

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

<p>JANE DOE,</p> <p style="text-align: center;"><i>Plaintiff,</i></p> <p style="text-align: center;">v.</p> <p>FAIRFAX COUNTY SCHOOL BOARD,</p> <p style="text-align: center;"><i>Defendant.</i></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Case No. 1:18-cv-614</p>
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ORDER

The Court held a hearing on July 19, 2019 and heard oral argument on Defendant’s Objections to Magistrate Judge’s Ruling or Recommendation, Dkt. 222, and other pre-trial matters.

In response to the issues raised at the hearing, it is hereby **ORDERED**

Evidence of Jane Doe and Jack Smith’s relationship prior to the incident which gives rise to this case will be admissible and not limited to solely the sexts sent from Smith to Doe.

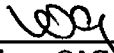
All witnesses, with the exception of Jane Doe and Jack Smith, will be identified by their real names, not pseudonyms. If any witness inadvertently uses Jane Doe or Jack Smith’s real names while testifying the official transcript will be amended to read Jane Doe or Jack Smith to preserve their anonymity.

During his deposition, Jack Smith asserted his Fifth Amendment rights regarding certain matters. At today’s hearing, counsel raised the possibility that Jack Smith may now testify at trial to those same matters. The Fifth Amendment privilege may not be used as both a shield and a sword. *In re Edmond*, 934 F.2d 1304, 1308 (4th Cir. 1991). Allowing a person to testify to issues

which he refused to testify to during his deposition based on privilege would allow a person to use the privilege as both a shield and a sword. *Galaxy Computer Servs., Inc. v. Baker*, 325 B.R. 544, 559 (E.D. Va. 2005). Thus, Jack Smith will not be permitted to testify at trial to matters about which he asserted is Fifth Amendment privilege during his deposition.

It is **SO ORDERED**.

July 19, 2019
Alexandria, Virginia



Liam O'Grady
United States District Judge