

AR AUG 25 2023
At 2:22 P.M.
Velva L. Price, District Clerk

COPY

CAUSE NO. D-1-GN-23-003616

LAZARO LOE, et al.,
Plaintiffs,

v.

THE STATE OF TEXAS, et al.,
Defendants.

§
§ **IN THE DISTRICT COURT OF**
§
§
§ **TRAVIS COUNTY, TEXAS**
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§
§
§ **201st JUDICIAL DISTRICT**
§

TEMPORARY INJUNCTION ORDER

On August 15 and 16, 2023, the Court held an evidentiary hearing on the Application for Temporary Injunction included within Plaintiff’s Verified Original Petition (“Application”) filed by Plaintiffs Lazaro Loe, individually and as parent and next friend of Luna Loe, a minor; Mary Moe and Matthew Moe, individually and as parents and next friends of Maeve Moe, a minor; Nora Noe, individually and as parent and next friend of Nathan Noe, a minor; Sarah Soe and Steven Soe, individually and as parents and next friends of Samantha Soe, a minor; Gina Goe, individually and as parent and next friend of Grayson Goe, a minor; PFLAG, Inc. (“PFLAG”); Richard Ogden Roberts III, M.D.; David L. Paul, M.D.; Patrick W. O’Malley, M.D.; American Association of Physicians for Human Rights, Inc., d/b/a GLMA: Health Professionals Advancing LGBTQ Equality (“GLMA”) (collectively, “Plaintiffs”) against Defendants the State of Texas, the Office of the Attorney General of Texas, John Scott, in his official capacity as Provisional Attorney General¹ (“Attorney General”), the Texas Medical Board, and Texas Health and Human Services Commission (collectively, “Defendants”).

¹ Plaintiffs’ Verified Original Petition for Declaratory Judgment and Application for Temporary and Permanent Injunctive Relief sued John Scott, in his capacity as Provisional Attorney General due to the Articles of Impeachment against Ken Paxton passed by the Texas House of Representatives on 5/27/2023, which resulted in the suspension of the exercise of Ken Paxton’s duties in the Office of Attorney General. On July 12, 2023, Angela Colmenero succeeded John Scott as Provisional Attorney General of Texas.

In their Application, Plaintiffs seek to temporarily restrain and enjoin Defendants, their officers, agents, servants, employees, attorneys, and all persons in active concert and participation with Defendants, from implementing and enforcing the act commonly known as Senate Bill 14, passed by the 88th Texas Legislature, Regular Session, and signed by the Governor on June 2, 2023 (“Act”). The Act prohibits the provision of certain medical treatments and procedures to transgender adolescents in Texas by various amendments to the Health and Safety Code, the Occupations Code, and Human Resources Code. Act §§ 1-9 (adding Subsection (g) to Section 62.151 of the Health and Safety Code; Subchapter X to Chapter 161 of the Health and Safety Code; Subsection (pp) to Section 33.024 of the Human Resources Code; Section 164.052(a)(24) of the Occupations Code; Section 164.0552 to Subchapter B, Chapter 164 of the Occupations Code).

Having considered the testimony and evidence admitted at the hearing, the arguments of counsel, and the applicable authorities, this Court finds sufficient cause to enter a Temporary Injunction against Defendants. Plaintiffs state a valid cause of action against Defendants and have a probable right to the declaratory and permanent injunctive relief they seek in this lawsuit. There is a substantial likelihood that Plaintiffs will prevail after a trial on the merits. Furthermore, unless Defendants are immediately enjoined from enforcing the Act, Plaintiffs will suffer probable, imminent, and irreparable injury in the interim.

FINDINGS

I. Likelihood of Success

A. The Court finds the Act likely violates Article I, Section 19 of the Texas Constitution by infringing upon the fundamental right of parents to make decisions concerning the care, custody, and control of their children. This fundamental right includes the right of parents to give, withhold, and withdraw consent to medical treatment for their children. This fundamental right also includes the right to seek and to follow medical advice to protect the health and wellbeing of their minor children. The Act’s prohibitions on providing evidence-based treatment for adolescents with gender dysphoria stands directly at odds with parents’ fundamental right to make decisions

concerning the care of their children. Furthermore, the Act interferes with Texas families' private decisions and strips Texas parents, including Parent Plaintiffs and PFLAG parent members, of the right to seek, direct, and provide medical care for their children. The evidence before the Court does not support the conclusion the Act protects the health or wellbeing of minors. Instead, the evidence demonstrates that the Act threatens the health and wellbeing of adolescents with gender dysphoria. Specifically, the Act denies their parents, including Parent Plaintiffs and PFLAG parent members, the ability to obtain necessary and in some circumstances, lifesaving medical treatment for these children. The Court finds the Act is not narrowly tailored to serve a compelling government interest. Furthermore, the Court finds the Act lacks even a rational relationship to any legitimate government interest.

B. The Court further finds the Act likely violates Article I, Section 19 of the Texas Constitution by infringing upon Texas physicians' right of occupational freedom. The Act deprives Texas physicians of a vested property interest in their medical licenses. The Act requires Texas medical providers, including the physician Plaintiffs and health professional members of GLMA, to disregard well-established, evidence-based clinical practice guidelines, and their training and oaths, thereby significantly and severely compromising the health of their patients with gender dysphoria or, alternatively, to risk their livelihoods. The Act mandates revocation of licenses, along with a panoply of other disciplinary actions (including actions available to some Defendants through existing enforcement provisions of the Texas Medical Practice Act) if physicians provide their transgender adolescent patients with medically necessary treatment. The Act interferes with the professional relationship among medical providers, adolescent patients, and the patients' parents. Further, it subjects physicians to discipline for treating a patient according to generally accepted standards of care. The Act is clearly arbitrary and its effect as a whole is so unreasonably burdensome that it is oppressive.

C. The Court further finds that the Act likely violates Article I, Sections 3 and 3a the Texas Constitution by discriminating against transgender adolescents with gender dysphoria because of

their sex, sex stereotypes, and transgender status. The Act infringes upon the Texas Constitution's guarantees of equality under the law by enacting a discriminatory and categorical prohibition on evidence-based medical treatments for transgender youth which remains available to cisgender youth. Puberty-delaying treatment, hormone therapy, and chest surgery may be administered to treat minors with a variety of conditions other than gender dysphoria. However, the Act does not prohibit the same medical treatments for minors with all medical conditions; rather, it prohibits the treatments *only* when used to treat an adolescent for gender dysphoria, even though the risks of the treatments are similar, if not the same, regardless of the condition for which they are prescribed. In short, the Court finds that the Act is not justified by any legitimate state purpose, let alone a compelling one. The Act was passed because of, and not in spite of, its impact on transgender adolescents, depriving them of necessary, safe, and effective medical treatment. Further, the Act interferes with and overrides the clinical and evidence-based judgment of medical providers and the decision-making of parents, who provide informed consent.

II. Likelihood of Irreparable Harm

A. It is clear to the Court that, unless Defendants are immediately enjoined from enforcing the Act, Plaintiffs will suffer probable, imminent, and irreparable injury in the interim. Such injury, which cannot be remedied by an award of damages or other adequate remedy at law, includes:

(i) the loss of access to safe, effective, and medically necessary treatment for transgender adolescents experiencing gender dysphoria;

(ii) significantly and severely compromising the health and wellbeing of transgender adolescents experiencing gender dysphoria, including forcing such patients to experience unwanted and unbearable changes to their body;

(iii) the loss of a parent's ability to direct their child's medical treatment;

(iv) destabilizing the family unit, including forcing families to leave Texas, travel regularly out of state, and/or choose indefinite family separation;

(v) depriving Texas physicians the right of occupational freedom and their vested property interests in their medical licenses;

(vi) forcing Texas physicians to either violate their oath by disregarding the patient's medical needs and inflicting needless suffering, or putting their medical license and livelihood at risk; and

(vii) exacerbating health disparities for transgender adolescent patients who receive Medicaid and Children's Health Insurance Program (CHIP) coverage and who will lose that coverage if the Act goes into effect.

III. Balancing of the Equities

Defendants were provided notice of the causes of action, the Application, and participated in the hearing. The balance of the equities favors Plaintiffs. The threatened injury to Plaintiffs substantially outweighs the harm, if any, that Defendants would suffer from having to forestall enforcement of the Act, pending resolution of this case.

The Temporary Injunction being entered by the Court today is necessary to maintain the status quo and should remain in effect while this Court, and potentially the Third Court of Appeals and the Supreme Court of Texas, examine the parties' merits and jurisdictional arguments.

IT IS HEREBY ORDERED, ADJUDGED, and DECREED:

A. Until all issues in this lawsuit are finally and fully determined, Defendants and their respective officers, agents, servants, employees, and attorneys, as well as any individuals or entities in active concert with them, directly or indirectly under their control, or participating with them, who receive actual notice of the Order by personal service or otherwise, are immediately enjoined and restrained from implementing or enforcing the Act, and such restraint encompasses but is not limited to:

(1) enjoining and restraining the State of Texas, Office of the Attorney General of the State of Texas, Angela Colmenero, in her official capacity as Provisional Attorney General, and any successor Attorney General from filing an action to

enforce the Act, whether directly through authority provided by proposed Section 161.706 of Texas Health and Safety Code, or indirectly through authority provided by the Texas Medical Practice Act or otherwise;

(2) enjoining and restraining the State of Texas and Texas Medical Board from taking action to implement or enforce the Act, including investigating a complaint, referring a complaint to the Office of the Attorney General, revoking the license or other authorization to practice medicine of a physician, refusing to admit to examination or refuse to issue a license or renewal license to a person based on the Act, whether directly through authority provided by proposed Sections 164.052(a)(24) or 164.0552 of Texas Occupations Code, or indirectly through authority provided by the Texas Medical Practice Act or otherwise;

(3) enjoining and restraining the State of Texas and Texas Health and Human Services Commission from (a) withholding public money from being used, granted, paid, or distributed to any health care provider, medical school, hospital, physician, or any other entity, organization, or individual that provides or facilitates the provision of a procedure or treatment based on the Act, and (b) withholding or otherwise limiting reimbursement of or coverage for prohibited care under the Act by Medicaid and/or CHIP insurance plans.

B. Defendants shall provide notice of this Temporary Injunction to their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them.

C. Plaintiffs' bond is set at \$100. The clerk of this Court shall issue a Temporary Injunction in conformity with the law and the terms of this Order.

D. All parties may be served with notice of this Temporary Injunction in any matter provided under Rule 21a of the Texas Rules of Civil Procedure.

E. This Temporary Injunction shall not expire until judgment in this case is entered or this case is otherwise dismissed by this Court.

F. A trial on the merits is preferentially set before the Honorable Maria Cantú Hexsel, Judge of the 53rd Judicial District Court of Travis County, Texas on May 6, 2024, at 9:00 AM.

SIGNED on the 25th day of August, 2023.

A handwritten signature in black ink, appearing to read 'M. Cantú Hexsel', written over a horizontal line.

Judge Maria Cantú Hexsel
PRESIDING JUDGE