

2022 WL 4549009 (Tex.Dist.) (Trial Order)
District Court of Texas,
459th Judicial District.
Travis County

PFLAG, INC.; Mirabel Voe, individually and as parent and next friend of Antonio Voe, a minor;
Wanda Roe, individually and as parent and next friend of Tommy Roe, a minor; Adam Briggie
and Amber Briggie, individually and as parents and next friends of M.B., a minor, Plaintiffs,

v.

Greg ABBOTT, sued in his official capacity as Governor of the State of Texas; Jaime Masters,
sued in her official capacity as Commissioner of the Texas Department of Family and
Protective Services; and the Texas Department Of Family and Protective Services Defendants.

No. D-1-GN-22-002569.
September 16, 2022.

Order Granting Pflag, Inc.'s and the Briggie Plaintiffs' Application for Temporary Injunction

Amy Clark Meachum, Judge.

*1 On July 6, 2022, the Court considered the application by Plaintiffs PFLAG, Inc. (“PFLAG”); Mirabel Voe, individually and as parent and next friend of Antonio Voe, a minor; Wanda Roe, individually and as parent and next friend of Tommy Roe; and, Adam Briggie and Amber Briggie, individually and as parents and next friends of M.B., a minor, (collectively, “Plaintiffs”) for a Temporary Injunction (the “Application”), as found in Plaintiffs' Original Petition, Application for Temporary Restraining Order, Temporary and Permanent Injunction, and Request for Declaratory Relief (“Petition”) filed against Defendants Greg Abbott, in his official capacity as Governor of the State of Texas; Jaime Masters, in her official capacity as Commissioner of the Texas Department of Family and Protective Services (“Commissioner Masters”); and the Texas Department of Family and Protective Services (“DFPS”) (collectively, “Defendants”).

Based on the facts set forth in Plaintiffs' Petition, the declarations attached thereto, the testimony, the evidence, and the argument of counsel presented during the July 6, 2022 hearing on Plaintiffs' Application, this Court previously found sufficient cause to enter a Temporary Injunction against Commissioner Masters and DFPS on behalf of the Voe and Roe Plaintiffs.

During the last two months, the Court has considered the associational standing of PFLAG, as well as the ripeness of the Briggies' claims. Having now considered the applicable law, as well as the testimony, the evidence, and the arguments and briefing of counsel, this Court finds that PFLAG has standing, and the Briggie Plaintiffs' claims are ripe, in order to pursue this matter to final trial. The Court further finds sufficient cause to enter a Temporary Injunction against Commissioner Masters and DFPS on behalf of PFLAG and the Briggie Plaintiffs.

All Plaintiffs state a valid cause of action against Commissioner Masters and DFPS and have a probable right to the declaratory and permanent injunctive relief they seek. For the reasons detailed in Plaintiffs' Application and accompanying evidence, there is a substantial likelihood that Plaintiffs will prevail after a trial on the merits. Commissioner Masters and DFPS implemented a new rule expanding the definition of “child abuse” to presumptively treat the provision of gender-affirming medical care, including puberty blockers and hormone therapy, as necessitating an investigation (“DFPS Rule”). The DFPS Rule operationalized

Governor Abbott's February 22, 2022, letter to Commissioner Masters ("Governor Abbott's Directive") and Attorney General Paxton's Opinion No. KP-0401 ("Attorney General Paxton's Opinion"), which DFPS announced in its statement on February 22, 2022. The DFPS Rule was adopted without following the necessary procedures under the APA, is contrary to DFPS's enabling statute, is beyond the authority provided to the Commissioner and DFPS, and is otherwise contrary to law, as alleged in Plaintiffs' Petition.

The Court finds this new rule was improperly promulgated by Defendants and interferes with or impairs - or threatens to interfere with or impair - the legal rights and privileges of PFLAG members and their families, as well as the legal rights and privileges of the Briggie Plaintiffs, as well as the other Plaintiffs in this case. *See* Tex. Gov't Code sec. 2001.038(a).

*2 The Court further finds that an allegation about the provision of gender-affirming medical care, such as puberty blockers and hormone therapy, without more, was not investigated as child abuse by DFPS until after February 22, 2022. The DFPS Rule changed the *status quo* for transgender children and their families. The DFPS Rule was given the effect of a new law or new agency rule, despite no new legislation, regulation, or even valid agency policy.

It clearly appears to the Court that unless Commissioner Masters and DFPS are immediately enjoined from enforcing the DFPS Rule operationalizing Governor Abbott's Directive and Attorney General Paxton's Opinion, members of Plaintiff PFLAG, including the Voe, Roe, and Briggie families (collectively, "Plaintiff Families"), 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, but is not limited to: being subjected to an unlawful and unwarranted child abuse investigation; intrusion and interference with parental decision-making; the deprivation or disruption of medically necessary care for the parents' adolescent children; the chilling of the exercise of the right of Texas parents to make medical decisions for their children relying upon the advice and recommendation of their health care providers acting consistent with prevailing medical guidelines; intrusion into the relationship between patients and their health care providers; gross invasions of privacy in the home and school. and the resulting trauma felt by parents, siblings, and other household members; outing an adolescent as transgender: adverse effects on grades and participation in school activities; fear and anxiety associated with the threat of having a child removed from the home; increased incidence of depression and risk of self-harm or suicide; having to uproot their lives and their families to seek medically necessary care in another state; being placed on the child abuse registry and the consequences that result therefrom; and criminal prosecution and the threat thereof.

The Temporary Injunction being entered by the Court today maintains the status quo prior to February 22, 2022, and should remain in effect while this Court, and potentially the Court of Appeals, and the Supreme Court of Texas, examine the parties' merits and jurisdictional arguments.

IT IS THEREFORE ORDERED that, until all issues in this lawsuit are finally and fully determined, Defendants Commissioner Masters and DFPS are immediately enjoined and restrained from implementing or enforcing the DFPS Rule, and from implementing Governor Abbott's Directive and the Attorney General's Opinion, with regard to members of Plaintiff PFLAG, including but not limited to Plaintiff Families, and that such restraint encompasses but is not limited to:

(1) investigating members of PFLAG, including but not limited to Plaintiff Families, for possible child abuse or neglect *solely* based on allegations that they have a minor child who is gender transitioning or alleged to be receiving or being prescribed medical treatment for gender dysphoria, and

(2) taking any actions, including investigatory or adverse actions, against Plaintiff Families and other members of PFLAG with open investigations solely based on allegations that they have a child who is transgender, gender nonconforming, gender transitioning, or receiving or being prescribed medical treatment for gender dysphoria, except that DFPS shall have the ability

to administratively close or issue a “ruled out” disposition in any of these open investigations based on the information DFPS has to date.

*3 IT IS FURTHER ORDERED that in furtherance of the above, Defendants Commissioner Masters, DFPS and its employees, agents, contractors, 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, and who also receive actual notice that the person(s) reported for suspected child abuse or neglect solely based on allegations that the person(s) have a minor child who is gender transitioning, or receiving or being prescribed gender-affirming medical treatment, including puberty blockers and/or hormone therapy, is a member of Plaintiff PFLAG, shall immediately cease any intake, investigation, or assessment, including ceasing any further contact, communications, or other action related to processing such allegations. As specified above, DFPS shall have the ability to administratively close or issue a “ruled out” disposition in any of these open investigations based on the information DFPS has to date.

IT IS FURTHER ORDERED that a trial on the merits of this case is preferentially set before the Honorable Amy Clark Meachum, Judge of the 201st Judicial District Court of Travis County, Texas on June 12, 2023, at 9:00 a.m. o'clock in the courtroom of the 201st Judicial District of Travis County, Texas. The Clerk of the Court is hereby directed to issue a show cause notice to Defendants to appear at the trial.

The Clerk of the Court shall forthwith issue a temporary injunction in conformity with the laws and terms of this Order.

Plaintiffs have previously executed with the Clerk a bond in conformity with the law in the amount of \$100 dollars, and that bond amount will remain adequate and effective for this Temporary Injunction.

IT IS FURTHER ORDERED that this Order shall not expire until judgment in this case is entered or this Case is otherwise dismissed by the Court. Signed on September 16th, 2022, at 3:00 p.m. in Travis County, Texas.

<<signature>>

JUDGE AMY CLARK MEACHUM

End of Document