

CAUSE NO. D-1-GN-23-008611

KATE COX; JUSTIN COX; and DAMLA
KARSAN, M.D., on behalf of herself, her staff,
nurses, pharmacists, agents, and patients,

IN THE DISTRICT COURT OF

Plaintiffs,

TRAVIS COUNTY, TEXAS

v.

200 JUDICIAL DISTRICT

STATE OF TEXAS; ATTORNEY GENERAL
OF TEXAS, KEN PAXTON, in his official
capacity as Attorney General of Texas; TEXAS
MEDICAL BOARD; and STEPHEN BRINT
CARLTON, in his official capacity as Executive
Director of the Texas Medical Board,

Defendants.

~~12/07/2023~~ **TEMPORARY RESTRAINING ORDER**

On the 7 day of December, 2023, the Court considered Plaintiffs Kate Cox, Justin Cox, and Dr. Damla Karsan's Application for Temporary Restraining Order ("Application") seeking to restrain Defendants State of Texas, Attorney General of Texas, Ken Paxton, Texas Medical Board, and Stephen Brint Carlton ("Defendants"), their agents, servants, employees, attorneys, and all persons in active concert and participation with Defendants from enforcing Texas's abortion bans and laws, codified at Tex. Health & Safety Code §§ 170A.001-002 (the "Trigger Ban"), Tex. Health & Safety Code §§ 171.002(3), 171.203-205 ("S.B. 8"), and 1925 Tex. Penal Code arts. 1191-96 (the "pre-Roe Ban"), and certain Texas abortion laws utilizing the same medical exception, Tex. Health & Safety Code §§ 170A.001-002, 171.002(3), 171.203-205, 171.152, 171.0124, 285.202, against Plaintiffs Kate and Justin Cox and Plaintiff Dr. Karsan and her staff, nurses, pharmacists, agents, and patients. After consideration of the Application and pursuant to the Texas Rule of Civil Procedure 680, the Court hereby finds:

FINDINGS

The Court finds that Ms. Cox's life, health, and fertility are currently at serious risk, and she needs a dilation and evacuation ("D&E") abortion immediately to preserve her life, health, and fertility. Ms. Cox's circumstances meet the medical exception to Texas's abortion bans and laws.

Ms. Cox is currently 20 weeks pregnant. Ms. Cox has two young children already, both delivered by cesarean surgery ("C-section"). Her third child has been diagnosed with full trisomy 18. After multiple screenings, ultrasounds, and diagnostic testing, Ms. Cox's physicians have confirmed that her baby may not survive to birth and, if so, will only live for minutes, hours, or days.

The longer Ms. Cox stays pregnant, the greater the risks to her life. Ms. Cox has already been to three emergency rooms with severe cramping, diarrhea, and leaking unidentifiable fluid. If she is forced to continue this pregnancy, Ms. Cox is at a particularly high risk for gestational hypertension, gestational diabetes, fetal macrosomia, post-operative infections, anesthesia complications, uterine rupture, and hysterectomy, due to her two prior C-sections and underlying health conditions. If she is forced to carry this pregnancy to term, she will likely need a third C-section. Undergoing a third C-section would make subsequent pregnancies higher risk and make it less likely that Ms. Cox would be able to carry another child in the future.

Dr. Karsan has met Ms. Cox, reviewed her medical records, and believes in good faith, exercising her best medical judgment, that a D&E abortion is medically recommended for Ms. Cox and that the medical exception to Texas's abortion bans and laws permits an abortion in Ms. Cox's circumstances. Dr. Karsan, however, cannot risk liability under Texas's abortion bans and laws for providing Ms. Cox's abortion absent intervention from the Court confirming that doing so will not jeopardize Dr. Karsan's medical license, finances, and personal liberty.

Mr. Cox is married to Ms. Cox and is the father of her children. He is ready to assist Ms. Cox in obtaining an abortion in Texas but needs assurances from this Court that doing so will not violate Texas's abortion bans and laws.

The Court finds that (1) Dr. Karsan is a Texas-licensed physician, and (2), consistent with Dr. Karsan's good faith belief and medical recommendation, that Ms. Cox has a life-threatening physical condition aggravated by, caused by, or arising from her current pregnancy that places her at risk of death or poses a serious risk of substantial impairment of her reproductive functions if a D&E abortion is not performed. Ms. Cox's circumstances thus fall within the medical exception to Texas's abortion bans and laws. Texas law therefore permits Dr. Karsan to perform, induce, or attempt an abortion for Ms. Cox, and permits Mr. Cox to assist Ms. Cox in obtaining that abortion.

This Court further finds that a D&E abortion is the method of abortion medically necessary to preserve Ms. Cox's life, health, and future fertility, and poses far fewer risks than an induction or a C-section.

The Court further finds that the risks to Ms. Cox's life, health, and fertility do not arise from a claim or diagnosis that Ms. Cox would engage in conduct that might result in her own death or self-harm.

Money damages are insufficient to remedy the injuries to Plaintiffs that will result if Defendants are not enjoined from instituting civil, criminal, or disciplinary investigations or actions under Texas's abortion bans and laws related to the abortion Ms. Cox is currently seeking. Conversely, Defendants will not be harmed if the Court restrains them and anyone in active participation or concert with them from enforcing Texas's abortion bans and laws as applied to the abortion Ms. Cox is currently seeking.

Defendants are responsible for enforcing Texas's abortion bans and laws. Defendant State of Texas enforces all Texas laws and includes persons acting under color of state law who could potentially enforce S.B. 8 and the pre-*Roe* ban. Defendants Attorney General Paxton, the Texas Medical Board, and Stephen Brint Carlton are statutorily empowered to assess civil penalties and disciplinary sanctions against anyone who violates the Trigger Ban and other Texas abortion laws. Defendants have not disavowed enforcement of these laws in circumstances like Ms. Cox's, nor have they provided any clarity as to how physicians like Dr. Karsan or persons like Mr. Cox should interpret the medical exception to Texas's abortion bans and laws that Defendants enforce. Violations of Texas's abortion bans and laws are subject to heavy penalties, including lifetime imprisonment, hundreds of thousands of dollars in fines and penalties, and loss of professional license. The Court finds that Plaintiffs are reasonably chilled from performing or aiding in the performance of an abortion for Ms. Cox without issuance of temporary relief restraining Defendants.

Defendants were provided notice of the cause of action, the Application, and the hearing conducted. Unless Defendants are restrained, Plaintiffs face an imminent threat of irreparable harm under Texas's abortion bans and laws. Judicial intervention is necessary to preserve Plaintiffs' legal right to obtain, provide, aid, or abet the abortion Ms. Cox is currently seeking.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

A. A Temporary Restraining Order is entered enjoining Defendants, their officers, agents, servants, employees, and attorneys, and those persons in active participation or concert with them, from enforcing Texas's abortion bans and laws, codified at Tex. Health & Safety Code §§ 170A.001-002, 171.002(3), 171.203-205, 171.152, 171.0124, 285.202 against Plaintiffs and their staff, nurses, pharmacists, agents, and patients, as applied to Ms. Cox's current pregnancy.

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

C. The matter is scheduled for a permanent injunction hearing on the 20 day of December, 2024, at 9:00am

D. Plaintiffs' bond is set at \$10.00. A law firm check or credit card is sufficient to post bond. Upon the filing of the bond required herein, the Clerk of this Court shall issue a Temporary Restraining Order in conformity with the law and the terms of this Order Granting Plaintiffs' Application for Temporary Restraining Order.

E. All parties may be served with notice of this Temporary Restraining Order and of the hearing on the request for Permanent Injunction in any matter provided under Rule 21a of the Texas Rules of Civil Procedure.

F. This Temporary Restraining Order shall expire on 12-21, 2023, at 5:00 p.m.

SIGNED this 7 day of December, 2023, at 10:09 a.m. ~~p.m.~~



PRESIDING JUDGE

MAYA GUERRA GAMBLE
459th DISTRICT COURT