

Testimony Against SB6
Before the Texas Senate Committee on State Affairs
March 7, 2017

Hello Madam Chair and Senate Committee Members. My name is Omar Narvaez and I am Law and Policy Advocate for Lambda Legal Defense and Education Fund (“Lambda Legal”). Lambda Legal is the Nation’s oldest and largest nonprofit legal organization making the case for equality for lesbian, gay, bisexual and transgender (“LGBT”) people for more than forty years. Lambda Legal has served our Texas LGBT community from its South Central Regional office in Dallas for more than twenty years. Our work has included cases such as *Lawrence v. Texas*, in which the U.S. Supreme Court struck down the Texas “Homosexual Conduct” law and all of the remaining state laws that criminalized same-sex intimate relationships.¹

I am a proud born and raised Texan from Houston, now living in Dallas, and I am honored to appear before you. My message is simple: Say “no” to Senate Bill 6.

Current laws already protect against predators in restrooms and other sex-separated spaces. There has been no showing whatsoever that those laws are insufficient.

Instead, without any basis in fact, SB6 cruelly targets some of our state’s most vulnerable young people — transgender students. If enacted, it would inflict further stigma and pain on students who are simply trying to make it through the school day, get an education, and survive the mean-spirited accusations of some adults who should be seeking to understand and support them — and all students in our great state of Texas — rather than singling them out for discrimination.

¹ *Lawrence v. Texas*, 539 U.S. 558 (2003).

Please let me stress: transgender students are not a threat to anyone. That is why SB6 is a misguided non-solution looking for a problem. And, if enacted, it would open our great state to expensive litigation that the state will surely lose.

I am confident in predicting that Texas would not be able to defend SB 6 in court because numerous courts already have spoken to these issues, and their condemnation of this kind of ill-advised discrimination is piling up. For more than fifteen years, our federal courts have been recognizing that discrimination against transgender individuals is unlawful sex discrimination.² This includes our federal courts here in Texas, for example in a case Lambda Legal won on behalf of a transgender woman nearly a decade ago.³

More recently, a series of federal court cases have challenged the same discrimination against transgender students that SB6 would impose here in Texas. And the decisions confirm that SB6 would cause a significant waste of taxpayer dollars trying to defend a policy that is indefensible.⁴

The most recent of these court decisions came just last week in Lambda Legal's case against the Pine-Richland School District in Western Pennsylvania.⁵ In that case, federal district Judge Mark Hornak ruled in favor of our clients, three transgender students at Pine-Richland High School. Judge Hornak ordered the school district to allow these students to use the restrooms that match who they are and to stop enforcing the discriminatory policy the District adopted last fall.

Judge Hornak's order explains that the school district violated the U.S. Constitution by ordering the students either to use the wrong restrooms or to use single-user facilities, separate from other students. Judge Hornak ruled that we are likely to win on our claim that the District's exclusion

² *Schwenk v. Hartford*, 204 F.3d 1187 (9th Cir. 2000). See also, e.g., *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011); *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004); *Schroer v. Billington*, 577 F. Supp. 2d 293 (D.D.C. 2008).

³ *Lopez v. River Oaks Imaging & Diagnostic Grp., Inc.*, 542 F. Supp. 2d 653 (S.D. Tex. 2008).

⁴ See, e.g., *Bd. of Educ. of Highland S.D. v. U.S. Dept. of Educ.*, No. 16-524, 2016 WL 5372349 (S.D. Ohio Sept. 26, 2016), stay denied pending appeal, *Dodds v. U.S. Dept. of Educ.*, 845 F.3d 217 (6th Cir. 2016) ("*Highland*"); *Whitaker v. Kenosha Unified Sch. Dist. No. 1*, No. 16-943, 2016 WL 5239829 (E. D. Wisc. Sept. 22, 2016) ("*Whitaker*"); *Carcano v. McCrory*, No. 16-cv-236, 2016 WL 4508192 (M.D. N.C. Aug. 26, 2016) ("*Carcano*").

⁵ *Evancho v. Pine-Richland School District*, Case 2:16-cv-01537-MRH (W.D. Pa. Feb. 27, 2017). Court decision and more information are at http://www.lambdalegal.org/blog/20170227_pine-richland-preliminary-injunction.

of our clients from “common school restrooms does not afford them equal protection of the law as guaranteed to them by the Fourteenth Amendment.”

Basically, the federal court told the school district to let transgender students use the bathroom they identify with — consistent with the gender they live every day in every aspect of their lives.

In addition to the U.S. Constitution, transgender students also are protected by Title IX, the federal law protecting students from sex discrimination in school. Numerous courts have concluded that this federal law does not allow schools to limit bathroom access based solely on birth-assigned sex or according to sex stereotypes, including the stereotype that a student’s gender identity must correspond to birth-assigned sex.⁶

In addition to the fact that SB6 is fatally flawed as a legal matter, it also would be devastating for our Texas economy. We know this from studies of the business climate here in Texas. For example, the Texas Association of Business’s analysis predicts up to \$8.5 billion in GDP losses and up to 185,000 lost jobs.⁷

But the most concrete evidence comes from North Carolina, where that state’s House Bill 2 of last year — which was the unwise model for SB6 here — has brought terrible consequences to the Tar Heel state.⁸ This is because targeting transgender people sends the powerfully negative message that a state is not open and welcoming to everyone. In addition to massive corporate

⁶ See, e.g., *Highland*, 2016 WL 5372349; *Whitaker*, 2016 WL 5239829; *Carcano*, 2016 WL 4508192. See also *G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.*, 822 F.3d 709, 718 (4th Cir. 2016) (“We look to case law interpreting Title VII of the Civil Rights Act of 1964 for guidance in evaluating a claim brought under Title IX.”), *cert. granted in part*, 137 S. Ct. 369 (2016), *vacated on other grounds and remanded*, *Gloucester Cty. Sch. Bd. v. G.G.*, Case No. 16-273, March 6, 2017 Order List, 580 U.S. ___ (March 6, 2017).

⁷ Keep Texas Open for Business, *New Study Finds Up to \$8.5 Billion GDP Loss, 185,000 Jobs at Risk if Texas Passes So-Called “Religious Freedom” and “Bathroom Bills”* (Dec. 6, 2016), available at <http://www.keeptxopen.org/launch-release/>; Texas Association of Business, *The Economic Impact of Discriminatory Legislation on the State of Texas* (Dec. 2016) (analysis concluding that SB6 would cause economic losses in Texas’ GDP ranging from \$964 million to \$8.5 billion, up to 185,000 lost jobs, and other substantial economic impacts), available at <http://www.keeptxopen.org/wp-content/uploads/2016/12/KTOB-Economic-Study.pdf>.

⁸ See, e.g., Christy Mallory and Brad Sears, *Discrimination, Diversity and Development: The Legal and Economic Implications of North Carolina’s HB 2* at 32, n. 184 (May 2016) (estimating that anti-LGBT law could cost state \$5 billion annually), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Discrimination-Diversity-and-Development-The-Legal-and-Economic-Implications-of-North-Carolinas-HB2.pdf>.

opposition to North Carolina's HB2,⁹ major entertainers, sports leagues, and consumers all have expressed outrage, including through boycotts with huge, negative economic effects.¹⁰

Lambda Legal along with the ACLU of North Carolina immediately challenged North Carolina's HB2 last year and the courts already have granted a preliminary injunction requiring that our clients be allowed access to the restrooms that match their gender identity. If we need to, of course, Lambda Legal will be ready to immediately challenge SB6 here. But, we strongly hope the lessons from other states will be heeded and litigation will not be necessary in Texas.

Texas is known as the "Friendship" state and SB6 is simply un-Texan. Honorable Senators, please do the right thing — the Texan thing — and reject Senate Bill 6. Keep Texas known as the "Friendship" State, with a growing, thriving economy and a bright future for all of us.

⁹ Ryan Bort, *A Comprehensive Timeline of Public Figures Boycotting North Carolina Over the HB2 'Bathroom Bill,'* NEWSWEEK (Sept. 14, 2016) (chronicling boycotts by entities such as the NCAA, NBA, ACC and 68 leading national businesses) ("*Timeline of Boycotts*"), available at <http://www.newsweek.com/north-carolina-hb2-bathroom-bill-timeline-498052>; Emma Grey Ellis, *Guess How Much That Anti-LGBTQ Law Is Costing North Carolina,* WIRED (Sept. 18, 2016) (estimating that NC has lost \$395 million due to HB2-related boycotts), available at <https://www.wired.com/2016/09/guess-much-anti-lgbtq-law-costing-north-carolina/>.

¹⁰ Ryan Bort, *Timeline of Boycotts* (itemizing boycotts by entertainment figures including Bruce Springsteen, Ringo Starr, Itzhak Perlman, Maroon 5, Pearl Jam, Demi Lovato and Nick Jonas well as production studio Lionsgate, *Wicked* composer Stephen Schwartz, Cirque du Soleil, and 269 children's book authors and illustrators).