

May 8, 2019

The Honorable Lindsey Graham
Chair
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington D.C. 20510

The Honorable Dianne Feinstein
Ranking Member
Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington D.C. 20510

RE: Lambda Legal Opposes Confirmation of Brantley Starr to the U.S. District Court for the Northern District of Texas

Dear Chairman Graham and Ranking Member Feinstein:

On behalf of Lambda Legal, the oldest and largest legal organization serving the lesbian, gay, bisexual and transgender (LGBT) community, we write to oppose the confirmation of Brantley Starr to the United States District Court for the Northern District of Texas. As explained in detail below, Mr. Starr has been a vocal opponent of LGBT nondiscrimination protections throughout his career. Mr. Starr advocated for broad religious exemptions that would allow child welfare providers to turn away LGBT foster and adoptive parents, authored guidance that would allow county clerks to refuse to issue marriage licenses to LGBT couples, and has argued against the inclusion of transgender students under Title IX protections. Based on his extensive history of staunch anti-LGBT advocacy, it is impossible to believe that he could administer fair and impartial justice to LGBT litigants appearing before him, and therefore, his nomination should be rejected.

For many years, Mr. Starr has played an active role in working to undermine the legal protections of LGBT people in the state of Texas.¹ For example, while serving as deputy attorney general, Mr. Starr provided in-person testimony during a legislative hearing² in support of a bill that would allow foster agencies to discriminate against prospective LGBT parents and LGBT children and youth in state care, despite the Attorney General's stated neutrality on the bill.³ Mr. Starr argued that the legislation was needed to eliminate the possibility that courts could find that there is a

¹ Chuck Lindell, *Texas senators weigh religious protection v. discrimination*, STATESMAN (Sept. 23, 2016), available at <https://www.statesman.com/news/20160923/texas-senators-weigh-religious-protection-vs-discrimination>.

² H.B. 3864, 84th Sess. (Tx. 2015); HB 3864 Witness List House Committee Report Juvenile Justice & Family Issues Committee (Apr. 15, 2015), available at <https://capitol.texas.gov/tlodocs/84R/witlistbill/html/HB03864H.htm>.

³ John Wright, *Committee Weighs 'License to Discriminate' Adoption Bill*, TEXAS OBSERVER (Apr. 16, 2015) available at <https://www.texasobserver.org/license-to-discriminate-adoption-bill/> (“Brantley Starr, deputy attorney general for legal counsel, said the AG’s office is officially neutral on the bill. But Republican Attorney General Ken Paxton has championed so-called religious liberty, and Starr offered supportive testimony.”).

compelling state interest in eradicating discrimination against LGBT people.⁴ Mr. Starr trivialized that interest by comparing it to the possibility that a judge could find a compelling state interest to use a cell phone while driving a vehicle.⁵ Two years later, Mr. Starr again provided in-person testimony on behalf of the Attorney General's office in support of a similar bill that sought to provide faith-based adoption and foster care providers the ability to turn away LGBT parents and to allow agencies to discriminate against LGBT children and youth in state care without consequence.⁶ This time the legislation passed and the discriminatory bill was signed into law—ostensibly giving child welfare agencies that receive taxpayer money in the state of Texas the right to turn away prospective adoptive parents simply because they are LGBT⁷ and allowing LGBT foster children to be sent to “conversion therapy” without fear of state action.⁷ Such discrimination is patently unconstitutional, but, Mr. Starr's minimization of the discrimination that LGBT people experience, and his conviction that there is no compelling state interest in ending discrimination against LGBT people clearly demonstrates an animus toward LGBT people that would prevent him from serving as an impartial judicial officer.

Mr. Starr also aggressively defended county clerks who wished to deny marriage licenses to same-sex couples following the U.S. Supreme Court ruling in *Obergefell v. Hodges*. Mr. Starr signed onto a 2015 Attorney General Opinion stating that county clerks may object to issuing licenses to same-sex couples that was issued in defiance of the U.S. Supreme Court's decision.⁸ Mr. Starr staunchly defended this discriminatory position, stating on a panel discussing the issue that “if a clerk has a religious objection personally, state law currently allows them to delegate those duties to issue licenses to other in their offices.” The Attorney General's Opinion ultimately led to an ethics investigation for instructing county clerks that they could deny marriage licenses to same-sex couples.⁹

Mr. Starr also helped spearhead the Texas Attorney General's misguided lawsuit challenging the Obama Administration's Title IX transgender student guidance.¹⁰ The complaint resorts to specious and damaging arguments that transgender people will whimsically undergo repeated gender

⁴ *Id.*

⁵ *Id.* (Mr. Starr is quoted as stating, “[my] cell phone, I used to be able to use it in my car in Austin, I can't now. It may be a compelling governmental interest in the minds of some judges to actually do that.”)

⁶ H.B. 3859, 2017 Leg., 85th Sess. (Tx. 2017); H.B. 3859 Witness List, House Committee Report, State Affairs Committee, (Mar. 29, 2017), available at <https://capitol.texas.gov/tlodocs/85R/witlistbill/pdf/HB03859H.pdf>

⁷ Kristopher Sharp, *The Deadly Consequences of Texas' HB 3859*, (June 23, 2017), available at <https://www.tribtalk.org/2017/06/23/the-deadly-consequences-of-texas-hb-3859/>.

⁸ Brantley Starr et al, *Rights of government officials involved with issuing same-sex marriage licenses and conducting same-sex wedding ceremonies* (June 28, 2015) available at <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/op/2015/kp0025.pdf><https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/op/2015/kp0025.pdf>

⁹ See Jon Herkovitz, *Texas Attorney General Faces Ethics Probe*, REUTERS (Feb. 11, 2016) available at <https://www.reuters.com/article/us-texas-paxton/texas-attorney-general-faces-ethics-probe-over-gay-marriage-idUSKCN0VK1VU>.

¹⁰ *Texas v. United States*, No. 7:16-cv-00054-O (N.D. Tex.), Plaintiff's First Amended Complaint for Declaratory and Injunctive Relief (June 15, 2016), available at <https://www.clearinghouse.net/chDocs/public/PA-TX-0001-0002.pdf>.

transitions.¹¹ In support of the litigation, Mr. Starr also repeated—without evidence—the fearmongering trope that protecting transgender students somehow impinges issues of “safety” for other students.¹² Mr. Starr also helped end an inclusive transgender policy in the Fort Worth school district by using the full weight of the Attorney General’s office to issue a formal Opinion.¹³

Mr. Starr’s long record of opposing LGBT protections at every turn reveals that he would be unable to set aside his personal beliefs in order to administer impartial justice. His animosity leaves no hope for LGBT Texans that they would receive equal justice under the law. For these reasons, we oppose this nomination and urge you to vote “no.”

Thank you for considering our views on this important issue. Please do not hesitate to reach out if we can provide additional information throughout the confirmation process. You can reach us through Sasha Buchert, Senior Attorney, at sbuchert@lambdalegal.org.

¹¹ *Id.*

¹² See Leah Jessen, *Texas Sues Obama Administration Over Transgender Bathroom Directive* DAILY SIGNAL (May 25, 2016), available at <https://www.dailysignal.com/2016/05/25/texas-sues-obama-administration-over-transgender-bathroom-directive/>.

¹³ Attorney General of Texas, Ken Paxton, Opinion No. KP-0100 (June 28, 2016), available at <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/op/2016/kp0100.pdf>.