

EXHIBIT 6

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

GSA Network, Students Engaged in
Advancing Texas, Texas AFT, Rebecca Roe,
by and through her next friend, Ruth Roe,
Adrian Moore, by and through his next friend,
Julie Johnson, and Polly Poe,
Plaintiffs,

v.

Mike Morath, in an official capacity as
Commissioner of the Texas Education
Agency, Houston ISD, Katy ISD, and Plano
ISD,

Defendants.

Civil Action No. 4:25-cv-04090

Declaration of Zeph Capo

Pursuant to 28 U.S.C. § 1746, I, Zeph Capo, declare as follows:

1. I am the President of the Texas American Federation of Teachers (“Texas AFT”). As President, I work closely with Texas AFT officers, staff, and chapter presidents to oversee all aspects of Texas AFT’s finances, operations, and programming.
2. Texas AFT is a statewide labor union that represents over 66,000 employees throughout Texas, including teachers, librarians, counselors, nurses, teaching assistants, and other public and charter school employees. Texas AFT advocates for the employment rights of its members and champions high quality public education, fairness, democracy, and economic opportunity for students, families, and communities. Our members work closely with students and are an active part of the lives and success of Texas students, parents, and guardians.
3. Texas AFT’s members reflect the diversity of Texas in every way and come from various backgrounds with regards to race, religion, gender identity, sexual orientation, national origin, wealth, disability, and more. Texas AFT has members in over 480 public school districts in Texas, including Houston ISD, Katy ISD, and Plano ISD. We also have members in various charter school systems across Texas.
4. Texas AFT is the statewide affiliate of the 1.6 million-member American Federation of Teachers. AFT has a broad membership spectrum, including pre-K through 12th-grade teachers; paraprofessionals and other school personnel; higher education faculty and professional staff; federal, state, and local government employees; and nurses and other healthcare professionals. In addition, AFT represents thousands of early childhood educators, along with retiree members.

5. AFT is an affiliate of the 12.5 million-member AFL-CIO, and Texas AFT makes up the largest affiliate of the Texas AFL-CIO. The AFL-CIO is a democratic, voluntary federation of 55 national international labor unions, all striving to improve the lives of working people with fair wages and benefits, safe jobs, and equal opportunities.
6. Texas AFT believes that education is the path to a just and democratic society. We also believe that the only way to give students a quality education is through the dedicated work of empowered public educators.
7. Racial justice and LGBTQ+ justice are both critical to Texas AFT's mission of supporting our members and public education in Texas. If the challenged aspects of S.B. 12 are not enjoined, Texas AFT's members will be subject to vague, arbitrary, and discriminatory provisions that impair their free speech and due process rights, and our members will be blocked from discussing topics of race, ethnicity, gender identity, and sexual orientation with students, parents, third parties, and other educators in and surrounding Texas schools.
8. Texas AFT brings claims on behalf of its members against the Commissioner, Houston ISD, Katy ISD, and Plano ISD for injunctive and declaratory relief against the GSA Ban, Inclusivity Ban, Social Transition Ban, and Don't Say LGBTQ+ Ban because these provision are vague, overbroad, viewpoint-discriminatory, and a prior restraint on members' speech.
9. Polly Poe, who is also an individual Plaintiff in this case, is a member of Texas AFT in Plano ISD.

Impacts of S.B. 12 on Texas AFT's Members

10. Every aspect of S.B. 12 challenged in this lawsuit harms the constitutional rights of Texas AFT members.
11. Our members are harmed by S.B. 12's prohibition on "assisting a student . . . with social transitioning, including by providing any information about social transitioning." This language is so vague and broad that it fails to give our members notice as to what is prohibited by the law. The law gives no guidance as to what it means to provide assistance, what is included in "any information about social transitioning," or even what social transitioning fully means.
12. The consequences for violating this Social Transition Ban are harsh and severe. S.B. 12 authorizes any parent to "report to the board of trustees of the district a suspected violation" of this prohibition. While most complaints against an educator are investigated first by the campus or district, S.B. 12 requires "[t]he board" itself to investigate and "determine whether the violation occurred." Although the law does not provide any burden of proof or due process rights that Texas AFT members or other educators may rely on in responding to these allegations, it requires the board to "immediately report the violation to the commissioner" if the board determines that a violation occurred. *Id.* Being reported to the TEA Commissioner can lead to an "investigative warning" being placed on the educator's

teaching certificate and that person immediately being “listed on the Do Not Hire Registry,” even without a finding of guilt, simply because TEA initiates a formal investigation.¹

13. These harsh consequences can be triggered without a clear burden of proof or sufficient due process rights for Texas AFT’s members. If a parent complains that one of our members is “assisting” a student’s social transition—as vaguely defined as it is—and a school board agrees with them, that member can be immediately placed on leave and threatened with the possibility of never teaching again. The vague provisions and harsh penalties of the Social Transition Ban therefore put Texas AFT members’ licenses at risk, even if they do not seek or intend to violate the law.
14. Given the detrimental consequences of violating S.B. 12, and the vague and ambiguous rules, our members are now afraid to fully support their students, which threatens the bonds and relationships between our members and the communities they serve.
15. Because Texas AFT has many members who want to keep supporting their transgender students—including by respecting their affirming names and pronouns—S.B. 12 places our members in an untenable position of having to either harm their students by not supporting their full and authentic identities or facing potential investigation, suspension, and loss of employment.
16. Because the Social Transition Ban is not limited to speech within the scope of an educator’s official duties, it also suppresses our members’ ability to speak about matters of public concern even in their own private capacity. On its face, the law is not limited only to curricula, in-class discussions, or school employees’ official duties. Because it applies to Texas AFT members’ private speech far removed from their official duties—such as when educators encounter students on the weekend or at a community event—this section censors our members’ speech.
17. The other sections of S.B. 12 challenged in this lawsuit similarly harm Texas AFT members. For example, the law’s ban on any school employee from “developing or implementing policies, procedures, trainings, activities, or programs that reference race, color, ethnicity, gender identity, or sexual orientation” provides insufficient guidance as to what is actually prohibited and bars Texas AFT members from being able to engage in activities by schools previously approved and established as appropriate forums for free and open discussion of race and other topics. For example, many schools in Texas have student newspapers, literary magazines, or debate clubs where students speak with teachers about current events, including topics of race, gender identity, and sexual orientation. Under S.B. 12, Texas AFT members are now prohibited from “implementing” any of those programs that even “reference” race or other disfavored topics. Even when Texas AFT members chaperone field trips or speak with students about these issues even outside of school, their speech on any topic relating to race, gender identity, or sexual orientation is chilled and suppressed by S.B. 12, and the law seems to require schools to discipline any teacher who violates these vague and ambiguous provisions.

¹ See *Educator Misconduct & Investigations*, Tex. Educ. Agency, <https://tea.texas.gov/texas-educators/investigations/educator-misconduct-investigations> (last visited Aug. 27, 2025).

18. S.B. 12's requirement that no district or charter school employee may "provide or allow a third party to provide instruction, guidance, activities, or programming regarding sexual orientation or gender identity to students enrolled in prekindergarten through 12th grade" also harms Texas AFT members. This provision is vague since it does not define its key terms or give any indication as to what kind of "instruction, guidance, activities, or programming" mean or what would or would not violate the law.
19. Because Texas AFT members cannot even "allow" any third party to address these topics, S.B. 12 puts educators in an impossible situation of having to predict what any guest speaker or third party might say before they say it. This requires our members to act as censors in all types of programs and activities related to schools. This puts our members in an untenable dilemma where they may face legal liability for violating the constitutional rights of third parties and being forced to suppress other people's free speech. Because public school employees can be sued if they violate someone's constitutional rights, S.B. 12 creates a legal risk for our members and puts them in an unenviable position of having to dictate or determine how to enforce this law.
20. Like the Social Transition Ban, the Don't Say LGBTQ+ prohibition is not limited to the curriculum or educators' official duties and threatens to suppress Texas AFT members' speech in their own private capacity, including if educators encounter students on the weekend or at community events.
21. Texas AFT members are also injured by S.B. 12's prohibition of student clubs "based on sexual orientation or gender identity." As with the other sections, this provision provides no guidance to educators about how to enforce the law or determine whether a club is "based on sexual orientation or gender identity." This section also conflicts with requirements that educators do not discriminate against their students or shut down student clubs based on content. Having to discriminate against students makes our own members who are LGBTQ+ feel more marginalized and isolated when any student organizations supporting LGBTQ+ identities are banished from Texas schools.
22. Each of these challenged provisions also creates an irreconcilable dilemma with the Texas Educator Code of Ethics, which many of our members are required to adhere to as certified educators in Texas. Among other requirements, the Code of Ethics mandates that educators not:
 - a. "[R]eveal confidential information concerning students unless disclosure serves lawful professional purposes or is required by law";
 - b. "[I]ntentionally, knowingly, or recklessly treat a student or minor in a manner that adversely affects or endangers the learning, physical health, mental health, or safety of the student or minor";
 - c. "[I]ntentionally, knowingly, or recklessly misrepresent facts regarding a student"; and
 - d. "[E]xclude a student from participation in a program, deny benefits to a student, or grant an advantage to a student on the basis of race, color, gender,

disability, national origin, religion, family status, or sexual orientation”, among other requirements.” 19 Tex. Admin. Code § 247.2(3).

23. Several provisions of S.B. 12 seem to conflict with these ethical requirements. If Texas AFT members are required to use a name or pronouns for transgender students based on their birth sex, that could reveal confidential information about them and expose their private medical information. It would also adversely affect or endanger their learning, safety, and physical and mental health. Texas educators are not allowed to misrepresent any facts regarding a student, which would occur if they are forced to deny students’ identities and are silenced from mentioning anything involving race, gender identity, or sexual orientation at school. Texas AFT members are also not permitted to discriminate against any student based on gender or sexual orientation, which the requirements of S.B. 12 could lead them to do. By requiring Texas AFT members to stop GSAs from meeting and to stop sharing information with students about race, gender, and sexual orientation, S.B. 12 puts our members in an untenable position. If these members are accused of violating the Texas Educators’ Code of Ethics, they may face threats to their certifications or other disciplinary sanctions imposed by the State Board for Educator Certification (SBEC).
24. Many Texas AFT members are also parents or guardians of children in Texas schools in pre-kindergarten through twelfth grade who will be negatively impacted by this law. Our members with kids in public or charter schools are in a particularly tenuous position under this law, because S.B. 12’s prohibitions are not limited to in-school discussions, curricula, or educators’ official duties. As a result, our members worry that they could be accused of violating S.B. 12’s restrictions even when speaking with their own children or their children’s friends in their role as a parent. While some lawmakers claimed that S.B. 12 is a “Parents’ Bill of Rights,” its vague and sweeping provisions harm the rights of Texas AFT members who are parents and want to be able to freely discuss topics of public concern with their children, including race, sexual orientation, gender identity, and social transitioning.
25. Texas AFT has already heard from many of our members harmed by these provisions of S.B. 12. Our grievance hotline has received a high volume of inquiries from our members seeking guidance about what S.B. 12 means and are upset about its implications including its harsh professional consequences and the harm it is causing their relationships with their students and concerned parents. As members contact us for help and advice on how to navigate this new law causing significant harm in and surrounding their schools, we have not been able to tell them what these provisions actually prohibit because they are so vague and seemingly contradictory.
26. We thus bring claims on behalf of our members for injunctive and declaratory relief against Defendants’ enforcement of these challenged provisions because they will irreparably harm the constitutional rights of our members and cause immense harm for students, parents, and educators across our state.

I declare under penalty of perjury that the foregoing is true and correct.

Signed on 15 September, 2025.



Zeph Capo