Cause No. 53526

COTI MATTHEWS, individually and on behalf of her minor child, MACY MATTHEWS; ELIZABETH O. HADNOT, individually and on behalf of her minor child, T'MIA HADNOT; KIM HAYNES, individually and on behalf of her minor child, ADRIANNA HAYNES; RHONDA KEMP, individually and on behalf of her minor child, MORGAN DEROUEN; AMY KILLOUGH, individually and on behalf of her minor child, ALLISON KILLOUGH; CHARLES & CHRISTY LAWRENCE, individually and on behalf of their minor child, ASHTON LAWRENCE; TONYA MOFFETT, individually and on behalf of her minor child, KIEARA MOFFETT; BETH RICHARDSON, individually and on behalf of her minor child REBEKAH RICHARDSON; SHY RICHARDSON, individually and on behalf of her minor child, AYIANA GALLASPY; MISTY SHORT, individually and on behalf of her minor child, SAVANNAH SHORT; PATRICE SONNIER, individually and on behalf of her minor child, NAHISSAA BILAL,	§	IN THE DISTRICT COURT
Plaintiffs,	§	356TH JUDICIAL DISTRICT
VS.	§	HARDIN COUNTY, TEXAS
KOUNTZE INDEPENDENT SCHOOL DISTRICT and KEVIN WELDON, in his individual and official capacity as Superintendent,	§	
Defendants.	§	

PETITION IN INTERVENTION OF THE STATE OF TEXAS

Defendants Kountze Independent School District and Superintendent Kevin Weldon have submitted pleadings affirmatively questioning the constitutionality of provisions of Texas law. *E.g.*, Defendants' First Amended Answer at ¶ 3. Because Defendants' answer implicates the constitutionality of state laws, pursuant to Rule 60 of the Texas Rules of Civil Procedure, the State of Texas, by and through its Attorney General, files this petition in intervention for the purpose of defending the constitutionality of Texas statutes.

I.
PARTIES

1. Intervenor is the State of Texas, represented by the Attorney General of Texas, who files this Petition in Intervention as the State's chief legal officer.

2. The plaintiffs are individuals who have filed suit on behalf of themselves and their minor children: COTI MATTHEWS, individually and on behalf of her minor child, MACY MATTHEWS; ELIZABETH O. HADNOT, individually and on behalf of her minor child, TMIA HADNOT; KIM HAYNES, individually and on behalf of her minor child, ADRIANNA HAYNES; RHONDA KEMP, individually and on behalf of her minor child, MORGAN DEROUEN; AMY KILLOUGH, individually and on behalf of her minor child, ALLISON KILLOUGH; CHARLES & CHRISTY LAWRENCE, individually and on behalf of their minor child, ASHTON LAWRENCE; TONYA MOFFETT, individually and on behalf of her minor child, KIEARA MOFFETT; BETH RICHARDSON, individually and on behalf of her minor child REBEKAH RICHARDSON; SHY RICHARDSON, individually and on behalf of her minor child, AYIANA

GALLASPY; MISTY SHORT, individually and on behalf of her minor child, SAVANNAH SHORT; PATRICE SONNIER, individually and on behalf of her minor child, NAHISSAA BILAL. A true copy of this petition is being forwarded to: David W. Starnes, counsel for plaintiffs, at 390 Park, Suite 700, Beaumont, Texas 77701; and Kelly J. Shackelford, Jeffrey C. Mateer, Hiram S. Sasser, co-counsel for plaintiffs, at 2001 W. Plano Pkwy., Suite 1600, Plano, Texas 75075.

3. The defendants are KOUNTZE INDEPENDENT SCHOOL DISTRICT and KEVIN WELDON, Superintendent. A true copy of this petition is being forwarded to Thomas P. Brandt and Joshua A. Skinner, counsel for defendants, at 4849 Greenville Ave., Suite 1300, Dallas, Texas 75206.

II.
THE ORGINAL LAWSUIT

The plaintiffs filed suit seeking declaratory and injunctive relief after the defendants implemented a policy that prohibited the plaintiff cheerleaders from including religious messages on the banners. *E.g.* Plaintiffs' Original Petition at ¶¶ 5.4–5.19, 10.1–10.3, 11.1–11.2. The plaintiffs assert that the messages were independently selected by the cheerleaders without involvement by school officials, and that the banners were created in an extra-curricular context using non-public supplies. Plaintiffs' Reply in Support of Temporary Injunction at 22–23. The defendants answered the plaintiffs' suit, stating that the decision to prohibit religious messages on the athletic banners was based upon the superintendent's and his legal counsel's interpretation of the United States Supreme Court's decision in *Santa Fe Independent School District v. Doe*, 530

U.S. 290 (2000), which held that student-led prayers at a public high-school football game violated the Establishment Clause. Defendants' Original Answer at ¶¶ 1–2. The Court entered, and then extended by two weeks, a temporary restraining order permitting the cheerleaders to continue using the banners.

III.
THE STATE OF TEXAS SATISFIES THE REQUIREMENTS FOR INTERVENTION

The State of Texas satisfies the intervention standard provided in Texas Rule of Civil Procedure 60, which provides that "any party may intervene." A party may intervene in litigation in which it has a sufficient interest. *See Mendez v. Brewer*, 626 S.W.2d 498, 499 (Tex. 1982).

A case in which a party has questioned the constitutionality of a statute is plainly one in which the State has a sufficient interest. The Texas Civil Practice and Remedies Code provides that when a "statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state must also be served with a copy of the proceeding and is entitled to be heard." TEX. CIV. PRAC. & REM. CODE § 37.006(b). To facilitate the Attorney General's notification, the Government Code provides that the attorney general shall be provided "notice of the constitutional question and a copy of the petition, motion, or other pleading that raises the challenge" and that the notice "must identify the statute in question [and] state the basis for the challenge." TEX. GOV'T CODE § 402.010(a). Moreover, the court "may not enter a final judgment holding a statute of this state unconstitutional before the 45th day after the date notice required by Subsection (a) is served on the attorney general." *Id.* § 402.010(b).

IV.
INTERVENOR'S INTEREST

The State of Texas has an undeniable interest in defending the constitutionality of statutes that were duly enacted by the Legislature. The State also has an interest in defending laws that were specifically enacted to preserve religious liberty, because a challenge to those laws could potentially erode the religious liberties of all Texans.

Defendants' pleading raising the constitutional challenge is vague: "Defendants affirmatively plead that, to the extent the Texas Constitution or laws require them to violate the Establishment Clause . . . such provisions of the Texas Constitution and/or laws of Texas are unconstitutional under the Supremecy Clause of the United States Constitution." First Amended Answer at ¶ 3. Indeed, by not specifically stating which Texas provisions are being challenged, the defendants' Answer makes difficult, if not impossible, the notification that section 402.010 of the Government Code requires to trigger the 45-day clock that must run before a statute may be held unconstitutional.

The defendants' position (which it has since clarified, *see* Defendants' Motion for Preliminary Declaratory Relief; Defendants' Response to Plaintiffs' Request for Temporary Injunction) misunderstands the Establishment Clause and *Santa Fe v. Doe*. *Santa Fe* does not require Kountze ISD to prevent the cheerleaders from including religious messages on their banners. In *Santa Fe*, the Supreme Court addressed a school policy that specifically contemplated and facilitated only the delivery of religious messages (via an invocation). *Santa Fe*,

530 U.S. at 306–07. Indeed, the Court determined that "the expressed purposes of the policy encourage the selection of a religious message." *Id.* at 307. This case is easily distinguished from *Santa Fe*, because Kountze ISD has established no policy that expressly encourages the inclusion of a religious message on the banners—that decision, and the decisions regarding the particular messages included on the banners, were solely student driven. This distinction alone renders the *Santa Fe* decision precluding prayers at football games not dispositive of this case.

It now appears that the parties are in agreement that the banners do not violate the Establishment Clause, *see* Defendants' Motion at 4, 7, and that resolution of this issue in this manner renders unnecessary the Court's consideration of other issues, *see* Defendants' Response at 1; Plaintiffs' Reply in Support of Temporary Injunction at 26. The State agrees. Thus, the State of Texas will at this time refrain from presenting to the Court its defense of the statutes protecting "Student Expression of Religious Viewpoints," TEX. EDUC. CODE §§ 25.151–25.156. However, if the Court decides that it cannot resolve this case on the grounds contemplated by the parties' recent filings, the Texas Attorney General will defend state laws (as he is entitled to do under the Civil Practice and Remedies and the Government Codes) that were enacted to ensure all students enrolled in Texas's public schools can voluntarily exercise their religious liberties and the religious beliefs of their choosing on equal footing with the exercise of non-religious or secular viewpoints.

V.
CONCLUSION

The State of Texas intervenes in this action pursuant to Texas Rule of Civil Procedure 60 and section 37.006(b) of the Civil Practice and Remedies Code.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was sent via Federal Express on the following counsel of record on October 16, 2012:

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