

NAHISSAA BILAL,

Plaintiffs,

VS.

KOUNTZE INDEPENDENT
SCHOOL DISTRICT and KEVIN
WELDON, in his individual and
official capacity as Superintendent,

Defendants.

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**DEFENDANTS KOUNTZE INDEPENDENT SCHOOL DISTRICT'S AND KEVIN
WELDON'S ANSWER, AND AFFIRMATIVE DEFENSES TO INTERVENOR STATE
OF TEXAS' PETITION IN INTERVENTION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Kountze Independent School District ("Kountze ISD" or "the School District") and Kevin Weldon (jointly, "Defendants"), Defendants named in the above entitled and numbered cause and files this their Answer and Affirmative Defenses to Intervenor State of Texas' Petition in Intervention, and in support thereof, would respectfully show unto the Court and jury as follows:

**I.
GENERAL DENIAL**

Defendants generally deny the material allegations contained in the Petition in Intervention of the State of Texas and say that, since the Intervenor has made such allegations, it should be required to prove them by a preponderance of the evidence as required by law, if it is able to do so.

**II.
AFFIRMATIVE DEFENSES**

1. Defendants affirmatively plead that the Texas Religious Viewpoints Anti-Discrimination Act does not apply to the case at bar.

2. Defendants affirmatively plead the Supremacy Clause of the United States Constitution. Defendants affirmatively assert that the actions taken by Defendant Weldon were done based on his and on legal counsel's interpretation of the Establishment Clause of the United States Constitution, specifically as it has been interpreted by the United States Supreme Court in *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000), in which the Supreme Court held that student-led prayers at a high school football game violated the Establishment Clause.

3. Defendant Weldon affirmatively asserts official and educator immunity. Defendant Weldon acted in good faith based on his understanding, and the advice of legal counsel, as to the application of the Establishment Clause to the banners displayed as part of the opening ceremonies of football games. In addition, Defendant Weldon's actions were taken in response to a letter from the Freedom From Religion Foundation complaining about the banners and arguing that the banners conflict with Supreme Court precedent, particularly *Santa Fe Independent School District v. Doe*.

4. Defendants affirmatively plead that, to the extent the Texas Constitution or laws require them to violate the Establishment Clause of the First Amendment to the United States Constitution, such provisions of the Texas Constitution and/or laws of Texas are unconstitutional under the Supremacy Clause of the United States Constitution.

5. Defendants affirmatively plead that compliance with the United States Constitution, including the Establishment Clause of the First Amendment, is a compelling governmental interest.

6. Defendant Kountze ISD affirmatively pleads that it is entitled to governmental immunity.

7. Defendant Weldon affirmatively pleads that he is not a proper defendant in his

individual capacity as to any of Plaintiffs' claims.

8. Defendant Weldon affirmatively pleads that Plaintiffs' official capacity claims against him should be dismissed as they are duplicative of Plaintiffs' claims against Kountze ISD.

III.
PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Defendants Kountze Independent School District and Kevin Weldon pray that Intervenor State of Texas have and recover nothing of Defendants and that, on trial hereof, Defendants be discharged with their costs herein, and for declaratory relief as pled, and for such other and further relief, both at law and in equity, both general and special, to which they may show themselves to be justly and equitably entitled.

Respectfully submitted,

**FANNING HARPER MARTINSON
BRANDT & KUTCHIN, P.C.**



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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been mailed,

via certified mail, return receipt requested, telecopied, or hand delivered to all attorneys of record, in compliance with Rule 21a of the Texas Rules of Civil Procedure, on the 6th day of November, 2012.



THOMAS P. BRANDT