

09-27-2012 10:14am From:Fanning, Harper, &amp; Martinson

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T-757 P.005/010 F-688

**DEFENDANTS KOUNTZE INDEPENDENT SCHOOL DISTRICT'S AND KEVIN WELDON'S ORIGINAL ANSWER, AFFIRMATIVE DEFENSES, JURY DEMAND AND SPECIAL EXCEPTIONS**

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 Original Answer, Affirmative Defenses, Jury Demand and Special Exceptions, 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 Plaintiffs' Original Petition, Application for Temporary Restraining Order, Application for Temporary Injunction, and Application for Permanent Injunction ("Plaintiffs' Petition") and say that, since the Plaintiffs have made such allegations, they should be required to prove them by a preponderance of the evidence as required by law, if they are able to do so.

**II.**  
**AFFIRMATIVE DEFENSES**

1. Defendants affirmatively plead the Supremacy Clause of the United States Constitution. Defendants affirmatively assert that the actions taken by Defendant Weldon were done based his and 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.

2. 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*.

3. 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.

4. Defendants affirmatively plead that Defendants did not substantially burden Plaintiffs' free exercise of religion.

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. Defendants affirmatively plead that, even assuming Plaintiffs could prove that Defendants substantially burdened Plaintiffs' free exercise of religion, their actions were the least restrictive means of furthering a compelling governmental interest.

7. Defendants affirmatively plead all applicable statutory caps on damages, including, but not limited to, those set forth in Section 110.005 of the Texas Civil Practice & Remedies Code.

8. Defendants affirmatively plead that Plaintiffs failed to provide the required statutory notice under Section 110.006 of the Texas Civil Practice & Remedies Code to



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Defendants of their claims and, therefore, that this Court lacks subject matter jurisdiction of Plaintiffs claim under the Texas Religious Freedom Restoration Act.

9. Defendants affirmatively plead that Plaintiffs are barred from receiving actual and other damages under the Texas Religious Freedom Restoration Act because they failed to provide the required statutory notice under Section 110.006 of the Texas Civil Practice & Remedies Code to Defendants of their claims.

10. Defendants affirmatively plead that they did not refuse to permit Plaintiffs to use facilities open to the public.

11. Defendants affirmatively plead that they did not refuse to permit Plaintiffs to use facilities open to the public because of Plaintiffs' religion.

12. Defendants affirmatively plead that they did not impose an unreasonable burden on Plaintiffs because of Plaintiffs' religion.

13. Defendants affirmatively plead that Plaintiffs lack standing.

14. Defendants affirmatively plead that Plaintiffs failed to exhaust their administrative remedies.

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

16. Defendant Kountze ISD affirmatively pleads that Plaintiffs' alleged rights were not violated by a policy, custom or practice of the School District.

17. Defendant Kountze ISD affirmatively pleads that Plaintiffs' free exercise of religion was not substantially burdened by a 'government agency,' as that term is used in the Texas Religious Freedom Restoration Act.

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



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individual capacity as to any of Plaintiffs' claims.

19. 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. REQUEST FOR JURY TRIAL

Defendants prays that all issues of fact be submitted to a jury pursuant to Rule 216 of the Texas Rules of Civil Procedure.

### IV. SPECIAL EXCEPTIONS

#### Special Exception No. 1: Parent claims – no factual support

Defendants specially except to the claims brought by the parents (i.e., Coti Matthews, Elizabeth O. Hadnot, Kim Haynes, Rhonda Kemp, Amy Killough, Charles & Christy Lawrence, Tonya Moffett, Beth Richardson, Shy Richardson, Misty Short, and Patrice Sonnier) individually as there are no allegations to support a claim that any of the parents' rights were implicated or violated by alleged actions of Defendants.

#### Special Exception No. 2: Individual capacity claims not proper

Defendant Kevin Weldon specially excepts to Plaintiffs' Petition because Plaintiffs' claims against him in his individual capacity are not proper under any of the identified causes of action.

#### Special Exception No. 3: Official capacity claims are redundant

Defendant Kevin Weldon specially excepts to Plaintiffs' Petition because Plaintiffs' claims against him in his official capacity are duplicative of their claims against Kountze Independent School District.



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**Special Exception No. 4: Damages amount not specified**

Defendants specially except to Plaintiffs' Petition because it fails to specifically plead the amount of actual damages claimed by Plaintiffs.

**Special Exception No. 5: Basis for attorney's fees request not specified**

Defendants specially except to Plaintiffs' Petition because it fails to specifically plead the legal basis for the attorney's fees requested by Plaintiffs.

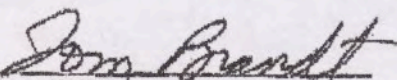
V.

**PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, Defendants Kountze Independent School District and Kevin Weldon pray that Plaintiffs have and recover nothing of Defendants and that, on trial hereof, Defendants be discharged with their costs herein, 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  
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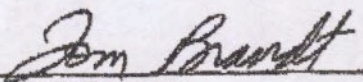
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CERTIFICATE OF SERVICE

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 26th day of September, 2012.

  
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THOMAS P. BRANDT