

Cause No. 53526

COTI MATTHEWS, et al,	§	IN THE DISTRICT COURT
	§	
<i>Plaintiffs,</i>	§	HARDIN COUNTY, TEXAS
	§	
VS.	§	
	§	
KOUNTZE INDEPENDENT SCHOOL	§	356 TH Judicial District
DISTRICT and KEVIN WELDON, in his	§	
individual and official capacity as	§	
Superintendent,	§	
	§	
<i>Defendants.</i>	§	
	§	

The State of Texas’s Response to Plaintiff’s Motion for Partial Summary Judgment and the Traditional Motion for Summary Judgment of Kountze Independent School District Regarding its Request for Declaratory Relief

Prior to the 2012 football season at Kountze High School, the cheerleaders decided to incorporate religious messages onto the run-through banners that they are to create for each football game. *See* Plaintiff’s Original Petition and Request for Injunctive Relief at 9-12. After the cheerleaders displayed religious messages on banners at the initial football games of the season, Kountze ISD Superintendent Kevin Weldon emailed the principals at Kountze ISD schools, requesting that they “please do not allow any student groups to display any religious signs or messages at school sponsored events. . . . For example, the run-through signs at the football games.” Email from Kevin Weldon (Sept. 18, 2012) (Exhibit A). Kountze High School Assistant Principal Chet Deaver read the email in its “exact words” to the high school students over the loudspeaker. Chet Deaver Deposition 22:19, 22:7-24 (Exhibit B). Following that announcement,

plaintiffs filed suit asserting, inter alia, that the display of religious messages on run-through banners at Kountze ISD football games is constitutionally permissible. *See, e.g.* Plaintiffs Original Petition and Request for Injunctive Relief. Plaintiffs sought (1) a declaration that defendants conduct violated state law, and (2) an injunction prohibiting the defendants from taking action to prevent the cheerleaders from including religious messages on the banners. *Id.* at 17-18.

Kountze ISD answered plaintiffs' suit with a general denial and by asserting as affirmative defenses: that the actions taken by the district superintendent to stop the display of the messages were based upon the Establishment Clause, Defendants' First Amended Answer at 2-3; and, to the extent that provisions of Texas law "require [defendants] to violate the Establishment Clause," those state laws are unconstitutional, *id.* at 3. Kountze ISD then expressed doubt as to the Constitution's requirements and asked the Court to "declare *whether or not* they are required, under the Establishment Clause of the First Amendment to the United States Constitution, to prevent certain high school banners displayed as part of official high school sporting games from containing religious messages." *Id.* at 6 (emphasis added); *see also id.* at 7 (Defendants "seek this declaration from the Court in order to determine whether they are required, under the Establishment Clause, to restrict the banners in question.") The State of Texas intervened to serve two public interests: defending a state statute from constitutional attack and preserving

religious liberties for Texas citizens. Petition in Intervention of the State of Texas at 1, 4-5.

On April 9, 2013, plaintiffs filed a partial motion for summary judgment seeking an order declaring that (1) “The Cheerleaders may continue to display religious messages on their banners at KISD sporting events,” and (2) “KISD violates no law by allowing the Cheerleaders to display religious messages on their banners at KISD sporting events.” Plaintiffs Motion for Partial Summary Judgment at 13; *id.* at 22.

Now, following more than six months of litigation, Kountze ISD appears to join the plaintiffs in the view that permitting religious messages on the cheerleaders’ banners is constitutionally permissible. On April 11, 2013, Kountze ISD sought a declaration “that the Establishment Clause . . . does not require Kountze ISD to prohibit the inclusion of religious-themed messages on banners.” Traditional Motion for Summary Judgment of Kountze ISD on Request for Declaratory relief at 1; *id.* at 4 (stating as the sole ground for declaratory relief that “the Establishment Clause does not require Kountze Independent School District to prohibit the inclusion of religious messages on “run-through” banners displayed at Kountze High School football games.”). Kountze ISD’s position is still a little unclear, however. Compare Defendants’ Second Amended Answer at 3 (asking the Court to declare whether or not the banners violate the establishment Clause) *with id.* at 5 (asking for a declaration “confirming that the Establishment Clause does not require Kountze ISD to restrict the banners.”). But the State understands Kountze ISD to no longer dispute what the plaintiffs

and the State have maintained since the outset of the litigation: the cheerleaders' religious messages on the 2012 football banners were constitutionally permissible. Kountze ISD has also amended its answer to remove its challenge to the constitutionality of the Religious Viewpoints Antidiscrimination Act. See Defendants' Second Amended Answer.

It is the State of Texas's understanding that both parties now seek a declaration from the Court that the cheerleaders' display of religious messages on the run-through banners was constitutionally permissible, and that Kountze ISD may allow the display of such messages on the banners. The State joins in that request.

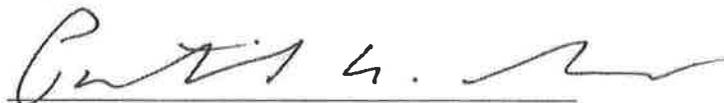
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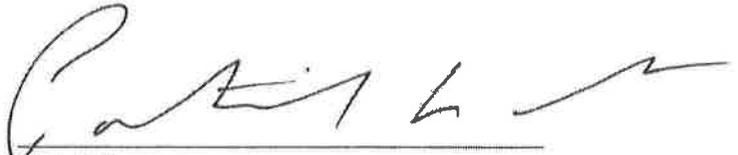
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served via facsimile on the following counsel of record and deposited by certified mail, in compliance with Rule 21a of the Texas Rules of Civil Procedure, on April 22, 2013:

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