NO. 289,461-B

DEDRA SHANNON,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
and	§	
	§	
TEXAS,	§	
	§	
Intervenor,	§	
	§	
v.	§	
	§	
KILLEEN INDEPENDENT SCHOOL DISTRICT; TERRY DELANO, CORBETT LAWLER, MINERVA TRUJILLO, SHELLEY WELLS, SUSAN JONES, JOANN PURSER, and MARVIN RAINWATER, in their official capacities as members of the Board of Trustees of Killeen Independent School District; JOHN CRAFT, in his official capacity as Superintendent of Killeen Independent School District; and KARA TREVINO, in her official capacity as Principal of Patterson Middle School,	§	BELL COUNTY, TEXAS
	§	
Defendants.	§	146th JUDICIAL DISTRICT

PLEA IN INTERVENTION OF TEXAS

Texas intervenes under Rule 60 of the Texas Rules of Civil Procedure, section 37.006(b) of the Civil Practice and Remedies Code, and other applicable law, to protect a proper understanding of what the Texas Constitution requires of government protection of religious liberty.

I. Background.

On Tuesday, December 14, 2016, the Killeen Independent School District ("KISD") affirmed the decision of Kara Trevino, the principal of Patterson Middle School, to censor the Christmas expression of staff member Dedra Shannon. Ms. Shannon, like other employees of KISD, created a passive expression on a door that celebrates Christmas.[1] Ms. Shannon's Christmas expression contains a picture of the famous Peanuts comic strip character, Linus, and quotes from a famous scene from the classic film "A Charlie Brown Christmas." In the scene, Linus summarizes his interpretation of the Biblical meaning of Christmas. The colloquy between Charlie Brown and Linus in the film goes as follows:

> **Charlie Brown: Isn't there anyone, who knows what Christmas is all about?!**
>
> **Linus: Sure Charlie Brown, I can tell you what Christmas is all about. Lights please?**
>
> **And there were in the same country shepherds, abiding in the field, keeping watch over their flock by night. And, lo, the angel of the Lord came upon them, and the glory of the Lord shone round about them! And they were sore afraid. And the angel said unto them, "Fear not! For, behold, I bring you tidings o great joy, which shall be to all my people. For unto you is born this day in the city of David a Saviour, which is Christ, the Lord. And this shall be a sign unto you: Ye shall find the babe wrapped in swaddling clothes, lying in a manger." And suddenly, there was with the angel a multitude of the Heavenly Host praising God, and saying, "Glory to God in the Highest, and on Earth peace, and good will toward men."**
>
> **That's what Christmas is all about, Charlie Brown.**

On a door in Patterson Middle School, Ms. Shannon provided an abbreviated version of that expression, to wit:

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[1] Christmas, celebrated on December 25 each year, recognizes the birth of Jesus Christ, the Son of God. KISD recognizes Christmas with a "Christmas Break"—a two-week vacation period that surrounds December 25. *See* KISD School Calendar, *available at* https://www.killeenisd.org/departmentDocs/c1013/documents/DistrictCalendar.pdf.

> "'For unto you is born this day in the City of David a Savior which is Christ the Lord' . . . That's what Christmas is all about Charlie Brown." Linus

A copy of Ms. Shannon's expression is attached to Plaintiff's Petition as Exhibit A. Intervenor also relies upon additional facts and circumstances as provided in Plaintiff's Petition.

Contrary to the decision of KISD, the inclusion of Bible verses or religious messages on student or teacher-sponsored holiday decorations does not violate Texas law. To the contrary, Texas law prohibits KISD from expressing hostility toward religious messages, and it also specifically encourages school districts to take a more inclusive approach to religious and secular celebrations. *See* TEX. CONST. art. I, §§ 3, 6, & 8; TEX. EDUC. CODE § 29.920.

II. Standard for Intervention.

Texas Rule of Civil Procedure 60 provides that "[a]ny party may intervene by filing a pleading, subject to being stricken out by the court for sufficient cause on the motion of any party." TEX. R. CIV. P. 60. "Rule 60 . . . provides . . . that any party may intervene" in litigation in which they have a sufficient interest. *Mendez v. Brewer*, 626 S.W.2d 498, 499 (Tex. 1982). An intervenor is not required to secure a court's permission to intervene in a cause of action or prove that it has standing. *Guar. Fed. Sav. Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652, 657 (Tex. 1990).

Texas's intervention is proper because Texas—through the Attorney General—has an interest in defending the proper interpretation and application of its laws. Texas law and precedent recognize the Attorney General's right to intervene in suits involving constitutional questions. TEX. CIV. PRAC. & REM. CODE § 37.006(b) ("In any proceeding that involves the validity of a municipal ordinance or franchise, the municipality must be made a party and is entitled to be heard, and if the 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.");

Motor Vehicle Bd. of Texas v. El Paso Indep. Auto. Dealers Ass'n, 1 S.W.3d 108, 110–11 (Tex. 1999); *Terrazas v. Ramirez*, 829 S.W.2d 712, 721–22 (Tex. 1991) (recognizing the Attorney General's legitimate role in a case involving a constitutional question).

As the chief legal officer, the Attorney General has broad power in representing Texas. *Perry v. Del Rio*, 67 S.W.3d 85, 92 (Tex. 2001) (citing TEX. CONST. art. IV, §§ 1, 22; TEX. GOV'T CODE § 402.021). Thus, it cannot be disputed that Texas has an interest in ensuring that local governmental bodies do not defy governing law, and particularly constitutional provisions.

III. Texas Must Ensure that Schools Respect the Ability of Religious People to Express Freely Their Ideas and Not Misapply Establishment Principles.

Plaintiff raises claims, *inter alia*, under Article I, sections 6 and 8 of the Texas Constitution. Texas interprets these sections using federal First Amendment jurisprudence. *HEB Ministries, Inc. v. Texas Higher Educ. Coordinating Bd.*, 235 S.W.3d 627, 649 (Tex. 2007) (Art. I, sec. 6); *Texas Dep't of Transp. v. Barber*, 111 S.W.3d 86, 106 (Tex. 2003) (Art. I, sec. 8); *see also Ex parte Tucci*, 859 S.W.2d 1, 5 (Tex. 1993) (finding that Art. I, section 8 provides "greater rights of free expression than its federal equivalent"). Accordingly, federal case law discussing religious liberty and free speech doctrines provide guideposts for understanding Texas law regarding the issues raised in this case.

Teachers and students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Matthews v. Kountze Indep. Sch. Dist.*, 484 S.W.3d 416, 424 (Tex. 2016) (Guzman, J., concurring) (quoting *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969)). For this reason, school officials may not suppress private speech simply because it contains a religious perspective. *See, e.g.*, *Good News Club v. Milford Cent. Sch. Dist.*, 533 U.S. 98 (2001); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); *Widmar*

v. Vincent, 454 U.S. 263 (1981). As the U.S. Supreme Court eloquently explained:

> Our precedent establishes that private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression. Indeed, in Anglo-American history, at least, government suppression of speech has so commonly been directed precisely at religious speech that a free-speech clause without religion would be Hamlet without the prince.

Capitol Square Review & Advisory Bd. v. Pinette, 515 U.S. 753, 760 (1995) (citations omitted). This is Texas law. *See*, *e.g.*, TEX. CONST. art. I, §§ 3, 6, & 8; TEX. EDUC. CODE § 29.920; *Matthews*, 484 S.W.3d at 424–25 (Guzman, J., concurring) (chronicling public schools that unlawfully targeted religious speech for censorship due to "confusion" about the Establishment Clause).

Texas law only requires the government to be neutral as between religious believers and non-believers. *See Spicer v. Texas Workforce Comm'n*, 430 S.W.3d 526, 536 (Tex. App.—Dallas 2014, no pet.) ("the government may neither promote religion nor harbor 'an official purpose to disapprove of a particular religion or of religion in general'") (quoting *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993)); *see also Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 839 (1995) ("We have held that the guarantee of neutrality is respected, not offended, when the government, following neutral criteria and evenhanded policies, extends benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse."). Thus, the government must not oppose religion or religious expression. TEX. CONST. art. I, § 6; *Everson v. Bd. of Educ.*, 330 U.S. 1, 18 (1947). "But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship." TEX. CONST. art. I, § 6; *see also Lynch v. Donnelly*, 465 U.S. 668, 673 (1984) (finding the Constitution "affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any").

This is because the Texas Constitution's establishment principles restrict only *government* speech, not the Christmas-oriented speech of its teachers or students. The government speaks when it wishes to communicate an idea that observers would reasonably interpret as coming from the government. *See Auspro Enters., LP v. Texas Dep't of Transp.*, No. 03-14-00375-CV, 2016 WL 7187475, at *5 (Tex. App.—Austin Dec. 8, 2016, no pet. h.); *see also Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 135 S. Ct. 2239, 2247 (2015) (citing *Pleasant Grove City v. Summum*, 555 U.S. 460, 470–73 (2009)).

By contrast, when the government creates a forum where private individuals may speak, the government may not censor religious speech. TEX. CONST. art. I, § 8; *Rosenberger*, 515 U.S. at 839. As such, "there is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect." *Bd. of Educ. of the Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 250 (1990). Therefore, it violates the Texas Constitution for KISD to deny individuals the right to religious speech and expression by imposing on them a limitation intended only for the government itself.

As stated by Justice Douglas, "[w]e are a religious people whose institutions presuppose a Supreme Being." *Zorach v. Clauson*, 343 U.S. 306, 313 (1952). As such, "to teach the existence of a Supreme Being of infinite wisdom, power, and goodness, and that it is the highest duty of all men to adore, obey, and love Him, is not sectarian, because all religious sects so believe and teach." *Church v. Bullock*, 100 S.W. 1025, 1027 (Tex. Civ. App. 1907), *aff'd*, 109 S.W. 115 (Tex. 1908) (quoting *State ex rel. Weiss v. Dist. Bd.*, 44 N.W. 967 (Wis. 1890)). Thus, public acknowledgments of our Nation's religious heritage – from the highest seat of the federal government to the KISD – routinely serve constitutional and appropriate purposes. In light of this, the Texas Establishment Clause permits passive displays acknowledging Texas's religious

heritage, such as the Ten Commandments monument at the Texas Capitol, or even a nativity scene incorporated into a holiday display on public grounds in December.

But actions like that of KISD inflict upon our culture the very angst for which the Establishment Clause exists. Indeed, government evinces a "hostility to religion" when it refuses to tolerate or even "recognize[e] our religious heritage[.]" *Spicer*, 430 S.W.3d at 536 (quoting *Van Orden v. Perry*, 545 U.S. 677, 683–84 (2005)). And when it comes to Christmas, students may learn about the religious origins of Christmas, even as part of school activities, without violating the Constitution. Indeed, it is permissible for the Bible to be used in any number of contexts in an educational setting. *See Williams v. Lara*, 52 S.W.3d 171, 190 (Tex. 2001) (citing *Stone v. Graham*, 449 U.S. 39, 42 (1980); *School Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 223–24 (1963)). Therefore, school officials may constitutionally present Christmas passages from the Bible, such as Luke 2:1–20 – the passage quoted in "A Charlie Brown Christmas" – via myriad teaching methods, including Ms. Shannon's door display.

Moreover, in taking its action outlined herein, KISD erroneously views the expression at issue as government speech. KISD thus sought to end the parties' dispute by taking over the speech in question and then eliminating it. KISD's actions, if permitted to stand, threaten to set a precedent under which public schools and individual administrators could usurp a wide range of student and teacher speech to control its content and viewpoint. KISD's actions and arguments present a serious danger to the First Amendment rights of all public-school students and teachers. That such messages cannot be shoehorned into the category of government speech is demonstrated by the Supreme Court's speech jurisprudence. *Compare Walker*, 135 S. Ct. 2239 (describing government speech) *with Rosenberger*, 515 U.S. 819 (comparing private speech in government-created forum to pure government speech).

KISD's reversal of decades of consistent school-board policy and practice, by

functionally announcing that the religious display at issue conveys only the school's speech, is in error. KISD's usurpation of the speech of students and teachers cannot be permitted to stand. If accepted by this Court, KISD's government-speech policy shift would effectively destroy public forums for speech on campus and authorize public school administrators to control and stifle permissible student and teacher expression. Because KISD muddles what is, and is not, government-speech, Texas has a profound interest in safeguarding the freedom to express their religious and other personal viewpoints.

IV. Intervenor Seeks Declaratory and Injunctive Relief.

The Court has jurisdiction over requests for declaratory judgments pursuant to Article V, section 8 of the Texas Constitution, and Chapter 37 of the Texas Civil Practice and Remedies Code, and over requests for injunctive relief pursuant to Chapters 106 and 110 of the Texas Civil Practice and Remedies Code. Here, there is a real and substantial conflict of tangible interests concerning the rights and status of the parties. The actions of Defendants, in particular, as described in this pleading and in Plaintiff's Petition, violate the law and thus create a basis for the usage of the Court's declaratory and injunctive powers.

V. Conclusion and Prayer for Relief.

Texas requests notice and appearance, and the opportunity to defend the rule of law before the Court. Texas also prays for the following:

(1) a declaratory judgment that the acts of the Defendants are in violation of Texas law;

(2) injunctive relief to prohibit the Defendants from violating Texas law;

(3) an award for court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs, pursuant to section 37.009 of the Texas Civil Practice and Remedies Code, and other applicable provisions of Texas law; and

(4) any and all such other relief, both in law and in equity, to which

Intervenor may be justly entitled.

Dated: December 15, 2016

Respectfully submitted,

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ATTORNEYS FOR INTERVENOR

CERTIFICATE OF SERVICE

I, Austin R. Nimocks, hereby certify that on this the 15th day of December, 2016, a true and correct copy of the foregoing document was transmitted via certified mail, return receipt requested, to each Defendant at the addresses listed in the Plaintiff's Original Petition.

/s/ Austin R. Nimocks
Austin R. Nimocks