## IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

DAVID WALLACE CROFT AND
SHANNON KRISTINE CROFT,
AS PARENTS AND NEXT FRIEND
OF THEIR MINOR CHILDREN; JOHN
DOE AND JANE DOE AS PARENTS
AND NEXT FRIEND OF THEIR
MINOR CHILDREN

Plaintiffs,

Plaintiffs,

S
Civil Action No. 3:07 CV-1362-K

V.

RICK PERRY, GOVERNOR OF
THE STATE OF TEXAS

Defendant.

## DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND CROSS-MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS:

Defendant Governor Perry respectfully requests that this Court grant summary judgment in his favor in accordance with Federal Rule of Civil Procedure 56(c). Defendant also requests that the district court deny Plaintiffs' motion for summary judgment and Plaintiffs' request for court costs, attorneys' fees, and costs of litigation.

## **SUMMARY**

Plaintiffs request this Court to go against the virtual unanimity of all other courts who have ever considered or referenced the constitutionality of the words "under God" in the

national pledge and to find the identical language in the Texas pledge unconstitutional. The United States Supreme Court has consistently recognized that it does not violate the Establishment Clause to acknowledge our nation's heritage. Moreover, the pledge is a patriotic—rather than a religious—exercise. As Plaintiffs have brought a facial challenge, they must demonstrate that the Texas pledge violates the Constitution in all applications.

Plaintiffs have not met their burden, and as there is no genuine issue as to any material fact, Defendant requests that the district court grant summary judgment in his favor. Defendant asks the court to declare that the language of the Texas pledge as prescribed in Texas Government Code §3100.101 is constitutional under the Establishment Clause of the First Amendment.

The legal and factual grounds on which Defendant Governor Perry relies will be set forth in the brief in support of this motion in accordance with L.R. 56.4(b).

Respectfully submitted,

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COUNSEL FOR DEFENDANT

## **CERTIFICATE OF SERVICE**

I certify that pursuant to the court's electronic filing procedures, a true and correct copy of the foregoing document was sent on May 20, 2008 via ECF notification to:

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Counsel for Plaintiffs

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