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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Kay Staley; Scott Weitzenhoffer;
Wilfred Lyon; Stacie Gonzalez; Kristin
Ames; and Freedom from Religion
Foundation, Inc.,

Plaintiffs,

v.

Rick Perry,

Defendant.

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Case No: 4:11-CV-02585

AFFIDAVIT OF JEFFREY S. BOYD

STATE OF TEXAS §
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COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day appeared Jeffrey S. Boyd, who swore and affirmed that the following facts are within his personal knowledge and are true and correct:

“My name is Jeffrey S. Boyd. I am over the age of 18 years, and am of sound mind and capable of making this affidavit. I am an employee of the Office of the Governor of the State of Texas (“OOG”), for which I serve as General Counsel. I have held this position since January 3, 2011. In my position as General Counsel for the OOG, I have reviewed the factual allegations contained in the Complaint and in the Brief in Support of Motion for Preliminary Injunction that Plaintiffs have filed in this matter.

Shortly before 10 a.m. on July 26, 2011, I first obtained a copy of Plaintiffs’ motion and brief in support of a preliminary injunction, and was advised that the Governor’s response was due filed by noon on July 27, 2011. I have since conferred with several OOG employees but, despite my diligent efforts, I have been unable to identify any one person within the OOG who

has personal knowledge of all of the facts that are relevant or responsive to the Plaintiffs' factual allegations. I do not have personal knowledge of all of the facts described below but, in light of the short time available prior to the filing deadline, and recognizing the Court's power to act in equity on matters involving injunctive relief, I am providing this information as the collective knowledge of the OOG regarding these matters:

1. Beginning on or about May 18, 2011, the OOG mailed letters that were signed by Texas Governor Rick Perry to several elected officials, including the President and Vice-President of the United States, the members of the United States Congress, the members of the Texas Legislature, and the Governors of the other forty-nine United States, inviting them to "join me on August 6 at Reliant Stadium in Houston for a solemn day of prayer and fasting on behalf of our troubled nation." As stated in those letters, Governor Perry sent the letters because of his firm personal belief that "it is time to convene the leaders from each of our United States in a day of prayer and fasting, like that described in the book of Joel." He explained that the gathering "will be apolitical in nature." He did not order or seek to compel any person to join him at this gathering, but invited "any member of the public who wants to join with us in prayer." Governor Perry signed these letters, on OOG letterhead, acting in his official capacity as Governor of the State of Texas. The letters were mailed to the named recipients, and a sample copy was subsequently posted on the OOG's official website. The paper and postage expense associated with the mailing of these letters, which the OOG estimates to total approximately \$290.00, was incurred by the OOG in support of the Governor acting in his official capacity.

2. On or about June 6, 2011, the OOG issued and filed an official Proclamation, signed by Governor Perry, proclaiming August 6, 2011, to be a Day of Prayer and Fasting for our Nation. As stated therein, Governor Perry issued this Proclamation because of his strongly held

personal belief that it is “imperative that the people of our nation should once again join together for a solemn day of prayer and fasting on behalf of our troubled nation.” In this Proclamation, he invited his “fellow Texans to join me on August 6 at Reliant Stadium in Houston, as we pray for unity and righteousness - for this great state, this great nation and all mankind.” He further “urged Americans of faith to pray on that day for the healing of our country, the rebuilding of our communities and the restoration of enduring values as our guiding force.” Governor Perry signed this Proclamation acting in his official capacity as Governor of the State of Texas. The Proclamation was filed with the office of the Texas Secretary of State and posted on the OOG’s official website, as is the OOG’s normal practice with Proclamations. Any expense associated with the preparation and issuance of this Proclamation was nominal, and was incurred by the OOG in support of the Governor acting in his official capacity.

3. On or about June 6, 2011, the OOG issued a press release entitled “Gov. Perry Declares August 6th Day of Prayer and Fasting for Our Nation’s Challenges.” The press release was distributed electronically and published on the OOG’s website, as is the OOG’s normal practice with press releases. The press release described the Governor’s Proclamation and invitation to the August 6th gathering, and provided links to the Proclamation, to a sample of the invitation letters, and to the official website for the August 6th gathering, www.theresponseusa.com (“the Response website”). Any expense associated with the issuance of this press release was nominal, and was incurred by the OOG in support of the Governor acting in his official capacity.

4. The OOG does not own, and did not participate in the creation or operation of, the Response website. The OOG has not incurred or paid any expenses in connection with the

Response website. The Response website was not created pursuant to any action that Governor Perry has taken in his official capacity.

5. The Response website displays a written message addressed to “Fellow Americans,” which appears above Governor Perry’s signature. I have not yet determined who wrote the actual language of this message. I have not identified any place or manner in which this message has been published other than on the Response website. It has not been published on the OOG’s official website. The OOG has not incurred any expense in connection with the publishing of this message on the Response website. Governor Perry’s actions in connection with this message were taken in his individual capacity, acting as a concerned individual (who also is the Governor), to invite others to join him in prayer on August 6th.

6. The Response website also displays a video message in which Governor Perry invites others to join him in prayer on August 6th. The video was filmed in a private office (not in a State office or on State property), using a privately-owned camera. Contrary to Plaintiffs’ allegations, the Official Seal of the State of Texas does not appear in the video. Any OOG employee who was present at the taping of this video was not there on state time. No OOG funds were used in the preparation or publishing of this video. The video has not been published on the OOG’s official website. Governor Perry’s actions in connection with the video were taken in his individual capacity, acting as a concerned individual (who also is the Governor), to invite others to join him in prayer on August 6th.

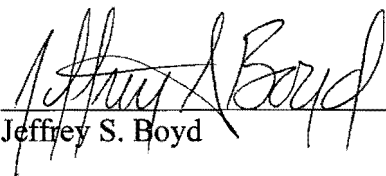
7. Plaintiffs have described “unsolicited robo-calls” inviting individuals to the August 6th gathering. It appears that these calls were created utilizing the audio from the video that I have described in the preceding paragraph. I have not yet determined who arranged or paid for these calls. The OOG was not involved in the making of these calls. I have been unable to

identify any manner in which public funds were expended on these calls. The calls were not created or made pursuant to any action that Governor Perry has taken in his official capacity.

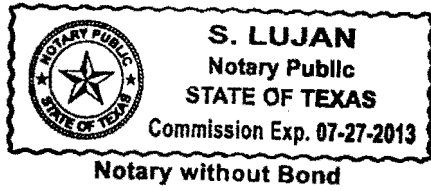
8. Governor Perry has engaged in numerous discussions regarding the August 6th gathering, and in those discussions has often encouraged others to join him in prayer at that gathering. Some of these discussions have been during telephone calls, others during in-person meetings, and others during broadcast radio interviews. Some of these discussions likely occurred during “official” State events, while others have certainly occurred during “unofficial” events and conversations. Governor Perry’s comments in connection with most, if not all, of these discussions were made in his individual capacity, acting as a concerned individual (who also is the Governor), to invite others to join him in prayer on August 6th.

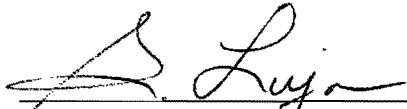
9. Governor Perry, acting in his individual capacity, intends to continue engaging in discussions regarding the August 6th gathering, and encouraging others to join him in prayer at that gathering. His personal, firmly-held religious beliefs compel him, as an individual, to do so, whether he is Governor or not. He most definitely intends to attend the August 6th gathering, but it has not yet been determined whether or how he will participate. Although he plans to attend in his individual capacity, he cannot simply stop being the Governor at that event, any more than he can stop being the Governor when he jogs, hunts, goes shopping, or attends church on Sunday morning.

Further affiant sayeth naught.


Jeffrey S. Boyd

SWORN to and SUBSCRIBED before me, the undersigned authority, on the 27th day of July, 2011, by Jeffrey S. Boyd.





Notary Public, State of Texas