

No. _____

IN THE SUPREME COURT OF TEXAS

IN RE TOM BROWN, SALVADOR GOMEZ, BEN MENDOZA, ELIZABETH
BRANHAM, WORD OF LIFE CHURCH OF EL PASO, TOM BROWN MINISTRIES,
and EL PASOANS FOR TRADITIONAL FAMILY VALUES, *Relators*,

Original Proceeding Arising Out of the Eighth District Court of Appeals
Cause No. 08-11-00367-CV
(Chief Justice Ann Crawford McClure,
Hon. Guadalupe Rivera and Hon. Christopher Antcliff)

**RECORD IN SUPPORT OF
PETITION FOR WRIT OF MANDAMUS**

James Bopp, Jr. IN No. 2838-84*
Randy Elf NY No. 2863553*
Noel H. Johnson WI No. 1068004*
James Madison Center for Free Speech
1 South Sixth Street
Terre Haute, IN 47807
Telephone (812) 232-2434
Facsimile (812) 235-3685

Raul A. Gonzalez SBN 00000032
Attorney at Law
10511 River Plantation Dr.
Austin, Texas 78747
Telephone (512) 280-1002
Facsimile (512) 292-4513

Theresa Caballero SBN 03569625
Stuart Leeds SBN 12151500
300 E. Main Drive, Suite 1136
El Paso, TX 79901-1381
Telephone (915) 565-3550
Facsimile (915) 562-5250

Joel L. Oster KS No. 18547*
Kevin H. Theriot SBN 00788908
Alliance Defense Fund
15192 Rosewood Street
Leawood, KS 66224
Telephone (913) 685-8000
Facsimile (913) 685-8001

Kelly Shackelford SBN 18070950
Jeffrey C. Mateer SBN 13185320
Hiram S. Sasser, III SBN 24039157
Liberty Legal Institute
2001 Plano Parkway, #1600
Plano, TX 75075
Telephone (972) 941-4444
Facsimile (972) 423-6570

Respectfully submitted, this 20th day of March, 2012.¹

James Bopp, Jr. IN No. 2838-84*
Randy Elf NY No. 2863553*
Noel H. Johnson WI No. 1068004*
James Madison Center for
Free Speech
1 South Sixth Street
Terre Haute, IN 47807
Telephone (812) 232-2434
Facsimile (812) 235-3685

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2001 Plano Parkway, #1600
Plano, TX 75075
Telephone (972) 941-4444
Facsimile (972) 423-6570

Attorneys for Relators Tom Brown Ministries, Word of Life Church of El Paso, Tom Brown, El Pasoans for Traditional Family Values, Salvador Gomez, Ben Mendoza and Elizabeth Branham

* *Pro Hac Vice* to be submitted.

/s/ Kevin H. Theriot
Joel L. Oster KS No. 18547*
Kevin H. Theriot SBN 00788908
Alliance Defense Fund
15192 Rosewood Street
Leawood, KS 66224
Telephone (913) 685-8000
Facsimile (913) 685-8001

Theresa Caballero SBN 03569625
Stuart Leeds SBN 12151500
Attorneys at Law
300 E. Main Drive, Suite 1136
El Paso, TX 79901-1381
Telephone (915) 565-3550
Facsimile (915) 562-5250

¹ Due to the voluminous record, hard copies, along with a cd, will be delivered to the court and to the parties.

CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2012, a true and correct copy of the foregoing was served by sending a copy of the same via facsimile (without exhibits) to the following:

Chief Justice Ann Crawford McClure
Eighth District Texas Court of Appeals
500 E San Antonio Ave # 1203
El Paso, TX 79901
Telephone (915) 546-2240
Facsimile (915) 546-2252

Hon. Guadalupe Rivera
Eighth District Texas Court of Appeals
500 E San Antonio Ave # 1203
El Paso, TX 79901
Telephone (915) 546-2240
Facsimile (915) 546-2252

Hon. Christopher Antcliff
Eighth District Texas Court of Appeals
500 E San Antonio Ave # 1203
El Paso, TX 79901
Telephone (915) 546-2240
Facsimile (915) 546-2252

Mark C. Walker
mwalker@coxsmith.com
David Mirazo
Cox Smith Matthews Incorporated
Wells Fargo Plaza, Suite 2000
221 North Kansas Street
El Paso, TX 77901
Telephone (915) 541-9300
Facsimile (915) 541-9399

Kenneth A. Krohn
krohnk@elpasotexas.gov
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, TX 79901-1196
Telephone (915) 541-4550
Facsimile (915) 541-4190

***Attorneys for Real Party in Interest
Mayor John F. Cook, in his individual
capacity***

***Attorney for Real Party in
Interest Richarda Momsen,
Solely in her official capacity as
El Paso City Clerk***

/s/ Kevin H. Theriot
Kevin H. Theriot

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VERIFICATION AFFIDAVIT

STATE OF KANSAS §
 §
COUNTY OF JOHNSON §

BEFORE ME, the undersigned Notary Public, on this day personally appeared Joel L. Oster, who being by me first duly sworn, deposed and said the following:

1. I was the counsel of record for Relators Tom Brown Ministries, Word of Life Church of El Paso, Tom Brown, El Pasoans for Traditional Family Values, Salvador Gomez, Ben Mendoza and Elizabeth Branham (“Relators”) before the trial court and the Eighth District Court of Appeal. In addition, I am submitting a motion to appear before this Court and represent the Relators pro hac vice. I am over the age of 18, have never been convicted of a felony, and am otherwise competent to testify regarding the matters herein. In accordance with Texas Rule of Appellate Procedure 52.3, I am submitting this verification affidavit in support of Respondents’ Petition for Writ of Mandamus. I have personal knowledge regarding the litigation of the underlying lawsuit against Relators.
2. I personally appeared at the hearing on Plaintiff’s Motion for Temporary Injunctive Relief. In addition, I personally ordered a copy of the transcript, along with all exhibits, from the court reporter, who prepared such transcript for the trial court and was submitted to the appeals court. A true, correct, and

certified copy of the record from the Temporary Injunction hearing appears in the Appendix behind **Record Tab A-C**, and the hearing exhibits behind **Record Tab D-J**.

3. I reviewed Plaintiff's Original petition, filed on September 12, 2011, when I received it. A true and correct copy of Plaintiff's Original Petition, along with the exhibits, are attached within the Appendix behind **Appendix (App.) Tab 1**.
4. I reviewed the Temporary Restraining Order, filed on September 12, 2011, when I received it. A true and correct copy of this document is attached within the Appendix behind **App. Tab 1**.
5. I reviewed Tom Brown's Motion to Dissolve TRO, filed September 13, 2011, when I received it. A true and correct copy of this document is attached within the Appendix behind **App. Tab 1**.
6. I reviewed the Plaintiff's Response to Tom Brown's Motion to Dissolve Temporary Restraining Order, filed September 14, 2011, when I received it. A true and correct copy of this document is attached within the Appendix behind **App. Tab 1**.
7. I reviewed the Order Modifying John Cook's Temporary Restraining Order, filed September 15, 2011, when I received it. A true and correct copy of this document is attached within the Appendix behind **App. Tab 1**.
8. I reviewed the Plaintiff's Motion for Clarification of Temporary Restraining Order, For Expedited Hearing, or For Extension of Modified Temporary Restraining Order, filed September 21, 2011, when I received it. A true and correct copy of this document is attached within the Appendix behind **App. Tab 1**.
9. I reviewed the Plaintiff's First Amended Petition, Second Affidavit of Pamela Soto, filed September 22, 2011, when I received it. A true and correct copy of this document is attached within the Appendix behind **App. Tab 1**.

10. I prepared Defendants' Answer, filed September 27, 2011. A true and correct copy of this document is attached within the Appendix behind **App. Tab 2**.
11. I prepared Defendant's Answer and Counterclaim, filed October 7, 2011. A true and correct copy of this document is attached within the Appendix behind **App. Tab 2**.
12. I reviewed the Plaintiff's Objections to October 12, 2011 Hearing, Motion to Strike, filed October 12, 2011, when I received it. A true and correct copy of this document is attached within the Appendix behind **App. Tab 2**.
13. I reviewed the Plaintiff's Second Amended Petition, filed October 21, 2011, when I received it. A true and correct copy of this document is attached within the Appendix behind **App. Tab 2**.
14. I reviewed the Plaintiff's Trial Brief on Admissibility of Electronic Evidence, filed October 25, 2011, when I received it. A true and correct copy of this document is attached within the Appendix behind **App. Tab 2**.
15. I reviewed the Plaintiff's Motion to Compel Testimony and Trial Brief on Use of Fifth Amendment Privilege in Civil Cases, when I received it. A true and correct copy of this document is attached within the Appendix behind **App. Tab 2**.
16. I prepared the First Amended Counterclaim of Defendants, filed November 21, 2011. A true and correct copy of this document is attached within the Appendix behind **App. Tab 2**.
17. I reviewed the Plaintiff's Third Amended Petition, filed November 21, 2011, when I received it. A true and correct copy of this document is attached within the Appendix behind **App. Tab 3**.
18. I reviewed the Plaintiff's Amended Brief in Support of Application for Temporary Injunction, filed on 11, 22, 2011, when I received it. A true and correct copy of this document is attached within the Appendix behind **App. Tab 3**.

19. I reviewed the Plaintiff's Proposed Findings of Facts and Conclusions of Law, when I received it. A true and correct copy of this document is attached within the Appendix behind **App. Tab 3**.
20. I reviewed the Plaintiff's Proposed Temporary Injunction, filed on November 22, 2011, when I received it. A true and correct copy of this document is attached within the Appendix behind **App. Tab 3**.
21. I reviewed the Order denying Plaintiff's Petition for Temporary Injunction, filed on November 28, 2011, when I received it. A true and correct copy of this document is attached within the Appendix behind **App. Tab 3**.
22. I reviewed the Plaintiff's Notice of Accelerated Interlocutory Appeal, filed November 30, 2011, when I received it. A true and correct copy of this document is attached within the Appendix behind **App. Tab 3**.
23. I reviewed the Temporary Injunction Exhibit 75, dated January 10, 2012, when I received it. A true and correct copy of this document is attached within the Appendix behind **App. Tab 3**.
24. I reviewed the Appellants' Brief, filed on December 27, 2011, when I received it. A true and correct copy of this document is attached within the Appendix behind **App. Tab 3**.
25. I prepared the Appellees' Response Brief, filed on January 11, 2012. A true and correct copy of this document is attached within the Appendix behind **App. Tab 3**.
26. I reviewed the City Clerk's Response Brief, filed on January 11, 2012, when I received it. A true and correct copy of this document is attached within the Appendix behind **App. Tab 3**.

27. I reviewed the Appellant's Reply Brief, filed on January 23, 2012, when I received it. A true and correct copy of this document is attached within the Appendix behind **App. Tab 3**.


28. I prepared Appellees' Motion to Dismiss, filed on February 7, 2012. A true and correct copy of this document is attached within the Appendix behind **App. Tab 3**.

29. I reviewed the Appellant's Response to Motion to Dismiss, when I received it. A true and correct copy of this document is attached within the Appendix behind **App. Tab 3**.

30. I reviewed the Appeal Court's order and judgment reversing the trial court's order. A true and correct copy of these documents are attached to the Petition for Writ of Mandamus as Appendix 1 and 2.

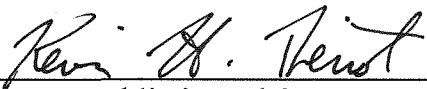
31. I reviewed the trial court's order denying the Plaintiff's Request for a Temporary Injunction. A true and correct copy of this document is attached to the Petition for Writ of Mandamus as Appendix 3.

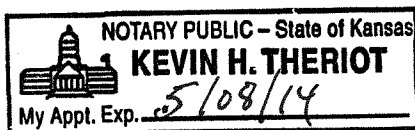
FURTHER AFFIANT SAYETH NOT.


Joel L. Oster

SUBSCRIBED AND SWORN TO BEFORE ME by Joel L. Oster, on this 20th day of March, 2012, to certify which witness my hand and official seal.

[SEAL]


Notary Public in and for
THE STATE OF KANSAS



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Pursuant to rules 52.3(j) and 52.7 of the Texas Rules of Appellate Procedure, Relators Tom Brown Ministries, Word of Life Church of El Paso, Tom Brown, El Pasoans for Traditional Family Values, Salvador Gomez, Ben Mendoza and Elizabeth Branham submit the following documents in their Record in Support of their Petition for Writ of Mandamus:

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PLEADINGS BELOW

Tab 1

Plaintiff's Original Petition, filed 9/12/11.

Temporary Restraining Order, filed 9/12/11.

Tom Brown's Mtn. to Dissolve TRO/Mtn. to Modify/Mtn. to Shorten Hearing on TRO, filed 9/13/11.

Plaintiff's Response to "Tom Brown's" Mtn. to Dissolve Temporary Restraining Order, Mtn. to Modify and Mtn. to Shorten Time for Hearing; and Plaintiff's Mtn. to Show Authority, Filed 9/14/11.

Order Modifying ¶ John Cook's Temporary Restraining Order, filed 9/15/11.

Plaintiff's Mtn. For Clarification of Temporary Restraining Order, For Expedited Hearing, or For Extension of Modified Temporary Restraining Order, filed 9/21/11.

Plaintiff's 1st Amended Petition; 2nd Affidavit of Pamela Soto, filed 9/22/11.

Tab 2

Defendants' Answer, filed 9/27/11.

Answer and Counterclaim of Defendants, filed 10/7/11.

Plaintiff's Objections to October 12, 2011 Hearing, Mtn. to Strike, etc., filed 10/12/11.

Plaintiff's Second Amended Petition, filed 10/21/11.

Plaintiff's Trial Brief on Admissibility of Electronic Evidence, filed 10/25/11.

Plaintiff's Mtn. to Compel Testimony and Trial Brief on Use of Fifth Amendment Privilege in Civil Cases, filed 10/25/11.

1st Amended Counterclaim of Defendants, filed 11/2/11.

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Plaintiff's Third Amended Petition, filed 11/21/11.

Plaintiff's Amended Brief in Support of Application for Temporary Injunction, filed 11/21/11.

Plaintiff's Proposed Findings of Fact and Conclusions of Law for Temporary Injunction, filed 11/22/11.

Plaintiff's Proposed Temporary Injunction, filed with court on 11/22/11.

Order Denying Plaintiff's Petition for Temporary Injunction, filed 11/28/11.

Plaintiff's Ntc. Of Accelerated Interlocutory Appeal, filed 11/30/11.

Temporary Injunction Exhibit 75, dated 1/10/12.

Brief of Appellant John F. Cook, filed 12/27/11.

Appellees' Brief in Response to Appellant John F. Cook, filed 1/11/12.

Brief of Appellee Richarda Momsen, filed 1/11/12.

Reply Brief of Appellant John F. Cook, filed 1/23/12.

Appellees' Motion to Dismiss Injunctive Claims as Moot and Brief in Support, filed 2/7/12.

Appellant John F. Cook's Response to Motion to Dismiss, filed 2/13/12.

Respectfully submitted, this 20th day of March, 2012.²

James Bopp, Jr. IN No. 2838-84*
Randy Elf NY No. 2863553*
Noel H. Johnson WI No. 1068004*
James Madison Center for

/s/ Kevin H. Theriot
Joel L. Oster KS No. 18547*
Kevin H. Theriot SBN 00788908
Alliance Defense Fund
15192 Rosewood Street

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Free Speech
1 South Sixth Street
Terre Haute, IN 47807
Telephone (812) 232-2434
Facsimile (812) 235-3685

Leawood, KS 66224
Telephone (913) 685-8000
Facsimile (913) 685-8001

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Attorney at Law
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Telephone (512) 280-1002
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