

By: Middleton

S.B. No. 1396

A BILL TO BE ENTITLED

AN ACT

relating to a period of prayer and Bible reading in public schools.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 25, Education Code, is amended by adding Section 25.0823 to read as follows:

Sec. 25.0823. PERIOD OF PRAYER AND BIBLE READING. (a) The board of trustees of a school district or the governing body of an open-enrollment charter school that is not operated by or affiliated with a religious organization may by record vote adopt a policy requiring every campus of the district or school to provide students and employees with an opportunity to participate in a period of prayer and Bible reading on each school day in accordance with this section.

(b) A policy adopted under Subsection (a) must prohibit:

(1) a student or employee of the school district or open-enrollment charter school from being permitted to participate in the period of prayer and Bible reading unless the employee or parent or guardian of the student submits to the district a signed consent form that includes:

(A) an acknowledgment that the student or employee has a choice as to whether to participate in the period of prayer and Bible reading;

(B) a statement that the person has no objection to the student's or employee's participation in or hearing of the

1 prayers or Bible readings offered during the period; and

2 (C) an express waiver of the person's right to
3 bring a claim under state or federal law arising out of the adoption
4 of a policy under this section, including claims under the United
5 States Supreme Court's interpretations of the Establishment
6 Clause, which forever releases the school district and all school
7 officials from any such claims that the signatory might assert in
8 state or federal court; and

9 (2) the provision of a prayer or Bible reading over a
10 public address system.

11 (c) An employee or parent or guardian of a student may
12 revoke the person's consent provided under Subsection (b)(1) by
13 informing the appropriate school administrator, as determined by
14 the school district or open-enrollment charter school, and no
15 student or employee whose consent has been withdrawn may continue
16 participating in the period of prayer and readings from the Bible
17 unless and until a new consent form is executed and submitted in
18 accordance with Subsection (b)(1). A person who withdraws consent
19 under this section remains bound by the waiver of claims described
20 in Subsection (b)(1)(C).

21 (d) A policy providing for a period of prayer and Bible
22 reading adopted under Subsection (a) must include provisions
23 ensuring a prayer or Bible reading is not provided in the physical
24 presence or within the hearing of a person for whom a signed consent
25 form has not been submitted under Subsection (b)(1) or has been
26 revoked under Subsection (c), or in any manner that would inflict
27 "injury in fact" on such a person under Article III of the

1 Constitution. In order to comply with this subsection, a policy may
2 require that the period of prayer and Bible reading be provided:

3 (1) before normal school hours;

4 (2) only in classrooms or other areas in which a
5 consent form under Subsection (b)(1) has been submitted for every
6 employee and student, which may include an entire district or
7 school campus if a consent form has been submitted for each employee
8 and student at the campus; or

9 (3) by any other method recommended by the attorney
10 general or legal counsel for the district or school.

11 (e) The attorney general, on request from the board of
12 trustees of a school district or the governing body of an
13 open-enrollment charter school, shall:

14 (1) provide advice on best methods for a district or
15 school to comply with the requirements of this section;

16 (2) provide a model consent form that may be used for
17 purposes of providing consent under Subsection (b)(1); and

18 (3) defend the district or school in a cause of action
19 arising out of the adoption of a policy providing for a period of
20 prayer and Bible reading under Subsection (a).

21 (f) If the attorney general defends a district or school
22 under Subsection (e)(3), the state is liable for the expenses,
23 costs, judgments, or settlements of the claims arising out of the
24 representation. The attorney general may settle or compromise any
25 and all claims under this subsection. The state may not be liable
26 for any expenses, costs, judgments, or settlements of any claims
27 arising out of the adoption of a policy providing for a period of

1 prayer and Bible reading under Subsection (a) against a district or
2 school not being represented by the attorney general.

3 (g) Notwithstanding any other law, any person, including an
4 entity, attorney, or law firm, who seeks declaratory or injunctive
5 relief to prevent a school district or open-enrollment charter
6 school from adopting or implementing a policy providing for a
7 period of prayer and Bible reading under Subsection (a) in any state
8 or federal court, or that represents any litigant seeking such
9 relief in any state or federal court, is jointly and severally
10 liable to pay the costs and reasonable attorney's fees, including
11 interest, of the prevailing party, including the costs and
12 reasonable attorney's fees that the prevailing party incurs in its
13 efforts to recover costs and fees.

14 (h) For purposes of this section, a party is considered a
15 prevailing party if a state or federal court:

16 (1) dismisses any claim or cause of action brought
17 against the party that seeks the declaratory or injunctive relief
18 described by Subsection (g), regardless of the reason for the
19 dismissal; or

20 (2) enters judgment in the party's favor on any such
21 claim or cause of action.

22 (i) A prevailing party may recover costs and attorney's fees
23 under Subsection (h) only to the extent that those costs and
24 attorney's fees were incurred while defending claims or causes of
25 action on which the party prevailed.

26 (j) Regardless of whether a prevailing party sought to
27 recover costs or attorney's fees in the underlying action, a

1 prevailing party under this section may bring a civil action to
2 recover costs and attorney's fees against a person, including an
3 entity, attorney, or law firm, that sought declaratory or
4 injunctive relief described by Subsection (g) not later than the
5 third anniversary of the date on which, as applicable:

- 6 (1) the dismissal or judgment described by Subsection
7 (h) becomes final on the conclusion of appellate review; or
8 (2) the time for seeking appellate review expires.

9 (k) It is not a defense to an action brought under
10 Subsection (j) that:

- 11 (1) a prevailing party under this section failed to
12 seek recovery of costs or attorney's fees in the underlying action;
13 (2) the court in the underlying action declined to
14 recognize or enforce the requirements of this section; or
15 (3) the court in the underlying action held that any
16 provisions of this section are invalid, unconstitutional, or
17 preempted by federal law, notwithstanding the doctrines of issue or
18 claim preclusion.

19 (1) Notwithstanding any other law, the state has sovereign
20 immunity, its officers and employees have sovereign and official
21 immunity, a school district or open-enrollment charter school has
22 governmental immunity, and each member of the governing body of a
23 school district or open-enrollment charter school and employee of a
24 school district or open-enrollment charter school has governmental
25 and official immunity in any action, claim, or counterclaim or any
26 type of legal or equitable action that challenges the validity of
27 any provision or application of this section, on constitutional

1 grounds or otherwise, unless that immunity has been abrogated or
2 preempted by federal law in a manner consistent with the
3 Constitution of the United States. The sovereign immunity conferred
4 by this section upon the state and each of its officers and
5 employees includes the constitutional sovereign immunity
6 recognized by the Supreme Court of the United States in *Seminole*
7 *Tribe of Florida v. Florida*, 517 U.S. 44 (1996), and *Alden v. Maine*,
8 527 U.S. 706 (1999), which applies in both state and federal court
9 and which may not be abrogated by Congress or by any state or
10 federal court except pursuant to legislation authorized by section
11 5 of the Fourteenth Amendment, by the Bankruptcy Clause of Article
12 I, or by Congress's powers to raise and support Armies and to
13 provide and maintain a Navy.

14 (m) Notwithstanding any other law, the immunities conferred
15 by Subsection (l) shall apply in every court, both state and
16 federal, and in every adjudicative proceeding of any type
17 whatsoever.

18 (n) Notwithstanding any other law, a provision of state law
19 may not be construed to waive or abrogate an immunity described by
20 Subsection (l) unless it expressly waives or abrogates immunity
21 with specific reference to this section.

22 (o) Notwithstanding any other law, no attorney representing
23 the state, its political subdivisions, or any officer, employee, or
24 agent of this state or a political subdivision is authorized or
25 permitted to waive an immunity described in Subsection (l) or take
26 any action that would result in a waiver of that immunity, and any
27 such action or purported waiver shall be regarded as a legal nullity

1 and an ultra vires act.

2 (p) Notwithstanding any other law, including Chapter 37,
3 Civil Practice and Remedies Code, and sections 22.002, 22.221, and
4 24.007 through 24.011, Government Code, no court of this state may
5 award declaratory or injunctive relief, or any type of writ, that
6 would declare or pronounce any provision or application of this
7 section invalid or unconstitutional, or that would restrain the
8 state, its political subdivisions, including a school district or
9 open-enrollment charter school, any officer, employee, or agent of
10 this state or a political subdivision, including each member of the
11 governing body of a school district or open-enrollment charter
12 school and employee of a school district or open-enrollment charter
13 school, or any person from enforcing any provision or application
14 of this section, and no court of this state shall have jurisdiction
15 to consider any action, claim, or counterclaim that seeks such
16 relief.

17 (q) Nothing in this section shall be construed to prevent a
18 litigant from asserting the invalidity or unconstitutionality of
19 any provision or application of this section as a defense to any
20 action, claim, or counterclaim brought against that litigant.

21 (r) Notwithstanding any other law, any judicial relief
22 issued by a court of this state that disregards the immunities
23 conferred by Subsection (l), or the jurisdictional and remedial
24 limitations imposed by Subsection (p), shall be regarded as a legal
25 nullity because it was issued by a court without jurisdiction, and
26 may not be enforced or obeyed by any officer, employee, or agent of
27 this state or a political subdivision, judicial or otherwise.

1 SECTION 2. Section 25.901, Education Code, is amended to
2 read as follows:

3 Sec. 25.901. EXERCISE OF CONSTITUTIONAL RIGHT TO PRAY. A
4 public school student has an absolute right to individually,
5 voluntarily, and silently pray or meditate in school in a manner
6 that does not disrupt the instructional or other activities of the
7 school. A person may not require~~[, encourage,]~~ or coerce a student
8 to engage in or refrain from such prayer or meditation during any
9 school activity.

10 SECTION 3. Each board of trustees of a school district and
11 each governing body of an open-enrollment charter school shall take
12 a record vote not later than six months after the effective date of
13 this Act on whether to adopt a policy requiring every campus of the
14 district or school to provide a period of prayer and Bible reading
15 under Section 25.0823, Education Code, as added by this Act.

16 SECTION 4. This Act applies beginning with the 2023-2024
17 school year.

18 SECTION 5. This Act takes effect immediately if it receives
19 a vote of two-thirds of all the members elected to each house, as
20 provided by Section 39, Article III, Texas Constitution. If this
21 Act does not receive the vote necessary for immediate effect, this
22 Act takes effect September 1, 2023.