By:  Middleton H.B. No. 2401

A BILL TO BE ENTITLED

AN ACT

preserving religious liberty from nativist jurisprudence.

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

SECTION 1.  This Act shall be known as the Protection of Religious Liberty from Nativist Jurisprudence Act.

SECTION 2.  Chapter 110, Civil Practice and Remedies Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. PROTECTION OF RELIGIOUS LIBERTY

Sec. 110.020.  DEFINITIONS. In this subchapter:

(1)  "state officer or employee" includes any state or local officer or employee of this State, including any member of the board of trustees of any school district in this state, and any teacher, principal, administrator, or other person employed by any school district in this state;

(2)  "court" includes any court of this State (other than an administrative or agency tribunal) or any Article III court of the United States;

(3)  "Blaine amendments" refers to: (a) the provision codified at article I, section 7 of the Texas Constitution, which reads: "No money shall be appropriated, or drawn from the Treasury for the benefit of any sect, or religious society, theological or religious seminary; nor shall property belonging to the State be appropriated for any such purposes"; and (b) the third sentence of article VII, section 5(c) of the Texas Constitution, which reads:

"The permanent school fund and the available school fund may not be appropriated to or used for the support of any sectarian school";

(4)  "the Separation of Church and State doctrine" means (a) any restriction, or denial of a benefit, that purports to be justified on grounds of Separation of Church and State or any element of the Supreme Court's decision in Lemon v. Kurtzman; or (b) any restriction, or denial of a benefit, that purports to be justified by the Blaine amendments.

Sec. 110.021.  BLAINE AMENDMENTS. No state officer or employee may enforce the Blaine Amendments unless and until the Supreme Court of the United States overrules Espinoza v. Montana Dept. Of Revenue, 140 S. Ct. 2246 (2020).

Sec. 110.022.  SEPARATION OF CHURCH AND STATE. Except as provided in section 110.024, no state officer or employee may enforce the Separation of Church and State doctrine against any person or entity in this state.

Sec. 110.023.  INCORPORATION. Except as provided in section 110.024, no state officer or employee may enforce the Establishment Clause of the First Amendment against any person or entity other than the federal government, its officers, or its instrumentalities.

Sec. 110.024.  EXCEPTIONS. Notwithstanding the requirements of sections 110.022 and 110.023, a state officer or employee may enforce the Separation of Church and State doctrine or the Establishment Clause as necessary to comply with:

(a)  a judgment or decree entered by a court against that specific officer or employee, his superiors, or the entity for whom he works; or

(b)  a directly-on-point ruling from the Supreme Court of the United States or the U.S. Court of Appeals for the Fifth Circuit, when there is no reasonable grounds for distinguishing that ruling factually or legally.

Sec. 110.025.  CHURCH SPEECH. No state or local officer may enforce any restrictions on speech or expression, whether in the form of direct duties or conditions, that single out churches or other religious organizations; nor shall any state or local officer chill the speech of any person, or other entity, in this state by publishing any such restrictions as law or required by law.

Sec. 110.026.  REMEDIES. (a) Any person or other entity residing, praying, preaching, or doing business in this State may bring a civil action in any court of this State against any state or local officer who violates this subchapter, and upon finding that the defendant has violated or is violating that person or entity's rights under this statute, the Court shall award:

(1)  Declaratory relief;

(2)  Injunctive relief; and

(3)  Costs and reasonable attorneys' fees.

(b)  The plaintiff in any action brought under this section shall have the right to a jury trial.

Sec. 110.027.  AWARD OF ATTORNEYS' FEES IN ESTABLISHMENT CLAUSE LAWSUITS. (a) Any person, entity, lawyer, or law firm that sues to enforce the Blaine Amendments, the Separation of Church and State Doctrine, or the Establishment Clause against any person or entity in the State of Texas, in any state or federal court, or that represents any litigant seeking such relief in any state or federal court, shall be jointly and severally liable to pay the costs and attorneys' fees of the prevailing party or parties, notwithstanding any other provision of law.

(b)  A litigant shall be deemed a "prevailing party" under this section if a state or federal court dismisses any claim or cause of action brought against it that seeks the relief described in subsection (a), regardless of the reason for such dismissal, or if a state or federal court enters judgment in its favor on any such claim or cause of action.

(c)  A prevailing party under this section may bring a civil action to recover costs and attorneys' fees against a person, entity, lawyer, or law firm that sought declaratory or injunctive relief described in subsection (a) within three (3) years of the date on which the dismissal or judgment described in subsection (b) becomes final upon the conclusion of appellate review, or within three (3) years of the date on which the time for seeking appellate review expires, regardless of whether the prevailing party sought to recover costs or attorneys' fees in the underlying action. It shall not be a defense that the prevailing party failed to seek recovery of costs or attorneys' fees in the underlying action, and it shall not be a defense that the court in the underlying action declined to recognize or enforce the requirements of this section.

(d)  An award of costs and attorneys' fees under this section shall include interest.

Sec. 110.027.  SEVERABILITY. Every provision, section, subsection, sentence, clause, phrase, or word of this subchapter, and every application of the provisions in this subchapter to every person, groups of persons, or circumstances, are severable from each other. If any application of any provision in this subchapter to any person, group of persons, or circumstances is found by a court to be unconstitutional or invalid, on any ground for any reason whatsoever, then the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutional applications of this subchapter shall be severed from any applications that a court finds to be unconstitutional, leaving the constitutional applications in force, because it is the Legislature's intent and priority that the constitutional applications be allowed to stand alone. The Legislature further declares that it would have passed this subchapter, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of this subchapter, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this subchapter, were to be declared unconstitutional by any court.

SECTION 3.  This Act takes effect September 1, 2021.