

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:

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

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

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

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

17 Sec. 110.023. INCORPORATION. Except as provided in section  
18 110.024, no state officer or employee may enforce the Establishment  
19 Clause of the First Amendment against any person or entity other  
20 than the federal government, its officers, or its  
21 instrumentalities.

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

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

1 he works; or

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

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

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

- 18 (1) Declaratory relief;  
19 (2) Injunctive relief; and  
20 (3) Costs and reasonable attorneys' fees.

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

23 Sec. 110.027. AWARD OF ATTORNEYS' FEES IN ESTABLISHMENT  
24 CLAUSE LAWSUITS. (a) Any person, entity, lawyer, or law firm that  
25 sues to enforce the Blaine Amendments, the Separation of Church and  
26 State Doctrine, or the Establishment Clause against any person or  
27 entity in the State of Texas, in any state or federal court, or that

1 represents any litigant seeking such relief in any state or federal  
2 court, shall be jointly and severally liable to pay the costs and  
3 attorneys' fees of the prevailing party or parties, notwithstanding  
4 any other provision of law.

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

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

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

26 Sec. 110.027. SEVERABILITY. Every provision, section,  
27 subsection, sentence, clause, phrase, or word of this subchapter,

1 and every application of the provisions in this subchapter to every  
2 person, groups of persons, or circumstances, are severable from  
3 each other. If any application of any provision in this subchapter  
4 to any person, group of persons, or circumstances is found by a  
5 court to be unconstitutional or invalid, on any ground for any  
6 reason whatsoever, then the remaining applications of that  
7 provision to all other persons and circumstances shall be severed  
8 and may not be affected. All constitutional applications of this  
9 subchapter shall be severed from any applications that a court  
10 finds to be unconstitutional, leaving the constitutional  
11 applications in force, because it is the Legislature's intent and  
12 priority that the constitutional applications be allowed to stand  
13 alone. The Legislature further declares that it would have passed  
14 this subchapter, and each provision, section, subsection,  
15 sentence, clause, phrase, or word, and all constitutional  
16 applications of this subchapter, irrespective of the fact that any  
17 provision, section, subsection, sentence, clause, phrase, or word,  
18 or applications of this subchapter, were to be declared  
19 unconstitutional by any court.

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