By:  Middleton S.B. No. 1879

A BILL TO BE ENTITLED

AN ACT

relating to 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.  Title 5, Civil Practice and Remedies Code, is amended by adding Chapter 110A to read as follows:

CHAPTER 110A. PROTECTION OF RELIGIOUS LIBERTY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 110A.001.  DEFINITIONS. In this chapter:

(1)  "Blaine amendments" means:

(A)  Section 7, Article I, Texas Constitution; and

(B)  the third sentence of Section 5(c), Article VII, Texas Constitution.

(2)  "Governmental officer or employee" means an officer or employee of this state or a political subdivision. The term includes a member of the board of trustees of a school district and a teacher, principal, administrator, or other individual employed by a school district.

(3)  "Separation of Church and State Doctrine" means:

(A)  any restriction, or denial of a benefit, that purports to be justified on the grounds of separation of church and state or any element of the United States Supreme Court's decision in *Lemon v. Kurtzman*, 403 U.S. 602 (1971); or

(B)  any restriction, or denial of a benefit, that purports to be justified by the Blaine amendments.

SUBCHAPTER B. PROTECTION OF RELIGIOUS LIBERTY

Sec. 110A.051.  ENFORCEMENT OF BLAINE AMENDMENTS. A governmental officer or employee may not enforce the Blaine amendments unless the United States Supreme Court overrules *Carson v. Makin*, 142 S. Ct. 1987 (2022), and *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020).

Sec. 110A.052.  ENFORCEMENT OF SEPARATION OF CHURCH AND STATE DOCTRINE. Except as provided in section 110A.054, a governmental officer or employee may not enforce the Separation of Church and State Doctrine against any person in this state.

Sec. 110A.053.  ENFORCEMENT OF ESTABLISHMENT CLAUSE. Except as provided in section 110A.054, a governmental officer or employee may not enforce the Establishment Clause of the First Amendment of the United States Constitution against any person other than the federal government, its officers, or its instrumentalities.

Sec. 110A.054.  EXCEPTIONS. Notwithstanding Sections 110A.052 and 110A.053, a governmental officer or employee may enforce the Separation of Church and State Doctrine or the Establishment Clause if necessary to comply with:

(1)  a judgment or decree entered by a court against that specific officer or employee, the officer's or employee's superiors, or the entity that employs the officer or employee; or

(2)  a directly-on-point ruling from the United States Supreme Court of the United States or the United States Court of Appeals for the Fifth Circuit if there are no reasonable grounds for distinguishing that ruling factually or legally from the basis for the officer's or employee's enforcement action.

Sec. 110A.055.  RELIGIOUS ORGANIZATION SPEECH PROTECTED. A governmental officer or employee may not:

(1)  adopt or enforce any restrictions on speech or expression, whether in the form of direct duties or conditions, that singles out churches or other religious organizations; or

(2)  chill the speech of any person by publishing a statement that a restriction described by Subdivision (1) is the law or is required by law.

Sec. 110A.056.  REMEDIES. (a) Any person injured or adversely affected by a violation of this chapter has standing to bring and may bring a civil action in any court of this state against any governmental officer or employee who violates this chapter.

(b)  On a finding that the defendant has violated or is violating the claimant's rights under this chapter, the court in an action brought under this section shall award:

(1)  declaratory relief;

(2)  injunctive relief; and

(3)  costs and reasonable attorney's fees.

(c)  The claimant in an action brought under this section is entitled to a jury trial.

Sec. 110A.057.  ATTORNEY'S FEES FOR ESTABLISHMENT CLAUSE ENFORCEMENT ACTIONS. (a) Notwithstanding any other law, any person, including an entity, attorney, or law firm, that brings an action to enforce the Blaine amendments, the Separation of Church and State Doctrine, or the Establishment Clause of the First Amendment to the United States Constitution against any person in this state in any state or federal court, or that represents a litigant seeking such relief in any state or federal court, is jointly and severally liable for the costs and reasonable attorney's fees of the party against whom such relief is sought if that party prevails, including the costs and reasonable attorney's fees that the prevailing party incurs in its efforts to recover costs and fees.

(b)  A party is considered to prevail under Subsection (a) if:

(1)  a state or federal court dismisses any claim or cause of action described by Subsection (a) against the party, regardless of the reason for the dismissal; or

(2)  a state or federal court enters judgment in the party's favor on a claim or cause of action described by Subsection (a).

(c)  A prevailing party may recover costs and attorney's fees under this section only to the extent that those costs and attorney's fees were incurred while defending claims or causes of action on which the party prevailed.

(d)  A prevailing party under this section may bring a civil action to recover costs and attorney's fees under this section not later than the third anniversary of the later of:

(1)  the date on which the dismissal or judgment described by Subsection (b) becomes final; or

(2)  the date on which the time for seeking appellate review of the dismissal or judgment described by Subsection (b) expires.

(e)  A prevailing party under this section may bring an action under Subsection (d) regardless of whether the party sought to recover costs or attorney's fees in the underlying action. It is not a defense that:

(1)  the prevailing party failed to seek costs or attorney's fees in the underlying action; or

(2)  the court in the underlying action declined to recognize or enforce the requirements of this section; or

(3)  the court in the underlying action held that any provisions of this section are invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim preclusion.

(f)  Notwithstanding any other law, including Chapter 15, Civil Practice and Remedies Code, a civil action brought under Subsection (d) may be brought in:

(1)  the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;

(2)  the county of residence for any one of the natural person defendants at the time the cause of action accrued;

(3)  the county of the principal office in this state of any one of the defendants that is not a natural person; or

(4)  the county of residence for the claimant if the claimant is a natural person residing in this state.

(g)  If a civil action is brought under Subsection (d) in any one of the venues described by Subsection (f), then the action may not be transferred to a different venue without the written consent of all parties.

(h)  Any contractual choice-of-forum provision that purports to require a civil action under Subsection (d) to be litigated in another forum shall be void as against public policy, and may not be enforced in any state or federal court.

(i)  A prevailing party under this section may recover interest on costs and attorney's fees in an action brought under Subsection (d).

Sec. 110A.058.  IMMUNITY DEFENSES WAIVED. A governmental officer or employee may not assert sovereign immunity, governmental immunity, official immunity, qualified immunity, or any other form of immunity as a defense in an action brought under this chapter.

Sec. 110A.059.  IMMUNITIES PRESERVED. (a) Notwithstanding any other law, the state and each of its officers and employees shall have sovereign immunity, its political subdivisions and each of their officers and employees shall have governmental immunity, and each officer and employee of this state or a political subdivision shall have official immunity (as well as sovereign or governmental immunity, as appropriate) in any action, claim, counterclaim, or any type of legal or equitable action that challenges the validity of any provision or application of this chapter, on constitutional grounds or otherwise, or that seeks to prevent or enjoin the state, its political subdivisions, or any officer, employee, or agent of this state or a political subdivision from enforcing any provision or application of this chapter, or from hearing, adjudicating, or docketing a civil action brought under Section 110A.056 or Section 110A.057 unless that immunity has been abrogated or preempted by federal law in a manner consistent with the Constitution of the United States. The sovereign immunity conferred by this section upon the state and each of its officers and employees includes the constitutional sovereign immunity recognized by the Supreme Court of the United States in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996), and *Alden v. Maine*, 527 U.S. 706 (1999), which applies in both state and federal court and which may not be abrogated by Congress or by any state or federal court except pursuant to legislation authorized by section 5 of the Fourteenth Amendment, by the Bankruptcy Clause of Article I, or by Congress's powers to raise and support Armies and to provide and maintain a Navy.

(b)  Notwithstanding any other law, the immunities conferred by Subsection (a) shall apply in every court, both state and federal, and in every adjudicative proceeding of any type whatsoever.

(c)  Notwithstanding any other law, no provision of state law may be construed to waive or abrogate an immunity described in Subsection (a) unless it expressly waives or abrogates immunity with specific reference to this section.

(d)  Notwithstanding any other law, no attorney representing the state, its political subdivisions, or any officer, employee, or agent of this state or a political subdivision is authorized or permitted to waive an immunity described in Subsection (a) or take any action that would result in a waiver of that immunity, and any such action or purported waiver shall be regarded as a legal nullity and an ultra vires act.

(e)  Notwithstanding any other law, including Chapter 37, Civil Practice and Remedies Code, and sections 22.002, 22.221, and 24.007 through 24.011, Government Code, no court of this state may award declaratory or injunctive relief, or any type of writ, that would pronounce any provision or application of this subchapter invalid or unconstitutional, or that would restrain the state, its political subdivisions, any officer, employee, or agent of this state or a political subdivision, or any person from enforcing any provision or application of this chapter, or from hearing, adjudicating, docketing, or filing a civil action brought under Section 110A.056 or Section 110A.057, and no court of this state shall have jurisdiction to consider any action, claim, or counterclaim that seeks such relief.

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

(g)  Notwithstanding any other provision of law to the contrary, any judicial relief issued by a court of this state that disregards the immunities conferred by Subsection (a), or the limitations on jurisdiction and relief imposed by Subsection (e), shall be regarded as a legal nullity because it was issued by a court without jurisdiction, and may not be enforced or obeyed by any officer, employee, or agent of this state or a political subdivision, judicial or otherwise.

(h)  Notwithstanding any other provision of law to the contrary, any writ, injunction, or declaratory judgment issued by a court of this state that purports to restrain the state, its political subdivisions, any officer, employee, or agent of this state or a political subdivision, or any person from hearing, adjudicating, docketing, or filing a civil action brought under Section 110A.056 or Section 110A.057 shall be regarded as a legal nullity and a violation of the Due Process Clause of the Fourteenth Amendment, and may not be enforced or obeyed by any officer, employee, or agent of this state or a political subdivision, judicial or otherwise.

(i)  Notwithstanding any other provision of law to the contrary, any officer, employee, or agent of this state or a political subdivision, judicial or otherwise, who issues, enforces, or obeys a writ, injunction, or declaratory judgment described in Subsection (h) shall be subject to suit by any person who is prevented from or delayed in bringing a civil action under Section 110A.056 or Section 110A.057, and a claimant who prevails in an action brought under this section shall recover:

(1)  injunctive relief;

(2)  compensatory damages;

(3)  punitive damages of not less than $100,000; and

(4)  costs and reasonable attorney's fees.

(j)  Notwithstanding any other provision of law to the contrary, any person who violates Subsections (e) or (h):

(1)  may not assert and shall not be entitled to any type of immunity defense, including sovereign immunity, governmental immunity, official immunity, or judicial immunity;

(2)  may not and shall not be indemnified for any award of damages or costs and attorneys' fees entered against them, or for the costs of their legal defense; and

(3)  may not and shall not receive or obtain legal representation from the attorney general of this state in any action brought under Subsection (i).

(k)  Notwithstanding any other provision of law to the contrary, any person who sues and seeks any writ, injunction, or declaratory judgment that would restrain any person from hearing, adjudicating, docketing, or filing a civil action brought under Section 110A.056 or Section 110A.057, shall pay the costs and attorneys' fees of the person sued. A person may bring a civil action to recover these costs and attorneys' fees in state or federal court. It shall not be defense to a civil action brought under this Subsection that:

(1)  the plaintiff failed to seek recovery of costs or attorney's fees in the underlying action;

(2)  the court in the underlying action declined to recognize or enforce the requirements of this Section; or

(3)  the court in the underlying action held that any provisions of this Section are invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim preclusion.

Sec. 110A.60.  SEVERABILITY. (a) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the Supreme Court of the United States held that an explicit statement of legislative intent is controlling, it is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this chapter, and every application of the provisions in this chapter to every person, group of persons, or circumstances, are severable from each other.

(b)  If any application of any provision in this chapter to any person, group of persons, or circumstances is found by a court to be invalid, preempted, or unconstitutional, for any reason whatsoever, then the remaining applications of that provision to all other persons and circumstances shall be severed and preserved, and shall remain in effect. All constitutionally valid applications of the provisions in this chapter shall be severed from any applications that a court finds to be invalid, preempted, or unconstitutional, because it is the legislature's intent and priority that every single valid application of every statutory provision be allowed to stand alone.

(c)  The legislature further declares that it would have enacted this chapter, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of the provisions of this chapter, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this chapter were to be declared invalid, preempted, or unconstitutional.

(d)  If any provision of this chapter is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force, consistent with the severability requirements of Subsections (a), (b), and (c).

(e)  No court may decline to enforce the severability requirements of Subsections (a), (b), (c), and (d) on the ground that severance would "rewrite" the statute or involve the court in legislative or lawmaking activity. A court that declines to enforce or enjoins a state official from enforcing a statutory provision is never rewriting a statute or engaging in legislative or lawmaking activity, as the statute continues to contain the same words as before the court's decision. A judicial injunction or declaration of unconstitutionality:

(1)  is nothing more than an edict prohibiting enforcement of the disputed statute against the named parties to that lawsuit, which may subsequently be vacated by a later court if that court has a different understanding of the requirements of the Texas Constitution or United States Constitution;

(2)  is not a formal amendment of the language in a statute; and

(3)  no more rewrites a statute than a decision by the executive not to enforce a duly enacted statute in a limited and defined set of circumstances.

(f)  If any state or federal court disregards any of the severability requirements in Subsections (a), (b), (c), (d), or (e), and declares or finds any provision of this chapter facially invalid, preempted, or unconstitutional, when there are discrete applications of that provision that can be enforced against a person, group of persons, or circumstances without violating federal law or the federal or state constitutions, then that provision shall be interpreted, as a matter of state law, as if the legislature had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate federal law or the federal or state constitutions, and every court shall adopt this saving construction of that provision until the court ruling that pronounced the provision facially invalid, preempted, or unconstitutional is vacated or overruled.

SECTION 3.  If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 4.  Chapter 110A, Civil Practice and Remedies Code, as added by this Act, applies only to a cause of action that accrues on or after the effective date of this Act.

SECTION 5.  This Act takes effect September 1, 2023.