

By: Cain

H.B. No. 4949

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15 student or employee whose consent has been withdrawn may continue  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  
4 conferred by this section upon the state and each of its officers  
5 and 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.