

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

1 in *Lemon v. Kurtzman*, 403 U.S. 602 (1971); or

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

4 SUBCHAPTER B. PROTECTION OF RELIGIOUS LIBERTY

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

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

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

19 Sec. 110A.054. EXCEPTIONS. Notwithstanding Sections  
20 110A.052 and 110A.053, a governmental officer or employee may  
21 enforce the Separation of Church and State Doctrine or the  
22 Establishment Clause if necessary to comply with:

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

26 (2) a directly-on-point ruling from the United States  
27 Supreme Court of the United States or the United States Court of

1 Appeals for the Fifth Circuit if there are no reasonable grounds for  
2 distinguishing that ruling factually or legally from the basis for  
3 the officer's or employee's enforcement action.

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

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

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

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

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

20 (1) declaratory relief;

21 (2) injunctive relief; and

22 (3) costs and reasonable attorney's fees.

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

25 Sec. 110A.057. ATTORNEY'S FEES FOR ESTABLISHMENT CLAUSE  
26 ENFORCEMENT ACTIONS. (a) Notwithstanding any other law, any  
27 person, including an entity, attorney, or law firm, that brings an

1 action to enforce the Blaine amendments, the Separation of Church  
2 and State Doctrine, or the Establishment Clause of the First  
3 Amendment to the United States Constitution against any person in  
4 this state in any state or federal court, or that represents a  
5 litigant seeking such relief in any state or federal court, is  
6 jointly and severally liable for the costs and reasonable  
7 attorney's fees of the party against whom such relief is sought if  
8 that party prevails, including the costs and reasonable attorney's  
9 fees that the prevailing party incurs in its efforts to recover  
10 costs and fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27           (g) If a civil action is brought under Subsection (d) in any

1 one of the venues described by Subsection (f), then the action may  
2 not be transferred to a different venue without the written consent  
3 of all parties.

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

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

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

15 Sec. 110A.059. IMMUNITIES PRESERVED. (a) Notwithstanding  
16 any other law, the state and each of its officers and employees  
17 shall have sovereign immunity, its political subdivisions and each  
18 of their officers and employees shall have governmental immunity,  
19 and each officer and employee of this state or a political  
20 subdivision shall have official immunity (as well as sovereign or  
21 governmental immunity, as appropriate) in any action, claim,  
22 counterclaim, or any type of legal or equitable action that  
23 challenges the validity of any provision or application of this  
24 chapter, on constitutional grounds or otherwise, or that seeks to  
25 prevent or enjoin the state, its political subdivisions, or any  
26 officer, employee, or agent of this state or a political  
27 subdivision from enforcing any provision or application of this

1 chapter, or from hearing, adjudicating, or docketing a civil action  
2 brought under Section 110A.056 or Section 110A.057 unless that  
3 immunity has been abrogated or preempted by federal law in a manner  
4 consistent with the Constitution of the United States. The  
5 sovereign immunity conferred by this section upon the state and  
6 each of its officers and employees includes the constitutional  
7 sovereign immunity recognized by the Supreme Court of the United  
8 States in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996),  
9 and *Alden v. Maine*, 527 U.S. 706 (1999), which applies in both state  
10 and federal court and which may not be abrogated by Congress or by  
11 any state or federal court except pursuant to legislation  
12 authorized by section 5 of the Fourteenth Amendment, by the  
13 Bankruptcy Clause of Article I, or by Congress's powers to raise and  
14 support Armies and to provide and maintain a Navy.

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

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

23 (d) Notwithstanding any other law, no attorney representing  
24 the state, its political subdivisions, or any officer, employee, or  
25 agent of this state or a political subdivision is authorized or  
26 permitted to waive an immunity described in Subsection (a) or take  
27 any action that would result in a waiver of that immunity, and any

1 such action or purported waiver shall be regarded as a legal nullity  
2 and an ultra vires act.

3 (e) Notwithstanding any other law, including Chapter 37,  
4 Civil Practice and Remedies Code, and sections 22.002, 22.221, and  
5 24.007 through 24.011, Government Code, no court of this state may  
6 award declaratory or injunctive relief, or any type of writ, that  
7 would pronounce any provision or application of this subchapter  
8 invalid or unconstitutional, or that would restrain the state, its  
9 political subdivisions, any officer, employee, or agent of this  
10 state or a political subdivision, or any person from enforcing any  
11 provision or application of this chapter, or from hearing,  
12 adjudicating, docketing, or filing a civil action brought under  
13 Section 110A.056 or Section 110A.057, and no court of this state  
14 shall have jurisdiction to consider any action, claim, or  
15 counterclaim that seeks such relief.

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

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



1 subdivision, judicial or otherwise.

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

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

- 21 (1) injunctive relief;
- 22 (2) compensatory damages;
- 23 (3) punitive damages of not less than \$100,000; and
- 24 (4) costs and reasonable attorney's fees.

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

- 27 (1) may not assert and shall not be entitled to any

1 type of immunity defense, including sovereign immunity,  
2 governmental immunity, official immunity, or judicial immunity;

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

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

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

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

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

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

26 Sec. 110A.60. SEVERABILITY. (a) Mindful of *Leavitt v. Jane*  
27 *L.*, 518 U.S. 137 (1996), in which in the context of determining the

1 severability of a state statute regulating abortion the Supreme  
2 Court of the United States held that an explicit statement of  
3 legislative intent is controlling, it is the intent of the  
4 legislature that every provision, section, subsection, sentence,  
5 clause, phrase, or word in this chapter, and every application of  
6 the provisions in this chapter to every person, group of persons, or  
7 circumstances, are severable from each other.

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

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

26 (d) If any provision of this chapter is found by any court to  
27 be unconstitutionally vague, then the applications of that

1 provision that do not present constitutional vagueness problems  
2 shall be severed and remain in force, consistent with the  
3 severability requirements of Subsections (a), (b), and (c).

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

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

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

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

23 (f) If any state or federal court disregards any of the  
24 severability requirements in Subsections (a), (b), (c), (d), or  
25 (e), and declares or finds any provision of this chapter facially  
26 invalid, preempted, or unconstitutional, when there are discrete  
27 applications of that provision that can be enforced against a

1 person, group of persons, or circumstances without violating  
2 federal law or the federal or state constitutions, then that  
3 provision shall be interpreted, as a matter of state law, as if the  
4 legislature had enacted a provision limited to the persons, group  
5 of persons, or circumstances for which the provision's application  
6 will not violate federal law or the federal or state constitutions,  
7 and every court shall adopt this saving construction of that  
8 provision until the court ruling that pronounced the provision  
9 facially invalid, preempted, or unconstitutional is vacated or  
10 overruled.

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

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

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