

- SUBJECT:** Limiting governmental burdens of freedom of religion
- COMMITTEE:** State Affairs — committee substitute recommended
- VOTE:** 9 ayes — Cook, Menendez, Craddick, Frullo, Harless, Hilderbran, Huberty, Solomons, Turner
- 0 nays
- 4 absent — Gallego, Geren, Oliveira, Smithee
- WITNESSES:** For — Hiram Sasser, Liberty Institute; (*Registered, but did not testify:* Paul Hastings, Texas Home School Coalition; Ann Hettinger, Concerned Women for America of Texas; Suzii Paynter, Christian Life Commission, Baptist General Convention of Texas; Cecilia Wood)
- Against — (*Registered, but did not testify:* Matt Simpson, ACLU of Texas; Monty Wynn, Texas Municipal League)
- On — David Carter
- BACKGROUND:** In 1999, the 76th Legislature enacted the Texas Religious Freedom Restoration Act (RFRA), Civil Practice and Remedies Code, ch. 110. The act prohibits state agencies from substantially burdening a person's free exercise of religion unless the agency can demonstrate that it acted in furtherance of a compelling governmental interest and used the least restrictive means of furthering that interest. In determining whether an interest is compelling, a court gives weight to the interpretation of compelling interest from federal constitutional case law.
- DIGEST:** CSHJR 135 would amend the Texas Constitution to prevent the state government from directly, indirectly, or incidentally, substantially burdening an individual's or a religious organization's conduct that was based on a sincerely held religious belief, unless the government was:
- acting to further a compelling governmental interest; and
  - used the least restrictive available means to do so.

The proposal would be presented to the voters at an election on Tuesday, November 8, 2011. The ballot proposal would read: “The constitutional amendment relating to an individual’s or a religious organization’s freedom of religion.”

**SUPPORTERS  
SAY:**

The Religious Freedom Restoration Act of 1999 needs to be reinforced. Religious freedom is a fundamental right on which the country was founded and should be protected. CSHJR 135 would enshrine the protections found in the RFRA in the Texas Constitution to protect them from future attempts to repeal or alter them through legislative action or court decisions. The Texas Constitution currently lacks the specificity needed to fully effectuate the religious freedoms contained in the RFRA. Adding the protections in the act to the state Constitution would ensure that these essential freedoms were properly protected.

CSHJR 135, like RFRA would not allow people to use religious freedom to overturn or stop the enforcement of current laws. The only government actions subject to the act are those that substantially burden the free exercise of religion. RFRA was carefully structured to track certain language in federal law and strikes a balance between absolute religious freedom and the rights of the larger society. Like the act, CSHJR 135 would allow for governmental regulations or actions that substantially burdened religious freedom, but only when they met a compelling governmental interest and used the least restrictive means of achieving that interest.

The concerns that CSHJR 135 would favor religious persons or harm existing generally applicable laws or civil protections are unfounded. The compelling interest test would be used as a shield to protect the religious expression of all Texans, not as a sword to strike down generally applicable laws.

CSHJR 135 would apply only to government actors and only when they restricted the religious freedom of Texans. The focus of CSHJR 135 would be to allow for reasonable exceptions to broad-based laws that negatively impact people of faith. RFRA, on which HJR 135 is based, was enacted in 1999 and there have been no serious concerns about its structure or protections since that time.

OPPONENTS  
SAY:

CSHJR 135, while promoting religious freedom, would not do enough to protect related essential civil liberties, and by placing the compelling interest standard in the state constitution, it could impinge on the ability of governments to create and enforce generally applicable laws.

Federal constitutional case law makes it clear that religious beliefs are protected absolutely. However, religiously motivated conduct is still subject to generally applicable state laws that are neutral on their face toward religion. These laws protect other individuals and society from practices detrimental to both.

While the RFRA contains strong protections for existing laws, including exemptions from the compelling interest test for prison litigation, zoning, land-use planning, urban nuisances, or historic preservation, CSHJR 135 would not specifically include these same exceptions. Private parties could claim these laws burdened their religious freedoms, and the laws would then be subjected to the compelling interest test. Examples might be a religious day care attempting to exempt itself from generally applicable public health and safety municipal ordinances or religiously affiliated hospitals using the constitutional amendment to challenge requirements that they provide certain procedures.

Current law is sufficient. CSHJR 135 is too broad and could expand the personal religious protections beyond the balanced limits found in the RFRA.

The proposed constitutional amendment would single out religious beliefs over other sincerely held beliefs and, thus, would be unfair to people who did not have religious beliefs. It would create special rights for people who were religiously motivated and could lead to additional entanglement between church and state.

NOTES:

The companion measure, SJR 49 by Patrick, was referred to the Senate State Affairs Committee on March 24.