

CIVIL PRACTICE AND REMEDIES CODE

TITLE 5. GOVERNMENTAL LIABILITY

CHAPTER 110. RELIGIOUS FREEDOM

Doc. 1 Att. 3

U.S. Pastor Council v. City Of Austin et al

Sec. 110.001. DEFINITIONS. (a) In this chapter:

(1) "Free exercise of religion" means an act or refusal to act that is substantially motivated by sincere religious belief. In determining whether an act or refusal to act is substantially motivated by sincere religious belief under this chapter, it is not necessary to determine that the act or refusal to act is motivated by a central part or central requirement of the person's sincere religious belief.

(2) "Government agency" means:

(A) this state or a municipality or other political subdivision of this state; and

(B) any agency of this state or a municipality or other political subdivision of this state, including a department, bureau, board, commission, office, agency, council, or public institution of higher education.

(b) In determining whether an interest is a compelling governmental interest under Section [110.003](#), a court shall give weight to the interpretation of compelling interest in federal case law relating to the free exercise of religion clause of the First Amendment of the United States Constitution.

Added by Acts 1999, 76th Leg., ch. 399, Sec. 1, eff. Aug. 30, 1999.

Sec. 110.002. APPLICATION. (a) This chapter applies to any ordinance, rule, order, decision, practice, or other exercise of governmental authority.

(b) This chapter applies to an act of a government agency, in the exercise of governmental authority, granting or refusing to grant a government benefit to an individual.

(c) This chapter applies to each law of this state unless the law is expressly made exempt from the application of this chapter by reference to this chapter.

Added by Acts 1999, 76th Leg., ch. 399, Sec. 1, eff. Aug. 30, 1999.

Sec. 110.003. RELIGIOUS FREEDOM PROTECTED. (a) Subject to Subsection (b), a government agency may not substantially burden a person's free exercise of religion.

(b) Subsection (a) does not apply if the government agency demonstrates that the application of the burden to the person:

(1) is in furtherance of a compelling governmental interest;
and

(2) is the least restrictive means of furthering that interest.

(c) A government agency that makes the demonstration required by Subsection (b) is not required to separately prove that the remedy and penalty provisions of the law, ordinance, rule, order, decision, practice, or other exercise of governmental authority that imposes the substantial burden are the least restrictive means to ensure compliance or to punish the failure to comply.

Added by Acts 1999, 76th Leg., ch. 399, Sec. 1, eff. Aug. 30, 1999.

Sec. 110.004. DEFENSE. A person whose free exercise of religion has been substantially burdened in violation of Section [110.003](#) may assert that violation as a defense in a judicial or administrative proceeding without regard to whether the proceeding is brought in the name of the state or by any other person.

Added by Acts 1999, 76th Leg., ch. 399, Sec. 1, eff. Aug. 30, 1999.

Sec. 110.005. REMEDIES. (a) Any person, other than a government agency, who successfully asserts a claim or defense under this chapter is entitled to recover:

- (1) declaratory relief under Chapter [37](#);
- (2) injunctive relief to prevent the threatened violation or continued violation;
- (3) compensatory damages for pecuniary and nonpecuniary losses;
and
- (4) reasonable attorney's fees, court costs, and other reasonable expenses incurred in bringing the action.

(b) Compensatory damages awarded under Subsection (a) (3) may not

exceed \$10,000 for each entire, distinct controversy, without regard to the number of members or other persons within a religious group who claim injury as a result of the government agency's exercise of governmental authority. A claimant is not entitled to recover exemplary damages under this chapter.

(c) An action under this section must be brought in district court.

(d) A person may not bring an action for damages or declaratory or injunctive relief against an individual, other than an action brought against an individual acting in the individual's official capacity as an officer of a government agency.

(e) This chapter does not affect the application of Section 498.0045 or 501.008, Government Code, or Chapter 14 of this code.

Added by Acts 1999, 76th Leg., ch. 399, Sec. 1, eff. Aug. 30, 1999.

Sec. 110.006. NOTICE; RIGHT TO ACCOMMODATE. (a) A person may not bring an action to assert a claim under this chapter unless, 60 days before bringing the action, the person gives written notice to the government agency by certified mail, return receipt requested:

(1) that the person's free exercise of religion is substantially burdened by an exercise of the government agency's governmental authority;

(2) of the particular act or refusal to act that is burdened; and

(3) of the manner in which the exercise of governmental authority burdens the act or refusal to act.

(b) Notwithstanding Subsection (a), a claimant may, within the 60-day period established by Subsection (a), bring an action for declaratory or injunctive relief and associated attorney's fees, court costs, and other reasonable expenses, if:

(1) the exercise of governmental authority that threatens to substantially burden the person's free exercise of religion is imminent; and

(2) the person was not informed and did not otherwise have knowledge of the exercise of the governmental authority in time to reasonably provide the notice.

(c) A government agency that receives a notice under Subsection (a) may remedy the substantial burden on the person's free exercise of

religion.

(d) A remedy implemented by a government agency under this section:

(1) may be designed to reasonably remove the substantial burden on the person's free exercise of religion;

(2) need not be implemented in a manner that results in an exercise of governmental authority that is the least restrictive means of furthering the governmental interest, notwithstanding any other provision of this chapter; and

(3) must be narrowly tailored to remove the particular burden for which the remedy is implemented.

(e) A person with respect to whom a substantial burden on the person's free exercise of religion has been cured by a remedy implemented under this section may not bring an action under Section 110.005.

(f) A person who complies with an inmate grievance system as required under Section 501.008, Government Code, is not required to provide a separate written notice under Subsection (a). In conjunction with the inmate grievance system, the government agency may remedy a substantial burden on the person's free exercise of religion in the manner described by, and subject to, Subsections (c), (d), and (e).

(g) In dealing with a claim that a person's free exercise of religion has been substantially burdened in violation of this chapter, an inmate grievance system, including an inmate grievance system required under Section 501.008, Government Code, must provide to the person making the claim a statement of the government agency's rationale for imposing the burden, if any exists, in connection with any adverse determination made in connection with the claim.

Added by Acts 1999, 76th Leg., ch. 399, Sec. 1, eff. Aug. 30, 1999.

Sec. 110.007. ONE-YEAR LIMITATIONS PERIOD. (a) A person must bring an action to assert a claim for damages under this chapter not later than one year after the date the person knew or should have known of the substantial burden on the person's free exercise of religion.

(b) Mailing notice under Section 110.006 tolls the limitations period established under this section until the 75th day after the date on which the notice was mailed.

Added by Acts 1999, 76th Leg., ch. 399, Sec. 1, eff. Aug. 30, 1999.

Sec. 110.008. SOVEREIGN IMMUNITY WAIVED. (a) Subject to Section 110.006, sovereign immunity to suit and from liability is waived and abolished to the extent of liability created by Section 110.005, and a claimant may sue a government agency for damages allowed by that section.

(b) Notwithstanding Subsection (a), this chapter does not waive or abolish sovereign immunity to suit and from liability under the Eleventh Amendment to the United States Constitution.

Added by Acts 1999, 76th Leg., ch. 399, Sec. 1, eff. Aug. 30, 1999.

Sec. 110.009. EFFECT ON RIGHTS. (a) This chapter does not authorize a government agency to burden a person's free exercise of religion.

(b) The protection of religious freedom afforded by this chapter is in addition to the protections provided under federal law and the constitutions of this state and the United States. This chapter may not be construed to affect or interpret Section 4, 5, 6, or 7, Article I, Texas Constitution.

Added by Acts 1999, 76th Leg., ch. 399, Sec. 1, eff. Aug. 30, 1999.

Sec. 110.010. APPLICATION TO CERTAIN CASES. Notwithstanding any other provision of this chapter, a municipality has no less authority to adopt or apply laws and regulations concerning zoning, land use planning, traffic management, urban nuisance, or historic preservation than the authority of the municipality that existed under the law as interpreted by the federal courts before April 17, 1990. This chapter does not affect the authority of a municipality to adopt or apply laws and regulations as that authority has been interpreted by any court in cases that do not involve the free exercise of religion.

Added by Acts 1999, 76th Leg., ch. 399, Sec. 1, eff. Aug. 30, 1999.

Sec. 110.011. CIVIL RIGHTS. (a) Except as provided in Subsection (b), this chapter does not establish or eliminate a defense to a civil action or criminal prosecution under a federal or state civil rights law.

(b) This chapter is fully applicable to claims regarding the

employment, education, or volunteering of those who perform duties, such as spreading or teaching faith, performing devotional services, or internal governance, for a religious organization. For the purposes of this subsection, an organization is a religious organization if:

(1) the organization's primary purpose and function are religious, it is a religious school organized primarily for religious and educational purposes, or it is a religious charity organized primarily for religious and charitable purposes; and

(2) it does not engage in activities that would disqualify it from tax exempt status under Section 501(c)(3), Internal Revenue Code of 1986, as it existed on August 30, 1999.

Added by Acts 1999, 76th Leg., ch. 399, Sec. 1, eff. Aug. 30, 1999.

Sec. 110.012. GRANT TO RELIGIOUS ORGANIZATION NOT AFFECTED.

Notwithstanding Section [110.002\(b\)](#), this chapter does not affect the grant or denial of an appropriation or other grant of money or benefits to a religious organization, nor does it affect the grant or denial of a tax exemption to a religious organization.

Added by Acts 1999, 76th Leg., ch. 399, Sec. 1, eff. Aug. 30, 1999.