

BILL ANALYSIS

C.S.H.J.R. 135
By: Phillips
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Neither the state nor the federal government can impose a burden or limitation on the right to free exercise of religion unless the government can show it has a compelling interest and no less restrictive means to accomplish that compelling interest. This standard of review used to protect religious freedom, known as the compelling interest test, has traditionally provided a wide safety net for religious liberties. Within the past 25 years new legal standards have developed providing that the compelling interest test can only be applied if a state action or law directly targets religion. This has resulted in a lower threshold of determining government interest so that, in some cases, the state is merely required to show a rational basis for its action. Some observers are concerned that Texas law is not sufficient in this regard and it has been suggested that a constitutional amendment will provide the best guarantee of lasting protection for citizens' religious liberties in Texas.

C.S.H.J.R. 135 seeks to address this issue by proposing a constitutional amendment prohibiting the government from directly, indirectly, or incidentally substantially burdening an individual's or a religious organization's conduct that is based on a sincerely held religious belief, unless the government is acting to further a compelling interest and is using the least restrictive available means to do so.

RULEMAKING AUTHORITY

It is the committee's opinion that this resolution does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.J.R. 135 proposes an amendment to the Texas Constitution to prohibit government from directly, indirectly, or incidentally, substantially burdening an individual's or a religious organization's conduct that is based on a sincerely held religious belief, unless the government is acting to further a compelling governmental interest and using the least restrictive available means to do so. The resolution sets out the required ballot language.

ELECTION DATE

The constitutional amendment proposed by this joint resolution will be submitted to the voters at an election to be held November 8, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.J.R. 135 differs from the original in nonsubstantive ways by conforming to certain bill drafting conventions and making clarifying changes and technical corrections to the law.