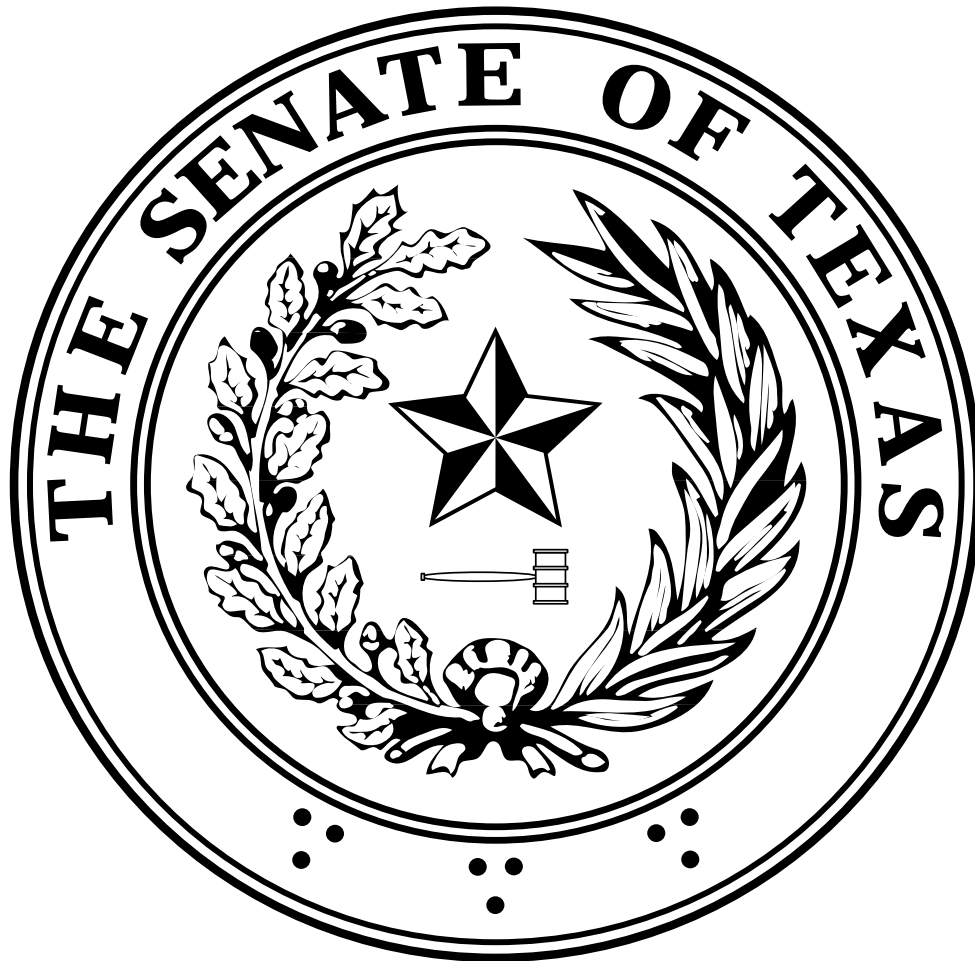


Senate Committee on State Affairs  
Report to the 77th Legislature



Charge 9

Monitoring Implementation of Texas RFRA and  
Electronic Filing

## **Acknowledgments**

The Senate State Affairs Committee would like to recognize the following people for their hard work and without whose assistance this report would not be possible: Douglas Laycock, Professor of Law, The University of Texas School of Law (representing himself); Wayne Scott, Executive Director, and Carl Reynolds, General Counsel, Texas Department of Criminal Justice; Tom Harrison, Executive Director, Kristin Newkirk, Director, Disclosure Filing, and Karen Lundquist, General Counsel, Texas Ethics Commission; and Clark Ervin, Deputy Attorney General/General Counsel & Director of Administration, Office of the Attorney General.

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## **Executive Summary**

### Texas RFRA

#### **The Charge:**

Monitor the implementation of the following bills enacted during the 76th Legislature, Regular Session: SB 138 relating to government restrictions on the exercise of religion ....

#### **Findings:**

No reported cases involving the Texas Religious Freedom Restoration Act have been adjudicated, therefore it is impossible to determine how the courts will enforce the rights granted under Texas RFRA. While some lawsuit settlement negotiations have occurred where Texas RFRA might have played a role, because no courts have ruled on the merits of the legislation, no determination can be made regarding how the legislation will impact municipalities, correctional facilities, and private citizens.

#### **Recommendation:**

- (1) The State Affairs Committee recommends no legislative action at this time. The legislature should monitor court enforcement, municipality behavior and correctional facility rules as they relate to the law.

### Electronic Filing

#### **The Charge:**

Monitor the implementation of the following bills enacted during the 76th Legislature, Regular Session: ... HB 2611 relating to electronic reporting of certain political contributions and political expenditures.

**Findings:**

Texas' electronic filing system went live on July 1, 2000. Preliminary results show an increase in the use of electronic filing by political action committees who file monthly with the Ethics Commission. The first major filing deadline since enactment of the legislation was July 17, 2000; almost 30 percent of filers filed electronically. Despite a few minor problems which have been corrected, the system is operational and boasts the nation's only electronic filing system with software that accommodates both IBM and Mac users.

Judicial district offices were exempted from the electronic filing legislation due to the fact that some judicial district offices were not required to file campaign reports with the Ethics Commission. Other legislation passed by the 76th Legislature now requires all judicial district offices to file campaign reports with the Ethics Commission, therefore judicial district offices should no longer be exempt from the requirements of electronic filing.

**Recommendation:**

- (2) The State Affairs Committee recommends the legislature remove the exemption for judicial district offices from the requirements of the electronic filing laws.

## **Senate Committee on State Affairs**

Lieutenant Governor Rick Perry charged the Senate Committee on State Affairs to “[m]onitor the implementation of the following bills enacted during the 76th Legislature, Regular Session: SB 138 relating to government restrictions on the exercise of religion; and HB 2611 relating to electronic reporting of certain political contributions and political expenditures.”<sup>1</sup>

Senate Bill 138,<sup>2</sup> passed by the 76th Legislature, relates to government restrictions on the exercise of religion. The bill became effective on September 1, 1999,<sup>3</sup> and is similar to RFRA, the federal Religious Freedom Restoration Act. The Supreme Court of the United States found the federal RFRA to be an unconstitutional exercise of power by Congress in 1997.<sup>4</sup> SB 138, known as Texas RFRA, represented similar legislation to the federal act. The committee focused primarily on discovering the impact, if any, the new law has had on Texas.

House Bill 2611,<sup>5</sup> passed by the 76th Legislature, relates to electronic reporting of certain political contributions and political expenditures. This legislation became effective on September 1, 1999.<sup>6</sup> The effectiveness of several provisions of the bill depend on the ability of the Texas Ethics Commission to have computer software operational.<sup>7</sup> The committee focused primarily on determining whether the Ethics Commission’s computer programming is operational, as required for the implementation of this bill.

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<sup>1</sup> Letter from Lieutenant Governor Rick Perry to the Senate Committee on State Affairs, September 7, 1999.

<sup>2</sup> Section 1, Chapter 399, Acts of the 76th Legislature, Regular Session, 1999 (Section 110.001 et seq., Civil Practices and Remedies Code).

<sup>3</sup> Chapter 399, Acts of the 76th Legislature, Regular Session, 1999.

<sup>4</sup> See *City of Boerne v. Flores*, 521 U.S. 507, 546 (1997).

<sup>5</sup> Chapter 1434, Acts of the 76th Legislature, Regular Session, 1999 (Section 254.036 et seq., Election Code).

<sup>6</sup> Section 5, Chapter 1434, Acts of the 76th Legislature, Regular Session, 1999.

<sup>7</sup> Section 6, Chapter 1434, Acts of the 76th Legislature, Regular Session, 1999.

## Implementation of SB 138 (Texas RFRA)

### History behind SB 138

The 76th Texas Legislature adopted a version of the federal Religious Freedom Restoration Act, which was passed by Congress in 1993<sup>8</sup> and was subsequently determined to be unconstitutional as applied to the states.<sup>9</sup> The Texas version, Senate Bill 138,<sup>10</sup> was the subject of vigorous debate in both the house and senate, but after passing out of conference committee, the bill was signed into law on June 10, 1999, by Governor George W. Bush. Effective 90 days after being signed the law applies to causes of actions that accrued on or after August 30, 1999.<sup>11</sup>

While debating the merits of the legislation, several fears were expressed regarding the consequences of adopting Texas RFRA. Among these fears were the following:

- a) Texas RFRA would result in a rash of new lawsuits and overburden the courts.
- b) Texas RFRA would invite excessive amounts of frivolous inmate litigation against the state.
- c) The standards established under Texas RFRA would be unworkable.

As of the date of the committee hearing regarding implementation of Texas RFRA, no cases had been decided by a court<sup>12</sup> and no litigation resulting from

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<sup>8</sup> Pub. L. 103-141, § 2, (1993), 107 Stat. 1488; 42 U.S.C. § 2000bb.

<sup>9</sup> *City of Boerne v. Flores*, 521 U.S. 507 (1997).

<sup>10</sup> Chapter 1434, Acts of the 76th Legislature, Regular Session, 1999 (Section 254.036 et seq., Election Code).

<sup>11</sup> Section 6, Chapter 1434, Acts of the 76th Legislature, Regular Session, 1999.

<sup>12</sup> “As of April 12, 2000, there are no reported cases under Texas RFRA.” Douglas Laycock, testimony presented to the Senate State Affairs Committee, April 13, 2000, page 1.

prisoners' claims<sup>13</sup> under Texas RFRA had occurred despite being available since August of 1999. Follow-up testimony confirms a lack of court action with regards to RFRA through July 14, 2000.<sup>14</sup>

Senate Bill 138 arose due to developments that occurred in federal law. Prior to 1990, laws that invoked First Amendment Free Exercise Clause protections were required to pass a strict scrutiny test.<sup>15</sup> In other words, when a law infringed upon a person's ability to worship, the state was required to prove that the goal the law was meant to achieve served a compelling government interest and the law achieved that purpose in the least restrictive means possible.<sup>16</sup> In 1990, the U. S. Supreme Court delivered a case that many viewed as jeopardizing the protection of religious freedom.<sup>17</sup> The court in *Employment Division v. Smith* specifically held that the Free Exercise Clause permitted the state to prohibit sacramental peyote use and thus, the state could deny unemployment benefits to persons discharged for such use.<sup>18</sup> The significance of the case though is found in the reasoning presented by the court's majority (five of the justices joined in the majority opinion).<sup>19</sup> The majority reasoned as such:

“It would be true, we think (though no case of ours has involved the point), that a state would be ‘prohibiting the free exercise [of religion]’ if it sought to ban such acts or abstentions only when they are engaged in for religious reasons, or only because of the religious belief that they display.”<sup>20</sup>

“We have never held that an individual's religious beliefs excuse him from compliance

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<sup>13</sup> Texas Department of Criminal Justice, *Report to the Senate State Affairs Committee*, presented to the Senate State Affairs Committee, April 13, 2000, page 3 and cover letter.

<sup>14</sup> Douglas Laycock, testimony submitted to the Senate State Affairs Committee, July 14, 2000.

<sup>15</sup> *Employment Division v. Smith*, 494 U.S. 872, 894 (1990); *City of Boerne v. Flores*, 521 U.S. 507, 546 (1997).

<sup>16</sup> Ibid.

<sup>17</sup> *Employment Division v. Smith*, 494 U.S. 872, 890 (1990).

<sup>18</sup> Ibid.

<sup>19</sup> Justice O'Connor agreed in the holding but differed in the reasoning. See *Employment Division v. Smith*, 494 U.S. 872, 903 (1990) (O'Connor, J., concurring).

<sup>20</sup> *Employment Division v. Smith*, 494 U.S. 872, 877 (1990).



with an otherwise valid law prohibiting conduct that the State is free to regulate. On the contrary, the record of more than a century of our free exercise jurisprudence contradicts that proposition ... Conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs. The mere possession of religious convictions which contradict the relevant concerns of a political society does not relieve the citizen from the discharge of political responsibilities.<sup>21</sup>

“The only decisions in which this Court has held the First Amendment bars application of a neutral, generally applicable law to religiously motivated action are distinguished on the ground that they involved not the Free Exercise Clause alone, but that Clause in conjunction with other constitutional protections. See, e.g., *Cantwell v. Connecticut*, 310 U.S. 296, 304-307; *Wisconsin v. Yoder*, 406 U.S. 205. Pp. 876-882.<sup>22</sup>

“The government’s ability to enforce generally applicable prohibitions of socially harmful conduct, like its ability to carry out other aspects of public policy, ‘cannot depend on measuring the effects of a governmental action on a religious objector’s spiritual development.’ *Lyng, supra*, 485 U.S. at 451. To make an individual’s obligation to obey such a law contingent upon the law’s coincidence with his religious beliefs, except where the State’s interest is ‘compelling’ -- permitting him, by virtue of his beliefs, ‘to become a law unto himself,’ *Reynolds v. United States*, 98 U.S. at 167 -- contradicts both constitutional tradition and common sense.”<sup>23</sup>

The reasoning by the majority was perceived as a significant decrease in the protections afforded to religious practices due to the fact that neutral, generally applicable laws no longer had to pass strict scrutiny regardless whether they imposed a significant burden on religious practice.

The opinion spurred Congress to adopt the Religious Freedom Restoration Act (RFRA) in 1993.<sup>24</sup> RFRA attempted to reverse the reasoning by the majority members of the court and require the courts to evaluate laws burdening religion by finding that the government has a compelling state interest and has accomplished

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<sup>21</sup> *Ibid.* at 879.

<sup>22</sup> *Ibid.* at 881.

<sup>23</sup> *Ibid.* at 885.

<sup>24</sup> *City of Boerne v. Flores*, 521 U.S. 507, 512 (1997).

that through the least restrictive means, in other words the strict scrutiny test.<sup>25</sup>

The Supreme Court reviewed the constitutionality of RFRA in *City of Boerne v. Flores*<sup>26</sup> and found it unconstitutional.<sup>27</sup> In court, the federal government relied on the 14th Amendment as the basis for enacting RFRA.<sup>28</sup> Section 5 of the 14th Amendment empowers Congress to enforce the provisions of the amendment.<sup>29</sup> Section 1 of the 14th Amendment prevents any state from depriving a person of life, liberty, or property without due process of law.<sup>30</sup> The government's brief contended that the free exercise of religion was a liberty that the 14th Amendment protects.<sup>31</sup> They argued that the 14th Amendment empowered Congress to use RFRA to enforce against a state's interference with the free exercise of religion.<sup>32</sup> The Supreme Court however reasoned that:

“RFRA is so out of proportion to a supposed remedial or preventative object that it cannot be understood as responsive to, or designed to prevent, unconstitutional behavior. It appears, instead, to attempt a substantive change in constitutional protections. Preventive measures prohibiting certain types of laws may be appropriate when there is reason to believe that many of the laws affected by the congressional enactment have a significant likelihood of being unconstitutional.....RFRA is not so confined. Sweeping coverage ensures its intrusion at every level of government, displacing laws and prohibiting official actions of almost every description and regardless of subject matter.

“This is a considerable congressional intrusion into the States' traditional prerogatives and general authority to regulate for the health and welfare of their citizens.

“Broad as the power of Congress is under the Enforcement Clause of the Fourteenth

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<sup>25</sup> 42 U.S.C. § 2000bb (1993).

<sup>26</sup> *City of Boerne v. Flores*, 521 U.S. 507 (1997).

<sup>27</sup> *Ibid.* at 536.

<sup>28</sup> *Ibid.* at 517.

<sup>29</sup> Section 5, Amendment XIV, United States Constitution; *City of Boerne v. Flores*, 521 U.S. 507, 517 (1997).

<sup>30</sup> Section 1, Amendment XIV, United States Constitution; *City of Boerne v. Flores*, 521 U.S. 507, 517 (1997).

<sup>31</sup> *City of Boerne v. Flores*, 521 U.S. 507, 517 (1997).

<sup>32</sup> *Ibid.*

Amendment, RFRA contradicts vital principles necessary to maintain separation of powers and the federal balance. The judgment of the Court of Appeals sustaining the Act's constitutionality is reversed."<sup>33</sup>

The dissent in *Boerne* disagreed with the majority's use of the *Smith* decision to judge whether RFRA had exceeded congressional power: "...[A]s a yardstick for measuring the constitutionality of RFRA, the Court uses its holding in *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872 (1990), the decision that prompted Congress to enact RFRA as a means of more rigorously enforcing the Free Exercise Clause. I remain of the view that *Smith* was wrongly decided, and I would use this case to reexamine the Court's holding there."<sup>34</sup>

Following these events, the 76th Texas Legislature enacted Texas RFRA, a state version of the federal RFRA legislation. In general, Texas RFRA prevents governmental agencies<sup>35</sup> and municipalities<sup>36</sup> from substantially burdening a person's free exercise of religion unless the government demonstrates that the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest.<sup>37</sup> The legislation also creates a rebuttable presumption that rules that apply to persons in custody of correctional

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<sup>33</sup> *Ibid.* at 532.

<sup>34</sup> *Ibid.* at 544.

<sup>35</sup> Section 1, Chapter 399, Acts of the 76th Legislature, Regular Session, 1999 (Section 110.000(2B), Civil Practices and Remedies Code).

<sup>36</sup> Section 1, Chapter 399, Acts of the 76th Legislature, Regular Session, 1999 (Section 110.000(2A), Civil Practices and Remedies Code).

<sup>37</sup> Section 1, Chapter 399, Acts of the 76th Legislature, Regular Session, 1999 (Section 110.003, Civil Practices and Remedies Code).

facilities,<sup>38</sup> juvenile detention facilities,<sup>39</sup> and municipal or county jails<sup>40</sup> further a compelling governmental interest by the least restrictive means.

The Senate Committee on State Affairs took invited and public testimony on April 13, 2000, in Houston regarding the implementation of SB 138. Professor Douglas Laycock, invited by the committee, testified regarding the impact Texas RFRA has had since its implementation. Additionally, the Department of Criminal Justice submitted written testimony regarding the impact Texas RFRA has had on prisoners' religious issues. No member of the public elected to speak regarding Texas RFRA.

### **Testimony Before the Committee**

Texas RFRA was signed into law on June 10, 1999, and became effective on August 30, 1999. Since the effective date of the law, no reported cases have occurred under Texas RFRA.<sup>41</sup> It may have played a role though in several disputes. A short synopsis of these follow:

City of Tyler: Smith County deputies issued a disorderly conduct citation on an Hispanic church based on the church's music being too loud.<sup>42</sup> After a Justice of the Peace Court ruled that the RFRA defense could be presented to a jury, the prosecutor dismissed the case.<sup>43</sup>

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<sup>38</sup> Section 1, Chapter 399, Acts of the 76th Legislature, Regular Session, 1999 (Section 76.018, Government Code).

<sup>39</sup> Section 1, Chapter 399, Acts of the 76th Legislature, Regular Session, 1999 (Section 61.097, Human Resources Code).

<sup>40</sup> Section 4, Chapter 399, Acts of the 76th Legislature, Regular Session, 1999 (Section 493.023, Government Code, Section 361.101, Local Government Code).

<sup>41</sup> "As of April 12, 2000, there are no reported cases under Texas RFRA." Douglas Laycock, testimony presented to the Senate State Affairs Committee, April 13, 2000, page 1. "As of July 14, there are still no reported cases." Douglas Laycock, testimony submitted to the Senate State Affairs Committee, July 14, 2000.

<sup>42</sup> Douglas Laycock, testimony presented to the Senate State Affairs Committee, April 13, 2000, page 1.

<sup>43</sup> Ibid.

City of Groves: In response to requests of nearby residents opposed to the church's ministry to the disadvantaged, the city zoning commission voted to close the church under a rule that requires an 80% affirmative vote by the commission to allow the presence of a church over the objections of the neighborhood.<sup>44</sup> A state judge issued a temporary restraining order to keep the church open and the city has removed the case to federal court.<sup>45</sup> Settlement negotiations are in progress.<sup>46</sup>

City of San Antonio: Neighbors complained about the parking congestion created by a church in the Castle Hills neighborhood and also objected to the expansion of the church's parking lot which would violate the zoning ordinance.<sup>47</sup> The church argued the meaning of the zoning ordinance but also asserted a Texas RFRA claim.<sup>48</sup> The Castle Hills City Council rejected a settlement reopening the case with a potential Texas RFRA issue in the background.<sup>49</sup>

City of Abilene: The city is requiring a church to undergo expensive renovations in order to use the church building as a school because of the timing of the permit application.<sup>50</sup> This despite the fact that the building is considered safe in accordance with existing school standards, serves more people on Sunday than it would on Monday, safety experts have certified the school as safe, and if the proper form had been filed at an earlier inspection, the building would have been

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<sup>44</sup> Ibid.

<sup>45</sup> Ibid. at 2.

<sup>46</sup> Ibid. at 2.

<sup>47</sup> Ibid. at 2.

<sup>48</sup> Ibid. at 2.

<sup>49</sup> Douglas Laycock, testimony submitted to the Senate State Affairs Committee, July 14, 2000.

<sup>50</sup> Douglas Laycock, testimony presented to the Senate State Affairs Committee, April 13, 2000, page 2.

certified.<sup>51</sup> The case is awaiting disposition by the trial court.<sup>52</sup>

City of Austin: A church and a neighborhood association had an agreement regarding the expansion limitation on the existing church.<sup>53</sup> When the church began to expand in accordance to the agreement, the association objected.<sup>54</sup> This dispute is in mediation and no litigation has yet been filed.<sup>55</sup>

The Texas Department of Criminal Justice (TDCJ) indicates that several procedural improvements have occurred since the passage of Texas RFRA.<sup>56</sup> Of 20 currently pending cases involving the free exercise of religion, no case invokes Texas RFRA.<sup>57</sup> A brief description of the pending cases can be found in the TDCJ's report contained in the Appendix.

So far, no decisions have been delivered with respect to Texas RFRA.<sup>58</sup> It also appears that no great changes have ensued in religious or governmental practice.<sup>59</sup>

### **Findings:**

No reported cases involving the Texas Religious Freedom Restoration Act have been adjudicated, therefore it is impossible to determine how the courts will

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<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid. at 3.

<sup>54</sup> Ibid. at 3.

<sup>55</sup> Ibid. at 3.

<sup>56</sup> Texas Department of Criminal Justice. "Report to the Senate State Affairs Committee," presented to the Senate State Affairs Committee, April 13, 2000, page 1.

<sup>57</sup> Texas Department of Criminal Justice. "Report to the Senate State Affairs Committee," presented to the Senate State Affairs Committee, April 13, 2000, page 3.

<sup>58</sup> Douglas Laycock, testimony presented to the Senate State Affairs Committee, April 13, 2000, page 1.

<sup>59</sup> Ibid.

enforce the rights granted under Texas RFRA. While some lawsuit settlement negotiations have occurred where Texas RFRA might have played a role, because no courts have ruled on the merits of the legislation, no determination can be made regarding how the legislation will impact municipalities, correctional facilities, and private citizens.

**Recommendation:**

- (1) The State Affairs Committee recommends no legislative action at this time. The legislature should monitor court enforcement, municipality behavior and correctional facility rules as they relate to the law.

**Ancillary Discussion**

Some questions were raised during the State Affairs hearing regarding TDCJ treatment of prisoners' religious requests.<sup>60</sup> TDCJ presented a response to these questions to the State Affairs Committee which is contained in full in the Appendix. While this issue is marginally related to the State Affairs inquiry into the implementation of Texas RFRA, a full inquiry lies outside the scope of the charge. As a consequence, the committee takes no position on this issue's validity, but notes that a future study regarding this issue may serve to clarify TDCJ's handling of prisoners' religious requests.

The State Affairs Committee also notes that Congress remains active in the arena of religious freedom legislation.<sup>61</sup> Future federal legislation may impact the workings of Texas RFRA. Any future studies regarding Texas RFRA should take note of the effect that any federal legislation may have upon the law.

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<sup>60</sup> *Ibid.* at 3-4.

<sup>61</sup> See S.2869, "Religious Land Use and Institutionalized Persons Act of 2000" (2000).

## **The Implementation of HB 2611 (Electronic Filing)**

### **History behind HB 2611**

The 76th Texas Legislature adopted legislation that requires certain seekers and supporters of political office to file reports with the Texas Ethics Commission electronically rather than in paper form. The idea of filing reports in an electronic format has been on the rise for the past few years. The Ethics Commission had already developed a voluntary electronic filing system that allowed filing with diskettes.<sup>62</sup> The 76th Legislature saw many versions of electronic filing legislation and the idea underwent vigorous debate in both the house and senate.<sup>63</sup> HB 2611, relating to electronic filing, was passed out of conference committee on May 30, 1999, and was signed by Governor George W. Bush on June 19, 1999. The bill became effective on September 1, 1999, but the requirement to file electronically became mandatory only after the incorporation of the appropriate software by the Ethics Commission in accordance with the bill's provisions.<sup>64</sup>

The Lieutenant Governor charged the Senate State Affairs Committee with the job of monitoring the implementation of this legislation.<sup>65</sup> The committee received testimony on April 13 in Houston. Representatives of the Ethics Commission: Tom Harrison, Executive Director, Karen Lundquist, General Counsel, and Kristin Newkirk, Director, Disclosure Filing, gave presentations before the committee. In addition, Clark Ervin of the Attorney General's office gave a brief explanation regarding an AG interpretation of part of the new legislation. No member of the public spoke regarding electronic filing.

The new law applies to campaign financial reports filed with the Ethics

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<sup>62</sup> Texas Ethics Commission. "Ethics Commission's Response," submitted to Senate State Affairs Committee, page 1.

<sup>63</sup> See among others: Tex. H.B. 2436, 76th Leg., R.S. (1999); Tex. H.B. 3461, 76th Leg., R.S. (1999); Tex. S.B. 418, 76th Leg., R.S. (1999); Tex. S.B. 972, 76th Leg., R.S. (1999); Tex. S.B. 895, 76th Leg., R.S. (1999).

<sup>64</sup> Section 6, Chapter 1434, Acts of the 76th Legislature, Regular Session, 1999 (Section 254.036 et seq., Election Code).

<sup>65</sup> Letter from Lieutenant Governor Rick Perry to the Senate Committee on State Affairs, September 7, 1999.



Commission, requiring that they be filed by computer diskette, modem or other means of electronic transfer.<sup>66</sup> It also provides for filing using a public access terminal.<sup>67</sup> The provisions cover candidates and officeholders of all state-wide offices, the state board of education, the legislature, and appellate court judges.<sup>68</sup> The new reporting requirements also apply to legislative caucuses, all general-purpose political committees, and any specific-purpose political committees connected with candidates for or office-holders of these offices.<sup>69</sup>

The legislation provides several exceptions, among these are those persons who file an affidavit indicating that they do not use a computer to keep their records and those persons who do not exceed more than \$20,000 in political contributions or expenditures in a calendar year.<sup>70</sup>

The legislation also exempts district judges, district attorneys and judges of multi-county statutory county courts.<sup>71</sup> At the time the legislation was passed, single county district offices were not required to file reports with the Ethics Commission.<sup>72</sup> Had HB 2611 not provided an exclusion for district judges, the legislature would have created an anomaly where the requirement to file electronically would apply to district judges of multi-county courts but not to district judges of single county courts. Concomitant with HB 2611, though, the 76th Legislature passed SB 1726 which added judicial district offices elected by voters of only one county to the list of those required to file with the

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<sup>66</sup> Section 1, Chapter 1434, Acts of the 76th Legislature, Regular Session, 1999 (Section 254.036(b), Election Code).

<sup>67</sup> Section 2, Chapter 1434, Acts of the 76th Legislature, Regular Session, 1999 (Section 254.0362., Election Code).

<sup>68</sup> Section 1, Chapter 1434, Acts of the 76th Legislature, Regular Session, 1999 (Section 254.036(b), Election Code); Texas Ethics Commission. "Ethics Commission's Response," submitted to Senate State Affairs Committee, page 1.

<sup>69</sup> Texas Ethics Commission. "Ethics Commission's Response," submitted to Senate State Affairs Committee, page 1.

<sup>70</sup> Section 1, Chapter 1434, Acts of the 76th Legislature, Regular Session, 1999 (Section 254.036(c-d), Election Code); Texas Ethics Commission. "Ethics Commission's Response," submitted to Senate State Affairs Committee, page 1.

<sup>71</sup> Section 1, Chapter 1434, Acts of the 76th Legislature, Regular Session, 1999 (Section 254.036(c-d), Election Code).

<sup>72</sup> Section 252.005(1)(B), Election Code.

commission.<sup>73</sup> District judges of both single and multi-counties are now required to file with the Ethics Commission, eliminating the need for the exception in HB 2611.

The enabling legislation provides that the Ethics Commission have a system operational before filing electronically will become mandatory.<sup>74</sup> The Ethics Commission released Requests for Offers to vendors in August of 1999, one month before the effective date of the legislation.<sup>75</sup> Following the normal bidding process for state contracts, the contract was awarded on November 3, 1999, to SDR Technologies, Inc.<sup>76</sup> Developing, testing and training filers on the system made it impossible to have the electronic filing system operational by the January 1, 2000, filing schedule. The Electronic Filing System became operational on July 1, 2000.<sup>77</sup> Preliminary results show an increase in the use of electronic filing by political action committees who file monthly with the Ethics Commission.<sup>78</sup> For the first major filing deadline (July 17, 2000) for candidates/officeholders, specific purpose political action committees and general purpose political action committees, almost 30 percent of filers filed electronically.<sup>79</sup> Some minor problems were reported regarding the system. The legislation prohibits certain address information from being posted electronically.<sup>80</sup> This prohibited information was momentarily displayed during the initial posting.<sup>81</sup> The glitch

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<sup>73</sup> Section 1, Chapter 0511, Acts of the 76th Legislature, Regular Session, 1999 (Section 252.005, Election Code).

<sup>74</sup> Section 6, Chapter 1434, Acts of the 76th Legislature, Regular Session, 1999.

<sup>75</sup> Texas Ethics Commission. "Ethics Commission's Response," submitted to Senate State Affairs Committee, page 2.

<sup>76</sup> Ibid.

<sup>77</sup> The Texas Ethics Commission. "Update on Implementation of HB2611, July 7, 2000," submitted to the Senate State Affairs Committee, page 1.

<sup>78</sup> The Texas Ethics Commission. "Update on Implementation of HB2611, September 6, 2000," submitted to the Senate State Affairs Committee, page 1.

<sup>79</sup> Ibid.

<sup>80</sup> Section 3, Chapter 1434, Acts of the 76th Legislature, Regular Session, 1999 (Section 254.0401(e), Election Code).

<sup>81</sup> The Texas Ethics Commission. "Update on Implementation of HB2611, July 7, 2000," submitted to the Senate State Affairs Committee, page 2.

was quickly detected with the information viewable for only five minutes and the glitch in the programming was resolved shortly thereafter.<sup>82</sup> The commission also experienced some problems due to power outages.<sup>83</sup> The commission took steps to notify filers of the outages to prevent as much confusion and mishap as possible.<sup>84</sup> The commission is also exploring other options, such as developing a mirror website that automatically takes over during power outages, to deal with such occurrences in the future.<sup>85</sup> The commission made revisions to the first version of electronic filing after the July 17, 2000, filing deadline.<sup>86</sup> The major enhancements are an “auto-save”, a new conversion utility allowing conversion of all data in the ‘old’ database, and expanded search capability.<sup>87</sup> The commission plans to make annual revisions to the software.<sup>88</sup>

The commission held a public hearing regarding the specifications for the computer software on September 2, 1999.<sup>89</sup> Of the 14 vendors who filed Intents to Respond, 11 appeared at the Mandatory Bidders’ Conference held on September 16, 1999.<sup>90</sup> Four bidders submitted bids by the October 1, 1999, deadline and gave presentations. The Ethics Commission awarded the bid to SDR Technologies,

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<sup>82</sup> The Texas Ethics Commission. “Update on Implementation of HB2611, September 6, 2000,” submitted to the Senate State Affairs Committee, page 2.

<sup>83</sup> The Texas Ethics Commission. “Update on Implementation of HB2611, July 7, 2000,” submitted to the Senate State Affairs Committee, page 2.

<sup>84</sup> Ibid.

<sup>85</sup> The Texas Ethics Commission. “Update on Implementation of HB2611, September 6, 2000,” submitted to the Senate State Affairs Committee, page 2.

<sup>86</sup> The Texas Ethics Commission. “Update on Implementation of HB2611, July 7, 2000,” submitted to the Senate State Affairs Committee, page 2.

<sup>87</sup> The Texas Ethics Commission. “Update on Implementation of HB2611, September 6, 2000,” submitted to the Senate State Affairs Committee, page 2.

<sup>88</sup> Ibid.

<sup>89</sup> Texas Ethics Commission. “Ethics Commission’s Response,” submitted to Senate State Affairs Committee, page 2.

<sup>90</sup> Ibid.

Inc.<sup>91</sup> Beginning in December of 1999, the commission held monthly public briefings regarding the project and briefed their commissioners in the public meetings.<sup>92</sup>

The Ethics Commission provides free copies of the electronic filing software.<sup>93</sup> The software allows entry of report data and maintains a database of that information.<sup>94</sup> The reports can then be filed with the commission either through diskette or electronic transmission.<sup>95</sup> The software allows information to be converted from separate spreadsheet software (such as Word, Excel, Lotus or Access).<sup>96</sup> Filers may use software provided by third party vendors (such as Aristotle, VOCUS and GNOSSOS) but it must meet the specific format requirements of the commission.<sup>97</sup> The commission also allows a report to be filed using its web filer application.<sup>98</sup> Texas is the only state that requires an electronic filing system for both IBM PCs and MACs (the FEC does not accommodate MAC users).<sup>99</sup> While this puts Texas in the forefront of states requiring electronic filing, this also restricts the features available on the system and necessitates the use of the computer language Java which requires filers to have at least 64Mb of memory for minimum processing time.<sup>100</sup> This has required some filers to upgrade their

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<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid. at 1.

<sup>95</sup> Ibid. at 1.

<sup>96</sup> Ibid.

<sup>97</sup> Ibid.

<sup>98</sup> Ibid.

<sup>99</sup> The Texas Ethics Commission. "Update on Implementation of HB2611, July 7, 2000," submitted to the Senate State Affairs Committee, page 1.

<sup>100</sup> Ibid. at 1-2.

computer's memory.<sup>101</sup> Training sessions for the software were held in various cities around the state: Austin, Houston, Arlington, San Antonio, Corpus Christi, Nacogdoches, Lubbock, Midland/Odessa, and El Paso.<sup>102</sup> The final training session was held on June 15, and the commission anticipates having trained over 500 individuals.<sup>103</sup> Comments from the testers and trainees have indicated that the system is simple and user friendly.<sup>104</sup>

The legislation provides for public access to the reports by electronic means.<sup>105</sup> The legislation further provides that before making a report available on the Internet, the commission must remove each portion of a person's address who made a political contribution except the city, state and zip code,<sup>106</sup> however the information removed must remain available on the report in the commission's office.<sup>107</sup> The Ethics Commission sought clarification from the Office of the Attorney General regarding whether these provisions also prohibited the commission from providing the contributor's address information on computer diskette.<sup>108</sup> The Attorney General determined that the law precludes the commission from making the address information available by any electronic means including computer terminals at the office, computer diskette or modem.<sup>109</sup> The Attorney General's opinion is contained in full in the Appendix to this report.

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<sup>101</sup> Ibid. at 2.

<sup>102</sup> Texas Ethics Commission. "Ethics Commission's Response," submitted to Senate State Affairs Committee, page 3.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid.

<sup>105</sup> Section 3, Chapter 1434, Acts of the 76th Legislature, Regular Session, 1999 (Section 254.0401-0402, Election Code).

<sup>106</sup> Section 3, Chapter 1434, Acts of the 76th Legislature, Regular Session, 1999 (Section 254.0401(e), Election Code).

<sup>107</sup> Section 3, Chapter 1434, Acts of the 76th Legislature, Regular Session, 1999 (Section 254.0401(e), Election Code).

<sup>108</sup> Tex. Att'y Gen. No. RQ-0155-JC (1999)

<sup>109</sup> Op. Tex. Att'y Gen. No. JC-0198, page 7.

**Findings:**

Texas' electronic filing system went live on July 1, 2000. Preliminary results show an increase in the use of electronic filing by political action committees who file monthly with the Ethics Commission. The first major filing deadline since enactment of the legislation was July 17, 2000; almost 30 percent of filers filed electronically. Despite a few minor problems which have been corrected, the system is operational and boasts the nation's only electronic filing system with software that accommodates both IBM and Mac users.

Judicial district offices were exempted from the electronic filing legislation due to the fact that some judicial district offices were not required to file campaign reports with the Ethics Commission. Other legislation passed by the 76th Legislature now requires all judicial district offices to file campaign reports with the Ethics Commission, therefore judicial district offices should no longer be exempt from the requirements of electronic filing.

**Recommendation:**

- (2) The State Affairs Committee recommends the legislature remove the exemption for judicial district offices from the requirements of the electronic filing laws.

# **Appendix I**

## **Texas RFRA**

# **Appendix II**

## **Electronic Filing**



# **Appendix III**

## **Sample Legislation**