

Texas Proposition 3

Religious Freedom

November 2, 2021

Texas Proposition 3, the Prohibition on Limiting Religious Services or Organizations Amendment, passed the Texas Legislature with bipartisan support as Senate Joint Resolution 27. Prop. 3 is on the ballot **November 2, 2021** as a legislatively referred constitutional amendment proposal. This proposed constitutional amendment, if passed, would protect churches and places of worship, as well as religious organizations, from being shut down by the government such as happened during the initial period of the Covid-19 pandemic.

Texas Proposition 3 Overview:

- Prohibits government agencies and officials from issuing orders that close or have the effect of closing “churches, congregations, and places of worship” in Texas.
- Further secures the Texas Freedom to Worship Act, passed during the 87th Regular Session, by preserving it in the Texas Constitution.
- “Place of worship” is defined in Texas Civil Practice and Remedies Code Section 110 to include non-church buildings or grounds where religious activities are conducted.

Background on Religious Freedom Laws:

- In 1993, Congress passed the Religious Freedom Restoration Act – which became known as RFRA – to require the government to prove it has a compelling reason to restrict a person’s First Amendment rights, and to prove it is doing so in the least restrictive way.
- After Congress passed the federal RFRA, at least 21 states, including Texas, passed statutes that established a “compelling interest” standard of review in state courts. Also referred to by some as “Mini RFRA,” these laws are intended to help protect religious freedom on the state level.

Do Texas voters get a chance to weigh in on this measure?

Yes! Constitutional amendment proposals passed by the Texas Legislature are required to be put to a statewide vote in a general election. Proposition 3 is on the ballot for Texas voters this **November 2, 2021**.

Did this happen in Texas?

Yes, in one Texas town, police officers circled a church parking lot while parishioners were having outdoor services. In two other cities, worshippers had to pursue legal action against the city government for unfair closure and treatment of churches during the pandemic.

Has the U.S. Supreme Court ruled on this issue?

Yes. The Supreme Court has “long recognized the importance of protecting religious actions, not just religious status.” *Espinoza v. Montana Dep’t of Revenue*, 140 S. Ct. 2246, 2276 (2020) (Gorsuch, J., Concurring). The Supreme Court specifically addressed the closure of churches during the pandemic in *Roman Catholic Diocese v. Cuomo* (citation pending). Justice Gorsuch wrote in that case, “...there is no world in which the Constitution tolerates color-coded executive edicts that reopen liquor stores and bike shops, but shutter churches.”

