

Chair Heinert, Vice Chair Schreiber-Beck, and members of the Committee:

On behalf of the ACLU of North Dakota, I submit testimony in opposition of House Bill 1456 relating to school chaplains in public school districts due to its violation of the constitutional rights of students in the First Amendment, Establishment Clause, and protections of the North Dakota Constitution under Article I, Section 3.

The U.S. Constitution protects the right of public-school students to attend a learning environment free from the imposition of religion, evangelization, or religious coercion by school employees. As enshrined in the First Amendment, religious freedom includes two complementary protections: the right to religious belief and expression and a guarantee that the government neither prefers religion over non-religion nor favors particular faiths over others. These dual protections are intended to work hand in hand, allowing religious liberty to thrive, safeguarding both religion and government from the influences of the other. The right to practice religion, or no religion at all, is among the most fundamental of the freedoms guaranteed by the Bill of Rights.

Our state constitution's protections align with the First Amendment ensuring that students in North Dakota have the right to freely practice their religion without government interference or discrimination:

*"The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall be forever guaranteed in this state. Nor shall any person be compelled to attend, erect, or support any place of worship, or to maintain any ministry, against his consent. No human authority can, in any case or manner whatsoever, control or interfere with the rights of conscience."*

*(ND Constitution, Article I, Section 3)*

Paid or volunteer chaplains in North Dakota's public schools will undermine this fundamental constitutional principle and make our schools unwelcoming environments for students who may hold different religious beliefs and values than their school's official chaplain. Courts have repeatedly ruled that it is unconstitutional for public schools to invite religious leaders to engage in religious activities with students or to promote religious doctrine to them.

Furthermore, the government is generally prohibited from hiring clergy. Courts have upheld the constitutionality of government-provided chaplains only in very limited settings where they are needed to accommodate the religious-exercise rights of people who would otherwise be unable to access religious services—for example, in prisons, public hospitals, or the military—or where chaplains have played a unique historical role in a particular setting, such as in congress or legislatures. Neither circumstance applies to public schools. Public-school students have broad access to religious services and clergy in their communities and through their families.

In specially designating chaplains for critical student-support roles and exempting them from the training and certification requirements that apply to school counselors, teachers, and

other educational professionals, this bill violates the Establishment Clause by creating an unconstitutional preference for religion over nonreligion.

This concern goes beyond constitutional violation. Authorizing school chaplains in public schools could create liability for school districts. Once a school district allows school chaplains, it cannot turn away chaplain volunteers based on the faith or religion they represent. Schools that do so and decline to accept chaplains of minority religions, even controversial ones like the Satanic Temple, will open themselves to potential litigation.

Additionally, while the bill seeks to provide legal immunity to chaplains for their actions or statements made while in employment or voluntary service, liability may remain open for any harm resulting from allowing unlicensed, uncertified, and untrained individuals to provide mental health services or other services to students. Due to the substantial liability risks for school districts, this bill is financially irresponsible. School funding should be devoted to improving students' educational experiences and outcomes, not defending lawsuits filed due to unwise and unconstitutional legislation and policies.

Across North Dakota, families practice a wide variety of faiths, and many are nonreligious. All students should feel welcome in our public schools. Even well-intentioned chaplain policies will undermine the fundamental premise of our public-education system and violate our First Amendment principles and state religious protections. Our students deserve staff, programs, and funding that do that do not involve unconstitutional school-sponsored religion.

The ACLU of North Dakota urges a “do not pass” on HB1456.

Submitted by:  
Cody J. Schuler  
*Advocacy Manager, ACLU of North Dakota*  
*ND Lobbyist #367*  
*cschuler@aclu.org*