

SCHOOL CHAPLAIN INFORMATION PACKET

Legislative Edition 2.3

DIGITAL VERSION



SCAN HERE

NSCA

National School Chaplain Association

P.O. Box 720746, Norman OK

73070-4574 (405) 831.3299

info@campuschaplains.org



School Chaplain Legislation Facts Sheet

- Data sources hyperlinked to keywords
- Supporting Organizations (pg. 3)
- Talking Points (pg. 4)

School chaplain legislation

is a critical and bipartisan measure to introduce school chaplains into our public schools. This initiative seeks to address the urgent challenges facing students, teachers, and schools across our state, including escalating mental health concerns, rising violence, and increasing teacher burnout.

For over 250 years, chaplains have played a vital role in shaping our nation's moral and spiritual foundation. Their ability to [provide care to individuals](#) from all walks of life—regardless of race, belief, culture, or orientation—has made them invaluable in institutions such as the military, hospitals, prisons, and corporations. Today, their unique skills are critically needed in our schools.

The Challenges We Face

- **Teacher Stress and Burnout:** According to the [National Education Association](#), teachers are experiencing unprecedented levels of stress and burnout, with many considering early retirement.
- **Mental Health Crisis:** [Violence in schools](#) continues to rise while children face record levels of [mental health](#) challenges and [hopelessness](#).
- **Shortage of Support:** Public schools lack sufficient [licensed professional counselors](#), leaving students and teachers without essential emotional and spiritual care.

The Evidence: Dr. Lisa Miller's Research

Dr. Lisa Miller, a leading researcher and clinical psychologist at Columbia University, has demonstrated through groundbreaking studies that spiritual development significantly reduces the [likelihood of mental illness](#) and destructive behavior in young people. Her research reveals that children and adolescents with a strong spiritual foundation are:

- **40% less likely to abuse substances.**
- **60% less likely to suffer from depression.**
- **80% more likely to have high resilience and emotional well-being levels.**

Chaplains trained to provide spiritual and emotional care are uniquely positioned to apply these findings in schools, fostering healthier, more resilient students and reducing destructive behaviors.

The Solution: School Chaplains

Chaplains are uniquely equipped to bridge critical gaps, offering:

- **Trauma Care and Crisis Intervention:** [Immediate support during and after critical incidents.](#)
- **Confidential, Safe Spaces:** [For students, teachers, and staff](#) to address personal challenges.
- **Enhanced School Security:** They are also trained as resource officers and possess [ancillary safety certifications](#) (Active Shooter, Stop the Bleed, Behavioral Threat Assessment) that greatly improve situational awareness and risk assessment.
- **Student Support:** Fostering better relationships, goal setting, and confidence building.

Proven Impact

As the world's largest provider of certified school chaplains, the National School Chaplain Association (NSCA) has [documented remarkable outcomes](#) in schools where chaplains are present:

- Reductions in violence, bullying, and disciplinary actions.
- Improvements in academic performance and student-teacher relationships.
- Enhanced overall school safety.

Backed by Science and Research

The benefits of chaplaincy are not anecdotal—they are supported by rigorous research. In addition to Dr. Miller's findings, a [peer-reviewed study by the U.S. Army](#) revealed that individuals receiving spiritual care demonstrated greater resilience and productivity. These findings align with the NSCA's data, highlighting chaplaincy's transformative impact on mental and emotional well-being.

A Call to Action

School chaplain legislation allows us to bring meaningful change to our schools, equipping students and teachers with the needed resources. Chaplains represent a cost-effective, impactful solution to some of the most pressing issues in education today.

Thank you for considering this vital measure.

Sincerely,



Rocky J. Malloy, CEO
rocky.malloy@campuschaplains.org
858.472.6084



SB763 – June 18th, 2023
Signed by Texas Gov. Abbott



HB931 – April 18th, 2024
Signed by Florida Gov. DeSantis



HB334 – June 19th, 2024
Signed by Louisiana Gov. Landry

STATES WITH SCHOOL CHAPLAINS



PO Box 720746, Norman, OK 73070-4574
www.NationalSchoolChaplainAssociation.org – 405.831.3299

US INSTITUTIONS & GOVERNMENT DATA

US Government & National Educator Association Data

US Public Schools Problems

1. **Educator Burnout - Record Rates of Teacher Resignations:** <https://www.nea.org/about-nea/media-center/press-releases/nea-survey-massive-staff-shortages-schools-leading-educator-burnout-alarming-number-educators>
2. **Rising Mental Health Issues Among Youth:** <https://www.cdc.gov/mmwr/volumes/71/su/su7103a3.htm>
3. **Licensed Professional Counselor Shortages in US Public Schools:** <https://www.charliehealth.com/research/most-states-have-a-school-counselor-shortage>
4. **Rising Levels of Violence in US Public Schools:** <https://nij.ojp.gov/topics/articles/what-do-data-reveal-about-violence-schools>
5. **Epidemic Levels of Hopelessness Among Students:** <https://www.usnews.com/news/health-news/articles/2022-08-15/data-shows-increases-in-students-feeling-sad-or-hopeless>

Peer-reviewed studies

School Chaplaincy Solutions

1. **Chaplaincy added to the US Army's Spiritual Readiness Initiative for Mental Health (USARMY):** https://www.army.mil/article/249985/chaplains_initiative_aims_to_strengthen_spiritual_readiness
2. **The Mental Health Benefits of Religion and Spirituality (National Association of Mental Illness):** <https://www.nami.org/Blogs/NAMI-Blog/December-2016/The-Mental-Health-Benefits-of-Religion-Spiritual>
3. **Religious Education Contributes to Adolescent Mental Health in School Settings (International Journal of Mental Health Systems):** <https://ijmhs.biomedcentral.com/articles/10.1186/s13033-019-0286-7>
4. **Adolescents who Practice Religion On A Regular Basis Do Better in School (Stanford):** <https://ed.stanford.edu/news/religiously-engaged-adolescents-demonstrate-habits-help-them-get-better-grades-stanford-scholar>

The Unique Role of School Chaplains

Spiritual / Secular Caregiver

- Emergency First Aider
- Community Builder
- Trauma Caregiver
- Resource Officer
- Safety Officer
- Peacemaker
- Caregiver
- Liaison

Trained in situational awareness and risk assessment, identifying trafficking, abuse, and bullying. Provides religious / non-religious spiritual support and care. A bridge between staff and parents. Acquainted with referral agencies.

Chaplain Duties

1. Prevention and treatment programs relating to addressing adverse childhood experiences.
2. The prevention, identification, and management of threats and emergencies.
3. Utilized for restorative discipline and restorative justice practices.
4. Provide behavioral health services, advocacy, conflict resolution, and social work services.
5. Developing and implementing culturally relevant instruction, and restorative justice programs.
6. Provide services and programs for suicide prevention, intervention, and post-vention.
7. School Chaplains may also function as a school guardian.

Additional Responsibilities

- Prayer, advocacy, and spiritual care for faculty, students, and their families
- Support after-school clubs and other student-lead faith activities
- Advise on moral and spiritual issues concerning school policies
- Assist school staff with theological and Biblical questions
- Lead informal Bible studies for school staff

How We Help

- Legal Representation*
- National Standards
- Parent Education
- Chaplain Certification
- DOD Recognition
- Advocacy

MITCHELL LAW

JONATHAN F. MITCHELL
Mitchell Law PLLC
111 Congress Avenue, Suite 400
Austin, Texas 78701
(512) 686-3940 TEL
(512) 686-3941 FAX
jonathan@mitchell.law

July 23, 2023

Re: The Constitutionality of School Chaplains Under Senate Bill No. 763

Dear Superintendent and School Board Members:

I write in response to the ACLU's letter of June 26, 2023,¹ which threatens your school district with lawsuits if it decides to employ chaplains under Senate Bill 763. The ACLU claims that the presence of chaplains in public schools would violate the Establishment Clause, and it implies your school district will lose in court if anyone challenges the constitutionality of the practice. The ACLU's claims are false, and you should not allow its threats to influence your decisions.

The Establishment Clause says that "Congress shall make no law respecting an establishment of religion." U.S. Const. amend. I. Making chaplains available to public-school students is not an "establishment" of religion if the students remain free to decide whether they will use the chaplain's services. The only circumstance in which the presence of a public-school chaplain could violate the Supreme Court's establishment-clause doctrine is if a school coerces its students to participate in chaplain-related programs or activities. *See Kennedy v. Bremerton School District*, 142 S. Ct. 2407, 2429 (2022) ("[G]overnment may not . . . make a religious observance compulsory . . . may not coerce anyone to attend church, nor may it force citizens to engage in a formal religious exercise." (citations and internal quotation marks omitted)). In the absence of coercion, there is no Establishment Clause violation and no reason to fear lawsuits from the ACLU.

If your school decides to employ or accept chaplains under Senate Bill 763, it would be prudent to adopt a policy making clear that no student may be coerced to use the services or programs offered by the chaplain's office, and that any student involvement with the chaplain must be purely voluntary. My law offices would be happy to advise or assist a school district considering a policy of this sort. But even without an official anti-coercion policy, there can be no Establishment Clause violation and no reason to fear a lawsuit unless actual coercion occurs.

1. The letter of June 26, 2023, is signed by leaders from the American Civil Liberties Union Program on Freedom of Religion and Belief, the American Civil Liberties Union of Texas, Americans United for Separation of Church and State, and the Freedom from Religion Foundation. For simplicity and ease of exposition, I will refer to the letter of June 26, 2023, as "the ACLU's letter" and will refer to the signatories collectively as "the ACLU."

The ACLU's letter acknowledges that the constitutionality of public-school chaplains hinges on the presence or absence of coercion, yet it claims that the mere presence of a chaplain in a public school is inherently coercive and indoctrinating. That is nonsense. A student who voluntarily seeks a school chaplain on his own accord is not being "coerced" or "indoctrinated," unless one is prepared to reject the notion of free will and claim that all human action is determined by pre-existing causes. And the current membership of the Supreme Court will not be amenable to the theory of coercion in the ACLU's letter. There was a time not long ago when a Supreme Court majority might be receptive to the ACLU's arguments, when moderately separationist jurists like Sandra Day O'Connor and Anthony Kennedy controlled the outcomes in Establishment Clause cases. *See, e.g., Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). But those days are over. President Trump's recent appointments to the Supreme Court and the Fifth Circuit have cemented conservative supermajorities, which are intent on rolling back the separationist doctrines that the ACLU and like-minded judges have been propagating for the last 50 years. Just last year, the Roberts Court recognized the overruling of *Lemon v. Kurtzman*, 403 U.S. 602 (1971), the crown jewel of separationist jurisprudence, and declared that coercion rather than separationism would be the touchstone in future Establishment Clause litigation. *See Kennedy*, 142 S. Ct. at 2427 ("[T]his Court long ago abandoned *Lemon* and its endorsement test offshoot."). If the ACLU believes that the current members of the Supreme Court or the Fifth Circuit will disapprove the employment of school chaplains or find their presence inherently "coercive," then we should welcome the opportunity to have the federal judiciary set them straight.

There may be other reasons not to employ a school chaplain, and I take no position on whether your school district should make a chaplain available to students. But your decision should be based solely on whether you and your constituents think public-school chaplains are a good idea. Do not allow your decisions to be influenced by idle threats from organizations that are struggling to stay relevant now that they no longer have a Supreme Court majority that supports their views.

Please do not hesitate to call my office or e-mail me if you would like to discuss any of this further.

Sincerely,

A handwritten signature in black ink that reads "Jonathan F. Mitchell". The signature is written in a cursive, slightly slanted style. The first letter of "Jonathan" is a large, bold capital "J".

JONATHAN F. MITCHELL
Mitchell Law PLLC



10/10/2023

ALBANY
NEW YORK

1701 N. Congress Avenue
Austin, Texas 78701

ATLANTIC CITY
NEW JERSEY

BALTIMORE
MARYLAND

Re: Constitutionality of chaplains in public schools

BILOXI
MISSISSIPPI

Dear Members of the Texas State Board of Education,

BOSTON
MASSACHUSETTS

The purpose of this letter is address the constitutionality of recently passed SB 763, which allows for public schools to utilize chaplains as school counselors.

CHICAGO
ILLINOIS

CINCINNATI
OHIO

By way of introduction, Pacific Justice Institute is a non-profit law firm specializing in the areas of religious freedom, parental rights and other civil liberties.

COEUR D'ALENE
IDAHO

Extensive United States Supreme Court precedent would support the utilization of chaplains in public schools without violating the Establishment Clause of the First Amendment.

COLUMBUS
OHIO

DENVER
COLORADO

Beginning with *Marsh v. Chambers* in 1983, the Supreme Court determined that maintaining the history and tradition of prayer prior to a legislative session is so important that it does not violate the Establishment Clause.

DETROIT
MICHIGAN

GALVESTON
TEXAS

Later, in *Katcoff v. Marsh*, the Court found that military chaplain programs do not violate the Establishment Clause. The Court found in this case that while military personnel are not home and able to access their usual places of worship, the chaplaincy program was a substitute. To not to provide such substitutes would be hostile toward religion rather than neutral, violating the First Amendment.

HONOLULU
HAWAII

HOUSTON
TEXAS

More recently in 2022, the Court discarded the longstanding Lemon Test in *Kennedy v. Bremerton School District*. Under the Lemon Test, the Court would examine whether the government or a law violated the Establishment Clause. The three prong test included whether the proposed activity had a clear secular purpose, whether the primary effect of the aid would advance or inhibit religion, and whether the aid would create an excessive governmental entanglement with religion. By eliminating the use of the Lemon Test, the court emphasized that the Free Exercise Clause is expansive and the Establishment Clause is more narrow. As such, any government activity must be viewed in light of this expansive view of the Free Exercise Clause.

MIAMI
FLORIDA

MILWAUKEE
WISCONSIN

NASHVILLE
TENNESSEE

NEW YORK
NEW YORK

PHILADELPHIA
PENNSYLVANIA

RENO
NEVADA

SACRAMENTO
CALIFORNIA

Finally, both *Espinoza v. Montana Department of Revenue* and *Carson v. Makin* in 2020 and 2022 respectively, clearly stated that government funding of religious schools is not an establishment clause problem. If government funding is generally provided to schools, religious schools cannot be discriminated against.

SALEM
OREGON

SAN FRANCISCO
CALIFORNIA

SANTA ANA
CALIFORNIA

SEATTLE
WASHINGTON

TRI CITIES
WASHINGTON

TUCSON
ARIZONA

Based on the above interpretations of the Establishment Clause, particularly by the current Supreme Court, as well as history and tradition, Texas' use of chaplains in the public school setting would survive a constitutional challenge.

Very truly yours,



Brad Dacus
PACIFIC JUSTICE INSTITUTE
9851 Horn Rd., Ste. 115
Sacramento, CA 95827

Tel. (916) 857-6900
E-mail: prez@pji.org

There is a New Birth of Freedom for Religious Liberty in America!

Kelly Shackleford, CEO and Chief Counsel of First Liberty, a premier legal organization, said, “There is *incredibly good news* about religious freedom in America, and very few pastors know about it. He went on to say, “There have been some *major, major* victories in the last 13 months. A lot of you have heard about the Coach Kennedy case where the coach went on his knees at the end of each football game to pray and thank God for the game. He was fired for that, and the case went all the way to the Supreme Court. The Supreme Court ruled this violated his freedom of speech and religion.”

Kelly Shackleford added, “Most people don’t know that within that decision a major precedence has been set, the overturning of the *Lemon Case.” A Supreme Court (1971) ruled in the Lemon Case for strict separation of church and state. As a result, we have seen attacks on Christmas nativity scenes, Ten Commandment monuments, and prayer being banned at school board meetings. Thirteen months ago, the Lemon Case was struck down by the Supreme Court; it is no longer the law!” Kelley Shackleford said, “Crosses (as monuments) can come back up. The Ten Commandments can come out of the closet. Prayer can occur at school board meetings. Students and players can pray together after a game, and coaches can join them.”

Kelly Shackleford continued, “For 50 years, because of the Lemon Case, people have been trained that they cannot do all things regarding faith and its expression in public. That is no longer the case! **Everything is shifted, but the problem is people do not know it.** Now everybody can restore faith in their own community. All they have to do is walk in the freedom God has given them. **People have more religious freedom now than they have ever had in their lifetime because of these cases.**” Kelly Shackleford went on to say, “**The land has already been won. God is already ahead of us. We just need to occupy it...Just realize that God is doing something dramatic right now. He is placing freedom in your hand if you will just exercise it.**” (Emphasis added.)

*(The Supreme Court Case – Kurtzman (1971) v. Lemon, often cited as the Lemon Case)
Source of article: <https://youtu.be/t1quRbbFh3U> & Firstlibertylive.com

What Has Changed?

Because of the recent Supreme Court rulings, *you can now pray after a game.*

Because of the recent Supreme Court rulings, *you can put religious books in public libraries.*

Because of the recent Supreme Court rulings, *you can pray in school.*

Because of the recent Supreme Court rulings, *you can pray in public.*

Because of the recent Supreme Court rulings, *you can keep a Bible on your desk.*

Source: Restoring Faith in America (RFIA.org)



A DIVISION OF WALLBUILDERS

Chaplains in Public Schools - Objections and Responses

Key Talking Points:

- This bill empowers ISDs / independent school districts to add Chaplains (if they so choose) as an additional resource for teachers and students
- This bill does not replace counselors, instead chaplains are an additional resource
- This bill will allow ISD's to determine chaplain requirements specific to the needs of their district
- Local school boards, listening to the desires of the parents in their communities, are best positioned to determine if they want chaplains in their schools and the specific requirements - local control is best
- Supreme Court precedent makes clear that this is permitted under the Constitution, just as we have chaplains for first responders, military etc.
- Texas, Louisiana and Florida passed this law and it has already gone into effect (no legal challenges) More than a dozen states are considering similar legislation this session. It is being considered now because of recent Supreme Court precedent
- The state of ND should make clear to ISD's in the state that it is within their jurisdiction to consider chaplains for their schools, this bill clarifies chaplains are permitted in schools and ISD's are the decision makers

1. This violates separation of church and state. The government cannot promote religion. Is this illegal?

- Chaplaincy is legal in public institutions and it is legal for the state to pay for chaplaincy services.
- Chaplaincy has been upheld for over 250 years. Chaplains existed before the U.S. Constitution. Public service chaplaincy does not violate the separation Clause of the First Amendment because chaplains represent God, not the church.
- Approximately 10,000 federal employees are classified as chaplains who serve in various branches and departments of the U.S. Government. School chaplains are no more illegal than chaplains serving the military, hospitals, first responders, and airports. Chaplains are trained to serve in secular environments.

- Extensive United States Supreme Court precedent would support the utilization of chaplains in public schools without violating the Establishment Clause of the First Amendment.
 - Beginning with Marsh v. Chambers in 1983, the Supreme Court determined that maintaining the history and tradition of prayer prior to a legislative session is so important that it does not violate the Establishment Clause.
 - Later, in Katcoff v. Marsh, the Court found that military chaplain programs do not violate the Establishment Clause. The Court found in this case that while military personnel are not home and able to access their usual places of worship, the chaplaincy program was a substitute. To not to provide such substitutes would be hostile toward religion rather than neutral, violating the First Amendment.
 - More recently in 2022, the Court discarded the longstanding Lemon Test in Kennedy v. Bremerton School District. Under the Lemon Test, the Court would examine whether the government or a law violated the Establishment Clause. The three prong test included whether the proposed activity had a clear secular purpose, whether the primary effect of the aid would advance or inhibit religion, and whether the aid would create an excessive governmental entanglement with religion. By eliminating the use of the Lemon Test, the court emphasized that the Free Exercise Clause is expansive and the Establishment Clause is more narrow. As such, any government activity must be viewed in light of this expansive view of the Free Exercise Clause.
 - Finally, both Espinoza v. Montana Department of Revenue and Carson v. Makin in 2020 and 2022 respectively, clearly stated that government funding of religious schools is not an establishment clause problem. If government funding is generally provided to schools, religious schools cannot be discriminated against.
 - Based on the above interpretations of the Establishment Clause, particularly by the current Supreme Court, as well as history and tradition, Texas' use of chaplains in the public school setting would survive a constitutional challenge. This according to the constitutional expertise of Brad Dacus, President of Pacific Justice Institute, one of the leading constitutional attorneys in the nation

2. No definition in the bill of what a chaplain is and what a chaplain is not

- The intent is for each ISD to determine a definition for chaplains that best fits their district rather than be mandated by the state.
- Chaplains are certified, ordained, or endorsed by religious bodies or certifying organizations, not by government institutions.
- However, A simple definition is that clergy is recognized (licensed, ordained, or endorsed - each has a different meaning according to traditional standards) by their religious organization trained to serve in secular environments.

3. No definition as to tasks, concerns for administration (like how do they regard/manage chaplains), no confidentiality requirements in the bill, chaplains will be tasked with things they are unqualified to do

- The intent is for each ISD to determine a definition for chaplains that best fits their district rather than be mandated by the state. ISDs may make requirements and mandates for chaplains. Conversations may be confidential unless the chaplain determines that in-action would harm faculty members or students.
- It is best suited for individual districts to determine the requirements best suited for their district
- For example, a district may stipulate that Chaplains may be required to be certified in particular safety, emergency, and violence prevention, such as active shooter, stop the bleed, and personality threat assessment. This can be determined at the local level.
- Chaplain duties are listed in most state education codes. However, if it is not located in ND code, suggest following Texas Education Code TEC 48.115 and amend the bill to include it.
 - (i) providing licensed counselors, social workers, chaplains, and individuals trained in restorative discipline and restorative justice practices;
 - (ii) providing mental health personnel and support, including chaplains;
 - (iii) providing behavioral health services, including services provided by chaplains;
 - (iv) establishing threat reporting systems; and
 - (v) developing and implementing programs focused on restorative justice practices, culturally relevant instruction, and providing mental health support, including support provided by chaplains;
 - (4) providing programs related to suicide prevention, intervention, and postvention, including programs provided by chaplains; and
 - (5) employing a school safety director and other personnel to manage and monitor school safety initiatives and the implementation of school safety requirements for the district.

4. Chaplains are only equipped to deal with spiritual health, not mental health

- The United States Department of Defense disagrees with this by their very actions. The U.S. Army now requires every mental health team to have a chaplain on their team.
- Both Chaplains and mental health professionals have an important role to play in helping people. Both are needed.

- Mental health that does not encompass spiritual care is not comprehensive. Therefore, spiritual care is an integral part of Mental Health.
- According to the research of Dr Lisa Miller, Professor of Psychology and Education at Columbia University, not offering spiritual care through chaplaincy creates mental disorders. Lisa Jane Miller | Faculty Profile | Teachers College, Columbia University.

5. There should be referrals to issues outside the bounds of what a chaplain is qualified to address

- Chaplains do not give professional referrals. However, they operate as a resource officer, making referrals to clergy who best meet the needs of individuals outside their religious affiliation. They also may refer individuals to school counselors and staff, Law Enforcement, parents and guardians, and humanitarian organizations.

6. Chaplains - Volunteers and or Paid Chaplains

- This bill allows the individual ISD to permit volunteer chaplains or paid chaplains
- There are no resources being removed from schools, chaplains will be added in addition to existing school resources.

7. Chaplains are mandatory reporters according to State law

- School personnel are generally considered mandatory reporters of abuse.
- Clergy and chaplains have a duty of confidentiality.
- Most chaplains are trained to report self-harm, abuse, and intent to harm others.
- For example, one of the largest Chaplain Associations in the country, National School Chaplain Association, does in fact train in protocols to report self-harm, abuse, and intent to harm others.

8. Circumstances already exist where chaplains come into schools to support students after tragedies – why does there need to be another level of authority

- Not every tragedy is recognized at a schoolwide level, and situations or events that are not considered tragedies (such as bullying, anxiety, depression, and other similar stressful challenges) may still benefit from chaplains.
- Furthermore, chaplains can assist both students and teachers/administrative faculty, as adults may also find themselves in need of spiritual counsel.
- Chaplains employed by the federal government and state governments have shown their benefit in preventing tragedies.
- Bringing chaplains in after a tragedy, has proven to reduce PTSD, build resilience, and reduce further trauma. Unlike limited ministerial care offered after school or during lunch, full-time campus chaplains have proven to prevent violence, reduce disciplinary

actions and teen pregnancies, enhance teacher-student relationships, and increase graduation rates.

9. What about Satanic Temple Chaplains / Other Worldviews?

- This does not reflect the current make-up of chaplains in the United States today. Reviewing the statistical data concerning chaplains qualified for hire by federal and state governments:
 - 91% are Protestants, the majority of which are Evangelicals.
 - 7% are Catholic.
 - 1% are Orthodox.
 - The balance of less than 1% is every other kind of religious affiliation. For reasons only they know, less than 1% of "others" are not motivated to serve in secular environments in a nonprejudiced manner.
- Additionally, any meetings between students and a chaplain occur on a strictly voluntary basis, students cannot be compelled to meet with them.
- Chaplains are School District employees subject to any other employee's norms and regulations.
- Although atheism and human secularists are treated as religions constitutionally, Satanism is not. The idea that schools will need to hire Satanists because they hired a Baptist are unfounded. No school will be required to hire any religious groups they don't want and the evidence is the US Senate. They have one chaplain, retired rear Admiral Barry Black.
- Satanism is not protected by the Free Exercise Clause of the First Amendment as found in long standing federal court precedent
 - For example, anti-blasphemy laws have been consistently upheld as compatible with free exercise of religion. The Harvard Law review States, "the blackletter rule was clear. Constitutional liberty entailed a right to articulate views on religion, but not a right to commit blasphemy — the offense of 'maliciously reviling God,' which encompassed "profane ridicule of Christ." Federal courts have consistently upheld state anti-blasphemy laws as constitutional finding they do not violate the First Amendment.

<https://www.theamericanconservative.com/there-is-no-constitutional-right-to-satanism/>

10. "Just anyone could do this work," violates parents' right to choose, and could be unconstitutional

- Chaplains are trained to offer spiritual care in a secular environment. Pastors are not chaplains, however a chaplain may be a pastor. It is important to understand the functional differences of pastors and chaplains.

- The state or the school district can determine who qualifies to serve as a School Chaplain—conversations with chaplains are universally by choice. A student's desire to speak with a school counselor or chaplain does not violate the parent's rights or the Constitution.
- See letters and statements by Brad Dacus, President of the Pacific Justice Institute, and Kelly Shackelford, President of First Liberty Institute, two of the best constitutional law firms in the nation regarding constitutionality. Both support the constitutionality of Chaplains in schools.
- ISD's that opt to have a chaplain available on campus will seek the most qualified applicants for the position, not "just anyone."
- Regarding parents' right to choose, parents do not choose teachers or administrators. Additionally, schoolchildren cannot be coerced into meeting with the chaplain, it must be on a strictly voluntary basis, which can help alleviate parents' concerns.

11. Should some level of training be required, to prevent quackery, as is required in hospitals, etc.? The "no training requirement" is insulting to highly trained chaplains.

- The no-training requirement reflects confidence in the ISDs to determine what level of professionalism is required to meet their district's needs. There are various levels of training available for chaplains. However, it is essential to remember that chaplains are certified, ordained, or endorsed by religious bodies and not government institutions.
- The government is not allowed to dictate religious affairs in this way, there is no national or statewide governing body that sets specific requirements for training chaplains. There are, however, chaplain agencies (such as the National School Chaplain Association) that require training and certifications in subjects such as crisis response for those that work with them. It ultimately depends on each school district to determine requirements.

12. What is the obligation of the chaplain in dealing with a student to the parent (with regards to confidentiality)

- Specific guidelines may be set by each school district.
- Teachers can also recur to chaplains for counsel and aid, stemming the tide of teachers leaving the profession.
- Research shows that spiritual practices have a positive impact on mental health, and the mental health of teachers has an impact on the mental health and academic success of students.
- Chaplains are trained to create positive discussions between students, teachers, and parents.
- Chaplains can provide access to emergency resources such as food and housing.

13. How will school districts know who to hire for chaplaincy services?

- School districts will have to determine who is the best qualified, though they can recur to chaplain agencies to find those with some basic shared training. Ex. Such as the National School Chaplain Association that is in more than 23,000 schools around the world.

14. What about students who do not belong to the same faith as the chaplain?

- Students are in no way coerced to talk to chaplains
- If chaplains are talking with someone of a different faith and don't feel qualified to assist in that specific situation, there are resources they can use to bring in a leader in that student's faith to provide specific counsel regarding their relationship to their faith.
- In many crisis situations parents or teachers are dealing with the same grief, anxiety, stress, etc., and can't provide help from the same stable foundation that a chaplain can.
- Frequently public schools discourage any type of religious discussion, creating environment hostile to religion, not neutral. Chaplains are instructed not to proselytize
- Crisis response teams do not remain permanently on site after a tragedy, chaplains can be that permanent resource.
- This bill doesn't take anything away from anyone, it only adds further resources.

15. Does this bill seek to meet an educational employment crisis with those not trained in education, detracting resources from schools whose districts are extremely budgetarily constrained?

- Schools are not required to provide chaplains, the districts decide on an individual basis to provide this resource. Districts also have the option to invite volunteer chaplains, not having to allocate portions of the budget to have them available on campus.

MODEL SCHOOL CHAPLAINCY POLICY

INTRODUCTION

On June 18, 2023, Governor Greg Abbott signed Texas Senate Bill 763. The new law allows a public school district or an open-enrollment charter school to “employ or accept as a volunteer a chaplain to provide support, services, and programs for students”¹ Districts must vote by March 1, 2024, on whether to adopt a chaplaincy policy.² Adding a school chaplaincy program to existing student services can provide a diverse student community with well-rounded support. The model chaplaincy policies provided below are designed to guide districts in developing policies that serve students well and comply with the Constitution.

Government chaplaincy programs have a long history, and courts consistently uphold them in a wide variety of circumstances, including the military, prisons, hospitals, and legislative bodies.³ Chaplaincy programs provide crucial support services, recognizing that many individuals value the opportunity to seek support that is provided from a religious perspective.⁴ The Supreme Court repeatedly explains that the First Amendment’s Establishment Clause does not “‘compel the government to purge from the public sphere’ anything an objective observer could reasonably infer endorses or ‘partakes of the religious.’”⁵ Last year, in *Kennedy v. Bremerton School District*, the Supreme Court overruled a 50-year precedent, *Lemon v. Kurtzman*,⁶ which incorrectly held that government action that lacks a secular purpose, advances religion, or entangles the government with religion violated the Establishment Clause. That doctrine—the *Lemon*

¹ Act of Jun. 18, 2023, 88th Leg., R.S., S.B. 763 (to be codified as an amendment Tex. Educ. Code tit. 2, subd. D, Ch. 23 and § 48.115) (“SB 763”).

² *Id.*

³ See *Katcoff v. Marsh*, 755 F.2d 223 (2d Cir. 1985) (upholding military chaplaincy); *Marsh v. Chambers*, 463 U.S. 783 (1983) (upholding state legislature’s practice of opening sessions with prayers by a State-employed chaplain); *Theriault v. Silber*, 547 F.2d 1279 (5th Cir. 1977) (upholding prison chaplains); *Carter v. Broadlawns Med. Ctr.*, 857 F.2d 448 (8th Cir. 1988) (upholding public hospital chaplaincy); *Freedom From Religion Found. v. Mack*, 49 F.4th 941 (5th Cir. 2022) (upholding justice of the peace’s chaplaincy and courtroom prayer program); see also *Murray v. Buchanan*, 720 F.2d 689, 690 (D.C. Cir. 1983) (upholding public funding of congressional chaplains).

⁴ See, e.g., *Mack*, 49 F.4th at 944–45 (describing justice of the peace’s volunteer chaplaincy program).

⁵ *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2427 (2022) (quoting *Van Orden v. Perry*, 545 U.S. 677, 699 (2005) (Breyer, J., concurring in judgment)).

⁶ 403 U.S. 602 (1971).

test—is no longer good law. Cases grounded in *Lemon’s* framework⁷ may no longer be controlling, as the Supreme Court “overrule[d] *Lemon v. Kurtzman*, and call[ed] into question decades of subsequent precedents that it deem[ed] offshoots of that decision.”⁸ Accordingly, perceived religious endorsement by the government is no longer the operative legal test. Instead, courts evaluate whether government action violates the Establishment Clause by reference “to historical practices and understandings”⁹ at the time of the Founding. And, as mentioned above, courts have upheld government chaplaincies many times based on the history and tradition of these programs.

Of course, schools may not coerce students to engage in religious exercise,¹⁰ and therefore chaplain services should be strictly voluntary for students to use. However, in *Kennedy*, the Court rejected the notion that the mere presence of religious activity is somehow coercive.¹¹ Rather, the Court found no coercion “where there is no evidence anyone sought to persuade or force students to participate[.]”¹²

First Liberty provides the following model policies as general guidance to assist school boards in developing school chaplaincy policies in accordance with SB 763. This document does not create an attorney-client relationship, and it is not to be used as a substitute for legal advice from a licensed attorney. Because this is a developing area of law, First Liberty Institute and its attorneys do not warrant, either expressly or impliedly, that the law, cases, statutes, and rules discussed or cited in this guide have not been changed, amended, reversed, or revised. Likewise, First Liberty and its attorneys do not express any opinion as to how a court would rule in a particular case. First Liberty encourages school districts considering adopting a chaplaincy policy to contact First Liberty at FirstLiberty.org for a legal consultation that is adapted to your unique situation.

⁷ See, e.g., *Edwards v. Aguillard*, 482 U.S. 578 (1987); *Epperson v. Arkansas*, 393 U.S. 97 (1968); *Doe v. Porter*, 370 F.3d 558 (6th Cir. 2004); *Berger v. Rensselaer Cent. Sch. Corp.*, 982 F.2d 1160 (7th Cir. 1993); *Busch v. Marple Newton Sch. Dist.*, 567 F.3d 89 (3d Cir. 2009); *Oxford v. Beaumont Indep. Sch. Dist.*, 224 F. Supp. 2d 1099 (E.D. Tex. 2022).

⁸ *Kennedy*, 142 S. Ct. at 2434 (Sotomayor, J., dissenting) (describing the majority opinion); *id.* at 2427–28 (“In place of *Lemon* and the endorsement test, this Court has instructed that the Establishment Clause must be interpreted by reference to historical practices and understandings.”) (cleaned up) (quotation omitted).

⁹ *Id.* at 2427 (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014)).

¹⁰ See *Lee v. Weisman*, 505 U.S. 577 (1992); *Engel v. Vitale*, 370 U.S. 421 (1962); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963); *McCullum v. Bd. of Educ.*, 333 U.S. 203 (1948).

¹¹ *Kennedy*, 142 S. Ct. at 2430–31.

¹² *Id.*

MODEL SCHOOL CHAPLAINCY POLICY VERSION 1 (EMPLOYED CHAPLAINS)

General

[School district] shall retain one or more chaplains as employees to provide chaplain support and services to the student body of the campuses or schools designated by *[school district]*.

The mental, emotional, social, physical, and spiritual challenges faced by today's students are immense. Concern about student mental health and physical safety is at an all-time high. For many students, the school environment may be the only opportunity they have to access the support, help, and care they need to meet these challenges. We have resources to help address some of these concerns, including counselors and dedicated teachers and staff to whom students may turn. Chaplains will serve as an additional student resource, recognizing that some students may be more comfortable or otherwise prefer to seek support from a chaplain.

It is solely the decision of the individual student whether to seek the support or services of a chaplain. All students are welcome to utilize a chaplain but no student may be required to do so.

All communications between a chaplain and a student intended by the student to be confidential are privileged and confidential, and that privilege and confidentiality may not be breached except as required by law.

Responsibilities

A chaplain's primary responsibility is to be present and available for any student who may seek such chaplain's help or care.

A chaplain will be a visible, integral member of the assigned school or campus. Such chaplain will support the school's students and student groups at their request and will work to develop positive, supportive relationships based on compassion and mutual respect with any students that so desire.

A chaplain will be present and visible both in the various activities in which students participate during the school day and the areas of the school or campus at which students are found. A chaplain may

refer students to other resources and personnel the school provides that might assist the students in any given situation.

A chaplain shall not proselytize or disparage any religion, belief, lack of belief, or faith group. A chaplain's provision of care, help, or counsel consistent with his beliefs or convictions to students who seek such care, help, or counsel is not proselytization or disparagement.

A chaplain shall not have disciplinary authority over students or student groups.

[School district] may provide any chaplain with office space suitable for confidential interactions with students and visible to and accessible by the students of the campus or school served by such chaplain.

[School district] shall ensure all students of a campus or school a chaplain is assigned are aware of such chaplain, the location of a chaplain's office, their continuing opportunity to seek the chaplain's help or care, the means by which they can request and receive the chaplain's help or care, that their confidential interaction with the chaplain will remain confidential unless otherwise required by law, and that their choice to seek a chaplain's help or care is strictly and always voluntary.

The school board may hire or select a chaplain directly or delegate such hiring authority in accordance with board policy.

In all actions taken and decisions made pursuant to this policy, *[school district]* shall comply with applicable state and federal law.

Qualifications

For purposes of this policy, a chaplain shall be a person who obtains a certification from a national chaplaincy certifying organization or has received an ecclesiastical endorsement from his or her faith group certifying that such chaplain is:

1. A minister, rabbi, priest, imam, lay leader, or similar functionary of the faith group;
2. Qualified spiritually, morally, intellectually, and emotionally to serve as a chaplain for [*school district*];
3. Sensitive to religious pluralism and able to provide for the free exercise of religion by all students.]

In accordance with state law, state licensure or certification is not required, but chaplains must comply with criminal history record laws and have no history of offenses for which registering as a sex offender is necessary.

MODEL SCHOOL CHAPLAINCY POLICY VERSION 2 (VOLUNTEER CHAPLAINS)

General

[School district] may accept one or more volunteer chaplains to provide support and services to the student body of the campuses or schools designated by *[school district]*.

The mental, emotional, social, physical, and spiritual challenges faced by today's students are immense. Concern about student mental health and physical safety is at an all-time high. For many students, the school environment may be the only opportunity they have to access the support, help, and care they need to meet these challenges. We have resources to help address some of these concerns, including counselors and dedicated teachers and staff to whom students may turn. Chaplains will serve as an additional student resource, recognizing that some students may be more comfortable or otherwise prefer to seek support from a chaplain.

It is solely the decision of the individual student whether to seek the support or services of a chaplain. All students are welcome to utilize a chaplain but no student may be required to do so.

All communications between a chaplain and a student intended by the student to be confidential are privileged and confidential, and that privilege and confidentiality may not be breached except as required by law.

Responsibilities

A chaplain's primary responsibility is to be present and available for any student who may seek such chaplain's help or care.

A chaplain will be a visible, integral member of the assigned school or campus. Such chaplain will support the school's students and student groups at their request and will work to develop positive, supportive relationships based on compassion and mutual respect with any students that so desire. A chaplain may refer students to other resources and personnel the school provides that might assist the students in any given situation.

A chaplain shall not proselytize or disparage any religion, belief, lack of belief, or faith group. A chaplain's provision of care, help, or counsel consistent with his beliefs or convictions to students who seek such care, help, or counsel is not proselytization or disparagement.

A chaplain shall not have disciplinary authority over students or student groups.

[School district] may provide any chaplain with office space suitable for confidential interactions with students.

[School district] shall notify all students of a campus or school in which a volunteer chaplain serves of their continuing opportunity to seek the chaplain's help or care, the means by which they can request and receive the chaplain's help or care, that their confidential interaction with the chaplain will remain confidential unless otherwise required by law, and that their choice to seek a chaplain's help or care is strictly and always voluntary.

The school board may select a chaplain directly or delegate such selection authority in accordance with board policy.

In all actions taken and decisions made pursuant to this policy, *[school district]* shall comply with applicable state and federal law.

Qualifications

For purposes of this policy, a chaplain shall be a person who obtains a certification from a national chaplaincy certifying organization or has received an ecclesiastical endorsement from his or her faith group certifying that such chaplain is:

1. A minister, rabbi, priest, imam, lay leader, or similar functionary of the faith group;
2. Qualified spiritually, morally, intellectually, and emotionally to serve as a chaplain for *[school district]*;
3. Sensitive to religious pluralism and able to provide for the free exercise of religion by all students.

In accordance with state law, state licensure or certification is not required, but chaplains must comply with criminal history record laws and have no history of offenses for which registering as a sex offender is necessary.