Sixty-ninth North Dakota Legislative Assembly
Senate Education Committee
H.B. 1222
March 12, 2025

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Chair Beard, Vice Chair Lemm, and members of the Committee:

On behalf of the ACLU of North Dakota, I submit testimony in opposition to House Bill 1222 relating to a requirement for public school students to have the opportunity to recite the pledge of allegiance each morning. In its original form, HB 1222 required the recitation of the pledge of allegiance. In an effort to reduce concerns of unconstitutionality, the current version before this Committee is the result of amendments to require every school district to adopt a policy requiring a daily voluntary opportunity for recitation of the pledge.

The ACLU opposed the original proposed bill and continues to oppose HB 1222 in this amended form, principally because it is unnecessary legislation. North Dakota already permits students to voluntarily recite the Pledge of Allegiance and further requirements of policy encroach on the First Amendment rights of students, teachers, and school staff and administration.

Furthermore, there are myriad moral, ethical, or personal reasons an individual may not wish to recite the pledge. Schools should be a place where different views are embraced and explored. The ACLU urges this committee to not further amend this legislation in any way which would reintroduce elements of compulsory speech or thought.

Strong free speech protections are enshrined in both the First Amendment to the U.S. Constitution and Article 1, Section 4 of the North Dakota State Constitution. As has long been established, these protections are violated when government officials attempt to coerce others to stand for the Pledge, say the Pledge, or otherwise take part in a Pledge of Allegiance ceremony.

Over eighty years ago that the United States Supreme Court ruled in *West Virginia State Bd. of Education v. Barnette,* 319 U.S. 624, 642 (1943). that government actors may not press individuals to say the Pledge of Allegiance:

> *If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.*

The Court concluded that "action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control." (In addition, in *Spence v. Washington,* 418 U.S. 405 (1974) the Supreme Court deemed that punishment for not showing proper respect for the American Flag was unconstitutional.) The landmark *Tinker v. Des Moines Indep. Community Sch. Dist*., 393 U.S. 503 (1969) has established that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

Due to the stated unnecessary nature of this bill and the risk of increased overreach of government pressure on student free speech, the ACLU of North Dakota urges the Senate Education Committee to give a "do not pass" recommendation on HB1222.

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The ACLU has a long history of defending students' right to decline to say the pledge including cases in Colorado (2003), Pennsylvania (2004), Virgina (2005), Florida (2006), and Texas (2008).