

March 6, 2024

Re: Legislation proposing public-school chaplains

Dear State Legislators:

As organizations long dedicated to protecting civil rights and civil liberties, including religious freedom, we are deeply opposed to any bill that would install chaplains in our public schools. Our societal and constitutional commitment to religious freedom guarantees all students the right to attend public school and to access the full range of school services without having government-sponsored religion imposed on them. Allowing chaplains to assume official positions—whether paid or voluntary—in public schools as counselors or other support staff will undermine this right by creating an environment ripe for evangelizing and religious coercion of students in violation of the First Amendment to the U.S. Constitution.

There are “heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools.”¹ Thus, in the public-school context, the U.S. Supreme Court “has been particularly vigilant in monitoring compliance with the Establishment Clause” of the First Amendment.² To that end, the Court has repeatedly recognized that public schools “may not coerce anyone to support or participate in religion or its exercise.”³ Less than two years ago, in *Kennedy v. Bremerton School District*, the Court reaffirmed this fundamental Establishment Clause principle.⁴

The primary role of chaplains is to provide pastoral or religious counseling to people in spiritual need. They are, therefore, not likely to have the training and experience necessary to ensure that they adhere to public schools’ educational mandates and avoid veering into impermissible religious counseling and other promotion of religion. Indeed, many of the school-chaplain bills proposed across the country specifically state that chaplains need not have any of the same qualifications or certifications as school counselors or staff who provide other support services for students. As a result, students will be vulnerable to religious indoctrination. For example, students may feel pressure to submit to religious proselytizing by chaplains or to join them in prayer.

This is precisely the kind of coercion that the Establishment Clause forbids. Courts have repeatedly ruled that it is unconstitutional for public schools to invite religious leaders onto campus to engage in religious activities, such as prayer and religious counseling, with students.⁵ In fact,

¹ *Lee v. Weisman*, 505 U.S. 577, 592 (1992).

² *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987).

³ *Lee*, 505 U.S. at 587.

⁴ 597 U.S. 507, 537, 541-42 (2022).

⁵ See, e.g., *Lee*, 505 U.S. at 597-99 (public school forbidden from inviting clergy to deliver prayers at graduation ceremonies); *McCullum v. Bd. of Educ.*, 333 U.S. 203, 211-12 (1948) (Establishment Clause prohibited public school from allowing clergy and others to teach religious classes on campus during school day); *Doe v. S. Iron R-1 Sch. Dist.*, 498 F.3d 878, 882 (8th Cir. 2007) (holding that public school could not permit religious group to distribute Bibles to

the Supreme Court has issued a “long line of cases carving out of the Establishment Clause what essentially amounts to a *per se* rule prohibiting public-school[] . . . -initiated religious expression or indoctrination.”⁶ These cases make clear that permitting volunteers to act as chaplains and evangelize students in public schools—let alone employing them—would violate the First Amendment.⁷

To be sure, some courts have upheld the constitutionality of government-provided chaplains in very limited settings. Generally, the government may provide chaplains only where they are needed to accommodate the religious-exercise rights of people who would otherwise lack the capacity to access religious services—specifically, for those in prison, confined to a public hospital, or serving in the military—or where chaplains have played a unique historical role in a particular setting, as in legislatures.⁸ Neither circumstance applies to public schools. Public-school students have unfettered access to religious services in their communities and through their families. They do not need chaplains, selected and imposed by the government, to practice their faith.⁹

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, these bills violate the Establishment Clause in another way: They result in an unconstitutional preference for religion over nonreligion.¹⁰ And the danger here goes beyond

students in school); *Doe v. Porter*, 370 F.3d 558, 562-64 (6th Cir. 2004) (barring public school from allowing volunteers from local religious college to conduct proselytizing Bible-study class during school day); *Berger v. Rensselaer Cent. Sch. Corp.*, 982 F.2d 1160, 1170-71 (7th Cir. 1993) (ruling that public schools could not authorize religious group to distribute Bibles to students in classrooms or auditoriums); *cf. Busch v. Marple Newtown Sch. Dist.*, 567 F.3d 89, 100-01 (3d Cir. 2009) (upholding school district’s refusal, on Establishment Clause grounds, to allow parent to read Bible to kindergarten students).

⁶ *Doe v. Duncanville Indep. Sch. Dist.*, 994 F.2d 160, 165 (5th Cir. 1993).

⁷ Some school-chaplain bills require parental consent for chaplains to work with students. But parental consent for chaplains in schools does not cure the constitutional violation—just as parental consent for a public school to teach creationism to a child would not make it constitutionally permissible to do so. *See, e.g., Edwards*, 482 U.S. at 596-97 (striking down statute that required public schools to teach creation-science alongside creationism).

⁸ *See, e.g., Marsh v. Chambers*, 463 U.S. 783, 790-91 (1983) (upholding chaplain-led legislative prayer in light of “unique history” dating back to drafting of the First Amendment); *Johnson-Bey v. Lane*, 863 F.2d 1308, 1312 (7th Cir. 1988) (“Patients in public hospitals, members of the armed forces . . . and prisoners . . . have restricted or even no access to religious services unless government takes an active role in supplying those services.”); *Katcoff v. Marsh*, 755 F.2d 223, 237 (2d Cir. 1985) (upholding military chaplaincy); *Carter v. Broadlawns Med. Ctr.*, 857 F.2d 448, 457 (8th Cir. 1988) (upholding county hospital chaplaincy); *see also, e.g., Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 297 (1963) (Brennan, J., concurring) (providing chaplains for prisoners or military personnel can be “sustained on constitutional grounds as necessary to secure to the members of the Armed Forces and prisoners those rights of worship guaranteed under the Free Exercise Clause”).

⁹ *Cf. Voswinkel v. City of Charlotte*, 495 F. Supp. 588, 597 (W.D.N.C. 1980) (government provision of chaplains for police officers was unconstitutional because it was “inconsistent with th[e] fundamental rule of neutrality,” and police officers do not face “the extraordinary restraint to which both soldiers and prisoners are subjected” that would limit their ability “to pursue their spiritual needs”).

¹⁰ The Supreme Court has recognized that government, including public schools, cannot favor religion over nonreligion. *See, e.g., Epperson v. Arkansas*, 393 U.S. 97, 104 (1968); *Schempp*, 374 U.S. at 216, 226; *Everson v. Bd. of Educ.*, 330 U.S. 1, 15-16 (1947).

the constitutional violation. In relying on uncertified, unqualified clergy to perform student-support duties, such as counseling, schools risk students receiving inadequate or inappropriate care and could be held liable for this negligence.¹¹

Finally, because chaplains are generally affiliated with specific religious denominations and traditions, in deciding which chaplains to hire or accept as volunteers, schools will inherently give preference to particular denominations, violating the “clearest command” of the Establishment Clause: “[O]ne religious denomination cannot be officially preferred over another.”¹² Schools that do so and decline to accept chaplains of minority religions, even controversial ones, will place themselves at even greater risk of liability.

Across the country, families and students practice a wide variety of faiths, and many are nonreligious. All should feel welcome in public schools. Even well-intentioned chaplain policies will undermine this fundamental premise of our public-education system and violate our longstanding First Amendment principles. We urge lawmakers to reject school-chaplain proposals and look for ways to better serve public-school students that do not involve unconstitutional school-sponsored religion.

Sincerely,

American Civil Liberties Union (ACLU)

Americans United for Separation of Church and State

FFRF Action Fund

American Atheists

American Humanist Association

Baptist Joint Committee for Religious Liberty (BJC)

Center for Inquiry (CFI)

CenterLink: The Community of LGBTQ Centers

Clearinghouse on Women’s Issues

Council of Administrators of Special Education

EducateUS

Equality Federation

Feminist Majority Foundation

First Focus Campaign for Children

¹¹ In some circumstances, state and/or federal laws may *require* certain students to have access to licensed or certified school-based mental health professionals. Chaplains do not qualify.

¹² *Larson v. Valente*, 456 U.S. 228, 244 (1982).

FORGE, Inc.
Gender Justice
GLMA: Health Professionals Advancing LGBTQ+ Equality
GLSEN
Interfaith Alliance
Japanese American Citizens League (JACL)
Law, Rights & Religion Project
MomsRising
National Center for Transgender Equality
National Council of Jewish Women
National Education Association
National LGBT Cancer Network
National LGBTQ Task Force
National Women's Law Center
People For the American Way
PFLAG National
Secular Student Alliance
State Innovation Exchange (SIX) Action
Transgender Legal Defense and Education Fund (TLDEF)
Union for Reform Judaism