

# FREEDOM FROM RELIGION *foundation*

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April 10, 2014

**SENT VIA MAIL AND FAX TO: (864) 656-7739**

Ms. Erin Swan Lauderdale  
Senior Associate General Counsel  
Clemson University  
207 Sikes Hall  
Clemson, SC 29634 - 5003

Re: Constitutional Violation in the Clemson Football Program

Dear Ms. Lauderdale:

Thank for the timely response to our FOIA request. After a careful review of the records you provided on February 25, 2014 FFRF would like to bring to the university's attention several serious constitutional concerns regarding the Clemson University football program.

As you are likely aware, it is a fundamental constitutional principle that publicly funded institutions cannot support, promote or otherwise endorse religion or engage in religious exercises. Therefore, it is inappropriate for a public institution, such as Clemson, to institute sermons, prayers, bible studies, and/or church visits for student athletes in the football program. Such practices demonstrate Clemson University endorsement of religion over nonreligion.

Christian worship seems interwoven into Clemson's football program.<sup>1</sup> We are concerned that this comingling of religion and athletics results, not from student initiative, but rather from the attitudes and unconstitutional behaviors of the coaching staff.

It is our information and understanding that:

- In 2011, coach Dabo Swinney personally invited James Trapp to become the Clemson Tigers Chaplain.<sup>2</sup> According to Mr. Trapp, coach Swinney called him several times throughout the year, insisting that Mr. Trapp consider taking a position as the teams official Chaplain. *Id.*

Not only is this a violation of the Establishment Clause, it is also a violation of Clemson's misguided and legally dubious "Guidelines For Athletic Team Chaplains." The guidelines state that student organizations must select their choice for team chaplain first, then they should request approval from

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<sup>1</sup> (<http://chronicle.com/article/With-God-on-Our-Side/143231/>)

<sup>2</sup> (<http://vimeo.com/32081881>, Relevant part: 29:10 - 31:00).

organizations must select their choice for team chaplain first, then they should request approval from the Coach.<sup>3</sup> FFRF's FOIA request sought, under paragraph (3), "all...university records related to James Trapp's... participation with the Clemson...football team." No records were provided that show a student organization selected a "chaplain." Instead the records and our research show entanglement between coach Swinney and a chaplaincy created by the University football program.

More importantly, the Establishment Clause prohibits state sponsorship of religion. Coach Swinney is a public university employee; by independently seeking out a Christian chaplain for his football program he has displayed a preference for, and endorsement of, the Christian religion. This "sponsorship of a religious message is impermissible because it sends the ancillary message to members of the audience who are nonadherents 'that they are outsiders, not full members of the political community and accompanying message to adherents that they are insiders, favored members of the political community.'" *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309-10 (2001)(quoting *Lynch v. Donnelly*, 465 U.S. at 668)(O'Connor, J., concurring). A state university and its coaching staff in their official capacity may not violate the duty to remain neutral on religious matters.

It is our information and understanding that:

- James Trapp was regularly given access to the entire football team in between drills for the purpose of bible study.<sup>4</sup>

When the coach grants the team chaplain access to the entire captive football team he violates his duty to remain neutral under the Constitution. Coach Swinney has acknowledged that several of his players are not Christian.<sup>5</sup> Indeed, this would stand to reason, as younger Americans are the least religious population in the country: 1-in-3 Americans aged 18-29 are not religious.<sup>6</sup> By granting Mr. Trapp such access, coach Swinney again displays preference for religion over non-religion, alienates those players who don't believe as he does, and creates a culture of religious coercion within the universities football program.

It is our information and understanding that:

- James Trapp has an office at the Jervey Athletic Center.<sup>7</sup> We understand that Mr. Trapp keeps bibles in this office for distribution and regularly displays bible quotes on his whiteboard.<sup>8</sup>
- Either James Trapp or Jeff Davis reportedly told a recruit's parents "I'm in charge of praying-period," when asked to describe their job.<sup>9</sup>

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<sup>3</sup> Guidelines For Athletic Team Chaplains. CU000001.

<sup>4</sup> Feb 9, 2012 emails between James Trapp and Dabo Swinney. CU000106.

<sup>5</sup> (<http://chronicle.com/article/With-God-on-Our-Side/143231/>)

<sup>6</sup> "Nones on the Rise: One-in-Five Adults Have No Religious Affiliation," Pew Research Center, The Pew Forum on Religion & Public Life (October 9, 2012) *available at* <http://www.pewforum.org/Unaffiliated/nones-on-the-rise.aspx>

<sup>7</sup> (<http://chronicle.com/article/With-God-on-Our-Side/143231/>)

<sup>8</sup> *Id.*

- James Trapp organized and led 30-minute sessions on “being baptized” in the athletic building.<sup>10</sup>

Mr. Trapp, as a paid employee of a state university, may not proselytize or promote religion and may not use his university office to do so. We are aware that Mr. Trapp serves dual roles at Clemson — both as an FCA representative and as a Clemson football recruiting assistant. However, by his own admission, his office in the Jervey Athletic Center is being used to proselytize.

If this office was given to Mr. Trapp to conduct his chaplain services this is a clear violation of the Constitution and the Guidelines For Athletic Team Chaplains.<sup>11</sup> Alternatively, if this space was provided to Mr. Trapp to carry out his duties as a recruiting assistant, his proselytizing within this space is nonetheless a violation of the Establishment Clause. Mr. Trapp’s legal duties and obligations as a state employee prohibit him from using state resources (i.e., his office in the Jervey Athletic Center) and his official position as a recruiting assistant to proselytize. If Mr. Trapp is to evangelize the team he must not do so as the recruiting assistant, nor can it be at coach Swinney’s insistence.

The Supreme Court has continually struck down teacher or school-led proselytizing in public schools. *See, e.g. Abington Township Sch. Dist. v. Schempp*, 374 U.S. 203 (1963) (declaring unconstitutional devotional Bible reading and recitation of the Lord’s Prayer in public schools); *Engel v. Vitale*, 370 U.S. 421 (1962) (declaring prayers in public schools unconstitutional); *Lee v. Weisman*, 505 U.S. 577 (1992) (ruling prayers at public school graduations an impermissible establishment of religion); *Wallace v. Jaffree*, 472 U.S. 38 (1985) (overturning law requiring daily “period of silence not to exceed one minute . . . for meditation or daily prayer.”). In all of these cases, the federal courts have struck down prayer in public schools because it constitutes a government-endorsement of religion, which violates the Establishment Clause of the First Amendment.

In *Mellen v. Bunting* the court extended the scope of the aforementioned cases from primary and secondary schools to college-aged students when institutional circumstances create a coercive religious environment. 327 F.3d 355, 372. The Court found that supper prayer at a state military college (VMI) was an unconstitutional violation of the Establishment Clause. *Id.* This was primarily because of the educational environment at VMI, which emphasized the detailed regulation of conduct. *Id.* The court found the prayer unconstitutional given the coercive atmosphere. *Id.*

Clemson Football program’s authority over student athletes is similar to that of VMI in that much of the players’ conduct is closely monitored, directed and critiqued by coaching staff. Players trying to please their coach or to curry favor surely feel huge pressure to attend devotional events organized or endorsed by Mr. Trapp and coach Swinney.

In 2012, FFRF sent a letter to Appalachian State University alerting them to similar violations occurring within their football program. The University agreed that their football program’s

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<sup>9</sup> (<http://chronicle.com/article/With-God-on-Our-Side/143231/>)

<sup>10</sup> July 26, 2011 email from James Trapp to Dabo Swinney. CU000085.

<sup>11</sup> *See*, Guidelines For Athletic Team Chaplains. CU000001

entanglement with religion was coercive and held no legitimate place in the University's athletic program.

Regarding the Clemson football program, it is our further understanding that:

- Coach Swinney confirmed that the entire Football team would attend an FCA breakfast on December 31, 2011 wherein three players would "testify."<sup>12</sup>
- Three coach buses (116 seat capacity) were used to bus the team and coaching staff to Valley Brook Baptist Church on August 7, 2011 for worship on "Church Day."<sup>13</sup> We understand the football program regularly uses three buses (116 seat capacity) for transportation on team "Church Day."<sup>14</sup>
- Coach Swinney schedules devotionals for the football team. Between March 2012 and April 2013 approximately 87 devotionals were organized by James Trapp, approved by coach Swinney and lead by university coaching staff.<sup>15</sup>

A call to players and university staff — who are of varying or no faith — to attend church is coercive. This practice coerces players, of varying faiths or none at all, to enter a Christian house of worship, lest they speak up against their superiors; a brave, but unlikely event given the extent to which coach Swinney makes his preference for religious belief clear.<sup>16</sup> Moreover, players wishing to abstain should not be forced to subject themselves to the resentment, embarrassment, or scrutiny that could result from taking such a stand. In the words of our Supreme Court, "It is a tenet of the First Amendment that the State cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored religious practice." *Lee v. Weisman*, 505 U.S. 577, 596 (1992).

The football coaching staff's endorsement of religion is worsened still when coach Swinney incorporates devotionals into the team's program, and allows himself and coaching staff to lead them. Again, it is unconstitutional for public school coaches to participate in student religious activities. *See, e.g., Borden v. Sch. Dist. of the Township of East Brunswick*, 523 F.3d 153 (3<sup>rd</sup> Cir. 2008), *cert. denied*, 129 S.Ct. 1524 (2009) (declaring the coach's organization, participation and leading of prayers before football games unconstitutional); *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402 (5<sup>th</sup> Cir. 1995) (declaring basketball coach's participation in student prayer circles an unconstitutional endorsement of religion).

Even if attendance at these religious events is "optional" this does not remedy the Constitutional violation. Courts have summarily rejected arguments that voluntariness excuses a constitutional violation. *See, generally, Mellen v. Bunting*, 327 F.3d 355, 372 (4<sup>th</sup> Cir. 2003) ("...VMI cannot avoid Establishment Clause problems by simply asserting that a cadet's attendance at supper or his or her

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<sup>12</sup> Dec 12, 2011 emails between James Trapp and Dabo Swinney. CU000090.

<sup>13</sup> July 18, 2011 emails between Dabo Swinney and James Trapp. CU000097, CU000072, CU000066-69.

<sup>14</sup> July 7, 2011 email from Andrew Johnston to James Trapp. CU000071.

<sup>15</sup> Various emails from/between Dabo Swinney and James Trapp. CU000095; CU000078-83; CU000075-77; CU000052, 60-64.

<sup>16</sup> *See*, coach Swinney's response to Chronicle reporter, Brad Wolverton, when asked about what he tells recruits: "I'm a Christian... If you have a problem with that you don't have to be here." (<http://chronicle.com/article/With-God-on-Our-Side/143231/>)



participation in the supper prayer are ‘voluntary.’”); *Lee v. Weisman*, 505 U.S. at 596 (“It is a tenet of the First Amendment that the State cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored religious practice.”); *Abington Sch. Dist. v. Schempp*, 374 U.S. 203, 288 (1963)(Brennan, J., concurring)(“Thus, the short, and to me sufficient, answer is that the availability of excusal or exemption simply has no relevance to the establishment question...”).

Coaches should be aware of the tremendous influence they have on their athletes. These young men spend a great deal of time in their coach’s charge, and the coaches through their own example must be sure that athletes are not only treated fairly but also imbued with a sense of community and camaraderie. Moreover, “The preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere.” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 310 (2001)(quoting *Lee v. Weisman*, 505 U.S. at 589). By scheduling and participating in “church days” and devotionals; by incorporating them into the team’s regular schedule, and by allowing Mr. Trapp access to the entire team for bible studies and proselytizing, coach Swinney sends a message of exclusion to those players on his team not in conformity with his personal religious beliefs. These violations must cease immediately.

The nonreligious and non-Christian student athletes who have come through the Clemson football program deserve to have their rights of conscience protected. We request that the University direct coach Swinney and James Trapp to immediately discontinue the practice of instituting team prayers, sermons, bible studies and “church days” for Clemson football players. The university must ensure that these violations end, must train coaching staff, and must monitor their conduct going forward. We look forward to being notified about the steps the University is taking to protect the rights of its students. May we hear from you at your earliest convenience?

Sincerely,



Patrick C. Elliott  
Staff Attorney

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