

FREEDOM FROM RELIGION *foundation*

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November 25, 2020

SENT VIA EMAIL & U.S. MAIL: president@boisestate.edu

Dr. Marlene Tromp
President
Boise State University
1910 University Drive
Boise, ID 83725

Re: Unconstitutional Chaplaincy and Open Records Request

Dear President Tromp:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring at Boise State University. FFRF is a national nonprofit organization with more than 33,000 members across the country, including members in Idaho. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

It has been brought to our attention that the Boise State University football program has an official chaplain, Mark Thornton. Thornton reportedly led Boise State University and Brigham Young University players in a joint prayer following a recent game. According to an article about this event in the Deseret News, Thornton arranges for post-game prayers on the field with players, leads them in chapel the night before games, and prays with players individually before games.¹ The article alarmingly points out, “While BYU is a private religious institution and Boise State is a state school, the role of faith in their two football programs is strikingly similar.”² The article also highlights other concerns in Boise State’s football program, noting that Boise State’s “coaches are men of God who join the team at chapel...” It is clear that Thornton is a Christian chaplain, who preaches Christianity regardless of the faith or denomination of student athletes: “Denominational differences take a back seat to a common belief in the crucified Jesus Christ.”³

Public school athletic teams cannot appoint or employ a chaplain, seek out a spiritual leader for the team, or agree to have a volunteer team chaplain because public schools may not advance or promote religion. *See generally, Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992); *Wallace v. Jaffree*, 472 U.S. 38 (1985); *Epperson v. Arkansas*,

¹<https://www.deseret.com/faith/2020/11/11/21557164/the-story-behind-byu-and-boise-state-football-players-joining-hands-to-pray-after-their-game>

² *Id.*

³ *Id.*

393 U.S. 97 (1967); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962).

Government chaplains may only exist as an accommodation of a public employee's religious beliefs when the government makes it difficult or impossible to seek out private ministries. See *Carter v. Broadlawns Medical Center*, 857 F.2d 448 (8th Cir. 1988), *cert. denied*, 489 U.S. 1096 (1989). For instance, it may be difficult for military service members to find a place of worship while on mission in a foreign country or for an inmate in a prison to find a way to worship. *Katcoff v. Marsh*, 755 F.2d 223 (2d. Cir. 1985). Chaplains are meant to lighten these government-imposed burdens on religious exercise. Boise State football players have no government-imposed burden on their religion, so there is no need—or legitimate legal reason—for Boise State to provide a chaplain for them. Thornton's employment, even if voluntary, is an unconstitutional endorsement of religion.

Claiming that the players can voluntarily seek out Thornton cannot cure this violation. First, players can seek out religious guidance at any of the other campus ministries or in the local community. The football team does not need to employ or host a volunteer chaplain—indeed, it cannot legally do so. Second, voluntariness has never been used to excuse a constitutional violation. At the college level, voluntary prayers are unconstitutional if organized by university staff and if students would feel pressure to join, as any team member would. *Mellen v. Bunting*, 327 F.3d 355, 372 (4th Cir. 2003) (pre-meal prayers at state-operated military college were unconstitutional, though voluntary).

While student athletes may choose to gather in prayer, a public university has no business encouraging or endorsing religious rituals, much less organizing them. Whether to pray, and whether to believe in a deity who answers prayer, are intensely personal decisions protected under our First Amendment as paramount matters of conscience. Sermons and sectarian practices demonstrate the university's apparent endorsement not only of religion over nonreligion but also of Christianity over other faiths. Boise State's authority over student athletes is similar to that of VMI, a public military college that organized unconstitutional mealtime prayers. See *Mellen*, 327 F.3d 355. That court explained:

Put simply, VMI's supper prayer exacts an unconstitutional toll on the consciences of religious objectors. While the First Amendment does not in any way prohibit VMI's cadets from praying before, during, or after supper, the Establishment Clause prohibits VMI from sponsoring such a religious activity. *Id.* at 372.

The “[s]chool 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*, 530 U.S. at 309-10 (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring)). A state school and its representatives, while acting in their official capacities, must remain neutral on religious matters.

Abolishing the team chaplaincy will not alter student athletes' ability to pray, but it will prevent some student athletes from feeling coerced into participating in prayers to a deity they may not believe in. Thirty-five percent of Americans are non-Christians, and this includes the more than one in four Americans who now identify as religiously unaffiliated.⁴ Among millennials and younger Americans, those born after 1981, over 43% are non-Christian, either practicing a minority religion or no religion at all.⁵

Student athletes' scholarships, playing time, future careers, and their entire education can be predicated on their football team membership. They should not have to jeopardize their personal religious beliefs or feel coerced to participate in religious rituals simply to play football.

There is no doubt that character is important and something worth imparting to student athletes. But that cannot be an excuse to use a coaching position to promote religion. Character is not dependent on religion or religious belief. If character is important enough for Boise State to employ a chaplain, it ought to instead be a coach that can serve all players without imposing his personal religion—or any religion—on the players. Boise State is a state school, a secular school—all its employees and volunteers must act accordingly.

This chaplaincy is unnecessary and legally problematic. Boise State should act quickly to end the chaplaincy and educate its athletic staff on appropriate constitutional boundaries. Please find a copy of our 2015 Pray to Play report attached and please respond to the following open records request. We look forward to your written response addressing this matter.

Open Records Request

For the purposes of this request, “chaplain” refers to any chaplain predecessors, successors, assistants, co-chaplains, or anyone who fills the role of spiritual or religious counselor; “Football Program” means the University football team, which includes all coaches and football personnel, paid or unpaid, who regularly access the team’s facilities; “records,” “communications,” or similar terms are meant to include, but not be limited to emails.

Pursuant to the Idaho Public Records Act (Idaho Code § 9-338), I request copies of the following from 2018 to the present:

1. All Football Program, University, or Athletic Department policies concerning coach or clergy-led prayers for student athletes; this includes any policies regarding restrictions on coach or clergy-led prayers before athletic competitions, practices, or team functions;
2. All Football Program, University, or Athletic Department schedules, notices, memos, emails, or announcements related to religious services, prayer gatherings, bible studies, Fellowship of Christian Athletes meetings, or other religious activities in which chaplains were involved;

⁴ *In U.S., Decline of Christianity Continues at Rapid Pace*, PEW RESEARCH CENTER (Oct. 17, 2019), available at <https://www.pewforum.org/2019/10/17/in-u-s-decline-of-christianity-continues-at-rapid-pace/>.

⁵ *America's Changing Religious Landscape*, PEW RESEARCH CENTER (May 12, 2015), available at www.pewforum.org/2015/05/12/americas-changing-religious-landscape/.

3. All emails between Athletic Department or Football Program staff and Mark Thornton;
4. All communications, including emails, concerning the scheduling, planning, advertisement, or sponsoring of religious services, prayer gatherings, bible studies, bible distributions, or other religious activities for football players;
5. All Football Program, University, or Athletic Department records related to chaplain travel with the football team. This includes all travel plans and itineraries.
6. All financial records related to chaplain travel with the football team, including any payments for plane tickets, meals, or hotel stays arranged by the Football Program, University, or Athletic Department. This also includes any invoices submitted to chaplains for reimbursement of travel and any documentation of payments received.
7. All records related to benefits provided to the chaplain, including any records related to compensation, complimentary tickets, gifts, or privileges given to the chaplain, including access to team facilities.
8. Any other Football Program, University, or Athletic Department records related to the chaplain's official or unofficial football team duties or activities.

I respectfully request a response within 3 days as is required under Idaho law. If these records are available in electronic format, they may be emailed to chris@ffrf.org. Thank you in advance for your time and attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Chris Line". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Christopher Line
Staff Attorney
Freedom From Religion Foundation

Enclosure