

FREEDOM FROM RELIGION *foundation*

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September 24, 2024

SENT VIA EMAIL: patrick.orourke@colorado.edu

Patrick T. O'Rourke
Executive Vice Chancellor and Chief Operating Officer
University of Colorado Boulder
90 UCB
Boulder, CO 80309

Re: Continued unconstitutional religious coercion in football program & open records request

Dear Executive Vice Chancellor O'Rourke:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding continued constitutional concerns with football coach Deion Sanders' promotion of religion and religious coercion through the football program. As you may recall from our January 2023 letter, FFRF is a national nonprofit organization with 40,000 members across the country, including more than 1,300 members and two local chapters in Colorado. 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's come to our attention that Coach Sanders has continued to entangle the University's football program with religion and engage in religious exercises with students and staff. Per a video, Coach Sanders once again made religious remarks and held a team prayer in the locker room after the September 22, 2024 game against Baylor. Coach Sanders appears to have invited Pastor E. Dewey Smith from the House of Hope Church in Atlanta, GA¹, to deliver the following prayer to student athletes:

God, we thank you tonight for victory, thank you that you kept us relatively safe. Thank you that in spite of our imperfections you still blessed us, Lord. And thank you for being with us to the end. Lord, some people call it Hail Mary, some people call it karma, some people call it luck, but in my faith tradition we call it Jesus. Grace, thank you for your mercy, bless us, help us to grow from this, learn from this, and take it to the next level. We give you praise, we thank you, in your name we pray, amen..²

Pastor Smith seems to be acting as the football team's chaplain. For instance, a July 29, 2024 official pregame video refers to Pastor Smith as the "spiritual advisor" to Coach Sanders and

¹ House of Hope Church, Our Senior Pastor, <https://www.hohatl.org/our-pastor>

² Coach Prime's Locker Room Speech After Colorado's First Big 12 Win vs Baylor, https://www.youtube.com/watch?v=X_z7NhhSGUc

“Chaplain for the Colorado Buffs.”³ In that video, Pastor Smith discussed the upcoming football season and team dynamics in a sermon-like manner, intertwining lessons from biblical scripture with his remarks about the team. Coach Sanders’ may have invited and allowed Pastor Smith to act as team chaplain when Coach Sanders was previously coaching at Jackson State.⁴ Here, Coach Sanders appears to be once again inviting and allowing Pastor Smith to act as team chaplain, this time for the University of Colorado Buffaloes.

On January 31, 2023, FFRF received a response from the University stating in part that:

The campus Office of Institutional Equity and Compliance is responsible for providing training on our non-discrimination policies, including the requirements of both the Establishment Clause and Free Exercise Clause. Last Friday, the Office of Institutional Equity and Compliance personally met with Coach Sanders to provide guidance on the non-discrimination policies, including guidance on the boundaries in which players and coaches may and may not engage in religious expression. Coach Sanders was very receptive to this training and came away from it with a better understanding of the University of Colorado’s policies and the requirements of the Establishment Clause.

It appears that Coach Sanders was not as receptive to the training as the University may have initially thought. We write once again to ask that the University ensure that Coach Sanders cease entangling the public university football program with Christianity.

As previously explained, the Supreme Court has continually struck down school-sponsored 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); *Sante Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000) (striking down a school policy that authorized students to vote on whether to hold a prayer at high school football games). In all of these cases, the federal courts have struck down school prayers because it constitutes a government advancement of religion, which violates the Establishment Clause of the First Amendment. The Court’s decision in *Kennedy v. Bremerton School District* did not alter the law regarding these kinds of coercive prayer practices, nor did it overrule these previous decisions. The Court reaffirmed in *Kennedy* that the schools cannot ““make a religious observance compulsory.”” *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 537 (2022) (quoting *Zorach v. Clauson*, 343 U. S. 306, 314 (1952)).

In *Mellen v. Bunting*, the Fourth Circuit Court of Appeals, extended the scope of the aforementioned cases from primary and secondary schools to college-aged students when institutional circumstances create a coercive religious environment. *Mellen v. Bunting*, 327 F.3d 355 (4th Cir. 2003). The court found that mealtime prayer at a state military college (VMI) was an unconstitutional violation of the Establishment Clause given the coercive atmosphere.

³ Pastor E. Dewey Smith Brings A Powerful Word For Practice 1, https://www.youtube.com/watch?v=5gwn8UTe_V8

⁴ <https://x.com/edeweysmith>

The University of Colorado’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 surely will feel immense pressure to go along with Coach Sanders’ proselytizing and participate in religious activities, including prayers delivered by religious leaders invited by Coach Sanders.

It is no defense to call these religious messages and activities “voluntary.” Courts have summarily rejected arguments that voluntariness excuses a constitutional violation. *See, generally, Lee*, 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.”); *Schempp*, 374 U.S. at 288 (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...”); *Mellen v. Bunting*, 327 F.3d at 372 (“...VMI cannot avoid Establishment Clause problems by simply asserting that a cadet’s attendance at supper or his or her participation in the supper prayer are ‘voluntary.’”).

Coach Sanders’ team is full of young and impressionable student athletes who would not risk giving up their scholarship, giving up playing time, or losing a good recommendation from the coach by speaking out or voluntarily opting out of his unconstitutional religious activities—even if they strongly disagree with his beliefs. Coaches exert great influence and power over student athletes and those athletes will follow the lead of their coach. Using a coaching position to promote Christianity amounts to unconstitutional religious coercion.

The University of Colorado must again take action to protect its student athletes’ First Amendment rights. Coach Sanders needs to understand that he was hired to coach football, not to force student athletes to engage in his preferred religious practices. He must cease infusing the football program with Christianity. We request notification in writing of the actions the University is taking to ensure that Coach Sanders will cease proselytizing student athletes for good.

Pursuant to the Colorado Open Records Act (“CORA”), please produce the following records:

- (1) All Football Program, University, or Athletic Department records related to Pastor E. Dewey Smith’s involvement with the football team.⁵ This includes all travel plans, itineraries, and financial records, including any plane tickets, meals, or hotel stays arranged by the Football Program, University or Athletic Department;
- (2) All Football Program, University, or Athletic Department records related to financial payments or reimbursements made to Pastor Smith; and,

⁵ For the purposes of this request, “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.

- (3) All University policies and other records provided to Coach Sanders related to making religious remarks, holding or leading prayers, promoting religion, or otherwise entangling the Football Program with religion while acting in his capacity as Head Coach. This includes but is not limited to training materials the University provided to Coach Sanders in or around January 2023.

This request is not made for a commercial purpose. If you are not the custodian of records, please forward this request to the proper custodian and let us know the name and address of that person. If the University chooses to deny this request, please provide a written explanation, including any references to applicable statutory exemptions relied upon.

If any of these records are available in electronic format, they may be e-mailed to FFRF at records@ffrf.org. Thank you for your time and attention.

Sincerely,

A handwritten signature in black ink that reads "Samantha F. Lawrence". The signature is fluid and cursive, with the first name being the most prominent.

Samantha F. Lawrence
Staff Attorney
Freedom From Religion Foundation

**CC: Laura Portis, CORA Compliance Administrator via Laura.Portis@cu.edu;
Elvie Henson, Senior Assistant University Counsel via Katie.Gleeson@cu.edu;**