

Touchdown Jesus? Analyzing Establishment Clause Concerns in Public University College Football

Maxfield Lane and Barbara Osborne

This research explores the history and evolution of the Establishment Clause from the *Everson v. Board of Education* (1947) separation of church and state framework, to the newly anointed accommodationist approach preferred in the *Kennedy v. Bremerton School District* (2022), within the context of college football at public universities. Player-led prayers, coach-led prayers, PA system-led prayer, the use of team chaplains, and other acts of religious expression are thoroughly discussed. College football coaches have a unique relationship with the student-athletes on their team, which includes examination of the Establishment Clause and the role of coercion (*Chaudhuri v. Tennessee* (1997); *Lee v. Weisman*, (1992); *Mellen v. Bunting* (2003). Similarly, the Supreme Court’s decision in *Kennedy v. Bremerton* (2022) to cast aside the Lemon Test analysis in favor of an approach that accommodates the traditional aspects of prayer applies the precedent from *Marsh v. Chambers* (1983) and *Town of Greece v. Galloway* (2014). While it is clear the use of team chaplains, coaches who actively proselytize at public institutions, and the use of the PA system for prayer at public institutions violates the Establishment Clause, coaches who engage in quiet, private prayer do not under the precedent established in *Kennedy v. Bremerton* (2022). However, this recent Supreme Court ruling leaves a large gray area of unanswered application relative to player-led team prayers, having a team prayer, coach-led prayer that is not quiet and private, and the role of coercion in the legal analysis.

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In a football locker room, religious prayer can be a unifier of the team. Prayer possesses the power to inspire players in the face of danger, keep them grounded in victory and defeat, and remind them to be thankful for their physical health and well-being. During the University of Nebraska's 1994 national championship winning football season, the team relied on a pre-game prayer for motivation (Nebraska University Athletic Communications, 2014). The prayer, which would become known as "The Prayer," is still an iconic feature of Nebraska gamedays. The prayer (Nebraska University Athletic Communications, 2014) is as follows:

Dear Lord, the battles we go through life,
 We ask for a chance that's fair
 A chance to equal our stride,
 A chance to do or dare
 If we should win, let it be by the code,
 Faith and Honor held high
 If we should lose, we'll stand by the road,
 And cheer as the winners go by
 Day by Day, we get better and better!
 Til' we can't be beat... WON'T BE BEAT!

At religious institutions such as Notre Dame, Liberty, or Baylor, locker room prayers, like "The Prayer," are encouraged and delivered by coaches and players alike, unifying the motivational benefits of prayer with the Christ-centered goals and aims of the university. At public institutions like the University of Nebraska and Clemson University, acts of coach- and player-led prayer potentially run afoul of the Establishment Clause, a First Amendment clause designed to maintain separation of church and state. While many public universities' football programs openly embrace prayer in their locker rooms and center their programs on overtly Christian principles, the programs' adoption of these practices do not necessarily mean these acts of faith are constitutionally permissible, even if others do not complain about the prayers. By applying Supreme Court precedent coupled with a rigorous analysis of Circuit Court decisions, this article will analyze the Establishment Clause legitimacy of player-led prayers, coach-led prayers, PA system-led prayer, and other acts of religious expression, with the goal of illuminating the wide scope of Establishment Clause violations that occur within college football programs at public universities.

Since there has never been a Supreme Court case that has specifically touched on college coach- or player-led prayer, a need exists to explore the history and



evolution of the Establishment Clause to assess if and how the clause shapes the permissibility of prayer at public universities. The Establishment Clause and its partner, the Free Exercise Clause, are contained in the First Amendment to the United States Constitution, which states that “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof” (*U.S. Const. amend. 1*). Focusing solely on the text, the scope of the Establishment Clause is incredibly unclear outside of restrictions placed on the federal government advocating for a “state religion” or banning the practice of a specific religious faith. The Establishment Clause’s effect on public institutions remained vague until *Everson v. Board of Education*, a 1947 Supreme Court case that ruled a New Jersey school transportation reimbursement law, which included religiously affiliated high schools, to be a constitutional use of government funding (*Everson v. Board of Education*, 1947). *Everson* was a landmark case, as it forced the Supreme Court to define the role of the Establishment Clause, as the case dealt with federally dispersed funding, an area not addressed within the text of the Clause.

In *Everson*, Justice Hugo Black developed an interpretation of the Establishment Clause that set defined limits on the federal government’s ability to inhibit or restrict religion, arguing:

The “establishment of religion” clause of the First Amendment means at least this: neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. *No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion* [emphasis added]. (*Everson v. Board of Education*, 1947, p. 330)

Black’s ban on the use of tax dollars for “religious activities or institutions” is vital in our understanding of prayer in public university locker rooms, as public colleges receive federal funding, and therefore, must avoid engaging in the “teach[ing] and practice” of religion to remain eligible for these tax dollars (*Everson v. Board of Education*, 1947, p. 330). Furthermore, public colleges are state actors, directly connected to the government and therefore required to abide by constitutional law. For example, while a private school may provide a variety of religious services on campus to meet students’ religious needs, public schools are forbidden from doing so, as they are state actors who are not permitted to “support religious activities” (*Everson v. Board of Education*, 1947, p. 330).



Despite Black's clarification in his ruling, much ambiguity still existed within the enforcement of the Establishment Clause. Within the definition of "support any religious activities," the difficult challenge is concluding what constitutes "support," as well as "religious activity," making the determination of an Establishment Clause violation problematic. These ambiguities were partially clarified in *Lemon v. Kurtzman*, a 1971 case that set the modern standard for evaluating Establishment Clause cases and provided the framework for an analysis of how the Establishment Clause could be applied in college sports settings. In *Lemon*, taxpayers sued claiming that state statutes providing money to private religious schools were violations of the Establishment Clause (*Lemon v. Kurtzman*, 1971). Since these monies were helping to provide a religious education, the funding was determined to be unconstitutional, violating the Establishment Clause via use of federal funds.

In the ruling, Justice Warren Burger created what would be known as the "Lemon Test," a standard for determining an Establishment Clause violation. Justice Burger outlined the three-pronged test in his majority opinion, stating that statutes and forms of government action must "have a secular legislative purpose," its "principal or primary effect must be one that neither advances nor inhibits religion," and "the statute must not foster 'an excessive government entanglement with religion'" (*Lemon v. Kurtzman*, 1971, pp. 612–613). To determine what constitutes "excessive entanglement," Burger states: "We must examine the character and purposes of the institutions that are benefited, the nature of the aid that the State provides, and the resulting relationship between the government and the religious authority" (*Lemon v. Kurtzman*, 1971, p. 615). Since public high schools and colleges are considered state actors, their actions are held to the standards of the Lemon Test. If an act, practice, or statute violates one of these three prongs, the offending practice has a high chance of being considered unconstitutional. Burger's definition is not a one-size-fits-all decree, in which a violation of one of the three prongs would represent a surefire Establishment Clause violation, but the Lemon Test acts as an outline of how to evaluate government actions to determine whether an unconstitutional intersection exists between the state and religion.

For years, the Lemon Test defined our nation's understanding of prayer in public school locker rooms, fully codifying the impact of the vaguely worded Establishment Clause and dictating years of subsequent policies and rulings. However, in 2022, the Supreme Court phased out the Lemon Test in *Kennedy v. Bremerton School District*, with the Court ruling in favor of a public high school football coach (Joseph Kennedy) who engaged in a postgame prayer on the 50-yard line. In the court's majority opinion, Justice Neil Gorsuch definitively laid to rest the Lemon Test, characterizing it as an "ambitious, abstract, and ahistorical



approach to the Establishment Clause” and mentioned the Court’s frequent criticism of the Lemon Test as evidence of the need for a new standard (*Kennedy v. Bremerton School District*, 2022, pp. 22–23). Instead, the Court opted to utilize a different standard, where the Establishment Clause is interpreted by “reference to historical practices and understandings” and is in “accord[ance] with history and faithfully reflect[s] the understanding of the Founding Fathers,” a philosophy originally outlined in *Town of Greece v. Galloway* (2014), a case that ruled a prayer preceding a legislative session to be constitutional (*Kennedy v. Bremerton School District*, 2022, p. 23).

Even though players prayed alongside Kennedy, which would likely meet the excessive government entanglement prong of the Lemon Test, the act of prayer is permitted under the Court’s new standard, in which the prayer is deemed to be a “long constitutional tradition under which learning how to tolerate diverse expressive activities [which] has always been a part of learning how to live in a pluralistic society” (*Kennedy v. Bremerton School District*, 2022, p. 29). The Court’s new logic is a significant derivation from their prior rulings that utilized the Lemon Test, as state actors may no longer need to consider if their actions endorse or advance religion if they can be deemed to fit within a “constitutional tradition,” opening the door for greater religious expression. When addressing the constitutionality of varied acts of prayer in college athletics, we need to be cognizant of the *Kennedy* ruling, which muddies the waters as to the role and limits of the Establishment Clause.

Since a Supreme Court case involving the Establishment Clause and public colleges has not yet occurred, high school Establishment Clause cases provide a strong framework to assess how the highest court views religious activity in our educational system. In *Engel v. Vitale* (1962), a case that occurred before *Lemon*, the Supreme Court determined that prayers issued over a school PA system are an Establishment Clause violation, as they breach the “wall of separation between Church and State” that was outlined in *Everson* (*Engel v. Vitale*, 1962, p. 615). Based upon this threshold, coach-led prayer on college campuses would clearly carry similar logic and likely be ruled a violation of the Establishment Clause. The constitutionality of public school prayer is further clarified in *Lee v. Weisman*, a 1992 case that addresses the concept of religious coercion and how age affects one’s ability to be coerced, two concepts that are vital to understanding the constitutionality of prayer in college athletics spaces.

In *Lee v. Weisman*, the Supreme Court ruled a prayer delivered by a Rabbi at a high school graduation to be a violation of the Establishment Clause, due in part to the idea that young people are uniquely prone to religious coercion. Justice Anthony Kennedy stated in the ruling: “in the hands of government what might begin as a tolerant expression of religious views may end in a policy to



indoctrinate and coerce” (*Lee v. Weisman*, 1992, p. 578). Elaborating on the idea of coercion, Kennedy continued:

The undeniable fact is that the school district’s supervision and control of a high school graduation ceremony places public pressure, as well as peer pressure, on attending students to stand as a group or, at least, maintain respectful silence during the invocation and benediction. This pressure, though subtle and indirect, can be as real as any overt compulsion. Of course, in our culture standing or remaining silent can signify adherence to a view or simple respect for the views of others. And no doubt some persons who have no desire to join a prayer have little objection to standing as a sign of respect for those who do. But for the dissenter of high school age, who has a reasonable perception that she is being forced by the State to pray in a manner her conscience will not allow, the injury is no less real. There can be no doubt that for many, if not most, of the students at the graduation, the act of standing or remaining silent was an expression of participation in the rabbi’s prayer. (*Lee v. Weisman*, 1992, p. 593)

Kennedy’s decision gave rise to a new element in the evaluation of Establishment Clause claims, searching for the presence of significant religious coercion. From the Court’s perspective, if a government-sanctioned or funded religious practice attempts to coerce others into participation, then the government is endorsing religion, and thus is in violation of the Establishment Clause.

How does Justice Kennedy’s definition of coercion affect public college football prayer? First, Kennedy refers to the age of the plaintiff in his determination of coercion, stating that she is a “dissenter of high school age,” a clear indication that age and maturity plays a role in one’s susceptibility to coercion (*Lee v. Weisman*, 1992, p. 593). It is still unclear whether college athletes, who are (nearly all) adults, are unable to be coerced, or whether either their relative youth or student-athlete status still makes them prone to coercion. Secondly, Kennedy acknowledges unwilling participation alone in state-funded religious practice as a form of injury. For Justice Kennedy, active persuasion, bullying, intimidation, or punishment is not required for coercion to take place, as being forced into the “dilemma of participating or protesting” is injurious enough to constitute a violation of the Establishment Clause (*Lee v. Weisman*, 1992, p. 593).

Kennedy v. Bremerton School District briefly interacts with the idea of coercion in the Court’s ruling. While Justice Kennedy viewed the Rabbi’s prayer in *Lee v. Weisman* as possessing the potential to “pressure” and “injur[e]” those who may have felt compelled to pray by the state (*Lee v. Weisman*, 1992, p. 593), Justice Gorsuch’s ruling in *Kennedy* potentially permits this type of conduct, which could be construed as a “diverse expressive activit[y] [which] has always been a part of learning how to live in a pluralistic society” (*Kennedy v. Bremerton School*



District, 2022, p. 29). Since the majority opinion in *Kennedy v. Bremerton* focused on an act narrowly defined as a “private” and “quiet” prayer, the ruling may not be directly transposed onto acts of blatantly public, state-sponsored prayer like that in *Lee v. Weisman* (*Kennedy v. Bremerton School District*, 2022, pp. 27–28). However, *Kennedy v. Bremerton* provides an avenue under which the Constitutionality of private and quiet prayers by state actors could potentially be argued, muddying the waters of what could constitute coercive religious expression.

How do college athletes fit into the Court’s definition of coercion? Are college athletes placed into the “dilemma of praying or protesting” (*Lee v. Weisman*, 1992, p. 578), or does their increased maturity render them more immune to an injurious situation? Since the Supreme Court has yet to grapple with the answers to questions defining coercion as it applies to adults, we need to examine other Supreme Court cases involving coercion, as well as lower court Establishment Clause cases to form a cohesive argument on coercion, both instrumental in addressing the constitutionality of locker room prayer.

The most common type of prayer in college athletics settings is player-led prayer, in which players pray either by themselves or in groups without the guidance or participation of coaches or staff. Some public college athletes, such as Tim Tebow, became famous in college for their acts of prayer and religious devotion in conjunction with their high level of play. In 1995, the NCAA had its own run-in with the complexities of student-athlete religious expression, as Liberty University sued the NCAA over a football rule that barred excessive celebrations, including kneeling in prayer (“Liberty U. Drops,” 1995). After Liberty argued that the case restricted student-athletes’ religious expression (at both private and public universities), the NCAA opted to unban kneeling in the endzone, and Liberty dropped the lawsuit. Player-led prayer fits into a unique position in the Establishment Clause debate, as the prayer is not delivered by any state employees, nor is the prayer broadcast via a medium that others would consider to be reflective of the state. While the Supreme Court considered prayers read at an official high school graduation and over the school PA system to be sponsored by the institution (*Lee v. Weisman*, 1992; *Santa Fe Independent School District v. Doe*, 2000), prayers delivered by students, who are not state actors, are unlikely to be construed as school-sponsored prayer. Rather, these acts of prayer are likely defined as private speech, which the Supreme Court has deemed permissible at public high schools and public high school-sponsored events.

The 2000 Supreme Court case *Santa Fe Independent School District v. Doe* illustrates the complexity and fleshes out the limitations of private speech. In the case, the Supreme Court determined that a student-chosen, student-led prayer delivered over the PA system at high school football games violates the Establishment Clause. While private prayer is allowed by students during school



and on school property, the pregame invocation crossed the line between private exercise and state-sponsored prayer, according to the Supreme Court:

The delivery of a message such as the invocation here—on school property, at school-sponsored events, over the school’s public address system, by a speaker representing the student body, under the supervision of school faculty, and pursuant to a school policy that explicitly and implicitly encourages public prayer—is not properly characterized as “private” speech. (*Santa Fe Independent School District v. Doe*, 2000, p. 310)

In this instance, the school’s multi-tiered involvement with the prayer activity, including the school-endorsed delivery of the prayer, transforms private speech into state-sponsored public speech, a violation of the Establishment Clause.

Even though the case focuses on high school prayer, *Santa Fe* provides a strong outline for understanding the distinction between private and public prayer, as well as the right of college athletes to participate in acts of student-run prayer. If student-led locker room prayer is conducted free of school entanglement, which was clearly not the case in *Santa Fe*, then the prayer can be considered private prayer. Since most acts of student-led locker room prayer are not given by school representatives, delivered over school announcement systems, or supervised by school staff, the prayers are almost certainly considered private prayer, making the prayer private and therefore permissible for collegiate student-athletes both alone and in groups. Since student-athletes are not state actors, they do not need to worry about their religious behavior acting as unconstitutional acts of public state-sponsored prayer. Furthermore, to protect students’ right to freely exercise their religion, schools need to ensure that private acts of religious expression are permitted, for forbidding student-athletes’ right to religious expression would be an unconstitutional violation of the Free Exercise Clause.

An interesting wrinkle in the private versus public characterization of student-led prayer occurs when private student-run prayer captures the eye of the university, entering the public sphere through university channels. For example, the University of Nebraska football team prayer outlined in the introduction is currently considered a cornerstone of the program, with the Nebraska athletics website describing the tradition as a “part of Nebraska’s DNA and a vital component of Husker tradition two decades later” (University of Nebraska Athletic Communications, 2014). The iconic prayer further became enshrined as a part of Nebraska lore after it was prominently featured on the pre-game tunnel walk hype video and displayed prior to the team taking the field, to the applause and adoration of the Husker faithful (neks4nebraska, 2008).

In *Santa Fe v. Doe*, an aggregation of school action coupled with the young age of those involved led to the determination of their prayer as state-sponsored



coercion, but can a state-sponsored university “spoil” a private act of prayer by making it public? One could argue that the public expression of the Nebraska prayer does not undo the private nature of the team prayer. In *Santa Fe*, the excessive state entanglement with the prayer, which was performed in public, supervised by school staff, and aligned with a pro-prayer school policy, transitioned a student’s prayer into a school-sponsored public act. While playing a recording of a prayer on the big screen at a public university football game may be an Establishment Clause violation akin to the offense found in *Santa Fe* (which will be discussed in further detail later), the prayer itself is still performed privately by student-athletes, who are non-state actors who are not following any prayer-focused school policies. In the Nebraska case, state entanglement is unclear in the student’s recitation of “The Prayer,” as it is not publicly recited, but the long-standing tradition of saying this specific prayer may be perceived as a stamp of approval by the school and the school provides the occasion of the prayer in scheduling football games. If every school or media-covered expression of prayer transformed private prayer into unconstitutional public prayer, student-athletes would be forced to keep their religious practices under wraps, a practice that would infringe on student-athletes’ right to religious free exercise. While it is unclear whether this type of traditional, student-led group, locker room prayer would trigger the establishment clause, public university student-athlete prayer could be considered private prayer, a type of prayer guaranteed and protected by the Constitution.

If student-athletes and high school students can participate in acts of private prayer, can their coaches do the same? The distinction between private and public prayer was the cornerstone of the Court’s argument in *Kennedy v. Bremerton School District* (2022), with the Court ruling that a high school coach, who was a state actor, can participate in quiet acts of private religious expression while on the job without the private speech becoming unconstitutional government speech. In the ruling, Justice Gorsuch outlines Coach Kennedy’s act of prayer as not “pursuant to government policy” nor one that “seek[ed] to convey a government created message,” rather, he engaged in a prayer as a “private citizen” during the post-game period where the staff “was free to engage in all manner of private speech” (*Kennedy v. Bremerton School District*, 2022, p. 17). Even though Kennedy’s prayer was in clear view of the public, and students prayed alongside the coach, these factors were not enough to turn the prayer into a government-sponsored message in the eyes of the majority of the Court. In fact, Gorsuch makes clear that restricting prayer in this instance would be “treating religious expression as second-class speech,” which would violate Kennedy’s constitutional right to Free Exercise (*Kennedy v. Bremerton School District*, 2022, p. 19).

While Gorsuch’s ruling characterizes Kennedy’s prayer as a private act of religious expression, Justice Sonia Sotomayor’s dissent criticizes the facts of the



case, arguing that Kennedy’s prayer was a government-sponsored endorsement of religion. Sotomayor highlights the fact that Kennedy “made multiple media appearances to publicize his plans to pray at the 50-yard line,” “held up helmets from [both teams] while players from each team kneeled around him,” during a period of time “when students are still on the football field, in uniform, under the stadium lights, with the audience still in attendance, and while Mr. Kennedy is still in his District-issued and District-logoed attire” (*Kennedy v. Bremerton School District*, 2022, p. 7). Sotomayor even includes a photo of the prayer in question, which depicts Kennedy holding both team’s helmets while flanked by players. This photo depicts Kennedy as a leader of prayer rather than a private practitioner, distinguishing Kennedy’s prayer as a public prayer leading high school students as the audience, rather than the quiet and private prayer described by Gorsuch. Figure 1 is a copy of the photograph included in Justice Sotomayor’s dissent.



The fact that Gorsuch’s opinion defines Kennedy’s act as a quiet and private prayer, and Sotomayor’s dissent provides evidence of facts that dispute this characterization of the coach’s behavior, makes it quite challenging to assess how the Court’s opinion would characterize acts of prayer by college coaches. The *Kennedy* ruling seems to greenlight private and quiet acts of prayer by coaches but leaves a grey area regarding coach-led prayer because of the discrepancy between the majority’s description of the prayer as an act of private religious expression when compared to the coach’s behaviors exhibited in Sotomayor’s photograph-enforced version of events. Would the Court permit acts of prayer



that are like Kennedy's actual prayer, but without the claims of private speech? Or would the Court forbid true coach-led prayer under the grounds that it is no longer private? *Kennedy v. Bremerton* provides more questions than answers on the topic of prayer by coaches, complicating and adding a lack of clarity to any analysis of coaches and prayer.

In both *Santa Fe* and in *Lee v. Weisman*, public prayer endorsed by high schools was deemed to violate the Establishment Clause, even though state/school employees did not deliver either prayer. One of the key legal principles in *Weisman* is the concept of coercion, with the Court highlighting high school students as especially vulnerable to coercion due to their young age and lack of maturity. In their ruling, the Court singles out high-school age adolescent teens, stating they are "often susceptible to peer pressure, especially in matters of social convention" (*Lee v. Weisman*, 1992, p. 578). While one could argue that college students are in a similarly formative state of mind and are, thus, vulnerable to the same types of coercion discussed in *Weisman*, the Supreme Court has not ruled specifically on coercion as it applies to college students, student-athletes, or adults. In past Establishment Clause cases, the Supreme Court has implemented the concept of coercion in conjunction with the Lemon Test, utilizing both to determine the constitutionality of a given law or act. In cases prior to *Kennedy v. Bremerton* (2022), the Court has been ambiguous as to how heavily they consider the Lemon Test when compared to the concept of coercion, making the cross-application of high school Establishment Clause cases to the college sphere somewhat challenging. Furthermore, the *Kennedy v. Bremerton* decision casts aside the Lemon Test in favor of the "reference to historical practices and understandings" standard (*Kennedy v. Bremerton School District*, 2022, p. 23). Therefore, to make a strong case both for and against the constitutionality of coach-led prayer, one must consider if and how the idea of religious coercion interacts with the new historical practices standard.

On the surface, the Supreme Court's ambiguity, and lack of decisive precedent regarding the definition of coercion, might seem puzzling, especially considering the prevalence of prayer on college campuses and in other state-run ceremonies. Even the recent *Kennedy* case generally skirts the idea of coercion, leaning heavily on the definition of the prayer as "private" and "quiet" to define the prayer as non-coercive (*Kennedy v. Bremerton School District*, 2022, p. 17, 27). There are tremendous religious liberty implications that come with a ruling on either side of state-sponsored prayer involving adults as potential targets of religious coercion. Because of the tough balance in maintaining the church-state separation of the Establishment Clause with the promise of religious freedom contained within the Free Exercise Clause, the Supreme Court's avoidance of a sweeping decision becomes understandable. Without Supreme Court guidance on the issue of



state-sponsored prayer directed at adults, we need to consult lower court rulings to understand how the justice system views instances of adult coercion.

In one lower court case, *Chaudhuri v. Tennessee* (1997), the U.S. Sixth Circuit Court of Appeals determined that Tennessee State University's non-sectarian prayer delivered during university events did not violate the Establishment Clause. Notably, the court determined that Dilip Chaudhuri, an adult college professor and Hindu practitioner who objected to the content of the non-sectarian prayers, is not subject to religious coercion. The court argues that a combination of the non-mandatory nature of the events and Chaudhuri's adulthood makes him resistant to the "peer pressure and 'subtle coercive pressure' that concerned the Court in *Lee [v. Weisman]*" (*Chaudhuri v. Tennessee*, 1997, p. 239). Chaudhuri's attendance at TSU's events was encouraged, but not mandatory, with the court stating that "TSU has represented without contradiction that it does not monitor faculty attendance at the university events in question and that no faculty member has ever been penalized for non-attendance" (*Chaudhuri v. Tennessee*, 1997, p. 239). The court also declared that "[no] unwilling adult listener would be indoctrinated by exposure to the prayers," outlining a belief that Chaudhuri's age serves as a shield, blocking out the indoctrinating aspects of public prayer (*Chaudhuri v. Tennessee*, 1997, p. 239).

Based upon the Chaudhuri case, coach-led prayer at the college level could be deemed permissible. In some situations, student-athletes could avoid instances of coach-led prayer, and coaches would have to "monitor" or "penalize" those who do not pray to violate the Establishment Clause (*Chaudhuri v. Tennessee*, 1997, p. 239). While some cases may possess strong claims of repercussions for non-compliance, like the eventually settled case involving New Mexico State's football staff engaging in Islamophobic behavior and attempting to convert Muslim student-athletes, many Establishment Clause claims (such as those in *Weisman* and *Chaudhuri*) do not involve such blatant retaliatory conduct (*Ali v. Mumme*, 2007). Even if student-athletes objected to the prayers, most student-athletes would be deemed "unwilling adult listeners" who are more resistant to religious indoctrination, reducing the coercive nature of coach-led prayers (*Chaudhuri v. Tennessee*, 1997, p. 239). However, *Chaudhuri* is a poor parallel for assessing student-athlete coercion. While many student-athletes are legal adults, they face a unique breed of coercion in a team-based environment, as their playing time and scholarship money is contingent on establishing and maintaining a good rapport with their coaches. In *Chaudhuri*, no administrative officials, nor anyone in a significant position of power over *Chaudhuri*, was observing or monitoring his attendance, contrary to the significant power dynamic present in the player-coach relationship. When considering Establishment Clause implications, the complicated player-coach relationship present in college athletics is ripe for



coercion, potentially distinguishing student-athletes from the adult public.

While the *Chaudhuri* case did not address the role of power imbalances in the creation of coercion, these factors are central to the ruling in another circuit court case, *Mellen v. Bunting* (2003). In this case, the U.S. Fourth Circuit Court of Appeals ruled Virginia Military Institute's (VMI) suppertime prayer a violation of the Establishment Clause, due in part to the uniquely coercive environment present at VMI (*Mellen v. Bunting*, 2003). Since VMI is a military school in which, according to the court, "obedience and conformity [are] central tenets," the prayer takes on an elevated level of coercion that violates the Establishment Clause (*Mellen v. Bunting*, 2003, p. 371). Additionally, while cadets could theoretically avoid the dining hall to avoid the prayer as eating in the dining hall is not mandatory, the court believes that "VMI cannot avoid Establishment Clause problems by simply asserting that a cadet's attendance at supper and his or her participation in the supper prayer are 'voluntary,'" since "members of the Corps are trained to participate in VMI's official activities" (*Mellen v. Bunting*, 2003, p. 372). To hammer home their point, the court quotes the prevailing opinion in *Santa Fe* when describing the coercive powers of peer pressure, stating that "the government may no more use social pressure to enforce orthodoxy than it may use more direct means" (*Mellen v. Bunting*, 2003, p. 372).

When compared to the *Chaudhuri* case, *Mellen* provides a much stronger parallel to the unique power dynamics that take place in the college athletics sphere. Just as obedience and conformity are central to VMI, these same traits are desired and coveted in football locker rooms, placing college athletes at high risk for coercion. To succeed in the team-based environment of college sports, student-athletes are expected to listen to and learn from their coaches, with playing time often going to those who are best able to fit their coach's desired physical and mental style of play. Furthermore, coaches at some institutions have tremendous control over the yearly renewal of student-athletes' scholarships, placing student-athletes' financial security in the hands of their coaches. The potential threat of losing thousands of dollars of educational funding is yet another powerful incentive for players to gain the favor of coaching staffs. A student-athlete's need to please their coach places "obedience and conformity" at the forefront of a student-athlete's thinking, placing them in a similar situation to the cadets at VMI (*Mellen v. Bunting*, 2003, p. 371).

Mellen also attacks the defense of prayer as a voluntary, and therefore, optional practice, citing *Santa Fe's* instance that social pressure, rather than the mandatory or voluntary designations, dictate an event as truly mandatory or voluntary. The focus on social pressure to determine coercion is especially pertinent in the field of college athletics, where coaches are well-versed in using the guise of "voluntary" to compel their athletes to perform certain tasks that are not permitted to



be mandatory, like extra practices or weightlifting sessions. The court in *Mellen* is aware of this brand of coercive tactic and realizes that power dynamics, rather than designations, dictate the importance of participating in a certain act. Based upon the definition of coercion as laid out by both the Supreme Court in *Santa Fe*, as well as the Fourth Circuit in *Mellen v. Bunting*, the power imbalance in the coach to student-athlete relationship makes acts of coach-led prayer inherently coercive and non-voluntary.

However, *Kennedy v. Bremerton's* “long constitutional tradition” standard adds a wrinkle to the constitutionality of coach-led prayer (*Kennedy v. Bremerton School District*, 2022, p. 29). Clearly, there is no specific mention in the Constitution of coach-led prayer (nor any other type of prayer); however, does Gorsuch’s characterization of Coach Kennedy’s prayer as a “diverse expressive activit[y] [which] has always been a part of learning how to live in a pluralistic society” potentially apply to other instances of coach-led prayer (*Kennedy v. Bremerton School District*, 2022, p. 29)? While “diverse expressive activities” seems generally broad and inclusive, the Court’s ruling was based on an act defined as an instance of private prayer, in which the coach was adjudged to have engaged in an act of personal devotion, rather than one with the goal of influencing others (*Kennedy v. Bremerton School District*, 2022, p. 29).

The private versus public prayer distinction would seem to shoot down the use of *Kennedy v. Bremerton* (2022) as precedent when addressing the public nature of most instances of coach-led prayer, yet, the Court’s designation of a prayer in which Coach Kennedy was holding both teams’ helmets aloft while speaking to the group as an act of private, rather than public, prayer makes the broadness of the court’s definition of private prayer unclear (*Kennedy v. Bremerton School District*, 2022, p. 5). Despite the lack of clarity regarding private versus public prayer, instances like the prayer in *Mellen v. Bunting* or where coaches lead their players in locker room prayer would still almost certainly constitute unconstitutional violations of the Establishment Clause, as these practices are delivered by employees who are state actors and are directed at student audiences. Gorsuch enforces this idea in his ruling, arguing that Kennedy did not “seek to direct any prayers to students or require anyone else to participate,” making his prayer a constitutional private religious exercise, logic that casts doubt on the constitutional permissibility of coach-led prayer (*Kennedy v. Bremerton School District*, 2022, p. 26).

Prior to the *Kennedy* case, coach-led prayer would almost certainly fail the Lemon Test and be perceived as coercive to student-athletes, making the prayer an unconstitutional practice that violates the Establishment Clause. The *Kennedy* ruling adds significant ambiguity to the constitutionality of coach-led prayer, as it is difficult to interpret exactly how the court would rule after casting aside the



Lemon Test. However, based on Gorsuch's differentiation between Kennedy's "proposal to pray quietly" and other acts that "direct any prayers to students or require anyone else to participate," we can conclude that coach-led prayer of student-athletes likely remains an unconstitutional violation of the Establishment Clause (*Kennedy v. Bremerton School District*, 2022, p. 26).

While past Supreme Court precedent and appellate court rulings support finding coach-led prayer at public colleges to be unconstitutional, critics of these rulings like Clayton Adams believe that adults are unable to be coerced and that coaches' acts of prayer are not "officially endorsed" by their institutions, even if the coach is on the job (Adams, 2015, pp. 27, 37). To argue his point, Adams focuses on the Supreme Court's findings in *Town of Greece v. Galloway* (2014), in which the Court deemed a prayer delivered prior to a legislative session to be constitutional. Adams cites *Town of Greece* as "the most appropriate approach for assessing the validity of Establishment Clause violations at the university level," drawing a parallel between the Court's position on adult coercion in *Town of Greece* and the potential constitutionality of coach-led prayer (Adams, 2015, p. 25).

In the *Town of Greece* case, the Supreme Court leans heavily on the idea of the traditional aspects of legislative prayer being sufficient to overcome the potentially coercive effects of the prayer, stating:

It is presumed that the reasonable observer is acquainted with this tradition [of legislative opening prayer] and understands that its purposes are to lend gravity to public proceedings and to acknowledge the place religion holds in the lives of many private citizens, not to afford government an opportunity to proselytize or force truant constituents into the pews. (*Town of Greece v. Galloway*, 2014, p. 583)

The Court also cites that the United States' founding fathers permitted similar legislative prayers as evidence of the Town of Greece's prayers' constitutionality, arguing:

From the earliest days of the Nation, these invocations have been addressed to assemblies comprising many different creeds. These ceremonial prayers strive for the idea that people of many faiths may be united in a community of tolerance and devotion. Even those who disagree as to religious doctrine may find common ground in the desire to show respect for the divine in all aspects of their lives and being. (*Town of Greece v. Galloway*, 2014, p. 584)

Since pre-legislative session prayers are a timeless tradition that was, at minimum, deemed permissible by the founders, the Court determined that the nature of the tradition prevents the prayer from being understood as a tool to push religion. By choosing to refer to the prayer as "ceremonial prayer," the Court indicates the value of prayer for providing an air of sacred reverence to



legislative sessions, rather than as a vehicle to spread or push faith. *Kennedy v. Bremerton* cites *Town of Greece* in their ruling, with the latter case forming the basis for the new “historical practices and understandings” standard that replaces the Lemon Test (*Kennedy v. Bremerton School District*, 2022, p. 23). The court ruled that Coach Kennedy’s prayer met this new standard, as the prayer was the historical practice of the “long constitutional tradition under which learning how to tolerate diverse expressive activities has always been a part of learning how to live in a pluralistic society” (*Kennedy v. Bremerton School District*, 2022, p. 29). Does this same logic apply to prayers that exist in the college athletics space?

Both rationales for the Court’s decision struggle in their cross application to coach-led prayer, as the religious exercises are not deeply rooted in founder-blessed tradition and fail to fall under the private prayer umbrella set by the *Kennedy* case. While one may be able to argue that some level of tradition is involved in coach-led prayer, no founder-blessed precedent to prayer exists in the athletics realm. Considering the tremendous weight that the founders’ opinions hold in Supreme Court rulings, including in *Town of Greece*, one cannot extrapolate a similar ruling in a case that lacks the founders’ insight. Justice Samuel Alito enforces this point of view in his concurrent opinion in *Town of Greece*, responding to the dissent’s worry that the ruling clears the way for the oppression of religious minorities, stating: “All that the Court does today is to allow a town to follow a practice that we have previously held is permissible for Congress and state legislatures. In seeming to suggest otherwise, the principal dissent goes far astray” (*Town of Greece v. Galloway*, 2014, p. 603). While concurrent opinions are not considered precedent, Alito’s words offer a strong overt reinforcement of the limits of the Court’s ruling, illuminating the specificity of the case and casting doubt on the ruling’s applicability to non-legislative contexts.

These limitations are slightly expanded outside of direct founder endorsement in *Kennedy v. Bremerton*, which considers the “long constitutional tradition [of] learning how to tolerate diverse expressive activities,” expanding the *Town of Greece* ruling beyond its original scope of legislative prayer (*Kennedy v. Bremerton School District*, 2022, p. 29). Despite this, as outlined previously, this expansion of the *Town of Greece* ruling applies to instances of private religious expression, rather than student-directed prayer. Gorsuch emphasizing that Coach Kennedy did not “direct any prayers to students or require anyone else to participate” appears to exclude instances of coach-led prayer from the new, expanded utilization of the *Town of Greece* ruling (*Kennedy v. Bremerton School District*, 2022, p. 26).

While a strong case can be made that coach-led prayer on its own violates the Establishment Clause, some coaches actively embed religion into many aspects of their programs, encouraging their players to form a deep connection with Christ. For example, several college football programs including those at



the University of Tennessee, Auburn University, and Clemson University hire “team chaplains,” who provide Christian (and only Christian) religious services to players and often lead their teams in prayer. According to the Freedom From Religion Foundation, which investigated the use of team chaplains, the chaplains are often paid by universities and receive compensation to travel and eat with their teams, indicating that these chaplains are state actors (Seidel et al., 2015). The increased presence of team chaplains at public institutions can be linked to a concerted effort from the Fellowship of Christian Athletes, as well as a pair of coaches, Bobby Bowden, the now deceased patriarch of Florida State University football, and Tommy Tuberville, an ex-Auburn football coach who is now a U.S. Senator (Seidel et al., 2015).

When Bowden was confronted on Fox News asking if he would change his stance on team chaplains after the removal of a high school team chaplain due to a potential Establishment Clause lawsuit, Bowden stated: “I did it [hired chaplains] anyway at Florida State. I don’t care about political correctness; I want to be spiritually correct, because that’s where we will spend eternity” (*Fox & Friends*, 2014). Bowden’s statement highlights how the hiring of chaplains possesses tremendous coercive potential, as he believes chaplains are essential to the spiritual salvation of his student-athletes who may or may not share Bowden’s spiritual goals, potentially placing his athletes in an ethical dilemma of visiting the Bowden-approved chaplain or risking alienating the coach through spiritual non-compliance. Furthermore, the quote displays how chaplains are hired to overtly advance religion, as Bowden explicitly hired his chaplains to save his student-athletes, ignoring the potential unconstitutionality of his actions in favor of furthering his personal religious mission onto his student-athletes. Despite Bowden admitting his intention for hiring chaplains, the question stands, would legal precedent deem the religious actions of chaplains at public universities to be an Establishment Clause violation?

Based upon the legal decisions outlined when analyzing coach-led prayer, chaplain-led religious activities constitute a clear Establishment Clause violation. When chaplains implement religion into football programming, their acts clearly violate that the “principal or primary effect must be one that neither advances nor inhibits religion” and “excessive government entanglement with religion” arms of the Lemon Test (*Lemon v. Kurtzman*, 1971, pp. 612–613). The actions of chaplains also fail the recently prioritized “historical practices and understandings” standard, as the acts are not private acts of prayer, but rather are “prayers directed to students” delivered by an employee hired with the explicit purpose of providing religious guidance (*Kennedy v. Bremerton School District*, 2022, pp. 23, 26). While coaches could conceivably argue that team chaplains achieve the secular aim of instilling their squads with strong moral guidance, sports psychologists



and counselors serve similar aims without advancing religion. Chaplains also heighten the level of coercion present within a program, as the active presence and religious teachings provided by chaplains identify the athletic program as distinctly religious in nature, illegally encouraging student-athletes to adopt the religious ideals to feel a part of the team, with the risk of alienation if the student-athletes choose not to participate.

In some unique situations, the courts have permitted chaplains in government-controlled settings. While the Supreme Court permitted state-funded chaplains in legislative settings in *Marsh v. Chambers*, those chaplains were a vital piece of founder-endorsed tradition, a determination identical to the Court's allowing of legislative prayer in *Town of Greece*. The court in *Marsh* stated:

Clearly the men who wrote the First Amendment Religion Clauses did not view paid legislative chaplains and opening prayers as a violation of that Amendment, for the practice of opening sessions with prayer has continued without interruption ever since that early session of Congress. (*Marsh v. Chambers*, 1983, p. 788)

Contrary to the chaplains in *Marsh*, the Christ-centered chaplains working within football programs are not performing a founder-endorsed solemnization of a formal occasion, but rather are engaging in the advancement of Christianity with regular prayer sessions and religious guidance (*Marsh v. Chambers*, 1983). Since the founders did not speak specifically on hired chaplains in public education, to cross-apply the *Marsh* ruling to cases involving college football chaplains would be a mistake.

Chaplains are also important figures in other governmental institutions like the military. Although the Supreme Court has yet to rule on military chaplains, the Second Circuit Court of Appeals ruled in favor of military chaplains in *Katcoff v. Marsh* (1985). In this case, the court recognized that while state-funded military chaplains may violate the Establishment Clause, their presence is necessary to recognize the Free Exercise rights of military personnel, a reasonable conclusion considering that soldiers frequently have limited access to religious services (*Katcoff v. Marsh*, 1985). College athletes are not in a warzone or forbidden from leaving base, placing them in a distinctly different situation than the armed forces. If a college athlete wishes to join a religious community, they have the freedom to attend a nearby church, join the Fellowship of Christian Athletes, or become a part of a religious club on campus, three commonly accessible means of legally permissible religious expression. Unlike the armed forces, student-athletes do not require special accommodation to achieve religious expression and, thus, do not require chaplain support to achieve free exercise.

Coach-led prayer and the hiring of a chaplain both state a program's willingness to center their program around the teachings of Christ, but some coaches



take things one step further, engaging in proselytization on the job. For example, Dabo Swinney at Clemson involves faith at the highest level, publicly baptizing players after practice. During his time in college, famed NFL receiver DeAndre Hopkins was baptized in front of his team post-practice, with Clemson's receivers coach calling the event the "highlight of his week" (Smith, 2012). Baptism crosses a line in the debate surrounding the Establishment Clause, transcending the relatively passive practice of prayer in favor of overt proselytization through the display and celebration of religious conversion, a blatantly clear violation of the Establishment Clause.

Proselytization is not typically considered in most court cases concerning the Establishment Clause, as the religious actions in the cases are generally related to prayer or subtle religious messaging and rarely rise to the level of converting others. The Supreme Court's ruling in *Marsh v. Chambers* describes proselytization as unconstitutional, stating "[t]he content of the prayer is not of concern to judges where, as here, there is no indication that the prayer opportunity has been *exploited to proselytize or advance any one*, or to disparage any other, faith or belief" [emphasis added] (*Marsh v. Chambers*, 1983, p. 794). In the eyes of the Supreme Court, acts of proselytizing are considered to advance religion in a manner that violates the Establishment Clause. Even Clayton Adams's work, which argues for the constitutionality of coach-led prayer through the lens of the Court's ruling in *Town of Greece*, cites Swinney's baptisms as crossing the line: "When student athletes are forced to attend a baptism or similar act of religious worship whether they wish to or not, the instance rises to the level of a clear Establishment Clause violation" (Adams, 2015, p. 23). Acts of proselytization are iron-clad violations of the Establishment Clause, as they unmistakably coerce student-athletes, forcing them to practice a chosen faith or resist, straying far from any historical tradition or practice.

The final type of prayer that permeates college football environments is prayer in the stands, which is typically led over the PA system to the tens of thousands of fans in attendance. While many private institutions announce pre-game prayers at their contests, public colleges and universities must carefully weigh the Establishment Clause implications of publicly recited prayers. Other than Nebraska's use of "The Prayer" in pregame video content, another institution that is notorious for their pregame invocations is the University of Tennessee, which once thanked the Lord for their new coach in a pregame prayer after the conclusion of the disappointing tenure of the prior head coach (Kirk, 2013). Prayer in the stands presents an intriguing series of Establishment Clause questions that center around the concepts of coercion and ceremonial prayer. Is a pregame invocation a non-coercive act of ceremonial respect, setting the tone for the evening, or are pregame invocations acts of unconstitutional and coercive prayer?



Firstly, prayer that is instigated among fans in attendance is certainly permissible, as public universities have no right to restrict acts of private prayer. Fans attending games are not acting on the official behalf of the university and, therefore, do not have to worry about their acts of prayer representing state action. For example, if a group of fans feels compelled to recite the Lord's Prayer, and others join in, the act of prayer would be a permissible private prayer. If the prayer is read over the PA system, a university-run and controlled system, the situation shifts, as public colleges are state actors and must ensure that their speech does not violate the Establishment Clause. While the Supreme Court has not ruled on an Establishment Clause case regarding a PA system prayer in a collegiate setting, the Court deemed this type of prayer unconstitutional at the high school level in *Santa Fe*. Understanding the rationale behind the *Santa Fe* ruling is essential to analyzing the ability to apply *Santa Fe* to collegiate prayer.

The Supreme Court's initial determination in *Santa Fe* is that the prayer expressed over the PA system is no longer private prayer, as excessive institutional entanglement is present in the prayer reading. According to the Court, the fact that the prayer was given "on school property, at school-sponsored events, over the school's public address system, by a speaker representing the student body, under the supervision of school faculty, and pursuant to a school policy that explicitly and implicitly encourages public prayer" transforms the PA system prayer into a state-sponsored public prayer (*Santa Fe Independent School District v. Doe*, 2000, p. 310). Based upon this ruling, PA system prayers would likely be ruled as unconstitutional violations of the Establishment Clause.

In another aspect of their ruling, the Supreme Court also rejected the *Santa Fe School District's* claim that coercion was not present in the prayers, as the events were voluntary, hence students could avoid the prayers if necessary. The Court disagreed with the school's argument, referencing "cheerleaders, members of the band, and [football] team members" who must attend games, with some of those students receiving class credit for their participation (*Santa Fe Independent School District v. Doe*, 2000, p. 311). Furthermore, the Court invokes the social pressure to attend a high school football game as sufficient to create coercion, stating: "The Constitution demands that schools not force on students the difficult choice between attending these games and avoiding personally offensive religious rituals" (*Santa Fe Independent School District v. Doe*, 2000, p. 292). In the eyes of the court, even those for whom the game is not mandatory are still deserving of Establishment Clause protections due to the "immense social pressure" to attend high school football contests (*Santa Fe Independent School District v. Doe*, 2000, p. 311).

In college football environments, countless individuals are forced to attend games in addition to those mentioned in *Santa Fe*, including university



employees, contracted security and concessions workers, and police and emergency services. Additionally, the fun gameday party environment present at college football games makes them the “place to be” on Saturdays, as evidenced by the massive student sections in stadiums all around the country. The tremendous buzz and hype surrounding these events makes attending college football games a source of social pressure, in line with the Court’s definition of high school football games. Based upon the reasoning used by the Court in *Santa Fe*, announced pregame prayers at college football games would likely be considered coercive, and therefore a violation of the Establishment Clause.

Kennedy v. Bremerton complicates the designation of announced pregame prayers as unconstitutional: are they part of the “diverse expressive activities [which] has always been a part of learning how to live in a pluralistic society” that justified Kennedy’s prayers (*Kennedy v. Bremerton School District*, 2022, p. 29)? In the same vein as coach-led prayer, the key is that announced prayers are instances of public prayer that are delivered for the express purpose of “directing prayers to students,” a practice that Gorsuch calls out as in contrast to the content of Kennedy’s private prayer (*Kennedy v. Bremerton School District*, 2022, p. 26). Therefore, the court’s ruling in *Kennedy v. Bremerton* should have no effect on announced prayers, which continue to be coercive violations of the Establishment Clause.

In *Santa Fe*, high school students were the group being faced with coercion, whereas college students, adult fans, and other employees are the subjects of coercion in collegiate stadium prayer. Does the increased age of the individuals in question make them unable to be coerced? This is not necessarily the case, as the Court in *Santa Fe* chooses to focus on the coercive elements of the situation, rather than the age of those impacted by the prayer. While the Court’s opinion mentions “immense social pressure,” “truly genuine desire,” and “difficult choice[s]” as contributors to coercion, the Court neglects to hone in on age as a similarly significant factor for coercion (*Santa Fe Independent School District v. Doe*, 2000, p. 292). By defining coercive behavior as the acts, rather than the characteristics of the prayer’s targeted audience, the Court leaves the door open for *Santa Fe* to be applied in a broad context, including in the collegiate space.

While *Chaudhuri* argues the opposite point, stating that “[no] unwilling adult listener would be indoctrinated by exposure to the prayers” present in their graduation ceremonies, the case was argued before *Santa Fe* and in a lower court (*Chaudhuri v. Tennessee*, 1997, p. 239). These facts, coupled with the absence of truly mandatory participants in the *Chaudhuri* prayer, (although *Santa Fe* would argue that graduation events emanate social pressure to attend) highlights how the *Chaudhuri* ruling has a limited scope in evaluating the constitutionality of PA system prayer. Therefore, based on the rhetorical argument present in *Santa Fe*,



and an analysis of the details of the *Kennedy* ruling, PA system prayer at public college football games is a violation of the Establishment Clause and should be omitted from the gameday experience at public colleges and universities.

While a strong argument can be made that coach-led prayer, team-appointed chaplains, and acts of proselytization in public university locker rooms violate the Establishment Clause, a high-profile Establishment Clause case has not yet emerged against a college coach or university that endorses or permits religious behavior. Presenting legal challenges to unconstitutional religious acts is difficult, as only those who have standing are permitted to sue, potentially eliminating cases from consideration in which an athlete, coach, or chaplain had since departed the institution. While the Freedom From Religion Foundation strongly disagreed with Swinney's prayer practices, the FFRF acknowledged in an interview with right-leaning media outlet Breitbart, "Without a player that's willing to challenge [the football program in court], I don't think there would be any legal action that could be taken" (Leahy, 2016). To file an Establishment Clause suit against a coach, student-athletes directly affected by the prayer would need to step forward, a move that would likely be career-ending. A current player would be highly unlikely to file a case even if he transferred to another institution for fear of being labeled a distraction, while past players are unlikely to file unless the coach engaged in life-changing religious oppression.

Beyond the negative ramifications that can arise from suing one's current or former coach, the media firestorm that would proceed a suit is a significant deterrent to any past players who may be inclined to file a suit. If, for example, a current or former student-athlete sued an athletically successful institution with a famed head coach like Clemson University, the individual would be subject to tremendous media attention, both positive and negative. Right-leaning news organizations would likely run stories on the student-athlete and the suit, fitting the commonly utilized "war on Christianity" narrative all too well. The student-athlete would also likely be forced to endure threats on social media, meaning they would essentially need to be willing to become a social martyr to challenge the status quo, a high bar that discourages those from suing.

Additionally, the current conservative makeup of the Supreme Court and district courts in the southern United States (where the vast majority of coach-led prayer occurs) may make a victory unlikely for those who claim Establishment Clause violations (Pratt School of Information, n.d.). Many conservative-leaning judges and justices utilize what constitutional scholar Erwin Chemerinsky calls the "accommodation approach" to the Establishment Clause, judging that the government should "accommodate religion by treating it the same as nonreligious beliefs and groups; the government violates the Establishment Clause only if it establishes a church, coerces religious participation, or favors some religions



over others” (Chemerinsky, 2015, p. 1263). *Kennedy v. Bremerton* is an example of the accommodation approach in action, with Gorsuch highlighting the need to avoid “treating religious expression as second-class speech,” as part of the rationale behind the Court’s ruling in favor of Kennedy (*Kennedy v. Bremerton School District*, 2022, p. 19).

The accommodationist approach would not inherently lead to ruling coach-led prayers as constitutional, but most conservative justices combine these standards with a strict definition of coercion, in which the act in question must “require [religious practice] and punish the failure to engage in religious practices” (Chemerinsky, 2015, p. 1264). To meet this lofty standard, plaintiffs would need to prove both the required nature of the practice, as well as actual punishment that would occur from a lack of participation in said practice. Had this mindset been in the majority in *Santa Fe* and *Mellen*, both acts of prayer would have been deemed constitutionally permissible, as documented punishment was not found to be present for nonparticipation in the religious activity at a school function of which attendance was not strictly required. Filing and losing a Supreme Court case also has the potential to set a precedent in opposition to the plaintiff’s intention. Given that the Supreme Court has already transitioned away from the Lemon Test in *Kennedy v. Bremerton*, deeming the actions of a coach who prayed alongside his players as an act of constitutionally acceptable private prayer, it appears to be an incredibly unlikely time for an Establishment Clause suit against a college athletics coach.

For those reasons, any successful suits against coaches or schools who violate the Establishment Clause are unlikely to take place. However, a lack of lawsuits does not mean that coaches and institutions should not be held accountable for violating the Establishment Clause. Athletic administrators need to be aware of the role of religion in each of their programs and understand that even if direct complaints are not filed against coaches, student-athletes’ college experiences can be adversely altered by unconstitutional religious activity. Setting department-wide standards on the use of religion in team and gameday settings is a good place to start for an athletics department that strives to create an inclusive and welcoming atmosphere. Establishing limits, while simultaneously ensuring that athletic teams have access to sports psychologists and counselors, ensures that teams receive the type of strong emotional support that coaches seek to provide through religious messaging.

Furthermore, administrators should encourage coaches to direct players who are seeking a religious or spiritual experience to organizations available within the local community. This allows student-athletes to freely exercise their right to practice their religious beliefs without the program forcing them to engage in a team-related religious practice. College athletics professionals and administrators



hold the critical role of ensuring that the First Amendment rights of their students are protected, for no college athlete or sports fan should feel forced to participate in a religious practice of which they do not endorse or believe.

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