# Them's Fighting Prayers

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## INTRODUCTION

Disrespect. That was the word that defined the day after a series of incidents preceding and following the University of Iowa Hawkeyes' (UI) football victory over the University of Nebraska Cornhuskers (NU) on November 29, 2024. Verbal jabs and taunting were certainly familiar to the series prior to the 2024 contest.[1] But that year, Iowa officials may have had reason to believe that hostilities would escalate due to NU's pregame prayer, which other teams and fanbases had described as an attempt to intimidate and disrespect their opponents.[2] Allowing the NU team to pray on top of the midfield logo could spark a violent confrontation, as it had in two previous games. Iowa directed Nebraska to pray in the end zone instead and deployed seven-armed state troopers to the midfield logo.[3] These weren't just prayers; they were fighting prayers.

For those less acquainted with the idiosyncrasies of sports, the consternation over a midfield logo may seem absurd. While midfield logos are part of the playing surface and thus are regularly trampled over the course of any game, they are often utilized as props for visiting teams to demonstrate disrespect and/or domination of their

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1. Iowa and Nebraska only played sparingly prior to NU joining the Big Ten conference in 2011. The league designated Iowa, the school in closest geographic proximity to Nebraska, as its rival and scheduled their series as the annual season finale each year, with games played on Black Friday during what is colloquially known in college football as "Rivalry Week." The teams and fanbases did not show significant animosity towards one another until, following a Huskers victory in 2014, then Nebraska Athletic Director Shawn Eichorst fired the NU head football coach, stating that, while it was good for his team to end the season with a victory, he "had to evaluate where Iowa was." The comments particularly irritated Iowa, whose team and fans felt the comments demonstrated that Nebraska thought itself plainly superior. Subsequently, Iowa won nine of the next ten games against NU, including the 2024 contest, with several games decided in the final moments and including instances of Iowa players making fun of Nebraska's team—including a kicker blowing kisses at the NU sideline following a game winning field goal, and Iowa players wishing Husker players "Merry Christmas" in 2023 when the loss to Iowa guaranteed that NU would be ineligible for a bowl game during the holidays. *See, e.g.*, Scott Dochterman, *Iowa's Torment of Nebraska Continues, Ten Years After the Words that Planted the Rivalry's Seed*, THE ATHLETIC (Nov. 30, 2024), https://www.nytimes.com/athletic/5958432/2024/11/30/iowa-nebraska-rivalry-history-shawn-eichorst/ [https://web.archive.org/web/20250919141748/https://www.nytimes.com/athletic/5958432/2024/11/30/iowa-nebraska-rivalry-history-shawn-eichorst/]; Mitch Sherman, *Nebraska Repaid the Disrespect Against Iowa. Spare Us the Insincere Audacity*, THE ATHLETIC (Nov. 30, 2024), https://www.nytimes.com/athletic/5958215/2024/11/30/nebraska-iowa-college-football-hand-shake [https://web.archive.org/web/20251004120239/https://www.nytimes.com/athletic/5958215/2024/11/30/nebraska-iowa-college-football-hand-shake/].

2. Josh Tolle, *Matt Rhule Lied About Nebraska Trying to Pray with Shedeur Sanders,* SPORTS ILLUSTRATED (Sep. 12, 2023), https://www.si.com/college/colorado/buffs-stuff/matt-rhule-lied-about-nebraska-trying-to-pray-with-shedeur-sanders [https://perma.cc/3EKH-JEUK?type=image].

3. McKenzy Parsons, *Iowa Defeats Nebraska in Last Seconds of Game to Keep the Heroes Trophy*, KETV 7 OMAHA (Nov. 29, 2024), https://www.ketv.com/article/iowa-defeats-nebraska/63055108 [https://web.archive.org/web/20251103172628/https://www.ketv.com/article/iowa-defeats-nebraska/63055108] ("The Huskers tried to meet in the middle of the field, but police kept them off the Hawkeye logo.").

opponent. In 2018, a pregame altercation between the University of Michigan and Michigan State University ended with University of Michigan running back Devin Bush using his cleats to dig divots in the Michigan State midfield logo.[4] Pregame logo incidents have also caused controversy in the NFL, where in 2020 the Tennessee Titans held a pregame meeting on the Baltimore Ravens logo,[5] and in 2021, the Las Vegas Raiders held a team meeting at midfield prior to their game against the Kansas City Chiefs.[6] In college football, displays on midfield logos are more common after games, and often escalate into violence. In fact, the day after Iowa prevented Nebraska from performing their prayer at midfield, at least four postgame brawls resulted from visiting teams celebrating on the opponent's midfield logo.[7] In one of those, a fight beginning after Michigan players planted a flag in Ohio State's logo, the brawl became so intense that police deployed pepper spray against the two teams.[8]

The restriction of players' and coaches' prayer at midfield of a football stadium bears similarities to the facts of the now infamous *Kennedy v. Bremerton School District*, which was decided by the Supreme Court in 2022.[9] In *Kennedy*, a high school football coach began praying at midfield following home football games. Over time, players joined the coach's prayer and the prayers morphed into motivational speeches which often included religious rhetoric.[10] When the school district, concerned that these speeches may represent an Establishment Clause violation, demanded the coach cease his

4. Phil Friend, *Devin Bush, Jim Harbaugh Get Under Michigan State's Skin with "Childish" Antics*, DETROIT FREE PRESS (Oct. 20, 2018), https://www.freep.com/story/sports/college/msu/football/2018/10/20/michigan-state-michigan-mark-dantonio-jim-harbaugh-devin-bush/1686584002/ [https://web.archive.org/web/20250919151335/https://www.freep.com/story/sports/college/msu/football/2018/10/20/michigan-state-michigan-mark-dantonio-jim-harbaugh-devin-bush/1686584002/].

5. Adam Mays, *John Harbaugh, Mike Vrabel Exchange Words After Titans Gather at Ravens Logo*, NFL.COM (Nov. 22, 2020), https://www.nfl.com/news/john-harbaugh-mike-vrabel-exchange-words-after-titans-gather-at-ravens-logo [https://web.archive.org/web/20250919154507/https://www.nfl.com/news/john-harbaugh-mike-vrabel-exchange-words-after-titans-gather-at-ravens-logo].

6. Randy Oliver, *Raiders Hold Disrespectful Team Meeting on Chiefs Logo Pregame, Promptly Lose 48–9*, DAILY SNARK (Dec. 12, 2021), https://dailysnark.com/2021/12/12/raiders-hold-disrespectful-team-meeting-on-chiefs-logo-pregame-promptly-lose-48-9/ [https://web.archive.org/web/20250919155426/https://dailysnark.com/2021/12/12/raiders-hold-disrespectful-team-meeting-on-chiefs-logo-pregame-promptly-lose-48-9/].

7. David K. Li & Carla Kakouris, *Ohio State, Michigan, North Carolina, and N.C. State Among Schools Fined After Rash of Football Brawls*, NBC NEWS (Dec. 2, 2024), https://www.nbcnews.com/sports/college-football/big-ten-fines-michigan-ohio-state-wake-wild-brawl-scuffles-erupt-colle-rcna182454 [https://web.archive.org/web/20250919155809/https://www.nbcnews.com/sports/college-football/big-ten-fines-michigan-ohio-state-wake-wild-brawl-scuffles-erupt-colle-rcna182454].

8. Nick Bromberg, *Michigan Stuns No. 2 Ohio State 13–10 Before a Massive Postgame Brawl at Midfield*, YAHOO! SPORTS (Nov. 30, 2024), https://sports.yahoo.com/michigan-stuns-no-2-ohio-state-13-10-before-a-massive-postgame-brawl-at-midfield-202748205.html [https://web.archive.org/web/20251004165934/https://sports.yahoo.com/michigan-stuns-no-2-ohio-state-13-10-before-a-massive-postgame-brawl-at-midfield-202748205.html].

9. 597 U.S. 507 (2022).

10. *Id.* at 515.

midfield prayers, he filed suit.[11] The Court ruled that the school had violated the coach's First Amendment rights by prohibiting his postgame prayer.[12] Similarly, the Court has previously ruled that collective prayer and religious worship are forms of both speech and association, making them protected under the Free Speech and Free Exercise Clauses of the First Amendment.[13] This has widely been interpreted to extend to the public religious expression of athletes at the sports facilities of public educational institutions.[14] However, unlike the coach's prayer in *Kennedy*, the restrictions by Iowa were not related to concerns about the Establishment Clause, but rather fear that the Cornhuskers' prayer would cause a violent altercation between the two teams as it had twice before.

In this article we seek to address the unusual combination of concerns highlighted by Nebraska's use of an opponent's midfield logo for its pregame prayer ritual and Iowa's deployment of state police to stop that prayer. This is not to say we know that UI officials' rationale for limiting the NU prayer was necessarily related to its history and concerns over violence. Rather, our objective is to explore how sportsmanship, field security, and free exercise may coalesce in a legal setting for the purpose of understanding how policies may better balance those three concerns. In so doing, we revisit the *Kennedy* decision to examine how the ruling may impact speech restrictions in public sports facilities more broadly, with the intent of providing general policy recommendations for operators of those public facilities. We begin by reviewing the details of the events leading up to and resulting from UI officials restricting the NU prayer. Next, we review the Supreme Court's ruling in *Kennedy*, focusing our analysis on the factual parallels between that case and the conflict between Iowa and Nebraska. In our analysis, we identify and evaluate three key questions in determining whether Iowa violated the Constitutional rights of the NU team if it had prohibited the prayer based on concerns that it may have caused violence. Was Iowa's restriction on the Nebraska team's speech viewpoint- and/or content-neutral? Is Nebraska's prayer protected under the Establishment Clause, and how might that impact the standard of review for a court considering Iowa's restriction? And finally, is the concern that NU's prayer may instigate a violent exchange sufficient reason for suppression of that speech? We conclude with a brief discussion of policy remedies that may mitigate future concerns while still preserving the free speech and exercise rights of participants at public athletic facilities.

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11. *Id.* at 518–520.

12. *Id.* at 514.

13. *See* Widmar v. Vincent, 454 U.S. 263 (1981) (finding that a state university policy prohibiting its facilities from being used for religious worship violated the First Amendment rights of students); Niemotko v. Maryland, 340 U.S. 268 (1951) (finding that a permit ordinance that was used to bar a group of Jehovah's Witnesses from holding a Bible talk at a local park created a regime of prior restraint that violated the group's freedoms of speech, press, and religion).

14. *See, e.g.*, Santa Fe Indep. School Dist. v. Doe, 530 U.S. 290, 313 (2000) ("[N]othing in the Constitution as interpreted by this Court prohibits any public school student from voluntarily praying at any time before, during, or after the schoolday.").

## I. Iowa's Restriction of Nebraska's Prayer

Since his hiring in 2023, Nebraska coach Matt Rhule has made it a tradition for his team to gather at the midfield logo of the stadium they were visiting to hold a short team prayer. This ritual typically takes place hours before the start of the game and before fans are allowed in, usually when the team initially arrived at the venue.[15]

The prayer sparked controversy from the beginning. In 2023, the NU prayer prior to the Cornhuskers' contest against the University of Colorado was interrupted when Colorado quarterback Shedeur Sanders walked into the middle of the gathering and broke it up.[16] After the game, Sanders referred to the Nebraska traditions as "extreme disrespect," while the Huskers coach Matt Rhule stated that he invited Sanders to pray with his team.[17] In 2024, only two weeks before the Iowa game, NU's prayer tradition again caused an issue when they played at the University of Southern California (USC).[18] The prayer ritual turned into a brawl between the two teams when USC players tried to break up the Nebraska players gathered on their midfield logo. The skirmish lasted roughly ten minutes, with a few team staff members exchanging some sharp words after.[19]

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15. David Ubben & Mitch Sherman, *Matt Rhule: Nebraska Meant No Disrespect by Pregame Huddle on Colorado Logo*, THE ATHLETIC (Sep. 11, 2023), https://www.nytimes.com/athletic/4853335/2023/09/11/matt-rhule-nebraska-colorado/ [https://web.archive.org/web/20251002193533/https://www.nytimes.com/athletic/4853335/2023/09/11/matt-rhule-nebraska-colorado/]. It is also worth noting that football players at NU have previously had pregame prayers on the field sporadically throughout their history, notably including a 1986 game against Oklahoma where former offensive lineman Stan Parker and University of Oklahoma running back Spencer Tillman organized a pregame prayer on the field between players prior to their game. See Randy York, *Parker Brought Pregame Prayer to the Field*, N-SIDER (Dec. 25, 2012). https://huskers.com/news/2012/12/26/parker-brought-pregame-prayer-to-the-field [https://web.archive.org/web/20251103173312/https://huskers.com/news/2012/12/26/parker-brought-pregame-prayer-to-the-field].

16. Nick Kosko, *Matt Rhule Says He Never Disrespected Colorado, Invited Shedeur Sanders to Join Prayer*, THE ATHLETIC (Sep. 11, 2023), https://www.nytimes.com/athletic/4853335/2023/09/11/matt-rhule-nebraska-colorado/ [https://web.archive.org/web/20250919165615/https://www.nytimes.com/athletic/4853335/2023/09/11/matt-rhule-nebraska-colorado/].

17. *Id.* Shedeur Sanders was quoted after the game as saying, "We go out there and warm up, you've got the head coach of the other team trying to stand out in the middle of the Buff. It's okay if, like, a couple players do it, it's fine. Like, just enjoy the scenery. But when you've got the whole team trying to disrespect it, I'm not going for that at all. I went in there and disrupted it. So, they knew I'm for real. The Buffaloes mean a lot to me. Personally, that's what I was saying pregame and that's when I knew it was just extreme disrespect."

18. Andrew Hughes, *Fight Breaks Out at Midfield Before Nebraska–USC During Cornhuskers' Pregame Ritual in Week 12 of College Football*, SPORTING NEWS (Nov 16, 2024), https://www.sportingnews.com/us/ncaa-football/news/fight-breaks-out-midfield-nebraska-usc-cornhuskers-midfield-pregame-ritual-week-12-college-football/f2311f459d08fa8dcfd49902 [https://web.archive.org/web/20250919170125/https://www.sportingnews.com/us/ncaa-football/news/fight-breaks-out-midfield-nebraska-usc-cornhuskers-midfield-pregame-ritual-week-12-college-football/f2311f459d08fa8dcfd49902].

19. *Id.*

Nebraska opponents also questioned the religious bona fides of the Huskers' pregame ritual, arguing instead that it is meant to intimidate and disrespect the hosting school. Following the 2023 incident at Colorado where the NU ritual caused a conflict with Buffaloes quarterback Shedeur Sanders, a few reporters covering CU football opined that there was no faith-based purpose to Nebraska's midfield prayer. Writing for *Sports Illustrated*, Josh Tolle described the NU action as an "intimidation tactic," stating that a "video from Denver 7's Nick Rothschild shows the Nebraska players spread out on the field trying to interrupt Sanders and others in pregame warm-ups."[20] Another Colorado writer who was present for the incident wrote that Nebraska head coach Matt Rhule gathered his players at the midfield logo two hours prior to game time for two to three minutes, where they stood in a circle while Rhule gave a speech in the center.[21] Following the Colorado game, Rhule insisted that Nebraska's ritual was indeed a form of team prayer, that his team did that at every stadium, and that they had even invited Sanders to join them in their prayer before hostilities between the two sides began.[22]

Prior to their November 2024 game, Iowa officials requested that the Nebraska team forgo its pregame prayer at midfield, suggesting instead that the ritual be performed in the endzone.[23] When Nebraska players came to the field before the game, Iowa had several armed state police officers formed a loose circle around the midfield logo.[24] The

20. *See* Tolle, *supra* note 2.

21. Ryland Scholes, *Is Matt Rhule Lying About the Incident at Midfield?*, SBNATION (Sep. 12, 2023), https://www.ralphiereport.com/2023/9/12/23870390/nebraska-coach-matt-rhule-is-lying-about-the-shedeur-sanders-incident [https://web.archive.org/web/20250919180317/https://www.ralphiereport.com/2023/9/12/23870390/nebraska-coach-matt-rhule-is-lying-about-the-shedeur-sanders-incident]. The author openly questions that the incident was in fact a prayer, writing that, "[t]ypically during a team prayer, at least a couple players will kneel down, close their eyes, or gesture to the sky after the prayer is finished. None of these things happened during Rhule's speech, which seems a bit odd for an alleged team prayer. Rhule's speech looked more like some sort of pump up speech than a team prayer." However, the author also notes that they were not close enough to the incident to hear any of the words that were exchanged.

22. Rhule was quoted at his postgame press conference stating "We do that at every stadium . . . We go there. We pray for blessings. When they came in, I asked them, I asked . . . Shedeur . . . if he wanted to pray with us. I pray over everything. I'm a public official, but I can have my own faith. I say pray; it's not [secular]. We take a moment as a team. I want that field to be safe for everybody." Ubben & Sherman, *supra* note 15.

23. Mitch Sherman, *Matt Rhule on Nebraska Captains Not Shaking Hands with Iowa: "That's Not What We Want to Do"*, THE ATHLETIC (Dec. 4, 2024), https://www.nytimes.com/athletic/5970577/2024/12/04/nebraska-iowa-handshake-matt-rhule/ [https://web.archive.org/web/20250919183914/https://www.nytimes.com/athletic/5970577/2024/12/04/nebraska-iowa-handshake-matt-rhule/] (quoting Nebraska coach Matt Rhule stating, "Iowa didn't want us to do it before the game," and "They told us we had to go to the end zone. When we came out to walk to the end zone, there were seven armed state troopers standing on the logo.").

24. *Id. See also* Andy Ketterson, *Huskers v. Malodorous, Sacrilegious Iowa Pre-Game Vibes: Unleash the Fury*, CORN NATION (Nov. 29, 2024), https://www.cornnation.com/2024/11/29/24309173/huskers-vs-malodorous-sacrilegious-iowa-pre-game-vibes-unleash-the-fury-nebraska-matt-rhule-raiola [https://web.archive.org/web/20250919184358/https://www.cornnation.com/2024/11/29/24309173/huskers-vs-malodorous-sacrilegious-iowa-pre-game-vibes-unleash-the-fury-nebraska-matt-rhule-raiola]; Luke Mullin, (@LjsLuke), X (Nov. 29, 2024, 4:19 PM), https://x.com/LjsLuke/status/1862622394642272677 [https://perma.cc/MCA2-CHP7] (Post includes a photo of Nebraska players gathering in a group on the edge

Nebraska team ultimately held their pregame ritual in the endzone on the opposite side of their field from their locker room without issue. But, according to Rhule, Nebraska's players felt particularly miffed by the incident, leading to NU team captains refusing to shake hands with the UI players prior to the game.[25] Following the game, a 13–10 Iowa victory, fans and writers from both teams took to the internet to debate the various examples of perceived disrespect provided from both programs, but no litigation has been filed on the matter. [26]

## II. Kennedy v. Bremerton School District (2022)

Kennedy, a football coach at the public Bremerton High School, would regularly kneel and pray in the middle of the field following each game. Players asked Kennedy to join in his prayers, and he allowed them to do so such that, over time, most of the Bremerton players and even members of the opposing team would participate.[27] Eventually, Kennedy's prayers started to take the form of motivational speeches, wherein players and coaches would kneel around him while he spoke—often using religious invocations and while waving a football helmet.[28] This took place over seven

of the Iowa midfield logo. The text of the post reads, "Perhaps motivated by a midfield clash against USC in its last road game, Nebraska football's pregame meeting took place just to the side of the Iowa logo.").

25. *See* Sherman, *supra* note 23. Quoting Rhule, the article states that "Nebraska players 'felt some type of way' about Iowa's decision to protect the logo." For their part, Iowa players cited the lack of pregame handshake and NU coach Matt Rhule disrupting their pregame warmups by walking through them as examples of perceived signs of disrespect from Nebraska. *See also* Blake Silverman, *Iowa Players Call Out Nebraska, Matt Rhule for Pregame Disrespect After Win*, SPORTS ILLUSTRATED (Nov. 30, 2024), https://www.si.com/college-football/iowa-players-call-out-nebraska-matt-rhule-pregame-disrespect [https://web.archive.org/web/20250919185501/https://www.si.com/college-football/iowa-players-call-out-nebraska-matt-rhule-pregame-disrespect] (quoting Iowa team captain Jay Higgins, who said that he told Nebraska's head coach during the game, "It probably wasn't a good idea to not shake our hands," to which Rhule allegedly responded, "Who are you?" Following the game, Higgins claims he sought out Rhule to collect the handshake he didn't receive prior to kickoff.).

26. *See, e.g.*, Chris Rosvoglou, *Matt Rhule, Nebraska Football Players Taking Heat for Classless Behavior vs. Iowa*, THE SPUN (Nov. 30, 2024), https://thespun.com/college-football/matt-rhule-nebraska-football-players-taking-heat-for-classless-behavior-vs-iowa [https://web.archive.org/web/20250919185958/https://thespun.com/college-football/matt-rhule-nebraska-football-players-taking-heat-for-classless-behavior-vs-iowa].

27. Kennedy v. Bremerton Sch. Dist., 597 U.S. 507, 515 (2022).

28. *Id.* at 549 (Sotomayor, J., dissenting). The dissent, and lower court decisions, also note that Kennedy's actions alerted the school district after another team's coach told district officials that Kennedy had invited his team to pray with him and the Bremerton football players at midfield following their game. A letter sent to Kennedy by the school district also noted that he had invited others to pray with him on multiple occasions. *Id.* at 552. This is not mentioned in the majority's decision. It has been widely noted that the presentation of the facts in this case differs substantially between those given by the Supreme Court's majority and those provided by the dissent and the lower courts. We have and continue to make some note of this in the footnotes of our review of the case here where relevant, but the discrepancies are not as impactful to the analysis of our facts as they would be in other situations, so we only mention them minimally. For readers interested in those discrepancies, we strongly recommend reviewing some of the many other scholarly opinions focusing more exclusively on the decision. *See, e.g.*, Steven K. Green, *First Amendment Imbalance:* Kennedy v. Bremerton School Dist., 99 NOTRE DAME L. REV. REFLECTION 269 (2024); J. Israel Balderas, *Beyond Prayer: How* Kennedy v. Bremerton *Reshapes First Amendment Protections for Public Employee*

years before officials at the Bremerton School District were alerted to the practice by an official at another school district who spoke in favor of Kennedy's religious speeches.[29]

District officials, concerned that the postgame prayers could represent a violation of the Establishment Clause's prohibition on state endorsement of religion, asked Kennedy to cease. The coach initially complied, agreeing to pray alone in the middle of the field after the stadium emptied.[30] After a few weeks, however, Kennedy sent the school district a letter requesting accommodation to resume his "private, personal prayer" on the field immediately after the game.[31] Kennedy resumed his postgame prayer, without authorization, two days later, albeit this time simply by kneeling and praying quietly at midfield.[32] He was joined by members of the other team and the community who entered the field from the stands.[33] Kennedy prayed in this manner at two more games, and received two more letters from his employer asking that he stop, before he was placed on administrative leave.[34] Following the season, the athletic director recommended that Kennedy not be rehired since he had refused to cooperate with the school district's policies. Kennedy filed suit in response.

Both the district and circuit courts sided with the school district, reasoning that Kennedy's prayers occurred in a location where he only had access by virtue of his employment with the school and were conducted while he was wearing the school logo

*Speech*, 23 FIRST AMEND. L. REV. 203 (2024); Maya Gardner, Note, *Establishment Clause Jurisprudence and the Constitutional Limits on Religion in Public Schools*, 76 S.C. L. REV. 587 (2025); Aislinn Comiskey, Kennedy v. Bremerton School District*: A Touchdown and a Victory for Establishment Clause Jurisprudence*, 31 JEFFREY S. MOORAD SPORTS L.J. 67 (2024); Jason T. Hanselman, *Religious Coercion and* Kennedy v. Bremerton School District, U. CHI. L. REV. ONLINE, https://lawreview.uchicago.edu/online-archive/religious-coercion-and-kennedy-v-bremerton-school-district [https://web.archive.org/web/20251002203630/https://lawreview.uchicago.edu/online-archive/religious-coercion-and-kennedy-v-bremerton-school-district] (last visited Sep. 26, 2025); Emily C. Neely, Note, Kennedy v. Bremerton School District*: A Fumble the Supreme Court Needs to Recover*, 11 N. ILL. L. REV. SUPPLEMENT 38 (2019).

29. *Kennedy*, 597 U.S. at 515.

30. *Id.* at 517.

31. *Id.*

32. *Id.* at 518.

33. *Id.* The dissent and earlier court decisions add significant detail to this point, noting that prior to returning to his prayer, Kennedy publicized his return to prayer with appearances in local media. *Id.* at 551 (Sotomayor, J., dissenting). As a result, his return to prayer was joined not only by coaches and players from the other team, but television news cameras and people in the stands who rushed the field to pray with Kennedy. *Id.* at 552–53. The incident resulted in several band members being knocked over and struck as patrons jumped the fence and ran onto the field. *Id.* at 553. The school district subsequently increased police presence and posted signs near the field to emphasize that it was not open to the public. *Id.* at 518, 553.

34. *Id.* at 518–19. The letter sent by the school district following Kennedy's return to prayer noted that he still was required to supervise students in the locker room following the game and that his conduct raised Establishment Clause concerns because he was only allowed on the field because of his position and was praying in front of an audience wearing the school's logo. *Id.* at 554 (Sotomayor, J., dissenting). The majority includes the same general details but also points out that the district's letter admits that the students Kennedy was required to supervise were "otherwise engaged and not praying with him" when he returned to prayer—they were in fact engaged in a tradition of singing the school fight song when Kennedy was praying. *Id.* at 519.

and had a responsibility to supervise students. Moreover, both courts reasoned that Kennedy's prayer could have a coercive effect on students, thus violating their First Amendment rights.[35] The Supreme Court majority disagreed, deciding that Kennedy's prayers did not occur at a time when he was acting in his role as a coach because the school district "permitted other members of the coaching staff to forgo supervising students briefly after the game to do things like visit with friends or take personal phone calls."[36] The majority did not agree with the school district's contention that Kennedy's presence on the field, which was otherwise closed to the public, the fact that the coach was wearing his school's logo, and prayed "under the bright lights of the stadium"[37] at midfield in front of an audience diminished the coach's right to pray on his own.[38] Relying on previous decisions in *Pickering v. Board of Education*, *Garcetti v. Ceballos*, and *Lane v. Franks*, the Court determined that Kennedy's speech reflected a matter of public concern and occurred outside the scope of his employment because it was not timed during his supervision of students.[39] Moreover, the majority notes that a lack of evidence of coercion, including multiple communications by the school district to both Kennedy and parents stating that there was no evidence of coercion, irreparably undermined the Establishment Clause concerns used by the school district to support terminating Kennedy's employment. Therefore, the majority declared that the district's removal of Kennedy constituted a content-specific restriction targeting an employee's

35. The district court reported that players and their parents had complained that the prayers felt necessary for them to stay connected to the team or to ensure that they would be able to play in games in addition to pointing out that players did not lead prayers independently when Kennedy was not on the field. Kennedy v. Bremerton Sch. Dist., 443 F. Supp. 3d 1223, 1229 (W.D. Wash. 2020). The appellate court did not include this information in its decision. *See* Kennedy v. Bremerton Sch. Dist., 991 F. 3d 1004 (9th Cir. 2021).

36. *Kennedy*, 597 U.S. at 527.

37. *Id.* at 554 (Justice Sotomayor quoting the school district's letter in her dissent).

38. Importantly, this discrepancy highlights a significant discrepancy between the majority's opinion of the facts and the considerations by the lower courts and the dissenting justices. The majority decision primarily focuses on Kennedy's behavior after the first letter was sent from the school district asking him to cease his prayers. At this point Kennedy ceased leading locker room prayers with his players and his subsequent prayers at midfield were not the religious speeches he gave prior to the letter. *Id.* at 525. The lower courts and the dissent take a wider view of the facts of the case, arguing that the midfield prayers Kennedy performed after the school district's initial letter were still connected to both his previous history of midfield prayers and his media promotions of his prayer upon his return. *See id.* at 557–58 (Sotomayor, J., dissenting).

39. *Id.* at 527–30 (applying Pickering v. Bd. of Educ. of Twp. High Sch. Dist. 205, Will Cnty., Ill., 391 U.S. 563, 574 (1968) (ruling that a schoolteacher's letter to a local newspaper criticizing the local school board was protected under the First Amendment as it represented commentary on a public concern), Garcetti v. Seballos, 547 U.S. 410, 421 (2006) (determining that the speech of an employee of the Los Angeles District Attorney's office who told defense attorneys about factual discrepancies in a search warrant and testified for the defense was not protected even though it touched on a matter of public concern because it occurred purely within the scope of their employment), and Lane v. Franks, 573 U.S. 228, 238 (2014) (finding that the court testimony of a public employee who testified against another former employee convicted of mail fraud and theft was protected under the First Amendment, as it was given outside the scope of his employment and spoke to a matter of public concern. However, the employee's termination for that speech was upheld under qualified immunity.)).

speech outside the scope of his employment and thus violating the coach's First Amendment rights.[40]

While there are many similarities between the NU controversy and the facts in *Kennedy*, there is also a significant difference: Kennedy was punished by his own employer rather than a rival school, and the employer's rationale was based on a fear that allowing the coach to continue would violate the Establishment Clause by potentially coercing students into a religious exercise. Coercion is not at issue when discussing Iowa's restrictions, but it is something that NU administrators may consider in their own evaluation of the pregame prayer. Nebraska's coach Rhule has stated that his religious pregame prayer is a "team" prayer and observers have generally noted that the entire Nebraska football team takes part.[41] That description and the related photos certainly draw parallels to the types of prayers Kennedy led prior to the initial letter from the school district that he voluntarily ceased. Notably, those earlier prayers were not considered in the majority's opinion when determining that Kennedy's actions were protected speech, because they had been voluntarily ended.[42] This does not necessarily mean that Rhule's team prayers are coercive. For starters, we do not know the content of Rhule's prayer and in what way or through what language Rhule's speech is "not secular."[43] We also do not know the extent to which the prayers are compulsory.[44]

Yet the fact that NU's coach is leading players—allegedly the entire team—in a non-secular prayer is highly concerning and could very well be an Establishment Clause violation. Coaches, even at the collegiate level, wield significant power over the lives of athletes, with the authority to control scholarships, playing time, and, more recently, financial payments from the university and boosters.[45] The Court's ruling in *Kennedy*

40. *Id.* at 543. Writing for the majority, Justice Gorsuch concludes, "Here, a government entity sought to punish an individual for engaging in a brief, quiet, personal religious observance doubly protected by the Free Exercise and Free Speech Clauses of the First Amendment. And the only meaningful justification the government offered for its reprisal rested on a mistaken view that it had a duty to ferret out and suppress religious observances even as it allows comparable secular speech. The Constitution neither mandates nor tolerates that kind of discrimination."

41. *See* Kosko, *supra* note 16 (Colorado quarterback Shedeur Sanders commenting that the whole Nebraska team was on their midfield logo prior to the game); *see also* Nick Kosko, *USC Players Take Exception to Nebraska Players on Midfield Logo in Pregame*, ON3 (Nov. 16, 2024), https://www.on3.com/news/usc-players-take-exception-to-nebraska-players-on-midfield-logo-in-pregame/ [https://web.archive.org/web/20251002205531/https://www.on3.com/news/usc-players-take-exception-to-nebraska-players-on-midfield-logo-in-pregame/] (including photos and videos showing approximately fifty NU players and staff gathered on the pregame field at USC).

42. *See Kennedy*, 597 U.S. at 538.

43. *See* Ubben & Sherman, *supra* note 15.

44. Any requirement that Nebraska players participate in a pregame prayer would be facially unconstitutional. *See, e.g.,* Lee v. Weisman, 505 U.S. 577, 589 (1992); Zorach v. Clauson, 343 U.S. 306, 314 (1952).

45. The NCAA and its member institutions maintain the façade that college athletics are an amateur endeavor and that athletes are not employees despite recent developments that have allowed players to receive payments for their name, image, and likeness (NIL) from sponsors, booster organizations described as "collectives," and a direct share in television revenue from the schools themselves, typically with the direct input of coaches. *See, e.g.,* Jeff Borzello, *How the Rev-Share Era Is Squeezing the College Basketball Recruiting Cycle*,

envisions the standard for finding coercion to be quite significant, as the majority found that the fact that Kennedy was a school official with authority over students was insufficient evidence for coercion since the coach never required or asked that players pray with him.[46] Given the *Kennedy* majority strongly rejected attempts to limit free exercise of a person's religion on the suggestion that a coach's behavior might cause coercion,[47] it is arguably safe to assume that a successful action by Nebraska to limit the team pregame prayer would likely require affirmation from a member of the team or coaching staff to establish that their status on the team was contingent on participation in the prayer.[48] More information is needed to truly determine if there is a coercive element to NU's prayer, but given the circumstances it would be wise for Nebraska officials to gather more evidence on the matter.

## III. Was Nebraska's Prayer Religious Speech?

We must begin this section by emphasizing that there is no specific documentation of what has been said during the NU pregame ritual, and Nebraska's coach Matt Rhule has repeatedly emphasized that the prayer is religious in nature.[49] As such, while speculation exists as to the religiosity of NU's pregame prayer, we do not attempt here to establish or dispel with any certainty the religiosity of the ritual or the beliefs of its participants. Instead, our discussion in this section focuses on how a court might investigate such claims and the potential implications for Rhule and Nebraska in a court's determination of whether the midfield prayer represents a religious or secular activity. Historically, the courts have utilized a "hands off" approach to religious

ESPN (Aug. 1, 2025), https://www.espn.com/mens-college-basketball/story/_/id/45873955/college-sports-revenue-sharing-shaping-high-school-basketball-recruiting-class-2026 [https://web.archive.org/web/20251002210153/https://www.espn.com/mens-college-basketball/story/_/id/45873955/college-sports-revenue-sharing-shaping-high-school-basketball-recruiting-class-2026] (providing some examples of coaches' perspectives on the valuation of athletes and how they might work within their institutional budgets to provide payouts). *See also* Sam C. Ehrlich & Neal C. Ternes, *Putting the First Amendment in Play: Name, Image, and Likeness Policies and Athlete Freedom of Speech*, 45 COLUM. J.L. & ARTS 47 (2021) (noting that athlete NIL deals are a form of speech protected by the First Amendment); Sam C. Ehrlich, Joe Sabin & Neal C. Ternes, *With Name, Image, and Likeness, College Sports Enters the Gig Economy*, 37 J. SPORT MGMT. 31 (2023) (explaining the precarious status of college athlete labor in relation to NIL and the continued control the NCAA and its member institutions preserve over athletes); Marc Edelman & Michael A. Carrier, *Of Labor, Antitrust, and Why the Proposed House Settlement Will Not Solve the NCAA's Problem*, 93 FORDHAM L. REV. 1603 (2025) (reviewing recent NCAA settlements to athlete-led antitrust litigation and noting that the league, its member schools, and coaches still hold a significant amount of financial power over college athletes that is not protected from additional antitrust scrutiny).

46. *Kennedy*, 597 U.S. at 537, 539–40.

47. *Id.* at 540. The majority's decision in *Kennedy* represented a very significant shift in precedent on this issue that is generally beyond the scope of our primary inquiry here. For more information on the Court's decision relative to precedent on this issue, we strongly recommend the myriad pieces of legal scholarship on this issue we have previously cited. *See* references cited, *supra* note 28.

48. For both staff members and, potentially, the athletes, pressure to participate in the prayer could also put the university in violation of Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000e–2000e17 (as amended), which prohibits religious harassment of employees.

49. *See* Ubben & Sherman, *supra* note 15.

doctrine, meaning that questions of religious truth are not typically at issue in legal decisions.[50] Generally, government entities are restricted from compelling an individual's beliefs or barring them for the religious views they hold.[51] Rather, the Free Exercise Clause has been viewed in the relevant jurisprudence as an absolute right for an individual to believe what they choose without government interference, and a slightly more limited right to act on one's personal beliefs.[52] Consideration is given to the state to restrict religious action only under circumstances where the government meets a strict scrutiny standard,[53] or, for non-federal cases, instances where the free expression claim is not attached to a violation of another right.[54]

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50. *See, e.g.*, Serbian E. Orthodox Diocese for U.S. of Am. & Canada v. Milivojecvich, 426 U.S. 696, 720 (1976) (holding that the courts did not have the jurisdiction to rule in an ecclesiastical matter when a former bishop sued his church after being defrocked); Burgess v. Rock Creek Baptist Church, 734 F. Supp. 30, 34–35 (D.D.C. 1990) (Plaintiff sued her former church after her membership was terminated, seeking acknowledgement that she was a member in good standing as well as damages related to intentional infliction of emotional distress. The court granted summary judgement in favor of the defendant, citing that the First Amendment precluded their involvement in religious affairs.); Richard W. Garnett, *A Hands-Off Approach to Religious Doctrine: What Are We Talking About?*, 84 NOTRE DAME L. REV. 837 (2009).

51. *See, e.g.*, Torcaso v. Watkins, 367 U.S. 488, 495–96 (1961) (ruling that denying a man who was appointed as Notary Public by the Governor of Maryland his position when he would not declare a personal belief in God was a violation of his First Amendment rights); United States v. Ballard, 322 U.S. 78, 86 (1944) (ruling that jury could not be expected to determine that a family charged with mail fraud after soliciting donations was sincere in their stated religious convictions. Writing for the majority, Justice Douglas concluded that "men may believe what they cannot prove.").

52. *See* Cantwell v. Connecticut, 310 U.S. 296, 303–304 (1940) (finding that a solicitation statute which empowered officials to determine which causes could be considered religious for the purpose of permitting solicitation was unconstitutional. Writing for the court, Justice Roberts stated, "Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the Amendment embraces two concepts—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society.").

53. *See, e.g.*, Sherbert v. Verner, 374 U.S. 398, 410 (1963) (ruling that a person whose religion prohibited them from working on Saturdays could not be denied unemployment benefits because employment opportunities were available on a day when their faith prohibited them from working); *see also* Wisconsin v. Yoder, 406 U.S. 205, 234 (1972) (finding that laws mandating attendance at public schools until the age of sixteen violated the free exercise rights of Amish families). In these cases, the court establishes a "compelling state interest" test wherein the government could only defeat a free exercise claim by demonstrating that the restriction constituted the least restrictive means of a compelling state interest. *See id.* at 215.

54. These so-called purely religious cases are distinguishable in that they only rely upon the Free Exercise Clause in their claim and not additional protections, including free speech claims. Purely religious claims have a lengthy history within American jurisprudence in instances where free exercise claims challenge general statutes that seek to create a general prohibition on a specific form of conduct. *See, e.g.*, Reynolds v. United States, 98 U.S. 145, 166 (1879) (ruling in part that freedom of expression under the First Amendment did not preclude a devout Mormon from following laws that forbade polygamy. The court reasoned, "Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice?"); Davis v. Beason, 133 U.S. 333 (1890) (also ruling that a person accused of polygamy could not be exempted under the First Amendment from laws that made the practice illegal).

Furthermore, free exercise claims need not be based on a belief in the divine or even one specific formal code of ethics[55] nor must an individual's beliefs be consistent with the beliefs of other individuals who operate under the umbrella of the same religious denomination.[56] A person may claim that their rights to freely exercise their personally held religious beliefs are being violated provided that their beliefs are merely "religious in nature."[57] Writing for a unanimous court in *United States v. Seeger*, Justice Clark writes that courts and local boards "are not free to reject beliefs because they consider them 'incomprehensible.' Their task is to decide whether the beliefs professed by a registrant are sincerely held and whether they are, in his own scheme of things, religious."[58] Perhaps two of the most prominent examples of successful arguments for free exercise protections involved beliefs based on the work of philosophers such as Aristotle and Plato and a personal study of sociology and history.[59] This is not to say that religious protections are limitless, as courts have notably rejected claims of beliefs that merely constituted a personal preference rather than a comprehensive system of

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More recent cases have further clarified this distinction by noting that purely religious cases only require that the government demonstrate a legitimate interest that is neutrally applied to comply with the First Amendment. *See, e.g.*, Employment Div., Dep't of Human Resources of Or. v. Smith, 494 U.S. 872 (1990) (upholding the denial of unemployment benefits to a person fired after it was discovered that they had consumed peyote as part of a religious ceremony, because the government had a legitimate interest in limiting drug use and the statute banning peyote was generally applied to all citizens); Prince v. Massachusetts, 321 U.S. 158 (1944) (finding that a mother could be prosecuted for violating labor laws when she conscripted her nine-year-old daughter to sell religious publications with her on a public sidewalk); Fulton v. City of Philadelphia, 593 U.S. 522 (2021) (finding that the standard established in *Smith* did not apply to a state standard requiring a foster care organization to provide services for same sex couples because it was not neutral or generally applicable).

In 1993, Congress passed the Religious Freedom Restoration Act (RFRA), requiring that courts defer to the strict scrutiny standard administered in all cases that involved free exercise claims: "Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability [unless it satisfies a strict scrutiny test]." 42 U.S.C. § 2000bb-1(a)–(b). The Supreme Court ruled the law unconstitutional as it applied to the states in *City of Boerne v. Flores*, 521 U.S. 507 (1997) (finding the RFRA over-extended Congress' Enforcement Clause powers and deferring to the standard in *Smith* when adjudicating a zoning dispute involving a church). However, the applicability of the RFRA to the federal government was affirmed in *Gonzales v. O Centro Espírita Beneficente União de Vegetal*, 546 U.S. 418 (2006) (finding that the federal government could not restrict a group from consuming a tea containing a hallucinogen as part of its religious practices).

Congress later passed the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc-1(a), which utilizes congressional authority under the Spending and Commerce Clauses to extend the compelling state interest test (*id.*) to state activities related to the regulation of land use and prison policies.

55. See, e.g., Peterson v. Wilmur Commc'ns, Inc., 205 F. Supp. 2d 1014 (ED Wis., 2002) (ruling that "Creativity"—a general belief system rejecting the notion of the divine in favor of a "natural order" defined by white supremacy—was a religion for the purposes of a Title VII claim).

56. *See, e.g.*, Frazee v. Ill. Dep't of Emp. Sec., 489 U.S. 829 (1989) (ruling in favor of a man seeking unemployment benefits who said that his Christian faith precluded him from working on Sundays); Thomas v. Rev. Bd. of Ind. Emp. Sec. Div., 450 U.S. 707 (1981) (determining that a man claiming unemployment benefits after his employer reassigned him to manufacture tank turrets was protected by the Free Exercise Clause, even though his friend who was involved in the same religion willingly accepted the new role).

57. Africa v. Pennsylvania, 662 F. 2d 1025, 1030 (3d Cir. 1981)

58. 380 U.S. 163, 184–185 (1965).

59. *See id.*; Welsh v. United States, 398 U.S. 333 (1970). Notably, both *Seeger* and *Welsh* dealt with conscientious objectors.

beliefs, or that did not address fundamental questions of meaning.[60] But, generally speaking, belief systems that function similar to traditional religious frameworks are unlikely to be significantly questioned by the courts.

Regarding NU's prayer, Nebraska's coach has previously described the ritual as a prayer for blessings, and prayer at the center of a playing area or before a sporting event is hardly an unparalleled practice.[61] Nor does the potential ulterior motive of intimidation preclude the ritual from being religious. New Zealand's national rugby team has historically performed a version of a traditional Māori ritual called the Haka with rhythmic chanting and clapping that is designed to challenge and intimidate opponents, a practice that several American college football teams with Polynesian athletes have occasionally adopted.[62] In *Kennedy*, the Court noted that the presence of religious speech that offended sensibilities or made others feel uncomfortable was an insufficient justification for restricting that speech.[63] As such, it is unlikely that the question of whether NU's ritual was religious in some way would invite significant judicial scrutiny despite the speculation of opposing fans. The more likely line of question would be whether the beliefs compelling NU's ritual are sincerely held and thus merit protection under the free exercise clause.

Whether an individual is sincere in their stated religious beliefs is a factual question, one which predominately asks whether the claimant is credible. [64] Some forms of extrinsic evidence which have been used to support determinations of sincerity include identifying motivations for the claimant to be insincere about their motives and behavioral inconsistencies. Motivation for insincerity refers to any evidence that claims of religious doctrine may be attempting to obscure some type of secular benefit.[65] Behavioral inconsistencies refers to instances where their own history of action belies their stated religious beliefs, such as when one adherent to the Jewish faith claimed they could not appear in court on the Sabbath despite regularly working on Saturdays.[66] Whether other people identifying with the same religion hold the same beliefs or

60. *See* Brown v. Pena, 441 F. Supp. 1382 (S.D. Fla. 1977) (rejecting a religious discrimination claim because petitioner's belief that eating cat food significantly contributed to their well-being and work performance was not a religious belief); Friedman v. S. Cal. Permanente Med. Grp., 102 Cal. App. 4th 39 (2002) (ruling that veganism is not a religion).

61. *See* Ubben & Sherman, *supra* note 15.

62. *See, e.g.*, Peggy Fletcher Stack, *Haka: A Dance of Diversity or Ignorance?*, SALT LAKE TRIB. (Aug. 3, 2017) https://www.sltrib.com/news/mormon/2017/03/05/haka-a-dance-of-diversity-or-ignorance/ [https://web.archive.org/web/20250926223727/https://www.sltrib.com/news/mormon/2017/03/05/haka-a-dance-of-diversity-or-ignorance/]; Associated Press, *Hawaii Must Not Perform "Haka" with Other Team on Field*, ESPN (Sep. 10, 2007) https://web.archive.org/web/20220406235836/https://espn.com/college-football/news/story?id=3013668. Notably, Hawaii's team was penalized for performing the Haka under league taunting rules, but only when they performed the ritual when the opposing team was present, as it was viewed as a form of taunting.

63. Kennedy v. Bremerton Sch. Dist., 597 U.S. 507, 538–539 (2022).

64. *See* United States v. Ballard, 322 U.S. 78, 86–88 (1944).

65. Int'l Soc'y for Krishna Consciousness, Inc. v. Barber, 650 F.2d 430, 441 (2d Cir. 1981) ("[A]n adherent's belief would not be 'sincere' if he acts in a manner inconsistent with that belief . . . or if there is evidence that the adherent materially gains by fraudulently hiding secular interests behind a veil of religious doctrine." (internal citations omitted)).

66. Dobkin v. District of Columbia, 194 A.2d 657 (D.C. 1963).

whether a person's beliefs conform to written codes of their stated religion are typically excluded from determining sincerity, as these questions direct state officials to determine whether the content of a person's beliefs constitute religion.[67]

It does not seem likely that the Nebraska football team gains any significant material benefit from their pregame prayer ritual. The Cornhuskers' record in road stadiums since Matt Rhule became the head coach and instituted the prayer in 2023 has been an abysmal two wins and eight losses, including losses in the three games where the pregame ritual generated controversy.[68] These prayers also happen hours before games start, well before fans are in the stands or cameras are rolling, so the only media comments on these events have been in the rare instances where the other school attempts to disrupt the ritual, and even then, those stories have hardly gained Rhule or his players any notable benefits. While it is not clear whether the Nebraska team performs this ritual at home games, that inconsistency is very unlikely to be significant when the NU players and coaches have made it a point of consistently performing their prayer at midfield before all road games. Absent motivation to falsify their religious claims and inconsistencies in the team's behavior, it would be very unlikely that opposing schools could prove that the NU team's prayer was not a sincerely held religious belief and thus subject to protection under the free exercise clause, regardless of whether it may also be considered disrespectful or an attempt to intimidate.

Iowa's defense to a free exercise claim would be to demonstrate that its denial of access to the midfield logo was part of a generally applicable, neutral policy and, as we discussed in the previous section, it is unclear whether that is the case.[69] Moreover, even if the prayer was a secular activity, and NU's coach has explicitly said that it is not, it is still speech and thus the issue for UI officials remains the same.[70] Iowa would still need to demonstrate that it had a reasonable rationale for restricting the NU team's speech.

## IV. Was Iowa's Restriction Viewpoint-Neutral?

As different publicly-owned spaces allow for different types of speech regulation based on the nature and function of the property, we must determine the type of public

67. This does not mean that such inquiries are non-existent, as there is a history of their use against religious minorities in some instances. *See, e.g.*, Adeel Mohammadi, Note, *Sincerity, Religious Questions, and the Accommodation Claims of Muslim Prisoners*, 129 YALE L.J. 1836 (2020).

68. NU lost the 2023 game against Colorado 36–14, the 2024 game against USC 28–20, and the 2024 game to Iowa 13–10. *See Nebraska Cornhuskers Schedule 2023*, ESPN https://www.espn.com/college-football/team/schedule/_/id/158/season/2023 [https://web.archive.org/web/20251103175438/https://www.espn.com/college-football/team/schedule/_/id/158/season/2023] (last visited Nov. 3, 2025); *Nebraska Cornhuskers Schedule 2024*, ESPN, https://www.espn.com/college-football/team/schedule/_/id/158/season/2024 [https://web.archive.org/web/20251103175557/https://www.espn.com/college-football/team/schedule/_/id/158/season/2024] (last visited Nov. 3, 2025).

69. *See* Church of Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520 (1993) (stating that a Florida law prohibiting keeping animals for sacrifice was not neutral or generally applicable as it only burdened the conduct of residents practicing the Santeria faith).

70. *See* Ubben & Sherman, *supra* note 15.

forum that Iowa's football field represents to determine whether Iowa's restriction fits. Once we have identified the forum, we can begin to answer the question of whether the restriction was content neutral and, if not, whether it was a bespoke attempt to restrict the NU prayer or a more generally applicable rule.

In First Amendment jurisprudence, forum analysis is the judicial evaluation of the extent to which speech is protected in a specific public space.[71] There are primarily four types of public fora:[72] traditional public fora such as parks or sidewalks, which have traditionally been open to the free exchange of ideas and where the government may only pose reasonable restrictions based on the time, place, and manner of speech;[73] designated public fora such as public theaters, which are venues created by the state and where restrictions on speech are also limited to only time, place, and manner concerns as long as the space is open to the public;[74] limited public fora where the government limits the use of the forum to certain groups and specific topics and may impose content-specific, but not viewpoint-specific, restrictions on speech to preserve the intended purpose of the forum;[75] and nonpublic fora such as military bases that are publicly owned but are not intended for free speech, meaning the government has greater authority to impose content-specific restrictions to speech in order to preserve the essential functions of the forum.[76] In all of these, the government is generally expected to maintain viewpoint neutrality, meaning that even in limited or non-public fora where speech may be restricted based on content, it cannot be restricted based on viewpoint if the speech is otherwise permissible.[77] Generally speaking, if a forum is a traditional or designated public forum, then the level of scrutiny on restrictions to speech is determined by the availability of alternative channels.[78] Limited public fora function effectively the same as designated public fora, but the government has a reasonable scrutiny standard for setting parameters on the speakers and content of the

71. *See* Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n, 460 U.S. 37 (1983).

72. *Id.* at 45–46.

73. *See e.g.*, Ward v. Rock Against Racism, 491 U.S. 781 (1989) (determining that restrictions based on the volume of a rock concert in a public park were narrowly content-neutral restrictions tailored to serve a substantial government interest, making them permissible under the First Amendment); Brown v. Louisiana, 383 U.S. 131 (1966) (holding that an African American could not be restricted from entering a segregated reading room at a public library without violating their rights to freedom of speech and assembly).

74. *See e.g.*, Se. Promotions, Ltd. v. Conrad, 420 U.S. 546 (1975) (finding that a public theater could not prohibit the production of a musical based on its content).

75. *See e.g.*, Rosenberger v. Rector and Visitors of Univ. of Va., 515 U.S. 819 (1995) (ruling that a public university could not prohibit religious student groups from renting meeting spaces available to other student groups).

76. *See e.g.*, Greer v. Spock, 424 U.S. 828 (1976) (ruling that military officials could regulate distribution of political material on a military base, as it is not a public forum for the purpose of First Amendment activity).

77. *See, e.g.*, Bd. of Airport Comm'rs of Los Angeles v. Jews for Jesus, Inc., 482 U.S. 569, 576 (1987) (noting that nondisruptive speech is protected in a nonpublic forum even if it is not related to the specific activities of the forum).

78. *See e.g.*, Schneider v. State of New Jersey, Town of Irvington, 308 U.S. 147 (1939) (concluding that a series of ordinances across several major cities prohibiting the distribution of handbills on public sidewalks was a violation of the First Amendment as there was no comparable alternative).

speech in the forum.[79] Finally, nonpublic fora face the lowest level of scrutiny because they are not designed to be venues of free expression, meaning speech restrictions only need to reasonably fit the government's purpose for the forum and be viewpoint neutral.[80]

In sports stadiums, spectator seating areas have been considered public fora,[81] but the courts have not weighed in on the question of whether the playing field is similarly constituted. Playing fields are uniquely challenging to classify as they are generally restricted to the public, and *Kennedy* is sadly devoid of forum analysis so there is still a general question of the extent to which a government entity may restrict the speech of those on the field. Both the majority decision and dissent briefly reference the standard in *Tinker v. Des Moines Independent Community School Dist.* that teachers and students at public schools do not shed their First Amendment rights.[82] Public schools and their related activities that are intended to fit within the educational curriculum are typically considered nonpublic fora for First Amendment analysis, meaning that school officials may reasonably restrain speech based on content to further the educational mission of the institution.[83] Thus, we might assume that the Court would generally consider the football field a nonpublic forum where the school's limitation on Kennedy's prayer was unconstitutional because it restricted speech based on content that was not disruptive to the forum's intended purpose.[84]

Spaces on college campuses are more diverse, including all three types of public fora and nonpublic fora, because colleges, by their nature, are designed to be more reflective of the marketplace of ideas within the community at large and thus require additional flexibility for speech.[85] The relationship between institution and student is also

79. *See e.g.*, Good News Club v. Milford Cent. Sch., 533 U.S. 98 (2001) (finding that a school district's prohibition on a religious club using its meeting rooms because of its spiritual focus was a violation of the club's First Amendment rights).

80. *See* Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n, 460 U.S. 37 (1983).

81. *See e.g.*, Stewart v. D.C. Armory Bd., 863 F.2d 1013 (D.C. Cir. 1988) (ruling that RFK Stadium was a public forum, and even the fact that the government did not intend to create a public forum when it created the stadium was not dispositive of its obligations under the First Amendment).

82. 393 U.S. 503 at 506 (1969). Referenced in Kennedy v. Bremerton Sch. Dist., 597 U.S. 507 (2022) by the majority at 527 and the dissent at 564.

83. *See, e.g.*, Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260 (1988) (holding that a public school could restrict the content of a student newspaper because the paper was part of the school's academic curriculum and not a designated public forum); Hedges v. Wauconda Cmty. Unit Sch. Dist. No. 118, 9 F.3d 1295 (7th Cir. 1993) (determining that a junior high school was not a public forum for the distribution of religious material); Peck v. Upshur Cnty. Bd. of Educ., 155 F.3d 274 (4th Cir. 1998) (reasoning that the schools in a public school district were nonpublic fora); M.A.L. *ex rel.* M.L. v. Kinsland, 543 F.3d 841 (6th Cir. 2008) (finding that a middle school was a nonpublic forum); Planned Parenthood of S. Nevada v. Clark Cnty. Sch. Dist., 941 F.2d 817, 825 (9th Cir. 1991) (ruling that a school's newspapers, yearbooks, and athletic programs were nonpublic fora).

84. This is also reflected in the dissent and lower court rulings, though their opinion differed on whether Kennedy's prayer was disruptive to the intended function of the football field. See *Kennedy*, 597 U.S. at 522, for a summary of the Ninth Circuit's ruling. *See also id.* at 546 (Sotomayor, J., dissenting).

85. *See, e.g.*, Healy v. James, 408 U.S. 169, 180 (1972) ("[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large."); ERWIN CHEMERINSKY & HOWARD GILMAN, FREE SPEECH ON CAMPUS 72–75 (2017).

distinguishable from high schools or other public schools as college students are young adults and more mature, meaning that university administrators do not need, and do not have, the general authority to act *in loco parentis* that is present in K-12 schools.[86] For example, green spaces and plazas on college campuses have been deemed traditional public fora,[87] public speaker events and registration of student organizations have been viewed as limited public fora,[88] and both email systems and college classrooms, when used for their primary function of hosting classes, have been designated as nonpublic fora.[89]

Since spaces on college campuses are far less likely to be considered nonpublic fora, we must examine the characteristics of Iowa's football field to determine the level of scrutiny given to speech restrictions there. Unlike other meeting areas on the university campus, a football field is not generally open to the public and therefore is not a traditional or designated public forum. The field itself is home to multiple expressive activities during a typical football game, from the players themselves to marching bands to cheerleaders. However, none of these roles are intended to be open to the public, and the University, like most other institutions, does not generally allow qualified football players, marching bands, or cheerleaders to participate unless they are specifically affiliated with the two participating schools. This precludes the field from being designated a limited public forum, as it would require public access to the forum based on the specific categories. Therefore we conclude that Iowa's football field is, just as we assume the field in *Kennedy* to be, a nonpublic forum, meaning that UI officials would only need to demonstrate that restrictions on the NU prayer were reasonably tailored to fit the purpose of the facility and viewpoint neutral, so we must next investigate the nature of Iowa's restriction to determine whether it meets this standard. There are two primary concerns we must address: whether the restriction Iowa imposed was viewpoint-neutral and whether it was reasonable.

To determine Iowa's rationale for its restriction we must engage in some speculation since, currently, the only information we have regarding Iowa's restriction on the NU prayer is the images of the police guarding the midfield logo prior to the game which were taken by reporters and a comment from coach Matt Rhule following the game: "They told us we had to go to the end zone. When we came out to walk to the end zone, there were seven armed troopers standing on the logo."[90] Simply put, all we know is that Iowa wanted NU to stay off the midfield logo for its ritual and was willing to accommodate it being performed at the same time in a different part of the stadium. This is important as, while Iowa's stadium may only have to adhere to the former, less

86. *See, e.g.*, Bd. of Regents of Univ. of Wis. Sys. v. Southworth, 529 U.S. 217, 238 n.4 (2000) (Souter, J., concurring); Widmar v. Vincent, 454 U.S. 263, 274 n.14 (1981).

87. *See, e.g.*, Hays Cnty. Guardian v. Supple, 969 F. 2d 111, 116 (5th Cir. 1992); Pro-Life Cougars v. Univ. of Hou., 259 F. Supp. 2d 575, 582 (S.D. Tex. 2003).

88. *See, e.g.*, *Widmar*, 454 U.S. at 265, 272 (1981); Hickock v. Orange Cnty. Cmty. Coll., 472 F. Supp. 2d 469, 474–475 (S.D.N.Y. 2006).

89. *See, e.g.*, Smith v. Tarrant Cnty. Coll. Dist., 670 F. Supp. 2d 534, 539 (N.D. Tex. 2009); Bishop v. Aronov, 926 F.2d 1066, 1071 (11th Cir. 1991).

90. Sherman, *supra* note 23.

restrictive standard in most cases, it is irreconcilable with the First Amendment's Free Exercise Clause to prohibit prayer as a class of speech, even in a nonpublic forum as the Court demonstrated in *Kennedy*. Thus, limiting NU's prayer without inhibiting other forms of prayer would trigger a significantly higher strict scrutiny standard, but if the restriction were merely content specific or content neutral such that applied to all forms of speech, then it would only need to be reasonable to preserve the function of the field as a nonpublic forum.

To defend against an NU free exercise claim, Iowa officials may assert that their prohibition was actually a general prohibition of demonstrations or team meetings on the midfield logo prior to games to prevent confrontations between the two teams, making it merely a content-neutral restriction on a specific part of the playing surface.[91] Content-neutral restrictions are permitted even in public fora provided that they are narrowly tailored to achieve a specific government interest, only limit speech based on its time, place, and manner, and provide a viable alternative for speech.[92] In Rhule's own comments he noted that UI officials allowed his team to perform their pregame prayer in the endzone of the football stadium as an alternative to using the midfield logo, which is what they did.[93]

91. Iowa's rationale could also potentially be related to specific concerns about maintaining the playing surface around the logo. Midfield logos are either painted onto the artificial turf or sewn into the field itself. It is unclear which category fits Iowa's midfield logo, but there are some conceivable scenarios where Iowa might have been concerned about maintaining the visual appearance of the logo prior to the game if it was painted.

92. *See* Clark v. Cmty. for Creative Non-Violence, 468 U.S. 288, 293 (1984) (citing Members of City Council of L.A. v. Taxpayers for Vincent, 466 U.S. 789, 821 (1984)).

93. Ubben & Sherman, *supra* note 15.

Restricting the midfield logo could also be portrayed as an attempt by UI officials to restrict the field based on NCAA guidelines. According to the 2024 NCAA football rulebook, game officials take jurisdiction of the playing field ninety minutes prior to the start of a game, at which point all players practicing or warming up on the field must be wearing their jersey with their number on it and must be supervised by a coach. [94] At this point, the field is divided into two parts in connecting "L" shapes (see Figure 1) with each team effectively controlling half of the midfield logo.[95] With forty minutes remaining until kickoff, the field is reconfigured such that both teams control half the field, with the ten yards in the middle of the field acting as a neutral buffer zone between the two teams (see Figure 2).[96] At no point in the NCAA's pregame warm-up period does either team have full control over the area occupied by the midfield logo.

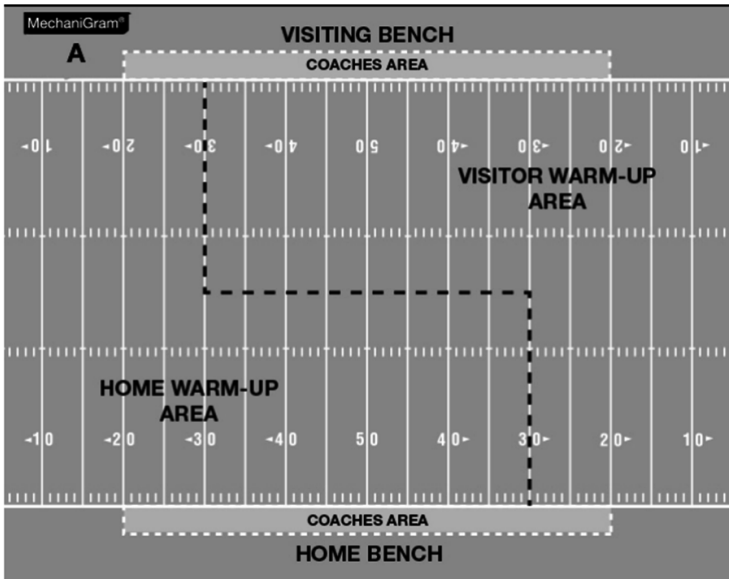


Figure 1[97]

94. NCAA FOOTBALL RULES BOOK, Rule 11 § 1, Art. 1 (2024), https://www.ncaapublications.com/p-4705-2024-ncaa-football-rules-book-online-only.aspx [https://web.archive.org/web/20250916152807/https://www.ncaapublications.com/p-4705-2024-ncaa-football-rules-book-online-only.aspx].

95. *Id.* at Rule 11 § 1 Art. 2.

96. *Id.*

97. *Id* at Appendix D (Field Diagrams).

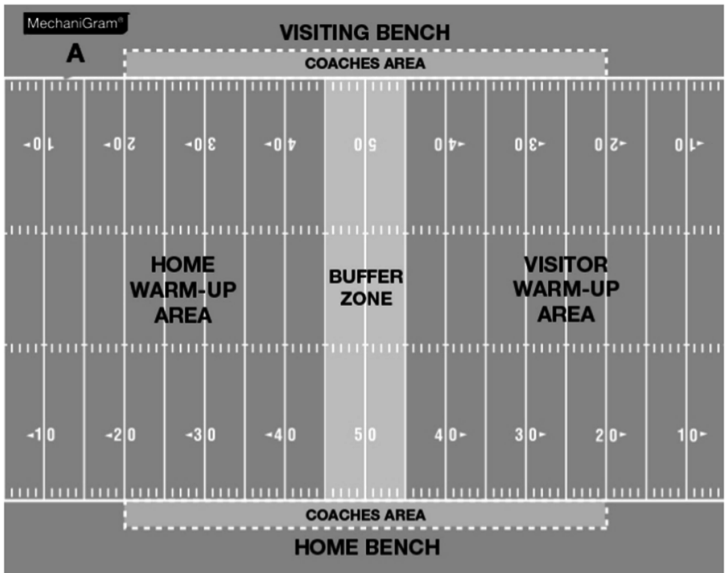


Figure 2[98]

However, NU's pregame prayer ritual took place roughly two hours prior to the start of the game, before the game officials took jurisdiction of the field, and with none of the players dressed in uniform.[99] This timing was consistent with the two other incidents sparked by NU's prayer, and in both of those incidents players for the other team were also on the field and not wearing jerseys. According to the Big Ten conference's vice president overseeing football operations, the conference in which Iowa and Nebraska are both members, the 2024 league rules required both teams to have shared access to the field beginning no later than two hours before kickoff, but players from both teams may access the field even earlier provided they are accompanied by coaches.[100] The official did not specify whether the field was necessarily divided in the same manner it would be ninety minutes prior to the start of the game when the NCAA referees took jurisdiction of the field. That NU's pregame prayer took place at a consistent time or place in opposing league stadiums for two years without any reprimand from the Big Ten indicates that the NU's prayer at midfield is within the league's policies.

It is worth returning to our comparison with *Kennedy* here, as in that case the school district offered what it argued was a reasonable time, place, and manner alternative for

98. *Id.*

99. *See* Ketterson, *supra* note 24, for a photo taken of NU players navigating around police on Iowa's field and attempting to pray.

100. Personal Communication with AJ Edds (Apr. 2, 2025). The Big Ten declined to provide copies of its pregame policy for this article.

their coach's prayer—allowing him to pray in private on the field after the stadium had emptied and players had gone home.[101] The Court likely did not consider this in its decision because the restriction imposed by the school district was viewpoint-based rather than content-based, being that it specifically targeted Kennedy's prayer at midfield and not all forms of prayer.[102] Iowa's restriction could be seen as equally targeting the Nebraska team prayer because, as far as we have found, Iowa typically does not deploy several state police officers to guard the midfield logo prior to most games. It may very well be that Iowa has a standing policy limiting access to the midfield logo prior to games and increased security against Nebraska because of a reasonable concern that NU players and coaches might attempt to perform their pregame ritual regardless. If that is the case, then the restriction on the NU prayer would be viewpoint-neutral, and the only question would be whether that restriction reasonably fits the purpose of the football field for Iowa to impose at its home games. However, it is also plausible that Iowa's restriction of the midfield logo was implemented to specifically restrict NU's pregame prayer and was therefore a form of viewpoint discrimination. We cannot say for certain which it is.

## V. Are "Fighting Prayers" A Reasonable Enough Concern to Restrict Speech?

The concern that NU's prayer may spark a violent conflict does not meet the standard of being reasonable for restricting speech, nor would UI's decision to limit access to midfield be a reasonable solution to that concern. Our conclusion here is based on the existing case literature indicating that NU's speech does not fall within the definition of "fighting words" that are not protected speech, further jurisprudence highlighting that the potential for conflict or offense resulting from speech is a grossly insufficient pretext for its restriction, and finally the observation that UI could have mitigated its concern over potential violence by attempting to limit the violence rather than the Nebraska team's expressive activities.

Fighting words are utterances that, "by their very utterance, inflict injury or tend to incite an immediate breach of the peace," and that, "any benefit that may be derived from them is clearly outweighed by the social interest in order and morality."[103] While fighting words are not protected under the First Amendment, the category of expressions is extremely narrow. For speech to be classified as fighting words it must "naturally tend to provoke violent resentment,"[104] must also be "directed to the person of the hearer,"[105] and, most importantly, the speech must tend to incite a breach of the peace.[106] The third element is the most crucial and most difficult, as it requires real

101. Kennedy v. Bremerton Sch. Dist., 597 U.S. 507, 552 (2022) (Sotomayor, J., dissenting) (describing the district's alternative option for Kennedy).

102. This was largely due to Kennedy's previous demonstrative religious invocations which the school district believed were invocative in Kennedy's decision to publicize his quiet prayer at midfield. *See id.*

103. Chaplinsky v. New Hampshire, 315 U.S. 568, 572 (1942).

104. Gooding v. Wilson, 405 U.S. 518, 525 (1972).

105. Cantwell v. Connecticut, 310 U.S. 296, 309 (1940).

106. UWM Post, Inc. v. Bd. of Regents of Univ. of Wis. Sys., 774 F. Supp. 1163, 1169 (E.D. Wis. 1991).

evidence that speech is likely to cause violence.[107] Among other things, the Court has determined that members of the Ku Klux Klan burning crosses,[108] individuals shouting expletives at police officers,[109] and protestors burning the American flag[110] are examples of speech that did not fit within the definition of fighting words. Restricting speech as fighting words is also impermissible when the restriction is targeted towards a specific viewpoint.[111]

While actions at the midfield logo may carry an implication of a derogatory message directed at the opposing team, it is not necessarily clear how Nebraska's team prayer is an action that would automatically promote violent resentment or tend to incite a breach of the peace. Prayer at midfield prior to a football game certainly has precedent as more than NU's alleged display of disrespect. For example, in 2011, both the Nebraska and Penn State teams gathered together at midfield to say a prayer for the victims of Jerry Sandusky, a former Penn State football coach who was convicted of molesting children days before the game.[112] In 2023, members of the NFL's Jacksonville Jaguars and Tennessee Titans came together at midfield to pray for the health of Buffalo Bills safety Damar Hamlin, who was critically injured in a previous game.[113] While a team's presence on an opponent's midfield logo has, in some circumstances, been intended as a sign of disrespect, there is no reason for players to assume NU's prayer carries that intent. Furthermore, the fact that two confrontations have occurred on the field is likely insufficient to demonstrate an imminent threat of violence inherent to the Huskers' prayer.

Restricting NU's speech because it might be deemed offensive by players on the opposing team is also unlikely to survive even the modest standard of review afforded to nonpublic fora. A reasonableness standard does not require that a regulation on speech be narrowly tailored, but it must have a sensible rationale for determining what

107. While some lower courts have continued to uphold convictions under the fighting words doctrine, the precedent has been substantively diminished to the point where convictions under statutes written to limit fighting words are increasingly rare. *See, e.g.*, Burton Caine, *The Trouble with "Fighting Words":* Chaplinsky v. New Hampshire *Is a Threat to First Amendment Values and Should Be Overruled*, 88 MARQ. L.R. 441 (2004).

108. *See, e.g.*, R.A.V. v. City of St. Paul, 505 U.S. 377 (1992).

109. *See, e.g.*, Lewis v. New Orleans, 415 U.S. 130 (1974); City of Houston, Tex. v. Hill, 482 U.S. 451 (1987).

110. *See, e.g.*, Texas v. Johnson, 491 U.S. 397 (1989).

111. *See, e.g.*, *R.A.V.*, 505 U.S. 377 at 392 (holding that government entities have "no such authority to license one side of a debate to fight freestyle, while requiring the other to follow Marquis of Queensberry rules.").

112. Alexander Angert, *Pregame Prayer Puts Things into Perspective for Penn State and Nebraska Football Teams*, PENN LIVE (Nov. 12, 2011), https://www.pennlive.com/patriotnewssports/2011/11/pregame_prayer_puts_things_int.html [https://web.archive.org/web/20250916225024/https://www.pennlive.com/patriotnewssports/2011/11/pregame_prayer_puts_things_int.html].

113. Nick Gray, *Titans and Jaguars Players Come Together for Pregame Prayer in Support of Damar Hamlin*, TENNESSEAN (Jan. 7, 2023), https://www.tennessean.com/story/sports/nfl/titans/2023/01/08/damar-hamlin-tenneseee-titans-jacksonville-jaguars-prayer-pregame/69787858007/ [https://perma.cc/C6TC-J427].

speech is included or excluded.[114] For example, a Minnesota law prohibiting political attire in polling places was deemed unconstitutionally overbroad because the definition the state used for political attire was vague and allowed election judges to decide at the door what messages constituted political speech.[115] While it could be argued that Iowa restricting access to its midfield logo is an effort to promote sportsmanship, a quality that is generally an important element of the football field, it would be very difficult for Iowa to define sportsmanship in such a way that wouldn't run into a similar issue of overbreadth. Not all gatherings of players and coaches at midfield are inherently unsportsmanlike, so a policy that restricted access to the logo would have to be more narrowly tailored. However, narrowing the definition of sportsmanship to only certain behaviors at midfield would require a policy so narrowly tailored that it would not be considered generally applicable for the purpose of a free exercise claim. To this point, the Court wrote in *Kennedy* that "some will take offense to certain forms of speech or prayer they are sure to encounter in a society where those activities enjoy such robust constitutional protection," but that is not enough to justify restriction on individual expression.[116] While some individuals may take offense to the sight of players kneeling in prayer on another team's field logo, it simply does not make sense to limit the ritual because it may cause bad feelings from the opposing team.

Finally, even if we accept that the concern of UI officials in our scenario about promoting sportsmanship and avoiding potential conflicts between participating teams is valid, the solution of prohibiting the NU team from accessing the midfield logo and deployment of state police to guard the logo is not a reasonable solution. The reasonableness standard requires that a regulation further the government interest of the nonpublic forum where it is deployed.[117] On sportsmanship, the NCAA states that "values such as respect, caring, fairness, civility, honesty, integrity and responsibility are key to creating a positive competitive environment."[118] It strains credulity that any of the words used by the NCAA to describe the values inherent in sportsmanship are furthered by denying access to the midfield logo for a pregame prayer. Nor does it logically follow that deploying police to guard the logo would de-escalate a situation and prevent player passions from erupting into violence. The evidence bears out that the policy decision made by UI officials to restrict the logo and the tactics used to enforce that policy enflamed the situation rather than defused tensions. NU players and coaches cited the police presence as the reason why the NU team captains refused to shake hands with the UI players at the beginning of the game, resulting in at least one

114. Minn. Voters All. v. Mansky, 585 U.S. 1, 16 (2018).

115. *Id.* at 21–22.

116. Kennedy v. Bremerton Sch. Dist., 597 U.S. 507, 539 (2022).

117. *See, e.g.*, Price v. Garland, 45 F. 4th 1059, 1071–1072 (D.C. Cir. 2022) (holding that regulation of filmmaking in public fora need only meet the reasonableness standard used to regulate speech in nonpublic fora).

118. NCAA: SPORTSMANSHIP, https://web.archive.org/web/20250522212704/https://www.ncaa.org/sports/2021/6/18/sportsmanship.aspx
(last visited May. 22, 2025).

Iowa player retaliating with mocking comments during and after the game to the NU coaching staff.[119]

Though a reasonableness standard does not mean that a restriction on speech be the most obvious or least restrictive option available, we must point out that UI officials had far more reasonable options to promote safety and sportsmanship than the avenue that they chose. Given their previous knowledge of NU's prayer ritual, Iowa officials could have very easily kept their players in the locker room when it knew the NU team was going to perform its pregame prayer, thus depriving NU of an audience that could potentially have a violent reaction. If that was somehow not possible, Iowa could also have used the same police officers it deployed to protect the field logo to protect NU's prayer from any UI players simultaneously on the field. Even if we accept the premise that NU's pregame prayer is designed to intimidate and disrespect the opponent, it is difficult to see how responding with an intimidating police presence is a logical conclusion.

## VI. Conclusion: Clearer, Consistent Policy is Needed

Our analysis demonstrates that claims that religious rituals may be used as attempts to intimidate or disrespect opponents and possibly provoke hostile responses are not rational explanations for trampling religious liberty. While there are many elements of what happened regarding the NU prayer at Iowa that we still do not know, it is clear that what happened cannot be justified under a framework of limiting violence or promoting sportsmanship. Our review of what facts we do know about the pregame prayer conflict demonstrates several opportunities for rethinking policies at public sports facilities to better balance concerns over player safety and mitigating potential conflict with First Amendment freedoms.

Perhaps the most prominent issue is the lack of clear and consistent policies. The fact that NU's prayer takes place at a point when control over space on the playing field is not generally defined and referees who can enforce codes of sportsmanship are not present is an issue that has previously and will likely continue to cause issues like the one discussed here. Teams could restrict player warm-up periods to only the ninety-minute window when the NCAA referees have jurisdiction of the field, or extend the time that officials are asked to monitor the field for potential sportsmanship violations. Leagues like the Big Ten that require that players be given access to the playing field prior to the NCAA window could also implement policies that clearly define the dimensions of the field that each team has access to during the time before the NCAA officials take jurisdiction of the field. Because they are not state actors, neither the Big

119. Tyler Tachman, *Iowa Football: How Disrespect Fueled Jay Higgins, Hawkeyes to Dramatic Win over Nebraska*, DES MOINES REGISTER (Nov. 30, 2024), https://www.hawkcentral.com/story/sports/college/iowa/football/2024/11/30/iowa-football-jay-higgins-kaleb-johnson-drew-stevens-matt-rhule-nebraska-hawkeyes-big-ten/76566742007/ [https://web.archive.org/web/20250916231018/https://www.hawkcentral.com/story/sports/college/iowa/football/2024/11/30/iowa-football-jay-higgins-kaleb-johnson-drew-stevens-matt-rhule-nebraska-hawkeyes-big-ten/76566742007/].

Ten nor the NCAA would face First Amendment scrutiny in restricting speech for the reasons we attributed to Iowa in our discussion. This is not to say that the NU prayer is problematic and warrants such restrictions—the responses by other schools thus far have caused more harm than the NU prayers themselves—but to say that action could be taken to craft policies that limit truly problematic behavior in the future before it becomes a problem.

Finally, while we do have modest concerns about the potential for coercion as it relates to the prayer, that is not an issue which opponents are positioned to address. Nothing in our review of the NU prayer would seem to indicate that it is used to intimidate or disrespect opponents, nor have we found any reason to believe that it is not a sincere religious practice. As such, we would advise schools to focus more on beating Nebraska during the game rather than regulating their team's prayer before it begins.[120]

120. As of this writing, Iowa has won nine of its last ten games against Nebraska.