

Current NFL Eligibility Rules and Their Anti-Competitive Nature: A Proposal to Change That

By: Joaquin Hernandez*

INTRODUCTION

Quentin Thomas was an outstanding football player who enjoyed nothing more than playing football. Quentin began playing organized football when he was just 6 years old playing with the Miami Central Youth Football team. He normally played running back on offense, as well as safety on defense. Even at that young age, a kid playing both offense and defense was a rarity for a youth football team in Miami. Because Quentin's parents always put schooling above athletics (one time while Quentin was in first grade his parents forced him to miss a game because he received a C+ on a spelling test), Quentin always made sure to complete his homework assignments and study for his tests. He was a very good student, usually earning an 'A' or 'B' in class. After years of playing at the youth level, Quentin began playing high school football for the Miami Sunset High Scarlet Knights.

* The author wrote this article in fulfillment of the writing requirement for Chicago-Kent College of Law's Fall 2013 Entertainment Law Seminar course taught by Professor Henry H. Perritt, Jr. The author thanks Prof. Perritt for the invaluable advice, suggestions, and assistance he provided during all stages of preparation. The author also thanks all of the students in Prof. Perritt's Entertainment Law class for all of their suggestions regarding this paper.

Quentin enjoyed playing scheduled games against other high schools, but, unlike most of his teammates, he also enjoyed practicing throughout the week. Indeed, Quentin was a special player. In high school he continued to play running back on offense and safety on defense, being the only one who started at two positions! Quentin was not only physically gifted, but he also excelled mentally in the game. He usually studied opponents for much more time, and in much more detail, than his teammates and even some coaches. At night, after practices or games, Quentin would analyze how he could have performed better on the football field, even if on just one particular play. Coaches were always impressed by how well Quentin understood not only his position's responsibilities, but also those of others on the field. If a play failed, whether on offense or defense, Quentin usually could explain why the play failed, and how to correct the error so the play would not fail again.

Before the start of his senior year, Quentin decided that in order to fully excel, he needed to focus on just one position. After giving it some serious thought, and after discussions with his parents and coaches, Quentin decided to only play the safety position. That year, Quentin went on to become the number one ranked high school player in the nation at the safety position, as well as the number one ranked player overall. Not surprisingly, everyone, including his parents and coaches, expected Quentin to receive several football scholarship offers, and ultimately enroll in a National Collegiate Athletic Association (NCAA) Division I football program. Quentin, however, had different plans.

Although he knew that he still had much to learn about the game of football and playing the safety position, Quentin's ultimate goal was to play in the National Football League (NFL). Because only around 0.08% of high school football players make it to the NFL¹, Quentin saw the NFL as the ultimate challenge whereby he would play with and against the best football players in the world. He knew, however, that to play effectively in the NFL one has to learn the various schemes and complexities that make up the NFL game. He felt that playing in college would only interrupt what he viewed as the ultimate challenge, and thought it would be best to hasten the "NFL learning curve" by entering the NFL earlier. His parents, however, were not approving of his wish to enter the NFL. They thought Quentin should instead take advantage of what was sure to be full-ride scholarships to enroll in college. They pushed him to obtain a college degree while playing football, and to then decide on the NFL. Quentin, however, ignored his parents' wishes. Instead, he began inquiring as to how to enroll in the NFL's annual draft.

Sadly for Quentin, he quickly found out he was "not allowed" to enter the NFL draft. The NFL's eligibility rules preclude a player from entering the NFL that have not attended college if at least four NFL season have not passed since the player graduated high school.² Even under the "Special Eligibility" route, whereby players request for special permission to enter the league, players must still be 3

¹ *Probability of competing in athletics beyond high school*, NCAA.ORG, <http://ncaa.org/wps/wcm/connect/public/NCAA/Resources/Research/Probability+of+Going+Pro> (last visited Dec. 2, 2013).

² See *National Football League Eligibility Rules*, NFL REGIONAL COMBINES, <https://www.nflregionalcombines.com/Docs/Eligibility%20rules.pdf> (last accessed Dec. 2, 2013) [hereinafter NFL Eligibility Rules].

NFL seasons removed from their high school graduation.³ Quentin, unfortunately, became victim to the anti-competitive effects of the NFL's eligibility rules. To Quentin's surprise, his parents were also upset that he could not enter the NFL. They were surprised that a league as powerful as the NFL was allowed to base eligibility on some arbitrary timeline. If anyone could play in the NFL right out of high school, they knew it would be Quentin. A rule that required a player such as their son to wait three or four years was incredible to them.

Because the NFL has locked out players such as Quentin from entering the league, Quentin is unable to offer his services as a player to any NFL teams. Thus, the rules prevent Quentin from competing in the market for NFL players. These anti-competitive effects are subject to antitrust laws in the United States that aim to prohibit restraints of trade.⁴ Antitrust laws, however, are subject to exceptions, and thus disputes arise relating to whether certain rules violate antitrust law, and if they do, whether they are subject to the available exceptions.⁵ Because the NFL has essentially exclusive control of the "football market" in the United States, the league's rules regulating who may or may not play in the league may be, and indeed have been subject to antitrust scrutiny.⁶ This paper proposes a change, albeit a major one, to the 2012 NFL Eligibility Rules that would substitute a required "NFL Degree" for the current "years since high school" scheme.

³ *Id.*

⁴ *See, e.g.*, 15 U.S.C. §§ 1-7 (2013).

⁵ *See, e.g.*, *Mackey v. Nat'l Football League*, 543 F.2d 606, 611 (8th Cir. 1976) (describing the statutory and nonstatutory labor exemptions to antitrust law).

⁶ *See, e.g.*, *Clarett v. Nat'l Football League*, 369 F.3d 124, 129 (2d Cir. 2004).

Part I of this paper focuses on antitrust law in the United States and more specifically the Sherman Act and the competing National Labor Relations Act. The Sherman Act is discussed first along with various exceptions to the law. Next, the National Labor Relations Act is discussed and analyzed including its relation to the Sherman Act. Finally, the law as applied is explained via discussion of various relevant cases. Part II discusses the NFL, the NFL Player's Union, and current NFL eligibility requirements. Part III discusses various issues with the current NFL eligibility requirements in relation to their anti-competitive effects. Then Part IV proposes to change the current NFL eligibility requirements in an attempt to protect the NFL from antitrust attacks, while at the same time to offer a reasonable path to the NFL for all players. The section analyzes the proposal for both anti and pro-competitive effects, as well as its effect on the public interest.

PART I: ANTITRUST LAW AND THE SHERMAN ACT

Antitrust law attempts to prevent business practices that may harm competition. For example, business practices that prevent competitors from entering the marketplace may be subject to antitrust scrutiny. The policy behind antitrust law includes "the preservation of economic freedom and ... free-enterprise."⁷ The Sherman Anti-Trust Act ("Sherman Act")⁸, attempts to prohibit unreasonable restraints of trade.⁹ At the same time there is a strong federal

⁷ United States v. Topco Associates, Inc., 405 U.S. 596, 610 (1972).

⁸ 15 U.S.C. § 1-7 (2013).

⁹ Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Oklahoma, 468 U.S. 85, 98 (1984).

interest in allowing collective bargaining¹⁰, such as between an employee union and an employer. The National Relations Act¹¹ protects the rights of employees to organize and bargain collectively. These two interests, however, are not entirely independent of each other and often clash with one another. For example, after collective bargaining, an agreement reached between employees represented by a union and an employer may provide that each employee is to be paid a certain wage. If, however, a person outside the union wishes to offer his services to the employer on better terms, the agreement reached between the union and the employer will prevent the newcomer from competing with the union for the employer's business. The agreement is preventing a competitor from entering that marketplace, and thus can be seen as an antitrust violation. Therefore, some exceptions to antitrust law are necessary to give effect to collective bargaining rights.

The Sherman Act

The Sherman Act declares illegal “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations....”¹² There are three basic elements a complainant must prove to show a violation of the Sherman Act: some form of an agreement between two or more entities; a restraint of trade flowing from the agreement; and the restraint must affect interstate commerce.¹³ Moreover, because in a sense any contract may be considered a restraint on trade, “only unreasonable

¹⁰ Mackey v. Nat'l Football League 543 F.2d 606, 611 (8th Cir. 1976).

¹¹ See 29 U.S.C. § 151 (2013).

¹² *Id.*

¹³ Am. Ad Mgmt., Inc. v. GTE Corp., 92 F.3d 781, 788 (9th Cir. 1996).

restraints of trade” may violate the Sherman Act.¹⁴ If there is a violation, however, the accused entity faces severe penalties including substantial monetary fines and, if the entity is a person, imprisonment as well.¹⁵

For a person to have standing to invoke the protections of the Sherman Act, one must prove that the injury suffered (1) is “of the type the antitrust laws were intended to prevent” and (2) “flows from that which makes defendants' acts unlawful.”¹⁶ Because prohibiting a potential competitor to enter the marketplace is anticompetitive, “antitrust law forbids all agreements among competitors (such as competing employers) that unreasonably lessen competition among or between them in virtually any respect whatsoever.”¹⁷ One example of such a prohibition may be a rule that prevents individuals from competing in the market for professional football players. Therefore, included among anticompetitive activities that are prohibited by the Sherman Act are “restraints on competition within the market for players' services.”¹⁸

Legal Standards Applicable to Violations of the Sherman Act

Courts have recognized at least three different legal standards in determining Sherman Act violations. These three standards include the “per se” rule, the “quick look” method, and the “rule of reason”.¹⁹ Per se Sherman Act violations include agreements that have “pernicious effects” on competition and

¹⁴ Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Oklahoma, 468 U.S. 85, 98 (1984).

¹⁵ See 15 U.S.C. § 2 (2013).

¹⁶ Atl. Richfield Co. v. USA Petroleum Co., 495 U.S. 328, 349 (1990) (quoting Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 477, 489 (1977)).

¹⁷ Brown v. Pro Football, Inc., 518 U.S. 231, 241 (1996).

¹⁸ Mackey v. Nat'l Football League, 543 F.2d 606, 618 (8th Cir. 1976) (overruled on other grounds).

¹⁹ Rossi v. Standard Roofing, Inc., 156 F.3d 452, 461 (3d Cir. 1998) (see n. 6 and surrounding text).

“lack any redeeming virtue,” and thus are “conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use.”²⁰ The “per se” standard is applied when “the practice facially appears to be one that would always or almost always tend to restrict competition and decrease output.”²¹ Instead, courts may apply the “quick look” standard, whereby “blatantly anticompetitive” acts merely require a quick look to determine that the act violates the Sherman Act.²² For example, a “naked restraint on price or output” may justify only a quick look to determine that the restraint violates the Sherman Act.²³ Finally, under the rule of reason standard, a court attempts to determine “whether the restraint imposed is justified by legitimate business purposes, and is no more restrictive than necessary.”²⁴ The inquiry focuses on determining the restraint’s impact on competition; however, justifications for the restraint are considered.²⁵

Labor Exemptions to the Sherman Act

Collective activities by employees can be inherently anticompetitive. For example, if employees decide to unionize, and the union decides to boycott certain

²⁰ *United States v. Topco Associates, Inc.*, 405 U.S. 596, 607 (1972) (discussing and comparing the “rule of reason” and “per se” doctrines).

²¹ *Broadcast Music, Inc. v. Columbia Broadcasting System, Inc.*, 441 U.S. 1, 19–20 (1979) (applying the “per se” rule to determine whether a blanket license to perform copyrighted music violates antitrust law).

²² *Clarett v. Nat'l Football League*, 369 F.3d 124, 129 (2d Cir. 2004) (discussing the district court’s use of the quick look standard to eligibility rules that were “blatantly anticompetitive”).

²³ *Am. Ad Mgmt., Inc. v. GTE Corp.*, 92 F.3d 781, 789-90 (9th Cir. 1996) (refusing to apply the quick look standard because there was no naked restraint on price or output).

²⁴ *Mackey v. Nat'l Football League*, 543 F.2d 606, 620 (8th Cir. 1976) (applying the rule of reason to a rule requiring a team signing a free agent player to compensate that player’s previous team).

²⁵ *Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Oklahoma*, 468 U.S. 85, 103 (1984) (considering the NCAA’s justifications for fixing the price of college football games under the rule of reason).

labor practices, the employees may engage in a “concerted refusal to deal” by boycotting the activity. The employees are in essence acting as one entity, and the employer is effectively restrained from benefitting from the boycotted activity. Because federal labor policy encourages this type of collective activity, a statutory exemption²⁶ was created to exempt certain types of collective activities that otherwise would violate antitrust law.²⁷ The provisions embodied within the statutory exemption extend to “legitimate labor activities unilaterally undertaken by a union in furtherance of its own interests.”²⁸ For example, by operating under this exemption, a union is free to participate in activities such as picketing and boycotting without fear of violating antitrust laws.²⁹

Additionally, while the statutory exemption itself does not extend to agreements between employers and unions, courts have established a non-statutory exemption that does extend to such agreements.³⁰ This exemption was “inferred ‘from federal labor statutes, which set forth a national labor policy favoring free and private collective bargaining; which require good-faith bargaining over wages, hours, and working conditions....’”³¹ Specifically, because collective bargaining is

²⁶ The statutory provisions may be found in the Clayton Act codified at 15 U.S.C. § 17 and 29 U.S.C. § 52, as well as in the Norris-LaGuardia Act at 29 U.S.C. § 104, 105, and 113. See *Mackey*, 543 F.2d at 611.

²⁷ *Mackey*, 543 F.2d at 611.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 611-12.

³¹ *Clarett v. Nat'l Football League*, 369 F.3d 124, 130 (2d Cir. 2004) (quoting *Brown v. Pro Football, Inc.*, 518 U.S. 231, 236 (1996) (internal citations omitted)).

avored under the National Labor Relations Act³², courts have determined that agreements flowing from the collective bargaining process are also to be shielded from antitrust law attack.³³ The protections of this non-statutory exemption, moreover, extend to both parties to such an agreement.³⁴

Determining Sherman Act Violations

To determine whether the non-statutory exemption applies, courts have applied various tests.³⁵ For example, in *Mackey v. National Football League*, the Eighth Circuit articulated the “Mackey Test.”³⁶ To determine whether the exemption applies, a court must consider: 1) whether the restraint on trade “affects only the parties to the collective bargaining relationship”; 2) whether the agreement “concerns a mandatory subject of collective bargaining”³⁷; and 3) whether the agreement is “the product of bona fide arm’s-length bargaining.”³⁸ In *Mackey*, present and former NFL players sued the NFL claiming that the “Rozelle Rule”³⁹ was an illegal restraint of trade in violation of the Sherman Act, among other claims, because it prevented players from freely contracting with NFL teams.⁴⁰ The rule did not come under the non-statutory exemption because the third part of the

³² The National Labor Relations Act is codified at 28 U.S.C. § 151-169. The Act permits employees to organize in part because of the inequality in bargaining power between employees and employers. See 28 U.S.C. § 151 (2013).

³³ *Mackey*, 543 F.2d at 611-12.

³⁴ *Id.* at 612.

³⁵ Because the focus of this paper is on the eligibility requirements of the NFL, the following discussion focuses on antitrust law claims against the NFL.

³⁶ See *Mackey*, 543 F.2d at 614.

³⁷ Under 28 U.S.C. § 158(d), mandatory subjects of bargaining include wages, hours, and other terms and conditions of employment. 28 U.S.C. § 158(d) (2013); see also *Mackey*, 543 F.2d at 615.

³⁸ *Mackey*, 543 F.2d at 614.

³⁹ The “Rozelle Rule” required that when a player’s contract with an NFL team had expired, and that player signed a new contract with another team, the new team had to pay compensation to the original team. See *Mackey*, 543 F.2d at 609 (8th Cir. 1976).

⁴⁰ *Mackey*, 543 F.2d at 615.

test was not met – the rule was not a product of bona fide negotiations.⁴¹ Rather, the rule imposed significant disadvantages on the players, had remained unchanged for a long period, and did not offer any advantages to the players.⁴² Thus, the non-statutory exemption did not apply, and the court went on to determine that the rule violated the Sherman Act.⁴³

The Second Circuit, however, declined to follow *Mackey* in *Clarett v. Nat'l Football League*.⁴⁴ Instead, the 2nd Circuit explained that a proper analysis is “whether subjecting ... [a restraint] to antitrust scrutiny would ‘subvert fundamental principles of our federal labor policy.’”⁴⁵ In other words, the non-statutory exemption should apply to a restraint if subjecting the restraint to antitrust law attack undermines federal labor policies. For example, in *Clarett*, labor law prohibited Clarett from directly negotiating the terms of his employment with the National Football League because the players had unionized and selected a union representative.⁴⁶ The union representative, moreover, had the power and right to create and restrict the rights of league players.⁴⁷ Because the National Labor Relations Act (NLRA) favored and governed collective bargaining, “an NFL club would commit an unfair labor practice were it to bargain with Clarett

⁴¹ *Id.* at 616.

⁴² *Id.* at 616.

⁴³ *Id.* at 622.

⁴⁴ *Clarett*, 369 F.3d at 133.

⁴⁵ *Id.* at 138.

⁴⁶ *Id.*

⁴⁷ *Id.* at 139; *see also* 28 U.S.C. § 159(a) (“Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment...”).

individually without the union's consent.”⁴⁸ Moreover, although Clarett was merely a prospective player, the considerations for employment were mandatory subjects of bargaining that were for the league and the player’s union to determine.⁴⁹ Thus, because allowing Clarett to negotiate with the league would “subvert ‘principles that have been familiar to, and accepted by, the nation's workers for all of the NLRA's [sixty years] ... ’”, the non-statutory labor exemption barred antitrust law attack.⁵⁰

The Supreme Court extended the application of the non-statutory labor exemption to professional sports leagues that set policies relating to mandatory subjects of bargaining after negotiations with player unions over those same policies have reached an impasse.⁵¹ The Court reasoned that disallowing the non-statutory exemption to the leagues after negotiations have reached an impasse would unjustifiably subject them to antitrust claims if they continue to offer similar terms, or unfair labor practice claims if they impose different terms.⁵² For example if the clubs offered terms similar to their previous joint offer, they would risk “antitrust action premised upon identical behavior (along with prior or accompanying conversations) as tending to show a common understanding or agreement.”⁵³ On the other hand, if any one of them acts unilaterally and imposes terms that differ

⁴⁸ *Id.*

⁴⁹ *Id.* at 141.

⁵⁰ *Clarett*, 369 F.3d at 143 (quoting *Caldwell v. Am. Basketball Ass'n, Inc.*, 66 F.3d 523, 530 (2d Cir. 1995)).

⁵¹ *Brown*, 518 U.S. at 240-42.

⁵² *Id.* at 241.

⁵³ *Id.*

from the last joint offer, they would risk a claim of unfair labor practice.⁵⁴

Furthermore, subjecting the leagues to antitrust violations for post-impasse discussions would prevent them from discussing how to renew negotiations with the unions.⁵⁵ Thus, to avoid such a dilemma, the non-statutory exemption to antitrust law protects professional sports leagues from antitrust claims when discussing mandatory subjects of bargaining not only during negotiations, but even after discussions with a union have reached an impasse.

Therefore while the Sherman Act prohibits agreements that restrain trade or commerce among the states, exemptions to its applications were created so that antitrust law remains consistent with federal labor law policies. Among these federal law policies is the ability to bargain collectively. First, a statutory exemption protects labor union activities that relate to the furtherance of their interests. Second, a non-statutory exemption extends that protection to agreements reached by a union and employer and the benefits arising out of the exemption extend to both parties. Although courts are divided as to what test to apply in determining if an exemption is applicable, the exemption may apply to mandatory subjects of bargaining including wages, hours, and other terms of employment.⁵⁶

PART II: THE NFL AND NFL ELIGIBILITY REQUIREMENTS

⁵⁴ *Id.*

⁵⁵ *Id.* at 242.

⁵⁶ *See, e.g., Mackey*, 543 F.2d; *Clarett*, 369 F.3d; *Brown*, 518 U.S.; *see also infra* Part I, *Labor Exceptions to the Sherman Act*.

The NFL was founded in 1920 and currently comprises 32 member teams.⁵⁷ Teams are divided into two conferences, the American Football Conference (AFC) and the National Football Conference (NFC).⁵⁸ After playing games in the regular season⁵⁹ the top teams from each conference qualify for the conference playoffs. The winners of each conference then play each other in the SuperBowl, the final game that determines the league's champion for a given year. As has been widely noted, the NFL has enjoyed tremendous financial success.⁶⁰ For example, the average NFL team was valued at \$1.17 billion in 2012.⁶¹ Additionally, league revenues for 2013 are estimated to top \$9 billion, establishing the NFL as the most lucrative league in the world.⁶² Although there are other professional football leagues available such as the Canadian Football League and the Arena Football League, none of them enjoy the same amount of success. For example, the Canadian Football League enjoyed revenues of just \$100 million in 2011, a mere 1.1% of the NFL's estimated revenue for 2013.⁶³ Even less successful has been the Arena Football League. The league ceased operations in 2009 before coming back in

⁵⁷ *History*, NFL.COM, <http://www.nfl.com/history/chronology/1911-1920> (last visited Dec. 2, 2013).

⁵⁸ *Standings*, NFL.COM, <http://www.nfl.com/standings> (last visited Dec. 2, 2013).

⁵⁹ Currently teams play 16 games in the regular season, as well as 4 preseason games that do not count towards the standings.

⁶⁰ See *In a league of its own*, THE ECONOMIST (April 27, 2006), <http://www.economist.com/node/6859210>.

⁶¹ Mike Ozanian, *The Most Valuable NFL Teams*, FORBES (Aug. 14, 2013), <http://www.forbes.com/sites/mikeozanian/2013/08/14/the-most-valuable-nfl-teams/>.

⁶² Monte Burke, *How The National Football League Can Reach \$25 Billion In Annual Revenues*, FORBES (Aug. 17, 2013), <http://www.forbes.com/sites/monteburke/2013/08/17/how-the-national-football-league-can-reach-25-billion-in-annual-revenues/>.

⁶³ *Major Professional Sports Leagues in the United States and Canada*, WIKIPEDIA.ORG, http://en.wikipedia.org/wiki/Major_professional_sports_leagues_in_the_United_States_and_Canada#Revenues (last visited Dec. 12, 2013).

2010.⁶⁴ As part of its new financial plan, the majority of players make \$400 per game, or about \$7200 per season.⁶⁵ Thus, while a player may have other leagues to choose from, none is as lucrative as the NFL.

The NFL's economic success flows down to the league's players in the form of a slew of benefits including life, medical, and dental insurance programs, workers' compensation, injury protection insurance, retirement plans, and cost and travel reimbursement benefits.⁶⁶ In addition players are guaranteed a minimum salary, and have the potential to earn much more.⁶⁷ For example, the minimum salary for a first year player in 2012 was \$390,000.⁶⁸ The average player's salary in 2012 was much higher, estimated at \$1.9 million.⁶⁹ In addition, players may enhance their compensation via publicity or endorsement deals resulting from their ability to play in the NFL. While other professional football leagues exist in North America, the compensation offered by the NFL is significantly higher than those other leagues.⁷⁰ Thus the benefits players receive, as well as the opportunity to play in the most elite professional football league, make playing in the NFL the ultimate goal of many aspiring professional football players.

⁶⁴ *No Sympathy for the NFL: Arena Football Players Live in World of \$400 Paychecks*, ORLANDO SENTINEL, http://articles.orlandosentinel.com/2011-05-25/sports/os-orlando-predators-nfl-lockout-20110525_1_nfl-lockout-kenny-mcentyre-rayshaun-kizer (last visited Dec. 12, 2013).

⁶⁵ *Id.*

⁶⁶ *See Collective Bargaining Agreement*, NFL PLAYERS ASSOCIATION, <https://www.nflplayers.com/about-us/cba-download> (last visited Dec. 2, 2013) [hereinafter 2011 CBA].

⁶⁷ *Id.*

⁶⁸ *Id.* at 146; *see also* <https://www.nflplayers.com/About-us/FAQs/NFL-Hopeful-FAQs/>.

⁶⁹ Monte Burke, *Average Player Salaries In The Four Major American Sports Leagues*, FORBES (Dec. 7, 2012), <http://www.forbes.com/sites/monteburke/2012/12/07/average-player-salaries-in-the-four-major-american-sports-leagues/>.

⁷⁰ *Clarett v. Nat'l Football League*, 306 F. Supp. 2d 379, 383 (S.D.N.Y. 2004) *judgment rev'd in part, vacated in part*, 369 F.3d 124 (2d Cir. 2004).

The NFLPA and the CBA Negotiated with the NFL

The National Football League Players Association (NFLPA) has represented the NFL's players since March 5, 1968.⁷¹ In November of 1968, the NFLPA union came to terms with the NFL on the league's first Collective Bargaining Agreement (CBA).⁷² The current CBA took effect on August 4, 2011, and is effective until the last day of the league's 2020 season.⁷³ The CBA notes that the NFLPA "is recognized as the sole and exclusive bargaining representative of present and future employee players in the NFL in a bargaining unit...."⁷⁴ Moreover the CBA is binding on both parties.⁷⁵ Thus the CBA, negotiated by the players' exclusive representative, the NFLPA, provides binding rules for both current and future NFL players.

While the CBA "represents the complete understanding of the parties on all subjects covered herein,"⁷⁶ the agreement also "waive[s] all rights to bargain with one another concerning any subject covered or not covered in this Agreement for the duration of this Agreement, including the provisions of the NFL Constitution and Bylaws."⁷⁷ In terms of player eligibility, the CBA provides that "[n]o player shall be eligible to be employed by an NFL Club until he has been eligible for selection in an

⁷¹ *Smith v. Pro-Football*, 420 F. Supp. 738, 741 (D.D.C. 1976) *aff'd in part, rev'd in part sub nom.*, *Smith v. Pro Football, Inc.*, 593 F.2d 1173 (D.C. Cir. 1978).

⁷² *Id.*

⁷³ 2011 CBA, *supra* note 62, at xiv.

⁷⁴ *Id.* at 270.

⁷⁵ Section 5 of Article 70 of the 2011 CBA states "Binding Effect: This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their heirs, executors, administrators, representatives, agents, successors and assigns and any corporation into or with which any corporate party hereto may merge or consolidate." 2011 CBA, *supra* note 60, at Art. 70, § 5.

⁷⁶ 2011 CBA, *supra* note 62, at 5.

⁷⁷ *Id.*

NFL Draft.”⁷⁸ The NFL Draft is a meeting at which the clubs in the NFL select players unto their teams.⁷⁹ The NFL Constitution and Bylaws, however, provide a set of “NFL Eligibility Rules”⁸⁰ that determine under what circumstances a player is eligible to enter the NFL draft.⁸¹ These rules allow for a potential NFL player to be eligible for the NFL Draft in six various ways.

NFL Eligibility Requirements

First, the “College Eligibility” provision allows a player to be eligible for the NFL Draft if that player’s college football eligibility has expired through participating in college football.⁸² Therefore players that are ineligible to participate further in college football may enter the NFL Draft. Second, through the “Graduation” provision, a potential NFL player that “has graduated and received a diploma from a recognized college or university prior to the beginning of the League's next regular season”⁸³ is eligible for the NFL Draft.⁸⁴ Third, a potential NFL player is eligible for the NFL Draft if at least five NFL seasons⁸⁵ have elapsed since that player “first entered, attended, practiced football at, or participated in football games for a recognized junior college, college, or university” via the “Five-Year Rule” provision.⁸⁶ The provision has an exception for those

⁷⁸ *Id.* at 17.

⁷⁹ *Id.*

⁸⁰ NFL Eligibility Rules, *supra* note 2, at 1.

⁸¹ *Clarett v. Nat'l Football League*, 369 F.3d 124, 142 (2d Cir. 2004).

⁸² NFL Eligibility Rules, *supra* note 2, at 1.

⁸³ The NFL has one “season” per year. The 2011 CBA defines a “League Year” as “the period from March [] of one year through and including March [] of the following year, or such other one year period to which the NFL and the NFLP A may agree.” 2011 CBA, *supra* note 60, at 2.

⁸⁴ NFL Eligibility Rules, *supra* note 2, at 1.

⁸⁵ The NFL has one “season” per year. *See supra* note 79.

⁸⁶ NFL Eligibility Rules, *supra* note 2, at 1.

players who attend a qualifying school that allow for five years of college eligibility. For such players, if the player has exhausted four of his five years of college football eligibility, the player is eligible to enter the NFL Draft.

Fourth, the “Non-Football Collegians” provision allows a potential NFL player to enter the NFL Draft if player “did not ... participate in college football, and [at least] four League seasons have elapsed since the player first entered or attended college.”⁸⁷ Thus players who never played college football must wait four NFL seasons from the time they entered college before they are eligible for the NFL Draft under this provision. Fifth, under the “Player Not Attending College” provision, potential NFL players that never attended college are eligible for the NFL Draft four NFL seasons after the earlier of when either they graduated high school, or their high school class graduated high school.⁸⁸ For example, a potential NFL player that never attended college and completed just one year of high school is not eligible for the NFL Draft until the class with which the player entered high school is scheduled to graduate. If, however, a potential NFL player graduates high school before his class graduates, and never attends college, that player is eligible for the NFL under this provision four league seasons after he graduated. Finally, under the “Special Eligibility” provision, a potential NFL player may petition the Commissioner of the NFL to be allowed to enter the NFL Draft.⁸⁹ No player may petition, however, until at least three NFL seasons have elapsed since the earlier of when either they graduated high school, or their high school class graduated high

⁸⁷ *Id.*

⁸⁸ *Id.* at 2.

⁸⁹ *Id.*

school.⁹⁰ This “Special Eligibility” election also appears in the CBA itself, suggesting the method of entering the NFL Draft was more fully negotiated than the first five eligibility methods discussed.⁹¹

PART III: ISSUES WITH CURRENT NFL ELIGIBILITY REQUIREMENTS

In a perfectly competitive professional football labor market, there would be many football leagues for a potential football player to choose from, and clubs within individual leagues would have the ability to select any potential player. For example, in the NFL, all interested potential players would enroll into the NFL Draft, and the clubs would then draft, i.e. select, players from the pool of those that enrolled. Furthermore, the NFL would not be the exclusive employer for professional football players, and a potential player would be able to choose among many other leagues to play in.⁹² Assuming the various leagues were completely independent and did not collude in undertaking anticompetitive behaviors, the professional football market would exhibit near perfect competition.

This ideal market, where perfect competition exists among players and professional football leagues, would obviate the concerns that antitrust law, and

⁹⁰ *Id.*

⁹¹ *See* 2011 CBA, *supra* note 62, at Art. 6, §2(b) (“No player shall be permitted to apply for special eligibility for selection in the Draft, or otherwise be eligible for the Draft, until three NFL regular seasons have begun and ended following either his graduation from high school or graduation of the class with which he entered high school, whichever is earlier.”).

⁹² While there are other professional football leagues a player may currently choose from, the NFL is the most successful professional football league in the world. The potential financial benefits of playing in the league are many times more than a player may earn in other leagues. Thus, for purposes of this paper, the NFL is considered the sole elite employer of professional football players. *See supra* Part II.

specifically the Sherman Act, was created to address. One league, let alone one club, could not “restrain trade” in professional football because there would be many other leagues a player could play in. An attempt by one league to engage in conduct that, compared to the other leagues, detracts the players would result in the players, especially the better players, independently deciding to leave the league and play elsewhere. For example, Quentin would be able to look at other leagues having different eligibility requirements that allowed him to play. At the same time, moreover, individual leagues would not be subject to antitrust law attack because the availability of other leagues quashes any restraint of trade concerns. With only one league available, however, players do not have the option of playing for another league. Thus, actions taken by the league that affect terms of employment, including eligibility requirements, are subject to antitrust law attack. There antitrust issues facing the current NFL Eligibility Requirements include: limiting competition for NFL roster spots, harm to players and NFL fans, and basing the requirements on mandatory wait periods that have little or no benefits to players or the NFL.

The NFL Eligibility Rules Limit Competition Among Players

The current NFL eligibility rules limit competition by disallowing players that do not meet certain requirements from entering the league, thus preventing those players from competing for a roster position with any NFL team. The available player pool is limited because players that are otherwise qualified to play in the NFL, but have not satisfied the requirements of any of the six eligibility

methods, are not eligible to participate in the NFL, as is the case with Quentin. By turning away these potential players, the league is not allowing them to compete for a roster spot on an NFL club, resulting in decreased competition for any available roster spot. This is especially true if the players turned away would be able to play at a high level in the NFL. Inherently, therefore, the NFL Eligibility Rules limit competition to obtaining a position with an NFL team.

The NFL Eligibility Rules Harm Players and Fans

The eligibility rules harm those players that cannot meet its requirements because they are prevented from playing in the league and enjoying the benefits that flow from playing in the league. In addition, the NFL eligibility rules harm spectators and fans of the NFL. As was mentioned earlier, the NFL is the most lucrative professional football league in the world. In essence, because the NFL attracts the highest caliber football players, the NFL is not only the premier professional football league, but may be seen as the only professional football league by, for example, fans wanting to see football played by the most gifted athletes. The NFL Eligibility Rules, however, prevent fans from watching players that do not meet the requirements of the rules but who otherwise are capable of playing at a high level in the NFL. For example, just as Quentin must wait three or four years before being allowed to play in the NFL, the league's fans must also wait that same time to see Quentin play. Thus, the NFL Eligibility Requirements harm both potential NFL players that do not meet its provisions and NFL fans.

Basing NFL Eligibility on Years From High School is Arbitrary

This paper does not posit that eligibility requirements to play in the NFL should be eliminated. Rather, the paper proposes an eligibility requirement that is based not only on football skills, but also on the ability to understand “NFL life.” One problem with the current eligibility rules is that some provisions are based on a predetermined amount of time whereby an otherwise employable NFL player must wait until the amount of time has passed before even being allowed to compete for a roster position. Instead of being productive NFL players, such players must sit and wait until the prescribed amount of time has elapsed. For example, the “Five-Year Rule” provision allows a player to enter the league only when five years have passed since the player first played football at a college or university. Similarly, the “Non-Football Collegians” provision allows a potential NFL player to enter the league only after four years have passed since the player first entered college. These wait periods serve as anti-competitive vehicles preventing otherwise NFL-ready players from entering the league.

In contrast, the “College Graduation” and “Graduation” provisions allowing college students who have either exhausted their college football eligibility or who have graduated college to enter the NFL are based on identifiable achievements that potential NFL players can work towards. First, student-athletes that have exhausted their eligibility rights to play at the college level should be permitted to attempt to play at the next level, namely, the NFL, if they so choose.⁹³ These

⁹³ College football almost acts like a minor league system to the NFL, similar to how the Minor League system in Major League Baseball acts to Major League Baseball. See ARTHUR T. JOHNSON, MINOR LEAGUE BASEBALL AND LOCAL ECONOMIC DEVELOPMENT 10-11 (1995). In theory, just as the

players presumably have demonstrated their ability to play at the college level, and do not have the option of continuing to play football in college. The player should therefore be made available to an NFL club wishing to draft that player. Likewise, students that have completed their college degree should also be permitted to play professionally in the NFL. This is because otherwise those students would have no choice but to take additional courses in college just to play football, even though they have already obtained a college degree. The problem, however, is how the eligibility rules treat those that do not satisfy any of these two criteria.

The “Five-Year Rule,” “Non-Football Collegians,” “Player Not Attending College,” and “Special Eligibility” provisions are troubling. They allow for eligibility only after a forced wait period, such as a number of years after the potential player graduated or would have graduated high school. One issue with this approach is that the potential NFL player has no real control over meeting such a requirement. Instead, the player must wait until so much time has passed before becoming eligible for the NFL (or, in the case of “Special Eligibility,” requesting to become eligible). For example, a player has to wait five years since the player first plays college football under the “Five-Year Rule” provision, or four years if the player does not play football under the “Non-Football Collegians” provision, to play in the NFL regardless of his ability to play professionally. Similarly, under the “Special Eligibility,” a potential player has to wait three years from when the player

best minor league baseball players are promoted to the major leagues, the best college football players are selected to play in the NFL.

graduated or would have graduated high school before the player can even apply for special eligibility.⁹⁴

Mandatory Wait Periods Provide No Benefits to Players or the NFL

What are the benefits to players and the NFL by requiring a player to wait so much time? Moreover, why does a player have to wait three years under one provision, while having to wait for years under another provision? The ability to compete in the NFL seems to have no rational relation to requiring a potential NFL player to have to wait a certain number of years before becoming eligible to compete in the league. Moreover, if individual teams do not believe a player is ready to compete in the NFL, the team would be hesitant in selecting that player in the NFL Draft.⁹⁵ If the goal of such a requirement is to assure that a player is “ready” for life in the NFL, the requirement should instead be tailored towards that goal. Having a player wait a certain number of years from a certain point in time, however, does not seem to be tailored to that goal. For example, Quentin Thomas seems to be ready to enter the NFL Draft. He has performed well in school indicating his intelligence and responsibility, and has excelled on the football field indicating his “NFL readiness.” Forcing Quentin to wait an additional three or four years seems to provide no advantage to the league, current players, or Quentin himself. The next section discusses specifics of the proposal, but the point made here is that any

⁹⁴ Once the three years pass and the player applies for Special Eligibility, the player must still be granted the request by the Commissioner. The process by which the Commissioner decides on whether to grant the request is outside the scope of this paper.

⁹⁵ A counterargument may be that an NFL team would select a player with potential that is not yet ready to compete in the league as a future investment. Drafting the player early would allow the team more time to prepare him for play in the league. If that is the case, what harm is there then to allowing the team to select such a player? That decision should be left to the team, rather than being subjected to an all-out ban by the NFL.

eligibility requirement should not be arbitrarily based such as on number of years since high school graduation. Rather, the eligibility requirements should instead be based on an individual's readiness for life in the NFL, whatever that may entail.

PART IV: THE “NFL DEGREE” PROPOSAL

The following proposal mitigates, and may eliminate, the various equitable and legal concerns that were presented in the previous section. The proposal seeks to balance the interests of the relevant parties including the NFL, current NFL players, and future NFL players by eliminating the current eligibility pathways that include mandatory wait periods. Instead, the proposal advances a new pathway based on the successful completion of an “NFL Degree” program. Because the goal of the degree program is to prepare individuals for life in the NFL, those completing the program should be better prepared to play in the NFL as compared to potential players, under the current rules, that are forced to wait a number of years before being allowed into the league. The proposal assumes that the goal of any eligibility requirement is to assure an individual is ready for life in the NFL. While assuring that an individual is ready for the NFL may not be the only goal of the current eligibility rules, the proposal does not seek to address other concerns. The proposal, however, may easily be altered so as to meet any additional goals of the NFL eligibility requirements.

The “NFL Degree” Proposal

As noted above, the NFL Eligibility Rules currently provide various pathways by which an individual may enter the NFL. Individuals may enter the league only if they have either graduated college, their college football eligibility has expired, or else some amount of time has expired. Although this proposal allows for the first two ways of entering the NFL, namely via expiration of college eligibility or via having graduated college, the proposal replaces the remaining options with a new way of entering the NFL – via an “NFL Degree.” Just as engineering companies require engineering degrees for engineering positions, or state bars require law degrees to practice law, possessing an “NFL Degree” would allow one to be eligible to play in the NFL. To incorporate the proposal, the section shown below would replace the current version of the “Eligibility of New Players” section of the NFL Eligibility Rules:⁹⁶

Eligibility of New Players

A member club cannot sign a player to an NFL Player Contract or select a player in a draft (principal or supplemental) until such player meets one of the following requirements:

COLLEGE ELIGIBILITY. All college football eligibility of such player has expired through participation in college football (expiration does not include a loss of college football eligibility through withdrawal from school, dismissal, or signing of a professional contract in another football league). Or,

GRADUATION. Such player has graduated and received a diploma from a recognized college or university prior to the beginning of the League's next regular season ("recognized college or university" means any institution listed in the Blue Book of College Athletics published by the Athletic Publishing Company, P.O. Box 931, Montgomery, Alabama 36101-0931 and/or The Integrated Postsecondary Education Data System (nces.ed.gov/ipeds), U.S. Dept.

⁹⁶ The first two eligibility requirements, COLLEGE ELIGIBILITY and GRADUATION, are taken from the current eligibility rules. See NFL Eligibility Rules, *supra* note 2, at 1.

of Education, Washington, D.C. A diploma of graduation issued by a recognized college or university to a student under an accelerated course or program is acceptable for eligibility purposes despite the fact that the student actually attended such institution for a period of less than four years. Or,

NFL DEGREE. Such player has successfully graduated and received an NFL Degree from a recognized organization that offers such a course of study (“recognized organization” means any institution listed in the NFL Book of Approved NFL Degree Schools published by the NFL). An NFL degree from any recognized organization must meet the requirements established in the current Collective Bargaining Agreement between the NFL and the NFL Players Association.

The proposal maintains the current rules’ options of entering the NFL if either a potential player’s college football eligibility has expired, or if that player has graduated college. First, as to the College Eligibility route, all players that have exhausted their ability to play at the college ranks deserve a chance to enter the NFL. Because these players do not have a further opportunity to continue playing at the college level, strictly forbidding them from entering the NFL would raise anti-competitive concerns given the NFL’s monopolistic hold on elite professional football.⁹⁷ Moreover, if an NFL team is interested in drafting such a player, it is most probably because they excelled in college football. Having mastered the college game, these players deserve the chance to play in the NFL. Therefore the proposal keeps this way of entering the league.

As to those individuals who have graduated college (even if their college football eligibility has not expired), there is no reasonable rational for strictly forbidding them from entering the NFL. These individuals have completed all requirements for a college degree, allowing them to enter various professions.

⁹⁷ See *infra* Part II, *The NFL and NFL Eligibility Requirements*.

Moreover, it is difficult to imagine either the NFL or the NFL Player's Union not wanting to allow individuals that have obtained a college degree to enter the NFL, especially if a team is willing to draft them. No purpose seems to be served by forbidding such players from entering the league, and thus the proposal also keeps this pathway for entrance to the NFL.

"NFL Degree" Requirements

This proposal abolishes the current three, four, and five year wait period methods of becoming eligible for the NFL and replaces them with an NFL Degree. The suggested requirements to obtain an NFL Degree discussed below are not meant to serve as exclusive requirements, but instead may be added to or changed according to negotiations by the NFL and NFL Player's Union. Each requirement is satisfied by a potential NFL player partaking in a class that will teach and test that player that particular requirement. The list of requirements presented below include: a "strength training" requirement; an "endurance" requirement; a "safe hitting methods" requirement; a "professional responsibility" requirement; a "financial responsibility" requirement; an "injury awareness" requirement; and finally a "concussion awareness" requirement. Any person that successfully completes a program that satisfies at least these requirements automatically qualifies to enter the NFL via the NFL draft.⁹⁸ The program should be designed to allow completion in nine months. The idea is that a player that completes high

⁹⁸ Although the person may qualify by completing these requirements, the NFL and NFL Player's Association may agree to bars preventing one from entering the NFL. For example, they may agree that anyone with a criminal conviction is barred from entering the NFL even though they qualify under the NFL Degree route.

school in June, can then enter the program immediately and be able to qualify for the NFL Draft the following April.⁹⁹ The more specific details of each requirement are left to negotiations between the NFL and NFL Players Union.

The Strength Training Requirement

The strength requirement is meant to assure that the potential player is aware of how to properly strength train. While there are many ways of strength training, the class would focus on how to properly train with equipment NFL teams typically utilize. Specifically, the class would focus on not only how to utilize properly the equipment, but also on how to select properly the amount of weight involved in the exercise, how to prevent injury, and on injury awareness (e.g. how to know when the player is injuring himself by continuing to strength train). The concern that players too young may be hurt while playing in the NFL because they are not physically ready drives this requirement. The focus is on proper strength training techniques, as well as how to avoid and detect injury.

Admittedly, in the NFL (as well as with college and even high school football) players at different positions may tend to have varying strength requirements. For example, defensive linemen tend to be stronger than defensive backs. The class, however, should focus on overall strength training, and not be “specialized” depending on what position the player is interested in playing.¹⁰⁰ This would avoid the potential problem of a player specializing during the course on a position that

⁹⁹ The NFL Draft is when NFL clubs select players, and is usually held in early April.

¹⁰⁰ The program, however, may have specialized segments, where the participants focus on strength training exercises specialized for certain positions at various times during the course.

has “easier” strength requirements but entering the NFL and playing a position that had “harder” requirements (e.g. “gaming the system”).

The Endurance Requirement

Similar to the strength training requirement, the endurance requirement is meant to assure that a potential NFL player is able to endure the daily physical demands that the NFL requires. A course with the goal of satisfying this requirement would focus on teaching various endurance exercises as well as preparing the potential player to endure the daily rigors of the NFL. The course would also teach the person how best to avoid injury. The goal of the course would be to not only test an individual’s ability to endure a particular exercise, but also the ability of the individual to endure repeated physical activity over a longer term (e.g. days or months). As with the strength-training requirement, different positions in the NFL may require various levels of endurance sustainability. The course, however, should be designed to teach and test overall comprehensive endurance training rather than any special training for a particular position. This way, the player comes away with an overall understanding of endurance training, and the temptation to “game the system” described before is mitigated.

The Safe Hitting Methods Requirement

Hitting, by its very nature, is a violent part of football. At the same time, however, hitting is a necessary part of football. For example, defensive players attempt to tackle the offensive player running with the ball, and offensive players attempt to block defensive players from disrupting the play. Both of these actions,

blocking and tackling, involve one player hitting another player. These sometimes-violent collisions may lead to injury for either the one doing the hitting, or the one taking the hit. Therefore a course that teaches proper hitting techniques is in order.

The purpose of including a safe hitting method requirement is two-fold. First, the class would teach students how to protect themselves when hitting another player so as to avoid injury. Second, the class would teach how to properly hit another player so as to avoid injury to the other player. The class is intended to review and teach proper technique in all aspects of hitting, including tackling an offensive player, blocking a defensive player, and “special teams” blocking.¹⁰¹

The Professional Responsibility Requirement

Players in the NFL interface with many other people and organizations. For example, players spend countless hours with teammates and coaches during practices, meetings, and even meals. They also meet with NFL administrators, the media, and their own player agents, among others. Some players also have the opportunity to engage in advertising campaigns for a given product, and therefore interface with not only business people representing the product, but also with the advertisement producers. Finally, NFL players interact with the public not only when they play their games in front of thousands at the stadium and millions more on television, but also when they themselves are out in public.

¹⁰¹ “Special Teams” is used to refer to kickoff and kickoff return players, as well as punt and punt return players.

For some players, the NFL may be the first time they attempt to manage these many types of relationships. Not only are there numerous relationships a player must juggle, but also in each relationship the party communicating with the NFL player has certain expectations regarding that player's conduct. If the player does not act properly, the relationship may be straining on either party. Moreover, each of these relationships may present stress to the player in different forms, in addition to the daily stress that is inherit in being an NFL player.¹⁰² For example, the media may ask questions to a player that he does not feel comfortable answering. Or while out in public, a fan of another team may attempt to arrogate the player. A course that fulfills the professional responsibility requirement will teach a player how to handle properly all of these various relationships, as well as how best to represent the NFL as an NFL player. The goal of the course would be to ensure that the student is aware of the various relationships he may be subject to, know how to handle the various relationships, and probably most importantly, know who to turn to for help when help is needed. Although instruction in these areas would first be necessary, the course would also include role-playing in simulated real life scenarios portraying the right and wrong ways of handling various situations. In this way, students can experience how various situations should be handled.

The Financial Responsibility Requirement

¹⁰² For example, NFL players may be worried about being kept on the team, current or future injury, or life outside of football such as familial relations.

According to the 2011 Collective Bargaining Agreement, the minimum salary a player with no years of experience (i.e. a “rookie”) earned was \$375,000.¹⁰³ For 2013, that figure increased to \$405,000.¹⁰⁴ In addition, players may earn even higher salaries, as well as performance based bonuses. Needless to say, even the lowest paid NFL player has high earnings. These high earnings, however, are only good as long as the player is able to provide wanted services for an NFL club. Due to many reasons including age, injury, and retirement, a career in the NFL is short-lived.¹⁰⁵ For example, the average number of years in the NFL for a first year player that makes the opening day roster of an NFL club is 6 years.¹⁰⁶ Therefore although even minimum salaries are very healthy, a typical NFL player does not play in the league, and thus earn an NFL salary, for many years.

A course satisfying the financial responsibility requirement would attempt to teach at least three concepts geared towards educating the student about how to handle his earnings. The first concept would include how to secure oneself financially in preparation for life after the NFL. This part of the course would stress financial responsibility and the importance of savings given the uncertainty regarding one’s NFL career. The second concept would include how to make sound financial decisions. The course should include not only a basic understanding of

¹⁰³ The numbers quoted reflect the minimum annual salary of a player with no experience on a club’s active/inactive list. If a player is not on a club’s active/inactive list, the minimum salaries are less. For example, a player with no years of experience that is not on any club’s active/inactive list is \$258,000 per year. See 2011 CBA, *supra* note 62 at Art. 26, §1.

¹⁰⁴ *Id.*

¹⁰⁵ See *What is average NFL Player’s career length? Longer than you might think*, Commissioner Goodell says, NFL, <http://nflcommunications.com/2011/04/18/what-is-average-nfl-player’s-career-length-longer-than-you-might-think-commissioner-goodell-says/> (last accessed Dec. 2, 2013).

¹⁰⁶ *Id.*

various investments, but also where and who to turn to regarding financial advice. Finally, the third part of the course would include advice on how to make wise financial decisions regarding purchases during one's NFL career, as well as how to deal with temptations that earning a lot of money can present.

The Injury Awareness Requirement

The purpose of the injury awareness requirement is to have players recognize when they are injured and then to seek proper treatment. Many times players have very little incentive to miss games or even practices because part of their compensation may be tied to performance goals that can only be reached by playing in games. Therefore players often times will try and "play through injuries" on the assumption that either the injury not that bad, or there is no need to seek treatment. Both of these assumptions may lead the player to injure himself further, or at least put himself at greater risk of more serious injury. Moreover, a player may try to either prevent injury, or treat injury, in unconventional ways such as with the use of steroids. The hope with this requirement is that awareness of injury and treatment options at the front end (i.e. before entering the NFL) will prevent more serious injury, and the use of irrational injury treatment or prevention methods, during the player's NFL career.

The Concussion Awareness Requirement

Although the injury awareness requirement discussed above will educate students on how to recognize when they are injured, the severity of head injuries, and specifically the dangers of concussions, drives this concussion awareness

requirement. The NFL, after researching the health of past players, has recognized that repeated brain injuries may lead to serious long-term effects.¹⁰⁷ Indeed, the NFL has attempted to mitigate such injuries through rule changes and by placing conditions on allowing players who have suffered such injuries to return to play.¹⁰⁸ More recently, the NFL agreed to a \$765 million settlement with former players who accused the NFL of hiding the dangers of brain injury while at the same time profiting from the violence that leads to such injuries.¹⁰⁹

Clearly, brain injuries are a serious concern. Therefore the goal of the concussion awareness requirement includes raising awareness of the seriousness of such injury, short and long term effects caused by brain injuries, an understanding of how to recognize when one has undergone a concussion, suggested treatment protocols, and how to go about seeking professional help. While the NFL has attempted to mitigate brain injuries, educating players about these types of injuries would raise awareness among the very individuals who are subjected to their very serious risk. Whether this particular requirement will help alleviate the number of concussions suffered in the NFL is unknown; however, awareness may at least help in recognizing and dealing with such injuries.

As mentioned above, this proposal seeks to balance the interests of the relevant parties including the NFL, current NFL players via the NFL Player's

¹⁰⁷ See *N.F.L. Acknowledges Long Time Concussion Effects*, THE NEW YORK TIMES (Dec. 20, 2009), <http://www.nytimes.com/2009/12/21/sports/football/21concussions.html?pagewanted=all>.

¹⁰⁸ See *New NFL rules designed to limit head injuries*, NFL.COM (July 26, 2012), <http://www.nfl.com/news/story/09000d5d81990bdf/article/new-nfl-rules-designed-to-limit-head-injuries>.

¹⁰⁹ See *NFL, players agree to settle concussion lawsuit*, THE CHICAGO TRIBUNE (Aug. 29, 2013), http://articles.chicagotribune.com/2013-08-29/sports/chi-nfl-concussion-settlement-20130829_1_concussion-lawsuit-duerson-family-mediator-layn-phillips.

Union, and future NFL players. This proposal is meant only to serve as suggestions that the parties may want to consider. The final agreement, however, would ideally be negotiated in good faith by the NFL and the NFL Player's Union, and would provide an entryway into the NFL based on the successful completion of classes that the parties agree will prepare one to play in the NFL.

PART IV: THE PROPOSAL'S PRO-COMPETITIVE EFFECTS AND PUBLIC POLICY ADVANCEMENTS

Adding an "NFL Degree" option to the NFL's current eligibility requirements would obviate Sherman Act concerns and advance public policy in light of the National Relations Labor Act. The "NFL Degree" option would be a negotiated provision of the Collective Bargaining Agreement between the NFL and the NFL Player's Union. For various reasons, both the NFL and the NFL Player's union would be willing to agree to such an option to entering the NFL.

The NFL Would Agree to Such an Option

The NFL would be willing to agree to such an option for at least two reasons. First, the NFL would have a say in what the requirements are. By adding or removing particular requirements, the NFL can address any interests or concerns that the league has in allowing persons into the league. Second, the agreement would be a bargained for arrangement that deals with mandatory subjects of employment including eligibility, and thus at least under the Mackey test would qualify for the non-statutory exemption to the Sherman Act, thus protecting the NFL from antitrust law attack. Moreover, even under the Second Circuit's test,

subjecting the eligibility rules to antitrust scrutiny would seem to “subvert fundamental principles of our federal labor policy,” thus insulating the NFL from antitrust claims.¹¹⁰ This is because the agreement would have been negotiated at arm’s length, providing a pathway to the NFL that is based on relevant criteria to playing in the NFL, rather than merely based on age or years out of high school.

The NFLPA, however, may still decertify in an effort to defeat the non-statutory exemption. By decertifying, the NFLPA would prevent the NFL from claiming the labor exemptions to antitrust law claims.¹¹¹ The NFL would be barred from claiming the labor exemptions to the Sherman Act because decertification of a union eliminates the reason for the existence of such exemptions. Specifically, the labor exemptions were created in an effort to accord significance to favored federal labor collective bargaining policies.¹¹² With the elimination of a union, however, the collective bargaining has come to an end, and presumably the NFL would be subject to antitrust law attack without the benefit of the non-statutory exemption. But the NFLPA would be less likely to contest a bargained for agreement that allows a player to be eligible for the NFL based on negotiated criteria that indicates an individual’s readiness for the NFL. Thus, because the NFLPA would be bargaining

¹¹⁰ *Clarett v. Nat'l Football League*, 369 F.3d 124, 138 (2d Cir. 2004).

¹¹¹ *See, e.g., Brady v. Nat'l Football League*, 644 F.3d 661, 687 (8th Cir. 2011) (“[T]he antitrust immunities stemming from statutory and nonstatutory labor exemptions must come to an end and give way to antitrust remedies. Such point does not come a year from the union disclaimer, nor one business cycle from it, as suggested by the League's counsel. Rather, such point comes at the moment of the union disclaimer.”).

¹¹² *See, supra*, Labor Exceptions to the Sherman Act, Part I.

for eligibility requirements on behalf of both current and future NFL players¹¹³, there would seem to be little reason for the NFLPA to attempt to bring changes through litigation, rather than thorough negotiation, to such bargained for terms.

The NFL Player's Union Would also Agree to Such an Option

Similarly, the NFL Player's Union would be willing to agree to an NFL Degree pathway to the NFL. Specifically, the NFL Player's Union would be able to negotiate the terms of this new option, taking into account the needs and concerns of current players as well as future players. One may argue that the NFL Player's Union would bias the negotiations in favor of current players rather than future players. In addition, because this new pathway potentially opens the door up to the NFL to more potential players, one may further argue that current players would not be in favor of an NFL Degree eligibility option.

These arguments cannot be overlooked; however, the concerns are mitigated for several reasons. First, the potential number of persons seeking entry into the NFL does not necessarily increase. Rather than allowing "more" individuals to qualify for the NFL, this option gives future players a chance of being eligible earlier in their careers. For example, instead of having to wait four years from they entered college, players that played in college can now enter after completing the NFL Degree requirements, irrespective of how long ago they entered college. Second, players that are not able to currently enter the NFL due to the current eligibility requirements may still enter the league at a later date, and would then be

¹¹³ Because the CBA acknowledges that the NFLPA is the sole representative of current and future NFL players, in theory the NFLPA should consider the interests of future NFL players. *See, supra, The NFLPA and the CBA Negotiated with the NFL, Part II.*

represented by the Player's Union. Thus, the Player's Union has an incentive to consider concerns of future NFL players. Finally, players in the NFL are already subject to extreme competition. If allowing a different path to the NFL increases the level of competition, it seems the rise would be minuscule to the point of being negligible.

Pro-competitive Effects of Proposal

Rather than limiting and harming competition, adopting this proposal would result in several pro-competitive effects. First, the proposal attempts to assure that only qualified athletes are eligible for the NFL. Rather than basing eligibility decisions on an arbitrary point in time, the proposal seeks to educate, and test, potential NFL players with regard to life in the NFL. By allowing only those candidates that successfully complete the "NFL Degree" program to enter the NFL Draft, the "NFL Degree" provision of the proposal filters out those players that are not ready for life in the NFL. Thus, the competition standard of players in the NFL would be higher, because competition would only be among those most qualified to play in the league.

Additionally, the proposal allows qualified athletes a way into the NFL without having to "wait it out." By allowing qualified athletes to enter the league earlier in their careers (assuming they satisfy the "NFL Degree" program's requirements), the players would have at least have the possibility of having longer

careers in the NFL.¹¹⁴ If players are able to participate in the league for a greater number of years, competition is increased at least in those additional years, because the players would otherwise not be competing in the league during those additional years.¹¹⁵

The Proposal Would Advance the Public Interest

Furthermore, the proposal would advance the public's interest in professional football eligibility. If the NFL is assumed to be a monopoly for professional football, there is a public interest in the fair and equal treatment of eligibility for potential players because potential players would not have a choice to play elsewhere if they were dissatisfied with the league. Rather than disallowing potential NFL players from entering the league merely because not enough time has passed since an arbitrary date, the current proposal allows all potential players to be eligible for the NFL if they successfully complete a preparatory program. In addition, the public interest is served well by policy that encourages good faith negotiations of employment terms between an employer that maintains monopolistic control over some part of a market, and a collective bargaining unit that represents both current and future employees. The proposal does just that by requiring the NFL and NFLPA to negotiate the details of the proposed changes to NFL eligibility

¹¹⁴ Because a career in the NFL tends to be short lived, there is no guarantee that allowing a player earlier into the league will result in a greater number of playing years in the league. See, supra, *The Financial Responsibility Requirement*, Part IV.

¹¹⁵ The statement assumes that the proposal does not limit completion by refusing eligibility to players that would effectively compete in the NFL, but are unable to satisfy any of the proposals' eligibility provisions.

requirements. In this fashion, the public can be assured that current and future players' interest is considered during employment negotiations.

Proposal Criticisms

The proposal inherently invites criticism because it involves change. Although addressing all criticism of the proposal is outside of the scope of this paper, three foreseeable criticisms are addressed. The first argument is that the current NFL eligibility requirements encourage a potential NFL player to attend college, in part because that player would rather play college football than have to wait three or four years before playing in the NFL. In contrast, the argument continues, the proposal discourages college enrollment because the "NFL Degree" is obtainable in a much shorter amount of time. The second, and related, argument is that under the current rules, if a potential player did enroll in college and graduate, at least that player can fall back on his degree if professional football does not work out. Finally, one may argue that those just graduating high school are not physically ready for professional football, and are best served by first playing at the college level. There is reason to doubt, however, the extent of these arguments.

First, there is no reason to think that many would-be college football players would instead opt out of attending college and enroll in an "NFL Degree" program. There are many reasons why students enroll in college, and obtaining a degree is one of them. A mere 0.08% of high school graduates go on to play football professionally.¹¹⁶ Undoubtedly most high school football players are aware of those odds, or at least realize that the odds are against them to make it professionally.

¹¹⁶ See Probability of competing in athletics beyond high school, supra note 1.

Thus, just for that reason alone high school students would choose to attend college. Additionally, studies suggest that merely half of current NFL players possess college degrees, suggesting that even under the current system, NFL players do not overwhelmingly possess such degrees.¹¹⁷ Therefore the “NFL Degree” program would not be depriving players of a degree that otherwise would have obtained.

Moreover, even if one were to complete the “NFL Degree” program, enroll in the NFL Draft, and not be selected, they can still go back and enroll in college. At most they would have lost nine months of time. A typical college degree takes four years to obtain. So one enrolling in an “NFL Degree” program that fails to play professionally and goes back to enroll in college can graduate with a college degree 4 years and 9 months after high school. Meanwhile, some college football players stay in college five years, especially if they are “redshirted” for their first year.¹¹⁸ Thus, the mere loss in 9 months time is not as significant as one may argue.

Finally, inherent protections in the degree program, as well as an NFL team’s best interests, mitigate concerns that a younger player may not be physically ready to play in the NFL. First, a player graduating high school is not eligible right away to play in the league. He must first satisfactorily complete the 9-month program that includes requirements related to physical ability and conditioning.

For example, the Strength Training requirement assures that students know how to

¹¹⁷ See *NFL Players Head Back to College*, CAMPUS EXPLORER, <http://www.campusexplorer.com/college-advice-tips/CA1C390B/NFL-Players-Head-Back-to-College/> (last visited Dec. 2, 2013).

¹¹⁸ A “redshirt year” is one in which the student athlete does not play the sport, but nonetheless is enrolled in college. Because athletic eligibility in college is limited, redshirting allows a student-athlete to spread his eligibility over a larger number of years. For example, 4 years of athletic eligibility may be spread out to five if the student-athlete “redshirts” one year. See http://en.wikipedia.org/wiki/Redshirt_%28college_sports%29.

strength train properly, and the Endurance requirement assures that students are able to endure the rigors of the NFL. These requirements, among others, attempt to prepare the student for the physical demands of the NFL.

In addition drafting a young player and playing him right away, while knowing that due to his physical conditioning he is likely to injure himself, is not in a team's best interest. A hurt player cannot help his team on the field. Rather, a team is more likely to evaluate a player, decide whether he is worth the risk of drafting, and if selected, place him on a path to success. Presumably, that path may include precluding the player from playing in games until the team feels he is physically ready to play in the league. Moreover, if a team feels that a player is not ready to play in the NFL, the team has less incentive to draft that player for immediate help, rather than as a future prospect. More likely, if the player is drafted, is to help the team in the future when that player is physically ready to play. These considerations, therefore, mitigate the concern that a younger player that becomes eligible for the NFL under this proposal's "NFL Degree" pathway will hurt himself because he is not physically ready to play in the NFL.

PART VI: CONCLUSION

This paper proposes a change to the current National Football League Eligibility requirements. Specifically, the proposal replaces several current ways of becoming eligible for the NFL that require a potential player to wait a certain amount of time before he is eligible to play in the league with a pathway based on

an “NFL Degree.” The 9-month degree program has no wait period, and instead prepares a potential player for entry into the league by requiring him to complete a set of classes. Upon successful completion of the program, the player becomes eligible for the NFL. The proposal requires the NFL and the NFL Player’s Union to bargain over the proposal’s details to be included in a collective bargaining agreement that qualifies for the non-statutory labor exemption to the Sherman Act, thus shielding the agreement from antitrust law attack.