



February 6, 2024

Yaw Gyebi, Jr., Director  
Jeffrey Burstein, Regional Attorney  
Equal Employment Opportunity Commission  
New York District Office  
33 Whitehall Street, 5th Floor  
New York, NY 10004

**Re: Request for Investigation of the National Football League and its Member Clubs**

Dear Director Gyebi and Regional Attorney Burstein:

America First Legal Foundation (“AFL”) is a national, nonprofit organization working to protect the rule of law, due process, and equal protection for all Americans.

We write pursuant to 29 C.F.R. § 1601.6(a), which states, “Any person or organization may request the issuance of a Commissioner charge for an inquiry into individual or systemic discrimination,” to request the Equal Employment Opportunity Commission (“EEOC”) open an investigation into the member clubs of the National Football League (“the NFL”) for engaging in unlawful employment practices in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2, through their adherence to and application of the Rooney Rule.<sup>1</sup>

**I. Background**

The NFL is a trade association composed of thirty-two member teams under your jurisdiction, having its headquarters at 345 Park Avenue, New York, NY 10154. The member clubs are each subject to Title VII of the Civil Rights Act of 1964, which prohibits them from engaging in unlawful employment practices. Unlawful employment practices include discriminating against an employee or an applicant for employment because of race, color, religion, sex, or national origin or limiting, segregating, or classifying employees or applicants in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of race, color, religion, sex, or national origin. *See* 42 U.S.C. § 2000e-2(a). Unlawful employment practices also include discriminating against any individual because of his race, color, religion, sex, or

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<sup>1</sup> Copies of this letter are also addressed to each Member of the Commission and AFL makes the same request of them according to 29 C.F.R. § 1601.6(a).

national origin in admission to, or employment in, any program established to provide apprenticeship or other training. 42 U.S.C. § 2000e-2(d). If race, color, religion, sex, or national origin is *a* motivating factor for any employment practice, then the employer has violated the law even if other factors also motivate the employer’s decision. 42 U.S.C. § 2000e-2(m).

## II. Unlawful Employment Practices

### A. The Rooney Rule

In 2003, the member clubs of the NFL voted to adopt the “Rooney Rule” for the purpose of “increas[ing] the number of minorities hired in head coach, general manager, and executive positions.”<sup>2</sup> According to the NFL, the initial focus of the Rooney Rule was to address “the historically low number of minorities in head coaching positions.”<sup>3</sup> Thus, the original iteration of the rule “required every team with a head coaching vacancy to interview at least one or more diverse candidates before making a new hire.”<sup>4</sup>

The Rooney Rule has been amended several times since its adoption and now requires teams to interview at least two external minority candidates for head coach and general manager vacancies, at least one external minority for a coordinator job, and at least one minority and/or female candidate for senior level positions, such as club president and senior executives.<sup>5</sup> In 2020, the owners of the NFL member clubs approved an amendment to the Rooney Rule that awards teams third-round compensatory draft picks for two years if it developed a minority executive or coach who left for another team and would award three years of compensatory third-round draft picks if it developed and lost both a minority executive and minority coach to another team.<sup>6</sup> The Rooney Rule facially violates 42 U.S.C. § 2000e-2(a).

### B. The NFL’s “Coach & Front Office Accelerator”

In May 2022, the NFL “launched” the “Coach & Front Office Accelerator” to “immerse women and other emerging leaders of color [sic] in leadership development sessions.... The NFL strategically designed the Coach & Front Office Accelerator Program to continue building a diverse [sic] hiring pipeline for future head coach and general manager positions.”<sup>7</sup> This facially violates 42 U.S.C. § 2000e-2(d).

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<sup>2</sup> NFL, *The Rooney Rule*, Football Operations, <http://tinyurl.com/9ync3k4> (last visited January 19, 2024).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *2023 NFL Diversity and Inclusion Report*, NATIONAL FOOTBALL LEAGUE, <https://bit.ly/3HV2aMB> (at page 35).

### C. The NFL’s “Mackie Development Program”

The NFL’s Mackie Development Program “provides an opportunity for college-level officials not yet working in the NFL to be exposed to some of the same experiences as NFL officials.” The NFL claims that participants are “Drawn from the nearly 4,000 candidates in the league’s scouting database, these officials, with an emphasis on diverse candidates, are evaluated by the league to answer one question: Do they have the potential to succeed in the NFL?” and provided unique training opportunities. This program, too, facially violates 42 U.S.C. § 2000e-2(d).

### III. The Commission Should Investigate the NFL and its Member Teams

The NFL’s Rooney Rule facially violates 42 U.S.C. §§ 2000e-2(a) and (d). Paradoxically, it seems that the Rooney Rule has not significantly increased the percentage of minority coaches in the league. Rather, according to minority interviewees for head coaching positions and the former head of the NFL Players Association, DeMaurice Smith, it has instead resulted in member clubs engaging in sham interviews with minority candidates solely to check the Rooney Rule box.<sup>8</sup> Given the limited timeframe to hire executives and coaches after the season, this results in fewer opportunities for similarly situated, well-qualified candidates who are not minorities.

It is abundantly clear that the NFL and its member teams do indeed limit, segregate, or classify their employees or applicants for employment in ways that deprive at least some individuals of interview and employment opportunities specifically because of race, color, or sex. Decades of case law have held that — no matter how well-intentioned — quotas and employment practices aimed at achieving racial “balancing” are strictly prohibited. *Students for Fair Admissions*, 143 S. Ct. 2141 (2023); *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731 (2020); see also *United Steelworkers of America v. Weber*, 443 U.S. 193, 208 (1979); *Johnson v. Transp. Agency*, U.S. 616, 621, 632 (1987). However pure its intention, the fact is that the Rooney Rule cannot stand up to legal scrutiny.

The NFL’s unlawful employment practices are also deeply harmful. Discrimination based on immutable characteristics such as race, color, national origin, or sex “generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely to ever be undone.”<sup>9</sup> More broadly, the discrimination highlighted in this case necessarily foments contention and

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<sup>8</sup> *Flores v. National Football League*, 658 F.Supp.3d 198, 203 (S.D.N.Y. 2023); DeMaurice Smith and Carl Lasker, *The Rooney Suggestion: How the “Rule” Has Failed to Defeat Systemic and Institutional Barriers to Fair and Equitable Hiring Practices in the NFL and Recommendations for Meaningful Reform*, NFLPA, <http://tinyurl.com/342knhyr> (last visited January 19, 2024).

<sup>9</sup> *Brown v. Bd. of Education*, 347 U.S. 484, 494 (1954).

resentment, it is “odious and destructive.”<sup>10</sup> It truly “is a sordid business, this divvying us up” by race, color, or sex.<sup>11</sup>

Thank you in advance for your consideration. Please feel free to contact me if you have any questions.

Sincerely,

/s/ Ian D. Prior

Ian D. Prior

America First Legal Foundation

Cc: The Honorable Charlotte A. Burrows, Commission Chair  
The Honorable Jocelyn Samuels, Commission Vice Chair  
The Honorable Keith E. Sonderling, Commissioner  
The Honorable Andrea R. Lucas, Commissioner  
The Honorable Kalpana Kotagal, Commissioner

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<sup>10</sup> *Texas v. Johnson*, 491 U.S. 397, 418 (1989).

<sup>11</sup> *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part).

## APPENDIX

The Rooney Rule encourages hiring best practices to foster and provide opportunity to diverse leadership throughout the NFL.

The Rooney Rule is one part of the NFL's effort to develop a deep, sustainable talent pool at all levels of the organization. The policy promotes diverse leadership among NFL clubs to ensure that promising candidates have the opportunity to prove they have the necessary skills and qualifications to excel.

Through hiring best practices, the Rooney Rule aims to increase the number of minorities hired in head coach, general manager, and executive positions. This diversity enriches the game and creates a more effective, quality organization from top to bottom.

## ***STRENGTHENING THE ROONEY RULE***

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In recent years, the DEI Committee has proposed additional changes to strengthen the Rooney Rule, including:

- Clubs must conduct an in-person interview with at least two external diverse — minority and/or female — candidates for any GM or head coaching interview.
- Clubs must interview at least two minorities and/or women for all coordinator positions.
- Clubs must interview a least one diverse candidate for the QB coach position or any senior level executive position at the club.

NFL Commissioner Roger Goodell stated that the updates “bolster the current Rooney Rule requirements and are intended to create additional opportunities for diverse candidates to be identified, interviewed, and ultimately hired when a vacancy becomes available.”

The committee also supported new accountability measures to ensure that all teams follow the procedures outlined in the rule.

# ***EVOLUTION OF THE ROONEY RULE***

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The NFL adopted the Rooney Rule in 2003 based on recommendations made by the league's Workplace Diversity Committee, now known as the Diversity Equity and Inclusion (DEI) Committee. It was named after then-chairman of the committee, Dan Rooney, the late owner of the Pittsburgh Steelers.

The committee's initial focus was on the historically low number of minorities in head coaching positions. The policy originally required every team with a head coaching vacancy to interview at least one or more diverse candidates before making a new hire.

Over the years, the Rooney Rule has expanded to include a greater number of positions across NFL clubs.

Following the 2022 Spring League Meeting, the Rooney Rule was expanded to include women as a part of the minority candidate definition and also include the QB coach position. NFL teams are now required to interview at least two minority candidates for vacant head coach, GM and coordinator positions. One minority candidate is required for the QB coach position. With many prospective head coaches beginning their careers in the QB room, the ruling is expected to help increase the hiring of diverse head coaches in the future.

In 2021, the NFL approved changes requiring every team to interview at least two external minority candidates in person for open head coach and GM positions and at least two external minority candidates — in person or virtual — for a coordinator job. Additionally, at least one minority and/or female candidate must be interviewed for senior level positions (e.g., club president and senior executives).

In November 2020, team owners approved a proposal rewarding teams who developed minority talent that went on to become GMs or head coaches across the league. If a team lost a minority executive or coach to another team, that team would receive a third-round compensatory pick for two years. If a team lost both a coach and personnel member, it would receive a third-round compensatory pick for three years.

In 2009, the policy was amended to include general manager and primary football executive jobs, requiring each team to interview a minimum of two external minority candidates.