



February 6, 2024

Roger Goodell, Commissioner  
Jeffrey Pash, Executive Vice President and General Counsel  
National Football League  
345 Park Avenue, 5th Floor  
New York, NY 10154

**Re: The NFL’s Illegal Employment and Contracting Practices**

Dear Commissioner Goodell,

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.

This letter serves as notice to you and to the owners of the thirty-two member clubs that the NFL’s illegal employment practices expose these individuals to substantial risk, including, *inter alia*, the risk of being a target of litigation alleging a conspiracy to violate civil rights. As Commissioner, you are “the principal executive officer of the League and [] have general supervision of its business and affairs.”<sup>1</sup> As such, and as you have recognized, your “No. 1 job is protecting the integrity of the game.”<sup>2</sup> It is, therefore, your responsibility to protect the integrity of the NFL by ensuring that its employment and contracting practices comply with our civil rights laws and controlling Supreme Court authorities. However, as explained below, you have failed to carry out this critical responsibility.

**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.

It generated more revenue in 2023 - \$18.6 billion - than any other professional sporting league worldwide.<sup>3</sup> Over the next decade, the NFL will receive \$125.5 billion in revenue from television contracts, \$2 billion a year from YouTube streaming rights provided to Alphabet, and likely another \$150 million to \$250 million a year through

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<sup>1</sup> CONSTITUTION AND BYLAWS OF THE NATIONAL FOOTBALL LEAGUE, Art. VIII, § 8.4 (B)(2). <http://tinyurl.com/awm8wt4x> (last visited January 19, 2024).

<sup>2</sup> Jill Martin (@ByJillMartin), X (October 8, 2014, 6:32 PM), <http://tinyurl.com/yc3fz9m3> (last visited January 19, 2024).

<sup>3</sup> Kevin Omuya and Jackline Wangare, *Which are the 15 richest sports leagues in the world currently?* Sports Brief (November 19, 2023), <http://tinyurl.com/3xw98meu>.

2029 from the NFL’s commercial rights.<sup>4</sup> As a result, an average of 17.9 million people tuned in for the regular season games, and Super Bowl LVII was the third most-watched television show in history with over 113 million viewers.<sup>5</sup>

Unfortunately, the evidence is that the NFL and its member clubs have infused unlawful considerations of race and sex into their hiring, promotion, and contracting practices, and are intentionally operating training and other programs that facially violate our civil rights laws. In fact, the NFL freely admits to operating a comprehensive system of employee and applicant classification for the express purpose of racial and sex balancing the workforce. To serve false “diversity,” the NFL disregards long-settled law and engages in patently illegal and immoral racial bean-counting.<sup>6</sup>

## II. Evidence of the NFL’s Unlawful Employment Practices

The NFL and its 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 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 motivated the employer’s decision. 42 U.S.C. § 2000e-2(m).

### 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>7</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>8</sup> Thus, the original iteration of the rule “required every team with

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<sup>4</sup> Michael Ozanian, *Why the NFL Could Reap More Than \$126 Billion in TV Money by 2033*, FORBES (August 30, 2023), <http://tinyurl.com/4tbzdvdn>.

<sup>5</sup> Scooby Axson, *Super Bowl 57 averages 113 million viewers, third most-watched television show in history*, USA TODAY (February 14, 2023), <http://tinyurl.com/3297e6km>.

<sup>6</sup> *2023 NFL Diversity and Inclusion Report*, NATIONAL FOOTBALL LEAGUE, <https://bit.ly/3HV2aMB>.

<sup>7</sup> NFL, *The Rooney Rule*, FOOTBALL OPERATIONS, <http://tinyurl.com/9ync3k4> (last visited January 19, 2024).

<sup>8</sup> *Id.*

a head coaching vacancy to interview at least one or more diverse candidates before making a new hire.”<sup>9</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>10</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>11</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 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>12</sup> This facially violates 42 U.S.C. § 2000e-2(d).

### **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 [sic] 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. Evidence of the NFL’s Unlawful Contracting Practices**

Under 42 U.S.C. § 1981, it is unlawful to discriminate on the basis of race in the making, performance, modification, and termination of contracts, and in the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship; the statute applies to all phases and incidents of the contractual relationship. *Comcast Corp. v. Nat’l Ass’n of Afr. Am.-Owned Media*, 140 S. Ct. 1009,

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *2023 NFL Diversity and Inclusion Report*, NATIONAL FOOTBALL LEAGUE, <https://bit.ly/3HV2aMB> (at page 35).

1020 (2020) (Ginsburg, J., concurring). However, the NFL and its member teams admit to doing precisely these things. For example, the 2020 amendment to the Rooney Rule, provides valuable compensatory third-round draft picks to teams for hiring coaches and executives with the “correct” skin color or sex, which violates 42 U.S.C. § 1981. Also, the NFL’s 2023 “Diversity and Inclusion” [sic] report illustrates the extent to which race and color drive NFL and member teams’ training and employment contracting practices.

#### **IV. The NFL’s Discriminatory Employment and Contracting Practices are Illegal and Immoral**

The NFL admits “intentionally” hiring and promoting “diverse” workers – that is, it admits to using race, color, and sex as a motivating factor in its employment practices.<sup>13</sup> However, the NFL’s admitted use of race and sex-based preferences in interviewing, hiring, and promotions is patently illegal. 42 U.S.C. §§ 2000e-2(a), (d), (m). Decades of case law have held that — no matter how well-intentioned — practices aimed at achieving racial or sexual “balancing” in the workforce 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). Similarly, the NFL’s policy of awarding valuable compensatory draft picks to clubs that develop only minority coaches and executives is unlawful.

Striking a blow for the principle that merit, not skin color, should be dispositive, Kenny Washington, Woody Strode, Bill Willis, and Marion Motley broke the NFL’s color barrier in 1946, one year before Jackie Robinson did so in baseball. This is something to be proud of. It is, therefore, shocking that the NFL and its member teams have chosen to roll back history; immutable characteristics should never drive employment and contracting decisions.

The NFL’s systemic violations of our civil rights laws over the past twenty years are not only illegal and anathema to the core fabric of America’s guarantee of equal protection, but they greatly diminish the integrity of the NFL, the protection of which you have cited as your top priority as NFL Commissioner. Accordingly, please be advised that America First Legal Foundation stands ready to represent any person who has been harmed by the NFL’s unlawful practices and will take all appropriate measures to stop your cynical assault on Constitutional equality.

[Signature page follows]

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<sup>13</sup> Press Release, National Football League, NFL Releases 2023 Diversity and Inclusion Report (Mar. 24, 2023) (available at <https://bit.ly/4brbDZK>).

Sincerely,

/s/ Ian D. Prior

Ian D. Prior

Senior Litigation Counsel

America First Legal Foundation

Cc: Michael Bidwell, Arizona Cardinals  
Arthur Blank, Atlanta Falcons  
Steve Biscotti, Baltimore Ravens  
Terry and Kim Pegula, Buffalo Bills  
David Tepper, Carolina Panthers  
Virginia Halas McCaskey, Chicago Bears  
Mike Brown, Cincinnati Bengals  
Jimmy and Dee Haslam, Cleveland Browns  
Jerry Jones, Dallas Cowboys  
Rob Walton, Denver Broncos  
Shelia Ford Hamp, Detroit Lions  
Mark Murphy, Green Bay Packer  
Janice McNair, Houston Texans  
Jim Irsay, Indianapolis Colts  
Shahid Khan, Jacksonville Jaguars  
Clark Hunt, Kansas City Chiefs  
Mark and Carol Davis, Las Vegas Raiders  
Dean Spanos, Los Angeles Chargers  
Stan Kroenke, Los Angeles Rams  
Stephen Ross, Miami Dolphins  
Zygi Wilf, Minnesota Vikings  
Robert Kraft, New England Patriots  
Gayle Benson, New Orleans Saints  
John Mara and Steve Tisch, New York Giants  
Woody and Christopher Johnson, New York Jets  
Jeffrey Lurie, Philadelphia Eagles  
Art Rooney II, Pittsburgh Steelers  
Denise York and Jed York, San Francisco 49ers  
Jody Allen, Seattle Seahawks  
Bryan Glazer, Tampa Bay Buccaneers  
Amy Adams Strunk, Tennessee Titans  
Josh Harris, Washington Commanders

## 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.