Seton Hall University
eRepository @ Seton Hall

Student Works | Seton Hall Law

2023

Detrimental Conduct: Why NFL Owners May Lose to Win

John C. Coyle IV

Follow this and additional works at: https://scholarship.shu.edu/student_scholarship

Part of the Law Commons

Detrimental Conduct: Why NFL Owners May Lose to Win

ABSTRACT

"Pay no attention to that man behind the curtain!" the Wizard of Oz exclaimed as Toto pulled back the green cloth that disguised the Wizard's identity.[1] To Dorothy's dismay, the Wizard of Oz concealed his true self, deciding to work in the shadows by directing attention to other artificial realities.

On February 1, 2022, Brian Flores, the former head coach of the Miami Dolphins, pulled the curtain back on Dolphins' owner Stephen Ross, alleging that Ross directed Flores to "tank" the season by offering Flores "$100,000 for every loss" during the 2019 season so that the team would secure a higher draft pick.

This article explains why the unidirectional view of sports betting corruption, namely player misconduct, is misguided. Instead, attention should be re-focused to team owners' misconduct. During a time of great economic expansion in the NFL due to legalized sports gambling, special scrutiny must be levied against inside individuals who can shape outcomes, such as NFL franchise owners. This paper will argue that the Sports Bribery Act is not up to the task to patrol this problem, and the law must be rewritten to reframe the issue of fixing games from the players' on-field performance to the whispers of the owner's front office.

[1] The Wizard of Oz (Metro-Goldwyn-Mayer 1939).

My main job as NFL Commissioner is to "protect the shield."[2]

"*Quis Custodiet Ipsos Custodes?*"[3]

Introduction

In 1933, Art Rooney, an avid horse race gambler, paid $2,500 to the National Football League ("NFL") to secure a new football franchise in Pittsburgh, Pennsylvania.[4] Rooney called his new team the Pirates, after Major League Baseball's ("MLB") Pittsburgh Pirates, in an effort to boost interest, recognition, and game attendance among Pittsburgh's citizens.[5] Shortly thereafter, in 1935, Rooney placed a parlay bet at Saratoga Race Course, winning $50,000.[6] Rooney used his winnings to bankroll the Pirates through the 1941 season, when they were rebranded as the Pittsburgh Steelers.[7] In 2021, the Pittsburgh Steelers were valued at $3.4 billion.[8]

This article argues that today's NFL team owners possess outsized and disproportionate power over the activities of their teams and the NFL. Some owners, such as the Rooneys, are responsible owners who are dedicated to celebrating and promoting the game of football.[9] But

[2] Roger Goodell, the current NFL Commissioner, frequently states that "protecting the shield" is his primary concern yet is commonly criticized for accommodating team owners' misconduct while punishing player misconduct. *See* Christopher L. Gasper, *It's clear Roger Goodell raised the shield to protect those who have tarnished it of late—the NFL's owners*, Boston Globe (Feb. 9, 2022, 07:57PM), https://www.bostonglobe.com/2022/02/09/sports/its-clear-roger-goodell-raised-shield-protect-those-who-have-tarnished-it-late-nfls-owners/; Ian O'Connor, *Roger Goodell at 10 years: Time to put 'players first'* ESPN, (Aug. 8, 2016), https://www.espn.com/nfl/story/_/id/17232122/roger-goodell-nfl-commissioner-10-years-protect-player-safety-first-improve-legacy.

[3] Latin translations include "Who will guard the guards themselves" or "who watches the watchmen?" Attributed to the Roman poet Juvenal's *Satires*. Juvenal, *Satires VI*, lines 347-48. (1st Century A.D.)

[4] Vince Johnson, *Rooney Unique in Pro Football Hall of Fame*, Pittsburgh Gazette, (Sept. 7, 1964), republished Sept. 30, 2007, https://www.post-gazette.com/sports/steelers/2007/09/30/From-the-PG-Archives-Rooney-Unique-in-Pro-Football-Hall-of-Fame/stories/200709300174.

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *NFL Team Valuations*, Forbes, (August 2021), https://www.forbes.com/teams/pittsburgh-steelers/?sh=2426cbb14cd6.

[9] The Rooney Rule, which is the basis of Brian Flores' race discrimination lawsuit against the NFL, is named after Art Rooney. The Rule intended to bring racial diversity and inclusivity into NFL team front offices and coaching positions by requiring NFL teams to interview at least one minority candidate for their open coaching positions. See

recent developments, including bribery allegations against Miami Dolphins owner Stephen Ross and Cleveland Browns owner Jimmy Haslam, demonstrate that the NFL and federal law are not adequately prepared to handle major misconduct of some of the most powerful individuals in professional sports. Allegations of owners paying their coaches to lose games strikes at the heart of the integrity of the sport at a time when it is undergoing great economic change due to the legalization of sports gambling.

In part one, the article explains the importance of maintaining game integrity in the NFL and addresses the potential consequences of losing public confidence in NFL games. Part two explores, through the lens of game integrity, how the NFL is unwilling and unable to punish owner sports gambling violations and further posits that the NFL cannot adequately punish any owner misconduct. Part three argues that the Sports Bribery Act is insufficient to protect against misconduct from team owners. Part four recommends solutions to this problem through changes in federal law and a public re-framing of corruption in professional sports.

It is time to reorient the conversation of corruption in sports from player misconduct to owner misconduct, rewrite the Sports Bribery Act, and deploy innovative legal methods such as employing consumer fraud laws so that powerful offenders are not shielded by their fellow owners and antiquated statutes. If the NFL's team owners, the de facto guardians of the game, cannot guard against corruption, outside institutions such as the United States Congress must intervene to preserve this beloved American institution.

The Rooney Rule, NFL Football Operations, https://operations.nfl.com/inside-football-ops/diversity-inclusion/the-rooney-rule/ (last visited Apr. 25, 2022).

PART I: The Integrity of the Game

I. The Origins of the NFL & Sports Corruption in the United States.

When the New York Nine beat the Knickerbocker Base Ball Club by a score of 23-1 at Elysian Fields in Hoboken, New Jersey on October 6, 1846, the players knew they were forming a new kind of game.[10] But little did they know it would morph into Major League Baseball, the oldest professional sports league in the world, which in 2019 took in $10.7 billion dollars in revenue.[11] The National Football League followed a similar trajectory. Formed in 1920 as the American Professional Football Association, the league consisted of fourteen teams from four states,[12] and operated in relative rural obscurity during its early years.[13] Today, the NFL consists of thirty-two franchises, and took in $18 billion dollars in revenue during the 2021 season.[14] The NFL now outperforms MLB in sponsorship revenue, playoff revenue, and viewership season after season.[15] What began as a pastoral game in Canton, Ohio grew into an economic sports and

---

[10] *See The First Baseball Game*, https://nj.gov/nj/about/baseball.html#:~:text=On%20June%2019%2C%201846%2C%20at,the%20Knickerbockers%20as%20they%20appeared; *National League of Baseball Is Founded*, HISTORY, https://www.history.com/this-day-in-history/national-league-of-baseball-is-founded (last visited Mar. 16, 2022); *American League*, Encyclopedia Britannica, https://www.britannica.com/American-League (last visited Mar. 16, 2022).

[11] The Football Association, commonly abbreviated FA, was founded in 1863 in England. The FA was solely amateur until 1885 when the league began paying its players due to the creation of a rival league. *See generally* R.W. Lewis, Touched Pitch and Been Shockingly Defiled: Football, Class, Social Darwinism, and Decadence in England, 1880-1914, in J.A. Mangan, *Sport in Europe: Politics, Class, Gender*, (Frank Cass, London), pp. 117-143. *See also* Maury Brown, *MLB Sees Record $10.7 Billion In Revenues For 2019*, Forbes (Dec. 21, 2019, 07:02AM), https://www.forbes.com/sites/maurybrown/2019/12/21/mlb-sees-record-107-billion-in-revenues-for-2019/?sh=194d73f05d78.

[12] Mark Craig, *From humble beginnings grew traditional powers*, StarTribune (Jan. 30, 2011, 11:48PM) https://www.startribune.com/from-humble-beginnings-grew-traditional-powers/114910274/

[13] Scott E. Backman, *NFL Players Fight for Their Freedom: The History of Free Agency in the NFL*, 9 Sports LAW, J. 1 (2002).

[14] In March 2010, Roger Goodell announced his goal was to increase NFL revenue to $25 billion in yearly revenue by 2027. According to Sportico, the NFL will take in $25 billion by 2025, largely from last year's $113 billion over 11 years media deal with CBS, Fox, NBC, Disney, and Amazon. *See* Kurt Badenhausen, *Goodell's $25 Billion Revenue Goal Remains In NFL's Sights*, Sportico (Feb. 15, 2022), https://www.sportico.com/leagues/football/2022/goodell-25-billion-revenue-goal-global-nfl-1234661705/; *see also* Jabari Young, *NFL ready to start the 2021 season – here's what's happening with the league's business on and off the field*, CNBC, (Sept. 8, 2021, 05:57PM), https://www.cnbc.com/2021/09/08/nfl-2021-season-whats-happening-with-the-leagues-business.html.

[15] Despite fielding only 256 regular season games compared to MLB's 2,430 matches, the NFL received $1.32 billion in sponsorship revenue in the 2017-18 season. In comparison, MLB's sponsorship revenue was $892 million. Mike

entertainment behemoth that commands the most attention and market power of any American professional sport.

A. **The Origins of the Owners**

During the 1920s, the NFL primarily operated in Midwestern and Mid-Atlantic cities such as Buffalo, Canton, Columbus, Dayton, Detroit, Rochester, and Chicago.[16] In 1925, eager to break into the larger coastal cities, NFL President Joe Carr approached Tim Mara,[17] who operated a gambling operation consisting of several horse racetracks in the New York area.[18] With little convincing, Mara bought the New York Giants football team for $500.[19] Several other NFL teams were founded with money acquired by gambling, with ties to organized crime, or with individuals associated with both, including the Chicago Cardinals, the Cleveland Browns, the Dallas Cowboys, the Baltimore Colts, the Los Angeles Rams, the San Francisco 49ers, and the Oakland Raiders.[20] Money, power, and gambling is a common thread that runs with the team owners from the infancy of the NFL to the current NFL. Yet, today's owners are remarkably different than the founding owners of the NFL.

The owners who founded NFL teams in the 1920s and 1930s started teams by paying a meager franchise fee and operated their teams by squeezing the most out of their lowly budgets.[21] These owners achieved wealth through the success of their franchises. But beginning in the early 1990s, the financial landscape of the NFL changed considerably. For the first time, already ultra-

---

Lukas, *NFL vs. MLB: Revenue, Salaries, Viewership, Attendance and Ratings*, WSN, (Sept. 4, 2018), https://www.wsn.com/nfl/nfl-vs-mlb/.

[16] Timothy O'Brien, *Bad Bet*, (Random House 1998) 238-240.

[17] *Id*.

[18] *Id*.

[19] *Id*.

[20] *Id*.

[21] In the 1968 Collective Bargaining Agreement, the minimum salary was set at $9,000 for rookies and $10,000 for veterans. Players were paid $50 dollars for exhibition games. *See 1960s: AFL vs. NFL*, NFLPA, NFLPA, https://nflpa.com/about/history/1960s-afl-vs-nfl.

wealthy individuals began purchasing teams or making new ones. Jerry Jones, the oil energy magnate, purchased the Dallas Cowboys in February 1989 for $140 million.[22] At the time, the Cowboys were the worst team in the NFL, with home game attendance declining for five straight years.[23] Jones quickly turned the team around, both on the field and in the bank, sending the Cowboys to the Superbowl in 1993, 1994, and 1996.[24] Financially, Jones was even more successful. He doubled the price of game tickets, eliminated 2,500 seats, and inserted one hundred luxury suites into Texas Stadium.[25] Jones's revenue from Texas Stadium skyrocketed from $700,000 in 1992 to $30 million in 1993.[26] But Jones did not stop at stadium revenue. He inked team sponsorship deals with Pepsi and Nike, thereby violating sponsorship deals NFL Properties already had in place with Coca-Cola and Reebok.[27] The NFL sued Jones for $300 million to enjoin him from executing his sponsorship deals; in response, Jones countersued for $750 million, and the NFL withdrew its claim.[28] Jerry Jones ushered in a new era of NFL ownership trademarked by unapologetic spending, immense growth, and windfall profits.

In 1993, coinciding with Jones' lawsuit, the NFL announced two new franchises, in Charlotte, North Carolina and Jacksonville, Florida.[29] Between 1993 and 1995, the New England Patriots, Philadelphia Eagles, and Miami Dolphins were all sold for prices between $160 to $173 million.[30] Other owners followed Jones' template. Buoyed by new national television contracts, owners entered a new era of stadium building with luxury boxes.[31] If cities refused to financially

[22] Michael Oriard, *Brand NFL: Making and Selling America's Favorite Sport* (2007). p. 150.
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.* at 151.
[28] *Id.*
[29] The Carolina Panthers and Jacksonville Jaguars franchises arrived at a cost $140 million each. Prior to their entrance to the NFL, the last teams to enter were Seattle and Tampa Bay in 1976 at a cost of $16 million. *Id.*
[30] *Id.* at 152.
[31] Television deals ballooned from $900 million in 1990 to $2.2 billion in 1998. *Id.* at 153.

aid stadium construction or provide tax breaks to franchises, owners threatened, and sometimes did, move their teams to other cities.[32] The NFL is powerless to restrict the movement of its teams, so owners pursued the profits, building new stadiums in their current cities or uprooting their fanbases and shipping their teams to new cities. Between 1992 and 2010, twenty-one teams moved into new stadiums.[33] The relocations, new stadiums, and television contracts paid off handsomely for the owners. Today, Jerry Jones is worth $8.9 billion. Including Jones, thirteen NFL franchise owners are worth more than three billion dollars each.[34]

For instance, the owner of the Carolina Panthers, David Tepper, is a hedge fund manager and is the one-hundred-forty-second richest individual in the world, with a wealth of fourteen and one half billion dollars.[35] The second wealthiest owner is Stanley Kroenke.[36] Kroenke operates a sports and entertainment umbrella company that owns several professional sports teams including the Premier League's Arsenal Football Club, the NBA's Denver Nuggets, the NHL's Colorado Avalanche, and the NFL's Los Angeles Rams.[37] Stephen Ross, the Miami Dolphins owner who faces sports bribery accusations, achieved wealth through global real estate development.[38] Ross is worth $8.4 billion.[39] Jimmy Haslam, the owner of the Cleveland Browns, who is also accused of sports bribery, is worth $3 billion.[40] The NFL owners of today constitute a handful of the wealthiest and most powerful individuals throughout the United States and the world.

---

[32] In 1995, the Los Angeles Rams moved to St. Louis after the City of St. Louis offered generous financial incentives, the owner of the Houston Oilers moved his team to Nashville, and the owner of the Cleveland Browns moved his team to Baltimore. In 1998, the NFL granted a new team for Cleveland for $530 million. A year later, Houston re-received a franchise, the Texans, for $700 million. *Id.* at 153.
[33] *Id.*
[34] John Breech, *NFL's richest owners revealed for 2021: Panthers, Cowboys and Rams top list of teams with wealthiest owners*, CBS Sports, (Apr. 9, 2021, 01:26PM), https://www.cbssports.com/nfl/draft/news/2022-nfl-mock-draft-seahawks-leapfrog-panthers-falcons-to-grab-qb1-chargers-move-up-for-top-pass-blocker/.
[35] *Id.*
[36] *Id.*
[37] Kroenke is married to the heiress of the Walmart fortune, Ann Walton. *Id.*
[38] *Id.*
[39] *Id.*
[40] *Id.*

B. **The Structure of the NFL**

NFL owners have a long history of exercising almost complete control over their players.[41] Since the NFL's beginning, team owners limited player rights by including restrictive clauses in the NFL Constitution, the NFL By-laws, and the NFL standard player contracts.[42] As the league gained popularity by the mid-nineteenth century, players began to challenge the owners' vice-like-grip on players' rights in court.

The first challenge came in 1957, when William Radovich sued the NFL arguing that the league violated antitrust laws.[43] The United States Supreme Court ruled in Radovich's favor, subjecting the NFL, unlike the MLB, to the Sherman Antitrust Act,[44] laying the groundwork for the push for free agency arguments almost twenty years later. The owners, fearing outside forces such as the courts would restrain their authority, responded to *Radovich* by instituting a new rule into the NFL Constitution, informally referred to as the Rozelle Rule, named after the NFL Commissioner at the time, which required teams who signed a new player to compensate the player's former team for a negotiated price. If the teams could not agree to an amount, the Commissioner would decide how much compensation was owed to the player's former team. Consequently, the Rozelle Rule, in effect, prevented players' movement among different teams simply because teams found it not in their best interest to sign free agent players.[45] Between 1963

---

[41] Scott E. Backman, *NFL Players Fight for Their Freedom: The History of Free Agency in the NFL*, 9 Sports LAW. J. 1 (2002).

[42] As a young league, NFL owners prevented players from joining other professional football leagues by enlisting a boycott policy, whereby a player who left the NFL to play for a rival league would be prevented from playing in the NFL for life. *Id.*

[43] *See Radovich v. NFL*, 352 U.S. 445 (1957).

[44] *Id.*

[45] The Rozelle Rule was codified in Section 12.1(H) of the NFL Constitution:

> Any player, whose contract with a League club has expired, shall thereupon become a free agent and shall no longer be considered a member of the team of that club following the expiration date of such contract. Whenever a player, becoming a free agent in such manner, thereafter signed a contract with a different club in the League, then, unless mutually satisfactory arrangements have been concluded between the two League clubs, the Commissioner may name and then award to the former club one or more players, from the Active, Reserve, or Selection List (including future selection choices) of the acquiring club as the Commissioner in

and 1974, only thirty-four players signed with new teams. The Rozelle Rule effectively artificially deflated player salaries by preventing a competitive market for players to arise.

In 1968, the National Labor Relations Board certifed the National Football League Players Association (NFLPA) as the "official bargaining representative of all NFL players."[46] The players challenged the Rozelle Rule in 1975, winning the first big victory for players against owner control in *Mackey v. NFL*.[47] Unfortunately for the players, the owners instituted the Right of First Refusal System just after the *Mackey* ruling, which further hindered players' ability to change teams.[48] It was not until the signing of the 1993 Collective Bargaining Agreement, at the same time as Cowboys owner Jerry Jones' countersuit against the NFL for $750 million, did the players receive full free agency rights.[49] For the first time in NFL history, players could move freely throughout the NFL from team to team.

It took almost seventy years for NFL players to gain to permit free agency; and the rise of free agency fundamentally changed the NFL on multiple fronts. First, free agency shifted the responsibility of team success from the players' on-field performance to front office strategy. Since teams could no longer hold elite players for the entirety of their career, owners and their front office executives had to make strategic decisions about which players to pay, which players to

---

> his sole discretion deems fair and equitable; any such decision by the Commissioner shall be final and conclusive.

For example, in 1968, Commissioner Rozelle required the New Orleans Saints to relinquish two first round draft picks to the San Francisco 49ers for signing former 49ers wide receiver Dave Parks, who had only caught twenty-six passes the season prior to his signing with the Saints.
Mackey v. NFL, 407 F. Supp. 1000 (D. Minn. 1975), aff'd, 543 F.2d 610, 610-11 (8th Cir. 1976), *cert. denied*, 434 U.S. 801 (1977).

[46] *See Kapp v. NFL*, 390 F. Supp. 74, 83 (D. Minn. 1974), aff'd, 586 F.2d 644 (8th Cir. 1978).

[47] *See Mackey*, 543 F.2d at 610-11.

[48] "A free agent's original team held the right of first refusal, enabling it to retain a player by matching any contract offer made by another team. The player's original team was also entitled to draft choice compensation from the team signing its player." *The History of NFL Free Agency*, NFL, (Mar. 8, 2021, 05:41PM), https://www.patriots.com/news/the-history-of-nfl-free-agency.

[49] Vito Stellino, *It's official: NFL, union settle on CBA*, The Baltimore Sun, (May 7, 1993, 12:00AM), https://www.baltimoresun.com/news/bs-xpm-1993-05-07-1993127183-story.html.

keep, and which players to trade. Second, the new competition for players increased the importance of the NFL Draft. The Draft allows the NFL's worst performing teams to acquire the best young players from the collegiate level, ensuring that the NFL's thirty-two teams remain competitive among each other. Third, player salaries, no longer diminished by restrictive rules, ballooned overnight. After the signing of the 1993 CBA, "the average salary of unrestricted free agents more than doubled, from $517,000 to $1.044 million" and "restricted free agents' salary leapt from $293,000 to $780,000."[50] These changes brought significantly higher salaries for the players, but immensely higher profits for the owners, as demonstrated in the ever-increasing revenues from luxury box sales, television deals, and corporate sponsorships. Legal sports gambling revenues will continue to climb and pad the pockets of team owners by raising the value of their franchises.[51]

On a structural level, the NFL organized itself in a way different from other business enterprises. Today's NFL consists of thirty-two franchise teams, thirty-one of which are majority or completely owned by ultrawealthy individuals.[52] Each team provides one board member to the NFL Executive Committee.[53] This member is usually the majority owner.[54] The Executive Committee votes on the most important matters in the NFL, ranging from selecting and removing a commissioner, changing game rules, and changing team ownership.[55] All votes for these weighty

[50] Oriard, at 143.
[51] 138 S. Ct. 1461 (2018). As of February 1, 2022, the NFL's Denver Broncos are up for sale. In 1984, Pat Bowlen bought the team for $78 million dollars. Today, Forbes estimates the team's worth at $3.7 billion dollars. The highest price paid in history for an American professional sports team was $2.35 billion dollars for the sale of the NBA's Brooklyn Nets to Joseph Tsai in 2019. Vincent Del Giudice, *NFL's Denver Broncos Announce Team Is Officially Up for Sale*, Bloomberg (Feb. 1, 2022, 02:52PM), https://www.bloomberg.com/news/articles/2022-02-01/nfl-s-denver-broncos-going-up-for-sale-team-announces.
[52] Green Bay Packers Inc. is the exception in the NFL. Since 1923, the Packers have been a publicly owned, nonprofit corporation. Since they are publicly owned, the Packers are the only team who must publicly report their finances. The team is governed by a board of directors and a seven-member executive committee. *See Generally* Green Bay Packers Shareholders 2021 Stock Sale, https://www.packers.com/community/shareholders; *see also* NFL Football Operations, https://operations.nfl.com/inside-football-ops/nfl-operations/integrity-of-the-game/.
[53] *Id.*
[54] *Id.*
[55] *Id.*

topics require three-fourths majority to pass.[56] In other words, the commissioner serves at the behest of the owners, no rules can be altered without the owners approval, and most importantly, no owner can be punished for misconduct unless more than seventy-five percent of the other owners agree. For these reasons, the time is now to examine the role and influence of team owners on the integrity of professional sports and introduce innovative mechanisms to hold rogue owners accountable.

II. Integrity of the Game is Necessary for the Survival of the NFL

A. Sport Integrity is Essential to the NFL's Success

The NFL offers a unique entertainment choice for Americans. The main difference that separates the NFL and other forms of entertainment such as movies, theater, and television is the perception that professional football games have undetermined outcomes. Uncertain outcomes are the reason why individuals who watch the NFL are fans and not merely viewers, why fans follow their teams to different cities, and most importantly, why individuals place bets on games. To maintain uncertain outcomes, professional American sports leagues require "uniform rules of the game," "competitive balance," and "consistent and rational internal application of integrity of sport rules by its governing body."[57] At a minimum, game integrity requires "fair and honest performances and outcomes, unaffected by illegitimate enhancements or external interests."[58] On the other hand, game integrity does not extend to viewers' ultimate satisfaction. Instead, viewers are "entitled only to view whatever transpires" and possess no right to a sports game which is

---

[56] *Id.*

[57] Matthew J. Mitten, *How Is the Integrity of Sport Protected in the United States*, 19 TEX. REV. ENT. & Sports L. 89 (2019); *Biediger v. Quinnipiac Univ.*, 691 F.3d 85, 105 (2d. Cir. 2012) (The cornerstones of sports require "application of a uniform set of rules for competition" so that "play is fair in each game, that teams' performances can be compared across a season, and that teams can be distinguished in terms of quality.")

[58] National Integrity of Sport Unit, Austl. Gov't Dep't of Health, https://www.health.gov.au/internet/main/publishing.nsf/content/national-integrity-of-sport-unit (Aug. 3. 2016).

"exciting" or exhibits spectacular athletic performance.[59] In other words, an athletic competition is supposed to be unpredictable and unscripted.

In the NFL, the Executive Committee sets the rules of the game so that every team follows the same rules, competitive balance is maintained by the NFL Draft which gives the best new players to the worst teams, and the NFL Commissioner applies the rules to the league's members. Dolphins owner Stephen Ross is accused of manipulating the NFL Draft by bribing the Dolphins Head Coach to intentionally lose games so that the team would artificially receive a higher draft pick. This behavior directly contravenes one of the central tenet's of maintaining uncertain outcomes in games: competitive balance. The uncertainty of how a game will transpire is the glue that keeps people in the stadium seats and in front of their television night after night and season after season. If the viewing public believes there is impropriety occurring during games and that outcomes are predetermined, game viewership, game attendance, and football wagering will all decline.

B. Shifting Sport Integrity Questions from the Field to the Owners' Office

Most attention concerning sport integrity is given to player performance and players' motivations to win games, take bribes, shave points, or throw games.[60] For the entire history of sport integrity in the NFL, the emphasis has been on players' susceptibility to gambling. The NFL

---

[59] *Bowers v. Fed'n Internationale de L'Automobile*, 489 F.3d 316, 321-22 (7th Cir. 2007).

[60] Much of the focus on player corruption can be attributed to the infamous "Black" Sox Scandal where several Chicago White Sox players allegedly took bribes to lose the 1919 World Series from gangster Arnold "The Brain" Rothstein. *See generally* Gene Carney, *Burying the Black Sox: How Baseball's Cover-Up of the 1919 World Series Fix Almost Succeeded*, Potomac Books (2007); Another incident that receives much attention is the Boston College Men's Basketball point shaving scheme, where several players of the basketball team took bribes to shave points, benefiting gamblers' profits during the 1978-79 season. Bart Barnes, *Kuhn Gets 10-Year Sentence In BC Point Shaving Case*, Wash. Post (Feb. 6, 1982), https://www.washingtonpost.com/archive/sports/1982/02/06/kuhn-gets-10-year-sentence-in-bc-point-shaving-case/6dd15e0e-48a8-4ce8-a8ad-a5154b210f21/

Commissioner possesses wide-ranging discretion to discipline players for sport integrity infractions with his "best interests of the sport" power.[61] If the Commissioner acts within the bounds of the league bylaws, constitution, and collective bargaining agreement, courts generally give great deference to the Commissioner's disciplinary decisions.[62] Despite the emphasis on players betting on games, only a handful of players have been disciplined for gambling. However, when players face accusations of bribery or betting on games, the reaction by the NFL through the owners is often swift and severe.

In 1963, two players, Paul Hornung of the Green Bay Packers and Alex Karras of the Detroit Lions, placed bets on college and NFL games.[63] Commissioner Pete Rozelle levied year-long suspensions and fined each player $2,000 dollars.[64] Since 1963, only three other players faced discipline for gambling, one in 1983, one in 2019, and one in 2022.[65] Despite this scant record of players violating the integrity of the game by gambling, all attention is given to players. The spotlight should be widened and refocused to team owners because the owners possess the power to directly manipulate what happens on the field more directly than individual players. For

---

[61] *Atlanta National League Baseball Club v. Kuhn*, 432 F. Supp. 1213 (N.D. Ga. 1977).

[62] Mitten, *How is the Integrity of Sport Protected in the United States*, 19 TEX. REV. ENT. & Sports L. 89, 103 (2019).

[63] Peter King, *How the NFL first addressed players gambling on games*, NBC Sports (Dec. 2, 2019, 12:50PM), https://sports.nbcsports.com/2019/12/02/how-the-nfl-first-addressed-players-gambling-on-games/.

[64] *Id.*

[65] David Brandt, *Cardinals' Josh Shaw Suspended for betting on NFL games*, AP News (Nov. 29, 2019), https://apnews.com/article/2dfff2fa4c1846c8861976f645d9d911; see Jonathan Barr, *For the First Time in Decades, NFL Suspends A Player For Gambling On Football*, FORBES (Nov. 30, 2019), http://www.forbes.com/sites/jonathanberr/2019/11/30/nfl-suspends-player-for-gambling-on-football-for-the-first-time-in-decades/?sh=201ec4a61970; On March 7, 2022, Atlanta Falcons wide receiver Calvin Ridley received a year-long suspension from the NFL for placing bets on football games while he was not on the active roster. Commissioner Goodell wrote a letter to Mr. Ridley stating, "There is nothing more fundamental to the NFL's success—and to the reputation of everyone with our league—than upholding the integrity of the game…Your actions put the integrity of the game at risk, threatened to damage public confidence in professional football, and potentially undermined the reputations of your fellow players throughout the NFL." The NFL stated that no evidence was found that "any game was compromised in any way." *See* Michael Rothstein, *NFL suspends Atlanta Falcons WR Calvin Ridley for at least 2022 season for betting on games*, ESPN (Mar. 7, 2022), https://www.espn.com/nfl/story/_/id/33446869/nfl-suspends-atlanta-falcons-wr-calvin-ridley-least-2022-season-betting-games.

example, NFL owners unilaterally dictate which front office executives to hire, which coaching personnel to hire, which players to bench, and which players to draft. These decisions directly affect a team's performance on the field, and consequently, the outcome of games.

The NFL Commissioner serves at the satisfaction of the owners which disincentivizes the commissioner's office from investigating or punishing owner misconduct. As a result, team owners and the Commissioner have always policed the behavior of players, but there is no internal mechanism inside the NFL structure to police owners beside the owners themselves. For example, after the 1919 World Series, the owner of the Chicago White Sox, Charles Comiskey, did not renounce or quickly move against the eight players that were later nicknamed the "Black Sox" after it was made public that several players on Comiskey's team took bribes to intentionally lose the World Series.[66] Comiskey "gained the reputation as a person who turned a blind eye to corruption in order to protect his profits."[67] Moreover, Comiskey's stinginess regarding his players' salary is partially the reason why his players took bribes to lose the World Series.[68] Despite this, the White Sox's baseball stadium in Chicago was named Comiskey Park until 2003 and Charles Comiskey was inducted into the Baseball Hall of Fame in 1939, less than twenty years after the Black Sox Scandal.[69]

The professional sports world has undergone monumental changes since the 1919 Black Sox Scandal. In today's NFL, free agency has driven up player salaries, and players are less incentivized to take bribes or benefit from betting on games than in the past.[70] Instead, players are incentivized to play as well as possible, so they can sell their talents on the open market and extend

---

[66] Milton Jamail, *Charles Cominsky*, Encyclopedia Britannica (Oct. 22, 2021), https://www.britannica.com/biography/Charles-Comiskey.
[67] *Id.*
[68] *Id.*
[69] *Id.*
[70] Jeffrey May, *How much do NFL free agents make? List of pay increases on new contracts*, AS, (Mar. 14, 2022), https://en.as.com/en/2022/03/15/nfl/1647302946_149614.html.

the length of their playing careers. On the other hand, owners have every reason to protect and maximize their long-term profits. Unfortunately, some owners resort to illegal tactics such as withholding ticket revenue or attempting to throw games to acquire higher draft picks.[71] These illicit activities are difficult to prevent and even more complicated to punish today because of the lack of transparency between the teams and the league, the NFL Commissioner's lack of power to punish owners, and the immense wealth and power of the individual owners themselves. Since NFL owners allegedly disregarded game integrity for private profit, the time is now to examine ways of promoting integrity that also addresses owner misconduct.

PART II: The NFL's Sports Gambling Policy Does Not Promote Game Integrity

Despite many owners purchasing their teams with gambling-related winnings, NFL owners collectively fought fiercely against the legalization of sports betting in the United States for most of the NFL's existence in the name of preserving game integrity. Yet, the NFL takes contradictory stances on sports gambling, preventing players from placing bets on any NFL games while simultaneously allowing its owners to hold financial stakes in sports gambling companies. The NFL's inability and unwillingness to enforce the same gambling rules against players and team owners suggests that the NFL cannot effectively protect the integrity of the game. NFL owners achieved great wealth from sports gambling and currently invest in sports gambling ventures yet control NFL team activities. Essentially, owners are given a free pass to financially benefit from

---

[71] Daniel Snyder, the owner of the Washington Commanders, is currently under investigation by the United States Congress Oversight Committee for allegedly withholding "millions of dollars in refundable security deposits owed to customers upon the expiration of their multi-year seat leases and may have taken steps to prevent customers from collecting these deposits." Additionally, documents "further suggest that the Commanders concealed revenues that were owed to the NFL as part of a revenue-sharing agreement that redistributes revenues to 32 teams in the League and helps set salaries for the League's football players." The investigation began from accusations of workplace sexual harassment in the Commanders' front offices. *See generally*, Letter from Carolyn B. Maloney, Chair of Committee on Oversight and Reform, to the Honorable Lina M. Khan, Chair of the Federal Trade Commission (Apr. 12, 2022) https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022-04-12.CBM%20RK%20to%20Khan-FTC%20re%20Washington%20Commanders.pdf.

gambling companies in violation of NFL rules when players are not. This reality is untenable now that legal sports gambling is spreading across the United States, and further displays that the NFL cannot and will not address owner misconduct.

A. The NFL's Fight Against Legal Sports Gambling

No professional American sports league wants to face another incident like the 1919 Black Sox Scandal. Consequently, Major League Baseball was the first American professional sports league to establish the role of "commissioner" to police its players, and to give peace of mind to fans who became skeptical of the honestness and trustworthiness of professional sports' leaders and players.[72] Major League Baseball's first commissioner, Kennesaw Mountain Landis, turned out to be a steadying hand, and the other major sports leagues, including the NFL, implemented the commissioner role in turn.[73]

For most of its history, the NFL relied on league power via the commissioner and political lobbying to shape public policy in ways beneficial to the league.[74] In 1991, after California attempted to legalize sport gambling, the NFL lobbied Congress for a federal ban on sports gambling.[75] Shortly thereafter, in 1992, Florida sought to permit Floridians to bet on professional football games.[76] The legislation was derailed by "antigambling lobbyists…including individuals who worked on behalf of the interests of the U.S. commercial sports leagues."[77] Weeks later, a bill titled the Professional and Amateur Sports Protection Act (PASPA) which prevented legalized

---

[72]*See The Commissionership*: A Historical Perspective, MLB, http://mlb.mlb.com/mlb/history/mlb_history_people.jsp?story=com.
[73] *See* Gregor Lentze, *The Legal Concept of Professional Sports Leagues: The Commissioner and an Alternative Approach from a Corporate Perspective*, 6 Marq. Sports L.J. 65, 71 (1995).
[74] *NCAA v. Governor of New Jersey*, 730 F.3d 208 (3d Cir. 2013) cert denied, 730 F.3d 208 (2014); *see also* John T. Holden, *North American Sports Leagues and Gambling Policy: A Comparative Analysis*, 14 Int. Sports L. J. 232 (2014).
[75] Kenneth Reich, *State Would Lose Under Legal Sports Betting, Critics Say*, L.A. Times, Aug. 6, 1991, at A3.
[76] *See State to Consider Pro Sports Gambling*, S. Fla. Sun-Sentinel, Jan. 15, 1992, at 2C.
[77] *Id.*

sports gambling in all but four States, was proposed in Congress. During the congressional deliberation of PASPA, the NFL argued that state-sponsored lotteries "would take the values of the sports leagues and would alter them."[78] The NFL enlisted former linebacker Reggie Williams to testify before Congress in favor of PASPA. Williams stated that "state-sponsored gambling really would make a mockery of an athlete's sacrifices and commitments."[79] It only took a few months from introducing PASPA to its signing.[80] In principal and in practice, the NFL did not tolerate sports betting in the name of game integrity.

B. NFL Owners Embrace Gambling Profits After PASPA's Demise

NFL team owners possess inside information on their teams and the inner workings of the league. Owners have the final word on all player decisions, personnel, hiring, and firing decisions. Yet, some owners own stakes in sports gambling companies. Jerry Jones of the Dallas Cowboys and Robert Kraft of the New England Patriots both hold financial stake in DraftKings.[81] Additionally, Kraft sits on the board of directors of Apollo Global Management, a New York private equity firm.[82] Apollo has a sixteen percent investment in Caesars Entertainment, one of the largest sports gambling companies in the United States.[83] Apollo also owns Yahoo Sports, and is currently shopping the market to merge Yahoo Sports with a sport betting company.[84] Kraft is currently violating NFL gambling policy by sitting on a board of directors of a "gambling-related

---

[78] *See* note 31, supra.
[79] *Legislation Prohibiting State Lotteries from Misappropriating Professional Sports Service Marks: Hearing on S. 1772 Before the Subcomm. on Patents, Copyrights and Trademarks of the Comm. on the Judiciary*, 101st Cong. 37, 14 (1990).
[80] *See* Justin Fielkow, Daniel Werly & Andrew Sensi, *Tackling PASPA: The Past, Present, and Future of Sports Gambling in America*, 66 DePaul L. Rev. 23, 23, 31-32 (2016).
[81] Mike Chiari, *Report: Jerry Jones, Robert Kraft Retain DraftKings Investments, Bleacher Report* (Aug. 28, 2018) https://bleacherreport.com/articles/2793031-report-jerry-jones-robert-kraft-retain-draftkings-investments.
[82] *Id.*
[83] *Id.*
[84] Alex Sherman, *Apollo considers merging Yahoo Sports with betting companies, sources say*, CNBC, (Mar. 2, 2022), https://www.cnbc.com/2022/03/02/apollo-considers-merging-yahoo-sports-with-betting-companies.html.

operation", but the NFL has not enforced the policy against Kraft.[85] In stark contrast, the NFL punishes players who have any connection to casinos or gambling of any kind. For instance, the NFL prohibits players from making promotional appearances at casinos or other gambling related sites and has even fined players who arm wrestled for the Pro Football Arm Wrestling Championship at a Las Vegas casino nightclub.[86] In another instance, former NFL quarterback Tony Romo was forced to cancel an appearance at the Venetian for a fantasy football event after the NFL declared it would issue fines should Romo appear.[87]

The NFL is free to levy punishments against players who violate league policy. However, the NFL does not apply the same standard to its owners as it does to its players. An NFL commissioner unwilling or unable to control team owners who blatantly violate the NFL's own rules is not protecting game integrity, rather, is enabling violations of game integrity. Using NFL gambling policy enforcement as a microcosm of larger NFL rule enforcement, it is clear the NFL has a double standard for player and owner misconduct. In the absence of league enforcement of policy, the only recourse to ensure owners do not undermine the integrity of the game is federal and state law. Unfortunately, relevant federal law is not up to the task.

PART III: The Sports Bribery Act is Insufficient to deal with Owner Misconduct

The Sports Bribery Act of 1964 was the culmination of a crusade against player-related gambling corruption that began with the 1919 World Series and continued throughout the early to

---

85 Dustin Gouker, *Can the NFL Possibly Get More Hypocritical On Sports Betting?*, Legal Sports Report (Apr. 25, 2017), https://www.legalsportsreport.com/13810/nfl-kraft-casinos-sports-betting/; the NFL policy states: "NFL employees may own interests in publicly traded enterprises where less than one-third of the enterprise's gross revenues or operating profit in any of the last three years is attributable to gambling-related operations, so long as the NFL employee does not own more than 5 percent of the company's stock and does not serve as an officer or director of the company."

86 David Purdum, *NFL to fine players involved in Vegas arm wrestling tournament*, ESPN (Apr. 10, 2017), https://www.espn.com/nfl/story/_/id/19126350/nfl-players-involved-arm-wrestling-event-vegas-fined-pending-further-investigation.

87 *Id.*

mid-nineteenth century.[88] When the Sports Bribery Act was signed, players were more susceptible to bribes because they generally received lower pay, were not unionized, and did not enjoy free agency rights. The Act aimed to "provide the authority our law enforcement agencies need to prevent gamblers from corrupting college and professional sports."[89] The Act was intended to "halt the contamination of sports by organized gambling syndicates by punishing any *players* or officials as well as gamblers who attempt to corrupt these games for personal gain."[90] The pertinent language of the Sports Bribery Act reads:

> (a) Whoever carries into effect, attempts to carry into effect, or conspires with any other person to carry into effect any scheme in commerce to influence, in any way, by bribery any sporting contest, with knowledge that the purpose of such scheme is to influence by bribery that contest, shall be fined under this title, or imprisoned not more than 5 years, or both.[91]

The Sports Bribery Act has only been used in sixteen federal prosecutions. [92] Of those, the majority resulted in convictions of corrupt gamblers in horse racing.[93] Not one case has been filed under the Sports Bribery Act against any of the four major professional sports leagues in the United States,[94] and the Act has never been deployed against the owner of an NFL team.

In its fifty-eight-year history, the statute has only been used to prosecute organized crime syndicates, players, and gamblers. The cases can be divided into two categories: score alteration cases and outcome determination cases.

---

88 *See generally*, Carney, *supra* note 19.
89 S. Rep. No. 593, at 2 (October 29, 1963). Senator Keating's statement introducing the Sports Bribery Act to the Senate.
90 *Id.* (Emphasis added.)
91 *See* 18 U.S.C. § 224 (1964).
92 John T. Holden & Ryan M. Rodenberg, *The Sports Bribery Act: A Law And Economics Approach*, 42 N. Ky. L. Rev. 453 (2015).
93 *See U.S. v. Donaway*, 447 F.2d 940 (9th Cir. 1071); *U.S. v. Pinto*, 503 F.3d 718 (2d. Cir. 1974); *U.S. v. Turcotte*, 515 F.2d 145 (2d. Cir. 1975); *U.S. v. DiNapoli*, 557 F.2d 962 (2d. Cir. 1975); *U.S. v. Gerry*, 515 F.2d 130 (2d. Cir. 1975; *U.S. v. Walsh*, 554 F.2d 156 (4th Cir. 1976); *U.S. v. Winter*, 22 F.3d 15 (1st Cir. 1994).
94 *See* Holden, *supra*, note 25.

A. Score Alteration Prosecutions Under the Sports Bribery Act

Two of the most notable cases stem from the 1979 Boston College Men's Basketball point shaving scheme.[95] In the scheme, members of organized crime paid basketball players to keep game scores within a pre-agreed upon margin. This "fixing" allowed bookies to secure windfall profits by altering the game on the court to fit their betting preferences.[96] At the center of the scheme were a middleman from Pittsburgh, Pennsylvania who was a high school friend of a Boston College Basketball player, two informed mobsters from New York City who offered protection for the corrupt bookmakers, and several Boston College basketball players who would receive payments, usually $2,500 per fixed game, to shave points.[97] This conspiracy did not involve predetermining the winner or reducing the uncertainty of outcome of the game. Rather, the scheme narrowed or largened the margin of victory for Boston College so that gamblers could win large profits through point-spread manipulation.

A more recent Sports Bribery Act score alteration prosecution arose out of a collegiate basketball and football point shaving scheme during the 2004-2006 seasons at the University of Toledo.[98] Wealthy businessmen and avid gamblers Ghazi Manni and Mitchell Karam paid both basketball and football players various sums of money, ranging from $10,000 to $40,000 to shave points so that the two men could profit handsomely off the point spread.[99] In 2008 and 2009, Manni and Karam, as well as seven athletes at the University of Toledo, faced indictments for shaving points as part of Manni and Karam's conspiracy.[100] All players pled guilty.[101]

---

[95] *See* Henry Hill & Douglas Looney, *How I Put the Fix In*, Sports Illustrated (Feb. 16, 1981).
[96] *Id.*
[97] *See U.S. v. Mazzei*, 700 F.2d 85 (2d. Cir. 1983); *See also U.S. v. Burke*, 700 F.2d 70 (2d Cir. 1983).
[98] CBS News Detroit, *Already Indicted on Point-Shaving Charges, Man Arrested For Food Stamp Fraud*, CBS News Detroit (Sept. 23, 2011, 04:36PM), https://detroit.cbslocal.com/2011/09/23/already-indicted-on-point-shaving-charges-man-arrested-for-food-stamp-fraud/.
[99] *Id.*
[100] *Id.*
[101] *Id.*

Two years later, three running backs from the University of Toledo pleaded guilty to fixing games for Manni and Karam.[102] One of the players, Quinton Broussard, "intentionally fumbled the football "in exchange for $500" during the "GMAC Bowl against Texas-El Paso."[103] Despite the fumble, Toledo won the game handedly by a score of 45-13.[104] Much like the mobsters in the Boston College scheme, Manni and Karam tailored scoring margins to their betting preferences so that they would privately profit on their bets. Although this conduct is reprehensible and criminal, it did not directly alter the ultimate outcome of the games. Schemes that do affect the result of a game, however, can also be prosecuted under the Act.

B. Outcome Determination Prosecutions Under the Sports Bribery Act

Richie "the Bull" Melito, Jr. was a boxer from Landover, Maryland who unknowingly benefitted from fixed fights from 1995 through 2000.[105] Promoter Robert Mitchell and boxer Thomas Williams "arranged" for at least eleven fights during this five-year period to be fixed in Melito, Jr.'s favor so that his professional boxing career would flourish.[106] In 2005, prosecutors indicted and convicted Mitchell for arranging at least $70,000 dollars of bribes to be given to at least seven different boxers during the five-year period.[107] Although the Sports Bribery Act has been used infrequently, it has been effective to prosecute players and outside actors in match fixing events such as college sports, horse racing, and boxing.

---

[102] *Id.*
[103] *Id.*
[104] *Id.*
[105] *See* Department of Justice, *Press Release: Boxing Promoter and Fighter Receive Prison Terms For Fixed Fights*, U.S. District Attorney's Office D. Nev. (Feb. 22, 2005), https://www.justice.gov/archive/usao/nv/news/2005/02222005.html#:~:text=Boxing%20Promoter%20and%20Fighter%20Receive%20Prison%20Terms%20for%20Fixed%20Fights&text=Las%20Vegas%2C%20Nev.,for%20the%20District%20of%20Nevada.
[106] *Id.*
[107] *Id.*

The Melito boxing case is different from the Boston College or the Toledo point shaving schemes, and is far more detrimental to professional sports. The fixed boxing scandal is much more like the allegations faced by NFL team owners Stephen Ross and Jimmy Halsam. Both instances involve paying one side of a sporting contest to intentionally lose for personal gain. In the former, a boxer's career would be artificially created to bring him fame, fortune, and a fantastical career. In the latter, an owner's football team would secure the best college football player in the next NFL Draft if the team lost as many games as possible during the prior season. The fight fixing should be likened to the owners' offering their head coaches to lose games because both have the same genesis: both come from the top down. In the boxing conspiracy, Richie "the Bull" Melito, Jr. did not know he was fighting in a fixed boxing match. Instead, his promoter, Robert Mitchell, paid off his opponents in advance. Similarly, Miami Dolphins owner Stephen Ross allegedly met with his head coach and stated that he wanted the team to "tank," and he would pay Flores "$100,000 for every loss" during the 2019 season.[108] This situation is similar to the fight fixing in that if Flores agreed to Ross's overtures, the Miami Dolphins players would be competing in a game in which they believed they had a honest chance of winning but in reality would never be able to win because it had a predetermined outcome.

This type of sports corruption—that an NFL owner would intentionally lose games to benefit in the NFL Draft—is not something that has ever been prosecuted under the Sports Bribery Act. It is a type of sports corruption that strikes at the core of game integrity. The notion that NFL team owners may lose games to win the best draft picks is a new type of issue that is far more dangerous than point shaving or paying a player to fumble. The harm in this scenario reaches huge amounts of people, starting with the players and continuing to other coaches, the other teams, the

[108] Flores Complaint, https://www.wigdorlaw.com/wp-content/uploads/2022/02/Complaint-against-National-Football-League-et-al-Filed.pdf.

referees, the fans, the team employees, league executives, sponsoring businesses, advertisers, and most importantly at this time of great change, the sports gambling companies.

If these allegations are true, Stephen Ross's behavior skews betting lines and the entire sports gambling ecosystem. Ross is not trying to make a quick buck like Henry Hill in 1979 on Boston College by beating the point spread. Rather, Ross is dismantling the entire goal of organized professional sport: to have a fair, undetermined outcome game in which people bet with the belief that both sides are trying to win the game. This kind of assault on game integrity is not something that the Sports Bribery Act can adequately handle. The statute targets outside gamblers who attempt to affect players, for example, by paying players to shave points by missing shots. It is not designed to hold team owners accountable. In fact, it has never handled any bribery occurring inside any of the four major American sports leagues.

PART IV: Fixing the Owners' Fixing Problem

The Sports Bribery Act needs to be amended to be amended to provide it with the ability to combat NFL team owner game integrity misconduct. First, although there are few reported incidences of game integrity violations in the major four American professional sports leagues, this is most likely due to underreporting and the private nature in which the sports leagues handle their affairs. Indeed, "it would be naïve to consider that with the rapid expansion of match-fixing scandals happening abroad, the United States is immune or insulated from match-fixing."[109] After all, since bribery transactions are usually done in secret, they are remarkably difficult to uncover and prosecute.[110] Second, individual teams are disincentivized to self-report their game integrity infractions because the league commissioner would likely punish player or team personnel

[109] *See* Holden, *supra*, note 25
[110] *See* Jeffery Boles, *Examining the Lax Treatment of Commercial Bribery in the United States: A Prescription for Reform*, 51 Am. Bus. L.J. 119, 158, 165 (2014).

financially and/or with lengthy suspensions which in turn would hamper the team's ability to win games and also hurt the team economically. The team would also likely suffer from public backlash if it was forthcoming about game integrity issues. After all, the only reason why the allegations against owner Stephen Ross became public is due to a race discrimination class action lawsuit filed by former Dolphins Head Coach Brian Flores. If Flores did not file his lawsuit, it is possible the allegations would not have surfaced. The lawsuit even incentivized other NFL insiders to reveal that another owner, Jerry Halsam of the Cleveland Browns, allegedly behaved in a similar way by offering Hue Jackson, the former head coach of the Browns, to lose games intentionally for a higher draft pick in past seasons.[111]

Third, the professional sports landscape has changed considerably since 1964, the year the Sports Bribery Act was signed. Among the most important changes concerning game integrity that have come to pass are (1) the creation of free agency for players, which increased player salaries considerably and should have a large deterrent on their choice to take bribes, (2) the rapid increase in the value of television rights and the creation of the 24/7 sports television network, and (3) the legalization of sports betting in the United States, which will inject unending amounts of money into the industry and in result, greatly increase franchise values and, consequently, owners' wealth and power.

A. Amend the Sports Bribery Act to Reflect the Nature of the NFL Today

Multiple changes can be enacted to combat owner misconduct. First, the Sports Bribery Act needs to impose direct liability on the people who are the guards of the game, particularly team executives, league executives, and above all, team owners. Congress should amend the Sports

---

[111] *See* Patrik Walker, *Hue Jackson suggests Browns' Jimmy Haslam paid him to tank during his time with Cleveland*, CBS Sports, Feb. 2, 2022, https://www.cbssports.com/nfl/news/hue-jackson-suggests-browns-jimmy-haslam-paid-him-to-tank-during-his-time-with-cleveland/.

Bribery Act to include a new section that is modeled off West Virginia's statute against sports bribery but specifically targets the owners. A reasonable proposal could read:

> Any person who holds any position within a professional sports organization who offers, promises, gives anything of value to anyone, or threatens anyone, for the purpose of influencing the outcome of a race, sporting event, contest, or game upon which a wager may be made, or a person in aforementioned position, who places, increases, or decreases a wager after acquiring knowledge of inside information within a team, shall be guilty of a felony and will be fined or imprisoned for no more than seven years.[112]

Congress could send a strong message to the NFL by altering the Sports Bribery Act with a new section that specifically targets team owners. The time is ripe to do so because multiple serious allegations are surfacing about how owners are allegedly attempting to manipulate football game outcomes for their personal financial gain. Additionally, the current Sports Bribery Act does not "cover situations where means other than bribery are used to manipulate athletic contests, such as extortion, blackmail, and duress."[113] There are a plethora of ways a team owner could blackmail, extort, or induce duress in a player or coach to change the outcome of a game and avoid prosecution under the current Sports Bribery Act. For instance, an owner could call the coach and threaten him to lose games, or the owner will release private unflattering emails between himself and the coach. This example constitutes blackmail but could not be prosecuted under the current Sports Bribery Act. Under the proposed amended version, all forms of coercion would be covered, including blackmail and duress.

---

[112] The West Virginia law that criminalizes bribery in sports wagering reads: "A person offers, promises, or gives anything of value to anyone ***for the purpose of influencing the outcome*** of a race, sporting event, contest, or game upon which a wager may be made, or a person places, increases, or decreases a wager after acquiring knowledge, not available to the general public, that anyone has been offered, promised, or given anything of value for the purpose of influencing the outcome of the race, sporting event, contest, or game upon which the wager is placed, increased or decreased, or attempts to do any of the same;" *See* W. Va. Code § 29-22D-21(b)(1) (2018) (b).

[113] Jodi S. Balsam, *Criminalizing Match-Fixing as America Legalizes Sports Gambling*, 31 Marq. Sports L. Rev. 1, 12.

B. Deploy Consumer Fraud Laws Against NFL Owners

The NFL is potentially reaching a perilous point due to the simultaneous legalization of sports gambling and alleged game fixing by team owners. Bettors and fans must be assured that their bets are legitimate. Bettors will only bet with confidence if they are assured that the football games in which they place wagers are not predetermined outcomes fixed by the team owners themselves. An innovative way to hold owners financially liable for games they fixed would be through state consumer fraud statutes. For example, if Miami Dolphins owner Stephen Ross is found to have fixed games, Florida's Deceptive and Unfair Trade Practices Act (FDUTPA) could require Ross to may a monetary fee. Ross's behavior could constitute "unfair methods of competition," or more likely, "unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce."[114] Ross's conduct could be considered "unfair," because unfair practices under FDUTPA include conduct that "offends established public policy and is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers."[115] During a time of unprecedented entertainment and betting alternatives, fans and gamblers cannot be skeptical that NFL games are rigged or predetermined. If viewers have doubts about the legitimacy of games, attendance may drop, television viewership may decrease, and the NFL may fall to the wayside of the entertainment ecosystem in American society. These new considerations demand new solutions. Deploying consumer fraud statutes against owners who fix games that the public wagers

[114] *See Delgado v. J.W. Courtesy Pontiac GMC-Truck, Inc.*, 693 So.2d 602, 605-06 (Fla. 2d. DCA 1997); *see also Davis v. Powertel, Inc.*, 776 So.2d 971, 974 (Fla. 1st DCA 2000) (deceptive practices are "likely to mislead" consumers).
[115] *See Samuels v. King Motor Co. of Boca Raton*, 782 So.2d. 489, 499 (Fla. 4th DCA 2001) (quoting *Spiegel, Inc. v. Fed. Trade Comm'n*, 540 F.2d 287, 293 (7th Cir. 1976).

on could shine a new spotlight on owner misconduct and re-frame the public conversation on game integrity.

C. Create a Public Investigative Committee on Sport Integrity

The NFL hired Mary Jo White, the former Securities and Exchange Commission Chair, to conduct an internal investigation into Miami Dolphins owner Stephen Ross's alleged bribery.[116] White is familiar with conducting internal investigations for the NFL, as she is currently investigating Washington Commanders' owner Daniel Snyder for inappropriate sexual conduct and previously investigated former Carolina Panthers owner Jerry Ricardson on sexual harassment allegations.[117] Yet, the NFL's launch of an internal investigation is insufficient to handle this matter for multiple reasons. First, the NFL is White's client. The NFL and the Miami Dolphins have an interest in preserving their brand and would not benefit from incriminating evidence of bribery becoming public information. Second, White cannot subpoena documents or witnesses, which could create shortcomings in information White recovers. These considerations suggest that internal investigations may not be the best route to uncover all the evidence in Ross's case or any future case involving bribery or game integrity allegations.

The best way to circumvent the issue of nonreporting among teams for misconduct on game integrity at all levels of an NFL team is to create a public committee that can investigate allegations of sport integrity issues for the four major American professional sports. Although it may be difficult for the leagues to voluntarily relinquish some of their autonomy, it would be in their best interest to do so for multiple reasons. First, it would show that the sports leagues, particularly the

---

[116] Mark Maske, *Mary Jo White to lead NFL's probe of Dolphins tanking allegations*, Wash. Post (Mar. 29, 2022, 06:39PM), https://www.washingtonpost.com/sports/2022/03/29/nfl-owners-meetings-goodell/.
[117] John Keim, *NFL hires ex-Securities and Exchange Commission chair Mary Jo White to investigate Commander' Dan Snyder*, ESPN (Feb. 18, 2022), https://www.espn.com/nfl/story/_/id/33323226/nfl-hires-ex-securities-exchange-commission-chair-mary-jo-white-investigate-commanders-dan-snyder.

NFL, are putting in a good faith effort to combat game integrity problems. Second, it would demonstrate to the public that the sports leagues care about their fans and their experience. Third, it would put the United States on a similar footing as the European and Australian countries who already have committees that ensure sports integrity.[118] Lastly, establishing a committee would rid the sports world of the non-reporting problem. Since players, coaches, and other employees could report game integrity concerns to an outside entity such as a Sport Integrity Committee, the fears of whistleblowing, social ostracization, and retaliation could be significantly reduced. In result, more claims of sport integrity could be filed, be more thoroughly investigated by outside counsel, and appropriate remedies proposed.

Part V: Conclusion

NFL owners are successful and powerful executives who control every aspect of their teams. Little stands in their way to make decisions, and, unfortunately, some owners conduct themselves in ways that severely threaten the health of the game. When bribery or other serious conspiracies occur at the top of an organization, the allegations must be vetted, investigated, and if found to be accurate, punished. For too long, the focus has been on player misconduct. Contemporary circumstances such as the injection of a new source of revenue in legalized sports gambling and allegations of owners rigging the NFL Draft by fixing games could destroy the public's confidence in the NFL, and consequently, the game of American football itself.

The structure of the NFL presents a collective action problem which shields team owners from accountability and punishment for game integrity issues such as bribery allegations. Players

---

[118] The Council of Europe Convention on the Manipulation of Sports Competitions offers review of alleged match fixing and publishes documents on how to combat sports integrity issues. See Fighting Match-Fixing, European Union, https://sport.ec.europa.eu/policies/sport-and-integrity/fighting-match-fixing (last visited Apr. 20, 2022); INTERPOL, the international law enforcement organization, has a Corruption in Sport Unit that investigates allegations of match-fixing and other game integrity violations. Interpol, *Corruption in Sport*, https://www.interpol.int/en/Crimes/Corruption/Corruption-in-sport (last visited Apr. 25, 2022).

and coaches are dissuaded from bringing claims against executives or owners out of fear for retaliation or jeopardizing their own careers. Additionally, from examining the history and use of the Sports Bribery Act, it is not prepared for NFL team owner misconduct. For this reason, the statute should be revised so that it is more comprehensive. Simple changes such as directly referencing front office executives and owners and covering other forms of illicit coercive activity such as blackmail and duress provide ways to prosecute current offenders and hopefully disempower future offenders. Deploying state consumer fraud statutes to ensure sports gamblers have recourse against fixed games ensures consumer confidence in a new era of ubiquitous sports betting. Establishing an independent commission that focuses solely on promoting game integrity in professional sports would allow whistleblowers to come forward with claims openly and would provide an unbiased assessment of questionable conduct.

These changes require some effort, but do not mandate the overhaul of the American professional sport structure. If the NFL Commissioner and team owners cannot adequately protect the shield and guard the game, the U.S. Congress and the American people should guard the guardians of the game, for the sake of the game.