SPORTS LITIGATION ALERT

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Cases

USA Football Flagged for Confusion Over Another's Use of USA Flag Trademark

By Katelyn Kohler

Flag football is rapidly growing both in the U.S. and globally with 2.4 million U.S. kids participating and millions more internationally.[1] It is expected to surpass tackle football in organized participation worldwide, supported by initiatives from the National Football League (NFL) and the International Federation of American Football (IFAF).The sport gained international recognition with its inclusion in the 2022 World Games and will be included at the Los Angeles

1 *See* National Football League, Flag Football Growth, NFL OPERATIONS, https://operations.nfl.com/learn-the-game/flag-football/flag-football-growth/ (last visited Feb. 23, 2025).

Table of Contents

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Cases

Articles

News Briefs

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2028 Olympics.[2] Due to its accessibility and inclusivity, flag football is a cornerstone of the NFL's domestic and international development strategies.

As the NFL invests in flag football, it faces legal challenges over brand identity in this rapidly growing sport. Two parties are fighting over the "USA FLAG" mark: USA Football, a nonprofit "endowed by the NFL and the NFL Players Association," and FFWCT, LLC, with its affiliate USA Flag, LLC, both organizing similar flag football events.[3] The dispute arose from a series of failed business negotiations and a subsequent fight over trademark rights.

Background

In 2017, USA Football and FFWCT began exploring a joint venture under the name USA Flag, aiming to create a governing body for flag football. USA Football declined the proposal, but entered into agreements for consulting services with FFWCT through 2018. However, by 2020, after the expiration of their agreement, FFWCT filed for the USA FLAG trademark. USA Football opposed FFWCT's trademark applications, arguing that it would likely cause consumer confusion due to its similarity with their USA FOOTBALL mark. The TTAB initially sustained the opposition. As the court described this as "a Hail Mary attempt to salvage the relationship," USA Football and FFWCT then entered into a final agreement in March 2021 which allowed USA Football to scout at FFWCT events.[4] FFWCT agreed to stop using USA FLAG branding until February 2022. After that agreement expired, FFWCT refiled for the USA FLAG trademark in April 2022. In September 2022, FFWCT announced its full rebrand to USA FLAG, prompting USA Football to send a cease-and-desist letter, which FFWCT ignored. This disagreement escalated into litigation, with USA Football accusing FFWCT of infringing upon its intellectual property. FFWCT, on the other hand, defended its position by arguing that flag football and tackle football were distinct entities. In its view, USA Football's trademarks were primarily associated with tackle football, not the flag football format that FFWCT was promoting.

Trademark Infringement

As USA Football's marks are incontestable, the core issue is the alleged trademark infringement by FFWCT's newly registered mark.[5] Specifically, the court considered whether FFWCT's use of the USA FLAG mark would likely cause confusion among consumers. Since likelihood of confusion is a question of fact, the court concluded that the issue should be put to a jury.

Trademark infringement cases hinge on likelihood of confusion. The court evaluates key factors, or "digits of confusion" in the Fifth Circuit.[6] The factors in this case they likely favor USA Football are listed as follows:

1. Strength of the plaintiff's mark: USA Football's marks are incontestable and thus have a presumption of validity. It is also likely strong given their association with the NFL, a household name in American sports. The long-standing reputation of the NFL contributes to the mark's widespread recognition which elevates the risk of consumer confusion.

2. Similarity of the marks: "USA FLAG" and "USA Football" both feature "USA" and "F" as the second letter. This similarity is concerning because "USA" conveys an association with national-level football, and both marks are

2 *See NFL and Jalen Hurts Light Up Handover to Olympic Games* Los Angeles 2028, NFL (Aug. 5, 2024), https://www.nfl.com/partners/flag-football/.

3 *See* FFWCT, LLC v. USA Football, Inc., No. 4:23-cv-465, 2025 U.S. Dist. LEXIS 644, at *27 (E.D. Tex. Jan. 3, 2025).

4 *See id*. at *9.

5 *See id*. at *24-26 (explain USA Football's incontestable status). Incontestable status removes the ability to challenge a mark's validity, which applies after five years of registration and use in commerce. *See id.* If a mark achieves incontestable status, its federal registration serves as conclusive evidence of validity. *See id*. (citing 15 U.S.C. § 1065).

6 *See id.* at *29 (describing factors in Fifth Circuit).

related to football in some capacity potentially creating confusion that they may originate from the same entity.

3. Similarity of products/services: USA Football and FFWCT offer overlapping services in the football arena. USA Football operates in both traditional and flag football, while FFWCT focuses solely on flag football. Despite FFWCT's claim of dissimilarity, its application's services description is "virtually identical" to USA Football's registration, differing only by the addition of "flag" in front of football activities.[7]

4. Identity of retail outlets and purchasers: Both entitles also target similar consumer groups — athletes, event organizers, and football enthusiasts—thus, directing a similar consumer demographic. This overlap strengthens the argument that consumers may mistake one entity for the other, especially if they are unfamiliar with the distinctions between "football" and "flag football."

5. Similarity of design: While the specific design elements of the marks were not discussed in depth, the overall similarity in naming and market association suggests that the marks may share visual elements (e.g., red, white, and blue, football logos, stars, and stripes) that could contribute to confusion.

6. The defendant's intent: USA Football may assert that FFWCT acted in bad faith by continuing to use the "USA FLAG" mark despite their opposition. Licensing can also impact this factor by indicating whether FFWCT knowingly took advantage of USA Football's established brand recognition to benefit from their reputation which could strengthen the likelihood of confusion. However, if USA Football knew of FFWCT's use and took no action, it could suggest acquiescence. The licensing agreement could clarify if USA Football was aware of USA FLAG in the marketplace, consented to its use, or knew of FFWCT's lawful rights but proceeded with the lawsuit anyway. Licensing could either justify FFWCT's actions or intensify suspicions of intentional infringement.

7. Actual confusion: Evidence of consumer confusion, such as testimonials or consumer surveys, would weigh heavily in USA Football's favor especially if they are the senior, stronger mark.

8. Degree of care exercised by potential purchasers: Since flag football appeals to casual participants, consumer scrutiny may be low. As this is a new and growing sport consumers may be less familiar with the details of different organizations, which would strengthen USA Football's case.

7 *See id*. at *7; see also USA Football, Registration No. 5,172,678; USA Flag, Application No. 88880085.

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Potential Defenses

In defense, FFWCT argued that the terms "football" and "flag football" referred to distinct activities, and thus USA Football's trademarks should not apply to flag football events. However, the court rejected this argument stating "[t]rademark protection is not limited to the goods and services specified in the registration but extends to any goods or services which are likely to cause confusion in the market."[8] Although the court isn't required to base its analysis on linguistic interpretation, it finds FFWCT's position "a non-starter."[9] They noted that "football" reasonably includes "flag football" as a sub-category. The Olympics themselves have also identified Flag football as "a variant of American football (or gridiron)[.]"[10]

FFWCT's strongest defense is challenging the distinctiveness of USA Football's marks, but this fails at summary judgment.[11] Instead, FFWCT's challenge should be addressed within the likelihood of confusion analysis, focusing on the strength of plaintiff's mark.

When terms like "AMERICA" or "USA" appear in trademarks, their geographic significance is assessed on a case-by-case basis considering the goods or services, geographic origin, and the overall commercial impression. If the term primarily denotes U.S. origin, it could be deemed geographically descriptive.[12] As a result, other similarities—such as logos or colors associated with the American flag—may not be particularly distinctive.

Regarding the similarity of the marks, both "USA FLAG" and "USA Football" share "USA" and relate to football. However, "USA" is a geographically descriptive term, weakening its ability to uniquely identify the brand and reducing the likelihood of confusion. The more prominent words—"Flag" and "Football"—would then distinguish the marks. "Flag" refers specifically to flag football, a distinct form of the sport. However, both parties disclaimed terms like "FLAG" and "FOOTBALL" in their registration, acknowledging that these words are not inherently distinctive or unique identifiers.[13] This further emphasizes the weakness of the marks and unlikeliness of creating confusion.

FFWCT could argue prior use of the "USA FLAG" mark, asserting that it adopted and used the mark in commerce before USA Football's expansion into flag football. FFWCT claims first use since 2010.[14] As a result, FFWCT may raise equitable defenses like acquiescence or laches. Pointing to the licensing agreement between the parties could suggest that USA Football was aware of FFWCT's use and allowed it without objection for a significant period. If USA Football failed to enforce its trademark rights or implicitly permitted FFWCT to use the mark, FFWCT could argue that USA Football waived its rights.

Another defense is that consumers in the sports industry could be highly sophisticated, and this heightened discernment makes it less likely they would be confused. As the NFL notes, flag football is becoming more international and gaining Olympic recognition. While the NFL is cleverly expanding its reach, it's possible that FFWCT has established itself as a distinct brand with its own targeted audience. Consumers would then be more likely to distinguish between tackle and flag football leagues based on specific branding, marketing materials, and their activity preferences.

Court's Ruling on Summary Judgment

The court ruled in favor of USA Football on the validity of its trademark. It acknowledged that USA Football had established strong marks, which was an important victory in the case. However, on the central issues of likelihood of confusion, vicarious liability, and conversion, the court found that factual disputes remained unresolved. As a result, it denied summary judgment on these issues, leaving the ultimate decision to the jury. In this battle for the future of flag football, the only thing that's clear is that both sides are aiming for a touchdown in court.

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8 See FFWCT, LLC v. USA Football, Inc., No. 4:23-cv-465, 2025 U.S. Dist. LEXIS 644, at *27 (E.D. Tex. Jan. 3, 2025)(citing Source, Inc. v. SourceOne, Inc., No. CIV.A.3:05-CV-1414-G, 2006 U.S. Dist. LEXIS 62401, 2006 WL 2381594, at *4 (N.D. Tex. Aug. 16, 2006)).

9 See id. at *28.

10 See International Olympic Committee, Flag Football, OLYMPICS, https://www.olympics.com/en/sports/flag-football/ (last visited Feb. 23, 2025).

11 See id. at *24 ("Flag's challenge to the distinctiveness of the USA Football Marks falls flat because that argument is better handled under the likelihood of confusion analysis.").

12 See TMEP § 1210.02(b)(iv).

13 See USA Football, Registration No. 5,172,678; USA Flag, Registration No. 7,290,036 (noting disclaimers).

14 See USA Flag, Registration No. 7,290,036 (stating date of first use).

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Return to Table of Contents

Florida Federal Judge Denies Motion to Dismiss College QB's Fraud Suit Arising From Failed $13.85 M NIL Deal

By William E. Grob and Zachary V. Zagger

On April 8, 2025, a judge of the U.S. District Court for the Northern District of Florida denied a motion to dismiss involving a former University of Florida quarterback recruit's lawsuit that alleged fraud by head football coach Billy Napier and a top athletics booster by way of a $13.85 million name, image, and likeness (NIL) deal that never materialized.

Quick Hits

- A Florida federal judge has allowed a college quarterback's fraud lawsuit against the University of Florida and key figures to proceed, emphasizing the potential legal ramifications of unfulfilled NIL deal promises.
- The ruling highlights the evolving landscape of college sports, where NIL agreements and recruiting practices—including those based only on oral promises—can lead to significant legal accountability for schools.

In the complaint, Jaden Rashada alleges that Napier, an NIL coordinator, and athletics booster Hugh Hathcock fraudulently induced him to abandon his recruitment by another school, where he allegedly had a $9.5 million NIL deal in play, and instead commit to the University of Florida (UF) Gators, based on what he contends turned out to be false promises of a more lucrative deal.

While noting that Rashada must still prove his claims, U.S. District Judge M. Casey Rodgers found Rashada had sufficiently stated fraud-based claims against the group and permitted his lawsuit to continue. However, the judge dismissed claims that the defendants had committed the independent tort of civil conspiracy and that they had tortiously interfered with his other NIL deals.

The ruling is significant, as the case is one of the first high-profile lawsuits concerning NIL-related promises made during recruitment. This ruling lands amid a changed landscape for college sports that allows college athletes to be compensated for their NIL value and as schools prepare to pay athletes directly from revenue-sharing under a settlement reached by the National Collegiate Athletic Association (NCAA) to end NIL litigation.

Background

Rashada was a highly touted California high school athlete, who received interest from multiple schools to play college football during his recruitment in 2022. Rashada alleges that after visiting UF in 2022, Hathcock offered him an $11 million NIL deal that would be paid by Hathcock's company, Velocity Automotive Solutions LLC, and a UF athletics NIL collective. Rashada later verbally committed to another school in Florida, where he had allegedly reached a $9.5 million deal with boosters.

The UF group then "upped the ante," offering a $13.85 million proposed NIL deal, Rashada alleges. He then switched his verbal commitment to UF and later signed a letter of intent, despite not finalizing the NIL deal in writing. Rashada alleges that defendant Marcus Castro-Walker, who was director of NIL and player engagement for the Gators, told him that head coach Napier was prepared to revoke the recruiting offer if he did not sign the letter of intent and that the $13.85 million NIL deal would be completed. However, Rashada alleges that deal never materialized, and the promised payments were not received. He then withdrew his letter of intent with UF and chose to play at another school, allegedly losing out on millions in NIL compensation.

Alleged Fraud and the Defendants' Motion to Dismiss

Rashada brought several fraud-based claims, including for fraudulent misrepresentation and inducement, aiding and abetting fraud, and negligent misrepresentation. The defendants filed a motion to dismiss the lawsuit, arguing that Rashada had not met the heightened standard for pleading fraud claims under Rule 9(b) of the Federal Rules of Civil Procedure, which requires plaintiffs to "state with particularity the circumstances constituting fraud."

Judge Rodgers disagreed, holding that Rashada had met the requisite pleading standards, at least at an early stage in the litigation—i.e., that the UF group had induced him to switch his recruitment with repeated

promises of a lucrative NIL deal that they never intended to pay.

"The broader context alleged in the Amended Complaint, granting all inferences in Rashada's favor, suggests that Defendants intended to string Rashada along without payment in order to deny Miami and other rival schools the prestige of signing a highly-touted quarterback as well as, for some period of time, Rashada's talents on the gridiron," Judge Rodgers stated in the ruling.

Notably, Judge Rodgers was not convinced that Rashada had failed to allege that the defendants had the authority to make promises on behalf of one another, noting that such a fact-intensive "parsing of agency relationships" was not necessary at that stage in the litigation.

"Viewed in totality, the Amended Complaint alleges a recruiting apparatus comprised of Napier, Castro-Walker, Hathcock, and Velocity that was assembled—not only to recruit Rashada to UF—but other student-athletes as well," Judge Rodgers wrote. "That recruiting ecosystem, as alleged, existed separate and apart from any putative fraud by Defendants."

Next Steps

While Rashada's case has just moved beyond an initial motion to dismiss—when factual allegations must be viewed in favor of the plaintiff—the ruling signals that NIL-payment promises to college recruits could potentially result in liability to college coaches, recruiting personnel, and athletics boosters. In particular, the judge found that promising an NIL deal to a recruit and failing to live up to that promise could constitute actionable fraud.

This is significant, as NIL deals are becoming the norm to attract top athletic recruits, particularly in revenue-generating sports such as college football, after the NCAA pared back its restrictions on NIL compensation. At the time of Rashada's recruitment, colleges were prohibited from using NIL deals as an inducement in recruiting. However, such recruiting restrictions will no longer be enforced under a recent settlement, meaning that athletes may now learn about and negotiate NIL compensation from third parties during the recruiting process.

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Return to Table of Contents

Court Rules Team Owner Did Not Breach Fiduciary Duty in Baseball Spat

A federal judge from the District of New Jersey has granted a motion to dismiss the claim of a professional baseball team, which had alleged that a businessman, who owns and operates multiple Minor League Baseball (MiLB) teams, had breached his fiduciary duty, "undermining negotiations (between the two parties, and) impacting various entities in minor league baseball."

By way of background, the plaintiff Sports Enterprises, Inc. (SEI) owns and operates the Salem-Keizer Volcanoes, formerly a minor league baseball team. Five years ago, MLB decided to contract the number of MiLB teams by 25 percent. The Volcanoes became one of the casualties, leaving it with no affiliation with any MLB club.

SEI sued Marvin Goldklang, alleging that he and other peers in ownership "destroyed" the Volcanoes and enriched themselves.

After the first complaint was dismissed, the plaintiff filed a second amended complaint (SAC), focusing its action to a single claim for breach of fiduciary duty against Marvin Goldklang. Goldklang "was a member of the Board of Trustees (BOT) of the National Association, a non-profit corporation organized under the laws of the State of Florida. Members of the BOT were entrusted as fiduciaries under Florida law, the express terms of the NAA (National Association Agreement), and common law, and charged with protecting the interests of the National Association, its 14 member-leagues, and the 160 MiLB clubs operating under the NAA."

Count 1 of the SAC notes that Goldklang was a director under Florida law because he was a member of the BOT of the National Association. It also alleges that pursuant to Florida law, all members of the BOT, including Goldklang, "owed SEI the fiduciary duty to act in good faith, with care of an ordinarily prudent person, and in the best interests of the National Association and its leagues and clubs," according to a Florida statute.

In his motion to dismiss, Goldklang countered, *inter alia*, that the plain language of the cited Florida statute clarifies that the duties imposed by the law is limited to the not-for-profit entity (i.e., the National Association) and therefore would not extend to individual members like (him). Indeed, the statute states that the relevant duty is limited to the 'corporation':

(1) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner he or she reasonably believes to be in the best interests of the **corporation**.

Fla. Stat. § 617.0830 (emphasis added)."

The court noted that case law "supports the proposition that the statute is limited to the entity and does not extend to the entity's members. *Stewart v. American Association of Physician Specialists*, No. 13-01670, 2014 U.S. Dist. LEXIS 72102, 2014 WL 2197795, at * (N.D. Cal. May 27, 2014) ('*Stewart* does not allege any independent relationship of trust from which the Court could imply a fiduciary relationship. Rather, *Stewart*'s sole contention is that AAPS and the Board owe her a fiduciary duty because she is a member of AAPS. . . . *Stewart* offers no authority that supports her position that the directors of a not-for-profit corporation owe their members—rather than the corporation—fiduciary duties.')"

The plaintiff argued that *Stewart* "is distinguishable because the plaintiff did not allege any facts about the nature of the fiduciary relationship between the directors of the non-profit and the members other than their status as directors and members. However, none of the facts that the plaintiff alleged about the nature of the relationship between Goldklang and SEI specifically demonstrates a special relationship of trust or confidence that would give rise to a fiduciary duty." P*aradiso v. Bank of Am.*, N.A., No. 22-02042, 2022 U.S Dist. LEXIS 212711, at *10-12 (D.N.J. Nov. 23, 2022).

Thus, the court granted the defendant's motion to dismiss, pursuant the Federal Rule of Civil Procedure 12(b)6. Moreover, "because further amendment would be futile," the court dismissed the SAC with prejudice.

Sports Enterprises, INC. v. Marvin Goldklang; D.N.J.; Civil Action No. 23-02198; 1/22/25

Return to Table of Contents

Esports Legend Prevails In Defamation Lawsuit Against Youtuber In Australian Court

The District Court of Queensland has awarded esports pioneer Billy Mitchell nearly $400,000 AUD after he filed a defamation lawsuit against YouTuber Karl Jobst, alleging that the defendant made harmful public statements.

In Case No. 136/21, the Court awarded Mitchell damages plus assessed interest and further ordered Jobst to pay Mitchell's legal costs with the final amount to be determined at a future hearing.

In delivering his judgment, Judge Barlow stated:

"The obvious pleasure that Mr. Jobst took in attacking [Billy Mitchell] and his gleeful anticipation of litigation simply added to Mr. Mitchell's emotions. He also suffered adverse physical effects in the short term."

The case arose from public statements made by Jobst on social media, in which he dismissed the potential for legal consequences due to his Australian residency. Among the statements cited in court included the following:

- "I have restrained myself from talking about this. But I think it is now time for me to step up. F*** Billy Mitchell."
- In response to a commenter suggesting legal action: "I'm in Australia so good luck."

Mitchell responded by retaining legal counsel in Queensland and initiating legal proceedings. Following a full trial in September 2024, the Court ruled on March 31, 2025 that Jobst had defamed Mitchell.

"I felt it was necessary to defend my name and professional reputation in the face of false and damaging allegations," said Mitchell. "I appreciate the Court's careful consideration of the facts and am thankful for the unwavering support of my family, friends, and legal team throughout this process."

Return to Table of Contents

Court Sides with State of New Jersey on Tax Break Issue, Involving Casinos

By Blake Simokat

Key Facts

The Casino Property Tax Stabilization Act (CPTSA) is an Act in the New Jersey State Constitution that regulates gambling in Atlantic City. In March 2024, the plaintiff, a group called Liberty and Prosperity, sued the defendant, the State of New Jersey, for what they felt was an unjust action of giving certain groups tax breaks.

Relevant Legislation and Background

In 1976, the State of New Jersey allowed gambling within the State. The Casino Act permitted the State to tax gambling equipment and the casino operation itself in order to reduce other taxes, such as property tax. In 1977, the State enacted the Casino Control Act (CCA), the State claimed that casinos and gambling were "a unique tool of urban redevelopment for Atlantic City" and would be exempt from taxation. The CCA imposed an annual tax on "gross revenues" equal to eight percent of those revenues. The CCA then required casinos to make annual investments to improve Atlantic City, or the casino would have to pay an alternative tax. In 1984, the Casino Reinvestment Development Authority (CDRA) came into play, where casinos got the option to pay an additional 2.5% on gross revenues or invest in CDRA bonds. Atlantic City had a gambling monopoly for a while until nearby states also started allowing it. Thereafter, Atlantic City's monopoly started to crumble. Due to the situation that Atlantic City was now in, of casinos rapidly closing, the CPTSA was put into play. The CPTSA made sure that there was certainty that the financial obligations of the casinos to the city were met. The CPTSA required casino owners to sign financial agreements with the City. This situation reached the federal level when in 2018, according to the legal document, "after the United States Supreme Court found unconstitutional a federal law that made it unlawful for a state to license or authorize gambling on competitive sporting events."

Issues Presented

In Atlantic City, tourism and gambling are what make the economy thrive and give jobs to thousands of workers in New Jersey. The plaintiff claimed that the casinos are being taxed unfairly. The plaintiff claims "Atlantic City has experienced 'an increase in unemployment due to the recent closing of four casino properties' and a strain on [its] municipal budget due to property tax," which was true for the time due to Atlantic City's gambling monopoly crumbling.

The plaintiff claimed the defendant should support their casinos and gambling for their unique recreational opportunities, tourism attraction, and revenue-generating ability. The defendant countered that "to prevent the insolvency of Atlantic City, to facilitate the municipality's rehabilitation and recovery, and to protect the citizens not only of the City but of Atlantic County, the region and the State from the ramifications of what would have otherwise been the imminent financial collapse of a tax base which uniquely funds State programs for senior citizens and disabled adults."

The defendant is claiming that through the series of legislation, the casinos and gambling equipment need to be taxed significantly, and casinos should be required to invest in the city directly through higher taxes on gross revenue or through bonds. The defendant claims it wants to keep costs, such as property taxes, lower so it can protect its more vulnerable citizens, such as senior citizens.

The Reasoning of the Court

Citing extensive case law, including *State vs. Trump Hotels & Casino Resorts* in 1999, *State v. Hemenway,* 239 N.J. 111, 125, 216 A.3d 118 (2019), *Mack-Cali Realty Corp. v. State*, 466 N.J. Super. 402, 423-24, 246 A.3d 847 (App. Div.2021), and *State v. Lenihan*, 219 N.J. 251, 266, 98 A.3d 533 (2014), the court was unwilling to "rule a legislative act void, 'unless its repugnancy to the Constitution is clear beyond a reasonable doubt.'" *Lenihan*. According to the court, the plaintiff "failed to meet that standard."

Final Ruling

For the final ruling of this case the court wrote, "For these reasons, we reverse the portions of the August 29, 2022, final judgment denying in part defendants' motion to dismiss the complaint, granting in part plaintiffs' summary-judgment motion, and declaring the 2021 amendment null, void, and of no effect. We otherwise affirm."

Articles

Trinity High School Under Fire: The Day a Heat Stroke Became a Legal Flashpoint

By Dr. Kyle Conkle, Assistant Professor of Sport Management, University of North Alabama

At approximately 8:00 a.m. on July 31, 2024, the varsity football team at Trinity High School in Louisville, Kentucky, commenced practice. Due to the absence of the first-string center, N.R., a second-string center, was assigned additional responsibilities, resulting in his performing more than twice the number of repetitions normally expected. Additionally, the practice conducted on the previous day had imposed an increased workload on the team, which may have contributed to heightened physical strain.

During the practice, several teammates observed that N.R. was not performing at his usual level. As the session progressed, it became apparent that his performance deteriorated beyond that anticipated from routine fatigue. N.R. was unable to complete the customary conditioning run within his typical time which indicated that his physical condition had significantly declined. It is alleged that during the practice, Coach Leslie directed N.R. to repeat a conditioning run despite observable signs of distress. Eyewitness accounts indicate that during this period, Coach Leslie made comments directed toward N.R. that have been described as derogatory. Specific remarks concerning N.R.'s family history were also noted. No intervention by other coaching staff or athletic trainers was reported at that time, and N.R. was required to complete an additional conditioning run.

Following the observable decline in N.R.'s condition, a 911 call was placed at approximately 10:20 a.m. by Coach Hilbert, who reported that N.R. was unresponsive. Despite the availability of a cold tub, equipment designated for rapid cooling measures in accordance with guidelines set by the Kentucky High School Athletic Association (KHSAA), no action was taken to transport N.R. to the training room or to initiate the cooling procedure. When emergency medical services arrived at approximately 10:30 a.m., N.R. was found unresponsive, with a recorded core temperature of 107.5°F. Subsequent assessments revealed that N.R. was in an unstable condition, with low blood pressure and an elevated heart rate. He was transported to Norton Children's Hospital, where it was determined that the prolonged exposure to high body temperatures had resulted in significant damage to his heart, kidneys, liver, and other organs.

The incident is further characterized by allegations that the assistant coach's methods were not isolated but part of a broader pattern of conduct. It is claimed that Trinity High School, its Foundation, and the Archdiocese responsible for oversight have been aware of the coaching practices in question and have failed to implement adequate supervisory measures and training protocols. The failure to initiate timely medical intervention, despite the availability of appropriate equipment, is cited as evidence of institutional shortcomings in ensuring the safety and welfare of student-athletes. The plaintiff alleges that the Trinity Defendants including Trinity High School, its Foundation, and the Archdiocese breached their duty to maintain a safe environment for student-athletes. It is asserted that by not promptly recognizing and treating N.R.'s heat stroke, the staff violated both state law and KHSAA policies, resulting in life-threatening conditions and significant organ damage.

The lawsuit contends that the failure to adhere to statutory requirements and KHSAA guidelines, specifically, the failure to utilize the available cold water immersion equipment within the prescribed time frame, constitutes negligence per se. The allegations assert that such a failure represents a direct violation of statutory duties designed to safeguard student-athlete health. In addition to physical injuries, the lawsuit claims that N.R. suffered substantial emotional distress due to the treatment received during the practice. The allegations state that the verbal comments made by Coach Leslie, coupled with the absence of timely intervention by other staff, contributed to psychological harm, thereby constituting infliction of emotional distress. The claims also include allegations that the administration of Trinity High School failed to properly

supervise and train its coaching staff. It is alleged that the school was aware of Coach Leslie's prior conduct and yet did not take sufficient measures to address or rectify his behavior, thereby contributing to the conditions that led to N.R.'s injury. The lawsuit further alleges gross negligence on the part of the Trinity Defendants, arguing that their actions or omissions were characterized by a reckless disregard for the safety of student-athletes. As a result, the plaintiff seeks punitive damages to deter similar conduct in the future. Lastly, the plaintiff asserts that the conduct exhibited by certain coaching staff was intentional and aimed at causing emotional distress. The claim contends that the remarks made during the practice were deliberate and exceeded acceptable bounds of professional conduct, thereby intentionally inflicting emotional distress on N.R.

The incident raises important questions regarding the standards and practices within high school athletic programs. The allegations prompt a review of the training methods and the extent to which strenuous practice regimens are monitored to prevent undue physical and emotional stress on student-athletes. Given the serious nature of the incident, there is potential for this case to influence future legislative and regulatory actions at the state level. The case underscores the need for rigorous enforcement of emergency response protocols and may prompt reviews of existing guidelines to ensure that all athletic programs adhere to the mandated safety standards. The involvement of external service providers, such as KORT, the designated sports medicine provider for Trinity High School, has also been highlighted. The lawsuit alleges that these providers failed to ensure that their personnel complied with established emergency response guidelines. This aspect of the case may lead to enhanced scrutiny of contractual and supervisory arrangements between schools and their external service providers. Finally, the case emphasizes the importance of comprehensive training and effective supervision for all personnel involved in athletic programs. The allegations suggest that a failure to adequately train and supervise coaching staff may contribute to preventable injuries, thereby necessitating a reassessment of current practices to better protect student-athletes.

This case, pending resolution through the legal process, may have significant implications for the administration of athletic programs, the supervision of coaching staff, and the regulatory framework governing student-athlete safety. It remains a subject of considerable interest as stakeholders await the outcomes and potential reforms that may arise from the court's determination.

Return to Table of Contents

Nico Iamaleava, NIL Deals, and the Legal Showdown Brewing in College Athletics

By Joseph Michael Ricco IV

Former University of Tennessee football quarterback Nico Iamaleava, once one of the highest-rated high school recruits in the country, entered the transfer portal and left for UCLA in mid-April, just months after leading the Volunteers to their first College Football Playoff appearance. His decision came after reported frustration over his NIL deal and growing tension between his camp and Tennessee's coaching staff and collective. The situation has sparked new questions about how NIL contracts are being handled and whether schools have any real power to hold athletes to these agreements. This article breaks down what led to Iamaleava's departure, examines the legal uncertainty around NIL contracts, shares perspective from sports law expert Professor Jodi Balsam, and looks at whether schools like Tennessee could take legal action as the House v. NCAA settlement continues to hang over the sport.

Why Nico Walked Away

Nico Iamaleava's exit from Tennessee did not come out of nowhere. Reports of frustration between his camp and the university's NIL collective, Spyre Sports Group, had been circulating for months leading up to his decision. Sources close to the situation said Iamaleava's representatives, including his father, reached out to the collective in late December asking to renegotiate the terms of his NIL deal, aiming for a figure closer to the reported $4 million that other high-profile transfer quarterbacks like Carson Beck and Darian Mensah eventually secured. Iamaleava was reportedly set to make around $2.4 million at Tennessee. While his side has publicly denied pushing for that specific amount, the relationship between

the quarterback and the program continued to deteriorate as the offseason unfolded.

The situation reached a breaking point in April when Iamaleava skipped practice ahead of Tennessee's spring game and stopped returning calls from coaches and teammates. Within days, he entered the transfer portal and quickly landed at UCLA, a move that surprised many given the Bruins had already named Joey Aguilar their expected starter for the upcoming season. Aguilar then transferred to Tennessee soon after, creating one of the more unusual quarterback swaps in recent memory. Adding to the ripple effects, Iamaleava's younger brother, Madden, also left University of Arkansas to follow Nico to UCLA. Madden, a four-star quarterback prospect in the 2024 class, had originally committed to UCLA before flipping to Arkansas on National Signing Day in December 2024. He enrolled at Arkansas at the start of the spring semester but chose to leave before ever playing a game for the Razorbacks.

Legal Gray Areas

The uncertainty surrounding Iamaleava's exit from Tennessee is not just about one quarterback or one NIL deal. It highlights the bigger legal questions facing college athletics in the NIL era, where contracts often lack the structure and enforceability seen in professional sports. Professor Jodi Balsam, a nationally recognized sports law expert and former NFL counsel for operations and litigation, believes the current system is showing the cracks of a labor market without clear rules. Balsam serves as Professor of Clinical Law and Director of Externship Programs at Brooklyn Law School and also teaches Sports Law at New York University, with additional experience as a co-author of one of the leading casebooks on sports law.

"This is what happens when you have a labor market that operates somewhere between professional and amateur sports but without the protections or consistency of either," Balsam said in an interview for this story. She explained that without collective bargaining agreements or formal unionization, there is little stopping high-profile athletes from seeking new opportunities whenever a better deal comes along. "If this were a professional league without a union, teams would be free to contract with any player on any terms, and that's essentially what we're seeing now in college sports," she said.

According to Balsam, the lack of regulation creates both opportunity and risk. While top players like Iamaleava may benefit from a free market, many others face instability, unclear expectations, and limited protections. "There are marquee athletes who will absolutely capitalize on this system, but there are also many players being exploited or misled along the way," she said. With no uniform labor structure in place and NIL deals often tied to booster collectives rather than schools themselves, enforcement remains murky at best, leaving open the question of whether programs like Tennessee could successfully hold an athlete to these agreements at all.

Litigation on the Horizon?

The uncertainty around NIL enforcement has also left the door open for schools to test how far they can go in holding athletes accountable to these deals. In the wake of Madden Iamaleava's departure, Arkansas officials have publicly confirmed that they are exploring legal action against Madden for breach of contract, citing buyout language included in his one-year NIL agreement with the school's collective, Arkansas Edge. Madden had only been enrolled at Arkansas since January before choosing to leave for UCLA, and reports indicate that his NIL deal required repayment of a portion of the agreement if he exited early. Arkansas athletic director Hunter Yurachek has voiced strong support for the collective's efforts to enforce these agreements, calling such action "vital in our new world of college athletics."

While Tennessee has not publicly confirmed any similar legal pursuit against Nico Iamaleava, there has been growing speculation about whether the school or its NIL collective could explore that option. If Tennessee's NIL deal with Iamaleava included similar contractual protections or buyout clauses, the program could attempt to recover some of the financial investment tied to his agreement. Whether such efforts would hold up in court remains unclear given the unsettled nature of NIL contract law and the complex question of whether these agreements function as enforceable employment contracts. With little precedent to follow, any legal action from Arkansas, Tennessee, or other programs in similar situations could play a role in shaping how similar disputes are handled.

What Comes Next?

As the Iamaleava brothers settle into their new chapter at UCLA, the legal and financial fallout from their departures remains unresolved. Whether Arkansas follows through on its plans for legal action against Madden, or Tennessee chooses to do the same with Nico, could shape how future NIL contracts are structured and enforced. For now, both quarterbacks are preparing for the upcoming season, but their high-profile decisions have drawn national attention. With the House v. NCAA settlement still pending and no clear labor system in place, this situation could become an early example of how schools attempt to hold athletes accountable in the NIL era. What happens next may help define how college football handles player movement, contract disputes, and competitive balance in the years ahead.

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References

Cookston, H. (2025, April 23). Arkansas nearing legal action against Madden Iamaleava, Tennessee could pull Nico in Crossfire. Sporting News. https://www.sportingnews.com/us/ncaa-football/news/arkansas-nearing-legal-action-against-madden-iamaleava-tennessee-could-pull-nico-crossfire/9f21e62d1e34fdbea92742ca

Gregoire, W. (2025, April 12). Nico Iamaleava Highlights Problem With NCAA Sports. Stadium Rant. https://www.stadiumrant.com/nico-iamaleava-highlights-problem-with-ncaa/

Jeyarajah, S. (2025, April 23). Source of Nico IAMALEAVA's frustration rooted in massive nil deals for Carson Beck, Darian Mensah, per report. CBSSports.com. https://www.cbssports.com/college-football/news/source-of-nico-iamaleavas-frustration-rooted-in-massive-nil-deals-for-carson-beck-darian-mensah-per-report/amp/

Low, C., Olson, M., & Rittenberg, A. (2025, April 23). Why Nico Iamaleava soured on Tennessee and ended up at UCLA. ESPN. https://www.espn.com/college-football/story/_/id/44787682/why-nico-iamaleava-left-tennessee-joined-ucla

Marcello, B. (2025, April 23). Arkansas puts departed QB Madden Iamaleava in its crosshairs by encouraging Nil Collective to recoup buyout. CBSSports.com. https://www.cbssports.com/college-football/news/arkansas-puts-departed-qb-madden-iamaleava-in-its-crosshairs-by-encouraging-nil-collective-to-recoup-buyout/

Return to Table of Contents

NCAA Antitrust Settlement: Ground-Breaking or Grounding?

Settlement Limits NIL Compensation, Leaves Open Major Issues

By Kate Roggio Buck, Robert A. Mintz, and Michael D. Fasciale

The *House v NCAA* settlement—purported to resolve antitrust claims (i.e. issues stymying the competitive market)— will, if approved, fail to accomplish its primary purpose and continue to stymie the competitive market by limiting the amount of money National Collegiate Athletic Association (NCAA) athletes can earn for the use of their name, image, and likeness (NIL). While commentators have referred to the settlement as "transformational," "historic," and "landmark," such evocative descriptions are not necessarily positive. This begs the question: does approval of the *House* settlement create more problems than solutions?

At the April 7, 2025 settlement approval hearing before U.S. District Judge Claudia Wilken, multiple objecting parties, including several student-athletes bravely speaking on their own behalf, criticized the overall structure of the *House* settlement. A central issue at the hearing revolved around the settlement's inclusion and adequacy of student-athlete class representatives and whether the settlement unfairly limits compensation and damages payout calculations for student-athletes as a whole. The settlement involves paying nearly $2.8 billion in back-pay damages to be divvied up in generally nominal amounts amongst approximately 390,000 current and former Division I athletes who were unable to profit from their NIL rights due to then-applicable NCAA rules. Additionally, Judge Wilken expressed hesitancy approving a 10-year settlement that would automatically bind future NCAA athletes (for instance, current middle and high school students) and effectively release any future legal claims that they might have with respect to NCAA rules on athlete compensation. Responding to her concerns, attorneys representing both parties clarified that future Division I athletes will not release any injunctive relief claims until they receive an opportunity to object.

Notably, the parties declined an initial chance to make changes to one of the other most contentious aspects of the proposed settlement -- the shift from scholarship limits to roster caps. The sudden introduction of the roster cap was raised by Judge Wilken as a major area of concern, but the NCAA held firm in its stance that roster caps must be abruptly applied, rather than slowly implemented. Such a change is expected to predominantly impact non-revenue sports, walk-on student-athletes, and those who are on partial scholarships. The NCAA's current rules place limits on the number of scholarships that each team can give to its players. The new rule would instead limit the total number of players, on scholarship or not, who could be on a roster. In effect, the settlement reallocates and concentrates money within NCAA programs rather than opening up financial opportunities for all student-athletes. Schools will likely reduce expenditures for non-revenue generating sports to offset the new costs associated with the settlement, thus increasing the potential for anti-competition and restricting overall scholarship opportunities through the elimination of thousands of roster spots on Division I teams across the country. Judge Wilken clearly remains very concerned about this issue and, through a written decision issued on April 23, 2025, gave the parties one more chance, or perhaps an admonition, to address it or risk denial of the settlement.

At this point, it seems approval is largely dependent upon the NCAA's level of obstinance. But even if approved with acceptable changes to the future class and the roster limit issue, problems abound. While approval of the settlement will resolve narrow antitrust issues for the litigation parties and class participants, it will leave open, and even create, a universe of reverberating legal issues and countless potential plaintiffs to pursue such claims, including those who opted out of the settlement. The settlement also includes restrictive third-party terms requiring deals exceeding $600 to be disclosed and reviewed for fair market value. While transparency tends to be a good thing, the formula for determining fair market value is fuzzy and unpredictable. The uncertainty and potential anti-competitive impact of the fair market analysis may backfire, incentivizing a return to the secrecy and underground dealings that have long been the nemesis of the NCAA. In the absence of final approval, schools will continue to use collectives to pay athletes unrestricted amounts of money.

Additionally, the proposed salary cap and the restrictions on third-party NIL deals may violate antitrust law, which ironically, as noted, formed the basis of the lawsuit in the first place. The settlement also potentially violates various state laws, as numerous states have introduced pieces of legislation that directly challenge elements of the proposed settlement. Notably, this proposed settlement only involves questions of federal law and, thus, cannot preempt claims that may arise under state law. Further, this deal invites questions pertaining to federal employment status and the broader implications of a revenue-sharing model, and may even violate Title IX gender discrimination laws, as there is no release of Title IX claims in the agreement. A resulting litigation bonanza is a near certainty.

Moreover, the settlement is not a replacement for collective bargaining and, in any event, prevents the possibility of the same. It is axiomatic that parties to a collective bargaining agreement are conclusively presumed to have equal bargaining power. Unlike professional athletes in the NFL and NBA who are represented by unions and have engaged in collective bargaining to secure minimum standards and protections on a broad range of issues, this proposed settlement agreement does not provide student-athletes with a comparable framework. Indeed, this settlement was not negotiated by representatives duly elected by student-athletes, and specifically asks the court to approve all existing NCAA rules regarding compensation and benefits that may or may not be provided by Division I conferences or schools to student-athletes, despite those rules being crafted without input from any athlete representatives. It is worth noting that the NCAA Board of Directors has voted to approve nine legislative proposals, which in turn would remove 153 current NCAA rules, contingent on the *House* settlement receiving final approval. All changes are part of the *House* settlement.

While an argument may be advanced that the "reaction" from the settlement class has been generally positive, that observation may only apply to the reaction from class members who are to receive compensation from this settlement. The key question before Judge Wilken is whether the settlement is "fair, reasonable, and adequate" with respect to the 390,000 class members—not whether the settlement resolves all issues raised in the case. Various continuing or newly filed lawsuits suggest there is an honest argument as to whether this

settlement meets that standard. The potential to pit particular student-athletes against each other is a real possibility. It is important to remember that, even if Judge Wilken deems only a portion of the settlement unfair as to a specific subset of student-athletes, her only options are to approve it in full or deny it outright, hence her recent order giving the parties 14 days to modify the settlement to grandfather in roster limits.

The proposed settlement is heralded as the most significant shift in college sports since the introduction of NIL, but it is an open question whether this "transformative" settlement represents real progress or merely unilateral NCAA control with a new paint job. It is frankly difficult to characterize the proposed settlement as a comprehensive solution to the myriad material issues that student-athletes face. The potential for future litigation surrounding college athletics is certain, and the lack of structural protections in this settlement may not ensure that all interests are fairly represented. The law, as it stands, does not otherwise appear to provide those protections. In reality, the settlement seems to be acting as a band-aid, providing back pay for athletes who were wronged in the past, and setting a "salary floor" for schools with respect to their future student-athletes. Regardless of the outcome at this stage, an appeal to the Ninth Circuit seems imminent.

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Return to Table of Contents

Ohio's Art Modell Law and the Ongoing Fight Over its Legality

By Alex Geyelin, JD Candidate at Harvard Law School

Introduction

There is no fury like a fan base scorned. Most respond in the standard ways: raucous boos; jerseys set ablaze; and rage-fueled radio calls. But after the Cleveland Browns' 1996 relocation to Baltimore, Ohioans took a different tack. The state legislature enacted Ohio Rev. Code § 9.67 — colloquially known as the Art Modell Law, in honor of the prior Browns' locally-infamous owner — to protect the region from future desertions. For nearly three decades the first-of-its-kind statute has mostly sat idly and symbolically reflected both the public's resentment and, perhaps, the legislature's political opportunism. The City of Cleveland and the Ohio Attorney General's Office now wield the Law, however, in their joint effort to block the current Browns' proposed move from its downtown stadium to the Cleveland suburbs after its lease on the former expires in 2029. Browns' ownership predictably disagrees and challenges the sparsely-worded statute on numerous legal grounds. Most forcefully, they allege that the Law violates the Constitution's Commerce Clause and is void for vagueness.

This paper examines the strongest claims on both sides of the dispute, ultimately presenting two main arguments, both of which are favorable to the franchise's relocation goals. First, the Law is best read forcefully, and if it is so, it is most likely impermissible. Second, there are colorable arguments to the contrary and the Law may well be upheld, but such an outcome would most likely be through an interpretation that renders the Browns in compliance and the Law a non-issue.

Background

The current fight over the potential move to Brook Park, Ohio, is the product of a decades-long saga that began with the prior Browns' move to Baltimore. "The Move," as it is now contemptuously known in greater Cleveland, inspired the statute at the core of this dispute. Its legality has been examined once before but without a firm judicial resolution. Now, with the Browns seeking to move on from their heavily subsidized downtown stadium, the franchise and the City

have launched opposing lawsuits at one another. This section outlines the pertinent background in four parts, examining The Move, the Art Modell Law, the facilities at issue, and the ongoing litigation in turn.

A. The Move.

On November 6, 1995, following years of financial struggles, stadium-related frustrations, and failed negotiations, Cleveland Browns owner Art Modell announced he intended to move the franchise to Baltimore at season's end.[1] The next day, Cuyahoga County voters overwhelmingly approved the extension of an alcohol and tobacco tax designed to generate funding for long-sought Cleveland Stadium renovations — the very absence of which had ostensibly motivated Modell to pursue a move to begin with. Modell forged ahead anyway,[2] declaring not only that "the bridge [between him and Cleveland was] down, burned, disappeared," but that "not even a canoe" remained for him.[3] He forever insisted on The Move's necessity, citing persistent debts, a hostile political environment, and no path to collaboratively resolving the stadium woes. Skeptics alleged financial mismanagement, bad faith, and backroom politicking.[4]

The City of Cleveland immediately led a lawsuit.[5] It primarily alleged a breach of contract, arguing that the Browns' lease required it to play its home games at Cleveland Stadium beyond the 1995 season.[6] In February 1996, after contentious NFL-facilitated negotiations, local officials, Modell, and the other NFL owners came to an agreement. After compensating the city for breaking the lease, Modell would be permitted to take the Browns' personnel and organization to Baltimore, but as a new, rebranded franchise (soon named the Ravens). Meanwhile, the Browns' name, branding, history, and records would remain in Cleveland, to be revived three seasons later through either league expansion or an existing franchise's relocation. And, crucially, the NFL committed to contributing tens of millions in funding to ensure the reactivated Browns would be greeted with a new stadium in Cleveland.[7]

On its face, this resolution seemingly provided all parties some degree of satisfaction:[8] Modell got his move, and in 1998, a new stadium courtesy of the Maryland Stadium Authority; Cleveland was to receive $12,000,000 from Modell in damages and up to $48 million from the NFL for construction costs; Ohioans kept the Browns, albeit with three lost seasons; and the NFL expanded while placing both the Baltimore and Cleveland franchises in new, modern, luxury suite-laden venues.[9] But the hurt lingered, and The Move rendered Modell permanently unwelcome in Cleveland,

1 Frank M. Henkel, *Cleveland Browns History* (Arcadia Publ'g 2005).

2 Mike Freeman, *Pro Football; A City Fights to Save the Browns*, N.Y. Times (Nov. 12, 1995), https://www.nytimes.com/1995/11/12/sports/pro-football-a-city-fights-to-save-the-browns.html.

3 *Modell: Franchise Movement Is Bad (But I'm Still Going)*, Toledo Blade, Nov. 8, 1995, at 25 (Associated Press).

4 Jeff Passan, *Lebron broke hearts in Cleveland, but ex-Browns owner Art Modell did far more damage*, Yahoo Sports (Sept. 6, 2012), https://sports.yahoo.com/news/nfl---feelings-of-nothingness-linger-after-death-of-art-modell--the-man-who-stole-cleveland-s-soul-.html.

5 Scott Andresen, *The Lasting Legacy of Art Modell Is Felt as the Columbus Crew Seeks to Set Sail for Austin*, Forbes (Mar. 9, 2018), https://www.forbes.com/sites/scottandresen/2018/03/09/the-lasting-legacy-of-art-modell-is-felt-as-the-columbus-crew-seeks-to-set-sail-for-austin/.

6 Fans and season ticket holders sued too, and Ohio Congressmembers introduced federal legislation designed to give leagues more power to block relocations. *See* Vinnie Perrone, *Franchise Relocation Curb Sought on Hill*, Wash. Post (Nov. 30, 1995).

7 Richard Sandomir, *Pro Football: How Compromise Built Cleveland a New Stadium*, N.Y. Times (Feb. 12, 1996).

8 The settlement also benefited other franchises and owners around the NFL, as many used the Browns' saga as a blueprint. In the ensuing years, franchises including the Seahawks, Bengals, Lions, Cardinals, and Bears leveraged the prospect of relocation to acquire new, publicly-subsidized stadiums in their home markets. The Buccaneers, among others, specifically floated relocating to Cleveland and becoming the reactivated Browns before moving into a new stadium in 1998. *See* Tim Crothers, *The Shakedown*, Sports Illustrated (June 19, 1995), https://vault.si.com/vault/1995/06/19/the-shakedown-greedy-owners-are-threatening-to-move-their-teams-if-demands-for-new-stadiums-better-lease-deals-etc-arent-met; Katherine C. Leone, Note, *No Team, No Peace: Franchise Free Agency in the National Football League*, 97 Colum. L. Rev. 473 (1997).

9 Leonard Shapiro, *Owners Approve Move of NFL Team to Baltimore*, Wash. Post (Feb. 10, 1996), https://www.washingtonpost.com/archive/sports/1996/02/10/owners-approve-move-of-nfl-team-to-baltimore/62005513-0215-46f0-9236-2eefbaae9583/.

where he never again set foot.[10] Fans soon began sporting vulgar t-shirts conveying their resentment,[11] streets filled with protests,[12] and commentators continue to place the departure atop the quite competitive list of the region's most stinging sports memories.[13] Even after LeBron James took his talents to South Beach in 2010, Modell himself offered as consolation that James could never surpass him as Clevelanders' biggest enemy.[14] (As a prominent columnist put it: "LeBron James broke Cleveland's heart. Modell stole its soul."[15])

B. The Law.

It was against this emotional and political backdrop that the Art Modell Law was born. Seeking protection against a similar fate should the reactivated Browns eventually tire of their to-be-built lakefront facility, legislators acted quickly to draft and pass Ohio Rev. Code § 9.67:

No owner of a professional sports team that uses a tax-supported facility for most of its home games and receives financial assistance from the state or a political subdivision thereof shall cease playing most of its home games at the facility and begin playing most of its home games elsewhere unless the owner either:

> *(A) Enters into an agreement with the political subdivision permitting the team to play most of its home games elsewhere;*
>
> *(B) Gives the political subdivision in which the facility is located not less than six months' advance notice of the owner's intention to cease playing most of its home games at the facility and, during the six months after such notice, gives the political subdivision or any individual or group of individuals who reside in the area the opportunity to purchase the team.*[16]

The Law became effective on June 20, 1996, and had been invoked just once prior to the current litigation. In October 2017, Anthony Precourt, then-owner of Major League Soccer's Columbus Crew, announced his plan to move the team to Austin if he could not reach a deal on a new downtown Columbus stadium.[17] The announcement predictably sparked regional outrage — potentially amplified by Ohio's prior experience with the Browns — and fans campaigned to retain the team.[18] The two sides offered conflicting tales: Precourt claimed local leaders presented no plans for a possible downtown venue, while Columbus officials argued it was "obvious" ownership had no desire to remain in the area and implied the stadium dispute was mere pretext to justify a long-desired move.[19] [20]

Then-Ohio Attorney General Mike DeWine and Columbus city attorneys filed suit in Franklin County Court against Precourt Sports Ventures, Major League Soccer, and the Crew. The complaint was wholly based on the untested but "common-sense" Modell Law and was straightforward: it claimed the Law requires owners within its purview to "give the cities in which [a given team's] publicly-subsidized facilities are housed and any interested individuals a reasonable opportunity to buy [the team]" and that Precourt had not done so.[21]

10 Adam Bernstein, *Art Modell, N.F.L. Owner of Browns, Then Ravens, Is Dead at 87*, N.Y. Times (Sept. 6, 2012), https://www.nytimes.com/2012/09/07/sports/football/art-modell-nfl-owner-of-browns-then-ravens-is-dead-at-87.html.

11 Al Fuchs, *Muck Fodell*, Al Fuchs Photography (Dec. 17, 1995), https://alandlarry.photoshelter.com/image/I00002URgxShCx8g.

12 Bernstein, *supra* note 10.

13 Mark Winegardner, *Sixteen Painful Moments in Cleveland Sports History*, ESPN (Sept. 14, 2014), https://www.espn.com/espn/story/_/id/11588331/sixteen-painful-moments-cleveland-sports-history.

14 *Art Modell Expects to Keep Most Hated Man in Cleveland Title Even After LeBron's Decision*, Cleveland.com (July 10, 2010), https://www.cleveland.com/cavs/2010/07/art_modell_expects_to_keep_mos.html.

15 Passan, *supra* note 4.

16 Ohio Rev. Code Ann. § 9.67.

17 *Statement from Precourt Sports Ventures*, Columbus Crew (Oct. 17, 2017), https://www.columbuscrew.com/news/statement-precourt-sports-ventures.

18 ESPN Staff, *Ohio Gov. John Kasich Says Crew SC 'Hasn't Created the Spark' in Columbus*, ESPN (Oct. 30, 2017), https://www.espn.com/soccer/story/_/id/37537329/ohio-gov-john-kasich-says-crew-sc-created-spark-columbus.

19 Christopher Vose, *Austin FC and Their Weird Road to the Major League*, The Vancouver Herald (Jan. 15, 2019), http://www.thevancouverherald.com/news/austin-fc-and-their-weird-road-to-the-major-league.

20 As support, some pointed to Precourt having negotiated a provision as early as 2013 that permitted an eventual relocation, but specifically and only to Austin. *See* ESPN Staff, *supra* note 18.

21 *State of Ohio and City of Columbus v. Precourt Sports Ventures et al.*, Complaint, No. 18CV-1864, Ct. Com. Pl.

The Plaintiffs sought a declaratory judgment stating that the Modell Law applied to the Defendants and the Defendants could not move the team to Austin without first complying, a preliminary and permanent injunction barring the move, and judicial oversight to ensure Precourt engaged in good-faith negotiations with local officials.[22]

The Defendants moved to dismiss the complaint for failure to state an actionable claim, and in so doing used several arguments similar to those the Browns now offer. On December 3, 2018, trial court Judge Jeffrey M. Brown denied the motion, declining to find the law unconstitutional and allowing the litigation to proceed.[23] Soon after his decision and before any appellate court could address the matter, however, the parties came to a resolution that is both jurisprudentially anticlimactic and slightly ironic. It is the former because the claims were not fully resolved — Precourt sold the Crew to a local group, became the owner of a new expansion franchise in Austin, and mooted the litigation. There is thus no binding case law or judicial precedent governing the constitutional claims against the Modell Law, and the Law remains technically untested for the purposes of the current litigation. And it is the latter because the local buyers (and the Crew's current owners) were Browns owners Jimmy and Dee Haslam through their Haslam Sports Group, against whom the Law is currently being invoked.

C. The Stadiums.

The same political and emotional backdrop provided the context for the planning and building of the Browns' current stadium (initially named Cleveland Browns Stadium and now Huntington Bank Field). Soon after the Browns departed in 1996 and following numerous discussions with the NFL, then-Mayor White announced plans for a 73,000 seat venue on the lakefront site previously occupied by the old stadium. Construction began in May 1997 and concluded in August 1999, just in time for the Browns' revival, and cost $283 million with approximately three-fourths covered by public funds.[24] The Browns resumed operations and began the 30-year lease negotiated between new owner Al Lerner and Cleveland officials, and that agreement's impending expiration following the 2028-29 NFL season provides the impetus for the current conflict.[25] To its credit, Huntington Bank Field has served admirably despite the on-field product. Though it has yet to host postseason play, yearly attendance has hovered near the middle of the pack throughout its life and stadium experience surveys typically rate it as solid if unremarkable.[26]

The stadium underwent its first round of substantial, subsidized renovations around the midpoint of the current lease. In 2013, Jimmy Haslam announced a "modernization" project for what was then named FirstEnergy Stadium. The total cost was projected at $120 million, with Cleveland asked to contribute $30 million over fifteen years and the Browns covering the remainder. Despite having the mayoral administration's support, the measure barely passed its City Council vote after a "heated, four-hour debate" in which members voiced frustration with the city's spending priorities, the perceived frivolity of the proposed upgrades, and the negotiating dynamic between the team and government.[27]

(Franklin Cnty., Ohio 2018) https://www.ohioattorneygeneral.gov/Files/Briefing-Room/News-Releases/Legal-initiatives/State-v-PSV-Complaint-and-exhibits.aspx.

22 *Id.*

23 Jim Woods, *Judge declines to dismiss lawsuit seeking to keep Crew SC in Columbus*, The Columbus Dispatch (Dec. 4, 2018) https://www.dispatch.com/story/news/politics/county/2018/12/04/judge-declines-to-dismiss-lawsuit/7945446007/.

24 Drew Maziasz, *Cleveland Browns plans reignites debate over public support for sports stadiums*, ideastream, (May 14, 2024) https://www.ideastream.org/show/sound-of-ideas/2024-05-14/cleveland-browns-plans-reignites-debate-over-public-support-for-sports-stadiums.

25 *Browns owner Randy Lerner selling controlling interest in Browns*, Akron Beacon J. (Jul. 28, 2012), https://www.beaconjournal.com/story/sports/pro/browns/2012/07/28/browns-owner-randy-lerner-selling/10698121007/.

26 *NFL Football Attendance*, ESPN, https://www.espn.com/nfl/attendance/_/year/; The Athletic Staff, *NFL Stadium Rankings: All 30 NFL Venues from Best to Worst*, N.Y. Times (Aug. 21, 2023), https://www.nytimes.com/athletic/4783340/2023/08/21/nfl-stadium-rankings-all-30-nfl-venues-from-best-to-worst/.

27 Robert Higgs, Cleveland City Council Approves New Deal for Cleveland Browns' Stadium (Nov. 12, 2013), *Cleveland.com*, https://www.cleveland.com/cityhall/2013/11/cleveland_city_council_approve_5.html.

The renovations nonetheless occurred over the next two offseasons, and since then, stadium-related discourse was relatively quiet until October 2023. Then, with an eye toward the lease's expiration and a potential extension, Browns ownership proposed renovations on a far larger scale. Seemingly looking to join the NFL markets that have recently built high-end, multi-use entertainment venues with enhanced and diversified revenue streams (e.g. in Las Vegas; Inglewood; Atlanta; and soon, Buffalo and Nashville), Haslam Sports Group presented plans for a stadium overhaul project. The proposal came with a projected cost of $1 billion to $1.2 billion, with half covered by HSG and the other half by public funding in some form.[28]

The proposal's enormity was sure to generate dissent given the contentious debate over the prior renovations' $30 million subsidies. Meanwhile, reports began surfacing in February 2024 that the Haslams were in the process of acquiring a 176-acre parcel in nearby Brook Park, fueling speculation that an entirely new venue may be in the works.[29] The next month, pressure on local officials increased when the Haslams acknowledged pursuing the land and confirmed they were "weigh[ing their] options" between renovations and a new, $2.4 billion domed stadium and mixed-use development project in Brook Park, though they stated "not one option is above the other."[30] [31] Likely adding to the pressure was Cleveland's "Lakefront Master Plan" unveiled in October 2023, for which Mayor Bibb released ambitious renderings of the area surrounding Huntington Bank Field. The long-term project would include commercial and residential development, restaurants, lodging, and a new land bridge, with a top-tier NFL facility as its centerpiece.[32]

After a period of private negotiations, Mayor Bibb publicly presented the Haslams with a funding proposal in August 2024. Cleveland offered $461 million toward the renovation project, paid out over a 30-year lease term, with the potential for additional contributions from the county and state.[33] City officials framed the bid as a "great first step" that approached the fifty-fifty split the Browns sought; detractors argued that the deferred payment schedule rendered its value much lower in real terms.[34] In any case, in October 2024 the Haslams officially announced they were moving forward with the Brook Park development plan in lieu of pursuing downtown renovations. Since then, amidst the litigation detailed below, they have done just that. In January 2025 they exercised an option to formally buy the Brook Park site,[35] and in February they released a financing plan that included a total of $1.2 billion in state, county, and Brook Park funding.[36]

D. The Litigation.

The parties' disagreements extend far beyond the merits, as they have been unable to even agree on the proper court. As a result, the litigation has so far unfolded in two parallel tracks: the Browns have filed

28 Nick Castele, *Browns Pitched Cleveland City Council on $1 Billion Stadium Renovation, Members Say*, Signal Cleveland (Feb. 16, 2024), https://signalcleveland.org/browns-pitched-cleveland-city-council-on-1-billion-stadium-renovation-members-say/.

29 *Browns Looking at Sites for Potential New Stadium*, Sports Business Journal (Feb. 8, 2024), https://www.sportsbusinessjournal.com/Articles/2024/02/08/cleveland-browns-new-stadium/.

30 Spencer German, *Browns Owners Confirm Land Purchase Could Be Used for New Stadium* (Mar. 27, 2024), *Sports Illustrated,* https://www.si.com/nfl/browns/news/browns-owners-confirm--land-purchase-could-be-used-for-new-stadium.

31 Mirroring some claims made during the Columbus Crew saga, some have theorized that the franchise truly wanted the Brook Park development all along.

32 Brian Hall, *Cleveland Lakefront Development Master Plan Unveiled*, Axios (Oct. 24, 2023), https://www.axios.com/local/cleveland/2023/10/24/cleveland-lakefront-development-master-plan-2023.

33 Courtney Astolfi, *The Fine Print: Bibb's Cleveland Browns Stadium Offer Isn't Anywhere Close to the 50/50 Split the Haslams Want, While Putting General Fund at Risk*, Cleveland.com, (Aug. 2024), https://www.cleveland.com/metro/2024/08/the-fine-print-bibbs-cleveland-browns-stadium-offer-isnt-anywhere-close-to-the-5050-split-the-haslams-want-while-putting-general-fund-at-risk.html.

34 *Id.*

35 Cleveland Browns, *Browns Execute Clause to Solidify Future Purchase of Land for New Huntington Bank Field Enclosed Stadium* (Jan. 2, 2025), https://www.clevelandbrowns.com/news/browns-execute-clause-to-solidify-future-purchase-of-land-for-new-huntington-bank-field-enclosed-stadium.

36 Michelle Jarboe, *Browns Detail Their Brook Park Stadium Financing Plans for the First Time*, News 5 Cleveland (Feb. 13, 2025), https://www.news5cleveland.com/news/local-news/browns-detail-their-brook-park-stadium-financing-plans-for-the-first-time.

suit in federal court, and the city has done the same in Cuyahoga County. Both legal processes are outlined below.

1. The Browns' Lawsuit in N.D. Ohio.

Cleveland officials were predictably displeased with the Haslams' announcement. Days after the owners announced an intent to exclusively pursue the Brook Park plan, Cleveland's Law Director publicly stated that the city would invoke the Modell Law against the franchise if necessary.[37] [38] Two days later, on October 24, 2024, the Browns filed suit against Cleveland in the Northern District of Ohio.[39] The Browns sought a declaratory judgment that the Modell Law "is unconstitutional on its face and as applied to the Browns," or in the alternative, that the Browns' Brook Park plan does not even trigger the Law.[40] The complaint alleged that the Law violates the Commerce Clause; the Contract Clause; the Privileges and Immunities Clause; and that it is void for vagueness and thus violates due process.[41] As for the secondary argument that the Law does not cover their intended conduct anyway, the Browns emphasized that the lease agreement is set to expire after the 2028-29 season, prior to any potential move. Thus, the team argued, as of 2029 it "will no longer be playing at a" tax-supported facility (nor will it have any obligation to do so going forward), and so will be outside the Law's scope.[42]

On January 15, 2025, both the City of Cleveland and the Ohio Attorney General's Office (as Intervenor-Defendant) filed motions to dismiss the Browns' complaint, although with different legal approaches.[43] Cleveland argued (i) the federal district court lacks subject matter jurisdiction; (ii) the franchise lacks Article III standing because it is requesting an advisory opinion; and (iii) even if N.D. Ohio has jurisdiction over the matter, it should decline to exercise it.[44] The Attorney General's Office, meanwhile, more directly addressed the merits of the Browns' claims. The state argued first that the Browns' federal claims are premised upon unanswered questions of state law – namely, the Modell Law's scope and meaning – and the district court should thus abstain. Second, the state pushed back on each of the Browns' constitutional challenges. Third and finally, the state argued that in the absence of a valid federal claim, the court should decline to exercise supplemental jurisdiction over any remaining state law claims.[45] On February 14, 2025, the Browns moved in opposition to both Defendants' motions to dismiss, arguing (i) the Browns' claims create federal question jurisdiction; (ii) they are seeking substantive relief, not an advisory opinion; and (iii) abstention is unwarranted.[46] On February 24, 2025, the city reiterated its view that the matter should be adjudicated in Cuyahoga County court and on February 28 Ohio Attorney General Ned Yost filed a brief arguing the same.[47]

37 Dave DeNatale et al., *City of Cleveland to 'move forward' on using Art Modell Law to prevent Browns from going to Brook Park*, WKYC News (Oct. 22, 2024), https://www.wkyc.com/article/sports/nfl/browns/cleveland-browns-art-modell-law-haslam-sports-group-domed-stadium-brook-park-city-council-bibb-administration/95-55370573-81c9-4a29-af21-fe3bebcdfe9f.

38 Presumably sensing the dispute's trajectory, Cleveland City Council passed an ordinance the preceding May directing Mayor Bibb to enforce the Law should the Browns attempt to relocate. *See* Tyler Carey and Lynna Lai, *Cleveland City Council approves ordinance directing city to enforce 'Art Modell Law' in Browns stadium talks*, WKYC News (May 7, 2024), https://www.wkyc.com/article/news/local/cleveland/cleveland-city-council-ordinance-art-modell-browns-stadium-talks/95-2721e8fe-7d2c-4dd5-b8ce-5beac30b1d71.

39 Noelle Haynes and Brian Koster, *Cleveland Browns File Lawsuit to Get Clarity on Modell Law*, Cleveland 19 News (Oct. 24, 2024) https://www.cleveland19.com/2024/10/24/cleveland-browns-file-lawsuit-get-clarity-modell-law/.

40 *Id.*

41 *Id*.

42 *Id.*

43 *Cleveland Browns v. City of Cleveland, et al.*, City of Cleveland Motion to Dismiss, No. 1:24-CV-01857 (N.D. Ohio 2024) ("Cleveland MTD"); *Cleveland Browns*, State of Ohio Motion to Dismiss, (N.D. Ohio 2024) ("Ohio MTD").

44 *See generally* Cleveland MTD.

45 *See generally* Ohio MTD.

46 Noelle Haynes, *Browns Say Modell Law Unconstitutional in New Motion*, Cleveland 19 News (Feb. 14, 2025), https://www.cleveland19.com/2025/02/15/browns-say-modell-law-unconstitutional-new-motion/.

47 Ed Gallek and Patty Gallek, *State Calls on Court to Dismiss Browns Lawsuit Against Cleveland*, Fox 8 News (Mar. 5, 2025), https://fox8.com/news/i-team/state-calls-on-court-to-dismiss-browns-lawsuit-against-cleveland-i-team/.

On March 18, 2025, the franchise doubled down on both its legal efforts and public rhetoric. The Browns added the elite and case-selective New York law firm Wachtell, Lipton, Rosen, & Katz to its legal team and filed a 183-page amended complaint expanding and clarifying its legal arguments. The Browns accused the City of Cleveland of "seek[ing] to hold the Browns hostage to its own failure of vision," making "little effort" to work toward the franchise's local development goals, and "misguiding Clevelanders by inaccurately conflating" the Brook Park proposal with the 1996 Baltimore move.[48] The same day, the Browns released a letter directly to the public providing updates on the Brook Park project, extolling its potential benefits, and framing it as fiscally responsible while regionally transformative.[49] Haslam Sports Group also issued a press release summarizing the franchise's rejection of the city's "baseless assertions" and emphasizing that the Haslams' "unwavering commitment to Northeast Ohio" represents "the complete opposite of the Modell situation." As evidence, HSG cited its commitment to putting more than $2 billion in total private capital toward the stadium and surrounding development, at least $1.2 billion of which would be from the Haslams and HSG directly.[50]

As expected, the City of Cleveland disagreed. The following morning, Mayor Bibb released a statement describing the Haslams as "misleading" the public and seeking to "squander taxpayer dollars… while openly violating state law."[51] Bibb called ownership's public statements "disingenuous" and "insulting," and stated that "[t]he Haslam scheme pays for itself on the backs of fans."[52] And where the Haslams highlighted the scale of private funding they and their partners are prepared to invest in the project, Bibb and other local officials focused on the combined $1.2 billion in local and state funds requested.[53]

2. Cleveland's Lawsuit in Cuyahoga County Court.

While the Browns have pursued federal relief, Cleveland has initiated its own litigation. First, on December 30, 2024, Mayor Bibb sent the Haslams a letter declaring the city's intent to invoke the Modell Law and requesting the team respond by January 9, 2025, or else face legal action. Browns officials met the deadline by a few hours but said little more than that they looked forward to resolving the dispute in federal court through the already-unfolding litigation outlined above.[54]

On January 14, 2025, the city filed its own lawsuit in the Cuyahoga County Court of Common Pleas against Haslam Sports Group, the Browns, and the Cleveland Browns Stadium Company. The city cited numerous prior statements from team ownership apparently conveying an intent to remain in Cleveland and framed the city as having "relentlessly" sought solutions that would appease both parties and keep the team downtown.[55] The city straightforwardly alleged a breach of the Modell Law and essentially sought the same relief as requested in the Columbus Crew litigation: a declaratory judgment that the Browns must comply with the Modell Law, injunctive relief barring a move without

48 Ed Gallek and Patty Gallek, *'Do the doable': City, county leaders talk about keeping the Browns downtown*, Fox 8 News (Mar. 19, 2025), https://fox8.com/news/browns-say-city-misguiding-clevelanders-court/.

49 Dave Jenkins, *A letter to Cleveland Browns fans in Northeast Ohio and beyond on our stadium process*, Cleveland Browns (Mar. 18, 2025), https://www.clevelandbrowns.com/news/a-letter-to-cleveland-browns-fans-in-northeast-ohio-and-beyond-on-our-stadium-process.

50 Haslam Sports Group, *Haslam Sports Group details key benefits of proposed enclosed Huntington Bank Field*, Haslam Sports Group (Mar. 19, 2025), https://haslamsports.com/news/haslam-sports-group-details-key-benefits-of-proposed-enclosed-huntington-bank-field/.

51 Ed Gallek and Patty Gallek, *supra* note 48.

52 *Id.*

53 *Id.*; George M. Thomas, *'Hold the Browns hostage': Haslams lash out at Cleveland in amended lawsuit*, Akron Beacon Journal (Mar. 18, 2025, https://www.beaconjournal.com/story/sports/pro/browns/2025/03/18/new-browns-stadium-lawsuit-hostage/82522219007/.

54 Dave DeNatale, Tyler Carey & Lynna Lai, *Cleveland Browns respond to Mayor Justin Bibb's 'Modell Law' letter as both sides prepare for potential court battle*, WKYC News (Jan. 9, 2025), https://www.wkyc.com/article/sports/nfl/browns/cleveland-browns-art-modell-law-domed-stadium-mayor-justin-bibb-brook-park-response-letter/95-39262e45-df0b-452e-a3aa-13f3f791dfa5.

55 *City of Cleveland v. Haslam Sports Grp., LLC, et al.*, Complaint, No. CV-25-110189, Ct. Com. Pl. (Cuyahoga Cnty., Ohio 2025) ("Cuyahoga County Complaint").

the Browns first doing so, and judicial oversight to ensure the same.[56]

On March 18, 2025, the Browns moved to stay the Cuyahoga County case, or in the alternative, dismiss for lack of justiciability. The team first argued that staying the county action is necessary to avoid a "collision course" resulting from differing statutory interpretations and that federal court is the primary and most appropriate venue for adjudicating federal questions. Alternatively, the franchise argued that the Cuyahoga County court should dismiss for lack of ripeness because it is not even possible for the Browns to violate the Modell Law for several years.[57]

Legality of the Art Modell Law

Regardless of how the various jurisdictional, procedural, and forum-related battles unfold, the Modell Law will eventually need to pass legal muster. The Browns believe it cannot, and challenge the Law from numerous angles, most prominently through the Commerce Clause and a void-for-vagueness allegation.[58]

56 Cuyahoga County Complaint at 22.

57 *City of Cleveland v. Haslam Sports Grp., LLC, et al.*, Defendants' Motion to Stay the Action, or in the Alternative, Dismiss the Complaint, No. CV-25-110189, Ct. Com. Pl. (Cuyahoga Cnty., Ohio 2025) ("Cuyahoga County Browns MTD").

58 The Privileges and Immunities argument hinges on many of the same general interpretive principles as the Commerce Clause issue. The Browns allege that "[the Modell Law] violates the Privileges and Immunities Clause by creating opportunities for Ohio citizens at the expense of similar opportunities for citizens of other states by giving local Ohio residents the opportunity to purchase the Team that is not afforded to residents of states other than Ohio." *Cleveland Browns v. City of Cleveland, et al.*, Complaint, at 14-15, No. 1:24-CV-01857 (N.D. Ohio 2024) (Browns N.D. Ohio Complaint"). As detailed below, the dormant Commerce Clause arguments largely presume a similar interpretation: that the Law requires the Browns to afford local buyers some opportunity above and beyond that which is afforded to out-of-staters. It seems that if the Commerce Clause arguments fail, it is likely the Privileges and Immunities claim does too, and if the former succeeds through a finding of discrimination, so too should the latter. Given that substantial overlap and the greater attention paid by the parties to the Commerce Clause thus far, a thorough Privileges and Immunities analysis is excluded here.

As for the Contract Clause allegation, that argument has generated some impassioned back-and-forth in the briefing, but it has largely concerned a factual dispute thus far. The city and state argued that the claim is facially invalid because the Law's passage predated the contracts with which it is alleged to interfere; the Browns have countered that the lease agreement was in fact signed prior to the Law's passage. *See Cleveland Browns*, Plaintiff's Opposition to Intervenor-Defendant the State of Ohio's Motion to Dismiss, No. 1:24-CV-01857 (N.D. Ohio 2024) ("Browns' Opposition to Ohio MTD").

2. It is difficult to predict with certainty how courts will read the Law given its novelty and the lack of thorough case law. As explored below, however, there are strong textual and structural arguments that a broad reading is more aligned with the statute as enacted than a soft one (and, importantly, more aligned with the Sixth Circuit's general judicial bent than is a more pragmatism-based analysis). If such a reading is applied, the law is vulnerable to numerous Commerce Clause arguments, and even if not there is a strong claim that the law is impermissibly vague. Ultimately, however, even if a court upholds the Law, it is unlikely to matter, because applying the type of interpretation that would survive the Browns' constitutional challenges would likely render the statute a nullity.

A. Strongest Arguments Against the Modell Law's Legality.

The Law is most vulnerable to a Commerce Clause challenge when it is read to have maximal force. When interpreted as imposing strict burdens and requirements on franchises, and even as effectively requiring current ownership to accept purchase offers from a select group during a specified timeframe as a precondition of a relatively mundane stadium upgrade process, the statute is quite arguably in violation of the dormant Commerce Clause. And when interpreted less harshly, it is subject to a more difficult, but still reasonable, void for vagueness challenge.

1. The Law Likely Violates the Commerce Clause.

A Commerce Clause challenge is strengthened by a broad interpretation of the statute. If read broadly, the Law is subject to a strong challenge that it violates the dormant Commerce Clause (the "DCC") in two related but distinct ways: it (1) facially discriminates against out-of-state actors and (2) places burdens on interstate commerce that are excessive relative to the local interest served and thus violates *Pike* balancing. And while the Browns' opponents offer several arguments against

the Commerce Clause challenges, each is flawed. The Browns' DCC arguments in briefing thus far presume such a broad reading of the Law, and this section articulates and defends that interpretation while applying it to the relevant DCC doctrine.

2. The Statute Should be Read as Forceful and Broad.

The Modell Law is sparsely worded and does not describe with specificity what it requires of the franchises to which it is applied. Defenders of the Law's constitutionality may argue that the statute is a relatively mild one, and that the Browns must only provide an "opportunity for purchase" in the sense that they must allow buyers to emerge and initiate negotiations.[59] Based on the statute's text, structure, and purpose, however, the reading most faithful to the statute's text and to traditional tools of interpretation is that current ownership is required to (1) sell to or meaningfully negotiate with local buyers, and (2) preference local buyers over non-local buyers during the six-month notice period.

The court must read the Modell Law so as to give effect to the Ohio legislature's intent.[60] That inquiry begins with the statute's plain language, and if the language is clear, the process ends.[61] In so doing, per the Supreme Court and Sixth Circuit, the court should employ a number of interpretive canons.[62] Prominent among them is the rule against surplusage, which reflects "the idea that 'every word and every provision is to be given effect [and that n]one should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence.'"[63] The court then checks its answer through the anti-absurdity canon, which dictates that "[i]nterpretations of a statute which would produce absurd results are to be avoided."[64] However, it must do so in moderation: "Only when following the literal language of the statute would lead to 'an interpretation which is inconsistent with the legislative intent or to an absurd result' can a court modify the meaning of the statutory language."[65]

Following this guidance, the Modell Law is best read to effectively require a sale – or at the very least a good faith negotiation – should a bona-fide, credible local buyer emerge during the six-month notice period. Beginning with the text, the Law requires the Browns to give the city six months' notice of the team's intention to move and, during that period, provide the city and potential buyers "in the area" with "the opportunity to purchase the team."[66] The primary (but far from only) ambiguity is the definition of "opportunity to purchase," and thus what exactly the Law requires of the Browns and current ownership during the notice period. Again, Defenders of the Law may argue for a weak meaning, pointing to dictionaries that define "opportunity" as merely "an occasion or situation that makes it *possible* to do something."[67] Under that definition, the Browns are theoretically just required to keep an open ear during the notice period and permit prospective buyers to approach them with offers. This definition minimizes the burden imposed on franchises and, importantly, on interstate commerce.

Such a definition is wholly inconsistent with the rules against surplusage and against rendering words and phrases meaningless. If "gives… the opportunity to purchase" merely means that prospective buyers have six months to approach current ownership, but ownership retains the right to refuse buyers' advances completely at their discretion, the entire "opportunity" clause is superfluous because it adds nothing to the preceding six-month notice provision. Put differently, the six-month notice provision requires the franchise to inform the government of its intent to move and

59 And, as explored below, Ohio argues just that.

60 *United States v. Am. Trucking Ass'ns*, 310 U.S. 534, 542 (1940).

61 *In re Corrin*, 849 F.3d 653, 657 (6th Cir. 2017).

62 *Donovan v. FirstCredit, Inc.*, 983 F.3d 246, 257 (6th Cir. 2020).

63 *Nielsen v. Preap*, 139 S. Ct. 954 (2019) (quoting A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 174 (2012)); *see also Lake Cumberland Trust, Inc. v. U.S. E.P.A.,* 954 F.2d 1218, 1222 (6th Cir. 1992) ("Under accepted canons of statutory interpretation, we must interpret statutes as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous.").

64 *Guzman v. U.S. Dep't of Homeland Sec.*, 679 F.3d 425, 432 (6th Cir. 2012).

65 *Tenn. Prot. & Advoc., Inc. v. Wells*, 371 F.3d 342, 350 (6th Cir. 2004) (quoting *Appleton v. First Nat'l Bank of Ohio,* 62 F.3d 791, 801 (6th Cir. 1995)).

66 Ohio Rev. Code Ann. § 9.67.

67 https://dictionary.cambridge.org/us/dictionary/english/opportunity#google_vignette (emphasis added).

press pause on relocation for the half-year thereafter; per the anti-surplusage canon, the "opportunity to purchase" clause must then do something materially *more* than just "duplicate [the preceding] provision."[68] For that to be the case, the Law must alter the status quo in terms of how current ownership is obligated to treat an emerging local buyer. Reinforcing this point, the statute's drafters used the word "and" to connect the six-month notice clause with the "opportunity to purchase" clause.[69] "Giving effect to each word"[70] requires one to view these as separate and distinct requirements rather than the latter as a redundant rephrasing of the former.[71] And again, on a basic level, local buyers are of course within their rights to make purchase offers at any time. Nothing prevents a motivated Cleveland resident from reaching out to current ownership whether during a required six-month notice period or not. To read the "opportunity" clause as merely elucidating that right is to "[give it] an interpretation that causes it… to have no consequence."[72]

Looking beyond these textual analyses leads to the same conclusion. If the text is indeterminate, the Sixth Circuit instructs us to consider "the '[t]he broader context' of the statute and statutory purpose together to resolve the ambiguity."[73] The Modell Law was passed in the aftermath of the prior Browns' much-decried relocation to Baltimore.[74] Ohio previously initiated enforcement against the Columbus Crew to hasten or stop its proposed relocation to Texas.[75] Here, the Cleveland City Council approved its enforcement and Cleveland subsequently sued the Browns for that very purpose, albeit regarding an in-state move.[76] By all accounts, the Law is designed as an anti-relocation measure and to ensure Ohio's professional sports teams remain just that. Therefore, to read the Law as merely delaying a move by six months, during which time potential buyers may speak up only to be immediately swatted away, is to render it entirely ineffective.[77] This would be inconsistent with its motivating purpose and context, and the most logical way to interpret the Law is thus as imposing a genuine burden on would-be movers.

A near-identical analysis tells us that a local buyer must be materially preferenced over a non-local buyer. By the statute's terms, the "opportunity to purchase" must be provided to "any individual or group of individuals who reside in the area."[78] At the risk of redundancy, traditional interpretive tools dictate that must mean something. Reading the statute as merely allowing local individuals to approach current ownership with offers in a manner no different than how any out-of-state individual is free to do the same, whether in a six-month notice period or not, is reading the "reside in the area" provision "to have no consequence."[79] Thus, the most logically sound way to read the local buyer provision is to read it as providing local residents some opportunity to purchase the team above and beyond that which is afforded to non-local residents, thereby placing local buyers in a class above and separate from non-local buyers.

68 *Preap* at 969 (2019) (quoting A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 174 (2012)).

69 Ohio Rev. Code Ann. § 9.67.

70 *Keeley v. Whitaker*, 910 F.3d 878, 884 (6th Cir. 2018) (Sixth Circuit denying that two words joined by "and" were synonymous because finding them so would "strip meaning from the statute's words").

71 The same general principle applies to the argument that the "opportunity to purchase" clause is explaining the function of the six-month notice period. If the drafters wanted to write the statute to require a six-month notice period "so that" local buyers had the opportunity to make offers, they could have; instead, they used "and" and created two distinct requirements.

72 *Preap* at 969 (2019) (quoting A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 174 (2012)).

73 *U.S. ex rel. Felten v. William Beaumont Hosp.*, 993 F.3d 428, 431 (6th Cir. 2021) (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340–41, 117 S.Ct. 843, 136 L.Ed.2d 808 (1997)).

74 https://www.sportico.com/law/analysis/2024/cleveland-browns-stadium-modell-law-1234778742/

75 https://www.cleveland.com/browns/2018/10/the_columbus_crew_had_been_sav.html

76 Carey and Lai, *supra* note 38.

77 Such a reading also collides with portions of the City's own argument. As explored further below, Ohio downplays the Law's severity in its DCC analysis, but in Cleveland's complaint it states forcefully that a team that accepts public funds "can't take the money and run." If a team cannot "take the money and run," then the Law must act with some level of force to prevent that; but if the Law does not require a sale, then a team can, in fact, "take the money and run." *See* Cuyahoga County Complaint at 4; Section III(B)(2) *infra*.

78 Ohio Rev. Code Ann. § 9.67.

79 *Preap* at 969 (2019) (quoting A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 174 (2012)).

Finally, even if the scientifically precise definition of "gives an opportunity to purchase" is indeterminate at this stage, the aforementioned canon against absurdity informs our understanding. Few would contend that the statute is written to absolutely and literally require a sale to a local buyer that emerges with even a laughably low offer. (If it somehow were, a constitutional challenge would be all the easier). One could, however, reasonably argue that the Law requires current ownership to actively entertain and pursue credible offers and, potentially, to accept an offer that reasonably reflects market value. The sharper contours of "opportunity" and "reasonable" are beyond the scope of this analysis, as is the precise extent to which local buyers are preferenced over non-local ones. But what is clear from applying the typical interpretive tools to this statute is (1) current ownership must do materially more than just passively allow local buyers to present them offers and (2) local buyers are elevated above non-local buyers.

b. If Read Broadly, the Law is Likely Violative.

Article I of the U.S. Constitution grants Congress the power "to regulate commerce with foreign nations, among states, and with the Indian tribes."[80] In the early 19th century, the Supreme Court established an exclusivity to that power and created the "Dormant Commerce Clause" ("DCC").[81] In essence, the Court determined that because Congress has *the* right to regulate interstate commerce, individual states cannot themselves enforce laws interfering with that domain.[82] As the Court recently explained, the Commerce Clause is read to "contain a further, negative command" "effectively forbidding the enforcement of 'certain state [economic regulations] even when Congress has failed to legislate on the subject.'"[83] A state law violates the dormant Commerce Clause when it is an attempt to "build up ... domestic commerce" through "burdens upon the industry and business of other States."[84] "At the core of" the doctrine is an "antidiscrimination principle" such that the DCC prohibits the enforcement of "laws driven by ... economic protectionism—that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors."[85] Relatedly but distinctly, laws may violate the dormant Commerce Clause if they regulate "even-handedly" but have an incidental burden on interstate commerce.[86] In assessing a law's constitutionality under the DCC, courts must consider not just the challenged law in isolation, but the potential cumulative effect of similar laws being enacted throughout the country.[87]

ii. The Modell Law Facially Discriminates Against Out-of-State Commercial Actors.

"The dormant Commerce Clause precludes States from 'discriminat[ing] between transactions on the basis of some interstate element.'"[88] A state law is discriminatory if it creates "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter."[89] Discriminatory laws motivated by "simple economic protectionism" are subject to a "virtually *per se* rule of invalidity"[90] which can be overcome only by "a showing that the State has no other means to advance a legitimate local

80 U.S. Const. art. I, § 8, cl. 3.

81 *See Gibbons v. Ogden,* 22 U.S. 1 (1824).

82 *Id.*

83 *Natl. Pork Producers Council v. Ross*, 598 U.S. 356, 368 (2023) (quoting *Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 179 (1995)).

84 *Guy v. Baltimore*, 100 U.S. 434, 443 (1880).

85 *Natl. Pork Producers Council v. Ross*, 598 U.S. 356, 369–70 (2023) (internal citations and quotations omitted); *see Tenn. Wine and Spirits Retailers Assn. v. Thomas*, 139 S. Ct. 2449 (2019) (observing that the Court's dormant Commerce Clause cases operate principally to "safeguard against state protectionism"); *Northwest Airlines, Inc. v. County of Kent*, 510 U.S. 355, 373 (1994) (describing "a violation of the dormant Commerce Clause" as "discrimination against interstate commerce").

86 *Amerada Hess Corp. v. Dir., Div. of Taxation New Jersey Dept. of the Treasury,* 490 U.S. 66, 78. (1989).

87 *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 336 (1989) ("Third, the practical effect of the statute must be evaluated not only by considering the consequences of the statute itself, but also by considering how the challenged statute may interact with the legitimate regulatory regimes of other States and what effect would arise if not one, but many or every, State adopted similar legislation.").

88 *Comptroller of Treas. of Maryland v. Wynne*, 575 U.S. 542, 549 (2015) (quoting *Boston Stock Exchange v. State Tax Comm'n,* 429 U.S. 318, 332 (1977)).

89 *Am. Bev. Ass'n v. Snyder*, 735 F.3d 362, 370 (6th Cir. 2013) (quoting *United Haulers Ass'n, Inc. v. Oneida-Herkimer Solid Waste Mgt. Auth.*, 550 U.S. 330, 338 (2007)).

90 *Philadelphia v. New Jersey,* 437 U.S. 617 (1978).

purpose."[91] Further, some statutes are not explicitly discriminatory but nonetheless have strong discriminatory effects; "[w]hen the effect is powerful, acting as an embargo on interstate commerce without hindering intrastate sales," the law is treated as the equivalent of a facially discriminatory statute.[92]

The Modell Law is quite arguably discriminatory on its face, but even if not, it undoubtedly has strong discriminatory effects. When read broadly as described above, the Law straightforwardly treats local buyers more favorably than non-local buyers. It creates a six month window during which local buyers are, if the rule against surplusage is applied with any force, elevated above non-residents. If both local and non-local buyers emerge with competitive offers, it follows logically that a franchise is statutorily obligated to preference the local buyer. And if the "opportunity to purchase" requirement is taken seriously, current ownership is seemingly barred from selling to a non-local buyer — even in the absence of a local buyer — because doing so would necessarily deprive all local buyers from the very "opportunity" the Law mandates.

Precise precedential analogues are few, but the Sixth Circuit's and Supreme Court's analyses in other DCC cases are instructive. In *Tenn. Wine and Spirits Retailers Ass'n v. Thomas*, retailers challenged a Tennessee statute that required an individual to show "bona fide residen[cy]" for the previous two years in order to obtain a liquor store license.[93] The law also barred corporations from operating liquor stores unless every shareholder satisfied the requirement.[94] The Sixth Circuit held the law unconstitutional and the Supreme Court agreed, with the latter finding that the durational-residency requirement "plainly favor[ed] Tennesseans over nonresidents."[95] Here, an identical analysis applies. In *Tenn. Wine*, if two applicants sought licenses and only one was a two-year Tennessee resident, under the invalidated law the non-resident would be summarily denied and the Tennessean would proceed. And here, if two buyers approach a franchise during the required notice period and only one is an Ohioan, that buyer must be permitted an "opportunity to purchase" while the out-of-stater not. The Modell Law thus explicitly treats in- and out-of-state commercial actors differently — the hallmark of facial discrimination.[96]

Conversely, this situation is decidedly unlike that in *Truesdell v. Friedlander*.[97] In *Truesdell*, an Ohio-based medical transport company challenged a Kentucky law that requires ambulance companies to obtain a "certificate of need" before providing certain services within its borders.[98] The law's applicability to a given company depended in part on whether the company sought to offer inter- or only intrastate ambulatory services.[99] When Truesdell applied for such a certificate, numerous local would-be competitors protested, and the hearing officer denied the application, citing in part that the applicant had not demonstrated a local need for more providers.[100] Truesdell challenged – on dormant Commerce Clause grounds – the substantive rule requiring it to demonstrate a need for its services and the procedural rule permitting competitors' objections.[101]

The Sixth Circuit in 2023 denied Truesdell's facial discrimination challenge because nothing in the challenged law distinguishes between in- and out-of-state actors, and nothing in the law explicitly favors the former over the latter. The law regulates companies differently based on whether their operations are inter- or intrastate, but the corporate residency of a given

91 *Maine v. Taylor,* 477 U.S. 131 (1986).

92 *Park Pet Shop, Inc. v. City of Chicago*, 872 F.3d 495, 501 (7th Cir. 2017) (citing *Nat'l Paint & Coatings Ass'n v. City of Chicago*, 45 F.3d 1124, 1130 (7th Cir. 1995).

93 588 U.S. 504, 511 (2019)

94 *Id.*

95 *Id.* at 518.

96 One difference between the Browns' case and most relevant DCC precedents is the Browns' position in the would-be transaction. In most cases, the objecting party is an out-of-state entity that is being barred from economic participation in a given state. Here, it is essentially the opposite: the Browns are barred from transacting with out-of-state actors. To establish standing, the Browns would presumably need to show injury-in-fact by arguing in some form that the Law's prevention of an open and competitive marketplace hurts the asset value or threatens to force a suboptimal sale price on ownership, but further standing analysis is beyond the scope of this paper.

97 80 F.4th 762 (6th Cir. 2023).

98 *Id.* at 765-66.

99 *Id*. at 766-67.

100 *Id.* at 767.

101 *Id.*

commercial actor makes no difference to the law's application.[102] Again, the Modell Law is wholly different; here, the *determinative* factor in the Law's treatment of a commercial actor in the six-month notice period is that actor's residence. During that period, a local buyer must be embraced and a non-local buyer must be shooed away. This is disparate treatment in its purest form.

Further, it is difficult for Ohio to show that the Law "serves a legitimate local purpose" that could not be served by "nondiscriminatory means."[103] The state's local interest served by the Modell Law is, presumably, retaining the professional sports teams in which the public has invested. This legislation is plainly not the only means by which this goal could be achieved. While the myriad contractual provisions that jurisdictions may employ to achieve this same end is a topic for another paper,[104] this Law could have been drafted to disregard a potential buyer's residence and merely require an "opportunity to purchase" be provided to anyone intending to keep the team stationary. To be clear, such a statute may face legal hurdles of its own, including those analyzed below; but at the very least, this structure would serve the exact same local interest while being completely nondiscriminatory. Due to the Modell Law explicitly favoring residents over non-residents in the marketplace and the availability of alternative means to serve the same interest, the Law is quite arguably facially discriminatory.

ii. As Applied to the Browns' Prospective Relocation, the Law Imposes Excessive Burdens Relative to the Local Interest Served.

Alternatively, a dormant Commerce Clause challenge could reasonably assert that the Law excessively burdens interstate commerce even if it is non-discriminatory. This genre of argument would not require such an aggressive statutory reading, as it does not need the statute to have the level of overt discrimination (or overtly discriminatory effects) as the arguments outlined in Section I(B)(1). When a state law "regulates even-handedly to effectuate a legitimate local public interest" but incidentally affects interstate commerce, *Pike* balancing applies.[105] Per *Pike*, a state law "will be upheld unless the burden imposed on [interstate] commerce is clearly excessive in relation to the putative local benefits."[106] A law may also be invalid if it governs "those phases of the national commerce which, because of the need of national uniformity, demand their regulation, if any, be prescribed by a single authority."[107]

"If a legitimate local purpose is found, then the question becomes one of degree… And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities."[108] While some decisions frame *Pike* as still requiring an asserted burden to be of a discriminatory sort to be unconstitutional, many decisions explicitly place *Pike* inquiries in a category separate from disparate impact analyses.[109] And the Supreme Court has written that "we generally leave the courtroom door open to plaintiffs" arguing "that even nondiscriminatory burdens on commerce may be struck down on a showing that those burdens clearly outweigh the benefits of a state or local practice."[110] Finally, as noted above, in assessing the burden courts should consider the cumulative effect of copycat laws emerging nationwide.[111]

Here, the burden imposed on interstate commerce is substantial relative to the local interests served.

First, the interstate aspect. The NFL is an "unincorporated association" of its member-clubs, and intuitively, the interstate nature of these franchises' commercial activity is clear. Each individual team of course play its games and engages in commercial transactions

102 *Id.* at 770.

103 *Maine*, 477 U.S. at 131.

104 *See* Section IV, *infra*.

105 *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

106 *Id*.

107 *Southern Pacific Co. v. Arizona* 325 U.S. 761, 767 (1945).

108 *Id*.

109 *See, e.g.,* Park Pet Shop, Inc. v. City of Chicago, 872 F.3d 495, 501 (7th Cir. 2017).

110 *Dept. of Revenue of Ky. v. Davis*, 553 U.S. 328, 353 (2008).

111 *Healy* , 491 U.S. st 336 ("Third, the practical effect of the statute must be evaluated not only by considering the consequences of the statute itself, but also by considering how the challenged statute may interact with the legitimate regulatory regimes of other States and what effect would arise if not one, but many or every, State adopted similar legislation.")

nationwide, but the franchises also cooperate with one another to uphold the broader league structure; they collectively bargain many of the agreements that sustain the game's operations, such as the CBA and broadcasting deals; they participate in a robust revenue-sharing program;[112] and franchises are uniquely scarce assets, rendering each one's value highly relevant to the overall marketplace. As an overall business, it is impossible to disentangle each franchise's commercial activities from the NFL's nationwide constellation.

This intuition has been repeatedly judicially affirmed. Atmospherically, in the foundational *Radovich v. National Football League* the Supreme Court declined to extend professional baseball's antitrust exemption to football.[113] The Court distanced itself from the oft-critiqued reasoning[114] behind the exemption, arguing that *Federal Baseball*'s peculiarity aside, "the volume of interstate business involved in organized professional football" places it squarely within federal law's ambit.[115] And more recently, the Supreme Court has written that franchises are "similar in some sense to a single enterprise" and "share an interest in making the entire league successful and profitable,"[116] while the Ninth Circuit has sharply contrasted the NFL with an environment of "actual [business] competitors."[117]

More specifically, several courts have specifically relied on the NFL's structure to strike down state action as excessively intrusive on interstate commerce. In *Partee v. San Diego Chargers*, California's Supreme Court rejected the state's attempt to apply its own local antitrust laws to the Chargers and the NFL's labor relations regime.[118] The court's reasoning rested near-entirely on the NFL's fundamentally national structure. It referenced many of the same points as in the preceding paragraph, stated that "national uniformity" is required in the regulation of professional football because "[f]ragmentation of the league structure on the basis of state lines would adversely affect the success of the competitive business," and declared the need for "a nationwide league structure" to be "evident." Therefore, per the court, applying California's local antitrust statutes to the Chargers and League would impermissibly burden interstate commercial activity.[119]

California courts were similarly skeptical of the state's attempt to block the Raiders' move to Los Angeles. In *City of Oakland v. Oakland Raiders* the city invoked eminent domain to acquire all property rights to the Raiders franchise and prevent the team from leaving Oakland.[120] The Raiders, relying in part on the *Partee* court's analysis of the NFL's structure, argued that such a move was violative of the Commerce Clause.[121] The appellate court agreed, and in affirming the trial court's reasoning specifically cited the league-wide importance of each franchise's playing facility: "League television contract proceeds are divided equally and gate receipts nearly equally; a team's drawing power is therefore a financial benefit to the other teams as well as to itself; hence the capacity and quality of the facility in which games are played is a component of the League's financial success."[122] The court proceeded to emphasize that "bar[ing] indefinitely defendant's business from relocating out of Oakland" is "the precise brand of parochial meddling with the national economy that the commerce clause was designed to prohibit," even though the Raiders' intended move was an in-state one.[123] And finally, the court concluded that "relocation of the Raiders would

112 Relevantly, this includes large, equal distributions of a portion of each franchise's ticket revenue; therefore, if one franchise upgrades its facility in a manner that materially increases such revenues, all 31 others stand to benefit.

113 352 U.S. 445, 452 (1957).

114 *Id.* ("If this ruling is unrealistic, inconsistent [with *Federal Baseball*], or illogical, it is sufficient to answer, aside from the distinctions between the businesses, that were we considering the question of baseball for the first time upon a clean slate we would have no doubts… [but] the orderly way to eliminate error or discrimination, if any there be, is by legislation and not by court decision"); *See also Fed. Baseball Club of Baltimore v. Natl. League of Prof. Base Ball Clubs*, 259 U.S. 200, 207 (1922).

115 *Radovich*, 352 U.S. at 452.

116 *Am. Needle, Inc. v. Natl. Football League*, 560 U.S. 183 (2010).

117 *Los Angeles Meml. Coliseum Commn. v. Natl. Football League*, 726 F.2d 1381, 1401 (9th Cir. 1984).

118 34 Cal.3d 378 (Cal. 1983).

119 *City of Oakland v. Oakland Raiders*, 220 Cal. Rptr. 153, 157 (Cal. App. 1st Dist. 1985).

120 *Id.*

121 *Id.*

122 *Id.*

123 *Id.*

implicate the welfare not only of the individual team franchise, but of the entire League" and stated that in such cases "regulation—if necessary—should come from Congress; only then can the consequences to interstate commerce be assessed and a proper balance struck."[124] While the state interventions at issue in *Partee* and *Oakland* each differ in specifics from the one applied to the Browns, the same principle covers all three disputes: each NFL team is an integral part of a complex, interwoven, national business apparatus, with all franchises economically interdependent on one another and on the broader league structure. And given that dynamic, each state applying its own regulations to core issues of franchise operations — such as relocation negotiations and stadium leases — risks colliding head-on with the Commerce Clause.

Second, the burden imposed by the Modell Law. The Law places material obstacles in front of the Browns' ability to relocate even beyond the franchise's negotiated lease term. Per the reasoning in the above-cited cases, the effects of such obstacles are neither minor nor isolated to the single franchise at issue. As for the Browns' specific proposal, the Brook Park project is presented as a year-round venue surrounded by a privately-funded entertainment district.[125] Economists affiliated with the project have predicted it could host up to a dozen major concerts annually (Huntington Bank Field currently hosts only one to three large, non-NFL events a year) in addition to other high-profile sporting events, such as Super Bowls and NCAA championships; the surrounding district would contain apartments, hotels, and office space; and up to 60% of its annual visitors are projected to be from out-of-state.[126] The city and state may quibble with some of these projections' details, but the general thrust is unobjectionable: in light of the Browns' plans and courts' prior analyses, the intended commercial activity at issue is not, despite Cleveland's and Ohio's contentions, "wholly intrastate."[127]

Further, franchise relocation in the NFL is far from unprecedented. In the past decade alone, three franchises have fully relocated[128] and five have moved to a new facility in the same market.[129] When an NFL franchise identifies superior economic prospects elsewhere or the need for a superior facility, movement is a valuable and oft-employed option. And the effects for both the franchise's new home and the franchise itself – and thereby, the NFL and all its member-franchises – can be substantial. For example, the St. Louis Rams' relocation to Inglewood in 2020. The move and accompanying developments have been described as "a boon for Inglewood financially at a time when they were teetering on bankruptcy"; as helping transform Inglewood into "a destination for shopping, entertainment, and sports"; and the Rams' new stadium as the "crown jewel" of a massive mixed-use entertainment district.[130] And for the Rams, the move appears to have been similarly beneficial. In their final year in an outdated St. Louis facility, the Rams ranked dead last in average home attendance (52,402)[131]; in its first fan-attended season in SoFi Stadium it ranked eighth (71,598 in 2021),[132] and in 2024, seventh.[133] Similar results are regularly seen when franchises stay put but open a new facility; Levi's Stadium in Santa Clara, to which the 49ers moved in 2014 from nearby San Francisco, has reportedly generated upwards of $2 billion in revenues for the region over the past decade.[134] These revenues undoubtedly implicate interstate commerce, as they involve fans visiting from out of state; out-of-state sponsorship and vendor agreements; games between teams of different states; national TV broadcasts; and more. This is by no means a comprehensive analysis

124 *Id*.

125 *See* Michelle Jarboe, *Browns Say New Brook Park Stadium District Will Add $1.2 Billion to the Local Economy*, News 5 Cleveland (Dec. 5, 2024), https://www.news5cleveland.com/news/local-news/browns-say-new-brook-park-stadium-district-will-add-1-2-billion-to-the-local-economy.

126 *Id.*

127 Ohio MTD at 14.

128 The St. Louis Rams to Los Angeles in 2016, the San Diego Chargers to Los Angeles in 2017, and the Oakland Raiders to Las Vegas in 2020.

129 The San Francisco 49ers in 2014, the Minnesota Vikings in 2016, the Atlanta Falcons in 2017, the Los Angeles Chargers in 2020, and the Los Angeles Rams in 2020.

130 "*Inglewood's Transformation: How an NFL Stadium Brought the City Back from the Brink of Bankruptcy*," Urban Land Institute.

131 "*NFL Attendance - 2015*," ESPN.

132 "*NFL Attendance - 2016*," ESPN.

133 "*NFL Attendance - 2024*," ESPN.

134 "*Report: Levi's Stadium in Santa Clara has $2B economic impact*, San José Spotlight.

of relocation economics, but instead merely offers that the economic effects of franchise relocation can be, for both localities and franchises, incredibly significant. Thus, a law that statutorily hamstrings that process is placing substantial burdens on inevitably interstate commercial activity.

This burden is only magnified when considering the cumulative effect of other franchise-housing states enacting similar statutes. Teams nationwide would be legally hindered in their efforts to realize the type of economic value the Rams, 49ers, and others have realized through their respective moves, and to bring the level of commercial activity to high-potential localities that these teams have brought. Franchise values across the NFL would resultantly be affected, because if prospective owners credibly fear that they will be handcuffed to a low-performing jurisdiction or an outdated facility, the financial incentive to invest in teams erodes. As applied to the Browns, if the courts endorse the Law as binding the team to the current Huntington Bank Field unless ownership subjects itself to the prospect of losing team control, the franchise's value necessarily plummets.

Finally, the local interest served. In this prong of the analysis it may work in the Browns' favor that the contemplated move is only fifteen miles.[135] The Browns can quite fairly argue that the burdens imposed on the franchise, and thereby on the larger NFL ecosystem, far outweigh the state's interest in keeping the team at its current facility over moving to a nearby suburb. This is especially so when the potential move would occur only after the franchise performs the entirety of its negotiated 30-year lease term; again, neither the city nor state can offer any argument that the franchise is attempting to exploit the taxpayer by escaping the terms of the parties' bargained-for agreement.[136] And as described, the Browns are pursuing a purportedly "transformational" and "state-of-the-art" stadium project and entertainment district that could bring inestimable levels of economic activity to the area.[137] While Cleveland may argue that such a development does little for it as a city, Ohio's interest in slowing or blocking such a project within its own borders strikes as weak.

iii. The City's Arguments Against the Browns' DCC Claims are Vulnerable.

Ohio argued in its initial motion to dismiss the Browns' federal suit that "[t]he dormant Commerce Clause has no relevance when a government acts as a market participant."[138] While true that the DCC has an established exception for scenarios in which the government acts as a market participant because "nothing… prohibits a State… from participating in the market and exercising the right to favor its own citizens over others,"[139] Ohio's argument misses the mark. The local governments opposite the Browns have surely expended funds toward the current stadium, and the City of Cleveland is engaged in the stadium lease market as the Browns', Guardians', and Cavaliers' landlord. But that market is not the one in which the Law discriminates, as neither Cleveland nor Ohio have emerged as prospective buyers of the Browns (nor could they, per NFL rules). The Browns also correctly note in its opposition to the state's motion that the participant exception does not apply where the government acts as a "market regulator";[140] here, the very discrimination at issue is through the government's attempted regulation of franchise relocation and the stadium lease market.[141]

135 This does not necessarily cut down the scale of the burden by a proportional extent. The court still should consider the cumulative effect of other states similarly hamstringing relocation, and should also weigh the unavoidably interstate impact of even one large-scale multi-use entertainment district development.

136 Especially considering that should the Browns stay at the current HBF, Cleveland would seemingly be on the hook to contribute upwards of $500 million toward renovations.

137 Michelle Jarboe, *Cleveland Browns Release First Renderings, Details of Brook Park Stadium Proposal*, News 5 Cleveland (Mar. 5, 2025), https://www.news5cleveland.com/sports/browns/cleveland-browns-release-first-renderings-details-of-brook-park-stadium-proposal.

138 Ohio MTD.

139 *Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794, 810 (1976) (footnotes omitted).

140 Browns' Opposition to Ohio MTD at 19-20.

141 *See also City of Oakland v. Oakland Raiders*, 220 Cal. Rptr. 153, 156 (Cal. App. 1st Dist. 1985) (where the "market participant" theory in an NFL franchise relocation case was rejected because the state was not "enter[ing] the football market on an equal footing, bidding with other potential market participants" but instead acting through "its governmental power").

The state's argument that the DCC does not touch "intrastate commerce" and thus is inapplicable to the Modell Law is similarly unavailing, and for reasons already covered. While true that the Commerce Clause definitionally covers only interstate commerce and so has no place governing wholly intrastate affairs, this is plainly not that. As noted, franchises engage in interstate competition; they are a part of a national marketplace where each one's value is highly relevant to those of the rest; and they are commercially intertwined with one another in too many ways to count. And further, the state's "intrastate commerce" argument is unresponsive to the claim of facial discrimination against out-of-state buyers, because if the law does so discriminate then it is a paradigmatic DCC violation regardless of the theoretical intrastate transactions it is meant to facilitate.

Finally, the state argues that the Law "nonetheless complies with" the DCC.[142] Attorney General Yost claims in turn that the Law "does not give Ohio political subdivisions and Ohio residents preferential treatment," it has no "discriminatory effect," it has no "discriminatory purpose," and finally that it inflicts no "substantial impact on interstate commerce."[143] Here, the state's arguments live or die with the court's choice of interpretive method. It is true that the court may choose to employ a softer reading, and as detailed below, if it does then the Law is far less vulnerable. But should the court interpret the statute in line with the repeatedly endorsed methodology outlined above, this portion of the state's argument falls.

2. The Law is Arguably Void for Vagueness.

The void for vagueness challenge is, predictably, based on the claim that the Law is so extremely unclear that it renders the franchises under its purview insufficiently notified of the conduct required of them. This argument is made more difficult by the Law being a civil statute, rather than a criminal one, but is available, nonetheless.

A void for vagueness argument would necessarily sacrifice much of the interpretive argument in Section III(A)(1) regarding the statute's breadth. The void for vagueness doctrine descends from the Due Process Clause and "prohibits civil and criminal laws that fail 'to give ordinary people fair notice of the conduct [they] punish, or [are] so standardless that [they] invite[ ] arbitrary enforcement.'"[144] Civil statutes are "held to a less strict vagueness standard than criminal laws 'because the consequences of imprecision are qualitatively less severe.'"[145] In this context, the court examines the vagueness challenge "in the light of the facts of the case at hand" and a challenger "bears the burden of establishing that the statute is vague as applied to his particular case, not merely that the statute could be construed as vague in some hypothetical situation."[146] To survive the challenge a statute must (1) "give the person of ordinary intelligence a reasonable opportunity [to] know what is prohibited" and (2) "provide explicit standards for those who enforce them" to prevent "arbitrary and discriminatory enforcement."[147]

Due to the fact-specific nature of the inquiry, strong precedent is in short supply. But the Browns' argument here is straightforward: the statute provides no clear guidance on what exactly the team is obligated to do during the six-month notice period. The team could object on several grounds, but most prominently, several of the words and phrases in the brief statute are susceptible to widely varying interpretations. First, the phrase "opportunity to purchase" is assigned no clear meaning. It could mean that current ownership must simply wait out the notice period; it could mean that current ownership is required to sell to a local buyer if approached; or it could mean anything in between. Given the enormous value of the asset at issue, these are no trivial differences. Moreover, as the Browns reference, it is unclear how such a requirement interacts with the NFL's ownership requirements. For example, current NFL regulations prohibit a prospective owner from buying a team with an offer including more than $1.2 billion in debt. Prospective ownership groups also may not contain more than 25 bought-in

142 Ohio MTD at 15.

143 *Id.* at 15-17.

144 *Hartman v. Acton*, 499 F. Supp. 3d 523, 533 (S.D. Ohio 2020) (quoting *Johnson v. United States*, 576 U.S. 591 (2015)).

145 *Buckle Up Festival, LLC v. City of Cincinnati*, 336 F. Supp. 3d 882, 886 (S.D. Ohio 2018) (quoting *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489 (1982)).

146 *United States v. Krumrei*, 258 F.3d 535, 537 (6th Cir. 2001) (citing *United States v. Powell*, 423 U.S. 87, 92 (1975)).

147 *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972).

members, and each group must contain a primary owner with a minimum 30% stake.[148] If a local buyer were to emerge during the six-month window, but the offer's financing violated the League's prescribed debt limit, it is unclear how the Browns must proceed. The same goes for a potential group that contains over 26 members or that has no members with a 30% share. Further analysis on this front is perhaps more tied to the franchise's Contract Clause arguments, but these questions nonetheless illustrate the complexities inherent to — and unaddressed by — the Law.

Similar gripes may be had with the "not less than six months' advance notice" provision. If that means the relevant political subdivision must receive notice at least six months prior to the actual relocation's occurrence, then the Browns seem to be in the clear anyway given that the intended move is not for several years.[149] Instead, it could mean that "notice" is required six months in advance of some other manifestation of the owner's future "intention" to move – which is itself a fairly indeterminate point in time. Again, given the complexity and financial scale of the transactions at issue, these differences are material. Or, it could mean that the Browns must provide notice and then wait six months before taking any additional steps toward the move. Other provisions are similarly vague; for example, as the Browns point out in briefing,[150] "reside in the area" is also left undefined. If the Browns open up bidding to all Clevelanders but exclude Cincinattians, it is not clear whether the franchise has complied. Alternatively, and importantly, likely due to the skyrocketing values of NFL franchises, modern purchases are often made by ownership groups rather than a single individual. If a group contains a mix of local and non-local individuals, it is unclear if that group qualifies as a "local buyer." If it does, a group containing mostly out-of-staters could potentially attempt to assign one Cleveland resident a nominal stake and exploit the Law's requirements. Again, these questions reflect a fundamental misalignment between the Law's brevity and the industry's commercial realities.

The above-listed ambiguities are non-exhaustive, and the Browns can reasonably argue that the Law as written does not provide them "a reasonable opportunity to know" what is specifically required of them and when it is so, thus inviting "arbitrary and discriminatory enforcement" by government officials who may be understandably bitter about a franchise's departure and the political fallout thereof.

A. Strongest Arguments in Favor of the Modell Law's Legality.

There remain numerous fair and reasonable arguments going the other way, though they would require a distinctly different reading and interpretive approach. Most generally, a court could simply disagree with the above about the Law's force and requirements and read it softly to avoid a constitutional dilemma. However, should the city and state prevail in their arguments about the Law's legality, they will ironically achieve the result they most dread. Should the Law be upheld per the very interpretations the state presents, not only will the Law be rendered substantively toothless, but the Browns will seemingly soon be in full compliance.

1. <u>There Remain Several Reasonable Arguments for the Law's Validity.</u>

If the Law is read to impose a lesser burden on the franchise or if a court is simply unpersuaded by the significance of a half-year of local buyer preferencing, the Commerce Clause challenge is made far harder. Once the discriminatory aspects are cut away and the impact on franchises is minimized, it becomes easier to frame the local interest as far outweighing any burdensome effects. Thus, with a weak reading, the general arguments on the state and city's side are straightforward. The void for vagueness challenge is even more vulnerable, as regardless of the statute's imprecision such a challenge is a tall task in the civil setting.

148 Michael Rothstein, *Private Equity in the NFL? How Team Ownership Might Shift*, ESPN (May 19, 2024), https://www.espn.com/nfl/story/_/id/40164039/private-equity-nfl-ownership-proposal-changes.

149 Further demonstrating the logical tightrope on which the state and city walk, if this is the case *and* "opportunity to purchase" has the soft meaning the state offers (and that is likely required to survive the DCC), then the Browns will have satisfied the Law once they hit April 22, 2025. At that point, six months will have passed since they formally announced the intent to move, and throughout that time any "local resident" will have been free to make a purchase offer. But if both of these interpretations are correct, it is hard to imagine (i) how the Law would ever have a material effect or (ii) why the City and state would undertake this litigation. This general argument is explored further below.

150 Browns N.D. Ohio Complaint at 10.

a. The Statute Need Not be Read as Forcefully as in Section III(A)(1).

An oft-employed "tool for choosing between competing plausible interpretations" of a statute is the canon of constitutional avoidance.[151] The canon is grounded largely in the desire to give effect to legislative intent, as legislatures are presumed not to purposefully craft unconstitutional statutes.[152] Ohio courts have consistently and repeatedly applied the canon, noting, for example, that "[c]ourts have an obligation to liberally construe statutes to avoid constitutional infirmities."[153] As Judge Brown relevantly noted in his opinion denying Precourt Sports Ventures' motion to dismiss in 2018, "[i]t is a fundamental principle of Ohio Law that 'a court must presume the constitutionality of [the state's] lawfully enacted legislation.'"[154]

The principle's application to this case is clear: a court may presume, notwithstanding the strong textual argument to the contrary, that Ohio's legislature did not intend to legislate in conflict with the Commerce Clause, and thus may give the Law a soft reading.[155] Under such a reading, the "opportunity to purchase" clause may be a mere temporal point and essentially state the purpose of the preceding six-month notice provision. Likewise, the "local buyer" portion may be read not as materially elevating local buyers *above* non-local buyers, but as, again, clarifying the substantive reason behind delaying the move by six months; that is, allowing locally-minded Ohioans an opportunity to put their offers together and approach the relevant franchise.

Should the court go down this path, one responsive argument is that if the court is going to deviate from a strict textual analysis and view the Law pragmatically, it should also look to the Law's clear purpose:[156] to prevent Ohio's sports franchises from deserting the region for another state, as the prior Browns did. The present-day Browns evince no such intention, as their proposal is to build a new facility a mere fifteen miles down the road. The team could thus argue that if the court is to consider legislative intent, then it should hold the Law inapplicable to this case entirely. This, however, may be a difficult argument as it requires overcoming quite a few textual hurdles.

b. If the Law is Read Softly, the Burden is Minimized and the Local Interest is Comparatively Strong.

Even if the canon of constitutional avoidance is not employed, a court may simply decide that the Law is non-discriminatory and *Pike* balancing points the other way. As noted above, a successful *Pike* balancing challenge must show that the challenged law's "burden on interstate commerce outweighs the local benefits."[157]

Here, the state and city may argue — and not wholly unreasonably — that a six-month delay in an inevitably years-long relocation process is a fair price to pay for the substantial financial and emotional investments that the state, its localities, and their residents have made in Ohio sports franchises. A court could determine that the Law's provision of a six-month period is fair and reasonable as a "last ditch"[158] effort for a community to drum up a local buyer to keep the franchise where it is, and with current ownership free to reject that local buyer's offer, there is little harm done. Again, there are strong arguments that this reading would be highly flawed from a textual perspective, but the Law's lack of precedent renders it difficult to predict how it will be read.

151 *Clark v. Martinez*, 543 U.S. 371, 381 (2005).

152 *See Rust v. Sullivan,* 500 U.S. 173, 191, 111 S.Ct. 1759, 114 L.Ed.2d 233 (1991).

153 *City of Columbiana v. Simpson*, 147 N.E.3d 73, 84 (Ohio App. 7th Dist. 2019) (citing *State ex rel. Taft v. Franklin Cty. Court of Common Pleas*, 81 Ohio St.3d 480, 481 (1998)).

154 *Ohio v. Precourt*, Decision and Entry Denying Defendants' Motion to Dismiss at 14, No. 18CV-1864 (Franklin Cnty., Ohio 2018) (quoting Ohio Rev. Code §1.47(A); *City of Cleveland v. State*, 128 Ohio St. 3d 135, 2010-Ohio-6318, 942 N.E.2d 370, ¶6 (2010) (internal quotations and citations omitted)).

155 "Intent," however, can cut both ways. As easily as one might argue that legislators did not intend the Law to be so draconian, one could argue it was meant to only apply to full-scale relocations akin to the 1996 Cleveland-to-Baltimore move and should not even be in play here. Or, alternatively, given that it is meant to stop a franchise from "tak[ing] the money and run[ning]" per AG Yost, it was likely not intended to be as weak or defeatable as a six-month delay. *See* note 77, *supra*.

156 *Wooden v. U.S.*, 595 U.S. 360, 366 (2022).

157 *Am. Bev. Ass'n v. Snyder*, 735 F.3d 362, 368 (6th Cir. 2013).

158 Ohio MTD at 11.

c. The Law, While Imperfectly Drafted, is Arguably Outside the Reach of the Void-for-Vagueness Doctrine.

Alternatively, but relatedly, one could argue (as the Browns' opponents do) that the void-for-vagueness doctrine is simply a poor fit. The state argues as much in its motion to dismiss the Browns' complaint, and in so doing stresses the reasonable, ordinary, everyday meanings of the statute's various terms and phrases. As a baseline matter, the state argues that "mathematical certainty" is not required of statutory drafters and that the "plain and ordinary meaning" controls, so long as "[a] person of ordinary intelligence [has] a reasonable opportunity to know what is prohibited." The state then claims that courts "typically consider only as-applied challenges to civil laws," and that the bar for a successful challenge is highest for a civil law unrelated to the First Amendment. Finally, the state argues that "regulatory statutes governing business activities… receive greater leeway," in part because businesses can be reasonably expected to ascertain what is expected of them.[159] In totality, the state's framing emphasizes less that the Law is an exemplar of precision than that the bar for a void for vagueness challenge is exceedingly high.

Here, the parties' primary dispute is less doctrinal than it is interpretive. They both appear aware of the general thrust of the void for vagueness principles, even if the state cites a few more obstacles than the franchise offers. And none claim that the Statute is "mathematical[ly]"[160] precise in its terms or requirements. But the Browns view its drafting shortcomings as fatal, while the state and city argue they are not. While, as noted in Section III(A)(2), there are strong arguments that the Statute does in fact fail to provide sufficient notice of the required or prohibited conduct, the state again points out that the threshold for such an allegation is quite a high one. It is thus difficult to say with high confidence that a court will take the uncommon step of invalidating the Law based on the void-for-vagueness doctrine.

2. If the Law is Upheld, the Browns Move May Proceed Effectively Unimpeded.

Unfortunately for Ohio and Cleveland, however, prevailing on the arguments in the preceding sections would back both into a difficult corner. Ironically, if the Law's terms and phrases are assigned the meanings offered within the state's own briefing, the franchise will soon have fully complied and should then be free to pursue its move without obstacle.

In the state's motion to dismiss the Browns' N.D. Ohio complaint it forcefully disputes allegations of vagueness by presenting definitions for each disputed term. Some are less controversial than others. For example, the state offers that "notice" should be assigned its clear, "easily understood" meaning;[161] "reside in the area" means reside in "the area around the City of Cleveland"[162]; "political subdivision" means "the City of Cleveland"; "elsewhere" means any facility that is not Huntington Bank Field; and "financial assistance" means taxpayer support.[163] For the purposes of this analysis, these definitions are presumed fair. "Opportunity to purchase," though, is the most indeterminate phrase, and likely the one on which the Law's legality turns. Clearly seeking to minimize the Law's severity, the state argues that it means a mere "chance to buy," but not in a manner that requires the Browns to "actually… s[ell] to *anyone*" or that renders the city "the ultimate decision-maker as to who can purchase a team." Instead, it

159 Ohio MTD at 7-8 (internal citations omitted).

160 *Id.*

161 This definition is left somewhat circular, as Ohio states [a] person of ordinary intelligence would easily understand that Ohio Rev. Code § 9.67(B) requires the Browns to provide six months notice to the City that it intends to play the majority of its home games at a location other than Huntington Bank Field. Ohio MTD at 10. It is conceivable that Ohio's definitions of notice and opportunity to purchase jointly assume a more formal, public notice from current ownership to local residents that they may come forward with offers. While Ohio's briefing does not mention any requirement of this sort, it would not materially shift the Browns' footing. Given Ohio's firm declaration that an "opportunity" need not lead to any sale whatsoever, ownership could issue such a public notice, refuse to accept whichever offers may arise, and be in compliance in six months.

162 This is not defined any further, so it is not clear whether Ohio views Brook Park itself as within "the area around the City of Cleveland." If it so qualifies, then Ohio would need to oddly argue that the franchise may be owned by a Brook Park resident but may not play in Brook Park.

163 Ohio MTD at 9.

provides "a last ditch, 6-month opportunity" for the region to attempt to "protect [its] investment."[164]

If government officials want to insert those definitions the Browns should let them. Plugging those meanings into the dispute at issue, the statute supposedly requires that Browns ownership "gives [the City of Cleveland] not less than [six months' notice] of [the Haslams'] intention to [move the Browns to Brook Park] and, during the six months after such notice, gives [the City of Cleveland] or any individual or group of individuals who [reside in the area around the City of Cleveland] the [opportunity to offer to buy the team, but such opportunity need not lead to any sale].

The glaring issue for Cleveland and Ohio is that if the above meanings are applied, the Browns will seemingly soon pass with flying colors. The Haslams notified Cleveland in October 2024 of their intention to move to Brook Park. That move is not scheduled to occur for several years. As of this writing, nearly five months have passed since such notice was provided. There has been no sale, but nor is there evidence that the city or any individuals or groups from the area have attempted to buy the team. And even if someone were to express such an intent, the state itself says that the Haslams are under no obligation to sell.

Losing the legal battle may thus bring the franchise its most favorable outcome. In April 2025, six months will have passed since Haslam Sports Group notified the city of its intent. Even if a court were to accept the state's interpretations and deem the Law legally valid, then once that six-month mark is reached the Browns will seemingly have met the Law's requirements in full.

Conclusion

Given the Law's lack of precedent, it is difficult to predict with confidence which strain of interpretation the courts will more readily accept. As noted, applying a reading most faithful to the statute's text and structure maximizes its vulnerability, and a softer one much less so. However, for the Browns' opponents, the latter is a double-edged sword; should the law be upheld, it would likely be through an interpretation that renders the Law effectively toothless, handing Cleveland and Ohio a nominal victory but a losing result.

A region's desire to "protect its investment" is wholly reasonable. And while this paper argues that the Modell Law is not the way to do so, several avenues exist for jurisdictions seeking maximal protection during a lease's term.[165] First, though, in the professional sports industry, a lease term of 30 years is relatively standard.[166] In that sense the Browns' current relocation efforts are extraordinarily ordinary. Second and relatedly, the stadium lease marketplace is competitive, with jurisdictions across the country willing to offer increasingly enticing financial incentive packages.[167] So for better or worse, franchises have considerable leverage in negotiations. While states may try their hand with Modell Law-esque legislation or other statutory efforts aimed at evening the deck, doing so runs the risk of simply driving franchises to more favorable markets.[168]

Nonetheless, there are numerous commonplace provisions that work to protect a jurisdiction's surely sizable stadium investments throughout the full term of the lease. Most fundamentally, a jurisdiction can (and should) require a non-relocation agreement to be included within or alongside the lease. It should

164 *Id.* at 11.

165 The Modell Law's motivating purpose evinces an intent to bind Ohio's franchises beyond even their respective lease terms. That very concept runs into some logical trouble, as the term for which a franchise is bound to a venue is itself, in effect, the lease term. If a team is bound to a facility for beyond the express term of its lease agreement, a better description of the dynamic is that the franchise is bound by an indefinite lease but the financial terms beyond *X* years have yet to be determined.

166 Alexander Chester and Robert Davydov, *The Revolution in NFL Stadiums: An Analysis of Deal Structure and Related Rewards,* Duane Morris LLP (Sept. 7, 2023), https://www.duanemorris.com/articles/revolution_nfl_stadiums_analysis_deal_structure_related_rewards_0923.html.

167 Ryan Gauthier, *Publicly-Subsidised Stadiums: Changing the Game Through Good Governance*, 30 Jeffrey S. Moorad Sports L.J. 231 (2023). https://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=1453&context=mslj.

168 There has not been any considerable movement toward federal legislation governing public-private partnerships, stadium subsidies, or franchise relocations. Such an effort would surely encounter an onslaught of legal opposition but, if it survived, would dramatically alter the dynamics at play.

push for the agreement to match the length of the lease term, and while it will be difficult to negotiate for specific performance, it is not uncommon to negotiate for high liquidated damages or default penalties that make a premature departure financially difficult.[169] Cities may also push for a local buyer provision, through which it could potentially achieve a Modell Law-like effect without the headache of constitutional litigation.[170] And finally, cities may negotiate for extension options; while the franchise will likely be able to push for control over the options, it is common for them to be structured as automatic options such that it is the franchise's responsibility to opt out should it so choose.[171] While, of course, none of these will guarantee a franchise's tenancy beyond the lease term itself, such is necessarily the reality of a negotiated lease term.[172]

Ultimately, this dispute's resolution is unlikely to make huge doctrinal waves. There are only so many professional sports franchises to which the Law applies, and as noted, it has yet to inspire copycat legislation elsewhere. If the Law receives a strong judicial endorsement it is conceivable that other jurisdictions will take note and change that, but to this point there has been little movement in that direction. Instead, this saga perhaps best offers a few lessons for actors in the stadium finance space. First, presuming the Browns eventually get their desired move, it is yet another indicator of the immense power franchises wield in their partnerships with localities. And second, if cities and jurisdictions seek to maximally protect their investments in local franchises, the best and simplest ways to do so are likely found at the negotiating table.

Return to Table of Contents

169 *Carfagna's Negotiating and Drafting Sports Venue Agreements* (2d ed.) at 31; *see also In re Dewey Ranch Hockey,* 414 B.R. 577 (in which a liquidated damages provision successfully prevented the Phoenix Coyotes from moving to Glendale).

170 *Carfagna* at 31.

171 *Carfagna* at 18.

172 *See* note 165, *supra*.

Recent MLS Medical Malpractice Verdict Demonstrates Perils Of Being A Team Doctor

By Christopher R. Deubert, Senior Writer

On March 28, 2025, an Oregon jury awarded former Portland Timbers goalkeeper Jake Gleeson $20.4 million in damages against Dr. Richard Edelson, a Timbers doctor. Gleeson had alleged that Edelson was negligent in performing surgery on Gleeson's legs in 2018, resulting in painful infections which required 14 additional surgeries and ended his career. The verdict highlights the complicated relationship among teams, team doctors, and players, including concerns over divided loyalties, sponsorship arrangements, and potentially costly liability.

The Structural Conflict of Interest

Doctors for professional sports teams have a variety of duties, including specifically: (1) providing healthcare to players; (2) helping players determine when they are ready to return to play; (3) helping clubs determine when players are ready to return to play; (4) examining players the club is considering employing (e.g., potential draft picks or free agents); and (5) helping clubs make decisions about a player's future with the club, including the possibility of a contract extension or release.

These duties do not necessarily align. Trust is an important element of the doctor-patient relationship. But trust can be diminished if the doctor is able to relay the patient's medical situation to the patient's employer for purposes of evaluating the patient's employment. Yet, players generally execute broad waivers permitting the disclosure of their health information by team doctors to team officials or such disclosure is explicitly permitted by the collective bargaining agreement (CBA) between the league and players union.

The leagues and unions recognize these conflicts and consequently seek to contract around them. For example, the CBA between the NFL and NFLPA declares that "Club medical personnel's primary duty in providing player medical care shall be not to the Club but instead to the player-patient." Implicit in this obligation is the recognition that team doctors have duties beyond their "primary" one, i.e., duties to the teams

which may be in conflict with the players' interests. The CBAs governing the NHL, MLS, WNBA, and NWSL all contain the same "primary duty" language. The MLB and NBA CBAs are silent on the issue.

Recognizing the existence of these conflicts does not diminish the fact that team doctors for professional sports teams are generally among the leading experts in their fields. Nevertheless, there is a conflict of interest inherent in the structure through which doctors provide healthcare to players in these leagues. For these reasons, in a 2016 report I co-authored with Glenn Cohen of Harvard Law School and Holly Fernandez Lynch, then of Harvard and now at the University of Pennsylvania, we recommended a division of responsibilities between two distinct groups of medical professionals. Player care and treatment should be provided by one set of medical professionals (i.e., the Players' Medical Staff), appointed by a joint committee with representation from both the league and union, and evaluation of players for business purposes should be done by separate medical personnel (i.e., the Club Evaluation Doctor).[173]

Pay for Play

The structural conflict of interest and trust concerns between team doctors and players can be exacerbated by the manner in which team doctors are selected. Nearly every team in the major American sports leagues has a sponsorship arrangement with one or more healthcare organizations. Those agreements typically include (or are executed alongside agreements which include) the right for the healthcare organization to be the practice of choice for the players' healthcare needs as well as the right for the healthcare organization to select the team doctors for the club.

The leagues take different approaches on this issue. The NFL and MLB have policies which explicitly prohibit healthcare providers from paying for the right to provide healthcare. The NBA and WNBA at least have language in their CBAs requiring that selection of the team's healthcare providers shall not be "based primarily on a sponsorship relationship." Other leagues are more permissive.

In MLS, it is common for the club's team doctor to work for a healthcare provider that is a sponsor of the club and for that sponsorship arrangement (i.e., payments from the healthcare provider to the club) to be contingent on the team using the healthcare provider for player medical care (Disclosure: from November 2018 to March 2021, I was General Counsel of D.C. United of MLS). Indeed, in the Gleeson case, Dr. Edelson is a part of Sports Medicine Oregon, which advertises itself as the "Official Team Doctors of the Portland Timbers."

Again, it is important to acknowledge that team doctors are highly qualified. Indeed, doctors with a history of working with teams sometimes switch their organizational affiliations whenever the club changes sponsors to ensure continuity. Nevertheless, the existence of sponsorship arrangements can contribute to a lack of trust between the players and their healthcare providers.

High Value Plaintiffs

The damages awarded to a plaintiff in a lawsuit must be rationally connected to the harm actually suffered by that plaintiff. In cases where a plaintiff's earning capacity has been harmed (such as in a wrongful termination case), the damages are going to be higher when the plaintiff had a high salary.

This simple legal concept is thus particularly important where a highly paid athlete is the plaintiff. For example, in February 2023, former Philadelphia Eagles player Chris Maragos was awarded $43.5 million in a medical malpractice case against the Eagles' team doctors, a verdict upheld on appeal. A jury agreed that the doctors' failure to properly treat Maragos' knee injury prematurely ended his career, depriving him of significant future career earnings.

In the Gleeson case, while MLS players earn substantially less than NFL players, most are still paid a few hundred thousand dollars per year. For that reason, the jury awarded him $2.145 million in lost earning capacity (the bulk of the award was for non-economic damages, e.g., pain and suffering).

Ultimately, the risk associated with treating professional athletes is reflected in higher insurance premiums for the doctors and their organizations. When coupled

173 Christopher R. Deubert, I. Glenn Cohen, and Holly Fernandez Lynch, *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations* (2016), also available at 7 Harv. J. Sports & Ent. L. 1

with sponsorship fees (as permitted in some leagues), the cost to be a team doctor is not insignificant.

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Return to Table of Contents

An Interview with Sports Lawyer Joshua M. Frieser

Joshua M. Frieser, Esq. is a sports business lawyer and Principal Attorney at Frieser Legal. His practice is focused on the representation of athletes, agents, sponsors, and sports businesses.

While working to solve the unique legal needs that athletes have, Josh represents athletes in eligibility and disciplinary proceedings and NIL licensing agreements, as well as in related intellectual property and business planning matters. In addition to serving as counsel to college and professional athletes, he represents sports agents and sports industry ventures as outside counsel. He also serves as a trusted advisor to sponsors working with athletes and sports properties.

Josh is a member of the State Bar of Wisconsin and an active member of its Sports & Entertainment Law Section and Business Law Section. He is also a member of the Sports Lawyers Association. Additionally, Josh serves on the Sports Advisory Committee for the American Arbitration Association.

As a leading expert on the regulatory landscape of college athletics, Josh has been quoted in numerous publications. He also regularly speaks on panels and CLE seminars about NIL and the legal implications surrounding college sports.

Josh's prior experience includes working at the National Collegiate Athletic Association for the Office of the Committees on Infractions and at the National Sports Law Institute. Additionally, during law school, Josh served as a Judicial Intern to the Chief Judge of the U.S. Court of Appeals for the Seventh Circuit in Chicago and as a Judicial Intern to a Senior District Judge of the U.S. District Court for the Eastern District of Wisconsin. Josh attended Marquette University Law School where he received a Sports Law Certificate and was a member of the Marquette Sports Law Review. He attended Indiana University as an undergraduate where he studied Sport Marketing & Management and Entrepreneurship & Small Business Management.

Question: How did you get your start in sports law and who were your mentors along the way?

Answer: My first in-depth exposure to sports law came during my time as a student in the sports law program at Marquette University Law School. Professors Matt Mitten and Paul Anderson did a wonderful job of exposing me to comprehensive sports law coursework, internships, and industry leaders. During law school, I had the opportunity to spend a semester at the NCAA's Office of the Committees on Infractions, where I developed lasting relationships with Matt Mikrut, Aaron Hernandez, and Naima Stevenson Starks, all of whom have meaningfully impacted my career as mentors.

Q: What areas of sports law are your strengths?

A: The areas of sports law I work with most regularly are athlete sponsorship and marketing agreements, sports agent regulation, and college athletics/NIL.

Q: Who are some representative clients in those areas, who you have worked with?

A: I have had the opportunity to represent professional sports league MVPs and 5-star recruits, as well as college athletes that have no prospects of playing professionally and athletes in every circumstance in between. I have also worked with dozens of professional sports player agents and NIL agents on representation agreements, players association agent regulations, and athlete agent laws. Additionally, I have worked with corporate sponsors of college and professional athletes.

Q: What trends in the industry are you following closely and why?

A; The *House* settlement is likely to transform the landscape of college athletics even more than NIL did. While college athletes are set to receive a portion of revenue derived by university athletics programs, those dollars are coming with lengthy revenue-sharing contracts. The implications of those agreements are broad. From the preliminary agreements that universities are circulating, the contracts include complex

intellectual property language, sublicense rights, restrictions on athlete movement, and comprehensive clawback language. As larger dollar figures are now at stake—both in the contract itself and in any potential disputes—there becomes an even greater need for athletes, agents, and university athletic departments to work with attorneys familiar with the contemporary landscape.

Return to Table of Contents

Carolina Names Former Sports Agent Jim Tanner Men's Basketball Executive Director & General Manager

Jim Tanner, the founder and president of Tandem Sports + Entertainment who has represented more than 70 NBA players over a 28-year career, has been named executive director and general manager of the University of North Carolina men's basketball team.

In this role, Tanner will, among other things, help manage the construction of the roster, negotiate contracts, identify and hire new scouting and analytics staff and spearhead player development programs.

Tanner, a 1990 Carolina graduate, has represented 40 first-round NBA Draft picks, including 12 top-five selections, and six inductees in the Naismith Hall of Fame (UNC's Vince Carter, Ray Allen, Tamika Catchings, Tim Duncan, Grant Hill and Dominique Wilkins) and has negotiated more than a billion dollars in contracts for his clients.

He has represented 17 former Tar Heels in their professional careers, including Carter; Final Four Most Outstanding Players Joel Berry II, Wayne Ellington and Sean May; All-Americas Raymond Felton, Tyler Hansbrough, John Henson, Justin Jackson and Luke Maye; and top-10 first-round draft picks Marvin Williams and Brandan Wright.

"Both of my kids and I went to Carolina and we owe so much as a family to this university," said Tanner. "This is such an exciting opportunity, and I couldn't be more thrilled. The landscape of college basketball has changed dramatically in a short period of time with NIL, collectives and the transfer portal. It's a highly-competitive and constantly-evolving environment. I look forward to using my 28 years of experience recruiting and representing players to help position UNC as strategic, adaptive and innovative in scouting and attracting top domestic and international talent while staying true to the principles and values that have defined Carolina Basketball over the years.

"I look forward to working with Coach Davis, the staff, Bubba Cunningham and the Carolina Athletics family."

A native of High Point, N.C., Tanner was a Morehead-Cain Scholar at UNC and attended law school at the University of Chicago. He sits on Carolina's Board of Directors in the College of Arts and Sciences and previously served on the Board for the Morehead-Cain Scholarship Fund.

"We are so pleased and excited to bring on an individual with Jim's decades-long legal and financial experience in negotiating contracts, in identifying top talent across the country and throughout the international game, who works with the best people in all aspects of the sport," said Bubba Cunningham, the UNC AD. "This is a new position at Carolina but it is one that numerous programs, including ours, have identified as essential to continue to compete at the championship level in college basketball."

"I am excited and happy to have Jim join our staff and the UNC family," says head coach Hubert Davis. "Jim's experience and knowledge is needed in helping us navigate contracts, the transfer portal and the advancement of this program. His resumé speaks for itself and his commitment to this university and community make him a great addition to the Carolina men's basketball program."

Tanner began his legal career as a corporate attorney at Skadden, Arps, Slate, Meagher & Flom before becoming a partner at Williams & Connolly LLP. He founded Tandem Sports + Entertainment in 2013. In 2020, Tandem merged with You First Sports, a global agency based in Madrid, Spain, which was later acquired by Gersh Sports. The combined sports and entertainment agency has a presence in 15 countries, and a wide range of expertise offering Tanner and Tandem a broad network of globally-sourced talent, resources and relationships.

Sports Illustrated recognized Tanner twice as one of the "101 Most Influential Minorities in Sports." He was named to the Washington Business Journal's list of Minority Business Leaders and was recognized on Washingtonian's list of "Top Lawyers" for media and

sports law. He has been invited to speak to the Knight Commission on Intercollegiate Athletics, the NCAA Commission on College Basketball, and the MIT Sloan Sports Analytics Conference.

Return to Table of Contents

DI Board of Directors Conditionally Approves House Settlement-Related Rules Changes, Opening the Door for Direct Payments to Players

The Division I Board of Directors adopted changes to NCAA rules that would take effect if the House settlement is ultimately approved by the court. More than 150 rules will be eliminated to allow for schools to provide additional benefits to student-athletes under the settlement, as a first step toward further implementation.

Moving forward, if final approval of the settlement is granted, NCAA rules will permit schools to provide direct financial payments to student-athletes, including for use of a student-athlete's name, image and likeness. Schools have until June 15 to decide whether to opt to provide benefits that would be permissible under the settlement for the coming academic year.

The board's actions included approving a number of proposals contingent on final federal court approval:

- Permitting schools to provide full scholarships to all student-athletes on a declared roster and eliminating sport-by-sport scholarship maximums, giving schools much greater flexibility in providing athletics aid and doubling the scholarships available in women's sports.
- Modifying rules to allow autonomy conference schools and others who opt to offer settlement-related benefits to provide up to $20.5 million in direct financial benefits to student-athletes.
- Introducing rules intended to bring clarity and stability to the NIL environment for all Division I schools, including allowing for additional independent review of third-party NIL agreements between student-athletes and entities that are associated with a particular school.

The board also approved new rules that would establish new policies consistent with the terms of the settlement, including:

- The creation of technology platforms for schools to monitor their payments to student-athletes and for student-athletes to report their third-party NIL agreements.
- Rules that address steps student-athletes can take if an NIL agreement is considered outside of the range of compensation developed by the external, independent clearinghouse.
- The creation of an enforcement group — created and operated by the defendant conferences — that would provide oversight for rules relating to the terms of the settlement, including third-party NIL and the annual benefits cap.
- A requirement that for student-athletes to receive the new benefits, they must be enrolled full-time, meet Division I progress-toward-degree requirements and receive such benefits during their period of eligibility (e.g., five-year clock).

Return to Table of Contents

Cultivating Financial Sustainability for Football Clubs in Europe; Examining Financial Fair Play Regulations

By Aaron Stromberg

Question Presented

Whether the United European Football Association's (UEFA) Financial Fair Play (FFP) Regulations serve their intended purpose—cultivating financial sustainability for football clubs in Europe—against the backdrop of European Union (EU) competition law.

History of FFP and EU Competition Law

In the aftermath of the 2008 global economic crisis, UEFA recognized a burgeoning concern regarding financial instability permeating European clubs.[1] As the governing body charged with regulating top-flight football in Europe, UEFA implemented a financial strategy, FFP, in 2011, "based on the principle that clubs should compete on the basis of their own financial resources"

and "improve… long-term stability and sustainability of club football."[2] While the majority of UEFA's original regulations tended to comprise mostly of "sporting rules," the most profound and controversial is FFP, essentially allowing UEFA to regulate finances of clubs.[3] FFP achieves its aim through a "break-even" requirement, ensuring that expenditures do not exceed revenues while permitting minor deviations.[4] Thus, UEFA's stated objectives of FFP are to, "introduce more discipline and rationality in club finances by operat[ing]… for the long-term benefit of soccer."[5]

The Treaty on the Functioning of the European Union (TFEU) sets out organizational and functional details of the European Union.[6] Article 101 of the TFEU establishes pillars of EU competition law.[7] Pursuant to Article 101, restrictive agreements between independent market operators acting either at the same level of the economy, often as potential competitors, or at different levels, are *per se* prohibited.[8] Article 101 precludes any form of collusion between undertakings which may have an adverse effect on competition within an internal market.[9]

The primary challenges and controversies enveloping FFP are that it violates EU competition law. Notwithstanding, EU legal bodies (EC) recognize the special role sports hold in the cultural development of communities across Europe, so it carved out a certain deferential perspective when determining how to apply competition law to sporting regulations.[10] When given the opportunity to intervene, EC has remained silent because, "(1) the EC has previously voiced its support for the principles behind FFP, (2) the EC's silence continues to build on the positive relations between the EC and UEFA in the broader context of sports autonomy and (3) the EC has previously provided guidance to UEFA on the types of regulations it will tolerate and is waiting for UEFA to make the necessary changes to FFP."[11]

The European Court of Justice (ECJ) laid out a test to determine if a sport regulation is deemed to meet EU competition law. In *Meca-Medina*, the ECJ noted that "a rule issued by a sport association… may not breach [TFEU] to the extent that the rule in question pursues a legitimate objective and its restrictive effects are inherent in the pursuit of that objective and are proportionate to it."[12] The ruling demonstrates willingness to specifically exempt competition law to sports, infusing a scrutiny tantamount to that of U.S. rational basis review.[13]

FFP Breaches and Action

If a violation of FFP is committed, UEFA can deploy a wide range of financial and sporting punishments for breaching FFP rules.[14] Most recently, clubs such as Barcelona, Manchester City, and Manchester United have faced sanctions for undermining FFP regulations, but results were lackluster with a degree of leniency shown to these historically superior clubs.[15]

However, the flaws in enforcement highlight how FFP is falling short of expectations. A paradigm example of the inefficacious application of FFP punishment is elucidated by Manchester City's near decade-long violations. Between 2009 through 2018, City was accused of providing misleading information and misrepresenting its finances after ownership change to Abu Dhabi's ruling family.[16] Despite a plethora of inculpatory evidence against City, enforcement fell wholly short of expectations, with the perception that City could operate with impuginty.[17] It was revealed that impartial proceedings did not occur to ensure matching FFP punishment for the violations.[18] Thus, FFP violation results are untrusting and call into question whether it subverts the proscriptions of EU competition laws.

Recommendations

At its inception, the objectives and intended purpose of UEFA's FFP fit well within the limited exception of EU's competition laws. However, in practice, FPP has fallen significantly short of its objective such that review of its structure elucidates a need for reformation.

Tri-Tier Break Even System

Specifically, an issue with FFP is that it ensures that smaller clubs cannot financially compete with bigger clubs, resulting in a significant increase in the revenue gap between bigger and smaller clubs; a strong indicator that FFP is fossilizing leagues and entrenching consolidated dominance.[19] A tweak to FFP's current composition would be significant: The Tri-Tier Break-Even System (TTBS).[20] This reformation strategy entails separating member clubs into three distinct brackets based upon respective revenues. In doing so, UEFA's licensing procedures and relevant income and expenditure calculations remain unchanged concurrent

with the same break-even formula, but the tiered categorization would allow for different deviations based upon a club's rank in the three pods.[21] For example, the top third of clubs—i.e., the historically preeminent clubs—will be permitted to deviate from break-even far more stringently than the lowest third, permitted reasonable but larger deviations.

All clubs are encouraged to break even, but the flexibility for clubs positioned further down the economic food chain will have the opportunity to grow their club in the short-term without risking the long-term financial health of their club in the long. This tiered system will allow, "spending beyond revenues, but not beyond reason" to bolster the growth of clubs.[22] Therefore, rather than adopting an entirely new regulatory system, TTBS improves FFP by better adhering to the proscriptions TFEU and creates a more compatible exception.[23]

Alternatively, UEFA could effectively scrap FFP and replace it with a new system:

Salary Cap and Luxury Tax Structure

Implementing a salary cap and luxury tax structure could be one step towards achieving competitive balance coupled with financial stability. For instance, many American professional sports leagues adopt various iterations of a salary cap system that penalizes teams or clubs for exceeding a predetermined financial threshold.[24] By implementing a soft salary cap, similar to models used by the NBA or MLB, clubs that wish to exceed the cap would be obligated to pay a luxury tax, which would then be redistributed to lower-revenue clubs. This redistribution mechanism would not restrict market freedoms but would engender a more level playing field helping smaller clubs compete for talent. Historically dominant clubs begin the financial race from vastly differing starting positions, so the soft cap and luxury tax could resolve embedded issues.

Revenue-Linked Investment Model

Under the current break-even FFP regime, club spending is directly tied to revenue such that well-established clubs benefit disproportionately and create perpetual financial disparity. FFP could modify its present approach to allow clubs to spend a percentage above their revenue, contingent upon the extra investment being aimed at long-term growth (such as infrastructure, youth development, marketing). By carving out exceptions or relaxed limits on spending, smaller clubs could more freely promote long-term growth and stability, without fear of compromising short-term ambitions. Under EU competition law, this would be less restrictive since it allows for more flexibility in spending combined with financial prudence. Such targeted spending would also be seen as promoting market efficiency without unfairly distorting the competitive balance.

Harsher Enforcement with Graduated System of Penalties

The present FFP dynamics witness inequitable enforcement—with large clubs often facing lenient sanctions or appeal penalties (e.g., Manchester City)—which ultimately undermines the effectiveness of FFP. A graduated system of penalties would take into consideration a host of factors such as character, quantity, and severity of breach, repetitiveness of misconduct, willful or intentional violations, and could hand down commensurate punishments with more proven, trusted uniformity while creating stronger deterrents for club overspending and misreporting. Due to the paramount importance of transparency, this recommendation satisfies EU competition laws via equal treatment, promotes fair competition and curtails ulterior motives swaying enforcers, thus adhering to proportionality principles.

Conclusion

FFP regulations are not serving their intended and expected purposes to galvanize financial stability in promotion of "the beautiful game." The proposal for change to the current regulatory system begins with exemplifying a concerted effort to garner uniformity for all member clubs and ends with concomitant, stronger punishment when breaches surface. By balancing financial oversight with flexible investment opportunities which acknowledge disparate club compositions, these changes could create a more competitive and financially healthier European football union to achieve UEFA's vision.

Footnotes

"Manchester City's FFP Hearing: What Are the Charges and Possible Penalties?" *Sportstar*, The Hindu, September 25, 2023, accessed September 25, 2024, https://sportstar.thehindu.com/football/epl/manchester-city-ffp-hearing-charges-penalties-explained-financial-irregularities-abu-dhabi-group-guardiola-football-news/article68647639.ece.; See also "Part 1: Balancing the Books – An Introduction to the UEFA's Financial Fair Play Regulations," *Meritas*, accessed September 25, 2024, https://www.meritas.org/insight/article/part-1-balancing-the-books-an-introduction-to-the-uefas-financial-fair-play-r#:~:text=The%20official%20FFP%20are%20a,threaten%20their%20long%2Dterm%20survival ("A 2009 UEFA review showed that more than half of the 655 European clubs incurred a loss over the previous year, and although a small proportion

were able to sustain heavy losses year-on-year as a result of the wealth of their owners, at least 20% of clubs surveyed were believed to be in actual financial peril. A report by Deloitte indicated that total debt among the 20 Premier League clubs for the year 2008–09 was around £3.1 billion. For example, between 2005 and 2010, West Ham United recorded an aggregate net loss of £90.2 million.")

Sven Van Kerckhoven and Glenn Rayp, "The EU's Governance of Global Finance: European Bond Markets under Stress," *Journal of European Integration* 43, no. 7 (2021): 827-843, accessed September 25, 2024, https://www.tandfonline.com/doi/full/10.1080/17441056.2021.1935570. ("The risk of being excluded from the *Champions League*, which is European soccer's most prestigious and financially rewarding competition, leaves clubs with no choice but to comply with UEFA's regulations, regardless of how onerous they may be.")

Id.

Id.; See also "Part 2: The Rules and Regulations of UEFA's Financial Fair Play (FFP) – The Premier League and Beyond," *Meritas*, accessed September 25, 2024, https://www.meritas.org/insight/article/part-2-the-rules-and-regulations-of-uefas-financial-fair-play-ffp-the-premi. ("On announcing the new legislation on 15 September 2009, former UEFA President Michel Platini said: 'Fifty per cent of clubs are losing money and this is an increasing trend. We needed to stop this downward spiral. They have spent more than they have earned in the past and haven't paid their debts. We don't want to kill or hurt the clubs; on the contrary, we want to help them in the market.'")

Id.

"Article 101(1) and (3) – Introduction," *Practical Law*, Thomson Reuters, accessed September 25, 2024, https://uk.practicallaw.thomsonreuters.com/2-107-6192?transitionType=Default&contextData=(sc.Default).

Ariel Ezrachi, *An Introduction to EU Competition Law*, "Key Concepts of Article 101 TFEU," (Cambridge: Cambridge University Press, n.d.), accessed September 25, 2024, https://www.cambridge.org/core/books/abs/an-introduction-to-eu-competition-law/key-concepts-of-article-101-tfeu/5A0F82CEF360A8827DDA4C46E12CE0DE.

Id. ("It also precludes decisions by associations of undertakings and concerted practices. These three types of coordinated market behaviour fall into the ambit of EU competition law if they may affect trade between Member States to an appreciable extent and if they have as their object or effect the prevention, restriction or distortion of competition within the internal market.")

Id.

Sven Van Kerckhoven and Glenn Rayp, "The EU's Governance of Global Finance: European Bond Markets under Stress," *Journal of European Integration* 43, no. 7 (2021): 827-843, accessed September 25, 2024, https://www.tandfonline.com/doi/full/10.1080/17441056.2021.1935570. ("European courts and decisions of the [EC] show that the specificity of sport [is] recognized and taken into account" when determining how EU law is to be applied to sporting organizations. Respecting the "specificity of sport", EU legal bodies have distinguished "between cases involving purely sporting rules, as opposed to those which have an economic or business dimension, on the view that the former would clearly be exempt from antitrust scrutiny."

Id. ("Whereas common experience tells us regulations that are prima facie violations of the law will be struck down, the EC seems to shift the burden with UEFA and upholds regulations that are prima facie illegal so long as there is an exception built in which can be perceived as compatible with EU law. Having provided this guidance, it is likely that the EC is taking a hands-off approach and affording deference to UEFA to follow this pattern and make the necessary changes to FFP without the need for EC interference."

See *Meca-Medina v. Commission* (2006)

Id. ("Principle of proportionality requires the adoption of the least restrictive measure capable of achieving the stated aim.")

"Part 3: Debunking the Breaches and Myths of UEFA's Financial Fair Play Regulation," *Meritas*, accessed September 25, 2024, https://www.meritas.org/insight/article/part-3-debunking-the-breaches-and-myths-of-uefas-financial-fair-play-regulation. ("[Punishments] include: 1) A formal written warning; 2) Fines and compensatory payments; 3) Points deductions from current or future seasons; 4) Withheld or reduced revenue from a UEFA competition, such as the Champions League; 5) Prohibition from registering new players for UEFA competitions, such as the Europa League; 6) Disqualification from competitions; and / or 7) Exclusion from future competitions.")

"Man United, Barcelona Hit with UEFA Fines for FFP Breaches," *ESPN*, July 14, 2023, accessed September 25, 2024, https://www.espn.com/soccer/story/_/id/38009485/man-united-barcelona-hit-uefa-fine-ffp-breaches. ("United were handed a €300,000 ($336,420) fine for "minor break even deficits" for the financial years spanning between 2019 and 2022. Barca, meanwhile, were issued a larger €500,000 ($560,700) fine "for wrongly reporting, in the financial year 2022, profits on disposal of intangible assets (other than player transfers) which are not a relevant income under the regulations.")

"Manchester City's FFP Hearing: What Are the Charges and Possible Penalties?" *Sportstar*, The Hindu, September 25, 2023, accessed September 25, 2024, https://sportstar.thehindu.com/football/epl/manchester-city-ffp-hearing-charges-penalties-explained-financial-irregularities-abu-dhabi-group-guardiola-football-news/article68647639.ece.

Id. ("In February 2020 City was banned from UEFA competition for two seasons for "serious breaches", including overstating sponsor revenue and failing to cooperate with investigators. The Court of Arbitration for Sport (CAS) overturned the ban in July 2020, ruling that some UEFA charges were not proven and other evidence was excluded as time-barred. The court "strongly condemned" Man City for obstructing UEFA's investigation.)

Sven Van Kerckhoven and Glenn Rayp, "The EU's Governance of Global Finance: European Bond Markets under Stress," *Journal of European Integration* 43, no. 7 (2021): 827-843, accessed September 25, 2024, https://www.tandfonline.com/doi/full/10.1080/17441056.2021.1935570. ("[T]he *Der Spiegel* revelations alleged that then UEFA President, Gianni Infantino, negotiated directly with Manchester City to help the club reach a favourable settlement and avoid harsh penalties during prior UEFA investigations of Manchester City, making UEFA complicit.")

Id.

Id.

Id.

Id.

Id.

"Salary Cap Differences Between the NFL, MLB, and MLS," *Fanteractive*, accessed September 25, 2024, https://www.fanteractive.com/arcticle/salary-cap-differences-between-the-nfl-mlb-and-mls.

Stromberg is a current J.D. candidate at Santa Clara University School.

Return to Table of Contents

Sports Lawyer Elevated to Assistant A.D. for Resource and Contract Management at Purdue

Purdue Athletics has appointed Tanner Ball as the athletic department's new assistant athletics director for resource and contract management.

Ball, who was elevated to the position from his prior role as director of strategic initiatives, will aid the Boilermakers in successfully implementing measures associated to the House Settlement case, including planning and tracking the distribution of revenue share payments to student-athletes. Ball will be responsible for the department's contract management protocols, maintaining a competitive edge in the adherence to emerging rules and regulations, as well as ongoing compliance to NCAA parameters and University policies.

"Tanner Ball's experiences at Purdue, as well as his career accomplishments and educational background, make him uniquely qualified to help us excel in this new frontier within college athletics," said Deputy Athletics Director and Chief Operating Officer Ken Halpin. "Tanner has bolstered our athletics department's revenue-generating endeavors during his time on campus, and his expertise will be of tremendous benefit to us as we forge ahead in the revenue sharing era."

As Purdue's director of strategic initiatives from 2022-25, Ball oversaw key revenue generating relationships on behalf of the Boilermakers, including the management of the Birck Boilermaker Golf Complex, the Schwartz Tennis Center, and the department's partnership with the Purdue Team Store. Ball was also essential to the growth of Purdue's efforts in the name, image and likeness space, as he aided in numerous merchandising opportunities that directly benefited Purdue student-athletes.

"I am thrilled to have this opportunity to guide Purdue through a period of substantial change in the structure of intercollegiate athletics," said Ball. "In the name, image and likeness era, we were able to set an immediate standard of success for our athletics department, sports programs and student-athletes, and I know I speak for everyone at Purdue in that we look forward to seeing that continue as we implement these new revenue sharing processes and procedures."

Prior to his arrival in West Lafayette, Ball served as assistant athletics director for administration at East Tennessee State from 2018-21. During his grad school days at ETSU, Ball specifically worked in the department's development office.

A graduate of the University of Tennessee with a Bachelor's degree in sport management in 2013, Ball went on to earn his MBA from East Tennessee State University in 2016 and followed that with his JD from the Cecil C. Humphreys School of Law at the University of Memphis in 2018.Stetson University (DeLand, Fla.), and the University of West Georgia (Carrollton, Ga.).

Return to Table of Contents

SRLA Recognizes Its Own with Special Awards at Annual Conference

The Sports and Recreation Law Association (SRLA) held its 38th Annual Conference at Myrtle Beach, South Carolina, welcoming nearly 100 attendees at the beautiful resort town.

As is traditionally the case, SRLA recognized members (both faculty and students) for their achievements. Among them:

The Bernard "Patrick" Maloy Student Research Award was given to Michael DiLiello from University of North Carolina, Chapel Hill, for his paper entitled, "School's Out: How State Public Education Union Bans Could Impact College Athletics." The award, which is sponsored by Hackney Publications, is given annually to the graduate student who submits the best research paper to the Honors and Awards Committee. Award winners are encouraged to work towards future publication in SRLA's *Journal of Legal Aspects of Sport*. This award is named after Bernard Patrick Maloy, an associate professor of sport law, management, and communication at the University of Michigan.

Meanwhile, the SRLA Graduate Case Study Cup Winner, which was presented by SRLA Student Representative Scott White, was given to a team of undergraduate teams from Coastal Carolina University comprised of Christopher Espinosa, Joshua Tennant and Kate Labate, along with advisor Kelly Elliott.

The Undergraduate Research Competition winner was Jackson Farias from the University of Nebraska at Kearney.

SRLA then recognized the following Mary Myers Scholarship Recipients: Dylan Andrade, Elisa Carli, Hongyoung Kim, Scott White, Jackson Farias, Gabe Ruiz, and Carley Damme

The Kristi Schoepfer Service Learning Award, which recognizes a collaborative educational team or individual who conducts a service-learning project that is inspired by the character, courage, and commitment of Schoepfer, was the subject of the next presentation. This award offers a SRLA member the opportunity to engage in a service-learning project that advances the mission of the organization, while engaging students in a community-oriented project related to the legal aspects of sport, recreation, and/ or physical activity. The 2025 winner was Dr. Brian Menaker, for his work on Enhancing Safety and Risk Management Preparation for a Community Running Series.

The next presentation involved the Lori K. Miller Young Professional Award, which recognizes a young professional who demonstrates commitment to the study and instruction of the legal aspects of sport and recreation. This award is named for one of our most respected members and scholars, Miller, who always supported deserving young scholars in our organization. This year's recipient was Dr. Natalie Bird, who "has consistently demonstrated an unwavering commitment to the advancement of understanding sport and recreation law through her teaching and research endeavors, and continued service to SRLA. As an assistant professor at Pittsburg State University, Dr. Bird excels in teaching and inspiring sport law and risk management students. Her passion for this work extends from her time as an assistant professor at Emporia State University, and her 12+ years of experience across the golf industry.

In sport law research, she has made considerable contributions that are enhancing the sport and recreation law body of knowledge. Dr. Bird finds time to explore her scholarly efforts despite her considerable teaching responsibilities. These efforts stem from her dissertation research on buffer zones and negligence cases in recreational golf, which she has shared as her research developed at SRLA conferences and in published scholarship outlets like the *Journal of Legal Aspects of Sport* and the *Journal of Applied Sport Management.*

Dr. Bird also leverages her golf playing and coaching experiences and her legal expertise to provide independent strategic consulting services in multiple outlets across the sport and recreation sector. Her work informs sport organizations like parks and recreation organizations, golf course and cart firms, and municipalities on best practice planning, strategic management, facility safety, and policy development.

Next up was the Herb Appenzeller Honor Award, which is presented to an individual who has given outstanding service to the Association. "Herb was one of our most respected and most esteemed founding members of SRLA, and we honor his career and contributions through the conferring of this award."

This year's recipient was Dr. Colleen McGlone, who has been a member of SRLA since 2004. Since that time, "Colleen has played pivotal roles in advancing the mission and goals of SRLA through her extensive involvement. She has sought out and accepted countless opportunities to serve our great association, including:

- • Serving as President (2012-2013), where she provided vital leadership during an important period for the Association and its conference.
- • Acting as Finance Officer (2006-2008), ensuring financial stability.
- • Co-chairing the Teaching Resources Committee (2007-2011), where she contributed to the development of educational resources and pedagogical tools for members.
- • Contributing as a Marketing Committee Member (2006-2009), aiding in the association's sponsorship efforts.
- • Participating in the Conference Planning Committee (2005-2008), shaping impactful events that foster collaboration and pedagogy.
- • Providing her expertise as an Abstract Reviewer (2006-Present), upholding the high academic and professional standards of the Association."

Dr. McGlone currently serves as the founding Dean of the Conway Medical Center College of Health and Human Performance at Coastal Carolina. "The nature

of her service has shifted to coincide with her changing role. She remains active in SRLA, including as an active member of the Past-President's Group, helping to enshrine the Association's institutional knowledge. This year, Dr. McGlone was able to utilize the resources of her office to formalize a partnership between Coastal Carolina and SRLA to host the conference and ensure that members enjoy the experience of SRLA and Myrtle Beach to the fullest."

The Betty van der Smissen Leadership Award was presented next. Betty van der Smissen was once described in this manner: "When you were presenting at a conference, you would hope that Betty would choose to attend your session, but then when she did, you were terrified. Betty remains one of the most distinguished scholars to ever study sport and recreation negligence. The Betty van der Smissen Leadership Award is presented to an individual who is recognized for leadership and vision in the study of legal aspects of sport and physical activity, and if there is one person we could point to that furthered the development of our field, it was Betty."

Recognized this year with the award was Dr. Natasha Brison, SRLA's outgoing president.

Dr. Brison is an Associate Professor in the Department of Sport and Entertainment Management at the University of South Carolina. In 2009, she co-founded Athletic Marketing & Management, a sports marketing firm based in Atlanta, GA, whose clients included NFL and NBA players, as well as U.S. Olympians. Her practical experience was the impetus for her research interests in athlete brand management and the legal aspects of sport marketing. Dr. Brison has written over 50 research articles, along with eight book chapters, and has given over 100 presentations at national and international conferences. In acknowledgement of her dedication to academia, in 2017, Dr. Brison received the Sport and Recreation Law Association (SRLA) Lori K. Miller Young Professional award and the Texas A&M University Center for Teaching Excellence Montague Scholar award. In 2020, the Texas A&M University Department of Health and Kinesiology as the Sport Management Teacher of the Year selected her, and in 2022, she was inducted into the 2022 SRLA Research Fellow class. Dr. Brison is the current President of the Sport and Recreation Law Association (SRLA) but also has served on the Board as President-Elect and the Marketing Member-at-Large. In addition to her service to SRLA, Dr. Brison is the Editor-in-Chief for the Journal of Legal Aspects of Sport, the organization's flagship journal.

As the outgoing President, Dr. Brison had the honor of presenting two President's Awards, one to fellow professor Amanda Siegrist, and another to Holt Hackney, the founder of Hackney Publications.

The JLAS Best Paper was presented next, recognizing Natalie Bird and Merry Moiseichik for their work on "Buffer Zones Through the Lens of Golf: A Negligence Case Content Analysis."

Dr. Jeffrey Levine and Siegrist were then recognized for their work on the Board, since they were rotating off. Furthermore, Kerri Cebula and Dr. Nita Unruh were acknowledged for their efforts in helping organize the conference.

Wrapping up the ceremony, Dr. Brison passed the gavel to incoming president, Dr. Justin Lovich.

The Honors and Awards Committee this year included Dr. Merry Moiseichik, Dr. Dylan Williams, Dr. Nick Smith, Dr. Andy Pittman, Dr. Edgar Jackson, Dr. YooJung Rhee, Dr. Neal Ternes, Dr. Eric Kramer, Dr. Brian Menaker, Dr. Heather VanMullem, and Matthew Kastel.

The judges for the graduate case study cup and undergraduate competitions included Dr. Scott Unruh, Dr. Yan Gioseffi, Dr. Dylan Williams, and Dr. Jim Evans.

Return to Table of Contents

Attorney Connor Glass Shares Insights with Sports Law Expert Podcast

Hackney Publications (HP) announced today that Connor Glass, a sports lawyer at Church Church Hittle + Antrim, has been interviewed on the Sports Law Expert Podcast. The segment can be heard here.

Glass is an Associate Attorney at CCHA, focusing on NCAA compliance and infractions, Title IX gender equity reviews, and navigating the evolving NIL landscape in college athletics.

He works closely with institutions to ensure compliance with regulatory frameworks while advocating for fair and equitable practices in sports law.

Glass earned his Juris Doctor from the Indiana University McKinney School of Law, where he served as a fellow in the prestigious Dean's Tutorial Society. Prior to law school, he had a successful career in sports and entertainment in Los Angeles, including a role with Ice Cube's professional basketball league, the BIG3. Glass holds a Bachelor of Arts in Journalism from Indiana University.

"Connor has emerged as a go-to attorney in the NIL space, capable of delivering expert legal work to athletes, universities and collectives," said Holt Hackney, the CEO of Hackney Publications. "As a younger attorney, we're excited about following his career and seeing where it takes him in the future."

Through the years, Glass has written multiple articles for the Journal of NCAA Compliance and Sports Litigation Alert. Earlier this year, he wrote about the House settlement, an article that can be viewed here.

Return to Table of Contents

Header Restriction Policy in Youth Soccer Shows Promising Impact on Concussion Rates

A new study presented at the 2025 Annual Meeting of the American Academy of Orthopaedic Surgeons (AAOS) examined the impact of a policy implemented by the United States Soccer Federation (USSF) to address youth players heading the soccer ball. Researchers found that the policy was associated with a decrease in soccer-related concussions; however, female players experienced a higher proportion of concussions than their male counterparts.

Soccer is one of the most popular youth sports in the United States and worldwide, and it's estimated that 3.9 million children play organized soccer in the U.S. each year.[I],[ii]< The incidence of concussions in youth soccer is estimated to be 0.19 to 0.28 per 1,000 athletic-exposures[iii] or 0.5 concussions per 1,000 playing hours.[iv] Soccer-related concussion injury mechanisms include accidental contact with another player or field equipment, such as a goal post or the field, and intentional contact between the head and the ball in a technique called a header. Because of growing concerns regarding repeated head trauma, in 2016, the USSF banned headers for athletes under the age of 10 and limited athletes aged 11 to 13 to practicing headers for 30 minutes per week.

We wanted to assess the impact of this policy on our patients," said Eugenia Lin, MD, resident at Mayo Clinic Arizona. "While policies are important, we don't always have the data to determine the effectiveness. This study aimed to analyze the long-term implications of the policy across different age groups, especially in light of growing concerns about traumatic brain injury and chronic traumatic encephalopathy, a progressive brain disease linked to repeated head injuries, in contact sports like football."

"Pediatric Concussion Injuries in Soccer: Emergency Department Trends in the United States from 2012 to 2023" is an epidemiological analysis utilizing data from the National Electronic Injury Surveillance System (NEISS) to analyze trends in soccer-related injuries relative to other injuries from soccer. The research team identified a 25.6% relative risk reduction in soccer-related concussions as a percentage of all soccer-related injuries presenting to the emergency department between 2020 to 2023 compared to 2012 to 2015.

Further breakdown of the data revealed distinct concussion trends pre- and post-policy implementation periods and concussion trends from 2012 to 2023 based on age and gender, providing insight into the policy's differential impact across demographic subgroups. Highlights include:

Concussions according to time frame

- Prior to the policy being enacted, there was an 8% proportion of concussions from 2012 to 2015.

- From 2020 to 2023, the proportion of concussions in relation to other injuries decreased to 6%, noting a relative risk reduction between time periods.

Concussions according to age

Soccer-related injuries and concussions were stratified by three age cohorts from 2012 to 2023 and data demonstrated an increase in soccer-related injuries and concussions as players got older.

- There were 8,793 total soccer-related injuries and 431 concussions (4.9%) in players 6- to 9-years-old.
- A total of 23,275 soccer-related injuries were reported in players 10- to 13-years-old, of which 1,527 were concussions (6.6%).
- A total of 26,907 soccer-related injuries were reported in players 14- to 17-years-old, of which 2,397 were concussions (8.9%).

Concussions according to gender

- Female players experienced fewer overall soccer-related injuries than male players, but a greater proportion of their injuries were concussions.
- Female players presented to the emergency department for 21,040 soccer-related injuries between 2012 and 2023, of which 2,010 were concussions (9.6%).
- Male players were seen for 37,935 soccer-related injuries, of which 2,345 were concussions (6.2%).
- The proportion of concussion diagnoses for both male and female players was lowest in 2023, at 4.3% and 7.8%, respectively. The highest annual proportion of concussion diagnoses was 8.4% for male players and 10.5% for female players, both in 2012.

"Although not all concussions result from headers, a measurable percentage still do, and it is encouraging to observe a trend indicating a decline in concussion rates," said Anikar Chhabra, MD, MS, FAAOS, senior author, associate professor and director of Sports Medicine at Mayo Clinic Arizona. "While we cannot attribute this reduction solely to policy changes, these data suggest that these regulations may positively impact different age groups and time periods. Now that physicians, athletic trainers, coaches and parents understand the long-term implications of concussions, it is crucial to continue refining and reinforcing evidence-based policies that prioritize player safety and injury prevention."

Return to Table of Contents

Sports Lawyer Appointed Title IX Coordinator for Southwestern University

Loren Galloway Bowans has joined Southwestern University in Georgetown, Texas as its new Title IX Coordinator.

Bowans was previously at the University of Texas (UT) at Austin, where she was a member of the University Risk and Compliance Services team and manager of UT's Clery Act compliance program. She also worked closely with UT Austin's Title IX office to ensure compliance with the Clery Act and provide interpretations of the application of relevant law and regulations.

Bowans previously served as a compliance officer for Texas Athletics, where she was responsible for monitoring compliance with recruiting and time management rules. Before joining UT Austin in 2019, she worked at the National Collegiate Athletic Association (NCAA) headquarters in Indianapolis as a participant in the NCAA Postgraduate Internship Program.

Bowans earned her bachelor's degree in government from UT Austin and holds both a master's degree and a Juris Doctorate from the University of Iowa.

Her legal and graduate education focused primarily on Title IX and higher education compliance. As a Research Assistant at the University of Iowa College of Law, she designed a law course on Title IX for the University's Associate Dean for International & Comparative Law programs. Loren is a past contributor to the Journal of NCAA Compliance, Legal Issues in College Sports, and Sports Litigation Alert publications.

Return to Table of Contents

News Briefs

Seattle Seahawks Announce Update to Front Office Leadership Team

The Seattle Seahawks have announced that Marissa John has been promoted to Vice President, General Counsel. John joined the Seahawks in 2022, previously serving as Director of Legal Affairs. In her role as Vice President, General Counsel, she will serve as "a trusted advisor to senior leadership; providing legal counsel across a wide range of business matters; and overseeing litigation and organizational compliance with NFL rules and regulations for both the Seattle Seahawks and Lumen Field." Prior to joining the Seahawks, John was Associate Corporate Counsel at Amazon and practiced at several national firms, advising clients in the sports and real estate sectors. She holds a B.S. in Psychology from the University of Central Florida, J.D. from Emory University School of Law, and an LL.M. in Sports Law from the University of Miami School of Law.

Sports Law Professor to Present CLE on 'Hot Topics in Sports Law'

Hackney Publications Senior Writer Gary Chester will present a 6-hour "Hot Topics in Sports Law" seminar on Friday, May 9, at 9 a.m. at the Minnesota CLE Conference Center in Minneapolis. Topics will include tort law, Title IX, IP law in sports, governance of high school sports, and NIL and the future of college sports. Gary teaches The Law of Sports at Montclair State University in New Jersey and is on the faculty of the Professional Education Group. For more information: https://minncle.org.

Conference USA Announces Hire of Chief Legal Officer

Conference USA has announced the hire of Grant Newton as Senior Associate Commissioner/Chief Legal Officer. In his role, Newton will oversee all legal functions, including managing legal risks, litigation, regulatory, corporate, and legal NCAA matters, as well as outside counsel management. Prior to joining Conference USA, Newton practiced law at Vinson & Elkins LLP in Dallas, where his practice areas included commercial litigation and white-collar investigations, along with a particular focus on matters related to name, image and likeness in collegiate sports. He earned a Doctor of Jurisprudence from Vanderbilt University Law School and a bachelor's in business administration at Oklahoma State University, where he graduated summa cum laude.