

# THE ROONEY RULE AND THE LACK OF MINORITY COACHES IN THE NATIONAL FOOTBALL LEAGUE

## I. INTRODUCTION

The Rooney Rule was intended to increase minority representation in the National Football League (“NFL”) head coaching ranks. Yet, there are currently only four minority head coaches in the NFL: Pittsburgh Steelers: Mike Tomlin; Los Angeles Chargers: Anthony Lynn; Miami Dolphins: Brian Flores; and Washington Redskins Ron Rivera.<sup>1</sup> This past season five head coaches were fired. Four Caucasian head coaches were hired, while Rivera, who was one of the five coaches fired, landed another head coaching job with the Redskins. Rivera, who is of Puerto Rican and Mexican descent, is the only minority head coach on a new team.<sup>2</sup>

The Rooney Rule, which is named after former Pittsburgh Steelers owner Dan Rooney, came about in 2003 after two civil rights attorney, Johnnie Cochran and Cyrus Mehri, circulated a document titled, “Black Coaches in the National Football League: Superior Performance, Inferior Opportunities.” The two attorneys gave the NFL an ultimatum: hire more black coaches or face a major lawsuit.<sup>3</sup> The NFL, recognizing the issue at hand, then implemented the Rooney Rule, which requires NFL teams to interview at least one minority candidate for open head coaching positions.

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<sup>1</sup> Prince J. Grimes, *Rooney Rule to be examined after Redskins’ Ron Rivera the only minority head coach hired*, NBC Sports (Jan. 14, 2020), <https://www.nbcsports.com/washington/redskins/rooney-rule-be-examined-after-redskins-ron-rivera-only-minority-head-coach-hired>.

<sup>2</sup> *Id.*

<sup>3</sup> Carl Horowitz, *The ‘Rooney Rule’: Pro Football’s Affirmative Action Deception*, National Legal and Policy Center (July 19, 2009), <https://nlpc.org/2009/07/17/rooney-rule-pro-footballs-affirmative-action-deception/>.

In 2009, the Rooney Rule was expanded so that teams would have to interview at least one minority general manager candidate and equivalent front office positions.<sup>4</sup> Yet, there are currently only two minority general managers: the Cleveland Browns' Andrew Berry and the Miami Dolphins' Chris Grier.<sup>5</sup> In 2018, the NFL expanded the Rooney Rule and required teams to go outside their own organization to interview a minority candidate who is part of the NFL's Career Development Advisory Panel list.<sup>6</sup>

There have been fluctuations in the amount of minority coaches in the NFL since the Rooney Rule was implemented, peaking at eight coaches in 2011 and again in 2017 and 2018.<sup>7</sup> Two seasons after the league peaked with eight minority coaches, and the Rooney Rule was praised, the number is now four and the Rooney Rule is again facing criticism.<sup>8</sup>

NFL commissioner Roger Goodell has recognized there is a problem with the lack of minority coaches and high-level executives and stated, "It's clear we need to change and do something different."<sup>9</sup>

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<sup>4</sup> National Football League, NFL expands Rooney Rule requirements to strengthen diversity, NFL (Dec. 12, 2018), <http://www.nfl.com/news/story/0ap3000000999110/article/nfl-expands-rooney-rule-requirements-to-strengthen-diversity>.

<sup>5</sup> Jason Reid, *NFL diversity takes a 'positive step' after Browns hire Andrew Berry as general manager*, The Undeclared (Jan. 28, 2020), <https://theundefeated.com/features/nfl-diversity-takes-a-positive-step-after-browns-hire-andrew-berry-as-general-manager/>.

<sup>6</sup> National Football League, *supra* note 4.

<sup>7</sup> Scott Brooks et al., *A 10-Year Snapshot of NFL Coaching Hires* (Global Sport Institute at Arizona State University, Working Paper Volume 1 Issue 1 2019), [https://gserl.org/wp-content/uploads/2020/01/Diversity-and-Inclusion-in-Hiring-Football-Coaches\\_1.6.2020.12pm.pdf](https://gserl.org/wp-content/uploads/2020/01/Diversity-and-Inclusion-in-Hiring-Football-Coaches_1.6.2020.12pm.pdf).

<sup>8</sup> Neil Paine, *The Rooney Rule Isn't Working Anymore*, FiveThirtyEight (Jan. 14, 2020), <https://fivethirtyeight.com/features/the-rooney-rule-isnt-working-anymore/>

<sup>9</sup> Nick Shook, *Roger Goodell: We need to evaluate the Rooney Rule*, NFL (Jan. 29, 2020), <http://www.nfl.com/news/story/0ap3000001099710/article/roger-goodell-we-need-to-evaluate-the-rooney-rule>.

This paper explores the legal implications of the Rooney Rule, the NFL's diversity problem, and discusses solutions the League should implement.

## II. LEGAL IMPLICATIONS

### A. The Rooney Rule As A Form Of Affirmative Action

The Rooney Rule is a basic form of affirmative action. Affirmative action was first introduced in the 1961, seven years after the Supreme Court in *Brown v. Board of Education* held "separate but equal" violated the Constitution.<sup>10</sup> The *Brown* Court held, separate educational facilities are inherently unequal.<sup>11</sup> With the integration of African Americans into public schools as well as other previously segregated sectors, affirmative action policies were implemented to address long histories of discrimination faced by minorities.<sup>12</sup> Title VII of the Civil Rights Act of 1964 was enacted to prohibit workplace discrimination based on race, color, religion, sex, or national origin.<sup>13</sup> Over the years, the Supreme Court has reviewed many decisions addressing affirmative action. For example, in *Regents of the University of California v. Bakke*, the Court held a quota system, in which the University of California Davis' medical school admissions policy reserved sixteen out of one hundred seats for minorities, to be unconstitutional.<sup>14</sup> Yet, in a similar reverse discrimination case in *Grutter v. Bollinger*, the Court upheld the constitutionality of the University of Michigan law school's admission policy in which race was used as a factor in admission decisions.<sup>15</sup> Affirmative action policies were never meant to be permanent rather

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<sup>10</sup> *Brown v. Board of Education*, 347 U.S. 483, 495 (1954).

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

<sup>12</sup> Philip C. Aka, *Affirmative Action and the Black Experience in America*, American Bar Association (Oct. 1, 2009), [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/human\\_rights\\_vol36\\_2009/fall2009/affirmative\\_action\\_and\\_the\\_black\\_experience\\_in\\_america/](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/human_rights_vol36_2009/fall2009/affirmative_action_and_the_black_experience_in_america/).

<sup>13</sup> Civil Rights Act, 42 USCS § 2000e (1964).

<sup>14</sup> *Regents of the University of California v. Bakke*, 438 U.S. 265, 375 (1978).

<sup>15</sup> *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

the policies were meant to promote social equality through the preferential treatment of socioeconomically disadvantaged people.<sup>16</sup>

The Rooney Rule, which has no end date, has not yet led to positive change. In the *Grutter* opinion (the same year the Rooney Rule was implemented), Justice O'Connor stated, "[t]he Court expects 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today."<sup>17</sup> O'Connor's prediction from 2003 is far from correct, because data suggests we are still a long way from having proportional minority representation on large public college campuses.<sup>18</sup> African American students are underrepresented by at least twenty percent at seventy-nine percent of the country's research universities.<sup>19</sup> Looking at the NFL's hiring data, fair minority representation in the coaching ranks is still far away from where it should be. From 2003-2020, there have been 111 different head coaches in the NFL and only 21 of those coaches, 18.9%, were minorities.<sup>20</sup>

## **B. Rooney Rule and Reverse Discrimination**

While Title VII was aimed specifically at ending severe workplace discrimination against African Americans, it also protects Caucasians from unfair racial discrimination.<sup>21</sup> Although it has not happened, a Caucasian coach who is denied a head coaching position could try to challenge the Rooney Rule by bringing a reverse discrimination suit. Would this ever happen?

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<sup>16</sup> Hayley Munguia, *Here's What Happens When You Ban Affirmative Action In College Admissions*, FiveThirtyEight (Dec. 9, 2015 6:00 AM), <https://fivethirtyeight.com/features/heres-what-happens-when-you-ban-affirmative-action-in-college-admissions/>.

<sup>17</sup> 539 U.S. at 343.

<sup>18</sup> Munguia, *supra* note 16.

<sup>19</sup> *Id.*

<sup>20</sup> Luke Knox, *NFL Hires In The Rooney Rule Era*, The Undefeated (2019), <https://theundefeated.com/features/nfl-hires-in-the-rooney-rule-era/>.

<sup>21</sup> Brian W. Collins, Note, *Tackling Unconscious Bias In Hiring Practices: The Plight Of The Rooney Rule*, 82 N.Y.U. L. Rev. 870, 891 (2007), [https://prfc-gr.org/wp-content/uploads/NYULawReview-82-3-Collins.pdf-Research\\_18\\_Bias-in-Sports-Hiring.pdf](https://prfc-gr.org/wp-content/uploads/NYULawReview-82-3-Collins.pdf-Research_18_Bias-in-Sports-Hiring.pdf).

Probably not, because a Caucasian coach would not want to face the backlash for bringing this type of high-profile claim. But would a Caucasian coach prevail on a reverse discrimination claim? Possibly. A New York Law Review note analyzing a hypothetical scenario in which a Caucasian coach files a reverse discrimination claim found the candidate has a slim chance of proving the Rooney Rule is invalid.<sup>22</sup>

In *United Steelworks v. Weber* and *Johnson v. Transportation Agency*, the Court developed a test to analyze affirmative action plans challenged under Title VII.<sup>23</sup> *Weber* and *Johnson* analyzed two different workplace plans designed to fix racial imbalances in the workforce.<sup>24</sup> To demonstrate the Rooney Rule as invalid, the Caucasian candidate would need to disprove one of three criteria derived from *Weber* and *Johnson*: (1) the plan is designed to eliminate manifest racial imbalance in traditionally segregated job categories; (2) it does not unnecessarily trammel the interests of Caucasian candidates; and (3) it is a temporary measure.<sup>25</sup>

The first prong would be difficult to disprove as the Rooney Rule was specifically designed to eliminate a manifest and statistical racial imbalance.<sup>26</sup> The second prong would be difficult to disprove because the Rooney Rule does not unnecessarily trammel the interests of Caucasian candidates as the rule does not establish a quota to replace Caucasian candidates with minorities nor bar Caucasians from advancing up the coaching ladder.<sup>27</sup> The third prong could be disputed because the Rooney Rule does not have an end date. If a court were to find the Rooney Rule is not temporary, then a Caucasian candidate would prevail on a reverse discrimination

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<sup>22</sup> *Id.* at 900.

<sup>23</sup> *Id.* at 891.

<sup>24</sup> *Id.* at 892.

<sup>25</sup> *Id.* at 894.

<sup>26</sup> *Id.* at 896.

<sup>27</sup> *Id.* at 899.

claim.<sup>28</sup> However, courts in the past have found policies with no end date can still be considered temporary.<sup>29</sup> While a reverse discrimination suit is unlikely to happen, this analysis shows a potential hole in the Rooney Rule.

### III. THE NFL'S DIVERSITY PROBLEM

Players of color make up 70.1% of the NFL players, yet only 12.5% of head coaches are minorities.<sup>30</sup> From January 1963 to February 2019, only eighteen different African American men and four Latino men have served as head coaches in the NFL.<sup>31</sup> In 2019, The Institute for Diversity and Ethics in Sport gave the NFL a “D+” racial hiring grade for head coaches.<sup>32</sup> There are two main issues to look at when analyzing why the NFL has a diversity problem: (1) the system in which coaches move up the ranks, and (2) an unconscious bias that has plagued hiring efforts and led to the Rooney Rule in the first place.

The most common path to becoming an NFL head coach is to be promoted from offensive or defensive coordinator. A study conducted by the Global Sport Education and Research Lab at Arizona State University, found since 2009, nearly 40% of head coaches hired left offensive coordinator positions.<sup>33</sup> Of the thirty-two current head coaches, fifteen previously served as offensive coordinators and ten were previously defensive coordinators.<sup>34</sup> While the

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<sup>28</sup> *Id.* at 899.

<sup>29</sup> *Id.* at 900.

<sup>30</sup> Dr. Richard Lapchick, *The 2019 Racial and Gender Report Card: National Football League*, The Institute For Diversity And Ethics In Sport (Oct. 30, 2019), [https://43530132-36e9-4f52-811a-182c7a91933b.filesusr.com/ugd/3844fb\\_1478b405e58e42608f1ed2223437d398.pdf](https://43530132-36e9-4f52-811a-182c7a91933b.filesusr.com/ugd/3844fb_1478b405e58e42608f1ed2223437d398.pdf).

<sup>31</sup> C.K. Harrison and Scott Bukstein, *Occupational Mobility Patterns in the National Football League*, NFL, Vol. VIII (May 2019), <https://operations.nfl.com/media/3789/2019-nfl-diversity-inclusion-report.pdf>.

<sup>32</sup> Lapchick, *supra* note 30, at 10.

<sup>33</sup> Brooks et al., *supra* note 7, at 7.

<sup>34</sup> Perry Bacon Jr. and Neil Paine, *A 5-Part Plan To Fix The NFL's Coaching Diversity Problem*, FiveThirtyEight (Jan. 29, 2020), <https://fivethirtyeight.com/features/a-5-part-plan-to-fix-the-nfls-coaching-diversity-problem/>.

most common path to becoming a head coach is to be an offensive coordinator, over the past decade, 91% of offensive coordinator hires were Caucasian.<sup>35</sup> Over the past three years, the Tampa Bay Buccaneers' Bryon Leftwich and Kansas City Chiefs' Eric Bieniemy were the lone nonwhite offensive coordinator hires.<sup>36</sup>

The second most likely path to becoming an NFL head coach is to be promoted from defensive coordinator. Fifteen of the fifty head coaches hired since the start of 2012 season were previously a defensive coordinator.<sup>37</sup> Coaches of color have had more opportunities as defensive coordinators than offensive coordinators. From 2009-2019, there was approximately eight minority defensive coordinators per season, which is 25% of the league.<sup>38</sup> Looking at the same time frame, a minority defensive coordinator was hired every season and minorities have been hired for 40% or more of the opportunities in five out of the ten seasons.<sup>39</sup>

When reviewing the NFL's head coaching hiring system, there is a troublesome "reshuffling effect."<sup>40</sup> Many head coaches and key position coaches continue to get reshuffled thereby preventing new talent from entering the candidate pipeline. For example, seven out of the sixteen recently hired offensive coordinators have previously served as an NFL offensive coordinator; in addition, seven out of the ten recently hired defensive coordinators previously served as an NFL defensive coordinator.<sup>41</sup> Over the past ten seasons, fired Caucasian head

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<sup>35</sup> Brooks et al., *supra* note 7, at 8.

<sup>36</sup> Martenzie Johnson, New study: Minority coaches still fare worse during NFL hiring process, *The Undeclared* (Dec. 30, 2019), <https://theundefeated.com/features/new-study-minority-coaches-still-fare-worse-during-nfl-hiring-process/>.

<sup>37</sup> Harrison and Bukstein, *supra* note 31, at 27.

<sup>38</sup> Brooks et al., *supra* note 7, at 18.

<sup>39</sup> *Id.* at 19.

<sup>40</sup> Harrison and Bukstein, *supra* note 31, at 8.

<sup>41</sup> *Id.*

coaches are twice as likely to land another head coaching job as compared to fired minority head coaches (14.3% vs. 7.1%).<sup>42</sup>

Another hiring trend is to transition from a college head coach to NFL head coach. In Division 1 college football only 13 out of 128 head coaches are African American.<sup>43</sup> The NCAA's minority head coaching percentage is even worse than the NFL, 10.2% vs. 12.5%. The NCAA does not have its own type of Rooney Rule and legally could not enforce such a rule because it is a membership organization that cannot influence individual campus hiring practices.<sup>44</sup> However, individual states and universities can implement their own "Rooney Rule" for public universities to follow. For example, in 2009, the state of Oregon passed House Bill 3118, which requires state schools to interview at least one qualified minority candidate for all head coach and athletic director openings.<sup>45</sup> The University of Oregon's last two football coaches were an African American, Willie Taggart, and a Cuban American, Mario Cristobal.<sup>46</sup>

The NFL's diverse hiring issues flows all the way down a system in which the pipelines in both the NFL and college football are underrepresented by minorities. A depleted pipeline coupled with an unconscious bias in which Caucasian NFL owners tend to hire similar looking individuals has adversely impacted the occupational mobility for minority coaches. The NFL's latest Diversity and Inclusion report highlights a study which stated, "[an] unconscious bias

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<sup>42</sup> Brooks et al., *supra* note 7, at 24.

<sup>43</sup> Paul Newberry, *Column: Shame on college football for lack of black coaches*, Chicago Tribune (Feb. 9, 2020), <https://www.chicagotribune.com/sports/college/ct-college-football-black-coaches-20200210-jqsv6qbjpfdyxnxnvmcattnfmi-story.html>.

<sup>44</sup> NCAA, *Behind The Blue Desk* (2012), <http://www.ncaa.org/sites/default/files/NCAA+Minority+Head+Football+Coaches.pdf>.

<sup>45</sup> Adam Rittenberg, *Oregon law on hiring minority college coaches works, so why isn't it used elsewhere?*, The Undeclared (Jan. 9, 2020), <https://theundefeated.com/features/oregon-law-on-hiring-minority-college-coaches-works-so-why-isnt-it-used-elsewhere/>.

<sup>46</sup> *Id.*

influences head coaching selections through the internalization of stereotypes regarding African Americans' intellectual inferiority and the establishment and maintenance of 'old boy' networks."<sup>47</sup> Another study found how the NFL's coaching mobility is one "[i]n which social connection, rather than just skills and abilities, enable people to move into positions such as head coach."<sup>48</sup> In order to overcome this unconscious bias, more stringent hiring policies need to be in place to afford minorities more navigable opportunities.

With an average of six head coaching openings a year, there are plenty of opportunities for minorities to be hired.<sup>49</sup> With ample hiring opportunities, the NFL needs to fix the hiring system in order to properly achieve the Rooney Rule's original purpose.

#### **IV. SOLUTIONS TO THE ROONEY RULE**

With the NFL recognizing there needs to be change, there are many ways to fix the diversity issue without making the Rooney Rule unconstitutional. First, the NFL can expand the Rooney Rule to include offensive and defensive coordinators. Currently over 78% of head coaches were previously an offensive or defensive coordinator.<sup>50</sup> Yet only 10 out of the 64 coordinator positions are minorities, making it unlikely for a minority to be hired as a head coach.<sup>51</sup> By expanding the Rooney Rule to include coordinators, the pipeline will be filled with more minority candidates with the relevant experience to obtain a head coaching job.

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<sup>47</sup> Harrison and Bukstein, *supra* note 31, at 10

<sup>48</sup> Harrison and Bukstein, *supra* note 31, at 11.

<sup>49</sup> Jim Trotter, *Aspiring coaches, GMs frustrated with NFL's diversity issue*, NFL (Aug. 1, 2019), <http://www.nfl.com/news/story/0ap3000001038346/article/aspiring-coaches-gms-frustrated-with-nfls-diversity-issue>.

<sup>50</sup> Bacon Jr. and Paine, *supra* note 34.

<sup>51</sup> Joseph Santoliquito, *NFL again struggling to hire minority coaches, coordinators – and the Eagles aren't helping*, Philly Voice (Feb. 10, 2020), <https://www.phillyvoice.com/eagles-lack-minority-coaching-hires-rooney-rule-nfl-demographics-troy-vincent-roger-goodell-duce-staley-press-taylor/>.

Secondly, the NFL must clearly state that high-level coaching job interviews are done in-person. In the past, to fulfill the Rooney Rule requirement, teams have conducted “sham” interviews although the team has no intention of hiring the candidate. For example, in 2003 when the Dallas Cowboys were pursuing Bill Parcells, a Caucasian, Cowboys’ owner Jerry Jones complied with the Rooney Rule by interviewing African American candidate Dennis Green over the phone for a half hour.<sup>52</sup> In 2004, the Miami Dolphins delayed hiring Caucasian head coach Nick Saban, when the team realized it still had to interview a minority candidate to comply with the Rooney Rule.<sup>53</sup> By making teams interview all coaching candidates in-person, teams will take each candidate more seriously, and each candidate will have a better chance to sell themselves.

Lastly, the NFL should expand the Rooney Rule from a minimum of one minority candidate to two candidates. A Harvard Business Review study analyzing the relationship between finalist pools and actual hiring decisions, found when a majority of the finalists were Caucasian, participants tended to recommend hiring a Caucasian candidate, whereas when a majority of the finalists were African American, participants tended to recommend hiring an African American candidate.<sup>54</sup> From 2013-2017, when only one African American coach was interviewed for a NFL head coach opening, only once out of twenty-two openings was an African American hired.<sup>55</sup> During the same time frame, when two or more African American

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<sup>52</sup> Collins, *supra* note 21, at 902.

<sup>53</sup> *Id.*

<sup>54</sup> Stephanie K. Johnson et al., *If There’s Only One Woman in Your Candidate Pool, There’s Statistically No Chance She’ll Be Hired*, Harvard Business Review (Apr. 26, 2016), <https://hbr.org/2016/04/if-theres-only-one-woman-in-your-candidate-pool-theres-statistically-no-chance-shell-be-hired>.

<sup>55</sup> Stephanie K. Johnson, *What Amazon’s Board Was Getting Wrong About Diversity and Hiring*, Harvard Business Review (May 14, 2018), <https://hbr.org/2018/05/what-amazons-board-is-getting-wrong-about-diversity-and-hiring>.

coaches were interviewed, an African American was hired four out of twelve opportunities.<sup>56</sup>

Increasing the Rooney Rule from one to two minority candidates will statistically give coaches of color a greater chance of being hired.

## V. CONCLUSION

The National Football League has one of the most diverse groups of players in professional sports. Yet, an unconscious bias in which predominantly Caucasian owners tend to hire people that look like themselves and institutionalized racism that dates back centuries have created barriers and not enough opportunities for minorities to move up in the coaching ranks. The Rooney Rule, which was implemented with good intention has not lived up to expectations. Seventeen years after it was introduced, the Rooney Rule needs to be revamped to better serve its original purpose of increasing African American head coaches in the NFL and furthering relationships between league ownership and African American coaching candidates. By expanding the Rooney Rule to include coordinator positions, requiring in-person interviews, and increasing the minimum minority candidates interviewed from one to two, minority candidates will be able to grow in the coaching ranks.

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<sup>56</sup> *Id.*