

## **ROONEY’S RECKONING: HOW THE NFL IS VIOLATING TITLE VII AND WHAT THEY SHOULD DO TO FIX IT**

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The U.S. Supreme Court’s impactful decisions in the 2020s, notably *SFFA v. Harvard*, have reshaped policies affecting college admissions and workforce diversity. The ruling against affirmative action prompts critical reflections on future diversity initiatives, especially considering the intersection with employment law, notably Title VII. Attorney generals’ assertions following the Harvard ruling signal potential shifts in hiring practices beyond academia, posing implications for organizations like the NFL and its Rooney Rule.

Examining the efficacy and legality of the Rooney Rule reveals shortcomings in promoting genuine diversity, leading to proposed revisions aligned with Title VII mandates. These include expanding grassroots programming to cultivate diverse talent pools and emphasizing candidates’ diverse backgrounds over race or gender quotas. Furthermore, advocating for career transition programs and collegiate courses could broaden the NFL’s recruitment base and foster inclusivity.

Such adjustments not only ensure compliance with Title VII but also advance the NFL’s commitment to diversity, equity, and inclusion (DEI). By promoting diverse perspectives and dismantling nepotistic hiring practices, the league stands to benefit from a more dynamic workforce while setting precedents for inclusivity in sports. Implementation requires robust leadership endorsement, collaboration with external stakeholders, and meaningful incentives to drive participation.

By embracing inclusive policies and proactive diversity initiatives, the NFL can rectify past shortcomings, uphold legal

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standards, and foster a more equitable and representative workforce.

## INTRODUCTION

After several years of quiet decisions and a low-key existence, the U.S. Supreme Court resolved it was going to be the main character of the 2020s.<sup>2</sup> It decided cases that rocked the very core of decades of policy that changed so many lives, including the striking down of affirmative action and the declaration that race-based admissions were unconstitutional in *SFFA v. Harvard*.<sup>3</sup> As the country continues to grapple with such a decision, we must determine the extent of what this means for not just the future of college admissions, but the future of the workforce. Race-based quotas will surely be a policy of the past, but does that mean we are done with the diversity push?

## PART I – BACKGROUND

“The words of the Civil Rights Act of 1964 are not like mood rings; they do not change their message from one moment to the next.” – Justice Neil Gorsuch

*SFFA v. Harvard and 13 Attorney General’s Hot Take.*

Students for Fair Admissions alleged that Harvard, UNC, and various other institutions that used “race as a factor” policies in their admissions violated Title VI of the Civil Rights Act of 1964.<sup>4</sup> The Court eventually determined that their admissions programs violated the Equal Protection Clause of the Fourteenth Amendment.<sup>5</sup>

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<sup>2</sup> URBAN DICTIONARY, <https://www.urbandictionary.com/define.php?term=Main%20Character%20Energy>, (last visited May 2, 2024).

<sup>3</sup> *Students for Fair Admissions, Inc. v. President and Fellows of Harv. Coll.*, 600 U.S. 181 (2023).

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

<sup>5</sup> Letter from Kris W. Kobach, et al, Kan. Att’y Gen. to Fortune 100 CEOs, (July 23, 2023), <https://www.tn.gov/content/dam/tn/attorneygeneral/documents/pr/2023/pr23-27-letter.pdf>.

Title VI provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U. S. C. §2000d. “We have explained that discrimination that violates the Equal Protection Clause of the Fourteenth Amendment committed by an institution that accepts federal funds also constitutes a violation of Title VI.” *Gratz v. Bollinger*, 539 U. S. 244, 276, n. 23 (2003). 600 U.S. at 198 n. 2.

Following the *Harvard* decision, attorney generals for thirteen states authored a letter addressed to Fortune 100 CEOs, urging they cease their race-based hiring processes and “comply with... race-neutral principles in [their] employment and contracting practices” while also threatening legal action should these CEOs not comply.<sup>6</sup> The attorney generals attacked diversity, equity, and inclusion programs that focused on hiring practices that had “explicit racial quotas and preferences in hiring, recruiting, retention, promotion, and advancement” as well as “race-based contracting practices.”<sup>7</sup>

In this letter, the attorney generals outline that the ruling in *Harvard* could and should be applied to employment because, while college admissions are legislatively regulated by Title VI of the Civil Rights Act of 1964, “[c]ourts routinely interpret Title VI and Title VII in conjunction with each other, adopting the same principles and interpretation for both statutes.”<sup>8</sup> It is interpreted that because race-based quotas are no longer allowed under the 14<sup>th</sup>

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“[W]hile the original purpose of the Fourteenth Amendment’s Equal Protection Clause was to ensure that laws apply equally to everyone, regardless of race, both the Supreme Court and the nation failed to uphold this principle, most notably in *Plessy v. Ferguson*, which sanctioned “separate but equal” facilities. However, the landmark case *Brown v. Board of Education* overturned this, and the equal protection principle has since expanded to various areas of life. Any exceptions to equal protection must satisfy “strict scrutiny”; that is, the government must show that the racial classification serves a compelling interest and is narrowly tailored to achieve that interest.... Harvard’s (and UNC’s, in the consolidated case) race-based admissions systems fail to meet the strict scrutiny, non-stereotyping, and termination criteria established by *Grutter* and *Bakke*. Specifically, the universities could not demonstrate their compelling interests in a measurable way, failed to avoid racial stereotypes, and did not offer a logical endpoint for when race-based admissions would cease. As a result, the programs violate the Equal Protection Clause of the Fourteenth Amendment. However, the Court noted that nothing prohibits universities from considering an applicant’s discussion of how race affected the applicant’s life, so long as that discussion is concretely tied to a quality of character or unique ability that the particular applicant can contribute to the university.” *Students for Fair Admissions, Inc. v. President and Fellows of Harv. Coll.*, OYEZ, <https://www.oyez.org/cases/2022/20-1199> (last visited May 2, 2024).

<sup>6</sup> Letter from Kris W. Kobach, et al.

<sup>7</sup> *Id.*

<sup>8</sup> See, e.g., *SFFA slip op.* at 4 (J. Gorsuch concurring), *Maisha v. Univ. of N. Carolina*, 641 F. App’x 246, 250 (4th Cir. 2016) (applying “familiar” Title VII standards to “claims of discrimination under Title VI”); *Rashdan v. Geissberger*, 764 F.3d 1179, 1182 (9th Cir. 2014) (“We now join the other circuits in concluding that [the Title VII standard] also applies to Title VI disparate treatment claims.”).

amendment and Title VI, they are now not allowed under Title VI. Title VII states that it:

“shall be an unlawful employment practice for an employer - (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.”<sup>9</sup>

The AGs state that because of the ruling and established relationships between Title VI and Title VII, employees, or potential employees, cannot be hired, interviewed, or contracted with, just because of their race; other factors must apply, and all hiring policies must become race-neutral. Should companies not comply with this interpretation, the AGs expressed they intend to take action.<sup>10</sup>

If the attorneys general proceed with their threat of litigation, numerous companies, including organizations like the NFL, would need to change their DEI policies. In the NFL, there are several DEI initiatives, but the most prolific is the Rooney Rule. The NFL actively implements the Rooney Rule as part of its efforts to foster a deep and sustainable talent pool at all levels of the organization.<sup>11</sup> This policy actively promotes diverse leadership within NFL clubs, ensuring that promising candidates actively have the opportunity to demonstrate their skills and qualifications for excellence.<sup>12</sup> The Rooney Rule is applied to a limited set of positions at clubs including head coach, general manager, and executive positions,

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<sup>9</sup> 42 U.S.C. § 2000e-2.

<sup>10</sup> Letter from Kris W. Kobach, et al., *supra* note 5, (“We urge you to immediately cease any unlawful race-based quotas or preferences your company has adopted for its employment and contracting practices. If you choose not to do so, know that you will be held accountable—sooner rather than later—for your decision to continue treating people differently because of the color of their skin.”).

<sup>11</sup> *The Rooney Rule*, THE NFL, <https://operations.nfl.com/inside-football-ops/inclusion/the-rooney-rule/> (last visited May 2, 2024).

<sup>12</sup> *Id.*

and is supposed to be designed to enrich the game and create “a more effective, quality organization from top to bottom”.<sup>13</sup>

### *The Rooney Rule*

The Rooney Rule was instituted to promote more diverse hiring practices from the top down, providing opportunities for minorities and women to be more actively involved and hold power. While it was initially a good idea to encourage teams and the league to look more at individuals who are not cis-white males and may have contributed to some hiring changes, it has very little enforcement power and is now violating Title VII.

The process of mandating a race and/or gender quota for interviews, while superficially appealing, fails to address the reality that clubs and the league are not mandated to hire individuals of color or women, and there are no true ramifications for lower diversity scores. There are no requirements regarding the seriousness of interviews, and no incentive to hire non-white male individuals beyond simply interviewing one. Additionally, the requirement to hire based on either race or gender and calling it “diverse” overlooks other diverse factors, such as individuals with disabilities or those of non-Christian religions.

Since the inception of the Rooney Rule in 2003, the hiring of head coaches of color has grown but remained inconsistent. The number of head coaches of color has only fluctuated between four and eight across all thirty-two teams, with a twenty-year average sitting around 5.85 head coaches of color each year.<sup>14</sup> This average accounts for 18.28% of all head coaches in a league where around 75% of all players are individuals of color.<sup>15</sup> Coordinator and assistant coach positions, on the whole, have had a greater

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<sup>13</sup> *Id.* Additional changes in recent years include:

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

<sup>14</sup> Tom Schad, et al, *NFL coaches diversity report 2023: Pittsburgh Steelers' staff still leads league*, USA TODAY, (Nov. 2, 2023, 11:02 AM) <https://www.usatoday.com/story/graphics/2023/11/02/nfl-coaches-diversity-report-statistics-2023/71383386007/>.

<sup>15</sup> *Id.*

percentage of diverse individuals, although teams varied significantly.<sup>16</sup> Teams with non-white head coaches tended to be more diverse, while those with white head coaches and few non-white coordinators were on the least diverse side of the spectrum.<sup>17</sup> This discrepancy is even more pronounced for women in coaching, with only ten women holding coaching roles out of a total of 752 in 2024, primarily in strength and conditioning positions, which are not on-the-field roles.<sup>18</sup>

### *Rooney and Title VII*

With regard to the Rooney Rule, Title VII would govern whether the interview quotas are considered an unlawful employment practice for an employer who limits, segregates, or classifies applicants in a way that deprives or tends to deprive any individual of employment opportunities or otherwise adversely affects their status as an employee because of race or sex.<sup>19</sup>

As stated, the Rooney Rule's goal is to require a quota of racially or gender-diverse candidates for selected upper management roles. Essentially, "candidates for employment" can be likened to "applicants to a university or college" due to the intersection of Title VI and Title VII. Therefore, with racial quotas prohibited in university admissions, the rule now pertains to organizations employing racial or gender quotas when considering candidates for employment.

I believe that under the interpretation set forth by the attorneys general, that the recent *Harvard* ruling should apply to Title VII, the NFL's race-based quota for interviews violates the

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Tom Withers, *NFL's look changing as more women move into prominent roles at teams across league*, AP NEWS (Nov. 21, 2023, 12:30 PM), <https://apnews.com/article/nfl-women-female-executives-catherine-raiche-sam-rapoport-1a2647bf20489ca80b27f677166e8a1e>; Chris Bumbaca, *There is no clear path for women who want to be NFL coaches. Can new pipelines change that?*, USA TODAY, (Oct. 26, 2023, 5:08 PM), <https://www.usatoday.com/story/sports/nfl/2023/10/26/new-pipelines-clear-way-for-women-nfl-coaches/70925035007/>. See generally *2023 NFL Diversity and Inclusion Report*, THE NFL (Mar. 2023), <https://operations.nfl.com/media/5qwhe0ba/2023-nfl-diversity-inclusion-mobility-report-march-2023.pdf>.

<sup>19</sup> UNLAWFUL EMPLOYMENT PRACTICES SEC. 2000e-2. [Section 703].

Civil Rights Act of 1964 and constitutes a discriminatory employment practice.

## PART II – SOLVING THE NFL'S TITLE VII PROBLEM

### *Some solutions require broken rules.*

Despite the above assertion that the Rooney Rule violates federal employment law, I do not believe that abolishing all diversity, equity, and inclusion programs would be beneficial. Instead, the NFL should expand its programming and revise its language to ensure the effectiveness and legality of its diversity efforts. My proposal to prevent the NFL's diversity programs from being declared unconstitutional due to the emphasis on race and gender quotas is to (1) expand the NFL's grassroots programming to educate and involve diverse groups and (2) remove the requirement of having one person that is a minority or female from the hiring criteria and adopt a policy similar to that of colleges, which seek individuals with diverse backgrounds.

#### (1) Expanding Grassroots Programming.

The Rooney Rule is one of several leaguewide efforts to promote diversity and inclusion on and off the field.<sup>20</sup> The NFL offers eight fellowships, programs, and symposiums aimed at a diverse crowd; however, these opportunities are limited.<sup>21</sup> Several of these programs have restrictions on participation, such as being open only to former NFL players and NCAA coaches.<sup>22</sup> This

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<sup>20</sup> Other NFL diversity initiatives include the Nunn-Wooten Scouting Fellowship, Bill Walsh Diversity Coaching Fellowship, The NFL and HBCUs, Coaching and Playing Opportunities, NFL-NCAA Coaches Academy, NFL Career Development Symposium, NFL Women's Forum, The Coach and Front Office Accelerator Program. See NFL Player Engagement & Development Programs, THE NFL, <https://operations.nfl.com/inside-football-ops/inclusion/the-rooney-rule/> (last visited Mar. 15, 2025).

<sup>21</sup> *The Rooney Rule*, THE NFL, <https://operations.nfl.com/inside-football-ops/inclusion/the-rooney-rule/> (last visited May 2, 2024).

<sup>22</sup> Nunn-Wooten Scouting Fellowship, THE NFL, <https://operations.nfl.com/inside-football-ops/players-legends/nfl-player-engagement/support-for-players-on-and-off-the-field/nunn-wooten-scouting-fellowship/> (last visited Mar. 15, 2025). Bill Walsh Diversity Coaching Fellowship, THE NFL, <https://operations.nfl.com/inside-football-ops/players-legends/nfl-player-engagement/support-for-players-on-and-off-the-field/bill-walsh-diversity-coaching-fellowship/> (last visited Mar. 15, 2025).



restricts participation and prevents a wider pool of candidates from being considered.

The NFL Women's Forum hosted an invite-only symposium aimed at educating and connecting women currently working in college football roles.<sup>23</sup> Attendees had the opportunity to interact with owners, general managers, head coaches, and club executives from both the NFL and college football programs.<sup>24</sup> Additionally, they could expand their professional network and gain industry insights. The forum spanned two days and featured panel discussions, presentations, and breakout sessions.<sup>25</sup> Participants also received an exclusive look into various aspects of football, including coaching, strength and conditioning, player personnel, team operations, football administration, research, strategy, as well as video and equipment.<sup>26</sup> The 2024 Forum had only 41 invited women attend, even though there are 858 college football teams in the United States. This is an incredibly small number of women who work in sports or aspire to work in football or other professional sports. If the NFL expands its female-driven programming, it could reach hundreds more and build a stronger hiring base.

### *Second Chances, Second Careers.*

To cast a wider net, the NFL should offer several programs without the restrictions imposed by current offerings. One such program should be a second-chance, second-career initiative.

The AARP reports that 78% of workers will switch careers at least once in their lifetime.<sup>27</sup> People change careers to pursue passions, seek advancement, or navigate unexpected health or family issues.<sup>28</sup> Before or after making these changes, individuals often require training and education to facilitate the transition. By introducing external programs, such as certificate programs, the NFL could prepare a broader pool of candidates and provide them

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<sup>23</sup> *NFL Women's Forum*, THE NFL, <https://operations.nfl.com/inside-football-ops/inclusion/nfl-womens-forum/> (last visited May 2, 2024).

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

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

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

<sup>27</sup> Ramsey Alwin et al., *Career Changes Are Becoming More Common With Increased Longevity*, AARP, (Apr. 24, 2020), <https://www.aarp.org/pri/topics/work-finances-retirement/employers-workforce/adults-career-journeys.html>.

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

with an advantage in transitioning from their current industry to the league or a team. Certificate programs could be “Accounting for the NFL”, “Human Resources for Professional Sports”, or even “Legal Challenges for Teams and the League.”

In sports, making a career change can be challenging because employers typically seek experience specific to their industry. If the NFL incorporated more detailed questions in job applications about why people are switching careers or industries and treated those applicants equally to those staying within the system, it would result in a more diverse pool of candidates with varied backgrounds. Hiring individuals with similar experiences can lead to stagnation and hinder systemic change. Conversely, bringing in individuals with diverse backgrounds could catalyze improvements and enhance team efficiency.

In addition to enhancing the application process, the NFL ought to establish a dedicated job fair tailored to second-career seekers, similar to the format of the Loyola Patent Fair. This event would provide a platform for prospective candidates, especially those considering industry transitions, to interact directly with NFL teams and league representatives. Mirroring the structure of the Loyola Patent Fair, the NFL could organize speed-dating style interviews during this event, offering participants the opportunity to qualify for subsequent full second-round interviews, just like candidates recruited outside the job fair.

Careers represent lifelong pursuits wherein individuals can continually develop professionally and climb the ranks within a company or industry. By offering opportunities for second careers, the NFL can cultivate a more diverse group of thinkers and employees, thereby propelling itself to new heights.

#### *Introduction and Sponsorship of Select Collegiate Courses.*

Another option the NFL should explore is creating and sponsoring classes to be offered at universities and colleges nationwide. This initiative would entail the NFL developing curricula and allocating funding for schools to offer these classes to their student bodies. By doing so, the NFL could reach a wider and more diverse range of candidates beyond the usual demographics of student-athletes, former players, or children of current employees.

The first course the NFL should introduce is a “Coaching in the NFL” course, mirroring existing university offerings that cover the fundamentals of coaching high school football.<sup>29</sup> These classes typically delve into theories, techniques, and strategies relevant to high school coaching. Students learn to create playbooks, conduct practices, understand statewide regulations, and grasp the nuances of coaching in the NFL. Adapting this curriculum for an NFL coaching course is a good starting point because the rules and requirements for NFL coaches differ significantly from those at the high school level. Offering such a course would provide undergraduate or graduate students with firsthand exposure to these differences within a classroom setting. It presents an excellent opportunity for individuals aspiring to extend their involvement in football beyond playing or watching as a fan, even if coaching isn’t their primary focus.<sup>30</sup>

The second course the NFL should sponsor is a course titled “Legal Issues in the NFL.” This course could be offered in law schools or as a pre-law class, depending on the institution and the depth of the curriculum. Ideally, the NFL would develop it as a law school course tailored for students interested in pursuing careers within the NFL and seeking a deeper understanding of its legal complexities.

The course would cover a range of topics including case law related to NFL player rights, labor disputes, intellectual property rights, agent relationships, employment within the NFL, and health and safety regulations. Also, it would provide insight into the organizational structure of NFL teams and the roles of key league leaders.

Ideally, the course would include a semester-long project where students either write a paper on a relevant NFL topic or participate in a simulated trade deal representing a team. The trade deal project would involve drafting term sheets, preparing contracts, and conducting any necessary due diligence, such as health screenings or draft pick negotiations.

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<sup>29</sup> *University Catalog 2024-2025*, NC STATE UNIVERSITY, (last visited May 2, 2024), <https://catalog.ncsu.edu/undergraduate/university-college/health-exercise-studies/coaching-education-minor/#planrequirements-text>.

<sup>30</sup> re: scouting, player development, operations

Finally, I believe an “NFL Survey” course would greatly benefit the league by catering to a broader range of students within a school. This course would encompass various aspects of running a team, providing an overview of the league, accounting procedures, the mechanics of the draft, the basics of trades, on-field and off-field rules and regulations, and the dynamic between a team and the league.

The intended audience for this course would be students with a basic understanding of the NFL and football who are interested in expanding their knowledge. While they may not necessarily pursue careers within the NFL or its teams, they could potentially work in recreational roles, become amateur coaches, be parents of players, or simply become more informed fans.

The NFL should primarily focus on Historically Black Colleges and Universities (HBCUs), and community colleges when offering these classes. By concentrating on these institutions, the NFL can reach a broader underserved audience, including individuals from lower socioeconomic backgrounds who may not have access to the resources available at larger colleges.

The NFL presently runs a program aimed at HBCU coaches, staff, and students, which aligns well with their existing relationships.<sup>31</sup> This initiative, known as the HBCU Forum, spans a single weekend and offers workshops and speakers who engage undergraduate and graduate students, providing them with opportunities to listen, learn, and network with NFL personnel and celebrities.<sup>32</sup> The proposal I’ve suggested would complement the Forum by offering semester-long courses, providing student participants with a more extensive and sustained opportunity for growth and development.

### *Mentorship*

Fewer than 2% of NCAA athletes become a professional athlete in their sport; the other 98%+ go pro in something else.<sup>33</sup>

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<sup>31</sup> *Strengthening HBCUs*, THE NFL, (last visited May 2, 2024), <https://operations.nfl.com/inside-football-ops/inclusion/the-nfl-and-hbcus/strengthening-hbcus/>.

<sup>32</sup> *Id.*

<sup>33</sup> *NCAA Recruiting Facts*, NCAA, (August 2104), <https://www.nfhs.org/media/886012/recruiting-fact-sheet-web.pdf>.

A third option the NFL should create is an NCAA-wide mentor program for student-athletes. The NCAA allows athletic departments to hire and maintain mentors and tutors for all student-athletes who want or need one. The NFL should sponsor a program that mirrors the academic side that has current and former NFL employees, players, or coaches who either volunteer or work at universities to counsel them on working in professional sports after college. This program would ideally teach student-athletes about professionalism, professional sports culture, skills needed to work for clubs, and the transition from student-athlete to professional adult. It would also reach a substantially larger diversity base as roughly 44% of student-athletes are women and roughly 35.76% are people of color; both percentages are higher than those of the current hiring rate in the NFL.<sup>34</sup>

A lot of professional and college sports programs prefer to hire former college athletes because they understand the rigor, training, and mindset it takes to be an upper-level athlete. But it does not always translate into the office. This mentorship program can help prepare the student-athlete for beyond the playing field.

These programs would all create a wider hiring pool for the league and clubs to hire out of without strict racial or gender quotas to follow. By creating a job-ready base, clubs already have a more diverse range of candidates and would be more likely to hire candidates who bring specialized training to the table.

A big part of working in sports is who you know and who you become connected to. In addition to having specialized training, potential candidates would have had an opportunity to interact with the potential hiring managers for “Rooney” roles at clubs. As potential hiring managers get more face-to-face time with participants, chances increase for one of these participants to become a new hire.

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<sup>34</sup> Christina Gough, *Number of student-athletes in the United States in 2022, by gender*, STATISTA, (Mar. 23, 2023), <https://www.statista.com/statistics/1098761/student-athletes-by-gender/>. Christina Gough, *Male college athletes in the United States in 2022, by ethnicity*, STATISTA, (Mar. 27, 2023), <https://www.statista.com/statistics/1098761/student-athletes-by-gender/>. Christina Gough, *Female college athletes in the United States in 2022, by ethnicity*, STATISTA, (Mar. 27, 2023), <https://www.statista.com/statistics/1098761/student-athletes-by-gender/>.

These programs will increase the NFL's recruitment pool outside of token minorities or women who are continuously brought in for Rooney interviews with no real intention of hiring them. They will also help increase the qualifications of individuals who are non-cis white males to prepare them to compete for valuable club spots.

## (2) Diverse Backgrounds Bring Diverse Perspectives.

In the recent *Harvard* ruling, Chief Justice John Roberts outlined that while race-based quotas for universities were invidious, "nothing in this opinion should be construed as prohibiting universities from considering an applicant's discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise."<sup>35</sup> This ruling still leaves the door open to universities to consider diverse applicants who describe how their race has affected their path to college and through life, also leaving the door open for employers to consider applicants with diverse backgrounds.

The NFL should put a greater emphasis on cover letters and working with individuals who have stories that display how their race or gender has affected their path to working in professional sports. One of the ways they can do this is through blind hiring for non-coaching positions. During the initial application phase, the NFL and teams should ask probing questions about lived experiences that replace the typical demographics section that comes toward the end. Of course, the usual questions about resumes and qualifications should remain, but under this new rule, race and gender should not be factors in hiring a non-coach candidate.

Additionally, the NFL should deemphasize the relationships between current employees and candidates. Candidates should be hired on the merits of their past work, diverse perspectives, and qualifications, not merely because they are related to someone associated with the league. Of the 717 coaches in 2022, 93 coaches had either a father, son, or brother who is a current or former NFL

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<sup>35</sup> Mark Walsh, *Biden Administration Outlines How Colleges Can Pursue Racial Diversity After Court Ruling*, EDUCATION WEEK, (Aug. 14, 2023), <https://edweek.org/policy-politics/biden-administration-outlines-how-colleges-can-pursue-racial-diversity-after-court-ruling/2023/08>.

coach.<sup>36</sup> Of those 93, 76 were white males.<sup>37</sup> That is 76 individuals who have the same or similar lived experiences as those already established in the NFL. While some may be extraordinarily qualified, some are hired simply because they are relatives, as many “nepo” hires are. The latter of these hires prevent qualified but underrepresented individuals from being hired into roles where they would thrive and bring great benefits to the league or team.

I believe these approaches will not only strengthen the NFL’s commitment to DEI but also protect it from being subject to the scrutiny of constitutional limits.

### PART III – DIVERSITY BENEFITS AND IMPLEMENTING THE POLICIES

“We will all profit from a more diverse, inclusive society, understanding, accommodating, even celebrating our differences, while pulling together for the common good.” – Justice Ruth Bader Ginsburg

#### *Why these changes to the NFL’s diversity policies are legal under Title VII.*

The proposed changes would benefit the NFL not only by expanding its diverse hiring pool but also by aligning its diversity policies with Title VII. None of the proposed changes include racial or sex quotas, which are now prohibited following *SFFA v. Harvard*. In fact, asking candidates about how their race or gender has influenced their lives aligns with guidance provided by the Biden-Harris administration after the decline of affirmative action.<sup>38</sup> This also conforms to the mandate by Justice John Roberts, as

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<sup>36</sup> Chris Bumbaca & Mike Freeman, *Cronyism. Bad hires. Blind spots. NFL’s nepotism has lasting impact on minority coaches*, USA TODAY, (Nov. 22, 2022, 12:23 PM), <https://www.usatoday.com/story/sports/nfl/2022/11/22/nfl-nepotism-impacts-minority-coaches-hiring-decisions/10673515002/>.

<sup>37</sup> *Id.*

<sup>38</sup> QUESTIONS AND ANSWERS REGARDING THE SUPREME COURT’S DECISION IN STUDENTS FOR FAIR ADMISSIONS, INC. V. HARVARD COLLEGE AND UNIVERSITY OF NORTH CAROLINA, DEPARTMENT OF JUSTICE AND DEPARTMENT OF EDUCATION, (Aug. 14, 2023), [https://www2.ed.gov/about/offices/list/ocr/docs/ocr-questionsandanswers-tvi-20230814.pdf?utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term=](https://www2.ed.gov/about/offices/list/ocr/docs/ocr-questionsandanswers-tvi-20230814.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=).

mentioned earlier, which still permits candidates to discuss their race.

Furthermore, the NFL's reduction of racial and gender quotas, coupled with efforts to enhance the qualified applicant base through programming, does not violate Title VII's provisions against failing to hire or refusing to hire. This also avoids contravening the section that prohibits companies from restricting, segregating, or categorizing employees or applicants in any manner that could deny or potentially deny individuals employment opportunities or negatively affect their employment status based on race, color, religion, sex, or national origin.

Some may argue that the proposed rule changes are still invidious on their face because of how they target some diverse communities, but it must be emphasized that there still is no quota which was the heart of the *Harvard* ruling. Instead, employers are still within their rights to provide strategic, nonemployment opportunities to communities throughout the country. Additionally, these opportunities are not even strictly held to specific racial or gender-diverse individuals, but are open to all applicants, participating university students, and interested parties, regardless of gender, race, sex, religion, etc.

*Why these changes would promote diversity in coaching and administration.*

As it stands, the Rooney rule is ineffective because there is no standard or regulation for the interviews that occur. The NFL has metrics that show some teams have strengthened their diverse staff while others still sit at a very low diversity score. In addition, a team does not have to follow the Rooney Rule if they are making an internal promotion and there is no open call for interviews. While there are incentives for implementing the Rooney Rule, it does not

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punish a team for not effectively interviewing a diversity hire.<sup>39</sup> With the lack of teeth on this rule, what is the point some may ask?

With the changes I have proposed, the NFL could do away with the arbitrary racial and gender quotas and could implement processes and programs that could potentially bring about a greater impact on the diverse greater good.

*Diversity, equity, and inclusion benefits companies and organizations in general.*

The introduction of equal employment laws and affirmative action in the 1960s marked the start of workplace diversity training.<sup>40</sup> Despite initial tensions, traditional diversity, equity, and inclusion programs emerged in the 1980s and 90s, addressing not only race but also gender and sexual orientation inclusion.<sup>41</sup> Since then, these programs have led to increased opportunities for underrepresented populations.

Recently, however, DEI has become a more prevalent “three-letter word,” with a growing contingent becoming discontent with these policies. DEI training has become dreaded mandatory training days where employees sit through long workshops and fill out various personality and bias questionnaires.<sup>42</sup> Now with the attorney general’s claim that many diversity policies violate Title VII, DEI has been under fire.

While some are screaming for the policies to change, it needs to be remembered that DEI policies were not enacted to take jobs

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<sup>39</sup> If a team developed minority talent that went on to become general managers or head coaches with another NFL team, that team receives a third-round compensatory pick for two years. If a team lost both a coach and personnel member, it would receive a third-round compensatory pick for three years. Joseph Salvador, *Explaining the NFL’s Rooney Rule Requirements*, SI.COM, (Jan. 19, 2023), <https://www.si.com/nfl/2023/01/19/nfl-rooney-rule-requirements-hiring-coach-gm-executives>.

<sup>40</sup> Hellen Golden, *History of DEI: The Evolution of Diversity Training Programs*, NOTRE DAME DE NAMUR UNIVERSITY, (Jan. 1, 2024), <https://www.ndnu.edu/history-of-dei-the-evolution-of-diversity-training-programs/> (last visited May 2, 2024).

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

<sup>42</sup> Ashutosh Kumar, *The History and Growth of Diversity, Equity, and Inclusion (DEI): How far do we away to achieve the goal*, LINKEDIN, (Jan. 20, 2023), <https://www.linkedin.com/pulse/history-growth-diversity-equity-inclusion-dei-how-far-ashutosh-kumar>.

from white people; they were implemented to create opportunities and uplift the disenfranchised.

Furthermore, a diverse workforce creates a more thoughtful and educated organization. It has been noted that companies with gender-diverse executive teams in the top quartile were 25 percent more likely to achieve above-average profitability compared to those in the fourth quartile.<sup>43</sup> Also, companies that had a higher diversity score were more amenable to change; more amenable companies saw better financial performance; stronger culture and leadership; and more engaged and inspired employees.<sup>44</sup>

*Diverse programs have already given underrepresented people opportunities.*

As the NFL embraces more diverse hiring opportunities, it contributes to a broader cultural shift towards gender equality and equity in sports. This shift can help break down stereotypes and barriers that may have previously discouraged women from working or participating in sports.

A diverse NFL creates opportunities for women, especially now with the growing interest in women's flag football. The more women are involved in the operations of the NFL, the more resources and support will be directed towards newly popular women's flag football initiatives or the long-standing women's tackle leagues. This could include funding for leagues, facilities, coaching programs, and outreach efforts aimed at increasing female participation.

It sets a precedent for inclusivity in the wider football community. This increased visibility can inspire more women and girls to participate in flag or tackle football, knowing that there are opportunities for them in the sport. In turn, this builds a larger hiring base for the NFL-specific roles that call for playing or coaching experience.

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<sup>43</sup> Sundiatu Dixon-Fyle, et al, *Diversity wins: How inclusion matters*, MCKINSEY & COMPANY, (May 19, 2020), <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/diversity-wins-how-inclusion-matters>.

<sup>44</sup> David Michaels, *How Investing in DEI Helps Companies Become More Adaptable*, HARVARD BUSINESS REVIEW, (May 5, 2023), <https://hbr.org/2023/05/how-investing-in-dei-helps-companies-become-more-adaptable>.

One example of a current coach who not only benefited from one of the diversity programs in place but also was a former female football player is Jennifer King.<sup>45</sup> Jennifer was last an offensive assistant with the running backs at the Chicago Bears in the 2024 season and will be the first African American female assistant position coach in NFL history.<sup>46</sup>

Before joining any NFL staff, Jennifer started her football career as a quarterback and wide receiver for the Carolina Phoenix from 2006 to 2017. She also held various positions on the D.C. Divas and New York Sharks.<sup>47</sup> Apart from her playing career, Jennifer worked as a women's basketball coach for Greensboro College and Johnson and Wales College.

In 2018, she attended the NFL Women's Forum where she met Ron Rivera, then the head coach for the Carolina Panthers. Thanks to this networking opportunity, Jennifer was invited to intern for the Panthers that season. This experience led to several more opportunities serving on collegiate and professional football teams as an intern or coach, including four full years with the Commanders.

Jennifer has contributed a tremendous amount not only to the NFL itself as an organization, but to all of the women who will come after her who want to coach in the NFL. I hope there will be many more women like her to come, and through all my suggested policy changes, there will be a greater opportunity for more.

*How to implement across the league and how to get grassroots buy-in.*

Effectively implementing these programs and policies across the league requires a significant amount of planning and coordination from the NFL, and it starts with getting the league's leadership to commit to implementing the opportunities. The league's leadership includes team owners, executives, and league

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<sup>45</sup> Other women who have benefitted from the current diversity initiatives include Kate Sowers (Bill Walsh Diversity Coaching Fellowship), Maral Javadifar (NFL Women's Forum), and Lori Locust (NFL Women's Forum).

<sup>46</sup> Coaches, CHICAGO BEARS, <https://www.chicagobears.com/team/coaches/jennifer-king> (last visited May 2, 2024).

<sup>47</sup> The Carolina Phoenix, D.C. Divas, and New York Shark are tackle, women's football teams' part of the Women's Football Alliance, a semi-pro full-contact football league.

officials. Their support and endorsement of diversity initiatives are crucial for establishing credibility and setting the tone for the entire organization.

After there is significant leadership buy-in, the league would need to charge their diversity committee or human resources department with developing the programs and implementing the policies while also creating measurable goals and metrics to track if the policies are supporting the necessary diversity efforts. The department or committee would also want to collaborate with external organizations, including grassroots community groups, minority advocacy organizations, and educational institutions, to leverage resources and expertise in implementing diversity programs. Building partnerships with local communities and schools will help foster grassroots support and engagement.

Enforcing the rules needs both positive and negative reinforcement. More productive types of positive reinforcement could mean recognizing and celebrating diversity achievements within the NFL, including highlighting success stories of minority coaches, players, and staff. This helps bolster the importance of diversity and inclusion and motivates continued efforts in this area. But these policies need to have teeth too. Alongside positive reinforcement and recognition, the NFL should also enact a policy where teams lose draft picks or receive other penalties should they not put a good-faith effort into participating in these programs.

By following these steps and actively engaging with stakeholders at all levels, the NFL can successfully implement diversity programs across the league and garner buy-in for these initiatives.

## CONCLUSION

In conclusion, the NFL must rectify its violation of Title VII via the Rooney Rule by abolishing the rule and adopting inclusive policies that do not mandate racial or gender quotas for interviews. Proposed actions include establishing grassroots programming across several different potential recruitment bodies and revising the demographic section of the application process to incorporate an essay component focusing on how a candidate's background influenced their journey.