

REASSESSING THE ECONOMIC AND SCHEMATIC ROLE OF RUNNING BACKS IN THE NATIONAL FOOTBALL LEAGUE: ABOLISHING THE FRANCHISE TAG AND ADVOCATING FOR A SEPARATE BARGAINING UNIT

Duncan Jones

INTRODUCTION

Jikola Nokic is an aspiring basketball player and future National Basketball Association (“NBA”) all-star.¹ Nokic attends Duke University and recently led the Blue Devils to a national title. The organization with the first pick of the draft plans to select him. Nokic has all the attributes to dominate in the NBA: vision, shot-making ability, spreads the floor, good in transition, excellent defensive presence, and a sharpshooter from three-point range. Nokic must attend college for three years before entering the NBA draft, making him twenty-one before entering the league, and must sign a four-year contract with a club option for a fifth and sixth year.² In addition, Nokic plays center, and conventional wisdom surrounding the league is that centers can only compete at their peak for up to five to seven years in the NBA.

Fast forward six years later. Nokic won an NBA title, lost a second, and played in the conference championship three times. He

¹ Jikola Nokic is a fictional player based on Nikola Jokic, a current NBA player for the Denver Nuggets. For information on Nikola Jokic, see *Nikola Jokic*, ESPN, https://www.espn.com/nba/player/_id/3112335/nikola-jokic (last visited Nov. 14, 2023).

² *National Football League Collective Bargaining Agreement* (Mar. 15, 2020). This illustration portrays the NFL running back contract problem through a prospective NBA player. The NFL rookie contract scale and NFL draft requirements are used rather than the NBA requisites.

is a five-time all-star and spokesperson for multiple companies within the United States and abroad. Yet he has only earned \$10 million throughout his career. He has stayed with the same organization the entirety of his tenure, signing a franchise tag for \$10 million in the current year. Nokic is an unrestricted free agent at the end of the season. He will struggle to secure a long-term deal.

Other players around the league, at positions other than center, have secured contracts of \$30 or \$40 million annually. Nokic cannot secure such a deal, regardless of his level of play. Two years later, Nokic retires with career earnings of \$20 million. Other players of his caliber secured upwards of \$100 million. Nokic feels shortchanged by the league's collective bargaining agreement.

Similar to Nokic's hypothetical situation in the NBA, National Football League ("NFL") running backs encounter unique challenges. The running back position is uniquely situated economically and schematically in the game of football.³ The position demands an exceptional skill set.⁴ Formerly, teams paid running backs to tote the ball twenty to thirty times per game; this is no longer the case.⁵ Running backs must have excellent vision to see the field and understand when, where, and how to cut, sit in the pocket and pass-block, catch dump-off passes or run complicated routes similar to a wide receiver, and withstand the physical turmoil of full-speed hits leveraged upon their body by opponents.⁶

The NFL constantly evolves with gameplans and schemes, types of talent, and compensation.⁷ In the past twenty years, the league gradually shifted from ground-and-pound running to a

³ Eric Williams, *How Christian McCaffrey, Bijan Robinson Are Changing Running Back Narrative*, FOX SPORTS (updated Oct. 6, 2023), <https://www.foxsports.com/stories/nfl/christian-mccaffrey-bijan-robinson-changing-running-back-narrative>.

⁴ *Id.*

⁵ Carron J. Phillips, *The Need for Workhorse NFL Running Backs Is Declining — It Isn't Personal, It's Evolution*, DEADSPIN (Aug. 21, 2023), <https://deadspin.com/nfl-running-back-evolution-1850757401>.

⁶ *Id.*

⁷ Sam Monson, *How Running Back Became the NFL's Most Worthless Position*, BLEACHER REP., (July 20, 2012), <https://bleacherreport.com/articles/1266016-how-running-back-became-the-nfls-most-worthless-position> ("Much like the March of Progress, football has evolved from a primitive grind on the ground to a fully upright and modern species with the ball in the hands of powerful grinders less and less by the year.").

central focus on speed, both in player quickness and ability to rapidly score points.⁸ In the 1990s, the league enacted rule changes to promote health and safety, providing more protections for quarterbacks.⁹ In addition, in the early 2000s NFL officials implemented an offensive-friendly approach to enforcing pass interference.¹⁰ No longer are players allowed to leverage their entire body at another's head or neck, so receivers cross the middle of the field more frequently.¹¹ Eliminating the chop block also reduced running lanes for running backs.¹²

These changes incrementally shifted play calling and the balance of pass- versus run-heavy offenses.¹³ Pro teams modeled their offenses after college football: shotgun formation, increase in pass plays, more receivers, and a spread offense.¹⁴ Running backs lost their status as the predominant offensive force.¹⁵

Teams specialized, utilizing multiple running backs for different types of plays.¹⁶ In addition, teams now employ mobile quarterbacks that can exit the pocket and rush for ten plus times a game, lowering the viability of frequent designed runs for running

⁸ *Id.* ("Running backs were once 230-lb bruisers who would take carry after endless carry into the line, churning their legs for yardage and running over defenders to move the chains. Winning in the NFL meant hard-nosed football involving three yards and a cloud of dust on more plays than not. Today, the game is more about finesse, speed and precision."); Ty Schalter, *How NFL Offenses Have Transformed over the Past Decade*, BLEACHER REP., (July 9, 2013), <https://bleacherreport.com/articles/1697407-how-nfl-offenses-have-transformed-over-the-past-decade>.

⁹ Dan Pompei, *The Value of NFL Running Backs Keeps Falling: How Did We Get Here?*, THE ATHLETIC (Oct. 19, 2023), <https://theathletic.com/4967902/2023/10/19/nfl-running-backs-value-contracts-jonathan-taylor/>. ("Passers can now hold the ball a tick longer and step into throws, knowing defenders will be penalized for launching as well as hitting above the neck or below the knees.").

¹⁰ Schalter, *supra* note 8 (This adjustment followed a brutally forceful secondary play by the New England Patriots against the Peyton Manning led Indianapolis Colts in a 2003 matchup).

¹¹ *Id.*

¹² *Id.* ("Over decades of NFL play, many yards were won with assistance from chop blocks. Making peel-back blocks illegal also resulted in fewer open spaces for running backs.").

¹³ *Id.* (In shotgun, quarterback lines up several yards behind the line of scrimmage, allowing for clear line-of-sight of the defense and space between himself and the defensive lineman. This allows more time for receivers to get downfield, and with more receivers running routes, more options for the quarterback to throw to).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

backs.¹⁷ In 2006, Michael Vick rushed for 1,000 yards in a single season, the first quarterback in NFL history to do so.¹⁸ This has occurred three more times in the past five years: twice by Lamar Jackson and once by Justin Fields.¹⁹

Organizations offer running backs less compensation to pay more money to other skill-position players.²⁰ Josh Jacobs and Saquon Barkley illustrate this shift.²¹ Jacobs and Barkley were the previous starting running backs for the Las Vegas Raiders and New York Giants, respectively.²² They are two of the most successful and valuable players at the position.²³ Drafted in 2019 (Jacobs) and 2018 (Barkley), both players signed four-year rookie contracts (Jacobs: \$11.9 million; Barkley: \$31.1 million).²⁴ As the end of the 2022 NFL season approached, both players advocated for long-term contracts akin to deals signed by other running backs such as Derrick Henry (4 yrs. / \$50,000,000), Christian McCaffrey (4 yrs. / \$64,063,500), and Nick Chubb (3 yrs. / \$36,600,000).²⁵ Neither received one. Both players previous organizations utilized a

¹⁷ Phillips, *supra* note 5 (“Black — and white — quarterbacks are becoming more mobile in and out of the pocket, as offensive coordinators have finally realized that dual-threat pass throwers give you more options. And since quarterbacks are running more, that means running backs are getting fewer carries — especially in a pass-happy era.”).

¹⁸ *Id.*

¹⁹ *Id.* (“In the last five seasons, quarterbacks had 14.5 percent of all runs, compared with 9.6 percent from 2006 to 2010.”).

²⁰ *Id.*

²¹ Tyler Sullivan, *NFL Running Back Controversy Explainer: Why Jonathan Taylor, Josh Jacobs, Others Take Issue with Pay Structure*, CBS SPORTS (Aug. 24, 2023), <https://www.cbssports.com/nfl/news/nfl-running-back-controversy-explainer-why-jonathan-taylor-josh-jacobs-others-take-issue-with-pay-structure/>.

²² *Id.*

²³ From 2019-2022, Jacobs rushed 1,072 times for 4,740 yards (4.42 yards per carry (ypc)). ESPN, https://www.espn.com/nfl/player/stats/_id/4047365/josh-jacobs (last visited Nov. 17, 2023); In the same span, Barkley rushed 693 times for 2,942 yards (4.24 ypc). https://www.espn.com/nfl/player/stats/_id/3929630/saquon-barkley (last visited Nov. 17, 2023).

²⁴ SPOTRAC, <https://www.spotrac.com/nfl/new-york-giants/saquon-barkley-25097/>; <https://www.spotrac.com/nfl/las-vegas-raiders/josh-jacobs-29059/> (last visited Oct. 10, 2023).

²⁵ SPOTRAC, <https://www.spotrac.com/nfl/tennessee-titans/derrick-henry-18994/> (last visited Dec. 1, 2023); SPOTRAC, <https://www.spotrac.com/nfl/san-francisco-49ers/christian-mccaffrey-21749/> (last visited Dec. 1, 2023); SPOTRAC, <https://www.spotrac.com/nfl/cleveland-browns/nick-chubb-25134/> (last visited Dec. 1, 2023).

franchise tag, a one-year contract exercisable by all NFL teams upon one soon-to-be unrestricted free agent of their choosing.²⁶

The salary of a franchise tagged player is largely the same for both types (exclusive and non-exclusive): the higher number of the (a) average of either the top-five salaries (exclusive) or cap hits (non-exclusive) at the player's position or (b) 120% of x player's salary from the previous year.²⁷ Teams can control a player for one or two additional years after the expiration of the player's rookie contract.²⁸

There are two common outcomes for players in such a scenario as Jacobs and Barkley. Dalvin Cook, former running back for the Minnesota Vikings, exemplifies the predominant trend: teams refuse to re-sign a costly player and release them to free agency.²⁹ Cook thrived in Minnesota.³⁰ In 2023, Cook signed with the New York Jets for a one-year, \$7 million deal and struggled as the secondary option for the Jets backfield with a little more than three yards per carry.³¹

On the other hand, Indianapolis Colts running back Jonathan Taylor recently signed an extension after holding out after recovering from an injury.³² A holdout is when a player refuses to participate in team activities in hopes of securing a new contract. Taylor's deal is a win for players; he negotiated an extension before

²⁶ Charlotte Edmonds, *NFL Franchise Tag: What You Need to Know*, NBC SPORTS PHILADELPHIA (Feb. 15, 2023), <https://www.nbcsportsphiladelphia.com/nfl/philadelphia-eagles/nfl-franchise-tag-what-you-need-to-know/200107/>.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Stephen Knox, *Dalvin Cook Cut a Reminder that the NFL Treats RBs Like Amazon Warehouse Workers*, DEADSPIN (June 9, 2023), <https://deadspin.com/amazon-nfl-running-backs-dalvin-cook-vikings-salary-cap-1850522408>.

³⁰ In seventy-three games, he rushed for nearly 6,000 yards with forty-seven touchdowns and 4.7 yards per carry. PRO FOOTBALL REFERENCE, <https://www.pro-football-reference.com/players/C/CookDa01.htm> (last visited Dec. 1, 2023); SPOTRAC, <https://www.spotrac.com/nfl/new-york-jets/dalvin-cook-21782/> (last visited Dec. 1, 2023).

³¹ PRO FOOTBALL REFERENCE, <https://www.pro-football-reference.com/players/C/CookDa01.htm> (last visited Dec. 1, 2023).

³² Bryan DeArdo, *Jonathan Taylor Inks Three-Year, \$42 Million Contract Extension with Colts*, CBS SPORTS (Oct. 8, 2023), <https://www.cbssports.com/nfl/news/jonathan-taylor-inks-three-year-42-million-contract-extension-with-colts/>. (Extension includes \$26.5 million guaranteed; a win for other running backs set to become free agents after 2023 season, including Josh Jacobs, Saquon Barkley, Austin Ekeler, and Tony Pollard).

he was franchise tagged and with greater compensation than most running backs in recent years (3 yrs. / \$42 million).³³

This Article argues that (a) the franchise tag should be abolished for running backs, or (b) for the creation of a separate bargaining unit for running backs. The NFL has devalued running backs over the past several decades amidst rising revenues and contracts across all other positions. The franchise tag disproportionately affects running backs because players at the position have shorter careers, are injured more often, and teams assign the tag to them more than other positions.

The franchise tag should be eliminated to allow running backs to enter free agency after the expiration of their fourth season (or fifth if drafted in the first round). This allows players to sign a lucrative contract while still in their prime. With the utilization of multiple running backs, players incur less wear-and-tear by the end of their rookie deal. Also, running backs deserve higher compensation because of the inherent danger of the position.

Alternatively, this paper argues for a separate bargaining unit apart from the National Football League Players Association (“NFLPA”) for running backs. This opens the door to negotiate new rookie contract structures, wage scales, elimination of the franchise tag, more contractual opt-outs, increase guaranteed money, and enact load-management provisions to prolong careers.

Part I addresses the evolution of the economic position teams use towards running backs, popular shortcuts taken to avoid proper compensation, disparities in pay by position, and antitrust immunity under the Collective Bargaining Agreement. It also highlights Amazon as a model situation of workplace danger and poor compensation in which the solutions adopted by Amazon are potentially applicable to contract issues for running backs.

Part II outlines a discussion of solutions for the problem — ending the franchise tag and creation of a separate bargaining entity for running backs. Part III advances a rationale for why both solutions provide better outcomes for the players and the NFL.

The conclusion considers where running back compensation will be in five years and how the discussion may evolve, next steps

³³ SPOTRAC, <https://www.spotrac.com/nfl/indianapolis-colts/jonathan-taylor-47636/> (last visited Oct. 24, 2023).

for examining the issue and future writing, and what's next for running backs.

BACKGROUND

History

Washington's head coach, Joe Gibbs, introduced the NFL world to the concept of a bargain-level running back in Super Bowl XXII.³⁴ Gibbs started fifth-round draft pick Timmy Smith over Pro Bowler and former number one overall pick George Rogers.³⁵ Gibbs's decision paid off: Smith rushed 22 times for 9.3 yards per carry, and he won the Super Bowl MVP.³⁶ Smith played sixteen more games in the NFL before retiring.³⁷ Another wrinkle to Gibbs's success: he utilized a zone-blocking scheme.³⁸

Denver Broncos head coach Mike Shanahan followed Gibbs, finding increased team value through discounted running backs.³⁹ With sixth round pick Terrell Davis, the Broncos won back-to-back Super Bowls.⁴⁰ Davis's career faltered, but the Broncos approach remained steady.⁴¹ Shanahan stated on his team's approach: "We usually targeted a guy who doesn't have great speed but is a downhill runner, is elusive to make people miss, can pick up linebackers in pass pro, and understands the game."⁴²

Other organizations followed the discounted path: the Tom Brady-led New England Patriots had eight different players lead the team in rushing across their nine Super Bowl appearance seasons; the Kansas City Chiefs won two super bowls with an undrafted back and a seventh-round pick.⁴³ The last nine Super

³⁴ Pompei, *supra* note 9.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* (career rushing average of 3.2 yards); ("Maybe what happened in Super Bowl XXII wasn't a eureka moment, but maybe it should have been. Smith's performance told the NFL that teams didn't necessarily need Walter Payton to achieve their goals.").

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

Bowl winning teams have not featured an All-Pro level running back.⁴⁴

NFL teams increasingly dispose of running backs at the end of their rookie contract.⁴⁵ Running backs are drafted and sign a four-year (or five years if selected in the first round of the draft) contract at a low salary compared to their projected output.⁴⁶ At the expiration of the rookie deal, teams release the player or sign them to a meager one- or two-year contract.⁴⁷

Teams stopped affording large contracts to running backs for a few reasons. Passing, rather than running, is the new central focus of offenses.⁴⁸ Teams evaluate talent in hopes of drafting a franchise quarterback and building teams around that player.⁴⁹ To supplement a quarterback, teams need a prolific wide receiver.⁵⁰ With an increase in passing across the league, the price for pass-catchers increased rapidly and continues to climb.⁵¹ The pass-centric evolution leaves running backs below many other positions on the hierarchy of compensation.⁵²

⁴⁴ *Id.* (2014: Patriots — Jonas Gray, Shane Vereen, Stevan Ridley; 2015: Broncos — Ronnie Hillman; 2016: Patriots LeGarrette Blount; 2017: Eagles — LeGarrette Blount, Jay Ajayi; 2018: Patriots — Sony Michel, James White; 2019: Chiefs — Damien Williams; 2020: Buccaneers — Ronald Jones, Leonard Fournette; 2021: Rams — Sony Michel, Darrell Henderson; Chiefs: 2022 — Isiah Pacheco.).

⁴⁵ Pompei, *supra* note 9 (“NFL running backs who have specialized in battling for every yard are learning a new skill — battling for every dollar.”).

⁴⁶ Oliver Connolly, *NFL Running Backs Are Angry – and Peace Seems a Long Way Off*, THE GUARDIAN (July 26, 2023), <https://www.theguardian.com/sport/2023/jul/26/nfl-running-backs-are-angry-and-peace-seems-a-long-way-off>.

⁴⁷ *Id.*; see Sullivan, *supra* note 21 (“This, of course, is a raw deal for backs because the second contract in the NFL is typically where players cash in. That’s where they can tech a multi-million deal and set themselves up financially for years to come, especially if they were selected outside of the first round. Speaking of that, teams have even slowed down on using premium draft picks on running backs, which also limits their earning potential.”).

⁴⁸ Pompei, *supra* note 9.

⁴⁹ Monson, *supra* note 7.

⁵⁰ Pompei, *supra* note 9.

⁵¹ *Id.*

⁵² *Id.* (“Quarterbacks get a huge number relative to the salary cap,’ Saints general manager Mickey Loomis says. ‘Pass rushers come next. In the past, the next most valued were the players blocking the pass rusher. But I think that has shifted to the top-flight wide receiver. That’s a change. Then it’s the offensive tackle and the guy covering the top-flight wide receiver. I don’t think you would find anyone to say a running back is more valuable than players at those five positions.”).

Running backs have the shortest average career length of all NFL position players at 2.57 years.⁵³ Players' bodies break down from hit after hit between the tackles and in the open field.⁵⁴ Analytics value a running back's shelf life at four years before production falls and the player's body becomes highly susceptible to injury.⁵⁵ Conversely, the committee-style usage of running backs has stymied the rate at which players' performance falters. With less usage and a more balanced rushing attack, running backs maintain their viability for longer. For example, Miami Dolphins running back Raheem Mostert is 31 and had the best season of his career in 2023.⁵⁶

Teams also often utilize a committee of specialized running backs: a pass-catching specialist, a north-to-south hard-nosed runner, and a speed threat.⁵⁷ Organizations do this to keep running backs fresh, prevent injury, and devalue the position.⁵⁸

Teams associate a stigma with signing a running back to a long-term deal at the expiration of the rookie contract.⁵⁹ Other skill position players routinely sign deals upwards of \$20, \$30, or \$40 million annually.⁶⁰ Zero running backs do.⁶¹ Organizations believe

⁵³ Knox, *supra* note 29.

⁵⁴ Arif Hasan, *The NFL Running Back Problem: Enormous Physical Toll Just to be Disposed*, PRO FOOTBALL NETWORK (July 18, 2023), <https://www.profootballnetwork.com/nfl-running-back-problem-2023/>.

⁵⁵ Connolly, *supra* note 46.

⁵⁶ ESPN, https://www.espn.com/nfl/player/stats/_id/2576414/raheem-mostert (last visited Apr. 17, 2024). Mostert rushed 209 times for 1,012 yards (4.8 ypc) and eighteen touchdowns. He also had twenty five receptions for 175 yards and three receiving touchdowns.

⁵⁷ Pompei, *supra* note 9.

⁵⁸ *Id.*

⁵⁹ Bill Barnwell, *Why Star NFL Running Backs Have Been Devalued: What's Next*, ESPN (July 13, 2023), https://www.espn.com/nfl/story/_id/37985469/why-star-nfl-running-backs-devalued-next-2023-free-agency-future#six. (Barnwell details six reasons why the league devalues RBs: (1) the league has moved toward the pass; (2) quarterbacks are more involved in the running game; (3) teams have abandoned the lead back approach; (4) the 2011 CBA instituted a slotted draft system; (5) the drafts from 2006 to 2010 delivered a particularly brutal run of first-round running backs; and (6) more teams are incorporating analytics into their decision-making).

⁶⁰ ESPN staff, *Highest-paid NFL Players: Tracking Most Money Guaranteed, Per Year at Every Position*, ESPN (Oct. 7, 2023) https://www.espn.com/nfl/story/_id/34096853/highest-paid-nfl-players-tracking-most-money-guaranteed-per-year-every-position.

⁶¹ Sullivan, *supra* note 21.

there is a smaller gap between a prolific runner and a serviceable running back.⁶²

The league implemented the franchise tag in 1992.⁶³ In the absence of a contract, a team may assign it to one player for a one-year extension.⁶⁴ Depending on the type of tag (exclusive, non-exclusive, or transition), the player may negotiate with his current team and other teams for a long-term deal that replaces the tag.⁶⁵ As a result of higher contracts for other players and the aforementioned factors aggravating the running back contract situation, the tag further devalues running backs.⁶⁶

Teams utilize the tag to maintain control of the player without paying them adequately for their production.⁶⁷ Players cannot secure a long-term deal with annual contract values equivalent to a one-year franchise tag, so they settle for a one-year placeholder with their current team.⁶⁸ By assigning a franchise tag, teams disproportionately diminish the value of a running back in the open market at the completion of the franchise tag year.⁶⁹

⁶² Pompei, *supra* note 9 (In 2023, coaches utilized passed-over running backs with much success. Zach Moss of the Indianapolis Colts led the league in rushing for a large part of the season, and Raheem Mostert was cut seven times prior to his outstanding season with the Miami Dolphins. ESPN, https://www.espn.com/nfl/player/stats/_id/2576414/raheem-mostert (last visited Apr. 17, 2024)).

⁶³ Jerry Donabedian, *Complete History of Holdouts and Franchise Tags for NFL Running Backs*, ROTOWIRE (July 28, 2023) <https://www.rotowire.com/football/article/complete-history-of-holdouts-and-franchise-tags-for-nfl-running-backs-73635>.

⁶⁴ *Id.*

⁶⁵ Ty Schalter, *How the NFL Franchise Tag Process Works*, BLEACHER REP. (Feb. 15, 2014), <https://bleacherreport.com/articles/1960713-how-the-nfl-franchise-tag-process-works>. (Per this article's publish date in 2014, the league perceived the franchise tag as a mutually beneficial agreement: "Ultimately, the franchise tag is a means to an end. For every player and team, the franchise tag could be a welcome, mutually beneficial way of keeping a player around, a bitterly regretted compromise that ensures acrimonious negotiations going forward or anywhere in between.").

⁶⁶ Connolly, *supra* note 46. (Connolly details another factor on why the league devalues RBs: snaps. The top ten RBs play 72.1% of snaps. The top ten players at all other skill-positions and offensive line play significantly more: [Quarterback: 99.6%] [Wide receiver: 94.1%] [Tight end: 85.3%] [O-line: 100%]).

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

Since its creation in 1993, teams have used the franchise tag on running backs ten times before the 2023 offseason.⁷¹ Only three players played on the tag.⁷¹ This year, three different teams applied a franchise tag to a star running back: Barkley (New York Giants), Jacobs (Las Vegas Raiders), and Tony Pollard (Dallas Cowboys).⁷² All three failed to sign new deals and currently play on the franchise tag.⁷³ But, Jonathan Taylor, in the final year of his rookie contract, held out from the Indianapolis Colts and negotiated a new multi-year contract.⁷⁴ There are eleven other instances of running backs holding out from training camp, preseason games, and sometimes portions of the regular season to sign a new deal, including Emmitt Smith (1993), Chris Johnson (2011), Le'Veon Bell (2017), Melvin Gordon (2019), and Ezekiel Elliot (2019).⁷⁵ Six of the eleven players successfully signed multi-year contracts, and the others either signed a one-year deal or returned on their existing contract.⁷⁶

Players may gamble and not cooperate with teams in order to secure their financial future, but the outcome is unpredictable, unlike other professional leagues such as the NBA.⁷⁷ Team ownership further exacerbates the problem as owners are antagonistic toward players that hold-out.⁷⁸ The most recent CBA increased daily fines for player holdouts during training camp to

⁷¹ Donabedian, *supra* note 63.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ DeArdo, *supra* note 32.

⁷⁵ Donabedian, *supra* note 63.

⁷⁶ *Id.*

⁷⁷ NBA stars Kevin Durant and Kyrie Irving publicly stated their demands to be traded from the Brooklyn Nets, contrary to the NBA's collective bargaining agreement which prohibits public trade requests. Durant and Irving's ploy worked, as the Nets traded them to the Phoenix Suns and Dallas Mavericks, respectively. Lorenzo Reyes, *NBA Stars Kevin Durant, Kyrie Irving Defend Public Trade Demands: 'Great for the League'*, USA TODAY (Feb. 19, 2023), <https://www.usatoday.com/story/sports/nba/2023/02/19/nba-stars-kevin-durant-kyrie-irving-defend-public-trade-demands/11299872002/>.

⁷⁸ Joel Corry, *Agent's Take: Inside Look at the Consequences and Dynamics Facing Nick Bosa, Zack Martin and other Holdouts*, CBS SPORTS (Aug. 10, 2023), <https://www.cbssports.com/nfl/news/agents-take-inside-look-at-the-consequences-and-dynamics-facing-nick-bosa-zack-martin-and-other-holdouts/>.

\$50,000 per day.⁷⁹ Franchise tag recipients are exempt from daily fines, unlike other players.⁸⁰

Running backs are attempting to acquire bargaining power through means outside the CBA.⁸¹ The NFL recently filed a grievance against the NFLPA over running backs allegedly faking injuries to increase leverage in contract negotiations.⁸² The NFL alleges that running backs are exaggerating, prolonging, and falsifying injuries for load management.⁸³ This makes the players more valuable at the expiration of their rookie contract.⁸⁴

The NFL's accusations arise simultaneously as running backs advocate for higher compensation for the risks associated with their position.⁸⁵ NFL contracts currently only reflect performance-based value.⁸⁶ Supply and demand encapsulates the aforementioned reasons on why running back contracts declined in recent years.⁸⁷ Demand for running backs dipped in the past decade, as teams view players at the position as more expendable.⁸⁸ Teams are also conscious of higher injury rates at running back.⁸⁹ Supply and demand theory explains that with higher risk comes lower supply, meaning future players will elect to play other positions instead of running back.⁹⁰

⁷⁹ *NFL's Obsession with Ending Holdouts Could Backfire on Some Teams*, PRO FOOTBALL TALK (July 28, 2021), <https://www.nbcsports.com/nfl/profootballtalk/rumor-mill/news/nfls-obsession-with-ending-holdouts-could-backfire-on-some-teams>.

⁸⁰ *Id.* ("The financial penalties don't apply to unsigned draft picks, and players with restricted free agent, franchise or transition tenders who aren't under contract who miss training camp. Their attendance isn't required because of the absence of a signed contract. [Josh] Jacobs falls into this category. As an unsigned player, Jacobs isn't withholding services he is contractually obligated to perform.").

⁸¹ Michael Makowsky, *The NFL Doesn't Want to Pay for Risk*, ECONOMIST WRITING EVERY DAY (Sept. 25, 2023), <https://economistwritingeveryday.com/2023/09/25/the-nfl-doesnt-want-to-pay-for-risk/>.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* ("Running backs have seen their salaries decline even as the damage incurred has become more apparent and measurable. This raises an interesting question: where are the compensating wage differentials for risk? Everyone gets paid more if their job is dangerous. Do running back wages reflect their physical risk?").

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

Now, running backs are shortchanging supply to force teams to compensate them with more money for risk associated with the position.⁹¹ Players contend that the short career length at the position and the underlying factors for such an abbreviated tenure warrant more compensation, not less.⁹²

To counter the cost-restrictive approaches of organizations towards running backs, players have adopted a more versatile skill set.⁹³ Christian McCaffrey, Bijan Robinson, and Jahmyr Gibbs are productive backs as well as skillful receivers, with adept open-field pass-catching abilities and route running.⁹⁴

PROBLEM: CURRENT RUNNING BACK PAY STRUCTURE

The NFL's CBA controls all aspects of contract formation for players. Teams sign rookies selected in the first round to four-year deals, with a fifth-year club option.⁹⁵ Players selected in subsequent rounds sign four-year deals and undrafted rookies sign for three years.⁹⁶ If selected in the first round, teams may exercise a club option and control the player for an additional two years (franchise tag).⁹⁷

Organizations take one of two approaches: (1) select a running back in the early rounds of the draft, or (2) pick a running back in the middle or late rounds or sign one as a free agent. Teams that select a running back in the first round follow a trend: draft the player, franchise tag him for two years, and let the player go at the expiration of their sixth or seventh season. The latter grouping of teams rarely exercise the franchise tag on a running back it selects. This comment addresses both situations. Both approaches devalue the position.

⁹¹ *Id.* ("I think running backs are beginning to reduce the amount of their bodies' usable careers they are willing to sell at the current market price. They have reduced supply on the intensive margin. Running backs are demanding greater compensating wage differentials for risk and the owners don't like it.").

⁹² *Id.*

⁹³ Williams, *supra* note 3.

⁹⁴ *Id.* ("Running backs like McCaffrey can age gracefully from a top running back to a productive third receiver over the life of their contract.").

⁹⁵ *Supra* note 2.

⁹⁶ *Id.*

⁹⁷ Connolly, *supra* note 46.

Not only are running backs often discarded after their rookie contracts, but teams pay them less than all other skill position players (quarterbacks, wide receivers, tight ends). Running backs make \$1.808 million annually on average.⁹⁸ They make more than only a few positions: long snappers (\$1.069 million), punters (\$1.52 million), and fullbacks (\$1.724 million).⁹⁹ The average kicker even out earns a running back as they make \$2.196 million a season in the NFL.”¹⁰⁰

In addition, the franchise tag for the position has decreased in the past eight years (the only position that has done so) from \$10.95 million to \$10.09 million.¹⁰¹ Fifty-six players earn \$20 million a year, including quarterbacks, wide receivers, defensive linemen, offensive linemen, defensive backs, and a linebacker.¹⁰² Prior to NFL free agency in 2024, only two running backs within the past three years had signed a multi-year deal of \$10+ million annually.¹⁰³

The salary gap increases dramatically by position.¹⁰⁴ There is a drop in compensation for running backs that other skill position groups do not have.¹⁰⁵

⁹⁸ Sullivan, *supra* note 21.

⁹⁹ *Id.*

¹⁰⁰ Sullivan, *supra* note 21.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ ESPN staff, *supra* note 59. (At quarterback, top earners Joe Burrow, Justin Herbert, Lamar Jackson, and others make upwards of \$50 million annually with \$180+ million guaranteed. At wide receiver, Cooper Kupp, Stefon Diggs, and Tyreek Hill will make \$25 million or more this year and \$70 million guaranteed over the duration of their contracts. Tight ends more closely resemble running backs as the top three earners, Darren Waller, T.J. Hockenson, and George Kittle, will earn \$15+ million each. Waller and Kittle, with the addition of Mark Andrews, will make the most guaranteed money at \$37+ million. The earnings for the three highest paid running backs: Christian McCaffrey (\$17.2m yr./ \$36.3m guaranteed), Jonathan Taylor (\$14m yr./ \$26.5m guaranteed, Alvin Kamara \$12.7m yr./ \$34.3m guaranteed).

¹⁰⁵ *Tight End Contracts* https://overthecap.com/position/tight-end_ (last visited Oct. 27, 2023); *Running Back Contracts* <https://overthecap.com/position/running-back> (last visited Oct. 27, 2023) (Thirteen tight ends make \$10m or more each year (none of whom are on one-year contracts), whereas only six running backs (excluding franchise tag recipients Josh Jacobs, Saquon Barkley, and Tony Pollard) will earn \$10m or more this year).

NFL COLLECTIVE BARGAINING AGREEMENT AND ANTITRUST EXEMPTION

The enactment of the Sherman Antitrust Act allowed courts to scrutinize businesses' anticompetitive practices.¹⁰⁶ *International Boxing Club of New York, Inc. v. United States* extended antitrust review to all professional sports leagues besides Major League Baseball.¹⁰⁷ The act prohibits contracts and conspiracies that restrain or infringe upon interstate commerce. The elements: "(1) a contract, combination, or conspiracy; (2) the contract, combination, or conspiracy produced a restraint of trade; and (3) the restraint affected trade or commerce among the several states."¹⁰⁸ The Supreme Court construed the act to allow restraints that are reasonable.¹⁰⁹

Contrary to other antitrust settings, professional sports involve labor restraints rather than trade restraints.¹¹⁰ Federal labor and antitrust laws often conflict, and courts apply exemptions to federal antitrust law to encourage collective bargaining.¹¹¹ The NFL is one such entity. NFL organizations enjoy an exemption from antitrust laws if a CBA is in effect.¹¹² This is referred to as the non-statutory labor exemption.¹¹³ Most antitrust suits against the NFL emanate from player restraints.¹¹⁴

The Eighth Circuit established a four-prong test, the *Mackey* test, whereby the NFL's non-statutory labor exemption applies, and

¹⁰⁶ See 15 U.S.C. §§ 1-38.

¹⁰⁷ *Int'l Boxing Club of N.Y. v. United States*, 358 U.S. 242, 245 (1955).

¹⁰⁸ *Supra* note 106 ("Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states or with foreign nations, is declared to be illegal.").

¹⁰⁹ *Standard Oil Co. of New Jersey v. United States*, 221 U.S. 1, 103 (1911).

¹¹⁰ Thomas Simpson, Comment, *Call Upon Congress to Abolish the NFL Draft* (2023).

¹¹¹ Barry S. Roberts & Brian A. Powers, *Defining the Relationship between Antitrust Law and Labor Law: Professional Sports and the Current Legal Background*, 19 Wm. & Mary L. Rev. 395, 395 (1978); Kieran M. Corcoran, *When Does the Buzzer Sound? The Nonstatutory Labor Exemption in Professional Sports*, 94 COLUM. L. REV. 1045, 1048-53 (1994).

¹¹² Chris Deubert et al., *All Four Quarters: A Retrospective and Analysis of the 2011 Collective Bargaining Process and Agreement in the National Football League*, UCLA L. REV. 8 (2012).

¹¹³ *Id.*

¹¹⁴ Corcoran, *supra* note 111 at 1054 ("A player restraint can appear in many forms, but generally will restrict the ability of players to move from team to team, and which consequently limits their ability to negotiate increases in salary.").

they are therefore shielded from liability: “(1) the restraint on trade must primarily affect only the parties to the collective bargaining agreement; (2) the issue must concern a mandatory subject of bargaining; and (3) the issue must have been achieved through arm’s length bargaining.”¹¹⁵

The Supreme Court in *Brown v. Pro Football, Inc.* rejected the *Mackey* test and established a new test in which the non-statutory labor exemption applies when alleged conduct: “(1) took place during and immediately after a collective bargaining negotiation; (2) grew out of, and was directly related to, the lawful operation of the bargaining process; (3) involved a matter that the parties were required to negotiate collectively; and (4) concerned only the parties to the collective bargaining relationship.”¹¹⁶ The Supreme Court’s reasoning in *Brown*: “to give effect to federal labor laws and policies and to allow meaningful collective bargaining to take place, some restraints on competition imposed through the bargaining process must be shielded from antitrust sanctions.”¹¹⁷

The *Brown* decision allowed employers to enact reasonable terms and conditions of employment in the event of a bargaining impasse, so long as the terms were reasonable.¹¹⁸ *Brown* illustrates the conservative construction of the labor exemption to NFL organizations, protecting them from most legal challenges. Proponents of increased player autonomy believe that *Brown* unfairly protects NFL teams because it prevents antitrust scrutiny for any anticompetitive practices collectively bargained for.¹¹⁹

In 2004, Maurice Claret, a college running back with hopes to enter the NFL draft as an underclassman, challenged the NFL’s draft policy, alleging its anticompetitive restrictions for draft eligibility.¹²⁰ Claret argued that the age eligibility requirement

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 13.

¹¹⁷ *Id.* (citing *Brown v. Pro Football, Inc.*, 518 U.S. 231, 236-37 (1996)); See Corcoran, *supra* note 111 at 1052 (“The Court has thus limited the non-statutory labor exemption to parties within the bargaining relationship and to matters of fundamental employee interest. Within these parameters, though, the exemption is not well-defined. The breadth of the exemption, which accommodates the competing congressional policies favoring collective bargaining and free competition, is essentially based upon issues of public policy.”).

¹¹⁸ *Id.*

¹¹⁹ Simpson, *supra* note 110 at 19.

¹²⁰ *Id.*

failed the *Mackey* test.¹²¹ The Second Circuit held that the *Mackey* test was not applicable and the draft age requirement, a mandatory bargaining subject of the CBA, was exempt from antitrust liability under the labor exemption.¹²²

Player compensation is a necessary piece of bargaining between the NFL and the NFLPA, therefore courts will likely hold that players lack standing to bring an antitrust suit against the league.¹²³

AMAZON AS A MODEL

Running backs' bodies rapidly break down in the NFL. Teams are uncompromising if a player exceeds the projected shelf-life at the position and often refuse to sign them to a subsequent contract. The situation closely mirrors the treatment of Amazon warehouse workers.¹²⁴

In "Dalvin Cook Cut a Reminder that the NFL Treats RBs Like Amazon Workers", Stephen Knox draws a parallel between running backs and Amazon warehouse workers.¹²⁵ The myriad differences between the two jobs are obvious, considering the NFL regularly signs players to multi-million-dollar contracts. However, the similarities between the conditions for running backs and Amazon workers are surprising and striking.

Like NFL-level compensation for running backs, Amazon's high wages (\$19/hour) entice prospective employees because of the high rate per hour relative to competitors.¹²⁶ However, Amazon has built a reputation for prioritizing efficiency over safety. In 2021, Amazon's injury rate per 100 workers was almost double all other warehouses (7.7; 4.0).¹²⁷ Workers are suing the company for forcing

¹²¹ *Id.*

¹²² *Id.* at 20.

¹²³ *See generally* *Clarett v. Nat'l Football League*, 369 F.3d 124, 141 (2d Cir. 2004) (on why mandatory bargaining subjects are not subject to antitrust scrutiny: "As a permissible, mandatory subject of bargaining, the conditions under which a prospective player, like Clarett, will be considered for employment as an NFL player are for the union representative and the NFL to determine.").

¹²⁴ Knox, *supra* note 29.

¹²⁵ *Id.*

¹²⁶ *Id.*; Annie Palmer, *Amazon Adding 250,000 Workers for the Holidays and Bumping Average Pay*, CNBC (Sept. 19, 2023), <https://www.cnbc.com/2023/09/19/amazon-adding-250000-workers-for-the-holidays-and-bumping-average-pay.html>.

delivery drivers to urinate in bottles and defecate in pet waste bags to stay on quota.¹²⁸ Employees at one warehouse in the UK went on strike, citing low pay, a “breakneck pace of work”, and “inhospitable conditions.”¹²⁹

The University of Illinois Chicago recently published the self-proclaimed largest survey of Amazon workers, with nearly 1,500 responses.¹³⁰ It includes astronomical numbers on rates of injury and interference with day-to-day life.¹³¹ Also, OSHA (Occupational Safety and Health Administration) has issued over a dozen citations to Amazon for warehouse safety infringements.¹³²

Minnesota recently enacted a warehouse worker statute to protect Amazon employees and others.¹³³ The act mandates that distribution centers inform workers of individual performance data and their required quota levels.¹³⁴ It also requires companies with incidence rates of 30% or higher than average to conduct monthly safety committee meetings. It directs the Department of Labor and Industry to investigate if incidence rates exceed the 30% higher than average rate.¹³⁵ It further restricts employers from setting quotas forcing workers to forego breaks or restroom use.¹³⁶

¹²⁷ Michael Sainato, ‘They’re More Concerned About Profit’: OSHA, DoJ Take on Amazon’s Grueling Working Conditions, *THE GUARDIAN* (Mar. 2, 2023), <https://www.theguardian.com/technology/2023/mar/02/amazon-safety-citations-osha-department-of-justice>.

¹²⁸ Allie Griffin, *Amazon Drivers, Including Iraq Vet, Sue over Poor Working Conditions, Saying They Peed, Defecated in Bottles to Avoid Discipline*, *NEW YORK POST* (May 30, 2023), <https://nypost.com/2023/05/30/colorado-amazon-drivers-sue-over-poor-working-conditions/>.

¹²⁹ TJ Denzer, *Amazon UK Warehouse Workers Stage Strike in Response to Poor Pay & Condition*, *SHACKNEWS* (Jan. 25, 2023), <https://www.shacknews.com/article/133843/amazon-uk-warehouse-strike-inflation>.

¹³⁰ Max Nesterak, *Advocates Say Amazon Is Not Complying with Minnesota’s New Warehouse Worker Safety Law*, *MINNESOTA REFORMER* (Oct. 27, 2023), <https://minnesotareformer.com/2023/10/27/amazon-not-complying-with-worker-safety-law/>.

¹³¹ *41% of Amazon Workers Have Been Injured on the Job, New Report Finds*, (Oct. 25, 2023) (69% reported to have taken unpaid time off from fatigue, pain, exhaustion from working at Amazon in the past month).

¹³² Caroline O’Donovan, *Regulators Struggle to Rein in Amazon on Safety for Warehouse Workers*, *THE WASHINGTON POST* (Sept. 18, 2023), <https://www.washingtonpost.com/technology/2023/09/18/amazon-working-conditions-safety-osha-doj/>.

¹³³ Nesterak, *supra* note 130.

¹³⁴ *Id.*

¹³⁵ *Id.*; *MNOSHA COMPLIANCE: WAREHOUSE WORKERS*.

Workers believe their contributions and sacrifices outweigh their compensation and benefits. The company seeks to ease labor tensions by raising workers' hourly wages (to \$20.50) and engaging in safety initiatives.¹³⁷

Both Amazon workers and running backs want adequate compensation and contractual leverage. Amazon employees want (1) to reduce quotas to a reasonable level, improve working conditions so as not to impair employees physically, and comply with safety regulations, and (2) to be compensated proportionally to the risks and demands of such stringent quotas. Running backs request a reduction in team control to a reasonable number of years because of their average career length, and an increase in post-rookie contract pay for risk and their shorter career length.

Both parties want reduced control and greater autonomy. The solution is to reduce Amazon quotas to promote fewer injuries and keep compensation at its current level. Applying this to the NFL, reducing team control for running backs to preserve a player's earning potential beyond their rookie contract allows them to sign for better wages while in their prime.

SOLUTIONS

End the Franchise Tag

The current CBA restricts running backs' options to obtain adequate compensation. In January 2023, the Federal Trade Commission ("FTC") proposed a rule that would ban employers' use of non-compete clauses, eradicating franchise tags in the NFL.¹³⁸ This would limit a team's player control to a maximum of four or five years, instead of seven, and allow running backs to enter the free agency market while in their prime. This solution increases player autonomy with the caveat that it also lowers the financial floor for players. Tagged running backs are compensated for less than they would receive with a contract extension, so it opens the

¹³⁶ Nesterak, *supra* note 130.

¹³⁷ *Latest Update on Safety at Amazon*, AMAZON, (July 26, 2023).

¹³⁸ Annalyse Harris, *How FTC's Proposed Rule Could Eliminate NFL's Exclusive Franchise Tags*, Washington J. L., Tech., & Arts (Feb. 8, 2023), <https://wjltta.com/2023/02/08/how-ftcs-proposed-rule-could-eliminate-nfls-exclusive-franchise-tags/>.

door to a fairer deal for the player earlier. The franchise tag presents no player-friendly qualities to a running back. Eradication of the tag does not harm any player's contractual future, because teams only assign a tag to a highly successful player. The elimination of the tag increases rather than harms running backs' financial security.

Running back production begins to fall around age twenty-seven. Unfortunately, the most promising opportunity for players to sign a multi-year deal is at the expiration of their rookie contract or, if they have enough bargaining power, before the rookie contract has expired. The franchise tag eliminates this possibility for most running backs. It is disadvantageous to the position because of the lack of longevity of running backs. Also, the repeated utilization of a franchise tag devalues the position.

When multiple teams assign a franchise tag to their star running back, these players are deprived of signing multi-year contracts, which lowers the franchise tag salary for other running backs. If all the prolific running backs are limited to franchise tags and cannot secure long-term deals, the ceiling for the entire position is lowered, and the franchise tag value is diminished. The constant imposition of a franchise tag is a feedback loop for not paying running backs: if all the good running backs are franchise tagged before they can sign a long-term deal, and then sign deals for less money and fewer years, every player at the position is financially hamstrung, no matter their level of production.

The players who avoid a franchise tag, or outlive the tag to sign another deal, are also compensated with less money, even though they are comparatively compensated far more than the rest of the position. The existence and prevalence of the tag negatively affects players performing under a tag as well as those that are not and establishes a precedent for future players.

The franchise tag has increased in value for every position since 2015, except for running backs, which has decreased from \$10.95 million to \$10.09 million.¹³⁹

\$10.95 million to \$10.09 million.¹³⁹ Although initially put in place as a contractual safeguard with mutual benefits for team and player, teams have reaped the one-sided benefit of maintaining a top talent at the position without compensating them long-term. With teams applying the tag more than ever, running backs will continue to lose out on multi-year contracts, further devaluing the position. The league can increase the position's value by eliminating the franchise tag and forcing teams to sign players to multi-year contracts. With the current workload of running backs, teams would be quick to sign them to two-year deals at the expiration of their rookie contract.

Running backs could also achieve more bargaining power with an exemption instead of the elimination of the franchise tag. The tag does not substantially disaffect other positions because teams do not use it as frequently.¹⁴⁰

Elimination or exemption of the franchise tag for running backs is both feasible and less disruptive than other solutions. It does not require any secondary considerations, such as bonuses or incentives in contracts, and it resolves the issue of the push for an independent bargaining unit for running backs. These solutions also do not require any restructuring of base rookie contracts. In addition, this can be accomplished without renegotiation of the CBA. The FTC holds the power to enact a ban on non-compete clauses. Resolving running back contract disputes is a pressing issue, and if the solutions are not enacted until 2030, the current players are left without recourse. Ending the franchise tag is timely and achievable within a matter of months, rather than six years.

This is a plausible solution because it is independent of the CBA. The NFLPA has no recourse to increase profits for running backs under the current agreement, and the current agreement will not be severed unless there is a league-wide holdout.

CREATION OF SEPARATE BARGAINING UNIT

Running backs have increasingly advocated for adequate representation. Players believe the NFLPA does not properly represent the position. Many advocated for the creation of a separate union for running backs in a 2019 petition to the National

¹⁴⁰ *Id.*; Donabedian, *supra* note 62.

Labor Relations Board (“NLRB”).¹⁴¹ Although not heeded by the NLRB, holdouts by players and increasing disparity in contracts elevate the issue’s status, possibly paving the way to a separate bargaining unit. Without the creation of a union, only the future generation of players would receive the protections afforded by the CBA in 2030.

If the NLRB approved the creation of a new bargaining unit, running backs would no longer be subject to the CBA. Therefore, judicial precedent would not likely apply if players brought an antitrust suit. Additionally, the players could collectively bargain for a new agreement specific to the position before the expiration of the current CBA in 2030. This would open the door to modification of rookie contracts, the franchise tag, incentives, signing bonuses, player safety, load management, and more issues that could improve compensation for the position.

Forming a new bargaining entity offers a path to resolving contractual issues for running backs, enabling them to negotiate a dedicated CBA with the NFL. This arrangement could overhaul rookie contracts and wage scales, abolish the franchise tag, introduce more flexible contract options, enhance guaranteed payments, and implement load management strategies to extend careers (similar to MLB’s innings limits for pitchers). In exchange, teams might seek greater control over players through longer contracts. Ultimately, this scenario benefits players by providing the opportunity for multi-year contracts with improved initial and subsequent compensation. This solution is also less complex than solutions that involve renegotiation of the current full CBA. It allows players to sidestep the CBA and advocate for adequate bargaining power. Also, it takes the power out of the hands of the owners. Both the eradication of the franchise tag solution and the proposed solution posit the control in other entities: the FTC and NLRB, respectively. Both bodies are likely to be more cooperative than team owners since organizations have no motivation to comply with players’ demands other than to dissuade holdouts.

If the trend of imposing franchise tags continues and running back compensation remains low, players may petition the NLRB a

¹⁴¹ *Running Backs Should Renew Push for Their Own Bargaining Unit*, NBC SPORTS (June 16, 2023), <https://www.nbcsports.com/nfl/profootballtalk/rumor-mill/news/running-backs-should-renew-push-for-their-own-bargaining-unit>.

second time. This is a unit clarification (“UC”) petition.¹⁴² Petitioners usually submit UC petitions to resolve disputes over new positions, or to provide redress to an existing position.¹⁴³ A possible petition by running backs would be an effort to sever themselves from the existing unit, the NFLPA. The standard of review: “...the petitioner must show ‘recent, substantial changes in their operations, or that other compelling circumstances exist which would warrant disregarding the long-existing bargaining history’ of the parties.”¹⁴⁴

To meet the *recent, substantial changes test*, running backs must prove that the level of compensation constitutes a material change that warrants increased bargaining power in the form of a separate bargaining unit. Questions remain as to the NLRB’s willingness to grant such a petition. It denied the initial petition for failure to meet the *recent, substantial changes test*.¹⁴⁵ The board said that the International Brotherhood of Professional Running Backs (“IBPRB”) lacked evidence of any substantial changes to the relationship between running backs and the NFLPA.¹⁴⁶

There are other proposed solutions to running backs’ compensation disparity not discussed here because they either require renegotiation of the CBA, or are not feasible with the current level of bargaining power.¹⁴⁷

The proposed solutions, being independent of the CBA, stand a better chance of being implemented and received cooperatively than modifying draft eligibility or rookie contract lengths and pay.¹⁴⁸ The issue for running backs is not their age but the volume of

¹⁴² Jackson Lewis P.C., *Running Backs’ NLRB Petition Seeks to “Stiff Arm” NFL Players Association With New Bargaining Unit*, JDSUPRA (Aug. 29, 2019), <https://www.jdsupra.com/legalnews/running-backs-nlr-b-petition-seeks-to-86031/>.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ Jackson Lewis P.C., *Running Backs Unit Clarification Petition Efforts Shutout by NLRB*, JDSUPRA (Sept. 20, 2019), <https://www.jdsupra.com/legalnews/running-backs-union-unit-clarification-48436/>.

¹⁴⁷ Currently negotiable under the CBA, an increased focus on incentive pay and bonuses for running backs is both feasible and promising. But teams are not inclined to provide such pay without a substantial impetus. Other solutions discussed in this comment may be necessary to provide players with enough bargaining power to negotiate significant incentives. This may be possible through contract holdouts, or a league-wide holdout by running backs.

carries that causes running backs' bodies to break down.¹⁴⁹ Adjusting the draft requirements to permit underclassmen is ineffective; it only expedites players' professional entry and subsequent exit without addressing career longevity.¹⁵⁰ Another proposed solution, contractual opt-outs, is promising but also requires renegotiating the CBA.¹⁵¹

If the FTC were not to pass the proposed rule ending non-compete clauses, the NFLPA could negotiate to terminate franchise tags in the next CBA. This would increase free agency opportunities for players, allowing the most prolific running backs to earn higher amounts. Increased player movement also carries the baggage of a lower potential financial floor.¹⁵²

WHY BOTH SOLUTIONS BENEFIT RUNNING BACKS AND THE NFL

Ending the franchise tag or creating a separate bargaining unit for running backs would promote better outcomes for players and the league. It would tip the scales, providing bargaining power to a group that currently cannot adequately safeguard its financial interests. Players would be able to freely contract with new teams,

¹⁴⁸ See Zach Leach, *Dump and Chase: Why the NFL, NBA, and MLB Should Abandon Their Problematic Amateur Draft Age Limits and Rookie Wage Structures and Adopt the Current NHL Model*, 29 MARQ. SPORTS L. REV. 177, 197 (2018). Leach proposes that the NFL follow the NHL's model for entry-level contracts: players between the ages of eighteen and twenty-one sign three-year deals, those between twenty-two and twenty-three sign two-year deals, and players twenty-four or older sign one-year deals. He also proposes allowing running backs to enter the draft at an earlier age. *Id.* at 197-98.

¹⁴⁹ Ty Schalter, *Why and When Do NFL Running Backs Start to Decline?* BLEACHER REP., (July 25, 2012), <https://bleacherreport.com/articles/1271412-why-and-when-do-nfl-running-backs-start-to-decline>.

¹⁵⁰ An alternative to allowing underclassmen running backs to enter the NFL draft: exempt them. The NFL could mandate that running backs enter the free agency pool once NFL eligible and allow them to negotiate contracts with a team of their choosing and not worry about a team exercising a fifth-year option. See Joseph Acosta, *What Does the Future of NFL RB Contracts Look Like?* SB NATION (Jul. 18, 2023), <https://www.sbnation.com/nfl/2023/7/18/23798832/what-does-the-future-of-nfl-rb-contracts-look-like>.

¹⁵¹ See William W. Berry III, *Superstars, Superteams, and the Future of Player Movement*, 13 Harv. J. Sports & Ent. L. 199, 227. Berry advocates for contractual opt-outs. Although running backs on rookie contracts may not currently negotiate for opt-outs, this could be established in the next CBA. Berry argues that "anti-capitalistic" practices are enacted on players, restricting their movement, autonomy, and devaluing their contributions. *Id.* at 229-30.

¹⁵² *Id.* at 227.

or re-sign with their current team, for more money. No longer would teams hold running backs “captive” with a franchise tag.

The solutions suggested aim to enhance running backs’ autonomy in contract negotiations, counterintuitively without increasing their vulnerability. Contrary to the usual correlation between financial freedom and security risks in contract talks, these proposals seek to dismantle team-favoring mechanisms like minimum-length rookie contracts and franchise tags. Such changes are designed not to compromise the players’ contract security but to empower them, addressing the current imbalances in negotiation dynamics and financial outcomes for players. Teams can currently cut players at any point in their contract, and most of the money is not fully guaranteed. The traditional four-year rookie contract is nothing more than a precedent for precedent’s sake. The franchise tag is only imposed upon players at the peak of their position; therefore, it is unfairly restricting the players’ ability to sign multi-year contracts and garner financial security through a higher salary. With a separate bargaining unit, players could negotiate with the NFL for higher guaranteed money to offset the decrease in pay relative to other positions and adjust the rookie contract scale for running backs.

One may argue that if the FTC eliminated the franchise tag, teams wouldn’t sign running backs to multi-year deals after their rookie contract. Therefore, the franchise tag is a way for running backs to accrue the most money they can in the shortest amount of time after their rookie contract, and they should jump at the opportunity. Statistics and league perception show that running backs perform at the highest level from the time they enter the league until they hit the 1800 carries mark. If a running back gets drafted at age twenty-one and averages seventeen-and-a-half touches per game for the regular season, he would be at 1190 touches for his career ($297.5 \text{ per year} \times 4 \text{ years} = 1190$). This leaves 610 touches before the 1800 mark. The player would retain a full two years of touches before eclipsing the 1800 mark, and a portion of a third year before passing the threshold. The carries per game number also assumes that the player will not suffer any injuries and be the singular running back for the prospective team, both of which are unlikely. Therefore, the running back would be viable for three years after the expiration of their rookie deal.

In *When Does the Buzzer Sound? The Nonstatutory Labor Exemption in Professional Sports*, Kieran Corcoran outlines the necessity of player restraints to promote equilibrium in professional sports:

“Professional sports leagues justify player restraints as essential to the economic viability of the leagues. Without restrictions on the movement of players, leagues and owners argue, the best players would wind up playing for the wealthiest teams in the regional markets that could pay the highest salaries... Such a result would lessen the quality of the product offered to the consumer—the fan—and would seriously diminish... the profitability of the league as a whole. Presumably, a less profitable league would reduce the revenue available for players’ salaries, and in the end make the players as a whole worse off.”¹⁵³

Corcoran details seemingly anti-competitive practices in the NFL that are in fact competitive.¹⁵⁴ Yet, this is not applicable to the current issue. To reduce a league’s option to control a running back by one or two years would not harm the economic viability of the league. This is an unreasonable player restraint upon running backs. In the NBA, players exercise an increased level of autonomy, and this benefits the league.¹⁵⁵ Increased player movement enhances the product, not devalue it. “The fan interest grows with the addition of a new player. The new player’s game against his former team becomes ‘must-see’ television. The new player can excite the fan base, even if he is unable to deliver a championship; the newfound competitiveness that a new player offers may be enough to provide hope and reinvigorate interest.”¹⁵⁶

Removing the franchise tag or forming a separate bargaining unit to enhance contractual freedom does not pose a risk of

¹⁵³ Corcoran, *supra* note 111 at 1054.

¹⁵⁴ *Id.*

¹⁵⁵ See Berry at 230. (“In the long run, increasing player autonomy is a positive development for the functioning of professional sports leagues. It invites the athletes into a greater stake in the capitalistic side of the sport. Freer markets allow individuals to reap their true value in the marketplace, rather than one set by league owners.”).

¹⁵⁶ *Id.* at 231. (“Increased player movement also allows players to escape bad situations. The draft can cause players to end up on teams that make their individual success difficult if not impossible. Despite teams’ best efforts, sometimes players just do not fit... If leagues insist on having drafts and preventing players from choosing which team they want to play for, then players should bargain for the right to structure contracts in a way that allows them to escape bad situations.”).

anticompetitive repercussions. Restricting running backs' ability to negotiate freely may dampen fan interest and viewership, as the franchise tag lacks the excitement that comes with high-value contracts or the prospect of players switching teams. Fans and players alike would find more excitement in the open market dynamics of running backs either moving to new teams or re-signing under more favorable conditions, rather than being tied down by a one-year franchise tag deal.

CONCLUSION

NFL teams often draft talented running backs, leveraging their skills for maximum on-field production while maintaining lower salary costs. Consequently, these athletes frequently leave the league earning significantly less compared to their counterparts in other positions, especially the star players. While the current CBA restricts running backs' legal options for addressing these disparities, alternative solutions exist outside the CBA framework. These solutions include eliminating the franchise tag or establishing a separate bargaining unit specifically for running backs, aiming to improve their contractual and financial situation. Long-term solutions cannot be explored without a restructuring of the CBA. These options are more viable for future players. These include restructuring rookie contracts, increasing opt-out provisions, changing prerequisites to enter the NFL draft or exempt running backs from the draft, and ending franchise tags.

The NFL's contract negotiation landscape is ever-changing as running back compensation becomes a more prominent issue. Jonathan Taylor's recent successful holdout, resulting in a long-term deal with the Colts, highlights holdouts as the current primary strategy for running backs seeking better contracts. However, this tactic isn't always successful, and there's potential for teams and league executives to develop strategies to counter holdouts, indicating that the discussion around running back compensation will continue to evolve. The NFL CBA negotiations of 2030 could settle the issue. Still, it depends on the breadth and effectiveness of the solution implemented, as well as if running backs can form a separate bargaining unit.

Revisiting the issue of running back compensation and contract freedoms in a few years could be insightful, particularly to

see what changes have occurred. By that time, it will be clearer whether any progress has been made in improving contract conditions for running backs, what impact these changes have had, and what strategies may be necessary as negotiations for a new CBA approach.