

A DING TO THE HEAD: HOW CONCUSSIONS AND DOMESTIC VIOLENCE IMPACT THE NFL IN THE NEXT CBA

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I. INTRODUCTION

The National Football League (NFL) had its darkest year in 2014. First, Ray Rice, former a running back with the Baltimore Ravens, assaulted his girlfriend, and lost his job only after the surveillance video surfaced.¹ Further, the surveillance video was troubling for the FBI to conduct an independent investigation into the NFL's handling of Ray Rice's situation.² Second, Greg Hardy, formerly a defensive end with the Carolina Panthers, was convicted of assaulting and threatening to kill his ex-girlfriend at his apartment.³ Finally, despite the NFL's attempts to make the game safer, head injuries remain the biggest threat to the future of football. For example, after John Abraham suffered his first concussion of his career on Monday Night Football, he told his head coach his "heart was not in the game anymore" and left the team.⁴

Based on this turmoil, the NFL is searching for answers to reduce the negative media surrounding these events. The NFL and the National Football League Players Association (NFLPA) should focus on situations involving head injuries and domestic violence in the next collective bargaining agreement (CBA). Regarding the CBA, the NFL has been bombarded with lawsuits over the years from antitrust suits to disputes regarding free agency.⁵ New disputes arose involving head injuries and domestic violence, which

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1. Gary Myers, *Sunday Morning Quarterback: Top 10 Image-Destroying Problems Facing the NFL*, N.Y. DAILY NEWS (Sept. 13, 2014, 6:05 PM), <http://www.nydailynews.com/sports/football/sunday-morning-quarterback-top-10-image-destroying-problems-facing-nfl-article-1.1938661> (Ray Rice was suspended two games for striking his girlfriend, then when the video of the abuse surfaced, the NFL revised the suspension to indefinitely).

2. *Id.*

3. *Id.*

4. *Id.*

5. Jarret Bell, *Timeline of NFL Labor Disputes*, USA TODAY (Mar. 12, 2011, 12:36:59 AM), http://usatoday30.usatoday.com/sports/football/nfl/2011-03-03-nfl-labor-disputes-timeline_N.htm.

will carry major consequences if not resolved.⁶ This comment uncovers the issues in the NFL's CBA and proposes solutions to maintain the integrity of the NFL.

Part II provides the history between the NFL and the development of the CBA. This history includes a synopsis of the landmark case *Radovich v. NFL* and how that case addresses the antitrust issue in the NFL, along with a timeline of previous disputes between the NFL and the NFLPA, which resulted in CBA reform. This comment also outlines provisions already in a standard NFL contract.

The NFL's history will be supplemented with a background on head injuries in the NFL, including the increase of diagnosed concussions, the legal ramifications of player safety, and how the NFL responded to this issue. Also discussed are the NFL's concerns with domestic violence, the backlash from the media, and how the NFL addressed this issue.

Finally, Part III examines consequences, such as decertification, if the NFL addresses neither issue and analyzes solutions for each issue the NFL can incorporate in the next CBA, including: (1) solutions to improve the NFL's handling of the head injury issue, (2) solutions to improve the NFL's domestic violence policy, including how the players can help; both will be supplemented with an original example of a provision in the CBA for head injuries and domestic violence. As the saying goes, "past behavior predicts future behavior," and the NFL and NFLPA need to reach a consensus on reform in the CBA or else face dire consequences.

II. BACKGROUND

The NFL is preeminent within the professional football industry, earning \$14 billion in revenue during the 2016 season.⁷ However, in the 1950's, antitrust concerns loomed over the NFL.⁸ These concerns implicated the Sherman Act: an Act discouraging antitrust and promoting free trade based on enumerated powers contained in the U.S. Constitution's commerce clause.⁹ Section 1 of the Sherman Act deems "[e]very 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, . . . to be

6. *NFL Players Won't Appeal \$1 Billion Concussion Settlement to Supreme Court*, ESPN (Aug. 31, 2016), http://www.espn.com/nfl/story/_/id/17428127/nfl-players-appeal-1-billion-concussion-settlement-supreme-court; Myers, *supra* note 1.

7. David Lauterbach, *NFL Pulled in \$14 Billion in Revenue During 2016 Season*, MSN (Mar. 7, 2017), <https://www.msn.com/en-us/sports/nfl/nfl-pulled-in-dollar14-billion-in-revenue-during-2016-season/ar-AAAnTZa3>.

8. *Radovich v. NFL*, 352 U.S. 445, 447 (1957).

9. U.S. CONST. art. I, § 8, cl. 3.

illegal.”¹⁰ Also, the Sherman Act discourages “monopolization,” a conspiracy resulting in “monopolization,” and attempting to “monopolize.”¹¹

A. How *Radovich* Changed the Antitrust in the NFL

In *Radovich v. NFL*, the Supreme Court addressed claims that the NFL attempted to “monopolize and control . . . professional football” in violation of the Sherman Act.¹² Petitioner Radovich played football for the NFL’s Detroit Lions.¹³ Later in his career, he wanted to be traded to Los Angeles to be closer to his ailing father, but the Detroit Lions refused.¹⁴ Radovich broke off the contract with the Lions and received an offer to play football for the San Francisco Clippers, an affiliate of the NFL.¹⁵ The NFL blacklisted Radovich from playing football with an affiliate NFL franchise; in response, Radovich claimed the blacklisting was “the result of a conspiracy among the NFL to monopolize commerce in professional football among the states.”¹⁶

The overarching issue in *Radovich* was whether Congress intended professional football to be within the scope of antitrust laws.¹⁷ The NFL argued professional football was subject to the same standard as professional baseball and that antitrust laws, according to the Sherman Act, do not apply to professional football.¹⁸ The Supreme Court found the “volume of interstate business involved with organized professional football [is] within the provisions of the [Sherman] Act.”¹⁹ Other cases attempted to apply precedent from *Federal Baseball v. National League*,²⁰ but the Court ruled *Federal Baseball* was limited to the sport of baseball, and baseball operations are outside the scope of the Sherman Act.²¹

10. 15 U.S.C. § 1 (2012).

11. 15 U.S.C. § 2 .

12. *Radovich*, 352 U.S. at 447 (reversing the lower court’s decision that the lower court lacked jurisdiction and the Petitioner failed to state a claim which relief can be granted and found professional football was subject to antitrust laws).

13. *Id.* at 448.

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.* at 449.

18. *Id.* at 450 (professional football has techniques and procedures that are similar if not the same as in professional baseball, so *stare decisis* should apply to this case (citing *Toolson v. New York Yankees Inc.*, 346 U.S. 356 (1953)).

19. *Id.* at 452.

20. *Fed. Baseball Club of Balt. v. Nat’l League of Prof’l Baseball Clubs*, 259 U.S. 200, 208 (1922) (Organized Baseball does not constitute as “attempting to monopolize” within the Sherman Act).

21. *Radovich*, 352 U.S. at 451–52 (citing *United States v. Int’l Boxing Club*, 348 U.S. 326 (1955) & *United States v. Shubert*, 348 U.S. 222 (1955) in that the cases tried to apply the *Federal Baseball* ruling, but those cases did not involve baseball operations so they must conform to the act).

Radovich was groundbreaking because the NFL could no longer monopolize the football industry. The NFL now must maximize its profit without breaking antitrust laws.

B. A Timeline of the CBA

The NFL and the NFLPA contracted its first collective bargaining agreement in 1968, which included a guaranteed minimum salary of \$9,000 for rookies and \$10,000 for veterans.²² Over the next ten years, disputes arose over terms of the CBA, and the NFL and NFLPA needed reform to resolve disputes in the CBA.

The first major dispute involved the free agency concept.²³ Back in the 1940's, the NFL used the "reserve" system, which stipulates, "once a player's contract expired, he could renegotiate with the team that owned his contract," but no other teams could negotiate with that particular player.²⁴ In 1963, R.C. Owens became the first player in NFL history to change teams, which urged owners to create the "Rozelle Rule," named after the commissioner Pete Rozelle.²⁵ The Rozelle Rule was a compensation clause that stated "whenever a team lost a free agent, the team signing that free agent had to compensate his former team. If the teams did not agree to terms, Commissioner Rozelle had the final authority to decide what the compensation would be."²⁶ Players were outraged by this rule and claimed it was an unfair restriction of trade in the open market, which resulted in the landmark case *Mackey v. NFL*.²⁷

In *Mackey*, the Eighth Circuit incorporated "the rule of reason" from the Sherman Act, providing that provisions in statutory legislation do not violate the "rule of reason" if "[t]he restraint imposed [by the statute] is justified by legitimate business purposes, and is no more restrictive than necessary."²⁸ The court found for the players and decided the Rozelle Rule was subject to antitrust laws for three reasons: (1) the Rozelle Rule applied to every player even though the NFL insisted the movement of elite players was detrimental to football, (2) the Rozelle Rule was unlimited and had continuous restriction on a player's ability to sell his services on the open

22. Bell, *supra* note 5.

23. *Id.*

24. Alvin Dominique, *NFL History: The Road to Free Agency*, BLEACHER REP. (Apr. 17, 2008), <http://bleacherreport.com/articles/18183-nfl-history-the-road-to-free-agency>.

25. *Id.*

26. *Id.*

27. *Mackey v. NFL*, 543 F.2d 606 (8th Cir. 1976) (claiming the "Rozelle Rule" violated §1 of the Sherman Act).

28. *Id.* at 620.

market, and (3) procedurally, the player was not involved in how fair compensation was determined.²⁹

This was a major victory for the players because it eliminated the Rozelle Rule. However, the NFL still maintained some restrictions on the players so teams could keep its best players from leaving by creating “plan B” free agency, whereby NFL teams can restrict up to thirty-seven players from entering free agency, and the rest are available in the open market once their contracts expired.³⁰

The second major dispute involved additional reform to the CBA, where the players wanted “liberalized free agency.”³¹ *White v. NFL* was a class action suit that involved the players seeking “antitrust injunctive relief and damages stemming from the operation of the right of first refusal rules of Plan B, the college draft, the NFL player contract and the preseason pay rules . . . [and] also alleged that defendants illegally fixed players’ medical insurance benefits and tortuously [sic] interfered with players’ prospective contracts.”³² The NFL settled to prevent the chances of a lockout.³³ The settlement included liberalized free agency for open market purposes in exchange for a salary cap.³⁴

The liberalized free agency was a breakthrough for the players, but the increased concussions in the NFL have resulted in overbearing lawsuits, which may require another reform in the CBA.

C. The CBA and the Influences of a Standard NFL Contract

The collective bargaining agreement impacts NFL contracts because all contracts are to meet certain guidelines set by the NFL.³⁵ For example, Arian Foster’s 2012 contract with the Houston Texans had eighteen references to the word “collective bargaining agreement.”³⁶ The prominent examples illustrating the CBA’s power include, “payment,” “workers’ compensation,” “filing,” and “disputes.”³⁷

Arian Foster’s contract contains an underlined and bolded clause that exemplifies the power the CBA has on NFL contracts.³⁸ The clause states a

29. *Id.* at 622.

30. Bell, *supra* note 5 (the players decertify and sue the NFL and the federal district court in Minnesota found Plan B subject to antitrust laws, thus being illegal (citing *McNeil v. NFL*, 790 F. Supp. 871, 897 (D. Minn. 1992))).

31. *White v. NFL*, 822 F. Supp. 1389, 1395 (D. Minn. 1993).

32. *Id.*

33. *Id.* at 1396; *see also* Bell, *supra* note 5.

34. *White*, 822 F. Supp. at 1395.

35. A NFL Contract, SECURITIES AND EXCHANGE COMMISSION, https://www.sec.gov/Archives/edgar/data/1573683/000104746913009713/a2216998zex-10_3.htm (last visited Oct. 24, 2016).

36. *Id.*

37. *Id.* at 1.

38. *Id.* at 7.

NFL team cannot include provisions in a contract that conflict with provisions in the CBA.³⁹ Also, the clause says if a provision in the contract conflicts with a provision in the CBA, “such unenforceable term shall be reduced to the extent necessary so that the term . . . is enforceable.”⁴⁰ This provision means the CBA overrides all contractual relationships between a team and a player, with the CBA acting as Big Brother. For example, any provision that states a player must reimburse any unearned portion of compensation, that reimbursement must be reduced to the maximum amount permitted by the terms of the CBA.⁴¹ However, one provision conflicting with the CBA does not make the entire contract null and void; the other provisions in the contract should remain fully enforced, and the contract should be interpreted as if the unenforceable provision did not exist.⁴²

D. CBA Provisions Addressing Head Injuries and Domestic Violence

The NFL hoped to address issues involving head injuries and domestic violence in the previous CBA (2011).⁴³ Article 44 is an example of how the CBA addresses head injuries.⁴⁴ Article 44 highlights instances where a player or practice player’s contract was terminated by a team due to the player being “physically unable to perform the services required of him by that contract because of an injury incurred in the performance of his services under that contract.”⁴⁵ The injury grievance allows players to seek an award due to injury, but must undergo an examination by a neutral physician, and go through arbitration, a panel of five arbitrators that analyzed the facts and determine whether the player will receive an award.⁴⁶

As discussed *infra*, the CBA allows for the NFL commissioner to make all necessary suspensions based on personal conduct, including domestic violence.⁴⁷ Specifically, Article 46, section 1(a) states:

All disputes involving a fine or suspension imposed upon a player for conduct on the playing field . . . or involving action taken against a player by the Commissioner for conduct detrimental to the integrity of, or public confidence in, the game of professional football, will be processed

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *NFL Collective Bargaining Agreement*, <https://nflabor.files.wordpress.com/2010/01/collective-bargaining-agreement-2011-2020.pdf> (last visited Mar. 9, 2017).

44. *Id.* at 193 (“Injury Grievance”).

45. *Id.*

46. *Id.* at 194–97.

47. *Id.* at 204 (“Commissioner Discipline”).

exclusively as follows: the Commissioner will promptly send written notice of his action to the player, with a copy to the NFLPA.⁴⁸

This quoted language is pertinent because the NFL commissioner only needs to send notice of his unilateral decision.⁴⁹

The NFL's CBA did its best to encompass all issues, but a revised CBA is necessary to specifically address head injuries and domestic violence. Since the NFL is a private corporation, they have the discretion to implement the necessary provisions.⁵⁰ The CBA contains a substantial amount of football jargon, but the issues that plague the NFL extend beyond football. Therefore, each issue needs to be discussed to understand why the NFL and the NFLPA have a dilemma.

E. Head Injuries' Effect on NFL Contracts

A concussion is "a type of traumatic brain injury, or TBI, caused by a bump, blow, or jolt to the head that can *change the way your brain normally works*."⁵¹ Long-term effects of a concussion include depression, dementia, chronic traumatic encephalopathy (CTE), and suicide.⁵²

There were 271 concussions in the 2015 NFL season, and a reported 182 concussions in the regular season alone, which is a fifty-eight percent rise over the 2014 season and the highest number in four years of record keeping.⁵³ Critics argue the number of concussions in the NFL did not increase; they argue the amount of *reported* concussions increased due to player evaluations doubling between the 2014 and 2015 season.⁵⁴ Concussions are not the only aspect of head injuries; subconcussive hits (smaller blows that happen repetitively during a game) are just as problematic.⁵⁵ Attorney Michael Kaplen suggests the increase in

48. *Id.*

49. *Id.*

50. *Company Overview of National Football League, Inc.*, BLOOMBERG (Oct. 24, 2016, 11:42 AM), <http://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=165309>; CALVIN MASSEY, *AMERICAN CONSTITUTIONAL LAW: POWERS AND LIBERTIES* 480 (Wolters Kluwer, 4th ed. 2012).

51. *What is a Concussion?*, CENTERS FOR DISEASE CONTROL AND PREVENTION, http://www.cdc.gov/headsup/basics/concussion_what.html (last visited Oct. 24, 2016) (emphasis added).

52. Jarryd Werts, *Ring the Bell on Concussions: The Rise of Head Injuries and Cognitive Decline in Football Players, and the NFL's Obligation to Improve Safety Measures*, 11 *CARDOZO PUB. L. POL'Y & ETHICS J.* 173, 178 (2012).

53. Nathaniel Vinton, *Concussions are on the Rise in the NFL: League Releases Data that Shows 58% Increase in Regular Season Concussions*, N.Y. *DAILY NEWS* (Jan. 30, 2016), <http://www.nydailynews.com/sports/football/concussions-rise-nfl-league-data-reveals-article-1.2513828>.

54. *Id.* (emphasis added).

55. *Id.*

concussions is just the tip of the iceberg, saying “[t]hese statistics mask a different problem, which is the subconcussive blows, and the cumulative effects of those blows.”⁵⁶

The NFL’s CBA handles general grievances, including injury, but does not say whether concussion-related claims are included.⁵⁷ However, by applying *Stringer v. NFL*, the NFL has a quasi-concussion provision in the CBA.⁵⁸ In *Stringer*, the Southern District of Ohio ruled a tort claim will be preempted by the Labor Management Relations Act (LMRA) if “(1) it arose from the CBA or (2) resolution of the claim is substantially dependent on an analysis of the terms of the CBA, or is inextricably intertwined with it.”⁵⁹ The court found for the NFL because the tort claim was “dependent on an analysis of the terms of the CBA” and “inextricably intertwined with it.” and thus was preempted by the LMRA.⁶⁰ In addition, two federal judges accepted this analysis and subjected retired players’ concussion-related claims to preemption under federal labor laws.⁶¹

The NFL and the NFLPA addressed the head injury issue by developing the Concussion Protocol.⁶² The Concussion Protocol establishes a base-line standard of care for NFL players while providing each team’s medical staff with an unaffiliated neuro-trauma consultant (UNC). The medical staff and the UNC work together to make medical determinations regarding the evaluation and diagnosis of a concussion.⁶³ In 2016, the Concussion Protocol improved with certified athletic trainers as spotters, who will identify a player with a potential head injury, remain in contact with the medical team, and provide video support until a concussion evaluation is underway.⁶⁴

The reason for the Concussion Protocol relates to the lawsuits,⁶⁵ especially with retired players.⁶⁶ The primary allegation involved the NFL’s failure to notify its players of the traumatic effects of brain damage while

56. *Id.*

57. Werts, *supra* note 52, at 186–87.

58. *Id.*

59. See *Stringer v. NFL*, 474 F. Supp. 2d 894, 903 (S.D. Ohio 2007) (alleging a wrongful death suit of a Minnesota Vikings player during a practice in 2001).

60. *Id.* at 903, 909, 911.

61. Greg Risling, *Concussion Lawsuits Are Next Big US Litigation*, WASH. TIMES (June 30, 2012), <http://www.washingtontimes.com/news/2012/jun/30/concussion-lawsuits-are-next-big-us-litigation/>.

62. *Concussion Protocol | NFL-NFLPA Joint Statement*, NFLPA (Oct. 19, 2016), <https://www.nflpa.com/concussion-protocol-joint-statement-oct-19>.

63. *Id.*

64. *Id.*

65. See, e.g., *Nat’l Football League Players’ Concussion Injury Litig.*, 301 F.R.D. 191, 195 (E.D. Pa. 2014).

66. Sarah James, Note, *Ring the Bell for the Last Time: How the NFL’s Settlement Agreement Overwhelmingly Disfavors NFL Players Living with Chronic Traumatic Encephalopathy (CTE)*, 11 J. HEALTH & BIOMED. L. 391, 408–13 (2016).

playing football.⁶⁷ After a consolidation of cases between the NFL and its retired players, both parties agreed to a settlement of \$675 million.⁶⁸ The settlement received negative reviews from the retired players because it restricted the compensation award to those CTE cases between a limited range of dates and did not compensate future diagnoses of CTE.⁶⁹

In future CBA negotiations, the NFL should use the *Stringer* decision as a foundation to include concussion related claims into the CBA. Another issue the NFL must address in the CBA is domestic violence.

F. Domestic Violence Concerns

Domestic violence accounts for forty-eight percent of arrests for violent crimes among NFL players between ages twenty-five and twenty-nine.⁷⁰ Domestic violence is an increasing concern for the NFL, and the league has received backlash regarding its handling of these situations.⁷¹

The NFL devised a personal conduct policy to address a variety of personal issues, including domestic violence, and the NFL revised it several times over the years.⁷² The 2007 revised Personal Conduct policy, which applies to all players and other NFL employees, provides “[e]ngaging in violent and/or criminal activity is unacceptable and constitutes conduct detrimental to the integrity of and public confidence in the National Football League.”⁷³ To further carry out its mission, the NFL launched a public awareness campaign on domestic violence and even ran an advertisement during the 2015 Super Bowl, which cost approximately \$4.5 million dollars to produce.⁷⁴ Despite the revisions to the personal conduct policy, which created more punitive consequences for domestic violence, the NFL still fails to fully enforce policies it created in the CBA.⁷⁵

67. *Id.* at 405.

68. *Id.* at 409.

69. *Id.* at 411–12.

70. Benjamin Morris, *The Rate of Domestic Violence Arrests Among NFL Players*, FIVETHIRTYEIGHT (July 31, 2014, 12:50 PM), <http://fivethirtyeight.com/datalab/the-rate-of-domestic-violence-arrests-among-nfl-players/>.

71. Pat Leonard, *Roger Goodell Fails to Get Tough on Domestic Violence . . . Again*, NY DAILY NEWS (Aug. 20, 2016, 9:37AM), <http://www.nydailynews.com/sports/football/giants/roger-goodell-fails-tough-domestic-violence-article-1.2758613> (acknowledging the lack of prioritization of domestic violence prevention in the NFL).

72. *See, e.g.*, Suzanne Janusz, *The NFL’s Strict Enforcement of its Personal Conduct Policy for Crimes Against Women: A Useful Tool for Combating Violence or an Attempt to Punish Morality*, 22 SETON HALL J. SPORTS & ENT. L. 93, 112–17 (2012); Bethany P. Withers, *The Integrity of the Game: Professional Athletes and Domestic Violence*, 1 HARV. J. SPORTS & ENT. L. 145, 170–71 (2010).

73. *NFL Personal Conduct Policy*, ESPN (Mar. 13, 2007), <http://www.espn.com/nfl/news/story?id=2798214>.

74. *Domestic Violence: Has the NFL Really Changed?*, THE TAKEAWAY (Jan. 29, 2015), <http://www.wnyc.org/story/domestic-violence-has-nfl-really-changed/>.

75. Leonard, *supra* note 71.

For example, Josh Brown, formerly of the New York Giants, was arrested in 2015 for domestic violence allegations brought by his ex-wife.⁷⁶ While Brown's ex-wife accused him of more than twenty instances of domestic violence, the New York Giants organization only suspended him for one game.⁷⁷ One year later, law enforcement discovered extensive journal entries and emails written by Brown admitting physical, emotional, and verbal abuse of his ex-wife.⁷⁸

After the Ray Rice incident, the NFL mandated a zero-tolerance policy on domestic violence; the first offense of domestic violence results in a six-game suspension, and the second offense results in banishment from the NFL.⁷⁹ The new evidence from the Brown incident sparked outrage from media outlets mainly because the NFL promised a zero-tolerance on domestic violence and did not follow through, instead instituting a one-game suspension.⁸⁰

The CBA gave the NFL commissioner unilateral authority to discipline players based on domestic violence.⁸¹ Specifically, through the "Uniform Player Contract," each player contractually agrees to the Commissioner's "sole authority to discipline" and "sole discretion to determine whether their conduct is detrimental to the NFL."⁸² The NFL must brainstorm ideas to better communicate a no tolerance for domestic violence, so the players will understand and comply.

76. Bill Pennington, *Josh Brown's Past Admission of Domestic Abuse Causes N.F.L. to Reopen Inquiry*, NY TIMES (Oct. 20, 2016), <http://www.nytimes.com/2016/10/21/sports/football/josh-brown-domestic-violence-new-york-giants.html>.

77. *Id.*

78. *Id.*

79. Tom Goldman, *NFL's Effort to Combat Domestic Violence May Go for the Long Game*, NAT'L PUB. RADIO (Aug. 12, 2015, 4:50 AM), <http://www.npr.org/2015/08/12/431567185/nfls-effort-to-combat-domestic-violence-may-go-for-the-long-game> (Ray Rice was suspended two games for striking his girlfriend, then when the video of the abuse surfaced, the NFL revised the suspension to indefinitely).

80. Pennington, *supra* note 76.

81. Maleaha L. Brown, Schwab Essay, *When Pros Become Cons: Ending the NFL's History of Domestic Violence Leniency*, 50 FAM. L.Q. 193, 195 (2016).

82. *Id.*

III. ANALYSIS

A. What Happens If the NFL Fails to Address Head Injuries or Domestic Violence?

The media attention surrounding the issues of head injuries and domestic violence is incredulous.⁸³ If the NFL fails to address these issues, it could suffer damaging consequences, affecting the future of professional football.

The concussion issue gained a lot of traction since the last CBA was signed in 2011 because of complaints from the players.⁸⁴ Current NFL players and future NFL retirees want protection if they suffer symptoms of CTE later in life.⁸⁵ If the NFL does not address injury protection from head injuries in the next CBA, the NFL players could decertify from the union to address these provisions in the CBA.⁸⁶

1. Decertification

Decertification is when employees formally revoke the authority of its union to negotiate, on their behalf, in the collective bargaining process.⁸⁷ There are three main steps necessary for successful decertification: (1) thirty percent of the employees must sign a petition indicating they do not want the union to represent them; (2) the petition must be filed with NLRB, who must verify the petition and schedule a hearing; and (3) fifty percent of the voting employees must opt for decertification before the union can be officially dissolved.⁸⁸

Decertification is an easier path for individual players to sue the NFL, and players have utilized decertification to address CBA issues before.⁸⁹ In 1989, player representatives for twenty-four teams voted unanimously to decertify as a union, ending the NFLPA's conferment as sole representative

83. See James, *supra* note 66, at 411–12.

84. See Jay Feeley, *NFL and Helmet Maker Riddell Sued by 75 Retired Players Over Concussions*, Bloomberg (July 21, 2011, 7:17 AM), <http://www.bloomberg.com/news/2011-07-20/nfl-and-helmet-maker-riddell-sued-by-75-retired-players-over-concussions.html>; see also Complaint at 7, *Easterling v. NFL*, No. 11CV05209 (E.D. Pa. Aug. 17, 2011) (alleging negligence and misconduct in the NFL in handling the concussion issue).

85. See James, *supra* note 66, at 406–08.

86. Gabriel A. Feldman, *The Legal Issues Behind the NFL-CBA Negotiations*, THE HUFFINGTON POST (Feb. 9, 2011, 9:22AM), http://www.huffingtonpost.com/gabriel-a-feldman/the-legal-issues-behind-t_b_820579.html.

87. *Id.*

88. *Id.*

89. *Id.*

during the collective bargaining process.⁹⁰ This led to tremendous success by paving the way for the players to sue the NFL, which resulted in the 1993 CBA reform.⁹¹ Decertification has worked in the past for the players, so it is probable the players will take decertification into consideration to resolve their dispute with the CBA provisions.

2. *Consequences of Remaining Silent on Domestic Violence*

Domestic violence is not only a damaging and irreparable crime, but it also carries pecuniary and familial consequences. One in every three women in United States, approximately 42.4 million women, have experienced some form of domestic violence.⁹² Women make up forty-five percent of NFL fans, and it is important that the NFL not alienate almost half of its viewing demographic.⁹³

As discussed above, the NFL is currently working to reduce domestic violence among its NFL players.⁹⁴ However, the NFL must do more to educate its players on domestic violence, or the commissioner could lose his job.⁹⁵ For example, New Jersey Senator Jennifer Beck made damning statements about the NFL commissioner and the current personal conduct policies put in place:

Our country often idolizes professional athletes, particularly football players, giving them a special status that physicians, teachers, politicians and astronauts do not enjoy. That is why the NFL's response is so critical . . . Roger Goodell never saw fit to develop a comprehensive policy to deal with domestic violence. He is the standard bearer and should be let go.⁹⁶

90. See *McNeil v. NFL*, 790 F.Supp. 871, 897 (D. Minn. 1992) (ruling "Plan B" was an unreasonable restraint of trade); see also *White v. NFL*, 822 F.Supp. 1389, 1396 (D. Minn. 1993) (challenging all free agency restrictions).

91. See James, *supra* note 66.

92. Anastasia M. Sotiropoulos, Comment, *Words Can Cut the Deepest Wounds: Why the Family Medical Leave Act Should Be Amended to Expand Protection for Victims of Domestic Violence*, 65 DEPAUL L. REV. 1361 (2016).

93. D'Arcy Maine, *Rule 1 in Speaking to Women Fans: Don't Alienate Women Fans*, ESPNW (Aug. 13, 2015), <http://www.espn.com/espnw/athletes-life/article/13430212/alienate-women-fans>.

94. See Janusz, *supra* note 72.

95. See R. McGrath, *Women Legislators Call for Stronger Response to Domestic Violence in NFL*, STATE OF N.J. (Sept. 30, 2014), <http://www.nj.gov/dcf/women/archive/WOMEN.LEGISLATORS.CALL.FOR.STRONGER.RESPONSE.TO.DOMESTIC.VIOLENCE.IN.NFL.pdf>.

96. *Id.*

If the NFL wants to improve its image amongst the media and its fans, the NFL must start from its foundation: the CBA. The CBA expires after the 2020 season, so the NFL must brainstorm solutions to address these issues.⁹⁷

B. Solutions to Address Head Injuries

The first topic the NFL must discuss in upcoming CBA negotiations is how to protect NFL players from the symptoms of head injuries later in life. Currently, a portion of the NFL's retired players, who are victims of CTE, are receiving payouts from a \$675 million settlement.⁹⁸ Moreover, the NFL included Articles in the CBA dedicated for NFL players to receive compensation upon retirement, as well as injury protection, in the event the player is physically unable to perform.⁹⁹ However, the NFL should include an additional section specifically for taking care of future NFL retirees who may encounter symptoms from constant hits to the head during their playing time.

The NFL should create an Article in the CBA for head injuries, which results in CTE, in the next CBA. The Article should resemble Article 63, which mirrors a typical pension plan because it sets aside money for NFL retirees while also reimbursing health care costs accrued during their NFL career.¹⁰⁰

Head injuries are inevitable in a sport such as football, so the NFL should include compensation in the CBA for NFL retirees who are affected by symptoms of CTE. The current settlement agreement only allows a portion of NFL retirees to receive payouts for CTE, which is why some NFL retirees are appealing the settlement.¹⁰¹ One problem with CTE is it can only be diagnosed after someone dies and the brain is taken out of the body.¹⁰² However, the deadly effects of CTE are widely known, and the NFL should incorporate a new Article in the CBA to allow current NFL players to acquire information on the effects of CTE, enabling the players to make informed decisions on their current health and career longevity.¹⁰³ Other commentators have provided solutions such as utilizing preliminary research results of CTE “to advance the expansion of future research trials to definitively diagnose CTE and prevent and treat CTE symptoms.”¹⁰⁴

97. Jerry Fowler, *Ramon Foster Expects 2021 Work Stoppage Over Drug Policy*, ESPN (Aug. 22, 2016), http://www.espn.com/nfl/story/_/id/17366384/pittsburgh-steelers-player-rep-nfl-players-save-2021-lockout.

98. See James, *supra* note 66.

99. See *NFL Collective Bargaining Agreement*, *supra* note 43, at 242.

100. See *id.* (“Gene Upshaw NFL Player Health Reimbursement Account”).

101. See James, *supra* note 66.

102. See *id.* at 428.

103. See *id.* at 391.

104. See *id.* at 434.

Compensation for those NFL retirees feeling the effects of CTE is a good start, but the NFL should also include in the CBA preventative measures to reduce CTE altogether.¹⁰⁵ The NFL needs stricter regulations preventing a player to re-enter the game due to a potential concussion. As discussed above, the Concussion Protocol made enhancements during the 2016 NFL season, but there has already been criticism of the Concussion Protocol due to the handling of Quarterback Cam Newton of the Carolina Panthers in a game against the Denver Broncos.¹⁰⁶ One solution is for the NFL to implement the three-strike rule in the CBA.¹⁰⁷

1. Three-Strike Rule

The three-strike rule is simple: if a player is diagnosed with three concussions during a season, that player is automatically out for the season.¹⁰⁸ This rule will be akin to the NFL's three-strike rule for substance abuse, which is already integrated in the NFL's substance abuse policy.¹⁰⁹

This rule would need stipulations before its placement. First, the NFL must stipulate when a concussion constitutes a strike.¹¹⁰ Some players have re-entered a game after Concussion Protocol and have later been diagnosed with a concussion.¹¹¹ Per the three-strike rule, it is important to define a strike as when a player is diagnosed with a concussion as part of the Concussion Protocol.¹¹² Second, the NFL should ensure round-the-clock treatment while concussed to make sure the concussion symptoms are gone before entering another game. This caveat is important because studies show an increased risk of future concussions after receiving the first.¹¹³

105. *Id.*

106. Emmett Knowlton, *The NFL's Concussion Protocol is Once Again Under Fire After Cam Newton Got Repeatedly Pummeled and Went Unchecked*, BUS. INSIDER (Sept. 9, 2016), <http://www.businessinsider.com/cam-newton-concussion-hits-protocol-panthers-broncos-2016-9>.

107. Hannah Wollenzien, *Why the Three Strikes Rule for Sports Concussions is Vital*, COBBLERS ON THE BRAIN BLOG (Mar. 27, 2017), <https://cobbersonthebrain.areavoices.com/2017/03/27/why-the-three-strikes-rule-for-sports-concussions-is-vital/>.

108. *Id.*

109. See Joel Michel Ugolini, *Even A Violent Game Has Limits: A Look at the NFL's Responsibility for the Behavior of its Players*, 39 U. TOL. L. REV. 41, 56–57 (2007).

110. See Knowlton, *supra* note 106.

111. See, e.g., *Browns Say Colt McCoy Seemed OK*, ESPN (Dec. 11, 2011), http://www.espn.com/nfl/story/_/id/7336211/colt-mccoy-cleveland-browns-diagnosed-concussion.

112. See Knowlton, *supra* note 106.

113. Jeanie Lerche Davis, *One Concussion Increases Risk of More*, WEBMD (Nov. 18, 2003), <http://www.webmd.com/fitness-exercise/news/20031118/one-concussion-increases-risk-of-more#1> (Kevin M. Guskiewicz, PhD, of the Injury Prevention Research Center at the University of North Carolina at Chapel Hill, wrote "Athletes with a history of a concussion are at greater risks for future concussions than those without a history of head injuries.").

This rule may receive backlash for several reasons, including: a NFL player's willingness to play through injury; a NFL team's outcome in a season due to that player being out; and a NFL fan's interest in a game because certain players are out. However, this is in the best interest of current NFL players, and increases their chances to live a healthy, productive life after they decide to retire. Another solution to prevent the effects of CTE involves starting from the ground up.

2. Grassroots level: Youth Football Programs

Youth football programs are the foundation for future NFL players. The need to protect youth football players is critical, considering the skeletal and muscular changes the young players experience, because just one robust hit to the head can affect a young player's overall development.¹¹⁴

The State of Illinois took measures to help youth football programs address concussions. In 2015, Illinois enacted the Youth Sports Concussion Safety Act, which requires school boards to create a "Concussion Oversight Team."¹¹⁵ The team is comprised of one or more physicians, an athletic trainer, and a nurse (if the school has one).¹¹⁶ The Act requires coaches, officials, and the Concussion Oversight Team to receive training with the primary goal being development of a protocol to ensure a child is symptom-free of concussions before returning to the field.¹¹⁷ However, the Act only requires the members of the Concussion Oversight Team to act "to the extent practicable," which highlights the ambiguity resulting in judges determining what is "practicable."¹¹⁸

Recently, the NFL teamed up with Heads-Up, a youth football organization, and proclaimed the rate of head injuries went down due to the teaching the proper way to tackle, but media reports discovered the Heads-Up program did not reduce head injuries.¹¹⁹

The NFL should include a CBA provision that funds the development of youth football programs like Heads-Up to encourage a safer, less violent football culture. The NFL must end the warrior-like culture it previously

114. See, e.g., Ken Belson, *Playing Tackle Football Before 12 is Tied to Brain Problems Later*, N.Y. TIMES (Sept. 19, 2017), <https://www.nytimes.com/2017/09/19/sports/football/tackle-football-brain-youth.html?mcubz=0>.

115. Youth Sports Concussion Safety Act, Pub. Act 99-0245 (2015), <http://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=88&GA=99&DocTypeId=S&B&DocNum=0007&GAID=13&LegID=83721&SpecSess=&Session=>.

116. *Id.*

117. Owen Blood & John-Michael Porretta, *Litigating Sports Brain Injuries: The New Ball Game*, 104 Ill. B.J. 28, 30 (2016).

118. *Id.*

119. Alan Schwarz, *N.F.L.-Backed Youth Program Says It Reduced Concussions. The Data Disagrees*, N.Y. TIMES (July 27, 2016), <http://www.nytimes.com/2016/07/28/sports/football/nfl-concussions-youth-program-heads-up-football.html>.

advocated, and rather emphasize the health of a player over loyalty to a team. Encouraging youth football players to report their injuries quickly and accurately is important to keep them safe.¹²⁰ The NFL must highlight a health-conscious football culture for players, coaches, and the training staff, starting at the youth level.

C. Solutions to Reduce Domestic Violence

The second topic the NFL must discuss in upcoming CBA negotiations is figure out ways to reduce domestic violence rates among its players. The NFL should propose a background check procedure in the CBA specifically targeted toward any history of violence. Domestic violence is not necessarily a single act; rather, it comprises a pattern of different abuse behaviors by a person to exert power and control over another person.¹²¹ If a player has a pattern of violent behavior, the NFL must identify the pattern at the source, and a viable and responsible way to identify a pattern is including a background check procedure in the CBA.

The CBA gives the commissioner power to “notif[y] the parties either of disapproval or of extension of [a] 10-day period for purposes of *investigation* or clarification”¹²² However, both a standard NFL contract and the NFL practice player contract are silent on whether background checks will be conducted before entering the NFL.¹²³

Concerns loom on the legality of background checks in player contracts because the NFL is subject to federal regulations.¹²⁴ Background checks will most likely be legal because the NFL is a private employer, and courts have ruled private employers have legally included at least a basic background check in contracts of its employees.¹²⁵

120. Richard Robeson & Nancy M. P. King, *Loss of Possession: Concussions, Informed Consent, and Autonomy*, 42 J.L. MED. & ETHICS 334, 339 (2014).

121. Melinda Smith & Jeanne Segal, *Domestic Violence and Abuse: Signs of Abuse and Abusive Relationships*, HelpGuide, <http://www.helpguide.org/articles/abuse/domestic-violence-and-abuse.htm> (last updated Oct. 2015) (providing an example of how domestic violence can lead to a cycle of abuse).

122. See *NFL Collective Bargaining Agreement*, *supra* note 43 (emphasis added).

123. *Id.*

124. See *AFSCME, Loc. 2043 v. City of Lebanon*, 388 P.3d. 1028, 1032 n.4 (Or. 2017) (“The NLRA applies only to private sector employment and expressly excludes public entities from the definition of ‘employer.’”); see also 29 U.S.C.S. § 152(2) (Lexis, LexisAdvance through Pub. L. 115-73) (stating an “employer” under the NLRA “shall not include the United States or . . . [a]ny State or political subdivision thereof”).

125. See, e.g., *NASA v. Nelson*, 562 U.S. 134, 149 (2011) (“[M]ore than 88% of U.S. companies . . . perform background checks on their employees”).

The NFL should look to other companies to create a background check policy in the players' contracts.¹²⁶ CBS News details what employers look for in a pre-employment background check which the NFL can emulate.¹²⁷ CBS News observed with criminal records, state law dictates what employers consider as a red flag to watch, so the NFL should also pay attention to states where it has teams and the laws applicable to that state.¹²⁸

A background check policy is a great start to help detect a pattern of violence for current and incoming NFL players. The NFL should have an independent firm facilitate the background check process to ensure the process is impartial so neither the NFL nor the NFLPA can claim unfair prejudice.

Another solution the NFL can implement involves mandating domestic violence training in the new CBA. The current CBA includes nothing about training for domestic violence, but the NFL mandates domestic violence training at training camp.¹²⁹ The domestic violence training started in 2014, in the aftermath of the Ray Rice incident, and changes its focus every year.¹³⁰ For example, Dwight Hollier, the NFL's vice president of wellness and clinical services, stated the "emphasis a year ago was about the basic definitions of domestic violence and sexual assault."¹³¹ The NFL wants the domestic violence training to progress every year to highlight the different type of crimes that can impact the victims, perpetrators, families, and the NFL teams.¹³²

Although the NFL mandates the domestic violence training during training camp, a community of players choose not to go to camp because of contract reasons or other disputes.¹³³ For *all* the players to receive domestic violence training, the NFL needs to add a provision in the CBA. The NFL

126. *Guidelines Regarding Security Background Checks for Candidates for Employment with Dell*, DELL, <http://i.dell.com/sites/doccontent/corporate/careers/en/Documents/CandidateGuidelines-Notice-of-Convictions.pdf> (last visited Feb. 13, 2017).

127. Suzanne Lucas, *What Happens on a Pre-Employment Background Check?*, CBS NEWS (Dec. 9, 2013 9:58 AM), <https://www.cbsnews.com/news/what-happens-on-a-pre-employment-background-check/>.

128. *Id.*

129. Lindsay H. Jones, *NFL Begins New Phase of Domestic Violence Education as Training Camps Open*, USA Today (July 27, 2015 5:20 PM), <http://www.usatoday.com/story/sports/nfl/2015/07/27/domestic-violence-training-education-drunk-driving-intervention/30752175/>.

130. *Id.*

131. *Id.*

132. *Id.*

133. See Scott Davis, *Chargers Star Rookie Joey Bosa is Holding Out of Training Camp Over Two Small Contract Details, and it's Getting Intense*, BUS. INSIDER (Aug. 1, 2016, 10:23 AM), <http://www.businessinsider.com/joey-bosa-chargers-training-camp-holdout-2016-8> (stating rookie Joey Bosa is holding out of NFL training because of contract dispute); see also Mike Florio, *Eric Berry May Skip All of Training Camp, Preseason*, PROFOOTBALLTALK (July 28, 2016, 12:13 AM), <http://profootballtalk.nbcsports.com/2016/07/28/eric-berry-may-skip-all-of-training-camp-preseason/> (Veteran Eric Berry may miss entire training camp due to contract dispute).

should look at what states incorporate in their statutes on domestic violence as a foundation to add in the CBA. For example, the Ohio legislature dedicates an exemplary statute to domestic violence:

(A) No person shall knowingly cause or attempt to cause physical harm to a family or household member. (B) No person shall recklessly cause serious physical harm to a family or household member. (C) No person, by threat of force, shall knowingly cause a family or household member to believe that the offender will cause imminent physical harm to the family or household member. (D)(1) Whoever violates this section is guilty of domestic violence, and the court shall sentence the offender.¹³⁴

This example illustrates the Ohio legislature's ability to broaden domestic violence to encompass more than actual physical harm. However, in punishing players who commit domestic violence, the NFL needs to discuss whether the commissioner is the proper person to handle that type of punishment.

According to Article 46 of the current CBA, the NFL commissioner has power over all suspensions and disciplinary actions handed to the NFL players, including domestic violence.¹³⁵ The NFL appointed former Manhattan sex crimes prosecutor Lisa Friel to advise the commissioner on how to investigate and discipline players accused of domestic and sexual violence, but critics say the appointment was more of a stunt to improve public relations.¹³⁶

More than advisement is needed; in future CBA negotiations, the NFL should consider delegating the authority of its commissioner. Specifically, the NFL should allow the NFLPA to appoint a qualified person for all matters involving domestic violence, and hand down punishment to NFL players who commit domestic violence. Allowing the NFLPA to appoint an official for domestic violence issues would be a victory for the NFL. The NFLPA can decide who disciplines the players on domestic violence and alleviates pressure the NFL faces from negative publicity in dealing with domestic violence.¹³⁷

134. 29 OHIO REV. CODE ANN. § 2919.25(A)-(D) (LEXIS through file 124).

135. See *NFL Collective Bargaining Agreement*, *supra* note 43, at 204.

136. Michael O'Keefe & Christian Red, *How Roger Goodell Mishandled Domestic Violence and What NFL has Changed Since*, N.Y. DAILY NEWS (Oct. 13, 2016, 12:21 AM), <http://www.nydailynews.com/sports/football/roger-goodell-mishandling-domestic-violence-article-1.2828800>.

137. See *Domestic Violence: Has the NFL Really Changed?*, *supra* note 74.

D. Suggested Provision in the Next CBA

This comment's first proposal is an Article reducing and assisting the NFL players and retirees who may suffer the effects of head injuries. The provision utilizes the same principles as Article 63.¹³⁸ However, the new article will include a few differences:

Article 71

The Junior Seau Head Injury Management Fund

Section 1 Qualification of Compensation for NFL retirees: A Player qualifies for this Fund in two ways: (a) the player earns a "Credited" season under the "Bert Bell/Pete Rozelle NFL Player Retirement Plan" for 2006 or any later year which a salary cap applies and has a total of two or more Credited Seasons; or (b) the player's last Credited season was before 2006 and the player has had a total of three or more Credited seasons.¹³⁹

Section 2 Youth Football Programs: The NFL must exemplify a health-conscious football culture for players, coaches, and the training staff starting at the youth level. Five percent of the revenue each season will be dedicated to youth football programs sanctioned by the NFL. The money will be used for educating coaches, players and parents on head injuries, supplying the proper medical staff at every game, and any other measure to improve the safety of the game.

Section 3 The Three-Strike Rule: The following rule will become effective immediately: Any player diagnosed with three concussions in NFL games, practices, or any NFL-related physical activity during a single NFL season, that player is disqualified from participating in any NFL games or practices and shall remain in the Concussion Protocol until the next calendar NFL season.

Section 4 CTE research: A portion of the NFL revenues each year will be dedicated to CTE research. The influx of data will allow the players to make informed decisions with their families on their current health and career longevity.

Section 1 extends the eligibility to more NFL retirees than in the settlement.¹⁴⁰ This allows more players to be covered to receive benefits from the effects of CTE.

138. See *NFL Collective Bargaining Agreement*, *supra* note 43, at 242–43.

139. *Id.*

140. See James, *supra* note 66, at 411–12.

Section 2 allows proceeds to go to youth football programs so they can emphasize a health-conscious football culture. It also explains how the money will be used; then hopefully that culture will carry over to the NFL.¹⁴¹

Section 3 enforces a three-strike rule, which is necessary in ensuring NFL players are symptom-free before entering in another game and the player's protection from further damage if the player has three concussions in a season.¹⁴²

Section 4 allows money to go to CTE research and educating the players on the consequences of CTE.¹⁴³

The second proposal provides is a provision dealing with the unfortunate issue of domestic violence. The provision should be included in the CBA, a standard NFL player's contract, and a NFL practice player's contract. The provision, modeled after the Ohio Statute on domestic violence,¹⁴⁴ is as follows:

Section 6. Domestic Violence:

(A) No NFL player or employee shall knowingly cause or attempt to cause physical abuse, sexual abuse, emotional abuse, or verbal abuse to a family or household member.

(B) No NFL player or employee shall recklessly cause serious physical abuse, sexual abuse, emotional abuse, or verbal abuse to a family or household member.

(C) No NFL player or employee, by threat of force, shall knowingly cause a family or household member to believe that the offender will cause imminent physical abuse or sexual abuse to the family or household member.

(D) Whoever violates subsections (A), (B), or (C) is guilty of domestic violence, and appropriate punishment shall be given by the official appointed by the NFLPA.

The proposed section resembles State statutes, but there are important differences. First, the example provision expands from physical abuse, and includes emotional, sexual, and verbal abuse. This is necessary because domestic violence is derived from different types of abusive behaviors in addition to physical abuse, so it is important to keep the provision as broad as possible to cover all possible angles of domestic violence.¹⁴⁵

Second, section (D) of the provision is important because the NFL commissioner is not the one best suited to delivering the punishment.¹⁴⁶ Not

141. See Blood & Porretta, *supra* note 117.

142. See Wollenzien, *supra* note 107.

143. See James, *supra* note 66, at 434.

144. See 29 OHIO REV. CODE ANN. § 2919.25(A)-(D) (LEXIS through file 124).

145. See Smith & Segal, *supra* note 121.

146. See *NFL Collective Bargaining Agreement*, *supra* note 43.

only should the NFL delegate the commissioner's punishing power to someone who is experienced in domestic violence disputes, the NFL should allow the NFLPA and the players to have an input on appointing a qualified candidate to deliver punishment on domestic violence. The NFL may recommend Lisa Friel, who was appointed by the NFL to lead, given her vast experience prosecuting sex crimes in Manhattan.¹⁴⁷ She would be a good selection for the NFL to delegate punishing power. However, for impartiality, the NFLPA may request a qualified person with whom the NFL does not have ties.

The Junior Seau Head Injury Management Fund and a domestic violence provision in the CBA may be a Hail Mary the NFL needs so it can address the issues of head injuries and domestic violence.

IV. CONCLUSION

The NFL will neither completely abolish domestic violence nor eliminate head injuries. However, decertification and impeaching the commissioner could happen if the NFL inadequately addresses the issues involving head injuries and domestic violence. For head injuries, the three-strike rule, educating youth football programs, and adding an article in the CBA dedicated to head injuries are great solutions. It is up to the NFL, the NFLPA, and the players to agree on a compromise suitable for all parties. For domestic violence, a background check policy, mandatory domestic violence training for all, delegating the commissioner's punishing power, and a separate provision in the CBA are great solutions. In 2021, the NFL will be on fourth down, and if the NFL and the NFLPA do not come to an agreement for the next CBA, there may not be any football games played on Sundays.

147. See Keefe & Red, *supra* note 136.

