I. THE ELIGIBILITY RULE VIOLATES THE SHERMAN ACT AS A MATTER OF LAW

The NFL devotes considerable effort to refuting plaintiff's purported contention that "the per se rule should be applied here." But the NFL has misconstrued plaintiff's position. Although the Rule is the type of conduct traditionally condemned as a per se violation of the Act, because it applies to sports, the teachings of the Supreme Court provide defendant with an opportunity to justify their restraint of trade.

The Rule codifies the NFL member teams' horizontal agreement not to compete for a particular class of football players and to exclude them from the market for player services in the NFL. This fact is particularly relevant to the kind of rule of reason analysis utilized by the Supreme Court in *NCAA v. Board of Regents.*[1] The Court in *NCAA* did not apply a blanket condemnation of the restraint only because the industry of college football required some restraints if it were to market its product. The Court determined, however, that where a challenged practice has obvious anticompetitive effects, "no elaborate industry analysis is required" and an abbreviated rule of reason analysis or "quick look" approach is appropriate.[2] In such cases, the court may proceed directly to the question of whether the procompetitive justifications advanced for the restraint outweigh the anticompetitive evils.[3] Thus, because the Rule applies in the context of sports, the analysis of its legality is, in a sense, a hybrid falling between per se and rule of reason.

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1 468 U.S. 85 (1984).

2 Law v. NCAA, 902 F. Supp. 1304, 1405 (D. Kan. 1995), *aff'd*, 134 F.3d 1010, 1019-20 (10th Cir. 1998) (citing NCAA, 468 U.S. at 109).

3 See id.; Chicago Prof'l Sports Ltd. P'ship v. NBA, 961 F.2d 667, 674 (7th Cir. 1992).

The NFL incorrectly claims that summary judgment is not appropriate under the rule of reason. If plaintiff's prima facie showing of an explicit restraint on trade is unrebutted, however, summary judgment may issue.[4]

In *Law v. NCAA*, the plaintiff challenged the defendant's rule setting a salary cap for entry level basketball coaches at its member institutions. Relying on *NCAA* to apply a rule of reason analysis, the district court granted summary judgment, holding that the defendant failed to meet its burden of showing that the restraint enhanced competition. The court stated that if an antitrust defendant "does not offer any legitimate justifications, the finding of adverse competitive impact or market power prevails, and 'the court condemns the practice without ado.'"[5] The Tenth Circuit agreed and flatly rejected defendant's argument, like the NFL's argument here, that there were genuine issues of fact about the market, which precluded summary judgment.[6]

The NFL offers two principle arguments in its opposition brief: (1) *plaintiff* has the burden of demonstrating that the procompetitive benefits of the restraint are outweighed by the anticompetitive harm; and (2) plaintiff has not defined the relevant market.

Without any support, the NFL asserts that "an antitrust *plaintiff* must demonstrate that the procompetitive benefits of the challenged restraint are outweighed by its anti-competitive effects."[7] As the Supreme Court has held, however, "under the rule of reason, the proponent – not the challenger – of a facially anticompetitive measure carries 'a *heavy* burden of establishing an affirmative defense which competitively justifies [such an] apparent deviation from the

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4 See Capital Imaging v. Mohawk Valley Med. Ass'n, 996 F.2d 537, 543 (2d Cir. 1993).

5 902 F. Supp. at 1404-05 (citing U.S. v. Brown Univ., 5 F.3d 658, 668 (3d Cir. 1993) (quoting Chicago Prof'l Sports, 961 F.2d at 674)).

6 See Law v. NCAA, 134 F.3d at 1020.

7 Def. Mem. at 23 (emphasis added). Indeed, the NFL cites as authority a footnote in *Bogan v. Hodgkins*, 166 F.3d 509, 513 n.4 (2d Cir. 1999), but the footnote does not even relate to the burden issue.

operations of a free market.'"[8] Reciting noble motives behind the restraint will not suffice; a defendant must demonstrate that the restraint actually enhances competition.[9] In addition, the benefits to competition must apply to the same market in which the restraint is found.[10]

Thus, the NFL's justifications must prove that the Rule serves to enhance competition in the market for player services. But the NFL has failed to provide any reasons as to why the Rule increases competition in any market. And none exists.

In the context of repeating its antitrust injury argument, the NFL suggests that the following purposes save the Rule: (1) to protect "younger and/or less experienced players from heightened risks of injury"; and (2) to "protect the NFL clubs from the costs and potential liability entailed by such injuries."[11]

The NFL's stunning admission that one of the Rule's purposes is to reduce the member teams' costs is fatal to its position. Not only is such a reason deficient as a procompetitive justification, it underscores plaintiff's claim that the Rule is anticompetitive. This justification is "nothing less than a frontal assault on the basic policy of the Sherman Act."[12] In short, "[e]xclusion of traders from the market by means of combination or conspiracy is so inconsistent with the free-market principles embodied in the Sherman Act that it is not to be saved by reference to the need for preserving the collaborators' profit margins."[13]

In *Law v. NCAA*, the Tenth Circuit flatly rejected the defendant's cost containment justification for imposing a salary cap on entry level basketball coaches: "If holding down costs by the exercise of market power over suppliers, rather than just by increased efficiency, is a pro-

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8 Law v. NCAA, 902 F. Supp at 1408 (quoting NCAA, 468 U.S. at 113 n.13 (emphasis added)).
9 See NCAA, 468 U.S. at 103-04.
10 See U.S. v. Topco Assocs., Inc., 405 U.S. 596, 610 (1972); Law v. NCAA, 902 F. Supp. at 1406.
11 Def. Mem. at 4, 22-23.
12 Nat'l Soc'y of Prof'l Eng'rs v. United States, 435 U.S. 679, 695 (1977).
13 U.S. v. General Motors Corp., 384 U.S. 127, 146 (1966); see also NCAA, 468 U.S. at 116 (rejecting NCAA's proffered justification that the restraint was necessary to protect live ticket sales).

competitive effect justifying joint conduct, then Section 1 can never apply to input markets or buyer cartels. This is not and cannot be the law."[14]

The NFL's purported benevolent objective of protecting players from injuries in NFL games is disingenuous. The NFL has no eligibility criteria for size, weight, strength, or maturity. Indeed, if two year college players were really at such greater risk of injury than three year players, the NFL's real intent is that these younger players should themselves bear the risk of a career-ending injury while playing in the NCAA for nothing so the NFL teams are not burdened with the cost of such injuries.

Moreover, even if player protection is a reason for the Rule, "this fact does not prevent [the Rule's] purpose from being described in, objective terms, as anticompetitive."[15] As the Supreme Court has stated, "good motives will not invalidate an otherwise anticompetitive practice."[16] Here, the Rule confers no benefits to competition in the market for player services. In addition, the NFL cannot demonstrate how the Rule is "tailored to the interests [it] purports to protect."[17]

In each of the prior eligibility cases, *Haywood*, *Boris* and *Linseman*, the defendant leagues attempted to justify their respective rules with reasons identical to those proffered here: to protect college athletes who are not physically, mentally or emotionally mature enough for the professional game, and to reduce costs.[18] In all three cases, the attempted justifications were rejected.

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14 134 F.3d at 1023 (citation omitted). Moreover, the court held that the rule's purpose actually established the finding of anticompetitive effect. Id. at 1020.

15 Smith v. Pro-Football, Inc., 593 F.2d 1173, 1185 (D.C. Cir. 1978) (rejecting NFL's proffered justification for the draft as promoting playing field equality rather than to inflate its profit margins).

16 NCAA, 468 U.S. at 101 n.23 (citations omitted).

17 Id. at 118-19.

18 The NFL claims, without support, that "[a]ll three of those cases were implicitly overruled by *NCAA*" because the exclusionary eligibility rules were held to be per se violations. Def. Mem. at 19. But, "the fundamental

(continued...)

The NFL is equally off-base in arguing that plaintiff has not established the contours of the relevant market. In this case, the relevant market is quite clear: it is the market for player services in the NFL. Defendant has complete control over this market and has acted to exclude from it a broad class of sellers.[19] These undisputed facts are sufficient to warrant summary judgment.

The NFL misapprehends the use of market definition in antitrust law, which is not an end unto itself but rather exists to illuminate a practice's effect on competition.[20] A plaintiff may indirectly establish anticompetitive effect, his initial burden under the rule of reason, by proving that the defendant possessed the requisite market power within a defined market or directly by showing anticompetitive effects themselves.[21] Thus, where a practice has obvious anticompetitive effects – as with the exclusion of sellers from the market – the court may apply the "quick look" rule of reason and dispense with market definition and assessment of market power. The court may then proceed to the issue of the procompetitive justifications advanced for the restraint.[22] In such cases, the court does "not need to resolve issues of fact pertaining to the definition of the relevant market" to support a decision that the rule is a naked restraint.[23]

(...continued)

inquiry under the rule of reason is the same as under the per se rule: what the competitive significance of the challenged restraint is and whether the restraint enhances competition." Law v. NCAA, 902 F. Supp. at 1404 (citing NCAA, 468 U.S. at 103-04). Indeed, the per se rule is not contradictory to the rule of reason, it is simply a "judicial shortcut." Smith v. Pro-Football, Inc., 593 F.2d at 1181. Accordingly, *Haywood*, *Boris* and *Linseman* remain significant in demonstrating that the eligibility rule constitutes an explicit restraint on trade. *NCAA* simply permits defendant to proffer a procompetitive justification.

19 The NFL's implied assertion that the existence of other football leagues render it without market power is ridiculous. No league is even remotely competitive with the NFL. In *Law v. NCAA*, defendant argued that plaintiffs could get coaching positions in other colleges, high school teams and overseas. The court stated that "[d]efendant's argument – essentially that price-fixing victims can simply go elsewhere and get a job in another part of the economy that is not fixed – is, of course, absurd and cannot carry the day for the NCAA in this litigation." 902 F. Supp. at 1405 n.11.

20 Law v. NCAA, 134 F.3d at 1020 (citing NCAA, 468 U.S. at 109).

21 See Brown Univ., 5 F.3d at 668-69; Bhan v. NME Hosp., Inc., 929 F.2d 1404, 1413 (9th Cir. 1991); Law v. NCAA, 134 F.3d at 1019.

22 See Chicago Prof'l Sports Ltd. P'ship, 961 F.2d at 667, 674.

23 Law v. NCAA, 134 F.3d at 1020.

Nevertheless, the NFL's market power is obvious. Indeed, market power has been defined by the Supreme Court to mean the "power to control prices or exclude competition."[24] In *United States v. Visa*, this Circuit recently held that "the most persuasive evidence of harm to competition [was] the total exclusion of [competitors] from a segment of the market" as a result of an agreement by the defendants.[25] Here the Rule itself is evidence of the NFL's market power.

II. THE RULE IS NOT IN THE BYLAWS

The NFL represents that the Rule is in the NFL Bylaws and that the Bylaws are incorporated into the CBA. This is the linchpin for the NFL's argument that the Rule is shielded from antitrust scrutiny by the non-statutory labor exemption. But where in the current Bylaws is the Rule?

The only NFL bylaw relating to draft eligibility appears in 1992 NFL Bylaws at 12.1(E), which the NFL has represented to Clarett's counsel is the applicable Rule. It provides: "three NFL seasons must have elapsed since the player was graduated from high school,"[26] if a player wants to be included in the draft prior to the expiration of his college eligibility. Clarett is eligible under the plain language of this Rule because three NFL seasons have expired since his high school graduation.[27]

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24 U.S. v. E.I. du Pont de Nemours & Co., 351 U.S. 377, 391 (1956).

25 344 F.3d 229, 240 (2d Cir. 2003).

26 1992 Bylaws at section 12.1(E), attached to Clarett's initial Memorandum as Exhibit D.

27 The NFL claims that under *Crouch v. Nat'l Ass'n for Stock Car Auto Racing, Inc.*, 845 F.2d 397 (2d Cir. 1988), this Court cannot interpret the Rule. However, in *Crouch*, a race car driver asked the court to solve a dispute with the corporation that sanctions stock car races over the rules governing a particular race. The Second Circuit declined the invitation "to become the 'super-scorer' for stock car racing disputes." Id. at 403. Clearly, Clarett is not asking this Court to interpret rules of play or to overturn a decision by a referee or line judge. Unlike Clarett, Crouch was a participant in the event but believed he had been victimized by an unfair interpretation of the rules of competition. Clarett is only seeking the right to compete and, under the plain reading of the 1992 Rule, he should be eligible.

Nevertheless, the NFL has continued to misrepresent the wording of the Rule to the public, college athletes, Clarett's counsel and, now, to this Court. In its first memorandum, the NFL quotes the Rule as requiring that "three full college football seasons have elapsed since his high school graduation," citing Clarett's Complaint as the source.[28] In its second memorandum, the NFL states that the Rule requires "that at least three football seasons have elapsed since his high school graduation," this time citing the Declaration of Peter Ruocco as the source.[29]

The NFL simply refuses to commit to a citation to its Bylaw or to specify what it contends is in fact the operative eligibility rule. Only by following a somewhat convoluted paper trail is it possible to understand the reason the NFL is playing games with the facts.

In 2003, the NFL replaced the 1992 Bylaws.[30] These current Bylaws are the only Bylaws applicable to this dispute. And they do not contain either the 1992 version of the Rule referencing "three NFL seasons" or the NFL's version in this case referencing "three full college football seasons." Instead, on page NFL/CLA 003, directly beneath a narrow rule relating to high school players who do not attend college, the following indented reference appears:

> *See* NFLNet Memorandum, February 16, 1990, establishing policy and procedure pursuant to Article VII, Section 8.5, permitting college players to apply for special draft eligibility if at least three football seasons have elapsed since their graduation from high school.[31]

The NFL produced the referenced NFLNet Memorandum only after Clarett filed his first brief, and twenty-nine days after the Court had ordered the NFL to produce the relevant documents. The NFL's counsel represented that this document had been "inadvertently omitted from the materials sent . . . on October 21, 2003 . . . to which reference is made in NFL/CLA

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28 NFL's Memorandum in support of its Motion for Summary Judgment at p.2.
29 NFL's Opposition Memorandum at p.3.
30 A copy of the NFL Constitution and Bylaws (Revised 2003) is attached as Exhibit A.
31 A copy of the 1990 memorandum is attached as Exhibit B.

0003."[32] The NFLNet Memorandum is titled "Special Draft Eligibility Policy and Procedure Announced February 16, 1990." If the Rule is anywhere in the current Bylaws, it is within this "inadvertently omitted" document. But the document merely states: "Applications for special eligibility for the *1990* draft will be accepted only from college players as to whom three full college seasons have elapsed since their high school graduations." (Emphasis supplied).

The rule announced in this memorandum, by its clear language, applies only to the 1990 draft. Indeed, every year thereafter, right up to the present, the NFL has issued a similar memorandum titled "Eligibility Rules" with the identical phrase "three full college seasons" with only a date change to reflect the respective year.[33] These memoranda are not part of the NFL Bylaws; they are simply documents generated by the Commissioner on a yearly basis describing the eligibility rules and the filing dates for the upcoming draft.

Accordingly, the current Bylaws do not contain the Rule. The NFL is basing its argument on an inexplicable, almost *non sequitur*, reference to a policy that applies to college athletes and only to the 1990 draft within a rule on non-college athletes. While the Rule appeared in the Bylaws in 1992, it required only that three NFL seasons have elapsed since the player's high school graduation, a requirement Clarett has met. And these Bylaws have been revised in 2003. Today neither the CBA nor the Bylaws contain the Rule.

III. THE NON-STATUTORY LABOR EXEMPTION DOES NOT SHELTER THE NFL'S DRAFT ELIGIBILITY RULE

The NFL seeks to shield its anticompetitive and unlawful Rule by invoking the non-statutory labor exemption. The NFL has not, *and obviously cannot*, show that the Rule is the

[32] A copy of counsel's letter is attached as Exhibit C.

[33] Copies of the Eligibility Rules memoranda for the 1991 through 2004 drafts are collectively attached as Exhibit D. The 2004 Eligibility Rules memorandum is bate stamped NFL/CLA 000011-13.

product of collective bargaining, applies only within the bargaining unit, and so concerns legitimate union interests that it merits protection by the labor exemption.

The NFL claims that the Second Circuit expressly declined to follow *Mackey v. National Football League*.[34] The three-prong *Mackey* formulation, however, remains good law in the Second Circuit. *Local 210*,[35] the case the NFL cites to suggest otherwise, simply uses the alternative, but consistent *Jewel Tea* standard. In *Local 210*, the Second Circuit simply quoted from *Jewel Tea* because the facts of the case were in all relevant respects identical to those in *Jewel Tea*.[36] Moreover, *Local 210* later cited *Mackey* approvingly for the proposition that to be eligible for the non-statutory labor exemption, the agreement at issue must be "within the scope of traditionally mandatory subjects of bargaining."[37] Additionally, *Local 210* did not mention the third-party prong of *Mackey* because third parties were not affected by the rule challenged in *Local 210*.[38]

The NFL has presented no evidence that the Rule is the product of collective bargaining. The NFL quotes Peter Ruocco's *ipse dixit* conclusion that "the eligibility rule itself was the subject of collective bargaining"[39] without offering any supporting facts. The NFL claims that

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34 543 F.2d 606 (8th Cir. 1976).

35 Local 210, Laborers' Int'l Union of North Am. v. Associated Gen. Contractors of Am., 844 F.2d 69, 80 n. 2 (2d Cir. 1988).

36 Id. at 79-80 (quoting Amalgamated Meat Cutters v. Jewel Tea Co., 381 U.S. 676, 689-90 (1965)).

37 Id. at 79. Numerous other cases, all decided after *Brown*, also continue to apply the *Mackey* three-prong test for the non-statutory labor exemption. See, e.g., U.S. Info. Systs. v. IBEW, Local Union No. 3, 2002 WL 91625, at *3 & n.3 (S.D.N.Y. Jan. 23, 2002); Grinnell Corp. v. Road Sprinkler Fitters, 1997 WL 311498, at *11-12 (D. Md. June 3, 1997); Sheet Metal Div. v. Local 38, 208 F.3d 18, 26, 27 (2d Cir. 2000); Mathiowetz Constr. Co. v. Minnesota Dep't of Transp., 137 F. Supp. 2d 1144 (D. Minn. 2001).

38 The NFL also claims that, after *Mackey*, the Eighth Circuit expanded the scope of the exemption in *Powell v. Nat'l Football League*, 930 F.2d 1293, 1303-4 (8th Cir. 1989). The court in *Powell* did no such thing. It simply noted that a collective bargaining agreement is not always essential for application of the exemption, a point that we acknowledge. Negotiation, however, is essential. *Powell* actually confirmed the holding in *Mackey* that "the mere incorporation of unlawful restraints into a collective bargaining agreement without bona fide bargaining was not sufficient to place them beyond the reach of the Sherman Act." Powell, 930 F.2d at 1298 (citing Mackey, 543 F.2d at 614)).

39 Second Declaration of Peter Ruocco attached to the NFL's Opposition Memorandum.

the parties "discussed" the Rule and that the NFLPA "agreed … not to challenge – and it waived its right to bargain over – the then-existing terms of the NFL Constitution and Bylaws."[40] Of course these activities are not the equivalent of collective bargaining, let alone "[s]erious, intensive, arm's-length collective bargaining."[41]

Nor has the NFL shown that the Rule is incorporated into the CBA by reference. The May 6, 1993 letter enclosing the 1992 Bylaws does not mention the Rule itself but merely refers to Article IV of the contract, in which the NFLPA promised not to contest the NFL Bylaws. Moreover, the 1992 Bylaws were revised and the 2003 Bylaws do not contain the Rule. The NFL then claims that even if the eligibility rule had not been the subject of an agreement, it would still be exempt from antitrust challenge because it was adopted when a union existed. Not one case supports this contention.

First, the NFL seriously misstates the holding in *Brown v. Pro Football, Inc*.[42] This case holds that an employer may, after impasse, unilaterally implement a final offer regarding a mandatory subject of bargaining and seek shelter from the antitrust laws when the rule primarily affects parties to the collective bargaining relationship. A restraint is not sheltered simply because the employer adopts it.[43] The NFL's reading of *Brown* would reverse more than fifty years of Supreme Court precedent.[44]

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40 Def. Mem. at 9-10.

41 Philadelphia World Hockey Club v. Philadelphia Hockey Club, Inc., 351 F. Supp. 462, 499 (E.D. Pa. 1972). Not surprisingly, the NFL fails to address our discussion of P*hiladelphia World Hockey Club*, in which the court found that the rules were not a product of collective bargaining.

42 518 U.S. 231 (1996). Like *Powell* and *National Basketball Ass'n v. Williams*, 45 F.3d 684 (2d Cir. 1995), this case involves the duration of the exemption, not its scope.

43 Notably, in *Brown* the parties had previously bargained over the program at issue to impasse, the employer's conduct concerned a mandatory subject of bargaining, and the program "concerned only the parties to the collective-bargaining relationship." 518 U.S. at 250.

44 See Allen Bradley Co. v. Local 3, 325 U.S. 797 (1945); United Mine Workers v. Pennington, 381 U.S. 657 (1965); Connell Constr. Co. v. Plumbers & Steamfitters, 421 U.S. 616 (1975). See also Brown, 518 U.S. at 250 (stressing the limited nature of the exemption).

The NFL also misrepresents the facts and holding in *Caldwell v. American Basketball Ass'n.*[45] The Court there did not apply the exemption simply because there was a collective bargaining relationship, but rather because the plaintiff alleged that he was discharged because of his union activities, a matter over which the NLRB has sole jurisdiction. Additionally, the discharge concerned a mandatory subject of bargaining, and Caldwell, an employee, was no stranger to the collective bargaining relationship.[46]

Because Clarett is not an employee, or even eligible to become an employee, the NFLPA does not, and cannot, represent him, and the NFL's duty to bargain does not encompass matters involving him. We wholly agree that the draft itself is a mandatory subject of bargaining. However, this dispute has nothing at all to do with the draft itself. Unlike a draft, which allocates new employees among the teams, this Rule governs non-employees' eligibility to apply for employment. Thus, it does not follow *a fortiori* that because the draft constitutes a mandatory subject, the Rule is also sheltered. In fact, the very cases cited by the NFL illustrate this distinction.

The plaintiff in *Wood v. National Basketball Ass'n,*[47] for example, was a first round draft choice of the Philadelphia 76ers and, thus, no longer a stranger to the collective bargaining relationship. Wood challenged the NBA salary cap and draft provisions of the collective bargaining agreement and tried to extract more favorable terms of employment through individual bargaining.[48] Clarett, on the other hand, has *not* been drafted and is *not* challenging the terms or conditions of employment. Indeed, his goal is to enter the draft and to become subject to those terms.

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45 66 F.3d 523 (2d Cir. 1995).
46 Id. at 529.
47 809 F.2d 954 (2d Cir. 1987).
48 Id. at 957-60.

The NFL attempts to analogize the Rule to the operation of union hiring halls.[49] Unlike a union hiring hall arrangement, the Rule was not collectively bargained and it does not affect "employees" within the meaning of the NLRA. Furthermore, a hiring hall (like the draft itself) is a mandatory subject of bargaining, as it allocates employees among different employers, thereby affecting wages, hours and other terms and conditions of employment.[50]

In contrast, matters involving prospective, as well as former, employees are not mandatory subjects of bargaining.[51] Only matters that concern current employees' terms and conditions of employment, or matters which "vitally affect" those terms, are mandatory subjects of bargaining.[52] "Applicants … are not 'employees' within the meaning of the collective-bargaining obligations of the Act," because "unlike the intermittent employment situation that gives rise to the need … for hiring halls, there is no economic relationship between the employer and an applicant, and the possibility that such a relationship may arise is speculative."[53] Those who are challenging a rule that makes them ineligible for consideration are one step below an applicant. And they are not challenging matters which "vitally affect" terms and conditions of employment. To the contrary, they are seeking to become subject to those terms.

The non-statutory labor exemption to the antitrust laws serves the limited purpose of protecting unions and their legitimate organizational and collective bargaining activities from the reach of the antitrust laws. In this regard, the Supreme Court has cautioned that the doctrine not

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49 This analogy is nonsensical. Hiring halls exist "in certain industries – most notably maritime, longshoring and construction" where the "unions provide what is in effect a job-referral service and act as a clearinghouse between employees seeking work and employers seeking workers." Cox, Bok, Gorman and Finkin, Labor Law Cases and Materials (Thirteenth Ed., Foundation Press 2001), at 1125. The NFLPA does not operate a hiring hall. It does not refer players for employment to NFL teams needing a player with particular skills for short-term employment.

50 See Houston Chapter, 143 NLRB 409, 412 (1963), *enf'd*, NLRB v. Houston Chapter, 349 F.2d 449 (5th Cir. 1965); Star Tribune, 295 NLRB 543, 545 (1989).

51 Allied Chemical & Alkali Workers, Local 1 v. Pittsburgh Plate Glass Co., 404 U.S. 157 (1971); Star Tribune, 295 NLRB at 546.

52 Johnson-Bateman Co., 295 NLRB 180 (1989); Pittsburg Plate Glass, 404 U.S. at 164-66, 179-80.

53 Star Tribune, 295 NLRB at 546-47 .

be used as "a cat's-paw to pull the employers' chestnuts out of the antitrust fires."[54] Here, the NFL seeks to do just that. The Court should reject its unfounded invocation of the exemption.

[54] United States v. Women's Sportswear Mfg. Ass'n, 336 U.S. 460, 464 (1948).