No. 09-214

IN THE

SUPREME COURT OF THE UNITED STATES

JON SNOW, AND OTHER SIMILARLY SITUATED INDIVIDUALS;

Petitioner,

v.

NATIONAL COLLEGIATE ATHLETIC ASS'N; THE NATIONAL FOOTBALL LEAGUE,

Respondent.

On Writ of Certiorari to the
United States Court of Appeals for the Fourteenth Circuit

BRIEF FOR RESPONDENT

Team 26R

Counsel for Respondent

ORAL ARGUMENT REQUESTED

QUESTION PRESENTED FOR REVIEW

I. Whether NCAA bylaws promoting amateurism and eligibility are presumptively procompetitive in conformity with the Sherman Act as a matter of law.

II. Whether State law claims brought by former players are pre-empted under section 301 of the Labor Management Relations Act, where the sole issue of the argument integrates with the collective bargaining agreement between the National Football League and their players.

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The decision of the United States District Court for the Southern District of Tulania appears in record at R.31. The decision of the Fourteenth Circuit Court of Appeals appears in the record at R. 10.

STATEMENT OF JURISDICTION

The District Court had jurisdiction under U.S. Const., Art. III, Sec 2 and 28 U.S.C. § 1331 and issues its judgment. This Court has jurisdiction under US Const. Art. III, Sec 2 and 28 U.S.C. § 1331.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Adjudication of this case involves interpretation of 15 U.S.C.S. § 1 of the Sherman Act. Adjudication also involves application of 29 U.S.C. 185 (a) of the Labor Management Relations Act.

STATEMENT OF THE CASE

Petitioner Jon Snow led a storied career as a quarterback for the Tulania Greenwaves, the college football team for Tulania University. J.2. Nominated for many awards, he gained national attention for his athletic prowess. *Id.* Due in part to this widespread acclaim, he was approached by Apple, Inc. (along with other top college football players) to take part in a trial for a new emoji keyboard that would allow consumers to use the players' images and likenesses. *Id.*

The agreement that the football players entered into with the tech giant awarded them $1,000 for Apple's use of their image and likeness. *Id.* Thereafter, the players earned a $1 royalty fee every time an Apple user downloaded their image or likeness for the keyboard. *Id.*

Tulania University is part of the National College Athletic Association (NCAA), a member-driven organization that oversees collegiate sports competition, including college

football and is the Respondent in this cause of action. As a member of this organization, Tulania University, and its college athletes, agreed to follow the NCAA bylaws, including Bylaw 12.5.2.1:

> *Advertisements and Promotions Following Enrollment.* After becoming a student athlete, an individual shall not be eligible for participation in intercollegiate athletics, if the individual: (a) Accepts any remuneration for or permits the use of his or her name or picture to advertise, recommend or promote directly the sale of use of a commercial product or service of any kind; or (b) Receives renumeration for endorsing a commercial product or service through the individual's use of such product or service.

Petitioner, along with other college football players, agreed to the trial terms with Apple, violating Bylaw 12.5.2.1. When the head of Tulania compliance, Cersei Lannister, discovered that Petitioner had signed such a contract, she notified the NCAA, which suspended him and the other players who took part in the deal. *Id.* Petitioner was banned from finishing the football season which also concluded his college athletic career. *Id.* He, with other college football players who entered into the contract with Apple brought the first action against the NCAA for violating Section 1 of the Sherman Act. *Id.* The federal law, in large part, states, "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 hereby declared to be illegal." 15 U.S.C.S 1.

Frustrated that his college football career was cut short, Petitioner took part in the professional football draft with the National Football League (NFL). *Id.* He joined the New Orleans Saints, one of the NFL teams, and again garnered national attention for his athletic talent. *Id.* However, during his rookie year, Petitioner also took several different kinds of painkillers that were prescribed to him by NFL doctors and trainers. *Id*. No one shared with him or other players who received similar treatment, information about side effects and risks that came with these medications. *Id.* They were treated quickly and rushed back on the field. *Id.*

During Petitioner's second contract year with the NFL, he was diagnosed with an enlarged heart and permanent nerve damage in his ankle *Id.* He also developed an addiction to the painkillers he was prescribed by NFL team doctors. *Id.* Petitioner and other professional football players sued the NFL, arguing that the organization violated California statutes that regulate prescription painkillers. *Id*. The NFL, Respondent in this matter, argued that the collective bargaining agreement (CBA) that the players signed was preempted by Section 301 of the Labor Management Review Act (LMRA). In significant part, this section of the federal law has authority over claims founded upon rights create by CBAs. When Petitioners made a state-based claim of negligence, Section 301 of the LMRA requires the examination of the workplace, here the NFL, whose conditions are governed by the CBA.

In the first action, Petitioners sought to invalidate the NCAA Bylaw 12.5.2.1 as a violation of Section 1 of the Sherman Act. J.1. Here, they claimed that the bylaw unfairly restricted competition which the Sherman Act was designed to protect. *Id.* Second, Petitioners sought to hold the NFL liable under California state law for the doctors it hired who negligently prescribed painkillers. *Id.* The United States District Court for the Southern District of Tulania consolidated the two actions into one case.

The district court found for Petitioners in both claims. To begin, the court found that the NCAA failed in its arguments to show that the Bylaw 12.5.2.1. did not restrict competition. J.3. The organization put forth three arguments, defending its rules on eligibility and amateurism. *Id*. First, the organization argued that its policies were procompetitive, because they applied to all the student-athletes. Second, it claimed that its bylaws did not regulate commercial activity, because the NCAA does not allow students to be compensated beyond scholarships for attending school.

Id. Finally, the NCAA disputed that Petitioners suffered any anti-trust injury because of the restrictions on compensation. *Id*. The court rejected each argument. *Id*.

In the complaint against the NFL, Petitioners alleged that when the NFL provided its players with prescription drugs, it acted wholly outside the scope of the collective bargaining agreement (CBA) that the players signed with the league. J.11. Therefore, the players did not need to adhere to it in their complaint – they were allowed to refer to state laws that govern prescription painkillers. *Id*.

The district court conducted a two-step inquiry to determine whether state-law claims are preempted by Section 301 of the Labor Management Relations Act (LMRA), which seeks to protect the forum for which CBA disputes can be resolved. J.12. First, the court determined whether the cause of action involved rights guaranteed to an employee under state law, not by a CBA. *Id*. Second, if the cause of action involved rights that existed independently, outside of an analysis of the CBA, the court would have to determine if such analysis required the CBA to be preempted by Section 301 of the LMRA. *Id*.

The district court found that due to the nature of the activity – prescribing controlled substances – the NFL did owe a duty of care to the players. J.16. Moreover, this duty fell outside of the CBA and was rooted in state law. J.17. The court further determined that it did not need to examine the CBA to make that determination. *Id*. Therefore, Petitioners' claims were not preempted by Section 301 of the LMRA. J.21.

The two leagues appealed the decisions to the United States Court of Appeals for the Fourteenth Circuit. The Appellate Court recognized that the NCAA's long-held purpose to protect amateurism had been reinforced by decades of case law. Citing *stare decisis*, the Court reversed the lower court, reinforcing the legitimacy of NCAA amateurism and eligibility bylaws. J.4.

Secondly, the Appellate Court agreed with the NFL that the state-based negligence claims that Petitioners made were preempted under Section 301 of the LMRA, which governed the CBA the Petitioners had signed with the league. J.6. Therefore, the Appellate Court also reversed that decision ordered by the district court.

This Court granted certiorari and directed the parties to address the questions that appear in the record on R.2.

SUMMARY OF THE ARGUMENT

Respondents, National Collegiate Athletic Ass'n and The National Football League, respectfully ask this Court to affirm the Fourteenth Circuit's decision. This Court should find that NCAA amateurism and eligibility bylaws are presumptively procompetitive and comport with section 1 of the Sherman Act for two reasons. First, NCAA bylaw 12.5.2.1 is an eligibility rule which is not subject to the Sherman Act demonstrated by forty years of stare decisis. Second, even if this Court finds the NCAA bylaws subject to the Sherman Act, the eligibility rules are presumptively competitive and clearly meet the requirements of the Rule-of-Reason analysis. As such, NCAA bylaws which promote the integrity of the amateur product are valid as a matter of law.

Further, this Court should affirm the Appellate Court's decision holding that the claims brought by NFL players are pre-empted. There are three reasons why state law decisions should be pre-empted under section 301 of the labor management relations act. First, Congress intended for the Courts to create a body of law that prevails over inconsistent state rules. Congress made the Labor Management Relations Act and they decided what language to include within that statute. Second, Congress decided that state law claims founded directly on the rights created within a collective bargaining agreement should be pre-empted. Congress made it apparent in the

laws that they manufactured that nay claims made that intergraded the use of the collective bargaining agreement under state law should be pre-empted under that law that the courts have created. Finally, pre-emption of state law claims allows for equal bargaining power for employees and employers. Allowing for fifty different laws, under state law, to hold any authority will make it inefficient for the courts to do their jobs to help any players that have a grievance against the National Football League.

ARGUMENT

I. THE DECISION OF THE FOURTEENTH CIRCUIT SHOULD BE AFFIRMED BECAUSE NCAA AMATEURISM AND ELIGIBILITY BYLAWS ARE PRESUMPTIVELY PROCOMPETITIVE AS A MATTER OF LAW.

First, the Fourteenth Circuit Court of Appeals correctly held that Rule 12.5.2.1 of the National Collegiate Athletic Association amateurism and eligibility bylaws do not violate Section 1 of the Sherman Antitrust Act because the NCAA bylaws are presumptively procompetitive. R.11. Under the Sherman Act, "[e]very contract … in restraint of trade … is declared to be illegal." 15 U.S.C.S. § 1. Pursuant to the Sherman Act, "the validity of a restraint on trade is its impact on competition." *Nat'l Coll. Athletic Ass'n v. Bd. of Regents*, 468 U.S. 85, 104 (1984). Further, the Sherman Act only forbids restraints in trade "that are *unreasonable*." *McCormack v. Nat'l Coll. Athletic Ass'n*, 845 F.2d 1338, 1343 (5th Cir. 1988) (emphasis added). The purpose of the Sherman Act serves to "protect consumers from injury that results from diminished competition." *Agnew v. NCAA*, 683 F.3d 328, 335 (7th Cir. 2012) (citing *Banks v. Nat'l Coll. Athletic Ass'n*, 977 F.2d 1081, 1087-88 (7th Cir. 1992)). Simply put, in *Board of Regents* this Court articulated that NCAA rules proposing competition requirements must serve a procompetitive purpose and eligibility rules are presumptively valid as a matter of law where NCAA rules "widen consumer choice … ." *Nat'l Coll. Athletic Ass'n*, 468 U.S. at 102.

Here, NCAA Rule 12.5.2.1 comports with the reasonableness rule of Sherman Act because the eligibility rule is a realistic means of fostering competition. NCAA Rule 12.5.2.1 deems ineligible any student-athlete who "accepts any renumeration for or permits the use of his or her name or picture to advertise, recommend or promote the sale or use of a commercial product or service of any kind." Eligibility rules aim to maintain the integrity of college sports as a distinct product from professional sports. Further, NCAA eligibility rules are not subject to antitrust laws

because the eligibility rules serve "primarily noncommercial objectives." *McCormack*, 845 F.2d at 1343. In other words, NCAA eligibility rules are presumptively procompetitive as a matter of law because "they enhance public interest in intercollegiate athletics." *Nat'l Coll. Athletic Ass'n*, 468 U.S. at 117. Therefore, this Court should find the NCAA eligibility rules clearly survive the Rule of Reason analysis and conform to the Sherman Act.

A. The Well-Reasoned Rationale of *Board of Regents* Demonstrates That NCAA Amateurism and Eligibility Rules Plainly Withstand the Rule of Reason Analysis Because Rule 12.5.2.1 Reasonably Promotes the Integrity of the NCAA.

Petitioner's bald assertion that NCAA Rule 12.5.2.1 unreasonably restrains trade runs contrary to nearly forty years of *stare decisis* and the fundamental purpose of Sherman Act. Congress created the Sherman Act to promulgate "consumer welfare prescription." *Id.* at 107 (quoting *Reiter v. Sonotone Corp.*, 442 U.S. 330, 343 (1979)). Further, restraints that reduce the significance of "consumer preference in setting price and output is not consistent with this fundamental goal of anti-trust law … [which are] examples of restraints of trade that the Sherman Act was intended to prohibit." *Id.* at 107-08 (citing *Standard Oil Co. v. United States*, 221 U.S. 1, 52-60 (1911)). Here, Rule 12.5.2.1 does not create an unreasonable restraint on the NCAA's product because Rule 12.5.2.1 preserves the NCAA's product which might otherwise be unavailable. *See id.* at 102.

In *Board of Regents*, this Court articulated the Rule of Reason rationale which demonstrates that Rule 12.5.2.1 conforms with the reasonableness requirement of the Sherman Act. There, this Court affirmed the decision of the Tenth Circuit Court of Appeals which determined that the NCAA "create[ed] a price structure that is unresponsive to viewer demand and unrelated to the prices that would prevail in a competitive market" in violation of the Sherman Act. *Id.* at 106. In addition, this Court explained that the NCAA's role "would be completely

ineffective if there were no rules on which the competitors agreed to create and define the competition to be marketed." *Id.* at 101. Although this Court aptly concluded that the NCAA television contracts were unreasonable restraints on trade, this Court recognized that some reasonable restraints on competition prove necessary to preserve the product. Specifically, the Court addressed that:

> the NCAA plays a vital role in enabling college football to preserve its character, and as a result enables a product to be marketed which might otherwise be unavailable. In performing this role, its actions widen consumer choice -- not only the choices available to sports fans but also those available to athletes -- and hence can be viewed as procompetitive.

Id. at 102 (internal quotations omitted) (emphasis added). In other words, some NCAA actions akin to Rule 12.5.2.1 widen consumer choice and do not violate the reasonableness requirement of the Sherman Act because these amateur and eligibility rules reasonably promote the NCAA's product of amateur competition distinct from a professional product.

In *Board of Regents*, this Court unequivocally determined that the integrity of the NCAA's product encompasses the resolute position that "athletes must not be paid …" if the product is to "widen consumer choice" to athletes and sports fans alike. *Id.* Here, Rule 12.5.2.1 differs from the television contracts in *Board of Regents* because amateur and eligibility rules operate as a reasonable regulatory control, foster competition, and serve to maintain the integrity of NCAA's product. Further, this Court explained that limited restraints may actually "enhance competition among member institutions." *Id.* at 103 (citing *Cont'l T. v. V Gte Sylvania*, 433 U.S. 36, 51-57 (1977)). Rule 12.5.2.1 is reasonable because "the surrounding circumstances giving rise to the inference …" promote "competitive conditions." *Id*. In other words, the NCAA amateur and eligibility rules conform with the central objective of anti-trust law because the rules promote a competitive atmosphere geared towards preserving the NCAA's product. Amateurism is the

distinction that allows for such a market for the NCAA and its members to create and regulate college sports competition.

B. NCAA's Renumeration Bylaws Promote a Unique Product That Does Not Violate the Sherman Act Because Such Rules are Procompetitive as a Matter of Law.

Because NCAA markets its product as a distinct product separate from professional leagues, eligibility rules allow NCAA's product to survive in the face of commercializing pressures." *McCormack,* 845 F.2d at 1345. NCAA Rule 12.5.2.1 is a regulatory control which comports with the Sherman Act because such amateur and eligibility rules foster competition amateur intercollegiate sports. Since this Court's seminal opinion in *Board of Regents*, various courts addressed whether certain NCAA eligibility regulations comport with the Sherman Act. *See, e.g., Deppe v. NCAA,* 893 F.3d 498 (7th Cir. 2018) (holding that the year-in-residence rule is, on its face, a presumptively procompetitive eligibility rule); *see also, e.g., Jones v. NCAA*, 392 F. Supp. 295 (D. Mass. 1975) (holding that any limitation on access to intercollegiate sports is merely the incidental result of the organization's pursuit of its legitimate goals and does not violate the Sherman Act).

First, in *McCormack*, the Fifth Circuit Court reviewed whether NCAA's suspension of Southern Methodist University for violating restrictions beyond educational expenses constituted price-fixing. The *McCormack* court found that NCAA did not violate the Sherman Act because there was "little difficulty in concluding that the challenged restrictions were reasonable" under the reasonableness test articulated in *Board of Regents*. *Id*. at 1344. The *McCormack* majority reiterated the spirit this Court's rationale in *Board of Regents* and explained that the "Sherman Act does not forbid every combination or conspiracy in restraint of trade, only those that are unreasonable." *Id.* at 1343. Further, the Court rationalized "without

deciding, that the antitrust laws apply to the eligibility rules, [but] it does not follow that the rules violate those laws." *Id*. Throughout its Rule-of-Reason analysis, the *McCormack* court described eligibility requirements as a reasonable requirement to further "[t]he goal of the NCAA [] to integrate athletics with academics." *Id.* at 1345.

Next, in *Agnew*, the Seventh Circuit analyzed whether an NCAA rule restricting multi-year scholarships violated the Sherman Act and reasoned that the restrictions were incongruent with eligibility rules. *Agnew*, 683 F.3d at 343. Although the *Agnew* Court affirmed the lower court's dismissal the football players antitrust claim because the football players failed to "sufficiently identify a commercial market …" the Seventh Circuit distinguished eligibility rules from other NCAA bylaws subject to detailed scrutiny under the Sherman Act. *Id.* at 332. Specifically, the Seventh Circuit Court explained that eligibility rules "eliminating the eligibility of players who receive cash payments beyond the costs attendant to receiving an education … *clearly protects amateurism*." *Id.* at 328, 343 (citing *McCormack v. Nat'l Coll. Athletic Ass'n*, 845 F.2d 1338 (5th Cir. 1988) (emphasis added)). In addition, The *Agnew* court's unambiguous analysis illustrates that most NCAA bylaws specifically aimed at promoting amateurism are presumably procompetitive. *See Id*. at 344-45. The *Agnew* court emphasized that "[m]ost – if not all – eligibility rules … are clearly necessary to preserve amateurism and the student-athlete in college football." *Id*. at 343. Such eligibility rules include "[t]he no-draft rule and other like NCAA regulations preserve the bright line of demarcation between college and pay for play football." *Id* (citing *Banks v. NCAA*, 977 F.2d 1081 (7th Cir. 1992); quoting *Gaines v. NCAA*, 746 F. Supp. 738, 744 (M.D. Tenn. 1990)).

Like *McCormack* and *Agnew*, here, eligibility Rule 12.5.2.1 reasonably preserves and fosters the NCAA's unique product which ultimately enhances the public interest in amateur

intercollegiate athletics. Specifically, here, Petitioner contracted with Apple, Inc. to receive compensation from Apple for Apples' use of Petitioner's likeness. Petitioner's contract compensated a few student-athletes and falls in direct contrast to the hallmark of college sports – amateurism. Logically, the eligibility rule at issue preserves the procompetitive goal of the NCAA because the quality of the NCAA product would be diminished if athletes were paid. The *McCormack* court emphasized this Court's decision in *Board of Regents* by quoting that "athletes must not be paid … ." *McCormack*, 845 F.2d at 1344 (quoting *Board of Regents of Univ. of Okla.*, 468 U.S. at 102).

II. UNDER SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT THE STATE LAW CLAIMS BROUGHT BY FORMER NFL PALYERS ARE PRE-EMPTED.

Although Congress developed this statute, they left the creation of a body of law to govern these disputes up to the courts. The lower courts correctly ruled that section 301 of the Labor Management Relations Act pre-empts state law claims, and this Court should affirm that decision. Section 301 of the Labor Management Relations Act governs "[s]uits for violation of contracts between an employer and a labor organization representing employees." 29 U.S.C. § 185(a) (2012). This section of the Labor Management Relations Act applies directly to this issue because John Snow and the former National Football League players brought suit against their employer, the National Football League. The former players were represented by a labor organization when they were creating the collective bargaining agreement between themselves and the National Football League.

Congress intended for the courts to create a body of federal law for enforcement of collective bargaining agreements, and for these laws to prevail over inconsistent case local rules. Congress created the Labor Management Relations Act and through this they decided that the courts should

have the power to create a body of law that applies to agreements including collective bargaining agreements. Because Congress has done this the courts should be deferred to and federal law should apply.

Section 301 of the Labor Management Relations Act pre-empts state law claims founded directly on rights created within a collective bargaining agreement. While there are claims that can be brought in state court under a certain state's law, any state law claim that is directly integrated or related to the collective bargaining agreement should be pre-empted by section 301. This court has ruled that state law claims that are based solely on the collective bargaining agreement cannot survive the pre-emptive nature of section 301 of the Labor Management Relations Act.

Pre-emption of state law claims allows for the National Football League and their employees to benefit alike. The players and the National Football League come together to bargain for different rights and benefits that the players should receive under the collective bargaining agreements. To complete these negotiations in a timely manner and to make sure that this one set of negotiations covers every player in the National Football League there needs to be one set of laws that is governing. Allowing for federal law to govern makes it more efficient and is more beneficial to all of the players as a whole rather than trying to apply 50 different state laws to one negotiation process. For that reason, the Appellate Court's decision should be affirmed by this Court.

A. Congress Intended for the Courts to Create a Body of Federal Law for Enforcement of Collective Bargaining Agreements, and for These Laws to Prevail Over Inconsistent Local Rules.

To begin we should look at the language of the section 301 of the Labor Management Relations Act. Subsection A of section 301 of the Labor Management Relations Act is where Congress decided the courts should fashion their own body of law, and it reads:

> **(a) Venue, amount, and citizenship**
> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Through this section of the act Congress decided that the courts are able to create a body of law that allows them to govern these disputes. This is not merely a jurisdictional notice, and if it was, Congress could have explicitly said that within the statute itself. They also could have decided that the courts did not have this power and thus not have allowed them to create a body of law which they are now using to govern these sorts of disputes.

In *Textile Workers Union of Am. v. Lincoln Mills of Ala.*, 353 U.S. 448, 457 (1957), this Court concluded that, through section 301, section 301(a) is more than jurisdictional – it authorizes federal courts to fashion a body of federal law for the enforcement of collective bargaining agreements. In *Textile Workers*, petitioner-union entered into a collective bargaining agreement in 1953 with respondent-employer. *Id.* at 449. The agreement provided that there would be no strikes or work stoppages and that grievances would be handled pursuant to a specific procedure, arbitration. *Id*. This Court ultimately decided that the respondent-employer could not refuse to arbitrate the grievances that were brought up by petitioner-union. *Id*.

This Court decided that based on the interpretation adopted of section 301 the agreements, contained in the collective bargaining agreement, and should be specifically enforced. *Id*. The

court decided that because the agreement to arbitrate grievance disputes was agreed to in the collective bargaining agreement that it should be enforced. *Id*. This Court reasoned that the arbitration was enforceable because Congress had given federal courts the authorization to develop a body of federal law and this body of law that was created encompassed specific performance of promises to arbitrate grievances under collective bargaining agreements. *Id*.

The facts of this case with the former players is decidedly similar. Petitioners were all employees of the National Football League, and they also agreed to a collective bargaining agreement with the National Football League. This Court decided that, through section 301 of the Labor Management Relations Act, Congress gave the courts the right to fashion a body of federal law for the enforcement of collective bargaining agreements. *Id*. at 451. This decision allows for this Court to make a decision on whether these state law claims can withstand a section 301 analysis.

This Court validated what Congress intended when they enacted section 301 of the Labor Management Relations Act in *Local 174, Teamsters, Chauffeurs, Warehousemen and Helpers of AM. v. Lucas Flour Co.*, 369 U.S. 95, 103 (1962), this Court determined that the dimensions of section 301 require the conclusion that substantive principles of federal labor law must be paramount in the area covered by the statute. In *Teamsters*, Petitioner, a union representing an employee that was discharged by Respondent their employer, brought this suit in the Superior Court of King County in the state of Washington. *Id*. at 97. The Washington court believed that it was free to decide this controversy within the limited horizon of its own law. *Id*. at 102. The collective bargaining contract expressly imposed upon both parties the duty of submitting the dispute in question to final and binding arbitration. *Id*. at 105.

This Court reasoned that the possibility that individual contract terms might have different meanings under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements. *Id*. at 102. The Court also stated that the importance of the area which would be affected by separate systems of substantive law makes the need for a single body of federal law particularly compelling. *Id*. at 104. Ultimately this Court decided that the claim brought by the union was to be resolved by submitting this dispute to final and binding arbitration. *Id*. at 106.

Teamsters is factually similar to our case and shows that this Court may apply federal law when deciding the overall result of this case. Not having one uniform law would be disruptive in the negotiation and administration of the collective bargaining agreement that Petitioners agreed to with the National Football League. It is important for there to be one uniform set of laws for the parties in our case to follow when negotiating and administering these agreements. As stated in *Teamsters*, the ordering and adjusting of competing interests through a process of free and voluntary collective bargaining is the keystone of the federal scheme to promote industrial peace. *Id*. at 104. This industrial peace is essential to a smooth bargaining and administration process so that the parties know exactly what they are agreeing to when they make these collective bargaining agreements.

B. Section 301 of the Labor Management Relations Act Pre-Empts State Law Claims Founded Directly on Rights Created Within a Collective Bargaining Agreement.

In *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 203 (1985) this court analyzed the bad-faith handling of an insurance claim, including a claim under a disability insurance plan included in a collective-bargaining agreement, which is a tort under Wisconsin law. Respondent, Robert S. Lueck, began working for Petitioner, Allis-Chalmers Corporation, in February of 1975. *Id*.

Respondent suffered a non-occupational back injury and began receiving benefits when his claim was approved by Aetna. *Id.* at 205. Petitioner, however, would periodically order Aetna to cut off Respondent's payments. *Id*. Respondent then filed suit against Aetna and Petitioner on January 18, 1982. *Id.* at 206. This Court established the question of whether this particular Wisconsin tort, as applied, would frustrate the federal labor-contract scheme established in section 301. *Id*. at 209.

This Court ultimately decided that when resolution of a state-law claim is substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract, that claim must either be treated as a section 301 claim, or dismissed as pre-empted by federal labor-contract law. *Id*. at 220. This Court reasoned that Congress has mandated that federal law govern the meaning given contract terms, and since the state tort purports to give life to these terms in a different environment, it is pre-empted. *Id*. at 218-219. This Court considered whether evaluation of the tort claim is inextricably intertwined with consideration of the terms of the labor contract. *Id*. at 213.

This case is factually similar to the case at hand. Petitioners brought a state law claim that should be pre-empted by section 301. The state law claim that Petitioner brought is inextricably intertwined with consideration of the terms of the collective bargaining agreement. The National Football League addressed the problem of adequate medical care for players in an important and effective way. They addressed this issue through the bargaining process that imposed uniform duties on all of the different clubs within their league. Through the collective bargaining agreement Petitioner and Respondent addressed the negligence claims that Petitioner is bringing and because of this, Petitioner's claims would be attempting to give light to terms of the agreement in a different environment.

Next, in *Int'l Bhd. of Elec. Workers v. Hechler*, 481 U.S. 851, 853 (1987), this Court explored whether a state-law tort claim that a union has breached its duty of care to provide a union member with a safe workplace is sufficiently independent of the collective bargaining agreement to withstand the pre-emptive force of section 301. In this case Respondent, Sally Hechler, sued Petitioner, the International Brotherhood of Electrical Workers and its Local 759. *Id*. Petitioner alleged that the contracts between the Union and Florida Power provided that the Union had a duty to ensure that Respondent "was provided safety in her work place and a safe work place," and to ensure that Respondent "would not be required or allowed to take undue risks in the performance of her duties." *Id*.

This Court ruled that Respondent's claim was not sufficiently independent of the collective bargaining agreement. This court reasoned that in order to determine the Union's tort liability a court would have to ascertain, first, whether the collective-bargaining agreement in fact placed an implied duty of care on the Union to ensure that Hechler was provided a safe workplace, and, second, the nature and scope of that duty, that is, whether, and to what extent, the Union's duty extended to the particular responsibilities alleged by Respondent in her complaint. *Id*. at 862. This court ultimately decided that this claim was not independent from the collective bargaining agreement and stated the need for federal uniformity in the interpretation of contract terms therefore mandates that here, as in *Allis-Chalmers*, respondent is precluded from evading the preemptive force of section 301 by casting her claim as a state-law tort action. *Id*.

Similar to our case, the collective bargaining agreement is not sufficiently independent from the claims that Petitioners brought. Section 301 preempts state law claims that are based on the rights created by the collective-bargaining agreement. Here, Petitioners claim that a right to adequate medical treatment that was given to them by the collective bargaining agreement has

been violated when they were given painkillers and medical treatment by the team's doctors and trainers. There are several clauses within the collective bargaining agreement that address the adequacy of the doctors and medical treatment that was given to players within the National Football League. Whether the National Football League was negligent and in violation of the state law claims that Petitioner brought cannot be determined without first establishing the full scope of the players' benefits contained within the collective bargaining agreement. Because this claim cannot be separated from the collective bargaining agreement, the preemptive forces of section 301 should be enforced here and the claim should be dismissed.

C. Pre-emption of State Law Claims Allows for the National Football League and Their Employees to Benefit Alike.

Because the National Football League is similar to any other company in the United States and has employees in different areas of the United States it is essential that we allow for the employees and employers to be have equal bargaining power when creating a collective bargaining agreement. To create this equal bargaining power there needs to be one set of uniform laws that both sides bargaining knows to follow.

Knowing which law is going to be used to determine the outcomes of any disputes gives this equal bargaining power to both employers and employees. In 2011, negotiations between the National Football League and the National Football League Player Association, about a new collective bargaining agreement, broke down. *Pro Sports Lockouts and Strikes Fast Facts,* (2018) https://www.cnn.com/2013/09/03/us/pro-sports-lockouts-and-strikes-fast-acts/index.html. This caused a 136-day lockout. *Id*. The players were then allowed to take the correct avenues to sue the National Football League under a class-action antitrust lawsuit. *Id.* After this lawsuit the Courts ruled that the owners and the National Football League needed to end the lockout. *Id*. However, had the players pursued trying to end the lockout under state law it is likely that they would have

to file a law suit in every state where a team is located. This begins to get inefficient for both the players and the National Football League. The lockout would have lasted much longer and also could have affected different players differently. Using state law, the players could run into the issue where one state rules to end the lockout, but another state does not. This could mean that all California teams could have ruled to end the lockout, but Louisiana teams did not. Would that mean that no teams in the league should end the lockout, or should the season just go on without the teams from Louisiana? Having one set of rules followed and pre-empting any state law claims that are brought by players allows for efficiency and for less confusion when it comes to deciding disputes between employers and employees.

The collective bargaining agreement also allows for players to negotiate the money that players get paid from different sources. *Id.* There have been lockouts in the National Football League that have solely pertained to the money and benefits that players receive through their collective bargaining agreements. *Id*. In 1968, the National Football League Players Association voted to strike in order to get better pension benefits for the players in their collective bargaining agreement. *Id*. In 2006, they voted to strike in order for the players to be paid a part of the 9-billion-dollar revenue stream from the television deals. *Id.* The players now get paid around 60 percent of the television revenue. *Id.* Having these collective bargaining agreements between the National Football League and the players is beneficial to both sides and it is essential to keep the bargaining power equal on both sides or the players could miss out on money and benefits.

There are many topics that can be covered within a collective bargaining agreement. In the most recent collective bargaining agreement, the amount of cash spent on players went up to about 55 percent of all revenues, players were paid more than 160 million dollars in cash and benefits, the amount of guaranteed money in players contracts went up to about 57 percent, and there was

an elimination of two-a-day practices and reduced hitting in practices. Albert Breer, *NFLPA says players have benefitted from new CBA,* National Football League, (2012) http://www.nfl.com/news/story/09000d5d8293f393/article/nflpa-says-players-have-benefitted-from-new-cba. Being able to control where the money that a company brings in goes and how much of that revenue goes to the players is very beneficial to the players. They were also able to negotiate to reduce practices and reduce the amount of contact that happens in these practices. This sort of negotiating power that is given to the players and their representatives allows for them to be able to negotiate their own safety while playing a very dangerous sport. To keep these negotiations running smoothly and efficiently so that players are able to keep these benefits and also negotiate for more benefits there needs to be one governing law. Even if the state law is not pre-empted by section 301 of the Labor Management Relations Act federal law should govern to make sure that this system continues to be as easy as possible for players to get these benefits from the league and negotiate for any other benefits that they may need in the future.

CONCLUSION

WHEREFORE, Respondent National Collegiate Athletic Ass'n and The National Football League asks this Court to affirm the decision Fourteenth Circuit decision.

Respectfully submitted,

Team 26R

Counsel for Respondent