In the

SUPREME COURT OF THE UNITED STATES OF AMERICA

JOHN SNOW and OTHER SIMILARLY SITUATED INDIVIDUALS,
Petitioner,

v.

NATIONAL COLLIAGTE ATHLETIC ASSOCIATON and NATIONAL FOOTBALL LEGAUE,
Respondent.

ON WRIT OF CERTIORARI TO THE APPEALLATE COURT OF TULNIA

BRIEF FOR RESPONDENT

ORAL ARGUMENT REQUESTED

TEAM 28

QUESTIONS PRESENTED

I. WHETHER THE NCAA AMATEURISM AND ELIGIBILITY BYLAWS ARE PROTECTED AS A MATTER OF LAW FROM ATTACK UNDER SECTION 1 OF THE SHERMAN ACT.

II. WHETHER THE VARIETY OF STATE LAW CLAIMS BROUGHT BY THE NFL PLAYERS ARE PREEMPTED BY THE LABOR MANAGEMENT RELATIONS ACT.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

United States Supreme Court Cases

United States Court of Appeals Cases

United States District Court Cases

State Court Cases

United States Statutes

Secondary Sources

STATEMENT OF FACTS

The Petitioner, John Snow, was a celebrated quarterback for the Tulania University Greenwave football team. (R. at 13). After three years of successful seasons, Mr. Snow, along with other well-known players, was approached by Apple Inc. to participate in a trial run for the new Apple Emoji Keyboard. Id. This Apple Emoji Keyboard would serve to promote college football as well as Apple products because it would allow the users of Apple products to type images to the likeliness of these college athletes. Id. In exchange for the athletes' participation in this collaboration with Apple Inc., the company agreed to pay Mr. Snow and the other athletes an immediate $1,000 for the use of their image, and also promised them an additional $1 royalty fee for each download by the users. Id. Following this offer, Mr. Snow agreed to participate in the trial term agreement with Apple, and earned approximately $3,500 during the first trial period. Id. Other student athletes notified the head of Tulania compliance, Cersei Lannister, of Mr. Snow's compensation. She, then notified the National Collegiate Athletic Association (NCAA), and the NCAA suspended Mr. Snow indefinitely for violating NCAA Bylaw 12.5.2.1. Id. The NCAA bylaw 12.5.2.1, states that "players will no longer be eligible if they accept any remunerations for or permit the use of his or her name or picture or advertise, recommend, or promote directly the sale or use of a commercial product or service in any way, by way of violation of Section 1 of the Sherman Act". Id. Furious about his suspension, Mr. Snow brought a legal action against the NCAA for preventing him and others from competition, and claiming that the NCAA bylaw 12.5.2.1 is in violation of Section One of the Sherman Act. (R. at 3).

Mr. Snow then decided to enter his name in the National Football League draft, and was drafted by the New Orleans Saints. (R. at 13). During the course of Snow's first year as a professional athlete at the New Orleans Saints NFL team, the doctors and trainers of the team

prescribed him multiple painkillers to aid the pain from small head collisions and minor ankle injuries. Id. Mr. Snow and other players who share similar stories, alleged that they were never given disclosure on the side effects and risks posed with each medication, and that instead, they were given rushed treatments before being sent back to the field. Id. In the second contract year, Mr. Snow had developed an addiction to painkillers, and was diagnosed with an enlarged heart and permanent nerve damage in his ankle. Id. Because of this, Mr. Snow and the other players sought to hold the NFL liable under state law for negligent distribution and encouragement of excessive painkiller prescription by league doctors. (R. at 4). The NFL moved for summary judgement on all claims arguing that the former NFL players' state law claims against the League are preempted by Section 301 of the Labor Management Relations Act because the litigation of their claims required interpretation of the Collective Bargaining Agreement (CBA). Id.

Because John Snow is a named plaintiff in both cases, and considering the best interest of judicial efficiency, the United States District Court of Tulania decided to consolidate both matters in the same action. (R. at 13). The district court ruled in favor of Mr. Snow and the other players, and found that the NCAA amateurism and eligibility bylaws are subject to attack under the Sherman Act as the bylaws were anticompetitive and that their claims are not preempted by Sec. 301 of the LMRA. (R. at 19) (R. at 26).

The Leagues then appealed these decisions to the Tulania Court of Appeals. On appeal, the United States Court of Appeals for the Fourteenth Circuit reversed the judgment of the District Court. (R. at 11). The Honorable Judge Donald Ricketts found that the Court could not ignore the stare decisis of the past thirty years, in which courts have repeatedly and consistently found that NCAA amateurism bylaw, including bylaws prohibiting certain kinds of compensation to current student-athletes, are not anti-competitive as a matter of law. (R. at 4-6). Furthermore, the Judge

found that in determining whether the NFL has been negligent in policing the clubs and in failing to address medical mistreatment by the clubs, it is necessary to interpret the CBA in order to construe and apply the medical duties requirements imposed by the NFL on the clubs. (R. at 9). Based on these findings, the Appeals Court held that the NCAA eligibility and amateurism bylaws are protected as a matter of law, and that former NFL players' state law claims against the NFL are in fact preempted by Section 301 of the Labor Management Relation Act. (R. at 11).

Mr. John Snow and the rest of the players, now appeal the Court of Appeals' decision to the United States Supreme Court. (R. at 1).

SUMMARY OF THE ARGUMENT

This Court should affirm the Appellate Court's ruling, finding that the NCAA bylaws regarding intercollegiate amateurism player compensation is not preempted by the Section One of the Sherman Act. The Appellate Court properly found that the NCAA bylaws are not subject to review under the Sherman Act because thirty (30) years of case precedent states that the NCAA amateurism bylaws, including bylaws regarding player compensation, are not anti-competitive as a matter of law.

Additionally, this Court should affirm the Appellate Court's ruling because the Tulania Court of Appeals properly held that the Petitioners' negligence claims against the NFL are preempted by Section 301 of the Labor Management Relations Act. Section 301 has preemptive power over state law claims that are inextricably intertwined with, or substantially dependent on analysis of the terms of a CBA. In this case, Petitioners' claims are preempted because the rights and obligations of the parties agreed to within the CBA are inextricably intertwined with the CBA made between the NFL and the players, the rights are substantially dependent upon an analysis of the CBA, and a factual inquiry into the League's conduct requires CBA interpretation. Since the resolution of the claim can only be determined by interpreting the CBA, the claims are preempted under Section 301 of the Labor Management Relations Act. Furthermore, Petitioners' claims are preempted by Section 301 due to public policy's need, and Congress' intent, to maintain a uniform federal labor dispute resolution system.

ARGUMENT

I. The purpose of the Sherman Act is to promote NCAA procompetitive bylaws that foster strong competition amongst amateur athletic teams.

The Sherman Act was established to protect the benefits of competition. Section one of the act states that "[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 nation, is declared to be illegal." 15 U.S.C. Code §1 – Trusts, etc., in restraint of trade illegal; penalty. Hence, the purpose of the Sherman Act is to protects consumer and the market from injury that result from abated competition. Id.

The NCAA Rule 12.5.2.1 regarding Advertisements and Promotions Enrollment, prohibits student athletes from receiving "any remuneration for or permits the use of [their] name or picture to advertise, recommended or promote directly the sale or use of a commercial product or service of any kind, or …[r]eceives remuneration for endorsing a commercial product or service through the individual's use of such product or services." The NCAA amateurism bylaws were created to protect student athletes from "exploitation by professional and commercial enterprises." NCAA, Article 2: Principles for Conduct of Intercollegiate Athletics, 2.9, The Principle of Amateurism.

In this case, Petitioners, John Snow and other similarly situated individuals, claim that the Respondent, NCAA bylaws regarding student athlete compensation should be subjected to review under Section One of the Sherman Act as they indeed regulate commercial activity. However, the Petitioners fail to demonstrate the necessary merits linking the NCAA bylaws to anti-competitive commerce. The United States Court of Appeals for the Fourteenth Circuit properly decided that Petitioner's claim failed on the merits as the Section One of the Sherman Act does not apply to their bylaws regarding student athlete compensation for three reasons: (1) The NCAA's

amateurism rules are "valid as a matter of law". NCAA v. Board of Regents of the University of Oklahoma, 468 U.S. 85, 104 S. Ct. 2948 (1984)., (2) The compensation rules at issue here are not addressed by the Sherman Act as they do not regulate commercial activity, and (3) the Petitioner has no standing to sue under the Sherman Act as they have not suffered a proper antitrust injury.

A. The NCAA bylaws are valid as a matter of law as they are not anticompetitive and protect amateurism.

The NCAA amateurism bylaws, including bylaws prohibiting compensation to current student athletes, have been recognized as a procompetitive and necessary to persevere amateurism among intercollegiate sports.

In NCAA v. Board of Regents of University of Oklahoma, this Court stated that the NCAA amateurism bylaws were reasonably fostering competition among intercollegiate teams and therefore procompetitive as they "enhanced public interest" in amateur sports. NCAA v. Board of Regents of University of Oklahoma, 468 U.S. 85, 117, 101-02, 104 S. Ct. 2948, 82 L. Ed. 2d 70 (1984). Additionally, this Court highlighted that because the NCAA bylaws incorporate that student athletes must not be compensated and emphasize an educational component, the bylaws are necessary in preserving he quality of college football and are, thus, procompetitive. Id. Although the Court's decision did not focus on NCAA amateurism bylaws being congruent with the Sherman Act, their findings regarding the procompetitive nature of the NCAA bylaws have had long-standing influence throughout subsequent decisions in federal courts.

Since Board of Regents of University of Oklahoma, other federal courts have followed suit and have similarly came to the same conclusions. The Fifth Circuit Court found claims that restricted compensation to college football players constituted illegal price-fixing failed as a matter of law in McCormack v. NCAA, 845 F.2d 1338 (5th Cir. 1988). Additionally, the Court concluded that collegiate football is marketed as a distinct product by the NCAA and the "eligibility rules

create the product and allow its survival in the face of commercializing pressures." McCormack v. NCAA, 845 F.2d 1340, 1334-45, 1338 (5th Cir. 1988).

More recently, the Seventh Circuit emphasized in Agnew v. NCAA, 683 F.3d 328, 342-43 (7th Cir. 2012) that without the NCAA, the student-athlete would not exist as the NCAA bylaws have developed the very definition and therefore is fundamental to the existence of the college football. The NCAA bylaws suspending a player's eligibility who receive compensation that equates to an amount beyond that of cost of attendance to their respective university further protects amateurism. Agnew v. NCAA, 683 F.3d 328, 342-43 (7th Cir. 2012). Additionally, the Court recognized that the compensation limitations that extend beyond expenses used for educational purposes imposed by the NCAA further advances the association's objectives of mitigating a distinction between amateurism among intercollegiate athletic and professional sports. Id. at 345.

Years of precedent have held in favor of the NCAA. Courts have maintained the stance that the NCAA amateurism and eligibility bylaws are not anticompetitive and thus are protected from attack under the Sherman Act. A Massachusetts District Court held in Jones v. NCAA that the NCAA bylaws were not in violation of the Sherman Act after a hockey player challenged the NCAA compensation bylaws that suspended his eligibility upon accepting compensation from other hockey teams as access that had been limited to intercollegiate sports is a secondary result of the association's interest of its goals "to promote amateurism in college sports and to integrate intercollegiate athletics into the educational programs of its member institutions." Jones v. NCAA, ones v. Nat'l Collegiate Athletic Ass'n, 392 F. Supp. 295 (D. Mass. 1975).

Through the bylaws the NCAA is able to preserve the very essence of colligate sports, amateurism. An Arizona District Court denied Arizona football players motion for preliminary injunction when they claimed that the NCAA sanctions that were leveled against them constituted

a group boycott as the University of Arizona was prevented from appearing post-season and televised competition in Justice v. NCAA, 577 F. Supp. 356, 378 (D. Ariz. 1983). The court found that sanctions were justifiably related to the preservation of amateurism and the NCAA bylaws were developed to not only preserve amateurism but to foster and encourage fair competition. Id. at 382-83. The sanction did not restrain trade as it was necessary for the protection of amateurism. Id.

NCAA bylaws are procompetitive and further promote their distinct product of intercollegiate sports. A Tennessee District Court denied a motion for preliminary injunction in Gaines v. NCAA for a plaintiff challenging the NCAA bylaws that resulted in him losing his eligibility upon declaring for the draft and engaging in an agent. Gaines v. NCAA, 746 F. Supp. 738, 740 (M.D. Tenn. 1990). The Court found that the NCAA eligibility bylaws had procompetitive effects as they continued to promote and preserve the distinct product of intercollegiate amateur football. Id. at 746-47.

Additionally, the amateur sports are considered a part of overall colligate experience. The Seventh Circuit was presented with a similar issue as presented in Gaines. In Banks v. NCAA, the court determined that the NCAA bylaws concerning eligibility of college football players were not a restraint on trade within the college player market as the NCAA is not a "training ground for future NFL players but rather to provide an opportunity for competition among amateur students pursuing a collegiate education." Banks v. NCAA, 977 F.2d 1081, 1089-90 (7th Cir. 1992).

The Third Circuit Court found in Smith v. NCAA, 139 F.3d 180, 187 (3rd Cir. 1998) that, overall, NCAA eligibility bylaws allow for amateur sports as a product to survive and to establish an "even playing field" among student athletes alike. As a result, Smith was vacated and remanded on other grounds.

Over the years, courts across the country have yielded to the Supreme Court's initial opinion in NCAA v. Board of Regents of University of Oklahoma. Though lower courts are not subject to Supreme Court dicta, subsequent cases have continued to incorporate the Court's opinion that the NCAA laws are indeed procompetitive and are valid as a matter of law in order to protect and preserve intercollegiate amateurism.

The Ninth Circuit has taken a different approach to the issue by applying the rule of reason but rendering a contrary outcome when compared to general precedent. In the case of O'Bannon v. NCAA, a former celebrated college basketball star challenged the NCAA amateurism rules prohibiting payment for the use of his likeness. O'Bannon v. Nat'l Collegiate Athletic Ass'n, 802 F.3d 1049, 1055 (9th Cir. 2015). The court concluded that the NCAA amateurism compensation bylaws were in fact subject to be reviewed under Section One of the Sherman Act and had suffered an antitrust injury. Id. at 1063. The court summarized that the NCAA bylaws were "more restrictive than necessary to maintain its tradition of amateurism in support of the college sports market. The Rule of Reason requires that the NCAA permit its schools to provide up to the cost of attendance to their student athletes. It does not require more." Id. at 1079.

The O'Bannon decision not only went against precedent, it also inspired several legal scholars to write and publish articles claiming that the court did not apply the rule of reason correctly. One such scholar, professor Michael A. Carrier of Rutgers Law School, published a paper titled "How Not to Apply the Rule of Reason: The O'Bannon Case". Professor Carrier examined cases between 1977 and 2009 and found that there is a "four-part burden-shifting approach" in which the court did not apply the rule of reason and instead it circumvented the established approached. Michael A. Carrier, How Not to Apply the Rule of Reason: The O'Bannon Case, 114 MICH. L. REV. 73 (2015).

Carrier argues that the Ninth Circuit Court inadequately applied the rule of reason in three distinctive ways: “First, the court inappropriately held that the plaintiff’s failure to prove a less restrictive alternative resulted in the plaintiff losing the case. Second, it misconstrued the scope of the justification to which the alternative would be applied. And third, it eliminated the balancing stage of the analysis." Id. If the court would have implemented the rule of reason as had been established by prior cases, it would have come to the conclusion that neither a less restrictive alternative or cost of attendance cap is necessary as the bylaws are not subject to section one of the Sherman Act.

B. The compensation rules at issue are not addressed by the Sherman Act as they do not regulate commercial activity.

The core of the Sherman Act are the regulations maintaining procompetitive conduct within all markets. Violations of the Sherman Act generally take one of two forms: either as a per se violation or as a violation under the rule of reason. Herbert J. Hovenkamp, The Rule of Reason (2018). Faculty Scholarship. 1778. Under the rule of reason, courts must evaluate the reasonableness of the alleged anticompetitive conduct. Id. The courts have analyzed this case as an alleged violation under the rule of reason which is customary when scrutinizing a conduct’s potential anticompetitive effects. Agnew v. NCAA, 683 F.3d 328 (7th Cir. 2012). The Plaintiff has the burden of proof and must demonstrate that the defendant has control over the market “without which the defendant could not cause anticompetitive effects on market pricing.” Id. Subsequently, if this is proven, then the defendant has the ability to demonstrate that the restrictive conduct at issue is in fact procompetitive. Id.

Procompetitive justifications are ever-expanding and can be tailored to a particular market. Newman, John M., Procompetitive Justifications in Antitrust Law. 94 Indiana Law Journal (2018

Forthcoming); University of Memphis Legal Studies Research Paper No. 167. In this case, the NCAA has successfully maintained the stance that their bylaws are procompetitive as they encourage and promote intercollegiate athletics, they maintain and preserve the tradition of amateurism and the student athlete at a collegiate level, and they have been upheld as reasonable restraints. *See* NCAA v. Board of Regents of the University of Oklahoma, 468 U.S. 85, 104 S.Ct.2948, 82 L.Ed.2d 70 (1984); Agnew v. NCAA, 683 F.3d 328 (7th Cir. 2012); Jones v. NCAA, No. 74-5519-T, 1975 WL 938 (D. Mass. 1975); and, Justice v. NCAA, 577 F. Supp. 356, 378 (D. Ariz. 1983).

Compensation rules administered and enforced by the NCAA are solely for the protection and enhancement of amateurism among intercollegiate athletics. Participating in athletics is a part of the college experience, however, being a student is a priority. The NCAA declares "[s]tudent-athletes shall be amateurs in an intercollegiate sport, and their participation should be motivated primarily by education and by the physical, mental and social benefits to be derived. Student participation in intercollegiate athletics is an avocation, and student-athletes should be protected from exploitation by professional and commercial enterprises." NCAA, Article 2: Principles for Conduct of Intercollegiate Athletics, 2.9, The Principle of Amateurism. Though the NCAA has ultimate control over the market, their conduct does not cause anticompetitive effects on the market because their bylaws are in fact procompetitive.

The NCAA's commitment to the student-athlete is a revered and noble achievement. The organization makes it possible for hundreds of thousands of students to obtain a debt-free college education, additionally they provide countless resources and develop their rules to encourage

academic success.[1] Compensation for the student athlete poses a threat to the intercollegiate amateurism as it would upset the balance of the NCAA's particular market. Fewer than two (2) percent of colligate athletes become professional athletes. Id. The NCAA bylaws institute a level playing field, if you will, for all intercollegiate amateur athletes.

The Petitioner, John Snow, is a renowned quarterback for the University of Tulania. Because of his achievements within college football, Apple, Inc. wanted to utilize his image and likeness in order to promote their new emoji keyboard. Football is the only major professional sport that requires athletes to attend an institution of higher learning. In order to be eligible for the draft, a player must be "out of high school for at least three [3] years and must have used their college eligibility before the start of the next college football season." The Rules Of The Draft, Player Eligibility (2018), https://operations.nfl.com/the-players/the-nfl-draft/the-rules-of-the-draft/. (Emphasis Added). Underclassmen and players who have graduated before exhausting their college eligibility may request the NFL's approval to enter into the draft early. Id. This process differs from the other major sports like basketball and baseball where players may be eligible to become a professional athlete upon exiting high school.

In his article for the Washington Journal of Law, Joseph Davison explores the "pay-for-play" collegiate model supported in part by Ninth Circuit Court's decision. Joseph Davison, Throwing the Flag on Pay-for-Play: The O'Bannon Ruling and the Future of Paid Student Athletes, 11 Wash. J.L. Tech. & Arts 155 (2015). He explains that by allowing universities and colleges more flexibility to pay their student athletes would inevitably lead to wealthier institutions to outbid their smaller rival schools. Id. While competitiveness is a championed principal of antitrust law,

[1] See NCAA Defends Scholarships For College Athletes Compensation, NCAA Website (2018), http://www.ncaa.org/about/resources/media-center/feature/ncaa-defends-scholarships-college-athletes

available scholarship caps are likely to rise over time which will thus create further flexibility, thus generating an anticompetitive "bidding process" that is controlled by wealthier schools. Id.

Universities, colleges, sports, and athletes are not equally created. Whether this is due to program funding, or a national or regional preference, the NCAA strives to incorporate equal standards so that all amateur student athletes can be treated relatively equal while at a collegiate level. The NCAA amateurism and eligibility bylaws are not exclusively exempt from attack under the Sherman Act because they are procompetitive and do not place an unreasonable restraint on trade

C. Petitioner's do not have standing to sue the Respondent under Section One of the Sherman Act as the Petitioner has not suffered an Antitrust Injury.

The Sherman Act mitigates injuries to the consumer and the market resulting from diminished competition and as such, three elements are required in order to succeed under the Sherman Act: "(1) a contract, combination, or conspiracy; (2) a resultant unreasonable restraint of trade in a relevant market; and (3) an accompany injury." Denny's Marina, Inc. v. Renfro Prods., Inc., 8 F.3d 1217 (7th Cir.1993) quoted in Agnew v. NCAA, 683 F.3d 328 (7th Cir. 2012).

In this case, the first element does not apply as all NCAA members have agreed to follow the amateurism bylaws. The second element is in question: whether the NCAA has contributed to unreasonable restraint of trade within intercollegiate athletics. Finally, the third element does not apply. Therefore, the court lacks jurisdiction.

Even if an injury has been alleged as a result of an antitrust violation, not every individual is subject to standing under the Sherman Act as only a person that has been injured in their business or property may seek proper damages and only an individual who is able to demonstrate a

substantial threat of the alleged injury may obtain injunctive relief. Agnew, 683 F.3d 328 (7th Cir. 2012).

An antitrust injury is an injury resulting from the antitrust regulations. Id. This particular type of injury acts as a standing requirement and a plaintiff has the burden of proof to demonstrate that the injury was a result of an intentional anticompetitive law. Glen Holly Entm't, Inc. v. Tekronix Inc., 343 F.3d 1000 (9th Cir. 2003). Additionally, the injury must be attributable to anticompetitive aspects. Speedway, LLC v. Nat'l Ass'n of Stock Car Racing, 588 F.3d 908, 920 (6th Cir. 2009). If the alleged injury is favorable to impartial to competition then there is no antitrust injury, even if the conduct in question is illegal. Theme Promotion, Inc. v. News Am. Mktg. Fsi, 539 F.3d 1046, 1055 (9th Cir. 2008). The Petitioners initially claimed the NCAA prevented them from competition. Once the head of compliance was notified, the Petitioners were suspended indefinitely from playing their respective collegiate athletic teams for accepting remunerations for their image and likeness to be used by various companies.

If John Snow proved that he did in fact have an antitrust injury, he would then be subject to scrutiny under prudential standing and whether his injury comes within the "zone of interest" of the Sherman Act.[2] This doctrine allows the court to look to whether or not Congress passed the Sherman Act intending to mitigate such a market as created by the NCAA, and whether the NCAA amateurism bylaws are therefore within this "zone of interest". However, there is no need to go to such lengths as no antitrust law injury has been proven.

[2] *See* Ass'n of Data Processing Service Org. v. Camp, 397 U.S. 150, 153 (1970); Simon v. Eastern Kentucky Welfare Rights Org., 426 U.S. 26, 39 (1976); Valley Forge Christian College v. Americans United, 454 U.S. 464 (1982); and Clarke v. Securities Industry Ass'n, 479 U.S. 388 (1987).

The NCAA bylaw prohibiting athletes to accept these remunerations are not anticompetitive as they are used to promote amateurism byway of intercollegiate competition. All participating members of the NCAA are subject to their division bylaws which includes the very guidelines that define and foster healthy competition among intercollegiate athletics. The NCAA bylaws are favorable to competition as they "enhance public interest in intercollegiate athletics". Board of Regents of the University of Oklahoma, 468 U.S. 85 (1984). Thus, the Petitioners have not suffered an antitrust injury and cannot sue the NCAA under Section One of the Sherman Act.

II. FORMER NFL PLAYERS' STATE LAW CLAIMS AGAINST THE NFL ARE PREEMPTED BY SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT.

Section 301 of the Labor Management Relations Act of 1947 ("LMRA") is a jurisdictional statute, which establishes that "suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties." 29 U.S.C. § 185(a).

On the other hand, Collective Bargaining Agreements (CBA) are agreements between employers and labor organizations in representation of employees, in which the trade union bargains for the terms and conditions of employment.

In order to determine whether state law claims are preempted by CBA's preemptive effect under Sec. 301 of the LMRA, this Court has held that Sec. 301 preempts state-law claims "founded directly on rights created by collective-bargaining agreements, and also claims that are 'substantially dependent on analysis of a collective-bargaining agreement.'" Caterpillar, Inc. v. Williams, 482 U.S. 386, 394, (1987) (quoting Int'l Bhd. of Elec. Workers v. Hechler, 481 U.S. 851, 859 (1987)). Sec. 301 preemption of the LMRA has been expanded by this Court to cases in

which the claims are "inextricably intertwined with consideration of the terms of the labor contract" or in which the 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. Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 220 (1985).

When analyzing the legal character of the present case, it is necessary for the courts to interpret the CBA provisions in order to establish the legal relationship between the NFL and, the independent club physicians who administered the medicines. Additionally, the interpretation of the CBA is essential for the courts to properly determine the extent, if any, to which the NFL was negligent in failing to curb medication abuse by the clubs. It is for this reason that in this case, the state law claims are preempted by Section 301 of the Labor Management Relations Act, because they fail to be sufficiently independent of the collective-bargaining agreement.

Furthermore, evaluation of John's state law claims would be contrary to Congress's intent to resolve labor disputes in a "uniform manner throughout the country." Trs. of Twin City Bricklayers Fringe Benefit Funds v. Superior Waterproofing, Inc., 450 F.3d 324, 330 (8th Cir. 2006). Sec. 301 of the LMRA applies to suits between employers and labor organizations for breach of CBAs because when enacting this Act, Congress intended to make a uniform system of federal law to handle labor disputes between employers and labor organizations.

Therefore, because John's claims are inextricably intertwined with, and substantially dependent upon, analysis of the Collective Bargaining Agreement, and because preemption by the LMRA would allow a national resolution to the dispute, John's state law claims against the National Football League, are preempted under Sec. 301 of the Labor Management Relations Act.

A. Petitioners' state law claims are preempted under Section 301 of the Labor Management Relations Act because they are inextricably intertwined with the Collective Bargaining Agreement made between the NFL and the players, and the resolution to their negligence claims is substantially dependent upon an analysis of the CBA.

Unlike ordinary contracts, CBA's enjoy preemptive effect over state common law duties. Section 301 of the Labor Management Relations Act governs "suits for violation of contracts between an employer and a labor organization." 29 U.S.C. 185(a). In order to determine if a state law claim is preempted by the LMRA, the courts conduct a two- step inquiry. The *first step* of the inquiry is to establish whether the cause of action involves "rights conferred upon an employee by virtue of state law, not by CBA". If the rights at issue "exist solely as a result of the CBA, then the claim is preempted, and our analysis ends there." Burnside v. Kiewit, 491 F.3d at 1059 (9th Cir. 2007). The *second* step of the inquiry is conducted by the courts if the cause of action involves rights that exist independently of the CBA. A tort claim "inextricably intertwined with consideration of the terms of the labor contract" must be deemed preempted under Sec. 301. Allis–Chalmers Corp. v. Lueck, 471 U.S. 202, 220 (1985). "We must determine if respondent's claim is sufficiently independent of the collective-bargaining agreement to withstand the preemptive force of Section 301." International Brotherhood of Electric Workers v. Hechler, 481 U.S. 851, 859 (1987). Sec. 301 completely preempts state law claims, including tort law claims, that involve the interpretation and application of a CBA. United Steelworkers of Am. v. Rawson, 495 U.S. 362, 368-69 (1990). "A claim that requires interpretation of a CBA is preempted." Burnside, 491 F.3d at 1059-1060 (9th Cir. 2007).

Accordingly, the district courts have found that Sec. 301 preemption over state law claims stand in cases in which the claims brought cannot be resolved without interpreting the CBAs, and in negligence claims where factors such as the legal relationship between the parties, the scope of the duties of care owed, and the steps taken by the defendant to comply with the duty, can only be established by determining what is imposed in the CBAs.

In Williams v. National Football League, 582 F.3d 863, 870–81 (8th Cir. 2009), football players tested positive for a banned substance in dietary supplements and were suspended. Action for which the players sued the NFL. The players based their claims on alleging that the NFL had to provide them a warning on the specific ingredient for the dietary supplements because the League owed "a common duty", that did not arise from the CBA. The Eighth Circuit held that the breach of fiduciary duty, negligence, and gross negligence claims brought by the players were found to be "inextricably intertwined with consideration of the terms of the Policy", because in order to determine whether the NFL owed the Players a duty to provide such a warning, they had to examine what was established by the CBA regarding the parties' legal relationship and expectations.

In Stringer v. National Football League, 474 F.Supp. 2d 894, 898– 99, 910–11 (S.D. Ohio 2007), a football player died from heat exhaustion during his team's summer training camp, and his widow brought negligence-based claims against the NFL, alleging that the League had negligently republished the "Hot Weather Guidelines" that were in effect at the time of the player's death. The court in this case found that that this allegation was "inextricably intertwined with certain key provisions of the CBA, because even though the standard of care remained constant, the degree of care varied depending on the facts and circumstances that surrounds each particular case". Particularly, Stringer pointed to provisions of the CBAs that addressed certification of individual teams' trainers and duties imposed on team physicians, explaining that resolution of the negligence based claims was substantially dependent on such provisions "in determining the degree of care owed by the NFL and what was reasonable under the circumstances". Id. at, 898–99.

In Duerson v. National Football League Inc., No. 12 C 2513, 2012 WL 1658353, at 3–4 (2012), the estate of a former NFL player sued the League for negligently educating players about the risks of concussions after a player committed suicide as a result of brain damage incurred during his NFL career. The district court in this case found that determining the meaning of the CBAs was "necessary to resolve the player's negligence claim". The reasoning behind this decision was that the NFL pointed to a CBA provision that required team physicians to advise players, in writing, about the "significantly aggravated" physical conditions, and thus the court reasoned that "the NFL could reasonably exercise a lower standard of care in that area if a court could plausibly interpret the CBAs to impose a duty on the NFL's clubs to monitor a player's health and fitness to continue to play football." Id.

Similarly, in Smith v. National Football League Players Association, No. 14 C 10559, 2014 WL 6776306 at 6–8 (2014) retired players claimed that the NFLPA negligently treated head concussions by failing prevention, and mitigation of brain damage, and that they were fraudulent because they concealed information from the players relating to concussions. The court in this case found that although none of the provisions in the CBA did "not explicitly say the NFLPA has a duty to inform its members on the risks and consequences of head injuries", interpretation of the CBA was necessary in order to assess the scope of the union's duties in relation to plaintiff's claims.

In the present case, the resolution to John's claims cannot be properly resolved without the interpretation of the CBA clauses. For instance, John's negligent hiring and negligent retention claims, allege that the NFL had a duty to "hire and retain educationally well-qualified, medically competent, professionally objective and specifically-trained professionals not subject to any conflicts." (R. at 9). But, as matter of fact, the NFL addressed the problem of adequate medical

through a bargaining process that imposed uniform duties on all clubs without diminution at the whim of individual state tort laws. (R. at 9). The CBA addressed this duty by requiring each club to retain a "board-certified orthopedic surgeon", and required all full-time trainers to be "certified by the National Athletic Trainers Association" (R. at 9).

The same analysis applies to the claims for negligent misrepresentation and negligence per se. John claims that the NFL had a "duty to protect the Class Members, and to disclose to them the dangers of Medications." (R. at 9). But, to determine whether the NFL breached these duties, the Court would need to consult, construe, and apply what was required by the CBA provision stating that if a "condition could be significantly aggravated by continued performance, the physician will advise the player of such fact in writing before the player is again allowed to perform on-field activity." (R. at 9).

There are other CBA provisions that would need interpretation because they provide for a player's right to a second medical opinion, access to medical records, access to medical facilities, and require that the "prognosis of the player's recovery time should be as precise as possible." (R. 12). Whether the NFL was negligent cannot be fairly determined without ascertaining the full scope of player benefits contained in these clauses from the CBA.

Furthermore, John's claims are simply unsupported under state law because no decision in any state has ever held that a professional sports league owed such a duty of intervening and stopping mistreatment by the league's independent clubs. (R. at 10). It is true that in some instances, state courts have found that Sec. 301 preemption is limited depending on the facts that the case present, and on the linkage between the claims brought and the resolution of the case. However, the decisions heavily relied upon by Petitioners to support state law, are distinguishable from the instant case in significant respects. The California Supreme Court decision in Rowland v.

Christian, 69 Cal.2d 108, 113 (1968), addressed the liability of a land possessor and the existence of the common law duty to exercise reasonable care based on foreseeability of harm, but this case does not relate to the liability of an unincorporated association of independent club such as the NFL. The same distinction is found in the case of J'Aire Corp. v. Gregory, 157 Cal. Rptr. 407, 598 P.2d at 62(1979). In this case, the Supreme Court of California recognized that "a duty may be premised upon the general character of the activity in which the defendant engaged", and recognized that the loss of business is a foreseeable harm when construction work is not completed in a reasonable time. Again, the reasoning of this case although correct, does not relate to the facts of the case present.

The Ninth Circuit reached a similar conclusion in Dent v. National Football League, No. 15-15143 (9th Cir. 2018). There, retired football player Richard Dent claimed that after playing for fourteen years on four different team, he ended his career with an enlarged heart, permanent nerve damage in his foot, and an addiction to painkillers, allegedly because doctors and trainers gave him "hundreds, if not thousands of injections and pills containing powerful painkillers in an effort to keep him on the field." Id at 5. The complaint in this case asserted that the NFL itself directly provided medical care and supplied drugs to players, and that the named plaintiffs in the action sought to represent a class of plaintiffs who had "received or were administered" drugs by anyone affiliated with the NFL or an NFL team. Based on this claims the Ninth Circuit Court of Appeals found that the plaintiffs' negligence claim regarding the NFL's alleged violation of federal and state laws governing controlled substances was not preempted by Sec. 301. Id. at 20. In addition, they held that the NFL had not identified any CBA provisions that must be interpreted in order to resolve the players' fraud claims, and resolving those claims did not require interpreting CBA provisions. Id. at 3. However, in the case present, Mr. Snow has been a player for the NFL for less

than two years, he has only played for the NFL as a professional athlete for only one team, and has not established in his claim that doctors or trainers have administered him "hundreds or thousands of drugs". Thus, Mr. Snow's claim is not based on the same set of facts of Dent, No. 15-15143. The treatment that Mr. Snow received represents only the treatment administered to him by one particular club in a limited set of time, and does not represent the treatment required by the NFL as established by the CBAs. Moreover, the Petitioners in this case are not seeking to represent a class of plaintiffs who had "received or were administered" drugs by "anyone affiliated with the NFL or an NFL team". If anything, the claims in this case seek to hold the NFL liable for inadequate medical care by the Club physicians. However, as it was noted by the District Court, "the CBAs place medical disclosure obligations 'squarely on Club physicians, not on the NFL", (R. at 24), and each team hires doctors and trainers who are employees of the teams, not the NFL, to attend to players' medical needs. Therefore, in order to assess this claim, interpretation of the CBA is necessary to establish the legal relationship between the doctors and trainers, with the NFL; and to determine the scope of the obligations the NFL and Clubs have adopted vis a vis the individual clubs' physicians and trainers. Lastly, as opposed to Dent, No. 15-15143, in the present case, the NFL has identified several CBA provisions that must be interpreted in order to resolve the players' fraud claims, and thus resolving those claims requires interpretation of those provisions.

Petitioners' claims also challenge the legality of the CBAs. "They [the players] are not arguing that the NFL violated the CBAs at all, but that it violated state and federal laws governing prescription drugs." (R. at 22). "The parties to a CBA cannot bargain for what is illegal." Allis-Chalmers, 471 U.S. at 212, 105 S. Ct. 1904. (R. at 24). Therefore, the resolution to Petitioners' claims requires "substantial interpretation" of the CBA because they challenge its very legality.

When a plaintiff alleges that acts taken in accordance with the CBA violate state law, "the claims will obviously require an interpretation of the CBA" Bagby v. Gen. Motors Corp., 976F. 2d 919, 921-22 (5th Cir.1992), citing Strachan v. Union Oil Co., 768 F.2d 703, 705 (5th Cir. 1985).

In sum, when evaluating Petitioners' claims, it is evident that interpretation of the CBA is required because the CBA includes the specific medical duties that the NFL imposed on the clubs, and that Petitioners are claiming that were breached.

B. Petitioners' claims are preempted by Section 301 due to public policy's need, and Congress' intent to maintain a uniform system of federal law to handle labor disputes between employers and labor organizations.

"In enacting Section 301, Congress intended that the rights and duties created through collective bargaining, involving, as they do, the collective strength of the unionized workers and their employer, would ordinarily trump common law remedies." (R. 8). In Textile Workers v. Lincoln Mills, 353 U.S. 448, 456 (1957), this Court reasoned that Congress, through Section 301 of the LMRA, had authorized federal courts to create a body of federal law for the enforcement of collective bargaining agreements. In Kobold v. Good Samaritan Reg'l Med. Ctr., 832 F.3d 1024, 1032 (9th Cir. 2016) the Court quoted Allis-Chalmers Corp., 471 U.S. 202 (1985) and stated that Sec. 301 is "a congressional mandate to the federal courts to fashion a body of federal common law to be used to address disputes arising out of labor contracts." Upon its enactment, Congress intended for Sec. 301 to "protect the primacy of grievance and arbitration as the forum for resolving CBAs disputes and the substantive supremacy of federal law within that forum. Alaska Airlines Inc. v. Schurke, 898 F. 3d 904, 920 (9th. Cir. 2018).

Uniform contract interpretation and enforcement, prevents courts from giving more than one meaning to the same contract terms in collective bargaining agreements. Federal-labor law principles should be employed in these types of cases because application of state law would lead

to inconsistent results given the fact that "there could be as many state-law principles as there are states." Lingle v. Norge Div. of Magic Chef, 486 U.S. 399, 405-406 (1988). This would result in a patchwork of state laws and regulations, making it impossible to maintain a uniform drug policy throughout the nation. Partee v. San Diego Chargers Football Co., 668 P.2d 674, 678 (Cal. 1983).

Because the claims "relating to what the parties to a labor agreement agreed, must be resolved by reference to uniform federal law," they are preempted by Section 301. Dent v. NFL, No. 15-15143 (9th Cir. 2018) quoting Williams v. NFL, 598 F.3d 932 (8th Cir. 2009).

For the reasons stated above, this Court should implement federal law for the resolution of this dispute, and find that the state law claims are preempted under Section 301 of the Labor Management Relations Act.

CONCLUSION

For the foregoing reasons, this Court should affirm the United States Court of Appeals for the Fourteenth Circuit and hold that: (1) NCAA amateurism and eligibility bylaws are protected as a matter of law from attack under Section One of the Sherman Act because the NCAA Amateurism and eligibility bylaws are protected as a matter of law from attack under Section One of the Sherman Act the bylaws promote procompetitive elements that foster competition amongst amateur athletic teams and do not regulate commercial activity, and (2) state law claims brought by NFL Players are preempted by the LMRA because the resolution to the their negligence claims is dependent on their CBA and it is necessary overall public policy.