RACIAL PROTEST AND RACIAL PROGRESS IN PROFESSIONAL SPORTS

MATTHEW J. PARLOW

ABSTRACT

The summer of 2020 marked significant changes in society, as seen through worldwide protests and an accompanying movement to address social injustice and systemic racism in America. That movement was amplified by and within professional sports as players, teams, and leagues sought to contribute to the goals of anti-racism by working to build a more equitable and just society. With so many other aspects of society shuttered by the COVID-19 pandemic—particularly in the entertainment sphere—the restarting of professional sports provided an even greater platform for athletes and others within sports to participate in this movement to effect change. In particular, professional sports leagues and teams sought to support players in their protest of societal racism and their efforts to seek structural reform in policing and the criminal justice system, among other entities. This type of support stood in stark contrast to how professional sports leagues previously treated athletes’ expressions of racial protest and their free speech rights more generally. In fact, leagues had implemented a variety of policies and rules that dramatically restricted player expression and speech. This article seeks to contextualize this dramatic shift within the context of sports law and the complicated history of racial protests and racial progress in professional sports—and looks to how the summer of 2020 may change sports going forward on these important fronts.

* Executive Vice President and Parker S. Kennedy Professor of Law, Chapman University. I would like to thank Madeleine Dobson, Talia Edri, Kylie Hernandez, Melody Morales, Caroline Nam, and Brandon Paine for their excellent research assistance.
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I. INTRODUCTION

Professional sports have a long and complicated history with racial protests and racial progress. On the one hand, sports have sometimes led on issues of race and equality—moving society forward in meaningful ways. Jackie Robinson breaking the color barrier in Major League Baseball (“MLB”) in 1947 is but one example.\(^1\) On the other hand, sports too often have emulated—or even trailed—society at large in failing to address systemic racism. The continued use of offensive mascots and trademarks in professional sports\(^2\) and the underrepresentation of persons of color and

\(^1\) *See generally* JULES TYGIEL, BASEBALL’S GREAT EXPERIMENT: JACKIE ROBINSON AND HIS LEGACY 3 (2008) (describing Jackie Robinson’s performance on the opening day of the 1946 International League season as the first black player in the history of organized baseball).

women in coaching, management, and front office positions are two prominent examples. Players have, understandably, attempted to advocate for racial progress and use their voices and platforms as professional athletes to raise awareness about issues within sports and in society.

However, instead of receiving support from their teams and leagues, these players were met with a variety of restrictions on their speech and ability to protest, through terms in their leagues’ respective collective bargaining agreements (“CBAs”) that precluded them from speaking out on racial injustice.

In fact, most professional sports leagues’ CBAs contain a variety of restrictions related to player speech—commercial, political, or otherwise. In many ways, these league policies curtail and even prohibit player activism and other forms of protest. Moreover, some professional sports leagues—such as the National Basketball Association (“NBA”)—have certain prescriptions in their CBAs that impose particular player expression or speech. In particular, the NBA CBA contains a provision that requires players, trainers, and coaches to stand for the national anthem before each game.

In this regard, certain contractual provisions in a professional sports league—whether in the CBA or another governing document in the sport—not only inhibit a player’s free speech and ability to protest, but they can also require or force a player into expression that they may feel uncomfortable supporting. To boot, all of these contractual provisions—restrictions and obligations—are protected by federal labor law as they are negotiated through the collective bargaining process. In short, for the history of American sports through the spring of 2020, there were severe

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7 Race, Speech, and Sports, supra note 5, at 933.


limitations on the ability of players to protest racial injustice and otherwise use their voice and platform as professional athletes to advocate for change in society.

The summer of 2020 has seemingly changed that historical reality. Inspired by social movements all over the country and the world, players exerted their influence to speak out about racial injustice and demand various reforms in professional sports and society more generally. Professional sports leagues not only put out statements supporting the Black Lives Matter movement, but they also included these words prominently in their games and advertising. As seasons recommenced after delay or suspension due to COVID-19, players in the NBA, National Hockey League (“NHL”), and MLB kneeled during the national anthem. The Women’s National Basketball Association (“WNBA”) players walked off the court during the national anthem in protest as well. This form of racial protest—and the support players received from their respective leagues and teams—provided a stark contrast to the firestorm that the then President Donald Trump set off in criticizing Colin Kaepernick and other NFL players for kneeling during the national anthem a few years earlier. About a month after seasons relaunched, in the wake of the police shooting of Jacob Blake in Kenosha, Wisconsin, all major professional sports leagues suspended games following player walkouts to protest systemic racism and Blake’s

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shooting. The sports world had fundamentally changed its approach on these important issues.

How did this sudden change take place? Are professional sports changed forever? This article seeks to delve into these questions within the context of how sports supported and thwarted racial protests and racial progress, and the legal and policy frameworks that hindered player activism. Part II provides a brief history of how professional sports have modeled racial progress ahead of societal changes thereafter, while at the same time perpetuating systemic racial inequities. Part III explores the ways in which labor law coalesced with team and league interest to dramatically limit the free speech rights of players. Part IV describes how professional leagues, teams, and athletes made significant and likely long-lasting changes in the ability of players to voice their protest against systemic racism and racial injustice in both sports and society. Part V provides some concluding thoughts on what the summer of 2020 may signal for future collective bargaining negotiations.

II. SPORT AS A SOCIAL INSTITUTION

MLB Commissioner Emeritus Allan “Bud” Selig is fond of saying that baseball is a social institution. By extension, sport is a social institution. What Selig means by this is that sport both reflects and influences society. This observation is true in both positive and negative ways. As Selig correctly points out, baseball has either been ahead of, or kept pace with, society on issues such as civil rights, immigration, and other social movements. Indeed, “[s]port offers a unique opportunity to bring communities together, integrate different ideals and perspectives, and offer what many other parts of our world cannot do.” At the same time,

18 Farber, supra note 17.
professional sports have also reflected ways in which society has failed to address issues of racial justice and equity. Indeed, in some areas, professional sports may even lag behind society on these important issues. A brief history of—and some examples involving—each of the ways in which sport is a social institution provides instructive context for understanding the changes in professional sports during the summer of 2020.

A. SPORTS LEADING ON RACIAL PROGRESS

Three examples illustrate well how professional sports led on issues of racial progress—and helped to positively influence society more generally—because of three extraordinary athletes: Jack Johnson, Jackie Robinson, and Fernando Valenzuela. Jack Johnson became the first African American heavyweight boxing champion in 1908.\(^{20}\) Racism and segregation were pervasive at the time, and in particular, practitioners of anthropometry sought to find scientific evidence of biological differences between races.\(^{21}\) They were looking to ground society’s racist views and stereotypes in science, specifically that African Americans were inferior to whites.\(^{22}\) Within this context, it is unsurprising that the mere notion of an African American boxing champion was unsettling to white America.\(^{23}\) Once Johnson won the heavyweight championship, his critics—who were among those seeking to perpetuate the myth of white superiority—searched for the “Great White Hope”: a white man who could vindicate the myths supporting the American racial hierarchy by defeating Johnson in the ring.\(^{24}\) They never succeeded in doing so, as Johnson vanquished all such “Great White Hope” opponents, including James Jeffries in the much-heralded


\(^{21}\) Id. at 532.

\(^{22}\) Id. at 532–33.


\(^{24}\) Morgan, supra note 20, at 536.
“fight of the century.” Indeed, Johnson’s very public successes were experienced as a significant setback to the white supremacist ideology that pervaded America at the time.26

Similarly, when Jackie Robinson broke MLB’s color barrier in 1947, America continued to be a highly segregated, racist society.27 In fact, Robinson’s major league debut occurred seven years before the U.S. Supreme Court decided Brown v. Board of Education.28 Not only were African Americans brutally murdered in the South, but restrictive covenants barring African Americans from buying homes were legal and widespread.29 There were only two African Americans in Congress, and there were no African American mayors of major cities.30 The legal system mirrored society; in fact, just before Robinson broke the color barrier, the Eighth Circuit Court of Appeals held that the Civil Rights Act of 1966, which was authorized under the Thirteenth Amendment, did not apply to private action.31 Robinson faced discrimination and the ill-effects of segregation as well, including being arrested and subsequently court-martialed after refusing to change seats on a military bus, even though the military had already desegregated their buses.32 While Robinson was found not guilty, he reflected on the verdict and society more generally, saying, “[i]t was a small victory, for I had learned that I was in two wars, one against the foreign enemy, the other against prejudice at home.”33

Within this environment, Robinson’s breaking of MLB’s color barrier was, in and of itself, noteworthy. However, as one scholar noted, Robinson’s most significant accomplishment may well have been

26 That is not to say that Johnson did not suffer significant racism and discrimination. Id. at 54–56. Johnson was widely criticized for, among other things, dating white women. Id at 53–54. His dating habits so enraged white America that he was charged under the Mann Act for transporting a white woman across state lines for “immoral purposes.” Al-Tony Gilmore, Jack Johnson and White Women: The National Impact, 58 J. NEGRO HIST. 18, 19 (1973).
29 Dreier, supra note 27.
30 Id.
32 Dreier, supra note 27.
33 Id.
demonstrating African American success in the white world. His success on the field—including being named the MLB’s Rookie of the Year in his first season with the Brooklyn Dodgers—helped shatter the persistent stereotype that African Americans were not qualified to play in the major leagues. Indeed, another scholar argues that Robinson’s coming to the plate at his first game on April 15, 1947 was one of the most visible and critically important moments in American civil rights history. Robinson’s historic path led to greater integration of MLB. Indeed, from 1949–1960, African American players won 8 of 12 Rookie of the Year awards and 9 out of 12 Most Valuable Player awards in the National League. Moreover, Robinson’s historic feat in changing MLB was a precursor to the civil rights movement of the 1960s.

The final example—for the purposes of this article—occurred in the latter part of the twentieth century when Los Angeles Dodgers rookie phenomenon, Fernando Valenzuela, took the country by storm with “Fernandomania.” When Valenzuela began pitching in MLB in the early 1980s, it was a time of fervent anti-immigrant sentiment. Legislators at the state and federal levels proposed immigration bills that targeted undocumented immigrants. White residents bristled at the notion, and, in some cases, the reality, of members of the Latinx community moving into predominantly white neighborhoods. There was similarly a societal push for assimilation of Mexican American immigrants and particularly of those

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35 See id. at 388; see also Dreier, supra note 27.
37 Dreier, supra note 27. Jackie Robinson was the first African American player to win a Most Valuable Player award in 1949. Id.
42 See id. at 230–33 (discussing a series of California propositions raised as a response to large-scale immigration from Latin America and Asia) (“[W]hite suburban families defended their distance from the racialized city and, with it, the right to maintain school policies that sent white middle-class children to white schools in white neighborhoods.”).
who primarily spoke Spanish that was fueled by the anti-immigrant sentiment at the time.\footnote{alamillo, supra note 40.} In Los Angeles specifically, there was a strained relationship between the city and the Mexican American community.\footnote{See id.} There were many reasons for the tension, but one glaring example had deep roots: the building of Dodger Stadium in Chavez Ravine, just north of downtown Los Angeles.\footnote{Matthew J. Parlow, Unintended Consequences: Eminent Domain and Affordable Housing, 46 Santa Clara L. Rev. 841, 843–46 (2006) [hereinafter Unintended Consequences].} For generations leading up to the 1950s, Chavez Ravine had been home to a Mexican American immigrant community.\footnote{Id. at 843.} To build a new stadium for the Dodgers, who were relocating from Brooklyn, New York, the City of Los Angeles first took the 300-acre property by eminent domain with the professed intention of building affordable housing units, only to use the land for the new stadium.\footnote{Id. at 843–44.} In the process, the city razed the community that had been living there and created a deep distrust from the Mexican American community towards their city (and indeed, ambivalence regarding the new baseball team).\footnote{See Hector Becerra, Decades Later, Bitter Memories of Chavez Ravine, L.A. Times (Apr. 5, 2012), https://www.latimes.com/local/la-xpm-2012-apr-05-la-me-adv-chavez-ravine-20120405-story.html [https://perma.cc/QL3S-5EEG].}

When Valenzuela began pitching for the Dodgers in 1981, his dominance took MLB and the Los Angeles community by storm.\footnote{alamillo, supra note 40.} He won the National League Rookie of the Year Award, the Cy Young Award, and also led the Dodgers to the 1981 World Series championship.\footnote{Hernandez, supra note 50.} Valenzuela inspired many in the Latinx community in Los Angeles and across the country at a time when they were marginalized and targeted by society’s widespread anti-immigration sentiment.\footnote{See id.; alamillo, supra note 40.} His emergence coincided with a growth of Spanish language radio and television, which helped raise awareness of his meteoric rise in MLB.\footnote{See id.; alamillo, supra note 40.} At a time when their race was being used against them, many in the Latinx community saw Valenzuela as an example of upward social mobility and what could be possible, despite the negative anti-immigrant political debates.\footnote{See id.; alamillo, supra note 40.}
had been embraced by mainstream America the way Valenzuela was.\textsuperscript{54} President Ronald Reagan even invited Valenzuela to the White House for lunch with Mexico’s President Jose Lopez Portillo, and some scholars believe that Valenzuela had a positive influence on the 1986 Immigration Reform and Control Act, which included a path to citizenship for undocumented immigrants.\textsuperscript{55} In these regards, Valenzuela—like Johnson and Robinson before him—helped influence societal change and racial progress.\textsuperscript{56}

**B. SPORTS REFLECTING SOCIETAL ATTITUDES ON RACE**

In other ways, however, sports have merely reflected society’s intransigence regarding racial progress, or worse, lagged behind the rest of society in achieving greater equality and representation. For example, in 1961, the then Washington Redskins, recently renamed the Washington Football Team (“WFT”),\textsuperscript{57} refused to integrate their team roster.\textsuperscript{58} Despite the fact that fifteen years had passed since Jackie Robinson broke the color barrier, WFT owner George Preston Marshall, a well-known racist, flaunted his refusal to integrate his team despite mounting public pressure.\textsuperscript{59} Marshall’s obstinacy was particularly egregious given that African Americans constituted 16.5% of all NFL players in the league at the time, averaging six African American players per team.\textsuperscript{60} The problem was so blatant that the Kennedy Administration, through the leadership of

\textsuperscript{54} See Jill Painter Lopez, *Fernando Valenzuela Quietly Affirms His Status as a U.S. Citizen*, N.Y. TIMES (Aug. 30, 2015), https://www.nytimes.com/2015/08/31/sports/baseball/fernando-valenzuela-quietly-affirms-his-status-as-a-us-citizen.html [https://perma.cc/VBZ6-MFH6]. This was even more noteworthy in light of the fact that Valenzuela did not speak English and that there was a strong English-only movement at the time. See id.

\textsuperscript{55} See Alamillo, supra note 40.

\textsuperscript{56} Valenzuela’s impact on the Dodger fan base was clear, both at the time and even today when 40% of the team’s fan base is Latinx. See Hernandez, supra note 50. Indeed, Dodgers executives estimate that attendance at Dodger games would be 10%-20% less had Valenzuela not played for the team and garnered such a strong and long-standing following from Latinx fans. See id.


\textsuperscript{60} See Smith, supra note 58, at 299.
Secretary of the Interior Stewart Udall, threatened the team with revocation of its stadium lease, which stood on federal land. With this and increasing negative public attention, NFL Commissioner Pete Rozelle intervened and got Marshall to hire and draft African American players, putting an end to an embarrassing episode for the league.

While sports history is littered with such examples, sports today continue to lag behind society in two key areas: (1) diversity in the hiring of coaches, general managers, and front office personnel and (2) ceasing to use racist team names and mascots. Diversity hiring in professional sports has long been a topic of discussion, both within the leagues and among sports scholars from a variety of disciplines. While most sports leagues are very diverse with regard to their players, the coaching, ownership, and front office positions within each league stand in stark contrast to the diversity amongst the players. A major reason for the lack of diversity in such leadership positions in professional sports stems from the common and pervasive hiring practice that most teams and leagues traditionally employ. They hire the same people within the same network and fail to offer opportunities to new candidates or people outside of that sphere of

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61 See id. at 302; Johnson, supra note 59.
62 Smith, supra note 58, at 306.
64 For purposes of this article, “front office positions” will refer to general managers, CEOs/Presidents, and other C-suite executives of professional sports teams.
influence. Since historical and existing personnel have tended not to be very diverse, it is perhaps unsurprising that this self-perpetuating cycle of hiring led to underwhelming results. In addition, implicit bias in the employment arena also led the largely white male decision-makers to hire people who had similar backgrounds (and thus oftentimes looked like them). To combat both this culture and the largely homogenous results, many professional sports leagues adopted diversity-oriented hiring policies: the Selig Rule, the Rooney Rule, etc. While particulars vary a bit by league, in general, these policies require teams to interview at least one minority candidate for any open coaching or front office position.

Despite these efforts, professional sports leagues still struggle with diversity in their leadership ranks. For example, at the start of the 2020 season, the NFL had only four minority head coaches—far fewer than the record of eight from 2011 and 2018, respectively. While the NBA and Major League Soccer (“MLS”) have achieved better representation in their coaching ranks—30% and 40.7%, respectively—in both cases, their diversity in coaching lags significantly behind their player representation.

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69 Duru, supra note 3, at 189. While the Rooney Rule focused initially only on head coaches, it was later expanded to include general manager and other front office positions. See Jason Reid, Rethinking the Rooney Rule, UNDEFEATED (May 20, 2016), https://theundefeated.com/features/rethinking-the-rooney-rule/ [https://perma.cc/8QD9-VCSX].


71 NFL RACIAL & GENDER REPORT CARD, supra note 63, at 8.


73 NBA RACIAL & GENDER REPORT CARD, supra note 19, at 2; MLS RACIAL & GENDER REPORT CARD, supra note 63, at 4.
In front office positions, the numbers are even worse. In MLB, Miami Marlins CEO Derek Jeter is the only person of color in the league to hold that title.\textsuperscript{74} Moreover, the highest levels of MLB executives have been notably lacking in terms of representation of persons of color and women.\textsuperscript{75} Since current Commissioner Rob Manfred took office in 2015, only one person of color has been promoted to an MLB executive.\textsuperscript{76} In the NFL, only four persons of color—Jason Wright, Hymie Elhai, Paraag Marathe, and Kim Pegula—hold the CEO position for a team.\textsuperscript{77} Even the NBA—which leads professional sports leagues with six CEOs who are persons of color—only reaches 10.9\% diversity for CEOs in the league.\textsuperscript{78} Finally, professional sports team ownership also lacks diverse representation. Of thirty-two teams, the NFL has only two owners of color who are significantly involved in the operations of an NFL club.\textsuperscript{79} The NBA has four majority owners of color out of thirty teams.\textsuperscript{80} The NHL and MLB each only have one majority owner of color.\textsuperscript{81} As these recent statistics show, sports have failed to be a leader in minority hiring for its high-level coaching and front office positions.

Racist team names and mascots are another glaring shortcoming where professional sports leagues have lagged behind society. For decades, Native American groups have protested offensive, stereotypical names and mascots in sports.\textsuperscript{82} These include the Washington Redskins (now, WFT), Kansas City Chiefs, Atlanta Braves, Cleveland Indians, and Chicago
Blackhawks. However, professional sports team owners have ignored such concerns and insisted on maintaining their team names and mascots. Other sectors of the country have taken a different approach from these team owners. For example, in 2015, California passed a law banning the word “Redskins” from being used in high school athletics. In contrast, around that same time, WFT owner Daniel Snyder vociferously insisted that the team would never change its “Redskins” name. While Snyder was not persuaded by the arguments of the Native American community, he eventually changed his mind in the summer of 2020 when Nike, FedEx, and PepsiCo threatened to terminate their business relationships with the WFT unless it changed its controversial name. Similarly, while the Cleveland Indians, for decades, ignored the pleas of Native American advocacy groups, the team recently announced in December of 2020 that it planned to change its name after facing similar pressures as the WFT.

The Kansas City Chiefs, on the other hand, announced that while they would not change their name, they would ban headdresses and Native American style paint at their stadium. While the team had previously discouraged such attire and paint, it was not until the events during the

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83 Id. at 9.
88 The team defends the use of the name, claiming it was based on a former Kansas City mayor who was nicknamed “the chief.” Leigh Oleszczak, Will KC Chiefs Follow Cleveland Indians with Name Change?, FANSIDED (Dec. 14, 2020), https://kcingdom.com/2020/12/14/will-kc-chiefs-follow-cleveland-indians-name-change/ [https://perma.cc/725E-23CA]. However, the Native American themes that the team has imbued throughout its fan base raises serious questions regarding the veracity of that defense.
summer of 2020 that this became an official policy. The team did not ban the offensive “Arrowhead Chop” that fans did during games, but pledged to review the practice further. Similarly, the Atlanta Braves and the Chicago Blackhawks both recently reiterated their long-standing position that their team names would not be reconsidered. As these examples demonstrate, professional sports has been incredibly slow to change racist team names and mascots.

III. RESTRICTION ON PLAYER SPEECH AND PROTEST IN PROFESSIONAL SPORTS

Athletes in professional sports have long sought to use their platforms as celebrities to bring greater societal awareness to issues of social justice and racial inequality. For example, Muhammad Ali, Arthur Ashe, and Jim Brown all advocated for civil rights during the 1960s and 1970s. In 2004, Toronto Blue Jays outfielder Carlos Delgado refused to stand during the seventh-inning stretch for the playing of “God Bless America”—a tradition followed by most teams after the September 11, 2001 terrorist attacks—in protest of the United States invading Iraq. Players on the NBA’s Phoenix Suns wore “Los Suns” jerseys in a game against the San Antonio Spurs in

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2010 to protest Arizona’s anti-immigration laws and policies.\textsuperscript{96} In 2012, prominent members of the NBA’s Miami Heat—including LeBron James and Dwyane Wade—wore black hoodie sweatshirts to protest the killing of teenager Trayvon Martin.\textsuperscript{97} When unarmed teenager Michael Brown was shot and killed by a Ferguson, Missouri police officer, members of the then St. Louis Rams protested his killing by making the “hands up, don’t shoot” gesture during pregame introductions in a 2014 game.\textsuperscript{98} Also in 2014, several NBA players wore “I Can’t Breathe” t-shirts before games to protest Eric Garner’s death after being put in a chokehold by a New York City police officer.\textsuperscript{99}

Perhaps the most prominent player protest pre-2020 may have been Colin Kaepernick taking a knee during the national anthem in 2016. Beginning in the preseason that year, Kaepernick refused to stand for the national anthem before games and was soon joined by other players in kneeling during its playing.\textsuperscript{100} Kaepernick and other players were protesting racial oppression, and in particular, police killings of African American men.\textsuperscript{101} These protests in the NFL continued throughout the 2016

\textsuperscript{96} Billy Witz, ‘Los Suns’ Join Protest, then Stop the Spurs, N.Y. TIMES (May 5, 2010), https://www.nytimes.com/2010/05/06/sports/basketball/06suns.html [https://perma.cc/M9Q4-Q224].


\textsuperscript{100} Arias Foster, Marcus Peters Among NFL Players Protesting During National Anthem, SPORTS ILLUSTRATED (Sept. 11, 2016), https://www.si.com/nfl/2016/09/11/national-anthem-protest-kneel-sit-players-list [https://perma.cc/9E25-LEH7].

season and into the 2017 season, when then President Donald Trump
divisively criticized the player protests and created a firestorm of
controversy around the issue. In response to the criticism, hundreds of
players sat or kneeled during the national anthem the same week as
President Trump’s comments, with a number of players, coaches, and
teams condemning his statements. This national controversy drew a
significant amount of attention, but eventually much of the player protest
subsided. Moreover, these various acts of protest did little, if anything,
to change the perspectives of sports leagues in limiting player expression
and free speech. For the reasons described below, the CBAs of professional
sports leagues curtailed player protest. Given the general lack of support
within sports for issues of social justice and racial equality—coupled with
this limiting legal framework contained in the CBAs—it was unsurprising
that little changed in terms of racial protest in professional sports before
2020.

A. CBA LIMITATIONS ON PLAYER SPEECH GENERALLY

Professional sports leagues’ CBAs, or other governing documents,
contain a variety of provisions that significantly limit players’ free speech
and ability to protest. Some of these limitations derive from general
provisions related to player discipline for conduct on or off the field that
runs contrary to the best interests of the sport. For example, under the
MLB CBA, the league or a team may punish a player “for just cause for

102 McCann, supra note 14.
106 It is worth noting that players in professional sports leagues do not have the same First Amendment rights as they normally would. The First Amendment only applies to state action. U.S. CONST. amend. XIV, § 1. Since professional sports leagues are private associations, the First Amendment does not apply to employer-employee relationships between teams and their players.
conduct that is materially detrimental or materially prejudicial to the best interests of Baseball, including, but not limited to, engaging in conduct in violation of federal, state, or local law.”

Similarly, the NFL CBA grants the NFL Commissioner the ability to discipline players “for conduct detrimental to the integrity of, or public confidence in, the game of professional football.”

The NBA CBA allows player punishment if players do not conduct themselves “according to the highest standards of honesty, citizenship, and sportsmanship... [or] do anything that is, in the opinion of the Commissioner of the NBA, materially prejudicial or materially prejudicial to the best interests of the Team or the League.”

Such broad disciplinary powers also emanate from the standard (or uniform) player contracts within each league. For example, in the NFL standard player contract, each player warrants that they will “conduct himself on and off the field with appropriate recognition of the fact that the success of professional football depends largely on public respect for and approval of those associated with the game.”

Similarly, the NBA’s uniform player contract allows the league to govern the conduct of players on and off the playing court.

MLB’s uniform player contract provides similar authority to the commissioner to discipline players for conduct off the field.

These various provisions afford a professional sports league or team the ability to punish a player for various actions, including for player speech or


111 McCann, supra note 14. Indeed, the NFL standard player contract contemplates the possibility of termination of the player’s contract if their conduct “adversely affect[s] or reflect[s] on the [team].” See id.

112 NBA CBA, supra note 110, at A-3.

expression, if they are detrimental to the sport or not otherwise protected under the respective league’s CBA or other governing document.\textsuperscript{114}

Professional sports leagues also curtail player speech in other ways. To nurture lucrative sponsorship relationships, leagues and teams restrict, if not ban, player commercial speech on products or companies that are not official sponsors of that league or team. The NBA’s uniform player contract forbids players from promoting non-league and non-team sponsors on their jersey or clothing.\textsuperscript{115} The NFL has a similar limitation on players not being able to promote companies on game day until ninety minutes after the conclusion of the game.\textsuperscript{116} Professional sports leagues also target player speech with regard to referees and umpires by imposing penalties on players for publicly criticizing officiators.\textsuperscript{117} However, league restrictions on player speech also extend more specifically to their ability to advocate for social causes or bring awareness to societal issues that matter to them. For example, the NFL forbids players from conveying personal messages in writing or illustration on the day of a game unless they have league permission.\textsuperscript{118} Indeed, up until the 2020 season, the NFL banned players from expressing themselves with regard to political activism, social causes, or other forms of protest or consciousness-raising speech.\textsuperscript{119}


\textsuperscript{116} Boudway, supra note 99. Many professional sports leagues regulate what players can wear before, during, and after games, and players who violate these policies can be subject to league or team discipline. \textit{Id}.

\textsuperscript{117} \textit{No Free Speech (or Silence) in the NFL}, LEGAL BLITZ (Nov. 26, 2014), http://thelegalblitz.com/blog/2014/11/26/no-free-speech-or-silence-in-the-nfl/ [https://perma.cc/LUR6-66CB] (quoting Article 51, Section 6 of the NFL CBA); Wilson, supra note 9, at 54 (noting the NBA’s punishing players for criticizing referees).


As the analysis above demonstrates, professional sports leagues have long sought to restrict player speech and punished players for violating these provisions. For example, in 2009, the NFL’s Houston Texans fined Dunta Robinson $25,000 for violating the league’s speech policies by writing demands for a higher salary from the team on his cleats. The NFL also fined Colin Kaepernick $10,000 in 2014 for wearing Beats by Dre headphones before a game in violation of the league’s commercial promotion policy. Professional sports leagues have also punished players for making racist, sexist, or homophobic statements or slurs.

One of the most prominent examples of a sports league punishing a person for offensive speech occurred in 2000 when Commissioner Selig suspended, fined, and imposed diversity training requirements on John Rocker for making racist and homophobic remarks about New York baseball fans. In 2012, the MLB suspended Yunel Escobar for writing a homophobic slur on his eye black. The NFL’s Kansas City Chiefs suspended Larry Johnson for two weeks, costing him approximately $600,000 in salary, for making homophobic remarks on Twitter. Similarly, the NBA fined New York Knicks player Amare Stoudamire $50,000 for using a homophobic slur in several tweets and fined Los

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120 Interestingly—and somewhat paradoxically—at the same time that they seek to quell player speech in various forms, professional sports leagues also seek to compel player speech through various media obligations and requirements. See, e.g., No Free Speech (or Silence) in the NFL, supra note 117 (describing the NFL CBA’s provision that the National Football League Players Association agrees to make best efforts to ensure that its membership—the players—cooperates with the media in reasonable promotion activities); McElroy, supra note 119 (describing the NFL Media Access Policy requirements for players).

121 Boudway, supra note 99.

122 Id.


125 Boudway, supra note 99.


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Angeles Clippers player Chris Paul $25,000 for sexist comments that he directed towards a female referee.128

While some of these examples seem appropriate and consistent with the animating values of various leagues’ policies, other examples demonstrate how leagues punish athletes even for violations that were innocuous and even deeply personal. The NFL fined Cam Heyward for writing “Iron Man” on his eye black, to honor his father’s fight with cancer.129 Similarly, the NFL disciplined Deangelo Williams for wearing pink on his uniform in honor of his mother who lost her battle with cancer.130 These two examples show how seriously professional sports leagues take violations of their speech and expression policies. At the same time, there are other examples of leagues choosing not to punish players when they, for example, wore patriotic athletic gear to mark the anniversary of the September 11, 2001 terror attacks131 and to protest the killing of Michael Brown by staging a “hands up, don’t shoot” demonstration.132 The WNBA initially fined Minnesota Lynx players in July 2016 for wearing Black Lives Matter t-shirts during pregame warm-ups, though the fines were later rescinded due to the backlash that the league received.133 More concerning, professional sports leagues and teams have been wildly inconsistent in


130 Id.

131 Boudway, supra note 99 (detailing the example of Lance Briggs and other NFL players seeking to honor the ten-year anniversary of the attacks).

132 See Chavez, supra note 118 (pointing to the St. Louis Rams players seeking to protest the killing of Michael Brown); Sikes, supra note 98.

punishing players for racist, sexist, and homophobic remarks made on social media and in other settings. All-in-all, the various speech restrictions in professional sports leagues’ governing documents and the inconsistency of punishment for violations has led to a chilling effect on players’ ability or willingness to protest or express their opinions of racial injustice and other societal inequality.

B. NATIONAL ANTHEM RESTRICTIONS AND PRESCRIPTIONS IN CBAS

One controversial area of player protest in recent years has been around the playing of the national anthem before games. While the national anthem has been increasingly made a part of professional sports, since it was first played at the opening of the Union Grounds Park in New York in 1862, it has also been a moment within sports where players and fans alike have sought to express protest regarding racial injustice and societal inequality. For example, in the 1970s, fans refused to stand for the national anthem to protest the Vietnam War. During the 1990s, in protest of racism and discrimination in the United States, NBA player Mahmoud Abdul-Rauf refused to stand during the playing of the national anthem. Before 2020, the Colin Kaepernick “taking a knee” controversy was the most recent high-profile example of this form of racial protest involving the national anthem.

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136 Jacobson, supra note 135.

137 Kelly B. Koenig, Note, Mahmoud Abdul-Rauf’s Suspension for Refusing to Stand for the National Anthem: A “Free Throw” for the NBA and Denver Nuggets, or a “Slam Dunk” Violation of Abdul-Rauf’s Title VII Rights?, 76 WASH. UNIV. L.Q. 377, 377–78 (1998).

Professional sports leagues vary in their approach to regulating player speech and protest related to the national anthem. The NBA has a long-standing policy that requires players and coaching staff to stand at attention on the court for the playing of the national anthem. In this regard, the NBA has historically not only precluded player protest during this pregame ritual, but it also prescribed player expression and speech by requiring that they stand for it. Indeed, when Mahmoud Abdul-Rauf refused to stand for the national anthem during the mid-1990s, the NBA suspended Abdul-Rauf for a game without pay. Abdul-Rauf thus was forced to stand for the playing of the national anthem before games, though the NBA permitted him to pray during it. Some twenty years later, when Colin Kaepernick’s actions launched the “take a knee” movement in the NFL, the NBA continued to emphasize the requirements of the NBA CBA that players stand for the national anthem. In fact, the league was so firm in its position on this matter that it sent a memorandum to all of its teams, coaches, and players emphasizing this requirement. The NBA did note in the memo that it supported players expressing their views on various social and political issues and that the league was committed to supporting them in building stronger and safer communities. But regardless of the league’s statements in support of players’ freedom of expression, the league refused to tolerate kneeling during the national anthem.

On the other hand, the NFL, MLB, NHL, and MLS do not have rules or policies within their respective CBAs or other governing documents

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140 Koenig, supra note 137, at 377–78.


143 Id.

144 Id.

145 Id.
related to player conduct and the national anthem. In these cases, the leagues’ CBAs are silent on what is expected of an athlete during the playing of the national anthem before a game. While players in these leagues were often encouraged to stand at attention during the playing of the national anthem, there are no enforcement mechanisms for leagues or teams to use against players because they were not agreed to during the collective bargaining process. That is not to say that these professional sports leagues could not potentially discipline players under some of the more general disciplinary clauses detailed above. The NFL, for example, at least considered doing so, as well as possibly implementing a rule related to standing for the national anthem. However, the NFL ultimately decided not to pursue either approach, and indeed, expressed support for its players and their protest of racial injustice. Similarly, MLB did not discipline Bruce Maxwell—the only MLB player to kneel during the national anthem in 2017 at the height of the “take a knee” movement. Whether in solidarity with their players or because of the lack of a concrete provision within their CBAs, these leagues chose not to punish players. Nevertheless, in assessing the collective whole of professional sports leagues and their regulation of player speech, it is relatively clear that leagues have limited, suppressed, and discouraged player speech and protest.

C. LABOR LAW PROTECTIONS FOR CBA TERMS

The kinds of restrictions on players’ speech described above are relevant for a number of reasons. Most obviously, they limit and perhaps thwart players using their platforms as professional athletes to speak out about racial injustice and help push for change in society. This dynamic, explored further below, also creates tension between players and their

147 See Seifert, supra note 141; Seifert & Graziano, supra note 146.
148 Race, Speech, and Sports, supra note 5, at 932–33.
150 Id.; Jacobson, supra note 135.
respective leagues and teams, as the players perceive such speech curtailment as a lack of support for the issues that they care about. Moreover, the limitations placed on player speech by professional sports leagues’ CBAs, and other governing documents, are also important because they receive special protection under labor and sports law. This unique legal status derives from the collective bargaining process, and the deference afforded it under federal statutes and related case law.

In a professional sports league like the NBA, NFL, or MLB, the players are represented by a union and the team owners are represented by the respective league’s commissioner’s office. The two sides negotiate the terms and conditions of employment for players consistent with the National Labor Relations Act. This collective bargaining process requires that certain mandatory subjects be collectively bargained by the two sides: wages, hours, and other conditions of employment. Importantly, matters of player discipline and grievance procedures are among those terms that must be agreed upon by both the league and players’ union. If the owners or players refuse to negotiate in good faith on any of the mandatory subjects for collective bargaining, they commit an unfair labor practice. The resulting document from these negotiations is the CBA, and it becomes the key authority that governs the employment relationship between players and their leagues and teams.

The significance of the collective bargaining process—and the agreed-upon terms and conditions of employment—cannot be overstated. Many of the terms of a professional sports league’s CBA are restraints on trade and would thus violate antitrust laws. However, because they are collectively bargained, these provisions receive special treatment under labor law and are largely exempt from antitrust challenges. This protection serves both

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153 McElroy, supra note 119.
the interests of the players and the league. Once agreed to, these terms provide certainty and predictability for both sides. However, a league cannot unilaterally change any of its CBA’s terms, nor implement new ones, without the approval of the players. In these regards, the restrictions on player speech and protest that originate from the collective bargaining process and are codified in the league’s CBA become somewhat sacrosanct, and thus, can severely limit player speech. On the other hand, as evidenced by the NFL choosing not to seek a new policy during the “take a knee” movement in 2017, players cannot have new limitations—or prescriptions—on their speech imposed without approval from their union.

IV. CHANGES IN ATTITUDES TOWARDS PLAYER PROTEST AND SPEECH IN SUMMER 2020

A. NEGOTIATIONS TO (RE)START THE 2020 SEASONS

The summer of 2020 seemingly changed the approach to player speech and protest in professional sports. After the murder of George Floyd on May 25, 2020, America and indeed the world faced a profound racial reckoning. Professional athletes spoke out forcefully and powerfully on social media regarding racial injustice in the United States. Some players even joined protests to use their platform to draw attention to the problems of police brutality inflicted on the African American community. During this same time, the players’ unions, in various professional sports leagues, were negotiating the terms of restarting their respective seasons in the midst


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of the COVID-19 global health pandemic.165 On the one hand, these negotiations provided an avenue for players to push their respective leagues towards greater action and support on issues of diversity, equity, inclusion, and social justice. On the other hand, many players rightfully worried that that restarting their season would distract from the social justice movement taking hold in the country.166 Some players—like the NBA’s Kyrie Irving and Dwight Howard—even proposed cancelling the season to keep the focus on social justice issues and supporting their respective communities.167 Other players, like the WNBA’s Natasha Cloud and Renee Montgomery, announced that they would skip the 2020 season to devote their time to these social justice causes.168

These concerns about distracting from the growing social justice movement soon gave way to players negotiating with their respective leagues to ensure that this unique platform of restarting sports during the pandemic helped effect change.169 For example, the WNBA Player Association (“WNBPA”) President, Nneka Ogwumike explained that the league’s commitment to player advocacy and social justice was a “non-


negotiable” component for the players to return to the court for the 2020 season.170 National Basketball Players Association (“NBPA”) President Chris Paul similarly stated that any agreement with the league to restart the season would have to include a joint effort between the players and the NBA to use their platform to advocate against systemic racism, police brutality, and social injustice in America.171 The negotiations on restarting the 2020 season focused on three key areas related to the players’ interest in advancing social and racial justice. The first was greater flexibility for the players to express their views on their jerseys and to be able to protest without penalty before games—both of which, as described above, were previously forbidden and heavily regulated. Specifically, players advocated for the ability to have personalized social justice messages on their jerseys—whether in place of, or in addition to, their names.172 Second, players advocated for greater diversity in head coaching and front office positions within their respective leagues.173 Finally, MLB players pushed for their leagues to provide better financial support to the African American communities in their cities, and in particular, to Black-owned businesses and vendors.174

The leagues were eager to support their players, and to restart their respective season, and the two sides reached agreement in both restarting the season and advancing social justice policies on several fronts. For example, the NBA and NBPA announced that addressing issues of race and inequality would be a priority during the relaunch of the 2020 season.175 In addition, NBA Commissioner Adam Silver announced that the league would respect player protests during the national anthem, which was a significant change from the strict enforcement of the NBA rule requiring

173 Andrews, supra note 171.
175 Andrews, supra note 171.
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players to stand.176 The NFL sent a memo to all of its teams announcing its social justice initiatives as part of the plans for its 2020 season.177 The NFL also announced policy changes to the Rooney Rule to require teams to interview at least one diverse candidate for general manager, coordinator, and senior staff positions and at least two diverse candidates for head coaching positions.178 Perhaps most prominently, the WNBA announced that its 2020 season would be dedicated to social justice and that the league, in partnership with the WNBPA, would form the Social Justice Council and launch a new initiative entitled the Social Justice Movement.179 MLB announced its restart to the 2020 season along with a variety of social justice initiatives, all of which it developed following negotiations with the MLB Players Association (“MLBPA”) and the newly-formed Players Alliance, a group of 150 current and former African American baseball players dedicated to fighting racial injustice.180 These leagues’ approaches contrasted starkly with the NHL, which had less of a focus on social justice


177 See Grant Gordon, NFL Informs Teams of Social Justice Initiatives for Week 1, NFL.COM (July 27, 2020, 7:21 PM), http://www.nfl.com/news/nfl-informs-teams-of-social-justice-initiatives-for-week-1 [https://perma.cc/JDC4-AHZL] (“As we continue to amplify and elevate the NFL’s ongoing and long-term commitment to social justice, we will be incorporating several prominent elements on the field, into all broadcasts and across league and club platforms to begin the NFL season and beyond[...]. In developing these concepts, we have worked directly with players and received input from the NFLPA.”).


179 Official Release, Nat’l Basketball Ass’n, WNBA Announces 2020 Season Dedicated to Social Justice (July 6, 2020), https://pr.nba.com/wnba-2020-season-social-justice/ [https://perma.cc/MKJ7-ZPHT]. The Social Justice Council’s purpose is to educate, amplify, and mobilize educators, activists, and community and business leaders with WNBA players, team and league staff, and fans. Id. The Council plans to facilitate community conversations, roundtables, player-produced podcasts, and other endeavors to address racial inequality, implicit bias, and systemic racism. Id.

and racial equality. In fact, the league dedicated its 2020 season to both social justice activists and front-line COVID workers.181

B. OPENING GAMES

These partnerships, between the leagues and their players, led to unprecedented advances for player protests and speech, as well as concrete commitments from the leagues to further diversity, equity, inclusion, and social justice. For example, at the restart or beginnings of their respective seasons, the leagues permitted various messages advocating for social justice that had not been allowed before.182 Leagues allowed players to wear messages of support on their uniforms and jerseys. For example, MLB encouraged players to place “Black Lives Matter” or “United for Change” patches on their uniforms, wear Black Lives Matter t-shirts during batting practice, or put messages for social justice on their cleats.183 The NBA similarly supported player expression by allowing them to wear jerseys that had social justice messages on their backs instead of, or in addition to, their names.184 While this approval was a departure from established league rules, the NBA did limit the wording of the messages to a list of twenty-nine pre-selected terms.185 The NBA also encouraged teams to warm up

182 See supra notes 120–134 and accompanying text.
185 Equality Tops List, supra note 184. Approved messages included “Vote,” “Equality,” “Say Their Names,” “I Can’t Breathe,” “Love Us,” and “Education Reform.” Id.
before games in Black Lives Matter t-shirts. The WNBA also approved
its players wearing Black Lives Matter t-shirts during warm-ups with “Say
Her Name” on the backs of the shirts. In addition, players wore uniforms
that displayed Breonna Taylor’s name on the back to raise awareness and
honor victims of police brutality. The NFL allowed players to honor
victims of systemic racism by wearing helmet decals with victims’ names
and by wearing NFL Players Association (”NFLPA”) approved shirts
during warm-ups that read, “Injustice against one of us is injustice against
all of us.” Similarly, the National Women’s Soccer League (“NWSL”) permitted its players to wear Black Lives Matter shirts during warm-ups and
Black Lives Matter armbands during games. The NHL, in somewhat
stark contrast, restarted their season with relatively minimal support for
social justice in announcing that the NHL’s newly-created #WeSkateFor
initiative would celebrate both social justice advocates and healthcare

186 See Sam Amick, Amick: The Biggest Storylines of the 2020 NBA Restart, ATHLETIC (July 30,
2020), [https://theathletic.com/1959665/2020/07/30/amick-the-biggest-storylines-of-the-2020-
nba-restart/].
187 Press Release, Women’s Nat’l Basketball Ass’n, WNBA’s 2020 Regular Season Tips Off July 25
188 Id.
189 James Dator, The NFL Is Shifting Social Justice off Itself and onto Players, and the Outcome
kaepernick [https://perma.cc/BHM8-7V9X]; Gordon, supra note 177 (“In the case of decals, each
player will have an option to honor an individual by displaying the person they choose to honor
via their name or initials.”). The NFL also allowed coaches to honor victims of systemic racism
by wearing such patches on their hats. See Jason Reid, NFL To Stencil ‘End Racism’ on End Zone
Borders as Part of Social Justice Rollout for Kickoff Week, ESPN (July 27, 2020)
http://www.espn.com/nfl/story/ _/id/29549338/nfl-stencil-end-racism-takes-all-us-end-zone-
Borders-kickoff-week [https://perma.cc/K6TW-Q4MA]. Individual players similarly showed
additional support on game days, like Kansas City Chiefs players Patrick Mahomes and Tyrann
Mathieu who wore red shirts with the Chiefs’ logo with the word “Vote” on the front of the shirt.
See Adam Teicher, Texans Stay in Locker Room While Chiefs Stand for National Anthem, ESPN
(Sept. 10, 2020), http://www.espn.com/nfl/story/ _/id/29855968/texans-stay-locker-room-chiefs-
stand-national-anthem [https://perma.cc/SF9X-HPL6]. New Orleans Saints star Drew Brees wore a
T-shirt with “Say Her Name” on it in reference to Breonna Taylor. See Ken Belson, N.F.L. Kicks
Off Season with Nods to Unrest and Focus on Anthem, N.Y. TIMES (Sept. 13, 2020),
https://www.nytimes.com/2020/09/13/sports/football/nfl-protests.html [https://perma.cc/G4P7-
3RUC].
190 Molly Hensley-Clancy, N.W.S.L. Players Kneel for Anthem as League Returns to Field, N.Y.
TIMES (June 26, 2020), https://www.nytimes.com/2020/06/26/sports/football/nwsl-anthem-protest-
kaiya-mccullough.html [https://perma.cc/29VF-B566].
workers, although several NHL teams wore Black Lives Matter t-shirts throughout the season.

Leagues also loosened their traditional strictures on player and political speech by displaying words, phrases, symbols, and the like on their fields and courts in support of social justice. For example, MLB stenciled an inverted league logo that read “BLM” for Black Lives Matter or “United for Change” on the back of the pitcher’s mound, so as to be visible on television. The WNBA displayed Black Lives Matter on the court for games played during the 2020 season. The NBA did the same for all games during the restarted 2020 season in the Disney World bubble. The NHL showed the hashtags #WeSkateForBlackLives and #WeSkateForBetterDays, as well as the phrase “ENDRACISM” on arena jumbotrons. The NFL similarly painted their stadium end zones with the phrase “End Racism.” For opening weekend, all MLB teams played a Black Lives Matter video before games. All of these visible signs of support were a marked departure from the leagues’ past practices.

191 Ryan S. Clark, ‘To Be United Is Important’—Inside the NHL’s Plan to Address Racism, ATHLETIC (July 24, 2020), https://theathletic.com/1945790/2020/07/24/to-be-united-is-important-inside-the-nhls-plan-to-address-racism/?article_source=search&search_query=inside%20nhl%5C%5C%27s%20plan%20to%20address%20racism.


193 Leagues also did not punish players for refusing to answer reporters’ questions about the game they just played and refocusing their remarks on social and racial justice. See, e.g., Mechelle Voepel, Storm, Liberty Honor Breonna Taylor Prior to WNBA Opener, ESPN (July 25, 2020) [hereinafter Storm, Liberty], https://www.espn.com/wnba/story/_/id/29536768/storm-liberty-honor-breonna-taylor-prior-wnba-opener [https://perma.cc/FY5J-ZUG]; Andrews & Spears, supra note 184.

194 Blum, supra note 183.


196 Amick, supra note 186.


198 Teicher, supra note 189.

Indeed, the start or restart of each league’s 2020 season provided perhaps the most significant change in approach to player speech and protest: relaxing rules about player actions during the playing of the national anthem before games. Leagues not only allowed, but facilitated player protest, including kneeling, during the playing of the national anthem. For example, when the NBA season restarted, players, coaches, and referees joined together and knelt in unity during the playing of the national anthem. Based on Philadelphia Phillies’ star Andrew McCutchen’s idea, MLB marked the opening games of its 2020 season with coaches and players holding a long, black tapestry while actor Morgan Freeman read a poem written by McCutchen and his wife over the loudspeaker. Players and coaches then knelt for sixty seconds of silence before the playing of the national anthem. While many players and coaches stood for the national anthem, several coaches and players took a knee during the national anthem or raised their right fists to raise awareness about racial injustice in America.

The NFL also invoked celebrity star power by asking Alicia Keys to sing the Black national anthem, “Lift Every Voice and Sing” before the opening game of the 2020 season. During the playing of the national anthem the Houston Texans stayed in their locker room. After the national anthem, the Texans joined their opponents, the Kansas City Chiefs, at midfield to link arms for a moment of silence “dedicated to the fight for

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202 On Opening Day, supra note 180.


equality.” 205 Similarly, the WNBA launched its 2020 season with both teams in the opening game leaving the court before the playing of the national anthem. 206 The teams then returned to the court for a twenty-six second moment of silence in honor of Breonna Taylor before starting the game. 207 For the first time in league history, the NHL had a player, Matt Dumba, of the Minnesota Wild, kneel during the national anthem after delivering an impassioned speech about racial justice as other players surrounded him in support. 208 Finally, during the opening game of the NWSL season, every player from both the Portland Thorns and the North Carolina Courage knelt together during the national anthem. 209

C. MONETARY SUPPORT

In addition to these newfound forms of player protest, the leagues, teams, players’ unions, and individual players also committed substantial amounts of money and resources to help fuel greater equality in the United States. For example, the NBA announced its partnership with the NBPA in founding the NBA Foundation, a philanthropic enterprise “dedicated to greater economic empowerment in the Black community.” 210 The NBA’s team owners committed $300 million—$30 million annually for ten years—to fund the NBA Foundation. 211 In addition, the NBPA auctioned off the player jerseys from the first week of games during the restarted 2020 season to fund a “player-administered social justice fund . . . housed by the NBPA Foundation.” 212 The NBPA also committed to funding research aimed at collecting data on jurisdictions where incidents of police brutality


208 Hensley-Clancy, supra note 190.


211 Id.

212 Equality Tops List, supra note 184.
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go unpunished.213 Similarly, the NFL committed $1 billion “aimed at helping Black businesses and communities.”214 The NFL and the Players Coalition also donated $3 million to African American communities hit hardest by COVID-19.215 The NHL dedicated a minimum of $2.5 million per year “to help fund programs and initiatives aimed at increasing diversity and inclusion [in hockey], as well as promoting social justice and racial equality.”216 This funding helped support the efforts of the Hockey Diversity Alliance’s charitable work.217 MLB committed more financial support to the Jackie Robinson Foundation and the Negro Leagues Baseball Museum, as well as initiated new partnerships—and donated substantial funds to—the NAACP Legal Defense Fund and the NAACP Education Fund.218 In addition, MLB established the MLB Diverse Business Partners Recovery Project to help Black-owned businesses that sustained damage during the protests of summer 2020.219

Many teams made similar financial commitments to infuse greater economic opportunity in Black communities. For example, the eleven professional sports teams in Los Angeles launched The ALLIANCE: Los Angeles, representing a five-year commitment by the teams to “drive

213 Michael Lee, A Police Accountability Project Is Just a Start for NBPA Boss Seeking Real Change, ATHLETIC (July 1, 2020), https://theathletic.com/1903578/2020/07/01/a-police-accountability-project-is-just-a-start-for-nbpa-boss-seeking-real-change/. The database would then be shared with various civic organizations to help support and elect prosecutors who would investigate police brutality. Id.
214 Guerilus, supra note 204.
219 Juneteenth, supra note 174.
investment and impact for social justice through sport."220 The three professional sports teams in Cleveland formed a similar alliance to “develop a sustainable and direct strategy to address social injustice facing the city and all Northeast Ohio communities.221 The Minnesota Twins committed $25 million through its newly-formed foundation to fight racial injustice.222 During the MLB Draft, the respective heads of baseball operations for each of MLB’s thirty teams announced that they personally and collectively were donating $311,000 to five charities: NAACP Legal Defense Fund; the Equal Justice Initiative; Color for Change; Campaign Zero; and the Jackie Robinson Foundation.223 Team owners then matched and exceeded these executives’ contributions to bring the total to more than $1 million for these five organizations.224 The Indiana Fever established the #Fever4Change initiative to raise money for local organizations that work for greater equality and justice in the community.225 The owner of the Philadelphia 76ers and New Jersey Devils committed $20 million over five years to invest in organizations aimed at targeting inequality in cities where the teams played and lived in.226 Finally, though certainly not exhaustively, Charlotte Hornets owner and NBA icon, Michael Jordan, pledged $100 million over ten years to fight systemic racism.227

Many professional athletes, individually and in partnership with others, also provided monetary support to advance social justice. Los Angeles Dodgers players raised money for local organizations in the Black community.\(^{228}\) The Chicago Sky players announced that they would donate $10 for every point the team scored, $100 for every win, and $50 for any loss to local organizations related to race, voting, and similar community causes.\(^{229}\) Indiana Pacer Malcolm Brogdon established a foundation for social justice reform,\(^{230}\) while the New Orleans Pelicans’ Jrue Holiday and San Antonio Spurs’ Patty Mills donated their salaries during the restarted 2020 NBA season, approximately $5 million and $1 million respectively, to business, charities, and educational institutions that serve Black and other minority communities.\(^{231}\) The New Orleans Saints’ Drew Brees donated $5 million to “support health care throughout underserved communities in Louisiana.”\(^{232}\) Jalen Ramsey of the Los Angeles Rams donated $1 million to “level the playing field” for underprivileged kids to help them receive a quality education.\(^{233}\) In the NHL, Matt Dumba matched donations up to $100,000 to rebuild a street that was damaged during the protests following

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the murder of George Floyd. Patrice Bergeron donated $25,000 to the local chapter of the NAACP and encouraged others to do the same on social media. The New Jersey Devils’ P.K. Subban donated $50,000 to George Floyd’s daughter, Gianna Floyd—an amount matched by NHL Commissioner Gary Bettman. All of these forms of monetary support sought to use not just the wealth, but also the celebrity, of professional sports and its athletes to put meaningful resources behind organizations and causes that would advance racial justice.

D. INTERVENING EVENTS DURING THE RESTARTED SEASONS AND EVEN GREATER PROGRESS

The significant advances made in terms of racial protests and racial progress during the summer of 2020 and leading up to the restarting of several professional sports leagues’ seasons is hard to overstate. However, the Kenosha, Wisconsin police shooting of Jacob Blake on August 23, 2020, led to even further progress, and, indeed, unprecedented feats of protest in professional sports, born out of this tragedy. On August 26, 2020, the Milwaukee Bucks spurred these historic events by declining to play Game 5 of the NBA’s Eastern Conference quarterfinal playoff series in protest of the police violence in their home state. The team used the time instead to call the Attorney General and Lieutenant Governor of Wisconsin to advocate on behalf of the Blake family. The Bucks’ walkout would normally have constituted a “failure to appear” under the NBA Operations

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236 Id.
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Manual, resulting in a forfeiture of the game and up to a $5 million fine.\(^{240}\) However, in solidarity with the Bucks, their opponent, the Orlando Magic, also chose not to play.\(^{241}\) The NBA thus postponed rather than cancelled the game.\(^{242}\) Other NBA teams joined the Bucks and Magic, and the league postponed all games for a seventy-two-hour period.\(^{243}\) Other professional sports teams, with the support of their respective leagues, similarly staged walkouts that led to game postponements. Led by the Milwaukee Brewers and Cincinnati Reds, who chose not to play a game on August 26, 2020,\(^{244}\) MLB postponed eleven games over the course of three days.\(^{245}\) The WNBA postponed the two games scheduled for August 26, 2020 in support of the four teams’ players refusing to play.\(^{246}\) Instead, the players from these teams gathered on the court, joined arms, and kneeled at center court in a display of unity.\(^{247}\) The NHL, in contrast, continued to play its games initially, despite pressure from the Hockey Diversity Alliance.\(^{248}\) The league insisted that it would not suspend games unless there was a strong push by the players to do so.\(^{249}\) A day later, on August 27, 2020, the eight teams scheduled to play agreed to a walk-out, leading to the NHL postponing the playoff games for two days.\(^{250}\)

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241 *Id.*

242 *Id.*


247 *Id.*


250 *Id.*
These walkouts, and the unprecedented forms of player protest that they embodied, also led to more progress in sports’ power to demand greater strides for racial and social justice, particularly in the area of promoting voter turnout in the then upcoming 2020 election. For example, the NBA, in collaboration with its players and the NBPA, announced a three-pronged plan in restarting its playoff games: the creation of a social justice coalition within the league aimed at voting, civic engagement, and police reform; using NBA arenas as polling places for the 2020 election; and including more advertising during playoff games to promote civic engagement and voting.²⁵¹ The NHL, which shared a number of arenas with the NBA, similarly announced that their arenas would be used as polling places, and the league designated all future election days in the United States and Canada as league-wide holidays to encourage voting and civic engagement.²⁵² The NHL also partnered with two non-partisan organizations, When We All Vote and RISE, to increase voter participation.²⁵³ The WNBA, which also shares many arenas with the NBA and NHL, announced that their arenas would be polling sites.²⁵⁴ The league also announced various initiatives aimed at voter registration, poll worker training, and the like.²⁵⁵ Finally, the NFL announced its launch of NFL

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²⁵³ Id.


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Votes, a non-partisan initiative among all league stakeholders to support and encourage voter education, registration, and turnout.\(^{256}\) In addition, many NFL teams made their stadiums available as polling sites for the 2020 election.\(^{257}\)

The historic player walkouts also led to further commitments from the leagues and their players to combat racial and social injustice. For example, shortly after the walkouts, the NHL, which had trailed other professional sports leagues in its support of the movements spreading across the United States, finally announced sweeping and concrete initiatives to combat racism.\(^{258}\) The NHL committed to increasing the number of league employees and coaches from underrepresented groups, including women, minorities, and the LGBTQ+ community.\(^{259}\) In addition, the league affirmed its intent to build a more diverse business pipeline with its vendors and to develop a more diverse pipeline of young hockey players throughout Canada and the United States.\(^{260}\) In addition, MLB, in partnership with the Players Alliance, pledged $10 million to its newly-formed nonprofit organization to finance the recruitment of more Black students into sports internships, to donate baseball equipment to Black community groups, and to fund a player mentorship program.\(^{261}\) Moreover, the Players Alliance donated the salaries of its players who played on August 27 and 28, 2020 to support Black families and communities that had been adversely affected

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\(^{259}\) NHL Press Release, supra note 252.  

\(^{260}\) Id.  

by the preceding months. In these, and so many other ways, professional sports evolved significantly in both its approach to racial progress and player protest.

V. CONCLUSION

Did the summer of 2020 permanently change professional sports in terms of its framework on player protests and on racial progress in sports and society more generally? As the preceding analysis demonstrates, there were significant advances made in professional sports leagues’ support of both player protests and racial equality. Moreover, new milestones in racial and gender progress in sports continue to occur. For example, MLB’s Miami Marlins hired Kim Ng, the first woman to serve as general manager of a baseball team. That it took until November of 2020 for her to shatter this glass ceiling in baseball raises reasonable questions of how much professional sports has systemically changed, particularly when MLB colleagues note that while Kim Ng was often the “smartest person in the room,” she was put on the slow track “because she was an Asian American woman.”

Moreover, despite some of these historic individual examples, professional sports still has a long way to go to effect greater representation in its coaching, management, and front office ranks.

Some of the visible signs of support for social justice in professional sports have subsided or gone away. For example, few athletes continue to kneel during the national anthem before games. While athletes have

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266 See supra notes 71–80 and accompanying text.

explained that they want to shift the focus to action and change off of the court or field, this general reverting to the norm pre-summer 2020 does raise questions about the commitment of sports to achieving these larger societal goals.²⁶⁸ In particular, as some commentators have noted, many professional sports team owners financially back political candidates who largely do not support the Black Lives Matter movement and similar efforts for social justice.²⁶⁹ This seeming disconnect between the public messages that professional sports leagues and teams sent during their 2020 seasons and where the political donations of team owners go may be a worthwhile tension point to observe going forward. Overall, there is no doubt that the 2020 seasons brought historic change in terms of player protests and racial progress in professional sports. Time will tell whether those are permanent.

²⁶⁸ Id.