FROM THE ROONEY RULE TO THE ROBINSON RULE:
NCAA FOOTBALL AND THE QUEST FOR EQUAL OPPORTUNITY IN HEAD COACHING

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I. INTRODUCTION

I told him to take a look around...[t]humb through the media guides and see how far you have to turn before you get to a person of color...if you don’t see people that look like you, there’s a problem. There has to be some reason behind it.

These words were spoken by Pro-Football Hall of Fame tight end Kellen Winslow Sr. while his son, Kellen Winslow Jr., a top recruit, was in the process of choosing a university with which to grace his gridiron talents. Winslow Jr.’s heart was set on the University of Washington, but his father refused to sign the national letter-of-intent because of low minority representation in the makeup of the school’s football coaching staff. Winslow Jr. repeatedly begged his father to sign the letter and insisted that the ultimate decision on which college he should attend was his choice, not his father’s, but Winslow Sr. would not budge. There was a bigger picture here. Winslow Sr. stated, “[m]y motive behind it was to keep him from looking at things through rose-colored glasses. It was a lesson in more than football. It was a lesson in life.”

When this took place in 2000, racial disparity in the head coaching position was rampant, with only three African-American coaches in the 114 Division I-A schools. Finding a university with an African American at the wheel was essentially a lost cause, so Winslow Sr. decided that he wanted his son to have guidance from an African American at the next highest level coaching position. Ultimately, the Winslow’s settled on the University of Miami. Winslow Sr. urged his son to choose Miami because the assistant coach, who would potentially be his son’s

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2 Id.

3 Id. (indicating a national letter of intent to play Division I college football requires a legal guardian’s signature when the recruit is under the age of 21).

4 Id.

5 Id.

6 Id.


8 Drehs, supra note 1.

9 Id.
position coach, was an African American. Winslow Sr. felt his son would have the best opportunity for a long-term career on a team with a coach from the same race because of the history of discriminatory treatment against African Americans. Not only did Winslow Sr. require a level of comfort with the future likelihood for success of his son’s chosen team, but he also insisted on something perhaps even more significant in the decision-making process: diversity and equality in leadership.

The purpose of the analysis in this article is to encourage the National Collegiate Athletic Association (NCAA) to take initiative and adopt an affirmative-action policy to combat racial inequity in the collegiate-football head coach position, similar to the “Rooney Rule” adopted by the National Football League (NFL/League). Section II explores and exposes the lack of African-American coaches at the NCAA Division I-A, Division I-AA, Division II, and Division III levels. While national television exposure places a constant spotlight on the racial issues at the “big-time” Division I-A schools, this same racial disparity exists at all levels and must not be ignored.

Section III introduces the Rooney Rule, which requires NFL teams to interview a minority candidate before hiring a head coach, and evaluates the rule’s success stories, benefits, and criticisms. Section IV proposes the development of the “Robinson Rule,” a potential NCAA version of the NFL’s Rooney Rule. This section describes the NCAA’s authority to adopt such a rule, other discretionary initiatives, and social considerations that focus on breaking stereotypes associated with African Americans. Section V evaluates the Rooney Rule as a low cost method of implementing an affirmative-action program. Section VI provides a solution to the racial disparity in the NCAA by suggesting the formalization of a version of the NFL’s Rooney Rule, and outlines the social and economic benefits of adopting a mandatory minority interview policy.

10 Id.
11 Id.
12 Id.
13 Id.
14 For information about NCAA football, see generally NCAA Football: 2010-11 POSTSEASON FOOTBALL HANDBOOK, available at http://fs.ncaa.org/Docs/champ_handbooks/football/2010/10_ps_football.pdf. Division I-A schools are referred to as Football Bowl Subdivision (FBS) schools. Id. These powerhouse-playing institutions compete in numerous bowl games, which culminate in a Bowl Championship Series (BCS) National Championship game crowning an undisputed national champion. Id. Division I-AA schools are referred to as Football Championship Series (FCS) schools. Id. These playing institutions play in a twenty-team postseason single-elimination tournament to crown their undisputed national champion. Id.

15 While Title VII reverse discrimination claims may be related to the present topic, it is not within the scope of this paper to analyze these claims in depth.
II. THE PROBLEM: RACIAL DISPARITY AT THE NCAA HEAD FOOTBALL COACHING LEVEL

The contrast between the number of minority coaches and the number of non-minority coaches makes the incidence of racial disparity immediately apparent. According to the NCAA, as of March 2010, a staggering 13 of the 119 head football coaches at Division I-A schools were African American.\(^{16}\) Of the student athletes competing at these top schools, 54.9\% are African American.\(^{17}\) At the NCAA Division I-AA level, “seven of 101 head coaches were of color (excluding historically black colleges and universities). In Division II and III, the numbers were 3 out of the 133 and 7 out of 229, respectively.”\(^{18}\) These figures show an undeniable racial inequality between African Americans playing on the field and those standing on the sidelines holding clipboards. This disparity leaves African-American high-school football players with few options if they wish to play for a university where they would be mentored by an African-American head coach.\(^{19}\) As former head coach of the Indianapolis Colts, Tony Dungy stated in 2009:

February is . . . the month that high school football players choose the colleges they will attend in the fall. While it’s an exciting day for those seniors, it’s a disappointing day for me. You see, many of those players who choose the top schools are African-American and yet almost none of them will get the opportunity to play for an African-American head coach. Of 120 teams in the N.C.A.A.’s Bowl Subdivision, the top tier of play, only seven have black head coaches.

One would think that our universities would be leading the way in progressive thinking. You wouldn’t think that in 2009 it would be more likely for an African-American to become president of the United States than to be hired as head coach of a top-20 football program. But that seems to be the case.\(^{20}\)


\(^{17}\) Id.

\(^{18}\) Id.


\(^{20}\) Id.
Outside organizations have made efforts to curb the disparity in minority head coaching at the NCAA Division I-A and I-AA levels. Meanwhile, Divisions II and III will suffer just as much, if not more, absent remedial action. The discretionary guidelines imposed at the NCAA Division I-A level have just begun to scratch the surface by attacking deeply rooted racial inequity. The thought process behind implementing these guidelines at the highest level of competition was that other divisions would follow suit, but they have not. Divisions outside of the NCAA Division I-A realm are worse off because they lack any form of discretionary or mandated hiring scheme. The inequity continues to exist at all levels despite a few progressive guidelines. This paramount problem requires more than an optional interviewing guideline to be the death knell of racial disparity in college-level football head coaching.

III. THE ROONEY RULE: THE NFL’S RESPONSE TO A SIMILAR PROBLEM

A. The Birth of the Rooney Way

In 1921, Frederick Douglass “Fritz” Pollard became the first African-American head football coach in the history of the professional game. Pollard guided the Akron Pros in affiliation with the American Professional Football

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22 Minority head football coaches, supra note 16.


24 Minority head football coaches, supra note 16.

25 Lapchick, supra note 23.

26 Id.; See also Minority head football coaches, supra note 16.

27 Douglas C. Proxmire, Coaching Diversity: The Rooney Rule, Its Application and Ideas for Expansion, AMERICAN CONSTITUTION SOCIETY FOR LAW AND POLICY, 2 (Dec. 2008), available at http://www.acslaw.org/files/Proxmire%20Issue%20Brief.pdf; See also FRITZ POLLARD ALLIANCE FOUNDATION: IN MEMORIAM – FRITZ POLLARD, http://fritzpollard.org/?page_id=91 (last visited Mar. 4, 2011) (providing background about “Fritz” Pollard, including (1) his time leading Brown University to the Rose Bowl, and being the first African American ever to accomplish this feat, (2) he was the second African American to garnish All-American honors, (3) he played professionally for the Akron Pros of the APFA in 1920, (4) he was named player/coach of the Pros in 1921, (5) he coached team from Indiana and Milwaukee in the NFL until 1926, and (6) when the League decision to segregate ousted all black players and coaches, Pollard’s voice remained a presence in the League by constantly urging the NFL to welcome African-Americans in the League).
Association (APFA), the predecessor to the NFL. Neither the APFA nor the NFL saw another African-American head coach for sixty-eight years until Art Shell took over the helm of the Oakland Raiders in 1989. An unfettered bias against an African American as the face of a team in the NFL could only go unnoticed for so long before someone took action.

In 2002, powerhouse attorneys Cyrus Mehri and Johnnie L. Cochran Jr., and labor economist Dr. Janice Madden joined forces to revolutionize the NFL’s hiring practices and to diversify the head coaching position. Dr. Madden provided data to Mehri and Cochran, culminating in a report emphasizing the superior performance of African-American coaches in the League, while also highlighting the subordinate opportunities offered to them. After objectively examining the difficulties faced by African-American head coaches and head-coach candidates, the report concluded that African-American coaches are denied a chance to compete for top positions in the NFL. The report found that NFL team owners expected far more from African-American coaches than from their Caucasian counterparts.

In order to be hired as an African-American head coach in the League, one would need to have “incontrovertibly dwarfed their competition.” Delving into the hiring and firing practices of NFL team owners over a span of fifteen years, prior to 2002, and examining the relationship between these practices and the number of wins and losses of African-American coaches compared to those of Caucasian coaches, Dr. Madden’s report found that African-American head coaches outperformed Caucasian head coaches across the board. Despite these findings,

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28 Fritz Pollard, supra note 27.

29 Id.


32 Id. at 48.

33 Id.

34 N. Jeremi Duru, Advancing the Ball: Race, Reformation, and the Quest for Equal Coaching Opportunity in the NFL 34 (Oxford Univ. Press 2011) [hereinafter Advancing the Ball].

35 Id. Based on statistical evidence, Dr. Madden’s report exposed the public to the truth of the “last to be hired, first to be fired” mentality of NFL owners when it came to African Americans at a head coaching position. Thornton, supra note 31, at 48. The Madden Report found: “1) Between 1986-2001, black coaches averaged 9.1 wins per season and white coaches averaged 8.1. 2) Teams with black head coaches made the playoffs 67% of the time, while white coaches made it 39%. 3) In the fifteen seasons, black coaches averaged 2.7 more wins than white coaches. 4) In the fifteen seasons, 66% of black coaches made the playoffs, to 20% of white coaches. 5) In the fifteen seasons, black coaches who were fired averaged 6.8 wins per season, while white coaches who were
the effect of widespread stereotypes among NFL owners, depicting African Americans as intellectually inferior, coupled with “old boy” socialization, continued as the leading force influencing hiring practices and thus causing African-American head coaches to be the last hired and the first fired. Though Mehri and Cochran had neither a defendant to sue, nor a plaintiff to represent, the mere threat of a damaging class-action lawsuit captured the League’s attention.

Once the report became public evidence of disparate treatment, the League began to question their involvement in discriminatory hiring practices. In 2003, former NFL Commissioner Paul Tagliabue responded by creating a Committee on Workplace Diversity, headed by the current owner of the Pittsburgh Steelers, Dan Rooney, to evaluate and correct the NFL’s minority hiring practices. On December 20, 2002, the diversity committee recommended remedial action, suggesting the League should require teams to interview minority candidates. This fired averaged 5.5. 6) 20% of black coaches who were fired made the playoffs that year, and 8% of white coaches who made the playoffs were fired.” Id.

36 Brian W. Collins, Note, Tackling Unconscious Bias in Hiring Practices: The Plight of the Rooney Rule, 82 N.Y.U. L. REV. 870, 875 (2007). “Old boy” hiring practices in the NFL can be referred to as a type of social networking and fraternal relationship created between already established members of an organization, which tended to leave out African Americans. Id. at 882. The lack of African Americans at all facets of high ranking league operations positions made it difficult for these individuals to network as no one would give them a shot at the top. Id. Moreover, many teams with predominately Caucasian clientele were reluctant to hire an African American head coach for fear of losing business. Id. at 882-83. “Thus, decision makers tend to rationalize their preference for safe, familiar coaching options by highlighting the unique pressures and responsibilities inherent in an NFL head coaching position. Since so few African American head coaches currently exist in the NFL, hiring an African American candidate is presumably neither safe nor familiar.” Id. at 884.

37 Thornton, supra note 31, at 48.

38 Bell, supra note 30; ADVANCING THE BALL, supra note 34, at 34-36. Mehri and Cochran knew that the NFL would argue that although the League was a single entity, this did not necessarily preclude them from declaring autonomy with regard to hiring and firing their personnel. ADVANCING THE BALL, supra note 34, at 35-36. Not only were Mehri and Cochran uncertain that the NFL would arise as a defendant in this lawsuit, there was still one problem: no plaintiff. Id. A plaintiff’s reluctance to file suit derives from fear of excommunication from one’s team and possibly from the sport’s industry as a whole, which disfavors potentially embarrassing challenges. Id. at 36.

39 Proxmire, supra note 27, at 3.


41 Proxmire, supra note 27, at 3.

42 Nichols, supra note 21, at 157.
recommendation has evolved into a League-wide mandate now known as the “Rooney Rule.”\(^43\)

It is important to understand Rooney’s vision and how the Rule acquired his name. Dan Rooney’s father, Art Rooney Sr., franchised the Pittsburgh Steelers in 1933.\(^44\) From the start, the Rooney family promoted diversity within their own franchise by initially hiring African Americans for positions at multiple levels of their organization.\(^45\) Unlike every other NFL team owner, Dan Rooney followed in the footsteps of his father\(^46\) and willingly disregarded the preconceived notion that hiring a Caucasian coach would keep the controversy and criticism to a minimum. Rooney refers to the Rooney Rule as “the Rule” because he is reluctant to take credit for something he feels should have been done years ago.\(^47\) The Rooney Rule is a formalization of an underlying theme of opportunity, and Rooney sought to instill that theme within the League.\(^48\)

The Rooney Rule is simple on its face, while its implications and ramifications are profound. The Rooney Rule requires all NFL teams to interview a minority candidate before making a final decision in their quest for a new head coach.\(^49\) After initial reluctance to the rule and sham efforts to comply with it, the League did away with the original telephone interview requirement and instead mandated a face-to-face meeting between the owner and the minority candidate.\(^50\) Teams are further required to: (1) publicize a detailed job description for the candidate they seek to hire as head coach; (2) publicize a hiring timeline; (3) maintain records of candidates that the team contacted for the position; and (4) maintain records of the outcome of those contacts.\(^51\) Finally, the NFL reserves the

\(^{43}\) Id.


\(^{45}\) Id. In 1933, the year Art Rooney franchised the Steelers, Ray Kemp was added to the roster, making Kemp the first African American to ever play for the Steelers. Id. The diversification movement continued in 1957 when the Steelers hired Lowell Perry as the League’s first African-American assistant coach. Id. The Steelers once again made history in 1984 by hiring Tony Dungy as the League’s first African-American coordinator. Id. Finally, the organization’s first African-American head coach, Mike Tomlin, was hired in 2007. Id.


\(^{47}\) Wojciechowski, *supra* note 44.

\(^{48}\) Id.

\(^{49}\) Thornton, *supra* note 31, at 51.

\(^{50}\) Proxmire, *supra* note 27, at 6.

right to fine teams $500,000 for non-compliance. Acting as a catalyst for minority candidates to be hired as head coaches in the NFL, the Rooney Rule fulfilled Dan Rooney’s vision of providing otherwise unattainable opportunities to qualified candidates.

B. Success of the Rooney Rule in the NFL

After the adoption of the Rooney Rule, the number of minority head coaches slowly increased. More importantly, minority candidates were afforded an opportunity to showcase their abilities and convince decision makers to hire them as the face of the team. Beneficiaries of the rule achieved new heights by guiding their respective teams to playoff games, division title game, and a Super Bowl championship.

In 2003, the rule was put to the test. The Cincinnati Bengals had never displayed initiative or an interest in interviewing a minority candidate in compliance with the rule. Throughout the history of the organization, the Bengals had never interviewed any minority candidate for a head coach position. After following the

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52 Lions’ Millen fined $200K for not interviewing minority candidates, SPORTSLINE.COM, July 25, 2003, http://www.cbssports.com/nfl/story/6498949. The League dished out its first fine in 2003 by fining President Matt Millen a sum of $200,000 for hiring Steve Mariucci without first interviewing a minority candidate. Id. The fine was a statement by the League that the Rooney Rule was going to be strictly enforced. Ford, supra note 51, at 93.

53 Thornton, supra note 31, at 45; Wojciechowski, supra note 44.

54 Proxmire, supra note 27, at 4 (“After the adoption of the Rooney Rule in December 2002, the number of African-American head coaches increased from two in 2002 to an all-time high of seven in 2006, but the numbers have leveled off since 2006. Midway through the 2008 season, there were seven African-American head coaches, including interim head coach Mick Singletary of the San Francisco 49ers.”).


56 Proxmire, supra note 27, at 4 (“[T]he additional coaching opportunities created over the last five years have lead to on-the-field success for the teams headed by these coaches. In 2005, teams coached by African-Americans won three division titles (Lovie Smith – Chicago Bears, Tony Dungy – Indianapolis Colts and Marvin Lewis – Cincinnati Bengals). The next year, in Super Bowl XLI, both conference winners were headed by African-American coaches – Dungy and Smith.”).

57 Duru in REVERSING THE FIELD, supra note 55, at 378.

58 Id.
mandatory interview aspect of the Rooney Rule, however, Martin Lewis won the decision makers over and became the head coach for the Bengals. 69 Shortly thereafter, he transformed a dismal Bengals team into a playoff contender. 70 Success: the rule was validated.

In 2005, the success in the interview room was finally extended to the field as three of the six coaches who won division titles were minorities. 71 The Rooney Rule attracted incredible attention in the week leading up to the 2006 Super Bowl. 72 Never before had an African American patrolled the sidelines on football’s grandest stage, and now two would do so, as Lovie Smith and the Chicago Bears faced off against Tony Dungy and the Indianapolis Colts. 73 The Colts prevailed and Dungy became the first African-American head coach to ever raise the Lombardi Trophy. 74

Before taking over at the helm of the Colts, Dungy was the head coach of the Tampa Bay Buccaneers from 1996-2001, 75 making him one of only six minorities hired as head coaches prior to the enactment of the Rooney Rule. 76 Unlike Dungy, Smith was hired after the enactment of the Rooney Rule. Smith openly credits the Rooney Rule 77 with propelling Smith into this position, where he succeeded in molding the Bears into a defensive leader each season. 78

59 Id.
60 Id.
61 Proxmire, supra note 27, at 4 (identifying the three coaches as Tony Dungy (Indianapolis Colts), Marvin Lewis (Cincinnati Bengals), and Lovie Smith (Chicago Bears)).
62 Floyd Keith, Minorities are Separate and Unequal: A Look at Minority Hiring Practices in Collegiate and Professional Athletics, in REVERSING THE FIELD 353, 353 (andré douglas pond cummings & Anne Marie Lofaso eds., 2010) (“During Super Bowl XLI in Miami, the NFL and the accompanying media frenzy exalted the progress of minority coach hires through the success of its Rooney Rule.”).
65 Duru in REVERSING THE FIELD, supra note 55, at 372.
66 BROWN UNIVERSITY, FRITZ POLLARD AND EARLY AFRICAN AMERICAN PROFESSIONAL FOOTBALL PLAYERS: BACKGROUND, http://brown.edu/Administration/News_Bureau/2003-04/03-078f.html (last visited Dec. 19, 2011). The six minority head coaches prior to the Rooney Rule were as follows: Tony Dungy (Indianapolis Colts), Art Shell (Oakland Raiders), Dennis Green (Arizona Cardinals), Herman Edwards (Kansas City Chiefs), Ray Rhodes (Philadelphia Eagles), and Terry Robiskie (Washington Redskins). Fritz Pollard was a head coach prior to the NFL. Marvin Lewis became a head coach after the implementation of the Rooney Rule. Id.
67 Duru in REVERSING THE FIELD, supra note 55, at 379.
68 Id. at 378-79.
At the close of the 2006 season, just a few years after the enactment of the Rooney Rule, there were seven minority head coaches, encompassing twenty-two percent of the thirty-two-team League. This marked a significant increase from the mere six percent of NFL teams with minority head coaches before the enactment of the Rooney Rule. This increase is even more shocking when viewed in its historical context: the pre-Rooney era hiring practices only hailed six minority coaches in the history of the League.

In 2007, the Pittsburgh Steelers were in need of a new head coach and took a chance on the young and talented African-American coach Mike Tomlin. This gamble ultimately paid off: Tomlin’s success as the head coach of the Steelers is undeniable. In 2009, Tomlin became the second African-American head coach to win the Super Bowl. Tomlin led his team to the Super Bowl again in 2011, after just four years at the helm. Art Rooney II, President of the Steelers, stated, “[i]t might be fair to say that he got the interview because of the Rooney Rule . . . but it had nothing to do with him getting it and everything to do with his ability.” This quote exemplifies the idea that a mandated interview process serves as a catalyst to expose to the League’s owners the potential talent that otherwise would have gone unnoticed. Tomlin’s commanding presence is prominent during the game, but the thirty-eight year-old head coach also relates to his players off the field.

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69 Hannah Gordon, The Robinson Rule: Models for Addressing Race Discrimination in the Hiring of NCAA Head Football Coaches, 15 SPORTS LAW. J. 1, 9 (2008) (identifying the coaches as Tony Dungy (Indianapolis Colts), Lovie Smith (Chicago Bears), Art Shell (Oakland Raiders), Dennis Green (Arizona Cardinals), Herman Edwards (Kansas City Chiefs), Marvin Lewis (Cincinnati Bengals), and Romeo Crennel (Cleveland Browns)).

70 Id. at 10.

71 BROWN UNIVERSITY, supra note 66.

72 Collins, supra note 36, at 908-09. Champion of diversity and owner of the Pittsburgh Steelers, Dan Rooney, made the final decision that Tomlin would guide the Steelers after national media reports surfaced that the Steelers were sure to hire Caucasian Russ Grimm. Id. at 909. Rooney again demonstrated his commitment to diversity by hiring Tomlin as the first African-American coach in franchise history. Id.


75 Graves, supra note 73.

76 Id.

77 Collins, supra note 36, at 905-06.

78 Graves, supra note 73.
brotherly, or even fatherly, relationship could stem from his age or it could be a result of Tomlin's racial connection with a majority of the players.\textsuperscript{79}

Not only does the Rooney Rule impact the quantity of African-American head coaches in the League, but it also has a substantial impact by combating the intangible effects of the unconscious bias evident in the culture of the NFL's social network.\textsuperscript{80} Applying for a top coaching position in the world of sports differs tremendously from the traditional business application process.\textsuperscript{81} The process does not consist merely of submitting an application; it relies on who you know and how well you know them.\textsuperscript{82} “The NFL’s head coaching network remains exclusive because football’s organizational complexity causes decision makers to rely on unconscious biases when evaluating candidates’ intellectual ability.”\textsuperscript{83} The Rooney Rule has essentially forced a decision maker, with an unconscious bias, to “confront his own partiality by meeting face-to-face with a candidate he might never have previously considered.”\textsuperscript{84} While still existent, notions of unconscious bias are less prevalent in the decision process.\textsuperscript{85} The success of the Rooney Rule in combating unconscious racism in the head-coach hiring processes can be attributed to the formidable efforts of Smith and Tomlin, among others.\textsuperscript{86} Offering African Americans the opportunity to make an impression on a decision maker and create a reputation for themselves in the industry directly places that candidate in a position to compete within the “old boy” network that kept out African Americans for so long.\textsuperscript{87}

\begin{itemize}
\item \textsuperscript{79} See id. (discussing Tomlin’s brotherly demeanor off the field).
\item \textsuperscript{80} Collins, supra note 36, at 872 (“[C]ontends that the Rooney Rule is a legally viable policy that effectively counters the principal reason for the significantly low percentage of minority head coaches in the NFL: unconscious bias. The NFL’s longstanding hiring practices and networking systems have consistently allowed front-office decisionmakers to avoid interacting with qualified African American candidates.”).
\item \textsuperscript{81} Id. at 904-05.
\item \textsuperscript{82} Id. at 905.
\item \textsuperscript{83} Id. (“Though the NFL decisionmaker is no more likely to be consciously racist than an NBA decisionmaker, he is more apt to unconsciously discount an African American candidate’s intellectual ability, and the candidacy is therefore likely to end well before the interview phase. Thus, the NFL head coaching network has remained virtually impenetrable.”).
\item \textsuperscript{84} Id. at 906.
\item \textsuperscript{85} Id. at 906-07.
\item \textsuperscript{86} Mehri, supra note 55, at 363-64.
\item \textsuperscript{87} Id.
\end{itemize}
C. Downfalls of the Rooney Rule

Some people criticize the Rooney Rule as only facially addressing the problem of diversification at the head coaching position in the NFL. Similarly, some argue that the League’s intention behind the implementation of the rule is commendable, but still yields unsatisfactory results. These criticisms arise from the notion that some League teams are conducting “sham” or “courtesy” interviews in order to comply with the rule’s guidelines and avoid a fine. Sham interviews sidestep the ultimate goal of the Rooney Rule: opportunity.

Sham interviews are hard to prove because it is difficult to determine the state of mind of a decision maker. For instance, Jerry Jones, the owner of the Dallas Cowboys, has been criticized for potentially conducting sham interviews since the implementation of the Rooney Rule. Previously, in 2003, Jones was attacked in the media for conducting a thirty-minute telephone interview with Dennis Green, just to comply with the rule. Again, at the close of the 2010 season, the Cowboys were searching for a head coach after Wade Phillips was fired. Jason Garrett, a Caucasian, was clearly Jones’ candidate-of-choice to fill the position because he was the interim head coach during the 2010 season. While Jones technically complied with the rule, he arguably had no intentions of hiring the minority candidate, Ray Sherman. The Cowboys were an utter disappointment

88 Thornton, supra note 31, at 52 (“Al Davis of the Oakland Raiders, the first owner to hire an African American coach (Art Shell) in the modern era, openly criticized the Rooney Rule.”).

89 Id. (“‘I find fault with the NFL program because it only addresses the process, not the reality. What good is putting a process in place if the results are still going to be unsatisfactory?’”).

90 Id. at 53.

91 Id.

92 Jason Reid, NFL’s Rooney Rule should be strengthened, WASH. POST, Feb. 19, 2011, available at http://www.washingtonpost.com/wp-dyn/content/article/2011/02/19/AR2011021903268.html. The Washington Redskins and the Seattle Seahawks have been recently criticized for conducting sham interviews to comply with the rule, then hiring their pre-selected candidates, Caucasians Mike Shanahan and Pete Carroll, respectively. Id.


96 Id.

97 Florio, supra note 93.
with their six and ten record during the 2010 season. As a result, all fingers pointed at Jones. It was inconceivable for Jones to allow Sherman, a former mediocre offensive coordinator and the team’s current receivers’ coach, to take over the helm, especially after a sub-par season. Moreover, even after a decade of working with the League, Sherman was never previously considered for a head coaching position.

Some proponents of the rule would argue that even though Sherman was given a sham interview, the rule’s purpose prevailed. Sherman is not a top candidate for a head coaching position, but he obtained a face-to-face interview with Jones. Sherman’s interview would not have occurred without the Rooney Rule. Had Sherman been Caucasian, his lack of credentials would have barred him from an opportunity to interview. The process-oriented nature of the rule is flawed, but an open-minded interviewer can truly benefit from a qualified, talented, and determined interviewee. “No interview, no matter how unlikely it will end in a job offer, should be considered ‘sham’ if a minority candidate is being exposed to an NFL owner and that owner is becoming familiar with that minority candidate.” Once granted an interview, the interviewee carries the burden to impress the decision makers enough to be chosen over the “shoo-in” candidate.


100 See Florio, supra note 93.

101 Id.

102 See generally REVERSING THE FIELD, supra note 55, at 378 (explaining that the purpose of the Rooney Rule is to afford minority coaching candidates the opportunity to meet with the NFL owners, “face-to-face” and make a lasting impression).

103 Id.

104 Id.

105 Florio, supra note 93.


107 cummings, supra note 94, at 396.

108 Id.

109 Gordon, supra note 69, at 11.
The Rooney Rule has also received criticism for encouraging reverse discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII). Title VII applies to all races equally, so it is arguable that affirmative-action policies result in unlawful reverse discrimination because employers are required to consider the applicant’s race when making employment decisions. United Steelworkers v. Weber was the first Title VII reverse discrimination case arising out of an affirmative-action plan to reach the Supreme Court. In Weber, the Court ruled against the plaintiff’s reverse discrimination claim and held “that Title VII’s prohibition . . . against racial discrimination does not condemn all private, voluntary, race-conscious affirmative-action plans.” The Weber Court set out a test upholding the legality of a hiring plan if: “(1) the plan was designed to eliminate conspicuous racial imbalance in traditionally segregated job categories, (2) it did not ‘unnecessarily trammel’ the interests of Caucasian employees, and (3) it was a temporary measure.”

The Weber test was reaffirmed and clarified in Johnson v. Transportation Agency. In Johnson, the Court clarified the first prong of the Weber test holding that “[i]f . . . the program applies to skilled jobs, [then] courts must compare the employer’s work force to the smaller pool or persons in the area labor market with the special skills or ‘relevant qualifications’ required for the job.”

To date, no coach has challenged the Rooney Rule. Furthermore, a successful Title VII claim constituting reverse discrimination is unlikely. Although a Caucasian head coaching candidate could argue he or she was denied an interview in lieu of an African-American candidate and could challenge the Rooney Rule as constituting

110 Nichols, supra note 21, at 159; See 42 U.S.C. §§ 2000e – 2000e-17 (2010). Title VII prohibits most employers from discriminating against employees and applicants based upon their race, color, religion, sex, or national origin. Id.


112 United Steelworkers of Am. v. Weber, 443 U.S. 193 (1979). Weber involved a collective bargaining agreement between the United Steelworkers and their employer, which provided that both Caucasians and African Americans be allowed into a one-on-one training program even though there were more Caucasians employed than African Americans. Id. at 197-99. Weber was not accepted into the training program and claimed a Title VII violation occurred. The Supreme Court found the affirmative action plan to be lawful. Id. at 197.

113 Id. at 208.


115 Johnson v. Transp. Agency, 480 U.S. 616 (1987). In Johnson a female road dispatcher was promoted over a male road dispatcher when both were equally qualified. Id. at 616-17. The Agency considered the sex of the candidates as a factor in making their decision; the Supreme Court affirmed the promotion procedures of the Agency as a legal affirmative action plan. Id. at 641-42.

116 Collins, supra note 36, at 892-93 (citing Johnson, 480 U.S. at 632).

117 cummings, supra note 94, at 397.
IV. THE ROBINSON RULE: A PROPOSED SOLUTION FOR NCAA DIVISION I-A FOOTBALL

The Robinson Rule, based on the NFL’s Rooney Rule, was proposed with the intent to extend to colleges the benefits achieved at the professional level. Dr. Richard Lapchick, the director of the Institute for Diversity and Ethics and Sports at the University of Central Florida, “suggested that the NCAA’s equivalent of the Rooney Rule be called the ‘Robinson Rule’ after Eddie Robinson, the long time head football coach at Grambling State University.” Over the course of Robinson’s fifty-six year career at Grambling, a historically black university, the renowned coach racked up more wins than any other coach in Division I-AA history. Surprisingly, after that much success, Robinson was never offered an interview for a Division I-A coaching position.

A. The NCAA’s Resistance to the Rule and Other Independent Responses

The Robinson Rule has never been implemented, and former NCAA President Myles Brand is largely responsible for the resistance to the Robinson Rule. Brand argued that schools are unwilling to give up their autonomy in selecting a head coach by surrendering authority to the NCAA to streamline the hiring process. Brand’s reasoning for the NCAA’s inability to exercise authority over the member institutions is that the NCAA lacks the authority to mandate

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118 Collins, supra note 36, at 893.
119 Id. at 900.
120 Lapchick, supra note 23.
122 Lapchick, supra note 23.
123 Id.
124 Hochbaum, supra note 121, 179.
125 Id.
campus-hiring requirements, which is inherently derived from the member institutions themselves.\textsuperscript{126}

Some observers would argue that the NCAA is attempting to escape its responsibility under the auspices of preserving institutional autonomy.\textsuperscript{127} In fact, it is the very nature of the NCAA to formulate rules and to ensure its member institutions operate their football programs in compliance with NCAA policies and procedures.\textsuperscript{128} The NCAA has already usurped authority from its member institutions by regulating countless practices as evidenced through their 476-page manual, consisting of a constitution, operating bylaws, and administrative bylaws.\textsuperscript{129}

The question remains open as to whether Brand was incapable of enacting a rule absent consent form the voluntary members, or whether he attempted to avoid accountability. The NCAA has, in one instance, already usurped authority over its member institutions.\textsuperscript{130} During the early 1980’s, when student-athlete graduation rates from colleges caused controversy,\textsuperscript{131} the NCAA claimed that it did not have the authority to require its member institutions to publish their graduation rates.\textsuperscript{132} The NCAA claimed member institutions refused to make information about graduation rates public.\textsuperscript{133} After the media and federal government became aware of this refusal and conducted an investigation into the relationship between the student athletes and higher education,\textsuperscript{134} legislators proposed a bill requiring the publication of race- and sport-specific graduation rates.\textsuperscript{135} Pressure from the legislature and Brand being led to the cornerstone of his career, the Academic Reform Package was created, which requires member institutions to publish their graduation rates.\textsuperscript{136} Thus, the NCAA’s position that it does not possess the power

\textsuperscript{126} Gordon, supra note 69, at 11.
\textsuperscript{127} Hochbaum, supra note 121, at 180.
\textsuperscript{128} Id.
\textsuperscript{130} Lapchick, supra note 23.
\textsuperscript{132} Lapchick, supra note 23.
\textsuperscript{133} Id.
\textsuperscript{134} Ridpath, supra note 131, at 253-54.
\textsuperscript{135} Lapchick, supra note 23.
\textsuperscript{136} See id.
to enact a rule of this nature is not persuasive.\textsuperscript{137} If the NCAA truly desired change and honored their values of diversity and inclusion, then the NCAA would actively seek remedial action instead of merely relying upon outside organizations.

Surprisingly, Brand has acquiesced by acknowledging “that college football head coaching was the ‘most segregated position’ in all of collegiate athletics.”\textsuperscript{138} Nonetheless, merely acknowledging the existence of a problem without making any effort to correct it presents a need for a resolution. In 1993, the association adopted a nondiscrimination policy that allowed member institutions to determine how to address the issue.\textsuperscript{139} Homogeneity in nondiscrimination enforcement will continue to be a farfetched fairytale without an association-promulgated version of the Rooney Rule. The rule will not circumvent institutional autonomy by merely requiring an interview because requiring an institution to interview minority candidates can be distinguished from establishing a hiring quota.\textsuperscript{140} Complete autonomy will not be lost because member institutions can still reserve the right to select the candidate of their choice.

The NCAA claims to promote inclusive diversity to its member institutions,\textsuperscript{141} yet racial barriers still exist at college football head coaching positions.\textsuperscript{142} In 2010, Mark Emmert replaced Brand as the fifth all-time President of the NCAA.\textsuperscript{143} Just days after his inauguration, Emmert stated, “[t]he fact that we have to grow diversity among the coaching ranks . . . is self-evident.”\textsuperscript{144} Time will tell if Emmert will take a stand and diversify the predominantly Caucasian makeup of college football’s head coaching class.

\textsuperscript{137} Gordon, supra note 69, at 11.


\textsuperscript{139} NCAA \textsc{Division I Manual}, supra note 129, at 4. Article 2, Section 2.6 of the NCAA Constitution states: “It is the responsibility of each member institution to determine independently its own policy regarding nondiscrimination.” \textit{Id}.

\textsuperscript{140} See Hochbaum, supra note 121, at 179-81.


\textsuperscript{144} Johnson, supra note 142.
The Black Coaches and Administrators (BCA) are a group of minority coaches who have been at the forefront of the effort to improve minority employment opportunities in coaching. The BCA advocates for diversity by drawing the public’s attention to the lack of minority head coaches in college football. Each year since 2003, the BCA has released its “Hiring Report Cards” (HRC), ranking Division I-A and Division I-AA schools who participate in the study, by assigning grades ranging from A through F based upon their hiring practices. The BCA can claim some success in its attempt to achieve a hiring equity, as there has been an increase in the number on interviews and hires of African-American had coaches since the publication of the HRC. Yet, the reality remains that the current number of African-American coaches is disproportionately less than the number of Caucasian head coaches in all NCAA levels. Brand contends that the BCA’s initiative of solely tracking hiring practices and exposing results to the public is a sufficient method to achieve diversity without implementing a rule mandating such action.

In 2008, the Athletic Directors Association (ADA) for Division I-A schools adopted several recommended interviewing guidelines for football. Dutch Baughman, executive director of the Texas-based Division I-A ADA stated, “[t]he best we can do . . . is provide recommendations . . . and respect the fact that there’s


146 Id.

147 Dr. Richard Lapchick, PROTECTING THEIR TURF: THE BLACK COACHES AND ADMINISTRATORS (BCA) HIRING REPORT CARD FOR NCAA FBS AND FCS FOOTBALL HEAD COACHING POSITIONS (2009-10) 16 (2010) [hereinafter PROTECTING THEIR TURF]. The BCA grades participating schools based on four categories, (1) Communication, (2) Hiring/Search Committee, (3) Candidates Interviewed, and (4) Reasonable Time. Id.

148 Id. at 7-8. The 2009-10 HRC provided some statistical evidence demonstrating progress since the HRC became public in 2003. Id. The statistical evidence stated in the report includes: “Fact No. 1, since the initial BCA Football Hiring Report Card in 2003, 14 full-time African-American head coaches have been hired. Fact No. 2, nearly half (42.4 percent) of all the African-American coaches ever hired have been hired since the publication of the first BCA Football Hiring Report Card. Fact No. 3, 12 of the 14 have been hired in the past four years; 10 of the 14 have been hired in the last two years. Fact No. 4, since 2007, we have tripled the number of Football Bowl Subdivision (FBS) head football coaches from five to an all-time high of 15 at the kickoff of the 2010 season. The reality is the BCA Hiring Report Card is having a positive influence on the landscape of hiring equity in collegiate football.” Id. at 7.

149 Minority head football coaches, supra note 16.

150 Hochbaum, supra note 121, at 179.

in institutional prerogative.”

152 The ADA guidelines mirror the NFL’s Rooney Rule, with one glaring exception: the ADA guidelines are optional. 153 The Rooney Rule is mandatory, and violators are subject to a penalty. 154 Violators of the ADA guidelines, however, face no penalties.

The efforts of both the BCA and the ADA have raised awareness to the diversity issues at the head coaching level. Without any means of enforcement, however, the NCAA will be hard pressed to diversify collegiate football hiring practices. 155 These progressive individual movements towards diversity are not enough independently, but together there is potential pressure on Congress. 156 That pressure could result in the NCAA creating a uniform rule, as evidenced through Brand’s Academic Reform Package, which proved that the impossible may actually be achievable. 157 Advocates of the Robinson Rule do not have unreasonable or unattainable expectations of seeing rapid increases in the number of African-American head coaches. 158 The central concern is providing opportunity for African-American interviewees, and exposing interviewers to a new pool of qualified and talented candidates. 159 The Robinson Rule might not single handedly desegregate the landscape of the college football head-coaching class, but by expanding the applicant field, the rule will provide African Americans with an opportunity for interviews that otherwise did not exist. 160

B. The Oregon State Legislature Takes a Stand

Thus far, member institutions have refused to allow the NCAA to implement a rule requiring minority candidates to be interviewed for a vacant coaching position. 161 Oregon’s state legislature recognized that the University of Oregon and Oregon State University, the state’s two largest universities, have never
had an African-American head football coach.\textsuperscript{162} Even smaller public colleges in Oregon have followed this same disparate trend.\textsuperscript{163} Despite the lack of an NCAA mandate, the state took the initiative to address the issue.\textsuperscript{164} In 2009, Oregon lawmakers passed a bill by a 52-0 vote, requiring Oregon state universities to interview at least one minority candidate when selecting a head coach.\textsuperscript{165}

Other states, such as Alabama and Florida, are also considering following Oregon’s path and adopting legislation.\textsuperscript{166} Alabama and Florida are home to some of the nation’s top football programs that compete in the nation’s top conferences.\textsuperscript{167} If Alabama and Florida enact legislation consistent with the Rooney Rule, a domino effect on other states could ensue. The question becomes one of timing because this process could take decades. The motive behind these acts is commendable, but the best way to systematically attack the racial disparity at the head coaching level is to have the NCAA implement the rule instead of relying on the social consciences of individual colleges and universities.

C. Social Considerations

Notions of unconscious bias trigger the racial disparity in the NCAA. The same notions plagued the NFL until the Rooney Rule was implanted to address the problem.\textsuperscript{168} The idea of unconscious bias in the hiring process is based on implicit stereotypes in the minds of the decision makers.\textsuperscript{169} Unlike a conscious and intentional bias, unintentional bias is much harder to combat because, by definition, the decision maker is unaware of this bias.\textsuperscript{170} A prime example of this type of bias is the NFL’s “old boy” hiring practice.\textsuperscript{171} Disparate hiring practices remained in


\textsuperscript{163} Id.

\textsuperscript{164} Id.


\textsuperscript{166} See Lindsey, supra note 162.


\textsuperscript{168} Collins, supra note 36, at 912.

\textsuperscript{169} Id. at 872, 875.

\textsuperscript{170} Id. at 872.

\textsuperscript{171} Id. at 882-83.
place and unquestioned for many years, until movements to adopt the Rooney Rule surfaced.172

Why do schools continue to remain comfortable with their inequitable hiring and refuse to take a chance on an African-American head coach? The answer is simple: money.173 As Grambling State head coach, Doug Williams, said, “[w]e may say it is about black and white, but in the end it’s green.”174 As with the NFL’s “old boy” hiring practices, the NCAA has an affective social networking stigma that can only be broken by showcasing how the Robinson Rule will increase revenue long term.175 One group at the heart of the NCAA’s social network is the Boosters.176 Boosters are some of the biggest monetary contributors to athletic programs and sometimes take the role of a special interest group in football.177 Large monetary contributors can wield tremendous influence on collegiate hiring decisions.178 Fear of losing essential monetary support from boosters can be an underlying hindrance to hiring an African-American head coach.179 Colleges and universities are business entities and, like all business models, seek to operate efficiently and productively.180 As exemplified by Lewis, Smith, and Tomlin’s success in the NFL, the NCAA is arguably hindering its productivity by failing to demand diversification at the head coaching position.181

V. A FORM OF AFFIRMATIVE ACTION?

A. Classifying the Rooney Rule as an Affirmative Action Equal Opportunity Program

A highly debated issue surrounding the creation of the Rooney Rule is whether the rule is a form of affirmative action.182 Affirmative-action programs

172 Id. at 884.
173 Louis, supra note 145, at 180.
174 Id. at 180-81 (quoting Bram A. Maravent, Is the Rooney Rule Affirmative Action? Analyzing the NFL’s Mandate to Its Clubs Regarding Coaching and Front Office Hires, 13 SPORTS LAW. J. 233, 272 (Spring 2006)).
175 Collins, supra note 36, at 882-83; Louis, supra note 147, at 181.
176 Louis, supra note 145, at 181.
177 Id.
178 Id.
179 Id.
180 Id. at 180 (quoting Maravent, supra note 178, at 272).
181 Duru in REVERSING THE FIELD, supra note 55, at 378; Gordon, supra note 69, at 10.
182 Maravent, supra note 174, at 262.
attempt to promote equal opportunity and afford special rights to minorities in connection with hiring and/or advancement in order to combat the effects of a long history of discrimination against that minority group. Proponents of classifying this rule as an affirmative-action program argue that forcing teams to interview a minority candidate before making a final hiring decision gives greater opportunities to minority candidates to advance in coaching than their white competitors. Allegedly, this would fall into the purview of affirmative action because the League is giving preferential treatment to African-American head-coaching candidates in hopes of correcting past discrimination. This interpretation is too literal.

The intention of the rule was not to create hiring quotas, timetables, or goals consistent with the traditional form of affirmative-action plans. The Rooney Rule does not order teams whom to hire, but it does require privately owned NFL clubs to “interact with and meaningfully interview minority candidates.” The goal is exposure and opportunity. If a connection develops at the interviewing stage between an owner and a potential candidate, the likelihood of that candidate being hired or contacted in the future increases. The rule encourages good hiring practices: offering a broad and inclusive interview base ensures that the top candidate for the position is hired. For these reasons, the Rooney Rule is not a pure affirmative-action program, but instead is an equal opportunity policy that opens the door to the interview room for minority candidates. Additionally, this policy allows the NFL to reap the benefits of a true affirmative-action program while at the same time eliminating the costs. These same results could occur in the NCAA if it adopted their version of the Rooney Rule.

183 Id.
184 Id.
185 Id. at 262-63.
186 Id. at 263
187 cummings, supra note 94, at 396.
188 Id.
189 Id.
190 Id. at 397.
191 Wojciechowski, supra note 44; Maravent, supra note 174, at 262.
B. The Benefits Associated with Affirmative-Action Programs

Businesses derive both economic and social benefits from voluntary affirmative-action programs. First, these programs provide economic benefits in two ways: they “promote underutilized talent and help to develop better access to minority markets.” Minorities historically have been denied their fair share of opportunities. By affording qualified minority candidates otherwise unobtainable opportunities, voluntary affirmative-action programs effectively diversify the workforce. Creating a diverse atmosphere in the workplace forces management to develop strategies designed to confront potential conflicts. Increasing the capability of management will, in turn, benefit all workers. A stronger and better-equipped management system coupled with a diverse workforce produces a more efficient and profitable business.

Second, affirmative-action programs provide social benefits. By increasing the number of minority employees, an employer can begin to dispel the stereotypical belief that a particular group is incompetent or does not have the potential to succeed. Placing minorities in previously inaccessible positions “provides mentors and role models for members of these groups.” Society will benefit as a whole from the exposure of the workforce to the diverse perspectives and experiences minority groups have to offer.

C. Costs Associated with Affirmative Action Programs

The term “costs” encompasses not only the actual dollar amounts used to implement an affirmative-action program, but it also includes the underlying costs proximately caused by the program’s implementation. Specific hiring quota

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194 Id. at 781.

195 See Andre et al., supra note 192.

196 Hiller & Ferris, supra note 193, at 781.

197 Id.

198 Id.

199 Id.

200 Andre et al., supra note 192.

201 Id.

202 Id.

203 Hiller & Ferris, supra note 193, at 782.
requirements force employers to expend time and money exclusively to recruit and subsequently retain an employee from a particular minority group. Preferential interviewing and hiring practices could potentially lead to animosity between employees hired through traditional business practices and those hired through an affirmative-action program. This animosity may give rise to conflict, requiring human-resource departments to intervene, which may cost the company valuable resources that could have been better utilized elsewhere. These expenditures could eventually result in decreased profitability.

In addition to the potential for frustration among white employees, it is possible that the targeted group may lose confidence in their abilities as a result of receiving preferential treatment. Minority employees may question their ability and qualifications because of the chosen hiring method, “leading to feelings of inferiority, self-doubt and incompetence.” Preferential treatment can create a stigma that the employee did not earn their position, which could hinder the employee’s success within a company.

At further cost to the company, affirmative-action programs force businesses to hire individuals who are not as qualified as their counterparts. Awarding positions to less qualified candidates, as a result of forced preferential treatment, creates a potential decrease in overall workplace productivity.

VI. THE SOLUTION: EQUAL OPPORTUNITY, NOT EQUAL HIRING

“The power of sport to impact society has the potential to increase opportunity in all sorts of realms.” The Rooney Rule has become an example of

204 Id.
205 Id.
206 Id.
207 Id. at 782-83.
208 Id. at 782.
209 Andre et al., supra note 192.
210 Hiller & Ferris, supra note 193, at 782.
211 Andre et al., supra note 192.
212 Id.
an effective mandatory hiring practice of the sports realm. The rule’s impact has had the profound effect of breaking racial stereotypes embedded in the sport of football for decades. The rule has catapulted well-qualified minority coaches into head-coaching positions at the sport’s highest level since its implementation.

The Rooney Rule is not free from its detractors and has been criticized. The criticism of the rule overlooks the rule’s underlying purpose, to provide opportunity and exposure for minorities, and alone outweighs these flaws. Coaching successes—such as Lewis, Smith, and Tomlin—are examples of how the rule has expanded the talent pool beyond just Caucasian candidates. The “old boy” network is slowly deteriorating. A few African American have reached the highest level of coaching success in the NFL, which serves as inspiration to minority candidates who aspire to become head coaches. This same sentiment should exist at the NCAA level.

Astonishingly, there are only 31 NCAA member institutions, not including historically black colleges and universities, which have minority head coaches. While Dr. Lapchick has offered a solution for NCAA Division I-A schools, the need for a uniform rule exists at all levels of college athletics. Logic and common sense suggest that the adoption of a tool, proven to succeed in reducing racial inequities in the NFL, should be applied throughout the lower echelons of collegiate football. The NCAA maintains they lack the necessary authority to implement such a rule. This claim lacks merit. Implementation of a rule by the NCAA may be a possibility if enough pressure surfaces from the media and the legislature. The Oregon legislature has taken a progressive step by enacting their version of the Rooney Rule into law. The NCAA should not continue to dodge

215 Collins, supra note 36, at 872.
216 Thornton, supra note 31, at 45.
217 Id. at 52.
218 Id. at 53.
219 Mehri, supra note 55, at 365.
220 Collins, supra note 36, at 882-83.
221 Mehri, supra note 55, at 365.
222 Minority head football coaches, supra note 16.
223 Lapchick, supra note 23.
224 Gordon, supra note 69, at 11.
225 Hochbaum, supra note 121, at 179-80.
226 See Lapchick, supra note 23.
227 Miller, supra note 165.
responsibility by simply waiting for every state to take initiative before finally following suit.

The ADA’s proposed interviewing guidelines for Division I-A schools have been coined as “acceptable” at curtailing the racial segregation of African-American head coaches. While the number of African-American head coaches has increased to 13 out of the 119 schools at the Division I-A level, the reality is that these numbers fall drastically short of claiming success. The lack of uniform guidelines, coupled with the dismal number of African-American head football coaches, demonstrates a dire need for a version of the Rooney Rule. The interviewing guidelines declared by the ADA are not mandatory, but the need for a mandatory rule is obvious.

Should the NCAA choose to adopt the Robinson Rule or a similar policy, the benefits will be tantamount to those of traditional affirmative-action programs, but without the costs associated with affirmative-action programs. The rule falls short of affirmative action because it replaces a hiring requirement with an interview requirement, and is simply and equal opportunity program. The ultimate hiring decision remains with the decision maker and is based upon the interviewee’s performance. The long-term benefits to the football program resulting from the implementation of a rule of this nature could be astounding.

VII. CONCLUSION

By forcing college teams to access the untapped talent of minority coaches, break down notions of unconscious bias, and open the door to an unlikely candidate, a more diverse team is created. Outstanding African-American high school athletes will not have to choose between their first choice school and the benefit of an African-American mentor. African-American parents will no longer be faced with the moral struggle experienced by the Winslow family over their child’s letter of intent because of the underrepresentation of minority mentors and coaches in collegiate football programs.

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228 See Wieberg, supra note 151 (“... [T]he executive director of the Texas-based Division I-A Athletic Directors Association ... oversaw the five-month process of drawing up ‘acceptable standards.’”).

229 Minority head football coaches, supra note 16; Lapchick, supra note 23.

230 Lapchick, supra note 23.

231 Wieberg, supra note 151.

232 cummings, supra note 94, at 396.

233 Id.

234 Drehs, supra note 1.
Moreover, such an equal opportunity program will continue to dispel stereotypical underpinnings of minority incompetency.\textsuperscript{235} With the adoption of the Robinson Rule, or a similar program, the stigma of preferential treatment\textsuperscript{236} (and the attendant belief that the new minority hire did not actually \textit{earn} the head coaching position) disappears. A rule of this nature only gets an individual to the door.\textsuperscript{237} It is up to that individual to walk through the door and prove they are the best candidate for the position. The final hiring decision rests with the decision maker.\textsuperscript{238} While Boosters may be resistant to this remedial action, success stories from the NFL should quell their concern.

The unquestionable need of this rule rests in the numbers. There are few negative effects resulting from merely requiring NCAA teams to interview minority candidates. At the same time, a simple interview requirement reaps multiple benefits on the players, the head-coach candidates, and the NCAA program. In 2011, it is a travesty to see a disproportionately low representation of African-American head coaches at the collegiate level. We need a formalized remedy, such as the Robinson Rule.

\textsuperscript{235} Collins, \textit{supra} note 36, at 872.
\textsuperscript{236} Hiller & Ferris, \textit{supra} note 193, at 782.
\textsuperscript{237} cummings, \textit{supra} note 94, at 396.
\textsuperscript{238} \textit{Id}. 