



Superstars, Superteams, and the Future of Player Movement

William W. Berry III*

ABSTRACT

Disgruntled stars have existed since the dawn of professional sports. Historically, though, top athletes had little recourse other than holdouts, which typically did not achieve an improvement in salary or circumstance.

Beginning with *The Decision*, LeBron James charted a new path for stars in the National Basketball Association (NBA)—creating “super-teams” through moves in free agency. To be sure, the two most recent NBA dynasties—the Miami Heat and the Golden State Warriors—assembled their championship rosters through decisions of free agents to combine their talents. Part of the strategy has been to agree to shorter contracts such that the flexibility exists to switch teams. These moves have resulted in players eschewing the higher pay of staying with their current teams under the Bird Rule.

During the past three years, this phenomenon has reached a new level, with players under contract using their star power to make lateral moves to form super-teams prior to free agency. Anthony Davis successfully forced a trade from the New Orleans Pelicans to the Los Angeles Lakers, resulting in a championship for the Lakers. James Harden accomplished the same move last year, forcing a trade from the Houston Rockets to the Brooklyn Nets, with similar championship aspirations. While teams might trade disgruntled players, the ability of a superstar to force a trade has rarely happened, as teams are reluctant to give up their best player.

* Associate Dean for Research and Montague Professor of Law, University of Mississippi. Many thanks to Erin Savoie, Eli Nachmany, and the rest of the JSEL editorial team for their excellent work on the article.

On the heels of the success of NBA stars forcing trades to build super-teams, National Football League (NFL) quarterbacks have tried the same approach during the past two years. Initially, they were less successful.

These attempts of star players to switch teams raises questions as to whether such trade demands will become the norm, the degree to which players can grab this kind of power within the confines of the current collective bargaining agreements, and whether such movements are desirable.

In light of these questions, this Article explores the benefits of the creation of a more open free market for pro athletes to allow for increased movement between teams. Specifically, the Article suggests that players should explore the concept of opt-out provisions in future collective bargaining agreements to allow for more free movement and competition in the market.

Part One of the Article explores the common myths of the single team star who spends an entire career with one franchise. In Part Two, the Article describes the recent super-team phenomenon. Part Three advances the central argument of the Article, making the case for an expansion of player rights in free agency through collective bargaining and opt-out contract provisions. It also concludes the Article by explaining the value of increased player movement in professional sports.

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INTRODUCTION

From a labor and employment law perspective, the story of professional sports in the United States has been a slow but steady movement toward athlete free agency.¹ The evolution has, to be sure, been uneven, and restrictions still remain.² And the path has varied across the three major team sports of baseball, football, and basketball.³ Nonetheless, the landscape has shifted significantly since the early years of professional sports.⁴

¹ See generally PAUL C. WEILER, ET AL., *SPORTS AND THE LAW: TEXT, CASES AND PROBLEMS* (6th ed. 2020).

² First-round draftees in the NFL get four-year contracts with a fifth-year team options, while picks from the second through seventh rounds get four-year contracts; NBA rookie contracts last two years, with team options for a third and fourth years; MLB rookie contracts are six years. See NAT'L FOOTBALL LEAGUE & NAT'L FOOTBALL LEAGUE PLAYERS ASS'N, *COLLECTIVE BARGAINING AGREEMENT* 27 (March 15, 2020), available at <https://nflpaweb.blob.core.windows.net/website/PDFs/CBA/March-15-2020-NFL-NFLPA-Collective-Bargaining-Agreement-Final-Executed-Copy.pdf> [<https://perma.cc/UF4B-8CAL>]; NAT'L BASKETBALL PLAYERS ASS'N, *COLLECTIVE BARGAINING AGREEMENT* 265 (Jan. 19, 2017), available at <https://nbpa.com/cba> [<https://perma.cc/S5QA-LZRC>]; MLB *COLLECTIVE BARGAINING AGREEMENT* 92 (December 1, 2016), available at <https://www.mlbplayers.com/cba>. This article cites the previous MLB collective bargaining agreement. At the time of writing, MLB and its players union recently agreed to a new collective bargaining agreement. See Mark Feinsand, *MLB, MLBPA Agree to New CBA; Season to Start April 7*, *MLB* (Mar. 10, 2022), <https://www.mlb.com/news/mlb-mlbpa-agree-to-cba> [<https://perma.cc/AM5R-DGF7>].

³ The big three sports in the United States outpace all other sports in annual revenue, with Premier League Soccer, Indian Premier League Cricket, and the National Hockey League a step behind. See, e.g., Bradley Geiser, *America Only Has 4 of the Most Profitable Sports Leagues in the World*, *SPORTSCASTING* (April 11, 2020), <https://www.sportscasting.com/america-only-has-4-of-the-most-profitable-sports-leagues-in-the-world/> [<https://perma.cc/R9QT-NWCJ>]. Indeed, in 2021, NFL football accounted for 75 of the top 100 most viewed live television broadcasts. Anthony Crupi, *NFL Games Account for 75 of the 100 Most-Watched Broadcasts of 2021*, *SPORTICO* (Jan. 7, 2022), <https://www.sportico.com/business/media/2022/nfl-games-account-for-75-of-the-100-most-watched-broadcasts-of-2021-1234657845/> [<https://perma.cc/89QY-AXJ8>]. Baseball players receive free agency after six years, but are eligible for arbitration after three. See *MLB COLLECTIVE BARGAINING AGREEMENT*, *supra* note 2, at 18, 92. Football players become free agents after four years unless the team exercises a fifth-year option. See *NFL COLLECTIVE BARGAINING AGREEMENT*, *supra* note 2, at 27. Basketball players become free agents after two years unless the team exercises its third-year option. See *NBA COLLECTIVE BARGAINING AGREEMENT*, *supra* note 2, at 265. The team can also exercise a fourth-year option, keeping the player from free agency until after his fourth year. *Id.*

⁴ The decline of baseball's reserve clause is perhaps most emblematic of this change. See, e.g., Jeff Martindale & Carolyn Lehr, *Two Strikes: A History and Analysis*

In baseball, antitrust challenges failed, but labor arbitration opened the door to free agency.⁵ In football, antitrust challenges preceded by union decertification carried the day.⁶ And in basketball, an antitrust challenge led to a negotiated settlement establishing free agency.⁷

And yet, there are restrictions at play in each sport. In baseball, players must wait six years for free agency, although they can enter salary arbitration after three years.⁸ In football, free agency is generally available after four years.⁹ And in basketball, free agency becomes available after four years, but can be two years if the team does not exercise its option on the rookie contract.¹⁰

In recent years, however, the players have begun to exercise greater control over player movement and team-building.¹¹ Beginning with *The Decision*,¹² LeBron James charted a new path for stars in the National Basketball Association (NBA) showing how to create a “super-team” through

of Major League Baseball, Its Antitrust Exemption, and the Reserve Clause, 7 J. LEGAL ASPECTS SPORT 174 (1997); Stew Thornley, *The Demise of the Reserve Clause: The Players' Path to Freedom*, 35 BASEBALL RSCH. J. 115 (2006).

⁵ *Flood v. Kuhn*, 407 U.S. 258 (1972) (upholding baseball's antitrust exemption from the Court's prior decisions in *Federal Baseball Club v. National League*, 259 U.S. 200 (1922) and *Toolson v. New York Yankees, Inc.*, 346 U.S. 356 (1953)); *Kansas City Royals v. Major League Baseball Players Ass'n*, 532 F.2d 615 (8th Cir. 1976) (upholding the arbitrator's decision in National and American Professional Baseball Clubs v. Major League Baseball Players Association, 66 Lab. Arb. Rep. (BNA) 101 (1976)).

⁶ *McNeil v. Nat'l Football League*, Civ. No. 4-90-476, 1992 WL 315292 (D. Minn. Sept. 10, 1992) (finding that Plan B free agency violated the Sherman Act); *White v. NFL*, 836 F. Supp. 1458 (D. Minn. 1993) (upholding the class action settlement resulting from limits on free agency).

⁷ *Robertson v. Nat'l Basketball Ass'n*, 72 F.R.D. 64 (S.D.N.Y. 1976), *aff'd*, 556 F.2d 682 (2d Cir. 1977) (upholding the class action settlement that established free agency).

⁸ MLB COLLECTIVE BARGAINING AGREEMENT, *supra* note 2, at 18, 92.

⁹ NFL COLLECTIVE BARGAINING AGREEMENT, *supra* note 2, at 27.

¹⁰ NBA COLLECTIVE BARGAINING AGREEMENT, *supra* note 2, at 265.

¹¹ Historically, control of a roster had been under the exclusive purview of the general manager or similar senior club executives.

¹² *The Decision* was a television special in which LeBron James announced his decision of where he would sign as a free agent, choosing to join the Miami Heat and leave his home state Cleveland Cavaliers. See, e.g., *Looking Back at LeBron's Decision 10 Years Later*, SPORTS ILLUSTRATED (July 8, 2020), <https://www.si.com/nba/2020/07/08/lebron-james-miami-heat-decision-10-years-later> [https://perma.cc/NQ4B-7MGE] (discussing the impact and theatrics of *The Decision*).

player-coordinated moves in free agency.¹³ To be sure, the two most recent NBA dynasties—the Miami Heat and the Golden State Warriors—assembled their championship rosters through superstar free agents deciding to combine their talents.¹⁴ Part of the strategy has been to agree to shorter contracts such that the flexibility exists to switch teams.¹⁵ These moves have resulted in players eschewing the higher pay of staying with their current team under the Bird Rule.¹⁶

During the past three years, this phenomenon has reached a new level, with players under contract using their star power to make lateral moves to form super-teams prior to free agency by demanding trades. Anthony Davis successfully forced a trade from the New Orleans Pelicans to the Los Angeles

¹³ As discussed *infra* in Part I, this strategy involves timing one's contract expiration with other players to join as free agents on a new team. This also requires some level of team complicity as well in order to have the salary cap space to accommodate multiple maximum contracts.

¹⁴ In James' case, free agent James joined with Miami Heat star Dwyane Wade and free agent Chris Bosh to form a super-team that made four consecutive NBA finals and won championships in 2012 and 2013. See *NBA & ABA Champions*, BASKETBALL-REFERENCE, available at [https://www.basketball-reference.com/playoffs/\[https://perma.cc/4FFJ-KEJ4\]](https://www.basketball-reference.com/playoffs/[https://perma.cc/4FFJ-KEJ4]) (last visited July 3, 2022). To be fair, the Warriors had already assembled a championship team, winning the NBA championship in 2015 and setting the NBA record for wins in 2015-16 before losing in the finals. See *id.*; *Top Moments: Warriors Set Record with 73-Win Season*, NBA (Sept. 14, 2021, 9:56 AM), <https://www.nba.com/news/history-top-moments-warriors-win-record-73-games> [https://perma.cc/ANE5-5YJY]. Adding Kevin Durant as a free agent led to two more championships in 2017 and 2018 and a third finals appearance in 2019 which the Warriors lost after Durant and another star player, Klay Thompson, were injured. See *id.*; *James Picks Heat; Cavs Owner Erupts*, ESPN (July 8, 2010), <https://www.espn.com/nba/news/story?id=5365165> [https://perma.cc/77JT-63AD]; *Top Moments: Kevin Durant Signs with Warriors in 2016*, NBA (Sept. 14, 2021, 9:56 AM), <https://www.nba.com/news/history-top-moments-kevin-durant-joins-warriors> [https://perma.cc/PP8L-FEY8].

¹⁵ The uneven raises of the salary cap over time also play a role here. See, e.g., Rob Mahoney, *NBA Free Agency: The Thought Behind the One-Year Deal Trend*, SPORTS ILLUSTRATED (July 12, 2018), <https://www.si.com/nba/2018/07/12/nba-free-agency-kevin-durant-demarcus-cousins-deandre-jordan-one-year-deal-trend> [https://perma.cc/6WTQ-554H].

¹⁶ The Bird rule, named for Boston Celtics star Larry Bird, allows a team to sign its own player for a higher amount than other clubs can sign him in free agency, even if the amount exceeds the salary cap. NBA COLLECTIVE BARGAINING AGREEMENT, *supra* note 2, at 35-43, 184, 198-99. The idea behind the rule is to discourage star players from switching teams.

Lakers, resulting in an NBA championship for the Lakers.¹⁷ James Harden accomplished the same move last year, forcing a trade from the Houston Rockets to the Brooklyn Nets, with similar championship aspirations.¹⁸ While teams have sometimes traded disgruntled players, the ability of a franchise-player superstar to force a trade to a strong team in order to win a championship has rarely happened, as teams are reluctant to give up their best player or help another team build a dynasty.¹⁹

On the heels of the success of NBA stars forcing trades to build super-teams, National Football League (NFL) quarterbacks tried the same approach during the summer of the 2021 NFL offseason. Houston Texans quarterback Deshaun Watson and Seattle Seahawks quarterback Russell Wilson both allegedly attempted to force trades, but were unsuccessful in the summer of 2021.²⁰ The litmus test, though, for this approach perhaps was Green Bay Packers quarterback Aaron Rodgers, the winner of the Most Valuable Player (MVP) award for the 2020 season.²¹ Rodgers went as far as to suggest that he would rather retire than play another season with the Packers before caving just before the team required its players to report for the 2021 season.²²

¹⁷ Kerr: *Forced Trade by Davis 'Bad for the League'*, ESPN (July 24, 2019), https://www.espn.com/nba/story/_/id/27250922/kerr-forced-trade-davis-bad-league [<https://perma.cc/7UR8-DPTP>].

¹⁸ Farbod Esnaashari, *The 2-Month Trade Request: How James Harden Forced His Way Out of Houston*, BLEACHER REPORT (Mar. 3, 2021), <https://bleacherreport.com/articles/2934230-the-2-month-trade-request-how-james-harden-forced-his-way-out-of-houston> [<https://perma.cc/BQ4H-7H7Z>].

¹⁹ The inability of football players to replicate what Davis and Harden have done underscores this point. See discussion *infra* Part II.

²⁰ Watson's attempt to force a trade was complicated by a series of accusations of sexual assault that emerged in the summer of 2021 and 22 civil lawsuits subsequently filed. See Aaron Reiss, *Timeline of Deshaun Watson Sexual Assault Lawsuits: Trade Won't Happen Before Deadline*, THE ATHLETIC (June 27, 2022), <https://theathletic.com/2496073/2021/10/26/timeline-of-deshaun-watson-sexual-assault-lawsuits-lawyer-for-texans-owner-tried-to-broker-mediation/> [<https://perma.cc/A9SB-ASEK>]. He ended up sitting out the 2021 season. *Id.* Gene Chamberlain, *Russell Wilson Explanation Misses the Mark*, SPORTS ILLUSTRATED (June 12, 2021), <https://www.si.com/nfl/bears/news/russell-wilson-does-revisionist-history-on-bears-trade-attempt> [<https://perma.cc/QHJ2-9RLE>].

²¹ Nick Shook, *Packers QB Aaron Rodgers Named 2020 AP NFL Most Valuable Player*, NFL (Feb. 6, 2021), <https://www.nfl.com/news/packers-qb-aaron-rodgers-named-2020-ap-nfl-most-valuable-player> [<https://perma.cc/5U4U-VJEU>].

²² See, e.g., Mike Tanier, *With a Little Leverage but a Lot to Say, Aaron Rodgers Returns*, N.Y. TIMES (July 29, 2021), <https://www.nytimes.com/2021/07/29/sports/football/aaron-rodgers-press-conference.html> [<https://perma.cc/H4GU-WUG6>]; Vinnie Iyer, *Aaron Rodgers' Holdout Timeline: Key Dates, Fines to Know on Packers'*

Interestingly, Watson and Wilson were both traded in the 2022 off-season. But their situations were far different from Davis and Harden in the NBA. Watson's situation was complicated by ongoing allegations of sexual assault and a possible NFL suspension. Wilson's situation related in part to a determination that his health and age had diminished his abilities while his desire to pass the ball extensively contradicted the team's run-based offensive philosophy.

These attempts of star players to switch teams raises questions as to whether such trade demands will become the norm, the degree to which players can grab this kind of power within the confines of the current collective bargaining agreements, and whether such movements are desirable.

In light of these questions, this Article assesses the benefits of the creation of a more open free market for pro athletes to allow for increased movement between teams. Specifically, the Article suggests that players should explore the concept of opt-out provisions in future collective bargaining agreements to allow for more free movement and competition in the market, as outside of the NBA, forcing trades is not a successful strategy.

Part One of the Article explores the common myth of the single team star who spends an entire career with one franchise. In Part Two, the Article describes the recent super-team phenomenon. Part Three advances the central argument of the Article, making the case for an expansion of player rights in free agency through collective bargaining and opt-out contract provisions while suggesting the limitations of the forced-trade strategy. It then concludes the Article by explaining the value of increased player movement in professional sports.

I. THE MYTH OF THE SINGLE TEAM STAR

Historically, athletes spent their career with the same team. Fans love the nostalgia of the old players who are synonymous with their teams. One might think of Larry Bird's Celtics, Magic Johnson's Lakers, and Michael Jordan's Bulls; Johnny Unitas's Colts, Roger Staubach's Cowboys, and Terry Bradshaw's Steelers; Joe DiMaggio's Yankees, Ernie Banks' Cubs, and Sandy Koufax's Dodgers. The home town hero mythology embraces the idea of the hero always playing for the home town team²³ and never becoming a free

Offseason Calendar, SPORTING NEWS <https://www.sportingnews.com/us/nfl/news/aaron-rogers-holdout-fines-packers/1db9kfevg9fhhb10lfj73124ktp> [https://perma.cc/4WRS-XCCH] (last visited July 4, 2022).

²³ Players in the baseball Hall of Fame are enshrined on a plaque where the player is wearing the team hat in Cooperstown, with the implicit presumption that players spend their career with one team. See *Plaque Gallery*, NAT'L BASEBALL HALL

agent.²⁴ Indeed, for some fans, nothing is more crushing than their favorite player being traded or leaving as a free agent, especially late in his career.²⁵

One part of the argument in favor of baseball's reserve system²⁶ related to the paternalistic idea that player movement would destroy professional sports, as the appeal to fans was the connection to particular players.²⁷ If the players changed too often and players switched teams, the argument went, fan loyalty and interest would diminish.²⁸

Reality, however, has debunked this concern. With the expansion of free agency in baseball, basketball, and football over the past thirty years, the player that spends his career with a single franchise is rare. But this pattern of athletes switching teams has not diminished the popularity of the sports. If anything, it has increased fan interest.²⁹

A. *Home Town Hero vs. Fantasy Star*

One lens through which to view the transition to the modern conception of sports is the transition from the home town hero to the fantasy star. Fan interest no longer focuses purely on the home town team. And the mod-

OF FAME, <https://baseballhall.org/discover/museum/plaque-gallery> [https://perma.cc/FYG9-TVNT] (last visited July 4, 2022).

²⁴ Cal Ripken perhaps best embodies this idea in having set the record for most consecutive games played at 2,632. See Sarah Langs et al., 8 Amazing Facts about Ripken's Streak, MLB (Sept. 6, 2020), <https://www.mlb.com/news/amazing-facts-about-cal-ripken-jr-s-games-played-streak> [https://perma.cc/D9DH-J3V4].

²⁵ Boston Red Sox fans in particular know this story, with the trade of Babe Ruth to the Yankees, anecdotally creating the "Curse of the Bambino," a superstition used to explain its eighty-six-year championship drought that finally ended in 2004. See, e.g., Anthony Castrovince, *The Curse of the Bambino Explained*, MLB (last visited Dec. 25, 2021), <https://www.mlb.com/news/curse-of-the-bambino> [https://perma.cc/R8PT-CPF5]; DAN SHAUGHNESSY, *THE CURSE OF THE BAMBINO* (1990); BILL SIMMONS, *NOW I CAN DIE IN PEACE* (2005). This often does not end well for the player (for example, Joe Montana and Michael Jordan), but Tom Brady seems to have reversed this trend with a championship quarterbacking his new team. See, e.g., Scott Smith, *Champs! Bucs Win Super Bowl LV*, BUCCANEERS (Feb. 8, 2021, 9:20 AM), <https://www.buccaneers.com/news/bucs-win-super-bowl-55-chiefs-31-9-final-score-champions> [https://perma.cc/H37A-6LEG].

²⁶ See, e.g., *Kansas City Royals v. Major League Baseball Players Ass'n*, 532 F.2d 615 (8th Cir. 1976).

²⁷ See sources *supra* note 4.

²⁸ *Id.* Interestingly, many who oppose paying college athletes make similar arguments about athlete compensation. See, e.g., *Alston v. NCAA*, 141 S. Ct. 2141 (2021).

²⁹ See, e.g., *In Depth: Topics A to Z: Sports*, GALLUP, <https://news.gallup.com/poll/4735/sports.aspx> [https://perma.cc/PD7V-KKEJ] (last visited July 4, 2022).

ern expansion of free agency leads to the expectation that players will not spend their entire careers with the same team.³⁰

Player movement has not ruined professional sports. Instead, it has created a season outside of the season during which there is keen fan interest³¹ in which players a franchise will retain, trade, release, and obtain through off-season transactions.³² If anything, the move toward free agency has magnified interest in professional sports because it has generated a steady stream of news and commentary throughout much of the year, expanding far beyond the length of the season.³³

Fan interest has also expanded beyond individual teams as a result of the growth of fantasy sports. Many fans have become far more interested in individual players as members of their fantasy roster, or the roster against which they are competing, as opposed to the degree to which a player can be the iconic representative of their home town team.³⁴

In the context of fantasy sports, one cheers for or against individuals, as opposed to teams.³⁵ This interest in the game cuts against the traditional

³⁰ Some companies will replace fans' purchased jerseys if players switch teams within 90 days. See, e.g., *Jersey Assurance*, FANATICS, <https://www.fanatics.com/jersey-assurance/x-2132+z-932267037-343285709> [<https://perma.cc/7ZMZ-CUVS>] (last visited July 4, 2022). Indeed, it is rare for even star players to spend their career with the same team.

³¹ This interest mirrors the interest in college football recruiting and helps make professional sports into full-year sports news topics, going far beyond the season.

³² Termed the "hot stove" season, the offseason can sometimes generate more interest from fans than the season itself does, particularly for fans of perennially bad teams looking for hope for a reversal of fortunes in the upcoming season.

³³ College football is currently enjoying a similar off-season spike in fan interest with the rise of the transfer portal, a free agency of sorts. The proliferation of sports media has accompanied this trend, with ESPN growing to prominence over the past four decades. Phil Rosenthal, *How ESPN — Now 40 Years Old — Changed the Sports World, from Your Growing Cable Bill and Round-the-Clock Programming to the Glut of Bowl Games*, CHI. TRIBUNE (Sept. 8, 2019), <https://www.chicagotribune.com/sports/breaking/ct-cb-espn-40th-anniversary-changed-sports-20190906-ogxokpxedjgwdekdlmgudb6myq-story.html> [<https://perma.cc/Z7PY-7L3B>].

³⁴ See, e.g., Ed Dixon, *Study: Fantasy Sports Market to Grow 9.5% to US \$22.3bn in 2021*, SP (Sept. 1, 2021), <https://www.sportspromedia.com/news/fantasy-sports-global-market-value-2021-nfl-mlb-nba/> [<https://perma.cc/MHP6-2UW4>]; *The Lucrative and Growing Fantasy Football Industry*, SPORTS MGMT. DEGREE HUB, <https://www.sportsmanagementdegreehub.com/fantasy-football-industry/> [<https://perma.cc/Y2SB-JWRR>] (last visited July 4, 2022).

³⁵ See, e.g., Chris Isidore, *Fantasy Sports: What Is It, Anyway?*, CNN MONEY (Oct. 6, 2015, 5:13 PM), <https://money.cnn.com/2015/10/06/news/companies/fantasy-sports-101/index.html> [<https://perma.cc/ZZ33-L9RG>].

model of fans cheering for their home town team.³⁶ While, in some ways, this could be a discouraging trend, the practical effect is that it drives fan interest into every minute of every game irrespective of the score.³⁷ While a conventional fan may turn their attention away from the game when it is clear that the home town team has secured victory or is destined to lose, the fantasy fan remains focused, as late game plays can affect the outcome of their fantasy game.³⁸

The broadening of the fan base—from those interested in their home teams and games that affect their home teams in the standings to a wide range of fans interested in both teams and individual outcomes—has made the home town hero less of an ideal of professional sports. And the reality of free agency has made such home town stars who spend their entire careers with one team largely extinct.

B. *Parity vs. Dynasty*

A second myth drives objections to super-teams—the need for parity in professional sports. Former NFL Commissioner Pete Rozelle famously argued that “balance” among teams was the key to the success of the NFL, and justified both free agency restrictions and the hard salary cap.³⁹ While it

³⁶ See, e.g., Blake Snow, *How Fantasy Sports Have Changed How We Cheer*, KSL (Aug. 31, 2011, 10:47 AM), <https://www.ksl.com/article/17049422/how-fantasy-sports-have-changed-how-we-cheer> [<https://perma.cc/NFG8-Y6UZ>].

³⁷ Some have argued that fantasy sports have the dark side of dehumanizing players. See, e.g., Eric Allen Hall, *The Dark Side of Fantasy Football*, WASH. POST (Sept. 10, 2017, 6:00 AM), <https://www.washingtonpost.com/news/made-by-history/wp/2017/09/10/the-dark-side-of-fantasy-football/> [<https://perma.cc/YY9V-Y35S>]. This is particularly true for daily fantasy sports, a gambling offshoot that allows fan owners to assemble a new roster each day. See, e.g., Brent Schrottenboer, *Leagues See Real Benefits in Daily Fantasy Sports*, USA TODAY (Jan. 1, 2015), <https://www.usatoday.com/story/sports/2015/01/01/daily-fantasy-sports-gambling-fanduel-draftkings-nba-nfl-mlb-nhl/21165279/> [<https://perma.cc/PKR9-67ET>].

³⁸ In garbage time, the part of the game after the result has been decided but there is still a part of the game left to play, fantasy sports participants have an incentive to watch in a way that traditional fans do not. See Scott Spratt, *Defining “Garbage Time” for Fantasy Production*, PRO FOOTBALL FOCUS (Aug. 23, 2017), <https://www.pff.com/news/fantasy-football-defining-garbage-time-for-fantasy-production>.

³⁹ Pete Rozelle, *Is It ‘Parity’? ‘Mediocrity’? Pete Rozelle Says No*, N.Y. TIMES (Jan. 3, 1982), <https://www.nytimes.com/1982/01/03/sports/is-it-parity-mediocrity-pete-rozelle-says-no.html> [<https://perma.cc/99UB-55ZC>]. See also Anthony Crupi, *NFL’s Overtime Spree Underscores Parity’s Impact on Television Ratings*, YAHOO! (Oct. 19, 2021), <https://www.yahoo.com/now/nfl-overtime-spree-underscores-parity-214813408.html> [<https://perma.cc/U7ZQ-WKPG>].

is true that the annual hope that this will be the year one's team makes the playoffs or wins the championship underlies much fan interest in sports, the presence of a dynasty—a team that competes for championships over several years—can likewise galvanize fan interest.⁴⁰

In some ways, the presence of a dynasty may attract even more fan interest than parity would. The dynasty raises the question of how long a team can stay on top—how many championships can it win before another team dethrones it? This phenomenon draws the interest of both bandwagon fans⁴¹—those who join on because it is fun to cheer for a winner—and those who relish cheering against the dominant team.⁴²

Rather than a unique matchup appearing in the late playoff and championship rounds of competition, repetition of the same teams playing each year can be a recipe for fan interest.⁴³ Michael Jordan's Chicago Bulls teams provide an obvious example.⁴⁴ For a number of years, the Detroit Pistons defeated the Bulls and ended their season in the playoffs.⁴⁵ Eventually, the

⁴⁰ See, e.g., Tim Cato, *NBA Finals Television Ratings Up from 2016 Even with Blow-outs*, SB NATION (June 5, 2017), <https://www.sbnation.com/2017/6/5/15740976/nba-finals-television-ratings-warriors-cavaliers> [https://perma.cc/EQ4C-EJZ6]; see also JORDAN FINCI, *THE IMPACT OF SUPERTEAMS AND PARITY ON THE NBA* (Univ. of Or., Senior Honors Thesis, Dec. 2017), available at <https://scholarbank.uoregon.edu/xmlui/bitstream/handle/1794/24005/Final%20Thesis-Finci.pdf?sequence=1&isAllowed=y> [https://perma.cc/KX26-BFY7] (arguing that super-teams do not have a negative effect on fan interest).

⁴¹ See, e.g., Tony Santorsa, *Dallas Cowboys and the 16 Biggest Bandwagon Fanbases in the NFL Today*, BLEACHER REPORT (June 9, 2011), <https://bleacherreport.com/articles/728759-16-biggest-bandwagon-fanbases-in-the-nfl-today> [https://perma.cc/9TQL-FWXB].

⁴² See, e.g., Callum Ng, *Dear Bandwagon Fan: You Are the Worst—Signed, Big Fan*, OLYMPIC (Nov. 12, 2014), <https://olympic.ca/2014/11/12/dear-bandwagon-fan-you-are-the-worst-signed-big-fan/> [https://perma.cc/59KH-N6JE]. The continued popularity of men's professional tennis also underscores this point; three dominant players—Roger Federer, Rafael Nadal, and Novak Djokovic—have won the vast majority of major titles over the past two decades, a fact that has increased fan interest, not diminished it. See Tumaini Carayol, *How Will Tennis Survive Without Its Superstars?*, THE RINGER (Sept. 5, 2019, 8:26 AM), <https://www.theringer.com/2019/9/5/20850223/tennis-superstars-roger-federer-rafael-nadal-novak-djokovic-serena-williams> [https://perma.cc/6SUL-R4CA].

⁴³ Giancarlo Ferrari-King, *10 Things That Happen After a Team Wins a Championship*, BLEACHER REPORT (Nov. 8, 2015), <https://bleacherreport.com/articles/2585616-10-things-that-happen-after-a-team-wins-a-championship> [https://perma.cc/XG8W-G3ZR].

⁴⁴ See generally NETFLIX, *THE LAST DANCE* (2020).

⁴⁵ The Pistons knocked the Bulls out of the playoffs in 1988, 1989, and 1990. See *NBA & ABA Playoff Series History*, BASKETBALL-REFERENCE, <https://>

Bulls gained a measure of revenge and defeated the Pistons in 1991 before winning the championship.⁴⁶ The Bulls made two separate runs to three championships, with six in eight years, and it did not diminish interest in the NBA.⁴⁷ To the contrary, their dynasty drew increased fan interest from both those celebrating their wins and those hoping to see another team knock them off.⁴⁸

The same point can be made by examining fan response to the Patriots dynasty in which Tom Brady and Bill Belichick won six Super Bowls over a seventeen-year period.⁴⁹ The NFL's popularity has not diminished over that period; to the contrary, it has significantly increased.⁵⁰

To the extent that player movement generates dynasties, this is a positive development, not a negative one, at least with respect to the economic health of the sport. Dynasties generate fan interest from everyone, not just fans of the team and fans of its rivals.

C. *Socialist Paternalism vs. Capitalist Free Markets*

Paternalistic arguments against player movement and expansion of free agency also advance a corporate, anti-competitive approach to the market for

www.basketball-reference.com/playoffs/series.html (last visited July 4, 2022). The Pistons coined their defense against Michael Jordan the "Jordan Rules." See, e.g., Drew Sharp, *The Best of the Pistons-Bulls Rivalry*, DETROIT FREE PRESS, Dec. 25, 2007.

⁴⁶ See *NBA & ABA Playoff Series History*, *supra* note 45.

⁴⁷ See *id.* See generally THE LAST DANCE, *supra* note 44.

⁴⁸ See, e.g., Scott D. Pierce, *Jazz-Bulls Are Still on Top of NBA Finals TV Ratings*, DESERET NEWS (July 6, 2007), <https://www.deseret.com/2007/7/6/20028317/scott-d-pierce-jazz-bulls-are-still-on-top-of-nba-finals-tv-ratings> [<https://perma.cc/8YB2-6ZHL>]; Kyle Dalton, *1998 NBA Finals Game 6 Is the Most-Watched Game in NBA History*, SPORTSCASTING (May 20, 2020), <https://www.sportscasting.com/1998-nba-finals-game-6-is-the-most-watched-game-in-nba-history/> [<https://perma.cc/V5YM-JFGQ>].

⁴⁹ See *NFL History - Super Bowl Winners*, ESPN <http://www.espn.com/nfl/superbowl/history/winners> [<https://perma.cc/3L2P-Z6WG>] (last visited July 4, 2022).

⁵⁰ See, e.g., Chad Finn, *In the World of TV Ratings, the NFL in a League of Its Own*, BOSTON (Oct. 23, 2021), <https://www.boston.com/sports/nfl/2021/10/23/nfl-tv-ratings-2021-season-chad-finn-sports-media-column/> [<https://perma.cc/B4PU-ET42>]. The Patriots are also apparently popular in China. Aimee Lewis, *How New England Patriots Had a 'Monumental' Year in China*, CNN (Apr. 16, 2019, 7:13 AM), <https://www.cnn.com/2019/04/02/sport/new-england-patriots-china-social-media-spt-intl/index.html> [<https://perma.cc/8DVD-WPAK>].

professional athletes.⁵¹ Salary caps and other forms of limiting free market competition are more apt to mirror a socialist approach to professional sports as opposed to a capitalistic one.

Billionaire owners fight hard against free markets for professional athlete services. The draft, the salary cap, and other player movement restrictions all help owners to achieve at least some of this aim.⁵²

The entry into the league begins with a draft, with the worst teams getting the best players.⁵³ To impose a similar approach in other industries would be laughable. Imagine the top law students in a law school class being required to work for the least successful law firms after being drafted by them. This might promote parity among law firms and balance the relative strength of firms, especially if continued for a number of years, but it is an approach contrary to a capitalistic ethic of rewarding the highest achievers.

This draft approach, despite the millions of dollars that accompany it, contradicts capitalism. In all three major sports, there is a rookie cap or draft limit, such that the amount of money one receives is limited by where one is drafted. An open market would produce wildly different results.⁵⁴

The salary cap likewise undermines capitalist values in the name of fair competition. This plays out in different ways across the three major sports.

MLB does not have a salary cap, but imposes a luxury tax on teams that exceed a certain level of total compensation for their payroll in a given year.⁵⁵ This results in economic redistribution from the wealthy teams to the less wealthy teams.⁵⁶ Baseball has perhaps the most capitalistic model, with teams otherwise not required to share revenue as they are in the NFL.⁵⁷

⁵¹ See generally Jonathan B. Goldberg, *Player Mobility in Professional Sports: From the Reserve System to Free Agency*, 15 SPORTS L.J. 21 (2008).

⁵² It is worth noting that all of these devices violate antitrust law, but the owners are able to use the shield of the non-statutory labor exemption to avoid liability. See, e.g., *Clarett v. NFL*, 369 F. 3d 124 (2d Cir. 2004).

⁵³ See generally *supra* notes 8, 9, and 10.

⁵⁴ College sports has an open market, but imposes its own caps on compensation—tuition, room, board, books, cost of attendance, and other education-related costs. See *NCAA v. Alston*, 141 S. Ct. 2141 (2021).

⁵⁵ See generally MLB COLLECTIVE BARGAINING AGREEMENT, *supra* note 2.

⁵⁶ *Id.* The luxury tax in 2021 applied to teams with payrolls above \$210 million, with the tax increasing from 20% to 32% at payrolls \$230 million-to-\$250 million, and to 62.5% for payrolls above \$250 million. See *2021 Luxury Tax Payrolls*, WTOP NEWS (Mar. 13, 2022, 8:04 PM), <https://wtop.com/sports/2022/03/2021-luxury-tax-payrolls/> [<https://perma.cc/5YUU-8A6W>].

⁵⁷ See generally MLB COLLECTIVE BARGAINING AGREEMENT, *supra* note 2.

The NFL has a hard salary cap, which means that teams cannot have total salaries in excess of the cap.⁵⁸ The absence of guaranteed contracts makes the cap easy to adhere to in the sense that teams can always cut players as needed.⁵⁹ The answer for player agents and teams has been to negotiate contracts with guaranteed signing bonuses paid up front, and per league rules, carry out the bonus equally over the years of the contract.⁶⁰ This leads to many restructuring efforts and extensions of contracts to delay the inevitable salary cap hit for as long as possible. This also means that teams can accumulate quite a bit of “dead” cap money for players who are no longer on the team, but whose prior bonuses still count against the cap.⁶¹ Interestingly, the NFL itself has a socialist model in that it engages in almost complete revenue sharing among its teams.

The NBA has a soft cap and a luxury tax.⁶² The soft cap limits how much teams can pay free agents, and defines maximum contracts for teams.⁶³ The Bird Rule, which allows teams to pay more than the market for their own free agents, makes the cap vary slightly from team to team, as the excess money paid in order to retain one’s own player does not all count against the cap.⁶⁴ The luxury tax, like in MLB, taxes teams that exceed a total compensation level.⁶⁵ The tax also has a balloon provision, imposed against teams that exceed the luxury tax for multiple years.⁶⁶

⁵⁸ See generally NFL COLLECTIVE BARGAINING AGREEMENT, *supra* note 2.

⁵⁹ See generally *id.*

⁶⁰ See, e.g., Andrew Brandt, *Business of Football: Understanding the Salary Cap, Dead Money, and Impact of 2021 Decrease*, SPORTS ILLUSTRATED (Mar. 2, 2021), <https://www.si.com/nfl/2021/03/02/business-of-football-understanding-the-salary-cap-dead-money> [<https://perma.cc/K94G-24S3>].

⁶¹ The recent trade between the Rams and the Lions of their quarterbacks—Jared Goff for Matthew Stafford—was particularly noteworthy in this regard, with Goff costing the Rams a \$22.2 million dead money cap hit and Stafford costing the Lions a \$17.8 million dead money cap hit in 2021. Tyler J. Davis, *Here’s the Detroit Lions’ Possible Escape Hatch if the Jared Goff Trade Doesn’t Work Out*, DETROIT FREE PRESS (Jan. 31, 2021, 3:47 AM), <https://www.freep.com/story/sports/nfl/lions/2021/01/30/detroit-lions-jared-goff-contract-matthew-stafford-trade/4329399001/> [<https://perma.cc/V6LB-593B>].

⁶² See generally NBA COLLECTIVE BARGAINING AGREEMENT, *supra* note 2.

⁶³ See generally *id.*

⁶⁴ See generally *id.*; see *supra* note 16.

⁶⁵ See generally NBA COLLECTIVE BARGAINING AGREEMENT, *supra* note 2. The NBA luxury tax threshold for the 2021-22 season was \$136,606,000. Luke Adams, *NBA Salary Cap for 2022-23 Projected to Be \$121 Million*, YARDBARKER (Feb. 4, 2022), https://www.yardbarker.com/nba/articles/nba_salary_cap_for_2022_23_projected_to_be_121_million/s1_14822_37170275 [<https://perma.cc/9ZAE-YNGY>].

⁶⁶ Repeat luxury tax offenders pay an increased penalty. See generally NBA COLLECTIVE BARGAINING AGREEMENT, *supra* note 2; Yossi Gozlan, *2021-22 Season Will*

Together, the draft and the salary cap theoretically promote parity, but it is not clear that they enhance the overall financial growth of the leagues. To be sure, they restrict the income of the players at the collectively bargained rate. In the three leagues, this value hovers around fifty percent of the revenue received annually.⁶⁷

What is not clear is whether the leagues could make even more money by creating a freer market for athletes. The limit would be what the fans and the television networks were willing to pay, not an arbitrary limit imposed by billionaire owners.⁶⁸ With no salary cap and a completely free market, some team owners might be willing to spend much more than they currently do on players.⁶⁹

Public opinion can also support limits on athlete compensation. The same people who are willing to spend hundreds of dollars to attend sporting events or watch thousands of hours of commercials during live telecasts often do not favor the idea of athletes making millions of dollars.⁷⁰ The idea of receiving compensation for playing a game offends some who argue that playing a sport is not working for a living.⁷¹

Changing the narrative here is important, as the time commitment of being a professional athlete far exceeds many other professions. The constant pressure to perform at an elite level with thousands of people watching in person comes with an unusual level of pressure. The culture of the sports

Have the Largest Luxury Tax Payments Ever, HOOPS HYPE (Aug. 27, 2021), <https://hoopshype.com/lists/nba-2021-22-season-largest-luxury-tax-payments-ever/> [<https://perma.cc/X857-D3G2>]; Luke Adams, *Hoops Rumors Glossary: Luxury Tax Penalties*, HOOPS RUMORS (Mar. 20, 2020), <https://www.hoopsrumors.com/2020/03/hoops-rumors-glossary-luxury-tax-penalties-2.html> [<https://perma.cc/V2LL-YQGU>].

⁶⁷ See generally *supra* notes 8, 9, and 10.

⁶⁸ To be fair, such limits are the product of collective bargaining, but those arrangements allow for anti-competitive rules, drafts, and caps. See *Dodgers Hit with Giant Luxury Tax Bill for Leading MLB Payroll in 2021*, SPORTS ILLUSTRATED, <https://www.si.com/mlb/dodgers/news/dodgers-hit-with-giant-luxury-tax-bill-for-leading-mlb-in-payroll-in-2021> [<https://perma.cc/Q33M-ELNC>].

⁶⁹ The Golden State Warriors are a prime example of this, being willing to spend more in luxury tax than their payroll, perhaps for several more years. See Gozlan, *supra* note 66.

⁷⁰ See, e.g., Mike Florio, *Why Don't Fans Support Players Who Want More?*, NBC SPORTS: PROFOOTBALLTALK (June 17, 2018, 12:47 PM), <https://profootballtalk.nbcsports.com/2018/06/17/why-dont-fans-support-players-who-want-more/> [<https://perma.cc/UCP9-7HV9>].

⁷¹ This argument has also been made about other kinds of entertainers. See, e.g., Dire Straits, *Money for Nothing*, YOUTUBE (released in 1985, uploaded Feb. 23, 2010), available at https://www.youtube.com/watch?v=WTP2RUD_cL0.

talk world adds to this stress, as every play can be put under a microscope, replayed millions of times, and discussed over and over again.

Athletes, though, are the entertainers. Fans certainly do not attend games to see owners. People do not watch games to see corporate executives. As with other performers in the marketplace, such as authors, musicians, and artists, the market should define how much athletes are paid, not paternalistic limits imposed by owners. In sum, changing the narrative has the potential to reverse the power of billionaires and restore the power over professional sports to the people: the fans.

II. THE RISE OF THE SUPER-TEAM⁷²

Historically, general managers and team executives have built pro sports dynasties through shrewd drafting, trades, and free agent acquisitions. The more recent trend, however, is athletes exerting influence, taking control, and ultimately operating in the role of the general manager without the formal title.

A. *The Tool of Free Agency*

1. LeBron James

What was different about the LeBron James decision to leave the Cleveland Cavaliers and join the Miami Heat as a free agent was the manner in which he made that decision.⁷³ James not only interviewed his potential suitors but also contacted a fellow free agent, Chris Bosh, and a potential future teammate, Dwyane Wade, to plan for a team together.⁷⁴ While

⁷² To be sure, there have been historical examples of super-teams—the Boston Celtics of the 1960s; the New York Yankees of the 1930s, 40s, and 50s; and the New England Patriots of the modern era. Chris Mueller, *The Greatest Sports Dynasties of All Time*, YARDBARKER (Oct. 23, 2021), https://www.yardbarker.com/general_sports/articles/the_greatest_sports_dynasties_of_all_time/s1__26756621 [https://perma.cc/BV6Z-YYBS]. But these teams have been built by general managers, not athletes.

⁷³ ESPN, *{FULL} LeBron James' 'The Decision' (7/8/2010)* — ESPN Archives, YOUTUBE (uploaded June 11, 2018, aired July 8, 2010), available at https://www.youtube.com/watch?v=afpgnb_9bA4; Anthony Chiang, *ESPN Reveals New Details from LeBron James' 'The Decision'*, MIAMI HERALD (June 24, 2020).

⁷⁴ Brian Windhorst, *Three Days in July: The High-Stakes Maneuvers that Assembled LeBron, Wade, and Bosh*, ESPN (June 29, 2020), https://www.espn.com/nba/story/_/id/29375065/the-decision-high-stakes-maneuvers-lebron-james-dwyane-wade-chris-bosh [https://perma.cc/PLZ6-2CB8]; Bryan Curtis, *"The Decision" Reloaded: How*

Miami Heat general manager Pat Riley may have played a role behind the scenes in enabling the cap space to allow Miami to sign both James and Bosh, the players were the driving force in putting together their team.⁷⁵ James and Wade further recruited other veteran players as well, several of whom were willing to receive reduced compensation in exchange for the chance to be on a team with such a high possibility of winning the NBA championship.⁷⁶

The experiment was a success. The Heat made the NBA Finals for four consecutive years, winning the championship in the second and third years.⁷⁷

2. Kevin Durant

Several years later, Kevin Durant chose to create a super-team by joining the Golden State Warriors as a free agent. The Warriors already had, by any estimation, an outstanding team, with a core of future NBA Hall of Famers in Stephen Curry, Klay Thompson, and Draymond Green. They had won the NBA championship in 2015,⁷⁸ and had lost 4-3 in the finals in 2016.⁷⁹ The 2016 team also set the all-time NBA record for victories in the regular season with 73, compiling a record of 73-9.⁸⁰

LeBron James's Free-Agency Announcement Changed the NBA, THE RINGER (June 2, 2018), <https://www.theringer.com/nba/2018/7/2/17524572/lebron-james-the-decision-miami-heat-2010> [https://perma.cc/L9FS-86T7].

⁷⁵ See Windhorst, *supra* note 74. Indeed, Wade also pitched the three players as a package to the Chicago Bulls. *Id.*

⁷⁶ Adam Davis, *Miami Heat: 10 Veterans Who May Sign for the League Minimum for a Chance at a Title*, BLEACHER REPORT (July 16, 2011), <https://bleacherreport.com/articles/769672-miami-heat-10-veterans-that-may-sign-for-league-minimum-for-chance-at-a-title> [https://perma.cc/4DH6-FHDL]; *2011/12 Miami Heat Salaries*, HOOPS HYPE, https://hoopshype.com/salaries/miami_heat/2011-2012/ [https://perma.cc/QG53-PCFV] (last visited July 5, 2022).

⁷⁷ See *NBA & ABA Playoff Series History*, *supra* note 45; see Windhorst, *supra* note 74.

⁷⁸ See *id.*

⁷⁹ See *id.* The Warriors arguably would have won without the suspension of Draymond Green for multiple games during the finals, but their loss was equally attributable to the heroics of LeBron James and Kyrie Irving. *Top Moments: Cavaliers End Cleveland's Long Championship Drought* NBA (Sept. 14, 2021), <https://www.nba.com/news/history-top-moments-cavaliers-erase-3-1-deficit-2016-finals> [https://perma.cc/FGW7-YLXT].

⁸⁰ See *2015-16 Golden State Warriors Roster and Stats*, BASKETBALL-REFERENCE, <https://www.basketball-reference.com/teams/GSW/2016.html> [https://perma.cc/T5KW-KMHK] (last visited Apr. 17, 2022).

Adding Durant, though, took the Warriors to another level. They won the NBA championship in 2017 and 2018.⁸¹ And they likely would have won a third consecutive title if both Durant and Thompson had not suffered serious injuries in the NBA Finals the next year.⁸²

3. Tom Brady

Tom Brady is perhaps the most recent example of creating a super-team through free agency. After winning six Super Bowls with the New England Patriots,⁸³ Brady left New England as a free agent and signed with the Tampa Bay Buccaneers.⁸⁴ The Buccaneers already had a strong defense, but needed an offense that was more consistent and committed fewer turnovers.⁸⁵

Brady also recruited several players to join him on the Buccaneers team, such as Antonio Brown and Leonard Fournette, improving the team significantly.⁸⁶ Notably, he convinced former New England tight end Rob Gronkowski to come out of retirement to play for the Buccaneers.⁸⁷

⁸¹ See *NBA & ABA Playoff Series History*, *supra* note 45.

⁸² They lost 4-2 in the NBA Finals to the Toronto Raptors. See *NBA & ABA Playoff Series History*, *supra* note 45. Durant tore his Achilles tendon and Thompson tore his anterior cruciate ligament. See *2019 NBA Finals, Game 6: The Wrap*, NBA (June 14, 2019, 3:18 AM), <https://www.nba.com/2019-finals-game6-the-wrap> [<https://perma.cc/M9GB-Q3GB>].

⁸³ See *Super Bowl History*, PRO FOOTBALL-REFERENCE, <https://www.pro-football-reference.com/super-bowl/> [<https://perma.cc/KL9M-TC4F>] (last visited Apr. 17, 2022).

⁸⁴ See, e.g., Tom Fornelli, *Tom Brady Signs with Buccaneers: Why Tampa Bay Isn't Likely to Get Its Money's Worth from the Future Hall of Famer*, CBS SPORTS (Mar. 20, 2020), <https://www.cbssports.com/nfl/news/tom-brady-signs-with-buccaneers-why-tampa-bay-isnt-likely-to-get-its-moneys-worth-from-future-hall-of-famer/> [<https://perma.cc/9QK4-FQ3L>].

⁸⁵ Indeed, the quarterback that Brady replaced, Jameis Winston, had thrown a league-leading 30 interceptions the season before Brady signed with the Buccaneers. See *Jameis Winston*, PRO FOOTBALL-REFERENCE, <https://www.pro-football-reference.com/players/W/WinsJa00.htm> [<https://perma.cc/M37A-W637>] (last visited Apr. 17, 2022).

⁸⁶ Michael David Smith, *Bruce Arians: Veteran Players Want to Play with Tom Brady*, NBC SPORTS (Sept. 30, 2021), <https://profootballtalk.nbcsports.com/2021/09/30/bruce-arians-veteran-players-want-to-play-with-tom-brady/> [<https://perma.cc/8FPX-XAM8>].

⁸⁷ Isaiah Houde, *Rob Gronkowski Explains How Joining Tampa Bay Matched Hopes He Had*, PATRIOTSWIRE (Jan. 22, 2021, 7:30 AM), <https://patriotswire.usatoday.com/2021/01/22/rob-gronkowski-explains-how-joining-tampa-bay-matched-his-expecations/> [<https://perma.cc/8N2A-DJ3L>]. Previously maligned but uber-tal-

Gronkowski played a key role in the Buccaneers' Super Bowl victory over the Kansas City Chiefs in Brady's first season with Tampa Bay.⁸⁸

What makes Brady's signing with Tampa Bay a sign of a different kind of free agency is his role in recruiting others to join him. His decision in choosing Tampa Bay reflects a calculus that involved his ability to assemble key pieces of his new team, as opposed to leaving that role up to the team and hoping for the best with respect to his supporting cast.

B. Forcing Trades

It is one thing to leave for another team and co-ordinate with other free agents to build a strong team. It is another thing altogether to convince a team to trade you to another team when the trade is likely to result in the formation of a super-team.

In the history of professional sports, teams have traded their superstar athletes, sometimes for money⁸⁹ but usually for numerous draft picks. Conversely, teams that have perceived players as game-changing superstars have packaged extensive assets to gain the rights to such players.⁹⁰

Usually, though, players demanding a trade have had difficulty convincing management to act upon their wishes, particularly when the player

ented players Leonard Fournette and Antonio Brown also signed with the Buccaneers thanks to Brady's recruiting. Vinnie Iyer, *How Buccaneers Built a Super Bowl Roster for Tom Brady: Patience in Draft, Punch in Free Agency Pay off*, SPORTING NEWS, <https://www.sportingnews.com/us/nfl/news/buccaneers-super-bowl-roster-tom-brady/72q5519y86ey1kxl287nter57> [https://perma.cc/56RT-KDEX] (last visited Apr. 17, 2022).

⁸⁸ See *Super Bowl History*, *supra* note 83; *Every Rob Gronkowski Catch from 2-TD Game, Super Bowl LV*, NFL, <https://www.nfl.com/videos/every-rob-gronkowski-catch-from-2-td-game-super-bowl-lv> [https://perma.cc/2T3U-JTKN] (last visited Apr. 17, 2022).

⁸⁹ See *supra* note 25; see also *Finley v. Kuhn*, 569 F.2d 527 (7th Cir. 1978) (upholding MLB Commissioner's decision to block the sale of Oakland Athletics players to the Boston Red Sox and New York Yankees).

⁹⁰ The two egregious examples are the Ricky Williams trade by the New Orleans Saints and the Herschel Walker trade by the Minnesota Vikings. See John Keim, *For Redskins, 1999 Ricky Williams Deal at NFL Draft Brought Too Few Wins*, ESPN (Apr. 21, 2020), https://www.espn.com/blog/nflnation/post/_/id/307342/for-redskins-1999-ricky-williams-deal-brought-hall-of-famer-too-few-wins [https://perma.cc/H42N-SW29]; Nick Allen, *Herschel Walker to the Minnesota Vikings: The Best Trade in NFL History*, BLEACHER REPORT (Mar. 16, 2009), <https://bleacherreport.com/articles/140116-the-best-trade-in-nfl-history> [https://perma.cc/NQH5-WHEG].

is a franchise-caliber star, i.e., the most important player on the team.⁹¹ It is even less likely that the general manager will accommodate a player's desires when the likely result is the creation of a championship-caliber super-team for some other franchise.

And yet, two NBA players in the past two years—Anthony Davis and James Harden—have accomplished this feat. Taking notice, three similar NFL players—Deshaun Watson, Russell Wilson, and Aaron Rodgers—attempted a similar move during the summer of 2021. None accomplished results immediately, but Watson and Wilson were traded in the summer of 2022.

1. Anthony Davis

Anthony Davis was the center for the New Orleans Pelicans.⁹² Davis is an accomplished player, having led the Kentucky Wildcats to a national championship.⁹³ Davis is seven feet tall and plays the game with the speed and agility of a guard, while also possessing the ability to shoot three-point shots.⁹⁴ His size, speed, and shooting ability make him quite difficult to defend.⁹⁵

⁹¹ When it has worked, it has been during the NFL draft, before the player has ever joined the team. John Elway and Eli Manning both accomplished this kind of move. See Jim Saccomano, *Sacco Sez: Former Broncos Exec. John Beake Recalls the 1983 Draft and the Trade for John Elway*, BRONCOS (Apr. 24, 2021, 10:00 AM), <https://www.denverbroncos.com/news/sacco-sez-former-broncos-exec-john-beake-recalls-the-1983-draft-and-the-trade-fo> [<https://perma.cc/RJ78-TKHT>]; John Fennelly, *Giants Legend Eli Manning Finally Opens Up About 2004 Draft Day Trade*, GIANTS WIRE (Oct. 7, 2021, 10:55 AM), <https://giantswire.usatoday.com/2021/10/07/new-york-giants-eli-manning-finally-opens-up-2004-draft-day-trade-los-angeles-chargers/> [<https://perma.cc/MD8T-EPT8>].

⁹² See *Anthony Davis*, BASKETBALL-REFERENCE, <https://www.basketball-reference.com/players/d/davisan02.html> [<https://perma.cc/DXT5-9AU2>] (last visited Apr. 17, 2022).

⁹³ *Kentucky Holds Off Kansas to Win Eighth National Title*, ESPN (Apr. 2, 2012), <https://www.espn.com/mens-college-basketball/recap?gameId=320930096> [<https://perma.cc/ZPA4-Q9YZ>].

⁹⁴ See, e.g., Rob Mahoney, *Anthony Davis Is Coming for the Crown*, THE RINGER (Dec. 22, 2020), <https://www.theringer.com/2020/12/22/22194796/anthony-davis-is-coming-for-the-crown>; John Tjarks, *The Only Player Who Can Stop Anthony Davis is Himself*, THE RINGER (Sept. 22, 2020), <https://www.theringer.com/2020/9/22/21450572/anthony-davis-lakers-nuggets> [<https://perma.cc/Z45Y-W2WF>]; Justin Verrier, *Anthony Davis Wasn't Meant to be an Alpha—Just a Superstar*, THE RINGER (Oct. 6, 2020), <https://www.theringer.com/2020/10/6/21502938/anthony-davis-lakers-lebron-james> [<https://perma.cc/T4PU-FU3U>].

⁹⁵ See *id.*

He played for several years on the Pelicans, a perennial loser mostly because Davis' supporting cast was weak and Davis was an oft-injured player.⁹⁶ Davis wanted to play for the Los Angeles Lakers alongside LeBron James, perennially one of the top five players in the NBA.⁹⁷ Davis did not, however, want to wait two years until he became a free agent.⁹⁸ This was particularly true because of LeBron's advancing age and the theory that he only had a few years left before his skills inevitably began declining.⁹⁹

To put pressure on the Pelicans, Davis sat out a number of games towards the end of the 2018 season.¹⁰⁰ At the urging of Davis' agent, the Pelicans finally caved to Davis' demand and traded him to the Lakers in exchange for a bounty of draft picks and players.¹⁰¹ While the Pelicans arguably received adequate compensation for Davis, it is unlikely that they would have traded him without him expressing his unhappiness and deciding not to play.¹⁰²

In the end, Davis' plan worked. The Lakers won the 2020 NBA championship, played in the infamous bubble created at the Disney resort in Orlando in response to the COVID-19 pandemic.¹⁰³ The Lakers did not repeat, however, largely because of injuries to LeBron James late in the 2021 season.¹⁰⁴ Had Davis waited for free agency, it is possible he never would have won a championship with LeBron James.

⁹⁶ See, e.g., William Guillory, *Injuries to Anthony Davis, Inconsistency Haunt Pelicans Once Again in 114-105 Loss to Thunder*, NOLA (Jan. 26, 2019), https://www.nola.com/sports/pelicans/article_bb9153bd-4f72-557d-96ab-f18494598912.html [<https://perma.cc/B9BM-3W7P>].

⁹⁷ Jordan Greer, *Anthony Davis' Trade Request Was an Absolute Mess—and It Gave the Lakers Star Everything He Wanted*, SPORTING NEWS (Oct. 11, 2020), <https://www.sportingnews.com/us/nba/news/anthony-davis-lakers-trade-request/f4ldgseobwvg1a6zzj7ythw0l> [<https://perma.cc/TQS8-KVZB>].

⁹⁸ See *id.*

⁹⁹ See *id.*

¹⁰⁰ See *id.*

¹⁰¹ See S.L. Price, *The King Maker: Why Rich Paul Will Own the NBA Summer*, SPORTS ILLUSTRATED (June 12, 2019), <https://www.si.com/nba/2019/06/12/rich-paul-klutch-sports-group-lakers-pelicans-lebron-james-anthony-davis> [<https://perma.cc/2QVM-XCM2>].

¹⁰² See Greer, *supra* note 97; Aaron Kellerstrauss, *The New Orleans Pelicans Won the Anthony Davis Trade*, FANSIDED, <https://pelicanbrief.com/2020/02/25/new-orleans-pelicans-anthony-davis-trade/> [<https://perma.cc/DY3Z-JU8S>].

¹⁰³ See *NBA & ABA Playoff Series History*, *supra* note 45.

¹⁰⁴ See *Los Angeles Lakers*, BASKETBALL-REFERENCE, <https://www.basketball-reference.com/teams/> [<https://perma.cc/F4CH-JJVX>] (last visited July 5, 2022).

2. James Harden

James Harden was a star player for the Houston Rockets. During his time there, Harden perennially led the Rockets deep into the playoffs. His unique style of monopolizing the ball and choosing to either shoot a three-pointer, drive to the basket for a layup or a foul, or kick out the ball to his teammates who would shoot three-pointers made the Rockets a high-scoring team that won many games. To help Harden win a championship, management brought in different star players, Chris Paul and then Russell Westbrook, but neither were able to help win the title.¹⁰⁵

The general manager, Daryl Morey, left in the summer of 2019, as did the coach, Mike D'Antoni.¹⁰⁶ Seeing the roster was moving toward a rebuilding period, Harden decided to sit out training camp in the fall of 2019.¹⁰⁷ When he did decide to play, he made it clear that he was waiting for a trade, alienating his teammates and creating dissension on the team.¹⁰⁸ The pressure that Harden put on the team convinced the new general manager to trade him to his team of choice, the Brooklyn Nets, early in the 2019 season.¹⁰⁹ While many perceived Harden's behavior as ugly and unprofessional, this behavior was arguably necessary to achieve Harden's desired goal—a trade to the Nets.¹¹⁰ The Rockets did not receive the largesse of picks and players for Harden that the Pelicans did for Davis, but nonetheless received a decent return for Harden.¹¹¹

Harden's plan to win a championship did not work. Part of the problem was injuries to one of the Nets' three superstars, Kyrie Irving, who

¹⁰⁵ See *Houston Rockets*, BASKETBALL-REFERENCE, <https://www.basketball-reference.com/teams/HOU/> [<https://perma.cc/6H8C-4WQS>] (last visited July 5, 2022).

¹⁰⁶ Brian T. Smith, *Daryl Morey's Departure Now Makes Sense*, HOUSTON CHRONICLE (Oct. 28, 2020), <https://www.houstonchronicle.com/texas-sports-nation/brian-t-smith/article/Smith-Morey-departure-Rockets-now-makes-sense-15681900.php> [<https://perma.cc/XV3Z-7Y8H>]; Jasmyn Wimbish, *Mike D'Antoni Stepped Down As Rockets Coach During Flight Back to Houston from the Bubble, Per Report*, CBS SPORTS (Sept. 15, 2020), <https://www.cbssports.com/nba/news/mike-dantoni-stepped-down-as-rockets-coach-during-flight-back-to-houston-from-nba-bubble-per-report/> [<https://perma.cc/SW6J-K945>].

¹⁰⁷ Tim McMahon, *Inside James Harden and the Houston Rockets' Breaking Point*, ESPN (Jan. 13, 2021), https://www.espn.com/nba/story/_/id/30528130/inside-james-harden-houston-rockets-breaking-point [<https://perma.cc/RKQ7-R2J3>].

¹⁰⁸ See *id.*

¹⁰⁹ See *id.*

¹¹⁰ See *id.*

¹¹¹ See *id.*

missed significant parts of the 2021 playoffs.¹¹² Even so, the Nets narrowly lost to the eventual 2021 NBA champions, the Milwaukee Bucks, in Game 7 of the conference semifinals.¹¹³ If the Nets could have survived the Bucks, an NBA championship seems like it would have been possible. The 2021-22 season could have provided another opportunity for Harden and the Nets, but Harden forced a subsequent trade to the Philadelphia 76ers, partially in response to Irving's inability to play home games because he was unwilling to get the COVID-19 vaccine.¹¹⁴

3. The NFL Movement (Watson, Wilson, Rodgers)

Unlike Harden and Davis, the NFL stars that attempted to force a trade in the summer of 2021 were initially unsuccessful. Two of the three were able to get traded in the offseason of 2022, with the third deciding he did not want to be traded after all.

It is not obvious why the NFL players struggled where the NBA players succeeded. Part of the difference may relate to the impact a single player can have on a basketball game as compared to a football game.¹¹⁵ Part of the difference may also relate to the more complicated nature of the NFL game, at least for the quarterback position.

Deshaun Watson was a quarterback with the Houston Texans.¹¹⁶ He was a star for Clemson University, leading them to a national championship

¹¹² Irving faced a different set of challenges last season, being available only for road games as a result of his anti-vaccine stance. See Jeff Ziligitt, *Unvaccinated Kyrie Irving Makes Nets Season Debut on Road Against Pacers*, USA TODAY (Jan. 5, 2022), <https://www.usatoday.com/story/sports/nba/nets/2022/01/05/nets-kyrie-irving-unvaccinated-covid-makes-season-debut/9108752002/> [https://perma.cc/NLE5-EDNM].

¹¹³ Indeed, Kevin Durant's toe was on the three-point line, turning what would have been a game-winning last second three-point shot into a game-tying two-point shot. The Nets then lost in overtime. See Jacob Camenker, *Nets' Kevin Durant Blames His "Big-Ass Foot" for Game 7 Loss to Bucks*, SPORTING NEWS (June 20, 2021), <https://www.sportingnews.com/us/nba/news/kevin-durant-big-ass-foot-nets-bucks/1au9or4z0d1kgz1vvpcmrcirm> [https://perma.cc/5NRT-FDEP].

¹¹⁴ *Nets Trade James Harden to Sixers for Ben Simmons*, NBA (Feb. 10, 2022), <https://www.nba.com/news/nets-sixers-james-harden-ben-simmons-trade> [https://perma.cc/KH2J-HAJY].

¹¹⁵ With only five players on the court, the value of a single athlete can presumably be more than being one out of eleven. See *infra* Part III.C.

¹¹⁶ See *Deshaun Watson*, PRO FOOTBALL-REFERENCE, <https://www.pro-football-reference.com/players/W/WatsDe00.htm> [https://perma.cc/9FX8-ML55] (last visited Apr. 17, 2022).

game win over Alabama.¹¹⁷ His early NFL career has been successful as well in leading a Texans offense that can be prolific at times.¹¹⁸ The inability of the Texans to succeed in the NFL playoffs, though, has contributed to Watson being disenchanted, and ultimately asking for a trade in the 2021 off-season.¹¹⁹ Before his demands could gain traction, however, Watson began to face a different set of challenges. Over twenty women accused Watson of sexual assault.¹²⁰ As a result, teams that might have been interested in trading for Watson lost interest, at least for the summer of 2021.¹²¹ Watson subsequently sat out the 2021 season, with it remaining unclear what kind of suspension the NFL might impose once it completes its investigation of the allegations against Watson.¹²²

Late in the spring of 2022, two grand juries declined to proceed with any of the sexual assault cases against Watson.¹²³ This changed the public perception of Watson enough to regenerate interest in him. The Texans ultimately traded him to the Cleveland Browns, who signed Watson to a lucrative contract extension. Even without the sexual assault allegations, it is unlikely that the Texans would have made such a deal in the summer of 2021. It was only after the combination of Watson being unwilling to par-

¹¹⁷ *Deshaun Watson, Clemson Dethrone Alabama in Thrilling National Championship Game*, NBC SPORTS (Jan. 10, 2017), <https://www.nbcsports.com/chicago/ncaa-talk/deshaun-watson-clemson-dethrone-alabama-thrilling-national-championship> [<https://perma.cc/8AWR-THUN>].

¹¹⁸ Matt Weston, *Pro Football Focus Has Deshaun Watson Ranked as a Top Five Quarterback*, SB NATION (July 31, 2021), <https://www.battleredblog.com/2021/7/13/22575451/pro-football-focus-has-deshaun-watson-ranked-as-a-top-five-quarterback> [<https://perma.cc/MKL9-F8HF>]; *Was Deshaun Watson's 2020 Season the Best by a Quarterback in More than a Decade?*, FOX SPORTS (Feb. 16, 2021), <https://www.foxsports.com/stories/nfl/houston-texans-quarterback-deshaun-watson-was-the-nfls-best-quarterback-in-2020-pff-argues> [<https://perma.cc/X28P-6HHS>].

¹¹⁹ Sarah Barshop, *Deshaun Watson Has Asked Houston Texans to Trade Him*, *Sources Say*, ESPN (Jan. 28, 2021), https://www.espn.com/nfl/story/_/id/30794678/deshaun-watson-asked-houston-texans-trade-sources-say [<https://perma.cc/W4FX-6AMS>].

¹²⁰ Reiss, *supra* note 20.

¹²¹ Kaelen Jones, *What Would a Trade for Deshaun Watson Even Look Like?*, THE RINGER (Jan. 18, 2021), <https://www.theringer.com/nfl/2021/1/18/22232051/deshaun-watson-trade-nfl-historical-comparisons> [<https://perma.cc/W4FX-6AMS>].

¹²² Nora Princiotti, *The NFL Passes on Taking a Stance on Deshaun Watson*, THE RINGER (Oct. 27, 2021), <https://www.theringer.com/nfl/2021/10/27/22749601/deshaun-watson-nfl-trade-deadline-roger-goodell> [<https://perma.cc/ZJU7-LAYQ>].

¹²³ Brent Schrottenboer, *Second Grand Jury in Texas Declines to Indict Browns QB Deshaun Watson*, USA TODAY (Apr. 1, 2022, 12:53 PM), <https://www.usatoday.com/story/sports/nfl/browns/2022/03/24/browns-quarterback-deshaun-watson-under-scrutiny-another-grand-jury/7157721001/> [<https://perma.cc/U4CD-J2GM>].

ticipate for a year and the ongoing criminal allegations that the Texans decided to move on from Watson despite his youth and talent.

Russell Wilson was a Super Bowl-winning¹²⁴ quarterback for the Seattle Seahawks and the face of the franchise.¹²⁵ Wilson began to complain, though, in the summer of 2021, intimating that he wanted certain changes to the Seahawks roster, or in the alternative, wanted to be traded.¹²⁶ Specifically, Wilson complained about the weakness of the offensive line and the number of hits and sacks he took in the 2020 season.¹²⁷ Further complicating the issue was Wilson's no trade clause, which gave him the power to veto a trade.¹²⁸ Wilson listed a handful of teams for which he was willing to play.¹²⁹ Despite Wilson's requests, the Seahawks refused to trade him, and he continued to be the starting quarterback for the Seahawks during the 2021 season.¹³⁰

The 2021 season did not go as hoped for the Seahawks, and the team began to sour on him in the same way that he had soured on the team. First, Wilson suffered a finger injury that caused him to miss half of the season. Also, Wilson was not the same player that he had been either before or after the injury. In particular, his play after the injury led the team to conclude that his best days might be behind him. In addition, the team management and coaching has long favored a run-heavy offense with occasional passing. Wilson has long favored a more pass-heavy offense. In 2020, fans of Wilson's approach fashioned the phrase "Let Russ Cook," advocating a more aggressive pass offense with deep passes to star receivers D.K. Metcalf and

¹²⁴ See *Super Bowl History*, *supra* note 83.

¹²⁵ See *Russell Wilson PRO FOOTBALL-REFERENCE*, <https://www.pro-football-reference.com/players/W/WilsRu00.htm> [<https://perma.cc/D2CH-K7QT>] (last visited Apr. 17, 2022).

¹²⁶ Gene Chamberlain, *Russell Wilson Explanation Misses the Mark*, SPORTS ILLUSTRATED (June 12, 2021), <https://www.si.com/nfl/bears/news/russell-wilson-does-revisionist-history-on-bears-trade-attempt> [<https://perma.cc/FK4K-WVHU>].

¹²⁷ See *id.*; Brendan Schulze, *What Russell Wilson's 4 "Approved" Trade Destinations Say about What He'd Want from a New Team*, SB NATION (Mar. 2, 2021), <https://www.fieldgulls.com/2021/3/2/22308778/what-russell-wilson-four-approved-trade-destinations-say-about-what-he-would-want-seattle-seahawks>.

¹²⁸ Brandon Gustafson, *Seahawks' Russell Wilson Addresses How No-Trade Clause Relates to His Future*, SEATTLE SPORTS 710 AM (Jan. 6, 2022, 3:32 PM), <https://sports.mynorthwest.com/1551972/seahawks-russell-wilson-no-trade-clause-future/> [<https://perma.cc/E2BT-8LQQ>].

¹²⁹ Schulze, *supra* note 127. The teams were the Cowboys, the Saints, the Raiders, and the Bears. *Id.*

¹³⁰ Wilson did miss three games as a result of an injury to his throwing hand, but then assumed his role as starting quarterback upon his return.

Tyler Lockett.¹³¹ This approach was successful during the first part of the 2020 season, but started to unravel late in the season, convincing the coaches that a more conservative, run-based offense would lead to more victories, especially against top teams.

The combination of the change in the team's perception of Wilson and of the growing divergence in philosophy led to the trade of Wilson to the Denver Broncos in the spring of 2022.¹³² Unlike the Davis and Harden scenarios, it seems that the Seahawks traded Wilson not because they were forced to, but because they wanted to in light of their perceptions of their team's best interests.

Aaron Rodgers, the quarterback for the Green Bay Packers, also demanded a trade during the 2021 off-season.¹³³ Rodgers has previously led the Packers to a Super Bowl victory, and his success has continued in recent years.¹³⁴ In 2020, he led the Packers to the NFC championship game for the second year in a row, and was named the league's most valuable player.¹³⁵

Rodgers' concerns began with the Packers' decision to draft Jordan Love, a quarterback, in the first round of the 2020 draft, presumably to be Rodgers' eventual successor.¹³⁶ This decision perhaps sent a signal that Rodgers' days with the Packers might be numbered, and his career approaching its end.¹³⁷ Rodgers further cited the way in which he believed the organiza-

¹³¹ Billy Heyen, 'Let Russ Cook': Behind the Meme Defining Russell Wilson's Early-Season MVP Campaign, SPORTING NEWS (Oct. 11, 2020), <https://www.sportingnews.com/us/nfl/news/russell-wilson-let-russ-cook-meme/1lg4dtwcxqre51y27owlm7j1cp> [<https://perma.cc/LAM5-CM4U>].

¹³² Kevin Patra, *Broncos Acquiring Seahawks QB Russell Wilson in Trade Including Drew Lock, Multiple Picks, Players*, NFL (Mar. 8, 2022, 1:52 PM), <https://www.nfl.com/news/broncos-acquiring-seahawks-qb-russell-wilson-in-trade-for-multiple-first-round-p> [<https://perma.cc/KD8Q-QB86>].

¹³³ Joe Rivers, *Aaron Rodgers Timeline: A Series of Events That Led to Packers Rift, Ignited Trade Rumors*, SPORTING NEWS (June 17, 2021), <https://www.sportingnews.com/us/nfl/news/aaron-rodgers-trade-timeline-packers/xrcz2aqqc3n41704v4u5dckph> [<https://perma.cc/NLA8-N4F9>].

¹³⁴ See *Super Bowl History*, *supra* note 83.

¹³⁵ See Rivers, *supra* note 133.

¹³⁶ See *id.* In some ways, this draft pick mirrored the Packers drafting Rodgers while Brett Favre was still its star quarterback. Maggie Hendricks, *Is History Repeating Itself in Green Bay?*, KATV (May 1, 2021), <https://katv.com/news/nation-world/is-history-repeating-itself-in-green-bay> [<https://perma.cc/QQA2-H4GE>]. But see Bill Bender, *Why Aaron Rodgers-Jordan Love Drama Doesn't Compare to Favre-Rodgers in Green Bay*, SPORTING NEWS (April 24, 2020), <https://www.sportingnews.com/us/nfl/news/aaron-rodgers-jordan-love-brett-favre-green-bay-packers-quarterback-drama/1oy72uxmg9trh1e635p4b4r8ni> [<https://perma.cc/Z826-FJ6N>].

¹³⁷ See Rivers, *supra* note 133. Given Rodgers' age (37 in 2021), such an assumption was not so unrealistic.

tion had mistreated him, which included its decision not to solicit his input on personnel decisions.¹³⁸

Going further than Wilson, Rodgers refused to report for minicamps all summer and pressured the Packers through the media to trade him.¹³⁹ The Packers responded by offering statements of support for Rodgers, while steadfastly refusing to trade him.¹⁴⁰ Despite the caliber of Rodgers' talent, he was unable to force the team to trade him. Throughout the entire summer of pressure imposed by Rodgers, the team remained steadfast. Rodgers ultimately caved in, ended his holdout, and reported for camp prior to the season.¹⁴¹ He played quarterback for the Packers in the 2021 season.¹⁴²

The Packers reportedly considered trading Rodgers after the 2021.¹⁴³ They instead decided to keep him, largely by offering him a new lucrative contract and convincing him to stay by patching up their prior differences. Ultimately, Rodgers decided he wanted to stay with the Packers.

III. RETHINKING PLAYER MOVEMENT

Given the obstacles to star players switching teams, the question becomes: what can the respective players associations and the athletes themselves do to enhance their ability to switch teams? There are two promising

¹³⁸ See *id.*

¹³⁹ Bill Huber, *Report: Rodgers Will Skip Mandatory Minicamp*, SPORTS ILLUSTRATED (June 7, 2021), <https://www.si.com/nfl/packers/news/rodgers-will-not-report-to-minicamp> [<https://perma.cc/32EW-6B4R>]. Rodgers went to Hawaii instead. Jaclyn Hendricks, *Aaron Rodgers Lives It Up in Hawaii with Shailene Woodley, Miles Teller*, PAGE SIX (May 26, 2021), <https://pagesix.com/2021/05/26/aaron-rodgers-hits-hawaii-with-shailene-woodley-miles-teller/> [<https://perma.cc/MS7Y-6ZM2>].

¹⁴⁰ See Rivers, *supra* note 133.

¹⁴¹ Jesse Pantuosco, *Aaron Rodgers Ends Holdout from Packers, Reports to Training Camp Tuesday*, AUDACY (July 27, 2021, 10:35 AM), <https://www.audacy.com/sports/nfl/aaron-rodgers-ends-holdout-reports-to-training-camp-tuesday> [<https://perma.cc/2C95-JZ5E>].

¹⁴² Despite another stellar season, Rodgers and the Packers lost in the playoffs prior to reaching the Super Bowl, this time to their arch-nemesis San Francisco 49ers. See Matt Maiocco, *What We Learned as 49ers Pull Off Miraculous Comeback vs. Packers*, NBC SPORTS (Jan. 22, 2022), <https://www.nbcsports.com/bayarea/49ers/49ers-observations-packers-shocked-sf-pulls-miraculous-comeback> [<https://perma.cc/58QU-5EF3>].

¹⁴³ Jacob Camenker, *Aaron Rodgers Contract Details: Why Packers QB May Have Played Last Game in Green Bay*, SPORTING NEWS (Jan. 23, 2022), <https://www.sportingnews.com/us/nfl/news/aaron-rodgers-contract-details-packers/oszcukxe7v1k1lgs83rlflow5> [<https://perma.cc/347J-ZGWE>].

pathways to creating such opportunities—reform of free agency and contractual opt-outs.

A. *Reforming Free Agency*

Owners have traditionally opposed free agency, and even when they allow for its existence in collective bargaining, they seek to limit its extent. The primary incentive is to avoid costly bidding wars that drive up the salaries of free agents. In the NBA in particular, there is a long history of overpaying mediocre players because they were the best option in the market.¹⁴⁴ In the NFL, the owners collectively bargained for a “franchise tag” that allows the team to extend a player’s contract for a year at a set price to delay the player’s entry into free agency. And MLB just ended a labor dispute that, at its heart, stemmed from the decreased desire of owners to pay players large salaries in free agency.

Given that decreasing restrictions on free agency increase the costs of player salaries, league owners will not be eager to adjust the terms of free agency. As a result, players will have to collectively bargain for this right.

One problem that might dissuade players from pushing for increased movement and decreased restrictions on free agency is that many of the players might care more about securing a financial floor than about opening the market to a greater possible ceiling. The high level of turnover at the lower level of professional sports drives the concern of most players to the current contract, not the future one.¹⁴⁵

And yet, opening up the market will ultimately raise compensation for everyone, as competition will drive player compensation, and player compensation will not be subject to artificial limits set by billionaire team owners. A main difference between the labor market in professional sports and other industries is the irreplaceability of the elite players. There are a limited number of athletes who can perform at the level required to succeed in the NFL, NBA, or MLB. As such, their leverage in the market should be greater than those in other fields in which the workers are more replaceable.

Unions must balance the goal of securing a minimum level of compensation and working conditions with the ability of individuals to negotiate salaries to a level that the market allows. Without unions, owners would be unable to use salary caps, impose player drafts, or place limits on free

¹⁴⁴ Indeed, the last negotiated NBA collective bargaining agreement included an amnesty provision that allowed teams to pay off such contracts and not count them against the salary cap.

¹⁴⁵ This is especially true in the NFL, where the average career is under four years.

agency.¹⁴⁶ The extent to which the players give up the open market that would otherwise be available in exchange for collectively bargained benefits should make sense. In other words, the collective bargaining agreement must give an advantage to the collective bargainers. For some superstar athletes, this may not be the case.¹⁴⁷

Contrary to popular belief, however, bargaining for freedom of movement would help all of the players. The creation of super-teams would drive interest in the league year-round and could increase overall league revenue.

B. Contractual Opt-Outs

A second approach, outside of collective bargaining, would be for players to incorporate opt-outs in their contracts. With elite players, this practice is becoming increasingly common, at least for the last year of the contract.

Historically, athletes wanted longer contracts to secure their future position on the team. In baseball, where contracts are guaranteed, this has been a profitable strategy, with star players signing contracts for terms as long as ten years. In football, that strategy is fruitless because the contracts are not guaranteed, and players can be cut at any point without economic consequence. As a result, NFL players seek large signing bonuses, where the compensation is guaranteed because it is paid in advance.¹⁴⁸

A recent strategy among star NBA players has been to shorten the length of their contracts. The athletes risk injury but get increased flexibility. The short, two-year or three-year contracts enable a player to choose to join another team when it becomes desirable. And the NBA contracts are generally guaranteed. Opt-out provisions give the team or the player (depending on who holds the option) the ability to continue the contract for an additional year or terminate it. Some players then will sign a three-year contract with the option to opt-out after two years.

An obstacle that both NFL and NBA players face in considering how long of a contract to sign relates to the salary cap. The NFL's hard cap, which limits how much a team can pay a particular player. The NBA has a

¹⁴⁶ Gabriel Feldman, *Antitrust Versus Labor Law in Professional Sports: Balancing the Scales After Brady v. NFL and Anthony v. NBA*, 45 UC DAVIS L. REV. 1221, 1229-30 (2012).

¹⁴⁷ The disagreement over whether to participate in the 2020 All-Star Game demonstrates this conflict. Stars like LeBron James argued for canceling the event, but the union membership voted in favor of having the event.

¹⁴⁸ Some NFL players have, in recent years, been able to negotiate partially guaranteed contracts, although this is not the norm.

more flexible cap, but the same issues exist, limiting the amount of compensation available to a player. If a player is trying to build a super-team, the player must figure out how to get all of the star players under the salary cap.¹⁴⁹

The idea of opt-out contracts would help create additional freedom for athletes. Athletes could place the option in the middle of the contract instead of at the end. For instance, athletes could sign four-year or five-year contracts with an opt-out after one or two years. This would allow for athletes to escape bad marriages with teams, or otherwise test their value in the market after particularly successful seasons. Having one opt-out also would provide some predictability to general managers while still maintaining flexibility for the athlete.

Standardizing this approach makes sense in the NFL in particular where, at the moment, the teams have all of the power. Without guaranteed contracts, the term-contract an NFL player signs is the equivalent of an at-will contract. The team would not lose power with opt-out contracts, but the player would gain autonomy.

Teams would also be more likely to trade disgruntled players if the player could opt-out within a year. The opt-out provision would encourage the team to try to get value for the player rather than the player just leaving as a free agent.

C. Basketball As a Unique Situation?

The initial success of Davis and Harden in forcing trades as compared to Watson, Wilson, and Rodgers who did not initially succeed suggests that the “forcing a trade” strategy might not be a successful approach outside of the NBA. In the NBA, the impact of one player can be the difference between winning a championship and not really competing for one. Historically, the third superstar player has resulted in championships for many teams. And with only five players per team in the game at one time, one player can influence the outcome in a way that players in football (with 22 players, not counting special teams) and baseball (10 players) cannot.¹⁵⁰

¹⁴⁹ In Miami, James, Bosh, and Wade agreed on salary reductions so that all could fit under the cap. In the case of the Warriors, an unusual bump in the salary cap because of increased revenue gave the Warriors the room to sign Kevin Durant.

¹⁵⁰ Hockey, with five players plus a goalie on ice at a time, might seemingly offer a similar opportunity for individual dominance. *See, e.g.,* Wayne Gretzky, STATMUSE, <https://www.statmuse.com/nhl/player/wayne-gretzky-2501> [<https://perma.cc/2WHF-D2TD>] (last visited July 5, 2022) (noting Gretzky’s nickname as

Even with quarterbacks in the NFL, for instance, one player can only succeed at a championship level with other good offensive players, a decent offensive line, and a reasonably good defense. One player can tip the balance, but not in such a way that a team might sacrifice to get the player at all costs.¹⁵¹ Similarly, a dominant pitcher in baseball will not have the same kind of trade-forcing power because the pitcher only plays every fifth day. And a fantastic hitter still depends on others in the lineup to get on base to be able to have a dominant impact on the outcome of a game.

As a result, it seems unlikely that the force-a-trade strategy of Davis and Harden will be successful in other professional sports in the near future. It is possible that other NBA players may try to follow the lead of Davis and Harden in the future.

D. Exploring the Value of Player Movement

In the long run, increasing player movement is a positive development for the functioning of professional sports leagues. It invites the athletes into a greater stake in the capitalistic side of the sport. Freer markets allow individuals to reap their true value in the marketplace, rather than one set by league owners.

The volume of money generated by professional sports continues to grow, and professional sports continue to face challenges concerning how to share that revenue. Owners make every effort to cap the amount of revenue that athletes receive. Collective bargaining relationships have kept these figures around fifty percent of league revenue in most sports.¹⁵²

To be sure, the effect on all players will not be the same. The elite athletes will receive a greater share of the profit than the marginal ones. But that is generally how free markets work—those that can offer a superior product or service receive higher pay.

There are other advantages to increased player movement. The fan interest often grows with the addition of a new player. The new player's game against his former team becomes "must-see" television. The new player can excite the fan base, even if he is unable to deliver a championship; the new-found competitiveness that a new player offers may be enough to provide hope and reinvigorate interest.

The trend toward gambling driving sports interest also resonates with the idea of increased player movement. New players in new situations in-

the "Great One"). But hockey players typically only spend 2-3 minutes at a time on the ice before switching out for other players because of fatigue.

¹⁵¹ See *supra* note 90.

¹⁵² See generally *supra* notes 8, 9, and 10.

creases unpredictability, makes outcomes more uncertain, and allows for players to thrive in new situations.

Increased player movement also allows players to escape bad situations. The draft can cause players to end up on teams that make their individual success difficult if not impossible. Despite teams' best efforts, sometimes players just do not fit. But limiting the ability to move to teams deciding to trade players limits player autonomy and makes it likely that years will be wasted in bad situations. If leagues insist on having drafts and preventing players from choosing which team they want to play for, then players should bargain for the right to structure contracts in a way that allows them to escape bad situations.

Interestingly, allowing increased player movement might not result in a proliferation of super-teams. Sometimes less-talented individuals that have a longer history playing together are able to defeat more star-laden rosters that have not gelled.

The increased player movement could also help address the recent phenomenon of tanking. In the NBA in particular, there has been a growing problem of teams giving up winning for multiple years in order to assemble championship teams.¹⁵³ With more frequent player movement, waiting for the next lottery pick would not be the favored approach; creating a core of players who opt out to play together would be a favored strategy.

CONCLUSION

This paper has sought to explore the recent phenomenon of athletes exerting increased autonomy over their choice of teams in professional sports. In doing so, it has questioned long-held values in favor of home town stars; parity; and paternalistic, anti-capitalistic restraints on player movement. It then suggested that athletes should strive to broaden their freedom of movement by collectively bargaining for decreased restrictions on free agency and incorporating opt-out provisions into their contracts. Finally, the paper concluded by highlighting the benefits of increased player movement in professional sports.

¹⁵³ Former 76ers general manager Sam Hinkie termed this approach "The Process."

