

HAIL MARY: CONSIDERING ALTERNATIVES TO THE NCAA’S  
INACTION TO REMEDY DISCRIMINATORY HIRING  
PRACTICES IN DIVISION I FOOTBALL

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“February is...the month that high school football players choose the college that 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...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.”<sup>1</sup>

- Tony Dungy, NFL Hall of Fame Head Coach

INTRODUCTION

Over a decade later, Tony Dungy’s words still reflect the disappointing reality of the state of Black head coaches in the National Collegiate Athletic Association (NCAA) Football Bowl Subdivision (FBS). The current changing tides in the modern-day sports landscape

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1. Tony Dungy, *Diversity Everywhere but the Sidelines*, N.Y. TIMES (Feb. 19, 2009), <http://www.nytimes.com/2009/02/20/opinion/20dungy.html> [<https://perma.cc/2DR5-FYK5>].

makes now the perfect time to understand the crux of the racial disparity issue in an effort to target the groups best suited to ameliorate the issue. At a time where the governance model of the NCAA is in flux, many are calling for federal and state intervention. The changing tides in the modern-day sports landscape make now an appropriate time to revisit the dilemma. This Essay describes racial disparity obstacles in NCAA hiring practices and identifies an array of possible actors best suited to make the fix.

Section I presents statistics that demonstrate the severity of the head coach diversity issue in Division I (DI) NCAA football. Section II seeks to document the NCAA's official response and action steps the entity has implemented to remedy the situation. Section III outlines the most commonly suggested "fix": The Robinson Rule. This section will introduce the NCAA version of the National Football League's (NFL) Rooney Rule and explain why the NCAA has refused to enforce it. Next, Section IV will briefly discuss alternatives to the Rooney Rule that may lead to a solution that appoints qualified Black head coaching positions proportionate to Black student athlete's involvement in the NCAA. Finally, Section V concludes with a call to action.

#### I. THE STATE OF RACIAL DISPARITY IN DI HEAD COACHING POSITIONS

The issue of imbalanced coaching demographics exists on many planes across the NCAA. Take for instance the gender consideration. In 2020, women made up forty-four percent of the NCAA's student-athletes with 222,920 participating women while men comprised fifty-six percent with 281,699 participants.<sup>2</sup> Collegiate athletes' gender makeup is relatively equal, however when we consider who coaches these athletes, a different image emerges. Men make up seventy-five percent of the head coaches in the NCAA with 15,194 head coaches across all sports in 2020.<sup>3</sup> Women, by contrast, make up only twenty-five percent with just 5,039 head coaches.<sup>4</sup> Thus across the NCAA, men do and are more likely to hold head coaching positions in both women's and men's sports. This is a disparity that exists throughout the NCAA and needs immediate attention, but it is outside the scope of this Essay. Instead, this Essay will narrow in specifically to review the racial disparity in football head coaches at the DI-FBS level. Additionally, this Essay will refer only to "Caucasian/White" and "African-American/Black" racial demographics. The NCAA considers seven separate racial demographics in its data research: Black, Hispanic/Latino, Native Hawaiian/Pacific Islander, Nonresident Alien, two or more races, Unknown, and White. The

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2. Demographics by Gender for the year 2020, NCAA <https://www.ncaa.org/about/resources/research/ncaa-demographics-database> [<https://perma.cc/YSV6-NTM4>].

3. *Id.*

4. *Id.*

discussion is limited to only two races because representation by White coaches highlights a proverbial “default” to be measured against and coaches identifying as Black are the closest to achieving parity by the numbers. The intent is not to leave out other racial minorities; it is the opposite. Hopefully, demonstrating the substantial gaps between the racial players in slots one (Caucasian/White) and two (African-American/Black) exacerbates the importance of racial disparity issues both as they relate to the remaining racial demographics and as a whole.

For the last nine years, Black student-athlete participation in DI football has increased from 12,670 to 14,160 participants.<sup>5</sup> During the same period, similarly situated White student-athlete participation has decreased from 11,798 to 10,666 participants.<sup>6</sup> Remarkably, however, the outcome switches when the input “student-athletes” is replaced with “head coach.” From 2012–2020, White head coaches at the DI level increased from 199 to 210, peaking at 211 White head coaches in 2019<sup>7</sup> while similarly situated Black head coaches decreased from 45 in 2012 to 40 in 2020.<sup>8</sup> The number of Black head coaches peaked at 45 in 2012, the first year recorded and spent four of the next eight years bottoming out at 38 head coaches.<sup>9</sup> Of the 66 head coaches in the FBS division, ten identified Black in 2020—their highest representation of the recorded period.<sup>10</sup> White head coaches, in contrast, held 52 of the head coaching positions in 2020.<sup>11</sup>

These statistics, collected and published by the NCAA, reveal that the head coaching position is not proportionate to student-athlete participation on racial grounds. At this point, one might wonder why this disparity matters given that the present system has a demonstrated ability in ushering all parties, athlete and coach alike, to success. The importance lies within the one group being left out: the class of qualified coaches that belong to a racial minority and are therefore overlooked for the most coveted position on the sideline. The answer is a simple one: this issue implicates an interest in general fairness.

The discrimination of racial minorities at the head coaching level of NCAA football ran so rampant that it caught federal attention in 2007

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5. NCAA Demographics Database Spreadsheet for Student Athletes and Coaching Staff for the years 2012–2020, NCAA <https://www.ncaa.org/about/resources/research/diversity-research> [<https://perma.cc/9Y5T-4NVB>] (following hyperlink; then clicking “NCAA Demographics Database”).

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. Demographics of student athletes and coaching staff by sport, NCAA, <https://www.ncaa.org/about/resources/research/diversity-research> [<https://perma.cc/LNN5-QE6G>] (following hyperlink; then clicking “NCAA Demographics Database”).

11. *Id.*

when Congress held a hearing on the lack of diversity in leadership positions in NCAA collegiate sports. In his opening address Representative Bobby Rush (D-IL), the chairman of the subcommittee holding the hearing, outlined why this issue matters:

First, athletic scholarships are often the only way qualified students from disadvantaged backgrounds can obtain a college education. A large percentage of these student-athletes are minorities and it is extremely important that these young men and women have access to role models and mentors who reflect their diverse background. . . . Second, NCAA college sports is literally a multibillion dollar business . . . [t]he fact that a sizable portion of this billion-dollar revenue stream is being generated by minority student-athletes but minorities are not part of the upper tier of strategic and decision-making leadership roles presents a disturbing two-tier situation that should raise a lot of eyebrows and a lot of tough questions.<sup>12</sup>

It is important to note that at the time of Representative Rush's remarks in 2007, only about six percent of Division I-A football head coaches were Black.<sup>13</sup> The NCAA structure has changed since then,<sup>14</sup> but the head coach statistic has only shifted up by ten percent.<sup>15</sup> At the time of this Essay's drafting, Division I head coaches sat at just over fifteen percent Black head coaches.<sup>16</sup> Evidence of progress over the last thirteen years should not be taken to mean that the problem has been resolved. However, it is beneficial to highlight the strides toward progress. As discussed in the next section, the NCAA has been long aware of the discrepancy and, according to them, have been working to remedy it.

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12. *The Lack of Diversity in Leadership Positions in NCAA Collegiate Sports: Hearing Before the Subcomm. on Com., Trade & Consumer Prot. of the H. Comm. on Energy & Com.*, 110th Cong. 2 (2007) (statement of Bobby L. Rush, Congressman from Illinois).

13. *See id.* (explaining that 119 college football programs were considered affiliates of NCAA's Division I-A designation, and only seven of those programs had African-American head football coaches).

14. *See* Michelle Brutlag Hosick, *Board Adopts New Division I Structure*, NCAA (Aug. 7, 2014, 11:49AM), <https://www.ncaa.org/news/2014/8/7/board-adopts-new-division-i-structure.aspx> [<https://perma.cc/Y4QW-2FVK>] (explaining that in 2014, the NCAA restructured schools and conferences to give student athletes more of a voice in decision-making "at every level").

15. *Compare id.*, establishing that only about six percent of D1 Football Head Coaches were Black in 2007, *with infra*, note 16.

16. *See* NCAA, *supra* note 10 (showing that per the NCAA, of the 63 football programs in the FBS Autonomy division, 8 had black head coaches in 2020).

## II. THE NCAA'S COMMITMENT TO CHANGE

Myles Brand, the fourth president of the NCAA, repeatedly commented on the disparity in head football coach hires during his tenure from 2002 to 2009.<sup>17</sup> In a State of the Association address, for example, Brand commented that “the proportion of ethnic minority head football coaches is inexcusably low.”<sup>18</sup> In another instance, he acknowledged that “college football head coaching was the most segregated position in all of collegiate athletics.”<sup>19</sup> In his comments at the 2007 Congressional subcommittee hearing, Brand noted:

Chief among [the challenges of the NCAA], in my view, is the dismal record of hiring people of color as head coaches, especially in football. . . . Sadly, if the pace of progress remains the same, it will be more than 80 years before we reach a percentage that even approximates the number of African-Americans in the general population...this is not only unacceptable, it is unconscionably wrong.<sup>20</sup>

Brand posited that to be most helpful, the NCAA should do two things: first, call attention to the problems and publicize best practices for hiring searches, and secondly, help prepare minority candidates for the search process.<sup>21</sup> His tenure saw the development and implementation of nineteen programs to achieve these ends.<sup>22</sup> After he passed away in 2009, Mark Emmert took over as the fifth president of the NCAA and continued Brand's commitment to the issue of racial discrimination in head coach hiring practices. Just days after taking the reins of the NCAA, Emmert went on record saying that “the fact that we have to grow diversity among the coaching ranks . . . is self-evident.”<sup>23</sup> As discussed in Section IV *infra*, Emmert continues to comment on and consider avenues to address the issue, though nothing has been formally enacted since Brand's tenure came to an end.

Despite official NCAA efforts to address the issue, racial minorities remain without head coaching positions at alarming rates compared to their White male counterparts. The number of hired minority head coaches remained steady at around five percent before the NCAA

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17. *See infra*, notes 18–22.

18. Myles Brand, President, NCAA, State of the Association, *In All, Fairness*: (Jan. 6, 2007), <https://mylesbrand.com/wp-content/uploads/2007/01/2007-NCAA-State-of-the-Association.pdf>).

19. Justin Pike, *From the Rooney Rule to the Robinson Rule: NCAA Football and the Quest for Equal Opportunity in Head Coaching*, 3 WIDENER J.L. ECON. & RACE 26, 44 (2011).

20. *The Lack of Diversity in Leadership Positions in NCAA Collegiate Sports: Hearing Before Congressional Subcommittee*, *supra* note 12.

21. Brand, *supra* note 18.

22. *Id.*

23. Pike, *supra* note 19.

development programs were in place and throughout the implementation of Brand's programs.<sup>24</sup> It is clear that even with the addition of the "Brand era" programs and the public denunciations of the issues with minority hiring practices, the issue remains. The predicament begs the question: How can this issue be remedied? Many have turned to the NFL for a potential answer.

### III. THE ROBINSON RULE

The NFL faced a similar problem with racial minority head coach hires. The first Black head coach came in 1921, the second would not come until 1989—sixty-eight years later.<sup>25</sup> After a report publicized the reality for Black coaches in the NFL—among the conclusions, that NFL team owners expected far more from Black head coaches than their White counterparts<sup>26</sup>—the NFL sprang to action. The NFL Commissioner created a committee on workplace diversity tasked with coming up with best practices for minority hiring.<sup>27</sup> The committee's recommendation resulted in the implementation of the league-wide mandate now known as the Rooney Rule.<sup>28</sup> The Rooney Rule requires:

all NFL teams to interview a minority candidate [face to face] before making a final decision in their quest for a new head coach. . . . Teams are 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. Finally, the NFL reserves the right to fine teams \$500,000 for non-compliance.<sup>29</sup>

The rule initially saw success in the NFL and was lauded when just a few years after its implementation, two Black head coaches faced each other in the Super Bowl.<sup>30</sup> However, almost 20 years after the Rule's implementation, a lawsuit by former Black NFL Head Coach Brian Flores called into question the Rooney Rule's overall success. In

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24. See Hannah Gordon, *The Robinson Rule: Models for Addressing Race Discrimination in the Hiring of NCAA Head Football Coaches*, 15 *SPORTS L. J.* 1, 14 (2008).

25. Pike, *supra* note 19, at 31–32.

26. *Id.* at 32.

27. *Id.* at 33.

28. *Id.* at 33–34.

29. Pike, *supra* note 19, at 34–35 (Note that this is the initial requirement of the Rooney Rule. Amendments now apply that extend the Rooney Rule to hiring practices of certain front office positions, assistant head coach, coordinator positions, and general managers. See Complaint in *Flores v. Nat'l Football League*, *infra* note 31).

30. In 2005, Black head coaches Lovie Smith (Chicago Bears) and Tony Dungy (Indianapolis Colts) became the first Black head coaches in a Super Bowl game. *Id.* at 36.

February 2022, Flores filed a class action lawsuit against the NFL and each of its 32 teams alleging hiring discrimination against Black candidates. In reference to the Rooney Rule, the complaint alleged:

Since its passage, the Rooney Rule has been amended several times in an effort to strengthen its impact on diversity and inclusion, or to at least appear to do that. It now applies to General Manager and other front office positions, as well as Assistant Head Coach and Coordinator positions. Moreover, teams are now required to interview two minority Head Coach candidates, and at least one in person. However, the Rooney Rule has failed to yield any meaningful change to an institution so fully steeped in discriminatory practices.<sup>31</sup>

Still, because of its initial trajectory in the NFL, it is no surprise that many call for a similar rule to be implemented at the NCAA level. The proposed NCAA counterpart has been dubbed “The Robinson Rule” after legendary Grambling State football head coach Eddie Robinson.<sup>32</sup> Coach Robinson remains the third-winningest coach in college football history and is famous for having sent over 200 players to the NFL during his career at Grambling State.<sup>33</sup> Notwithstanding his resume and a long list of accolades, however, Coach Robinson was never considered for a coaching position at the DI level.<sup>34</sup> Despite wide support for such a rule and a clear demonstration of the need for some kind of intervention, the NCAA has declined to impose any such rule on its member institutions thus far.<sup>35</sup>

#### IV. NCAA REJECTION OF THE ROBINSON RULE

Myles Brand argued that the hiring of head coaches is solely within the purview of the NCAA’s member institutions. According to him, an NCAA Robinson Rule would inevitably fail since schools do not want to give up autonomy and yield authority to the NCAA to streamline the hiring process.<sup>36</sup> The NCAA renewed its rejection of the Robinson Rule as recently as November 2020 when the NCAA Committee to Promote Cultural Diversity and Equity was tasked with identifying and

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31. Complaint at 25, *Flores v. Nat’l Football League et al.*, No. 1:22cv871 (S.D.N.Y. 2022).

32. Pike, *supra* note 19, at 42.

33. *See* Gordon, *supra* note 24, at 2 (Grambling State is a historically black university).

34. *Id.* at 2–3.

35. Adam Rittenberg, *No Action from NCAA Committee on Pair of Minority Hiring Policies* ESPN (Nov. 13, 2020), [https://www.espn.com/college-sports/story/\\_/id/30312570/no-action-ncaa-committee-pair-minority-hiring-policies](https://www.espn.com/college-sports/story/_/id/30312570/no-action-ncaa-committee-pair-minority-hiring-policies) [<https://perma.cc/8SC5-FPFL>] (Last considered in 2020, the NCAA refused to action on an association-wide rule that would mandate a college-level Rooney Rule.).

36. Pike, *supra* note 19, at 42.

considering policies that would broaden minority hiring.<sup>37</sup> Although Mark Emmert wrote a letter reinforcing the commitment to remedying the issue,<sup>38</sup> the committee ultimately declined to vote on the Robinson Rule and a similar alternative, citing legal reasons: “[t]he NCAA is a voluntary association with public and private members who are subject to different laws . . . [t]hus, the NCAA cannot mandate the individual hiring practices of colleges and universities or campus employment practices. As a result, the employment decisions are made at the individual campus level.”<sup>39</sup>

Although the legality of the Robinson Rule is outside the scope of this Essay, it is worth noting here that some argue that the NCAA’s justification for refusing to implement the Rule is a farce. Justin Pike, for example, contends that it is the “very nature” of the NCAA to impose such rules.<sup>40</sup> He points to the NCAA’s lengthy manual as evidence of their practice of usurping authority from member institutions through NCAA regulations.<sup>41</sup> The reality remains, however, that the NCAA is reluctant to conform to this view. One must then consider what, if any, avenues exist to get the ball rolling in the event the NCAA remains idle.

## V. ALTERNATIVES TO NCAA ENFORCEMENT

Several alternatives to remedy the disparity between minority head coaches and student athletes have been considered and attempted in the past. This section will briefly discuss three of those alternatives: shifting the responsibility to individual institutions, a private lawsuit to compel change, and legislative changes.

### A. *Shifting the Responsibility*

A person sympathetic to the NCAA’s justification that it lacks the power to compel the schools’ action might suggest that the solution to this issue is to shift the responsibility. Instead of the NCAA, put the onus on the individual institutions to make an internal change. While this thought is not without merit, a recent study by Guillermo Ortega, Z.W. Taylor, and Joshua Childs illustrate why such a move does little, if anything, to remedy the situation. The researchers conducted a study on athletic mission statements from NCAA member institutions to calculate the level of importance the athletic departments at these institutions place

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37. Rittenberg, *supra* note 33.

38. *Id.* (In a letter obtained by ESPN, Mark Emmert wrote “[w]e know the Association and its members have more work to do around racial justice and fostering inclusive environments. . . . I look forward to our continuous engagement in this meaningful work to ensure an equitable and inclusive environment for all.”).

39. *Id.*

40. Pike, *supra* note 19, at 43.

41. *Id.*

on diversity.<sup>42</sup> A mission statement generally “represents campus-wide values, expectation[s] for student-learning and development and campus priorities . . . [M]ission statements have developed into instruments that shape the institution’s culture and goals, help create the institution’s purpose[,] . . . help represent the strategic process of institutions and are used to state an institutions commitment to diversity.”<sup>43</sup>

The results found that member institutions do not adhere to the NCAA’s inclusion statement stating that “athletes, coaches, and *administrators must commit to diversity, inclusion, and gender equity.*”<sup>44</sup> Across the 250 NCAA member institutions included in the study, only 29 published athletic diversity statements.<sup>45</sup> What is more:

Although the NCAA has posited that diversity, equity, and inclusion are organizational priorities, data in this study suggests that some member institutions express their beliefs and values toward diversity in terms of women and gender: rarely of race, if at all. Subsequently, for the NCAA to better convey its message of diversity, equity, and inclusion amongst all of its members, the NCAA must make clear their own stance toward diversity in all of its forms, including gender and race.<sup>46</sup>

If we assume that the takeaways from the study into athletic diversity statements are reflective of the athletic departments’ priorities (that institutions tend to think of and prioritize diversity in the athletic sense as a question of gender diversity),<sup>47</sup> it is not a logical leap to see that yielding to institutional controls puts diverse head coach prospects in a worse position. This method is unlikely to be successful.

### B. Title VII Lawsuit

Alternatively, a private suit brought by a well-poised plaintiff might have the potential to stir change. Title VII of the Civil Rights Act is the prohibition of discrimination on the basis of sex, race, religion, color, or national origin in the workplace.<sup>48</sup> Cases brought under Title VII

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42. Guillermo Ortega et al., *What Are We Saying by Saying so Little? Mission Statements, Diversity Mission Statements, and NCAA Programs*, in J. DIVERSITY IN HIGHER EDU. 1, 1 (2020).

43. *Id.* at 2.

44. *Id.* at 2 (emphasis added).

45. *Id.* at 6.

46. *Id.* at 8 (emphasis added). *See also id.* at 5 (“the majority of athletics mission statements do not discuss diversity, and those that do are primarily focused on gender with few focused on race”).

47. *See id.* at table 5 (showing that of the twenty-nine commonly used words among examined athletic diversity statements, racial diversity ranked 21st on the list with only ten occurrences, while gender ranked 7th with twenty occurrences).

48. Civil Rights Act of 1964 § 7, 42 U.S. § 2000e et seq. (1964).

normally proceed under one of three broad categories of theories: individual disparate treatment, systemic disparate treatment, or disparate impact (of a facially neutral rule or practice).<sup>49</sup> Though a racial minority kept out of a head coach position can arguably construct a suit under any theory, a coach would presumably sue under a disparate treatment theory<sup>50</sup> and thus, disparate treatment will be the focus of this Section.

In order to establish a *prima facie* case under a disparate treatment theory, the plaintiff will need to show several elements. First, that the plaintiff is part of a protected class. Second, that the plaintiff was subjected to adverse job action. Third, that the employer treated similarly situated employees of other races more favorably, and finally, that the plaintiff was qualified to do the job.<sup>51</sup> Once established, the burden shifts to the employer to prove that the challenged conduct was not a result of the plaintiff's status in a protected class.<sup>52</sup> A plaintiff can still ultimately prevail if they show that the employer's reasons were a "pretext for unlawful discrimination."<sup>53</sup>

Despite the burden shift, no DI head football coach has filed such a complaint to be analyzed, presumably because the cost to the plaintiff would be the forfeiture of their career.<sup>54</sup> Perhaps, however, a viable threat of legal scrutiny towards the NCAA or NCAA member institution would provide enough of a catalyst for sparking change.

Brian Flores' recent class action lawsuit against the NFL may shed light on another cause of action under the Civil Rights Act available to minority coaches. Flores alleges discrimination under Section 1981 of the Civil Rights Act, in lieu of a Title VII challenge, to attack discriminatory hiring practices.<sup>55</sup> At the time of this Essay's writing it is too early to determine the impact of Flores' claim, however, a few initial takeaways illuminate integral factors that would punctuate a similar lawsuit at the NCAA level.<sup>56</sup>

First, Flores' discrimination claim takes the NFL's Rooney Rule into account and alleges that the interviews held in compliance with the rule

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49. Gordon, *supra* note 24, at 6.

50. Bram Maravent & Ben Tario, *Leveling the Playing Field: Can Title VII Work to Increase Minority Coaching Hires in NCAA Athletes*, 81 FLA. BAR J. 42 (2007). (retrieved from: <https://www.floridabar.org/the-florida-bar-journal/leveling-the-playing-field-can-title-vii-work-to-increase-minority-coaching-hires-in-ncaa-athletes/> [https://perma.cc/QJR3-BTHG]).

51. *Id.*

52. Gordon, *supra* note 24, at 7.

53. *Id.*

54. *Id.* at 8.

55. See Flores, *supra* note 31, at 52.

56. At the time of this Essay's writing, no Answer has been filed on behalf of the defendants in Flores v. Nat'l Football League, et al. All conclusions drawn in this Article from the lawsuit, therefore, are derived from the Complaint alone.

are a sham and evidence of discrimination.<sup>57</sup> Secondly, Flores' discrimination claim appears to rest on a text message that suggests Flores had no chance at a successful interview as smoking gun proof of discrimination.<sup>58</sup> Thus, it would likely be harder to allege discrimination in a similar suit on the NCAA level since there is no Rooney Rule equivalent in the NCAA, and—at least until now—there is no evidence that can be reasonably construed as a smoking gun of hiring discrimination.

### C. *The Legislative Route*

Others have stressed the consideration of official legislation to remedy the issue. In 2008, the state of Oregon unanimously approved a bill that requires state universities to interview at least one minority candidate when selecting a head coach.<sup>59</sup> Inspired by the Rooney Rule and concerned with the NCAA's inaction, Oregon decided to address the issue head on.<sup>60</sup> The state has seen an increase in minority hiring since it passed the law over a decade ago. Portland State and Western Oregon University both have Black athletic directors.<sup>61</sup> In addition, since the law's passing, three of the four head football coaches hired at the University of Oregon have been from a minority origin.<sup>62</sup> Two, Willie Taggart and Bryan McClendon, are Black while Mario Cristobal is Latin American.<sup>63</sup> Due to this perceived success, other states have since considered similar alternatives, but none have passed any into law yet.<sup>64</sup>

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57. Flores, *supra* note 31 (“As described above, Defendants have discriminated against Plaintiff and the Proposed Class on the basis of race and/or color in violation of Section 1981 by . . . (ii) discriminatorily subjecting them to sham and illegitimate interviews . . .”). *Id.*

58. *See id.* at 36–39 (Three days before Flores' interview for a head coach position, New England Patriots Head Coach Bill Belichick mistakenly texted Flores, thinking he was another candidate, and congratulated Flores, who he thought was the other candidate, for landing the position Flores was scheduled to interview for). *Id.*

59. Pike, *supra* note 19, at 47.

60. *See* Affirmative action plan; interview of qualified minority applicants, Oregon Revised Statute § 352.281(2)(b) (2015) (“Each public university shall . . . Interview one or more qualified minority applicants when hiring a head coach or athletic director. . . .”) *Id.*

61. Patrick Hraby, *State Of Oregon's 'Rooney Rule' Shifts The Game*, GLOBAL SPORTS MATTERS (Sept. 24, 2020), <https://globalsportmatters.com/business/2020/09/24/oregons-rooney-rule-shifts-the-game/> [<https://perma.cc/VZN9-5G36>]

62. *See id.*

63. *See* Khobi Price, *Willie Taggart's roller coaster ride brings coach to FAU*, S. FLA. SUN SENTINEL (Sept. 15, 2020, 11:38 AM), <https://www.sun-sentinel.com/sports/fau-owls/fl-sp-fau-willie-taggart-20200915-nvzt7txvevbexk6mr7zllc3774-story.html> [<https://perma.cc/4ZMB-EEK4>]; Dennis Dodd, *Mario Cristobal has been fighting all his life; now he's doing it for the Oregon Ducks*, CBS SPORTS (Sept. 18, 2018, 11:34 AM), <https://www.cbssports.com/college-football/news/mario-cristobal-has-been-fighting-all-his-life-now-hes-doing-it-for-the-oregon-ducks/> [<https://perma.cc/R4DP-RVN7>].

64. *Id.*

In 2020, the West Coast Conference (WCC) became the first conference to adopt a rule mandating diverse consideration in hiring decisions.<sup>65</sup> The “Russell Rule,” named after legendary basketball Hall of Famer Bill Russell, requires that “each school within the WCC will have to include ‘a member of a traditionally underrepresented community’ in its final pool of candidates when hiring for key positions.”<sup>66</sup> This includes head coaches and assistant coaches as well as athletic director and senior administrator positions.<sup>67</sup> This development shows that it may be the conferences that are in the perfect position to take action through legislative measures.

Finally, federal legislative action may be on the table as an option to stir change. Though no legislative end came of the 2007 Congressional hearing on the subject, its mere occurrence might hint at the possibility of future action. Especially, given the current state of collegiate athletics and the propensity for federal intervention—now might be the perfectly poised time to lobby Congress and show that over a decade since they last reviewed the issue, it remains.

#### CONCLUSION

The NCAA constitution claims to aim for an inclusive and equitable culture,<sup>68</sup> but it cannot both maintain this claim and stand idly by as the age-old problem rages on. In the interim, an alternative actor must be identified and selected to implement the long-awaited change to balance the playing field. Whether it be the individual institutions, private action, or a legislative change, two things are certain: the time for change is now and there will be no success without a social backing of the cause. Thus, whether immediate action can be taken or not—one key action step to remain at the forefront of the battle to parity must never be forgotten. Summarized best by the late Myles Brand, we must never stop “call[ing] attention to these problem areas . . . .”

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65. Adam Rittenberg, *No Action from NCAA Committee on Pair of Minority Hiring Policies* ESPN (Nov. 13, 2020), [https://www.espn.com/college-sports/story/\\_/id/30312570/no-action-ncaa-committee-pair-minority-hiring-policies](https://www.espn.com/college-sports/story/_/id/30312570/no-action-ncaa-committee-pair-minority-hiring-policies).

66. *Id.*

67. Rob Goldberg, *West Coast Conference Adopts the ‘Russell Rule’ for Diversity Hiring Commitment*, BLEACHER REP. (Aug. 3, 2020), <https://bleacherreport.com/articles/2902891-west-coast-conference-adopts-the-russell-rule-for-diversity-hiring-commitment#:~:text=West%20Coast%20Conference%20Adopts%20the%20Russell%20Rule%20for%20Diversity%20Hiring%20Commitment,-Rob%20Goldberg%20Invalid&text=Similar%20to%20the%2022Rooney%20Rule,when%20hiring%20for%20key%20positions> [https://perma.cc/SWC8-ACZW].

68. Ortega et al., *supra* note 42, at 1.