Spring May 27, 2022

Minnesota: Decades of Decisions and Impact on Sports Law

Adam Epstein

Campbell Law Review

Volume 44
Issue 2 *Spring 2022*

Article 4

2022

Minnesota: Decades of Decisions and Impact on Sports Law

Adam Epstein

Minnesota: Decades of Decisions and Impact on Sports Law

ADAM EPSTEIN*

ABSTRACT

The purpose of this Article is to demonstrate that Minnesota provides one of the most substantial examples of how sport and the law intersect. The Article begins with the 1970s and explores, decade-by-decade, many of the major sports law claims, cases, judgments, and incidents associated with Minnesota. The state's flagship institution—the University of Minnesota Twin Cities—is the epicenter of many of these cases, providing examples of impropriety within institutional rules or the bylaws of the National Collegiate Athletic Association. Despite the many instances that the University of Minnesota Twin Cities has run afoul of NCAA rules, it is not the only campus or university in the state that provides sports law material. Minnesota has had a lasting effect on the Eighth Circuit Court of Appeals, professional sports, and labor relations of the sports world. Ultimately, this Article demonstrates that Minnesota must continue to be a part of the discussion in sports law.

* Professor, Department of Finance and Law, Central Michigan University.

INTRODUCTION

Over the last two years, the state of Minnesota has been the epicenter of national discussion and public debate involving trials related to discrimination, individual rights, and abuse of power, specifically with respect to criminal law. Buildings burned and protests raged over the death of George Floyd, who died in 2020 from Minneapolis police officer Derek Chauvin's use of excessive force.[1] Claims of racism sparked protests throughout the city and nation, and a jury found Chauvin guilty of second-degree murder, third-degree murder, and second-degree manslaughter.[2] Similarly, during the following year in Brooklyn Center, a suburb of Minneapolis, Kim Potter was convicted of manslaughter after the shooting and death of Daunte Wright.[3] In both cases, and others as well, claims of racism, police brutality

1. *See* Matt Furber, John Eligon & Audra D. S. Burch, *Minneapolis Police, Long Accused of Racism, Face Wrath of Wounded City*, N.Y. TIMES (Oct. 29, 2021), https://www.nytimes.com/2020/05/27/us/minneapolis-police.html [https://perma.cc/7NAC-9L84].

2. *See* Ashley Southall et al., *Derek Chauvin Trial: Chauvin Found Guilty of Murdering George Floyd*, N.Y. TIMES (Dec. 16, 2021), https://www.nytimes.com/live/2021/04/20/us/derek-chauvin-verdict-george-floyd [https://perma.cc/9HXS-3YN4] (noting that Floyd's death spurred the largest civil rights protests in decades and comparing it to the death of Eric Garner in Staten Island, New York, in 2014).

3. Associated Press, *Key Moments in the Police Shooting of Daunte Wright*, KTAR NEWS (Dec. 23, 2021), https://ktar.com/story/4817575/key-moments-in-the-police-shooting-of-daunte-wright-3/ [https://perma.cc/MB6C-8PQA].

and misconduct became part of the national discourse, all emanating from Hennepin County.[4]

However, in a different legal arena, the city of Minneapolis and the state of Minnesota have been a focus for sports law-related claims and controversies over the last few decades. These cases cover a broad spectrum of sports-related issues and have left a national impact. While some of the issues center on discrimination, most notably related to gender, other examples emanating from the Land of 10,000 Lakes reflect a much broader legal perspective as to the relationship between sports and the law. Certainly though, Minnesotans remain unafraid to challenge the status quo, regardless of the arena, whether on the court or in the courtroom.

The purpose of this Article is to demonstrate that the North Star State provides one of the most substantial examples of how sports and the law intersect. The Article begins with cases tried in the 1970s and explores, decade-by-decade, many of the major legal claims, judgments, and incidents concerning Minnesota and sports law—particularly related to allegations of discrimination and violations of due process and equal protection under the law. Thereafter, it explores numerous other cases which demonstrate Minnesota's involvement with sports law.

This Article covers all levels of sport, including the interscholastic, intercollegiate, Olympic, and professional levels, and explains how each of these levels have touched the Midwestern state, which is located in the Eighth Circuit.[5] Unfortunately, the state's flagship institution, the University of Minnesota (UMN), provides numerous examples of impropriety in failing to play by its own rules or those of the National Collegiate Athletic

4. *See* Josiah Bates, *Kim Potter Found Guilty of Manslaughter in Shooting Death of Daunte Wright*, TIME (Dec. 23, 2021, 3:20 PM), https://time.com/6130649/kim-potter-daunte-wright-verdict/ [https://perma.cc/H6PG-H2C4]; *see also, e.g.,* Bill Hutchinson, *George Floyd's Killer Was Convicted. So What Was Different about Philando Castile's Case?*, ABC NEWS (Apr. 22, 2021, 5:32 PM), https://abcnews.go.com/US/george-floyds-killer-convicted-philando-castiles-case/story?id=77213550 [https://perma.cc/7HZ2-ACQ8] (reporting the $3 million wrongful death settlement after the acquittal of police officer Jeronimo Yanez of manslaughter in the shooting of Philando Castile, which occurred only five miles from where Floyd was killed; discussing the shooting death of Justine Ruszczyk Damond, who was shot by police officer Mohamed Noor after she called 911 to report an assault; noting the $20 million settlement from the city of Minneapolis in the Damond case was the largest payout for a police misconduct case until the city paid Floyd's family $27 million in 2021).

5. The Eighth Circuit includes the districts of Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota. U.S. COURT OF APPEALS FOR THE EIGHTH CIRCUIT, https://www.ca8.uscourts.gov/ [https://perma.cc/LT63-TFCT].

Association (NCAA).[6] The goal of this Article is to present Minnesota as a state of thorough and diverse examples for sports law enthusiasts, despite being merely the twenty-second most populous state in the nation.[7]

I. THE 1970S

A. Brenden v. Independent School District

In *Brenden v. Independent School District*, the parents of two high school students sued the school on behalf of their daughters, Peggy Brenden and Antoinette "Tony" St. Pierre, seeking an injunction for an alleged violation of their constitutional rights under the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution and under 42 U.S.C. § 1983.[8] The plaintiffs, who attended two different schools, contended that the Minnesota State High School League's (MSHSL) rule prohibiting girls from participating in boys' interscholastic athletic competition violated their rights, and requested injunctive relief.[9] At the time, the MSHSL rule stated, "[g]irls shall be prohibited from participation in the boys' interscholastic athletic program either as a member of the boys' team or a member of the girls' team playing the boys' team. The girls' teams shall not accept male members."[10] The MSHSL argued that participating in interscholastic sports was a privilege rather than a right.[11]

---

6. Throughout this article, "UMN" refers to the University of Minnesota Twin Cities (Minneapolis-St. Paul) as opposed to other system campuses located in Crookston, Duluth, Morris, and Rochester. *See* UNIV. OF MINN. TWIN CITIES, https://twin-cities.umn.edu/ [https://perma.cc/M2DN-Y7JT] ("Bold minds don't wait. Discover the University of Minnesota Twin Cities."). The author is aware that "UM" or "UofM" could be used as well, but "UMN" avoids confusion with other universities in sports law-related scholarship. *See, e.g.*, Adam Epstein, *Michigan and Sports Law*, 24 J.L. BUS. & ETHICS 1, 24–26 (2018) (referring to the University of Michigan as "UM").

7. *See US States—Ranked by Population 2021*, WORLD POPULATION REV., http://worldpopulationreview.com/states/ [https://perma.cc/233J-997L].

8. Brenden v. Indep. Sch. Dist., 342 F. Supp. 1224, 1226 (D. Minn. 1972).

9. *Id*. at 1226–27, 1228.

10. *Id*. at 1227 (citing Minn. St. High Sch. League Official Handbook, 1971–72, Athletic Rules for Girls, Art. III, § 5, and Athletic Rules for Boys, Art. I, § 8). There is no mention of Title IX in this case because the District Court decision was officially decided May 1, 1972, before Title IX was enacted on June 23, 1972. *Id.* at 1226; History of Title IX, Women's Sports Foundation, (Aug. 13, 2019), https://www.womenssportsfoundation.org/advocacy_category/title-ix/ [https://perma.cc/A6WY-SE29].

11. Jenny Berg, *Remembering Tech High School: 1967–1976*, ST. CLOUD TIMES (Aug. 25, 2017, 11:21 AM), https://www.sctimes.com/story/news/local/2017/08/25/latest-tech-anniversary-series-brenden-sues-school-district-makes-history-1972/560637001/

On May 1, 1972, the United States District Court for the District of Minnesota ordered that the girls should be able to play on their schools' teams—Brenden in tennis, and St. Pierre in cross-country skiing and cross-country running.[12] "It was [already] halfway through the tennis season, but Brenden was able to play in five matches," playing the number three position in singles. She won three and lost two matches.[13] The MSHSL appealed the district court's order and the Eighth Circuit Court of Appeals affirmed on April 18, 1973, holding that the rule violated equal protection.[14] The Eighth Circuit reasoned that there was no rational basis for the MSHSL to treat the sexes differently in non-contact sports opportunities.[15] As a result, Brenden won the case and became the first girl in the state of Minnesota to earn an athletic letter award on a boys' team.[16]

One of the most interesting aspects of the pre-Title IX case, however, was some of the language used by District Court Judge Miles Lord in his opinion, which includes:

> There are, of course, substantial physiological differences between males and females. As testified to by defendants' expert witnesses, men are taller than women, stronger than women by reason of a greater muscle mass; have larger hearts than women and a deeper breathing capacity, enabling them to utilize oxygen more efficiently than women, run faster, based upon the construction of the pelvic area, which, when women reach puberty, widens, causing the femur to bend outward, rendering the female incapable of running as efficiently as a male. These physiological differences may, on the average, prevent the great majority of women from competing on an equal level with the great majority of males. The differences may form a basis for defining class competition on the basis of sex, for the purpose of encouraging girls to compete in their own class and not in a class consisting of boys involved in interscholastic athletic competition.[17]

Despite much of the above language, which would likely shock the conscience of most readers today, Judge Lord—appointed to the bench by President Lyndon Johnson in 1966—was prouder of this decision than any of

---

[https://perma.cc/5R2F-BRCT] (also noting that Brenden had the help of the American Civil Liberties Union).

12. *Brenden*, 342 F. Supp. at 1224, 1234.

13. Berg, *supra* note 11.

14. Brenden v. Indep. Sch. Dist., 477 F.2d 1292, 1296–97 (8th Cir. 1973).

15. *Id*. at 1300, 1303.

16. Berg, *supra* note 11.

17. *Brenden*, 342 F. Supp. at 1233.

the others that he issued.[18] Judge Lord contended that both Brendan and St. Pierre overcame these female "physiological differences" and "physiological disabilities" to become highly accomplished athletes who would not be "damaged" by competing in boys' interscholastic sports.[19] Lord continued by stating that there was no concern, in this instance, that equitable competition would be "hampered," and that neither Brendan nor St. Pierre should be "sacrificed upon this altar."[20] The case ultimately had a significant impact on other state and federal sports law decisions, and its holding has been cited nationwide.[21]

B. Regents of University of Minnesota v. National Collegiate Athletic Association

A few years later in *Regents of University of Minnesota v. National Collegiate Athletic Association*, the NCAA placed all UMN athletic teams on indefinite probation when the university refused to declare three UMN men's basketball players—Philip Saunders, Michael Thompson, and David Winey—ineligible for NCAA rule infractions.[22] The university sought an

18. *See* Dave Orrick, *Miles Lord, "Pivotal" Federal Judge Who Helped Shape MN and U.S. Policies, Dies at 97*, TWINCITIES PIONEER PRESS (Dec. 12, 2016, 8:32 AM), https://www.twincities.com/2016/12/10/miles-lord-pivotal-federal-judge-who-helped-shape-mn-and-u-s-policies-dies-at-97/ [https://perma.cc/RG5P-N7XC] ("That has done more to change the lives of more young women than anything else I've done.") (discussing Lord's other maverick rulings and how they impacted state and national social policies, also offering, "Lord was a polarizing jurist.").

19. *Brenden*, 342 F. Supp. at 1233.

20. *Id*. at 1233–34.

21. As of this writing, the 1973 appellate decision has been cited by at least seventy-eight federal and state decisions, including prominent sports law decisions from that era. *See generally* Fortin v. Darlington Little League, Inc., 514 F.2d 344, 348 n.4 (1st Cir. 1975); Gomes v. R.I. Interscholastic League, 469 F. Supp. 659, 660 (D.R.I. 1979), *vacated*, 604 F.2d 733 (1st Cir. 1979); Haffer v. Temple Univ. of the Commonwealth Sys. of Higher Educ., 678 F. Supp. 517, 523 (E.D. Pa. 1987); McFadden v. Grasmick, 485 F. Supp. 2d 642, 647 (D. Md. 2007); Lafler v. Athletic Bd. of Control, 536 F. Supp. 104, 106 (W.D. Mich. 1982); Martin v. Int'l Olympic Comm., 740 F.2d 670, 680 (9th Cir. 1984) (Alarcon, J., concurring); Clark *ex rel.* Clark v. Ariz. Interscholastic Ass'n, 695 F.2d 1126, 1128 (9th Cir. 1982); Howard Univ. v. Nat'l Collegiate Athletic Ass'n, 510 F.2d 213, 218 (D.C. Cir. 1975), *abrogated by* Nat'l Collegiate Athletic Ass'n v. Tarkanian, 488 U.S. 179 (1988); Att'y Gen. v. Mass. Interscholastic Athletic Ass'n, 393 N.E.2d 284, 289 (Mass. 1979).

22. Regents of the Univ. of Minn. v. Nat'l Collegiate Athletic Ass'n, 422 F. Supp. 1158 (D. Minn. 1976), *rev'd*, 560 F.2d 352 (8th Cir. 1977), *abrogated by* Tarkanian, 488 U.S. 179 (1988). The violations were not mentioned in the district court decision, but they were outlined in the appellate decision. *See Regents of the Univ. of Minn.,* 560 F.2d at 359 (noting that the NCAA's Committee on Infractions reported a total of 122 violations of NCAA rules by the UNM men's basketball team) ("Among the violations listed in the report were Thompson's sale of complimentary tickets, Winey's excursions to northern Wisconsin, Saunders'

injunction to prevent the NCAA from suspending the players.[23] In fact, UMN held its own hearings related to the violations and determined that the student-athletes should not be suspended.[24] The NCAA did not take too kindly to this conclusion and placed all UMN teams on probation.[25] The university then sought an injunction to prevent the NCAA from imposing the probation penalty on the institution.[26]

The district court stated, "[t]he issue here is not one of absence of due process—each of the student-athletes received a full and fair hearing and they had no complaint—but the issue is whether Minnesota's President Magrath was right in the choice he made between forces impelling him in opposite directions."[27] The court turned to whether participation in intercollegiate athletics was a substantial property right entitled to due process guarantees under the Constitution.[28] The court looked to both a Minnesota state case[29] and a federal case[30] for guidance on whether playing college basketball involved a property interest that warranted due process in the event of a suspension.[31] Weighing both cases, which contained opposite results, and because neither case involved the Minnesota Supreme Court, the district court surmised that there was indeed a "substantial property

use of the WATS line, Saunders' use of Mrs. Kienzel's automobile, and Saunders' cost-free overnight lodging at Gustavus Adolphus College." (citations omitted)). Note that the case misspelled Mychal Thompson as Michael Thompson.

23. *Regents of the Univ. of Minn.*, 422 F. Supp. at 1159.

24. *Id*.

25. *Id*.

26. *Id*.

27. *Id*. at 1160 (describing Magrath's dilemma) ("If he followed the findings of the hearing committees, he could not declare the athletes ineligible, but that would be to ignore the findings of the NCAA's Infraction Committee and Minnesota's obligation as an NCAA member and thus incur sanctions of the serious kind later imposed. If he followed NCAA's direction, he would be ignoring the findings of the hearing committees, hearings required by law and authorized by NCAA, to the prejudice of the student athletes.").

28. *Id*. at 1160–61.

29. Thompson *ex rel.* Thompson v. Barnes, 200 N.W.2d 921, 924–26 (Minn. 1972) (mentioning that the opportunity to participate in intercollegiate athletics is *not* a property right substantial enough to warrant due process protection).

30. Behagen v. Intercollegiate Conf. of Fac. Representatives, 346 F. Supp. 602, 604 (D. Minn. 1972) ("It is well recognized that the opportunity to receive an education is an interest of such substantial importance that it cannot be impaired without minimum standards of due process." (first citing Jones v. Snead, 431 F.2d 1115 (8th Cir. 1970); then citing Esteban v. Central Mo. State Coll., 415 F.2d 1077 (8th Cir. 1969); then citing Scoglin v. Kaufman, 418 F.2d 163 (7th Cir. 1970); and then citing Dixon v. Ala. State Bd. of Educ., 294 F.2d 150 (5th Cir. 1961))).

31. *Regents of the Univ. of Minn.*, 422 F. Supp. at 1161.

interest" that is protected by the Due Process clause of the Constitution.[32] The court went further and stated that playing basketball at the University of Minnesota "is a property right entitled to due process guarantees" because college athletes could make a lot of money as professional basketball players and playing college basketball is an important part of the overall college athlete's experience.[33] In other words, according to this court, a student-athlete was entitled to due process before the right to an education or any substantial element of it could be adversely affected by the NCAA.[34] The district court directed the NCAA to lift the probation and temporarily prohibited the NCAA from imposing further sanctions pending a hearing on the merits.[35]

The NCAA appealed this decision to the Eighth Circuit Court of Appeals, which ultimately ruled in the NCAA's favor; the appellate court dissolved the injunction and noted that as a voluntary NCAA member, UMN agreed to adhere to NCAA rules, including "to administer their athletic programs in accordance with the Constitution, the Bylaws, and other legislation of the Association."[36] As to whether governmental (state) action was involved, the court agreed with the First Circuit: "[t]hree courts of appeals have squarely held that Association activities do constitute governmental action for purposes of the Constitution and § 1983, and the First Circuit, in a recent opinion authored by Judge Van Oosterhout, has specifically stated its agreement with these decisions."[37] The Court of Appeals continued:

> [w]e are convinced, at least on the basis of matters currently of record, that the University, as of May 4, 1976, could have declared each of the three student-athletes ineligible consistently with any constitutional duty it may have owed to them and, conversely stated, without violating any due process rights held by them. With this conclusion, the entirety of the University's unconstitutional interference claim necessarily falls, for it follows almost immediately that (1) the University's contractual obligation to declare the student-athletes ineligible was not subject to any superior constitutional

32. *Id*. at 1161–62.

33. *Id*.

34. *Id*. at 1162–63.

35. *Id*. at 1163.

36. Regents of the Univ. of Minn. v. Nat'l Collegiate Athletic Ass'n, 560 F.2d 352, 355 (8th Cir. 1977), *abrogated by* Nat'l Collegiate Athletic Ass'n v. Tarkanian, 488 U.S. 179 (1988).

37. *Id*. at 364–65. In his concurring opinion, however, Hon. Myron H. Bright, stated, "Although I have some doubt that the activities of the NCAA constitute 'state action,' four other circuits have held to the contrary and I feel bound by those precedents." *Id*. at 372–73 (Bright, J., concurring) (referring to opinions of the D.C. Circuit and the First, Fifth, and Ninth Circuits).

> obligation; and (2) the sanctions imposed by Confidential Report No. 118(42) were a legitimate consequence of Association rules established by contract and unimpaired by the Constitution.[38]

However, even though the Court of Appeals found that there was state action, the question remained whether the student-athletes had a property interest in participating in college athletics. In this regard, the court sidestepped the issue and added that it did not have to decide whether the college athletes had a property interest in college basketball from the university or the NCAA.[39]

In sum, the Eighth Circuit Court of Appeals ruled in favor of the NCAA and dissolved the December 2, 1976, injunction against the NCAA, but it avoided the determination concerning whether a property interest was involved.[40] Also, the issue of whether the NCAA was a state actor was still not resolved within the sports law community. That would change in the 1988 U.S. Supreme Court decision *National Collegiate Athletic Association v. Tarkanian*,[41] which declared that the NCAA is not a state actor.[42]

As demonstrated, the 1970s provided at least two sports-related cases from Minnesota that have significantly impacted sports law.[43] One case

---

38. *Id*. at 366.

39. *Id*. at 366 ("[F]or present purposes, we need not decide whether [plaintiffs] had a property interest in intercollegiate basketball participation[.]"); *id.* at 372 ("Our authority is confined to adjudicating the constitutional issue before us, and apart from that issue we have no authority to judge whether a voluntary association has chosen the most desirable or efficacious means of enforcing its rules." (citing Shelton v. Nat'l Collegiate Athletic Ass'n, 539 F.2d 1197, 1198 (9th Cir. 1976)).

40. *Id*. at 372 ("We hold that the University has not demonstrated a substantial likelihood of success on the merits and that the district court accordingly erred in granting the preliminary injunction herein appealed.").

41. *See Tarkanian*, 488 U.S. at 182 n.5 (citing *Regents of Univ. of Minn*., 560 F.2d 352, as one of several cases in which lower courts "entertained the question" of the NCAA's status as a state actor).

42. *Id*. at 196 ("Just as a state-compensated public defender acts in a private capacity when he or she represents a private client in a conflict against the State, the NCAA is properly viewed as a private actor at odds with the State when it represents the interests of its entire membership in an investigation of one public university." (citing Polk County v. Dodson, 454 U.S. 312, 320 (1981))).

43. For another case from the decade, consider *State v. Forbes*, a violence in hockey case that resulted in a mistrial. Ray Kennedy, *A Nondecision Begs the Question*, SPORTS ILLUSTRATED: VAULT (July 28, 1975), https://www.si.com/vault/1975/07/28/606678/a-non-decision-begs-the-question [https://perma.cc/5VXX-SYFJ]. Dave Forbes, of the Boston Bruins, attacked Henry Boucha, of the Minnesota North Stars, during a hockey game in Minnesota on January 4, 1975, after both had exchanged blows and verbal threats. *Id.* Forbes hit Boucha with his stick, then jumped on Boucha and banged his head into the ice,

dealt primarily with gender and equal protection issues in the context of interscholastic sports, and the plaintiffs ultimately won the right to participate on boys' teams. The other addressed the constitutional issues surrounding a state institution's relationship to the NCAA, a private, voluntary organization, in the context of intercollegiate sport; the NCAA prevailed in the end.

II. THE 1980S

In the context of college sports, the issues of the existence of a property interest and an entitlement to due process continued in Minnesota courts into the next decade.

A. Hall v. University of Minnesota

In *Hall v. University of Minnesota*, UMN basketball player, Mark Hall, sued UMN and sought an injunction for its failure to admit him to a degree program; his rejection from the program resulted in his athletic ineligibility, forcing him off of the basketball team during his senior year.[44] He was enrolled in a non-baccalaureate degree program and accumulated the maximum ninety credits,[45] but Big Ten Conference rules required a student-athlete to be enrolled as a "candidate for degree" to maintain athletic eligibility.[46]

Judge Lord delivered the opinion of the U.S. District Court for the District of Minnesota, which found in favor of Hall, stating, "[t]his plaintiff has put all of his 'eggs' into the 'basket' of professional basketball. The

seriously injuring Boucha and damaging his eyesight. *Id.* Forbes was suspended by the NHL for ten games, but he was also indicted for aggravated assault for the use of his stick as a "dangerous weapon." *Id.* The Hennepin County trial ended in mistrial with a nine-to-three hung jury in favor of conviction. *Id.* More noteworthy, however, the incident was reported as "the first time a professional athlete had been charged in the United States with committing a criminal act during a sports Contest." Robin Herman, *Mistrial in Forbes Case*, N.Y. TIMES (July 19, 1975), https://www.nytimes.com/1975/07/19/archives/mistrial-in-forbes-case-hung-jury-ends-trial-of-forbes.html [https://perma.cc/5NNL-JU33]. Ironically, the first time a hockey player was sentenced to jail for an on-ice offense involved Minnesota North Stars Dino Ciccarelli who was sentenced to a day in jail and fined $1,000 for hitting Luke Richardson on the head with his stick during a game in Toronto on January 8, 1988. *See* David Aldridge, *Ciccarelli Sentenced to Day in Jail*, WASH. POST (Aug. 25, 1988), https://www.washingtonpost.com/archive/sports/1988/08/25/ciccarelli-sentenced-to-day-in-jail/9f829000-f2d4-4d1f-880f-dcbc41b25de4/?utm_term=.2825edfa82f5 [https://perma.cc/WNK5-R6EB].

44. Hall v. Univ. of Minn., 530 F. Supp. 104, 105 (D. Minn. 1982).

45. *Id.*

46. *Id*.

plaintiff would suffer a substantial loss if his career objectives were impaired."[47] Judge Lord did not take too kindly to the university's assertion that Hall had not met the requirements to be admitted into the degree program, describing it as a "tug of war" between the "academicians" and the athletic department.[48] In the court's opinion, Hall's due process rights under the Fourteenth Amendment were violated.[49] The court held that college athletes have a "property right protected by due process"[50] and stated that Hall was "recruited to come to the University of Minnesota to be a basketball player and not a scholar. His academic record reflects that he has lived up to those expectations . . . ."[51] The court later opined, "[b]alancing all of the above factors, this Court concludes that an injunction should issue requiring the defendant University to admit the plaintiff into a degree program on January 4, 1982 and to declare him eligible to compete in intercollegiate varsity basketball competition."[52] Thus, as a result of Lord's injunction, Hall could play, and he did, sporadically, before eventually quitting the team altogether.[53]

Though Judge Lord's decision in *Hall* held that student-athletes had a property interest in participating on college sports teams, that line of reasoning was beginning to be questioned in other federal and state courts. For example, the 1983 Ninth Circuit Arizona-based decision, *Justice v. National Collegiate Athletic Association*, disagreed with Judge Lord's logic and specifically cited two Minnesota cases—one being *Hall*—as less persuasive than other legal authority.[54]

---

47. *Id*. at 108.

48. *Id*. at 109.

49. *Id*. at 107–08.

50. *Id*. at 107.

51. *Id*. at 106. The court also stated, "This Court is not saying that athletes are incapable of scholarship; however they are given little incentive to be scholars and few persons care how the student athlete performs academically, including many of the athletes themselves." *Id*. at 109.

52. *Id*. at 110.

53. *See Former University of Minnesota Basketball Player Mark Hall Says . . .* , UPI: ARCHIVES (Mar. 9, 1982), https://www.upi.com/Archives/1982/03/09/Former-University-of-Minnesota-basketball-player-Mark-Hall-says/8589384498000/ [https://perma.cc/SM5E-UMX6].

54. Justice v. Nat'l Collegiate Athletic Ass'n, 577 F. Supp. 356, 366 (D. Ariz. 1983) ("The plaintiffs have cited [two] federal cases which support the proposition that college athletes have a property interest in participating in intercollegiate athletics." (first citing *Hall*, 530 F. Supp. at 107–08; and then citing Behagen v. Intercollegiate Conf. of Fac. Representatives, 346 F. Supp. 602, 604 (D. Minn. 1972)). The court found "more persuasive authority" in several other cases arriving at the opposite conclusion. *Id.* (first citing Colo. Seminary v. Nat'l Collegiate Athletic Ass'n, 570 F.2d 320, 321 (10th Cir. 1978); then citing Parish v. Nat'l Collegiate Athletic Ass'n, 506 F.2d 1028, 1034 (5th Cir. 1988), *abrogated by* Nat'l

As mentioned previously, a few years later, in the 1988 Supreme Court decision *National College Athletic Association v. Tarkanian*, the Supreme Court ruled that the NCAA, a private organization, is not bound by the same constitutional due process requirements that governmental agencies must observe; the 5–4 decision overturned a ruling by the Nevada Supreme Court.[55]

Though the *Tarkanian* decision did not specifically mention *Hall*, it did address the NCAA's status as a private actor in a footnote[56] that cited *Regents of University of Minnesota* discussed in Part I, *supra*. This demonstrates that for over a decade, the federal courts and the U.S. Supreme Court looked to Minnesota sports law decisions for guidance and authority. Indeed, the North Star State was in play.

B. Striebel v. Minnesota State High School League

In the 1982 Minnesota Supreme Court decision *Striebel v. Minnesota State High School League*, the appellant, Charlotte Striebel, sued on behalf of her daughter, Kathryn, and challenged the constitutionality of a Minnesota state law on equal protection grounds.[57] The law authorized separate seasons of play for high school athletic teams that were "separated or substantially separated according to sex."[58] The trial court determined that the MSHSL's policy of establishing separate seasons for boys and girls in tennis and swimming passed constitutional muster and complied with the state

Collegiate Athletic Ass'n v. Tarkanian, 488 U.S. 179 (1988); then citing Williams v. Hamilton, 497 F. Supp. 641, 645 (D.N.H. 1980); then citing Walsh v. La. High Sch. Athletic Ass'n, 616 F.2d 152, 159–60 (5th Cir. 1980), *cert. denied*, 449 U.S. 1124 (1981); then citing Hebert v. Ventetuolo, 638 F.2d 5, 6 (1st Cir. 1981); then citing Denis J. O'Connell High Sch. v. Va. High Sch. League, 581 F.2d 81, 84 (4th Cir. 1978), *cert. denied*, 440 U.S. 936 (1979); and then citing Hamilton *ex rel.* Hamilton v. Tenn. Secondary Sch. Athletic Ass'n, 552 F.2d 681, 682 (6th Cir. 1976)).

55. *Tarkanian*, 488 U.S. at 199 (holding that the NCAA's enforcement of its own bylaws was not "state action" covered by the 14th Amendment) ("It would be more appropriate to conclude that UNLV has conducted its athletic program under color of the policies adopted by the NCAA, rather than that those policies were developed and enforced under color of Nevada law.").

56. *Id*. at 182 n.5 ("Although the NCAA's status as a state or private actor is a novel issue in this Court, lower federal courts have entertained the question for a number of years. Initially, Federal Courts of Appeals held that the NCAA was a state actor for § 1983 purposes. E.g., Regents of Univ. of Minn. v. Nat'l Collegiate Athletic Ass'n, 560 F. 2d 352 (CA8), *cert. dism'd*, 434 U.S. 978 (1977) . . .)"

57. Striebel v. Minn. State High Sch. League, 321 N.W.2d 400, 401–02 (Minn. 1982); *see also* Mary Lynn Smith, *Obituary: Charlotte Striebel, Professor and Feminist*, STARTRIBUNE (Mar. 22, 2014, 5:52 PM), http://www.startribune.com/obituary-charlotte-striebel-professor-and-feminist/251724291/ [https://perma.cc/N2TA-3HHQ].

58. *Striebel*, 321 N.W.2d at 401 (referencing MINN. STAT. § 126.21, subd. 5 (1980)).

statute:[59] "[S]eparating the teams by sex was a reasonable means of achieving maximum participation by both sexes in the high school athletic program."[60]

The court stated, "it should be noted that treatment of the separate teams must be as nearly equal as possible, and separation allowed only to the extent absolutely necessary to provide equal athletic opportunity for all participants."[61] The court noted that the only allegation was that the girls' teams played in separate seasons, but "neither season is so substantially better than the other as to deny equal protection of the laws."[62] Therefore, the state supreme court affirmed in part, holding that the MSHSL policy was constitutional.[63] The holding remains true even today, with only a few sports out of sync.[64]

C. Sennewald v. University of Minnesota

In *Sennewald v. University of Minnesota*, Charlene Sennewald, a part-time assistant women's softball coach at UMN, sued under Title VII for sex discrimination for the university's failure to make her position full-time.[65] Sennewald began coaching at UMN in 1977, and she asked for the change in 1983, but she was denied; similar requests from assistant coaches in the women's tennis and women's track and field departments were denied at the same time.[66] However, UMN did grant full-time

59. *Id*.

60. *Id*.

61. *Id.* at 402.

62. *Id*.

63. *Id*. at 402–03.

64. *See Minnesota State High School League*, WIKIPEDIA, (Nov. 26, 2021, 11:26 PM) https://en.wikipedia.org/wiki/Minnesota_State_High_School_League [https://perma.cc/3YBE-AV68] (offering an easy-to-access list of sport seasons for boys and girls in Minnesota, showing that today, for instance, swimming and diving for girls is a fall sport whereas it is a winter sport for boys). *But see* Epstein, *supra* note 6, at 10–11 (discussing federal litigation in Michigan over different seasons for high school women's volleyball, women's basketball, and a few other sports that resulted in a different decision than Striebel after decades of litigation) (citing Cmtys. for Equity v. Mich. High Sch. Athletic Ass'n, 377 F.3d 504 (6th Cir. 2004); Cmtys. for Equity v. Mich. High Sch. Athletic Ass'n, 459 F.3d 676 (6th Cir. 2006)) ("Unfortunately for the state of Michigan, the decades-long legal battle over the lack of synchronous seasons demonstrated that the state can be stubborn to change, at times, as it was one of the last states to get in line with Title IX regarding playing seasons at the high school level nationwide." (citing *Local Litigation Now National Issue*, MHSSA, https://www.mhsaa.com/mhsaa_archive/news/equity.html [https://perma.cc/VX44-8QAM])).

65. Sennewald v. Univ. of Minn., 847 F.2d 472, 472–73 (8th Cir. 1988).

66. *Id*. at 473.

appointments to the male assistant women's gymnastics coach and female assistant women's volleyball and basketball coaches.[67]

Sennewald's lawsuit alleged a violation of the consent decree in *Rajender v. University of Minnesota*, a sex discrimination class action lawsuit that settled in 1980,[68] and a violation of Title VII of the Civil Rights Act of 1964.[69] Special masters heard the claim and ruled in favor of UMN "because the decision was based on the needs of the respective athletic department's programs rather than the sex or performance of either of the assistant coaches in question."[70] The district court adopted the decision of the special masters, and Sennewald appealed.[71]

The district court found that UMN's decision to not reclassify Sennewald's part-time position to a full-time position was a "programmatic and budgetary decision" rather than a "promotion or salary decision."[72] The Eighth Circuit affirmed, holding that UMN had articulated legitimate, non-discriminatory reasons for its decision, and that Sennewald failed to show that the reasons proffered by the university were a pretext for discrimination.[73] The court stated:

> [t]he district court found that the University compared the needs and profit potential of the gymnastics and softball programs and concluded that the gymnastics program required more coaching, had greater spectator appeal, and was more profitable than the softball program. The district court further found that the consent decree was integrated in the University's existing personnel procedures. Under the University's personnel system, promotions and salary increases refer only to decisions based on individual evaluations of performance. The district court found that the decision at issue here did not concern individual evaluations, but rather concerned programmatic concerns, that is, the budgets of the women's softball and gymnastics programs. Therefore, the consent decree was not applicable and the University did not need to use written, sex-neutral criteria in making the kind of decision at issue.[74]

The *Rajender* Consent Decree "provide[d] that 'each academic unit employing non-faculty employees shall develop and maintain sex-neutral

67. *Id*.

68. *Id*. at 472–73 (citing Rajender v. Univ. of Minn., No. 4-73-435 (D. Minn. Aug. 13, 1980)).

69. *Id*. at 473; *see also* 42 U.S.C. § 2000e.

70. *Sennewald*, 847 F.2d at 473.

71. *Id*.

72. *Id*. at 473–74.

73. *Id*. at 474.

74. *Id*.

procedures and criteria for hiring, salary, and promotion decisions for such persons.'"[75] However, Sennewald was unable to demonstrate that UMN violated the *Rajende*r Consent Decree. What is not mentioned in the decision, however, is that Charlotte Striebel, discussed *supra*, a single mother who earned her law degree while a full-time faculty member and associate professor of mathematics at UMN, was instrumental in assisting Shyamala Rajender in her sex discrimination case, which led to establishing the *Rajender* Consent Decree in the first place.[76]

III. THE 1990S

In *Deli v. University of Minnesota*,[77] Katalin Deli, the first head coach of the UMN women's gymnastics team and Big Ten Coach of the Year in 1989 and 1991,[78] challenged her termination by UMN, which the university claimed was for just cause.[79] UMN terminated her employment as well as her husband's, assistant coach Gabor Deli, who accidentally gave members of the gymnastics team a videotape that included sex scenes involving the two coaches; it was a videotape of a gymnastics' meet, but at the end, it contained five minutes of just the Delis in a hotel room in Florida.[80]

After her termination, Katalin challenged both her and her husband's dismissal and unsuccessfully sued in federal district court, "alleging [that] the [u]niversity improperly paid her less than head coaches of several men's athletic teams," and that the "pay differential . . . constituted prohibited discrimination on the basis of sex, in violation of Title VII of the Civil Rights Act, the Equal Pay Act, and Title IX of the Education Amendments of 1972."[81] More specifically and curiously, the district court noted:

---

75. *Id*. at 473 n.4 (listing "additional *Rajender* consent decree cases") (first citing Rajender v. Univ. of Minn., No. 4-73-435 (D. Minn. Aug. 13, 1980); then citing Rajender v. Univ. of Minn., 730 F.2d 1110 (8th Cir. 1984); and then citing Pilon v. Univ. of Minn., 710 F.2d 466 (8th Cir. 1983)).

76. *See Charlotte Striebel Equity Award*, UNIVERSITY OF MINNESOTA: THE WOMEN'S CENTER, http://womenscenter.umn.edu/charlotte-striebel-equity-award [https://perma.cc/WYU9-UZR7].

77. Deli v. Univ. of Minn., 863 F. Supp. 958 (D. Minn. 1994), *abrogated by* Egerdahl v. Hibbing Cmty. Coll., 72 F.3d 615 (8th Cir. 1995).

78. *See Minnesota Golden Gophers Women's Gymnastics*, WIKIPEDIA, https://en.wikipedia.org/wiki/Minnesota_Golden_Gophers_women%27s_gymnastics [https://perma.cc/73Z7-YSCL].

79. *Deli*, 863 F. Supp. at 959.

80. Deli v. Univ. of Minnesota, 578 N.W.2d 779, 781 (Minn. Ct. App. 1998) ("[The] videotape . . . contained both the University's gymnastics team performance at a 1992 Florida competition and Deli's sexual encounter with her husband in a Florida hotel room.").

81. *Deli*, 863 F. Supp. at 959.

> Plaintiff contends the Defendant discriminated in the compensation it paid her on the basis of the gender of the athletes she coached. Significantly, Plaintiff does not claim that the University discriminated against her on the basis of Plaintiff's gender, i.e. she does not claim that the University's motivation for paying her less money than the coaches of men's sports was the fact that Plaintiff was a woman and the coaches of men's sports were men. Plaintiff also does not challenge in this action the circumstances, justification or legality of her discharge from employment by the University.[82]

The district court found in favor of UMN by granting a motion for summary judgment and dismissing the claim.[83] The court gave substantial deference to the Office for Civil Rights' Policy Interpretation, which stated that "differential compensation of coaches violates Title IX 'only where compensation or assignment policies or practices deny male and female athletes coaching of equivalent quality, nature or availability.'"[84] Further, the district court referred to a recent Ninth Circuit decision, in which a female coach failed to show that she would prevail on either Equal Pay Act or Title IX claims because "an employer may pay different salaries to coaches of different genders if the coaching positions are not substantially equal in terms of skill, effort, responsibility, and working conditions."[85]

Following this unsuccessful challenge to her termination, Deli again sued UMN, though this time in state court, "alleging [a] violation of [the state's] Data Practices Act,[86] breach of contract, unjust enrichment, and promissory estoppel."[87] She sued the University "for emotional distress damages arising from its athletic director's breach of an oral promise not to view [the] videotape" from the 1992 Florida competition.[88]

---

82. *Id*. at 959–60.

83. *Id*. at 963 ("Because Plaintiff does not claim or provide any evidence to suggest that due to her receipt of a lower salary than that received by coaches of some men's athletic teams, Plaintiff's coaching services were inferior in 'quality, nature or availability' to those provided to the men's teams, she has failed to make out a prima facie claim for violation of Title IX. The Defendant is entitled to summary judgment on Plaintiff's Title IX claims.").

84. *Id*. at 962 (quoting Policy Interpretation; Title IX and Intercollegiate Athletics, 44 Fed. Reg. 71,416 (1979)).

85. *Id.* at 961 (quoting Stanley v. Univ. of S. Cal., 13 F.3d 1313, 1321 (9th Cir. 1994)) (noting that Deli supervised fewer employees, coached sports that drew fewer spectators, and generated substantially less revenue for the university than the coaches of three men's teams, including basketball, football, and hockey, in addition to the other coaches having greater public and media responsibilities than she did).

86. Government Data Practices, MINN. STAT. §§ 13.01–.90 (2021).

87. Deli v. Univ. of Minn., 578 N.W.2d 779, 781 (Minn. Ct. App. 1998).

88. *Id*. at 780.

The trial court granted summary judgment in favor of UMN.[89] The court of appeals affirmed in part, but it reversed and remanded the case on the data practices and promissory estoppel claims.[90] "The jury returned a special verdict in favor of Deli on her promissory estoppel claim. Concluding that injustice could only be avoided through enforcement of the director's promise, the trial court awarded Deli $675,000 in damages for emotional distress suffered to the time of trial."[91]

The Minnesota Court of Appeals characterized the case's key issue as: "[a]bsent the existence of an independent tort claim, are emotional distress damages recoverable in Deli's promissory estoppel action?"[92] Answering in the negative and reversing the district court, the appellate court stated, "[t]he trial court erred in awarding emotional distress damages on Deli's contract-based claim because Deli failed to allege or prove the existence of an independent tort."[93]

It is worth noting that a university grievance panel unanimously voted to reinstate Katalin, but not her husband, Gabor.[94] However, UMN overruled the campus panel's decision, and neither ever regained employment at UMN; the Board of Regents referred to the videotape merely as a "triggering mechanism" that led to the discovery of violations of NCAA rules.[95]

IV. THE 2000S–PRESENT

The momentum of claims in federal court involving gender discrimination in sports continued into the next decade in Minnesota, even though some of the claims were ultimately unsuccessful.[96] Unfortunately for

89. *Id*. at 781.

90. *Id*. (citing Deli v. Hasselmo, 542 N.W.2d 649, 658 (Minn. Ct. App. 1996).

91. *Id*.

92. *Id*.

93. *Id*. at 784.

94. *See Panel Rules for Gymnastics Coach*, CHI. TRIB. (Feb. 14, 1993), https://www.chicagotribune.com/news/ct-xpm-1993-02-14-9303182453-story.html [https://perma.cc/PV45-7Z9S].

95. *See* Ed Stych, *The Firing of the Women's Gymnastics Coach at the Universit* [sic], AP NEWS (Apr. 14, 1993), https://www.apnews.com/2f41b2d7a0091917a4cff2ce9d420440 [https://perma.cc/Z4C8-56X6] ("The Delis also were accused of violating NCAA rules by lending a car and bicycle to university athletes and allowing an athlete to stay as a guest in their home.").

96. *See, e.g.*, Montgomery v. Indep. Sch. Dist. No. 709, 109 F. Supp. 2d 1081, 1089–90 (D. Minn. 2000) ("[U]nlike the Fourteenth Amendment, Title IX prohibits only discrimination based on sex and does not extend to any other form of invidious discrimination. For these reasons the Court concludes that [plaintiff's] Title IX claims based on discrimination due to his sexual orientation or perceived sexual orientation . . . are not actionable and must

UMN, not only did additional NCAA rule violations that began in the 1990s reveal themselves thereafter as well, but the UMN athletic department exposed other concerns which led to continued turmoil.

A. UMN's Public Infraction Reports

In the University of Minnesota Twin Cities Public Infractions Reports of October 24, 2000,[97] and July 2, 2002,[98] the Minnesota men's and women's basketball programs were involved in a series of scandals representing some of the worst in NCAA history, with misconduct dating back to the mid-to-late 1990s.

The 2000 Report resulted in the NCAA placing UMN's men's basketball program on probation for four years; probation conditions included the elimination of five scholarships and limitations on recruiting.[99] The violations involved head coach, Clem Haskins, an academic adviser, Alonzo Newby, and a former office manager, Jan Gangelhoff, who completed more

be dismissed."); *see also* Grandson v. Univ. of Minn., 272 F.3d 568, 576 (8th Cir. 2001) (holding that plaintiffs' claims of unequal treatment of female student-athletes at the Duluth campus was moot because UMD already established such a team and voluntarily made progress to increase and improve opportunities for women there) ("[T]he efforts UMD made in fulfilling its commitments under the Compliance Agreement with [the Office of Civil Rights], preclude a finding that UMD has been deliberately indifferent to its overall compliance obligations under Title IX."); Portz v. St. Cloud State Univ., 410 F. Supp. 3d 834, 855–863 (D. Minn. 2019), *affirmed in part*, 16 F.4th 577 (8th Cir. 2021) (holding that St. Cloud State University was out of compliance with Title IX). Interestingly, St. Cloud State University decided to terminate its football program soon thereafter. *See* Nora G. Hertel, *St. Cloud State University Cuts Football and Golf, Adds Men's Soccer in 2020*, SC TIMES (Sept. 28, 2020, 9:55 AM), https://www.sctimes.com/story/news/2019/12/10/scsu-st-cloud-state-football-golf-teams-eliminated-title-ix/2634708001/ [https://perma.cc/F5PY-R3G8] ("St. Cloud State University will end its football and golf programs next year to comply with a Title IX court order and manage budget shortages.").

97. *See* RICHARD J. DUNN ET AL., NCAA COMM. ON INFRACTIONS, Univ. OF MINN. TWIN CITIES PUBLIC INFRACTIONS REP. (Oct. 24, 2000) [hereinafter 2000 Report].

98. *See* PAUL DEE ET AL., NCAA COMM. ON INFRACTIONS, UNIV. OF MINN., TWIN CITIES PUBLIC INFRACTIONS REP. (July 2, 2002) [hereinafter 2002 Report].

99. *See* Joe Drape, *Minnesota Penalized by N.C.A.A.*, N.Y. TIMES (Oct. 25, 2000), https://www.nytimes.com/2000/10/25/sports/college-basketball-minnesota-penalized-by-ncaa.html [https://perma.cc/8LLD-BH56].

than 400 pieces of classwork for at least eighteen student-athletes from 1994 to 1998.[100] The NCAA did not impose a post-season ban in its report.[101]

Interestingly, Gangelhoff blew the whistle on herself and others,[102] prompting an investigation in March 1999 in which she told the *St. Paul Pioneer Press* about the coursework she completed for the student-athletes.[103] As a result, the NCAA found a lack of appropriate institutional control at UMN.[104] Jack H. Friedenthal, Chair of the NCAA Committee on Infractions (COI), said that Newby intimidated professors to ensure athletes obtained passing grades, and he enabled Gangelhoff to carry out academic work for the student-athletes, all with Haskins' knowledge.[105] To Friedenthal and the COI, it was one of the worst examples of fraud in several decades.[106]

This academic fraud scandal also led to the downfall of head coach Haskins, who was bought out of his contract, and the resignations of men's Athletic Director Mark Dienhart and University Vice President McKinley Boston.[107] Haskins later admitted that he lied to investigators about his

100. *Id*. (noting that the NCAA might have imposed harsher penalties but for the efforts of UMN president) ("Mark Yudof, the university president, kept [UMN] from postseason play [in 1999], took away three scholarships for the academic year, and offered to repay 90 percent of UMN's share for playing in the 1994, 1995, and 1997 NCAA basketball tournaments, an estimated $350,000.").

101. *Id*.; *see also* 2000 Report, *supra* note 97, at Section I (referencing previous misconduct by UMN) ("The university appeared before the committee previously in March of 1988 and again in March of 1991. The 1988 case involved men's basketball; both cases resulted in findings of lack of institutional control.").

102. For further discussion of Jan Gangelhoff, see Adam Epstein, *The NCAA and Whistleblowers: 30–40 Years of Wrongdoing and College Sport and Possible Solutions*, 28 SO. L.J. 65, 73–74 (2018) [hereinafter *Whistleblowers*]. For further discussion of similar school scandals, see Adam Epstein & Barbara Osborne, *Teaching Ethics with Sports: Recent Developments*, 28 MARQ. SPORTS L. REV. 301 (2018).

103. *Whistleblowers*, *supra* note 102, at 73–74.

104. 2000 Report, *supra* note 97, at Section II(U).

105. Drape, *supra* note 99; *see also* 2000 Report, *supra* note 97, at Section III(B)(6) ("Regarding the 1994, 1995 and 1997 NCAA Division I Men's Basketball Tournaments, and the 1996 and 1998 National Invitational Tournaments (NIT), and pursuant to NCAA Bylaw 19.6.2.2-(e)-(2), the university will vacate its team record as well as the individual records of any student-athlete who engaged in academic fraud as set forth in this report.")

106. 2000 Report, *supra* note 97, at Section I ("The numerous violations found by the committee are among the most serious academic fraud violations to come before it in the past 20 years. The violations were significant, widespread and intentional. More than that, their nature—academic fraud—undermined the bedrock foundation of a university and the operation of its intercollegiate athletics program.").

107. *See* William Wilcoxen, *Cheating Scandal Leads to Ousters at University of Minnesota*, MINN. PUB. RADIO (Nov. 19, 1999), http://news.minnesota.publicradio.org/features/199911/19_wilcoxenw_cheating/ [https://perma.cc/P57Z-SDAD].

knowledge of the academic fraud, UMN sued accordingly, and an arbitrator ordered Haskins to repay $815,000, an award that was upheld by the Hennepin County District Court.[108]

As if that was not enough, while UMN was still on probation from the men's basketball scandal, UMN's women's Director of Athletics was alerted by student-athletes that the head women's basketball coach, Cheryl Littlejohn, carried out various possible NCAA violations that occurred from 1998 to 1999.[109] Littlejohn arranged for housing and other impermissible benefits for prospective student-athletes.[110] UMN was characterized as a "repeat violator" under NCAA rules and suffered additional penalties, including an extension of the university's probation period, a reduction in scholarships to the women's basketball team, a decrease in the allowed number of official paid visits by prospective student-athletes, and a delay in the start of preseason practice.[111] Littlejohn was terminated for cause by UMN.[112]

B. UMN and Coach David Horn

Another case that emerged from a situation in the late 1990s involved a dispute within UMN's hockey team. In *Horn v. University of Minnesota*, David Horn, a former assistant coach of the UMN women's hockey team, claimed wage discrimination, retaliation, and constructive discharge in violation of Title VII of the Civil Rights Act of 1964 and the Equal Pay Act.[113] UMN's first hockey season was in 1997–98, led by head coach Laura Halldorson.[114] UMN also created two assistant coach positions, both titled "Assistant Women's Ice Hockey Coach."[115] Elizabeth Witchger, the first assistant, made $33,000 over eleven months, whereas Horn, the second assistant,

108. *See Minnesota Court Orders Former Basketball Coach to Repay $815,000 He Received in Buyout*, CHRON. OF HIGHER EDUC. (May 14, 2002), https://www.chronicle.com/article/minnesota-court-orders-former-basketball-coach-to-repay-815-000-he-received-in-buyout/ [https://perma.cc/3Q37-9MKA].

109. 2002 Report, *supra* note 98, at Section I.

110. *Id.* at Section II(A) (offering timeline).

111. *Id*. at Section III(B).

112. *See* Press Release, Univ. of Minn. Athletics, Gopher Women's Basketball Coach Cheryl Littlejohn Terminated (May 14, 2021), https://gophersports.com/news/2001/5/15/GOPHER_WOMEN_S_BASKETBALL_COACH_CHERYL_LITTLEJOHN_TERMINATED_PRESS_RELEASE.aspx [https://perma.cc/QU26-GYXK] (describing three categories of deliberate rules violations and infractions: improper offers, inducements or impermissible benefits; interference in a prior investigation; and violations of limits on practice time and evaluation of prospects).

113. Horn v. Univ. of Minn., 362 F.3d 1042, 1044 (8th Cir. 2004).

114. *See Id*.

115. *Id*.

earned $20,000 over ten months.[116] The job titles and descriptions were the same for both positions, but the salary and the duration of the contract were not; Horn admitted that he accepted the "Second Assistant" position.[117]

Tensions arose once Horn discovered the disparity in pay during the season.[118] Nevertheless, Horn and Witchger both received positive performance reviews, contract renewals, and salary increases.[119] Horn eventually complained to the Director of women's athletics, but he was treated poorly by Halldorson and received a poor performance evaluation for the 1998–99 season; Halldorson also recommended that Horn's contract not be renewed.[120] Still, UMN offered Horn a new, twelve-month contract with another salary increase, but Horn rejected the offer and left UMN for another employer in the fall of 1999.[121] It was at that point that he brought suit against the University.

The U.S. District Court for the District of Minnesota granted summary judgment in favor of UMN.[122] The Eighth Circuit Court of Appeals affirmed.[123] With regard to wage discrimination, although Horn was paid less than Witchger, he failed to demonstrate a prima facie case under the Equal Pay Act, which required him to prove that UMN "discriminated on the basis of sex by paying different wages to employees of opposite sexes 'for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.'"[124]

The Eighth Circuit outlined the various ways in which Witchger's job responsibilities were different than Horn's, including recruiting, facilitating public relations, and scheduling duties that were different and more "public" in nature than Horn's behind-the-scenes duties.[125] The Court stated:

> [b]ecause the two positions required different types and degrees of skill and responsibility, they were not "substantially equal" as required by the Equal Pay Act and Title VII. We will not engage in a subjective assessment of the

116. *Id*.
117. *Id*.
118. *See Id*.
119. *Id*.
120. *Id*.
121. *Id*. at 1045.
122. Horn v. Univ. of Minn., No. 01-967, 2003 WL 721241, at *1 (D. Minn. Feb. 25, 2003).
123. *Horn*, 362 F.3d at 1047.
124. *Horn,* 362 F.3d at 1045 (quoting 29 U.S.C. § 206(d)(1)).
125. *Id*. at 1045–46.

> University's decision to value the duties of the "First Assistant" over those of the "Second Assistant" where the duties themselves were different.[126]

The court of appeals also determined that Horn could not succeed in his Title VII retaliation claim because there was no adverse employment action by the university: "Indeed, Horn not only retained his job with the University, he received an offer for an extended contract term of 12 months at an increased salary."[127] With regard to constructive discharge, the court stated that although the "conditions may have been uncomfortable or difficult for Horn, they did not rise to the level of 'intolerable working conditions' as defined under Title VII."[128]

C. Minnesota-Duluth and Coach Shannon Miller

In another discrimination case involving a hockey team, *Miller v. Board of Regents of the University of Minnesota*,[129] University of Minnesota-Duluth (UMD) Athletics Director Josh Berlo declined to renew hockey head coach Shannon Miller's employment contract after the 2014–2015 season; Berlo cited budgetary reasons for his decision, despite Miller having won five national championships and her characterization as possibly "the most accomplished women's hockey coach in the history of college athletics."[130] Miller was one of three plaintiff-coaches, the others being Jen Banford, who coached the softball team (and also served on Miller's staff as director of hockey operations), and Annette Wiles, who coached the women's basketball team.[131] Banford's contract was also not renewed (in relation to her hockey duties), and she rejected UMD's offer to renew her softball contract.[132] Wiles resigned, although UMD planned to offer her a new contract.[133]

The three coaches claimed that their contracts were not renewed or they were constructively discharged because of their sex or sexual orientation and in retaliation for accusing UMD of violating Title IX.[134] The coaches, referred to by the court as "lesbians,"[135] also claimed that they

126. *Id*. at 1046.

127. *Id*.

128. *Id*. at 1047.

129. Miller v. Bd. of Regents, No. 15-CV-3740, 2018 U.S. Dist. LEXIS 17531, at *1 (D. Minn. Feb. 1, 2018).

130. *Id*. at *1.

131. *Id*.

132. *Id.* at *2.

133. *Id*.

134. *Id*.

135. *Id*. at *4.

experienced a hostile work environment, and they each asserted claims under the Equal Pay Act of 1963.[136] The coaches asserted these claims under both federal and state law to include Title VII,[137] and the Minnesota Human Rights Act (MHRA).[138] Almost all of the claims were dismissed by the district court, except for Miller's claim of sex discrimination and retaliation.[139] The court set Miller's case for a jury trial in Duluth.[140]

On March 15, 2018, a federal jury awarded Miller $3.74 million after an eight-day trial.[141] "The jury of eight women and four men took a little over four hours to find that UMD discriminated against Miller on the basis of her sex and retaliated against her for making Title IX complaints when officials decided in December 2014 not to offer her a new contract."[142] "Jurors awarded Miller . . . $744,832 in past lost wages and $3 million for past emotional distress," though they did not award any damages for future emotional distress.[143] The university counsel unsuccessfully argued that Miller's success was waning, in addition to pointing out academic issues on her team and a budget shortfall.[144]

136. *Id*. at *2.

137. 42 U.S.C. § 2000e.

138. MINN. STAT. § 363A.01–.50.

139. *Id*. at *3; *see also id.* at *6–*7 (admonishing the parties) ("To be clear: Plaintiffs could have pursued their state-law claims—including their MHRA sexual-orientation claims—in state court. But, for reasons that are not apparent, plaintiffs chose to bring those claims in federal court, despite the fact that plaintiffs knew (or should have known) that a federal court would have no jurisdiction over them. As a result of their own choices, then, plaintiffs cannot recover on their (stronger) sexual-orientation claims, and instead are left to litigate their (weaker) sex discrimination, hostile environment, Title IX, and EPA claims.") The sex discrimination claims were later dismissed by a state court judge, as well. *See* Forum News Service, *Judge Dismisses Discrimination Lawsuit Filed by Former UMD Women's Hockey Coach*, TWINCITIES PIONEER PRESS (Oct. 27, 2018, 8:31 PM), https://www.twincities.com/2018/10/27/judge-dismisses-discrimination-lawsuit-filed-by-former-umd-womens-hockey-coach/ [https://perma.cc/GSA6-FQMN].

140. *Cf.* Tom Olsen, *Judge Dismisses Former Coaches' Lawsuit Against University of Minnesota Duluth*, DULUTH NEWS TRIB. (Apr. 22, 2021, 6:44 PM), https://www.duluthnewstribune.com/news/crime-and-courts/6996288-Judge-dismisses-former-coaches-lawsuit-against-University-of-Minnesota-Duluth [https://perma.cc/3B9S-JMGX] (noting that in March 2018 a federal jury found in Miller's favor).

141. Tom Olsen, *Former UMD Women's Hockey Coach Awarded $3.74M in Sex Discrimination Lawsuit,* TWINCITIES PIONEER PRESS (Mar. 16, 2018, 3:02 PM), https://www.twincities.com/2018/03/15/former-umd-womens-hockey-coach-awarded-3-74m-in-sex-discrimination-lawsuit/ [https://perma.cc/4KRF-RX9L].

142. *Id*.

143. *Id*.

144. *Id*.

On February 13, 2019, U.S. District Court Judge Patrick J. Schiltz, ordered—based upon the jury verdict—UMD to pay "the total sum of $4,206,110, consisting of (1) $461,278 in front pay and future benefits; (2) $744,832 in back pay and past benefits; and (3) $3,000,000 in other past damages."[145] However, later that same year, in December 2019, the Miller case ended with a complete and final out-of-court settlement between the parties in the amount of $4.53 million; the settlement arrived after a total of four years of litigation.[146]

D. The Case of Tubby Smith, UMN, and Jimmy Williams

Williams v. Smith centered on James "Jimmy" R. Williams, who was an assistant basketball coach at Oklahoma State University (OSU).[147] In 2007, UMN head coach Orlando "Tubby" Smith telephoned Williams and offered him an assistant coaching position at UMN for a salary of $175,000 plus $25,000 for working a summer basketball camp.[148] Williams, in good faith reliance upon the verbal offer, resigned from OSU shortly thereafter and put his house up for sale in order to start recruiting basketball players for UMN right away.[149] However, before Williams resigned, Smith allegedly informed Williams that the offer was subject to the final approval of UMN Athletic Director Joel Maturi.[150]

After the offer was made over the telephone to Williams, Maturi decided against hiring Williams, even though a written Memorandum of

145. Miller v. Bd. of Regents, No. 15-CV-3740, 2019 U.S. Dist. LEXIS 23107, at *18 (D. Minn. Feb. 13, 2019); *see also id.* at *16 ("In light of the jury's finding, the Court determines that front pay through June 2020 is a reasonable award. This represents a total of five years of pay past the end of Miller's last contract."); Baihly Warfield, *Judge Awards Shannon Miller Additional $460,000 in UMD Lawsuit*, WDIO (Feb. 13, 2019, 10:38 PM), https://www.wdio.com/sports/judge-awards-shannon-miller-umd-lawsuit/5245407/ [https://perma.cc/V43A-2HQ6]. *But see* Miller v. Bd. of Regents, 402 F. Supp. 3d 568, 582–83 (D. Minn. 2019) ("[T]he Court agrees that $3 million is a shockingly excessive amount to compensate Miller for 32 months of past non-economic damages. So far as the Court and the parties can discover, neither the Eighth Circuit nor any district court within the Eighth Circuit has ever upheld an award remotely comparable to the award in this case.").

146. *See* Tom Olsen, *UMD, Ex-Hockey Coach Reach $4.5 Million Settlement*, MPR NEWS (Dec. 20, 2019, 12:32 AM), https://www.mprnews.org/story/2019/12/19/umd-exhockey-coach-reach-45-million-settlement [https://perma.cc/RG28-NVFE] (noting that the settlement terms included approximately $2.1 million to Miller, $2.43 million to her attorney, both Miller and UMD dropping their appeals, and allowing UMD to maintain its denial of any wrongdoing or violation of law).

147. Williams v. Smith, 820 N.W.2d 807, 810 (Minn. 2012).

148. *Id*. at 823 (Meyer, J., concurring in part, dissenting in part).

149. *Id*. at 810.

150. *Id*. at 810–11.

Agreement was already prepared.[151] Maturi discovered that Williams was connected with NCAA violations during his previous tenure as an UMN assistant coach from 1971 to 1986.[152] Unfortunately for Williams, he resigned from OSU, but he was not offered the job at UMN by Maturi.[153] Accordingly, Williams filed a lawsuit against both UMN's Board of Regents and Maturi, and he filed a second lawsuit against Coach Smith.[154] Smith maintained that he told Williams that the decision to hire was ultimately subject to Maturi's approval.[155]

An eight-day jury trial ended with a Hennepin County District Court jury verdict against Smith and UMN.[156] The jury awarded $1,247,293 in damages to Williams.[157] Although at first glance, breach of contract and promissory estoppel arguments might appear to be obviously relevant to the case, neither of these claims made it to the jury. Williams' claims also included interference with contract, equitable estoppel, defamation, deprivation of rights under color of state law,[158] and the tort of negligent misrepresentation.[159] However, the trial court threw out all of these employment-related claims because UMN employment decisions, according to Minnesota statutes, may only be reviewed on certiorari petitions to Minnesota's Court of Appeals within sixty days.[160] The trial court

151. *Id*. at 810, 811.

152. *Id*. at 811 ("Given the University's history of NCAA rules violations in the men's basketball program, Maturi was concerned about maintaining a clean program and the potential media reaction if Williams returned.").

153. *Id*.

154. *Id*. (noting Williams asserted constitutional claims under 42 U.S.C. § 1983, as well as common law breach of contract, negligent misrepresentation, and estoppel claims against the Board of Regents and Maturi, and that Williams asserted claims for fraud, negligent misrepresentation, interference with contract, and promissory estoppel against Coach Smith).

155. *Id*.

156. *See* John Hageman, *Jury Awards Jimmy Williams $1.2 Million in Smith Trial*, MINN. DAILY (June 2, 2010), http://www.mndaily.com/2010/05/26/jury-rules-favor-williams-awards-1247-million [https://perma.cc/T4B4-LW7F] ("Former U.S. Rep. Jim Ramstad, former Gophers basketball star Kevin McHale, and former Gophers coach Jim Dutcher served as character witnesses for Williams.").

157. *Williams*, 820 N.W.2d at 812 n.1 ("[T]he district court reduced the award . . . pursuant to MINN. STAT. § 3.736, subd. 4(e) (2010), because Smith was acting within the scope of his employment at the time he made the misrepresentations.").

158. 42 U.S.C. § 1983.

159. *Smith*, 820 N.W.2d at 811–12.

160. *Id*. at 813 (citing MINN. STAT. § 606.01 (2010) ("No writ of certiorari shall be issued, to correct any proceeding,

dismissed the section 1983 civil rights claims, holding that they lacked merit.[161] Additionally, Maturi could not be sued because he was entitled to qualified immunity based upon his employment with UMN.[162]

The Minnesota Court of Appeals affirmed the district court's dismissal of all of the claims, except the negligent misrepresentation claim.[163] The case was then remanded for trial solely on the negligent misrepresentation claim.[164] Unfortunately for Williams, the jury's award of $1.2 million had to be reduced because the state of Minnesota maintained a statutory cap on such damages at $1 million.[165] The verdict was reduced accordingly, and it was ultimately upheld by the Minnesota Court of Appeals in 2011.[166]

The Minnesota Supreme Court reviewed the decision after five years of litigation, and on August 8, 2012, it reversed the jury's decision and held in favor of Coach Smith on the negligent misrepresentation claim.[167] The Minnesota Supreme Court considered two questions: "(1) whether a duty of care exists in arm's-length negotiations between a prospective employer and a prospective employee; and (2) whether a person negotiating a contract with a government representative is conclusively presumed to know the extent of the authority of that representative."[168] UMN prevailed in a 3–2 decision in which the Honorable Christopher J. Dietzen wrote the opinion for the majority.[169] The Supreme Court concluded that Williams' claim of negligent misrepresentation was not subject to review because that claim was against Smith and not the University itself.[170] The court stated as follows:

---

unless such writ shall be issued within 60 days after the party applying for such writ shall have received due notice of the proceeding sought to be reviewed thereby. The party shall apply to the Court of Appeals for the writ.")).

161. *Id*. at 811. UMN could have also asserted Eleventh Amendment sovereign immunity from suit in federal court had the university attempted to remove the case to federal jurisdiction. *See, e.g*., Kelly Knivila, *Public Universities and the Eleventh Amendment*, 78 GEO. L.J. 1723 (1990).

162. *See* Williams v. Bd. of Regents, 763 N.W.2d 646, 654–55 (Minn. Ct. App. 2009).

163. *Smith*, 820 N.W.2d at 811.

164. *Id.*

165. *Id*. at 812 n.1.

166. *Id.* at 812.

167. *Id*. at 807, 822.

168. *Id*. at 812.

169. *Id*. at 809.

170. *Id*. at 814 (denying certiorari because Williams' tort claim was "separate and distinct" from the discretionary employment decision of the government agency) ("Williams' negligent misrepresentation claim did not challenge the 'propriety' of the University's discretionary decision not to hire him. Williams' claim thus was separate and distinct from the University's decision not to hire him because the central inquiry and focus was on Smith's representations.").

> [w]e believe that the manner in which appellants treated Williams regarding his prospective employment with the University was unfair and disappointing. We do not condone their conduct. But the question we must decide is whether appellants owed Williams a duty of care and, therefore, whether appellants' conduct is actionable. The question of whether a duty of care exists in a particular relationship is a question of law, which this court determines de novo . . . . Without it, liability cannot attach.[171]

The majority opined that Smith did not owe Williams a duty of care during the contract negotiations,[172] offering, "when a prospective government employment relationship is negotiated at arm's length between sophisticated business persons who do not have a professional, fiduciary, or other special legal relationship [between the parties], the prospective employee is not entitled to protection against negligent misrepresentations by the representative for the prospective government employer."[173] To the Minnesota Supreme Court, Williams did not prevail because he was characterized as a "sophisticated" business person and thus no duty of care was owed to him during the negotiations.[174]

E. Continued Controversies at UMN

UMN provides a host of other examples of controversies related to sports law, although not all of the examples resulted in litigation. For example, Norwood Teague succeeded Joel Maturi as Athletic Director, but his tenure lasted only three years; Teague resigned on August 7, 2015, admitting to sexual harassment incidents involving female employees.[175] As a

171. *Id*. at 816 (first citing Domagala v. Rolland, 805 N.W.2d 14, 22 (Minn. 2011); and then citing Foss v. Kincade, 766 N.W.2d 317, 320 (Minn. 2009)).

172. *Id*. at 822 ("Our conclusion that no duty of care was owed makes it unnecessary to address the issue of Williams' reliance."); *see also* MacDonald v. Thomas M. Cooley L. Sch., 880 F. Supp. 2d 785, 799 (W.D. Mich. 2012) (holding that the plaintiffs could not legitimately state a claim for negligent misrepresentation because employment statistics provided by the law school were vague, incomplete, and essentially meaningless and therefore could not reasonably be relied upon) ("A claim for negligent misrepresentation requires plaintiff to prove that a party justifiably relied to his detriment on information prepared without reasonable care by one who owed the relying party a duty of care" (citing Fejedelem v. Kasco, 269 Mich App. 499, 501 (2006))).

173. *Smith*, 820 N.W.2d at 809.

174. For a full discussion and analysis of the case, including the minority opinion, see Adam Epstein & Henry Lowenstein, *Promises to Keep? Coaches Tubby Smith, Jimmy Williams and Lessons Learned in 2012*, 24 S.L.J. 165 (2014).

175. *See* Amelia Rayno, *Norwood Teague Resigns as Athletic Director at University of Minnesota*, STARTRIBUNE (Aug. 13, 2015, 11:21 AM), http://www.startribune.com/u-s-

result of the Teague scandal, new language was added into the contract of the new Athletic Director, Mark Coyle, that specifically addressed grounds for termination for drinking, drugs, or dishonesty.[176]

Controversy seemed to follow the University year-after-year, including conflict of interest issues.[177] For example, after refusing to remove his

---

teague-quits-after-groping-women-sending-graphic-texts/321038541/ [https://perma.cc/D6VW-ZAMU]. For another example of inappropriate misconduct at UMN, see Josh Verges, *UMN Demotes, Suspends Athletics Fundraiser for Sexual Harassment*, TWIN CITIES PIONEER PRESS (May 26, 2017, 9:48 AM), https://www.twincities.com/2017/05/25/umn-demotes-suspends-athletics-fundraiser-for-sexual-harassment/ [https://perma.cc/HW82-A8SC] (discussing Randy Handel) ("The University of Minnesota has suspended and demoted its top athletics fundraiser accused of sexually harassing a subordinate with hugs and other unwanted touching."); Joe Christensen & Michael Russo, *University of Minnesota Hires New Head of Fundraising Dusty Clements After Randy Handel Sexual Harassment Investigation*, STARTRIBUNE (June 1, 2017, 11:42 PM), http://www.startribune.com/university-of-minnesota-hires-new-head-of-fundraising-dusty-clements-after-randy-handel-sexual-harassment-investigation/425837073/ [https://perma.cc/W2RH-SARQ]. For an example of inappropriate misconduct at another Minnesota institution of higher learning, see Austin Monteith & Micah Friez, *Current and Former Softball Players Detail Inappropriate Behavior by BSU Coach, Lack of Action by University*, BEMIDJI PIONEER (July 24, 2019, 5:20 PM), https://www.bemidjipioneer.com/sports/softball/4037678-Current-and-former-softball-players-detail-inappropriate-behavior-by-BSU-coach-lack-of-action-by-university [https://perma.cc/HZ3H-43WL].

176. *See* Jim Hammerand, *Lessons from Teague Scandal Evident in New Minnesota AD's Contract*, MINNEAPOLIS/ST. PAUL BUS. J. (May 12, 2016, 1:44 PM), https://www.bizjournals.com/twincities/news/2016/05/12/university-minnesota-ad-teague-coyle-contracts.html [https://perma.cc/76CD-W9WL]; *see also* Joe Christensen, *Gophers AD Mark Coyle Receives Two-Year Contract Extension, Pay Hike*, STARTRIBUNE (Feb. 14, 2020, 11:44 PM), http://www.startribune.com/gophers-ad-mark-coyle-receives-two-year-contract-extension/567884952/ [https://perma.cc/7H4D-8YZA]. For another contract-related issue involving UMN and Coyle, *see* Rachel Blount, *Seven Gophers Coaches Have "Program Elimination" Clauses in Their Contracts*, STARTRIBUNE (Oct. 8, 2020, 2:40 PM), https://www.startribune.com/seven-gophers-coaches-have-program-elimination-clauses-in-new-contracts/572667942/ [https://perma.cc/MGB4-JXFZ] ("Starting in summer 2019, for Olympic sports, our practice has been to include the clause in new contracts and contracts up for renewal.").

177. *See* Dana O'Neil, *Title IX Probes Pose Conflicts of Interest, but Coaches and Athletic Department Officials Must Stand Aside*, THE ATHLETIC (Mar. 7, 2018), https://theathletic.com/264135/2018/03/07/title-ix-probes-pose-conflicts-of-interest-but-coaches-and-athletic-department-officials-must-stand-aside/ [https://perma.cc/AXR8-MKVT] ("[T]he University of Minnesota's Office of Equal Opportunity and Affirmative Action (EOAA) began an investigation into Reggie Lynch, a starting senior forward on the Golden Gophers basketball team.") (noting several women claimed Lynch sexually assaulted them; however, Lynch continued to play the first sixteen games of the season—despite the accusation and investigation—but was ultimately banned from campus after the EOAA ruling); *see also* Jason Scott, *Minnesota to Investigate Decades-Old Abuse Claims*, ATHLETIC BUS. (Feb. 25, 2020), https://www.athleticbusiness.com/college/minnesota-to-investigate-decades-old-

name, image, and likeness from songs and music videos identifying him as a UMN wrestler, Joel Bauman lost his eligibility to continue competing in the sport.[178]

Additionally, after allegations surfaced in the fall of 2016 that numerous student-athlete football players were involved in an alleged gang rape on campus, a protest over the athletes' suspensions from the Holiday Bowl arose; however, that threat eventually dissipated.[179] In fact, even the head football coach Tracy Claeys publicly supported the players and was later terminated.[180]

---

abuse-claims.html?eid=430221898&bid=2602427 [https://perma.cc/39TC-5X38] (stating that UMN, under Coyle's leadership, began investigating claims of sexual abuse against the 1984–85 men's hockey assistant coach Thomas "Chico" Adrahtas); Paul Walsh, *Lawsuit: University of Minnesota Swept Recruit's Sexual Abuse by 1980s Gophers Hockey Assistant Adrahtas Under the Rug*, STARTRIBUNE (May 15, 2021, 9:23 AM), https://www.startribune.com/lawsuit-university-of-minnesota-sex-abuse-allegations-adrahtas-1980s-hockey-assistant/600057398/ [https://perma.cc/KL2P-2D6A].

178. *See* Andy Staples, *Minnesota Wrestler Joel Bauman Another Victim of NCAA Hypocrisy*, SPORTS ILLUSTRATED (Feb. 20, 2013), https://www.si.com/more-sports/2013/02/20/joel-bauman [https://perma.cc/SF57-4V3U].

179. *See, e.g.*, Jon Solomon, *Let's Hope Minnesota Players Learn About Consent, Pick Causes More Carefully*, CBS SPORTS (Dec. 17, 2016, 1:27 PM), https://www.cbssports.com/college-football/news/lets-hope-minnesota-players-learn-about-consent-pick-causes-more-carefully/ [https://perma.cc/QGY7-LGPP] (discussing the "deeply disturbing and graphic details" of an alleged gang rape that led to the suspension of 10 Minnesota football players; noting that in response to the players suspension, the team threatened to boycott the Holiday bowl game); Josh Verges, *UMN Pays $500,000 to Student Who Accused Football Players of Rape in 2016*, TWINCITIES PIONEER PRESS (Aug. 28, 2020, 7:25 PM), https://www.twincities.com/2020/08/27/umn-pays-500000-to-student-who-accused-football-players-of-rape-in-2016/ [https://perma.cc/U7NV-BANV] ("According to the settlement agreement, signed in March, the unidentified 'claimant' was an undergraduate student when she reported to the U that she was the victim of sexual misconduct in fall 2016.").

180. *See* Andy Greder, *10 Gophers Football Players Suspended, Two Weeks Before Holiday Bowl*, TWINCITIES PIONEER PRESS (Jan. 3, 2017, 9:17 PM), https://www.twincities.com/2016/12/13/gophers-football-team-suspends-10-players-indefinitely/ [https://perma.cc/5WBW-Q332]; *see also* Staff and Wire Reports, *Minnesota Fires Tracy Claeys After Coach's Support of Players' Boycott*, USA TODAY (Jan. 4, 2017, 2:03 PM), https://www.usatoday.com/story/sports/ncaaf/bigten/2017/01/03/minnesota-fires-football-coach-tracy-claeys-player-protest/96125342/ [https://perma.cc/R76S-XKCM] ("Claeys voiced support for his players publicly during the protest, much to the dismay of university officials. 'Have never been more proud of our kids,' Claeys tweeted on Dec. 15. 'I respect their rights and support their efforts to make a better world!'"). *But see* Jillian Kay Melchior, *Minnesota Football Rape Case Emblematic of Campus Witch-Hunt Culture*, N.Y. POST (Jan. 1, 2017, 10:36 PM), https://nypost.com/2017/01/01/minnesota-football-rape-case-emblematic-of-campus-witch-hunt-culture/ [https://perma.cc/V8D4-E2RE] ("Coach Tracy Claeys committed the heresy of questioning whether UMinn's Title IX adjudication

After a thorough investigation, four players were expelled; two were suspended for one year; and four players were cleared of wrongdoing.[181] The suspended players then sued the University, but their disparate treatment lawsuit was dismissed.[182] Some journalists have questioned why so many problems have seemed to regularly follow UMN and its athletic department since 1999.[183] Indeed, job turnover, program elimination, and associated costs have proved a hallmark at UMN and in its athletics administration across the board.[184]

---

denied his players due process, and supposedly enlightened liberal activists now want him charred at the stake for it.").

181. *See* Jennifer Mayerle, *4 Gopher Football Players Expelled, 2 Suspended in Sexual Assault Case*, WCCO (Feb. 3, 2017, 5:33 PM), https://minnesota.cbslocal.com/2017/02/03/gopher-player-cleared-sexual-assault/ [https://perma.cc/VKJ2-8WLS].

182. *See* Rochelle Olson, *Federal Judge Tosses Football Players' Race and Gender Discrimination Lawsuit against the University of Minnesota*, STARTRIBUNE (June 26, 2019, 7:30 AM), http://www.startribune.com/federal-judge-tosses-former-football-players-lawsuit-against-university-of-minnesota/511782292/ [https://perma.cc/EQY4-DP2G] ("U.S. District Judge Donovan Frank said the players offered 'no factual support for their allegations of disparate treatment' based on race, gender or their sport's reputation.").

183. *See, e.g.*, Brian Hamilton, *Tracy Claeys Firing Leads to Bigger Question: Why Does Trouble Follow Minnesota?*, SPORTS ILLUSTRATED (Jan. 3, 2017), https://www.si.com/college-football/2017/01/03/minnesota-football-fires-tracy-claeys [https://perma.cc/29NW-PDZE] ("Minnesota athletics is realistically a mid-level business with fair-but-not-outsized expectations, and yet it all too consistently faces extraordinarily high-end humiliations."); Josh Verges, *With "Exemplary" Behavior Since He Was Caught, Gophers Ticket Boss Gets 21 Months in Prison for Stealing $361,000*, TWINCITIES PIONEER PRESS (May 6, 2019, 5:48 PM), https://www.twincities.com/2019/05/06/minnesota-gophers-assistant-athletic-director-brent-holck-sentenced-stealing-361000-ticket-funds/ [https://perma.cc/Y4DZ-8YGG].

184. *See* Mila Koumpilova, *Minnesota Colleges Hunting for Talent Lean More Heavily on Search Firms*, STARTRIBUNE (Aug. 4, 2019, 7:06 AM), http://www.startribune.com/colleges-paid-10m-to-search-firms/516783671/ [https://perma.cc/2XBX-RSKL]; Joan T.A. Gabel & Mark Coyle, *An Open Letter to the University of Minnesota Athletics Community*, GOPHERSPORTS.COM (Sept. 10, 2020, 2:43 PM), https://gophersports.com/news/2020/9/10/an-open-letter-to-the-university-of-minnesota-athletics-community.aspx [https://perma.cc/6C5B-FXMM] (announcing the discontinuation of men's indoor track and field, men's gymnastics, and men's tennis at the completion of the 2020–21 competition season); Rachel Blount, *Regents Vote to Drop Three Gophers Men's Programs but Save Outdoor Track*, STARTRIBUNE (Oct. 10, 2020, 12:49 AM), https://www.startribune.com/regents-vote-to-drop-three-gophers-men-s-programs-but-save-outdoor-track/572690622/ [https://perma.cc/7NWT-LJ9B]. *But see* Madison Roth, *UMN Students Voice Opinions on Gabel's Salary Increase*, MINN. DAILY (Dec. 24, 2021), https://mndaily.com/270337/news/umn-students-voice-opinions-on-gabels-salary-increase/ [https://perma.cc/6DCR-M2NF] (explaining that despite cutting men's tennis, men's gymnastics, and men's indoor/outdoor track and field, UMN's Board of Regents still voted to increase Gabel's new contract to over $1.1 million dollars, the first million-dollar salary for a president in UMN history).

V. OTHER AREAS FOR EXPLORATION

The previous sections of this Article, categorized by decades, focus on constitutional and discriminatory claims and issues. Some involved gender issues, while others relayed examples of improprieties involving Minnesota public universities, including breach of contract claims and demonstrations of the tenuous relationship between UMN and the NCAA rules. The final section of this Article presents other ways in which the state of Minnesota relates to sports law.

A. The Eighth Circuit and Professional Sports

Prominent professional football figures including John Mackey,[185] Freeman McNeil,[186] Marvin Powell,[187] and Reggie White,[188] have all been the named plaintiffs in numerous class action lawsuits that have traveled from Minnesota through the Eighth Circuit Court of Appeals in St. Louis.[189] In fact, the district court in Minneapolis has been the epicenter of the National Football League (NFL) labor-relations universe.[190] This trend appears to have started with John Mackey seeking counsel with a Minneapolis

185. Mackey v. Nat'l Football League, 543 F.2d 606, 623 (8th Cir. 1976) (holding that the Rozelle Rule was a violation of antitrust law under § 1 of the Sherman Act).

186. McNeil v. Nat'l Football League, 790 F. Supp. 871 (D. Minn. 1992).

187. Powell v. Nat'l Football League, 678 F. Supp. 777, 789 (D. Minn. 1988), *rev'd*, 930 F.2d 1293 (8th Cir. 1989) (challenging the NFL's restrictions on free agency under antitrust law but holding that the NFL was protected under antitrust law's labor exemption).

188. *See* White v. Nat'l Football League, 41 F.3d 402, 409 (8th Cir. 1994) (approving the settlement that specified that Doty oversee the Stipulated Settlement Agreement), *abrogated by* Amchem Prods., Inc. v. Windsor, 521 U.S. 591 (1997).

189. *See* Tim Yotter, *NFL, NFLPA Have Legal History in Minneapolis*, 247 SPORTS (June 8, 2015), https://247sports.com/nfl/minnesota-vikings/Article/NFL-NFLPA-have-legal-history-in-Minneapolis-105218738/ [https://perma.cc/L45T-7PFZ] (noting that Minneapolis is one of the jurisdictions of record for NFL labor relations issues); *see also* Richard Sandomir, *Court in Minnesota Has Been a Home Field for a League's Labor Disputes*, N.Y. TIMES (Mar. 12, 2011), https://www.nytimes.com/2011/03/13/sports/football/13judge.html [https://perma.cc/7EVL-N5BV].

190. Sandomir, *supra* note 189; *see also* Jay Weiner, *How Minnesota Became the Center of the NFL Labor Universe*, MINNPOST (Mar. 2, 2011), https://www.minnpost.com/politics-policy/2011/03/how-minnesota-became-center-nfl-labor-universe/ [https://perma.cc/2EAG-WFGD] (noting that NFL cases often appear in Judge David Doty's fourteenth-floor courtroom downtown and that Minnesota courts have jurisdiction because, among other reasons, the NFL's Minnesota Vikings has a franchise there) ("Doty forged a settlement that strengthened players' free agency rights and allowed for the creation of a league-wide salary cap . . . all the while boosting the economic vitality and popularity of the NFL. That so-called 'White settlement' was formalized by a consent decree by Doty, and, with it, the judge retained jurisdiction over all labor matters for as long as the White settlement is in place." (alteration in original))

law firm.[191] Mackey's particular case originated in the courtroom of U.S. District Court Judge for the District of Minnesota, Earl Larson, over the NFL's "Rozelle Rule." The rule involved the former NFL Commissioner, Pete Rozelle, who would award players (and possibly NFL draft picks) to teams as compensation for one of their former players signing with a rival club after becoming a free agent. This policy was determined to be a violation of the Sherman Act.[192]

Given the positive result, the NFL's union, the NFL Players Association (NFLPA), continued to bring lawsuits in the District Court of Minnesota.[193] Other, later decisions often were ruled upon by U.S. District Court Judge David Doty—almost always in favor the NFLPA—prompting the NFL to allege bias.[194] Even today, cases continue to be brought in the district court, despite the NFL's animosity towards the venue; however, the NFL has recently been successful in beating the NFLPA in the race to file a lawsuit in a more favorable jurisdiction.[195] Although the district court has

191. Weiner, *supra* note 190.

192. *See Mackey*, 543 F.2d at 623.

193. *See, e.g.*, *Williams*, 794 N.W.2d at 393 (ruling in favor of the NFL in a circuitous federal and state case related to the league's drug testing policy); *accord* Stringer v. Minn. Vikings Football Club, LLC, 705 N.W.2d 746, 748 (Minn. 2005) (ruling that decedent Korey Stringer's widow could only prevail from his death at football practice in 2001 if she could show that the assistant trainer and medical services coordinator owed Stringer a personal duty and were grossly negligent in performing it and that because they owed Stringer a professional duty, not a personal one, summary judgment in favor the defendants was proper). For a worker's compensation case involving a former Minnesota Vikings player, see Noga v. Minn. Vikings Football Club, 931 N.W.2d 801, 813 (Minn. 2019) (reversing the Workers' Compensation Court of Appeals and holding that defensive lineman Alapati Noga, who later suffered from dementia, did not satisfy the statute of limitations under MINN. STAT. § 176.151 (2018)) ("Here, nothing in the record suggests that the Vikings knew or should have known that Noga was at an increased risk of developing a compensable *Gillette* injury in the form of dementia when the Vikings' staff provided Advil and Tylenol for the headaches and wooziness Noga experienced following play.").

194. *See, e.g.*, White v. Nat'l Football League, 533 F. Supp. 2d 929, 935 (D. Minn. 2008) (reversing arbitrator Stephen Burbank's ruling that former Atlanta Falcons quarterback Michael Vick had to return almost $20 million in bonus money after Vick was sentenced to prison for dog fighting). *But see* Associated Press, *Retirees' Suit vs. NFLPA Dismissed*, ESPN (May 29, 2012), https://www.espn.com/nfl/story/_/id/7984929/judge-dismisses-retired-players-lawsuit-nflpa [https://perma.cc/VX96-LWYR] (discussing U.S. District Judge Susan Richard Nelson's order holding that retired players could not sue their own union and that there was no "fiduciary duty" in such a relationship).

195. *See* Britt Robson, *Why the NFL Hates Minneapolis*, MINNPOST.COM (Aug. 5, 2015), https://www.minnpost.com/sports/2015/08/why-nfl-hates-minneapolis/ [https://perma.cc/P8FD-8J7X] (discussing the transfer of NFLPA's lawsuit after "Deflategate") ("The NFL had filed legal papers in U.S. District Court in Manhattan mere moments after Goodell's announcement last Tuesday, an unusual legal stratagem that sought to confirm the commissioner's edict even before it had been challenged."). For further

addressed many cases involving professional football players,[196] not all professional sports cases are NFL-related.[197]

B. Foul Balls and the "Limited Duty" Rule

In *Alwin v. St. Paul Saints Baseball Club, Inc.*, the Minnesota Court of Appeals affirmed a trial court decision in favor of the baseball club, stating that no duty was owed to a spectator when he was returning from the restroom and was hit in the mouth by a foul fly ball.[198] The court held that the spectator assumed the risk of injury.[199] The court noted that warnings regarding assumption of the risks and dangers incidental to baseball were printed on tickets and large signs posted throughout the stadium; the risks were also announced before the game.[200] The court offered that a ballpark's duty of care owed to its spectators is only a limited duty, and the court was unwilling to extend the duty to areas of the stadium where patrons might not be watching or paying attention to the game.[201] Citing numerous cases from various jurisdictions, the court stated, "Minnesota, like other states, has determined that certain sporting events, including baseball, present

discussion of cases that have emanated from the District of Minnesota to the Eighth Circuit Court of Appeals, including the Tom Brady suspension case, see Adam Epstein, *Missouri Sports Law*, 20 JEFFREY S. MOORAD SPORTS L.J. 495, 507–12 (2013).

196. *See, e.g.*, Dryer v. Nat'l Football League, 55 F. Supp. 3d 1181, 1195–1200 (D. Minn. 2014), *aff'd*, 814 F.3d 938 (8th Cir. 2016).

197. *See* Stephen Whyno, *NHL, Retired Players Reach $19M Concussions Settlement*, AP NEWS (Nov. 12, 2018), https://www.apnews.com/27e7392bf42a41e598054b3f0c52730a [https://perma.cc/3U6X-FCKU] (reporting that the settlement stemmed from U.S. District Judge Susan Richard Nelson's denial of class-action status); *see also* United States v. Beckman, 787 F.3d 466, 474 (8th Cir. 2015) (affirming defendants' convictions for fraud, conspiracy, and money-laundering involving a Ponzi scheme and an attempt to purchase an interest in the NHL's Minnesota Wild); Minn. Twins P'ship v. Minnesota, 592 N.W.2d 847, 856 (Minn. 1999) (concluding the Major League Baseball team was not required to turn over its financial records related to an alleged antitrust violation) ("We choose to follow the lead of those courts that conclude the business of professional baseball is exempt from federal antitrust laws."). For a dispute not decided by the courts, see Sean Highkin, *The Bizarre Saga of Joe Smith's Illegal Minnesota Timberwolves Contract*, USA TODAY (Jan. 9, 2014 3:35 PM), https://ftw.usatoday.com/2014/01/nba-joe-smith-illegal-contract-timberwolves [https://perma.cc/7K4A-K4K9].

198. Alwin v. St. Paul Saints Baseball Club, Inc., 672 N.W.2d 570, 571 (Minn. Ct. App. 2003).

199. *Id*. at 574.

200. *Id*.

201. *Id*. at 573–74.

inherent risks that are well known to the public, and that anyone who attends those events assumes the risk of injury."[202]

C. Additional Considerations

There are many other Minnesota-related sports law incidents, cases, and examples to consider.[203] In one case, *Wu ex rel. Tien v. Shattuck-St. Mary's School*, the federal district court addressed a situation in which a high school student suffered brain damage after being struck in the temple with a golf ball during practice when she stepped into a netted area near another student who was practicing.[204] The court found that assumption of risk did not bar the plaintiff's claim; it explained:

> [a]fter a review of the case law and the parties' memoranda, the Court finds that Plaintiff's negligence claims are not barred by the doctrine of primary assumption of risk. The Court finds that the Plaintiff's claims as stated in her Complaint are more akin to those cases involving enhancement of risk, negligent maintenance of a facility, or negligent supervision of a sporting activity. Accordingly, the Court believes that the apportionment of negligence between the parties is an issue that should be left to a jury.[205]

As a result, the defendants' motions for summary judgment were denied.[206]

In an Olympics-related case, a Minnesota carpet-cleaning company, Zerorez, sued the United States Olympic Committee (USOC) in federal court seeking a declaratory judgment for the right to tweet congratulatory remarks to Minnesota-based Olympians.[207] Zerorez never did cheer on, via

---

202. *Id*. at 572 (first citing Modec v. City of Eveleth, 29 N.W.2d 453, 456 (1947); and then citing Brisson v. Minneapolis Baseball and Athletic Ass'n, 240 N.W.2d 903, 903 (1932)).

203. *See, e.g*., John Rosengren, *A Football Martyr*, SB NATION (Nov. 25, 2014), https://www.sbnation.com/longform/2014/11/25/7275681/jack-trice-iowa-state-football-profile [https://perma.cc/GKL8-82ZX] (exploring the case of Iowa State College football lineman John "Jack" Trice, who died two days after a game against the University of Minnesota, as a result of injuries during the game that may have been racially motivated; reporting that, after years of discussion, Iowa State (now Iowa State University) named its football stadium "Jack Trice Stadium," becoming the first Division-I school in the country to name a stadium after an African-American athlete).

204. Wu *ex rel.* Tien v. Shattuck-St. Mary's Sch., 393 F. Supp. 2d 831, 835 (D. Minn. 2005).

205. *Id*. at 837.

206. *Id*. at 839.

207. *See* Aaron Hall, Zerorez v. U.S. Olympics Comm.—*A Social Media Free Speech Case*, AARON HALL, https://aaronhall.com/usoc/ [https://perma.cc/XD9V-K4TL]

social media, the eleven Minnesotans competing at the Rio 2016 Olympics, but the company felt that the USOC's position to weed out Olympic "Rule 40" violators amounted to a violation of corporate free speech rights via social media.[208] The case was dismissed.[209]

In a case involving roof-top advertising, the Minnesota Vikings and Wells Fargo Bank[210] reached a confidential settlement allowing Wells Fargo to keep elevated, but not illuminated, signs on the rooftops of two office buildings adjacent to U.S. Bank Stadium in Minneapolis.[211] Though the Vikings won their case outright, and Wells Fargo was later ordered to take down the signs, the parties came to an out-of-court resolution to end the litigation.[212]

VI. THE FUTURE

As demonstrated from the decades of incidents, cases, and decisions discussed throughout this Article, the North Star State has played a significant role in sports law, and there is no reason to believe that its national impact will decrease in the future, even if it is not the first of the fifty states to legislate novel sports-related law.[213] Decade after decade, the state continues to address issues related to gender discrimination via legal action. Claims related to NCAA rules violations often emanate from Minnesota and weave their way into the national discourse, much like the recent pattern of

(chronicling the lawsuit and providing updated PDF files of both parties' filings, in addition to links to press articles and FAQs).

208. HSK, LLC v. U.S. Olympic Comm., 248 F. Supp. 3d 938, 946 (D. Minn. 2017) ("Because the totality of the circumstances alleged does not establish that an actual controversy exists between Zerorez and USOC, the Court grants USOC's motion to dismiss for lack of subject-matter jurisdiction.").

209. For the complaint and other legal documents in the case, see Hall, *supra* note 207; *see also* Adam Epstein, *The Ambush at Rio*, 16 J. MARSHALL REV. INTELL. PROP. L. 350, 373–75 (2017).

210. Minn. Vikings Football Stadium, LLC v. Wells Fargo Bank, Nat'l Ass'n, 193 F. Supp. 3d 1002, 1007 (D. Minn. 2016) ("[B]ecause the parties' contract unambiguously prohibits the roof-top signs that Wells Fargo has installed on the Wells Fargo Towers, Wells Fargo is liable for breach of contract. Further, the balance of equities supports a permanent injunction requiring Wells Fargo to remove its current roof-top signs and prohibiting Wells Fargo from installing or maintaining any other mounted or illuminated roof-top signs.").

211. *See* Barbara Osborne, *Vikings Defense Beats Wells Fargo Offense in Contract Dispute Over Signage*, 26 SPORT MKTG. Q. 55, 56–57 (2017).

212. *Id*.

213. *See, e.g.*, Briana Bierschbach, *Bipartisan Push Coming in 2022 to Legalize Sports Betting in Minnesota*, STARTRIBUNE (Nov. 6, 2021, 12:49 PM), https://www.startribune.com/bipartisan-push-coming-in-2022-to-legalize-sports-betting-in-minnesota/600113647/ [https://perma.cc/DP9B-9ZYF].

police brutality protests. Particularly when the stakes are high, athletes and others from the Land of 10,000 Lakes remain unafraid to speak their mind and fight for what is right in the court of public opinion, even if such outspoken activism[214] challenges the status quo or the moniker "Minnesota Nice."[215] For example, the impact of police wrongdoing in the Minneapolis area provided the WNBA's Minnesota Lynx with a platform to speak out against racial injustices.[216] In July 2016, following the death of Philando Castile, several Lynx players wore T-shirts and held a news conference calling for justice and police reform.[217] This outspoken activism "opened the door" for other WNBA players and teams; almost immediately, "players for the New York Liberty, Indiana Fever, and Phoenix Mercury wore Black Lives Matter shirts."[218] Likewise, the NBA's Minnesota Timberwolves, including their players and office staff, proactively and publicly spoke out against racial injustice.[219]

Further, it remains to be seen as to how UMN and the state of Minnesota will adapt in the quickly evolving intercollegiate athletic world, especially after the 2021 U.S. Supreme Court's *NCAA v. Alston* decision, which has contributed to the recent momentum of opening the door for college

214. *See* Bates, *supra* note 4. For discussion on the history of student-athlete activism generally, see Adam Epstein & Kathryn Kisska-Schulze, *Northwestern University, The University of Missouri, and the "Student-Athlete": Mobilization Efforts and the Future*, 26 J. LEGAL ASPECTS OF SPORT 71, 71 (2016) (addressing issues related to both racial and economic injustice).

215. *See* Rachel Hutton, *What is Minnesota Nice and Where Did the Term Originate?,* STARTRIBUNE (Apr. 23, 2019, 10:47 AM), https://www.startribune.com/where-does-the-term-minnesota-nice-come-from-and-what-does-it-mean/502474301/ [https://perma.cc/N3EH-WJ6W]; *see also* Steve Karnowski, *Floyd's Death Laid Bare the 'Minnesota Paradox' of Racism*, AP NEWS (May 24, 2021), https://apnews.com/article/george-floyd-death-anniversary-2021-363fbf2646d7dd69d97e1e87784995f1 [https://perma.cc/VB9V-4BHM] (suggesting that "Minnesota Nice" has hidden the state's racial disparities in employment, housing, and education).

216. *See* Katie Barnes, *In the Shadow of George Floyd Square, the Minnesota Lynx Remain Steadfast in the Fight for Racial Justice*, ESPN (May 25, 2021), https://www.espn.com/wnba/story/_/id/31502648/in-shadow-george-floyd-square-minnesota-lynx-remain-steadfast-fight-racial-justice [https://perma.cc/2DTJ-LP6U] (referencing the deaths of Floyd, Castile, Wright, and others in encounters with police).

217. *Id*.

218. *Id*. ("There's no question that the Minnesota Lynx were the first team to really create this space of being unafraid and to lead with courage[.]" (quoting Lynx coach and general manager Cheryl Reeve)).

219. *See* Michael Pina, *Behind the Timberwolves' Fight for Racial Justice*, SPORTS ILLUSTRATED (May 25, 2021), https://www.si.com/nba/2021/05/25/minnesota-timberwolves-george-floyd-racial-justice [https://perma.cc/A2G2-XCJM] (reporting that the team's gift to Floyd family members of a game ball and some jerseys was a small part of the players' "commitment to the cause of racial equality").

athletes to benefit financially overall, including from the use of their name, image, and likenesses (NIL), despite the NCAA's long history of preventing college athletes from profiting from any such activity.[220] Though not directly related to NIL, in *Alston*, the Supreme Court unanimously upheld Ninth Circuit District Court and Court of Appeals' decisions, which determined that the NCAA's cap on education-related compensation for student-athletes was a form of price-fixing and therefore violated federal antitrust law.[221]

Almost immediately following the *Alston* decision, many states began to legislate that student-athletes could capitalize on and monetize the use of their NIL.[222] However, Minnesota was not in that camp, at least at the state legislative level, at the time of this Article's publication.[223] Nevertheless, the NCAA suspended its immemorial, restrictive NIL policy, which wholly prevented college-athletes from earning NIL income, on July 1, 2021.[224] UMN jumped on board almost immediately by establishing a new policy, though it was expressly categorized as an interim policy.[225] Despite the lack of a Minnesota law which specifically addresses NIL, UMN

220. Nat'l Collegiate Athletic Ass'n v. Alston, 141 S. Ct. 2141, 2165-66 (2021); *id.* at 2166 (Kavanaugh, J., concurring).

221. *Id*. at 2166 (recognizing the national debate on the subject of student-athlete compensation; stating that resolving the debate is not within the role of the courts (quoting In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig., 958 F.3d 1239, 1265 (9th Cir. 2020)); holding that the district court's decision was "within the law's bounds"); *id.* at 2169 (Kavanaugh, J., concurring) ("The NCAA is not above the law.").

222. *See* Kathryn Kisska-Schulze & Adam Epstein, *Changing the Face of College Sports One Tax Return at a Time*, 73 OKLA. L. REV. 457, 457–58 (2021) (noting that the state of California was the first state to adopt NIL legislation on September 30, 2019, when Governor Gavin Newsom signed into law the Fair Pay to Play Act, allowing student-athletes to capitalize on the use of their NIL despite the NCAA's bylaws).

223. *Id*. at 475 (reporting that a Minnesota bill died in the legislature in 2020); *see also* Kent Youngblood, *NCAA Decision Allows Athletes to Make Money from Their Name, Image and Likeness*, STARTRIBUNE (July 1, 2021, 6:56 AM), https://www.startribune.com/landmark-ncaa-decision-allows-athletes-to-profit-from-name-image-and-likeness/600073714/ [https://perma.cc/4XVR-BQRG] (noting that UMN planned to communicate with student-athletes, coaches, and the general public on its NIL policy).

224. *See* Youngblood, *supra* note 223.

225. UNIV. OF MINN., UNIVERSITY OF MINNESOTA NAME, IMAGE & LIKENESS INTERIM POLICY (2021); *see also* Youngblood, *supra* note 223; Ryan Faircloth, *Minnesota Student Athletes Cash in on Their Brand Under New NCAA Rules*, STARTRIBUNE (Dec. 5, 2021, 7:59 AM), https://www.startribune.com/college-sports-ncaa-university-of-minnesota-student-athletes-name-image-likeness/600123822/ [https://perma.cc/V8DW-7L87] (reporting that UMN athletes have signed at least 150 NIL deals since July 2021).

student-athletes are currently building their brands and capitalizing on these new opportunities.[226]

It is quite ironic that the NCAA changed its NIL stance as byproduct of the *Alston* decision. Indeed, one of the most public and significant statements made against this NCAA restriction, as discussed above, occurred when UMN wrestler Joel Bauman took a principled stand in 2013 and gave up his college wrestling career as a result.[227] Today, not only could Bauman wrestle for UMN and profit from his NIL, much like current UMN wrestler Gable Steveson, but he would likely be supported, rather than punished, for his efforts.[228]

CONCLUSION

The volume of sports law cases emanating from Minnesota is epic in relation to the state's population. Minnesota was one of the states in the 1970s that addressed the issue of gender discrimination and civil rights, even before the enactment of Title IX. Minnesota was one of the first states to judicially consider whether girls could play on boys' sports teams. The impact of Judge Miles Lord and his decisions must not be underestimated.

Unfortunately for the state, its flagship institution, UMN, has run afoul of NCAA rules time-and-time again, often leading to litigation in the courts. Claims of academic fraud, Title IX discrimination, harassment, retaliation, and alleged violations of several federal and state laws demonstrate that UMN has much to offer sports law enthusiasts, arguably as much as any other university in the country.

---

226. *See* Gabrielle Lombard, *NCAA Rule Change Allows UMN Student Athletes to Build Their Brand*, MINN. DAILY (Dec. 16, 2021), https://mndaily.com/270300/news/ncaa-rule-change-allows-umn-student-athletes-to-build-their-brand/ [https://perma.cc/X3HS-H7GV] (writing that the athletes are not only creating personal brands but are also forming partnerships and deals beyond Minnesota's borders).

227. *See* Staples, *supra* note 178; *see also* Chip Scoggins, *Score One for the NCAA Resisters with Unanimous Supreme Court's Ruling*, STARTRIBUNE (June 27, 2021, 8:34 AM), https://www.startribune.com/score-one-for-the-ncaa-resisters/600072408/ [https://perma.cc/MEA4-5X8D] (discussing Bauman's refusal to comply with NCAA policies against the use of NIL in 2013 by giving up wrestling for UMN as a matter of principle) ("Bauman feels a sense of pride in taking a stand on this issue nearly a decade ago. He was right then, and he is right now.").

228. *See* Mike Coppinger, *Gable Steveson, Olympic Wrestling Gold Medalist, Signs Multiyear Deal with WWE*, ESPN (Sept. 9, 2021), https://www.espn.com/wwe/story/_/id/32177038/gable-steveson-olympic-wrestling-gold-medalist-signs-multi-year-deal-wwe [https://perma.cc/E65D-MKNX] (reporting that 21-year-old Steveson signed a contract with World Wrestling Entertainment allowing him to attend UMN for his senior year to defend his national championship in the heavyweight division).

Uniquely, the impact that Minnesota has had on the Eighth Circuit Court of Appeals and professional sports is conceivably more than any other state in terms of labor relations, particularly with respect to the NFL. Ultimately, this Article demonstrates that the North Star State, especially its flagship public university, must continue to be a part of the discussion in sports law.