

No. __A-____

In the Supreme Court of the United States

NATIONAL FOOTBALL LEAGUE, INC. *et al.*,
Applicants,

v.

NINTH INNING, INC. *et al.*,
Respondents.

**APPLICATION FOR AN EXTENSION OF TIME IN WHICH
TO FILE A PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

To the Honorable Elena Kagan, Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

Pursuant to Rules 13.5, 22, and 30.2 of the Rules of this Court, Applicants National Football League, Inc.; NFL Enterprises, LLC; (collectively, the “NFL”); Applicants Arizona Cardinals, Inc.; Atlanta Falcons Football Club LLC; Baltimore Ravens, LP; Buffalo Bills, Inc.; Panthers Football, LLC; Chicago Bears Football Club, Inc.; Cincinnati Bengals, Inc.; Cleveland Browns, LLC; Dallas Cowboys Football Club, Ltd.; Detroit Lions, Inc.; Green Bay Packers, Inc.; Houston NFL Holdings, LP; Indianapolis Colts, Inc.; Jacksonville Jaguars, Ltd.; Kansas City Chiefs Football Club, Inc.; Miami Dolphins, Ltd.; Minnesota Vikings Football Club, LLC; New

England Patriots, LP; New Orleans Louisiana Saints, LLC; New York Football Giants, Inc.; New York Jets Football Club, Inc.; Oakland Raiders, LP; Philadelphia Eagles Football Club, Inc.; Pittsburgh Steelers Sports, Inc.; San Diego Chargers Football Co.; San Francisco Forty Niners, Ltd.; the Rams Football Company, LLC; Buccaneers, LP; Tennessee Football, Inc.; Washington Football, Inc.; Football Northwest LLC; and Denver Broncos Football Club (collectively, “member clubs”); and Applicants DIRECTV, LLC and DIRECTV Holdings LLC (“collectively, “DIRECTV”) respectfully request that the time to file a petition for writ of certiorari in this matter be extended for 30 days to, and including, February 7, 2020.

The Ninth Circuit entered its judgment and issued an opinion in support of the judgment on August 13, 2019. The NFL and its member clubs timely petitioned for rehearing *en banc* on August 27, 2019. DIRECTV filed a joinder in support of the petition for rehearing *en banc* on the same day. The Ninth Circuit denied the petition on October 10, 2019. Unless extended, the time for filing a petition for writ of certiorari will expire on January 8, 2020. This Application is filed more than ten days prior to that date.

The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1). Attached are copies of the Ninth Circuit’s majority and dissenting opinions (Exhibit 1) and its order denying rehearing *en banc* (Exhibit 2).

BACKGROUND

This case concerns an antitrust challenge to the NFL’s longstanding, procompetitive broadcast arrangements. Respondents challenge the NFL’s exclusive distribution arrangements with DIRECTV, which provide consumers access to “out-

of-market” NFL game broadcasts (“Sunday Ticket”) in addition to those available on free, over-the-air television. Respondents challenged as allegedly anticompetitive (i) the NFL member clubs’ joint licensing of the Sunday Ticket broadcast rights and (ii) the NFL’s agreement to grant certain exclusive distribution rights to DIRECTV.

The district court dismissed respondents’ claims on multiple independent grounds, including their failure to allege that any aspect of the challenged arrangements injured competition. The Ninth Circuit reversed, holding that the challenged arrangements could be condemned as a “naked” restraint of trade. As a result, the Ninth Circuit relieved respondents of their obligation to plead facts plausibly showing both anticompetitive effects and a properly defined relevant market. The appellate court did not address the district court’s holding that respondents could not establish either of those elements of a rule-of-reason claim.

The Ninth Circuit’s analysis of the joint-venture issues represents a clear misapplication of *NCAA v. Bd. of Regents of Univ. of Okla.*, 468 U.S. 85 (1984), and conflicts squarely with this Court’s decision in *American Needle, Inc. v. National Football League*, 560 U.S. 183 (2010), as well as precedents of other courts of appeals. Unlike the NCAA, the NFL is a highly integrated joint venture that produces an entertainment product—the on-the-field competition of NFL Football—which the NFL then distributes to consumers through broadcast television and other means.

Multiple courts of appeals have recognized that sports leagues function as joint ventures that create an integrated product, *e.g.*, *Major League Baseball Properties, Inc. v. Salvino, Inc.*, 542 F.3d 290, 296 (2d Cir. 2008); *Smith v. Pro Football, Inc.*, 593

F.2d 1173, 1179 (D.C. Cir. 1978), and have therefore held that any antitrust challenges to league broadcast arrangements are subject to full rule-of-reason scrutiny, e.g., *Chi. Prof'l Sports Ltd. P'ship v. Nat'l Basketball Ass'n*, 95 F.3d 593, 600 (7th Cir. 1996). The Ninth Circuit's decision cannot be reconciled with these decisions of its sister circuits; it condemns as a "naked" anticompetitive restraint agreements regarding intellectual property rights of a kind that are ubiquitous in the U.S. economy, are "essential if the product is to be available at all," and are "likely to survive the Rule of Reason." See *American Needle*, 560 U.S. at 203 (citations and internal quotations omitted).

Over a dissent, a majority of the Ninth Circuit panel also held that respondents had standing to pursue antitrust damages claims against the NFL and its member clubs even though respondents do not purchase anything from the NFL or its member clubs. That holding created a new exception to *Illinois Brick v. Illinois*, 431 U.S. 720 (1977), affording standing to indirect purchasers who challenge non-price-fixing agreements that allegedly reduce output. That result cannot be reconciled with *Illinois Brick*; it contradicts this Court's instruction not to create further "exceptions" to the direct purchaser rule, *Kansas v. Utilicorp United, Inc.*, 497 U.S. 199, 216-17 (1990); and it conflicts with other circuit precedent, e.g., *Dickson v. Microsoft Corp.*, 309 F.3d 193, 200, 213-16 (4th Cir. 2002).

REASONS FOR GRANTING AN EXTENSION OF TIME

The Applicants respectfully submit that a 30-day extension of the time in which to file a petition for writ of certiorari is appropriate:

First, this case raises significant questions regarding the pleading standards that must be met by an antitrust plaintiff challenging joint venture conduct as well as the scope of *Illinois Brick*'s direct purchaser rule, including:

- Whether a plaintiff can state a viable antitrust claim challenging an agreement among a lawful joint venture's members that is integral to creation of the venture's product without plausibly alleging that the joint venture exercised market power in a properly defined antitrust market.
- Whether a plaintiff may pursue an antitrust damages claim challenging an agreement among joint venture members when that plaintiff does not directly purchase any product from the joint venture or its members, does not allege price-fixing by joint venture members, and does not otherwise satisfy an established exception to *Illinois Brick*'s direct purchaser requirement.

These questions have important implications for the application of the antitrust laws not only to sports leagues, but more generally to all integrated joint ventures in many sectors of the economy. Opening the door to treble damages antitrust challenges to the decisions of joint ventures about the creation and distribution of the joint venture's core product—based on the theory that limits on the distribution of the jointly-produced product are “naked” restrictions on output—would chill procompetitive collaboration and diminish inter-brand competition. Such challenges should at a minimum require the pleading of the standard requirements of a full rule-of-reason antitrust claim.

Second, the requested 30-day extension would impose no additional burden or prejudice on the parties.

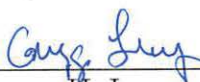
Third, a 30-day extension would facilitate coordination between counsel, the NFL, DIRECTV, and the 32 member club petitioners. This additional time is necessary in light of the upcoming holidays and counsel's responsibility to meet additional, earlier deadlines in other matters.

CONCLUSION

Accordingly, the NFL, member clubs, and DIRECTV respectfully request that the time within which they may file a petition for a writ of certiorari be extended for 30 days, to and including February 7, 2020.

Robyn E. Bladow
Tammy A. Tsoumas
Jonathan J. Faria
KIRKLAND & ELLIS LLP
333 South Hope Street
Los Angeles, CA 90071
(213) 680-8400

Respectfully submitted,

 / with permission
JC

Gregg H. Levy
Counsel of Record
Derek Ludwin
John S. Playforth
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001
glevy@cov.com
(202) 662-6000

Beth A. Wilkinson
WILKINSON WALSH + ESKOVITZ LLP
2001 M Street, NW, 10th Floor
Washington, DC 20036
Telephone: (202) 847-4000

Sean Eskovitz
WILKINSON WALSH + ESKOVITZ LLP
11601 Wilshire Boulevard, Suite 600
Los Angeles, CA 90025
Telephone: (424) 291-9655

Counsel for DIRECTV Applicants

Counsel for NFL and Member Club Applicants

November 27, 2019

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Applicants disclose the following:

1. The National Football League is an unincorporated association of 32 member clubs and has its principal executive offices at 345 Park Avenue, New York, New York 10154.

2. NFL Enterprises LLC is wholly owned by NFL Ventures, L.P.

3. The 32 member clubs of the National Football League are as follows:

a. Arizona Cardinals Football Club LLC, d/b/a Arizona Cardinals;

b. Atlanta Falcons Football Club, LLC, d/b/a Atlanta Falcons;

c. Baltimore Ravens Limited Partnership, d/b/a Baltimore Ravens

(Baltimore Football Company, LLC is the general partner);

d. Buffalo Bills, LLC, d/b/a Buffalo Bills;

e. Panthers Football, LLC, d/b/a Carolina Panthers;

f. The Chicago Bears Football Club, Inc., d/b/a Chicago Bears;

g. Cincinnati Bengals, Inc., d/b/a Cincinnati Bengals;

h. Cleveland Browns Football Company LLC, d/b/a Cleveland

Browns;

i. Dallas Cowboys Football Club, Ltd., d/b/a Dallas Cowboys (JWJ

Corporation is the general partner);

j. PDB Sports, Ltd. d/b/a Denver Broncos (Bowlen Sports, Inc. is

the general partner);

k. The Detroit Lions, Inc., d/b/a Detroit Lions;

l. Green Bay Packers, Inc., d/b/a Green Bay Packers;

- m. Houston NFL Holdings, L.P., d/b/a Houston Texans (RCM Sports & Leisure, L.P. is the general partner; Houston NFL Holdings G.P., L.L.C. is the general partner of RCM Sports);
- n. Indianapolis Colts, Inc., d/b/a Indianapolis Colts;
- o. Jacksonville Jaguars, LLC, d/b/a Jacksonville Jaguars;
- p. Kansas City Chiefs Football Club, Inc., d/b/a Kansas City Chiefs;
- q. The Los Angeles Rams, LLC, d/b/a Los Angeles Rams;
- r. Chargers Football Company, LLC, d/b/a Los Angeles Chargers;
- s. Miami Dolphins, Ltd., d/b/a Miami Dolphins (South Florida Football Associates LLC is the general partner);
- t. Minnesota Vikings Football, LLC, d/b/a Minnesota Vikings;
- u. New England Patriots LLC, d/b/a New England Patriots;
- v. New Orleans Louisiana Saints, LLC, d/b/a New Orleans Saints;
- w. New York Football Giants, Inc., d/b/a New York Giants;
- x. New York Jets LLC, d/b/a New York Jets;
- y. Raiders Football Club, LLC, d/b/a Oakland Raiders;
- z. Philadelphia Eagles, LLC, d/b/a Philadelphia Eagles;
- aa. Pittsburgh Steelers LLC, d/b/a Pittsburgh Steelers;
- bb. Forty Niners Football Company LLC, d/b/a San Francisco 49ers;
- cc. Football Northwest LLC, d/b/a Seattle Seahawks;
- dd. Buccaneers Team LLC, d/b/a Tampa Bay Buccaneers;

ee. Tennessee Football, Inc., d/b/a Tennessee Titans (a subsidiary of KSA Industries, Inc.); and

ff. Pro-Football, Inc., d/b/a Washington Redskins (a subsidiary of WFI Group, Inc., which is a subsidiary of Washington Football, Inc.).

4. DIRECTV, LLC, a California limited liability company, is a wholly-owned subsidiary of DIRECTV Holdings LLC.

a. DIRECTV Holdings LLC, a Delaware limited liability company, is a wholly-owned subsidiary of The DIRECTV Group, Inc.

b. The DIRECTV Group, Inc., a Delaware corporation, is a wholly-owned subsidiary of DIRECTV Group Holdings, LLC.

c. DIRECTV Group Holdings, LLC, a Delaware limited liability company, is a wholly-owned subsidiary of AT&T Inc.

d. AT&T Inc., a Delaware corporation, is a publicly traded company on the New York Stock Exchange.

e. There is no one person or group that owns 10% or more of the stock of AT&T Inc.

Other than what is listed above, no Applicant has a parent corporation.

Other than AT&T Inc., no publicly-held corporation owns more than 10 percent of any Applicant's stock.