

CLIENT ALERT

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NFL Fumbles: Courts Push Back on NFL Commissioner's Authority To Arbitrate Claims

Two recent decisions against the NFL, *NFL v. Gruden* and *Flores v. New York Football Giants*, raise questions regarding the league's ability to arbitrate claims by former employees of its member teams. In both cases the NFL argued that the claims were subject to the arbitration provisions in the employee's contracts that also incorporated by reference the NFL Constitution, which grants broad powers to the NFL Commissioner to arbitrate claims by players and employees. The courts disagreed, finding that the claims were not subject to arbitration and challenging the Commissioner's authority to compel arbitration. These cases demonstrate that while there is a strong presumption under the Federal Arbitration Act and state law in favor of arbitration, courts will refuse to enforce provisions that do not meet the basic requirements for arbitrability of claims. These decisions could be the death knell for the arbitration provision of the NFL Constitution and the Commissioner's authority to compel arbitration.

National Football League v. Gruden

In *National Football League v. Gruden*, the NFL appealed the district court of Nevada's order denying a motion to compel arbitration of Gruden's claims.¹ Gruden, a longtime coach in the NFL and former ESPN host, alleged that the NFL and its Commissioner, Roger Goodell, conspired to leak emails between Gruden and the then president of a professional football team (the Washington Commanders) containing sexist, racist and homophobic language.² When the emails were published by news outlets, Gruden resigned from the Las Vegas Raiders, terminating his 10-year, \$100 million contract.³ Gruden alleged that the NFL and Goodell tortiously interfered with his contract by leaking the offensive emails to force his resignation.⁴

Gruden's employment contract with the Raiders contained a provision requiring Gruden to arbitrate any dispute arising out of that contract, and also incorporated by reference the NFL Constitution's arbitration provision, which provides in relevant part:

The Commissioner shall have full, complete, and final jurisdiction and authority to arbitrate: . . .

(E) Any dispute involving a member or members in the League or any players or employees of the members of the

¹ *NFL v. Gruden*, No. 85527, 2025 Nev. Unpub. LEXIS 558, at *1 (Nev. Aug. 11, 2025).

² *Id.* at *1-*2.

³ *Id.* at *2, 10.

⁴ *Id.* at *2.

League or any combination thereof that in the opinion of the Commissioner constitutes conduct detrimental to the best interests of the League or professional football.⁵

At issue was whether those arbitration provisions applied to Gruden's claims and thus required Gruden to arbitrate his state law claims rather than litigate them in court.⁶ The Supreme Court of Nevada agreed with the lower court that those provisions could not apply to Gruden's claims and therefore affirmed the district court's order denying the motion to compel arbitration.⁷ Because Gruden was no longer an NFL employee, the Court found that he was no longer bound by the NFL Constitution's arbitration provision.⁸ Additionally, the Court agreed with the lower court that the NFL Constitution's arbitration provision is unconscionable and therefore unenforceable.⁹

In order to refuse to enforce a contract based on the doctrine of unconscionability, a court must find both procedural and substantive unconscionability. The inquiry regarding procedural unconscionability focuses on the circumstances surrounding contract formation, while the inquiry regarding substantive unconscionability focuses on the terms of the contract. The Court found that the NFL Constitution's arbitration provision was procedurally unconscionable because Gruden was only permitted to negotiate the terms of his 7-page employee contract, not the 447-page NFL Constitution that the NFL required every team to incorporate into their employment contracts.¹⁰ And it found that the provision was substantively unconscionable for two reasons. First, the provision permitted Commissioner Goodell to arbitrate disputes pertaining to his own conduct, which was at issue in the case.¹¹ The Court held that allowing the "stronger party" to select a biased arbitrator is unconscionable "even if the stronger party may ultimately choose a neutral arbitrator."¹² Second, the NFL was permitted to amend the NFL Constitution (including the arbitration clause) at any time, without notice.¹³ The Court held that having this unilateral control over amendments to the NFL Constitution was substantively unconscionable.¹⁴

Addressing the arbitration clause in the employment contract between Gruden and the Raiders, the Court held that the NFL and Goodell—who were not signatories to that

⁵ *Id.* at *2–*3.

⁶ *Id.*

⁷ *Id.* at *9–*10.

⁸ *Id.* at *4.

⁹ *Id.* at *5.

¹⁰ *Id.* at *7.

¹¹ *Id.* at *7–*8.

¹² *Id.* at *8.

¹³ *Id.*

¹⁴ *Id.*

contract—could not avail themselves of the contract’s arbitration clause based on the doctrine of equitable estoppel because the gravamen of Gruden’s complaint was not based on his contractual duties; rather, his complaint pertains to the alleged release of the emails, actions external to the contract.¹⁵ A nonsignatory to an arbitration agreement may enforce an arbitration agreement against a signatory based on the doctrine of equitable estoppel only where signatory’s claims are “dependent upon, or founded in and inextricably intertwined with, the underlying contractual obligations of the agreement containing the arbitration clause.”¹⁶

Flores v. New York Football Giants

The second case involved claims by three former NFL coaches against the NFL and certain of its member teams for racial discrimination under local, state and federal law.¹⁷ The coaches alleged that they were denied coaching positions based on their race.¹⁸ Like Gruden, the coaches had signed employment contracts that contained arbitration provisions and also incorporated the NFL Constitution (including its arbitration provision) by reference.¹⁹ The NFL and its member clubs moved to compel arbitration.²⁰ The district court granted the motion with respect to certain claims based on the club-specific arbitration agreements in the coaches’ contracts, including Brian Flores’ claim against the Miami Dolphins, but denied the motion with respect to one coach, Flores, for his claims against the NFL and the New York Giants, Houston Texans and Denver Broncos for their refusal to hire him.²¹

On appeal, the Second Circuit affirmed the district court’s order.²² The court found that by submitting Flores’s claims to “the unilateral substantive and procedural discretion” of the principal executive officer of an adverse party (the NFL Commissioner), the NFL Constitution’s arbitration clause fails to provide an independent arbitral forum, a bilateral dispute resolution, and a procedure.²³ The court therefore held that the arbitration clause was entitled to no protection under the Federal Arbitration Act (the FAA).²⁴ The fact that the procedure was labelled an “arbitration” was simply insufficient to bring it within the

¹⁵ *Id.* at *9.

¹⁶ *Id.* (citing *Soltero v. Precise Distrib., Inc.*, 322 Cal. Rptr. 3d 133, 138 (Cal. Ct. App. 2024)).

¹⁷ *Flores v. N.Y. Football Giants, Inc.*, No. 23-1185-cv, 2025 U.S. App. LEXIS 20688, at *3–*4 (2d Cir. Aug. 14, 2025).

¹⁸ *Id.* at *6–*7.

¹⁹ *Id.* at *9.

²⁰ *Id.* at *7.

²¹ *Id.* at *8–*9.

²² *Id.* at *4.

²³ *Id.* at *19.

²⁴ *Id.* at *22.

scope of the FAA.²⁵ The NFL Commissioner’s appointment of an NFL adviser to arbitrate Flores’s claims was also insufficient because it did not provide an independent arbitral forum or remedy the Commissioner’s unilateral contractual authority over the substance of Flores’s claims and the procedures for arbitrating them.²⁶

Separately, the court held that the arbitration clause was also unenforceable because it failed to guarantee that Flores can vindicate his statutory claims in an adequate arbitral forum.²⁷ Under the effective vindication doctrine, a judge may invalidate “offending arbitration agreements” that erode a party’s right to pursue statutory remedies.²⁸ Applying that doctrine, the court found that the NFL Constitution’s arbitration agreement constitutes an improper waiver of Flores’s right to pursue statutory remedies because it required Flores to submit his statutory claims to the unilateral discretion of the executive of an adverse party, without an independent arbitral forum and a process for bilateral dispute resolution.²⁹

The parties in the *Flores* case continue to litigate arbitrability. Based on the Second Circuit’s decision, the coaches in the *Flores* case have asked the District Court to reconsider its prior holding that their other claims were subject to arbitration.³⁰ The NFL and other NFL teams have filed a petition for *en banc* review by the Second Circuit.³¹ To date, no discovery has occurred in the District Court as the various challenges to the NFL Commissioner’s authority to arbitrate claims play out.

Conclusion

While these decisions are limited to the facts of each case, they raise serious questions regarding the enforceability of the arbitration provisions of the NFL Constitution. Both courts found that the authority granted to the NFL Commissioner exceeded limits allowed by federal and state law. Although a similar provision granting the NFL Commissioner broad authority in arbitrations has previously been enforced in *NFL Mgmt. Council v. NFL Players Ass’n*, 820 F.3d 527 (2d Cir. 2016), that case involved a collective bargaining agreement between the players and the NFL.³² In that case, federal labor law dictated the bounds of the authority of the Commissioner, which were “negotiated and refined over time by the parties themselves so as to best reflect their priorities, expectations, and

²⁵ *Id.* at *19.

²⁶ *Id.* at *21–*22.

²⁷ *Id.* at *23.

²⁸ *Id.*

²⁹ *Id.* at *23–24.

³⁰ Mem. of Law in support of Mot. For Recons., *Flores v. NFL*, No. 22-CV-0871 (VEC), 2023 LEXIS 71461 (S.D.N.Y. July 25, 2023).

³¹ Appellants’ Pet. for Reh’g En Banc, *Flores v. N.Y. Football Giants*, No. 23-1185-cv, 2025 LEXIS 342037 (2d Cir. Aug. 14, 2025).

³² *NFL Mgmt. Council v. NFL Players Ass’n*, 820 F.3d 527, 536 (2d Cir. 2016).

experience.”³³ Conversely, in *Gruden* and *Flores*, the coaches did not have such an opportunity to negotiate and mutually decide on the arbitration provision in the NFL Constitution, which was also subject to unilateral change without notice.

The courts in *Gruden* and *Flores* have identified serious flaws in the provisions of the NFL Constitution that litigants may raise in future proceedings. Particularly since the NFL Constitution is not subject to negotiation, and can be changed without notice, the NFL should consider amending its Constitution’s arbitration clause to require a neutral arbitrator and a process for bilateral dispute resolution, which does not confer on the Commissioner any authority over deciding the substance of claims or the procedures for arbitrating them. This would significantly improve the chances of enforcing arbitration in disputes with former and current employees.

Ultimately, the arbitration agreement at issue in these cases was found to be unenforceable for a number of reasons. The broader implications of these decisions is that an arbitration agreement that does not provide for bilateral dispute resolution and an independent adjudicator is not an arbitration agreement at all. Indeed, there are limitations to the FAA’s strong presumption of enforceability of arbitration agreements — drafters of such agreements must take caution to ensure the requisite independence between the parties and the arbitrator exists, or they risk making a costly fumble.

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³³ *Id.*

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