Congress of the United States
Washington, DC 20510

September 2, 2020

Mr. Roger Goodell
Commissioner
National Football League
345 Park Avenue
New York, NY 10154

Dear Commissioner Goodell:

We write today to request information regarding any actions the National Football League (NFL) is taking or plans to take to address alleged racial bias in the algorithm used to determine eligibility for dementia-related compensation.

In 2013, the NFL agreed to a $765 million settlement that entitled 4,500 former players and their families to monetary compensation based on concussions suffered on the field and resulting dementia.[1] In order to receive any compensation, affected players must undergo a neurocognitive exam to demonstrate cognitive decline. However, media reports have recently brought to light troubling allegations from two retired players: The NFL has "explicitly and deliberately" discriminated against possibly thousands of Black players who filed dementia-related claims and denied them deserved monetary compensation.[2]

The players allege the results of the NFL's cognitive impairment evaluation are modified by a race-based algorithm that assumes Black players have lower cognitive functioning when healthy than that of their white counterparts. The effect of such an across the board assumption is that, in order to receive their settlement compensation, Black players must show a greater cognitive decline than their white teammates. This is not the first time these issues have been raised. Researchers have repeatedly questioned the science at hand and raised concerns about its use outside of a clinical setting. In fact, the special master appointed by the court during the 2013 settlement negotiations recently acknowledged not only that "African-American-specific norms increase the rate of false negatives," but also that Black players "may be denied access to necessary benefits or compensation solely on the basis of race."[3] To be clear, using racial factors to deny compensation that would otherwise be received is a violation of federal law.

In an official statement, the NFL did not deny the existence of the racially-based algorithm. Instead, the League's spokesperson maintained the settlement "always contemplated the use of recognized statistical techniques to account for demographic differences such as age, education and race."[4] In addition, the NFL spokesman maintained the settlement compensation does not

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[1] https://www.nytimes.com/2013/08/30/sports/football/judge-announces-settlement-in-nfl-concussion-suit.html
[2] https://www.nytimes.com/2020/08/25/sports/football/nfl-concussion-racial-bias.html
[3] https://www.nytimes.com/2020/08/25/sports/football/nfl-concussion-racial-bias.html
[4] https://www.wsj.com/articles/lawsuit-alleges-nfls-concussion-settlement-discriminates-against-black-players-11598371843

require the use of any particular adjustment, and instead leaves their use up to the discretion of the doctor administering each specific evaluation. Yet, it is our understanding that the NFL has appealed at least one case in which a doctor awarded a Black player compensation without accounting for race. In that case, the NFL ended up reversing the earlier eligibility determination to deny the player compensation after recalculating and accounting for race.

If these allegations are true, the algorithm used to modify the results of your cognitive evaluations appear to have the effect of denying Black players — a historically-disadvantaged and legally-protected group — compensation to which they would otherwise be entitled. This would raise serious questions about the NFL's commitment to racial justice and compliance with the Federal law that mandates equal protection. The facts as presented are particularly troubling if the NFL was previously aware of the effects of this algorithm on Black players.

As the NFL, and this country, attempts to take steps to address racial injustice, the NFL must make a concerted effort to evaluate the degree to which racial bias impacts these compensation determinations and move promptly to rectify it. To that end, please provide our offices with answers to the following questions no later than October 2, 2020.

1. Please detail the following regarding the cognitive impairment evaluation:
    a. What is the history of its development?
    b. Many cognitive measures used today were originally validated only with white participants (and often only white men).
        i.   What data set was used to develop these impairment evaluations?
        ii. What vetting process was used to reduce any embedded biases in the data, including measurement, representation, and historical biases?
        iii. Were these measures reviewed by independent experts or peer reviewed? Please provide documentation of these reviews.
2. Please detail the following regarding the racially-based compensation adjustment algorithm:
    a. Please provide details about the "recognized statistical techniques" cited by the League's spokesman.
    b. How did the algorithm account for systemic biases in care and outcomes for Black Americans? If it did not account for these factors, explain why.
    c. Did the algorithm make adjustments for players from other historically-marginalized groups such as the Pacific Islander or Hispanic communities?
    d. Was this algorithm reviewed by independent experts? Please provide documentation of these reviews.
    e. Are doctors required, or encouraged, to use these adjustments?
3. What percentage of Black players have had their dementia claims denied compared to white players?
    a. How many of the initial evaluations of Black players accounted for race in their calculations?
    b. How many cases has the NFL appealed in order to account for race in the calculations? Of these appeals, how many compensation determinations were reversed?

c. Please attach, as an addendum, statistics on the race of applicants and their eligibility determinations.
4. After deciding to use the cognitive impairment evaluations to inform compensation from the settlement, what has the NFL done to ensure the results are free from racial or other bias, both with and without the racially-based adjustment algorithm?
   a. Are continuing audits performed to detect bias?
   b. Has the NFL consulted with organizations with expertise in preventing, detecting and eliminating bias in algorithms? Please provide documentation of this process.

We urge you to immediately halt the use of any racially-based algorithms in the cognitive impairment evaluation until it can be determined, through a full independent review, that they do not have the effect of depriving Black players compensation they are owed. In the meantime, we also urge you to review Black players' previously-denied claims to evaluate whether or not the denial was based on race.

We thank you for your prompt attention to this critical matter, and we look forward to your timely response.

Sincerely,

Ron Wyden
United States Senator

Cory A. Booker
United States Senator

Yvette D. Clarke
Member of Congress

Maxine Waters
Member of Congress