NFL Play 60 Celebration Assembly
Issues and Arguments

This document serves to address some of the issues we have pondered and to provide arguments regarding our rights and those of our children pertaining to the NFL Play 60 celebration assembly held at Cathcart Elementary School on 2011 November 15.

Conflict of interests on the part of the Snohomish School District:

Basically, we contend that Snohomish School District administrators attempted to serve two masters that day. We contend that the act of accepting a payment (regardless of how it is labeled) from a private enterprise with conditions attached that were favorable for that enterprise without serving any legitimate purpose for the school district was in direct conflict with the primary responsibilities of public school administrators. By catering to the promotional demands of the NFL, Snohomish School District administrators sacrificed the fundamental principles of fairness towards all of the students under their authority, damaged the self-esteem of those who were segregated from the mainstream student body, and compromised the quality of their education. Further discussions of these conflicts are listed below.

Regarding a person's freedom to choose:

One of our primary concerns raised by the NFL's Play 60 celebration assembly pertains to a person's right to choose those private enterprises they wish to support, either by purchasing their products or services or by promoting that enterprise. The primary questions raised here are:

1 Does any person have the right to choose for another person or group of persons, without their approval, a private enterprise that they are expected to patronize, support or promote?
2 If a person chooses to refuse to support a private enterprise, should that person suffer any consequences or adverse affects from that decision?

We believe the answer to both questions should be, no.

Analogies:
If a salesperson comes to your home and you refuse their product or service offer, the salesperson leaves quietly. Although they are disappointed, the salesperson does not throw eggs at your home or string toilet paper throughout your yard. Another, perhaps more appropriate view is the case where a person approaches you seeking to purchase your automobile. If you refuse their purchase offer, you don't expect that person to key your car when they leave. In other words, there are no expected consequences when you refuse to engage in business with a private party.

Arguments:
This was not the case with the NFL. By refusing to sign their Waiver of Liability and Release, thereby refusing to engage in business with the NFL (by refusing to relinquish our rights to something of tangible value - the images and biographical information of our children), our children suffered consequences by (1) being segregated from their peers (through no fault of their own and for reasons we feel are not legitimate), and (2) receiving a sub-standard education. In essence, our children were egged by the NFL and the Snohomish School District based upon our refusal to help promote the NFL. It is our claim that both the NFL and Snohomish School District infringed upon our freedom to choose those private enterprises we would support or deny support; that nobody has the right to speak on our behalf, without our prior permission, to obligate us to engage in business with any private enterprise. Furthermore, the NFL should not be absolved from the responsibility of knowing that just a few people cannot and did not represent everybody that would become involved, regardless of what their contest rules may specify.

We see this issue as somewhat of a variation of the insurance mandate that is about to be heard before the Supreme Court. The difference here is that instead of a law mandating that individuals purchase a particular product from a private enterprise; this case focuses on a private enterprise entering into a public institution to coerce them to provide resources for their own benefit. We feel that a person should have a fundamental right to choose those private enterprises they wish to support or deny support, without any consequences, especially when the product or service in question is unnecessary.

Regarding the NFL's expectations that schools obtain all of the necessary waivers and legal approvals:

The short story here is that we contend that none of the contest entrants had collective bargaining authority and that the NFL had to have been aware of this. We challenge the NFL's expectations placed upon the schools as unreasonable and seek to have these portions of the NFL Play 60 contest rules invalidated.

While we have not obtained a copy of the actual Play 60 contest rules in effect for the contest that was entered on behalf of Cathcart Elementary, a similar set of rules can be obtained on the NFL's Play 60 website that seems to place most, if not all, of the legal and procedural burden of complying with the contest rules upon the award winning schools. Here is a section we pulled from one set of their contest rules: "*Attendees (and, if minors, their parents or legal guardians) may be required to execute and return a liability and publicity release prior to the visit. Grand Prize award is dependent upon applicable school's or community center's full approval and cooperation.*"

Regardless of the exact set of contest rules in place by the NFL pertaining to the publicity aspects of the Play 60 contests, we feel that the language of these rules needs to be addressed, with focus on the breadth and scope of the group to which the rules would apply. From this approach, we see two possible paths:

1 The NFL's contest rules were specific about the breadth and scope of the group of participants to which the publicity aspects would apply, or…
2 The NFL's contest rules were vague - even narrow - regarding the breadth and scope of the group of participants to which the publicity aspects would apply.

In the first case, we wrap right back into the argument pertaining to who had the authority to represent us and all of the collective participants in a business agreement with a private enterprise. No individual(s) were given collective bargaining authority and we cannot imagine that this contest met any competitive bidding process which would be customary with a public school district. So just who assumed to have this authority to speak for us and our children? What happened to our freedom to choose?

In the second case, if the NFL used vague language within the contest rules then we may be looking at a variation of the bait-and-switch tactic. Using language like we saw a few paragraphs ago, "*Attendees <u>may</u> be required to execute and return a liability and publicity release…"* would be so vague that no reasonable person could be expected to interpret as to eventually include a group consisting of several hundred members. If the NFL did not specify that the publicity aspects of the contest would include such a large group of individuals, then we feel that this is a very significant distinction and omission on the part of the NFL. While it may be customary for the contest entrant(s) to agree to be included in any publicity opportunities sought by the contest sponsor, this would be strictly limited to only those individuals who actually entered the contest. Unless the contest entrant(s) had prior knowledge to the breadth and scope of the publicity aspects of the contest (case 1 above), the NFL would have to have made their publicity demands after the award had been announced; effectively dangling the bait in front of the "winner" and pressuring them into complying with their exorbitant demands for publicity materials.

So now the argument converges down the same path. In either case, the NFL had to have acted with the knowledge that the contest entrants lacked the authority to represent such a large group of individuals. We believe this can be proven by observing the actual participation rates of the award winning schools, as we expect that no school achieved a 100 percent student participation rate. We also believe this can be reasonably demonstrated by the forethought the NFL devoted in developing multiple layers of waivers; that the NFL had the foresight to have the ability to preserve some legal protection by having additional layers of waivers should one layer - the one we are challenging (the broadest layer) - fail to stand against any legal challenges.

Since it can be argued that the NFL cannot reasonably expect any school to obtain signed waivers for all of their students, the question that follows is, what did the NFL expect would happen those students whose parents or guardians did not sign the

waiver? We argue that it was not unreasonable for the NFL to have projected this scenario and, therefore, can and should be held liable for creating an illegitimate class distinction - between those who cooperated with their desires for promotional materials and those who did not cooperate - and the consequences these children suffered as a result.

Regarding the issue of discrimination:

Another concern we have is that Play 60 event may not be viewed as a case of discrimination because it does not conform to one of the protected classes as defined by the Civil Rights Act or other applicable law. We would like to argue that this case should be considered as a case of discrimination and a violation of civil rights for several reasons:

1 The absence of applicable law does not mean a problem is nonexistent and should not be addressed. While legislative action has already defined several class distinctions (race, religion gender, etc.), who could foresee a time when a private enterprise would find a method for entering into public schools and create a class distinction based upon a person's willingness or unwillingness to enter into a business contract with that enterprise? Much like the legal wrangling over the free speech and the right to bear arms, the courts are often called upon ahead of legislative action to refine the meaning of a person's rights. Sometimes courts rule to strike down conflicting laws and sometimes they are asked to rule when applicable laws do not exist. In this case a class distinction exists, but has yet to be recognized because the circumstances were simply unforeseen.

2 By requiring a signed Waiver of Liability and Release, the NFL created a class distinction based upon a person's willingness to enter into a business relationship with them. We argue that since the NFL is a private enterprise and were in the act of conducting business from which they received something of tangible value while on public school property and during normal class hours, that this was not a legitimate reason to create a class distinction which resulted in a segregation of school children. As we pointed out previously, there should have been no consequences if a person refused to engage in business with a private enterprise.

3 We argue that the NFL and the Snohomish School District engaged in discrimination based upon the definition in the standard dictionary as a class distinction was applied to our children for which there was no legitimate reason. This would provide the basis for an argument which is then supported by examples where class distinctions have already been defined (race, religion, gender, age, etc.). There was a time when sexual orientation was not defined as a distinct class and now we just have another case that needs a similar determination. Again, whoever foresaw a time when a private enterprise would enter a public school to use children for the purpose of collecting promotional materials?

4 Now this may be a stretch, but… We would like to present an argument for discrimination based upon age (a protected class). First, we must establish that the NFL's Waiver of Liability and Release constituted a contract between the NFL and the Snohomish School District, based on the facts that the NFL demanded

something of tangible value in exchange for their award and that the celebration event occurred while on school property and during normal school hours (at a time when our children were under the care of the school district). The crux of this argument is that while we, as parents, may lack legal standing to challenge the contract because we refused to sign the waiver, that our children do have legal standing because the terms of the contract between the NFL and the Snohomish School District were still applied to them; that providing promotional materials for a private enterprise is not a legitimate reason for segregating school children from their peers. Therefore, any argument presented by the NFL or the school district regarding our (as parents only) legal standing is immaterial since the terms of the contract were not applied to us; rather, the terms of the contract were applied to our children.

Regarding the use of children to courier legal documents:

While we do not have legal standing on this particular issue, we think it would be worthwhile to see if students who were similarly situated were excluded from their celebration assemblies simply because a student forgot to turn in their waiver. We raise this issue because the Waiver of Liability and Release that we received was sent home with our children. Using children for delivering legal documents between parents and school administrators cannot be considered as a reliable delivery method. Considering the scope of the Play 60 program and all of the schools and students involved (34 schools received awards this past season alone), we think it would be likely that somewhere in the process that some student was excluded from their respective celebration assembly simply because they either lost or forgot to turn in their waiver, etc. From our experience, it is apparent that the NFL and school district did not maintain adequate control of their legal paperwork. We would think that by excluding any child from their respective celebration assembly because they relied on children to courier legal documents may constitute a form of age discrimination since no child could be held responsible for handling legal documents which would be used to enter into a contract.

Rebuttal of the school's expected argument that our children's education was not compromised:

While we would need to verify the facts, according to our children there were only four children (including themselves) in their classroom during the NFL Play 60 celebration assembly. While we assume these children were attended to by a certified teacher, this should be verified. If this person was not a certified teacher, the school's argument that our children's education was not compromised fails on this point alone. However, if the person attending to this classroom was a certified teacher, then this gives a teacher to student ratio of 1 to 4. What a wonderful teaching opportunity! What parent wouldn't dream of a 1 to 4 teacher-student ratio? However, according to our children, this teaching opportunity consisted of watching a video, and perhaps some personal

drawing activities if there was time remaining after the video had completed. What happened to individualized attention? Did this teacher offer to work with the students on math, reading, spelling, writing, or any other core educational component? Talk about squandering the teaching opportunity. In our opinion, this was not the quality of education we would have expected. Rather, it sounds like the teacher was converted into a glorified babysitter. We argue that minimal attention was devoted to our children while the school attended to their primary concern; that of catering to the provider of their award.

Regarding the favorable tax status of a charity:

According to a NFL website (https://www.nflcharities.org/grants/nfl_teams/play_60), the Play 60 program is a charity. True charity is anonymous. In our opinion, by demanding access to the entire student body for promotional purposes, the NFL goes beyond charity and enters into the realm of exploitation, especially when non-cooperative individuals are excluded. If one dismisses the NFL's claim that Play 60 is a charity and views the program with an open mind, we believe one will discover that the "awards" are actually payments for access to children to conduct an advertising campaign. The evidence is the NFL's exclusion of those who will not relinquish their rights to their images and biographical information; something of tangible value. We believe it can be argued that it is reasonable to assume the NFL is violating tax code by claiming their awards as after-tax charitable deductions rather than pre-tax business expenses.

Regarding the use of taxpayer resources to help promote a private enterprise:

While a cost analysis would need to be performed, it could be argued that the NFL benefited by using school resources for obtaining promotional materials, perhaps enough to go well above and beyond offsetting the $10,000 award presented to the school. In effect, it may be possible that Snohomish School District taxpayers actually subsidized the NFL in their quest to obtain promotional materials.