

A Unicorn No More? The No-Trade Clause and its Potential to Reshape NBA Contractual Negotiations

ABSTRACT

The no-trade clause, which, in the simplest of terms, allows a player to block his organization from trading him, is somewhat of a unicorn in NBA contractual circles. It has been sparsely used in the National Basketball Association (NBA) history, and there are certainly some good reasons for this. Allowing a player to control his fate without any potential for a trade puts his team in a straitjacket. Thus, teams have long kept their distance from the no-trade clause, with only ten players in NBA history having a no-trade clause in their contract. Most of these players have been legends within their respective organizations: long-tenured players who simply wish to one day retire with the teams on which they have spent the majority of their careers.

As the average salary of an NBA player has ballooned over the past few years, teams have been forced to give maximum contracts to retain their best talent, regardless of whether that player is deserving of a maximum contract. This has led to a newfound loyalty problem: with maximum contracts becoming more and more the norm, what can teams offer their franchise player(s) that will incentivize them to stay if they can get a maximum contract anywhere? The answer is the no-trade clause, which gives players a unique contractual provision that they cannot get on other teams. The aforementioned problems that are associated with the no-trade clause remain, but certain teams would be wise to consider exercising this option for young players whom they see as franchise figureheads for years to come. This Note investigates the history of the no-trade clause in the NBA, its use in other sports leagues, and the potential implications of its expanded use moving forward. This Note argues for the no-trade clause to be entrenched as a more common contractual provision, serving as an additional tool for both teams and players alike to consider when at the negotiating table. As a part of this solution, this Note advocates for changes to the NBA Collective Bargaining Agreement that will give teams more flexibility in choosing to whom they wish to give no-trade clauses. Should these changes be

made, this Note identifies the player archetype to which teams should consider giving no-trade clauses.

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On June 30, 2022, the Washington Wizards agreed to a five-year, \$251 million deal with star guard Bradley Beal.¹ The deal would make Beal one of the highest-paid players in the National Basketball Association (NBA), despite the fact that he was coming off of an injury-plagued 2021–22 season.² There was little doubt about his talent: in the previous season he had become just the fourteenth player in the history of the Wizards's franchise to earn All-NBA honors.³ Beal was a three-time All-Star, had been with the organization for ten years, and had already established himself as a Wizards great by becoming the franchise's all-time leader in three-pointers made.⁴ However, what

1. Benyam Kidane, *Bradley Beal Contract Details: Wizards Star Joins Exclusive List with No-Trade Clause, Becomes One of NBA's Highest-Paid Players*, SPORTING NEWS (July 6, 2022, 4:21 PM), <https://www.sportingnews.com/us/nba/news/bradley-beal-contract-details-wizards-nba-highest-paid-players/tfxrra0jaea95rnua4ur5tyr> [https://perma.cc/G3TV-34UE].

2. *See id.*

3. Austen Tealer, *Bradley Beal's Career Timeline*, NBA (July 7, 2022, 11:21 AM), <https://www.nba.com/wizards/news/bradley-beals-career-timeline> [https://perma.cc/LR7P-F894].

4. Jackson Filyo, *Wizards Re-Sign Bradley Beal*, NBA (July 6, 2022, 3:41 PM), <https://www.nba.com/wizards/news/wizards-re-sign-bradley-beal> [https://perma.cc/VT6D-4V6G].

was particularly curious about Beal's new contract extension, and what drew the ire of many basketball pundits, was the fact that his new deal contained a no-trade clause.⁵ A no-trade clause allows a player to either deny a trade entirely or to pick his next destination; his current team cannot trade him without his approval.⁶

Prior to Beal's deal in the 2022 offseason, there had only been nine previous instances of a player receiving a no-trade clause in his contract.⁷ Beal's contract was also a bit of an anachronism when compared to previous deals that had been given to established winners.⁸ While Beal had individually been brilliant, he had yet to show that he could lead the team to any sort of substantive playoff run.⁹ By extending Beal, the Wizards were signaling that they intended to be playoff contenders in the coming years. After all, the contract he received was the second largest in NBA history up to that point, trailing only that of the Denver Nuggets's Nikola Jokic.¹⁰

Even so, the Wizards's lack of recent success, combined with the fact that they had done little to build around Beal, made it difficult to justify his extension.¹¹ Some pundits believed that the Wizards would have been better off trading him and getting some form of draft compensation before his prior deal ran out, allowing them to enter into a tanking stage where they could collect young players and draft picks.¹² In doing so, the Wizards would be able to rebuild their team through the draft, developing young players to hopefully rejoin the competitive ranks of the league. By instead choosing to include a no-trade clause,

5. See, e.g., Kidane, *supra* note 1.

6. See Mark Deeks, *How the No-Trade Clause in the NBA Works*, FORBES, <https://www.forbes.com/sites/markdeeks/2022/12/31/how-the-no-trade-clause-in-the-nba-works/?sh=245c5dbd771b> [<https://perma.cc/8WPS-HVBU>] (Feb. 8, 2023, 9:33 AM).

7. Nick Mac, *The Only Players in NBA History with a No-Trade Clause*, FADEAWAY WORLD (June 21, 2023), <https://fadeawayworld.net/the-only-players-in-nba-history-with-a-no-trade-clause> [<https://perma.cc/8FEN-PM5P>].

8. See *id.*

9. See Tealer, *supra* note 3.

10. Kidane, *supra* note 1.

11. See, e.g., Michael Pina, *The Wizards Dropped the Ball on Bradley Beal's Max Contract*, SPORTS ILLUSTRATED (July 8, 2022), <https://www.si.com/nba/2022/07/08/bradley-beal-washington-wizards-contract> [<https://perma.cc/EL3Q-CYK2>].

12. See Osman Baig, *It's Time for the Wizards to Trade Bradley Beal*, SBNATION, <https://www.bulletsforever.com/2021/1/23/22245272/wizards-should-trade-bradley-beal> [<https://perma.cc/NF85-9GT2>] (Jan. 23, 2021, 10:31 AM). A "tanking stage" is a period in which a team will lose continuously in the hopes of getting high draft picks, with the ultimate goal being to one day build a contending team out of the high draft picks. See, e.g., Andy Bailey, *The NBA's Best and Worst Tank Jobs of the Past Decade*, BLEACHER REP. (Aug. 31, 2021), <https://bleacherreport.com/articles/2947825-the-nbas-best-and-worst-tank-jobs-of-the-past-decade> [<https://perma.cc/645Q-MZ67>].

they had put themselves in a bind: Bradley Beal had all the negotiating power since he was allowed to choose a destination if the Wizards did decide to trade him and seek a rebuild.

Why did the Wizards decide to give Beal a no-trade clause in the first place? After all, Beal was due to receive a massive contract.¹³ Put most simply, the Wizards felt they had no choice. Due to a depleted roster, combined with the fact that Beal wanted to chase a championship, Beal likely would have jettisoned for another franchise if they had not offered him a no-trade clause in addition to a huge contract, and the Wizards would have been left with nothing in return.¹⁴ By including the no-trade provision, the Wizards at least left open the possibility that they could later deal him and receive young players and draft picks in return.¹⁵

The modern era of the NBA has seen significant changes in the dynamic between players and organizations; more and more high-caliber players have expressed signs of disloyalty to their organizations.¹⁶ James Harden, an All-NBA talent who has won the league's regular season MVP, has traversed from team to team during the past few seasons.¹⁷ In August of 2023, he was fined \$100 thousand for bashing 76ers President Daryl Morey for not accommodating his trade request, referring to Morey as a "liar."¹⁸ Damian Lillard, a name almost synonymous with the Trail Blazers, requested a trade during the offseason of 2023 after eleven years in Portland, and was subsequently traded to the Milwaukee Bucks.¹⁹ Players have become

13. See Filyo, *supra* note 4.

14. Cf. Joseph Zucker, *Fans Stunned Celtics' Jaylen Brown Lands Richest Supermax Contract in NBA History*, BLEACHER REP. (July 25, 2023), <https://bleacherreport.com/articles/10083869-fans-stunned-celtics-jaylen-brown-lands-richest-supermax-contract-in-nba-history> [https://perma.cc/8SW5-U7RR] (asserting that Jaylen Brown would have jettisoned for another team had he not been given a maximum contract, just as how Beal would have left had he not received a no-trade clause).

15. See Deeks, *supra* note 6.

16. See, e.g., *NBA Fines James Harden \$100K over Comments Around 76ers*, ESPN (Aug. 22, 2023, 12:19 PM), https://www.espn.com/nba/story/_/id/38239513/nba-fines-76ers-james-harden-100k-recent-comments [https://perma.cc/K6JZ-EANB].

17. Timothy Rapp, *James Harden Wins 2018 MVP Award over LeBron James, Anthony Davis*, BLEACHER REP. (June 25, 2018), <https://bleacherreport.com/articles/2776610-james-harden-wins-2018-nba-mvp-award-over-lebron-james-anthony-davis> [https://perma.cc/EJ37-XTDB].

18. *NBA Fines James Harden \$100k over Comments Around 76ers*, *supra* note 16.

19. Thomas Schlachter, *Damian Lillard Requests Trade Away from Portland Trail Blazers*, CNN (July 2, 2023, 8:39 AM), <https://www.cnn.com/2023/07/02/sport/damian-lillard-requests-trade-portland-trailblazers-spt-intl/index.html> [https://perma.cc/C43D-GRT8]; *Blazers Deal Damian Lillard to Bucks in Blockbuster 3-Team Deal*, ESPN (Sept. 27, 2023, 2:24 PM), https://www.espn.com/nba/story/_/id/38505763/sources-blazers-trading-damian-lillard-bucks-3-team-deal [https://perma.cc/Z4TF-X8T5].

accustomed to changing teams for the best chance at winning rather than waiting for their current team to improve.²⁰

Some loyalists do still exist. For example, Golden State Warriors guard Stephen Curry has been a pillar of his organizations for years.²¹ Yet, this loyalty seems to be the exception rather than the rule. Many players have taken it upon themselves to seek out the opportunities that will most benefit their individual goals, usually to either win an NBA title or to receive the highest-paying contract, sometimes both.²² Any sense of loyalty to the franchise that one was drafted to has grown almost extinct.²³

The rising loyalty problems within the NBA were inevitable. With the rise of super teams (which could be described as teams that collect three or more All-NBA talents),²⁴ players were bound to want to leave their home franchises for better teams where they could compete for an NBA title. While the Wizards's experiment with Beal was ultimately unsuccessful, the no-trade clause is nevertheless an ideal option for teams looking to retain their star talent, if used at the right time and for the right players.²⁵

Expansive use of the no-trade clause does raise some concerns regarding the interplay between basketball and the legal profession. For example, it would require the NBA's Collective Bargaining Agreement (CBA), which regulates the conditions of employment for the players and is negotiated by the National Basketball Players

20. See, e.g., David Jones, *Sixers Swapped One Headache for Another, the Most Selfish Man in the NBA*, *James Harden*, PENN LIVE, <https://www.pennlive.com/sports/2022/02/sixers-swapped-one-headache-for-another-the-most-selfish-man-in-the-nba-james-harden-jones.html> [<https://perma.cc/7QS9-XKP4>] (Feb. 12, 2022, 12:24 PM).

21. See Austin Veazey, *Stephen Curry Extension Highlights Dirk Nowitzki's Loyalty*, *SPORTS ILLUSTRATED* (Sept. 5, 2024), <https://www.si.com/nba/mavericks/news/golden-state-warriors-stephen-curry-extension-highlights-dirk-nowitzki-loyalty-dallas-mavericks> [<https://perma.cc/63AJ-9KUQ>].

22. See, e.g., Jones, *supra* note 20.

23. See Dan Feldman, *Paul Pierce: 'There Is No Loyalty to a Franchise Anymore'*, *NBC SPORTS* (Aug. 16, 2018, 4:00 AM), <https://www.nbcsports.com/nba/news/paul-pierce-there-is-no-loyalty-to-a-franchise-anymore> [<https://perma.cc/UYG8-YZGG>].

24. See Anthony Pasciolla, *Is the NBA's Super-Team Era Coming to an End?*, *SPORTING NEWS* (May 1, 2024, 8:46 AM), <https://www.sportingnews.com/us/nba/phoenix-suns/news/nba-playoffs-super-team-superteam-phoenix-suns/9e2f2c2f423d65ba76233c45> [<https://perma.cc/X6VF-MZTT>] ("The super-team strategy dominated the NBA for nearly a decade . . .").

25. See, e.g., Baig, *supra* note 12. The no-trade clause did not work out for the Wizards because they failed to put any talent around Beal, leading to the team not making the playoffs. Adrian Wojnarowski, *Sources: Suns Finalizing Trade for Wizards' Bradley Beal*, *ESPN* (June 18, 2023, 4:31 PM), https://www.espn.com/nba/story/_/id/37873714/sources-suns-finalizing-trade-wizards-bradley-beal [<https://perma.cc/9GKP-CU2N>]. This goes to show that a no-trade clause can only do so much when it comes to retaining talent. Beal was later traded to the Suns. *Id.*

Association (NBPA), to be altered from its current state, which currently allows the clause only for certain players who have spent eight years in the league.²⁶ Although the current CBA runs through 2030 and was just signed into effect in 2023, the agreement contemplates modifications to the agreement so long as both the NBA and the NBPA agree to it.²⁷ This Note argues the NBA's CBA needs to be modified to allow for no-trade clauses to take center stage in player contract negotiations.

Part I of this Note outlines the history of the no-trade clause in the NBA, looking first at the nine players who received a no-trade clause before Bradley Beal and how, if at all, the no-trade clause affected each player's development with their team. Part II analyzes the current state of the no-trade clause, who can qualify for a no-trade clause, how the clause is currently used in other major sports leagues, and variations of the no-trade clause. Part III presents the central premise of this Note, arguing that extensive use of the no-trade clause in the NBA is warranted because it would help solve the loyalty and contractual problems that have plagued the league in recent times. Finally, Part III also argues that no-trade clauses are best suited for a particular player.

I. HISTORICAL BACKGROUND

The no-trade clause had been utilized just nine times in the history of the NBA prior to the Bradley Beal deal, its sparse usage indicating that it has never been utilized to its full potential.²⁸ Because it has been used so sparingly, the players that have received a no-trade provision, aside from Beal, have all been multiple All-NBA selections.²⁹ Each of these players can be categorized in ways that help explain why they received the deal in the first place. The first category of players, making up the majority of the no-trade clause recipients, includes the

26. NBA-NBPA Collective Bargaining Agreement 416–17 (July 2023) [hereinafter NBA CBA], <https://imgix.cosmicjs.com/25da5eb0-15eb-11ee-b5b3-fbd321202bdf-Final-2023-NBA-Collective-Bargaining-Agreement-6-28-23.pdf> [<https://perma.cc/4MLA-2B69>].

27. *Id.* at 547 (“[T]he parties shall negotiate in good faith such modifications to the CBA as may be appropriate . . .”). The phrase “the parties” references the NBA and the NBPA. *See id.*

28. Mac, *supra* note 7.

29. *See id.* All-NBA players are those who have been nominated as members of one of the three All-NBA teams (the best players in the league), comprised of five players each. *Year-By-Year List of All-NBA Teams*, NBA, <https://www.nba.com/news/history-all-nba-teams> [<https://perma.cc/5ZF7-G7NH>] (May 23, 2024, 5:39 AM); Reign Amurao, *How Are All-NBA Teams Selected? Selection Process and Other Details Explored*, SPORTSKEEDA, <https://www.sportskeeda.com/basketball/news-how-all-nba-teams-selected-selection-process-details-explored> [<https://perma.cc/BLE4-SL55>] (Mar. 22, 2024, 12:18 AM).

long-tenured franchise cornerstones who retired with their clubs—that is, those players whose names have become virtually synonymous with their respective teams.³⁰ The second category includes players who were eventually traded. Perhaps they were once considered franchise cornerstones, but they were ultimately dealt to another club. Finally, in the third category are the unicorns: those who do not really fit into either of the more common preceding categories. An evaluation of these players across the three categories illustrates that the players who have received no-trade clauses have almost never been of the archetype that this Note will argue they should be: young players that an organization hopes will one day turn into a franchise centerpiece.³¹

A. Franchise Cornerstones

The majority of the no-trade clause recipients would never exercise their option to block a trade.³² John Stockton of the Utah Jazz received a no-trade clause when he signed his final deal with the team in the fall of 1996.³³ The deal was met with little fanfare, as Stockton was nearing the end of his career and had expressed his willingness to stay with the Jazz until retirement.³⁴ For its part, the Jazz were firmly committed to resigning Stockton, and it appeared that the no-trade clause was largely a symbolic expression of the fact that Stockton and the organization would be intertwined until he retired.³⁵ As Utah Jazz owner Larry Miller said at the time, “there just aren’t a lot of guys like John around anymore. John’s commitment to this organization is so strong, so focused and so fair. I get kind of emotional when I think about our relationship.”³⁶ While both parties expressed their intent to be bound together, the fact that a no-trade clause was even put in the contract in the first place hints that Stockton wanted an assurance that he would not be traded in the twilight of his career.³⁷ It did not come without a cost, either, as Stockton took a deal that left as much as \$10

30. Mac, *supra* note 7.

31. *See id.*

32. *See id.*

33. Dirk Facer, *3-Year Contract: Stockton Stays Home with Jazz*, DESERET NEWS (Oct. 4, 1996, 12:00 AM), <https://www.deseret.com/1996/10/4/19269579/3-year-contract-stockton-stays-home-with-jazz> [<https://perma.cc/A8PD-M4PW>].

34. JOHN WUKOVITS, JOHN STOCKTON 58 (1998) (“At the time, Stockton was quoted saying, I’m not leaving Utah. If that turns around and bites me, then that’s the way it goes. I’m staying here. I like it here. This is where I’m comfortable, and I love the team and the coaches.”).

35. *See id.*

36. *Id.*

37. *See id.*

million on the table.³⁸ The no-trade clause ended up being inconsequential, as Stockton finished his career with the Jazz without controversy.³⁹

The no-trade clause truly started rising in popularity in the 2010s.⁴⁰ Dirk Nowitzki, late into the peak of his NBA career and wanting to remain a Dallas Maverick, signed a four-year deal worth \$80 million to stay with the team in the summer of 2010.⁴¹ The deal came with a no-trade clause, in part because Nowitzki had expressly stated on multiple occasions that he wanted to be a Maverick until retirement.⁴² The clause never actually had any impact, as Nowitzki would remain with the Mavericks until the end of his career, although the Mavericks would end up winning the title the next year against the LeBron James-led Miami Heat.⁴³

Tim Duncan's experience with the no-trade clause mirrored that of Nowitzki's. By 2012, Duncan, the long-tenured franchise cornerstone of the San Antonio Spurs, was nearing the end of his illustrious career.⁴⁴ Not wanting their fan-favorite big man to leave, the Spurs ensured that he would end his career with the team by agreeing to a three-year deal worth close to \$36 million.⁴⁵ Like Nowitzki, his no-trade clause would prove to have little effect, as both Duncan and the Spurs seemed to have little interest in parting ways.⁴⁶

During the 2014 offseason, Miami Heat legend Dwyane Wade also received a no-trade clause in his contract, allowing him to return to the team for two more seasons.⁴⁷ Although no longer quite in his prime, Wade's longtime loyalty to the organization gave the Heat

38. *Id.* ("Stockton could have earned as much as \$10 million more if he had gone on the free-agent market . . .").

39. *See id.*

40. *See Mac, supra* note 7 (showing there were only three no-trade clauses prior to 2010).

41. Ashish Mathur, *Dirk Nowitzki: Every Contract He Signed During His NBA Career*, CLUTCHPOINTS (May 14, 2020, 5:57 PM), <https://clutchpoints.com/dirk-nowitzki-nba-contracts> [<https://perma.cc/USQ3-PKWN>].

42. *Id.*

43. *See id.*

44. Louis Bien, *Tim Duncan Signs 3-Year Deal to Stay with Spurs, According to Report*, SBNATION (July 10, 2012, 1:58 PM), <https://www.sbnation.com/nba/2012/7/10/3149483/tim-duncan-spurs-contract-nba-free-agency-2012> [<https://perma.cc/5EKT-8AZ2>].

45. *Mac, supra* note 7.

46. Maxwell Ogden, *NBA Free Agency 2012: How Much Is Tim Duncan Worth?*, BLEACHER REP. (July 10, 2012), <https://bleacherreport.com/articles/1252381-nba-free-agency-2012-how-much-is-tim-duncan-worth> [<https://perma.cc/FTD5-ETD6>] (reporting Duncan as saying "[n]o... I'm not going anywhere. You can print that wherever you want to. I'm here and I'm a Spur for life").

47. Dan Feldman, *Dwyane Wade Also Gets No-Trade Clause*, NBC SPORTS (July 16, 2014, 3:30 PM), <https://www.nbcsports.com/nba/news/dwyane-wade-also-gets-no-trade-clause> [<https://perma.cc/MX5E-F3FP>].

reason to extend him an offer inclusive of a no-trade clause.⁴⁸ Drafted by the Heat in 2003, Wade had stayed true to the organization for years, leading them to multiple NBA titles with the likes of Shaquille O’Neal and LeBron James along the way.⁴⁹ Wade was the pinnacle of loyalty, staying with Miami for almost his entire career.⁵⁰ Although Wade would end up signing with the Chicago Bulls upon the end of his contract, eliminating any potential use of the clause, he would later return to the Heat and retire in 2019.⁵¹

The late Kobe Bryant received a no-trade clause as a part of his 2004 deal with the Lakers.⁵² The provision went largely unused until 2007, when Bryant and the Los Angeles Lakers began to butt heads over management decisions, leading to Bryant requesting a trade from the organization.⁵³ While the Lakers were hesitant to trade their star, they ultimately agreed to a deal with the Detroit Pistons to ship Bryant out in exchange for Richard “Rip” Hamilton, Tayshaun Prince, Amir Johnson, and a first-round pick.⁵⁴ However, in a change of heart, or perhaps just because he did not want to be a Piston,⁵⁵ Bryant vetoed the trade using his no-trade clause, the first such use of the clause in NBA history.⁵⁶ Eventually, the Lakers and Bryant worked things out; Bryant

48. See *id.*

49. See Dwayne Wade, NAISMITH BASKETBALL HALL OF FAME, <https://www.hoophall.com/hall-of-famers/dwyane-wade> [https://perma.cc/RGZ3-H4YE] (last visited Jan. 30, 2024).

50. Mac, *supra* note 7.

51. See *id.*

52. Marc Stein, *Kobe’s Trade Request Raises Big Questions. Here Are Some Answers*, ESPN (May 30, 2007, 3:00 AM), https://www.espn.com/nba/columns/story?columnist=stein_marc&page=KobeTradeRequest-070530 [https://perma.cc/4B87-XXJ7].

53. See *id.*

54. Corey Hansford, *Lakers Almost Traded Kobe Bryant to Pistons in 2007?*, LAKERS NATION (May 17, 2024), <https://lakersnation.com/lakers-almost-traded-kobe-bryant-to-pistons-in-2007/> [https://perma.cc/8GV6-2Y83]; Aaron Ferguson, *The Detroit Pistons Agreed to a Trade for Kobe Bryant, but He Altered the Team’s Path*, PISTONPOWERED (Jan. 28, 2020), <https://pistonpowered.com/2020/01/28/detroit-pistons-agreed-trade-kobe-bryant-altered-teams-path/> [https://perma.cc/AM5E-FZTU].

55. Bryant said in a 2015 interview that he told the Lakers he would only accept a trade to certain destinations, with Detroit not being one of them. basketballprosworkouts, *Grantland Kobe Bryant Talking with Jalen Rose and Bill Simmons About Muse and More*, YOUTUBE (Mar. 3, 2015), https://www.youtube.com/watch?v=cBAhO0H_n_A&t=2709s [https://perma.cc/GUV2-RM8C?type=standard]. Bryant stated that he told the Lakers, “I gave you a list of teams that I’m comfortable being traded to. That wasn’t one of them. So no.” *Id.* (noting, at 45:01, his reluctance to accept a trade to the Pistons).

56. Ferguson, *supra* note 54.

remained on the team and went on to win two more titles during his tenure.⁵⁷

With the exception of Bryant, the examples set by each of these franchise cornerstones help to explain how the no-trade clause has been sparingly used for players that are unlikely to actually utilize them. The sparse usage of the clause suggests that NBA teams have not fully explored all avenues for how it can be employed.

B. Traded Players

The second category of no-trade clause recipients is comprised of players that were later traded despite having the provision in their contract. In 2012, Kevin Garnett signed a similar contract to that of Tim Duncan's, worth approximately \$34 million over three years.⁵⁸ Garnett had been traded to the Boston Celtics years earlier, winning his first NBA title with the team in 2008.⁵⁹ Garnett, like Duncan, vowed to stay with the team for years to come, stating, "I bleed green; I die green."⁶⁰ But by midseason, rumors began to swirl about Garnett's future with the Celtics.⁶¹ That summer, just a year after signing his new contract with the no-trade clause, Garnett was shipped off to the Brooklyn Nets.⁶² After initial hesitation, he was convinced to waive his no-trade clause in the hopes of chasing another title with the Nets.⁶³ Garnett's decision to waive his no-trade clause was the first instance of such a waiver in the NBA's history, illustrating that the no-trade clause is not quite a brick wall against trades.⁶⁴

A second demonstration of a waiver of the no-trade clause came in 2017 with New York Knicks small forward Carmelo "Melo"

57. See *id.* ("Buss sold Bryant on being a Laker for life. The Lakers traded for a 27-year-old Pau Gasol and would cement Bryant's legacy, reaching the Finals the next three seasons, winning two.").

58. Steve von Horn, *Kevin Garnett, Tim Duncan Win Rare No-Trade Clauses*, SBATION (Sept. 20, 2012, 8:50 AM), <https://www.sbnation.com/nba/2012/9/20/3362352/kevin-garnett-tim-duncan-no-trade-clause> [<https://perma.cc/7H48-F4YY>].

59. See Ian Thomsen, *SI Vault: How the Celtics Landed Kevin Garnett and Became Relevant Again*, SPORTS ILLUSTRATED (July 27, 2015), <https://www.si.com/nba/2015/07/27/boston-celtics-kevin-garnett-danny-ainge-ray-allen-paul-pierce-trade> [<https://perma.cc/XW6F-V2SE>].

60. Kurt Helin, *Kevin Garnett on Trade Rumors: "I Bleed Green; I Die Green."*, NBC SPORTS (Feb. 6, 2013, 6:08 AM), <https://www.nbcsports.com/nba/news/kevin-garnett-on-trade-rumors-i-bleed-green-i-die-green> [<https://perma.cc/9NFN-4JGF>].

61. See *id.*

62. Mike Mazzeo, *Nets Officially Get Garnett, Pierce*, ESPN (July 12, 2013, 2:20 PM), https://www.espn.com/new-york/nba/story/_id/9473403/kevin-garnett-paul-pierce-jason-terry-trade-brooklyn-nets-official [<https://perma.cc/R983-7Y92>].

63. See *id.*

64. See *id.*

Anthony.⁶⁵ He had received his own no-trade clause in a five-year, \$124 million deal during the following offseason.⁶⁶ However, unlike any of the other traded players, Anthony never won an NBA title with the team he signed his no-trade clause with.⁶⁷ A few years after signing his deal, the Knicks and Anthony soon became mutually disaffected with each other, and it seemed as though the Knicks were more intent on starting a rebuild than they were on building around Anthony.⁶⁸ Anthony soon created a list of acceptable trade destinations, and the Knicks acquiesced and sent him off to the Oklahoma City Thunder in the fall of 2017.⁶⁹ Like Garnett, the use of the no-trade clause in this instance demonstrates that the no-trade clause can be quite flexible if both parties have the intent to part ways.

C. The Unicorns

Like most of the franchise cornerstones, neither of the unicorns discussed in this Section would see their no-trade clauses exercised, illustrating that the no-trade clause can be used efficiently without negatively impacting the team that offers the clause. David Robinson was the first player in the league's history to have a no-trade clause implemented into his contract.⁷⁰ However, Robinson's no-trade clause arose in circumstances substantially different from any of the other players on this shortlist.⁷¹ Robinson had continuing obligations to serve in the navy after being drafted first overall to the San Antonio Spurs in the 1987 NBA Draft, and thus the Spurs and Robinson had to negotiate a unique contract that worked around his military duties.⁷² While the media focused on the sheer enormity of his deal—he was paid the average between the highest and second-highest paid players in the league—an overshadowed part of the deal was the inclusion of a no-trade clause.⁷³ By including a no-trade provision, the Spurs were

65. See Ian Begley, *Carmelo Anthony Official a Member of Thunder*, ESPN (Sept. 25, 2017, 11:36 AM), https://www.espn.com/nba/story/_/id/20814797/new-york-knicks-make-carmelo-anthony-trade-oklahoma-city-thunder-official [https://perma.cc/JGY2-W65C].

66. Zach Harper, *Report: Carmelo Anthony Has No-Trade Clause, Opt-Out in New Deal*, CBS SPORTS (July 15, 2014, 9:00 PM), <https://www.cbssports.com/nba/news/report-carmelo-anthony-has-no-trade-clause-opt-out-in-new-deal/> [https://perma.cc/ZA5Q-WT56].

67. See Mac, *supra* note 7.

68. See *id.*

69. See Harper, *supra* note 66.

70. See Mac, *supra* note 7.

71. See *id.*

72. *Id.*

73. See *id.*

able to convey their faith in Robinson as their future franchise centerpiece, a unique and never-seen-after use of the clause.⁷⁴

Perhaps one of the most efficient uses of the no-trade clause occurred when LeBron James inked a three-year, \$100 million deal to stay with the Cleveland Cavaliers after winning a title against the Golden State Warriors.⁷⁵ Like Wade, LeBron would make no use of his no-trade clause, eventually opting out of the final year of his deal to sign with the Lakers in 2018.⁷⁶ Regarded by many as the greatest player of all time, it was almost inevitable that LeBron would receive a no-trade clause at some point in his career.⁷⁷ Teams can only compensate a player of James's caliber so much; in Cleveland's case, the only thing they had left to offer him was a no-trade clause. LeBron's greatness as a player made him an exception to the rule, as any team would have coveted him at the time.⁷⁸

The usage of the no-trade clause in LeBron and Robinson's cases should be viewed through the lens of their unique circumstances; that is to say, usage of the clause in these cases should not serve as a paradigm example of how it should be used. Rather, they are just outliers that should have no bearing on future use of the clause.

The preceding historical evaluation of players across the categories of franchise cornerstones, traded players, and unicorns provides a few important takeaways that exhibit the effectiveness of the no-trade clause. First, it is quite clear from the traded-player examples of Garnett and Anthony that the no-trade clause is not inflexible.⁷⁹ Both players and teams in those cases were no longer satisfied with their situations, so the no-trade clause did not present a roadblock to a trade.⁸⁰ Second, all of the preceding players across all three categories, sans the unique case of David Robinson, had established themselves as generational talents, pointing at the type of player that is deserving of a no-trade clause.⁸¹ The final takeaway, and perhaps the most important one for the purposes of this Note, is that none of the no-trade clauses were given to young stars who were only a few years into their NBA tenure.⁸² Thus, despite being used so sparingly, NBA teams have never used the no-trade clause to its maximum effectiveness: as a

74. *See id.*

75. *Id.*

76. *See id.*

77. *See, e.g., id.*

78. *See id.*

79. *See id.*; Harper, *supra* note 66.

80. *See Mac, supra* note 7; Begley, *supra* note 65.

81. *See Mac, supra* note 7.

82. *See id.*

means to retain a young player that a team hopes will be a long-term franchise centerpiece.

II. THE NO-TRADE CLAUSE IN THE MODERN NBA

A. NBA Contract Structures

To adequately explain how the no-trade clause works and the implications it has for the future of the league, a brief background on NBA contracts is warranted. In the NBA, teams are subject to a salary cap that limits the amount of money that they can spend on players in a single season.⁸³ If a team has spent, for example, \$133 million, and the salary cap is \$136 million (the salary cap as of the 2023–24 season), then they cannot sign a player for \$8 million a year.⁸⁴ However, the salary cap is a “soft cap,” meaning that there are ways for teams to spend over the cap by using one of the exceptions listed in the NBA’s CBA.⁸⁵ If teams do go over the salary cap, they are not subjected to financial penalties by the league until they hit the “luxury tax line,” which for the 2023–24 season was \$165 million.⁸⁶ If a team spends beyond this line, the next financial penalty threshold is \$172 million, known as the “first apron,” which triggers restrictions that limit teams’ flexibility to make trades and acquisitions.⁸⁷ Finally, there is the

83. NBA CBA, *supra* note 26, at 169.

84. *NBA Salary Cap, Explained: What Is the NBA Salary Cap?*, DIRECTV (Oct. 23, 2024), <https://www.directv.com/insider/nba-salary-cap/#:~:text=The%20NBA's%20salary%20cap%20is,at%20%24140%20million%20this%20year> [https://perma.cc/FU6B-N3EQ].

85. See NBA CBA, *supra* note 26, at 231–32 (listing the exceptions that allow teams to go over the salary cap).

86. *NBA Sets Salary Cap at \$136 Million for 2023-24 Season*, NBA (June 30, 2023, 5:53 PM), <https://www.nba.com/news/nba-sets-salary-cap-at-136-million-for-2023-24-season> [https://perma.cc/WPN9-5M3L].

87. Namely, there are three restrictions in place at the first apron: (1) teams cannot acquire a player in a sign-and-trade deal (in which a player resigns with his current team and is then immediately traded, usually done because of salary cap limitations) if that player keeps the team above the first apron; (2) salary matching (whereby teams must attempt to keep the contractual costs of the players they are trading with each other fairly even) in trades must be within 110% instead of the normal 125%; and (3) teams cannot sign a player who had been waived during the season if that player’s salary is over the \$12.2 million midlevel exception. Stephen Noh, *NBA’s Second Apron, Explained: How Latest Collective Bargaining Agreement Impacts Salary Cap, Team Spending*, SPORTING NEWS (June 30, 2023, 8:48 AM), <https://www.sportingnews.com/us/nba/news/nba-second-apron-explained-salary-cap-team-spending/efo6htjzzmzrswo necvblmhi> [https://perma.cc/5QY6-GSNM].

“second apron,” \$182.5 million, at which point a plethora of restrictions kick in.⁸⁸

Discussion of the structure of the NBA salary cap helps to explain why the no-trade clause is necessary as a bargaining tool to player negotiation in the first place. After all, if teams could just have endless funding, then there would be no need for such a provision. But how is it possible for teams to go so far into the luxury tax so as to hit the first and second aprons? As mentioned above, exceptions exist that permit a team to spend more than the salary cap, allowing teams a degree of flexibility to make their rosters competitive and to retain home-grown talent.⁸⁹

The first cap exception is the re-signing of current players, which allows teams to keep their rosters intact and to hold onto players that they hope will become franchise cornerstones, provided the player meets the criteria to re-sign.⁹⁰ The second exception deals with existing contractual commitments: when teams must honor salaries that are already contractually due to a player.⁹¹ This exception is often exercised when teams make trades, which allows them to take on more salary than they gave out (although the new player’s salary must not exceed 125% of the traded-away player’s contract).⁹² There are a number of other specific player acquisition exceptions, like the biannual exception and the midlevel salary exception, that allow teams to sign a single player if they are already restricted by salary cap limitations.⁹³ Exercising these options allows teams to fill their required number of roster spots without having to sign a bunch of players to minimum contracts.⁹⁴ Using too many of these exceptions can result in teams entering the second apron, like the Phoenix Suns did in 2023.⁹⁵ Thus,

88. To name just a few of the restrictions: teams cannot include cash in a trade, first round picks that are seven years away cannot be traded, and teams cannot use a trade exception generated in the preceding year. *Id.*

89. See generally NBA CBA, *supra* note 26, at 231–47.

90. See *id.* at 231.

91. *Id.* at 231–32.

92. *Id.* at 231–32, 241.

93. See *id.* at 235–37.

94. See *id.* at 240. The Minimum Player Salary Exception is another of these exceptions, essentially allowing a team to sign as many players as necessary to get to a full roster so long as they are receiving the minimum salary as provided by the NBA Collective Bargaining Agreement. See *id.*

95. Dave King, *Aprons Are a Payne: Diving into What the Phoenix Suns Can and Cannot Do in Trades*, SB Nation: BRIGHTSIDE SUN (July 16, 2023, 7:00 AM), <https://www.brightsideofthesun.com/2023/7/16/23793709/aprons-are-a-payne-diving-into-what-the-phoenix-suns-can-and-cannot-do-in-trades-nba-free-agency> [https://perma.cc/SJ6R-8GUU].

NBA salary caps, with some exceptions, are firm caps that limit the amount of money that teams can give players.

Maximum contracts (often referred to as simply “max contracts”) fill the void between the no-trade clause and the salary cap. Maximum contracts are fairly self-explanatory: they are the upper limit of what teams can give to an individual player.⁹⁶ They prevent star players from taking up too much salary cap room for any one team.⁹⁷ Without them, teams would get into a bidding war over the top players in the league, pushing salaries ever higher, leaving less room for teams to give money to role players.⁹⁸ As such, the max contract exists to allow for nonstar players to receive fair wages for their contributions.⁹⁹ The NBA CBA contemplates the varying maximum contracts that players can receive.¹⁰⁰ These range based on years of service in the league and various accomplishments, such as winning the MVP award or Defensive Player of the Year, giving players anywhere from 25 to 35 percent of the salary cap.¹⁰¹ Players with six years of experience can sign for a maximum of 25 percent, those with seven to nine can sign for 30 percent, and those with ten or more can sign for 35 percent of the cap.¹⁰² It is important to note that these percentages only apply for a player with Bird rights, meaning the player has spent at least three seasons with a team.¹⁰³

Yet, the strength of max contracts is also their greatest weakness: by allowing players to take up only a certain amount of cap room, max players are much less likely to stay with their current teams because other teams can offer substantial deals. Some protections are in place that allow teams to retain their developed talent.¹⁰⁴ Bird rights, for instance, allow prior teams to keep their internal talent by offering

96. See NBA CBA, *supra* note 26, at 36–44.

97. See *id.*

98. See Bryan Toporek, *NBA’s New CBA Appears Aimed at Increasing Leaguewide Parity*, FORBES (Apr. 5, 2023, 8:00 AM), <https://www.forbes.com/sites/bryantoporek/2023/04/05/nbas-new-cba-appears-aimed-at-increasing-leaguewide-parity/> [<https://perma.cc/CMG7-4D8K>].

99. See generally NBA CBA, *supra* note 26, at 36–37.

100. *Id.*; Sam Quinn, *NBA CBA 101: Everything to Know About the New Agreement, from Salary Cap to Free Agency and Beyond*, CBS SPORTS (Apr. 3, 2023, 4:28 PM), <https://www.cbssports.com/nba/news/nba-cba-101-everything-to-know-about-new-agreement-from-salary-cap-to-free-agency-and-beyond/> [<https://perma.cc/K64Y-7W3F>].

101. NBA CBA, *supra* note 26, at 36–37.

102. *Id.*

103. Eric Pincus, *Understanding the Value of Bird Rights*, SPORTS BUS. CLASSROOM (Nov. 23, 2022), <https://www.sportsbusinessclassroom.com/understanding-the-value-of-bird-rights/> [<https://perma.cc/L948-MKVD>].

104. See, e.g., NBA CBA, *supra* note 26, at 36–37.

five-year contracts instead of four-year deals.¹⁰⁵ Nor can other teams offer the exact same amount of money that a player's prior team can.¹⁰⁶ For example, in 2019, Kevin Durant signed a deal with the Brooklyn Nets to leave the Golden State Warriors.¹⁰⁷ According to reports, Durant's deal was worth \$164 million over four years.¹⁰⁸ The deal offered to him by the Warriors: \$221 million over five years, averaging out to \$44.2 million a year, while his deal with the Nets was for \$41 million a year.¹⁰⁹ Thus, while Durant may have been taking slightly less money with the Nets, the almost menial difference afforded to the Warriors was not enough to sway him to return.¹¹⁰ The Durant case illustrates that even though the NBA has certain protections in place for teams to keep their current talent, these protections are currently not enough to retain superstars, leaving the door open for the no-trade clause to fill that void.

B. How the No-Trade Clause Works

The no-trade clause is a simple contract provision that can be exercised in a variety of ways, operating in conjunction with the salary that a player receives.¹¹¹ It is not a bonus, nor does it give a player an additional amount of money.¹¹² Rather, it is an additional provision added to a contract as an incentive.¹¹³ Consider two scenarios: in the first scenario, Player 1 signs a four-year contract that does not contain a no-trade provision. Player 1 is happy with his team for the first year, but halfway through year two he starts to become disgruntled with his playing time. At the same time, the team starts to see him as a liability and starts to search for trade suitors. Player 1 is happy to be dealt away, but he specifically wants to go to a team that can compete for a title.

105. See Pincus, *supra* note 103. Bird rights are rights that a team can acquire once a player has spent a certain amount of time with a team. *Id.* Full Bird rights are acquired once a player has spent three years with a team without leaving in free agency, while Early Bird rights apply for two years with the same team. *Id.*; see also Frank Urbina, *What Are Bird Rights in the NBA?*, HOOPSHYPE (Oct. 10, 2018), <https://hoopshype.com/2018/10/10/nba-bird-rights/> [https://perma.cc/H4ZS-X5AB].

106. See NBA CBA, *supra* note 26, at 36–37.

107. Jack Maloney, *Kevin Durant Free Agency Update: Star Free Agent Announces He Will Sign Max Deal with Nets Worth Reported \$164 Million*, CBS SPORTS (June 30, 2019, 8:55 PM), <https://www.cbssports.com/nba/news/kevin-durant-free-agency-update-star-free-agent-announce-s-he-will-sign-max-deal-with-nets-worth-reported-164m/> [https://perma.cc/L5GU-CWVA].

108. *Id.*

109. See *id.*

110. See *id.*

111. See Deeks, *supra* note 6.

112. See *id.*

113. See *id.*

His team finds a rebuilding team willing to take him in exchange for a draft pick, and Player 1 is shipped off without any input from him.

Now, consider a second scenario. Player 2 is in almost the exact same situation as Player 1, except when he signed his four-year deal, his agent managed to convince the franchise that he was worthy of a no-trade clause in his contract. Unlike Player 1, when Player 2's team has come to an agreement with the rebuilding team, Player 2 can reject the deal, forcing the team to either continue paying him without getting much in return or to find a team that suits Player 2's needs. Thus is the power of the no-trade clause.

The no-trade clause can also be used simply to allow a player to fully reject a deal and decide to stay with his team, but its power is best served as laid out in the scenario above.¹¹⁴ The player involved most likely wants to be able to play to his full potential, so it makes sense for him to choose where he wants to go rather than wait out the remainder of his contract with his current team. The no-trade clause is thus a flexible provision that can help to open up opportunities for the recipient.

C. *De Facto No-Trade Clauses*

While no-trade clauses are often implemented directly in a contract, there is also what is known as a “de facto no-trade clause” that exists in a narrow set of circumstances.¹¹⁵ A de facto no-trade clause exists when a player who signs a one-year deal has Bird or Early Bird rights.¹¹⁶ That deal may not contain any form of player or team option for future years.¹¹⁷ While rare, this form of a no-trade clause effectively gives certain players veto power.¹¹⁸ For the 2022–23 season, sixteen

114. *Id.*

115. *See id.* (describing a de facto no-trade clause as when “players who signed a one-year contract that will have Larry Bird or Early Bird rights at the end of the season . . . have the right to veto any trade they are in”).

116. *Id.* Bird rights exist when a player has spent at least two consecutive seasons with their current team. *Id.*

117. *Id.* A player option allows a player to choose whether they want to sign on for another year, and a team option allows the organization to re-sign the player for another year. NBA CBA, *supra* note 26, at 336–37. A player option is obviously much more beneficial for the player, for if they play well, they can decline the option and re-sign for more, or if they play poorly, they can accept the option and get some guaranteed money for the next year. *See id.*

118. *See Deeks, supra* note 6.

players held such a distinction.¹¹⁹ This form of a no-trade clause is not to be confused with the use of the clause as advocated by this Note.

D. The No-Trade Clause in Other Major Sports Leagues

The history of the no-trade clause in the NBA may be brief and fairly uneventful, but other major American sports leagues that have a more robust history of using the clause hint at its potential utility in the NBA. Other leagues can illustrate the effectiveness of the clause as a means of keeping franchise players.

In the National Football League (NFL), use of the no-trade clause is much more common.¹²⁰ The 2020 NFL Collective Bargaining Agreement does not have an explicit provision permitting no-trade clauses like the NBA's CBA does,¹²¹ but it does imply the permissibility of the use of such a provision:

For the purposes of this Article (and Article 10), the Principal Terms of an Offer Sheet shall include only:

. . . .

(ii) Any modifications of and additions to the terms contained in the NFL Player Contract requested by the Restricted Free Agent and acceptable to the New Club, that relate to non-compensation terms (including guarantees, no-cut provisions, and *no-trade provisions*).¹²²

Entering the 2021 NFL offseason, there were eight players that had a no-trade provision in their respective contracts.¹²³ In contrast, there

119. Those players are: Kessler Edwards (Brooklyn); Derrick Jones (Chicago); Theo Pinson (Dallas); Rodney McGruder (Detroit); Andre Iguodala (Golden State); Udonis Haslem and Victor Oladipo (Miami); Serge Ibaka, Jevon Carter, and Wesley Matthews (Milwaukee); Nathan Knight (Minnesota); Ryan Arcidiacono (New York); Mike Muscala (Oklahoma City); James Harden (Philadelphia); Bismack Biyombo (Phoenix); and Drew Eubanks (Portland). *Id.*

120. See, e.g., Matt Audilet, *There Are Currently 8 NFL Players with No-Trade Clauses*, THE SPUN (Feb. 24, 2021, 3:33 PM), <https://thespun.com/more/top-stories/8-nfl-players-no-trade-clauses> [<https://perma.cc/55KX-X9EJ>].

121. NBA CBA, *supra* note 26, at 416–17 (“A Player Contract entered into by a player who has eight (8) or more Years of Service in the NBA and who has rendered four (4) or more Years of Service for the Team entering into such Contract may contain a prohibition or limitation of such Team’s right to trade such Contract to another NBA Team.”).

122. NFL-NFLPA Collective Bargaining Agreement 54 (Mar. 15, 2020) (emphasis added), <https://nflpaweb.blob.core.windows.net/website/PDFs/CBA/March-15-2020-NFL-NFLPA-Collective-Bargaining-Agreement-Final-Executed-Copy.pdf> [<https://perma.cc/344C-9USK>].

123. Those eight players were: DeAndre Hopkins, Deshaun Watson, Drew Brees, Jimmy Garoppolo, Jimmy Graham, Laurent Duvernay-Tardif, Patrick Mahomes, and Russell Wilson. Audilet, *supra* note 120. The exact number of no-trade clauses in NFL history is hard to determine, as contract details are private and are often selectively released to the media. See Jon Paul Hoornstra, *One Professional Sports Team Is Making Its Players’ Contract Information Public*,

have been only ten players with a no-trade clause in the entirety of the NBA's history.¹²⁴ The NFL players that have such a provision are most commonly franchise quarterbacks who are the cornerstones of their respective franchises.¹²⁵

Major League Baseball (MLB) also allows its players to have no-trade provisions in their contracts; the MLB Collective Bargaining Agreement provides that:

During the period beginning at the time when the Player becomes a free agent . . . any Club representative and any free agent or his representative may talk with each other and discuss the merits of the free agent contracting, when eligible therefor, with the Club; provided, however, that the Club and the free agent shall not negotiate terms or contract with each other. The following subjects are among those which may properly be discussed between any Club and such Player:

. . . .
 . . . (vi) *no-trade or limited no-trade provisions*.¹²⁶

Like the NFL, many more players in the MLB have no-trade clauses in their contracts compared to the NBA.¹²⁷ Interestingly, no-trade clauses in the MLB are also more likely to have limited no-trade rights rather than full no-trade rights.¹²⁸ Limited no-trade clauses are those that limit the ability of a player to go to certain teams rather than an ability to veto trades to *any* team.¹²⁹ Back in 2016, of the sixty-three players in the MLB that had some form of a no-trade clause in their contracts, thirty of them were limited no-trade provisions.¹³⁰

The comparative popularity of the no-trade provision in other major sports leagues compared to the NBA is most likely due to the single-player-centric nature of the sport. In both baseball and football, individual players are much less important than the team as a whole

NEWSWEEK (Aug. 28, 2024, 11:42 PM), <https://www.newsweek.com/sports/one-professional-sports-team-making-its-players-contract-information-public-1945895#> [<https://perma.cc/5EBZ-NE8C>].

124. See Mac, *supra* note 7.

125. See Audilet, *supra* note 120.

126. 2022–2026 MLB Basic Agreement 102–03 (2022) (emphasis added), https://www.mlbplayers.com/_files/ugd/4d23dc_d6dfc2344d2042de973e37de62484da5.pdf [<https://perma.cc/L9Z3-B9S7>].

127. See, e.g., Anthony Castrovine, *The ‘Santo Clause’: No-Trade Provisions Reshape Market*, MLB (Dec. 10, 2016), <https://www.mlb.com/news/mlb-no-trade-clauses-stop-deals-alter-market-c210842280> [<https://perma.cc/FRA6-FCMK>] (indicating there are at least “[sixty-three] active players with either limited or full no-trade protection”).

128. See *id.*

129. *Id.*

130. *Id.*

because of the sheer number of players on the roster.¹³¹ Therefore, NFL teams have much less risk when they give out no-trade clauses compared to NBA teams, who often build their entire lineup around a single player.¹³² The extensive use of the no-trade clause in both the NFL and the MLB exhibits that expanded use of the clause is possible in major sports leagues without compromising teams' futures. The key to its expanded use in the NBA is careful application of the clause, only to specific players.

III. IMPLICATIONS FOR AN EXPANDED NO-TRADE CLAUSE

A. *The Problems in Today's NBA*

There are three problems in the modern NBA that have given rise to a need for expanded use of the no-trade clause. The first problem is the rising contractual costs that have plagued NBA teams over the past decade; during the 2014–15 season, the highest paid NBA player was Kobe Bryant, who earned \$23.5 million that year from his deal.¹³³ Fast forward to today, and the highest-earning player, Stephen Curry, earns more than twice that at \$51.9 million.¹³⁴ The ever-increasing rate of pay has led teams to shell out more and more to keep their star players under contract.¹³⁵ From the player's perspective, this is an excellent development that allows the talent in the NBA to be compensated fairly. There are certainly teams from large markets that are willing to do this, such as the Golden State Warriors (San Francisco) and the Boston Celtics.¹³⁶ But teams from small markets cannot always compete with the large market teams, as they may be less willing to go

131. See Amy Trask, *The Case for Increasing Roster Size and Why Players Might Oppose Such a Change*, N.Y. TIMES: ATHLETIC (Aug. 29, 2019), <https://www.nytimes.com/athletic/1169298/2019/08/29/the-case-for-increasing-roster-size-and-why-players-might-oppose-such-a-change/> [https://perma.cc/5DLS-GJM5].

132. The 2020–21 Milwaukee Bucks are a typical example of this, as the team was generally molded around superstar Giannis Antetokounmpo. See, e.g., Sopan Deb, *The Milwaukee Bucks Win the N.B.A. Championship*, N.Y. TIMES, <https://www.nytimes.com/2021/07/20/sports/basketball/milwaukee-bucks-nba-finals-championship.html> [https://perma.cc/LK26-2ZM2] (Oct. 18, 2021).

133. *NBA Player Salaries – 2014–2015*, ESPN, https://www.espn.com/nba/salaries/_year/2015 [https://perma.cc/W56T-PTWM] (last visited Jan. 29, 2025).

134. *NBA Player Salaries – 2024–2025*, ESPN, <https://www.espn.com/nba/salaries> [https://perma.cc/249R-WV8Y] (last visited Jan. 29, 2025).

135. See, e.g., Zucker, *supra* note 14.

136. See Chris Kirsch, *3 NBA Teams Facing Salary Cap Crises This Offseason*, GIVEMESPORT (June 29, 2024), <https://www.givemesport.com/nba-teams-facing-salary-cap-crunch-in-offseason/> [https://perma.cc/VU5T-28DP] (mentioning the Celtics as a team that is deep in the luxury tax because of its willingness to spend excessive amounts).

covets.¹⁴⁵ Yet, their arguable lack of loyalty does create an additional problem for teams. If a team were to take a chance on one of them, trading away valuable assets and taking on their massive contracts, it would be doing so at the risk of it only being a rental. The wider implication from their activities is the effect that it will have on the next generation of stars. New players in the league may mimic their activity, leaving the teams that draft them and hopping from team to team hoping to win a title.

Because of the willingness of players to leave their home organizations, teams are desperate for a means to keep their stars.¹⁴⁶ Max contracts are no longer enough to keep players; something more needs to be offered to these players to keep them at home.¹⁴⁷ This has become extremely important as many young stars are approaching their prime, signaling the transfer from the old guard to the new. Shai Gilgeous-Alexander, Jayson Tatum, Luka Dončić, LaMelo Ball, and Anthony Edwards are all young centerpieces for their respective organizations and will soon become the faces of the league.¹⁴⁸ Each player has shown their ability to be a future superstar, if they are not already, so the loyalty problem should be at the forefront of their teams' minds.¹⁴⁹

Contractual costs and the loyalty problem have caused a third issue in today's NBA: non-max players (this Note refers to these players as simply "regular stars") receiving max contracts.¹⁵⁰ Because players are more willing to leave, teams feel that they need to offer their regular

145. See Ajayi Browne, *Did James Harden and Kevin Durant Miss Huge Opportunity with Kyrie Irving on the Nets?*, SPORTS ILLUSTRATED (May 19, 2024), <https://www.si.com/nba/nets/news/did-james-harden-and-kevin-durant-miss-huge-opportunity-with-kyrie-irving-on-the-nets-01hy8wtjsm8r> [https://perma.cc/3EUA-YR38].

146. See Ohm Youngmisuk, *Stephen Curry Says Warriors Shouldn't Make 'Desperate' Move*, ESPN (Jan. 14, 2025, 12:41 AM), https://www.espn.com/nba/story/_/id/43405991/stephen-curry-says-warriors-make-desperate-move [https://perma.cc/NQ84-QKH9].

147. See Sam Quinn, *Bradley Beal Trade: Suns Land Star Guard from Wizards as Chris Paul Leaves Phoenix in Blockbuster Deal*, CBS SPORTS (June 22, 2023, 3:54 PM), <https://www.cbssports.com/nba/news/bradley-beal-trade-suns-land-star-guard-from-wizards-as-chris-paul-leaves-phoenix-in-blockbuster-deal/> [https://perma.cc/D4KQ-XSGK].

148. See, e.g., Grant Afseth, *Stephen Curry, Kevin Durant Name Luka Doncic Among Future Faces of NBA*, SPORTS ILLUSTRATED (Feb. 17, 2024), <https://www.si.com/nba/mavericks/news/dallas-mavs-luka-doncic-stephen-curry-kevin-durant-name-among-future-faces-nba> [https://perma.cc/K9LB-TPA3].

149. See Bryan Toporek, *What Pascal Siakam's Extension Says About NBA's New Max-Contract Landscape*, FORBES (June 20, 2024, 7:00 AM), <https://www.forbes.com/sites/bryantoporek/2024/06/20/what-pascal-siakams-extension-says-about-nbas-new-max-contract-landscape/> [https://perma.cc/AD5X-C6BG].

150. See Marc J. Spears, *Jaylen Brown, Celtics Agree to Record 5-Year, \$303.7M Supermax Extension*, ESPN (July 25, 2023, 11:04 AM), https://www.espn.com/nba/story/_/id/38067889/jaylen-brown-celtics-agree-record-5-year-304m-supermax-extension [https://perma.cc/C5HB-P9JH].

stars max deals in order to keep them.¹⁵¹ However, what precisely constitutes a player worth that much has become heavily conflated. During the summer of 2023, Boston Celtics forward Jaylen Brown signed a supermax extension worth \$303.7 million.¹⁵² Brown was coming off of a stellar season, having averaged career highs in both points and shooting percentage while also earning second-team All-NBA honors.¹⁵³ And yet, there was a belief that Brown was undeserving of that deal.¹⁵⁴ It was the richest deal in NBA history, given to a player who was neither his team's number one option nor who had led his team to an NBA title during his tenure to that point.¹⁵⁵ Moreover, Brown struggled during his team's loss to the Miami Heat in the Eastern Conference Finals in 2023, shooting just 41.8 percent from the field for nineteen points per game.¹⁵⁶ So why did the Celtics agree to give him a max deal? Similar to Bradley Beal, it had no choice.¹⁵⁷ If Brown did not receive a max extension, he likely would have walked to another team that would give him a better deal.¹⁵⁸ In addition, the Celtics were hesitant to break up a core that had been one of the NBA's best, even going to the NBA Finals in the season prior to their Eastern Conference Finals loss.¹⁵⁹

Brown's extension was not an isolated incident. In the modern NBA, larger and larger contracts have gone to normal (non-superstar) star players who have arguably not proven deserving of maximum contracts.¹⁶⁰ Combined with modern-day loyalty problems, a solution is needed, one that will offer greater incentives to actual star players

151. See Zucker, *supra* note 14.

152. See Spears, *supra* note 150. A supermax contract (also called a Designated Veteran Player Extension) is a special form of a max contract that can only be given to veteran players with at least seven years of experience in the NBA. See NBA CBA, *supra* note 26, at 3, 36–37.

153. Spears, *supra* note 150.

154. See Zucker, *supra* note 14.

155. See *id.*

156. Jaylen Brown: Game Log, ESPN, https://www.espn.com/nba/player/gamelog/_id/3917376/type/nba/year/2023 [<https://perma.cc/AFA3-FST9>] (last visited Jan. 29, 2025).

157. See *supra* Part I.

158. Zucker, *supra* note 14 (“[A]nother team probably would’ve eventually stepped to the plate if Boston balked at the bargaining table.”).

159. See Paul Kasabian, *Celtics’ Ime Udoka Says ‘The Future Is Bright’ After NBA Finals Loss to Warriors*, BLEACHER REP. (June 16, 2022), <https://bleacherreport.com/articles/10038988-celtics-ime-udoka-says-the-future-is-bright-after-nba-finals-loss-to-warriors> [<https://perma.cc/7FSQ-9ENF>].

160. See Zach Buckley, *Predicting the NBA’s Worst Contracts Next Season*, BLEACHER REP. (July 26, 2024), <https://bleacherreport.com/articles/10083835-predicting-the-nbas-worst-contracts-next-season> [<https://perma.cc/ZR2B-E8NZ>] (referencing Duncan Robinson’s five-year, \$90 million contract and an unnamed Eastern Conference executive’s comment that “he has the worst contract in the league”).

while also not breaking the bank for the organization. The answer lies in the no-trade clause.

B. The No-Trade Clause as a Solution to the Current Issues Facing the NBA

NBA teams have historically avoided the no-trade clause, but the time has come for them to embrace it.¹⁶¹ It solves each of the aforementioned problems from Part III.A—rising contractual costs, loyalty issues, and max contracts going to non-max players that have stunted the ability of teams to build and maintain well-rounded rosters—in the form of one neat contractual provision.¹⁶²

1. The Solution to Modern NBA Issues

First, the no-trade clause solves the issue of rising contractual costs by acting as an alternative form of compensation for players other than the award of a max contract. Instead of increasing the salary cap each year,¹⁶³ the NBA could make it easier on small market teams that cannot afford massive luxury taxes by amending its CBA to allow for easier usage of the no-trade clause.¹⁶⁴ Certain players would get a form of job security, as well as more control over their futures, and small-market teams would be better able to compete with their large-market competitors.

Second, increased implementation of no-trade provisions would solve the problem of regular star players receiving max contracts. Technically, these players would still receive max deals. However, superstar players—the traditional recipients of max contracts—would receive an additional, non-monetary type of compensation in the form of the no-trade clause, allowing them to differentiate themselves from normal star players. In addition, if a team feels that a regular star will be a part of their long-term plans, it can offer him a no-trade clause instead of a max deal; in its place, the team would give him a large deal that would fall just short of the max, allowing the team greater flexibility when building their roster. Therefore, the no-trade clause would kill two birds with one stone.

Ultimately, the no-trade clause's greatest benefit is that it solves the loyalty problem in the modern NBA.¹⁶⁵ Allowing superstar players

161. See *supra* Part II.

162. See *supra* Section III.A.

163. NBA CBA, *supra* note 26, at 169–70.

164. See *infra* Section III.B.4.

165. Deeks, *supra* note 6.

to have a form of leverage in trade conversations gives them a sense of security: they are more likely to feel that their home team covets them and wants to build around them.¹⁶⁶ Handing out a no-trade clause is no small feat, and it could restrict the future choices a team makes, perhaps even allowing the player more leverage in trade discussions.¹⁶⁷ Yet, teams can limit the uncertainty and risk that comes with giving out a no-trade clause by limiting to whom they give their no-trade clauses: young stars that a team wants to build around, not older stars who are more likely to change teams as they look to win a championship. The loyalty problem may not be completely erased by the no-trade clause, but it can surely limit the problem's reach.

The aforementioned three problems are sure to only grow without some sort of pushback. The no-trade clause solves these problems without doing too much to change the game or how contractual negotiations are carried out. It is a scalpel that helps to carve out the problems while leaving the main part of contractual negotiations intact.

2. The No-Trade Clause from Three Perspectives

By solving the three recurring problems that have plagued the NBA in recent years, expanded use of the no-trade clause can be beneficial to player, team, and agent alike. From the player's perspective, superstars will be able to receive max deals and the additional no-trade provision, giving them more power than ever to choose their own fate.¹⁶⁸ In addition, star (not superstar) players that do not receive such a clause in their contracts will also benefit from being able to attain max deals and see the fruits of their efforts.¹⁶⁹ The alternative? A lack of no-trade clauses would mean that the prices of these players might eventually fall as teams shift their priorities, attempting to differentiate superstar from star players.¹⁷⁰ This course correction would see star players like Jaylen Brown fall just short of max compensation territory. An expansion of the no-trade clause would allow them to keep their salaries high, even if they do not receive the same job security that the players receiving no-trade clauses would

166. *See id.*

167. *Id.*

168. *Id.*

169. Colin Salao, *NBA Player Contracts Are Skyrocketing – Here's How High They Can Go*, STREET (Dec. 2, 2023, 10:08 AM), <https://www.thestreet.com/sports/nba-player-contracts-are-skyrocketing-how-high-they-can-go> [<https://perma.cc/J2M3-RR6T>].

170. *See id.*

get.¹⁷¹ Thus, both superstar and regular star players alike would benefit from its implementation.

The second perspective is that of the team. At first glance, it may appear that the teams are the big losers in this proposition. After all, organizations are the ones that have to give up a degree of control to the players receiving no-trade provisions.¹⁷² And yet, the teams themselves will still see a benefit. If exercised correctly and apportioned to the right player, teams will see a long-term benefit from using the no-trade clause.¹⁷³ It will allow them to secure their young star players and give them the security necessary to keep them happy.¹⁷⁴ It tells their burgeoning stars, “We want to build a championship team around you and make you the face of our franchise.”

The third perspective comes from the players’ agents. Agents constantly try to secure the best contracts for their players, with the most beneficial provisions and the highest salaries.¹⁷⁵ Expanding use of the no-trade clause gives them another weapon in their arsenal to use to fight for their players. Admittedly, this will most likely only apply to agents who represent superstars, but nevertheless, the benefit will be obvious. Agents can use it as another bargaining chip, perhaps even as leverage to attain other contractual provisions that they might not otherwise be able to attain.

3. The Ideal Recipients for a No-Trade Provision

The crux of the argument for the expansion of the no-trade clause lies with who will actually receive such a provision. Importantly, the clause must not be used for players past their prime, who, while perhaps still effective players, are not young enough to be long-term cornerstones for a franchise. As of 2024, players such as Kevin Durant, James Harden, and Kyrie Irving are not ideal candidates to receive such a provision.¹⁷⁶ While they were all superstars at one point in their career (and are still most definitely in the star category), all three are in their thirties, and teams no longer see them as building blocks with which to restart a franchise.¹⁷⁷

171. See *supra* Section III.B.1.

172. See Deeks, *supra* note 6.

173. See *supra* Section III.B.1.

174. See *supra* Section II.D.

175. Andrew Brandt, *An Agent’s Life Isn’t All Glamour*, ESPN (Nov. 27, 2012, 3:00 AM), https://www.espn.com/nfl/story/_/id/8681968/nfl-agent-life-all-glamour [https://perma.cc/CTN4-8ZR5].

176. See Browne, *supra* note 145.

177. See *id.*

Rather, the players to whom teams should consider awarding no-trade clauses should be young, surrounded by similarly aged peers who can grow with them as a team, and who have shown the promise and potential to be multi-time All-Pros. That potential can take the form of statistical numbers—young players who put up high numbers in statistical categories such as points, assists, and rebounds that outpace their peers—or it can take the form of potential shown—the extent to which a player has displayed the ability and skill to one day be a superstar even if their stats are not there yet. Players such as Shae Gilgeous Alexander and Anthony Edwards fit this role in 2024, and both could be used as models of the type of player to whom teams should look to give the no-trade clause.¹⁷⁸ By giving a no-trade clause to these young stars, teams will be able to ensure that the future of their franchises feels coveted while the organization attempts to build around them.

4. A Change in the CBA

Once NBA teams decide to give out no-trade clauses more liberally, expansive use of the provision will face some important hurdles. It is currently not possible under the most recent collective bargaining agreement to award no-trade clauses to the player archetype illustrated in the preceding section.¹⁷⁹ The 2023 CBA allows only for a player who meets certain criteria to be eligible for a no-trade clause under Article XXIV, Section 2(b):

A Player Contract entered into by a player who has eight (8) or more Years of Service in the NBA and who has rendered four (4) or more Years of Service for the Team entering into such Contract may contain a prohibition or limitation of such Team's right to trade such Contract to another NBA Team.¹⁸⁰

Because a player has to have at least eight years of service for a team, the ideal player archetype listed in the preceding section—a young star that has shown potential, surrounded by similarly aged peers—would not qualify.¹⁸¹ Herein lies one of the biggest issues as to why the no-trade clause has not been more extensively used: if teams cannot

178. See *Anthony Edwards: Overview*, ESPN, https://www.espn.com/nba/player/_id/4594268/anthony-edwards [<https://perma.cc/UZB3-AWKP>] (last visited Jan. 29, 2025) (noting that as of March 6, 2024, the Minnesota Timberwolves sat atop the Northwest Division standings); Gilbert McGregor, *Shai Gilgeous-Alexander Selected as NBA All-Star: How SGA Differs from Steve Nash, Andrew Wiggins*, SPORTING NEWS (Feb. 2, 2023, 6:36 PM), <https://www.sportingnews.com/ca/nba/news/shai-gilgeous-alexander-nba-all-star-2023/xxs15z0x3mgxlhzgeyj4s0p> [<https://perma.cc/2B8Y-JVR4>].

179. See NBA CBA, *supra* note 26.

180. *Id.*

181. *Id.*

give no-trade clauses to their young, burgeoning stars, then the provision falls into a state of limbo. Teams are already wary enough of the provision, and restricting its usage to older players serves only to diminish its capacity for change.¹⁸²

Continued adherence to the eight-year standard would be a mistake, and this Note proposes that the NBA should make one of two changes.¹⁸³ The first potential change would simply be to lower the eight-year standard to a four-year standard, bringing it into line with the second requirement in the CBA that says a player must be with a team for four consecutive seasons.¹⁸⁴ Such a change does little to alter the landscape of the CBA, as it simply adjusts the year requirement without burdening the teams or the players. It would not be a difficult change to make in the next CBA.

Alternatively, the NBA could take a more invasive approach, altering the text of Article XXIV, Section 2(b) beyond an adjustment of the years-of-service requirement. The altered text of the Article XXIV, Section 2(b) would read as follows:

A Player Contract entered into by a player who has three (3) or more consecutive Years of Service for the Team entering into such Contract and who has received a designation for a Generally Recognized League Honor may contain a prohibition or limitation of such Team's right to trade such Contract to another NBA Team.¹⁸⁵

Two changes are made in this provision. One, instead of the eight- and four-year requirements, the language of the contract is changed so as to allow for players with only three years of experience to receive a no-trade clause.¹⁸⁶ Importantly, it has to be three consecutive seasons with the same team, ensuring that the player does not leave and come back. Second, in order to accommodate for the lower threshold of years that a player is required to play for, a second clause states that the player must have received one of the "Generally Recognized Honors," as defined by the CBA.¹⁸⁷ In other words, the player must have exhibited some form of excellence, anywhere from being a Most Valuable Player of the NBA Finals to being a second-team All-Defensive player.¹⁸⁸ This second clause would ensure that to be eligible for a no-trade clause, a

182. *See generally id.*

183. *Id.*

184. *Id.*

185. *See id.* A "Generally Recognized League Honors" is defined in the CBA as any of the following: "NBA Most Valuable Player; NBA Finals Most Valuable Player; NBA Defensive Player of the Year; NBA Sixth Man Award; NBA Most Improved Player; All-NBA Team (First, Second, or Third); NBA All-Defensive Team (First or Second); and All-Star Team Selection." *Id.* at 4.

186. *See id.* at 416–17.

187. *Id.* at 4.

188. *Id.*

player must have already shown proof of concept. Including such a stipulation would provide teams with a form of insurance, so that a young star must first establish their proficiency before becoming eligible to be a no-trade clause recipient.

In order to achieve either of these potential changes, both sides to the CBA—the NBA itself and NBPA—would have to mutually agree to an alteration of the current agreement.¹⁸⁹ This is because the current CBA does not expire until 2030.¹⁹⁰ The CBA contemplates on multiple occasions that such a change is permissible, assuming that both sides agree to such an alteration.¹⁹¹

IV. CONCLUSION

In 2016, Kevin Durant, then of the Oklahoma City Thunder, shocked the basketball world by signing a two-year, \$54.3 million contract with the Golden State Warriors.¹⁹² The Warriors were coming off of back-to-back titles, with star trio Stephen Curry, Klay Thompson, and Draymond Green firing on all cylinders during the two historic runs.¹⁹³ Pundits and fans everywhere were aghast at the fact that one of the best players in the world would reject the team with which he had grown into an All-NBA talent.¹⁹⁴ Durant would go on to win two titles with the Warriors, helping to establish them as an NBA dynasty and one of the most dominant teams in the modern NBA.¹⁹⁵ Durant's departure from the Thunder is emblematic of the NBA's loyalty problem, but the no-trade clause could have been used to keep him. Durant was certainly eligible, having been with the Thunder dating back to the 2007–08 season when the team was still known as the Seattle Supersonics.¹⁹⁶ Giving Durant a no-trade clause may have been

189. *See id.* at 546.

190. *Id.* at 542. The CBA contemplates that either side to the agreement can terminate the agreement a year early in 2029. *Id.* (“The NBA and the Players Association shall each have the option to terminate this Agreement on June 30, 2029 . . .”).

191. *Id.* at 547 (“[T]he parties shall negotiate in good faith such modifications to the CBA as may be appropriate . . .”).

192. *Kevin Durant to Sign with Warriors*, ESPN (July 4, 2016, 10:09 AM), https://www.espn.com/nba/story/_/id/16759826/kevin-durant-announces-sign-golden-state-warriors [<https://perma.cc/7VCE-PH8H>].

193. *See id.*

194. *See* Martin Pengelly, *Kevin Durant Joins Golden State Warriors and Breaks Thunder Hearts*, GUARDIAN (July 4, 2016, 12:06 AM), <https://www.theguardian.com/sport/2016/jul/04/kevin-durant-golden-state-warriors-oklahoma-city-thunder-nba-free-agency> [<https://perma.cc/CX7T-RCU8>].

195. *Kevin Durant*, OLYMPICS, <https://www.olympics.com/en/athletes/kevin-durant> [<https://perma.cc/RYP6-GS9T>] (last visited Jan. 29, 2025).

196. *See id.*

enough to sway him to stay with the team.¹⁹⁷ Combined with perennial All-Star Russell Westbrook, the Thunder would have kept had one of the best young cores in the league, potentially leading the team to a title in one of the ensuing years.¹⁹⁸ Instead, Durant left the team, leaving the Thunder with nothing in return.¹⁹⁹

The NBA's history shows that the no-trade clause has been underutilized, both in number of uses and in terms of its recipients.²⁰⁰ With only slight changes to the CBA,²⁰¹ the no-trade clause could counteract the loyalty and contractual issues that continue to plague the NBA. Expanded use of the clause would benefit both player and team alike, laying the groundwork for a better future for relations between the players and their respective organizations.

*Paul Gerstle**

197. See *id.*

198. See Scott Polacek, *Kevin Durant Says Thunder Era with Westbrook, Harden Was Favorite Time of His Career*, BLEACHER REP. (Apr. 11, 2024), <https://bleacherreport.com/articles/10116454-kevin-durant-says-thunder-era-with-westbrook-harden-was-favorite-time-of-his-career> [<https://perma.cc/9W2Z-D6TJ>].

199. See *Kevin Durant to Sign with Warriors*, *supra* note 192.

200. See *supra* Part II.

201. See *supra* Section IV.B.4.

* J.D. Candidate, Vanderbilt University Law School, 2025; B.A. History and Political Science, Washington University in St. Louis, 2022. The Author would like to thank the entire staff of the Vanderbilt Journal of Entertainment & Technology Law for their advice, time, and support in publishing this Note.