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Play Like a Girl, Get Paid Like a… Man?

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Play Like a Girl, Get Paid Like A ... Man?

Amanda Malool
ABSTRACT. This paper delve deep into the persisting gender wage gap in professional sports, addressing the common misconceptions surrounding women's sports and their perceived value. The narrative commonly held is that women's sports lack the same entertainment value, thus justifying their reduced pay. However, this paper challenges that notion, presenting evidence of the systemic bias that keeps women athletes from achieving pay parity. Factors such as limited media coverage, historical gender biases, discrepancies in endorsements and sponsorships, and the considerable head start male sports leagues have enjoyed all contribute to the wage gap. Despite men's leagues being beneficiaries of public subsidies and government protections, women's leagues have been largely left out, perpetuating the pay and revenue chasm.

BIO. Amanda M. Malool, Esq. is a 2022 graduate from Rutgers Law School in New Jersey. She graduated in 2017 from The College of Charleston with a B.A. in Political Science and a minor in Leadership, Change, and Social Responsibility. While attending Rutgers, Amanda acted as Vice President of the Entertainment, Arts, and Sports Law Society. Amanda began playing golf at the age of six years old and learned about her idol, Babe Didrikson Zaharias, and all that she and other women golfers endured. This inspired her to pursue law and developed a passion of helping women in sports. In her free time, Amanda enjoys playing golf, watching sports, and reading.
Play Like A Girl, Get Paid Like A...Man?

INTRODUCTION

I. A HISTORY OF WOMEN IN SPORTS AND RELEVANT LEGISLATION
   A. The Equal Protection Clause does not protect professional female athletes
   B. The U.S. Women’s National Soccer Team changes the equal pay landscape

II. FACING THE UNDENIABLE TRUTH: WOMEN ATHLETES IN THE UNITED STATES ARE UNDERPAID
   A. The facts are in the figures
   B. How the World Surf League rides the wave to equity

III. REFORMS
   A. Following the lead of other countries
      i. Australia’s Success with Equity
      ii. Norway supports its women
   B. Angel City FC shows how a single team can change a sport’s culture
   C. Increasing corporate sponsorship adds viewership and visibility

IV. HOW THE POLITICAL AND LEGAL PROCESS CAN CHANGE TO HELP WOMEN ATHLETES

CONCLUSION
Introduction

Women’s sports aren’t interesting. Women cannot compete on the same level as men. Play men and women against each other and see what happens. No one cares about women’s sports.\(^1\) Statements like these are common responses to calls for equal pay in professional sports, as misinformation and biases hold society back from understanding the true issue behind the present inequalities.

Unfortunately, women in the United States deal with many social inequalities, including the gender wage gap. The gender wage gap is the term for the difference in earnings between men and women workers. Researchers determined it would “take an extra forty-two days of work for women to earn what men did in 2020” as “women earned 84% of what men earned.”\(^2\) Furthermore, “there is no single gender or racial pay gap since women of different backgrounds have very different experiences and earnings. However, across all racial and ethnic groups, women working full-time are typically paid less than men in the same group,”\(^3\) with an even wider wage gap when comparing women of color.\(^4\)

The salaries of male and female athletes are no exception, as the wage gap is prominent when comparing athletes who hold the same job, have the same goals, and undergo the same training regime. The only difference between male and female professional basketball players is the league in which they play, yet the “average male NBA player earns $5.3 million a year...by comparison, WNBA players earn an average of $130,000 a year.”\(^5\) These staggering differences in wage span more than one league.

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4. Id. (“White women were paid 79% of white, non-Hispanic men’s wages in 2020, the same ratio as 2019; Black women were paid 64% of white, non-Hispanic men’s wages in 2020, compared to 63% in 2019; and Latinas were paid 57% of white, non-Hispanic men’s wages in 2020, compared to 55% in 2019.”)
or organization; it occurs in tennis, golf, basketball, soccer, and hockey. Women “continue to be paid less and receive fewer benefits than male athletes.”

This paper will focus on the lack of equal pay among male and female athletes in professional sports. Though sports and politics are often tied together, “regrettably, sports command little attention in political science,” in reality, “it should come as no surprise that sports are an intrinsically political business.” Viewing sports as a microcosm of society, it is important to evaluate the social inequalities that female athletes face and apply potential solutions to the country as a whole.

What is misunderstood about the fight for pay equality in professional sports is that “nobody is suggesting that [WNBA player Nneka] Ogwumike ought to be paid $27 million a year [like NBA player Anthony Davis] – not even the WNBA athletes who have been fighting the longest for better wages.” Instead, athletes, fans, and other voices for women’s sports ask people to consider “why the revenue is different, what bias and discrimination are in play. . .have investments been equal? Has commitment been equal? Is the allocation of the best talent to thinking about ways to grow fan engagement, innovation or player experience happening?”

The most pressing issue is that women’s sports are stuck in a bad cycle: “low investment and media coverage have led to limited viewership, rights deals and sponsorships, which leads to low pay, which hampers the development of new talent and initiatives, which leads to… low investment and media coverage.”

Critics suggest that female athletes receive a disproportionate paycheck in comparison to male athletes because women do not draw the same crowds or viewers. There are two problems with this phenomenon: first, there is a lack of coverage dedicated to women’s sports, and second, even when a women’s team outperforms a

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7 Id. at 136.
8 Id. at 129.
10 Id.
11 Id.
men’s team in revenue and viewership, there is still no change in compensation.\textsuperscript{12} Today, “media still only covers female athletes about 4 percent of the time, and \textit{Fox Sports} manages even less than that.”\textsuperscript{13} This issue leads to the “chicken-egg argument around media coverage: Is it that not enough people watch women’s sports to warrant better and more sustained coverage? Or do people not watch \textit{because} there isn’t better and more sustained coverage?”\textsuperscript{14} With all the channels and streaming services dedicated to sports coverage, a lack of focus on women can be eradicated.

With the growing popularity of streaming services and the vast number of sports channels on television, more channels can dedicate a higher percentage of airtime to women’s sports. Unfortunately, a study of the subscription streaming service ESPN+ in the United States revealed only about 7\% of thumbnails show women or women’s sports, some of which were duplicated leading to a number that is “misleadingly high.”\textsuperscript{15} Even then, “women and women’s sports particularly disappeared during major men’s sporting events like the UEFA European Football Championship and the first two days of the Masters Tournament. Even for events that involved both men and women competitors, like Wimbledon, men’s matches were usually highlighted more than women’s.”\textsuperscript{16} When women’s sports do receive coverage, it is often inconsistently disseminated. Some women’s games will be shown on YouTube and the next games will be found on Twitter, making “the hunt by fans for women’s games difficult at best.”\textsuperscript{17} Broadcasting sports matches and games – both on television and through consistent streaming services – would be beneficial to increase viewership.

An increase in women’s sports broadcasts would be well-received by a majority of the public. A 2018 Nielsen study found of the “eighty-four percent of

\textsuperscript{12} Meg Kelly, \textit{Are U.S. women’s soccer players really earning less than men?}, \textit{THE WASHINGTON POST} (July 8, 2019, 3:00 AM), https://www.washingtonpost.com/politics/2019/07/08/are-us-womens-soccer-players-really-earning-less-than-men/ [https://perma.cc/MAK6-SARC].

\textsuperscript{13} JOAN STEIDINGER, \textsc{Stand Up and Shout Out: Women’s Fight for Equal Pay, Equal Rights, and Equal Opportunities in Sports} [xiii] (2020).

\textsuperscript{14} Jessica Luther, \textit{The More Women’s Sports Are Covered, The More Popular They Will Be}, \textit{HUFFPOST} (April 3, 2018, 9:00 AM), https://www.huffpost.com/entry/opinion-luther-women-basketball_n_5ac27206e4b09712f6c34663 [https://perma.cc/MBD6-GXSU].

\textsuperscript{15} FROM NETWORKS TO NETFLIX: A GUIDE TO CHANGING CHANNELS [382] (Derek Johnson ed. 2nd ed. 2023).

\textsuperscript{16} \textit{Id.} at 382.

\textsuperscript{17} ROUTLEDGE HANDBOOK OF SPORT FANS AND FANDOM, \textit{supra} note 1 at 316.
general sports fans today worldwide with an interest in women’s sports, fifty-one percent of those are men, which shows both men and women can be consumers of women’s athletics.”

There are certain platforms that highlight women in professional sports, such as Just Women’s Sports, HighlightHER, and even espnW which should be (and can be) disseminated on a broader scale. Recent trends prove that audiences appreciate a broader showing of women’s sports. The 2019 FIFA Women’s World Cup saw a total of 20 million viewers in the United States while in the WNBA, the average number of viewers increased by 68% in the 2020 season, the only league that did not have a decrease in viewership. The numbers show that as long as women’s sports are widely available, there will be fans who want to watch.

Moreover, pay inequity also extends to a lack of endorsements and sponsorships for women when compared to male players. Often, the only “second job” of a male athlete consists of endorsement obligations, which usually include promoting brands on social media, posing for advertisements, or allowing his name, image, or likeness to appear connected to a company. Unfortunately, women have not received the same opportunities for individual sponsorships; in 2015, “less than half of 1 percent of sport sponsorship [was] invested in women’s sport.” Even as society has pushed for women’s sports to receive more attention and money over the last several years, the WNBA’s Players Association continues to fight “for better sports sponsorship deals where currently ‘for every dollar a company invests in endorsement deals for men’s sports, less than half a penny goes to the women’s game.’”

In prior years, “it has been acknowledged that if women in sports want to increase viewership or their appeal in order to gain sponsorships and augment their revenue, they have to

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conform to hegemonic femininity because it is what is expected of them.”

Sponsorships should focus on the quality of the players, the excitement of the sport, and the love of fans, the same metrics used for male athletes. But “brands shouldn’t invest in women’s sports just because it’s the right thing to do.” Instead, brands should invest in new opportunities that benefit companies, teams, and fans; a 2021 study found that women’s sports fans are 25% more likely to purchase sponsor products than men’s sports fans.

In the conversation regarding pay equity in sports, many overlook the decades-long advantage that many men’s sports leagues have over women’s leagues: “the NBA has had a 50-year head start in building a fanbase, sponsorships and media buys,” as the NBA started in 1946 compared to the WNBA’s 1996 debut. Sports economist David Berri believes “the economics of women’s sport are never explained thoroughly enough and therefore are misunderstood by many.”

He makes two important points about establishing sports: “Building a fan base takes decades, and creating an emotional attachment to a sport takes equally long. There is a clear double standard in the sports world.” It must be acknowledged that women were banned from playing sports and competing for years: “for many men [in the nineteenth and early twentieth century], sports were entirely a domain occupied by men, and women were simply not welcome to participate.” As a result, it became difficult for a women’s sports league to “grow and thrive without a large underlying population of talent.”

Due to the delay in the creation of women’s professional leagues, ample opportunities arose for assistance from pre-established organizations to further women’s sports. The U.S. Soccer Federation (USSF) helped fund Major League Soccer in the early 1990s “to the tune of millions of dollars in order to get the league up and

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23 Morgan, supra note 20 at 135-36.
26 Brooks, supra note 5.
27 STEIDINGER, supra note 13 at page 25.
28 Id.
29 ROUTLEDGE HANDBOOK OF SPORT FANS AND FANDOM, supra note 1 at 45.
30 Id. at 46.
running,” and yet “two attempts at a domestic women’s professional league folded due to a lack of funding after the USSF refused to provide these women’s leagues substantial financial assistance.”

The advantage given to men’s organizations and leagues but not to their female counterparts extends to the protections set forth by the United States government. The Sports Broadcasting Act of 1961 states “the antitrust laws . . . shall not apply to any joint agreement by or among persons engaging in or conducting the organized professional team sports of football, baseball, basketball, or hockey…” but this has not been amended or revised to include any major professional women’s sports teams. Men’s sports organizations have acceptedclose to thirty billion dollars in public subsidies from politicians in the United States. This benefit has not been extended to women’s organizations, only furthering the space between the visibility of men’s and women’s sporting events and adding to the revenue and pay gap.

Furthermore, Dr. Laura Claus from the University College London School of Management suggests that “the market follows with the money that athletes are being paid. More salary for athletes makes them more interesting to the public, evident from professional football players. So, one could argue that we need to pay women more first and then the market will equalize.” Dr. Claus proposes a unique solution: as more professional women athletes receive larger salaries or prize money, they would garner more press coverage and headlines, which would lead to newer fans and more interest in that specific sport.

Despite the progress that the United States has made in women’s rights and gender issues in professional sports, the United States does not offer equal or comparable pay for male and female athletes through laws or legislation. Title VII prohibits discrimination based on race, color, religion, sex, and national origin. Even though Title VII is already in place in the United States, other countries, such as

31 Mallory E. Hopkins, Taking the Game Back: A Response to the District Court Ruling against the United States Women’s National Soccer Team under the Equal Pay Act, 14 ELON L. REV. 259, 266 (2022).
33 ROUTLEDGE HANDBOOK OF SPORT FANS AND FANDOM, supra note 1 at 52.
35 ROUTLEDGE HANDBOOK OF SPORT FANS AND FANDOM, supra note 1 at 56.
36 42 U.S. Code § 2000(e).
Australia and Norway, have made better strides toward equal pay for their athletes. The United States should look to Australia and Norway and adopt some of these methods. This paper demonstrates how Australia and Norway have improved the pay distribution of their respective women’s sports leagues via the work of groundbreaking soccer players, emphasizing male allyship, and utilizing both corporate support and the political process to the advantage of female athletes.

Section II of this paper discusses the background of the United States’ attempts to address pay inequality, both overall in the country and in professional sports. Section III acknowledges the pressing problems in the gender pay gap in sports in the United States and some of the current leagues’ attempts to address these problems. Section IV sets forth potential solutions, reforms and suggested laws that can change the aforementioned issues.

I. A History of Women in Sports and Relevant Legislation

A. *The Equal Protection Clause does not protect professional female athletes*

The Fourteenth Amendment of the United States Constitution protects United States citizens by prohibiting the establishment of... “any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”37 While the Equal Protection Clause originally intended to prevent the government from discriminating against Black citizens,38 the Supreme Court has interpreted the language to include the prevention of discrimination on the basis of race, national origin, religion, gender, and other classifications.39

To supplement the Equal Protection Clause, Congress passed the Civil Rights Act of 1964. Within the Civil Rights Act is Title VII, prohibiting employment discrimination based on certain protected characteristics, including sex.40 While Title VII presents a solution to women to seek justice in employment discrimination,

37 U.S. CONST. amend. XIV, § 2.


39 *Id.*

40 42 U.S. Code § 2000(e).
“federal circuits have implemented different standards of causation linking stereotyping with discrimination,” which, “seriously affect a woman’s ability to prove employment discrimination based on gender stereotyping and have led to disparate results for the same discriminatory conduct.”41

The Fair Labor Standards Act (FLSA) creates uniform legislation overseeing all employees in the United States.42 An amendment to the FLSA provides guidelines on equal pay. The Equal Pay Act (EPA) “prohibits sex-based wage differences and requires employers to provide equal pay for equal work.”43 To prove a case of sex-based wage discrimination, an employee must show: “(i) an employer pays unequal wages to employees of the opposite sex; (ii) in the same establishment; (iii) for equal work of jobs that require equal skill, effort, and responsibility; and, (iv) which job is performed under similar working conditions.”44

One of the biggest issues with the EPA in the context of the gender pay gap is the second factor, “in the same establishment,” because many professional sports leagues are separate organizations for men and women players. For example, professional golf in the United States comprises the Professional Golf Association (PGA), for men, and the Ladies’ Professional Golf Association (LPGA), for women. This ‘same establishment’ element is one of the biggest obstacles women athletes face when lobbying their respective organizations for equal pay.45

Furthermore, wages are not solely the salary an employee receives; they also include “wages, salary, profit sharing, expense account, monthly minimum, bonus, uniform cleaning allowance, hotel accommodations, use of company car, [or] gasoline accounts.”46 It is important to note the different forms of compensation when considering how female athletes are paid. The Pew Research Center found that the gender pay gap can be connected to educational attainment, occupational segregation, work experience, women’s overrepresentation in lower-paying occupations, gender discrimination, and parenthood.47

42 29 U.S. Code Ch. 8 § 201.
43 Gersch, supra note 19 at 164.
44 Id.
45 Morgan, supra note 20 at 143.
46 29 C.F.R. §1620.10 (2023).
47 Barroso & Brown, supra note 2.
Modern day women fighting for equal opportunity and pay in sports is not a new phenomenon. As it is, “paying women equally has not been straightforward. Male patriarchy in sports is a centuries-old battle where women have challenged sexist barriers and restrictive notions about their physical appearance and athletic ability.”\(^{48}\)

The earliest record of women in sports emerged during the ancient Greek and Egyptian civilizations, but a decline in participation occurred during the Medieval Age due to a belief about women’s inferiority.\(^{49}\) Discouraged from any strenuous activity in the Victorian Age, women became more involved through sports like golf, croquet, and archery.\(^{50}\) In 1896, at the first modern Olympics in Greece, a woman was barred from the official race, but ultimately ran the course and finished in 4 hours and 30 minutes, a comparable time to the male runners.\(^{51}\) In 1914, the United States Olympic Committee formally opposed women competing in the Olympics.\(^{52}\) As the women’s suffrage movement gained momentum in the United States, the first Women’s Olympic Games took place in Paris and female athletes fought for the ability to compete in “physically demanding” events.\(^{53}\)

Athletes such as swimmer Gertrude Ederle, tennis players Helen Wills and Ora Washington, and golfer Babe Didrikson helped pave the way for the following generations of female athletes. In fact, the \textit{Dallas News}, hometown newspaper of Babe Didrikson, suggested that “perhaps she supplies the proof that the comparatively recent turn of women to strenuous field sports is developing a new super-physique in womanhood, an unexpected outcome of suffragism which goes in for sports as well as politics, and threatens the old male supremacy even in the mere routine of making a


\(^{50}\) \textit{Id.}


\(^{52}\) \textit{Id.} at xxiii.

Post-World War II, even with the creation of the All-American Girls Professional Baseball League, the Ladies' Professional Golf Association, and the rise of another barrier-breaker, African-American tennis player Althea Gibson, women’s roles in sports were still limited. In 1967, Katherine Switzer entered the Boston Marathon, registered under only her first initial since women were still barred from running in the competition.

In 1972, the United States Congress passed Title IX of the Education Amendments of 1972, which states: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” Thanks to the passage of Title IX, more than three million girls currently participate in sports, compared to a mere 300,000 in 1972.

Despite the success of Title IX and the new opportunities for girls and women in the United States, during the 1990s, “Congress held two sets of hearings to re-examine the validity of Title IX, questioning whether it had caused inadvertent discrimination against male athletes.” Subsequently, President George W. Bush created a special presidential panel to revisit Title IX, expressing concern that equality for women reduced opportunities and “damaged the psyches of boys and men.” The increased opportunities for women to participate in sports “doesn’t mean a reduction of men’s opportunities: About 26% more high school boys and 62% more college men are participating in sports.” However, Title IX does not address any difference in payment between men and women athletes.

Unfortunately, inequalities persist, so professional women athletes must take it upon themselves to fight for change. Female athletes are quite aware of the differences between male and female compensation. As a result, women have filed lawsuits, staged boycotts, and fought a political battle to gain equality.

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54 O’REILLY, supra note 51 at 18.
55 Id. at xxvi.
57 STEIDINGER, supra note 13 at xiii.
58 O’Reilly, supra note 51 at xii.
59 O’Reilly, supra note 51 at xii.
60 Lisa Kaplowitz, Title IX increased opportunities for women athletes, but there’s still work to do, RUTGERS BUS. SCH. (June 23, 2022), https://www.business.rutgers.edu/business-insights/title-ix-increased-opportunities-women-athletes-theres-still-work-do [https://perma.cc/QCA2-NFR9].
B. The U.S. Women’s National Soccer Team changes the equal pay landscape

The United States Women’s National Team (USWNT) has been, for years, one of the most dominant, successful, and influential sports teams in history. For example, the USWNT beat Thailand 13 to 0 during the group stage of the 2019 World Cup. Not only did this represent more goals than any team had ever scored in a World Cup match, it was also more goals than the U.S. Men’s National Team scored – combined – in every World Cup competition between 2006 and 2019.61 In 2019, the women’s team was the best in the world and had never been ranked lower than second in FIFA women’s rankings, whereas the men’s team was 30th in the FIFA world rankings.62 The USWNT has won four World Cups and four Olympic gold medals63 while the USMNT has not been able to achieve either accomplishment.64

Unfortunately, women soccer players had to take on the battle for equal pay themselves, since they do not receive help from their overarching organization, the USSF. In 2016, “five USWNT soccer players filed a wage discrimination complaint with the Equal Employment Opportunity Commission against the USSF, alleging they were not paid the same amount as their male counterparts, and they were denied at least equal playing, training, and travel conditions; equal protection of their games; equal support and development for their games; and other terms and conditions of employment equal to the Men’s National Team.”65

In that case, the federal judge decided that “the world champion U.S. women’s soccer team does not have the right to strike to seek improved conditions and wages before the Summer Olympics” which seemed to “end the prospect of an

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62 Drew Kann, Yes, the US Women’s Soccer Team is Dominant. That’s Because Most of the World is Playing Catch-up, CNN (July 5, 2019, 8:27 AM), https://www.cnn.com/2019/06/16/us/uswnt-dominance-womens-soccer-world-cup-history-explained [https://perma.cc/5FAL-UC4V].


64 Gersch, supra note 19 at 151.

65 Gersch, supra note 19 at 149-50.
unprecedented disruption by one of the most successful American national teams.” After soccer superstars Hope Solo, Alex Morgan, Carli Lloyd, Becky Sauerbrunn, and Megan Rapinoe filed their complaint, their employer argued that the “claim is misleading, partly because the men and women are paid differently under separate collective bargaining agreements.” Despite the ruling in favor of U.S. Soccer, the women’s players association noted “the court’s ruling today does not negate the fact that [USSF] does not fairly compensate the women’s national team, or in any way impact the players’ demands for equal pay for equal work.” The disappointing result of the original wage discrimination case only served as a basis for a larger, more encompassing lawsuit filed later.

More recently, in 2019, the USWNT filed a class action suit against its employer, the USSF, based on “institutionalized gender discrimination.” The twenty-eight women claimed female players were paid significantly less than male players, despite having the same job responsibilities. Furthermore, “both the players on the WNT and the MNT have jobs requiring the same skills. Those skills include an elite level of soccer skills, physical training, adherence to strict nutrition, and national and international travel, among other requirements.” The judge originally dismissed the team’s lawsuit after “accepting U.S. Soccer’s accounting that showed the women had been paid more per game than the men” but the women appealed, “arguing that the judge ignored how performances increased their pay rate, all while their bonuses for winning were smaller than for men.” The appeal noted that even if the judge did not find a violation of the EPA, a Title VII violation may still exist.

The decision to dismiss the case surprised the USWNT’s lawyers, as the appeal noted that “performance – that is, winning or losing – can’t be ignored. The women only got paid more because they won more, despite the fact that their available

67 Id.
68 Id.
69 Gersch, supra note 19 at 150.
70 Id. at 151-52.
bonuses were lower than for the men. The women won two World Cups during the time period covered in the lawsuit, 2015-19, while the men failed to qualify for a World Cup. . .The court did not account for performance – specifically, that the women had to be the best in the world to make about the same amount per game as the much less successful men.”

The women’s team claims the pay differences stem from a “larger pattern of indifference and discrimination against the women.” The men’s team was provided food, lodging, and equipment, while the women had to do everything themselves. Furthermore, when the women criticized how USSF treated the USWNT, USSF leadership “argued that the women have less ‘ability’ than their male counterparts because of ‘the different levels of speed and strength required for the two jobs,’ a comment widely criticized as misogynistic.” The sexist comments from the leaders of the USSF were contradictory to former leadership, given the statements of the former president of USSF, Carlos Cordeiro, who said “female players have not been treated equally’ and the federation needed ‘to work toward equal pay for the national teams,’” a comment on which Cordeiro later backtracked.

EPA claims are not commonly filed by professional female athletes. The USWNT brought a claim against the USSF, because the USSF employs both the USWNT and the USMNT. However, women competing in professional golf, basketball, soccer (a separate league from the national teams), tennis, and hockey are unable to fight for equal pay through the use of the EPA. In those organizations, women cannot be considered in the “same establishment” as their male counterparts, which would invalidate the second factor needed to bring a claim under the EPA.

In May 2022, the USSF, USMNT, and USWNT announced new Collective Bargaining Agreements (CBAs) that guarantee equalized prize money from the World Cup, identical fees for camp, match appearance and performance, and pooled and split

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72 Id.
73 Id.
74 Id.
75 Id.
77 Gersch, supra note 19 at 178.
prize money for non-World Cup tournaments.\textsuperscript{78} The new CBAs also include split broadcast income, a share of ticket revenue, and comparable match venues, fields, hotel accommodations, staffing, and charter flights.\textsuperscript{79} The prior CBA, negotiated in 2016/2017, was the USWNT’s fourth ever Collective Bargaining Agreement.\textsuperscript{80} Meanwhile, this new, record-breaking CBA runs through 2028 and the benefits awarded show the importance of hiring lawyers who understand how to negotiate with an institution that has a history of not supporting its women athletes.

II. Facing the Undeniable Truth: Women Athletes in the United States Are Underpaid

A. \textit{The facts are in the figures}

Athletes often have to pick up additional jobs to support their income and to continue providing for their families, due to the lack of investment in women’s sports. A female athlete who becomes pregnant during her career may face career uncertainty upon her return. Olympic runners Allyson Felix, Alysia Montaño, and Kara Goucher have been vocal about their sponsor’s poor reactions to their pregnancies. “Montaño and Goucher were told by Nike that their contracts would be paused and they would not be paid while they were pregnant. Nike offered Felix a 70% pay cut during negotiations of her new contract, which took place while she was pregnant.”\textsuperscript{81} Montaño still competed while pregnant, running at eight months pregnant in 2014 and five months pregnant in 2017.\textsuperscript{82}

Furthermore, “a 2021 study by the BBC found that male golf pros in 2014 earned an average of $1.1 million, while female pros earned $212,000 – a gap of $888,000; by 2021, that gap had grown to $1.25 million.”\textsuperscript{83} As stated earlier, the


\textsuperscript{79} Id.

\textsuperscript{80} Hopkins, supra note 31 at 265.

\textsuperscript{81} SOCIAL ISSUES IN SPORT COMMUNICATION, supra note 22 at 9.

\textsuperscript{82} Korin Miller, \textit{Alysia Montaño Ran an 800-Meter Race While 5 Months Pregnant}, SELF (June 26, 2017), https://www.self.com/story/alyssia-montano-race-pregnant [https://perma.cc/LYV2-4Y23].

\textsuperscript{83} Brooks, supra note 5.
paychecks earned by NBA and WNBA players are vastly different. NBA superstars Steph Curry and Kevin Durant make $45.7 million and $42 million a year respectively, while WNBA superstars Diana Taurasi and Breanna Stewart earn about $230,000 a year.\(^{84}\) There is more to pay inequities than salaries, as “NBA players receive 50% of NBA league revenue, while WNBA players receive only 20% of WNBA league revenue.”\(^{85}\) Moreover, the WNBA “was founded, and is half-owned, by the NBA. In the past 21 years, the NBA has earned revenue exceeding $100 billion; $10 billion in 2022 alone. Of that amount, it has given a relative pittance - $10 to $15 million – annually to subsidize the WNBA, a business it founded for women.”\(^{86}\)

In 1973, tennis legend Billie Jean King threatened to boycott the U.S. Open due to unequal pay, but ended up playing once women players were awarded equal prize money.\(^{87}\) However, this led to the myth that all tennis tournaments offer equal prize money to men and women. In actuality, only “the four Grand Slam tournaments offer equal prize money to both men and women. . . Equal compensation is the exception rather than the rule.”\(^{88}\)

<table>
<thead>
<tr>
<th>Sport</th>
<th>Men</th>
<th>Women</th>
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<tbody>
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<td>Basketball (NBA &amp; WNBA)</td>
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<td>$75,181</td>
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<tr>
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<td>Soccer (MLS &amp; NWSL)</td>
<td>$410,730</td>
<td>$35,000</td>
</tr>
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\(^{84}\) Id.


\(^{86}\) Id.

\(^{87}\) SOCIAL ISSUES IN SPORT COMMUNICATION, supra note 22 at 8.

\(^{88}\) STEIDINGER, supra note 13 at 26.

\(^{89}\) Male vs Female Professional Sports Salary Compensation, Adelphi University (May 20, 2021, 9:12 AM) [https://online.adelphi.edu/articles/male-female-sports-salary/][https://perma.cc/Y45G-BZgL].
B. How the World Surf League Rides the Wave to Equity

A pioneer in the field of pay equality for athletes, the World Surf League (WSL) has started paying their surfers equally, though there are some lingering issues. After years of massive differences in paychecks, the “fight to rid pro surfing of pay inequality only started to gain ground...when a number of high-profile women surfers, and organizations such as the Committee for Equity in Women’s Surfing, began to shed light on the sport’s sexist culture, which infects everything from its competitive structure to profitable sponsorship deals.”90 The Committee for Equity in Women’s Surfing (CEWS) was founded by six big-wave women surfers. CEWS’s goal is to “increase ‘the number of events and the number of awards for women, as well as offering equal prize money... to achieve meaningful equity in competitive surfing.’”91 The decision by the WSL to offer equal pay in September 2018 is historic as it is “the first and only US-based global sports league to offer equal prize money and among the first internationally.”92

The WSL did not always offer equal prize money for men and women. Prior to the September 2018 decision, the men on the WSL’s World Championship Tour were competing for $607,800 and the women were competing for $303,900.93 The WSL reasoned “that the average earnings between male and female surfers were the same – which they were – but the allocation of prize money wasn’t broken down evenly. When Stephanie Gilmore won the 2018 Rip Curl Pro, she earned $65,000 for her victory, while Italo Ferreira got $100,000 for his.”94 One of the biggest issues in

<table>
<thead>
<tr>
<th>Sport</th>
<th>Men’s Prize Money</th>
<th>Women’s Prize Money</th>
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<td>Tennis (ATP &amp; WTA)</td>
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92 Glass, supra note 48.

93 Baird, supra note 90.

94 Id.
previous pay inequity is that “overcoming gender stereotypes in surfing, a strong masculine sport, has been especially challenging for women.”

While the prize money is now equal for men and women on the Championship Tour, surfers are often already famous from sponsorship deals. This shift to equal pay, “might be most crucial for young, aspiring female surfers on the World Qualifying Series, where surfers compete in various events to earn points that could lead to a spot on the prestigious (and well-paid) World Championship Tour.”

With better compensation, female surfers will “likely be encouraged to pursue surfing as a professional sport, knowing that the financial cost of their attempts to reach the Championship Tour will be less daunting.”

While these changes are important and beneficial for female surfers, the WSL must do more to achieve gender equity. The WSL’s dedication to equal pay “was followed by a damaging, 9,000-word article in the February issue of The New York Times Magazine, in which a group of women big-wave surfers... outlined pro surfing’s long standing, systemic sexism and homophobia and accused Goldschmidt [WSL’s CEO] and the WSL of proliferating these biases.”

Many of the women pro surfers openly criticize their employer and sport “for their homophobia and disinterest in paying women fairly yet their insistence on advertising them as sexual objects.”

Systemic inequity in surfing has presented itself in several ways, even after the pay disparity has been “resolved.” Men have more opportunities to accumulate wins and points on their way to the top level, demonstrated by the Championship Tour hosting 64 events for men in the World Qualifying Series and only 44 events for women.

Throughout the World Championship Tour, women are not mandated to be in every event, leading to fewer opportunities for women athletes to earn money. Furthermore, league-sanctioned events are not always controlled by the WSL. These events are not required to follow the equal pay guidelines, which ultimately led to greater awareness of equal pay issues. This created an issue in March of 2022 at an event in Huntington Beach, where organizers of the events justified women’s

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95 Glass, supra note 48.
96 Baird, supra note 90.
97 Id.
99 Id.
100 Baird, supra note 90.
exclusion from the contests with a lack of organizing time.\textsuperscript{101} Female activists within the surfing community looked to political figures to address the present inequalities in the sport, which is further discussed in Section IV.

### III. Reforms

United States professional sports leagues have many possible courses of action available to achieve pay equity. Several other countries, especially Australia and Norway, have made progress capable of being replicated. An increase in team-driven programs and corporate sponsorships would allow women athletes to be properly compensated. With this, the political and legal process would create indisputable support for women which could force a complete upheaval in women’s pay equity.

#### A. Following the Lead of Other Countries

The United States is considered a first-world, progressive, and forward-thinking country. In many respects, it is. However, the United States is far behind other countries when it comes to pay equity. For example, Australia and Norway are far ahead of the United States in terms of pay equality, particularly in reference to professional athletes.

1. **Australia’s Success with Equity**

   Ironically, men are the secret behind Australia’s successful fight for pay equality in professional sports. Australia’s longest serving Sex Discrimination Commissioner, Elizabeth Broderick, founded the group, Male Champions of Change Institute (MCC) to create and propose unique solutions to Australia’s gender wage gap. The “MCC focuses on working with influential leaders in Australia to redefine the male role in fighting gender inequality” and has grown to include “thirty chief executive officers, boards of directors, government departments, university leaders, and military leaders” amounting to over 230 leaders across the country since its inception in 2010.\textsuperscript{102} The MCC’s goals include “creat[ing] the operating environments, system and cultures which will make equality, pay equity and sustainable pay equality the norm rather than the exception across all elite sports.”\textsuperscript{103} In a perfect world, pay equality would already exist. If it did not, those with authority would listen to women and make those changes. While pay equity reform should not depend on powerful

\textsuperscript{101} Baird, supra note 90.

\textsuperscript{102} Gersch, supra note 19 at 181.

\textsuperscript{103} Id. at 181-82.
men, the men of the MCC acknowledge the twisted logic – that it takes the men’s accepting responsibility to fight for women’s rights.

Broderick and the MCC developed the Pathway to Pay Equality (PPE) which aims to provide female professional athletes with “access to a fair and reasonable base pay and equal terms and conditions to their male counterparts.” To promote the PPE plan, Broderick and the MCC expanded the plan into three key steps: 1) “distinguish between the payments that the sport itself can directly control and the determinants of pay that the sport cannot directly control”; 2) “have organizations define the different types of work that athletes perform” such as media, training, appearances, matches, etc. so that “each type of work would have its own corresponding pay rate determined by a match fee or an hourly rate”; and 3) have “organizations calculate the pay for each type of work described above” so that “the rate of pay would be based on the type of work rather than gender.”

In addition, the PPE seeks public campaigns for gender equality using professional athletes of both genders to discuss the goals of sports with key stakeholders, ensure transparent and frank discussions about salaries, and set clear timelines to achieve their pay equality.

So far, the MCC’s plans are successful. Tennis Australia has a “gender-balanced and inclusive approach” that allows equality among its competitors. As a result, the Australian Open highlights women’s matches, distributes equal resources between genders, and pushes for equal numbers of young men and women in their junior programs. Tennis Australia also promotes female tennis players through the media to encourage young women and girls to participate and view female tennis players as role models.

Tennis Australia is not the only professional sports league in Australia to have gender neutral contracts. Cricket Australia has equal hourly base wages, retainers, salary caps, match fees, and international premiums, Golf Australia has men and women play on the same courses for the same prize money, and Australian women soccer players share commercial revenues equally with the men’s teams, and receive

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104 Gersch, supra note 19 at 182.
105 Id. at 182-83.
106 Id. at 186-87.
107 Id. at 187.
108 Id. at 188.
coaching and operational support on the same standard as the men’s team.\textsuperscript{109}

Previously, in 2015, the Australian women’s team had plans to play in the United States in a sell-out tour. However, the team had a fight with Football Federation Australia over their pay, which the players said was “so low it was illegal.”\textsuperscript{110} Yet the league is moving closer to equality in payment as well as the parental leave policy “to ensure women playing for the national team are supported during pregnancy and on their return.”\textsuperscript{111}

The United States should follow Australia because of its success in implementing its equal pay program. The United States should also model its reforms after Australia and create a Commission against Sex/Gender Discrimination.

In Australia, male athletes’ support is a key factor for professional sports equity. This support is lacking in the United States. Male athletes in the United States need to be more vocal about the pressing issues in women’s sports. While some prominent male athletes show support through messages on social media, by wearing WNBA or LPGA hoodies, and appearing courtside at games, this is not enough. Undoubtedly, male athletes recognize their influence. With this influence, they must intensify the pressure on professional sports leagues, corporate sponsors, and the government to support female athletes.

In early 2017, the Women’s National Hockey Team, medaling in all Olympic appearances,\textsuperscript{112} threatened to boycott the World Championship, unless they received fair and comparable compensation to the Men’s National Hockey Team.\textsuperscript{113} In what some deemed a “rare display of solidarity in sports,”\textsuperscript{114} the men’s team “not only boycotted training camp, they managed to convince every post college, college, and high school [hockey] player in the country not to cross the picket line to fill the USA’s

\begin{thebibliography}{9}
\bibitem{Id} \textit{Id.}
\bibitem{Id} \textit{Id.}
\bibitem{Id} \textit{Id. at 196.}
\end{thebibliography}
roster.” This was a breakthrough for the women’s team, which received a more equitable contract, as well as the support of their counterparts on the men’s team.

Another show of support came when negotiating the new United States Soccer CBAs, Walker Zimmerman, a USMNT defender and member of the negotiating team for the men’s soccer union, said “[critics] said equal pay for men and women was not possible, but that did not stop us and [we] went ahead and achieved it. We hope this will awaken others to the need for this type of change, and will inspire FIFA and others around the world to move in the same direction.” One step forward in professional leagues recognizing women’s abilities occurred during the 2019 NHL All-Star weekend. Olympian and U.S. Women’s hockey team member Kendall Coyne Schofield took the ice as a last minute substitute for an injured player during the fastest skater competition. Coyne Schofield finished ahead of three NHL players and missed first place by one second behind winner Connor McDavid. Since 2019, the NHL All-Star Skills Competition has included other notable women hockey players such as Jocelyn Lamoureux-Davidson, Sarah Nurse, and Hilary Knight, which increased hockey fans’ exposure to incredible American and Canadian female hockey players.

The pay disparity between men and women players not only affects their current salary, but their post-athletic-career plans. Professional athletes generally do not play past the age of forty and often retire even earlier depending on their health and injuries. In 2016, Abby Wambach received the Icon Award at the ESPYs. Julie Uhrman, the Angel City Football Club’s president and co-founder, explained this was “at the same time as Kobe [Bryant] and Peyton Manning, and they were talking about where to spend their hundreds of millions of dollars. And Abby was trying to figure out how to make her mortgage.” Unequal pay is a familiar issue for anyone who cares about women athletes or women’s politics. It is time for men – retired and currently playing – to amplify women’s voices and make real change.

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115 *Id.* at 196.
116 Straus, *supra* note 78.
As a solution, the Commission can create a group similar to the MCC. The group would include important men from different areas of society (sports, government, military, etc.) who all believe in and will champion the cause. Furthermore, the major sports leagues should model their pay structures after the PPE. Since this worked in Australia, it has the potential to work in the United States as well. As stated earlier, equal pay is more than just the salary of an individual athlete. Equal pay includes investments, marketing, and showcasing women’s sports on the same level as the men’s sports. The PPE also ensures greater transparency and openness surrounding the different treatment between men’s and women’s sports. All of the positive momentum that Australia has found can be – and must be – implemented in the United States.

ii. Norway Supports Its Women

Norway did not officially recognize women’s soccer until 1976. In 2017, the Norwegian Football Association (NFF) and Norwegian player’s association (NISO) signed an agreement for equal pay, supposedly the first in international soccer. The agreement created a “pay [raise] of 2.5 million Norwegian kroner ($302,750) in 2018 for the women’s team, with both national teams receiving six million kroner ($726,900) each [the] next year.” This was achieved after “the 550,000 kroner ($60,000) Norway’s male players receive for commercial activities was switched to the women’s team.”

Norway was not unique in its lack of support for women’s soccer teams. “England, for example, essentially banned women’s soccer from 1921 to 1971. Germany did the same, from 1955 to 1970... These countries – and many others – claimed that soccer was simply not a woman’s sport.”

During World War I, English women were encouraged to play soccer for their health and well-being. Once the war ended, the Football Association, the governing body for soccer in England, banned women from playing as the sport was deemed “unsuitable.” Germany forbade women for a similar reason; it was “fundamentally foreign” to their nature and their public image.

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121 Anderson & Jones, supra note 61.

“body and soul will inevitably suffer harm.” Once these countries acknowledged the legitimacy of women’s sports, their soccer associations “more than doubled their spending on women’s teams” from 2012 to 2017.

While the United States should look to Norway’s progress, Norway still has work to do. Norway’s victory in pay equity did not happen overnight, resulting instead from a long battle forcing the Norwegian female players to take a stand. One of the world’s best players, Ada Hegerberg, took a stand against the Norwegian national team and decided not to play in the World Cup because of “frustrations with the way women’s football was treated within the country.” This occurred after the team was paid on an equal level as the men’s team and was instead based on persistent disparate gender-based treatment. Norway’s need for equal recognition and representation of women’s soccer is obvious when looking at the award ceremony where Hegerberg won the first women’s Ballon d’Or, the most prestigious prize in soccer, at the age of twenty-three. When she went on stage to collect her award, the co-host of the ceremony, Martin Solveig, did not ask Hegerberg about any of her major accomplishments. Instead, he asked if she would twerk on stage. Those closest to Hegerberg explain that she is, and “[was] prepared to sacrifice her own career so that the next generation of female footballers ‘have better conditions when they grow up.’”

If the United States wants to boast its powerhouse of a women’s national soccer team, it should follow Norway’s lead. While Norway has room for improvement regarding fairness among men and women’s teams, it has taken steps to listen to the women’s soccer team. Male Norwegian soccer players, like Australian male athletes, utilize their platform to ensure equal pay for women. Norway achieved equal pay between their teams with strong support from their male counterparts and the Norwegian Football Association. Plainly, investment in women’s sports is the key for

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126 *Id.*

127 *Id.*

128 *Id.*
moving forward. After analyzing how other countries have overcome obstacles that crowd the path toward pay equality, the United States sports world can (and should) follow other countries’ guidelines to achieve equality.

B. Angel City FC Shows How A Single Team Can Change A Sport’s Culture

One of the newest additions to the National Women’s Soccer League (NWSL), Angel City Football Club (Angel City FC), is unique and heightens the standard for sports equity. Angel City FC first made headlines when the expansion club’s creation was announced in July 2020 and original investors were revealed, including professional tennis player Serena Williams, actors Jessica Chastain, Natalie Portman, and America Ferrara, and former U.S. Soccer players Julie Foudy, Mia Hamm, and Abby Wambach. With these household names backing the club, “the ownership group is the first in soccer to be comprised primarily of women and features some of the biggest names in Hollywood, sports and technology.” One of the team’s biggest goals is to, “most importantly, build...a sports and lifestyle brand that all sports fans (girls and boys) want to identify with, and a community within sports that they want to belong to.”

The predominantly-female ownership group understands the unique struggle of achieving equal pay, as many of them have taken on the same fight throughout their careers. Angel City FC President and co-founder Julie Uhrman explained “we founded Angel City on the principle of pay equity.” It would not be feasible for one soccer team to be solely responsible for achieving equal pay, but Angel City FC is helping its female players in their push for equal pay. In October 2021, Angel City FC announced a partnership with Payscale, Inc., a compensation software and

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131 Ohanian, supra note 129.

PLAY LIKE A GIRL, GET PAID LIKE A... MAN?

data company. Once the club began to compete with the other NWSL teams in 2022, Angel City and Payscale launched their Pay Equity Pledge, “that will aim to push companies, including those with ties to the sports industry, to make pay equity a priority – and a reality – within their organizations.”

The team is also making pay equity a priority through their newest program for players, the Fan Fueled Player Fund. Their plan is to “divide 1% of net ticket revenue from each NWSL home game and pay bonuses to each player on the team,” which could add “several thousand additional dollars for many of the women on the roster.” The only “buy-in” for the players is to opt into the program by agreeing to post marketing-related publicity to their social media profiles. As a result, both fans and players are able to advance women’s soccer themselves through ticket purchases and increasing visibility on social media platforms. This is a great step forward for women’s soccer and its athletes as it creates a unique solution for this common problem in professional sports. In all, a fan, player, and team-backed program like the Fan Fueled Player Fund will push women athletes to the forefront of social media, leading to greater exposure in the public which would in turn create a greater response in fans attending matches, purchasing new gear, and watching on television. As the popularity of the NWSL continues to grow, more teams can add this incentive for players and fans to contribute to leveling out the pay disparity.

C. Increasing Corporate Sponsorship Adds Viewership and Visibility

In the past thirty years, major corporations have finally begun to support women’s sports. As mentioned earlier, the total percentage of women’s sponsors is low and investments in women’s sports are severely lacking. The most noticeable trend is corporations increasing their financial support after the media highlights

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133 Id.

134 Id.


137 Professional female sports account for only 0.4% of sports sponsorship spending. Gersch, supra note 19 at 191.
inequities or after more women become outspoken. After the 2019 World Cup – which the U.S. women’s team won – Budweiser became the first beer sponsor of the U.S. National Women’s Soccer League, which includes the USWNT.\textsuperscript{138} Once the USWNT announced its lawsuit, Procter & Gamble published a full-page ad in \textit{The New York Times} calling for equal pay and donated $529,000 to the USWNT to lessen the pay disparity.\textsuperscript{139} Visa mandated 50\% of its sponsorship to the USWNT, and Luna Bar donated $32,250 to each member of the USWNT to bump their salary closer to men’s salaries.\textsuperscript{140}

In February 2023, the Walt Disney Company and Ally Financial Inc. announced that the two companies would support women’s sports with a multi-year, multimillion dollar investment to increase women’s sports coverage.\textsuperscript{141} The corporations committed to expanding game highlights as well as branded content and features throughout ESPN-controlled channels, rather than offering women’s sports as part of men’s package or as add-ons.\textsuperscript{142} The acknowledgement and change by one of the largest sports media companies is a massive step forward. This will hopefully spark more channels to show women’s sporting events, leading to greater visibility and viewership. These additions should be successful since “sixty-six percent of the people who would be interested in streaming women’s sports would be willing to pay up to ten dollars for streaming services.”\textsuperscript{143} To further increase the popularity of women’s sports, superstars Alex Morgan, Chloe Kim, Simone Manuel and Sue Bird

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\textsuperscript{138} Id. at 152.
\textsuperscript{139} Id. at 153.
\textsuperscript{140} Id. at 153.
\textsuperscript{142} Id.
\textsuperscript{143} Andrews, \textit{supra} note 18.
\end{flushright}
created their own media platform,\textsuperscript{44} Togethxr, which emphasizes “representation and equality [as] the norm.”\textsuperscript{45}

Female-owned and female-sponsored athletic clothing brands continue to grow. This growth is based on “brands [being] keenly aware that women drive the majority of consumer spending in the United States and female athletic icons offer brands a unique opportunity to align with their rabid fans.”\textsuperscript{46} Corporations that currently sponsor sports teams or players should reevaluate where their money goes and how it is distributed. Women should be their central focus, with women receiving an equal percentage of their organization’s income.

As previously mentioned, women’s sports fans are more likely to purchase sponsored apparel or other branded merchandise.\textsuperscript{47} In the 2019 soccer season, Nike’s USWNT home jersey outsold any of Nike’s pre-released men’s or women’s jerseys ever produced.\textsuperscript{48} Previously, during the 2015 World Cup season, Nike only sold the jerseys of women soccer players in men’s sizes despite selling the jerseys of men soccer players in both women’s and men’s sizes.\textsuperscript{49} This was the same year the USWNT won their third World Cup championship.\textsuperscript{50} It took four years and an additional USWNT World Cup win for Nike to recognize their issue and facilitate the change. The more money and marketing aimed at women athletes and women’s sports fans, the greater the increase in viewership, which would further increase base salaries and bonuses.

While responsibility should not fall solely on corporations’ shoulders, they should bear some of the burden.

\textsuperscript{44} Steve McCaskill, “‘We’ve got to keep pushing forward’: Why greater media coverage of women’s sport will provide the platform for equality,” SPORTSPRO (March 31, 2022), https://www.sportspromedia.com/features/womens-sport-media-tv-equality-dazn-ata-football-togethxr [https://perma.cc/Z2FM-E55H].

\textsuperscript{45} Togethxr, About (last viewed April 17, 2023), https://www.togethxr.com/pages/about [https://perma.cc/GC28-U9D2].

\textsuperscript{46} Ohanian, supra note 129.

\textsuperscript{47} Jones, supra note 25.

\textsuperscript{48} ROUTLEDGE HANDBOOK OF SPORT FANS AND FANDOM, supra note 1 at 322.

\textsuperscript{49} SOCIAL ISSUES IN SPORT COMMUNICATION, supra note 22 at 158.

\textsuperscript{50} Id. at 158.
IV. How The Political and Legal Process Can Change to Help Women Athletes

Lastly, and perhaps most importantly, there must be political, constitutional, and legal changes. Throughout history, women have used the law to fight for their rights, carve out their place in sports, and shatter glass ceilings for future generations. One of the most prominent court cases for women in sports came in 1978 when Melissa Ludtke fought for equal locker room access for post-game interviews.\(^\text{151}\) Her bosses at Sports Illustrated filed a suit on her behalf against Major League Baseball. Within the next year, the federal district court found MLB’s decision to exclude Ludtke violated her Fourteenth Amendment rights of equal protection and due process, including her right to pursue her profession.\(^\text{152}\)

Some athletes are already attempting to use the political process to their advantage (like the female surfers mentioned earlier). One surefire step forward occurred in January 2023 when United States President Joe Biden signed the Cantwell-Capito Equal Pay for Team USA Act into law. This law requires “U.S. Olympic and Paralympic Committee and sports’ governing bodies [to] provide the same pay, medical care, travel accommodations, and coverage of expenses to U.S. athletes regardless of gender.”\(^\text{153}\) Senators Maria Cantwell (D-Wash.) and Shelley Moore Capito (R-W.Va.) first introduced this bill in 2019 after the USWNT sued for equal pay, reintroducing the bill in 2022.\(^\text{154}\)

The most vocal critics in surfing have proposed solutions to achieve further equality within surfing and within sports in the United States. These women used the political process to their advantage, by lobbying the California Assembly to pass Bill 467 – the Equal Pay for Equal Play Bill – which was signed by Governor Newsom and went into effect in January 2020. Essentially, “if an athletic event takes place on state lands, it falls under the jurisdiction” of state agencies such as the California Department of Transportation, the Department of Parks and Recreation, the Department of Fish and Game, the State Lands Commission, and the California

\(^\text{151}\) DiCaro, supra note 113 at 14.

\(^\text{152}\) DiCaro, supra note 113 at 16.


\(^\text{154}\) Id.
Coastal Commission.\textsuperscript{155} As such, since state water or land is being used, any competition “must award equal prize money for all athletes at all participant levels, regardless of gender, as a condition of receiving a lease or permit.”\textsuperscript{156}

If other states were to adopt something similar, proponents of the bill would make necessary changes. This includes adding city and municipal lands, putting in broader protections for women athletes, and finding a way to ensure equal pay on private property, as the new law only affects sports such as surfing, cycling, skateboarding, and running.\textsuperscript{157} While there is still much to be desired in the new law, it represents progress. Prominent leaders acknowledge this progress as “advocates from states like Arizona and Hawaii and from countries including France and Spain have reached out to [California Assemblywoman] Boerner Horvath’s office to seek guidance on how to design legislation similar to Equal Pay for Equal Play.”\textsuperscript{158}

In 2019, a group of U.S. House of Representatives introduced the Give Our Athletes Level Salaries (GOALS) Act which “would block federal funding for the 2026 Men’s World Cup, which will be hosted jointly by the United States, Mexico and Canada, until the USWNT receives ‘fair and equitable wages.’”\textsuperscript{159} While this shows commitment to equal pay, it is not a long-term solution, as the act focuses on one specific event. Thus, the federal government should make changes to the EPA to allow for lawsuits that find equal pay violations among similar organizations. This would ensure that female athletes can fight for equal pay and compare their salaries to that of their male counterparts. As stated earlier, female athletes face a difficult path making EPA claims. Women are often not considered to be employees, but independent contractors. Also, men’s and women’s leagues are not the same, such that these athletes do not fall under the EPA.\textsuperscript{160}

The disparity between the EPA’s goal and actual result is disappointing. Sports leagues still find loopholes not to pay women athletes what they deserve. As a result, the federal government – specifically the Legislative branch – must remedy this


\textsuperscript{156} Id.

\textsuperscript{157} Id.

\textsuperscript{158} Id.

\textsuperscript{159} Gersch, \textit{supra} note 19 at 190.

\textsuperscript{160} Morgan, \textit{supra} note 20 at 143.
situation. The language of the EPA, “the same establishment”\textsuperscript{161} should be amended to state “similar establishments,” so female athletes have a chance to have their case heard.\textsuperscript{162} While a little word change could make a notable difference for women athletes, it would be “narrow enough, however, to prevent a female basketball player from claiming wage disparity by comparing her wages to a non-similar employer – the National Football League, for example.”\textsuperscript{163}

Another alternative to changing “same establishment” language could be adding a separate provision to the EPA, tailored specifically to professional sports. A new provision would streamline the federal government’s support of professional athletes instead of altering all existing aspects of the EPA.\textsuperscript{164}

**Conclusion**

While the United States’ lack of progress regarding the gender wage gap is disheartening, athletes worldwide are expediting progress. While some United States organizations made small strides to compensate their female athletes fairly, problems persist. These leagues should follow Australia’s and Norway’s methods by implementing creative solutions to address the pay inequality in professional sports. Approaches that utilize male support, corporate sponsorships, and political processes will further pay equity in women’s sports. Hopefully, meaningful reforms will soon be implemented and female athletes can be fairly compensated and further appreciated nationwide.

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\textsuperscript{161} 29 U.S.C. §206(d).

\textsuperscript{162} Zerunyan, supra note 76 at 251.

\textsuperscript{163} Id. at 253.

\textsuperscript{164} Id. at 257.