

# Glory & Gold Medals Don't Pay Rent: The Case for Paying U.S. National Soccer Teams

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*The United States Women's National Soccer Team is one of the most successful national teams of all time, having amassed four World Cup titles and four Olympic titles in the last thirty years. In recent years, multiple disagreements over how much they are paid by their employer, U.S. Soccer, has led to an array of litigation—including both an Equal Pay Act and a Title VII lawsuit. The lawsuits aside, a bigger question remains: Why is U.S. Soccer paying both the men and the women at all? Most U.S. Olympians and other international athletes make little to nothing for national representation when compared to the bonuses paid to U.S. Soccer teams. This Comment argues that soccer is different from other sports and that to drive international competitiveness, paying the national teams is a necessary floor for any hope of success. Additionally, this Comment argues that paying the U.S. Women more is in the national interest and furthers the mission of U.S. Soccer. This Comment explores the global financing of national sports representation from the history of U.S. Soccer and the two senior teams to other Olympic sports at home and abroad. Finally, this Comment concludes with an analysis of what “equal” pay looks like in the soccer context and offers commentary on the economic counterarguments to paying the U.S. Women more.*

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INTRODUCTION

On March 8, 2019, twenty-eight members of the United States Women’s National Soccer Team (U.S. Women or Women’s Team) filed an Equal Pay Act and a Title VII claim against their employers, the United States Soccer Federation (U.S. Soccer).<sup>1</sup> A little over a year later, on May 1, 2020, a federal judge dismissed almost the entirety of both claims in favor of U.S. Soccer.<sup>2</sup> Between the two legal events, the U.S. Women won their fourth FIFA World Cup title since the tournament’s inception thirty years prior.<sup>3</sup> While the 2020 court decision was resolved heavily in favor of U.S. Soccer, the lawsuit left scorched earth on both sides. One of U.S. Soccer’s initial defenses<sup>4</sup> resulted in the resignation of the President of U.S. Soccer<sup>5</sup> and the replacement of U.S. Soccer’s counsel of record.<sup>6</sup> For the Women’s Team, the lawsuit attracted as much, if not more, media attention than their actual triumph in the World Cup.

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DOI: <https://doi.org/10.15779/Z386M3346J>

1. Complaint, *Morgan v. U.S. Soccer Fed’n, Inc.*, 445 F. Supp. 3d 635 (C.D. Cal. 2020) (No. 2:19-cv-01717).

2. In dismissing the entirety of the Equal Pay Act claim, the court outlined the negotiation history between the U.S. Women and U.S. Soccer. The court pointed out that the U.S. Women may have actually had the opportunity to obtain a similar compensation structure to the U.S. Men, but declined to do so. In any event, for the relevant time period in question, the court found that the U.S. Women actually made *more* money on an average basis per game than did the U.S. Men. A successful Equal Pay Act claim would have required a showing that the U.S. Women made *less* than the U.S. Men. The Title VII allegations regarding “field conditions” were dismissed, in essence, because the U.S. Women failed to rebut U.S. Soccer’s explanations for why the U.S. Women had to play on artificial turf more often than the men did. Those explanations included an array of financial and strategic considerations taken into account by U.S. Soccer. The Title VII claims regarding alleged discrimination in charter flights, hotel accommodations, and personnel services were not dismissed. *See Morgan*, 445 F. Supp. 3d at 651–65.

3. Joshua Robinson, *U.S. Wins Women’s World Cup*, WALL ST. J. (July 7, 2019), <https://www.wsj.com/articles/u-s-wins-womens-world-cup-11562518499> [<https://perma.cc/YNC9-TNCT>].

4. Defendant’s Notice of Motion & Motion For Summary Judgement on Plaintiffs’ Claims, *Morgan*, 445 F. Supp. 3d 635 (No. 2:19-cv-01717).

5. The president of U.S. Soccer, Carlos Cordeiro, tweeted his letter of resignation in March of 2020. Carlos Cordeiro (@CACsoccer), TWITTER (Mar. 12, 2020, 6:06 PM), <https://twitter.com/CACsoccer/status/1238270294504112128> [<https://perma.cc/G4HA-TR46>].

6. Notice of Appearance of Withdrawal of Counsel, *Morgan*, 445 F. Supp. 3d 635 (No. 2:19-cv-01717), ECF Nos. 195 & 196.

The most recent litigation stemmed from a comparison of the two collective bargaining agreements that govern compensation for the U.S. Women and the U.S. Men's National Team (U.S. Men or Men's Team). The women's collective bargaining agreement became effective in 2017 and is set to run through 2021—it pays the women a base salary and benefits for their national service.<sup>7</sup> The men's collective bargaining agreement expired in 2018 and likely will not be renegotiated until the dispute between the U.S. Women and U.S. Soccer is fully resolved—it pays the men no base salary but confers a far greater bonus structure for success in national team service.<sup>8</sup>

At the time of the negotiations for the women's current agreement, then captain Becky Sauerbrunn publicly discussed the idea that the U.S. Women's program requirements were different from the men's.<sup>9</sup> She agreed with U.S. Soccer's characterization at the time of the two pay structures being "equitable" rather than "equal" because the two teams had very different needs.<sup>10</sup> Underscoring the differing views on the subject, during those same negotiations, the U.S. Women's representative was demanding "the same pay per play compensation and bonus system currently deployed . . . to the MNT [U.S. Men]."<sup>11</sup>

To say that comparing the two teams' needs and compensation is difficult would be an understatement. Part of the difficulty is the immensely different professional situations faced by the U.S. Men and the U.S. Women. As Sauerbrunn pointed out, the U.S. Men's Team has their professional teams as a source of income security, but for the U.S. Women, the national team is their source of security.<sup>12</sup> The U.S. Women's agreement pays the players a base salary and benefits as well as additional money for playing in the domestic professional league, the National Women's Soccer League (NWSL).<sup>13</sup> The U.S. Men make little or no money at all from the national team if they do not play or make the tournament, but their bonuses for winning are much higher than the women's.<sup>14</sup> And all of this is further complicated by the structural problems posed by the fact that FIFA, the global governing body for soccer,<sup>15</sup> pays out far more in prize

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7. Collective Bargaining Agreement Between the U.S. Soccer Federation & the U.S. Women National Team Player's Ass'n at 53 Ex. A (2017–2021) [hereinafter U.S. Women's CBA].

8. Press Release, U.S. Nat'l Soccer Team Players Ass'n, USMNT Statement on WNT Players Lawsuit (Mar. 8, 2019), <https://ussoccerplayers.com/2019/03/usmnt-statement-on-wnt-players-lawsuit.html> [<https://perma.cc/W54T-97N4>]; see *infra* note 14.

9. Planet Fútbol with Grant Wahl, *Becky Sauerbrunn, U.S. Women Co-Captain* (Apr. 4, 2017), <https://play.acast.com/s/planetfubolpodcast/becky-sauerbrunn-uswnt-co-captain> [<https://perma.cc/5HHH-AVBW>].

10. *Id.*

11. *Morgan*, 445 F. Supp. 3d at 646.

12. Planet Fútbol with Grant Wahl, *supra* note 9.

13. U.S. Women's CBA, *supra* note 7, at 53 Ex. A.

14. Collective Bargaining Agreement Between the U.S. Soccer Federation & U.S. National Soccer Team Players Ass'n at 9–11 (2011–2018) [hereinafter U.S. Men's CBA].

15. FIFA stands for "Fédération Internationale de Football Association."

money for the Men's World Cup than the Women's World Cup.<sup>16</sup> Finally, it cannot go unsaid that by and large, women are still excluded from the game in much of the international community.<sup>17</sup>

But a question for American soccer remains: Should U.S. Soccer be paying either national team at all? And if so, why? Soccer is clearly not the preeminent sport in the United States and especially not so on the men's side. Yet, the United States pays its national soccer teams far more than other, more soccer-obsessed nations, pay their own teams and far more than other American Olympians make.<sup>18</sup> Are the glory and gold medals not enough for the U.S. soccer players? Moreover, the Equal Pay Act pointedly requires "equal" pay and not "identical" pay.<sup>19</sup> This means that even in the event the Equal Pay Act claim was successfully revived on appeal,<sup>20</sup> an easy solution for U.S. Soccer might have been to just pay expenses for the two teams and make it consistent with the other U.S. Olympic teams.<sup>21</sup>

This Comment argues that soccer should be different from other American sports. U.S. Soccer should continue paying the two national teams because, to drive international competitiveness for both the men and the women, multiple levels of compensation are appropriate. Without compensation, the U.S. Women's competitive advantage risks fading away and the U.S. Men may never find any advantage. In the case of U.S. soccer, the glory and gold medals truly are not enough.

This Comment argues that both teams should be paid and that, specifically, the U.S. Women deserve greater pay than they receive now. In this regard, the term "competitive compensation" is used throughout the Comment and is defined as an increased compensation structure from what the U.S. Women have now. Competitive compensation is used instead of "equal," as the definition of equal is deceptively more complex in this situation than simply mirroring

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16. For the 2018 Men's World Cup, FIFA awarded a total of \$400 million to the various participants while awarding a total of \$30 million to the participants in the Women's World Cup. FIFA, FIFA FINANCIAL REPORT (2018) [hereinafter FIFA 2018 FINANCIAL REPORT], <https://resources.fifa.com/image/upload/xzshsoe2aytyquuxhq0.pdf> [https://perma.cc/WMF9-KARV].

17. See Xanthe Ackerman & Christina Asquith, *Soccer Is Still Out of Reach for Half the World's Women*, TIME (July 8, 2015), <https://time.com/3949377/world-cup-women-global-equality> [https://perma.cc/9RAH-ELCS]; Patricia Kowsmann, *In Brazil, Girls Are Still Left on the Sidelines in Soccer*, WALL ST. J. (June 18, 2014), <https://www.wsj.com/articles/in-brazil-girls-are-still-left-on-the-sidelines-in-soccer-1403131630> [https://perma.cc/56AH-268P].

18. See *infra* Part I.E.

19. 29 U.S.C. § 206(d).

20. At the time of writing, the U.S. Women and U.S. Soccer had settled the lawsuit prior to the case being taken up on appeal. The deal purportedly grants accommodations, charter flights, and professional staff equal to that provided to the Men's Team. Anne M. Peterson & Ronald Blum, *Women's Team, US Soccer Settle Part of Their Lawsuit*, AP (Dec. 1, 2020), <https://apnews.com/article/international-soccer-soccer-womens-soccer-lawsuits-courts-19b5599494006be69d6162ecd35058a3> [https://perma.cc/UM88-WY8E].

21. Sports commentator Beau Dure noted that this is essentially how the Norwegian soccer teams solved the pay discrepancy between the two teams. See *infra* note 119.

paychecks.<sup>22</sup> The point of this Comment is not a spreadsheet analysis of salary potential; rather it aims to articulate why it is in the policy interest of the United States, U.S. Soccer, and both the Men's and the Women's Teams that the Women's Team receive more money. The litigious nature of the issue has spawned relatively little legal scholarship. While one law review article specifically tackled the merits of the most recent lawsuit,<sup>23</sup> the remainder of the existing scholarship analyzes other sports or different issues within soccer.<sup>24</sup>

Part I broadly examines how national sports teams are financed across the world and specifically discusses the U.S. Men's and U.S. Women's history and compensation. Subpart I.A provides context to the current U.S. Women's lawsuit in light of the Equal Pay Act and Title VII. Subpart I.B outlines the financial structure of U.S. Soccer and Subpart I.C discusses the history and current state of the U.S. Men's and U.S. Women's programs. Subpart I.D gives several brief examples of how other nations compensate their national soccer teams, and Subpart I.E concludes with a summary of both U.S. and international compensation at the Olympics. With this background in mind, Part II dives into the policy reasons for generally paying both national teams, and specifically for paying the U.S. Women more. Subpart II.A explains why a paid training camp, or the ensured presence of a domestic professional league, is a necessary minimum for competitive national teams. Subpart II.B then argues that providing competitive compensation for the U.S. Women serves both national interest and the mission of U.S. Soccer. Moreover, Subpart II.B concludes by arguing that the compensation deal should not be tied to revenue production.

## I. GLOBAL FINANCING OF NATIONAL TEAM SERVICE

### A. *The Equal Pay Act & Title VII*

An important preliminary consideration is the statutory scheme in which the U.S. Women's most recent lawsuit was based. The lawsuit—while not the primary focus of this Comment—lays the groundwork for this Comment's inquiry. While one scholar recently evaluated the Equal Pay Act claim on the merits and determined that U.S. Soccer had a stronger claim,<sup>25</sup> he also provided

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22. See *infra* Part II.B.iii.

23. Andrew J. Haile, *An Even Playing Field: The Goal of Gender Equality in World Cup Soccer*, 98 OR. L. REV. 427 (2020) (the page numbers referred to throughout this paper refer to the SSRN draft copy as the published version was not yet available at the time of writing).

24. See, e.g., Jenna N. Rowan, *Equal Protection for Equal Play: A Constitutional Solution to Gender Discrimination in International Sports*, 20 VAND. J. ENT. & TECH. L. 919 (2018); Collin R. Flake, *Getting to Deuce: Professional Tennis and the Need for Expanding Coverage of Federal Antidiscrimination Laws*, 16 TEX. REV. ENT. & SPORTS L. 51 (2014); Diane Heckman, *The Entrenchment of the Glass Sneaker Ceiling: Excavating Forty-Five Years of Sex Discrimination Involving Educational Athletic Employment Based on Title VII, Title XI and the Equal Pay Act*, 18 VILL. SPORTS & ENT. L.J. 429 (2011).

25. Haile's arguments are generally confined to the standard points evaluated by a court when examining the merits of an Equal Pay Act claim. Among them are: (1) whether the two teams were employed by the same establishment; (2) whether the women were, in fact, paid at a lesser rate

an excellent example of the law's shortcomings in pay equity issues as applied to sports. These shortcomings showcase why this paper ultimately appeals to policy reasons for paying the women competitively.

The Equal Pay Act was passed against the backdrop of a post-World War II era that saw a massive increase in women in the manufacturing workforce who were being paid less than male counterparts purely based on gender.<sup>26</sup> A large aspect of President Kennedy's New Frontier program,<sup>27</sup> the Equal Pay Act prohibits the same establishment from paying a man and a woman differently when the job requires equal skill, effort, and responsibility.<sup>28</sup> Several affirmative defenses are also provided by the Equal Pay Act, including the establishment of a seniority system, merit system, quality or quantity of production system, or any other factor other than sex.<sup>29</sup>

A year after the passage of the Equal Pay Act, Congress enacted Title VII of the Civil Rights Act of 1964.<sup>30</sup> Title VII generally prohibits employment discrimination based on a number of immutable factors, including "sex."<sup>31</sup> The addition of "sex" to the discrimination prohibition list was potentially less noble in motivation than the passage of the Equal Pay Act<sup>32</sup> and was done on the House floor before the vote, creating far less legislative history than the passage of the Act itself.<sup>33</sup> Applied today, however, Title VII is often an easier claim to prove

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than the men; (3) whether the two teams performed equal work requiring equal skill, responsibility, and effort and performed under similar conditions; and (4) whether any pay discrepancy that does exist is based on a factor other than sex. Haile points out it is feasible for a court to decide the two teams are distinct establishments and that it is likely a court will find the complexities of the two pay agreements to tilt towards being discriminatory. Haile then evaluates the equal work component, finding that the U.S. Women will likely satisfy this component as well. Finally, Haile looks at the potential defenses and concludes that U.S. Soccer will likely point to the disparities in market value provided by the two teams and also may be able to prove they have previously offered the women a deal identical to the men and show it was declined. Both of these then would likely defeat the U.S. Women's claim. Haile, *supra* note 23.

26. Staff of Comm. on Educ. & Labor, 88th Cong., 1st Sess., Legislative History of Equal Pay Act of 1963 (Comm. Print 1963); 108 Cong. Rec. 14,771 (1962); Hearings on S. 882 & S. 910 Before the Subcomm. on Labor of the S. Comm. on Labor & Pub. Welfare, 88th Cong., 1st Sess. (1963); Hearings on H.R. 3861 & Related Bills Before the Special Subcomm. on Labor of the H. Comm. on Educ. & Labor, 88th Cong., 1st Sess. (1963); 21 Cong. Q. 978 (1963); Albert H. Ross & Frank V. McDermott, Jr., *The Equal Pay Act of 1963: A Decade of Enforcement*, 16 B.C. L. REV. 1 (1974).

27. President Kennedy signed the bill noting that, at the time, the average female worker earned just 60 percent of the average wage for men and that the economy at the time depended on women in the labor force. 21 Cong. Q. 978 (1963).

28. 29 U.S.C. § 206(d).

29. *Id.*

30. 42 U.S.C. § 2000e.

31. *Id.*

32. There is some evidence and speculation that "sex" was added because the member of Congress who proposed it thought the addition would cause other members who opposed civil rights for women to vote against the bill and ultimately defeat it. For further discussion, see Michael Evan Gold, *A Tale of Two Amendments: The Reasons Congress Added Sex to Title VII and Their Implication for the Issue of Comparable Worth*, 19 DUQ. L. REV. 453 (1981).

33. *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 64 (1986).

than a claim based on the Equal Pay Act, so the two are usually filed together.<sup>34</sup> This is largely because the Equal Pay Act has been interpreted narrowly, and the affirmative defenses have been interpreted more broadly.<sup>35</sup> With that said, the Ninth Circuit recently began to reverse this pattern in its most recent Equal Pay Act decision, *Rizo v. Yovino*.<sup>36</sup> The decision narrowed the fourth affirmative defense—“factor other than sex”—to apply to only job related factors, as opposed to anything the employer could conceivably pass off as a factor other than sex in preparation for litigation.<sup>37</sup>

Today, pay equity is still an issue. As recently as 2016—more than fifty years after the passage of the Equal Pay Act—the U.S. Equal Employment Opportunity Commission (EEOC) still listed enforcement of the Equal Pay Act as a top priority.<sup>38</sup> Applied to sports, pay discrepancies are even more difficult to evaluate. As Professor Haile points out, one of the hardest parts of equalizing pay across different genders of teams is the distinctness in the markets in which the two operate.<sup>39</sup> With respect to the U.S. Women, they are almost entirely different entities given how distinct their operations are from the U.S. Men.<sup>40</sup> Put more bluntly, one labor and employment law professor remarked that, in the eyes of the law, the two teams are basically playing different sports.<sup>41</sup> Applied to women’s sports generally, both Equal Pay Act and Title VII claims are relatively easy to defeat.<sup>42</sup> And since courts have determined that governing bodies like U.S. Soccer and the U.S. Olympic Committee are not state actors, female athletes can seek no redress under the Constitution either.<sup>43</sup> Short of overruling the common law or a fundamental reinterpretation of more than half a century of precedent regarding the two statutes, the solution therefore lies in policy decisions benefiting both U.S. Soccer and the U.S. Women.

### B. U.S. Soccer’s Origins & Current Financial Structure

The financial structure of American soccer at global competitions has

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34. See Morgan A. Tufarolo, *You Haven’t Come a Long Way, Baby: The Court’s Inability to Eliminate the Gender Wage Gap Fifty-Two Years After the Passage of the Equal Pay Act*, 24 AM. U. J. GENDER SOC. POL. & L. 305 (2016), and Lisa Levine Shapiro, *Sex-Based Wage Discrimination: One Step Beyond the Equal Pay Act*, 9 HOFSTRA L. REV. 1575 (1981), for discussion on why Equal Pay Act claims are increasingly difficult to prove, and thus why Title VII claims are often filed alongside Equal Pay Act claims.

35. EEOC v. Madison City Unit Sch. Dist. No. 12, 818 F.2d 577, 582 (7th Cir. 1987) (noting that the Equal Pay Act requires the jobs be “virtually identical” and not just “comparable”).

36. 950 F.3d 1217 (9th Cir. 2020) (en banc).

37. *Id.* at 1229.

38. EEOC, STRATEGIC PLAN FOR FISCAL YEARS 2013–2016 (2013).

39. Haile, *supra* note 23, at 32–33.

40. *Id.* at 69.

41. This comment was taken from a conversation with a law professor when discussing the current U.S. Women’s lawsuit. It is provided for illustrative value rather than as authority to demonstrate how ill-suited the Equal Pay Act is when applied to sports.

42. Rowan, *supra* note 24.

43. S.F. Arts & Athletics, Inc. v. U.S. Olympic Comm., 483 U.S. 522, 547 (1987).

changed significantly over the years.<sup>44</sup> U.S. Soccer was formed in 1913 and joined FIFA the year after.<sup>45</sup> For the next 72 years, U.S. Soccer fielded only a men's team which competed in various international competitions.<sup>46</sup> It was not until 1972 when President Nixon signed Title IX into law that the women's game began to flourish.<sup>47</sup> The first women's national team was assembled in 1985, and by 1991 they were playing in the first Women's World Cup.<sup>48</sup> U.S. Soccer is a 501(c)3 non-profit with almost 50 percent of annual revenue coming directly from "sponsorship, television, licensing, and royalties."<sup>49</sup> The sponsorship component consists primarily of U.S. Soccer's deal with Nike.<sup>50</sup> Meanwhile, the television and licensing component consists of the net revenues derived from U.S. Soccer's agreement with Soccer United Marketing to sell the television rights.<sup>51</sup> Another 28 percent of revenue comes from "National Teams' game revenues."<sup>52</sup> Such "game" revenues consist of ticket sales, concessions, and other standard sporting event gameday revenues.<sup>53</sup> Less than 3 percent of current revenues for U.S. Soccer comes from Olympic Committee funding and zero comes from the federal government.<sup>54</sup> FIFA payout and prize money is included in these varied revenues as the money is paid to the federations rather than directly to the players.<sup>55</sup> For example, U.S. Soccer received \$9 million when the

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44. *U.S. Soccer Timeline*, U.S. SOCCER, <https://www.ussoccer.com/history/timeline> [<https://perma.cc/3BWZ-X8X5>] (last visited Apr. 20, 2020).

45. *Id.*

46. *Id.*

47. Between 1971 and the first Women's World Cup in 1991, girl's youth participation in soccer increased by 17,000 percent. Betsy Butler, Opinion, *Captivated By the U.S. Women's Soccer Team Victory? Thank Title IX*, L.A. TIMES (July 10, 2019), [latimes.com/opinion/op-ed/la-oe-butler-us-womens-soccer-title-nine-20190710-story.html](http://latimes.com/opinion/op-ed/la-oe-butler-us-womens-soccer-title-nine-20190710-story.html) [<https://perma.cc/LA23-85FE>].

48. Technically, it was called the "World Cup" retroactively and was referred to initially as the "1st FIFA World Championship for Women's Football for the M&M's Cup." CAITLIN MURRAY, *THE NATIONAL TEAM: THE INSIDE STORY OF THE WOMEN WHO CHANGED SOCCER* 9 (2019).

49. U.S. SOCCER FEDERATION, INC., CONSOLIDATED FINANCIAL STATEMENTS AND REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS 6 (2019) [hereinafter 2019 U.S. Soccer Financial Statement] (stating that of the \$104,727,219 in total revenue, \$51,031,249 came from "[s]ponsorship, television, licensing, and royalties" and \$29,498,265 came from "National Teams' game revenues" with strikingly similar numbers for the previous year as well).

50. *Id.* at 13.

51. *Id.*

52. *Id.* at 6. Worth noting, however, is the fact that some revenues from games actually come from the Mexican National team playing games in the United States. The Mexican National team has an exclusive and unique deal with Soccer United Marketing, U.S. Soccer's marketing arm, to promote friendly matches in the United States. Grant Wahl, *Soccer United Marketing Fact/Fiction: Garber Opens Up on SUM's Role in U.S. Soccer, MLS*, SPORTS ILLUSTRATED (Jan. 25, 2018), <https://www.si.com/soccer/2018/01/25/sum-soccer-united-marketing-garber-gulati-carter> [<https://perma.cc/HHA7-REGE>].

53. *See infra* note 243.

54. 2019 U.S. Soccer Financial Statement, *supra* note 49.

55. Steven Goff, *After Getting Knocked Out of the 2018 World Cup, U.S. Soccer Will Take More Hits Off the Field*, WASH. POST (Oct. 11, 2017), <https://www.washingtonpost.com/news/soccer-insider/wp/2017/10/11/after-getting-knocked-out-of-2018-world-cup-u-s-soccer-will-take-more-hits-off-the-field/> [<https://perma.cc/W2CZ-HR92>].



U.S. Men advanced to the round of sixteen in the 2014 World Cup and another \$1.5 million for U.S. Men's participation in the round.<sup>56</sup> These payouts are reflected as a source of income for U.S. Soccer.<sup>57</sup> But the takeaway is not how U.S. Soccer categorizes FIFA payouts on their financial statements; rather, it is that each team's collective bargaining agreement implicitly and explicitly takes this into account when they are negotiated.<sup>58</sup> Subpart I.C discusses the details of each agreement further.

Expenses for U.S. Soccer are designated almost entirely as "National Teams," which makes up almost 63 percent of total expenses.<sup>59</sup> "National Teams" expenses are the aggregated total cost of every program for which U.S. Soccer is responsible and includes salaries, travel, and other costs associated with fielding a national team.<sup>60</sup> This includes the men's and women's senior national teams, all fourteen girls and fourteen boys youth national teams, all national team event and training centers, the Paralympic national team, the futsal national team, the men's and women's beach soccer national teams, and the administrative side of the NWSL.<sup>61</sup> It is with the breadth of U.S. Soccer's responsibility and the scope of revenue sources that this Comment turns to the history and development of each program.

### C. *A History of U.S. National Soccer Team Compensation*

U.S. Soccer is the governing body that exercises control over the administration of the national soccer teams.<sup>62</sup> As such, U.S. Soccer, in some form, has been present since the inception of both the men's and women's national teams and has usually been on the other side of the bargaining table when negotiating compensation. This Part outlines the history of the two teams and concludes with a summary of where both teams stand now with respect to compensation.

Turning first to the compensation history of the women's program, in the lead up to the inaugural 1991 Women's World Cup, each player on the Women's Team received \$10 per day for room and board.<sup>63</sup> Four months out from the 1991

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56. *Id.*

57. *Id.*

58. U.S. Men's CBA, *supra* note 14; U.S. Women's CBA, *supra* note 7, at 43.

59. 2019 U.S. Soccer Financial Statement, *supra* note 49, at 6.

60. Twenty-five percent of total U.S. expenses alone are attributable to the U.S. Women compared with 18 percent of total expenses that are attributable to the U.S. Men. *Id.* at 20.

61. *Id.* Before April 15, 2020, this list would have reflected the cost of the youth programs called "development academies" across the country. In the face of mounting costs from COVID-19, among other reasons, the development academies were folded. See *infra* note 250 for further discussion.

62. Per the Ted Stevens Act, the U.S. Olympic Committee does have authority over U.S. Soccer, but U.S. Soccer is generally awarded a large degree of autonomy in conducting its affairs. MURRAY, *supra* note 48, at 115–16.

63. Gary Davidson, *U.S. Women's Team Takes Shot at First Goal, Play for World Crown Starts in China Today*, BALTIMORE SUN (Nov. 16, 1991), <https://www.baltimoresun.com/news/bs-xpm-1991-11-16-1991320089-story.html> [<https://perma.cc/7QTQ-EE3H>]. The 1991 team was not the

World Cup, the daily stipend increased to \$40 to \$45 and each player received the first of five monthly installments of \$1,000 for their participation in the World Cup.<sup>64</sup> In today's dollars, this reflects a daily stipend of \$75 to \$85 and a monthly salary of approximately \$1,886.<sup>65</sup> For winning the World Cup in 1991, each player on the Women's Team received a check for \$500, which is approximately \$945 today.<sup>66</sup> In preparation for the 1995 World Cup, the U.S. Women moved into a training facility in Florida where it is estimated the salaries for the top players, who were not National Collegiate Athletic Association (NCAA) eligible,<sup>67</sup> ranged from \$25,000 to \$40,000.<sup>68</sup> The facility was loaned at no cost to U.S. Soccer and Nike agreed to sponsor the team as well as pay for several friendlies prior to the World Cup.<sup>69</sup> The individual salary bills were paid by U.S. Soccer.<sup>70</sup> In today's figures, the 1995 salary range is around \$42,000 to \$68,000.<sup>71</sup>

Women's soccer was added to the Olympics in 1996, presenting a new dilemma for the sport.<sup>72</sup> Olympic men's soccer was, and is, limited to amateurs in the form of the under-23 squad with three roster slots left open for players over the age of twenty-three.<sup>73</sup> This is due largely to FIFA's desire to prevent the Olympics from competing with the World Cup.<sup>74</sup> Women's soccer, however, was allowed to send their full professional teams and has done so ever since.<sup>75</sup> Compensation for the Olympics was, and is, still paid for by U.S. Soccer.<sup>76</sup>

In 2001, the U.S. Women's players unionized, forming the United States

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first time U.S. Soccer fielded a women's team. In fact, several years prior in 1985, the team competed as one of four teams in a smaller competition called the "Mundialito." MURRAY, *supra* note 48, at 3–12.

64. Davidson, *supra* note 63.

65. *CPI Inflation Calculator*, BUREAU LAB STAT., <https://data.bls.gov/cgi-bin/cpicalc.pl> [<https://perma.cc/79C8-XQWP>] (last calculated Jan. 27, 2019).

66. MURRAY, *supra* note 48, at 12; *CPI Inflation Calculator*, *supra* note 65.

67. See Jonathan Chait, *How to Pay College Athletes Without Ruining NCAA Sports*, N.Y. MAG. INTELLIGENCER (Mar. 31, 2019), <http://nymag.com/intelligencer/2018/03/how-to-pay-college-athletes-without-ruining-ncaa-sports.html> [<https://perma.cc/C3MR-V27U>] (pointing out that the soccer pay equity issue presents an entirely separate and arguably more complex set of problems when applied to the NCAA).

68. Bill Ward, *U.S. Women's Team Settles in at Facility*, TAMPA TRIB.-TIMES, Feb. 26, 1995, at 85.

69. *Id.*

70. *Id.*

71. *CPI Inflation Calculator*, *supra* note 65.

72. *Atlanta 1996*, INT'L OLYMPIC COMM., <https://www.olympic.org/atlanta-1996> [<https://perma.cc/F7PA-B5TR>] (last visited Apr. 1, 2020).

73. TIMOTHY F. GRAINEY, *BEYOND BEND IT LIKE BECKHAM: THE GLOBAL PHENOMENON OF WOMEN'S SOCCER* 18 (2012).

74. *Id.*

75. *Id.*

76. U.S. Women's CBA, *supra* note 7, at 53; see also MURRAY, *supra* note 48, at 27 (noting that it required a training camp lock out and numerous disagreements between the U.S. Women and U.S. Soccer before the latter ultimately agreed to a deal that resulted in a \$20,000 bonus awarded to each team member for their Olympic gold medal win).

Women's National Team Players Association.<sup>77</sup> Since then, all compensation packages with U.S. Soccer have been organized through collective bargaining agreements negotiated by the Association with U.S. Soccer.<sup>78</sup> From 2001 to 2016, the U.S. Women's Soccer Team negotiated three separate collective bargaining agreements.<sup>79</sup> At the expiration of the 2016 agreement, a series of lawsuits, EEOC filings, and threats from both sides led to two new agreements in as many years.<sup>80</sup> This ultimately led to the most recent lawsuit concerning the collective bargaining agreement, which was slated to run from 2018 to 2021.<sup>81</sup>

The men's national team also has a tumultuous history both in structure and in pay.<sup>82</sup> For their participation in the 1990 World Cup, each Men's Team player received a bonus of \$10,000 from U.S. Soccer.<sup>83</sup> Around the same time period they also received \$25 per diems.<sup>84</sup> These figures amount to around \$20,124 and \$51 respectively in today's dollars.<sup>85</sup> Until 1996, appearance fees and contracts with U.S. Soccer were largely negotiated individually with each player.<sup>86</sup>

Beginning in 1996, the male players also unionized and formed the United States National Soccer Team Players Association.<sup>87</sup> Since 1996, the men's players union negotiated three different agreements with U.S. Soccer.<sup>88</sup> The most recent agreement expired at the end of 2018.<sup>89</sup> Not every negotiation went smoothly between U.S. Soccer and the men's union. In the lead up to the 2006

77. U.S. Soccer Fed'n, Inc. v. U.S. Women's Nat'l Soccer Team Players Ass'n, 190 F. Supp. 3d 777, 781 (N.D. Ill. 2016). It is also worth noting that players' unions are ubiquitous in American sports. The NHL formed a players union in 1967; the NFL players union finds its roots as far back as 1956; the MLB negotiated their first collective bargaining agreement in 1965; and the NBA formed its players union in 1957. Michael Macklon, *The Rise of Labor Unions in Pro Sports*, INVESTOPEDIA (June 25, 2019), <https://www.investopedia.com/financial-edge/0711/the-rise-of-labor-unions-in-pro-sports.aspx> [<https://perma.cc/VN95-FPCA>].

78. For a broader summary of the history of the U.S. Women's players union, see generally U.S. Women's Nat'l Team Players Ass'n, <https://uswntplayers.com/> [<https://perma.cc/59XP-UZUS>] (last visited Mar. 20, 2020).

79. For further details on the timeline for the varied disputes, see Jessica Fletcher & Stephanie Yang, *The Complete and Updated USWNT Lawsuit Timeline*, Stars & Stripes FC (Feb. 3, 2017), <https://www.starsandstripesfc.com/2017/2/3/14498152/complete-updated-uswnt-ussf-ba-negotiation-timeline> [<https://perma.cc/66VV-ZZ7K>].

80. *Id.*

81. *Id.*

82. See Pablo Maurer, *Team America: Why the United States National Team Failed as a Club*, MLS (Nov. 18, 2015), <https://www.mlssoccer.com/post/2015/11/18/team-america-why-united-states-national-team-failed-club-word> [<https://perma.cc/3FQC-NST2>] (explaining how the U.S. national team even doubled as a professional club at one point). For a fuller picture detailing the history of the U.S. Men, the U.S. Soccer website timeline and history pages contain a great deal of novel information. *U.S. Soccer Timeline*, *supra* note 44.

83. MURRAY, *supra* note 48, at 18.

84. *Id.*

85. *CPI Inflation Calculator*, *supra* note 63.

86. *Id.*

87. *The United States National Soccer Team Players Association*, U.S. NAT'L SOCCER TEAM PLAYERS, <https://ussoccerplayers.com/about-the-usnstopa> [<https://perma.cc/5E45-R2CL>] (last visited Mar. 26, 2020).

88. *Id.*

89. *Id.*; U.S. Men's CBA, *supra* note 14.

World Cup, the two sides scraped together a no-strike agreement that allowed the top players to be present for the World Cup qualification rounds while the collective bargaining agreement negotiations continued.<sup>90</sup> At that point, the previous collective bargaining agreement had expired two years prior.<sup>91</sup> The most recent agreement —albeit an expired agreement—is outlined below.

As a result of the two described trajectories of the men’s and women’s programs, there are two largely different compensation structures in place today. Both the U.S. Women’s and the U.S. Men’s most recent collective bargaining agreements were negotiated separately and ran for different time periods. For ease of comparison, this Part compares the compensation packages in place at the time of the Men’s 2018 World Cup in Russia and the Women’s 2019 World Cup in France.<sup>92</sup>

Both teams are paid differently based on the four types of matches and the results of those games.<sup>93</sup> The first type is a “friendly” where the outcome of the match is not determinative of any subsequent event and purely for exhibition. The next type is a “qualifier” where teams play to build a record of wins that qualify them for a specific tournament—the most commonly known of which are the World Cup qualifiers (the qualifier matches are the games the Men’s Team repeatedly lost in 2018, resulting in their failure to qualify for the World Cup that year). The third type are games played in the actual tournament and includes anything from group stage matches<sup>94</sup> to the quarter finals and finals of a World Cup or the Olympics. Finally, there can also be “victory” matches played as exhibitions after winning a major tournament as part of a celebration tour.<sup>95</sup> Each of these different types of games pays out differently as the stakes for each are varied and the FIFA payouts only exist for certain tournament participation and for certain results within those tournaments.<sup>96</sup>

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90. Steven Goff, *USSF, Players’ Union Reach an Agreement*, WASH. POST (Jan. 22, 2005), <https://www.washingtonpost.com/archive/sports/2005/01/22/ussf-players-union-reach-an-agreement/58ed5c53-151e-441d-9bba-fd44b3796bd0/> [https://perma.cc/5NM6-EARU] (noting that the no-strike agreement provided \$2,750 to each player per qualifier, a 37.5 percent increase, and the bonuses for each win increased in similar proportions).

91. *Id.*

92. These are also only part of the agreements as each major tournament the two teams play in is spelled out in their respective collective bargaining agreements. The World Cup is used for comparison because it is the basis for the lawsuit and pays out the most money of any of the tournaments the two teams compete in. Similarly, the U.S. Men’s deal outlines two different time periods with two different compensation packages: one for 2011 to 2014 and one for 2015 to 2018. The latter is examined here given that it was the deal in place during the 2018 Men’s World Cup. See U.S. Men’s CBA, *supra* note 14, at 9–11; U.S. Women’s CBA, *supra* note 7, at 53 Ex. A.

93. U.S. Men’s CBA, *supra* note 14, at 9–11; U.S. Women’s CBA, *supra* note 7, at 53 Ex. A.

94. The Group Stage is the initial round-robin pairings of the World Cup tournament. Typically, the thirty-two team tournament starts off in eight individual four team round-robin groups with the top two advancing to the knockout stage. The first knockout stage is referred to as the “Round of 16.” The winners of these matches advance to the quarterfinals and so on.

95. U.S. Women’s CBA, *supra* note 7, at 53 Ex. A.

96. U.S. Men’s CBA, *supra* note 14, at 9–11; U.S. Women’s CBA, *supra* note 7, at 53 Ex. A.

Turning to the collective bargaining agreements themselves, a majority of the players on the U.S. Women's team received a base salary of around \$100,000 as well as retirement and health benefits and an additional \$62,500 to \$72,500 if they played in the NWSL.<sup>97</sup> The Men's Team received no base salary or benefits and were paid solely for appearances based on the type of game.<sup>98</sup> For each World Cup qualifier game won, the men and women were allocated bonuses of \$18,125 and \$3,000 respectively.<sup>99</sup> In the event of a loss, the men were allocated bonuses of \$5,000 each, while the women received no compensation.<sup>100</sup> If the Men's Team had qualified for the World Cup, each player would have earned around \$108,695, whereas only a few of the top players on the Women's Team earned \$37,500 with the rest earning even less.<sup>101</sup> Upon being selected for the twenty-three person World Cup roster, the women received a bonus of \$37,500 each while the men would have received \$68,750 each.<sup>102</sup> Within the World Cup, the women did not receive any bonuses for winning games in the group stage or knockout round, whereas the men would have received \$6,875 per game regardless of the result.<sup>103</sup> For winning the World Cup, the women each received \$110,000 whereas the men would have received a lump sum, to be divided among the players at their discretion, of \$9.375 million—amounting to around \$407,609 each if divided equally.<sup>104</sup> The women receive a paid victory tour whereas the men do not.<sup>105</sup> The victory tour would pay each member of the women's team an additional \$60,869 covering all victory matches.<sup>106</sup> These figures are presented in Figure 1 below.

An important caveat to these figures is that they are, in large part, based on a percentage of the payout from FIFA, which represents a significant source of income for U.S. Soccer. As stated above, the World Cup prize money paid by FIFA is given to U.S. Soccer and not to the players directly.<sup>107</sup> In fact, the men's agreement explicitly states that the performance-based bonuses from the World Cup are not payable until U.S. Soccer has received the money from FIFA.<sup>108</sup> Further, the payout pool from FIFA for the men totals \$400 million and the women's payout pool totals \$30 million<sup>109</sup>—nearly fourteen times less than the men's tournament payout. As such, the available and negotiable “percentage of winnings” is significantly greater in gross value for the men than for the

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97. U.S. Women's CBA, *supra* note 7, at 53 Ex. A.

98. U.S. Men's CBA, *supra* note 14, at 9–11.

99. *Id.* at 9; U.S. Women's CBA, *supra* note 7, at 53 Ex. A.

100. U.S. Men's CBA, *supra* note 14, at 9; U.S. Women's CBA, *supra* note 7, at 53 Ex. A.

101. U.S. Men's CBA, *supra* note 14, at 9; U.S. Women's CBA, *supra* note 7, at 53 Ex. A.

102. U.S. Men's CBA, *supra* note 14, at 9; U.S. Women's CBA, *supra* note 7, at 53 Ex. A.

103. U.S. Men's CBA, *supra* note 14, at 9; U.S. Women's CBA, *supra* note 7, at 53 Ex. A.

104. U.S. Men's CBA, *supra* note 14, at 9; U.S. Women's CBA, *supra* note 7, at 53 Ex. A.

105. U.S. Men's CBA, *supra* note 14, at 9; U.S. Women's CBA, *supra* note 7, at 53 Ex. A.

106. U.S. Women's CBA, *supra* note 7, at 53 Ex. A.

107. Goff, *supra* note 55.

108. U.S. Men's CBA, *supra* note 14, at art. VI.J.

109. FIFA 2018 FINANCIAL REPORT, *supra* note 16, at 37, 57.

women.<sup>110</sup> This Comment discusses how the two teams may overcome this issue in Subpart II.B.iii.

Figure 1: Individual Earnings

	US Men	U.S. Women
Base Salary	\$0	\$100,000 – \$172,500
Benefits	\$0	Health, Dental, Vision, Retirement, Maternity/Adoption Leave
Qualifier Win Bonuses	\$18,125	\$3,000
Qualifier Losses	\$5,000	\$0
Qualification for World Cup	\$108,695	\$37,500
Rostered for World Cup	\$68,750	\$37,500
Group & Knockout Stage Win Bonuses	\$6,875	\$0
Winning the World Cup	\$407,609*	\$110,000
Victory Tour**	\$0	\$60,869
FIFA World Cup Total Prize Pool	\$400 million	\$30 million

\*reflects the \$9.375 million bonus if divided equally among the 23-player roster

\*\* reflects the total payout to each player for participation in the four-game victory tour

#### D. Comparative International Compensation for National Soccer Team Service

With respect to men’s soccer, the U.S. Men’s Team is one of the highest paid national sports teams in the world—at least they would have been had they qualified for the 2018 World Cup and won it. As stated, the U.S. Men would have received just over \$407,000 each for a World Cup Final win alone.<sup>111</sup> The French men’s team—who did win the tournament—received around \$330,000 each from their federation for winning the championship game.<sup>112</sup> This money came directly from the prize money awarded by FIFA, meaning that the French

110. The U.S. Women’s CBA also actually mandates that the women receive no less than 60 percent of the prize money paid out by FIFA, whereas the men’s agreement does not contain such a stipulation. U.S. Women’s CBA, *supra* note 7, at art. 19.D.

111. *See supra* Figure 1.

112. Richard Asfour, *Gender Pay Inequality in World Cup Prize Pools and International Football*, EVERYTHING MONEY, <https://sites.duke.edu/2019womensworldcupfinances/how-countries-pay-their-players/> [https://perma.cc/GC2Q-WTU3] (last visited Apr. 21, 2020).

men's team players came home with only 25 percent of the World Cup prize money and the French federation kept the remainder.<sup>113</sup> Had they been successful, the Germans would have taken home around \$384,000 each.<sup>114</sup>

With respect to women's soccer, a number of countries have increased their budgets in recent years for the women's national soccer programs.<sup>115</sup> For example, France, Spain, and England have all increased spending on women's national soccer programs.<sup>116</sup> Alternatively, the Australian men's and women's national soccer teams have reached a revenue sharing agreement.<sup>117</sup> Similarly, the Norwegian men's and women's national teams recently agreed to equalize pay.<sup>118</sup> However, it is worth noting that both the Norwegian and Australian compensation schemes are so minimal that they are almost irrelevant to the situation in the United States.<sup>119</sup> Both the Norwegian and Australian deals are discussed further in Subpart II.B.iii. Most recently, the Brazilian soccer federation announced its intention to equalize pay between their men's and women's senior teams.<sup>120</sup> While the details of the agreement are currently unclear, the federation purports to now pay the women identical amounts. As noted above, it is important to remember women around the world are still

113. *Id.*

114. Evgeniya Koptug, *Bonus Paid Per DFB Player During the FIFA 2018*, STATISTA (July 31, 2018), <https://www.statista.com/statistics/872465/fifa-2018-germany-player-bonuses/> [<https://perma.cc/F9P7-XPVG>] (conversion of €350,000 done on Google Finance on Feb. 6, 2020).

115. Kira Schacht, *World Cup Shows How Nations Back Women's Soccer – Or Don't*, DW (June 27, 2019), <https://www.dw.com/en/world-cup-shows-how-nations-back-womens-soccer-ordont/a-49359480> [<https://perma.cc/3EXR-SW3W>].

116. UEFA, *WOMEN'S FOOTBALL ACROSS THE NATIONAL ASSOCIATIONS 2016/2017*, [https://www.uefa.com/MultimediaFiles/Download/OfficialDocument/uefaorg/Women%27sfootball/02/43/13/56/2431356\\_DOWNLOAD.pdf](https://www.uefa.com/MultimediaFiles/Download/OfficialDocument/uefaorg/Women%27sfootball/02/43/13/56/2431356_DOWNLOAD.pdf) [<https://perma.cc/ND9T-3XYK>].

117. Laurel Wamsley, *Under New Deal, Australian Women's and Men's Soccer Will Get Equal Share of Revenue*, NPR (Nov. 6, 2019), <https://www.npr.org/2019/11/06/776973749/under-new-deal-australian-womens-and-men-s-soccer-will-get-equal-share-of-revenu> [<https://perma.cc/R3B6-HKE3>].

118. Marissa Payne, *Norway to Pay Men's and Women's Soccer Teams Equally After Men Agree to Slight Pay Cut*, WASH. POST (Oct. 7, 2017), <https://www.washingtonpost.com/news/early-lead/wp/2017/10/08/norway-to-pay-mens-and-womens-soccer-teams-equally-after-men-agree-to-slight-pay-cut/> [<https://perma.cc/U568-D2QG>].

119. See Beau Dure, *Would the US Women Agree to Equal Pay Deal Akin to Australia and Norway? No Way.*, SOCCERAMERICA (Nov. 15, 2019), <https://www.socceramerica.com/publications/article/84262/would-us-women-agree-to-equal-pay-deal-akin-to.html?verified=1> [<https://perma.cc/L2PK-T3XZ>] (noting the solution that Norway actually found for men's and women's compensation was to "barely pay them" and describing the author's own calculation, which determined the U.S. Men and U.S. Women would earn double-digit millions less than they do now over the next few years under the Australian and Norwegian agreements).

120. There is a key term that the Brazilian soccer federation used: "proportional." Specifically, after seemingly announcing a deal that gives the men and women identical amounts of money for their performances at the Olympics and World Cup, the federation President adds: "What the men will receive at the next World Cup will be proportionally equal to what is proposed by FIFA." It remains to be seen what distinction this may have from the Norwegian and Australian deals. See Alana Glass, *Brazil Announces Equal Pay for Women's and Men's National Teams*, FORBES (Sept. 2, 2020), <https://www.forbes.com/sites/alanaglass/2020/09/02/brazil-announces-equal-pay-for-womens-and-mens-national-teams/#48b378059084> [<https://perma.cc/Z955-3N5H>].

largely excluded from soccer.<sup>121</sup>

*E. U.S. & International Compensation for Olympic National Team Service*

With U.S. Soccer compensation structures in mind, it is worth highlighting a few examples of other American national sports teams as well as international Olympic compensation for context. The United States Olympic Committee (USOC), the entity in charge of organizing and training Team USA in most Olympic sports, receives no funding or support from the federal government and is entirely reliant on private support and the profits of the broadcast rights.<sup>122</sup> Unlike FIFA, which pays out prize and participation money, the International Olympic Committee does not pay out prize or participation money and leaves such rewards to each nation's discretion.<sup>123</sup> At the 2018 Winter Olympic Games, USOC awarded the American medalists \$37,500 per gold medal, \$22,500 per silver medal, and \$15,000 per bronze medal—a 50 percent increase from the 2016 summer games.<sup>124</sup> Every two years, Congress usually delivers a much-touted tax break to Olympians returning with hardware who would normally be taxed on both the bonus as well as the value of the medal itself.<sup>125</sup> Several Olympians also have lucrative endorsement deals.<sup>126</sup> However, in terms of a “salary,” the U.S. Soccer and Olympic teams' methods diverge. Aside from the bonuses for winning a medal, USOC does not pay Team USA for their participation in the Olympics.<sup>127</sup> Expenses and travel for Olympians are covered by USOC, but Olympians do not receive salaries like the U.S. Women nor

121. See Ackerman, *supra* note 17; Kowsmann, *supra* note 17.

122. *Team USA Fund*, TEAM USA, <https://www.teamusa.org/us-olympic-and-paralympic-foundation/team-usa-fund> [<https://perma.cc/65GP-XPBV>] (last visited Apr. 21, 2020).

123. Kathleen Elkins, *Here's How Much Olympic Athletes Earn in 12 Different Countries*, CNBC (Feb. 25, 2018), <https://www.cnbc.com/2018/02/23/heres-how-much-olympic-athletes-earn-in-12-different-countries.html> [<https://perma.cc/P6FC-RHGM>].

124. *Id.*; Brandon Penny, *U.S. Olympic Committee Significantly Increases Payments to Athletes for Olympic/Paralympic, World Medals*, TEAM USA (Dec. 13, 2016), <https://www.teamusa.org/News/2016/December/13/US-Olympic-Committee-Significantly-Increases-Payments-To-Athletes-For-Olympic-World-Medals> [<https://perma.cc/PC32-9P43>].

125. 114th Cong. H.R. 5946. *But see* Adam Chodorow, *Olympians Don't Need a Tax Break*, SLATE (Aug. 26, 2016), <https://slate.com/business/2016/08/giving-olympians-a-tax-break-is-bad-for-america.html> [<https://perma.cc/BVY2-2BHF>] (noting a number of critics who point out that most everyone else from peace workers in Africa to Nobel Laureates still pay taxes on the income they bring home to the United States); Elkins, *supra* note 123 (noting that the gold medal itself is gold plated rather than solid gold and worth slightly less than \$600).

126. Top Olympians like Shaun White and Lindsey Vonn had estimated 2018 net earnings around \$4 million and \$5 million respectively, mainly from endorsement deals. They did not receive the congressional tax break, however, as it exempted athletes whose income was over \$1 million. Christina Settimi, *By the Numbers: The 2018 PyeongChang Winter Olympics*, FORBES (Feb. 8, 2018), <https://www.forbes.com/sites/christinasettimi/2018/02/08/by-the-numbers-the-2018-pyeongchang-winter-olympics/#7d0a7e397fb4> [<https://perma.cc/NM62-QRC8>].

127. *How Olympic Athletes Make a Living*, SPORTS MGMT. DEGREE HUB, <https://www.sportsmanagementdegreehub.com/olympic-athletes-salaries/> [<https://perma.cc/5GMT-G2BS>] (last visited Jan. 30, 2018).



bonuses comparable to those received by the U.S. Men.<sup>128</sup> Of course, this is not without its critics<sup>129</sup> and there are several other governing bodies for various sports that do subsidize Olympic level training. The prime examples of these governing bodies are USA Swimming and USA Basketball. USA Swimming<sup>130</sup> generates upwards of \$34 million per year and doles it out to various members of the national team to subsidize their training.<sup>131</sup> That compensation amounts to \$3,244 per month for any American who ranks in the top eight internationally and \$2,163 per month for anyone in ranks nine through sixteen.<sup>132</sup> USA Swimming even subsidizes some NCAA and high school athletes in monthly stipends that range from \$500 to \$1,750 depending on age, rank, and performance.<sup>133</sup> Most recently, the United States women's basketball team arranged a new contract with USA Basketball<sup>134</sup> to pay them during their Olympic training camps as well.<sup>135</sup> Meanwhile, the United States men's Olympic basketball team is paid nothing to compete.<sup>136</sup> If the female basketball players partake in all possible training camps offered, they can now earn up to \$100,000 as opposed to just \$150 per diems, which is what they received in preparation for the 2016 Olympics.<sup>137</sup>

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128. *Id.*

129. Michael Wallace, *Dwayne Wade Eyes Olympic Pay*, ESPN (Apr. 11, 2012), [https://www.espn.com/nba/truehoop/miamiheat/story/\\_/id/7801502/nba-olympians-compensated](https://www.espn.com/nba/truehoop/miamiheat/story/_/id/7801502/nba-olympians-compensated) [<https://perma.cc/WG97-BEUQ>] (juxtaposing two U.S. basketball superstars' contravening views, the first being Dwayne Wade's comments that the United States ought to compensate players for their play and the other being LeBron James' statement: "It doesn't matter. I'm happy to be a part of the team, to be selected again.").

130. Similar to U.S. Soccer, USA Swimming is the USOC recognized governing body of the U.S. Swimming Team. Their resources, however, are considerably less than that of U.S. Soccer. *Compare* WAUGH & GOODWIN L.L.P., USA SWIMMING, INC., USA SWIMMING FOUNDATION, INC., FINANCIAL STATEMENTS AND SUPPLEMENTAL SCHEDULES FOR THE YEARS ENDED DECEMBER 31, 2018 AND 2017, at 4 (2018) (stating that 2018 revenue was \$34.8 million), *with* 2019 U.S. Soccer Financial Statements, *supra* note 49 (stating that U.S Soccer's 2019 revenue was \$109 million).

131. USA SWIMMING, *supra* note 130, at 4.

132. Jared Anderson, *Breaking Down U.S. National Team Funding for 2019-2020*, SWIM SWAM (Aug. 22, 2019), <https://swimswam.com/breaking-down-u-s-national-team-funding-for-2019-2020/> [<https://perma.cc/K92C-SXRP>] (also noting that USA Swimming caps the number of athletes who can receive support at fifty-two per year).

133. *Id.*

134. Similar to U.S. Soccer, USA Basketball is the internationally recognized governing body of U.S. basketball in the United States. Their budget is even less than that of U.S. Soccer and USA Swimming. *Compare* USA BASKETBALL, FINANCIAL STATEMENTS AND SUPPLEMENTAL SCHEDULE FOR THE YEARS ENDED SEPTEMBER 30, 2018 AND 2017, at 4 (2018) (stating 2018 revenue was just over \$16 million), *with* 2019 U.S. Soccer Financial Statements, *supra* note 49 (stating that U.S Soccer's 2019 revenue was around \$109 million).

135. Rachel Bachman & Ben Cohen, *How U.S. Women's Basketball Won a Pay Raise*, WALL ST. J. (Dec. 16, 2019), <https://www.wsj.com/articles/how-u-s-womens-basketball-won-a-pay-raise-11576512570> [<https://perma.cc/RJ7P-S39P>]. With that said, it is also important to note that pay equity issues are not unique to soccer in the United States. Men's and women's basketball currently have immensely different professional situations and, as shown, differing national team compensation packages.

136. Wallace, *supra* note 129.

137. Bachman, *supra* note 135.

Interestingly, when compared to other nations, the United States pays relatively little in both Olympic win bonuses and subsidies for off year training. For example, a gold medal at the 2018 Olympic games earned French athletes a bonus of \$55,000, Russian athletes a bonus of \$61,000, and Singapore athletes a \$1 million bonus.<sup>138</sup> In terms of subsidies, the United Kingdom's government distributes funds through a need based scheme that allocates up to \$36,000 per medaling athlete for living expenses.<sup>139</sup> China has hundreds of government funded sports boarding schools dedicated to discovering and training the next top Olympic athletes.<sup>140</sup> Reports from the Chinese central government in 2013 suggest nearly \$600 million was invested in the programs that housed and trained its young athletes.<sup>141</sup>

## II. U.S. SOCCER SHOULD PAY THE NATIONAL SOCCER TEAMS

The broad question for this Comment then remains: Why is U.S. Soccer paying the national teams at all? Are gold medals, the front page of every news outlet, and a shot at endorsement deals that most Americans can only dream of not enough? Similarly, when viewed through the lens of the Equal Pay Act, the law requires that pay between genders be "equal," not "identical." As noted, U.S. Soccer could choose to pay for excellent accommodations and travel instead, consistent with other American Olympians. But the glory and gold medals often are not enough because of the pay discrepancies between male and female athletes. The Men's Team captain, Christian Pulisic, earns \$189,254 per *week* from his professional club.<sup>142</sup> Not a single member of the Women's Team made as much in their base salary last *year*.<sup>143</sup> To use an even more illustrative comparison of male and female professional athlete pay discrepancies outside American soccer, when asked whether the U.S. Olympic basketball team should have been paid for their time at the 2012 Summer Olympics, LeBron James, one of the world's most recognizable athletes, answered, "It doesn't matter. I'm happy to be a part of the team." In stark contrast, England's top striker and most capped<sup>144</sup> female soccer player, Fara Williams, could not afford rent for the first

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138. Elkins, *supra* note 123.

139. *How UK Sport Funding Works*, UK SPORT, <https://www.ukssport.gov.uk/our-work/investing-in-sport/how-uk-sport-funding-works> [<https://perma.cc/3TD4-RDYF>] (converting from £28,000 calculated on Google Finance) (last visited Apr. 1, 2020).

140. Chris Weller, *Inside the Grueling Chinese 'Sports Schools' Where 6-Year-Old Farm Kids Become Olympic Superstars*, BUS. INSIDER (Aug. 1, 2016), <https://www.businessinsider.com/how-china-trains-olympic-athletes-2016-7> [<https://perma.cc/MJA5-C9QN>].

141. *Id.*

142. Daniil Tykheev, *What Are Christian Pulisic's Net Worth and Wages At Chelsea?*, CFC LIVE, <https://tribuna.com/en/chelsea/news/3507864/> [<https://perma.cc/M42D-9WCW>] (converting £145,000 calculated on Google Finance) (last visited Apr. 1, 2020).

143. U.S. Women's CBA, *supra* note 7.

144. "Capped" is the soccer term for appearances made on the national team. For example, if Jane Bruin were to play three games for the U.S. national team in any capacity (friendly, qualifier, or other), she would then have three caps.

seven years of her professional career.<sup>145</sup>

The point is the equal pay debate is not one limited to a fight over how many more millions each player makes. There is a significant difference between the pay of the U.S. Men and the U.S. Women which cannot be dismissed lightly. In addition, there is a strong case for why it is in the interest of U.S. Soccer to pay the Women's Team competitively. This Comment evaluates the policy reasons for why U.S. Soccer should pay its national teams. Subpart II.A explains why a paid training camp or the ensured presence of a domestic professional league is a required minimum to field competitive national teams. Subpart II.B then argues that the U.S. Women deserve competitive compensation because it serves both the national interest and the mission of U.S. Soccer, and that the compensation deal should not be tied to revenue production. Each argument is considered in turn.

*A. Compensation Is a Necessary Floor for International Competitiveness*

The presence of a paid training camp or domestic professional league is a necessary floor to maintain and drive international competitiveness in this sport. To that end, the U.S. Men present an excellent case illustrating the opportunity cost of not paying the players and why a paid training camp or domestic league is essential. Applied to the U.S. Women, the cost of potentially not paying for the women's professional league or not fairly compensating them risks losing their competitive advantage over the rest of the world.

National team competitiveness is arguably one of, if not the, top priority for U.S. Soccer. The U.S. Women are far and away the most dominant female soccer team in the world with an 82 percent all time success rate against other FIFA Top 10-ranked women's national teams.<sup>146</sup> Among their accolades are four World Cup titles and four Olympic gold medals since the inception of those tournaments less than thirty years ago.<sup>147</sup> During the same time period, the Men's Team has made it past the group stage in the World Cup just three times and has, in several instances, failed to qualify for the tournament at all.<sup>148</sup> The Men's Team has only medaled in the World Cup once, in 1930.<sup>149</sup> The logical conclusion from these records is that the Men's Team needs to boost competitiveness and the Women's

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145. Donald McRae, *Fara Williams: 'I Had Football. A Lot of Homeless Girls Have Nothing'*, GUARDIAN (Nov. 17, 2014), <https://www.theguardian.com/football/2014/nov/17/fara-williams-football-homeless> [<https://perma.cc/HAB2-CNH4>]; see also GWENDOLYN OXENHAM, UNDER THE LIGHTS AND IN THE DARK: UNTOLD STORIES OF WOMEN'S SOCCER (2017) (providing an excellent story of the struggles faced by women everywhere from a Brazilian professional team that hitchhikes to work to a Danish national team member who got her start playing in a refugee camp).

146. *WNT Earns 500th Win in Team History*, U.S. SOCCER (Nov. 8, 2018), <https://www.ussoccer.com/stories/2018/11/wnt-earns-500th-win-in-team-history> [<https://perma.cc/9SLX-C5KH>].

147. *U.S. Soccer Awards*, U.S. SOCCER, <https://www.ussoccer.com/history/awards/us-soccer-awards> [<https://perma.cc/2TVL-8VG3>] (last visited May 14, 2020).

148. *U.S. Soccer Timeline*, *supra* note 44.

149. *Id.*

Team needs to maintain it.

The U.S. Men illustrate the opportunity cost of not paying the players and why a paid training camp or domestic league is essential. What if U.S. Soccer declined to pay either team? Would Christian Pulisic<sup>150</sup> spurn the opportunity to lead the United States in the World Cup because of a paycheck? Most would likely answer this with a resounding no, but it raises an important preliminary distinction. The rationale for paying the men as compared to the rationale for paying the women is different at the moment. As referenced by Sauerbrunn in her interview, most U.S. Men's players earn a sizable paycheck from their professional clubs.<sup>151</sup> Pulisic's compensation is rumored to be around \$189,254 per week from his professional club, Chelsea F.C., in London.<sup>152</sup> Needless to say, the opportunity cost of not paying him would not spell doom for his ability to continue training. It is a similar story for other players on the U.S. Men's team who all play for comparatively successful professional clubs around the world.<sup>153</sup> This economic model, however, did not happen overnight and is a direct result of the United States having a domestic professional league in place on the men's side.

For forty years between 1954 and 1990, the United States failed to qualify for the men's World Cup tournament.<sup>154</sup> During this period, the United States had no professional domestic league until 1967 when it pulled together the fledgling North American Soccer League (NASL).<sup>155</sup> But what little money was spent on these clubs was plowed into attempts to bring the biggest international stars like Pelé and Franz Beckenbauer to the United States in order to drive ticket sales.<sup>156</sup> Development of the American players was evidently not the priority. As such, in 1983, when faced with the calamitous prospect of failing to qualify for the World Cup for the eighth time in a row, U.S. Soccer and its affiliates put together a paid national team.<sup>157</sup> The team was to be called Team America. The idea was to collect the top American players from around the country and pay them to compete in the NASL while simultaneously training them for World Cup competitiveness.<sup>158</sup> Team America folded after a year and the NASL along with

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150. Christian Pulisic is currently the U.S. Men's national team captain and arguably the best men's player the United States has produced to date. Sam Borden, *Chelsea's Christian Pulisic Is Not Your Wonderboy Anymore*, ESPN (Aug. 2, 2019), <https://www.espn.com/soccer/story/3910275/chelseas-christian-pulisic-is-not-your-wonderboy-anymore> [https://perma.cc/YCU2-KY6X].

151. Planet Fútbol with Grant Wahl, *supra* note 9.

152. Tykheev, *supra* note 142.

153. *Current Roster*, U.S. SOCCER, <https://www.ussoccer.com/teams/usmnt> [https://perma.cc/4DAG-X4UH] (last visited Apr. 1, 2020).

154. *U.S. Soccer Timeline*, *supra* note 44.

155. *NASL 1969-1984: A Review of the Golden Era*, NASL, <http://www.nasl.com/a-review-of-the-golden-era> [https://perma.cc/7GYM-9C3A] (last visited Apr. 1, 2020).

156. *Id.*

157. Mauer, *supra* note 82.

158. *Id.*

it two years later.<sup>159</sup> While Team America itself did not fulfill its goal of qualifying the United States for the World Cup, it did birth the idea of paying the national team to boost competitiveness.<sup>160</sup> Team America was considered an innovation on the U.S. national team just slightly ahead of its time and talent pool.<sup>161</sup> Less than a decade later, in 1992, faced with being the confirmed hosts of the 1994 World Cup and no professional league or team to speak of, U.S. Soccer again convened a two year long training camp for the men's national team.<sup>162</sup> This team would go on to not only make it past the group stage but also stun Colombia—then fourth ranked in the world—and only narrowly lose 1-0 to the eventual champions, Brazil, in the round of 16.<sup>163</sup> After a forty year drought, the decision to pay the men's national team to train proved effective.

Fast forward to today, and Major League Soccer (MLS) is, if not thriving, at the very least surviving and providing an outlet for NCAA players and development academies across the country to spill some of their top talents into.<sup>164</sup> The MLS would not have gotten off the ground were it not for the initial support from U.S. Soccer.<sup>165</sup> The very presence of the MLS functions as a paid training camp for young American players who are not yet good enough to make it in Europe. Having this outlet for players to make a living allows them to live and train full time. It also creates an exponential number of partners for U.S. Soccer in developing young players. The MLS clubs have their own youth teams and there are plenty of clubs around the country who have no affiliation with the professional teams. Without a domestic league or a paid training camp, that competitive development goes away as there is nothing for the players to aspire to or work towards and it cuts out the professional teams' role in development at every stage. Very few players are good enough or financially able<sup>166</sup> to pick up

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159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. *Matches, 1994 FIFA World Cup USA*, FIFA, <https://www.fifa.com/worldcup/archive/usa1994/matches/#groupphase> [https://perma.cc/ZQ5X-R852] (last visited Apr. 1, 2020).

164. Quite a few MLS fans would take issue with any sentiment that the MLS is not a resounding success especially when compared to soccer's history in the United States. It is a sentiment not unfounded and one with which a number of people agree. For an example of how one MLS club found the right balance in spending money on international stars to develop the club without bankrupting itself in the process as many of the clubs did in the NASL, see Kevin Baxter, *David Beckham's Signing With Galaxy Made a Lasting Impact on MLS*, L.A. TIMES (Feb. 28, 2020), <https://www.latimes.com/sports/soccer/story/2020-02-28/david-beckham-signing-with-the-galaxy-made-lasting-impact-on-mls> [https://perma.cc/DZ2N-SCPB].

165. *Fraser v. Major League Soccer*, 284 F.3d 47, 52–53 (7th Cir. 2002).

166. Another important critique of U.S. Soccer is that the lower tiers are considered “pay to play,” meaning that only the wealthier families can access the top clubs and academies. Economists have long noted that socioeconomic status of countries, while a factor at the Olympics, is not a factor for success at the World Cup. As such, the United States might also need to consider adding a low-income scouting program to find better players. See Les Carpenter, *It's Only Working for the White Kids': American Soccer's Diversity Problem*, GUARDIAN (June 1, 2016), <https://www.theguardian.com/football/blog/2016/jun/01/us-soccer-diversity-problem-world->

and move to Europe at a young age. Having the regional development prospects based in the United States allows for a wider net of talent to be cast and an overall better team in the long term.

Now apply this to the current state of the U.S. Women. The U.S. Women's current collective bargaining agreement includes additional payments and subsidies for the NWSL, as did past iterations in some form.<sup>167</sup> Without these subsidies the league would almost certainly fold and there would be even less of an outlet than there already is for the U.S. Women to train during the year.<sup>168</sup> As noted above, Title IX is usually considered the cause of American dominance in women's soccer.<sup>169</sup> The NCAA, however, is an entirely different development system that has fortuitously coincided with a lack of development of the women's game elsewhere in the world. The NCAA is not driven by win-maximizing incentives and has a natural end for players once they age out. Past college, the NCAA provides no enablement for the athletes to train and live. Importantly, not one of the U.S. Women's players who won the 2019 World Cup was in college at the time of their selection for the roster.<sup>170</sup> This means there must be some apparatus whereby the women are paid to train, either through a domestic league or a training camp. The men's failures through the mid-20th century illustrate the opportunity cost of not paying the players and the resulting international failure.

Critics of the above theory argue that paying for a league or training camp does not boost competitiveness, pointing out that the Men's Team is performing at a seemingly all-time low, despite the MLS arguably being the most successful domestic soccer league ever attempted in America. There are several responses to this, though the primary one is a reiteration of the idea that the presence of the league or camp is a floor and not a guarantor of success. The United States is not yet as efficient at producing professional players as other countries like Portugal, whose youth clubs regularly churn out top talent. Whereas Portugal's more than a century old youth academies<sup>171</sup> have exported 292 professional players from a population of 10.3 million, the MLS is just now beginning to export players

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football [<https://perma.cc/Y8AG-C7CH>].

167. MURRAY, *supra* note 48.

168. See *WPS Suspends 2012 Season*, WOMEN'S GAME (Jan. 30, 2012), <https://thewomensgame.com/news/wps-suspends-2012-season-482551> [<https://perma.cc/TLX2-AY8Q>], for further discussion of the details on the collapse of the most recent iteration of the women's soccer league in the United States.

169. Butler, *supra* note 47.

170. *Meet the USA's 2019 FIFA Women's World Cup Team*, U.S. SOCCER (May 1, 2019), <https://www.usoccer.com/stories/2019/05/meet-the-usas-2019-fifa-womens-world-cup-team> [<https://perma.cc/K26M-N9PF>].

171. The top three clubs in Portugal, which are also responsible for a large number of the talent export, are F.C. Porto founded in 1893, S.L. Benfica founded in 1904, and Sporting Portugal founded in 1906. See generally F.C. PORTO, <https://www.fcporto.pt/en> [<https://perma.cc/66S7-TD9S>] (last visited Apr. 3, 2020); S.L. BENFICA, <https://www.slbenfica.pt/en-us> [<https://perma.cc/6LXV-9AWW>] (last visited Apr. 3, 2020); SPORTING PORTUGAL, <https://www.sporting.pt/en> [<https://perma.cc/C9TH-GPVK>] (last visited Apr. 3, 2020) (colloquially known as Sporting Lisbon).

abroad and produce top talent.<sup>172</sup> This economic model is exactly what can be achieved by subsidizing a women's professional league in the United States given that around the world there is a vacuum of women's professional leagues. Finally, it is worth noting that the U.S. Men may never win the World Cup anyway. After all, only eight nations ever have,<sup>173</sup> and a number of experts think the men will never stand a chance.<sup>174</sup> Without a paid training camp or domestic league, these experts would certainly be right, and the women would risk losing their dominance.

Furthermore, several elite soccer clubs in Europe are quickly expanding their youth development apparatus already perfected on the men's side to extend to the women.<sup>175</sup> Any competitive advantage derived from the NCAA leagues will quickly evaporate as world renowned clubs like Arsenal in England and F.C. Barcelona in Spain begin implementing their own strategies for developing their country's female talent.

Finally, other national sports entities have demonstrated the efficacy of paying their athletes to train year-round. As noted above, USA Swimming compensates the top American swimmers from professionals to high school students to ensure that athletes can spend most of their time at the pool rather than working.<sup>176</sup> Of the most successful Olympic swimmers ever, fourteen of the top twenty are American.<sup>177</sup> USA Basketball has also decided that it is worth it to pay the women to train in the off season at their own national team camps rather than force them to go abroad to make more money and risk injury or burnout.<sup>178</sup> The American women's basketball team has won six straight Olympic gold medals and has been called one of the most dominant sports teams

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172. Joshua Robinson, *Europe's Most Efficient Player Factories are in Portugal*, WALL ST. J. (Feb. 10, 2020), [https://www.wsj.com/articles/europes-most-efficient-player-factories-are-in-portugal-11581332400?mod=hp\\_major\\_pos7](https://www.wsj.com/articles/europes-most-efficient-player-factories-are-in-portugal-11581332400?mod=hp_major_pos7) [<https://perma.cc/U8NU-D6RT>].

173. Tim Hackett, *List of World Cup Winners*, SPORTS ILLUSTRATED (June 11, 2018), <https://www.si.com/soccer/2018/06/11/world-cup-winners-list-past-history-champions-final> [<https://perma.cc/AZV4-4ZQD>].

174. See BEAU DURE, *WHY THE U.S. MEN WILL NEVER WIN THE WORLD CUP* (2019), for a theory on why the U.S. Men will never win. Beau Dure outlines the various lawsuits, flawed academy system, privilege, and internal skirmishes at U.S. Soccer that prevent long term success. Most compellingly, he points out that the American system of development strips the game of its joy that underpins it everywhere else in the world and that the United States takes soccer far too seriously to ever be successful. But see SIMON KUPER & STEFAN SZYMANSKI, *SOCCERNOMICS* (2009), for a countervailing view that the United States' plight will improve.

175. See, e.g., *Girls Youth Academy*, ARSENAL (Apr. 19, 2020), <https://www.arsenal.com/women/girlsyouthacademy> [<https://perma.cc/9ZJD-3AXH>]; *Presentation*, PARIS SAINT-GERMAIN, <https://en.psg.fr/football-academy/presentation> [<https://perma.cc/PAB4-PRM4>]; *OL Academy*, OLYMPIQUE LYONNAIS, <https://www.ol.fr/en/academy> [<https://perma.cc/GXJ7-QF49>] (last visited Apr. 3, 2020).

176. Anderson, *supra* note 132.

177. Robert Wood, *The Greatest Swimmer at the Olympic Games*, TOPEND SPORTS, <https://www.topendsports.com/events/summer/medal-tally/rankings-sports-swimming.htm> [<https://perma.cc/Y69S-KHLA>] (last visited May 6, 2020).

178. Bachman, *supra* note 135.

ever.<sup>179</sup> The competitive advantage of both sports proves that paid camps or a domestic league are essential. A huge component of the success of these two programs is their ability to train all year. With payment of the national soccer teams, the U.S. Women could similarly maintain their dominance.

Thus, paying the two soccer teams is a minimum requirement for maintaining any semblance of international competitiveness. This can take form in a paid training camp much like the U.S. Women have utilized over the past few years or the U.S. Men implemented in anticipation of the 1994 World Cup. This can also take form in a domestic professional league. Though this route requires financial aid from U.S. Soccer, it may be the more sustainable path in the long run and especially so given the lack of professional female soccer opportunities internationally. However, to develop the game beyond this floor, the U.S. Women must be paid competitively.

### *B. The U.S. Women Deserve Increased Competitive Compensation*

With the question of whether we should pay the two national teams at all answered, this Comment turns to whether the U.S. Women ought to be paid more than they are now. It is in the interest of U.S. Soccer and the United States to pay the U.S. Women competitively. First, the U.S. Women deserve competitive compensation because it serves the national interest, defined here as the messaging to the nation and the world, patriotic value, and conformity with the original spirit of the Equal Pay Act. Second, competitive compensation also serves the mission of U.S. Soccer to develop the game in the United States. Finally, the compensation should not be tied to revenue production because of the difficulties in defining “equal,” although revenue can be used as a launch pad to examine other long-term solutions.

#### *1. Competitive Compensation Serves the National Interest*

Paying the U.S. Women competitive compensation is in the United States’ national interest. National interest here is defined as the messaging to the nation, messaging to the world, patriotic celebratory potential, and the original intent of the Equal Pay Act. With respect to patriotic value, this Comment stipulates to the idea that patriotism has the ability to draw together individuals from multiple backgrounds and to promote intra-national cross-cultural understandings. This premise finds support in several studies and papers that have examined the relationship sport has with national pride.<sup>180</sup> This Comment then also assumes

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179. DJ Gallo, *US Olympic Women’s Basketball Team May Be Most Dominant Champions Ever*, *GUARDIAN* (Aug. 21, 2016), <https://www.theguardian.com/sport/blog/2016/aug/21/usa-olympic-women-basketball-team-gold-medal-domination-rio-2016> [https://perma.cc/38NV-SE8Z].

180. See generally ALAN BAIRNER, *SPORTS, NATIONALISM, AND GLOBALIZATION: EUROPEAN AND NORTH AMERICAN PERSPECTIVES* (2001); GRANT JARVIE, *SPORT, CULTURE, AND SOCIETY: AN INTRODUCTION* (2013).



cross-cultural understanding is good policy.<sup>181</sup>

Paying the U.S. Women competitively sends a symbolic message to the country. Four-time national sports columnist of the year, Sally Jenkins, penned a column shortly after the U.S. Women crushed the Thai national team 13-0 in the 2019 World Cup. Jenkins pointed out that the relevant comparison is not whether U.S. Soccer ought to pay Alex Morgan like Lionel Messi,<sup>182</sup> rather, Alex Morgan ought to be paid at least as much if not more than her comparatively poor performing American male counterparts.<sup>183</sup> This line of argument, oft dismissed as not economically reasonable,<sup>184</sup> still carries weight outside the merits of the economic factors. Such competitive compensation demonstrates to the population, both young and old, that the U.S. Women are valued as much as the men. It is widely accepted that messaging received by children shapes their various outlooks, and the internet is accelerating the rate at which youths are exposed to news and information.<sup>185</sup> Paying the U.S. Women is an opportunity to demonstrate to the American youth that women are valued as much as men. It is an opportunity to attempt to begin correcting past discriminations in pay equity by shifting the cultural outlook using national icons.

Furthermore, choosing to pay the U.S. Women sends an important message to the world. In direct response to American calls for greater prize money, FIFA announced plans to double the prize money at the 2021 Women's World Cup.<sup>186</sup>

181. While some may debate whether or not globalized understandings of other cultures is good policy, an important aspect of soccer is its ubiquitous presence around the world, hence its international moniker, "the global game." FIFA has also made great efforts in recent years to utilize soccer as a vehicle for promoting anti-racism campaigns and pushing development around the world. As such, it makes sense to examine soccer in light of beneficial cross-cultural promotion. See RESOLUTION ON THE FIGHT AGAINST RACISM AND DISCRIMINATION, 63RD FIFA CONGRESS (2013), [https://www.fifa.com/mm/document/afsocial/anti-racism/02/08/56/92/fifa-paper-against-racism-en-def\\_neutral.pdf](https://www.fifa.com/mm/document/afsocial/anti-racism/02/08/56/92/fifa-paper-against-racism-en-def_neutral.pdf) [https://perma.cc/43UK-GWZ].

182. Alex Morgan is one of the greatest female soccer players of all time. In 2011 she was the youngest player on the U.S. Women's roster at the World Cup, where she scored goals in the semi-finals and the championship round. She currently boasts two World Cup wins and has scored 107 goals in her 169 games played for the United States. *Alex Morgan*, U.S. SOCCER, <https://www.usoccer.com/players/m/alex-morgan> [https://perma.cc/V7WL-5LA4] (last visited Apr. 6, 2020). Lionel Messi is one of—if not the—greatest male soccer players of all time. Messi has won an unprecedented six Ballon d'Or awards (the top individual player award), and is a six-time Champions League top scorer, a six-time top scorer in the Spanish League, and the all-time top scorer in both the Champions League and Spanish League. *Lionel Messi*, FC BARCELONA, <https://www.fcbarcelona.com/en/football/first-team/players/4974/lionel-messi#/694461/lionel-messi> [https://perma.cc/4DJ3-6PPD] (last visited Apr. 6, 2020).

183. Sally Jenkins, *The U.S. Women's National Team Is an American Treasure. Pay Them a Bounty.*, WASH. POST (June 12, 2019), [https://www.washingtonpost.com/sports/dcunited/the-us-womens-national-team-is-american-treasure-pay-them-a-bounty/2019/06/12/1c151908-8c9a-11e9-adf3-f70f78c156e8\\_story.html](https://www.washingtonpost.com/sports/dcunited/the-us-womens-national-team-is-american-treasure-pay-them-a-bounty/2019/06/12/1c151908-8c9a-11e9-adf3-f70f78c156e8_story.html) [https://perma.cc/77QK-6B2C].

184. Rich Lowry, *The U.S. Women Are Winners, Not Victims*, NAT'L REV. (July 9, 2019), <https://www.nationalreview.com/2019/07/us-women-soccer-team-equal-pay-lawsuit/> [https://perma.cc/HN9Y-8NY4].

185. Monica Anderson & Jingjing Jiang, *Teens, Social Media & Technology 2018*, PEW RSCH. CTR. (May 31, 2018), <https://www.pewresearch.org/internet/2018/05/31/teens-social-media-technology-2018/> [https://perma.cc/TYV3-9E9G].

186. Christopher Simpson, *Megan Rapinoe Calls on FIFA, U.S. Soccer, for Equal Pay After*

Further, in direct response to American indictments of FIFA officials, FIFA announced plans to suspend and reevaluate the bidding process for the 2026 World Cup<sup>187</sup> and has subsequently taken further steps to increase transparency and accountability.<sup>188</sup> The point is that when America sends a message, it has a ripple effect that reaches far beyond its own borders. Paying the U.S. Women a fair and competitive salary to compete sends that message and can help lift women's pay globally.

In a related vein, the root of international sport is finding a reason to celebrate the nation and come together in patriotic fashion. The Greeks famously stalled all number of wars, campaigns, and disagreements during the Olympics.<sup>189</sup> In a more modern context, during World War I, the English and the Germans agreed to the famed "Christmas Truce" in order to play a soccer match.<sup>190</sup> Applied today, inserting lawsuits into the World Cup and Olympics detracts from those sporting events' patriotic value. When the U.S. Women won the 2019 World Cup, it was difficult to find a headline or article about the American victory that did not also include some mention of the lawsuit.<sup>191</sup> Paying the U.S. Women competitive salaries eliminates this issue by refocusing the media attention on celebrating American victory and sends an important message around the world.

Finally, sending such a message conforms to the original intent of the Equal Pay Act itself. As noted, the Equal Pay Act was passed as a part of President Kennedy's New Frontier program in the interest of equalizing pay across genders.<sup>192</sup> Among the stated purposes of the Equal Pay Act is that pay differentials based on sex "tend[] to cause labor disputes thereby burdening, affecting, and obstructing commerce."<sup>193</sup> Perhaps one lawsuit filed by the U.S. Women, alone, would not burden the commerce the U.S. Women generate in games played around the country. But multiple lawsuits, player strikes, and the repeated shadows cast by the media's focus on the lawsuits over the U.S.

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*USWNT World Cup Win*, BLEACHER REP. (July 8, 2019), <https://bleacherreport.com/articles/2844656-megan-rapinoe-calls-on-fifa-us-soccer-for-equal-pay-after-uswnt-world-cup-win> [<https://perma.cc/28F4-S4ES>].

187. *FIFA World Cup 2026 Bidding Process Delayed*, BBC (June 10, 2015), <https://www.bbc.com/sport/football/33078284> [<https://perma.cc/FJY2-R26A>].

188. FIFA, *FIFA 2.0: THE VISION FOR THE FUTURE* 28 (2016).

189. *Background, The United Nations and the Olympic Truce*, UNITED NATIONS, <https://www.un.org/en/events/olympictruce/background.shtml> [<https://perma.cc/C83N-G7L9>] (last visited Apr. 1, 2020) (noting that the Olympic Truce has been adopted for the modern games as well).

190. Simon Kuper, *Soccer in the Trenches: Remembering the WWI Christmas Truce*, ESPN (Dec. 25, 2015), <https://www.espn.com/soccer/blog/espn-fc-united/68/post/2191045/christmas-truce-soccer-matches-during-world-war-one> [<https://perma.cc/89AJ-SCD8>].

191. Unfortunately, the media's bias in coverage is not limited to soccer. Rowan's commentary about the media's inability to celebrate female victory without an extraneous comment notes many other examples, including the media's focus on Serena Williams' outfit after she won her sixth Grand Slam. Rowan, *supra* note 24, at 926.

192. See Ross & McDermott, *supra* note 26.

193. *Shultz v. Am. Can Co.*, 424 F.2d 356, 360 n.7 (8th Cir. 1970).

Women's international victories certainly would amount to the sort of burden that the Equal Pay Act aimed to eliminate.<sup>194</sup> On the House floor at the Equal Pay Act's passage, Representative Bolton stated that the law was "the first step towards an adjustment of balance in pay for women."<sup>195</sup> This statement recognizes that the Equal Pay Act was not a final solution so much as a preliminary step towards equalizing pay. A further interpretation has noted that the Equal Pay Act was intended "as a broad charter of women's rights."<sup>196</sup> Surely the original passage did not envision a technical parsing of the statute to prevent female soccer players from having access to the same compensation opportunities as their male counterparts.<sup>197</sup>

The counter argument to this position is that the passage of the Equal Pay Act actually did envision economic considerations like revenue production and other market realities, as evidenced by the four affirmative defenses outlined in the Act. However, the original intent of the Act is still relevant today, given the *Rizo* court's invocation of Congress's original intent and given that the most recent lawsuit was partially dismissed for reasons that did not include revenue production or market realities.<sup>198</sup>

Despite the court declining to examine such market realities, critics of paying the U.S. Women more often point to the economics of such proposals. The argument is that if the market values the sport, the athletes will get paid for it eventually.<sup>199</sup> Evidence suggests that the federal government, and specifically the Department of Defense, has determined otherwise. In 2015, it came to light that the Pentagon had begun paying a large number of professional sports teams in the country's top leagues for displays of patriotism.<sup>200</sup> For example, \$49,000 was paid to the Milwaukee Brewers, a Major League Baseball team, to allow the Wisconsin National Guard to sing "God Bless America" during games.<sup>201</sup> Between 2012 and 2015, seventy-two such contracts were signed by the

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194. See *id.* at 360 (specifically highlighting the broad remedial purpose for which the Equal Pay Act was to be applied); see also *Rizo v. Yovino*, 950 F.3d 1217, 1226 (9th Cir. 2020) (en banc) (noting the remedial purpose was still relevant today).

195. 109 Cong. Rec. 9,193 (1963) (Rep. Frances P. Bolton).

196. *Shultz v. Wheaton Glass Co.*, 421 F.2d 259, 265 (3d Cir. 1970).

197. See *id.* at 266 ("For even if the Civil Rights Act is put aside, the Equal Pay Act alone does not permit artificial classification to prevent inquiry whether there exists a difference in pay for substantially equal work."); *Schultz*, 424 F.2d at 360 ("Congress in prescribing 'equal' work did not require that the jobs be identical, but only that they must be substantially equal. Any other interpretation would destroy the remedial purposes of the Act.").

198. *Rizo*, 950 F.3d at 1226; *Morgan v. U.S. Soccer Fed'n, Inc.*, 445 F. Supp. 3d 635, 651–56 (C.D. Cal. 2020).

199. Lowry, *supra* note 184; see also *Morgan*, 445 F. Supp. 3d at 656 (noting that during the collective bargaining agreement negotiations, an attorney for U.S. Soccer allegedly said "market realities are such that the women do not deserve equal pay").

200. Eyder Peralta, *Pentagon Paid Sports Teams Millions for 'Paid Patriotism' Events*, NPR (Nov. 5, 2015), <https://www.npr.org/sections/thetwo-way/2015/11/05/454834662/pentagon-paid-sports-teams-millions-for-paid-patriotism-events> [<https://perma.cc/SN72-FKRX>].

201. *Id.*

Pentagon.<sup>202</sup> Upon varied criticism from different branches of government, some of the teams did give the money back,<sup>203</sup> but the logic remains. While not the explicitly stated goal of the sponsorships,<sup>204</sup> it can be inferred that the Department of Defense was motivated, at least in part, by the concern that American sports teams might not have valued such displays, and thus, like paid advertising, the Pentagon needed to underwrite it. The same logic applies to the U.S. Women in that they may not ever receive competitive compensation due to factors out of their control if left to the market.<sup>205</sup> Taking a page out of the Department of Defense's book, a few members of Congress have put forth bills that would prevent the market from determining its own valuation in women's soccer. Among the bills is the Even Playing Field Act, which would amend the Ted Stevens Act<sup>206</sup> to require pay equity across amateur athletes representing the United States.<sup>207</sup> A more targeted bill, dubbed the "GOALS Act," would withhold funding for the 2026 World Cup being hosted in the United States until the U.S. Women's and U.S. Men's pay is equalized.<sup>208</sup> Paying the U.S. Women eliminates any risks of the market not valuing such performances and avoids the federal government needing to step in. Competitive compensation sends an important message to the world, to U.S. citizens, and eliminates the need for government sponsored patriotism.

## 2. *Competitive Compensation Serves the Mission of U.S. Soccer*

Competitive compensation achieves the stated mission of U.S. Soccer in developing the game beyond the floor established by a domestic league or paid training camp. U.S. Soccer's stated mission is a self-professed "clear and simple" one.<sup>209</sup> It reads in its entirety that the mission is "to make soccer, in all its forms, the preeminent sport in the United States and to continue the development of soccer at all recreational and competitive levels."<sup>210</sup> With respect to the first half, logically, one can assume a paid national team of professionals is fully encompassed in the process of pushing soccer to stand out among American football, baseball, and basketball. It would be rather difficult to compete for

202. *Id.*

203. Corky Siemaszko, *NFL Agrees to Reimburse U.S. Taxpayers \$720K for 'Paid Patriotism'*, NBC NEWS (May 19, 2016), <https://www.nbcnews.com/news/us-news/nfl-agrees-reimburse-u-s-taxpayers-720k-paid-patriotism-n577031> [<https://perma.cc/486F-RFCK>].

204. The purported goal of the program was "recruitment," though again the logic remains that if the Department of Defense had thought these entities would put on the shows on their own, this recruitment money would have been spent elsewhere. *Id.*

205. Among these factors is the entrenchment of men's sports in the mainstream media. *See generally* Rowan, *supra* note 24.

206. 36 U.S.C. § 2205.

207. Even Playing Field Act, H.R. 3882, 116th Cong. (2019) (house bill introduced by Rep. Speier); Even Playing Field Act, S. 2253, 116th Cong. (2019) (senate bill introduced by Sen. Feinstein, Sen. Shaheen, Sen. Klobuchar, and Sen. Gilibrand).

208. GOALS Act, H.R. 3917, 116th Cong. (2019–2020); S. 2062, 116th Cong. (2019–2020).

209. *U.S. Soccer Reaching New Heights*, U.S. SOCCER, <https://www.ussoccer.com/about> [<https://perma.cc/H5Q6-VCSE>] (last visited May 3, 2020).

210. *Id.*

audiences used to a seven-game multimillion-dollar NBA Finals or World Series with a volunteer squad of soccer players. Therefore, for purposes of this Comment, the notable part of the mission statement is the second half: to continue development of the game in the United States.

To develop the game, U.S. Soccer must maximize the incentives at the top in order to drive the production of talent throughout the country. Tournament theory supports the idea that paying the top level of an organization has a trickle-down effect that drives the rest of the organization to success. Applied here, the U.S. Men and U.S. Women are the top level, and the organization takes shape in the form of the various development programs and professional teams throughout the country. If U.S. Soccer were to take only a volunteer squad, the ensuing lack of incentives at the top level will significantly reduce or eliminate the programs dedicated to producing talented soccer players around the country and ultimately result in poorer national teams.<sup>211</sup> This effect was demonstrated by the utter lack of talented American male players for the forty-year period where the national team was not paid and the few domestic leagues that were attempted did not prioritize development of American players. Critics of this argument will point out that U.S. Soccer can still play a role in subsidizing and organizing the leagues without paying the senior team. The argument is that U.S. Soccer might simply take the money awarded by FIFA for fielding a team, as well as the other licensing and broadcast revenues, and push that into the development of the game in the form of paying for facilities, coaching, and ensuring the professional clubs remain solvent enough to continue training players.

This Comment argues that a version of tournament theory rebuts this claim. Broadly speaking, tournament theory is an economic theory that has been applied to both labor disputes and sports law.<sup>212</sup> Among other notions, it theorizes that a large part of the reason senior-level executives are paid significantly more than they might be worth in terms of output is a means of incentivizing the remainder of the hierarchy to continue striving for the top.<sup>213</sup> Applied to the U.S. Women, as an economic incentive, there is a rationale for paying the U.S. Women generously with little regard for the current value of television rights or revenue production. This effect was demonstrated on a smaller scale when Title IX created NCAA women's soccer teams as the "top level" and incentivized development of female players. Paying and celebrating the would-be icons at the top level of women's soccer not only conforms with the above stated goal of sending a message to the country, but it also is consistent with U.S. Soccer's goal of achieving a high rate of development at all levels of the game by incentivizing academies and professional clubs to train young women to become the top soccer players in the world.

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211. See also Carpenter, *supra* note 166.

212. Bernd Frick, *Contest Theory and Sport*, 19 OXFORD REV. ECON. POL'Y 512 (2003).

213. Edward P. Lazear & Sherwin Rosen, *Rank Order Tournaments as Optimum Labor Contracts*, 89 J. POL. ECON. 841 (1981).

Without these icons at the top being valued by competitive compensation, this lack of incentive trickles down signaling there is nothing to work for. This effect is on full display in other previously undercapitalized sports. Snowboarding saw a huge rise in popularity with Shaun White,<sup>214</sup> golf's ratings and interest always skyrocket when Tiger Woods is on the tee box;<sup>215</sup> and Simone Biles has repeatedly carried popularity of not only gymnastics but the entire NBC broadcast of the Olympics.<sup>216</sup> Sports need icons to push the development of younger athletes, and tournament theory explains why the senior team needs to be paid beyond just their marginal productivity.

The organizations to which these incentives trickle down are the various youth teams, academies, and professional teams in the United States. U.S. Soccer has worked closely with the MLS since its inception to ensure lucrative broadcast rights, soccer-specific stadium expansions, and the transition to a financially stable enterprise.<sup>217</sup> The player production has followed with the top American soccer players—some as young as fifteen years old—now signing with clubs rather than going the traditional college route.<sup>218</sup> Simultaneously, NCAA soccer is becoming increasingly irrelevant in the production of male soccer players.<sup>219</sup> The provision of a paid men's national team has spurred the growth of development academies at the youth and professional level.<sup>220</sup>

The success of similar academies feeding national team success is on full display in other more soccer-focused countries. As noted, in recent years, Portugal has been the most efficient country in producing international talent, and this translated directly into a European Championship in 2016.<sup>221</sup> A large aspect of Portugal's success in player production is attributed to the strength of

214. Rachel Axon, *Snowboarding Story: From Outcast to Olympic Darling in 20 Years*, USA TODAY (Feb. 8, 2018), <https://www.usatoday.com/story/sports/winter-olympics-2018/2018/02/08/snowboarding-story-outcast-olympic-darling-20-years/317370002/> [<https://perma.cc/ZX2D-YQ28>].

215. Rick Porter, *Tiger Woods Drives Ratings Spike for NBC's Golf Coverage*, HOLLYWOOD REP. (Sept. 24, 2018), <https://www.hollywoodreporter.com/live-feed/tiger-woods-drives-ratings-spike-nbc-golf-coverage-1146456> [<https://perma.cc/9JYG-FDG4>].

216. Cynthia Littleton, *TV Ratings: Fourth Gold Medal for Simone Biles Drives Tuesday Olympic Viewership*, VARIETY (Aug. 16, 2016), <https://variety.com/2016/tv/news/tv-ratings-simone-biles-aly-raisman-olympics-nbc-1201839287/> [<https://perma.cc/7WTH-6N3A>].

217. *Fraser v. Major League Soccer*, 284 F.3d 47, 52–53 (7th Cir. 2002).

218. Tisha Thompson, *Is College Soccer Too Much of a Risk for Rising U.S. Talent?*, ESPN (Mar. 22, 2018), [https://www.espn.com/sports/soccer/story/\\_/id/22869596/2018-world-cup-college-soccer-too-much-risk-rising-us-talent](https://www.espn.com/sports/soccer/story/_/id/22869596/2018-world-cup-college-soccer-too-much-risk-rising-us-talent) [<https://perma.cc/H7P4-EURN>].

219. *Id.*; Scott Sidway, *How FC Dallas Became Home to the Best Academy in the United States*, MLS (Sept. 23, 2016), <https://www.mlssoccer.com/post/2016/09/23/how-fc-dallas-became-home-best-academy-united-states> [<https://perma.cc/96GQ-TT45>].

220. Not all academies are managed by professional clubs. There are a number of highly competitive private youth organizations that style themselves as an “academy” or some degree of high level development around the country.

221. Robinson, *supra* note 172. The European Championship is like a miniature World Cup limited to, as its name suggests, exclusively European nations and is played every four years on years that do not conflict with the World Cup.

their three biggest professional clubs' youth academies.<sup>222</sup> Other countries have similar programs in place, notably F.C. Barcelona's storied "La Masia," which produced seven of the starting eleven players on Spain's 2010 World Cup winning side,<sup>223</sup> and Ajax F.C.'s youth academy in the Netherlands.<sup>224</sup> The aforementioned academies alone are responsible for the likes of Cristiano Ronaldo,<sup>225</sup> Lionel Messi,<sup>226</sup> and Johan Cruyff<sup>227</sup>—three of the greatest male soccer players of all time. The U.S. Men's star mentioned above, Christian Pulisic, is also a product of a youth academy: Borussia Dortmund in Germany.<sup>228</sup>

The U.S. Women now stare down the direct prospect of the remainder of the world implementing these successful academies on the women's side and overtaking the U.S. Women's dominance.<sup>229</sup> As it stands, the U.S. Women are almost completely reliant on the NCAA system to field and develop their youth team players.<sup>230</sup> Without funding in the form of league subsidies and national team bonuses, the incentive at the end of the tunnel and ability to play at the top level all but goes away. Without a paid national team, there is less demand for domestic clubs, even less demand for youth academies, and, in turn, a lack of supply of talent for the women's national team. As argued, the NCAA is not a sustainable proving ground or system for continuously providing top international talent for the women, and furthermore, the incentives that drive the NCAA often are not aligned with the mission of U.S. Soccer to develop the game at all levels. To maximize the growth of professional and youth leagues on the women's side, U.S. Soccer must competitively compensate the national team to provide the beacon for teams across the country.

Furthermore, paying the senior women's team even more than they get now will keep the players involved, becoming an investment in the game as the players remain linked to the program. Of the eighteen members of the board of directors of U.S. Soccer, six have collegiate or professional soccer playing experience.<sup>231</sup> Of the U.S. Women's inaugural 1991 World Cup winning squad,

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222. *Id.*

223. *Meet Spain's 2010 World Cup Team*, FOX SPORTS (Oct. 20, 2016), <https://www.foxsports.com/soccer/gallery/spain-2010-world-cup-final-team-070810> [<https://perma.cc/UVM9-G9VJ>].

224. Jerrad Peters, *The 20 Best Players to Have Graduated From Barcelona's La Masia Youth Academy*, BLEACHER REP. (Apr. 3, 2014), <https://bleacherreport.com/articles/2016884-the-20-best-players-to-have-graduated-from-barcelonas-la-masia-youth-academy#slide8> [<https://perma.cc/YR2G-SPHR>].

225. *See generally* GUILLEM BALAGUE, *CRISTIANO RONALDO: THE BIOGRAPHY* (2019).

226. *See Lionel Messi*, *supra* note 182.

227. *See generally* JOHAN CRUYFF, *MY TURN: THE AUTOBIOGRAPHY* (2017).

228. Borden, *supra* note 150.

229. *See* text accompanying *supra* note 175.

230. Shannon Scovel, *Here's Where Every Member on the USWNT Roster Played College Soccer*, NCAA (Oct. 27, 2018), <https://wwwcache.ncaa.com/news/soccer-women/article/2018-10-27/heres-where-every-member-uswnt-roster-played-college-soccer> [<https://perma.cc/C3BJ-CZMX>] (indicating that twenty-one of twenty-three of the U.S. Women 2019 World Cup winning squad played soccer in college before turning professional).

231. *About the Board*, U.S. SOCCER, <https://www.ussoccer.com/governance/board-of->

all but one member of the team continued in a professional or collegiate coaching capacity after retiring as players.<sup>232</sup> Paying the U.S. Women competitive compensation for participating in the Olympics and the World Cup ensures even more of those icons and experienced professionals remain involved, give back to the game, and ultimately continue developing top talent.

Finally, not paying the national team competitively for their stellar performances risks disgruntlement or early retirement by the top women in the game. The U.S. Men's team currently faces a similar issue where, because players prioritize professional clubs or concerns over training camps, the top team members choose not to show up for even mid-level games.<sup>233</sup> The trickle-down effect includes a poorer performing team as demonstrated by U.S. Men's failure to qualify for the 2018 World Cup and viewership that suffers when fans and young players cannot tune in to watch their heroes play.<sup>234</sup> Similarly, the risk of early retirement might mean that for stars like Megan Rapinoe or Mia Hamm before her, playing for the national team simply is not worth the effort. Several of the top women's basketball players have stated publicly that their continued participation in the Olympic camp directly results from the recent pay agreement reached with USA Basketball.<sup>235</sup> Paying the U.S. Women a competitive sum for their time incentivizes continued play and retains the talent on the field.

### 3. *Competitive Compensation Should Not Be Tied to Revenue*

The main argument against paying the U.S. Women more is that the U.S. Men generate more revenue than the women's team, both internationally and domestically. In the most recent decision, a court determined the U.S. Women made more money than the U.S. Men did in the relevant period.<sup>236</sup> Both perspectives take a short-sighted view of the problem and consider but one

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directors/about [https://perma.cc/B7GW-8NVA] (last visited May 3, 2020).

232. Scott French, *Where Are They Now? U.S. Women's 1991 World Cup Winning Squad*, FOURFOURTWO, Nov. 30, 2016.

233. Take, for example, Pulisic's 2019 "hip injury," which took him out of contention for U.S. National Team duty only for him to start the very next match his club team played against the Premier League champions. See Luis Miguel Echegaray, *Christian Pulisic Unavailable as USMNT's Nations League Roster Is Finalized*, SPORTS ILLUSTRATED (Nov. 11, 2019), <https://www.si.com/soccer/2019/11/11/christian-pulisic-absent-usmnt-usa-berhalter-concacaf-nations-league-canada-cuba> [https://perma.cc/T5RW-QDKK]; *Match Report, CHELSEA FOOTBALL CLUB* (Nov. 23, 2019), <https://www.chelseafc.com/en/matches/match-day/2019/1059828?pageTab=report> [https://perma.cc/3XRC-ALNV].

234. A unique example of fan disappointment when the idols and icons do not play manifested in a lawsuit in South Korea this year. On tour with Italian team Juventus F.C. during the summer of 2019, Cristiano Ronaldo remained on the bench for the exhibition match in South Korea and fans were not happy. In fact, several were so unhappy they filed suit in a South Korean court and won damages for the cost of the tickets and "mental anguish" from Juventus. John Duerden, *Koreans Win Compensation for Ronaldo No-Show; More to Come*, AP SAN DIEGO UNION-TRIB. (Feb. 4, 2020), <https://www.sandiegouniontribune.com/sports/national/story/2020-02-04/koreans-win-compensation-for-ronaldo-no-show-more-to-come> [https://perma.cc/88BD-TKNQ].

235. Bachman, *supra* note 135.

236. *Morgan v. U.S. Soccer Fed'n, Inc.*, 445 F. Supp. 3d 635 (C.D. Cal. 2020).



dimension of the overall issue. The real inquiry for all stakeholders in this issue is the source of U.S. Soccer's revenue and how to spend it. Put another way, the question becomes what is "equal" and how much of the prize money and other revenue are the U.S. Women's players, the U.S. Men's players, and U.S. Soccer entitled to. The equally relevant follow up is the question of who is responsible for bearing the losses during the years where less money comes in because of poorer performances.<sup>237</sup> This Part argues for a longer-term approach, because short-sighted solutions implemented without long term considerations, like one-time settlements, will only hurt the U.S. Women, U.S. Men, and American soccer in the grand scheme of developing the game.

As noted above, the differing bonus structures in place for the U.S. Men and U.S. Women is partially due to a significant difference in how much money FIFA pays out for participation and in prize money.<sup>238</sup> The U.S. Women receive 85 percent of the prize money awarded by FIFA whereas the men receive just 25 percent of the award.<sup>239</sup> The men make more based on 25 percent of a mediocre performance than the women's 85 percent of a championship performance because the FIFA payouts are so disparate. Furthermore, outside the FIFA payouts, it is even more difficult to define which team is responsible for which revenue. U.S. Soccer sells the television and sponsorship rights as a bundle and not separate.<sup>240</sup> These television rights also do not even include the World Cup rights, which are sold by FIFA alone.<sup>241</sup> Further, the U.S. Soccer financials lump most of the revenue streams together and do not distinguish between the men and women.<sup>242</sup> The one area of revenue that is separate is so small in comparison to the remainder of the budget that it is almost not worth mentioning.<sup>243</sup> The functional question for the U.S. Women, then, is where does the remainder of

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237. It is important to remember that while everyone knows the U.S. Men do not always perform successfully on the international scale, the U.S. Women also lose occasionally. The U.S. Women have almost always finished on the podium, though in 2016 they finished fifth place in the Olympics. As the remainder of the world begins to catch up in competitiveness, there could easily be more fifth place finishes in the future. This similar fall from grace played out in the men's 2014 World Cup when Brazil, the men's team with the most World Cup victories, was spectacularly sent home after losing 7-1 to Germany in the Semi-Finals. *See 2014 FIFA World Cup Brazil*, FIFA, <https://www.fifa.com/worldcup/archive/brazil2014/> [<https://perma.cc/8TKM-N7PH>] (last visited May 7, 2020). Of course, this author hopes the U.S. Women's dominance continues, but the possibility that other countries will catch up to the U.S. Women's talent must be taken into account.

238. *See generally supra* Part I.C.

239. *Asfour, supra* note 112.

240. Rachel Bachman, *U.S. Women's Soccer Games Outearned Men's Games*, WALL ST. J. (June 17, 2019), <https://www.wsj.com/articles/u-s-womens-soccer-games-out-earned-mens-games-11560765600> [<https://perma.cc/65S2-54K8>].

241. *Id.*

242. 2019 U.S. Soccer Financial Statement, *supra* note 49, at 6.

243. Data from U.S. Soccer reveals that the U.S. Women did out-earn the men by about \$1.9 million between 2016 and 2018, but this is all attributable to "gameday revenues," which are almost exclusively ticket sales. Total combined revenue for the same time period was well over \$300 million. Bachman, *supra* note 240; 2019 U.S. Soccer Financial Statement, *supra* note 49, at 6; U.S. SOCCER FEDERATION, INC., CONSOLIDATED FINANCIAL STATEMENTS AND REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS 8 (2017).

the money come from and what would an “equal” payment look like?

Some countries have undertaken to define “equal” as an equitable revenue sharing model. Both Norway and Australia have done so. The Norwegian Football Association’s<sup>244</sup> model grants both their men and women 25 percent of profits from any major tournament they participate in.<sup>245</sup> Football Federation Australia’s<sup>246</sup> model grants both their men and women 24 percent of revenues from the major tournaments they participate in with a 1 percent increase in each of the next four years.<sup>247</sup> A massive critique and problem with these revenue sharing agreements, however, is that they do not truly equalize pay.<sup>248</sup> As exhibited by the American situation, the payout discrepancy from FIFA is so disparate that equalized percentages do next to nothing to equalize pay because the men still get 25 percent of a much bigger payout. A true revenue sharing model would pool the prize money earned and split the proceeds of the general pot accordingly. This will be difficult to achieve so long as the U.S. Women and U.S. Men negotiate their contracts separately.<sup>249</sup> Given the competing interests for each team to maximize their own payout and the divergent interests because of the respective professional compensation situations, until the two teams negotiate together, a true revenue sharing model is unlikely to come to fruition. As outlined below, negotiating together is a necessary condition in achieving such a revenue sharing agreement.

A final point with respect to dividing up the revenue streams is the question of how much U.S. Soccer is entitled to from the winnings. Neither the men nor the women would argue they are entitled to the entirety of their winnings as U.S. Soccer not only furnishes the administrative ability to compete at all, but more importantly, U.S. Soccer has a duty to cross-subsidize and invest in the future. The facilities, training camps, youth programs, Paralympic teams, coaching salaries, administrative salaries, legal paperwork, government liaisons, and much more require immense funding.<sup>250</sup> It is for this reason that a long-term solution

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244. The Norwegian Football Association is the Norwegian equivalent of U.S. Soccer.

245. Suzanne Wrack, *Norway’s Historic Pay Deal for Women’s Team Shows It Can Be Done*, GUARDIAN (Oct. 17, 2017), <https://www.theguardian.com/football/blog/2017/oct/17/norway-historic-pay-deal-for-womens-team-shows-it-can-be-done> [<https://perma.cc/6VYK-CBFU>].

246. The Football Federation Australia is the Australian equivalent of U.S. Soccer.

247. *Australian Men, Women Soccer Players Close Gender Pay Gap*, SPORTS ILLUSTRATED (Nov. 5, 2019), <https://www.si.com/soccer/2019/11/06/australian-soccer-close-mens-women-gender-pay-gap> [<https://perma.cc/YFX9-ZA57>].

248. See also Dure, *supra* note 119 (noting that neither of these deals would likely be acceptable to the U.S. Men or U.S. Women anyway).

249. *Australian Men, Women Soccer Players Close Gender Pay Gap*, *supra* note 247.

250. There even already exists a casualty due to cash flow problems. On April 15, 2020, U.S. Soccer announced it was folding the youth Development Academies across the country for boys and girls. These academies were started in 2007 to provide more competitive opportunities around the country to spur the overall increased competitiveness of youth soccer in the United States. While the publicly stated reason for the closure is complications arising from COVID-19, several writers have pointed out that it coincides with rising litigation costs and the anticipation of a potential eight figure settlement with the U.S. Women. See Mark Zeigler, *Analysis: Youth Soccer Braces for Demise*

is required. Short-sighted settlements, lump sum payoffs that only deal with one squad of players, and short-term pay increases are not sufficient to solve the gender equality problem or to bolster the success of soccer in the United States. Important to note and as stated above, for any of these solutions to work in the long run, both teams will need to work together to jointly negotiate the same collective bargaining agreement. Since the professional situations are so starkly different between the two teams, the interests of each are too distinct to expect the two entities to work together for a common goal because they do not have one. Mixed in with this is the need to agree to a uniform payment schedule, given that the two World Cups are played in different years and other tournaments like the Olympics for the women or the Gold Cup for the men also take place in different years.<sup>251</sup> Payment schedules could be regular—for example, where revenues produced by either team during a six month period are split evenly—or could be delayed and done every year or two years resulting in fewer but larger payouts each time. The Australian approach, while not a transferable model for future collective bargaining agreements,<sup>252</sup> is an example of how the men's and women's teams can work together despite distinct differences in professional expectations and goals.

Solutions of a long-term nature might take form in one lump sum agreement.<sup>253</sup> For example, if every team member who played in the World Cup or met a certain minutes-in-squad requirement per year received a flat \$400,000 fee and none of the prize winnings, this might solve the issue of how to distribute the remainder.<sup>254</sup> Then, U.S. Soccer would be paying all team members equally, regardless of gender. Some years, players will make more than they do now and other years they will make less. The U.S. Women will almost certainly make more money with this arrangement and the U.S. Men will still make enough money for it to be worth their time. U.S. Soccer is then free to take the remainder of the winnings and invest accordingly. Of course, a critical component of this plan assumes at least one team, if not both, consistently qualifies and places or performs in these tournaments to drive that revenue.

Another solution might be the aforementioned pooling of the prize money won from various tournaments and equal division among the men and women.

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*of Development Academy*, SAN DIEGO UNION-TRIB. (Apr. 14, 2020), <https://www.sandiegouniontribune.com/sports/soccer/story/2020-04-14/us-soccer-federation-development-academy-da-ecnl-termination-showcase-san-diego> [<https://perma.cc/2KRY-6U59>]; Mike Voitalla, *U.S. Soccer Ends Development Academy Citing 'Financial Situation'*, SOCCERAMERICA (Apr. 15, 2020), <https://www.socceramerica.com/publications/article/85426/us-soccer-ends-development-academy-citing-finan.html> [<https://perma.cc/UML7-S3VR>].

251. See *generally Competitions*, FIFA, <https://www.fifa.com/fifa-tournaments/> [<https://perma.cc/47TK-8YUZ>] (last visited June 28, 2021).

252. Dure, *supra* note 119.

253. This solution builds on an idea offered generally by Haile for eliminating singular game bonuses in favor of one lump sum paid to players' associations instead. Haile, *supra* note 23, at 104.

254. A hard number is used here to color the argument. Haile argues generally for a "lump sum" without giving specifics; specifics are given here to further illustrate the feasibility of this idea and give a ballpark estimate of what that sum might look like.

This would shift the burden to FIFA to continually increase the payout of the Women's World Cup. It would also conform with the broader public message that the U.S. Men and U.S. Women support both equal pay and each other. Two critiques here are that FIFA is outside U.S. jurisdiction and that the U.S. Men might never agree to this approach, despite their proclaimed support of the U.S. Women.<sup>255</sup> Another potential pitfall is that in years like 2018 and 2019, the U.S. Women become the ones subsidizing the U.S. Men, who earned no World Cup prize money.

Professor Haile, in his article evaluating the merits of the U.S. Women's equal pay claim, articulates another solution.<sup>256</sup> He puts forth the idea that NWSL salaries ought to be a separate negotiation from national team service and should be considered an investment in the game rather than compensation.<sup>257</sup> Applied to this Comment, such salaries could be considered part of the cross-subsidization efforts of U.S. Soccer and be consistent with maintaining the domestic league argued for above.

Whatever the pursued solution, it is critical that a long-term one be implemented when equalizing pay rather than short term flicks and backheels that only move the ball so far and leave the teams with yet another lawsuit. The long-term solution is in the best interest of the game, of gender equality, and for all involved.

#### CONCLUSION

In conclusion, both the men and women representing the United States on the soccer field deserve more than the accompanying glory and gold medals. Compensation in the form of a training camp or domestic league is an absolute necessity for international competitiveness. Not only is it in the national interest to pay the U.S. Women more, but it serves the broader mission of U.S. Soccer. Revenue production alone is not the answer in deciding how much each entity is paid. Rather, the long-term development of the game must be the priority. In the words of Mia Hamm: "Celebrate what you've accomplished, but raise the bar a little higher each time you succeed."<sup>258</sup> U.S. Soccer ought to do the same.

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255. Press Release, U.S. Nat'l Soccer Team Players, Statement About the USWNT 2017–2021 CBA (Feb. 12, 2020), <https://ussoccerplayers.com/2020/02/statement-about-the-uswnt-2017-2021-cba.html> [<https://perma.cc/7RDN-XRMB>].

256. Haile, *supra* note 23.

257. *Id.*

258. TERRY R. BACON, *ELEMENTS OF INFLUENCE: GETTING OTHERS TO FOLLOW YOUR LEAD* 142 (2012).