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Power and Finesse: How the United States' and Australia's Women's National Soccer Teams Score for Equal Pay

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POWER AND FINESSE: HOW THE UNITED STATES' AND AUSTRALIA'S WOMEN'S NATIONAL SOCCER TEAMS SCORE FOR EQUAL PAY

Arianna Amato*

Over the last fifty years, women's soccer has emerged as a segment of the sport attracting an audience of all ages, genders, and national origins. Despite its relatively young but dense history, the sport's following is fun, passionate, and inspiring to both die-hard fans and casual viewers alike. However, with its explosion in popularity comes a corresponding rise in life-altering issues requiring legal solutions. Behind the scenes, these female athletes come together not only over their love of the beautiful game but in confronting similar challenges regarding their employment agreements, which are governed by domestic and international labor law, as federations have historically been reluctant to righteously compensate to their female players equally to their male players. The most recent World Cup in the summer of 2023 once again brought these issues to the forefront of international news, with particular focus on pre-tournament favorites the United States Women's National Team and the co-host Australian Women's National Team, commonly known as The Matildas. Demands from these teams and others around the world for equal pay have only become louder and louder, though, prompting them to utilize domestic and international labor law to effectuate worthwhile change in the form of equal pay between women's and men's national soccer team players. The USWNT and The Matildas utilized different methods to achieve this worthwhile change, though, with each method bearing a myriad of advantages and disadvantages. While this note opines that The Matildas' approach bettered the USWNT approach in their own respective contexts, both teams ultimately attained equal pay for their players.

This note will begin by briefly exploring both the history of women's soccer both globally and in the United States and Australia. Then, it will examine labor law in their respective countries and their application to each

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team's choice of bargaining strategy to obtain equal pay. This examination will include the backdrop against which the campaign for equal pay began and the measures each team and its players took as a part of that campaign. A comparison of each team's strategy will follow. Next, the note will investigate these strategies to determine how well the teams and other contributors, like the general public, accomplished their goals and how they can impact other teams around the world. Specifically, the effects will be assessed through weighing the long-awaited result of equal pay for women and men with the economic and social costs accumulated for the teams and their players along the way. A synthesis will conclude the note about how the team, their federations, and international governing bodies may be able to play a significant role in shaping the future of women's soccer.

INTRODUCTION	51
I. GETTING THE BALL ROLLING: HISTORY OF THE BEAUTIFUL GAME.....	57
A. WOMEN'S SOCCER	57
B. THE UNITED STATES WOMEN'S NATIONAL TEAM	59
C. THE MATILDAS	61
II. USING THE LAW TO REMAIN GOAL ORIENTED	63
A. EMPLOYMENT & LABOR LAW IN THE UNITED STATES.....	63
B. EMPLOYMENT & LABOR LAW IN AUSTRALIA	67
III. KICKING OFF EFFORTS TO ACHIEVE EQUAL PAY	68
A. THE UNITED STATES WOMEN'S NATIONAL TEAM	69
B. THE MATILDAS	72
IV. SHOOTING FOR THE STARS POST SUITS, STRIKES, & SETTLEMENTS	76
A. EVALUATION OF USWNT & MATILDA STRATEGIES	77
B. PUBLIC LENDS SUPPORT FOR BOTH TEAMS TO ACHIEVE EQUAL PAY.....	80
V. STRATEGIES IN STOPPAGE TIME TO KEEP MOVING UP THE FIELD	81
CONCLUSION.....	83

INTRODUCTION

Sports are more than just a form of entertainment. They endure not only as means to escape life's challenges but also to foster a sense

of belonging—whether watching an event in a friend’s living room with snacks scattered around or experiencing the energy of a game in a packed arena with thousands of other fans, all feeling as if they are one. Sports are strength. Sports are solidarity. Sports are power. Sports are any number of things. However, one thing sports have not always been is equal across genders. In recent years, though, women’s sports have made significant strides towards achieving equality in all aspects.

The meteoric rise of elite women’s sports began with Title IX’s enactment and has only skyrocketed in participation and popularity since. Up until only a few decades ago, women’s sports were seen as mere activities and pastimes, something that women participated in when they were not tending to household and familial duties. Title IX, the federal legislation that prohibits sex-based discrimination in federally funded education programs,¹ emerged as- and continues to be- a driving force in transforming these activities into recognized sports, increasing women’s opportunities to participate and achieve greatness.² Its impact has been far more extensive than initially anticipated. Since its enactment, the popularity of women’s sports has soared, as demonstrated by rising ratings, attendance, and sponsorships.³ Following the 50th anniversary of this landmark law in 2022, various women’s sports, like basketball, golf, tennis, and ice hockey continue to make headway in expanding their reach.⁴ Yet, despite these substantial efforts, no women’s sport garners more interest than women’s soccer. Women’s soccer persists as a trendsetter by creating a multitude of spaces for other women’s sports to grow, most recently demonstrated in the recent success of women’s college

¹ Caroline Skoog, *Title IX at 50: Onward and Upward for Women’s Sports*, NATIONAL SPORTS CENTER: BEYOND THE BENCH (Feb. 4, 2022), https://blog.nscsports.org/title-ix-at-50-onward-and-upward-for-womenssports/?gclid=CjwKCAiAxreqBhAxEiwAfGfndO2iN1qiWAdFYiMwEFtM4uLslMwmftvei1GjQehvEc0dr1khllbrxoCkJQQAvD_BwE.

² See Gretchen Miller et al., *Women’s Soccer Before 1999*, SOCCER POL.: A DISCUSSION F. ABOUT THE POWER OF THE GLOB. GAME, <https://sites.duke.edu/wcwp/research-projects/womens-soccer-in-the-u-s/womens-soccer-before-1999/> (lasted updated 2013).

³ Brad Adgate, *Popularity of Women’s Sports Surges Approaching 50th Anniversary of Title IX*, FORBES (Apr. 7, 2022, 11:52 AM), <https://www.forbes.com/sites/bradadgate/2022/04/07/popularity-of-womens-sports-has-been-surgin/?sh=34ebc6aa3613>.

⁴ See *id.*

basketball and its positive effects on the WNBA.⁵ Crucial to their success, as well, are the elevation of individual players as celebrities, who can build brand awareness and a fan base to their teams and the league generally. Its audience continues to grow at lightning speed, whether they are watching to follow their favorite player or their hometown team. As a result, each year statistics concerning its reach only become more staggering. Women's soccer boasts the largest following of any women's sport.⁶ Globally, twenty-nine million girls and women play the sport, providing skilled players to 176 national teams and multiple professional leagues.⁷ The 2019 FIFA Women's World Cup, a quadrennial tournament of women's national soccer teams that crowns the world's champion among women's national soccer teams,⁸ drew over a billion viewers.⁹ An average of 14.3 million people tuned into the title game of that year's tournament, accounting for a 22% increase from the same game for the Men's World Cup the year prior.¹⁰

The growing following of women's soccer extends far beyond the sport's biggest tournament, though. It also encompasses the players themselves and their actions both on and off the field. Female athletes, particularly soccer players, are highly active in areas at the forefront of broader societal discussions, such as mental health and social justice.¹¹ By doing so, they have amassed millions of followers on social media.¹² For example, Alex Morgan, a veteran striker for the United States Women's National Team ("USWNT"), has 10.2 million followers on her Instagram account and 3.7 million followers on her

⁵ See generally Katie Callahan, *ESPN Platforms Wrap Up Successful Women's College Basketball Regular Season Slate*, ESPN PRESS ROOM, (March 12, 2024), <https://espnpressroom.com/us/press-releases/2024/03/espn-platforms-wrap-up-successful-womens-college-basketball-regular-season-slate/#:~:text=The%202023%2D24%20women's%20college,ESPN%20platforms%20since%202008%2D09>.

⁶ Jennifer Bubel, *How Women's Soccer has Evolved*, AS USA, <https://en.as.com/soccer/how-womens-soccer-has-evolved-n/> (last updated Mar. 8, 2023, 8:53 AM).

⁷ *Id.*

⁸ Editors of Encyclopedia Britannica, *World Cup*, BRITANNICA, <https://www.britannica.com/sports/World-Cup-football> (last updated Nov. 10, 2024).

⁹ Adgate, *supra* note 3.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

Twitter account at the time of writing.¹³ Megan Rapinoe, another veteran for the USWNT, is widely known for her activism, consistently speaking out on political issues, LGBTQ+ issues, and racial injustices.¹⁴ In recognition of her tireless and influential work, she was awarded the Presidential Medal of Freedom in 2022.¹⁵

Despite the meteoric rise of women's sports as well as their players and fanbases, women's leagues and federations have come under severe criticism for failing to capitalize on their success. Namely, the criticism largely alleges that leagues and federations do not share revenues with the players responsible for generating it, especially when compared to male players. At this point, it should be common sense that failing to invest fully—head, heart, and wallet—in women's soccer is simply bad business.¹⁶ Although reluctance to do so presents daunting obstacles for female athletes, they continue to succeed *in spite* of these challenges.¹⁷ The most recent edition of the Women's World Cup this past summer is particularly evident of this feat. The 2023 Women's World Cup, the first to have its revenue recorded separately from the Men's World Cup, generated \$570 million and set a new record for women's total attendance with 1.8 million fans.¹⁸ This tournament also showcased the increasing depth of talent across multiple teams.¹⁹ While female athletes and their supporters are proud

¹³ Alex Morgan (@alexmorgan13), INSTAGRAM, <https://www.instagram.com/alexmorgan13/> (last visited Nov. 10, 2023, 9:00 AM); Alex Morgan (@alexmorgan13), TWITTER, <https://twitter.com/alexmorgan13> (last visited Nov. 10, 2023, 9:01 AM).

¹⁴ Dan Berridge, *Megan Rapinoe: A Pioneer for US Women's Soccer and Social Justice*, SPORTING HER (Sept. 30, 2023), <https://sportingher.com/megan-rapinoe-a-pioneer-for-us-womens-soccer-and-social-justice/>.

¹⁵ See *Under Pressure: The U.S. Women's World Cup Team*, NETFLIX (Dec. 12, 2023), <https://www.netflix.com/search?q=under%20pressure&jbv=81697366>.

¹⁶ See Dan Wetzel, *Where's FIFA? Failing to Promote a fun, High-Quality Women's World cup, That's Where*, YAHOO SPORTS (June 25, 2019), <https://sports.yahoo.com/wheres-fifa-failing-to-promote-a-fun-highquality-womens-world-cup-thats-where-162128913.html>.

¹⁷ *Id.*

¹⁸ *2027 Women's World Cup Predictions: Spain, US, Host, More*, ESPN (Aug. 21, 2023, 9:58 AM), https://www.espn.com/soccer/story/_/id/38228653/2027-women-world-cup-predictions-spain-us-host-more.

¹⁹ See *2023 Women's World Cup Review: Best XIs, Breakouts, Moments*, ESPN (Aug. 22, 2023, 10:46 AM), https://www.espn.com/soccer/story/_/id/38234868/2023-women-world-cup-best-xis-golden-ball-best-moments-highlights.

of the progress made thus far, they are not satisfied. They continue to push for *more* in every sense of the word. Equitable prize money and working conditions are among the key improvements needed,²⁰ but in general, what is being asked for is simply more support.²¹ The players believe that the best way to demonstrate that support is through wage equality between men's and women's national teams.

Gender pay inequities are unique to any one nation: they "plague[] many international teams as well."²² For example, Canada's women's team was left with only an interim agreement prior to the 2023 Women's World Cup, with hopes of achieving equal pay and treatment following the tournament.²³ South Africa's team has endured significant turmoil, clashing with their federation over a lack of benefits and bonus payments comparable to those of the men's team.²⁴ Jamaica, following a drastic cut to their funding by their federation, released a statement just one month before the 2023 Women's World Cup highlighting issues related to "transportation, accommodations, training conditions, compensation, communication, nutrition, and accessibility to proper resources."²⁵ Thus, the experiences of these teams demonstrate that federations all over the

²⁰ See *id.*

²¹ See generally Henry Bushnell, *2023 World Cup was a 'Turning Point' for Women's Soccer. Now Comes the Real Work*, YAHOO SPORTS (Aug. 21, 2023), <https://sports.yahoo.com/2023-world-cup-was-a-turning-point-for-womens-soccer-now-comes-the-real-work-172927723.html>.

²² Megan Musachio, *Shooting for Equality: The U.S. Women's National Team and Their Struggle for Equal Pay*, 19 J. INT'L BUS. & L. 258, 258 (2020).

²³ CanadianSoccerPlayers (@PlayersCanadian), X (July 28, 2023, 9:00 AM), <https://x.com/PlayersCanadian/status/1684911779657269248>; *Canada Women Footballers Reach Interim Pay Deal, but say Fight 'Isn't Over'*, ALJAZEERA (July 28, 2023), <https://www.aljazeera.com/news/2023/7/28/canada-women-footballers-reach-interim-pay-deal-but-say-fight-isnt-over>; Canadian Press, *Canada's Women's Team Announces deal with Canada Soccer, but Unhappy About it*, SPORTSNET (July 28, 2023 9:56 AM), <https://www.sportsnet.ca/soccer/article/canadas-womens-team-announces-deal-with-soccer-canada-but-unhappy-about-it/>.

²⁴ Bushnell, *supra* note 21; see also Gerald Imray, *South African Women's World Cup Team Sits out game in pay Dispute as 13-year-old Player Called in*, AP (July 2, 2023, 3:46 PM), <https://apnews.com/article/south-africa-dispute-womens-world-cup-0b46f2afd7a4c274fb47c8d4bff91a8e>.

²⁵ Jay Harris, *The Pre-tournament chaos Jamaica Survived to Reach World Cup Knockouts*, THE ATHLETIC, <https://theathletic.com/4718637/2023/07/29/jamaica-women-world-cup/> (last updated Aug. 2, 2023).

world consistently refuse to produce sufficient compensation for the elite players responsible for the massive growth in women's soccer.

Two nations that have consistently been on the front lines of each and every battle in the war to improve the sport they love are the USWNT and the Australian Women's National Team ("The Matildas"). In their fight, players from both teams have used legal channels and collective bargaining agreements with their federations, or the governing bodies of their teams that are responsible for player compensation.²⁶ The USWNT undertook a litigious route in their fight for equal pay through players filing complaints with federal executive agencies and lawsuits in federal courts against their governing federation to not only voice their concerns, but in an effort to effectuate true change. On the other hand, The Matildas utilized powers afforded to them through their union and surrounding labor law by participating in a strike to shift the power from their federation to themselves to achieve their equal pay objectives. By examining the laws that grant the players the right to fight for better conditions, we can glimpse the future of not just women's soccer but also women's sports as a whole, and how it may continue to evolve for the better.

Section II recounts a brief history of women's soccer as a sport as well as its specific development in the United States and Australia. Section III explains foundational concepts in employment and labor law that provide the basis of the rights and pathways to change that employees, particularly professional athletes, can use to improve and protecting their working conditions. Section IV describes strategies exercised by the USWNT and the Matildas', using legal frameworks, to achieve equal pay from their respective federations. Section V analyzes the advantages and disadvantages of each team's approach, demonstrating which method ultimately proved superior. Section VI offers insight into further steps that can help close the wage gap for women's national teams all over the world.

²⁶ *U.S. Soccer Reaching New Heights*, U.S. SOCCER, <https://www.ussoccer.com/about> (last visited Oct. 1, 2024).

I. GETTING THE BALL ROLLING: HISTORY OF THE BEAUTIFUL GAME

Following a vastly successful 2023 Women's World Cup co-hosted by Australia and New Zealand,²⁷ record-breaking viewing figures silenced any doubters who held preconceptions about a lack of interest in the women's game.²⁸ However, before looking ahead to the future of the sport and its star teams, their history will be comprehensively reviewed to provide ample background and help fully understand its trajectory.

A. Women's Soccer

Women's soccer has roots on multiple continents including Asia, the Americas, and Europe dating back to the 19th century.²⁹ Looking onto one of the first women's matches, A Lady Correspondent from the *Manchester Guardian* confidently remarked that "there was no reason why the game should not be annexed by women for their own use as a new and healthful form of recreation."³⁰ Unfortunately, a dark shadow soon suffocated this growing phenomenon.³¹ As a part of its ban on women's soccer, the English Football Association (FA) declared that soccer was "unsuitable for females and should not be encouraged."³² Other nations quickly followed suit - albeit in their

²⁷ *Australia Strongly Positioned to host AFC Women's Asian Cup and World Club Elite*, FOOTBALL AUSTRALIA, <https://www.footballaustralia.com.au/news/statement-football-australia-0> (last updated Oct. 31, 2023, 1:59 AM).

²⁸ Hilary Whiteman & Tara Subramaniam, *Fireworks on and off the Pitch as FIFA Prepares for Women's Football to 'Explode'*, CNN SPORTS, <https://www.cnn.com/2023/08/21/football/spain-australia-wwc-legacy-hnk-intl-spt-dst/index.html> (last updated Aug. 22, 2023, 12:45 AM).

²⁹ Jean Williams, *Women's Soccer Evolution a Product of Pre-World-Cup-era Resolve*, SPORTS ILLUSTRATED (June 9, 2015), <https://www.si.com/soccer/2015/06/09/womens-soccer-world-cup-history-evolution>.

³⁰ Matthew Wills, *The Origins of Women's Soccer*, JSTOR DAILY (July 5, 2019), <https://daily.jstor.org/the-origins-of-womens-soccer/>.

³¹ Samantha Lewis, *Out of the Shadows: How Women's Football Flourished After 50 Years of Darkness*, ABC NEWS AUSTRALIA (Jul. 19, 2023), <https://www.abc.net.au/news/2023-07-20/out-of-the-shadows-womens-football-soccer-fifa-world-cup-2023/102321436>.

³² Babel, *supra* note 6.

own ways -- and echoed FA's sentiments in their own ways.³³ As a result, women's soccer was left entirely engulfed in darkness, virtually abandoned for decades that felt like eons.³⁴

The FA finally lifted the ban on women's soccer in July 1971,³⁵ following a global second wave of feminism in the 1960s and 1970s.³⁶ The effects of the feminism movement and Title IX legislation pushed FIFA, international soccer's governing body, to officially recognize women's soccer in 1980 and designed its first women's version of the widely known Men's World Cup eleven years later in 1991.³⁷ The International Olympic Committee soon followed FIFA's lead, including women's soccer in the games for the 1996 Summer Olympics in Atlanta for the first time.³⁸

While the game was thriving, it was not until the 1999 Women's World Cup that women's soccer truly exploded in popularity. In front of more than 90,000 fans in the stands and hundreds of thousands more watching from home, the USWNT defeated China in a nail-biting penalty kick shootout to win their second world championship.³⁹ The iconic image of Brandi Chastain kneeling after scoring the Americans' winning penalty, clutching her jersey in one hand and victory in the other, shrieking with triumph,⁴⁰ became a defining moment for the USWNT and women's soccer as a whole.⁴¹ Since the 1999 edition of the tournament, six more Women's World Cups have been held all across the globe, each attracting larger audiences and increasing the sport's momentum.

³³ Lewis, *supra* note 31.

³⁴ Lewis, *supra* note 31.

³⁵ *Id.*

³⁶ *Second Wave Feminism: Collections*, GALE NORTH AMERICA, <https://www.gale.com/primarysources/womensstudies/collections/secondwavefeminism#:~:text=The%20second%20wave%20feminism%20movement,spread%20to%20other%20Western%20countries> (last visited Oct. 1, 2024).

³⁷ Bubel, *supra* note 6.

³⁸ Bubel, *supra* note 6.

³⁹ *U.S. Soccer Timeline*, U.S. SOCCER, <https://www.ussoccer.com/history/timeline> (last visited Nov. 10, 2023).

⁴⁰ Roberto Schmidt, Photograph of Brandi Chastain, in Jennifer Bubel, *How Women's Soccer Has Evolved*, AS USA, <https://en.as.com/soccer/how-womens-soccer-has-evolved-n/> (last updated Mar. 8, 2023, 8:53AM),.

⁴¹ See generally Bubel, *supra* note 6 (providing a historical background concerning the rise in popularity of women's soccer).

B. *The United States Women's National Team*

A history of women's soccer would not be complete without extensive reference to the United States Women's National Team. Long before the celebrated 1999 squared put women's soccer on the global map,⁴² teams, players, and coaches of years past faced seemingly insurmountable struggles.

Women's soccer in the United States began as a college sport in the years after the Civil War.⁴³ The U.S. Football Association (USFA, now the United States Soccer Federation or USSF) was then incorporated in New York on May 30, 1914, and was granted full membership in FIFA in June of that same year.⁴⁴ Title IX's ratification in 1972 dramatically increased women's participation in sports, prompting the National Collegiate Athletic Association (NCAA) to sponsoring women's athletics in all three of its divisions.⁴⁵ Particularly, because collegiate administrators used women's soccer as a cost-effective way to comply with Title IX, youth leagues (with young girls who would soon grow into collegiate women athletes) swelled.⁴⁶ As a result, participation in women's soccer sky-rocketed from 1,855 student-athletes at the time of the law's inception to now more than 30,000 young women playing soccer at the collegiate level.⁴⁷

The USWNT was officially formed in 1985-almost by accident as it so happens-when the United States was invited to play in an

⁴² *Id.*

⁴³ U.S. SOCCER, *supra* note 39.

⁴⁴ *Id.*

⁴⁵ See Aimee Lewis, *The History Makers and the Groundbreakers: How the US Became Women's Soccer's Dominant Force*, CNN SPORTS, <https://www.cnn.com/2023/07/21/sport/uswnt-success-history-womens-world-cup-spt-intl/index.html> (last updated July 21, 2023, 10:12AM).

⁴⁶ Alexandra E Petri, *Once an 'Easy Way Out' for Equality, Women's Soccer Is Now a U.S. Force*, THE NEW YORK TIMES (June 27, 2022), <https://www.nytimes.com/2022/06/27/sports/soccer/title-ix-soccer.html#:~:text=New%20York%20Times-,Once%20an%20'Easy%20Way%20Out'%20for%20Equality%2C%20Women's%20Soccer,schools%2C%20universities%20and%20club%20teams>.

⁴⁷ Lewis, *The History Makers and the Groundbreakers: how the US Became Women's Soccer's Dominant Force*, *supra* note 45.

international tournament “The Mundalito” in Italy.⁴⁸ It was the 1999 Women’s World Cup, though, that represented a momentous turning point for both the team and for the sport.⁴⁹ The excitement surrounding the USWNT’s second world title, coupled with the tournament taking place on American soil, brought unprecedented attention to the team.⁵⁰ The players of the 1999 team, dubbed the “99ers”, are recognized as pioneers for women’s soccer in the United States.⁵¹ Soon, the new millennium positioned the USWNT and its players at the top of the mountain, and they have yet to come down as they currently have four World Cup titles and four Olympic gold medals to their name.⁵² Following an underwhelming performance during their four matches in the tournament, the American women flamed out in the Round of 16.⁵³ FIFA’s most recent rankings name the USWNT as the third-best team in the world.⁵⁴

Despite the abundant quality and quantity of accolades achieved by the USWNT in their relatively short history, their struggles to rise to the top are similarly abundant in quality and quantity. Prior to their championship run in the influential 1999 Women’s World Cup, USWNT players played in absurd conditions. In the 1980s, they would buy their own cleats,⁵⁵ go around selling tickets to and attempting to garner interest for their games,⁵⁶ and would even

⁴⁸ Caitlin Murray, *The Inside Story of how the USWNT Became the most Dominant Force in Women’s Football*, GOAL, <https://www.goal.com/story/inside-story-uswnt-dominance/index.html> (last visited Nov. 10, 2023).

⁴⁹ See generally Bubel, *supra* note 6.

⁵⁰ See generally Murray, *supra* note 48.

⁵¹ Lizzy Goodman, *The Best Women’s Soccer Team in the World Fights for Equal Pay*, THE N. Y. TIMES MAG. (June 10, 2019), <https://www.nytimes.com/2019/06/10/magazine/womenssoccerinequalitypay.html?action=click&module=RelatedLinks&pgtype=Article>.

⁵² *History: U.S. Soccer Team Honors*, U.S. SOCCER, <https://www.ussoccer.com/history/awards> (last visited Sept. 11, 2024).

⁵³ Emma Hurby, *World Cup history: 2023 marks earliest exit ever for USWNT*, JUST WOMEN’S SPORTS (Aug. 6, 2023), <https://justwomenssports.com/reads/uswnt-world-cup-history-years-wins-exits-2023/>.

⁵⁴ *Women’s Ranking*, FIFA, https://www.fifa.com/fifa-world-ranking/women?dateId=ranking_20230825 (last updated Aug. 16, 2024).

⁵⁵ Lewis, *The History Makers and the Groundbreakers: how the US Became Women’s Soccer’s Dominant Force*, *supra* note 45.

⁵⁶ *Under Pressure*, *supra* note 15.

have to sew badges onto oversized uniforms handed down from the men's team.⁵⁷ But one of the most notable conditions that female soccer players at this time were forced to deal with day in and day out was the substantial They stretched and pulled themselves in every which way in valiant, yet oftentimes unsuccessful, efforts to make their full-time work schedules fit in with their (also full-time) schedules as professional members of an international squad.⁵⁸ Members of the team would receive \$10 *per day* and only a \$500 bonus for winning the world's largest and most famous international tournament to this day, the Women's World Cup, despite hours and hours exhausting training and competing.⁵⁹ Former USWNT player, Caitlin Murray, recalled that her fellow teammates were "thrilled because there wasn't any money in women's soccer, and they knew it."⁶⁰ Although these conditions have improved a touch since 1999, they unfortunately remain for players in the modern era. For instance, the WNT was promised a bonus for winning gold in Olympic competition, whereas earning only a medal was sufficient for the MNT to receive a similar bonus.⁶¹

C. *The Matildas*

Similar to women's soccer in the United States, the sport in Australia emerged in the early 20th century.⁶² On September 24, 1921, North Brisbane defeated South Brisbane in the country's first public soccer match between two women's teams.⁶³ Fifty years after that hot September game, multiple leagues and teams regularly competed in Australia.⁶⁴ After the success of the Women's Soccer Championships,

⁵⁷ Lewis, *The History Makers and the Groundbreakers: how the US Became Women's Soccer's Dominant Force*, *supra* note 45.

⁵⁸ Murray, *supra* note 48.

⁵⁹ Lewis, *The History Makers and the Groundbreakers: how the US Became Women's Soccer's Dominant Force*, *supra* note 45.

⁶⁰ Murray, *supra* note 48 quoting Caitlin Murray, *The National Team: The Inside Story of the Women Who Changed Soccer* (Abrams Press, 2019).

⁶¹ Lewis, *The History Makers and the Groundbreakers: how the US Became Women's Soccer's Dominant Force*, *supra* note 45.

⁶² *History of Women's Football in Australia*, FOOTBALL AUSTRALIA, <https://www.footballaustralia.com.au/history-womens-football-australia> (last visited Nov. 10, 2023).

⁶³ *Id.*

⁶⁴ *Id.*

team officials met “to discuss the establishment of an organization to promote, foster, and manage women’s football in Australia.”⁶⁵ It took an invitation to participate in the first World Women’s Invitational Tournament in Chinese Taipei in 1978 for Australia to put together its first national squad.⁶⁶ They played every now and then through the next decade, traveling to the already-minimal number of international women’s tournaments available at the time.⁶⁷ Australia and eleven other nations, including the United States and host nation China, were invited to compete in the FIFA Women’s World Cup.⁶⁸

The Australian public soon voiced their affection for their women’s national team, and their voices were soon heard loud and clear by an Australian news network.⁶⁹ In conjunction with the Australian Women’s Soccer Association (AWSA,) the Special Broadcasting Service ran a television event in 1995 to give the women’s team a new name.⁷⁰ After the vote, the squad was forever known as Matildas.⁷¹ Since then, the Matildas have qualified for every FIFA Women’s World Cup from that year of the vote through 2023, with their most recent qualification coming automatically from their position as co-host of the tournament.⁷²

While qualifying for the tournament was once an achievement in itself, expectations have since risen. Between 2007 and 2015, the Matildas reached the quarterfinals in four consecutive World Cups⁷³ and won the AFC Women’s Asian Cup against North Korea in 2010.⁷⁴ The 2023 edition of the Women’s World Cup, co-hosted by Australia

⁶⁵ *Id.*

⁶⁶ *History of the Matildas*, FOOTBALL AUSTRALIA, <https://www.footballaustralia.com.au/history/matildas> (last visited Sept. 17, 2024).

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *History of the Matildas*, *supra* note 66.

⁷³ Joshua Thomas, *The Matildas’ FIFA Women’s World Cup Results, Records, and top Goalscorers*, OPTUS SPORT (July 15, 2023, 7:11 PM), <https://sport.optus.com.au/news/womens-world-cup-2023/os59450/matildas-fifa-womens-world-cup-results-records-top-goalscorers>.

⁷⁴ Adam Hancock, *‘Incredible Growth’: The rise of Australian Women’s Football*, ALJAZEERA (July 18, 2023), <https://www.aljazeera.com/sports/2023/7/18/world-cup-2023-rise-of-australian-womens-football>.

and New Zealand, was expected to be the Matildas' most difficult test yet, as fans hoped for the team's continued success. Not only did the team rise to the occasion, they exceeded even the highest of expectations. Despite their heartbreaking loss in the semifinals, the Matildas captured the heart of the nation.⁷⁵ The Matildas' success has even led to a \$200 million pledge from the Australian government to support women's sports.⁷⁶ FIFA's most recent rankings place the Matildas as the eleventh-best team in the world,⁷⁷ and with the 2023 seasons concluding on such a high note, it is safe to say that the island nation has gone "Matildas mad."⁷⁸

II. USING THE LAW TO REMAIN GOAL ORIENTED

This section will outline the legal frameworks that supported both the USWNT and the Matildas in their respective struggles for equal pay. By examining relevant employment laws, collective bargaining processes, and key legal precedents, we will explore how these teams challenged pay disparities and advanced their cases within the legal systems of the United States and Australia.

A. *Employment & Labor Law in the United States*

Although the primary focus of the Civil Rights Act of 1964 was to prohibit *racial* discrimination in employment settings,⁷⁹ discrimination based on one's sex was also added into the mix.⁸⁰ Southern representatives proposed adding "sex" to Title VII's prohibitions in an effort to defeat the bill and make it less attractive to others in the House of Representatives, but in fact, it had the opposite

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Women's Ranking*, *supra* note 54.

⁷⁸ Thomas, *supra* note 73.

⁷⁹ This discrimination can occur in almost every aspect of employment, such as in recruitment, hiring, wages, and discipline. Most relevant to this note is discrimination based on sex showcased through discrepancies in pay and conditions.

⁸⁰ George Rutherglen, *Title VII as Precedent: Past and Prologue for Future Legislation*, 159 STAN. J. OF CIV. RTS. & CIV. LIBERTIES 159, 167 (June 2014).

effect.⁸¹ Rather than undermining the Act's primary purpose, it provided a solid stepping stone to achieving true protection for women against employment discrimination.⁸² The parliamentary maneuvers used to successfully add "sex" to the Civil Rights Act were extraordinary and paved the way for subsequent legislation with similar goals.⁸³

Sex-based discrimination involves treating an employee or prospective employee unfavorably solely due to their sex.⁸⁴ Discriminatory treatment that negatively affects the terms or conditions of employment is considered unlawful.⁸⁵ Terms or conditions can encompass job's responsibilities, work hours, salary, and performance evaluation standards.⁸⁶ In unionized workplaces, such as those involving the USWNT and the Matildas, these terms are typically negotiated through collective bargaining.⁸⁷ Whether the discrimination is intentional or unintentional, explicit or implicit, major or minor, is immaterial.⁸⁸ In other words, if an employer excludes or harms workers based on their sex, it qualifies as discrimination under Title VII.⁸⁹ This can include discharge, denial of promotion, or being subjected to less favorable employment conditions compared to colleagues of the opposite sex.⁹⁰

The Civil Rights Act laid the foundation for further legal protections against employment discrimination.⁹¹ After being upheld by the United States Supreme Court, the Act and its advocates could continue pursuing its objectives without concern for constitutional

⁸¹ Serena Mayeri, *Intersectionality and Title VII: A Brief (Pre)-History*, 95 B.U. L. REV. 713, 716 (2015).

⁸² *Id.*

⁸³ Rutherglen, *supra* note 80, at 162.

⁸⁴ *Know Your Rights at Work: Gender Discrimination at Work*, EQUAL RTS. ADVOCS., <https://www.equalrights.org/issue/economic-workplace-equality/discrimination-at-work/> (last visited Dec. 22, 2023).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Know Your Rights: Sex Discrimination*, ACLU, <https://www.aclu.org/know-your-rights/sex-discrimination> (last visited Dec. 22, 2023).

⁹¹ Rutherglen, *supra* note 80, at 162.

challenges.⁹² Most notably, the Equal Pay Act of 1963 (EPA) specifically addresses sex-based pay discrimination,⁹³ making it unlawful for employers to pay employees of opposite sexes differently for “substantially similar” work performed under similar conditions.⁹⁴ This law, like Title VII, follows an “equality” or “sameness” theory, which describes women as substantially similar to men with regards to employment.⁹⁵ As part of their litigious crusade for equal pay, several USWNT players alleged that the USSF, the employer of both the women’s and men’s national teams, engaged in a wage discrimination based on sex in violation of Title VII and the EPA⁹⁶ in a complaint filed with the Equal Employment Opportunity Commission (EEOC).⁹⁷

Several elements of employment are analyzed for similarities in EPA claims, like the one filed by USWNT players. Firstly, the skill,⁹⁸ effort,⁹⁹ and responsibility¹⁰⁰ involved in a female employee’s job must be substantially similar to that of their male counterparts and are considered in depth.¹⁰¹ Secondly, working conditions must also be substantially similar, taking into account both physical surroundings and job-related hazards.¹⁰² Thirdly, the establishment that houses the

⁹² *Id.*

⁹³ *Know Your Rights at Work: Pay Discrimination*, EQUAL RTS. ADVOCS., <https://www.equalrights.org/issue/economic-workplace-equality/pay-discrimination/> (last visited Dec. 22, 2023).

⁹⁴ EQUAL RTS. ADVOCS., *Know your Rights at Work: Gender Discrimination*, *supra* note 84.

⁹⁵ Kathryn Abrams, *Title VII and the Complex Female Subject*, 92 MICH. L. REV. 2479, 2479-80 (1994).

⁹⁶ *Id.*

⁹⁷ Honey Campbell, *Superior Play, Unequal Pay: U.S. Women’s Soccer and the Pursuit for Pay Equity*, 51 U.S.F. L. Rev. 545, 552 (2017).

⁹⁸ Skill can be measured by the position’s, not the employee’s, experience, and training for that position.

⁹⁹ Effort is considered by the physical or mental exertion necessary to perform a particular job.

¹⁰⁰ Responsibility may be determined through the degree of accountability for that job.

¹⁰¹ Off. of the Assistant Sec’y for Admin. & Mgmt., *Equal Pay for Equal Work*, U.S. DEPT. OF LAB., <https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/internal/policies/equal-pay-for-equal-work> (last visited Dec. 22, 2023).

¹⁰² *Id.*

alleged pay discrepancy must be the same.¹⁰³ Fourthly, the complainant must demonstrate that they were “paid at a lower wage than members of the opposite sex.”¹⁰⁴ In response to such claims, an employer may then raise affirmative defenses, primarily dependent on the compensation systems used in their workplace to determine compensation that consider factors *other* than sex, such as seniority systems.¹⁰⁵

The National Labor Relations Act (“NLRA”) also provided a necessary part of the foundation for the USWNT and its players to pursue equal pay in the courts. Passed in 1935, the legislation sought to assert and preserve the fundamental right for employees to seek better working conditions, including wages.¹⁰⁶ The legislation does so in a variety of ways, but the one most relevant here is the legislation’s protection of collective bargaining. Collective bargaining can be defined as “the process in which working people, through their unions, negotiate contracts with their employers to determine their terms of employment.”¹⁰⁷ These contracts are generally called “collective bargaining agreements,” or “CBAs.”¹⁰⁸ Prior to the USWNT players’ lawsuit, the players and their union were parties to a CBA with their federation, or employer, but the lawsuit soon emerged as players deemed the wages and other conditions outlined in the agreement as unfair and ultimately decided to file suit in an effort to rectify the situation.

¹⁰³ *Id.*

¹⁰⁴ Jason Zuckerman, *Whistleblower Rewards and Protections Blog*, ZUCKERMAN LAW: WHISTLEBLOWER REWARDS AND PROTECTIONS BLOG, (citing *Cornish v. District of Columbia*, 67 F. Supp. 3d 345, 360-361 (D.D.C. 2014) (last updated Aug. 19, 2024).

¹⁰⁵ Off. of the Assistant Sec’y for Admin. & Mgmt., *supra* note 101.

¹⁰⁶ Nat’l Lab. Rel. Bd., *Nat’l Lab. Rel. Act*, <https://www.nlr.gov/guidance/key-reference-materials/national-labor-relations-act> (last visited Oct. 27, 2024).

¹⁰⁷ American Fed’n of Lab. and Cong. of Indus. Org., *Collective Bargaining*, <https://aflcio.org/what-unions-do/empower-workers/collective-bargaining> (last visited Oct. 27, 2024).

¹⁰⁸ Soc’y for Hum. Res. Mgmt., *What is a Collective Bargaining Agreement?*, (Sept. 4, 2024) <https://www.shrm.org/topics-tools/tools/hr-answers/collective-bargaining-agreement>.

B. *Employment & Labor Law in Australia*

In contrast to the USWNT, the Matildas took a different to address pay and condition discrimination. Instead of using employment law-backed tactics, like filing a lawsuit in federal court against their federation, the Matildas invoked an age-old right with deeply rooted in labor law: the right to strike.

The Federal Parliament in Australia enacted the *Conciliation and Arbitration Act 1904*, which created a Court of Conciliation and Arbitration tasked with preventing and settling industrial disputes.¹⁰⁹ This, in turn, created Australia's first industrial relations system.¹¹⁰ The *Workplace Relations Act 1993* (Cth) provided the most notable expansion of Australian labor law, particularly by providing for the negotiation and enforcement of collective employment agreements while regulating union and employer activities.¹¹¹ Freedom of association was notably included in this legislation,¹¹² mirroring the United States' National Labor Relations Act.¹¹³

Equality was a topic of momentous significance in Australia during the 1970s, as well, especially following what is known as the "Equal Pay Decision."¹¹⁴ This ruling by the Commonwealth Conciliation and Arbitration Commission established the right to equal pay for equally valued work.¹¹⁵ Here, separate wages for women and men were abolished and replaced by a unified rate.¹¹⁶

When labor rights are violated, though, industrial action, as opposed to litigious strategies, may be taken in Australia to right the scales. Industrial action refers to actions by an employee to improve their wages and conditions, such as through strikes or other work-stoppages.¹¹⁷ Strikes allow employees to express discontent with the

¹⁰⁹ *Id.*

¹¹⁰ *Australia's Industrial Relations Timeline*, FAIR WORK OMBUDSMAN, <https://www.fairwork.gov.au/about-us/legislation/the-fair-work-system/australias-industrial-relations-timeline> (last visited Dec. 22, 2023).

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ Nat'l Lab. Rel. Bd., *supra* note 106.

¹¹⁴ FAIR WORK OMBUDSMAN, *supra* note 110.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Industrial Action*, AUSTRALIAN UNIONS, <https://www.australianunions.org.au/fact>

terms and conditions of their employment in order to protect their interests.¹¹⁸ A ruling by the High Court¹¹⁹, in *Victoria v. Commonwealth*¹²⁰ upheld the validity of Federal Parliament exercising its power to enact legislation containing the right to strike.¹²¹ As a result, Australian law now provides for the ability to strike.¹²² However, strikes are only considered to be “protected actions” during a period when a CBA is being negotiated,¹²³ unlike in the United States. Otherwise, they are unlawful under Australian law, and those engaged in strikes are faced with the potential for severe legal consequences.¹²⁴

III. KICKING OFF EFFORTS TO ACHIEVE EQUAL PAY

Women in this sport sacrifice as much, if not *more*, than their male counterparts. Women spend long periods away from their families, homes, and normal lives to be a dedicate themselves to a goal larger than themselves while carrying the heavy societal expectation to be the primary caretaker of these things.¹²⁵ There is no motive other than the ferocious desire to represent their country on the largest stage.¹²⁶ And yet, they are consistently paid less than the men. Their commitment comes with the understanding of the immense impact on their lives, and, like in many other sports, they are pressured to avoid speaking on issues outside of their immediate competition. Still, the

sheet/industrial-action/ (last visited Dec. 22, 2023).

¹¹⁸ *Id.*

¹¹⁹ See generally HIGH COURT OF AUSTRALIA, *Role of the High Court*, <https://www.hcourt.gov.au/about/role-of-the-high-court> (last visited March 1, 2024) (“The High Court is the highest court in the Australian judicial system.”).

¹²⁰ Richard Dalton & Richard Groom, *The Right to Strike in Australia: International Treaty Obligations and the External Affairs Power*, 1 MELBOURNE J. OF INT’L L. 1, 1 (2000).

¹²¹ *Id.*

¹²² *Id.*

¹²³ AUSTRALIAN UNIONS, *supra* note 117; *National Labour Law Profile: Australia*, INTERNATIONAL LABOUR ORGANIZATION, [HTTPS://WWW.ILO.ORG/IFPDIAL/INFORMATION-RESOURCES/NATIONAL-LABOUR-LAW-PROFILES/WCMS_158892/LANG--EN/INDEX.HTM](https://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158892/LANG--EN/INDEX.HTM) (last visited Dec. 22, 2023).

¹²⁴ *Id.*

¹²⁵ Goodman, *supra* note 51.

¹²⁶ Murray, *supra* note 48.

USWNT and the Matildas, albeit with differing strategies, refused to just shut up and play.¹²⁷

This discussion will outline the events surrounding the USWNT's and the Matildas' fight for pay equity, detailing actions before, during, and after they demanded equal compensation to their male counterparts.

A. *The United States Women's National Team*

On March 29, 2016, five of the USWNT's most prominent players—Alex Morgan, Hope Solo, Carli Lloyd, Megan Rapinoe, and Rebecca (Becky) Sauerbrunn—filed a historic complaint with the Equal Employment Opportunity Commission (EEOC).¹²⁸ In their complaint, the players alleged that their employing federation, USSF, unlawfully engaged in discrimination in the wages enumerated in the USWNT CBA based on sex in violation of Title VII and the EPA.¹²⁹ With significant financial reports used as evidence, USWNT players intended to expose an unfair and discriminatory compensation and bonus structure of USSF. One example showed that from 2013 to 2016, a male player would receive an average of \$262,320 for competing in twenty exhibition games, while a female player earned a maximum of \$99,000.¹³⁰ This kind of figure is especially jarring considering not only how much more success the USWNT has had, but also that they bring in more of a profit, as well.¹³¹ In essence, the women's team would need to continue their “world-beating” pace just to keep up financially with the men's team. The USWNT also argued that because both teams had the same job duties, including duties requiring equal skill, effort, and responsibilities, and performed those jobs under similar conditions, the USSF was legally obligated to pay them equally.¹³² They also argued that the imbalance in pay could not be justified by a

¹²⁷ *Under Pressure*, *supra* note 15.

¹²⁸ Campbell, *supra* note 97.

¹²⁹ *Id.*

¹³⁰ Goodman, *supra* note 51.

¹³¹ *Id.*

¹³² Campbell, *supra* note 97.

seniority, merit, or incentive system.¹³³ As such, the only explanation to the gross disparity in wages was sex.¹³⁴

Three years later, on February 5, 2019, the EEOC concluded its investigation and allowed the players to sue in federal court.¹³⁵ Twenty-eight USWNT players filed lawsuit in federal court against USSF, again putting forth their claim that the federation violated Title VII and the EPA.¹³⁶ Similarly, the complaint alleged that although the women's team performed substantially equal work, they were (illegally) denied equal playing, training, and travel conditions, as well as equal promotional and developmental support.¹³⁷ Their first victory in court came as the court certified the players as a class in November 2019, which allowed any player from the team since February 2015 to join the class and become part of the suit.¹³⁸ Another blow to the USSF's case came when the USWNT presented documents containing statements of former USSF President Carlos Cordeiro and his predecessor Sunil Gulati saying that USWNT players had less physical ability and responsibility than the USMNT.¹³⁹ The EEOC also filed an amicus curiae brief in support of the USWNT, arguing that both "quantity of games – the total number – as well as quality of games – the importance, opponent ranking, and results of those games" must be considered when determining the wage rate of players.¹⁴⁰ To combat the USWNT's allegations, the USSF claimed that the federation has supported women's soccer to the and did not, under any circumstances, discriminate against the WNT players on the basis of gender.¹⁴¹ Specifically, the federation argued that the MNT generated more revenue than the WNT, the WNT negotiated a different salary

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ L. Elaine Halchin, CONG. RSCH. SERV., IN11186, *U.S. Women's Soccer Team and Equal Pay*, (2019).

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Katherine Mazaheri & Hanna Lunsford, *The Goal to Become Equal: The Women's National Soccer League and the Equal Pay Game*, OKLA. BAR J. 32, 33 (2020).

¹³⁹ *Id.* at 34.

¹⁴⁰ *Fact Sheet: Notable EEOC Litigation Involving Pay Discrimination*, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, <https://www.eeoc.gov/fact-sheet-notable-eeoc-litigation-involving-pay-discrimination> (last visited Jan. 26, 2024).

¹⁴¹ Campbell, *supra* note 97 at 547.

structure than the MNT, and both teams' CBAs were negotiated at different times.¹⁴² After months of strenuous litigation, though, the Court ruled in favor of USSF, opining that the USWNT did not establish a prima facie case under the EPA.¹⁴³ The women continued to exhaust their legal remedies, through more appeals and more briefs, as well as remedies that directly appealed to the general public.

Not only were USWNT players heavily involved in their suit against their federation, but they were also entrenched in training for the 2019 Women's World Cup. The team knew that if they could win the tournament that year, they could possibly use it as leverage in their fight for equal pay.¹⁴⁴ That goal was ultimately accomplished, as the USWNT won the World Cup for a second time in a row.¹⁴⁵ Additionally, the team took to social media to spread their message to anyone who would listen. Namely, the team created and promoted a post on Time's Up official Instagram account where actresses, and USWNT players stood side by side coupled with a caption that read "It's time for U.S. Soccer Federation to pay their women players what they deserve."¹⁴⁶ The discussion regarding equal pay eventually made its way from a federal courthouse in southern California to celebrity interview videos, sporting event sidelines, national news desks, and household dinner tables across the country.¹⁴⁷ No matter how intricate or complex the conversation was in any of these settings, though, Becky Sauerbrunn asserted that "the bottom line is simple. It's wrong for us to be paid and valued less for our work because of our gender."¹⁴⁸ All the players wanted was equal pay for equal work.¹⁴⁹

¹⁴² *Id.*

¹⁴³ *Fact Sheet*, *supra* note 140.

¹⁴⁴ *Under Pressure*, *supra* note 15.

¹⁴⁵ *Matches: Results*, U.S. SOCCER, <https://www.ussoccer.com/all-matches#results> (last visited Jan. 26, 2024).

¹⁴⁶ TIME'S UP (@timesupnow), INSTAGRAM (Apr. 7, 2019), https://www.instagram.com/timesupnow/p/Bv-dOwZguUP/?hl=en&img_index=1.

¹⁴⁷ Andrew Das, *U.S. Soccer and Top Players Agree to Guarantee Equal Pay*, NEW YORK TIMES (May 18, 2022), <https://www.nytimes.com/2022/05/18/sports/soccer/us-soccer-equal-pay-deal.html>; *See generally* Goodman, *supra* note 51.

¹⁴⁸ Goodman, *supra* note 51.

¹⁴⁹ Andrews Das, *Pay Disparity in U.S. Soccer? It's Complicated*, NEW YORK TIMES (Apr. 21, 2016), <https://www.nytimes.com/2016/04/22/sports/soccer/usmnt-uswnt-soccer-equal-pay.html>.

Ultimately, the WNT and USSF settled in 2022 for a total of \$24 million.¹⁵⁰ The settlement also contained an agreement that USSF would equalize men's and women's payment in all competitions in their next CBA with USSF.¹⁵¹ Additionally, in an effort to minimize the negative effects of unequal World Cup prize money from FIFA, the USSF pledged to pool the prize money earned by both the men's and women's teams and divide that money equally beginning in 2022 and 2023.¹⁵² Although the settlement is technically not effective until a new CBA is ratified,¹⁵³ it persists as a monumental win for the USWNT, women's sports, and women overall¹⁵⁴ (even if equal pay is something the players believed they should have had all along).¹⁵⁵

A win is a win, but it certainly does not come without costs. Legal fees in the dispute cost both sides of millions of dollars. Social costs were not spared, either, as USWNT players remained divided concerning the equal pay lawsuit. For instance, former USWNT goalkeeper Hope Solo filed a formal notice of objection in the lawsuit.¹⁵⁶ Nevertheless, the struggles fought decades ago and the fights endured to this day help prove that "investment in women's soccer is worth it."¹⁵⁷

B. *The Matildas*

Prolific wage gaps not only rear their ugly heads in the United States, but also plague many international teams, as well.¹⁵⁸ Like the USWNT, the Matildas' surge to glory was preceded by a dark and arduous struggles resulting from unequal pay. The Matildas of

¹⁵⁰ *Fact Sheet*, *supra* note 140.

¹⁵¹ *Id.*

¹⁵² Andrew Das, *U.S. Soccer and Top Players Agree to Guarantee Equal Pay*, NEW YORK TIMES (May 18, 2022), <https://www.nytimes.com/2022/05/18/sports/soccer/us-soccer-equal-pay-deal.html>.

¹⁵³ *Fact Sheet*, *supra* note 140.

¹⁵⁴ *Under Pressure*, *supra* note 15.

¹⁵⁵ Das, *supra* note 152.

¹⁵⁶ *Ex-goalkeeper Hope Solo Objects to US Soccer Equal Pay Deal*, AP NEWS (Oct. 12, 2022, 1:32 AM), <https://apnews.com/article/womens-soccer-entertainment-sports-lawsuits-6fccd2e140d9adf9fa212c47603b9a5a>.

¹⁵⁷ *Under Pressure*, *supra* note 15.

¹⁵⁸ Musachio, *supra* note 22.

decades prior wore uniforms with taped-on numbers or handed down from the men's team.¹⁵⁹ Players did not train in stadiums with media capturing every pass, kick, and score,¹⁶⁰ but instead practiced on the gravel next to the field.¹⁶¹ Until 2013, the team did not even have the right not to have to wash their own tattered uniforms until 2013.¹⁶² Arguably the worst condition faced by early Matildas was not the lack of compensation, but instead the absence of competition altogether.¹⁶³ Instead of being *paid* to play, Matildas had to *pay* to play.¹⁶⁴ From baking cakes¹⁶⁵ to working at Pizza Hut¹⁶⁶ to even posing for and selling a nude calendar in 1999,¹⁶⁷ Australia's women soccer players were grasping at straws just to make ends meet between shifts and matches. In fact, unless a Matilda had a contract to play for a professional team either domestically or abroad, it was unlikely that the player could earn the average Australian wage of \$63,700¹⁶⁸ or even be above the country's poverty line.¹⁶⁹ Thus, the salary for a Matilda was explicitly illegal, as it did not reside above the poverty line.¹⁷⁰

¹⁵⁹ Henry Bushnell, *Australia Lost its Semifinal, but Won its Women's World Cup Going Away*, YAHOO! SPORTS (Aug. 16, 2023), <https://sports.yahoo.com/australia-womens-world-cup-success-records-history-223722491.html>.

¹⁶⁰ *Celebrating 100 Years of Women's Soccer in Australia*, SPORT INTEGRITY AUSTRALIA (Sept. 24, 2021), <https://www.sportintegrity.gov.au/news/integrity-blog/2021-09/celebrating-100-years-of-womens-soccer-australia>.

¹⁶¹ Bushnell, *Australia Lost its Semifinal, but Won its Women's World Cup Going Away*, *supra* note 159.

¹⁶² Rachel Pannett, *Australia's Matildas Call for Equal FIFA Prize Money at the World Cup*, WASHINGTON POST (July 16, 2023, 10:30 PM), <https://www.washingtonpost.com/sports/2023/07/16/australia-matildas-soccer-womens-world-cup-pay/>.

¹⁶³ Bushnell, *Australia Lost its Semifinal, but Won its Women's World Cup Going Away*, *supra* note 159.

¹⁶⁴ *Id.*

¹⁶⁵ Hancock, *supra* note 74.

¹⁶⁶ Ben McKay, *Matildas' Secret Lives: Pizza Hut and Uber*, THE WOMEN'S GAME (June 18, 2019, 10:20 AM), <https://thewomensgame.com/news/matildas-secret-lives-pizza-hut-and-uber-526858/page0>.

¹⁶⁷ Bushnell, *supra* note 159.

¹⁶⁸ *Id.*

¹⁶⁹ Helen Regan, *Australia's Women Footballers get Equal pay in Landmark deal*, CNN, <https://www.cnn.com/2019/11/06/sport/australia-womens-football-equal-pay-intl-hnk/index.html> (last updated Nov. 6, 2019, 12:52 AM).

¹⁷⁰ *Id.*

2015 was the year that the Matildas decided that enough was finally enough.¹⁷¹ The team canceled a sold-out tour to play various locations throughout the United States to take a stand against the Football Federation Australia (FFA) and its reluctance to implement equal pay,¹⁷² becoming “the first and only national sporting team to go on strike in the modern era.”¹⁷³ Team leaders like Sam Kerr, Caitlin Foord, Katrina Gorry, and Steph Catley refused to play in the compete in the already-scheduled tour and their teammates soon followed their lead soon thereafter.¹⁷⁴ The Matildas “marched down Sydney’s Oxford Street . . . to confront the . . . [FFA]” after the federation attempted to provide the players with “contracts worth \$21,000, [well] below [Australia’s] minimum wage.”¹⁷⁵ The decision to strike did not come without serious thoughts and deliberations amongst the team, with players sometimes battling with each other and themselves.¹⁷⁶ On one hand, the tour had already been scheduled and fans in the U.S. were eagerly waiting their arrival. Additionally, players were excited to play the World Champion USWNT.¹⁷⁷ Eventually the Matildas, including former player Kate Gill, recognized their frustration and knew they deserved better than what they were offered.¹⁷⁸ They wanted, *needed* more not only for themselves, but for the next generation, too, and the only way to achieve that was to do something drastic to “get the FFA’s attention” about the seriousness of the team’s dissatisfaction.¹⁷⁹

The strike persisted as players and the public alike urged the FFA to hear the Matildas’ pleas for equal pay.¹⁸⁰ The Matilda’s’ union,

¹⁷¹ Adam Pengilly, *The day the Matildas Walked down Oxford St and went on Strike*, THE SYDNEY MORNING HERALD (Aug. 10, 2023, 7:45 PM), <https://www.smh.com.au/sport/soccer/the-day-the-matildas-walked-down-oxford-st-and-went-on-strike-20230809-p5dv7w.html>.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ Pengilly, *supra* note 171.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ See Stephanie Convery, *The Matildas’ pay Dispute Could Spark real Change*, ABC NEWS (Sept. 10, 2015 10:41 PM), <https://www.abc.net.au/news/2015-09-11/convery-the-matildas-pay-dispute-could-spark-real-change/6767916>.

Professional Footballers Australia, and FFA began to tirelessly renegotiate their CBA.¹⁸¹ In 2019, the parties reached a four-year agreement where the Socceroos and Matildas “[would] receive equal shares of total player revenue.”¹⁸² In a statement following the announcement of the new agreement, FFA proclaimed that the new terms “reflects [soccer’s] determination to address issues of gender equity in all facets of the game and build a sustainable financial model.”¹⁸³ Under the CBA, the men’s and women’s teams would earn 24% of an agreed aggregate of revenue, with 5% of that to be “reinvest[ed] in Australian Youth National Teams.”¹⁸⁴ The 24% will also increase by 1% each year starting in 2019.¹⁸⁵ The CBA also gives players “an increased share of World Cup prize money,” as they will now receive 40%, instead of 30%, for qualifying for the tournament and “50% if they reach the knockout [stage].”¹⁸⁶ Other terms of the agreement include changes to the parental leave policy, ensuring support for Matildas during and after a pregnancy, and upgrades to travel conditions, providing for Matildas to travel business class for international competitions.¹⁸⁷ All in all, the 2019 CBA not only improved compensation, but it also bridged the gap between other disparities between the Socceroos and Matildas.¹⁸⁸

Prior to the strike and subsequent agreement, it was not uncommon for Australian players to retire before reaching 26 years of age because a career as a professional soccer player was sadly not a feasible one.¹⁸⁹ Now, though, players are not only playing past that age but are even training and competing after becoming mothers.¹⁹⁰ In a statement about the union’s and federations commitment to reaching

¹⁸¹ Karen Zraick, *Australian Women and Men’s Soccer Teams Reach Deal to Close Pay Gap*, NEW YORK TIMES, [HTTPS://WWW.NYTIMES.COM/2019/11/06/SPORTS/SOCCER/AUSTRALIA-SOCCER-MATILDAS-EQUAL-PAY.HTML](https://www.nytimes.com/2019/11/06/sports/soccer/australia-soccer-matildas-equal-pay.html) (last updated July 30, 2021).

¹⁸² *Id.*; see also Musachio, *supra* note 22 at 266.

¹⁸³ Zraick, *supra* note 181.

¹⁸⁴ Regan, *supra* note 169.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ Musachio, *supra* note 22 at 266.

¹⁸⁹ Pengilly, *supra* note 171.

¹⁹⁰ *Id.*

a fair agreement, FFA Chairman Chris Nikou remarked, “[Soccer] is the game for everyone, and this new CBA is another huge step toward ensuring that we live the values of equality, inclusivity, and opportunity.”¹⁹¹

IV. SHOOTING FOR THE STARS POST SUITS, STRIKES, & SETTLEMENTS

Although this analysis does not focus on evaluating the Court’s decision in the USWNT lawsuit or the bargaining positions undertaken by the Matildas, it aims evaluate both teams’ respective strategies in their fight for equal pay.

Being on the frontlines of the battle to end gender discrimination and achieve equal pay required heaps of time and money, to say the least. The USWNT’s lawsuit made its way through the judicial system for six years¹⁹² before coming to their settlement, while the Matildas were on strike for two months,¹⁹³ only coming to an agreement about an acceptable CBA in 2019 after four years of conflict. As a part of their settlement with U.S. Soccer, the USWNT was awarded a \$24 million settlement¹⁹⁴ with \$2 million allocated for post-career goals for players and charitable efforts for women’s soccer.¹⁹⁵ U.S. Soccer also committed to paying \$18,000 per player for each game won.¹⁹⁶ That number jumps to \$24,000 per game per win at designated major tournaments.¹⁹⁷ Under their new deal with Football Australia, each of the Matildas’ salaries rose \$19,000.¹⁹⁸

¹⁹¹ Regan, *supra* note 169.

¹⁹² *USWNT Players and U.S. Soccer Settle Equal pay Dispute*, REUTERS (Feb. 22, 2022, 10:38 PM), <https://www.reuters.com/lifestyle/sports/us-soccer-uswnt-reach-agreement-over-equal-pay-dispute-2022-02-22/>.

¹⁹³ Convery, *supra* note 180.

¹⁹⁴ *Fact Sheet*, *supra* note 140.

¹⁹⁵ *USWNT players and U.S. Soccer*, *supra* note 192.

¹⁹⁶ Das, *supra* note 152.

¹⁹⁷ *Id.*

¹⁹⁸ Laurel Wamsley, *Under New Deal, Australian Women’s And Men’s Soccer Will Get Equal Share of Revenue*, NPR (Nov. 6, 2019, 5:29 PM), <https://www.npr.org/2019/11/06/776973749/under-new-deal-australian-womens-and-men-s-soccer-will-get-equal-share-of-revenu>, (“Salaries for the women’s team will rise under the new deal. Top women’s players will make about \$57,000 USD a year in 2020, up from about \$38,000 this year.”).

A. *Evaluation of USWNT & Matilda Strategies*

Although both the USWNT and the Matildas eventually achieved their equal pay goals, the following discussion addresses which teams' strategies reigned superior.

The USWNT utilized the court system through filing a lawsuit. In addition to being able to recover damages,¹⁹⁹ an important advantage of using litigation to challenge discriminatory practices in the workplace is the goal of compelling the employer to cease those discriminatory practices.²⁰⁰ Winning an employment discrimination lawsuit not only benefits not only current employees, but also future workers, who can work without facing the fear or effects of their employers' unlawful behavior.²⁰¹ It sends a clear message that discrimination will not be tolerated in the workplace.²⁰²

The drawbacks of this approach, however, are troubling and plentiful. First, litigation in any capacity can be very lengthy, stressful, and expensive.²⁰³ Here, the USWNT suit accrued millions of dollars in legal fees for both sides.²⁰⁴ Second, despite prohibitions against employer retaliation under employment law, this often times does not stop an employer from finding justifiable ways to take action against a plaintiff-employee.²⁰⁵ Third, employment discrimination cases can be very difficult for plaintiffs to win.²⁰⁶ This is evidenced through the dismissal of the equal pay portion of the USWNT lawsuit and the eventual settlement being far less than the \$66 million originally sought.²⁰⁷ Fourth, there is growing concern about the size of

¹⁹⁹ *The Pros and Cons of Filing a Discrimination Lawsuit*, S. CAL. LAB. L. GRP., PC (June 10, 2022), <https://www.socallaborlawgroup.com/blog/2022/june/the-pros-and-cons-of-filing-a-discrimination-law/>.

²⁰⁰ *Id.*

²⁰¹ *Pros And Cons Of Suing An Employer For Discrimination*, BROWN & CHARBONNEAU, LLP, <https://bc-llp.com/pros-cons-suing-employer-discrimination/> (last visited Mar. 1, 2024).

²⁰² *The Pros and Cons of Filing*, *supra* note 199.

²⁰³ *Id.*

²⁰⁴ Das, *supra* note 152.

²⁰⁵ *Pros And Cons Of Suing*, *supra* note 201.

²⁰⁶ Melissa Hart, *Will Employment Discrimination Class Actions Survive?*, 37 AKRON L. REV. 813, 840 (2004).

²⁰⁷ Jeff Carlisle, *USWNT, U.S. Soccer Federation Settle Equal pay Lawsuit for \$24 million*, ESPN (Feb. 22, 2022, 6:32 AM), https://www.espn.com/soccer/story/_/id/

settlements and what that can mean for future suits. One concern at the heart of this dialogue is that the mere *fear* of being party to a lawsuit compels employers into agreeing to overly large settlements, regardless of the merits of the case.²⁰⁸ As a result, scholars have begun to ponder if such pricey settlements shift the focus of the damages from changing employer behavior to extravagantly compensating plaintiffs.²⁰⁹ Finally, the labor dispute and accompanying lawsuit between the USWNT and U.S. Soccer battered the federation's reputation and strained prominent relationships with sponsors.²¹⁰

The Matildas', on the other hand, took an approach more rooted in labor law than employment law: striking. Although this method does carry its fair share of risks, it certainly presents a more balanced set of pros and cons compared to litigation. Striking employees risk losing healthcare benefits, incurring economic liability for the strike,²¹¹ facing workplace tension,²¹² and even losing their job altogether.²¹³ Deciding to strike, in essence, exposes employees to burdensome uncertainties that can be immediate and harsh. Nevertheless, strikes offer key advantages, of which the Matildas took full advantage. For instance, striking allows employees to withhold their labor – the very labor that their employers rely on—to provide critical leverage when bargaining.²¹⁴ By disrupting the typical power imbalance in an employee-employer relationship, strikers draw attention to many issues like fair pay, such as in the case of the Matildas.²¹⁵ This disruption also places immense pressure on employers to come to an agreement with their employees on points of

37625711/uswnt-us-soccer-federation-settle-equal-pay-lawsuit-24-million.

²⁰⁸ Hart, *supra* note 206, at 836.

²⁰⁹ *Id.* at 821.

²¹⁰ Das, *supra* note 152.

²¹¹ Josh Bivens et al., *What to know About this Summer's Strike Activity*, ECON. POL'Y INST. (Aug. 30, 2023), <https://www.epi.org/publication/summer-strike-activity/#:~:text=Strikes%20are%20a%20powerful%20tool,legally%20replace%20striking%20workers%20permanently>.

²¹² Geoff Dueck Thiessen, *Striking: Pros and Cons*, CLAC (Aug. 20, 2023), <https://www.clac.ca/Your-voice/Article/striking-pros-and-cons>.

²¹³ Bivens et al., *supra* note 211.

²¹⁴ *Id.*

²¹⁵ *Id.*

contention showcased during the strike.²¹⁶ Strikes and their publicized nature also bring the society into the mix. A strike is an opportunity to show others what workers are going through and educate them on how to help, further bolstering pressure on employers.²¹⁷ Here, the strike prompted the wide circulation and discussion of an article titled “The Matildas Have Gone on Strike Because, Oh My God Can We Just Pay Them Properly?” in which Meg Watson writes highlights the strike and the wage disparities behind it.²¹⁸

Both employment and labor law strive to achieve peace. This kind of peace is cultivated through relationships between parties dedicated to not only to listening to each other’s needs but wholeheartedly working to satisfy them. In other words, employment and labor disputes tend to succeed when those involved are focused on being *collaborative* rather than *combative*. Although in the short term the Matilda’s strike was more disruptive given that the players completely stopped working (playing soccer) for a prolonged period of time, the USWNT’s lawsuit was more disruptive in the long term because the relationship between the team and federation soured while working to come to an agreement. Resolving the fight amicably, rather than in court, may not prevent *any* disdain for the opposing party, but it may prevent much of it. However, an advantage shown in both approaches discussed was strength in numbers. In both the USWNT lawsuit and the Matilda’s strike, the players’ mutual support of and confidence in each other and their mission constructed a united front against wage disparity. By standing shoulder to shoulder with their cleats planted firmly on the ground and unwavering in their position, whether in federal court or in the streets of Melbourne, they refused to back down for themselves, for each other, and for girls and women everywhere.

Even though both the USWNT and the Matildas made significant strides toward achieving in equal pay for themselves and paving the way for other women’s national teams can take on their own journey to gender wage disparity, it is clear which method

²¹⁶ Thiessen, *supra* note 212.

²¹⁷ *Id.*

²¹⁸ Meg Watson, *The Matildas Have Gone On Strike Because, Oh My God Can We Just Pay Them Properly?*, JUNKEE (Sept. 9, 2015), <https://junkee.com/the-matildas-have-gone-on-strike-because-oh-my-god-can-we-just-pay-them-properly/65061>.

yielded better results. In addition to being quicker and cheaper than the USWNT's litigation, the Matildas strike illustrated the plethora of benefits that strikes can offer disgruntled employees looking to improve their working conditions.

B. Public Lends Support for Both Teams to Achieve Equal Pay

An advantage shown in both approaches discussed was strength in numbers, but part of what makes this advantage unique was that these numbers are not exclusive to the players on the field; they also included the mass number of fans that cheer on those players from stadium seats and comfy couches. Not only diehard fans were aware of the USWNT lawsuit, The Matilda strike, and their implications, though. Countless members of the public who had never watched a women's soccer match were familiar with both teams' efforts to secure equal pay due to cutting edge media strategies to frame the equal pay issue and create pressure to get the American and Australian federations to provide their players with adequate compensation.

The general public rely on different parts of the media, including most recently social media platforms, to inform them on topics they are either already well-versed in or are completely unacquainted with.²¹⁹ Masses of information are interpreted and boiled down to terms easily understood by anyone who may come across the information.²²⁰ Media creators, whether it be television stations or Instagram accounts, oftentimes anticipate how the information is likely to be received by viewers and followers and how those same viewers and followers will respond in light of the information.²²¹ Particularly, those who strive for change in any arena utilize the media to even induce action by the public and compel people and institutions to act.

The media campaigns produced by the USWNT and the Matildas were no different. The claims made by both teams as part of

²¹⁹ Catherine Happer & Greg Philo, *The Role of the Media in the Construction of Public Belief and Social Change*, 1(1) J. OF SOC. AND POL. PSYCH. 321, 322 (2013) <https://jspp.psychopen.eu/index.php/jspp/article/view/4761/4761.html>.

²²⁰ *Id.*

²²¹ *Id.*

their operation for equal pay held enough merit to stand alone and potentially even come out victorious, but attention garnered by their media campaigns certainly added an extra push. Team posts, videos, and interviews generated a widespread dialogue by people all over the world in all types of varying circles. They all had the USWNT, Matildas, and international women's soccer overall on their tongues while examining the struggle for equal pay. Importantly, those discussions often centered around the failings of governing federations and their executives while simultaneously propping up players that chose to utilize tools available to them, such as domestic labor law and the media. As a result, the joint legal and media strategy attacked the issue from multiple angles and aided in chipping away at the federations' defense of their previous position bit by bit until the previous framework was no more. By controlling the narrative on their struggle rather than allowing for the narrative to control them, the USWNT and the Matildas added the numbers they needed to not only support their position in passing, but to actively advocate for it in the places and to the people that mattered.

In the USWNT lawsuit and the Matilda's strike, the players mutual support of and confidence in each other and their mission constructed a united front in the furtherance of wage disparity. The public, in hearing their message through the media, soon become zealous advocates for the teams and their players in loudening the war cry demanding equal pay. By standing shoulder to shoulder with their competition cleats, stadium sneakers, and high heels planted firmly on the ground and unwavering in their position, whether in Los Angeles federal court, streets of Melbourne, or even in internet blog and comment sections, they refused to back down for themselves, for each other, and for girls and women everywhere.

V. STRATEGIES IN STOPPAGE TIME TO KEEP MOVING UP THE FIELD

In very broad terms, it is undoubtedly a goal to achieve similar results all over the world, from large market teams with developed women's soccer programs like Canada to smaller nations that recently debuted at the Women's World Cup for the first time this past summer. However, if the last few years has shown anything thus far,

it is the importance of winning individual battles in order to win the war for fair pay in international women's soccer. One such victory within reach is the equalization of FIFA World Cup prize money.

Small yet meaningful steps in a positive direction must not be ignored. However, despite being decades past the 1990s, when the *entire* USWNT team received a \$500 bonus for winning the Women's World Cup,²²² current prize disparity is not nearly where it should be and it has not been for some time. For the 2015 Women's World Cup, the USWNT championed the tournament and won \$2 million.²²³ But just the year before, for the 2014 Men's World Cup, the USMNT received \$9 million for simply advancing to the second round.²²⁴ The next edition of the Men's and Women's Tournaments saw a similarly staggering imbalance. The prize money for the 2019 Women's World Cup, where the USWNT won for the second time in a row, totaled \$30 million while the 2018 Men's World Cup's prize was \$400 million.²²⁵

The 2023 Women's World Cup marked several significant improvements from tournaments past. Apart from record ticket sales and match attendance coupled with the promotion of game's focus on inclusivity and teamwork,²²⁶ this summer's tournament provided many firsts for the tournament. First, this edition of the tournament was the first to generate its own profits, separate from its male counterpart.²²⁷ In impressive fashion, FIFA boasted that the women's tournament for generating \$570 million.²²⁸ Second, the 2023 Women's World Cup was also be the first time where *every* player received compensation from FIFA with each federation receiving over \$1.5 million for simply qualifying.²²⁹ Third, and perhaps most importantly for this discussion, the prize money for the 2023 Women's World Cup skyrocketed to \$110 million.²³⁰ Although this is still only a quarter of

²²² Lewis, *supra* note 31.

²²³ Das, *supra* note 152.

²²⁴ *Id.*

²²⁵ Wamsley, *supra* note 198.

²²⁶ Thomas, *supra* note 73.

²²⁷ *2027 Women's World Cup Predictions*, *supra* note 18.

²²⁸ *Id.*

²²⁹ Ben Church, *Four ways the 2023 Women's World cup is Breaking new Ground*, CNN (July 19, 2023 11:31 PM), <https://www.cnn.com/2023/07/19/sport/womens-world-cup-of-firsts-spt-intl/index.html>.

²³⁰ *Id.*

the \$440 million awarded for the Men's World Cup,²³¹ it is certainly demonstrative of FIFA's efforts to equalize the beautiful game.

Because compensation from countless teams' CBAs is partially based on money FIFA provides for participation and success in the Women's World Cup, wages of men's and women's national teams cannot be *truly* equal until the prize for both tournaments are *also* equal.

CONCLUSION

Women's soccer is rooted in strife and struggle, and despite the game it has undergone, that strife and struggle continue today. Equal pay remains a contentious issue between multiple women's national teams and their respective federations, but the USWNT and the Matilda's displayed different yet successful strategies based in employment and labor law to combat wage disparity. The USWNT pursued a gender discrimination lawsuit under Title VII of the Civil Rights Act of 1964 and the Equal Pay Act against U.S. Soccer alleging that their wages were unlawfully lower than those of the men's national team. In contrast, the Matildas went on strike and refused to play for two months to compel Football Australia to negotiate a CBA mandating equal pay for the women's and men's teams. Although both strategies ultimately resulted in equal pay, the Matilda's strike involved less money, less time, and less contempt than the USWNT's lawsuit. Although these teams' valiant efforts produced helpful results, equal pay cannot truly be achieved until FIFA equalizes World Cup money for both men's and women's tournaments. Thus, FIFA should dedicate itself to equalizing World Cup prizes for the next edition of the men's and women's tournaments. Not only should they promise equal prize money to all participants in the tournament, they must follow through on that promise.

Were the steps of the USWNT and Matilda's enough to accomplish *their* goal? It appears that way, although it may not be enough to meet the broader goals of women's soccer *globally*. However, if these trends continue, there is no reason why all teams can't score.

²³¹ *Id.*