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Preface

I am Professor Peter Carfagna '79, the Harvard Law School Faculty Advisor to the Harvard Journal of Sports and Entertainment Law ("JSEL"). It has been a distinct pleasure to work with JSEL's Executive Board this year, and I am delighted to introduce our second and final issue of Volume 17, which features two excellent articles.

The issue opens with *The Gist of It: The Uneasy Triangle of Sports Journalism, Deadlines & Defamation Law* by Professor Michael A. McCann and Samantha Chavez-Salinas, current Harvard Law School student and one of JSEL's incoming editors-in-chief. Drawing on two live defamation actions arising from sports reporting by *The New York Times* and *ESPN*, the authors examine the doctrine of substantial truth and its interaction with First Amendment principles in an era of process journalism, artificial-intelligence-assisted reporting, and declining public trust in media. Professor McCann and Chavez-Salinas argue that, while the law tolerates honest errors made without actual malice, courts should apply the substantial truth doctrine cautiously and media organizations should prioritize accuracy over urgency. Their timely Article also addresses the public figure doctrine in the rapidly evolving landscape of college athletics, where name, image, and likeness compensation has thrust student-athletes into a new kind of public prominence, complicating long-settled questions about who must prove actual malice to prevail in defamation suits.

Next is "*The Motherhood Penalty*": *The Intersection of Law and Social Unrest Concerning Pregnancy Discrimination Against Female Athletes* by Isabelle Marie Silva, a graduating student at University of New Hampshire Franklin Pierce School of Law. Using Dearica Hamby's pregnancy discrimination lawsuit as a contemporary case study, the Article asks why federal employment law leaves professional female athletes vulnerable to pregnancy discrimination in ways not experienced by more traditional employees. The author argues that the intersection of the Pregnancy Discrimination Act, the Pregnant Workers Fairness Act, the National Labor Relations Act, and collective bargaining structures creates doctrinal and practical gaps that fail to adequately safeguard pregnant professional athletes. Although recent legal developments have expanded workplace protections for pregnant workers broadly, professional female athletes remain consistently underprotected due to the unique contours of professional sports employment. To address these deficiencies, the Article

proposes a framework for systemic reform through enhanced league governance, stronger collective bargaining protections, increased institutional support and resources for pregnant athletes, and broader cultural and structural change within professional sports.

As always, I am deeply grateful to JSEL's Editorial Board for their dedication and their work on this volume. Specifically, I would like to thank the graduating members of the Board: Emily Baskin, Bailey Bogle, Natalia Brown, Esdras Camacho, Cassidy Hunt, Gurtaran Johal, Priya Setty, Carolina Stainfeld, Ryan Stam, and Caleigh Sturgeon. Finally, I would like to extend the warmest welcome to JSEL's incoming masthead, including our co-editors-in-chief for the next Volume, Sam Chavez-Salinas and Bert Li. We sincerely hope you enjoy Volume 17, Issue 2.

—Peter A. Carfagna

Editor's Note

We are proud to present Volume 17, Issue 2.

This Summer Issue comes at the close of a lively and rewarding Spring for JSEL. In addition to preparing this publication, we hosted the 2026 Entertainment Law Symposium at Harvard Law School, which brought together practitioners, students, and scholars for a week of conversations on current issues in the entertainment industry. Our Symposium featured discussions on music law and the changing economics of the streaming era with Don Passman; transactional entertainment practice with attorneys from Wilson Sonsini, O'Melveny, and Sheppard Mullin; celebrity representation and litigation with Doug Baldridge; and the growing role of artificial intelligence in entertainment litigation and intellectual property practice. The week reflected the breadth of modern entertainment law and created valuable opportunities for students to engage directly with leaders in the field.

The articles featured in this Issue engage legal questions arising from two areas undergoing especially rapid change: sports media and women's professional athletics. In *The Gist of It: The Uneasy Triangle of Sports Journalism, Deadlines & Defamation Law*, Professor Michael A. McCann and Samantha Chavez-Salinas examine how modern defamation doctrine operates in an increasingly fast-moving media environment shaped by process journalism, AI-assisted reporting, and the commercial pressures of instant publication. Using recent lawsuits involving reporting by *The New York Times* and *ESPN*, the authors explore the limits of the substantial truth doctrine and reconsider how concepts like actual malice and public figure status apply in the modern landscape of college athletics and name-image-and-likeness-driven celebrity. In "*The Motherhood Penalty*": *The Intersection of Law and Social Unrest Concerning Pregnancy Discrimination Against Female Athletes*, Isabelle Marie Silva examines the gaps in federal employment and labor law that leave pregnant professional athletes uniquely vulnerable to discrimination. Through Dearica Hamby's lawsuit against the Las Vegas Aces and the WNBA, Silva analyzes the interaction between antidiscrimination statutes, labor law, and collective bargaining agreements, proposing reforms aimed at strengthening protections and institutional support for athlete-mothers. Together, these pieces reflect JSEL's continued interest in scholarship that addresses how doctrine adapts to changing professional and cultural realities in sports and entertainment.

This Issue also marks a transition point for the Journal as we prepare to welcome new leadership for the next academic year. We are incredibly grateful to every editor and board member who contributed their time and effort throughout this publication cycle. Their thoughtful editing, close attention to detail, and willingness to collaborate made this Issue possible. We also thank our Faculty Advisor, Professor Peter A. Carfagna '79, for his continued guidance and support, and we extend our sincere appreciation to the authors for trusting JSEL with their work.

We hope you enjoy reading this issue as much as we enjoyed bringing it to publication.

Natalia Brown '26 & Esdras Camacho '26

Co-Editors-in-Chief

Harvard Journal of Sports and Entertainment Law



The Gist of It: The Uneasy Triangle of Sports Journalism, Deadlines & Defamation Law

Michael A. McCann* & Samantha Chavez-Salinas**

ABSTRACT

This Article examines how structural pressures in contemporary sports media, particularly the continuous competition for clicks and the rapid adoption of artificial intelligence (“AI”), expose fault lines in defamation law doctrines of substantial truth and public figure status. Using two contemporary disputes, Spears v. New York Times Co. and Taylor v. ESPN, this Article reveals how the “gist” standard can insulate technically false yet reputationally-damaging reporting, and how an expansive conception of who qualifies as a “public figure” can leave relatively obscure college athletes with diminished protection despite limited access to meaningful self-help. Situating these disputes within ongoing transformations of sports journalism, the Article argues that getting the gist right is not enough when inaccuracies materially worsen an individual’s perceived legal culpability or moral blameworthiness. This Article urges courts to apply substantial truth more rigorously, resist overbroad public figure findings particularly in the name, image, and likeness era of quasi-professional college sports and recognize that process journalism and AI amplification can magnify the harm of initial errors. To that end, the Article recommends that media organizations realign incentives toward accuracy over speed and that courts recalibrate defamation doctrine to better safeguard both robust debate and individual dignity in an evolving sports media ecosystem.

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INTRODUCTION

Media companies operate in an increasingly intense and rushed environment, a phenomenon that likely contributes to reporting errors and may elevate the risk of defamation lawsuits.¹ This Article explores the contemporary framework for journalism in the context of two ongoing defamation actions arising from sports reporting by the *New York Times* and ESPN and offers insights on how a sensible legal system ought to regard reporting errors in light of the First Amendment.

In *Spears v. New York Times Co.*, a former University of Alabama student-athlete accused the *Times* of defamation on account of the publication falsely stating he was present at a fatal shooting.² Former Stanford University head football coach Troy Taylor similarly brought a defamation claim against ESPN, accusing the so-called “World Wide Leader in Sports” of publishing articles that misstate and exaggerate allegations that he bullied and belittled female Stanford athletics staffers.³

In both *Spears* and *Taylor*, the defendant media companies maintain that even if their reporting was technically inaccurate, the essence of their reporting was sufficiently correct.⁴ This defense relies on the doctrine of substantial truth. As explained by the Supreme Court in *Masson v. New Yorker Magazine, Inc.*, this doctrine calls for judicial review of defamation claims in media reporting to focus on “the substance, the gist, the sting” of reported material.⁵ Substantial truth doctrine thus insulates speakers from defamation liability for their errors so long as the overarching coverage is accurate. Though these errors may seem small, they still make the reporting inaccurate and may still cause reputational harms to individuals. For readers already skeptical of mainstream media and “fake news”—which we define as false, exaggerated, or biased reports—the idea that outlets can publish untrue and

¹ The propensity of journalists to make mistakes while rushing is, of course, neither new nor revelatory. In 1999, an American Society of Newspaper Editors study found that “rush to deadlines” was the reason most often blamed by journalists for errors. See Jerry Finch, *Hearing from the Journalists on Press Credibility Concerns*, RICH. TIMES DISPATCH, May 30, 1999, at F2.

² Complaint at 13, *Spears v. N.Y. Times Co.*, No. 23-cv-00692 (N.D. Ala. May 30, 2023).

³ *Taylor v. ESPN, Inc.*, No. 25-cv-06384, 2026 WL 758474, at *1–4 (N.D. Cal. Mar. 17, 2026).

⁴ *Id.* at *4; Answer to Complaint at 17, *Spears*, No. 23-cv-00692.

⁵ 501 U.S. 496, 517 (1991) (internal quotation marks and citation omitted).

reputationally damaging statements without liability because the “gist” of their reporting is true may further erode public trust.⁶

This Article weighs the substantial truth and public figure doctrines as legal defenses in a sports media landscape that prioritizes breaking news and often assumes that “news” can be updated—sometimes a euphemism for *corrected*—as additional, sometimes contradictory, details flow in.⁷ The capacity of journalists to publish a story, continue their reporting and then, if necessary, update or correct the story with developments has been coined “process journalism.”⁸ A story published multiple times in different and increasingly accurate versions has both positive and negative ramifications for readers, authors, editors, and story subjects. Beneficial to authors and editors, updating provides opportunity and incentive to stay on top of a story, especially since many contemporary readers anticipate that updates will be made. However, reliance on the opportunity to get the facts right at a later date means that stories based on preliminary or emerging information that has not been fully developed are more likely to be published. At the same time, First Amendment principles indicate that erroneous statements, when they are honestly made and not uttered with actual malice, are tolerated by the law.⁹ Without that tolerance, freedom of expression might not survive in a media landscape that prizes speed. In a world where the highest levels of college sports increasingly resemble professional sports and some student athletes are covered by media as professional athletes,¹⁰ these issues take on added resonance in the context of sports journalism.

⁶ See Udo Fink & Ines Gillich, *Fake News as a Challenge for Journalistic Standards in Modern Democracy*, 58 U. LOUISVILLE L. REV. 263, 267–69 (2020) (discussing differing legal definitions of “fake news”).

⁷ See Sophia Scolman, *Correcting the Record: Experts Weigh In On Ethical News Corrections*, U. WIS. CTR. FOR JOURNALISM ETHICS (Dec. 13, 2024), <https://ethics.sjmc.wisc.edu/2024/12/13/correcting-the-record-experts-weigh-in-on-ethical-news-corrections/> [https://perma.cc/64GG-87CH].

⁸ See Steve Myers, *Were CNN & Fox News' Mistakes on Supreme Court Ruling Part of 'Process Journalism'?*, POYNTER (June 29, 2012), <https://www.poynter.org/reporting-editing/2012/were-cnn-fox-news-mistakes-on-supreme-court-ruling-part-of-process-journalism/> [https://perma.cc/6X2A-4ERS].

⁹ See *New York Times v. Sullivan*, 376 U.S. 254, 271–272.

¹⁰ See Ben Strauss, *Covering College Sports Was Once 'The Scandal Beat.' Then Amateurism Became The Scandal.*, WASH. POST (July 1, 2021), <https://www.washingtonpost.com/sports/2021/07/01/media-coverage-ncaa-amateurism/> [https://perma.cc/46NA-QGPV] (noting that more college sports journalists now see college sports and the multibillion-dollar industry behind it as a professional topic).

This Article recommends that media companies prioritize accuracy over urgency and that courts cautiously apply the doctrine of substantial truth. This recommendation acknowledges that media companies that take the time to ‘get it right’ might lose some readers who impatiently turn to less reputable, but faster, sources—namely, social media accounts—for their news.¹¹ We also recognize that some scholars have pushed for stricter regulation of social media companies to improve accuracy, while others warn such restrictions could raise compliance costs that disadvantage smaller platforms and create tension with First Amendment protections.¹² There is no perfect solution, but we contend that accuracy builds public confidence, which is a winning strategy in the long run. To that point, trust in mass media is at an all-time low, with Gallup reporting in late 2025 that only twenty-eight percent of Americans expressed “a ‘great deal’ or ‘fair amount’ of trust in newspapers, television, and radio to report the news fully, accurately, and fairly.”¹³ In fact, some commentators regard diminishing trust in media as contributing to destabilization of democratic institutions.¹⁴ Meanwhile, many people are turning to social media for their information,¹⁵ where conspiracy theories and

¹¹ See Nic Newman, *Traditional Media Faces a New Wave of Online Disruption*, INPUBLISHING (Aug. 22, 2025), <https://www.inpublishing.co.uk/articles/traditional-media-faces-a-new-wave-of-online-disruption-25663> [<https://perma.cc/8ZQ9-NGJ3>] (“[Y]ounger groups have become less likely over time to go directly to a news website or app—and more likely to consume news via social media or video networks.”).

¹² The topic of regulating social media companies is important and relevant to this Article but beyond its scope. Also, even if social media companies were more strictly regulated, resulting in improved quality and reliability of social media, our concerns about traditional media outlets and their reporting would remain unaddressed. For more information on regulating social media, see generally Jack M. Balkin, *How to Regulate (and Not Regulate) Social Media*, 1 J. FREE SPEECH L. 71 (2021); Jack M. Balkin & Jonathan Zittrain, *A Grand Bargain to Make Tech Companies Trustworthy*, ATLANTIC (Oct. 3, 2016), <https://www.theatlantic.com/technology/archive/2016/10/information-fiduciary/502346> [<https://perma.cc/NR4X-TD97>]; Leah Plunkett, *To Stop Sharenting & Other Children’s Privacy Harms, Start Playing: A Blueprint for a New Protecting the Private Lives of Adolescents and Youth (PPLAY) Act*, 44 SETON HALL LEGIS. J. 457 (2020).

¹³ Megan Brenan, *Trust in Media at New Low of 28% in U.S.*, GALLUP (Oct. 2, 2025), <https://news.gallup.com/poll/695762/trust-media-new-low.aspx> [<https://perma.cc/W8DR-5UGS>].

¹⁴ See, e.g., Suzanne Nossel, *The Fate of American Democracy Depends on Free Speech*, 6 J. FREE SPEECH L. 275, 282–83 (2024) (observing that manipulation of media has contributed to disinformation that undermines democracy).

¹⁵ Dave Chaffey, *Global Social Media Statistics Research Summary*, SMART INSIGHTS (Feb. 14, 2025), <https://www.smartinsights.com/social-media-marketing/social-media-strategy/new-global-social-media-research/> [<https://perma.cc/633T-BAXL>] (noting several data points showing wide usage of social media).

misinformation can thrive.¹⁶ Social media and aggregated content generated by artificial intelligence (“AI”), which has become harder to identify as distinct from human-written content and sometimes contains errors,¹⁷ only add to the chaos. For example, in 2025, Apple disabled its AI-infused aggregating and summarizing news system because of erroneous reports, such as claiming that accused-murderer Luigi Mangione shot himself.¹⁸ Likewise, mainstream generative AI platforms “have been found to provide users with fabricated data that appears authentic,” known as “hallucinations.”¹⁹ It remains unclear how courts will assess liability when erroneous information originates from AI-assisted reporting tools. If there was ever a time for accuracy to matter and for the law to encourage accuracy, it is now.

Today is also a time of substantial change in public perception of celebrities, especially in the new era of college sports, where college athletes—few of whom will actually become professional athletes—are paid in ways that previously triggered NCAA ineligibility.²⁰ Presently, athletes can receive compensation through name, image, and likeness (“NIL”) and revenue-sharing deals and can garner further acclaim through social media influencing.²¹ Consequently, college athletes have become increasingly recognizable in the public

¹⁶ Emma Thompson, *Study Shows 81% of American Teens Believe in Conspiracy Theories and Rising Distrust in News Media*, EDTECH INNOVATION HUB (Oct. 23, 2025), <https://www.edtechinnovationhub.com/news/study-shows-81-of-american-teens-believe-in-conspiracy-theories> [https://perma.cc/X8GF-TUE4].

¹⁷ Ambuj Tewari, *Why It's So Hard to Tell if a Piece of Text Was Written by AI—Even for AI*, CONVERSATION (Dec. 18, 2025, 08:33 AM), <https://theconversation.com/why-its-so-hard-to-tell-if-a-piece-of-text-was-written-by-ai-even-for-ai-265181> [https://perma.cc/WW95-LPVX]. This content, one commentator notes, not only misinforms but “can reinforce bias, amplify moral outrage, and deepen echo chambers.” Lindsay Sain Jones & Tim R. Samples, *On the Systemic Importance of Digital Platforms*, 25 U. PA. J. BUS. L. 141, 187 (2023) (internal citations omitted).

¹⁸ Tripp Mickle, *Apple Plans to Disable A.I. Features Summarizing News Notifications*, N.Y. TIMES (Jan. 17, 2025), <https://www.nytimes.com/2025/01/16/technology/apple-ai-news-notifications.html> [https://perma.cc/KF72-WSS2].

¹⁹ *When AI Gets It Wrong: Addressing AI Hallucinations and Bias*, MIT SLOAN TEACHING & LEARNING TECHS., <https://mitsloanedtech.mit.edu/ai/basics/addressing-ai-hallucinations-and-bias/> [https://perma.cc/Z8WR-RX5N] (last visited Apr. 3, 2026).

²⁰ *In re Coll. Athlete NIL Litig.*, No. 20-cv-03919-CW, slip op. at 31 (N.D. Cal. Nov. 3, 2023) (discussing how the NCAA’s interim NIL policy in 2021 allowed college athletes to receive NIL compensation without losing their eligibility).

²¹ *See Athletes and Social Media: A Double Edged Sword*, BSNSPORTS (Oct. 15, 2025), <https://blog.bsnsports.com/bsn-story/athletes-and-social-media-a-double-edged-sword> [https://perma.cc/Z9HJ-TBYH].

sphere.²² This development necessitates renewed scrutiny of the public figure doctrine, which determines when individuals must prove “actual malice” to prevail in defamation cases.²³ This doctrine’s operation in a world where fame is more diffuse and rules for athlete compensation by third parties and their schools continue to expand is ripe for confusion.

This Article suggests concrete guidance for courts and media organizations as they navigate a sports industry that is undergoing tectonic change at the collegiate level and in a technological environment where AI is an unpredictable tool for news reporting and distribution. To that end, this Article promotes greater discipline in applying the substantial truth doctrine and a narrower approach to public figure status under the First Amendment. These measures intend to enhance accuracy and fairness in defamation adjudication, mitigate the distortive effects of algorithmic amplification, and reduce the chilling impact of legal uncertainty on responsible journalism.

I. STRUCTURAL PRESSURES IN MODERN NEWSROOMS

A. *Economic and Technological Disruption Reshaping Incentives*

Journalism, statutorily defined as “reporting, publishing, or distributing news or information to the public,” has become an increasingly challenging profession.²⁴ Through news aggregation, Big Tech and social media networks capture advertising revenue previously enjoyed by online and traditional news platforms, including newspapers.²⁵ In 2005, U.S. newspapers generated yearly advertising revenue totaling nearly fifty billion dollars.²⁶ By 2020, however, that revenue dropped to ten billion dollars as internet companies

²² Karen Dooley, *Beyond the Field: New Research Highlights How NIL Is Reshaping College Athlete Identity*, UF NEWS (July 29, 2025), <https://news.ufl.edu/2025/07/college-athletes-roles-and-identities/> [<https://perma.cc/X7XY-929P>].

²³ *New York Times v. Sullivan*, 376 U.S. 254, 279 (1964).

²⁴ *See, e.g.*, 12 V.S.A. § 1615 (a)(2)(A) (“‘Journalism’ means: (A) investigating issues or events of public interest for the primary purpose of reporting, publishing, or distributing news or information to the public, whether or not the news or information is ultimately published or distributed . . .”).

²⁵ Courtney C. Radsch, *Making Big Tech Pay for the News They Use*, CTR. FOR INT’L MEDIA ASSISTANCE (July 7, 2022), <https://www.cima.ned.org/publication/making-big-tech-pay-for-the-news-they-use/> [<https://perma.cc/5KT3-T55U>].

²⁶ Jesse Holcomb, *Media Mistrust Has Been Growing for Decades—Does It Matter?*, TREND MAG., Fall 2024, at 23, 25.

“began supplanting services such as classified ads offered by newspapers.”²⁷ A concurrent pressure point is the increase in private equity firms purchasing media companies.²⁸ While such investment can provide much-needed capital and short-term stability, it can also intensify commercial pressures that shape editorial priorities and reduce resources for original reporting.²⁹ This trend is associated with cost-cutting in newsrooms and, critics charge, a focus on clickbait stories instead of sophisticated, in-depth analysis.³⁰ Some sports news platforms have struggled in this environment of diminished advertising opportunities and heightened financial pressures.³¹

AI, which has social benefits but can replace the work of human journalists, is an important factor, too.³² AI tools may supplement or replace journalistic functions, including drafting and data summarization. AI has exacerbated a decades-long decline in journalism jobs. From 2004 to 2024, newspapers eliminated seventy-seven percent of their headcount, more than any other industry studied by the Bureau of Labor Statistics.³³ This trend continues, including in 2026 when the *Washington Post*—one of the most influential publications in the United States—ended its sports department and terminated its sports writers.³⁴ Among the reasons cited for the *Post*, which reported a loss of nearly \$100 million in 2024, to reduce headcount were “the upheaval in the media

²⁷ *Id.*

²⁸ Jack Shafer, *The Investment Firms Leave Behind a Barren Wasteland*, POLITICO (Feb. 18, 2024), <https://www.politico.com/news/magazine/2024/02/18/is-wall-street-to-blame-for-the-collapse-of-newspapers-00141920> [https://perma.cc/HTY4-YA86].

²⁹ Camille Bromley, *Megan Greenwell on How Private Equity Is Devastating the Media*, COLUM. JOURNALISM REV. (July 9, 2025), <https://www.cjr.org/the-interview/megan-greenwell-interview-how-private-equity-is-devastating-media.php> [https://perma.cc/RZ5A-XSCN].

³⁰ Holcomb, *supra* note 26, at 25.

³¹ David Ertischek, “*Sports Illustrated* Fall Could Lead to New Sports Journalism, Says Rodzvilla,” EMERSON TODAY (Jan. 25, 2024), <https://today.emerson.edu/2024/01/25/sports-illustrated-fall-could-lead-to-new-sports-journalism-says-rodzvilla/> [https://perma.cc/Q75N-W9HQ].

³² See Neelanjana Gautam, *Unraveling the Social Impacts of Artificial Intelligence*, U.C. DAVIS OFF. RSCH. (Aug. 7, 2024), <https://research.ucdavis.edu/unraveling-the-social-impacts-of-artificial-intelligence/> [https://perma.cc/7RGP-WC2K] (proposing that AI can help decision-making and identifying other alleged societal benefits of AI).

³³ Andrew Van Dam, *Wait, Does America Really Still Employ a Ton of News Reporters?*, WASH. POST (July 12, 2024), <https://www.washingtonpost.com/business/2024/07/12/news-reporters-journalism-jobs-census/> [https://perma.cc/4JR7-DYJ4].

³⁴ Dan Shanoff, *The Washington Post Eliminates Sports Section as Part of Wider Layoffs*, ATHLETIC (Feb. 4, 2026), <https://www.nytimes.com/athletic/7019090/2026/02/04/washington-post-sports-layoffs/> [https://perma.cc/D5SS-PLKF].

ecosystem and the advent of artificial intelligence.”³⁵ Despite well-founded concerns about AI mistakes, media companies have become more accepting of using AI to generate content.³⁶ AI provides substantial cost savings, which makes the technology attractive to media companies and the businesses that fund them.³⁷ Even venerable media brands like the *Associated Press*, *BBC*, and *Sports Illustrated* have turned to AI to augment, if not generate, content.³⁸

As AI has become more prevalent in internet searches, established media companies are losing referral traffic, too. For instance, in Google search results, website rankings now appear farther down and “below a long AI Overview and invitation to ‘dive deeper’ in AI Mode.”³⁹ According to the Authoritas analytics company, in 2025, a website “previously ranked first in a search result could lose about seventy-nine percent of its traffic for that query if results were delivered below an AI overview.”⁴⁰ Worse yet for media companies, AI-infused chatbots eliminate “the need to click on blue links,” effectively “tanking referrals to news sites.”⁴¹ *The Huffington Post*, for example,

³⁵ Piotr Smolar, *The ‘Washington Post,’ Legendary American Daily, Is Shaken by Mass Layoffs*, LE MONDE (Feb. 5, 2026), https://www.lemonde.fr/en/international/article/2026/02/05/the-washington-post-legendary-american-daily-is-shaken-by-mass-layoffs_6750173_4.html [https://perma.cc/6EL7-5G7L].

³⁶ Courtney C. Radsch, *Can Journalism Survive AI?*, BROOKINGS (Mar. 25, 2024), <https://www.brookings.edu/articles/can-journalism-survive-ai/> [https://perma.cc/T5SG-D5X3].

³⁷ *How AI Benefits—and Threatens—the Entertainment Industry*, MORGAN STANLEY (July 17, 2025), <https://www.morganstanley.com/insights/articles/ai-in-media-entertainment-benefits-and-risks> [https://perma.cc/J8Z9-2KCV].

³⁸ See Clark Merrefield, *AI in the Newsroom: What Researchers Learned from the AP and the BBC*, JOURNALIST’S RES. (Mar. 4, 2025), <https://journalistsresource.org/home/ai-in-the-newsroom-what-researchers-learned-from-the-ap-and-the-bbc/> [https://perma.cc/C4AG-BQGM]; see also Austin Murphy, *The Fall of ‘Sports Illustrated’*, ATLANTIC (Dec. 2, 2023), <https://www.theatlantic.com/ideas/archive/2023/12/sports-illustrated-media-layoffs-ai-articles/676211/> [https://perma.cc/JY4T-33A9] (discussing the loss of jobs at *Sports Illustrated* as it tried to evolve in a new economy for sports journalism).

³⁹ Dominic Ponsford, *Forbes Cuts Contributors Amid Falling Google Traffic | Freelances Offered Less Than 10p a Word*, PRESS GAZETTE (Dec. 9, 2025), <https://press-gazette.substack.com/p/forbes-cuts-contributors-amid-falling> [https://perma.cc/H8HR-2VPB].

⁴⁰ Michael Savage, *AI Summaries Cause ‘Devastating’ Drop in Audiences, Online News Media Told*, GUARDIAN (July 24, 2025), <https://www.theguardian.com/technology/2025/jul/24/ai-summaries-causing-devastating-drop-in-online-news-audiences-study-finds> [https://perma.cc/3XBH-ANAL].

⁴¹ Isabella Simonetti & Katherine Blunt, *New Google AI Tools Bruise News Sites*, WALL STREET J. (June 11, 2025), <https://www.wsj.com/tech/ai/google-ai-news-publishers-7e687141> [https://perma.cc/W2DY-2XF7].

saw its traffic from organic searches plummet by over half from 2022 to 2025, with chatbots blamed as a key reason.⁴²

B. Speed, Competition, and the Erosion of Verification Norms

The twenty-four-hour news cycle and persistent fear among journalists of being “scooped” or overshadowed by competitors or social media influencers only amplifies worries among journalists and their editors.⁴³ As longtime journalist Paul Hutchinson recently wrote, “the pressure to publish quickly has never been greater,” as winning the battle for “clicks” has elevated in priority.⁴⁴ Many journalists are under intense pressure to break news, as news-breakers tend to generate more clicks and thus more revenue for their employers.⁴⁵ This pressure continues to rise even while media companies have reduced positions for editors, fact checkers, and other gatekeepers against untrue reporting and misinformation.⁴⁶

Commentators suggest that the risk of errors has become more tolerated by media companies and even baked into reporting as a feature rather than a

⁴² *Id.*

⁴³ Jessica Machado, ‘Look for the Patterns’: Where Journalists Can Focus During a Firehose of News, NBCU ACAD. (Mar. 5, 2025), <https://nbcuacademy.com/newsworthy-nonstop-news/> [<https://perma.cc/5DRG-YUEB>]; see generally LEAH A. PLUNKETT, SHARENTHOOD: WHY WE SHOULD THINK BEFORE WE TALK ABOUT OUR KIDS ONLINE 55–57 (David Weinberger ed., 2019) (exploring legal issues in influencing, including in how influencers shape viewpoints about news).

⁴⁴ Paul Hutchinson, *Fast News, Slow Truth: Why Responsible Journalism Waits to Get it Right*, BEDFORD INDEP. (Apr. 3, 2025), <https://www.bedfordindependent.co.uk/fast-news-slow-truth-why-responsible-journalism-waits-to-get-it-right/> [<https://perma.cc/D5XR-A7S7>].

⁴⁵ See Steve Daly, *Q: How Do Journalists Fix Mistakes after Spreading Fake News?*, NEWS LITERACY MATTERS (Sept. 4, 2019), <https://newsliteracymatters.com/2019/09/04/q-how-do-journalists-fix-mistakes-after-spreading-fake-news/> [<https://perma.cc/V5NC-JBRT>]; see also Richard Pérez-Peña, *The Top Player in This League? It May Be the Sports Reporter*, N.Y. TIMES (Dec. 24, 2007), <https://www.nytimes.com/2007/12/24/business/media/24sportswriters.html> [<https://perma.cc/JN7Q-RL85>] (discussing high salaries of sports journalists who break news).

⁴⁶ Earl Lane, AAAS Kavli Lecture: Carl Zimmer on Science Reporting in Age of Fake News, AM. ASS’N FOR ADVANCEMENT SCI. (Oct. 18, 2017), <https://www.aaas.org/news/aaas-kavli-lecture-carl-zimmer-science-reporting-age-fake-news> [<https://perma.cc/DZ3T-D2Z6>]; see also *Crafting Compelling Op-Eds: Insights from Industry Experts Peter Stanton and Donna Leinwand Leger*, STANTON COMM’NS (Jan. 2, 2024), <https://stantoncomm.com/crafting-compelling-op-eds-insights-from-industry-experts-peter-stanton-and-donna-leinwand-leger/> [<https://perma.cc/CQY2-SJJS>] (noting that “[m]ost publications no longer employ fact-checkers.”).

bug. This phenomenon is called “process journalism,” which, as described by Poynter’s Steve Myers, means to “publish what you have now, figure out the story as you go, correct your mistakes as you update.”⁴⁷ The term was coined by academic and journalist Jeff Jarvis in 2009.⁴⁸ Jarvis explained that while “newspaper people see their articles as finished products of their work,” journalists who publish through blogs and social media sometimes “see their posts as part of the process of learning.”⁴⁹ Implicit in process journalism is the idea that updates and corrections work hand-in-hand as more information becomes available.⁵⁰ Courts have neither addressed process journalism nor fully grappled with how this evolving reporting model affects defamation liability.

Despite the lack of attention to process journalism by courts, process journalism can arguably still cause harm to individuals when the first report has a defamatory statement. It can because with so many publications and updates, it’s not certain that everyone who saw the first report will see the update; this means that some people in the community will continue to believe the initial, erroneous publication, and thus the reputational harm to the individual can continue.⁵¹ Cognitive biases and heuristics compound this harm as people may place more emphasis or weight on the first or most salient piece of information, especially if coming from an authoritative source like a large, well-established media company.⁵² Ultimately, process-journalism-corrected updates should not be a safe harbor for a lack of reporting accuracy in the first place.

⁴⁷ Myers, *supra* note 8.

⁴⁸ See Jeff Jarvis, *Product v. Process Journalism: The Myth of Perfection v. Beta Culture*, BUZZMACHINE (June 7, 2009), <https://buzzmachine.com/2009/06/07/process-journalism/> [https://perma.cc/7AVS-5D6L].

⁴⁹ *Id.*

⁵⁰ Mark Coddington, *This Week in Review: Journatic and Outsourcing Local News, and Twitter’s Tension with Developers*, NIEMAN LAB (July 9, 2012), <https://www.niemanlab.org/2012/07/this-week-in-review-journatic-and-outsourcing-local-news-and-twiters-tension-with-developers/> [https://perma.cc/5E9F-A399].

⁵¹ See Adam Slavny, *The Normative Foundations of Defamatory Meaning*, 37 L. & PHIL. 523, 527 (2018) (“a person’s reputation [is] the beliefs and attitudes that others hold about her”); LAWRENCE McNAMARA, REPUTATION AND DEFAMATION 21 (1st ed. 2007) (“An individual’s reputation is a social judgment of the person based upon facts which are considered relevant by the community.”).

⁵² See ENCYCLOPEDIA OF SOCIAL PSYCHOLOGY 697–98 (Roy F. Baumeister & Kathleen D. Vohs eds., 2007) (“Thus what someone first sees, hears, or reads about a person tends to serve as a primary reference point or anchor for later judgments, so that later judgments are overly influenced by a person’s initial judgment. In essence, first impressions count.”); Lauren Braithwaite, *Why Do We Always Trust the Doctor, Even Though They Might Be Wrong?*, THE DECISION LAB, <https://thedecisionlab.com/biases/authority-bias> [https://perma.cc/UVN2-AHDM].

C. *Error as a Structural Feature: Case Studies and Consequences*

Given the pressure this landscape places on newsrooms, it is unsurprising that reporting errors sometimes happen. Journalists, like all human beings, have always been susceptible to error. Long before the internet, the *Chicago Daily Tribune* erroneously reported that New York Governor Thomas Dewey defeated President Harry S. Truman in the 1948 presidential election.⁵³ It led to a famous photo of Truman holding up the front page of the November 3, 1948, *Chicago Daily Tribune* with the caption “Dewey Defeats Truman.”⁵⁴ Fast forward to 1981, and the desire to speedily make sense of a frightening situation led to false reports that President Ronald Reagan escaped injury in an assassination attempt and that his aide, press secretary James Brady, died from a gunshot wound. ABC News anchor Frank Reynolds assured Americans that “the president was not hit” while CBS News anchor Dan Rather shared the tragic news that Brady died.⁵⁵ Neither piece of information was correct; a bullet struck Reagan in the left lung while Brady, though seriously injured by the assassin’s bullet, survived.⁵⁶ Years later, reporter Judy Woodruff wrote about the serious “mistakes” made by high-profile journalists that day.⁵⁷ However, she cautioned that the reporting occurred during an era where there were no cell phones that might have assisted in conveying accurate information.⁵⁸

But modern technologies haven’t immunized journalists from inaccurate reporting on high-profile matters. In 2012, journalists from CNN and Fox News wrongly summarized Chief Justice John Roberts’s majority opinion in *National Federation of Independent Business v. Sebelius*.⁵⁹ They reported that

⁵³ Will Lester, ‘Dewey Defeats Truman’ Disaster Haunts Pollsters, L.A. TIMES (Nov. 1, 1998), <https://www.latimes.com/archives/la-xpm-1998-nov-01-mn-38174-story.html> [<https://perma.cc/33AD-XUHC>].

⁵⁴ Arthur Henning, *Dewey Defeats Truman*, CHI. DAILY TRIB. (Nov. 2, 1948).

⁵⁵ Carrie Hagen, *The Media Learned Nothing After Misreporting the Reagan Assassination Attempt*, SMITHSONIAN MAG. (Aug. 11, 2016), <https://www.smithsonianmag.com/history/media-learned-nothing-after-misreporting-reagan-assassination-attempt-180960091/> [<https://perma.cc/L5AX-PLXH>].

⁵⁶ *Id.*

⁵⁷ Judy Woodruff, *Judy Woodruff on Covering Reagan Assassination Attempt*, PBS NEWS (Mar. 30, 2011), <https://www.pbs.org/newshour/politics/woodruff> [<https://perma.cc/W8DN-RQTP>].

⁵⁸ *See id.*

⁵⁹ 567 U.S. 519 (2012); Korva Coleman, *CNN, Fox Mistakenly Report Health Care Law Overturned*, NPR (June 28, 2012), <https://www.npr.org/sections/thetwo-way/2012/06/28/155916373/they-got-it-wrong-cnn-fox-mistakenly-report-health-care-law-overturned> [<https://perma.cc/D77J-MEAT>].

a majority of the Supreme Court struck down the individual mandate in the Affordable Care Act (also known as Obamacare) on the basis that it violated the Commerce Clause of the U.S. Constitution.⁶⁰ The description was accurate in the sense that a majority had determined the individual mandate violated the Commerce Clause, but it was contextually inaccurate since the Court did not strike down the mandate and upheld it on other grounds.⁶¹ One Fox News correspondent said “the mandate is gone” while a CNN correspondent similarly voiced “it appears as if the Supreme Court justices have struck down the individual mandate, the centerpiece of the health care legislation.”⁶² The reporters failed to review or accurately synthesize the rest of the opinion, where a majority found the mandate was constitutional on the basis that it was a tax authorized by the General Welfare Clause.⁶³ Obamacare was upheld by the Court, not invalidated as CNN and Fox had reported.

Commentators blamed the “rush to get the news out” for the misreporting.⁶⁴ CNN and Fox News compete with NBC, ABC, CBS, and other news networks for viewers, and the Obamacare decision was highly anticipated.⁶⁵ It would have been a glaring omission for major news networks to fail to report on the most significant news of the day in a timely manner, particularly when audiences expect real-time updates and breaking-news banners. Yet the commercial and reputational incentives to be first do not erase the professional and democratic imperative to be accurate, especially when reporting on consequential Supreme Court decisions. To that point, by reporting the news *incorrectly*, CNN and Fox News ultimately lost the very credibility they were racing to protect.⁶⁶ As New York University journalism

⁶⁰ Coleman, *supra* note 59.

⁶¹ A. E. Dick Howard, *The Changing Face of the Supreme Court*, 101 VA. L. REV. 231, 281 (2015).

⁶² Myers, *supra* note 8.

⁶³ *Sebelius*, 567 U.S. at 576.

⁶⁴ See Brian Stelter, *CNN and Fox Trip Up in Rush to Get the News on the Air*, N.Y. TIMES (June 28, 2012), <https://www.nytimes.com/2012/06/29/us/cnn-and-foxs-supreme-court-mistake.html> [<https://perma.cc/Z72F-KR67>].

⁶⁵ See Diane Alter, *Prepare for the Obamacare Ruling Aftermath*, MONEYMORNING (June 28, 2012), <https://moneymorning.com/2012/06/28/prepare-for-obamacare-ruling-aftermath/> [<https://perma.cc/5BCL-7MTK>] (“The stock market, down sharply . . . in anticipation of the Supreme Court Obamacare ruling, fell further after the decision was announced.”).

⁶⁶ Paul Farhi, *CNN, Fox Botch Supreme Court Health-Care Decision in Latest Media Misstep*, WASH. POST (June 29, 2012), https://www.washingtonpost.com/lifestyle/style/cnn-fox-botch-supreme-court-health-care-decision-in-latest-media-misstep/2012/06/28/gJQA7tU19V_story.html [<https://perma.cc/3LVA-TXVD>].

professor Michael Norman opined at the time, the prioritization of speed in contemporary journalism invites exactly this kind of error. “What’s the value in getting part of the story out at 10 a.m. and getting it wrong,” Norman asked, “instead of getting it at 10:06 a.m. and getting it right?”⁶⁷

Beyond reporting errors due to rushing, some journalists have gone further by inventing settings that were reported as real, albeit sometimes tongue-in-cheek. In 1835, the *New York Sun* published six articles about the discovery of life on the Moon through a new and enhanced telescope.⁶⁸ Supposed author Andrew Grant told readers the Moon featured unicorns and humanoids, among other fantastical features.⁶⁹ While the series was intended as satire, many readers didn’t recognize it as such and believed it to be hard news.⁷⁰ Both contemporary readers and seasoned editors have been duped as well. Former *New York Times* reporter Jayson Blair concocted scenes, conversations, and people for articles published on serious topics, including “the anguish of families grieving for loved ones killed in Iraq.”⁷¹ The invention of news has also occurred in sports reporting, albeit with much lower stakes. In 2023, Amazon Prime Video and Fox Sports anchor Charissa Thompson admitted to fabricating reports on her sideline interviews in NFL games.⁷² These examples illustrate that reporting errors predate recent technological and industry changes in media and that these errors are not necessarily owed to speed and urgency in getting news out.

With heightened demands to publish quickly in the contemporary era, errors appear to be occurring with greater frequency.⁷³ Writing for the

⁶⁷ *Id.*

⁶⁸ “*The Great Moon Hoax*” Is Published in the “*New York Sun*”, HISTORY.COM (May 27, 2025), <https://www.history.com/this-day-in-history/august-25/the-great-moon-hoax> [<https://perma.cc/5U7A-J2T7>].

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Dan Barry, David Barstow, Jonathan D. Glater, Adam Liptak & Jacques Steinberg, *Correcting the Record: Times Reporter Who Resigned Leaves Long Trail of Deception*, N.Y. TIMES (May 11, 2003), <https://www.nytimes.com/2003/05/11/us/correcting-the-record-times-reporter-who-resigned-leaves-long-trail-of-deception.html> [<https://perma.cc/3M6Q-7GKL>].

⁷² Tom Jones, Opinion, *A Former Sideline Reporter Stunningly Admitted That She Made Things Up*, POYNTER (Nov. 17, 2023), <https://www.poynter.org/commentary/2023/charissa-thompson-sideline-reporter-fabricated-commentary/> [<http://perma.cc/MV5T-LXJV>].

⁷³ Scott Finn, *Four Reasons You May Be Seeing More Mistakes in the Media*, WUSF (June 6, 2012), <https://www.wusf.org/culture/2012-06-06/four-reasons-you-may-be-seeing-more-mistakes-in-the-media> [<http://perma.cc/VS6U-Z6GM>].

Harvard University T.H. Chan School of Public Health Center for Health Communication in 2024, former Pro Publica president Richard Tofel observed “it is almost certainly the case that the rate of errors in journalism is increasing” especially due to the “increased pace of publishing” and because “most jobs dedicated to fact-checking and copy-editing have been eliminated.”⁷⁴ Readers seem to be noticing a diminished product and regard it as undermining their ability to rely on news. According to a 2020 Pew Research Center study, readers identify “thinner reporting” along with “fewer journalists” and “increasingly desperate advertising content” as reasons for being more “cynical” about news.⁷⁵ The increased reliance on digital media for news consumption is an important factor, too.⁷⁶ One recent study found that with “ease of access and use, speed of information diffusion, and difficulty in correcting false information” in digital media, “rumors, misinformation, disinformation, and mal-information” become harder to prevent and remedy.⁷⁷ These problems are prevalent on social media feeds, which in turn can influence *real* news. One commentator noted “fictional stories whip from Facebook feeds onto front pages.”⁷⁸ The market is paying attention, too. According to Nieman Lab, social media surpassed television as the leading way Americans get news in 2025, with Nieman Lab observing that social media rewards speed, virality, and immediacy over deliberation.⁷⁹ For large media companies competing for clicks and shares on these platforms, the pressure

⁷⁴ RICHARD J. TOFEL, HARV. T.H. CHAN SCH. PUB. HEALTH CTR. FOR HEALTH COMM’N, *ENGAGING WITH THE PRESS: A GUIDE FOR PERPLEXED READERS AND SOURCES* 66 (2024), <https://hsph.harvard.edu/wp-content/uploads/2024/10/Engaging-with-the-Press-A-Guide-for-Perplexed-Readers-and-Sources.pdf> [https://perma.cc/6EU6-HCFN].

⁷⁵ Holcomb, *supra* note 26.

⁷⁶ Theresa Schempp, *The Impact of Social Media on Reading*, UNIV. MD. GLOB. CAMPUS (Mar. 10, 2025), <https://www.umgc.edu/blog/impact-social-media-on-reading> [http://perma.cc/PT44-J3FK].

⁷⁷ See Sadiq Muhammed T & Saji K. Mathew, *The Disaster of Misinformation: A Review of Research in Social Media*, 13 INT’L J. DATA SCI. & ANALYTICS 271, 271 (2022).

⁷⁸ See *The War on Fake News*, B.U. COLL. OF COMM’N (Apr. 1, 2018), <https://www.bu.edu/com/articles/the-war-on-fake-news/> [http://perma.cc/36E6-VE2W]; see also Jonathan Zittrain, *Engineering an Election*, 127 HARV. L. REV. F. 335, 335–36 (2014) (discussing the power of Facebook and other social media platforms to influence attitudes and beliefs).

⁷⁹ Joshua Benton, *For the First Time, Social Media Overtakes TV as Americans’ Top News Source*, NIEMAN LAB (June 18, 2025), <https://www.niemanlab.org/2025/06/for-the-first-time-social-media-overtakes-tv-as-americans-top-news-source/> [http://perma.cc/LFV5-GV8U].

to publish first is not merely professional instinct; it may be an economic imperative.

More discouragingly, the downside for media acknowledging errors is that corrections appear to make readers *less* trusting of the news source.⁸⁰ This finding was made in a 2023 study conducted jointly by researchers at Arizona State and Dartmouth College, and it suggests that instead of admitting one's error, ignoring the mistake or doubling-down might prove less damaging to the journalists and their media company.⁸¹ These disincentives to correct errors coupled with the longevity of online media raise genuine and increased concern for the potential impact of defamatory errors on an individual's reputation.

II. WHEN THE "GIST" GOVERNS: SUBSTANTIAL TRUTH AND MODERN SPORTS DEFAMATION

A. *The Doctrine of Substantial Truth and the "Gist" Standard*

The challenges described above are apparent in two ongoing defamation controversies involving factual errors by the *New York Times* and ESPN in reporting on high-profile sports scandals.⁸² Both media companies invoke the doctrine of substantial truth, which calls for defamation claims in media reporting to focus on "the substance, the gist, the sting" of reported material.⁸³ As courts have held, the substantial truth doctrine advances core First Amendment values.⁸⁴ It safeguards open discourse by preventing liability for inconsequential misstatements, which are sometimes "unavoidable" when

⁸⁰ Dan Gillmor, *The Corrections Dilemma: Admitting Your Mistakes Increases Accuracy but Reduces Audience Trust, a New Study Finds*, NIEMAN LAB (Mar. 27, 2023), <https://www.niemanlab.org/2023/03/the-corrections-dilemma-admitting-your-mistakes-increases-accuracy-but-reduces-audience-trust-a-new-study-finds/> [<https://perma.cc/ZDX9-VKYC>].

⁸¹ *Id.*

⁸² Some of the analysis draws from one of the author's Sportico columns on these cases. See Michael McCann, *Ex-Stanford Football Coach and ESPN Battle Over 'The Truth'*, SPORTICO (Nov. 11, 2025), <https://www.sportico.com/law/analysis/2025/troy-taylor-espn-lawsuit-legal-analysis-stanford-1234876196/> [<http://perma.cc/T9F7-WDSW>].

⁸³ *Masson v. New Yorker Mag., Inc.*, 501 U.S. 496, 517 (1991) (citing *Heuer v. Kee*, 59 P.2d 1063, 1064 (1936)).

⁸⁴ See, e.g., *Tarkington v. Fireman's Fund Ins. Co.*, No. A077091, 1998 Cal. App. Unpub. LEXIS 3, at *61 (June 17, 1998).

conveying a message that is, in all material respects, true.⁸⁵ The appropriate approach for determining falsity is to “overlook minor inaccuracies” and “concentrate” on “substantial truth.”⁸⁶ Jurors are thus expected to consider “whether the reader would think differently of the plaintiff if the literal truth had been communicated.”⁸⁷ In other words, under this standard, a media company could make an inaccurate and reputationally harmful statement, and it may be found not liable for defamation so long as the inaccuracy is peripheral to the locus of the story.

B. Two Contemporary Controversies: The New York Times and ESPN

The *New York Times* story, “A Shooting That Ensnared Alabama Players Could Have Been Deadlier,” was published on March 15, 2023, right as the University of Alabama was set to start as a No. 1 seed in the 2023 NCAA Division I men’s basketball tournament.⁸⁸ The story’s timing was opportunistic, given public interest in the tournament and especially a No. 1 seed.⁸⁹ Authored by Billy Witz, the story incorrectly claims that Alabama basketball player Kai Spears was present at a deadly shooting in Tuscaloosa, Alabama, in January 2023.

Spears was a freshman walk-on, meaning he lacked an athletic scholarship, and he had not played in any games. Not surprisingly, this unheralded member of the Crimson Tide wasn’t the focal point of a story published by the *New York Times*—a prestigious publication with a “vast international audience.”⁹⁰ The story instead discussed how star Alabama player Brandon Miller, who a few months later would be the second overall pick in the 2023 NBA draft, played a key role in the shooting. A former Alabama player, Darius Miles, allegedly took a gun from Miller’s car. That gun eventually was possessed by another person, Michael Davis, who shot and killed Jamea

⁸⁵ *Id.*

⁸⁶ Masson, 501 U.S. at 516.

⁸⁷ Erin Daly, *The Incremental Harm Doctrine: Is There Life After Masson?*, 46 ARK. L. REV. 371, 376–77 (1993).

⁸⁸ Billy Witz, *A Shooting That Ensnared Alabama Players Could Have Been Deadlier*, N.Y. TIMES (Mar. 15, 2023), <https://www.nytimes.com/2023/03/15/sports/ncaabasketball/alabama-shooting.html> [<https://perma.cc/98WY-V6YL>].

⁸⁹ Des Bieler, *Alabama State Stunner Gets March Madness Off to a Frolicking Start*, WASH. POST (Mar. 18, 2025), <https://www.washingtonpost.com/sports/2025/03/18/alabama-state-buzzer-beater/> [<http://perma.cc/LUS6-ATUF>].

⁹⁰ Anne Dailey, *Law and the Unconscious: A Psychoanalytic Perspective*, 31 YALE J.L. & HUMANS. 1, 9 (2020).

Harris, a 23-year-old mother from Birmingham.⁹¹ Miller was not charged with a crime, as his attorney maintained that Miller was unaware of the gun, which was allegedly concealed under clothing, and Miller never touched it.⁹²

The *Times* boasted it had a scoop, noting that though the shooting had garnered previous media coverage, Spears's "presence at the scene had not been previously reported."⁹³ Building on the Spears angle, the story references how "two bullets struck the windshield of Miller's car" and that "neither struck Miller or Spears."⁹⁴ When the *Times* reached out to Spears to discuss the shooting, he said, "I'm sorry, I'm not going to be able to speak about that."⁹⁵ The placement of Spears at the shooting, Witz wrote, was made through the information of "a person familiar with the case."⁹⁶ That person was not named and spoke to the *Times* "on condition of anonymity to discuss sensitive matters in the case."⁹⁷

Witz's source was wrong. Spears was not at the shooting. Instead, the young man presumed to be Spears turned out to be Cooper Lee, the team's manager. The *Times* issued a correction a couple of months following the story's publication after Spears sued for defamation.⁹⁸ The newspaper said it "regrets the error in the initial report."⁹⁹ In his Complaint, Spears insists that he was approached for comment only a few hours before the story's publication, and that he was under instructions from his school's athletic director to

⁹¹ In May 2025, Davis was convicted of capital murder and sentenced to life in prison. John Weinstein, *Michael Davis Found Guilty of Capital Murder, Closing Arguments Delivered*, CRIMSON WHITE (May 9, 2025), <https://thecrimsonwhite.com/121331/news/michael-davis-found-guilty-of-capital-murder/> [http://perma.cc/8HSB-HQ8C]. As of this writing, Miles has yet to go to trial for capital murder charges. His trial has been postponed until at least 2026. See *Former Alabama Player Darius Miles' Trial Delayed Amid Defense's Push for Judge's Recusal*, ABC 33/40 (Nov. 7, 2025, 6:37 PM), <https://abc3340.com/news/local/former-alabama-player-darius-miles-trial-delayed-amid-defenses-push-for-judges-recusal-november-2025-jamea-harris-the-strip-shooting> [http://perma.cc/P8RJ-5ERP].

⁹² Mike Rodak, *Brandon Miller 'Never Touched the Gun' Used In Darius Miles Capital Murder Case, Attorney Says*, ADVANCE LOCAL (Feb. 22, 2023, 6:57 PM), <https://www.al.com/alabamabasketball/2023/02/attorney-says-brandon-miller-never-knew-illegal-activity-would-occur.html> [https://perma.cc/6RSG-MX62].

⁹³ Witz, *supra* note 88.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

refrain from commenting.¹⁰⁰ The Complaint also details how Spears and a group of advocates—his father, university officials, and an attorney—notification the *Times* that it had the facts wrong.¹⁰¹ In addition, the Complaint alleges that Fox News, ESPN Pittsburgh, and other media outlets rebroadcast the *Times*'s inaccurate reporting and contends that Spears was “bombarded with texts, calls and mentions on social media” about his reported connection to the shooting.¹⁰² The repetition of the error by other outlets illustrates the amplification risks inherent in modern media ecosystems. Spears, who later transferred to Marshall University, says that being wrongly linked to a shooting caused him anxiety and stress when “managing and processing” social media comments that falsely link him to a “criminal event.”¹⁰³

The *Times* admits its reporting error but insists it is not liable for defamation. Central to the *Times*'s defense is that Spears was in close proximity to Miller for much of the evening of the shooting, even if he wasn't in the car or otherwise present at the shooting. To that end, Spears “was with Miller minutes before Miller delivered a gun to the teammate who would later be charged with murder” and with Miller when he “received key information about a fight and the teammate's need for the gun.” Spears also saw “bullet holes in Miller's windshield,” though he wasn't there when the shots were fired. In short, the *Times* maintains that the near-accuracy of its reporting should be sufficient to preclude liability for defamation. As of this writing, the case is scheduled to go to trial on August 10, 2026, at the Richard Shelby Federal Building and Courthouse, Tuscaloosa, Alabama.¹⁰⁴

ESPN offered a similar defense in response to former Stanford football coach Troy Taylor suing for defamation based on four articles concerning Taylor's alleged bullying and belittling of female Stanford athletics staffers.¹⁰⁵ Stanford fired Taylor after the publication of three of the articles,

¹⁰⁰ Complaint at 9, *Spears v. The New York Times Co.*, No. 7:23-cv-00692-ACA (N.D. Ala. May 30, 2023).

¹⁰¹ *Id.* at 11.

¹⁰² *Id.*

¹⁰³ *Id.* at 12.

¹⁰⁴ Pretrial Scheduling Order at 1, *Spears v. N.Y. Times Co.*, No. 23-cv-00692 (N.D. Ala. Feb. 23, 2026).

¹⁰⁵ Xuan Thai, *Reports Find Stanford's Taylor Bullied, Belittled Female Staffers*, ESPN (Mar. 19, 2025, 05:11 PM), https://www.espn.com/college-football/story/_/id/44319805/stanford-football-coach-accused-reports-bullying-belittling-female-staffers [https://perma.cc/Y2VC-2RRK]; Dan Wetzel, *Wetzel: Bad Behavior Is on Stanford Coach Taylor, but This Is Andrew Luck's Program*, ESPN (Mar. 22, 2025, 07:30 AM), https://www.espn.com/college-football/story/_/id/44347700/bad-behavior-stanford-coach-taylor-andrew-luck-program [https://perma.cc/H872-VKXK]; Kyle

and Taylor believes the articles were responsible for the school's decision (though his coaching record of six wins and eighteen losses over two seasons was likely a factor, too).¹⁰⁶ The central problem with ESPN's stories, Taylor alleges, is that they conflate the findings of two separate workplace investigations and claim that both investigations were launched because "multiple employees" accused him of "hostile and aggressive behavior, as well as personal attacks."¹⁰⁷ Taylor asserts that this description is wrong as the first investigation was not launched in response to "multiple employees" and "made no findings at all" regarding his interactions with co-workers. As Taylor sees it, these statements are "provably false" and ESPN used its "false reporting" to inflict harm on Taylor, namely, "to make it difficult for Taylor to defend himself, maximizing his reputational harm and making it nearly impossible for him to find a new job."¹⁰⁸ He also accuses ESPN of falsely asserting investigators corroborated gender-based complaints.¹⁰⁹

Like the *New York Times*, ESPN asserts its reporting was "substantially true" and sufficient to defeat a defamation lawsuit.¹¹⁰ ESPN argues that Taylor's "word parsing" and "quibbling about specific numbers" don't get around the overarching assertion and thesis of its articles: He is accused of wrongful workplace behavior.¹¹¹ ESPN also maintains that case precedent makes clear that "truth" in reporting on events does not have to mean "literal truth."¹¹²

Bonagura & Xuan Thai, *Stanford Football Needs "Reset," Fires Football Coach Troy Taylor*, ESPN (Mar. 25, 2025, 01:41 PM), https://www.espn.com/college-football/story/_/id/44402806/stanford-fires-football-coach-troy-taylor-says-gm-andrew-luck [https://perma.cc/K5DD-8K8B]; Xuan Thai, *Ex-Stanford Coach Troy Taylor Takes Issue with Investigation*, ESPN (Apr. 16, 2025, 03:41 PM), https://www.espn.com/college-football/story/_/id/44702265/ex-stanford-coach-troy-taylor-takes-issue-investigation [https://perma.cc/2JR9-C3VL].

¹⁰⁶ Shehan Jeyarajah, *Andrew Luck Makes Decision to Fire Stanford Coach Troy Taylor After Reports Taylor Mistreated Female Staffers*, CBS SPORTS (Mar. 25, 2025, 01:15 PM), <https://www.cbssports.com/college-football/news/andrew-luck-makes-decision-to-fire-stanford-coach-troy-taylor-after-reports-taylor-mistreated-female-staffers/> [https://perma.cc/FA2T-UWXU] (discussing how Taylor's team lost eight of its last nine games).

¹⁰⁷ See Complaint at 2, Taylor v. ESPN, Inc., No. 25-cv-06384, 2026 WL 758474 (N.D. Cal. July 30, 2025).

¹⁰⁸ Plaintiff's Opposition to Defendant's Motion to Dismiss at 1–2, Taylor, 2026 WL 758474 (No. 25-cv-06384).

¹⁰⁹ *Id.*

¹¹⁰ Defendant's Motion to Dismiss at 10–19, Taylor, 2026 WL 758474 (No. 25-cv-06384).

¹¹¹ *Id.*

¹¹² *Id.* at 10.

The company cites *Summit Bank v. Rogers* for the proposition that “the law does not require [the defendant] to justify the literal truth of every word of the allegedly defamatory content, nor must we parse each word written by [the defendant] to determine its truthfulness.”¹¹³ ESPN also stressed *Vogel v. Felice*, where a California court found that “minor inaccuracies” don’t amount to defamation provided “the gist” of the account is true.¹¹⁴

On March 17, 2026, U.S. Magistrate Judge Virginia K. DeMarchi granted ESPN’s motion to dismiss Taylor’s complaint.¹¹⁵ Invoking the doctrine of substantial truth, Magistrate Judge DeMarchi reasoned that Taylor failed to identify statements that rose to the level of serious error required for a viable defamation claim.¹¹⁶ For example, although the word “bully” did not appear in the first investigation’s findings and ESPN incorrectly referred to “investigations” (plural) as having made that finding, the first investigation referenced “super aggressive” conduct and that Taylor allegedly attempted to silence a staff member.¹¹⁷

Similarly, the court was not persuaded that a headline, incorrectly referring to “reports” (plural) concluding there was bullying, amounts to defamation—even if a reader might be more inclined to believe Taylor partook in bullying if multiple reports made that claim.¹¹⁸ Magistrate Judge DeMarchi stressed that there is an absence of corroborating precedent “for the proposition that defendants are required to report about each investigation separately, or that the article’s headline must disaggregate the findings from each investigation.”¹¹⁹ The court emphasized that “minor inaccuracies do not amount to falsity so long as the substance, the gist, [or] the sting” is correct.¹²⁰

C. When Substantial Truth Shields, and When It Fails

The doctrine of substantial truth has proved significant elsewhere in sports, offering instructive lessons along the way. In 2017, boxing champion Floyd Mayweather Jr. defeated a defamation claim brought by his ex-girlfriend, Shantel Jackson.¹²¹ Jackson accused Mayweather of falsely asserting

¹¹³ 142 Cal. Rptr. 3d 40, 61 (Ct. App. 2012).

¹¹⁴ 26 Cal. Rptr. 3d 350 (Ct. App. 2005).

¹¹⁵ *Taylor*, 2026 WL 758474, at *1 (order granting defendant’s motion to dismiss).

¹¹⁶ *Id.* at *14–16.

¹¹⁷ *Id.* at *14.

¹¹⁸ *Id.* at *13.

¹¹⁹ *Id.* at *13.

¹²⁰ *Id.* at *11 (quoting *Masson v. New Yorker Mag., Inc.*, 501 U.S. 496, 517 (1991)).

¹²¹ *Jackson v. Mayweather*, 217 Cal. Rptr. 3d 234, 250 (Ct. App. 2017).

that she had plastic surgery performed on her face and various other parts of her body during a radio interview.¹²² Mayweather insisted the doctrine of substantial truth applied: Jackson, a model, tacitly conceded that she underwent plastic surgery on some body parts, though not all the parts claimed by Mayweather.¹²³ Judge Dennis M. Perluss of the California Court of Appeal found this defense persuasive, writing that Mayweather's "exaggerated description of the extent of Jackson's cosmetic surgery was, in substance, truthful."¹²⁴ Judge Perluss surmised that Jackson failed to explain how Mayweather's description—which included both accurate and inaccurate information—"created a different and negative effect on the radio audience from that which the truth would have produced."¹²⁵ The judge added that, while "it is certainly conceivable that surgical enhancement of the face is different for the reputation of an actress or model from the augmentation or sculpting of other parts of her body," Jackson failed to raise that distinction in her pleadings.¹²⁶ For the *Times* and ESPN, *Jackson v. Mayweather* supports the legal defense that the relative accuracy of an assertion can be sufficient to succeed in court. *Taylor v. ESPN* extends that lesson to newsroom coverage of internal investigations in college sports, signaling that media outlets will often be protected so long as their reporting captures the essential gist of alleged misconduct, even if some details are imprecise.

Other case law examining the gist defense paints a more complicated story. Courts have at times disfavored media companies—including when they claim that published content is non-defamatory opinion rather than a defamatory factual assertion. For instance, in *Milkovich v. Lorain Journal Co.*, a sports columnist incorrectly wrote that a high school wrestling coach "lied" in sworn testimony.¹²⁷ The Supreme Court reasoned that, while media companies are accorded some latitude in reporting, designating a story as "opinion" does not shield underlying false factual assertions.¹²⁸ Another failure of the substantial truth doctrine is reflected in *Memphis Publishing Co. v. Nichols*.¹²⁹ In 1971, the *Memphis Press-Scimitar* accurately reported on a shooting but was nonetheless denied summary judgment on a defamation

¹²² *Id.* at 243.

¹²³ See Defendant's Motion to Dismiss, *supra* note 110, at 10.

¹²⁴ *Mayweather*, 217 Cal. Rptr. 3d at 256.

¹²⁵ *Id.* at 254.

¹²⁶ *Id.* at 255.

¹²⁷ 497 U.S. 1, 3–4 (1990).

¹²⁸ *Id.* at 18–19.

¹²⁹ 569 S.W.2d 412 (Tenn. 1978).

claim.¹³⁰ The Tennessee Supreme Court found that, by omitting facts, the publication skewed readers' perception of the incident and who to blame.¹³¹ This case provides an important lesson for media companies like the *New York Times* and ESPN: The "gist" is shaped not only by express statements, but also by what is left unsaid. Omissions can materially alter the defamatory meaning of otherwise accurate statements.

Jackson and *Milkovich* illuminate that while the doctrine of substantial truth does not compel literal, word-for-word accuracy and tolerates minor errors, the denial of the underlying truth to a reasonable reader, listener, or viewer falls outside the doctrine. In other words, the law gives speakers some leeway on details so long as the "sting" of the statement accurately reflects reality. However, it does not permit a version of events that meaningfully worsens the plaintiff's reputational position relative to the actual facts. To that end, when a defendant's distortions—whether affirmative statements or material withholdings of fact—cause a plaintiff to appear significantly worse than the truth would, substantial truth becomes a far less persuasive, and often unavailable, defense. At that point, the inaccuracy is no longer a trivial embellishment but a substantive misrepresentation. Courts are thus more inclined to view the statement as crossing the line from protected rough approximation into actionable falsehood.

III. DEFAMATION DOCTRINE AND THE CONSTITUTIONAL BALANCE IN SPORTS MEDIA

A. Core Elements of Defamation and the Fact-Opinion Boundary

Defamation claims arising from alleged factual inaccuracies in sports reporting—such as the claims brought against the *Times* and ESPN—hinge on whether the plaintiff can satisfy the traditional elements of defamation as applied to media coverage. In general, defamation claims require the plaintiff to prove there was a false communication about the plaintiff that was published and resulted in damages.¹³² A communication is defamatory if it exposes the plaintiff "to public hatred, contempt, ridicule, or disgrace."¹³³

¹³⁰ See *Memphis Publ'g Co.*, 569 S.W.2d at 414.

¹³¹ *Id.* at 420–21.

¹³² *Overcast v. Billings Mut. Ins. Co.*, 11 S.W.3d 62, 70 (Mo. 2000) (citing *Nazeri v. Mo. Valley Coll.*, 860 S.W.2d 303 (Mo. 1993)).

¹³³ *Miller Mendel, Inc. v. City of Okla. City*, No. CIV-18-00990, 2024 WL 4940553, at *8 (W.D. Okla. Dec. 2, 2024).

Critically, the First Amendment draws a boundary between actionable false statements of fact and protected expressions of opinion. As the Supreme Court explained in *Gertz v. Robert Welch, Inc.*, “there is no such thing as a false idea . . . however pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas.”¹³⁴ The Court’s reference to “ideas” encompasses the range of subjective interpretations and pointed viewpoints that commentators and journalists sometimes express about sports figures and their controversies. This type of content remains protected so long as it does not falsely assert or imply specific, defamatory facts.

B. Public Figures, Actual Malice, and Constitutional Limits

Of note, the standard to recover in a defamation suit is different for public figures than for private individuals. In *New York Times Co. v. Sullivan*, the Supreme Court enunciated that plaintiffs who are public officials must meet a heightened “actual malice” standard to recover in suits involving falsehoods about their official conduct.¹³⁵ Then, in *Curtis Publishing Co. v. Butts*, the Court extended the *Sullivan* rule to “public figure” cases, reasoning that the distinction between public *officials* and public *figures* had become increasingly blurred.¹³⁶ Private individuals, by contrast, have only ever been required to show negligence to prevail in defamation suits.¹³⁷

¹³⁴ 418 U.S. 323, 339–40 (1974).

¹³⁵ 376 U.S. 254, 279 (1964) (“The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with ‘actual malice’ — that is, with knowledge that it was false or with reckless disregard of whether it was false or not.”).

¹³⁶ 388 U.S. 130, 155 (1967); see *id.* at 164 (Warren, J., concurring) (“Increasingly in this country, the distinctions between governmental and private sectors are blurred. . . . ‘public figures,’ like ‘public officials,’ often play an influential role in ordering society. And surely as a class these ‘public figures’ have as ready access as ‘public officials’ to mass media, both to influence policy and to counter criticism of their views and activities. Our citizenry has a legitimate and substantial interest in the conduct of such persons, and freedom of the press to engage in uninhibited debate about their involvement in public issues and events is as crucial as it is in the case of ‘public officials.’”).

¹³⁷ See *Sullivan*, 376 U.S. at 301 (Goldberg, J., concurring) (explaining that actual malice standard does not apply to private defamation cases because “[p]urely private defamation has little to do with the political ends of a self-governing society” and that defamatory statements of public figures’ private conduct are not necessarily constitutionally protected either).

The “actual malice” standard presents a high bar to recovery. To satisfy it, a public-official or public-figure plaintiff must show clear evidence that a statement was made “with knowledge that it was false or with reckless disregard of whether it was false or not.”¹³⁸ Although “reckless disregard” cannot be encompassed fully in one definition,¹³⁹ a plaintiff can generally demonstrate reckless disregard to satisfy actual malice¹⁴⁰ by showing that the defendant “entertained serious doubts as to the truth of the publication” and was thus aware of the likelihood that they were circulating false information. Direct evidence can be effective for proving actual malice, but it is rare.¹⁴¹ Therefore, actual malice is often proved using circumstantial evidence.¹⁴² Importantly, because a plaintiff often has less access to evidence of a defendant’s mental state or knowledge that the statement was false, the actual malice standard permits recovery in fewer public figure than private figure defamation cases.¹⁴³

The heightened difficulty that public figures face in recovering for defamation compared with private individuals can appear asymmetrical at first glance. After all, defamatory falsehoods are categorically excluded from First Amendment protection for lacking social value.¹⁴⁴ Yet, the constitutional requirement that public figures prove “actual malice” rests on compelling democratic considerations that remain salient in the context of sports reporting. By affording breathing space for robust, uninhibited discussion of matters and personalities of public interest, the standard protects the press’s ability to inform the public while preserving liability for knowingly or recklessly false statements. Predating *New York Times Co. v. Sullivan*, there has been a “profound national commitment to the principle that debate on public

¹³⁸ *Id.* at 279–80.

¹³⁹ *St. Amant v. Thompson*, 390 U.S. 727, 730 (1968) (“‘Reckless disregard,’ it is true, cannot be fully encompassed in one infallible definition.”).

¹⁴⁰ *Id.* at 730; see *Times, Inc. v. Pape*, 401 U.S. 279, 291–92 (1971) (citing *St. Amant*, 390 U.S. at 731).

¹⁴¹ *Biro v. Condé Nast*, 963 F. Supp. 2d 255, 277 (S.D.N.Y. 2013) (quoting *Levesque v. Doocy*, 560 F.3d 82, 90 (1st Cir. 2009)).

¹⁴² *Id.* at 277–78 (providing examples of actual malice proven by circumstantial evidence, including when a “story is fabricated or based wholly on an unverified source,” when the “defendant fabricates a statement made by a source,” when “the defendant has motive for defaming the plaintiff,” and when “the defendant knows or suspects that it has committed an error and refuses to acknowledge it”). Because even circumstantial evidence needed to prove actual malice often concerns statements and contexts uniquely private to the defendant, a plaintiff is not in an advantageous situation to access this evidence and use it to support its case.

¹⁴³ See *St. Amant*, 390 U.S. at 730.

¹⁴⁴ See *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964).

issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on public officials.”¹⁴⁵ People have always been, and will continue to be, interested in the conduct and controversies surrounding public officials and figures, including those in the sports industry. In fact, for many, community discussion regarding prominent sports figures and teams is one of the greatest benefits and sources of entertainment in sports culture. Since its founding, this nation’s constitutional guarantee has included an “inalienable right” to opine on such matters of public interest.¹⁴⁶

Though false statements of fact have no constitutional or social value, they are “inevitable in free debate.”¹⁴⁷ Despite this unfortunate reality, erroneous statements made honestly must still be protected for freedoms of expression to have the “breathing space” they require to survive.¹⁴⁸ Where reporting typically depends on speed for views, relevance, and advertising revenue, requiring all publishers to guarantee the accuracy of their assertions before publishing would significantly delay reporting. It would also lead to “intolerable self-censorship,” undermining First Amendment liberties.¹⁴⁹ As much as other disciplines, sports reporting benefits from robust discussion from all sides, and a stricter liability regime would undermine these benefits.

Finally, beyond supporting democratic discourse and reducing the risk of self-censorship, the Supreme Court has justified the actual malice standard on remedial grounds. It characterizes the first remedy for defamation as “self-help—using available opportunities to contradict the lie or correct the error and thereby to minimize its adverse impact on reputation.”¹⁵⁰ Public figures typically have greater access to effective means of communication with which to undertake such corrective speech than private individuals do.¹⁵¹ Additionally, by stepping into government office or achieving fame, public

¹⁴⁵ *Id.* at 270.

¹⁴⁶ *Curtis Publ’g Co. v. Butts*, 388 U.S. 130, 149 (1967) (“The dissemination of the individual’s opinions on matters of public interest is for us, in the historic words of the Declaration of Independence, an ‘unalienable right’ that ‘governments are instituted among men to secure.’”); see *Sullivan*, 376 U.S. at 282–83 (“It is as much his duty to criticize as it is the official’s duty to administer.”) (quoting *Whitney v. California*, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring)).

¹⁴⁷ *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 340 (1974).

¹⁴⁸ *Sullivan*, 376 U.S. at 271–72.

¹⁴⁹ *Gertz*, 418 U.S. at 340–41 (“the First Amendment requires that we protect some falsehood in order to protect speech that matters”); see *Sullivan*, 376 U.S. at 279.

¹⁵⁰ *Gertz*, 418 U.S. at 344.

¹⁵¹ See *id.*

figures invite public scrutiny that private individuals do not.¹⁵² Even for the rare instances where a person becomes a public figure involuntarily, their position as a public figure still invites scrutiny as they occupy positions with privileges and power that private individuals do not have.¹⁵³ These considerations supply a normative basis for maintaining distinct standards for public figures and private individuals.

The heightened, yet still present, actual malice standard for public figures also reflects a compromise between these democratic free speech interests and the competing interest of compensating harmed individuals for defamatory statements.¹⁵⁴ If avoiding self-censorship—an important democratic free speech interest—were the only concern undermining this doctrine, publishers would have an unconditional immunity from liability for defamation of public figures. But that situation would be contrary to the inherent value of defamation law, which still allows for compensation to individuals harmed by defamatory falsehoods.¹⁵⁵ Furthermore, the compromise relegates the actual malice standard only to public officials and figures, which is a small subset of individuals as defined by case law. This distinction between private and public figures is of paramount importance in sports reporting defamation cases because athletes and other individuals may rise to prominence at many different levels of sport.

C. *Modern Pressures and Doctrinal Strain in Sports Reporting*

Although the actual malice standard can be said to reinforce democratic and free speech interests, it is critical to recognize its shortcomings, especially in the modern internet age characterized by process journalism. Requiring knowledge of, or reckless disregard for, the truth could encourage willful ignorance by publishers. After all, if publishers simply fail to inquire into the accuracy of their assertions, actual malice cannot be proven, as ignorance of the truth is distinct from publishing with knowledge of falsity or with reckless disregard for the truth.¹⁵⁶ Under this standard, “reckless disregard”

¹⁵² See *id.*

¹⁵³ See *id.* at 345 (imagining that, in rare instances, an individual can come to be an involuntary public figure when they “have assumed roles of especial prominence in the affairs of society . . . [and] occupy positions of such persuasive power and influence that they are deemed public figures for all purposes.”).

¹⁵⁴ See *Curtis Publ’g Co. v. Butts*, 388 U.S. 130, 147 (1967); *Gertz*, 418 U.S. at 342.

¹⁵⁵ See *Gertz*, 418 U.S. at 341.

¹⁵⁶ See *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968).

requires that the publisher actually entertained serious doubts about the truth of the statement or had a high degree of awareness of its probable falsity but published it anyway.¹⁵⁷ Stated another way, a publisher who never asks the question cannot be said to have doubted the answer, a point that is captured by the proverb “hear no evil, see no evil, speak no evil.”¹⁵⁸ The knowledge requirement has arguably led to an erosion of journalistic investigation and fact-checking.¹⁵⁹ The justification for these negative consequences is the avoidance of self-censorship,¹⁶⁰ but the reality is a news cycle that rewards fast publishing, combined with the eroding incentive to fact-check, means that more factual errors are likely to be published, and damages for the real harm these errors cause to public figures are less likely to be awarded. While avoiding self-censorship is a worthwhile goal, it is not a sufficiently compelling justification for permitting swift and erroneous sports reporting. Given how popular and heavily consumed sports news is, taking the time to fact-check or investigate would not diminish its appeal or, hopefully, much of its audience.¹⁶¹ Yet the time needed to perform those steps may carry a price that media companies are not willing to pay: delay. Despite resulting in more accurate journalism and minimizing the risk of harm to athletes, coaches, and other individuals in sports, such a delay would also cause sports news to break

¹⁵⁷ Rodney A. Smolla, *Let the Author Beware: The Rejuvenation of the American Law of Libel*, 132 U. PA. L. REV. 1, 78–81 (1983).

¹⁵⁸ Miriam D. D’Jaen, *Breaching the Great Firewall of China: Congress Overreaches in Attacking Chinese Internet Censorship*, 31 SEATTLE U. L. REV. 327, 327 n. 1 (2008).

¹⁵⁹ See *Berisha v. Lawson*, 141 S. Ct. 2424, 2428 (2021) (Gorsuch, J., dissenting from denial of certiorari) (arguing that “over time the actual malice standard has evolved from a high bar to recovery into an effective immunity from liability. . . . It seems that publishing *without* investigation, fact-checking, or editing has become the optimal legal strategy. . . . Combine this legal incentive with the business incentives fostered by our new media world and the deck seems stacked against those with traditional (and expensive) journalistic standards—and in favor of those who can disseminate the most sensational information as efficiently as possible without any particular concern for truth.”).

¹⁶⁰ See *id.*; *St. Amant v. Thompson*, 390 U.S. 727, 731–32 (1968).

¹⁶¹ See, e.g., Bron Maher, *How Paris Olympics Led to Traffic Boost for Leading News Publishers*, PRESS GAZETTE (Aug. 20, 2024), https://pressgazette.co.uk/media-audience-and-business-data/media_metrics/olympics-website-traffic-boost/ [<https://perma.cc/7SWL-RLEW>] (reporting that news sites saw a pike in traffic during the 2024 Olympic games, particularly on Olympic articles); *Mail Reports Record US Sports Traffic*, INPUBLISHING (Feb. 12, 2025, 08:26 AM), <https://www.inpublishing.co.uk/articles/mail-reports-record-us-sports-traffic-25050> [<https://perma.cc/Z3B3-EMQU>] (reporting that The Mail Sport saw the most traffic its ever seen over its coverage of Super Bowl LIX).

later than it does, which is not preferable in a world where breaking news gets the first and most clicks.

It is worth noting that process journalism has been used by media companies to defend against defamation lawsuits, notably in *Giduck v. SOCNET.com*.¹⁶² The case involved alleged defamatory statements made in a chat room about the credentials of an attorney and terrorism expert. The expert was described as a “fraud” and a “poser” who pretended to have special forces experience and who “exploited the trust” of and “deceived” others.¹⁶³ Part of the defense centered on process journalism, which, the defendants asserted, allows for “pure, unadulterated rumors (which may have no truth, some truth or considerable truth)” that “are posted as a means of generating additional information to ultimately get to the ‘absolute truth.’”¹⁶⁴ The defendants also argued that “courts should be wary about wading into a widespread social phenomenon as a referee over each and every aspect of this ‘process.’”¹⁶⁵ Ruling for the Defendants, the Colorado Court of Appeals emphasized the fact that the challenged statements “were placed in an online community where anonymous individuals can express highly biased opinions weighs in favor of finding these statements to be opinion.”¹⁶⁶

Moreover, the internet age and modern media complicates the self-help justification for the actual malice standard. It is true that many athletes and prominent sports figures do have better access to effective communication channels than private figures, either through established sports reporting sites or large personal social media followings. For these public figures, then, combatting a published falsehood may be as easy as posting on their account or getting an interview published. But not all athletes and figures in sports have the same fame or access to effective communication channels. Someone like Kai Spears, for example, could be viewed as a relatively famous person because he was on the basketball team at the University of Alabama, a sports powerhouse in the Southeastern Conference. Yet, in reality, he was a freshman walk-on who had not played any games and at the time of the suit had just over three thousand Instagram followers.¹⁶⁷ By comparison, better-known

¹⁶² See No. 12CV128, 2012 Colo. Dist. LEXIS 2243 (Sept. 25, 2012); *Giduck v. Niblett*, 408 P.3d 856 (Colo. App. 2014).

¹⁶³ Amended Complaint and Jury Demand at 9, *SOCNET*, 2012 Colo. Dist. LEXIS 2243 (No. 12CV128).

¹⁶⁴ Answer Brief of Defendants-Appellees at 11–12, *Niblett*, 408 P.3d 856 (No. 13CA0775).

¹⁶⁵ *Id.* at 12.

¹⁶⁶ *Niblett*, 408 P.3d at 868.

¹⁶⁷ See Kai Spears (@kjspears0), INSTAGRAM, <https://www.instagram.com/kjspears0/?hl=en> [<https://perma.cc/5C4Y-MWTJ>].

college basketball players sometimes have tens of thousands or even several hundred thousand Instagram followers.¹⁶⁸ In this way, Spears's ability to effectively combat the published falsehood was more akin to that of a private individual than a public figure, making the question of whether he should be treated as a public figure or a private individual of paramount importance to his ability to recover.¹⁶⁹

IV. DETERMINING PUBLIC FIGURE STATUS IN SPORTS REPORTING CONTROVERSIES

The Supreme Court recently denied certiorari to revisit the actual malice standard,¹⁷⁰ which means public figures must still meet this high bar to recover for defamation. However, the Court has elaborated on who qualifies as a public figure and has distinguished between an all-purpose public figure and a limited-purpose public figure.¹⁷¹ Courts typically consider voluntariness, access to channels of communication, and the plaintiff's role in a public controversy when determining limited-purpose public figure status.¹⁷² In this era of process journalism, it is more important than ever to keep the bar for public-figure status high; if it slips, Spears and others labeled 'public figures' will find it even harder to recover for harmful defamatory statements.

Being classified as an all-purpose public figure is rare, and rightfully so. To be an all-purpose public figure, there must be a clear showing of an individual's "general fame or notoriety,"¹⁷³ such that they are a celebrity or household name who the public "recognizes [] and follows [their] words and

¹⁶⁸ See Lev Akabas, *College Basketball's Biggest Stars on Social Media Are Women: Data Viz*, SPORTICO (Mar. 31, 2024, 10:54 AM), <https://www.sportico.com/leagues/college-sports/2024/march-madness-2024-angel-reese-caitlin-clark-instagram-1234773233> [<https://perma.cc/RGE4-LAXN>].

¹⁶⁹ See Eugene Volokh, *Alabama Basketball Player's Libel Lawsuit Against New York Times Can Go Forward*, THE VOLOKH CONSPIRACY (Dec. 6, 2023, 03:40 PM), <https://reason.com/volokh/2023/12/06/alabama-basketball-players-libel-lawsuit-against-new-york-times-can-go-forward/> [<https://perma.cc/R9ZN-2SB3>] (noting that Spears's case is still relatively early, but as of yet, The N.Y. Times has not argued Spears to be a public figure); Memorandum Opinion and Order at 8–9, *Spears v. N.Y. Times Co.*, No. 23-cv-00692 (N.D. Ala. Oct. 7, 2025).

¹⁷⁰ *Berisha v. Lawson*, 141 S. Ct. 2424 (2021).

¹⁷¹ See *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345 (1974).

¹⁷² See, e.g., *Carr v. Forbes, Inc.*, 259 F.3d 273, 280 (4th Cir. 2001); *Fitzgerald v. Penthouse Int'l, Ltd.*, 691 F.2d 666, 668 (4th Cir. 2001).

¹⁷³ *Id.* at 352.

deeds.”¹⁷⁴ It is not enough to be well known in just some circles, even if the individual is involved in community and societal affairs.¹⁷⁵ Few people achieve this general notoriety,¹⁷⁶ though it can be common in the sports industry for athletes, coaches, commentators, and other important individuals.¹⁷⁷ In some rare cases, an individual involuntarily becomes a public figure.¹⁷⁸ More often, however, individuals are determined to be limited-purpose public figures when they voluntarily place themselves at the “forefront of particular public controversies in order to influence the resolution of the issues involved.”¹⁷⁹ These dynamics were apparent in Magistrate Judge DeMarchi’s order to dismiss Taylor’s complaint. Although she conceded that Taylor has elements of fame—he’s a retired NFL quarterback who coached a top college football program that is part of a prestigious university—she could not “conclude definitively” that Taylor is a public figure under applicable precedent.¹⁸⁰

In the context of limited-purpose public figures, a public controversy is not merely anything of public interest but rather refers to matters which the Court views as a legitimate subject of public discussion or debate.¹⁸¹ As

¹⁷⁴ See *Waldbaum v. Fairchild Publ’ns*, 627 F.2d 1287, 1294 (D.C. Cir. 1980).

¹⁷⁵ See *Gertz*, 418 U.S. at 351–52.

¹⁷⁶ See *Waldbaum*, 627 F.2d at 1296.

¹⁷⁷ See ROBERT D. SACK, *SACK ON DEFAMATION: LIBEL, SLANDER, AND RELATED PROBLEMS* 5-57 to -58 (4th ed. 2010) (explaining that celebrities, like professional athletes, are public figures as imagined in *Gertz* in part because they voluntarily devote themselves to the public arena for profit and reap those benefits); see generally John Newell, *Athletes as Brands: Caitlin Clark and LeBron James Lead as America’s Favorites*, BEE (Sept. 23, 2025, 09:37 PM), <https://www.sacbee.com/sports/article309725745.html> [<https://perma.cc/F9M9-8YYK>] (reporting that forty-seven percent of U.S. sports fans say they trust endorsements from athletes more than from other celebrities); cf. *National Survey of Kids (and Their Parents) About Famous Athletes as Role Models: Summary of Findings*, KAISER FAM. FOUND. (Sept. 30, 2000), <https://www.kff.org/hiv-aids/kaiser-family-foundation-national-survey-of-kids/> [<https://perma.cc/J5F3-MFFS>] (reporting that athletes are commonly admired and followed by children aged ten to seventeen years old).

¹⁷⁸ *Gertz*, 418 U.S. at 345–46 (imagining that in rare instances, an individual can come to be an involuntary public figure when they “have assumed roles of special prominence in the affairs of society . . . [and] occupy positions of such persuasive power and influence that they are deemed public figures for all purposes.”).

¹⁷⁹ *Id.*

¹⁸⁰ *Taylor v. ESPN, Inc.*, No. 25-cv-06384, 2026 WL 758474, at *9 (N.D. Cal. Mar. 17, 2026) (granting defendants’ motion to dismiss).

¹⁸¹ See SACK, *supra* note 177, at 5-58; *Waldbaum*, 627 F.2d at 1296 (“a dispute that in fact has received public attention because its ramifications will be felt by persons who are not direct participants”); SACK, *supra* note 177, at 5-59 to -61 (explaining that a public controversy does not have to necessarily be a debated situation, rather simply

a result, plaintiffs who are accomplished athletes and other public-facing individuals in the sports industry are often considered to have placed themselves within public controversies because they and their work are socially and culturally popular. Many cases have determined that professional and collegiate athletes and coaches are at least limited-purpose public figures.¹⁸² Limited-purpose public figures are only public figures for a limited range of issues relating to a controversy.¹⁸³ This means the heightened actual malice standard only applies to defamatory statements pertaining to their public character and performance related to the public controversy, which in many cases is separate from their private lives.¹⁸⁴

At the same time, courts are wary of deeming individuals limited-purpose public figures when they did not voluntarily inject themselves into the relevant controversy. In Taylor's case, Magistrate Judge DeMarchi rejected ESPN's characterization of him as a limited-purpose public figure. While she acknowledged that Taylor voluntarily accepted the role of head football coach at a high-profile program and was accused of workplace misconduct, she found that the public controversy surrounding that alleged misconduct stemmed from the unauthorized leak of a confidential personnel file to ESPN.¹⁸⁵ That conclusion warrants scrutiny. The alleged misconduct raises broader public considerations—including how male college football coaches treat female staff members and whether universities have put sufficient safeguards in place to deter such misconduct—that exist independently of how

a preexisting situation of public interest in which the individual becomes involved by their voluntary and public actions).

¹⁸² See, e.g., *Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 162 (1967) (determining Coach Wally Butts, the University of Georgia Athletic Director and former coach, to be a public figure); *Brewer v. Memphis Publ'g Co.*, 626 F.2d 1238, 1254–55 (5th Cir. 1980); *McGarry v. Univ. of San Diego*, 64 Cal. Rptr. 3d 476, 481 (Ct. App. 2007) (quoting *Barry v. Time, Inc.*, 584 F. Supp. 1110, 1119 (N.D. Cal. 1984)) (“[A] common thread in these cases is that one’s voluntary decision to pursue a career in sports, whether as an athlete or a coach, ‘invites attention and comment’ regarding his job performance and thus constitutes an assumption of the risk of negative publicity”); *Chuy v. Phila. Eagles Football Club*, 595 F.2d 1265, 1280 (3d Cir. 1979) (“Professional athletes, at least as regards their playing careers, assume a position of public prominence.”).

¹⁸³ *Gertz*, 418 U.S. at 351 (1974).

¹⁸⁴ See *Cottrell v. NCAA*, 975 So. 2d 306, 343 (Ala. 2007) (holding the plaintiff was a limited-purpose public figure only for defamatory statements related to the public controversy but not statements unrelated to the controversy).

¹⁸⁵ *Taylor*, 2026 WL 758474, at *9 (granting defendants’ motion to dismiss).

the story became public. We assert that Taylor ought to have been deemed a limited-purpose public figure for that reason.

This distinction between conduct relating to public controversy and defamatory statements made against an individual's personal life is critical to uphold. Athletes, coaches, and sports personalities have evolved to occupy a more significant public role than simply entertainers in recent years, due in part to the rise of NIL deals, social media, and an increasing interest in social and political matters.¹⁸⁶ It can be easy to argue the public is impacted by and has a legitimate interest in discussing these individuals' conduct beyond their athletic performance. However, courts in the NIL era should exercise caution to respect the dignity of these individuals and their right to rectify the harm done to them by defamatory statements. To that end, courts should weigh contextual factors such as the degree to which the athlete has affirmatively monetized or promoted their public persona. One benchmark could consider number of social media followers compared to similarly situated college athletes, and another might weigh reported earnings generated by the athlete. These and other considerations could help to ensure that the public figure doctrine tracks genuine public accountability, rather than serving as a blanket reduction in protection for anyone with a jersey and a social media account.

For example, adopting a broad view of public controversy could mean that Kai Spears is determined to be a limited-purpose public figure with regard to the shooting reported by the *Times*. It could because he was drawn into a specific public controversy by virtue of his status as a teammate of a college basketball star who was at the shooting and, although it turned out he wasn't at the shooting, it appears he had conversations with teammates who were present.

We find that approach problematic. To classify Spears as a public figure would mean that a relatively unknown college athlete who simply wanted to play basketball for a power conference school must show "actual malice" to recover for false statements that affect his reputation. To be sure, collegiate athletes at power conference schools nowadays share a lot in common with professional athletes. They can be directly paid by their schools through revenue sharing—in addition to athletic scholarships, which cover tuition, housing, health resources, and other student benefits—and can sign NIL deals

¹⁸⁶ Sylvie Nguyen, *Athletes Take Political Stances, Influence Public Opinion*, ORACLE (Nov. 1, 2024), <https://gunnoracle.com/27886/uncategorized/athletes-take-political-stances-influence-public-opinion/> [https://perma.cc/GTS5-FXBD].

with third parties.¹⁸⁷ It is no wonder that so many collegiate athletes are of public interest, with surging TV ratings and other rising metrics.¹⁸⁸ Yet they are also students, typically between seventeen and twenty-two years old, and fewer than two percent of them will become professional athletes.¹⁸⁹ There ought to be limits to what aspects of student athletes' lives are subject to public debate, and their private activities, such as who they choose to spend time with outside of practice and games, should not be open to such public scrutiny. Stretching public-figure doctrine to encompass relatively anonymous college players simply because they participate in a popular sport risks collapsing any meaningful boundary between public and private individuals. It would saddle young athletes who pass briefly through the college system with the same diminished reputational protection afforded to seasoned celebrities and public officials, despite their far more limited access to public platforms, media reach, and legal resources.

By contrast, and counter to Magistrate Judge DeMarchi's conclusion, characterizing Stanford coach Troy Taylor as a limited-purpose public figure with respect to investigations into his workplace conduct *is* appropriate because those investigations implicate matters of genuine public controversy. Their consequences extend beyond the immediate participants, affecting the university community and the public's confidence in institutional governance. At the same time, courts must balance the public's interest in debating significant controversies against the interest in preserving individual dignity and reputation for people who have become more prominent than the average person simply by pursuing their careers. One way to strike that balance is to resist expanding the definition of a limited-purpose public figure beyond those who have truly assumed a central, voluntary role in the relevant public controversy.

¹⁸⁷ Michael McCann, *2025 Sports Law in Review: NCAA, Betting and DOJ Controversies*, SPORTICO (Jan. 1, 2026, 09:00 AM), <https://www.sportico.com/law/analysis/2026/college-sports-betting-law-controversies-1234878608/> [https://perma.cc/4ZM8-UFTQ].

¹⁸⁸ Austin Karp, *College Football Rides Wave to New Audience Records for the Sport*, SPORTS BUS. J. (Dec. 8, 2025), <https://www.sportsbusinessjournal.com/Articles/2025/12/08/college-football-rides-wave-to-new-audience-records-for-the-sport> [https://perma.cc/LVT5-5S7P].

¹⁸⁹ NCAA, NCAA RECRUITING FACTS (2014) <https://assets.nfhs.org/umbraco/media/886012/recruiting-fact-sheet-web.pdf> [https://perma.cc/RS24-ZUNN].

CONCLUSION

In sum, this Article urges movement along two intersecting tracks. First, media organizations—especially those covering sports, where breaking news is treated as a competitive blood sport—should realign their internal incentives to favor accuracy over immediacy, recognizing that longterm trust and legal risk turn on whether audiences trust their work. Second, courts should adapt existing doctrines—substantial truth, opinion/fact, and public figure status—to appreciate contemporary realities of process journalism and, for good or bad, AI-infused news distribution.

The defamation disputes pitting Kai Spears and Troy Taylor against the *Times* and ESPN, respectively, reveal the uneasy fit between the doctrine of substantial truth, public figure defamation analysis, and contemporary sports reporting in a world where college sports and professional sports have become more alike due to expansion of compensation opportunities for college athletes. The doctrine and accompanying defamation law dynamics were crafted in an era of slower news cycles and more robust editorial hierarchies. With the rise of process journalism and the need to “break news,” the increasing reliance—and social acceptance—of AI-generated media content, and the unsteady economics of media companies and journalism employment, what counts as “truth” is an evolving concept. Accordingly, the evaluation of truth and reputational harm must account for contemporary reporting practices.

This Article argues that getting the ‘gist’ right is not enough. Inaccuracies that materially alter reputational harm or legal culpability should defeat the substantial truth defense. Conversely, minor or technical errors that do not meaningfully change the gist or impact of the allegation should not preclude reliance on substantial truth. Together, these standards seek to align the substantial truth doctrine with its core purpose: protecting robust speech while refusing to immunize distortions that significantly worsen the sting of a defamatory charge.

Along those lines, media entities should accurately inform the public and shouldn’t enjoy a legal shield for avoidable errors. This is not an abstract issue. Mistakes can meaningfully harm individuals, including prominent sports figures and less publicly visible individuals like Spears, whose ability to fight back—either through litigation or ‘self-help’ via public relations strategies or public statements and influencing on social media—is often misunderstood and overstated. It is true that journalists and media companies face enormous financial and professional pressures and, worse yet, those pressures will probably worsen in time as AI takes a greater hold of content generation. But accuracy should be deemed most important for those who pursue a career in journalism.

We contend this position is consistent with *New York Times Co. v. Sullivan* and its progeny. It also aligns with the need for sports reporting to face readers' scrutiny and the robust, wide-open debate the First Amendment and common sense demand. Courts should apply substantial truth with greater discipline and a healthier dose of skepticism—especially where an inaccuracy misconstrues the legal status of its subject matter. With such an inaccuracy, the story is not “substantially” true, and reliance on the “gist of it” is doing too much work for a legal system that prioritizes justice and fairness.

Public figure doctrine must also be calibrated to contemporary sports culture, where some college athletes share much in common with professional athletes. Even with the professionalization of college sports, not every scholarship athlete and Division I coach is a *de facto* public figure. The reality is that the vast majority of college athletes are *not* prospective professional athletes, and they are still primarily students who seek a degree for a post-college career or graduate school admissions.

In that light, Spears's case underscores the risk of construing “limited purpose” public figure status to functionally deny redress to individuals who resemble ordinary private persons more than celebrity athletes. Courts should demand a high threshold for both allpurpose and limitedpurpose public figure status in the sports context. They should also confine the “public controversy” inquiry to situations where the athlete has injected themselves into a debate; simply being on the roster of a team that faces a controversy is not enough. For those reasons, courts should require a high threshold before extending public figure status to college athletes who have not voluntarily assumed a prominent public role.



“The Motherhood Penalty”: The Intersection of Law and Social Unrest Concerning Pregnancy Discrimination Against Female Athletes

Isabelle Marie Silva

ABSTRACT

Women’s professional sports have rapidly expanded over the past five years, marked by increased visibility, commercial success, and public recognition of female athletes’ accomplishments. Despite this progress, professional female athletes continue to face structural barriers, including the “motherhood penalty.” These athletes face a unique form of pregnancy discrimination because their employment rights exist at the intersection of antidiscrimination law, labor law, and collective bargaining agreements. These overlapping legal structures inadequately protect pregnant athletes and create uncertainty regarding career stability, compensation, and roster security.

Using Dearica Hamby’s pregnancy discrimination lawsuit as a contemporary case study, this Article examines this problem head on – asking why federal employment law leaves professional female athletes vulnerable to pregnancy discrimination in ways not experienced by more traditional employees. This Article argues that the intersection between the Pregnancy Discrimination Act, Pregnant Workers Fairness Act, National Labor Relations Act, and collective bargaining structures create doctrinal and practical gaps that fail to adequately safeguard pregnant professional athletes. Although recent legal developments have expanded workplace protections for pregnant workers, professional female athletes remain consistently under protected due to the confines of professional sports employment.

To address these deficiencies, this Article proposes a framework for systemic reform through enhanced league governance, stronger collective bargaining protections, increased institutional support and resources for pregnant athletes, and broader cultural and structural change within professional sports.

INTRODUCTION

This Article explores the legal rights of pregnant women who are professional athletes and recommends several changes to how the law currently treats those women and their economic opportunities. As professional women's sports become more popular in the United States, more women will have opportunities to pursue often lucrative, but typically brief, careers as professional athletes. These athletes occupy a unique position in employment law: they are employees entitled to protection under federal antidiscrimination statutes, yet their working conditions in these unionized leagues are largely governed by collective bargaining agreements, which dictate their terms of employment. This Article argues that the intersection of federal antidiscrimination protections, labor law, and collectively bargained league governance creates significant doctrinal and practical gaps that leave pregnant professional athletes inadequately protected from adverse employment actions.

Within this context, eligibility rules, salary caps, and revenue sharing provisions tend to attract the most attention from fans and media. Yet these same employment structures create substantial uncertainty for athletes who become pregnant and may subsequently face trades, contract non-renewals, reduced playing opportunities, or other adverse career consequences. Existing legal frameworks frequently fail to account for how professional sports uniquely shape employment decision-making, leaving pregnant athletes particularly vulnerable despite broader expansions in workplace pregnancy protections. These tensions are emerging in WNBA player Dearica Hamby's lawsuit against the Las Vegas Aces, in which Hamby alleges the team traded her after learning that she was pregnant. This lawsuit is the first modern pregnancy discrimination claim involving a professional athlete trade, raising unresolved questions about roster decisions, collective bargaining protections (or lack thereof), and Title VII liability in professional sports.

As Dr. Kathryn Ackerman, a sports medicine physician, urges, "female athletes shouldn't have to give up motherhood because they want to be an athlete."¹ Even when female athletes do decide to continue playing their respective sport while simultaneously becoming a mother, many endure "a cut in or removal of funding or a loss of sponsorship during pregnancy, forcing

¹ Anna Furman, *Pregnancy and Sports a Challenging Combination for Female Professional Athletes*, AP NEWS (May 29, 2023, 15:56 ET), <https://apnews.com/article/female-athletes-pregnancy-hammon-hamby-wnba-62ce78e7d3e1b547c885ae341d229027> [<https://perma.cc/2EA2-SFKK>].

them to return quickly after childbirth.”² Unfortunately, it appears that pregnancy is “the kiss of death” to a woman’s athletic career.³

This Article proceeds in four remaining parts. Part I explains the doctrinal framework of relevant civil rights laws before analyzing discrimination in the American workplace through the lens of the “motherhood penalty,” which is discussed in greater detail in Part II. Part III then examines the role of labor law and the specific applications of collective bargaining within women’s professional sports leagues. Finally, Part IV proposes a multi-pronged strategy to eliminate pregnancy discrimination in professional sports through social factors, research, and access to accommodations, all of which may serve to lay the groundwork for legal and systemic change.

I. CIVIL RIGHTS FOR PREGNANT WOMEN

A. *From Judicial Exclusion to Legislative Reform*

The Supreme Court of the United States decided two seminal cases prior to the enactment of the Pregnancy Discrimination Act (“PDA”)⁴—*Geduldig v. Aiello* and *General Electric v. Gilbert*—which Congress ultimately took issue with, and pushed through legislation to correct.⁵ In *Geduldig*, the Court held that excluding pregnancy from disability benefits did not constitute sex discrimination under the Fourteenth Amendment.⁶ Similarly, in *General Electric*, the Court found that an employer’s disability plan excluding pregnancy-related conditions did not violate Title VII of the

² Olivia Howe, *Mum’s the Word – How Elite Mothers are Shaking Up the Sporting World*, ATHLETE MEDIA GRP. (Sep. 10, 2020), <https://athletemediaco.uk/article/mums-the-word-how-elite-mothers-are-shaking-up-the-sporting-world/> [https://perma.cc/4C38-RM2T].

³ *Id.*

⁴ 42 U.S.C. § 2000e-2 (1991).

⁵ Barbara DiTullio, *Slow & Uneven Progress: The Pregnancy Discrimination Act at 35*, WOMEN’S L. PROJECT (Oct. 31, 2015), <https://www.womenslawproject.org/2013/10/31/slow-uneven-progress-the-pregnancy-discrimination-act-at-35/> [https://perma.cc/7E79-D94V]; see also *General Elec. Co. v. Gilbert*, 429 U.S. 125, 146–47 (Brennan, J., dissenting) (“[T]oday’s holding not only repudiates the applicable administrative guideline promulgated by the agency charged by Congress with implementation of the Act, but also rejects the unanimous conclusion of all six Courts of Appeals that have addressed this question.”).

⁶ *Geduldig v. Aiello*, 417 U.S. 484, 494–95 (1974).

Civil Rights Act of 1964.⁷ These cases revealed the Court's unwillingness to extend protection to pregnant female employees in the workforce. Such decisions prompted Congress to intervene, ultimately enacting the PDA to correct this narrow interpretation of Title VII and extend explicit protections to pregnant employees.⁸ In doing so, the PDA effectively overturned the Court's reasoning by legislatively asserting that discrimination on the basis of pregnancy does indeed constitute unlawful sex discrimination under Title VII.

The PDA is contained within the Civil Rights Act of 1964, Title VII.⁹ "Discrimination in employment because of sex and on the basis of sex, which is further defined as on the basis of pregnancy, childbirth, or related medical conditions," constitutes unlawful sexual discrimination under Title VII.¹⁰ This amendment was passed by Congress, and signed into law by President Jimmy Carter in 1978 to address the fact that there were no specific federal laws protecting pregnant women from workplace discrimination.¹¹ Indeed, other laws such as Title VII of the Civil Rights Act of 1964 offered limited protection for pregnant women.¹² At the time, Title VII protection entailed only a prohibition on discrimination "because of sex," which courts interpreted not to include pregnancy.¹³ Thus, this permitted employers to exclude pregnancy-related conditions from otherwise

⁷ Gen. Elec. Co. v. Gilbert, 429 U.S. 125, 127–28, 132–33, 135–38 (1976).

⁸ See A bill to amend title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy, S.995, 95th Cong. (1978). More recently, The Pregnant Workers Fairness Act ("PWFA") deemed it unlawful for a covered employer to "not make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee," absent a showing of undue hardship to the employer. 42 U.S.C. § 2000gg-1(i) (2022). Still, however, these accommodations do not go as far as providing support for the mother after pregnancy.

⁹ Civil Rights Act of 1964, Pub. L. No. 88–352, § 701, 78 Stat. 253.

¹⁰ Noa Dalzell, *Dearica Hamby's Pregnancy Discrimination Lawsuit Against the WNBA's Aces, Explained*, SB NATION (Aug. 13, 2024), <https://www.sbnation.com/wnba/2024/8/13/24218924/dearica-hamby-discrimination-pregnancy-lawsuit-las-vegas-aces-wnba-becky-hammon-sparks-explained> [https://perma.cc/S2BN-5DHA].

¹¹ Admin-science, *Understanding the Historical Context and Significance of the Pregnancy Discrimination Act—Shining a Light on the Past and Paving the Way for a More Equal Future*, PREGNANCY ARCHIVE: BLOG (Feb. 26, 2024), <https://pregnancyarchive.com/blog/understanding-the-historical-context-and-significance-of-the-pregnancy-discrimination-act-shining-a-light-on-the-past-and-paving-the-way-for-a-more-equal-future> [https://perma.cc/4L6C-QWYW].

¹² *Id.*

¹³ See Barbara DiTullio, *supra* note 5.

comprehensive benefits schemes, allowing differential treatment of pregnant workers without triggering liability.¹⁴ These gaps in federal protection helped catalyze a convergence of organizing efforts among working women, labor advocates, and civil rights groups.¹⁵ The passage of the PDA was thus a product of this collective advocacy, demonstrating that organized action can reform “workplace culture and practices for pregnant workers.”¹⁶

More recently, the Pregnant Workers Fairness Act expanded federal protections by requiring covered employers to provide reasonable accommodations for known limitations related to pregnancy, childbirth, or medical conditions, absent undue hardship.¹⁷ This requirement is affirmative in nature and differs from the PDA framework because it imposes a proactive duty on employers to modify workplace conditions, rather than merely prohibiting differential treatment.¹⁸

B. The Pregnancy Discrimination Act: Scope and Coverage

The PDA aims to ensure that an employer treats “pregnant women and women who may become pregnant . . . the same as other employees.”¹⁹ This implicates core principles of labor and employment law by embedding pregnancy within Title VII’s broader anti-discrimination framework and reshaping both the interpretation and enforcement of work place equality

¹⁴ See *Gen. Elec. Co. v. Gilbert*, 429 U.S. 125, 127–28, 132–33, 135–38 (1976) (holding exclusion of pregnancy-related disabilities from employee benefits did not violate Title VII).

¹⁵ See H.R. Rep. No. 117-27(I), at 11–13 (2021) (describing judicial exclusion of pregnancy from Title VII and the resulting push for reform).

¹⁶ Kenneth Quinnell, *Pathway to Progress: The Pregnancy Discrimination Act of 1978*, AFL-CIO (Apr. 15, 2021), <https://aflcio.org/2021/4/15/pathway-progress-pregnancy-discrimination-act-1978> [<https://perma.cc/9ETA-LFZW>].

¹⁷ 42 U.S.C. §§ 2000gg (2022).

¹⁸ See Press Release, U.S. Equal Employment Opportunity Commission, EEOC Issues Final Regulation on Pregnant Workers Fairness Act (Apr. 15, 2024), <https://www.eeoc.gov/newsroom/eeoc-issues-final-regulation-pregnant-workers-fairness-act> [<https://perma.cc/67CH-W5XM>].

¹⁹ Congressional Research Service, *Pregnancy and Labor: An Overview of Federal Laws Protecting Pregnant Workers*, CRS REPORT (June 17, 2021), https://www.congress.gov/crs_external_products/R/PDF/R46821/R46821.1.pdf [<https://perma.cc/99YC-ED5U>]; see 42 U.S.C. § 2000e(k) (Pregnancy Discrimination Act, Pub. L. 95-555, 1978) (clarifying that discrimination “because of sex” includes pregnancy, childbirth, or related conditions, enacted in response to Supreme Court rulings narrowly interpreting Title VII); H.R. Rep. No. 95-948, at 3–4 (1978).

standards.²⁰ Accordingly, the PDA raises a structural question: to what extent do employers have a duty to accommodate pregnant employees?²¹ This Article aims to answer that question through the lens of women's professional sports.

The statute prohibits employers from “basing employment decisions such as hiring, firing, promotion, or compensation on an employee's pregnancy or related medical condition.”²² To that end, the PDA further “prohibits employers from treating pregnancy less favorably than other medical conditions.”²³ Not only is pregnancy placed on the same level as other medical conditions,²⁴ but it also cannot serve as grounds for discrimination.²⁵ To avoid potential discrimination lawsuits, employers in the private or public sector with fifteen or more employees must comply with the statute's requirements.²⁶

Additionally, female employees are covered under these anti-discrimination laws, whereas independent contractors are not.²⁷ This distinction creates a significant structural vulnerability for professional female athletes, as leagues may classify players as employees in some contexts and independent contractors in others²⁸—especially in relation to marketing,

²⁰ U.S. EQUAL EMP. OPPORTUNITY COMM'N, EEOC Notice No. 915.003, ENFORCEMENT GUIDANCE ON PREGNANCY DISCRIMINATION AND RELATED ISSUES (June 25, 2015), <https://www.eeoc.gov/laws/guidance/enforcement-guidance-pregnancy-discrimination-and-related-issues> [<https://perma.cc/Q4QS-N9GV>].

²¹ See generally *Pregnancy Discrimination Act: Compliance Tips*, LEXISNEXIS PRAC. GUIDANCE (Apr. 29, 2024), <https://plus.lexis.com/api/permalink/a7161033-ab74-46b8-94fe-c6e70f743b21/?context=1530671> [<https://perma.cc/T8EH-2FB9>].

²² 42 U.S.C. § 2000e(k).

²³ *Id.*; *Newport News Shipbuilding & Dry Dock Co. v. EEOC*, 462 U.S. 669, 684 (1983).

²⁴ 42 U.S.C. § 2000e(k).

²⁵ *Id.*

²⁶ *Id.* § 2000e(b).

²⁷ See Patrick J. Lamparello & Noa Baddish, *Title VII Compliance Issues*, LEXISNEXIS PRAC. GUIDANCE (Apr. 30, 2024), <https://plus.lexis.com/api/permalink/b7d3f384-5d02-4126-99e7-e7cd546d91c7/?context=1530671> [<https://perma.cc/Z8MA-YBCU>] (explaining that independent contractors are not covered under Title VII, and therefore, are not covered under the PDA—employers do not count them for the purposes of Title VII compliance issues); see *Alberty-Velez v. Corporacion de P.R. para la Difusion Publica*, 361 F.3d 1, 3 (1st Cir. 2004) (affirming lower court's decision that plaintiff, as an independent contractor, was “not covered by Title VII or the [relevant] anti-discrimination laws”).

²⁸ See, e.g., *These 3 Factors Distinguish Employees From Contractors*, INC. (Sep. 15, 2015), <https://www.inc.com/jessica-mah/the-3-factors-that-distinguish-employees-from-contractors.html> [<https://perma.cc/WR77-EZ3Q>] (“In both the NFL and the NCAA, franchises are facing questions over whether some athletes are employees, contractors, or unpaid intern student athletes.”).

endorsement, and promotional activities.²⁹ Courts analyzing whether a worker qualifies as an employee often apply the “economic realities” test, which considers factors such as the employer’s degree of control over the worker, the worker’s economic dependence on the employer, and the permanence of the relationship.³⁰ Professional athletes arguably satisfy many of these factors because teams and leagues exercise substantial control over training schedules, travel obligations, game participation, media appearances, and conduct requirements.³¹ However, the dual classification of athletes raises questions under federal common law agency principles regarding whether leagues can simultaneously maintain extensive control over players while denying them statutory protections in certain commercial contexts.³² This issue becomes particularly significant for athlete-mothers, whose pregnancies may affect league marketing decisions, sponsorship opportunities, and participation status, as illustrated in Dearica Hamby’s case,³³ which will be addressed later in this Article. Thus, the classification of professional athletes is not merely a contractual or organizational issue; it directly impacts whether athletes can invoke the protections afforded by the PDA.

When employers fail to comply with the aforementioned PDA requirements, employees seeking relief must generally first file a charge with the Equal Employment Opportunity Commission (“EEOC”), typically within 180 days or 300 days, depending on the jurisdiction.³⁴ While this administrative

²⁹ See Women’s National Basketball Association Collective Bargaining Agreement, at 13 (2020), <https://wnbpa.com/wp-content/uploads/2020/01/WNBA-WNBPA-CBA-2020-2027.pdf> [<https://perma.cc/UB4Y-C7T8>] [hereinafter “WNBA CBA”] (defining WNBA Marketing and Promotional Agreement and what players are entitled to do and restricted to do).

³⁰ 29 C.F.R. § 795.110(b)(1)–(6) (2024).

³¹ See *Employee Status in Sport*, HCRLAW (June 26, 2019), <https://www.hcrlaw.com/news-and-insights/employee-status-in-sport/> [<https://perma.cc/8LQB-2JZW>] (“[C]lubs will have a large degree of control over their players’ day to day activities, such as training and competition schedules; degree of control is a key indicator of employee status.”).

³² See Leanne O’Leary, Maximillian Selmann, Vanja Smokvina, *Elite Athletes and Worker Status*, 54 INDUS. L.J. 248, 249–50, 275–76 (2025) (discussing how sports organizations often exercise substantial control over athletes’ participation and services while contractually excluding them from employee status, thereby denying them access to statutory labor protections).

³³ Complaint and Jury Demand, *Hamby v. WNBA, LLC*, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 1.

³⁴ *What You Can Expect After You File a Charge*, U.S. EQUAL EMP. OPPORTUNITY COMM’N, <https://www.eeoc.gov/what-you-can-expect-after-you-file-charge> [<https://perma.cc/A6RY-S6W8>] (last visited Apr. 30, 2026).

process is a prerequisite to filing suit under Title VII or the Americans with Disabilities Act (“ADA”),³⁵ it may pose unique challenges for athletes. For example, the time-sensitive nature of athletic careers—often defined by short seasons, performance windows, and limited contract durations—may render the EEOC’s months-long investigation process impractical.³⁶ Additionally, athletes may be disincentivized from pursuing claims due to concerns about reputational harm, reduced playing time, or jeopardizing future contract opportunities within a relatively insular industry.³⁷ So, although procedural avenues for relief exist, practical barriers may limit their accessibility and effectiveness in the athletic context.

These enforcement limitations are particularly significant because they place greater emphasis on employer-side compliance. For employers, the implementation of the PDA provided shifts in conducting compliance within Title VII. Prior to the PDA’s enactment, “federal law did not expressly address the discriminatory treatment of pregnant workers.”³⁸ With this legislation, employers may be subject to higher compliance costs associated with adhering to the new rules.³⁹ At the same time, employers are now provided with clear standards governing discrimination against pregnant workers, including detailed guidance on how to implement anti-discrimination practices in the workplace.⁴⁰ Specifically, if a professional team declines to renew a pregnant athlete’s contract or removes her from a roster without providing accommodations comparable to those afforded to other injured players, then

³⁵ See 42 U.S.C. § 2000e(k).

³⁶ See generally *Northwestern Univ.*, 362 NLRB 1350 (2015).

³⁷ See Michael Z. Green, *Retaliatory Employment Arbitration*, 35 BERKELEY J. EMP. & LAB. L. 201, 205 (2014) (“EEOC became involved . . . employer responses create a chilling effect that deters employees from further filing of discrimination charges.”).

³⁸ APRIL J. ANDERSON, CONG. RSCH. SERV., R46821, PREGNANCY AND LABOR: AN OVERVIEW OF FEDERAL LAWS PROTECTING PREGNANT WORKERS (2023).

³⁹ See generally *HR Compliance Issues: Challenges Impacting Employers in 2025*, VANTAGE POINT BENEFIT ADM’RS (Jan. 29, 2026), <https://vantagepointbenefit.com/hr-compliance-issues-challenges-impacting-employers-in-2025/> [<https://perma.cc/6CJG-S7C2>]; Staff Management, *The Cost of Compliance: Minimising Risks in 2025*, HR:4UK (Jan. 8, 2025), <https://hr4uk.com/blogs/the-cost-of-compliance-minimising-risks-in-2025/> [<https://perma.cc/FEX9-SLHX>].

⁴⁰ See 42 U.S.C. § 2000e-2(a)(1) (“It shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin . . .”).

the team could expose itself to liability under the PDA, regardless of whether the athlete pursues legal remedy.⁴¹

C. Case Law and Legal Frameworks

The burden-shifting framework articulated in *McDonnell-Douglass v. Green* provides the foundational structure for proving employment discrimination,⁴² making it critical to the Court's analysis in *Young v. United Parcel Service, Inc.*, a recent pregnancy discrimination case that exposed foundational issues in labor and employment law.⁴³ Under the first step of the framework, the plaintiff, Green, established a prima facie case by showing he was a member of a protected class, qualified for his job position, and was rejected for reemployment despite the employer continuing to hire others with similar qualifications.⁴⁴ In response, McDonnell-Douglass asserted a legitimate, nondiscriminatory reason for its decision: Green had participated in a "stall-in" protest against the company.⁴⁵ The burden shifted back to Green to show this stated reason was in fact pretextual, pointing to evidence that the employer's explanation was not consistently applied and that similarly-situated individuals were treated more favorably.⁴⁶ Based on the evidence presented, the Court found that the employee had indeed illustrated a prima facie case of discrimination.⁴⁷ The Court also stated that the employer offered a legitimate, nondiscriminatory reason for its actions.⁴⁸ Therefore, the case was remanded to ensure the employee received a fair trial to show that the employer's actions were, in fact, pretext for racial discrimination.⁴⁹

⁴¹ See U.S. Equal Emp. Opportunity Comm'n, *Enforcement Guidance on Pregnancy Discrimination and Related Issues*, No. 915.003 (June 25, 2015), <https://www.eeoc.gov/laws/guidance/enforcement-guidance-pregnancy-discrimination-and-related-issues> [<https://perma.cc/MY8M-5U9L>] (explaining that adverse employment actions, including termination or other unfavorable treatment based on pregnancy, violate the PDA).

⁴² *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

⁴³ *Young v. United Parcel Service, Inc.*, 575 U.S. 206 (2015).

⁴⁴ *McDonnell Douglas*, 411 U.S. at 802.

⁴⁵ *Id.* at 802–03.

⁴⁶ *Id.* at 805.

⁴⁷ *Id.* at 802.

⁴⁸ *Id.* at 802–03.

⁴⁹ *Id.* at 804.

This three-step burden-shifting framework remains the standard for proving employment discrimination.⁵⁰

Applying the *McDonnell-Douglas* burden-shifting framework, the *Young* Court brought the PDA into the spotlight.⁵¹ The plaintiff, Peggy Young, sued her employer, United Parcel Service (“UPS”), because it refused to accommodate her pregnancy-related lifting restrictions.⁵² The Court held a pregnant employee can establish a *prima facie* case of discrimination if she can demonstrate that her employer provided accommodations to other employees “similar in their ability or inability to work.”⁵³

Here, Young showed that UPS denied her a light-duty accommodation despite providing such accommodations to other employees, who were similarly unable to perform certain job functions, including those injured on the job, those with disabilities under the Americans with Disabilities Act (“ADA”), and those who had lost Department of Transportation certifications.⁵⁴ The Court emphasized that pregnant workers do not enjoy a “most-favored-nation status,”⁵⁵ but clarified that when an employer denies an accommodation to a pregnant employee while accommodating others, it must articulate “a legitimate, non-discriminatory reason” for the refusal, beyond mere financial or convenience considerations.⁵⁶ Plaintiffs may rebut this reason by showing that the employer’s stated justification is insufficient or by demonstrating that a substantial percentage of non-pregnant employees receive accommodations while a similar proportion of pregnant employees do not.⁵⁷

To compare, a pregnant-athlete plaintiff could establish a *prima facie* case of discrimination by showing that she disclosed her pregnancy, experienced an adverse roster or contract decision, and was treated differently from similarly situated non-pregnant players, such as those recovering from injury, on medical leave, or returning from surgery. Under this comparative approach, a league or team that routinely provides accommodations to injured or recovering players would likewise be expected to offer reasonable accommodations to pregnant athletes unless it can articulate a legitimate, non-discriminatory reason for the differential treatment.

⁵⁰ See *Sprowl v. Mercedes-Benz U.S. Int’l, Inc.*, 815 Fed. Appx. 473 (11th Cir. 2020), *petition for cert. denied* (No. 20-790).

⁵¹ *Young v. United Parcel Service, Inc.*, 575 U.S. 206, 206 (2015).

⁵² *Id.* at 211.

⁵³ *Id.* at 229.

⁵⁴ *Id.* at 211–15.

⁵⁵ *Id.* at 221–22.

⁵⁶ *Id.*

⁵⁷ *Id.* at 229–30.

II. THE MOTHERHOOD PENALTY

A. *Discrimination in the Workplace*

Despite the protections afforded by the PDA and the doctrinal frameworks governing pregnancy discrimination, legislative reform and legal remedies have been insufficient approaches to reducing pregnancy discrimination.⁵⁸ The reality is that such discrimination persists in the workplace.⁵⁹ A recent article in *The New York Times* outlines the reality of the “motherhood penalty” for women employed across a range of industries—from retailers like Walmart to pharmaceutical giants like Merck.⁶⁰ This reality reflects a broader pattern: when women get pregnant, they are often “knocked off the professional ladder.”⁶¹ Scholarship in both law and labor economics has long documented that pregnancy and motherhood significantly alter workplace outcomes, as women are often perceived as less committed or competent and face measurable wage penalties.⁶² For example, one study found that “each child [a woman has] chops 4 percent off a woman’s hourly wages,” while “[m]en’s earnings increase by 6 percent when

⁵⁸ See, e.g., Ellie Samuel, *The Past, Present, and Future of Pregnancy in the Workplace*, PORTSIDE (Jan. 30, 2024), <https://portside.org/2024-01-30/past-present-and-future-pregnancy-workplace> [<https://perma.cc/5XRG-4SFG>] (“[W]hen pregnant workers bring charges with the EEOC, 74% result in ‘no monetary benefit or required workplace change.’”); Dina Bakst, *Peggy Young’s Victory Is Not Enough*, U.S. NEWS (Mar. 26, 2015), <https://www.usnews.com/opinion/economic-intelligence/2015/03/26/peggy-young-supreme-court-victory-is-not-enough-for-pregnant-workers> [<https://perma.cc/R5AK-33Y2>].

⁵⁹ Claire Savage & Alexandra Olson, *New Rules for Pregnant Workers Fairness Act Include Divisive Accommodations for Abortion*, AP NEWS (Apr. 15, 2024), <https://apnews.com/article/pregnant-workers-fairness-act-abortion-d2a25371e-09a20734803b1b9cce53c85> [<https://perma.cc/P5EN-AAAC>] (noting that EEOC adjudicates roughly “2,000 to 4,000” pregnancy discrimination complaints annually, many involving denied workplace accommodations, and that a study found courts permitted employers to deny accommodations in approximately “two-thirds of cases decided after the 2015 Supreme Court” ruling under the PDA).

⁶⁰ Natalie Kitroeff & Jessica Silver-Greenberg, *Pregnancy Discrimination Is Rampant Inside America’s Biggest Companies*, N.Y. TIMES (Feb. 8, 2019), <https://www.nytimes.com/interactive/2018/06/15/business/pregnancy-discrimination.html>, [<https://perma.cc/N9Q4-4VTV>].

⁶¹ *Id.*

⁶² Joan C. Williams, Robin Devaux, Danielle Fuschetti, et al., *A Sip of Cool Water: Pregnancy Accommodation After the ADA Amendments Act*, 32 YALE L. & POL’Y REV. 97, 102–03 (2013).

they become fathers.”⁶³ The Institute for Women’s Policy Research further demonstrates that these disparities compound over time, finding that “[the] motherhood penalty is responsible for nearly 80 percent of the gender pay gap, [which] widens as women age and are more likely to have children.”⁶⁴ Similarly, a study by The Century Foundation revealed that “[e]ach child under five years old is projected to reduce the [annual] earnings of a typical mother by 15 percent.”⁶⁵

These economic patterns inform how courts evaluate discrimination claims, particularly where employers characterize pregnancy-related decisions as neutral business judgments.⁶⁶

B. *Pregnancy Discrimination in Professional Sports: Dearica Hamby*

The most recent victim of the ‘motherhood penalty’ in professional sports is three-time WNBA All-Star Dearica Hamby.⁶⁷ Hamby started her WNBA career in 2015 when she was selected in the first round by the San Antonio Stars.⁶⁸ Hamby was named Sixth Woman of the Year for two consecutive seasons⁶⁹ and continued to maintain a career marked by consistent double-digit scoring and strong rebounding.⁷⁰ In June of 2022, Hamby signed a two-year extension with her former team, the Las Vegas Aces (hereinafter “the Aces”).⁷¹ This two-year extension included housing accommodation

⁶³ Kitroeff & Silver-Greenberg, *supra* note 60.

⁶⁴ Miranda Peterson, *Motherhood is Hard – Pay Penalties Make It Harder*, INST. FOR WOMEN’S POL’Y RSCH. (Aug. 7, 2024), <https://iwpr.org/motherhood-is-hard-pay-penalties-make-it-harder/> [<https://perma.cc/C2TF-SX6V>].

⁶⁵ Julie Kashen & Jessica Milli, *The Build Back Better Plan Would Reduce the Motherhood Penalty*, CENTURY FOUND. (Oct. 8, 2021), <https://tcf.org/content/report/build-back-better-plan-reduce-motherhood-penalty/> [<https://perma.cc/2NRB-FG5K>].

⁶⁶ Judith G. Greenberg, *The Pregnancy Discrimination Act: Legitimizing Discrimination Against Pregnant Women in the Workforce*, 50 ME. L. REV. 225, 226 (1998).

⁶⁷ See generally Complaint and Jury Demand, *Hamby v. WNBA, LLC*, et. al, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 1.

⁶⁸ *Dearica Hamby Career Statistics*, ESPN, https://www.espn.com/wnba/player/stats/_id/2566106/dearica-hamby [<https://perma.cc/3H4S-VAJC>]; *Los Angeles Sparks Roster: Dearica Hamby*, WNBA, <https://www.wnba.com/player/204324/dearica-hamby?os=f&ref=app> [<https://perma.cc/9CY5-V8JP>].

⁶⁹ WNBA, *Sixth Woman of the Year Award*, <https://www.wnba.com/history-sixth-woman-of-the-year> [<https://perma.cc/QMB9-UKNX>].

⁷⁰ See *Dearica Hamby Career Statistics*, *supra* note 68.

⁷¹ *Aces Sign Dearica Hamby to Contract Extension*, L.V. ACES (June 29 2022), <https://aces.wnba.com/news/aces-sign-dearica-hamby-to-contract-extension> [<https://perma.cc/GKM2-MCPR>].

for Hamby and her family, among other benefits.⁷² In July of 2022, Hamby discovered she was pregnant.⁷³ Soon after, on August 6, Hamby informed head coach Becky Hammon.⁷⁴ Once her pregnancy was confirmed a few days later by her doctor, Hamby notified the Aces' general manager, Natalie Williams.⁷⁵ Hamby publicly announced that she was pregnant at the end of September 2022 while celebrating the Aces' championship win—and that, she says, is when the tides turned.⁷⁶ Following the public announcement, Hamby was told “she must vacate the team-provided housing.”⁷⁷ Coach Hammon accused Hamby of failing to take “proper precautions not to get pregnant,” questioned her commitment to the team, and accused her of not taking her workouts seriously.⁷⁸ Hammon also asserted that signing the extension contract meant she “implicitly agreed she would not get pregnant again.”⁷⁹ Then, Hamby's situation changed abruptly—she was told her “time with the Aces [was] up” and was traded to the Los Angeles Sparks in January 2023.⁸⁰ Stunned and frustrated by the turn of events, Hamby asked the WNBA to investigate.⁸¹ The internal investigation officially commenced in February 2023.⁸² Concluding the investigation in May 2023, the WNBA found that the Aces had retaliated against Hamby.⁸³

1. The Lawsuit

In response to her employer's conduct, which Hamby contends violated civil rights protections, she filed a federal lawsuit against the Aces and the WNBA in August 2024 alleging intimidation and discrimination over her pregnancy.⁸⁴

⁷² Complaint and Jury Demand ¶ 29, *Hamby v. WNBA, LLC, et. al*, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 1.

⁷³ *Id.* ¶ 31.

⁷⁴ *Id.* ¶ 32.

⁷⁵ *Id.* ¶¶ 33–34.

⁷⁶ *Id.* ¶¶ 35–37.

⁷⁷ *Id.* ¶ 39.

⁷⁸ *Id.* ¶¶ 41, 45.

⁷⁹ *Id.* ¶ 46.

⁸⁰ *Id.* ¶¶ 48–49.

⁸¹ *Id.* ¶ 51.

⁸² *Id.* ¶ 52.

⁸³ *Id.* ¶¶ 56–57.

⁸⁴ Michael Voepel, *Sparks' Dearica Hamby Sues WNBA, Aces Alleging Discrimination*, ESPN (Aug. 12, 2024), https://www.espn.com/wnba/story/_/id/40839309/sparks-dearica-hamby-sues-wnba-aces-alleging-discrimination [https://perma.cc/DLQ3-28KA].

i. Hamby's Claims and Supporting Arguments

Cause of Action One: Discrimination by the Aces

Hamby's first cause of action against the Aces is discrimination based on sex, a violation of Title VII and Nevada state law.⁸⁵ To succeed in a claim alleging discrimination based upon sex, a plaintiff must establish "direct or circumstantial evidence of discrimination" or use the *McDonnell Douglas* burden-shifting test.⁸⁶ The first step under *McDonnell* is for the plaintiff to establish a *prima facie* case, asserting they are a member of a protected class.⁸⁷ Here, Hamby satisfies this requirement by alleging discrimination on the basis of pregnancy,⁸⁸ a protected characteristic under the PDA.⁸⁹ Public and private employers with fifteen or more workers⁹⁰ are subject to the laws under Title VII; accordingly, both the WNBA and the Aces are bound to the legal obligation "to provide . . . a fair non-discriminatory work environment and employment opportunities."⁹¹ Indeed, per the PDA, employers shall not discriminate in employment on the basis of sex, including pregnancy.⁹² Hamby alleges that the Defendant's decision to trade her after signing the contract extension "was motivated by [her] announcement that she was pregnant."⁹³ When asked if Hamby was getting traded due to her pregnancy, Hammon answered: "What do you want me to do?"⁹⁴ These statements are offered to show a negative bias toward Hamby's status as a pregnant woman and support allegations that her employer engaged in discriminatory actions, suggesting differential treatment from similarly situated players who were not pregnant.⁹⁵

Hamby claims that she suffered embarrassment from these conversations and the trade inflicted emotional distress and anxiety on her.⁹⁶ According to

⁸⁵ Complaint and Jury Demand ¶¶ 66–79, *Hamby v. WNBA, LLC, et. al*, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 1.

⁸⁶ *Hittle v. City of Stockton*, 101 F. 4th 1000, 1012 (9th Cir. 2024).

⁸⁷ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973).

⁸⁸ Complaint and Jury Demand ¶ 67, *Hamby v. WNBA, LLC, et. al*, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 1.

⁸⁹ *Id.*

⁹⁰ 2 U.S.C. § 2000e(b).

⁹¹ Complaint and Jury Demand ¶ 68, *Hamby v. WNBA, LLC, et. al*, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 1.

⁹² *Id.* ¶ 69.

⁹³ *Id.* ¶ 70.

⁹⁴ *Id.* ¶ 47.

⁹⁵ *Id.* ¶¶ 41–44, 46

⁹⁶ *Id.* ¶¶ 73–74.

Hamby, such a rapid change in employment also harmed her financial security and professional reputation. Hamby lost promotional and endorsement opportunities; the relocation from Nevada to California subjected her to a higher cost of living; joining a new team meant she could not participate in back-to-back WNBA championships; and her reputation among her peers was damaged.⁹⁷

Under the second step of the *McDonnell* framework, the burden shifts to the defendants to articulate a legitimate, non-discriminatory reasons for the challenged employment action.⁹⁸ The Aces contend that Hamby “cannot adequately allege her trade to the Los Angeles Sparks constituted a sufficient adverse employment action”⁹⁹ and that she failed to identify specific individuals responsible for the alleged conduct.¹⁰⁰ Similarly, the WNBA argues that it was not Hamby’s joint employer and therefore cannot be held liable for any harms allegedly suffered.¹⁰¹

Third, the burden shifts back to Hamby to demonstrate that the defendants’ stated reasons were merely pretextual.¹⁰² Hamby asserts that the WNBA functioned as a joint employer¹⁰³ and that the harms she suffered were directly tied to the employment actions taken following her pregnancy announcement.¹⁰⁴ In support of this argument, Hamby again points to Hammon’s indication that Hamby’s contract extension was conditioned on an implicit understanding that she would not become pregnant and to her deflective response to whether Hamby’s pregnancy motivated the trade.¹⁰⁵

Cause of Action Two: Retaliation by the Aces

Hamby’s second cause of action is retaliation by the Aces under Title VII and Nevada law.¹⁰⁶ Retaliation is antagonistic behavior from employers that can include actions like “induc[ing] claimant to drop her

⁹⁷ *Id.* ¶¶ 71–72.

⁹⁸ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802–03 (1973).

⁹⁹ Las Vegas Aces Motion to Dismiss at 13:14–15, *Hamby v. WNBA, LLC, et. al*, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 12.

¹⁰⁰ *Id.* at 6:15–16; 12:5–6.

¹⁰¹ WNBA’s First Motion to Dismiss at 9:6–12, *Hamby v. WNBA, LLC, et. al*, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 14.

¹⁰² *McDonnell Douglas*, 411 U.S. at 804.

¹⁰³ Complaint and Jury Demand ¶ 13, *Hamby v. WNBA, LLC, et. al*, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 1.

¹⁰⁴ *Id.* ¶ 70.

¹⁰⁵ *Id.* ¶¶ 46–47.

¹⁰⁶ *Id.* ¶ 81.

claim”¹⁰⁷ and requires proof that, but for the employer’s alleged wrongful action or actions, the retaliation would not have occurred.¹⁰⁸ Hamby argues that the Aces retaliated against her after bringing her complaints to the Women’s National Basketball Players Association (“WNBPA”).¹⁰⁹ Hamby asserts multiple examples where the Aces allegedly retaliated against her due to her pregnant status. These include “(1) issuing a directive to Las Vegas Aces players and staff to cease communication with [Hamby]; (2) making a false public statement, through its General Manager, Natalie Williams, on a radio show that implied [Hamby], and the Las Vegas Aces, were aware of [her] pregnant status since June 2022; and (3) attempting to wrongfully obtain confidential medical records from [Hamby] after informing her she was no longer a member of the Las Vegas Aces.”¹¹⁰ All these actions (and potentially more, as the list is non-exhaustive) were taken, according to Hamby, to punish her and ultimately “dissuade a reasonable worker from complaining about discrimination or otherwise engaging in protected activity.”¹¹¹

Cause of Action Three: Retaliation by WNBA

Hamby’s last cause of action is retaliation by the WNBA under Title VII and Nevada law.¹¹² Hamby publicly posted on social media about the trade, stating her disappointment and contentions with the Aces’ behavior, and engaged with the WNBPA’s representative to bring forth an investigation regarding the discrimination.¹¹³ Yet, this was met with alleged retaliatory behavior by the WNBA because it: (1) provided no meaningful redress to Hamby, (2) failed to interview key witnesses, (3) failed to take any steps to deter future wrongdoing, (4) failed to impose any proper remedial measures, and (5) refused to extend Hamby’s League Marketing Contract.¹¹⁴ Hamby argues this conduct and failure to act was intended to punish and dissuade her from complaining about the discrimination.¹¹⁵

¹⁰⁷ *Heuer v. Weil-McLain*, 203 F.3d 1021, 1023 (7th Cir. 2000).

¹⁰⁸ *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 360 (2013).

¹⁰⁹ Complaint and Jury Demand ¶¶ 81, 51, *Hamby v. WNBA, LLC, et. al*, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 1.

¹¹⁰ *Id.* ¶¶ 81(a)–(d).

¹¹¹ *Id.* ¶ 84.

¹¹² *Id.* ¶ 92.

¹¹³ *Id.* ¶ 50.

¹¹⁴ *Id.* ¶¶ 93–99.

¹¹⁵ *Id.* ¶¶ 84.

ii. *Defendants' Motion to Dismiss and Counter-Arguments*

The WNBA disputed Hamby's arguments about joint-employer status.¹¹⁶ Under federal law, joint-employer status typically turns on whether an entity exercises significant control over the terms and conditions of employment, including hiring, supervision, and discipline, or whether the worker is economically dependent on that entity.¹¹⁷ Hamby worked for the WNBA in marketing as an independent contractor.¹¹⁸ The WNBA relies on Hamby's classification to argue that it lacked the requisite control, asserting that it did not control the details of her work¹¹⁹ and therefore did not exercise the level of authority necessary to establish a joint-employer relationship. The WNBA emphasized that each franchise is privately-owned and that players are employed solely by their respective teams.¹²⁰ Also, the WNBA argued that Hamby failed to state a plausible retaliation claim, as she did not identify specific actions or omissions by the WNBA that caused her harm.¹²¹ The federal judge agreed, and the WNBA was dismissed as a defendant from the litigation.¹²²

That said, the NLRB's joint-employer framework for professional sports is not straightforward. It provides that joint-employer status may arise where an entity exercises direct or indirect control over essential terms and conditions of employment.¹²³ Although WNBA franchises maintain formal control

¹¹⁶ WNBA's First Motion to Dismiss 9: 6-12, *Hamby v. WNBA, LLC, et. al*, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 14.

¹¹⁷ See 29 C.F.R. § 103.40; see also NLRB Joint-Employer Standard Final Rule, <https://www.nlr.gov/about-nlr/what-we-do/the-standard-for-determining-joint-employer-status-final-rule> [<https://perma.cc/X2NU-JQ9N>] (describing how authority to control essential employment terms is the touchstone of joint-employer status).

¹¹⁸ Marketing Agreement between Dearica Hamby and the WNBA (Aug. 18, 2022).

¹¹⁹ WNBA's First Motion to Dismiss at 13–15, *Hamby v. WNBA, LLC, et. al*, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 14.

¹²⁰ *Id.* at 2; Michael McCann, *WNBA, Aces Push for Dismissal of Dearica Hamby's Lawsuit*, SPORTICO (Nov. 10, 2024), <https://www.sportico.com/law/analysis/2024/wnba-aces-defenses-hamby-lawsuit-1234804485/> [<https://perma.cc/K7RV-DAPB>].

¹²¹ WNBA's First Motion to Dismiss at 7, *Hamby v. WNBA, LLC, et. al*, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 14.

¹²² Order (1) Granting in Part Defendant Las Vegas Basketball L.P.'s Motion to Dismiss; (2) Granting Defendant WNBA, LLC's Motion to Dismiss; (3) Denying Plaintiff Dearica Hamby's Motion for Leave to Amend Complaint; and (4) Denying Motion for Leave to File Brief as Amici, *Hamby v. WNBA, LLC, et. al*, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 65.

¹²³ National Labor Relations Board, *The Standard for Determining Joint-Employer Status – Final Rule* (Oct. 27, 2023), <https://www.nlr.gov/about-nlr/what-we-do/>

over player contracts, the league exerts significant influence through league-wide governance structures, including specific collective bargaining provisions like salary regulations, eligibility requirements, and disciplinary authority.¹²⁴

The Aces also moved for dismissal, arguing that Hamby's alleged harms were not clearly connected to a specific term or condition of her employment.¹²⁵ And, Hamby did not identify who in the Aces organization engaged in the "retaliatory conduct."¹²⁶ In 2025, the motion was denied in an order noting that Hamby's claims were sufficiently pleaded.¹²⁷

2. Resolution and Potential Repercussions

As of December 11, 2025, the Aces and Hamby agreed to settle their portion of the lawsuit.¹²⁸ The parties filed a motion to dismiss with prejudice.¹²⁹

Hamby's courage to speak out against pregnancy discrimination illustrates how important these discussions are for employment law in the context of "pregnant pro[fessional] athletes[,] . . . their teams[,] and league[s]."¹³⁰ It also highlights the legal question of "whether a player trade can cause an

the-standard-for-determining-joint-employer-status-final-rule [<https://perma.cc/5VFH-Q7Z2>]. *But see* Max Kutner, *DOL Unveils Joint Employer Rule Proposal*, LAW360 (Apr. 22, 2026 09:00 ET), <https://www.law360.com/employment/articles/2460691> [<https://perma.cc/K396-XYNL>] (describing the Department of Labor's proposed four-factor framework for determining vertical joint-employer status based on control over hiring, supervision, compensation, and employment records).

¹²⁴ See WNBA CBA art. VII (Salary Cap Structure), art. III (Player Eligibility and Draft Rules), art. XIII (Grievance and Arbitration Procedures).

¹²⁵ Las Vegas Ace's First Motion to Dismiss at 2, *Hamby v. WNBA, LLC*, et. al, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 12.

¹²⁶ *Id.* at 4, 5.

¹²⁷ Order (1) Granting in Part Defendant Las Vegas Basketball L.P.'s Motion to Dismiss, at 1; (2) Granting Defendant WNBA, LLC's Motion to Dismiss; (3) Denying Plaintiff Dearica Hamby's Motion for Leave to Amend Complaint; and (4) Denying Motion for Leave to File Brief as Amici, *Hamby v. WNBA, LLC*, et. al, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 65.

¹²⁸ Associated Press, *Dearica Hamby, Aces Drop Lawsuit over Pregnancy Discrimination*, ESPN (Dec. 12, 2025), https://www.espn.com/wnba/story/_/id/47289537/dearica-hamby-aces-drop-lawsuit-pregnancy-discrimination [<https://perma.cc/95WG-RAYM>].

¹²⁹ *Id.*

¹³⁰ Michael McCann, *Hamby's Lawsuit Could Change How Pro Teams Handle Pregnancies*, SPORTICO (Aug. 19, 2024), <https://www.sportico.com/law/analysis/2024/hamby-wnba-lawsuit-legal-analysis-1234793871/> [<https://perma.cc/5MGB-HKNE>].

injury the law ought to protect.”¹³¹ Although Hamby’s case is unlike those of pregnant women in the traditional workforce, the recent Supreme Court case of *Muldrow v. City of St. Louis, Missouri* may be instructive.¹³² In *Muldrow*, the Court held “that a female officer sufficiently alleged sex discrimination under Title VII after she was transferred from one job to another, even though her pay and rank were unchanged.”¹³³ Further, the Court asserted that though an employee must show “‘some harm’ . . . the harm need not be significant.”¹³⁴

Under this standard, Hamby’s allegations likely satisfy Title VII’s injury requirement because the trade imposed tangible professional and personal consequences beyond merely changing teams.¹³⁵ With such a lessened standard, “Hamby’s trade to a new team — which undoubtedly necessitated various life changes — is likely to state a claim against the Aces even if her pay was not affected.”¹³⁶

Though the complaint paints a “bleak picture of employment for” an athlete-mother, “Hamby [was not] fired, denied a raise, passed over for a promotion, downgraded in influence or exiled to another company office.”¹³⁷ So, settling the case was likely the best option. However, the absence of a judicial ruling leaves several significant legal questions unresolved for future plaintiffs. Because the case was settled before a court could fully apply Title VII and the PDA in the context of professional athletics, uncertainty remains regarding whether a player trade constitutes actionable employment harm¹³⁸ and how the Supreme Court’s reasoning in *Muldrow* applies to professional athletes,¹³⁹

¹³¹ *Id.*

¹³² 601 U.S. 346 (2024).

¹³³ Chris Deubert, *Hamby Pregnancy Lawsuit Against WNBA, Aces Presents Many Legal Issues*, FORBES (Aug. 14, 2024), <https://www.forbes.com/sites/chrisdeubert/2024/08/14/hamby-pregnancy-lawsuit-against-wnba-aces-presents-many-legal-issues/> [https://perma.cc/4TWH-RCY3] (quoting *Muldrow*, 601 U.S. at 347).

¹³⁴ *Id.* (quoting *Muldrow*, 601 U.S. at 347).

¹³⁵ Complaint and Jury Demand ¶¶ 71–74, *Hamby v. WNBA, LLC, et. al*, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 1.

¹³⁶ Deubert, *supra* note 133.

¹³⁷ See McCann, *supra* note 130.

¹³⁸ Sara Coello, *Dearica Hamby’s Pregnancy Allegations: What Do Laws, WNBA CBA Say?*, ESPN (Jul 11, 2023, 12:32 ET), https://www.espn.com/wnba/story/_/id/37990199/dearica-hamby-pregnancy-allegations-do-laws-wnba-cba-say [https://perma.cc/7F62-F2BZ] (explaining the varied interpretations of unclear law and differing context of employment actions in traditional workforce and professional athletics, especially with the *Hamby* case).

¹³⁹ See *Muldrow Case Recalibrates Title VII “Significant Harm” Standard*, CROWELL & MOORING LLP: CLIENT ALERT (Apr. 24, 2024), <https://www.crowell.com/en/insights/client-alerts/muldrow-case-recalibrates-title-vii-significant-harm-standard>

and especially athlete-mothers, whose careers are uniquely tied to team placement, public reputation, and endorsement opportunities.¹⁴⁰ The settlement also leaves unanswered the extent to which professional sports leagues, like the WNBA, may be considered joint employers for the purposes of Title VII liability.¹⁴¹

Additionally, given the WNBA's surge in popularity, the league has a strong incentive to avoid litigation that could impede its momentum. With that, "the Aces have become one of the league's leading teams, led by Hammon[,] who has previously garnered interest as a potential NBA head coach."¹⁴² As sports and entertainment attorney Chris Deubert observes, Hamby's claimed damages, particularly emotional distress, would require invasive questioning, and Hamby likely does not want to open herself up to such emotional exhaustion when she is in her "best season yet."¹⁴³

As a result, while Hamby's cause brought national attention to pregnancy discrimination in professional sports,¹⁴⁴ future athlete-plaintiffs may continue to face uncertainty regarding the scope of legitimate protections available to them.

[<https://perma.cc/RK7P-PXGS>] (explaining that the Supreme Court's decision in *Muldrow v. City of St. Louis* lowered the threshold for actionable Title VII discrimination claims by rejecting prior "significant harm" requirements and may allow more plaintiffs to survive motion to dismiss and summary judgment, particularly in cases involving transfers and loss of professional opportunities).

¹⁴⁰ See Talston Scott, Sydney V.M. Smith, Francine E. Darroch & Audrey R. Giles, *Selling v. Supporting Motherhood: How Corporate Sponsors Frame the Parenting Experiences of Elite and Olympic Athletes*, 11 COMM'C'N & SPORT J. 1181, 1184–86, 1189–90 (2023) (asserting that athlete-mothers' careers depend on sponsorship and visibility, and that pregnancy has historically led to reduced opportunities and perceived athletic devaluation).

¹⁴¹ See generally Order (1) Granting in Part Defendant Las Vegas Basketball L.P.'s Motion to Dismiss; (2) Granting Defendant WNBA, LLC's Motion to Dismiss; (3) Denying Plaintiff Dearica Hamby's Motion for Leave to Amend Complaint; and (4) Denying Motion for Leave to File Brief as Amici, *Hamby v. WNBA, LLC, et. al*, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 65.

¹⁴² See Deubert, *supra* note 133 (quoting *Muldrow v. City of St. Louis, Missouri*, 601 U.S. 346, 347 (2024)).

¹⁴³ *Id.*

¹⁴⁴ See Michael Voepel, *Sparks' Dearica Hamby Sues WNBA, Aces Alleging Discrimination*, ESPN (Aug. 12, 2024), https://www.espn.com/wnba/story/_/id/40839309/sparks-dearica-hamby-sues-wnba-aces-alleging-discrimination [<https://perma.cc/DLQ3-28KA>].

III. THE IMPACT OF COLLECTIVE BARGAINING AGREEMENTS ON LABOR AND EMPLOYMENT RIGHTS OF FEMALE ATHLETES

A. *Collective Bargaining Agreements in Professional Sports Leagues*

A collective bargaining agreement (“CBA”) is defined as “an agreement negotiated between a labor union and an employer that sets forth the terms of employment for the employees who are members of that labor union.”¹⁴⁵ Such an agreement serves as a crucial piece of negotiating power between the major ‘players’: the labor union, employer, and employees. For a traditional labor union, the CBA often “include[s] provisions regarding wages, vacation time, working hours, working conditions, and health insurance benefits.”¹⁴⁶

The governing body and statute that enforce these areas related to union activities and collective bargaining are the National Labor Relations Board (“NLRB”) and the National Labor Relations Act (“NLRA”), respectively. The NLRA not only requires employers to “collectively bargain in good faith over wages, hours, and other key employment matters,”¹⁴⁷ but also extends protections to non-unionized employees in “protected concerted activities.”¹⁴⁸ Importantly, the NLRA also operates as a preemptive force: under doctrines such as *Garmon* and *Machinists* preemption, which may displace state and certain federal claims where the conduct at issue is either arguably protected or prohibited by the Act, or where it concerns areas left to the free play of economic forces.¹⁴⁹ The preemption framework raises a particularly under-explored tension in the context of unionized professional athletes:¹⁵⁰ where

¹⁴⁵ *All About Unions*, WORKPLACE FAIRNESS, <https://www.workplacefairness.org/labor-unions/> [<https://perma.cc/6YQA-NUP8>].

¹⁴⁶ *Id.*

¹⁴⁷ *What Employers Need to Know About the Current State of the NLRB*, FISHER PHILLIPS (Feb. 5, 2025), <https://www.fisherphillips.com/en/news-insights/what-employers-need-to-know-about-the-current-state-of-the-nlr.html> [<https://perma.cc/762Y-QBNV>].

¹⁴⁸ *Id.*

¹⁴⁹ See *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 235, 244–45 (1959); *Lodge 76, Int’l Ass’n of Machinists & Aerospace Workers v. Wis. Emp’t Relations Comm’n*, 427 U.S. 132, 140 (1976).

¹⁵⁰ See generally Ryan T. Smith and Michael J. Frantz, *Timeout! NLRB General Counsel Says Student-Athletes Are Employees Who Can Unionize*, FRANTZ WARD: LABOR & EMPLOYMENT NAVIGATOR (Oct. 4, 2021), <https://www.laboremploymentlawnavigator.com/2021/10/timeout-nlr-general-counsel-says-student-athletes-are-employees-who-can-unionize/> [<https://perma.cc/5V5Z-H8QA>] (discussing

a pregnant athlete's adverse roster or employment decision may simultaneously be characterized as both an unfair labor practice under the NLRA and a violation of federal anti-discrimination law, such as Title VII, the question becomes which statutory regime governs, and on what basis.¹⁵¹ Courts have long grappled with the extent to which statutory anti-discrimination claims can proceed with collectively bargained relationships,¹⁵² but the interaction between labor law preemption and civil rights protections in professional sports remains underdeveloped in the case law and scholarship.¹⁵³ NLRA preemption is not merely a background doctrine but a potential key for assessing jurisdictional overlap and doctrinal priority when labor relations and statutory equality guarantees collide. At the same time, arbitration agreements further complicate this landscape by channeling workplace disputes away from public adjudication and into private resolution.¹⁵⁴ This often limits employees' ability to pursue statutory claims in court.¹⁵⁵

While the NLRB continues its mission to protect workers by representation petitions and union elections, regional director decisions in representation cases, and unfair labor practice changes, the interaction between NLRA protections, federal preemption doctrines, and enforceable arbitration

Northwestern football unionization in collegiate sports and underscores uncertainty and unresolved doctrinal space regarding labor law).

¹⁵¹ See *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 49–51 (1974); see generally Michigan Law Review, *Title VII and NLRA: Protection of Extra-Union Opposition to Employment Discrimination*, 72 MICH. L. REV. 313 (1973) (examining the jurisdictional tension arising when Title VII and NLRA grievance procedures are simultaneously available to a unionized employee).

¹⁵² See *Gardner-Denver*, 415 U.S. at 59–60 (holding Title VII claims are not foreclosed by prior arbitration under a CBA); *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 260–72 (2009) (limiting the decision in *Gardner-Denver* by finding that a provision in a CBA requiring arbitration of employment claim under the Age Discrimination Act of 1967 was enforceable).

¹⁵³ See *Brown v. Pro Football, Inc.* 518 U.S. 231, 236–37, 250 (1996) (reflecting the Court's acknowledgment that federal labor policy can displace or limit the application of external legal regimes, contributing to an unresolved tension between labor law preemption and other statutory protections); Abigail Bono, *Professional Athlete's Maternity Rights – The Dearica Hamby Lawsuit*, BROOKLYN SPORTS & ENTERTAINMENT LAW BLOG (Oct. 28, 2025), <https://sports-entertainment.brooklaw.edu/sports/professional-athletes-maternity-rights-the-dearica-hamby-lawsuit/> [https://perma.cc/HSX9-ZU4S] (“CBA . . . provisions in tension with federal pregnancy protections [create] [a]mbiguities as to the application of [labor] laws.”).

¹⁵⁴ See *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 334–45 (2011); 9 U.S.C. § 2 (2023).

¹⁵⁵ See *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 26 (1991).

clauses¹⁵⁶ may limit the availability of parallel civil claims and shape the legal remedies available to athletes like Hamby.

Professional athletes likewise benefit from a CBA. In a professional sports league, “the owners wield substantial power both individually and as a group” and professional athletes have formed unions to curb such power.¹⁵⁷ The unions “devise” CBAs to ensure the rights of athletes are protected.¹⁵⁸ Like a union in the traditional workforce, CBAs for professional athletes generally include provisions regarding wages, hours, working conditions, employee grievances, medical benefits, and retirement plans.¹⁵⁹

However, professional athletes’ CBAs discuss provisions that would be irrelevant for a member of the traditional workforce. For example, revenue sharing does not occur between traditional employees and employers. Additionally, wages for professional athletes depend on the structure of the given league and any relevant antitrust exemptions the league may have.¹⁶⁰ Indeed, while a salary cap—like limiting an associate attorney to \$100,000 per year regardless of additional work—might appear to resemble a restraint on trade, such caps have generally survived antitrust scrutiny in sports when collectively agreed upon and tied to league structure.¹⁶¹ As such, there are protections afforded by the non-statutory labor exemption, which shields certain restraints on competition that are the product of bona fide collective bargaining.¹⁶² As articulated by the Court, the exemption applies where the challenged restraint primarily affects the parties to the collective bargaining relationship, concerns a mandatory subject of bargaining (like wages), and

¹⁵⁶ See, e.g., *Epic Systems Corp. v. Lewis*, 584 U.S. 497 (2018) (holding that mandatory arbitration agreements requiring individualized proceedings are enforceable); *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247 (2009) (finding that a provision in a CBA requiring arbitration of employment claim under the Age Discrimination Act of 1967 was enforceable).

¹⁵⁷ *Collective Bargaining Agreements in Sports Leagues & Their Legal Scope*, JUSTIA, <https://www.justia.com/sports-law/collective-bargaining-agreements-in-sports-leagues/> [<https://perma.cc/Z482-C4BF>].

¹⁵⁸ *Id.*

¹⁵⁹ See *All About Unions*, *supra* note 145.

¹⁶⁰ *Collective Bargaining Agreements in Sports Leagues & Their Legal Scope*, *supra* note 157.

¹⁶¹ For a more in-depth analysis and discussion of the Sherman Act and salary caps, see GABE FELDMAN, *THE OXFORD HANDBOOK OF AMERICAN SPORTS LAW* CHAPTER 11: COLLECTIVE BARGAINING AND PROFESSIONAL SPORTS (Michael A. McCann ed., 1 ed. 2018).

¹⁶² See *NLRB v. Katz*, 369 U.S. 736, 743 (1962); *Clarett v. Nat’l Football League*, 369 F.3d 124, 130 (2d Cir. 2004).

is the result of arm's-length negotiation within a valid CBA.¹⁶³ In the professional sports context, courts have consistently recognized that salary caps fit squarely within this framework, as they are central to the collective negotiation of wages and competitive balance.¹⁶⁴ Simply put, if the salary cap is negotiated and bargained for in good faith in a CBA, it is not a violation of antitrust law, whereas in a traditional workforce context it would be.¹⁶⁵

B. Comparative Case Studies

Professional athletes and sports leagues are not immune to the motherhood penalty. In response, many female athletes have been outspoken about motherhood and pregnancy while maintaining their careers.¹⁶⁶ Their advocacy has contributed to changes in CBAs for female athletes in various leagues. The National Women's Soccer League ("NWSL"),¹⁶⁷ the Professional Women's Hockey League ("PWHL"),¹⁶⁸ and the WNBA¹⁶⁹ each offer illustrations of the different protections afforded to athletes by CBAs; some including protective measures to address the motherhood penalty and others lacking such a shield.

1. Professional Women's Hockey League

The PWHL has one of the most player-friendly, dynamic, and forward-looking CBAs.¹⁷⁰ Three sections emphasize the protections afforded to female

¹⁶³ See *Brown v. Pro Football, Inc.*, 518 U.S. 231, 250 (1996).

¹⁶⁴ *Id.* at 236–37.

¹⁶⁵ See *Katz*, 369 U.S. at 743; *Clarett*, 369 F.3d at 130.

¹⁶⁶ Examples include, but are not limited to, Serena Williams, Allyson Felix, and Alex Morgan.

¹⁶⁷ Collective Bargaining Agreement Between The National Women's Soccer League Players Association and National Women's Soccer League (2022), https://www.nwslplayers.com/_files/ugd/84dade_c1592001e8774f81b8346c2b13e6a5f4.pdf [<https://perma.cc/Q3EX-S9WH>] [hereinafter "NWSL CBA"].

¹⁶⁸ Melissa Burgess, *Highlights and Comparables of the PWHLPA Collective Bargaining Agreement*, VICTORY PRESS (July 8, 2023), <https://victorypress.org/2023/07/08/highlights-comparables-of-the-pwhlpa-collective-bargaining-agreement/> [<https://perma.cc/AH4A-8GD8>].

¹⁶⁹ WNBA CBA, *supra* note 31.

¹⁷⁰ See Maitreyi Anantharaman, *The First CBA in Women's Hockey Is a Picture of the Future, and a Story of the Past*, DEFECTOR: WOMEN'S HOCKEY (Jan. 11, 2024), <https://defector.com/womens-hockey-pwhl-pwhpa-labor-cba> [<https://perma.cc/JG9V-TK7X>].

athletes with respect to their choices in becoming mothers: salary, traveling and lodging, and insurance.¹⁷¹ For salary, the “base . . . including benefits, will continue for PWHL players in the event of pregnancy.” Nursing accommodations are also to be provided, and “any benefits-eligible player who births or adopts, or whose partner births, a child during the season will be entitled to up to eight weeks paid leave, or the remainder of the player’s base salary for that season, whichever is lesser.”¹⁷² For traveling and lodging, rooms will have up to two players per room, but players traveling “with a child under three years old will be provided a single room.”¹⁷³ Finally, for insurance, “the PWHL will maintain a group life insurance policy with a face policy amount of at least \$55,000 per benefits-eligible player. At their expense, players can add their spouses and dependent children.”¹⁷⁴

2. National Women’s Soccer League

The NWSL anti-harassment policy and CBA include provisions relating to pregnancy.¹⁷⁵ First, the anti-harassment policy bars the league from discriminating against players in “pregnancy (including lactation, childbirth, or related medical conditions) . . .”¹⁷⁶ Players may report discriminatory conduct by text, email, call, writing to the NWSL Human Resources Manager, or by email or call to the joint investigative team comprised of NWSL and their players association (“NWSLPA”).¹⁷⁷

Additionally, the CBA contains four provisions relevant to pregnancy: team-provided housing, salary, nursing accommodations, and parental leave.¹⁷⁸ NWSL can opt-in to team-provided housing, and if the players have “a child or children residing with them” they are afforded, at the least,

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ NWSL Policy to Prevent and Eliminate Workplace Discrimination, Harassment, and Bullying, https://images.nwslsoccer.com/image/private/t_q-good/prd/eqf8onxvjcmkqmt5ubmn.pdf [<https://perma.cc/6BUP-48BT>]; NWSL CBA, *supra* note 167.

¹⁷⁶ See NWSL Policy to Prevent and Eliminate Workplace Discrimination, Harassment, and Bullying, *supra* note 175; NWSL CBA, *supra* note 167.

¹⁷⁷ NWSL Policy to Prevent and Eliminate Workplace Discrimination, Harassment, and Bullying, *supra* note 175; NWSL CBA, *supra* note 167.

¹⁷⁸ NWSL CBA, *supra* note 167, §§ 9.2, 9.5, 9.8–9.11.

two-bedrooms.¹⁷⁹ For salary, § 9.8 states that a player who “cannot render the services required . . . as a result of the Player’s pregnancy” are entitled to receive their entire base salary, “and any NWSL provided insurance,” for the duration of the Player’s inability—or the remaining term of her standard player agreement—meaning that the NWSL not only upholds safety standards for pregnant players but also guarantees financial security during periods when they are unable to play.¹⁸⁰ The CBA also ensures private, comfortable nursing accommodations for players who are nursing.¹⁸¹ The league specifies that they understand “that a bathroom is not an acceptable accommodation.”¹⁸² Finally, “any player who births or adopts a child during the NWSL League Season shall be entitled” to up to eight weeks of the player’s base salary or the “remaining term” of the player’s contract.¹⁸³

The PWHL’s CBA and NWSL’s CBA each represent diligent bargaining by a players’ association on behalf of its members, leading to several safeguards related to pregnancy. What makes this financially plausible is that the leagues embed cost-mitigation mechanisms, like salary-cap relief, guaranteed contracts, and revenue-sharing structures,¹⁸⁴ ensuring pregnancy-related protections can coexist with competitive balance and sustainable league economics.¹⁸⁵ Indeed, the agreements reflect a broader alignment between player protections and league growth, where improved work conditions are treated as vital to long-term sustainability rather than as secondary considerations.

3. Women’s National Basketball Association

In 2020, the WNBA adopted a CBA which provided a salary increase for the league’s highest-paid players and changes to free agency.¹⁸⁶ The provisions related to salary and parental leave are especially relevant here.¹⁸⁷ Annual base pay for the league’s highest-paid player increased from \$117,500 to

¹⁷⁹ *Id.* § 9.5.

¹⁸⁰ *Id.* § 9.8.

¹⁸¹ *Id.* § 9.10

¹⁸² *Id.*

¹⁸³ *Id.* § 9.11.

¹⁸⁴ See Professional Women’s Hockey League Collective Bargaining Agreement § 6 (2023), https://assets-global.website-files.com/64d22f9c3617ad42d10d32f1/64ed721629f3b2cfe84c7a54_PWHL-CBA-thpwhlcom.pdf [<https://perma.cc/F7YZ-RPFN>] [hereinafter “PWHL CBA”]; NWSL CBA, *supra* note 167, § 7.4.

¹⁸⁵ See PWHL CBA § 9.7; NWSL CBA, *supra* note 167, § 9.8.

¹⁸⁶ WNBA CBA, *supra* note 169.

¹⁸⁷ *Id.* art. VII §§ 1–4; *id.* art. X § 2.

\$215,000, the league's top players may earn cash compensation in excess of \$500,000,¹⁸⁸ and the 2020 salary cap is increased to \$1.3 million, up from \$996,100 in 2019.¹⁸⁹ Players receive full salary while on maternity leave, an annual childcare stipend of \$5,000, and guarantee of two-bedroom apartments for players with children.¹⁹⁰

Despite these positive accommodations, WNBA players maintained that they did not fully address their concerns. Players pointed to issues including a hard salary cap, lack of revenue sharing, inadequate travel resources and facilities, and insufficient family provisions.¹⁹¹ Thus, in October 2024, the WNBA players opted out of the CBA¹⁹² in pursuit of what they characterized as 'transformational change'¹⁹³ Alongside seeking a greater share of the league-generated revenue,¹⁹⁴ players raised concerns regarding "working conditions" and ensuring long-term benefits for ". . . generations to come."¹⁹⁵ Dearica Hamby's case has become a leverage point for players in bargaining with the WNBA.¹⁹⁶ Players cite ambiguities in how the league's arbitration provision intersects with statutory discrimination claims and the WNBA's policy under the 2020 CBA, as well as the risks of inadequate protections

¹⁸⁸ *WNBA and WNBPA Reach Tentative Agreement On Groundbreaking Eight-Year Collective Bargaining Agreement*, WNBA (Jan. 14, 2020, 09:00 ET), <https://www.wnba.com/news/wnba-and-wnbpa-reach-tentative-agreement-on-groundbreaking-eight-year-collective-bargaining-agreement> [<https://perma.cc/HRB9-CWA4>].

¹⁸⁹ WNBA CBA, *supra* note 169, art. V § 8(a). For a discussion of the WNBA's salary history, see Kevin Pelton, *Road to \$1M Paydays: How WNBA Salaries Evolved with Each CBA*, ESPN (Feb. 4, 2026, 9:15 ET), https://www.espn.com/wnba/story/_/id/47813218/wnba-cba-collective-bargaining-agreement-negotiations-salary-cap [<https://perma.cc/6U8H-8FVN>].

¹⁹⁰ WNBA CBA, *supra* note 169, art. X §§ 2(a), 7; *id.* art. XI § 1(a).

¹⁹¹ Kendra Andrews and Alexa Philippou, *What We're Hearing On the WNBA's CBA Negotiations*, ESPN (Oct. 22, 2025), https://www.espn.ph/wnba/story/_/id/46675630/wnba-cba-updates-negotiations-latest [<https://perma.cc/P6KE-B9GJ>].

¹⁹² *Id.*; Jack Maloney, *Lynx's Napheesa Collier Says WNBA Players are Prepared for Possibility of Lockout amid CBA Negotiations*, MSN (Mar. 12, 2025), <https://www.msn.com/en-us/sports/other/lynxs-napheesa-collier-says-wnba-players-are-prepared-for-possibility-of-lockout-amid-cba-negotiations/ar-AA1AJ73B> [<https://perma.cc/A84X-WHQY>].

¹⁹³ Maloney, *supra* note 192.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ See Bella DiPalermo, *Pregnancy, Power, and Procedure: The WNBA Arbitration Clause Meets its Limits*, ARBITRATION BRIEF (Jan. 16, 2026), <https://thearbitrationbrief.com/2026/01/16/pregnancy-power-and-procedure-the-wnba-arbitration-clause-meets-its-limits/> [<https://perma.cc/8965-AGDL>].

for pregnant athletes and mothers within professional sport leagues.¹⁹⁷ This issue has implications for future players not only in the WNBA but also for female athletes in other leagues.¹⁹⁸ Because the resolution of these disputes may shape how professional sports leagues balance collectively bargained procedures with independent statutory protections, the Hamby controversy could influence the scope of pregnancy and motherhood protections available to these female athletes.

IV. ELIMINATING THE MOTHERHOOD PENALTY

The motherhood penalty remains inevitable in women's sports. Professional soccer player Jess McDonald has been outspoken about balancing her life as an athlete and a mother by sharing how she has juggled parenting and preparing for and playing in the Fédération Internationale de Football Association ("FIFA") Women's World Cup while taking her seven-year-old son with her to these events.¹⁹⁹ Olympic runners Allyson Felix and Kate Goucher have also spoken out, specifically against Nike, "for slashing their pay and then dropping them for becoming pregnant."²⁰⁰

Tennis star Serena Williams was also penalized for taking medical leave due to her pregnancy.²⁰¹ In tennis, players are ranked according to how well

¹⁹⁷ Lindsay Graham, *The Landscape of Pregnancy Discrimination in Women's Sports Following Hamby v. WNBA*, JEFFREY S. MOORAD SPORTS L.J. (Nov. 11, 2025), https://www.villanova.edu/villanova/law/academics/sportslaw/commentary/mslj_blog/2025/The_Landscape_of_Pregnancy_Discrimination_in_Womens_Sports.html [<https://perma.cc/GQP2-XECW>].

¹⁹⁸ *Id.*

¹⁹⁹ Ronald Blum, *Working Mom; McDonald Balances World Cup, 7-year-old Son*, AP NEWS (June 23, 2019), <https://apnews.com/working-mom-mcdonald-balances-world-cup-7-year-old-son-6eb7496b1bce47ee80272f8750a18d2b> [<https://perma.cc/6CYD-98RL>]; Anna Furman, *Pregnancy and Sports a Challenging Combination for Female Professional Athletes*, AP NEWS (May 29, 2023), <https://apnews.com/article/female-athletes-pregnancy-hammon-hamby-wnba-62ce78e7d3e1b547c885ae341d229027> [<https://perma.cc/KB5L-VK4J>]; Abdullah Imran, *Adam Silver Drops '11th Hour' Update on WNBA CBA Negotiations*, CLUTCH POINTS (Feb. 15, 2026), <https://clutchpoints.com/wnba/wnba-stories/adam-silver-drops-11th-hour-update-on-wnba-cba-negotiations> [<https://perma.cc/QP9U-6BJU>].

²⁰⁰ Blum, *supra* note 199; Furman, *supra* note 199; Imran, *supra* note 199; Scott, Smith, Darroch & Giles, *supra* note 140, at 1185.

²⁰¹ Liz Clarke, *After Outcry Over Serena Williams's Rankings, WTA Alters Rules for Moms Returning to Competition*, WASH. POST (Dec. 18, 2018), <https://www.washingtonpost.com/sports/2018/12/18/after-outcry-over-serena-williams-rankings-wta-alters-rules-moms-returning-competition/> [<https://perma.cc/KGL2-GW55>].

they perform, which is “the key factor in determining [players’] seeding at Grand Slams and major events.”²⁰² Williams’s rank plunged from number one to number four-hundred fifty-one after she decided to take medical leave due to her pregnancy, as the Women’s Tennis Association (“WTA”) at that time did not pause or protect ranking points during extended absences.²⁰³ The WTA subsequently faced major backlash as athletes, fans, and others voiced objections regarding Williams’ punishment.²⁰⁴ Such an uproar caused the WTA to change their rules regarding ranking when players return to the tour post-pregnancy—ultimately designing rules that made it easier, and more accessible, for women to return to competition.²⁰⁵ These new rules allow a player to “freeze her ranking” if she is “out of competition due to pregnancy or a medical condition.”²⁰⁶ A player who is out for at least one year may use her “special ranking” for up to twelve tournaments within a one-year period.²⁰⁷ Players who step away due to pregnancy or a medical condition have three years to use their special ranking (calculated from the child’s birth in cases of pregnancy) while those absent due to adoption, surrogacy, or legal guardianship have two years.²⁰⁸

Alternatively, for several sports, governing bodies expressly allow athletes to retain quota spots or competition eligibility after maternity leave,

²⁰² *Id.*

²⁰³ *Id.*; Courtney Nguyen, *2019 WTA Rule Changes: WTA Introduces Special Seeding, Shot Clock*, WTA (Dec. 17, 2018); <https://www.wtatennis.com/news/1437655/2019-wta-rule-changes-wta-introduces-special-seeding-shot-clock> [<https://perma.cc/4XAZ-AGW7>].

²⁰⁴ Clarke, *supra* note 201.

²⁰⁵ *Id.*

²⁰⁶ Nguyen, *supra* note 203.

²⁰⁷ *Id.*

²⁰⁸ *Id.* The Special Ranking Rule is intended to make returning to competition easier for players coming back after pregnancy, starting a family, or a medical leave. *See id.* Its legal sufficiency under civil rights and labor protections remains an open question. On one hand, the rule serves as a model for other professional sports leagues to elevate their policies with anti-discrimination principles embodied in statutes like the PDA. It also demonstrates practical value by enabling athletes to reenter tournaments without forfeiting their pre-leave competitive standing, thereby preserving earning potential and career longevity. Yet, the Rule may be critiqued as an incomplete remedy: it addresses ranking consequences but does not directly guarantee compensation, roster security, or broader workplace accommodations contemplated under CBAs. *See* Women’s Tennis Association Official Rulebook § VIII.C (2025), <https://photoresources.wtatennis.com/wta/document/2025/01/06/50dleafae678-4081-bfa8-5576f670f801/2025-WTA-Rulebook-1-5-2025-.pdf> [<https://perma.cc/VE3X-PQ68>].

even if they miss an entire season.²⁰⁹ For example, the International Bobsleigh and Skeleton Federation guarantees that an athlete who sits out a season due to pregnancy “will be granted that quota spot . . . when coming back,” with the spot tied to the athlete rather than reallocated through the ordinary qualification process.²¹⁰ A similar model has been formalized by FIFA’s mandatory maternity regulations, which require minimum maternity leave, guaranteed return-to-play rights, and medical and reintegration policies.²¹¹ These examples mirror minimum labor standards, embedding baseline protections such as job security, protected leave, and return-to-work rights in order to better support and retain athlete-mothers.

The reforms discussed in this Article work in tandem to address the motherhood penalty in professional sports and may emerge through multiple avenues. First, this Part identifies non-legal reforms that could reduce the impact of the penalty and influence legal outcomes by increasing athlete-mothers’ ability to assert their rights. This Part then prescribes three institutional avenues for legal change—congressional influence, legal and quasi-legal mechanisms, and internal league governance and collective bargaining—that may help advance and reinforce broader efforts to eliminate pregnancy discrimination in professional sports.

A. Non-Legal Reforms

1. Social Change: Female Parental Visibility

Female parental visibility is the recognition and acknowledgement of mothers as well as their roles in society, including in work contexts and public life.²¹² Male athletes, though many are fathers, do not face the same barriers and stressors as their female counterparts.²¹³ This is not because fatherhood is

²⁰⁹ See Margie H. Davenport et al., *Advancing Gender Equity in Sport: A Scoping Review of International Sport Federation Policies for Pregnant, Postpartum and Parenting Elite Athletes*, 59 BRIT. J. SPORTS MED. 1096, 1099–1100 (2025).

²¹⁰ *IBSF Paves the Way for Female Athletes to Return to Competition After Maternity Leave*, IBSF (Oct. 19, 2020), <https://www.ibsf.org/en/news/detail/ibsf-paves-the-way-for-female-athletes-to-return-to-competition-after-maternity-leave> [https://perma.cc/TYR2-CEX7].

²¹¹ Daniel Gonzalez Guerrero, *Right to Maternity in Sports: How Does it Work at FIFA*, LATIN AM. POST (Apr. 3, 2023), <https://latinamericanpost.com/sports/right-to-maternity-in-sports-how-does-it-work-at-fifa/> [https://perma.cc/67NL-WQ5F].

²¹² See Howe, *supra* note 2.

²¹³ Scott, Smith, Darroch & Giles, *supra* note 140, at 1189.

particularly visible or socially valorized, but because societal expectations and structural norms do not penalize men for balancing professional and parental responsibilities.²¹⁴ For female athletes, this bifurcation of pre-motherhood and post-motherhood forces judgment upon them based solely on that distinction.²¹⁵ Instead, they should be supported and seen for their dual identity.²¹⁶ This is not to suggest that women should be treated *apart* from motherhood altogether; as intersectional scholars have noted, ignoring the real implications of a protected status can undermine substantive equality.²¹⁷ As Zoe Gillings-Brier, four-time Olympic snowboarder,²¹⁸ stated: “[i]f we want more young girls to get into sport we need them to know it’s not sport or motherhood, that you can do both.”²¹⁹ Thankfully, “elite mothers” have slowly but surely gained “visibility” in their work and public life contexts.²²⁰ This includes media attention, like that of the 2012 London Olympic Games as observed by McGannon in her study of Olympic athlete mothers.²²¹

Alex Morgan, U.S. Women’s National Team legend and two-time World Cup Champion, is the epitome of an “elite mother.” During her career, she was not only a star on the soccer field, but a fierce advocate for athlete mothers in the public eye.²²² Specifically, Morgan pushed for better parental leave, travel accommodations, and childcare support in professional

²¹⁴ See generally Wei-hsin Yu & Yuko Hara, *Motherhood Penalties and Fatherhood Premiums: Effect of Parenthood on Earnings Growth*, 58 DEMOGRAPHY 247, 267–70 (2021) (discussing the disparity in earnings between women when they become mothers and men when they become fathers, reflecting differential societal and economic treatments of parental roles).

²¹⁵ See Howe, *supra* note 2.

²¹⁶ *Id.*

²¹⁷ See, e.g., Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1241–45 (1991) (critiquing colorblind approaches in racial discrimination for obscuring structural and intersectional harms).

²¹⁸ Zoe Gillings, WIKIPEDIA, https://en.wikipedia.org/w/index.php?title=Zoe_Gillings&oldid=1234621939 [<https://perma.cc/U4SN-CCEJ>].

²¹⁹ Howe, *supra* note 2.

²²⁰ Scott, Smith, Darroch & Giles, *supra* note 140, at 1183.

²²¹ Kerry R. McGannon, Christine A. Gonsalves, Robert J. Schinke & Rebecca Busanich, *Negotiating Motherhood and Athletic Identity: A Qualitative Analysis of Olympic Athlete Mother Representations in Media Narratives*, 20 PSYCH. SPORT & EXERCISE 51, 51–59 (Sep. 2015), <https://doi.org/10.1016/j.psychsport.2015.04.010> [<https://perma.cc/ZY7S-Z5NF>].

²²² Mara Santilli, *Soccer Star Alex Morgan Has Retired from Competition – Both On and Off the Field*, SELF (Sep. 4, 2025), <https://www.self.com/story/alex-morgan-bobbie-postpartum> [<https://perma.cc/LXA8-AX4J>].

soccer.²²³ Through her advocacy, Morgan “played a pivotal role” in influencing the 2022 NWSL CBA, which included improved conditions for mothers traveling with children.²²⁴ Despite retiring in 2024, she continues to work on campaigns, like There’s No Scoreboard in Motherhood, that normalize postpartum recovery and center families in athlete narratives.²²⁵

Improving female parental visibility is the approach that most squarely addresses social norms perpetuating the motherhood penalty. Supporting athlete-mothers’ “dual identity” has resulted in positive outcomes including “pride, motivation, resilience, and enjoyment for their sport.”²²⁶ Recognizing an elite female athlete’s dual identity can aid in protecting the spirit of their sports and more importantly, the well-being of athlete-mothers across the world.

2. Research Insights for Evidence-Based Return-to-Sport Guidelines

Second, greater medical and social-scientific research on a female athlete’s ability to return to sport postpartum can improve the effectiveness of interventions. As rower Jill Moffatt poignantly notes, “[i]t is interesting that in Canada, especially with the Summer Olympics, women are winning 76% to 77% of the medals compared to men . . . [a]nd yet we’re so far behind in terms of being able to support athletes across their athletic career before pregnancy and then afterwards if they continue on in their sports.”²²⁷ Indeed, Moffatt’s observation highlights a broader disconnect: despite the extraordinary contributions of female athletes, professional sport still lacks sufficient research, resources, and institutional support for pregnancy and postpartum athletic participation.²²⁸

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ See generally Scott, Smith, Darroch & Giles, *supra* note 140; Boden Joel Tighe, Susan L. Williams, Courtney Porter & Melanie Hayman, *Barriers and Enablers Influencing Female Athlete Return-to-Sport Postpartum: A Scoping Review*, 57 BRIT. J. SPORTS MED. 1, 8 (2023), <https://bjsm.bmj.com/content/57/22/1450> [<https://perma.cc/Z72M-4VKE>].

²²⁷ Teddy Katz, *MOMentum Building for Athlete Moms on the Road to Paris 2024*, CAN. OLYMPIC COMM. (May 10, 2024), <https://olympic.ca/2024/05/10/momentum-building-for-athlete-moms-on-the-road-to-paris-2024/> [<https://perma.cc/H8V3-CQY4>].

²²⁸ See Jenna Schulz, Jane Thornton & The Conversation, *New Research Upends Common Thoughts on Motherhood and Elite Athletic Performance*, INVERSE (Aug. 4, 2024), <https://www.inverse.com/health/new-research-upends-common-thoughts-on-motherhood-and-elite-athletic-performance> [<https://perma.cc/6PBV-NQLG>].

Research in prior decades has shown a decline in women's participation in sport "after they give birth,"²²⁹ while more recent studies show a greater number of women returning to high-level sport after giving birth.²³⁰ Only a handful have analyzed return-to-sport ("RSP") guidelines for elite female athletes, but limitations in scope affect their practical value.²³¹ Of note, one study addresses injury risk and potential long-term health impacts, while also understanding the larger societal structure and pressures placed upon elite female athletes.²³² RSP frameworks, the study suggests, should include "assessment of strength, endurance and functional abilities, but also emphasize the importance of mental readiness."²³³ This integrated approach is rare in existing literature, which often isolates physiological outcomes from the social and institutional contexts in which postpartum athletes train and compete.²³⁴ The inclusion of both medical and structural considerations produces more holistic and actionable insights.

Expanded research on successful post-partum returns to sport for athlete-mothers can generate the evidence needed to mitigate health challenges and support sustained postpartum.

²²⁹ Scott, Smith, Darroch & Giles, *supra* note 140, at 1182 (citing M. Deborah Bialeschki, Sarah Michener, *Re-entering Leisure: Transition Within the Role of Motherhood*, 26 J. LEISURE RSCH. 57–74 (1994)); Yvette D. Miller & Wendy J. Brown, *Determinants of Active Leisure for Women With Young Children—An 'Ethic of Care' Prevails*, 27 LEISURE SCIS. 405–20 (2005); Farah R. Palmer & Sarah I. Leberman, *Elite Athletes at Mothers: Managing Multiple Identities*, 12 SPORT MGMT. REV. 241–254 (2009); Helene Thomsson, *Yes, I Used to Exercise, But: A Feminist Study of Exercise in the Life of Swedish Women*, 31 J. LEISURE RSCH. 35–56 (1999).

²³⁰ Scott, Smith, Darroch & Giles, *supra* note 140, at 1182; International Olympic Committee, *Factsheet: Women in the Olympic Movement* (June 27, 2025), <https://stillmed.olympics.com/media/Documents/Olympic-Movement/Factsheets/Women-in-the-Olympic-Movement.pdf> [<https://perma.cc/82DN-GB3U>].

²³¹ Schulz, Thornton & Conversation, *supra* note 228 ("We found most studies stated that return to activity could start once 'medically safe' around six weeks postpartum, but this term was generally left undefined. . . . Only 11 out of 36 studies had specific return-to-sport guidelines, and only six studies considered the importance of mental health.").

²³² Scott, Smith, Darroch & Giles, *supra* note 140, at 1190.

²³³ Schulz, Thornton & Conversation, *supra* note 228; *see generally* Davenport et al., *We're Not Superhuman, We're Human: A Qualitative Description of Elite Athletes' Experiences of Return to Sport After Childbirth*, 53 SPORTS MED. 269, 276 (July 28, 2022).

²³⁴ Jana Nolte et al., *Elite and Sub-elite Athletes and Pregnancy: Training, Performance, Health and Psychological Aspects Across the Pre-, Peri-, and Postnatal Stages: A Scoping Review*, 12 SPORTS MED. – OPEN 25 (Mar. 9, 2026), <https://doi.org/10.1186/s40798-026-01000-5> [<https://perma.cc/9M2K-HE45>].

3. Access to Accommodations & Social Support

Further, enhancing on-the-ground accommodations and resources available to female athletes can make a meaningful difference. The success of this approach turns on the practical implementation of athlete-mother protections in their day-to-day training and competition environments. Ensuring that athlete-mothers have access to return-to-play protocols, childcare, and individualized medical, performance-related, and scheduling accommodations²³⁵ can mitigate challenges that might otherwise exclude athlete-mothers or lead to reductions in performance. Athlete-mothers report more positive postpartum returns when such supports are in place,²³⁶ underscoring that meaningful changes require practical infrastructure to protect athlete-mothers in ways that facilitate safe, supported, and successful reentry into professional sport. One study illustrated that “more than half” of the athlete-mothers return to “at least their pre-pregnancy performance level, and some will even exceed it.”²³⁷ One 2022 study tracked the performance of elite female runners before and after pregnancy, finding that “a whopping 46% improved performances post-pregnancy.”²³⁸ With that, “when athlete[-mothers] have strong social supports and childcare[,]” they feel less “stress placed on performance outcomes” and are able to reap the benefits of “the forced break [which] may have both mental and physical benefits.”²³⁹

These ideas can help serve as a guide for the types of support that need to be increased for athlete-mothers. Such encouragement coupled with

²³⁵ Schulz, Thornton & Conversation, *supra* note 228; see generally Brooke McGregor, Richard McGrath, Janette Young & Carmel Nottle, *A Scoping Review of the Experiences of Elite Female Athletes Concerning Pregnancy and Motherhood*, 27 *SPORT IN SOC'Y* 1221 (2024); Chloe M. Hewitt, M. Karent Campbell, Yun-Hee Choi & Jane S. Thornton, *Exploring the Postpartum Return to Sport and Performance in Canadian Elite Athletes*, 7 *FRONTIERS IN SPORTS & ACTIVE LIVING* (Oct. 7, 2025).

²³⁶ Schulz, Thornton & Conversation, *supra* note 228; see also McGregor, McGrath, Young & Nottle, *supra* note 235; Hewitt, Campbell, Choi & Thornton, *supra* note 235.

²³⁷ Francine Darroch et. al., *Effect of Pregnancy in 42 Elite to World-Class Runners on Training and Performance Outcomes*, 55 *MED. & SCI SPORTS & EXERCISE* 93, 96–97 (2022); Jorunn Sundgot-Borgen et al., *Elite Athletes Get Pregnant, Have Healthy Babies and Return to Sport Early Postpartum*, *BMJ OPEN SPORT & EXERCISE MED.* (Nov. 21, 2019), <https://bmjopensem.bmj.com/content/5/1/e000652> [<https://perma.cc/E58A-HE87>].

²³⁸ David Roche, *Groundbreaking New Study on Pregnancy and Athletic Performance*, *TRAIL RUNNER* (Aug. 30, 2022), <https://www.trailrunnermag.com/training/trail-tips-training/pregnancy-and-performance/> [<https://perma.cc/89KB-U9ET>].

²³⁹ Darroch et al., *supra* note 237, at 96–97.

exercise during pregnancy creates healthier moms and babies, making the 'win' inter-generational.²⁴⁰

Scott, Smith, Darroch & Giles further outline the importance of empowering athlete-mothers, advocating for changes in contractual agreements specific to pregnancy and postpartum recovery, as well as parental leave to ensure they and their children are protected.²⁴¹ It has been frequently reported that "negative contractual changes" occur when a female athlete becomes pregnant.²⁴² For example, following the high-risk birth of her daughter, eleven-time Olympic medalist and mother of two, Allyson Felix noted that Nike wanted to decrease her pay by seventy percent, "despite all [her] victories" when she was in the process of renegotiation.²⁴³ Felix reported that Nike's proposed terms included reduced compensation tied to performance expectations, alongside contract provisions that historically have included morality clauses.²⁴⁴ In the context of pregnancy and childbirth, such clauses risk penalizing athletes for conditions that are both medically necessary and legally protected. Unfortunately, Allyson Felix is not alone. Many elite female athletes experience financial penalization "by their corporate sponsors" because of their choice "to start families."²⁴⁵ Even more, "vague and ambiguous" language coupled with "industry-standard non-disclosure" clauses lead to female athletes without advocates and ultimately, them facing "arbitrary" punishment.²⁴⁶

This unfortunate situation presents opportunities for proactive labor and employment attorneys and other economic justice advocates to play instrumental roles. Navigating the moving parts of a contract alongside the current

²⁴⁰ Mary Gearin, *Serena Williams: Can Having a Baby Actually Improve Athletic Performance in the Long Run?* AUSTL. BROAD. CORP. (Sep. 6, 2018), <https://www.abc.net.au/news/2018-09-07/serena-williams-why-some-athletes-stronger-after-pregnancy/10208896> [<https://perma.cc/RFM3-QTFR>].

²⁴¹ See generally Scott, Smith, Darroch & Giles, *supra* note 140; see also *Model Sponsorship Contract Provisions for Pregnancy and Parental Leave* (2021), & MOTHER, <https://static1.squarespace.com/static/5e165f2eb132690ddad7ee9f/t/618ae94f71bccc305ea1c587/1636493647440/Model+Sponsorship+Contract+Provisions.pdf> [<https://perma.cc/6CLZ-XP9E>].

²⁴² Scott, Smith, Darroch & Giles, *supra* note 140, at 1189.

²⁴³ *Id.*

²⁴⁴ Jenna West, *Allyson Felix: Nike Contract Talks at 'Standstill' After Request for Maternity Protections*, SPORTS ILLUSTRATED (May 22, 2019), <https://www.si.com/olympics/2019/05/22/allyson-felix-nike-contract-maternity-protection> [<https://perma.cc/K55D-L2WY>].

²⁴⁵ Scott, Smith, Darroch & Giles, *supra* note 140, at 1182.

²⁴⁶ *Id.* at 1189.

exploitation and depreciation of athlete-mothers is a hard task. Nevertheless, the legal framework surrounding pregnancy protections in professional sport can and should evolve to better support athlete-mothers. This objective can be advanced through the inclusion of pregnancy-protective sponsorship clauses and the elimination of ambiguous morality and performance reduction provisions. Additionally, guaranteed compensation during pregnancy and postpartum recovery, when secured through collective bargaining, provides meaningful protection for athlete-mothers – so the idea of motherhood becomes a point of contractual power, rather than vulnerability.

Despite limited resources to help “athlete-mothers navigate family planning and their careers,”²⁴⁷ there is one illustrative initiative that is making a statement: MOMemtum. This group, led by multiple Olympic athletes like “Canadian rower Jill Moffatt, runner Melissa Bishop-Nriagu, wrestler Erica Wiebe, basketball player Erica Gavel” as well as “two other[s] who almost missed the Tokyo Games due to pregnancy and postpartum policies, basketball player Kim Gaucher and boxer Mandy Bujold”²⁴⁸ aid “elite Olympic and Paralympic athletes with their family planning needs” as they prepare for the Games.²⁴⁹ The athlete-mothers propelled MOMemtum by first improving advocacy and research, being “one of 15 non-profit projects awarded an OLY Canada Legacy Grant in February by the Canadian Olympic Committee.”²⁵⁰ This grant helps sustain and expand their advocacy and research initiatives. This alignment between lived experience, targeted programming, and external funding underscore both the practical impact of their focus on investing in education, safety, and mentorship to improve support for athlete-mothers. Due to their advocacy, the Olympic Village now provides a nursery, located at its center,²⁵¹ and “hotel rooms to their athletes for breastfeeding during the games.”²⁵² This is a case study not only to instill hope, but also one that should inspire greater investment and attention to support motherhood in professional sports.²⁵³

²⁴⁷ Schulz, Thornton & Conversation, *supra* note 228.

²⁴⁸ *Id.*

²⁴⁹ Katz, *supra* note 227.

²⁵⁰ *Id.*

²⁵¹ Schulz, Thornton & Conversation, *supra* note 228.

²⁵² *Id.*

²⁵³ *Id.*

B. *Legal Avenues for Reform*

1. Congressional Influence

Unfortunately, the structure of the federal legislative processing, including bicameral approval requirements, creates significant barriers to the enactment of reform. In addition, competing claims on political capital frequently relegate women's rights to a lower position within legislative priorities.²⁵⁴ Private leagues also present a structural hurdle, as they have long resisted government intervention.²⁵⁵ This is because major leagues often operate as self-governing private entities with significant economic and political influence.²⁵⁶ Historically, these leagues have used strong lobbying power to shape federal policy and maintain autonomy from regulation,²⁵⁷ so efforts to enact stronger statutory protections for athlete-mothers face substantial structural resistance.²⁵⁸

²⁵⁴ See generally Edith M. Lederer, *Women's Rights are Under Attack 30 years After Leaders Adopted a Blueprint for Equality, UN says*, AP WORLD NEWS (Mar. 6, 2025, 16:59 ET), <https://apnews.com/article/un-women-girls-equality-beijing-conference-rights-b009715ff605ccf47f1b72865c7a27e7> [<https://perma.cc/ZC2U-WBAC>]; Colleen Goko, *World Bank Report Highlights 'Shockingly Large' Gap Between Gender Equality Laws and Enforcement*, REUTERS (Feb. 24, 2026), <https://www.reuters.com/sustainability/world-bank-report-highlights-shockingly-large-gap-between-gender-equality-laws-2026-02-24/> [<https://perma.cc/6XST-JNZQ>].

²⁵⁵ For example, the increased steroid testing in athletes early 2000's and the congressional hearings, that followed, pushing for federal law regulating drug testing was highly opposed by the public. See Full Committee Hearing: Steroids in Baseball (Mar. 17, 2005), <https://oversightdemocrats.house.gov/legislation/hearings/committee-holds-hearing-on-steroids-in-baseball> [<https://perma.cc/99VJ-FSYN>].

²⁵⁶ Marc Edelman, *In Defense of Sports Antitrust Law: A Response to Law Review Articles Calling for the Administrative Regulation of Commercial Sports*, 72 WASH. & LEE L. REV. ONLINE 210, 211–12 (2015).

²⁵⁷ *Id.*; see *How Lobbyists Advocated For Your Favorite Sports League*, DORN POL'Y GRP. (Sep. 29, 2020), <https://dornpolicygroup.com/how-lobbyists-advocated-for-your-favorite-sports-league> [<https://perma.cc/QM7Y-UFPG>]; Dylan Sinn, Adam Zielonka, Connor Hoyt & Michael Brice-Saddler, *Pro Sports Leagues, Teams Spend Millions Lobbying Washington*, CAP. NEWS SERV. (Dec. 18, 2017), <https://cnsmaryland.org/2017/12/18/pro-sports-leagues-teams-spend-millions-lobbying-washington/> [<https://perma.cc/6S66-59UA>].

²⁵⁸ See Nathaniel Grow, *Regulating Professional Sports Leagues*, 72 WASH. & LEE L. REV. 573 (2015) (arguing that the existing dominant regulatory framework (antitrust) doesn't effectively limit league power, implying that legislative or regulatory protection for athletes would face similar systemic resistance).

However, these obstacles do not foreclose the possibility of reform. Encouraging legislators to pass a bill regarding increased support for athlete-mothers and working mothers is one vehicle to stimulate change. Creating new legislation that maintains the benefits of the PDA, PWFA and other related amendments under Title VII but implements the above resources and access to them would outline an action plan ready for implementation. Congress could effectuate this by amending the PDA to explicitly cover professional athletes and clarify its application to sponsorship and endorsement relationships. Alternatively, Congress could enact sport-specific worker protections that require minimum pregnancy and postpartum accommodations in professional athletics. Such legislation could also mandate baseline standards for return-to-play protocols, guaranteed access to childcare, and individuals medical, performance-related, and scheduling accommodations during pregnancy and postpartum recovery. Congress could incentivize compliance through federal grants to support research and implementation of evidence-based postpartum research programs, while conditions certain funding or league-related benefits on adherence to these standards. Establishing federal laws around this topic would not only foster a more supportive attitude towards the challenges faced by mothers but also enhance the tangible resources and protections available to female athletes during pregnancy. Even more, legislation would likely gain bipartisan support,²⁵⁹ as many Democrats are pro-union and pro-worker and many Republicans are pro-life and pro-family.²⁶⁰

²⁵⁹ See, e.g., Pregnant Workers Fairness Act, H.R. 2694, 117th Cong. (2021) (introduced by bipartisan group of Representatives, including Rep. John Katko (R-NY) and Rep. Jamie Herrera Beutler (R-WA) alongside Democrats, to strengthen workplace protections for pregnant workers); *Bipartisan Group Reintroduce Bill to Strengthen Protections for Pregnant Workers*, EDUC. & WORKFORCE COMM. DEMOCRATS (Feb. 16, 2021), <https://democrats-edworkforce.house.gov/media/press-releases/bipartisan-group-reintroduce-bill-to-strengthen-protections-for-pregnant-workers> [<https://perma.cc/96XQ-UUC9>].

²⁶⁰ See PEW RESEARCH CENTER, FROM BUSINESSES AND BANKS TO COLLEGES AND CHURCHES: AMERICANS' VIEWS OF U.S. INSTITUTIONS 9 (2024), https://www.pewresearch.org/wp-content/uploads/sites/20/2024/02/PP_2024.02.01_institutions_REPORT.pdf [<https://perma.cc/LK6X-AT93>]; *Public Opinion on Abortion*, PEW RSCH. CTR. (Mar. 12, 2026), <https://www.pewresearch.org/religion/fact-sheet/public-opinion-on-abortion/> [<https://perma.cc/8RS2-J5H6>].

2. Legal and Quasi-Legal Influence

Many times, if not properly educated or involved in the discussion, athletes may not recognize unfavorable terms of a contract until after it has been executed.²⁶¹ Athlete-mothers are particularly vulnerable to this dynamic, as disparities in bargaining power often shape both employment and sponsorship agreements.

While labor law,²⁶² contract law,²⁶³ and constitutional protections²⁶⁴ offer some safeguards, they are insufficient to address the structural imbalances inherent in elite sports contracting.²⁶⁵ Many athlete agreements are negotiated in contexts with limited transparency, high economic stakes, and significant asymmetry in bargaining power,²⁶⁶ leaving athletes with little meaningful ability to challenge unfavorable terms *ex ante*.

Litigation offers a pathway for shaping and expanding these protections. Strategic civil rights claims under Title VII, as well as challenges under statutes like the PDA and PWFA, can help clarify boundaries of permissible conduct and expose discriminatory practices embedded in contractual arrangements.²⁶⁷

²⁶¹ GLOBALAW, SPORTS LAW TASKFORCE: PROTECTING & EMPOWERING ATHLETES (2025), <https://media.globalaw.net/Globalaw%20Sports%20Law%20Taskforce%2006242025.pdf> [https://perma.cc/4J34-NURR].

²⁶² See Leanne O'Leary, Maximillian Seltmann & Vanja Smokvina, *Elite Athletes and Worker Status*, 54 INDUS. L. J. 248, 249 (2024) (noting that elite athletes often fall outside traditional employment traditional law protections).

²⁶³ See Rajeeb Kumar, *Power Imbalances and Fairness in Standard Form Contracts: A Critical Analysis of Professional Sports Agreements*, 3 LAWFOYER INT'L J. DOCTRINAL LEGAL RSCH. 184, 184 (2025).

²⁶⁴ See, e.g., Sam C. Ehrlich & Neal C. Ternes, *Putting the First Amendment in Play: Name, Image, and Likeness Policies and Athlete Speech*, 45 COLUM. J. L. & ARTS 47, 47 (2021) (explaining constitutional free speech protections are often constrained when athletes' rights conflict with league or institutional policies, illustrating limits of constitutional safeguards in shaping employment or contractual rights).

²⁶⁵ See Marc Edelman, Michael A. McCann & John T. Holden, *The Collegiate Employee-Athlete*, 1 UNIV. OF ILL. L. REV. 1, 53 (2024) (discussing structural imbalances in bargaining power between athletes and leagues and the limits of traditional legal protections).

²⁶⁶ Kumar, *supra* note 263.

²⁶⁷ See Joanna L. Grossman, *Expanding the Core: Pregnancy Discrimination Law as It Approaches Full Term*, 52 IDAHO L. REV. 825, 860 (2016) (discussing how litigation under Title VII and the PDA has pushed courts to give effect to Congressional intent).

Within this broader framework, attorneys and sports agents play a critical role. By encouraging attorneys and sports agents to proactively identify potentially discriminatory provisions, advising clients on their rights under applicable statutes, and preserving claims where appropriate for future litigation, they help address the motherhood penalty. In doing so, attorneys can be advocates and more present for athlete-mothers in negotiations of their player contracts as well as in sponsorship deals. This would not only better prepare advocates and athlete-mothers at the contract stage but also position them to challenge unlawful or inequitable terms when they arise.

3. Internal Governance and Collective Bargaining

Finally, internal influences from the teams and leagues themselves could aid in support for athlete-mothers, particularly through the collective bargaining process. Under a CBA, the players' union and the league negotiate terms governing compensation, working conditions, and player benefits, with both sides ultimately required to reach mutual agreement for the CBA to take effect.²⁶⁸ So, players' unions can bargain for specific provisions like pregnancy accommodations, return-to-play protocols, and childcare support, while league ownership can shape outcomes by proposing contract terms, setting policy priorities, and signaling willingness to enforce rules.²⁶⁹ Importantly, this process is not purely adversarial. For example, policies that support pregnancy and postpartum recovery can extend athletes' careers, reduce injury risk, and enhance long-term player availability—outcomes²⁷⁰ that may benefit teams and leagues financially.²⁷¹ At the same time, the bargaining process reflects an inherent balancing act between the union and the leagues:

²⁶⁸ *All About Unions*, *supra* note 145.

²⁶⁹ *See Collective Bargaining Agreements in Sports Leagues & Their Legal Scope*, *supra* note 157.

²⁷⁰ *See* Kat M. Crossley et al., *Female, Woman and/or Girl Athlete Injury Prevention (FAIR) Practical Recommendations: International Olympic Committee Consensus Meeting Held in Lausanne Switzerland*, 59 *BRITISH J. SPORTS MED.* 1546 (2025) (noting that improved female athlete health management, including pregnancy and postpartum care, is linked to reduced injury risk and sustained elite performance across athletic careers).

²⁷¹ *See, e.g.*, Sören Dallmeyer et al., *Monetising Misfortune: The Financial Consequences of Injuries in Professional Football Teams*, 11 *BMJ OPEN SPORT & EXERCISE MEDICINE* 1, 5 (2024) (“The substantial indirect costs associated with player injuries highlight the economic value of investing in effective injury prevention and management strategies.”)

while the union can advocate for specific terms, leagues must agree to their inclusion.²⁷² This is ever-present in the WNBA's current bargaining issues. If the players' union and the league fail to reach an agreement, it could lead to a labor dispute, influencing the negotiation landscape, and introduce uncertainty and shifting leverage between the parties.²⁷³

CONCLUSION

The PDA served as a monumental shift in the way pregnant workers were treated and the culture around working mothers. As the Act expanded Title VII's discrimination provision, it required pregnant employees to be treated the same as others with similar ability or inability to work.²⁷⁴ More recently, the Supreme Court's decision in *Young* clarified that employers may be liable when they provide accommodations to some nonpregnant workers with work limitations while denying comparable accommodations to pregnant workers, ultimately establishing a burden-shifting framework in pregnancy-accommodation litigation.²⁷⁵ Within the sports industry, however, enforcement largely depends on traditional labor and employment mechanisms like CBAs and administrative oversight by the EEOC rather than sport-specific statutory protections. Recent CBAs, like those at the PWHL and NWSL, reflect meaningful progress.²⁷⁶ Yet the fight for better provisions related to paid parental leave, roster protection, and health benefits continues with WNBA CBA negotiations ongoing at the time of this Article.²⁷⁷ Critically, there needs to be change in the industry, and the approach should be multi-faceted. This Article recommends congressional action to strengthen and clarify pregnancy

²⁷² See *Collective Bargaining Agreements in Sports Leagues & Their Legal Scope*, *supra* note 157.

²⁷³ *WNBA Could Lose Leverage as CBA Negotiations Stall*, SPORTS BUSINESS JOURNAL: LEAGUE AND GOVERNING BODIES (Jan. 22, 2026), <https://www.sports-businessjournal.com/Articles/2026/01/22/wnba-could-lose-leverage-as-cba-negotiations-stall/> [<https://perma.cc/TAM3-2RXH>] (“[T]he union’s ‘upper hand at the bargaining table is slipping’ [and] . . . [a] lockout or strike . . . ‘poses economical risks for the WNBA.’”); see Doha Madani, *WNBA Players’ Union Votes to Authorize Strike as Deadline for New Contract Approaches*, NBC N.Y. (Dec. 18, 2025), <https://www.nbcnewyork.com/news/sports/wnba/wnba-players-union-votes-authorize-strike-cba-deadline/6432978/> [<https://perma.cc/WQF3-28D6>].

²⁷⁴ 42 U.S.C. § 2000e-2.

²⁷⁵ *Young v. United Parcel Service, Inc.*, 575 U.S. 206, 240–24 (2015).

²⁷⁶ Anantharaman, *supra* note 170.

²⁷⁷ FELDMAN, *supra* note 161.

accommodation mandates; legal and quasi-legal reforms through attorney and agent guidance; and internal change in social norms, implementation of research-based practices, and improved access to accommodations. Such an approach should be reinforced by professional sports teams, leagues, and the public to ensure that athlete-mothers are not forced to choose between professional participation and pursuing motherhood. Indeed, the end goal: shut down the motherhood penalty.