

# Beyond the Draft: How the NWSL’s CBA Challenges Labor Restrictions in Professional Sports

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## I. INTRODUCTION

In August 2024, the National Women’s Soccer League (NWSL) and the National Women’s Soccer League Players Association (NWSLPA) entered a new Collective Bargaining Agreement (CBA), the terms of which are a sharp deviation from traditional norms for American professional sports.<sup>1</sup> The new CBA is the product of recent efforts to grant athletes greater “freedom of choice over their careers” and a general shift in women’s soccer towards player empowerment.<sup>2</sup> NWSL players secured major wins in the new CBA, including universal free agency, an end to trade without player consent, guaranteed contracts, workload management measures to protect players’ health, and the implementation of revenue sharing.<sup>3</sup> However, the biggest—and perhaps most controversial—change is the abolition of the player draft.<sup>4</sup>

In the U.S., the draft is a hallmark of professional sports. Every year, millions of viewers tune into a league’s draft to see their favorite college athletes advance to the professional league.<sup>5</sup> From the league perspective, the

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<sup>1</sup> Chris Deubert, *New NWSL CBA Furthers Competitive Advantage Over Rival Super League*, FORBES (Sept. 6, 2024), <https://perma.cc/GRZ5-Q4XB>.

<sup>2</sup> *CBA Fact Sheet*, NWSL PLAYER’S ASS’N, <https://perma.cc/VB2L-JM9R> (last visited Jan. 7, 2025).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> See, e.g., *Viewership for Round 1 of 2024 NFL Draft surpasses 2023*, NFL (Apr. 26, 2024) <https://perma.cc/JR3H-PSND> (last visited Oct. 25, 2025) (Round 1 of the 2024 NFL draft drew a total of 34.3

draft is more than a media performance. It is the primary mechanism for maintaining competitive balance by providing weaker teams with better draft picks, therefore better odds at improving the quality of their franchise.<sup>6</sup> Additionally, the draft deters costly bidding wars for young talent and avoids the chance of super teams that monopolize the best players.<sup>7</sup> The draft works alongside other typical restrictions to player mobility like limited free agency, contract restrictions, and transfer windows. However, these limitations on player mobility have faced criticism for inhibiting player autonomy and suppressing salaries.<sup>8</sup> Such restrictions have also been the subject of antitrust scrutiny as unreasonable restraints on trade.<sup>9</sup>

The NWSL is the first professional sports league in America to abolish the draft.<sup>10</sup> What differentiates the NWSL from other American professional sports leagues is its direct competition with international leagues for player talent.<sup>11</sup> In sports like basketball, football, and baseball, America is the dominant market for professional athletes. Soccer, however, is a global sport. The changes in the CBA came after a disappointing finish for the U.S. Women's National Team in the 2023 World Cup.<sup>12</sup> After their early exit in the round-of-15 and slip from FIFA's top two for the first time since rankings began in 2003, it was clear that US dominance in women's soccer was fading.<sup>13</sup> In the wake of this disappointment, critics pointed fingers at the NWSL as 22 of the 23

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million viewers); *see also* Alex Sinatra, *2024 WNBA Draft Shattered Viewership Records To Become The Most-Viewed In History*, YAHOO SPORTS (April 17, 2024), <https://perma.cc/732P-TAGB>; (The 2024 WNBA Draft "drew 2.45 million viewers on ESPN Monday night and peaked at 3.09 million"); Alex Schiffer, *NBA Draft Ratings Stay Strong Despite Lack of Star Power*, FRONT OFFICE SPORTS, (July 28, 2024) <https://perma.cc/A394-N4GB>.

<sup>6</sup> Rachel Bachman, *The U.S. Sports League That Just Scrapped the Draft—and Made Everyone a Free Agent*, THE WALL STREET JOURNAL (Aug. 22, 2024), <https://perma.cc/8KWR-L2GY>; *see also* Kathryn Johnston et al., *To draft or not to draft? A systematic review of North American sports' entry draft*, 32 SCAND. J. MED. SCI. SPORTS 4 (2022).

<sup>7</sup> *See* N. Am. Soccer League v. Nat'l Football League, 670 F.2d 1249, 1253 (2d Cir. 1982) ("[T]he economic success of each franchise is dependent on the quality of sports competition throughout the league and the economic strength and stability of other league members.").

<sup>8</sup> Jeffrey Dorfman, *Draft Season Reminds Us Who Truly Exploits Young Athletes: The Answer Is Old Athletes*, FORBES (June 25, 2017).

<sup>9</sup> *See generally* *Smith v. Pro Football*, 593 F.2d 1173 (D.C. Cir. 1978) (holding the draft was illegal under the rule of reason after an ex-NFL player challenged the draft system under the Sherman Act); *Denver Rockets v. All-Pro Mgmt., Inc.*, 325 F. Supp. 1049 (C.D. Cal. 1971) (holding that the rule was illegal under the Sherman Act as it constituted a group boycott after a professional basketball player challenged the NBA's age eligibility rule); *NCAA v. Alston*, 594 U.S. 69 (2021) (holding that the NCAA violated the Sherman Act in limiting education-related benefits for student athletes, essentially fixing the price of labor).

<sup>10</sup> NWSL PLAYER'S ASS'N, *supra* note 2.

<sup>11</sup> Tom Kludt, *National Women's Soccer League Eliminates Draft in Historic New Agreement*, VANITY FAIR (Aug. 22, 2024), <https://perma.cc/CQ93-4N89>.

<sup>12</sup> Kassouf, Jeff, *After USWNT's poor World Cup, the NWSL is at a crossroads*, ESPN (Sept. 28, 2023), [https://www.espn.com/soccer/story/\\_/id/38508023/after-uswnt-poor-2023-world-cup-nwsl-needs-reforms](https://www.espn.com/soccer/story/_/id/38508023/after-uswnt-poor-2023-world-cup-nwsl-needs-reforms).

<sup>13</sup> *Id.*

players representing the U.S. that year played in the NWSL.<sup>14</sup> In reality, a major reason for this fall from grace was that the rest of the world had finally caught up to the U.S. in investment and development of their women's programs.<sup>15</sup> As a result, the U.S.'s first mover advantage had eroded. As the primary infrastructure of player development in the U.S. this shift in dominance forced the NWSL to reevaluate their program.<sup>16</sup>

The subsequent emergence of new leaders in women's soccer—like Spain and England—was a wakeup call, showing the league there was “a global talent pool [the NWSL] wanted to attract.”<sup>17</sup> It forced the NSWL “to look in the mirror and decide what . . . artificial obstacles and barriers [ ] exist . . . within the NWSL that make it harder . . . to attract top talent.”<sup>18</sup> Because foreign leagues do not utilize a draft, the NSWL's draft functioned as an obstacle to the league's ability to compete for international talent.<sup>19</sup> Even domestic talent has begun to shift overseas in recent years because foreign leagues do not require a player draft as a condition of entry.<sup>20</sup>

The NWSL's progressive CBA could provide a blueprint for other leagues to pursue similar advancements. Sports experts have already questioned whether other leagues focused on attracting players from international markets—like the Professional Women's Hockey League (PWHL) will follow suit<sup>21</sup> or if player's associations in leagues with notably low salaries will push for enhanced player autonomy, increasing player leverage in negotiations.<sup>22</sup> Given the potential for change signaled by the NWSL's new CBA two key questions arise: (1) Whether the traditional antitrust justifications for restrictive practices in professional sports still hold true in today's evolving sports landscape and, (2) if other leagues follow suit, what mechanisms can they adopt to maintain competitive balance while embracing greater player autonomy and fairness.

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Jeff Carlisle, *Does the 2023 World Cup Signal the End of USWNT Dominance?*, ESPN, (Aug. 9, 2023), <https://perma.cc/84HC-SDZB>.

<sup>17</sup> Tom Kludt, *supra* note 11.

<sup>18</sup> *Id.*

<sup>19</sup> Deubert, *supra* note 1.

<sup>20</sup> Emily Olsen, *With Another USWNT Player Going Abroad, Should NWSL Panic? Plus, Dash Are Up to Something*, THE ATHLETIC, (Jan. 27, 2025), <https://perma.cc/TED7-DPH5>.

<sup>21</sup> Ian Kennedy, *'Freedom Over Their Careers' New NWSL CBA Abandons Draft, Rapidly Increases Salaries*, THE HOCKEY NEWS (Aug. 22, 2024), <https://perma.cc/42YQ-QDGR>.

<sup>22</sup> *See* Tom Kludt, *supra* note 11.

## II. ANALYSIS

### A. Restrictions on Player Mobility

Historically, professional leagues framed restrictions on player mobility like the draft, limitations on free agency, and other contract limitations within the context of protecting competitive parity.<sup>23</sup> They argue that these practices are necessary to preserve competition and recover costs associated with player development, which are essential to a league’s overall success.<sup>24</sup> If a select few teams consistently acquired the best players, while other teams were limited to less skilled talent, game outcomes would be predictable, competition would diminish, and fan interest would decrease, undermining the league’s quality as a product.<sup>25</sup> The NWSL’s reforms, however, cast doubt on the blanket application of these restrictions to every league in the American market.

The draft, for example, is an allocation mechanism for new talent—whether players are transitioning from their collegiate eligibility or by-passing college altogether to enter the league early. This allocation allegedly promotes competitive parity “by giving the worst teams the highest picks, and an opportunity to replenish their talent with the top players.”<sup>26</sup> Beyond the draft, leagues apply restrictions on free agency, allowing franchises to retain talent longer and continue to maintain parity. Free agency is the period when a player’s contract expires, and they can negotiate with their same team or other teams. Typically, players are barred from free agency until they become more senior members of a league.<sup>27</sup> For the NWSL, the previous rule required players to meet a minimum of five “service years” before they could exercise free agency.<sup>28</sup> Until a player reaches seniority within a league, their team retains various rights “such as the right to offer a minimum contract, match

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<sup>23</sup> *N. Am. Soccer League*, 670 F.2d at 1253 (“[T]he economic success of each franchise is dependent on the quality of sports competition throughout the league and the economic strength and stability of other league members.”).

<sup>24</sup> *Id.*

<sup>25</sup> See, e.g., *Smith v. Pro Football*, 593 F.2d 1173, 1179 (1978) (holding that the *per se* rule was improper to apply to the NFL draft because it allowed individual teams to be competitively balanced, which is essential to the success of league as “only if the teams are ‘competitively balanced’ will spectator interest be maintained at a high pitch”).

<sup>26</sup> Tom Kludt, *supra* note 11.

<sup>27</sup> Jeff Kassouf, *Inside the NWSL’s new CBA: Free agency, revenue sharing, more*, ESPN, (Sept. 24, 2024) [perma.cc/RH8U-9RGC](https://perma.cc/RH8U-9RGC).

<sup>28</sup> Deubert, *supra* note 1.; Other leagues do this as well. In NBA, the current rule requires players remain in the league four years before they are free agents and in the MLB the rule is six years.

any offers or the right to receive compensation of some kind if another team signs the player.”<sup>29</sup>

Outside the sports industry, similar labor restrictions face scrutiny under the Sherman Act. Section 1 of the Sherman Act prohibits “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce.”<sup>30</sup> Supreme Court precedent interprets Section 1 to outlaw only *unreasonable* restraints.<sup>31</sup> Naked restraints on trade are those that courts have determined to be inherently unreasonable and anticompetitive.<sup>32</sup> Such restraints are evaluated under the stricter *per se* standard or review and include practices such as price fixing<sup>33</sup> or market allocation.<sup>34</sup> The vast majority of cases are analyzed under the “Rule of Reason” standard, which determines whether a restraint is unreasonable such that it violates the Act.<sup>35</sup> Rule of Reason analysis requires courts to weigh relevant factors about a business and the defined market to determine “whether the restraint imposed . . . regulates and perhaps thereby promotes competition or whether it . . . may suppress or even destroy competition.”<sup>36</sup>

While often applied on the consumer side, the relevance of antitrust law on labor markets has long been settled in the US.<sup>37</sup> A type of agreement that has been the subject of increased antitrust litigation in recent years is the “No-Poach” clause. “No-Poach” clauses operate similarly to the player draft in that they are horizontal agreements between labor market competitors not to compete to hire each other’s employees.<sup>38</sup> “No-Poach” clauses are often a part of franchise agreements, applying to franchises associated with a greater entity, just as the draft applies to different teams in a league.<sup>39</sup> Vertical

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<sup>29</sup> *Id.*

<sup>30</sup> 15 U.S.C. § 1.

<sup>31</sup> *Ohio v. Am. Express Co.*, 585 U.S. 529, 540 (2018).

<sup>32</sup> *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 223 (1940) (“Under the Sherman Act a combination formed for the purpose and with the effect of raising, depressing, fixing, pegging, or stabilizing the price of a commodity in interstate or foreign commerce is illegal *per se*.”).

<sup>33</sup> *Id.*

<sup>34</sup> *United States v. Topco Assocs.*, 405 U.S. 596, 608 (1972) (“One of the classic examples of a *per se* violation of § 1 is an agreement between competitors at the same level of the market structure to allocate territories in order to minimize competition.”).

<sup>35</sup> *NCAA v. Alston*, 594 U.S. 69, 88 (2021) (“Most restraints challenged under the Sherman Act. . . are subject to the rule of reason.”).

<sup>36</sup> *Chicago Bd. of Trade v. United States*, 246 U.S. 231, 238 (1918).

<sup>37</sup> See generally *Anderson v. Shipowners’ Ass’n*, 272 U.S. 359 (1927); *National Collegiate Athletic Ass’n v. Alston*, 594 U.S. 69 (2021).

<sup>38</sup> Eric A. Posner & Sarah Roberts, *No-Poach Antitrust Litigation in the United States* 1–2 (Coase-Sandor Working Paper Series in Law and Economics, Working Paper No. 993, 2023).

<sup>39</sup> *Id.*

restraints on labor mobility have also been the subject of antitrust scrutiny. A “non-compete” clause is often included in an employee’s contract and is “an agreement between the employer and the employee that forbids the employee from obtaining a job with a competitor for a period of time after leaving the employer.”<sup>40</sup>

These types of labor restraints can come in the form of *per se* violations of § 1 of the Sherman Act as well as those that are subject to the Rule of Reason. For example, *Markson v. CRST International, Inc.*, involved a “No-Poach” agreement between trucking firms not to hire each other’s trained drivers.<sup>41</sup> Ultimately, a California District Court held that the plaintiffs had adequately pled for the application of *per se* analysis to the “No-Poach” agreements.<sup>42</sup> The court held that “No-Poach” agreements were *per se* unlawful, characterizing them as classic forms of horizontal market allocation among competing firms.<sup>43</sup>

However, these clauses often have pro-competitive justifications, such as protecting an employer’s training and skill development investments or preserving brand integrity, pushing courts to analyze them under the Rule of Reason. In *Giordano v. Saks Inc.*, a New York District Court declined to apply the *per se* standard to a “No-Poach” agreement, treating an agreement between Saks and luxury brands not to hire each other’s employees as ancillary to a procompetitive relationship.<sup>44</sup> Both parties agreed that “absent the no-hire agreement, there would be a continual risk that the Brand Defendants would use their concessions in Saks stores to recruit employees.”<sup>45</sup> The court applied the Rule of Reason and dismissed the case for lack of market definition.<sup>46</sup> In *Deslandes v. McDonald’s USA LLC*, while reviewing a “No Poach” agreement between McDonald’s franchises, the 7<sup>th</sup> Circuit also applied a Rule of Reason standard of review. Key to the court’s analysis was whether the agreement had a procompetitive function—such as recouping the cost of training employees—or anticompetitive function—such as keeping “down the price of labor by reducing competition for fast-food workers.”<sup>47</sup>

While labor mobility restrictions are scrutinized under the Sherman Act outside the sports industry, within they face an entirely different framework.

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<sup>40</sup> *Id.*

<sup>41</sup> See generally *Markson v. CRST Int’l, Inc.*, No. 5:17-cv-01261-SB-SP, 2021 U.S. Dist. LEXIS 60368 (C.D. Cal. Feb. 10, 2021).

<sup>42</sup> *Markson*, 2021 U.S. Dist. LEXIS 60368, at \*14.

<sup>43</sup> *Id.*

<sup>44</sup> *Giordano v. Saks Inc.*, 654 F. Supp. 3d 174, 202 (E.D.N.Y. 2023).

<sup>45</sup> *Id.* at 203.

<sup>46</sup> *Id.* at 210.

<sup>47</sup> *Deslandes*, 81 F.4th at 702.

Restrictive practices within professional sports leagues generally escape antitrust scrutiny under the non-statutory labor exemption.<sup>48</sup> This exemption applies to alleged restraints of trade that (1) involve mandatory subjects of bargaining, like CBAs, (2) are reached through arm's-length bargaining,<sup>49</sup> and (3) primarily affect employees rather than competitors.<sup>50</sup> This exemption reflects the Court's recognition of Congress's efforts in the 20<sup>th</sup> century to move labor disputes out of the antitrust realm and into a system where unions can collectively bargain to counter the inherent power imbalance between individual workers and employers.<sup>51</sup> Because that bargaining requires coordinated restraints on competition that antitrust law would otherwise prohibit, this exception is necessary for the process to function as Congress intended.<sup>52</sup>

Even before professional leagues had the foresight to codify restrictions on labor mobility into their CBAs, courts were sympathetic to the fact that, within the sports industry, "the economic success of each franchise is dependent on the quality of sports competition throughout the league and the economic strength and stability of other league members."<sup>53</sup> Courts differentiate between labor mobility restrictions that are designed to limit competition within a league versus those that are designed to "improve the entertainment product by enhancing its teams' competitive equality."<sup>54</sup> For example, in *Smith v. Pro Football*, despite conceding that the NFL draft decreased competition for the labor force, the court held it was not a violation of antitrust law because it "resulted in no decrease in the competition for providing football entertainment to the public."<sup>55</sup> This analysis focuses on the impact on the product side of the market rather than the labor side.

*Mackey v. NFL* is illustrative of the arguments made for and against the use of labor mobility restrictions in sports.<sup>56</sup> In *Mackey*, the 8<sup>th</sup> Circuit applied a rule of reason analysis to the NFL's previous Rozelle Rule, which mandated compensation from a team signing a free agent to the player's former team.<sup>57</sup> A group of players challenged this rule under § 1 of the Sherman Act as "an

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<sup>48</sup> *Mackey v. National Football League*, 543 F.2d 606, 614 (8th Cir. 1976).

<sup>49</sup> *Id.*

<sup>50</sup> *Claret v. National Football League*, 369 F.3d 124, 131, 134 (2d Cir. 2004), cert. denied, 544 U.S. 961 (2005).

<sup>51</sup> *Brown v. Pro Football*, 518 U.S. 231, 235-237 (1996).

<sup>52</sup> *Id.*

<sup>53</sup> *N. Am. Soccer League*, 670 F.2d at 1253.

<sup>54</sup> *Smith v. Pro Football*, 593 F.2d 1173, 1179 (D.C. Cir. 1978).

<sup>55</sup> *Id.* at 1179.

<sup>56</sup> *See generally* 543 F.2d 606 (8th Cir. 1976).

<sup>57</sup> *Mackey*, 543 F.2d at 620.

illegal combination and conspiracy in restraint of trade denying professional football players the right to freely contract for their services.”<sup>58</sup>

The NFL argued that the Rozelle Rule was necessary to maintain competitive balance within the league. They reasoned that “star players would flock to cities having natural advantages such as larger economic bases, winning teams, warmer climates, and greater media opportunities.”<sup>59</sup> Which would in turn destroy the competitive balance of the league and “ultimately lead to diminished spectator interest, franchise failures, and perhaps the demise of the NFL.”<sup>60</sup> Additionally, the NFL argued the Rule was necessary to recoup the cost of scouting and player development.<sup>61</sup>

The court rejected these arguments, finding the Rozelle Rule violated §1 of the Sherman Act.<sup>62</sup> The rule imposed significant restraints on player competition as it deterred clubs from negotiating with free agents, discouraged players from exercising their right to free agency, and reduced player’s bargaining power.<sup>63</sup> As a result, player salaries were suppressed compared to what they would have been in a competitive ecosystem.<sup>64</sup> In response to the league’s justification of recoupment, the court found that these costs were simply “an ordinary cost of doing business,” that could not justify the restrictions imposed by the rule.<sup>65</sup>

While the non-statutory labor exemption continues to protect other professional leagues from antitrust scrutiny, the NWSL’s bold reforms challenge the long-standing arguments underpinning these labor restrictions. When players’ unions step up to the negotiation table to renew and revise their CBAs, it shouldn’t come as a surprise to professional leagues that the restrictive practices they once took for granted are now on the chopping block. Even if leagues remain shielded from litigation, the growing demand for labor autonomy and fair treatment may force leagues to rethink their reliance on traditional labor restrictions to maintain competitive balance.

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<sup>58</sup> *Id.* at 609.

<sup>59</sup> *Id.* at 621.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Mackey*, 543 F.2d at 622.

<sup>63</sup> *Id.* at 620.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 621.



## B. The NWSL's New Terms and Their Impact

The NWSL's new CBA is the most pro-player agreement in American professional sports. The changes collectively prioritize fairness, autonomy, and mutual respect between players and teams. In reference to the decision to abolish the draft, the NWSLPA president, Tori Huster, described the practice as an “antiquated model that empowers teams to decide for Players instead of Players deciding for themselves.”<sup>66</sup> By abolishing the draft, the players are empowered to “choose the team environment that fits their needs and maximizes their opportunities.”<sup>67</sup> This autonomy is amplified by the establishment of free agency for all players, regardless of seniority.<sup>68</sup> This change provides players with more negotiating power, requiring “[t]eams and [p]layers mutually agre[e] to enter into a contractual relationship on even terms.”<sup>69</sup> In addition, the CBA mandates guaranteed contracts, ensuring that, except in limited circumstances, a league cannot terminate a player's contract before it expires.<sup>70</sup> This provision promotes a mutual accountability forcing both parties to internalize the risks and obligations of their contract. Finally, the new CBA prevents players from being traded without their consent.<sup>71</sup>

The potential benefits from these reforms flow both to the league and its players. The NWSL's commissioner, Jessica Berman, said the changes in the new CBA—which align with the international soccer standards—were crucial for the league to compete “in the global labor market for talent.” Previously players faced a difficult choice: play in the American league, subjecting themselves to the labor restrictions that come with it, or opt to play internationally where free agency is a given, empowering players to negotiate directly with leagues. With less restrictions, the league has paved the way for their teams to entice global talent, enhancing its competitiveness and long-term sustainability.<sup>72</sup> Of course, the European model comes with parity issues that the NWSL must be prepared to address. For example, in England, there are large spending differences between teams—sometimes millions of dollars—leading to dominance in the hands of a few teams. NWSL general managers

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<sup>66</sup> NWSL Players Announce Groundbreaking CBA, First American League to Eliminate the Draft, NWSL PLAYER'S ASS'N (Aug. 22, 2024), <https://perma.cc/58V5-QXKP>.

<sup>67</sup> *Id.*

<sup>68</sup> NWSL PLAYER'S ASS'N, *supra* note 2.

<sup>69</sup> *Id.*

<sup>70</sup> NWSL PLAYER'S ASS'N, *supra* note 66.

<sup>71</sup> *Id.*

<sup>72</sup> Deubert, *supra* note 1.

have expressed the view that the salary cap will mitigate the potential competitive imbalances arising from these reforms.<sup>73</sup>

For players, the benefits are more prominent. Beyond the autonomy to choose one's career path, the new CBA has changed incentives for team owners. The draft model, which rewarded worse teams and punished successful ones, creates the incentive for teams to game the system. The draft encourages "tanking" (purposely performing poorly towards the end of the season) to get a better draft pick.<sup>74</sup> This may benefit team owners who will be able to gain a high value player at low cost, but it does so at the expense of current athletes' development and league competitiveness. Under the new framework, teams can no longer passively wait for talent to be assigned to them through the draft, instead they must actively compete with other teams to promote their organization as an attractive environment for players to develop their skills. With increased bargaining power and the ability to negotiate freely, players may secure more lucrative contracts, not only benefitting themselves but setting higher benchmarks for compensation in women's sports.

Moving to this free-market model empowers players, but also presents challenges that could have significant implications for the league's long-term stability. NWSL general managers were split on eliminating the draft, not because they were concerned with maintaining competitive parity, but because the league lacked alternative talent development options, "such as academies where teams can naturally develop and identify players."<sup>75</sup> One general manager went so far as to say the "biggest threat to the league going forward" is the league's ability, or inability, to be involved in developing their own talent.<sup>76</sup> Additionally, the immediate effect of abolishing the draft left a vacuum in the talent pipeline, creating a system where incoming players have been forced to "dive head-first into the open market of negotiation."<sup>77</sup>

If the NWSL is to prove to the American market that the draft is an antiquated model hiding behind false pretenses of maintaining competition, they need to take another page out of the European book and develop institutions for young talent. Additionally, they must be prepared to address parity issues by implementing mechanisms like salary caps, revenue sharing, and minimum investment requirements for player development. Salary caps

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<sup>73</sup> Jeff Kassouf, *NWSL GM survey: League execs on draft, USWNT, rule-breaking, more*, ESPN (Sept 10, 2024), [perma.cc/K6DV-36UP](https://perma.cc/K6DV-36UP).

<sup>74</sup> Conor Orr, *Five NFL Teams That Should Consider Tanking for the No. 1 Pick in 2023*, SPORT ILLUSTRATED (Mar. 28, 2023), <https://perma.cc/9P3K-92RF>.

<sup>75</sup> Jeff Kassouf, *Inside the NWSL's new CBA: Free agency, revenue sharing, more*, ESPN (Sept. 24, 2024), [perma.cc/RH8U-9RGC](https://perma.cc/RH8U-9RGC).

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

can prevent wealthier teams from monopolizing top talent, while revenue sharing ensures that smaller-market teams have the resources to attract talent. Furthermore, mandating investments in talent development programs, such as academies, can level the playing field by giving all teams access to a pipeline of skilled players. These mechanisms help preserve the NWSL's level of competition and align with the broader goal of creating a more equitable league for players.

### III. CONCLUSION

The success or failure of the NWSL's new model invites speculation about whether other leagues may follow suit. If they do, they will need to address how to balance player autonomy with league stability. Leagues must be prepared to manage the potential for talent to gravitate towards wealthier attractive teams, potentially exacerbating disparities among franchises. To maintain parity, leagues can use mechanisms like salary caps, revenue sharing, and minimum investment requirements for player development. While the NWSL's new CBA is a bold step forward, it also serves as a test case for balancing player empowerment and competition. Whether this new model will become a blueprint for other leagues remains to be seen, but has undeniably weakened the arguments traditionally used by leagues to justify mobility restrictions and shield themselves from antitrust challenges. If the NWSL remains dominant and competitive, other players associations may seek to change their league structures as well and leagues should be prepared to face the accompanying challenges.