On July 7, 2019, the United States Women’s National Team (WNT) claimed their fourth FIFA Women’s World Cup championship. Prior to the World Cup, 28 WNT players filed a federal lawsuit against the United States Soccer Federation (USSF), asserting that despite the WNT’s successful record, the federation had engaged in institutional gender discrimination in violation of the Equal Pay Act (EPA) and Title VII of the Civil Rights Act (Title VII), (Morgan v. USSF, 2019). In their lawsuit, the players asked for equitable pay and treatment as well as damages including back pay (Graham, 2019).

The USSF is the national governing body for men’s and women’s soccer in the United States (36 U.S.C. § 220521, 2006). USSF’s bylaws state that its primary purpose is to “promote, govern, coordinate, and administer the growth and development of soccer… including national teams” (2019, p. 1). USSF’s mission is to promote excellence in soccer, including gender equality (Morgan v. USSF, 2019). Nevertheless, players on the WNT argue that USSF’s pay structure discriminates against women by paying them less for substantially equal work.

The EPA prohibits pay discrimination on the basis of sex for jobs that require substantially equal skill, effort, and responsibility (Forsberg v. Pacific Northwest Bell Tel., 1988). Title VII supplements the EPA by broadening the definition of discriminatory conduct to include hiring, firing, and other working conditions. USSF has broadly raised a market defense, claiming that market forces, rather than sex, dictate the distinctions in pay structure. For example, in the past, USSF has responded to allegations of discrimination by attributing the pay gap to, inter alia, greater aggregate revenue generated by MNT and a larger market for men’s soccer (Jessani, 2018). However, some scholars have challenged the appropriateness of the market defense in cases where the employer has contributed to the establishment of unequal market conditions (McCarthy, 1985; Porter & Vartanian, 2011; Rabin-Margalioth, 2010; Jessani, 2018). Indeed, the market defense argument sits in contradiction to the fundamental legislative intent of Title VII and EPA which is to correct a market that historically discriminated against women in terms of compensation and working conditions.

This study draws from the general body of legal and economic research on market force arguments, challenging the understanding of markets as neutral and external measures of value in discussions of pay equity. Linking these findings to the women’s soccer market, the authors employ a doctrinal legal analysis of judicial and legislative authority to evaluate the prospective arguments in Morgan v. USSF (2019). Specifically, the authors examine the validity of the market defense by investigating the extent to which the USSF may be actively contributing to the unequal conditions of the market it is using to justify the existing pay gap between the WNT and the MNT. This study adds to the growing body of research on inequality in sport labor markets and emphasizes the importance of institutional factors that courts should consider when evaluating the legitimacy of the market force defense in pay discrimination lawsuits.