Fixing the Old Boys Club: Comparing the Handling of Workplace Misconduct by the NFL and NWSL for Change

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I. Introduction

“If you’re going to be a female in a sports office, you better have thick skin,” said Susan T. Spencer in an interview.1 In 1984, Spencer was the first woman appointed to the front office of a National Football League (“NFL” or the “League”) team, the Philadelphia Eagles.2 She faced hatred from Eagles fans due to negotiations to sell the financially troubled team.3 Moreover, Spencer experienced harassment from players, and one columnist even stated she was “just another worthless bimbo.”4 In reality, Spencer helped keep the Eagles franchise afloat and handled all team contracts.5

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2. See Dan Pompei, Susan Tose Spencer, the First Woman to Run an NFL Team’s Front Office, was Villainized Despite Smart Work with the Eagles, Athletic (Mar. 8, 2022), https://theathletic.com/3151505/2022/03/08/susan-tose-spencer-the-first-woman-to-run-an-nfl-teams-front-office-was-villainized-despite-smart-work-with-the-eagles/ [https://perma.cc/QQ4Y-UAV4] (detailing Spencer’s accomplishments as general manager). First, the Eagle’s finances improved, turning a modest profit. See id. (stating Spencer made budget cuts which positively affected the team’s finances). Second, Spencer became villainized by the media and fans’ criticisms. See id. (noting Spencer developed nicknames such as “Dragon Lady”).

3. See id. (explaining Spencer was booed and fans even pelted her car with eggs and tomatoes).

4. See id. (describing Spencer passed through locker room once and one player told others to drop their towels).

Overall, women in the corporate American workplace continue to face discrimination and low employment numbers. In 2017, the New York Times published an exposé detailing Harvey Weinstein, a well-known Hollywood producer, and his predatory behavior towards actresses and female employees of the Weinstein Company. After the exposé, actress Alyssa Milano used #MeToo on social media for women to acknowledge their experiences with sexual assault or harassment. Within one year, the #MeToo movement caused over 200 prominent men to lose their jobs due to inappropriate workplace misconduct. Since then, #MeToo has continued to serve as a sign of empowerment for sexual harassment victims to unlock their vaulted stories and pursue legal recourse.

The legal avenue for pursuing an employment sexual harassment claim is usually under Title VII of the Civil Rights Act of 1964 (“Title VII”).


statutory definition of “sexual harassment” to include harassment based on sex even when it does not “take the form of sexual advances or of other incidents with clearly sexual overtones.” 12 The U.S. Equal Employment Opportunity Commission (“EEOC”) enforces Title VII with the top priority of “preventing and remedying harassment in the workplace.” 13 Since #MeToo became popular, the EEOC has noted an increase in charges filed, but harassment often remains unreported. 14 Consequently, for companies to avoid litigation and costly investigations, the best measure is incorporation of anti-harassment prevention strategies. 15

The low number of women in leadership positions points to a culture of masculinity embedded in sports throughout American history. 16 Specifically, the NFL has ingrained itself into the identity of American men with game presentations, marketing campaigns, and a sweeping media ecosystem. 17 Additionally, whether coaching or in the office, men tend to fill the NFL’s head positions, perpetuating

12. McKinney v. Dole, 765 F.2d 1129, 1138 (D.C. Cir. 1985) (holding if “employee [or group of employees] is treated unfairly or harassed solely because of their sex, it could be considered illegal under Title VII if behavior is frequent or widespread enough.”).

13. See Sexual Harassment in Our Nation’s Workplaces, U.S. EQUAL EMP. OPPORTUNITY COMM’N (Apr. 2022), https://www.eeoc.gov/sites/default/files/2022-04/Sexual%20Harassment%20Awareness%20Month%202022%20Data%20Highlight.pdf [https://perma.cc/7XHX-Q3F4] (stating prevention and remediation of harassment in workplace is one of EEOC’s top priorities). In fiscal year 2018, the EEOC received 7,609 sexual harassment charges compared to 6,696 in fiscal year 2017 – an increase of 13.6%. See id. (reporting increased rate of sexual harassment charges within workplace).


15. See id. (summarizing recommendations for workplace harassment prevention).


the old boys club – an idiom commonly used to describe a company culture fostering male dominance.  

Even with the #MeToo movement and available legal avenues, the sports industry still falters in protecting women from workplace misconduct. The treatment of women in the sports industry raises questions about how to conduct investigations and punish wrongdoers in the future. Recently, two reports have brought attention to the mistreatment of women in the professional sports workplace: (1) Congress’ report regarding the Washington Commanders’ and former owner Dan Snyder’s hostile work environment and (2) the National Women’s Soccer League report on the systematic abuse of players by coaches. This Comment argues that the NFL has failed to punish its own- ers for sexual harassment in the workplace and needs to amend its Constitution. Additionally, this Comment aims to provide solutions for sexual harassment issues in the sports industry by analyzing current harassment laws and compliance initiatives. Section II details sexual harassment law under Title VII and various legislative actions. Section III analyzes the NFL’s failure to address Dan Snyder, his interference with several investigations regarding workplace misconduct, and how toxic masculinity threatens the governance of the NFL. Next, Section IV discusses recent misconduct, reported by...
the National Women’s Soccer League, of systematic abuse regarding its players.\textsuperscript{26} Section V proposes solutions by comparing the NFL and the National Women’s Soccer League’s failures and initiatives to address workplace misconduct (or lack thereof).\textsuperscript{27} Finally, Section VI summarizes the objective of this Comment: to create change in professional sports that affects societal norms.\textsuperscript{28}

\section{Sexual Harassment \& the Law}

Sexual harassment is a form of sex discrimination and is unlawful under Title VII of the Civil Rights Act of 1964.\textsuperscript{29} The statute contains no explicit language of sexual harassment, but the Supreme Court and federal appellate courts have created a scope of employee protection.\textsuperscript{30} Usually, the EEOC interprets and enforces Title VII in any work situation, such as hiring, firing, harassment, training, wages, and benefits.\textsuperscript{31} This Section is a brief overview of Title VII claims.\textsuperscript{32} Shortcomings in legal actions for workplace sexual harassment is a form of sex discrimination and is unlawful under Title VII of the Civil Rights Act of 1964.\textsuperscript{29} The statute contains no explicit language of sexual harassment, but the Supreme Court and federal appellate courts have created a scope of employee protection.\textsuperscript{30} Usually, the EEOC interprets and enforces Title VII in any work situation, such as hiring, firing, harassment, training, wages, and benefits.\textsuperscript{31} This Section is a brief overview of Title VII claims.\textsuperscript{32} Shortcomings in legal actions for workplace

football team). To avoid confusion, this Comment will refer to Snyder’s team as the Commanders, although some of the articles referred to may use the Redskins or Washington Football. For further discussion of the Commanders’ investigation and the NFL’s misconduct, see infra notes 59–135 and accompanying text.

26. For further discussion of the NWSL investigations, see infra notes 136–176 and accompanying text.

27. For further discussion of workplace misconduct solutions, see infra notes 177–245 and accompanying text.

28. For further discussion of creating change in the workplace, see infra notes 246–257 and accompanying text.

29. 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"); 29 C.F.R. § 1604.11(a) ("[sexual harassment is] unwelcome . . . verbal or physical conduct of a sexual nature . . ."); see also Henson v. City of Dundee, 682 F.2d 897, 903 (11th Cir. 1982) (defining unwelcome, “in the sense that the employee did not solicit or incite it, and in the sense that the employee regarded the conduct as undesirable or offensive").

30. See Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57, 66 (1986) (holding plaintiff may establish violation of Title VII, "by proving that discrimination based on sex has created a hostile or abusive work environment").


32. See Daniel Hemel & Dorothy S. Lund, Sexual Harassment and Corporate Law, 118 COLUM. L. REV. 1583, 1603–10 (2018) (explaining Title VII’s shortcomings when helping sexual harassment victims). The EEOC has proposed a new Enforcement
sexual harassment remain; Section V addresses these shortcomings and proposes solutions.33

A. Title VII Claims

1. Quid Pro Quo

Claims under the quid pro quo framework involve an unwelcome employer’s demand for sexual favors in return for an employment benefit or to avoid employment detriment.34 The employee must prove: (1) they are a member of a protected class; (2) sexual advances were made without consent; (3) the harassment was motivated by sexual intent; (4) their reaction negatively affected tangible aspects of employment; and (5) establishment of respondeat superior, a doctrine that holds an employer responsible for an employee’s wrongdoing.35 Some federal courts of appeals require a plaintiff to show tangible employment action.36 Other circuit courts describe requisite evidence for establishing a quid pro quo claim as either evidence of a tangible employment action or evidence that an employee’s submission to unwelcome advances was an express or implied condition for receiving job benefits.37

Guidance on Harassment in the Workplace; however, at the time of publication the proposal has not moved out of the public comment phase and is therefore outside the scope of this Comment. See PROPOSED Enforcement Guidance on Harassment in the Workplace, U.S. EQUAL EMP. OPPORTUNITY COMM’N https://www.eeoc.gov/proposed-enforcement-guidance-harassment-workplace [https://perma.cc/LE54-J6G6] (detailing new EEOC proposed comment).

33. For further discussion of Title VII’s shortcomings, see infra notes 180–196 and accompanying text.

34. See Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 765 (1998) (indicating that employers are subject to vicarious liability for supervisor’s unlawful harassment).


37. See La Day v. Catalyst Tech., Inc., 302 F.3d 474, 481 (5th Cir. 2002) (quoting Casiano v. AT&T Corp., 213 F.3d 278, 283 (5th Cir. 2000)) (establishing claim requires “plaintiff must show that he suffered a ‘tangible employment action’ that ‘resulted from his acceptance or rejection of his supervisor’s alleged sexual harassment.’”); see also Hernández-Loring v. Universidad Metropolitana, 233 F.3d 49, 52 (1st Cir. 2000) (“Under Title VII, quid pro quo sexual harassment can be shown
2. *Hostile Work Environment*

The Hostile Work Environment ("HWE") claim is alleged more often than quid pro quo and is also more subjective. Generally, a plaintiff must establish that alleged harassment was: (1) unwelcome; (2) because of a protected class; (3) attributable to an employer; (4) severe or persuasive enough to change conditions of the employment, creating an abusive environment. The fourth factor of severe or persuasive can be judged by both “an objective standard” and “a subjective standard.” HWE claims comprise a series of harassments not involving physicality and most often it cannot be an isolated incident.

3. *Same-Sex*

In *Onacle v. Sundowner Offshore Services*, the Supreme Court considered a same-sex harassment claim based on the plaintiff’s sex. In *Onacle*, the Court described three forms of evidence for plaintiffs to bring. These included: (1) harassing conduct motivated by sexual desire; (2) harassment based on sex-specific and derogatory terms which creates hostility to one’s gender in the workplace; and (3) direct comparative evidence of treatment of both genders in a mixed-sex workplace.

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39. See *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23 (1993) (explaining consideration is given to type and extent of discrimination, such as physical threats and job performance interference).

40. See *Harris*, 510 U.S. at 23 (reporting plaintiff must prove environment was both subjectively and objectively hostile).

41. See *Policy Guidance on Current Issues of Sexual Harassment*, supra note 38 (explaining that unwelcome physical advances can have greater impacts on victim’s work atmosphere than verbal advances or comments).


43. See *id.* at 81 (stating Title VII does not reach differences between women and men routinely interacting with members of same or opposite sex); *see also id.* at 79 (“We see no justification in the statutory language or our precedents for a categorical rule excluding same-sex harassment claims from the coverage of Title VII.”).

44. See *id.* at 79, 80–82 (acknowledging that although challenging, plaintiffs must provide evidence that harassment occurred because of plaintiff’s sex).

45. See *id.* at 79 (holding Title VII does not bar discrimination claims if parties are of same sex).
4. **Retaliation**

Under Title VII, an anti-retaliation provision makes it unlawful for an employer to discriminate against an employee if they report a Title VII violation against them.\(^{46}\) To establish a Title VII retaliation claim for sexual harassment, the plaintiff must show “[a]n individual engaged in prior protected activity; [t]he employer took a materially adverse action; and [r]etaliation caused the employer’s action.”\(^{47}\) The EEOC provides ample guidance to help plaintiffs assess whether their action fills these requirements.\(^{48}\)

**B. Legislative Action Against Sexual Harassment**

1. **Ending Forced Arbitration Act of Sexual Assault and Sexual Harassment**

On March 3, 2022, President Biden signed into law the Ending of Enforced Arbitration of Sexual Assault and Sexual Harassment Act.\(^{49}\) It amended the Federal Arbitration Act and allows employees subjected to pre-dispute mandatory arbitration agreements, to pursue their claims in court.\(^{50}\) Moreover, the Act defines sexual harassment as a dispute relating to alleged conduct constituting sexual harassment under applicable laws.\(^{51}\) Unfortunately, for disputes arising before March 3, 2022, mandatory arbitration remains enforceable.\(^{52}\) Additionally, employers may continue to enforce pre-dispute agreements that arose before that date.\(^{53}\)

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\(^{46}\) See Gilooly v. Mo. Dep’t of Health & Senior Servs., 421 F.3d 734, 739–40 (8th Cir. 2005) (establishing framework for retaliation claim).


\(^{48}\) See id. (explaining serious employer action that constitutes retaliation).


\(^{51}\) See Ending Forced Arbitration of Sexual Assault & Sexual Harassment Act (stating what disputes will be considered based on subject matter).

\(^{52}\) See id. (noting when arbitration has no validity or enforceability).

\(^{53}\) See id. (stating mandatory arbitration agreements and class-action prior to Act’s effective date remain valid).
2. *Speak Out Act*

Another effort to help victims of sexual harassment in the workplace is the Speak Out Act.\(^{54}\) Signed into law on December 7, 2022, it facilitates transparency for victims of sexual harassment to communicate their stories.\(^{55}\) This Act limits the enforceability of non-disclosure agreements (“NDAs”) and non-disparagement clauses covering sexual assault and harassment disputes in the workplace.\(^{56}\) However, the Act does not apply to pre-dispute NDAs and non-disparagement clauses conducted before the law was signed.\(^{57}\) Despite these limitations, the Act represents positive progress in developing laws for employers to be held accountable for sexual harassment.\(^{58}\)

### III. The NFL’s Mishandling of Toxic Workplaces

#### A. An Overview of the NFL

The NFL is the most influential association in American sports, generating billions of dollars annually.\(^{59}\) The League is made up of thirty-two teams, and governance is controlled by Commissioner Roger Goodell and the Executive Committee.\(^{60}\) The Executive

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\(^{54}\) See Speak Out Act, Pub. L. No. 117-224, 136 Stat. 2290 (explaining that prohibiting non-disclosure and non-disparagement clauses will create justice for victims and accountability for perpetrators).


\(^{58}\) See Spiggle, *supra* note 56 (concluding Speak Out Act continues positive trend, thus making it easier for victims of sexual harassment to seek recourse against employers).

\(^{59}\) See Mike Ozanian & Justin Teitelbaum, *2023 NFL Team Valuations*, FORBES (Aug. 30, 2023, 6:30 AM), https://www.forbes.com/lists/nfl-valuations/?sh=252610fa1738 [https://perma.cc/8G2V-J27E] (stating 2022 season’s average NFL team revenue was estimated at $5.1 billion). The average NFL team alone is valued at $5.1 billion. *See id.* (reporting in 2022 teams’ value increased by 8%).

\(^{60}\) See V. James DeSimone, *Sexual Harassment is Illegal, Even in the NFL*, BLOOMBERG L. (July 15, 2022, 4:00 AM), https://news.bloomberglaw.com/us-law-
Committee includes one representative from each team – a majority owner or top officer. Each team operates as a separate employer with its own rules and procedures, payroll, and Human Resources department. Teams are expected to conform to NFL rules and can face discipline for non-compliance.

Unlike other professional sports teams, the NFL does not limit the commissioner’s power extensively. Instead, the NFL commissioner gains authority through the Personal Conduct Policy (“PCP”), modified over the years in response to scandals within the League. Currently, the PCP is issued under Commissioner Goodell’s authority with the addition of a Conduct Committee. It states, “Everyone who is part of the league must refrain from ‘conduct detrimental to the integrity of and public confidence in’ the NFL.” In theory, ownership and team management are held to a higher standard with more significant discipline for violations. In reality, the NFL neglects to discipline owners and management.

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62. See id. (summarizing separation of team offices from League).
63. See DeSimone, supra note 60 (analyzing relationship of NFL and teams as fraternities on college campus). Fraternities on college campuses must adhere to policies of its organization but also comply with campus rules. See id. (explaining each NFL Team is separate employer but is expected to conform to general NFL rules and policies).
64. See Adriano Pacifici, Scope and Authority of Sports League Commissioner Disciplinary Power: Bounty and Beyond, 3 BERKELEY J. ENT. & SPORTS L. 93, 94 (2014) (stating NFL commissioner’s power appears plenary compared to other professional sports).
66. See Const. and Bylaws of the Nat’l Football League, supra note 61, at 31 (acknowledging NFL commissioner has power to interpret both policy and procedure).
68. See id. at 6 (subjecting ownership and club or league management to significant discipline for PCP violations).
69. See Diego De La Vega, Flag on the Policy: The NFL’s Discipline Problem, 13 OHIO Sr. JDR OSLINIA 69, 71–73 (2025) (explaining NFL fails to discipline various owners); see also Noah Strackbein, Lack of Punishment Against Team Owners Could Keep Deshaun Watson From Suspension, SPORTS ILLUSTRATED (June 18, 2022, 11:23 AM), https://www.
A series of public-relation debacles involving team offices and the treatment of women has shown that the NFL continues to fail in changing workplace culture. For example, in December 2017, *Sports Illustrated* reported that Jerry Richardson, owner of the Carolina Panthers, had created a hostile work environment. The article exposed Richardson for sexual and racial harassment throughout the Panthers’ office. Afterward, the NFL announced they would internally investigate Richardson and the Carolina Panthers. The investigation led to Richardson selling the Panthers, and the NFL fined the billionaire a mere $2.75 million. Additionally, broader recommendations for the executive office were given by NFL general counsel. The NFL publicly stated that it would present the recommendations given by counsel to

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72. See id. (reporting female employees felt uncomfortable when Richardson spoke about their physical appearances).


75. See id. (stating White’s recommendations included: (1) specific prohibition of non-disclosure agreements in regard to League investigations under Personal Conduct Policy; (2) requiring workplace misconduct issues must be reported to League Office; (3) establishing hotline for League and club employees to report workplace issues; and (4) reviewing workplace best practices with team office employees).
the Conduct Committee, and they ultimately adopted three out of the four recommendations.\textsuperscript{76}

By 2022, the Washington Commanders and their owner, Dan Snyder, took the spotlight away from other teams’ front office struggles with workplace misconduct.\textsuperscript{77} Congress investigated the team due to questionable conduct, and discovering decades of covered-up sexual misconduct.\textsuperscript{78} The report, \textit{Conduct Detrimental}, not only pointed to Snyder for misconduct, but the NFL and other executive staff.\textsuperscript{79} To understand the investigation by Congress, Part B summarizes the Commanders’ history and Snyder’s influence.\textsuperscript{80}

\section{The History of Dan Snyder’s Ignorance}

\subsection{The Beginning}

In 1999, Dan Snyder bought the Commanders, formerly the Redskins, after a long negotiation with several minority owners.\textsuperscript{81} Since then, Snyder faced allegations of malfeasance, targeting other owners, sexual harassment, and personal attacks.\textsuperscript{82} Employees described the Commanders’ atmosphere as a place of bullying and demeaning behavior by management, creating a climate of fear that allowed abusive behavior to remain unchecked.\textsuperscript{83} The image of a

\begin{footnotesize}
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\item See Tackling Toxic Workplaces: Examining the NFL’s Handling of Workplace Misconduct at the Washington, 177th Cong. 2, at 45 (June 22, 2022), https://docs.house.gov/meetings/GO/GO00/20220622/114933/HHRG-117-GO00-Transcript-20220622.pdf [hereinafter Tackling Toxic Workplaces] (statement from Roger Goodell, NFL Commissioner) (stating NFL chose to not require workplace misconduct issues to be reported to League office).

\item See John Keim, A Timeline of Commanders Owner Dan Snyder’s Tumultuous Tenure, ESPN (Mar. 27, 2023, 6:00 AM), https://www.espn.com/nfl/story/_/id/35904912/commanders-owner-dan-snyder-tumultuous-tenure-washington (explaining allegations of poor workplace culture have resulted in investigation by Congress, the NFL, and multiple state attorney generals).


\item See id. (reporting Commanders’ investigation findings).

\item For further discussion of Dan Snyder and the Commanders’ history of workplace misconduct, see infra notes 81–107 and accompanying text.

\item See Keim, supra note 77 (noting NFL owners approved Snyder’s purchase and reportedly forced out staff after saying he would retain them).


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mismanaged organization has been prevalent in the news and media, and only in July 2023 did Snyder agree to sell the team.84 The following outlines the events leading up to the report recently released by the House of Representatives documenting the Commanders’ front office and its toxic culture.85

2. Investigations Leading Up to Government Involvement

After purchasing the Commanders, Snyder revamped the cheerleading program.86 In 2018, The New York Times reported that five former Commander cheerleaders were harassed and intimidated by the team and sponsors during a calendar photo shoot in Costa Rica.87 The Costa Rica trip required many cheerleaders to be topless during photoshoots and had a dress code of only white tops, khaki bottoms, and heels.88 Additionally, significant sponsors of the Commanders were given exclusive access to the photoshoots.89

The NFL replied to the allegations and stated its office had no role with how clubs utilized cheerleaders.90 After the article came to light, the Commanders conducted an internal investigation.91 At the time, a spokesperson for the Commanders pledged to implement changes and be “more family friendly.”92


85. For further discussion of events leading up to Congress becoming involved with the Commanders, see infra notes 86–107 and accompanying text.


88. See id. (reporting uncomfortable expectations of cheerleaders on Costa Rica trip).

89. See id. (detailing cheerleaders’ contracts never stated they would have to entertain men who financially supported team).

90. See id. (describing NFL’s response to cheerleader’s allegations).

91. See Clarke, supra note 86 (reporting Commanders’ spokesman outlined investigation findings and enumerated corrective steps in consideration).

92. See id. (noting suite holders are no longer permitted at cheerleader photoshoots and cheerleaders will not be scantily clad).
Fast forward to July 16, 2020, the Washington Post ("The Post") published a report based on interviews with fifteen former female employees detailing harassment allegations within the Commanders’ organization.\(^93\) One example was of veteran female employees instructing other female employees in a private, informal orientation to stay away from certain people and places.\(^94\) Additionally, employees noted that Snyder understaffed the Human Resources department and created a “culture of verbal abuse among top executives.”\(^95\)

After The Post presented its findings to the Commanders, the three accused employees left the organization.\(^96\) About one month later, The Post released another report which detailed an additional twenty-five women’s experiences of sexual harassment while working for the Commanders.\(^97\) This time Snyder was not absent from the allegations.\(^98\) The most publicized finding was that Larry Michael, a former team radio host, asked for male production managers in the broadcasting department to put together an unofficial video.\(^99\) This video, titled “For Executive Meeting,” consisted of the team’s cheerleaders, topless and performing acts.\(^100\) These allegations brought

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\(^93\). See Will Hobson & Liz Clarke, From Dream Job to Nightmare, Wash Post (July 16, 2020), https://www.washingtonpost.com/sports/2020/07/16/redskins-sexual-harassment-larry-michael-alex-santos/?arc404=true [https://perma.cc/3NVU-ZH5U] (categorizing allegations against Commanders to include “unwelcome overtures or comments of sexual nature and exhortations to wear revealing clothing and flirt with clients to close sales deals.”).

\(^94\). See id. (reporting veteran employees warned new employees to avoid certain people and places, such as stairs near entrance to team headquarters because “[s]omeone standing at the bottom can look up the skirt of a woman standing at the top”).

\(^95\). See id. (stating Dan Snyder was absent from allegations but three team members departed after allegations and two executives were also involved).

\(^96\). See Ben Standig & Rhiannon Walker, Sources: Washington Fires Two Front Office Employees Ahead of Training Camp, Athletic (July 12, 2020), https://theathletic.com/1923766/2020/07/12/sources-washington-fires-two-front-office-employees-ahead-of-training-camp/ [https://perma.cc/P9AR-KS4N] (reporting Director of Pro Personnel Alex Santos and Assistant Director of Pro Personnel Richard Mann II were dismissed); see also Hobson & Clarke, supra note 93 (stating article release led to Larry Michael retiring).

\(^97\). See Hobson et al., supra note 83 (summarizing new allegations against Snyder and Commanders’ front office).

\(^98\). See id. (announcing Snyder was also involved in misconduct, not just Commanders’ front office). Women on the Commanders’ staff acknowledged that Snyder let them be marginalized, discriminated against, and exploited. See id. (reporting Snyder created toxic work atmosphere).

\(^99\). See id. (“According to the former employee, the producer identified the footage as ‘outtakes of the recent cheerleader shoot’ and said the video was being compiled for Snyder.”).

\(^100\). See id. (explaining Larry Michael scoured calendar footage for lewd outtakes).
public attention to the toxicity of the Commanders, and Snyder began an internal investigation.101

3. The Wilkinson Investigation and NFL Oversight

Snyder hired Washington DC attorney Beth Wilkinson to conduct an internal investigation (the “Wilkinson Investigation”).102 One month later, the NFL assumed oversight of the investigation, instructing Wilkinson to report to the NFL, not Snyder.103 On July 1, 2021, the NFL announced the outcome of the Wilkinson Investigation, concluding that the workplace environment for women was unprofessional, with bullying and intimidation frequently occurring.104

Next, the NFL announced that Snyder would pay a $10 million fine and implement a series of recommendations.105 However, even with public pressure, the NFL refused to release the full findings of the Wilkinson Investigation and maintained that Snyder was being held accountable.106 Afterwards, Congress’ interest in the NFL’s

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101. For further discussion of the Wilkinson report, see infra notes 102–107 and accompanying text.


failure to release detailed findings from the Wilkinson Investigation and handling of team workplace misconduct led the House Committee of Oversight and Reform ("the Committee") to investigate.107

C. Conduct Detrimental Investigation and Report

1. Committee Investigation

On October 21, 2021, the Committee began investigating the Washington Commanders’ workplace environment.108 The Committee sent Commissioner Goodell a letter explaining the investigation’s purpose and a request for documents.109 The NFL produced some documents in response, but refused to turn over an estimated 40,000 documents collected during the Wilkinson Investigation.110 Throughout the Committee’s investigation, publicly released documents showed potential financial fraud within the Commanders’ organization and Snyder’s interference with the Wilkinson Investigation.111

On February 3, 2022, a Committee roundtable with bipartisan Committee members and six former employees discussed sexual harassment and verbal abuse they encountered while employed for the Commanders.112 The employees shared personal accounts of

107. For further discussion of the Committee’s report, see infra notes 123–135 and accompanying text.


110. See Conduct Detrimental, supra note 78, at 47 (explaining undisclosed common interest agreement signed by Team and NFL was used to conceal documents); see also Liz Clarke, Daniel Snyder Could Block Release of Probe Details Under Deal with NFL, Document Shows, Wash. Post (Feb. 4, 2022, 11:10 AM), https://www.washingtonpost.com/sports/2022/02/04/congress-nfl-wilkinson-report/ (https://perma.cc/NQU8-YCVN] (reporting NFL and Commanders agreed not to disclose information about investigation without each other’s consent).

111. See Conduct Detrimental, supra note 78, at 13 (explaining Committee findings lead to establishment of hostile work environment).

Snyder’s contributions to the toxic Commander workplace. Additionally, the roundtable discussed the NFL’s failure to prevent the misconduct, worried this accountable failure set a dangerous precedent for other workplaces.

Then, on June 22, 2022, the Committee held a public hearing attended by Goodell. Goodell defended his decision to keep the Wilkinson Investigation private, explaining that he wanted the report given orally to “preserv[e] the confidentiality of those who participated in the investigation.” The Committee responded by showing a chart detailing the length and reports the NFL had previously released. Goodell deflected the chart and turned to broadly discuss the Commanders’ workplace.

Snyder failed to attend the hearing and sat for a private deposition. The deposition lasted eleven hours, and Snyder reportedly

113. See Conduct Detrimental, supra note 78, at 5 (noting Snyder inappropriately touched former employee Tiffani Johnston at work dinner and attempted to push her into his limousine until he was stopped by onlookers); see also Madeline Coleman, Congressional Committee Pressures NFL to Release Washington Probe Findings, SPORTS ILLUSTRATED (Feb. 4, 2022), https://www.si.com/nfl/2022/02/04/washington-commanders-congress-pressures-nfl-to-release-probe-findings [https://perma.cc/D9ET-XGW9] (explaining Committee members received firsthand accounts of Commanders’ front office); see also Committee Roundtable, supra note 112 (explaining six former Commanders employees shared their own stories with the Committee).

114. See id. (detailing roundtable discussion regarding sexual harassment and verbal abuse at the Washington Commanders organization).

115. See Tackling Toxic Workplaces, supra note 76, at 2 (stating hearing’s goal was to make sure women are protected in workplace); see generally Jenny Vrentas, Roger Goodell Defends Commanders Investigation, but Not Team’s Owner, N.Y. TIMES (June 22, 2022), https://www.nytimes.com/2022/06/22/sports/football/roger-goodell-congress-dan-snyder.html [https://perma.cc/X6RM-PQSU] (explaining Goodell did not go out of his way to defend Snyder).

116. See Tackling Toxic Workplaces, supra note 76, at 8 (statement of Roger Goodell, NFL Commissioner) (“Oral reports are often used by the NFL and other organizations in conducting internal investigations and for other issues.”).

117. See id. at 22 (“However, I [Chairmen Krishnamoorthi] have this 148-page Miami Dolphins harassment report that you did, where you have redacted the names . . . out of privacy concerns. And so, it is possible to release a detailed report and . . . protect people’s privacy, yet you chose not to do so . . . with the Commanders.”).

118. See Conduct Detrimental, supra note 78, at 62 (stating Goodell’s explanations in Congress were at odds with prior handling of workplace investigations).

119. See Andrew Beaton & Louise Radnofsky, Lawmakers Are Pushing to Depose Dan Snyder. He’s Parking the Boat Overseas., WALL ST. J. (July 13, 2022, 2:32 PM), https://www.wsj.com/articles/dan-snyder-subpoena-house-congress-116577718917 [https://perma.cc/9AWM-83MS] (reporting Snyder missed committee hearing while on his yacht in France). Snyder tried to escape being subpoenaed for his deposition as well by parking his boat in the middle of the ocean. See id. (explaining Snyder refused his subpoena because he was on international waters); see also Liz Clarke, Mark Maske, & Nick Jhabvala, Daniel Snyder, Bruce Allen Testified for Hours. Here’s What They Said., WASH. POST (Dec. 8, 2022, 2:21 PM), https://www.
“testified over 100 times that he did not know or could not recall basic facts about his role as owner of the Commanders.”120 Furthermore, the documents released by the Committee led to several investigations by the NFL, state attorneys general, and the United States Attorney’s Office for the Eastern District of Virginia.121 On December 8, 2022, the Committee publicly released its seventy-nine page Conduct Detrimental report.122

2. The Committee’s Findings

There were several main conclusions from Conduct Detrimental.123 First, for over two decades, the Commanders’ employees were subjected to an entrenched toxic workplace culture under Snyder’s leadership.124 Second, the Commanders’ leadership perpetuated a toxic workplace culture by ignoring and downplaying sexual misconduct by senior male Commanders employees.125 Third, Snyder interfered with the investigation by intimidating witnesses, failing to appear for the public hearing, and blocking the production of documents.126 Finally, the NFL misled the public about handling the

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120. See Conduct Detrimental, supra note 78, at 53 (explaining topics Mr. Snyder ultimately avoided, including his (1) role in personal decisions regarding hiring and termination, (2) knowledge of sexual harassment by senior executives, (3) settlement claims with former employees, (4) involvement in offering money for non-disclosure agreements, (5) shadow investigation and targeting of private investigators, and (6) involvement in Wilkinson’s investigation).

121. See id. at 14 (stating Committee’s referrals and findings have led to various lawsuits against Snyder); see also Nicki Jhabvala & Mark Maske, D.C. Attorney General Sues Daniel Snyder, Commanders, NFL, Wash. Post (Nov. 10, 2022, 5:20 PM), https://www.washingtonpost.com/sports/2022/11/10/snyder-attorney-general-lawsuit-commanders/ [https://perma.cc/9CR5-J6CJ] (discussing lawsuit against Commanders, Snyder, NFL, and Goodell for misleading District of Columbia consumers through public statements, ambiguities, and omissions).


123. See Conduct Detrimental, supra note 78, at 4 (stating Mr. Snyder, team executives, and NFL executives failed to stop misconduct).

124. See id. at 17–23 (summarizing former employees’ descriptions of Snyder’s contributions to Commanders’ toxic workplace).

125. See id. at 14 (reporting that former employees and executives described Commanders’ workplace culture as “a cycle of inappropriate conduct and retaliation.”).

126. See id. at 43–53 (detailing Snyder’s interference with Committee’s investigation). Snyder was also found using private investigators on three different occurrences during the Wilkinson Investigation after the NFL assumed responsibility.
Wilkinson Investigation, reflecting a broader failure to take workplace misconduct seriously. At the end of Conduct Detrimental, the Committee made recommendations for change, and Chairwoman Maloney introduced two new bills.

3. Conduct Detrimental Bills Introduced

The Committee introduced two bills to combat toxic workplaces. First, the Accountability for Workplace Misconduct Act (“AWMA”) which would “provide that certain agreements containing nondisclosure clauses regarding claims of discrimination, harassment, retaliation shall not be enforceable, and for other purposes.” Additionally, the AWMA would force companies and the EEOC to establish processes for receiving employee complaints.

Second, the Professional Images Protection Act would operate as an additional defense in privacy protection for employees to hold employers accountable. The Act “would require employers to provide written notice to and obtain consent from employees prior to taking, collecting, disseminating, or using their professional

See id. at 44–45 (explaining Snyder’s lawyers sent damaging emails about former employees); see also Will Hobson, Liz Clarke, Beth Reinhard, & Alice Crites, NFL asked Snyder To ‘Back Off’ Use of Private Investigators, Lawyers Says, as PI Visits Rattle Ex-Employees, WASH. POST (Sept. 4, 2020, 8:15 PM), https://www.washingtonpost.com/sports/2020/09/04/dan-snyder-private-investigators-nfl/ [https://perma.cc/PL6S-9ZUZ] (explaining former employees reported Snyder sent private investigators to their homes for questioning).

127. See Conduct Detrimental, supra note 78, at 77 (stating NFL defers workplace issue responsibilities to team front offices)

128. See id. at 78 (stating Congress’ recommendations). Conduct Detrimental recommended that “Congress should consider prohibiting professional sports team owners from taking tax deductions on fines or penalties paid in connection with workplace misconduct investigations” as well as “requiring the NFL . . . to prioritize the wellness of their employees and demonstrate compliance with state and federal employment laws as a condition to continue to benefit from federal antitrust exemptions as well as tax-exempt municipal bonds used to finance construction and renovation of sports stadiums.” See id. at 79 (listing several recommendations by Congress).

129. See id. at 78–79 (explaining applicability of new bills).

130. See Accountability for Workplace Misconduct Act, H.R. 8146, 117th Cong. (2021-2022) (stating agreements apply to severance and separation and precludes employees from pursuing legal redress associated with allegations).


images.” Commissioner Goodell supported both of these bills publicly. Since Conduct Detrimental was released, Snyder has sold the Commanders but is not banned from the NFL.

IV. THE NWSL AND ITS HANDLING OF SYSTEMATIC ABUSE

A. History of the NWSL

The United States women’s professional club soccer has fluctuated financially throughout the years. After two failed organizations, the National Women’s Soccer League (“NWSL”) was founded in 2012 and started with eight club teams. Over the years, the teams have changed and switched locations to now include twelve teams. Notably, the NWSL has been U.S. history’s longest-running professional women’s soccer league.

There have been historical developments pertaining to equality for NWSL players. By 2017, players formed the NWSL Players Association (“NWSLPA”), a player’s union, to advocate and be a voice for the NWSL. Second, players negotiated a collective bargaining agreement to raise earnings from $22,000 to a higher minimum of...
$35,000 per player including free agency. Finally, the 2023 NWSL Challenge Cup initiated the first million-dollar prize in U.S. women’s soccer history. However, the NWSL’s success still faces obstacles such as sexual harassment. Over the years, harassment from coaches was brushed under the table, with many players fearing for their futures within the NWSL. In December 2022, triggering events led to the Report of NWSL and NWSLPA Joint Investigative Team (“Joint Investigative Report”), uncovering misconduct across the NWSL between staff and players. These triggering events included player interactions with the NWSL front office, coaches, and other staff members.

The breaking point occurred in September 2020, when the now-dissolved Utah Royals FC team placed Head Coach Craig Harrington and Assistant Louis Lancaster on a leave of absence due to inappropriate sexual comments toward players. After, the NWSLPA advocated for the NWSL to adopt an anti-harassment policy. By April 2021, the NWSL adopted an anti-harassment policy

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146. See id. (explaining developments creating need for investigation by NWSL and NWSLPA).

147. See Joint Investigation Report, supra note 144, at 13–14 (listing staff departures and worldwide attention brought by players posting on social media).


which was later broadened in 2022 to expand the scope of misconduct protections.\textsuperscript{150}

A September 2021 article from The Athletic that reported coach Paul Riley’s sexual harassment against players emphasized the need for the reformed anti-harassment policy.\textsuperscript{151} The Athletic interviewed twelve players who alleged Riley made inappropriate remarks about their weight and sexual orientation.\textsuperscript{152} The article stated that although there was a prior investigation into Riley, he was not punished.\textsuperscript{153} Instead, he was hired by the Western New York Flash five months later.\textsuperscript{154}

After the article, Riley was fired from his team, and his coaching license was revoked.\textsuperscript{155} On October 1, 2021, the players union had enough of the coaches’ mistreatment and toxic environments.\textsuperscript{156} A statement to the NWSL from the union demanded immediate action from the NWSL believing that the NWSL had failed them.\textsuperscript{157} The union asked the NWSL to cancel five weekend games, which gained

\begin{footnotesize}
\begin{enumerate}
\item[152.] See id. (explaining Coach Riley’s past allegations).
\item[153.] See id. (stating Coach Riley continued working despite allegations).
\item[154.] See id. (reporting Thorns did not renew Riley’s contract). The Flash relocated and renamed the franchise the North Carolina Courage. See id. (explaining team changes and rename). Then from 2016 to 2021, Riley was the Courage’s head coach, and allegations continued to be reported. See id. (detailing Riley’s coaching history).
\end{enumerate}
\end{footnotesize}
enough attention for the reports to be investigated. Afterward, Lisa Baird, the NWSL commissioner and general counsel, resigned.

B. Investigation and Findings

1. Joint Investigation Begins

Commissioner Baird’s resignation led to the NWSLPA requesting an investigation into abuse and misconduct towards NWSL players. Both parties’ separate investigations prompted an agreement between the NWSLPA and NWSL to conduct a joint investigation with law firms Covington & Burling LLP and Weil, Gotshal & Manges LLP (the “Joint Investigative Team”). The investigation focused on misconduct by NWSL employees and club staff directed at staff while reporting to an Oversight Committee. Approximately 780 former and current NWSL players were contacted during the investigation. The NWSLPA encouraged participation and the NWSL players chose to be anonymous. Overall, the Joint Investigative Team contacted individuals in the report and collected over 200,000 documents.

When evaluating individuals and teams accused of misconduct, the Joint Investigative Team looked to sources such as the NWSL’s 2022 policies and professional coaching standards. Furthermore,
the NWSL took corrective action with the new commissioner, Jessica Berman, by broadening the anti-harassment policy, hiring a People and Culture Officer, and initiating programs to ensure player safety.167 On December 14, 2022, the report released by the NWSL and the NWSLPA revealed information about how the NWSL was mismanaged and its mistreatment of players.168

The report concluded that the underlying culture of the NWSL fostered an environment that allowed misconduct to go unreported.169 Overall, various teams and employees were caught abusing players’ complaints.170 Furthermore, the report recommended that the NWSL adopt additional measures that were systematic, rather than disciplinary.171

2. NWSL Penalties

On January 9, 2023, the NWSL assigned penalties for individuals and organizations associated with misconduct identified in the Joint Investigation Report.172 The penalties were assigned through a tiered system based on the following factors:

“the degree of severity of the misconduct that occurred, whether individuals in positions of power knew or should have known of the misconduct, the degree or repetition of the misconduct, evidence of retaliatory conduct, the proximate nature of the behavior or action to the present, and actions that failed to communicate the misconduct with others.”173

The penalty level was then reduced based on mitigating factors such as the responsibility of others for contributing to the

167. See id. at 113 (revising anti-harassment policy with specific application to “NWSL Personnel”).
168. See id. at 2 (reporting club officials made inappropriate comments, pressured weight loss, and violated boundaries which created unstable work environment).
169. See id. (explaining players were told to be thankful, loyal, and obedient, even though they did not get resources they should have as professional athletes).
170. See id. at 100–08 (summarizing individuals and organizations found guilty).
171. See id. at 112–24 (recommending that NSWL (a) strengthen anti-harassment policies; (b) develop and enforce guidelines addressing appropriate interactions between club staff and players; (c) develop and implement trainings that reflect and address player and staff experiences; (d) coordinate with clubs and U.S. Soccer to improve and centralize hiring practices; and (e) enhance reporting and investigation procedures).
173. See id. (explaining factors involved in tier system placement).
misconduct and voluntary disclosure.\textsuperscript{174} For individuals, level one was permanent exclusion from the NWSL, level two was suspension with conditional further employment for the NWSL, and level three was their future employment for the NWSL conditional.\textsuperscript{175} For organizations, level one was a fine of one million dollars and mandatory systematic changes, level two was a fine of one hundred thousand dollars, and level three was a fine of fifty thousand dollars.\textsuperscript{176}

V. Solutions for Workplace Misconduct

Workplace culture can help promote or prevent harassment.\textsuperscript{177} As much as corporate culture needs to change, there are legal and in-house solutions to help curb harassment in the workplace.\textsuperscript{178} Solutions include the NFL addressing workplace misconduct in team offices with updated League-wide policies and procedures, adoption of a Chief Diversity Officer, and accountability for executive staff and owners.\textsuperscript{179}

A. Title VII & Legislative Shortcomings

1. Title VII Makes Plaintiff’s Claims Harder to Bring

Title VII has helped lessen sexual harassment in the workplace but continues to fall short to fully eradicate the behavior.\textsuperscript{180} Under Title VII, there are limitations that affect a victim’s ability to seek

\textsuperscript{174} See id. (stating other mitigating factors such as “acceptance of responsibility, and good faith efforts to mitigate poor decisions such as removing people in positions of authority who failed to act.”).

\textsuperscript{175} See id. (announcing individuals’ sanctions). Level one sanctions were given to Christy Holly, Richie Burke, Paul Riley, and Rory Dames. (describing ban on four individuals). See id. Level two sanctions were given to coaches Craig Harrington and Alyssa LaHue. See id. (detailing individual sanctions). Level three sanctions were given to Farid Benstiti, James Clarkson, Vera Pauw, Amanda Cromwell, Same Greene, and Aline Reis. See id. (announcing conditional level three sanctions).

\textsuperscript{176} See id. (announcing organizations’ sanctions). Level one sanctions were applied to NWSL League Office, Chicago Red Stars, and Portland Thorns. See id. (detailing one fine). Level two sanctions were applied to Racing Louisville and North Carolina Courage. See id. (adding that both teams were required to hire sporting staff separate from men’s team of same ownership). Finally, level three sanctions were given to OL Reign and Gotham FC. See id. (fining OL Reign and Gotham FC $50,000 each).

\textsuperscript{177} See Feldblum & Lipnic, \textit{supra} note 14, at 76 (concluding strong leadership and accountability create corporate culture).

\textsuperscript{178} For further discussion of legal and administrative solutions to workplace misconduct, see \textit{infra} notes 231–245 and accompanying text.

\textsuperscript{179} For further discussion of NFL team office solutions, see \textit{infra} notes 231–245 and accompanying text.

\textsuperscript{180} See Hemel & Lund, \textit{supra} note 32, at 1603 (explaining Title VII fails to create change for workplace harassment).
legal recourse. First, the law places limits on compensatory and punitive damages depending on the corporation’s size. These capped damages have stayed the same since 1991, the year the Civil Rights Law of 1991 was enacted.

Second, Title VII claims require a private sector victim to file charges with the EEOC within 180 days from the date of alleged harm or 300 days if the victim files a charge with a state agency. If the EEOC finds sufficient evidence of discrimination, the victim has 90 days to file a lawsuit. This shorter filing period burdens victims, particularly those who may not even know they are being harassed.

Third, federal court precedent makes it hard to pin individual liability to a supervisor. This makes it harder to hold an individual accountable and face discipline via the court system. Finally, recent court decisions have made it harder for employees to file sex discrimination suits via a class action. The Supreme Court in Walt-Mart Stores, Inc. v. Dukes rejected the certification of a class that included 1.5 million current and former Walmart employees. Overall, the Court heightened the standard of evidence for bringing class actions under sex discrimination by stating, “[the] anecdotal

181. See id. at 1603–10 (stating various limitations for Title VII claims such as capped damages, 180-day filing limitation period, and class certifications).
182. See Remedies for Employment Discrimination, U.S. EQUAL EMP. OPPORTUNITY COMM’N, https://www.eeoc.gov/remedies-employment-discrimination [https://perma.cc/EZ6U-54QA] (last visited Sept. 25, 2023) (“For employers with 15-100 employees, the limit is $50,000. For employers with 101-200 employees, the limit is $100,000. For employers with 201-500 employees, the limit is $200,000. For employers with more than 500 employees, the limit is $300,000.”).
186. See Hemel & Lund, supra note 32, at 1604 (explaining impact of Title VII filing requirements for victims of sexual harassment).
187. See Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 754–65 (1998) (holding supervisors are liable under company); Faragher v. City of Boca Raton, 524 U.S. 775, 807 (1998) (reiterating supervisors are held liable by their company).
188. See Hemel & Lund, supra note 32, at 1606–07 (“The fact that individual harassers cannot be held liable under Title VII no doubt weakens the statute’s deterrent effect.”).
189. See id. at 1608 (explaining that class action mechanisms are beneficial but judicial decisions have made it difficult for employees to bring class actions).
191. See id. at 342 (stating women claimed Wal-Mart’s management discriminated against them in pay and promotion decisions); see also id. at 343 (holding class action would be denied).
evidence . . . [was] too weak to raise any inference that all the individual, discretionary personnel decisions [were] discriminatory.’’

In the case of Dan Snyder and his former employees, it is clear that a Title VII claim for employees would be hard to navigate.\footnote{192} First, the statute of limitations may have expired for many of the employees’ claims.\footnote{193} Second, Snyder secretly settled a case, gave probes to former employees, and was discovered to be using NDAs to prevent employees from being able to speak out.\footnote{194} Therefore, \textit{prevention} is the best tool to eliminate sexual harassment in the Commander workplace and beyond.\footnote{195}

2. \textit{New \& Proposed Legislation Remain Untested}

The two proposed bills by Chairwomen Maloney would be instrumental in holding NFL teams like the Commanders accountable.\footnote{196} However, they have only been introduced, making prevention strategy the most efficient solution.\footnote{197} Although 2022 brought new ways for companies to be held liable for harassment, they remain untested and unable to change the past.\footnote{198}

The Enforced Arbitration Act is relatively straightforward but raises many questions for future use in the court system.\footnote{199} The statutory language states that arbitration clauses and joint-action waivers cannot be enforced for sexual assault cases but can be enforced for claims.\footnote{200} This raises confusion if a plaintiff brings multiple claims.\footnote{201}

\begin{footnotes}
\item 192. See id. at 358 (holding respondents suffer from weak evidence in raising any inference that personnel decisions are discriminatory).
\item 193. See generally \textit{Conduct Detrimental}, supra note 78, at 4 (detailing Snyder’s history of workplace misconduct).
\item 194. See id. at 5 (detailing employee’s allegations from 2019 through 2021).
\item 195. See id. at 23–24 (explaining Snyder’s attempts to silence various victims).
\item 196. See Feldblum & Lipnic, supra note 14, at 56 (stating prevention tools are best option to cure legislative inequity).
\item 197. For further discussion of the two new bills brought by Chairwomen Maloney, see \textit{supra} notes 129–135 and accompanying text.
\item 198. See Feldblum & Lipnic, supra note 14, at 70 (detailing best way to stop harassment in workplace is prevention).
\item 199. For further discussion of legislative initiatives to curb sexual harassment, see \textit{supra} notes 49–58 and accompanying text.
\item 201. See id. (describing inefficiencies of Forced Arbitration Act).
\item 202. See id. (describing litigation concerns of Forced Arbitration Act include whether lawsuits can contain multiple claims).
\end{footnotes}
Additionally the broad applicability could be misconstrued by courts in the future.\footnote{203}{See id. (claiming Forced Arbitration Act will be applied distinctly and employers must think of practical uses concerning employee arbitration clauses).}

The Speak Out Act is a big step in the right direction – critics of NDAs have said they “contribute to a culture of silence around sexual harassment, allowing perpetrators to continue their abuse while survivors face potential legal consequences for speaking publicly about their experiences.”\footnote{204}{See Cat Zakrewski, NDAs Can Muzzle Sexual Harassment Victims. Congress Could Change That., Wash. Post (June 27, 2022, 8:00 AM), https://www.washingtonpost.com/technology/2022/06/27/congress-ndas-bipartisan-legislation/ [https://perma.cc/WJ6Y-RT8T] (explaining Congress’ legislation could ensure victims hold companies responsible).} Although the Act will provide those who face sexual harassment and assault special treatment, it allows clauses to be used in settlement and severance agreements after a sexual harassment allegation has been communicated.\footnote{205}{See Birmingham, supra note 55 (explaining “while employers need to be aware of the Act and its requirements, it does not represent a sea change.”).} The two proposed bills would be instrumental in holding NFL teams like the Commanders accountable.\footnote{206}{For further discussion of the two new bills brought by Chairwomen Maloney, see supra notes 128–134 and accompanying text.} However, their lack of movement in Congress makes prevention strategy the most efficient solution.\footnote{207}{See Feldblum & Lipnic, supra note 14 (detailing best way to stop harassment in workplace is prevention).}

B. The NFL Must Address Workplace Misconduct in Team Offices

1. Comparing the NFL & NWSL

The NFL and NWSL, in both reports, show how mismanagement can harm women in the workplace.\footnote{208}{For further discussion of Conduct Detrimental and the Joint Investigation Report, see supra notes 108–135, 143–171 and accompanying text.} For example, in the Commanders’ organization women felt trapped by a culture of fear instilled by Snyder.\footnote{209}{See Conduct Detrimental, supra note 78, at 78 (summarizing report results).} Similarly, NWSL players coached by Paul Riley also felt he had created a culture of fear.\footnote{210}{See Joint Investigation Report, supra note 144, at 106 (explaining Riley’s creation of toxic team culture).} However, the response to the misconduct between the NWSL and NFL is astronomical.\footnote{211}{For further discussion of Conduct Detrimental and the Joint Investigation Report, see supra notes 108–135, 143–171 and accompanying text.}
abusers escape punishment.\textsuperscript{212} Since the Joint Investigation Report, the NWSL made changes to ensure adequate procedures for harassment in the workplace.\textsuperscript{213} In contrast, Commissioner Goodell aided Snyder in hiding documents from Congress through a common interest agreement.\textsuperscript{214}

The NFL’s powerful role in American sports can promote substantial change and drive for gender equity in the workplace.\textsuperscript{215} Both the Joint Investigation Report and \textit{Conduct Detrimental} were released within a week of each other.\textsuperscript{216} However, the Joint Investigation Report was conducted by the NWSL, while \textit{Conduct Detrimental} was a government investigation.\textsuperscript{217} Nevertheless, the NWSL adopted recommendations and gave money and sanction penalties for individuals and organizations, while the NFL settled for monetary penalties.\textsuperscript{218}

2. \textit{Dan Snyder and Executive Staff Must Be Held Accountable}

The NFL has failed to hold owners and management to the higher standard of accountability described in its Constitution.\textsuperscript{219} Organizational culture comes down to accountability, which is determined by behaviors that are formally and informally rewarded.\textsuperscript{220} Currently, Snyder continues to evade further punishment, even with continuing discovery of additional misconduct.\textsuperscript{221}

\textsuperscript{212} For further discussion of \textit{Conduct Detrimental} and the \textit{Joint Investigation Report}, see supra notes 108–135, 143–170 and accompanying text.

\textsuperscript{213} See \textit{Joint Investigation Report}, supra note 144, at 112 (detailing Commissioner Berman’s changes to NWSL harassments procedures).

\textsuperscript{214} See \textit{Conduct Detrimental}, supra note 78, at 11 (stating documents showed common interest agreement between Goodell and Snyder).

\textsuperscript{215} See \textit{Vrentas}, supra note 82 (explaining Snyder serves as example of how influential NFL individuals wield power, especially when it comes to promoting their own goals).

\textsuperscript{216} For further discussion of \textit{Conduct Detrimental} and the \textit{Joint Investigation Report}, see supra notes 108–135, 143–171 and accompanying text.

\textsuperscript{217} For further discussion of \textit{Conduct Detrimental} and the \textit{Joint Investigation Report}, see supra notes 108–135, 143–171 and accompanying text.

\textsuperscript{218} For further discussion of \textit{Conduct Detrimental} and the \textit{Joint Investigation Report}, see supra notes 108–135, 143–171 and accompanying text.

\textsuperscript{219} See \textit{Vrentas}, supra note 82 (reporting NFL is highly concerned about its public image and has been plagued by negative news cycles due to the accusations against Snyder).

\textsuperscript{220} See Feldblum & Lipnic, supra note 14 (suggesting compliance and effective anti-harassment program instills accountability).

The NFL Constitution states that removal of a team owner requires twenty-four out of thirty-two owners to vote for favorable removal.\textsuperscript{222} Even if the vote is met, the owner may face suspension instead.\textsuperscript{223} Owners like Snyder show that the NFL Constitution and bylaws should be amended to only require a majority vote of owners for removal.\textsuperscript{224} Commissioner Goodell and the Executive Committee can take this necessary step to combat public and possible judicial scrutiny in the future.\textsuperscript{225}

Unlike no owner before, Dan Snyder has caused an uproar from the public.\textsuperscript{226} In February 2023, Snyder began selling the Commanders, and wanted $7 billion for the team, demanding reassurance from the League and other team owners that he wouldn’t be held legally liable in the future after selling the Commanders.\textsuperscript{227} In April, Snyder agreed to sell the Commanders to Josh Harris, owner of the New Jersey Devils and Philadelphia 76ers, and his partners.\textsuperscript{228} Of course, with Snyder gone, there is opportunity to create change at the franchise level – to stall further harassment towards women in the future.\textsuperscript{229}

C. NFL Tone at the Top: Administrative Solutions

The biggest issue in workplace harassment cases is that they often go unreported.\textsuperscript{230} In the Commanders’ case, Snyder created

\begin{itemize}
  \item See Perez, supra note 69 (summarizing NFL Constitution).
  \item See Perez, supra note 69 (explaining owner removal and its complexity).
  \item See id. (concluding Goodell must act).
  \item See Vrentas, supra note 82 (stating Snyder’s situation is unprecedented).
  \item See Feldblum & Lipnic, supra note 14, at 32 (explaining employees may not report harassment due to fear of not being believed, lack of action, blame, or retaliation).
\end{itemize}
a hostile work environment for over two decades hidden from the public eye. The solution involves Goodell and the Executive Committee creating change throughout all NFL franchises – not just the League office.

1. Requiring Thirty-Two Chief Diversity Officers & HR Standards

One solution for the NFL is to require each team to have a Chief Diversity Officer (“CDO”). A CDO is a hybrid position that works with various departments, such as recruitment, human resources, marketing, ethics, and legal compliance. Various studies have shown that CDOs improve corporate culture while bringing the top management team new perspectives. The NWSL enacted an officer called the People and Culture Officer, which fulfills the role of the CDO.

Besides a CDO, Human Resources (“HR”) departments in NFL teams offices could be held to a stricter standard. HR departments have the potential to influence mitigating conduct. As of 2022, only ten of the thirty-two NFL franchises have identifiable staff roles like a CDO. Franchises have hundreds of employees, and this hinders the opportunity for improvement in corporate culture. Adding

231. See Conduct Detrimental, supra note 78, at 4 (explaining Snyder’s decades of hostile environment allegations).
232. See id. at 78 (summarizing recommendations for NFL).
233. See DeMartini & Butler, supra note 17 (explaining NFL front office reticence in hiring CDOs may be explained by NFL’s culture and insularity).
234. See id. (stating presidents must be supportive of CDOs).
237. See DeMartini & Butler, supra note 17 (recommending adoption of CDOs).
238. See id. (“To set up a CDO for success, firms must make more substantial resources commitments than for the adoption of other types of diversity programs.”).
239. See id. (finding NFL franchises are significantly behind in having CDOs, compared to other industries).
240. See Conduct Detrimental, supra note 78, at 4 (stating Snyder’s lack of accountability stems from inadequate staff resources).
rules applied to all NFL teams that require a CDO and competent HR departments would aid in processing harassment complaints.\textsuperscript{241}

2. NFL Could Implement Separate Anti-Harassment Policy

Another solution includes amending the Personal Policy Conduct of the NFL to adopt a more specific anti-harassment policy with stricter punishment guidelines.\textsuperscript{242} Although this is a harsher approach, the NFL has failed to punish owners and executives, unlike the NWSL which banned non-compliant individuals for life.\textsuperscript{243} The NWSL developed a detailed twenty-two-page policy specifically for workplace harassment.\textsuperscript{244} Compared to the NFL’s short overall policy, the NWSL provides explicit guidelines in its anti-harassment policy.\textsuperscript{245}

VI. Conclusion

The discrimination women face in workplaces shows how masculinity continues to manifest in the NFL through workplace misconduct.\textsuperscript{246} Again, this is not just a problem in the sports industry.\textsuperscript{247} Generally, women in the workplace continue to be discriminated against and dramatically underrepresented in corporate America.\textsuperscript{248} For every 100 men who are promoted from entry-level roles to manager positions, only eighty-seven women are promoted.\textsuperscript{249} The NFL

\begin{itemize}
\item \textsuperscript{241} See Feldblum & Lipnic, supra note 14, at 31 (“Rather, at all levels, across all positions, an organization must have systems in place that hold employees accountable...”).
\item \textsuperscript{242} See Conduct Detrimental, supra note 78, at 77 (“The NFL’s ongoing failure to take workplace misconduct seriously is compounded by its own policies that are designed to protect the interests of clubs owners.”).
\item \textsuperscript{243} For further discussion of Conduct Detrimental and the Joint Investigation Report, see supra notes 78, 144 and accompanying text.
\item \textsuperscript{244} See Joint Investigation Report, supra note 144, at 112 (explaining NWSL’s effort to correct misconduct).
\item \textsuperscript{245} See id. (explaining NWSL’s effort to correct anti-harassment policy via player recommendations); Personal Conduct Policy, supra note 67 at 1 (citing conduct as anything “dangerous, illegal, violent, dangerous, or irresponsible puts innocent victims at risk, damages the reputation of others in the game, and undercuts public respect and support for the NFL.”).
\item \textsuperscript{246} See Melanie L. Sartore & George B. Cunningham, Explaining the Under-Representation of Women in Leadership Positions of Sports Organizations: A Symbolic Interactionist Perspective, 59 Quest 244, 245 (2007) (summarizing lack of representation of females in sport front offices).
\item \textsuperscript{247} See Thomas et al., supra note 6, at 53–54 (showing corporate hiring pipeline in different industries).
\item \textsuperscript{248} See id. at 5 (detailing comprehensive research done across corporations in United States).
\item \textsuperscript{249} See id. at 9 (reporting statistics of women in workplace).
\end{itemize}
faces diversity-specific pressures and has created a mirage of impres-
sionable effort. However, the NFL has the power to not only create
change for women working in the sports industry, but also become a
role model for the American workplace.

Although there are League office initiatives such as the Women’s
Careers in Football Forum, there must be a cultural and compliance
shift. The NFL can look to the NWSL’s use of penalties to apply
accountability across various office positions. Of course, the ques-
tion remains whether the NFL can create change instead of using
smoke and mirrors through public initiatives. Dan Snyder has
now sold the Commanders, making it harder for the NFL to defy
his actions. However, investigations surrounding Snyder continue
to occur and may result in future penalties. Nevertheless, there is
an opportunity for the NFL to set an example and establish a frame-
work for compliance that can be adopted by corporations across the
United States.

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tidesport.org/_files/ugd/ac4087_d74e4aa674334087b6c4506f6d353a48.pdf
[https://perma.cc/DXE6-PVZ3] (detailing NFL’s goals for diversity and ethical
conduct in professional and amateur sports).

251. See DeMartini & Butler, supra note 17 (explaining that although CDOs
need substantial resources, they help change corporate culture).

252. See id. (stating League office has ideal diversity opportunities for women).

253. For further discussion of Conduct Detrimental and the Joint Investigation
Report, see supra notes 108–135, 143–171 and accompanying text.

254. See Vrentas, supra note 82 (stating NFL can create applicable change for
corporations).

255. See Belson & Rosman, supra note 228 (detailing Snyder’s sale of
Commanders).

256. See John Keim, Commanders’ Dan Snyder Fined $60M Over Findings in Inves-
tigation, ESPN (July 21, 2023, 6:11 PM), https://www.espn.com/nfl/story/_/
id/38043823/commanders-dan-snyder-fined-60m-findings-investigation
[https://perma.cc/68R-2R4A] (explaining NFL fined Snyder $60 million after finding
more detrimental evidence); see also Mike Fisher, Dan Snyder $60 Million Fine: Who
Gets Ex Commanders Owner’s Money?, SPORTS ILLUSTRATED (July 22, 2023, 5:55 PM),
https://www.si.com/nfl/commanders/news/dan-snyder-60-million-fine-who-gets-
washington-commanders-owner-money-dallas-cowboys-jerry-jones
[https://perma.
cc/825J-S4HH] (explaining NFL will receive $27 million in legal fees).

257. See Conduct Detrimental, supra note 78, at 78–79 (summarizing NFL recom-
mendations).

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