Are the Green Bay Packers Socialists?

Matthew J. Parlow, Chapman University Dale E. Fowler School of Law
Anne-Louise Mittal
Are the Green Bay Packers Socialists?

Matthew J. Parlow
Anne-Louise Mittal

The Green Bay Packers are an oft-misunderstood organization—not in the decisions that the Packers make, but in their legal status and structure. Scholars, commentators, and even the general public refer to the Packers as "community-owned." While this characterization is true—to a degree—the specifics of this unique ownership structure in professional sports have never been comprehensively documented and analyzed. Perhaps this is the reason that some political pundits have termed the Packers "socialists." However, such commentators also seem to not fully appreciate the historical development, and contemporary understanding, of this social, economic, and political ideology. This confluence of confusion has led to the misapplication of the term socialism to the Green Bay Packers. This article seeks to set the record straight.

I. INTRODUCTION

In a 2011 article published on ThinkProgress.org, Scott Keyes described the Green Bay Packers as the National Football League’s (NFL) "socialist Super Bowl champions." Keyes offered three points in support of this assertion: the Packers are community-owned; are nonprofit sharing; and have rules in place to prevent any single individual from taking control of the organization. In a subsequent article, University of Wisconsin-Madison professor of sociology Erik Olin Wright agreed with Keyes’s characterization of the Packers and further emphasized that the Packers are not owned by an individual or entity that seeks to maximize private profits.
Keyes and Wright are not the first to characterize the Packers as a socialist organization. In a 2011 article in *The New Yorker*, Dave Zirin asserted that, “[i]n the United States, we socialize the debt of sports and privatize the profits.” Zirin went on to contrast the Packers’ ownership structure with that of the NFL’s other thirty-one franchises, suggesting that the quest for private profit tends to operate to the detriment of these other teams. The clear implication of the Zirin article is that the Packers’ model of community ownership is inherently preferable to the private model found throughout the rest of the NFL. Similarly, in a Salon.com article, David Sirota described the Packers as “a team whose quasi-socialist structure allows Wisconsin’s proletariat to own the means of football production.” Like Zirin, Sirota highlighted the Packers’ nonprofit-sharing, community-ownership structure—which is a unique characteristic among NFL teams.

In describing the Packers as a socialist organization, none of the articles cited above attempted to define socialism or to identify the specific qualities that the Packers purportedly share with a socialist organization. Yet, as PolitiFact noted when testing Keyes’s claims, the term “socialism” can encompass a wide range of definitions. Moreover, as the PolitiFact suggested through its

---

5 Id.
6 Id.
8 Sirota, supra note 7. The Packers are able to own and operate an NFL franchise only because the corporation predates the NFL’s current bylaws, which expressly prohibit ownership of an NFL franchise by a nonprofit sharing organization and furthermore effectively prohibit public ownership of any franchise. See Lynn Reynolds Hartel, Comment, Community-Based Ownership of a National Football League Franchise: The Answer to Relocation and Taxpayer Financing of NFL Teams, 18 Loy. L.A. Ent. L.J. 589, 604–05 (1998). Specifically, NFL bylaws provide that “[n]o corporation, association, partnership, or other entity not operated for profit nor any charitable organization or entity not presently a member of the League shall be eligible for membership.” *Constitution and Bylaws of the National Football League*, art. III, § 3.2(A) (2006), available at http://static.nfl.com/static/content/public/static/html/careers/pdf/co_.pdf (emphasis added). Although NFL bylaws do not expressly prohibit public ownership, Article III imposes various requirements that make public ownership impracticable. See id. § 3.3 (requiring for each shareholder a name, address, written financial statement, and individual approval from the NFL commissioner).
9 This haphazard approach to the details of both socialism as a doctrine and the Packers as an organization detracts from the persuasiveness of claims that the Packers are a socialist organization. For example, Keyes initially presumed that Packers shareholders obtained season tickets by virtue of owning stock in the Packers, which is incorrect. See infra Part IV.D. Subsequently, Keyes backed away from his initial position that the Packers are a socialist organization and instead claimed that the Packers are “far more socialistic than all of the other NFL teams.” Left-Leaning Think Tank Writer Says Green Bay Packers “Socialist Organization,” supra note 3.
10 Left-Leaning Think Tank Writer Says Green Bay Packers “Socialist Organization,” supra note 3 (noting that “socialism isn’t easily defined”).
reference to Milwaukee electing the United States' first socialist mayor of a major city and first socialist congressman, socialism has historically developed in different ways and to varying extents in different parts of the world. Similarly, none of these articles dissect the Packers' legal and organizational structure to properly (and fully) explain how the socialist moniker might apply. Therefore, in failing to define socialism and unpack the complexities of the Green Bay Packers organization, these articles inaccurately applies this socialist theory to the Packers.

To address these oversights, Part II of this Article briefly traces the historical origins and development of socialism as a social, economic, and political ideology. This Part then considers four doctrines that potentially fall within the broad umbrella of "socialism": early or utopian socialism, Marxism, democratic socialism, and communism. Part II suggests that, of these four doctrines, Marxism—as defined through the nineteenth-century writings of Karl Marx and Friedrich Engels—most closely approximates "socialism" as the term is commonly understood today and most likely used in the above-cited articles. Accordingly, by drawing on the theories of Marx and Engels, this Part identifies three fundamental tenets of socialism: that community welfare—not private profit—should be the ultimate goal of any enterprise; that private property should be abolished in favor of community ownership and control of the means of production; and that the material needs of all members of society should be met through equitable distribution of wealth.

Against this backdrop, Part III outlines the history, ownership, management, operations, and recent financial condition of Green Bay Packers, Inc., the Wisconsin corporation that owns and operates the Packers franchise. This Part demonstrates that, beyond being community owned and re-investing any profits into the organization, the Packers depart from the socialist model in several key respects. Specifically, Packers' shareholders exercise virtually no control over the organization, and—far from having all of their material needs met—shareholders derive no tangible benefit as a result of their affiliation with the organization. Part IV thus suggests that, while the Packers cannot properly be termed a socialist organization, the Packers do fit squarely within the model of a nonprofit corporation. With this characterization of the Packers as a nonprofit corporation, Part V argues that the Packers are uniquely positioned among professional sports teams to place on-field success at an unrivaled premium. Finally, Part VI provides some concluding reflections on the significance of this analysis.

11 Id.
II. SOCIALISM

A. Historical Development

Although the origins of socialist thought are arguably traceable to the ancient world, socialism as a distinct and identifiable ideology first emerged during the eighteenth century as a component of Enlightenment philosophy. Conditions during the late eighteenth and early nineteenth centuries were particularly conducive to the development of ideologies that stood in opposition to capitalism and liberalism. During this period, capitalism replaced feudalism as the dominant economic system, and the French Revolution of 1789 heralded the collapse of monarchies across Western Europe. Moreover, rapid industrialization led to an increase in the population of urban poor, division of labor in the workplace, and the implementation of wages as the primary form of compensation for workers. In this context, socialism emerged as a critical theory relative to the prevailing economic and social paradigms.

While Karl Marx and Friedrich Engels are perhaps the figures most closely associated with socialism (and communism), certain notable movements in the history of socialism pre-date publication of Marx and Engels’s *The Communist Manifesto* in 1848. In particular, the French Enlightenment philosopher Jean-Jacques Rousseau characterized property and property rights asalienating individuals from their true humanity. Citing Rousseau’s ideal of a more egalitarian society, the so-called utopian socialists in post-revolutionary

---

14 See Mark Sandle, Communism 30 (2006); Newman, supra note 12, at 6.
15 Sandle, supra note 14, at 30; Newman, supra note 12, at 6.
16 Sandle, supra note 14, at 30.
17 Id.; see also Lerner, supra note 12, at xiv–xv (“[S]ocialism emanates from the values of the eighteenth-century movement known as the Enlightenment and was a response to the socioeconomic problems that emerged with the modern industrial age.”).
18 Lerner, supra note 12, at 20 (stating that Marx’s “ideas have been so pervasive that the terms Marxism and socialism are often used interchangeably, even though in today’s world there are socialist movements that do not trace their origins to Marx”).
19 See, e.g., Peter Beilharz, Socialism and Modernity 2 (2009) (noting that “[s]ocialism both precedes and postdates marxism”); Maurice Dobb, Socialist Thought, in The Development of Socialist Economic Thought: Selected Essays by Maurice Dobb 42 (Brian Pollitt ed., 2008) (“Treated historically, therefore, description and analysis of socialist thought must run predominantly in terms of Marxian doctrine. This is not to say that there have been no other different and rival socialist creeds that have been influential and continue to find an echo today.”).
20 Lerner, supra note 12, at 2 (summarizing the central theories of Rousseau’s The Discourse on the Origins of Inequality).
France attempted to achieve this ideal through communal living and working.\textsuperscript{21}

To this early version of socialism as a cooperative alternative to liberalism and capitalism, Marx and Engels introduced a class component. Relying on the Hegelian notion that historical progress is achieved through resolution—or synthesis—of antithesis and thesis, Marx and Engels characterized human history as a class struggle between workers (the proletariat) and the propertied classes (the bourgeoisie).\textsuperscript{22} This struggle had, according to Marx and Engels, proceeded in four stages up to the present period: primitive communism, slavery, feudalism, and capitalism. Writing in the mid-nineteenth century, Marx and Engels described the present stage of history—capitalism—as defined by exploitation of the working class by the owners of capital.\textsuperscript{23} The result of this exploitation, Marx and Engels predicted, was the inevitable uprising of the proletariat against the bourgeoisie, which would propel human history into its fifth and final stage: the creation of a socialist society.\textsuperscript{24}

Marx’s later writings lacked the revolutionary overtones of The Communist Manifesto.\textsuperscript{25} The inherent contradiction between the rhetoric of the Manifesto and Marx’s more general opposition to any attempt to incite premature revolutionary change through violence or insurrection was reflected in the various socialist political parties that developed around Europe during the later part of the nineteenth century.\textsuperscript{26} Among these parties, the Social Democratic Party in Germany (SDP) was by far the largest and most influential.\textsuperscript{27} The SDP’s agenda sought gradual reform within capitalism that would yield immediate benefits for the working class while moving closer to the long-term goal of a socialist society.\textsuperscript{28}

By contrast, other groups and movements would seize upon the Marxist
notion of an inevitable clash between the proletariat and the bourgeoisie to propound a more radical form of socialism, which came to be known as communism. The decisive moment in the development of communism as a distinct—and distinctly radical—form of socialism came in the early twentieth century in Russia, with the rise of Vladimir Lenin as the leader of the Bolshevik party, the fall of the Tsar during the Russian Revolution of 1917, and Lenin’s subsequent ascendance to power.29 Lenin’s particular contribution to Marxism was the notion that the proletariat lacked the capacity to develop a revolutionary consciousness; rather, Lenin suggested, a core group of professional revolutionaries was necessary to organize the proletariat into a coherent and self-conscious revolutionary force.30 Other avowed Marxists, including many within Russia, criticized Lenin’s position as a rejection of historical determinism and the presumption inherent in Marxism that the rise of the proletariat was inevitable.31

The break between European socialism and Russian communism intensified with Joseph Stalin’s rise to power following Lenin’s death. Stalin’s implementation of “socialism in one country” abandoned the goal of a worldwide socialist revolution in favor of a uniquely Soviet revolution, and his implementation of successive “Five-Year Plans” sought to triple industrial productivity in the Soviet Union.32 If elements of elitism and authoritarianism had been implicit in Lenin’s notion of a vanguard party that would lead the proletariat in revolution, these features became excruciatingly explicit under Stalin, as total state control of industry and agriculture, as well as complete suppression of dissenting voices, came to define Soviet communism.33 Following World War II, Stalin imposed this model on much of Eastern Europe, in terms of both political and economic structure.34

Thus, after 1920, two distinct strands of socialist thought are readily apparent: social democracy, which had effectively rejected any attempt to

29 See Lerner, supra note 12, at 87–88.
30 See id.
31 See id. at 90–91 (noting that the “Menshevik” or minority party within Russia, with support from many of the social democratic parties throughout Europe, viewed Lenin and the Bolsheviks as espousing an “elitism” that was “excessively authoritarian”); Newman, supra note 12, at 44 (describing the “notion of a centrally controlled, vanguard revolutionary party” as “distasteful to socialists with a belief in reform and democracy”).
33 See id. at 155–58; see also Stephen Eric Bronner, Socialism Unbound 104–07 (2d ed. 2001). Bronner’s work is emblematic of a current within modern socialist thought that seeks to rehabilitate socialism as a political ideology by distinguishing socialist theory from historical practice. As Bronner states, “Contemporary socialists must bear responsibility for explaining the aberrations and atrocities of the past.” Bronner, supra, at 107. Accordingly, Bronner describes Stalin as having “trampled on every value of the original labor movement.” Id. at 108.
34 Sandle, supra note 14, at 134–35. The key features of the model that Stalin imposed on the Soviet bloc included complete political control via local politburos and central economic planning with a particular focus on developing heavy industry. Id. at 135.
achieve a socialist society through revolution, and communism, which was increasingly synonymous with the Soviet Union. Over the next several decades, these two strands continued to diverge. Democratic socialism established and maintained a firm foothold in Western Europe, while communism steadily lost support in Europe from the mid-twentieth century onward. In Eastern Europe, Stalin’s death in 1953 heralded economic decentralization throughout much of the Soviet bloc. While the Soviet Union attempted to maintain political control, rising nationalism eventually led to the collapse of the Soviet Union in 1991. Notably, neither democratic socialists nor communists were able to gain any kind of meaningful representation in the national political process in the United States.

B. Socialist Movements

As a brief overview of socialism’s historical development suggests, multiple groups and movements have laid claim to this ideological designation over time. Accordingly, any attempt to provide a single definition of socialism is inherently problematic. This section briefly outlines the different forms of socialism that have emerged since the term first appeared in 1827, the principles central to each form, and the most salient differences among these

35 See Newman, supra note 12, at 46.
36 Lemer, supra note 12, at 207 (“By the beginning of the 1980s the professedly socialist world had become so diverse that socialism could mean the total integration of socialist ideas into democratic society or a rationalization for the monopoly of political power in a highly monopolistic and oftentimes repressive regime.”).
37 See id. at 208–12 (citing in particular the British Labor Party and the German Social Democratic Party as examples of socialist parties that became the dominant political force in their respective countries).
38 Sandle, supra note 14, at 164–65 (discussing Eurocommunism and “its failure to halt the electoral slide of the European communist parties” toward the end of the twentieth century).
39 “Eurocommunism” refers to the movement among European communists, beginning in the 1970s, to abandon violent revolution, class struggle, and the notion of a vanguard party as the primary means of achieving the transition from capitalism to communism. Id.
40 Id. at 138–39.
41 Id. at 212–14 (“American socialists have always been restricted to the fringes of political movements and, except for a rare triumph in a municipal election, have never been able to achieve election to major positions of government.”); see also Sandle, supra note 14, at 162 (discussing the history of the communist party in the United States).
42 See, e.g., Newman, supra note 12, at 2 (asserting that “socialism has taken far too many forms” to assume that its meaning is self-evident); Beilharz, supra note 19, at 2 (noting that “socialism has a history, a plurality of traditions across place and time”); Lemer, supra note 12, at 43 (“Perhaps it is in the nature of socialist movements that unity is elusive; the history of socialism has certainly produced more divisions than other social or political movements.”).
43 See Newman, supra note 12, at 6–7 (describing the first known use of the term “socialism” in an 1827 article that appeared in the London Cooperative Magazine discussing the ownership of capital).
forms. In addition, this section suggests that Marxism most closely approximates "socialism" as the term is commonly used and understood today.

1. Early or Utopian Socialism

Although early or utopian socialism encompasses a range of movements, pre-Marxist socialism can be described, in general, as a largely apolitical desire to reform the economic and social condition of humankind. Utopian socialism seeks reform at the community level by championing cooperation over the traits of individualism and competition that define liberalism and capitalism. Indeed, the very designation of "utopian" was originally intended to highlight the extent to which early socialist thought was divorced from broader political, economic, and social theory.

2. Marxism

Marxism constitutes a form of "scientific socialism" that stands in contrast to earlier utopian socialism. In particular, Marxism offers a systematic critique of capitalism that is grounded in historical materialism. Marxism conceives of human history as comprised of five, progressively higher stages of development, each of which is defined by the prevailing economic system of the time: primitive communism, slavery, feudalism, capitalism, and socialism. Common to each of these stages—with the exception of socialism—is the hegemony of a ruling class based on its control of economic surplus. What moves society forward from one stage of history to the next is the non-ruling class's developing awareness that it has been deprived of the full benefits of its economic productivity and its subsequent challenge to the established order.

Marxism asserts that the present stage of human history—capitalism—is characterized by the exploitation of the working class by the owners of

---

44 Sandle, supra note 14, at 32.
45 Id.
46 Newman, supra note 12, at 7.
47 Sandle, supra note 14, at 32.
48 Newman, supra note 12, at 7 (noting that the label "utopian" was meant to suggest "naiveté and a failure to root ... ideas in rigorous social, economic, and political analysis").
49 Dobb, supra note 19, at 42.
50 Newman, supra note 12, at 22.
51 Lerner, supra note 12, at 32.
52 Newman, supra note 12, at 23.
53 Lerner, supra note 12, at 32.
capital.\textsuperscript{54} Owners of capital deny the working class a fair return on their labor in order to increase profit or "surplus value."\textsuperscript{55} The conflict that such exploitation precipitates will inevitably result in the rising up of the working class against the owners of capital and the subsequent establishment of a socialist society.\textsuperscript{56}

According to Marxist theory, the socialist society that comes after the collapse of capitalism is a fundamentally just society\textsuperscript{57}—one that is characterized by the abolition of private property and democratic rule by the working class.\textsuperscript{58} As one of the preeminent Marxist scholars of the twentieth century, Maurice Dobb, stated:

A social transformation of this kind, the most revolutionary known to history, would liquidate the class antagonism of previous class society by substituting the social equality of a community of active producers, where everyone was a worker drawing an income from society, for the unequal and divided society of those who owned and those who were dispossessed.\textsuperscript{59}

In short, socialism—according to the Marxist conception of the term—refers to democratic self-governance by the working class, communal ownership of the means of production, and centralized control of the processes of production.\textsuperscript{60}

3. Democratic Socialism

Democratic socialism is the common designation for political parties that proclaim a socialist agenda but seek to implement this agenda through participation in the democratic process rather than through revolutionary upheaval.\textsuperscript{61} The main features of the society that social democrats envision are generally comparable to the Marxist conception of a socialist society:

\textsuperscript{54} Id. at 33.
\textsuperscript{55} Id.
\textsuperscript{56} Id.
\textsuperscript{57} Id.
\textsuperscript{59} Dobb, supra note 19, at 51.
\textsuperscript{60} Id. at 52.
\textsuperscript{61} See Newman, supra note 12, at 46 (describing social democrats as accepting of "the notion that there was some convergence between their own views and those of others, such as left-wing liberals, who believed in parliamentary democracy and social reform"); Dobb, supra note 19, at 53 (noting, with reference to social democrats, "their devotion to democratic parliamentary methods and their intention of achieving socialism, not by a single revolutionary act, but by a series of modifying reforms in the existing structure and by a gradual extension of the economic functions of government").
elimination of capitalist enterprise and socialization of the means of production. The salient difference between democratic socialism and Marxism thus relates to the means of bringing about this transformation of society—essentially, the difference between reform and revolution.

4. Communism

Communism is best understood as a form or subset of socialism. Like socialism, communism is critical of both liberalism and capitalism; unlike socialism, communism advocates a more radical approach to upending the current social and economic order. In more concrete terms, communism encompasses two distinct schools of thought: the Marxist characterization of a perfect socialist society and the ideology of the Bolshevik party in Russia following the Revolution of 1917.

According to the Marxist formulation of the term, communism refers to the complete perfection of socialist society in the final stage of human history. In an 1875 critique of German Social-Democracy, Marx provides the classic description of a communist society: a society based on the principle "from each according to his ability, to each according to his needs." Socially, all divisions and inequalities are removed. Economically, communism entails complete socialization of the means of production, with the goal of production being community welfare rather than private profit. Property is held in common,

62 See Newman, supra note 12, at 46; Sandle, supra note 14, at 52.
63 See Sandle, supra note 14, at 52.
64 Lerner, supra note 12, at xv ("All communists consider themselves socialists; a great many socialists do not consider themselves communists. From this simple observation one may deduce that communism can be viewed as a form of socialism.
65 Sandle, supra note 14, at 31 ("What distinguished socialism and communism then was the critique offered of capitalism, the alternative put forward to capitalism and the means of expressing their protest and achieving their aims."); see also Lerner, supra note 12, at xv ("[O]ne can say that to be communist is to identify with a more radical and more revolutionary approach to society than is suggested by the more generic term socialist.").
66 See Sandle, supra note 14, at 43–44 (defining "communism" as the highest phase of post-capitalist society); Newman, supra note 12, at 34 (noting that "[m]odern communism was created with the assumption of power in Russia by the Bolshevik party"); see also Sandle, supra note 14, at 62 (asserting that twentieth-century communism emerged with the ascendance of the Bolshevik party in Russia and was thereafter "dominated by the Soviet experience"). While the Bolshevik party emphasized the continuity of its ideology with that of Marx, the differences between the Bolshevik and Marxist formulations of communism are significant. Newman, supra note 12, at 34 (describing the relationship between Bolshevism and Marxism as "highly controversial" and "very dubious").
67 Sandle, supra note 14, at 46.
69 Id. at 27.
70 Sandle, supra note 14, at 46.
71 Id.
with individuals contributing what they are able and using what they need.\(^{72}\)

Whereas Marxism stresses the historical inevitability of revolutionary uprising, Bolshevik communism posits that—left to themselves—the proletariat will at best develop “trade union” consciousness, or a concern with addressing their immediate needs within the current system of production.\(^{73}\) As such, Bolshevik communism calls for a dedicated party of enlightened bourgeois intellectuals who will awaken the revolutionary consciousness of the working class and lead the proletariat in revolution.\(^{74}\) This notion of a “vanguard” party whose superior consciousness will redirect the misguided masses introduces an element of authoritarianism that is distinctly lacking in the Marxist conception of communism, which stresses a classless and radically democratic society.\(^{75}\)

C. Defining Socialism

Although socialism can clearly encompass a variety of doctrines, the term as it is commonly understood and used is arguably synonymous with Marxism.\(^{76}\) As Maurice Dobb stated:

In the half-century prior to the Russian Revolution of 1917 the dominant doctrine inspiring the major socialist parties of continental Europe was Marxism . . . Since 1917 Marxism has become the official doctrine of the socialist sector of the world (i.e. of the Soviet Union and China and of the other countries of Europe and Asia associated with them. Treated historically, therefore, description and analysis of socialist thought must run predominantly in terms of Marxian doctrine.\(^{77}\)

This is especially true when the label of socialism is attached to a particular social and economic order for the purpose of distinguishing that order from capitalism.\(^{78}\) As described above, pre-Marxist forms of socialism—such as

\(^{72}\) Id. at 47.

\(^{73}\) See Newman, supra note 12, at 39; Lerner, supra note 12, at 29; Sandle, supra note 14, at 56.

\(^{74}\) Newman, supra note 12, at 39; see also Lerner, supra note 12, at 87 ("What Marxists had overlooked was the desirability of developing a disciplined core of professional revolutionaries, whom [Lenin] referred to as the vanguard, who would organize and lead the workers in revolutionary action.").

\(^{75}\) Lerner, supra note 12, at 39.

\(^{76}\) Compare Beilharz, supra note 19, at 2 ("[T]he fact that Marxism has come to dominate socialism does not mean that the two are identical. Socialism has a history, of which Marxism is a part. Socialism preceded and postdates Marxism."), with Lerner, supra note 12, at 20 ("[Marx's] ideas have been so pervasive that the terms Marxism and socialism are often used interchangeably.").

\(^{77}\) Dobb, supra note 19, at 42.

\(^{78}\) Id.
utopian socialism—lack any kind of systematic social, economic, or political theory. Conversely, political theory tends to dominate and subsume the social and economic components of democratic socialism and Bolshevik communism. Therefore, in attempting to define “socialism” as the term is commonly used to describe a particular social and economic order, Marxism provides the most logical and appropriate starting point.

In this context, the following Marxist principles may be said to comprise the basic tenets of socialism: community welfare, as opposed to private profit, should be the ultimate goal of enterprise; private property should be abolished and replaced by community ownership and control of the means of production; and the materials needs of all members of society should be met through equitable distribution of wealth.

1. Community Welfare—Not Private Profit—Should be the Goal of Enterprise

Marxist theory cites antagonism between the working class and the owners of capital as the defining characteristic of capitalism, and further posits that such antagonism results from the ultimate goal of enterprise within a capitalist society—private profit. In all aspects of the production process—including hiring and paying workers—capitalists act in accordance with private profit motive. Marxism identifies two forms of capital that go into the production process in a capitalist enterprise: constant capital (the raw materials and machinery that facilitate production) and variable capital (labor). Because the value of constant capital generally remains fixed throughout production, profit—in the Marxist view—can only be obtained through exploitation of variable capital (labor), which can increase in value if productivity rises while wages remain constant. Therefore, in a capitalist society, the working class is necessarily denied a fair return for its labor. In their quest to maximize private profit, the owners of capital inevitably exploit the working class by suppressing wages, even as productivity increases. The “surplus value” of increased productivity purchased at a fixed wage is returned to capitalists in the form of

79 See, e.g., Newman, supra note 12, at 32 (describing democratic socialism in the twentieth century as characterized by political parties “seeking mass membership and majority electoral support”); Marxism, supra note 58, at 638 (indicating that authoritarianism came to dominate Soviet communism over the course of the twentieth century).  
80 Newman, supra note 12, at 25.  
82 Newman, supra note 12, at 25.  
83 Id. at 25–26.  
84 Lerner, supra note 12, at 33.  
profit, while the working class grows increasingly impoverished despite being the most productive element of society.\textsuperscript{86}

In a socialist society, by contrast, the goal of production is not private profit but use-value.\textsuperscript{87} Production is not aimed at creating commodities to be sold on the market for a profit, but rather at creating goods to be used by the same individuals who produced them.\textsuperscript{88} Put differently, in a socialist system, the working class is the beneficiary of its own productivity.\textsuperscript{89} Such a system does not entail every individual receiving the full and direct return of his or her labor; rather, surplus value is re-invested into the production process for the benefit of the working class itself, rather than appropriated by the owners of capital in the form of private profit.\textsuperscript{90} For example, surplus value might be invested in upgraded infrastructure that increases material production while at the same time reducing the length of the workday.\textsuperscript{91} In this respect, the defining feature of socialism is the absence of private profit motive, which serves to diminish overall returns to producers.\textsuperscript{92}

2. Private Property Should be Replaced by Community Ownership and Control

According to Marxist theory, capitalists are both prone and able to exploit the working class as a result of private ownership and control of the means of production.\textsuperscript{93} In seeking a return on their investment in the means of production, capitalists inevitably attempt to maximize profits by exploiting wage-labor in the manner described above.\textsuperscript{94} Such exploitation is only possible because of the status of property owners \textit{vis-à-vis} the property-less working class, whose subsistence depends entirely on wages.\textsuperscript{95} Although technically parties to a voluntary contractual relationship, workers—lacking any other source of wealth—have no choice but to accept the depressed wages that the owners of capital offer in exchange for labor.\textsuperscript{96} Through the abolition of private property, socialism seeks to negate the "exploitative features of capitalism."\textsuperscript{97}

By calling for community ownership of the means of production, socialism

\begin{itemize}
  \item \textsuperscript{86} Lemer, supra note 12, at 33.
  \item \textsuperscript{87} Sandle, supra note 14, at 46.
  \item \textsuperscript{88} Melkonian, supra note 81, at 126.
  \item \textsuperscript{89} Lemer, supra note 12, at 33.
  \item \textsuperscript{90} See Melkonian, supra note 81, at 117.
  \item \textsuperscript{91} See id.
  \item \textsuperscript{92} See id.
  \item \textsuperscript{93} See Sandle, supra note 14, at 43.
  \item \textsuperscript{94} Newman, supra note 12, at 25.
  \item \textsuperscript{95} Dobb, supra note 19, at 49.
  \item \textsuperscript{96} Id.
  \item \textsuperscript{97} Sandle, supra note 14, at 44.
\end{itemize}
attempts, in the words of Dobb, to "substitut[e] the social equality of a community of active producers, where everyone [is] a worker drawing an income from society, for the unequal and divided society of those who owned and those who were dispossessed." Marxist theory thus envisions the abolition of private property as a means of eliminating the source of all inequality, including class distinctions.

Notably, Marxist theory places great significance on community control as well as ownership of the means of production, as "[t]here can be no workers' power without workers managing their own factories, farms, workshops, and offices." Such control should exist, in the Marxist view, at both the broader level of management and the narrower level of day-to-day decision-making. While workers may decide to delegate some of their management and decision-making authority to non-productive administrators, such delegation remains completely at the discretion, and subject to the control, of the workers themselves. Therefore, in a socialist society, workers not only own the means of production, but they also control the processes of production.

3. Society Should Meet the Material Needs of All Its Members

Capitalist society, according to Marxist theory, is characterized not only by inequality of power but also by inequality of wealth: suppression of wages results in the enrichment of the owners of capital at the expense of the working class. In a socialist society, by contrast, the material needs of all members of society are fully met through equitable distribution of wealth. Community ownership and control of the means of production eliminate economic scarcity, as surplus value is re-invested in a manner intended to increase productivity while simultaneously minimizing the burdens on the working class. The result is a "superabundance of goods" sufficient to meet the needs of all members of society. Such goods are held in common and thus

---

98 Dobb, supra note 19, at 51.
99 See Sandle, supra note 14, at 46.
100 See, e.g., id. at 40–41 (indicating that, in a socialist society, production is "run by society as a whole: for the good of society, according to a social plan").
101 Melkonian, supra note 81, at 118–19.
102 Id. at 119.
103 Id.
104 Id.
106 Sandle, supra note 14, at 46–47; Dobb, supra note 19, at 52.
107 Sandle, supra note 14, at 46–47.
108 Id. at 46.
available to all members of society on the basis of need.109 In this regard, Marxism envisions two stages of socialism: a “lower” or initial phase and a “higher” or perfect phase.110 During the initial phase, workers are compensated in direct proportion to their contributions.111 Once society is perfected, however, individuals will contribute labor according to their ability and draw upon a common supply of goods according to their needs.112

This latter stage of socialist society is, according to Marxist terminology, a communist society, or a society that is perfectly just from both an economic and moral perspective.113 In the words of Dobb, quoting Marx and Engels, “when the productive powers of society ha[ve] been sufficiently developed and the moral standards of society sufficiently raised, [it is] possible to achieve the fuller social equality of ‘from each according to his ability, to each according to his needs.’”114

III. ARE THE PACKERS SOCIALISTS?

An examination of the Packers’ history, ownership, management, operations, and financial condition reveals that, while the community-owned organization reflects the socialist maxim that community welfare should replace private profit motive as the driving force behind enterprise, the Packers depart significantly from the socialist model in other essential ways. In particular, Packers’ shareholders have no meaningful voice in management and no input in day-to-day operations. Moreover, far from having their material needs fully met, Packers’ shareholders derive no tangible benefit as a result of their affiliation with the organization. A history of the development of the Green Bay Packers organization and an analysis of its current legal structure are instructive.

109 Id. at 47.
110 Id. at 44–48.
111 See id. at 44; see also Melkonian, supra note 81, at 116 (“Under socialism, distribution of means of consumption will take place according to the single standard ‘to each according to labor contributed.’”).
112 See Sandle, supra note 14, at 46–47.
113 Melkonian, supra note 81, at 126. This latter stage is realized as a result of the productivity that characterizes the earlier stages of socialist society.
114 Dobb, supra note 19, at 52.
A. The NFL’s Only Community-Owned Franchise

Although the Packers cite 1919 as the date of the team’s founding, the current corporation did not come into existence until January 26, 1935. Since 1935, notwithstanding various amendments to its Articles of Incorporation and bylaws, the corporation has retained its character as a nonprofit-sharing, community-owned entity.

1. Early Years (1919-1922)

Prior to 1935, the Packers first operated as a football team under the sponsorship of a local Green Bay business, the Indian Packing Company, which provided jerseys, equipment, and practice space to the team. Following the sale of the Indian Packing Company to the Acme Packing Company, the Packers joined the American Professional Football Association (APFA), which later became the National Football League (NFL), on August 27, 1921. In 1922, the Packers were expelled from the League when they were caught using college players in a non-league game. The Packers were re-admitted to the league as the Green Bay Football Club later that same year when Curly Lambeau paid the $250 application fee required for reinstatement and, in the process, acquired ownership of the team.

2. The Green Bay Football Corporation (1923-1935)

Financial difficulties plagued the Packers throughout 1922, and, by the end of the season, the team had acquired $3,400 in debt. These difficulties

---

119 Id. at 9. Acme executives John and Emmet Clair paid the $50 fee required to join the league. Id.
120 Id. at 11–12.
121 Id. at 12–13.
122 Id. at 13–15. See also Jonathan Rand, The Year that Changed the Game: The Memorable Months that Shaped Pro Football 25–26 (2008) (explaining how poor attendance at home games frequently led to substantial debt for teams because the home team was required to pay a visitor’s guarantee).
ultimately led the team to incorporate on August 18, 1923.\textsuperscript{123} The newly formed Green Bay Football Corporation—predecessor to the current corporation—was organized as a nonprofit stock corporation under Chapter 86 of the Wisconsin Statutes, which allowed for the formation of a corporation whose purposes were “charitable,” but which had the ability to issue shares of capital stock.\textsuperscript{124} The 1923 Articles of Incorporation authorized the Packers to issue one thousand shares of common stock at $5 per share.\textsuperscript{125} The 1923 Articles further called for the formation of a fifteen-member board of directors made up of shareholders in the corporation, who would in turn appoint a five-member executive committee that would “have charge of the general affairs of the corporation, subject, however, to the control of the Board of Directors.”\textsuperscript{126} Finally, under the 1923 Articles, any earnings of the corporation would be donated to the Sullivan Post of the American Legion in Green Bay, Wisconsin.\textsuperscript{127}

In August of 1923, the Green Bay Football Corporation initiated the first of five stock sales to occur in Packers’ history.\textsuperscript{128} Local businessmen associated with the team personally approached other area businessmen to purchase stock, and a stock coupon published in the \textit{Green Bay Press-Gazette} allowed any member of the public to buy shares.\textsuperscript{129} Shares cost $5 each, paid no dividends, and carried with them the stipulation that any purchaser had to buy at least six season tickets.\textsuperscript{130} For $25, a purchaser could get five shares and a box seat to all home games.\textsuperscript{131} Through the sale of 1,000 shares, the Green Bay Football Corporation raised five thousand dollars.\textsuperscript{132}


Throughout the early 1930s, additional financial crises brought the Green Bay Football Corporation to the brink of bankruptcy.\textsuperscript{133} A 1934 court

\begin{thebibliography}{99}
\bibitem{123} Povletich, supra note 118, at 15; Rand, supra note 122, at 26.
\bibitem{124} Articles of Incorporation of the Green Bay Football Corp. (Aug. 14, 1923) [hereinafter 1923 Articles]; Wis. Stat. § 86.1771 (1921).
\bibitem{125} 1923 Articles art. III.
\bibitem{126} Id. art. IV-V. Article IV further provides that the general officers of the corporation would consist of a president, a vice-president, a secretary, and a treasurer. Id. art. IV.
\bibitem{127} Id. art. IX.
\bibitem{130} Povletich, supra note 118, at 15; Media Guide, supra note 128, at 523.
\bibitem{131} Names, supra note 129, at 97.
\bibitem{132} Media Guide, supra note 128, at 523.
\bibitem{133} See Povletich, supra note 118, at 30–40 (describing the financial difficulties that plagued all NFL teams during the Great Depression and the need for teams to “fill[] every seat in their respective stadiums on game days” in order to survive in the league).
\end{thebibliography}
award of $5,000 in damages to a fan who fell from the stands at a Packers home game resulted in the corporation going into receivership from 1934 to 1937.134

In response to these difficulties, the Packers reincorporated as The Green Bay Packers, Inc. on January 26, 1935.135 The newly formed corporation was organized pursuant to Chapter 180 of the Wisconsin Statutes, which allowed for the formation of a corporation “for any lawful business or purpose whatsoever, except banking, insurance and building or operating public railroads . . . .”136

The Packers’ 1935 Articles of Incorporation authorized the corporation to issue three hundred shares of common stock having no par value.137 The 1935 Articles furthermore expressly stated that the Packers would be a nonprofit-sharing corporation whose only purposes would be charitable, with any profits to be donated to the Sullivan Post of the American Legion.138 The second stock sale in Packers’ history was conducted that same year and raised $15,000 in stock sales and other donations.139

In 1950, the Packers once again needed to raise substantial funds as the team struggled to remain competitive following the 1949 merger of the NFL and the All-American Football Conference.140 At a February 9, 1950 meeting, shareholders voted to amend the Articles of Incorporation to authorize the Packers to issue up to ten thousand shares of common stock.141 Shareholders also approved an amendment limiting the number of shares that an individual or corporation could hold to two hundred to prevent any one shareholder from seizing control of the corporation in the upcoming stock sale.142 Selling shares at $25 each, the Packers raised approximately $118,000 with 4,627 of the authorized 10,000 shares outstanding at the end of the 1950 stock sale.143

136 Wis. Stat. § 180.01 (1933); Articles of Incorporation of the Green Bay Packers, Inc. art. I (Jan. 25, 1935) [hereinafter 1935 Articles].
137 1935 Articles art. III.
138 Id. art. VII (“This corporation shall be non-profit sharing and its purposes shall be exclusively for charitable purposes, the profits, if any, to be donated to the Sullivan Post of the American Legion, or other war veterans’ organizations, the stockholders not to receive any dividend or pecuniary profit.”).
139 Media Guide, supra note 128, at 523 (describing how then president Lee Joannes raised fifteen thousand dollars in a “Save the Packers” stock drive by “getting donations from firefighters, policemen, high school students, housewives, civic leaders and other citizens”).
140 See 1997 Offering Document, supra note 117, at 2 (describing the Packers’ need in 1950 to raise funds to ensure the team’s “long-term ability to remain a member of the NFL”); Povletich, supra note 118, at 81 (indicating that the Packers had to raise $120,000 to remain a viable member of the new league); Rand, supra note 122, at 26 (discussing the Packers’ inability to compete financially for top players in the new league).
142 Povletich, supra note 118, at 82; Green Bay Sets Limit on Stock, supra note 141, at 11.
The next significant changes to the Packers’ Articles of Incorporation did not occur for forty-seven years, when the Packers faced low cash reserves and an impending need to renovate their stadium in order to remain competitive in the NFL. With plans to initiate its first stock sale since 1950, the corporation held a special shareholders meeting on November 13, 1997. At the meeting, shareholders approved an amendment to the Articles of Incorporation authorizing the Packers to issue up to ten million shares of common stock. Shareholders also approved a 1000-for-1 split of the 4,627 shares outstanding at that time, resulting in a total of 4,627,000 outstanding shares. To accommodate this split, the Packers’ bylaws were also amended to allow a single shareholder to own up to 200,000 shares of the newly split stock; however, the amended bylaws continued to restrict the corporation from issuing more than two hundred shares to any single shareholder in any subsequent offering. At the same meeting, the Articles of Incorporation were further amended to require approval by a seventy percent vote for the corporation to issue more than one million of the newly authorized shares in any subsequent offering, and to change the corporation’s beneficiary in the event of dissolution from the Sullivan Post of the American Legion to the Green Bay Packers Foundation, Inc. In addition to these more substantial changes, the corporation also changed its name from The Green Bay Packers, Inc., to its current form—Green Bay Packers, Inc.

B. Community Welfare as the Packers’ Ultimate Goal

The Packers’ current Articles of Incorporation prohibit payment of dividends to shareholders; consequently, any net income is either re-invested into the organization or donated to charitable causes. While the Packers’ recent

144 See Povletich, supra note 118, at 267–68 (describing how, by 1997, Lambeau Field was the fifth smallest stadium in the NFL and the Packers had cash reserves of $25 million with more than $19 million of that committed to signing bonuses for just three players); see also Cliff Christl, Stock Sale Is Critical, Packers Say, Milwaukee J. Sentinel (Nov. 8, 1997), http://www3.jsonline.com/packer/sbxxiic/news/stock11897.stm; Bob McGinn, Tagliabue OKs Packers Stock Sale, Current Shareholders Must Approve the Offering, Which Is Tentatively 400,000 Shares at $200 Each, Milwaukee J. Sentinel, Oct. 11, 1997, [hereinafter McGinn, Tagliabue OKs], available at Proquest, Doc. No. 260626773.
146 Id.
147 Id. (indicating that “any stockholder who currently owns 200,000 shares of Common Stock may not purchase any 1997 shares” and that the corporation “may not sell more than 200 of the 1997 shares” to any one purchaser); see also Bylaws of the Green Bay Packers, Inc. art. VI, § 5 (Aug. 19, 1998).
148 1997 Offering Document, supra note 117, at 7; McGinn, Tagliabue OKs, supra note 144.
149 See Wis. Dep’t. of Fin. Insts., supra note 116.
financial history suggests that the corporation’s investments in the team far outstrip its charitable contributions, private profit motive nonetheless remains absent from the organization’s operations. Rather, community welfare—whether achieved through charitable donations or through operation of a successful NFL franchise within the community—continues to be the ultimate goal of the organization’s operations. In this respect, the Packers reflect the socialist maxim that community welfare rather than private profit motive should drive enterprise.

1. Green Bay Packers, Inc.

Under its current Articles of Incorporation, the Packers are organized as a domestic business that is nonprofit-sharing and authorized to issue up to ten million shares of common stock having no par value. The Packers’ bylaws provide that shareholders in the corporation have voting rights to elect the Board of Directors, which in turn must appoint an Executive Committee and a Committee on Directors Affairs.

a. Business Corporation

Article I of the Packers’ Articles of Incorporation states that the corporation is organized as a domestic business pursuant to Chapter 180 of the Wisconsin Statutes. In general, Chapter 180 defines a “corporation” as “a corporation for profit that is not a foreign corporation and that is incorporated under or subject to this chapter.” Chapter 181, by contrast, governs non-stock corporations including most nonprofit corporations. However, because Chapter 181 did not exist when the Packers originally incorporated in 1935, the Packers fall within a “grandfather clause” of Chapter 180. Specifically, Chapter 180 states that a “corporation” may include, “to the extent provided under Section 180.1703, a corporation with capital stock but not organized for profit.” Section 180.1703 provides, in turn, that Chapter 180 applies to “[a]ny domestic corporation with capital stock but not organized for profit that was

151 Restated Articles of Incorporation of Green Bay Packers, Inc. art. I, III, VI (May 30, 2007) [hereinafter Restated Articles].
153 Restated Articles, supra note 151, art. I.
155 Id.
157 Wis. Stat. § 180.0103(5).
organized before July 1, 1953, under the general corporation laws or any special state statute or law of this state and that has not elected to be subject to ch. 181.

b. Nonprofit-Sharing

Articles I and VI of the Packers' Articles of Incorporation define the corporation as a nonprofit-sharing entity whose primary purposes are charitable. The Articles describe the corporation as "a community project intended to promote community welfare," whose "purposes shall be exclusively charitable." "[I]ncidental to its purposes, [the corporation has] the right to conduct athletic contests, operate a football team, or such other similar projects for the purpose of carrying out its charitable purposes . . ." Any profits must be donated to the Green Bay Packers Foundation, Inc. or any local charitable institution. In the event of dissolution of the corporation, "the undivided profits and assets of the Green Bay Packers, Inc. shall go to the Green Bay Packers Foundation for distribution to community programs, charitable causes, and such other similar causes to which the Foundation deems appropriate." Notwithstanding these provisions, the Packers' Board of Directors may create and maintain a capital reserve "to provide for the acquisition and maintenance of its plant, equipment and players . . ." While the Packers are exempt for Wisconsin tax purposes, the corporation is not a charitable organization under Section 501(c)(3) of the United States Internal Revenue Code and is therefore subject to federal and other states' taxes.

158 Id. § 180.1703(2).
159 Restated Articles, supra note 151, art. I, VI.
160 Id. art. I.
161 Id.
162 Id. art. VI.
163 Id.
164 Id. art. VII.
2. Financial Condition

The Packers’ recent financial history is marked by two stock sales, which occurred in 1997 and 2011, and which raised a combined total of more than $90 million. The NFL mandates that the revenue from these sales be limited to use for stadium renovations, and stock sale revenue is not included in the Packers’ annual financial statements. While the Packers have consistently reported record revenue levels in recent years, the corporation’s net income levels have fluctuated in both directions dependent largely on player costs. Because the Packers do not pay dividends to shareholders, any profits are reinvested in the organization or donated to various charitable causes.

a. Recent Stock Sales

The first of the Packers’ recent stock sales began in mid-November of 1997 and continued for seventeen weeks into early 1998. The Packers initially offered 400,000 shares at $200 each but reserved the right to offer up to one million shares. Final sales totaled 120,000 shares—raising approximately $24

166 Mike Spofford, Stock Sale Closes; Shares Top 268,000, Packers.com (March 1, 2012), http://www.packers.com/news-and-events/article_spofford/article-1/Stock-sale-closes-shares-top-268000/19d9b0a8-84ce-497b-b5ac-73f6c72fd973 [hereinafter Spofford, Stock Sale].
168 See, e.g., Daniel Kaplan, Green Bay Packers Record Profit of $54.3 Million, Up 26 Percent, Sports Business Daily (July 16, 2013), http://www.sportsbusinessdaily.com/SB-Blogs/On-The-Ground/2013/07/Packers.aspx [hereinafter Kaplan, Green Bay Packers] (indicating that, in 2013, the Packers reported record profits due, in large part, to increased team revenue and decreased player costs).
million. The second of the Packers' recent stock sales began in December 2011 and continued for twelve weeks into February 2012. The Packers initially offered 250,000 shares at $250 each, reserving the right to issue up to 880,000 shares. Following the sale of 185,000 shares during the first two days of the offering, the corporation increased the size of the offering to 280,000 shares on December 27, 2011. Final sales totaled approximately 268,000 shares—raising $67 million.

The purpose of both the 1997 and 2011 stock offerings was to raise revenue for a segregated reserve fund for stadium and other capital improvements. The Packers had originally proposed to use proceeds from the 1997 sale to augment the team's cash reserves for player costs, but later restricted the use of proceeds to capital improvements at the insistence of the NFL Commissioner, whose approval was required to initiate the stock sale. Accordingly, the offering document for each sale expressly states:

Withdrawals from [the Corporation's segregated capital improvements fund] may be used only for stadium or other capital improvements and will be subject to NFL oversight. Proceeds from this Offering will not be commingled with the general cash balances of the Corporation or used to pay ordinary operating expenses of the Corporation.

Nonetheless, by providing another source of revenue for capital improvements, the Packers' recent stock sales enabled the team to stockpile additional cash reserves and thus spend more on player costs: in the twelve years prior to the 1997 stock sale, for example, the Packers had spent $50 million on

---

173 Media Guide, supra note 128, at 524; Spofford, Stock Sale, supra note 166.
176 Spofford, Stock Sale, supra note 166.
177 2011 Offering Document, supra note 172, at 3 (stating that the offering's purpose was "to augment the segregated reserve fund of the Corporation for stadium improvements and other capital improvements"); 1997 Offering Document, supra note 117, at 3 (stating that the 1997 offering's purpose was "to establish a segregated reserve fund of the Corporation for future stadium improvements and other capital improvements").
178 Christl, supra note 144 (indicating that the Commissioner "stipulated that the money raised through the stock drive must be used for capital improvements, not for player salaries and signing bonuses"); Bob McGinn, Packed Crowd Hears Packers Stock Plan, Milwaukee J. Sentinel, May 28, 1997, at 3A, available at, https://news.google.com/newspapers?nid=1683&dat=19970529&id=nTEqAAAAIBAJ&sjid=Jy4EAAAAYAAJ&pg=1557,7373390&hl=en (suggesting that the Packers had initially planned to use proceeds from the stock sale to meet player costs).
facilities upgrades, reducing their cash reserves to $25 million.\textsuperscript{180}

b. Revenue

Apart from recent stock sales, the Packers’ revenue sources can be divided roughly into two categories: sources subject to the NFL’s revenue-sharing rules and retained revenue that is not shared among the league’s thirty-two teams.\textsuperscript{181} Under the NFL’s current revenue-sharing system, more than half of all league revenue is shared equally.\textsuperscript{182} National revenue sources—including national media, sponsorship, and licensing deals—comprise the large majority of this shared revenue.\textsuperscript{183} The other major component of shared revenue is gate receipts: Under the NFL Constitution, each team pays to the NFL forty percent of gross ticket sale receipts.\textsuperscript{184} Retained revenue, by contrast, is comprised primarily of local revenue sources, including revenue from stadium sponsorships, luxury box sales, concessions, stadium pro shop sales, and local media contracts.\textsuperscript{185} For all NFL teams, shared revenue constitutes a significant percentage of total revenue: The most recently available numbers indicate that, for the 2012–13 season, each team received $180 million in shared revenue.\textsuperscript{186}

In addition to revenue that is shared equally among the league’s thirty-two teams, the NFL has maintained a supplemental revenue sharing fund (SRS) since the 1990s, which is intended to further assist teams at the bottom half of the NFL’s revenue-generating rankings.\textsuperscript{187} Each year, the top fifteen NFL teams in terms of total revenue are required to contribute a certain percentage of their revenue to the SRS;\textsuperscript{188} on the other side of the equation, teams whose revenue

\textsuperscript{180} Christi, supra note 144.  
\textsuperscript{181} Legis. Audit Bureau, supra note 165, at 8–9.  
\textsuperscript{184} Clay Moorehead, Revenue Sharing and the Salary Cap in the NFL: Perfecting the Balance between NFL Socialism and Unrestrained Free-Trade, in The Business of Sports 163–64 (Scott Rosner & Kenneth Shropshire eds., 2011); Constitution and Bylaws of the National Football League, supra note 8, art. XIX, § 19.1(A).  
\textsuperscript{186} Badenhausen, supra note 183.  
\textsuperscript{187} Kaplan, Change, supra note 182.  
\textsuperscript{188} See Mike Spofford, Packers’ Finances on Solid Ground, Packers.com (June 21, 2008), http://www.packers.com/news-and-events/article-1/Packers-Finances-On-Solid-Ground/94a8290b-5aa4-11df-a3b6-526cc843f916 [hereinafter Spofford, Packers Finances].
falls below a certain level qualify to receive payments out of the SRS. The SRS is intended to narrow the gap between the highest and lowest revenue-generating teams—thus promoting competitive balance within the league.

The Packers' major shared revenue sources include the sale of national broadcasting rights, ticket sales, and the issuing of licenses for and commissions on the sale of NFL merchandise. Local revenue sources include local television and radio broadcasting rights for games not broadcast nationally; marketing deals (for example, the sale of advertising space on the Jumbotron at Lambeau Field and corporate sponsorships); Packers Pro Shop sales; suite and club seat premiums; investment income, such as the income derived from investing stock sale proceeds; and other miscellaneous sources such as concessions, parking, souvenir sales, and the like.

Prior to the major renovation of Lambeau Field from 2001 to 2003, the Packers' local (unshared) revenue remained consistently below the NFL average, while the team's player costs rose along with the rest of the league. This discrepancy in local revenue was a major factor in the Packers' push to renovate Lambeau Field. A 1999 report from the Wisconsin Legislative Audit Bureau indicated that, "in the absence of additional local revenue, the Packers project that their revenue ranking among all NFL franchises will decline from 15th in their current fiscal year to nearly last by FY 2003-04, in part because other teams are making increasing use of local revenues generated by new or renovated stadiums." In 2001, this prediction appeared accurate, as the Packers dropped to eighteenth among NFL teams in total revenue rankings.

Following completion of the 2001-03 stadium renovations, the Packers "vaulted" into the "upper half of NFL teams by local revenue." In 2012, the Packers reported record local revenue of more than $130 million.
local revenue totaled more than $128 million. The Packers' total revenue ranking within the NFL has risen accordingly: After falling to twentieth in the league in total revenue in 2002, the Packers rose to tenth among all NFL teams in 2003. The Packers remained at tenth in the league in 2004 and 2005 before reaching a team-record ranking of seventh among NFL teams in 2006. From 2003 to 2013, the Packers have consistently ranked among the top fifteen NFL teams in terms of total revenue. In 2012, the Packers' total revenue reached $302 million, and in 2013, the Packers generated more than $308 million in total revenue. Most recently, the Packers recorded a record $324 million in total revenue in 2014.

c. Expenses

The Packers’ main expenses include player costs, administrative expenses, game expenses, federal income taxes, and interest expenses. Of these, player costs—which include player salaries as well as all other costs associated with players—have historically been the most significant expense for the team. The Packers have also repeatedly indicated that they exercise the

---

198 Daniel Kaplan, Green Bay Packers, supra note 168.
202 For an overview of the Packers' financial information from 2006 to 2013, including total revenue rankings for each year, see infra Appendix A.
203 Kaplan, Green Bay Packers, supra note 168.
205 Legis. Audit Bureau, supra note 165, at 10.
least control over this particular expense.\textsuperscript{207} Rather, player costs have generally tracked the steady rise in the NFL salary cap. Since the salary cap was first instituted in 1994, cap levels have increased from $34.6 million to the recently set $133 million cap for 2014.\textsuperscript{208} By comparison, in 1994, Packers' player costs totaled approximately $42 million; in 2013, player costs totaled $136 million.\textsuperscript{209}

d. Operating and Net Income

In recent years, although the Packers have consistently generated record revenue, operating and net income levels have fluctuated significantly in both directions.\textsuperscript{210} In 2009, the Packers’ total franchise revenue reached a record $247.9 million, but net income totaled only $4 million as a result of a nearly $15 million increase in player costs and other team expenses, as well as $16 million in investment losses during the economic downturn.\textsuperscript{211} The Packers reported

\textsuperscript{207} Legis. Audit Bureau, supra note 165, at 15 ("Packers officials believe that expenses cannot be significantly limited in the future because player costs are market-driven and subject to collective bargaining agreements."); Don Walker, Franchise Dealing with a Little Less Green, Milwaukee J. Sentinel (June 23, 2009), http://www.jsonline.com/sports/packers/48921342.html [hereinafter Walker, Franchise Dealing] (quoting then general counsel for the Packers Jason Wied, who indicated that the Packers “have control over much of the franchise’s operating expenses,” but “[t]he area we don’t have direct systematic control over is player costs”).


\textsuperscript{209} See Legis. Audit Bureau, supra note 165, at 10 (setting Packers’ player costs for fiscal year 1994–95 at $41,999,000); Kaplan, Green Bay Packers, supra note 168 (setting player costs for fiscal year 2013–14 at $136 million). For an overview of Packers’ player costs since 2006, see infra Appendix A. For an estimate of Packers’ player salaries relative to the NFL salary cap since 2000, see infra Appendix B.


\textsuperscript{211} Walker, Franchise Dealing, supra note 207.
similar numbers in 2010: a record $258 million in revenue but also a record $248 million in expenses, for a net income of $5.2 million.\textsuperscript{212} Notably, player costs accounted for $161 million of the Packers expenses in 2010, an increase of $22 million from the previous year.\textsuperscript{213} In 2011, by contrast, the Packers’ net income more than tripled to $17.1 million due primarily to investment gains but also increased local revenue generated by apparel sales and stadium visits in the wake of the Packers’ Super Bowl victory.\textsuperscript{214} The Packers reported record net income in both 2012 and 2013: $42.7 million in 2012 and $43.1 million in 2013.\textsuperscript{215} In 2012, Packers executives attributed approximately two-thirds of these gains to increased revenue and one-third to reduced expenses.\textsuperscript{216} Likewise, in 2013, total revenue hit a record $308.1 million, while player expenses declined from $155 million to $136 million due primarily to the timing of new contracts for certain key players.\textsuperscript{217} In both 2012 and 2013, the Packers also set records for profits from operations, bringing in $43 million in 2012 and $54.3 million in 2013.\textsuperscript{218} In 2014, however, the Packers’ profits from operations dropped sharply to $25.6 million, despite a record $324 million in total revenue.\textsuperscript{219} Packers’ executives attributed this decline in profits to an increase in player costs due to the timing of contract extensions for both Aaron Rodgers and Clay Matthews.\textsuperscript{220}

Because the Packers do not pay dividends to shareholders, any net income is placed in the corporation’s reserve fund, re-invested in the organization, or donated to charitable causes.\textsuperscript{221} The Packers’ reserve fund has grown substantially over the past decade.\textsuperscript{222} In 2003, the fund, which the Packers describe as “a safety net for a publicly owned team without a billionaire owner,” stood at $58 million.\textsuperscript{223} Financial success during fiscal year 2003–04
enabled the Packers to increase the fund to $84.5 million. Renamed the "Packers Franchise Preservation Fund" in 2005, the reserve fund continued to grow through 2007, when the Packers added $10 million to the fund—bringing it to $125.5 million. After increasing to $127.5 million in 2008, reserve fund levels remained stagnant for several years. However, in 2012, the Packers reported reserve fund levels at $246 million, with the fund increasing to $254 million by 2013.

In terms of re-investing the corporation’s net income, the Packers’ recent efforts have focused heavily on continued stadium renovations and real estate purchases. The Packers’ record 2012 gains were put toward a $143 million stadium expansion that increased the seating capacity of Lambeau Field by 7,000 seats. Since 2006, the Packers have also made significant investments in real estate surrounding Lambeau Field, spending as much as $25 million on properties as of 2010. In 2010, Packers' President and CEO Mark Murphy indicated that, “while [the corporation’s reserve fund] remains important to the Packers’ long term needs, the franchise is now looking to real estate development on land it controls west of the stadium.” Specifically, the Packers have acquired approximately twenty-eight acres with plans to develop a “multi-jurisdictional sports and entertainment district” known as the “Titletown District.” Although much of this land remains undeveloped as of December 2013, a multi-use baseball stadium, a new indoor practice facility, and a hotel are among the projects that the Packers have considered. One development project that the Packers have undertaken is the completion of a 100,000-square-
foot building that now houses Cabela's, a national outdoor gear and equipment retail chain. The Packers consider this building to be the "first phase" of the Titletown District development.235 The Packers have also acquired properties on which existing businesses are located, and these businesses now pay rent to the Packers.236 Similar to stadium renovations, the planned Titletown District is intended to increase local, unshared revenue for the Packers.237 However, the Packers also cite a desire to generate economic development for the community among their goals in developing these properties and have indicated that they will encourage "public comment" on any master plan for the area that the Packers eventually develop.238

Finally, in terms of charitable contributions, the primary vehicle for the Packers' efforts is the Green Bay Packers Foundation, Inc.239 The Foundation was established in 1986 by then Packers President Judge Robert J. Parins to facilitate the Packers' charitable efforts.240 Currently, the Foundation’s endowment stands at just under $20 million, following the addition of $5 million in 2014.241 The Foundation awards numerous small grants to local and regional nonprofit organizations.242 To date, the Foundation has distributed approximately $3.7 million in grants, including $750,000 on December 17, 2013.243 A significant portion of the money that the Foundation distributes stays within the local community: In 2013, 55 of the 188 organizations that received grants were located in Brown County, and these organizations received a total of $142,050.244 However, the Packers estimate that, in recent years, the team has an overall annual "charity impact" on Brown County of anywhere between $4 million and $6 million.245 Included in this estimate are "personal appearances, donations of signed memorabilia, cash donations, volunteer time, organizing fund raising events, grants from the Green Bay Packers Foundation and

236 DeLong, supra note 233 (citing Pomp’s Tires, Sideline Sports Bar, and Kmart as businesses already in place when the Packers purchased the properties).
237 Walter & Ryman, supra note 232.
238 Id.
240 Id.
241 Spofford, Revenue Up, supra note 204
244 Packers Foundation, supra note 239.
245 See AECOM, Economic Impact Study of the Green Bay Packers and the Redeveloped Lambeau Field 9, 82 (2010), available at http://www.packers.com/assets/docs/2010economic_impact_report.pdf (indicating that the Packers had a "charity impact" of more than $4 million in 2008); Spofford, Revenue Up, supra note 204 (noting that, as of 2014, "the organization’s overall community impact remains at roughly $6 million annually").
individual players’ foundations, and participating in other outreach programs through various community organizations and the NFL.246

3. The Absence of Private Profit Motive

When compared with the even the most generous estimate of the Packers’ charitable impact on the community in a given year (as opposed to the Packers’ actual charitable expenditures), the organization’s $254 million reserve fund and $25 million investment in real estate would seem to belie any claim that the Packers privilege community welfare over profitability. The Packers’ plans for development in the area immediately surrounding Lambeau Field appear to further illustrate this dynamic. While the organization has expressed a desire to solicit public commentary and work with the local community in creating its planned Titletown District, the Packers retain ultimate decision-making authority, and increasing local revenue for the corporation remains the primary goal of any development. However, while private profit motive appears to drive operations, the Packers’ Articles of Incorporation ensure that community welfare remains the corporation’s ultimate goal.

In this respect, it is important to note that charitable contributions are only one mechanism for promoting community welfare that the Packers’ Articles of Incorporation identify. Operation of a successful NFL franchise within the community is not only expressly permissible under the Packers’ Articles of Incorporation as a means of “carrying out [the corporation’s] charitable purposes,” but also entirely consistent with the corporation’s emphasis on profitability—provided that any profit is re-invested in the team rather than distributed to shareholders.247 Because the Packers’ Articles of Incorporation

246 AECOM, supra note 245, at 9.
247 Beyond recognizing that any profits must either be donated to charitable causes or re-invested in the team, some also suggest that the organization directly sacrifices profitability for community welfare in certain areas of its operations. For example, former Packers Vice President Jason Weid noted that the Packers “could probably double home game revenue” by increasing ticket prices, but that the organization chooses not to do so out of consideration for the team’s “blue-collar base.” See Karl Taro Greenfield, Packers Win on the Field and in the Boardroom, Bloomberg Businessweek (Oct. 23, 2011), http://www.nbcnews.com/id/44992436/ns/business-us_business/t/packers-win-field-boardroom/#.UuJNBayhSW; see also Matuszewksi, supra note 219 (noting that the Packers rank seventeenth among NFL teams in terms of ticket prices). Although Weid went on to suggest that the Packers occasionally “make decisions that may not be in our best interest but are in the best interests of the community,” even Packers’ President Mark Murphy has acknowledged that fielding a successful football team always takes priority: “We structure the organization in a way that we can be successful on the field. But a big part of it is also remembering that this team has a special place in this community. We’re owned by this community. We can’t be perceived as gouging the fans.” Id. In this respect, the Packers are probably more accurately described as balancing profit maximization with the team’s community relations rather than sacrificing profitability for community welfare. See id. (noting that the Packers “must constantly walk that fine line between profitability and community”).
expressly prohibit the payment of dividends to shareholders, the totality of the Packers' admittedly substantial profits is necessarily devoted to community welfare, whether directly through charitable contributions or indirectly through investments intended to sustain a successful NFL franchise within the community. Consistent with the socialist model for enterprise, private profit motive remains entirely absent from the Packers' operations. Indeed, one hallmark of a socialist enterprise is the re-investment of profits into the enterprise to increase the overall benefit to the community. Thus, despite the Packers' overwhelming focus on increasing revenue and minimizing expenses, the corporation reflects the socialist maxim that community welfare should replace private profit motive as the driving force behind enterprise.

C. Packers Shareholders Have Virtually No Say in How the Organization is Run

The Packers' corporate structure vests control of the organization's business and affairs in a Board of Directors that is elected by shareholders; the Board, in turn, appoints a seven-member Executive Committee that exercises the Board's management power when the Board is not in session. Front office personnel hired by the Packers' President and Chief Executive Officer manage the corporation's day-to-day operations. Within this structure, shareholders have minimal input into the organization's management and no input in the organization's day-to-day-operations.

1. Management

The Packers' bylaws provide that a Board of Directors elected by the corporation's shareholders shall manage "the business and affairs of the corporation." Directors are divided into three classes, with one class up for re-election at each annual shareholders meeting; vacancies that occur on the board may be (but do not have to be) filled prior to the annual shareholders meeting by a majority vote of the remaining board members. The board must be comprised of at least forty-five members, with between five and fifteen of those members being residents of Brown County. No individual may serve as a member of the Board of Directors past his or her seventieth birthday, though individuals who no longer qualify as active directors may serve as a (non-voting)

---

249 Id. art. III, §§ 2, 9.
250 Id. art. III, § 2.
director emeritus at the discretion of the board. Board members are required to meet four times per year—including an annual director’s meeting—and either the President of the corporation or any fifteen members of the board may call a special meeting at any time.

The Packers’ bylaws further require that the Board of Directors elect a seven-person Executive Committee from among the board’s own members, as well as a Committee on Directors Affairs. The board may (but is not required to) create additional committees comprised of at least two members each. These committees include, but are not limited to, the Investment, Personnel and Compensation, Green Bay Packers Foundation, Audit, and Corporate Marketing committees. In general, members of any of the committees that the board creates serve at the pleasure of, and for a period of time determined by, the board. Moreover, the board may—with certain exceptions—delegate any of its own authority to these committees.

Under Article III of the Packers’ bylaws, the Board of Directors must appoint a seven-member Executive Committee consisting of a President, Vice President, Treasurer, Secretary, and three other board members. The Executive Committee “shall have and may exercise, when the Board is not in session, the powers of the Board in the management of the business and affairs of the corporation . . . .” More specifically, the Executive Committee “directs corporate management, approves major capital expenditures, establishes broad policy and monitors management’s performance in conducting the business and affairs of the corporation.”

The President of the Executive Committee is the only committee member to receive a salary; all other members are unpaid. The President “in
general supervise[s] and control[s] all of the business and affairs of the corporation” subject to the oversight of the Board of Directors. Although the Board of Directors ultimately votes to select the President of the Executive Committee, responsibility for the search process has been concentrated primarily in the Executive Committee itself, at least in recent years. For example, following the resignation of former President and CEO John Jones in 2007, a search committee comprised of the remaining six members of the Executive Committee and five members of the Board of Directors worked with an executive search firm to conduct the hiring process. While the board received updates from the search committee at its quarterly meetings, the board at large was not privy to the names of the candidates that the search committee interviewed.

The Vice President of the Executive Committee performs the duties of the President in the President’s absence, as well as any other duties that the President or Board of Directors may assign. The Secretary keeps the minutes of the shareholders, Board of Directors, and Executive Committee meetings, and is further responsible for maintaining shareholder records. Finally, the Treasurer is responsible “for all assets, funds and investments of the corporation.”

Under Article III of the Packers’ bylaws, the Board of Directors—acting in conjunction with the Executive Committee—is also required to appoint a Committee on Directors Affairs. The Directors Affairs Committee conducts a performance review of the Board of Directors at the end of each fiscal year. The Committee also has primary responsibility for identifying candidates for nomination to the Board of Directors.
Under Article VI of the Packers’ Articles of Incorporation, shareholders receive no benefit, monetary or otherwise, as a consequence of being a shareholder.\textsuperscript{272} Accordingly, as the 2011 Common Stock Offering Document states, “common stock does not constitute an investment in ‘stock’ in the common sense of the term.”\textsuperscript{273} Rather, the document explains, “the best characterization of a purchase of Common Stock is that it represents a contribution to the capital of the Corporation that will . . . entitle the purchaser of Common Stock to receive a Common Stock Certificate evidencing the purchase and to vote at the Corporation’s annual meeting . . . .”\textsuperscript{274} The Packers’ bylaws provide that each outstanding share of stock is entitled to one vote “upon each matter submitted to a vote at a meeting of shareholders . . . .”\textsuperscript{275} Two types of shareholder meetings can occur under the bylaws: the annual shareholders meeting (which must take place after the first Monday in March but before the last Monday in July) and special shareholders meetings—which can be called for any purpose by the President of the Corporation, the Board of Directors, or one-third of all shareholders entitled to vote.\textsuperscript{276}

Article XI of the Packers’ bylaws establishes the order of business for the annual shareholders meeting, with the most significant matter being the election of members to the Board of Directors.\textsuperscript{277} Nominations for the Board of Directors can be made in three ways: in the notice of the shareholders meeting given by the Board of Directors; at the shareholders meeting at the direction of the President or the Chairman of the Board; or at the request of any shareholder entitled to vote at the meeting.\textsuperscript{278} Directors are elected by a plurality of votes

\textsuperscript{272} Restated Articles, supra note 151, art. VI (stating that “no stockholder shall receive any dividend, pecuniary profit or emolument by virtue of his being a stockholder”).
\textsuperscript{273} 2011 Offering Document, supra note 172, at 4.
\textsuperscript{274} Id.
\textsuperscript{276} Id. art. II, §§ 1–2.
\textsuperscript{277} Id. art. XI, § 2.
\textsuperscript{278} Id. art. VII, § 1. The procedure for a shareholder to nominate a candidate for the Board of Directors is fairly elaborate. See id. art. VII, § 3. The bylaws require written notice to the Secretary of the corporation in advance of the meeting detailing, at a minimum, the following information: (a) the name, age, business and residence addresses of each nominee, and the principal occupation or employment of each nominee during the past five (5) years; (b) a description of any legal proceedings during the past five (5) years that would be material to an evaluation of the ability or integrity of any person nominated to become a Director; (c) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the stockholder; (d) the written consent of each nominee to serve as a Director of the corporation if so elected; (e) the name and address of the stockholder intending to make the nomination; (f) the number of shares of the stock of the corporation held; either personally or in concert with others, by the stockholder; and (g) a representation that the stockholder is a holder of stock of the corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to make such
Shareholders also vote on proposed amendments to the bylaws, which require a majority vote. A two-thirds majority of shareholders is required to amend the Articles of Incorporation, for certain mergers or share exchanges, and for the sale or dissolution of the corporation.

Although those individuals who purchased stock in the 1997 and 2011 offerings thus “have a voice in the Corporation’s governance,” their influence is, by the Packers’ own admission, “extremely limited.” This is due to the large number of shares outstanding prior to the 1997 and 2011 stock sales, in combination with the various ownership restrictions that the Packers’ Articles of Incorporation impose. Specifically, following the 1997 1000-for-1 split of the corporation’s 4,627 outstanding shares, but prior to the 1997 stock sale, the corporation had 4,627,000 shares outstanding. After the 2011 stock sale, the corporation had approximately five million shares outstanding. Accordingly, owners of the original shares hold more than ninety per cent of the total number of outstanding shares. As the 2011 Common Stock Offering Document states, these original shareholders thus “collectively hold a sufficient number of votes to elect the members of the Corporation’s Board of Directors, approve (or block approval of) future amendments to the articles of incorporation and approve (or block approval of) certain issuances of Common Stock.” Because the Packers’ bylaws prohibit the sale of more than two hundred split shares to any single owner in any subsequent offering, “the influence of any single purchaser nomination.

Id. art. XII, § 11.

Id. art. XII.

2011 Offering Document, supra note 172, at 8. For example, following NFL approval of the Packers’ plan to conduct its first stock sale since 1950, the Packers called a special shareholders meeting on November 13, 1997, to obtain shareholder approval of the plan, as well as approval of a proposed amendment to the Articles of Incorporation changing the corporation’s beneficiary from the Sullivan Post of the American Legion to the Green Bay Packers Foundation, Inc. McGinn, Tagliabue OKs, supra note 144.

See 2011 Offering Document, supra note 172, at 5.

Id.

2011 Offering Document, supra note 172, at 5.


2011 Offering Document, supra note 172, at 5. To accommodate the 1997 1000-for-1 stock split, the Packers’ bylaws were amended to allow a single shareholder to own up to 200,000 shares of the newly split stock; however, the amended bylaws continue to restrict the corporation from issuing more than 200 shares to any single shareholder in any subsequent offering. See 1997 Offering Document, supra note 117, at 7; Bylaws of the Green Bay Packers, Inc., supra note 148, art. VI, § 5. The 2011 Common Stock Offering Document indicates that two shareholders currently own the maximum 200,000 shares. 2011 Offering Document, supra note 172, at 8. While the Packers have declined requests to provide a list of shareholders, sources with access to shareholder information indicate that Emil Fischer Jr. (son of former Packers President Emil Fischer Senior) and Miller Brewing Co. each hold the maximum 200,000 shares. Christl, supra note 144.
of Offered Shares is extremely limited.\footnote{\textsuperscript{288}}

2. Operations

While the Packers’ Articles of Incorporation provide that the Board of Directors manages the business and affairs of the corporation, the Packers’ day-to-day operations are managed by front-office personnel who can be divided into two broad categories: administration and football operations.\footnote{\textsuperscript{289}} The specific structure of the Packers’ front office is, in large part, a result of a recent reorganization of the Packers’ overall management structure, which Mark Murphy undertook shortly after taking over as President and CEO of the corporation in 2008.\footnote{\textsuperscript{290}} Specifically, in response to growth within the organization, Murphy created a senior-leadership staff to provide broad oversight of the corporation’s administration, finance, football operations, and sales and marketing departments.\footnote{\textsuperscript{291}}

a. Administration

Key members of the Packers’ administration include the corporation’s President and CEO; the Vice President of Finance and Administration; the Vice President of Sales and Marketing; and the Vice President and General Counsel.\footnote{\textsuperscript{292}} Collectively, these positions oversee the Packers’ Finance, Human Resources, Public Relations, Media Group and Branding, Marketing, IT, Community Outreach, Pro Shop, Stadium Services, Ticketing, Facilities and Fields, and Security departments.\footnote{\textsuperscript{293}} The Packers’ bylaws provide that the President of the corporation’s Executive Committee will also serve as the CEO of the corporation and “shall in general supervise and control all of the business and affairs of the corporation,” subject to the control of the Board of Directors.\footnote{\textsuperscript{294}} The President and CEO has authority over all other employees of the corporation, including the power to appoint, remove, fix compensation for, and

\footnote{\textsuperscript{288}} Id.
\footnote{\textsuperscript{290}} See Green Bay Packers: Mark Murphy, Packers.com, http://www.packers.com/team/staff/mark-murphy1e6572d2-1c9e-496e-8743-9a153333ed42 (last visited Jan. 29, 2014) (outlining Murphy’s initiative to update the organization’s strategic plan and restructure the organization’s management).
\footnote{\textsuperscript{291}} Id.
\footnote{\textsuperscript{292}} See Front Office, supra note 289.
\footnote{\textsuperscript{293}} See id.
\footnote{\textsuperscript{294}} Bylaws of the Green Bay Packers, Inc., supra note 148, art. IV, § 5.}
delegate authority and responsibilities to such employees.\textsuperscript{295} At the NFL level, the President and CEO serves as the Packers' representative at all owners' meetings.\textsuperscript{296} Despite the extent of authority concentrated in the Packers' President and CEO, the Board of Directors remains a meaningful presence within the organization. Current President and CEO Mark Murphy has noted, for example, that decision-making within the organization is generally a slower and thus more conservative process because "[y]ou've got a board structure to work through, whereas if you had a single owner, you could go to the owner for a decision."\textsuperscript{297}

The Vice President of Finance and Administration oversees the day-to-day operations of the corporation's Finance, Facilities, and IT departments.\textsuperscript{298} With regard to the corporation's Executive and other committees, the VP of Finance and Administration works closely with the Treasurer, the Audit and Investment committees, and the Brown County Stadium District in overseeing the audit process.\textsuperscript{299} At the NFL level, the VP of Finance and Administration represents the Packers on economic issues.\textsuperscript{300} The Vice President of Sales and Marketing supervises all of the corporation's revenue-generating operations.\textsuperscript{301} These include marketing, the Packers Pro Shop, ticketing, food and beverage operations, premium seating sales and services, Packers Hall of Fame and Stadium tours, the Packers Media Group, and stadium services.\textsuperscript{302} The Vice President and General Counsel directs the corporation's legal affairs and supervises the Community Outreach, Human Resources, Public Affairs, Shareholder Relations, and Security departments.\textsuperscript{303} At the NFL level, the VP and General Counsel represents the corporation on all legal matters.\textsuperscript{304}

b. Football Operations

Key members of the Packers' football operations include the General Manager and Director of Football Operations, as well as the Vice President of

\textsuperscript{295} Id.
\textsuperscript{296} Norris-Tirrell & Schmidt, supra note 165, at 101.
\textsuperscript{297} Bercovici, supra note 169 (internal quotation marks omitted).
\textsuperscript{299} Id.
\textsuperscript{300} Id.
\textsuperscript{301} See Media Guide, supra note 128, at 23.
\textsuperscript{302} Id.
\textsuperscript{304} Id.
Football Administration/Player Finance. Together, these two positions oversee the Packers’ Coaching, Player Personnel, Video, Equipment, and Medical departments. The GM and Director of Football Operations has complete authority over all football operations. This includes final decision-making authority over all player and coaching hires. The VP of Football Administration/Player Finance has primary responsibility for negotiating player contracts and managing the salary cap. The VP of Football Administration/Player Finance also oversees the day-to-day operations of all of the football operations departments.

3. Community-Owned, But Not Community-Controlled

While the Packers are the NFL’s only community-owned franchise, the organization is far from community-controlled. Within the Packers’ corporate structure, shareholders have a negligible voice in the organization’s management, a situation that the 1997 stock split exacerbated for all but a handful of shareholders. Shareholders moreover have no voice in day-to-day operations. In this respect, the Packers’ corporate structure departs substantially from the socialist model, which emphasizes the importance of both community ownership and control. Even to the extent that the community in a socialist society may delegate its managerial and decision-making authority to a separate group of managers and administrators, the ability of Packers shareholders to select the corporation’s Board of Directors is largely symbolic, as the Packers’ Directors Affairs Committee exercises complete control over all nominations to the Board. Therefore, while the Packers may conform to the socialist ideal of community ownership, community control of the corporation is lacking in almost every meaningful respect.

305 See Front Office, supra note 289.
306 Id.
308 See id. (describing current GM Ted Thompson’s role in shaping the Packers’ football roster and hiring Head Coach Mike McCarthy).
310 Id.
D. Shareholders Derive No Material Benefit from Their Packers Affiliation

Under Article VI of the Packers’ Articles of Incorporation, shareholders receive no benefit, monetary or otherwise, as a consequence of being a shareholder.\textsuperscript{311} As noted above, the Packers pay no dividends to shareholders, and shareholders will receive no portion of the corporation’s assets in the event of dissolution. Moreover, although the Packers are a nonprofit-sharing organization, shareholders are not entitled to a tax deduction on their federal or state income taxes for their purchase of stock.\textsuperscript{312} Article VI of the Packers’ bylaws furthermore places significant restrictions on the transfer of shares of stock, which preclude the possibility of any kind of financial gain.\textsuperscript{313} Specifically, shareholders are only permitted to transfer stock to immediate family members as a gift or in the event of the shareholder’s death.\textsuperscript{314} Should a shareholder attempt any other type of transfer, the bylaws give the corporation the right to repurchase such shares at $0.025 per share.\textsuperscript{315} Nor do shareholders gain any kind of nonmonetary “special benefits” such as “access to tickets to Packer games, preferential seating for Packer games or discounts on Packer merchandise.”\textsuperscript{316}

In this respect, the Packers again depart substantially from the socialist model. Far from being able to draw on a common supply of goods, Packers shareholders receive no material benefit in exchange for their contribution to the organization. Perhaps implicit in the arguments put forward by those like Keyes and Wright—who describe the Packers as a socialist organization—is that “benefit” should be defined more broadly in this context to include the psychic benefits associated with having the Packers remain in Green Bay and continue to be a competitive NFL franchise.\textsuperscript{317} Even adopting this more expansive definition, however, the particular benefits that Keyes and Wright cite do not accrue solely to shareholders as a result of their association with the Packers, but are instead enjoyed by Packers fans in general, regardless of whether or not they own stock in the Packers. Therefore, to the extent that shareholders derive no

\textsuperscript{311} Restated Articles, supra note 151, art. VI (stating that “no stockholder shall receive any dividend, pecuniary profit or emolument by virtue of his being a stockholder”).

\textsuperscript{312} 1997 Offering Document, supra note 117, at 5.

\textsuperscript{313} Bylaws of the Green Bay Packers, Inc., supra note 148, art. VI, § 4.

\textsuperscript{314} Id.

\textsuperscript{315} Id. The 1997 Common Stock Offering Document states that, “[b]ased on past practice, the Corporation expects that it would repurchase Common Stock if a holder sought to transfer Common Stock.” 1997 Offering Document, supra note 117, at 4.

\textsuperscript{316} 1997 Offering Document, supra note 117, at 5.

\textsuperscript{317} Keyes speculates that, “[w]ere the Packers controlled by a single owner, it’s unlikely they would still play in Green Bay, the smallest hometown of any NFL team . . . .” Keyes, supra note 1. Wright likewise suggests that “[c]ommunity ownership kept the Packers in Green Bay.” Left-Leaning Think Tank Writer Says Green Bay Packers “Socialist Organization,” supra note 3.
unique benefit—material or otherwise—as a result of their affiliation with the Packers, the organization falls short of the socialist model of equitable distribution of wealth among members of the community.

IV. NONPROFIT, NOT SOCIALIST

In these regards, the Packers depart too substantially from certain key tenets of socialism to be properly termed a socialist organization. The lack of any meaningful community control over the corporation and the absence of any material benefit to shareholders are both fundamentally at odds with the socialist model. By contrast, the Packers’ organizational structure and operations fit neatly within the framework of a nonprofit corporation.

A. Defining “Nonprofit”

In general, a nonprofit corporation can be defined as “an organization in which no part of the income is distributable to its members, directors, or officers.” This definition does not constitute a prohibition on profitability per se, but rather on the distribution of profits to members, director, and officers. Beyond this limitation, nonprofit corporations may, in general, participate in any type of lawful activity. Given such wide latitude, nonprofit corporations vary significantly in terms of their sources of funding, their management structures,
and the purposes for which they are organized and operated.  

Nonprofit organizations can be divided into two categories based on their sources of funding: donative nonprofits and commercial nonprofits.  

Whereas donative nonprofits obtain funding through charitable gifts to the organization, commercial nonprofits build their financial resources through commercial activity such as the sale of merchandise or the rendering of services.  

The Salvation Army provides an example of the former, while many hospitals in the United States operate as the latter.  

Notably, many organizations possess features of both donative and commercial nonprofits, relying on donations as well as income generated through services or sales. For example, universities fall somewhere in the middle of the continuum between a donative and a commercial nonprofit.  

Nonprofit organizations can be also divided into two categories based on who controls the organization: mutual nonprofits and entrepreneurial nonprofits.  

In a mutual nonprofit, the same individuals who constitute the ultimate source of income for the organization also select the organization’s Board of Directors.  

In an entrepreneurial nonprofit, the organization’s board is typically self-perpetuating and thus independent from the individuals who financially support the organization.  

A country club whose members elect the Board of Directors and provide income to the club through their membership dues is an example of a mutual nonprofit organization, while a hospital (whose customers have no say in electing the hospital’s board) is an example of an entrepreneurial nonprofit organization.  

Again, it is important to note that these categories are not mutually exclusive, as many nonprofit organizations use a hybrid method of electing board members that combines member or customer input with a partially self-perpetuating structure.  

A further means of categorizing nonprofit corporations is to distinguish

---

321 See Phelan, supra note 318, § 1.1 (noting that, “in actual practice, nonprofits are a very diverse group”).
322 Hansmann, supra note 318, at 840–41. Recognizing that “the flexibility of corporation statutes permits nonprofit organizations to assume a wide variety of forms,” Hansmann outlines two basic ways to categorize such organizations: based on how the organization is financed and based on how the organization is controlled. Id. at 840.
323 Id.
324 Id.
325 Id. at 841 (emphasizing that “donative and commercial nonprofits should be considered polar or ideal types rather than mutually exclusive and exhaustive categories”).
326 Id.
327 Id.
328 Id.
329 Id.
330 Id. at 841–42. Hansmann cites the example of universities that structure their board of trustees so that alumni elect a portion of the board, while the other portion of the board is self-perpetuating. Id.
between "public benefit" and "mutual benefit" corporations.\textsuperscript{331} Public benefit corporations are those that are organized for charitable or social welfare purposes, including all corporations organized under Section 501(c)(3) or (4) of the Internal Revenue Code.\textsuperscript{332} Mutual benefit corporations, by contrast, are formed and operated for the benefit of the organization's own members.\textsuperscript{333} Although the most recent version of the Model Nonprofit Corporation Act no longer retains an express distinction between public benefit and mutual benefit corporations, the 2008 Act makes a similar distinction between charitable and other types of nonprofit corporations based on the corporation's primary purposes. Specifically, the 2008 Act defines a charitable corporation as "a domestic nonprofit corporation that is operated primarily or exclusively for one or more charitable purposes."\textsuperscript{334} The Act defines "charitable purpose" as any purpose that "would make a corporation operated exclusively for that purpose eligible to be exempt from taxation under Section 501(c)(3) or (4) of the Internal Revenue Code" or "is considered charitable under law other than this [act] or the Internal Revenue Code."\textsuperscript{335} The Act goes on to establish certain distinctions between charitable and other types of nonprofits in terms of how the corporations are treated under the Act. For example, whereas Section 6.41(c) provides that a nonprofit corporation may, in general, make distributions to its members upon dissolution of the corporation, Section 14.05(c) prohibits any individual affiliated with a charitable nonprofit from receiving any kind of financial benefit as a result of dissolution of the corporation.\textsuperscript{336}

Therefore, a nonprofit corporation has wide latitude to structure the financing of its operations, the management and control of the organization, and the purposes for which the organization is formed and operated. In this context, the defining characteristic of a nonprofit corporation, in contrast to a for-profit corporation, is the "nondistribution constraint" that prohibits any distribution of profits to those who own or control the enterprise.\textsuperscript{337}

\textsuperscript{331} Phelan, supra note 318, § 1.1 (citing Revised Model Nonprofit Corp. Act, §§ 1.40(23), 14.06(A)(7), 17.07 (1987)).
\textsuperscript{332} Phelan, supra note 318, § 1.1.
\textsuperscript{333} Id.
\textsuperscript{335} Id. § 1.40(6).
\textsuperscript{336} Id. §§ 6.41(c), 14.05(c).
\textsuperscript{337} Hansmann, supra note 318, at 838 ("Thus a nonprofit corporation is distinguished from a for-profit (or 'business') corporation primarily by the absence of stock or other indicia of ownership that give their owners a simultaneous share in both profits and control.").
B. The Packers as a Nonprofit Corporation

The Packers fit squarely within this nonprofit framework. While the absence of private profit motive in the Packers’ operations is certainly consistent with the socialist model for enterprise, it is also characteristic of a nonprofit corporation. Insofar as no portion of the Packers’ profits is distributed to the corporation’s shareholders, directors, or officers, the Packers comply with the nondistribution constraint that constitutes the defining feature of a nonprofit corporation.

Beyond meeting this basic requirement, many of the more unique aspects of the Packers’ organizational structure and operations are easily situated along the continuum of characteristics that a nonprofit corporation may possess. For example, the Packers combine elements of both a donative and a commercial nonprofit. To the extent that the totality of the corporation’s revenue as it appears on the corporation’s financial statements is generated through commercial sales—such as the sale of broadcasting rights, merchandise, tickets, concessions, and the like—the Packers resemble a commercial nonprofit organization. However, the more than $90 million that the Packers raised in the 1997 and 2011 stock sales is arguably best characterized as a charitable gift to organization. This characterization is certainly consistent with the language that the Packers used to described the two most recent stock sales: the 1997 Stock Offering Document notes, for example, that the purchase of Packers stock constitutes “the ultimate in fan support,” and that purchasers’ “continued commitment to the Green Bay Packers will help preserve our national treasure.” 338 Similarly, the 2011 Stock Offering Document asks fans “to provide support for this special organization.” 339 As both offering documents prominently warn potential buyers, “purchasers should not purchase common stock with the purpose of making a profit.” 340

The Packers’ ownership and management structures are also more compatible with those of a nonprofit corporation than those of a socialist organization. As discussed above, Packers shareholders lack any kind of meaningful voice in the organization’s management and have no say in day-to-day operations—which is inconsistent with the socialist ideal of community ownership and control. By contrast, the Packers’ corporate structure clearly falls somewhere along the continuum between a mutual and an entrepreneurial nonprofit. While shareholders obtain the right to vote for the Packers’ Board of Directors at the annual shareholders meeting by virtue of their status as

shareholders, the Packers' board is, practically speaking, self-perpetuating given the complete control that the board-appointed Committee on Directors Affairs exercises over the nomination process.

Finally, with respect to the organization's primary purposes, the Packers straddle the line between a public benefit and a mutual benefit nonprofit or, to use the more current terminology of the 2008 Model Nonprofit Corporation Act, between a charitable and a non-charitable nonprofit. The Packers designate a small portion of their profits to benefit charitable causes, and, in the event of dissolution of the corporation, all assets would be distributed to the Green Bay Packers Foundation, Inc., for donation to various charitable causes. Moreover, under the Packers' Articles of Incorporation, shareholders in the corporation are not entitled to any dividends. In these respects, the Packers resemble a public benefit or charitable nonprofit. However, a much more significant portion of the Packers' profits is re-invested into the organization in a way that benefits members of the organization—albeit indirectly—by supporting the continued operation of a successful NFL franchise in Green Bay. Additionally, the Packers are not a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. These features more closely resemble those of a mutual benefit or non-charitable nonprofit.

V. THE MEASURE OF SUCCESS FOR A NONPROFIT PROFESSIONAL SPORTS TEAM

As a nonprofit-sharing organization, the Packers are in a unique position among professional sports teams to place on-field success at an unrivaled premium. Without the private profit motive of an owner or shareholders to influence decision-making, Packers' executives are free to focus solely on fielding the most competitive football team possible within the confines of the NFL salary cap. Indeed, given the Packers' overwhelming focus on re-investing profits into the team—as opposed to donating a larger percentage of the team's profits to local charitable organizations—the organization arguably has an obligation to field the most competitive team financially possible if it is to fulfill its avowed community-based mission.

A. A Focus on On-Field Success

The Packers' community-ownership model is frequently lauded as a kind of ideal within an otherwise corrupt sports world. See, e.g., Patrick Hruby, The Right Way? The Green Bay Way, ESPN (Jan. 31, 2011),
demonize owners of other professional sports teams as greedy opportunists more than willing to disregard the interests of loyal fans in favor of their own bottom line. Indeed, some commentators have identified public ownership of professional sports teams as a possible solution to problems such as franchise location and rising ticket prices—and they often cite the Packers as a model. At the same time, many of these same observers highlight the major pitfall that would accompany any public offering of a professional sports team: the potentially divergent interests of fans and shareholders. As a basic tenet of corporate law, a public corporation’s ultimate purpose is to maximize profitability for its shareholders. In the context of professional sports teams, this particular purpose is often at odds with the interest of fans in fielding a winning team—the expense of which often reduces a team’s profitability. In addition, while the possibility exists that a majority of shareholders in a publicly held professional sports franchise would also be fans of that team, there nonetheless remains a fundamental tension between the interests of the pure investor and the pure fan. This very tension perhaps explains why this model has not taken root in professional sports.

Because the Packers’ Articles of Incorporation expressly prohibit any

343 See id. at 678–79; see also Hartel, supra note 8, at 592; Nathan R. Scott, Take Us Back to the Ball Game: The Laws and Policy of Professional Sports Ticket Prices, 39 Univ. Mich. J. L. Reform 37, 67 (2005).
344 Scott, supra note 343, at 69 ("[A] publicly-held professional sports team is in the unenviable position of having to serve two masters, as "the best interests of the fans and the best interest of shareholders in a franchise are strikingly divergent.").
346 See Heather M. Field, Throwing the Red Flag: Challenging the NFL’s Lessons for American Business, 38 J. Corp. L. 381, 394 (2013) (“Profits and on-field performance are often at odds in professional sports.”); Jorge E. Leal Garrett & Bryan A. Green, Considerations for Professional Sports Teams Contemplating Going Public, 31 N. Ill. U. L. Rev. 69, 86 (2010) (“The problem, however, is that success as a winning team does not entirely translate into success in terms of increased revenue.”); Cheffins, supra note 342, at 677 (citing the concern that, “because investors will demand a hard-nosed attitude towards money matters, team executives will feel compelled to sacrifice playing success when this is required to save costs and increase profits available to shareholders”); Scott, supra note 343, at 69 (acknowledging that “a publicly-held corporation’s fiduciary duty to its shareholders may actually force it to maximize revenues by increasing ticket prices”).
347 See Garrett & Green, supra note 346, at 86 (positing that a conflict of interests is “not likely to arise considering the fact that the majority of investors will be the fan-as-investors who are less likely to question the business judgment of their favorite team”); Cheffins, supra note 342, at 677–78 (citing the example of publicly held British soccer teams to support the proposition that “the interests of fans and those who own shares in publicly quoted sports teams should generally be congruent” because “important victories tend to please the shareholders as well as the supporters since a rise in the share price often follows”).
348 See Garrett & Green, supra note 346, at 86 (“Nevertheless, a possibility exists that a discontent fan-as-investor would be willing to utilize these corporate tools and bring suit. Alternatively, it is also conceivable that a traditional investor could decide to purchase stock for the sole purpose of maximizing profit.”).
distribution of profits to shareholders, the Packers deftly sidestep this potential pitfall. Where private profit motive might dictate that the Packers forgo signing a marquee free agent to address a key area of weakness on the team, for example, Packers’ executives are free to make such decisions without consideration for maximizing shareholder profits. The Packers are thus uniquely situated to focus on winning not because the team is community-owned, but rather because the team is owned and operated by what effectively constitutes a nonprofit corporation.

B. An Obligation to Win

The Packers arguably have not only a unique ability to field the most competitive team that the organization is financially capable of assembling, but also an obligation to do so. While the Packers clearly seek to maximize revenue and minimize expenses in nearly all aspects of their operations, the organization’s Articles of Incorporation dictate that profitability cannot be the ultimate goal. Rather, any profits must contribute to community welfare—either directly (through charitable donations) or indirectly (through re-investment in the team). The Packers have, at least in recent years, placed an overwhelming emphasis on re-investing profits in the team, as opposed to making charitable donations. In this context, the measure of the organization’s success in fulfilling its community-based mission becomes, in large part, a function of the team’s on-field success.

An examination of the Packers’ on-field performance over the past ten years—relative to the team’s salary cap spending and free agency activity—suggests that on at least several occasions, the Packers may have failed to fulfill the organization’s community-based mission by fielding the most competitive team financially possible. Although the Packers have enjoyed considerable success during the past decade, the team has ranked in the bottom half of the NFL in terms of either its overall offensive or defensive performance on six occasions: during the 2003, 2004, 2005, 2008, 2011, and 2013 seasons. In each of these seasons, the Packers remained anywhere from $3 million to $11 million beneath the NFL salary cap. Whether the Packers’ on-field performance in each of these seasons would have benefited as a result of

---


350 For an estimate of the Packers' cap spending over the past decade, see infra Appendix B.
additional spending in free agency necessarily remains speculative. Nevertheless, the fact remains the Packers had both room for improvement and the financial wherewithal to at least attempt to effect such improvement. This reality calls into question whether the organization was fulfilling its duties to its shareholders and the community in attempting to field the most competitive team financially possible (and within the parameters set by the NFL, such as the salary cap). A closer examination of the Packers’ 2005 offense and 2011 defense more provide important context for this issue.

1. The 2005 Offense

Between 2003 and 2013, the Packers’ offense ranked in the bottom half of the NFL only once: in 2005, the Packers’ overall offense ranked eighteenth out of thirty-two NFL teams.\(^\text{351}\) The Packers’ rushing offense was particularly anemic during the 2005 season, ranking thirtieth in yards per game.\(^\text{352}\) This dismal performance was due, in part, to the season-ending injury that the Packers’ Pro-Bowl running back, Ahman Green, suffered during week eight of the regular season.\(^\text{353}\) However, even prior to his injury, Green had rushed for a career-low 255 yards on 77 carries, suggesting that the Packers’ rushing offense suffered from more pervasive problems than Green’s absence.\(^\text{354}\)

In light of the struggles that the rushing offense experienced in 2005, the Packers’ loss of highly ranked offensive linemen Mike Wahle and Marco Rivera to free agency prior to the start of season is notable.\(^\text{355}\) Although keeping both Wahle and Rivera on the roster was probably not feasible for the Packers, given the size of the contracts that each player commanded as an unrestricted free agent,\(^\text{356}\) the Packers opted for extreme economy in rebuilding their offensive line. Specifically, the Packers replaced Wahle and Rivera by signing


\(^{354}\) Id.


\(^{356}\) Pasquarelli, Wahle, supra note 355.
free agent guards Adrien Klemm and Matt O’Dwyer, and by resigning guard
Grey Ruegamer, whose combined contracts totaled just $2.97 million for
2005.\footnote{Len Pasquarelli, Packers Rebuild Line for Less Than $3 Million, ESPN (Mar. 22, 2005),
http://sports.espn.go.com/nfl/columns/story?columnist=pasquarelli_len&id=2018928.} The Packers chose this course of action despite the availability of three
highly ranked guards as unrestricted free agents during the 2005 season.\footnote{2005 Scout.com NFL Free Agency Tracker, Scout NFL Network,
Considering that the Packers remained nearly $8 million below the NFL’s $85.5 million salary cap in 2005,\footnote{See infra Appendix B.} the organization presumably had the option to
invest additional money in its offensive line. Given the disappointing on-field results for the 2005 season, the organization arguably had an obligation to do so.

2. The 2011 Defense

The 2011 season was, by almost any measure, a tremendous success for
the Packers: the team finished the regular season with fifteen wins and just one
loss before falling to the New York Giants in the divisional round of the
playoffs.\footnote{Green Bay Packers Schedule, NFL.com,
http://www.nfl.com/teams/greenbay%20packers/schedule?team=GB&season=2011&seasonType=REG (last visited Aug. 20, 2014).} Contributing to the Packers’ early exit from the playoffs was the
team’s defense, which ranked last in the NFL in 2011.\footnote{NFL Stats: By Team Category, NFL.com,
league in interceptions, the Packers’ passing defense gave up the most passing
yards per game of any team.\footnote{NFL Stats: By Team Category, NFL.com,
apply pressure on opposing quarterbacks, ranking twenty-seventh in the number
of sacks recorded by the defense.\footnote{Id.}

Similar to the key loss of offensive guards Wahle and Rivera in free
agency prior to the 2005 season, the Packers notably lost defensive end Cullen
Jenkins prior to the 2011 season, when Jenkins signed a five-year contract with
the Philadelphia Eagles.\footnote{Eagles Sign Cullen Jenkins, ESPN (July 31, 2011),
http://espn.go.com/nfl/story/_/id/6819083/cullen-jenkins-signs-five-year-deal-philadelphia-eagles.} The Packers declined to re-sign Jenkins despite the
fact that Jenkins had recorded a career-high seven sacks in just eleven games
during the Packers’ 2010 Super Bowl run, and despite Jenkins’s apparent willingness to accept a smaller contract to remain in Green Bay. Beyond failing to re-sign Jenkins, the Packers also passed on a number of other highly ranked defensive players who were available as unrestricted free agents prior to the 2011 season, including defensive end Richard Seymour, defensive tackle Aubrayo Franklin, cornerback Nnamdi Asomugha, and cornerback Champ Bailey. Following the Packers’ 37–20 loss to the Giants in the playoffs, many pointed to Jenkins’s absence—and the Packers’ lack of a pass rush in general—as the root cause of the team’s defensive struggles over the course of the season. Given the team’s more than $7 million of cap space, it seems clear that the Packers could have taken additional steps in free agency to shore up their defense. And, without private profit motive to explain the organization’s decision to remain well under the salary cap despite glaring holes in the defense, it becomes more difficult to justify the Packers’ failure to take such steps.

C. Other Considerations

To be sure, it is difficult—if not impossible—to establish a direct correlation between a team’s decision to forgo certain actions in free agency and its subsequent on-field success (or lack thereof). Further complicating the analysis in this situation is Packers’ general manager Ted Thompson’s well-known commitment to developing his roster through the draft rather than free agency, a strategy that has (in general) produced on-field results with which it is hard to argue. Nonetheless, the Packers’ unique position as the only NFL


368 See infra Appendix B.


franchise that is owned and operated by what effectively constitutes a nonprofit corporation arguably establishes a unique standard by which the Packers' off-field decision-making should be evaluated. Without private profit motive to explain the organization's failure to exhaust its cap space in a given season, such failure becomes more questionable in light of any glaring on-field weaknesses.

VI. CONCLUSION

Beyond neglecting to define socialism or thoroughly investigate the details of the Packers' history, ownership, management, operations, and financial condition, the various articles that characterize the Packers as a socialist organization tend to conflate socialist and nonprofit organizations. Indeed, one of Keyes's three main points in support of his argument that the Packers are a socialist organization is the fact that the Packers are nonprofit sharing. Such conflation is problematic for a number of reasons. According to the most recent estimates from the National Center for Charitable Statistics, approximately 2.3 million nonprofit organizations currently operate within the United States, of which 1.6 million are registered as nonprofits with the Internal Revenue Service. In this context, those who assert that the Packers are a socialist organization because they are nonprofit-sharing perhaps unintentionally—but substantially—overstate their point.

More problematically, equating socialist and nonprofit organizations ignores the fact that the latter encompass a much broader range of characteristics. Whereas the Packers' hierarchical management and operating structure—as well as the complete lack of any material benefits for shareholders—are fundamentally at odds with the socialist model, these features fit easily along the continuum of possible types of nonprofit corporations. In this regard, it makes little logical sense to characterize the Packers as a socialist organization because they are nonprofit sharing; rather, the Packers are best described as a nonprofit organization rather than a socialist one.

While describing the Green Bay Packers as "socialist Super Bowl champions" may be attention grabbing, focusing on the organization's nonprofit character raises more interesting questions. Chief among these is what purpose the current NFL prohibition on the ownership of any other franchise by a nonprofit organization serves. To a certain extent, commentators like Zirin and Sirota are right when they suggest that the Packers' model is inherently

372 Keyes, supra note 1.
373 Amy S. Blackwood et al., The Nonprofit Sector in Brief: Public Charities, Giving, and Volunteering (2012) (summarizing The Nonprofit Almanac 2012, which is prepared by the National Center for Charitable Statistics).
preferable to that of other NFL teams, at least from a fan’s perspective: the Packers are unique among NFL teams in their ability to place on-field success at an unrivaled premium. However, this unique position results not from the fact that the Packers are community-owned, but rather because the franchise is owned and operated by what is essentially a nonprofit corporation. Under the NFL’s current bylaws, this is not a model that other NFL teams will be replicating anytime soon, no matter how desirable it may be from a fan’s perspective.
### APPENDIX A

**Packners’ Financial Information, 2006–13**

(Figures in millions)

<table>
<thead>
<tr>
<th>Year</th>
<th>Net Income</th>
<th>Operating Income</th>
<th>Player Salaries</th>
<th>Total Local Revenues</th>
<th>National Revenues</th>
<th>Total Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>200</td>
<td>$18</td>
<td>$20.9</td>
<td>$102</td>
<td>$187</td>
<td>$93.1</td>
<td>$115.3</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$208.4</td>
</tr>
<tr>
<td>200</td>
<td>$22</td>
<td>$34.2</td>
<td>$110</td>
<td>$183</td>
<td>$93.2</td>
<td>$124.9</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$218.1</td>
</tr>
<tr>
<td>200</td>
<td>$23.4</td>
<td>$21.4</td>
<td>$124</td>
<td>$219</td>
<td>$105.8</td>
<td>$136.5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$241.3</td>
</tr>
<tr>
<td>200</td>
<td>$4</td>
<td>$20.1</td>
<td>$138</td>
<td>$227</td>
<td>$100.8</td>
<td>$147.1</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$247.9</td>
</tr>
<tr>
<td>201</td>
<td>$5.2</td>
<td>$9.8</td>
<td>$160</td>
<td>$248</td>
<td>$100.4</td>
<td>$157.6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$258</td>
</tr>
<tr>
<td>201</td>
<td>$17.1</td>
<td>$12</td>
<td>$158</td>
<td>$270</td>
<td>$122</td>
<td>$169</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$282.6</td>
</tr>
<tr>
<td>201</td>
<td>$42.7</td>
<td>$43</td>
<td>$155</td>
<td>$259</td>
<td>$130.4</td>
<td>$171.6</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$302</td>
</tr>
<tr>
<td>201</td>
<td>$43.1</td>
<td>$54.3</td>
<td>$136</td>
<td>$233</td>
<td>$128.2</td>
<td>$179.9</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$308.1</td>
</tr>
<tr>
<td>201</td>
<td>$25.3</td>
<td>$25.6</td>
<td>$171</td>
<td>$298</td>
<td>$136.4</td>
<td>$187.7</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$324.1</td>
</tr>
</tbody>
</table>

* Operating income consists of total revenue minus total costs, while net income takes into account tax provisions and investment performance.

** The Packers’ revenue ranking for the 2013–14 season is not yet available.

---


### APPENDIX B

**NFL Salary Cap and Packers’ Player Salaries, 2000–14**  
(Figures in millions)

<table>
<thead>
<tr>
<th>Year</th>
<th>NFL Salary Cap</th>
<th>Packers’ Player Salaries</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>$62.2</td>
<td>$55.87</td>
</tr>
<tr>
<td>2001</td>
<td>$67.4</td>
<td>$56.24</td>
</tr>
<tr>
<td>2002</td>
<td>$71.1</td>
<td>$50.08</td>
</tr>
<tr>
<td>2003</td>
<td>$75</td>
<td>$64.39</td>
</tr>
<tr>
<td>2004</td>
<td>$80.6</td>
<td>$73.89</td>
</tr>
<tr>
<td>2005</td>
<td>$85.5</td>
<td>$67.87</td>
</tr>
<tr>
<td>2006</td>
<td>$102</td>
<td>$88.88</td>
</tr>
<tr>
<td>2007</td>
<td>$109</td>
<td>$97.39</td>
</tr>
<tr>
<td>2008</td>
<td>$116</td>
<td>$110.33</td>
</tr>
<tr>
<td>2009</td>
<td>$123</td>
<td>$117.81</td>
</tr>
<tr>
<td>2010</td>
<td>N/A*</td>
<td>$137.75</td>
</tr>
<tr>
<td>2011</td>
<td>$120</td>
<td>$112.5</td>
</tr>
<tr>
<td>2012</td>
<td>$120.6</td>
<td>$118.85</td>
</tr>
<tr>
<td>2013</td>
<td>$123</td>
<td>$119.48</td>
</tr>
<tr>
<td>2014</td>
<td>$133</td>
<td>$129.6**</td>
</tr>
</tbody>
</table>

---

376 See Gaines, supra note 208; Year-by-Year Salary Cap, supra note 208; Wesseling, supra note 208; Hanzus, supra note 208. These numbers represent the NFL cap and do not take into account the Packers’ individual adjusted cap for each year. See Tom Pelissero, Adjusted Salary Cap Number for All 32 NFL Teams, USA Today (Mar. 10, 2014), http://usatoday.com/2014/03/10/adjusted-salary-cap-number-for-all-32-nfl-teams/ (providing an adjusted cap number for each NFL team for 2014).