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Should Congress Stop the Bidding War for Sports Franchises?

Hearing before the
Subcommittee on Antitrust, Business Rights, and Competition
Senate Committee on the Judiciary

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Academics

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PART 1

Gary R. Roberts
Tulane Law School

I want to thank the Subcommittee for inviting me to share my views on a subject that has long been a focus of my professional work–the application of section 1 of the Sherman Act to professional sports league structural matters such as franchise location and ownership decisions.

> **Professional sports leagues are partnerships, and the purely internal rules and decisions of the league should not be subject to the Sherman Act section I's rule of reason as potentially illegal conspiracies.**

I have been involved in litigating, teaching, speaking, and writing about sports antitrust issues for the better part of two decades. Since 1983 I have been a professor of law at Tulane Law School teaching sports law, antitrust, and business enterprises, and where I founded and currently direct the nation's only sports law certificate program. I am also currently the president of the Sports Lawyers Association, on whose board of directors I have served since 1986. I am also the editor-in-chief of the SLA's bimonthly newsletter, *The Sports Lawyer.* I often speak at sports law conferences, have written several major law review articles (including four on the very subject of this hearing) and two book chapters on sports antitrust matters, and along with Professor Paul Weiler of Harvard Law School, I have coauthored the leading sports law textbook and supplement used in American law schools, *Sports and the Law,* published by West Publishing Company. I also regularly work with and am cited by the print and broadcast media on sports legal issues and often author columns in publications like *The Sporting News* and *USA Today.*

In the interest of full disclosure, I must also reveal that from 1976 to 1983 I worked at the Washington firm of Covington & Burling with, among others, now-NFL Commissioner Paul Tagliabue. My primary client then was the National Football League, although I also did work for the National Hockey League, World Championship Tennis, and several nonsports clients. I was on the legal team that represented the NFL in the antitrust litigation involving the league's unsuccessful effort to block the Oakland Raiders move to the Los Angeles Coliseum in 1982. However, I have had no relationship with, and have received no compensation from, the NFL or NHL since I came to Tulane in 1983, and I have no economic stake in the issues under consideration today.

Editor's note: Source citations and other footnotes have been excluded from the three papers in this *Heartland Policy Study* to simplify the presentation.

Generally, I am strongly of the view that professional sports leagues are partnerships for all practical business and economic purposes, and as such the purely internal rules and decisions of the league should not be subject to section l's rule of reason as potentially illegal conspiracies. There simply are no rational doctrinal standards for identifying when partners in an inherently wholly integrated joint venture are or should be required by antitrust law to compete with one another in producing or selling their necessarily jointly produced product. Thus, trying to apply section 1 to purely internal sports league decisions inevitably creates ambiguity and confusion about what is or is not lawful, which in turn results in distorted league decision-making, excessive costly litigation, and frequently bizarre court decisions that on balance injure the public interest and consumer welfare.

I support granting professional sports leagues a limited antitrust exemption for decisions relating to franchise location or relocation.

Thus, as explained in greater detail herein, I support granting professional sports leagues a limited antitrust exemption for decisions relating to franchise location or relocation (as well as for ownership restrictions), not because doing so will substantially eliminate the harmful effects of the underlying structural condition causing franchise relocations–namely the shortage of franchises in each league–but only because such an exemption is the only politically feasible way today to mitigate at all the public injury caused by the phenomenon of "franchise free agency." Certainly, allowing standardless antitrust litigation against leagues if they attempt to play a role in franchise location decisions serves no public interest, and in fact further exacerbates the harmful effects of the franchise relocation game on fans and taxpayers.

The Single Firm Nature of Professional Sports Leagues

Section 1 of the Sherman Act proscribes every "contract, combination . . . or conspiracy" in restraint of trade. Over the years I have argued often (of course persuasively) that sports league member teams are not the kind of independent horizontal economic firms that section 1 mandates must compete with one another, but rather are collectively the single relevant economic firm capable of producing the league's necessarily jointly produced entertainment product. Thus, the league, as the lowest economic unit capable of producing its product, should not trigger section l's threshold agreement requirement when its partners vote to adopt rules or make decisions with respect to the structure, governance, or operation of their joint venture partnership.

Even if one believes that leagues are not single firms whose internal rules fail to meet section l's "contract, combination . . . and conspiracy" requirement, the inherently integrated nature of a league and its jointly produced product should still render internal league decisions per se legal under section l's rule of reason, either under the age-old doctrine of ancillary restraints or because the league's partners are not business competitors and thus cannot internally reduce "competition" of the type section 1 is designed to protect.

The reasoning behind the argument that leagues are single firms whose internal rules and decisions should not be reviewed by antitrust courts or juries emerges most clearly from the Supreme Court's landmark decision in *Copperweld Corp. v. Independence Tube Corp.,* 467 U.S. 752 (1984), which held that a parent corporation and its wholly owned subsidiary were together a single firm for section 1 purposes. In so holding, the Court articulated the test for whether two or more separate legal persons who act jointly constitute a single firm or a voluntary combination of competitors. The determining factor, wrote Chief Justice Burger, is not how the organization has chosen to structure itself or its decision-making process, for to make antitrust status turn on voluntary organizational choices would create incentives to structure businesses in ways not optimally efficient or good for consumers, but rather in ways that merely minimize antitrust risks. Making single entity status turn on voluntary structural choices "would serve no useful antitrust purpose but could well deprive consumers of the efficiencies that decentralized management may bring." Instead, the deciding factor should be whether the inherent nature of the joint enterprise is such that its existence flows from a single source of economic power, or instead from inherently independent sources of economic power that have simply chosen to operate jointly–that is to say, if a joint enterprise "does not represent a sudden joining of two independent sources of economic power previously pursuing separate interests, it is not an activity that warrants § 1 scrutiny."

> A sports league's product can only be produced through the total cooperation and integration of the member clubs, not independently by one team.

While the parent-subsidiary relationship in *Copperweld is* obviously different from the sports league context, the test set forth therein for determining whether an enterprise is a single entity or a collection of competitors is valid and leads inevitably to the conclusion that leagues are single firms. While a parent-subsidiary organization derives from a single source of economic power because all subunits are commonly owned, a sports league derives from a different single source of economic power, namely the inherent reality that the league's product can only be produced through the total cooperation and integration of the member clubs, not independently by one team. Without doubt, the member clubs in a sports league are not "independent sources of economic power previously pursuing separate interests," for each has no capacity independently to produce anything of significant value, and thus cannot be an independent source of economic power.

To require the partners in an inherently joint venture partnership to compete against one another in some, but not all, economic respects is illogical and ultimately works to the detriment of consumers. General partnership/joint venture law reflects this by providing that partners not only are not required to compete against one another, they have a *fiduciary duty not to compete* against the venture or one another with respect to the venture's business, and not to expropriate for individual gain an asset or prospective business opportunity of the joint venture, absent express permission from the venture to do so. Surely this rule should apply to the partners in a sports league at least as much as to partners in "voluntary" joint ventures.

A sports league, unlike most other joint venture partnerships, is not the result of wholly independent economic persons voluntarily joining their separate sources of economic power, but rather is necessarily a wholly integrated venture deriving from a single source of economic power that flows from the inherently joint nature of its athletic “competition” product. As such, the league’s partners should not be required by antitrust law to do what partnership/joint venture law prohibits–to compete for individual gain against one another and the joint venture itself in ways related to the venture’s business. As the *Copperweld* decision indicates, the internal business decisions of a venture representing a single source of economic power should not be subject to rule of reason review by judges and juries.

To date, three circuit courts of appeal have addressed this issue squarely, and all three have mistakenly held that sports leagues are not single firms, but rather a collection of separate competitors whose joint business decisions are subject to judicial “reasonableness” review. Two of these decisions predated *Copperweld* and relied heavily on cases that are easily distinguishable and today discredited (namely the *Topco Associates* and *Sealy* cases). The third completely ignored the underlying test set forth in *Copperweld* and distinguished its holding on the superficial ground that *Copperweld* involved a corporate parent/ subsidiary context. In the Seventh Circuit, however, Judge Easterbrook has strongly hinted in a recent case that the National Basketball Association might well be a single entity, and he encouraged the NBA to raise that issue back in the district court. That case is now back before the Seventh Circuit and a decision is expected next year.

Thus, the law, although not firmly settled, has so far been interpreted to render every internal decision by sports leagues subject to rule of reason review. The single entity nature of leagues has not been recognized. In my judgment, that is bad law and bad policy, which has resulted in much confusion about what leagues may or may not lawfully do and has produced results that have injured the public interest and consumer welfare. Indeed, league fears of huge treble damages liability if they try to block franchise relocations, and the resulting game of franchise blackmail that teams have played against communities over the last decade, are the direct result of the confusing and contradictory opinions of the Ninth Circuit in the *Raiders* case in the early 1980s.

League fears of huge treble damages liability if they try to block franchise relocations, and the resulting game of franchise blackmail, are the direct result of the confusing and contradictory opinions of the Ninth Circuit in the *Raiders* case in the early 1980s.

The League as a “Natural Monopoly”

The inherent joint venture nature of a sports league is obvious, even to the courts that have held league members to be a collection of horizontal competitors for antitrust purposes. Thus it is curious that the courts have so far not seen fit to recognize the member clubs’ duty of loyalty not to compete independently against the league venture, nor to recognize internal league rules as being beyond the scope of case-by-case rule of reason review.

The explanation for this puzzling jurisprudence, I believe, lies in the fact that each major sports league is the only producer of its particular sports entertainment product at the major league level. While economists can debate endlessly how to define and identify monopoly market power and whether a sports league possesses such power in one or more of the many markets in which it operates, most knowledgeable neutral people who follow sports intuitively sense that the tremendous attractiveness of each league's product to millions of rabid fans gives it substantial market power in many markets. The salaries that players and coaches command, the subsidies that teams can extract from local communities, and even the street value of a Super Bowl ticket all suggest that leagues exercise tremendous and arguably monopoly market power in several markets. In this respect, sports leagues are a greater threat to the public interest and consumer welfare than the typical partnership or joint venture that faces substantial "interbrand" competition and whose internal business decisions are presumably safe from case-by-case rule of reason review *(Topco Associates* and *Sealy* notwithstanding).

It would be in the public interest for there to be some principled legal mechanism to reduce the ability of leagues fully to exploit their market power to the detriment of consumers and the public.

While subjecting internal sports league rules and decisions to ad hoc rule of reason review lacks theoretical justification and results in arbitrary, confusing, and unprincipled decisions that often work to the detriment of the public interest, there is a sense among many in the sports law field that even an arbitrary ad hoc application of section 1 deters leagues from fully exploiting their substantial market power at relatively little cost to the efficiency of the league. In short, so the argument goes, it is better to have unpredictable and unprincipled regulation of sports leagues through ad hoc application of section 1 than to have no regulation at all.

I do not accept this argument because it tends to legitimize purely result-oriented jurisprudence–the use of statutes in ways not intended in order to achieve a result in each case that the judge or jury generally thinks desirable. This is a misuse of law and the legal process that in a single application or a limited context poses only a slight threat to justice. However, as yet another instance of courts claiming the legitimate authority to "govern" in unprincipled or arbitrary ways in order to achieve particular results that may or may not be in the general public interest, this approach contributes to the erosion of the integrity of the legal process and to the public's declining trust in our legal and political institutions.

Having said this, I recognize that leagues do appear to possess substantial market power of varying degrees in many relevant markets: the national player labor market (in which the countervailing power of the union also exists); the national and local markets in which television rights and trademark licensing rights are sold; many local markets in which tickets to live games are sold; and, most relevant for this hearing, the national market in which professional franchises in each sport are distributed. I also recognize that it would be in the public interest for there to be some principled legal mechanism to reduce the ability of leagues fully to exploit their market power to the detriment of consumers and the public.

Some (like Professor Steve Ross) argue that Congress or the courts should require each league to split into three or more competing leagues that operate completely independently of each other, and that the resulting competition will greatly diminish any one league's market power. The underlying theory of this approach is reasonable and if it worked as planned the legal mechanism created would be principled and legitimate. The problems with this approach are that it is politically unfeasible and that as a factual matter I doubt it would work over the long term. I believe that within a few years, inevitably one league in each sport would become perceived by the public as having the highest-quality product, which in turn would result in that league generating much larger revenues, which in turn would result in the dominant league expanding to fill the national market and reestablishing the major league monopoly in the sport.

I strongly suspect that each major sports league is a natural monopoly whose market power in many markets cannot (and probably should not) be diminished for very long by forced market competition.

The more technical explanation for this likely phenomenon is that sports leagues face average fixed costs that greatly exceed marginal costs. In highly competitive product markets, each league would thus price their output at levels somewhat above marginal cost but well below average fixed costs, which means that the leagues would inevitably lose money and one-by-one go out of business until only one remained that had the market power to charge prices high enough to allow it to recoup its fixed costs. Thus, I strongly suspect that each major sports league is a natural monopoly whose market power in many markets cannot (and probably should not) be diminished for very long by forced market competition.

My own remedy for the natural market power that major sports leagues enjoy is to treat leagues in exactly the same manner that government treats all natural monopolies– that is, to regulate them. I believe Congress should create and empower a regulatory body to identify the markets in which sports leagues possess extraordinary unchecked market power and then to regulate what leagues may do in those markets so as to prevent exploitation beyond that necessary to guarantee a fair rate of return.

I made this same recommendation specifically in connection with Major League Baseball to this Subcommittee back on December 10, 1992, during hearings on the baseball exemption, and I was essentially told by then-Chairman Metzenbaum that the idea of regulating baseball was too liberal for him. I quickly came to realize that if regulating professional sports is too liberal for Senator Metzenbaum, it is probably an idea whose time has not yet come (or perhaps has long since passed). But political difficulties aside, regulating natural monopoly power is far more principled, predictable, and rational than subjecting an enterprise to the vagaries of unprincipled, arbitrary, and unpredictable section 1 antitrust enforcement by courts, each of which has its own agenda–and I say this even after fully taking into account the dangers of incompetence, conflict of interest, and corruption that can plague government regulatory schemes.

Accepting that regulation, like breaking up the major leagues, is not a feasible option, and that for now the courts are intent on applying section 1 to internal sports league rules and decisions, the question for Congress today is: What is the best way to mitigate the effects of the leagues' substantial market power while at the same time allowing them to operate within a reasonably predictable and rational legal framework? It is in responding to this question that I support the adoption of a limited antitrust exemption with respect to league decisions involving franchise location and ownership restrictions.

The Case for a Limited Antitrust Exemption

If sports leagues are to be subject to anticonspiracy doctrines that will require the league partners to compete with one another in certain respects, then the contexts in which courts are allowed to engage in this ad hoc judicial regulation ought to be limited to ones in which it is likely that requiring intraleague competition will in fact mitigate the league's market power and on balance benefit consumers and the public. It ought not to include contexts in which no rational theories of competition can be articulated and in which judges can thus be free to pursue their own political agenda.

One can make a reasonable argument that with respect to league restraints on member clubs' independent competitive conduct in the player labor market, or in the markets in which television or trademark rights are sold, requiring the league's member clubs to compete at least in some limited (albeit hard to define) ways would on balance benefit the public interest. Thus, if one rejects the various doctrinal variations of the single entity argument because leagues have too much market power, then league rules affecting these markets would arguably not be the best candidates for exemption from intraleague judicial section 1 regulation, even though exemptions already exist in significant respects in both the labor market, and the television rights market.

Granting sports leagues an antitrust exemption for franchise relocation decisions would at least marginally enhance the public interest.

On the other hand, it is difficult to conceive of any rational argument for the proposition that the public interest or consumer welfare is enhanced by antitrust suits against league rules or decisions relating to franchise location or ownership. In fact, it is quite likely that the public interest will be served by having leagues (the relevant productive firm) make such structural decisions instead of allowing individual club owners to make them based solely on their individual interests. For this reason, granting sports leagues an antitrust exemption for such decisions would at least marginally enhance the public interest, which is probably the most Congress can do if it is unwilling to make major substantive changes in the structure or governance of the sports industry.

The ability of major league franchise owners to extract huge subsidies of various kinds from communities by auctioning their teams to the highest bidder demonstrates enormous market power in the sports franchise market. By restricting the supply of franchises well below the demand for them, team owners can reap classical monopoly profits–driving up the value of a commodity by restricting output and forcing consumers to bid up the price for the scarce item. But the only way to mitigate significantly the monopoly wealth transfers from community taxpayers to franchise owners (and in turn to the players who share in the owners' largesse) would be to create structures that would increase the number of franchises available so almost every viable community could have one, and this could only be accomplished through radical measures like direct government regulation or forced breaking up of each league, ideas which are apparently not politically viable.

It is not and has never been illegal for business people who lawfully possess market power to exploit it fully in the pursuit of profits.

Thus, if we must accept a fixed number of unregulated franchises in each sport, two things are inevitable. First, many communities that could support a franchise in a sport won't have one (a "misallocation of society's resources" effect). Second, in order to have a franchise, a community will be required to pay huge subsidies (a "monopoly wealth transfer" effect). So assuming a set number of teams, Congress' ability to mitigate the effects of the leagues' market power is quite limited. The question we are focusing on today is simply whether it is in the public's interest for decisions affecting franchise location to be made by individual franchise owners or by the full league/joint venture partnership. I believe that in virtually every case, the answer is that such decisions are better made by the league, and thus an antitrust exemption from section 1 suits should be granted in these types of cases.

We, of course, cannot expect the collective group of franchise owners comprising the league to act as a significant check on the league's exploitation of market power in order to protect the public interest. This does not make them evil or immoral people, only business people who do what business people are expected to do, and what in many business contexts they have a fiduciary duty to their shareholders or partners to do–maximize profits. And it should be noted that it is not and has never been illegal for business people who lawfully possess market power to exploit it fully in the pursuit of profits. But even though the league partners are not likely guardians of the public interest, that interest will still be better served if the owners collectively make franchise location and ownership decisions than if single owners are free to pursue individual interests in individual cases.

In the first place, leagues will act from a broader perspective and thus will mitigate somewhat the most severe effects of market power exploitation by a single owner. Because all leagues equally share network television revenues, the effects of a move on viewership, which is directly proportional to market size and thus consumer welfare, will have minimal influence on an individual owner. However, stadium revenues are either kept entirely by the home team or shared somewhat with the visiting team. Thus, much smaller communities that can provide new state-of-the-art stadiums, luxury boxes, and a cadre of wealthy business leaders willing to fork over lots of money for box rentals and personal seat licenses can lure individual team owners to abandon much larger cities that cannot in the short term come up with similar financial guarantees.

With due respect to those who represent St. Louis, Nashville, and Baltimore, it is not in the interests of consumer welfare or the American public generally for NFL teams to be in those cities but not in Los Angeles, Houston, or Cleveland. There will be millions fewer of NFL consumers because of the recent NFL franchise shifts (although the fewer will be wealthier people who are paying more for it), a fact which because of the way revenues are shared hurts the overall long-term revenue and welfare of the league as a whole. If fear of antitrust litigation did not hang over the NFL, it is likely that some of these anti-consumer moves that benefit only the individual team owner would be blocked. Of course, as the NFL did with the St. Louis Rams, the league could condition approval of a move on the team's sharing much of its windfall with the rest of the league, which would somewhat diminish the beneficial effect of having league oversight, but the overall principle that such league oversight is better than none at all remains valid.

It is not in the interests of consumers or the American public for NFL teams to be in St. Louis, Nashville, or Baltimore but not in Los Angeles, Houston, or Cleveland.

Likewise, frequent franchise relocations undermine the image and credibility of a league as a whole and thus diminish the quality of the product in the eyes of consumers. This too is an injury to consumer welfare that league oversight might mitigate. Individual teams that get short-term windfalls aren't deterred by subtle long-term image problems, but the league as a whole might be. In this way too, having league control of franchise location benefits the overall long-term public interest.

The bottom line is that if we assume a limited number of franchises, how the decision as to where they will be located is made is not an antitrust issue. No economic or business competition is diminished and no market power is enhanced or entrenched because the league decides where one team's home games on the league schedule are played (i.e., where the franchise is located) instead of the team. (And logically, why shouldn't a visiting team have the same right to decide where its road games are played, or the other league members whose television revenues are affected and whose jointly owned league trademark is exploited in every game?) These kinds of cases will virtually never implicate antitrust law or policy.

As an illustration, there were very few intercity professional sports franchise relocations prior to 1980. In the NFL, the last previous relocation had been the Chicago Cardinals move to St. Louis in 1960. However, after the highly political, result-oriented antitrust decision in the *Raiders* case in 1982, the ability of leagues to control franchise location without fear of antitrust litigation and liability disappeared. Since then, the Raiders have moved to Los Angeles and back again to Oakland; the Colts moved from Baltimore to Indianapolis; the Cardinals from St. Louis to Phoenix; the Rams from Los Angeles to St. Louis; the Browns are moving from Cleveland to Baltimore; the Oilers are moving from Houston to Nashville; and several other teams are reported to be likely to move in the near future. That's zero moves in twenty years before the *Raiders* decision, and seven moves (and still counting) in the fourteen years since. And several NFL teams that have not moved, like the Minnesota Vikings, New Orleans Saints, and Philadelphia Eagles, have used the threat of relocation as a negotiating ploy to extract huge subsidies from their home communities. One unprincipled decision by Los Angeles judges who wanted a second NFL team in Los Angeles unleashed the era of franchise free agency in the NFL that has greatly injured many consumers of NFL football and the taxpayers of many communities. The possibility that the league could intervene to block a team from abandoning a loyal community would likely have materially diminished the unfettered power of individual owners to extract as much as they did, but that possibility was minimized because of the fear of antitrust litigation caused by the *Raiders* case.

Conclusion

Partnership/joint venture law recognizes that the efficiency and productivity of any joint venture is maximized if the partners are required to act with loyalty and good faith toward the joint enterprise and, unless the joint venture allows it, not to compete independently against the venture or to expropriate its assets. If antitrust law is going to ignore this principle and require sports league partners to compete independently against the league (and thus create the inefficiency that inevitably flows from such internal disloyalty) because the league partnership possesses market power, it should do so only in situations where requiring such "intraenterprise competition" will mitigate the effects of market power and benefit consumers.

> **One unprincipled decision by Los Angeles judges who wanted a second NFL team in Los Angeles unleashed the era of franchise free agency in the NFL.**

In cases involving franchise relocations or ownership, there is no intraleague competition in any meaningful sense implicated and the public interest will virtually never be enhanced by allowing courts to fantasize some imaginary type of intraleague competition and then to hold that the league illegally diminished it. In fact, particularly in the franchise location context, the most virulent effects of the league's strong market power on the public will actually be somewhat mitigated by allowing leagues to impose their broader and longer-term perspective than by allowing individual owners to pursue their narrow short-term interests with little fear of league intervention. The public interest and consumer welfare gain nothing and are actually diminished by allowing these types of nonsensical antitrust suits that unjustifiably enrich only the lawyers and disloyal plaintiff club owners and that greatly confuse and misdirect antitrust doctrine.

For these reasons, given that real structural reform or regulation is not feasible, the public interest and consumer welfare will be benefitted by granting a limited section 1 antitrust exemption for professional sports league decisions involving franchise location and relocation and involving franchise ownership.

PART 2

Stephen F. Ross
University of Illinois

It is a privilege and a pleasure to appear before the committee for which I had the honor of working as a staff counsel over a decade ago. A committee whose principal concern is antitrust law–what the Supreme Court has described as a prescription for the welfare of consumers–is appropriately focusing its attention on one of the most grievous abuses of monopoly power in America today: the exploitation of fans and taxpayers by monopoly sports league owners threatening to relocate sports franchises.

Introduction and Summary

National Football League owners are not, to my knowledge, evil or nefarious people. They are simply monopolists, and they behave consistently with the way economic theory suggests monopolists will conduct themselves: They produce less of their product (too few franchises), charge more for it (obscene tax subsidies in this current era of government deficits), and operate inefficiently (franchises relocated from the nation's second-largest media market (Los Angeles) and one of the most popular on a percentage basis (Cleveland)). Fans in areas without teams suffer from the inability to see a major league professional team in their area; taxpayers suffer through these public stadium subsidies.

As I have previously written, the clearly optimal policy solution is to acknowledge that time has shown that the Act of November 8, 1966, permitting a financially successful National Football League to merge with its financially successful American Football League rival, is now a mistake that should be corrected by Congress. If two or more rival major leagues made their own independent determinations concerning expansion and relocation, the result would be the end of "franchise free agency" and the end of massive exploitation of taxpayers.

> **One of the most grievous abuses of monopoly power in America today is the exploitation of fans and taxpayers by monopoly sports league owners threatening to relocate sports franchises.**

In light of the many policies of the 1960s being reconsidered by the 104th Congress, I do not believe this proposal is too radical to be politically possible. Indeed, as I illustrate in Table 1 below, I believe that this proposal is not only good policy but good politics. After addressing why I believe the committee should seriously consider this proposal, this testimony will address why proposals to simply immunize NFL relocation decisions from antitrust scrutiny will not solve the real problems of the exercise of the NFL's monopoly power, why the cumulative effect of a number of NFL revenue-sharing rules may result in an unreasonable restraint of trade that should not be immunized, and why fear of antitrust liability is not the principal cause of the recent rash of franchise relocations in the NFL. As I detail below, by requiring teams to share all revenues from live gate, television, and souvenirs, but permit teams to keep for themselves all revenues from local tax subsidies, the NFL owners have illegally channelled their entrepreneurial competition away from making their games exciting and entertaining to fans and toward exploiting taxpayers.

> The NFL's current revenue-sharing system allows owners only one way to improve profits–through taxpayer rip-offs.

Finally, I suggest that several second-best solutions deserve the Committee's consideration if the restoration of competition in major league professional football is not going to be possible. Specifically, I propose that you consider employing Congress' Commerce Clause power to condition the NFL's continued existence as a monopolist on its refusal to accept tax subsidies by state and local governments to lure or keep franchises from relocating to another state, and that you also consider specific legislation to outlaw, as an unreasonable restraint of trade, the NFL's current revenue-sharing system that allows owners only one way to improve profits–through taxpayer rip-offs.

Restoring competition in the franchise market is the best solution to the current problems.

In 1959, Bud Adams agreed to pay $150,000 of his own money to expand the seating capacity of a local stadium in order to secure a five-year lease and obtain for his Oilers team in the American Football League the Houston, Texas, franchise. This month, Mr. Adams announced he was moving his team to Nashville, Tennessee, in pursuit of a new stadium that will guarantee Adams $71.5 million in "personal seat licenses" and at least 82 luxury suites as part of a $292 million agreement subsidized by $55 million in state general obligation bonds, $18 million in cash for road improvements, and $4 million in local funds accumulated by the Nashville water department. The principal explanation for the stark difference in Mr. Adams' behavior is that in 1959 he was part of a competitive enterprise; today, he operates as a member of a monopoly cartel.

In prior legislative battles, senators from states that currently have NFL franchises skirmished with their colleagues from "have-not" states, preventing any legislation from passing. It is time for you to join together to accomplish a result that will benefit taxpayers and fans everywhere, and where the only losers are the monopolists. By restoring competition, the exploitation of taxpayers would cease. The NFL wouldn't think of abandoning Los Angeles or Cleveland, because the AFL would move right in, picking up a lucrative expansion opportunity, higher ratings for the AFL's network television rights, etc. If taxpayers in Baltimore or Nashville thought that creation of a publicly funded stadium was critical, at least they would have the AFL and NFL bidding to pay more rent to defer some of the cost.

Creation of competing leagues would also reduce the antitrust uncertainty that NFL officials like to cite as a cause of the current problem. The Supreme Court has clearly suggested that where two or more rival leagues exist in a market, each league will have considerably more flexibility to make its own decisions free of review in antitrust litigation. Moreover, modern antitrust law (which has, in fairness, become more sophisticated since Congress allowed the AFL-NFL merger in 1966) would clearly permit the NFL and its rejuvenated AFL rival to agree on a Super Bowl, inter-league play, and agreements ancillary to this cooperation.

Some suggest that competing leagues are simply not possible in professional sports. I have dealt in detail with such an historical argument elsewhere. For current purposes, suffice it to say that, although many attempts to challenge an established major league failed for economic reasons, in both baseball and football successful rival leagues were formed and succeeded in joining the established league in a cartel exempted either by the Supreme Court or Congress from antitrust scrutiny. Moreover, repealing the 1966 legislation and establishing an orderly procedure for the re-creation of the old AFL would involve, unlike prior cases, two rival leagues of equal strength. The law is also clear that a common draft, or even restraints on the ability of an AFL team to bid on the services of an NFL player, would be protected from antitrust challenge if they were embodied in a collective bargaining agreement signed by both leagues and the players' union. Finally, the public will be well-served even if I am wrong in my judgment that a re-created AFL could compete with the NFL. Even if the players' union did not help preserve members' jobs by agreeing to restraints on competition for players' services in a collective bargaining agreement, Congress could revisit this issue and re-enact merger-authorizing legislation a decade from now. Meanwhile, the public will receive the benefit of ten years' worth of competition.

> **The fewer the franchises, the more incentive for have-not cities to provide tax subsidies like the ones lavished upon Art Modell and Bud Adams.**

One benefit of a free enterprise system is that the market usually responds to increased consumer demand for a product by spurring increased output. Monopoly sports leagues, by contrast, exercise their power deliberately to hold down the number of available franchises: The fewer the franchises, the more incentive for have-not cities to provide tax subsidies like the ones lavished upon Art Modell and Bud Adams. Even owners with no intention of relocating their own teams want to suppress the number of franchises so that they may exercise a credible threat to relocate, and have no desire to share lucrative television revenue with another co-venturer.

If competing leagues existed, each league would have a greater incentive to expand to available markets. Each league would be eager to tap into new markets to attract new viewers to its own network television package, whose value would depend on how many fans viewed each leagues' games. For example, when the AFC-member Colts left Baltimore for Indianapolis, the Baltimore NBC affiliate (which broadcasts AFC games) saw its ratings fall, while the CBS affiliate (which used to broadcast NFC games) saw its ratings rise. Faced with a potential move by another

AFC team (the Browns) into Baltimore, the NFC would have a strong incentive to expand to that media market, an incentive that its current network, Fox, would probably be willing to pay for.

As a noted economist once wrote, one of the virtues of competitive markets is that they "solve the economic problem impersonally, and not through the personal control of entrepreneurs or bureaucrats. There is nothing more galling than to have the achievement of some desired objective frustrated by the decision of an identifiable individual or group." The following table shows the benefits and costs of such restored competition. I remain optimistic that this Committee will be able to assert leadership in this area on behalf of all their constituents who don't happen to own NFL franchises.

Table 1
Effect of Legislation Repealing the NFL-AFL Merger

Interest Group	Principal Effect	Winners/Losers
Fans in cities without teams (football fans in Nashville, Baltimore)	Increased likelihood that each league will expand to gain new market and prevent rival from gains	Winner
Taxpayers in cities without teams	Rival leagues will bid for chance to play in new stadiums, pay rent, etc.	Winner
Fans in cities with franchises (e.g., Browns, Oilers fans)	Reduced chance that favorite team will leave, since most lucrative markets will be filled	Winner
Taxpayers in cities with teams	Popular support for tax subsidies reduced since local team will lose credible threat to relocate to desirable market	Winner
Elected representatives who do not depend on political support from NFL owners	Bi-partisan legislative solution shows problems can be solved in D.C.	Winner
Television networks	Fees potentially reduced with rival leagues	Winner
Average and young players	More jobs = greater opportunity	Winner
Currently over-paid stars	With reduced monopoly income from league, deals like Deion Sanders' may suffer, but competition from leagues may prevent strikes	???
NFL owners	Lose ability to exploit taxpayers by threatening relocation	Loser

Granting antitrust immunity for NFL rules concerning franchise relocation is not a desirable alternative.

Although I have not seen today's testimony from NFL officials, in the past they have suggested that the problem of "franchise free agency" would be significantly alleviated if only they were allowed to operate as they saw fit, free of any threatened antitrust liability. If the NFL were not a monopoly league, I believe that current interpretations of the Sherman Act would make it virtually impossible to win a case against one league's franchise location decision, and, for purposes of clarification, I can see little harm from affirmatively immunizing franchise relocations decisions made independently by one league where that league faced effective competition from one or more rivals. However, as long as the NFL remains a monopoly league, I do not believe that this Committee's response to the problem should be to grant such immunity.

First and most fundamentally, such an immunity does nothing to prevent cities, fans, and taxpayers from exploitation when the league works in concert with a team owner to threaten or actually relocate. Second, depending on the language of the legislation, such immunity could block what I believe is a potentially viable antitrust challenge to the current problems in the NFL. Third, such immunity would also improperly immunize the inefficient and anticompetitive vote by a minority of NFL owners to block a desirable relocation solely to protect an existing owner from competition. Fourth, such an immunity is not really necessary to enable the NFL to effectively prevent franchise free agency if it chose to do so. Fifth, although on balance carefully drafted and narrow legislation might represent a slight improvement over the *status quo,* Senators representing states without NFL franchises (obviously including Senators Thompson and Heflin of this Committee) are likely to come under tremendous constituent pressure to strongly oppose such legislation. If this Committee is determined to forge ahead with controversial legislation in this area, I strongly urge that you pursue the legislation advocated in Part I of my testimony despite the opposition of the NFL, rather than legislation discussed in this part of my testimony, despite the opposition of have-not cities and their representatives.

Legislation that would immunize NFL decisions to prevent a franchise from relocating would obviously have an effect only when NFL owners chose to block a relocation.

Legislation that would immunize NFL decisions to prevent a franchise from relocating would obviously have an effect only when NFL owners chose to block a relocation. Although allegations of bad faith concerning Mr. Modell's negotiating tactics have made Cleveland's case a particular *cause celebre,* even here Commissioner Tagliabue made it clear that the league would welcome Modell's relocation if Cleveland taxpayers did not come up with a sizable subsidy package to attempt to meet Baltimore's offer.

For example, almost all legislative proposals I have seen, as well as current NFL rules, permit the league to consider among the relevant factors the "adequacy" of the existing stadium and the willingness of local taxpayers to support any efforts to remedy any inadequacies. As a good lawyer, Paul Tagliabue would have no trouble defending a league decision that any stadium without substantial luxury boxes was "inadequate," and that any locality whose taxpayers were unwilling to provide significant subsidies to be insufficiently supportive, so that relocation would be justified. Indeed, since adequacy and support are relative concepts, even the Browns relocation could be approved by league owners, if they so chose, because the proposed new stadium in Cleveland is arguably inadequate relative to the new stadium in Baltimore, and the degree of taxpayer support is similarly inadequate–if it were not, Mr. Modell would not have bothered to move to Baltimore! The real problem is not individual owners like Mr. Modell, or Al Davis before him–even Pete Rozelle went to Minnesota and threatened to support relocating the Vikings if the state legislature did not construct the Humphrey Metrodome at taxpayer expense. The problem is that owners want to be able to threaten to relocate in order to maximize taxpayer subsidy, and as long as they have a monopoly it is most difficult to prevent them from doing so.

> NFL owners want to be able to threaten to relocate in order to maximize taxpayer subsidy, and as long as they have a monopoly it is most difficult to prevent them from doing so.

Depending on the breadth of the exemption, immunity legislation could unjustifiably eliminate what I believe to be a viable cause of action that could be brought under current law by taxpayers and fans in Ohio and Texas against the entire system of NFL rules that, in my opinion, unreasonably restrains and channels trade and competition among NFL owners away from an exciting product on the field and toward exploitation of local taxpayers. The NFL has a number of rules that require teams to share revenue from live gate, television, and souvenirs. Taken in isolation, the rules are probably reasonable. The NFL also permits teams to keep for themselves income from luxury boxes and other stadium revenues and does not require any pooling of costs of leasing facilities. The combined effect of these rules is to dampen incentives to increase live gate income, broadcast ratings, or popularity of team jackets and other paraphernalia, while maximizing incentives to relocate or otherwise exploit local taxpayers. In my opinion these rules, together, fall within the Supreme Court's definition of unreasonable trade restraints in the sports area: Prices are higher and output is lower than would otherwise be the case, and both are unresponsive to consumer preference. It is clear, for example, that Mr. Modell would not bother moving to Maryland if he personally would pocket only 1/30th of the subsidy. Less clear, Mr. Modell might not have moved even if he were able to keep the subsidy but would have to substitute the revenues from Baltimore's television market for the revenues from Cleveland's television market. Only because tax subsidies are not shared while other revenues are can the current situation flourish. It would be unfortunate if this legal theory were wiped out by Congress.

Not only would immunity legislation do little to solve the real problem of taxpayer exploitation, but it might facilitate some real injustices. Recall that the Cardinals franchise left St. Louis for Phoenix without great controversy, because the fans were not supporting the team and there was little support for a new stadium.

Suppose, however, that based on objective market factors Baltimore was a stronger candidate for the Cardinals franchise than Phoenix, but a minority of league owners, organized by the Washington Redskins' Jack Kent Cooke, prevented the selection of the superior Baltimore market? In such a case, I believe, fans are entitled to some protection from anticompetitive decisions by a minority of monopoly sports league owners.

This Committee should recognize that NFL officials seriously overstate the legal risk in blocking franchise relocations under current antitrust law. (Of course, were the NFL to appear in court, they would plainly support the narrow interpretation of existing case law that I set forth below.) The only case to find a professional sports league liable for refusing to allow a franchise relocation was the NFL's rejection of the Oakland Raiders relocation to Los Angeles.

The NFL's revenue-sharing rules dampen incentives to increase live gate income, broadcast ratings, or popularity of team jackets and other paraphernalia, while maximizing incentives to relocate or otherwise exploit local taxpayers.

In the *Raiders* case, the plaintiffs presented evidence found credible by a jury that (1) the L.A. market could easily support both the Raiders and the Los Angeles Rams; (2) the NFL had failed to show any harm to the league, in terms of network television exposure, regional balance, or travel costs, as justification for refusing to permit the relocation; (3) the NFL rules permitting eight owners to veto the move, combined with evidence that the Rams strongly objected, supported the conclusion that the leagues' motivation was to protect the Rams from competition rather than to enhance the quality or marketability of NFL football; and (4) the league's most persuasive argument–that it had a legitimate interest in recognizing the loyalty of Oakland fans–was undercut by its lack of any criteria for evaluating relocations and significant evidence that, in other cases, the league was willing to overlook fan loyalty in order to permit teams to credibly threaten to move unless they received public stadium subsidies. Moreover, the court of appeals' subsequent opinion on damages confirmed that leagues may legitimately impose a significant fee upon the relocating team to compensate the league for the lost opportunity to obtain expansion fees from a new team in the new area.

In my judgment, this means that the NFL could have legally barred the Rams from relocating to St. Louis. The league's claims of effect on regional rivalries (e.g. with the San Francisco 49ers) and television exposure (losing the second-largest media market) would have been legitimate. Most significantly, the Rams had no plausible claim that a refusal would be based on any anticompetitive motive. This also means that the only way that Messrs. Modell or Adams could prevail in an antitrust suit should their fellow owners reject their relocation proposals would be if their attorneys could persuade a *reasonable* jury that, like the *Raiders* case, the league was not interested in saving television dollars, regional rivalries, or fan loyalty but rather was interested in protecting the Washington Redskins or some team somehow viewed as nearby to Nashville from competition.

Most significantly, I read the *Raiders* decision as permitting a league to adopt a strong and consistent policy of rewarding fan loyalty–demonstrated by live gate attendance, television viewership, and souvenir purchases, as opposed to public stadium subsidies–as a long-term business strategy. The NFL is not going to adopt such a policy however, because the owners don't want to deprive themselves of the ability to threaten teams with relocation. Indeed, if legislation conditioned antitrust immunity on the league's adoption of such a policy, and prevented a league from permitting teams to relocate because of insufficient tax subsidies, it would be a significant improvement over the *status quo.* Similarly, legislation that, for example, granted immunity to the NFL for ten years, conditioned upon an expansion of at least four teams during the next six seasons, might approximate the results of a free market, and would make it very difficult for teams to credibly threaten to leave existing metropolitan areas. I have seen no serious proposals along these lines.

I read the *Raiders* decision as permitting a league to adopt a strong and consistent policy of rewarding fan loyalty–demonstrated by live gate attendance, television viewership, and souvenir purchases, as opposed to public stadium subsidies.

I have yet to see any proposed statutory language that would effectively protect against real or threatened relocations because the league believes that taxpayers in the current location have not provided a sufficiently large subsidy. At the end of the day, however, the number of cases where the league might want to prevent an individual owner from exploiting taxpayers is probably greater than the cases where the league might inefficiently protect one owner from intra-territorial competition. Thus, legislation carefully drafted to immunize specific relocation decisions, while still permitting antitrust challenges to the overall system of league rules that facilitate taxpayer exploitation, would probably mark a very modest improvement in the *status quo.*

However, such legislation is likely to provoke strong opposition from key interest groups, as Table 2 demonstrates. If this Committee is going to draft legislation that offends an interest group, it makes better sense, better policy, and better politics to take on twenty-eight owners of NFL teams rather than millions of sports fans in Los Angeles, Nashville, Baltimore, Birmingham, Portland, Sacramento, and other communities that fancy themselves worthy of an NFL franchise.

Table 2 Effect of Legislation Preserving NFL's Option to Exploit Taxpayer		
Interest Group	**Principal Effect**	**Winners/Losers**
Fans in cities without teams (football fans in Nashville, Baltimore)	Decreased chance of outbidding existing teams for franchise if NFL owners wish to avoid P.R. "hit"	Big Loser
Taxpayers in cities without teams	Somewhat decreased chance of exploitation if relocation barred by owners	Modest Winner
Fans in cities with franchises (e.g., Browns, Oilers)	Reduced chance that favorite team will leave, if can convince owners	Modest Winner
Taxpayers in cities with teams	Still required to support tax subsidies or league will allow relocation	Loser
Elected representatives who do not depend on political support from NFL owners	Have-not cities pressure their representatives to oppose bill, so legislation unlikely	Probable Loser
Television networks, average and young players, over-paid stars	No effect	???
NFL owners	Preserve ability to maintain good P.R. while continuing to exploit taxpayers by threatening relocation	Big Winner

Legislative solutions if merger-repealing legislation is deemed unacceptable.

Thus far, I have attempted to demonstrate that the best solution would be to restore competition between competing leagues by repealing the 1966 merger legislation, and that granting the NFL greater antitrust immunity while enabling owners to both maintain their monopoly powers and their freedom to exploit taxpayers would do little to improve the current problem. If the Committee's judgment is that your limited time should not be spent on this issue unless a consensus can be reached and legislation could be passed with at least the acquiescence of the NFL, I would urge you to turn to other matters immediately. Unfortunately, this issue involves a zero-sum game. As demonstrated in Part II, any legislation that would likely be supported by the NFL will not solve the real problem of taxpayer exploitation. Moreover, as shown by Table 2 above, it is likely to hurt strong interest groups, and thus is unlikely to pass anyway. If you are willing to take on the NFL, my proposal to repeal the 1966 legislation seems the cleanest. However, in this Part of my testimony, I offer two other suggestions that would significantly improve the status quo and defer to your political judgment if they are more politically palatable.

Prohibit tax subsidies to lure or retain franchises.

Although restoring competition to professional football and allowing the marketplace to allocate franchises would be most consistent with general public policy, one legitimate congressional response to the immediate problem of franchise free agency would be to directly target the social harm caused by this process–the exploitation of taxpayers–by prohibiting special tax subsidies to lure or retain franchises from leaving a state. As you may know, the European Community has historically prohibited these "state aids," as well as tariffs and other negative barriers to the free flow of commerce. In the United States, special tax breaks have been held not to interfere with interstate commerce. Whatever the merits of this aspect of American federalism generally, it seems entirely appropriate for the same national legislature that granted a special antitrust exemption to allow the creation of a monopoly football league to insist that such a league not play one community against another through tax subsidies. If federalism concerns are perceived to prevent Congress from limiting the ability of states to use their spending or taxing authority in a way that Congress believes is inimical to interstate commerce, legislation could be drafted that would provide that, notwithstanding the 1966 merger legislation, the NFL would be subject to a monopolization challenge under §2 of the Sherman Act if it or its member teams accepted tax subsidies as a lure to remain or relocate a franchise.

It seems entirely appropriate for the same national legislature that granted a special antitrust exemption to allow the creation of a monopoly football league to insist that such a league not play one community against another through tax subsidies.

Require luxury box income to be shared by all members of the league.

As noted earlier, the structure of NFL rules requiring sharing of all income the Browns and the Oilers derive from live gate, television, and souvenirs, but allowing Messrs. Modell and Adams to keep for themselves the benefits of local taxpayer subsidies, has unreasonably channelled competition away from activities that make NFL football the most marketable product possible and toward techniques to further exploit consumers. As a result, for many years now the principal difference between the most profitable and least profitable franchises was not the quality of the organization or the team but the success of the team owner in negotiating a lucrative stadium deal. One way to correct this problem, and take away a significant incentive for owners to relocate, would be to require that stadium-related income be shared with co-owners to the same degree as other principal sources of revenue.

As explained above, these owners would simply not have gone through the trouble of becoming exiled from their hometowns for 1/30th of the proceeds of the move to Baltimore or Nashville. Moreover, consider the impact this has if we assume that these owners are knowledgeable about the sport in which they operate.

One way to take away a significant incentive for owners to relocate would be to require that stadium-related income be shared with co-owners to the same degree as other principal sources of revenue.

For the past few years, the Houston Oilers have had their ups and downs amid several coaching changes, novel offensive strategies, and decisions about whether to keep old and popular veteran players. Should Mr. Adams have been spending more time focusing on these issues, or trying to figure out ways to exploit taxpayers? Under NFL rules, clearly the latter. If the Oilers win big on the field, they might have many sell-outs and ticket prices at the Astrodome could rise considerably, but Mr. Adams will have to share 40 percent of this source of income with the visiting team. If the Oilers' players are popular, Oiler jackets, hats, helmets, and other paraphernalia might become big sellers, but Mr. Adams simply shares 1/30th of all profits from NFL Properties. If the Oilers design an exciting offense that attracts major television ratings, both in Houston and across the country, Mr. Adams simply shares 1/30th of the profits. However, if Mr. Adams can get a multi-million-dollar tax subsidy, he keeps it himself. This is not the way that free enterprise is supposed to work in this society, and this Committee is the appropriate body to call a halt to these practices.

Again, I appreciate the opportunity to appear before you today.

PART 3

Robert A. Baade
Lake Forest College

In considering the controversy relating to subsidies extended to professional sports by government at all levels, subsidy supporters have expressed bewilderment at the extent of public antipathy. After all, subsidies of one form or another are routinely extended to private enterprise. Chicago, New York, and other cities throughout the United States often attempt to attract or retain industry, including sports franchises, by providing them tax concessions, land at below market value, the construction of infrastructure, or other subsidies. What is it about professional sports that inspires the unusual level of taxpayer resentment to government largesse?

Several things distinguish sports. First, sports are of enormous cultural significance. Some influential social scientists view sports as a secular religion in the United States. Second, those who provide sports entertainment, the owners and players at the professional level, enjoy extraordinary financial privilege. Third, sports leagues are cartels that operate with at least the tacit approval of government despite antitrust laws that ostensibly prohibit collusion and restraint of trade.

> **Sports has a split personality. There is the personality we revere, represented by the on-field activities which give substance to our dreams and childhood memories, and the personality we revile, the off-the-field financial activities and antics which sully those same dreams and memories.**

These three factors have combined to split sports' personality. There is the personality we revere, represented by the on-field activities which give substance to our dreams and childhood memories, and the personality we revile, the off-the-field financial activities and antics which sully those same dreams and memories. If the baseball strike accomplished nothing else, it demonstrated how tenuously professional sports balances its dual character. Indeed, professional sports may be courting its own demise through alienating its fans, betraying a trust, through the use of its monopoly power to further its financial privilege.

Nowhere is the exercise of sports' excessive and potentially destructive financial ambition more apparent than in the construction of new sports stadiums. My comments today will focus on the stadium issue. In particular, I will provide information on the number of new facilities being constructed, the economic imperatives which explain the surge in stadium construction, and the economic benefits, or lack thereof, that accrue from new facility construction.

New Sports Facilities Construction

Since 1989, by my count thirty-one new commercial sports venues have been constructed or are under construction. Further, twenty-seven cities are in the throes of new stadium debates, and this statistic includes only those cities that currently host a team in one of the four major professional sports leagues: baseball, basketball, football, and hockey. There are countless other cities across the country that are contemplating building a sports facility to either attract a currently existing professional team or to accommodate a minor league club. The construction of sports facilities has become a billion dollar business and all indications are that the spate of stadium construction will not soon abate. Why?

Stadium construction mania cannot be understood without understanding the ongoing economic revolution in professional sports. Free agency, the declining importance of television revenue for most major league sports, the growing disparity among the financially well-heeled in sports and financial also-rans, and the increased discussion of revenue-sharing within leagues as a means of providing league stability explain the stadium construction boom.

The most valuable franchise in professional sports today is the Dallas Cowboys with an estimated price tag of $238 million. The Dallas Cowboys play in the NFL, a league renowned for its revenue-sharing program, a program promulgated by its former commissioner, Pete Rozelle. What separates Jerry Jones and the Cowboys from the rest of the NFL is the over $30 million annually the Cowboys have been able to generate through the operation of their stadium.

If one were to compute the venue revenue generated by teams as a percentage of the league average for venue revenue in baseball, it is not difficult to understand why new stadiums are being constructed or contemplated in Minnesota (35 percent of the average venue revenue), Milwaukee (47 percent), and Cincinnati (66 percent). Since television revenues have actually fallen for baseball, the Twins, Brewers, and Reds feel they cannot maintain their on-the-field competitiveness without new playing facilities.

Two of the more egregious examples of the perils the new economics of sports pose for facilities can be found in Charlotte and Minneapolis.

One major lesson gleaned from the experience with new stadium construction is that stadiums are replaced not because of their physical obsolescence, but because of their economic obsolescence. As a consequence, the shelf life of stadiums and arenas has been substantially reduced. Two of the more egregious examples of the perils the new economics of sports pose for facilities can be found in Charlotte and Minneapolis. Despite having built an arena for the NBA Hornets in 1988, Charlotte's arena generates only 37 percent of the NBA arena revenue average. The emphasis on luxury seating and the relative paucity of it in the current Charlotte facility have compelled the new arena debate in that community. This despite the fact that the

Charlotte facility, with 23,906 seats, was the NBA's largest up until 1993 and may still be the largest at this moment.

Minneapolis built a domed stadium in 1982 to accommodate the NFL's Vikings and the MLB's Twins. The new stadium debate in Minneapolis is compelled by the same forces at work in Charlotte, but an additional force is at work in Minneapolis. The multi-purpose facility, particularly as it relates to accommodating both football and baseball, is on the endangered species list. In their quest for revenues, owners do not want to share stadium proceeds with other owners. I do not foresee multi-purpose stadiums for football and baseball existing beyond the year 2000. Events in Cincinnati, Milwaukee, Cleveland, and Seattle attest to this assertion.

My personal experience has heightened my awareness of this particular trend. In Chicago, I chaired the cost-benefits committee for the Metropolitan Planning Council's version of a stadium task force for more than one year. We concluded that the City of Chicago's economic interests would be served best if a domed stadium was built adjacent to the McCormick Convention and Trade-Show Center. Our committee counseled that to minimize stadium dead time, the facility should house both the Bears and the White Sox. That recommendation effectively killed the proposal, and a year's worth of volunteer work by a substantial number of professional people was summarily dismissed as untenable.

The modern stadium caters to a more elite audience while at the same time asking for public support.

Recent stadium experiences across the country provide some other lessons. In addition to economic obsolescence, the modern stadium caters to a more elite audience while at the same time asking for public support. This poses an equity problem: whether the general public should subsidize sports spectating for the most financially privileged among us. The trend in stadium design is generally toward the small and more luxurious. Some teams have argued that the luxury seating keeps down the ticket prices for seats that are sold to the general public. That argument is suspect, since it would be difficult, if not impossible, to test such an assertion. In addition, the quality of publicly sold seats may be compromised to accommodate luxury seating. For example, in the new Comiskey Park in Chicago, the two tiers of luxury loges separating the lower and upper grandstands required angling the upper grandstand at 25 degrees to bring those fans closer to the action on the field. This severe angle has discouraged ticket sales in that part of the ballpark.

A third observation with regard to the new genre of stadiums, is that in their quest to maximize profits, owners have appropriated revenues from activities that were once the province of neighborhoods. In many cases, the modern sports facility resembles a small walled city. These profit centers offer a range of culinary options, services, and souvenirs not available in the previous generation of stadiums. As a consequence, it is arguable that many stadiums built across the street from the structures they replace actually reduce the economic spillover that is used to rationalize stadium subsidies. In calculating a return on taxpayer equity for a new stadium that will be used by the MLB's Arizona Diamondbacks in Phoenix, I calculated a return on taxpayer investment of between 1 and 2 percent. In developing that estimate, I used the data provided in the economic impact study used to defend the stadium subsidy. Starting from scratch, my estimate was closer to zero than one. Couple this low rate of return with the large risk associated with a stadium investment (how many potential clients are there for a used dome stadium?), and it is not difficult to understand taxpayer resistance to a stadium tax.

Fourth, I find a bit disingenuous the proposition that the new stadium will serve as a magnet for tourists even when the team is not playing. When the Houston Astrodome was completed in 1965, it was referred to as the "Eighth Wonder of the World." Thirty years later, there is enormous pressure being exerted on relevant government entities in the Houston area to build a new domed stadium in downtown Houston. The shine has long been off the Astrodome, and a stadium will remain state-of-the-art and a tourist attraction only as long as other communities do not construct their own "eighth wonders." In reality, there appears to be an "edifice complex" at work among cities, and it may be that cities live in an Alice in Wonderland world, where you have to run faster and faster just to preserve your rank among stadium landmarks.

Cities live in an Alice in Wonderland world, where you have to run faster and faster just to preserve your rank among stadium landmarks.

Fifth, one of the most socially undesirable aspects of monopolies in general, and professional sports leagues in particular, is that it is to the financial advantage of the professional sports leagues and their members to maintain an excess demand for franchises. Leagues accomplish this by restricting supply. It takes an extraordinary majority vote of current owners to expand or relocate teams. Cities confronted with stiff competition from other cities to adopt or retain a franchise, bid sums of money that almost certainly exceed the economic contribution the team can make. In fact, there is evidence to support the notion that the extent to which the winning bid exceeds the franchise's economic contribution varies directly with the number of cities bidding for the franchise. It is no accident that it takes extraordinary political pressure to convince leagues to expand. Teams would not have the leverage in negotiating for a new playing facility with cities if leagues were not able to constrain the supply of teams. Cities are often reluctant to bow to team demands for new playing facilities until the midnight hour when the team trucks are loaded and ready to depart to greener pastures. The stadium plan born out of this crisis mentality rarely enables the realization of the level of economic development promised as a consequence of stadium construction. Camden Yards and Gateway are not the rule, but rather the exception in stadium design. More often than not, stadiums are surrounded with seas of asphalt or concrete to ease entry and egress from the ballpark. Such a design discourages rather than encourages economic development.

In the absence of a synergistic stadium development, one that integrates commercial and residential development, using a substantial portion of a city's capital budget for stadium construction is likely to force painful trade-offs between the stadium and other forms of public infrastructure. Opponents of the stadiums proposed for Cincinnati argue that public financing of sports facilities would divert funds from the schools as well as police, fire, and public health departments.

> **More often than not, stadiums are surrounded with seas of asphalt or concrete to ease entry and egress from the ballpark. Such a design discourages rather than encourages economic development.**

Despite all the negatives, stadium subsidies continue to be rationalized by promises of economic development. There is a growing body of evidence to indicate that the economic impact studies used to justify stadium subsidies more closely resemble political statements than economic reality.

The Fundamental Flaw of Sports Economic Impact Studies

In assessing the impact a major league sports team has on a metropolitan economy, several issues have to be addressed. Chief among them is devising a method for accurately assessing the extent to which a professional sports team affects total spending for the metropolitan economy's goods and services. A professional sports team facilitates an expansion of the metropolitan economy only to the extent it induces an increase in spending overall. The increases in income and job creation which ordinarily measure the economic significance of changes in the composition of a city's economy, derive from increases in spending.

Recent research indicates that the increased spending and the economic development benefit promised by those favoring municipal subsidies for stadiums is routinely exaggerated. The primary factor in the overly optimistic appraisal of a team's development potential is the assumption that an increase in sports-generated revenues necessarily represents a corresponding expansion of the local economy. It is more reasonable to assume that increased spending on spectator sports is largely offset by reductions in other forms of leisure spending. This proposition seems warranted in light of the fact that, in terms of both time and money, most individuals and families have limited leisure budgets. The pyramid of economic benefit generally associated with spectator sports depends absolutely upon the assumption that spending on spectator sports represents an increase in spending in the city overall.

Direct expenditures and indirect expenditures constitute the change in total spending within the metropolis. Since indirect expenditures exist purely as a consequence of direct expenditures, the critical step in estimating team-induced changes in aggregate metropolitan spending is to precisely measure direct spending. James Quirk and Rodney Fort provide a definition for direct expenditures:

> The procedure that is used to estimate the economic benefits provided by a team or a facility is first to estimate the direct expenditures by the team for goods and services in the city, and then to add to this expenditures by fans on goods and services (other than

> game tickets) purchased in the city, together with expenditures by players on purchases of goods and services in the city. The resulting sum is the amount of direct expenditure benefits to the city provided by the team.[1]

These direct expenditures—on restaurants, hotels, transportation, souvenirs, food, and the like—are received as income by metropolitan-area businesses. These businesses and their employees then spend a fraction of this income on other goods and services within the metropolitan area, and those businesses and their employees spend a fraction of their income at other metropolitan-area businesses. The process continues, and the second, third, and subsequent rounds of spending constitute the indirect expenditures that benefit a region.

It is more reasonable to assume that increased spending on spectator sports is largely offset by reductions in other forms of leisure spending.

The major flaw in many economic impact studies occurs in estimating direct expenditures. Direct expenditures will be exaggerated if researchers fail to identify the extent to which direct spending on professional sports is financed by less spending on other leisure activities within the metropolitan economy. An alternative method for estimating the economic impact a team will have on the metropolitan economy borrows from economic analysis explaining the development of countries.

In the standard development models, local growth comes from increased export sales, net inflows of spending from outside the area. The multiplier then follows the new spending with expansion of locally produced secondary activities. Another way for a local area to grow is through import substitution. If the twenty dollars spent by a local resident on a sports ticket would have been used to buy goods outside the area, then net local spending will increase.

The size of the multiplier following any net increase in area spending depends similarly on the locus of the re-spending. If all of the new income is re-spent on locally produced goods, then the multiplier will be substantial. However, if, for example, the highly paid athletes or team executives maintain their residences outside the area or if the concessionaires import their semi-finished goods from outside, then the multipliers may be inconsequential.

The impact of a team depends, therefore, on the details of where each dollar is spent and would be spent—on imports, on exports, or on local production. This information is very difficult to obtain, and the common technique is to proceed by making assumptions about the sources of spending and the uses of income which results from that spending. Not surprisingly, those who estimate the greatest impact of teams on local economies assume that all the direct spending represents a net increase in local spending. Implicitly the most zealous boosters of team subsidies contend that all of the spending is either export sales, import substitutions, or is

1. James P. Quirk and Rodney D. Fort, *Paydirt* (Princeton, NJ: Princeton University Press, 1992), page 172.

financed by decreases in local saving that would not otherwise have been spent, and all the re-spending stays inside the area.

The Need for Precedents in Assessing a Team's Likely Impact

Given the complexity and controversy involved in obtaining estimates on spending, cities considering the use of public subsidies for attracting teams should not rely exclusively on assumption-driven models that project economic impact without filtering those projections through past city experiences. At the very least, precedents can be useful in assigning a probability to the likelihood that some promise of substantial economic impact will, in fact, materialize.

The question should not be whether a team would have any net impact on area development, but rather if it has the largest impact from the set of alternative development projects.

However, reviewing the growth experience of other cities that have used public subsidies to attract a professional sports team provides only a partial assessment of the efficacy of government sports subsidies. Any economic impact analysis of sports would be incomplete without considering the opportunities a city forgoes in subsidizing the team. The question should not be whether a team would have any net impact on area development, but rather if it has the largest impact from the set of alternative development projects. In general, the "political capital" to sell projects to those who pay the taxes or lose from the redistribution of economic activity is limited. Scarce development subsidy resources might better be targeted to industries which are more clearly engaged in export sales or import substitution. The attention of those who allocate development resources should be devoted to the types of jobs which are being created in alternative development projects.

The Growth Experience of Cities with Professional Teams

Professional sports provides a boost to the local economy if it is successful at attracting fans from outside the metropolis in large numbers or is successful at retaining funds that had previously financed professional sports spectating in another city. All other things equal, if a city's professional sports constitutes an important export, it would be expected that the share of regional income that city commands would increase with the addition of a professional sports franchise. The preponderance of empirical evidence supports no such correlation between professional sports and shares of regional income.

Indeed, my research indicates that pro sports often correlates with a decline in a sports city's share of regional income, although baseball, with its longer schedule, is more likely to have a positive impact than professional football. Upon some reflection, sports' slow-growth pattern should not be surprising. The slower growth reflects the kind of economic activity that investments in professional sports spawn. Sports diverts economic development toward labor-intensive, relatively unskilled (low-wage), part-time jobs. Other cities in the region that invest in economic activity that promotes full-time, non-seasonal, and high-wage jobs can be expected to capture a greater share of the regional economic pie.

My most recent research suggests a paradox. It may be that over the long run, professional sports may not be the most useful strategy in creating jobs in the industry it most directly affects, amusement and recreation. In studying ten cities (Cincinnati, Denver, Detroit, Kansas City, Minneapolis, New Orleans, Pittsburgh, San Diego, Seattle, and Tampa Bay) over the period 1958-1989, of the eight cities in the sample that changed the number of pro teams they hosted, in only four cities did an increase in their share of state jobs in the amusement and recreation industry correlate with adding a pro team. Since the study controlled for the impact that changes in real per-capita income and a city's share of state population had on amusement and recreation jobs, it is plausible that those cities generating the highest rates of growth in real per-capita income will induce growth in the amusement and recreation industry faster, in some cases, than would a city that adds a team. Clearly, in order to precisely estimate the economic benefit a sports franchise might provide a city, one must consider the opportunity cost of the city's investment in the franchise.

Conclusions and Policy Implications

Professional sports are an insignificant part of a large city's economy. For example, in Chicago, the entire professional sports industry accounts for .08 percent of Chicago's personal income. To put the matter in a somewhat different perspective, the sales revenue of Fruit of the Loom exceeds that for all of Major League Baseball (MLB), while the sales revenue for Sears is about thirty times larger than that of all MLB revenues. Despite the economic insignificance of professional sports, local and state governments engage one another in what amounts to ruinous financial competition for the limited supply of professional sports franchises.

In spite of a growing body of literature to the contrary, some state and local governments persist in using the promise of substantial economic development to justify subsidies. In some ways the lack of discipline exhibited by some government officials resembles the behavior of team owners in bidding for free agents. Financial chaos followed owner excesses in bidding for free agent players. Reckless bidding for sports franchises by local government will, at a minimum, likely complicate their financial picture. Owners have asked their leagues for assistance in controlling their appetite for free agent players. Perhaps, cities should request federal legislation that would prohibit the use of state or local government funds to attract a franchise currently residing in another city.

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Other remedies to the social pain caused by the relocation of sports franchises are suggested by league rules governing the movement of players. For example, cities that are abandoned by a team despite exemplary records of fan support and in spite of league rules that ostensibly prohibit such moves, could be compensated by the league. In such an instance, an expansion club could be immediately awarded the abandoned city, and that city would not be required to pay a franchise fee for that team.

Loyalty is less likely to be put up for sale if ownership was spread over a large number of local citizens who have an emotional stake in the team.

Perhaps legislation could be drafted to encourage local ownership of franchises. In this regard the local ownership of the Green Bay Packers could be used as a template. Loyalty is less likely to be put up for sale if ownership was spread over a large number of local citizens who have an emotional stake in the team.

In conclusion, professional sports and stadiums are not major league as contributors to a city's economy. The question of whether to build sports stadiums with public money is more properly debated in the cultural arena than the economics arena.