

C

Virginia Sports and Entertainment Law Journal
Spring 2003

Article

***280 HOW TO CURB PROFESSIONAL SPORTS' BARGAINING POWER VIS-À-VIS THE
AMERICAN CITY**

Marc Edelman [\[FNa1\]](#)

Copyright © 2003 University of Virginia School of Law; **Marc Edelman**

Introduction
281

I. The History of Professional Sports Subsidies
284

II. Why American Cities Subsidize Professional Sports
289

 A. Professional Sports Leagues Yield Monopoly Power
289

 B. Antitrust Law Fails to Adequately Regulate Sports' Monopoly
Power
292

 C. There is No Real Competitive Rationale for Sports Subsidies
294

 D. There is No Strong Public Policy Reason for Sports Subsidies ...
296

III. Recent Proposals to Curb Professional Sports' Bargaining Power
297

 A. State Constitutional Enactments
297

 B. Applying Antitrust Law to Break Up Professional Sports Leagues .
300

 C. Court-Ordered Expansion of Professional Sports Leagues
303

	D. Federal Congressional Enactments	
305		
IV.	Why Congress Should Pass a Bill Banning Professional Sports	
	Subsidies	
306		
	Conclusion	
308		

*281 Introduction

On December 28, 2001, New York City mayor Rudolph Giuliani announced a plan to spend \$800 million of taxpayer money on two new retractable-roof baseball stadiums, equipped with modern frills and luxury boxes. [\[FN1\]](#) Giuliani's plan was nixed by his successor, Michael Bloomberg, who explained that New York City had more urgent concerns including balancing a \$4 billion budget deficit, reducing the city's unemployment rate, combating homelessness, and rebuilding lower Manhattan. [\[FN2\]](#) Bloomberg's city was not going to subsidize an already profitable industry. [\[FN3\]](#)

New York City's hard-line stance on sports subsidies, however, is in the ultra-minority when compared with most American cities. [\[FN4\]](#) For example in Chicago, sports teams have far greater influence over the government. [\[FN5\]](#) Recently, Chicago Bears president Ted Phillips approached Mayor Richard Daley about repairing the team's home, Soldier Field. [\[FN6\]](#) Over a seventy-two hour period in November 2000, the Illinois legislature agreed to contribute \$432 million in upfront costs to rebuild the stadium. [\[FN7\]](#) Including loan repayment, the project is expected to cost Chicago area taxpayers \$1.3 billion over thirty-one years. [\[FN8\]](#) Experts estimate the stadium will double the Bears' franchise value and *282 provide team owners with \$20 million in annual subsidies beginning in 2003. [\[FN9\]](#) However, no plans exist for the Bears' ownership to help repay the city. [\[FN10\]](#)

Similarly in Seattle, baseball and football team owners recently secured public funding for two new sports facilities--Safeco Field and Seahawk Stadium. [\[FN11\]](#) In 1995, King County citizens voted against a referendum that would have increased sales taxes to finance a new sports stadium. [\[FN12\]](#) Nevertheless, then-governor Mike Lowry called for a special session of the legislature to pass a law authorizing taxes for stadiums owned by a Public Facilities District, but for a sports teams' exclusive use. [\[FN13\]](#) The city then spent \$672 million dollars to build two new stadiums, renting one to the Mariners and the other to the Seahawks, both at extreme discounts. [\[FN14\]](#)

Likewise in San Antonio, Spurs ownership recently decided their ten-year-old home, the Alamodome, was obsolete and needed public replacement. [\[FN15\]](#) Ownership's main problem with the 65,000 seat dome was that it held too many seats for the average fan and not enough high-priced luxury boxes. [\[FN16\]](#) So, Spurs ownership negotiated for the city to issue a \$146.5 million bond, backed by a tourist tax, to help pay for a new \$190 million arena. [\[FN17\]](#) The Spurs then defrayed their share of the costs by selling naming rights to the SBC Communications company. [\[FN18\]](#)

Chicago, Seattle and San Antonio represent three among a growing list of cities that have surrendered to the demands of professional sports teams. [\[FN19\]](#) Cities surrender to such demands because sports leagues control the number of teams in each sport and maintain high levels of scarcity. [\[FN20\]](#) In a scarce market, because *283 there are more cities that want to host professional sports teams than there are teams available, existing teams can threaten to move to another location if their demands are not met. [\[FN21\]](#)

More than thirty professional sports teams in the past forty years have threatened to relocate. [FN22] In most cases, these threats are credible, as many teams have proceeded to switch cities. [FN23] These threats are even credible in metropolises like New York, that have not succumbed to sports leagues' pressures. [FN24] Since the 1950s, even New York has lost four sports teams to rival markets. [FN25]

Despite the national prevalence of sports subsidies, subsidizing a professional sports team is usually a poor investment. [FN26] New stadiums do not promote economic growth, [FN27] and they usually fail to bring jobs into the community. [FN28] Furthermore, new stadiums disproportionately benefit the wealthy [FN29] and hamper urban revitalization. [FN30]

***284** Antitrust law is intended to prevent businesses from obtaining the kind of excessive market power that enables public-subsidy demands. [FN31] The unique structure of the professional sports market, however, renders traditional antitrust scrutiny inadequate. [FN32] Therefore, America requires a new solution to curb professional sports' bargaining power.

This Note argues that Congress needs to pass a bill that bans professional sports subsidies. Part I discusses the historical evolution of sports subsidies. Part II explains the inefficiencies in the legal and economic environment that have led cities to subsidize professional sports teams. Part III discusses four types of proposals intended to reduce subsidization, and Part IV concludes the best way to regulate professional sports is to pass a bill that outlaws sports subsidies altogether.

I. The History of Professional Sports Subsidies

The "glory era" of American professional sports began with the formation of baseball's National League in 1876 and ended shortly after World War II. [FN33] During this era, professional sports, which then consisted predominantly of baseball and to a lesser extent football, did not enjoy large subsidies from American cities. [FN34]

During the glory era, when professional teams wanted new playing facilities, team owners usually erected private facilities by buying land and hiring construction companies to dig, fill and build. [FN35] Publicly-funded sports ***285** facilities were generally an anomaly. [FN36] Until 1950, there were just three of them: the Los Angeles Coliseum (built in 1923), Chicago's Soldier Field (built in 1929) and Cleveland's Municipal Stadium (built in 1931). [FN37]

Even without public subsidies, professional baseball franchises became valuable commodities during the golden era. [FN38] For example, the Brooklyn Dodgers were sold four times in the era: in 1912 for \$0.2 million, in 1944 for \$1.4 million, in 1945 for \$1.5 million and in 1950 for \$4.2 million. [FN39] The St. Louis Cardinals were also sold four times in the era: in 1917 for \$0.4 million, in 1947 for \$2.1 million, in 1949 for \$3.3 million, and in 1953 for \$3.8 million. [FN40]

Within a decade after World War II, however, the structure of professional sports and its relationship with the American city had begun to change, as new demographics and modern technology increased the national demand for professional sports teams. [FN41] With new metropolitan markets in the western United States opened by jet travel, the growth of in-home television, and the baby boomers coming of age, professional sports leagues for the first time encountered significant growth opportunities. [FN42] Major League Baseball ("MLB"), however, chose not to expand to meet these opportunities. [FN43]

With American cities unable to acquire MLB expansion teams, the city of Milwaukee triggered the start into professional sports' transient era by proactively recruiting an existing team into its home market. [FN44] In 1950, Milwaukee officials decided to spend tax dollars to build County Stadium--a public, multipurpose venue. [FN45] Shortly thereafter, the city proposed to house both baseball and football at the venue [FN46] and offered Lou Perini, then-owner of baseball's Boston Braves, the opportunity for his team to play there. [FN47] In 1953, ***286** Perini accepted

Milwaukee's offer, [\[FN48\]](#) marking the first time since the signing of Baseball's Major League Agreement that a MLB team switched host cities. [\[FN49\]](#)

The Braves' move to Milwaukee significantly improved Perini's bottom line. [\[FN50\]](#) In addition to a new stadium, Perini inherited a larger fan base, which purchased 1.8 million tickets in 1953--more than six times as many as Braves fans bought during their final season in Boston. [\[FN51\]](#) During the following years, the St. Louis Browns and Philadelphia Athletics followed suit, leaving behind shared markets and private stadiums in favor of solo markets and public stadiums. [\[FN52\]](#) The Browns left St. Louis, a market they shared with the Cardinals, in favor of Baltimore's Memorial Stadium; while the Athletics, a team which shared the Philadelphia market, moved to Kansas City to play in Municipal Stadium. [\[FN53\]](#) The moves by the Braves, Browns and Athletics were primarily effected to maximize ticket revenues. Public stadiums made these moves feasible, but subsidies did not dictate the decisions.

Then in 1958, baseball team owner Walter O'Malley abruptly decided to move his Dodgers from Ebbets Field in Brooklyn, New York to a new home in Los Angeles, California--a city that did not have better fan support, but instead provided O'Malley with a big chunk of prime real estate. [\[FN54\]](#) Since it would not have been logistically feasible to have only one MLB team on the West Coast, O'Malley convinced New York Giants owner Horace Stoneham to follow him and leave behind a nearly empty private stadium in Manhattan for a newer, more desirable home in San Francisco. [\[FN55\]](#)

The Dodgers' move to Los Angeles and the Giants' move to San Francisco were different from earlier MLB team moves, in that the Dodgers and the Giants were less concerned about building a fan base and more concerned about garnering subsidies. [\[FN56\]](#) O'Malley, an attorney experienced in complex negotiations, made a series of requests for New York City to build new *287 stadiums. [\[FN57\]](#) After the city refused, O'Malley purchased franchise rights to the Los Angeles MLB territory and negotiated a very favorable deal with the city that involved significant public subsidies. [\[FN58\]](#) Stoneham also achieved a personally gratifying outcome.

With more cities wanting to capture the essence of professional sports and with sports teams beginning to recognize their ability to levy demands on cities, the public share of stadium financing reached close to 100 percent by the end of the 1950s. [\[FN59\]](#) Then in 1959, New York lawyer William Shea and former Dodgers general manager Branch Rickey announced plans to form a rival professional baseball league, the Continental League, which was intended to provide franchises to many non-MLB markets. [\[FN60\]](#) In response, the MLB expanded from 16 to 24 teams, [\[FN61\]](#) temporarily bringing the supply of professional baseball teams closer to demand. [\[FN62\]](#) As a result, sports facility subsidies fell during the 1960s from nearly 100 percent of facility costs to just above 60 percent. [\[FN63\]](#)

The counterbalance in power, though, was short-lived. [\[FN64\]](#) With the Continental League's quick dissolution and rising fan interest in the National Football League ("NFL"), National Basketball Association ("NBA") and National Hockey League ("NHL"), the power pendulum once again has swung in favor of professional sports--this time perhaps permanently, absent federal legislation. [\[FN65\]](#) In the modern (post-Continental League) professional sports era, most cities bear between 70 and 80 percent of new stadium costs. [\[FN66\]](#) Although subsidies as a percentage of total stadium costs remain below their 1950s rate, *288 the overall power of professional sports is greater today than ever before. [\[FN67\]](#) One new cause for concern among American cities is the increasing cost paid per new stadium. [\[FN68\]](#) The Astrodome, which was the most expensive sports facility built or refurbished prior to 1975, cost \$175 million in 1989 dollars, and today's modern facilities cost more than double that amount. [\[FN69\]](#) The Skydome, which was built in Toronto in 1989, cost \$532 million, [\[FN70\]](#) while Seattle's Safeco Field, built in 1999, cost \$517 million. [\[FN71\]](#) Even two of baseball's more modestly-priced new stadiums, Detroit's Comerica Park [\[FN72\]](#) and Milwaukee's Miller Park [\[FN73\]](#) cost \$313 million and \$414 million respectively to build.

In addition to the rising cost per new stadium, an increase in the sheer number of new facilities being constructed each year has contributed to American cities' deteriorating position with respect to professional sports teams. [\[FN74\]](#)

Only seven sports facilities were constructed from 1950-59, as compared to twenty-one from 1960-69, twenty-five from 1970-79, fourteen from 1980-89, thirty-two from 1990-98, and already more than forty since 1999. [FN75] A significant portion of the increase in new sports facilities is due to baseball teams increasingly rendering their stadiums obsolete. [FN76] The increase is also attributable to the emergence of the NFL, NBA and NHL as dominant monopolist sports leagues, which exert similar bargaining power over American cities today to that wielded by MLB since the 1950s. [FN77]

Even despite the recent trend toward subsidized professional sports facilities, most of today's professional sports teams could probably operate profitably without subsidies. [FN78] In fact, a few current MLB and NFL teams are proving *289 success is not dependant upon government assistance. [FN79] For example, when the city of San Francisco was unwilling to build a new baseball stadium for the Giants in the late 1990s, rather than move, Giants' ownership decided to obtain private financing. [FN80] With the backing of twenty-five partners and \$140 million in private bank financing, the Giants proceeded to build the first entirely private ballpark since 1962. [FN81] The stadium in total cost \$319 million--a modest fee as compared to many recent, publicly-financed stadiums. [FN82] The team's cost was greatly offset by selling naming rights to Pac Bell for \$50 million, charter seat rights for \$55 million, and various corporate sponsorships worth tens of millions of dollars. [FN83]

Since the opening of Pac Bell Park, a few other professional sports teams--including football's New England Patriots and Washington Redskins--have proven that private facilities are capable of turning profit. [FN84] Recently, the Patriots even won a Super Bowl playing in a private facility. Nevertheless, privately financed stadiums and arenas remain an anomaly. [FN85] Despite recent private-facility success stories, the overwhelming majority of teams in the four premier sports leagues continue to pressure cities to build them publicly- subsidized facilities.

II. Why American Cities Subsidize Professional Sports

A. Professional Sports Leagues Yield Monopoly Power

Most American cities subsidize professional sports because the four premier sports leagues possess monopoly power over the number of teams in their *290 respective sport. [FN86] By limiting the number of teams, the premier leagues act as franchise monopolists, driving up the price a city must pay to host a franchise. [FN87] Not only does this strategy create deadweight loss in terms of overall team output, [FN88] but it also gives teams the power to switch cities almost at will, or to threaten to switch cities when facility demands are denied. [FN89]

Modern sports leagues maintain excessive demand by keeping a supply of viable host cities on hold so that current host cities, absent long-term agreements with teams, [FN90] are always in the position of having to accept a team owners' demands or else risk losing that team. [FN91] Some examples of on-hold cities that rank among the twenty most populous metropolitan areas include: Los Angeles (no NFL team), Washington (no MLB team), Houston (no NHL team), Seattle (no NHL team), Cleveland (no NHL team) San Diego (no NBA or NHL team), St. Louis (no NBA team), Pittsburgh (no NBA team) and Baltimore (no NBA or NHL team. [FN92] Other cities often kept on hold by sports leagues include Portland, Oregon, Norfolk, Virginia, Charlotte, North Carolina, and Louisville, Kentucky. [FN93]

In a perfectly competitive market where new premier leagues (such as Shea and Rickey's Continental League) would periodically emerge to meet demand, *291 sports leagues would have the incentive to expand into on-hold cities. [FN94] In practice, however, the four premier sports leagues rarely face competition from new leagues because the premier markets have high barriers to entry. [FN95] Competitor leagues are rarely able to compete against MLB, the NBA, the NFL and the NHL because the big four enjoy an almost insurmountable lead in building a fan base, signing superstar players, acquiring television broadcast contracts, [FN96] and obtaining playing facilities. [FN97]

Exacerbating the difficulty involved in creating new professional sports leagues is the fact that the big four leagues

operate similarly to illegal cartels, adopting and enforcing rules designed to maximize profits for member teams and limit entry of outsiders. [\[FN98\]](#) Unlike traditional cartels, however, sports leagues are not prosecuted by the Department of Justice ("DOJ") because sports leagues perform certain essential activities such as arranging schedules, establishing game rules and determining league champions. [\[FN99\]](#)

Despite sports leagues' more benign functions, some economists and city officials liken the big four professional sports leagues' conduct to various forms of blackmail tactics and extortion, which force cities to confront a prisoner's dilemma. [\[FN100\]](#) According to former Washington D.C. mayor Sharon Pratt Kelly:

The mayors of American cities are confronted with a prisoner's dilemma of sorts. If no mayor succumbs to the demands of a franchise shopping for a new home then the team will stay where they are. This, however, is unlikely to happen *292 because if Mayor A is not willing to pay the price, Mayor B may think it is advantageous to open up the city's wallet. Then to protect his or her interest, Mayor A often ends up paying the demanded price. [\[FN101\]](#)

Oftentimes, direct democracy is suggested as a solution to prevent mayors from confronting this dilemma; still, even direct democracy does not fully resolve this problem. [\[FN102\]](#) The primary difficulty with direct democracy is that proponents of ballot initiatives generally are far more willing to spend money to support an initiative than opponents are to fight it. [\[FN103\]](#) In the sports context, the problem of asymmetric spending is exacerbated by the media, which profits from the presence of professional sports teams and has an obvious bias toward promoting sports subsidies. [\[FN104\]](#)

B. Antitrust Law Fails to Adequately Regulate Sports' Monopoly Power

Under traditional circumstances, courts apply antitrust law to prevent businesses from gaining and exploiting monopoly power and to prevent democratic interests from becoming subordinated. [\[FN105\]](#) Nevertheless, current antitrust law enforcement has failed to effectively regulate professional sports leagues. [\[FN106\]](#)

Antitrust law emerged in the United States with the 1890 passing of the Sherman Act. [\[FN107\]](#) The Sherman Act is comprised of two main sections. [\[FN108\]](#) Section 1 states, "Every contract, combination in the form of a trust or otherwise, or conspiracy . . . is hereby declared illegal." [\[FN109\]](#) Section 2 states: "Every person *293 who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony." [\[FN110\]](#)

Professional sports has been inadequately regulated by American antitrust law because it does not fit clearly within either section of the Sherman Act. [\[FN111\]](#) On the team level, professional sports seems to fall within section 1 of the Act, because teams compete against each other in the labor market for free-agents. [\[FN112\]](#) Yet, on the league level, professional sports appears to belong under section 2 because leagues behave as single entities when they form schedules, [\[FN113\]](#) negotiate national television contracts, negotiate league-wide sponsorships, [\[FN114\]](#) and arrange for player drafts and revenue sharing. [\[FN115\]](#)

There is ongoing debate about how antitrust law should address professional sports' dimorphic nature. [\[FN116\]](#) American courts usually classify sports leagues as joint ventures under section 1 of the Sherman Act--a classification that provides premier, professional sports leagues more leeway than either cartels or single entities. [\[FN117\]](#) Many academics, however, find this treatment is overly generous and suggest that section 2 analysis is more appropriate. [\[FN118\]](#)

If courts considered sports leagues under section 2, then the law would allow teams within a league to fully cooperate under the Copperweld Doctrine. [\[FN119\]](#) At *294 the same time, however, courts would also become more likely to break up the big four sports leagues for monopoly conduct. [\[FN120\]](#) Breaking up the big four sports

leagues would mitigate sports leagues' excessive bargaining power, but would also be problematic, since the sports market is probably unable to sustain multiple, premier leagues within a given sport. [\[FN121\]](#)

C. There is No Real Competitive Rationale for Sports Subsidies

Some team owners disagree with the under-regulation explanation of subsidies and argue that even in a competitive market, sports subsidies make prudent economic sense. [\[FN122\]](#) As evidence of sports' positive economic impact on communities, some team owners refer to for-profit consulting studies that assert that sports facilities generate economic growth and increase local consumption. [\[FN123\]](#) These privately-funded consulting studies, however, are usually either biased or overly optimistic. [\[FN124\]](#)

Unlike paid consulting studies, non-profit empirical research does not find a positive correlation between facility construction and economic development. [\[FN125\]](#) Further, when empirical research considers opportunity costs, subsidized sports facilities are usually labeled as losing investments. [\[FN126\]](#) Many empirical economic studies cast doubt on for-profit consulting analyses. For example, a study conducted by the Congressional Research Service analyzed thirty stadium projects and found that none of them positively impacted the community. [\[FN127\]](#) *295 Another study conducted by economists Robert Baade and Allen Sanderson found that subsidized sports facilities do not even improve local employment. [\[FN128\]](#) A third study prepared by the Maryland Department of Business and Economic Development [\[FN129\]](#) found specifically that the Baltimore Ravens' new stadium cost more money and created fewer jobs than the best alternative public tax investment. [\[FN130\]](#)

Not only do professional sports facilities fail to yield economic benefits, but government spending on sports facilities also fails to follow the "benefits principle of taxation." [\[FN131\]](#) According to this principle, each taxpayer's contribution to provide for a public service should exist in proportion to the benefits received from that service. [\[FN132\]](#) One application of the benefits principle is the Ramsey Rule, which suggests that sales taxes "should be levied in inverse proportion to the price elasticity of demand for the good or service on which the government places the tax." [\[FN133\]](#)

Taxes to erect new sports facilities usually do not follow either the benefits principle or the Ramsey Rule, since new facilities typically benefit the wealthy but tax the poor. [\[FN134\]](#) Recent stadium-design trends such as luxury boxes and premium seating concentrate the benefits of the new, professional sports' facilities within the middle- and upper-income brackets. [\[FN135\]](#) Additionally, the increasing price of sports tickets often keeps the low-income population from attending games. [\[FN136\]](#) Contrary to the benefits principle, however, the lower-income segment bears much of the tax burden of new sports facilities, which often are funded by regressive taxes. [\[FN137\]](#) For example, in the 1990s, sales tax increases were used to fund new stadiums in Cincinnati, Denver, Tampa and *296 Arlington, Texas, [\[FN138\]](#) while lotteries were used in Seattle and the state of Maryland to subsidize sports facilities. [\[FN139\]](#)

D. There is No Strong Public Policy Reason for Sports Subsidies

Other team owners acknowledge the costs and inequalities in sports facility financing, but nevertheless advocate subsidies under the assumption that professional sports teams are public goods that provide social value to the community. [\[FN140\]](#) According to the public goods theory, professional sports teams provide a community with the ability to "root for the home team" and with a level of community spirit that would not exist without the team. [\[FN141\]](#)

There are several weaknesses with this public policy argument. First, the ability to "root for the home team" is not limited to citizens living in a new sports facilities' taxable district. People living outside the district are also able to support that team. [\[FN142\]](#) For example, many New York residents continue to root for the Los Angeles Dodgers, even though the Dodgers left Brooklyn in the 1950s. [\[FN143\]](#) These Dodgers fans are not taxed if Los Angeles de-

cides to subsidize a new baseball stadium, even though the team they root for is receiving a new home. Additionally, even if the in- or out-of-district distinction serves as a good proxy for fan interest, there is still insufficient evidence to conclude that a city's desire to root for a sports team either exceeds or is proportional to the amount of money that a city population provides in subsidies. [\[FN144\]](#) Furthermore, the benefits that any individual derives from rooting for a sports team through the media are probably small compared with the benefits derived from supporting the team by attending games. [\[FN145\]](#) Therefore, even if a sports facility helps the local *297 community overall to root for a home team, the upper- and middle-class receive significantly greater assistance. [\[FN146\]](#)

A final public policy argument in favor of sports subsidies is that professional sports teams help a city to develop a national identity. [\[FN147\]](#) Mayors of second-tier markets like Charlotte, North Carolina and Nashville, Tennessee--both of which have recently obtained expansion franchises in one of the four premier sports leagues--defend subsidies as a way to solve their cities' long-term identity crises. [\[FN148\]](#) The national identity argument, however, much like the "root for the home team" argument, is weak because empirical evidence does not show a causal relationship between a city's identity and its economic performance. [\[FN149\]](#) Similarly, the national identity argument does not explain why cities like Chicago, which already have strong identities, need to subsidize professional sports. [\[FN150\]](#)

III. Recent Proposals to Curb Professional Sports' Bargaining Power

There are various proposals to curb professional sports' bargaining power vis-à-vis the American city. As a general matter, these proposals fall into one of four broad categories--state constitutional enactments, federal court-ordered breakups, federal court-ordered expansions, and federal congressional enactments.

A. State Constitutional Enactments

State constitutional enactments are the oldest and generally most conservative way to address professional sports' excessive bargaining power. [\[FN151\]](#) Since the mid-1800s, forty-six states have adopted constitutional enactments that prohibit the use of public money to aid private enterprise. [\[FN152\]](#) State constitutional enactments appear sufficient based on their wording to prevent professional *298 sports subsidies. [\[FN153\]](#) In practice, however, state constitutional enactments are usually ineffective. [\[FN154\]](#)

There are two types of state congressional enactments, lending-of-credit clauses and public-policy provisions. [\[FN155\]](#) Both arose alongside the growth of big business in the mid-1800s, as citizens became enraged at state and local governments for subsidizing powerful business interests such as the railroad industry. [\[FN156\]](#) Strictly interpreted, state courts should apply these requirements to prevent public sports subsidies. [\[FN157\]](#) Nonetheless, courts have rarely acted in this manner. [\[FN158\]](#)

One instance where sports subsidies were held to violate a state constitution was the 1956 case, *Brandes v. City of Deerfield Beach*, [\[FN159\]](#) in which the Supreme Court of Florida found that the City of Deerfield Beach's proposal to build a spring training facility for the Pittsburgh Pirates violated Florida's public purpose doctrine. [\[FN160\]](#) According to the Supreme Court of Florida:

'Taxes for municipal purposes' means a public purpose as distinguished from a private or nongovernmental purpose; a purpose intended to embrace some of the functions of the governmental agency. The mere incidental advantage to the public resulting from a public aid in the promotion of private enterprise is not a public or municipal purpose; and the incidental benefits or advantages gained by private enterprise from expenditures made for a public purpose do not vitiate or diminish public purpose. [\[FN161\]](#)

Despite the *Brandes* holding, courts in most other jurisdictions have found state constitutions inapplicable when determining whether municipalities may subsidize professional sports. [\[FN162\]](#) As early as the 1930 case *Meyer v. City of *299 Cleveland*, [\[FN163\]](#) the Ohio Court of Appeals held that the City of Cleveland may use public funds to

build a sports stadium because a stadium promotes public welfare and provides recreational enjoyment. [\[FN164\]](#) Meyer has remained the prevalent view even post-Brandes, as subsequent cases, such as 1966's *Martin v. City of Philadelphia*, [\[FN165\]](#) have continued to hold that cities may erect sports facilities and rent them to professional teams at a discount without violating state lending-of-credit or public policy provisions. [\[FN166\]](#)

Despite recent precedent, advocates of state constitutional regulations continue to argue that a state-level solution is feasible, and that if the legal environment were to become more skeptical about sports subsidies, then state constitutional enactments would emerge as an adequate form of industry regulation. [\[FN167\]](#) One zealous advocate of state regulation, Professor Dale Rubin, [\[FN168\]](#) argues that stricter interpretation of state constitutional provisions are both feasible and appropriate. He indicates that subsidizing the conduct of professional sports leads to payback regimes similar to those that existed within the 1800s railroad industry, which gave initial rise to these public purpose enactments. [\[FN169\]](#)

Yet, state constitutional enactments generally are a poor solution to resolving sports' excessive bargaining power. Any state-level solution relies on the premise that a single state would willingly become more skeptical to stadium financing, even without substantial reason to believe that all other states would act concordantly. [\[FN170\]](#) This argument fails to consider that part of the reason why states are so unwilling to strictly interpret their constitutions is because individual states fear that in doing so they would lose professional sports teams to more leniently-interpreting states. [\[FN171\]](#) Interestingly, Brandes, [\[FN172\]](#) which is the only identifiable sports case to enforce a public policy provision, did not involve this fear element, as Brandes instead involved the spring training baseball market--a market that at the time was limited geographically to southern Florida. [\[FN173\]](#)

B. Applying Antitrust Law to Break Up Professional Sports Leagues

Beyond state constitutional enactments, there are three other types of proposals to regulate professional sports leagues. [\[FN174\]](#) One federal proposal is to promote the court-ordered breakup of the four premier sports leagues. [\[FN175\]](#) A proposal to break up the four premier sports leagues would require courts to apply similar logic to the professional sports market as was applied to the telecommunication market in the famous break-up of AT&T's long-term monopoly over telephone services. [\[FN176\]](#) It would first require that the DOJ bring a monopolization charge against the four premier sports leagues. [\[FN177\]](#) Then, a federal court would need to hold that the leagues violated antitrust laws, and order the violation remedied by separating MLB, the NBA, NFL and NHL into smaller, competitor leagues. [\[FN178\]](#)

The argument in favor of breaking up professional sports leagues is a favorite among academics. In the recent article, *Economic Impact of Sports Teams and Facilities*, two distinguished economics professors, Roger Noll and Andrew Zimbalist, conclude that if there were multiple leagues for each sport, professional sports' excessive bargaining power vis-à-vis the American city would dissipate. [\[FN179\]](#) According to Noll and Zimbalist, in a multiple league model each league would expand into as many markets as could support a team, and [*301](#) each league would place more teams into the markets that could support multiple teams. [\[FN180\]](#)

Concurring with Noll and Zimbalist are economics professors James Quirk and Rodney Fort, who in their 1999 book *Hard Ball* conclude that there are market benefits to competing leagues in each premier professional sport. [\[FN181\]](#) Similarly, sports law professors Paul Weiler and Gary Roberts, co-authors of the textbook *Sports and the Law*, agree that the economics of the multiple-league model would remove incentives for sports teams to demand government subsidies. [\[FN182\]](#) Weiler and Roberts further contend that the competitive pressures generated by multiple sports leagues would lead to innovations that would enhance fans' overall enjoyment of sports, much as occurred when the American Basketball Association ("ABA") briefly competed against the NBA and introduced the slam dunk and three-point shot. [\[FN183\]](#)

The problem with breaking up the big four professional sports leagues, however, is that the free market has historically failed to sustain multiple premier leagues competing against one another in the same sport. [\[FN184\]](#) Multiple-league competition has consistently failed absent a partial merger or acquisition [\[FN185\]](#) because in a multi-league model, one league eventually gains a comparative advantage and drives the others out of business. This is true even when all the leagues begin operating at the same time and with similar resources. [\[FN186\]](#)

***302** This "survival of the fittest" dynamic appeared subsequent to brief eras of competition in 1890s baseball, 1980s men's soccer and late 1990s women's basketball. [\[FN187\]](#) A likely reason only one premier league survives per sport is that premier sports leagues are different from other forms of business to the extent that premier sports leagues require the services of elite members of their labor force in order to maintain "major league" status. According to Bill Veeck, generally considered to be the greatest owner and promoter in professional sports history, operating a professional sports team involves marketing dreams--intangible benefits identified with the best players, coaches and managers. [\[FN188\]](#) These dreams are only obtainable through extraordinary high labor-market competition. [\[FN189\]](#)

Indeed, there is a secondary market for professional minor league sports, which does not require top-level talent. [\[FN190\]](#) However, unlike the market for premier professional sports, the secondary minor league market is already highly saturated. [\[FN191\]](#) Baseball maintains an elaborate, four-tier minor league system, which includes mainly MLB-sponsored leagues as well as some independent leagues. [\[FN192\]](#) Similarly, in football, basketball and hockey, the minor league market is dominated by the National Collegiate Athletics Association ("NCAA"), which is a highly elaborate agreement between 1271 member institutions that sets the rules and dominates lower-level training and competition. [\[FN193\]](#)

Another reason why the rival sports league model fails relates to the high start-up costs of constructing new sports facilities, absent strong guarantees of league sustainability. [\[FN194\]](#) In the 1980s and 1990s, a new wave of team-owned, ***303** highly subsidized stadiums and arenas emerged, and existing team owners are unlikely to share these facilities with teams in rival leagues absent compulsion. [\[FN195\]](#)

The high risks involved in operating rival premier professional sports leagues help to justify the DOJ's hands-off approach. [\[FN196\]](#) While the DOJ imposes strict guidelines on most industries where free competition is sustainable, [\[FN197\]](#) multiple premier professional sports leagues in a single sport do not inevitably coexist, and therefore, the Department has remained hands off. As suggested by its decision not to pursue action against the four premier professional sports leagues, the basic structure of professional sports, although not perfectly competitive, seems best for sustaining the industry's viability. [\[FN198\]](#) Hence, the current structure warrants some deference. [\[FN199\]](#)

C. Court-Ordered Expansion of Professional Sports Leagues

A third suggestion to redress professional sports' excessive bargaining power is for courts to compel the four premier leagues to expand their number of teams by applying either the "Aspen Ski doctrine" or the "essential facilities doctrine." [\[FN200\]](#) Under the Aspen Ski approach, the issue is not the legality under antitrust law of sports leagues themselves, but rather the legality of membership restrictions as a type of ancillary restraint. [\[FN201\]](#) In his 1996 article, *The Antitrust Rationale for the Expansion of Sports Leagues*, Thomas Piraino argues that access to league entry is just as critical as the forms of entry sought by plaintiffs in the essential facilities cases. [\[FN202\]](#) According to Piraino, compelling sports leagues to expand would reduce teams' bargaining power vis-à-vis American cities. [\[FN203\]](#)

Under the long-entrenched essential facilities doctrine, courts have required certain joint ventures, which are based around an essential facility, to adopt objective membership rules, giving all parties equal opportunity to participate in the venture. [\[FN204\]](#) Courts have held essential facilities to include: railroad hubs, [\[FN205\]](#) ***304** bridges and fer-

ries, [\[FN206\]](#) access to news stories, [\[FN207\]](#) local telephone lines, [\[FN208\]](#) and even stadium usage. [\[FN209\]](#) Sports leagues are not entirely different. Similarly, under the Aspen Ski doctrine, courts have mandated that businesses with monopoly power cooperate with their smaller rivals when no legal business justification exists for refusing to do so. [\[FN210\]](#)

Historically, courts have rejected the argument for compelling sport leagues to expand. In *Mid-South Grizzlies v. NFL*, [\[FN211\]](#) the Third Circuit affirmed summary judgment for the NFL, rejecting the Mid-South Grizzlies' claim that the essential facilities doctrine allowed them a right to enter the NFL. [\[FN212\]](#) Three years later, in *Seattle Totems Hockey Club v. NHL*, [\[FN213\]](#) the Ninth Circuit rejected a similar claim by a Seattle hockey team that was a member of the defunct World Hockey League and had sought expansion into the NHL. [\[FN214\]](#) With agreement among two circuits, court-ordered expansion appears dubious, absent federal legislation or a Supreme Court ruling. [\[FN215\]](#)

However, even beyond barriers of precedent, there are other factors indicating that compelled expansion is a poor solution. Primarily, court-ordered expansion would lead to a flood of litigation by plaintiffs that want to own professional teams. Litigation would in turn lead to subjective, court-ordered criteria to determine how premier sports leagues must expand. Most likely, these criteria would require leagues to rapidly add new teams, even though some of the new teams might fail. If high team turnover occurred, the overall sports product would lose value, as occurred when the NHL rapidly expanded in the 1920s and over-saturated its primary markets, which led to a significant decline in attendance. [\[FN216\]](#) Similarly, court-ordered expansion would also lead to logistical nightmares for league front-offices, which are responsible for drafting game schedules and conducting expansion-player drafts. The need for constant, centralized reorganization might lead sports leagues to abandon league-wide *305 planning--a central tenet of professional sports leagues since first adopted by baseball in 1876. [\[FN217\]](#)

D. Federal Congressional Enactments

A fourth strategy to reduce professional sports leagues' bargaining power is through congressional enactments. There have been two interesting congressional proposals intended to curb sports' bargaining power; neither has passed, and neither alone would have been sufficient.

One proposal ultimately rejected by Congress was New York Senator Pat Moynihan's 1996 Stop Tax-Exempt Arena Debt Issuance Act ("STADIA"), which was intended to prevent tax-exempt federal bonds from financing recreational facilities managed by private authorities without sufficient revenue to pay debt service. [\[FN218\]](#) Congress rejected STADIA for various reasons, including the adverse effect the bill would have on zoos and libraries. [\[FN219\]](#) However, even if Congress had enacted STADIA, the bill would have failed to prevent American cities from financing professional sports stadiums via local bonds. [\[FN220\]](#)

A somewhat better proposal that Congress also rejected was Pennsylvania Senator Arlen Specter's 1999 Stadium Financing and Franchise Relocation Act ("SFFRA"). [\[FN221\]](#) The Act intended to use antitrust principles to prevent sports franchises from relocating and attempted to limit the amount of money that local governments could contribute to financing professional sports facilities. [\[FN222\]](#) It also would have required MLB and the NFL to place 10 percent of their national broadcasting revenues into a trust fund reserved for stadium financing, and it would have required the leagues to contribute 50 percent of the cost of new stadiums from that fund, with individual team owners paying at least 25 percent of the new stadium cost and local taxpayers paying no more than 25 percent. [\[FN223\]](#)

The SFFRA would have been a big step in the right direction because it would have prevented more sports subsidies like those provided in Chicago, Seattle and San Antonio, where taxpayers contributed significantly more than 25 percent of the new facility costs. [\[FN224\]](#) However, the SFFRA was insufficient in two respects. First, the SFFRA protected cities from MLB and NFL stadium *306 demands but did not address arena demands made by NBA and

NHL teams. [\[FN225\]](#) Additionally, the SFFRA allowed cities to continue to bear up to 25 percent of the cost of new stadiums--an arbitrary percentage, which may be in excess of the amount that cities would pay if professional sports participated in a truly competitive market.

IV. Why Congress Should Pass a Bill Banning Professional Sports Subsidies

Although STADIA and the SFFRA were insufficient attempts to curb professional sports' bargaining power vis-à-vis the American city, a federal bill that bans professional sports subsidies would adequately curb professional sports' bargaining power [\[FN226\]](#) without financially ruining sports leagues. [\[FN227\]](#) In effect, banning all sports subsidies would remove most of the unfair advantages from the sports-league market structure without disrupting the virtues of maintaining premier sports leagues.

A federal zero-subsidies bill is more effective than applying state constitutional enactments because a zero-subsidies bill does not require simultaneous concerted agreement between all fifty states. [\[FN228\]](#) A zero-subsidies bill is also fairer than breaking up the four professional sports leagues because it does not force professional sports into a business model with high bankruptcy risk. [\[FN229\]](#) A zero-subsidies bill is more practical than compelling sports leagues to expand because it would not create streams of litigation and logistical nightmares. [\[FN230\]](#) Finally, a zero-subsidies bill is simpler and more effective than either STADIA or the SFFRA, since a zero-subsidies bill eliminates all sports subsidies, rather than just some arbitrary percentage. [\[FN231\]](#) Furthermore, a zero-subsidies bill truly is constitutionally feasible because the federal government is allowed to regulate sports subsidies under the Constitution's interstate commerce clause. [\[FN232\]](#)

***307** Obviously, not everybody would support a bill that prevents sports subsidies, and like most middle-ground solutions, a ban on sports subsidies would have its skeptics on both sides of the equation: sports team owners and traditional economists. Many sports team owners would oppose a zero-subsidies bill because ownership would bear the initial burden of financing new sports facilities. This is a weak argument, however, in light of existing empirical, economic evidence. In the absence of public funding, professional sports teams would most likely either play in more affordable, less luxurious stadiums or would more resourcefully seek private financing from businesses, investors and fans. Effective sports marketers are consistently finding new revenue streams from sources such as naming rights, pouring rights, and the sale of personal seat licenses. Each of these revenue streams makes private stadium financing more feasible. [\[FN233\]](#)

Additionally, some teams that are less subsidized by local governments have been especially resourceful at exploring new revenue streams. For example, the Texas Rangers raised \$56 million toward the 1994 opening of the Ballpark of Arlington from seat option fees, bank loans repayable via a ticket surcharge, concessionaire funding, luxury suites, and a program that allowed fans to purchase sidewalk bricks with their names engraved on them. [\[FN234\]](#) Similarly, the San Francisco Giants recently built a 100-percent privately financed stadium, primarily through selling various exclusive rights upfront to businesses. [\[FN235\]](#)

Whereas some sports-team owners would oppose a zero-subsidies bill based on financing costs, some traditional economists would oppose a zero-subsidies bill because it would not provide a traditional "market solution." [\[FN236\]](#) According to Professors Quirk and Fort, even in the sports context, the problem with federal bills is that they provide "a piecemeal patchwork approach to identifying specific antitrust violations and impose detailed rules for their elimination." [\[FN237\]](#) Further, ***308** Quirk and Fort opine that bills of this nature lead to the disasters of regulated industries such as the establishment of a micromanaged bureaucracy. [\[FN238\]](#)

Quirk and Fort are probably correct that regulating the sports industries via bills rather than enhanced antitrust scrutiny would lead to some bureaucratic concerns. Still, these bureaucratic concerns are not highly intrusive, and the government can easily regulate subsidies through the Internal Revenue Service. [\[FN239\]](#) Therefore, as compared to completely overhauling the entire industry's market structure, the bureaucratic effect of a regulated professional

sports market does not seem particularly problematic. [\[FN240\]](#)

Conclusion

Professional sports leagues enjoy a long-standing relationship with American cities, dating back to 1876. Yet, sports subsidies are a relatively new phenomenon that emerged by legal accident. Since their arrival, subsidized professional sports leagues have hurt public welfare and have led to the inefficient operation of sports teams. Antitrust law's inability to regulate professional sports' conduct has allowed the four premier professional sports leagues to obtain monopoly power. [\[FN241\]](#) With monopoly power, professional sports teams have garnered billions of dollars in local subsidies that governments could otherwise spend to improve public welfare. Without doubt, the current relationship between professional sports and the American city needs to change.

Given the recent conflicts surrounding sports subsidies, new regulations are needed to help improve the relationship between professional sports and the American city. The solutions most frequently proposed by academics, such as enhanced state regulation, breaking up the professional sports leagues, and compelling leagues to expand, do not reflect adequately the sports market's inability to sustain inter-league competition. However, a simple ban of sports subsidies would sufficiently improve the situation.

A bill preventing professional sports teams from accepting government subsidies would have a far-reaching impact. Specifically, a zero-subsidies bill will remove sports leagues' monopolistic incentives for maintaining scarcity. Similarly, such a bill will both influence sports leagues to raise capital more efficiently and allow cities to focus their tax spending on true public welfare projects. For these reasons, the enactment of a zero-subsidies bill--which would *309 prevent sports teams from accepting public subsidies--is an important step toward curbing professional sports' bargaining power vis-à-vis the American city.

[\[FN1\]](#). **Marc Edelman** (marcedelman@aol.com) is a John M. Olin Fellow in Law and Economics. B.S., magna cum laude, 1999, Economics, Wharton School, University of Pennsylvania; M.A. summa cum laude, 2003, Sports Management, University of Michigan; J.D., cum laude, 2003, University of Michigan Law School. The author wishes to thank the John M. Olin Center for Law and Economics along with professors Sherman Clark and Richard Wolfe for their support.

[\[FN1\]](#). Rudy's Last Shocker: New Baseball Deals, *Newsday*, Jan. 20, 2002, at B3. According to Giuliani's plan, The Mets would get an \$800-million stadium in Queens, built in the image of Brooklyn's old Ebbets Field, and the Yankees would get an \$800-million stadium in the Bronx, built on city parkland. *Id.* The Mets and Yankees would each pay half their new stadium's costs, and the city would pay for the rest. *Id.*

[\[FN2\]](#). *Id.*

[\[FN3\]](#). *Id.* Although Major League Baseball teams do not open their books to the public, *Financial World* magazine estimates that Baseball teams averaged \$3.6 million in annual operating income between 1990-96. James Quirk & Rodney D. Fort, *Hard Ball: The Abuse of Power in Pro Sports Teams* 206 (1999); (Table 5-1: Estimated Operating Income, Major League Baseball, 1990-96). During this period, the New York Yankees averaged an estimated \$27.3 million annual operating income and the New York Mets averaged an estimated \$11.6 million. *Id.* Additionally, the average rate of return on professional baseball teams during this era was about 12.7 percent. *Id.* at 212 (Table 5-7: Sales of Pro Sports Teams, 1990-98, and Estimated Rates of Return on Investments to Owners).

[\[FN4\]](#). Quirk & Fort, *Hard Ball*, *supra* note 3, at 218-25 (Table 7-1: Stadiums and Arenas Built or Being Built, 1991-98).

[\[FN5\]](#). See *infra* notes 6-10 and accompanying text.

[FN6]. See generally Rick Telander, *Bowled over in a City of Perks*, Chi. Sun-Times, Apr. 28, 2002, at 127.

[FN7]. Josh Peter, *Building NFL Fortunes*, Times-Picayune (New Orleans), Jul. 14, 2002, at Sports 1.

[FN8]. Nancy Moffett, *The Opponents of Renovation may Appeal to High Court*, Chi. Sun-Times, Apr. 26, 2002, at A8 (quoting Landmark Council Board Chairman John Stassen).

[FN9]. *Id.* (quoting statements by Michael Rachlis, the lawyer representing taxpayers in opposition to funding Soldier Field).

[FN10]. See generally *id.*

[FN11]. See *infra* notes 12-14 and accompanying text.

[FN12]. See O. Casey Corr, *The Subsidy Court*, Seattle Times, Aug. 30, 1998, at B5.

[FN13]. *Id.*

[FN14]. Marc D. Oram, *The Stadium Financing and Relocation Act of 1999*, 2 Va. J. Sports & L., note 55 (citing Sports Bus. J., May 10-16, 1999, at 5).

[FN15]. David McLemore, *Functioning in a New Arena; San Antonio's Alamodome Alive despite SBC Center*, Dallas Morning News, Dec. 1, 2002, at 43A.

[FN16]. *Id.* The Spurs' old home, the Alamodome, held 65,000 fans, while the new, SBC Center holds only 18,500; however, the Alamodome had one-third fewer luxury boxes than does the SBC Center. *Id.*

[FN17]. *Id.*

[FN18]. *Id.*

[FN19]. See generally Roger Noll & Andrew Zimbalist, *Economic Impact of Sports Teams and Facilities in Sports, Jobs and Taxes: The Economic Impact of Sports Teams and Stadiums* 65 (Roger Noll & Andrew Zimbalist eds. 1997).

[FN20]. *Id.* at 65.

[FN21]. Mark Rosentraub, *Major League Losers: The Real Cost of Sports and Who's Paying for It* 16-18 (1997).

[FN22]. *Id.*

[FN23]. Over the past decade, various professional sports teams have switched host cities, including: the Browns (NFL, from Cleveland to Baltimore), Hornets (NBA, from Charlotte to New Orleans), North Stars (NHL, from Minnesota to Dallas), Oilers (NFL, from Houston to Nashville, TN), Rams (NFL, from Los Angeles to St. Louis), Raiders (NFL, from Oakland to Los Angeles) and Whalers (NHL, from Hartford, CT to North Carolina). Bob Kravitz, *Tagliabue Talks the 'No Move' Talk But the Colts Still May Walk*, Indianapolis Star, Oct. 9, 2002, at 1D; Elliot Teaford, *Hornets on the Way to New Orleans*, L.A. Times, May 11, 2002, at part 4, 10; John Millea, *When the North Stars Moved to Dallas in 1993, the NHL's Makeover was Just Beginning*, Star Trib. (Minneapolis, MN), Jan. 3, 1999, at 10C; Jimmy Smith, *The New Arena Opens*, Times-Picayune (New Orleans), Oct. 30, 1999, at A1; see also Thomas A. Piraino, Jr., *The Antitrust Rationale for the Expansion of Professional Sports Leagues*, 57 Ohio St. L. J. 1677, 1702 (1996).

[FN24]. See infra note 25 and accompanying text.

[FN25]. Before the 1958 season, the Dodgers baseball team moved from Brooklyn, NY to Los Angeles, and the Giants baseball team moved from New York, NY to San Francisco; eighteen years later in 1976, the Giants and Jets football teams both moved from New York to New Jersey. NYC 100: The Eighth Decade, N.Y. Times, Jan. 25, 1998, at 25; see also James Edward Miller, *the Baseball Business: Pursuing Pennants and Profits in Baltimore 79-80* (1990); Paul Weiler, *Leveling the Playing Field: How the Law Can Make Sports Better for Fans 224* (2000).

[FN26]. See, e.g., Michael Leeds & Peter von Allmen, *the Economics of Sports 189-90* (2002).

[FN27]. Robert A. Baade & Allen R. Sanderson, *Employment Effect of Teams and Sports Facilities*, in *Sports, Jobs & Taxes: The Economic Impact of Sports Teams and Stadiums 114* (Roger Noll & Andrew Zimbalist eds. 1997).

[FN28]. *Id.* at 109.

[FN29]. Noll & Zimbalist, *supra* note 19, at 87.

[FN30]. Mark Rosentraub, *Stadiums and Urban Space*, in *Sports, Jobs & Taxes: The Economic Impact of Sports Teams and Stadiums 202* (Roger Noll & Andrew Zimbalist eds. 1997).

[FN31]. Phillip Areeda & Louis Kaplow, *Antitrust Analysis: Problems Texts and Cases, 47-49* (5th Ed., 1997).

[FN32]. See generally Gerald W. Scully, *the Market Structure of Sports, 3- 41* (1995) (discussing the unique economic structure of professional sports leagues and how antitrust law has historically addressed special issues pertaining to sports leagues).

[FN33]. The glory era in professional sports was marked by franchise stability and few government subsidies; sports economists James Quirk and Rodney Fort refer to this era as the "good old days," while sports law professor Roger Abrams calls it the period of stability. See Quirk & Fort, *Hard Ball*, *supra* note 3, at 9-10. The glory era in professional sports relates to professional sports' positive relationship with the general public; it is not to be confused with the era from 1980-95, which economist Gerald Scully refers to as "the financial golden age in professional sports." But see Scully, *supra* note 32, at 3.

[FN34]. See generally Quirk & Fort, *Hard Ball*, *supra* note 3, at 18-22.

[FN35]. See generally Lee Geige, [Cheering for the Home Team: An Analysis of Public Funding of Professional Sports Stadia in Cincinnati, Ohio](#), *30 U. Tol. L. Rev. 459, 461* (1999). According to Geige, "In the 1880s, the [Cincinnati Reds] purchased land in Cincinnati at the corner of Findlay Street and Western Avenue. The first stadium built on this site, the Cincinnati Baseball Club Park, erected in 1884, was 'planned and built in five months'--much faster than the current several-year time frame." *Id.*

[FN36]. See John Siegfried & Andrew Zimbalist, *The Economics of Sports Facilities and Their Communities, 14 J. Econ. Persp. 95, 95-96* (2000).

[FN37]. *Id.*

[FN38]. See James Quirk & Rodney D. Fort, *Pay Dirt: The Business of Professional Team Sports, 49-50* (1992). For specific franchise values for all Major League Baseball teams, see *id.*, at 51-53 (Table 2.7).

[FN39]. Quirk & Fort, *Pay Dirt*, *supra* note 38, at 51.

[\[FN40\]](#). Id.

[\[FN41\]](#). Siegfried & Zimbalist, *supra* note 36, at 96.

[\[FN42\]](#). Id.

[\[FN43\]](#). Major League Baseball would not agree to expand its number of teams until it faced competition from the rival, upstart Continental League. See *infra* notes 60-62 and accompanying text.

[\[FN44\]](#). Siegfried & Zimbalist, *supra* note 36, at 96.

[\[FN45\]](#). Id.; Quirk & Fort, *Hard Ball*, *supra* note 3, at 15.

[\[FN46\]](#). Quirk & Fort, *Hard Ball*, *supra* note 3, at 15.

[\[FN47\]](#). Miller, *supra* note 25, at 31.

[\[FN48\]](#). Id.

[\[FN49\]](#). See Jerold J. Duquette, *Regulating the National Pastime: Baseball and Antitrust* 52 (1999).

[\[FN50\]](#). Miller, *supra* note 25, at 31; Quirk & Fort, *Pay Dirt*, *supra* note 38, at 480 (Table: Attendance Records: Baseball, National League).

[\[FN51\]](#). Quirk & Fort, *Pay Dirt*, *supra* note 38, at 480.

[\[FN52\]](#). Miller, *supra* note 25, at 79; Quirk & Fort, *Hard Ball*, *supra* note 3, at 15.

[\[FN53\]](#). Quirk & Fort, *Hard Ball*, *supra* note 3, at 15.

[\[FN54\]](#). Cagan & deMause, *supra* note 37, at 186-87; Miller, *supra* note 25, at 80; Quirk & Fort, *Hard Ball*, *supra* note 3, at 16.

[\[FN55\]](#). Miller, *supra* note 25, at 79-80; Quirk & Fort, *Pay Dirt*, *supra* note 38, at 480 (Attendance Records; Baseball, National League). In 1957, the New York Giants drew just 652,932 fans; while the next year, playing in San Francisco, the Giants drew 1,272,625 fans. Id.; see also Quirk & Fort, *Hard Ball*, *supra* note 3, at 16.

[\[FN56\]](#). Miller, *supra* note 25, at 79-80.

[\[FN57\]](#). Id. at 79.

[\[FN58\]](#). Id. at 79-80.

[\[FN59\]](#). Siegfried & Zimbalist, *supra* note 36, at 96 (Table 1: Expenditures on New Sports Facilities for Professional Teams by Decade); Quirk & Fort, *Hard Ball*, *supra* note 3, at 19-20.

[\[FN60\]](#). Duquette, *supra* note 49, at 52-53.

[\[FN61\]](#). Id. at 53; Quirk & Fort, *Pay Dirt*, *supra* note 38, at 482-83, 487 (Major League Baseball added eight new teams in the years from 1961-69, with new teams beginning play in: Queens, NY, Houston, San Diego, Montreal, Los Angeles, Washington, Seattle and Kansas City).

[\[FN62\]](#). See generally *id.*

[\[FN63\]](#). Siegfried & Zimbalist, *supra* note 36, at 96 (Table 1: Expenditures on New Sports Facilities for Professional Teams by Decade).

[\[FN64\]](#). See *infra* notes 65-77 and accompanying text.

[\[FN65\]](#). See generally Cagan & deMause, *supra* note 37, at 28-29. According to the authors, "North America is in the midst of a remarkable stadium and sports arena building boom unlike any other in its history . . . Between 1980 and 1990, U.S. cities spent some \$750 million on building or renovating sports arenas and stadiums. The bill for the '90s is expected to total anywhere between \$8 billion and \$11 billion, the bulk of it paid by taxpayers--and hidden subsidies could amount to billions more." *Id.*

[\[FN66\]](#). See generally Siegfried & Zimbalist, *supra* note 36, at 96 (Table 1: Expenditures on New Sports Facilities for Professional Teams by Decade).

[\[FN67\]](#). See *infra* notes 69-77 and accompanying text.

[\[FN68\]](#). See *infra* notes 69-73 and accompanying text.

[\[FN69\]](#). Quirk & Fort, *Pay Dirt*, *supra* note 38, at 161-63 (Table 4.14: Stadium and Arena Construction Costs in Current and 1989 Dollars, Selected Stadiums and Arenas).

[\[FN70\]](#). *Id.* at 163.

[\[FN71\]](#). Michael R. Fancher, *Here are Some Examples of What Happens When a Newspaper Gets it Right*, *Seattle Times*, May 30, 1999, at A21.

[\[FN72\]](#). Fred Girard & Becky Yerak, *Big Losers will Include Spin-Off Trade*, *Detroit News*, Aug. 29, 2002, at 2A.

[\[FN73\]](#). Don Walker, *Auditors Blame 'Enron-Style Accounting' for Ballpark Cost Dispute*, *Milwaukee J. Sentinel*, May 22, 2002, at 1A.

[\[FN74\]](#). Siegfried & Zimbalist, *supra* note 36, at 96.

[\[FN75\]](#). *Id.*

[\[FN76\]](#). See, e.g., *id.*

[\[FN77\]](#). See, e.g., *The Stadium Binge*, *USA Today*, Sep. 6, 1996, at 20C; see generally Quirk & Fort, *Hard Ball*, *supra* note 3, at 18-23.

[\[FN78\]](#). This argument is supported by building a mathematical model for sports-team profitability, which estimates net operating income and annual expected return on investment by team. See generally Quirk & Fort, *Hard Ball*, *supra* note 3, at 206, 212. The model considers the additional costs of constructing a new stadium and factors in revenue streams that are created by building a new stadium.

[\[FN79\]](#). Christopher Carey, *Two Privately Financed Stadiums May Hold Lessons for the Cardinals; Homes of Patriots and Giants Have Features that Cut Risk, Saved Money*, *St. Louis Post-Dispatch*, Sept. 29, 2002, at A6.

[\[FN80\]](#). Rodney Fort, *Employment Effect of Teams and Sports Facilities*, in *Sports, Jobs & Taxes: The Economic Impact of Sports Teams and Stadiums* 167 (Roger Noll & Andrew Zimbalist eds. 1997). After various initiatives for

city subsidization failed, the Giants on March 26, 1996 received voter approval to build a privately financed stadium on the China Basin. *Id.* at 167.

[FN81]. Jay Weiner, When the Public Said 'No', The Giants had to Say 'Yes', *Star Trib.* (Minneapolis, MN), Feb. 9, 1997, at 23A.

[FN82]. Richard Alm, Nosebleed Prices, *Dallas Morning News*, Jul. 11, 2000, at 1D. Prior to construction, the stadium was expected to cost \$255 million. See Geoff Baker, Skydome Deal Far from Worst, *Toronto Star*, Nov. 9, 1998 at E8.

[FN83]. Financing New Stadiums, *N.Y. Times*, May 7, 1998, at A30.

[FN84]. Carey, *supra* note 79, at A6; see also Richard Sandomir, Pro Football: NFL Goes Back to Houston for \$700 Million, *N.Y. Times*, Oct. 7, 1999, at D-5.

[FN85]. See generally Carey, *supra* note 79, at A6.

[FN86]. See generally Leeds & von Allmen, *supra* note 26, at 111-12, 154-55; Piraino, *supra* note 23, at 1681-82.

[FN87]. Leeds & von Allmen, *supra* note 26, at 161.

[FN88]. *Id.* at 115.

[FN89]. Piraino, *supra* note 23, at 1677; Stephen D. Ross, [Monopoly Sports Leagues](#), 73 *Minn. L. Rev.* 643, 661 (1989).

[FN90]. The lone example of a premier professional sports team that was contractually denied the right to leave their host city was the 2002 Minnesota Twins (MLB), which were ordered by the Minnesota Supreme Court to complete a stadium-lease agreement and play the full eighty-one schedule in the Metrodome. See Dave Sheinin, Check the Boxscore for Attendance, *Wash. Post*, Feb. 14, 2002, at D4. However, looking forward, a city's strategy to require a team to sign a long-term lease becomes unfeasible because most premier, professional sports teams would prefer to locate in one of the many untapped markets, where the local government does not require this type of stipulation.

[FN91]. See, e.g., Fort, *supra* note 80, at 149-50.

[FN92]. Leeds & von Allmen, *supra* note 26, at 98 (Table 3.3: Twenty Most Populated Metropolitan Areas and Their Respective Sports Teams).

[FN93]. Quirk & Fort, *Hard Ball*, *supra* note 3, at 216 (Table 6-2: Major Metropolitan Areas, United States and Canada, Population, 1994, and Team Locations, *Pro Sports Teams*, 1997) (Portland is the twenty-second largest metropolitan market with a population of 1,982,000; however, Portland only one premier professional sports team—the NBA Trailblazers. Norfolk in the seventy-seventh largest metropolitan area with a population of 1,529,000, but the city does not have any premier sports teams. Charlotte is a rapidly growing city with the thirty-third largest metropolitan population of 1,260,000, and has only an NBA and NFL franchise. Louisville has the forty-fifth largest metropolitan population at 980,000, and does not have a premier professional sports team but was a finalist city for the NBA's Grizzlies).

[FN94]. See generally Duquette, *supra* note 49, at 52-53.

[FN95]. All attempts to form rival, premier professional sports leagues in the four major sports over the past forty years have failed. For example, in football, the World Football League (WFL) emerged in the 1960s and almost

from its first games exhibited dire financial trouble; missed payrolls were common and the league folded during its second season. Robert Berry et. al., *Labor Relations in Professional Sports* 93 (Dover: Auburn House 1986). The United States Football League (USFL) then emerged in 1983 with differentiated strategy of playing football during the spring; the USFL quickly found itself in a bidding war for players with the NFL, and in November 1984, it too filed for bankruptcy. *Id.* at 95-96. In basketball, Harlem Globetrotters owner Abe Saperstein launched the American Basketball League (ABL) in 1961, but the league folded in its second season. *Id.* at 155. Its successor, the American Basketball Association (ABA), which started in 1967-68, fared slightly better; however, it too was heading toward bankruptcy in 1976 when the league disbanded and four existing teams joined the NBA. *Id.* at 156-57. In hockey, the World Hockey Association (WHA) was founded by entrepreneurs Gary Davidson and Dennis Murphy in 1972-73, but by 1979, most of its teams were bankrupt; the four remaining franchises were acquired by the NHL. *Id.* at 213-14.

[FN96]. Leeds & Von Allmen, *supra* note 26, at 124-25.

[FN97]. Quirk & Fort, *Hard Ball*, *supra* note 3, at 135.

[FN98]. *Id.* at 117-18.

[FN99]. *Id.* at 117.

[FN100]. See, e.g., *id.*, at 6.

[FN101]. Fort, *supra* note 80, at 150. See also Todd Senkiewicz, *Stadium and Arena Financing: Who Should Pay?*, *Seton Hall J. Sport L.* 575, 582 (1998) (citing Bill Knight, *Suite Deals Luxury Seat a Foundation for Building New Ballparks*, *Seattle Post-Intelligencer*, Mar. 30, 1994, at D1).

[FN102]. See generally Fort, *supra* note 80, at 146.

[FN103]. *Id.* at 152.

[FN104]. See generally Quirk & Fort, *Hard Ball*, *supra* note 3, at 27-48 (discussing the media's relationship with the professional sports industry, as well as the media's incentives for bias).

[FN105]. Areeda & Kaplow, *supra* note 31, at 49; see also *id.* at 47-48 (citing R. Hofstadter, *What Happened to the Antitrust Movement*, in *Am. Pol. & Other Essays* 205-211 (1965)).

[FN106]. See generally Quirk & Fort, *Hard Ball*, *supra* note 3, at 171-86; see also Weiler, *supra* note 25, at 324-33 (discussing sports leagues' monopoly-like position); Abrams, *supra* note 33, at 57-58 (with respect to baseball's historic antitrust exemption); Edelman, *Can Antitrust Law Save the Minnesota Twins*, *supra* note 90 (with respect to the current state of baseball's antitrust law); Michael Jones, *Sports Law* 62-64 (1999) (with respect to antitrust law's regulation of the NBA, NFL and NHL); Leeds & van Allmen, *supra* note 26, at 132- 34 (explaining special non-baseball sports-related exemptions).

[FN107]. Leeds & von Allmen, *supra* note 26, at 125; see also Sherman Act, [15 U.S.C.A. §§1-7 \(1890\)](#).

[FN108]. [15 U.S.C.A. §§1-7 \(1890\)](#).

[FN109]. *Id.* at § 1.

[FN110]. *Id.* at § 2.

[FN111]. See, e.g., [Smith v. Pro Football Inc., 593 F.2d 1173, 1175 \(1978\)](#). The plaintiff, Yazoo Smith, brings nearly identical group boycott claims against the Washington Redskins and the National Football League under both Sections One and Two of the Sherman Antitrust Act. Id. Bringing a claim in this nature indicates that even the plaintiffs' lawyers were unsure how to classify the NFL under our antitrust statute.

[FN112]. See generally Piraino, *supra* note 23, at 1685. For a legal dispute arising between teams that emerged out of competition for the rights to free agent baseball player Gary Matthews; see also [Atlanta Nat'l League Baseball Club v. Bowie Kuhn, 432 F. Supp. 1213 \(1977\)](#).

[FN113]. See generally Piraino, *supra* note 23, at 1682.

[FN114]. Quirk & Fort, *Hard Ball*, *supra* note 3, at 38-39; Weiler, *supra* note 25, at 287-95.

[FN115]. Leeds & von Allmen, *supra* note 26, at 242-244; Weiler, *supra* note 25, at 157-58.

[FN116]. For different academic perspectives on how antitrust law should address professional sports, compare Daniel E. Lazaroff, The [Antitrust Implications of Franchise Relocation Restrictions in Professional Sports, 53 Fordham L. Rev. 157, 157-220 \(1984\)](#) (presuming antitrust analysis falls at the team level under Section One) with Gary R. Roberts, The Single Entity Status of Sports Leagues Under [Section 1](#) of the Sherman Act: An alternative view, 60 *Tul. L. Rev.* 562, 562-95 (1986).

[FN117]. Unlike cartels, joint ventures serve some pro-competitive purpose; however, also unlike mergers, joint ventures do not completely integrate their operations. Piraino, *supra* note 23, at 1681.

[FN118]. For a scathing view of the Department of Justice's refusal to break up professional sports leagues, see Quirk & Fort, *Hard Ball*, *supra* note 3, at 171-86.

[FN119]. The Copperweld Doctrine eliminates intra-enterprise conspiracy, stating that "concerted action by persons within a business enterprise is not deemed a 'contract, combination or conspiracy' within the meaning of [§ 1](#)." Areeda & Kaplow, *supra* note 31, at 286. See also [Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752 \(1984\)](#).

[FN120]. If each professional sports league is considered a single-entity and the court determines the product market is sport-exclusive, then courts would find each of the four, professional sports leagues to have monopolies. See generally Areeda & Kaplow, *supra* note 31, at 553-577.

[FN121]. See *supra* notes 189-94 and accompanying text.

[FN122]. See generally John L. Crompton, *Economic Impact Analysis of Sports Facilities and Events: Eleven sources of misapplication*, 9 *J. of Sport Mgmt.* 14, 15 (1995).

[FN123]. Senkiewicz, *supra* note 101, at 588; Noll & Zimbalist, *supra* note 19, at 59.

[FN124]. See generally Siegfried & Zimbalist, *supra* note 36, at 103-04; see also Senkiewicz, *supra* note 101, at 588; Crompton, *supra* note 122, at 15 (discussing the various forms of bias in these consulting studies); Noll & Zimbalist, *supra* note 19, at 60-62 (stating that one of the frequent mistakes in evaluating stadium financing is that the reporter fails to consider the opportunity costs of facility financing).

[FN125]. See generally Siegfried & Zimbalist, *supra* note 36, at 103.

[FN126]. See generally Dennis Zimmerman, *Subsidizing Stadiums: Who Benefits, Who Pays*, in *Sports, Jobs &*

Taxes: The Economic Impact of Sports Teams and Stadiums 120-25 (Roger Noll & Andrew Zimalist eds. 1997).

[FN127]. See generally Senkiewicz, *supra* note 101, at 589 (citing William J. Donovan, Stadiums: Winners or Losers, *The Providence Journal-Bulletin*, Feb. 26, 1997, at A1).

[FN128]. Baade and Sanderson, *supra* note 27, at 93 (describing how spending on spectator sports "is largely offset by reductions in other forms of leisure spending by consumers and other fiscal commitments by government entities.").

[FN129]. The Maryland Department of Business and Economic Development is part of the state's executive branch; this study was afterward reviewed by the Maryland Department of Fiscal Services--part of the state's legislative branch. Zimmerman, *supra* note 126, at 122-23.

[FN130]. *Id.*

[FN131]. *Id.* at 120-21 ("[T]o implement the benefit principle of taxation, revenue must be raised or spending on other programs decreased in such a manner that the distribution of stadium costs matches the distribution of stadium benefits.").

[FN132]. *Id.*

[FN133]. Leeds & von Allmen, *supra* note 26, at 210.

[FN134]. Zimmerman, *supra* note 126, at 120-21, 143.

[FN135]. *Id.* at 121.

[FN136]. *Id.*

[FN137]. See generally Zimmerman, *supra* note 126, at 121-22, 126.

[FN138]. Senkiewicz, *supra* note 101, at 585.

[FN139]. Zimmerman, *supra* note 126, at 125-26 (citing Charles T. Clotfelter and Phillip J. Cook, *Selling Hope: State Lotteries in America* (Harvard Univ. Press 1989); Senkiewicz, *supra* note 101, at 586).

[FN140]. See generally Martin Greenberg, Sports Facilities and Development: [Stadium Financing and Franchise Relocation Act of 1999](#), 10 *Marq. Sports L.J.* 383, 387 (2000) (citing [Stadium Financing and Franchise Relocation Act of 1999: Hearings on S. 952 Before the Senate Judiciary Comm., 106th Cong. \(1999\) \(testimony of Richard Harrow, Pres. Harrow Sports Ventures\)](#), available at 1999 WL 41677 (F.D.C.H.)); see also Zimmerman, *supra* note 126, at 121.

[FN141]. *Id.*

[FN142]. See generally Zimmerman, *supra* note 126, at 121. A majority of the beneficiaries from premier professional sports are likely to live in the surrounding metropolitan area and regions, outside the local jurisdiction in which the stadium is located.

[FN143]. Michael Kaufman, About New York; For \$39.50, a License to Love Dodgers of Old, *N.Y. Times*, Nov. 4, 1992, at B3.

[FN144]. Without this evidence, subsidy supporters cannot contend that professional sports' legal environment is not

at least part of the reason for subsidies.

[FN145]. Zimmerman, *supra* note 126, at 122.

[FN146]. *Id.* at 121 (stating that a sports facility fails to aid lower-income residents in attending sporting events since the price of admission excludes them from becoming potential ticket holders).

[FN147]. Senkiewicz, *supra* note 101, at 593 (citing Mark S. Rosentraub, *Major League Losers: The Real Cost of Sports and Who's Paying for It* 19 (BasicBooks 1997)).

[FN148]. See generally Senkiewicz, *supra* note 101, at 593.

[FN149]. Senkiewicz, *supra* note 101 at 593.

[FN150]. See *supra* notes 5-10 and accompanying text.

[FN151]. Generally, advocates of state autonomy support curbing professional sports' power via state constitutional enactments because it allows each state to independently determine whether to subsidize sports facilities.

[FN152]. Dale F. Rubin, [Public Aid to Professional Sports Teams--A Constitutional Disgrace: The Battle to Revive Judicial Rulings and State Constitutional Enactments Prohibiting Public Subsidies to Private Corporations](#), 30 *U. Tol. L. Rev.* 393, 412 (1999).

[FN153]. *Supra* note 161 and accompanying text.

[FN154]. See *supra* note 163 and accompanying text.

[FN155]. Rubin, *supra* note 152, at 397-99.

[FN156]. See generally Rubin, *supra* note 152, at 397-99. Oftentimes in the mid-1800s, government officials provided subsidies to large, private businesses as part of a quid pro quo arrangement, where these businesses in turn provided government officials with bribes and kickbacks. *Id.* at 395-99.

[FN157]. *Infra* note 161 and accompanying text.

[FN158]. *Infra* note 163 and accompanying text.

[FN159]. [186 So. 2d 6 \(Fla. 1966\)](#).

[FN160]. [Id. at 7, 12.](#)

[FN161]. [Id. at 12.](#)

[FN162]. See, e.g., [Meyer v. City of Cleveland](#), 171 N.E. 606 (Ohio Ct. App. 1930); *Martin v. City of Philadelphia*, 214 A.2d 894 (Pa. 1966); [Bazell v. City of Cincinnati](#), 233 N.E. 2d 864 (Ohio 1968); [Ginsberg v. City & County of Denver](#), 436 P. 2d 685 (Colo. 1968); [State v. Daytona Beach Racing & Recreational Facilities Dist.](#), 89 So.2d 34 (Fla. 1966) (all holding that the proposed public subsidization of professional sports was constitutional).

[FN163]. [171 N.E. 606 \(Ohio Ct. App. 1930\)](#).

[FN164]. *Id.*

[FN165]. [215 A.2d 894](#).

[FN166]. [Id. at 899](#) (stating that there may be a public purpose for erecting a sports stadium even if private organizations retain benefits from the project).

[FN167]. See generally Rubin, *supra* note 152, at 393-94; see also Geige, *supra* note 35, at 462.

[FN168]. Dale Rubin is a professor at Appalachian School of Law. See Rubin, *supra* note 152, at 393.

[FN169]. Rubin, *supra* note 152, at 395-396, 404 (discussing examples of campaign contributions by professional sports leagues and teams). Rubin does not argue that sports teams per se bribe city officials; however, he contends that when sports provide election-campaign contributions to government officials, it operates as a subtle and more benign form of bribery. *Id.*

[FN170]. See generally Rubin, *supra* note 152.

[FN171]. See generally Fort, *supra* note 101 (discussing the prisoner's dilemma).

[FN172]. [186 So. 2d at 6 \(Fla. 1966\)](#).

[FN173]. See generally Brandes, 186 So. 2d; see also Rubin, *supra* note 152, at 405-407 (describing how the Washington state government responded to the Seattle Mariners' threats to leave Seattle if a new stadium for them was not constructed).

[FN174]. See *infra* notes 175, 202 & 223 and accompanying text.

[FN175]. See generally Noll & Zimbalist, *supra* note 19, at 88; see also Quirk & Fort, *Hard Ball*, *supra* note 3, at 177; Weiler & Roberts, *Sports and the Law* 194-95 (2nd ed. 1998).

[FN176]. Weiler & Roberts, *supra* note 175, at 643 (citing [United States v. American Telegraph Company, 552 F. Supp. 131 \(D.D.C. 1982\)](#)).

[FN177]. See generally Quirk & Fort, *Hard Ball*, *supra* note 3, at 177.

[FN178]. See Ross, *supra* note 89, at 643; see also Weiler & Roberts, *supra* note 179, at 643. Usually, a movement to breakup the four premier sports leagues would require courts to consider sports leagues under section 2 of the Sherman Act; if the court considers this path, there are two kinds of charges available under section 2 of the Sherman Act. Weiler & Roberts, *supra* note 175, at 596. A monopolization charge consists of possession of monopoly market power and use of unacceptable means to acquire or maintain that power. *Id.* An "attempt to monopolize" claim requires a showing that the defendant is dangerously close to obtaining market power and is taking steps with the specific attempt to obtain a monopoly. *Id.*

[FN179]. Noll & Zimbalist, *supra* note 19, at 88.

[FN180]. *Id.*

[FN181]. Quirk & Fort, *Hard Ball*, *supra* note 3, at 177.

[FN182]. *Id.*; see also Weiler & Roberts, *supra* note 175, at 594.

[FN183]. Weiler & Roberts, *supra* note 175, at 595.

[FN184]. See, e.g., David Quentin Voight, *The League that Failed* (Scarecrow Press 1998) (discussing the Inter-League Wars in professional baseball during the early 1890s, which were followed by the National League's attempt to monopolize professional league baseball, and the Inter-League War between the National and American Leagues, which significantly weakened both entities and led to the Major League Baseball Agreement of 1903, which essentially merged the two leagues into a single entity); see also Jody Goldstein, *Alive and Kicking in the U.S.A.*, *Hous. Chron.*, June 5, 1994, at 21 (discussing how competition between the National Indoor Soccer League and the Major Indoor Soccer League helped drive most teams in both leagues into bankruptcy); Lena Williams, *Former Team Official Recounts the A.B.L.'s Dizzying Decent*, *N.Y. Times*, Apr. 2, 1999, at D5 (discussing how the rivalry between America's two premier women's indoor basketball leagues resulted in the Women's National Basketball Association driving the American Basketball League into bankruptcy).

[FN185]. The most famous merger of premier sports leagues was the January 1903 cooperation agreement between the American and National Leagues, which formed today's modern version of Major League Baseball. See generally Duquette, *supra* note 48, at 8. The other famous sports merger agreement was between the National Football League and the American Football League. See Berry, *supra* note 95, at 93. While, the most famous sports league acquisition was the National Hockey League's 1979 buyout of the World Hockey Association. *Id.* at 213-14.

[FN186]. *Supra* note 184 and accompanying text.

[FN187]. *Id.*

[FN188]. See generally Quirk & Fort, *Hard Ball*, *supra* note 3, at 4.

[FN189]. See generally *id.* at 135.

[FN190]. See generally Arthur T. Johnson, *Minor League Baseball and Local Economic Development 1-35* (Univ. of Ill. Press 1995).

[FN191]. In 1992, there were 152 formal minor league baseball teams in the United States, and today even more teams exist with the reemergence of the independent leagues like the Atlantic League, which are not affiliated with Major League Baseball. *Id.* at 12-17 (Table I.1: Profiles of Minor Leagues, 1992 Season & Table I.2: Comparison of League Attendance Levels, 1986 and 1990).

[FN192]. *Id.*

[FN193]. **Marc Edelman**, *Reevaluating Amateurism Standards in Men's College Basketball*, *U. Mich. J. L. Ref.* 861, 861-64 (2002).

[FN194]. In the four premier, professional sports leagues, investing in private sports facilities is feasible because these facilities would recoup their initial investment. However, when a league is new and team owners are not convinced that the league will survive, then owners are rightfully less wary of paying the high, fixed start-up costs involved in building a sports facility.

[FN195]. Quirk & Fort, *Hard Ball*, *supra* note 3, at 135.

[FN196]. See *contra*, Quirk & Fort, *Hard Ball*, *supra* note 3, at 171-77.

[FN197]. See, e.g., *supra*, note 182.

[FN198]. Mark C. Anderson, [Self-Regulation and League Rules under the Sherman Act](#), *30 Cap. U. L. R.* 125 (2001).

[\[FN199\]](#). Id.

[\[FN200\]](#). Piraino, supra note 23, at 1689-90; Weiler & Roberts, supra note 182, at 640-42.

[\[FN201\]](#). Piraino, supra note 23, at 1704-05.

[\[FN202\]](#). Id. at 1692.

[\[FN203\]](#). Id. at 1704.

[\[FN204\]](#). Piraino, supra note 23, at 1690.

[\[FN205\]](#). United States v. Terminal R.R. Ass'n, 224 U.S. 38, 411 (1912).

[\[FN206\]](#). Id.

[\[FN207\]](#). [Assoc. Press v. United States, 326 U.S. 1, 12-17 \(1945\)](#).

[\[FN208\]](#). MCI Communications Corp. v. AT&T, 708 F.2s 1081, 1133 (7th Cir. 1983).

[\[FN209\]](#). Hecht v. Pro-Football, Inc., 50 F.2d 1081, 1133 (D.C. Cir. 1983). See also [Fishman v. Estate of Wirtz, 807 F.2d 520, 539 \(7th Cir. 1986\)](#).

[\[FN210\]](#). [Aspen Skiing Co. v. Aspen Highlands Skiing Corp., 472 U.S. 585 \(1985\)](#).

[\[FN211\]](#). 550 F. Supp. 558 (E.D. Pa. 1982), aff'd 720 F.2d 772 (3rd Cir. 1983).

[\[FN212\]](#). [Mid-South Grizzlies, 720 F.2d. at 787](#).

[\[FN213\]](#). [783 F.2d 1347 \(9th Cir. 1986\)](#).

[\[FN214\]](#). [Seattle Totems, 783 F.2d at 1347](#).

[\[FN215\]](#). Piraino, supra note 23, at 1724.

[\[FN216\]](#). Quirk & Fort, Hard Ball, supra note 3, at 101.

[\[FN217\]](#). Abrams, supra note 33, at 14-15.

[\[FN218\]](#). Andrew Goodman, The Public Financing of Professional Sports Stadiums: Policy and Practice, 9 Sports L. J. 173, 217 (2002); see also Weiler, supra note 25, at 265.

[\[FN219\]](#). Goodman, supra note 218, at 218.

[\[FN220\]](#). Id. at 217-18.

[\[FN221\]](#). Weiler, supra note 25, at 275; see generally Oram, supra note 14, at 184.

[\[FN222\]](#). Oram, supra note 14, at 187.

[\[FN223\]](#). Weiler, supra note 25, at 275; see also Greenberg, supra note 140, at 394-98.

[\[FN224\]](#). Supra notes 6-18 and accompanying text.

[FN225]. Supra note 223 and accompanying text.

[FN226]. At least in the market for professional sports teams, this remedy would make professional sports leagues unable to exert monopoly power over American cities. Without monopoly power in the given market, an antitrust remedy becomes unnecessary. See generally Areeda & Kaplow, supra note 31, at 553-77.

[FN227]. See generally supra note 184 and accompanying text.

[FN228]. See supra notes 170-71 and accompanying text.

[FN229]. Supra note 184 and accompanying text.

[FN230]. Supra note 216 and accompanying text.

[FN231]. See generally supra notes 218 & 221 and accompanying text.

[FN232]. [Article I, Section 8, Clause 3 of the United States Constitution](#) states that Congress shall have the power to "regulate Commerce with foreign Nations, and among the several states." [U.S. Const. art I, § 8, cl. 3](#). Back in 1922, Justice Oliver Wendell Holmes handed down a unanimous decision that baseball was exempt from federal antitrust law because baseball was not interstate commerce within the Constitution's definition. See Quirk & Fort, Hard Ball, supra note 3, at 13. See also [Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs](#), 259 U.S. 200 (1922). However, the Supreme Court has since retracted its position that professional baseball is not interstate commerce. [Flood v. Kuhn](#), 407 U.S. 258 (1972). Similarly, the Supreme Court has always held that other forms of professional sports constitute interstate commerce. See [Radovich v. National Football League](#), 352 U.S. 445 (1957). See also [Haywood v. National Basketball Assn.](#), 401 U.S. 1204 (1971).

[FN233]. Zimmerman, supra note 126, at 126.

[FN234]. Senkiewicz, supra note 101, at 578-80.

[FN235]. Fort, supra note 80, at 167.

[FN236]. Quirk & Fort, Hard Ball, supra note 3, at 176-78.

[FN237]. Id.

[FN238]. Id.

[FN239]. These risks include the strong possibility that the smaller sub-leagues, created under Quirk and Fort's breakup proposal, would drive each other out of business as the leagues competed against each other to maintain access to premier players. See supra notes 189-94 and accompanying text.

[FN240]. See generally supra notes 189-94 and accompanying text.

[FN241]. See supra notes 86 & 102 and accompanying text.

END OF DOCUMENT