

OF FRANCHISE RELOCATION, EXPANSION AND COMPETITION IN PROFESSIONAL TEAM SPORTS: THE ULTIMATE POLITICAL FOOTBALL?

By Glenn M. Wong*

I. INTRODUCTION

How about the Minnesota Bucks, the Jacksonville Saints, the New York Generals, the Sacramento Kings, the Vancouver or New Jersey Giants, the New Jersey Indians, the Phoenix Saints, the New York or Phoenix Cardinals? These rumored or confirmed franchise relocations, in addition to the recent moves of the Raiders from Oakland to Los Angeles¹ and the Colts from Baltimore to Indianapolis,² and the expensively forestalled move of the Eagles from Philadelphia to Phoenix,³ have sparked an interest among legislators to attempt to regulate professional sport franchise relocations.⁴ Given the competing needs and concerns

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¹ See, e.g., *Los Angeles: A Lush Target in NFL Future*, Sporting News, Jan. 12, 1980, at 15, col. 1.

² See, e.g., *Colts are Winners for Indianapolis*, U.S.A. Today, Dec. 18, 1984, at 5C, col. 1.

³ See, e.g., *Eagles Studying Move to Phoenix*, N.Y. Times, Dec. 12, 1984, at B13.

⁴ In addition to the franchise relocations of the Colts and Raiders and the attempted relocation of the Eagles, recent relocation controversies have involved the St. Louis Cardinals of the NFL, see *City Said to Seek NFL Cardinals*, N.Y. Times, Feb. 9, 1985, at 29, col. 3; *Bidwill Studying NFL Cards' Shift*, Star-Ledger (Newark, NJ), Jan. 7, 1985, at 35, col. 1; *No Hint on Cards*, N.Y. Times, Mar. 14, 1985, at 24; *St. Louis Struggles to Keep Cards*, Dallas-Morning News, Mar. 14, 1985, at B7; *Phoenix Wants Fair Deal from Cards*, Bidwell, U.S.A. Today, Mar. 12, 1985; *Football Cards To Stay*, N.Y. Times, Feb. 6, 1985, at 17; *Stadium Entitles Cards to Remain*, Star-Ledger (Newark, NJ), Feb. 6, 1985, at 18, the New Orleans Saints of the NFL, see *Saints Reserve Right to Move*, N.Y. Times, Jan. 19, 1985, at 27, col. 5; *Cost of Keeping Saints*, N.Y. Times, Feb. 6, 1985, at B8; *Benson Group Buys Saints for \$64 Million*, Dallas Times Herald, Mar. 13, 1985, at B2, the Kansas City Kings of the NBA, see *Kings Never Found Castle in K.C.*, Star-Ledger (Newark, NJ), Mar. 5, 1985, at 57; *Kansas City*

of the individual legislators to secure or maintain a professional team in their district, however, any attempt to enact regulatory legislation in this area may prove extremely difficult.⁵ Indeed, as one columnist has noted, “[t]he thorniest issue facing Congress this year won’t necessarily be what to do about the deficit It may be what to do about the Raiders, the Colts and the Eagles.”⁶

An example of proposed legislation to regulate professional sport franchise relocation, which will serve as the focus of examination for this article, is Senate bill S.2505, the Professional Sports Team Community Protection Act [hereinafter referred to as the “Sports Team Protection Act”], which was introduced on March 29, 1984.⁷ The bill was designed, “to provide a right of first refusal for metropolitan areas before a professional sports team is relocated, and for other purposes.”⁸ This legislation was

May Lose Kings, N.Y. Times, Jan. 12, 1985, at 29, col. 1; *Sacramento-Bound Kings Find Kansas City Fans Apathetic*, U.S.A. Today, Jan. 29, 1985, at 3C, col. 1; *Axelsson Says Kings Adamant About Moving*, Boston Herald, Jan. 25, 1985, at 63; *Kings Expect NBA Clearance for Move to Sacramento*, Sports Industry News, Jan. 23, 1985, at 18, the Milwaukee Bucks of the NBA, see *Making An Offer*, N.Y. Times, Feb. 9, 1985, at 28; *A Lack of Revenue Could Mean Absence of Bucks*, Boston Globe, Feb. 10, 1985, at 48; *Owner Announces Plans to Sell Bucks*, U.S.A. Today, Feb. 6, 1985, at 1C; *Bucks Are Sold*, N.Y. Times, Mar. 2, 1985, at 42; *Bonanza For Bucks*, N.Y. Times, Mar. 7, 1985, at B15, the San Francisco Giants of MLB, see *San Jose Giants?*, N.Y. Times, Mar. 6, 1985, at B12; *The Giants: Down and Out*, N.Y. Times, Mar. 21, 1985, at B11; *Laurie Taking Giant Steps to Remain in San Francisco*, U.S.A. Today, Mar. 1, 1985, at 4C; *Giants Being Courtied*, Boston Globe, Mar. 3, 1985, at 66; *Ueberroth Says Giants, A’s Remain on Market*, U.S.A. Today, Mar. 7, 1985, at 8C, the Utah Jazz of the NBA, *Minneapolis Investor Trying to Buy Jazz*, U.S.A. Today, Mar. 18, 1985, at 9C, the Pittsburgh Penguins of the NHL, see *The DeBartolos Losing Patience With Penguins*, Boston Herald, Mar. 19, 1985, at 58; the Pittsburgh Pirates of MLB, see *Lack of Local Buyer Irks Pirates President*, N.Y. Times, Mar. 14, 1985, § 5, at 9, and the Denver Nuggets of the NBA, see *Nuggets Eye New Arena in Denver Suburbs*, Sports Industry News, Jan. 30, 1985, at 30.

⁵ United States Senator Frank Lautenberg (D.-N.J.), who serves on the Committee on Commerce, Science, and Transportation, has noted that the inherent problem concerning the competing interests of legislators is that “there are not enough teams to go around A community that wants a team, that can field a team and that can support a team should have a team.” Kurtz, *A Political Football, Literally*, Washington Post, Feb. 4, 1985, at 13 (Nat’l Weekly Ed.).

⁶ *Id.*

⁷ S.2505, 98th Cong., 2d Sess. (1984) (Staff Working Draft) (Introduced March 29 (legislative day, March 26), 1984) [hereinafter cited as *Professional Sports Team Protection Act*].

⁸ *Professional Sports Team Protection Act: Hearings on S.2505 Before the Senate Comm.*

introduced by Senator Slade Gorton (R-Wash.).⁹

On June 13, 1984 the Senate Commerce Committee¹⁰ voted 9-8 to release the bill for consideration by the full Senate.¹¹ The Commerce Committee's approval of the bill marked the first time that legislation concerning franchise relocation was reported out of a committee to the Senate. Past attempts to regulate franchise relocation had focused upon amending the application of anti-trust laws to professional sports leagues¹² and all had failed to be reported out of the Commerce Committee.¹³ This failure stemmed from a lack of consensus between the legislators on

on Commerce, Science, and Transportation, 98th Cong., 2d Sess. 6 (1984) [hereinafter cited as *Sports Team Protection Act Hearings*].

⁹ In 1970, the Pilots left Seattle, after only one season of competition, to move to Milwaukee and become the Brewers. Gorton, as Attorney General for the State of Washington, filed suit against the American League and contended that the City of Seattle had built the 60,000 seat Kingdome Stadium at the behest of the league. The suit was settled out of court when the league agreed in 1975 to place an expansion team in Seattle.

See Berg, *How Much Loyalty Do Teams Owe Their Towns and Fans*, Minneapolis Star and Tribune, Apr. 18, 1984, at D3; *NFL, Baseball Expansion Targets of Senate Bill*, Washington Post, Sept. 6, 1984, at E1. See also *State of Washington v. American League of Professional Baseball Clubs*, 460 F.2d 654 (9th Cir. 1972).

¹⁰ Hearings on the bill were held on April 27 and May 12, 1984. See *Sports Team Protection Act Hearings*, *supra* note 8, at i.

¹¹ *Modified Franchise Bill Passes Senate Committee*, Washington Post, June 14, 1984.

¹² *Professional Sports Antitrust Immunity: Hearings on S.2784 and S.2821 Before the Senate Comm. on the Judiciary*, 97th Cong., 2d Sess. at i (1982) [hereinafter cited as *Sports Antitrust Immunity Hearings*]. For past attempts to legislate and examine the relationship between professional team sports and antitrust laws, see also *Organized Professional Team Sports: Hearings on H.R. 5307 Before the Subcomm. on Antitrust of the House Comm. on the Judiciary*, 87th Cong., 1st Sess. (1957); *APPLICABILITY OF ANTI-TRUST LAWS TO ORGANIZED PROFESSIONAL TEAM SPORTS*, H.R. REP. NO. 1720, 85th Cong., 2d Sess. (1958); *Organized Professional Team Sports: Hearings on H.R. 10378 and S.4070 Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 85th Cong., 2d Sess. (1958); *Organized Professional Team Sports: Hearings on S.616 and S.886 Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 86th Cong., 1st Sess. (1959); *Organized Professional Team Sports—1960: Hearings on S.3483 Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 86th Cong., 2d Sess. (1960); *Professional Sports Antitrust Bill—1964: Hearings on S.2391 Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 88th Cong., 2d Sess. (1964); *APPLICABILITY OF THE ANTI-TRUST LAWS TO CERTAIN ASPECTS OF DESIGNATED ORGANIZED PROFESSIONAL TEAM SPORTS*, S. REP. NO. 1303, 88th Cong., 2d Sess. (1964); *Professional Sports Antitrust Bill of 1965: Hearings on S.950 Before Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 89th Cong., 1st Sess. (1965), and *PROFESSIONAL SPORTS ACT OF 1965*, S. REP. NO. 462, 89th Cong., 1st Sess. (1965).

¹³ *Sports Team Protection Act Hearings*, *supra* note 8, at 31 (statement of Hon. Pete Stark, U.S. Representative from California).

how to balance the competing interests which could have been affected by the proposed legislation.¹⁴ Despite the fact that the Sports Team Protection Act was voted out of committee, the bill was not considered by the full Senate and died on the Senate floor without being voted on.¹⁵ A companion bill, H.R. 5430,

¹⁴ In 1982, two bills were introduced into Congress to regulate franchise relocation through antitrust laws. See *Sports Antitrust Immunity Hearings*, *supra* note 12, at 7-14. S.2784, the Major League Sports Community Act of 1982, sought to "clarify the application of the antitrust laws to professional team sports leagues, to protect the public interest in maintaining the stability of professional team sport leagues, and for other purposes." *Id.* at 7. S.2821, the Professional Football Stabilization Act of 1982, sought "[t]o protect the public interest and to clarify the application of antitrust laws with respect to the location of professional football teams." *Id.* at 11.

¹⁵ As a result of legislation not being enacted, it was necessary to reintroduce the different franchise relocation bills when a newly elected Congress convened in 1985. See *Pro Franchise Legislation Rises from Capital Hill Grave*, Sports Industry News, Jan. 16, 1985, at 10; *Mandatory Expansion By the NFL*, Sports Industry News, Jan. 23, 1985, at 17; *Franchise Bill Sponsors Seek Compromise To Gain Panel Approval*, Sports Industry News, Feb. 27, 1985, at 64; *Franchise Legislation Cleared*, Sports Industry News, Apr. 3, 1985, at 97; and *Franchise Bill Passage Doubtful Despite Approval by Senate Panel*, Sports Industry News, Apr. 3, 1985, at 99.

The following legislation was introduced during the 99th Congress (1985) concerning franchise relocation:

House of Representatives:

H.R. 510	-	filed by Luken (D-Oh.)
H.R. 751	-	filed by Milkulski (D-Md.)
H.R. 885	-	filed by Milkulski (D-Md.)
H.R. 785	-	filed by Dellums (D-Ca.)
H.R. 956	-	filed by Brooks (D-Tx.)
H.R. 1124	-	filed by Luken (D-Oh.)

Senate:

S.172	-	filed by Specter (R-Pa.)
S.298	-	filed by DeConcini (D-Az.)
S.259	-	filed by Eagleton (D-Mo.)
S.287	-	filed by Gorton (R-Wa.)

On April 2, 1985, S. 259, the Eagleton-Danforth legislation, was sent out of preliminary committee hearing and, on June 12, 1985, it was approved by the Senate Judiciary Committee.

See Klein, *Anti-Trust Exemption for NFL?*, Star-Ledger (Newark, NJ), June 18, 1985, at 56, col. 1.

S.259, the Professional Sports Community Protection Act of 1985, is:

intended to stabilize community, team and league relationships by ensuring equitable consideration of community interests while preserving league self-regulation. The bill provides that professional sport leagues may enforce intraleague rules concerning team relocation, division of revenues, and selection and removal of team owners, provided certain procedural and substantive requirements are satisfied. The Committee

which was introduced in the House by Representative Barbara Mikulski (3d D.Md.), encountered a similar fate. Several factors have been cited as contributing to the Act's failure to reach a vote. Included among these were the National Football League's (NFL) opposition and a crowded Senate calendar facing an election year adjournment.¹⁶

The issue of relocation of franchises in professional team sports is complex due to the nature and extent of the competing interests involved.¹⁷ The communities which house franchises invariably have significant monetary and emotional ties to the teams which sport their name.¹⁸ Many franchises play in facilities which are constructed, maintained, and improved by the community, involving significant capital expenditures which affect the taxes of the residents.¹⁹ Some of these residents are fans who come to watch the teams compete and might consider their taxes well spent, while others have little interest in attending live sporting events. The local business community is also involved, since the economic impact of a franchise can be significant,²⁰ attracting an influx of patrons to hotels, restaurants and related businesses.²¹ A community's pride in having a professional sport

. . . does not believe the types of intraleague agreements covered by the bill were intended to be illegal.

STAFF OF SENATE COMM. ON COMMERCE, SCIENCES, AND TRANSPORTATION, S. REP. NO. 69, 99TH CONG., 1ST SESS., REPORT TOGETHER WITH MINORITY VIEWS ON THE PROFESSIONAL SPORTS COMMUNITY PROTECTION ACT OF 1985, at 1 (1985).

¹⁶ See Editorial, *Protecting Cities and Fans*, *Sporting News*, June 25, 1984 at 6.

¹⁷ See generally *The Brookings Institution*, GOVERNMENT AND THE SPORTS BUSINESS, (R. Noll. ed. 1974).

¹⁸ It was estimated that the relocation of the NFL Jets to the Meadowlands Complex in New Jersey cost New York City's economy approximately \$33.3 million, including direct revenues to the city of \$1.2 million from taxes, rent (\$500,000 a year), fees, and transit fares. See *City Seeks Another NFL Team for Shea Stadium*, N.Y. Times, Sept. 29, 1983, at B19, col. 1; and *City Has Lost Jets To Jersey, Koch Declares*, N.Y. Times, Sept. 29, 1983, at A1, B20.

¹⁹ See generally Pierce, *Sports Franchise Hijackings Make Fans, Taxpayers Victims*, San Diego Union, May 27, 1985.

²⁰ See, e.g., Greater Pittsburgh Chamber of Commerce, *Baseball: An Economic Impact on the Community* (1977); Greater Pittsburgh Chamber of Commerce, *Chamber Study Shows Pirates' Economic Impact Is \$33 Million-Up \$12 Million Since 1976*, press release (June 17, 1980); Mid Continent Surveys, Inc., *The Economic Impact of Major League Sports on the Twin Cities Metropolitan Area* (Sept. 24, 1965), (conducted for the Metropolitan Sports Area Commission); Coopers & Lybrand, *Downtown Buffalo Stadium Market Study* (Feb. 16, 1981) (Erie County Industrial Development Agency).

²¹ *Sports Team Protection Act Hearings*, *supra* note 8, at 148-149 (testimony of Doug

franchise,²² although difficult to measure, can also be a major factor.²³ As a result, many communities view themselves as having a vested public interest and investment in their sport franchises, and seek through their elected public officials to prevent franchise relocation by legislation, such as the Sports Team Protection Act.²⁴

While communities obviously have strong vested interests in "their" teams, the rights of team-owners are, by definition, very significant. Indeed, the owners of sport franchises view themselves as owners of businesses, who like other businessmen, should be allowed to maximize their profits or at least minimize their losses.²⁵ While franchise owners will admit that there are many indirect benefits to owning a professional team that set them apart from the ordinary businessman,²⁶ they view any intervention by the government as an unnecessary intrusion upon their right to operate their businesses.²⁷ In their opinion, the

Ferrari, general manager Hyatt-Regency Hotel, Minneapolis, MN). Ferrari estimated that overall \$2.3 million is generated in income from professional sports in downtown Minneapolis and \$3 million in revenue to the State of Minnesota.

²² *Supra* note 20.

²³ *Sports Team Protection Act Hearings, supra* note 8, at 33. It was noted by Senator Frank Lautenberg, in regards to community pride, that "when we invite in teams to join us in our facilities . . . New Jersey was saying, in effect, we are sick and tired of being a second-class community and having to go to either New York City or Philadelphia to see a major league sports franchise play."

²⁴ *See Legislators Study Defenses To Keep Teams in Place*, N.Y. Times, Jan. 20, 1985, § 5, at 12, col. 1.

²⁵ Joe Axelson, president and general manager of the NBA Kings franchise has stated that "I think their [Congress'] concern is justified provided it's fair legislation and if someone isn't forced to send good money after bad. I don't think a person in the private sector has to keep losing money for the enjoyment of fans." *Bills Introduced in Congress to Restrict Franchise Shifting*, U.S.A. Today, Jan. 27, 1985, at 5C.

²⁶ The twenty-eight owners of NFL franchises have been described by each other as "28 successful, hard driving individualists" (statement of Gene Klein, owner, San Diego chargers), "28 kings" (statement of Hugh Culverhouse, owner, Tampa Bay Buccaneers), "28 egomaniacs" (statement of Leonard Tose, former owner, Philadelphia Eagles), and "28 idiots, myself included" (statement of Art Modell, owner, Cleveland Browns). *Pete Rozelle — The Man Who Made Football An American Obsession*, N.Y. Times, Jan. 15, 1984, (Magazine), at 12, 16.

²⁷ NFL Commissioner Pete Rozelle, while testifying before Congress, stated that "I don't know of any business where the government can tell a company to expand, by how much, and in what years." *Pro Sports Takes Case to Congress*, U.S.A. Today, Feb. 5, 1985, at 1C, 2C. *See generally Bills Introduced in Congress To Restrict Franchise Shifting*, U.S.A. Today, Jan. 24, 1985, at 5C.

only legislation needed is that which allows the owners greater and easier control over the operations of the leagues and franchises.²⁸ They argue that this control will allow them to present a better sports product to the public.²⁹ To this end, the professional sport leagues have consistently lobbied for an exemption from the antitrust laws.³⁰ The most recent efforts occurred in 1982, when the Senate considered S.2784 and S.2821, the Professional Sports Antitrust Immunity Act(s).³¹ Although not enacted into law nor totally appealing to the leagues and owners, both bills were,³² and remain, indicative of what the leagues seek in the form of legislation.³³

The athletes are another obvious constituency to consider when analyzing the legal aspects governing the relocation of

²⁸ NBA Commissioner David Stern, while representing the team owners, has noted that "[i]t is the leagues themselves, and not the federal government or a regulatory board, that are best suited to weigh the variety of competing considerations and balance the numerous relevant factors involved in a proposed relocation." *Sport Bosses Seek Bill to Limit Team Moves*, Star-Ledger (Newark, NJ), Feb. 5, 1985, at 53. Stern also commented that "[w]hat is needed is simply legislation that will enable professional sports to make these judgments." *Id.*

²⁹ NFL Commissioner Pete Rozelle, in describing the basic operating system of a professional sports league, noted that a league requires special control over franchises because they are "a form of business partnership or joint business venture that [produce] a common entertainment product. The relationship among the clubs within a professional sports leagues [sic] is unique; it is found nowhere else on the American business scene." *Sports Team Protection Act Hearings, supra* note 8, at 59. Rozelle also noted that "[f]ederal law as currently developed ignores fan, league, and public interests. . ." and suggested that league control over matters such as franchise relocation would best remedy this situation. *Id.* at 58.

³⁰ An exception is Major League Baseball which already enjoys an antitrust exemption by way of the U.S. Supreme Court. *Federal Baseball Club v. National League*, 259 U.S. 200 (1922), *aff'd*, *Toolson v. New York Yankees*, 346 U.S. 356 (1953), also *aff'd*, *Flood v. Kuhn*, 407 U.S. 258 (1972). The courts have chosen not to extend this immunity to other professional leagues. *See, e.g., Radovich v. National Football League*, 352 U.S. 445 (1957); *Robertson v. National Basketball Association*, 389 F. Supp. 867 (S.D.N.Y. 1975); *Philadelphia World Hockey Club v. Philadelphia Hockey Club*, 351 F. Supp. 462 (E.D. Pa. 1972).

³¹ *Sports Antitrust Immunity Hearings, supra* note 12, at 7-14.

³² In 1985, NFL Commissioner Pete Rozelle again requested a "limited" antitrust exemption for professional football as the solution to its franchise relocation problem. *See Rozelle Asks Aid On Shifts*, N.Y. Times, Feb. 5, 1985, at B7.

³³ It remains to be seen whether the NFL will continue to seek aid from Congress regarding relocation problems. NFL Commissioner Pete Rozelle noted in 1985 that "[w]e haven't sought anything since 1982." Some NFL owners are concerned that Congress' reaction to relocation may impact on them negatively and be detrimental to the league. *See Plain Talk With Davis May Signal A Shift in NFL*, N.Y. Times, Mar. 17, 1985, § 5, at 7.

sport franchises.³⁴ The players and their unions have been most concerned about the prospect of professional sports being granted an antitrust immunity.³⁵ Although the players generally agree that franchise “free agency” should not exist, the players fear that an antitrust immunity would adversely impact on labor negotiations and player mobility.³⁶ The unions, on behalf of the players, argue that the key issue in this area is not the relocation of sport franchises, but rather, a scarcity of sport franchises which has been artificially developed and maintained by the leagues in contravention to the public interest.³⁷ The unions argue that this creates a situation where communities bid against each other for established franchises, many times “stealing” a franchise away from another city.³⁸ The unions suggest that

³⁴ In 1982, then NFL Players Association (NFLPA) Executive Director Edward R. Garvey stated that:

[t]he NFL Players Association and its members have a vital interest in the stability of franchises and the economic viability and prosperity of professional football. Our members share many of the same interests and goals held by citizens in the communities in which they play. Players plan for post football careers in their ‘home’ communities and the stability of a franchise is important in that planning.

Sports Antitrust Immunity Hearings, supra note 12, at 97.

³⁵ In 1984, Gene Upshaw, Executive Director of the NFLPA, noted that the Association did:

oppose any legislation that would simply reinstate League control over team relocation unless it was subject to antitrust scrutiny. Any statutory language which purports to reinstate league controls and vitiates the antitrust decisions of the federal courts would be contrary to the interests of the fans, the communities, stadium authorities and the players.

Sports Team Protection Act Hearings, supra note 8, at 93.

³⁶ See *Sports Antitrust Immunity Hearings, supra* note 12, at 114-16 (statement of Gene Upshaw, Executive Director, NFL Players Association).

³⁷ In 1976, Dr. Gerald Scully, professor of economics at Southern Methodist University stated that:

[e]xclusive territorial rights are justified in the interest of league stability when . . . the entry of a new league team would seriously undermine the financial viability of the existing team. When cities are capable of supporting more than one franchise it is not in the public interest to . . . block entry solely to protect . . . monopoly profits.

Inquiry Into Professional Sports: Hearings Before the House Select Comm. on Professional Sports, 94th Cong., 2d Sess. 165 (1976) (Part 2) [hereinafter cited as *Inquiry Into Professional Sports Hearings*].

³⁸ In 1984, Donald M. Fehr, Acting Executive Director of the Major League Baseball Players Association (MLBPA) testified that:

[b]aseball enjoys a carte blanche antitrust immunity. By virtue of that immunity, the clubs are free to grant or withhold franchises to municipalities at their whim—and that is exactly what they do. Accordingly,

there is enough athletic talent available to support the demand for the establishment of more franchises.³⁹ In football, the union points to the establishment of the United States Football League (USFL) as proof of this contention.⁴⁰ The arguments against expansion vary from league to league, and include the lack of talent, the lack of good markets, and that new franchises, if needed, should be established in a controlled manner.⁴¹ Controlled ex-

cities are continually competing for an artificially scarce resource—to the detriment of the cities involved.

Sports Team Protection Act Hearings, supra note 8, at 101.

³⁹ Expansion of professional sports leagues is favored by the different players associations because, as a general rule, it creates more potential jobs for the players which form the associations. It has been estimated that the addition of six new franchises in Major League Baseball would create 240 new jobs and increase the MLBPA membership by twenty-three percent. See Nightengale, *Expansion Is Coming*, *Sporting News*, Feb. 11, 1985, at 32, col. 1.

⁴⁰ Potential new professional sport leagues are not limited to football. In 1984, it was announced that a new baseball league was being formed to begin play in 1985. The North American Baseball League (NABL) planned to compete in ten North American cities, most of which had been considered as potential expansion sites for MLB. The NABL sites include Brooklyn, NY; Buffalo, NY; Washington, D.C.; Tampa, FL; Miami, FL; Indianapolis, IN; New Orleans, LA; Denver, CO; Vancouver, CN; and Mexico City, MX. The Meadowlands Complex in New Jersey was originally considered as a site but was dropped because it lacked a suitable stadium. *NABL Hopes For '85 Start*, *Star-Ledger* (Newark, NJ), Nov. 6, 1984, at 53, col. 4. A new professional basketball league, the United States Basketball League (USBL), was also formed in 1984. Slated to begin operations in June, 1985, the USBL would have a minimum of ten teams, a salary cap of \$250,000 a team, a limit of ten players per team and would play a 50-game schedule from June to August.

See *New Pro Basketball League Is Beginning; Summer Play Slated*, *Wall St. J.*, Dec. 21, 1984; *Summer Basketball Loop Set*, *N.Y. Daily News*, Dec. 21, 1984; *New on the Court*, *N.Y. Times*, Dec. 21, 1984, at B8; *Riley Calls for Fewer Games*, *N.Y. Times*, Feb. 10, 1985, § 5, at 9, col. 4.

⁴¹ In 1985, NFL Commissioner Pete Rozelle said, "We will expand. We want stability first. We want to pick our cities, and we want to pick our owners." *Pro Sports Takes Case to Congress, supra* note 7. In 1985, NFL Commissioner Rozelle further commented that:

I thought we would have expanded to 30 teams by now . . . But the league owners have been concerned. They want to pick their own owners and make sure there is some degree of stability in a franchise.

Rozelle Lands NFL Stability, *Star-Ledger* (Newark, NJ), Mar. 12, 1985, at 64.

There are four likely NFL expansion cities including Oakland, CA, Jacksonville, FL, Phoenix, AZ, and Baltimore, MD. See *Expansion Favorites Lobby NFL*, *Sports Industry News*, Mar. 20, 1985 (data page).

MLB Commissioner Peter V. Ueberroth has commented about franchise expansion in baseball:

I am writing to reiterate . . . of baseball's intention to expand from its present twenty-six teams, perhaps by as many as six additional clubs.

. . . We will be looking for expansion locations which meet the follow-

pansion, according to the leagues, protects the integrity of the league, the property rights of franchise owners (which often provide for revenue sharing among teams), and the interests of the fans who expect a high quality performance whether they are in the stadium or at home viewing a contest on television.⁴²

Potential revenues for professional team franchise owners, like most other businessmen, is a paramount concern frequently underlying franchise relocation.⁴³ This concern over revenues by franchise owners reveals itself in many forms, including demands for new stadiums, more seating and the construction of luxury boxes. For instance, even in the NFL, which has revenue sharing of ninety-seven percent of its television revenues and gate receipts, as well as marketing of its NFL properties merchandising and publishing entity,⁴⁴ the question of revenue increases remains.

ing three criteria: a solid demonstration of fan support; multiple, local ownership, with deep roots in the community; and a total, long-range commitment from local community and government leaders in support of the club, including an appropriate stadium lease.

REPORT TOGETHER WITH MINORITY VIEWS ON THE PROFESSIONAL SPORTS COMMUNITY PROTECTION ACT OF 1985, *supra* note 5, at 22 (letter from Peter V. Ueberroth to Hon. John Danforth, U.S. Senator (Mo.) Apr. 1, 1985).

⁴² In 1984, NFL Commissioner Pete Rozelle testified:

Expansion requires the existing clubs to convey to the new unit a portion of their own assets and to further subdivide their jointly owned League assets, including . . . trademarks and logos, . . . good will and reputation, . . . contracts of active players, priority rights in the player selection procedure, . . . know-how and experience, and the full array of the League's internal partnership commitments, including a pro rata share of all network television receipts.

. . . Responsible expansion also requires careful consideration of . . . existing levels of competitive balance; . . . availability of football talent and the dilution effects of added teams; . . . current financial stability of all clubs; . . . effects . . . on television interests; . . . demographics and economics of various cities; . . . availability and suitability of local stadiums; . . . climate considerations. . . .

Sports Team Protection Act Hearings, supra note 8, at 64. Expanding on this theme, NFL Commissioner Rozelle in 1985 further noted that:

A lot of owners want to loosen the rules (for new potential buyers), yet do it in such a way that the league can still maintain control.

See Is NFL Holding the Sale of the Century?, Boston Globe, Mar. 10, 1985, at 46.

⁴³ *Id.*

⁴⁴ In 1982, NFL Commissioner Pete Rozelle stated that:

[T]here are forms of revenue sharing, not all of it equal. The television . . . is shared equally.

. . . On the gate, you keep 60 percent when you play at home; the

Some contend that the Oakland/Los Angeles Raiders franchise was relocated because of pay television income potential, which is not included in the NFL's revenue sharing plan.⁴⁵ The potential for tremendous television revenues in Southern California, the third largest market in the United States, far exceeds the Oakland area.⁴⁶ This significantly increased the franchise's revenue potential in the long term, which justified a relocation.⁴⁷ The NFL opposed the relocation of the Raiders and voted unanimously not to approve the move.⁴⁸ The Raiders moved in spite of the NFL's vote and to date have been successful in defending their action. Court decisions have ruled that the NFL's rules on relocation of franchises are violative of antitrust law.⁴⁹ The Ninth Circuit's decision in the *Raiders* case⁵⁰ is indica-

visitor gets 40 percent. The clubs have their own local radio rights and pre-season television rights. . . .

. . . . Our marketing income is shared from our film company and our NFL properties [,] [sic] merchandising and publishing entity. So 97 percent of it [revenue] is shared, not all equally, but a great preponderance of it equally.

Sports Antitrust Immunity Hearings, supra note 12, at 43-44.

⁴⁵ *Id.* at 319. Al Davis, managing general partner of the Los Angeles Raiders, has argued that he is in favor of revenue sharing but only if revenue is shared equally in all areas, including parking, concessions, luxury boxes, and gate attendance.

⁴⁶ See *Los Angeles A Lush Target in NFL Future*, *Sporting News*, Jan. 12, 1980, at 15.

⁴⁷ In 1984, NFL Commissioner Rozelle commented that:

I would like to briefly read the statements made and confirmed in the cases having been made by Al Davis of the Raiders.

Pay TV is going to be all it is in a few years. It won't matter the size of the stadiums. But can you imagine 2 million viewers paying 10 bucks a head? That means the smart pro clubs have to be in the big TV market. That's why we're thinking about a move to Los Angeles.

Sports Team Protection Act Hearings, supra note 8, at 56.

⁴⁸ *Sports Antitrust Immunity Hearings, supra* note 12, at 26-28 (testimony of NFL Commissioner Rozelle).

⁴⁹ An example of franchise relocation criteria used prior to the Raiders decision was that employed by the NBA (declared Void and Unenforceable, 6/26/84) which had no objective standards and which read:

A membership shall not be granted or transferred for operation within the Territory of any Member without the prior written consent of such Member. Anything herein contained to the contrary notwithstanding, this provision as to territorial restrictions may be amended only with the consent of all the Members of the Association.

NATIONAL BASKETBALL ASSOCIATION CONST. AND BY-LAWS, art. 9 (as in effect at the commencement of the 1984-85 season, Oct. 26, 1984).

⁵⁰ *Los Angeles Memorial Coliseum Commission v. National Football League*, 726 F.2d 1381 (9th Cir. 1984). In upholding a district court decision finding the

tive of both current and historical NFL woes.⁵¹

Since the NFL's rules governing franchise relocation were struck down in the *Raiders* case, the NFL did not challenge the subsequent relocation of the Colts from Baltimore to Indianapolis,⁵² nor review the move of the New York Jets from Shea Stadium in New York City to the Meadowlands Sports Complex in East Rutherford, New Jersey.⁵³ Unregulated franchise relocations such as these were the impetus for the Sports Team Protection Act, since politicians were frustrated by their inability to address the complaints of their constituents. In particular, as originally proposed, the Sports Team Protection Act would have dealt with both forms of franchise relocations, intra-territorial movement as exemplified by the Jets move to the Meadowlands, and outside territorial movement such as the Colts move from Baltimore to Indianapolis.⁵⁴

NFL liable for antitrust violations against the Raiders, the United States Court of Appeals held that the NFL was not a single entity for purposes of federal antitrust law and could be held liable under § 1 of the Sherman Antitrust Act for an unreasonable restraint of trade in blocking the Raiders franchise relocation to Los Angeles.

⁵¹ The NFL has established a long history of litigation in regards to Sherman Antitrust Act violations. In *North American Soccer League v. National Football League*, 670 F.2d 1249 (2d Cir.), cert. denied, 459 U.S. 1074 (1982), the NFL's cross-ownership rule, which disallowed NFL owners from owning a franchise in another professional league, was found in violation of antitrust law.

See NFL Is Confronted with Decline in Popularity, N.Y. Times, Oct. 25, 1984, at 27; *NFL Looking for Direction After Loss*, U.S.A. Today, Nov. 6, 1984, at 1C.

Despite the Raiders decision and the decline of the NFL's television ratings, the NFL does not seem in any immediate danger of fiscal collapse. NFL Commissioner Pete Rozelle, at the league's 1985 winter meetings, noted that:

I would think they (franchise owners) all virtually made money last year or will take steps to make money in the future. We're in a healthy financial state right now as a league. Of all major sports, the NFL is in the best shape.

See Rozelle: NFL's Fine, Dallas Morning News, Mar. 12, 1985, at B8.

⁵² NFL Commissioner Pete Rozelle has testified that:

[W]hen the Colts owner . . . informed the NFL member clubs . . . that he was considering Indianapolis and other communities as alternatives to Baltimore, the clubs concluded that in view of the court decisions in the Raiders' litigation, the Colts' location was for the Colts to decide, not the League.

Sports Team Protection Act Hearings, supra note 8, at 61.

⁵³ *Id.* at 66. NFL Commissioner Pete Rozelle testified that "[b]ecause of the court ruling in the *Raiders*' case, the NFL did not take any action on the question of the Jets switching within their home territory to the Meadowlands stadium."

⁵⁴ An intra-territorial franchise movement can be defined as one which involves

This article will study the impact of the proposed "Professional Sports Team Community Protection Act" upon four separate groups with vested interests in franchise locations and relocations. These include the community (including the political subdivision itself, the fans, businesses, and politicians) which has lost or may lose a franchise; the professional sports leagues that want to control franchise relocation; the sports franchise owner who wants to relocate and the communities that wish to attract a franchise; and the players and the player associations. These groups would be affected by the Sports Team Protection Act or similar-type legislation in varying degrees, and their resulting viewpoints will be examined in detail.

Special emphasis will be placed upon the impact that legislation such as this Act could have on New Jersey. In recent years the development of the Meadowlands Sports Complex has resulted in New Jersey becoming a leader in professional sports scheduling.⁵⁵ Legislation dealing with franchise relocation could severely impact on the Meadowlands with regard to professional sports teams.⁵⁶ Indeed, attempted legislative panaceas could result in the thrusting of New Jersey into a "Catch-22" situation.

a change of playing sites within the same geographic location (e.g., New York Jets). Generally, there is little loss of the franchise's season ticket holders or local television contract. In contrast, a relocation outside the territorial assignment of a league by a franchise involves a total severing of all former relationships by the franchise (e.g., Indianapolis Colts).

⁵⁵ The Meadowlands Complex has hosted the following professional sport franchises in either Giants Stadium or the Byrne Arena:

NFL	-	N.Y. Giants	NASL	-	Cosmos
		N.Y. Jets	MISL	-	Cosmos
NBA	-	N.J. Nets	USFL	-	N.J. Generals
NHL	-	Devils			

See *New Jersey Sports and Exposition Authority ANN. REP.* (1984).

⁵⁶ Given the Meadowlands' youth as a sports complex, it has acquired almost all of its professional franchises through relocation. The NFL Giants moved from Yankee Stadium in New York City (1984 Giants Media Guide), the Jets from Shea Stadium in New York City (1984 Jets Media Guide), the NBA Nets came originally from Nassau Coliseum in Long Island, New York (1984-85 New Jersey Nets Media Guide), and the NASL Cosmos also played in various New York City sites before moving to New Jersey (1984 Cosmos Media Guide).

When trying to acquire an NHL franchise in 1982, the Meadowlands became involved in a contested relocation. The Colorado Rockies' move to Byrne Arena was severely criticized by Colorado officials despite continued financial losses and a poor lease arrangement in Denver. Ultimately approved by the NHL Board of Gov-

Given the scarcity of franchises and the great demand by many cities for one, New Jersey would have difficulty attracting additional franchises.⁵⁷ Conversely, the same legislation might protect New Jersey from losing existing teams to other states in search of sport franchises.⁵⁸

The most immediate concern for the Meadowlands would be the potential impact of the Sports Team Protection Act or similar legislation on its acquisition of a professional baseball franchise.⁵⁹ After a review of the Sports Team Protection Act,

errors, the decision involved a transfer of ownership, as well as relocation. The newly located franchise was renamed the Devils.

See The Lease: City's Seat Tax Compounds Problem, Gilbert Maintains, Denver Post, Feb. 1, 1982, at E1; *Jersey Adopts New Team Despite History of Losing*, N.Y. Times, Apr. 29, 1982, at 31.

⁵⁷ Senator Frank Lautenberg, in discussing New Jersey's position in regards to franchise relocation, noted that legislation such as the Sports Team Protection Act: [Would allocate teams] according to some fair plan. But for years the people in New Jersey had to identify with New York or Philadelphia for baseball, hockey, football, and soccer. Was that fair. . .? By favoring the status quo, the bill would seem to deny changing markets and changing population.

Sports Team Protection Act Hearings, *supra* note 8, at 4.

⁵⁸ In 1984, the New Jersey Devils of the NHL raised the possibility of a franchise relocation to Ottawa, Canada, unless it could negotiate a better lease with the New Jersey Sports and Exposition Authority (NJSEA). Since moving to New Jersey, the Devils had lost at least \$3 million. John McMullen, owner of the Devils has noted that the move "was a mistake from the beginning . . . Everyone built this myth of all these hockey fans." *Devils Find No Salvation in Move to New Jersey*, Sports Industry News, Jan. 16, 1985, at 15; *see also Devils Are Struggling to Shake Off a Losing Spirit*, N.Y. Times, Dec. 24, 1984, at 26, col. 1.

A threat to New Jersey's professional sports franchises could develop in New York. In April, 1985, the City and State of New York requested proposals to build and operate a stadium in Queens, New York. The requests were sent to real-estate developers and to the owners of every NFL and USFL franchise with a June 1985 return deadline. *See Officials Endorse New Stadium Plan*, N.Y. Times, Apr. 10, 1985, at 1; *4 Developers Asked to Submit Proposals for Queens Stadium*, N.Y. Times, May 14, 1985, at B4, col. 6.

The proposed stadium in Queens, has met with some opposition from area businessmen. *See Junkman to State: Scrap New Stadium*, Grain's N.Y. Business, Apr. 22, 1985, at 1. Prime tenants for the stadium are the NFL Jets and the USFL Generals, both currently playing at the Meadowlands Complex. *See Panel Favors New Open-Air Stadium*, N.Y. Times, Oct. 4, 1984, at B3.

⁵⁹ In 1984, the State of New Jersey enacted legislation that empowered the New Jersey Sports and Exposition Authority (NJSEA) to build a baseball stadium, if necessary, to attract Major League Baseball to the state. *See Kean Enacts Baseball Efforts, Hails Jersey as Sports Capital*, Star-Ledger (Newark, NJ), Dec. 19, 1984. *See also Major League Trade Is Brewing in Legislature, North Jersey Wants to Deal Billion in Casino Cash for Baseball Stadium*, Star-Ledger (Newark, NJ), Feb. 19, 1984, at 27; and *Sites, Teams*

the author offers suggestions concerning legislative proposals

Targeted for Baseball Stadium; Sports Authority Awaits Legal Clearance to Expand, Star-Ledger (Newark, NJ), Sept. 16, 1984, at 40.

In March 1985, the NJSEA appropriated \$100,000 to determine the marketability of New Jersey for Major League Baseball. NJSEA Chairman John F. Hanson noted that a well-located stadium in the state could draw up to 3 million fans annually. See *\$100G Ballpark Study Planned*, Jersey Journal (Jersey City), Mar. 16, 1985, at 1.

The bill, An Act to Amend and Expand N.J. STAT. ANN. § 5:10-2 (West Supp. 1985), authorizes a baseball stadium for New Jersey and empowers the NJSEA, which expects to have 10 million patrons in its present facilities in 1985, to:

operate at least one additional racetrack, enter the hotel business, establish a "world class" cultural center, build an amusement park, site an aquarium, [and] create a ski slope. . . .

In 1984, sixteen sports authorities operated in the United States. Only the NJSEA operated at a profit, largely because of the \$40 million surplus produced by its Meadowlands Racetrack. See *The Sports Authority Writes Its Own Ticket*, N.J. REP., Apr. 1985, at 6-12. In April, 1985 the NJSEA purchased Monmouth Racetrack in Oceanport, New Jersey for between \$40 and \$45 million. Seen as the first step in developing a baseball stadium, it created a potential financial base for any proposed stadium bond offering. See *Sports Authority Clears Letter of Intent to Purchase Monmouth Park*, Star-Ledger (Newark, NJ), Apr. 19, 1985, at 20; and *Sports Authority Issues a Glowing Annual Report and Looks to Baseball*, Star-Ledger (Newark, NJ), Apr. 18, 1985, at 21.

Since the purchase of Monmouth Park, the NJSEA has been actively attempting to acquire a baseball franchise. See *Authority Talking With Baseball Team*, Asbury Park Press, May 21, 1985, at 1; *Pirates Ready to Negotiate a Sale*, Star-Ledger (Newark, NJ), June 12, 1985, at 62, col. 3; and *Groups Bid on Ball Team for Jersey*, Star-Ledger (Newark, NJ), June 14, 1985, at 17.

In 1985, George M. Steinbrenner, owner of the New York Yankees, stated concerning a baseball team in New Jersey, "We have a lot of fans from New Jersey. It would have a tremendous impact on us." *Bid to Lure Baseball Stepped Up*, N.Y. Times, Apr. 7, 1985, § 11, at 1, 4. The Yankees belong to MLB's American League, which gives 100 mile territorial rights to its franchises. The New York Mets' franchise belongs to MLB's National League, which only gives territorial rights for 10 miles. This difference leads some to expect a National League franchise for New Jersey.

Franchises mentioned as relocation possibilities for a NJSEA stadium include the Pittsburgh Pirates, San Francisco Giants, and Cleveland Indians. See *N.J. Woos Pirates for a New Stadium*, N.Y. Daily News, Jan. 23, 1985, at 63. Another possibility was that the NJSEA would be awarded an expansion franchise from Major League Baseball. See *Expansion Is Coming*, *supra* note 39, at 32. One potential owner for a New Jersey MLB franchise is Donald Trump, the present owner of the USFL New Jersey Generals. *Trump Making His Pitch For Jersey Baseball*, Star-Ledger (Newark, NJ), Dec. 23, 1984, sec. 1, at 6.

Competition for a MLB franchise is intense and was made even more fierce by the 1985 MLB player-owner basic agreement (collective bargaining labor agreement) which runs until 1989 and which states that there can be only a two-franchise expansion, exclusively in the National League, during the length of the agreement. *Expansion Jackpot: Only 2 Cities Can Win*, U.S.A. Today, Aug. 9, 1985, at 1C.

Following the agreement National League president Chub Feeny noted:

that would delicately balance the different interests of all the affected parties.

II. HISTORICAL PERSPECTIVES OF FRANCHISE RELOCATION

While the Sports Team Protection Act was proposed primarily as a result of the recent franchise moves of the Raiders and Colts, it is important to note that franchise relocation is not a recent phenomenon. Although an in-depth study of the historical perspectives of franchise relocation in professional sports is not within the scope of this article, a brief overview is illuminating. As one author has noted:

Contrary to popular belief, the movement of franchises is not something that began in the 1950's. While baseball and ice hockey were extremely stable in the years before 1950, such was not the case in professional basketball and football. Cities won and lost teams as rival leagues in those sports warred. Large and medium-size cities such as Boston, Chicago, Cleveland, Denver, St. Louis and Toronto were affected, as were smaller communities such as Anderson, Oshkosh, Sheboygan, and Waterloo.⁶⁰

In the first half of the twentieth century, franchise movement was dictated primarily by unstable financial status brought upon by poor attendance in an era in which gate receipts accounted for the major portion of a franchise's revenues (see Table One, page 27). Many of the relocations occurred in professional leagues which had not achieved financial stability. This remains a characteristic of leagues today, especially new ones, as witnessed by the recently defunct North America Soccer League (NASL),⁶¹ the Major Indoor

The League is ambivalent towards expansion right now . . . Certain cities out there certainly deserve a club, but not all our owners feel ready to oblige them . . . We have two franchises (Pittsburgh and San Francisco) we'd like to get straightened out . . . Expansion could come first, but it's not likely. I think 1987 would be the earliest . . . we could go to 14 teams. . .

Baseball In No Hurry To Expand, U.S.A. Today, Aug. 20, 1985, at 1C.

⁶⁰ Johnson, *Municipal Administration and the Sports Franchise Relocation Issue*, PUBLIC AD. REV. 519 (Nov./Dec. 1983).

⁶¹ In 1985, the once promising NASL (24 Teams, 1978-80), was considering suspending operations for one year in order to build a stronger organization. See *NASL Considers Taking A Year Off*, N.Y. Times, Feb. 6, 1985, at B9. The NASL felt

Soccer League (MISL),⁶² the defunct World Football League (WFL),⁶³ the merger of the American Football League (AFL) and the National Football League (NFL),⁶⁴ the United States Football League (USFL),⁶⁵ the merger of the American Basketball Associa-

that it was necessary to have commitments from six teams in order to schedule a 1985 summer season. *Id.*

In March 1985, the NASL suspended league operations. "We simply ran out of time," announced acting league president Clyde Toye. Some teams, like the New Jersey Cosmos, tried to continue by scheduling international competition. *See Season Off for NASL*, N.Y. Times, Mar. 29, 1985, at A25; and *NASL Ceases Operations for '85*, Star-Ledger (Newark, N.J.), Mar. 29, 1985, at 77. However, the Cosmos were eventually forced to cease operations when fans failed to materialize for the international matches at Giants Stadium. *Cosmos Operating On Letter of Credit*, N.Y. Times, Feb. 5, 1985, at B7; *see also Chinaglia Battling To Save Two Teams*, N.Y. Times, June 16, 1985, Sec. 5, at 11; *Cosmos Appear To Be On Last Legs*, U.S.A. Today, June 18, 1985, at 1C; *Cosmos Abandon Schedule, Plans*, N.Y. Times, June 22, 1985, at 47; and *Steep Decline Ends In Cosmos Demise*, N.Y. Times, June 23, 1985, Sec. 5, at 6. For more information on the formation of the North American Soccer League, *see North American Soccer League v. National Football League*, 323 F.2d 123 (4th Cir. 1963).

⁶² In 1984, the Major Indoor Soccer League opened its eighth season, without the inclusion of three of its 1983 franchises. However, three teams were added from the NASL's former indoor league, a totally new franchise was created and an existing franchise was relocated from Memphis, Tennessee to Las Vegas, Nevada. *See Improved MISL Set for New Season*, N.Y. Times, Nov. 2, 1984, at D23.

⁶³ The WFL went defunct on October 22, 1975 during its second season of competition with debts estimated at \$30 million. *See L. SOBEL, PROFESSIONAL SPORTS AND THE LAW 479 (1977)*. *See also Mid-South Grizzlies Joint Venture v. National Football League*, 550 F. Supp. 558 (E.D. Pa. 1982).

⁶⁴ The AFL was formed in 1960 and merged with the NFL in 1966, in part to prevent both leagues from becoming fiscally unsound due to "salary wars" for player talent. *See SOBEL, supra note 63*, at 381-84. *See also Football Merger Bill: Hearings on S.3817 Before the Antitrust Subcomm. on the House Comm. on the Judiciary*, 89th Cong., 2d Sess. (1966); and S. REP. NO. 1654, 89th Cong., 2d Sess. (1966).

⁶⁵ In the USFL, Donald Trump, owner of the New Jersey Generals, predicted that when the league opened its 1985 season (third year of operations), it would have been reduced from 18 teams to 12 teams. *See Trump Envisions 12-Team USFL*, Star-Ledger (Newark, NJ), Oct. 30, 1984, at 63; and *Trump Dealing All the Aces*, U.S.A. Today, Feb. 22, 1985, at 1C. In fact, the USFL opened the 1985 season with 14 teams, but continued to face fiscal uncertainties, including franchises (Los Angeles Express and Houston Gamblers) with financial difficulties and no major national television contract. *See Usher Confronts USFL Finances*, N.Y. Times, Feb. 1, 1985, at A21; *Usher's New Job: Keep USFL Afloat*, U.S.A. Today, Feb. 19, 1985, at 3C.

A particular concern of the USFL in 1985 would be the progress of its antitrust suit against the NFL. The suit seeks to void the NFL's contracts with the major television networks, break up the NFL's monopoly on player contracts and stadiums in the major cities of the United States, and enjoin the NFL from making contracts with players in the USFL prior to the expiration of their USFL contracts. *See USFL Hits NFL With Antitrust Suit*, U.S.A. Today, Oct. 18, 1984, at 1C, col. 6.

A similar suit was brought in the 1970's by the new World Hockey League

tion (ABA) and the National Basketball Association (NBA),⁶⁶ and the defunct Women's Basketball League (WBL).⁶⁷ Beginning in the fifties, professional sports in America underwent an evolution that changed the fundamental precepts of how sports are viewed in this country. In 1958, franchise relocation expanded into a new dimension, not based on either shaky financial consideration or new league formation. For in this year, the Brooklyn Dodgers⁶⁸ and the

against the established National Hockey League. See *Philadelphia World Hockey Club v. Philadelphia Hockey Club*, 351 F. Supp. 462 (E.D. Pa. 1972). The USFL suit seeks \$440 million in antitrust damages which could under law be tripled to over \$1 billion is viewed by some commentators as being a "last ditch effort to survive." See *USFL Makes Move to Stay Alive*, U.S.A. Today, Oct. 18, 1984, at 1C.

Another factor in the future financial success or failure of the USFL will be the planned move to a fall schedule in 1986. See *USFL Must Tackle Sticky Problems*, U.S.A. Today, Oct. 18, 1984, at 3C; *USFL Rethinking Fall Move*, U.S.A. Today, Feb. 4, 1985, at 3C; *USFL Will Fine Owner of Bandits*, N.Y. Times, Mar. 27, 1985, at B12; *Outlaws Lacking Fans and Patience*, N.Y. Times, Mar. 31, 1985, § 5, at 9; *USFL May Dissolve Express*, N.Y. Times, Apr. 27, 1985, at 43; *Fall Booster*, N.Y. Times, Apr. 20, 1985, at 46; *Bassett, Trump Squaring Off*, Boston Globe, Apr. 28, 1985, at 63; *Second Thoughts*, N.Y. Times, Mar. 24, 1985, § 5, at 4; *Bassett Is Adamant on a New League*, N.Y. Times, Apr. 4, 1985, § 5, at 9, col. 5; *Meeting Crucial to Fall Slate*, N.Y. Times, Apr. 30, 1985, at B8, col. 5; *Eskenazi, Instant Leagues Are Often Doomed*, N.Y. Times, June 25, 1985, at A25, col. 1.

⁶⁶ The ABA was formed in 1966 and merged with the NBA in 1970 to "put an end to escalating salary expenses, thus increasing the probability of profitable operation in the future." SOBEL, *supra* note 63, at 393, 395. See also *The Antitrust Laws and Organized Professional Team Sports Including Consideration of the Proposed Merger of the American and National Basketball Associations: Hearings on H.R. 1206 Before the Subcomm. on Antitrust of the House Comm. on the Judiciary*, 92d Cong., 2d Sess. (1972); *Professional Basketball: Hearing on S.2373 Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 92d Cong., 2d Sess. (1972).

⁶⁷ The WBL started play in the 1978-79 basketball season using a "low budget operation" philosophy. See *Proud Pioneers*, The Boston Herald, Mar. 9, 1979 (Sports Plus), at 12. The WBL suspended operations in 1981. See *At 12, She Wants To Be a Celtic*, N.Y. Times, Dec. 6, 1981, Sec. 5, at 5. See also CHICAGO HUSTLE, INC., PROSPECTUS (1981). In 1984, a new six team league, the Women's American Basketball Association was formed. See *New League for Women*, N.Y. Times, Oct. 28, 1984, § 5, at 4.

⁶⁸ Walter O'Malley owned the Dodgers. It has been written, with regard to the relocation of the Dodgers' franchise to Los Angeles, that:

The shock was all the stronger when he led the Dodgers out of Brooklyn . . . Hypocrisy rose from cry to clamor. "For ten years he told us he was a fan. Then he pulls out for money."

It amazes me to this day that I once stood in the ranks of journalists who, in the most furious words they could summon, indicted a capitalist for being motivated by a passion for greater profits.

See R. Kahn, THE BOYS OF SUMMER at 385 (1972).

"They called me carpetbagger," O'Malley said. ". . . [b]ut they will pass

New York Giants both moved from the east to the west coast to relocate in Los Angeles and San Francisco, respectively.⁶⁹

With the Dodgers' and Giants' move west, the franchise relocation issue had developed a new dimension—a move based on economic and business advantages of the new location and not the economic failures of the previous location.⁷⁰ Since that time the financial stakes for all parties have become increasingly greater, more complex, and are based more and more on favorable lease agree-

and the great ballpark I'm going to build in California will stand . . . "a monument to the O'Malleys."

Id. at 389.

⁶⁹ Howard Cosell, national sports columnist for ABC television and radio, in a 1984 address to the Greater Baltimore Committee, noted that the Colts move to Indianapolis was just a repeat of the Brooklyn Dodgers move, circa 1984. He stated that:

[T]he psyche of a city has been materially impaired; if not ravaged, by a franchise removal.

. . . [C]onditions did not exist (to warrant a relocation) in the case of the Baltimore Colts, or the once New York Giants, or the once New York Jets. They surely did not exist when Walter O'Malley made his infamous land grab, or in the removal of the Los Angeles Rams to Anaheim. It's time for this kind of thing to come to an end.

See Kornhenser, *Push to Reclaim Colts Shadowed by Precedent*, Washington Post, Apr. 28, 1984, at D1, D4, col. 6.

⁷⁰ Politically, perhaps the most infamous franchise relocations (which have continually come back to haunt all professional sports league executives) were those of the Washington Senators to Minneapolis in 1961 and the replacement club, the "second" Washington Senators, to Texas in 1972. This lack of a professional baseball team has embarrassed the nation's capital and is often jokingly referred to as the main reason for Congress' continued concern with the problem of franchise relocation. During the initial move in 1961, Calvin Griffith declared that "the fans in the District of Columbia would rather watch pro wrestling than baseball." *Expansion Is Coming*, *supra* note 39.

It has been suggested that a Senators III expansion club may be placed in Washington in the latter part of the 1980's due in part to a new stadium, availability of funds for renovations of RFK Stadium to accommodate baseball, and the new subway system in Washington that makes access to the stadium easy. *Id.* at 33. It has also been noted that:

[t]he trauma caused by the Washington Senators' move to Dallas, Texas brought the problem of franchise shifts into focus. Fans, particularly in relatively small cities, have come to realize that their home town team may be here today and gone tomorrow. Even the fans in larger metropolitan areas are not immune, as the Brooklyn Dodgers and New York Giants moves testify.

Inquiry Into Professional Sports Hearings, *supra* note 37, at 165 (testimony of Professor Scully); see also *Baseball Is Only Memory in D.C.*, Asbury Park Press, Mar. 3, 1985, at C12; and *Luring the Big Leagues*, N.Y. Times, Mar. 17, 1985, § 5, at 6.

ments with the stadiums involved.⁷¹ From 1958 to today, many sport afficianados began to think of Major League Baseball and other professional leagues as a business as well as a sport.⁷² Table One on page 27 illustrates franchise relocations for the years 1971-82 in the sports of baseball,⁷³ basketball, ice hockey, and football. It illustrates the increasing movement of sport team franchises in recent years.⁷⁴

III. FRANCHISE RELOCATION: THE FINANCIAL IMPACT AND LEASE ARRANGEMENTS

In discussing franchise relocation and its financial considera-

⁷¹ In the case of the NFL Cardinals' proposed relocation, the primary motivations for team owner Bill Bidwell to move are the size of Busch Stadium (51,391 seats, the 2nd smallest in the NFL), and the fact that the facility's main tenant and concern is the MLB Cardinals. Cowboys' president Tex Schramm has noted that: He's [Bidwell] in a difficult situation. The stadium is owned by baseball people who don't give a damn about football.

Cleveland Browns' owner Art Modell has also commented:

Billy Bidwill has no other outside business interests. There's not eight owners in the entire league that do it like that. He's a true-blue NFL man.

St. Louis Struggles to Keep Cards, *supra* note 4.

In April 1985, Cardinal's owner Bill Bidwill suspended his search for a new stadium when St. Louis officials announced plans to build a \$100 million domed stadium. The stadium would seat 100,000, as well as contain an office complex, a luxury hotel, and world trade center. Bidwill stated, "The primary goal has always been more seats, additional seats . . . We need a modern football stadium." Busch Stadium, where the Cardinals presently play, is owned by Anheuser-Busch, Inc., the owners of the MLB Cardinals' franchise. *Stadium Entitles Cards to Remain*, *supra* note 4; *see also Football Cards to Stay*, *supra* note 4; and *St. Louis Struggles To Keep Cards*, *supra* note 4. The Civic Center Corporation, which operates Busch Stadium, offered lease improvements in order to keep the NFL Cardinals in their facility. Improvements included the installation of 8,000 new seats and the addition of luxury boxes. Additional inducements included the waiver of game expenses (currently \$450,000 annually under a lease between the parties which runs until 1996).

⁷² *See infra* text, section III, Franchise Relocation, the Financial Impact, and Lease Arrangements.

⁷³ While in no imminent danger of financial collapse, Major League Baseball (MLB) recently claimed that it was undergoing a period of economic distress. In 1983, 18 of 26 MLB teams lost money, while in 1984, 9 of the 11 reporting teams claimed losses. (Total 1984 loss: \$21 million). *See Baseball Owners Ask Players' Help*, N.Y. Times, Feb. 28, 1985, at B9; *Baseball Owners List Huge Financial Losses*, Dallas Times Herald, Mar. 13, 1985, at B1; *Owners Predict \$155 Million Baseball Loss*, U.S.A. Today, Mar. 13, 1985, at 1C; *Baseball Owners May Have to Open Up*, U.S.A. Today, Feb. 27, 1985, at 1C; and *Financial Woes Cited by Baseball Owners*, Star-Ledger (Newark, NJ), Apr. 7, 1985, § 5, at 2.

⁷⁴ *See Johnson*, *supra* note 60, at 523.

TABLE ONE

Professional Sports Franchise Creation, Movement, and Demise, 1971-1982

Year	Baseball	Basketball	Ice Hockey	Football	
1971		<u>BUFFALO, CLEVELAND, PORTLAND</u> New Orleans → Memphis Los Angeles → Salt Lake City Washington → Norfolk		Boston → Foxboro, MA Dallas → Irvine	
1972	Washinton → Arlington, TX	<u>San Diego → Houston</u> San Francisco plays some games in Oakland	<u>ATLANTA, NASSAU COUNTY, NY</u> WHA created ^a		
1973		<u>Cincinnati → Kansas City</u> Omaha (Pittsburgh, Miami) SAN DIEGO	<u>San Francisco → Vancouver</u> prevented Philadelphia → Vancouver Ottawa → Toronto New York → Cherry Hill, NJ Boston → Hartford	Buffalo → Orchard Park, NY	
1974		<u>Baltimore → Landover, MD</u> Dallas → San Antonio	<u>KANSAS CITY, WASHINGTON</u> DETROIT → (Baltimore) Cherry Hill → San Diego (Los Angeles)	WFL created ^b	
1975		<u>NEW ORLEANS</u> Charlotte-Raleigh-Greensboro → St. Louis	<u>PHOENIX, INDIANAPOLIS, CALGARY</u> DENVER → (Ottawa) (Chicago, St. Paul, Vancouver)	Detroit → Pontiac, MI (WTL)	
1976		<u>Memphis → (Baltimore)</u> (San Diego, Salt Lake City)	<u>Oakland → Cleveland</u> Kansas City → Denver Cleveland → (Minneapolis) Toronto → Birmingham CINCINNATI	New York → Rutherford, NJ SEATTLE, TAMPA BAY	
1977	SEATTLE → AL TORONTO → NL	<u>Buffalo → Hollywood, FL</u> prevented ABA-NBA merger (Louisville, St. Louis, Norfolk)	<u>(Cleveland) merger with</u> Minneapolis (Calgary, Phoenix, San Diego)		
1978		<u>Commach, L.I. → Rutgers, NJ</u>	<u>Houston → (Winnipeg)</u> (Indianapolis)		
1979		<u>Buffalo → San Diego</u>	<u>WHA-NHL merger</u> (Birmingham, Cincinnati)		
1980		<u>New Orleans → Salt Lake City</u>	<u>Atlanta → Calgary</u>	Los Angeles → Anaheim	
1981		<u>DALLAS</u>			
1982		<u>San Diego → Los Angeles</u> prevented	<u>Denver → Rutherford, NJ</u>	Bloomington → Minneapolis Oakland → Los Angeles USFL created ^c	
Total	Teams Cites	20/24	23/23	21/21	NFL = 28/27 USFL = 12/12 Total = 40/28

Key → = franchise reinnovation
 CAPITAL LETTERS = new franchise usually brought about by expansion.
 (city) = franchise on league collapse
sepio: league
 new league

^aThe World Hockey Association began play in 1972 in Houston, Cleveland, Philadelphia, Winnipeg, Boston, Edmonton, New York, Los Angeles, St. Paul, Chicago, Ottawa, and Quebec.

^bThe World Football League began play in 1974 in Honolulu, Birmingham, Chicago, Philadelphia, Memphis, New York, Los Angeles, Houston, Portland, Detroit, Jacksonville, and Orlando. Locanon, names and ownership of franchises changed often during WFL's brief life.

^cThe Limited States Football league in 1983 played in Boston, Birmingham, Chicago, Dever, Detroit, Oakland, Washington, Los Angeles, Law Rutherford, Philadelphia, Pheonix, and Tampa Bay. It will add expansion franchises in 1984 in Houston, Jacksonville, Memphis, Pittsburgh, San Antonio, and Tulsa.

tions, several areas of concern must be emphasized. Initially the financial impact of a relocation on both the community losing a franchise and the franchise itself must be examined. An additional consideration is the impact of a stadium lease on the community and sports franchise.⁷⁵

The financial benefits to a community having a franchise can be measured in terms of both direct and indirect benefits. Examples of direct benefits are employment and income earned.⁷⁶ An indirect benefit that a franchise may generate is an economic impact upon the community, usually considered in terms of the "multiplier effect."⁷⁷

⁷⁵ One economist has determined that the factors for a successful franchise location are: population, per capita income, and competing entertainment opportunities. Burman, *Where the Fans Are: Why Teams Move*, N.Y. Times, May 30, 1982, § 5, at 2.

⁷⁶ In Green Bay, Wisconsin, the economic impact of the NFL Green Bay Packers is estimated at \$20 to \$25 million annually. *Sports Antitrust Immunity Hearings*, *supra* note 12, at 168. When the Los Angeles Rams relocated, it was estimated that 1,200 jobs were lost by workers (ushers, security, concessionaires, etc.), whose total earned income was \$50,000 per game. *Id.* at 372 (statement of Congressman Julian Dixon (CA. 28th D.)).

It was estimated that the NBA Kings added \$6 million annually to the Kansas City economy before their franchise relocation in 1985. Robert McGregor, president of the Kansas City Chamber of Commerce, noted that:

The impact on the economy is substantial . . . It's substantial when you add up the salaries of the players, concessions, parking, out of town guests and all the rest. Some of it is intangible. It's helpful to be known as a sports town. All the teams in town are important. When you lose one, it affects your image.

The Effect of Franchise Shifts, N.Y. Times, Apr. 14, 1985, § 5, at 9; see also *Kings Move Official*, N.Y. Times, Apr. 17, 1985, at B14.

In New Orleans, the NFL Saints' franchise contributes \$78 million annually to the local economy according to a 1985 study prepared by the University of New Orleans for the Louisiana Stadium and Exposition District. See *New Orleans Saints Contribute \$78 Million*, Sports Industry News, Jan. 23, 1985, at 24.

⁷⁷ The multiplier effect has been defined as the amplified effect of newly generated money. The multiplier itself is used as the numerical co-efficient to show how great an increase in income results from each increase in spending. The response is formally measured by the multiplier, which is the following ratio:

$$K = \frac{1}{1-bd}$$

where: K = multiplier

b = the proportion of income which is consumed

d = the proportion of total purchases produced by the local economy.

See Touche Ross & Co., "The Multiplier Effect" (noting W. HIRSCH, URBAN ECONOMIC ANALYSIS 191 (1973)).

Since professional sports attract spectators, many of whom live outside the community, private expenditures associated with the game,⁷⁸ along with salaries and other earned income from the contest, become a welcome chain of indirect expenditures in a community. Such proceeds originate with the location of the franchise.⁷⁹ Additional items having an economic impact include the tax revenues generated at the stadium site as well as the tax benefits directly gained by the franchise owner.⁸⁰

A. *The Financial Impact on the Community*

The extent to which a franchise migration affects a community may be best illuminated by an examination of the relocations of the Colts and Raiders, and the new relocations of the Eagles, Saints and Cardinals. In the six seasons preceding the Colts' move to Indianapolis, the city of Baltimore and the state of Maryland invested \$1.3 million annually to improve the Colts' facility, in addition to the required police, fire and sanitation costs for the games.⁸¹ During the same period of time, the Colts never had a

⁷⁸ In 1970, it was estimated that the ultimate effect on income following the construction of a proposed Coliseum-Convention Center would be over \$15 million to the Richmond Metropolitan area and over \$8 million to the City of Richmond. See Rountree and Burton, "Feasibility Study of Richmond Coliseum," *APPRAISAL J.* 38, Apr. 1970, at 273, 289.

⁷⁹ See W. SCHAFFER & L. DAVIDSON, *ECONOMIC IMPACT OF PROFESSIONAL FOOTBALL ON ATLANTA, MANAGEMENT SCIENCE APPLICATIONS TO LEISURE TIME OPERATIONS*, 276. See also, *supra* note 22.

⁸⁰ *Sports Team Protection Act Hearings, supra* note 8, at 148-49 (testimony of Doug Ferrari, general manager of the Hyatt Regency Hotel, Minneapolis, MN). Ferrari noted that in Minneapolis: (a) baseball teams generate 3,000 room-nights a year, \$300,000 straight revenue, and \$42,000 in related taxes; (b) football teams generate 400 room-nights, and \$6,000 in related taxes, together with news media coverage, \$50,000 straight revenue, and \$7,000 in related taxes; and (c) hockey teams generate, \$100,000 straight revenue, and \$14,000 in related taxes.)

⁸¹ *Id.* at 40 (testimony of Baltimore Mayor Donald Schaefer). As a general rule, most municipalities facing the loss of a professional team franchise will go to great lengths to retain the team. In 1985, faced with a possible loss of their NFL franchise, St. Louis officials proposed building a new 70,000 seat domed stadium for the Cardinals' use. See *St. Louis Dome*, U.S.A. Today, Feb. 27, 1985, at 1C; and *Ways Studied to Expand Busch Stadium*, *Star-Ledger* (Newark, NJ), June 16, 1985, § 5, at 13; see also *supra* note 71.

Illinois Governor James Thompson has also proposed building a new stadium for the Cardinals in his state. The 70,000 seat domed stadium would be built in the East St. Louis area, across the Mississippi River from the Cardinals' present location. See *Illinois' Thompson Proposes New Stadium for NFL Cardinals*, *Sports Industry News*, May 22, 1985, at 156. Similarly, in 1985, San Francisco Mayor Diane Fein-

winning season, yet in their last season in Baltimore they had an average attendance of over 41,000 fans.⁸²

In 1982, the Raiders relocated their franchise from Oakland to Los Angeles, which itself had lost the Rams NFL franchise to nearby Anaheim in 1980. The Oakland-Alameda Coliseum, the stadium which had housed the Raiders, has continued to cost the city of Oakland and the county of Alameda \$1.5 million a year in debt service and will continue to do so until the year 2004.⁸³ As

stein could not finance a downtown baseball stadium because of high real estate prices. Instead, she proposed spending \$70 million to dome Candlestick Park. *See Candlestick Dome*, U.S.A. Today, Mar. 15, 1985, at 1C; and *Feinstein Eyes Candlestick Dome; Land Costs Block New Stadium Plan*, Sports Industry News, Feb. 20, 1985, at 54. *New Stadium Key Issue In Giants Sale*, U.S.A. Today, Aug. 2, 1985, at 3C.

In addition to the dome, ten open-air, baseball-only, stadium sites have been proposed for San Francisco with seating for about 40,000. However, none have proved totally suitable. In the meantime, Giants' owner Bob Lurie has scheduled 60 day games for the 1985 season, thus paving the way for him to possibly breach his lease on the ground that Candlestick Park is unsuitable for playing baseball at night. *See In This Livable City, Giants Seek a Home*, N.Y. Times, Mar. 31, 1985, § 5, at 2; *A Downtown Stadium—First Look at Plans for Ball Park-Hotel*, San Francisco Chronicle, June 7, 1985, at 1. In 1985 Mayor Feinstein and the NFL 49ers agreed to a \$30 million expansion and renovation to Candlestick Park so to retain the football franchise in the Bay area. *Renovation Plan*, U.S.A. Today, Aug. 20, 1985, at 1C.

The San Francisco Bay area seems an especially poor location to place a professional sport franchise. The MLB Giants, NFL 49ers, NBA Warriors, and MLB Athletics all faced financial difficulties in 1985. *Pro Teams Are Sinking Fast In the Bay Area*, Boston Globe, June 23, 1985, at 49.

The USFL's Birmingham Stallions became financially troubled for operating funds and threatened to shut down operations in 1985. As a result, the City of Birmingham approved \$1 million in aid. *Birmingham Aid Plan*, N.Y. Times, Apr. 19, 1985, at A25; *Stallions' Aid Approved*, N.Y. Times, Apr. 24, 1985, at B14; and *Birmingham Aids Stallions*, N.Y. Daily News, Apr. 24, 1985, at 56.

⁸² *Sports Team Protection Act Hearings*, *supra* note 8 at 40 (testimony of Baltimore Mayor Donald Schaefer). Mayor Schaefer testified that:

Six consecutive seasons below .500, including one season without a victory. And yet, still over 41,000 fans last year there.

. . . Twenty-two million dollars in improvements approved by the State untapped because we could not get a lease signed. We reduced that. Right now there are \$7,500,000 in improvements for either the football team and also the baseball team, another \$7,500,000 for a commitment of 6 years, and the same lease for the baseball. No guarantee by the owners to pay anything. The city and the state pays it all—the commitment to city operations at the stadium, the groundskeepers and so forth, and to continue improvements to benefit the fans.

⁸³ *Id.* at 46 (testimony of Oakland Mayor Lionel Wilson). Mayor Wilson noted that as a result of the Raiders' decision:

On February 22, 1980, the City took the extraordinary step of seeking to purchase the Raiders' franchise for full fair market value, by exercise

Oakland Mayor Lionel Wilson has testified:

After 22 years in Oakland, and 12 years of sold-out attendance in the 54,000 seat Oakland-Alameda County Coliseum stadium with ticket prices among the highest in the NFL, the Oakland Raiders threatened to move to Los Angeles in 1980 [T]he taxpayers of Oakland and Alameda County provided a facility now worth more than \$75 million. The City and County are now \$30 million "in the hole" as a result of Coliseum operations, and will continue to pay \$1,500,000 per year until the year 2004 in order to retire the construction bond obligation.⁸⁴

In testimony to Congress, NFL Commissioner Pete Rozelle supported⁸⁵ the claims of Mayor Wilson, noting that the Raiders were not in any financial difficulty at the time of their relocation, but rather, "were *third* among the League's 28 members in gate receipts, *fifth* in the League in total revenues, had an equal share of League television receipts, and were operating with a preferential stadium lease when they announced their intention to move."⁸⁶ (Emphasis supplied).

As noted earlier, the NFL's attempts to force the Raiders to remain in Oakland were found violative of the Sherman Antitrust Act.⁸⁷ The NFL suffered an additional legal setback on November

of the City's right of eminent domain. This effort has been time-consuming and expensive. After 4 years and the conclusion of a 7-week trial in 1983, the Raiders filed a claim against the City for costs and attorneys' fees in excess of \$2,500,000.

The city of Oakland, in 1985, offered the NFL a new \$65 million stadium, exclusively for football, in return for an expansion franchise. NFL Commissioner Pete Rozelle noted, "We will expand, but before these people spend a lot of money, they should wait until we do." *Oakland Offers New Stadium to Entice an NFL Franchise*, U.S.A. Today, Mar. 12, 1985, at 4C.

⁸⁴ *Id.*

⁸⁵ Commissioner Rozelle might not be the most objective witness when it comes to Al Davis and the Raiders. See generally *Pete Rozelle—The Man Who Made Football An American Obsession*, *supra* note 26, at 38-39. There were indications at one point in 1985 that the Rozelle-Davis feud would be settled for the overall benefit of the NFL. See *NFL Working on Settlement with Davis*, Boston Globe, Mar. 15, 1985, at 24; *This Talk Is Not Cheap*, Boston Globe, Mar. 17, 1985, at 50; and *Plain Talk with Davis May Signal A Shift In NFL*, *supra* note 33. However, the NFL owners refused Davis' lawsuit settlement figure of \$65 million as being too expensive. The settlement would have cost each team owner \$2.5 million. See *Davis, NFL Can't Find Peace of Mind*, Boston Globe, Mar. 31, 1985, at 47.

⁸⁶ *Sports Antitrust Immunity Hearings*, *supra* note 12, at 66.

⁸⁷ See *supra* note 50.

10, 1984 when the United States Supreme Court refused to hear the NFL's appeal of the *Raiders* case.⁸⁸ The NFL had appealed the decision of the Appeals Court (9th Cir.), which upheld a district court antitrust decision against the league. The NFL had based their appeal to the Supreme Court on the theory that the league should not be viewed as a body of independent economic competitors controlling the location of competition, but as one business which should make decisions as a whole.⁸⁹

Many of those who commented on the Supreme Court's decision felt that it required the NFL and professional sports leagues in general to develop more flexibility in their practices and policies, with less centralized decision-making based on a standard of reasonableness.⁹⁰ Other commentators reasoned that the Supreme Court refused to review the case at that juncture because the issue of damages in the *Raiders* case was still being heard by the Ninth Circuit and that a full review of the combined cases would be heard by the Supreme Court in the future.⁹¹

The decision prompted a flurry of proposed relocations, despite assurances from league officials to the contrary.⁹² It was speculated that in the NFL, the only two teams that could immediately relocate—if they wanted to—were the New Orleans Saints and Miami Dolphins, since their leases were to expire in the near future.⁹³ There was also immediate speculation that the Philadelphia

⁸⁸ See *High Court Bars NFL Control of Franchise Shifts*, N.Y. Times, Nov. 6, 1984, at B7, col. 6; *NFL Strikes Out*, Boston Globe, Nov. 6, 1984, at 39.

⁸⁹ See *supra* note 87.

⁹⁰ See *Antitrust Reality Intact with Court's Decision*, U.S.A. Today, Nov. 6, 1984, at 3C, col. 6.

⁹¹ See *Eminent Domain . . . Will Fall Like A House of Cards*, U.S.A. Today, Nov. 6, 1984, at 3C, col. 1.

⁹² *Id.*; see also *Leagues Don't Foresee Franchises Moving*, U.S.A. Today, Nov. 6, 1984, at 1C, col. 3.

⁹³ See *Leases Have a Hold on NFL Teams*, U.S.A. Today, Nov. 6, 1984, at 3C, col. 3. In the case of the Dolphins, owner Joe Robbie is building a new 73,000 seat stadium in Dade County, Florida to which he will move his franchise at the expiration of their lease with the Orange Bowl. See *Dolphins Plan: Marino Raise, New Stadium*, U.S.A. Today, Jan. 9, 1985, at 1C, col. 6. Robbie committed \$2 million for preliminary stadium work and expected to break ground in May or June 1985. The Orange Bowl, where the Dolphins currently play, was built in 1937 and Robbie claims it is inadequate. As of January, 1985, 81 skyboxes and 2,700 club seats were sold in advance of the stadium's 1987 opening which will generate \$6.58 million in annual rental fees when completed. See *Robbie Gains Private Funding for New Stadium, Aims for 1987*, Sports Industry News, Jan. 23, 1985, at 23. However, Robbie may have problems in the location of his stadium. See *Plan for Miami Stadium Complex Draws*

Eagles might settle in Phoenix after buying out their lease at Veterans Stadium.⁹⁴ These rumors persisted despite assurances from then Eagles owner Leonard Tose that there was no such possibility⁹⁵ and denials from Susan Fletcher, the franchise's vice-president, who said only a forty percent interest was up for sale and no relocation was planned.⁹⁶ As Tose noted, "I don't think any teams are committed [to move] . . . Where should I go? Hawaii? Not me, I think that's Coney Island . . . I think things are going to simmer down."⁹⁷

Despite such assurances, in December 1984, the Eagles announced that they were in fact considering a move to Phoenix.⁹⁸ Plans were for the Eagles to move after the final game of the season, with the Eagles playing temporarily in Arizona State's Sun Devil Stadium, while a domed stadium was built in Phoenix.⁹⁹ Reasons cited for the move included declining yearly attendance (from 700,000 in 1980 to 445,000 in 1983 and projected 459,000 in 1984), Eagles owner Leonard Tose's \$42 million dollar debt¹⁰⁰ and a player payroll in excess of \$10 million.¹⁰¹ Plans, including the purchase of airline tickets, were near completion for a move when the news was leaked to a Phoenix newspaper and the Eagles were forced to acknowledge the pending relocation.¹⁰²

A familiar outcry followed the announcement by the Eagles. Civic leaders protested the damage to the Philadelphia economy that a relocation would bring, estimating a loss of up to \$15 million

Fire, N.Y. Times, Mar. 22, 1985, at A10. If completed on time, Robbie can expect to host the 1989 NFL Super Bowl Championship. See *Dolphin Owner Lures '89 Super Bowl*, U.S.A. Today, Mar. 13, 1985, at 2C.

⁹⁴ See *Eagles May Be On Block*, Boston Globe, Nov. 4, 1985, at 56.

⁹⁵ See *Eminent Domain . . . Will Fall Like A House of Cards*, *supra* note 91.

⁹⁶ See *Eagles Staying Put*, N.Y. Times, Nov. 13, 1984, at B10.

⁹⁷ See *supra* note 90.

⁹⁸ See *Eagles Studying Move to Phoenix*, N.Y. Times, Dec. 12, 1984, at B13.

⁹⁹ *Id.*

¹⁰⁰ Tose's debts were allegedly the result of enormous losses at Las Vegas and Atlantic City casinos. See *Madden, Tose Does His Fast Shuffle*, Boston Globe, Dec. 18, 1984, at 71, col. 5. The heavy involvement of an NFL owner in gambling was an embarrassment to the league which has disciplined players in the past for such behavior, but did not seem able to act against one of its club owners. See *Vescey, A Man for All People*, N.Y. Times, Dec. 16, 1984, § 5, at 3, col. 5; *Anderson, Take Eagles from Tose*, N.Y. Times, Dec. 18, 1984, at B20, col. 1.

¹⁰¹ See *Eagles Studying Move to Phoenix*, *supra* note 98.

¹⁰² See *How A Column Saved A Team*, Philadelphia Inquirer, Dec. 19, 1985, § C, at 2, col. 1.

annually.¹⁰³ Fans expressed outrage at the relocation of a franchise which had been located in the city for fifty-one years.¹⁰⁴ Senator Arlen Specter (R-Pa.) promised to introduce legislation similar to the Sports Team Protection Act on the first day of the 99th Congress,¹⁰⁵ while the NFL worried about what potential effect the loss of the nation's fourth largest television market would have, especially since Phoenix ranked only twenty-fourth in comparison.¹⁰⁶

Faced with this dilemma, Philadelphia Mayor W. Wilson Goode acted quickly to arrange two alternative loan packages to keep the Eagles in his city.¹⁰⁷ Abandoning its posture from the Colts and Jets moves, the NFL filed suit in federal court, seeking to enjoin the Eagles' potential move.¹⁰⁸ The NFL contended that this case was different from the situation which led to the *Raiders* decision since in that instance the franchise was attempting to move into a location with an existing NFL team, while no such problem existed in the proposed relocation of the Eagles. The distinction, as seen by the NFL, was that while the *Raiders* case involved the regulation of "competition"—thereby subjecting it to antitrust scrutiny—this instance only concerned the regulation of franchise location.¹⁰⁹

The NFL intended to demonstrate that the enforcement of its franchise location agreements did not violate the Sherman Antitrust Act. The league sought damages for breach of good faith by the Eagles and for potential monetary losses for damage to the league's efforts to maintain fan and media interest in a geographically balanced manner.¹¹⁰ Los Angeles Raiders owner Al Davis quickly criticized the NFL's action against the Eagles and maintained that his

¹⁰³ See *Eagles Fans Vent Rage At A Move*, N.Y. Times, Dec. 13, 1984, at A18, col. 3.

¹⁰⁴ *Id.* One outraged fan noted that, "even when they [the Eagles] were dragging along in the cellar[,] Philadelphians were there." *Id.*

¹⁰⁵ See *Eagles' Move Believed Near*, N.Y. Times, Dec. 13, 1984, at B27.

¹⁰⁶ *Id.*

¹⁰⁷ See *Mayor Is Hopeful on Keeping Eagles*, N.Y. Times, Dec. 14, 1984, at B25.

¹⁰⁸ The NFL commented that "[w]hat began as a trickle in the wake of the *Raiders'* case in California now threatens to become a flood if the Eagles leave the country's fourth-largest market. Such a move would abandon a community that has supported a team superbly for more than half a century." See *NFL Asks Court to Block Eagle Move*, N.Y. Times, Dec. 15, 1984, at 43, col. 1. The NFL also considered filing a lawsuit against any proposed franchise relocation by the St. Louis Cardinals, in part due to the NFL's perceived success when, after filing suit against the Eagles, they remained in Philadelphia. See *NFL Mulls Court Fight If Cardinals Fly to Phoenix*, Sports Industry News, Mar. 20, 1985, at 83.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

franchise would have no part in the suit.¹¹¹

The NFL litigation became moot, however, on December 15, 1984, when, in a joint news conference, Mayor Goode and Leonard Tose announced that the Eagles would remain in Philadelphia.¹¹² The lease at Veteran's stadium, which had not expired,¹¹³ was extended to the year 2011 and contained new performance clauses which require the Eagles to remain in the city until expiration.¹¹⁴ Included in the lease were a rent deferment clause for the first ten years and provisions for the construction of luxury boxes, escalators to the elevated sections of the stadium, and a new practice facility.¹¹⁵ Despite this favorable leasing arrangement with the city of Philadelphia, Tose continued to have financial problems,¹¹⁶ especially regarding his outstanding debts with two banks which totaled \$30 million.¹¹⁷ While the prospective hosts of the Eagles in Phoenix may have fumed over Tose's leveraging of the proposed relocation with Philadelphia officials,¹¹⁸ many commentators felt it was only a matter of time before an NFL franchise is located in that Sun Belt city.¹¹⁹ Meanwhile, in Philadelphia, the president of Major League Baseball's Phillies, who share Veteran's Stadium with the Eagles, be-

¹¹¹ See *New Deal Would Keep Eagles in Philly*, Boston Globe, Dec. 15, 1984, at 29, 31.

¹¹² See *Tose Will Keep Eagles in Philadelphia*, Asbury Park (N.J.) Press, Dec. 16, 1984, at C1, col. 3.

¹¹³ Veterans Stadium was built in 1971 at a cost of \$50 million and was financed by a city bond issue. The Eagles original lease would have expired in 1991 and it required the Eagles to pay a minimum of \$150,000 a year against a percentage of the gross revenues. The Eagles also received a share of concessions, but received no income from parking or luxury suite rentals. See *Ease On Down the Road*, Boston Globe, Dec. 16, 1984, at 55. According to a Wharton School of Business study, sporting events and concerts at Veteran's Stadium and the Spectrum in Philadelphia produce \$525 million in direct and indirect revenues. See *Team Work: \$525 Million a Year*, Philadelphia Inquirer, Jan. 1985.

¹¹⁴ See *supra* note 112.

¹¹⁵ *Id.*

¹¹⁶ See *NFL Approves Forming A Panel on Tose's Debts*, Philadelphia Inquirer, Dec. 19, 1985, at 1, col. 1.

¹¹⁷ See *Tose Said to Face New Panel*, N.Y. Times, Feb. 3, 1985, § 5, at 1.

¹¹⁸ Tose's move to Phoenix involved forming a partnership with James Monaghan, a real estate developer who has stated, "I still think that Leonard Tose and Susan Fletcher were sincere in wanting that move to occur." *Fletcher Never Wanted Eagles' Phoenix Flight Cancelled*, U.S.A. Today, Dec. 18, 1984, at 5C, col. 1.

¹¹⁹ Arizona Governor Bruce Babbitt stated that "[w]e take these things in stride. I'm confident there's an NFL franchise in our future . . . the 'NFL Wanted' sign is still out for everybody to see." *Officials Optimistic Phoenix Will Obtain NFL Franchise*, U.S.A. Today, Dec. 18, 1984, at 5C, col. 5.

gan pressuring Mayor Goode for lease concessions.¹²⁰

Tose's personal debt problems were not resolved with the settlement of the Eagles relocation issue.¹²¹ In March, 1985, Tose was forced to sell the Eagles for \$65 million to Norman Braman of Miami.¹²² As part of the deal Tose had to sever all relationships with the franchise.¹²³ Partially due to the Tose debacle, the NFL had considered limiting the amount of debt (\$25 million) that could be secured by an owner against the value of the franchise.¹²⁴

Just as events began to settle in Philadelphia, the NFL was faced with situations in St. Louis¹²⁵ and New Orleans¹²⁶ which concerned possible relocations of these franchises.¹²⁷ Citing the federal court decision in the *Raiders* case, both clubs notified the league that they were reserving the right to relocate.¹²⁸ It was reported that Jacksonville, Phoenix, and Baltimore were all interested in acquiring the Saints, whose lease with the New Orleans Superdome expired in April, 1985.¹²⁹ Louisiana Governor Edwin Edwards noted that "my thoughts are only of keeping the Saints in New Orleans. I can only say that we have already spoken to several interested parties. We are trying to put together a package with that end in mind."¹³⁰ Sim-

¹²⁰ Phillies president Bill Giles noted that his club has "the most unfavorable stadium lease in major league baseball." *Phillies Want Relief*, U.S.A. Today, Dec. 18, 1984, at 3C.

¹²¹ See *New Financial Problems Facing Eagles Owner*, U.S.A. Today, Feb. 5, 1985, at 3C.

¹²² The 1969 purchase price of the Eagles was \$16 million. See *Tose Reportedly Agrees to Sell Eagles*, N.Y. Times, Mar. 6, 1985, at B13; see generally *Tose May Complete Sale This Weekend*, U.S.A. Today, Mar. 7, 1985, at 8C; *Braman's Story of Success Still Being Written*, U.S.A. Today, Mar. 8, 1985, at 2C; and *Eagles Buyer Enjoys Backing of NFL Barons*, Sports Industry News, Mar. 13, 1985, at 77.

¹²³ *Id.*; see also *Philadelphia Eagles for Sale But Tose Still Wants To Be Boss*, U.S.A. Today, Mar. 1, 1985, at 4C; *NFL Owners OK Sale of Eagles*, Star-Ledger (Newark, NJ), Apr. 23, 1985, at 65; and *The Undoing of Leonard Tose Brings Contentment in Retirement*, N.Y. Times, Apr. 7, 1985, § 5, at 4.

¹²⁴ See *NFL Eyes Club-Debt Limit*, N.Y. Times, Mar. 10, 1985, § 5, at 7.

¹²⁵ See *Cardinals Declare Right to Move in Letter to NFL*, U.S.A. Today, Jan. 16, 1985, at 1C.

¹²⁶ See *Saints Reserve Right to Move*, N.Y. Times, Jan. 19, 1985, at 27, col. 6.

¹²⁷ The first franchise to move after the *Raiders'* Supreme Court decision was the USFL's Breakers. The Breakers moved from New Orleans to Portland, however the relocation had league approval. See *Breakers Moving Team to Oregon*, N.Y. Times, Nov. 14, 1984, at A31.

¹²⁸ See *supra* note 126, at 27.

¹²⁹ See *Saints for Sale: \$75M Price Tag*, Star-Ledger (Newark, NJ), Nov. 28, 1985, at 86.

¹³⁰ *Id.*

ilarly, St. Louis Mayor Vincent C. Schoemehl, Jr. noted a relocation of the football Cardinals from his city would be, "a severe negative," and the city would do whatever it could to retain the franchise.¹³¹

Efforts to retain the Saints in New Orleans first involved a sale of the franchise from John Mecom, Jr. to Andrew Pritzker,¹³² and a Louisiana state aid package totalling over \$20 million.¹³³ The plan submitted by the governor asked for enactment of "a \$25 million bond issue, waive \$2 million a year in amusement taxes," in return for a thirty-year extension of the Saints lease at the Superdome.¹³⁴ The State of Louisiana, owner of the Superdome, would additionally lease the facility to the Pritzker family to operate.¹³⁵ The Pritzkers and Saints owner John Mecom, Jr., were unable to come to terms, however, and in early March 1985, the deal was called off.¹³⁶ Shortly thereafter, New Orleans automobile dealer Tom Benson bought the franchise for \$64 million.¹³⁷ The deal with Benson involved a forty-year extension of the Saints' lease with the Superdome and the building of a new training center in suburban St. Tammany Parish.¹³⁸

¹³¹ *Talking of a Move*, N.Y. Times, Jan. 12, 1985, at 30.

¹³² The proposed sale price of the Saints to Pritzker was estimated to be \$68 million. McDonough, *Pritzker Set to March In*, Boston Globe, Jan. 20, 1985, at 63.

¹³³ In justifying his request for state aid to the Saints, Governor Edwards noted that "if you look at the financial package that the City of Philadelphia just paid in order to keep the Eagles there, one has no problem seeing how other governments are concerned about movements of teams, and move in to keep that . . . from happening." *Louisiana Offers Aid Package to Keep Saints From Marching Out*, U.S.A. Today, Dec. 18, 1984, at 5C, col. 1.

¹³⁴ *Cost of Keeping Saints*, N.Y. Times, Feb. 6, 1985, at D6. See also *Progress on Saints*, N.Y. Times, Jan. 1, 1985, at A18. Negotiations with the Pritzker family broke down after the Louisiana legislature balked at the price tag for the Saints. However, Governor Edwards then began negotiations with Tom Benson, a car dealer in New Orleans, to keep the Saints in Louisiana. See *Governor Enters Talks for Saints*, N.Y. Times, Feb. 20, 1985, at B13; *State Aid Imperiled as Mecom, Pritzker Reach Agreement*, Sports Industry News, Feb. 6, 1985, at 39; *Sports Deal Dying Amid Opposition to State Aid*, Sports Industry News, Feb. 13, 1985, at 46; and *NFL Saints Deals Emerge as Pritzkers Face Competition*, Sports Industry News, Feb. 20, 1985, at 56.

¹³⁵ *Cost of Keep Saints*, *supra* note 134. It was also noted that the Pritzker family sought in negotiations a "\$1-a-year lease on state land for use as a training camp . . . [and] low-interest industrial development bonds to finance construction of training facilities." *Id.*

¹³⁶ *Saints Deal Off*, U.S.A. Today, Mar. 15, 1985, at 1C.

¹³⁷ *NFL Saints, Eagles Get New Owners*, U.S.A. Today, Mar. 13, 1985 at 1C.

¹³⁸ See *Benson Group Buys Saints for \$64 Million*, *supra* note 4. The Saints sale to Benson involved minority partners, contrary to the NFL preference that there be at least one owner with a 51% interest in the team. The Cowboys, Raiders, Bengals

One additional factor associated with franchise relocation that can affect a community's financial status is litigation expenses.¹³⁹ It is a cost that can become a great drain to all parties involved and the threat of litigation may in itself prompt a franchise to relocate.¹⁴⁰

These examples of how a sports franchise relocation can impact on a community and effect a community's financial situation are major reasons why securing or maintaining a professional franchise in a particular location has become such a high stakes game.¹⁴¹ As previously noted, the financial well being of a community can be greatly affected by a franchise relocation decision. When other attractive communities are available, the franchise owner enjoys tremendous leverage when negotiating a stadium lease with local government authorities.¹⁴² According to one report, this disparity in bargaining

and Packers also have minority owners. *Id.* See also *Lease for Saints Given Approval*, N.Y. Times, May 23, 1985, at B18; and *Louisiana House Votes for Saints*, Star-Ledger (Newark, NJ), May 10, 1985, at 75, col. 1.

¹³⁹ *Sports Team Protection Act Hearings*, *supra* note 8.

¹⁴⁰ For instance, Colts' owner Robert Irsay claimed that his quick franchise relocation to Indianapolis was prompted by Maryland's decision to introduce eminent domain legislation, designed to keep his club in Baltimore. The bill, proposed by John Pica (D-Baltimore), would have allowed Baltimore to condemn the team and then buy it. *Irsay Says City's Threat Led to Move*, Baltimore Sun, Apr. 31, 1984, at A1. See also *Colts Suit*, AP Wireservice, N.Y. (Apr. 26, 1984) (NFL Archives); *Baltimore Getting Legal Help*, U.S.A. Today, Oct. 25, 1984, at 6C; *Baltimore Sues Colts for 2d Time*, N.Y. Times, Jan. 5, 1985, at 41; *Colts Condemnation Case Scheduled for October*, Sports Industry News, May 22, 1985, at 156; see also *City of Oakland v. Oakland Raiders*, 183 Cal. Rptr. 673 (1982).

¹⁴¹ See *Green Bay Packers Are Threatened By Football's Changing Economics*, Wall St. J., Dec. 14, 1984, § 2, at 29, col. 1.

¹⁴² Not all major stadiums and arenas are publicly owned. However, where stadiums and arenas are privately owned, the facility owner also usually owns one of the major tenants of the building. For instance, the Boston Bruins (NHL) and the Boston Garden are owned by Delaware North, Inc. This alters the leverage situation and can create problems for any other sports tenant in the building. The Boston Celtics (NBA) who also use the Boston Garden have historically had bad relations with Delaware North, Inc., concerning areas such as building availability, training facilities, locker rooms, improvements in seating, the general appearance of the arena and the addition of luxury boxes. See Ryan, *Celtics Vulnerable to Suitors*, Boston Globe, Dec. 18, 1984, at 71, col. 1; and G. WONG, *THE BOSTON BRUINS' ATTEMPT TO MOVE TO SALEM, NEW HAMPSHIRE—KICK SAVE BY THE STATE* (1984). Even the venerable Boston Garden may be in for some major changes. In 1985 former U.S. Senator Paul Tsongas proposed buying the Boston Garden and the NHL Bruins and building a new \$2 billion sports complex in downtown Boston. See *Tsongas: It's Now or Never for New Arena*, Boston Herald, Mar. 19, 1985, at 1; *Tsongas Group to Announce Intent to Buy Bruins*, Boston Globe, Mar. 19, 1985, at 31; *Tsongas Making Pitch*, N.Y. Times, Mar. 20, 1985, at B10; *Arena Is Seeking Historical Status*,

power has led state and local governments to spend "more than \$6 billion to build or refurbish stadiums in the past twenty years to attract or keep professional baseball and football teams alone."¹⁴³ The extent to which stadium governing bodies will go to attract professional sports franchises is perhaps best illustrated by the city of Indianapolis, which built the 61,300 seat Hoosier Dome without knowing whether a sports franchise would be available for the site.¹⁴⁴ Similarly, St. Petersburg, Florida is planning a \$60 million domed baseball stadium and Phoenix, Arizona a \$90 million baseball and football stadium.¹⁴⁵

B. *The Financial Impact on the Franchise Owner*

The financial concerns of the franchise owner are considerably different than those of the community. While the "maximize profit" or "minimize losses" maxims might seem an oversimplification of the owner's concern, in most cases these would probably be closest to the mark in describing the underlying reason for franchise relocation.¹⁴⁶ The negotiations by Indianapolis to se-

N.Y. Times, Apr. 17, 1985, at B14; and *Arena Bill Stirs Fears on Powers of Board*, Boston Globe, June 16, 1985, at 25.

¹⁴³ S. REP. No. 592, 98th Cong., 2d Sess. 2 (1984) [hereinafter cited as *Sports Team Protection Act Report*] (citing expenditure estimates on publicly owned facilities as published in U.S. NEWS & WORLD REP. (May 21, 1984)). In April 1985, the Tampa Bay Sports Authority began to plan for an issuance of \$80 million in industrial revenue bonds. The revenues from the bond sale would be used to construct a 46,000 seat baseball stadium in Tampa for the Tampa Bay Baseball Group (TBBG). The TBBG is seeking a Major League Baseball (MLB) franchise for Tampa and is proceeding with the construction of the new stadium. This is based on the assumption that they will be awarded one by MLB or they will be able to purchase an existing team and move it to Tampa. See *TBBG Seeks to Purchase A's for Move to Tampa*, Tampa Tribune, Apr. 24, 1985, at C1, col. 1.

See also *Major League Flare-Up*, U.S.A. Today, Dec. 13, 1983, at 1C (concerning rivalries for an MLB franchise in Florida); *Battling For A Baseball Franchise*, Wall St. J., Apr. 13, 1984, at 30 (concerning Tampa-St. Petersburg rivalry over who will build a domed baseball stadium); *More Cities Plan Domed Stadiums, But Returns May Prove To Be Small*, Wall St. J., May 17, 1984, sec. 2, at 33; and *Phoenix OK's Stadium Site*, St. Louis Post Dispatch, July 11, 1985 at D2.

¹⁴⁴ See *Colts Slip Out of Baltimore and Into Indianapolis*, Washington Post, Mar. 10, 1984 at F1, col. 1. Similarly, the Hoosier Dome is planning to expend, in advance, between \$7 to \$9 million in order to equip the stadium for baseball play and attract a MBL franchise to Indianapolis. See *Indy Trying to Fit In a Baseball Team*, Star-Ledger (Newark, NJ), Dec. 23, 1984, § 5, at 8, col. 5.

¹⁴⁵ *Sports Team Protection Act Report*, *supra* note 143, at 2.

¹⁴⁶ During the negotiations for the relocation of the Colts, owner Robert J. Irsay wanted a "low interest (loan) rate for \$15 million and a guarantee on ticket sales"

cure the Colts serve as an interesting example of the financial concerns involved in a franchise relocation.¹⁴⁷ Colt's owner Robert Irsay negotiated with the cities of both Baltimore and Indianapolis, before finally deciding to play in the Indianapolis Hoosier Dome.¹⁴⁸ Within five days of the Colts' late-night move out of Baltimore, that city had offered Irsay a \$15 million loan at eight percent interest, \$6 million in cash to buy his training facility, and guaranteed ticket sales of 43,000 per game for the 1984-85 season.¹⁴⁹ Indianapolis offered a 61,300 seat capacity, a domed facility, a modest rent, the erection of a \$5 million training center, and guaranteed ticket sales of 45,000 per game for three seasons.¹⁵⁰ As it turned out, the Hoosier Dome sold out of Colts season tickets for its inaugural 1984-85 season, with a long waiting list of season ticket applications for the future.¹⁵¹

From a purely business point of view, it is difficult to ques-

according to David R. Frick, Indianapolis' chief negotiator. *Hudnut Recounts How Indianapolis Corralled Colts*, Indianapolis Star, Apr. 1, 1984, at A10, col. 1.

¹⁴⁷ See *Behind Scenes of Colts Deal*, Indianapolis Star, Apr. 1, 1984, at A1.

¹⁴⁸ Maryland Governor Harry Hughes noted about the negotiations that "[w]e felt we met every reasonable demand he made, but the demands kept changing." *Colts Move to Indianapolis Is Announced*, N.Y. Times, Apr. 1, 1984, at A23, col. 5. Interest remains high in Maryland for acquiring a NFL franchise. A committee was formed following the loss of the Colts called the Maryland Special Advisory Commission on Professional Sports. The new group commissioned the Touche Ross Company, at a cost of \$200,000, to develop plans to attract and retain sports franchises in the state. Another group of businessmen commissioned an architect who determined that it would cost \$80 million to build a new stadium in Baltimore and some \$60 million to renovate the existing Memorial Stadium. Maryland's House Speaker, Benjamin Cardin, supported funding a new 65,000 seat stadium as long as the city could receive long term lease agreements from MLB Orioles owner Edward Bennett Williams and USFL Stars owner Myles Tannebaum. See *Proposals for an \$80 Million Stadium*, Sports Industry News, Jan. 23, 1985, at 23; *Push for New Baltimore Stadium Placed on Hold*, U.S.A. Today, Apr. 3, 1985, at 7C; and *Plans to Attract and Retain Sports Franchises*, Sports Industry News, Apr. 10, 1985, at 110.

¹⁴⁹ See *Colts Slip Out of Baltimore and Into Indianapolis*, Washington Post, Mar. 10, 1984, at F1, col. 1.

¹⁵⁰ See *Colt Countdown: 4,3,2,1. . .*, Baltimore News American, Mar. 29, 1985, at 1, col. 1.

¹⁵¹ During their first season (1984-85), in the Hoosier Dome (capacity 61,000), the Indianapolis Colts averaged 60,257 in attendance, completely selling out all games. This compared to an average attendance of 41,968 in Baltimore (capacity 60,586). In addition, ticket prices were higher in Indianapolis at \$10, \$17, and \$21 per ticket as opposed to Baltimore which were \$7, \$9, \$13, and \$14. This occurred in a population area that was ranked 34th in the nation according to the 1980 census as opposed to Baltimore which ranked 14th. See *Colts Are Winners for Indianapolis*, U.S.A. Today, Dec. 18, 1984, at 5C, col. 1; *Colts Dull, But Packing Fans In*, Boston

tion Irsay's judgment. It is from a league, community and public interest standpoint that his actions have been questioned. It may also take some time to determine if Irsay's business judgment was a wise long-term decision. Indeed, there is economic evidence that a "honeymoon" effect occurs when a team relocates, with temporarily-inflated attendance figures resulting.¹⁵² Only time will tell whether this increase in attendance is maintained in the long-run.¹⁵³ Table Two which follows illustrates how such increases alone could buttress an owner's decision to relocate intra-territorial, if not outside his assigned franchise area.¹⁵⁴

A new stadium alone, however, will not guarantee the relocation of a franchise into an area. This reality is ably demonstrated by Indianapolis' additional lease incentives and the situation in Minnesota, where, even after the city of Minneapolis built the Hubert Humphrey Metrodome at a cost of over \$55 million, the Minnesota Twins (MLB) still had a financial escape clause to the 30-year lease in the event ticket sales fell below the league average over a three year period.¹⁵⁵ When this actually happened in 1983, a plan had to be quickly enacted by local and community leaders to attempt to sell 2.4 million tickets and thereby retain the Twins in the community.¹⁵⁶

Globe, Nov. 17, 1984, at 30; *Colts*, AP Wireservice-N.Y., Apr. 21, 1984 (NFL Archives).

¹⁵² See *supra* note 17.

¹⁵³ The MLB Braves moved from Boston to Milwaukee and initially they enjoyed high attendance. However, they were later forced to move to Atlanta when the "honeymoon" affect subsided and attendance dropped. *Id.*

¹⁵⁴ Metropolitan Council Sports Facility Commission (Minneapolis) (October, 1979) (Official Statement), *Analysis of Average Attendance Per Game of Selected Football Teams Before and After Construction of a New Stadium*.

¹⁵⁵ See *Sports Team Protection Act Hearings*, *supra* note 8, at 134-38.

¹⁵⁶ *Id.* at 134 (statement of Merlin Dewing, Chairman of Major League Baseball Task Force). It was announced by Jerry Bell, Executive Director, Metropolitan Sports Facilities Commission that:

[t]he impact of the Twins leaving after the 1985 season would be a loss of revenue to the commission of \$1,678,000 in 1986, and \$1,760,000 in 1987, and similar amounts in the years 1988 and beyond. The loss of the Twins would have a severe impact on the financial condition of the stadium. Every publicly owned and financed major league stadium in the country is susceptible to losing its major league tenant to another city that is willing to offer a more lucrative agreement. I believe that the community about to lose a team should be given an opportunity to take reasonable measures to keep its major league teams.

Id. at 137.

TABLE TWO
ANALYSIS OF AVERAGE ATTENDANCE PER GAME OF SELECTED FOOTBALL TEAMS BEFORE AND AFTER CONSTRUCTION OF A NEW STADIUM (Through 1978 Season)

Team	Old Stadium Capacity	New Stadium Capacity	Year New Stadium Opened	Average Regular Game Attendance				3rd Year and Thereafter (Average) (Number of Years)	Attendance as a Percentage of Capacity			
				Old		New			Before	1st	2nd	3rd Year and Thereafter
				Before (Number of Years)	Year	1st Year	2nd Year					
Dallas Cowboys	72,000	65,000	1971	63,794(4)	64,396	63,856	59,406(6)	88.9%	99.1%	98.2%	91.2%	
New York Giants	74,000	76,800	1976	61,044(9)	76,307	66,337	68,092(1)	82.5	99.4	86.4	88.7	
Philadelphia Eagles	60,000	66,000	1971	59,229(4)	65,358	65,720	58,811(6)	98.9	99.0	99.6	89.1	
Detroit Lions	54,000	80,650	1975	53,593(8)	73,340	58,102	63,996(2)	99.2	90.0	72.0	79.4	
New England Patriots	34,325*	61,500	1971	24,652(4)	58,730	60,990	58,363(6)	71.7	95.5	99.2	84.9	
Buffalo Bills	42,000	80,000	1973	39,998(6)	75,896	78,177	55,078(4)	95.2	94.9	97.7	68.8-	
Pittsburgh Steelers	56,500	50,350	1970	37,597(3)	46,197	46,259	48,070(7)	66.5	91.8	91.9	95.5	
Cincinnati Bengals	28,000	60,000	1970	26,531(2)	58,251	59,266	51,300(7)	94.8	97.1	98.8	85.5	
Kansas City Chiefs	48,800	78,000	1972	48,732(5)	72,756	65,646	53,525(5)	99.9	93.3	84.2	68.6	
		Range: Low		24,652	46,197	46,257	48,070	66.5%	90.9%	72.0%	68.6%	
		High		63,794	76,307	78,177	68,092	99.9	99.4	99.6	95.5	
		Median		48,732	65,358	63,856	58,363	94.8	95.5	97.7	88.7	
		Average		49,395*	65,692	62,706	55,420*	88.6	95.7	92.0	84.6	

* Weighted Average

C. Stadium Lease Arrangements

Since many owners of sports franchises enjoy a leveraged position in dealing with stadium operators, many facility operators move from a position of maximizing profits or insuring that the marginal costs equal the marginal revenues, to a defensive position of reducing losses.¹⁵⁷ Lease agreements have become increasingly more complex, involving greater concessions and further inducements to the franchise owners, with minimal reciprocation on their part.¹⁵⁸ There are few areas in the commercial world which would give the business owner such an attractive lease, without even a guarantee of a minimum standard of product quality, or in this instance, franchise quality.¹⁵⁹

The various components of a lease agreement may include

¹⁵⁷ In testimony before Congress, Colen P. Flaherty, Chairman of the Stadium Committee in San Diego, California commented that some of the costs associated with a stadium include foregone use of land, public improvements, unusual tax breaks, as well as time costs associated with negotiations and concluded that rarely do the benefits of a stadium outweigh the costs to the community. See *Sports Antitrust Immunity Hearings*, *supra* note 12, at 446-53.

¹⁵⁸ In 1976, Leslie Foschio, Corporation Counsel of the City of Buffalo, noted in testimony before Congress that, in negotiating a lease with the NHL Sabres, franchise pressure developed as:

the direct product of . . . [t]he city's perceived need[,] . . . intense public demand[,] . . . and obvious inability of the city to consider alternative, competing, sporting attractions.

Inquiry Into Professional Sports Hearings, *supra* note 37, at 512 (Part I).

¹⁵⁹ Senator Slade Gorton (R.-Wash.) commenting on the business of franchise ownership and leasing arrangements has stated:

[i]t is difficult to think . . . of teams . . . which do not receive some sort of substantial public subsidy, either through lease arrangements which are designed to recoup only operating expenses, through tax breaks or other similar combinations.

See *Sports Team Protection Act Hearings*, *supra* note 8, at 1.

Senator Bob Kasten (R.-Kan.) testified that:

[I]n this day and age, a professional sports team is not simply a private enterprise. Teams are supported directly and indirectly at all levels of government; . . . [I]nvestments of public resources are done with an eye toward recouping these expenditures over the course of several years through an expanded tax base and collateral business generated by the presence of a professional team. . . .

The public relies on a team's long-term stay. . . .

Id. at 4-5.

Senator Frank Lautenberg (D.-N.J.) stated, "Nowhere do I see a mandate for owners to do what they have to do in other businesses. The pressure is off for good management practices. . . ." See *Leagues Plead for Legislation to Control Franchise Moves*, *Sports Industry News*, Feb. 6, 1985, at 35.

fixed rent or flexible rent provisions, concession revenue, parking revenue, and other inducements such as training facilities, office space, low interest loans, and luxury boxes.¹⁶⁰ Not surprisingly, as leasing arrangements for stadiums have become more and more complex, the need for expert stadium management has increased.¹⁶¹ In many instances, it could be argued that stadium governing bodies have negotiated poor lease arrangements.¹⁶² Testimony has been offered at Congressional hearings which indicates the poor state of affairs concerning stadium management:

An Alice in Wonderland world of sports economics. Financial statements of stadium don't usually include annual bond debt payments; poor record keeping on publicly owned stadiums as to use and attendance; no standardizations of lease arrangements; from stadium to stadium. Each has unique fiscal arrangements; a lack of proper accounting for stadium costs which are not viewed realistically.¹⁶³

Problems involving lease agreements with professional sports franchises, and the inability of public officials to negotiate good leases are common. The city of New York spent \$95.6 million to refurbish Yankee Stadium, but ended up paying the Yankees \$10,000 after the first season of renewed operations.¹⁶⁴ Oakland's problems with the Raiders were partially attributable to a short-term lease.¹⁶⁵ Buffalo refurbished War Memorial Stadium for the NFL Bills' franchise, but did not have a lease that would keep the club

¹⁶⁰ See *Stadium License Agreement*, Tampa Sports Authority and Hugh F. Culverhouse (owner of the NFL Tampa Bay Buccaneers franchise), April 28, 1975; *Amended and Restated Lease Agreement*, City of Anaheim and Golden West Baseball Co. (California Angels), July 9, 1981; *Operations Agreement*, City of Anaheim and Los Angeles Rams Football Club, Nov. 21, 1978; and *Lease Agreement*, Mayor and City Council of Baltimore and the Baltimore Baseball Club, Inc., Jan. 1, 1985.

¹⁶¹ See *Sports Antitrust Immunity Hearings*, *supra* note 12, at 446-53 (testimony of Colen P. Flaherty, Chairman, San Diego Stadium Committee).

¹⁶² A municipality must decide whether a facility is better operated by the private sector or a public body. Some areas of concern are whether the facility should be operated as a profit-making venture and whether the various public interests can be met and addressed by the private sector. See *Who'll Run the Exhibit Center?*, N.Y. Daily News, Mar. 10, 1985, at 44; and *Javits Center: An "Either Or"*, N.Y. Daily News, Apr. 8, 1985, at 36.

¹⁶³ See *Sports Antitrust Immunity Hearings*, *supra* note 12, at 446-50.

¹⁶⁴ *Id.* at 449.

¹⁶⁵ See *Sports Team Protection Act Hearings*, *supra* note 8, at 46 (testimony of Oakland Mayor Lionel Wilson).

there when it decided to move to suburban Rich Stadium.¹⁶⁶ Minneapolis' problems with the escape clause of their lease with the Twins have been noted.¹⁶⁷ The plight of the \$163 million Louisiana Superdome is legendary. At one time, the Superdome was annually draining public coffers by \$6 million in operating deficits and \$10 million in annual bond payments.¹⁶⁸ The hardships that the NBA's Detroit Pistons experienced after the roof of the Pontiac Silverdome collapsed in 1985 is a current example of both the difficulties in which a municipality can become embroiled when operating a facility and the potential economic effects that can occur as a result of a facility failure.¹⁶⁹

Such dilemmas may exacerbate as more leases come up for renewal in this period of scarce availability of NFL¹⁷⁰ and Major League Baseball (MLB) franchises. Table Three which follows illustrates this concern by detailing the remaining time on leases by NFL teams (1982).¹⁷¹ The possibility of additional franchise relocations, with leases coming up for renewal, is disquieting to the NFL. National Football League Commissioner Peter Rozelle has noted that, in the past, the league had:

a consistent NFL policy in favor of franchise stability for sound partnership reasons. Public respect for the League is important to us; community support and public investments in stadiums and related facilities are vital to the league . . . the NFL had not authorized any member club to abandon its home territory, to walk away from its fans, or to ignore public investments in an unpaid-for stadium especially built for

¹⁶⁶ See *Sports Antitrust Immunity Hearings*, *supra* note 12, at 449 (testimony of Colen P. Flaherty, Chairman, San Diego Stadium Committee).

¹⁶⁷ See *Sports Team Protection Act Hearings*, *supra* note 8, at 148-49 (statements of Pat Murray, President, Greater Metropolitan Area Hospitality Association and Doug Ferrari, General Manager, Hyatt Regency Hotel, Minneapolis, MN).

¹⁶⁸ See *Sports Antitrust Immunity Hearings*, *supra* note 12, at 449-50 (testimony of Colen P. Flaherty, Chairman, San Diego Stadium Committee).

¹⁶⁹ The Pistons had to reschedule their last ten home games and play in Joe Louis Arena and Cobo Hall, both in Detroit. This cost them twice as much as their rent in Pontiac. In addition, the limited attendance capacity of each replacement facility was lower than advance ticket sales for some games. See *Piston Caught in Cave-In*, Boston Globe, Mar. 10, 1985, at 42.

¹⁷⁰ In 1984, the NFL estimated that six franchises would consider relocation due to their lease situations and other factors. See *Moving On?*, Sports Industry News, Dec. 19, 1984 (data page).

¹⁷¹ *Sports Antitrust Immunity Hearings*, *supra* note 12, at 214 (appendix C). Source: Los Angeles Memorial Coliseum v. National Football League, NFL Interrogatory No. 9, (Plaintiff's First Set of Interrogatories).

TABLE THREE*

*Length of current leases in years by NFL team
(1982)*

<i>Teams</i>	<i>Years</i>
Atlanta Falcons	25
Anaheim Rams	35
Baltimore Colts	1
Buffalo Bills	25
Chicago Bears	20
Cincinnati Bengals	30
Cleveland Browns	25
Dallas Cowboys	35
Denver Broncos	32
Detroit Lions	30
Green Bay Packers	22
Houston Oilers	9
Kansas City Chiefs	25
Los Angeles Raiders	10
Miami Dolphins	10
Minnesota Vikings	30
New England Patriots	30
New Orleans Saints	10
New York Giants	30
New York Jets	20
Philadelphia Eagles	30
Pittsburgh Steelers	40
St. Louis Cardinals	30
San Diego Chargers	19

* Source: "Market Study and Financial Projections for Two Domed Stadium Alternatives," City of San Francisco, California (March 1982), p. 247.

professional football.¹⁷²

These concerns expressed by Commissioner Rozelle are generally held by the other professional sports leagues such as the NBA,¹⁷³ the NHL,¹⁷⁴ and MLB.¹⁷⁵

An example of the complex nature of this problem is the reloca-

¹⁷² *Sports Team Protection Act Hearings*, *supra* note 8, at 60 (testimony of NFL Commissioner Pete Rozelle). The Commissioner noted that:

[s]ince 1960, virtually all NFL clubs have begun play in new or significantly improved stadiums. Most have been built or improved at least partially with public financing. As a result of this wave of stadium construction in the past two decades, nineteen NFL teams have changed their operations from one local stadium to another—generally within the city limits. Several of these new stadiums have been in suburban locations, such as Texas Stadium in the Dallas suburb of Irving.

¹⁷³ *Id.* at 152-54 (statement of David Stern, Commissioner of the NBA). Commissioner Stern stated that:

[t]he NBA does not encourage and, in fact, strongly discourages the movement of franchises. The NBA acknowledged the significant monetary and emotional investment made by cities in their sports franchises and fully supports the policy of promoting team stability embodied in the bill. Nevertheless, it is our belief that the decision to permit or deny a proposed relocation properly rests within the sound discretion of the League, and should not be subject to rigid federal regulation as contemplated by S.2505.

Id. at 152.

¹⁷⁴ *Id.* at 154-56 (statement of John A. Ziegler, Jr.). NHL president Ziegler commented that:

[t]he NHL supports the purpose of this bill—to ensure stability in the location of professional sports clubs— but suggests that more government regulation is unnecessary since the public interest of the fans and localities coincides with the NHL's interest. Each wants clubs to remain in their home area, unless financial considerations absolutely necessitate a move. We believe the League's record on movements illustrates this.

Id. at 154.

¹⁷⁵ See *Peter and Paul at the Podium*, N.Y. Times, Mar. 12, 1985, at 20. In 1985, MLB Commissioner Peter Ueberroth stated that "nobody is going to back up moving vans and move a club to another city. I just won't permit it." *Ueberroth Says Giants Must Stay in San Francisco Bay Region*, Sports Industry News, Mar. 13, 1985, at 80; see also *Laurie Shelves Giants Sale, Cities Buyers' Plans to Move*, Sports Industry News, Mar. 6, 1985, at 70. Ueberroth has further noted that:

I would not approve the [Pirates] sale if outside groups want to move it to another city. . . . I've been telling other cities who want ballclubs, "Don't be walking around trying to raid other communities".

Ubie Vows to Veto Buc Franchise Shift, N.Y. Daily News, June 22, 1985, at 34, col. 1.

In June 1985, Pirates president Dan Galbreath threatened to have the club file for Chapter 11 bankruptcy in order to break its long term lease with Three Rivers Stadium. Galbreath claimed the franchise would be worth much more without the lease and would be more attractive to potential buyers. See *Pirates Threaten Bankruptcy*, U.S.A. Today, June 26, 1985, at 1C.

tion of the NHL Rockies franchise. The Colorado Rockies claimed that the sale and relocation of the franchise to New Jersey was partially due to their unfair and restrictive lease at the McNichols Sports Arena and the poor management of the facility.¹⁷⁶ Conversely, city officials claimed that it was poor marketing by the franchise that caused the Rockies their financial woes.¹⁷⁷ The Rockies noted that they had to make excessive payments to the city of Denver of either eight percent of their ticket revenues or \$3,500 per game, whichever was higher, in order to lease the municipal facility.¹⁷⁸ In addition, the franchise had to pay a ten percent tax on ticket sales, making their lease the most expensive of the nine NHL teams that were tenants of municipally-owned arenas in 1982.¹⁷⁹ The NHL Board of Governors found no viable alternative but to approve the relocation and sale of the Rockies.

While the leagues often consider franchise stability vital due to

¹⁷⁶ See *The Arena: Some Call McNichols Badly Run*, Denver Post, Feb. 7, 1982, at E2.

¹⁷⁷ See *The Mistakes: Marketing Strategy Foils Rockies*, Denver Post, Feb. 7, 1982, at E7.

¹⁷⁸ See *The Lease: City's Seat Tax Compounds Problems, Gilbert Maintains*, Denver Post, Feb. 7, 1982, at E2.

¹⁷⁹ *Id.* In 1982, the NHL franchises had the following lease arrangements:

NHL Arena Arrangements

Boston	Owens	Boston Garden
Buffalo	Leases	Memorial Auditorium, 9.5 percent
Calgary	Leases	Calgary Corral, flat rate
Chicago	Owens	Chicago Stadium
Colorado	Leases	McNichols Sports Arena, 8 percent
Detroit	Manages	Joe Louis Arena, \$701,000 per year
Edmonton	Leases	Northlands Coliseum, sliding scale, 12 to 15 percent
Hartford	Leases	Memorial Coliseum, sliding scale, 12.5 to 13 percent
Los Angeles	Owens	The Forum
Minnesota	Owens	The Met Center
Montreal	Owens	Montreal Forum
NY Islanders	Leases	Nassau Veterans Memorial Coliseum, 10 percent
NY Rangers	Owens	Madison Square Garden
Philadelphia	Owens	The Spectrum
Pittsburgh	Manages	Civic Arena, \$1.06 million per year
Quebec	Leases	Quebec Coliseum, 8 percent
St. Louis	Owens	Checkerdome
Toronto	Owens	Maple Leaf Garden
Vancouver	Leases	Pacific Coliseum, 10 percent
Washington	Owens	Capital Centre
Winnipeg	Leases	Winnipeg Arena, 10 percent

investment in new and improved stadiums by the host communities, as indicated above there are other matters which can lead to franchise relocation. The issue of luxury boxes is one recent topic in stadium leasing arrangements that can affect revenue generation and lend support to relocation decisions by franchise owners.¹⁸⁰

Luxury boxes are best defined as a suite of luxurious seating in an enclosed area, which include many amenities such as plush furnishings, kitchens, bars, catering services, and television and audio amplification.¹⁸¹ Luxury boxes are available for business or private use. They were first introduced in the 1970's by former NFL Dallas Cowboys owner Clint Murchinson, who has been credited with popularizing their use when he largely financed the construction of Texas Stadium with the sale of non-interest bearing bonds that entitled the holder to buy season tickets to a seat or a luxury box for Cowboy games.¹⁸² The boxes, which originally cost \$50,000 in bonds, were selling on the open market in 1984 for \$450,000 and \$500,000.¹⁸³

This issue has rapidly come to the fore. Indeed, the Raiders' Managing General Partner Al Davis has frequently complained that the revenues gained from lease arrangements of luxury boxes are not included in the NFL's revenue sharing plan.¹⁸⁴ In part, he claims that the luxury box potential in Los Angeles led to the move of the Raiders.¹⁸⁵ Similarly, Leon Hess, owner of the NFL Jets, relo-

¹⁸⁰ Senator Dennis DeConcini of Arizona has commented that "[i]f you're trying to get a team, you'd like some protection that they won't move off to Salt Lake City or Albuquerque because someone promises them a better skybox." See *supra* note 5.

¹⁸¹ See *Select NFL Fans in Lap of Luxury*, U.S.A. Today, Sept. 27, 1984, at 11C; and *First and Goal Dolphins '87*, Dolphins Stadium proposal materials.

¹⁸² See *New Stadium Proposals on Both Sides of Hudson*, N.Y. Times, Dec. 15, 1984, at 26.

¹⁸³ *Id.*

¹⁸⁴ *Professional Sports Antitrust Immunity Hearings*, *supra* note 12, at 312 (statement of Al Davis).

¹⁸⁵ *Id.* at 346-47:

[T]he Raiders on March 1, 1980 signed an agreement with the Los Angeles Coliseum to play in a remodeled stadium with 100 luxury boxes beginning the 1980 season (the Raiders had fulfilled all of their obligations under the Oakland lease and extended the original five-year term of 1966 to fourteen years of occupancy ending in 1979. At the end of the lease, the Oakland Coliseum was the worst or second-worst stadium in the country in terms of seating capacity, playing field, locker rooms, and baseball conflicts).

Id. at 346.

cated his franchise to the Meadowlands Complex in New Jersey because of uncertainties about whether New York City would in fact construct ninety-eight luxury boxes in Shea Stadium, a condition which Hess felt was imperative for the franchise to remain in Shea.¹⁸⁶ Tables Four and Five which follow illustrate how luxury boxes are leased and the potential benefits to the franchises which control the luxury boxes.

These lease arrangements are indicative of the financial importance of luxury boxes to sports franchises, and the extent to which arrangements may be structured to reach desired franchise stability.¹⁸⁷ A recent example is the plan of Miami Dolphins owner Joe Robbie to build a 72,000 seat stadium in Dade County for \$90 million, financed in a large part by 10-year leases on 235 luxury boxes, which would rent for \$29,000 to \$65,000 per year.¹⁸⁸ In addition, Donald Trump, owner of the USFL Generals franchise, has proposed a "condominium" seat financing proposal for a new stadium in New York City.¹⁸⁹

¹⁸⁶ See Eskenazi, *The Koch-Hess Letters on Why the Jets Left Town*, N.Y. Times, Feb. 5, 1985, at B7. Leon Hess, the Jet's owner, is noted as having "chafed at the Jets' lease with the city in which the team paid more rent for eight home games, about \$500,000 a year, than the Mets did for 81 home games. Also, the Mets received all the Jets' concession revenue, even from the programs." *Id.* at B7.

¹⁸⁷ In April, 1984, the MLB Mets franchise announced that an arrangement had been made between the owners and New York City to install 50 luxury boxes in Shea Stadium at a cost of \$8 million. The city and the Mets agreed to divide the cost of the additions and other renovations that could reach \$40 million. Part of the deal might include an extension of the Mets' current lease for an additional 15 years through the year 2009. See *Shea Stadium Won't Get Artificial Turf*, N.Y. Times, Nov. 15, 1984, at B22, col. 4.

¹⁸⁸ See *Select NFL Fans in Lap of Luxury*, *supra* note 181.

¹⁸⁹ See *supra* note 182, at 26; see also *Trump Deals the Hand on New Stadium*, N.Y. Daily News, Dec. 13, 1984, at 5; and *Trump's Plan: \$5G Buys Your Own Seat*, N.Y. Daily News, Dec. 12, 1984, at 3.

In 1985, President Ronald Reagan introduced a tax reform package to Congress which, if enacted, could pose serious problems to sports arenas and the sale of their luxury boxes. Under the Reagan tax plan, the tax benefit given to corporations purchasing luxury boxes or tickets would be eliminated. This could discourage their sale and use as a financing device for those proposing the construction of new stadiums or arenas. See McDonough, *CBS Courts Ch. 4's Lobel*, Boston Globe, May 20, 1985, at 73-74, col. 1. Luxury box prices average \$30,000 to \$40,000 in the NFL and in St. Louis a twelve seat box cost \$25,000 in 1985. *High-Priced Seats*, U.S.A. Today, Apr. 19, 1985, at 1C; see also *A Taxing Situation*, L.A. Times, July 22, 1985, sec. III, at 10, 11, col. 1; and *Boxed In*, Boston Globe, Feb. 27, 1985, at 25, 31.

TABLE FOUR*

STADIUM SUITES SURVEY

Location	No.	Seats	Size	Annual Cost/Term	Tickets	Other
Cleveland Municipal Stadium	108	8	286 sq. ft.	\$20,000 1 year	FB BB 1 parking 2 guest passes	Private restroom Private corridor Seats in front but separate Limited catering 1 decor, 3 colors
Philadelphia Veterans Stadium	23	28	13'-6"D 19'-6"W 13'-6"D 16"W	\$21,000 3 years \$18,000 3 years	FB BB Parking	Seats in front Private entrance with elevator Outside caterer Semit-private restrooms
Buffalo Rich Stadium	34	4 @ 25 30 @ 12	510 sq. ft.	\$15,000 5 years	FB Parking	Seats inside Loose furnishing by Lessee Concessionaire caters
Meadowlands Giants Stadium	66	16	20' × 20'	\$20,000 1 year (formerly 5 years)	FB Parking 10 other FB events	Seats inside Concessionaire caters 3 decors, 3 colors
Minneapolis H.H. Humphrey Stadium (April 1982)	112	9 10 12	9'W × 19'D 11'W × 19'D 13'W × 19'D	\$25,000 \$27,500 \$30,000	FB Parking	Seats inside 1 decor, 3 colors
Chicago Soldier Field (August 1982)	116	12	12'W × 19'D	\$25,000 5 years	N/A	Seats inside Private elevator, entrance & corridor

* Source: *Luxury Boxes Gaining Favor Around NFL*, Sports Industry News, Oct 10, 1984 (data page).

TABLE FIVE**LUXURY BOXES IN THE NATIONAL FOOTBALL LEAGUE
(1984)**

<u>Team</u>	<u>Annual lease</u>	<u>Estimated Annual Revenue</u>
Atlanta	\$25,000	\$300,000
Buffalo	N/A	
Chicago	\$25,000	\$1,500,000
Cincinnati	Must buy 16 Bengals season tickets, 8 Reds passes	
Cleveland	\$20,000; \$28,500	\$2,600,000
Dallas	\$50,000 in construction bonds, plus tickets	\$8,900,000 in bond revenues
Denver	\$6,400-\$19,200	\$1,100,000
Detroit	\$32,500-\$62,500, plus tickets	\$4,600,000
Green Bay	None	
Houston	\$12,000-\$16,000	\$770,000
Indianapolis	\$10,000-\$16,000, plus contributions up to \$100,000 and tickets	\$1,700,000
Kansas City	\$8,000-\$24,000 plus tickets	\$1,200,000
Raiders	None	
Rams	\$20,000-\$40,000	\$3,400,000
Miami	None	
Minnesota	\$26,250-\$31,250	\$3,300,000
New England	\$27,500-\$44,000	\$1,700,000
New Orleans	\$14,000-\$22,500	\$1,100,000
Giants	\$30,000	\$2,000,000
Jets	\$10,000	\$660,000
Philadelphia	\$25,000; \$30,000	\$680,000
Pittsburgh	\$25,000-\$27,000, plus \$100,000 in construction funds for new boxholders	\$2,500,000
St. Louis	\$160 per seat	\$75,000
San Diego	\$25,000-\$55,000	\$2,900,000
San Francisco	\$200 per seat	\$64,000
Seattle	N/A	
Tampa Bay	\$25,000-\$50,000	\$1,700,000
Washington	None	

Clearly the financial stakes involved with the franchise relocations are so great that it is little wonder why communities try to retain and acquire teams. The efforts exerted in the recent relocations of the Colts and Raiders are understandable given these financial considerations. They present a frightening, if fiscally alluring, example of what other franchise-holding communities

might expect in the near future.¹⁹⁰

IV. LEGISLATIVE OPTIONS TO FRANCHISE RELOCATION

One proposed scale of measuring the legislative options to the franchise relocation issue is noted in Table Six on page 54.¹⁹¹ On this scale the Sports Team Protection Act would be rated within a Category IV, in the middle of the spectrum in terms of restrictiveness.

The Sports Team Protection Act proposed by Senator Gorton would have required that, "a league determine that a proposed relocation of a professional sports team was necessary and appropriate before a team could relocate. . .", and would have established "criteria for professional sports leagues to consider when making a determination as to whether a proposed sports teams' relocation is necessary and appropriate."¹⁹² Partially due to both the criteria requirement proposed in this legislation and the Supreme Court's refusal to hear an appeal on the *Raiders* case,¹⁹³ the NFL promulgated a procedure that must be followed before a franchise can be relocated.¹⁹⁴ In a memorandum written

¹⁹⁰ It is somewhat ironic that the Mariners who were established as a direct result of Senator Gorton's efforts to have an MLB expansion franchise placed in Seattle after the relocation of the Pilots, have what is considered one of the worst MLB leases. The lease leaves the club with the lowest net ticket receipts in MLB. The only MLB leases considered worse are those of Philadelphia, Pittsburgh, and Baltimore. See *Mariners Lease*, U.S.A. Today, Mar. 15, 1985, at 1C. In 1984, the Mariners lost \$6 million, raising the club's losses since 1981 to \$21 million. Franchise revenue totalled \$12.8 million, but expenses were \$19 million. Major revenue sources included: network television (\$5.3 million), ticket revenue (\$3.4 million), and local radio and television (\$1.1-1.6 million). See *Mariners Posted \$6 Million Loss Last Year*, *Beggs Says*, Sports Industry News, Apr. 10, 1985, at 106.

In 1985, the Mariners reached a proposed new lease agreement with the Kingdome, which gave the franchise the right to relocate after the 1987 season if they do not average 1.4 million in attendance for the 1985 and 1986 MLB seasons. However, before any attempt to relocate, the Mariners owner George Argyros would have to seek a local buyer for his club. Additional lease clauses call for three years free rent at the Kingdome, increased concession revenue, and an exemption from Seattle's 5 percent admissions tax. See *Accord Reached in Kingdome*, N.Y. Times, June 26, 1985, at B14; and *Mariners Lease*, U.S.A. Today, June 26, 1985, at 1C, col. 1.

¹⁹¹ See Johnson, *supra* note 60, at 524.

¹⁹² *Sports Team Protection Act Report*, *supra* note 8, at 7.

¹⁹³ *Los Angeles Memorial Coliseum Commission v. National Football League*, 726 F.2d 1381 (9th Cir. 1984).

¹⁹⁴ See *Teams They Are A Changing . . . So Rozelle Sets Up Guidelines*, Boston Globe,

TABLE SIX**Legislative Options to Protect Professional Sports
Communities from Franchise Relocation**

	<i>Options</i>	
<i>Most Restrictive</i>	I	Absolute ban on relocation;
	II	Before relocation is permitted franchise must be offered for sale to investors who guarantee franchise will not be relocated;
	III	Notice of intent to relocate must be given 2-3 years before relocation is permitted; during this time reasons for relocation will be investigated by a third party who has authority to permit or deny the relocation;
	IV	Relocation permitted only if certain criteria are met—usually continued financial losses, inadequacy of the stadium or other parties fail to comply with the stadium lease agreement.
	V	Relocation permitted without restriction unless league rules with regard to relocation are modified so as to be more reasonable; other league rules remain intact (present status quo as a result of the <i>Raiders</i> case);
<i>Least Restrictive</i>	VI	Relocation permitted without restrictions but accompanied with unrestricted league entry.

by NFL Commissioner Pete Rozelle and sent to the league's franchise owners, the proposed criteria included:

[a] comparison of the club's home revenues with league aver-

Dec. 23, 1984, at 44. NFL Commissioner Pete Rozelle commented that "I haven't seen Al (Davis) or (Attorney Joe) Alioto come forward and say they would indemnify the league against any lawsuits . . . if we put in rules like this to stop them." *Id.* at 44.

ages and medians. Past and projected ticket sales, and other stadium revenues at the existing and proposed location. The club's profits or losses of the last four seasons. Information regarding other professional or college sports in the existing and proposed locations, and the effects of the proposed transfer on NFL scheduling patterns, travel requirements, divisional alignments and television interests.¹⁹⁵

As outlined in the memorandum, a three-quarters vote by the franchise owners would still be required to approve a franchise relocation.¹⁹⁶

The NBA has also issued new relocation guidelines in response to the *Raiders'* decision.¹⁹⁷ Effective with the 1984-85 season, the extensive guidelines were implemented to provide comprehensive objective criteria for proposed franchise relocation.¹⁹⁸

¹⁹⁵ See *NFL In New Policy*, N.Y. Times, Dec. 30, 1984, § 5, at 1, col. 1. The New York Times had acquired a copy of the confidential memo distributed to the owners. In telephone discussions about it with NFL personnel, the author was told that the story was "accurate."

¹⁹⁶ *Id.*

¹⁹⁷ NATIONAL BASKETBALL ASSOCIATION CONST. AND BY-LAWS, *supra* note 49.

¹⁹⁸ *Id.* art. 9A. This article stipulates:

Franchise Relocation

9A. A member may transfer its franchise, city of operation, or playing site of any or all of its home games, to a different location, within or outside its existing Territory, as defined in Article 10, only in accordance with and subject to the following provisions:

(a) Application to relocate must be made in writing to the Commissioner. The application shall identify the proposed new location and the arena in which the Member proposes to play its home games, and shall be accompanied by a certified check in the sum of \$50,000 to defray the costs of the investigation of the application. Following the disposition of any application the Association shall repay to the applicant the sum of \$50,000 less all expenses reasonably incurred in connection with the investigation of the application.

(b) No application to relocate may be made after the first day of March preceding the season in which the proposed relocation is to take effect. Within ten (10) days of the receipt of an application to relocate, the Commissioner shall refer the application to a Committee to investigate the application. The Committee shall be appointed by the Commissioner and shall consist of no fewer than five Governors or Alternate Governors. Within one hundred twenty (120) calendar days from the Commissioner's receipt of the application, the Committee shall report to the Board of Governors with respect to the results of its investigation and its recommendation of whether the application should be granted or denied. The recom-

In addition to establishing relocation criteria, the most controversial aspect of the Sports Team Protection Act was the establish-

mentation of the Committee shall be based solely and exclusively upon the following factors:

(i) Whether the proposed new location can support a franchise in the Association or, if the proposed new location is within the existing Territory of a Member, whether the proposed new location can support another franchise. In evaluating this factor, the Committee shall consider: existing and projected population, income levels and age distribution; existing and projected markets for radio, broadcast television, cable television, and other forms of audio-visual transmission of Association games; the size, quality and location of the arena in which the Member proposes to play its home games; and the presence, history and popularity in the proposed new location of other professional sports teams and major college basketball teams.

(ii) Whether the applicant has demonstrated that it will be able successfully to operate an Association team in the proposed new location. In evaluating this factor, the Committee shall consider the applicant's present and projected financial condition and resources and its past performance in operating a team in the Association.

(iii) Whether the proposed relocation is likely to have an adverse effect upon the Association's ability to market and promote Association basketball on a nationwide basis in a diverse group of geographic markets.

(iv) Whether the proposed new location presents particular disadvantages for the operation of the Association, such as by creating significant travelling or scheduling difficulties or because of adverse state or local laws or regulations.

(v) Whether other Association Members, in addition to the applicant, are interested in transferring their franchises to the proposed new location, or whether there are persons or entities interested in obtaining an expansion franchise in the proposed new location. In any such event:

(a) Except as otherwise provided herein, all applicants shall follow the procedures set forth in Article 6 of this Article, as the case may be. All additional applications to establish an NBA team in the proposed new location for the season to which the initial application relates shall be made within forty-five (45) days of the Commissioner's receipt of the initial application referred to in subparagraph (a), and the one hundred twenty (120) day period provided for in subparagraph (b) of this Article shall be extended to no longer than forty-five (45) days after the Commissioner's receipt of the initial application.

(b) The Committee appointed pursuant to this Article shall investigate each of the applications and shall recommend which of the applications, if any, should be granted. In reaching its recommen-

ment of a Professional Team Arbitration Board.¹⁹⁹ The board would have been a three-member panel empowered "to review *de novo* whether a proposed franchise relocation which has been approved by a professional sports league is necessary and appropriate," and, if it had approved a relocation after such a review, to then

dation, the Committee shall consider all factors listed in subparagraph (b)(i-iv) of this Article and shall also consider:

(i) which applicant is likely to operate most successfully in the proposed new location, or otherwise best serve the interests of the Association; and

(ii) in the case of the proposed expansion franchise, whether the interests of the Association would best be served by expanding the number of members in the Association.

(c) The Committee is empowered to require from the applicant, and the applicant shall furnish, such information as the Committee deems appropriate for the conduct of this investigation. The Committee may engage consultants or other experts to assist it in the investigation of the application and may also request such additional information from the Commissioner as the Committee may be appropriate for the conduct of its investigation. All information supplied to the Committee pursuant to his subparagraph (c) shall be made available to the applicant, and the applicant shall be afforded an opportunity to appear before the Committee to present whatever additional information or arguments the applicant desires. Any other Governor or his representative may also appear before the Committee to present whatever information or arguments such Governor desires.

(d) The report and recommendation of the Committee shall be delivered to each Member of the Board of Governors. The Commissioner shall call a meeting of the Board of Governors to consider the Committee's report and recommendation, which meeting shall be held no sooner than seven (7) days and no later than thirty (30) days of delivery of the Committee's report and recommendation. The applicant shall be afforded an opportunity to appear before the Board of Governors to present whatever information or arguments the applicant desires. The question whether to approve the proposed relocation shall be decided by a majority vote of all of the members, and no vote by proxy shall be permitted. The vote of each Governor on the proposed relocation shall be based solely and exclusively upon the factors listed in subparagraph (b) (i through v) of this Article.

Id. at 7-10.

¹⁹⁹ Senator Larry Pressler (R.-S.D.), a member of the Commerce Committee which has held hearings on the Sports Community Protection Act, has commented that "[t]his committee has made a reputation the last four years on deregulation" and warned that the establishment of an arbitration board could "engulf us." *Sports Team Protection Act Hearings, supra* note 8, at 59. NBA Commissioner David Stern has noted that the league is "not in favor of a legislation that would create a federal board or agency to supervise and control franchise transfers." *Id.*

determine "the value of the proposed move and, if made, the value of any offer to retain the team in its present location."²⁰⁰ This proposed system of review was met with stiff resistance by the leagues.²⁰¹ One NFL attorney noted, "These are essentially business judgments. . . . We just don't want Congress telling us. . . , where teams can play."²⁰²

As this indicates, the potential impact of an arbitration board on the decision-making process of the leagues was distasteful to them.²⁰³ James J. Fitzpatrick, a representative of Major League Baseball noted that, "the means established in S.2505 for discouraging relocation of professional sports franchises are both inadequate and inappropriate. . . . we believe it is improper for the federal government to be involved in this process at all. . . ."²⁰⁴

²⁰⁰ *Sports Team Protection Act Report*, *supra* note 143, at 7.

²⁰¹ NBA Commissioner David Stern noted that "this (bill) appears to give some relief to franchise cities, but involves the government in a way that does not seem appropriate." *NFL Opposes Senate Committee Bill on Control of Franchise Movement*, U.S.A. Today, June 14, 1984; *see also The Impact of the Sports Community Protection Act on Concerned Parties to Franchise Relocation*, *infra* text § 5, at 154.

²⁰² *See supra* note 5; *see also The Impact of the Sports Community Protection Act on Concerned Parties to Franchise Relocation*, *infra* text § 5, at 154.

²⁰³ *Sports Team Protection Act Hearings*, *supra* note 8, at 75 (statement of James F. Fitzpatrick, Esq., MLB representative). Mr. Fitzpatrick stated:

S.2505 calls for a Professional Sports Team Arbitration Board, constituted in an ad hoc fashion for each particular relocation case, to determine whether any offer to retain the location of the franchise in its home community is "equal to or greater in value than the proposed relocation." If there is such an offer, the Board cannot approve the proposed relocation, even if the league and, if necessary, its Commissioner have consented to the move. The only criterion for the Board's decision is its assessment of the bottomline financial value of the offers. Moreover, in most cases, broadcasting revenues in either the current or future location cannot be part of this calculation. This is done despite the fact that local and regional television and radio revenues may be a significant factor in the financial equation (in Baseball they account for approximately fifteen percent of a club's operating revenues).

. . . It is, of course, not surprising that Congress would be reluctant to grant an ad hoc Arbitration Board wide discretion in making decisions regarding the structure of professional sports leagues. The Board would completely lack the experience and perspective necessary to make such decisions in a discretionary manner. That does not mean, however, that broad discretion is not needed in ruling on relocation issues. Rather, that discretion should be exercised by the sports leagues themselves.

Id.

²⁰⁴ *Id.*

As outlined in the legislation, the arbitration board would have three members, one appointed by the league involved in the arbitration, one appointed by the applicable stadium government authority, and one member chosen by the president of the American Arbitration Association.²⁰⁵ The board would have been empowered to approve or disapprove any league decision concerning relocation.²⁰⁶ The board would have conducted their hearings *de novo*, using the same legislated criteria established for a league's decision.²⁰⁷ The board would also have been authorized to consider, accept, and reject any offers of retention by individuals seeking to purchase the team and retain it in its present location.²⁰⁸ The leagues would have still been able to determine who they would accept as a franchise owner.²⁰⁹ Judicial review of these decisions would have been, "very limited", so to "create a mechanism for the protection of the communities' interests without fostering extensive litigation."²¹⁰

As previously noted, professional sports leagues perceived the proposed federal arbitration board to be an intrusion into league decisions and they opposed it strongly. NFL Commissioner Pete Rozelle, a long-time proponent of a general antitrust exemption for professional sports leagues, noted in his initial testimony before the committee that:

the NFL questions the need for establishing a federal board or agency, with a rather elaborate range of regulatory requirements, to supervise such matters, as S.2505 contemplates . . . on the sound principle that "if it's not broken, it doesn't need fixing." We view the inflexible notice requirements and other standards of S.2505 as unnecessary and inappropriate.²¹¹

²⁰⁵ *Professional Sports Team Community Protection Act*, *supra* note 7, § 7(a)(1-3).

²⁰⁶ *Id.* § 7(e)(1).

²⁰⁷ *Id.* § 7(e)(1)(1).

²⁰⁸ *Id.* § 7(h)(1).

²⁰⁹ *Id.* § 7(h)(2).

²¹⁰ *Sports Team Protection Action Report*, *supra* note 143, at 13.

²¹¹ *Sports Team Protection Act Hearings*, *supra* note 8, at 63. Commissioner Rozelle also found that:

In addition, since sports leagues must directly compete in a broad entertainment marketplace with vigorous and financially powerful businesses that are not subject to such statutory or agency regulation, the NFL believes that continued reliance on responsible league action rather than a board pattern of regulation is entirely appropriate. In the event that disputes would occur over the relative value of bona fide offers submitted under any right of first refusal concept, we believe that

The Sports Team Protection Act, as voted out of committee, also granted the NFL an exemption from the legislation if it, "expands its membership by two teams, one of which is to be located in Baltimore, Maryland. If the bill does not apply to the NFL, a 3-year moratorium would be imposed on team relocations."²¹² The legislation also had community notice requirements mandating a franchise to give such notice within three months of league approval, limitations on judicial review of any league and arbitration board decisions concerning relocation, and required a \$50,000 deposit which had to be put in an escrow account for arbitration board activities.²¹³

An amendment offered by Senator Frank Lautenberg of New Jersey, which made two changes in the bill, was approved by the Committee. Lautenberg noted that: "[T]he bill does not apply to a relocation where the team has signed its lease before June 1984, but will not play its first game until September. That would apply to the planned move of the football Jets to New Jersey."²¹⁴ Senator Lautenberg further commented: "[T]his change has a significant impact in my State, where the Meadowlands Complex has attracted a number of sports teams that have contributed to State pride and a sense of New Jersey identity."²¹⁵ Lautenberg had sought enactment of his amendment to specifically block any potential attempt,²¹⁶ by New York to "mount a court challenge to force the return of the Jets. . . ."²¹⁷

such disputes should be resolved either internally by the league, or by resort to private sector arbitration.

Id.

²¹² *Sports Team Protection Act Report*, *supra* note 143, at 7.

²¹³ *Id.*

²¹⁴ *Id.* at 16.

²¹⁵ *Id.*

²¹⁶ *See Bill Could Challenge Raiders' Move*, Oakland (CA) Tribune, June 13, 1984, at F6.

²¹⁷ *Id.* As Senator Lautenberg (D.-N.J.) noted:

The change would make it clear that for a team located at the Meadowlands, a Northern New Jersey SMSA is its community—and not the greater New Jersey-New York-Connecticut megalopolis. For a long time, the people of my State were forced to root for and identify with teams from neighboring states. The Meadowlands has helped to develop a stronger sense of New Jersey community. The amendment would serve to protect that development.

Sports Team Protection Act Report, *supra* note 143, at 16.

V. THE IMPACT OF THE SPORTS TEAM PROTECTION ACT ON CONCERNED PARTIES TO FRANCHISE RELOCATION

A. The Community

The purpose of the Sports Team Protection Act was to aid communities which currently host professional team franchises by providing them a "right of first refusal" before their professional team could be relocated.²¹⁸ The impact of this proposed legislation would have been two sided. First, it would have protected communities with franchises, and secondly, it would have made it extremely difficult for any community without a professional team to acquire one through relocation. The major purposes of the Act were:

to provide stability in the location of professional sports teams; . . . to provide predictability with respect to the relocation of professional sports teams; and . . . ensure that the interests of communities which have supported such teams are considered through an equitable procedure.²¹⁹

Those who supported the Sports Team Protection Act felt, as Oakland Mayor Lionel Wilson did, that the impact would be to "prevent indiscriminate and unwarranted transfers of major league sports franchises from one community to another . . . contrary to the interests of sports communities, sports fans, and the entire nation."²²⁰ Generally, supporters of the Sports Team Protection Act and similar legislation believe that it would have prevented leveraging by team owners, averted last minute frantic negotiations as experienced by the cities of Baltimore and Philadelphia, and provided

²¹⁸ *Sports Team Protection Act Hearings, supra* note 8, at 8.

²¹⁹ *Sports Team Protection Act Report, supra* note 143, at 9.

²²⁰ *Sports Team Protection Act Hearings, supra* note 8, at 45 (testimony of Oakland, CA Mayor Lionel Wilson). Congressman Thomas A. Luken of Ohio commented:

[W]hat distresses me most . . . is that an owner no longer has to demonstrate that a lack of community support and financial hardships are present before relocating a sports franchise. Today, owners just pick up and run, or sell out to the highest bidder, leaving communities and taxpayers holding the bag.

. . . Municipalities make large investments in their professional sports teams in terms of providing facilities, favorable tax treatment, and encouraging community support. In effect a partnership exists among the city, the fans, the players and the owners.

for stability in a community's tax base and financial health.²²¹

A question which was not initially addressed in the Sports Team Protection Act was how to balance a community's need to retain a franchise against the need for a developing community to acquire a franchise. The bill addressed the needs of an existing community, but not the developing one. As Senator Lautenberg noted at the hearings concerning this issue: "I think this is very important legislation. But some modifications have to be made so we do not continue to deprive newly developing areas, areas where there are an abundance of fans and an abundance of interest that would require and support a franchise."²²² In addressing only the needs of communities with franchises, the Sports Team Protection Act overlooked the entire breadth of the problem of franchise location. Legislative approval of any bill dealing with this dilemma may only come about when the entire issue is digested and corrected to the satisfaction of both types of communities.²²³

B. *Owners Interested in Relocation*

The Sports Team Protection Act would have posed major difficulties for those owners who might want to move their franchises. It would have effectuated an "only if" test before a team could be moved.²²⁴ The test devised by the bill required that a franchise seeking to relocate satisfy two major conditions. First, the league must approve the transfer following the specific guidelines in the legislation. Second, the transfer must be approved by an arbitration board.²²⁵

To meet the first prong of the test, league approval, the league would have been allowed to employ its own voting procedures for transfer of franchises, but would have been required to use standards established by the Act.²²⁶ These criteria required that in addition to showing need under the legislated test, an owner seeking to relocate a franchise would also have had to

²²¹ See generally *supra* note 24.

²²² *Sports Team Protection Act Hearings, supra* note 8, at 45.

²²³ *Supra* note 5.

²²⁴ If the Board determines that the proposed relocation is not necessary and appropriate, the Board shall disapprove the proposed relocation. *Sports Team Protection Act, supra* note 7, at § 7(f).

²²⁵ *Id.* at § 5(a)(1).

²²⁶ *Id.* at § 5(a)(2).

meet detailed notice requirements. These included a three-month advanced notice of any proposed move.²²⁷

The requirements for franchise relocation proposed under the Sports Team Protection Act also mandated that before an owner could be granted a league approval for transfer he would have to prove extreme economic distress. This standard would have ruled out the Dodgers, Giants and Raiders-type moves, where these teams were primarily interested in the financial benefits of the *new* location.

There are a number of other problems for the owner proposing relocation that the Sports Team Protection Act would have created. First, if an owner managed to prove to the league a need to relocate, the league's decision could have been overruled by an arbitration board. In addition, some of the proposed legislative criteria contained highly subjective standards. The adequacy of the stadium, fan support, managerial mismanagement, and good faith negotiations are subjective criteria which could have allowed the league and an arbitration board a great deal of discretion in approving or disapproving a proposed relocation.

²²⁷ *Id.* at § 5(b)(1-9). The criteria included:

(1) the adequacy of the stadium or arena in which the team played its home games in the previous season and the willingness of the stadium or arena authority to remedy any deficiencies in such facility.

(2) the extent to which fan support for the team has been demonstrated during the team's tenure in the community;

(3) the extent to which the team has, directly or indirectly, received public financial support by means of any publicly financed playing facility, special tax treatment, and any other form of public financial support;

(4) the degree to which the owner or management of the team has contributed to any circumstance which might otherwise demonstrate the need for such relocation;

(5) whether the team has incurred net operating losses, exclusive of depreciation and amortization, sufficient to threaten the continued financial viability of the team;

(6) the degree to which the team has engaged in good faith negotiations with members and representatives of the community concerning terms and conditions under which the team would continue to play its games in such community;

(7) whether any other team in its league is located in the community in which the team is currently located;

(8) whether the team proposes to relocate to a community in which no other team in its league is located; and

(9) whether the stadium or arena authority, if public, is not opposed to such relocation.

The possibility of multiple interpretations of the subjective standards and the wealth of discretion granted to the league and the arbitration board would likely result in further litigation of their decisions. Litigation based not on the merits of the decision, but rather, on the subjective criteria used by the board and the league could be considered by the courts as arbitrary and capricious.

Finally, the notice requirements placed burdensome time constraints on the owner and the \$50,000 escrow requirement might have placed a too heavy financial burden on the owner. Both of these factors may also have negated any negotiating position he might have had with a new location's stadium manager. The new stadium manager would know that the owner would be as dependent on them throughout this procedure, as they were on him. While certainly advantageous to the proposed new stadium manager, such an arrangement would have had a deleterious impact on the owner.

C. *The Leagues*

In view of the considerable time and expense that professional sports leagues have gone through to prevent unauthorized relocation of their member franchises, it would follow that the leagues would support legislation like the Sports Team Protection Act.²²⁸ In reality, however, the leagues, while supporting the purposes of the Act, opposed passage of the Act and any similar

²²⁸ *Id.* at § 6. The notice would have had to: be delivered through certified mail or be personally delivered; contain a statement of intention to relocate, the new location, reasons for such relocation, and the date on which such relocation is scheduled to occur; and, a certified copy of the determination of the league pursuant to section 5 of this Act.

Id. at 6(b)(2-4).

When a person furnishes notice pursuant to this section, such person shall also transmit to the league a cashier's check in the amount of \$50,000. The league shall deposit such check in an escrow account which it establishes for such purpose. Amounts deposited under this subsection shall be used for activities of the Board established under section 7 of this Act. Any amounts remaining in such account after the termination of the Board pursuant to section 7(b) of this Act which are not required for expenses incurred by the Board shall be returned to such person.

Id. at §(b)(c).

legislation which would serve to constrain the decision-making process of the leagues.²²⁹ The testimony of John A. Ziegler, Jr., President of the NHL, concerning the bill is illustrative of the position taken by the various leagues. As he noted, "the NHL supports the purpose of this bill to ensure stability in the location of professional sports clubs but suggests that more government regulation is unnecessary since the public interest of the fans and localities coincides with the NHL's interest."²³⁰

Most of the league's representatives desired a blanket anti-trust exemption, or, at a minimum, an exemption which covered league franchise establishment and transfer.²³¹ The detectable consensus of the professional sport organizations seemed to warn that since the leagues are the ones who were the most knowledgeable about their particular sports, government intrusion would only hurt, not advance, the public interest.²³²

²²⁹ NFL Commissioner Pete Rozelle has noted "under the precedent set by the Davis case every one of our league's decisions could potentially be challenged as a conspiracy." *Supra* note 26, at 39.

²³⁰ See generally *Sport Bosses Seek Bill to Limit Team Moves*, *Star-Ledger* (Newark, NJ), Feb. 5, 1985, at 53; and *Baseball May Fight Franchise Measure*, *Star-Ledger* (Newark, NJ), Jan. 24, 1985, at 9.

²³¹ *Sports Team Protection Act Hearings*, *supra* note 8, at 154. NHL president Ziegler also noted that:

This legislation is prompted, we believe, by recent transfers of clubs. But it is not the appropriate response. Establishing a cumbersome, costly (to taxpayers) and time-consuming process of review of proposed transfers by a quasi-governmental agency is not the answer. Rather sports leagues should be given the freedom to refuse to permit a club to move without fear of the harassment of having to defend antitrust suits. Both the NHL and the National Basketball Association have refused to permit moves—exactly what the legislation is aimed at—and are now in Federal court defending themselves for that refusal. The National Football League was apparently so intimidated by fear of further costly antitrust litigation that it meekly acquiesced as the owner of the Baltimore Colts moved his team to Indianapolis. Next year it could be the Washington Redskins. Although the NHL believes it has not violated the antitrust laws, inasmuch as the NHL interest is the same as that of Congress, a clear grant of limited immunity from the antitrust laws to permit professional leagues to say "No" to their would-be carpetbaggers would ensure the stability Congress is seeking without the need for governmental action.

Id.

²³² *Id.* at 153. Philip R. Hochberg stated on behalf of the NBA that:

[a]bsent a modification of the antitrust laws to enable sports leagues to exercise responsible business judgment in deciding the geographic locations in which their teams will operate, the leagues will continue to face

The NHL, in particular, argued that if legislation was to be enacted it should return them to the position they were in following the decision in *San Francisco Seals, Ltd. v. National Hockey League*.²³³ As explained by the NHL, that decision established that, "territorial restraints imposed by the League did not restrain commerce and were not a violation of antitrust law."²³⁴ The court reached this conclusion despite the then-existing requirements for unanimous approval by the NHL owners before a franchise could relocate. Unfortunately for the NHL and other professional team sport leagues, however, the recent *Raiders* decision seriously questions the precedential value of the *Seals* decision.

The NHL was particularly concerned about the impact of the *Raiders* decision because of its recent trouble with the franchise relocation involving the St. Louis Blues. In May 1983, Ralston-Purina Co., which owned the Blues, sought to sell the franchise to a group in Saskatoon, Saskatchewan, Canada for \$13 million.²³⁵ The NHL Board of Governors rejected the proposed sales by a vote of 15-3.²³⁶ In response, Ralston-Purina filed a \$20 million antitrust lawsuit against the league which could have potentially cost the league \$60 million if treble damages were awarded.²³⁷ In July 1983, the NHL approved the sale of the Blues franchise by Ralston-Purina to a local St. Louis consortium

the prospect of protracted and burdensome litigation, and potentially devastating legal penalties, no matter what action they take with respect to proposed franchise relocations.

Id.

²³³ *Id.* at 62-63 (testimony of NFL Commissioner Pete Rozelle). Commissioner Rozelle stated that:

legislation should provide a comprehensive solution to the problem of unrestricted team relocations . . . legislation should recognize the vital interest of all league participants in deciding where they will produce and market their common entertainment product. Legislation should thus vest leagues themselves with the primary decisionmaking authority . . . the NHL questions the need for establishing a federal board or agency. . . .

Id.

²³⁴ 379 F. Supp. 966 (C.D. Cal. 1974).

²³⁵ *Sports Team Protection Act Hearings*, *supra* note 8, at 155.

²³⁶ See *NHL to Weigh Plan to Buy Blues and Keep Club in St. Louis*, N.Y. Times, May 29, 1983, at 59.

²³⁷ See *The Blues' Saga Drags On and On and . . .*, HOCKEY NEWS, (June 1983).

for \$12 million by a vote of 18-2.²³⁸ The NHL anticipated that the approved sale would help its defense of the pending antitrust suit.²³⁹ The case was recently settled.

Opposition to the Sports Team Protection Act extended beyond the established leagues to the newest entry in the pro team sports industry, the United States Football League (USFL).²⁴⁰ The USFL opposed the Act, despite the fact that it would have enjoyed a five-year exemption from the legislation.²⁴¹ Harry Usher, the USFL Commissioner, questioned the need for any antitrust legislation which he believed created, "an impossible entry position," for new professional leagues.²⁴² Instead, Usher noted that the leagues should be forced to compete in a "free and open market, which would ultimately cause the creation of more franchises for communities who could support them adequately."²⁴³

Any support of the Act by the NFL quickly evaporated when the bill was amended and voted out of committee. As amended, the bill did not give the NFL the retroactivity clause it sought to force the Raiders and Colts to move back to their original

²³⁸ NHL officials at one time saw little likelihood of an out-of-court settlement for which Ralston-Purina then wanted \$13 million. See *Brass To Talk, Not Act, On Expansion*, N.Y. Daily News, Feb. 12, 1985, at 42.

²³⁹ See *Not All Happy With Blues' Sale*, U.S.A. Today, July 25, 1983, at 8C. Ralston-Purina claimed losses of \$20 million during seven seasons of ownership.

²⁴⁰ *Id.*

²⁴¹ *Sports Team Protection Act Hearings*, *supra* note 8, at 71. Steven E. Ehrhart, Executive Director for the USFL, testified:

The United States Football League supports the goals and policies reflected in S.2505. Major league professional sports franchises are of crucial and vital economic importance to communities, and that public interest needs protection. However, that protection is not best accomplished by the passage of this legislation. I believe that the interests of all parties are served by allowing the League to make economically sound business decisions regarding the location of their respective clubs. The federal regulatory framework provided by this legislation impairs the League's ability to make such financial determination.

. . . [T]his should be an internal financial determination made at the league level, and should not be subject to a web of federal regulatory procedures.

Id.

²⁴² *Professional Sports Team Community Protection Act*, *supra* note 7, at § 4(5). This Act would have granted a seven year exemption for a new league. The USFL exemption would have expired in 1989.

²⁴³ *Supra* note 32, at B8.

franchise locations.²⁴⁴ Instead, the revised bill included an alternative solution, by which the NFL would have been exempted from the coverage of the Act for a stipulated period of time if the league created two new franchises by 1987 and placed one of them in Baltimore.²⁴⁵ The NFL viewed this amended legislation as creating additional federal intrusion, while giving it no relief from the Raiders' situation by either relocating the franchise back to Oakland or relieving the league of treble damages resulting from the antitrust decision.²⁴⁶ As the NFL noted in a subsequent press release, "[t]he heart of the problem is that a federal court in Los Angeles has stripped away from professional sports leagues the tools which helped preserve franchise stability. The sensible solution is to give these tools back to the league, not to establish yet another federal bureaucracy."²⁴⁷

In general, it seems that the sports leagues are at an impasse as to what to do about franchise relocation. They seem to want only an antitrust exemption, with no added restrictions to their league operation and discretion in decision-making. Facing escalating problems in the area of relocation,²⁴⁸ the leagues are not

²⁴⁴ *Id.*

²⁴⁵ *Sports Team Protection Act Hearings, supra* note 8, at 63 (statement of Pete Rozelle, Commissioner of the NFL). The NFL Commissioner commented that: The NFL believes that legislation should apply to the Colts' and Raiders' situations . . . [T]he NFL has supported legislation . . . applicable by its terms to team moves that remain the subject of pending court actions.

Id.

²⁴⁶ *Id.* See also *Sports Teams Protection Act Report, supra* note 143, at 13.

²⁴⁷ See *supra* note 11; see also *Franchises "Free Agency" and Its Impact*, N.Y. Times, Sept. 2, 1984, § 5, at 2. Jay Moyer, counsel to the NFL Commissioner, has noted that:

This bill rests on the incredible notion of a scarcity of pro football teams in America. There are now 45 pro football teams; Major League Baseball has only 26 teams; the National Basketball Association 23; and the National Hockey League 21.

With the courts making sports leagues powerless to act on team-location matters, the bill authorizes part-time third-parties to handle critical league affairs.

So how can team stability be restored and the foundation set for future NFL expansion? First and foremost, the antitrust chaos must end. A professional league must be legally recognized for what it is—a partnership of its teams and a unified business.

²⁴⁸ In the NBA, during 1985, there were the proposed moves of the Kansas City Kings (*supra*, note 4), the Milwaukee Bucks (*supra*, note 4), and litigation involving the unapproved relocation of the Clippers franchise from San Diego to Los Ange-

yet prepared to seek a permanent solution which would encompass the concerns of all the parties involved.²⁴⁹

D. *Players and Players' Associations*

The position of professional sports team players and their players' associations is limited with respect to franchise relocation. Since some of the players may be directly affected by a franchise relocation, however, they have individual concerns about legislation such as the Sports Team Protection Act.²⁵⁰ Within the broader spectrum of labor negotiations, they have specific reservations over any legislation that would grant the professional leagues an exemption from the antitrust laws.²⁵¹

Gene Upshaw, Executive Director of the NFL Players' Association (NFLPA), addressed these concerns at the Sports Team Protection Act committee hearings. As he noted, "[t]he experi-

les. See *NBA Seeks Answers for Clippers*, Boston Globe, June 23, 1982, at 28. In preparation for the 1984-85 NBA season, the Clippers had moved their franchise from San Diego to Los Angeles. The NBA Board of Governors did not approve the move and immediately filed suit to block the relocation. In 1982, the Clippers had threatened the same move, but reconsidered when the NBA filed a lawsuit seeking a declaratory judgment to block the move and \$10 million in damages from the Los Angeles Coliseum Commission for trying to persuade the franchise to relocate. *Id.* The NBA's suit which was filed in 1985 sought \$25 million in damages for the unapproved relocation but according to Clippers General Counsel Arn Tellem the "lawsuit is just a sham. David Stern is probably trying to show that the league can't be pushed around." *On the Move*, L.A. Times, Sept. 4, 1984, at C1. In March 1985, the Clippers filed a \$100 million suit against the NBA, charging that the league has conspired to terminate the franchise since 1981. See *Miscellany: Clippers Sue NBA for \$100M*, Boston Globe, Mar. 9, 1985, at 30.

²⁴⁹ The relocation of franchises can extend beyond the location of the regular season playing site. The New York Mets (MLB) in 1985 decided to move their spring training site from St. Petersburg to St. Lucie, Florida beginning with the 1988 season. In order to attract the Mets, St. Lucie had agreed to build a 7,500 seat stadium, four to eight practice fields, and player's housing on a 95-acre site. The complex will be financed with general interest bonds and a tourist tax. The complex was proposed in part to increase the tourist trade. See *Mets Mull Move from St. Pete*, N.Y. Post, Feb. 13, 1985, at 66.

²⁵⁰ Director Allen announced concern "that an exemption would be used by the sports leagues to broaden monopoly powers . . . We think competition in the marketplace is very helpful." *Sports Team Protection Act Hearings*, *supra* note 8, at 98 (testimony of Doug Allen, Executive Director, USFL Players' Association).

²⁵¹ "You are concerned, as we are, about the protection of cities and fans. But we feel that granting any more power to a group that has enough power already, under the guise of protecting the fans and the players, would be wrong." *Id.* at 92 (testimony of Gene Upshaw, Executive Director of NFL Players' Association).

ence of team relocation under baseball's antitrust exemption offers little reason to expect that the NFL will act to protect and respect the interests of municipalities."²⁵² Upshaw's testimony was strongly supported by Donald M. Fehr, Acting Executive Director of MLB Players' Association. As Fehr pointed out, "[r]epresentatives of the Players' Association have previously testified on several occasions with respect to the anticompetitive effects of special antitrust treatment of professional sports leagues in general—and of major league baseball in particular."²⁵³ In sum, the players' associations advocated legislation to stabilize franchise movement. However, they did not share the league's general preference for blanket antitrust immunity. The unification of the various players' associations in their efforts to control the relocation problem poses a significant barrier to franchise owners, especially to the passing of a blanket antitrust immunity.

In 1985, both the NFLPA and the United States Football League Players' Association (USFLPA) shared the same office in Washington, D.C. under the title of "Federation of Professional Athletes."²⁵⁴ In March 1985, it was reported that the NFLPA had filed a position paper with the Congressional Committee on Commerce in support of the USFL's position that the NFL dominates network television coverage of professional football.²⁵⁵ If

²⁵² *Id.* Upshaw also commented on the effects of the *Raiders'* decisions and noted that:

We urge this committee not to disturb these decisions by legislation. It would be a serious mistake for Congress to send a signal to the courts that the League may enforce restrictions on team movement without satisfying antitrust requirements.

Id. at 93.

²⁵³ *Id.* at 102. Fehr also noted that:

In summary, we agree that if the public interest would be served by restricting the territorial movement of franchises, that restriction should be improved as a matter of law, and not by league action. The public policy of the United States should not be determined in owner's internal meetings. Having said that, however, I am of the view that this legislation is not designed to meet the central problem, which is an insufficient number of franchises. We suggest that this is the problem that should be addressed. In baseball, we submit that prompt congressional action to eliminate baseball's antitrust exemption would be the surest way to accomplish that goal in the fastest possible time.

Id.

²⁵⁴ *Id.* See also Davis, *NFL Can't Find Peace of Mind*, *supra* note 85.

²⁵⁵ *Id.*

so, this would be indicative of how the players' associations could also band together in dealing with the franchise relocation issue.

VI. CONCLUSION

The decision of the Supreme Court in the *Raiders* case, the subsequent moves of the Colts and Jets, and the rumored and threatened moves of other franchises, have only strengthened the impetus to address the franchise relocation issue.²⁵⁶ The Sports Team Protection Act and other legislative proposals were introduced in the 1985 session of Congress. While each of the legislative proposals was laudable, each had its faults. A delicate balance must be attained between cities which have franchises, cities which would like franchises, current team owners, prospective team owners, the leagues, the players, the players' associations and the fans. In addition to those numerous interests, each league is, to some extent, unique. For example, baseball has an antitrust exemption and the other sports do not; there are great financial disparities between the leagues and teams within leagues; and, football has competition (USFL-NFL), while the others do not. The task of fashioning legislation which considers the different concerns of these constituencies is extremely challenging. This was precisely the problem with the proposals currently before Congress in 1985. The legislation was proposed by a specific interest "group," and at a minimum, each piece of legislation did not consider all of the different interests and variations among the leagues. For these reasons the author proposes that the following should be considered in drafting future legislation:

1. Free Market System. This should be the underlying basis for the relocation, expansion and competition within the professional team sports industry.

2. No Federal Sports Agency or Arbitration Board. The free market system would obviate the need for a federal sports agency or arbitration board. There is no need to add another level of federal bureaucracy which would hinder the free market system, especially one perhaps lacking the expertise of the

²⁵⁶ During the 99th Congress (1985), ten bills were introduced to deal with the problem of professional sport franchise relocations. See *Plain Talk with Davis May Signal A Shift in NFL*, *supra* note 33; and *supra* note 17.

leagues themselves. In addition, much of the decision-making criteria proposed for the arbitration board was subjective and would only lead to further litigation.

3. Limited Antitrust Exemption for Expansion. The legislative solution addressed by the Sports Team Protection Act concerning the problems of franchise relocations can be best solved by creating more expansion franchises.²⁵⁷ The problem is essentially that the professional sport leagues have not allowed expansion franchises where there has been a demand for them. If expansion franchises are not in the offing, the community looking for a franchise redirects its attention to entice existing franchises to relocate by offering new stadiums, better geographic locations, guaranteed attendance, loans, practice fields and other incentives. This situation gives tremendous leverage to the franchise owners who want to relocate their franchises. An additional sidelight, which is often overlooked, is that this "demand-greater-than-supply" situation is also extremely advantageous to the franchise owners who do not want to move. These franchise owners, when they are negotiating a new lease, renegotiating an existing lease, or asking for renovations or improvements may use the threat of relocation during negotiations. Some speculate that this is why a league always leaves an attractive community or two without a franchise. This prompts communities who own and operate facilities to take a defensive position, changing their negotiating stance from a profit/break-even financial analysis to a cut-the-loss approach, predicated upon the desire to retain the franchise.²⁵⁸

The solution to this is to allow the leagues to expand. It has

²⁵⁷ Not all commentators feel that expansion is the answer. It has been noted that in MLB there are at least seven franchises (Oakland, San Francisco, Texas, Seattle, Cleveland, Pittsburgh, and Minnesota) experiencing financial difficulties and that expansion would only increase the problem. See *Expansion Would Make Big Headaches Bigger*, N.Y. Daily News, Feb. 17, 1985, at 99.

In April 1980, MLB Commissioner Peter Ueberroth commented that, at that time, no city met his personal requirements for consideration as an expansion team. Denver Mayor Frederico Pena noted that Ueberroth's remarks were "a major insult to the people of Denver." Denver had 70,000 patrons at two pre-season exhibition games in the spring of 1985. *Ueberroth Draws Fire*, N.Y. Times, Apr. 10, 1985, at B14.

²⁵⁸ While the need for legislation in this area is debated, the financial considerations involved in acquiring or retaining a franchise are significant. In the case of Indianapolis, the Capital Improvement Board (CIB), which oversees the Hoosier

been contended, specifically by the NFL, that they cannot expand due to potential antitrust claims (and a resulting treble damages award) from any applicant who is denied a franchise in the expansion selection process. One possible solution is to give the pro-

Dome, estimated a \$1.397 million profit annually from its lease with the Colts based on the fiscal projections below:

Income to the Board

1. The board received \$250,000 annual rent from the Colts.
2. Assuming that average game attendance is 60,000 people . . . total receipts with an average ticket price of \$15.50 are \$930,000. The ticket receipts go to the Colts, but the board receives a 5 percent tax on that amount, equaling \$46,500 per game or \$465,000 for the year's 10 games. (Under the lease agreement, the average ticket price cannot be less than \$15.50 nor more than \$25).
3. Again assuming 60,000 fans and estimating that each fan will buy an average of \$3 worth of snacks and drinks from the concession stands, total concession sales per game will be \$180,000. The board receives 41 percent of the concession receipts under its current contract—and the Colts will not receive a share of the food and drink concessions—which translates to \$73,800 per game, or \$738,000 per year for the board.
4. The board will receive \$1.276 million in payments for the suites, or "sky boxes." The Colts will receive \$500,000 of that, leaving \$776,000 for the board.
5. The board will receive \$55,000 in parking fees for cars and buses.
6. The board will receive \$200,000 from advertising on the scoreboards.
7. The games will result in an additional \$49,000 in food and beverage taxes and \$101,000 in additional hotel and motel taxes flowing to the board.
8. Total income for the board is \$2.643 million.

Expenses for the Board

1. The cost to the board for game-day personnel, medical facilities, post-game cleanup and so forth will be about \$15,000 per game, or \$150,000 per year.
2. The training facility that the board will build for the Colts is estimated to cost up to \$4 million. Assuming that money for the facility could be borrowed at 10 percent interest over 10 years, the annual cost of the facility would be \$650,000.
3. The board's payment of interest above 8 percent on the \$12.5 million loan . . . capped at 14 percent interest—was estimated at \$437,500 per year.
4. Total cost to the board annually is \$1.237 million.

Thus the Board estimated it would receive \$1.397 million in annual revenues. The estimates did not include a one-time \$25,000 payment to the Colts to defray moving expenses. They did not include any estimates for legal expenses that may be necessary to defend against actions taken by the City of Baltimore or others which might contest the Colts' move to Indianapolis. *See City Makes \$1.3 Million Annually from Colts Move*, Indianapolis Star, Apr. 1, 1985, at 14.

fessional sports leagues a limited antitrust exemption specifically and narrowly designed for expansion. Such an exemption, however, should not, as proposed by the Sports Team Protection Act, be applied to the relocation of existing franchises. This would constitute an infringement upon the property rights of franchise owners to develop and improve their businesses. (Relocation will be addressed below). Indeed, the problem of relocation will diminish substantially as new franchises are made available to communities. The communities would have to weigh the cost of attracting an existing franchise with that of acquiring a new one.²⁵⁹ An expansion franchise may be less costly to a community since the lease terms would not have to be as attractive and there would be no litigation expenses to defend a suit brought by the community losing its franchise.

In establishing this limited antitrust exemption, standards could be enacted in the legislation to assure that the leagues would not abuse their new status. This would involve a delicate balance of league control over expansion and an assurance of expansion when necessary. One such standard might require that all questions of league expansion need only a majority vote of the owners. It is essential, however, that the leagues maintain an integral and substantial role in the decision-making process with respect to expansion for three reasons. First, while the existing team owners have vested property rights which they should be able to protect, they should not exploit this situation by fostering a scarcity of franchises, which has arguably occurred in the past. Second, it would not be sound public policy to force or cause the product to become too watered-down in quality because of rapid expansion. Finally, current owners of team franchises are best qualified to judge if the league is expanding too fast and developing too many "weak sisters."

4. No Legislative Requirement to Expand. The Sports Team Protection Act requires the NFL to expand. The author agrees and argues that this should not be legislatively mandated.

²⁵⁹ In November, 1985, MLB Commissioner Peter Ueberroth noted that one of the league's major problems was the pending sale of seven franchises. Despite these franchise sales, Ueberroth found that there was pressure on the league to expand into new cities and that consideration would have to be given to those demands in the near future. See *Ueberroth Will Address Owner Disunity, TV Glut*, Star-Ledger (Newark, NJ), Nov. 29, 1984, at 94.

Some may argue that the limited antitrust exemption for expansion does not guarantee league expansion and therefore expansion should be mandated. However, the free market system should encourage expansion, and if a league fails to expand, there are potential risks. For example, if a league allows too many attractive cities to remain without franchises, a new league may develop which could lead a host of competition-based dilemmas. Such is the case today in professional football, with the development of the United States Football League (USFL). In addition, the USFL reduces NFL expansion possibilities and stadium lease leverage situations. The USFL has located franchises primarily in non-NFL cities such as Birmingham, Phoenix, Baltimore, Oakland, and Jacksonville.²⁶⁰

This proposal, therefore, would reject any requirement that mandates NFL expansion into Baltimore, such as proposed by the Sports Team Protection Act. It would also reject the NFL's preference for retroactive legislation that would usher the Raiders and Colts back to their original cities. The NFL violated antitrust laws when it prevented the Raiders' move and did not pass relocation rules afterwards—it should not be aided at this juncture. The Raiders' move was deemed legal by the courts, and the Colts' move was accomplished after the league failed to promulgate new rules with respect to relocation. In addition, the Raiders, Colts, and the cities of Los Angeles and Indianapolis would be penalized for what has been deemed by the courts to be free and legal competition. An additional compelling consideration is that forcing NFL teams back to Oakland and Baltimore would hurt the USFL, which has franchises in those cities. The author suggests that the NFL should be allowed to expand at will and predicts that without USFL franchises in Baltimore and Oakland, these cities would be at the top of the NFL expansion list. Indeed, if the NFL does not expand to Baltimore and Oakland, all the league's supposed concerns voiced during the Colts' and Raiders' moves for the loyal NFL fans in those cities would be viewed as spurious.

²⁶⁰ The development of new, competing leagues can lead to an eventual absorption of the new league into the old league (American Football League into NFL; American Basketball Association into NBA). Some commentators expect that this is the ultimate goal of the USFL owners. See *The USFL's Grand Design*, N.Y. Times, Oct. 23, 1984, at B9.

5. Legislative Relocation Standards. Reasonable rules based on objective criteria should be promulgated to guide leagues in relocation decisions. Such legislation should be largely based on the district court's decision in the *Raiders* case. This is precisely what the NBA has accomplished²⁶¹—implementing criteria which strikes a balance between the concerns of the fans, the community, the league and the franchise owner. These are reasonable standards which allow the free market system to work by giving the leagues the authority to exercise their own business judgment without interference from the government. The vote requirement should be a majority one, and not the 3/4 vote preferred by the NFL.

6. Lease Negotiations By Stadium Management. Finally, it is incumbent upon stadium/arena management to negotiate better leases with franchises, thus firmly securing any investments made by the communities, as well as accommodating the needs of the team owners.²⁶² Municipally-owned facilities must establish stronger internal management, possibly with professional management firms, which specialize in facility management. This may be a preferable alternative to the politicized atmosphere that inhabits many of these publicly-owned buildings.²⁶³ Only with knowledgeable and experienced managers and negotiators will facilities be able to negotiate fair leasing arrangements.

An ironic example of the need for better lease agreements involves the NFL's Raiders franchise. The lease problem, however, involved the Los Angeles Memorial Coliseum rather than the Oakland stadium. It seems that with all the problems associated with the Raiders' move to Los Angeles, no final lease was signed with the Coliseum when the Raiders first moved to Los Angeles. As a result of this oversight, the Raiders were seeking further lease concessions from the Coliseum, with a rumored

²⁶¹ *Supra* notes 197-98.

²⁶² For instance, there are plans in Baltimore to build a new \$80 million stadium designed to hold 65,000 fans. Legislative approval, however, hinges on whether the Orioles (MLB) and Stars (USFL) will sign long-term leases. See *Proposal for An \$80 Million Stadium*, Sports Industry News, Jan. 23, 1985, at 23, see also *supra* note 148.

²⁶³ The City of New York has been criticized for lacking a central management system for its multiple stadiums and recreational facilities and for dealing with franchise relocation problems in a management-by-crisis manner. See *Why NY's Fumbling in the Sports Game*, N.Y. CITY BUSINESS, Feb. 25-Mar. 8, 1985, at 1.

threat to relocate the franchise again.²⁶⁴ The Raiders have been very successful financially in Los Angeles, setting new NFL records for a single game gross income with consecutive game ticket sales of \$1.4 million.²⁶⁵ In December, 1984, a lease between the Raiders and the Coliseum Commission was signed, retroactive to 1982.²⁶⁶ It established a ten-year lease with five three-year options. As part of the lease agreement, Raiders' General Manager Al Davis received a \$4 million loan.²⁶⁷

There are indications that stadium managers are negotiating better leases and enforcing them in the event of a breach. For instance, the Pontiac (Michigan) Silverdome Stadium Authority, upon hearing reports that the USFL Michigan Panthers might merge with the Oakland Invaders and relocate to California, brought an immediate suit to enforce a fifteen-season lease.²⁶⁸ The suit was settled out of court with the Silverdome accepting \$1.325 million as a settlement, and allowed the Panthers to move and merge with the Oakland franchise.²⁶⁹

For New Jersey, the consequences of legislation such as the Sports Team Protection Act could be extensive.²⁷⁰ The Meadowlands Complex has attracted professional franchises because of its excellent new facilities. It has been one of the developing sports areas which has sought to attract franchises. This is true despite a location outside of the "Sun Belt" where most such new development has occurred. Senator Lautenberg's efforts to redefine the franchise intra-territorial move in the Act were particularly helpful in protecting the interests of New Jersey. Continued

²⁶⁴ See *Raiders' Deal, Coliseum Status Remains Unclear*, L.A. Times, Oct. 12, 1984, § III, at 1.

²⁶⁵ *Raiders Hit It Big at the Turnstiles*, L.A. Times, Oct. 10, 1985, § III, at 5.

²⁶⁶ *Raiders Ring Up Record NFL Gross*, Star-Ledger (Newark, NJ), Dec. 19, 1984, at 104.

²⁶⁷ *Id.*

²⁶⁸ See *Michigan Panthers Sued*, N.Y. Times, Nov. 3, 1984, at 21.

²⁶⁹ See *Merger Cleared*, N.Y. Times, Nov. 22, 1984, at B12.

²⁷⁰ The Meadowlands Complex is a 750 acre site which has cost \$450 million but which has been financed exclusively from funds generated by its activities, primarily harness racing. *Why NY's Fumbling Sports Game*, *supra* note 263, at 18. In 1983, the racetrack generated \$40 million which was used to meet debt obligations of \$38.3 million. In addition, in 1983 the Meadowlands Complex generated \$10.9 million in revenue for the New Jersey state treasury. Besides its own construction costs, the Meadowlands Complex is estimated to have generated \$800 million in new construction (i.e., hotels, offices, etc). *Id.*

diligence will be required, however, since further efforts focused upon the franchise relocation problem are expected to be addressed in the future. Of particular significance will be how any legislation would impact on the securing of a professional baseball team for New Jersey.

It was just such a concern that served as an impetus in December 1984, for the New Jersey Legislature to pass legislation allowing the New Jersey Sports and Exposition Authority (NJ-SEA) to expand beyond their current site at the Meadowlands Complex to build a new baseball stadium.²⁷¹ This legislation also allows the authority to enter into negotiations for an existing or expansion baseball franchise, and to participate, if necessary, in the management or ownership of a baseball team or any other type sports franchise. In addition, the law provides that the NJ-SEA may become involved in the ownership or construction of additional race tracks that could possibly serve (but need not) as a revenue base for the baseball stadium and may build an aquarium, exposition hall, and hotel at the existing Meadowlands site.²⁷²

Of particular importance was language that would permit the NJSEA to buy sports franchises as a means of keeping them from leaving New Jersey.²⁷³ The NJSEA strongly supported the legislation because the authority could not negotiate seriously with potential baseball franchises until they had the ability to construct a baseball facility.²⁷⁴ In discussing the importance of securing a baseball team, New Jersey Governor Thomas Kean noted that the new sense of pride that had developed in the state with the growth of sports at the Meadowlands would only expand with the securing of a baseball franchise.²⁷⁵

While the possibility of a "ferryboat series" between New Jersey and New York baseball clubs might be exciting to local fans, the citizens of San Francisco or Cleveland, whose franchises

²⁷¹ See *Sites, Teams Targeted for Baseball Stadium*, Star-Ledger (Newark, NJ), Dec. 9, 1984, at 1; and *Kean Enacts Baseball Effort*, *supra* note 59.

²⁷² See *New Role for Sports Authority*, Star-Ledger (Newark, NJ), Dec. 7, 1984, at 1.

²⁷³ See *Authorization for Ballpark Placed on the Fast Track*, Star-Ledger (Newark, NJ), Dec. 13, 1984, at 1.

²⁷⁴ See *Bills on Jersey Stadium Are Backed at Hearing*, N.Y. Times, Dec. 13, 1984, at B2.

²⁷⁵ See *Kean Hopeful of Getting Major League Baseball*, N.Y. Times, Dec. 12, 1984, at B2.

are rumored to improve the odds for such a contingency, must be conversely concerned. It seems likely that legislation such as the Sports Team Protection Act may become a reality in the near future, especially if the leagues do not expand and the movement of franchises becomes so widespread as to cause the Congress to overcome regional concerns and enact national legislation to deal with the problem. In any event, any legislation enacted must address all parties concerned if it is to deal effectively with franchise relocation. Otherwise there is a strong likelihood that Commissioner Rozelle's feared "era of free-agent franchises"²⁷⁶ may become a reality that eventually could disturb the success that New Jersey has recently enjoyed.

In sum, although expansion and relocation are intimately tied together, and in some situations may be the cause and the result, the problems should, as proposed above, be handled separately. Relocation should be governed by balancing the right of individual owners with the leagues, by the fans and communities guidelines set forth in the *Raiders'* decision, and legislation which establishes those guidelines as being reasonable within the antitrust laws. Expansion should be dictated by the marketplace, with the establishment of a limited antitrust exemption to allow expansion. The NFL should be given the benefit of the doubt for its claims that it did not expand in the past because of the fear of antitrust lawsuits. All professional sport leagues should be watched extremely closely in the future with respect to expansion. The NFL should realize that Congress will pass legislation forcing the NFL to expand or form a federal sports agency if it fails to address this issue properly in the future. Although expansion and relocation are handled differently and separately, this dual approach should produce results which are desirable, interactive and coordinated.²⁷⁷

²⁷⁶ See *Ease On Down the Road*, *supra* note 116.

²⁷⁷ See also Glick, *Professional Sports Franchise Movements and the Sherman Act: When and Where Teams Should Be Able to Move*, 23 SANTA CLARA L. REV. 55 (1983); and Lazaroff, *The Antitrust Implications of Franchise Relocation Restrictions in Professional Sports*, 53 FORDHAM L. REV. 157 (1984).