

THE BOOM IN FRANCHISE RELOCATIONS: MOVING CITIES NO MATTER THE COST

*Jack Noonan**

INTRODUCTION

Since the beginning of professional sports, there has been a consistent and nationwide trend of franchises relocating from city to city across the country. Since 1966, there have been 35 franchise relocations across the major four sports leagues—the National Football League (NFL), the National Basketball Association (NBA), Major League Baseball (MLB), and the National Hockey League (NHL).¹ Just this past year, there were many sporting franchises that had the conversation about a possible relocation from their current city. In particular, the NFL is always swirling with rumors that teams are fighting for new homes. On January 12, 2016, Stan Kroenke made one of the rumors true when he announced the move of his St. Louis Rams back to Los Angeles.² Now at 2016's end, the Oakland Raiders and San Diego Chargers are finalizing votes and budgeting for another possible move. In addition, the NHL announced a new team moving to Las Vegas, which expands their league even more.³ Sports franchises have constantly coerced their cities to build their teams new stadiums and facilities with the threat of relocation.

* Jack Noonan, Juris Doctor Candidate, 2018, University of Mississippi School of Law.

¹ Joe Delessio, *A Brief History of Team Relocations*, SPORTS ON EARTH (January 14, 2016), <http://www.sportsonearth.com/article/161900652/la-rams-relocation-major-sports-guide-nfl-mlb>.

² Sam Farmer and Nathan Fenno, *NFL will return to Los Angeles for 2016 season*, LOS ANGELES TIMES (January 12, 2016, 10:40 PM), <http://www.latimes.com/sports/nfl/la-sp-nfl-la-chargers-rams-20160113-story.html>.

³ Dan Rosen, *Las Vegas awarded NHL franchise*, NHL.COM (June 22, 2016), <https://www.nhl.com/news/nhl-expands-to-las-vegas/c-281010682>.

Two problems come from all of this—disappointed fan bases and annoyed tax payers who may have to help finance these brand-new stadiums. So, the questions then present themselves: (1) How are these teams allowed to move cities as much as they do? (2) Does the league have any power over the owners for leaving cities? (3) And then, which party pays for all this movement, the owner or the tax paying individual? The court’s justification to all this goes back to sports law’s favorite topic: Antitrust Law.

I. THE IMPACT OF ANTITRUST LAW

Antitrust law always finds its way back to the middle of the discussion when it comes to professional sports leagues. The Sherman Antitrust Act is the primary legal authority regulating sports leagues in this country.⁴ However, as a peculiar exception, Major League Baseball has been exempt from antitrust law since 1922, when the U.S. Supreme Court ruled that its operations did not constitute interstate commerce.⁵ Even if the MLB does not publically recognize antitrust law as its governing authority, the league does little outside of its rules so their exemption will not be under the scrutiny of Congress. However, the Sherman Act does not effectively govern the leagues when it comes to the relocation of franchises. The main purpose of Section One of the Sherman Act is that “every contract, or conspiracy, in restraint of trade or commerce... is to be illegal.”⁶ For as cut and dry as this language seems, courts do have some flexibility when applying this law. The main takeaway is that owners can use this language to have all the power in finding the best deal for their team. This exact power was flaunted by owner Al Davis in *Los Angeles Memorial Coliseum Commission v. National Football League*.⁷ He won his case against the NFL to move his franchise from Oakland to Los Angeles.⁸ From this case, the team owners knew they were able to move where they wanted, when they wanted, and the courts agreed with them.

⁴ Marc Edelman & Brian Doyle, *Antitrust and “Free Movement” Risks of Expanding U.S. Professional Sports Leagues into Europe*, 29 NW. J. INT’L & BUS. 403, 412 (2009).

⁵ *Federal Baseball Club of Baltimore v. Nat’l League*, 259 U.S. 200 (1922). *Flood v. Kuhn*, 407 U.S. 258 (1972); *Toolson v. New York Yankees*, 346 U.S. 356 (1953).

⁶ 15 U.S.C. § 1 (2008).

⁷ 726 F.2d 1381 (9th Cir. 2005). [hereinafter *Raiders*].

⁸ *Id.* at 1410.

The first impact outside the NFL was seen in the NBA shortly after the decision in *Raiders* was made. The conflict that resulted in *National Basketball Association v. SDC Basketball Club, Inc.* began when the Association successfully blocked a move by the San Diego Clippers to Los Angeles in the early 1980's without much court interference.⁹ The NBA brought sanctions against the Clippers because they were trying to make the move without approval first.¹⁰ The team remained in San Diego until the team owner, Alan Rothenberg, became irritated by the court conditions which were unfit for professional basketball.¹¹ In 1984, he packed up and moved to Los Angeles regardless of the scrutiny from the league.¹² Coincidentally, the decision from the NFL came down right after this relocation announcement, so Rothenberg could legally protect his move by claiming the league's refusal would classify as a restraint in trade.¹³ The court in *SDC Basketball Club* did not specifically rule on whether or not the NBA's relocation rule aligned with federal antitrust laws, but it did side with *Raiders* on decisions regarding antitrust issues of franchise relocations.¹⁴ So, with this case included, the validation of the *Raiders* case is all owners needed for plans of future relocation. The professional leagues' hands were tied by the court across all sports.

Sports leagues do not have as much power as they may seem to when it comes to relocation. They are hindered because any restraint by the league will be challenged, so the league has to be careful with any action they might bring to a prospective franchise on the move. Specifically for the NFL, the league had to adopt updated relocation rules and policies in 1984 after the aforementioned case when the NFL failed to block the Oakland Raiders from moving to Los Angeles.¹⁵ The court used the Sherman Act's Rule of Reason which requires courts to identify and balance

⁹ 815 F.2d 562 (9th Cir. 1987). [hereinafter *SDC Basketball Club*]

¹⁰ *Id.* at 563.

¹¹ Daniel B. Rubanowitz, *Who Said There's no Place like Home- Franchise Relocation in Professional Sports*, LOY. OF L.A. ENT. L. REV. 163, 165 (1990).

¹² *SDC Basketball Club*, 815 F.2d at 564

¹³ *Id.*

¹⁴ *Id.* at 566-567.

¹⁵ Daniel Kaplan, *Relocation bylaw is not binding for NFL owners*, SPORTS BUSINESS JOURNAL (November 9, 2015) <http://www.sportsbusinessdaily.com/Journal/Issues/2015/11/09/Leagues-and-Governing-Bodies/NFL-relocate.aspx>.

the procompetitive benefits and anticompetitive effects of an opposed restraint to determine the outcome.¹⁶ This judgment ruled that the restraint, imposed by the old Rule 4.3 on franchise relocation, was not reasonably necessary and was an illegal restraint of trade since the NFL was not a single entity and could not restrain trade.¹⁷ The court says, “We believe antitrust principles are sufficiently flexible to account for the NFL’s structure.”¹⁸ The courts do not seem to see the glaring problem and the floodgate this case opened up in its ruling.

This restriction of blocking franchise relocation inflates the problem even more, making it easier for owners to pick up and move. Even if this precedent, along with other court cases, does not take away all power from the NFL to reject a proposed franchise relocation, the league will still be extremely hesitant to block any move for fear of another court judgment against them resulting in liability.¹⁹ All the owners know this as well. They know if a better opportunity with a bigger market comes up any one of them will take it.

Currently the NFL has new guidelines set for any kind of team movement under their “Policy and Procedures for Proposed Franchise Relocations.”²⁰ They needed to alter the language of the previous rules because of *Raiders*.²¹ First, all proposed moves go to the commissioner, and then, after a committee reviews the application, the league takes a vote with all the league owners.²² Rules require, according to Article 4.3, the affirmative vote of three-quarters of the member clubs before a club may transfer its franchise or playing site.²³ In the negotiations prior, the clubs are “obligated to work diligently and in good faith to obtain and to

¹⁶ *Raiders*, 726 F.2d at 1387.

¹⁷ *Id.* at 1385.

¹⁸ *Id.* at 1401.

¹⁹ Nathaniel Grow, *Regulating Professional Sports Leagues* 72 WASH. & LEE L. REV. 1, 31 (2014).

²⁰

<https://www.leg.state.mn.us/webcontent/lrl/issues/FootballStadium/NFLFranchiseRelocationRules.pdf>

²¹ *Raiders*, 726 F.2d at 1381

²²

<https://www.leg.state.mn.us/webcontent/lrl/issues/FootballStadium/NFLFranchiseRelocationRules.pdf>

²³ *Id.*

maintain suitable stadium support in their current home community.”²⁴

The rules also bring in interesting language: “And that no club has an ‘entitlement’ to relocate simply because it perceives an opportunity for enhanced club revenues in another location.”²⁵ This clause is quite ironic because the way these businessmen have earned the wealth to buy these teams has been by always taking the best opportunity for enhanced revenue. The NFL is trying to make it seem that the commissioner and other owners are weighing in on what is best for the league, when in reality, it does not matter because the league will not remand this behavior because of prior court cases not finding in the league’s favor.

II. ARE SPORTS FRANCHISES ACTUALLY WORTH IT FOR THE CITY?

Team owners mainly choose a home for their franchise based upon the economic factors that will maximize the current profitability for their investment in the team.²⁶ Antitrust law has failed to protect the public interest. This disregard usually comes from the city as well. Cities across the country are willing to compete, to recruit, and fight for professional sports franchises because they want the alleged reputational and economic benefits that teams are believed to provide to the host city.²⁷ Local governments are spending obscene amounts of money to set up the best scenarios to earn a team and a status of a ‘major league city.’²⁸ However, this status may not be as beneficial as officials believe. According to Rodger Noll, a Stanford professor emeritus in economics, “NFL stadiums do not generate significant local economic growth, and the incremental tax revenue is not sufficient

²⁴ *Id.*

²⁵ *Id.*

²⁶ Matthew J. Mitten and Bruce W. Burton, *Professional Sports Franchise Relocations from Private Law and Public Law Perspectives: Balancing Marketplace Competition, League Autonomy, and the Need for a Level Playing Field*, 56 MD. L. REV. 57, 62 (1997).

²⁷ Thomas A. Piraino, Jr., *A Proposal for the Antitrust Regulation of Professional Sports*, 79 B.U.L. REV. 889, 913.

²⁸ *Id.*

to cover any significant financial contribution by the city.”²⁹ Noll bases his opinion on the net balance which shows almost no economic benefits for the city.³⁰ In contrast, cities only see the instant impact it will bring to their town. They perceive the identification of a sports town to add immeasurable prestige and creates an atmosphere that attracts many outside non-sport industries.³¹ To their credit, many times that is the case. However, the price to pay to be able to have that franchise is the biggest concern.

The attractiveness of professional sports franchises is what keeps this constant struggle going today. It is a constant game between the cities and the owners who know their franchise values. These individuals engage in “franchise free agency” by moving, or threatening to move, their teams to cities which do have a league franchise.³² This game creates cities all across the country, doing whatever they can to entice a team to come to their city. Owners are aware that local officials perceive the loss of a franchise as a psychologically damaging occurrence, and they use this as a bargaining piece.³³ This has created a sellers’ market, and a team owner enhances their own franchise’s profitability at the taxpayer expense.³⁴

So the question becomes why have a team at all? Shouldn’t cities should just let franchises go elsewhere if it is an economic burden to them? Well, not exactly. There is an interdependent relationship between a sports team and city that run deep within the people of the town. The relocation of a major league sports team can bring emotional distress and sense of loss to the fans of the former team.³⁵ Leagues have been subjected to tremendous

²⁹ Clifton B. Parker, *Sports stadiums do not generate significant local economic growth, Stanford expert says*, STANFORD NEWS (July 30, 2015), <http://news.stanford.edu/2015/07/30/stadium-economics-noll-073015/>.

³⁰ *Id.*

³¹ John Beisner, *Sports Franchise Relocation: Competitive Markets and Taxpayer Protection*, 6 YALE L. & POL. REV. 429, 432 (1988).

³² Mitten & Burton, *supra* note 26, at 60-61.

³³ John Beisner, *supra* note 31, at footnote 26.

³⁴ *Id.*

³⁵ Mitten & Burton, *supra* note 26, at 105.

criticism from its fans when a team relocates.³⁶ Along with the fans, many businesses have significant ties to the team name through products or branding itself.³⁷ Think about if the Chicago Cubs moved from Chicago, or if Boston did not have the Red Sox any longer. Generations would be affected and cities would have to be rebranded. Having franchise stability protects the identity of a particular team with a particular city.³⁸

With the owners' side and the city's side laid out, there is a simple solution to solve both issues: have private money pay for the stadiums or make it worth spending the taxpayer's dollar as a long-term city investment. Unfortunately, unless all cities are on board with this way of negotiating, some cities will face a classic prisoner's dilemma.³⁹ City A will offer the owner a much better deal not withstanding with the proposed solution than City B, and then the owner will relocate to City A because of the better deal.

From 1970 to 1999, local governments were estimated to spend as much as \$10.4 billion in subsidies for new sports stadiums, in addition to an extra \$1.4 billion in renovations to existing stadiums.⁴⁰ Since 2001, the NFL has received at least \$2.4 billion in stadium subsidies by themselves. The sad truth behind these mind-boggling numbers is that the taxpayers in these cities are paying for billionaires to have brand new stadiums for their lucrative teams. This money may come from a lifelong sports fan who does not mind his tax dollar going to new facilities, or it may come from a single mother of three whose kids come home with dilapidated school textbooks because there is not enough school funding for new textbooks.

To go further into the numbers, sixty-five percent of arenas and eighty-seven percent of stadiums housing teams in the four professional sports leagues are publically owned.⁴¹ Also, seventy to

³⁶ Franklin M. Fisher, Christopher Maxwell, Evan Sue Schouten, *The Economics of Sports Leagues and the Relocation of Teams: The Case of the St. Louis Rams*, 10 MARQ. SPORTS L. REV. 193, 207 (2000).

³⁷ Glenn M. Wong, *Of Franchise Relocation, Expansion and Competition in Professional Team Sports: The Ultimate Political Football?*, 9 SETON HALL LEGIS. J. 7, 11 (1985).

³⁸ Fisher, Maxwell, & Schouten, *supra* note 36, at 207.

³⁹ Grow, *supra* note 19, at 10.

⁴⁰ David Haddock, Tonja Jacobi, & Matthew Sag, *League Structure & Stadium Rent Seeking- the Role of Antitrust Revisited*, 65 FLA. L. REV. 1, 7 (2013).

⁴¹ Grow, *supra* note 19, at 28.

eighty percent of the total construction cost of these new stadiums are burdened to the taxpayers.⁴² One of the most egregious deals in all of professional sports came from Miami. Marlins owner Jeffrey Loria started suggesting he needed a new stadium, so the city cut him a deal of a lifetime.⁴³ He was required to only have the team cover less than twenty percent of the cost.⁴⁴ The county put in \$500 million for the construction of Marlins Park; however, the county did not have that money.⁴⁵ The money was loaned to them from bonds sold on Wall Street, and now the city is going to owe around \$1.18 billion from \$91 million raised.⁴⁶ This enormous debt was all for Loria to stay in Miami by means of buying him a new ballpark. Miamians had no voice in this decision, and the decision will affect them the most.

In another franchise relocation example, which gives more hope to change, the San Diego Chargers announced they were moving to Los Angeles to eventually join the Rams.⁴⁷ This move had an interesting twist that could have hopeful ripple effects in the future. The city of San Diego elected not to pursue keeping the Chargers with the city after they heard the owner's, Dean Spanos, request.⁴⁸ He was between \$450 million and \$550 million apart with San Diego on a new stadium, but rather than make up that difference, Spanos opted to move to Los Angeles ripping the San Diego Chargers from the city.⁴⁹ The politicians stood up to the

⁴² Marc Edelman, *The House that Taxpayers Built: Exploring the Rise in Publically Funded Baseball Stadiums from 1953 Through the Present*, 16 VILL. SPORTS & ENT. L.J. 257, 257(2009).

⁴³ Barry Petchesky, *The Real Cost To Miami For Marlins Park Is In The Billions*, DEADSPIN (January 25, 2013 11:10 AM), <http://deadspin.com/5978964/the-real-cost-to-miami-for-marlins-park-is-in-the-billions>.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Adam Schefter, *Sources: Chargers plan to announce move from San Diego to Los Angeles*, ESPN (January 12, 2017), http://www.espn.com/nfl/story/_id/18455802/chargers-expected-announce-move-san-diego-los-angeles.

⁴⁸ Les Carpenter, *San Diego refused to be bullied by the NFL and billionaire owners*, THE GUARDIAN (January 12, 2017, 1:27 PM), https://www.theguardian.com/sport/blog/2017/jan/12/san-diego-chargers-los-angeles-move-nfl-owners?CMP=share_btn_tw.

⁴⁹ Bart Hubbuch, *Chargers move shows sad truth of Rodger Goodell's greedy NFL*, NEW YORK POST (January 12, 2017, 7:15 PM), <http://nypost.com/2017/01/12/chargers-move-shows-sad-truth-of-roger-goodells-greedy-nfl/>.

owner and did not conform to his demands, unlike Minneapolis, Atlanta, and Seattle who all built new stadiums at risk of losing the franchise.⁵⁰ This honorable move shows that cities do not have to continue to pay billionaires millions of dollars to host their team if the negatives outweigh the positives.

The issues with professional franchise relocations do not always stem from one team leaving a city for another. They can also derive, more times than not, from within the home city because of how the particular city convinces the team to stay, as mentioned earlier. Between 1990 and 2006, there were eighty-two new venues which opened across the country.⁵¹ With this huge boom in new stadiums, there is now another problem in that many of those stadiums are unfit to house professional sport competition any longer. So, unless renovations were completed, numerous stadiums have been abandoned and left empty creating more economic catastrophe for the city. The most glaring example of this type of impact to city infrastructure is with the Astrodome in Houston. Once nicknamed the “Eighth Wonder of the World,” the concrete domed-stadium was first of its kind when it opened in 1965.⁵² This groundbreaking venue was built to host both the Oilers and the Astros.⁵³ However, since 2002, the Astrodome has only been used for Hurricane Katrina refugees.⁵⁴ So, it has been fifteen years since this massive structure has made the city any money. In fact, because of its location and size, it has lost the city millions in possible futures earnings. The city is in a bind because by either renovating the Astrodome or tearing it down for another project, both will cost a huge sum of money.⁵⁵

Unfortunately, this is not just happening with Houston. As owners continue to demand their cities to build them new stadiums, the old, immense structures will negatively impact these

⁵⁰ Les Carpenter, *supra* note 48.

⁵¹ Ryan Holeywell, *When Teams Leave, What Do You Do With the Stadium?*, GOVERNING (December 2011), <http://www.governing.com/topics/economic-dev/when-team-leaves-its-stadium-what-do-you-do.html>.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

economies. In cities such as Atlanta, with the Turner Field,⁵⁶ Oakland, with the Oracle Arena,⁵⁷ and Arlington, with Globe Life Park,⁵⁸ the old stadiums are being left standing with no tenants bringing in zero money for the city. Keeping many of these old stadiums, while putting in billions of dollars into new stadiums, is one of the numerous ways that the public interest is not protected in these franchise decisions.

III. GOVERNMENT INTERVENTION TO THIS RELOCATION PROBLEM

Even with all the issues noted, the courts have been weary of ruling with leagues to open up flexibility regarding antitrust law. The court in *Raiders* said, “To the extent the NFL finds the law inadequate, it must look for Congress for relief.”⁵⁹ So in fact, a proposed bill to address this exact issue was brought to Congress. H.R. 2740, the “Fan Freedom and Community Protection Act of 1996,” was introduced in a response to the problem of sports franchise relocation.⁶⁰ It details the problems with relocation since many owners have taken large public subsidies either to stay in the same city or to use the subsidies offered to move to another.⁶¹ Local governments can use tax dollars as leverage to bring in a new team and cover costs of the relocation fees, and, as seen in some cases, build the team a new stadium. This comes all at the demise of the individual taxpayer.

The main goal of this act was to “clarify the law regarding the rules that allow leagues to block franchise moves by providing for an explicit antitrust exemption for such rules so long as the leagues

⁵⁶ Alex Brown, *New Atlanta Stadium to replace Georgia Dome in 2017*, KOMU (December 5, 2014 7:27 PM), <http://www.komu.com/news/new-atlanta-stadium-to-replace-georgia-dome-in-2017>.

⁵⁷ Sam Amick, *Golden State Warriors break ground on new Chase Center arena in bizarre scene*, USA TODAY (January 17, 2017, 7:53), <http://www.usatoday.com/story/sports/nba/warriors/2017/01/17/golden-state-warriors-new-arena-oracle/96689206/>.

⁵⁸ Jeff Mosier and Loyd Brumfield, *Texas Rangers stadium vote passes in landslide*, DALLAS NEWS (November 8, 2015), <http://www.dallasnews.com/news/arlington/2016/11/08/texas-rangers-stadium-vote-passes-landslide>.

⁵⁹ *Raiders*, 726 F.2d at 1401.

⁶⁰ H.R. 2740, 104th Cong., 2d Sess. (1996).

⁶¹ *Id.*

base their decisions on neutral criteria and hold public hearings.”⁶² The premise of this act is just what needs to be put into place for the betterment of public interest. These owners need to be kept in check by antitrust exemptions which would trace out the league’s available power to stop unnecessary relocations. By diluting the owner’s power, this plan tries to balance the three entities at play: the owner, the league, and the city.

The Fan Freedom and Community Protection Act of 1996 also proposed specific language that required a relocating team owner to repay all of the financial aid that he would have received from that city’s government.⁶³ This requirement would be crucial in helping cities that are victims to relocations resulting in empty stadiums. To use the case study of the Rams, the city of St. Louis was negatively impacted in two major ways when Stan Kroenke moved the team to Los Angeles. Not only did the city and fans lose a team they had hosted for the past 21 years, but they also must continue to pay for the stadium they built to attract the Rams to their city.⁶⁴ At the beginning of 2015, the city and state still owed more than \$100 million in debt on the bonds used to finance the Edward Jones Dome, the stadium St. Louis put \$280 million in public funds behind in 1995.⁶⁵ The St. Louis taxpayers will be paying this stadium off until at least 2021 without a team to fill it.⁶⁶ This is a prime example of the problem of the system at large. One of the worst parts about all this is that one of the only bright spots comes from taxpayers being happy they will now not have to pay for another stadium for the Rams since the team has relocated.⁶⁷

St. Louis is not the only city that has been victimized over the decades of relocations across the leagues. Another example comes from Houston, Texas. In 1996, the Houston Oilers owner Bud Adams moved his football franchise to Nashville when Houston government officials would not pay \$245 million for a new, domed

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Travis Waldron, *St. Louis Taxpayers Aren’t Finished Paying For The Stadium The Rams Abandoned*, THE HUFFINGTON POST (January 13, 2016 4:15 PM), http://www.huffingtonpost.com/entry/rams-los-angeles-st-louis-taxpayers_us_5696955ee4b0778f46f7c330.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

stadium.⁶⁸ As another team left a city, the burden, again, was left to the Houston taxpayers of an approximately \$50 million of outstanding bond debt, which were incurred to pay for the stadium improvements in 1987.⁶⁹ These renovations were the first effort the city put in to keep Adams from relocating the team to Jacksonville.⁷⁰

The teams' fans are the real group that gets the short end of these deals. They buy tickets, merchandise, and apparel for their teams, pumping in revenue to these multi-billionaire owners, only to have their teams ripped out from under them and leaving them to pay for empty stadiums. That is how antitrust law and the current system have failed to protect the public interest, and something needs to be done to stop this from happening.

Members of Congress need to keep pushing towards change to better protect their constituents and the public interest. In 1998, another bill was introduced called the Professional Sports Franchise Relocation Act of 1998.⁷¹ Unfortunately, it did not get past the introduction stage before fizzling out without support. Its main goal was to exempt professional sports leagues from liability under antitrust law relating to the relocation of their member teams, along with applicable remedies to relocation.⁷²

IV. PROPOSALS TO PROTECT THE PUBLIC INTEREST

The main goal should be to find a perfect balance with all prior proposed bills along with new forward thinking. This article is set to propose a solution to the current problem. First, the federal government should create an agency to regulate professional sports. These leagues need some type of third party monitoring that will look past the interests of the leagues or their owners and will protect the public interest in this massive industry. As a matter of fact, for the billions of dollars that are involved with the leagues, it is odd that the leagues have been able to operate this long without

⁶⁸ Mitten & Burton, *supra* note 26, at 61.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Professional Sports Franchise Relocation Act of 1998, H.R. 3817, 105th Cong. (2d Sess. 1998).

⁷² *Id.*

interference by the government.⁷³ Our government today has hundreds of agencies that oversee all kinds matters with much lower budgets than professional sports leagues.⁷⁴ Looking to the rest of the world, it can be seen that other countries have governmental regulation of sports leagues who make decisions for the league when needed.⁷⁵ This is not to suggest we have complete government control of our leagues, nor is this article trying to advocate for the government necessarily. The main point of emphasis is to suggest an outside third party who can regulate the activity of the league with the owners and teams alike.

Going back to 1972, Congress had many sessions on a proposal to create what was called the Federal Sports Commission.⁷⁶ Unfortunately, the idea did not pan out; however, the proposal can still be used in formatting a perfect solution. According to the proposal, the agency's power would regulate four areas: television blackout restrictions, the sale of professional teams, the leagues' entry draft procedures, and limitations on competition between teams for players.⁷⁷ Using these four areas, an agency could be created for overseeing professional sports while also using language from the Professional Sports Franchise Relocation Act of 1998 specifically drafted for relocations.

Second, Congress should create new laws or change existing rules such as the Sherman Act to specifically help the taxpaying fans. As was mentioned earlier, the Fan Freedom and Community Protection Act of 1996 is a great example of how, if a similar proposal was passed, a new law could solve this problem of the taxpaying fan getting left behind with stadium subsidies. This plan would narrowly affect the overall structure of the professional league dynamic. It would limit the scope of antitrust law and tweak the application of such laws toward owners of teams. The current system has the leagues afraid to challenge owners from moving cities because of the literal interpretation of them restricting trade.

⁷³ Grow, *supra* note 19, at 57.

⁷⁴ *A-Z Index of U.S. Government Departments and Agencies*, USA.GOV <https://www.usa.gov/federal-agencies/>

⁷⁵ Trevor E. Brice, *Labor Pains on the Playing Field: Why Taking a Page from Europe's Playbook Could Help the United States*, 20 UCLA Ent. L. Rev. 49, 72 (2013).

⁷⁶ Grow, *supra* note 19, at 51

⁷⁷ *Id.*

As a result, there is an unjust balance of power that must be changed.

Both of these solutions would allow guidelines to be put in place to determine whether a franchise does in fact need a new home or if the owner is just looking for a better deal. Circumstances must be right for the movement of any team across the four major sports. The evaluation would come on a case-by-case basis. Current situations such as the quality and age of the team's stadium along with the city's support of the team measured by the revenue being brought in should all be considered. Then, the consideration would be weighed with factors having to do with the potential future city of the team's relocation. Factors such as the future city's excitement for the team,⁷⁸ the cost of the new stadium, the effect of league dynamic, and the economic stability of the new city are all important to consider.

The agency or the league itself, under the agency's supervision, would consider all these factors and determine if a relocation was warranted. If an agency is approved, there would need to be more guidelines put in place for protection of the public interest. The problem now comes with owners not having to pay for any renovations or new stadiums which burden the taxpayers. Instead, this article proposes that the owners would have three basic options for payment of the new stadiums. First, the owners have to pay for everything themselves; however, this option is unlikely to happen if the team is building a brand new stadium. Second, the owners can split the bill with a private third party for all the funding. For example, a report came out that the Oakland Raiders could potentially be partially funded by Goldman-Sachs to help pay for a possible new stadium in Las Vegas.⁷⁹ Third, the owners and cities come to a compromise on how much each entity should pay. This will give cities much more security in being able to profit, or at least not suffer, from teams entering their cities. The cities can set up a buy-out clause with the owners committing to an

⁷⁸ In the case of the Los Angeles Chargers, the residents of Los Angeles do not want another team in their city. The Chargers will be ignored more than the Rams already are by the LA community.

⁷⁹ Richard N. Velotta, *Raiders: Las Vegas stadium financing secure, with or without Adelson investment*, LAS VEGAS REVIEW-JOURNAL (January 12, 2017 7:45), <http://www.reviewjournal.com/business/stadium/raiders-las-vegas-stadium-financing-secure-or-without-adelson-investment>.

agreement. If the team leaves the city, the owner must pay the debt still owed on the stadium. Hopefully, this responsibility would deter the owner from making an early relocation so situations, such as the ones mentioned previously in the article, do not occur.

Through some form of concrete rules to refer back to, it will be easy to determine whether a franchise relocation is in the best interest of the public or if a relocation is actually just to further the owner's financial gain. If enough public demand occurs over the relocation of the city's team, federal regulation may become more likely.⁸⁰ Undoubtedly, any government intervention will cause some harsh feedback. A proposal of such will also lead to a lobbying war with Congressmen voting on the proposal between the leagues and owners fighting against any change while having public interest advocacy groups fighting for or against the proposal. Even with these disadvantages, the four major professional sports leagues must adopt this regulatory change so the public does not continue to be harmed.

CONCLUSION

The current state of professional sports allows the individual team owners to have too much power. This unregulated power gives a type of free authorization to team owners when deciding whether to move their franchises to cities. If the league tries to stop them, the team can sue the league, and most likely win, under antitrust law claiming the league is restricting their team's free trade to move cities. As a result, cities are having to submit to demands from the teams to build brand-new stadiums, mainly from the taxpayer's pocket.

Congress needs to take steps to protect the public interest that the current system is ignoring. This article propose two solutions for a legislative change. The first solution is to create a third party agency to oversee professional sports franchises. The second requires making slight changes and amendments to existing law or creating new legislation all together. These two solutions would not impact the popularity of the present industry. They would simply implement protections for the cities and taxpayers with owners still being able to relocate if they so choose. Both solutions offer practical

⁸⁰ Grow, *supra* note 19, at 5.

means to balance the power between the owners and the cities bargaining for their beloved teams.

The fans are the lifeline of professional sports. Without them, the leagues do not exist. It is time to show appreciation for them and make the changes necessary to protect them and their cities.