Squeeze Play: The Game of Owners, Cities, Leagues and Congress

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I. Introduction

In the next ten years, twelve stadium leases will expire between NFL or Major League Baseball franchises and their host community. In the next twenty years, twenty-eight (28) stadium leases will expire. The impending expiration of a lease will often signal the commencement of a game — an invitational sponsored by the affected franchise owner — called “So you really want a professional sports franchise?” ("Squeeze Play" for short). The players in this game are the owner, the league, the cities competing to acquire the franchise, and the city fighting to retain the franchise. At the end of the game, one city may win, the league may or may not win, one or more cities will lose, and the owner will almost certainly win.

The 1982-85 lease expiration season provided some interesting contests. In 1982 Al Davis moved the Raiders from Oakland to Los Angeles, leaving the city of Oakland and the county of Alameda to pay $1.5 million a year until the year 2004 to service the debt on the Oakland-Alameda Coliseum. Oakland lost, Los Angeles won, the NFL lost, and Al Davis won.

In December of 1984, Philadelphia Eagles owner Leonard Tose announced that he was going to move the Eagles to Phoenix. In response, the city of Philadelphia offered Tose: 1) rent deferment for ten years, 2) stadium renovations, including the construction of luxury boxes, 3) a
new practice facility, and 4) promotion of the team. Tose accepted Philadelphia’s offer and the Eagles remained in Veteran’s Stadium. The city of Philadelphia “won,” Phoenix lost, and Tose definitely won.

Within months, Robert Irsay threatened to move the Colts from Baltimore to Indianapolis, in spite of the recent $24 million in stadium improvements. Baltimore responded by offering: 1) a $15 million loan at 8%, 2) $6 million in cash for a new training facility, and 3) guaranteed ticket sales of 43,000 per game for the 1984-85 season. However, Baltimore apparently was not up to the task, as Indianapolis “won” the Colts with an offer of: 1) a new 61,300 seat capacity domed stadium, 2) modest rent, 3) a $5 million training facility, and 4) guaranteed ticket sales of 45,000/game for three seasons. Baltimore lost, Indianapolis won, Irsay won, and the league had a team move from the 14th largest market to the 34th.

Shortly thereafter, the Saints and the Cardinals threatened to move from New Orleans and St. Louis, respectively. Baltimore and Phoenix, both recent losers, threw their hats in the ring to compete for the Saints. Also playing the game at this time was Jacksonville, with a standing offer of an 82,000 seat stadium, new training facilities, sky boxes, and a guarantee worth $125.8 million. New Orleans fought off all challengers, but at a price of a new training facility, tax abatements, bond issues, and other public subsidies which were estimated at one time to “drain[] the public coffers by $6 million in operating deficits and $10 million in annual bond payments.” Phoenix and Baltimore lost again; and owner Tom Benson won. However, Phoenix later managed a victory at St. Louis’ expense when the Cardinals relocated. William Bidwell also won, and the NFL watched as a team went from the 12th largest market to the 26th.

Table 1 illustrates the pervasiveness of this game. It contains a compilation of the win/loss records of the cities who either won or lost a


8. Wong, supra note 1, at 40.
9. Id.
11. Wong, supra note 1, at 36.
12. Beisner, supra note 7, at 431.
13. Wong, supra note 1, at 45.
14. The information for these league standings is taken from a table in Wong, supra note 1, at 27.
professional baseball, football, basketball, or hockey franchise during the 1971-1982 seasons. A city gets a win if it acquires a franchise by relocation or expansion, and gets a loss if it loses a franchise by relocation or dissolution. The table only deals with events which result in franchise creation, movement, and demise, and not with the competitions which result in the status quo. Although not all of the contest outcomes represented by the standings had the impact of a Raiders relocation, it remains particularly striking that fifty-eight cities were involved in the major league professional sports franchise game in just a twelve-year period.

Table 1

Win/Loss Records of Cities Who Played the Professional Sports Franchise Creation, Movement, and Demise Game During the 1971-1982 Seasons

<table>
<thead>
<tr>
<th>CITY</th>
<th>W</th>
<th>L</th>
<th>%</th>
<th>CITY</th>
<th>W</th>
<th>L</th>
<th>%</th>
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<td>Phoenix</td>
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<td>1</td>
<td>.500</td>
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<td>1.00</td>
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<td>1</td>
<td>.500</td>
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<td>1.00</td>
<td>Toronto</td>
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<td>1</td>
<td>.500</td>
</tr>
<tr>
<td>Foxboro</td>
<td>1</td>
<td>0</td>
<td>1.00</td>
<td>Birmingham</td>
<td>1</td>
<td>1</td>
<td>.500</td>
</tr>
<tr>
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<td>0</td>
<td>1.00</td>
<td>Cincinnati</td>
<td>1</td>
<td>1</td>
<td>.500</td>
</tr>
<tr>
<td>Nassau County</td>
<td>1</td>
<td>0</td>
<td>1.00</td>
<td>Winnipeg</td>
<td>1</td>
<td>1</td>
<td>.500</td>
</tr>
<tr>
<td>San Francisco</td>
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<td>0</td>
<td>1.00</td>
<td>San Diego</td>
<td>3</td>
<td>4</td>
<td>.429</td>
</tr>
<tr>
<td>Orchard Park</td>
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<td>0</td>
<td>1.00</td>
<td>Los Angeles</td>
<td>2</td>
<td>3</td>
<td>.400</td>
</tr>
<tr>
<td>Hartford</td>
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<td>0</td>
<td>1.00</td>
<td>Dallas</td>
<td>1</td>
<td>2</td>
<td>.333</td>
</tr>
<tr>
<td>Landover, MD</td>
<td>1</td>
<td>0</td>
<td>1.00</td>
<td>New Orleans</td>
<td>1</td>
<td>2</td>
<td>.333</td>
</tr>
<tr>
<td>San Antonio</td>
<td>1</td>
<td>0</td>
<td>1.00</td>
<td>Washington, DC</td>
<td>1</td>
<td>2</td>
<td>.333</td>
</tr>
<tr>
<td>Pontiac, MI</td>
<td>1</td>
<td>0</td>
<td>1.00</td>
<td>Vancouver</td>
<td>1</td>
<td>2</td>
<td>.333</td>
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<tr>
<td>Tampa Bay</td>
<td>1</td>
<td>0</td>
<td>1.00</td>
<td>Ottawa</td>
<td>1</td>
<td>2</td>
<td>.333</td>
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<tr>
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<td>1.00</td>
<td>Detroit</td>
<td>1</td>
<td>2</td>
<td>.333</td>
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<tr>
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<td>1.00</td>
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<td>1</td>
<td>3</td>
<td>.250</td>
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<tr>
<td>Salt Lake</td>
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<td>1</td>
<td>.667</td>
<td>Cincinnati</td>
<td>0</td>
<td>1</td>
<td>.000</td>
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<tr>
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<td>.667</td>
<td>Pittsburgh</td>
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<td>1</td>
<td>.000</td>
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<tr>
<td>Calgary</td>
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<td>.667</td>
<td>Miami</td>
<td>0</td>
<td>1</td>
<td>.000</td>
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<tr>
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<td>.667</td>
<td>Philadelphia</td>
<td>0</td>
<td>1</td>
<td>.000</td>
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<td>.500</td>
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<td>1</td>
<td>.000</td>
</tr>
<tr>
<td>Cleveland</td>
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<td>2</td>
<td>.500</td>
<td>Chicago</td>
<td>0</td>
<td>1</td>
<td>.000</td>
</tr>
<tr>
<td>Denver</td>
<td>2</td>
<td>2</td>
<td>.500</td>
<td>St. Paul</td>
<td>0</td>
<td>1</td>
<td>.000</td>
</tr>
<tr>
<td>Memphis</td>
<td>1</td>
<td>1</td>
<td>.500</td>
<td>Hollywood, FL</td>
<td>0</td>
<td>1</td>
<td>.000</td>
</tr>
<tr>
<td>Norfolk</td>
<td>1</td>
<td>1</td>
<td>.500</td>
<td>Louisville</td>
<td>0</td>
<td>1</td>
<td>.000</td>
</tr>
<tr>
<td>Houston</td>
<td>1</td>
<td>1</td>
<td>.500</td>
<td>Commach, L.I.</td>
<td>0</td>
<td>1</td>
<td>.000</td>
</tr>
<tr>
<td>Atlanta</td>
<td>1</td>
<td>1</td>
<td>.500</td>
<td>Bloomington</td>
<td>0</td>
<td>1</td>
<td>.000</td>
</tr>
<tr>
<td>Cherry Hill, NJ</td>
<td>1</td>
<td>1</td>
<td>.500</td>
<td>Boston</td>
<td>0</td>
<td>2</td>
<td>.000</td>
</tr>
<tr>
<td>St. Louis</td>
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<td>1</td>
<td>.500</td>
<td>New York</td>
<td>0</td>
<td>2</td>
<td>.000</td>
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<td></td>
<td></td>
<td>Oakland</td>
<td>0</td>
<td>2</td>
<td>.000</td>
</tr>
</tbody>
</table>

Perhaps even more striking than the number of cities involved in this game is the amount of money at stake. In 1984, it was estimated that in
twenty years more than $6 billion dollars were spent to build or refurbish stadiums to attract or retain professional baseball and football teams alone.\footnote{15}

The initial question to be addressed is whether or not this competition between cities and the subsequent transfer of wealth from a city to a franchise owner presents a problem that needs to be solved. The cities obviously see some benefit in having a professional sports franchise within its walls, and are willing to pay to have this benefit up to its perceived value. The cities are, in effect, consumers of professional sports franchises. A lease agreement between a franchise and a public stadium more accurately represents a city's rental of a franchise than a franchise's rental of a stadium.

This competition between cities for franchises would not be troubling if a fixed number of franchises spontaneously dropped from the sky and had to locate somewhere. In that case, we could justifiably rely on competition to efficiently allocate the franchises to the cities who will benefit the most from them. Of course, the cities with franchises would still be troubled if a team subsequently moved. This should not be of great concern, however, since it is not hard to imagine that after the initial allocation of teams, a city without one will emerge, obtaining better utility from a franchise than a city which already has one. Teams should locate in cities that value them the most. Nonetheless, this very scenario involving a team changing cities has been the main focus of concern in the courts and in Congress.

The troubling aspect of this competition among cities is that there is no magical fixed number of franchises to be allocated among our cities. Imagine if a firm created a communications system or product which could interconnect citizens within a city and between cities. Imagine also that the system was cost effective in all cities with a population of one million or above. If this firm was the only firm offering this product, we could expect: 1) that the firm would not produce a product for every city over one million; 2) that cities over one million would compete against one another for the available products, ultimately paying more than the social cost of the product; and 3) the excess profit would go from the taxpayer to the controlling firm. This would be troubling.

Similarly troubling, the owners of professional sports franchises, acting collectively in leagues, decide how many franchises to "rent" to the cities. If economic theory is at all reliable, this means that the owners

\footnote{15. Wong, \textit{supra} note 1, at 39.}
SQUEEZE PLAY

can be expected to not offer franchises at their social cost, but rather at a price significantly above — a monopoly price. This will result in a misallocation of resources. Consider the following:

[M]any of the families in Louisiana would find it tough to afford even the guided tour of the Superdome, even though the people of Louisiana subsidize the Superdome to the tune of $3 million to $5 million per year... Meanwhile, the people of New Orleans, many of whom are poor, pay the highest city sales tax in the United States (9%), send their children to what may be the poorest public schools in North America, and face cuts in public transportation and city services.16

This quote illustrates the allocative decisions that cities must make. A monopoly price charged for the Saints distorts the allocation of resources.17 It is this dynamic which should concern us and lead us to reevaluate the rules of the game.

This article will look at questions surrounding the rules of the game between team owners and cities. Of particular concern are these questions: (1) Who should make the rules of this game?; and (2) What should the rules be? It will of course be necessary to try to identify what the rules currently are, and who is making them. In addressing these questions, we need to analyze what the “players”18 want, or in other words, what outcomes are considered to be victories.

II. THE PLAYERS

A. The Owners and the League

An owner must be considered a businessman first. As such, he19 wins by maximizing profits, measured by the margin between costs and revenues. Of course, this margin is widened by either increasing revenues or decreasing costs.

A franchise’s direct revenues, or receipts, are basically a function of two variables: 1) the population size of the metropolitan area, and 2) the team’s winning percentage.20 For our purposes, our analysis is focused on what an owner wants from a city, so the critical variable affecting club receipts is the city’s population size. Scully estimated that “each one million in population is worth $2.9 million in club revenues, holding the

17. This will be treated more in depth, infra note 51.
19. For convenience, I am not going to use gender neutral language.
quality of the club constant." So we would expect that an owner would prefer his team to be in a high population area, and would only move his team to a smaller statistical area if the lost revenues due to the move were at least compensated for by a decrease in costs.

Decreased costs come in the form of public subsidies. These include the following: 1) reduced rent for the use of public stadia, 2) construction of new facilities at public expense,\(^2\) and 3) tax abatements for privately owned facilities. Not surprisingly, these are the most common demands owners make on cities.\(^3\)

In a world of franchise free agency, we would expect teams to be located in the highest population areas. Since owners derive revenue from the population base of a city, they will require more from smaller cities and less from large cities. At the same time, it seems intuitive that a larger city would have more resources to devote to a professional sports team than a smaller city. So why are the Colts in Indianapolis and the Cardinals in Phoenix?

First, consider the effect of revenue sharing. Revenue sharing insulates the owner from the adverse effects of moving from a high population city to a low population city. Since the receipts affected by the population size are spread among all the teams in the league, a team will only have to internalize a small fraction of the lost revenues due to the drop in population caused by the move. The extent to which a league shares revenues is the extent to which all cities compete on a level playing field to rent a franchise. Since an owner need not consider population size, the winning city will simply be the one which offers more subsidies, or a greater reduction in costs.\(^4\)

\(^21\). *Id.*

\(^22\). The construction of new practice facilities and improvements to existing facilities could also be seen as affecting the revenue side by improving a team's winning percentage, but for simplicity we can conceptualize all public subsidies as decreasing the franchise's cost. This conceptualization makes it easier to analyze things like the affect of revenue sharing on owner incentives.

\(^23\). Johnson, supra note 1, at 219. Johnson notes that about 25 cities were confronted with demands for increased public subsidies between 1980 and 1985.

\(^24\). NFL commissioner Pete Rozelle claimed that revenue sharing actually contributed to forestall opportunistic behavior before the Senate Committee on Commerce, Science, and Transportation in 1985. He argued that revenue sharing leads to less income disparity between teams and thus lessens the incentives for a team to relocate. John A. Gray, *Section I of the Sherman Act and Control Over NFL Franchise Relocations: The Problem of Opportunistic Behavior*, 25 AM. BUS. L.J. 123, 132 n.29 (1987). I fail to see the logic in this argument. In the same address to the Committee, Rozelle listed the St. Louis Cardinals as one of the teams which was stable because of revenue sharing. I suppose the Arizona Cardinals are now more stable because of revenue sharing.
Once cities are on a level playing field, there is still an intuition that the larger cities should be able to offer more than the smaller cities. There are two possible responses to this intuition. First, while a larger city may have greater revenues available to it due to a larger tax base, this does not necessarily mean that the larger city has more funds to devote to professional sports. With larger city revenues come greater demands for those revenues. A large city may have social, infrastructure, and educational demands that smaller cities do not. The point is that a large city will not necessarily have greater discretionary funds to devote to professional sports than a smaller city.

Second, we must consider the marquee effect of a major league team. A smaller city may be willing to spend more to be considered a “big league city” than a larger, established city. Other reasons for wanting a franchise will be discussed in the next section as we take a closer look at the cities. For now, we must keep in mind that factors exist which disrupt any natural stability of teams gravitating to the largest cities and staying there.

These dynamics present interesting issues for a league. On one hand, the moves of the Colts and Cardinals should cause the NFL some concern, since both moves represented a loss in population and presumably a loss in revenue to be shared among the owners. On the other hand, the league is no more than the owners themselves, and it is this very threat of relocation which allows each owner to extract greater public subsidies from their host city. It is not hard to believe that the public subsidies received as a result of the relocation threat more than make up for the lost revenue of a couple of moves. However, the league still has reason to be concerned if too many owners make good on their threats.

Major League Baseball has less revenue sharing and more group control over its members. We might expect that MLB would be relatively stable, which it has been in recent years. Baseball owners must consider the population base of a potential new city more so than football owners. Nevertheless, as the demographics of the nation change, it is to be expected that new metropolitan areas will emerge to compete on equal footing with an area in which a baseball team is currently located. And although relatively stable, MLB still maintains the threat of relocation in the form of the Suncoast Dome in Tampa/St. Petersburg.25 The new and

25. Major League Baseball may be in danger of losing their best asset as the Piazza case (Piazza v. Major League Baseball, 831 F. Supp. 420 (E.D. Pa. 1993)) goes to trial. This is an antitrust suit brought by investors who had agreed to buy the Giants and move them to Tampa/St. Pete, but the owners voted to prevent the sale. The investors won the first round by
open Suncoast Dome, as well as the recent NFL relocations, serve as a reminder to the cities that the franchise stability of Major League Baseball is due more to cities like Chicago building new Comiskey Parks than any benevolence of the league.

History suggests that no sports league has made a strong effort to prevent its franchises from moving. For example, between 1950 and 1982, eleven relocations occurred in baseball, forty in basketball, fourteen in hockey, and thirteen in football. The few times in which a league rejected a bid to relocate was directed at “mavericks” of the league, such as Charlie Finley, Bill Veeck, and Al Davis. Furthermore, Finley’s and Veeck’s teams were eventually allowed to move after they no longer owned the team.

Although moves from high population areas to low population areas might be a concern, a greater concern to any league is owners moving from low population to high population areas. An open high population area represents an exploitable area for the entire league, either as an expansion opportunity or as an open and visible “Suncoast Dome” threat. Owners, acting as a league, do not like to see someone else appropriating an exploitable area to themselves, as did the Raiders and the Clippers. In either case, however, a team relocation can mean substantial direct benefits to the moving owner at the expense of lost potential revenues to the league as a whole.

The main point is that it is not at all clear, at any given time, whether a league would favor a move of one of its franchises or not. A move could mean moderate lost revenues to the league. However, a league is a collection of owners, each concerned with his own opportunities to maximize profits by pursuing increased revenue sources or decreased costs. Most owners would want to be able to capitalize on future lucrative offers themselves, or at least maintain a viable threat so as to extract further concessions from their current host community. Therefore, even if the owners could prevent any individual owner from moving, we would expect leagues to continue to be very liberal in granting permission.

defeating a motion for summary judgement on the grounds that baseball is immune from antitrust. This case will be discussed later in more detail.
B. The Cities

Contrary to the artificial world which was constructed earlier by Table 1 and the accompanying discussion, in which a city wins when it has a professional sports franchise and loses when it does not, cities win in the real world by maximizing the quality of life of its citizens. A city must make many allocative decisions towards this end. Professional sports is one of many uses to which a city can devote its resources. As a tool for increasing the quality of life, a professional sports franchise must be measured against social, infrastructure, health, and education needs. This section addresses why a city wants, or should want, a professional sports franchise.

Cities can be viewed in one of two ways, or a mixture of both, with respect to professional sports. They can be seen as investors or consumers. As investors, cities get into the business of professional sports to get a financial return or, in other words, to reap direct and indirect economic benefits. As a consumer, cities rent franchises as a means to obtain certain intangible benefits, to be used as a unifying mechanism, to generate civic pride, to give prestige to the city, or as an educational tool. Let us not also forget that a city is renting a team to provide another entertainment outlet for its citizens.

Whether or not a professional sports team is a good financial investment for cities is a questionable proposition. It is clear that for a sports team to be a good investment, the economic benefits must exceed the costs. The costs to a city of having a franchise take many forms. There are stadium construction costs and annual deficits associated with reduced rental charges. "Costs, however, may take forms other than operational expenditures and bonded indebtedness. Opportunity costs of land use and foregone tax revenues are not analyzed. Costs for additional police protection, traffic control, and sanitation rarely are calculated." While it may be difficult, a reasonably accurate number could be obtained, the result of which would represent the actual financial cost of a franchise. It is more difficult to measure the economic benefits.

Johnson defines economic benefits, direct and indirect, as follows: Direct economic benefits take the form of rental income, tax revenues, franchise expenditures in the community, and increased jobs. Indirect economic benefits include the additional business generated by fans and participants in related industries such as food, hotel, and transportation; the increased convention business

28. Johnson, supra note 1, at 224.
a city attracts as a result of a team's presence; and the additional
jobs produced by the secondary effects of a team's presence.\textsuperscript{29}

The direct and indirect economic benefits together represent the “eco-
nomic impact” of a franchise. The estimates of the economic impact of
various teams on their respective cities shows a considerable range of
potential economic activity.

It is estimated that the Packers economic impact is $20-25 million;
the Pirates, $21 million; the Raiders (in Oakland), $36 million in direct
benefits and $100 million in indirect benefits; the Jets, $33 million; and
the Colts, $30 million.\textsuperscript{30} Other estimates, however, have the Raiders (in
Oakland) worth $36 million in direct benefits and $180 million in indi-
rect benefits (or overall economic activity).\textsuperscript{31} Still others estimate the
Raiders impact in Oakland at $75 million total; and the Colts, $35 mil-
lion.\textsuperscript{32} And others claim the Colts impact is $21 million; while the Pi-
rates generate $37 million in economic activity.\textsuperscript{33}

This range of estimates can be attributed to “alternative assumptions
... when researchers differ in skill or in predisposition.”\textsuperscript{34} The measure-
ment of indirect economic benefits is highly speculative. First, a multi-
plier must be chosen to estimate the impact of every new dollar spent on
the economy. The multiplier chosen can vary, depending on how self-
contained the area economy is, or how much “leakage” of economic ac-
tivity there is out to other areas. “Generally, the smaller the community
the smaller the multiplier because these areas have greater difficulty
containing all spending than do larger areas.”\textsuperscript{35} Multipliers range from
1.2 in a study of the Pittsburgh Pirates, to 3.2 in a team-financed study on
the impact of Chicago baseball.\textsuperscript{36} Even more distressing than the range
of multipliers is the implicit assumption that the use of a multiplier
makes; the assumption is:

that all first-round spending attributable to team or stadium activ-
ities is net new spending for the local area ... Spending on
sports may merely redistribute preexisting local spending. What

\textsuperscript{29} Id. at 222-23.

\textsuperscript{30} Id. at 223.

\textsuperscript{31} Gray, supra note 24, at 130.

\textsuperscript{32} York, supra note 6, at 354-355.

\textsuperscript{33} Beisner, supra note 7, at 433 n.24.

\textsuperscript{34} Robert A. Badde & Richard F. Dye, \textit{Sports Stadiums and Area Development: A Criti-

\textsuperscript{35} Mark S. Rosentraub and David Swindell, “Just Say No?” \textit{The Economic and Political
Realities of a Small City's Investment in Minor League Baseball}, 5 EcoN. Dev. Q. 152, 156

\textsuperscript{36} Baade & Dye, supra note 34, at 270.
if the dollar spent at the stadium or the adjacent restaurant is merely one dollar less spent on entertainment elsewhere in the city? 37

The concern with this assumption is that a team only produces a positive impact on the economy if it is attracting recreational spending from outside of the studied economy.

Another issue associated with estimating the economic impact of professional sports is the type of jobs created. Most of the jobs created by teams are seasonal, low-wage, and part-time. 38 This means that the presence of a team in a city could actually reduce the city's share of regional income if the surrounding communities are "higher wage." 39

Perhaps we should step back from the world of economic impacts and consider the direct costs and revenues of the stadia. In 1974, Benjamin Okner published a widely cited study of twenty baseball or football stadia. 40 He concluded that the average stadium covers only 60% of total costs, and noticed a tendency toward greater public subsidization. The difference between the cost and the direct revenue on a stadium must be made up by other revenues that the city government makes as a result of the franchise's presence. In other words, the economic impact of the team must be translated into an increase in tax revenues (or other revenue source, such as public transit) under the same tax levels or rate structure, or the franchise must be considered either a bad investment or an expense.

Gray gives an example of a hypothetical city which invests $100 million in a sports stadium. 41 He assumes that the opportunity cost is five percent, so the city would require a $5 million annual return on its investment plus additional revenue to cover its annual operating and maintenance costs (which he assumes are $1 million).

If the city could recover $4 million of this $6 million through new tax and other revenues, such as increased sales taxes, entertainment taxes, income taxes, and transit use generated because of the presence of the franchise, the city could still recover its opportunity cost by charging the franchise tenant as low as $2 million in annual rental fees. 42

37. Id. at 270-71.
38. Id.
39. ZIMBALIST, supra note 27, at 137.
41. Gray, supra note 24, at 131.
42. Id.
It must be assumed that by “new tax and other revenues,” Gray does not mean that the city could raise the tax levels or create new taxes and have that count as a return to an investment. The additional revenues must be the result of real economic growth. Real economic growth is measured in the subjective world of economic impact projections, which brings us full circle.

To summarize this discussion of the economic impact of professional sports, the factors to look for are: 1) the extent a team attracts spending from outside of the area paying the costs of the team; 2) the extent the team deflects residents of the area from spending elsewhere; 3) the creation of jobs — look for whether they are permanent, temporary, seasonal, full-time, or part-time; and, 4) the additional tax revenue generated by the above three factors, holding tax levels constant.

The question of whether a sports franchise is “worth it” financially to a community is unanswerable in the abstract, and is very difficult, if not impossible, even in any specific case. What is clear is that money is commonly transferred from cities to sports teams in exchange for perceived economic and intangible benefits. There is reason to be skeptical of claims that professional sports produce net positive financial returns to a city, although this may be true in some cases. But in light of the strong position of the owners in this game, it is not hard to imagine that any financial gains which will come to a city as a result of a franchise will be captured and appropriated to the team itself somehow. It seems more realistic to view cities as consumers of the intangible benefits of having a professional sports franchise.

As a result, we must look at these intangible benefits which the cities are purchasing. Commonly cited intangible benefits include a boost to civic pride, a unifying force, and prestige. If civic pride is meant to refer to the lift the city gets through experiencing vicarious victory, then this element appears to be a wash. If a city benefits from victory, it should be acknowledged that it is harmed by loss. In which case, the affect on civic pride must be considered neutral.

However, a professional sports team can be a unifying force whether the team wins or loses. Whether a city is rejoicing together or commiserating together, there is value in the fact that the city is doing something together. It is important for communities to look for ways to bind its citizens together. Communities will benefit from any mechanism which encourages individuals to transcend cultural, religious, racial, political, or economic divisions. Sport is central enough to the experience of the vast majority of people to be a useful tool to break down the barriers which divide citizens. However, it must be strongly noted that a professional
sports team does not automatically have a unifying effect by virtue of being a professional sports team. In fact, the same power a sports team has to unify, it has to divide, if it is perceived as only for a particular race, economic class, or culture.

Prestige is perhaps the most likely, and at the same time least appealing, reason for a city to acquire a major league sports franchise. There are two main problems with pursuing or subsidizing a major league team for the prestige it brings the city. First, prestige is merely a function of perceptions which could quickly change. One day the city is a “major league” city, the next day it is a minor league city for having a bad team, and the next day it is a stupid city for spending so many taxpayer dollars just so people will think the city is major league. Second, any prestige that comes from having a major league franchise will be lost, and more so, if the franchise leaves. “It’s almost worse for a city’s image to lose a major league team than to have never had one at all.”

If the only thing a major league sports team had to offer a city was prestige, then the competition among cities to acquire teams would not be of concern, as it would be no concern if the teams magically dropped from the sky. The competition would be as entertaining a spectacle as the sports themselves, perhaps more so. A cynic would feel this way about watching cities compete against each other today, musing at the folly of the cities handing over large amounts of money to snake oil salesmen in pursuit of illusory fame and riches. However, to those who believe that a sports team can be a very positive element in a community, the fact that two cities compete against each other for a sports team when each is equally able to support a team is less amusing, especially when the team owner is the one inviting the competition, setting the rules, and profiting at the cities’ expense.

A professional sports team should be a tool to be used to improve the quality of life of the members of a community. A sports team can be a very effective educational and communicative tool. The intangibles of a sports franchise can be good or bad, but sports is definitely a powerful medium. It may sound trite, but it is nevertheless true, that a sporting contest has metaphorical qualities which lends itself to shared observation, evaluation, and discussion. It also has romantic qualities which frame idealistic thoughts and memories.44

43. Baade and Dye, supra note 34, at 272, quoting Merlin E. Dewing, Chairman of a Minnesota task force to revitalize the economy.

44. Perhaps professional sports are romantic in another sense. CNN reported a study which found that cities with major league baseball teams have a 28% lower divorce rate when
bring to the fore pettiness, greed, divisiveness, and an exaggerated emphasis on athletic victories.\textsuperscript{45} A sports franchise is a powerful tool that a city can use to improve the quality of life of its citizens.

III. The Rules of the Game

There needs to be rules to this game involving the cities, owners, and leagues. Determinations need to be made concerning which cities should have franchises, and under what conditions a franchise should be able to move from one city to another. The rules are first concerned with who should have the authority to make the necessary determinations: the owners, the leagues, the cities, Congress, the market, or some combination? Second, the rules must concern what those determinations should be, given different circumstances.

Basically, there are two working rules of the game: (1) teams cannot agree not to "compete;" and (2) cities cannot "take" teams. In the world of law, this refers to the law of antitrust and eminent domain. This article will take the rule against the taking of teams as given and focus on the rules within the framework of antitrust. Next, this article will look to proposed changes or additions to the rules in the form of federal legislation from mandatory lease terms to mandatory expansion. Finally, this article will propose what the rules should be.

A. Antitrust

Antitrust law and concepts can be both complicated and elusive, so before we dive into the specific cases which concern our issues, it will be helpful to identify the overarching themes and goals of antitrust. The source of antitrust law which we will be focusing on is Section 1 and 2 of the Sherman Act, which condemns 1) every contract, combination, and conspiracy in restraint of trade and 2) monopolization, combinations and conspiracies to monopolize, and attempts to monopolize.\textsuperscript{46} The Sher-
man Act stands as a far and deep reaching rule regulating the game of American business and economic organization. The question is whether it can reach our specific game.

Generally, the body of antitrust "common law" which has emerged from the Sherman Act can be said to have two goals: 1) to achieve an efficient allocation of society's resources, and 2) to prevent large concentrations of economic, and thus political, power. The antitrust laws rely on consumer preferences to determine what is an optimal allocation of resources. In other words, individual consumers choose to allocate their personal resources among various products at given prices based on individual preferences. These preferences are not questioned, but rather are by definition, optimal. The aggregation of individual consumer choices provides our societal allocation.

In order for consumer preferences to result in an optimal allocation, the consumers must be choosing between products offered at their social cost. If a consumer is faced with a choice between two products, such as sports and education, and one product is not offered at its social cost, then the resulting consumer allocation will not be optimal; a product offered at other than social cost is said to create an allocative distortion.

This is where the concept of competition comes in for antitrust purposes. Competition is the mechanism used by antitrust law to assure that products are offered to consumers at a price which equals the social cost to produce the product. Perfect competition in an industry will result in that industry's product being offered to the consumer at social cost. The antithesis of a perfectly competitive industry is a monopolized industry, characterized by reduced output and prices above social costs. Antitrust law demands competition by condemning the practices which move away from perfect competition and towards monopoly. "[A]ntitrust supplements or, perhaps, defines, the rules of the game by which competition takes place."

The focus on competition defines both the reach and the limitations of antitrust law to achieve the ultimate goal of optimal and efficient allocation of resources. Competition may not be sustainable or desirable in an industry, such as one that will lead to a natural monopoly. In such a

complicated. As we shall see, antitrust has a similar feel. We can only be glad that umpires have not developed a "per se" and "rule of reason" analysis in calling games.


48. A natural monopoly is where a single firm can satisfy the demand in an industry at a point where its long run average total cost curve is declining; in other words, where one firm can meet demand at less cost than two or more firms. Walter C. Neale, The Peculiar Econo-
case, absent any wrongdoing, the industry is beyond the reach of the antitrust rules, and other rules must be brought to bear on the industry to insure that the product's price approximates what we would expect under competition. Consider the following assessment by Areeda and Kaplow:

[A]n otherwise perfectly competitive system will not always achieve an efficient result. . . . Production at least cost will sometimes be possible only at a scale of production where a few firms or even a single firm can satisfy the entire demand. In that event competition will not be sustainable, price will probably exceed the competitive price, and competitive efficiency will be lost. Proper regulation could theoretically restore pricing efficiency. This is one explanation of government regulation of public utilities. 49

So it appears from the outset that antitrust law may not have all the necessary rules of the game.

The above analysis both frames the issues and reveals the conclusion of this article: If a) the cities are treated as consumers, making allocative decisions between, for example, professional sports and education; and b) the product which the league offers to the cities as consumers is viewed as the rental of a professional sports franchise, and c) each professional sport is a natural monopoly 50, we would expect 1) that the number of franchises available to the cities would be less than optimal; 2) the price of the franchises to the cities would be above social costs, with monopoly profits going to the league members; 3) the effect of low output and high cost will result in a distortion in the cities' allocation of resources 51; 4) the antitrust laws will not be able to solve the real problem of sub-optimal allocation of resources; and, therefore, 5) external


49. AREEDA & KAPLOW, supra note 47, at 12.

50. See generally Neale, supra note 48.

51. Imagine that two cities are faced with an allocative decision in a two product world. In this case imagine that instead of guns and butter, the products were professional sports and education. Assume that the competitive price of one unit of professional sports (a franchise) is $5 million and the monopoly price is $10 million. Assume also that one city would be willing to pay $7 million for one sports unit and the other city would be willing to pay $12 million. At a competitive price, both cities would pay $5 million for a franchise and the rest of their respective budgets would go to education. At a monopoly price, one city will pay $10 million for a franchise, while the other would not get a franchise and the whole budget would go to education. In the first case, the monopoly price paid by the city means that $5 million which would go to education under a competitive price will now go to the owner of the franchise. This result sounds concerning, but is not the primary economic concern. The primary concern is that the second city would have been willing to pay the competitive price for a franchise and was denied that opportunity. In other words, the city was denied the opportu-
regulation by the federal government is necessary, and 6) this regulation should take the form of setting a “price” for a city to rent a franchise, at which price one should be made available to them.

We will return to evaluate the effect of our assumptions and predictions, but for now, we must return to earth and take a look at the cases which have sparked such lively discussion among courts, academics, leagues, city councils, and sports fans.

B. Raiders I

In 1978, the lease between the Raiders and the Oakland Coliseum expired.\(^5\) That same year, Carroll Rosenbloom decided to move the Rams from the Los Angeles Coliseum (Coliseum) to Anaheim.\(^5\) This left the Coliseum in search of a new tenant and Al Davis, owner of the Raiders, in an enviable bargaining position. After Oakland officials refused to meet Davis’ demands, he decided to move his Raiders to Los Angeles, and so notified the NFL on March 3, 1980.\(^5\) One week later, acting under the recently amended Rule 4.3 of Article IV of the NFL Constitution, which requires three-quarters approval for any team to relocate\(^5\) to a different city, the NFL voted 22-0 against Al Davis’ proposed move.\(^5\) Two years later, a Los Angeles jury agreed with the Los Angeles Coliseum and Al Davis that this was a violation of § 1 of the Sherman Act.\(^5\) The Ninth Circuit was then asked to decide whether the jury could be allowed to reach that conclusion. The court held that the

\(^52\). Los Angeles Memorial Coliseum Comm’n v. NFL, 726 F.2d 1381, 1385 (9th Cir. 1984).
\(^53\). Id. at 1384.
\(^54\). Id. at 1385.
\(^55\). Roberts suggests that to say a team is relocating is misdirecting the analysis since what is at issue is not the location of the “team”, but rather the location of eight home games. Gary R. Roberts, The Evolving Confusion of Professional Sports Antitrust, The Rule of Reason, and the Doctrine of Ancillary Restraints, 61 S. CAL. L. REV. 945, 948 n.11 (1988). Whatever the merit of this distinction may be, I will continue to employ the convention of referring to the team as relocating.
\(^56\). Los Angeles Memorial Coliseum Comm’n, 726 F.2d at 1385.
\(^57\). Id. at 1386.
jury could find that Rule 4.3 violated § 1 of the Sherman Act under the circumstances.

In order to find a § 1 violation, an agreement between two or more separate entities must first be shown. After an agreement is shown, the court will decide whether the type of agreement conforms to a paradigmatic fact pattern which can confidently be condemned as anticompetitive without further analysis ("per se" treatment), or whether a more involved analysis is required to determine what effect the agreement has on competition ("rule of reason" analysis). Per se treatment is usually reserved for cases in which horizontal competitors (separate firms offering the same or similar products to the same group of consumers) agree to fix prices, divide markets or not deal with a competitor or supplier. A rule of reason analysis is for the non-obvious cases and requires a balancing of pro- and anti-competitive effects of the agreement in a relevant geographic and product market, as well as a look to any possible less restrictive alternatives.

The Raiders court held that; (1) NFL teams were separate entities for § 1 purposes, (2) that "per se" treatment was inappropriate, and (3) that pursuant to a rule of reason analysis, a jury could find that competition for NFL football was diminished in southern California as a result of the operation of Rule 4.3 on the Raiders proposed move. Therefore, Rule 4.3 violated § 1 of the Sherman Act in this case.

The claim against the NFL was that the individual teams agreed, through the mechanism of Rule 4.3, to prevent the Raiders from moving into the Rams territory and competing against them. On the surface, this looks like an agreement among competitors to divide the market and not compete with each other within those market divisions. Such an agreement seems like a candidate for per se treatment. Yet the court recognized the unique character of the sports industry, and it was confusing enough to not condemn the NFL so quickly.


Much of the difficulty of applying the antitrust laws in the sports industry stems from the various levels of competition that exist among the teams in a given league. The central difference between an individual

60. Eastern States Lumber Ass'n v. United States, 234 U.S. 600 (1914).
61. Instead, it seems the court chose to confuse the NFL, other sports leagues, academics, and law students in the same way the sports industry seems to have baffled it.
sports team and a typical individual firm of production is 1) a sports team cannot produce a marketable product without other sports teams, and as a result, 2) it is not a rational economic goal of any sports team to "compete" so well as to put the other teams out of business. Neale concludes from this that all teams which cooperate to produce a single "World Champion" should be considered as divisions of a single economic firm.

If teams were viewed merely as divisions of a single firm, then they would be incapable of conspiring under § 1 of the Sherman Act. This idea frightened the district court enough to cite it as the first reason to not view leagues as single entities. The second reason was that "other organizations have been found to violate § 1 though their product . . . requires the same kind of cooperation from the organization's members." Given the examples used by the Ninth Circuit in agreement, this statement is clearly wrong. The majority seemed to be concerned not with the level of cooperation required to create the product, but rather with who makes the policy decisions.

62. These two dynamics are described in a more detailed and humorous way as "The Louis-Schmelling Paradox," and "The Inverted Joint Product or the Product Joint." See Neale, supra note 48, at 2.

63. Id.; See also Roberts, supra note 55.

64. Los Angeles Memorial Coliseum Comm'n, 726 F.2d at 1388.

65. Id.

66. The court cited United States v. Sealy, Inc., 388 U.S. 350 (1967), and United States v. Topco Assoc., 405 U.S. 596. Both cases involved legally separate, horizontal competitors who collectively formed an association, which allocated territories to its members. In both cases an individual firm could offer its products to consumers, mattresses or a food product line, without the assistance of the other competitors. However, the defendants in Topco, a case given per se treatment, had a slightly better position. In that case, individual grocery stores agreed to jointly create a food product line in order to compete with the national supermarket chains. As a part of this effort, the stores agreed not to use the joint product line to compete against one another. Topco is a disfavored case, however, because the per se treatment neglected to consider the positive effect on interbrand competition.

This becomes relevant in the Raiders case when the product market is defined as NFL football and not the entertainment in general. The NFL wants to argue that even if Rule 4.3 restrains competition among NFL teams, the rule helps the league compete better with other forms of entertainment. The Topco defendants lost with a more compelling argument.

67. The court determined that "NFL policies are not set by one individual or parent corporation, but by the separate teams acting jointly." Los Angeles Memorial Coliseum Comm'n, 726 F.2d at 1389. Other similar statements lead one to believe that whether the court was right or wrong on this point, it would not have reached a different result even if it had the benefit of Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752 (1984). It appears that the Ninth Circuit had already determined that a parent corporation and a subsidiary could not conspire under § 1: "[T]his circuit has found the threshold requirement of concerted activity missing among multiple corporations operated as a single entity when corporate policies are
district court and accepted by the Ninth Circuit was that the teams are separate business entities whose products have an independent value.\textsuperscript{68}

What seems to be driving this case and others which treat teams as separate entities is the observation that "clubs do compete with one another off the field as well as on to acquire players, coaches, and management personnel [and] . . . where two teams operate in close proximity, there is also competition for fan support, local television and local radio revenues, and media space."\textsuperscript{69} The court wants to be able to force teams to continue to compete in these spheres and wants to keep § 1 as a vehicle to do so.

The \textit{Raiders} majority, therefore, would have all league agreements pass a rule of reason analysis in order to have the blessing of antitrust. Roberts, on the other hand, argues that all league agreements should be immune from § 1 liability.\textsuperscript{70} However, the dissent in \textit{Raiders} would carve out a functional immunity for "downstream" outputs, i.e. getting the football product to the fans, but would maintain § 1 scrutiny in the sphere of "upstream" inputs, i.e. players, coaches, and investors.

The dissent's argument has appeal because it appears to address a concern that players would be exploited without § 1 forcing teams to compete for them, while at the same time granting the league some relief. However, with respect to the players, it is not at all clear that they 1) should be a concern of antitrust or 2) need § 1 to protect them from exploitation.\textsuperscript{71} With respect to granting the league some relief, the world of the dissent is not clear enough to be helpful. The dissent constructs a functional test where the league is immune from § 1 attack in instances in which "member clubs must coordinate intraleague policy and practice if the joint product is to result."\textsuperscript{72} It is not even clear that the present case would meet this functional test. One might rightly ask why it is

\textsuperscript{68} The Ninth Circuit backed up this conclusory and question begging reason by stating that 1) the teams are all independently owned, and 2) although the teams share revenue, they do not share profit or loss. \textit{Los Angeles Memorial Coliseum Comm'n, 726 F.2d at 1389-1390}. It is not clear why these observations are important.

\textsuperscript{69} \textit{Id.} at 1390.

\textsuperscript{70} Roberts, \textit{supra} note 55.

\textsuperscript{71} I believe a league's product output and price will be determined independent of the cost of the players input, since I maintain that player payroll has the quality of a fixed cost. If this is true, the exploitation of a player will not affect the allocative decisions of a consumer, but rather merely concerns the distribution of wealth between players and owners. This is why I also believe that the best way to protect the players' interests is through the mechanism of labor law.

\textsuperscript{72} \textit{Los Angeles Memorial Coliseum Comm'n, 726 F.2d at 1409}. 
necessary for a league to keep the Raiders in Oakland, or control any team movement for that matter, in order to produce their product.

2. Rule of Reason Analysis.

The consequence of treating teams as separate entities in this case is that a jury must now determine whether on balance the application of Rule 4.3 harmed competition. The court allowed the jury to define the relevant product market as NFL football and the relevant geographic market as southern California. The consequence of this market definition is that the NFL loses. It would be difficult once the market was defined as NFL football in southern California to find anything procompetitive about Rule 4.3 to balance against even the most minor anticompetitive effect.

If the geographic market was enlarged to the U.S., or even just to California, the effect on competition would be a wash. The competition lost in Los Angeles between the Raiders and the Rams if the Raiders are prevented from moving would be offset by the competition lost in the Bay Area between the Raiders and the Giants if the Raiders are allowed to move. Similarly, if the product market were enlarged to include other forms of entertainment, the NFL could at least argue that the “intrabrand” competition lost between the teams is offset by the increased ability of the NFL to compete “interbrand.”

Given the court’s blessing on the relevant market, the comments about less restrictive alternatives available to the league to meet its goals seem meaningless. The court talked about how the league could flesh out Rule 4.3 by adding some objective criteria which need to be met in order to prevent a move. However, a different rule would not change the competitive effects in the southern California NFL football market.

If at the heart of Raiders is the question of who gets to decide when a team can move, the league or an individual owner, then the case will have a very limited affect on the cities. A city that wants to acquire a team would prefer, given a choice between the two, that an individual owner be able to move at will. On the other hand, a city with a team would prefer the owner to have to at least jump through a hoop before moving. If the Raiders court contributed a valuable observation it was that cities with teams should not place too much faith in any league to look out for the cities’ interest.73 Even if the league did begin to prevent

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73. “The NFL’s professed interest in ensuring that cities and other local governments secure a return on their investments in stadia . . . may not be as important as it would have us believe because the League has in the past allowed teams to threaten a transfer to another
team transfers, this would merely represent a win for the cities with teams and a loss for those who want teams. *Raiders* does, however, show signs of reaching beyond a simple power struggle between one owner and other owners.

An interesting, yet defective, market definition was advanced by the Los Angeles Coliseum. The Coliseum argued that the relevant product market was the market of “stadium offering their facilities to NFL teams” in the U.S. The defect lies not in the definition of the market, but in the Coliseum’s contention that Rule 4.3 restrains competition among stadiums within this market. Roberts correctly points out that 1) Rule 4.3 in no way prevents or lessens competition among stadia to house NFL teams, and 2) the NFL’s interest is for stadia competition to be as vigorous as possible. Nevertheless, the *Raiders* court accepted this market definition as possible grounds for § 1 liability. This is significant because this market analysis can be applied to all team movements prevented by the league, regardless of whether the team is moving into another team’s territory. In other words, the restraint applicable to stadiums does not rely on the fact that the Raiders were prevented from competing with the Rams.

C. *Piazza v. MLB*

On August 6, 1992, Vincent Piazza and other investors (“Investors”), executed a Letter of Intent with Robert Lurie, owner of the San Francisco Giants, to purchase the Giants baseball team for $115 million. The Investors intended to move the Giants to the Suncoast Dome, located in St. Petersburg. The league refused to approve the sale and move, and the Giants were subsequently sold for $100 million to a San Francisco group which kept the Giants in San Francisco. The Investors claim 1) that the league’s actions “have placed direct and indirect restraints on the purchase, sale, transfer, and relocation of Major League Baseball teams and on competition in the purchase, sale, transfer and relocation of such teams. . .”

location in order to give the team leverage in lease negotiations.” *Id.* at 1397. The leagues collectively do not have a very good track record when it comes to voting against transfers. See ZIMBALIST, supra note 27.

74. *Los Angeles Memorial Coliseum Comm’n*, 726 F.2d at 1393.
75. Roberts, supra note 55.
77. *Id.* at 429 n.13.
The issue of interest for our concerns is how the court defined the relevant market. The Investors claim that the relevant product market is the market for existing baseball teams. It initially appears that the Investors made the same defective argument as the one made by the Coliseum in *Raiders*: that the league restrained competition among potential investors who wish to purchase a team. This is the characterization of the market which the court first seems to create and accept. However, at the end of the opinion the market analysis becomes sharper. The court notes that a market may be defined as “any grouping of sales whose sellers, if unified by a hypothetical cartel or merger, could raise prices significantly above the competitive level.” The court then defines the market in this case:

[T]his market has the following components: (1) the product being sold is an ownership interest in professional baseball teams; (2) the sellers are team owners; and (3) the buyers are those who would like to become team owners. . . . [I]t would not be unreasonable also to infer that if the team owners combined, they could increase the price of teams considerably and control the conditions of sale.

This definition suggests not that the league is restraining competition among potential owners, which it would have no interest in doing, but rather that the league could restrain competition among the teams. This is a much more defensible market definition.

The other difference in market definition between the *Piazza* case and the *Raiders* case is that the Coliseum in *Raiders* argued that the relevant product was stadia services, which it was selling, while the Investors in *Piazza* argued that the relevant product was the teams themselves, which they were purchasing.

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78. This case is potentially much more significant for Major League Baseball since the court spends a good deal of thought and energy virtually eliminating MLB's antitrust exemption. However, I will not address baseball's antitrust exemption for four reasons: first, the exemption does not need more commentary; second, it is almost uniformly considered an anomaly, with no good reasons supporting its existence; third, I want to focus on how the antitrust laws can affect cities and professional leagues generally; and fourth, I do not believe that antitrust is large enough to solve the real problems between leagues and cities, so baseball's exemption is of minor significance.

79. *Id.* at 430.

80. *Id.* at 439, quoting PHILIP E. AREEDA & HERBERT HOVENKAMP, ANTITRUST LAW 518.1b (Supp. 1991).

D. Relevance of Raiders and Piazza to the Cities

Regardless of the incorrect application of the Coliseum's market definition in Raiders, a potentially viable § 1 argument from either case could be made by a city which was denied a team in favor of franchise free agency. For example, if a city and an owner have come to terms on a deal which would move a team into the city, and the move is prevented by the league, the city could argue that the teams are 1) collectively restraining competition among themselves to purchase the services of the cities (in the form of stadia, for example) or 2) restraining competition among themselves in the provision of sports franchises to the cities. In the first case, the claim would be that the teams are agreeing to act as a monopsonist, similar to agreeing not to compete in the purchase of “up-stream” inputs such as players. In the second case, the effect would be similar to price fixing: under a free market, i.e. franchise free agency, one owner might be willing to offer his franchise for $2 million in public subsidies, but without franchise free agency, the league could disallow the move, “increase the price of teams considerably and control the conditions of sale.”

The argument for franchise free agency can certainly be defended in terms of allocative efficiency. If teams act as independent profit maximizers, they will locate in the cities which offer them the best mixture of population and public subsidy — where the teams will be valued the most. If confronted with a choice between having the Raiders in Oakland or in Los Angeles, it is clear they should be in Los Angeles. Presumably, the Raiders would either reach more people in Los Angeles, or the Raiders had some other value greater to Los Angeles than to Oakland. The league, however, instead of allowing free movement of teams, would rather keep Los Angeles open, either as a threat which all teams could use against their respective cities, or as means to extract a large fee from a prospective owner through expansion, similar to how Major League Baseball is using the Suncoast Dome.

Al Davis personally does not present a compelling story: when he bought into this industry, he contracted with his fellow owners to abide by certain rules; instead, he “stole” a money making opportunity from the league. This has led some commentators to conclude that the league should be allowed to prevent this result. Yet, however offensive Al Davis’ move is to our sense of contractual obligations, the antitrust laws

82. Id.
should not be concerned with protecting the league's opportunities for profit. Rather, antitrust law should be concerned with insuring that the rules for making profit lead to an efficient allocation of resources. Therefore, the themes of § 1 antitrust analysis suggest that there should be franchise free agency.

This conclusion, however, reveals an apparent limitation of § 1 of the Sherman Act in the world of cities and professional sports leagues. This analysis takes place in a world of a limited number of teams, where cities compete for those teams and the "best" cities win. In such a world, franchise free agency would probably be the best rule of the game. Cities without teams would have a fair chance to get one if they wanted one badly enough. Although cities with teams would prefer a world where the team is forced to stay, at least under franchise free agency if the city lost a team it would have a fair chance of getting another one. The problem, however, is that the number of teams is artificially limited by the owners themselves, which causes all cities to make sub-optimal allocative decisions with respect to professional sports. The question then is whether antitrust is up to the task of increasing the output of professional sports teams.

E. Mid-South Grizzlies.

In 1975, the Grizzlies, a professional football team located in Memphis, applied for membership into the NFL after the league they were in, the WFL, disbanded.\footnote{Mid-South Grizzlies v. NFL, 720 F.2d 772, 776 (3rd Cir. 1983).} They were denied membership by the NFL, so they sued, claiming that the NFL teams violated §§ 1 and 2 of the Sherman Act. The court dismissed the Grizzlies' claim on the NFL's motion for summary judgement. The opinion appears to mix § 1 and § 2 issues in its discussion of the case. The court briefly noted that the requisite conspiracy requirement of § 1 was not in dispute. Apparently it was accepted by all parties that the teams were distinct entities capable of competing for antitrust purposes. Yet quickly after jumping over the conspiracy hurdle, the court spends quite a bit of time discussing the NFL's monopoly position, created by congressional fiat\footnote{The court cites two statutes that contributed to the NFL's monopoly position. The first allowed sports leagues an antitrust exemption with respect to the sale of broadcast rights in 1961. 15 U.S.C. § 1291 (1961). The second, an amendment to § 1291, allowed the NFL and AFL to merge. Id., amended by Pub. L. 89-800 (1966). One of the issues in this case is whether this amendment mandated expansion since it allowed the merger agreement "if such agreement increases rather than decreases the number of professional football clubs so oper-}.
Eventually, however, the court returned to the § 1 question, which requires a definition of a relevant market. The market identified by the Grizzlies was major league professional football in the United States. The court viewed the relevant competition to be for "ticket buyers, for local broadcast revenue, and for sale of the concession items like food and beverages and team paraphernalia." In other words, the court viewed the potential competition between teams in the same way that Al Davis argued and won in *Raiders*. The Grizzlies lost in this case because there would be no other team within a 280 mile radius to compete with, so their existence or non-existence as a team had no effect on competition.

Yet what about the competition between teams that does not rely on geographic proximity? The Grizzlies began to argue on appeal that teams also compete for players and coaches. The court, however, rejected this contention by stating:

First, the Grizzlies exclusion from the league in no way restrained them from competing for players by forming a competitive league. Second, they fail to explain how, if their exclusion from the league reduced competition for team personnel, that reduction caused an injury to the Grizzlies' business or property.

At the heart of this case is the notion that the Grizzlies represented individuals who wanted to share a monopoly position with other co-investors, not compete against them. The court was confident that not allowing the Grizzlies into the NFL would not harm competition.

The court also dismissed the Grizzlies § 2 claim without much analysis. This case reveals the limitations of § 2 of the Sherman Act. A violation of § 2 requires both a showing of monopoly power and either a misuse of that power or that the power was wrongly acquired. If a firm has a monopoly position either by legislative grant, superior business skill, or by being the only firm in a natural monopoly industry, § 2 cannot reach the firm, even if the firm is reducing output and charging prices above the competitive level as a result of its monopoly position. It was clear that the NFL had monopoly power. But it was also clear to the court that the NFL has a monopoly position by legislative fiat. The court

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86. *Mid-South Grizzlies*, 720 F.2d at 787.
87. *Id.*
was not about to use the antitrust laws to take away power granted by Congress.\textsuperscript{88}

Suppose that instead of the Grizzlies, it was the city of Memphis which was attempting to argue for the Grizzlies’ admission to the NFL. Suppose also that Memphis could not lure another NFL team away for $3 million a year, the amount Memphis was willing to pay for an NFL football team, but the Grizzlies would be willing to set up shop for $2.5 million. The city might argue under § 1 that the NFL teams compete in the provision of sports franchises to cities, and the addition of the Grizzlies would create more competition, as evidenced by the Grizzlies willingness to provide NFL football for a mere $2.5 million. This basic market conception was formulated above from Raiders and Piazza, but towards the end of existing franchise free agency, not to create a new franchise. There is at least one problem with cities using § 1 in this context. The fact that no team will move to Memphis for $3 million a year is not the result of an agreement among the teams not to compete, rather it is the result of an agreement not to expand by accepting anyone else into the club.\textsuperscript{89} The addition of the Grizzlies in Memphis is not going to increase competition among the teams to provide football to cities.

However, a team without a city could argue that its presence would increase the competition among teams to provide football, since theoretically that team would be competing against all others to play in the other teams’ cities. For example, a team without a city could compete against the Saints to play in New Orleans for less in public subsidies. This may make for a valid “essential facilities” argument, which the Grizzlies court rejected because the doctrine “is predicated on the assumption that admission of the excluded applicant would result in additional competition, in an economic rather than athletic sense.”\textsuperscript{90} To carry this argument to its conclusion would create a world where anyone who wants to can say they own an NFL team, demand a part of the TV

\textsuperscript{88} At a point in the opinion when the court is confusing § 1 with § 2, it says, “It would take a court bolder than this to claim that the congressionally authorized acquisition of market power, even market power amounting to monopoly power, was unlawful under Section 1 of the Sherman Act.” Id. at 784.

\textsuperscript{89} The court cited a 1973 study by the Stanford Research Institute which identified thirteen viable locations for new franchises, in addition to Memphis: Mexico City; Birmingham, Alabama; Seattle, Washington; Nassau County, New York; Anaheim, California; Chicago, Illinois; Phoenix, Arizona; Honolulu, Hawaii; Tampa, Florida; the Tidewater area of Virginia; Charlotte-Greensboro, North Carolina; Indianapolis, Indiana; and Orlando, Florida. As already discussed, Anaheim, Phoenix, and Indianapolis acquired NFL teams by luring away existing teams. Seattle, Tampa, and now Charlotte acquired NFL teams by expansion. Id.

\textsuperscript{90} Mid-South Grizzlies, 720 F.2d at 787.
and gate revenues, and then compete against an established team to take over their city. I do not think a court will be willing to take the antitrust laws this far.\footnote{91}

Suppose that instead of using § 1, the city of Memphis took a § 2 approach. They might argue that the NFL is a monopoly, and even if it acquired its monopoly legally, it is misusing its power by leaving Memphis open as a “Suncoast Dome city,” i.e. an attractive area which could support a franchise, but is being used by the teams as a relocation threat. This argument would most likely fail because in essence the claim is that the league is limiting output in order to raise prices, exactly what we would expect from a monopolist. Acting like a monopolist, without more, is not illegal if the monopoly power was acquired legally. If the real problem is that cities are being overcharged for franchises because of the monopoly position of leagues, then antitrust law is not going to be large enough to solve the problem, even though this is precisely the concern of antitrust. There must be other rules.

IV. PROPOSED RULES OF THE GAME

There are two rule themes proposed in the world of contract. The first theme, proposed by Shropshire, concerns the payment of damages when a team relocates without league approval, and operates within the relationship of team to league.\footnote{92} The second theme, proposed by Beisner, concerns mandatory lease terms, and operates within the relationship of team to city.\footnote{93} Both proposals have their merits, yet neither addresses the underlying dynamics which create the problems they are trying to solve.

Shropshire argues that teams should be seen as having a fiduciary relationship towards the league, i.e. each team owes a duty to the other teams as a partner would have toward other partners in a partnership. The significance of this fiduciary duty is to allow for compensatory and punitive damages for breach of contract in the event a team usurps a league developed opportunity — e.g., moves to a “Suncoast Dome site.” Essentially, Shropshire’s concern is to not allow a single owner to steal from the league. But presumably if a team is required to fully compen-
sate the league for the league's loss, and the team still finds a move profitable, then the move should be O.K.

Shropshire claims to be concerned with an economically efficient allocation of resources, as he cites this idea as one important goal of contract remedies. Yet if we conceive of punitive damages as representing a payment above what would fully compensate the league, it would seem that franchise moves would never deter franchises from moving. If we are concerned with an efficient allocation of resources, punitive damages should only be employed to compensate for the probability of not getting caught. To the extent that Shropshire views punitive damages merely as a means to have owners internalize the full costs of a move, his argument has merit as a way to further refine the franchise free agency landscape. However, having the owners internalize the full costs of their actions requires a redefinition of compensatory damages, not the addition of punitive damages.

If Shropshire is suggesting the use of punitive damages above true compensatory damages as a means for the league to control franchise movement for its own benefit, then his argument is simply that relocation decisions should be made by the league, not the market. This could be good or bad for a city, depending on whether the city does or does not already have a franchise, and depending on how benevolent the league feels towards protecting the city's interests. As we have noted and will continue to note, the league has little reason or incentive to watch after the city's interests.

To protect the cities' interests, Beisner argues that Congress should mandate certain stadium lease terms to correct for the unequal bargaining power between cities and teams caused by the reduced supply of teams. Beisner argues that every stadium lease should include "a notification provision, set mandatory minimums for owner contribution and length of lease, and, upon relocation, require a franchise owner to reimburse the local municipality for any investment in remodeling." Basically, the length of the lease and other team commitments would be indexed to the amount of public subsidies from the municipality. This is an interesting idea. The effect would be similar to the cities collectively price fixing. Unfortunately, this does not have the effect of cities collec-

94. Shropshire, supra note 92, at 593.
95. Shavell, Law and Economics class at Yale Law School, Fall of 1993. The probability of a team not getting caught relocating without permission is obviously zero.
96. Beisner, supra note 7, at 432.
97. Id.
tively agreeing not to compete. If the problem is caused by an artificially reduced supply of teams, then mandating team concessions in one area will merely shift the competition for teams to another area. Cities will still find ways to lure teams away, and the leagues will still use this reality to extract public subsidies from sources other than stadium leases. Beisner’s proposal is thoughtful, but it does not solve the problem — it just changes the landscape.

A. Congressional Proposals

The Raiders litigation caused a number of congressmen to propose rule changes to the relocation game. The overriding concern of this wave of proposed legislation, with limited exceptions, was how to best keep teams from moving. It should come as no surprise that most of the congressmen sponsoring the bills on this topic were representing communities who already had professional sports teams.

Senator DeConcini and Representative Stark introduced bills which would grant all sports leagues immunity from antitrust. In other words, DeConcini’s and Stark’s proposed rule change was to eliminate the rules. These bills are either motivated by the sincere, yet naive, belief that a collection of team owners are the best people to watch out for the cities’ interests, or by the hope of moving from Congress into a commissioner’s office. All of the other bills recognize that there must be some external source for the rules of this game, whether antitrust plays a part or not.

Bills proposed by Senators Gorton, Eagleton, Specter, and Representative Dellums would require that certain objective criteria be met before a team could expand. For example, Specter’s and Dellums’ bills would make it unlawful for a team to relocate unless one of three per se situations are met: 1) if there is a material breach of the lease by the stadium operator, 2) if the stadium is inadequate, or 3) if a team has experienced net losses for three consecutive years.

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100. York, supra note 6. Specter’s proposal allows for a shorter time period of team losses if the losses “endanger the continued profitability of the team.” Id. at 358-59.
Eagleton identify a set of objective factors to be taken into account when approving a team relocation.\footnote{Gorton's bill identifies nine objective factors, including: "stadium adequacy; past fan support; public financial support, including the construction of facilities; net operating losses; and the degree to which the team has negotiated in good faith with local officials regarding the current situation." \textit{Id.} at 363.}

The major difference between Gorton’s and Eagleton’s bills lies in who makes the determination whether a relocation is appropriate and what standard must be met in making that determination. Eagleton’s bill would have the leagues decide relocation issues by granting the leagues antitrust immunity if they make findings concerning the objective factors enumerated in the bill. The league will then be allowed to prevent any relocation or allow any “reasonable and appropriate” relocation after a consideration of these factors. Gorton’s bill, on the other hand, would create a Professional Sports Franchise Arbitration Board to review any proposed relocation to determine if the relocation is “necessary and appropriate.”

The “necessary and appropriate” threshold in the Gorton bill, coupled with external federal review, would make it almost impossible to relocate a franchise. While a rule of this sort would create stability, this should not be the only or even primary goal of federal legislation. Locking franchises into where they are is great for the cities with franchises, but bad not only for the cities without franchises, but bad also for the leagues. The teams would lose all of their bargaining strength, with only a select few cities reaping the rewards. An evaluation of the initial draft of Gorton’s bill was that “[It] is very important legislation. But some

\textit{Id.} at 366; S. 259, § 6(b), \textit{supra} note 99..
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."

At this point in the evaluation of the proposed rule changes one gets
the feeling that no one wants to address the real source of the problem:
less than optimal supply of franchises due to league monopoly power.
Congress needs to make rules which will increase the supply of teams.
There are two ways Congress can approach this problem. It can either
mandate expansion by the leagues, i.e. tell the leagues that they must
create X new teams by year Y; or it can reduce the barriers to entry in
the league, i.e. set a "price" which if paid would allow a team to enter
the league. Mandating expansion, while helpful, would provide only a
temporary and limited answer to the problem, and would be cumbersome to implement. Reducing the barriers to league entry would be the
best rule change Congress could adopt. Both of these options will now
be considered in more detail.

B. The Case for Expansion

Senator Gorton realized that creating a system which would make it
more difficult for teams to relocate would not be a good rule change, standing alone. "For the 'have-nots,' the status quo, which gives cities
without a franchise at least the chance to entice a team away from another city, is preferable to a regulatory scheme designed solely to encourage stability." For this reason, Gorton proposed in his bill to
mandate expansion in the National Football League and in Major
League Baseball. This has been a controversial idea, but not without its
supporters.

102. Wong, supra note 1, at 62, quoting Senator Lautenberg at the Professional Sports
Team Protection Act Hearings on S.2505 before the Senate Comm. on Commerce, Science,
103. The congressional proposals are like adopting the two point conversion and penalizing missed field goals in order to create more touchdowns. If football really needs more touchdowns, deepen the end zone.
105. S.287, supra note 99.
106. The bill introduced by Sen. Eagleton, S.259, supra note 99, was killed when then Sen. Al Gore and Sen. Charles Mathias threatened a filibuster and demanded mandatory NFL expansion in exchange for releasing the bill. York, supra note 6, at 371. It is certainly no coincidence that Sen. Mathias is from Maryland, and Sen. Gorton's bill specified that one of the expansion NFL franchises be located in Baltimore. Nor is it a coincidence that Sen. Gore is from Tennessee, a state which could not get the Grizzlies into the league through the current rules of antitrust.
The first hurdle for a mandatory expansion rule is to justify congressional intervention in the first place. Gorton made a compelling argument. After noting that "legislators . . . realize that professional sports teams are important community assets, economically and psychologically," Gorton asks:

Why should Congress intervene to help state and local officials who evidently will not help themselves by negotiating secure leases or delaying the expenditure of public funds until a team is committed to locate in the community? . . .

First, due to the enormous discrepancy between the demand for professional sports teams and the supply, particularly in football and baseball, it is extremely difficult for any local officials to make meaningful demands on a team in negotiating a lease. For every city cautious enough to require a pledge of security, there is another city willing to forego that security to win a franchise. In short, in a seller's market, buyers make few demands.

Second, the fact that the market is so heavily tilted in favor of team owners is in large measure attributable to a series of congressional manipulations of the free market . . . . These actions and this omission have permitted the leagues to control the supply of the product in the marketplace virtually free from any competitive pressure to respond to market demand. . . .

It is hardly sound or balanced public policy to manipulate the free market for the benefit of the league and owners and then to turn our backs on the cities which become the victims of that manipulation. . . .

Gorton's basic argument is that Congress helped create this monster, so Congress should help contain it.

Even if Congress was not in any way responsible for the leagues' monopoly power, this factor would not be a reason for Congress to not intervene and regulate the sports industry. Neale argues that "each professional sport is a natural monopoly." In other words, "there appears to be a strong tendency toward a single league, and this for one good reason: only a single league can produce that most useful of all products, the World Champion. . . . [And] one large league can provide any quantity of output as cheaply as two or more smaller firms. . . . [T]here is a

108. Gorton noted that "in the past 20 years, state and local governments have spent over $6 billion building or renovating stadiums." Id.
109. Id. at 2-3.
likelihood that the first league in the sport — like the first utility in a city — will become a monopoly."\footnote{Johnson, supra note 1, at 8.}

Johnson cites Lowell and Weistart to rebut the argument that sports franchises are analogous to public utilities. Lowell and Weistart argue that sports franchises are not like public utilities because they lack "the presence of an activity affecting the basic public need for food, shelter, and sanitation."\footnote{Id. at 6, 8.} It is difficult to argue with the observed difference between sports and public utilities, but this observation is missing the point. Although sports plays a strong role in the American way of life and could be viewed as a public trust, it is not these characteristics which make sports like public utilities. Instead, sports are like public utilities in that they are both natural monopolies, and if left unregulated would be fertile ground for individuals to extract excess profits at the expense of the public welfare.

If leagues hold their powerful positions because the sports industry is a natural monopoly, then they will be able to act like monopolists without existing antitrust law able to do anything about these actions. The only way to have the leagues offer their products at a price which approximates a competitive level is through external regulation.\footnote{Baade & Dye, supra note 34, at 265 (referring to an estimate made by Gerald Scully, sports economist).}

Of course, the leagues do not like mandatory expansion because it would weaken the owners' privileged position. Perhaps the value of the current owners' investment will be diminished, but so what? "By some estimates, 95% of the value of a franchise is economic rent that is the result of team monopoly and monopsony advantage imparted by legislation."\footnote{Johnson, supra note 1, at 234.} Regardless of how the owners acquired a monopoly position\footnote{It at least appears clear that each of the four major leagues — baseball, football, basketball, and hockey — do have monopoly positions, without the prospect of any serious competition.}, the owners should not feel entitled to reap the benefits of a monopoly position indefinitely. Investors must always bear the risk that the government will come to its senses and do what is in the public interest.

\footnote{ZIMBALIST, supra note 27, at 146.}
Other criticisms have been leveled against mandatory expansion. For example, the Justice Department, at the time Gorton's bill was on the table, believed that there was no justification for mandatory expansion.\footnote{116} In a free market system, firms—not regulators or legislators—are generally considered the best judges of how and where their products are marketed. Congress does not mandate that steel manufacturers, for example, must open new plants in specific cities according to a specific schedule. The assessment of demand and the amount of athletic and managerial talent available to satisfy this demand are best left to the judgement of the NFL and Major League Baseball.\footnote{117}

The comparison of sports leagues to steel manufacturers reveals the flaw in the Justice Department's argument. First, if the steel industry is competitive, there would be no reason for Congress to mandate that steel manufacturers open new plants. But even if the industry is monopolized and the antitrust laws continue to be ineffective in reaching the steel industry, as they were in 1920,\footnote{118} a city could unilaterally subsidize or start up a steel plant located within its boundaries to meet the city's steel needs, and that plant could independently produce steel. A city cannot unilaterally create a major league baseball team which could independently produce baseball for the city. This dilemma is another twist caused by the unique nature of sports leagues. The arguments as to why sports leagues are unique, do not fit neatly into antitrust analysis, and should not be governed by antitrust law. These arguments are then why the federal government needs to set rules specifically governing sports leagues. If left alone, the leagues will certainly be able to assess the demand for sports franchises, as claimed by the Justice Department, but this does not mean that the leagues will meet the demand — quite the contrary.

Mandatory expansion, however, is a cumbersome way for the federal government to regulate the sports industry. The government would have to decide how many teams a league could support, then a decision will need to be made concerning which cities should get a team. Senator DeConcini, who proposed that leagues should be immune from anti-

\footnote{116} Gray, supra note 24, at 158.  
\footnote{118} See United States v. United States Steel Corp., 251 U.S. 417 (1920). US Steel brought 180 independent firms under one umbrella, controlling 80-95% of domestic production of steel. The court refused to break up US Steel because "the law does not make mere size an offence or the existence of unexerted power an offence." Id. at 451.
trust, argued that "Congress should not be in the business of selecting cities . . . [but] should create a legal climate in which leagues can follow their best business judgment." DeConcini has a good point about Congress creating a legal climate if included in this climate is an opportunity for cities to follow their best judgement. In other words, Congress should create a level playing field for all participants. This is why the best rule Congress could give the professional sports industry is to reduce the barriers to entry, and let the chips fall where they may.

C. Reduced Barriers to Entry

If there were a "price" set for participation in the major league sports industry, then cities would be free to make an allocative decision about whether a sports franchise is worth that price to the city. We could trust this decision the way we trust any consumer decision to lead to the most efficient allocation of resources. Cities without franchises could get one if they wanted one, and cities with franchises could not be extorted by threats of relocation, since a city could replace a lost franchise. It appears to be the only solution which does not distinctly advantage the 'haves' over the 'have-nots', or vice versa. Even though this may be a good solution to a tough problem, few have been willing to support reducing the barriers to league entry, nor has it been given much serious study. Two questions must be answered concerning reduced barriers to entry before it can be embraced: first, what is the buy-in "price," and second, what affect will this have on the sports themselves.

The question about the price to be paid for league entry is meant to address the concern many have about the economic viability of expansion. Johnson suggests that the "price" to join a major league should include 1) minimum population requirements, 2) adequate playing facilities, and 3) a minimal level of financial solvency. He also suggests that cities in which a franchise fails financially could be required to wait five years or longer before reentry into the league. Once entry requirements are met, Johnson advises that a two-year waiting period take effect for

119. S.298, supra note 98.
120. York, supra note 6, at 370.
121. All of the cities would be better off under this proposal except those cities who currently have franchises only for the prestige value. Those cities will lose because the value of the franchise to them will be diluted, similar to a person who buys a car $30,000 over cost only to display his wealth to the neighbors, and then the same car starts selling at cost and half the block buys one. Similarly, the owners who bought into the sports industry to take advantage of its monopoly position will lose, but neither of these losses should cause much concern.
122. Johnson, supra note 1, at 239.
123. Id.
the new team to organize its front office, to promote the team, to prepare the playing facilities, and to allow the league time to adjust its schedule.

The requirements for entry should approximate the population and stadium capacity of the community with the smallest media market currently in the league. Consider that in 1993, the Cincinnati Reds were operating profitably in the 30th largest media market, and without incorporating any smaller markets it would be possible for Major League Baseball to expand to thirty-six teams, and additionally, another six are within 14% of Cincinnati.\textsuperscript{124} We could take Cincinnati's average annual gate receipts over the last five years and use this figure as a "price" — guaranteed ticket sales of $X$ amount at at least $Y$ price level. If any team fails to meet this requirement in two consecutive years, then the team may be voted out of the league. In this manner, a city in a higher media market than thirtieth could acquire a team, with a good chance that the population alone would keep the team in the league. At the same time, a smaller city could still acquire a franchise if it was willing to subsidize the team in the amount necessary to cover the guaranteed ticket sales requirement. If a team were in danger of not meeting the quota, tickets could be bought up by the local chamber of commerce or by the local government if either thought the team was worth the cost. The communities could make rational decisions concerning the worth of sports teams and at the same time the leagues could be left alone to make any marketing, relocative, or internal allocative decisions as they see fit, while at the same time protecting themselves from free riders. Reducing the barriers to entry sounds attractive.

Those not yet convinced, or those who have something to lose, will still argue that expansion will hurt the quality of the game product in two ways which will affect the demand for professional sports: 1) it will reduce the quality of player talent, and 2) it will saturate the market. In considering both arguments, the reader should first reflect on the success of the NCAA in basketball and football. Every year millions of fans await anxiously as the NCAA basketball tournament selection committee whittles the college basketball field down to sixty-four teams, none of which could beat the Dallas Mavericks. Neither the number of teams in a league nor the absolute skill level of the players can be shown to be related to fan interest.

Neale asserts that as a league expands, the quality of the product is affected by two contrary tendencies: "diminishing quality returns" and

\textsuperscript{124} ZIMBALIST, supra note 27, at 145.
the "input-enthusiasm effect."125 As less skilled players are drawn into the sport, the demand function may contract, leading to a reduction in revenue per game seat. "However, we know by introspection that the reduction will be small since the appeal of a seat depends mostly on the uncertainty of the outcome and on the weather."126 But any reduction in demand due to diminishing quality returns will be counteracted by the input-enthusiasm effect. As leagues expand into new areas, public attention will be drawn more to the particular sport and more private concentration will be put into a development of the skills of the sport. "In other words, the larger the scale of operations, the higher the quality of inputs and of products. . . . Larger scale, therefore, does not necessarily increase costs more than revenue."127

Bill James, baseball expert and rotisserie guru, estimates that there is sufficient talent for sixty major league baseball teams.128 Both Larry MacPhail in 1951 and George Will in 1990 suggest that baseball would be better organized if there were expansion to six major leagues instead of two.129 The bottom line is that expansion should be embraced, not feared. Reduced barriers to entry will not lead to the downfall of professional sports, but it will change the rules of the game.

V. CONCLUSION

Our cities see in professional sports an opportunity to improve the quality of life of its citizens. A sports team can be used to unite and even educate a community, or it can give a city prestige. For whatever reasons, more cities want and can support major league sports teams than teams are made available. Team owners, acting as individual leagues, restrict the amount of teams available to be "rented" by the cities. This allows individual team owners to extract excess profits from the cities, which results in a sub-optimal allocation of resources. The only way to correct this situation is for Congress to reduce the barriers to entry into professional sports leagues. The fact that a community like Tampa/St. Pete could build a baseball stadium in the 24th largest U.S. market and have twenty-eight self-interested owners decide whether they can participate in the national pastime is an embarrassment. Perhaps, when the Piazza litigation fails to get the Giants transferred to Tampa/St. Pete, a

125. Neale, supra note 48, at 8.
126. Id. at 8 n.7.
127. Id. at 9.
128. ZIMBALIST, supra note 27, at 143.
129. Id. I imagine they both envision the "leagues" as one league, existing under the umbrella of Major League Baseball. See Neale, supra note 48, at 6.
few congressmen will take notice of the real problem between cities and professional sports: the sports output is controlled by a select few individuals with little incentive to allow a city like St. Pete to play with them. Professional sports is truly the tail that wags the dog.