KEEPING UP WITH THE JERRY JONESES:

HOW TO STOP BILLIONAIRES FROM USING OUR MONEY TO FUND THEIR PLAYGROUNDS

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INTRODUCTION

A young athlete, after striving for years to make it to the pros, walks out of the tunnel to the roar of a crowd. The hairs on the back of their neck stand up, as they look up into the lights as thousands of faces look back. They sing and dance while the team warms up, they cheer when the team scores, and they chant the players' names when they finally take the field. That feeling of electricity in the air is almost palpable. For most, those cheers usually end with us waking up. For those lucky few who make it to the pros, those cheers empower them to achieve more than ever. The crowd drives athletes to jump higher, run faster, and push harder.[1]

Even for spectators, the feeling is unlike anything else. Whether it is the yells after the audible crack of a homerun, the hesitant quiet as a deep ball falls into the hands of a streaking receiver, or the jubilee of a last second buzzer beater, anyone who has attended a live sporting event has experienced one of those magic, unifying moments of joy. This feeling can make you feel pride in your town, build camaraderie with your neighbors, and can make even a boring game fun. There is even evidence that spectating sports makes you healthier.[2]

A central but often forgotten part in the narratives of great sporting triumphs and heartbreaks is the setting. Grand sporting

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[1] Hilary E. MacGregor, For athletes, the crowd's roar is double-edged, Los Angeles Times (Aug. 23, 2004), https://www.latimes.com/archives/la-xpm-2004-aug-23-he-crowds23-story.html.

[2] Yuhei Inoue, Mikihiro Sato, and Makoto Nakazawa, Association between sporting event attendance and self-rated health: an analysis of multiyear cross-sectional national data in Japan, Global Health Research and Policy (May 6, 2018), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5936628/.

stadiums often become symbols of the cities they reside in, and part of the living mythos of the sports they house. From the Roman Colosseum to Fenway Park, these facilities can become icons all their own.

It is easy to forget amongst the glam and glory of sports that professional sports are big business. Newer stadiums competing with the more iconic stadiums have included all kinds of bells and whistles to entertain, excite, and entice guests to keep paying the ever-increasing costs of tickets. AT&T Stadium, home of the Dallas Cowboys, has a contemporary art collection personally selected by owner Jerry Jones spread inside and around the facility.[3] Levi Stadium, the home of the San Francisco 49ers as of 2014, has included 1,200 Wi-Fi access points throughout the stadium, and offers online ordering and delivery of concessions.[4] When the Jacksonville Jaguars renovated their stadium in the mid-2010s they removed 9,500 seats to install cabanas and two pools.[5]

This is not just a football phenomenon. In baseball you have teams like the Miami Marlins, whose stadium includes a giant homerun sculpture,[6] fish tank backstop behind home plate,[7] and (until recently) a nightclub and pool.[8] From the South[9] to the

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[3] Art, ATTStadium.com, https://attstadium.com/art/.

[4] Paul Kapustka, Niners: More than 1,000 fans used in-seat food delivery at 2nd Levi's Stadium preseason game, Mobile Sports Report (Sept. 3, 2014), https://www.mobilesportsreport.com/2014/09/niners-more-than-1000-fans-used-in-seat-food-delivery-at-2nd-levis-stadium-preseason-game/.

[5] Darren Rovell, Jaguars to have poolside cabanas, ESPN (June 9, 2014), https://www.espn.com/nfl/story/_/id/11055495/jacksonville-jaguars-poolside-cabanas-stadium.

[6] Richard Langford, Marlins Park: Team Swings and Misses with Fish Tank and Home Run Sculpture, Bleacher Report (April 4, 2012), https://bleacherreport.com/articles/1132292-marlins-park-team-swings-and-misses-with-fish-tank-and-home-run-sculpture.

[7] Id.

[8] Nightclub, swimming pool close at Marlins Park, ESPN (Mar. 5, 2020), https://www.espn.com/mlb/story/_/id/28845618/nightclub-swimming-pool-close-marlins-park.

[9] Tim Tucker, Mercedes-Benz Stadium's video board could be a game changer, AJC (Aug. 22, 2017), https://www.ajc.com/sports/mercedes-benz-stadium-halo-board-could-game-changer/RcMJYsB3XRTmMV9HF5TlyH/.

North,[10] East[11] to the West,[12] sports franchises are caught in a perpetual game of "Keeping up with the (Jerry) Joneses." Though some of these renovations and amenities may be gaudy or kitschy, it is all in good fun; and few people really care what billionaire sports team owners blow their money on. After all, it is only their money, right?

I. PRIVATE STADIUMS ARE WASTING PUBLIC MONEY

Unfortunately, it is not. The overwhelming majority of professional sports stadiums in the United States are funded at least partially with public money. In the National Football League (hereinafter, "NFL"), only one stadium is completely privately financed: MetLife Stadium, which is shared by the New York Jets and New York Giants.[13] In the National Basketball Association (hereinafter, "NBA") only one of the American teams has been able to privately fund their new stadium, the Golden State Warriors.[14] Major League Baseball (hereinafter, "MLB") has two publicly funded stadiums in America, the Chicago Cubs[15] and the Boston Red Sox.[16] Fenway park would have been publicly funded

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[10] Tim Newcomb, The Roof That Isn't There, Popular Mechanics (Feb. 2, 2018), https://www.popularmechanics.com/adventure/sports/a19066/minnesota-viking-football-stadium-roof/.

[11] Flyers and Wells Fargo Center Announce Official Sportsbook Partner, NHL (Sept. 4, 2019), https://www.nhl.com/flyers/news/flyers-and-wells-fargo-center-announce-official-sportsbook-partner—philadelphia-flyers/c-308873868.

[12] Ryan Gorcey, A Chase Center sneak peek: Amenities to die for, San Francisco Examiner (Aug. 26, 2019), https://www.sfexaminer.com/sports/a-chase-center-sneak-peek-amenities-to-die-for/.

[13] NFL Stadium Funding Information, CBS Minnesota (December 2, 2011), https://web.archive.org/web/20121222050741/https://cbsminnesota.files.wordpress.com/2011/12/nfl-funding-summary-12-2-11.pdf.

[14] Scott Davis, Warriors President Rick Welts explains why their new $1.4 billion self-financed stadium was a one-of-a-kind situation other teams can't replicate, Business Insider (Mar. 28, 2019), https://www.businessinsider.com/how-chase-center-built-warriors-cost-perfect-storm-2019-3.

[15] Mary Ann Ahern, Emanuel, Cubs Quick to Note No Tax Dollars Used in Wrigley Renovations, NBC Chicago (April 10, 2017), https://www.nbcchicago.com/news/local/emanuel-cubs-wrigley-field-renovations-plaza/11344/.

[16] Mark Yost, The Green Monster Goes It Alone, Wall Street Journal (July 13, 2010), https://www.wsj.com/articles/SB100014240527487034260045753387733054824 94.

as well, had they not lost a lengthy political battle that took place in the Boston City Council to save the park.[17]

It is obvious that a vast majority of professional sports stadiums receive some form of public funding. All of those new stadiums and renovations can add up. In the twenty-four years from 1996-2020, over $7 billion has been spent by taxpayers to fund NFL stadium construction and renovation.[18] That number has only gone up, with new stadiums being built in Las Vegas and Atlanta. Construction on the new Los Angeles shared arena is seeing public financing topping at least $950 million.[19] That public funding can come from a variety of sources, including the federal, state, city, and county governments. The idea of stadiums adding extra features like campy fish tanks, swimming pools, Ferris wheels, and private art museums is all just fun, until you realize that you and all your neighbors are the ones footing the bill.

Perhaps a more serious problem lies in the fact that these public investments end up not being worth the money. Sometimes the tradeoff of investing in a new stadium for one sport results in a lack of public funding for other sports, such as how the new Mercedes-Benz stadium in Atlanta resulted in the Braves leaving for the neighboring Cobb County.[20] More importantly, the use of public funds for sports arenas can come at the expense of other, essential needs of a community. Look at Detroit, which sold $450 million in tax exempt bonds to fund a new stadium for the Red Wings. [21] Six days before, the bankrupt city was proposing slashing healthcare benefits and pensions for workers, and almost half of the city lights were dark.[22] There is really no need for

[17] Steve Marantz, He Saved Fenway Park, Sports Media Guide (Jan. 2, 2014), https://web.archive.org/web/20150202173342/http://sportsmediaguide.com/announcements/he-saved-fenway-park/.

[18] Taxpayers have spent a staggering amount of money on NFL stadiums in the last 20 years, Fox Sports (Mar. 31, 2016), https://www.foxsports.com/nfl/story/nfl-new-stadiums-public-funding-how-much-atlanta-san-diego-minnesota-los-angeles-033116.

[19] Liz Clarke, The Rams' $5 billion stadium complex is bigger than Disneyland. It might be perfect for L.A., Wash. Post (Jan. 26, 2019), https://www.washingtonpost.com/sports/the-rams-5-billion-stadium-is-bigger-than-disneyland-it-might-be-perfect-for-la/2019/01/26/7c393898-20c3-11e9-8e21-59a09ff1e2a1_story.html.

[20] Fox Sports, supra note 18.

[21] Detroit billionaires get US$450M hockey arena as city suffers under bankruptcy, Financial Post (Sept. 3, 2013), https://business.financialpost.com/news/economy/detroit-billionaires-get-us450m-hockey-arena-as-city-suffers-under-bankruptcy.

[22] Id.

public investments in the hundreds of millions of dollars for sports franchises, especially when most of these franchises are worth billions themselves.[23]

There is a misconception that investing in a sports stadium eventually manages to pay itself off. Often, this is based on the philosophy of a "rising tide lifts all ships." The rationale of proponents of public stadium funding basically falls into four arguments:

> "First, building the facility creates construction jobs. Second, people who attend games or work for the team generate new spending in the community, expanding local employment. Third, a team attracts tourists and companies to the host city, further increasing local spending and jobs. Finally, all this new spending has a "multiplier effect" as increased local income causes still more new spending and job creation."[24]

All four of these arguments are fundamentally flawed. These reasonings only make the investment worthwhile if they are the best possible use of the public funds.[25] The opportunity cost of using those funds for sports arenas instead of other, more direct benefits to the taxpayer can grossly outweigh the benefits created by the arena.[26] The misuse of public funds hurts the public because there are cheaper alternatives that would have the same effect, and allow more of the public money to go to more useful expenses such as education, housing, and infrastructure.[27] "Consumers who spend money on sporting events would likely

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[23] Mike Ozanian, Kurt Badenhausen, and Christina Settimi, The NFL's Most Valuable Teams 2019: Cowboys Lead League At $5.5 Billion, Forbes (Sept. 4, 2019), https://www.forbes.com/sites/mikeozanian/2019/09/04/the-nfls-most-valuable-teams-2019-cowboys-lead-league-at-55-billion/#9d9e2802f1bb.

[24] Andrew Zimbalist and Roger G. Noll, Sports, Jobs, & Taxes: Are New Stadiums Worth the Cost?, The Brookings Institution (June 1, 1997), https://www.brookings.edu/articles/sports-jobs-taxes-are-new-stadiums-worth-the-cost/.

[25] Id.

[26] Karthik Vegesna, The Economics of Sports Stadiums: Does public financing of sports stadiums create local economic growth, or just help billionaires improve their profit margin?, Berkeley Economic Review (April 4, 2019), https://econreview.berkeley.edu/the-economics-of-sports-stadiums-does-public-financing-of-sports-stadiums-create-local-economic-growth-or-just-help-billionaires-improve-their-profit-margin/.

[27] Id.

spend the money on other forms of entertainment, which has a similar economic impact."[28]

The second argument faces a further flaw, in that the generation of local spending does not often bring in new revenue. Sure, people who attend games or work generate some local spending. But this spending is offset by the spending they would have done anyway. A fan drives from across one city district to the district that houses the stadium eats at a restaurant closer to the stadium, but all this does is reallocate the funds they would have spent at an establishment further in the city to the district the stadium resides in.[29] For the city to recoup its investments, the stadium would have to rely predominantly on out-of-town customers to bring new revenue into the market, an unlikely outcome for all but the biggest of games.[30] That business model would weaken the social benefits of having the team, and likely be somewhat opposed to the interest of the teams, who might prioritize heavy local involvement.

City and local politicians know the powerful feeling of being a part of a crowd, and they will do seemingly anything to keep sports in their city. Sports franchise owners are acutely aware of the public support for their organizations and use their strong bargaining positions to request increasingly outrageous deals. Even organizations with little success, such as the Cincinnati Bengals, include provisions as outrageous as requiring the local county to purchase any stadium feature that fourteen other NFL stadiums had.[31] The unequal bargaining power created by the emotional and sociological bonds with sports franchises makes negotiations ideal for the billionaire owners.

Sports franchises prey upon these emotional ties during these negotiations to create political pressure against city officials. The threat they make is always the same: relocation. For years, the

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[28] Scott A. Wolla, The Economics of Subsidizing Sports Stadiums, Economic Research Federal Reserve Bank of St. Louis (May 2017), https://research.stlouisfed.org/publications/page1-econ/2017-05-01/the-economics-of-subsidizing-sports-stadiums/.

[29] Jeffrey Dorfman, Publicly Financed Sports Stadiums Are a Game That Taxpayers Lose, Forbes (Jan. 31, 2015), https://www.forbes.com/sites/jeffreydorfman/2015/01/31/publicly-financed-sports-stadiums-are-a-game-that-taxpayers-lose/#7634ee524f07.

[30] Id.

[31] Fox Sports, supra note 18.

boogeyman for any city with an NFL team has been Los Angeles. Two teams, the Chargers and the Rams, have recently taken the leap and moved to the City of Angels.[32] The 2020 season was the first season to house the new Las Vegas Raiders, after they left their previous home in Oakland.[33] These moves have left cities with the taste of live football wanting, and only presented new options for those teams who are dissatisfied with their current market. As long as these teams keep threatening to leave, whether to Los Angeles or the new targets of San Antonio, Toronto, or London, there will always be the power dynamic that makes cities agree to terrible deals will still exist. What options do the cities have to level the metaphorical playing field?

II. POSSIBLE SOLUTIONS

A. Just Say "No"

The first and most obvious solution for the power imbalance borrows a slogan from the War on Drugs: "Just Say No!" The easiest way to reclaim bargaining power is for cities across the country to refuse to contribute public funds forward to private stadiums. Entering into a negotiation without being fully comfortable walking away is a recipe for disaster. City, county, and state governments need to be ready and willing to let "their team" move to another city.

The benefit of a sports franchise is often overstated,[34] and trying to subsidize a game of one-upmanship over which multi-billion-dollar organization can have the nicest stadium is a bad economic decision. Instead of allocating millions to the funding of an arena that only paying customers will be able to use, that money could be spent building parks, housing, and roads that will benefit everyone. Financing of arenas and coliseums only serves

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32 Seth Wickersham and Don Van Natta Jr., Inside the Rams-Chargers marriage as the NFL fights for Los Angeles, ESPN (Nov. 21, 2019), https://www.espn.com/nfl/story/_/id/28117460/inside-rams-chargers-marriage-nfl-fights-los-angeles.

33 Tadd Haislop, Raiders' move to Las Vegas: Why (and when) Oakland's NFL team is leaving for new stadium, Sporting News (Dec. 15, 2019), https://www.sportingnews.com/us/nfl/news/raiders-move-las-vegas-new-stadium/421klqekch1t1cu0h56zcqew2.

34 Zimbalist, supra note 24.

as corporate welfare, socializing the costs of a private business, while allowing the profits to be capitalized on by the owners.[35]

There are, of course, significant costs associated with this path. First and foremost, it may mean the loss of the team. Their loss may harm the reputation and re-election chances of the city, county, or state officials who did not offer enough to keep the team in their area. Teams have certainly played up their emotional bonds with their fan base. In one display of this tactic, the Minnesota Twins ran television ads showcasing what Minnesota would miss if the team relocated, and advising viewers to call their legislators.[36] One of these ads depicted a cancer-stricken eight-year-old.[37] Over the video, a narrator said "If the Twins leave Minnesota, an 8-year-old from Willmar undergoing chemotherapy will never get a visit from Marty Cordova."[38]

But if a city can weather the storm of a sports franchise negative P.R. blitz, public opinion can change. After the Rams left St. Louis, and quickly made their way back to the Super Bowl, public support in St. Louis seemed to be against their former team.[39] One sports memorabilia store owner remarked on the change in support, saying "As much as they hate the Patriots, they still will root for them over the Rams this year. The Rams owner abandoned St Louis, and the fans won't forget it."[40] Part of this attitude surely stems from the owner's refusal of the city's offer, which then left the city with millions in debt on the old stadium. But the sentiment of abandonment is likely not an anomaly. Sports franchises using the feelings of togetherness or city pride to manipulate their fan base is a double-edged sword. When they leave, the audience for those remarks will see the inconsistency on the team's behalf.

Further, the costs of allowing a franchise to walk away may be mitigated by the availability of other teams. A city like New

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[35] Vegesna, supra note 26.

[36] Twins Yank Controversial TV Ad, AP News, (Nov. 5, 1997), https://apnews.com/8560a5223a20cb1d573f2013662864ca.

[37] Id.

[38] Id.

[39] Brent Schrotenboer, This Super Bowl stinks in St. Louis, still burdened by Rams dome debt, USA Today (Jan. 29, 2019), https://www.usatoday.com/story/sports/2019/01/29/super-bowl-st-louis-still-picking-up-pieces-rams-saga/2708034002/.

[40] Id.

York, which effectively has nine sports franchises across the four major US sports, can lose almost any individual team before the city would lose the social benefits of cohesion and city pride. Is a New Yorker really going to no longer be proud of their city because the Giants left? However, a city like Memphis may feel the loss of the Grizzlies more. Even if the Grizzlies left, however, Memphis could replicate some of those social benefits through other means, such as a restoration of Beale Street.

If cities across America began refusing the franchise owners demands on new stadiums, the owners would not be able to extort more and more extravagant funding from their hometowns. It is an issue of supply and demand. The supply is a relative constant and set at the pace of the various leagues who decide when or when not to expand. The demand can be affected, however. In doing so, there are going to be some teams that walk away. But others, unwilling to leave their hometown behind, may find the money to renovate by themselves, and remain just where they are.[41]

But there is an inherent flaw with this path. It relies upon politicians, both local and state, to make the hard decision and forsake an organization that is usually immensely popular with their constituents. Though this may later Even if a specific team is playing second or third fiddle in its city (such as the Clippers in Los Angeles, or the Mets in New York), there will undoubtedly be some disgruntled fans unhappy with the choice. While city leaders will occasionally rise to the challenge[42] and defy the teams, it will be a significant risk to their career.

B. Joint Negotiation Efforts

Forming “unions” between cities could potentially give local governments better bargaining power against the franchises. Options for these unions could include negotiating directly with the league, or agreeing not to compete in offering bids at local teams.[43] This solution allows an out for the local politician afraid to stand alone in denying a sports team the funding they request.

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[41] See Marantz, supra note 17.
[42] Id.
[43] Zimbalist, supra note 24.

It would also grant an organized and unified group of cities the capability to limit their competitors and reflect the demand.[44] It would be far easier for a city such as San Diego to resist giving more money to a local sports team if they felt assured that Los Angeles, San Francisco, and Sacramento had agreed to not entice their team in lower tax incentives and more direct funds than San Diego could offer. These unions could form based on regions, states, or simply as collectives of all of the cities with a team in a particular sport.

But there are two fundamental problems with this solution. First, there will likely be a city unwilling to join the union. These "scabs" would serve as alternatives to the organized collective and would undoubtedly be willing to offer more for the allure and prestige a major league sports team can bring to a city. If all of the current and past NFL cities unified to bargain together, the Jaguars could still leave Jacksonville for London, or the Bills could move across Lake Ontario to Toronto.

Perhaps the worst issue such a union would face, however, is the natural incentive to break ranks and negotiate secretly.[45] Even if you could form a collective bargaining union of cities, the related teams would try their hardest to break up the union as quickly as possible. Such an organization would pose a dramatic threat to the extremely owner-friendly market the league currently enjoys. Therefore, major franchises could target specific cities that join the union, and incite them to break ranks in order to elevate their city's prestige.

If such a union could form and resist the temptation to fracture, they would have the capability to refuse the demands of teams threatening to relocate. By undermining that threat, the union would gain much greater leverage in the bargain. However, the weaknesses here are fundamental to the concept, and so this path is unlikely to be a successful one.

C. Public Ownership of Sports Franchises

The first two possible solutions deal exclusively with tipping the scales in the bargaining between cities and sports franchises.

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[44] Id.
[45] Id.

At the end of the day, no matter what the cities do, the outcome for the team ends up in the same place, wherever the owner wants them. An alternative solution to increase the bargaining power of the cities and limit the misuse of public funds is for the cities to own the sports teams themselves. The money could likely be better spent elsewhere, but if local governments are going to spend hundreds of millions on sports, they should at least receive the profits.

There is a precedent for public sports ownership in the United States. Along with numerous minor league teams in baseball and soccer, one of the oldest, most prestigious franchises in the big four American sports is owned by its fans: the Green Bay Packers.[46] The Packers have been publicly owned since the days before the NFL became an economic powerhouse.[47] This system of ownership has kept one of the titans of the sport in a city with a population of only 104,057 for over a hundred years. For context, every single member of that city could fit into the Dallas Cowboys' stadium with room for over a thousand to spare.[48]

> "The Packers' unique setup has created a relationship between team and community unlike any in the N.F.L. Wisconsin fans get to enjoy the team with the confidence that their owner won't threaten to move to Los Angeles unless the team gets a new mega-dome. Volunteers work concessions, with sixty percent of the proceeds going to local charities. Even the beer is cheaper than at a typical N.F.L. stadium. Not only has home field been sold out for two decades, but during snowstorms, the team routinely puts out calls for volunteers to help shovel and is never disappointed by the response."[49]

The relationship between Green Bay and the Packers should be the benchmark for sports teams in order to maximize the benefits to a community. They set an example for how a

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[46] Dave Zirin, Those Nonprofit Packers, New Yorker (Jan. 25, 2011), https://www.newyorker.com/sports/sporting-scene/those-non-profit-packers.

[47] Id.

[48] NFL regular-season-record crowd of 105,121 sees Giants-Cowboys, NFL (Sept. 21, 2009), http://www.nfl.com/news/story/09000d5d812c91b4/article/nfl-regularseasonrecord-crowd-of-105121-sees-giantscowboys.

[49] Zirin, supra note 46.

community can genuinely be improved through the ownership of a sports franchise, and where investment in the stadium owned by that franchise serves more of a purpose than to generate profits for a billionaire. If a city wants to follow Green Bay's example, there are two main ways for the cities to gain ownership of the franchises: right of first refusal clauses and eminent domain.

1. Right of First Refusal

A right of first refusal is "a potential buyer's contractual right to meet the terms of a third party's higher offer."[50] To make this legal concept effective, a city would need to include in any deal to publicly finance a stadium a provision requiring a team selling or relocating to give the city the chance to purchase the team.[51] This provision would protect cities who have spent millions on a property from having their largest tenant leave on a dime.

There are benefits to this method. First, it does not necessarily require a city or team to take any action. The city would have the opportunity to match the offer if a team left or sold. If, however, the city wanted to instead refuse to spend another penny on a sports franchise, all they would have to do is decline to enact their right. Second, if they chose to own the franchise, then they will have access to all the lucrative financial benefits the current owners receive, plus the societal and cultural benefits of maintaining a sports franchise that has effectively become part of the city.

There are problems with this path as well. Most obviously, this provision would have to be agreed upon by both parties. In a contract negotiation where two parties are meeting on relatively level ground, this provision might not be too outrageous of an ask to be granted. With the large inequality in bargaining power between local governments and sports franchises, however, this provision then becomes something the cities would have to seriously fight for, requiring concession they may be unwilling to make. Without being willing to let the team leave, city officials will have as little ability to enforce this as they do to deny the funding that they want in the first place.

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[50] Black's Law Dictionary 1521 (10th ed. 2014).

[51] Zimbalist, supra note 24.

There also exists the question of price. If a team is in the process of relocation or sale, it is probably because the value of the franchise would rise if it moved.[52] A city such as St. Louis trying to match the offer of a giant city such as Los Angeles could be unfeasible. If they do match, then St. Louis overpays for a franchise that was not worth as much in their smaller city as it could be in the land of Hollywood. If they do not match it, the result is the same as if there had never been a provision at all, and St. Louis is left without a team.[53] Perhaps the contracts could agree to a lower price or the value of the team at its current venue, but that again runs into the problem of inequality of bargaining power.

However, perhaps the most damning issue for the use of right of first refusal is the major sports leagues' refusal to allow in publicly owned teams. There is a reason that Green Bay has been the only major league team owned publicly. In 1960, the NFL constitution was rewritten to bar all community owned entities, with the sole exception of the grandfathered-in Green Bay Packers.[54] The Constitution and Bylaws of the NFL now says "No corporation, association, partnership, or other entity not operated for profit nor any charitable organizations or entity not presently a member of the League shall be eligible for membership."[55] The NFL is not the only organization with these sentiments.[56] When the owner of the San Diego Padres Joan Kroc tried to gift the franchise and a $100m trust with which to run the franchise to the city of San Diego, a baseball owner's committee refused to let her.[57]

With this attitude likely prevalent in all of the major sports leagues, convincing a team to sign a provision that allows for public ownership is going to be difficult. When considering the

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[52] Id.

[53] Id.

[54] Zirin, supra note 46.

[55] Nat'l Football League, Const. art. III, § 2 (2006), https://onlabor.org/wp-content/uploads/2017/04/co_.pdf.

[56] Neil deMause, The Radical Case for Cities Buying Sports Teams, Not Sports Stadiums, Vice (Dec. 29, 2014), https://www.vice.com/en_us/article/vvakva/the-radical-case-for-cities-buying-sports-teams-not-sports-stadiums.

[57] Panel Blocks Bid to Give Padres to City of San Diego, Los Angeles Times (July 30, 1990), https://www.latimes.com/archives/la-xpm-1990-07-30-sp-1027-story.html.

dispute over what cost a team should be valued at if a city enacted this provision, it becomes even harder. In today's landscape, however, where the major sports franchises have ample opportunity to request extravagant sums from cities across the country, it becomes nigh impossible to get a team to agree to any right of first refusal provision that would greatly benefit the cities. If public ownership relies upon the agreement of the major sports leagues, it is effectively dead.

2. Eminent Domain

Luckily, however, it does not. Governments have the ability to force franchise owners to sell the franchises to them through the power of eminent domain.[58] Eminent domain is defined as "The inherent power of a governmental entity to take privately owned property, especially land, and convert it to public use, subject to reasonable compensation for the taking."[59] In the United States, we see this power laid out in the Fifth Amendment's Takings Clause.[60] "The Supreme Court has consistently recognized this power and acknowledged a government's authority to divest private citizens of title to their property. In fact, many commentators assert that the power of eminent domain existed prior to the Constitution and is inherent in sovereignty, independent of the Constitution."[61]

Therefore, a city who has spent millions of dollars on a stadium could reasonably claim that, rather than let the biggest tenant of that stadium leave, they should take it for the public use.

The term "public use" is likely to be the fighting point on this issue. This limitation on the Takings Clause of only allowing property taken for the "public use" has largely expanded over time.[62] This limitation was expanded greatly in the Supreme Court decision *Kelo v. City of New London, Connecticut*, where the court upheld the taking of private land to redistribute to a private

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[58] deMause, supra note 56.

[59] Black's Law Dictionary 637 (10th ed. 2014).

[60] Michael Birch, Take Some Land for the Ball Game: Sports Stadiums, Eminent Domain, and the Public Use Debate, 19 SPLAWJ 173, 178 (2012).

[61] Id. at footnote 25.

[62] Id. at 179.

entity for the sole purpose of economic development.[63] In the aftermath of this decision, local governments have used eminent domain as a more powerful tool to expand their economies.

The great irony of using eminent domain as a tool to seize professional sports franchises is that the very same franchises frequently benefit from its use. When holdouts stood in the way of the new Mercedes-Benz stadium, eminent domain was used to clear the way for the Falcons' new stadium.[64] Eminent domain was used to claim some of the property needed for AT&T Stadium in Arlington.[65] If eminent domain is being used to acquire land for private stadiums is proper, shouldn't using it to fill those stadiums with sports also be proper?

To put it simply, we just do not know. There are two prominent failed attempts of local governments to seize sports franchises.[66] The first example is when the City of Oakland attempted to seize the Raiders after they announced their attention to move to Los Angeles.[67] After, appeals all the way to the California Supreme Court, wrote:

> "The examples of Candlestick Park in San Francisco and Anaheim Stadium in Anaheim, both owned and operated by municipalities, further suggest the acceptance of the general principle that providing access to recreation to its residents in the form of spectator sports is an appropriate function of city government."[68]

Nonetheless, the court remanded, and a California Appellate Court later found the seizure violated the Commerce Clause.[69]

The second attempt came immediately after, when the Baltimore Colts famously fled Maryland in the middle of the night

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63 Id. at 183 (citing Kelo v. City of New London, Connecticut, 545 U.S. 469 (2005)).

64 Tim Tucker, Eminent domain in play for Falcons stadium property, AJC (Oct. 25, 2013), https://www.ajc.com/news/local/eminent-domain-play-for-falcons-stadium-property/2CtEiFmkomJqjbBEjnUgwM/.

65 Texas woman gets $2.75M for stadium land, ESPN (Sept. 14, 2006), https://www.espn.com/nfl/news/story?id=2587752.

66 deMause, supra note 56.

67 Id.

68 City of Oakland v. Oakland Raiders, 32 Cal. 3d 60, 71 (1982).

69 City of Oakland v. Oakland Raiders, 174 Cal. App. 3d 414, 422 (Ct. App. 1985).

to avoid the imminent eminent domain taking.[70] Though the court agrees it is indisputable that intangible property may be seized under eminent domain,[71] they found that the Colts had left the state before the eminent domain was finalized, and so the Colts were granted summary judgement.[72]

With no case from after the expansion of the public use limitation in *Kelo*, it is unclear how a modern court would treat a city who used eminent domain to take a team. It seems logically consistent that if eminent domain is appropriate for seizing land for stadiums, it would then be appropriate to seize teams for those stadiums. It also seems particularly cruel to allow eminent domain to only cut one way, particularly when that way is the one that benefits the businesses.

Even if a court disagrees, there is still some use in eminent domain. The major sports leagues really do not want to have other publicly owned teams, and the owners do not want their extremely lucrative businesses taken from them. Cities can and should use eminent domain as a threat to counter talk of relocation.[73] City councilmen and local politicians need to use every tool at their disposal in the negotiations with these businesses, and "we can just take it" is a powerful argument. Sure, this would likely be an immediately unpopular move that draws cries of "socialism," but the counterargument is obvious. Taxpayers are already footing the bill; they might as well receive the profits.

D. Federal Legislation

The last way to help balance the scales between cities and sports franchises and end the exploitation of local governments to fund stadiums is applied from the top down. Congress clearly has authority to regulate the various major sports leagues through the Commerce Clause. They could outright stop the use of public funds for private stadiums. In 2017, Senators Corey Booker of

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[70] Nick Sibilla, Over Thirty Years Ago, Maryland Tried to Seize an NFL Team, Forbes (Mar. 28, 2014), https://www.forbes.com/sites/instituteforjustice/2014/03/28/thirty-years-ago-baltimore-tried-to-use-eminent-domain-to-seize-an-nfl-team/#6d9f056441f5.

[71] Mayor & City Council of Baltimore v. Baltimore Football Club Inc., 624 F. Supp. 278, 282 (D. Md. 1985).

[72] Id. at 290.

[73] deMause, supra note 56.

New Jersey and James Lankford of Oklahoma introduced bipartisan legislation to end federal subsidies of professional stadiums.[74] The bill never received a vote. Another failed bill would greatly help the plight of cities seeking to gain ownership of sports franchises. The "Give Fans a Chance Act of 2001"[75] would have stripped the sports broadcast antitrust exemption from leagues that barred community ownership.[76] Further, it would have required any team relocating to give 180 days' notice beforehand, during which local governments, stadiums, and people could make an offer to buy the team and keep it in the community.[77] It died in committee.

Federal legislation could alleviate many of the problems that have arisen because of the power imbalance between local governments and sports franchises. However, the likelihood of any sweeping sports reform legislation coming out of the U.S. Congress in the near future is slim. After all, such legislation would require a literal act of Congress.

CONCLUSION

The stadium is a special place to fans of all sports. It is the setting to all of the magical moments that elevate sports into something more than just a game, more than just a business in the eyes of the spectators. We need to realize, however, that these arenas do not require every state-of-the-art bell and whistle to serve their purpose. The magic of the arena resides not in how many pools it has, or how many Wi-Fi access points, but on the field and in the crowd. The great arenas of our day are not those where legends are made.

More importantly, our governments should not be in the business of subsidizing these vainglorious expansions, particularly not when the profits of these efforts are being kept by the owners of the team. Every dollar a city or municipality spends on building

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[74] Booker, Lankford Introduce Bipartisan Bill to End Federal Subsidies for Sports Stadiums (June 13, 2017) https://www.booker.senate.gov/news/press/booker-lankford-introduce-bipartisan-bill-to-end-federal-subsidies-for-sports-stadiums.

[75] Give Fans A Chance Act, Institute for Local Self-Reliance (accessed on May 5, 2020), https://ilsr.org/rule/sports/2783-2/.

[76] Id.

[77] Id.

or renovating a stadium is money that could be spent on housing, roads, education, infrastructure, and other critical needs. When billionaires come knocking, requesting money they do not need but sure would like, local governments should just say "no." If they choose instead to wade into the world of public funding, they will need to use every tool at their disposal to combat the bargaining power of the franchises and to create leverage: joint negotiations with other cities, rights of first refusal, and the threat of taking the team under eminent domain. If cities use the powers they have and fight back against the temptation to misuse public funds, they can break free of funding a billionaire's game of "keeping up with the Joneses."