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## WHY CONGRESS IS OUT-OF-BOUNDS IF IT MAKES RULES FOR FOOTBALL

### INTRODUCTION

Is it a federal case if the Raiders score their touchdowns in Los Angeles rather than in Oakland? Apparently so. Despite an unusually large number of important issues facing Congress this year, lawmakers are still finding time to consider regulating where professional sports teams will play their games. While this may seem to be merely half-time entertainment for Congress, it could have serious implications for industries all over the United States. The reason: if the lawmakers regulated a franchise's ability to move from one city to another, they would be treating it as public property, and thus could establish a dangerous precedent for controlling the movements of capital and other private assets.

Since the recent movement of two National Football League teams, the Raiders and the Colts, to other cities, Congress has been considering various proposals to hinder such franchise relocations. Some of these proposals call for special federal boards to decide whether or not a franchise should move. Others would allow the sports leagues to decide when a franchise may move, but only when certain congressionally mandated conditions are met. Under a proposal recently endorsed by a Senate committee, the leagues would have to consider certain factors, subject to later court challenges of their decision.

Federal involvement of this sort is neither necessary nor desirable. The effect of a sports franchise relocation is widely misunderstood. Such relocations are rarely harmful and may, on balance, often be desirable. Laws hindering team owners from moving their teams will penalize not only the teams but millions of potential new sports fans.

Proposals to restrict the mobility of professional sports teams suffer from the same flaws as recent attempts to restrict the closure or movement of factories. Both seriously underestimate the need for the free movement of property in a market economy. The ability to liquidate or relocate assets so that they may be put to their best use, and provide the most benefit to consumers, is crucial to a thriving and dynamic economy. Restrictions on this activity, whether in the sports or the steel industries, will only preserve a stagnant status quo, hurting business and consumers alike.

This does not mean that there is nothing the Congress can do about franchise relocations. Government policy should be neutral as to whether a sports franchise should be relocated, allowing the leagues and team owners to decide where the franchise will be most valuable. Current government policy, however, actually encourages relocation of teams, for recent antitrust rulings have restricted the role that sports leagues may play in relocation decisions. These antitrust rulings treat team owners within a league as competitors, ignoring the fact that they are actually partners in a single enterprise. These restrictions have prevented the leagues from exercising their traditional role of ensuring stability. Therefore, rather than impose new forms of regulation, Congress should instead consider lifting the antitrust regulation under which sports leagues now suffer.

#### HOW THE ISSUE AROSE

The controversy over sports franchise relocations first arose as a legal and political issue in 1980, when the Oakland Raiders, a member of the National Football League, announced that it would start playing its games in Los Angeles rather than in Oakland. This was criticized both by the National Football League (NFL) and the City of Oakland. NFL team owners voted 22 to 0 to invoke a provision of the League's by-laws to prevent the Raiders from moving. The Raiders responded by taking the League to court, charging that the NFL had conspired to restrain trade in violation of the federal antitrust laws. In 1982, after lengthy litigation, a jury found against the League and the Raiders were awarded \$50 million in damages. This award is being appealed.

While the Raiders were suing the NFL, they in turn were being sued by the City of Oakland which seeks to condemn the Raider franchise through the city's powers of eminent domain--the right of a city to seize private property, with compensation, for the public use--so as to keep the franchise in Oakland. Eminent domain powers were originally created to allow state and local governments to acquire land for public roads. The City of Oakland thus now seeks to expand eminent domain dramatically to such intangible assets as businesses and contracts.

Several other team relocations have recently occurred. In early 1984, for example, the NFL's Colts left Baltimore for Indianapolis. Wary after its loss in the Raiders case, the NFL did not attempt to stop the move. But worried about a threatened condemnation of their property by Baltimore, the Colts packed their equipment and other property and sped out of Baltimore in the middle of the night, giving no advance notice to city officials.

Teams in other sports leagues also have relocated in the last two years, without the approval of their leagues. These include basketball's Clippers, which moved from San Diego to Los Angeles, and the Kings, which moved from Kansas City to Sacramento. Other teams may soon be added to this relocation list.

Spurred by angry local officials and disappointed fans, a flurry of bills have been introduced in Congress to hinder such relocations. Several of these, such as S. 287 and H.R. 885, introduced by Senator Slade Gorton (R-WA) and Representative Barbara Mikulski (D-MD), essentially would deny team owners and leagues the power to decide the location of professional sports teams and turn it over to federally created franchise relocation boards. These boards, to be convened whenever a team proposed to move, would consist of representatives of the league and the city or county from which the team proposed to move, and an arbitrator. The board would be directed to base its decision upon criteria specified by Congress.

To further ensure cities are not deprived of their "right" to host major league sports, Mikulski's bill also would require both the NFL and major league baseball to create two new franchises by 1988. Not surprisingly, one of the two new football clubs would have to be in Baltimore, which happens to be Mikulski's district. The other would be in Oakland.

Other proposals include S. 172, introduced by Senator Arlen Specter (R-PA), which would simply prohibit the relocation of a football team, unless it has sustained three straight years of financial losses, can show its stadium is inadequate, or can show that the local stadium authorities have breached their contract. This proposal would also restore the authority of sports leagues to reject proposed relocation of individual franchises.

On May 21, the Senate Commerce Committee approved S.259, introduced by Senator Thomas Eagleton (D-MO). While this measure would allow sports leagues to reject proposed franchise relocations, it would require them to give six months' notice of any move, conduct public hearings on the proposed move, and to consider and make specific findings as to factors deemed relevant by the Congress. Among these: 1) the adequacy of the team's present stadium; 2) the desire of the stadium owner to remedy inadequacies; 3) the amount of public financial support received by the club; 4) any contract regarding the

team's location; 5) the extent to which the club's management has contributed to the problem prompting the move; 6) the club's revenues and losses; 7) fan support; 8) other teams playing the same sport in the area; and 9) offers by others to purchase the team.

After these procedures are followed, and a decision is reached by the league, this decision could be challenged in federal court. S. 259 would cover only professional football, hockey, basketball, and soccer leagues; baseball already is protected by a unique antitrust exemption.

Several other bills differently approach the issue. Senator Dennis DeConcini (D-AZ), for instance, has introduced S. 298, which would grant sports leagues a limited exemption from the antitrust laws, without further restrictions on the movements of franchises.

#### ARE RELOCATIONS A PROBLEM?

Most discussion of the relocation issue is dominated by city officials and local fans angered at the prospect of a team they have supported for years moving. They understandably focus narrowly on what they see as the "unfairness" of the move. A broader examination of the matter, however, reveals that, in many cases, sports team relocations to new cities have positive effects on the sports industry and the fans.

Three reasons are usually cited for restricting the movement of professional sports teams: economic loss to the locality, direct financial loss to cities and other governments who invested in stadiums, and such psychological damage as a loss of civic pride. Each argument proves unconvincing upon close examination.

##### 1) Damage to the Local Economy

Departure of a major professional sports team can have a measurable economic impact. In addition to ticket sales and revenues generated by stadium concessions, there are indirect losses to restaurants and other businesses in the stadium's vicinity. The mayor of Baltimore claims that the loss of the Colts cost that city \$20 million in reduced economic activity;<sup>1</sup> Oakland's mayor has asserted the Raiders' move cost \$180 million.

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1. Professional Sports Team Community Protection Act: Hearing Before the Subcommittee on Commerce, Transportation and Tourism of the House Energy Committee, 98th Congress, 2nd Sess., p. 30 (1984), Testimony of Mayor Donald Schaefer.

2. Professional Sports Antitrust Immunity: Hearings Before the Senate Judiciary Committee, 97th Congress, 2nd Session, p. 357 (1982), Testimony of Hon. Lionel Wilson.

But these figures must be put in perspective. According to a recent study by the state of Maryland, about \$1.12 billion was spent directly or indirectly on professional sports in that state in 1984. Had the Colts remained in Maryland, this figure would have been increased only about 3.5 percent, to \$1.16 billion.<sup>3</sup> The impact of a team on the total state economy is, of course, much less than this because of the small size of the sports industry in comparison to other industries.

More important, the money that would have been spent in the local economy because of the sports team does not simply disappear when that team plays its games elsewhere. Much of this is spent anyway on other forms of entertainment. Many former Baltimore Colts fans who would have attended a Sunday afternoon football game now will go to a movie, the zoo, a restaurant or shopping instead. The money does not all flee from the local economy. And even if fans spend less once their team departs, money is saved, increasing the amount of capital available for local investment.

In addition, the figures cited by the jilted local officials reveal only one side of the coin. For every city that loses a team, another city gains a team. Even if the loss of the Colts somehow hurt the Baltimore area, it was a gain to the Indianapolis area. If the Raiders move injured Northern California, it benefited Southern California. Such shifts in economic activity occur continuously in the nation and are not a reason for federal controls.

## 2) Financial Losses to Municipalities

It is claimed that when teams move, they leave local governments saddled with tremendous debts, principally from the construction of stadiums. The Oakland Coliseum, for instance, was built in 1965 by Oakland and Alameda County, California, primarily for the use of the Raiders. When the team moved, those governments still owed millions and were stuck with \$1.5 million in debt to be paid each year through the year 2005.<sup>4</sup> This problem, of course, exists only when local governments help finance professional sports. There is no reason that such sports financing cannot be handled privately, without putting taxpayers--many of whom are not sports fans--at risk. Indeed, many of the stadiums now existing, such as Chicago's Wrigley Field, are already privately owned.

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3. Maryland Department of Economic and Community Development, The Economic Impact of Professional Sports on the Maryland Economy, 1985, p. 2.

4. Senate Hearings, p. 356.

Yet if cities feel they must finance sports stadiums, they easily could avoid the painful problems of Oakland by negotiating a contract with the teams to provide taxpayers protection and reimbursement should the teams decide to leave. In the private sector, large outlays are frequently made for construction projects and other capital investments. The party assuming the debt for the capital investment covers his risk by requiring a long-term lease or other commitment from the contemplated user of the asset. This is the norm in the private sector. There is no reason that governmental bodies, acting in the interests of their taxpayers, cannot obtain the same protection from professional sports franchises before constructing or improving stadiums for their benefit.

Proponents of the congressional legislation retort that cities cannot obtain such commitments from franchises because they have no bargaining power over them. According to this view, major leagues have limited the number of franchises to create an "artificial scarcity" of teams, thus increasing competition among cities for these teams and further reducing the cities' power to bargain.

This argument does not square with the facts. Most NFL cities, for example, have been able to bargain with their local franchises. As of 1982, 17 of the 28 NFL teams had leases on their stadiums of 25 years or more. The Pittsburgh Steelers, for instance, are committed to a forty year lease.<sup>5</sup> Minneapolis, which recently built a new stadium for the Vikings, has gone a step further to protect its taxpayers by obtaining a commitment from the league that if the team should move, a new franchise would be created to take its place.

Even the premise of this "shortage" theory is false, as there is no artificial scarcity of professional football teams. In 1960 there were only 13 professional football teams in the U.S., less than half of today's 28. Counting the United States Football League (USFL), there are now 42 professional football teams in the U.S.

Other sports have expanded in a similar fashion. Since 1960 the total number of professional teams in football, baseball, basketball, and hockey has increased from 43 to 112. Far from being artificially limited, the number of professional sports teams has expanded rapidly over the past two decades.

Cities currently without teams may still wish for a greater supply. But overzealous expansion in sports, as in other businesses, can lead to disastrous results. Each expansion of a league threatens to dilute the quality of play, since talent is spread more thinly. On the other hand, the NFL cannot create a permanent shortage of teams simply by refusing to accept new members--even if it does so with the

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5. Senate Hearings, p. 214 (Testimony of William Robertson).

est of intentions. As the sponsors of many new sports leagues have demonstrated, new teams can emerge if there is a market.

The answer for local governments facing the loss of the franchises located in their jurisdiction is not to demand that the federal government override the contractual arrangements they have made with those teams; it is to make more sensible contracts in the first place.

### 3) Emotional Ties

"No one has been protecting the fans from having their hearts broken when their favorite team packs its bags and trophies and suddenly moves to another city far away,"<sup>6</sup> complains Representative Mikulski. While she may have a point, can it be argued seriously that, among Washington's many responsibilities, one is to protect sports fans from broken hearts?

While many fans are emotionally tied to a particular team, these franchises are nonetheless businesses, representing millions of dollars of investment on the part of the owners and the leagues. Absent any contractual limitations, they should not be forced to operate in a specific location any more than should a supermarket or widget factory. In any case, the support provided by fans is clearly taken into account by team owners making business decisions. Much of the value of any sports franchise takes the form of the local interest and goodwill. Strong support from fans is money at the box office and then in the bank. Fans are not ignored; their support is a major factor weighing against any decision to move.

## BENEFITS OF FRANCHISE RELOCATIONS

Just as the problems associated with franchise relocations often have been exaggerated, potential benefits are usually ignored. Moves by teams are the best means available to leagues for bringing their "product" to the greatest number of fans. In major league baseball, for example, franchise relocations during the 1950s and 1960s brought the sport to the nation's western and southern regions. In 1958, for instance, the Dodgers and Giants pulled out of New York City, which then had three baseball teams, and moved to Los Angeles and San Francisco, respectively--cities which had no major league teams. Similarly the Braves moved from Boston to Milwaukee and then to Atlanta. And, in two moves which made more economic than political sense, the two Washington, D.C. clubs moved to Minnesota and Texas,

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6. Barbara Mikulski, "Protect Taxpayers From Greedy Team Owners," Baltimore News American, March 1, 1985.

respectively. Ironically, the city which triggered the current relocation controversy, Oakland, itself was a beneficiary of franchise mobility. It lured the Athletics from Philadelphia, via Kansas City. Through these moves, baseball became truly national, rather than limited to the northeast and midwest.

Franchise relocation also is often crucial to many new and marginal sports leagues. During the early years of the National Football League, franchise moves were common. Some teams in the struggling league even moved annually. At that time, the new league could not afford business mistakes, and had to operate where it thought it could find the most fan support.

Several leagues today are going through similar evolution. The USFL, struggling to compete with the NFL, has seen numerous franchise shifts during its two-year existence, including the transfer of the championship-winning Philadelphia team to Baltimore after the NFL Colts left that city. The National Hockey League, during lean times, saw many franchises moving from western and southern cities back to hockey's "home" ground in the northern U.S. and Canada, in order to consolidate. Had restrictions on franchise mobility been in place in the past, these sports, and their fans, would have suffered.

#### EFFECTS OF ANTITRUST POLICY

The interests of sports fans and local taxpayers can be served quite adequately through businesslike contracts and market processes. As such, federal intervention is neither necessary nor desirable. Fans are served by the incentives of the leagues and owners to nurture the goodwill of their supporters, as well as to provide franchises to the largest possible number of potential fans. Local taxpayers, in turn, can be protected through appropriate contractual provisions negotiated by their local governments, or by leaving the process to the private sector.

For any private market to work properly, of course, the government must not distort or block the process. Yet in sports, the federal government, through antitrust regulation, prevents the leagues from acting to further the legitimate interests of owners and fans. Federal regulation actually biases the situation slightly in favor of relocations.

This federal regulation was judicially created in the lawsuit arising from the Raiders move. Rule 4.3 of the National Football League regulations prevents owners from moving their franchise out of a defined home area without approval of three-quarters of the League



wners. Acting under this rule, the NFL owners voted unanimously against the move of the Raiders from Oakland to Los Angeles.<sup>7</sup> The Raiders, in their subsequent lawsuit, claimed successfully that the League had violated the Sherman Antitrust Act, Section One of which prohibits any agreement, conspiracy, or other concerted activity in restraint of trade.<sup>8</sup> This law was meant to prohibit cartels among competing businesses to fix prices or restrict output. The Court of Appeals reasoned that the teams in the NFL competed against one another in much the same manner as firms in any other business compete. As businesses, declared the Court, they cannot decide where their competitors are to do business.

This was a poor decision--both in its interpretation of antitrust law and in its implications for sports in America. Sports leagues, by their nature, are not cartels among competing businesses. Rather, they are partnerships formed by owners of individual teams. The owners realize that by creating such partnerships, they are able to create a "product" of far greater value than if they operated independently. The product they create--sports entertainment--is greatly enhanced by ensuring qualified opponents, integrated team schedules, and strict rules, and other factors that heighten competition and interest in the sport. In this sense, sports league partnerships are little different from partnerships among lawyers or doctors, who realize that they can offer more valuable services to their clients when organized as a single firm than they could individually.

The benefits of partnership are greater in the sports industry than in almost any other industry. While a lawyer's or doctor's services have value when offered independently, a single sports team has little to offer to the public.

In forming a partnership, partners must necessarily accept some restrictions on their own actions. Lawyers, for example, are rarely able to represent clients without gaining the approval of their partners, and almost never can decide for themselves the location from which they choose to practice. Similarly, the owners of professional sports leagues agree to limit their own activities in the interests of the league as a whole. One such limitation, agreed upon by the owners of every U.S. sports league, ranging from major league baseball and the NFL to the fledgling United States Football League, is that an owner cannot relocate his franchise without league approval.

The owners, acting through their sports leagues, have many

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7. While no vote was taken on the relocation of the Colts, the League had on two previous occasions disapproved, under Rule 4.3, proposed relocations of that team.

8. See, 15 U.S.C. Section 1.

legitimate reasons for wanting a say in the location from which their partners do business. They have a clear interest, for instance, in maintaining a regional balance of franchises to sustain a strong nationwide following in the activities of their teams. They also have an interest in maintaining regional rivalries which might be lost if one of the rival teams were to move. Further, the owners wish to see that other teams maintain fan loyalty and goodwill in their communities to ensure the success of the league as a whole.

While the individual team owners, of course, share the league's interest in these matters, their particular interests may differ. The Raiders, for example, saw the possibility of increased revenue for the their franchise from the large cable TV market in Los Angeles. This revenue likely would not be shared with other league members. For the Raiders, this potential gain outweighed the negative effects of the move, although the move may have been detrimental to the league as a whole. Thus, rather than being unreasonable, the constraints which the sports leagues place on their member teams generally tend to further the long-run interests of the leagues and their fans.

Antitrust law in the U.S. long has recognized the legitimate interests of partnerships and other forms of joint enterprises in controlling the activities of its members. While the 1890 Sherman Antitrust Act, read literally, could be interpreted as prohibiting every "restraint of trade" of any kind, it long has been held that restraints made necessary due to partnership arrangements are to be respected. Agreements made by members of a single economic enterprise are simply not the sort of "conspiracies" which the law was meant to stop.

In the Raiders case, the federal appellate court maintained that the legitimate interests of the NFL would still be protected under its rule. Each league restriction, it held, would be judged on its own merits, and courts would decide whether each is justified. This approach, however, forces sports leagues to guess what a future court may decide regarding a particular restriction. Not only does this handicap the ability of sports leagues to plan, but leaves them open to huge damage awards should they guess wrong. Rather than impose such vague and ill-defined prohibitions, sports leagues, as single economic entities, should be as free to determine their own internal policies as any other businesses.

The rule created in the Raiders case, moreover, is not needed to protect the supposed beneficiaries of antitrust law--the consumers. The Raiders court worried that the NFL rule would reduce competition among teams for fan support, presumably thus allowing teams to charge "monopoly" prices. Neither the Raider nor the Colt moves, however, increased competition for fan support. Twenty-six of the twenty-eight NFL cities had only one team before the moves, the same number had a single team after the moves.

More important, even if competition among NFL clubs were reduced, this scarcely would give the NFL any economic power over fans. The NFL faces too much competition for it to charge monopoly prices. Not only does the league compete economically with the USFL, but it also competes against all other sports for the allegiance and dollars of fans. Revenues from admissions to NFL games account for only about 10 percent of the total ticket revenues for spectator sports in the U.S., and only about a third of the total ticket revenues for major sports leagues.<sup>9</sup> Seen more broadly, the NFL competes in the huge U.S. recreation market totaling scores of billions of dollars. Of this, NFL revenues represent less than one percent.<sup>10</sup> Similarly, the other major consumers of the NFL product, television networks, have plenty of alternatives for sports viewers.

## CONCLUSION

Legislation regulating the mobility of professional sports teams would be unwise. The problem of franchise relocation has been greatly exaggerated. Relocation, in fact, can be very beneficial. Direct regulation, or even indirect regulation of the sort proposed by the Senate Commerce Committee, would turn each relocation of a team into a long process of public hearings and inevitable court challenges by the losing parties. This bureaucratic and litigious procedure would be of little benefit to sports fans, or taxpayers, even if it would be a boon to lawyers.

Much more important, such regulation would set a dangerous precedent for other U.S. industries. The same logic that supports restrictions on the relocation of professional sports franchisees could support restrictions on the relocation of steel mills, shoe factories, or any other business. If a departing sports franchise warrants the creation of a federal commission with the power to block the move, then clearly the threat of a manufacturer moving from New England to the South, with the loss of jobs rather than simply entertainment, requires even tougher action. Such restrictions would impose a high price on the U.S. economy. The ability to change is essential to a vigorous economy, allowing it to adapt to changed conditions and to make better use of existing resources. In this, all benefit. Preventing change ensures stagnation and unemployment. Governmental restrictions on the movement of professional sports could be a first step down a very slippery slope.

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9. Leonard Koppett, Sports Illusion, Sports Reality: A Reporter's View of Sports, Journalism and Society (New York: Houghton Mifflin Co., 1981), pp. 70-71.

10. Ibid.

Equally important, the market must not be skewed to favor relocation of franchises, as it has through the recent antitrust decisions. While regulation to restrict the movement of franchises is undesirable, action to remove the existing, problem-causing regulation is needed. Since the real economic competition which the antitrust laws were designed to protect takes place between partnerships, and not within them, laws should not prevent sports league partnerships from enforcing league rules. Sports leagues thus should be allowed to enforce rules regarding team relocations, and be able to resume their function of protecting league stability, to the benefit of their members, the taxpayers, and the fans.

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