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## A Taxpayer's and a Politician's Dilemma: Use of Eminent Domain to Acquire Private Property for Sport Facilities

Arline F. Schubert

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A TAXPAYER’S AND A POLITICIAN’S DILEMMA:  
USE OF EMINENT DOMAIN TO ACQUIRE  
PRIVATE PROPERTY FOR SPORT FACILITIES

ARLINE F. SCHUBERT\*

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## I. INTRODUCTION

Among the most controversial issues in modern professional sports is the threat that the owners of a professional sports franchise will move the franchise because they consider the present stadium unacceptable. One avenue of competition and a status symbol for a major metropolis is a professional sports team, and civic leaders do not want the franchise to move. Yet, to obtain a franchised team, cities have to find the means to lure teams away from their roots. The most popular and effective incentive is the publicly funded stadium. However, civic leaders may not wish to subsidize a new stadium with publicly raised funds. It is difficult for civic-minded leaders to justify spending public tax dollars to build expensive new stadiums that owners are demanding.

Public financing is always a challenge because the decision-makers must answer three primary questions. Will the stadium be worth the cost? How will construction costs be funded? Is it an appropriate use of public funds?<sup>1</sup> Because the answers are never easily discernible, decision-makers face a major dilemma: either give in to franchise owners, who are seeking to capitalize on financial opportunities presented by the new stadiums, or refuse to cooperate with the owners by refusing demands made by owners to subsidize a new stadium. Either way, it is a lose-lose situation for the taxpayer.

Robert Baade, Professor of Economics at Lake Forest College, suggests owners, in concert with league commissioners, claim “old stadiums” are economically obsolete; such stadiums simply do not generate sufficient revenue to compete for the free-agent talent necessary to compete

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1. See Frank A. Mayer, III, *Stadium Financing: Where We Are, How We Got Here, and Where We Are Going*, 12 VILL. SPORTS & ENT. L.J. 195, 196 (2005) (citing MARTIN J. GREENBERG, *THE STADIUM GAME* 187 (2d ed. 2000)); see also Ian Dobson, *The Wrong Gameplan: Why the Minnesota Vikings Failure to Understand Minnesota's Value Dooms Their Proposal For a New Stadium and How the Team Can Improve Its Future Chances*, 33 WM. MITCHELL L. REV. 485, 489-90 (2006).

on the field.<sup>2</sup> Perhaps this is an honest conclusion, but questions still remain. Will a new stadium improve a baseball club's financial position within Major League Baseball, and who should foot the bill and pay for the new stadium? Do state legislators have the right to spend millions of taxpayer dollars to subsidize millionaires? Does the court system have the right to enact eminent domain to acquire needed land? Or should the owners of the teams pay for the stadiums themselves?

A preponderance of academic research has disputed building a new stadium will lead to economic development in the form of increased incomes, jobs, and revenue. Most economic studies have found the local economy receives, at best, only limited economic benefits from the construction of modern stadiums. Economist Robert Tillis,<sup>3</sup> former head of the Sports Advising Group for JP Morgan, concluded a privately financed stadium is feasible, but only in cities such as New York and Los Angeles. Thus, the ultimate question remains: is this public subsidizing trend just another corporate bailout?

Many people perceive professional sports teams as beneficial to the local economy and essential to an area's civic identity; sports permeate multiple aspects of our lives. It is this popularity that sports franchises use to their advantage. The presence of a professional sports franchise from one of the four major sports—football, baseball, basketball, and hockey—is often regarded as a prerequisite to becoming a “big league” city or state. People become so attached to a team that it becomes part of the identity of a city or state.<sup>4</sup> Marlin Schneider, a Wisconsin State Representative, joked in

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2. Robert A. Baade, *Some Observations on a New Fenway Park: Is It Necessary? Is It Financially Prudent?*, in CTR. FOR STUDY OF RESPONSIVE LAW 2 (June 13, 2001). Baade completed a financial study of the feasibility of a new stadium for the Boston Red Sox in 2000 by analyzing four state of the art ballparks built during the period of 1990 to 1996. *Id.* He concluded his study by stating, “Given the cost of the project, it is unlikely that the new stadium will enhance Red Sox revenues to a point that allows them to be more financially competitive than they are now, especially since the benefits the Red Sox expect from the new stadium are of typically marginal significance” and they are already financially competitive with the rest of the Major League Baseball. Rather than hiring new players with the increased revenue, the Red Sox would be retiring debt. *Id.*

3. Robert J. Tillis is the founder and Chief Executive Officer of Inner Circle Sports. Prior to his CEO position, he served as Managing Director of JP Morgan Sports Advisory and Finance Group where he had been active in many high profile assignments in stadium financing.

4. See Don Nottingham, *Keeping the Home Team at Home: Antitrust and Trademark Law as Weapons in the Fight Against Professional Sports Franchise Relocation*, 75 U. COLO. L. REV. 1065 (2004); see also *Poe v. Hillsborough Cnty.*, 695 So.2d 672, 678-79 (Fla. 1997) (“The Court finds that the [Tampa Bay] Buccaneers instill civic pride and camaraderie into the community and that Buccaneer games and other stadium events also serve a commendable public purpose by enhancing the community image on a nationwide basis and providing recreation, entertainment and cultural activities to its citizens.”); JEFFREY D. JAMES, *BECOMING A SPORTS FAN:*

1995, “Without the Milwaukee Brewers, the Milwaukee Bucks, and Green Bay Packers, [Wisconsin] ain’t nothing but another Nebraska.”<sup>5</sup>

Going to a sporting event is no longer just about watching the game—It is about the “stadium experience.” The great American sporting pastime isn’t just a game—it is a very successful multi-billion dollar business.<sup>6</sup> Because of the preponderance of evidence against the economic development justification, recent stadium requests by franchises have focused on anywhere from quality of life arguments to justify public expenditure. The attitude expressed by some franchise owners might be an exclusive experience for those with discerning taste who seek the very best life has to offer.

Funding and acquisition costs raise a myriad of economical, political, and legal issues. However, two of the primary issues are eminent domain and the use of public financing to acquire the land. These two issues will be the focus of this paper. Though tax incentives appear to be the major financing tool used by civic leaders to attract franchise owners, this article will primarily address the eminent domain issues. Stadium deals negotiated by elected officials have led to public outrage, lawsuits, and legislative proposals. Often the benefits provided to the owners end up as financial losses to the communities.

## II. TRENDS IN SPORT STADIUM CONSTRUCTION AND RETROFITTING

Since Baltimore began the trend in 1992, stadiums have either been built new or retrofitted, routinely increasing the square footage up to fifty percent over earlier ballparks.<sup>7</sup> New stadiums have been erected at an astonishing pace.<sup>8</sup> One reason for the boom in stadium construction is the

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UNDERSTANDING COGNITIVE DEVELOPMENT AND SOCIALIZATION IN THE DEVELOPMENT OF FAN LOYALTY (1997); Robert Taylor Bowling, *Sports Aggravated: The Fan’s Guide to the Franchise Relocation Problem in Professional Sports*, 28 STETSON L. REV. 645, 649 (1999) (discussing the importance of being a “big league” city with a professional franchise).

5. *Sports Law—Come Back, Shane: The Movement of Professional Sports Teams*, LAW.JRANK.ORG (Mar. 16, 2011, 8:17 PM), <http://law.jrank.org/pages/10434/Sports-Law-COME-BACK-SHANE-MOVEMENT-PROFESSIONAL-SPORTS-TEAMS.html>.

6. Eric R. McDonough, *Escaping Anti-Trust Immunity—Decertification of the National Basketball Players Association*, 37 SANTA CLARA L. REV. 821, 821 n.3 (1997).

7. See Brett Smith, *If You Build It, Will They Come? The Relationship Between Public Financing of Sports Facilities and Quality of Life in America’s Cities*, 7 GEO. PUB. POL’Y INST. 45, 45 (2001) (stating public financing did not become the norm until the 1950s, when stadium construction began to increase dramatically).

8. Peter Whorsky, *Sports Stadium Deals Cost U.S. Treasury Big Bucks*, THE UNION LEADER (Manchester, N.H.), July 30, 2003, at B3 (explaining at least thirty-eight major league sports venues have been built or rebuilt using nearly seven billion dollars in tax-exempt financing).

movement away from multi-purpose facilities.<sup>9</sup> Franchise owners want their own single-purpose facility, and if the present locale's leaders falter when the subject of a new stadium subsidized by taxpayer money is raised, then the owners threaten to move the franchise to a more willing buyer.<sup>10</sup> It appears that it is a seller's market when it comes to acquiring a sports franchise in a new locale as long as the league does not allow new teams to enter the market.

#### A. TRENDS FROM 1950-1990

Prior to 1950, team owners were usually financing and building new stadiums themselves, such that "they had a very direct interest in keeping costs down while still sitting the facility in a location accessible to their core market."<sup>11</sup> The first stadium to be totally publicly financed was the Los Angeles Coliseum in 1923.<sup>12</sup> However, the United States had a vested interest in this stadium. The idea was to have a stadium large enough for the U.S. Olympic Committee to vote to hold the Olympic games in Los Angeles.<sup>13</sup> Unfortunately, the United States did not win its Olympic bid, but Los Angeles was left with a great stadium, which is still in use today.<sup>14</sup> Fenway Park and Chicago's Wrigley Field, two of the most famous and publicized sports venues which were privately funded are also still used today for the purposes for which they were built.<sup>15</sup>

Government subsidies prior to 1950 did not raise much criticism because public funding of sports stadiums was not yet common practice.<sup>16</sup> Public financing began during the 1950s, with a change in the relationship between sports and government.<sup>17</sup> From 1953 to 1979, thirty stadiums were

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9. See ROGER G. NOLL & ANDREW ZIMBALIST, *SPORTS, JOBS, AND TAXES: THE ECONOMIC IMPACT OF SPORTS TEAMS AND STADIUMS* 30-48 (1997).

10. Mary Jo Malone, *Setting Sail Against the Tide of Fans and the NFL*, ST. PETERSBURG TIMES, Jan. 28, 2003, at 1b (discussing the Buccaneers owner's threats to leave the city with the team if Tampa Bay did not provide money to build a new stadium); see also Thomas A. Piraino, *A Proposal for the Antitrust Regulation of Professional Sports*, 79 B.U. L. REV. 889, 912-13 (1999).

11. Tim Chapin, *The Political Economy of Sports Facility Location: An End-of-the-Century Review and Assessment*, 10 MARQ. SPORTS L.J. 361, 369-70 (2000).

12. Raymond J. Keating, *Sports Pork: The Costly Relationship Between Major League Sports and Government*, 339 POL'Y ANALYSIS 1, 4 (1999).

13. *Id.*

14. Andrew M. Zaretsky, *Should Cities Pay For Sports Facilities?*, THE REGIONAL ECONOMIST, Apr. 2001, at 5, 6.

15. *Id.* (stating Fenway Park, Ebbets Field, Wrigley Field, Yankee Stadium, and the original Comiskey Park were all privately owned and financed).

16. Andrew H. Goodman, *Policy and Practice*, 9 SPORTS L.J. 173, 180 (2002).

17. Smith, *supra* note 7, at 46.

built.<sup>18</sup> Before 1953, there were only twenty-eight professional stadiums constructed in the United States.<sup>19</sup> Of the thirty stadiums constructed in the United States between 1953 and 1979, twenty-seven received financial support.<sup>20</sup> The taxpayer support totaled over \$450 million, nearly seventy percent of the total cost of all thirty stadiums during the 1950 to 1970 period.<sup>21</sup>

In most instances, the public funding amounts to seventy percent of the cost of building a new stadium. During the 1960s, a total of \$513.69 million was devoted to new sports facilities, of which 63.2% was public money. In the 1970s, a total of \$1.7 billion was devoted to new sports facilities; 94.6% was public money. In the 1980s, the figure for new stadiums grew to \$1.5 billion, which included 78.6% public money, and in the 1990s, the figure for building new stadiums had grown to \$8 billion, which included 73.4% public money.<sup>22</sup> In the 1970s and early 1980s, cities like Seattle, Baltimore, and Detroit were persuaded to build large stadiums because the cities' leaders thought that would lure major sports teams to their areas and would serve as an economic stimulus.<sup>23</sup>

Raymond J. Keating, chief economist for the Washington-based Small Business Survival Committee, stated during the twentieth century, \$20 billion was spent in building major league stadiums, ballparks, and arenas.<sup>24</sup> That figure includes \$14.7 billion in government subsidies but excludes the billions of dollars in subsidies provided through the use of tax-free municipal bonds.<sup>25</sup> In 1999, Keating predicted, based upon the various requests from teams and cities for subsidized monies, another \$9 billion will be spent at the taxpayers' expense.<sup>26</sup> He concluded the economic facts do not support the position that sports teams should receive taxpayers'

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18. Keating, *supra* note 12, at 12-13.

19. *Id.* at 11-12.

20. *Id.* at 12-13. Only the Colt stadium in Baltimore, the Great Western Forum, and Madison Square Garden did not receive any public monies. *Id.*

21. *Id.* at 10-11. Interestingly, the tax advantages that owners receive, including municipal subsidies for the construction of stadiums, occur without the franchises being required to provide full financial information demonstrating the need for the money.

22. John Siegfried & Andrew Zimbalist, *The Economics of Sports Facilities and Their Communities*, 14 J. ECON. PERS. 95, 96 (2000).

23. *Id.* at 95 (noting from 1900 to 1999, forty-six major league stadiums and arenas were built or retrofitted for the four major sports of football, baseball, basketball, and hockey, and typically these new and retrofitted stadiums were in cities that depended upon eminent domain for the funding).

24. Keating, *supra* note 12, at 1.

25. *Id.*

26. *Id.*

subsidies.<sup>27</sup> The lone beneficiaries of sports subsidies are team owners and players. Results of studies on the changes in the economy resulting from the presence of stadiums, arenas, and sports teams show an absence of positive economic impact from professional sports, but there may be a possible negative effect.<sup>28</sup>

#### B. TRENDS FOLLOWING 1990 TO PRESENT

After 1990, big stadiums with increased seating capacity were no longer the choice of team owners. The '90s were truly a time of change. It is a challenging period to analyze because four ballparks were built during that period that many believe set the standard for revenue-generating facilities.<sup>29</sup> They were all considered to be "state of the economic art."<sup>30</sup> The stadiums were Camden Yards in Baltimore, Maryland; Jacobs Field in Cleveland, Ohio; the Ballpark in Arlington, Texas; and Coors Field, in Denver, Colorado.<sup>31</sup>

In 2006, two economists, Marc Poitras and Lawrence Hadley, examined thirteen stadiums built between 1989 and 2001 and concluded that these facilities, if they would have been funded by private dollars, would probably have recovered all or nearly all of the construction costs of the stadiums within twelve years.<sup>32</sup> Poitras and Hadley calculated if a \$268 million stadium expected to produce \$33 million a year—by taking into consideration team performance, ticket prices, the "honeymoon period" of a new stadium, stadium capacity, and player salaries—half of the cost would have been recovered within the first five years, and all costs would have been recovered by the end of twelve years.<sup>33</sup> Andrew Zimbalist, an economics professor at Smith College in Massachusetts, agreed the above study was carefully designed, but he questioned if the owners would agree to wait twelve years to recover their privately spent funds.<sup>34</sup> The owners would have argued that having to expend their own money would have placed them in a disadvantaged position, especially when they looked at the

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27. *Id.*

28. *Id.*

29. Baade, *supra* note 2.

30. *Id.*

31. *Id.* at 8.

32. *See generally* Marc Poitra & Lawrence Hadley, *Do New Major League Ballparks Pay For Themselves?*, 79 J. BUS. 2275 (2006).

33. *See generally id.* at 2296-99.

34. NOLL & ZIMBALIST, *supra* note 9, at 28-29 (describing the non-viability of stadiums when assessed on the basis of the incremental profit expected over the life of the facility).



“free agent market” of players.<sup>35</sup> If owners were left to rely on their own funds, they would likely choose functional no-frill stadiums that would produce the predicted results in the study by Poitra and Hadley. But, the teams would have had to risk the possibility that declining rates of return might occur as the stadium aged. This, Zimbalist stated, would place the teams at a competitive disadvantage in the current financial market.<sup>36</sup>

Therefore, city leaders, who desired the privilege and prestige of having the image of “a major league city,” attempted to entice existing teams to move to their city by offering them luxury stadiums with the amenities demanded by the owners. As professional sports expanded, politicians and business leaders pushed for taxpayer financed stadiums to lure teams away from their home stadiums.<sup>37</sup> Other cities, such as Philadelphia, Pittsburgh, and Cincinnati, built stadiums for teams already in their towns but justified the expense as a way to keep the teams from moving.<sup>38</sup> Politicians argued the stadiums would generate enough revenue to cover the construction costs.<sup>39</sup> Often, these enticements were the ultimate results of bargaining points demanded by the owners who appeared to be seeking a new facility. It became a bidding war between two cities each wanting the professional team. As a result, many owners and teams have received “sweetheart deals”<sup>40</sup> from city and state leaders so the fran-

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35. *Id.*

36. *Id.* at 17.

37. See Ken Belson, *As Stadiums Vanish, Their Debt Lives On*, N.Y. TIMES, Sept. 7, 2010, <http://nytimes.com/2010/09/08/sports/08stadium.html> (discussing the examples of: Shea Stadium, built for the New York Mets expansion team; Fulton County Stadium, built in Atlanta to lure the Braves from Milwaukee; and a stadium built by Oakland to entice the Athletics to move from Kansas City, Missouri).

38. *Id.*

39. *Id.*

40. “Sweetheart deals” include: financial funding desired by the owners for direct building expenditures; help in the preparation of environmental impact studies that must be completed and filed; cooperation by political leaders for zoning variances that must be obtained; legal assistance for acquiring land by the use of eminent domain for the building of the stadium, approach roads, and parking lots; adjusting and building public transportation routes which must be changed by the city leaders; and the benefit of below-market rents. See Dennis Coates & Brad R. Humphries, *The Stadium Gambit and Local Economic Development*, 23 REG. MAG., no. 2, 2000 at 15-20. The authors examined thirty-seven cities where franchises existed for sports teams and found that sports franchises frequently used their monopoly power to extract rents from state and local governments. *Id.* Their findings indicated that franchise owners declared an existing facility unsuitable because it was too small or too old or it lacked the amenities of luxury seats or suites necessary to raise adequate revenues. *Id.* The owners reminded the cities that many other cities would like to have a team and those other cities, desperate for a team, would build a stadium and sweeten it with reduced rents. *Id.* The city with the lease would then promise a lavish new stadium and/or a sweetheart lease to convince the present owners of the franchise to stay. *Id.* The authors’ conclusion of their research of the thirty-seven franchise cities suggested that attracting a

chise would remain in the present locale. Rather than confront teams, politicians and city council members have often buckled when owners have threatened to move, and the politicians have demanded the public pay for new suites, parking, or arenas and stadiums. Among the major cities and teams that threatened to leave unless their demands were met were: New York Yankees, Toronto Blue Jays, Seattle Mariners, Chicago White Sox, San Diego Padres, Baltimore Orioles, New York Mets, and Florida Marlins.<sup>41</sup>

The owners' demands that modern amenities be included within the stadium design have created an amusement-style stadium, which increases size and cost of construction. The trend is to build stadiums with fewer seats but with more space for amenities such as: luxury suites; premium seating close to the field of play; modern amenities, including amusement parks and swimming pools; concession enterprises like private restaurants and souvenir shops; private entrances for the exclusive high-end seats; private underground parking; and sponsorship by private businesses which, according to the records kept by the industry, will draw more fans to the ball park. Owners argue that these new revenue sources are necessary to compete and to survive economically in today's market.

### III. CURRENT STATUS

Franchise owners recognize modern stadiums are enormously expensive to build and, due to the inevitable issue that stadiums must now be built in accordance with federal and state laws, financial backing and support for future years must be forthcoming from the cities that have acquired sport franchises.<sup>42</sup> Prior to 1962, stadiums were built with private

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professional sports franchise to a city and building that franchise a new stadium or arena will have no effect on the growth rate of real per capita income and may reduce the level of real capita income in that city. *Id.*

41. See MICHAEL J. KEANE, WISCONSIN LEGISLATIVE REFERENCE BUREAU, STADIUM FINANCE: GOVERNMENT'S ROLE IN THE 1990S 6 (1996). Keane is a Research Analyst in Wisconsin who developed a brochure for informational distribution in January 1996, when it appeared that the strong link between major league sports and civic pride led cities without major league teams to enter into competition with those that do have teams, offering to meet teams' requirements when host cities are reluctant to do so. *Id.* Such competition has added urgency to questions of whether the benefits of professional sports are sufficient to merit the public investment necessary to retain the team. *Id.*; see also Belson, *supra* note 37.

42. S. COUNSEL & RESEARCH, STADIUM DISCUSSION POINTS, <http://www.senate.leg.state.mn.us/departments/scr/report/stadium.htm> (last visited Mar. 20, 2011). The Minnesota Senate Research unit developed a website that presented information with the intent to familiarize senators with major issues surrounding the complex topic of public subsidies for sports stadiums. *Id.* This included the commitments both sides must agree to and the costs and features of a stadium, as well as the non-stadium areas where funds could be tapped, including taxes and the revenue-

funds. Since 1990, professional teams have convinced decision-makers and civic leaders to build stadiums with public funds by threatening to move the team to another city.<sup>43</sup> With the use of expert negotiators, owners hope to persuade civic leaders, with their joint cooperation, a new stadium could be a win-win situation. Franchise owners do not want to face the heavy financial burden of a single-purpose facility alone; they need the backing of community leaders, who have the power to gain the use of taxpayer money, and politicians, who have the ability to take private land by governmental condemnation at a lower price than might have been paid on the open market and convert it to public use.<sup>44</sup>

However, taxpayers must also be convinced it is in their best interest to spend tax dollars to subsidize private enterprise. The Minnesota Senate Counsel and Research group has produced an informational website that presents information with the intent to familiarize senators and interested citizens with the major issues surrounding the complex topic of public subsidies for sports stadiums.<sup>45</sup>

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generating areas most often reserved for the owners—such as naming rights, parking fees, concessions, and souvenirs. *Id.* It discussed the idea of lease or public ownership of the team and also reminded the senators that the team has the option of leaving the state if an agreement cannot be realized. *Id.*

The Minnesota Vikings partnered with the Minnesota State Lottery and the NFL on a Vikings-themed game just before training in July 2010. *See Vikings: Use Lotto Dollars to Help Pay for Stadium*, GRAND FORKS HERALD, Feb. 10, 2011, at B5. The game was a resounding success in its first year, clearing twelve million dollars in total sales, and now the team hopes to use some of the money generated to help pay for a new stadium. *Id.* The team has been in a year-long fight at the state capitol to secure a new stadium to replace the outdated Metrodome. Costs for a new stadium could approach \$900 million, depending on a roof and other amenities. That would mean roughly forty to sixty million dollars a year in public funds would be needed to help pay for the project, a percentage of which the Vikings suggest could come from the lottery game. *Id.*

43. *Policy Debate: Does Public Investment in Municipal Sports Stadiums Pay Off?*, ECON. RESOURCE CENTER, [http://www.swlearning.com/economics/policy\\_debates/stadiums.html](http://www.swlearning.com/economics/policy_debates/stadiums.html) (last visited Apr. 4, 2011) [hereinafter *Policy Debate*] (discussing the issues and arguments for and against economical value of supporting public investments in sport stadiums); *see also* Dobson, *supra* note 1, at 485. The owner of the Minnesota Vikings, Zygi Wilf, announced that he had an agreement with Anoka County in Minnesota to build a \$675 million stadium as a new home for the Minnesota Vikings. Dobson, *supra* note 1, at 485. The Vikings sought \$790 million in total funding because \$115 million from the state would be designated for transportation infrastructure surrounding the new stadium area. *Id.* at 485-86. These infrastructure projects, which included widening Interstate 35-W in the suburbs north of Minneapolis and improving the on and off ramps, were not scheduled to be added until 2020. *Id.* at 486 & n.2. The total proposal relied on nearly \$510 million of public money from Anoka County and \$230 million from the State of Minnesota. *Id.*

44. Eminent domain is the government's power to take private property for public use, provided that just compensation is paid for the property. U.S. CONST. amend. V.

45. *See Policy Debate, supra* note 43.

Andrew Zimbalist and Roger Noll in their book, *Sports, Jobs, and Taxes*,<sup>46</sup> found since 1990, professional sports teams have been able to negotiate with cities for around seventy percent publicly financed stadiums, and this resulted in increased profits for the teams.<sup>47</sup> With private funding, the franchise owners would recognize declining profits, declare they were disadvantaged, and begin to search for a more lucrative venue for their team.<sup>48</sup> To assess the claim for subsidies, the authors examined the economic impact of new stadiums and the presence of a sports franchise on the local economy; the authors then reviewed case studies of major and minor league stadiums, as well as spring training facilities.<sup>49</sup> From their assessment of the cities with stadiums, the writers reached three primary conclusions: sports teams and facilities are not a source of local economic growth and employment; the magnitude of the net subsidy exceeds the financial benefit of a new stadium to a team; and the most plausible reasons that cities are willing to subsidize sports teams are the intense popularity among the voters and business owners.<sup>50</sup> Cities enjoy the leverage from the monopoly of a professional sports league. Noll and Zimbalist concluded that whatever the costs and benefits to a city of attracting a professional team, there is no rationale whatsoever for the federal government to subsidize the financial tug-of-war among the cities to host teams.<sup>51</sup>

While marketing their demands to civic leaders, team owners determined the economic image they had projected had a significant financial value to them, as well. Franchise owners, who were seeking to capitalize on financial opportunities, realized certain revenue sources had to be retained by the owners. The franchise entrepreneurs found inventive

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46. See NOLL & ZIMBALIST, *supra* note 9. In the first section of *Sports, Jobs and Taxes*, the authors explore the following general issues: the appropriate method for measuring economic benefits and costs; the source of the bargaining power of teams in obtaining subsidies from local governments; the local politics of attracting and retaining teams; the relationship between sports and local employment; and the importance of stadium design in influencing the economic import of a facility. In the second section, the authors present a number of essays that examine in detail the relationship between professional sports and local economies in cities where owners or franchise holders make growth claims based upon a new and lavish stadium. They attempt to answer the question as to whether the prospective team owners' claims will develop and whether there is a positive effect on economic growth in cities where they have built stadiums.

47. *Id.*

48. *Id.*

49. *Id.* In response to the recent growth in public subsidies of sports stadiums, many independent economists have studied the effect on economic growth and collaborated with the Noll and Zimbalist in order to share their findings. *Id.* The academic literature included in *Sports, Jobs, and Taxes* on the economic benefits of sports stadiums concluded that there is no economic growth associated with professional sports franchises and stadiums. *Id.*

50. *Id.*

51. *Id.*

ways of increasing and modifying revenues created from the great game, which they coveted for themselves. One of these sources was the naming rights to the stadium.<sup>52</sup> A naming rights agreement is a contract between the naming rights holder and a private entity, the corporate sponsor. Some people argue the naming right should stay with the public and not be relinquished so easily to the team owners because the public bears most of the cost of building the sports stadium.<sup>53</sup> Fields and stadiums are no longer named after heroes or as a symbol of honor.<sup>54</sup> “Naming rights are not to be confused with honor. Honor is something bestowed upon you. It is not something that you can insist is your due.”<sup>55</sup>

The major revenue remaining for owners to capitalize on was to convince corporations to invest in the naming rights of the stadium. Thus, revenues obtained from the naming rights have created a major part of the operating revenue for the major league owners and teams. About ninety-five percent of all sports facilities constructed since 1990 have a naming rights contract.<sup>56</sup> In 2008, fourteen major league teams received more than \$36.1 million per year from major enterprises that chose to pay to have their trade name become the stadium’s name.<sup>57</sup> Corporations have eagerly capitalized on the business opportunity presented to them by the team owners. The price to have a corporation’s name placed on sports stadiums ranges from \$4 million to over \$200 million, with terms of the agreement ranging five to thirty-one years after making the contract.<sup>58</sup>

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52. See Mayer, *supra* note 1, at 196.

53. See Christian Maximilian Voigt, “What’s Really in the Package of a Naming Rights Deal?” *Service Mark Rights and the Naming Rights of Professional Sports Stadiums*, 11 J. INTELL. PROP. L. 327, 331-32 (2004).

54. Clyde Haberman, *Field of Honor Becomes Field of Dollars*, N.Y. TIMES, Nov. 14, 2006, at B1. “Putting up money without receiving a billboard in return is an alien concept in corporate America today.” *Id.* Mayor Bloomberg stated, “You don’t like it? Well, get real . . . The real world is that you have to have a naming opportunity and sell it for a lot of money, if you can afford a stadium in this day and age.” *Id.*

55. *Id.*

56. See Ralph C. Anzivino, *Reorganization of the Professional Sports Franchise*, 12 MARQ. SPORTS L. REV. 9, 56 (2001).

57. See Janet Frankston Lorin, *Prices of Stadium Name Sponsorships Soar*, USA TODAY (Feb. 10, 2008, 2:48 PM), [http://www.usatoday.com/money/economy/2008-02-10-716674597\\_x.htm](http://www.usatoday.com/money/economy/2008-02-10-716674597_x.htm) (“Naming rights prices are escalating for several reasons: public support to build stadiums is waning, player salaries are increasing, and stadium constructions costs are rising.”); see also *The 2009 Banking Playoffs: Best Sports Stadiums Sponsorships*, MYBANKTRACKER.COM (Aug. 31, 2009), <http://www.mybanktracker.com/bank-news/2009/08/31/the-2009-banking-playoffs-best-sports-stadium-sponsorships/> (providing a complete list of banks and corporations that paid large sums of money for the naming rights to sports stadiums in 2009); *Naming Giants, Jets Stadium Could Set Record*, MSNBC (Feb. 10, 2008, 7:26 PM), [http://www.msnbc.msn.com/id/23098043/ns/business-sports\\_biz/](http://www.msnbc.msn.com/id/23098043/ns/business-sports_biz/) [hereinafter *Naming Giants*].

58. See *Naming Giants*, *supra* note 57.

#### IV. LAND ACQUISITION BY EMINENT DOMAIN

State constitutions have generally established the state law for eminent domain issues that arise within the state. State eminent domain laws are based primarily upon the Fifth Amendment to the United States Constitution, which states, “No person shall be . . . deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.”<sup>59</sup> The federal government and state legislatures have been given the authority to enforce such a law because it was deemed necessary in order to protect private citizens from having private property taken from them without just compensation.

However, it appears that this power has been abused.<sup>60</sup> The average citizen does not know nor understand how and why the government can take private property from law-abiding citizens and convey it to private developers to build office parks, sports arenas, luxury condominiums, or retail stores.<sup>61</sup> As Scott Bullock, representing the Institute for Justice, has publicly stated, “Our cities and states have become like real estate speculators, securing land owned by their own citizens on behalf of politically connected private interests.”<sup>62</sup> In a majority of the legal challenges in state courts, judges have found that expenditure of taxpayer dollars for sports stadiums fulfilled a public purpose even though a substantial benefit would be realized by a private corporation. The challengers ask that judges look at the true purpose of the stadium.<sup>63</sup>

##### A. ORIGINAL PURPOSE FOR PUBLIC DOMAIN DOCTRINE

Courts have continued the trend of allowing municipalities to classify a stadium as a public facility.<sup>64</sup> Many stadium financing plans have withstood challenges in state courts by relying upon the public purpose doctrine. Nearly all states have adopted this doctrine to prevent the public

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59. U.S. CONST. amend. V.

60. See generally DANA BERLINER, CASTLE COAL., GOVERNMENT THEFT: THE TOP 10 ABUSES OF EMINENT DOMAIN (2002).

61. *Id.*

62. Ira Carnahan, *Domain Game*, FORBES, Nov. 25, 2002, at 113.

63. *Meyer v. City of Cleveland*, 171 N.E. 606, 608 (Ohio Ct. App. 1930). The court rejected the taxpayer's argument that the purpose was for the benefit of the sports team and not for the benefit of the public. *Id.* The court pointed to the public entertainment and educational purposes that a stadium could provide and stated cities “are not limited to policing the city, to paving the streets, to providing it with light, water, and sewers, docks, and markets. The power of cities and towns to maintain institutions which educate and instruct as well as please and amuse their inhabitants . . . is unquestioned.” *Id.* at 607-08.

64. See generally *Kelo v. City of New London*, 545 U.S. 469, 490 (2005).

funding of projects that benefit private entities rather than the state or its citizens. The public purpose doctrine was originally designed in 1880 by state legislators to curb corruption and exploitation of the public by legislators and railroad developers. The concern of legislators in 1880 was the same as the concern expressed by the angry taxpayers today who have filed eminent domain actions. Courts have traditionally found the determination of whether a stadium should be built with public financing is a political issue rather than a judicial issue, so it is not surprising judicial challenges to stadium funding plans nearly always fail. When such challenges come before a court, judges have held the use of public funds to build or improve sports stadiums is a legal expenditure for a legitimate purpose.<sup>65</sup>

One of the government's chief duties is to protect the "health, safety, and general welfare" of its citizens and, because of this purpose, courts have had to determine when and why government can condemn land and put it in the hands of civic leaders for the general welfare of the citizens. Accordingly, most courts have held that many uses of private property are "public uses." The government can utilize the public use requirement to disguise the taking by merely forming a local agency and approving its authority to formulate a plan to increase jobs and tax revenues.<sup>66</sup>

#### B. CURRENT USE OF PUBLIC POLICY DOCTRINE

Courts often defer to state legislatures and to state and municipal agencies when determining what constitutes a public use or a public purpose—often the words "use," "benefit," and "purpose" are used interchangeably even though the Fifth Amendment contains just the word "use."<sup>67</sup> In some cases, courts have made a significant distinction by stating: the public must have the right to resort to the land or property for the use for which it was acquired, independently of the mere will or caprice

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65. *Id.*

66. *See Kelo v. City of New London*, 843 A.2d 500, 510 (Conn. 2004) (discussing the authority of the New London Development Corporation to use the doctrine of eminent domain to acquire privately owned land for building a technology complex and a state park that would raise tax revenue and generate new jobs in New London, Connecticut); *see also Berman v. Parker*, 348 U.S. 26, 35 (1954) (discussing the Supreme Court's validation of the condemnation of public land in Washington, D.C., even though it was not unsanitary or in a "slum" condition because the plan for urban renewal was necessary for the public welfare).

67. *See Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 240-41 (2005) (stating the Supreme Court does not recognize a distinction between public use and public purpose). The Supreme Court recently reaffirmed *Midkiff* in June 2005 when it decided *Kelo v. City of New London*. *Kelo*, 545 U.S. at 488. However, the supreme courts of New York and Illinois do make a distinction between public use and public purpose.

of any private person or of any corporation in whom the title to the property would vest upon condemnation.<sup>68</sup>

In the urban renewal context, so long as the redevelopment agency has shown the area to be substandard, condemnation of private property for urban renewal is a valid public purpose even if there is some benefit to a private entity.<sup>69</sup> However, the United States Supreme Court stated that outside of the urban renewal context, condemnation of a private property should not be a valid exercise of a municipality's eminent domain powers; if the use of land is "only incidental and in large measure subordinate to the private business[,] it does not fit within the context of urban renewal."<sup>70</sup>

### C. RECENT CASES OF PUBLIC PURPOSE DOCTRINE

Eminent domain issues arise because of the value of land, and the action usually involves the taking of private land for public use. An eminent domain action may seem to be an illegal, arbitrary, and capricious taking of another's land. However, the practice is allowed when the land is needed for a public use, benefit, or purpose. Courts will approve an eminent domain action if there is a clear and deliberate economic rejuvenation plan that provides ample opportunity to succeed in a stated purpose. Such plans must also purport to have sufficient public purpose, such as tax dollars, new jobs, and other economic advantages.<sup>71</sup>

Such was the case in the 2005 landmark case, *Kelo v. City of New London*.<sup>72</sup> In *Kelo*, the City of New London, Connecticut formulated a redevelopment plan that included condemnation of ninety acres of privately owned land, which included private residences.<sup>73</sup> Plaintiffs and other residents in that area did not believe the plan had adequate evidence of

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68. In re City of N.Y., 31 N.E. 1043, 1044 (N.Y. 1892); see *Kelo*, 545 U.S. at 469 (noting the public should be able to use the land regardless of how it is used by the new owner or the agency who is in charge); N.Y. City Hous. Auth. v. Muller, 1 N.E.2d 153, 154 (N.Y. 1936) (stating legislative findings and determinations of public use are not conclusive on the courts, but they are entitled at least to great respect because they relate to public conditions, which the Legislature both by necessity and duty must have known).

69. *Berman*, 348 U.S. at 33. The Court validated Washington, D.C.'s condemnation of public land even though the building on the land was not insanitary nor was it in a "slum" condition; because the plan for urban renewal was necessary for the public welfare, the Court deferred to the Legislature. *Id.*; see also David M. Levitt, *Bruce Ratner's Atlantic Yards Project Will Proceed*, BLOOMBERG (Nov. 24, 2009, 4:35 PM), <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=allWv6R2YkIQ>.

70. *Berman*, 348 U.S. at 33.

71. *Kelo*, 545 U.S. at 469-70.

72. 545 U.S. 469 (2005).

73. *Kelo*, 545 U.S. at 469.



“public purpose” included in it to authorize the exercise of eminent domain under federal constitutional principles.<sup>74</sup>

Because the primary issue in an eminent domain case is whether the purportedly “public purpose taking” meets the public use requirement intended by the Fifth Amendment, a court must decide whether the city’s development plan serves a public purpose.<sup>75</sup> The Court in *Kelo* determined that issue had been asked and answered by the judges in other cases, so it limited its discussion to the topic of what constitutes a “public purpose.”<sup>76</sup> The Court focused on the distinction between private and public use rather than on the question of whether economic development itself constituted a public use.<sup>77</sup> The Court noted the taking of the land, which would benefit private parties, amounts to a public use as long as the public interest is paramount.<sup>78</sup>

In *Kelo*, one of the petitioners argued there was no public purpose in the condemnation of his land.<sup>79</sup> The Supreme Court pointed out the entire ninety acres of land in *Kelo* must be considered as a whole and that the Court should not isolate a single parcel of the condemned area.<sup>80</sup> The Court was then required to look at New London’s actions and consider the city’s basis for using eminent domain on the entire tract of ninety acres.<sup>81</sup> The *Kelo* Court recognized the appellant’s home was not “blight,” nor was there any blight in the ninety acre area; at the same time, the Court acknowledged the fact that the New London area was sufficiently distressed, and a program of economic rejuvenation was justified by New London’s Economic Development Department.<sup>82</sup> The devised plan included the opportunity for new jobs and increased tax revenue.<sup>83</sup> The development planners pointed out that economic development is a function of government.<sup>84</sup> Thus, the Supreme Court did not find New London’s action to be arbitrary or capricious.<sup>85</sup> Rather, it determined the action for economic rejuvenation

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74. *Id.* at 475.

75. *Id.* at 480.

76. *Id.*

77. *Id.* at 485-87.

78. *Id.* at 486.

79. *Id.* at 484.

80. *Id.*

81. *Id.*

82. *Id.* at 483.

83. *Id.* at 474.

84. *Id.* at 484.

85. *Id.* at 490.

was well planned, deliberate, and offered ample opportunity to consider the ultimate results of the plan.<sup>86</sup>

However, four dissenting justices argued the majority decision was incorrect.<sup>87</sup> They argued New London's use of eminent domain was an illegal taking.<sup>88</sup> One should not be able to take property from A and give it to B simply because the property would be more valuable in B's possession. Justice O'Connor wrote in her dissent, "The majority held words 'public use' in the Fifth Amendment can mean wholly private use, so long as the government expects it to yield some incidental 'public benefits' such as tax dollars, new jobs, maybe even esthetic pleasure."<sup>89</sup> Thus, the Supreme Court, in a 5-4 decision, held economic development alone is sufficient to meet the public use requirement of the Takings Clause of the Fifth Amendment.<sup>90</sup> Shortly after the *Kelo* ruling, Alabama, Delaware, and Texas signed legislation limiting the use of eminent domain; however, the Texas law made an explicit exemption for the use of eminent domain for the new Dallas Cowboy's Stadium in Arlington, Texas.<sup>91</sup>

#### D. REGIONAL EXAMPLES OF STADIUM PROJECTS

Eminent domain is not the only reason that citizens have chosen to challenge the taking of land. Sports complexes and arena development are often areas where city developers and team owners have exploited using the broad concept of public use. However, there are other reasons why politicians choose to modify the use of land. Sometimes it appears a different use of the land may increase its value. When sites for new stadiums are chosen, citizens have taken the local political leaders to court alleging patterns of discrimination for the selection site. Poor districts and communities often are forced to accept public facilities that are shunned by the wealthier districts and communities. Other states, such as Michigan,<sup>92</sup>

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86. *Id.* at 483-84.

87. *Id.* at 494 (O'Connor, J., dissenting).

88. *Id.*

89. *Id.* at 501.

90. *Id.* at 483-84 (majority opinion).

91. CASTLE COAL., 50 STATE REPORT CARD TRACKING EMINENT DOMAIN SINCE KELO 5, 12, 47 (2007), available at [http://www.castlecoalition.org/pdf/publications/report\\_card/50\\_State\\_Report.pdf](http://www.castlecoalition.org/pdf/publications/report_card/50_State_Report.pdf).

92. See generally *Cnty. of Wayne v. Hathcock*, 684 N.W.2d 765 (Mich. 2004); *Poletown Neighborhood Council v. City of Detroit*, 304 N.W.2d 455 (Mich. 1981). In *Hathcock*, the judges developed a three-pronged test for determining whether eminent domain taking of private property was constitutional. *Hathcock*, 684 N.W.2d at 781. The three prongs for the test are: (1) if the land taken for public use is needed by railroads to lay a straight track; (2) when governmental oversight forces the need for the taking of land; and (3) when the land is taken because of blighted

Massachusetts,<sup>93</sup> California,<sup>94</sup> Wisconsin,<sup>95</sup> Minnesota,<sup>96</sup> Pennsylvania,<sup>97</sup> Washington,<sup>98</sup> and Illinois,<sup>99</sup> have taken political leaders to court because of a decision that seemed unfair, unnecessary, and discriminatory.

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conditions. *Id.* at 781-83. Meeting any one of these conditions will create public use of private land. *Id.* at 783. In *Poletown*, Judge Ryan, who wrote a dissent, suggested the court should take heightened scrutiny when he characterized the affirmative vote as “placing a judicial imprimatur upon government action taken under the policy of the end justifying the means.” *Poletown*, 304 N.W.2d at 456.

93. See *City of Springfield v. Dreison Inv., Inc.*, Nos. 19991318, 991230, 000014, 2000 WL 782971, at \*47 (Mass. Super. Ct. Feb. 25, 2000) (determining that the primary beneficiary of the city’s contribution to the eminent domain action was not the public). The decision, though it discussed public use, largely turned on improper diversion of city funds. *Id.*

94. See *City of Anaheim v. Michel*, 66 Cal. Rptr. 543, 545-46 (Cal. Ct. App. 1968) (allowing condemnation of private property for expansion of stadium’s parking facilities based upon statutory authority that operation of “public assembly facilities” is a public use).

95. See *Libertarian Party of Wis. v. State*, 546 N.W.2d 424, 428, 440 (Wis. 1996) (upholding the Wisconsin Stadium Act, based upon legislative findings regarding the public purposes to be served by a professional baseball stadium).

96. See *Lifteau v. Metro. Sports Facilities Comm’n*, 270 N.W.2d 749, 751-52, 757 (Minn. 1978) (affirming public financing of the reconstruction of a baseball and football stadium when Minnesota legislation adequately protected the public’s interests and imposed conditions to be met before public monies could be expended).

97. See *Martin v. City of Phila.*, 215 A.2d 894, 896 (Pa. 1966). The *Martin* court adopted the view that a stadium has an inherently public nature, citing the lower court’s rationale that public purposes are not limited to municipal purposes, such as streets, water, sewers, and police protection. *Id.* Instead, public purposes encompass anything relating to public education, recreation, or pleasure, including museums, parks, libraries, and gardens; a sports stadium also falls under this umbrella because it is public recreation, and all of this helps to build a healthy community. *Id.* Even if the stadium’s primary use were to be by privately owned clubs, this would not conflict with the stadium’s public nature. *Id.*; see also *Conrad v. City of Pittsburgh*, 218 A.2d 906, 908 (Pa. 1966).

98. See *King Cnty. v. Taxpayers of King Cnty.*, 949 P.2d 1260, 1273 (Wash. 1997) (discussing the issue arising in Seattle when citizens voted not to fund a new stadium to replace the Kingdome); see also *Belson*, *supra* note 37 (noting King County residents owe more than eighty million dollars for the Kingdome, which was razed in 2000). This is happening in other cities where residents are paying for stadiums and arenas that were abandoned by the teams for which they were built.

99. See *Friends of the Parks v. Chi. Park Dist.*, 786 N.E.2d 161, 181 (Ill. 2003). In *Friends of the Parks*, the plaintiffs argued that issuance of debt proportionately favored the Bears NFL franchise when refurbishing Soldier Field in Chicago, thus violating the section of the Illinois Constitution that forbids public funds from being used for private purposes. *Id.* In line with the Supreme Court in *Meyer*, the Supreme Court of Illinois deferred to the Legislature to determine what constitutes a public purpose. *Id.* The Illinois Supreme Court, like courts in other jurisdictions, took an expansive view of the concept of public benefit. *Id.* By the court making findings of public benefit that may turn out to be false, the Legislature was able to shift the burden of proving that the project would primarily benefit a private entity to the opponents. *Id.* The Illinois court stated:

[i]t is historically clear that Soldier Field has served public purposes since its dedication in 1924. It will continue to do so after the completion of the Burnham Park project as authorized by the Act. A financial benefit accruing to the Bears, standing alone, does not diminish the fact that the renovated Soldier Field will be used and enjoyed by the public for a wide variety of public purposes, whether or not the projected

### 1. *Miami*

In Miami, politicians were faced with determining who should receive the benefits of the community's tax money raised for the purpose of improving the city and state and encouraging tourists and visitors to bring new money to the area. This created a dilemma for the city leaders. In November 2008, Miami was faced with a major decision when two major improvement projects in Miami and Dade County wanted to use the tax money that was raised for developing visitor spending. The query to be answered was: is it wiser to invest community resources in a baseball stadium for a team that has threatened to move unless a new stadium is built, or would it be more beneficial to make needed improvements to the Dade County Convention Center, which could bring thousands of visitors into the Miami area?<sup>100</sup> Exacerbating the situation was the threat by the Florida Marlins to leave Miami if the city would not agree to build a new stadium.

Supporters of both projects, the Dade County Convention Center and the Florida Marlins, presented plausible reasons why they should be rewarded. The owners of the Marlins wanted a new and modern baseball stadium that would require an investment of approximately \$650 million,

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positive effects on jobs and the local economy generally result as predicted by the legislature.

*Id.*; see also *Larimore v. Ill. Sports Facilities Auth.*, No. 89 C 1067, 1996 WL 153672, at \*1081 (D. Ill. Apr. 1, 1996). The legal issue in *Larimore* was where the new stadium would be built. *Id.* Chicago City Council members determined the site should be near the old Comiskey Park. *Id.* In order to acquire the land needed, the City Council condemned property in a neighborhood known as South Armour. *Id.* The Illinois General Assembly passed legislation in 1988 to build the baseball stadium directly across the street from Comiskey Park. *Id.* The White Sox wanted a different area but agreed to build where the Legislature indicated, but they needed more space than was in the legislation. *Id.* The White Sox threatened to move to Florida if they did not receive more land. *Id.* The only available land site in the condemned neighborhood was the park, which had been set aside for recreation for the children and families. *Id.* Families living in the apartment complex in South Armour believed the park belonged to the neighborhood because they had to struggle to have it designated park space, and they did not want to give up without a fight. *Id.* The African-Americans living in South Armour argued the condemnation was racially motivated. *Id.* After hearing oral arguments and providing a lengthy analysis of the issues, the court rejected the plaintiffs' claims of racial bias. *Id.* The court claimed most of the government's officials who approved the land site were African-American and there was a race-neutral explanation for the decision to build the new ball park in South Armour Park—evidently the park had not been used by families but by gangs of juveniles and young adults and was a familiar trouble spot on the south side of Chicago. *Id.* The court determined that by building the new ballpark on the South Armour Park location, it was the least expensive means of keeping the Chicago White Sox in Chicago. *Id.* U.S. Cellular Park opened approximately three years after the Illinois General Assembly passed legislation to build the park directly across the street from Comisky Park.

100. See Michael Lewis, *Hidden Costs, Giveaways Top List of 32 Added Stadium Pitfalls*, MIAMI TODAY, Feb. 12, 2009, <http://www.miamitodaynews.com/news/090212/story-viewpoint.shtml> (commenting on the announced plan for the Marlin stadium to be built and ready for occupancy in 2013).

plus additional dollars for infrastructure modifications. They used the common argument that in order to draw the fans, they must have the same amenities as other new stadiums; in order to build the stadium, they needed public financing. However, a group of citizens argued the city and county should invest the tax money in the project proposed for improving Dade County Convention Center. They argued a convention center would draw thousands of visitors to Miami, which was what the tax was aimed at—“bringing visitors and new money to Miami and Dade County.”<sup>101</sup>

Michael Lewis, publisher of *Miami Today*, argued that building the ballpark could cost the county \$3 billion per year.<sup>102</sup> He suggested, one of the key criteria in determining how to invest a community’s resources should be an examination of how the spending would improve the area’s economy and reduce the doldrums.<sup>103</sup> His conclusion was if the Miami decision-makers were to fund the proposed new baseball stadium, it would show a lack of fiscal responsibility by officials willing to hand over hundreds of millions of dollars to achieve little.<sup>104</sup> Lewis concluded it is doubtful a new stadium will draw fans to Miami.<sup>105</sup> In new stadiums built with public funds, the owners are pocketing all the stadium’s financial benefit; a closer study would likely find more costs than benefits for Miami.<sup>106</sup> On Friday, February 12, 2009, the plan to build a \$609 million-plus stadium for the Florida Marlins was about to be voted on, and the Chairman of the Commissioners of the County remarked, “[I]f it’s financially feasible to build a baseball stadium, I think it’s something we need to do because it’s an economic stimulus project.”<sup>107</sup> The Mayor of Miami, Carlos Alvarez, added, “[T]here is no better use for these tourist dollars than to build a world-class baseball facility that will be the envy of the nation.”<sup>108</sup>

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101. See Michael Lewis, *Building Ballpark Could Cost County \$3 Billion Every Year*, MIAMI TODAY, Nov. 20, 2008, <http://www.miamitodaynews.com/news/081120/story-viewpoint.shtml>.

102. *Id.*

103. *See id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. Risa Polansky, *Financial Questions Remain as Miami, County Commissioners Prepare for Friday Vote on Marlins Stadium Deal*, MIAMI TODAY, Feb. 12, 2009, <http://www.miamitodaynews.com/news/090212/story2.shtml>; *accord Miami-Dade Leaves Marlins’ Ballpark Future up to City*, USA TODAY, Mar. 2, 2009, [http://www.usatoday.com/sports/baseball/nl/marlins/2009-03-02-miami-ballpark\\_N htm?loc=interstitialskip](http://www.usatoday.com/sports/baseball/nl/marlins/2009-03-02-miami-ballpark_N htm?loc=interstitialskip).

108. Polansky, *supra* note 107.

## 2. *Washington D.C.*

In December 2004, Washington, D.C. and Major League Baseball agreed to a public financing package to build a 41,888 seat baseball stadium, which would allow the former Montreal Expos to move to the United States capital.<sup>109</sup> The redevelopment plan spearheaded the revitalization of the corridor of Washington, D.C. near the Navy Yard and the Anacostia waterfront.<sup>110</sup> Washington, D.C. city leaders condemned the land where the new Washington Nationals Park would be erected; it was a rat-infested warehouse district that visitors avoided because it was unsafe for pedestrians.<sup>111</sup> The city planners had a plan to build on the side of the interstate in the once forsaken area separating the district known as “The Hill” from what used to be a neighborhood notable for its run-down public housing, low-slung industrial buildings, and a handful of run-down warehouse dance clubs.<sup>112</sup>

In February 2006, the Washington, D.C. City Council capped the city's expenditures on the project at \$611 million, though the land acquisition and other costs eventually drove the price to \$693 million.<sup>113</sup> The state of the art baseball park opened as planned in 2008, but the lavish entertainment district that was planned has not materialized. In fact, there are only empty spaces nearby and two empty office buildings hoping for tenants soon. Moreover, when fans approached the stadium in 2009, they saw a thirty-five foot hole in the ground owned by Monument Realty, which had to put its plans on hold after beginning its development.<sup>114</sup>

The plans for developing Capitol River Front, the area around the Washington Nationals Stadium, has experienced a setback. In 2004, it was announced that the plans for the area included a waterfront park, retail and professional offices, and condos in modern high rise buildings, designed to attract young professionals, couples without children, and empty nesters. The plans for Half Street, next to the stadium, were a mixed-use development with restaurants, bars, retail shops, and entertainment venues. The street would be closed to traffic on game-day, providing space to

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109. See *National's Park—New DC Baseball Stadium*, JD LAND, <http://www.jdland.com/DC/stadium.cfm> (last visited Mar. 23, 2011).

110. *Id.*

111. *Id.*

112. *Id.*

113. Dana Hedgpeth & David Nakamura, *At Nationals Park, District of Dreams Hits a Slump*, WASH. POST, Apr. 12, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/04/11/AR2009041102036.html>.

114. *Id.*

browse or relax before and after games. During the off-season, the space would be used to host events and festivals. The plan for the massive re-development effort is projected to take ten years.<sup>115</sup>

However, the best laid plans often go astray, as they did in Washington, D.C. When the plans for a new stadium were announced, developers flocked to the southwest side of the city, and the land sold like wild fire. However, the financial picture changed abruptly, and the credit crisis left builders and developers unable to secure loans and credit for developing the area. Since the development of the area has slowed down, the stadium management has increased food services within the baseball park and added entertainment in the fun zone, but fans looking out from the ballpark in any direction can see projects that have been started have slowed due to the credit crisis.

There is a new metro stop near the Navy Yard, within a one mile walk to the Capitol Building, the congressional offices, and Barracks Row entertainment district. The public housing area of the district, which was rundown, was to include new homes built in the classic style of row houses or stand-alone houses. The city paid for new roads, sidewalks, and parks, committing a total of approximately \$1 billion to prepare for the projected development.<sup>116</sup>

### 3. *New York*

New York is an example of a city that allows politics to determine how to spend money the city and metropolitan area has not yet raised. Three of the more elaborate political agreements involving the building of new sports stadiums have been made in the last few years involving the City and State of New York. Mayor Giuliani signed agreements to build two \$800 million stadiums: one with the New York Yankees and one with the New York Mets, both of which were scheduled to open between 2009 and 2010.<sup>117</sup> The agreements were withdrawn by Mayor Michael Bloomberg, Giuliani's successor, days after taking office.<sup>118</sup> The reason for the stop order on the stadium decisions was New York City's fiscal officers projected New York would experience a \$4 billion deficit in each of the years

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115. *Id.*

116. *Id.*

117. See Charles V. Bagli, *As Stadiums' Costs Swell, Benefits in Question*, N.Y. TIMES, Nov. 3, 2008, <http://www.nytimes.com/2008/11/04/nyregion/04stadiums.html>.

118. *Id.*

2002 through 2005, and the new mayor thought they were too expensive during a recession.<sup>119</sup>

Three years later, Mayor Bloomberg unveiled his own plan calling for the New York Yankees and the New York Mets to pay the construction costs of their new stadiums while the city would build public parks, parking garages, and transit stations near the ballparks.<sup>120</sup> The mayor suggested that the cost to the taxpayers would be relatively small and the benefits to the city would be great. Bloomberg stated, "We don't do subsidies. The city is getting paid back at a profit."<sup>121</sup>

Yet, as the two stadiums neared completion, the costs were anything but small once the project was reviewed. Construction costs were approximately \$1 billion each, and the cost to the city for infrastructure improvements—parks, garages, and transit stations—had increased significantly to \$458 million from the \$281 million projected in 2005.<sup>122</sup> The state was contributing an additional \$201 million.<sup>123</sup> These figures did not include an estimated \$480 million in city, state, and federal tax breaks granted to both teams.<sup>124</sup> In addition, both stadiums are located on land owned by New York City; according to the negotiated agreement, neither team would be paying rent or property taxes.<sup>125</sup>

#### a. Yankee Stadium

The construction costs of the new Yankee Stadium were estimated to be \$1.8 billion.<sup>126</sup> The agreement between the Yankees and the city includes the following provisions. First, the city will retain ownership of all the land that currently houses both the existing Yankee Stadium and the proposed structures of the new Yankee Stadium, including the proposed garages.<sup>127</sup> Second, the city agreed the Yankees will not have to pay any rent or taxes.<sup>128</sup> Third, the new Yankee Stadium was built on ground that was being used by two very popular public parks. Thus, New York City agreed to replace lost park land along the Hudson River at Macomb's Dam

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119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*



and at Mullaly Park by resurfacing the top of the underground garages with artificial grass; however, during ball games—eighty-one days between April and October—this area would be used for parking vehicles. Additionally, the city agreed to further develop the smaller park areas along the waterfront about one-half mile from the stadium site. The city also agreed to replace a soccer field, a baseball diamond, basketball courts, and a track. The estimated cost of replacing those parks and play areas has increased from \$129.2 million in 2005, when the agreement was made, to \$177 million.<sup>129</sup> Fourth, the cost to the city to build garages for stadium parking would be approximately \$170 million, and the cost to demolish the old stadium would be in the tens of millions of dollars. The city is also responsible for paying sixty-five million dollars in infrastructure costs and design and planning costs for the stadium, which accrued since the agreement was entered into in 2005.<sup>130</sup> Fifth, to raise funding for the new stadium, New York City issued \$225 million in tax-exempt bonds in 2007, which the Yankees owners agreed to pay in “lieu of taxes.”<sup>131</sup> Sixth, the Yankees owners arranged for the lease to be classified as an operating lease; thus, they will keep significantly more revenue and will not have to share it with the rest of the Major League.<sup>132</sup>

In 2005 and 2006, when negotiations were in the early stages, the projection was that the Yankees project would cost about \$1 billion. The team’s franchise owners would pay eighty percentor \$800 million for the stadium, while the city and state would contribute \$208.6 million for parks and garages.<sup>133</sup> It appeared Mayor Bloomberg’s plan was a good deal. However, the projected costs proved not to be actual costs. From 2006 to 2008, the stadium and infrastructure costs increased greatly. In 2008, the projected costs of the Mets project was about \$900 million, and the Yankees project was expected to be more than \$1.7 billion.<sup>134</sup> The rising costs meant public costs would grow as well.<sup>135</sup>

The subsidies, which Mayor Bloomberg said were not being given to the franchise owners for the stadium, have created community outrage

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129. *Id.*

130. *Id.*

131. See John R. Middleton, Jr., Scott L. Walker & Matthew Savare, *Stadia Mania: The Business, Civic and Legal Issues of New Stadium Construction—Part I*, METROPOLITAN CORPORATE COUNSEL, Feb. 2008.

132. Andrew Zimbalist, *Financing a New Yankee Stadium*, BASEBALL PROSPECTUS, Jan. 30, 2006, <http://www.baseballprospectus.com/article.php?articleid=4732>.

133. Bagli, *supra* note 117.

134. *Id.*

135. *Id.*

because New York City has been in an economic meltdown that has crippled the city's budget. The city has cut thousands of working-class jobs while the Yankees doled out \$423.5 million in salaries to three players.<sup>136</sup> Mayor Bloomberg answered the community's inquiries regarding the additional millions of dollars being spent stating, "[K]eeping the Yankees in the Bronx and the Mets in Queens not only creates temporary construction and permanent stadium jobs, but also is crucial to the city's image."<sup>137</sup>

b. CitiField

As of September 27, 2008, the CitiField sign hangs above the Jackie Robinson Rotunda. The new stadium in Queens was eighty-five percent completed when the CitiField sign appeared. This stadium replaced the forty-four year old Shea Stadium as the home of the New York Mets.

Mayor Bloomberg and the Economic Development Corporation had a multi-billion dollar plan to redevelop the sixty-one acre site of Willets Point, a rundown section of Queens bordering on Shea Stadium.<sup>138</sup> The proposed plan to build a new baseball stadium on the site of Shea Stadium in Queens included creating an environmentally friendly residential and commercial community along 126th Street, which runs in front of Shea Stadium.<sup>139</sup> The plan involved transforming the area into a strip of cafes and shops.<sup>140</sup>

CitiField is clearly not a bare-bones functional structure like Shea Stadium. It has a brick exterior, archways, a rotunda similar to Ebbets Field, and plans include shops and a museum in the public area. Although Shea Stadium was part of the 1964 World's Fair, it lacked signature features like the overhanging upper deck frieze of Yankee Stadium or the Green Monster of Fenway Park in Boston, Massachusetts.<sup>141</sup>

In 1964, the ballpark in Queens was completed. It had moveable seats on a buried track, so it was easily converted into a football stadium. The stadium featured a circular design, an outfield without bleachers, and tunnels leading to the seating area.<sup>142</sup> The city had instructed the architect and

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136. *Id.*

137. *Id.*

138. Sophia Hollander, *Imagining a Place Where Cheers Never End*, N.Y. TIMES, Aug. 9, 2008.

139. *Id.*

140. *Id.*

141. Richard Sandomir, *Stadium's Appeal Lay in Futuristic Functionality*, N.Y. TIMES, Sept. 27, 2008, <http://www.nytimes.com/2008/09/28/sports/baseball/28sandomir.html>.

142. *Id.*

developer to “design and build it for \$15 million and make it convertible for two sports.”<sup>143</sup> The final cost exceeded the allotted amount by fifteen million dollars.<sup>144</sup>

The Agreement/Financing Plan with New York City and the franchise owners of the New York Mets will include public financing with the sale of bonds, both taxable and non-taxable. The following highlights features of the Agreement:

1. The project will be subsidized by granting the Mets [owners] access to tax exempt bond financing which will save the [owners] approximately \$105 million over the next forty [40] years.
2. New York City will invest \$105 million for infrastructure and capital improvements, including site preparation, demolishing of Shea Stadium, and the paving of parking lots . . . . [New York City] will raise this money by issuing bonds and paying the principal and interest with general city [funds].
3. The State of New York will contribute \$70 million for [the stadium’s] infrastructure.
4. The new stadium will be exempt from [New York City] property tax.
5. The stadium will be exempt from city, state, and Metropolitan Transportation Authority sales taxes on . . . construction materials, fixtures, and equipment.
6. [New York City] will forgo a [percentage or] portion of the stadium’s parking revenue.
7. [The owners of the New York Mets] will receive increased rent credits.
8. [Both New York City and New York State] will make direct “capital replacement” payments into a reserve fund for the stadium.
9. [New York City] has granted the [owners of] the Mets a mortgage-recording tax exemption.
10. [The owners] will [not pay] rent for the use of the . . . stadium, [but] will pay [for the stadium] maintenance.<sup>145</sup>

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143. *Id.*

144. *See id.*

145. Middleton et al., *supra* note 131.

In total direct subsidies, exemptions, and bond financing, the Mets owners will save approximately \$276 million while New York City will experience \$155 million in lost revenue; it will cost the State of New York eight-nine million dollars in lost revenue.<sup>146</sup> This is in comparison to the financial plan of the Yankees where the owners received \$276 million in benefits over a cost to the city of \$170 million and to the state of eighty five million dollars.<sup>147</sup>

One news article reported the struggling Citigroup is slated to pay \$400 million for naming rights during the next twenty years to the team owners of the New York Mets.<sup>148</sup> Citigroup's sign above the main scoreboard, the first of several, was ample proof of the multi-million dollar agreement for the naming rights of the ballpark.<sup>149</sup> Citigroup made the commitment years ago, in November 2006, when it was "flush" with cash.<sup>150</sup> Citigroup and the New York Mets' Chief Operating Officer have said they have no plan to alter the naming rights deal even though the bank is receiving billions of dollars in federal aid.<sup>151</sup> Economists who question the economic value of a stadium accept the Bloomberg administration may have made a better deal for taxpayers than those deals made in other cities. But, economists say the stadiums still carry an immense public cost, and eighty-one home games in each park will not create many permanent jobs.<sup>152</sup>

c. New Jersey Nets

The third new sports stadium issue surfaced in Brooklyn just recently when the New Jersey Nets were purchased by a real estate developer, Bruce C. Ratner, and his associates.<sup>153</sup> As soon as the purchase was approved, the new owners announced they were moving the basketball team from New Jersey to Brooklyn.<sup>154</sup> Ratner's group has a detailed plan for commercial and residential development around the proposed arena. However, it faced opposition from community groups and elected officials who opposed the

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146. *Id.*

147. *Id.*

148. Richard Sandomir, *Citigroup Puts Its Money Where Its Name Will Be*, N.Y. TIMES, July 20, 2008, [http://www.nytimes.com/2008/07/20/sports/baseball/20sandomir.html?\\_r=1&partner=rssnyt&emc=rss](http://www.nytimes.com/2008/07/20/sports/baseball/20sandomir.html?_r=1&partner=rssnyt&emc=rss).

149. *Id.*

150. *Id.*

151. *Id.*

152. See Bagli, *supra* note 117.

153. See Levitt, *supra* note 69.

154. See *id.*

size and scale of the project.<sup>155</sup> A group of tenants and owners claim the seizure is unconstitutional.<sup>156</sup> They argued Ratner's proposed \$4.9 billion Atlantic Yards project mainly enriches private interests, and the New York Constitution requires a public use for land taken by eminent domain.<sup>157</sup> The tenants also argued that it is not an area that is blighted or in unsanitary conditions.<sup>158</sup> They claimed the takings are for private use by the developer and that the plan only enriches private interests.<sup>159</sup>

On November 24, 2009 the Court of Appeals of New York ruled that the state could use eminent domain to force homeowners and businesses to sell their property for a massive development in Brooklyn that includes a new arena for the Nets basketball team.<sup>160</sup> The vote was 6-1, and Judge Lippman, who wrote the majority decision, said, "The Constitution accords government broad power to take and clear substandard and insanitary areas for redevelopment. In so doing, it commensurately deprives the Judiciary of grounds to interfere with the exercise."<sup>161</sup>

The court approved the use of eminent domain, holding that conditions were such that there were public benefits to cleaning up the area.<sup>162</sup> Sheila McGraph, a real estate analyst, commented this was the last significant hurdle for the development project, and the ruling provides "additional visibility on the value proposition of the project, avoids significant write-off, and assists in marketing Barclays Center bonds."<sup>163</sup> Mayor Bloomberg remarked, "The state court ruled in favor of the city because this is a project the city really needs . . . . It gives us another great venue for the big events . . . ." <sup>164</sup>

#### d. Oakland

The newest baseball stadium to be proposed is the Oakland Athletics Cisco Park in Fremont, California, twelve miles from San Jose, on a 143 acre parcel of land in the Oakland area known as the Pacific Commons. Several sites have been proposed for the new ballpark, though the threat

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155. *Id.*

156. *Goldstein v. N.Y. State Urban Dev. Corp.*, 921 N.E.2d 164, 170 (N.Y. 2009).

157. *See id.*

158. *Id.* at 171.

159. *See id.* at 170.

160. *Id.* at 165.

161. *Id.* at 173.

162. *Id.*

163. Levitt, *supra* note 69.

164. *Id.*

looms the club might move from the Oakland area if a site is not determined soon.<sup>165</sup> Throughout 2010, the Oakland Athletics have struggled in their attempt to construct a new stadium. Oakland city officials have repeatedly indicated they want to keep the Oakland Athletics in their city. The team owner, Len Wolff, continues to focus his attention on San Jose, which may indicate a franchise move. However, Major League Baseball management has not yet decided to allow the team to move.<sup>166</sup> San Jose has proposed a site, and Wolff has stated he is willing to privately finance the \$461 million ballpark there.<sup>167</sup>

The stadium design will have all of the modern amenities, including suites of various sizes.<sup>168</sup> The outfield concourses will be public streets that will close shortly before the game. The surrounding area will have numerous fan amenities and interactive opportunities. Food vendors will have a wide choice of specialty foods, and sit-down restaurants and clubs will be situated so there will be a continuous view of the playing field.<sup>169</sup> Though the naming rights to this stadium have already been negotiated and the Athletics and Cisco Networking have signed a thirty-year naming rights package, ground-breaking has not been set because approval of the site has not yet been obtained.<sup>170</sup> On January 14, 2009, it was reported baseball Commissioner Bud Selig had given the Oakland Athletics permission to “discuss a ballpark with other communities if officials in Fremont, California, didn’t quickly approve a proposed new stadium.”<sup>171</sup>

The Athletics plan to build a ballpark in Fremont, California, at a cost of approximately \$500 million, which would be paid primarily from private funds, but the team has yet to win the approval of Fremont’s officials. Selig added:

I cannot stress enough that the need for the A’s to have a viable and modern stadium is a paramount objective for your organization and for the game overall. The A’s currently operate in one of the least desirable venues in Major League Baseball and it

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165. *Athletics Ballpark*, BALLPARKS OF BASEBALL, <http://www.ballparksofbaseball.com/future/AthleticsBallpark.htm> (last visited Mar. 21, 2011).

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

171. *Selig Wants Fremont to Approve A’s Ballpark*, USA TODAY, Jan. 14, 2009, [http://www.usatoday.com/sports/baseball/al/athletics/2009-01-14-athleticsstadium\\_N.htm?loc=interstitialskip](http://www.usatoday.com/sports/baseball/al/athletics/2009-01-14-athleticsstadium_N.htm?loc=interstitialskip).

has placed your club at a serious disadvantage with respect to other clubs in the game.<sup>172</sup>

## V. ADDITIONAL FUNDING ISSUES

Most state constitutions include an article that prohibits giving or loaning state money to private corporations or associations.<sup>173</sup> The same constitutional provision also prohibits state actors from using state credit to subsidize a stadium. Therefore, the legality of investing public tax dollars by local governmental agencies in order to subsidize the building of a stadium for private corporations or associations has been challenged by taxpayers.<sup>174</sup> Lawsuits raised by concerned citizens and legislators attack the use of tax-exempt bonds, the predominant method of financing the stadiums. They object primarily because public subsidies to fund the stadiums

172. *Id.*

173. *See* N.D. CONST. art. X, § 18. On December 17, 1998, the North Dakota Attorney General issued an opinion stating:

The use of public funds is restricted by a number of state and federal constitutional provisions including Article X, Section 18 of the North Dakota Constitution, the Fourteenth Amendment of the United States Constitution and its North Dakota counterpart, Article 1, Section 16.

Article X, Section 18 of the North Dakota Constitution provides:

The state, any county or city may make internal improvements and may engage in any industry, enterprise or business, . . . but neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual, association or corporation except for reasonable support of the poor, nor subscribe to or become the owner of capital stock in any association or corporation.

The North Dakota Supreme Court has construed Article X, Section 18 as . . . prohibit[ing] the state or political subdivision to “otherwise” loan or give its credit or make donations . . . .

Under the Fourteenth Amendment of the United States Constitution, a state may not “deprive any person of life, liberty, or property without due process of law.” North Dakota’s Constitution contains a similar provision in Article I, Section 16. Under these constitutional provisions, a state may expend public funds only for public purposes . . . . The legality of a given expenditure under these two due process constitutional provisions thus turns on whether it is primarily for a private or public purpose.

“A public purpose or business has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity and contentment of all the inhabitants or residents within a given subdivision.”

. . . .

With reference to governmental policy and constitutional provisions restricting taxation or the contracting of public debts, this term . . . does not include the building and maintenance of state institutions.

N.D. Op. Att’y Gen. 98-F-30 (1998) (internal citations omitted).

174. *See* N.D. CONST. art. X, § 18.

give major benefits to team owners while placing the risk of debt upon cities and states and, consequently, the taxpayers.

The owners' laissez-faire attitude has been often criticized by fans, but team owners have simply followed their best business interests. Various judicial holdings have emboldened owners of professional sports teams. Owners realize that fan support increases the value of their franchise; however, the judicial decisions, including the antitrust decisions, have created a seller's market, inspiring the owners to make the best deal possible.

While some observers remain dubious, owners and major supporters of new stadiums have convinced government officials, potential investors, and key community leaders that new stadiums with modern amenities generate additional economic activity, create new jobs, and encourage commercial and residential development in the area surrounding a new stadium. Some question the propriety of building stadiums with public dollars when studies indicate there is only a remote economic impact to the communities.<sup>175</sup> Nevertheless, team owners and league officials have persuaded state and city legislatures that professional teams will provide jobs and inject millions of dollars into the economy of an area.

When a state or municipality issues a bond to fund a stadium, the taxpayers are subsidizing the cost of construction by assuming the debt. Economists speculate that the public benefit argument is highly exaggerated and, while increased spending at a sports stadium may produce some local economic activity, there is very little "new" activity.<sup>176</sup> The money, which would have gone into the municipality coffers in another manner, goes into the spending at or near the stadium, and the benefits are shared by the municipality and the owners. Thus, the municipality has suffered lost revenue because they have to share it with the owners.

Several pieces of legislation designed to prevent subsidizing schemes have been presented to Congress for consideration.<sup>177</sup> This legislation was introduced at the federal level because, when states subsidize construction costs, the federal government also becomes a victim.<sup>178</sup> None of the bills submitted to Congress have been enacted. Perhaps lobbying by professional leagues and commissioners, coupled with the Government Finance Officers Association's argument that federal action would interfere

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175. KEVIN DELANEY & RICK ECKSTEIN, PUBLIC DOLLARS, PRIVATE STADIUMS, BATTLES OVER BUILDING SPORTS STADIUMS 23 (2003).

176. *Id.*

177. *Id.*

178. *Id.*



with states' rights to make financing decisions affecting their jurisdictions, were persuasive.

#### A. BALTIMORE/INDIANAPOLIS

Finally, because the trend for new luxurious stadiums began in Baltimore, it is only fitting to discuss what happened in Baltimore when another city offered the team a better opportunity. The Baltimore Colts, a major sports team, threatened to leave Baltimore if the city did not meet the team's demands for a new stadium built only for football. Baltimore did not agree to the owner's terms, and Robert Irsay took the team and all of its possessions to Indianapolis in the middle of the night in March of 1984.<sup>179</sup> The team settled in to play its games at Hoosier Dome, which was renamed RCA Dome in 1984.<sup>180</sup>

The Colts became unhappy with the Hoosier Dome in Indianapolis and wanted to have all the amenities of the newer stadiums. The team especially wanted more luxury suites because such suites are a major source of revenue reserved by the team. Without a new home, chances of a Super Bowl being played in Indianapolis were slim. Indianapolis and the State of Indiana agreed to support the team by building a new stadium.<sup>181</sup>

The construction of Lucas Oil Stadium, named in 2006, began in 2005.<sup>182</sup> The stadium is a state of the art facility with a retractable roof and the elements of kinetic architecture that provide for a speedy conversion of the facility to accommodate a variety of events.<sup>183</sup> This conversion facility allows increased use of the building and increased return on the investment. Lucas Oil Stadium opened in August 2008 and replaced the RCA Dome as the home of the Indianapolis Colts.<sup>184</sup>

The approximate cost of constructing the stadium was \$720 million and was to be financed by Indianapolis and Indiana.<sup>185</sup> There were arguments and debates among politicians about where they could find funding for the stadium.<sup>186</sup> Some politicians favored gaming to raise the funds, and others

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179. *History of the Indianapolis Colts*, INDIANAPOLIS STAR, [http://www2.indystar.com/library/factfiles/sports/football-pro/indpls\\_colts/history/colts.html](http://www2.indystar.com/library/factfiles/sports/football-pro/indpls_colts/history/colts.html) (last visited Mar. 21, 2011).

180. *Id.*

181. Michele McNeil, *State OKs Deal with City and Colts*, INDIANAPOLIS STAR, Sept. 9, 2005, at B1.

182. *Id.*

183. *See id.*

184. *Lucas Oil Stadium*, BALLPARKS.COM, <http://football.ballparks.com/NFL/IndianapolisColts/newindex.htm> (last visited Mar. 21, 2011).

185. *See* McNeil, *supra* note 181.

186. *Id.*

avored raising taxes to fund the venue.<sup>187</sup> Eventually the stadium was financed by taxes imposed on entertainment, food, lodging, car rentals, and ticket sales.<sup>188</sup> The Colts and the NFL were to contribute \$100 million dollars to the construction costs of the stadium.<sup>189</sup> Because the team was given a forty-eight million dollar credit for rent paid for use of the RCA Dome, its actual contribution in dollars toward construction of the dome was fifty-two million.<sup>190</sup> In February 2006, the Indianapolis Colts announced Lucas Oil had purchased the naming rights for \$122 million over the next twenty years.<sup>191</sup> This revenue went into the team's treasure chest because the agreement with Indianapolis stated this revenue was reserved as property of the team.<sup>192</sup>

The Indiana Convention Center, including Lucas Oil Stadium operations, will be the responsibility of a new state agency, the Indiana Stadium and Convention Building Authority, and the agency shall assume responsibility and control of the operations. The responsibilities transferred to the Indiana Stadium and Convention Building Authority will be demolishing the RCA Dome, along with the financing, design, and operations of the entire new facility. The state will become the owner of the entire facility once it is completed, and the Capital Improvement Board will assume control.

## VI. CONCLUSION

Surprisingly, scant precedent exists regarding government acquisition of property for privately owned sports stadiums; the better view is that such acquisition does not fulfill a public use. There is very little support for a conclusion that the use will benefit the public. Public finance experts Roger Noll and Andrew Zimbalist concluded their research by noting no recent facility appears to have earned anything approaching a reasonable return on investment and no recent facility has been self-financing in terms of its impact on net tax revenue.<sup>193</sup>

The ultimate conclusion to the existing dilemma of “to build or not to build” is that government subsidies cannot be justified in principle. Forcing some people to pay so others, whomever they are—owners, developers,

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187. *Id.*

188. *Lucas Oil Stadium, supra* note 184.

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.*

193. NOLL & ZIMBALIST, *supra* note 9.

restaurateurs—can profit is a misuse of government money. The only benefit economists can see is a private benefit, not a public benefit. Economists conclude that government subsidies in stadium construction is a form of “corporation welfare” and not in the best interests of taxpayers.

Most American taxpayers are uninformed about the legal process of eminent domain and the probable ramifications. Many people, in particular young taxpayers, are part of the mania who identify with sports franchises, sport teams, and individual athletes. This group of young voters, and some older voters, has a tremendous influence on legislators. Many legislators have the same personal thoughts as their sport fanatic constituents about the value that a sports franchise has for establishing a quality of life for their community. The essence of the overriding thought is, “We must keep our professional teams at any cost.” America’s governors and mayors, along with the country’s judges, appear to be allocating public funds and using eminent domain power to acquire land for sports stadiums that they then convey to private profit-making business enterprises. To do this seems illegal and economically imprudent when public schools, health, and transportation are deprived of adequate resources.<sup>194</sup>

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194. See Philip Weinberg, *Eminent Domain for Private Sports Stadiums: Fair or Foul*, 35 ENVTL. L. 311, 322 (2005).