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TAKE US BACK TO THE BALL GAME:
THE LAWS AND POLICY OF PROFESSIONAL
SPORTS TICKET PRICES

Nathan R. Scott*

The prices of professional sports tickets have skyrocketed in recent years, depriving
many fans of the time-honored tradition of taking their families out to a ball game.
This Article argues that legal reform and political action are appropriate responses
to these soaring prices.

First, the Article rebuts the threshold objection that economics alone justify current
ticket prices. Professional sports teams reap a windfall from the public through
corporate welfare, special-interest legislation, and favorable antitrust and tax
laws. This preferential legal treatment undercuts the argument that teams are sim-
ply charging, or should charge, what the market will bear. In addition, teams
cannot blame ticket prices on high player salaries, because the market for tickets is
economically distinct from the market for players.

Next, the Article evaluates four possible legal or political responses to ticket prices:
regulating professional sports leagues, eliminating their preferential legal treat-
ment, taking individual teams through eminent domain, and encouraging local
team ownership. It concludes that fans will be best able to keep tickets affordable by
encouraging local governments, which have spent billions of dollars on stadium
construction, to consider buying teams of their own.

INTRODUCTION

The family outing to the local big-league game, once a staple of
American life, is being lost. Ticket prices to professional sporting
events have skyrocketed beyond the reach of the average fan. Fans
who paid $1.50 as a child to watch their favorite team must now pay
$150 or more to bring their children to a game. Even these steeply-
priced tickets are becoming harder to find, as many teams now
require fans to purchase season tickets or personal seat licenses.
Fans also find themselves competing for stadium space with corpo-
rations who can afford $100,000 or more for luxury boxes.

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nia, Los Angeles; J.D., Harvard Law School. I thank my father, John Scott, for suggesting this
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ing and reviewing an earlier version of this article; and my wife, Mary Scott, for her support.
Despite the growing commentary on sports and the law, the problem of soaring ticket prices has attracted relatively little academic attention. The lack of scholarly commentary is likely due to two common, but flawed, perceptions. The first misperception sees ticket pricing as solely an economic phenomenon, not a legal issue. This view overlooks the windfall professional sports teams gain through preferential legal treatment, such as special interest legislation and court-sanctioned monopoly status. The second misperception sees soaring ticket prices as necessary financial offsets to higher player salaries. This assessment fails to recognize that the economic market for ticket prices and the economic market for player salaries are largely unrelated.

This article explores the ticket-pricing problem, rebuts the conventional wisdom that the problem is not a legitimate legal issue, and suggests possible legal responses to make ticket prices affordable to the regular fan. It concludes that local government ownership of professional sports teams may best protect fans' ability to take their families out to the ball game.

I. Assessing the Ticket Pricing Problem

Is there a "problem" with professional sports ticket prices? There is for the regular fan, as it is now "standard practice for teams to target affluent professionals as their primary clientele and to charge prices that are beyond the means of average working families. Middle and lower-income fans are thus being priced out of the game."

Part I.A reviews the soaring ticket prices in the four major professional sports leagues: Major League Baseball (MLB), the National Football League (NFL), the National Basketball Association (NBA), and the National Hockey League (NHL). Part I.B analyzes the growing prevalence of premium seating, which further prices regular fans out of the game.

A. The Current State of Professional Sports Ticket Prices

When Curly Lambeau's football team (sponsored by the Indian Packing Company) first took the field in 1919, he literally passed a
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hat among spectators to raise money.2 By 2004, the average ticket to a Green Bay Packers game cost $54.40.3 This price did not include $25 for parking.4 The Packers raised their ticket prices for the 2005 season, and now the cheapest seats will cost $54.5 Fans wishing to watch a game on the "frozen tundra of Lambeau Field" in heated comfort can pay hundreds of dollars more for an indoor club seat—the exact price depends on the terms of the team’s multi-year leases with its season ticket holders.6

Despite the price hike, Green Bay Packers’s tickets are a bargain compared to tickets for the New England Patriots. The average ticket to a New England Patriots game cost $75.33 in 2004, not including $35 for parking.7 At least fans who could afford $110 to watch the Patriots got to watch a championship team, winners of three of the last four Super Bowls.8 Fans of the mediocre Kansas City Chiefs (7 wins, 9 losses in 2004), Washington Redskins (6-10), New York Giants (6-10), and Chicago Bears (5-11) still paid more than $65 for the average ticket.9 Even the hapless San Francisco 49ers, who won 2 games and lost 14 in 2004, charged $64 for the average ticket.10

Overall, the average NFL ticket cost $54.75 in 2004.11 Out of all of the professional sports, fans pay the highest prices for NFL tickets, as each team plays only eight regular-season home games.12 Prices are somewhat lower in the NBA or NHL, whose teams play 41 regular-season home games.13 The average ticket to an NBA
game cost $45.28 in 2004; an average NHL ticket cost $43.57.\textsuperscript{14} The NBA's Los Angeles Lakers charged the highest average ticket price in professional sports: $75.40.\textsuperscript{15}

These highly-priced tickets just get you in the door: the cost of actually attending an NFL, NBA, or NHL game is much higher. The Fan Cost Index (FCI) estimates the total cost for a family of four to attend a game, including typical expenditures on parking, tickets, concessions, and souvenirs.\textsuperscript{16} The 2004 FCI was $321.62 for NFL games, $263.44 for NBA games, and $253.65 for NHL games.\textsuperscript{17} Seven NFL teams had a 2004 FCI above $350; seven NBA teams and five NHL teams had a 2004 FCI above $300.\textsuperscript{18}

Even Major League Baseball, historically the most affordable of the four major professional sports leagues because its teams play the most home games, is pricing its regular fans out of the ballpark.\textsuperscript{19} The average ticket to a 2004 MLB game cost $19.82, and the average 2004 FCI for a family of four to watch a MLB game was $155.71.\textsuperscript{20} Fans of the 2004 World Series champion Boston Red Sox paid more than $40 for the average ticket, the highest price in MLB.\textsuperscript{21} Fans of the Philadelphia Phillies paid $26.08 for the average ticket in 2004, only to watch their team finish 10 games out of first place in the National League's East Division.\textsuperscript{22} The $26.08 ticket price represents a whopping 51.26% increase over the Phillies's


\textsuperscript{15} Fan Cost Index, NBA 2004, supra note 14; cf. Fan Cost Index, NFL 2004, supra note 14.

\textsuperscript{16} Id.; Fan Cost Index, NBA 2004, supra note 14; Fan Cost Index, NHL 2004, supra note 14.

\textsuperscript{17}See, e.g., Fan Cost Index, NFL 2004, supra note 3.

\textsuperscript{18}Id.; Fan Cost Index, NBA 2004, supra note 14; Fan Cost Index, NHL 2004, supra note 14.

\textsuperscript{19} Daniel C. Glazer, Can't Anybody Here Run This Game?: The Past, Present and Future of Major League Baseball, 9 Seton Hall J. Sport L. 339, 400 (1999) ("MLB plays at least twice as many games per season as any other professional sport, in stadiums with seating capacities ranging from 30,000 to almost 60,000 . . . ").


\textsuperscript{21} Id.

2003 ticket prices, when the Phillies finished 15 games out of first place.\footnote{23}

The dramatic increase in professional sports ticket prices is a surprisingly recent development, as exemplified by MLB ticket prices. MLB ticket prices were remarkably consistent until the early 1990s.\footnote{24} In 1920, the average MLB ticket cost $1.00.\footnote{25} By 1986, the average MLB ticket cost $6.70.\footnote{26} But the real price of the average MLB ticket, adjusted for inflation, actually fell during that time.\footnote{27} Expressed in 1967 dollars, the price of the average MLB ticket fell from $2.88 in 1939 to $1.98 in 1986.\footnote{28} The startling revelation is that “average ticket prices during the 1980’s were cheaper in real dollars than at any other time since the Great Depression.”\footnote{29}

But MLB ticket prices have skyrocketed since the early 1990s. The average Red Sox ticket price has almost doubled in price since 1998, when the average Red Sox ticket cost $24.05.\footnote{30} On a whole, the average MLB ticket price more than doubled since 1990, from $7.95 in 1990 to $19.82 in 2004—a 149% increase.\footnote{31} By way of comparison, the average movie ticket price rose only 47% during the same time, from $4.22 in 1990 to $6.21 in 2004.\footnote{32} In fact, recent professional sports ticket price increases are triple the inflation rate.\footnote{33}
B. The Explosion of Premium Seating

Professional sports teams benefit from a "new economics—fewer seats, more expensive seats, and a catering to corporate America."34 Premium seating—including expensive field-level seats, "club" seats, and luxury boxes—is sweeping through sports, as teams "search[.] for innovative and elaborate ways to transform fan interest and loyalty into dollars."35 For example, in 2000 the Los Angeles Dodgers renovated Dodger Stadium by adding 601 "Dugout Club" seats at field level behind home plate, 500 extra seats along the foul lines, and 33 luxury suites.36 Only five years later, this premium seating proved outdated. Before the 2005 season, new Dodgers owner Frank McCourt added 300 more Dugout Club seats behind home plate and 1300 more field box seats along the foul lines.37 The new field box seats cost between $40 and $125; the new Dugout Club seats cost between $275 and $400.38 The Dodgers told one long-time fan, reportedly the very first Dodger Stadium season ticket holder, that he could upgrade his formerly first-row seats to the new first row for a mere $120,000.39

Club seats are mushrooming at other stadiums, too. When the Green Bay Packers renovated Lambeau Field in 2003, they added 1080 indoor club seats and 3200 outdoor club seats.40 The Chicago Bears added 8657 club seats when they recently renovated Soldier Field.41 The Philadelphia Eagles added 10,828 club seats when they left Veterans Stadium for Lincoln Financial Field.42

The most "premium" of the premium seating is a luxury box. Fans—or, more usually, corporations—who purchase luxury boxes can watch the game from what is essentially a hotel room, complete with a wet bar, television, private bathroom, and food and beverage service.43 Luxury suites usually cost between $50,000 and

37. Id.
38. Id.
40. Greenberg, supra note 34, at 108.
41. Id.
42. Id. at 109. Lincoln Financial Field, like Veterans Stadium before it, has even more "secluded" seating: a jail for unruly fans. Jamison Hensley, Eagles Fans Can Boo with Best, Says Billick, Balt. Sun, Oct. 29, 2004, at 4D.
$200,000 per season, with the average price exceeding $100,000.44 Luxury suites at the Staples Center, home of the Los Angeles Lakers, Clippers, and Kings, range from $197,000 to more than $300,000 per season.45

Additionally, regular seats are increasingly sold only through season tickets.46 And those teams that still offer single-game tickets usually reserve the better seats for season ticket holders.47 A new twist on the season ticket is the Personal Seat License (PSL). A PSL essentially gives its holder nothing more than the right to spend more money on a season ticket.48 The Dallas Cowboys issued the first PSLs in 1968, charging $300 to $1000 for a 40-year “seat option.”49 Since then, many teams have required season ticket holders to purchase PSLs. The Carolina Panthers raised $150 million in 1993 by selling nearly 63,000 PSLs at costs of $600 to $5400.50 One commentator has observed that “PSLs amount to nothing more than ‘money raised from thin air’ for the owners.”51

Notably, fans who can afford season tickets or PSLs receive little in return other than entrance to the stadium. Fans generally have no property interest in their season tickets or PSLs.52 Season ticket holders have sued teams for preventing them from transferring their season tickets, unilaterally moving their seat locations, and fraudulently inducing their season ticket purchases with implied promises of fielding competitive teams or staying in the community.53 The

44. Id.; see also Robinson, supra note 33, at 144 n.34.
45. Parlow, supra note 43, at 539.
46. MICHAEL DANIELSON, HOME TEAM 65 (1997).
47. See, e.g., Doug Moore, New Park’s Best Seats Will Hit Wallets, St. Louis Post-Dispatch, Jan. 7, 2004, at A1, available at 2004 WLNR 1291017 (Westlaw) (“The sweetest seats in the new [St. Louis Cardinals’ stadium]—designed to get you as close to the action as possible—will likely go to current season ticket holders at Busch Stadium.... If all the seats are not reserved by season ticket holders, other fans will get a shot at them.”).
48. Mark Levengood, Unregistered Securities in the National Football League: Can the Securities Act of 1933 Protect Season Ticket Holders and Personal Seat License Holders?, 11 VILL. SPORTS & ENT. L.J. 411, 415 (2004) (“While the specific rights vary from franchise to franchise, most personal seat licenses include the right to renew a season ticket package on an annual basis, the right of first refusal for playoff tickets, and the right to transfer the personal seat license.”).
50. Id.
51. Id.
53. Id. at 163 (recounting unsuccessful actions by season ticket holders against NFL teams for relocating seats); see also Levengood, supra note 48, at 417–18 (recounting unsuccessful actions based on implied contract not to relocate or misrepresented quality of team);
courts have largely turned a deaf ear to these season ticket holders' claims.\textsuperscript{54}

II. The Hurdles to a Legal Analysis of Ticket Prices

Despite the soaring cost of professional sports tickets, relatively little legal commentary tackles the problem directly. Some say the increase in professional sports ticket prices simply reflects economic reality: owners are only charging what the market for sporting tickets will bear. In addition, they have to increase revenue to cover their players' increasing salaries. But closer analysis reveals these two economic phenomena—the free market for tickets and players' salaries—pose no hurdle to a legal analysis of professional sports ticket prices.

Part II.A shows that the market for professional sports tickets is not "free," as team owners reap billions of dollars from publicly-funded corporate welfare and preferential legal treatment. Part II.B demonstrates that the market for ticket prices is economically distinct from the market for players' salaries. Clearing these two hurdles will pave the way for a review of potential legal responses to professional sports ticket prices.

A. The First Hurdle: The Myth of the Free Market

The first obstacle to analyzing professional sports ticket prices from a legal perspective is the "myth of the free market." In a free market, the thought goes, team owners should be allowed to charge whatever ticket prices the market will bear. We can draw an analogy to another business. If Starbucks can charge its customers $4 for a venti caramel macchiato, then more power to it, many would say. Few legal scholars would see the need for legislation or court action to protect Starbucks customers' "right" to an affordable cup of coffee.


\textsuperscript{54} Reese et al., \textit{supra} note 52, at 184–85 ("Previous non-bankruptcy cases have established that the 'ownership' of tickets resides with professional teams. The courts have ruled that professional teams are entitled to create and modify policies to manage season ticket accounts.").
Thoughts on the subject might change if we learned the law bent over backwards to favor Starbucks at its customers' expense. Imagine if Starbucks built its stores with public funds and tax-exempt municipal bonds, had a coffee monopoly protected by unreasoned precedent and special interest legislation, and saved hundreds of million of dollars through tax loopholes. People might begin to wonder why legislatures would use the public coffers to artificially prop up Starbucks, and why courts would protect Starbucks's soaring prices from competition or regulation.

Professional sports team owners receive exactly this type of preferential legal treatment. Because the courts and legislatures have granted team owners a windfall of public funds and foregone tax revenue, team owners are raising ticket prices in a market that is far from "free."

1. The Corporate Welfare of Stadium Deals—Professional sports teams are on the dole. The most blatant example of preferential legal treatment for professional sports is the corporate welfare it receives through public stadium construction and renovation.\(^{55}\) Indeed, "taxpayers have been predominantly responsible for financing the building of sports facilities to accommodate professional franchises."\(^{56}\) Between 1975 and 1990, state and local governments spent $1.2 billion to build or renovate stadiums for professional sports teams.\(^{57}\) During the 1990s, they spent more than $12 billion on professional sports stadium construction, renovation, or lease renegotiation.\(^{58}\)

Local governments routinely give away billion-dollar stadium deals to professional sports teams. When the Chicago Bears asked their fans to rebuild Soldier Field in 2000, the Illinois legislature

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needed only three days to approve a $432 million contribution. The State of Missouri, the County of St. Louis, and the City of St. Louis spent $258 million to build the TWA Dome (now the Edward Jones Dome) in 1995. By the time the three governments pay off the tax-exempt bonds they issued to raise those funds, the stadium will have cost Missouri taxpayers roughly $720 million. The people of Ontario, Canada thought they were going to contribute $60 million of the estimated $225 million needed to build the Toronto Blue Jay's Sky Dome. But after extensive revisions to what ultimately became a $628 million stadium complex, Ontario ended up paying an estimated $278 million—more than the entire initial estimated cost.

Overall, "[t]he public generally pays approximately 80% of the cost for a new baseball facility and approximately 70% of the cost for a new football facility." These percentages were highest in the early 1990s, when the public paid 100% of the cost to build Jacobs Field for the Cleveland Indians, 93.6% of the cost to build Oriole Park at Camden Yards for the Baltimore Orioles, and 84.3% of the cost to build the Ballpark at Arlington for the Texas Rangers. Although these percentages have decreased somewhat, the total dollar amount of the public contribution is increasing. Local government contributed approximately $418 million to build Safeco Field for the Seattle Mariners in 1999, $328 million to build Miller Park for the Milwaukee Brewers in 2001, and $300 million to build Petco Park for the San Diego Padres in 2004. More recently, the City of Newark agreed to contribute $210 million towards construction of a new arena for the NHL's New Jersey Devils.

60. Id.
61. Parlow, supra note 43, at 518; see also Greenberg, supra note 34, at 121 (noting that St. Louis reimbursed the Rams for lost revenue in Southern California, paid off $28 million in debt owed to the Rams' Anaheim, California stadium, paid a $29 million relocation fee to the NFL, and built a $12.5 million practice complex for the team).
62. Parlow, supra note 43, at 518. Before the Los Angeles Rams agreed to move to St. Louis from Anaheim in 1996, the three governments committed to build the stadium before securing a tenant. Id.
64. Id. at 599.
65. Greenberg, supra note 34, at 123.
66. Id.
67. See id.
Publicly-funded stadiums are also often built on publicly-donated land. For example, Dodger Stadium is usually regarded as a privately-funded stadium. But to lure the Dodgers from Brooklyn in 1958, the City of Los Angeles gave the Dodgers 300 acres near the heart of downtown L.A. ProPlayer Stadium in Miami is built on 160 acres donated by Dade County. The City of Charlotte and the State of North Carolina spent $57 million to acquire land for the Carolina Panther's Ericsson Stadium. In addition, whether the stadium property is donated or not, professional sports teams typically pay no property taxes on it.

If new stadium construction is not feasible, even on free land, cities instead may offer to renovate the team's existing stadium. In an effort to keep the Cleveland Browns from moving to Baltimore, Cleveland offered to spend $175 million to renovate Cleveland Stadium. At least Cleveland got to keep their money when the Browns moved to Baltimore to play rent-free in their newly-constructed, publicly-financed stadium. The situation was much worse for Harris County, Texas, whose taxpayers had to pay off the $50 million used to renovate the Astrodome for the Houston Oilers long after the Oilers left Houston and became the Tennessee Titans. And publicly-funded renovations are not limited to the stadium itself. State and local governments spent $72 million on infrastructure improvements around the Milwaukee Brewers's Miller Park, and the State of Maryland spent $70 million improving the roads around the Washington Redskins's Jack Kent Cooke Stadium. More recently, the State of New Jersey agreed to pay an

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69. Zachary A. Phelps, Note, Stadium Construction for Professional Sports: Reversing the Inequities Through Tax Incentives, 18 St. John's J. Legal Comment 981, 1017 n.183 (2004); see also Howard Fine, Absence of Leadership May Hinder NFL Deal, L.A. Bus. J., Apr. 11, 2005, at 1, available at 2005 WLNR 6886406 (Westlaw) ("Dodger Stadium was one of the first ballparks to be built with private funds.").

70. See City of Los Angeles v. Superior Court, 333 P.2d 745, 748-49 (1959); see also Fine, supra note 69 (noting that the City of Los Angeles donated land for Dodger Stadium); Walter O'Malley official website, Building O'Malley's Dream Stadium: Exchange of Land, http://www.walteromalley.com/stad_hist_page2.php (last visited Nov. 25, 2005) ("Los Angeles agreed in September to exchange 300 acres of land in Chavez Ravine to the Dodgers in return for the Dodgers' commitment to build a 50,000-seat stadium.").

71. DANIELSON, supra note 46, at 250.

72. Id.

73. Greenberg, supra note 34, at 113, 130-31.

74. MARK S. ROSENTRAUB, MAJOR LEAGUE LOSERS 242 (1997).

75. Mitten & Burton, supra note 57, at 61, 76-77.

76. Greenberg, supra note 34, at 133.

estimated $30 million in infrastructure improvements for the New York Giants's new stadium in East Rutherford.78

Once a city builds or renovates a stadium acceptable to its professional sports team, it often leases it to the team at sweetheart rates. "In fact, most teams pay rent that is far below the fair market value."79 Cities that charge below-market rents at least recoup some of their investment; others charge no rent at all. The Baltimore Ravens play rent-free in their 100% publicly-financed stadium.80 The Minnesota Twins play rent-free in the Hubert H. Humphrey Metrodome.81 New York actually had to pay the Yankees $10,000 to play in Yankee Stadium in 1977 because the stadium lease allowed the Yankees to deduct maintenance costs from their rent.82

As a final, brazen example of corporate welfare, the public occasionally just gives money to professional sports teams. The government coalition that lured the Rams to St. Louis gave them $15 million to cover relocation expenses and assumed the Rams's $30 million debt to the City of Anaheim.83 The City of Montreal and the Province of Quebec gave the new owners of the Montreal Expos $33 million to help them buy the team in 1990.84 Biting the hand that fed them, the Expos recently left Montreal to play in Washington, D.C.85

2. Tax-Exempt Stadium Bonds—The public grants an additional subsidy to professional sports when it pays for stadium construction with tax-exempt municipal bonds. This funding is a common, costly practice.86 For example, the City of San Diego issued $206 million in tax-exempt bonds to build Petco Park for the San Diego Padres in 2004,87 the City of San Antonio issued $146.5 million in tax-exempt bonds to build the SBC Center for the San Antonio

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80. Id. at 146.
81. Greenberg, supra note 34, at 130; see also Metro. Sports Facilities Comm'n v. Minn. Twins P'ship, 638 N.W.2d 214, 221 (Minn. Ct. App. 2002).
82. ZIMBALIST, supra note 31, at 138.
84. ZIMBALIST, supra note 31, at 138.
85. Jeff Barker, Drama Comes Full Circle for D.C. Fans; Joy Had Become Despair; Now, Signs of Baseball Life Spring Up Again in Capital, BALT. SUN, Dec. 22, 2004, at 1C.
86. Greenberg, supra note 34, at 130-31.
87. Id. at 134.
Spurs, and Cleveland's Gateway Economic Development Corporation issued $117 million in tax-exempt bonds to build Jacobs Field for the Cleveland Indians. Municipal bonds are attractive to investors because their interest payments are not subject to federal income tax. Because municipal bonds are tax-exempt, using them to finance stadium construction spreads the costs of stadium construction across all federal taxpayers.

Before 1968, municipal bonds were exempt from federal income tax regardless of their purpose. In 1968, Congress restricted tax-exempt status to bonds benefiting the general public, and eliminated the tax exemption for "private activity bonds." But municipal bonds issued to finance stadium construction were expressly exempted from the private activity exception.

The Tax Reform Act of 1986 limited, but did not preclude, the use of tax-exempt municipal bonds to finance stadium construction. First, stadium bonds were now potentially subject to the private activity exception. Second, the Act modified the test for determining what constituted a private activity bond. A municipal bond was now a private activity bond if: (1) the proceeds of the bond offering were "to be used for any private business use"; and (2) more than 10% of the bond was secured by, or more than 10% of the interest payments would be derived from, property used for private business purposes (the private security test). The private security test thus required local governments issuing tax-exempt stadium bonds to avoid receiving more than 10% of the bond's cost from the stadium lease. This has had the unfortunate side-effect of forcing local governments to slash stadium rents.

Congress has been unable to further discourage tax-exempt stadium bonds. In 1996, Senator Mike Dewine of Ohio introduced

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89. Greenberg, supra note 34, at 132.
91. Senkiewicz, supra note 63, at 583 ("[T]he use of tax-exempt debt [to finance stadium construction] has the indirect effect of placing the cost burden upon all federal taxpayers across the country.").
92. Erickson, supra note 55, at 608.
94. Id.
96. Erickson, supra note 55, at 608 (noting that stadiums were no longer denominated "exempt facilities").
97. Id.
99. Erickson, supra note 55, at 609.
100. Id. at 611. ("[T]he 1986 Act has really forced local governments to give rent free deals to sports teams in order to avoid the 10% security-interest test's classification . . . .")
the Team Relocation and Taxpayer Protection Act, which would have eliminated the tax exemption for a team’s stadium bonds if the team were to relocate. In 1997, Senator Daniel Patrick Moynihan of New York introduced the Stop Tax-Exempt Arena Debt Issuance Act (STADIA), which would have deemed any bond using more than $5 million or 5% of its proceeds to build a professional sports stadium as a private activity bond, ineligible for tax-exempt status. Neither bill made much headway in Congress. Senator Moynihan reintroduced STADIA in 2000 without better results. In 1999, Senator Arlen Specter of Pennsylvania introduced the Stadium Financing and Franchise Relocation Act, which would have obviated the need for tax-exempt stadium bonds by requiring professional sports leagues to establish a trust fund to build or renovate stadiums. This measure also failed.

3. Baseball’s Antitrust Exemption—The existing preferential legal treatment does more than merely facilitate using public funds to build stadiums for professional sports teams; it embraces and protects the “league” structure by which professional sports teams do business. Major League Baseball has a free pass from antitrust scrutiny, courtesy of the U.S. Supreme Court’s decision in Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs. The Federal League began play as a professional baseball league in 1913. By that time, the National and American Leagues had not seen a competing league in more than twenty years, leading one contemporary court to conclude major league baseball was “as complete a monopoly of the baseball business for profit as any monopoly can be made.” The major leagues responded to this threat to their monopoly status by blacklisting

101. Id. at 629.
102. Id. at 613–14.
103. Id. at 613–14, 629.
104. Id. at 613; see also Edelman, supra note 59, at 305.
105. Erickson, supra note 55, at 624–25.
106. Edelman, supra note 59, at 305.
108. ZIMBALIST, supra note 31, at 8.
109. Id. at 6 (noting the demise of the Players’ League in 1890 and of the American Association in 1891). Another rival league, the Continental League, was proposed in 1959 by former Brooklyn Dodgers general manager Branch Rickey and attorney William Shea. See Stephen F. Ross & Stefan Szymanski, Open Competition in League Sports, 2002 Wis. L. Rev. 625, 631 n.26 (noting that MLB expansion “forestalled entry” of the Continental League into the professional baseball market). MLB defeated the Continental League before it played a game by expanding into its proposed markets. Id.
players who defected to the Federal League. The Federal League sued the major leagues for restricting their access to players. As Judge Kenesaw Mountain Landis pondered his decision, the two leagues settled, and the major leagues paid the Federal League approximately $600,000. One Federal League team, the Baltimore Terrapins, was unsatisfied, and sued the National League. The trial court awarded $240,000 to the Terrapins, which the D.C. Court of Appeals reversed on appeal.

The Supreme Court affirmed the circuit court, with its now-astonishing holding that major league baseball does not affect interstate commerce. Writing for the unanimous court, Justice Holmes recognized the obvious fact that professional baseball was a business, but argued "personal effort, not related to production, is not a subject of commerce." Moreover, "the business [in question] is giving exhibitions of base ball [sic], which are purely state affairs." That teams crossed state lines to play the game was "a mere incident" to the essentially local activity of playing baseball. Because professional baseball was not involved in interstate commerce, it was immune from antitrust scrutiny under the Sherman Act.

The Supreme Court has since conceded Justice Holmes got it wrong: baseball was and is engaged in interstate commerce. The Court now acknowledges that its decisions giving MLB an antitrust

112. Id.
114. See ZIMBALIST, supra note 31, at 9.
115. See id. at 9-10.
118. Oliver Wendell Holmes played organized amateur baseball as a young man. ZIMBALIST, supra note 31, at 10. Another member of the court, Chief Justice William Howard Taft, played third base for Yale and was the first President to throw out the first pitch of the baseball season. Id.
120. Id. at 208.
121. Id. at 209.
122. Id. at 208-09; see also 15 U.S.C. §§ 1-2 (2000) (prohibiting "restraint of trade or commerce among the several States").
123. See Flood v. Kuhn, 407 U.S. 258, 282 (1972) ("Professional baseball is a business and it is engaged in interstate commerce."); see also Radovich v. NFL, 352 U.S. 445, 452 (1957) ("[W]here we considering the question of baseball for the first time upon a clean slate we would have no doubts [that baseball is engaged in interstate commerce].").
exemption may have been "unrealistic, inconsistent, or illogical," and recognizes the antitrust exemption is "an exception and an anomaly," as well as "an aberration." Yet the Court has protected MLB's antitrust exemption on two grounds: stare decisis and a lingering conviction that Congress's failure to remedy the antitrust exemption implies congressional approval. The New York Times ridiculed this rationale: "The only basis for the judge-made monopoly status of baseball is that the Supreme Court made a mistake the first time it considered the subject... and now feels obliged to keep on making the same mistake because Congress does not act to repeal the exemption it never ordered." In fact, Congress held hearings in 1951 to examine the antitrust exemption. It took no action because it believed the Second Circuit's decision in *Gardella v. Chandler,* holding that MLB's use of radio and television implicated interstate commerce, supplanted the antitrust exemption. But Congress was mistaken, as the 1953 *Toolson* decision made clear that the antitrust exemption survived *Gardella.* In the twenty years between *Toolson* and the Court's 1972 *Flood* decision, more than fifty bills were introduced to limit the antitrust exemption. None made it out of committee. More recent efforts to end baseball's antitrust exemption have also failed.

The main reason for Congress's failure to repeal the antitrust exemption is MLB's powerful lobby. Even during the 1951 hearings, major league baseball overwhelmed Congress with its lobbying effort. The committee chairman remarked he had never seen such organized, determined lobbyists: "They came upon

126. *Id.* at 282–83; *see also* *Toolson v. N.Y. Yankees,* Inc., 346 U.S. 356, 357 (1953) ("[Baseball] has thus been left for thirty years to develop, on the understanding that it was not subject to existing antitrust legislation. The present cases ask us to overrule the [Federal Baseball Club] decision and, with retrospective effect, hold the [Sherman Act] legislation applicable. We think that if there are evils in this field which now warrant application to it of the antitrust laws it should be by legislation.").
128. *Id.* at 14.
130. *Id.* at 407–08.
131. *Toolson,* 346 U.S. at 357.
133. *Id.*
134. *Id.* at 53–54.
Washington like locusts." Thus, the antitrust exemption today survives between the turned backs of the Supreme Court and Congress, as each refuses to clean up the mess it believes the other made. No reason in logic or law exists to explain why MLB is "the only industry in the United States that has a blanket exemption from the country's antitrust laws and is subject to no trade regulation." MLB's antitrust exemption ensures it can wield monopoly power that, as the next two parts of this Article show, allows professional sports leagues to suppress competition and extract concessions from the fans and the general public.

4. Monopoly Leagues—Although the NBA, NHL, and NFL are technically subject to antitrust scrutiny, each league nonetheless enjoys a monopoly in its sport. Historically, only one major professional sports league has existed in each sport at any given time. When rival leagues emerge, they are short-lived; the dominant major league absorbs them, marginalizes them, or drives them out of business.

The NBA, formed in 1949, has faced two rivals to its monopoly status. The American Basketball League challenged the NBA for one season, 1961–1962, before folding. The American Basketball Association (ABA) posed a more serious threat to the NBA's monopoly in 1967. Interestingly, the ABA was not intended to compete with the NBA, but to force the NBA to absorb it. After

137. See, e.g., Radovich v. NFL, 352 U.S. 445, 451–52 (1957) (declining to extend MLB antitrust exemption to the NFL); Chi. Prof'l Sports Ltd. P'ship v. NBA, 95 F.3d 593, 600–01 (7th Cir. 1996) (holding that the NBA is subject to Rule of Reason analysis under the Sherman Act); L.A. Mem'l Coliseum Comm'n v. NFL, 726 F.2d 1381, 1388–89 (9th Cir. 1984) (rejecting the NFL's claim that it is a "single entity" immune from antitrust scrutiny and citing cases holding that NFL player contract rules violated Sherman Act); S.F. Seals, Ltd. v. NHL, 379 F. Supp. 966, 968 (C.D. Cal. 1974) ("Plaintiff contends at the outset that major league professional hockey is subject to federal anti-trust laws. It seem [sic] to me reasonably clear that this is so and I so hold.").
138. WEILER & ROBERTS, supra note 113, at 595.
139. Mitten & Burton, supra note 57, at 93 ("It is extremely difficult for more than one major professional league to exist in the same sport for a prolonged period."); see also DANIELSON, supra note 46, at 210 ("[N]ew leagues either fail or are absorbed by existing leagues... ").
140. DANIELSON, supra note 46, at 202. The NBA itself resulted from the anticompetitive merger of the upstart Basketball Association of America and the National Basketball League. Id. at 202, 211.
141. WEILER & ROBERTS, supra note 113, at 595
142. Id.
143. DANIELSON, supra note 46, at 210.
nine seasons, the NBA acceded, accepting four of the six remaining ABA teams.\textsuperscript{144}

The NHL, formed in 1917, also has faced two challenges to its monopoly status.\textsuperscript{145} The NHL eliminated the rival Western Canada Hockey League in 1926, absorbing one WCHL team and distributing the other WCHL players to new NHL franchises in New York and Chicago.\textsuperscript{146} The NHL then enjoyed an unrivaled existence until 1972, when the World Hockey Association (WHA) began play.\textsuperscript{147} The NHL drove the WHA out of business in 1979, absorbing four of its remaining teams.\textsuperscript{148}

The NFL has faced more serious challenges, but maintains its monopoly.\textsuperscript{149} Since its formation in 1920, at least eight rival leagues have come and gone, all dispatched by the NFL's monopoly power.\textsuperscript{150} The first serious rival, the All-American Football Conference, played from 1946 to 1949, when the NFL absorbed its San Francisco, Baltimore, and Cleveland franchises.\textsuperscript{151} The most serious NFL rival, the American Football League (AFL), played for six seasons starting in 1960.\textsuperscript{152} It competed with relative success against the NFL, due largely to its network television contracts with ABC and NBC.\textsuperscript{153} Its success led the NFL to seek a merger.\textsuperscript{154} To obtain congressional blessing, the NFL promised to expand into Louisiana—the home state of the House and Senate committee chairmen

\begin{itemize}
  \item \textsuperscript{144} DANIELSON, supra note 46, at 202, 211; WEILER & ROBERTS, supra note 113, at 595.
  \item \textsuperscript{145} ROSENTRAUB, supra note 74, at 89.
  \item \textsuperscript{146} DANIELSON, supra note 46, at 202, 211. The NHL allowed the Victoria Cougars to join the league in exchange for moving to Detroit, where it became the Detroit Red Wings. \textit{Id.} at 202.
  \item \textsuperscript{147} \textit{Id.} at 203.
  \item \textsuperscript{148} \textit{Id.} at 211; see also WEILER & ROBERTS, supra note 113, at 595.
  \item \textsuperscript{150} ROSENTRAUB, supra note 74, at 88. The NFL has dispatched the All-American Football Conference, the World Football League, the United States Football League, the XFL, and four different leagues named the American Football League. \textit{Id.}
  \item \textsuperscript{151} WEILER & ROBERTS, supra note 113, at 595–96.
  \item \textsuperscript{152} \textit{Id.}
  \item \textsuperscript{153} DANIELSON, supra note 46, at 204.
  \item \textsuperscript{154} WEILER & ROBERTS, supra note 113, at 602.
\end{itemize}
Take Us Back to the Ball Game

responsible for approving the merger. The NFL’s gift to Louisiana resulted in an amendment to the Sports Broadcasting Act exempting the NFL-AFL merger from antitrust scrutiny. All nine AFL teams joined the NFL, ending the threat to the NFL’s monopoly.

Since the AFL-NFL merger, two other serious rival leagues have come and gone. The World Football League (WFL) lasted only two seasons, from 1972 to 1974. The United States Football League (USFL) fared no better, lasting from 1983 to 1985. No WFL or USFL teams survived. Rather, “[t]he NFL’s superior product, resources, and markets produced unconditional triumphs over the WFL and USFL.”

Rival leagues have challenged the professional sports monopolies in court, but “[j]udges . . . have not been very receptive to the [antitrust] claims of new leagues.” The AFL could not convince the Fourth Circuit that the NFL had market power, and the WFL’s Mid-South Grizzlies could not prove the NFL illegally maintained its monopoly power, or injured competition by refusing to add the team. The only two successful antitrust suits by rival leagues proved to be victories in vain. The WHA successfully sued the NHL over its player reserve clauses, which perpetually bound NHL players to their teams. The court held that “[t]he NHL [had] willfully acquired and maintained its monopoly power” in the market for players, and enjoined the NHL from enforcing the reserve clauses, but the NHL still drove the WHA out of business a few seasons later. The USFL successfully sued the NFL over the NFL’s monopolization of the U.S. professional football markets, but received only $1 in damages, trebled to $3, or “barely enough to buy

155. Id.
156. Id.
157. Id. at 596.
159. DANIELSON, supra note 46, at 203.
160. U.S. Football League v. NFL, 842 F.2d 1335, 1340 (2d Cir. 1988).
161. DANIELSON, supra note 46, at 210.
162. Id. at 209–10.
166. Id. at 510; see also DANIELSON, supra note 46, at 210.
167. U.S. Football League v. NFL, 842 F.2d 1335, 1340–41 (2d Cir. 1988); see also WEILER & ROBERTS, supra note 115, at 630.
a soft drink at an NFL game." The USFL's court victory "proved to be a mocking footnote to the history of a defunct league."  

The legal system's unparalleled deference to the professional sports monopolies allows them to "operate similarly to illegal cartels, adopting and enforcing rules designed to maximize profits for member teams and limit entry of outsiders." Professional sports leagues wield their monopoly power in the markets for players, stadiums, and broadcast rights, suppressing rival leagues and extracting legal and financial concessions from the public.  

5. The Sports Broadcasting Act—Congress expressly granted professional sports teams additional monopoly power through a piece of special-interest legislation, the Sports Broadcasting Act (SBA). Before the SBA, the Department of Justice twice questioned league negotiations with broadcast networks. In 1953, the Justice Department sued the NFL over its blackout policy, which prohibited teams from broadcasting their games into other teams' regions, claiming this constituted an unreasonable restraint of trade. The Eastern District of Pennsylvania partially upheld the NFL's blackout policy, holding that it reasonably protected other teams' stadium attendance when they were playing at home. In 1960, the Justice Department sued the NFL over its league-wide television contract with CBS. The same judge who partially upheld the NFL's blackout policy invalidated the NFL-CBS contract, holding that it unreasonably restrained the ability of individual teams to negotiate their own television contracts.  

The NFL, alarmed by these decisions and the 1957 Radovich decision declining to extend MLB's antitrust exemption, responded with "an end run around the courts in Congress." The NFL successfully lobbied Congress to pass the SBA, which granted the NFL, NBA, NHL, and MLB limited antitrust exemptions to negotiate league-wide television contracts. Professional sports have greatly

168. DANIELSON, supra note 46, at 210.  
169. Id.  
171. Id. at 289–92; see also WEILER & ROBERTS, supra note 113, at 608–09, 620, 629 (player market, stadium market, and television contract market, respectively).  
174. See id. at 326–27.  
176. See id. at 446–47.  
177. DANIELSON, supra note 46, at 98.  
178. 15 U.S.C. § 1291 (2000) ("The antitrust laws . . . shall not apply to any joint agreement by or among persons engaging in or conducting the organized professional team
profited from this special-interest legislation at the expense of the public. The NFL’s broadcast revenue jumped after Congress passed the SBA. Economist Roger Noll determined that “within two years of the SBA’s passage, the NFL and MLB had their revenues triple while the number of broadcast games was cut in half.” Professional sports now use the SBA to negotiate multi-billion dollar television contracts, not just with network television, but increasingly with cable television stations and satellite television providers. The SBA essentially gives professional sports a billion-dollar bargaining chip with cable and satellite broadcasters, and “[a]s a result, many fans have found that following their favorite team on television has become too expensive . . . .”

6. Depreciating Player Salaries—Besides allowing professional sports teams to benefit from tax-exempt stadiums bonds, the tax code gives professional sports teams a unique advantage: they are the only businesses that can depreciate employee (i.e. player) salaries. When a new owner buys a professional sports team, he can attribute 50% of the purchase price to player salaries and depreciate that amount over five years. For example, when John Henry and his group of investors bought the Boston Red Sox in 2002 for $700 million, they could attribute $350 million to player contracts. They were then entitled to a $70 million deduction for five years, meaning that team profits up to that amount are earned tax-free. If the profits fall short of that amount, the shortfall is a loss that can offset the owners’ profits from other sources. Either way, they greatly reduce their overall tax liability. In addition, allocating

sports of football, baseball, basketball, or hockey, by which any league of clubs participating in professional football, baseball, basketball, or hockey contests sells or otherwise transfers all or any part of the rights of such league’s member clubs in the sponsored telecasting of the games of football, baseball, basketball, or hockey . . . .”

179. H. Ward Classen, Three Strikes and You're Out: An Investigation of Professional Baseball's Antitrust Exemption, 21 Akron L. Rev. 369, 372 (1988) (“Most professional sports leagues were able to double or triple their television revenues within a year of the SBA’s passage.”).

180. Zimbalist, supra note 31, at 151 (citing Roger Noll, The Economics of Sports Leagues, in LAW OF PROFESSIONAL AND AMATEUR SPORTS 17.8 (Gary Uberstine ed., 1988)).

181. The NFL will generate $8 billion from its current six-year contracts with CBS and Fox, and $3.5 billion from its current five-year contract with DirecTV. Stephen A. Smith, While Hockey Blows It, NFL Mines More Gold, PHILA. INQUIRER, Feb. 5, 2005, at E01, available at 2005 WLNR 1608892 (Westlaw). National television contracts generate $567 million for the NBA, $558 million for MLB, and $67 million for the NHL. Id.

182. Glazer, supra note 19, at 403.


184. Id. at 352; see also I.R.C. § 167(a) (2000).

185. Greenberg, supra note 34, at 114 (listing the Red Sox purchase price).
50% of the purchase price to player contracts benefits the owners when they eventually sell the Red Sox, as it increases the amount of sales proceeds that will be classified as capital gains, which are taxed at a lower rate than ordinary income.\footnote{186} This uniquely favorable tax status deprives the federal taxpayers of hundreds of millions of dollars. In the Red Sox scenario, the $70 million annual deduction saves the owners approximately $24.5 million in taxes each year. Thus, over the five-year course of the deduction, the public will contribute roughly $122.5 million in foregone tax revenue to John Henry and his group.\footnote{187} Before the Tax Reform Act of 1976, the situation was even worse for the public, as team owners could attribute much more than 50% of the teams’ purchase price to player contracts.\footnote{188} When Bud Selig bought the Seattle Pilots in 1969, the Seventh Circuit permitted him to allocate $10.2 million of the $10.8 million purchase price—almost 95%—to player contracts.\footnote{189}

Allowing professional sports teams to depreciate player salaries gives them an unjustified tax shelter. First, it is a fiction to pretend fully half of a team’s value comes from its player contracts. Rather, the vast majority of a team’s value comes from sharing in the monopoly power of a professional league, participating in revenue sharing, and restocking rosters through free agency and drafts.\footnote{190} Second, it is far from certain that all players depreciate in value over time. It is certainly not the general rule that employees increasingly lose value the longer they work for their employers. Professional athletes are no exception. If anything, players may appreciate in value

\footnote{186. Mitten & Burton, supra note 57, at 130 (stating that allocating team value to player contracts “facilitates characterizing appreciation in franchise value as a capital gain and enables the team owner to take advantage of favorable tax treatment”).}

\footnote{187. Martens, supra note 183, at 352-53 (stating that depreciating player salaries “forces the government to subsidize the purchase of the franchise by an amount equal to the present value of the amount allocated to players’ contracts multiplied by the corporate tax rate” (citing Jennifer Reingold, When Less Is More, Fin. World, May 23, 1993, at 8)).}

\footnote{188. See Selig v. United States, 740 F.2d 572, 579 n.17 (7th Cir. 1982) (allowing Bud Selig to attribute 95% of the 1969 purchase price of the Seattle Pilots to player contracts). Selig moved the Pilots away from Seattle to his hometown of Milwaukee and renamed the team the Milwaukee Brewers. Id. at 574-75.}

\footnote{189. Id. at 575.}

\footnote{190. Martens, supra note 183, at 353 (stating that team value is primarily derived from “the monopoly rent that is generated by belonging to Major League Baseball and the exclusive territorial rights membership confers, not to the players’ contracts” (quoting ZIMBALIST, supra note 31, at 35-36)); see also WEILER & ROBERTS, supra note 113, at 548 (noting that team value is derived from “the right to participate in the rookie draft, the salary cap system, and other features of the players market that allow teams to restock their rosters as current players leave”).}
during the five years their owner is depreciating their salaries as they gain experience and learn the team's system.¹⁹¹

B. The Second Hurdle: The Scapegoat of Player Salaries

Part II.A cleared the first hurdle to a legal analysis of professional sports ticket prices by showing that professional sports do not play in a free market, but instead benefit from preferential laws and policies. This part clears a second hurdle: the popular belief that high player salaries cause high ticket prices.¹⁹²

If conventional wisdom were correct, then we could lower ticket prices by decreasing player salaries or increasing non-ticket revenues. But this has not been the case. For example, both the NBA and the NFL instituted salary caps in the 1980s, but neither subsequently lowered ticket prices.¹⁹³ MLB owners illegally colluded to slash free agent salaries from 1985 to 1987, but did not pass on their savings to fans by suddenly dropping ticket prices at the same time.¹⁹⁴

¹⁹¹ Martens, supra, note 188, at 353 (quoting ZIMBALIST, supra note 31, at 35–36).
¹⁹² Glazer, supra note 19, at 402.
¹⁹³ See Ken Rosenthal, Four More Years: Baseball Has a Labor Agreement, but the Balance of Power Still Hinges on the Balance in George Steinbrenner's Checkbook, SPORTING NEWS, Sept. 2, 2002, at 24, available at 2002 WLNR 7269811 (Westlaw) (dispelling the myth that "if salaries stop rising, so will ticket prices") ("The NBA implemented a salary cap for the 1984–85 season, yet its average ticket price more than doubled from $22.52 to $50.10 over the 10-year period starting in 1991–92, according to Team Marketing Report. The NFL implemented a cap in 1994, and since then its average ticket price has risen from $30.83 to $53.65—a 74 percent jump ... "); see also Bob Wojnowski, Lockout Could Be End of Yzerman's Career, DETROIT NEWS, Dec. 7, 2004, at A1, available at 2004 WLNR 13699551 (Westlaw) ("I think the biggest misconception is the supposed reasons we need a salary cap. Look at the leagues—NFL and NBA—that have one. It hasn't ensured competitive balance, it hasn't prevented teams from moving and it hasn't kept ticket prices down." (quoting NHL great Steve Yzerman)). The NHL and its players association agreed to implement a salary cap for the 2005 season; fans and commentators already are complaining that NHL teams have not lowered ticket prices accordingly. See Rich Chere, Not All Devils Fans Love Newark, STAR-LEDGER (Newark, N.J.), Sept. 24, 2005, at Sports 28, available at 2005 WLNR 15077180 (Westlaw); Mac Engel, Stars Plan to Work Hard to Lure Fans Back, FORT WORTH STAR-TELEGRAM, July 15, 2005, at D3, available at 2005 WLNR 11106152 (Westlaw); J.P. Giglio, Canes Plot New Course, NEWS & OBSERVER (Raleigh, N.C.), July 15, 2005, at C1, available at 2005 WLNR 11104996 (Westlaw); Michael Rosenberg, Hockeytown: Where the Same Is Less and Less Is Really More, DETROIT FREE PRESS, Aug. 10, 2005, available at 2005 WLNR 15627430 (Westlaw).
¹⁹⁴ Jacob F. Lamme, The Twelve Year Rain Delay: Why a Change in Leadership Will Benefit the Game of Baseball, 68 ALB. L. REV. 155, 172–74 (2004). In 1985, then-commissioner Peter Ueberroth encouraged teams to limit free agent signings, but warned that an "orchestrated effort" to do so would violate MLB's collective bargaining agreement with the players. Id. at 172. The team owners proceeded to enter into just such an orchestrated effort, as the players proved in three separate arbitrations between 1987 and 1990. Id. at 172–74. MLB settled with the players for $280 million, which was funded by adding four new teams and charging
Moreover, teams' owners in all major leagues have dramatically increased revenue from stadium naming rights and other non-ticket sources, without lowering ticket prices.\textsuperscript{195}

Thus, the conventional wisdom is simply wrong. It is a "myth that the escalation in ticket prices is caused by high salaries."\textsuperscript{196} As another commentator puts it, "[h]igh salaries do not cause high ticket prices . . . . [I]f payroll were to increase by 50 percent tomorrow, owners would not be able to make up the revenue by raising ticket prices—if they could raise ticket prices without losing revenue, they already would have done so."\textsuperscript{197} Indeed, even though MLB player salaries skyrocketed after the onset of free agency in the mid-1970s, ticket prices did not jump.\textsuperscript{198} And lowered salaries will not lead to lowered ticket prices. In fact, "[i]f payroll were cut in half tomorrow, it is not clear why an owner would cut ticket prices . . . ."\textsuperscript{199} High salaries effect ticket prices only in two indirect ways—a team with high-priced star players may generate more ticket demand than a bargain-priced team, and a high payroll may encourage owners to better market their teams.\textsuperscript{200} Thus, high player salaries may allow an owner to charge higher prices, but they do not require the owner to do so.

Simply put, team owners will always charge as much as possible for tickets, regardless of what they pay for player salaries. Fans cannot allow their justified antipathy for millionaire players to excuse ticket price gouging by billionaire owners.

\begin{bibliography}{10}
\bibitem{195} the new owners $490 million in expansion fees. \textit{Id.} at 174, 177; see also Glazer, \textit{supra} note 19, at 401.
\bibitem{196} Parlow, \textit{supra} note 43, at 539 (noting that the developer of Los Angeles' Staples Center receives $116 million over twenty years in naming rights, $20 to $30 million per year in stadium advertising, and $9.6 million per year in parking revenue); Robert H. Thornburg, \textit{Stadium Naming Rights: An Assessment of the Contract and Trademark Issues Inherent to both Professional and Collegiate Stadiums}, 2 VA. SPORTS \& ENT. L.J. 328, 332-35 (2003) (reviewing recent naming rights deals). See generally \textit{supra} Part I.A.
\bibitem{198} \textit{Id.} at 1689-90.
\bibitem{199} Glazer, \textit{supra} note 19, at 401-02.
\bibitem{200} Ross, \textit{supra} note 196, at 1690.
\end{bibliography}
III. Potential Legal Responses

Part I showed how professional sports teams are pricing the regular fan out of the stadium through ticket price hikes and premium seating. Part II cleared the two hurdles to looking for a legal response to soaring professional sports ticket prices: the myth of the free market and the scapegoat of player salaries. This part will focus on four possible legal responses. The first two options control professional sports ticket prices at the federal level: federal regulation of professional sports and elimination of preferential legal treatment until professional sports teams set affordable ticket prices. The second two options control professional sports ticket prices at the local level: taking professional sports teams through eminent domain and encouraging local ownership of professional sports teams.

A. Regulate Professional Sports

The most direct way for the public to control professional sports ticket prices is through federal regulation of professional sports. In Nebbia v. New York, the U.S. Supreme Court recognized that “neither property rights nor contract rights are absolute . . . . Equally fundamental with the private right is that of the public to regulate it in the common interest.” Federal regulation of an industry is constitutional if the regulations have “a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory.” Industries amenable to public regulation generally share two primary characteristics. First, they have a “special public importance,” as professional sports seem to have. Second, they operate in conditions that “lead almost inevitably to monopoly.”

We must therefore inquire whether professional sports leagues are natural monopolies. A natural monopoly exists when “the market will only allow a single producer to be profitable.” The relatively infrequent appearance of ultimately-ultimately-unsuccessful rival leagues suggests this may be true. This is likely due to the

202. Id. at 537.
203. Dodge, supra note 132, at 59–60.
204. Id. at 59.
206. See supra Part II.A.4.
psychology of competition, which leads fans to prefer one major league that names that year's supreme champion in each sport. Indeed, fans have long decried the absence of a clear-cut championship system in Division I-A college football.

If professional sports leagues are natural monopolies, then federal regulation is the historically appropriate treatment. A federal regulatory commission could take many forms. One proposal for a MLB commission called for a three-member panel, with the owners, the players, and the public each selecting one commissioner. This proposal could be expanded to govern all four major professional sports, resulting in a twelve-member commission. Another proposal called for the President to appoint a bipartisan commission to govern sports in the interests of players, owners, and fans.

Although federal regulation of professional sports would certainly allow the public to lower ticket prices, it poses numerous problems. First, either Congress or the courts would have to step up to the plate and take a swing against Federal Baseball. Although Federal Baseball specifically held that MLB is immune from federal antitrust scrutiny, its determination that MLB is not engaged in interstate commerce would appear to place MLB beyond any federal regulation at all. But as noted above, neither Congress nor the judiciary has shown much interest in correcting Federal Baseball. No sudden groundswell of support for federal regulation of professional sports seems likely, as many share the sentiment that "[e]specially over the past half century, Washington has proven worries of an overbearing, meddlesome federal government legitimate." Even President Clinton famously conceded, "The era of big government is over." Second, and more fundamentally, the

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210. Dodge, supra note 132, at 61-64.
211. Zimbalist, supra note 31, at 183-84.
212. Fed. Baseball Club of Balt., Inc. v. Nat’l League of Prof’l Baseball Clubs, 259 U.S. 200, 208-09 (1922); see also Gonzales v. Raich, 125 S. Ct. 2195, 2205 (2005) ("[T]here are] three general categories of regulation in which Congress is authorized to engage under its commerce power. First, Congress can regulate the channels of interstate commerce. Second, Congress has authority to regulate and protect the instrumentalities of interstate commerce, and persons or things in interstate commerce. Third, Congress has the power to regulate activities that substantially affect interstate commerce." (citations omitted)).
213. Erickson, supra note 55, at 637.
dangers of federal regulation may outweigh any beneficial effect on ticket prices. Owners and players alike may fear that a federal sports commission would become an undesired bureaucratic impediment to competition or innovation. Fans may fear a federal sports commission would ultimately become subservient to the teams it purports to regulate.\textsuperscript{215}

\subsection*{B. End Preferential Legal Treatment}

Although it is unlikely that many would support imposing federal regulation on professional sports, more support may be garnered to reduce the preferential legal treatment we give professional sports. Congress could begin weaning professional sports from the windfall of public funds, antitrust exemptions, and tax breaks discussed in Part II, until professional sports teams restrain themselves from increasing gate revenue by any means necessary and recommit themselves to serving the regular fan through affordable ticket prices.

Although this approach has some intuitive appeal, it is unlikely to succeed. Congress has demonstrated little desire to push professional sports teams away from the public’s trough. Congress has been unable or unwilling to end MLB’s unjustified antitrust exemption.\textsuperscript{216} Instead, Congress fostered professional sports’ monopoly power by enacting the SBA, including the amendment allowing the NFL-AFL merger.\textsuperscript{217} And although three bills have been introduced since the Tax Reform Act of 1986 to limit tax-exempt stadium bonds, none have passed.\textsuperscript{218} Any new legislation to lower professional sports ticket prices would likely succumb to the professional sports leagues’ powerful lobby.\textsuperscript{219}

\bibitem{state-of-the-union-address-as-delivered.html} (“We know big government does not have all the answers. We know there’s not a program for every problem. (Applause.) We know, and we have worked to give the American people a smaller, less bureaucratic government in Washington. And we have to give the American people one that lives within its means. (Applause.) The era of big government is over.”).
\bibitem{215} See Samuel R. Bagenstos, \textit{The Americans with Disabilities Act as Risk Regulation}, 101 COLUM. L. REV 1479, 1505 (2001) (“[I]ndustry-specific agencies are most likely to be responsive to the concerns of the industry, labor union, and public interest groups ... that confront them on a daily basis.”); see also Dan M. Kahan, \textit{Is Chevron Relevant to Federal Criminal Law?}, 110 HARV. L. REV. 469, 497–98 (1996) (noting that independent federal agencies are subject to “industry-group domination”).
\bibitem{216} See supra Part II.A.3.
\bibitem{217} See supra Part II.A.4–5.
\bibitem{218} See supra Part II.A.2.
\bibitem{219} See supra Part II.A.3.
Moreover, it is unclear how Congress would translate continued preferential legal treatment into reduced professional sports ticket prices. Would Congress eliminate its professional sports subsidies until ticket prices were lowered to some specific price level? Congress would then have to determine what constitutes “affordable” tickets prices, taking into account the varying ticket prices among the different professional sports, and the varying prices charged by the individual teams in each sport. Even if Congress could decide what constitutes affordable professional sports ticket prices, getting ticket prices to that level poses a procedural nightmare. Should professional sports teams lower ticket prices for all seats in the stadium, even if ticket prices for more-desirable field level, 50-yard line, or center ice seats are still out of the reach of the average fan? Or should teams sell a certain percentage of stadium seats at reasonable prices, even if the discounted tickets are for less-desirable bleacher, end-zone, or “nose bleed” seats? Should Congress discourage premium seating to create more stadium space for regular fans, or encourage premium seating to underwrite lower prices on regular seating? How would Congress prevent ticket brokers and scalpers from acquiring the reasonably-priced tickets and reselling them at higher prices? It could distribute the tickets by lottery, but who would run it? Would the congressmen and senators distribute the tickets themselves, the way they distribute tour tickets to popular Washington, D.C. landmarks?

These are difficult questions to answer with regard to any one team, and they become much more difficult with regard to all 122 MLB, NFL, NBA, and NHL teams across the United States and Canada. Different constituencies would likely suggest different answers, because sound ticket policies in New York and Los Angeles may not be as sound in Kansas City or Green Bay. Bridging the inevitable political gap may prove daunting, to say the least. A glimpse of the sort of political bickering that attempting to regulate professional sports ticket prices is likely to entail may be seen in the failed negotiations to build a “West Side Stadium” in New York. New York City Mayor Michael Bloomberg championed a plan to build a stadium in Manhattan’s Upper West Side for the New York Jets and the 2012 Olympics (since awarded to London), but the stadium plan crumbled after Bloomberg failed to obtain political support from New York State Assembly Speaker Sheldon Silver.220

Thus, even if Congress could muster the political will to rein in the preferential legal treatment it provides professional sports, no

obvious mechanism exists to translate that restriction into reasonable professional sports ticket prices.

C. Take Teams by Eminent Domain

Although a nationwide consensus to regulate professional sports or end preferential legal treatment at the federal level is unlikely, a sufficiently-vocal movement to lower professional sports ticket prices could arise locally. A local government seeking to directly set professional sports ticket prices could do so by taking ownership of a professional sports team through eminent domain. The Takings Clause of the U.S. Constitution authorizes the federal and local government to take property through eminent domain, subject to two restrictions. First, the private property must be taken for a legitimate public purpose. The U.S. Supreme Court has held that public purposes generally include "matters of public health, recreation and enjoyment." In City of Oakland v. Oakland Raiders, the California Supreme Court specifically held that the condemnation of a professional sports team can serve a legitimate public purpose. Other courts have held that the condemnation of land to facilitate stadium construction serves a legitimate public purpose. Courts have also observed the legitimate public interest in professional sports in a variety of contexts besides condemnation proceedings.

Second, the government must pay "just compensation" for the property. Just compensation is usually determined by fair market

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224. City of Oakland v. Oakland Raiders, 646 P.2d 835, 843 (Cal. 1982) ("[W]e conclude only that the acquisition and, indeed, the operation of a sports franchise may be an appropriate municipal function. If such valid public use can be demonstrated, the statutes discussed herein afford City the power to acquire by eminent domain any property necessary to accomplish that use.").


226. Greenberg, supra note 34, at 95-99 (citing cases holding that taxes levied to pay for stadium construction serve a public purpose).

227. U.S. CONST. amend. V.
The fair market value of a professional sports team, as noted above, would primarily include the value of the right to participate in the league's monopoly power, as well as the stadium lease and player contracts. Economists regularly estimate the market value of professional sports teams, and teams are routinely sold to new owners. Municipalities and courts thus would have little trouble deriving a fair market value for professional sports teams.

The Commerce Clause of the U.S. Constitution places a third restriction on the eminent domain power by forbidding local government from unduly burdening interstate commerce. This restriction is known as the "dormant" Commerce Clause. In *City of Oakland v. Oakland Raiders (Raiders II)*, the California Supreme Court held that NFL teams are engaged in interstate commerce. Even though such condemnation "would scarcely affect the flow of interstate commerce," the court stated that condemnation of a professional football team by the City of Oakland would be "the precise brand of parochial meddling with the national economy that the commerce clause was designed to prohibit." The court expressed concern that a municipal owner of a professional sports team might contravene league policies in favor of the local public interest.

Despite the availability of a mechanism for local governments to take professional sports teams by eminent domain, they are unlikely to do so. The professional sports team and its league would strenuously lobby against condemnation. If the local government persisted, the ensuing litigation would be protracted and expensive for the local government. And success is far from guaranteed—as *Raiders II* shows, the dormant commerce clause poses a

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228. Rafael A. Declet, Jr., *We'll Take the Yankees: Assessing the Feasibility of a State Condemnation of Baseball's Greatest Franchise*, 8 MARQ. SPORTS L.J. 53, 64 (1997) (citing Sparkhill Realty Corp. v. State, 197 N.E. 192 (N.Y. 1935); In re Brookfield, 68 N.E. 138 (N.Y. 1903)).

229. See supra note 190 and accompanying text.

230. See, e.g., Greenberg, supra note 34, at 115 (estimating MLB team values, led by the New York Yankees at $832 million). See generally Carr & Cummins, supra note 12.

231. See, e.g., Greenberg, supra note 34, at 114 (citing recent MLB team sales, led by the 2002 sale of the Boston Red Sox for $700 million).

232. U.S. CONST. art. I, § 8, cl. 1–3; see also Declet, supra note 228, at 67–68.

233. Declet, supra note 228, at 68 (citing Exxon Corp. v. Governor of Maryland, 437 U.S. 117, 128 (1978); S. Pac. Co. v. Arizona, 325 U.S. 761, 774–75 (1945)).


235. Declet, supra note 228, at 70.

236. Id. at 157.

237. Id.
substantial legal obstacle to condemning a professional sports team.

D. Encourage Community Ownership

Nonetheless, a local government willing to tackle the issues involved in setting professional sports ticket prices need not fight a protracted and uncertain court battle to condemn the local professional sports team. Instead, it should seriously consider buying its own team from a willing seller.

The Green Bay Packers present a model for community ownership of a professional sports team. The Green Bay Football Corporation took the reins from Curly Lambeau in 1923 when a group of Green Bay businessman organized the team as a non-profit corporation.\footnote{Hartel, supra note 83, at 593.} The first shares were sold for $5.\footnote{Stroz, supra note 35, at 523.} In 1935, the team reorganized and issued 300 shares of common stock.\footnote{Hartel, supra note 83, at 593.} The team issued 10,000 more shares in 1950 for $25 per share.\footnote{Id. at 594; see also Genevieve E.F. Birren, NFL vs. Sherman Act: How the NFL’s Ban on Public Ownership Violates Federal Antitrust Laws, 11 SPORTS LAW. J. 121, 130 (2004) (noting that of the 120,010 shares, Green Bay sold 64,300 to Wisconsin residents and 16,700 to residents of nearby Illinois, Minnesota, and Michigan); Stroz, supra note 35, at 524.} In 1997, the team split existing stock 1000-to-1 and issued approximately 120,000 new shares for $200 each, largely to local fans.\footnote{Hartel, supra note 83, at 594-95; Stroz, supra note 35, at 524.} Stockholders have limited rights, though, as the shares will never pay a dividend and cannot be transferred, except to sell them back to the team.\footnote{Hartel, supra note 83, at 594; Stroz, supra note 35, at 524.} But Green Bay shareholders have certain voting rights, including the crucial right to approve any team relocation.\footnote{Hartel, supra note 83, at 594; Stroz, supra note 35, at 524.}

Other professional sports teams have had limited public ownership for short periods.\footnote{Hartel, supra note 83, at 594; Stroz, supra note 35, at 524.} The Boston Celtics, Florida Panthers, and Cleveland Indians once issued shares to the public. The Celtics sold a 40% interest in its limited partnership to the public in 1986.\footnote{Bacon, supra note 55, at 148-50; see also Stroz, supra note 35, at 525.} The shares were traded on the NYSE and occasionally paid
dividends to investors, but gave shareholders "virtually no say in corporate operations."247 The Celtics later reorganized into a private limited partnership and a public limited partnership.248 Boston Basketball Partners, a private limited liability corporation, bought the private limited partnership in 2002 and the public limited partnership in 2003.249 Likewise, the Florida Panthers held a public offering for shares in Florida Panthers Holdings, Inc., in 1996.250 But the principal owner, H. Wayne Huizenga, continued to hold more than 87% of the voting shares.251 Shortly thereafter, the company began buying and developing resort properties, and the hockey operations took a back seat to real estate development.252 Florida Panthers Holdings, Inc., eventually became known as Boca Resorts, Inc., and changed its stock ticker symbol from the hockey-related PUCK to PAW to the “resort” abbreviation, RST.253 Boca Resorts, Inc., sold the Florida Panthers to a private corporation, the Florida Panthers Hockey Club, in 2001.254 The Cleveland Indians sold 4,600,000 shares to the public at $15 per share in 1998.255 The shares paid no dividend and extended no real control to shareholders.256 The Cleveland Indians principal owner, Dick Jacobs, sold the team to Larry Dolan in a cash-out merger in 2000, ending the Cleveland Indians’s public ownership.257

Fans wishing to follow in the Packers’s footsteps, and improve on the Celtics, Panthers, and Indians limited success, could purchase a professional sports team through a community-based public corporation. One commentator suggests a two-tiered initial public offering, with an investment tier and a fan tier.258 The investment-tier shares would pay a dividend, encouraging ownership by investors, but would not carry voting rights.259 The fan-tier shares would be reasonably priced and carry voting rights, but would not pay a

248. Cheffins, supra note 1, at 646.
250. Bacon, supra note 55, at 150.
251. Stroz, supra note 35, at 527.
252. Cheffins, supra note 1, at 647; see also Bacon, supra note 55, at 150; Stroz, supra note 35, at 526.
253. Stroz, supra note 35, at 526–27; see also Cheffins, supra note 1, at 647.
255. Bacon, supra note 55, at 151.
256. Id. at 151–52.
258. Hartel, supra note 83, at 597.
259. Id. at 597–98.
dividend. Also, any one fan could purchase a set number of fan-tier shares. This arrangement may be able to raise the substantial capital investment required to purchase a professional sports team, while securing community control of the team.

Numerous barriers exist, however, to forming a publicly-owned corporation to buy a professional sports team. The process of preparing a public offering is time consuming and costly, as expenses may consume ten percent or more of the IPO proceeds. Investors may not flock to the IPO, as a professional sports team offers relatively limited opportunities for the growth or expansion needed to continually drive share prices. Indeed, the Green Bay Packers could not sell out their 1997 offering, and shares in the Boston Celtics, Cleveland Indians, and Florida Panthers had lackluster performance. Public ownership entails onerous disclosure requirements and accountability to shareholders. Also, a publicly-held professional sports team is in the unenviable position of having to serve two masters, as “[t]he best interests of the fans and the best interests of shareholders in a franchise are strikingly divergent.” Most troubling for our purposes, a publicly-held corporation’s fiduciary duty to its shareholders may actually force it to maximize revenues by increasing ticket prices.

Another option to obtain community ownership of a professional sports team is for the local government itself to buy the team. No local government currently owns a major league sports team, although Franklin County, Ohio, owns the Columbus Clippers minor league baseball team. In theory, operating a professional sports team should pose no extraordinary burden on a local government, as local governments already own and operate professional sports stadiums, as well as other complex public facilities like train stations.

260. Id. at 598.
261. Id.
262. Id. at 596–99 (arguing that a team could raise $700 million by selling three million investment shares at $100 per share and ten million fan shares at $40 per share).
263. Cheffins, supra note 1, at 660–61.
265. Stroz, supra note 35, at 524, 543 (noting that the Packers expected to sell 400,000 shares but sold only 120,000, and observing that shares in all three teams floundered at or below $11 “during a period of time when the stock market in general has seen unprecedented growth”); see also Bacon, supra note 55, at 140 (“[A]ttempts by sports franchises to sell stock to the public have resulted in mediocre success for team owners and poor investment returns for shareholders.”).
266. Cheffins, supra note 1, at 658–59; see also Bacon, supra note 55, at 159–62.
268. Cheffins, supra note 1, at 677.
and airports. The primary objection to a local government buying a professional sports team—the high price tag—is a red herring. Local governments already gladly spend $200 million to $400 million to build new stadiums. Some cities spend considerably more on professional sports. The City of Indianapolis has spent more than $3 billion since 1974 to build stadiums and attract professional sporting events. Local governments poised to commit hundreds of millions of dollars to a professional sports stadium deal might consider whether their money would be better spent on buying the professional sports team instead. MLB teams may be the most attractive purchases, as at least six MLB teams have been sold for less than $200 million since 1999. A government-owned team could play in the local government’s existing stadium and be subject to direct community control, keeping the team from raising ticket prices, replacing affordable seating with premium seating, relocating, or otherwise harming its relationship with its local fans.

Once a local government decides its stadium construction budget is better spent on buying a professional sports team, the next obstacle comes from league policies against public ownership. The NBA, NHL, and MLB allow public ownership in theory, but only if one primary shareholder retains ultimate voting control. The NFL, by contrast, forbids public ownership of its teams, other than the Green Bay Packers. The NFL policy is unwritten, but follows from several provisions of the NFL Constitution. NFL Rule 3.2(a) flatly prohibits nonprofit companies from owning a team. Other rules require detailed financial statements from each person holding an ownership interest in the team and permit

270. Hartel, supra note 83, at 602-03. “[S]ome cities ... are not willing to bear the financial burdens associated with subsidizing the acquisition of an NFL franchise.” Id. (citing Katherine C. Leone, No Team, No Peace: Franchise Free Agency in the National Football League, 97 Colum. L. Rev. 473, 487 (1997)). Team ownership by community-based, publicly-held corporations is recommended to overcome the “‘general’ opposition to whatever amount of public funding may be necessary to acquire a team.” Id. at 602.

271. See supra Part II.A.1.

272. Sepulveda, supra note 79, at 144-45.

273. Greenberg, supra note 34, at 114-15 (noting the 1999 sale of the Cincinnati Reds for $183 million, the 2002 sale of the Florida Marlins for $158 million, the 2000 sale of the Toronto Blue Jays for $140 million, the 2000 sale of the then-Anaheim Angels for $140 million, the 2002 sale of the Montreal Expos for $120 million, and the 2000 sale of the Kansas City Royals for the bargain price of $96 million).

274. See Hartel, supra note 83, at 600-02 (noting that community-based ownership of a team could be a check on relocation and premium stadium seating).

275. Bacon, supra note 55, at 144-45; see also Cheffins, supra note 1, at 657.


277. Id.

278. Id.
the league to approve or reject any proposed team owner.279 Billy Sullivan, then-owner of the New England Patriots, challenged this policy in 1987 when the NFL blocked his plan to sell 49% of the team to the public via a stock offering.280 On appeal, the First Circuit agreed Sullivan presented substantial evidence that the NFL's policy caused antitrust injury, but vacated Sullivan's jury verdict due to the trial court's various procedural errors.281 Thus, the First Circuit's discussion of the NFL policy may be dicta.282 Subsequent legislation to formally extinguish the NFL policy against public ownership was unsuccessful.283 The NFL policy consequently is still in effect, albeit on shaky legal footing.

CONCLUSION

Professional sports ticket prices have skyrocketed, benefiting owners, players, and corporate sponsors, but shutting the regular fan out of the game. Conventional wisdom blames the soaring cost of professional sports ticket prices on the free market or greedy players, but neither excuse stands up to analysis. Professional sports teams do not set ticket prices in a market that is "free," because they depend on billion-dollar public subsidies and preferential legal treatment, such as stadium deals, tax-exempt stadium bonds, antitrust exemptions, protected monopoly status, and tax loopholes. And player salaries have, at most, a weak indirect influence on ticket prices. Professional sports team owners will charge as much for tickets as they can, whether player salaries go up or down.

Thus, no reason exists not to use legal reform to address the ticket price problem. But federal oversight of professional sports ticket prices is undesirable and unworkable, either through direct regulation of professional sports or by basing continued preferential legal treatment on affordable ticket prices. Local control of professional sports ticket prices is more feasible, but not by taking professional sports teams through eminent domain. A condemnation action

279. Id. at 122 (citing NFL Rules 3.3(A)(1)-(2), 3.3(C), and 3.5).
280. Sullivan v. NFL, 34 F.3d 1091, 1095-96 (1st Cir. 1994).
281. Id. at 1100-02, 1106-13.
282. Birren, supra note 242, at 123.
283. Harten, supra note 83, at 592 (discussing the Give Fans a Chance Act of 1997, H.R. 590, 105th Cong. (1997), proposed by U.S. Representative Earl Blumenauer of Oregon); see also Wang, supra note 53, at 821-23 (noting that no action has been taken on the Give Fans a Chance Act since 1997, strongly suggesting that the bill died in committee).
would undoubtedly result in a costly court battle and would likely fail in the face of the dormant commerce clause.

The most promising legal avenue to lowering professional sports ticket prices is to encourage local ownership. Although local fans might form a publicly-held corporation to obtain community ownership of a professional sports team, the necessary IPO may not attract sufficient investor interest. Ironically, a professional sports team owned by a community-based, publicly-held corporation may be forced to *raise* ticket prices to satisfy analyst and shareholder demand for increased revenue.

Instead, local governments should contemplate buying professional sports teams. Local government ownership, unlike the federal options, does not require an unlikely national consensus to regulate professional sports or a nationwide determination of appropriate professional sports ticket prices. Unlike condemning a professional sports team through eminent domain, local government ownership does not pit the city or county against the team, as the team owner would be a willing seller. Unlike forming a community-based, publicly-held corporation, local government ownership is not subject to investor whims or shareholder demands for increased revenue.

All that is required for a local government to start the process of buying a professional sports team is the political will to do so, and funding similar to that required for stadium construction or renovation. Once a willing owner is found, the local government would need to defeat the league policies restricting public ownership. This is a much easier legal battle to fight than a condemnation action, in light of the First Circuit's analysis in *Sullivan* and the consistent outcry from legal commentators against the league's policies.284 As such, and as compared against the other possible options, encouraging local government ownership of professional sports teams may be the best means to ensure fans can once again afford to take their families out to the ballgame.