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CURBING FRANCHISE FREE AGENCY: THE PROFESSIONAL SPORTS FRANCHISE RELOCATION ACT OF 1998

INTRODUCTION

Rooting for the home team is not as easy as it used to be. The recent move of the Cleveland Browns to Baltimore, along with the prior moves of the Cardinals from St. Louis to Phoenix, of the Colts from Baltimore to Indianapolis, and of the Oilers from Houston to Tennessee, have separated fans from their National Football League home teams,\(^1\) destroying natural team rivalries and creating fan animosity and distrust towards the League and the individual teams’ owners. Unfortunately, professional football is not the only endangered sports enterprise. Other professional sports, such as hockey, basketball and soccer are similarly affected. For example, professional basketball has contributed to the problem with the departure of the New Orleans Jazz for Utah.\(^2\) Meanwhile, professional baseball fans recently would have seen the Pirates exit Pittsburgh, but for baseball’s exemption from antitrust laws and the corresponding ability of baseball’s American and National Leagues to control franchise moves.\(^3\)

The recent proliferation of franchise relocations destroys team rivalries and incites the animosity of fans.\(^4\) However, it has a more politically salient component: it inflicts financial loss on the cities involved.\(^5\) The existence of a professional sports franchise lends a city status as a “big-league city,” thereby creating numerous commercial opportunities and thousands of jobs in hospitality and services.\(^6\) Furthermore, the loss of a franchise undermines significant public investments associated with professional sports facilities in the form of state and local tax subsidies provided for

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6. *Id.*
the construction and improvement of stadia and infrastructure. Inevitably, the continued increase in sports franchise relocation will threaten both the loyalty of sports’ fans and the stability of professional sports in general.  

The problem of franchise relocation may find its solution in the most recent of a series of bills regarding this issue introduced in the 105th Congress. This bill, introduced by Representative Martin Meehan of Massachusetts on May 7, 1998 and subsequently referred to the Committee on the Judiciary and the Committee on Commerce, seeks to exempt professional sports leagues from liability under antitrust laws for restricting the relocation of a member team. The bill suggests procedural requirements for league evaluation of relocation requests and establishes criteria for making this assessment. As a result of this legislation, professional sports leagues will be entitled to limit or refuse relocation without threat of antitrust litigation while “interested parties,” such as political entities within affected cities, will have the opportunity to seek judicial review of a league’s determination.

This update will begin by briefly discussing both the legislative basis for disallowing league restriction of team relocation and the recent case law that suggests that a league has the authority to prevent a professional sports team from relocating from one community to another. Next, it will discuss Congressional findings and prior Congressional attempts to formulate legislation that would exempt leagues from antitrust violation. Finally, this update will explain and analyze the “Professional Sports Franchise Relocation Act of 1998.” It will seek to describe why this proposed legislation is essential to the protection of the entertainment interests of sports fans and to the promotion of stability in professional sports.
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I. BACKGROUND

A. Antitrust Limitations

Restrictions on professional sports leagues as to the inclusion and relocation of member teams have been generated by judicial interpretations of the Sherman Act. This antitrust legislation prohibits the formation of "[e]very contract, combination in the form of a trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states... ." Affected parties, such as team owners, may seek treble damages for a violation of this provision. Professional sports leagues, with the exception of professional baseball, generally are prohibited from placing restrictions on the sports industry as a result of these laws. However, Congress has created exceptions to this rule, and generally has been willing to legislate in the best interests of professional sports. First, in 1961, Congress granted certain sports leagues a limited exception from the antitrust laws with respect to the joint sale of television broadcast rights for league games. This exception was limited; it did not apply to any other activities of those engaged in professional sports. Second, in 1966, Congress permitted "a joint agreement by which the members of two or more football leagues combine their operations in

13. See generally Flood v. Kuhn, 407 U.S. 258 (1972) (the judicially created exception of professional baseball and its reserve system from federal antitrust laws is a matter for Congress and will not be overturned by the courts). Since this decision, Congress has passed the Curt Flood Act of 1998, giving major league baseball players protection under federal antitrust laws and effectively eliminating baseball's limited antitrust exemption. S.53, 105th Cong. (1998).
16. Id.
expanded single leagues... if such agreement increases rather than decreases the number of professional football clubs so operating."

This amendment was limited in that it merely allowed the combination of members of two or more leagues into one. In addition to these antitrust exceptions, professional sports teams have also been the direct beneficiaries of federal legislation. The benefits included the following: a prohibition of local television blackouts of network games which were sold out at least 72 hours in advance, and various federal tax laws that allow depreciation of player contracts, capital gains, carryover losses, and the formation of Subchapter S corporations.

In order for an "agreement" or "conspiracy" to exist under Section 1 of the Sherman Act, it is implied that two or more individuals must be acting in concert. This raises the question of whether a professional sports league is a "single entity," implicitly incapable of forming a contract, combination, or conspiracy alone in restraint of trade. The National Football League made this argument in *Los Angeles Memorial Coliseum Commission v. National Football League.* It contended that its league structure deems it a single entity, likened to a partnership or joint venture, and therefore it should not be subject to Section 1 of the Sherman Act. The 9th Circuit rejected this argument, noting that the league functions in the promotion of individual teams. The NFL clubs are seen as separate business entities, to be distinguished from partnerships and joint ventures in that they are independently owned and do not share profits and losses.

18. *Id.*
23. *Id.*
24. *Id.* at 1389.
25. *Id.*
26. *Id.*
While it seems as if Section 1 of the Sherman Act prohibits every agreement, conspiracy, or other concerted activity in restraint of trade, courts will not invalidate every such agreement in keeping with what they view to be Congressional intent. Courts have, instead, adopted analysis under "rule of reason," requiring the fact finder to decide whether, under all the circumstances of the case, the agreement imposes an unreasonable restraint on competition. The positive and negative effects on trade will be balanced after the plaintiff establishes a cause of action by establishing three threshold elements: (1) an agreement among two or more persons or business entities; (2) intent to harm or unreasonably restrain competition; and (3) actual injury to competition. Despite this flexible approach, some restraints are held to be per se unreasonable. When judicial experience with a particular kind of restraint enables a court to predict with certainty that the rule of reason will condemn that restraint, the court will hold that the restraint is per se unlawful. It is uncertain at this time whether a league's restriction on the right to relocate a franchise is per se unlawful under Section 1 of the Sherman Act. However, there are at least two federal court decisions that may imply that a league has the authority to prevent a team from relocating under certain circumstances.

B. Raiders I

Prior to 1978, the Los Angeles Coliseum was the home of the Los Angeles Rams. The coliseum was left without a tenant, however, when the owner of the Rams decided to relocate his team to Anaheim, California. The owners of the L.A. coliseum...
inquired with the NFL about locating an expansion franchise in Los Angeles, but were told it would not be possible at the time.\textsuperscript{33}

In its attempt to convince another team to move, the stadium officials ran into an obstacle in Rule 4.3 of Article IV of the NFL Constitution.\textsuperscript{34} At that time, Rule 4.3 required unanimous approval\textsuperscript{35} of the 28 member teams when a team sought to relocate to the home territory of another team.\textsuperscript{36} Even though the owner of the Oakland Raiders was willing to move his team to Los Angeles, the members of the NFL unanimously voted to refuse the relocation request.\textsuperscript{37} The Los Angeles Memorial Coliseum Commission then instigated legal action against the NFL, claiming that Rule 4.3 was illegal under antitrust laws.\textsuperscript{38}

The court used "rule of reason" analysis to determine whether Rule 4.3 "reasonably serves the legitimate collective concerns of the owners or instead permits them to reap excess profits at the expense of the consuming public."\textsuperscript{39} It determined that the owners had a legitimate interest in protecting the integrity of the league and that the exceptional nature of the industry requires some territorial restrictions in order to encourage participation in the venture and to secure each member team "legitimate fruits of that participation."\textsuperscript{40} However, the court concluded that a jury could reasonably find Rule 4.3 to be a violation of antitrust laws because a less restrictive measure could have been employed by the league.\textsuperscript{41} Even though the court ruled against the NFL in this case, it limited its decision to the Raiders’ move to Los Angeles, and

\begin{itemize}
  \item \textsuperscript{33} \textit{Id.}
  \item \textsuperscript{34} \textit{Id.}
  \item \textsuperscript{35} \textit{Id.} Pursuant to a 1978 amendment, Rule 4.3 was amended so as to require only a three-fourths affirmative vote to allow a team to relocate into the "home territory" of a member team.
  \item \textsuperscript{36} \textit{Id.} Rule 4.1 of the NFL Constitution describes "home territory" as the city in which the club holds its home games along with the 75 miles in each direction. In this case, the L.A. Coliseum was still in the "home territory" of the Rams.
  \item \textsuperscript{37} \textit{Raiders I}, 726 F.2d at 1385.
  \item \textsuperscript{38} \textit{Id.}
  \item \textsuperscript{39} \textit{Id.} at 1392.
  \item \textsuperscript{40} \textit{Id.} at 1396.
  \item \textsuperscript{41} \textit{Id.} at 1397.
\end{itemize}
laid the foundation for an argument against applying antitrust laws in this context.

C. NBA v. SDC Basketball Club

The San Diego Clippers Basketball Club is a member of the National Basketball Association. Its owner moved the club to Los Angeles without obtaining league permission. The league acquiesced at the time, believing that the decision in Raiders I precluded any league interference with franchise relocation. Following the move, the NBA began proceedings to adopt a new rule governing its consideration of franchise moves, and brought suit against the Clippers for failing to seek league approval for its relocation. The Clippers, along with the Los Angeles Memorial Coliseum Commission, counter-claimed with the argument that the league’s approval provision violated Section 1 of the Sherman Act.

The Court of Appeals reversed the District Court’s grant of summary judgment to the Clippers and remanded the case for consideration of material facts. In its reasoning, the court emphasized the narrow holding of Raiders I, reasserting that the decision invalidated league restrictions on member teams’ relocation only as applied to the Raiders’ move to Los Angeles. It rejected the notion that Raiders I invalidates any and all restrictions on franchise movements, and implied that restrictions are permissible so long as they are “closely tailored” to effectuate the league’s interests. The case was remanded to enable the district court to examine three issues of material fact relevant to the finding of an antitrust violation: 1) the purpose of the restraint as demonstrated by the NBA’s use of a variety of criteria in evaluating franchise movement; 2) the relevant market said to

42. 815 F.2d 562 (9th Cir. 1987).
43. Id. at 564.
44. Id.
45. Id.
46. Id. at 565.
47. NBA, 815 F.2d at 570.
48. Id. at 567.
49. Id.
have been affected by the relocation restrictions; and 3) the actual effects of the restrictions on trade.\(^{50}\)

The court in \textit{Raiders I}, in its finding that Section 4.3 of the NFL’s Constitution violated antitrust laws, suggested to the NFL that, to the extent it finds the law inadequate, it would have to look to Congress for relief.\(^{51}\) Conversely, the Court of Appeals in the NBA’s case suggested that the lower courts consider three factual matters before finding an antitrust violation in this context. The first of these factors, the existence of various criteria in evaluating a future franchise relocation, plays a prominent role in much of the subsequent proposed federal legislation. The ultimate effect of these two cases was to alert Congress of the need to provide legislative remedy to the problems created by unfettered professional sports franchise relocation and to create predictability and consistency in the application of antitrust laws to professional sports.

\textit{D. Congressional “Findings”}

In its attempts over the last five years to remedy the problems inherent in sports franchise relocation and to propose legislation creating an antitrust exemption for leagues under such circumstances, Congress has identified many relevant and viable issues justifying its intervention. The first, and most important, finding is that professional sports teams travel in interstate commerce to compete, utilize materials shipped in interstate commerce, and broadcast games nationally.\(^{52}\) This establishes that Congress has the authority to regulate professional sports through its powers under the Commerce Clause. Nine of the most common of Congress’ additional findings are as follows:

(1) Professional sports teams foster a strong local identity with the people of the cities and regions in

\(^{50}\) \textit{Id.} at 568.

\(^{51}\) \textit{Raiders I}, 726 F.2d at 1399.

which they are located, providing a source of civic pride for their supporters;\textsuperscript{53}

(2) Teams provide employment opportunities, revenues, and a valuable form of entertainment for the cities and regions in which they are located;\textsuperscript{54}

(3) It is in the public interest to encourage professional sports leagues to operate under policies that promote stability among their member teams and to promote the equitable resolution of disputes arising from the proposed relocation of professional sports teams;\textsuperscript{55}

(4) Communities, sports fans, and taxpayers make a substantial and valuable financial, psychological, and emotional investment in their teams and their teams’ names;\textsuperscript{56}

(5) Professional sports teams remain in communities for generations and represent much more than a business;\textsuperscript{57}

(6) Current law does not protect the rights of sports fans nor the interests of communities when a professional sports franchise decides to relocate;\textsuperscript{58}

(7) Professional sports teams’ owners are positioned to extract enormous benefits from communities, and they are taking advantage of these opportunities;\textsuperscript{59}

(8) Professional sports teams and leagues have directly benefited from federal legislation;\textsuperscript{60} and

\textsuperscript{53} Id.
\textsuperscript{54} Id.
\textsuperscript{55} Id.
\textsuperscript{56} Fan Freedom and Community Protection Act of 1995, H.R. 2740, 104th Cong. § 2 (1995). This proposed law advocated reserving the registered mark used to identify the team for the community from which the team is relocating.
\textsuperscript{57} Id.
\textsuperscript{58} Id.
\textsuperscript{59} Id.
\textsuperscript{60} Id. The bill cites, as examples, the Sports Antitrust Broadcast Act of 1961, 15 U.S.C. 1291, the Football Merger Act of 1966, Pub. L. No. 89-800, 80 Stat. 1508; Pub. L. No. 93-107, 87 Stat. 350 (relating to prohibition of local
The Court of Appeals for the Ninth Circuit ruled that a league has the authority to prevent a professional sports franchise from relocating from one community to another community.\(^6\)

These nine findings demonstrate Congress' intent to equalize the playing field. The means employed by the proposed legislation is to take important decision-making authority out of the hands of individual team owners and place it with the league.\(^6\) It is the individual league which ultimately will be imposed upon to keep the economic and ideological best interests of the sport paramount. In addition, the following examples of legislation take into account the concerns of professional sports fans, as they seek to protect their interests in professional sports entertainment from the corporate interests of the franchise owners.

\textit{E. Former Congressional Initiatives}


In 1992, Congress made an attempt to free leagues from antitrust limitations with the Professional Sports Franchise Stabilization Act of 1992.\(^6\) This proposed bill would have made it unlawful for any professional sports franchise to relocate unless specific requirements were met.\(^6\) First, the owner of the franchise had to provide written notification of his intention to the local government not less than 120 days before action was to be taken.\(^6\) After this notification was received, the owner of the team was required to negotiate in good faith with the local government to the

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\(^6\) Television blackouts of network games which were sold out 72 hours in advance, and various unnamed federal tax laws.


\(^{64}\) \textit{Id} at § 2.

\(^{65}\) \textit{Id}. 0x6c
end of avoiding relocation. The bill also provided three additional situations in which a team could relocate: (1) where a party to the stadium lease agreement fails to comply with a provision of material significance; (2) where the stadium is found to be "inadequate," and the stadium authority demonstrates no attempt to remedy the inadequacies; and (3) where the franchise has incurred an annual net loss for at least three consecutive years immediately preceding the proposed location, or has incurred losses in a shorter period that endanger the financial viability of the franchise.

This bill did not explicitly suggest an exemption from antitrust liability, thus distinguishing it from many similar Congressional initiatives. In addition, it only provided for civil action on the part of government authorities. The bill was unique in two additional ways. First, it contained a mandatory provision allowing for communities to purchase the franchise. Second, it disregarded the various sports leagues' interests in regulating franchise relocation. The leagues, presumably, were not considered parties to the decision-making process. The proposed effect of this legislation was to protect the economic and emotional interests of fans and taxpayers, but, in essence, the result merely would have been to force the sale of the franchise to local governments, thereby undermining the rights of team owners and the responsibilities of the sports leagues. The bill would have done little more than provide for a local government's opportunity to purchase a franchise – an opportunity that already exists. It was inadequate without an explicit antitrust exemption and recognition of the leagues' interests in respect to franchise relocation. The Professional Sports Franchise Stabilization Act of 1992 was not enacted by Congress.

66. Id.
67. Id.
69. Id.
70. Id.
2. Fans Rights Act of 1995

Another attempt of Congress to limit sports franchise relocation was the Fans Rights Act of 1995.71 This proposed legislation differed from the 1992 Act in that it exempted professional sports leagues from antitrust laws when enforcing rules regarding franchise relocation.72 It also differed in that it described, in detail, the criteria to be used by the league in making such a determination, including but not limited to the demonstration of fan loyalty, the existence of net operating losses and the degree to which the owner of the team had engaged in good faith negotiations with appropriate individuals to maintain the status quo.73 Like the Professional Sports Stabilization Act, this proposal required notice and provided the opportunity for a government entity to purchase the franchise.74 This Act required 180 days notice, along with publication in one or more newspapers of general circulation.75

The Fans Rights Act addressed the issue of franchise relocation more adequately than the 1992 proposed Act would have, particularly because it identified the professional league as the party responsible for relocation determinations.76 In addition, it provided for a necessary antitrust exemption and provided examples of relevant criteria to be used in deciding whether to allow a team to relocate.77 This bill was an example of an attempt to balance the rights and interests of communities, owners and professional leagues. It sought to serve the interests of communities by allowing government entities to purchase a franchise prior to its move.78 Additionally, while recognizing the professional leagues as decision-making bodies, it protected the

72. Id. at § 4.
73. Id.
75. Id.
The last congressional action on the Fans Rights Act of 1995 was a referral to the Senate Committee on Commerce, Science, and Transportation on November 30, 1995.

3. **Fan Freedom and Community Protection Act of 1995**

Congress made its next attempt to limit franchise relocation with the Fan Freedom and Community Protection Act of 1995. This bill was notable in two respects. First, it contained a provision under which the registered mark that was used to identify the team would become the property of the league. The league then was to reserve the registered mark for use only by the community from which the team was relocating, either until the registered mark expired or until the community informed the league that a professional sports team would not be using the mark. Furthermore, the registered mark, or any portion of the registered mark, could not be used by another professional sports team in the same league. This was a unique attempt by Congress to protect the intellectual property rights of cities in their teams’ registered trademarks.

The second notable aspect of this bill is that it sought to impose a requirement on leagues to make expansion teams available to communities that meet certain conditions. The expansion franchise was to be made available from the league within one year of the submission of the name of an investor at a fee no greater than 85 percent of the franchise fee charged by the league for the last expansion team. The three requirements for a city to obtain an expansion franchise were as follows: (1) the league must approve the relocation of a professional sports team from one community to another; (2) not later than three years after the relocation, the community in which the team was previously

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80. *Id* at § 3.
81. *Id*.
82. *Id*.
84. *Id*.
located must submit the name of an investor to the league; and (3) the investor must demonstrate that he is financially able to purchase and support the team by placing the amount of the franchise fee and an amount equal to the sale price of the last professional sports team in an escrow account.\textsuperscript{85}

This bill, in addition to providing an antitrust exemption and an enumeration of criteria to be used in evaluating the proposed relocation of a franchise, allowed for maintenance of a team’s registered mark and suggested a remedy for relocation that went beyond judicial review of the league’s determination.\textsuperscript{86} By allowing a community to retain the registered mark and to obtain an expansion franchise within three years of the loss of its “home team,” Congress was, in essence, allowing the community to reclaim what it has lost. It had the opportunity to fill its stadium with new players under the same team logo and identity, almost as if the team had never left, thus allowing fans to continue to identify with their “original” home team.\textsuperscript{87} The last action taken by Congress on the Fan Freedom and Community Protection Act of 1995 was a report from the House Committee on the Judiciary on July 8, 1996.

II. THE PROFESSIONAL SPORTS FRANCHISE RELOCATION ACT OF 1998

The most recent congressional attempt at limiting professional sports franchise relocation is the Professional Sports Franchise Relocation Act of 1998.\textsuperscript{88} This bill, as introduced, will apply an antitrust exemption to professional football, basketball, soccer and hockey leagues when they issue or enforce rules restricting the relocation of member teams.\textsuperscript{89} It seeks to provide procedural requirements for franchise relocation and judicial review of a league’s determination to “interested parties.”\textsuperscript{90} The bill describes “interested parties” as a member team, a stadium owner or

\textsuperscript{85} Id.
\textsuperscript{86} Id.
\textsuperscript{87} H.R. 2740, 104th Cong. § 3 (1995).
\textsuperscript{89} H.R. 3817, 105th Cong. § 3 (1998).
operator, a representative of a political subdivision with geographic jurisdiction over the stadium, any legislature that has provided financial assistance to team facilities and "any other person who is determined by the sports league of the member team to be an affected party." The 1998 Act consists of three primary provisions: 1) requests for approval of franchise moves; 2) criteria for approval of relocation; and 3) judicial review.

A. Requests for Approval

H.R. 3817 will require any individual who seeks to change the home territory of a team to submit written notice to the league at least 210 days prior to the beginning of the sport's season. This request must be in writing and delivered in person or by certified mail to each "interested party" at least 30 days after the request was submitted to the sports league. It must contain the date of the proposed change, a summary of the reasons for the change, and a detailed description of the requirements of this Act, including notice of the relief available to interested parties. In addition, the request must be made available to the news media and must be published in at least one newspaper of general circulation in the home territory of the team seeking relocation, presumably to offer interested parties not privy to prior negotiations notice of their rights to relief.

B. Criteria for Approval

While each individual league is to be responsible for establishing its own procedures for the approval or disapproval of relocation requests, H.R. 3817 will make it mandatory that the league base their decisions on pre-existing criteria made available to all interested parties at their request. Congress enumerated ten such criteria that must be taken into consideration in addition to any criteria the leagues themselves develop:

93. Id.
94. Id.
95. Id.
96. Id.
(1) The extent to which fan loyalty has been demonstrated during the tenure of the member team in the home territory (this is to be determined by fan attendance, ticket sales, and television ratings); 97

(2) The degree to which the owner of the member team has engaged in good faith negotiations enabling the team to retain its present location; 98

(3) The degree to which the ownership or management of the member team has contributed to any circumstance that might demonstrate the need for relocation; 99

(4) The extent to which the team has been a beneficiary of public support by means of any publicly financed playing facility, rent abatement or special tax treatment; 100

(5) The adequacy of the stadium or arena of the team and the willingness of authorities to remedy any deficiencies; 101

(6) Whether the team has incurred net operating losses, exclusive of depreciation or amortization, sufficient to threaten its financial viability; 102

(7) Whether any other member team in the league is located in the home territory of the team requesting relocation; 103

(8) Whether the member team wishes to relocate to a territory in which no other team in the league is located; 104

(9) Whether the stadium or arena authority, if public, is opposed to relocation; 105 and

98. Id.
99. Id.
100. Id.
101. Id.
102. Id.
104. Id.
105. Id.
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(10) The effect that relocation will have on contracts, agreements and understandings between the member team and public and private parties.\textsuperscript{106}

Once the league has ensured that its requirements have been satisfied, it must conduct a meeting in which interested parties may submit testimony.\textsuperscript{107} No later than five days after a decision is made, the league must provide written notice to all interested parties and to the news media detailing the league’s decision, requirements and remedies available.\textsuperscript{108}

C. Judicial Review

Generally, judicial review of a league’s compliance with this Act is available to any “interested party” through civil action.\textsuperscript{109} The “interested party” must seek judicial review within 21 days of publication of the league’s decision to allow or disallow relocation, and may not commence action in any judicial district containing either the home territory or the proposed location of the member team.\textsuperscript{110} If a plaintiff succeeds in civil action, the court then has the option to vacate the league’s decision to relocate the franchise or to refuse approval or disapproval of the request until the league complies with this legislation.\textsuperscript{111}

III. IMPACT

The Professional Sports Franchise Relocation Act of 1998 will be beneficial to professional sports. It’s negative effects include a possible decline in the quality of play (due to an incentive toward league expansion), interference with contractual relationships and the potential to lock team owners into less preferable facilities and locations.\textsuperscript{112} The positive effects, including procedural predictability and the capability to limit the current tide of

\textsuperscript{106} Id.
\textsuperscript{107} Id.
\textsuperscript{110} Id.
\textsuperscript{111} Id.
franchise relocations, ultimately will outweigh the negative, making this Act a necessary tool in preserving the integrity of professional sports.

A. Positive Effects

Protection of the entertainment interests of fans and the promotion of stability in professional sports are both valid concerns and important legislative goals. The Professional Sports Franchise Relocation Act of 1998 will ultimately effectuate those interests. First, the Act contains the necessary antitrust exemption for football, basketball, soccer, and hockey. Without this legislative exemption, enforcement of the Act would be impeded by limitless litigation and its subsequent appeals. Second, this proposed legislation acknowledges the professional leagues’ interests in regulating franchise relocation in a way that previous proposed legislation has not. While acknowledging that vital decision-making authority must be placed with the individual leagues, the Act also attempts to balance this authority with the interests of cities and team owners by making judicial remedies available to both. Under the Act, political subdivisions, along with team owners and member teams, are labeled “interested parties” and are therefore given the opportunity to seek judicial review of a league’s compliance with the Act. If an affected party feels that the league’s decision in approving or disapproving a team’s relocation request is arbitrary or in violation of this act, it can have that decision vacated by the courts, or have the courts enjoin the league from approving or disapproving such a request until compliance with the Act is determined. This provision successfully balances the interests of team owners with those of the fans, by granting fans and cities limits on franchise expansion and

113. Id.
by granting team owners the opportunity to seek judicial review of a league’s decision. ¹¹⁹

While these two aspects of the Franchise Relocation Act are important, the most eminent aspects of this bill are found in its effects on the professional sports enterprise in general. First, the existence of enumerated criteria to determine franchise relocation provides both procedural and substantive predictability to team moves. The Act establishes specific procedural requirements to be followed before a team can relocate, including time limits on notice and the methods used to notify all “interested parties” in advance of the relocation. This will prevent owners from packing up the team overnight and stealing away under the cover of darkness – an image, whether accurate or not, most often conjured up by fans and cities deserted by their home teams. ¹²⁰ In addition, this will effectively prevent team owners from forming valid contracts with more generous cities prior to giving notice to current fans and obtaining approval from the league itself. Substantive predictability is obtained by including enumerated criteria for the leagues’ decisions. ¹²¹ In this respect, teams must take certain factors into account, and fans and cities will have advance notice as to how to protect the existence of their home team before relocation becomes an issue.

The second, and perhaps most important, effect on professional sports is the Act’s capability of slowing the current tide of franchise moves. ¹²² Similarly, the Act, by limiting franchise relocation, will produce an incentive for league expansion as a means for cities to obtain a professional team. ¹²³ This will increase the number of cities with “big-league status,” provide additional revenue and jobs that go along with the existence of a professional sports franchise, and promote interest in professional sports

¹¹⁹ Id.
¹²⁰ Danitz, supra note 2, at 12.
¹²³ Id. This will make it more likely that a league will expand its number of member teams in order to place one with an unrepresented city, as opposed to simply allowing teams to move from one city to another.
through additional fan loyalties and natural rivalries. In addition, this increase in professional sports teams will create a corresponding increase in the opportunities of players. With more positions available, athletes will be able to begin their professional careers earlier and/or prolong them. Athletes that may not have made it to the professional level in the past will be given that opportunity once the leagues expand. Ultimately, the probable effects of the Professional Sports Franchise Relocation Act of 1998 promote the goals of professional sports and therefore justify the bill’s enactment into law.

B. Negative Effects

While the incentive of league expansion is likely to create many benefits to a professional sport, it also has one major drawback. Despite the increased opportunities to athletes, league expansion is said by many to reduce the quality of play. By making professional sports more inclusive, the level of play and the quality of performance may decline. In addition to this contention, the Act must face three other valid criticisms. First, there is a possibility of interference with contractual relationships. The Act affects the contractual relationship between team owners and cities concerning location and the amount of public funding put into stadia and infrastructure. The Act, in a sense, has the effect of enforcing a non-existent contract between a team’s owner and its “home” city in some cases, while invalidating an otherwise valid contract between the same owner and a more generous “future home” city. Second, once a city has lost a team under the Act, assuming that all of the procedural and substantive requirements were met by the league, the likelihood that that city will be able to obtain a future expansion franchise is slim. In this regard, if a city exhibits that it cannot meet the league’s substantive requirements to keep the franchise— for example, by demonstrating adequate fan loyalty or by showing a willingness to provide financial support

126. Id.
127. Id.
and "adequate" playing facilities – the league will be less likely to take a risk with the city in the attainment of a future franchise. The Act can thus be improved upon by including a provision similar to that in the Fan Freedom and Community Protection Act of 1995, making an expansion franchise available from the league within one year of the submission of the name of an investor. The third, and most important, criticism of the Franchise Relocation Act is that may have the potential to lock teams and their owners into less preferable facilities and locations. A team owner, when deciding to relocate the team, is often faced with a choice between a dissatisfying relationship with the political entities of a present location and the promise of a new stadium and increased revenues in a future location. In such a case, the Act may have the effect of binding the owner to a location and to a situation in which less income is to be obtained. This may act as a disincentive to individuals who may, in the future, undertake the risk of owning and sponsoring a professional sports franchise. This disincentive may be incredibly harmful to the enterprise of professional sports, particularly because many teams are owned by large entertainment-oriented corporations. Many individuals and corporations will not undertake the risk of managing a team if one of those risks is a potential legislative block to relocation for financial gain.

CONCLUSION

The Professional Sports Franchise Relocation Act of 1998 is just the most recent in a series of Congressional attempts to create a partial antitrust exemption for professional sports. Unfortunately, the political reality of such a measure invariably sets in opposition the interests of wealthy team owners and the interests of the everyday sports fan. Thus, if past experience is any indication, this bill, while attractive to sports fans and to local political entities, will garner the support of only a few proactive legislators. However, if the bill is passed it will benefit professional sports. It
will break the current trend favoring franchise relocation at the behest of team owners and will produce a corresponding incentive for league expansion. These positive effects will be felt by the increasing number of cities capable of maintaining a professional franchise, as they will have the opportunity to experience the numerous commercial opportunities that a “big-league city” enjoys. The Act will protect their financial investments. But perhaps most importantly, this Act will promote stability in professional sports while slowing the recent proliferation in franchise moves that has destroyed team rivalries and incited the animosity of fans. It will preserve loyalty to our professional teams and protect the integrity of the games that they play.

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