THE MONOPOLY MYTH: A COMMENT ON THE PUBLIC FUNDING OF SPORTS STADIUMS

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The argument against public funding of sports stadiums relies on the dubious supposition that professional sports franchises are monopolists.[1] The argument runs that these franchises, as monopolists, are able to extort[2] favorable deals from cities and other local governments on account of the market power they, and by extension their league, have over the staging of premier contests in their sport. For example, although minor, foreign or off-season football leagues do from time to time arise, no one would seriously argue at this point in history that any football league poses a serious competitive threat to the National Football League ("NFL") in the staging of professional football at its highest echelon. Thus, the NFL enjoys a monopoly over the provision of premier professional football. Any city or locality that wants to have an NFL franchise in its midst will have to deal with this monopolist and will accordingly pay monopoly prices in the form of stadium deals or direct subsidy[3] to attract and retain a franchise.

The conclusion that professional leagues in major American team sports constitute monopolies reflects an unduly narrow view of the market in which professional teams compete. Indeed, the observation that the leagues have monopoly power over the number of franchises in their respective sport fails to identify the consumer market in which the monopoly power is supposed to exist.

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1. *See* Rodney Fort, *Direct Democracy and the Stadium Mess, in* Sports, Jobs & Taxes: The Economic Impact of Sports Teams and Stadiums 149-50 (Roger G. Noll & Andrew Zimbalist eds. 1997); *Stadium Financing and Franchise Relocation Act of 1999: Hearing on S.952 Before the Sen. Comm. on the Judiciary*, 106th Cong. 38 (1999) [hereinafter *Hearing on S. 952*] (statement of Andrew Zimbalist) ("An economist has no difficulty in identifying monopoly as the root of the problem."); ANDREW ZIMBALIST, MAY THE BEST TEAM WIN: BASEBALL ECONOMICS AND PUBLIC POLICY 123-24 (Brookings Institution Press 2003).

2. *Hearing on S. 952, supra* note 1, at 11 (testimony of Senator Arlen Specter of Pennsylvania) (terming franchise demands for subsidies as "legalized extortion"); *see also id.* at 31 (testimony of Jean B. Cryor, Maryland House of Delegates) ("Today, team owners are holding the baby captive and waiting for ransom.").

3. The state of Louisiana provides its two professional teams with direct yearly cash payments to retain the teams. *Louisiana Faces Saints, Hornets Payments*, FOXSPORTS.COM, http://msn.foxsports.com/nba/story/9205212/Louisiana-faces-Saints,- Hornets-cash-payments?MSNHPHMA (last visited Mar. 27, 2009).

Although the NFL may, as a practical matter, present the only game in town to satisfy consumer demand for premier football, professional football itself comprises merely one participant in the highly competitive consumer market in leisure and entertainment activities. Thus, the NFL and other professional leagues in fact compete for market share against the many other products for which consumers spend their leisure budget.

The contention that sports contests are but one participant in the larger market for leisure activities is supported by the economic observations made by opponents of stadium funding. Their research has shown that consumption of sports has local substitute goods.[4] Consumers may select from many local leisure options and will trade consumption of professional sports for other pursuits, such as recreation or restaurant dining. This "substitution effect" forms the primary plank in the argument against public funding of sports stadiums: because the arrival of a team merely shifts consumer spending among substitute goods and does not increase it, then the claim that a new team will enhance business and economic activity and profit the locality is false. Yet it is that very same ease of substitution that renders the claim of monopoly dubious. The presence of substitutes indicates that the sports team does not supply all the demand for leisure enjoyments. Fans will go elsewhere if prices are too high. Teams will be unable to exercise the monopoly power funding critics attribute to them. The team can set a price for its goods, both to the fans and to the city, but in either case it runs the risk of losing to the market competition.

The claim that the local sports team is a monopolist fails to properly define the market in which sports teams compete. Nonetheless, although they are not true monopolists, sports teams do appear to have some limited market power in their localities, for instance when negotiating stadium deals, and on a national scale, when negotiating broadcasting rights. This market power, although limited by the prerogative of fans, cities and television networks to substitute other leisure goods, does give the owners of

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4. *See* John Siegfried & Andrew Zimbalist, *The Economics of Sports Facilities and Their Communities*, 14 J. OF ECON. PERSPECTIVES 95, 105 (2000).

> The vast majority of consumers has a relatively inflexible leisure budget. If a sports team moves to town, the money one spends taking a family to a game typically is money that is not spent at a local bowling alley, golf course, restaurant or theater. The net effect on spending in the metropolitan area then is zero, or very close to zero. While sports teams may rearrange the spending and economic activity in an urban area, they are not likely to add much to it.

Id.

sports teams an opportunity to extract limited rents from their advantageous position, thus giving franchises and leagues the appearance of monopolists.

Yet even as a monopolist in this limited sense, the sports team's monopoly is probably a natural one. The major professional sports teams in America have all the ingredients of a natural monopoly, including very high fixed costs. The costs of constructing a venue and hiring coaches and players constitute the large majority of the costs of staging premier sporting events. These fixed costs are high relative to the variable costs of producing contests: thus team owners could add dates to the schedule with little trouble. It should not surprise that any monopoly by professional sports is natural: the salaries that must be paid to identify and attract the finest athletes to a particular sport and team are very substantial.[5] A league limited to the best athletes must in turn limit the number of teams. Although competition is always possible, the repeated failures of rival sports leagues have provided evidence that the exclusive premier status of the current professional leagues is here to stay. In addition, the consumption of sports presents the classic network effect: the more fans who are interested in a particular league, the more those fans enjoy their consumption of that league. Only a single, nationwide sports league can take complete advantage of this network effect.

In response to this perceived monopoly, and without recognition that any such monopoly may be natural, opponents of public funding of sports stadiums have offered a range of solutions, all involving government intervention and control. The proposals include mandatory divestiture of the leagues into multiple, independent leagues,[6] enactment of federal law to prohibit stadium subsidies[7] or other federal interventions.[8] The aim of these proposals is to eliminate the public subsidy.

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5. To produce a contest between the very best athletes in any particular sport requires a limitation in the number of athletes who may participate. A limitation in the number of athletes necessarily connotes a limitation in the number of teams. Thus, the only way to put on a contest involving the best athletes is to limit the number of teams, even below the number that might supply the market-clearing number.

6. PAUL C. WIELER AND GARY R. ROBERTS, SPORTS AND THE LAW: TEXT, CASES, PROBLEMS 736-38 (3d ed. 2004); Rodney Fort, *Employment Effect of Teams and Sports Facilities, in* SPORTS, JOBS & TAXES: THE ECONOMIC IMPACT OF SPORTS TEAMS AND STADIUMS, *supra* note 1, at 93.

7. *See* Marc Edelman, *Sports and the City: How to Curb Professional Sports Teams' Demands for Free Public Stadiums*, 6 RUTGERS J. L. & PUB. POL'Y 45, 71-76 (2008).

8. One opponent has called for strict application of the historic "lending of credit" and "public purpose" limitations on government aid to private enterprise. *See generally*, Dale F. Rubin, *Public Aid to Professional Sports Teams – A Constitutional*

What these proposals fail to consider is that the subsidy itself may be the remedy for the perceived problem of monopolization. For sports teams, the average cost of staging games reaches its cheapest point at a quantity well above the number of games the consumer of sports would likely demand. In other words, the fact that the professional leagues limit the number of contests on their schedule reflects, at least in part, their fear of over-saturating their market.

At some point contests would become so numerous as to be meaningless, and would accordingly lose fan interest. Teams in this position, with all the necessary employees under salary and venues available, will nonetheless decline to produce all the games they could, because producing more games, although marginally cheaper, would diminish fan interest and decrease revenue.[9] The sports monopolist will restrict output so that the relatively infrequent contests will draw maximum fan interest. The locality, however, may want the team to produce more games than the incentives for restricted monopoly output would suggest. Localities benefit from frequent games, providing an additional entertainment choice and stirring up economic activity. Thus the public subsidy, whether it comes in the form of cash or a funded stadium, solves the problem of monopoly by inducing the leagues to stage a greater number of home contests than they would have without the subsidy. The subsidy essentially covers the putative loss that results from staging the entire schedule.[10]

Although the better argument is that sports leagues do not constitute a monopoly, at least not in the consumer market in which they compete, it is certain that the leagues do enjoy a monopsony, the buyer's equivalent of a monopoly, in which only one buyer may purchase a product. In practical terms, athletes have

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Disgrace: The Battle to Revive Judicial Rulings and State Constitutional Enactments Prohibiting Public Subsidies to Private Corporations, 30 U. TOL. L. REV. 393 (1999).

9. This is not to say that teams could not be profitable without government subsidy. *See* JAMES QUIRK & RODNEY FORT, HARD BALL: THE ABUSE OF POWER IN PRO TEAM SPORTS 181-82 (Princeton University Press 1999) (arguing teams could be profitable without subsidies). Rather, the point of profitability might be at an output well below a full season schedule. Losing teams, in particular, would likely decline to play out the schedule, liquidating their assets instead. The public subsidy, typically exchanged for the promise of a full schedule of contests, allows the losing team to guarantee salaries and produce games to satisfy the full season schedule.

10. This solution to the problem of monopoly is not a common one, as it is difficult to explain to voters why a government dedicated to the elimination of monopolies should subsidize one. Yet this approach has been taken frequently with respect to privately operated urban transit systems, for example.

nowhere else to go should they not agree to a contract with the league in their chosen sport. This monopsony position has generated repeated requests for judicial intervention at the behest of individual players to subject league practices and rules to antitrust scrutiny.[11] This monopsony has also given rise to players unions and subsequent collective bargaining agreements. But the fact that the leagues are monopsonists with respect to their players does not mean that the leagues are monopolists for all purposes. Fans have a choice and, as economic literature demonstrates, exercise that choice with regularity. Demand is elastic, thus stifling attempts by a professional sports franchise to extract monopoly profits. It is not the only game in town.

Understanding the sports team as one producer in a multi-producer competitive market and not as a monopolist, renders the other controversies involving stadium funding less difficult to resolve. The salient issue is the charge, made implicitly by opponents of stadium financing, of fraudulent inducement. Opponents of stadium subsidies have relentlessly pointed out the dubiousness of the claims made by team owners and other proponents in support of stadium funding. Their arguments are convincing: every serious study of the economics of funding sports stadiums concludes that stadiums do not pay off. They do not fulfill their public promise of providing enhanced business opportunities for local merchants;[12] they do not substantially contribute to the improvement of the neighborhoods in which they are built;[13] and they do not provide the general increased economic activity and financial profit for the city or community in which they are built as a whole.[14] Finally, adding insult to injury, the construction of a new sports stadium is

11. *See* Flood v. Kuhn, 407 U.S. 258 (1972) (holding that exemption of professional baseball's reserve system from federal antitrust laws is established aberration that Congress must remedy); Piazza and Tirendi v. Major League Baseball, 831 F. Supp. 420 (E.D. Pa. 1993) (holding that baseball exemption to federal antitrust laws does not extend beyond player reserve system); Smith v. Pro Football, Inc., 593 F.2d 1173 (D.C. Cir. 1978) (holding that professional football player draft had anticompetitive impact on market for players' services); Mackey v. Nat'l Football League, 543 F.2d 606 (8th Cir. 1976) (holding that exemption to antitrust laws could not be invoked where agreement with players was not product of bona fide arm's length negotiations).

12. See Siegfried & Zimbalist, *supra* note 4, at 110.

13. *See* Todd Senkiewicz, *Stadium and Arena Financing: Who Should Pay?*, 8 SETON HALL J. SPORT L. 575, 589 (1998).

14. *See* Robert A. Baade & Allen R. Sanderson, *The Employment Effect of Teams and Sports Facilities*, *in* SPORTS, JOBS & TAXES: THE ECONOMIC IMPACT OF SPORTS TEAMS AND STADIUMS, supra note 1, at 93 (concluding that spending on sports is "largely offset by reductions in other forms of leisure spending by consumers and other fiscal commitments by governmental entities").

frequently cited as the reason, or the excuse, for substantial increases in the price of tickets.[15] In essence, tax payers build stadiums that they may not visit and without offsetting benefit.

Despite the criticisms, once the issue of monopoly is set aside, a surprisingly robust case can be made to support the public funding of private sports stadiums. Cities bid for teams in a market that is competitive, and they bid voluntarily. City managers should be presumed to spend taxpayers' money validly. Although the price they must pay is high, the price is unavoidably steep. Teams compete in the entertainment market, and thus have to provide an experience to induce fans to pay high prices to support the large salaries needed to encourage young athletes to sacrifice their youth to the pursuit of sport. Playing careers tend to be brief; salaries must be commensurately high. The contemporary fan experience includes winning teams and exciting stadium venues. Further, the good that the city pays to supply is in part public. Fan enjoyment of a team is non-excludable and non-rivalrous: many fans are ardent in their support of the home town team yet seldom attend games in person. In other words, fans can enjoy the team but the owner of the team cannot extract payment for their consumption. These non-attending fans may pay teams indirectly, by watching television advertisements or purchasing some merchandise, but this payment is likely insufficient to account for their consumption. The balance is paid by the city. Like any public good, the lack of a public subsidy would cause the good to be under-produced.

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15. These higher ticket prices are very controversial, yet defensible. The new stadium typically should supply better seating. Thus, the fan in the new stadium is in theory receiving a superior product. Further, the higher ticket price should not necessarily be attributed to the new stadium. The cost of attracting and retaining the best players for the local franchise typically increases over time. Thus, the new stadium is not the reason for the increase in ticket prices, but, rather, is the vehicle by which higher revenues can be raised. The higher revenues are needed to field a competitive team. Of course, a cogent argument can be made that the hike in ticket prices stemming from a new stadium is illusory. If the team had it within its power to command higher ticket prices, then it would do so prior to the completion of the new stadium.