104TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPT. 104–656
Part 1

FAN FREEDOM AND COMMUNITY PROTECTION ACT OF 1996

JUNE 27, 1996.—Ordered to be printed

Mr. HYDE, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2740]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2740) to protect sports fans and communities throughout the Nation, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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29–006

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Fan Freedom and Community Protection Act of 1996”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Communities, sports fans, and taxpayers make a substantial and valuable financial, psychological, and emotional investment in their professional sports teams.

(2) Professional sports teams promote civic pride, and generate jobs, revenues, and other local economic development.

(3) Professional sports teams remain in communities for generations and represent much more than a business.

(4) Current law does not protect the rights of sports fans nor the interests of communities when a professional sports team decides to relocate.

(5) Professional sports team owners are positioned to extract enormous benefits from communities, and they are taking advantage of these opportunities.

(6) Professional sports teams and leagues have directly benefited from Federal legislation, including the following:

(A) Public Law 87–331 (15 U.S.C. 1291 et seq.; commonly referred to as the Sports Antitrust Broadcast Act of 1961).

(B) Public Law 89–800 (80 Stat. 1508; commonly referred to as the Football Merger Act of 1966).

(C) Public Law 93–107 (87 Stat. 350; relating to a prohibition of local television blackouts of network games which were sold out 72 hours in advance).

(D) Federal tax laws that allow depreciation of player contracts, capital gains, carryover losses, and the formation of Subchapter S corporations.

(7) The Court of Appeals for the Ninth Circuit ruled in Los Angeles Memorial Coliseum Commission v. National Football League, 726 F.2d 1381 (9th Cir. 1984) (commonly referred to as “Raiders I”), Los Angeles Memorial Coliseum Commission v. National Football League, 791 F.2d. 1356 (9th Cir. 1986) (commonly referred to as “Raiders II”), and National Basketball Association v. SDC Basketball Club, Inc., 815 F.2d 562 (9th Cir. 1987) (commonly referred to as “Clippers”) that a league has the authority to prevent a professional sports team from relocating from one community to another community.

SEC. 3. NOTICE OF PROPOSED RELOCATION OF A PROFESSIONAL SPORTS TEAM.

(a) REQUIREMENT.—A professional sports team owner seeking to relocate the team from one community to another shall provide notice of the proposed relocation to the parties listed in subsection (b) not later than 180 days before the commencement of the season in which the professional sports team is to play in the new community.

(b) PARTIES.—The notice required under subsection (a) shall be provided to—

(1) the local government for the community in which the professional sports team's stadium or arena is located;

(2) the sports authority, or similar entity with jurisdiction over the stadium or facility in which the professional sports team is located;

(3) any owner or operator of such stadium or facility; and

(4) the professional sports league and each professional sports team that is a member of the league for the professional sport concerned.

(c) ADDITIONAL REQUIREMENTS.—The notice required under subsection (a) shall—

(1) be delivered in person or by certified mail;

(2) be published in one or more newspapers of general circulation within the community in which the professional sports team is located; and

(3) contain an identification of the proposed new location for the professional sports team, a summary of the reasons for moving the professional sports team based on the factors listed in section 5(b), and the date on which the proposed change is scheduled to become effective.

SEC. 4. REQUIREMENT TO MAKE EXPANSION TEAMS AVAILABLE TO COMMUNITIES UPON THE FULFILLMENT OF CERTAIN CONDITIONS.

(a) LEAGUE REQUIREMENT TO GRANT FRANCHISE.—Not later than 12 months after the submission of the name of an investor under subsection (b) to a league, the league shall grant to the investor a new expansion professional sports team franchise from the league at a fee in an amount no greater than an amount equal to the franchise fee charged by the league for the last expansion professional sports team franchise granted by the league, and on financial terms and conditions no less favorable than those granted to the last expansion professional sports team franchise granted by the league.

(b) THREE-YEAR OPPORTUNITY FOR INVESTMENT.—The requirement of subsection (a) applies to a league in any case in which—

(1) the league approves the relocation of a professional sports team from one community to another;

(2) not later than three years after such relocation, the community in which the team was previously located submits to the league the name of an investor to be granted a new professional sports team franchise in such community by the league; and

(3) the investor demonstrates that he is financially able to purchase and support a team.

(c) TEN-YEAR RELOCATION PROHIBITION.—In the case of a grant of a professional sports team franchise under subsection (a), the league may approve a resale of the team, but may not approve a relocation of the team during the ten-year period beginning on the date of the grant of the expansion professional sports team franchise, except as provided in section 5 of this Act.

(d) EXCEPTION.—This section shall not apply in the case of a community with a professional sports team if the team relocates within 25 miles of the community and remains within the State in which the community is located.

SEC. 5. LEAGUE RELOCATION AUTHORITY AND RELOCATION DETERMINATION CRITERIA.

(a) LEAGUE AUTHORITY.—It is not unlawful by reason of the antitrust laws for a professional sports league to enforce rules or agreements authorizing the membership of such league to decide whether a professional sports team that is a member of the league may relocate from one community to another.

(b) DETERMINATION CRITERIA.—In determining whether to approve or disapprove the relocation of a professional sports team from one community to another, a league, after public hearings held in accordance with the provisions of subsection (c) of this section, shall make specific written findings regarding—

(1) the adequacy of the stadium in which the team played its home games in the previous season, and the willingness of the stadium, arena authority, or the local government to remedy any deficiencies in such facility;

(2) the extent to which fan loyalty to and support for the team has been demonstrated during the team's tenure in the community;

(3) the extent to which the team, directly or indirectly, received public financial support by means of any publicly financed playing facility, special tax treatment, or any other form of public financial support;

(4) the degree to which the owners or managers of the team have contributed to any circumstances which might demonstrate the need for the relocation;

(5) whether the team has incurred net operating losses, exclusive of depreciation and amortization, sufficient to threaten the continued financial viability of the team;

(6) the degree to which the team has engaged in good faith negotiations with appropriate persons concerning terms and conditions under which the team would continue to play its games in the community;

(7) whether any other team in the league is located in the community in which the team is currently located;

(8) whether the team proposes to relocate to a community in which no other team in the league is located;

(9) whether the stadium authority, if public, is not opposed to such relocation; and

(10) whether there is a bona fide investor who is offering fair market value for the professional sports team and who will retain the team in the current community.

(c) REQUIREMENT FOR PUBLIC HEARINGS AND PUBLISHED FINDINGS.—No decision by a league to permit the relocation of a professional sports team shall be valid or final until the league has—

(1) conducted at least two public hearings in the community from which the professional sports team seeks to relocate;

(2) permitted any interested member of the public, including any representative of the local government of the community from which the professional sports team seeks to relocate, or any sports authority, or similar entity with jurisdiction over the stadium or facility from which the professional sports team seeks to relocate, to deliver oral comments or file written comments regarding such relocation;

(3) published, within 30 days of such decision, written findings in one or more newspapers of general circulation within the community from which the professional sports team seeks to relocate setting forth the basis of such decision, with specific reference to each of the criteria set forth in subsection (b); and

(4) delivered copies of its written findings to the local government of the community from which the professional sports team seeks to relocate and any sports authority, or similar entity with jurisdiction over the stadium or facility from which the professional sports team seeks to relocate.

SEC. 6. REQUIREMENT FOR PROFESSIONAL SPORTS TEAM OWNERS WHO RELOCATE TO NEW PLAYING FACILITIES TO REIMBURSE STATE AND LOCAL GOVERNMENTS FOR VALUE OF FINANCIAL ASSISTANCE RECEIVED.

(a) REIMBURSEMENT FOR FINANCIAL ASSISTANCE.—In a case in which a professional sports team owner relocates a professional sports team from one playing facility to another facility (including a facility located in the same community in which the previous facility is located), and in doing so the owner breaches a contract with the State or local government with respect to use of the previous playing facility, the professional sports team owner shall, within 30 days after the team plays its first game in another facility, pay to the State or local government an amount equal to the value of financial assistance provided by the State or local government to the team.

(b) LIMITATION.—The provisions of subsection (a) shall not apply in a case in which recovery of financial assistance as defined in subsection (c) is a remedy under the contract.

(c) DEFINITION OF FINANCIAL ASSISTANCE.—For purposes of this section, the term "financial assistance" includes special tax treatment and financing of a stadium or arena in which a professional sports team plays.

(d) PENALTY.—A professional sports team owner who violates the requirement of subsection (a) is liable to the State or local government that provided financial assistance to the team for an amount equal to three times the value of the financial assistance provided by the State or local government to the team.

SEC. 7. ENFORCEMENT.

(a) PENALTIES FOR FAILURE TO COMPLY.—A league that violates the requirement of section 4(a) by failing to grant a new professional sports team franchise—

(1) is liable to the community in which the team was previously located for damages equal to three times the purchase price or market value of the team, whichever is greater;

(2) is subject to the suspension for one season of its antitrust exemption for pooling the broadcasting rights to games under Public Law 87–331 (15 U.S.C. 1291 et seq.); and

(3) is subject to the loss of the antitrust exemption under section 5(a) of this Act for the franchise relocation that led to the violation of section 4(a).

(b) ENFORCEMENT PROCEDURES.—

(1) DECLARATORY JUDGMENT BY DEPARTMENT OF JUSTICE.—The Department of Justice may seek a declaratory judgment and appropriate injunctive relief in an appropriate Federal district court with respect to whether a league has complied with section 4(a) of this Act.

(2) PRIVATE RIGHT OF ACTION BY LOCAL GOVERNMENT.—A private right of action may be brought in an appropriate Federal district court to enforce the provisions of sections 3 and 4 of this Act by—

(A) any local government that has provided, or been requested to provide, financial assistance, including tax abatement, to any professional sports team or that team's existing or proposed stadium facility; or

(B) any local government, sports authority, or other similar entity in the region or locality in which the professional sports team's home stadium or facility is located.

(3) PRIVATE RIGHT OF ACTION BY INVESTOR.—Any investor whose name has been submitted under subsection 4(a) of this Act may seek injunctive relief in an appropriate Federal district court to enforce the provisions of subsection 4(a).

SEC. 8. INAPPLICABILITY TO CERTAIN MATTERS.

Except as expressly provided in this Act, nothing in this Act shall be construed to alter, determine, or otherwise affect the applicability or inapplicability of the antitrust laws, labor laws, or any other provision of law to any act, contract, agreement, rule, course of conduct, or other activity by, between, or among persons engaging in, conducting, or participating in professional football, basketball, or hockey.

SEC. 9. DEFINITIONS.

For purposes of this Act:

(1) ANTITRUST LAWS.—The term "antitrust laws"—

(A) has the meaning giving it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section applies to unfair methods of competition; and

(B) includes any State law similar to the laws referred to in subparagraph (A).

(2) COMMUNITY.—The term "community" means a city, county, parish, town, township, village, or any other general function governmental unit established by State law.

(3) INVESTOR.—The term "investor" includes a person, group of persons, shareholders, or a community.

(4) LEAGUE.—The terms "league" and "professional sports league" mean an association composed of two or more professional sports teams (which have been engaged in competition in their sport for more than seven years) which has adopted, accepted, or put into effect rules for the conduct of professional sports teams which are members of that association and for the regulation of contests and exhibitions in which such teams regularly engage. The term includes—

(A) the National Football League;

(B) the National Hockey League; and

(C) the National Basketball Association.

(5) LOCATED.—The term "located", with respect to a professional sports team, means situated in the stadium or arena in which the professional sports team plays its home games.

(6) PROFESSIONAL SPORTS TEAM.—The term "professional sports team" means any group of professional athletes organized to play major league football, hockey, or basketball.

(7) STATE.—The term "State" means any of the 50 States and the District of Columbia.

SEC. 10. EFFECTIVE DATE.

This Act takes effect as of August 1, 1995.

PURPOSE AND SUMMARY

H.R. 2740, the "Fan Freedom and Community Protection Act of 1996," which was introduced by Congressman Martin R. Hoke, is a response to the growing problem of sports franchise relocation. Since a series of federal court decisions in the 1980s—dealing with the applicability of the antitrust laws to professional sports leagues—professional sports teams have been free to move from one city to another. Often, they have extracted large public subsidies either to stay where they are or to move to a new city. Because there are far fewer franchises than there are cities who want franchises, local government officials often have little leverage in these negotiations.

H.R. 2740, as reported by the Committee, seeks to address this issue in several ways. It clarifies the law regarding rules that allow leagues to block franchise moves by providing for an explicit antitrust exemption for such rules so long as the leagues base their decisions on neutral criteria and hold public hearings. It attempts to balance the bargaining power of the cities with that of the leagues by requiring that a league which approves a franchise move provide an expansion team to the city from which the franchise left, if the city submits the name of a qualified investor within three years after the team moves.

It further requires that if a relocating team owner breaches a stadium contract with a local government, that owner must repay all of the financial assistance that he has received from that local government. Finally, H.R. 2740 would remove for one year the pooled broadcast rights antitrust exemption, 15 U.S.C. § 1291 *et* *seq.,* that Congress gave the leagues, if they do not comply with the expansion provisions of the Act.

BACKGROUND AND NEED FOR THE LEGISLATION

Background

In 1960, the National Football League ("NFL") came to the United States Congress seeking relief from antitrust laws. The NFL argued on behalf of all three of the major sports leagues not already enjoying exemptions from the federal antitrust laws (football, hockey, and basketball), that in the absence of a limited antitrust exemption, teams in smaller markets would not be able to survive financially because the television revenue available to teams in large markets would enable them to hire the best players—a situation that could seriously detract from balance on the playing field and threaten the leagues' very existence.

To bring stability to the major professional sports leagues and protect fans and communities, Congress passed, and President Kennedy signed into law, the Sports Broadcasting Act of 1961, 15 U.S.C. § 1291 *et seq.* The new law permitted each of the leagues to pool their separate broadcasting rights for sale to a single purchaser. This broadcast antitrust exemption has succeeded in providing the financial foundation for every team in each of the leagues. In the case of the NFL, the Act allowed the league's 30 teams to divide equally $1.2 billion in the 1995–1996 season.

In 1966, arguing that competition between the NFL and the American Football League ("AFL") was undermining the stability of teams in both leagues, the NFL approached Congress again seeking special protection under the law: an antitrust exemption to permit the NFL and the AFL to merge. In testimony before Congress, then-NFL commissioner Pete Rozelle argued forcefully for the merger, saying that if it were approved:

> Professional football operations will be preserved in the 23 cities and 25 stadiums where such operations are presently being conducted. This alone is a matter of considerable public interest—to local economies, stadium authorities, and consumers. Without the plan, franchise moves and/or franchise failures will occur as a matter of course within the next few years.

Professional Football League Merger: Hearings on S. 3817 Before the Antitrust Subcommittee of the House Committee on the Judiciary, 89th Cong., 2d Sess. 37 (1966). Congress once again responded to the leagues' entreaties, this time by enacting the Football Merger Act of 1966. *See* 15 U.S.C. § 1291.

During congressional consideration of the Sports Broadcasting Act and the Football Merger Act, the professional sports leagues made certain promises, both explicit and implicit, as to how they would behave if the exemptions were granted. Specifically, they argued that the exemptions would create stability for the leagues, communities, and the fans. Recent history indicates that this has not been the case. Instead of bringing stability, pro sports team owners have taken advantage of the guaranteed television income stream and the limited number of franchises available to pit city against city in ever-escalating bidding wars with public officials desperate to keep existing teams or attract new ones.

Now, thirty years later, the leagues have returned to Congress looking for a third antitrust waiver to halt the recent rash of team movements because franchise relocations have caused continuing controversy for the NFL. In the 1980s, owner Al Davis moved the Oakland Raiders to Los Angeles; in 1994, he moved them back to Oakland. The St. Louis Cardinals moved to Arizona in the late 1980s, while the Los Angeles Rams recently moved to St. Louis. The city of Baltimore lost its team in 1984 when the Baltimore Colts abruptly abandoned that city for Indianapolis, Indiana. At present, the Houston Oilers are actively seeking to move to Nashville, and there are numerous rumors concerning possible moves by other teams. Since the early 1980s, the number and cost of team movements have dramatically increased. For example, the state of Maryland agreed to spend approximately $200 million dollars of public money to entice the Cleveland Browns to move.

The recent move of the former Cleveland Browns illustrates the problem that the cities and fans face. On November 6, 1995, the owner of the Browns, Art Modell, announced that he was moving the team to Baltimore, Maryland. Citing financial difficulty, Mr. Modell agreed to move his team in return for promises from the Maryland Stadium Authority of a new, multi-million dollar, state-of-the-art stadium. The Cleveland community, which has fervently supported the Browns for years, erupted in a storm of protest. In the controversy which followed, the public has hotly debated the economic, social, and emotional costs and benefits of moving professional sports franchises from one city to another.

In response, the city of Cleveland filed a lawsuit seeking to block the move. On February 8, 1996, the NFL reached a settlement with the city which, among other things, will provide Cleveland with a team by the 1999 season and allow the new team to use the “Browns” nickname. However, as part of the settlement, Cleveland will have to build a new stadium that will be funded in large part with public funds, but with a small part coming from a loan from the NFL. On February 9, the NFL owners voted to approve the settlement and to approve the relocation of the old team to Baltimore. Under the NFL Constitution, any move by an NFL owner must be approved by a 3/4ths majority of the team owners. The owners approved the move by a vote of 25–2.

Interestingly, a member of Congress at the time of the 1961 sports broadcasting debate, Representative George Meader of Michigan, foresaw the current problem when he addressed Mr. Rozelle:

> Are you not asking us to place a rather large amount of power in your football league, which you say you will use judiciously? What I am trying to find out is whether or not some phraseology could be included in the statute itself so that we would not have to depend upon the good will of the management of the professional football league.
>
> *   *   *   *   *   *   *
>
> [Y]ou are now asking for an exemption from the antitrust laws from Congress, and if there was concern that

> the power granted by such an exemption would be abused, I think the Congress would have the right to make it conditional.

Telecasting of Professional Sports Contests: Hearings on H.R. 8757 Before the Antitrust Subcommittee of the House Committee on the Judiciary, 87th Cong., 1st Sess. 38–39 (1961). It is clear from the historical record that the major professional sports leagues do not operate in a completely free market environment. Given the history of legislation relating to sports leagues, Congress has an ongoing obligation to ensure that not only that the financial health of the leagues is served, but that the public interest is served as well.

Antitrust implications of franchise relocations

Current legal environment

The NFL contends that under current law, it cannot prevent franchise relocations. That contention grows out of litigation in the 1980s over Section 4.3 of the NFL's Constitution and Bylaws. Section 4.3 provides in relevant part that: "No member club shall have the right to transfer its franchise or playing site to a different city, either within or outside its home territory, without prior approval by the affirmative vote of three-fourths of the existing member clubs of the League."[1]

When Al Davis announced that he would move the Oakland Raiders to Los Angeles, the NFL owners voted 22–0 to block the move under Rule 4.3. Mr. Davis brought an antitrust suit against the league claiming that the vote under Rule 4.3 amounted to an illegal conspiracy to restrain trade in violation of § 1 of the Sherman Act.

Mr. Davis ultimately prevailed in the liability phase of the case on two grounds. *Los Angeles Memorial Coliseum Commission* v. *National Football League,* 726 F.2d 1381 (9th Cir.) ("Raiders I"), cert. denied, 469 U.S. 990 (1984). First, the Raiders I court held that, as a matter of law, the NFL is not a single entity incapable of conspiring with itself. Id. at 1387–90. Rather, the court found that the teams in the League compete with one another and may conspire with one another to restrain trade. One judge on the panel vigorously dissented from this holding arguing that the NFL is a single entity incapable of conspiring with itself. Id. at 1401, 1403–10.

Second, the *Raiders* I court considered whether the jury properly found that Rule 4.3 was an unreasonable ancillary restraint to the legitimate and necessary cooperation among NFL members. Applying a rule of reason analysis, the court held that "the jury could have found that the rules restricting team movement do not sufficiently promote interbrand competition [i.e. competition among leagues] to justify the negative impact on intrabrand competition [i.e. competition among League members]." *Id.* at 1397. The court further suggested that a league rule that included objective criteria and procedural due process mechanisms might pass antitrust scrutiny. Id. at 1397–98.

[1] Section 4.3 originally required unanimous approval for a move into another team's home territory, but it was changed in late 1978.

Later, the appeal of the damages phase of the case shed further light on these issues. *Los Angeles Memorial Coliseum Commission* v. *National Football League,* 791 F.2d 1356 (9th Cir. 1986) ("Raiders II"), *cert. denied,* 484 U.S. 826 (1987). In resolving the various claims as to how damages were to be offset, the *Raiders* II court held that the jury's verdict should be read as finding Rule 4.3 illegal only as it applied to this specific case. *Id.* at 1369. It was not to be read as finding the rule invalid in all cases. *Id.* The court specifically noted that the trial court's injunction only prohibited the NFL from enforcing the rule in the circumstances of this case and not in all other cases. *Id.* at 1369 & n.4.

In a later case involving the relocation of the NBA's San Diego Clippers to Los Angeles, the Ninth Circuit reaffirmed the basic principles it set forth in *Raiders I* and *Raiders II. National Basketball Association* v. *SDC Basketball Club, Inc.,* 815 F.2d 562 (9th Cir.), cert. dismissed, 484 U.S. 960 (1987). The court held:

> Collectively, the Raiders opinions held that rule of reason analysis governed a professional sports league's efforts to restrict franchise movement. More narrowly, however, Raiders I merely held that a reasonable jury could have found that the NFL's application of its franchise movement rule was an unreasonable restraint of trade. * * * Neither the jury's verdict in *Raiders,* nor the court's affirmance of that verdict, held that a franchise movement rule, in and of itself, was invalid under the antitrust laws.

815 F.2d at 567.

The decisions in the *Raiders* cases may be read to mean more than they do. In particular, analysis of the Raiders decisions rarely focuses on the fact that the *Raiders* moved to a market in which another NFL team, the Los Angeles Rams, was already playing. That consideration raises competitive issues that are not present in a more typical move like the Browns' move to Baltimore where no other team is located. In short, the NFL's claims that it is powerless to prevent franchise relocations because of the antitrust laws have not been thoroughly tested, and they may be based on a decision that arose out of an atypical fact situation. Nonetheless, the NFL raises a legitimate concern about the expense and uncertainty of antitrust treble damage lawsuits hanging over its head for years.

Objective criteria and procedural mechanisms

As noted above, the *Raiders* I court suggested that an NFL rule that included objective criteria and procedural mechanisms to guide league decisions on franchise relocations might pass antitrust scrutiny. In December 1984, the League adopted a policy that provides for the types of objective criteria suggested by the court. These criteria include: (1) the adequacy of the team's stadium and the willingness of the city to renovate it; (2) the loyalty of the team's fans; (3) the extent of the team's public financial support; (4) the degree to which team management has contributed to the need to move; (5) the team's financial viability; (6) the degree to which the team has engaged in good faith negotiations with the city; (7) whether the existing city and the new city already have other teams; and (8) whether the stadium authority opposes the move. The criteria provided in H.R. 2740 for league review of franchise relocation decisions closely track these criteria.

That NFL policy also provides a procedural mechanism for consideration of franchise relocations. However, these procedural mechanisms apply only to the subject team and other League members. The policy does not allow the affected communities any participation in the process. H.R. 2740 requires notice to the communities and two public hearings. To the Committee's knowledge, no court has ever reviewed this policy to determine whether it would violate the antitrust laws.

Sports leagues as single entities

Despite the decision in *Raiders* I, there is an ongoing debate as to whether professional sports leagues should be treated as unified single entities (i.e., essentially partnerships or joint ventures) or whether each team in a particular league should be treated as a separate competing firm for antitrust analysis purposes. Many legal commentators, as well as the NFL, have advanced the single entity theory arguing that the leagues are joint ventures in which the owners are partners. Other courts have followed the *Raiders* I decision on this point holding that each team should be treated as an independent competitor. *Sullivan* v. *NFL,* 34 F.3d 1091, 1098–99. (1st Cir. 1994), *cert. denied,* 115 S.Ct. 1252 (1995); *McNeil* v. *NFL,* 790 F.Supp. 871, 879–80 (D. Minn. 1992).

Professional sports leagues involve elements of both cooperation and competition. For example, sports leagues adopt uniform league rules and agree on the appropriate size of the playing field. They cooperate on scheduling dates, the number of games played, and the playoff structure. In addition, they also share revenue from television rights and gate receipts. The leagues argue that the economic success of each team depends on the economic strength and stability of the other league members and that they are not economic competitors.

Others argue that the teams are separate competing entities. This argument carries the most weight when two teams play in the same city, as in the Raiders case. Each club makes most of its own business decisions on a day-to-day business. They have separate profit and loss results. Each team determines its own ticket prices, players' salaries, and player acquisitions. Each team hires its own coaches, negotiates the terms of its stadium leases, and enters into its own local radio broadcasting deals. These practices support the idea that the teams are economic competitors.

Since the Committee ordered H.R. 2740 reported, the Supreme Court has held that the NFL is not a single entity for purposes of the antitrust exemption for multiemployer collective bargaining. *Brown* v. *Pro Football, Inc.,* —— U.S. ——, 1996 U.S. Lexis 4047 (June 20, 1996). In making this decision, the Court made the following comments in dicta:

> We concede that the clubs that make up a professional sports league are not completely independent economic competitors, as they depend upon a degree of cooperation for economic survival. In the present context, however, that circumstance makes the league more like a single bar-

> gaining employer, which analogy seems irrelevant to the legal issue before us.

Id. (citations omitted). This passing comment does not resolve this issue for purposes of franchise movement.

Other sports antitrust exemptions

Aside from the franchise relocation issue, professional football, basketball, hockey, and baseball leagues currently enjoy another important antitrust exemption under the Sports Broadcasting Act, 15 U.S.C. § 1291 *et seq.,* which allows the teams in each league to market the league's broadcast rights jointly. In addition, the NFL benefits from the Football Merger Act of 1966, Public Law No. 89–800, 80 Stat. 1508 (codified at 15 U.S.C. § 1291), which allowed the merger of the NFL with the old American Football League.

The Hyde amendment in the nature of a substitute

At the Committee's markup, Chairman Hyde offered an amendment in the nature of a substitute. The Hyde amendment followed the basic format of H.R. 2740 as introduced with some substantive changes.

Most importantly, the Hyde amendment drops the language relating to trademarks that was included in Section 3 of H.R. 2740. These provisions would have required a relocating team to leave its team name, logo, and other trademark items in the city to be used with the expansion team. Experts in the trademark field indicated that these provisions might cause a constitutional takings problem.

The Hyde amendment also changes the terms under which required expansion franchises are to be granted. The Hyde amendment allows the league to charge the new expansion team up to 100%, rather than 85% as originally provided, of the fee charged to the last expansion team, but it further requires that the other financial terms and conditions given to the new team would be at least as favorable as those given the last expansion teams. At the suggestion of Congressman Flanagan, the Hyde amendment also requires a new expansion team whenever a team relocates across state lines.

The Hyde amendment makes several changes to the league review provisions in H.R. 2740. It provides that when the league reviews a relocation, it must hold at least two public hearings and issue written findings. The criteria for the league's decision originally contained in H.R. 2740 are slightly modified so that they more closely track the criteria in the NFL's existing policy.

The Hyde amendment also makes some changes to the remedies provisions of H.R. 2740. It provides for a Department of Justice suit for declaratory and injunctive relief to enforce the expansion provisions as well as private rights of action by local governments, sports authorities, and potential investors. It adds to the penalty provisions so that the league would lose the antitrust exemption that this Act provides if it does not comply with the expansion provisions. In addition, the Hyde amendment dropped baseball from the coverage of the bill because it already has a general exemption from the antitrust laws and therefore had no need for the protections of this bill. *See Federal Baseball Club of Baltimore, Inc.* v. *National League of Professional Baseball Clubs,* 259 U.S. 200

(1922). *See also Toolson* v. *New York Yankees, Inc.,* 346 U.S. 356 (1953); *Flood* v. *Kuhn,* 407 U.S. 258 (1972). Finally, the amendment makes a variety of other minor substantive and technical changes. At the markup, the Committee adopted the Hyde amendment in the nature of a substitute, as further amended, by voice vote.

HEARINGS

Before this year, the last time the Judiciary Committee had held hearings on the subject of sports franchise movement was in 1981 and 1982.[2] On February 6, 1996, the full Committee held a day of hearings on H.R. 2740. The Committee received testimony from thirteen witnesses, including four members of Congress.

The first panel consisted of Representatives Martin Hoke of Ohio, Michael Flanagan of Illinois, and Louis Stokes of Ohio, and Senator John Glenn of Ohio. Representative Hoke pointed out that the National Football League had benefited greatly from the antitrust exemptions the Congress provided in the Sports Broadcasting Act and the Football Merger Act. He testified that the provisions of H.R. 2740, including the required expansion provisions, were a fair trade off for these antitrust exemptions. Representative Flanagan also testified in favor of H.R. 2740 with special emphasis on his amendment to require relocating teams to repay the financial assistance they have received from local governments.

Representative Stokes testified in favor of his bill, H.R. 2699, which is similar in some respects to H.R. 2740, but does not include the required expansion provisions. Senator Glenn also testified in favor of H.R. 2699 and noted that he is the sponsor of companion legislation in the Senate.

The second panel consisted of Mayor Bob Lanier of Houston, Texas, Countywide Commissioner Joe Chillura of Hillsborough County, Florida, County Executive Gary Locke of King County Washington, and Mr. John "Big Dawg" Thompson of Cleveland, Ohio. Mayor Lanier testified about the Houston Oilers' pending move to Nashville, Tennessee in spite of Houston's long time support for the Oilers. He argued that the NFL has a monopoly status that gives them an advantage over the cities and that the leagues ought to be able to have rules to prevent franchise movements that take into account the public interest. He specifically endorsed the required expansion provisions of H.R. 2740.

Commissioner Chillura testified about the relationship between the Tampa community and the Tampa Bay Buccaneers. He noted that the Tampa community had provided many kinds of public support for the Buccaneers since the team's inception in 1974. He said that despite this support, the Buccaneers are now threatening to leave and that the community has little leverage against the team. He applauded the provisions of both H.R. 2740 and H.R. 2699.

County Executive Locke testified about the investment that the Seattle community had made in the Seattle Seahawks and their threatened move to Los Angeles. He called for giving the National Football League a limited right to control franchise moves and for

[2] The Subcommittee on Economic and Commercial Law did hold a hearing in the 103rd Congress on baseball's antitrust exemption, and franchise relocation and movement was discussed extensively at that hearing.

requiring franchises to give 180 days' notice to communities that they are leaving.

Mr. Thompson testified about the human impact that the Browns' move from Cleveland had on the Browns' fans. He pointed to the loss of the charity work that the Browns' players had done for many years. He argued that the fans need rights that are equivalent to those that the owners have so as to preserve this important community asset.

The third panel consisted of Mr. Paul Tagliabue, the commissioner of the National Football League. Mr. Jerry Richardson, the owner of the Carolina Panthers, appeared with Mr. Tagliabue for the purpose of answering questions, but he did not give a statement. Mr. Tagliabue testified that the League needed a narrow antitrust exemption to have some control over football franchise relocations. He further asserted that the decisions in the Oakland *Raiders* cases and other court decisions severely restrict the NFL's power to prevent an owner from moving a football team to a new city.

The fourth panel consisted of Professor Gary Roberts of Tulane Law School, Professor Andy Zimbalist of Smith College, and Mr. Bruce Keller on behalf of the International Trademark Association. Professor Roberts testified that he believes that a sports league is a natural monopoly and that short of government regulation, the best solution to the franchise relocation problem is to grant a limited antitrust exemption.

Professor Zimbalist testified that the franchise relocation problem arises out of the leagues' monopoly status. He argued that the problem could be dealt with either through breaking up the leagues or regulating them in some fashion. He favored the required expansion provisions as one way of regulating the leagues.

Mr. Keller limited his testimony to the provisions of H.R. 2740 that would require a team that moved to give up its trademark to the city that it was leaving. He argued that these provisions would effect an unconstitutional taking of the trademarks and would be inconsistent with the basic goals and principles of trademark law.

COMMITTEE CONSIDERATION

On April 25, 1996, the full Committee met in open session and ordered favorably reported the bill H.R. 2740 as amended by the amendment in the nature of a substitute offered by Mr. Hyde, as amended, by a vote of 24 to 6, a quorum being present.

VOTES OF THE COMMITTEE

The following roll call votes took place during Committee deliberations on H.R. 2740 (April 25, 1996).

1. An amendment by Mr. Flanagan to the amendment in the nature of a substitute by Mr. Hyde to add a new section to require relocating team owners who breach their contracts with State and local governments to reimburse State and local governments for the value of financial assistance received. (Before the roll call vote, the Committee adopted by unanimous consent an amendment by Mr. Barr to the underlying amendment by Mr. Flanagan to clarify that the State and local governments could not recover such assistance twice when such recovery was otherwise provided under the con-

tract.) The Flanagan amendment, as amended by the Barr amendment, was adopted by a roll call vote of 20–8.

AYES	NAYS
Mr. Hyde	Mr. Gallegly
Mr. Moorhead	Mr. Inglis
Mr. Sensenbrenner	Mr. Goodlatte
Mr. McCollum	Mr. Bono
Mr. Smith (TX)	Mr. Bryant (TN)
Mr. Canady	Mr. Conyers
Mr. Buyer	Mr. Boucher
Mr. Hoke	Ms. Lofgren
Mr. Heineman	
Mr. Chabot	
Mr. Flanagan	
Mr. Barr	
Mr. Frank	
Mr. Schumer	
Mr. Reed	
Mr. Nadler	
Mr. Scott	
Mr. Watt	
Ms. Jackson Lee	

2. Three amendments en bloc by Mr. Bryant of Tennessee to the amendment in the nature of a substitute by Mr. Hyde to strike the required expansion provisions, the penalties provisions, and certain of the findings relating thereto, and to insert a modified judicial review procedure. The Bryant of Tennessee amendments en bloc were defeated by a roll call vote of 10–20.

AYES	NAYS
Mr. McCollum	Mr. Hyde
Mr. Coble	Mr. Moorhead
Mr. Buyer	Mr. Sensenbrenner
Mr. Bono	Mr. Gekas
Mr. Bryant (TN)	Mr. Smith (TX)
Mr. Chabot	Mr. Gallegly
Mr. Conyers	Mr. Canady
Mr. Frank	Mr. Inglis
Mr. Watt	Mr. Goodlatte
Ms. Lofgren	Mr. Hoke
	Mr. Heineman
	Mr. Flanagan
	Mr. Barr
	Mr. Schumer
	Mr. Boucher
	Mr. Reed
	Mr. Nadler
	Mr. Scott
	Mr. Becerra
	Ms. Jackson Lee

3. An amendment by Messrs. Schumer and Nadler to the amendment in the nature of a substitute by Mr. Hyde to provide for limi-

tations on the use of the names of professional sports teams in certain circumstances. The Schumer/Nadler amendment was defeated by a roll call vote of 12–18.

AYES	NAYS
Mr. Hoke	Mr. Hyde
Mr. Heineman	Mr. Moorhead
Mr. Flanagan	Mr. Sensenbrenner
Mr. Barr	Mr. McCollum
Mr. Conyers	Mr. Gekas
Mr. Schumer	Mr. Coble
Mr. Reed	Mr. Smith (TX)
Mr. Nadler	Mr. Gallegly
Mr. Scott	Mr. Canady
Mr. Watt	Mr. Inglis
Mr. Becerra	Mr. Goodlatte
Ms. Jackson Lee	Mr. Buyer
	Mr. Bono
	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Frank
	Mr. Boucher
	Ms. Lofgren

4. An amendment by Mr. Bryant of Tennessee to the amendment in the nature of a substitute by Mr. Hyde to strike the effective date (August 1, 1995). The Bryant of Tennessee amendment was defeated by a roll call vote of 8–22.

AYES	NAYS
Mr. McCollum	Mr. Hyde
Mr. Coble	Mr. Moorhead
Mr. Gallegly	Mr. Sensenbrenner
Mr. Buyer	Mr. Gekas
Mr. Bono	Mr. Smith (TX)
Mr. Heineman	Mr. Canady
Mr. Bryant (TN)	Mr. Inglis
Mr. Watt	Mr. Goodlatte
	Mr. Hoke
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr
	Mr. Conyers
	Mr. Frank
	Mr. Schumer
	Mr. Boucher
	Mr. Reed
	Mr. Nadler
	Mr. Scott
	Mr. Becerra
	Ms. Lofgren
	Ms. Jackson Lee

5. An amendment by Mr. Canady to the amendment in the nature of a substitute by Mr. Hyde to change the exception to the re-

quired expansion provision so that it applies when the team relocates within 25 miles of the original community rather than 60 miles. The Canady amendment was adopted by a roll call vote of 19–9.

AYES	NAYS
Mr. Hyde	Mr. Moorhead
Mr. Coble	Mr. Sensenbrenner
Mr. Smith (TX)	Mr. McCollum
Mr. Gallegly	Mr. Buyer
Mr. Canady	Mr. Bono
Mr. Inglis	Mr. Bryant (TN)
Mr. Goodlatte	Mr. Chabot
Mr. Hoke	Mr. Watt
Mr. Heineman	Ms. Lofgren
Mr. Flanagan	
Mr. Barr	
Mr. Conyers	
Mr. Schumer	
Mr. Boucher	
Mr. Reed	
Mr. Nadler	
Mr. Scott	
Mr. Becerra	
Ms. Jackson Lee	

6. A substitute amendment by Mr. Conyers (the text of H.R. 2699) to the amendment in the nature of a substitute by Mr. Hyde. The Conyers substitute amendment was defeated by a roll call vote of 13–15.

AYES	NAYS
Mr. Sensenbrenner	Mr. Hyde
Mr. Bryant (TN)	Mr. Moorhead
Mr. Chabot	Mr. Coble
Mr. Conyers	Mr. Smith (TX)
Mr. Frank	Mr. Gallegly
Mr. Schumer	Mr. Canady
Mr. Boucher	Mr. Inglis
Mr. Reed	Mr. Goodlatte
Mr. Nadler	Mr. Buyer
Mr. Scott	Mr. Hoke
Mr. Watt	Mr. Bono
Mr. Becerra	Mr. Heineman
Ms. Lofgren	Mr. Flanagan
	Mr. Barr
	Ms. Jackson Lee

7. The motion to favorably report H.R. 2740 as amended by the amendment in the nature of a substitute by Mr. Hyde, as amended. The motion was agreed to by a roll call vote of 24–6.

AYES	NAYS
Mr. Hyde	Mr. Buyer
Mr. Moorhead	Mr. Bryant (TN)

Mr. Sensenbrenner
Mr. Gekas
Mr. Coble
Mr. Smith (TX)
Mr. Gallegly
Mr. Canady
Mr. Inglis
Mr. Goodlatte
Mr. Hoke
Mr. Bono
Mr. Heineman
Mr. Flanagan
Mr. Barr
Mr. Schumer
Mr. Berman
Mr. Boucher
Mr. Reed
Mr. Nadler
Mr. Scott
Mr. Watt
Mr. Becerra
Ms. Jackson Lee
Mr. Chabot
Mr. Conyers
Mr. Frank
Ms. Lofgren

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to H.R. 2740, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 21, 1996.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2740, the Fan Freedom and Community Protection Act of 1996, as ordered reported by the House Committee on the Judiciary on April 25, 1996. CBO estimates that enacting this legislation would have no significant impact on the federal budget. Because H.R. 2740 would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

Section 4 of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) excludes from the application of that act legislative provisions that enforce the constitutional rights of individuals. CBO has determined that the bill's provisions pertaining to antitrust laws and local governments' private right of action in federal court fit within that exclusion. Other provisions in H.R. 2740 contain private-sector mandates that exceed the $100 million annual threshold established in Public Law 104–4 (see the enclosed mandate cost statement). These other provisions do not contain intergovernmental mandates, and would impose no direct costs on state, local, or tribal governments.

Bill Purpose. H.R. 2740 would make several changes to the current laws relating to relocation of professional football, hockey, and basketball franchises. The bill would loosen federal and state antitrust restrictions, giving professional sports leagues approval authority over team relocations, and would place significant new requirements on leagues and team owners involved in such relocations.

Intergovernmental Impact. The bill would protect state and local governments from some adverse impacts of team relocations. In particular, the bill would require owners of teams who breach a contract when moving out of existing playing facilities to reimburse state and local governments for the value of the financial assistance provided by those governments. The bill would also require a league that approves the relocation of a team to another state, or outside a 25-mile radius, to grant a replacement franchise to the community losing the team, and to do so on favorable financial terms. These requirements would be sufficiently onerous, however, that CBO expects few relocations would occur. In recent years, approximately three teams have relocated annually.

Federal Budgetary Impact: Enacting H.R. 2740 could result in additional costs to the U.S. Department of Justice to enforce the bill's provisions and in additional costs to the federal courts to hear cases. Since we expect very few of these cases, however, CBO estimates that any such costs would be less than $500,000 annually.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz for federal costs and Karen McVey for effects on state, local, and tribal governments.

Sincerely,

JAMES L. BLUM,
(For June E. O'Neill, *Director*).

Enclosure.

CONGRESSIONAL BUDGET OFFICE ESTIMATE OF COSTS OF PRIVATE-SECTOR MANDATES

1. Bill number: H.R. 2740.
2. Bill title: Fan Freedom and Community Protection Act of 1996.
3. Bill status: Ordered reported by the House Committee on the Judiciary on April 25, 1996.
4. Bill purpose: H.R. 2740 would impose several new federal restrictions on the business operations of the National Football League (NFL), the National Hockey League (NHL), the National Basketball Association (NBA), and the owners of professional sports teams that compete in those leagues. New constraints, however, would not affect the governing body for Major League Baseball and owners of major league baseball franchises because of that sport's existing exemption from anti-trust-related laws. In addition, the bill would extend a limited exemption from anti-trust laws to the NFL, NHL, and NBA, which would grant those leagues greater control over franchise movement by league members.
5. Private-sector mandates contained in the bill: In general, the private-sector mandates imposed by the bill fall into four categories: (1) those requiring certain actions by owners and sports leagues before teams can relocate from one community to another; (2) those mandating the expansion of professional sports leagues by requiring leagues to provide replacement franchises to communities from which teams have relocated; (3) those requiring team owners who relocate their franchise from one facility to another to reimburse state and local governments for financial assistance; and (4) those restricting franchise movement.
6. Estimated district cost to the private sector: Because the legislation is retroactive and sports leagues and franchises have already planned for or are now completing team relocations, the cost of federal mandates proposed in the bill could be significant. CBO estimates the direct costs, as defined in Public Law 104–4, of complying with new federal private-sector mandates could exceed the $100 million annual threshold during the first five years that the mandates were in effect. That estimate is based on the effective date of August 1, 1995; provisions that cap the fees that sports leagues could charge potential investors for the rights to replacement franchises; provisions that could require team owners who relocate their franchises from one playing facility to another to reimburse communities for financial support; and severe financial penalties that effectively restrict franchise movement and the income that owners may earn.

In the future, the direct costs of complying with new federal private-sector mandates in H.R. 2740 would likely be much lower. That is because the bill would promote franchise stability and would more closely wed franchises to their current communities except where expansion is the desired outcome for leagues. Professional sports leagues, which act effectively as monopolies by controlling the supply of franchises below the quantity desired by communities, would approve team relocations only when benefits to the league exceed costs. Given the history of slow expansion by sports leagues and the addition of new teams by each league within the past three years, it is unlikely that leagues would voluntarily undergo another round of expansion until after 2000. In that case, the direct costs imposed on the NFL, NHL, NBA, and franchise owners to comply with new private-sector mandates would be negligible. The costs of forgone opportunities for sports leagues and owners resulting from new operating restrictions, however, would be much larger.

Basis of estimate

Section 3—Notice of proposed relocation of a professional sports team

Section 3 contains provisions that would impose new federal private-sector mandates on the owners of professional sports teams who seek to relocate their franchises from one community to another by requiring owners to take specific actions to notify the community in which the team plays of a proposed relocation.

CBO estimates that the direct costs of complying new federal private-sector mandates contained in Section 3 would be insignificant. Any costs incurred would be a function of the number of owners who proposed to relocate their teams from one community to another and the cost of publishing official notice in a local newspaper of general circulation. In addition, some cost would be associated with producing the summary of the reasons for moving. Lastly, in any given year, relatively few owners propose to relocate their franchises.

Section 4—Requirement to make expansion teams available to communities upon the fulfillment of certain conditions

Section 4 contains federal mandates that would impose new requirements on professional sports leagues that approve the relocation of a team from one community to another. Sports leagues would be required to grant a replacement franchise to the community from which a team relocates when that community fulfils certain conditions. Therefore, Section 4 effectively mandates the expansion of professional sports leagues and places an enforceable duty on leagues to operate in certain geographic locations but reduces slightly the ability of leagues to act as monopolists.

Under Section 4(a), sports leagues that approve the relocation of a team are required to provide a replacement franchise to the community from which a team relocated within 12 months, if a bona fide investor is identified. In addition, leagues are required to provide the replacement franchise to the community under terms and conditions no less favorable than provided to the most recent expansion team granted by the league. The window of opportunity for the community to identify a bona fide investor, however, is limited to three years. Penalties could be imposed on professional sports leagues that fail to comply with those two requirements, and leagues would also be liable for monetary damages.

Provisions in Section 4 would not apply in cases where the site approved by a sports league for franchise relocation is not more that 25 miles from the community and is located within the same jurisdiction (state or the District of Columbia).

CBO estimates that the direct private-section costs associated with new federal mandates contained in Section 4 could exceed $100 million during the first five years that the mandates were effective. That estimate of costs assumes sports leagues would be able to charge a fee to investors in replacement franchises that is greater than the limit on such fees imposed by the bill. However, that level of direct costs is somewhat speculative because it relies on variables that are difficult to estimate with any certainty.

First, the number of teams that would apply for and be given approval to move from one community to another is unpredictable. Second, the spread between the fee that the league could charge for a new franchise unconstrained by the cap in the bill and the franchise fee charged by the league during its most recent round to expansion is not fixed over time. In addition, league variable costs would rise somewhat because mandatory expansion would increase operating costs due to augmented league duties, an expanded game schedule, and hiring additional game officials.

Because the effective date for H.R. 2740 is August 1, 1995, several franchise relocations that have already been executed, are in progress, or are planned for the near future would be affected. For example, the former Cleveland Browns of the NFL relocated to Baltimore for the beginning of the 1996–97 season. Section 4 would require the NFL to grant a replacement franchise to the city of Cleveland if a bona fide investor is identified by September 1999 (at this time, a replacement franchise has been promised to Cleveland by the NFL). However, the entry fee that the league may charge would be limited by the bill to the amount—$150 million—paid by investors in the Jacksonville and Carolina expansion franchises in 1993. CBO estimates that the entry fee that the NFL could now charge for an expansion franchise is about $175 million. Similarly, entry fees are capped for the NBA at the $125 million fee paid by the Toronto and Vancouver expansion franchises prior to competing in league play during the 1995–96 season and for the NHL at the $50 million fee paid by the Florida Panthers and Anaheim Mighty Ducks prior to the 1993–94 season. Given the growth in the value of sports franchises over the last decade, sport leagues could probably charge entry fees that are at least $25 million higher than those charged during the last round of league expansion. Thus, if the NFL, NBA, and NHL were each required in the same year to grant replacement franchises, the direct costs imposed by new mandates in Section 4 could eclipse $100 million.

Enacting H.R. 2740 would have other notable effects on professional sport leagues and team owners. First, the recent tide of franchise movement would probably be slowed for several years to come. That conclusion is evidenced by recent developments in the proposed relocation by the NFL's Houston Oilers to Nashville, Tennessee. Reports cite legislation before the Congress covering team relocations as a primary reason that the agreement between the Oilers and the city of Nashville has been temporarily suspended. Second, leagues would be given incentives to expand the number of cities with franchises at shorter intervals than in the past. Consequently, voluntary league expansion would become the more likely way that teams would play in communities where they had not previously competed. Third, franchises could be locked-in to playing facilities that are less preferable than alternative sites. Section 4(d) would create a cause of action against a sports league that approved the move of a franchise more than 25 miles from its current community or across state lines. For example, the proposed relocation of the NHL's Washington franchise from its playing facility in Landover, Maryland into a new arena in the District of Columbia could require the league to provide that metropolitan region with another franchise even though community support generally exists for such a move. Fourth, mandatory expansion of league play would reduce the amount of shared revenue (from television, for example) provided to each team by increasing the number of shares. Expansion could also reduce the quality of league play because existing teams would have to make some players available for selection by new franchises to ensure a minimum level of competitiveness by new teams. Finally, owners deterred from applying for relocation or whose applications are denied by leagues would forgo income that they could earn by relocating. (These costs are discussed in more detail in reference to Section 7).

Section 5—League relocation authority and relocation determination criteria

Section 5 contains new private-sector mandates that would require professional sports leagues to follow certain procedures before the relocation of a team from one community to another could be approved. It would, however, extend the antitrust exemption to leagues with regard to their authority over the relocation decisions by franchises that are league members. That exemption would enable sports leagues to legally enforce league by-laws that prohibit franchise relocation without league approval.

Under the provisions of this section, leagues are required to conduct at least two public hearings on the relocation of franchises and to make public written findings regarding the relocation process. Decisions by leagues that approve the relocation of sports franchises and do not follow the procedures provided for in Section 5 would not be valid or final under federal law. Further, leagues would be required to publish written findings in one or more newspapers of general circulation in the community that state the basis of approving the proposed team relocation and to deliver its findings to the local government.

CBO estimates that the direct costs imposed by mandates in Section 5 would be minor. Those costs would flow from new requirements to publish in one or more newspapers of general circulation the written findings from the mandatory public hearings on team relocation. Again, in any short period of time, few owners propose to relocate their franchise.

By extending a limited anti-trust exemption to sports leagues such that they could exert real power over the movement of franchises, the Congress would also confer a significant benefit on sports leagues. That exemption should reduce both the legal costs that would now be incurred by sports leagues for attempts to block in court the relocation of franchises and the likelihood that leagues could be liable for monetary damages.

Section 6—Requirement for professional sports team owners who relocate to new playing facilities to reimburse State and local governments for value of financial assistance received

Section 6 would impose new mandates on the owners of professional sports teams that relocate their teams from one playing facility to another and, in the process of relocating, commit a breach of contract with a state or local government with regard to the original playing facility.

Section 6(a) requires owners who fit the above criteria to reimburse the state or local government within 30 days of playing in a new facility for the amount of financial assistance—including special tax treatment and financing of a playing facility—provided to the team. Treble monetary penalties could be imposed on owners who fail to fulfill reimbursement requirements within the specified time period. However, those provisions do not apply in cases where recovery of financial assistance is already available to communities under the terms of existing contracts with professional sports teams.

The reimbursement requirements in Section 6 could impose new costs on some owners. Those costs would be a function of the number of teams that apply to the league and are approved for relocation, that were provided with financial assistance by states or local governments, and that committed a breach of contract and were not liable for financial assistance reimbursement as part of a contract between the team and the community.

CBO estimates that the direct costs of complying wih the federal mandate to reimburse governments for financial assistance provided would be small. Enacting H.R. 2740 would, in essence, lock-in franchises that have been provided with financial assistance to their current playing facilities until their lease is expired because the cost of reimbursement or potential monetary penalties would, in most cases, exceed the benefits of relocation. Under the requirements of H.R. 2740, if the Oilers relocate prior to the expiration of their lease with the Astrodome, for example, the Houston owner could be required to repay to Harris County, Texas in excess of $100 million for renovations performed on the playing facility in the 1980s. Thus, the relocation of franchises would likely be met with league approval only in those cases where franchises fulfill the condition to remain within a 25 mile radius of their current playing facility (in addition to not crossing state lines) and had been provided with insignificant levels of or no community financial assistance, or whose lease is due to expire.

Section 7—Enforcement

Section 7 creates several financial penalties that could be levied against sports leagues. Those penalties would effectively prohibit the movement by franchises from one community to another without prior approval by sports leagues unless league expansion was a desired outcome. Leagues would exercise their ability to restrict team movement to avoid being liable for monetary damages to abandoned communities in an amount equal to three times the purchase price or market value of the departed team—or about $100 million to $700 million depending on the franchise—if a replacement franchise is not appropriately granted. In addition, leagues could face a suspension for one season of their antitrust exemption for pooling the broadcasting rights to games and the loss of the antitrust exemption provided under this legislation. Thus, those penalties act as federal restrictions on franchise relocation.

Federal restrictions on movement by teams would affect the profitability of franchises that wish to relocate. In general, owners who relocate can expect a medium-term boost to annual operating income of $10 million to $25 million. Severe penalties in Section 7, therefore, directly limit the income that team owners can earn. If, on average, one franchise from each sports league would relocate annually in the absence of H.R. 2740, enacting the bill would impose direct costs of between $30 million and $75 million in the first year that the mandate was effective. By the fifth year, the direct costs of provisions in Section 7 would be between $150 million and $375 million.

7. Previous CBO estimate: None.

8. Estimate prepared by: Matt Eyles.

9. Estimate approved by: Robert W. Hartman, Assistant Director for Special Studies.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 2740 will have no significant inflationary impact on prices and costs in the national economy.

SECTION-BY-SECTION ANALYSIS

Section 1

Section 1 provides that this act may be cited as the "Fan Freedom and Community Protection Act of 1996."

Section 2

Section 2 sets forth the congressional findings underlying the bill.

Section 3

Section 3(a) provides that professional sports team owners who seek to relocate from one community to another must give notice to the community that they will be leaving not later than 180 days before the start of the season in which the team is to play in the new city.

Section 3(b) sets forth the parties to whom the notice must be given—the local government for the community from which the team is moving; the sports authority for the team's stadium or facility; the owner or operator of the stadium or facility; and the professional sports league and each of its members.

Section 3(c) requires that the notice must be delivered in person or by certified mail, that it must be published in a newspaper of general circulation in the community from which the team is leaving, and that it must contain the location to which the team is moving, a summary of the reasons for the move, and the date on which the move is effective.

Section 4

Section 4(a) provides that within twelve months after a community that has lost a team meets the conditions in section 4(b), the professional sports league must make an expansion team available to that community. The league must provide the team at an expansion fee no greater than the amount of the fee charged to the last expansion franchise granted by the league. It must also grant the franchise on financial terms and conditions no less favorable than those granted to the last expansion franchise granted by the league.

Section 4(b) provides that if the community from which a professional sports team has moved provides the name of a qualified investor within three years after the team moves, the league must provide it with an expansion team under section 4(a). Section 4(c) provides that the league may approve a resale of an expansion franchise granted under section 4(a), but it may not approve the relocation of such an expansion franchise for ten years except as provided in Section 5.

Section 4(d) provides for an exception from the requirements of this section for any relocation of a franchise which is within 25 miles of the original location and which remains within the same state.

Section 5

Section 5(a) makes it explicit that a league does not violate the antitrust laws by enforcing rules which authorize the league to decide whether a franchise may relocate, subject to certain conditions.

Section 5(b) requires that the league make any such decision based on the ten criteria enumerated in this section. These criteria track those currently included in the National Football League's relocation policy.

Section 5(c) requires that the league must also hold at least two public hearings on a proposed relocation and publish its findings relating to the criteria.

Section 6

Section 6(a) provides for a new, self-executing remedy for States and local governments when a professional sports team leaves one playing facility for another and, in doing so, breaches its contract with respect to playing in the facility. In such a case, the team must pay the government an amount equal to the financial assistance the government provided to the team within thirty days after the team plays its first game in the new facility. Section 6(b) limits this remedy to those cases in which the recovery is not already provided for under the contract that was breached. In other words, the Committee intends that the State or local government should be able to recover the amount of the financial assistance whenever the team has breached its contract, but that it should not be able to effect a double recovery when such recovery is otherwise available under the terms of the contract. Section 6(c) defines "financial assistance" to include special tax treatment and the financing of a stadium or arena in which a professional sports team plays. The Committee intends that this definition should be read as inclusive, rather than limiting, and that the term "financial assistance" should be interpreted in a common sense fashion to include all forms of monetary help that a government may have provided to a team.

Section 6(d) provides that if a team fails to pay the amount set forth in section 6(a) within the required time period, the government may bring a lawsuit and recover three times the financial assistance it provided to the team.

Section 7

Section 7(a) provides for three remedies if a league does not comply with the expansion provisions of section 4(a). First, the league is liable to the community from which the team left for three times the purchase price or market value of the team, whichever is greater. Second, the league may lose its antitrust exemption for pooling its broadcasting rights under 15 U.S.C. § 1291 et seq. for one season. Third, the league may lose the antitrust exemption provided under section 5(a) for the franchise relocation that led to the violation of section 4(a).

Section 7(b) provides for three causes of action to enforce various provisions of the Act. First, the Department of Justice may bring an action for declaratory and injunctive relief, including the injunctive relief provided in sections 7(a)(2) and 7(a)(3), to determine whether a league has complied with the expansion provisions of section 4(a).

Second, any local government that has provided financial assistance to a team or any local government for a community in which a team's home stadium or facility is located may bring an action to enforce the notice provisions of section 3 and the expansion provisions of section 4.

Third, an investor whose name has been submitted by a community under section 4 may bring an action for injunctive relief, including the injunctive relief provided in sections 7(a)(2) and 7(a)(3), to enforce the provisions of section 4(a).

The Committee intends that the actions and remedies enumerated in this Act are in addition to, and not in lieu of, any other appropriate actions and remedies that may be available under applicable law, except as explicitly provided in section 6(b). As in all other cases, the Committee intends that any of the actions provided for in this Act may be joined with any other actions, if appropriate under the applicable rules of joinder.

Section 8

Section 8 provides that except as expressly provided in the Act, nothing in the Act shall be construed to alter, determine, or otherwise affect the applicability or inapplicability of the antitrust laws, labor laws, or other laws to any other matters involved in professional sports.

Section 9

Section 9 defines various terms that are used in the Act. The term "antitrust laws" is defined to include state antitrust laws. The term "professional sports team" is defined as any group of athletes organized to play major league football, basketball, or hockey. The term "State" is defined as any of the 50 States and the District of Columbia. Section 10. Section 10 provides that the effective date of the Act is August 1, 1995. The Committee realizes that some events triggering parts of the act have occurred after that date. Moreover, it is likely that additional such events will have occurred between the date this report is filed and the date of enactment, if enactment occurs.

The Committee intends that the substantive requirements of the Act should fully apply to those events. However, in cases in which a time period provided under the Act would be shortened because part or all of the time period ran before the date of enactment, the Committee intends that the party required to act within the time period should get the full benefit of the time period provided in the Act and that the day after the date of enactment should be deemed to be the first day of any such time period. In cases in which a deadline for action required under the Act has already passed, the Committee intends that the party required to act shall act as soon as practicable after the date of enactment.

At the markup, Congresswoman Lofgren pointed out that the Golden State Warriors will be playing the next season in San Jose while their regular arena in Oakland is being renovated. The Committee wishes to clarify that none of the provisions of this bill are intended to apply to temporary moves made for the purposes of renovation or other similar reasons. In addition, none of the provisions of this bill should be construed to apply to teams that play a small minority of their home games in a nearby city for the purpose of widening their market appeal.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, the Committee notes that the bill, as reported, does not make any changes to existing law.

DISSENTING VIEWS

On a bipartisan basis, we oppose the legislation reported by the Committee which constitutes an unwarranted and unprecedented intrusion into private economic decisions. In particular, by mandating franchise expansion, the legislation will engender greater economic uncertainty for sports leagues and lead to less stability for professional sports teams and their fans.

In addition to being opposed by all of the affected major sports leagues—the National Football League; National Basketball Association; and National Hockey League [1]—the legislation is opposed by the U.S. Conference of Mayors (through their Franchise Relocation Task Force). Task Force co-chairman, Cleveland Mayor Michael White has written that the forced expansion potentially required under the legislation would compel sports leagues "to retain economically unviable ventures in cities * * * [and] ultimately doom major sports leagues as we know it." [2]

We do agree that the record before us supports a legislative response to prevent unneeded and unwanted franchise relocations. And we would support confirming that the sports leagues have limited legal authority to prevent unwarranted relocations, so long as the clarification is coupled with notice requirements, specified relocation criteria, and permits affected communities to seek review of relocation decisions in federal court. Similar approaches were offered through amendments by Mr. Bryant (R–TN) and Mr. Conyers (D–MI), but were rejected by the Committee (the latter amendment failed by a 13–15 vote). Such proposals offered a far more non-regulatory, free market approach to the problem of franchise relocation.

Unfortunately, the legislation approved by the Committee goes well beyond such measured responses and forces the leagues to expand and enter into partnerships with potentially unwanted and undesired partners whenever a franchise relocates—even if the facts justify a relocation. In addition, the legislation reported by the Committee unnecessarily interferes with contractual arrangements entered into between sports franchises and public stadium authorities.

I. MANDATORY EXPANSION IS INAPPROPRIATE AND UNPRECEDENTED

Section 4(a) of H.R. 2740 provides that in the event of a franchise relocation "the league shall grant to an investor [selected by the community] * * * a new expansion * * * franchise." In essence, this provision would force professional sports leagues to expand

[1] See Letters from Paul Tagliabue, Commissioner, National Football League (April 23, 1996); Jeffrey A. Mishkin, Executive Vice President and Chief Legal Officer, National Basketball Association (April 19, 1996); and Gary B. Bettman, Commissioner, National Hockey League (April 17, 1996) to Members of the House Judiciary Committee.

[2] Letter from the Hon. Michael R. White, Mayor, City of Cleveland to the Hon. John Conyers, Jr. (April 24, 1996). Participants in the task force represented a cross-section of mayors with NFL franchises in their cities.

into all communities from which a team has relocated, whether or not the community is able to support a franchise economically or the relocation otherwise complied with the federally-mandated relocation criteria.

Such forced expansion would threaten the financial stability of the sports leagues and clubs. Expansion of a sports league does not ordinarily produce additional net revenues for league members in the long run, even if a substantial expansion fee is paid up front.[3] Instead such expansion can dilute each member's share of shared revenue sources and jeopardize the ability of lower revenue clubs to field competitive teams. As the gulf between clubs widens, attendance could well decline, and with attendance, revenues. Such a circumstance would increase the pressure on clubs to relocate—a result completely contrary to that sought by the authors of the legislation.

Moreover, the forced expansion required by H.R. 2740 would deprive the leagues of the ability to ensure that the new owner—forced upon the league—is in compliance with the league's ownership policies. A wealthy investor with a criminal record or who otherwise does not meet a league's ownership criteria could undermine the integrity of a professional sports league's product and diminish fan interest. Although the sports leagues are free to exclude such owners today, H.R. 2740 would force them to accept anyone willing to pay the required fee. This is also true for investors whose other business investments create a conflict-of-interest involving the league.

The legislation's geographical restrictions—which apply any time a franchise relocates outside of its current State or moves to a stadium 25 miles further than its current home—could also result in unintended and undesirable consequences. For example, under the terms of H.R. 2740, the National Football League would be forced to provide the District of Columbia with a franchise to replace the Redskins, who are relocating from Washington, D.C. to nearby Landover, Maryland. This would result in the absurd situation of two professional football teams within a less than 5 mile radius. A recent *Wall Street Journal* editorial criticizing H.R. 2740 points out:

> If this law had been in effect when the football Giants and Jets moved across the Hudson River from New York City to the New Jersey Meadowlands, New York would now have four football teams—two courtesy of Adam Smith, two from Uncle Sam. If Cincinnati's Bengals build a new stadium a couple of miles away in Kentucky, Cin-

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[3] For example, in connection with the most recent NFL expansion, although each NFL team will receive $10 million in expansion payments over a 4–5 year period, it will forego at least $13.9 million in television payments in the first seven years alone. A similar dilution occurs with regard to team revenues from licensing and marketing. *See* Letter from Paul Tagliabue, Commissioner, National Football League, to the Hon. Arlen Specter (December 8, 1995).

The Congressional Budget Office agrees that mandated expansion would reduce the revenues available to existing teams, concluding:

[M]andatory expansion of league play would reduce the amount of shared revenue (from television, for example) provided to each team by increasing the number of shares. Letter from June O'Neil Director, Congressional Budget Office, to Honorable Henry J. Hyde, Chairman, Comm. on the Judiciary, June 21, 1996 [hereinafter, "CBO Letter"].

cinnati would become the smallest city with two NFL teams (it's already the fifth smallest city with one team).[4]

Another absurd consequence is the legislation's failure to specify any inflation or time adjustment for the franchise fee. As currently drafted, the investor selected by the community must pay a franchise fee "no greater than * * * the franchise fee charged by the league for the last expansion * * * franchise granted." Thus if a league has not expanded for many years, or if a league has secured significant capital influx or otherwise realized a significant increase in franchise value since the last time a franchise was awarded, the league would be forced to offer a franchise at a significant discount from the fair market value. This would also allow a mayor or other public official to award valuable private benefits to whomever may be selected as the designated "investor"—a significant political plum.

In all likelihood, the net effect of these forced expansion provisions would be to freeze the status quo of major league sports franchises. Professional football, basketball, and hockey would all be discouraged from expanding into new markets because of the punitive new legal obligations associated with a sports franchise. Why expand into a new city if a league is already facing the threat of a significant increase in franchises through the legal device of forced expansion?

We are aware of no other legislative precedent which authorizes such unilateral federal intervention into private decisions and financial arrangements.[5] The only comparable legislative context is the Worker Adjustment and Retraining Notification Act,[6] which ensures that large groups of dislocated workers (those working for employers of 100 or more persons) receive at least 60 days notice before a plant closing. H.R. 2740 constitutes a quantum leap beyond the scope of the plant closing law—instead of providing a simple notice, the legislation provides for outright community acquisition of a new franchise from a private sports league.

Finally, we would note that among the other punitive remedies for failing to comply with mandated league expansion is the legislation's imposing suspension of the Sports Broadcasting Act of 1961.[7] The Sports Broadcasting Act permits members of a professional sports league to pool their television rights for purposes of sale to networks. Absent such arrangements, clubs in smaller markets (such as Cincinnati, Green Bay, Indianapolis, Jacksonville, Kansas City, Salt Lake City, and San Antonio) would likely have been forced to relocate to larger communities and the expansion of each of the professional sports leagues to new and growing communities in recent years would not have occurred. Moreover, if clubs are precluded from pooling their television rights even for a single season, they would be faced with the economically untenable choice of ei-

[4] Richard J. Tofel, "When Conservatives Tilt the Playing Field," *The Wall Street Journal,* May 15, 1996 at A14. The legislation has also been criticized by *The Washington Times. See* "Ministry of Football," *The Washington Times,* June 12, 1996 at A20.

[5] Indeed, it should be noted that CBO has estimated that the bill would constitute an unfunded private sector mandate, and that "the direct costs * * * of complying with the new federal private-sector mandates could exceed the $100 million annual threshold during the first five years that the mandates were in effect." CBO Letter, supra. note 3.

[6] Pub. L. 100–379, 29 U.S.C. 2101 et seq.

[7] 15 U.S.C. §§ 1291 et seq.

ther suspending their network rights agreements (which are negotiated on a multi-year basis) or maintaining those arrangements and facing the prospect of defending treble damage antitrust actions. Again the result—increased franchise instability—would be the precise opposite of that intended by the bill's sponsors.

II. UNNECESSARY INTERVENTION INTO SPORTS CONTRACTING ARRANGEMENTS

We also have serious concerns with section 6 of the legislation, which would require a professional sport franchise that moves from one facility to another to reimburse the state or local government for any "financial assistance" if the move were in breach of a lease with that entity.

This provision constitutes an unnecessary and unwarranted federal intervention into the domain of contract law. Our hearings disclosed no instance where a professional sports team breached a lease with a state or local government. Moreover, state and local governments can and do protect themselves from the prospect of such breaches by including liquidated damages or specific performance provisions in the contract. [8]

Moreover, even in the absence of an explicit contractual remedy, any stadium landlord would be free to bring an action for breach of contract if the tenant club breached its lease. If successful, the landlord would be entitled to recover all its actual and consequential damages—not an artificially imposed reimbursement for all "financial assistance" rendered, regardless of when the asserted assistance was rendered. No public policy consideration warrants such unusual remedies when traditional damages—and in many cases liquidated damages—are available to interested government parties.

Finally, the term "financial assistance" is so vague that it could be interpreted to require compensation for all services (including police protection) for all time (not even limited to the period of the lease). Therefore, in addition to being discriminatory, this provision could prove to be extraordinarily punitive.

[8] For example, the stadium lease signed between the Oilers and Nashville, TN has been described as "ironclad" and provides that if the team seeks to break the lease, they will be legally obligated to pay the city (i) $117 million if they break the lease in the first 12 years; (ii) $87 million if they break the lease in the following 10 years; (iii) $34 million if they break the lease in the following 8 years; (iv) and $15 million if they break the lease in the following 10-year extension. The lease also allows the city to seek an injunction barring any move. *See* Trebor Banstetter, Nashville's lease deal among NFL's toughest, Nashville Banner, April 17, 1996, et al.

For all of the foregoing reasons, we respectfully dissent from H.R. 2740. Although we support efforts to bring fairness and equity to the issue of sports franchise relocations, we cannot endorse legislation which co-opts private financial arrangements and exacerbates the financial problems that lead to the relocations that the sponsors of the bill would like to prevent.

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ED BRYANT.