Q&A with Keith Kupferschmid of Copyright Alliance Keeping the Internet of Things Monster at Bay: Protecting the Patient Privacy of Sports and Entertainment Clients in the Age of the Selfie

Methods for Protecting Public Domain Characters after Klinger v. Doyle Estate, Ltd.



The Day the Music Died: How the Department of Justice Unraveled Music Licensing to Create a New Ball of Confusion



A PUBLICATION OF THE ABA FORUM ON THE ENTERTAINMENT AND SPORTS INDUSTRIES

VOLUME 33, NUMBER 1 FALL 2016

> Forum on the Entertainment & Sports Industries

# Stadium Financing: American Taxpayers should throw the Red Flag

BY JEREMY M. EVANS

### NATIONAL ANTHEM

n this article, we are going to explore sports stadium financing. We will look at specific examples of taxpayer dollars proposed or spent on private stadiums and whether taxpayers have or will actually benefit. In the end, we can determine whether American taxpayers should throw the proverbial red challenge flag, ask the umpires to put on the headset, you get the picture. Specifically, whether Americans should start voting with their minds instead of their hearts.

#### THROWING OUT THE FIRST PITCH

Americans love sports. We love watching our favorite sports, betting on our favorite teams and individual athletes, while our legislators and governors pass and sign into law gambling regulations, and the National Collegiate Athletic Association (NCAA) regulates student-athletes. Professional sports franchises and the leagues they play in have strict rules on buying and selling teams. The players' unions have collectively bargained agreements that limit where, when, and how free agency occurs. These same leagues have various salary caps, luxury taxes, and relocation fees.

How about us though? How about us, the American taxpayers, what do we have when it comes to saying yes and no to other folks spending our hard earned money through taxes to build grandiose stadiums? Specifically, what protections do we have and why have we not exercised our rights to those protections?

CONTINUED ON PAGE 65

# VR/AR in a Real World

BY DAVID E. FINK AND JAMIE N. ZAGORIA

n case you have been living under a rock, virtual reality (VR) and its first cousin, augmented reality (AR), have arrived. The highly publicized and long-awaited head-mounted displays (HMDs), the headsets through which the world of virtual reality can be accessed, have been or will be made available for sale to the public this year, such as Facebook-owned Oculus VR's Oculus Rift, Samsung's Gear VR, Sony's PlayStation VR, HTC's Vive, etc. In other words, VR/AR is going mainstream.

Nearly all of the top 10 tech companies, including Apple, Google, Samsung, and Microsoft, have jumped on the VR bandwagon, investing significantly in the space. Countless players across many different industries, including Marriott, Netflix, Hulu, Birchbox, and Ford, have developed VR "experiences," seeking to capitalize on the hype. Indeed, 75%

CONTINUED ON PAGE 75

# Stadium Financing: American Taxpayers Should Throw the Red Flag

### CONTINUED FROM PAGE 1

How about us though? How about us, the American taxpayers, what do we have when it comes to saying yes and no to other folks spending our hard earned money through taxes to build grandiose stadiums? Specifically, what protections do we have and why have we not exercised our rights to those protections?

For one, we can vote. We can vote no on tax increases and bond deals issued to build new professional sports stadiums. We can call the bluff of owners who threaten to leave a city for another if they do not receive a new home, e.g. the St. Louis Rams who left for Los Angeles. Voting is a powerful right and freedom of free people. However, when push comes to shove, Americans have traditionally failed to exercise their right to vote no on tax increases and bond deals for professional stadiums.

There are many explanations why Americans consistently vote against their pocketbooks and bank accounts. One reason may be that we love our sports so like a family member or friend who always borrows money we give and give some more. Another reason may be that dysfunctional relationships sometimes work because it is the status quo. We are fearful of the unknown. We fear losing something and so we do whatever we can, e.g., give our money, to professional teams to keep them secure in our cities.

What do professional sports give us? They give us the best and worst of entertainment anyone could ask for because nothing is scripted. Everyone has a role, but nothing is certain. Sporting events give us highs, lows, and everything in between. We spend hours on end playing fantasy sports, pretending that we have been great in a uniform.

Sometimes we idolize our favorite athletes and sports teams when athletes and teams become our heroes, our hope in the future, our Friday night, Sunday afternoon, and every other day in between. Logically, it does not make sense. However, every year we consistently come back for more. We say, "next year is our year." We push on, hoping that the best is yet to come.

Unfortunately, when we tie emotion to our wallets, we forget logic.

### PLAY BALL

#### Cases-in-point: The San Diego Chargers, Milwaukee Bucks, San Francisco 49ers, San Francisco Giants, Atlanta Braves, and Los Angeles Dodgers

What do the Chargers, Bucks, 49ers, Giants, Braves, and Dodgers all have in common? All of these professional sports franchises, at one point or another, have built or proposed to build stadiums for their teams, but each of them did it differently. Let us explore the different deals for each of these franchises struck to secure their sporting stadiums.

# San Diego Chargers, NFL, and the San Diego Padres, MLB

Per Tom Shepard with the Voice of San Diego:<sup>1</sup>

"All told, land acquisition and construction for Petco Park cost \$456.8 million: \$225 million financed with municipal bonds repaid by hotel taxes; \$57.8 million from redevelopment funds generated within the project area; \$21 million from the Port of San Diego and \$153 million from the Padres (not including their substantial investment in private development projects in East Village)." "A series of lawsuits delayed construction, but Petco Park eventually opened in April 2004. Since then, public investment in it has spurred more than \$2 billion in private investment, generating hundreds of millions of dollars in new tax revenues and transforming East Village into one of San Diego's most exciting and vibrant neighborhoods."

At first glance, the Padres ballpark was a good deal for all sides because it did not directly tax citizens and it benefitted the community through investment and development. In contrast, how about the Chargers? How would we rate their proposal and the current situation?

From another article written by this author on January 25, 2016, "What the Chargers Have to Do to Keep the Team in San Diego:"<sup>2</sup>

"Often when two sides to negotiation focus on their differences, they fail to make a deal. This is

Published in *Entertainment & Sports Lawyer*, Volume 33, Number 1, Fall 2016. © 2016 by the American Bar Association. Reproduced with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.

really common sense, which sometimes is not so common, as the saying goes. The NFL sees a future for professional football in San Diego or else they would have allowed the Chargers to move outright. The sides should focus on what has worked in the past, what has failed, and what needs to be completed to get a deal done. In the end, a fair deal for San Diegans is what matters. Taxpayers should not be stuck with a bill other than what they vote on and pay for in terms of season tickets and merchandise. If the sides can secure a deal that the public supports, the Chargers will be in San Diego for the future."

See also, "What the '15 Chargers can Learn from the '98 Padres?"<sup>3</sup>

Recently, a proposal emerged that would not tax San Diegans. From "A 'no tax' Chargers stadium plan unveiled" by Roger Showley with the *San Diego Union-Tribune:*<sup>4</sup>

> "Former [San Diego] City Councilman Carl DeMaio [recently unveiled a plan] to pay for a new \$1.5 billion Chargers stadium without a tax increase or a convention center annex. . . [that plan] involves fans and investors, investing in the stadium for \$5,000 to \$700,000 each."

Instead of a convention center annex, as the Chargers propose in their planned Nov. 8 socalled "convadium" ballot initiative, DeMaio would substitute a 250-room hotel whose rooms would overlook the stadium field, and a 200,000-square-foot retail center with a fitness club, nightclubs, shops, restaurants and other attractions . . .

The Chargers' initiative relies on raising the current city hotel room tax from 12.5 percent to 16.5 percent, \$650 million from the team and NFL and other sources that could underwrite a \$1.8 billion, publicly owned facility with 65,000 seats for a stadium and an attached convention exhibit hall, meeting rooms and ballrooms that can expand to the stadium field."

It is uncertain whether the private investment capital required is available in San Diego since you would think the Chargers would have obtained the capital already. It is possible that the Chargers ownership does not want new owners, no matter how minor, through outside investment. Time will tell how this situation is resolved, but the current proposal on the ballot is calling for a 4% tax increase on hotels, to 16.5%.

Again, not a direct tax, but citizens will have to vote for that increase<sup>5</sup> and it directly harms hotels, their bottom line, and the tourism industry. You can bet that the hotel tax will be pushed back onto the hotel guests, who also happen to be taxpayers. Despite its unpopular nature with Chargers fans, San Diego Mayor Kevin Faulconer has done a good job of not succumbing to the Chargers overtures on raising taxes and the like.

#### Milwaukee Bucks, NBA

From Mary Spicuzza, Jason Stein and Crocker Stephenson of the Milwaukee-Wisconsin *Journal Sentinel:*<sup>6</sup>

"The Bucks deal includes \$250 million in contributions from the state, city and county of Milwaukee, and a special arena and entertainment district. The other half of the arena is being paid by the team's current owners and former U.S. Sen. Herb Kohl, the team's previous owner.

State, city and county residents will ultimately pay \$400 million on the arena when accounting for \$174 million in interest over 20 years, with any construction cost overruns and maintenance expenses being the responsibility of the team.

Of the principal coming from taxpayers for the arena, \$47 million would come from the City of Milwaukee providing a parking structure and tax incremental financing.

The rest — \$203 million — would come from: bonds issued by an arena and entertainment district and paid off by state taxpayers; a \$4 million decrease in Milwaukee County's state aid over the next 20 years; and the increase of a ticket surcharge and the extension of existing local hotel room, rental car, and food and beverage taxes being collected by the Wisconsin Center District."

Lastly, from Rich Kirchen, Senior Reporter with the *Milwaukee Business Journal:*<sup>7</sup>

Published in *Entertainment & Sports Lawyer*, Volume 33, Number 1, Fall 2016. © 2016 by the American Bar Association. Reproduced with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.

"The Milwaukee Bucks owners arranged a bank loan of at least \$174 million to pay for the owners' share of the \$524 million arena project."

In response to the massive amounts of tax dollars going to a professional sports stadium, Wisconsin Governor Scott Walker has argued that the team leaving the state would do more harm by taking away tax dollars and investment.<sup>8</sup> More on that later.

#### San Francisco 49ers, NFL

Much like the San Diego Padres and Chargers, the 49ers and the Giants of San Francisco are a tale of two teams in one city. One went public, the other went private. Both are examples of what to do and what not to do: one involves taxpayers, one does not.

From John Coté with SFGate.com:9

"Back in November 2006, [former 49ers owner John] York projected the stadium would cost \$600 million to \$800 million to build. The price tag ended up at \$1.27 billion, and it likely will take years to know how good of a deal Levi's Stadium is for Santa Clara taxpayers.

That price tag doesn't include a combined \$37 million that Santa Clara spent to move an electrical substation and the stadium's share of a new city-built parking garage that had already been planned to serve the nearby convention center. Accounting for those costs, the stadium project comes out to \$1.31 billion before interest payments averaging \$14.6 million per year for 25 years...

Years of complex negotiations, at least four lawsuits, special state legislation and a successful ballot measure - which stadium opponents contend was a bait-and-switch - have produced a financing plan that includes a new tax on hotel guests near the stadium and \$621 million in construction loans taken out by a cityrelated entity...

The authority, which is responsible for the construction loans, is supposed to pay them back using revenue generated by the stadium, including its \$154 million cut of the \$220 million, 20-year naming rights deal with Levi Strauss & Co. and the sale of seat licenses one-time fees ranging from \$2,000 to \$250,000 per seat that give people the right to purchase 49ers' season tickets. The licenses are budgeted to bring in \$312 million . . .

Publicly owned football stadiums are notorious for being a drag on public coffers as they age. It currently would cost about \$100 million, for example, to pay off the bond debt still attached to O.co Coliseum after Oakland and Alameda County paid for major upgrades in 1995."

A terrible deal for the Santa Clara taxpayers. Santa Clara was leveraged when team ownership dangled the proverbial 49ers franchise carrot, a jewel of the National Football League. The city took the bait and the taxpayers will be paying for the team's home for years to come. It is a hearts and minds situation where professional sports team owners and cities leverage love for money.

#### San Francisco Giants, MLB

"We found that the only way that a ball park was going to be built in San Francisco is if the Giants were to do so privately." - Stacy Slaughter, San Francisco Giants vice president.<sup>10</sup>

From Jon Gordon with *Minnesota Public Radio*,<sup>11</sup> a city that has its own experience with publically-financed stadiums via the Minnesota Vikings of the NFL:

"[A]fter voters rejected public financing four times in the 1980s and 1990s, the Giants financed their new park largely on their own. Since 2000, Barry Bonds and the rest of the Giants have played to a consistently packed house in one of baseball's premier parks. But that doesn't mean San Francisco's privatelyfinanced stadium honeymoon will last forever . .

We are paying more for our stadium than most other teams do," said Slaughter. "We have an annual debt payment that we have to pay. But at the same time, other teams around the league are paying rent for their stadiums in excess of several million dollars. And they don't necessarily generate the revenues we do. So at the end of the day it's pretty much a wash...

SBC Park [Now AT&T Park<sup>12</sup>] cost \$315 million. After selling the naming rights for \$50 million and raising about \$90 million through personal seat licenses and corporate sponsorships, the Giants borrowed \$175 million for construction. The team pays about \$17 million annually to service that debt, and will for another 15 years . .

So far the Giants have had no trouble paying their stadium debt. A post-season regular the last few years, the Giants have 28,000 season ticket holders and regularly sell out their games."

In 2016, not much has changed as the Giants rank third in attendance behind the Los Angeles Dodgers and second place St. Louis Cardinals.<sup>13</sup> By any standard, a fair deal for the public. A round of applause to the Giants organization for doing it right.

#### Atlanta Braves, MLB

Per Barry Petchesky with *Deadspin:*<sup>14</sup>

"Cobb County has released more details on proposed financing for a new stadium to host the Braves, after the team announced it will leave Atlanta after the 2016 season. It's a 30-year deal that will have Cobb County paying around 45 percent of construction costs, or \$300 million.

The memorandum of understanding . . . shows that the Braves will pay \$280 million up front, with an additional \$92 million over the life of the operating agreement. Cobb County will pledge \$14 million up front in transportation improvements and \$10 million from the Cumberland Community Improvement District, a self-taxing commercial district overseen by local business leaders.

The county will finance the remaining \$276 million by issuing revenue bonds. As for repaying those bonds, here are the bullet points. Remember, each figure is the **annual** cost over 30 years.

- \$400,000 from a new rental car tax.
- *\$940,000 from the existing hotel/motel tax.*
- \$2,740,000 from a new hotel/motel fee in the Cumberland CID.

- \$5,150,000 from a property tax increase in the CID.
- \$8,670,000 in relocation of existing Cobb County property taxes.

If you're against publicly financed stadiums (and you ought to be), that last one is startling. While the majority of Cobb County residents won't be paying any additional taxes to fund the Braves' stadium, a large amount of their existing tax payments will cover for the costs. That's \$8.67 million a year over 30 years, 260 million dollars, that Cobb County could spend on other things (say, rehiring all those teachers)<sup>15</sup> but will instead [be] use[d] to build a ballpark.

Also very important: Because there are no new taxes here outside of the self-taxing CID, the County Commission can approve the proposal without a countywide referendum. Cobb County residents will cover nearly half of the Braves' ballpark without getting to vote on it."

Let us recap that for you: the taxpayers will not pay "new" taxes, but their existing tax dollars will go towards a new stadium. Unfortunately, because there are no "new" taxes, the citizens do not get to vote on whether their tax dollars should go to building a new stadium outside of Atlanta. Lastly, the above fails to mention that the Braves' current home, Turner Field, was built in 1996, made ready for baseball in 1997, and there is nothing wrong with it.<sup>16,17</sup>

#### Los Angeles Dodgers, MLB

Finally, we come to the Los Angeles Dodgers. Per *Dodgers.com:*<sup>18</sup>

"The ballpark's rich history began with Dodger President Walter O'Malley's foresight six decades ago. In 1957, O'Malley lobbied for a new stadium to be built for his Brooklyn club, but when a deal could not be reached[<sup>19</sup>], the Dodgers made the unprecedented move to California. In September of that year, the city of Los Angeles agreed to give 300 acres of land to the Dodgers in exchange for the deed to Wrigley Field in Los Angeles and their commitment to construct a 50,000-seat stadium. While Dodger Stadium was being built, the Dodgers played at the Los Angeles Memorial Coliseum through 1961, before the true Opening Day- April 10,

1962 - when the Dodgers finally played in their new home before 52,564 fans. The 56,000-seat Dodger Stadium, the first privately financed ballpark since Yankee Stadium in 1923, is a reflection of the careful study Walter O'Malley put into this seminal project."

Moreover, per The Official website of Walter O'Malley regarding "Building O'Malley's Dream Stadium":<sup>20</sup>

> "After the Japan tour, O'Malley made a side trip to Italy before returning to the United States. O'Malley studied the Colosseum in Rome, which took 12 years to build and was completed in 82 A.D. The Colosseum seated an estimated 50,000 to 80,000 and remained the largest "stadium" until the Yale Bowl at New Haven was built for football in 1914 to accommodate 80,000 spectators.

While O'Malley examined his remaining options in New York, he pondered the landscape in Los Angeles. In a letter to Dodger stockholder James Mulvey on Jan. 8, 1957, O'Malley described a Thomas Brothers map book of Los Angeles County and the areas of Elysian Park and Chavez Ravine.

"On page 44 of the booklet just to the right of the center on the top you will find Chavez Ravine Road," wrote O'Malley. "This particular map shows the freeways more clearly. There are about 400 acres of sandy hills and underdeveloped land in this area behind the Police Barracks. ... I wish you would drive out to this location at your convenience and study it. This happens to be the only spot adjacent to one freeway but within a short distance of the intersections of the remaining highway. ... When you return to New York, we will have some interesting observations to compare ..." (O'Malley letter to James Mulvey, January 8, 1957.)

In February 1957, O'Malley purchased the Chicago Cubs' minor league franchise, the Los Angeles Angels, along with their home ballpark, Wrigley Field. O'Malley secured the territorial rights to the Los Angeles market and had a home if the team was unsuccessful building a new stadium in Brooklyn. Negotiations with New York City officials eventually fizzled and Los Angeles agreed in September to exchange 300 acres of land in Chavez Ravine to the Dodgers in return for the Dodgers' commitment to build a 50,000-seat stadium. The Dodgers also exchanged the deed to Wrigley Field to the city and agreed to pay a property tax estimated at \$345,000. The contract also included a commitment from the city to spend \$2 million on grading for the area and \$2.74 million from the county for the construction of access roads."

Not all was great however with the move to Los Angeles as it alienated Brooklyn fans, and Mexican-American families who were removed from their homes inside Chavez Ravine and Elysian Park.<sup>21</sup> However, the young lefty Fernando Valenzuela seemingly changed that sentiment overnight.<sup>22</sup> However, again, taxpayers were not taxed directly and the Dodgers paid for the land through a property tax. Nonetheless, it is unlikely that anyone is complaining now about the success and appreciation of the Dodgers in Los Angeles.

## EXTRA INNINGS, OVERTIME, & THE PLAYOFFS

We have laid the groundwork, surveyed the field, now what have the political operatives said about publically financed sports stadiums? Let us take the temperature of our elected representatives. What do our elected officials have to say and what have they done to protect the American taxpayer?

#### **Political Opinion**

Democratic President Barrack Obama, in 2015, proposed an idea that would limit public stadium financing by removing the tax-exempt status of bonds and the like to build professional sports stadiums.<sup>23</sup> The President's idea did not make into the law books, but interestingly he supported the Chicago Bears Soldier Field upgrade using taxpayer money in 2007 when running for the Oval Office.<sup>24</sup>

As discussed above, Republican Governor Scott Walker of Wisconsin, once a Presidential hopeful, was the biggest proponent of spending taxpayer money to keep the Bucks in Wisconsin when he signed legislation giving money and write-offs to the Milwaukee franchise. On the other hand, Democratic Governor Jay Nixon of Missouri, before losing the Rams to Los Angeles,

supported a stadium deal that would have used taxpayer dollars. However, when the team left for Los Angeles, he said the team would have lost \$10 million per year in tax revenue, which was a similar argument used by Governor Walker of Wisconsin in his effort to keep the Bucks from moving.<sup>25</sup> It seems that for sitting politicians, it is a damned if you, damned if you do not situation since fans vote too.

Per Elaine S. Povich, Pew/Stateline Staff Writer, with *USAToday.com*<sup>26</sup>:

"The Bloomberg analysis<sup>27</sup> found that in the past 25 years, some 22 NFL teams have played in stadiums that were built or renovated using taxfree public borrowing. Sixty-four other teams baseball, hockey and basketball — also play in arenas constructed with similar financing.

Over the life of the \$17 billion of exempt debt issued to build stadiums since 1986, Bloomberg said, taxpayer subsidies to bondholders will total \$4 billion.

The tax-free bond provision dates to the 1986 Tax Reform Act. The authors of the bill actually sought to restrict the use of public subsidies for sports teams. The law said that no more than 10% of tax-exempt bonds' debt could be repaid by ticket sales or concession — a provision its authors thought would deter using them to finance stadiums because cities and states wouldn't want to obligate taxpayers to pay off the rest of the financing.

But it didn't work. The bonds became attractive to investors because states and cities got creative in the ways they paid off the rest of the bond obligations.

According to Zimmerman [Dennis Zimmerman, an economist who worked for the Congressional Budget Office], they've often stuck tourists with the bill by imposing hotel and rental car taxes that raise "a whopping amount of money that's paying off a stadium." Or, he said, they're "sticking constituents with the tax bill."

However, not all stadium proposals are created equal. Enter Stan Kroenke, owner of the now-Los Angeles Rams of the NFL. Per Darrell Preston with Bloomberg<sup>28</sup> news: "Billionaire Stan Kroenke is providing a business lesson to states and cities that for decades have poured taxpayer funds into professional sports stadiums: You may be better off letting the teams pay.

Kroenke's decision to move his National Football League Rams from St. Louis to a privately financed \$1.8 billion stadium in Inglewood, California, will wind up benefiting both cities, according to Moody's Investors Service. The Los Angeles suburb, which is letting the team foot the bill, should pick up additional revenue. St. Louis will lose little, the rating company said, and be freed from building another stadium while still paying for the old one [Edward Jones stadium<sup>29</sup>]."

Despite what politicians were offering or not, Kroenke did the right thing by paying his own way, making an investment in his team and the city.<sup>30</sup> Of course the St. Louis fans lost a team to a city that it was originally taken from, but overall it seems that the taxpayers benefitted in this deal. It is also true that Los Angeles is a large media market and was waiting to be plucked, but Kroenke refrained from using his leverage to move the team to gain incentives and tax exemptions.

#### **PLAYOFFS**

#### **Public Opinion**

"Sometimes the economic incentives aren't always offset. But often you get the blimp flying on Sundays, civic pride and important meeting place where people can meet." -Randy Gerardes, senior analyst with Wells Fargo Securities."<sup>31</sup>

Unsurprisingly, from casual fans to economists, we all have differing views on public stadium financing. The quote from Wells Fargo Securities senior analyst Randy Gerardes above takes the "it is what it is" approach in that fans love their teams and so they are willing to part with their money to fund something they love by voting for new taxes and bonds, etc. However, not everyone agrees:

> "Governments [American taxpayers who pay for and elect governments] should never finance a stadium with public money as it is simply a subsidy to rich team owners and a few

Published in *Entertainment & Sports Lawyer*, Volume 33, Number 1, Fall 2016. © 2016 by the American Bar Association. Reproduced with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.

businesses that stand to benefit from the events held there." -Jeffrey Dorfman, Contributor with Forbes.com."<sup>32</sup>

Dorfman goes on to argue that revenue from new business should never be a justification for upfront taxpayer dollars because that revenue does not directly benefit taxpayers or pay them back for their investment. Moreover, the increased revenue does not mean taxpayers made more money to spend at or around the new stadium, it is that they have not spent it on something else. For example, a person or family is likely to attend fewer movies in exchange for attending a professional sporting event in a new stadium paid with their tax dollars.<sup>33</sup>

Travis Waldron, Sports Reporter with *The Huffington Post*, <sup>34</sup> writes:

"All told, 29 of the NFL's 31 stadiums have received public funds for construction or renovation. In the last two decades, the analysis<sup>35</sup> found, taxpayers across the country have spent nearly \$7 billion on stadiums for a league that surpassed \$10 billion in revenue last season.

"Unfortunately, beneath all of the glitz and glamour, these venues are nothing more than monuments to corporate welfare and taxpayer handouts," David Williams, president of the Taxpayers Protection Alliance, said in a press release. "These stadiums have been built on the backs of taxpayers who had no or little say in the matter and in many cases have benefitted little or not at all.""

In some sense, the debate between public or private financing is about your priorities and interests. Schools, roads, and infrastructure? Or gambling, sports, and playoffs? Los Angeles Rams owner by funding the project privately is one recent example and contrast to exchanging public funding and coercion through love of team.<sup>36</sup>

#### **CHAMPIONSHIP & the OFFSEASON**

#### What the future may hold

"Can American professional sports leagues afford to entirely pay for their own stadiums and the operations surrounding them?" –Clifton B. Parker, Stanford News<sup>37</sup>

According to Stanford economist Roger Noll, in his interview with Parker,<sup>38</sup> he says yes they can and adds:

"Cities have very little bargaining power with an NFL team. As long as there are cities without NFL teams that are willing to subsidize a stadium, cities will have to pay part of the cost of a new stadium," [Noll] said.

Ultimately, Noll acknowledged, cities can decide whether to view these facilities as a form of "public consumption" rather than as financial investments.

Interestingly, he noted, the city of Pasadena turned down a proposal to convert the Rose Bowl to an NFL stadium – which would have meant adding luxury boxes and fancier concession areas, and reducing the number of seats by 20,000.

"In recent years, several cities have simply decided the price is too high," [Noll] said."<sup>39</sup>

When referring to Noll's opinion, Parker adds this: "professional sports stadiums do not generate local economic growth as advertised. He also says the stadium costs that NFL teams expect local governments to contribute have fallen due to increased political resistance to subsidies for sports teams."<sup>40</sup>

Economist Noll adds that the future may include smaller, but more luxurious stadiums as the internet crowd expands (or with the increase of virtual reality and daily fantasy sports). Noll also argues that the future will likely include more planning that involves economic development to an area, like a shopping mall with a stadium, much like the Inglewood, California development with Los Angeles Rams owner Stan Kroenke.

#### **Closing Arguments**

"Ultimately, the burden of public subsidies falls disproportionately on small cities that are the least able to bear the cost. For example, a \$200 million public subsidy for a new stadium ends up costing a small city like Santa Clara roughly \$1,650 per resident, compared to just \$50 a person for L.A. And, of course, teams in bigger cities, with their bigger markets and more

revenue, often do not need subsidies at all." –Richard Florida, Contributor with *The Atlantic City Lab*<sup>41</sup>

Richard Florida, with *The Atlantic City Lab*,<sup>42</sup> argues that to date professional sports franchises and their leagues have leveraged and made better deals for their teams. They have done this by (1) forcing updates to stadiums per league policies, (2) threatening relocation of the franchise if the stadium is not updated, and (3) by guaranteeing private investment and public benefit to an area where the new stadium will be built. The Atlanta Braves, San Diego Chargers, and many other stadiums are examples of the above approach to negotiations. Not surprisingly, and unfortunately, private businesspersons are better at negotiating deals than their government counterparts and often our elected officials enter bad deals as a result.

Florida continues and says that the Federal Government needs to step up and regulate the industry. He writes: "It's time put an end to runaway public subsidies to lucrative sports franchises. Is there any other industry or field of business where taxpayers are asked to hand over astronomical sums to billionaire owners and their millionaire employees? If cities and states

#### Endnotes

<sup>1</sup> <u>http://www.voiceofsandiego.org/topics/news/what-petco-park-can-teach-us-about-a-new-chargers-stadium/</u>
 <sup>2</sup> <u>https://www.csllegal.com/what-the-chargers-have-to-do-to-keep-the-team-in-san-diego/</u>

<sup>3</sup> <u>https://www.csllegal.com/what-the-15-chargers-can-learn-from-the-98-padres/</u>

http://www.sandiegouniontribune.com/news/2016/jun/23/d emaio-stadium-alternative/

http://www.sandiegouniontribune.com/news/2016/jun/29/s tadium-initiative-faces-high-vote-hurdle/

<sup>6</sup> <u>http://www.jsonline.com/news/statepolitics/scott-walker-</u> <u>to-sign-bucks-arena-funding-bill-at-wisconsin-state-fair-</u> <u>b99555622z1-321544131.html</u>

http://www.bizjournals.com/milwaukee/news/2016/06/10/ milwaukeebucks-owners-borrow-174-million-to.html <sup>8</sup> https://www.washingtonpost.com/politics/scott-walkerapproves-spending-250-million-on-milwaukee-bucksarena/2015/08/12/5cd72d54-4055-11e5-9561-4b3dc93e3b9a story.html

<sup>9</sup> <u>http://www.sfgate.com/49ers/article/Levi-s-Stadium-The-1-</u>
 3-billion-bet-5687409.php

cannot stop themselves, it's up to the federal government to step in."  $^{43}$ 

Whether Congress steps up is a question that has not been answered to date. Whether that is the right approach is another question entirely. Ultimately, our city and county governments need to do a better job of managing our tax dollars. Remember, we can still vote and can vote elected officials out of office. Next time, get up and vote with your heart and mind focused on the greater good, not the greater team and the stadiums in which they play.

Jeremy M. Evans is the Managing Attorney at California Sports Lawyer®, representing sports and entertainment professionals in contract drafting, negotiations, licensing, and career growth. Evans is the Director of the Center for Sports Law & Policy (CSLP) at Thomas Jefferson School of Law in San Diego, California, where he resides. He may be reached at Jeremy@CSLlegal.com, www.CSLlegal.com, or @JeremyMEvansESQ

#### 10

http://news.minnesota.publicradio.org/features/2004/05/14 gordonj sanfranpark/ <sup>11</sup> Id. <sup>12</sup> http://sanfrancisco.giants.mlb.com/sf/ballpark/ <sup>13</sup> <u>http://espn.go.com/mlb/attendance</u> <sup>14</sup> http://deadspin.com/heres-how-cobb-county-will-pay-forthe-braves-ballpar-1464404976 <sup>15</sup> http://www.ajc.com/news/news/breaking-news/cobbschools-2013-14-budget-to-mean-furloughs-fewe/nXtKp/ http://atlanta.braves.mlb.com/atl/ballpark/information/inde x.jsp?content=history http://www.forbes.com/sites/maurybrown/2013/11/11/atla nta-braves-plan-on-moving-into-new-672-million-ballpark-incobb-co/#440338883066 http://losangeles.dodgers.mlb.com/la/ballpark/information/i ndex.jsp?content=history <sup>19</sup> http://www.dodgersnation.com/in-a-new-york-minute-themiracle-mets-vs-dem-bums-from-brooklyn/2016/05/27/ <sup>20</sup> http://www.walteromalley.com/stad hist page2.php <sup>21</sup> http://articles.latimes.com/2012/apr/05/local/la-me-advchavez-ravine-20120405 <sup>22</sup> http://articles.latimes.com/2011/mar/30/sports/la-sp-0331-fernandomania-20110331

23
http://www.usatoday.com/story/news/politics/2015/03/16/s tateline-obama-proposal-taxpayer-subsidized-sports- stadiums/24845355/ <sup>24</sup> Id.
<ul> <li><sup>25</sup> Id.</li> <li><sup>26</sup> Id.</li> <li><sup>27</sup> http://www.bloomberg.com/news/articles/2012-09-05/in-</li> </ul>
stadium-building-spree-u-s-taxpayers-lose-4-billion <sup>28</sup> <u>http://www.bloomberg.com/news/articles/2016-02-</u> 02/billionaire-kroenke-s-rams-give-cities-lesson-in-stadium-
finance 29 http://www.stadiumsofprofootball.com/nfc/EdwardJonesDo
me.htm <sup>30</sup> http://www.latimes.com/sports/la-sp-nfl-rams-financing-
20160120-story.html <sup>31</sup> http://www.bloomberg.com/news/articles/2016-02- 02/billionaire-kroenke-s-rams-give-cities-lesson-in-stadium-
finance 32 http://www.forbes.com/sites/jeffreydorfman/2015/01/31/pu
blicly-financed-sports-stadiums-are-a-game-that-taxpayers- lose/#57e7a50d6183 <sup>33</sup> Id.
<sup>34</sup> <u>http://www.huffingtonpost.com/entry/taxpayers-nfl-</u> <u>stadiums_us_55f08313e4b002d5c077b8ac</u> <sub>35</sub>
http://protectingtaxpayers.org/index.php?blog&action=view &post_id=857#sthash.tgcghoDD.LliyakEU.dpbs <sup>36</sup> http://www.wsj.com/articles/cities-rethink-sports-stadium-
deals-1452734069 <sup>37</sup> http://news.stanford.edu/2015/07/30/stadium-economics- noll-073015/
<sup>38</sup> <u>Id.</u> <sup>39</sup> <u>Id.</u> <sup>40</sup> <u>Id.</u>
<ul> <li><sup>41</sup> <u>http://www.citylab.com/politics/2015/09/the-never-ending-stadium-boondoggle/403666/</u></li> <li><sup>42</sup> <u>Id.</u></li> </ul>
<sup>43</sup> <u>Id.</u>



### Firm, Company or Government Group ABA Membership

When your firm or organization chooses to join the American Bar Association, we provide resources making membership in the ABA easier. Contact us to see if your firm or organization participates.

Nearly 2,000 firms and organizations have already joined the program to enjoy many benefits:

- Reduce administrative paperwork through a single annual invoice for all members of your organization; no more individual employee reimbursements!
- Simplify membership updates through our online tool making adding or dropping members a snap
- Enjoy dedicated account service with a team to serve your unique needs

Join as a firm or company >>>

### Join as a Public Service Group >>>