Brooklyn Law Review

Volume 71
Issue 1
SYMPOSIUM:
Crawford and Beyond: Exploring The Future of the Confrontation Clause in Light of its Past

Article 16

2005

Public Finance and the West Side Stadium: The Future of Stadium Subsidies in New York

Gregory W. Fox

Follow this and additional works at: https://brooklynworks.brooklaw.edu/blr

Recommended Citation
Gregory W. Fox, *Public Finance and the West Side Stadium: The Future of Stadium Subsidies in New York*, 71 Brook. L. Rev. (2005).
Available at: https://brooklynworks.brooklaw.edu/blr/vol71/iss1/16

This Note is brought to you for free and open access by the Law Journals at BrooklynWorks. It has been accepted for inclusion in Brooklyn Law Review by an authorized editor of BrooklynWorks.

Public Finance and the West Side Stadium

THE FUTURE OF STADIUM SUBSIDIES IN NEW YORK

INTRODUCTION

The physical and economic landscape of New York City evolved on a grand scale during the more than 30 years that Robert Moses served as the State Parks Commissioner and as head of the Triborough Bridge and New York City Tunnel Authority.[1] Moses employed many questionable financing schemes and consistently circumvented legislative and public review in order to build the bridges, parks, buildings, and highways that defined his career.[2] The recently aborted plan to spend $2.2 billion to construct the New York Sports and Convention Center [hereinafter "West Side Stadium," "Stadium," or "NYSCC"][3] on the Far West Side of Manhattan resembled a Robert Moses project in several respects.[4] First,

---

[1] Robert Moses was the New York City Parks Commissioner from 1934-1960 and headed the Triborough Bridge and New York City Tunnel Authority from 1948-1968. Over the course of his life, Moses served in several other municipal capacities and ran for public office. *See generally* ROBERT A. CARO, THE POWER BROKER (1975) (biography of Robert Moses).

[2] *See id.* at 16.

[3] The stadium plan was rejected in June of 2005 when the New York State Public Authorities Control Board vetoed it by preventing New York State from allowing the Metropolitan Transportation Authority to transfer the land upon which the stadium would be built and by withholding the requisite $300 million state subsidy. Charles V. Bagli, *Bloomberg's Stadium Quest Fails; Olympic Bid is Hurt*, N.Y. TIMES, June 7, 2005, at A1 [hereinafter *Bloomberg's Stadium Quest Fails*].

[4] The general project plan describing the goals, anticipated uses, financing structure, and economic impacts of the NYSCC was adopted by the City and State of New York on November 4, 2004. *See* NEW YORK STATE URBAN DEVELOPMENT D/B/A EMPIRE STATE DEVELOPMENT CORPORATION, GENERAL PROJECT PLAN: NEW YORK SPORTS AND CONVENTION CENTER LAND USE IMPROVEMENT PROJECT & CIVIC PROJECT 1 (2004), *available at* http://www.manhattancb4.org/HKHY/docs/Jets%20GPP.pdf [hereinafter GENERAL PROJECT PLAN]. *See also* Press Release, Mayor Michael Bloomberg and Governor George Pataki, Mayor Michael R. Bloomberg and Governor George E. Pataki Announce Historic Plan to Create Convention Corridor on Manhattan's West Side, Including Expanded Javits Center and New 75,000 Seat Sports and Convention Center (Mar. 25, 2004), *available at* http://www.nyc.gov [hereinafter Mayor's Press Release] (follow "News and Press Releases" hyperlink under "Office of the Mayor"; then follow "2004 Events" hyperlink under "News and Press

the local and state governments attempted, through a complex financing structure, to avoid significant public review of this controversial plan.[5] Second, the magnitude of this project called for a massive alteration to the city's infrastructure that would have impacted a great deal more than the visual skyline of Manhattan.[6] Finally, as was the case with Robert Moses' projects, it may have taken a generation or more for the taxpayers of New York to fully pay for the incredible financial imposition that the stadium would have presented.[7]

Few debates over public projects in recent years have caused such a fervent division of opinions amongst New York residents and lawmakers as the plan to construct the West Side Stadium.[8] The proposal was part of the ambitious Hudson Yards Development Plan for the West Side of Manhattan: a development plan that called for dozens of new commercial and residential buildings, the extension of the Number 7 subway line, a renovated and expanded Jacob K. Javits Convention Center, extensive rezoning, new open spaces and parks, and the construction of a massive platform over the active Hudson Rail Yards.[9] The proposed stadium would, most notably, have become the new home of the New York Jets football team.[10] The West Side Stadium was also intended to serve as an element of the northward extension of the Javits Convention Center,[11] to lure mega-sports and entertainment events to New

---

Releases"; then follow "March 2004" hyperlink under "2004"; then scroll down to "March 25, 2004" press releases and follow "Read the press release" hyperlink).

[5] The lack of sufficient opportunities for public review of this plan is discussed *infra* Part III.B.

[6] *See* Mayor's Press Release, *supra* note 4.

[7] *See generally* CARO, *supra* note 1. For an in-depth discussion of the risks to taxpayer dollars associated with the West Side Stadium financing plan, see *infra* Part III.A.

[8] *See* Charles V. Bagli, *$11.5 Million Spent on Fight Over Stadium on West Side*, N.Y. TIMES, Oct. 26, 2004, at B3.

[9] New York City estimated that the entire Hudson Yards Development would cost about $3 billion excluding the cost of the New York Sports and Convention Center. *See* Presentation of Hudson Yards Infrastructure Corporation Financing Plan to City Planning Commission (July 12, 2004), http://www.nyc.gov/html/dcp/pdf/hyards/financing_for_cpc.pdf [hereinafter Presentation of Hudson Yards Corporation Financing Plan]. Without the stadium, the future of the Hudson Yards development and the Javits Center are currently unknown. *See* Charles V. Bagli, *New Proposals Afoot for Javits Expansion and Now-Jetless Railyards*, N.Y. TIMES, Aug. 8, 2005, at B1.

[10] GENERAL PROJECT PLAN, *supra* note 4, at 5.

[11] On December 7, 2004, the New York State Assembly approved a bill to expand the Javits Center after language was removed that could have been read to approve the building of the West Side Stadium as part of that expansion. This legislation allowed for the expansion of the Javits Center two city blocks to the north. *See* Press Release, Assembly Speaker Sheldon Silver, Remarks by Speaker Sheldon

York such as the Super Bowl,[12] and to provide the main stage for the coveted 2012 Summer Olympic Games.[13]

Much of the rift in opinions over the West Side Stadium proposal was due to the fact that the plan required $600 million in taxpayer funds to cover the construction of the stadium, which would have then become property of the Jets.[14] Although municipalities commonly finance sports facilities using public funds,[15] this proposal represented what would have gone down in history as the largest public investment in the most expensive football stadium in the nation.[16]

Now that the stadium is not being built, New York taxpayers have avoided paying the extraordinary costs of this project. This victory for opponents of publicly subsidized stadiums, however, appears to be short lived as Major League Baseball's (MLB) Yankees and Mets and the National Basketball Association's (NBA) Nets are planning to build sports facilities that require large public investments as well.[17]

Since municipalities began appropriating substantial amounts of public dollars for professional sports stadiums and arenas, these financing plans have been consistently met by

---

Silver, Bill Signing: Javits Center Expansion (Dec. 8, 2004), *available at* http://assembly.state.ny.us/Press/20041208; Charles V. Bagli, *Albany Votes to Expand Javits Center*, N.Y. TIMES, Dec. 8, 2004, at B1.

12 GENERAL PROJECT PLAN, *supra* note 4, at 1. *See also* Charles V. Bagli, *Stadium Vote Linked to Olympics Bid and West Side's Future*, N.Y. TIMES, Nov. 3, 2004, at B1.

13 The International Olympic Committee ended New York's chances of hosting the 2012 Summer Olympic Games when it chose London as the host city on July 6, 2005. *See* International Olympic Committee website *at* http://www.olympic.org/uk/games/london/election_uk.asp (last visited Oct. 5, 2005).

14 Presentation of Hudson Yards Corporation Financing Plan, *supra* note 9. *See also* Craig Horowitz, *Stadium of Dreams*, NEW YORK MAGAZINE, June 21, 2004, *available at* http://www.newyorkmetro.com/nymetro/realestate/urbandev/features/9307/index.html. For an in-depth discussion of the funding proposal for the stadium, see *infra* Part II.C.

15 *See* Roger G. Noll & Andrew Zimbalist, *"Build the Stadium – Create the Jobs!"*, *in* SPORTS, JOBS & TAXES: THE ECONOMIC IMPACT OF SPORTS TEAMS AND STADIUMS 2 (Roger G. Noll & Andrew Zimbalist eds., 1997) [hereinafter SPORTS, JOBS & TAXES].

16 *See* Raymond J. Keating, Cato Inst., *Sports Pork: The Costly Relationship between Major League Sports and Government*, POLICY ANALYSIS NO. 399, Apr. 5, 1999, at 11-15. For a summary of the costs and logistics of planned and recently completed professional football arenas compiled by a sports reform organization, see League of Fans: Summary of Current National Football League Stadium Deals *at* http://www.leagueoffans.org/nflstadiumdeals.html (last visited Oct. 1, 2005).

17 Charles V. Bagli, *More Costs To Taxpayers Seen in Stadium Plans*, N.Y. TIMES, June 19, 2005, § 1, at 27 [hereinafter *More Costs To Taxpayers*]; Charles V. Bagli, *What the Team Wants And What the City Gets*, N.Y. TIMES, Jan. 16, 2005, § 1, at 31 [hereinafter *What the Team Wants*].

taxpayer lawsuits challenging their legality under state constitutions.[18] These lawsuits commonly attack the use of tax-exempt bonds and other forms of public subsidy to fund the construction of stadiums, which bestow a great benefit to their owners while placing a massive risk-heavy debt upon the cities and states that fund them.[19] The plan to build the West Side Stadium was defeated in the political arena before it faced similar legal challenges from New York residents.[20] Accordingly, New York courts never had the chance to rule definitively on whether the expenditure of hundreds of millions of public dollars for privately owned stadiums is permissible under the state constitution.

In order to defeat the West Side Stadium plan on the grounds that the public subsidy was too great, opponents would have needed to overcome the national tendency of state courts to resolve suits brought against publicly funded stadiums in favor of the municipality.[21] These opponents, however, will have the opportunity to challenge publicly financed stadiums in the near future as the Yankees, Mets, and Nets plan to build stadiums using New York taxpayer dollars.[22] If the New York

---

[18] In recent years, taxpayers and community groups have brought suits to enjoin the public financing of stadiums in many large cities such as Phoenix, Tampa, Chicago, Baltimore, Philadelphia, Pittsburgh, Seattle, and Milwaukee. *See* Long v. Napolitano, 53 P.3d 172 (Ariz. Ct. App. 2002); Poe v. Hillsborough County, 695 So. 2d 672 (Fla. 1997); Friends of the Parks v. Chicago Park Dist., 786 N.E.2d 161 (Ill. 2003); Kelly v. Marylanders for Sports Sanity, 530 A.2d 245 (Md. 1987); Cohen v. City of Philadelphia, 806 A.2d 905 (Pa. Commw. Ct. 2002); Allegheny Inst. Taxpayers Coal. v. Allegheny Reg'l Asset Dist., 727 A.2d 113 (Pa. 1999); King County v. Taxpayers of King County, 949 P.2d 1260 (Wash. 1997); CLEAN v. State, 928 P.2d 1054 (Wash. 1996); Libertarian Party of Wisconsin v. State, 546 N.W.2d 424 (Wis. 1996). For further discussion of the use of public funds to finance stadiums, see *infra* Part I.

[19] *See, e.g.*, *CLEAN*, 928 P.2d at 1054; *Libertarian Party of Wisconsin*, 546 N.W.2d at 424.

[20] On December 22, 2004, opponents of the proposed stadium filed suit against New York City in Supreme Court in Manhattan. The suit alleged that the approval of the Final Environmental Impact Statement for the project was based upon faulty and misleading information, not that the public expenditure was unconstitutional. *See* Press Release, Hell's Kitchen/Hudson Yards Alliance, Local Residents and Businesses File Suit Against MTA & New York City to Prevent Violation of State and City Environmental Laws and State's Freedom of Information Law (Dec. 22, 2004) (on file with author). *See also* Charles V. Bagli, *2 Groups Sue to Halt Action on Jets Stadium*, N.Y. TIMES, Dec. 23, 2004, at B1.

[21] State courts throughout the nation that have addressed this issue have rarely invalidated publicly financed stadium plans. *See, e.g.*, *Poe*, 695 So. 2d 672; *Taxpayers of King County*, 949 P.2d 1260; *Libertarian Party of Wisconsin*, 546 N.W.2d 424. *But see* Opinion of the Justices to the House of Representatives, 250 N.E.2d 547 (Mass. 1969); Brandes v. City of Deerfield Beach, 186 So. 2d 6 (Fla. 1966). The history of taxpayer challenges to publicly financed stadiums will be discussed *infra* Part III.A.

[22] *See* Bagli, *More Costs To Taxpayers*, *supra* note 17; Bagli, *What the Team Wants*, *supra* note 17. The Jets have agreed with the New York Giants to jointly fund

courts hearing these taxpayer challenges carefully balance the risks and benefits of committing so much public money to privately owned stadiums, as the judiciary in Massachusetts does,[23] these stadium funding plans should be held unconstitutional.

This note will analyze the economic feasibility of the proposed plan to fund the construction of the West Side Stadium, the significant risks it posed, and the future of publicly subsidized stadiums in New York. Part I will address the public financing of stadiums using tax-exempt bonds, federal attempts to curb the use of tax-exempt bonds for professional sports stadiums, and how payments in lieu of taxes represent another means of subsidizing stadium construction. Part II will describe the logistics of the proposed West Side Stadium construction, including the financing mechanisms that the City and State planned to use and the story behind the ultimate demise of this stadium plan.

Part III will analyze the significant risks and inequities particular to the West Side Stadium proposal. First, the proponents of the stadium relied on a flawed financial study, which allowed them to announce unreasonably optimistic revenue predictions that were unlikely to occur. Under more realistic figures New York was at risk of failing to meet the massive debt burden that it would have faced.[24] Second, without significant public review of the plan to build the NYSCC and ample opportunities to explore alternative options for the West Side, this extremely valuable waterfront property may have become committed to a stadium that underutilized the area's potential. Finally, the social costs of committing vast amounts of public dollars to financing a stadium are exceedingly great at a time when New York City desperately needs additional funds for fire protection, education, public transportation, housing, and security.

---

a football stadium in New Jersey to house both clubs. It is unclear what the public costs of this project will be, but early signs indicate that the teams will not be asking the taxpayers of New Jersey to cover large portions of the stadium costs. *See* Charles V. Bagli, *Giants and Jets Agree to Share a New Stadium*, N.Y. TIMES, Sep. 30, 2005, at A1 [hereinafter *Giants and Jets Agree*].

[23] *See* Brian Adams, Note, *Stadium Funding in Massachusetts: Has the Commonwealth Found the Balance in Private vs. Public Spending?*, 51 CATH. U. L. REV. 655, 671-75 (2002). The Massachusetts approach to publicly financed stadiums will be discussed *infra* Part IV.

[24] *See* NEW YORK CITY INDEPENDENT BUDGET OFFICE, WEST SIDE STADIUM: TOUCHDOWN FOR THE CITY? 3-4 (July 1, 2004), http://www.ibo.nyc.ny.us/newsfax/insidethebudget131.pdf [hereinafter TOUCHDOWN FOR THE CITY?].

Many stadium financing schemes have withstood challenges in state courts under the public purpose doctrine: a doctrine that most states have adopted into their constitutions to prevent the public funding of projects that benefit private entities rather than the state and its citizens.[25] Part IV will describe the evolution of the public purpose doctrine in relation to stadium financing and analyze its current effectiveness as a litigation tactic for opponents of publicly funded stadiums. Using the plan to finance the West Side Stadium as an example of how stadium funding plans provide massive private benefits to team owners that vastly overshadow the speculative benefits to the public, this Part will then demonstrate how such plans violate the public purpose doctrine.

Part V will conclude this note by suggesting that although the taxpayers appeared to have won the fight against publicly financed stadiums when the NYSCC plan was defeated, the public is still at risk of being forced to help fund stadiums for the Yankees and Mets, and an arena in Brooklyn for the Nets.[26] In fact, it may be the case that by asking for such a large amount of public money, the failed West Side Stadium plan has actually raised the bar, and future stadium proposals will ask for more public dollars than stadium developers requested before. If this is the case, winning the recent fight against the West Side Stadium may only be the beginning of a long struggle to block the use of massive amounts of public dollars to fund privately owned stadiums. This note will conclude with the message that in future legal challenges to publicly funded stadiums, New York courts should send the message to wealthy sports franchises that they can no longer rely on New York taxpayer dollars to fund their playing fields.

I. THE FUNDING OF STADIUMS USING TAX-EXEMPT BONDS, STADIUM AUTHORITIES, AND PAYMENTS IN LIEU OF TAXES

Municipalities have been using taxpayer dollars to fund the construction of professional sports stadiums since the

[25] *See, e.g.*, N.Y. CONST. art. VII, § 8 ("The money of the state shall not be given or loaned to or in aid of any private corporation or association, or private undertaking; nor shall the credit of the state be given or loaned to or in aid of any individual, or public or private corporation or association, or private undertaking.").

[26] *See* Bagli, *More Costs to Taxpayers*, *supra* note 17.

1920s.[27] Although some cities in the early twentieth century did utilize public funds to pay for stadium construction, the majority of stadiums in the United States at that time were privately built and owned by the team or teams that played there.[28] Skyrocketing costs of construction, massive expansion of professional sports leagues, and perhaps most significantly, the threat of losing a team and its revenues to another city through relocation, have all contributed to the drastic shift towards the public subsidy of stadiums.[29] Accordingly, since the 1960s, the United States has been experiencing a stadium construction boom,[30] during which almost all major league sports teams have played in one or more stadiums that were constructed or renovated using taxpayer dollars.[31]

A. The Use of Tax-Exempt Bonds to Finance Stadiums

The predominant method for financing stadiums today is through the issuance of tax-exempt bonds.[32] The proposal for

---

[27] Cleveland's Municipal Stadium, Baltimore's Memorial Stadium, and the Los Angeles Memorial Coliseum were built with public funds. Noll & Zimbalist, *supra* note 15, at 2. The Los Angeles and Cleveland stadiums were constructed after state courts rejected taxpayer lawsuits challenging the public expenditure. *See* Los Angeles v. Dodge, 197 P. 403 (Cal. Dist. Ct. App. 1921); Meyer v. City of Cleveland, 171 N.E. 606 (Ohio Ct. App. 1930).

[28] Noll & Zimbalist, *supra* note 15, at 2 ("Publicly subsidized facilities for professional sports are hardly a new phenomenon . . . [b]ut, historically, publicly financed stadiums were exceptions to the rule. Until about 1960, the vast majority of new facilities were privately owned, usually by one of the teams that played in them."). Some historic examples of stadiums built and maintained with private funds include New York City's Yankee Stadium, Chicago's Wrigley Field, and Boston's Fenway Park. *See* Zachary A. Phelps, Note, *Stadium Construction for Professional Sports: Reversing the Inequities Through Tax Incentives*, 18 ST. JOHN'S J. LEGAL COMMENT. 981, 983 (2004).

[29] Noll & Zimbalist, *supra* note 15, at 3.

[30] Daniel J. Lathrope, *Federal Tax Policy, Tax Subsidies, and the Financing of Professional Sports Facilities*, 38 S. TEX. L. REV. 1147, 1148 (1997).

[31] Noll & Zimbalist, *supra* note 15, at 3. *See also* Lathrope, *supra* note 30, at 1148-49; Alex Frangos, *Bigger and Better: Pro Football Teams have Ambitious Plans for a New Generation of Stadiums; Here's a Look at Their Chances for Success*, WALL ST. J., Sept. 20, 2004, at R4 ("Over the past 13 years of concrete pouring and turf laying, 25 of the [NFL's] 32 teams moved into new or gussied-up stadiums.").

[32] James L. Musselman, *Recent Federal Income Tax Issues Regarding Professional and Amateur Sports*, 13 MARQ. SPORTS L. REV. 195, 196 (2003). Other financing mechanisms that are often used to fund stadiums include lotteries, sales taxes, and levies on parking, hotels, alcohol, car rentals, and cigarettes. Noll & Zimbalist, *supra* note 15, at 14; Lisa-Michele Smith, Note, *History, Rivalry, Envy, and Relocation: Will the Sale of the New York Jets Give Rise to a New Stadium?*, 7 SPORTS LAW. J. 309, 322 (2000); Scott A. Jensen, Note, *Financing Professional Sports Facilities With Federal Tax Subsidies: Is it Sound Tax Policy?*, 10 MARQ. SPORTS L.J. 425, 430-31 (2000). Since these mechanisms would not have been used directly to fund the construction of the West Side Stadium, they will not be discussed in this note.

the NYSCC was no exception.[33] This type of financing involves the issuance of tax-exempt bonds by a municipality or state that will in turn be repaid using taxpayer dollars. State and local governments prefer this method because it allows them to pay below-market interest rates, which bondholders are willing to accept because the interest on these bonds is exempt from federal taxation.[34] This means that when a state or municipality issues a bond to fund the construction of a stadium, not only are the taxpayers of that state or municipality subsidizing the cost of construction by assuming the debt, but the federal government is subsidizing it as well by forfeiting tax revenues.[35] Many proponents of publicly financed stadiums justify the policy of indirect subsidization by the federal government by claiming that the "'benefits of [public capital facilities] extend beyond the jurisdiction that provides them,' and will therefore, without the subsidy, be provided at less than the optimum level."[36] Many economists, however, claim that the economic benefits of stadiums to the jurisdiction are highly exaggerated, thus rendering the local and state subsidy justifications weak and the federal justification even weaker.[37]

The federal government has attempted to curtail the indirect federal subsidy of professional sports facilities on several occasions, but the practice is occurring with as much frequency, if not more, than ever.[38] One such attempt was the Tax Reform Act of 1986, which deemed a bond to be a "private activity bond," and thus taxable, if more than ten percent of the bond proceeds are used by a nongovernmental entity and more

---

[33] The financing structure for the NYSCC proposal will be discussed in depth *infra* Part II.C.

[34] Musselman, *supra* note 32, at 196. *See also* WILLIAM A. KLEIN, JOSEPH BANKMAN & DANIEL N. SHAVIRO, FEDERAL INCOME TAXATION 184-85 (13th ed. 2003).

[35] Musselman, *supra* note 32, at 200.

[36] *Id.* (quoting Lathrope, *supra* note 30, at 1159).

[37] Lathrope, *supra* note 30, at 1159-60.

> Because the state and local economic benefits from a publicly owned sports facility are generally exaggerated, it is extremely difficult to justify the federal tax subsidy. . . . Moreover, the economic justifications for the subsidy are even weaker from a federal perspective than from a state and local one. While increased spending at a sports facility may produce some local economic activity, there will be very little new, net, *national* economic activity generated by a publicly owned sports facility.

Id. *See also* Dennis Zimmerman, *Subsidizing Stadiums: Who Benefits, Who Pays?*, in SPORTS, JOBS & TAXES 119, *supra* note 15, at 133 ("[T]o the federal taxpayer, very few economic benefits are created to offset the cost of the subsidy. . . .").

[38] Zimmerman, *supra* note 37, at 137.

than ten percent of the debt service is secured by property used in a private business.[39] This law has been interpreted to mean that a government bond issue may exceed "one but not both of the 10 percent bond tests."[40] Owners of recently constructed stadiums have circumvented the requirements of the second ten percent test by servicing at least ninety percent of the debt using non-stadium revenues.[41] By repaying their debts in this manner, less than ten percent of the bonds are secured by the private business that is occupying the stadium and the bond cannot be considered a private activity bond for tax purposes.[42]

So called "stadium authorities" are another way for municipalities to avoid "private activity bond" status and maintain federal tax exemptions.[43] This is possible because a tax is not considered to be stadium related if it is "generally applicable."[44] By establishing an authority as a separate unit of the state government that manages several stadiums, the taxes on event tickets are generally applicable as long as they are applied to all events equally. This allows stadium authorities to circumvent the ten percent of stadium debt service requirement of the Internal Revenue Code by servicing their debts with tax proceeds from ticket sales that are not considered to be stadium related.[45]

B. *Congressional Efforts to Limit the Use of Tax-Exempt Bonds for Stadiums*

In an effort to curb the issuance of local tax-exempt bonds to finance stadiums, Senator Daniel Moynihan introduced the Stop Tax-Exempt Arena Debt Issuance Act (STADIA)[46] in 1996, 1997, and 2000.[47] This bill proposed an

---

[39] I.R.C. § 141 (2000); Zimmerman, *supra* note 37, at 136.

[40] Zimmerman, *supra* note 37, at 137. *See also* Lathrope, *supra* note 30, at 1156-57.

[41] Zimmerman, *supra* note 37, at 137.

[42] *Id.*

[43] *Id.* at 138.

[44] The applicable Tax Code provision entitled "Exception for tax assessment, etc., loans" provides, "a loan is described in this paragraph if such loan-- (A) enables the borrower to finance any governmental tax or assessment of general application for a specific essential governmental function . . . ." I.R.C. § 141(c)(2) (2000).

[45] Zimmerman, *supra* note 37, at 138. A stadium authority was created in Maryland for the purpose of avoiding "private activity bond" status in connection with the bonds issued for the construction of Camden Yards, where MLB's Baltimore Orioles currently play their home games. *See id.*; Kelly v. Marylanders for Sports Sanity, 530 A.2d 245, 246 (Md. 1987).

[46] S. 1880, 104th Cong. (1996).

amendment to section 141 of the Internal Revenue Code[48] that would define a private activity bond (one that does not qualify for federal tax exemption) as "any bond issued as part of an issue if the amount of the proceeds of the issue which are to be used (directly or indirectly) to provide professional sports facilities exceeds the lesser of-- (A) 5 percent of such proceeds, or (B) $5,000,000."[49] This bill addressed several concerns. First, by allowing local governments to issue tax-exempt bonds to finance stadiums, wealthy franchise owners were the true beneficiaries, not the municipality.[50] Second, Senator Moynihan and the other supporters of this bill also feared the tendency of municipalities spending beyond their means when issuing debt to pay for sports facilities.[51] Finally, the proponents of this bill did not believe Congress intended to create this loophole allowing for the use of tax-free bonds to pay for stadiums that benefit private organizations when it enacted section 141 of the Internal Revenue Code.[52] Although Senator Moynihan's concerns were valid, as the following analysis of the plan to finance the West Side Stadium will illustrate, Congress did not enact this stadium reform.[53]

In 1996, Senators Mike Dewine and John Glen introduced the Team Relocation Taxpayer Protection Act.[54] This bill would have denied federal tax benefits associated with the relocation of a National Football League (NFL) franchise if the franchise broke an unexpired lease with a publicly owned facility.[55] This bill only applied when: (1) the team was relocating to a publicly owned facility; (2) the team's average attendance was at least seventy-five percent of stadium capacity; and (3) the voters of the team's jurisdiction approved

---

47 Musselman, *supra* note 32, at 201; 146 CONG. REC. S9257-02 (daily ed. Sept. 26, 2000).

48 I.R.C. § 141. For a discussion of section 141, see 1 BORIS I. BITTKER & LAWRENCE LOKKEN, FEDERAL TAXATION OF INCOME, ESTATES, AND GIFTS, §§ 15.2.1-15.3.2 (3d ed. 1999).

49 S. 1880, § 2.

50 Phelps, *supra* note 28, at 996. *See also* Michael D. Erickson, Note, *Upon Further Review…When it Comes to Tax-Exempt, Stadium Finance Reform, Stop Cheering for the Popular Proposals and Adopt Simple Reform*, 21 VA. TAX REV. 603, 615-16 (2002).

51 Phelps, *supra* note 28, at 996.

52 *Id.*

53 Musselman, *supra* note 32, at 201.

54 S. 1529, 104th Cong. (1996).

55 *Id.*, § 2.

taxes to improve the existing facilities or build new facilities.[56] This bill also failed to pass.[57]

Shortly after these bills were defeated, Senator Arlen Specter introduced the Stadium Financing and Franchise Relocation Act of 1999, which was another attempt at reducing the public costs of professional sports facility construction.[58] This act would have limited the cost to the public by forcing MLB and the NFL to create a trust fund from which part of the stadium construction costs would be paid,[59] as well as drastically limit a franchise's ability to relocate.[60] This legislation was also not enacted by Congress.[61]

Although STADIA, the Team Relocation Taxpayer Protection Act, and the Stadium Financing and Franchise Relocation Act all failed to become federal law,[62] they do demonstrate that members of Congress are deeply concerned that federal tax exemptions for stadium construction represent an inequity to local and federal taxpayers. Notwithstanding these congressional efforts to deter teams from seeking public subsidy of stadiums through tax-exempt bonds, the practice pervades today.[63]

C. Payments in Lieu of Taxes as a Form of Local Subsidy

Some states, including New York, use payments in lieu of taxes (PILOTs) as an additional method of financing stadium construction.[64] PILOTs are, as defined by the laws of New York, "any payment made to an agency, or affected tax

---

56 *Id. See also* Musselman, *supra* note 32, at 201-02.

57 Musselman, *supra* note 32, at 202.

58 S. 952, 106th Cong. (1999).

59 *Id.*, § 1(b).

60 *Id.*, § 1(a)(2)(C).

61 Phelps, *supra* note 28, at 1003.

62 Senator Specter and others attribute this failure to the strong lobbying efforts of the professional sports leagues. Phelps, *supra* note 28, at 1002 (citing 145 CONG. REC. 4674 and Martin J. Greenberg, *Stadium Financing and Franchise Relocation Act of 1999*, 10 MARQ. SPORTS L.J. 383, 398 (2000)). The Government Finance Officers Association also opposed these Congressional actions because they appeared to preempt local and state governments from making financing decisions affecting their jurisdictions. Practicing Law Institute, Government Finance Officers Association (GFOA) Fact Sheet: Sports Facilities Bonds (1998).

63 The plan to construct the West Side Stadium involved the issuance of these tax-exempt bonds. *See* GENERAL PROJECT PLAN, *supra* note 4, at 6-7.

64 *See* N.Y. GEN. MUN. LAW § 696 (McKinney 2005). The plan to finance the West Side Stadium included the use of PILOTs. *See* GENERAL PROJECT PLAN, *supra* note 4, at 7. For a more detailed description of the plan to finance the NYSCC, see *infra* Part II.C.

jurisdiction equal to the amount, or a portion of, real property taxes, or other taxes, which would have been levied by or on behalf of an affected tax jurisdiction if the project was not tax exempt by reason of agency involvement."[65] This means that private contributions to the cost of the stadium may be paid to the municipality in amounts equal to the property taxes that would have been due to that municipality. PILOTs become a form of local subsidy when a municipality lends capital in the form of municipal bonds to the private developer in order to cover the private share of the stadium construction costs.[66] This is because the municipality is forfeiting its right to receive property taxes in exchange for payments that merely service the debt owed to it by the private entity.

The NYSCC proposal called for the issuance of at least $600 million in tax-exempt bonds and the use of PILOTs by the Jets.[67] The next part will describe what that massive investment would have went towards if the West Side Stadium had been built.

II. THE PLAN TO FUND AND CONSTRUCT THE NYSCC

The stadium boom that has resulted in the construction of new publicly subsidized sports facilities throughout the nation has reached New York City in a huge way.[68] Under Rudolph Giuliani's mayoral administration, there was discussion about building a stadium on the West Side to lure the Jets to New York, but that plan never came to fruition.[69] In March of 2004, the City and State of New York, in conjunction with the New York Jets, announced plans to construct a $1.4 billion retractable roof stadium and convention center on the

---

[65] N.Y. GEN. MUN. LAW § 854(17) (McKinney 2005).

[66] New York City planned to issue bonds to the Jets and accept payments in lieu of taxes to service the bond debt. GENERAL PROJECT PLAN, *supra* note 4, at 7. The use of PILOTs for financing the West Side Stadium will be further discussed *infra* Part II.C.

[67] *See infra* Part II.C.

[68] The NFL's Jets are only one of the New York Metropolitan Area's nine professional sports teams that are seeking new or substantially renovated playing facilities. The owners of the NFL's Giants, MLB's Yankees and Mets, the National Hockey League's Islanders, Devils, and Rangers, and the NBA's Knicks and Nets are all currently planning to upgrade their team's home. Keating, *supra* note 16, at 16; *Jets and Giants Agree*, *supra* note 22.

[69] *See* Smith, *supra* note 32, at 326; Dan Barry, *Giuliani Offers Plan to Put Up Sports Complex*, N.Y. TIMES, Jan. 15, 1999, at A1.

Far West Side of Manhattan.[70] That announcement polarized local residents and politicians and initiated a battle over the future of the Far West Side that was waged in the media, in City Hall, and on the city's streets.[71]

The proponents of the stadium plan included Michael Bloomberg, mayor of New York City, George Pataki, governor of New York, unions representing the food service, hotel, and construction industries, and the organizations trying to bring the Olympic Games to New York.[72] Those who supported the plan pointed to the jobs that would have been created by the construction and operation of the West Side Stadium and the revenues that would have been generated from stadium events as exceeding the risks of allocating $600 million in public dollars.[73] In his announcement of the plan, Mayor Michael Bloomberg said that the NYSCC would "enable . . . New York City to vie for hundreds of events – and millions of dollars in economic activity – now lost to other cities" as well as "create hundreds of thousands of jobs in construction, tourism and new businesses, large and small."[74] These statements are typical of those made throughout the nation by politicians in municipalities seeking to justify the construction of a stadium.[75]

Opponents of the stadium included community organizations such as the Hell's Kitchen/Hudson Yards Alliance[76] and the Citizens Union,[77] Community Board 4, which represents that area,[78] several elected officials,[79] owners of

---

70 Associated Press, *New York Proposes New Stadium Complex*, WALL ST. J., Mar. 26, 2004, at B2.

71 *See, e.g.*, Bagli, *supra* note 8 ("The debate over a proposed $1.4 billion football stadium project for the Jets has entered the financial stratosphere, with proponents and opponents spending a combined $11.5 million on television advertising, and on lobbyists, T-shirts, buttons, leaflets and CD's, according to a report issued yesterday by Common Cause."); Charles V. Bagli, *Some Heavy Artillery is Aimed at the West Side Stadium Plan*, N.Y. TIMES, Aug. 12, 2004, at B7; Jennifer Steinhauer, *On One Side, Cheerleading; the Other, 'Block That Stadium!'*, N.Y. TIMES, June 4, 2004, at B1.

72 *See* Mayor's Press Release, *supra* note 4; Steinhauer, *supra* note 71.

73 Mayor's Press Release, *supra* note 4.

74 *Id.*

75 *See* Noll & Zimbalist, *supra* note 15, at 1-2.

76 *See* Charles V. Bagli, *Build Platform, Group Says, but Please Hold the Stadium*, N.Y. TIMES, Dec. 2, 2004, at B4.

77 *See* Charles V. Bagli, *Citizens Union Urges City to Rethink Stadium Plan*, N.Y. TIMES, Aug. 11, 2004, at B6.

78 Letter from Manhattan Community Board No. 4 to the Chair of the City Planning Commission (Aug. 23, 2004), *available at* http://www.manhattanCB4.org (last visited Sep. 1, 2005).

theaters in the nearby theater district,[80] the Regional Plan Association,[81] as well as Cablevision, the owner of Madison Square Garden.[82] The reasons given by these groups for opposing the stadium included the economic risk to the City's budget from such an immense public outlay, the need to use tax dollars for more pressing social concerns such as schools, security, and housing, and the traffic and noise that the stadium would create.[83]

A. *Unsatisfied with Their Current Home Field in New Jersey, the Jets are Looking to Build a New Home*

Before discussing this hotly contested stadium proposal, it is helpful to understand why the Jets were so eager to leave their current home in New Jersey and why many New York politicians were eager to lure them to the West Side.[84] Organized as the New York Titans in 1959, early in their history, the Jets played their home games at the Polo Grounds in upper Manhattan (1961-1963) and Shea Stadium in Queens (1964-1983).[85] In 1984, the team announced that they were moving into Giants Stadium at the Meadowlands, the home of the other New York Metropolitan NFL franchise.[86] Although the Jets ownership insisted that they would return to New York City when a "first-class professional stadium was ready

[79] *See* Jefferson Siegel, *Miller, Quinn Team Up On 23rd to Oppose a West Side Stadium*, THE VILLAGER, Apr. 13-19, 2005, http://www.thevillager.com/villager_102/millerquinnteamupon23.html (last visited Oct. 6, 2005).

[80] Charles V. Bagli, *Broadway Joins Criticism of West Side Stadium Plan*, N.Y. TIMES, Feb. 24, 2004, at B3.

[81] The Regional Plan Association (RPA) is an independent, not-for-profit regional planning organization that seeks to improve the economic competitiveness of the New York-New Jersey-Connecticut region through research, planning, and advocacy. For more information, see the RPA homepage, http://www.rpa.org.

[82] Cablevision spent millions in a television campaign against the stadium and brought several lawsuits to block construction of this stadium. *See* Bagli, *supra* note 8; *In re* Madison Square Garden, L.P., No. 104644/05 (N.Y. Sup. Ct. June 2, 2005), *aff'd*, 799 N.Y.S.2d 186 (N.Y. App. Div. 1st Dep't 2005). For more discussion of this dispute, see *infra* Part III.A.

[83] Charles V. Bagli, *Stadium Opponents Criticize City for Adopting Jets' Economic Study*, N.Y. TIMES, May 23, 2004, § 1, at 25; Letter from Manhattan Community Board No. 4, *supra* note 78.

[84] The Jets currently plan to stay in New Jersey, but no longer as tenants in another team's stadium. *See Giants and Jets Agree*, *supra* note 22.

[85] *See* The New York Jets Historical Highlights, http://www.newyorkjets.com/history (last visited Sep. 1, 2005).

[86] *Id.*

for occupancy," the team is currently still playing their home games in Giants Stadium in New Jersey.[87]

The Jets current home field situation is considered by many as one of the worst stadium deals in the NFL.[88] Although the team consistently sells out its home games, the Jets generate less-than-optimal revenues. The reason for this is the rent the Jets annually pay to the Meadowlands and unfavorable concessions, parking, and luxury box contracts.[89] The Jets have been desperate to have a stadium of their own since the 1980s and were pushing as hard as they could for a stadium that would be ready for use by 2009, since their lease with the Meadowlands expired at the end of the 2008 football season.[90] These timing concerns did not allow the proponents of this plan much time to obtain approval for the stadium.[91]

B. The NYSCC and the Large-Scale Development of the West Side

The Jets joined forces with the Mayor's office, the organizations attempting to bring the Olympic Games to New York, and several unions in order to push for the construction of the NYSCC. The 75,000-seat retractable-roof-stadium was designed by architect Kohn Pederson Fox and was presented to the public as part of the immense Hudson Yards development plan.[92] The West Side Stadium would also have been fully convertible into an 180,000 square foot exhibit hall for conventions and trade shows by removing the field surface and

---

[87] Smith, *supra* note 32, at 317-18.

[88] *Id.* at 323 (citing JAMES QUIRK & RODNEY D. FORT, PAY DIRT: THE BUSINESS OF PROFESSIONAL TEAM SPORTS 152 (1992)).

[89] *Id.*

[90] METROPOLITAN TRANSPORTATION AUTHORITY AND CITY PLANNING COMMISSION, CITY OF NEW YORK, NO. 7 SUBWAY EXTENSION-HUDSON YARDS REZONING AND DEVELOPMENT PROGRAM DRAFT GENERIC ENVIRONMENTAL IMPACT STATEMENT 2-48 (2004) [hereinafter DGEIS], *available at* http://www.nyc.gov/html/dcp/html/hyards/eis.html. The expiration of the Jets' lease is no longer an issue since the Jets and Giants have agreed to jointly finance and construct a new stadium for use by both teams. *See Jets and Giants Agree*, *supra* note 22.

[91] Anticipating litigation, the drafters of legislation that would have allowed for the construction of the NYSCC as part of the Javits Center expansion wrote in provisions that would expedite judicial review of the plan by forcing plaintiffs to bring suit in the Appellate Division of the New York State Supreme Court rather than the Supreme Court (the state trial court in New York). REGIONAL PLAN ASSOCIATION, FULFILLING THE PROMISE OF MANHATTAN'S FAR WEST SIDE: A REGIONAL PLAN ASSOCIATION POSITION PAPER 32 (2004), *available at* http://www.rpa.org/pdf/FWSpositionpaper.pdf [hereinafter REGIONAL PLAN ASSOCIATION].

[92] Frangos, *supra* note 31.

retracting the seats closest to the field.[93] The Stadium as planned would have occupied approximately 2.5 million gross square feet between Eleventh and Twelfth Avenues from West 30th to West 33rd Street.[94] While the proponents of this plan put forth great effort to frame this project as a multi-use facility that would have been occupied year-round by conventions, concerts, and other events, the only tenant that would definitely have occupied the NYSCC was the New York Jets for the minimum ten home games they play each season.[95]

Many view the Far West Side as the "last great frontier" in Manhattan when it comes to areas where there has been practically no new commercial or residential development.[96] The site upon which the stadium would have been built is currently occupied by exposed rail yards [hereinafter "John D. Caemmerer West Side Yards," "Hudson Rail Yards," or "Rail Yards"] used by the Long Island Rail Road and owned by the Triborough Bridge and Tunnel Authority, both of which are affiliates of the Metropolitan Transportation Authority (MTA).[97] The proponents of the West Side Stadium and the Hudson Yards development plan referred to this section of the city as "blighted," "substandard," and "unsanitary."[98] While not in agreement that the area is "blighted," "substandard," and "unsanitary," even the various opponents of the stadium plan agreed that substantial development of the West Side is in the best interests of New York City.[99] Within the next few years construction will begin in this underutilized section of Manhattan. The crucial question is: what type of development would provide the greatest public benefit?

Developers and politicians sought to take advantage of this "last great frontier" with a massive Hudson Yards development plan, of which the West Side Stadium was an included but independent part.[100] This plan called for a city

---

93 DGEIS, *supra* note 90, at ES-17.

94 *Id.*

95 *See* Horowitz, *supra* note 14. The Jets play 8 regular season games, 2 pre-season games, and if applicable, playoff games at its home field.

96 *Id*. at 2.

97 GENERAL PROJECT PLAN, *supra* note 4, at 2.

98 *Id.* at 9.

99 *See* REGIONAL PLAN ASSOCIATION, *supra* note 91, at 3.

100 *See* GENERAL PROJECT PLAN, *supra* note 4, at 2.

investment of over $3 billion (in 2003 dollars)[101] to create 28 million square feet of new commercial office space, 12,600 residential units, and significant amounts of open recreational space on the Far West Side of Manhattan.[102] The development plan also included the extension of the Number 7 subway line, the construction of a massive steel and concrete platform over the active rail yards, a 1,500 room convention hotel, the expansion of the Jacob K. Javits Center, and a convention corridor connecting the Javits Center to the NYSCC.[103]

The overarching Hudson Yards plan was contingent upon several factors. First, the city and state legislatures had to approve the funding and construction of the platform upon which the development would occur. Second, the New York City Council had to approve the rezoning of a large section of western Manhattan to allow for high density development in the area.[104] Third, some public review was necessary whereby the local community would have been given an opportunity to voice their opinions on the plan.[105] Finally, the City needed to successfully negotiate with the MTA for the air rights to build the platform above the John D. Caemmerer West Side Yards.[106] While the opponents of this plan attacked nearly every aspect of this plan as being the wrong type of development for the City, the inclusion of a publicly subsidized stadium that would house the Jets was met by the most vociferous criticism.

C. *The Plan to Finance the NYSCC*

If built, the total cost of the NYSCC would have been more than $1.4 billion, by far the most expensive multi-use stadium in the country.[107] Those attacking the plan focused upon the immense public contribution that was necessary to build this project while supporters focused on the

---

[101] NEW YORK CITY INDEPENDENT BUDGET OFFICE, WEST SIDE FINANCING'S COMPLEX $1.3 BILLION STORY 1 (2004), *available at* http://www.ibo.nyc.ny.us/iboreports/westsidefinanceFB.pdf.

[102] DGEIS, *supra* note 90, at ES-1.

[103] *Id.* at ES-2.

[104] The proposed rezoning is described in detail in chapter 4 of the DGEIS. *Id.*

[105] This procedure is called the Uniform Land Use Review Procedure (ULURP). For a description of the ULURP process, see New York City Department of City Planning, The Uniform Land Use Review Procedure, http://www.ci.nyc.ny.us/html/dcp/html/luproc/ulpro.shtml (last visited Oct. 2, 2005).

[106] Horowitz, *supra* note 14, at 7. The issue of the air rights negotiations will be discussed *infra* Part III.A.

[107] *See* Keating, *supra* note 16, at 11-14.

unprecedented private investment that the Jets planned to contribute.[108] Regardless of which view is taken, it is indisputable that the West Side Stadium project was unmatched in cost and would have represented a sizable concern of the city's economy.

The New York Jets intended to spend $800 million to spur construction of their new home field, the largest ever private investment in an NFL stadium.[109] This private investment was to go towards the actual stadium that would lie atop the publicly funded platform.[110] The Jets also assured the city that the team would protect the public by covering any cost overruns.[111] The team planned on signing a forty-nine-year lease for use of the land, but for its extensive investment, it would have been the owner of the building and collected the revenues from its operation.[112] There was much criticism, however, over the fact that the city planed to assist the Jets by issuing $400 million in tax-exempt "Jets bonds" to be repaid with payments in lieu of taxes by the Jets.[113] This meant that the stadium would be exempt from municipal property taxes, and that the Jets would pay back its debt to the city in "[amounts that did] not exceed real estate taxes that would otherwise be payable."[114] Opponents criticized this private financing scheme as "the Jets . . . effectively paying back the city with the city's money."[115]

In order to cover the staggering costs of the NYSCC, $600 million more in public subsidies were still needed in addition to the Jets' contribution. New York City announced

---

[108] Press Release, Hell's Kitchen/Hudson Yards Alliance, Public Cost of Jets Stadium Higher than Reported? (July 16, 2004) (on file with author), *available at* http://www.newyorkgames.org/news/archives/001951.html.

[109] Mayor's Press Release (March 25, 2004), *supra* note 4. In regards to this massive outlay of funds, Jets owner Woody Johnson said, "[t]he Jets are proud to invest $800 million in the future of our city to create the greatest sports and convention center in the world. And we thank New York City and State for committing the resources to make that investment possible." *Id.*

[110] COMMITTEE ON ECONOMIC DEVELOPMENT, NEW YORK CITY COUNCIL, HOW WILL THE WEST SIDE STADIUM COMPLEX IMPACT OUR CITY? (2004) [hereinafter HOW WILL THE WEST SIDE STADIUM IMPACT OUR CITY?], *available at* http://webdocs.nyccouncil.info/attachments/61636.htm?CFID=805016&CFTOKEN=98776719 (outlining the uses of the private state and city investments).

[111] Mayor's Press Release (March 25, 2004), *supra* note 4.

[112] Horowitz, *supra* note 14.

[113] GENERAL PROJECT PLAN, *supra* note 4, at 6-7.

[114] *Id.* at 7.

[115] Press Release, Hells Kitchen/Hudson Yards Alliance, Public Cost of Jets Stadium Higher than Reported! (Dec. 15, 2004), *available at* http://www.newyorkgames.org/news/archives/003158.html (last visited Oct. 8, 2005).

that it would provide $300 million: $225 million to cover the cost of the retractable roof and $75 million towards the platform over the rail yards.[116] The $300 million investment in the NYSCC would have been generated through the issuance of tax-exempt bonds.[117] The City expected that the construction of the NYSCC and the accompanying jobs would "generate billions in incremental personal income, sales, and other taxes that will flow directly to the City, State and MTA."[118] The economic allure of the possibility of bringing the 2012 Summer Olympic Games, the Super Bowl, and other mega-events were also strong factors in the City's willingness to support this project with such a sizeable contribution.[119] These funds were in addition to the projected $3 billion necessary for the construction of the other components of the Hudson Yards development.[120]

The remaining $300 million needed for the West Side Stadium was sought from the New York State budget.[121] The state's investment would have covered the remaining cost of the platform over the rail yards, estimated to cost $375 million.[122] All of these figures added up to the glaring fact that politicians in the City and State of New York intended to issue hundreds of millions of dollars in debt to lure sporting events, large-scale conventions, and tourism to the City, and of course, the tax dollars that follow.

D. The Demise of the West Side Stadium

The Jets' hopes for building the largest football stadium in the country on the West Side of Manhattan were destroyed by two state legislators unconvinced that a stadium would benefit the citizens of New York. In the summer of 2005, the New York State Public Authorities Control Board (PACB), a

---

116 HOW WILL THE WEST SIDE STADIUM IMPACT OUR CITY?, *supra* note 110.

117 Horowitz, *supra* note 14.

118 Presentation of Hudson Yards Corporation Financing Plan, *supra* note 9.

119 *See* GENERAL PROJECT PLAN, *supra* note 4, at 1; Horowitz, *supra* note 14.

120 *See* GENERAL PROJECT PLAN, *supra* note 4, at 2.

121 Presentation of Hudson Yards Corporation Financing Plan, *supra* note 9.

122 HOW WILL THE WEST SIDE STADIUM IMPACT OUR CITY?, *supra* note 110. New York State also sought to restructure the bonds on the current Javits Convention Center in order to free up another $350 million for expansion of the Javits Center. *See* Press Release, New York State Govenor George E. Pataki, Governor Pataki Proposes Bill to Expand Javits Center (June 3, 2004), http://www.ny.gov/governor/press/04/june3_04.htm. A hotel room tax was proposed to generate the necessary funds to cover the debt from the Javits Center. *Id*.

little-known yet extraordinarily powerful state board, faced the decision of whether it should approve the $300 million state subsidy required to construct the West Side Stadium.[123] This board, created in 1976 to manage ballooning public authority debts,[124] consists of three voting members, Governor George Pataki, State Assembly Speaker Sheldon Silver, and State Senate Majority Leader Joseph Bruno.[125] The PACB must unanimously approve the financing and construction of any project proposed by various state public benefit corporations.[126] The New York State Urban Development Corporation, the authority that was going to finance the West Side Stadium[127] fell under the purview of the PACB.[128] Since Governor Pataki was a staunch supporter of the stadium, the fate of this project was in the hands of Assemblyman Silver and Senator Bruno, who each possessed the power to prevent the state from subsidizing the stadium by voting against the plan.

In late May and early June of 2005, the proponents of the West Side Stadium attempted to convince the members of the PACB that the stadium and its $300 million state subsidy price tag would ultimately benefit New York. Despite a great deal of behind the scenes maneuvering on the part of the Jets and Mayor Bloomberg's administration, on June 6, 2005, Assemblyman Silver and Senator Bruno vetoed the plan to build the West Side Stadium.[129] Senator Bruno, who represents a district in upstate New York, expressed skepticism that there was justification for such a huge subsidy when so many New Yorkers opposed the plan.[130] Speaker Silver, who represents a district in Downtown Manhattan, declined to support the plan because it would have involved the construction of 24 million square feet of new office space in Midtown that would have competed with Lower Manhattan for tenants.[131] Regardless of the reasons why, these powerful legislators used their veto

---

[123] Michael Cooper & Charles V. Bagli, *Bruno and Silver Continue to Express Doubts on Stadium*, N.Y. TIMES, June 2, 2005, at B5.

[124] *See* New York State Office of the State Comptroller, What is the Public Authorities Control Board?, http://www.osc.state.ny.us/pubauth/whatisboard.htm (last visited Oct. 2, 2005).

[125] Cooper, *supra* note 123.

[126] N.Y. PUB. AUTH. LAW §§ 50(2), 51(1) (McKinney 2005).

[127] DGEIS *supra* note 90, at ES-1-2.

[128] N.Y. PUB. AUTH. LAW § 51(1)(e) (McKinney 2005).

[129] *Bloomberg's Stadium Quest Fails*, *supra* note 3.

[130] *See* Cooper, *supra* note 123.

[131] *Id.*

power to bring the possibility of a West Side Stadium to a screeching halt and left the Jets and Olympic planners to quickly revise their plans.[132] Now that the evolution and ultimate demise of the plan to build the NYSCC are clear, the next section will address the considerable risks and inequities that were avoided when this controversial proposal fell apart.

III. THE RISKS OF THE WEST SIDE STADIUM PLAN

As is often the case when American cities seek to justify large public investments in the construction of sports facilities and convention centers, supporters of this proposal contended that the facility would pay for itself.[133] The optimistic projections of this plan, however, were called into question by several independent and reputable organizations.[134] These organizations argued that the huge economic risks of such a large outlay of public dollars were too great.[135] Additionally, the state and local legislatures had little power to approve the plan or consider alternatives, and the citizens whose taxes were to be spent had no opportunity to vote on this important public decision.

A. The Projected Benefits of the NYSCC Were Founded upon Inflated Figures

New York City's estimates of the potential revenues of the West Side Stadium were based on a study done by Ernst & Young for the Jets,[136] which the City accepted without

---

[132] *See* Chales V. Bagli, *Plan for Stadium in Queens Shapes Up Political Lineup*, N.Y. TIMES, Aug. 23, 2005, at B3; Charles V. Bagli, *Jets Cling to Dream of Stadium on West Side*, N.Y. TIMES, June 24, 2005, at B3; Charles V. Bagli & Mike McIntire, *Taxpayer Expense is Less in Deal for New Stadium*, N.Y. TIMES, June 14, 2005, at B4.

[133] *See* Roger G. Noll & Andrew Zimbalist, *The Economic Impact of Sports Teams and Facilities*, *in* SPORTS, JOBS & TAXES 55, *supra* note 15, at 58.

[134] *See* TOUCHDOWN FOR THE CITY?, *supra* note 24; NEW YORK CITY INDEPENDENT BUDGET OFFICE, ESTIMATING THE ECONOMIC AND FISCAL IMPACTS OF THE NEW YORK SPORTS AND CONVENTION CENTER, (July 2004), http://www.ibo.nyc.ny.us/iboreports/stadiumBP.pdf [hereinafter ESTIMATING THE ECONOMIC AND FISCAL IMPACTS]; REGIONAL PLAN ASSOCIATION, *supra* note 91.

[135] *See, e.g.*, TOUCHDOWN FOR THE CITY?, *supra* note 24; REGIONAL PLAN ASSOCIATION, *supra* note 91.

[136] Ernst & Young, Preliminary Estimates of the Economic and Fiscal Impacts of a Proposed Multi-Use Athletic and Exhibition Facility, Hudson Yards District, New York City (April 2004) [hereinafter the Jets' study].

performing its own study.[137] To justify the cost of the stadium to the public, the Jets and New York presented this study as fact when it was unlikely that the facility, if built, would actually generate the amount of revenue projected.[138] This study reported that the NYSCC would generate $72 million in new tax revenues each year of operation – more than enough to cover the $42 million in annual debt service over thirty years.[139] These figures assumed that the stadium would host many more events than appeared feasible and that those events would draw more people than similar ones in other markets.[140] The bottom line is that the only events that would definitely occur if the stadium was built were ten annual New York Jets football games. Proponents of the NYSCC claimed that the stadium would frequently be used in its non-stadium, "convention" setup.[141] However, if it turned out that the stadium was not used as often as the City and the Jets claimed it would be, the loss would have fallen upon the taxpayers not the Jets.

According to the New York City Independent Budget Office (IBO), "[t]he Jets and the Bloomberg Administration have publicly acknowledged that if the new facility were operated only as a football stadium, it would not generate sufficient tax revenue to justify the public investment."[142] The Jets, on the other hand, would break even on their $800 million investment solely from their football games.[143] Since the Jets would have been the owners of the stadium, the team would have been under no obligation to continue to operate it as a convention center if that business turned out to be unprofitable, as has been the case in other large cities with comparable facilities.[144] This realistic scenario would have left the taxpayers of New York to supply however much of the $42

---

137 Charles V. Bagli, *Big Claims And Questions Surround Plan For a Stadium*, N.Y. TIMES, June 20, 2004, at 29.

138 *See* TOUCHDOWN FOR THE CITY?, *supra* note 24, at 1.

139 Horowitz, *supra* note 14. The plan provided that the City and State of New York would each have annual debt services of $21 million and the Jets projected that there will be $36.2 million in city and $36.3 million in state tax revenues annually. TOUCHDOWN FOR THE CITY?, *supra* note 24, at 1 n.1.

140 *See* TOUCHDOWN FOR THE CITY?, *supra* note 24, at 2.

141 *Id.*

142 *Id.* at 3.

143 *Id.*

144 *Id.* at 3-4. *See also* Horowitz, *supra* note 14 ("[the City proponents] say the Jets will be mandated to use the building for convention-style events a significant number of days a year. [The Jets have] a different idea: 'We'll let the market determine what works in terms of use of the building.'").

million in annual debt service that could not be covered by tax revenues from convention operations.

Independent analysis of the proponents' projections revealed that the estimated revenue of $72 million was a significant overstatement.[145] The Jets' study projected that the West Side Stadium would be used for thirty-eight conventions, trade and consumer shows that would attract 8,427 attendees per show.[146] Many critical aspects of the Jets' study, however, were dramatically flawed. The report claimed that these figures were reached using data from "comparable venues," but it failed to provide detailed enough information regarding these "venues" that would warrant such optimistic predictions.[147] Second, high costs for exhibitioners and visitors in New York City would have negatively impacted NYSCC's attractiveness as a convention location.[148] Additionally, the overlap of the NFL season with prime fall convention season would have cut into the NYSCC's availability to hold weekend shows during the busy season as well as deterred scheduling of weekend shows years in advance, when the future NFL schedule is unknown.[149]

Convention center studies have shown that cities consistently present optimistic and unlikely figures to justify large public expenditures for convention centers that end up failing to meet expectations once constructed.[150] The competition for national conventions is very strong and there are many cities that consistently fail to fill their convention centers. The most recent example of this is Boston, which recently built the $850 million Boston Convention and Exhibition Center.[151] Prior to construction, Boston released a feasibility study that predicted the center would book thirty-four conventions each year.[152] There have only been forty-three confirmed bookings through 2010, an average of less than ten

---

[145] Horowitz, *supra* note 14

[146] ESTIMATING THE ECONOMIC AND FISCAL IMPACTS, *supra* note 134, at 2.

[147] *Id.*

[148] *Id*.

[149] TOUCHDOWN FOR THE CITY?, *supra* note 24, at 2.

[150] *See* Heywood T. Sanders, *Flawed Forecasts: A Critical Look at Convention Center Feasibility Studies*, 1999 Pioneer Institute for Public Policy Research, White Paper No. 9, *available at* http://www.pioneerinstitute.org/pdf/wp9.pdf (last visited Oct. 8, 2005).

[151] *Big Claims And Questions Surround Plan For a Stadium*, *supra* note 137.

[152] *Id*.

bookings per year.[153] Similar attendance figures in New York City would have proven detrimental to its ability to service the massive debt associated with building the NYSCC.

The Edward Jones Dome and America's Center ("the Dome") in St. Louis is considered the most successful stadium/exhibition hall in the country and the Jets' study cited it as a comparable facility to the proposed NYSCC.[154] In 2003, the Dome hosted only eight non-sports related events, and those were low-impact events that drew local residents but did not generate hotel and restaurant taxes.[155] These eight events come nowhere close the thirty-eight non-sports events that the Jets' study based its revenue projections upon.[156] Seeing as how, unlike the Dome, the NYSCC would have lacked continuous floor space between the stadium and the convention center since they would be connected by a 100-yard long corridor, convention planners may have been further deterred from bringing large shows.[157] It is hard to believe that the NYSCC would have been filled thirty-eight times a year with conventions, when less expensive cities such as St. Louis and Boston are having trouble filling their convention centers ten times a year.

Under the IBO's optimistic projections, the NYSCC would have been used for twenty expositions, two plenary sessions and two mega-events[158] each year.[159] This amounted to a projected $28.4 million in city tax revenues and $24.9 million in new state revenue, meaning that the city tax revenues would have been $6.7 million and the state tax revenue would have been $11.9 million less than the proponents of the plan estimated.[160] While these independent figures would have still

---

[153] *Id.*

[154] *Id.*

[155] *Id.*

[156] GENERAL PROJECT PLAN, *supra* note 4, at 5.

[157] REGIONAL PLAN ASSOCIATION, *supra* note 91, at 29. Also of note is the fact that the Dome in St. Louis was built in 1995 for $260 million, or $330 million in 2004 dollars, while the NYSCC would have cost at least $1.4 billion. Walter Mankoff, How Will The Proposed West Side Stadium Complex Impact Our City? Statement on Behalf of Manhattan Community Board No.4, Testimony Before the New York City Council (June 3, 2004) *available at* http://www.manhattancb4.org/HKHY/docs/WS%20Stadium%20hearing.htm.

[158] "Mega events are large national events staged in the arena or stadium configuration. Examples of potential mega events are the National College Athletic Association Final Four basketball tournament, college football games, and large scale concerts." ESTIMATING THE ECONOMIC AND FISCAL IMPACTS, *supra* note 134, at 3.

[159] TOUCHDOWN FOR THE CITY?, *supra* note 24, at 2.

[160] ESTIMATING THE ECONOMIC AND FISCAL IMPACTS, *supra* note 134, at 8, 10.

allowed the city and state to cover the debt service on the West Side Stadium, the margin for error would have been much narrower than the Jets' study indicated.[161] Since the IBO analysis was based on an optimistic number of exposition events, the revenues generated by the non-Jets stadium events could quite possibly not have covered the enormous debt, leaving the taxpayers to cover the rest.[162] This sizeable risk to the taxpayers, in conjunction with the limited risk to the Jets, demonstrates that the public benefits of this stadium plan were highly speculative while the private benefit to the team was enormous and clear.

Job creation predictions are another figure that the proponents of publicly funded stadium and convention center construction consistently rely on for support. Studies on the reliability of these predictions have shown, as in the context of revenues, that post-stadium construction job creation figures rarely meet expectations.[163] The Jets' study predicted that the project would create 6,971 jobs.[164] The IBO determined that even under an optimistic scenario, the facility would generate only about half of that figure, or 3,586 jobs.[165] Using these more realistic figures, the IBO predicted that the new jobs created by the NYSCC would generate $144 million in new earnings, while the Jets' study predicted $284 in earnings.[166] As with the IBO's revenue predictions, these job figures were under an optimistic scenario of twenty convention style events each year.[167] If there were fewer than twenty conventions, the job numbers would fall along with the revenues. Also, since twenty percent of the jobs would most likely have been held by residents not living in one of the five boroughs of New York City, only $86 million of the $144 million optimistically predicted new earnings would have benefited residents of the

---

[161] *Id*. at 1.

[162] "If the facility only hosted the expected 17 football games per year with no other events, the total city tax revenues would be $9.2 million." ESTIMATING THE ECONOMIC AND FISCAL IMPACTS, *supra* note 134, at 8.

[163] *See* Robert A. Baade & Allen R. Sanderson, *The Employment Effect of Teams and Sports Facilities*, *in* SPORTS, JOBS & TAXES 92, *supra* note 15, at 93-99; TOUCHDOWN FOR THE CITY?, *supra* note 24, at 3 (arguing that estimating demand for convention center space is highly speculative).

[164] TOUCHDOWN FOR THE CITY?, *supra* note 24, at 3.

[165] *Id.* at 1.

[166] *Id.* at 3.

[167] *Id.* at 2.

city called upon to foot $300 million of the bill for the stadium.[168]

Aside from the strong likelihood that the actual number of jobs that would have been created by the construction and maintenance of the West Side Stadium would have fallen far short of the proponents' predictions, the jobs created by the West Side Stadium would mostly have been of the low-paying service variety or not new jobs at all.[169] The construction unions were one of the major supporters of the plan because of the construction jobs associated with it.[170] The jobs involved in the construction of stadiums, however, only represent new earnings if those construction workers would be out of work otherwise.[171] Additionally, the options for the West Side were not between a stadium and an open rail yard. Those who opposed the stadium favored building commercial, residential, and open spaces on the site, just not a publicly subsidized football stadium for the Jets.[172] If apartment buildings, office complexes, or anything else were built on at that spot instead of a stadium, construction workers would still have been in high demand.

There were additional financial risks to the public if the NYSCC was financed and constructed as planned, not the least of which was the burden to the MTA. The MTA is the cash-strapped state agency that currently owns the rail yards that the Jets planned to build above.[173] Over the past few years, the MTA has been raising its tolls and fares and cutting services to counteract a ballooning deficit that may soon reach $1.2 billion.[174] There was widespread concern that the stadium financing strategy, which only offered the MTA $100 million for

---

[168] *Id.* at 3.

[169] *Id.*; Baade & Sanderson, *supra* note 163, at 94, 112.

[170] *See* Natalie Keith, *J-E-T-S Equals J-O-B-S*: *$2.8 Billion Stadium and Convention Center Plan Will Bring Construction Jobs*, NEW YORK CONSTRUCTION (July 2004), *available at* http://newyork.construction.com/features/archive/0407_feature1.asp.

[171] *See* Baade & Sanderson, *supra* note 163, at 94, 112.

[172] *See, e.g.*, REGIONAL PLAN ASSOCIATION, URBAN DEVELOPMENT ALTERNATIVES FOR THE HUDSON RAIL YARDS (Dec. 2004), *available at* http://www.rpa.org/pdf/hudsonyardsalternatives.pdf.

[173] For a detailed analysis of the MTA's economic troubles and future prospects, see NEW YORK CITY INDEPENDENT BUDGET OFFICE, RUNNING ON EMPTY: THE MTA'S 2005 BUDGET AND FINANCIAL PLAN (Nov. 2004) [hereinafter RUNNING ON EMPTY], *available at* http://www.ibo.nyc.ny.us.

[174] *Id.* at 1. *See also* Joshua Robin, *Layoffs on the Line: Transit Union Vows to Fight Plan to Terminate at Least 1,200 Subway, Bus Workers; Alternative Would Raise Monthly MetroCard Fare Even Higher*, NEWSDAY, Oct. 26, 2004, at A3.

the air rights above the Hudson Yards, would deprive this already struggling state agency of the market value of its asset.[175] The MTA's financial struggles have significantly increased costs for the public, especially commuters.[176] If tax dollars were spent to compensate for the air rights above the Hudson Yards in an inefficient manner that benefited the Jets more than the MTA, the costs of this project would have been further exacerbated to the detriment of New Yorkers' wallets.

Demonstrating that the Jets planned on depriving the MTA of the fair value of the air rights above the rail yards, in February of 2005, Cablevision, the biggest opponent of the West Side Stadium plan, offered to pay $600 million for the right to build office buildings and housing over the Hudson Yards.[177] This bid, $500 million more than what the Jets were offering, also covered the cost of the platform that the stadium plan required state and city taxes to pay for.[178] A bidding war ensued between the Jets, Cablevision, and other prospective developers.[179] The MTA eventually accepted the Jets' $715 million bid even though Cablevision's bid was $760 million.[180] Cablevision brought suit against the MTA in state court alleging that "the MTA acted arbitrarily and capriciously in selecting the Jets' bid."[181] The Supreme Court ruled in favor of the MTA, holding that, "[i]n assessing which terms are most beneficial, the MTA can take into account not only the dollar figure being offered, but the long-term benefit to the MTA and

---

175 *See* REGIONAL PLAN ASSOCIATION, *supra* note 91, at 31-32 ("Compensation to the MTA for these [development] rights does not appear as a major cost assumption in the plan, in spite of the potential value of these development rights.").

176 RUNNING ON EMPTY, *supra* note 173, at 6-7. For reports on public transportation fare increases in New York City, see The New York Public Interest Research Group's Straphangers Campaign, http://www.straphangers.org/farehike1004/ (last visited Oct. 2, 2005).

177 *See* Charles V. Bagli, *Owner of Garden Outbids Jets For Site of Proposed Stadium*, N.Y. TIMES, Feb. 5, 2005, at A1.

178 *Id.*

179 *See* Charles V. Bagli, *Jets and Rivals Increase Bids For Railyards*, N.Y. TIMES, Mar. 22, 2005 at A1.

180 The Jets' proposal included a $250 million payment over four years or a discounted up front payment of $210 million, a $25 million slush fund for repairs, and approximately $440 million from real estate developers. The Cablevision bid (referred to by the court as the MSG proposal) provided for $400 million up front and a commitment to build the $360 million platform over the rail yards. *See In re* Madison Square Garden, L.P., 2005 N.Y. Slip Op. 50824U, ***7-9 (N.Y. Sup. Ct. June 2, 2005) *aff'd* 799 N.Y.S.2d 186 (N.Y. App. Div. 1st Dep't 2005).

181 *Id.* at ***13.

the public it serves."[182] Unfortunately for the Jets, days after this decision was handed down, their West Side Stadium aspirations were ended by the PACB's veto.[183]

B. Insufficient Opportunity for the New York Legislatures and the Public to Review and Offer Alternatives to the Stadium Plan

In addition to the incredible financial risks to the public associated with the West Side Stadium, the opponents of its construction had many other reasons to complain. First of all, the city and state legislatures had minimal opportunities for review of the plan. The proponents of the project responded by pointing out that the City Council could approve the zoning necessary for the Hudson Yards plan and that the city and state development corporations also had to approve the NYSCC plan.[184] These are insufficient means for public review. According to the Regional Plan Association (RPA), an independent community planning organization, "[the] RPA remains concerned that the project is not being given adequate review and that normal processes are being truncated. The review process designed for land use decisions should not be used as a proxy for informed debate on financing."[185] Community leaders on the West Side shared the RPA's sentiment and felt that direct public review of the stadium plan needed to be implemented before constructing such a huge structure.[186]

The RPA published a report containing three alternative plans for the development of the West Side, which suggested that mixed-use development rather than a stadium would provide a greater revenue stream for New York City.[187] This report attacked the faulty underlying assumption by the proponents of the plan that "the public's choice is between a

---

[182] *Id.* at ***12 (citing Creole Enterprises, Inc. v. Giuliani, 236 A.D.2d 272 (N.Y. App. Div. 1st Dep't 1997); New City Jewish Center v. Flagg, 111 A.D.2d 814 (N.Y. App. Div. 2nd Dep't 1985), *aff'd* 489 N.E.2d 1297 (N.Y. 1985)).

[183] *See Bloomberg's Stadium Quest Fails*, *supra* note 3.

[184] REGIONAL PLAN ASSOCIATION, *supra* note 91, at 32.

[185] *Id.*

[186] Letter from Manhattan Community Board No. 4 to Amanda Burden, Chair of the City Planning Commission 12 (Aug. 23, 2004) [hereinafter Letter from Manhattan Community Bd. No. 4], *available at* http://www.manhattancb4.org/agendas/2004_08/1%20HY%20ULURP%20Response%20final.pdf.

[187] REGIONAL PLAN ASSOCIATION, *supra* note 172.

stadium and the exposed rail yard."[188] The mixed-use development envisioned by the RPA and other groups interested in the development of the Far West Side included construction of condominiums, rental apartments, and commercial office buildings.[189] Since these alternatives would have involved dramatically fewer infrastructure costs,[190] the projected net revenues of a mixed-use development would have been $510 million in comparison to only $74 million for a stadium.[191] While the proponents of the stadium argued that the public would benefit from the projected revenues of the West Side Stadium, there was insufficient consideration of alternative uses of that land that could provide more secure and greater benefits to the public.

The people of New York also did not get an opportunity to vote on whether or not they desire a stadium to be built on the West Side.[192] This is because New York is not among the twenty-seven states that require a vote by the electorate prior to the issuance of municipal debt.[193] It cannot be known whether the voters of New York would approve a measure to finance the NYSCC without actually holding a vote. Thus, the decision to use $600 million in public funds for a football stadium was in the hands of a few powerful individuals, rather than in the hands of the people who would have paid for it. Like the Robert Moses projects of the twentieth century, the citizens of New York City had a disturbingly limited ability to stop or alter the plan to build this massive stadium by exercising their voting rights.[194]

---

[188] *Id.* at 2.

[189] *Id.* at 3.

[190] The RPA mixed-use alternative would still require that a platform be built over the rail yards, but not $225 million for a retractable roof. Also, this type of development would require developers to pay fees and property taxes that the Jets would not have paid. *Id.* at 4.

[191] *Id.*

[192] *See* REGIONAL PLAN ASSOCIATION, *supra* note 91, at 32.

[193] Clayton P. Gillette, *Direct Democracy and Debt*, 13 J. CONTEMP. LEGAL ISSUES 365, 370 n.10.

[194] While the New York City officials pushing for the construction of the West Side Stadium did not plan to subject this issue to a public vote at all, other municipalities have even gone ahead and financed stadiums that were voted down on ballot measures. *See, e.g.*, Long v. Napolitano, 53 P.3d 172, 176-77 (Ariz. Ct. App. 2002); CLEAN v. State, 928 P.2d 1054, 1057-58 (Wash. 1996). *See also*, Rodney Fort, *Direct Democracy and the Stadium Mess*, *in* SPORTS, JOBS & TAXES 146, *supra* note 15.

C. *The Significant Social Costs of Committing Such a Large Sum of Public Funds to a Stadium*

The opponents of this stadium plan also argued that New York City is facing serious social crises that are not being adequately addressed, which would only have worsened if tax dollars were diverted towards the risky NYSCC plan.[195] These opponents felt that public schools, police and fire protection, and affordable housing should be primary concerns, not secondary to stadium construction.[196] They also were concerned that the traffic that already makes travel on the West Side exceedingly difficult would worsen exponentially with the construction and operation of a football stadium. According to the New York City Council Member for the district where the stadium would have been built, "[t]he simultaneous arrival and departure of 80,000 people [would] devastate already-clogged streets and transit lines, even with a subway extension."[197]

While the opponents of publicly financed stadiums won a major victory when the plan to build the NYSCC was vetoed by Assemblyman Silver and Senator Bruno, they cannot rest on their laurels. Taxpayers, politicians, and community groups opposed to publicly financed stadiums still have the weight of the national trend of approving these stadium plans working against them. It is probable that lawsuits challenging the use of public money will arise in response to the plan to build new facilities for the Mets, Yankees, and Nets. The courts, when hearing challenges to these subsidized stadium plans, must not allow the practice of avoiding or ignoring public sentiment when spending hundreds of millions in taxpayer dollars to become the standard in New York.[198] The next part will discuss the public purpose doctrine and its potential as a litigation tool for invalidating plans to use public funds to construct stadiums that will primarily benefit the team that plays there.

---

[195] Letter from Manhattan Community Bd. No. 4, *supra* note 186, at 9.

[196] *Id.*

[197] Council Member Christine Quinn *in* Testimony Prepared by Ana Hayes Levin of Manhattan Community Bd. No. 4 for delivery at the Joint Meeting of City Council Committees on Land Use and Economic Development (April 28, 2003) (on file with author).

[198] *See infra* Parts IV.B and V for a discussion of the role of the New York judiciary in taxpayer challenges to the stadium proposal.

IV. THE PUBLIC PURPOSE DOCTRINE: CAN IT BE AN EFFECTIVE TOOL IN THE FIGHT AGAINST PUBLICLY FINANCED STADIUMS?

Whether discussing the use of tax-exempt bonds to finance the construction of a professional sports facility in terms of the debt incurred by the local and state governments or the loss of federal tax revenues, the issue is basically the same: do stadiums provide a significant benefit to the public that warrants massive subsidies? The public purpose doctrine, as it is commonly referred to, has been incorporated into nearly every state constitution in order to ensure that taxpayer dollars are being spent on projects that benefit the public, not private individuals and corporations.[199]

A. The Evolution of the Public Purpose Doctrine

The public purpose doctrine was originally designed by state legislatures to curb corruption and exploitation of the public by legislators and railroad developers during the late 1800s.[200] The public concern during that period was that tax dollars were being designated to repay bonds issued for the private benefit of railroad owners.[201] Today, taxpayers throughout the nation continue to call upon the public purpose doctrine in lawsuits challenging the use of public funds to repay bonds issues to pay for the construction and renovation of stadiums.[202] In the majority of these lawsuits, courts have found that the expenditure of taxpayer dollars for sports

---

[199] *See, e.g.*, N.Y. CONST. arts. VII, § 8, VIII, § 1. For a description of the evolution of the public purpose doctrine, see Dale F. Rubin, *Public Aid to Professional Sports Teams—A Constitutional Disgrace. The Battle to Revive Judicial Rulings and State Constitutional Enactments Prohibiting Public Subsidies to Private Corporations*, 30 U. TOL. L. REV. 393 (1999).

[200] Rubin, *supra* note 199, at 396-398.

[201] *Id.* at 397.

[202] *See, e.g.*, Long v. Napolitano, 53 P.3d 172, 178 (Ariz. Ct. App. 2002); Friends of the Parks v. Chicago Park Dist., 786 N.E.2d 161, 163 (Ill. 2003); Kelly v. Marylanders for Sports Sanity, 530 A.2d 245, 246 (Md. 1987); Allegheny Institute Taxpayers Coalition v. Allegheny Regional Asset Dist., 727 A.2d 113, 115 (Pa. 1999); Cohen v. City of Philadelphia, 806 A.2d 905, 910 (Pa. Commw. Ct. 2002); Libertarian Party of Wisconsin v. State, 546 N.W.2d 424, 428 (Wis. 1996); CLEAN v. State, 928 P.2d 1054, 1056 (Wash. 1996).

facilities fulfilled a public purpose even though private corporations would receive a substantial benefit as a result.[203]

One of the first taxpayer lawsuits challenging public funding for a stadium under the public purpose doctrine was *Meyer v. City of Cleveland*.[204] Meyer, a Cleveland taxpayer, sued on behalf of the city and sought to enjoin the issuance of $2,500,000 in bonds for the construction of "a fireproof stadium on the lake front."[205] He argued that the true purpose of the stadium was for use by the Cleveland Indians baseball club, a primarily private use that should not be publicly funded under the public purpose doctrine.[206] The court, in rejecting the taxpayer's argument, pointed to the public entertainment and educational purposes that a stadium could provide, such as carnivals, theatric performances, and concerts.[207] The court stated that cities are "not limited to policing the city, to paving the streets, to providing it with light, water, sewers, docks, and markets" and that "[t]he power of cities and towns to maintain institutions which educate and instruct as well as please and amuse their inhabitants . . . is unquestioned."[208] In regards to the Cleveland Indians' use of the stadium, the court said that, "where buildings of that character are owned by the city there can certainly be no objection to the city deriving revenue therefrom."[209]

After the *Meyer* decision, many other municipalities began utilizing public funds for new stadiums.[210] As more cities began to plan publicly financed stadiums, more taxpayers arose to challenge them. In the 1960s, taxpayer lawsuits challenging public expenditures for sports facilities were defeated in Philadelphia,[211] Cincinnati,[212] and Denver.[213] In each of those

---

203 "Modern courts . . . have so broadened the scope of the doctrine so as to render it ineffective as a tool to limit the power of the public entity to spend tax dollars." Rubin, *supra* note 199, at 418.

204 171 N.E. 606 (Ohio Ct. App. 1930).

205 *Id*. at 606.

206 *Id.* at 608.

207 *Id.*

208 *Id.* at 606-607.

209 *Id*. at 608.

210 Adams, *supra* note 23, at 664.

211 Martin v. City of Philadelphia, 215 A.2d 894 (Pa. 1966). The court went further than the *Meyer* court in holding that:

> [e]ven if the ordinance specifically provided that the stadium will be used primarily by privately owned football and baseball clubs, there would be no conflict with the public nature of the stadium, for the City would be entering into the lease, not to engage in the private business of promoting sporting events or leasing buildings (which might be a private, not a public, use), but

cases, the plaintiffs unsuccessfully argued that the city was committing a violation of the state constitution by failing to follow to the public purpose doctrine.[214] The courts adhered to the broad definition of public use in *Meyer* and deferred to the state legislature to determine whether the public benefit of a stadium outweighs the private benefit to the team that would play there.[215] The trend towards allowing municipalities to classify a stadium as a public purpose, which began with *Meyer* in 1930, has continued to pervade in many large American cities practically undeterred.[216]

Two state courts in the 1960s, however, did invalidate publicly funded stadium plans.[217] In 1966, the Supreme Court of Florida upheld a taxpayer challenge to the issuance of $1.5 million in bonds to pay for a spring training stadium for the Pittsburgh Pirates.[218] In *Brandes v. City of Deerfield Beach* the court held that the bond issuance would violate the Florida State Constitution's public purpose provisions, which forbid municipalities from assessing taxes for non-municipal purposes and from extending public credit to any private entity.[219] The

---

> rather as incident to providing for 'the recreation or the pleasure of the public.'

Id. at 896.

[212] Bazell v. City of Cincinnati, 233 N.E.2d 864 (Ohio 1968). The court held that it was permissible to use public funds to construct a stadium that would then be leased to a private entity that would make a profit from the use of the stadium. *Id.* at 870.

[213] Ginsberg v. City and County of Denver, 436 P.2d 685 (Colo. 1968) (en banc). The court held that "the determination of what is a public purpose is primarily for the legislative body." *Id.* at 688.

[214] *Martin*, 215 A.2d at 895, 899; *Bazall*, 233 N.E.2d at 870-71; *Ginsberg*, 436 P.2d at 688.

[215] Adams, *supra* note 23, at 666-67.

[216] For examples of lawsuits that failed to enjoin the use of public funds for stadiums *see* Long v. Napolitano, 53 P.3d 172 (Ariz. Ct. App. 2002); Poe v. Hillsborough County, 695 So. 2d 672 (Fla. 1997); Friends of the Parks v. Chicago Park Dist., 786 N.E.2d 161 (Ill. 2003); Kelly v. Marylanders for Sports Sanity, 530 A.2d 245 (Md. 1987); Allegheny Institute Taxpayers Coalition v. Allegheny Regional Asset Dist., 727 A.2d 113 (Pa. 1999); Cohen v. City of Philadelphia, 806 A.2d 905 (Pa. Commw. Ct. 2002); King County v. Taxpayers of King County, 949 P.2d 1260 (Wash. 1997); Libertarian Party of Wisconsin v. State, 546 N.W.2d 424 (Wis. 1996). This list is by no means exhaustive.

[217] Brandes v. City of Deerfield Beach, 186 So. 2d 6 (Fla. 1966); Opinion of the Justices to the House of Representatives, 250 N.E.2d 547 (Mass. 1969). These cases have not been widely followed in state courts throughout the nation. Michael J. Cremonese, Comment, *Building New Stadiums With Your Money Whether You Like It Or Not: The Pennsylvania Constitution Does Not Prohibit the Use of Public Funds to Construct New Stadiums*, 37 DUQ. L. REV. 423, 427-28 (1999).

[218] *Brandes*, 186 So. 2d at 7-8, 12.

[219] In so holding, the court in *Brandes* pointed out that,

court stated that although the presence of a private interest does not per se violate the public purpose requirement, "[t]he mere incidental advantage to the public resulting from a public aid in the promotion of private enterprise is not a public or municipal purpose."[220]

In 1969, the Supreme Judicial Court of Massachusetts, in an advisory opinion, held that a plan to use public funds to construct a multi-use stadium in Boston did not meet the public purpose requirement of the state constitution.[221] While recognizing that stadiums do provide certain public benefits, the court determined that the stadium proposal contained insufficient safeguards to protect the public interest from the "improper diversion of public funds and privileges for the benefit of private persons and entities."[222] As a result of this decision, recently proposed stadium acts requesting public funds in Massachusetts include safeguards that limit the amount of public money that may be spent and guarantee specific returns on public investments.[223] In contrast, the plan to finance the West Side Stadium included neither of these safeguards.[224]

In the early 1970s, the courts of New York State were confronted with a taxpayer challenge to a stadium funding plan. In *Murphy v. Erie County*,[225] the plaintiff taxpayers sued to prevent Erie County from issuing $50,000,000 in bonds to finance a new domed stadium to be leased for 40 years to a private entity.[226] The plaintiffs claimed that the lease would violate Article VIII of the New York Constitution, which forbids a loan or gift of county property in aid of a private undertaking.[227] The Court of Appeals held that the private benefit would be "incidental" to the public purpose of the

> Article IX, Section 5, of the Constitution, provides that 'The Legislature shall authorize . . . incorporated cities . . . to assess and improve taxes . . . for municipal purposes, *and for no other purposes*. . . .'; and Article IX, Section 10, of the Constitution prescribes that 'The Legislature shall not authorize any . . . city . . . to loan its credit to any corporation, association, institution or individual.'

Id. at 11 (quoting FLA. CONST. art IX, §§ 5, 10).

[220] *Id.* at 12.

[221] *Opinion of the Justices*, 250 N.E.2d at 560.

[222] *Id.* at 558-60.

[223] Adams, *supra* note 23, at 685-87.

[224] *See generally* GENERAL PROJECT PLAN, *supra* note 4.

[225] 268 N.E.2d 771 (N.Y. 1971).

[226] *Id.* at 772.

[227] *Id.* at 774; N.Y. CONST. art VIII, § 1.

stadium.[228] The court also reiterated the holding of *Martin v. Philadelphia* by stating that, "[i]t is established that a municipality may lease its public improvements to private concerns so long as the benefit accrues to the public and the municipality retains ownership of the improvement."[229] This case is in line with many states' sentiment towards stadium finance.[230]

More recently, the Supreme Court of Florida broadened the public purpose doctrine in *Poe v. Hillsborough County*.[231] In that case, a taxpayer sued to invalidate the bond issued to fund the construction of a stadium for the Tampa Bay Buccaneers under that state's public purpose provision.[232] The court upheld the issuance of the bond as fulfilling a public purpose.[233] The public purposes that the court believed the stadium would provide included the anticipated economic benefits projected by the city as well as "national media exposure" and the "civic pride and camaraderie" associated with having a professional football team play in the city.[234] This case provides an excellent example of the great deference given by state courts to the municipalities that wish to expend tax dollars to build sports facilities. Today, even speculative and unquantifiable benefits to the public will be sufficient in many jurisdictions to demonstrate that there is a public purpose that justifies massive public subsidies of stadiums.[235]

One of the most recent examples of a public purpose challenge to a taxpayer financed NFL stadium project took place in Chicago. In *Friends of the Parks v. Chicago Park District*,[236] a non-profit organization seeking to protect Soldier Field from being altered at the public's expense challenged a plan to issue $399,000,000 in bonds to reconstruct the stadium

---

[228] *Murphy*, 268 N.E.2d at 774.

[229] *Id.* (citing Martin v. City of Philadelphia, 215 A.2d 894 (Pa. 1966) (additional citations omitted)).

[230] New Jersey also upheld a finance plan for the construction of the current home of the Jets, the Meadowlands. *See* New Jersey Sports & Exposition Auth. v. McCrane, 292 A.2d 580, 641 (N.J. Super. Ct. Law Div. 1971) (holding that the state constitution was not violated by the issuance of bonds to pay for the construction of a football stadium).

[231] 695 So. 2d 672 (Fla. 1997).

[232] *Id.* at 674-675.

[233] *Id.* at 679.

[234] *Id.* at 678-679.

[235] *See* Rubin, *supra* note 199, at 418.

[236] 786 N.E.2d 161 (Ill. 2003).

and erect a parking garage.[237] They claimed that this issuance of debt disproportionately favored the Bears NFL franchise, thus violating the section of the Illinois Constitution that forbids public funds from being used for private purposes.[238] In line with the national trend, the Supreme Court of Illinois deferred to the legislature to determine what constitutes a public purpose.[239] The court stated that:

> [i]t is historically clear that Soldier Field has served public purposes since its dedication in 1924. It will continue to do so after the completion of the Burnham Park project as authorized by the Act. A financial benefit accruing to the Bears, standing alone, does not diminish the fact that the renovated Soldier Field will be used and enjoyed by the public for a wide variety of public purposes, whether or not the projected positive effects on jobs and the local economy generally result as predicted by the legislature.[240]

The Illinois Supreme Court in *Friends of the Parks*, like the court in *Poe*, took an expansive view of the concept of public benefit. By making findings of public benefit that may turn out to be false, the legislature was able to shift the burden of proving that the project would primarily benefit a private entity to their opponents.[241]

Due to the nationwide broadening of the public purpose doctrine from the 1930s to the present, non-profit organizations and individual taxpayers in New York City would have had their work cut out for them if they wished to challenge the bond issuances for the West Side Stadium as solely representing a handout to the Jets.[242] As described above, stadium opponents could have made compelling arguments demonstrating that the public benefit of a West Side Stadium, if any existed, was merely incidental to the massive private

---

[237] *Id.* at 162-164.

[238] *Id.* at 165.

[239] *Id.* at 166-167.

[240] *Id.* at 169.

[241] *See id.*

[242] *See* Rubin, *supra* note 199, at 418.

> In light of the courts' pervasive unwillingness to place any limitations on what the state and its political subdivisions can do with tax dollars, the public finds itself in the same position as it was more than 150 years ago. . . . Unless the courts begin to fulfill their judicial responsibility and properly enforce the constitution, the public will be left to the mercies of a legislature prone to side with the entity that pays the most money. The future does not look bright.

Id.

benefit to the Jets.[243] If such arguments were made in state court, the court should have deemed the NYSCC bond issuance proposals unconstitutional under Articles VII and VIII of the New York State Constitution, New York's public purpose provisions for the investment of state and local funds.[244] While such a challenge to the West Side Stadium ended up being unnecessary after the PACB vetoed the plan, opponents of publicly financed stadiums should be preparing their arguments for a narrow reading of the public purpose provisions now so they can effectively fight the stadium financing plans for New York City's other sports franchises.

B. *Why Challenges to the NYSCC Under the Public Purpose Doctrine Could Have Succeeded*

It is inequitable to force the taxpayers of New York to assume the monumental risks associated with stadium projects of the magnitude of the West Side Stadium without first asking them if they agree that the government should go ahead and fund that stadium. Many New Yorkers, including officials elected to serve the interests of the public, feel that the taxpayers should not be forced by franchise owners and a handful of powerful city officials to subsidize stadiums when it is not in their best interest.[245] The plan to construct the West Side Stadium would not have been voted upon by the City's legislature or its citizenry. There is no plan to allow people of New York City or their local legislators to vote on the funding of the new Mets, Yankees, or Nets sports facilities either. Therefore, stadium opponents will likely have to turn to the courts in order to stop public funds from being used to finance these projects.

Taxpayers around the nation have been forced by municipalities to fund stadiums by assuming debt and forfeiting tax revenues from sports teams.[246] With the aid of state courts that have proven exceedingly deferential to the proponents of public funding for stadiums, the United States has been experiencing a stadium construction boom for nearly

---

[243] *See supra* Part III.

[244] *See* N.Y. CONST. arts. VII, § 8, VIII, § 1.

[245] *See generally* Letter from Manhattan Community Bd. No. 4, *supra* note 186.

[246] *See supra* Part II.

forty years.[247] During this period, the public purpose doctrine's ability to protect taxpayers from funding private benefits has been steadily diminishing in most jurisdictions.[248] In the near future the courts of New York will be presented with an excellent opportunity to put a resounding halt to this practice by upholding challenges seeking to enjoin the expenditure of hundreds of millions of city and state dollars for stadiums.

Taxpayer challenges to the NYSCC would have needed to overcome the widespread national trend of approving these public finance schemes as well as the *Murphy* case, which recognized a public purpose in sports facilities.[249] The courts of New York, if faced with a taxpayer challenge to the NYSCC should have looked to the independent analysis of this plan indicating that the City and the Jets were relying on an inaccurate study that overestimated the community growth, jobs, and revenues that this stadium would create.[250] The courts should also have looked to the fates of several other cities that have committed huge amounts of tax dollars to stadiums and convention centers that have failed to come close to meeting expectations.[251] With the opportunity to hear taxpayer suits against the West Side Stadium, the state courts could have breathed life back into New York's public purpose provisions by holding that a massive private benefit from enormous tax dollar expenditures cannot be overridden by speculative and risky plans to derive a public benefit propounded by the same private entities that would see the greatest benefit.

When hearing upcoming stadium challenges, New York courts should consider the fact that the public has been afforded no opportunity to vote on whether the stadium should be built.[252] The court in *Poe* deferred to the unsubstantiated and speculative benefits to the public that were presented by the respective municipalities.[253] While the plaintiffs in that case had valid arguments that their taxes were being used to benefit a private corporation in violation of the Florida State

---

[247] Lathrope, *supra* note 30, at 1148.

[248] *See supra* Part IV.A.

[249] *See* Murphy v. Erie County, 268 N.E.2d 771, 774 (N.Y. 1971). *See also supra* Part IV.A.

[250] *See supra* Part III.A.

[251] *See, e.g.*, Sanders, *supra* note 150.

[252] *See supra* Part III.B.

[253] Poe v. Hillsborough County, 695 So. 2d 672, 278 (Fla. 1997).

Constitution, the majority of taxpayers voted to approve the stadium financing scheme when it was presented to them on the ballot.[254] A court can more easily justify the expenditure of taxpayer dollars for a controversial purpose when the taxpayers themselves have voted in agreement with the municipality to spend in that way. New York citizens are not being offered a similar opportunity to vote on upcoming stadium projects.[255] While a ballot measure or referendum is not required for all proposed expenditures of tax dollars, decisions to assume hundreds of millions in debt to fund stadiums that will immensely benefit private corporations must not be made by a handful of politicians and developers.

Similarly, the legislature elected by the people of New York City will not have been given direct authority to approve or deny funding for these projects.[256] The Supreme Court of Illinois in *Friends of the Parks* deferred to the legislative findings of prospective public benefits when approving a large bond issuance to renovate Soldier Field.[257] Again, the court rejected valid taxpayer arguments that public funds were disproportionately benefiting a privately owned corporation.[258] However, the taxpayers of Chicago at least had a body of elected officials with political accountability researching and weighing the prospective public harms and benefits of that tax-free stadium bond issuance.[259] The New York City Council had no direct authority to decide on the NYSCC plan and will have no authority to approve the Yankees, Mets, or Nets proposals either.[260] The courts of New York must not defer to flawed studies done for the very private corporation that stands to benefit from a stadium, which was the case with the Jets' plan.[261] Without voter or legislative approval, the public purpose requirement cannot be met because the public has had no constructive opportunity to weigh in.

---

[254] *Id*. at 679.

[255] *See* REGIONAL PLAN ASSOCIATION, *supra* note 91, at 32.

[256] *See id*.

[257] Friends of the Parks v. Chicago Park Dist., 786 N.E.2d 161, 166-167 (Ill. 2003).

[258] *See id.*

[259] *See id.* The legislature of Erie County also approved the bond issuance in *Murphy v. Erie County*, 268 N.E.2d 771, 772 (N.Y. 1971).

[260] The New York City Council's only role indirectly related to the West Side Stadium approval would have been to approve the rezoning for the entire Hudson Yards Proposal. *See* REGIONAL PLAN ASSOCIATION, *supra* note 91, at 32.

[261] *See supra* Part IV.A.

C. Applying the Massachusetts Approach in Future New York Stadium Challenges

The courts of New York should follow the lead of Massachusetts in regards to the public purpose doctrine and look much more carefully at who will primarily benefit from a publicly financed stadium. In *Opinion of the Justices*, the judiciary of Massachusetts firmly established that the public's money cannot be improperly diverted in order to benefit a private entity.[262] Although the case was decided long ago, this holding remains good law today and was recently applied in order to invalidate the plan to build a minor league baseball stadium in *City of Springfield v. Dreison*.[263] In *Dreison*, the court determined that the private use of the stadium superceded its public use and held that the state could not exercise its eminent domain power in order to foster the stadium construction.[264] The Superior Court of Massachusetts said:

> [W]here it is contemplated that a stadium will be used primarily or substantially by a privately owned professional athletic team, statutory controls must be in place before public funds can be used to acquire or build such a stadium. That is exactly the type of stadium at issue here. The principal immediate reason for the proposed stadium in this case is to allow a private not-for-profit corporation to own and operate a professional baseball team.[265]

The controversy over the plan to fund the NYSCC was quite similar to the one discussed in *Dreison* even though eminent domain was not a central issue. This is because, as evidenced by the aforementioned guaranteed profits to the Jets and the risks to the public, the principal reason for this project was for the Jets to own and operate the stadium. Subsidized stadium opponents should be figuring out how to demonstrate that the plans to build new homes for the Mets, Yankees, and Nets are also primarily private enterprises

As discussed above, there were no safeguards protecting the potential public investment in the West Side Stadium, and there was a substantial risk that the revenues generated would

---

[262] Opinion of the Justices to the House of Representatives, 250 N.E.2d 547, 559 (Mass. 1969).

[263] No. 19991318, 2000 WL 782971, at *40-41 (Mass. Super. Feb. 25, 2000).

[264] *Id.* at *1.

[265] *Id*. at *41.

be insufficient to service the $600 million in bonds.[266] The fact that some public benefits may have resulted from the stadium cannot override the fact that the Jets were guaranteed profits and the public was guaranteed nothing.[267] If proposed in Massachusetts, the plan to fund the West Side Stadium would have been invalidated under that state's version of the public purpose doctrine.[268] The courts of New York should adopt a similar interpretation of the public purpose doctrine and begin to invalidate publicly subsidized stadiums as well.

In *Murphy v. Erie County*, the New York Court of Appeals held that a publicly funded stadium utilized for the benefit of a private corporation fulfilled a public purpose and did not necessarily represent a gift of public property to a private entity.[269] The court stated that in regards to the stadium at issue, "the private benefit is 'incidental' to the conceded public purpose of the stadium."[270] This view is erroneous. The immense costs and risks of the West Side Stadium plan in conjunction with the nearly certain profits for the Jets were not what the creators of the public purpose doctrine envisioned. The public benefits, if any, of stadiums and arenas are incidental to private purposes, and for this reason stadiums should not be funded using tax dollars.[271]

V. CONCLUSION

With several publicly financed stadiums in the works in New York City, the time will soon come for the courts to make a decision on whether to allow wealthy sports franchises to receive immense public subsidies to construct these privately owned facilities. When that time comes, those courts should depart from the national trend and hold that these massive public subsidies violate the public purpose provisions of the New York State Constitution. An extreme example of why it is inequitable for taxpayers to bear the risk and costs of helping to pay for sports stadiums was the recent plan to construct the NYSCC. While the private interests of the Jets would

---

[266] *See supra* Part III.A.

[267] *See id*.

[268] *See Opinion of the Justices*, 250 N.E.2d at 560; *Dreison*, 2000 WL 782971, at *44.

[269] *See* Murphy v. Erie County, 268 N.E.2d 771, 774 (N.Y. 1971).

[270] *Id.*

[271] *See generally* TOUCHDOWN FOR THE CITY?, *supra* note 24.

definitely have been served by the West Side Stadium, the benefit to the public was far too speculative. The use of public dollars for stadiums absent valid demonstration of a substantial public benefit should cease to be the norm. Future taxpayer lawsuits will allow the perfect opportunity for New York to put its foot down and end the widespread stadium handouts to sports franchises.

Gregory W. Fox[†]

[†] B.A., Cornell University; J.D. candidate, 2006, Brooklyn Law School. The author thanks everybody at the *Brooklyn Law Review* for their tireless efforts, Professor David Reiss for his guidance, and Housing Conservation Coordinators and all of the other West Side Stadium opponents who proved that you can fight city hall.