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If You (Pay to) Build it, They Will Come: Rethinking Publicly-Financed Professional Sports Stadiums After the Atlanta Braves Deal with Cobb County

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IF YOU (PAY TO) BUILD IT, THEY WILL COME: RETHINKING PUBLICLY-FINANCED PROFESSIONAL SPORTS STADIUMS AFTER THE ATLANTA BRAVES DEAL WITH COBB COUNTY

Steven D. Zavodnick Jr.[*]

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I. INTRODUCTION

"If you build it, they will come." In the classic film *Field of Dreams*,[1] Iowa farmer Ray Kinsella heard a voice from the heavens repeat this phrase while working his cornfield. On belief alone, Ray plowed over his cornfield and built a baseball diamond—risking financial ruin and bringing his sanity into question. When all was almost lost, Ray's faith was rewarded. The ghosts of past baseball greats emerged from the cornfield to play on Ray's field, and he was able to "have a catch" with the ghost of his long-dead ballplayer father.

Cobb County, Georgia (Cobb) pledged millions of dollars in public money to build a new stadium for Major League Baseball's (MLB) Atlanta Braves (the Braves). The team opened the 2017 season at the brand-new SunTrust Park.[2] Like Ray, Cobb has undertaken significant financial risk in building the new ballpark. To repay the $376 million in municipal bonds issued for the stadium, Cobb must pay $22.4 million a year for the next thirty years.[3] Although Ray Kinsella's risk in building a baseball field paid off, it is doubtful that the new Braves stadium will live up to the lofty promises made by Cobb politicians to justify the public expenditure.

Professional sports stadiums have been subsidized with public money since before Babe Ruth famously "called his shot."[4] While the economic and legal merits of stadium subsidies have been debated over the past fifty years, the scrutiny has intensified in recent years from members of Congress, political commentators, and sports journalists alike.[5]

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[1] FIELD OF DREAMS (Universal Pictures 1989).

[2] Tim Tucker, *How Braves Will Honor Hank Aaron at SunTrust Park*, ATLANTA J. CONST. (Jan. 12, 2017), http://www.ajc.com/sports/baseball/how-braves-will-honor-hank-aaron-suntrust-park/bILuow4BWQTVReSD8Z7W0I/.

[3] Dan Klepal, *Cobb to Borrow $376 Million for SunTrust Park*, ATL. J.-CONST. (Aug. 25, 2015), http://www.ajc.com/news/local-govt--politics/cobb-borrow-376-million-for-suntrust-park/yEv6osd51CzK7YtuHWDVaO/. The payment will be offset to some degree by the Braves' $6.1 million in annual rent payments. *Id.*

[4] *See* John Horne, *The Babe's Called Shot*, BASEBALL HALL OF FAME (last visited Dec. 19, 2016), http://baseballhall.org/archive-collection/called-shot (chronicling the 1932 World Series game when Babe Ruth pointed his bat beyond the outfield wall before hitting a home run); *infra* note 14 and accompanying text (noting that the first professional sports team played in a publicly-funded stadium in 1932).

[5] *See* Tax Cuts and Jobs Act, H.R. 1, 115th Cong. § 3684 (2017) (proposing to eliminate the federal tax exemption given to municipal bonds issued to finance stadiums); HBO, *Any*

For several reasons, the Braves' new stadium is a fascinating case study through which to analyze the current legal framework that enables and encourages municipalities to gift privately owned teams millions of dollars in public money to build stadiums. Like most publicly-funded stadiums, the Braves' stadium construction was financed with the proceeds from municipal bonds. Unlike other stadium bonds, however, the interest collected by SunTrust Park bonds are not exempt from federal income taxation.[6] Additionally, the bonds' validity was upheld by the Georgia Supreme Court against numerous Georgia constitutional and statutory challenges.[7] And lastly, the project exposed how inadequate statutory safeguards can result in significant public backlash.[8]

Section II of this Note provides a brief history of publicly-financed stadiums, evaluates the claims that stadiums are worthy public investments, and explains how teams' bargaining advantage over municipalities resulted in an oversupply of public funds for stadium construction. Section III examines federal and state law implicated by using municipal bonds to subsidize stadiums. Section IV analyzes the agreement between the Cobb-Marietta Coliseum and Exhibit Hall Authority (the Authority), the Braves, and Cobb County and concludes that: (1) the agreement was structured to evade the Georgia constitutional and statutory limitations on municipal debt; (2) the decision to issue taxable, instead of tax-exempt, bonds likely saved Cobb money, which illustrates the perverse incentives federal tax law impose on local governments; and (3) although correctly decided from precedent, the Georgia Supreme Court's decision in *Savage v. State* ignores the plain meaning and historical purpose of state constitutional protections intended to prevent municipalities from lending public funds for projects that result in predominately private gains.[9]

Given Wednesday with Bill Simmons 'I Believe' Promo (HBO), YOUTUBE (May 14, 2016), https://www.youtube.com/watch?v=y1dGNbtHdV8 ("I believe that billionaires should pay for their own . . . stadiums."); *Last Week Tonight with John Oliver* (HBO television broadcast July 12, 2015) (criticizing stadium subsidies).

[6] *See infra* Section III.A (considering the federal tax exemption generally); *infra* Section IV.A (analyzing Cobb's decision to issue taxable bonds).

[7] *See* Savage v. State, 774 S.E.2d 624, 1627 (Ga. 2015) (discussed *infra* Section IV.C).

[8] *See* Dan Klepal, *Cobb Approves Major Braves Stadium Agreements*, ATLANTA J. CONST. (May 27, 2014), http://www.myajc.com/news/cobb-approves-major-braves-stadium-agreements/VlgOPijPkz6hyKurCvZ9dL/ (discussing the public opposition to the stadium).

[9] *Savage*, 774 S.E.2d at 634.

To prevent the continued oversupply of stadium subsidies, in Section V this Note endorses the pending federal legislation that would revoke stadium bonds' tax exemption. It also advocates for state legislation that would create procedural and substantive standards to rein in local governments' tendency to capitulate to team owners at the expense of the taxpaying public. Finally, courts, recognizing that publicly funded stadiums are unlike other government facilities, should take a more active role in reviewing proposed stadium bonds to ensure that they are for a public purpose and not just gratuitous public aid to private enterprise.

II. BACKGROUND

A. THE HISTORY OF PUBLIC FUNDING FOR PROFESSIONAL SPORTS STADIUMS

In the early days of American professional sports, games were played in venues paid for by the home team's owners.[10] Beginning in 1923, however, the cities of Los Angeles, Chicago, and Cleveland spent public money to construct large coliseums to bolster their chances of hosting the Olympic Games.[11] All three cities' initial efforts failed, and while Los Angeles was eventually awarded the 1932 Games,[12] Chicago and Cleveland were left with vacant stadiums. The best, and perhaps only, solution was to offer the stadiums to local professional teams, which Cleveland did by renting the stadium to MLB's Indians.[13]

Until 1960, however, publicly funded stadiums were the exception and not the rule.[14] Post-World War II social and economic conditions profoundly affected the business of professional sports.[15] Because of this rapid growth, it became

[10] *See* Logan E. Gans, *Take Me Out to the Ball Game, But Should the Crowd's Taxes Pay for It?*, 29 VA. TAX REV. 751, 754 (2010) (noting that famous ballparks, such as Fenway Park and Wrigley Field, were built entirely with private funds).

[11] Raymond J. Keating, *Sports Pork: The Costly Relationships between Major League Sports and Government*, CATO INST. POL'Y ANALYSIS, Apr. 5, 1999 at 4.

[12] *Id.*

[13] *Id.*

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

[15] *See id.* at 2–3 (discussing how population migration from the Northeast to the Sunbelt, cheaper long-distance travel, and rapid revenue growth increased the value of professional leagues and made it viable for teams to exist in more American cities).

imperative for major cities to retain or attract professional teams.[16] Although local governments went about this in several ways, the most fruitful was to "dangl[e] the prospect of a publicly financed stadium . . . ."[17] Milwaukee was the first to use this strategy. Unable to secure an MLB expansion franchise, the city built a new stadium entirely with public funds.[18] The stadium was able to lure the Braves franchise to Milwaukee in 1953.[19] And while two other MLB teams moved to take advantage of publicly financed stadiums in other cities shortly thereafter,[20] it was the Brooklyn Dodgers' departure for Los Angeles in 1958 that truly accelerated the frenzy of new stadium construction.[21]

Before 1948, there were only twenty-eight professional sports stadiums and only four were built with a modest amount of government funds.[22] Over the next half of the twentieth century, American sports teams spent over $20 billion on stadiums for the four major American sports leagues of which, conservatively, taxpayers paid $14.727 billion.[23] During that time, stadium construction changed dramatically.[24] The stadiums of the 1960s and 1970s were "cookie-cutter, concrete-slab" facilities that were often home to both baseball and football teams.[25] Today, teams demand sport-specific stadiums with a bevy of modern amenities, and are increasingly declaring that their facilities are obsolete.[26]

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[16] *See* Gans, *supra* note 11, at 755 ("[G]reat competition for both established teams and expansion teams ensued between many cities.").

[17] *Id.*

[18] Marc Edelman, *Sports and the City: How to Curb Professional Sports Teams' Demands for Free Public Stadiums*, 6 RUTGERS J.L. & PUB. POL'Y 35 (2008).

[19] *Id.*

[20] *See id.* at 40 (noting that the Browns and Athletics left privately owned stadiums and markets shared with another team for solo markets and publicly-funded stadiums).

[21] *See id.* at 41 ("Once [the Dodgers moved] to Los Angeles, MLB owners became cognizant of a basic tenet in economics: the law of supply and demand.").

[22] Zachary A. Phelps, *Stadium Construction for Professional Sports: Reversing the Inequities Through Tax Incentives*, 18 ST. JOHN'S J. L. COMM. 981, 983–84 (2004).

[23] *See* Keating, *supra* note 11, at 11–15 (converting nominal expenditures into real 1997 dollars).

[24] *See* Edelman, *supra* note 18, at 43–44 (noting the sharp increase in costs to build a new stadium).

[25] Gans, *supra* note 10, at 755 (internal quotations omitted).

[26] Edelman, *supra* note 18, at 44–45. Stadium revenues are a vital part of a team's business model, and new stadiums generally lead to increased attendance and allow teams to justify charging fans higher ticket and concessions prices. Frank A. Mayer III, *Stadium Financing: Where We Are, How We Got Here, and Where We Are Going*, 12 VILL. SPORTS & ENT. L.J. 195, 198 (2005).

Given the leverage teams hold over local governments, this has resulted in an increase in the number of new stadiums being built,[27] each carrying a higher price tag.[28] While the percentage of the total construction costs paid with public funds is less than it was in the 1950s, the total public investment is higher than ever before because of the number of new stadiums being built and the increase in the price per stadium.[29] Since 2000, forty-five stadiums were constructed or majorly renovated at the staggering cost of $27.8 billion, of which nearly $13 billion (in 2014 dollars) was financed with public money.[30]

B. THE ECONOMIC COSTS AND BENEFITS OF NEW STADIUMS

Although the aggregate $13 billion public investment in stadiums since the turn of the century is an attention grabbing figure, subsidy proponents argue that the public expenditure is warranted because stadiums spur economic growth, job creation, and increase tax revenues.[31] Local politicians and team owners produce "independent" economic analyses ahead of every new stadium proposal. Invariably, these studies predict an influx of money into the local economy attributable to the stadium.[32] Advocates also rely on cherry-picked statistics to show positive economic outcomes allegedly attributable to the stadium. For

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[27] *See* Edelman, *supra* note 18, at 44 (showing the steady increase in the number of new facilities being built in each decade since 1950).

[28] *See* TED GAYER ET AL., BROOKINGS INST., TAX-EXEMPT MUNICIPAL BONDS AND THE FINANCING OF PROFESSIONAL SPORTS STADIUMS 23 (2016) (stating that the total cost to build new Yankee Stadium, completed in 2009, was over $2.5 billion); Edelman, *supra* note 18, at 43–44 (providing representative examples to show how the cost to build a new stadium has increased over the years).

[29] *See* Edelman, *supra* note 18, at 43 ("[L]ocal communities are paying more than ever before to build sports facilities.").

[30] GAYER ET AL., *supra* note 28, at 23.

[31] Dennis Coates & Brad R. Humphreys, *Do Economists Reach a Conclusion on Subsidies for Sports Franchises, Stadiums, and Mega-Events?*, 5 ECON. J. WATCH 294, 300 (2008).

[32] *See* Andrew H. Goodman, *The Public Financing of Professional Sports Stadiums: Policy and Practice*, 9 SPORTS LAW J. 173, 201 (2002) (quoting a consultant who advises local governments on stadium issues as saying that "for each $1 spent on pro sports, an additional $1.75 is created in the economy . . . and for each $1 million spent on pro sports, 76 jobs are created."); *see also, e.g.*, BRAILSFORD & DUNLAVEY, SUMMARY OF THE ECONOMIC AND FISCAL BENEFITS OF A MLB TEAM AND NEW BALLPARK TO COBB COUNTY, https://cobbcounty.org/images/documents/communications/CobbCountyFinalBenefitsStudy.pdf (touting the anticipated economic benefits from the Braves stadium in an "independent" study commissioned by the Cobb County Chamber of Commerce).

example, a 1998 study conducted by the City of Phoenix attributed a one-year 34% increase in downtown sales revenue to a newly constructed baseball stadium.[33]

Contrary to the economic impact studies commissioned by stadium proponents—what two economists derisively call "promotional literature"[34]—the weight of independent economic research shows negligible long-term economic stimulus from new stadium construction.[35] For example, using a regression model, one economist concluded that there was no statistically significant evidence that professional sports teams or stadiums positively impact income per capita or employment.[36] To explain the empirical findings, economists note that consumer spending on professional sports comes out of local residents' fixed entertainment budget. Further, administrative and opportunity costs associated with stadium subsidies are generally not addressed in the "promotional literature."[37]

Backers of stadium projects also argue that professional sports franchises are cultural assets that increase civic pride and bring national attention to the community. This reasoning has been endorsed by some courts.[38] These intangible benefits, however, are impossible to quantify.[39] And, like tangible economic benefits, must be assessed while keeping in mind opportunity costs and substitution effects because, for every resident who derives benefit from the stadium, there are citizens who are disinterested in sports and may resent paying taxes to subsidize the stadium.[40]

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33 Goodman, *supra* note 32, at 201.

34 Coates & Humphreys, *supra* note 31, at 300.

35 *See id.* at 310 (surveying the work of several economists to conclude that there is "near unanimity in the conclusion that stadiums . . . have no consistent, positive impact on jobs, income, and tax revenues.").

36 *Id.* at 303 (citing Robert Baade, *Professional Sports as Catalysts for Metropolitan Economic Development*, 18 J. URB. AFF. 12, 14 (1996)).

37 *See id.* at 299 ("Government expenditures on stadium and arena subsidies carry opportunity costs which are never addressed.").

38 *See, e.g.*, Poe v. Hillsborough Cty., 695 So. 2d 672, 678–79 (Fla. 1997) (citing "national media exposure" and "civic pride and camaraderie" as a few of the stadium's public benefits).

39 GAYER ET AL., *supra* note 28, at 5–6.

40 Coates & Humphreys, *supra* note 31, at 299.

C. THE BARGAINING ADVANTAGE TEAMS HAVE OVER LOCAL GOVERNMENTS

Professional sports leagues are exempt from federal antitrust laws.[41] In what would otherwise be an illegal restraint on trade, leagues can block otherwise qualified franchises from joining.[42] Additionally, start-up leagues face prohibitively high barriers to challenge existing leagues.[43] Because of this, some American communities that want and could support a pro team are left without.[44] Moreover, a Ninth Circuit decision in the 1980s sanctioned the unilateral power of individual franchises to relocate.[45] The result is that American cities find themselves in a classic prisoner's dilemma. Either the local government gives into the team's demand for a subsidized stadium, or it runs the risk that another city will—leading to the team's departure.[46] San Diegans discovered this hard lesson recently. After voters refused to approve public money to build a new stadium,[47] the Chargers announced they were moving to Los Angeles to be a co-tenant in a new stadium.[48]

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[41] *See* Jacob M. Ware, *Intentional Pass: Analyzing Baseball's Antitrust Exemption as Applied to Broadcasting Agreements in* Laumann v. National Hockey League, 49 GA. L. REV. 895, 901 (2015) ("[B]aseball has enjoyed a longstanding judicially created exemption to antitrust laws since a famous Supreme Court case in 1922.").

[42] *See, e.g.*, Mid-South Grizzlies v. Nat'l Football League, 550 F. Supp. 558, 571–72 (E.D. Pa. 1982), *aff'd* 720 F.2d 772 (3d Cir. 1983) (finding that the NFL's rejection of a franchise application did not violate Sections 1 or 2 of the Sherman Act); *see also* Edelman, *supra* note 18, at 62–63 (arguing that removing the exemption might limit stadium subsidies).

[43] *See* Edelman, *supra* note 18, at 48–49 (citing the four major sports leagues' "insurmountable lead" in fan base, talent, broadcasting rights, and facilities).

[44] *See id.* at 48 (citing examples of major American cities that lack a team in one or more of the four major sports leagues).

[45] *See* Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League, 726 F.2d 1381, 1401 (9th Cir. 1984) (holding that the NFL could not prevent one of its franchises from relocating); *see also* City of Oakland v. Oakland Raiders, 174 Cal. App. 3d 414 (1985) (preventing the city from using its eminent domain power to block the team's departure).

[46] *See* Goodman, *supra* note 32, at 210 (discussing the prisoner's dilemma facing municipalities and why it almost always makes sense to offer a subsidy).

[47] Ken Belson, *San Diego Voters Reject Funding of New Chargers Stadium*, N.Y. TIMES (Nov. 9, 2016), https://www.nytimes.com/2016/11/10/sports/football/san-diego-rejects-chargers-stadium.html.

[48] Nathan Fenno, *What Could a Chargers Lease at the Rams' Inglewood Stadium Look Like?*, L.A. TIMES (Dec. 14, 2016), http://www.latimes.com/sports/la-sp-live-nfl-meetings-chargers-what-could-a-chargers-lease-at-the-1481731431-htmlstory.html.

III. PUBLIC FINANCE LAW

Local governments have several policy tools at their disposal to subsidize stadiums. These include direct payments for site preparation and infrastructure improvements,[49] tax breaks,[50] and the use of eminent domain to acquire the stadium site.[51] But the most common tool is the use of tax-exempt municipal bonds.[52] In a typical arrangement, a municipality will utilize another governmental entity—either a special fund, district, or authority—to issue the debt and own the stadium.[53] The debt issued by the quasi-governmental entity is then paid back with a mix of tax dollars remitted to the authority by the municipality and rent paid by the team.[54]

A. THE FEDERAL TAX EXEMPTION OF MUNICIPAL BONDS

Interest earned on state and municipal debt obligations has been excluded from federal taxation since the first income tax was passed in 1913.[55] The rule is now codified at section 103(a) of the Internal Revenue Code.[56] Because investors do not pay taxes on their earned interest, tax-exempt municipal bonds are, all other

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[49] *See* Noll & Zimbalist, *supra* note 14, at 7 ("The standard practice is for local and sometimes state government to pay for most, if not all, site preparation.").

[50] *See* Gans, *supra* note 10, at 764 ("An abatement of property taxes is one major tool used by cities to lure or keep teams."); *see also* Jack F. Williams et al., *Public Financing of Green Cathedrals*, 5 ALB. GOV'T L. REV. 123, 133 (2012) (noting that property tax abatements have term limits so some jurisdictions have issued payment in lieu of taxes (PILOT) bonds instead).

[51] *See generally* Cristin Hartzog, *The Public Use of Private Sports Stadiums:* Kelo *Hits a Homerun for Private Developers*, 9 VAND. J. ENT. & TECH. L. 145 (2006) (discussing the evolution of and controversy around using eminent domain to acquire land for stadiums).

[52] *See* Goodman, *supra* note 32, at 174, 176 (calling the practice "pervasive").

[53] *See id.* (discussing common financing mechanisms).

[54] *See* Noll & Zimbalist, *supra* note 14, at 13–14 (listing various sources of revenue used to repay the municipal bond).

[55] Dennis Zimmerman, *Subsidizing Stadiums: Who Benefits, Who Pays?*, *in* SPORTS, JOBS, AND TAXES: THE ECONOMIC IMPACT OF SPORTS TEAMS AND STADIUMS 134 (Roger G. Noll & Andrew Zimbalist eds., 1997). At first, the exemption was premised on the intergovernmental tax immunity doctrine, which prohibits the federal government from taxing the states, and vice versa. *See* Pollock v. Farmers' Loan & Tr. Co., 157 U.S. 429, 586 (1895) (holding that a tax on state bond interest was unconstitutional because it amounted to an indirect tax on the states). But this decision was later overruled. *See* South Carolina v. Baker, 485 U.S. 505, 525–26 (1998) (determining that taxing interest earned by individuals from state bonds does not violate the intergovernmental tax immunity doctrine).

[56] *See* I.R.C. § 103(a) (2012) ("[G]ross income [for tax purposes] does not include interest on any State or local bond.").

things being equal, more attractive investments than conventional, taxable bonds.[57] This enables municipalities to borrow at lower interest rates, which reduces the total cost to taxpayers over the life of the obligation.[58] The federal government effectively subsidizes this advantage for local governments through uncollected taxes.[59]

Congress removed tax-exempt status from certain municipal bonds. [60] The Revenue and Expenditure Control Act of 1968 made municipal bonds taxable if more than 25% of the proceeds were used for the benefit of a private entity and secured by property used by a private entity.[61] This law, however, excluded bonds used to build "sports facilities."[62]

Troubled by the proliferation of municipal financings to build professional sports stadiums—and the resulting federal revenue loss[63]—Congress inserted provisions into the Tax Reform Act of 1986 to "eliminate tax-exempt financing of professional sports facilities."[64] The law removed the "sports facilities" exclusion,[65] defined municipal bonds that overwhelmingly benefit private enterprise as "private activity" bonds,[66] and lowered the threshold

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[57] *See* Zimmerman, *supra* note 55, at 130 (noting the "interest rate spread (differential) between long-term taxable corporate bonds and long-term tax-exempt state and local bonds"); *see also* GAYER ET AL., *supra* note 28, at 10–11 (arguing that corporate bonds provide the best taxable comparison to tax-free municipal bonds). Since 1996, the interest rate spread has declined from 2% to approximately 0.5%. *Id.* at 27.

[58] GAYER ET AL., *supra* note 28, at 3 (calculating that cumulative savings for issuers of stadium bonds between 2000 and 2014 because of the federal tax-exemption to be between $2.6 billion and $3.2 billion depending on the discount rate used to discount future payments back to present value).

[59] *See id.* at 3 (estimating the present value of the federal revenue loss from stadium bonds issued between 2000 and 2014 to be between $3.2 billion and $3.7 billion).

[60] *See* Williams et al., *supra* note 50, at 130–31 (indicating that Congress passed the law out of concern that tax-exempt revenue bonds were driving up interest rates, calculating tax revenue loss, and giving state and local government officials too much control over a federal tax expenditure).

[61] Williams et al., *supra* note 50, at 131.

[62] *Id.*

[63] *See* Gans, *supra* note 10, at 757 (internal quotations omitted) (attributing the backlash that developed in the 1970s and 80s to the "explosive growth" of using tax-exempt municipal debt to finance stadiums for wealthy owners and the resulting revenue loss suffered by the federal treasury).

[64] Goodman, *supra* note 32, at 182 (quoting 142 Cong. Rec. S6306 (June 14, 1996) (statement of Senator Daniel Patrick Moynihan)).

[65] I.R.C. § 142(a) (2012).

[66] I.R.C. § 103(b)(1).

amount of private use to 10%.[67] Now, a bond issuance is considered a private activity bond, and is therefore taxable, if more than 10% of the bond proceeds are used by a private business (the private use test) *and* more than 10% of the debt service is secured by property used for a private business or through payments for property used for a private business use (the private payment test).[68]

With $13 billion in proceeds from tax-exempt municipal bonds used to subsidize professional sports stadiums since 2000,[69] it is clear that the 1986 law has failed to live up its stated purpose.[70] Quite to the contrary, the law weakened the bargaining position of municipalities in negotiations with professional teams.[71] To avoid the private activity bond classification and the resulting forfeiture of tax-exempt status, local taxpayers are forced to shoulder at least 90% of the debt repayment from revenues unrelated to the stadium.[72] Several legislative efforts have attempted to change the law,[73] including an early version of the tax reform bill passed in late 2017.[74] But the bill passed into law by President Trump left the tax-exemption for stadium bonds intact.[75]

B. STATE LIMITATIONS ON MUNICIPAL BORROWING

In the middle of the nineteenth century, public animosity towards public aid to private corporations (primarily railroads) led states across the country to limit state legislatures "unbridled

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67 I.R.C. § 141(b).

68 *Id.*

69 *See supra* note 31and accompanying text.

70 *See supra* note 66 and accompanying text.

71 *See* Goodman, *supra* note 33, at 183 (finding the bills effects "ironic").

72 *Id.* at 185; *see also* Gans, *supra* note 10, at 758 ("[T]he 1986 Tax Reform Act actually made stadiums more likely to be funded with public tax money unrelated to the stadium . . . .").

73 *See, e.g.,* Stadium Financing and Franchise Relocation Act of 1999, S. 952, 106th Cong. (1999) (expanding sports leagues' antitrust exemption so long as stadiums are not publicly-financed); Stop Tax-Exempt Arena Debt Issuance Act, S. 224, 106th Cong. § (a)(1) (1996) (classifying local bonds as private activity bonds if more than 5% or $5 million of the proceeds are used "to provide professional sports facilities").

74 *See* Tax Cuts and Jobs Act, H.R. 1, 115th Cong. § 3604 (2017).

75 Kathryn Watson, *Tax Bill Includes Breaks for Things Trump has Railed Against—Like NFL Stadiums*, C.B.S. NEWS, (Dec. 21, 2017) (nothing that the final bill preserved the "tax break for the construction of sports stadiums"); *see also* Goodman, *supra* note 32, at 218 (discussing the various constituencies that oppose changing the tax code to eliminate the subsidy).

power to use the public's assets for the benefit of private corporations."[76] Many states, including Georgia, amended their constitutions to limit state and local politicians' power to incur debt without voter approval and to prohibit lending state credit to private enterprise.[77] Around the same time, courts created the public purpose doctrine "to insure that public monies be spent solely for public purposes and not to benefit private business."[78] While these doctrines were applied vigorously around the turn of the twentieth century, modern courts have been hesitant to use them to check legislative power.[79] Stadium bond issuances are regularly challenged on the grounds that they violate the debt limitation clause, lending of credit doctrine, or public purpose doctrine, but courts have generally declined to grant judicial relief to stadium subsidy opponents.[80]

1. Avoiding Debt Limitation Clauses Through the Use of Revenue Bonds.

As with stadium subsidies today, state and municipal debt were the primary vehicles for governments to subsidize private business in the nineteenth century.[81] Debt limitation clauses were enacted to limit or, in some cases, completely proscribe municipal borrowing.[82] Georgia's law limits the debt incurred by political subdivisions to (i) 10% of the total assessed value of all taxable property within the jurisdiction and (ii) requires that any new debt be approved by a majority of voters.[83] While both the cap on total indebtedness and the vote requirement would seemingly impose

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[76] 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, 397–99 (1999).

[77] *Id. at* 393.

[78] *Id.*

[79] *See id.* at 394 (arguing that modern courts ignore the historical purposes and clear wording of these state constitutional provisions, which amounts to "a constitutional disgrace").

[80] *See* Edelman, *supra* note 18, at 57 ("Courts . . . have rarely applied these doctrines against the building of public sports facilities."); *see also infra* Section III.B.*4* (analyzing case law where courts have upheld stadium subsidies against state constitutional challenges).

[81] *See* Rubin, *supra* note 76, at 395 (describing the massive public debt incurred "for the purpose of giving financial aid to private corporations to build canals and railroads.").

[82] Goodman, *supra* note 32, at 177.

[83] GA. CONST. art. 9, § 5, para. 1(a) (2016); *see also* GA. CONST. art. 7, § 4, paras. 1, 2 (imposing similar requirements on the state government).

vital checks on a municipality's capacity to issue stadium bonds,[84] in practice they are easily evaded.[85] The debt limitation clause only applies to bonds secured by the full faith and credit of the issuing government[86]—known as general obligations bonds—and not bonds secured by revenues from the project being undertaken or monies paid into a special fund—known as revenue bonds.[87] The "special fund doctrine" says that a "financial obligation payable solely from a dedicated source of revenue, and not general taxes, is not treated as a debt for the purposes of constitutional debt limitations . . . ."[88] In Georgia, the doctrine became law with a ruling by the state Supreme Court,[89] which the Revenue Bond Law later codified.[90]

Since the 1960s, local governments have relied almost exclusively on revenue bonds to finance stadiums.[91] Payments to retire the debt can come from stadium revenues, indirectly related sources of revenue such as sales or hotel occupancy taxes, or from general tax revenues.[92] However, as discussed in the preceding section, federal tax law creates incentives to limit the amount paid from private uses of the stadium to no more than 10% of the debt security.[93]

2. Lending of Credit Doctrine.

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[84] *See, e.g.*, Belson, *supra* note 47 (discussing how voters in San Diego County rejected the referendum that would have approved public funds for a new football stadium). *But see* Rodney Fort, *Direct Democracy and the Stadium Mess*, *in* SPORTS, JOBS, AND TAXES: THE ECONOMIC IMPACT OF SPORTS TEAMS AND STADIUMS 149 (Roger G. Noll & Andrew Zimbalist eds., 1997) (arguing that direct democracy often fails to express the median voter's preferences on the amount of public spending on stadiums).

[85] *See* Goodman, *supra* note 32, at 177–78 (describing how local governments can avoid the debt limitation clause by issuing the bonds through special districts, special funds, or public authorities).

[86] *See id.* at 177 (explaining that when a government pledges its full faith and credit, it is pledging to use its taxing power, if necessary, to repay the obligation).

[87] *Id.* at 178.

[88] JAMES P. MONACELL, GEORGIA PUBLIC FINANCE LAW HANDBOOK 22 (2d ed. 2015).

[89] *See* Wright v. Hardwick, 109 S.E. 903, 906 (Ga. 1921) (holding that certain warrants, which appeared to be debts, were not debts for constitutional purposes because "the holders . . . would have no recourse against the state on the warrants themselves . . . .").

[90] O.C.G.A. §§ 36-82-60 to 36-82-85 (2012).

[91] *See* Goodman, *supra* note 32, at 177 ("It is the issuance of [revenue bonds] that has become popular in recent decades in the milieu of stadium financing.").

[92] Mayer III, *supra* note 26, at 208.

[93] *See supra* notes 66–72 and accompanying text.

While debt limitation clauses reflect public distrust of government's ability to control borrowing and spending generally, [94] the lending of credit doctrine focuses squarely on limiting government aid to private enterprise. Forty-six states, including Georgia, have enacted such measures to prevent the "mischief" that arises in business partnerships between municipalities and private corporations and to "forbid[ ] the union of public and private capital."[95] Georgia's provision, which is representative, is as follows: "[No] county, municipality, or other political subdivision of this state, through taxation, contribution, or otherwise, [shall] appropriate money for or to lend its credit to any person or to any nonpublic corporation or association . . . ."[96] Applying the plain meaning of this prohibition to stadium subsidies, it seems obvious that contributing public money to repay bonds issued to construct a stadium for a privately-owned sports team would violate the lending of credit doctrine, but modern courts have disagreed.[97]

3. The Public Purpose Doctrine.

Although now codified in some states' constitutions,[98] the public purpose doctrine began as a judicially-created rule.[99] The rule, which states that public money can only be spent for public purposes,[100] seems intuitive, but until the mid-nineteenth century legislatures could tax, borrow, and spend "for every purpose deemed by them legitimate."[101] Related to the public purpose doctrine is what is known as Dillon's rule on the limits of power. The rule, which is regarded as a fundamental principle of local government law, limits local governments' powers to those expressly granted to them by the state legislature or necessarily

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[94] Rubin, *supra* note 76, at 397–98.

[95] *Id.* at 412, 414 (citing Walker v. City of Cincinnati, 21 Ohio St. 14, 54 (Ohio 1871)).

[96] *See* GA. CONST. art. 9, § 2, para. 8 (2016); *see also* GA. CONST. art. 7, § 4, para. 8 (imposing the same limitation on the state). *But see* Bradfield v. Hosp. Auth. Of Muskogee Cty., 176 S.E.2d 92, 101 (Ga. 1970) (determining that the lending of credit doctrine does not apply to public authorities).

[97] *See infra* Section III.B.*4*.

[98] *See, e.g.*, WASH. CONST. art. VII, § 1 (West, Westlaw through amendments approved Nov. 3, 2015) ("Taxes . . . shall be levied and collected for public purposes only.").

[99] Rubin, *supra* note 76, at 417.

[100] *Id.*

[101] Commonwealth v. M'Williams, 11 Pa. (1 Jones) 61, 71 (1849**)**.

implied from the granting legislation.[102] Both the public purpose doctrine and Dillon's rule have been adopted by judicial decree in Georgia.[103] Taken together, municipalities may only issue bonds for public purposes that they are expressly authorized to undertake by law.[104]

4. Most Courts Have Upheld Stadium Subsidies Against State Law Challenges.

Despite the plain meaning and historical reasons for their enactment, the debt limitation clause, lending of credit doctrine, and public purpose rule have failed to prevent state and municipal governments from bestowing billions of taxpayer dollars on privately-owned professional sports teams to build stadiums. The case law validating the use of municipal bonds to finance stadiums is immense, but three cases decided within a year of each other exemplify the majority view.[105]

By structuring stadium bonds as revenue bonds, local governments avoid state debt limitation clauses and, therefore, the referendum requirement. In *Libertarian Party v. State*, the stadium bonds did not implicate Wisconsin's debt limitation clause because the issuing special district could only assess sales and use taxes, which were then placed into a special fund.[106] The court distinguished bonds payable from general property taxes and bonds payable from other tax revenues placed into a special fund—the former being subject to the debt limitation clause while the latter is not.[107] Because the bonds met the statutory requirements,

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[102] MONACELL, *supra* note 88, at 29 (citing Beazley v. DeKalb Cty., 77 S.E.2d 240, 242 (Ga. 1953)).

[103] *See* Smith v. State, 150 S.E.2d 868, 870 (Ga. 1966) (holding that "bonds must be issued for a public purpose."); *Beazley*, 77 S.E.2D AT 242 ("[C]ounties and municipal corporations can exercise only such powers as are conferred on them by law . . . .").

[104] MONACELL, *supra* note 88, at 29.

[105] *See* Poe v. Hillsborough Cty., 695 So. 2d 672, 673 (Fla. 1997) (reversing the trial court's invalidation of stadium bonds); CLEAN v. State, 928 P.2d 1054, 1056 (Wash. 1996) (upholding legislation "that provides a means of financing the construction of a publicly owned major league baseball stadium); Libertarian Party v. State, 546 N.W.2d 424, 440 (Wis. 1996) (determining that a state law authorizing the formation of special district to build and maintain a professional baseball park was constitutional).

[106] *Libertarian Party*, 546 N.W.2d at 437.

[107] *See id.* at 436–37 (analogizing stadium bonds to other obligations that do not "create an indebtedness").

the debt limitation clause was not invoked and a referendum was not required.[108]

In addition to evading the debt limitation clause, using a public authority or special fund can effectively sterilize state lending of credit doctrines. In many states, "the legislature has the power to create local units of government which are not subject to the same constitutional restrictions as the state."[109] This proposition was used to conclude that the state lending of credit did not apply to the baseball park district.[110] Moreover, the state's "moral obligation" to repay the bonds if the special district defaulted did not pledge the state's credit because it was not a contractual obligation even though the state acknowledged that, if called upon, they would use their full taxing power to backstop the bonds.[111]

The Washington Supreme Court employed a two-pronged test to determine whether the stadium bonds violated the lending of credit doctrine.[112] First, it asked whether the public funds were spent to further a fundamental purpose of government. While it concluded that constructing a baseball stadium was for a public purpose, it did not rise to the level of a fundamental purpose of government.[113] Because the stadium bonds did not pass the first prong, the court moved to the second.[114] The court analyzed the consideration the public received for the expenditure and asked whether there was donative intent.[115] Rejecting the plaintiff's contention that the state was acting as a "financing conduit for private enterprise,"[116] the court concluded that the lending of credit doctrine was not violated because the stadium site was to

[108] *Id.* at 437.

[109] *Id.* at 438–39; *see also, e.g.,* Bradfield v. Hosp. Auth. of Muskogee Cty., 176 S.E.2d 92, 101 (Ga. 1970) (holding that the lending of credit doctrine does not apply to political subdivisions in Georgia).

[110] *Id.* at 439.

[111] *See id.* at 440 (concluding that this type of commitment does not pledge state credit but merely expresses the legislature's intention to make necessary appropriations to further the legislation's objectives).

[112] CLEAN v. State, 928 P.2d 1054, 1061 (Wash. 1996).

[113] *Id.* at 1061–62.

[114] *See id.* at 1061 ("The second prong comes into play only when the expenditures are held to not serve fundamental purposes of government.").

[115] *Id.*

[116] *Id.* at 1062 (internal quotations omitted).

remain state owned and the lease agreement with the professional team was not for nominal rent.[117]

The Florida Supreme Court in *Poe* explained the judiciary's role in the revenue bond process.[118] Many states require revenue bonds to be validated by the courts.[119] But this review is generally limited.[120] The trial court in *Poe* exceeded the permissible scope of judicial review by conditioning the stadium bond's validation on an amendment to the professional football team's lease agreement that granted the team the right to receive the first $2 million in annual revenue from non-football events.[121] The court suggested that this type of micromanagement and second-guessing of an arms-length business deal is what the limited scope of judicial review is intended to prevent.[122]

All three decisions deferred to the legislature's determination that the stadium bonds furthered a public purpose.[123] When courts do analyze the substantive merits of the claim that stadiums are for a public purpose, they tend to focus on both the purported tangible economic benefits and non-tangible benefits to the community. The Wisconsin court approved the legislature's declaration that the stadium would encourage economic development and tourism, reduce unemployment, and bring needed capital into the state.[124] It also endorsed the stadium's public purpose because of the "important part that professional sports plays in our social life."[125] Similarly, the Florida court

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[117] *See id.* (noting that if the governmental authority should "permit the ball club to play its games in the stadium for only nominal rent, then the constitutional prohibitions against a gift of state funds might be implicated.").

[118] Poe v. Hillsborough Cty., 695 So. 2d 672, 675 (Fla. 1997).

[119] *See, e.g.*, O.C.G.A. § 36-82-73 (2012) ("All revenue bonds . . . shall be validated in the superior court . . . .").

[120] *See* Poe, 695 So. 2d at 675 (limiting judicial review to the issuer's authority, the obligation's legal purpose, and compliance with other legal requirements).

[121] *Id.*

[122] *Id.* at 679.

[123] *See id.* at 678–79 (giving substantial weight to testimony of local government officials regarding the anticipated economic benefits to be derived from the stadium); CLEAN v. State, 928 P.2d 1054, 1059 (Wash. 1996) (deferring to the legislature's judgment even if the public purpose is debatable); Libertarian Party v. State, 546 N.W.2d 424, 435 (Wis. 1996) (internal quotations omitted) ("[L]egislative determinations of public purpose should be overruled only if it . . . is manifestly arbitrary or unreasonable.") (quoting State *ex rel* Hammermill Paper Co. v. La Plante, 205 N.W.2d 784 (Wis. 1973)).

[124] *Libertarian Party*, 546 N.W.2d at 434.

[125] *Id.* (quoting Lifteau v. Metro. Sports Facilities Comm'n, 270 N.W.2d 749, 754 (Minn. 1978)).

accepted the local government's claim that the stadium would yield an economic benefit in excess of $300 million.[126] Additionally, the stadium served the public purpose by instilling "civic pride and camaraderie," as well as "enhancing the community image on a nationwide basis."[127] On a final note about the public purpose doctrine, the prevailing view is that the public purpose is not defeated because the project will also confer substantial private benefits to the team.[128]

5. The Massachusetts Approach.

In contrast to other state courts, the Massachusetts Supreme Court took a more nuanced approach in assessing the public purpose of a proposed stadium project. The state legislature sought the court's opinion on the constitutionality of a bill authorizing a public authority to issue revenue bonds to finance a massive infrastructure project that included the construction of both an outdoor stadium and indoor arena.[129] The court concluded that a stadium may be for a public purpose if all aspects of the project are "adequately governed by appropriate standards and principles set out in the legislation."[130] The court reasoned that special standards were necessary to guard the public interest because a stadium is distinct from facilities more typically provided by government, such as housing and transportation, where the public objective and the means to achieve that objective are well established.[131] Absent these standards, the public stadium was likely to subsidize private business,[132] and "the facilities could not be said to exist for a public purpose."[133]

Applying this rule to the proposed legislation, the court elaborated on what "appropriate standards and principals" might

126 *See* Poe v. Hillsborough Cty., 695 So.2d 672, 678 (Fla. 1997).

127 *See id.* at 678–79 (quoting the unpublished trial court opinion).

128 *See id.* at 676 (quoting State v. Daytona Beach Racing and Recreational Facilities Dist., 89 So. 2d 34, 36 (Fla. 1956)) (differentiating between permissible incidental private benefits and non-permissible predominant private benefits); *CLEAN*, 928 P.2d at 1061 ("The fact that private ends are incidentally advanced is immaterial to determining whether legislation furthers a public purpose.").

129 *In re* Opinion of the Justices, 250 N.E.2d 547, 549–50 (Mass. 1969).

130 *Id.* at 558.

131 *Id.*

132 *See id.* (recognizing that the stadium "necessarily contemplate[s] a substantial use" by private businesses).

133 *Id.*

look like.[134] Even though the bill mandated that the rent collected must enable the authority to meet its obligations incurred in connection with the facilities, the court determined that the standards were too "vague and fragmentary."[135] Because the project was prospective and a lease with a professional team had yet to be executed, the court did not weigh the substantive merits of the deal, but it did suggest that effective standards would require the government to charge at least fair market rent.[136] Without stronger statutory guidance and standards, as well as a mechanism for reviewing compliance with those standards, the court certified that the stadium project would not be for a public purpose.[137]

Since *In re Opinion of the Justices*, the Massachusetts legislature has crafted stadium bills to protect the public interest.[138] Two stadium bills that provided public money for professional teams limited the use of public funds to infrastructure and utility improvements and required the teams to make contributions so that the government was ensured a return on its investment.[139] In the separate yet related context of an eminent domain taking to build a stadium, a lower court applied the *In re Opinion of the Justices* decision to invalidate the taking because the private use of the stadium outweighed its public use.[140]

IV. THE BRAVES-COBB COUNTY STADIUM DEAL

The November 2013 announcement came as a surprise to all but the select few who had participated in the early, secret negotiations.[141] The Braves, who had played their home games in

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[134] *Id.*

[135] *Id.* at 559.

[136] *See id.* at 559–60 (finding that guidance fell short because it lacked a requirement that the stadium authority charge the stadium's users fair market rent).

[137] *Id.* at 560.

[138] *See* Steven Chen, *Keeping Public Use Relevant in Stadium Eminent Domain Takings: The Massachusetts Way*, 40 B.C. ENVTL. AFF. L. REV. 453, 471–74 (2013) (arguing that the Massachusetts courts' "insistence on the traditional analysis of public use to justify stadium projects" has effectively constrained stadium legislation).

[139] *Id.* at 473–74.

[140] City of Springfield v. Dreison Invs., Inc., 2000 WL 782971, at *50 (Mass. Super. Ct. Feb. 25, 2000).

[141] *See* Mike Tierney, *Braves Begin Work on Stadium Outside Downtown Atlanta, to Mixed Reaction,* N.Y. TIMES (Sept. 16, 2014), https://www.nytimes.com/2014/09/17/sports/baseball/braves-begin-work-on-stadium-outside-

downtown Atlanta since moving to the city from Milwaukee, were packing their bags for the suburbs to play in a new stadium being built in Cobb County (Cobb).[142] Although the existing ballpark was only eighteen years old, Braves officials were adamant that the facility needed "hundreds of millions of upgrades" to "improve access [and] the fan experience."[143] And, after eighteen months of negotiations, it became clear that the city of Atlanta was unwilling to foot the bill.[144] Cobb, on the other hand, had promised to issue up to $397 million in municipal bonds to finance construction of the new stadium.[145] While other factors influenced the team's decision,[146] the public money Cobb offered likely sealed the deal.[147]

A. THE TERMS OF THE AGREEMENT

While many Cobb residents initially welcomed the stadium, a University of Florida poll indicated that an overwhelming majority wished county officials had held a referendum on the stadium.[148] Cobb chairman Tim Lee claims to have considered putting the question to the voters.[149] There is, however, reason to doubt the sincerity of this claim because the three-party agreement between the Authority,[150] Cobb, and the Braves appears structured

downtown-atlanta-to-mixed-reaction.html?_r=0 (characterizing the negotiations as "secret" and noting that the announcement "stunned metropolitan Atlanta").

142 *Id.*

143 *See* Greg Botelho, *Atlanta Mayor Says Price to Keep Braves in City Limits Was Too Steep*, CNN (Nov. 13, 2013), http://www.cnn.com/2013/11/12/us/atlanta-braves-move/ (quoting Braves president John Schuerholz).

144 *See id.* (quoting a press release from Atlanta Mayor Kasim Reed) ("We wanted the Braves to stay in Atlanta, but (there was a) business problem that we had to solve.").

145 Tierney, *supra* note 141.

146 *See, e.g.*, Tierney, *supra* note 141 (noting that one of the Braves stated reasons for the move was to be closer to its heaviest ticket base in Atlanta's northern suburbs).

147 *See* Houston Barber, *The Fall of Turner Field and Why Baseball in the Suburbs is Bad News for Us All*, HUFFINGTON POST (Apr. 6, 2016), http://www.huffingtonpost.com/houston-barber/the-fall-of-turner-field-_b_9612302.html (arguing that the "unprecedented" offer from Cobb was the main reason for the move).

148 *See* Tierney, *supra* note 141 (citing a poll that 78% of Cobb voters would have preferred a referendum and that 55% would have voted for the bonds).

149 *See id.* ("Tim Lee, the Cobb County chairman who steered negotiations with the Braves said . . . a vote had been considered . . . .").

150 The Authority was created in 1980 as a "subordinate public corporation of the State of Georgia for the purpose of development and promotion in this state of the cultural growth, public welfare, education, and recreation of the people of this state." Savage v. State, 774 S.E.2d 624, 627 (Ga. 2015) (internal quotations omitted). Since then, it has overseen the construction and management of a shopping mall and a performing arts center. *Id.* at 628.

specifically to bypass the debt limitation clause in the Georgia Constitution that requires municipal borrowings to be approved by a voter referendum.[151]

To understand why the Braves stadium bonds were not subject to the referendum requirement, it is necessary to understand the terms of the agreement and the financial structure of the project. Befitting a complex public-private joint venture, the project is governed by nine separate contracts.[152] A Memorandum of Understanding (MOU)—similar to a letter of intent—was executed in November 2013.[153] Although the MOU indicated agreement on key terms, it acknowledged that it was not the final agreement and that the parties contemplated several more definitive agreements,[154] including the Development Agreement, Operating Agreement, Bond Resolution, Intergovernmental Agreement, and Trust Indenture.[155] These agreements were signed six months later, immediately following the Cobb County Commission's unanimous approval of the project.[156]

Article 6 of the Development Agreement details the financing arrangement.[157] The Authority issued $368 million in revenue bonds, Cobb directly provided $14 million in infrastructure improvements, and the Braves contributed the rest—between $230 and $280 million depending on the final project costs.[158] Once completed, the Authority would own all the real property and

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[151] *See* GA. CONST. art. 9, § 5, para. 1(a)(2016) ("[N]o such county, municipality, or other political subdivision shall incur any new debt without the assent of a majority of the qualified voters of such county.").

[152] COBB CTY. GOV'T, BRAVES AGREEMENTS, https://cobbcounty.org/index.php?option=com_content&view=article&id=5790:braves-agreements&catid=606&Itemid=2153 (last visited Dec. 19, 2016).

[153] *Id.*

[154] *See id.* at 2 ("This MOU is not intended as a complete and final agreement governing these matters, and the Parties intend to execute one or more final agreements to govern these matters in greater detail.").

[155] COBB CTY. GOV'T, MEMORANDUM OF UNDERSTANDING (Nov. 27, 2013), https://cobbcounty.org/images/documents/communications/13975-BravesMOU.pdf [hereinafter COBB CTY. GOV'T, MOU]; Savage v. State, 774 S.E.2d 624, 628–31 (Ga. 2015) (listing the five "main agreements").

[156] Klepal, *supra* note 8.

[157] COBB CTY. GOV'T, DEVELOPMENT AGREEMENT (May 27, 2014), at 23–28, https://cobbcounty.org/images/documents/boc/braves/Resolution%20for%20Development%20Agreement.pdf.

[158] *See id.* at Exhibit C (showing that the Braves contributed $230 million plus an additional $50 million in discretionary funds).

public infrastructure at the site while the Braves would own the stadium improvements.[159]

At first glance, it appears that Cobb's financial obligation limited to only the $14 million in infrastructure improvements while the Authority is the primary financier of the stadium. The Authority's enabling legislation authorizes it to undertake "projects"—defined to include the construction and operation of "facilities to be used for athletic contests"[160] and to issue revenue bonds to finance these projects.[161] The ability to issue debt obligations is meaningless, however, if the issuer lacks the means to repay the debt, and the Authority does not have the power to independently levy taxes.[162] Requiring the Braves to repay the debt from stadium revenues would negate the primary motivation for moving stadiums.[163] Moreover, even under the most optimistic projections, additional taxes attributable to the project would not come close to covering the annual debt service payments.[164]

To come up with the funds to repay the bonds, the parties exploited a loophole in Georgia public finance law. As authorized by the Georgia Constitution,[165] Cobb and the Authority entered into the Intergovernmental Agreement (IGA). Per the terms of the IGA, Cobb is required to deposit an amount sufficient to cover the annual debt service payments into a trust using "any funds lawfully available to it."[166] This includes an obligation to levy new ad valorem property taxes if necessary to meet its contractual obligation.[167] Although the Authority is seemingly the main

159 *Id.* at 26.

160 Savage v. State, 774 S.E.2d 624, 627 (Ga. 2015) (quoting 1980 Ga. Laws 4096, § (5)(2)).

161 *Id.*

162 *See* GA. CONST. art. 9, § 6, para. 1 (2016) ("No such issuing political subdivision shall exercise the power of taxation for purpose of paying any part of the principal or interest of any such revenue bonds.").

163 *See supra* note 147 and accompanying text (opining that the public money approved by Cobb for the stadium was the primary motivation for the Braves move).

164 *See* COBB CTY. GOV'T, ECONOMIC BENEFITS SUMMARY, *supra* note 32 ("Operation of the ballpark will generate nearly $2 million in annual tax collections for the County." BRAILSFORD & DUNLAVEY, *supra* note 33 at 3. And the annual debt repayment figures is $22.4 million. Klepal, *supra* note 3).

165 *See* GA. CONST. art. 9, § 3, para. 1(a) (authorizing counties to contract with public authorities for "joint services, for the provision of services, or for the joint or separate use of facilities" for a period not exceeding 50 years).

166 COBB CTY GOV'T, INTERGOVERNMENTAL AGREEMENT §§ 5.1, 5.2.

167 *See id.* at § 5.2 (explaining that if pre-existing tax revenues earmarked for the stadium are insufficient to meet Cobb's payment obligations under the IGA, then Cobb agreed to levy an additional ad valorem property tax).

government sponsor of the project, in reality it is was only a conduit used by Cobb to issue the bonds and to serve as the nominal owner of the real property at the stadium site.

Once the bonds were issued, Cobb's liability was finalized. In addition to the $14 million in upfront infrastructure improvements, Cobb's taxpayers will pay $22.4 million annually over thirty years to repay the bonds issued to finance stadium construction, which is partially offset by the Braves $6.1 million in annual rent payments.[168] To cover this recurring expenditure, Cobb increased property taxes by .23 mills.[169] Except for the Braves rent and sales taxes, neither Cobb nor the Authority is entitled to any revenue generated by the stadium,[170] but they are obligated to contribute up to $35 million over thirty years for capital maintenance and repairs.[171]

B. A LEAGUE OF THEIR OWN: FINANCING THE STADIUM WITH TAXABLE MUNICIPAL BONDS

Unlike other publicly-financed stadiums, the Braves stadium bonds are not exempt from federal income taxation.[172] While the decision to issue taxable, rather than tax-exempt, bonds made the project as a whole more expensive,[173] due to the idiosyncrasies of the federal tax code, it also allowed Cobb to secure a greater contribution from the Braves to repay the debt. Current federal law forces municipalities to make a trade-off between paying back at least 90% of the borrowing costs and foregoing the federal tax subsidy. The general rule is that the interest earned on state and local bonds is excluded from gross income for federal taxes purposes, unless the bonds qualify as private activity bonds under section 141(b) of the Internal Revenue Code.[174] The Braves

168 Klepal, *supra* note 3.

169 *Id.*

170 COBB CTY. GOV'T, MOU, *supra* note 155, at 7. This includes the reportedly $10 million a year SunTrust Bank pays for the naming rights. *Sources: Braves' Naming-Rights Deal with SunTrust Worth More Than $10M Annually*, SPORTS BUS. DAILY (Sept. 17, 2014), http://www.sportsbusinessdaily.com/Daily/Issues/2014/09/17/Facilities/Braves.aspx.

171 COBB CTY. GOV'T, MOU, *supra* note 155, at 8.

172 *See* Meredith Hobbs, *Cobb's Bonds Close for Braves Stadium*, DAILY REPORT (FULTON CTY. GA.) (Sept. 14, 2015) (announcing the closing of the sale period for $376.6 million in AAA-rated taxable bonds that are fixed-rate, payable over thirty years).

173 *See* Gayer et al., *supra* note 28 at 27 (noting that interest rates are approximate 0.5% higher for taxable bonds than their tax-exempt counterparts).

174 I.R.C. § 103(a), (b) (2012).

stadiums bonds, however, are not tax-exempt because they qualify as private activity bonds under section 141(b) of the Internal Revenue Code.[175] Bonds are private activity bonds if they meet both the private use and private payment tests.[176] As with all other stadium bonds, the Braves' bonds meet the private use test because the privately-owned team's use of the facility will far exceed the 10% threshold. Unlike other stadium bond issuances, where the team pays no more than 10% of the debt service payments,[177] the Braves are paying $6.1 million of the $22.1 million annual amount required to repay the bondholders.[178] Because the privately-owned team is responsible for 27% of the annual debt service payments, the bonds pass both the private use and private payment tests and are, therefore, taxable private activity bonds.

Although using private activity bonds enabled Cobb to charge the Braves a higher rent, it also made the project as a whole more expensive because taxable bonds carry a higher interest rate than comparable tax-exempt bonds.[179] The Braves stadium bonds carry an interest rate of 4.4%, which results in an annual bond repayment of $22.4 million.[180] While it is impossible to know the market interest rate for the hypothetical tax-exempt Braves stadium bonds, the average of comparable tax-exempt municipal bonds provides a good approximation. In 2015, the average interest rate on AA-rated tax-exempt municipal debt obligations maturing in twenty years was 3.65%.[181] Our hypothetical tax-exempt Braves stadium bonds paying 3.65% interest would lead to an annual debt repayment of $20.4 million. So the decision to issue

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[175] I.R.C. §§ 103(b), 141(b).

[176] *See* I.R.C. § 141(a) ("[T]he term 'private activity bond' means any bond . . . which meets the private business use test . . . and . . . the private security or payment test . . . ."), *supra* note 73 and accompanying text (describing the private use and private payment tests).

[177] *See, e.g.*, Libertarian Party v. State, 546 N.W.2d 424, 429 (Wis. 1996) (noting that the team's rent was exactly 10% of the total annual payment to be made by the bond issuing governmental authority).

[178] COBB CTY. GOV'T, MOU, *supra* note 155 at 9.

[179] *See supra* note 57 and accompanying text (discussing why taxable bonds carry a higher interest rate).

[180] Klepal, *supra* note 3.

[181] WM FINANCIAL STRATEGIES, *The 20-Bond Index: 2008–2017*, http://www.munibondadvisor.com/market.htm (last visited Dec. 30, 2016).

taxable bonds cost approximately $2 million per year or $60 million over the life of the bonds.

From Cobb's perspective, this trade-off made sense because it was able to pass all of the additional costs of issuing taxable bonds to the Braves in the form of higher rent. To avoid the private activity bond classification under this hypothetical, the Braves' maximum contribution would have been just over $2 million with Cobb left paying the remaining $18 million, roughly $1.7 million more than the $16.3 million they are paying under the actual agreement.[182] While just a hypothetical based on a set of assumptions, Cobb officials presumably conducted a similar analysis when they were structuring the deal. Furthermore, it is not difficult to see how minor changes to the assumptions could alter the trade-off. For example, if the interest rate spread between taxable and tax-exempt bonds was 2%, as it had been in the 1990s,[183] the annual payment to repay the fictional, tax-exempt bonds would have been $16.9 million. Under that scenario, Cobb would have been better off lowering the Braves' rent and issuing tax-exempt bonds.

C. THE LAWSUIT: *SAVAGE V. STATE*

Georgia law requires all revenue bonds to be validated by a trial court.[184] Citizens for Governmental Transparency, an advocacy group opposed to the new stadium, joined the Braves stadium bond validation proceedings.[185] The trial court confirmed and validated the bonds, but three Cobb taxpayers appealed directly to the Georgia Supreme Court alleging that the bond issuance violated Georgia constitutional and statutory provisions.[186] Although remarking that "aspects of the deal structure at issue may push the law about as far as it can go,"[187] the Georgia Supreme Court affirmed the trial court's order, and the project was allowed to proceed.[188]

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[182] *See supra* note 3 and accompanying text (stating Cobb's share of the obligation).
[183] *See supra* note 61.
[184] O.C.G.A. § 36-82-73 (2012).
[185] Tierney, *supra* note 141; *see also* O.C.G.A. § 36-82-77 ("Any citizen of this state . . . may become a party to the proceedings . . . .").
[186] Savage v. State, 774 S.E.2d 624, 630 (Ga. 2015).
[187] *Id.* at 641.
[188] *Id.* at 630.

The bonds' compliance with the debt limitation clause and revenue bond statute hinged on whether the intergovernmental agreement (IGA) between the Authority and Cobb was valid.[189] The IGA complied because its term was for less than fifty years and it was between two political subdivisions for "joint services" that the governmental entities were authorized by law to provide.[190] The court held that "debt incurred under a valid intergovernmental contract is not subject to the debt limitation clause" because the intergovernmental contracts clause is essentially a carve-out to other constitutional provisions.[191] In reaching this conclusion, the court analyzed the extent of Cobb's liability under the agreement. It correctly noted that Cobb was obligated to pay hundreds of millions of dollars over a thirty year period, but that liability was contractual in nature and not directly tied to the bonds themselves.[192] While this distinction may seem arbitrary, it accords with basic principles of contract law. Cobb is not a party to the bond contract, the Bond Resolution agreement expressly disclaims any potential liability Cobb might have under a theory that the bondholders were intended third-party beneficiaries of the IGA.[193] Cobb's only potential liability would be directly to the Authority if it breached the IGA.

The court found further support for its holding by citing extensive precedent and appealing to the power of precedent itself.[194] Although it is easy to be contemptuous of high-powered lawyers exploiting small exceptions in the law, the parties structured their relationship in view of the law at the time and to change it *ex post* would harm the parties' reliance interest.[195] Moreover, as the court noted, intergovernmental contracts are often used to provide essential government services such as

189 *See id.* at 631 (listing the four requirements for a valid intergovernmental agreement).
190 *Id.* at 631–34.
191 *Id.* at 635.
192 *Id.*
193 *See id.* ("[T]he Bond Resolution expressly declares that the bonds shall not constitute . . . an obligation, debt, or a pledge . . . of the [c]ounty . . . .") (internal quotations omitted).
194 *See id.* at 636 ("[S]tare decisis is especially important where judicial decisions create substantial reliance interests, as is common with rulings involving contract and property rights.").
195 *See id.* at 637 ("A ruling that intergovernmental contracts are no longer an exception to the debt limitation clause would affect *every* intergovernmental agreement . . . .").

hospitals, roads, and public safety and it would be impractical to require voter approval for these types of agreements.[196]

In addition to avoiding the debt limitation clause, the court ruled that the IGA effectively satisfied the revenue bond law that limits repayment to revenues derived from the project.[197] Georgia revenue bond law states that repayment must come solely from "the revenue pledged to the payment thereof,"[198]—defined as "all revenues, income, and earnings arising out of or in connection with the operation or ownership of the undertaking . . . ."[199] While the rent paid by the Braves is certainly a revenue connected to the "operation or ownership of the undertaking," it is difficult to see how Cobb's contribution, sourced from a countywide property tax increase, is a revenue tied to the stadium. Put in the context of the court's analysis, however, this interpretation is at least plausible. Cobb's authorization to provide the "joint services" (the stadium) is predicated on its constitutional authority to provide "[p]arks, recreational areas, programs, and facilities"[200] as well as its authority to use general revenues to fund permissible projects like parks.[201]

While conceptually this makes sense, Cobb is still spending a significant amount of money to provide a "recreational facility" that will only be enjoyed by a small, relatively wealthy subset of its residents. Interestingly, the appellants' did not allege that the bonds violated Georgia's public purpose rule.[202] Instead, they argued that the stadium violated the constitutional directive that a county may only expend funds for public functions,[203] relitigating

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196 *Id.*

197 *See id.* at 638 ("This Court has repeatedly held that when revenue bonds are contemplated as part of a valid intergovernmental contract, payments made under the contract constitute project revenue.").

198 O.C.G.A. § 36-82-66 (2012).

199 O.C.G.A. § 36-82-61(3); *see also* GA. CONST. art. IX, § 6, para. 1 (2016) ("The obligation represented by revenue bonds shall be repayable only out of the revenue derived from the project . . . .").

200 *See* Savage v. State, 774 S.E.2d 624, 632 (Ga. 2015) (quoting GA. CONST. art. IX, § 2, para. 3(a)(5)) (finding that a stadium qualifies as a type of recreational facility the county is authorized to provide under its constitutional powers).

201 *Id.* at 633.

202 *See supra* notes 105–107 and accompanying text (discussing Georgia's public purpose doctrine).

203 *Savage*, 774 S.E.2d at 633 (citing GA. CONST. art. IX, § 4, para. 2) (2016) (alleging that the expenditure is not for a public function because the Braves will have exclusive control over the stadium).

the issue of whether a professional baseball stadium is a "recreational facility" that the county is authorized to provide for its citizens. Nevertheless, the court conducted a cursory public purpose analysis similar to the ones conducted in *Libertarian Party*, *CLEAN,* and *Poe*.[204] Operating under an "abuse of discretion" standard,[205] the court deferred to Cobb's pronouncement that the stadium will provide significant economic and intangible benefits to its residents.[206] The Braves' anticipated benefit from exclusive use of the stadium would not defeat the stadium's purported public benefit.[207] While this is consistent with the majority view, other jurisdictions insist that a stadium subsidy must serve a "predominant public purpose"[208] and that any private benefits to the team are "incidental" to the "paramount public purpose."[209] In contrast, the Georgia court suggested that *any* public benefit is sufficient, whether it is disproportionate to the private benefit or not.[210]

Furthermore, the decision illustrates modern courts' propensity to conflate public benefit with public purpose.[211] This effectively renders the public purpose rule superfluous. In *Loan Association v. Topeka*, the United States Supreme Court held that bonds issued by the city under a state statute intended to promote manufacturing development because they were not for a public purpose were payable directly to a manufacturer.[212] The Court reasoned that any private business, in employing capital and labor, creates some public benefit.[213] By putting money into the

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[204] *See supra* note 126–130 and accompanying text (discussing three cases that exemplify the predominant judicial application of the public purpose rule to stadium subsidies).

[205] *See Savage*, 774 S.E.2d at 634 (holding that "unless there is an abuse of discretion . . . courts should not substitute their judgment or interfere with governing authorities" (quoting Smith v. Bd. of Comm'rs, 259 S.E.2d 74, 79 (Ga. 1979)).

[206] *See id.* at 633–34 (discussing Cobb's determination that the project will catalyze redevelopment in the area, promote tourism, benefit the economy, and provide recreational benefits).

[207] *Id.* at 634.

[208] Libertarian Party v. State, 546 N.W.2d 424, 434 (Wis. 1996)

[209] Poe v. Hillsborough Cty., 695 So. 2d 672, 675 (Fla. 1997).

[210] *See Savage*, 774 S.E.2d at 633 (rejecting the assertion that the private benefits to the Braves "eliminated *any* public benefits") (emphasis added).

[211] *See* Rubin, *supra* note 76, at 418 (arguing that this conflation removes a key limit on public spending).

[212] *See* 87 U.S. 655, 664–65 (1874) ("It is . . . the duty of the legislature which imposes or authorizes municipalities to impose a tax to see that it is not to be used for purposes of private interest instead of a public use . . . .").

[213] *See id.* at 665 (listing other businesses that are "equally promoters of the public good").

economy, any government expenditure is going to have some public benefit, whether that benefit is widespread or warrants the payment of tax money are entirely separate questions.

The court in *Savage* paid minimal attention to the claim that Cobb violated the lending of credit clause.[214] According to the court, because the Development Agreement ensured that no public money would be used to acquire, improve, or alter the Braves private property, the project did not violate the lending of credit clause.[215] The Development Agreement grants the Braves ownership of the stadium improvements in exchange for the Braves $290 million upfront contribution. But the stadium's "hard" construction costs were budgeted at $482 million.[216] The $192 million difference between the construction costs and the Braves initial contribution is necessarily covered by the revenue bond proceeds. Thus, the Authority and Cobb are lending their credit for the Braves to acquire approximately 40% of the personal property they will own in the stadium.

V. PROPOSED CHANGES TO PROTECT TAXPAYERS

Limiting public subsidies for professional sports stadiums will be no easy task. As long as local politicians fear the political ramifications of a beloved team skipping town and other cities remain willing to open the public coffers to become "major league cities," the temptation to acquire in to demands for a publicly-financed stadium will persist. Leveling the playing field, will require a combination of congressional, state legislative, and state judicial actions. While Georgia is too late as all three of its major pro sports teams are either completing major renovations or moving into new stadiums in the next two years, its mistakes can serve as an example for other jurisdictions confronted with teams demanding publicly-financed stadiums.

214 *See supra* note 97 (stating Georgia's lending of credit clause).
215 Savage, 774 S.E.2d at 637–38.
216 COBB CTY., DEVELOPMENT AGREEMENT, *supra* note 157, at 24 Exhibit C.

A. REMOVING THE FEDERAL TAX EXEMPTION

Although the recent tax bill signed into law by President Trump did nothing to close "30-year-old tax loophole"[217] created by exempting the interest rate on stadium bonds from federal taxation.[218] Congress should revisit the issue and pass a provision similar to what was in an early draft of the House Republicans tax bill.[219] The subsidy is not economically justified because professional sports do not exhibit economies of scale, thus defeating any natural monopoly justification like that is given for a public utility.[220] Further, economic research shows limited spillover gains from subsidizing stadiums.[221] Even if stadiums stimulated local economies, it is unfair to require a taxpayer in one state to fund local stadiums in other states that they will derive no benefit from.[222] While only representing a drop in the bucket for the federal treasury, stadium bonds have reduced tax revenues by nearly $4 billion since 2000.[223]

Recognizing the political opposition to changing the federal tax code, [224] legal scholars have put forward moderate alternatives that might be more palatable to legislators while still limiting the federal subsidy. One proposal would allow renovations to existing stadiums to be financed through tax-exempt bonds subject to an existing $225 million cap for qualified private activity bonds.[225] An even more moderate proposal would essentially undo the changes made in 1986 and allow bonds for new stadiums to be tax-exempt, subject to the qualified private activity cap.[226] At a minimum, if

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[217] PRESS RELEASE, CONGRESSMAN STEVE RUSSELL, *Congressman Russell Introduces Bill to End 30-Year-Old Tax Loophole* (Mar. 23, 2016), https://russell.house.gov/media-center/pressreleases/congressman-russell-introduces-bill-end-30-year-old-tax-loophole.

[218] Watson, *supra* note 77.

[219] Tax Cuts and Jobs Act, H.R. 1, 115th Cong. § 3604 (2017).

[220] *See* Gayer et al., *supra* note 28, at 5.

[221] *See id.* ("The evidence for large spillover gains from stadiums to the local economic is weak. Academic studies consistently find no discernible positive relationship between sports facility construction and local economic development, income growth, or job criteria.").

[222] *Id.* at 6.

[223] *See id.* at 4 ("[T]he present value federal tax revenue loss was $3.7 billion . . . .").

[224] *See supra* note 75 and accompanying text (discussing two previous failed bills and the constituencies that oppose changes to the federal tax code).

[225] *See* I.R.C. § 146(d) (2012) (imposing a $225 million cap on the total amount of private activity bonds that a state or local government agency can issue in a year); Gans, *supra* note 10, at 784 (arguing for this cap to be extended to stadium bonds).

[226] *See* Goodman, *supra* note 32, at 217 (describing Dennis Zimmerman's proposal).

stadium bonds are going to be tax-exempt, the private payment test that exerts pressure on local governments to assume 90% of the repayment burden should be eliminated.[227]

Although the taxable bonds used to finance the Braves stadium prove that eliminating the federal tax exemption will not completely solve the problem, it is a good place to start. Part of the appeal of municipal bonds for teams is that it lowers their total cost of capital by enabling them to access lower interest debt through their local government. While teams are unlikely to turn down a government handout, if local governments cannot access the tax-exempt municipal bond market to subsidize stadiums, the principle advantage of municipal bond financing will be eliminated and teams will gradually gravitate to lower cost alternatives.

B. STATE LEGISLATION SETTING CLEAR STANDARDS AND PROCEDURES IS NECESSARY TO PROTECT THE PUBLIC INTEREST

Any political backlash over the amount of Cobb's contribution to build the stadium was overshadowed by the public outcry that the negotiation and approval process lacked transparency and public involvement.[228] This underscores the need for legislation that provides both procedural and substantive standards to protect the public interest. Legislative guidance is necessary because professional sports stadiums are unlike other public facilities.[229] Although the fiscal benefits are overstated, professional sports teams are valuable assets to local communities. But the public objective and the means to achieve it are murky and closely intertwined with the naked self-interest of powerful team owners. This recognition led the Massachusetts court to conclude that a public stadium project would not be in the public interest unless accompanied by standards and procedures that ensured public oversight and constrained local government's ability to capitulate to pressure derived from the team's bargaining advantage.[230]

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[227] *See supra* notes 172–181 and accompanying text (discussing the difficult calculus municipalities must perform in deciding whether to issue taxable or tax-exempt bonds).

[228] *See* Klepal, *supra* note 8 (noting that stadium opponents were not saved speaking slots at an open meeting and key documents were only made available days before the final vote).

[229] *See In re Opinion of the Justices*, 250 N.E.2d 547, 558 (Mass. 1969) (contrasting essential public facilities like housing and mass transit where "the public objectives are well understood" with stadiums where there is "not as clearly and directly a public purpose").

[230] *Id.*

In Georgia, the only guidance was the nearly twenty-five-year-old law that authorized the Authority to construct athletic facilities and the standard validation process required by the revenue bond law.[231] While these may be sufficient to protect the public interest when applied to ordinary government functions like building roads, the public backlash that resulted in the chairman of the Cobb Commission being voted out of office, in what was widely viewed as a belated referendum on the stadium, clearly shows that Cobb taxpayers felt taken advantage of.[232] Simply legislating special stadium districts will not prevent unpopular stadium subsides if that legislation does not impose rigorous standards that subject to independent oversight.[233] States should adopt the Massachusetts approach that limits public expenditures and requires the project as a whole to provide a reasonable return on the public's investment.[234]

C. MORE ROBUST JUDICIAL REVIEW

Massachusetts also stands out for adhering to the more traditional public purpose analysis employed by most states until the middle of the twentieth century.[235] The current majority view grants broad deference to local governments' conclusion that a public stadium project furthers a valid public purpose.[236] While there are valid policy reasons to limit judicial oversight of the terms of the agreements reached by local governments and pro sports teams,[237] those must be balanced with an appreciation of the unequal bargaining power professional teams have over municipalities and the need to enforce state constitutional doctrines enacted to prevent public credit from being used for predominantly private gain. As the analysis in *Savage* suggests,

[231] *See supra* notes 182–183,198–200 and accompanying text.

[232] Meris Lutz, *Cobb County Voters Send Lee Packing; Boyce Elected New Chairman*, ATLANTA J. CONST. (July 27, 2016), http://www.ajc.com/news/local-govt--politics/cobb-county-voters-send-lee-packing-boyce-elected-new-chairman/amm2QpAS9oVjtaozOwvfXP/.

[233] See CLEAN v. State, 928 P.2d 1054 (Wash. 1996) and Libertarian Party v. State, 546 N.W.2d 424 (Wis. 1996), both states created special stadium districts subject to legislative regulation and oversight that proved ineffective in limiting the public money that flowed to the privately owned teams.

[234] *See supra* notes 138–139 and accompanying text (detailing the types of standards that have been effective in Massachusetts).

[235] *See supra* notes 80–82 and accompanying text.

[236] *See supra* note 126 and accompanying text.

[237] *See supra* notes 124–125 and accompanying text.

teams and local governments are adept at exploiting loopholes in public finance law—many of which serve legitimate functions in other contexts—to avoid debt limitation clauses, the lending of credit doctrine, and the public purpose rule.[238] Absent legislation providing more specific guidance and standards that municipalities must comply with before approving public money to build pro sports stadiums, these doctrines will likely continue to be ineffective. But, as the Massachusetts court proved, that does not necessarily mean that state courts must cede the floor and allow taxpayer money to be spent for the benefit of private professional sports teams.

VI. CONCLUSION

The billions of dollars that American taxpayers have spent since the turn of the century to repay municipal bonds issued to subsidize professional sports stadiums poses a curious type of problem. Everyone seems to agree it is a problem, but nobody can muster the will to remedy it. The last congressional action in 1986 only exacerbated the pressure local governments face to agree to teams' demands for subsidized stadiums. While removing the federal tax exemption is a common sense reform, Congress seems to lack the political will to act. Furthermore, as the Braves stadium bonds show, changes to the tax code alone are insufficient to limit subsidies. The complex agreement between Cobb, the Authority, and the Braves and the ensuing litigation made apparent that teams and local governments have discovered ways around the state constitutional provisions enacted to prevent gratuitous public aid to private businesses. And state courts, with one exception, are disinclined to reign this practice in. The best way forward first requires state legislatures and courts to acknowledge that public stadiums are unlike other government provided facilities and, as such, must be treated differently by the law. By requiring municipalities to affirmatively show in court that a stadium project is indeed in the public interest and that it complies with state legislative standings and guidance specific to the stadium context, the playing field that is currently titled

[238] *See supra* Section IV.C.

strongly in favor of pro sports teams' extracting overly generous subsidies to build their stadiums will begin to become more equal.