

# Esports Bar Association Journal

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## Journal Management

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<sup>†</sup> The Esports Bar Association Journal selected Paul Santache as the recipient of the scholarship for the Top Student Submission.

<sup>‡</sup> The Esports Bar Association Journal selected Phillip Jones as the recipient of the scholarship for the Student Runner-Up.

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## Shaky Foundations – The Uncertain Legality of Publicly Funded Esports Venues

By Paul Santache<sup>†</sup>

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### Introduction

For better or for worse, it appears that the much-deliberated franchise model for esports leagues is here to stay.<sup>1</sup> Depending on whom you ask, this city-based approach has been heralded as both the future of esports and an undue shackling to traditional sports models of yore.<sup>2</sup> Impugned merits aside, the adoption of franchise-based leagues has fundamentally changed esports. No change has been more drastic than the sudden onslaught of brick-and-mortar esports venues.

The allure of a future filled with purpose-built esports stadiums is understandable. Baseball has its Wrigley Field, football has AT&T Stadium, and soccer Old Trafford—and someday, we hope, esports will have its own grand cathedral. But as esports stadiums get bigger, so too will the checks needed to pay for them. It is for this reason that traditional sports franchises have long sought the financial support of local municipalities, state governments, and even fans.<sup>3</sup> Historically, the ability to levy public funds has been a catalyst for traditional sports'

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<sup>1</sup> Briefly, under a franchise-based model, esports teams must pay the relevant organizer, developer, or game publisher a fee in exchange for a permanent spot within a given league. For example, in order to be eligible to play in the inaugural season of the Overwatch League ("OWL"), Activision Blizzard required each team to commit a reported US\$20M. This franchise-based model departs from the promotion/relegation systems typical of early esports—where league positions were not guaranteed, but dependent upon performance. See Jacob Wolf, *Teams Hesitant to Buy into Overwatch League Due to High Cost, Undesirable Contract Terms*, ESPN UK (May 9, 2017), [https://www.espn.co.uk/esports/story/\\_/id/19347153/teams-hesitant-buy-overwatch-league-due-high-cost-undesirable-contract-terms](https://www.espn.co.uk/esports/story/_/id/19347153/teams-hesitant-buy-overwatch-league-due-high-cost-undesirable-contract-terms).

<sup>2</sup> See Josh Chapman, *Esports Leagues: Stop Franchising*, MEDIUM (Feb. 6, 2019), <https://medium.com/konvoy/esports-leagues-stop-franchising-2c3ae29c16e9>; Max Miceli, *How the Franchising Model Shook Up North American Esports in 2018*, ESPORTS OBSERVER (Jan. 28, 2019), <https://esportsobserver.com/franchising-north-america-2018>.

<sup>3</sup> The NFL's Green Bay Packers is an example of a fan-funded franchise. See *Executive Committee & Board of Directors*, GREEN BAY PACKERS (Apr. 1, 2020), <https://www.packers.com/team/executive-committee>.

incredible progress.<sup>4</sup> However, it is a tool that esports may have to do without.

### I. A History of Public Funding for Traditional Sports Venues

In the National Football League, nearly every stadium has been subsidized using taxpayer dollars.<sup>5</sup> One such publicly funded venue is the newly minted Mercedes-Benz stadium, home of the Atlanta Falcons, which received contributions of US\$200M<sup>6</sup> from the City of Atlanta and an additional US\$40M<sup>7</sup> from the State of Georgia. Looking to Major League Baseball, Florida's Miami-Dade County agreed to contribute US\$507M to the construction of Marlins Park (thereby covering 80% of the new ballpark's US\$634M price tag).<sup>8</sup> The story is very much the same in the National Hockey League and National Basketball Association.<sup>9</sup> In fact, a famed 2005 study of all four major US sports leagues found that between 1991 to 2005, municipal and state governments granted approximately US\$12B in subsidies for stadium construction.<sup>10</sup> With a number of mega-stadiums being built since then, today's subsidy total is markedly higher.<sup>11</sup>

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<sup>4</sup> On average, traditional sports franchises have saved US\$123M in development costs through public subsidies. Using Major League Baseball as an example, of the twenty-five facilities in use in 2001, 57% of each venue's total development cost can be attributed to public funds—a marked advantage. Judith Grant Long, *Full Count: The Real Cost of Public Funding for Major League Sports Facilities*, 6 J. SPORTS ECON. 119, 121–25 (2005).

<sup>5</sup> CBA MINNESOTA, NFL STADIUM FUNDING INFORMATION (Dec. 2, 2011), <https://cbsminnesota.files.wordpress.com/2011/12/nfl-funding-summary-12-2-11.pdf> [<https://web.archive.org/web/20121222050741/https://cbsminnesota.files.wordpress.com/2011/12/nfl-funding-summary-12-2-11.pdf>].

<sup>6</sup> Neil deMause, *Falcons Stadium Cost to Taxpayers Counting Hidden Subsidies: \$554 Million*, FIELD OF SCHEMES (Mar. 18, 2013), <http://www.fieldofschemes.com/2013/03/18/4735/falcons-stadium-cost-to-taxpayers-counting-hidden-subsidies-554-million>.

<sup>7</sup> Neil deMause, *Falcons Stadium Subsidy Nearing \$600M Thanks to State-Funded Parking Garage*, FIELD OF SCHEMES (Jan. 20, 2015), <http://www.fieldofschemes.com/2015/01/20/8387/falcons-stadium-subsidy-nearing-600m-thanks-to-state-funded-parking-garage>.

<sup>8</sup> Timothy Martin et al., *SEC Examines Marlins Stadium Deal*, WALL ST. J. (Dec. 5, 2011), <https://online.wsj.com/article/SB10001424052970204826704577077230342369436.html>.

<sup>9</sup> Long, *supra* note 4, at 138.

<sup>10</sup> *Id.* at 121–24.

<sup>11</sup> For example, municipal and state governments contributed US\$600M to the construction of Lucas Oil Stadium (2008) and US\$325M for AT&T Stadium (2009). See *Lucas Oil Stadium Facts & Figures*, STADIUMS OF PRO FOOTBALL, <https://www.stadiumsofprofootball.com/stadiums/lucas-oil-stadium> (last visited Sept. 22, 2020); *AT&T Stadium Facts & Figures*, STADIUMS OF PRO FOOTBALL, <https://www.stadiumsofprofootball.com/stadiums/att-stadium> (last visited Sept. 22, 2020).

Leveraging taxpayer dollars to fund professional sports venues is not just a controversial topic but represents an exercise of state power that rests on a shaky legal foundation. More specifically, public funding for professional sports venues ignores a host of statutory limitations on public funding for private for-profit businesses. One such limitation is state-enacted anti-gifting clauses, which, in theory, legally preclude public funding of professional sports stadiums.

## II. Legal Considerations: Publicly Funded (E)sports Venues Must Serve a Core Public Purpose

### A. Anti-Gifting Provisions

Anti-gifting clauses are legal provisions that prohibit the appropriation of public funds to corporations or individuals for a private purpose.<sup>12</sup> Put differently, such clauses safeguard against public administrative bodies reaching into taxpayers' pockets and passing money on to private industry actors. This anti-gifting regime was a direct response to states' excessive investments in private industries during the 19th century, which ravaged public treasuries, inflated public debt, and generally hamstrung local economies.<sup>13</sup>

Today, almost every state has enacted anti-gifting measures.<sup>14</sup> For example, the Constitution of New York State declares that "[t]he money of the state shall not be given . . . in aid of any private corporation or association, or private undertaking."<sup>15</sup> There is, however, an exception to this general anti-gifting rule. Public money can be granted to private actors when used for a project that will create a *public benefit*.<sup>16</sup> So the frequently litigated question becomes: Do professional sports venues generate sufficient public benefit to fall within this exception?

In short, the majority of cases accept that using public funds for professional sports venues serves a host of legitimate public purposes, such as stimulating local economies; creating new jobs; attracting new businesses; or building new infrastructure in an otherwise underdeveloped area.<sup>17</sup> However, on rare occasions, the courts have found that professional sports venues do not generate enough public benefit to warrant falling within the aforementioned exception. For

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<sup>12</sup> Daniel McClurg, *Levelling the Playing Field: Publicly Financed Professional Sports Facilities*, 53 WAKE FOREST L. REV. 233, 243 (2013).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 246.

<sup>15</sup> N.Y. CONST. art. VII, § 8.1.

<sup>16</sup> *Id.*

<sup>17</sup> See Judith Grant Long, *Public-Private Partnerships for Major League Sports Facilities* 8–10 (New York: Routledge, 2012); McClurg, *supra* note 12, at 245.

example, the Supreme Court of Florida quashed the City of Deerfield Beach's proposed issuance of US\$1.5M worth of bonds to pay for the Pittsburgh Pirates' new spring training facility.<sup>18</sup> Here, the court held that the public benefit derived from the venue must not be a "mere incidental advantage"—that is, the ability to sidestep anti-gifting legislation should be reserved for projects that deliberately aim to satisfy some core public purpose.<sup>19</sup>

### B. *Eminent Domain*

Another legal issue associated with publicly funded sports venues pertains to the use, or misuse, of eminent domain. Eminent domain is a constitutional power that allows the government to appropriate private property for public use.<sup>20</sup> Also known as the "Takings Clause," the Fifth Amendment to the United States Constitution declares that "no person . . . shall [have] private property be taken for public use, without just compensation."<sup>21</sup> This means that the government may legally take up private land, so long as it is used for a public purpose and the owner is justly compensated.<sup>22</sup> In *Olson v. United States*, the Supreme Court of the United States held "just compensation" to mean that private owners must be put in as good of a *pecuniary* position as if their property had not been taken.<sup>23</sup> This language suggests that compensation is limited to fiscal redress.

Such a broad possessory power carries considerable risk of abuse. This risk was unfortunately realized in the construction of the iconic Dodgers Stadium in Los Angeles, California—a venue that stands on land once populated by a bustling Mexican American community.<sup>24</sup> In 1950, the City of Los Angeles used the eminent domain power to take up some of the neighborhood residents' homes for a community housing project.<sup>25</sup> Despite the project's eventual cancellation, the city never returned land title to the original owners.<sup>26</sup> Conveniently, in

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<sup>18</sup> *Brandes v. City of Deerfield Beach*, 186 So. 2d 6 (Fla. 1966).

<sup>19</sup> *Id.*

<sup>20</sup> U.S. CONST. amend. V.

<sup>21</sup> *Id.*

<sup>22</sup> *Olson v. United States*, 292 U.S. 246 (1934).

<sup>23</sup> *Id.* at 255.

<sup>24</sup> Hector Becerra, *Decades Later, Bitter Memories of Chavez Ravine*, L.A. TIMES (Apr. 5, 2012), <https://www.latimes.com/local/la-xpm-2012-apr-05-la-me-adv-chavez-ravine-20120405-story.html>.

<sup>25</sup> Independent Lens, *Chavez Ravine: A Los Angeles Story*, PBS, <https://www.pbs.org/independentlens/chavezravine/cr.html> (last visited Aug. 24, 2020).

<sup>26</sup> Becerra, *supra* note 24.

1957, the city then sold this land to Brooklyn Dodgers owner Walter O'Malley to build a new stadium.<sup>27</sup>

The exchange sparked a slew of taxpayer lawsuits, which argued that the sale of the condemned land was illegal for want of public purpose.<sup>28</sup> The Supreme Court of California found in favor of the city, satisfied that the stadium served an adequate public purpose and that private owners were justly compensated.<sup>29</sup> In the wake of the decision, the city forcibly evicted the community's remaining residents and razed their homes.<sup>30</sup> Only a few months later, Walter O'Malley and the city broke ground on the construction of Dodgers Stadium.<sup>31</sup> In setting this precedent, the Supreme Court of California enabled a series of lamentable eminent domain abuses, the legality of which the Supreme Court of the United States most recently affirmed in 2005.<sup>32</sup>

Accordingly, the use of public funds for the construction of private sports (and esports) venues carries a host of legal challenges. Specifically, such taxpayer levies must fit within an authorized exception to state anti-gifting legislation or be a valid exercise of eminent domain power. Both avenues necessitate that the public must benefit in a substantial and direct way.

The government has never used its eminent domain power in an esports context, so courts have yet to interpret what public benefit that future esports venues must adequately serve. As outlined above, examples of valid public benefits for traditional sports venues include stimulating local economies; creating jobs; attracting new businesses; or building new infrastructure in an otherwise underdeveloped area.<sup>33</sup> Relying on these precedents, one can hypothesize that larger esports venues may be more successful in putting courts' eminent domain concerns at ease, as more employees would be required to build, operate, and maintain the facility. This would both stimulate the local economy and create more jobs than a comparatively small esports endeavor. Additionally, prospective esports venues lobbying for eminent domain should consider less developed areas as the location for their proposal.

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<sup>27</sup> Jerald Podair, *Dodger Blue: How the California Supreme Court Saved Dodger Stadium*, CAL. SUP. CT. HIST. SOC'Y (Fall/Winter 2018), <https://www.cschs.org/wp-content/uploads/2018/12/2018-Newsletter-Fall-Dodger-Stadium.pdf>.

<sup>28</sup> *Id.*

<sup>29</sup> *Los Angeles v. Super. Ct. of L.A. Cty.*, 51 Cal. 2d 423 (1959).

<sup>30</sup> Scott Harrison, *From the Archives: 1959 Evictions from Chavez Ravine*, L.A. TIMES (May 9, 2017), <https://www.latimes.com/visuals/photography/la-me-fw-archives-1959-evictions-from-chavez-ravine-20170328-story.html>.

<sup>31</sup> *Id.*

<sup>32</sup> See *Kelo v. City of New London*, 545 U.S. 469 (2005); *Haw. Hous. Auth. v. Midkiff*, 463 U.S. 1323 (1983); *Berman v. Parker*, 348 U.S. 26 (1954).

<sup>33</sup> McClurg, *supra* note 12.

### III. Policy Considerations: Taxpayer Scrutiny, Diverting Funds Away from Social Programs, and Sharp Dealings

#### A. Taxpayer Scrutiny

Setting the aforementioned legal hurdles aside, levying public funds for the construction of professional sports venues also invites intense taxpayer scrutiny. An oft-cited concern is that the construction of new sports stadiums will incur substantial cost overruns. For example, in 1976, the City of Montreal, Quebec, initially estimated that their now-infamous Olympic Stadium would cost CA\$134M prior to completion.<sup>34</sup> However, after a slew of construction defects and delays, the city—and its taxpayers—were instead presented with a bill for CA\$770M.<sup>35</sup> It would not be until 2006 that Montreal would pay off the Olympic Stadium's CA\$1.5B debt.<sup>36</sup> In light of this example, and many more like it, taxpayers' concerns about cost overruns are understandable.

#### B. Diverting Funds Away from Social Programs

Another common argument against using public funds for professional sports venues is that, in doing so, those funds are diverted from more deserving programs such as those addressing education, health, or safety.<sup>37</sup> A thought-provoking example of such a warped prioritization can be seen in Detroit, Michigan, circa 2013. At the time, the city was on the brink of financial ruin.<sup>38</sup> With more than US\$18B in debt, and an operating deficit of US\$400M, Detroit was forced to shut off 40% of its streetlights to avoid further overruns.<sup>39</sup> With nowhere else to turn, the city declared bankruptcy.<sup>40</sup> Less than a week later, the state of Michigan contributed US\$450M to help finance Little Caesars Arena, the new home of the Detroit Red Wings.<sup>41</sup> Of this, the city levied US\$250M from properties and businesses in downtown

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<sup>34</sup> Philippe Gohier, *The Big Owe*, MACLEAN'S (May 6, 2008), <https://www.macleans.ca/general/the-big-owe>.

<sup>35</sup> *1976 Montreal Olympic Stadium*, BALLPARKS, <http://olympics.ballparks.com/1976Montreal/index.htm>.

<sup>36</sup> *Quebec's Big Owe Stadium Debt Is Over*, CBC (Dec. 19, 2006), <https://www.cbc.ca/news/canada/montreal/quebec-s-big-owe-stadium-debt-is-over-1.602530>.

<sup>37</sup> McClurg, *supra* note 12, at 242.

<sup>38</sup> Martin Braun, *Detroit Billionaires Get Arena Help as Bankrupt City Suffers*, BLOOMBERG (Sept. 3, 2013), <https://www.bloomberg.com/news/articles/2013-09-03/detroit-billionaires-get-hockey-arena-as-bankrupt-city-suffers>.

<sup>39</sup> *Id.*

<sup>40</sup> McClurg, *supra* note 12, at 242.

<sup>41</sup> *Id.*



Detroit.<sup>42</sup> The funds were originally reserved for Detroit public schools.<sup>43</sup>

### C. Sharp Dealings

The draconian nature of eminent domain powers has forced governments to seriously reconsider the doctrine's application, with Alabama, Delaware, and Texas all passing legislation to limit the doctrine's use in their respective states.<sup>44</sup> Despite these self-imposed limitations, state governments are still finding ways to circumvent the limitations' operation. For example, while the State of Texas was passing *An Act Relating to the Limits on the Use of the Power of Eminent Domain* (which, as the name suggests, sought to narrow the applicability of eminent domain), the City of Arlington was inconveniently in the process of acquiring land for the Dallas Cowboys' new stadium.<sup>45</sup> To ensure that the land in question could still be taken up, Texas legislators added a special provision to the aforementioned statute:

(c) This section does not affect the authority of an entity authorized by law to take private property through the use of eminent domain for: . . .

(6) a sports and community venue project approved by voters at an election *held on or before December 1, 2005*, under Chapter 334 or 335, Local Government Code.<sup>46</sup>

On November 2, 2004—just one month before the eminent domain limiting legislation took effect—Arlington approved the stadium's funding, and the property was legally condemned.<sup>47</sup>

Despite the above legal and policy considerations, traditional sports teams have long relied on public funding for the construction of their venues.<sup>48</sup> However, moving forward, it remains unclear whether esports will be afforded the same privilege. Specifically, esports

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Arline F. Schubert, *A Taxpayer's and a Politician's Dilemma: Use of Eminent Domain to Acquire Private Property for Sport Facilities*, 86 N.D. L. REV. 845, 861 (2010).

<sup>45</sup> See S. 7, 79th Leg., 2d Called Sess. (Tex. 2005); Peter Montine, *Forced Turnovers: Using Eminent Domain to Build Professional Sports Venues*, 9 WASH. J.L. TECH. & ARTS 331, 335 (2014).

<sup>46</sup> S. 7, 79th Leg., 2d Called Sess. (Tex. 2005) (emphasis added).

<sup>47</sup> Stadium Election, CITY OF ARLINGTON (Nov. 2, 2004), [https://www.arlingtontx.gov/UserFiles/Servers/Server\\_14481062/File/City%20Hall/Depts/City%20Secretary/Elections/Post%20Election%20Results/November-2-2004-Stadium-Election-Results.pdf](https://www.arlingtontx.gov/UserFiles/Servers/Server_14481062/File/City%20Hall/Depts/City%20Secretary/Elections/Post%20Election%20Results/November-2-2004-Stadium-Election-Results.pdf).

<sup>48</sup> Long, *supra* note 4.

stakeholders face the enormous challenge of convincing both the judiciary and the general public of their stadiums' purported public benefits.<sup>49</sup> And yet, in some instances, it is a challenge that they have overcome.

#### IV. Case Studies in Public Funding of Esports Venues

In 2018, the City of Arlington, Texas, contributed US\$10M in public funding to help finance Esports Stadium Arlington.<sup>50</sup> The 100,000 square-foot arena has a capacity of 2,500 people and is the largest dedicated esports facility in North America.<sup>51</sup> More importantly, this was the first time that a municipal government levied public funds specifically for the creation of a professional esports venue. Although hesitant at first, regional stakeholders eventually persuaded Arlington Mayor Jeff Williams to commit Arlington taxpayers' funds to the cause.<sup>52</sup> Though the public funding of Esports Stadium Arlington represents a crucial step forward for esports, it now exposes the industry to the very same legal and social issues that have mired the public funding of traditional sports venues.

An authorized exception to the Texas Constitution made Arlington's US\$10M tax levy legal, and therefore possible.<sup>53</sup> Section 52-a is Texas's anti-gifting provision and reads, "[T]he Legislature shall have no power to authorize . . . any grant of public [moneys] . . . to any individual, association, or corporation."<sup>54</sup> However, as outlined above, there is an exception—expenditures of public funds for a public benefit or purpose are permissible.<sup>55</sup> Seeing as Arlington's proposed US\$10M grant successfully found its way into the city's 2018 budget, it would appear that stakeholders are satisfied that the esports arena holds some genuine public purpose.<sup>56</sup> If the expenditure is challenged, however, it is dubious whether the Texas judiciary would arrive at the same conclusion.

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<sup>49</sup> See N.Y. CONST. art. VII, § 8.1.

<sup>50</sup> Melissa Repko, *Arlington Goes All-In on Esports, Transforming Convention Center into \$10M Gaming Venue*, DALL. MORNING NEWS (Nov. 21, 2018), <https://www.dallasnews.com/business/technology/2018/11/21/arlington-goes-all-in-on-esports-transforming-convention-center-into-10-million-gaming-venue>.

<sup>51</sup> Jason Dachman, *Inside Esports Stadium Arlington, North America's Largest—and Most Flexible—Esports Venue*, SPORTS VIDEO GROUP (Jan. 24, 2019), <https://www.sportsvideo.org/2019/01/24/inside-esports-stadium-arlington-north-americas-largest-and-most-flexible-esports-venue>.

<sup>52</sup> Repko, *supra* note 50.

<sup>53</sup> TEX. CONST. art. III, § 52-a.

<sup>54</sup> *Id.*

<sup>55</sup> Tex. Att'y Gen. Op. GA-0076 (2003).

<sup>56</sup> *City of Arlington FY2019 Adopted Budget*, CITY OF ARLINGTON 15, <https://arlingtontx.gov/common/pages/DisplayFile.aspx?itemId=16867054>.

Specifically, a prospective court would examine whether the city deliberately aimed to satisfy some core public purpose with the construction of Esports Stadium Arlington.<sup>57</sup> The city's Economic Development and Capital Investment Business Plan cites "help[ing] increase tourism," "promot[ing] and marketing . . . special events," and "increasing [adjacent] hotel occupancy" as the stadium's primary objectives.<sup>58</sup> However, several studies have concluded that there is no correlation between sports venues and economic growth and that sports venues do not increase either local incomes or tax revenues.<sup>59</sup> Additionally, in order for the city to rely on the favorable jurisprudential record of traditional sports venues, they would need to satisfy the court that Esports Stadium Arlington represents an analogous use of public funds—that is, that esports and traditional sports serve parallel purposes.

Reflecting on 2013 Detroit's cautionary tale, it is important to consider what social programs policymakers overlooked in favor of Arlington's US\$10M esports levy. For comparison, in 2018, Arlington spent US\$8.5M on public libraries,<sup>60</sup> US\$2.5M on youth support,<sup>61</sup> and US\$461K on school safety<sup>62</sup>—all well short of the city's US\$10M esports venture. Taxpayers can only hope that funds allocated to each program are proportional to their public benefit. While the greater Dallas–Fort Worth Metroplex's hardcore esports fans might consider Arlington's US\$10M tax levy "money well spent," one can imagine that local librarians, low income youth, and the youths' parents would not.<sup>63</sup>

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<sup>57</sup> TEX. CONST. art. III, § 52-a.

<sup>58</sup> *City of Arlington FY2019 Adopted Budget*, *supra* note 56, at 15.

<sup>59</sup> See SPORTS, JOBS & TAXES: THE ECONOMIC IMPACT OF SPORTS TEAMS AND STADIUMS (Roger G. Noll & Andrew Zimbalist eds., 1997); Robert A. Baade, *Stadiums, Professional Sports, and Economic Development: Assessing the Reality*, HEARTLAND INST. (Apr. 4, 1994), <https://www.heartland.org/publications-resources/publications/stadiums-professional-sports-and-economic-development-assessing-the-reality-full-text>; Long, *supra* note 17, at 8–10.

<sup>60</sup> *City of Arlington FY2019 Adopted Budget*, *supra* note 56, at 132.

<sup>61</sup> *Id.* at 138.

<sup>62</sup> *Id.* at 149.

<sup>63</sup> This disproportionate allocation of funds is especially contentious given the host of systemic sexual abuse and harassment issues currently miring the esports industry. For example, in June 2020 alone, more than seventy victims of gender-based discrimination, harassment, and sexual assault came forward with allegations against members of the esports industry. Since then, major actors such as T1 and NRG Esports have pulled sizeable portions of their sponsorship budgets. If such endemic brands are less willing to contribute monetarily to esports, it is realistic to assume governments will be increasingly hesitant to divert public funds away from other social programs in furtherance of the industry. See TJ Denzer, *NRG Severs Ties with Smash Bros Player Nairo amid Sexual Misconduct Allegations*, SHACK NEWS (July 2, 2020), <https://www.shacknews.com/article/119009/nrg-severs-ties-with-smash-bros-player-nairo-amid-sexual-misconduct-allegations>; Taylor Lorenz & Kellen Browning, *Dozens of Women in Gaming Speak Out About Sexism and Harassment*, N.Y. TIMES (June 23, 2020), <https://www.nytimes.com/2020/06/23/style/women->

Though Esports Stadium Arlington's US\$10M price tag likely is not material enough to garner tremendous public opposition, other publicly funded esports stadiums just may. Just five days prior to Arlington's foray into esports, the city of Hangzhou, China, unveiled its four-million-square-foot "esports town."<sup>64</sup> Hangzhou paid the equivalent of US\$280M to cover 100% of the cost of the esports town's construction.<sup>65</sup> The city also committed to investing the equivalent of an additional US\$1.3B in various esports-related projects by 2022.<sup>66</sup> Hangzhou's esports town, however, remains government-operated, so there are presumably no issues related to the misappropriation of public funds to private actors.<sup>67</sup> Regardless, if a North American government were to earmark such an enormous tranche of public funds for esports infrastructure, it would surely rouse scrutiny from taxpayers and put a town-sized target on policymakers should the investment prove fruitless.

## V. Moving Forward

Private esports actors embarking on their franchise-modeled journey should do so with the above-described legal and policy concepts in mind. Practically, such actors should prepare for a future where stadiums are built of their own fiscal accord. This necessity for esports stadiums to be self-sufficient creates new hurdles that traditional sports franchises have not encountered—fundamentally altering the way tomorrow's esports stadiums will be financed, built, and operated on a day-to-day basis. That being said, privately funded esports stadiums provide hope that these hurdles may still be overcome.

Fusion Arena in Philadelphia, Pennsylvania, is a crucial experiment. Its success or failure will inform the viability of future esports stadiums. Relying on private funding, Comcast Spectacor and The Cordish Companies financed the bulk of Fusion Arena's US\$50M

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gaming-streaming-harassment-sexism-twitch.html; Ian Walker, *Over 50 Sexual Misconduct Allegations Have the Super Smash Bros Community in Turmoil*, KOTAKU (July 9, 2020), <https://kotaku.com/over-50-sexual-misconduct-allegations-have-the-super-sm-1844328719>.

<sup>64</sup> For scale, Hangzhou's "esports town" is the size of approximately seventy football fields. See Aisha Hassan, *Hangzhou Is Investing in Becoming the Esports Capital of the World*, QUARTZ (Nov. 26, 2018), <https://qz.com/1475572/hangzhou-china-is-investing-to-be-esports-capital-of-world>.

<sup>65</sup> Hongyu Chen, *Hangzhou Opens Esports Town, LGD Gaming and Allied Esports Debut Venue*, ESPORTS OBSERVER (Nov. 21, 2018), <https://esportsobserver.com/hangzhou-opens-esports-town>.

<sup>66</sup> *Id.*

<sup>67</sup> Adam Fitch, *Hangzhou Opens Its Own Esports Town*, ESPORTS INSIDER (Nov. 21, 2018), <https://esportsinsider.com/2018/11/hangzhou-esports-town>.

cost.<sup>68</sup> In order to recoup this massive investment, Comcast and company expect to hold more than 120 non-esports events per year in the new arena.<sup>69</sup> Additionally, the naming rights to the stadium will be sold on a ten-year, multi-million-dollar deal.<sup>70</sup> These measures are not only prudent but entirely necessary. In many ways, Fusion Arena's business model was borne out of the legal and political defects inherent in public funding. Should such a privately funded model prove successful, it would set a shining precedent for the esports industry—one that denounces traditional sports' undue reliance on taxpayers.

### Conclusion

Since the esports industry's inception, its fate and that of its traditional sports counterpart have been hopelessly intertwined. Esports' transition to franchise-based leagues is just another iteration of this similarity. Though following the path laid out by traditional sports has perhaps accelerated esports' progression, it also puts esports at risk of making the same missteps as traditional sports—or, perhaps worse, pursuing a path that has since been muddied and rendered uncertain. This path, of course, is the use of public funds for professional sports venues. As the esports industry inches closer to this reality, it becomes increasingly important to reflect on the legal and social consequences involved. Cautionary tales like those of Los Angeles, Montreal, and Detroit must be heeded, as they chronicle a history unworthy of repetition.

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<sup>68</sup> Reina Kern, *Fusion Arena to Become Newest State-of-the-Art Gaming Facility*, NBC SPORTS (Mar. 25, 2019), <https://www.nbcsports.com/philadelphia/fusion/fusion-arena-become-newest-state-art-gaming-facility-philadelphia-sports-complex>.

<sup>69</sup> Bob Fernandez, *Comcast to Spend \$50 Million in South Philly To Create the Nation's First Video Gaming Arena*, PHILA. INQUIRER (Mar. 25, 2019), <https://www.inquirer.com/business/comcast-overwatch-fusion-philadelphia-wells-fargo-linc-20190325.html>.

<sup>70</sup> Don Muret, *Million-Dollar Naming Rights for Esports?*, VENUES NOW (July 11, 2019), <https://venuesnow.com/million-dollar-naming-rights-for-esports>.

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