

YOUNG LAWYERS



BY SCOTT LACHMAN, YOUNG LAWYERS SECTION

THE HOUSTON GOLDEN KNIGHTS?

HOW NEVADA'S EMINENT DOMAIN LAW AND LEGISLATION MAY SAVE VEGAS FROM THE ULTIMATE SPORTS CRIME

Pat Williams, the former president and general manager of the Orlando Magic, once said, “[y]ou can have Disney World and every major attraction, but if you don’t have a team in the eyes of the world, you’re not a big league city.” **Las Vegas, once known as just a gambling town, is now a big-league city thanks to the Golden Knights.** Our National Hockey League team greatly surpassed expectations in year one and made hockey history representing the Western Conference in the Stanley Cup finals. You can’t go anywhere in Las Vegas today without seeing a Golden Knights shirt or bumper sticker. There are even talks of replacing Nevada’s state flower, the sagebrush, with Marc-Andre Fleury. The union of Las Vegas and the Golden Knights is a marriage that should never end, just as New York is to the Yankees and Dallas is to the Cowboys.

Losing the Golden Knights to Houston, Seattle or London, Ontario, seems crazy today, but the residents of Montreal never thought the Expos would move to Washington, D.C.; the people of Baltimore never thought their beloved Colts would relocate to Indianapolis; and Oakland’s Black Hole never thought Las Vegas would be home to Raider Nation. Sports franchise relocation is likely to benefit Nevada as it grows in population and becomes the Delaware of the west. Take the Las Vegas Aces, for example;

the team relocated their WNBA franchise from San Antonio to Las Vegas just this year. There are rumors that a National Basketball Association franchise is bound for Las Vegas, and Major League Baseball even considers Las Vegas a potential home to a future team. What happens, however, when Nevada loses its winning ways and the next generation of Bill Foley’s and Marc Davis’s seek the next-best city? Can Nevada and its political subdivisions use the power of eminent domain or creative legislation to keep the Knights or Raiders in Las Vegas?

Is Intangible Property Subject to Condemnation?

Traditionally, the power of eminent domain was used to condemn real property. Section 8 of the Nevada Constitution states, “[p]rivate property shall not be taken for public use without just compensation having been first made or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be made afterward.” It makes no distinction between real and intangible property like a sports franchise. So, if the Raiders wanted to move back to Oakland, could Nevada’s eminent domain law combat relocation? The question is decades away from needing to be answered, but with a few slight changes to NRS Chapter 37, Nevada can protect itself from losing one of its future prized possessions, the Raiders.

Since history repeats itself, Nevada need look no further than the *City of Oakland v. Oakland Raiders*, 646 P.2d 835 (Cal. 1982) and its progeny. In 1980, the City of Oakland broke condemnation barriers by bringing an action against the Oakland Raiders to acquire all of the property rights associated with the team. The Raiders contended, as most

of us would think, that the law does not permit the taking of intangible property. Remarkably, the Supreme Court of California concluded that intangible property could indeed be condemned. The majority proclaimed that the “right of eminent domain encompasses property of every kind and character, whether real or personal, or tangible or intangible.” The California Supreme Court ultimately held, after a few more years of litigation, that the taking would violate the Commerce Clause, thus ruling in favor of the Raiders relocating to Los Angeles. The team stayed in LA for just over a decade, returning to Oakland in 1995.

Baltimore, like Oakland, pulled out all of the stops to keep the Colts in Maryland as detailed in *Mayor and City Council of Baltimore v. Baltimore Football Club Inc.*, 624 F.Supp. 278 (D. Md. 1986). In the middle of the night in spring 1984, Mayflower Transit packed up the Colts’ training facility and was bound for Indiana. Soon thereafter, the Maryland Legislature passed emergency legislation authorizing Baltimore to condemn the Colts and related properties. Baltimore then filed a condemnation action seeking to acquire the Colts by eminent domain and to enjoin the Colts from doing anything to further transfer the franchise. The federal district court determined that Baltimore lacked the power to condemn the Colts’ franchise, because its principal place of business was no longer Maryland. Although the case was ultimately decided on jurisdictional grounds, the court pointed out that intangible property is properly the subject of condemnation proceedings.

What the Colts’ and Raiders’ cases teach us is that intangible property rights are likely subject to condemnation and that Nevada should start thinking about

sports franchise relocation before our Knights become the next Atlanta Thrashers, who moved to Winnipeg in 2011.

Federal and State Legislation as Defense to Franchise Relocation

While the power of eminent domain has never been successful in the sports franchise arena, private agreements between professional teams and the host city have gained popularity throughout the country, especially when the city or state fronts the majority of the bill for the new stadium. A perfect example of such an agreement is Senate Bill 1 from the 2016 Nevada Special Session, where section (2)(m) of the bill requires that the term of the lease entered into with the Raiders be at least 30 years.

Senate Bill 1 was in direct response to a future franchise relocation threat from the next generation of Raiders' owners. Responding to the Raiders' move to Oakland 30 years ago, Congressman Ronald Dellus of California sponsored the Professional Sports Franchise Relocation Act, which would have allowed a team's host city to pursue the franchise at its fair market value under certain circumstances. A similar bill was introduced by Ohio representative Martin Hoke in response to the Cleveland Browns' relocation to Baltimore. This bill, known as the Fan Freedom and Community Protection Act, would have required a professional sports league to grant an expansion franchise to an investor who is financially able to pursue and support a team in a city that formerly hosted a league franchise. Federal legislation restricting the movement of sports franchises have not been successful, likely due to league lobbyists, affluent ownership that financially support members of Congress, and representatives whose cities want to be home the next great franchise.

Home Means Nevada and Sports

The Golden Knights did not lift the Stanley Cup in 2018, but the team lifted Nevada from a gambling town to a sports mecca. In a few short years, the Raiders will join their sister franchise, making Las Vegas home to two major sports franchises. Some say that it will take time to get used to the Raiders, but before we know it, the state song will be "The Autumn Wind" and the state motor vehicle will be Derek Carr. Using the power of eminent domain to condemn the Knights or Raiders could one day be a reality. Until then, Vegas sports fans should support their local teams and lobby federal, state and local legislators before the ultimate sport crime is committed here. **NL**

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