

# **WHY RHODE ISLAND SHOULD REJECT THE NEW PAWSOX DEAL**

## **1. Economists have shown that public subsidies for new stadiums make no economic sense**

Economists have shown that new stadiums do not generate enough economic growth or tax revenues to justify public subsidies.<sup>1</sup> For example, economists Dennis Coates and Brad Humphreys reviewed more than 40 academic studies that examined public subsidies for professional sports teams over the last two decades. They determined there is "almost no evidence that professional sports franchises and facilities have a measurable economic impact."<sup>2</sup> In addition, they emphasized that a "large and growing peer-reviewed economics literature on the economic impacts of stadiums, arenas, sports franchises, and sports mega-events has consistently found no substantial evidence of increased jobs, incomes, or tax revenues for a community."<sup>3</sup> Furthermore, they stated: "Economists reach the nearly unanimous conclusion that 'tangible' economic benefits generated by professional sports facilities and franchises are very small; clearly far smaller than stadium advocates suggest and smaller than the size of the subsidies."<sup>4</sup> Lastly, they also indicated that in a survey of economists 86 percent agreed that "local and state governments in the United States should eliminate subsidies to professional sports franchises" while only 5 percent disagreed.<sup>5</sup> Proponents of a new PawSox stadium have never been able to refute these conclusions by economists or explain why a new PawSox stadium would be different.

## **2. The analysis produced by consultants like Brailsford & Dunlavy is not reliable**

Proponents of building a new PawSox stadium rely upon an analysis performed by Brailsford & Dunlavy, a consulting firm hired by the City of Pawtucket that previously performed a study for the PawSox related to the proposed Providence stadium.<sup>6</sup> They claim that a new PawSox Pawtucket stadium will generate directly and indirectly millions in economic growth and tax revenues. However, the analysis by Brailsford & Dunlavy appears comparable to the flawed economic impact studies typically used by promoters for tax subsidies of new stadiums.

Economists have noted that cities use "bogus economic impact studies" to support their claim "that stadiums are good investments."<sup>7</sup> One economist has stated that these studies and analyses

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<sup>1</sup> See C. Eugene Emery Jr., "Politifact Rhode Island: R.I.GOP official Steven Frias says research finds no economic benefit from having sports franchise", Providence Journal, (3/7/2015)

<sup>2</sup> Dennis Coates and Brad R. Humphreys, "Do Economists Reach a Conclusion on Subsidies for Sports Franchises, Stadiums, and Mega-Events?", Econ Journal Watch, Volume 5, Number 3, at 302 (September 2008)

<sup>3</sup> Id. at 310.

<sup>4</sup> Id. at 311.

<sup>5</sup> Id. at 296.

<sup>6</sup> Brailsford & Dunlavy, Economic & Fiscal Benefits Analysis of a New Downtown Pawtucket Ballpark, (April 2017); Brailsford & Dunlavy, Project Hope, (April 2015). This firm also did an economic study for the new ballpark built in Hartford, Connecticut. Brailsford & Dunlavy, New Ballpark Planning Study, (2/18/2014).

<sup>7</sup> Roger G. Noll and Andrew Zimbalist, "The Economic Impact of Sports Teams and Facilities", Roger G. Noll and Andrew Zimbalist, editors, Sports, Jobs & Taxes, at 84 (1997).

are never published in reputable journals because "you can make them say whatever you want them to say" by tinkering with the assumptions.<sup>8</sup> Another economist noted that "these studies are neither impartial nor objective" and "incorporate assumptions and adopt methods that facilitate their use as advocacy documents intended to provide a public subsidy for a sports project with a convincing aura of economic legitimacy."<sup>9</sup> Other economists have called these studies simply "promotional literature", which suffer from "a long list" of problems that are "well-documented" by many economists.<sup>10</sup>

One problem noted by economists is that much of the economic activity quantified in these studies is merely "redistributive", in particular when a new stadium is being built in the same city.<sup>11</sup> Much of the consumer spending increase due to a new stadium comes from the entertainment budgets of local residents, and leads to decreases in spending in other recreational and entertainment activities.<sup>12</sup> Also, these studies have "several errors" that stem from the "misapplication or misinterpretation of the 'multiplier' effect, which is the principal economic theory embraced by economic impact studies."<sup>13</sup> Some economists have noted that the method for "assessing economic impact overstates the extent to which a team generates a net increase in business" and "overstates again multiplier effects arising from this business."<sup>14</sup> These type of studies "overstate the extent to which the income generated by a team remains in the local economy" because most of the gross revenues generated by a team goes to owners, executives, managers, coaches, scouts and players.<sup>15</sup> Some economists have suggested that the "proper multiplier for sports teams is 1.2" and this multiplier should "not" be "applied to gross spending, but to that portion of spending that constitutes a net increase in the income of local residents".<sup>16</sup> The PawSox have never explained why the Brailsford & Dunlavy analysis is more reliable than comparable economic comparable studies shown by economists to be unreliable.

### **3. Brailsford & Dunlavy's analysis uses unrealistic tax revenue and attendance projections**

Brailsford & Dunlavy's analysis for a Pawtucket stadium appears to have less realistic forecasts than their study of a new Providence stadium. For example, during the first five years of operation of the new Pawtucket stadium, Brailsford & Dunlavy claims that between \$3.2 million to \$3.4 million in tax revenues will be generated each year.<sup>17</sup> However, for a new stadium in Providence, Brailsford & Dunlavy's study only claimed that during the first five years of operation of the new Providence stadium would generate between \$2.1 million to \$2.3

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<sup>8</sup> C. Eugene Emery Jr., "Politifact Rhode Island: R.I.GOP official Steven Frias says research finds no economic benefit from having sports franchise", Providence Journal, (3/7/2015).

<sup>9</sup> John L. Crompton, "Economic Impact Analysis of Sport Facilities and Events: Eleven Sources of Misapplication", Journal of Sport Management, at 16 (1995).

<sup>10</sup> Dennis Coates and Brad R. Humphreys, "Do Economists Reach a Conclusion on Subsidies for Sports Franchises, Stadiums, and Mega-Events?", Econ Journal Watch, Volume 5, Number 3, at 298.

<sup>11</sup> Id. at 298.

<sup>12</sup> Id.

<sup>13</sup> John L. Crompton, "Economic Impact Analysis of Sport Facilities and Events: Eleven Sources of Misapplication", Journal of Sport Management, at 18.

<sup>14</sup> "The Economic Impact of Sports Teams and Facilities", Roger G. Noll and Andrew Zimbalist, editors, Sports, Jobs & Taxes, at 87.

<sup>15</sup> Id. at 71.

<sup>16</sup> Id. at 75.

<sup>17</sup> Brailsford & Dunlavy, Economic & Fiscal Benefits Analysis of a New Downtown Pawtucket Ballpark, at 12.

million in tax revenues each year for the first five years.<sup>18</sup> In other words, Brailsford & Dunlavy is claiming that a new Pawtucket stadium will produce about \$1.1 million more in tax revenues a year than a new Providence stadium, primarily from higher state income tax revenues.<sup>19</sup> It does not seem credible that building a new stadium in Pawtucket would produce about \$1 million more in state income tax revenues than a new stadium in Providence. If Brailsford & Dunlavy's tax revenue projections are not realistic, then the claim that a new stadium in Pawtucket will generate enough tax revenues to pay for itself is also not credible.

Another example of unrealistic forecasts used by Brailsford & Dunlavy is projected attendance at the new stadium. Brailsford & Dunlavy has acknowledged that the PawSox has experienced a "steep decline" in attendance from its peak level of 9,550 per game in 2005.<sup>20</sup> In 2016, the PawSox had an attendance of 407,097.<sup>21</sup> Brailsford & Dunlavy forecasted in early 2017 that with a new Pawtucket stadium attendance will increase to 597,000 in the first year of operation and then after five years stabilize at 569,000.<sup>22</sup> In other words, attendance will increase by about 40 percent, and then decrease by less than 5 percent at a new Pawtucket stadium. However, previously, Brailsford & Dunlavy noted that the minor league team in Columbus, Ohio experienced a 21 percent increase when it built a new ballpark and that "Columbus represents an important comparable to Pawtucket in terms of market size and attendance levels prior to a new ballpark project."<sup>23</sup> In addition, Brailsford & Dunlavy noted that "ballparks typically reach a stabilized attendance level at 90% of first year attendance in year 6 of operations."<sup>24</sup> Therefore, Brailsford & Dunlavy now claims that a new stadium in Pawtucket will generate a percentage increase in attendance more than double what a comparable team in Columbus, Ohio experienced and have less than half of the typical decrease in attendance five years after a new ballpark is built. This does not seem credible. If Brailsford & Dunlavy's attendance projections do not seem credible, then their other forecasts are also questionable.

#### **4. PawSox will not guarantee the tax revenue projections because the risk is not minimal**

Proponents of a new PawSox stadium claim that the risk to taxpayers is minimal.<sup>25</sup> However, economists have shown that the type of economic impact studies relied upon by the City of Pawtucket and Pawsox ownership are deeply flawed. Also, the studies by Brailsford & Dunlavy claims to show that more tax revenues will be generated by a new stadium located in Pawtucket than in Providence, which sounds illogical. If the Pawsox ownership is confident the tax revenue projections of Brailsford & Dunlavy are accurate, then they can guarantee the tax revenue projections. They will not do so because they know the risk is not minimal. The

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<sup>18</sup> Brailsford & Dunlavy, Project Hope, 2-5 and Fiscal Impact Summary.

<sup>19</sup> Compare Brailsford & Dunlavy, Economic & Fiscal Benefits Analysis of a New Downtown Pawtucket Ballpark, at 12, and Brailsford & Dunlavy, Project Hope, 2-5 and Fiscal Impact Summary.

<sup>20</sup> Brailsford & Dunlavy, Project Hope, 3-17.

<sup>21</sup> Tim White, "Pawsox attendance at McCoy Stadium hit 24-year low in 2016 season", WPRI 12 (10/10/2016, 1/26/2017).

<sup>22</sup> Brailsford & Dunlavy, Economic & Fiscal Benefits Analysis of a New Downtown Pawtucket Ballpark, at 9.

<sup>23</sup> Brailsford & Dunlavy, Project Hope, 3-20 (April 2015).

<sup>24</sup> Id.

<sup>25</sup> Kate Bramson and Katherine Gregg, "Many lawmakers wary of PawSox' stadium bid", Providence Journal (5/17/2017)

PawSox want the public to subsidize the building of a new stadium because they know stadiums are seldom financially attractive as private investments.<sup>26</sup>

## **5. The amount of tax revenues currently generated at McCoy has never been disclosed**

While proponents of a new PawSox stadium have produced studies claiming that millions in tax revenues will be produced from a new stadium, the PawSox have not disclosed how much in state sales, income and hotel tax revenue McCoy Stadium is currently generating.<sup>27</sup> Furthermore, in 2015, Antonio Pires, Pawtucket's Administration Director, indicated that Pawtucket "was receiving no tax revenue from the team."<sup>28</sup> The refusal or inability of the PawSox or government officials to disclose how much tax revenues McCoy Stadium or the PawSox currently generate suggests a concern about revealing how little the PawSox actually generates in tax revenues currently.

## **6. State tax revenues in general, not just taxes from the stadium, will pay the new bonds**

The proposed legislation indicates that the "debt service" for \$25 million in bonds issued in Pawtucket Redevelopment Agency will "be funded from State taxes, including taxes generated by Ballpark users, visitors, the PawSox, and ancillary development, as well as a premium ticket surcharge".<sup>29</sup> However, the language does not limit the taxes to pay these bonds to taxes generated from the new stadium. Instead it states the bonds will be "funded from State taxes" which includes, but is not limited to, taxes generated by the new stadium. The bonds to pay for the new stadium will be paid annually from tax revenues approved in the budget.<sup>30</sup> Taxes and ticket surcharges directly generated at the new stadium can be identified and earmarked to pay for these bonds. However, any tax revenues generated away from the new stadium will be difficult to identify as arising from a new stadium. As a result, state tax revenues in general not just taxes generated by the new stadium will be used to pay these bonds.

## **7. It is unclear who will pay the entire costs on \$33 million in bonds**

The new stadium is estimated to cost \$83 million with \$71 million in bonds to be issued by the Pawtucket Redevelopment Agency. The proposed legislation indicates that \$33,000,000 will "be financed by a taxable lease revenue bond issued by the Pawtucket Redevelopment Agency" that will be paid by "sublease rental payments to be paid from PawSox rents and annual naming right payments"<sup>31</sup> To pay for these bonds, the PawSox have committed to leasing the stadium "for \$1 million a year in the first year, with the lease going up 2 percent annually" as well as "a \$500,000 naming-rights deal".<sup>32</sup> However, these amounts do not equal the principal and interest costs on a \$33 million bond. The cost of \$33 million in bonds paid over 30 years at 5 percent

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<sup>26</sup> See Roger G. Noll and Andrew Zimbalist, "Build the Stadium- Create the Jobs", Roger G. Noll and Andrew Zimbalist, editors, *Sports, Jobs & Taxes*, at 28.

<sup>27</sup> Kate Bramson, PawSox, city reveal stadium financing framework", *Providence Journal* (5/16/2017).

<sup>28</sup> Ethan Shorey, "City devastated after 'gut punch' PawSox announcement", *Valley Breeze* (2/24/2015).

<sup>29</sup> R.I. Bill 2017-S0989.

<sup>30</sup> Ted Nesi, "PawSox bill calls for city agency to borrow \$71M for ballpark", WPRI 12 (5/24/2017, 5/25/2017).

<sup>31</sup> R.I. Bill 2017-S0989.

<sup>32</sup> Kate Bramson, "PawSox, city reveal stadium financing framework", *Providence Journal* (5/16/2017).

would be about \$63.7 million.<sup>33</sup> Although the PawSox have indicated they will pay the costs associated with this \$33 million bond,<sup>34</sup> the legislation is unclear about the responsibility of PawSox to pay for these bonds.

## **8. Issuing bonds for a new PawSox Stadium without voter approval is just like 38 Studios**

The proposed legislation will allow the Pawtucket Redevelopment Agency to issue bonds without voter approval for which state taxpayers would be responsible.<sup>35</sup> Pawtucket Redevelopment Agency will be authorized to issue \$25 million in bonds, which will be the responsibility of the State of Rhode Island. The Governor can be required “to include in each annual or supplemental proposed budget of revenues and appropriations submitted to the General Assembly for any fiscal year” any “outstanding the amount required for the payment of the projected annual debt service” for these bonds.<sup>36</sup> In effect, this is a moral obligation bond since the debt does not constitute a debt of the state but political leaders will feel obliged to pay the debt to avoid a potential downgrade of the State of Rhode Island’s credit rating.<sup>37</sup> This is essentially the same type of bond used for 38 Studios. The legislation that led to 38 Studios authorized the Rhode Island Economic Development Corporation to issue bonds for a loan guarantee program and if any debt costs were not covered by the reserve fund then “the governor” was required “submit to the general assembly, as part of the governor’s budget, the total of such sums, if any, required to pay any and all obligations of the corporation under such guarantees or bond obligations pursuant to the terms of this authorization.”<sup>38</sup> Taking on public debt without voter approval for the benefit of a private company in the hopes of spurring economic development is quite comparable to 38 Studios.

## **9. Moral obligation bonds are more costly than bonds approved by voters**

A general obligation bond usually has a lower interest rate than a moral obligation bond.<sup>39</sup> However, a general obligation bond requires voter approval.<sup>40</sup> This can be accomplished in either a general election or a special election. Even if the PawSox issue must be resolved quickly, a special election can be conducted. Rhode Island has conducted multiple special elections on bond referendums in the past. The cost for holding a special election to approve or reject a bond referendum is much smaller than the difference in interest costs for a general obligation bond compared to a moral obligation bond. Also, other communities, when approving the expenditure of taxpayer money for a new stadium or arena, have required voter approval.<sup>41</sup>

Furthermore, due to the political controversy surrounding the repayment of bonds for 38 Studios, and the fact that payments for these bonds will be included in the state budget for thirty years, it

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<sup>33</sup> <http://www.bankrate.com/calculators/managing-debt/annual-percentage-rate-calculator.aspx>.

<sup>34</sup> Kate Bramson, “PawSox stadium breakdown: Team \$86 million, state \$43 million, city \$29 million”, *Providence Journal*, (5/18/2017).

<sup>35</sup> R.I. Bill 2017-S0989.

<sup>36</sup> *Id.*; see also Ted Nesi, “PawSox bill calls for city agency to borrow \$71M for ballpark”, WPRI 12, (5/24/2017).

<sup>37</sup> See Ted Nesi, “Chafee reveals RI’s confusion about the 38 Studios bonds”, WPRI 12, (5/1/2013).

<sup>38</sup> 2010 P.L. 26, and P.L. 29

<sup>39</sup> See Ted Nesi, “RI lawmakers pushed to repay 38 Studios bondholders”, WPRI 12, (6/6/2013).

<sup>40</sup> R.I. Constitution, Article VI, Section 16.

<sup>41</sup> Kevin J. Delaney and Rick Eckstein, *Public Dollars, Private Stadiums*, at 72, 107, 118, 149, 155-56, 195 (2003).

is possible that bond investors may demand an interest rate higher than what is being estimated because of the risk that lawmakers may not want to pay for the costs of these bonds when inadequate tax revenues are generated by the new PawSox Stadium.

## **10. Voter approval of debt for a new PawSox stadium should be required**

Although the Rhode Island Constitution generally requires voter approval for the incurrence of public debt, the General Assembly has devised various means to increase the amount of debt for which the taxpayers are ultimately responsible without receiving voter approval.<sup>42</sup> For example, moral obligation bonds began in Rhode Island after voters repeatedly rejected bond referendums for low-income housing and economic development between 1969 and 1972.<sup>43</sup> Although the General Assembly legally can, it should not incur more debt to build a new PawSox stadium for which the taxpayers are responsible, without voter approval.

Although there are various business groups, labor organizations and other special interest groups that support a new PawSox stadium, this does not mean a majority of the voters support using taxpayer funds to build a new PawSox stadium. One poll commissioned by the PawSox showed that 63 percent of the voters oppose using taxpayers' money to build a new stadium.<sup>44</sup> In the past, the public has rejected economic development proposals that incur public debt and provides taxpayer subsidies to select businesses. Most memorably, in a special election in 1984, the Greenhouse Compact was rejected by 80 percent of the voters although it had strong support of prominent political leaders of both parties, important organizations like the Chamber of Commerce, and AFL-CIO, and the Providence Journal.<sup>45</sup> A reason that lawmakers would approve the taxpayer funding of a new PawSox Stadium through the issuance of new debt without voter approval is because proponents of a new stadium fear that the proposal would be defeated by the voters in an election.

## **11. A 2/3<sup>rd</sup> vote of the General Assembly is necessary**

Any bill which authorizes the appropriation of public money for a "local" or "private purpose" must be approved by two-thirds of the members elected to each house of the General Assembly.<sup>46</sup> The proposed legislation indicates that the "debt service" for \$25 million in bonds issued in Pawtucket Redevelopment Agency will "be funded from State taxes, including taxes generated by Ballpark users, visitors, the PawSox, and ancillary development, as well as a premium ticket surcharge".<sup>47</sup> Essentially, this legislation is authorizing state revenues to be expended to pay the bonds of the Pawtucket Redevelopment Agency. The Pawtucket

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<sup>42</sup> Opinion to the Governor, 113 R.I. 586 (1974).

<sup>43</sup> Steven Frias, "No morality to moral obligation bonds", Providence Journal (6/18/2013).

<sup>44</sup> Ted Nesi, "Nesi's Notes", WPRI 12, (5/20/2017).

<sup>45</sup> Brain C Jones, "Greenhouse defeated in all 39 communities", Providence Journal, (6/13/1984); Ira Magaziner, "Rhode Island: The Defeat of the Greenhouse Compact," New England Journal of Public Policy, Vol. 2, Issue 1 at 49 (1986); "State Greenhouse Compact: We Recommend: Approve", Providence Journal, ( 6/12/1984)

<sup>46</sup> R.I. Constitution, Article VI, Section 11.

<sup>47</sup> R.I. Bill 2017-S0989.

Redevelopment Agency is a local entity and when state funds are used to pay its bonds, it is the expenditure of public money for a local purpose.<sup>48</sup>

In addition, the legislation appears to authorize the expenditure of state taxes for a private purpose, and therefore it must be approved by two-thirds of the members elected to each house of the General Assembly. State taxes are being used to pay the bonds which will be used to build a new stadium that will be leased to a private entity, the PawSox. Previously, the Rhode Island Supreme Court has declared that if a quasi-public corporation used public funds to construct facilities for the purpose of leasing them to a private entity, the expenditure is for a private purpose, and requires approval by two-thirds of the members elected to each house of the General Assembly.<sup>49</sup> If the proposed legislation is not adopted by a two-thirds vote in either chamber, it could be declared invalid.<sup>50</sup>

## **12. It is unclear how much it will cost taxpayers to acquire the land for the new stadium**

The cost of building a new stadium is \$73 million, not including interest costs, with the cost of the acquiring the land for the new stadium estimated to be an additional \$10 million.<sup>51</sup> However the land targeted for acquisition is the Apex site and its owners are reportedly “seeking more than \$20 million” for the property.<sup>52</sup> In addition, there is a pending lawsuit over environmental cleanup of the Apex site, which could cause acquisition costs to “surge”.<sup>53</sup> Lastly, because the Apex property has been contaminated by hazardous materials, by taking ownership of this property, it is unclear if there is any potential risk to Pawtucket taxpayers to acquiring this property. Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), current and prior owners of a contaminated property are generally held strictly liable for the costs of removal for hazardous materials.<sup>54</sup> As a result, the cost to taxpayers of acquiring the land to build a new stadium may be higher than currently estimated.

## **13. The proposed legislation significantly expands the ability to use eminent domain**

The proposed legislation allows for the use of eminent domain to seize the Apex property for a new stadium by eliminating the requirement under current law that limits local redevelopment agencies to designate an area for a “redevelopment area” to locations which are “blighted and

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<sup>48</sup> Providence v. Moulton, 52 R.I. 236 (1932) (state expenditures to pay the Providence Police Commission required the two-thirds vote approval of each chamber of the General Assembly).

<sup>49</sup> Opinion to the Governor, 79 R.I. 305, 307 (1952). The proposed Industrial Development Corporation was an entity to be funded with \$1,000,000 in public funds, managed by a board appointed by the Governor, that would “acquire industrial sites” in order “to construct industrial plants” so as “to lease” these facilities “to private industry”. Opinion to the Governor, 79 R.I. at 306; “Legislation on Plan to Aid Industry Goes to Assembly”, Providence Journal (1/5/1952).

<sup>50</sup> If there is a doubt that a two-thirds vote is necessary to approve this legislation, then the Governor or either chamber should request an advisory opinion from the Rhode Island Supreme Court. See R.I. Constitution, Article X, Section 3.

<sup>51</sup> Steph Machado and Ted Nesi, “PawSox to request \$23M from state for new stadium at Apex site”, WPRI 12, (5/16/2017).

<sup>52</sup> Ethan Shorey, “Apex property price appears too high for PawSox”, Valley Breeze, (3/21/2017).

<sup>53</sup> “The PawSox deal, cost to Rhode Island taxpayers”, Providence Journal, (8/19/2017).

<sup>54</sup> See Owen T. Smith, “The Expansive Scope of Liable Parties under CERCLA”, St. John’s Review, Volume 63, Issue 4, Summer 1989.

substandard”.<sup>55</sup> Under this legislation, an area may be designated a redevelopment area in which eminent domain can be utilized “even though such land, buildings or other improvements are not blighted or substandard”.<sup>56</sup> Now that an area no longer must be shown to be blighted and substandard, this legislation would give local development agencies broad power to declare any area to be a redevelopment zone in which eminent domain can be used to seize private property and transfer it to private developers. Redevelopment agencies, which have the power of eminent domain, were created for the “elimination of slums” and the “eradication of blight”.<sup>57</sup> Essentially, this legislation will allow the use of eminent domain anywhere in order to promote economic development. This significant expansion of the ability to use eminent domain is dangerous to property rights.

#### **14. Use of eminent domain in these circumstances could be unconstitutional**

Under the United States Constitution, the use of eminent domain to seize the Apex property under these circumstances could be legally problematic. In a five to four decision, the United State Supreme Court determined in the Kelo case that eminent domain can be used to promote economic development under the United States Constitution.<sup>58</sup> However, the deciding vote in the case, Justice Anthony Kennedy indicated eminent domain would violate the U.S. Constitution if the property “transfers” were “intended to confer benefits on particular, favored private entities, with only incidental or pretextual public benefits.”<sup>59</sup> He noted that the use of eminent domain was proper in Kelo because a “substantial commitment of public funds by the State to the development project” occurred “before most of the private beneficiaries were known” and a “private developer” was chosen “from group of applicants rather than picking out a particular transferee beforehand”.<sup>60</sup> In this case, private property is being seized in order to build a new stadium which will benefit the PawSox ownership, which consists of a small group of wealthy, politically involved individuals.<sup>61</sup> The factual issue of whether “impermissible favoritism” occurred in the seizing by eminent domain of the Apex property to benefit the PawSox owners could be developed by the trial court through the development of a robust evidentiary record involving “testimony from government officials and corporate officers” as well “documentary evidence of communications between the parties.”<sup>62</sup>

Under the Rhode Island Constitution, the use of eminent domain in these circumstances could likely be unconstitutional. The use of eminent domain is specifically permitted by the Rhode Island Constitution for the “clearance, replanning, redevelopment, rehabilitation and improvement of blighted and substandard areas.”<sup>63</sup> If the General Assembly adopted the proposed legislation, it would appear to exceed its authority because eminent domain for redevelopment purposes is limited to “blighted and substandard” areas. The use of eminent

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<sup>55</sup> R.I. Bill 2017-S0090.

<sup>56</sup> Id.

<sup>57</sup> Romeo v. Cranston Redevelopment Agency, 105 R.I. 651, 657-658, 662 (1969).

<sup>58</sup> Kelo v. City of New London, 545 U.S. 469 (2005).

<sup>59</sup> Id. at 490 (Kennedy concurring).

<sup>60</sup> Id. at 491-492 (Kennedy concurring).

<sup>61</sup> Katherine Gregg, “R.I. GOP: Raimondo’s view colored by donations from PawSox owners, building industry”, Providence Journal (5/22/2017).

<sup>62</sup> Kelo v. City of New London, 545 U.S. at 491-492 (Kennedy concurring).

<sup>63</sup> R.I. Constitution, Article VI, Section 18.



domain by the Pawtucket Redevelopment Agency to seize the Apex property, which is not located in an area determined to be “blighted and substandard”, is not permitted by Article VI, Section 18 of the Rhode Island Constitution. There is a general Rhode Island constitutional provision that allows for the taking of private property for a public use.<sup>64</sup> However, the use of eminent domain for redevelopment programs was a matter of significant constitutional dispute and uncertainty.<sup>65</sup> In order “to remove all constitutional doubt relative to an establishment of a program of urban renewal”, a new section to the Rhode Island Constitution was adopted in 1955 that permitted the use of eminent domain for redevelopment projects but only for “blighted and substandard areas.”<sup>66</sup> Eminent domain can be used to take property that is not in a blighted condition, but the property must be located in an area deemed blighted and substandard.<sup>67</sup> The use of eminent domain to implement a redevelopment plan needs to conform with this specific constitutional provision otherwise the “taking” of land that is used by “a private developer for private profit” would “not constitute proper public use as that term is defined in Amendment XXXIII”, which is today Article VI, Section 18.<sup>68</sup>

### **15. There are better uses of taxpayer money than building a new PawSox stadium**

The taxpayer money spent on a new stadium is money that cannot be spent for another better purpose. The economic concept of opportunity cost indicates that policymakers should evaluate the best use of resources by viewing other alternatives for which those resources can be used.<sup>69</sup> Taxpayers are expected to spend about \$73.4 million to pay off a \$38 million in bonds at a 5 percent interest rate.<sup>70</sup> Economic research shows that the “opportunity cost of taxes is significant.”<sup>71</sup> In general, the best use of taxpayer money is to allow taxpayers to keep their money so they can invest it or spend it as they best see fit.

If policymakers decide that they know better than the taxpayers how to invest and spend their money, then there are other ways the government could spend \$73.4 million over 30 years. Other public projects can achieve higher “social rates of return than a stadium.”<sup>72</sup> For example, it is expected that a new PawSox Stadium will create temporary construction jobs and entertain children who attend baseball games. However, the Rhode Island Department of Education has indicated that cities and towns need to spend about \$1.7 billion to fully repair every school in the state.<sup>73</sup> Repairing schools would be a way to provide temporary construction jobs, improve the learning environment of all Rhode Island public school children, and likely be better use of

<sup>64</sup> R.I. Constitution, Article I, Section 16.

<sup>65</sup> Opinion to the Governor, 76 R.I. 249 (1949).

<sup>66</sup> Romeo v. Cranston Redevelopment Agency, 105 R.I. 651, 657-658, 662 (1969).

<sup>67</sup> Id., at 664.

<sup>68</sup> O’Neill v. City of East Providence, 480 A.2d 1375, 1382 (1984). If there is a doubt that the use of eminent domain for redevelopment projects is limited to areas deemed blighted and substandard, then the Governor or either chamber of the General Assembly should request an advisory opinion from the Rhode Island Supreme Court. See R.I. Constitution under Article X, Section 3.

<sup>69</sup> Roger G. Noll and Andrew Zimbalist, “The Economic Impact of Sports Teams and Facilities”, Roger G. Noll and Andrew Zimbalist, editors, Sports, Jobs & Taxes, at 61-62.

<sup>70</sup> <http://www.bankrate.com/calculators/managing-debt/annual-percentage-rate-calculator.aspx>

<sup>71</sup> Roger G. Noll and Andrew Zimbalist, “The Economic Impact of Sports Teams and Facilities”, Roger G. Noll and Andrew Zimbalist, editors, Sports, Jobs & Taxes, at 61-62.

<sup>72</sup> Dennis Coates and Brad R. Humphreys, “Do Economists Reach a Conclusion on Subsidies for Sports Franchises, Stadiums, and Mega-Events?”, Econ Journal Watch, Volume 5, Number 3, at 299.

<sup>73</sup> Dan McGowan, “Advocates urge RI leaders to increase funding for school repairs”, WPRI 12, (2/27/2017).

taxpayer money. “Resources allocated to a sports event or facility” means resources are being “denied to other sectors of the economy.”<sup>74</sup> Taxpayer resources are limited. Rhode Island is faces large and chronic structural budget deficits.<sup>75</sup> Money spent on a new stadium means less taxpayer resources available for more important priorities.

## **16. A new PawSox stadium is not necessary to assist the construction industry**

A major special interest group in support of building a new PawSox stadium is the construction unions. Construction unions are a reason why new stadiums are built.<sup>76</sup> Over the past year, Rhode Island saw a 13.4 percent increase in construction jobs.<sup>77</sup> This increase is driven by millions in taxpayer money being spent to repair roads and bridges and the millions in taxpayer subsidies for real estate development.<sup>78</sup> Spending millions on a new PawSox stadium is unjustified because millions have been, and will be spent to benefit the construction industry.

## **17. The new owners need a new stadium to increase the value of their investment**

The age of McCoy Stadium is not the primary reason why the new PawSox ownership wants a new stadium. The demand for a new stadium only came immediately after the new ownership bought the PawSox for an amount estimated to be \$20 million.<sup>79</sup> When a minor league team is purchased at a high price, it makes it “highly probable” that the purchase of the team was “highly leveraged” with debt.<sup>80</sup> Minor league teams “are not particularly profitable in terms of their annual operations.”<sup>81</sup> “Only through long-run capital appreciation are returns attractive” for minor league owners.<sup>82</sup> A new ownership will demand a new stadium as a way to recoup and increase their investment in a professional team. As a result, new minor league “stadiums must now produce considerably more revenue than the stadiums of the past.”<sup>83</sup> Furthermore, a new stadium increases the value of the team. Some economists have estimated that a new stadium may “double the value of a franchise” in professional sports.<sup>84</sup> The new Pawsox ownership’s demand for a new stadium is driven by the need to get a return on their multi-million dollar investment and to increase the value of their investment. Taxpayers should not be required to subsidize the effort by PawSox owners to get a return on their costly investment.

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<sup>74</sup> John L. Crompton, “Economic Impact Analysis of Sport Facilities and Events: Eleven Sources of Misapplication”, Journal of Sport Management, at 31.

<sup>75</sup> Katherine Gregg, “R.I. budget: From surplus to projected \$237 million deficit”, Providence Journal, (9/3/2017).

<sup>76</sup> Roger G. Noll and Andrew Zimbalist, “Build the Stadium- Create the Jobs”, Roger G. Noll and Andrew Zimbalist, editors, Sports, Jobs & Taxes, at 29.

<sup>77</sup> Suzanne O’Halloran, “Why Rhode Island’s construction job boom may spell trouble for Houston”, FOX Business, (8/31/2017).

<sup>78</sup> Id.

<sup>79</sup> Ted Nesi, “PawSox want \$4M a year from RI for Prov. Stadium”, WPRI 12, (4/15/2015, 9/22/2016).

<sup>80</sup> Robert A. Baade and Allen R. Anderson, “Minor League Teams and Communities” Roger G. Noll and Andrew Zimbalist, editors, Sports, Jobs & Taxes, at 467.

<sup>81</sup> Id., at 471.

<sup>82</sup> Id.

<sup>83</sup> Id., at 467.

<sup>84</sup> Kevin J. Delaney and Rick Eckstein, Public Dollars, Private Stadiums, at 26.

## **18. There is no guarantee that PawSox tickets will remain affordable in the long-term**

The PawSox have verbally pledged that for the first five years in a new stadium, general admission tickets will remain at \$9 and at \$6 for children and seniors.<sup>85</sup> However, the taxpayers will be paying for a new stadium for 30 years. There is no legal binding obligation on the new ownership to keep general admission seating at affordable levels for the entire 30 year period of the lease or to keep the quantity of general admission seating at current levels for the entire 30 year period. New “minor league stadiums are fast becoming miniatures of modern major league facilities complete with skyboxes.”<sup>86</sup> In the past, “locals ... used to run minor league clubs on a virtually not-for-profit basis.”<sup>87</sup> However, many of today’s minor league “owners are in many cases outsiders” who view “their acquisitions in business terms only.”<sup>88</sup> The new PawSox ownership represents in many ways this new brand of minor league ownership. The new owners of minor league teams expect new stadiums to “produce considerably more revenue than the stadiums of the past.”<sup>89</sup> Unless restrained by legally binding agreements, the new PawSox ownership will have the ability to increase the price of tickets or reduce the number of low priced tickets in order to get a larger return on their multi-million dollar investment.

## **19. Massachusetts state taxpayers will not fund a new stadium for the PawSox**

The PawSox has explored moving to other Massachusetts communities such as Worcester.<sup>90</sup> However, Massachusetts state lawmakers are not likely to use state taxpayer funds to build a new stadium for the PawSox in Massachusetts. According to Massachusetts Senate Majority Leader Harriette Chandler, a Worcester Democrat, the Massachusetts state legislature “has an established precedent of not putting public money into sports stadiums.”<sup>91</sup> This precedent was set when the Massachusetts state legislature refused to fund the building of a new stadium for the New England Patriots. Instead, funding was limited to infrastructure improvements related to the new stadium. Without resorting to subsidizing the building of sports stadiums with state taxpayer funds, Massachusetts has a growing economy. It is unclear why Rhode Island should not follow the example of Massachusetts.

## **20. The PawSox is a poor investment even compared to other Commerce Corporation deals**

Governor Gina Raimondo’s administration, with the support of the General Assembly, is pursuing an economic development policy through the Commerce Corporation of providing tax subsidies to specific businesses. This policy has been criticized on various grounds.<sup>92</sup> In

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<sup>85</sup> Adam Vaccaro, “PawSox, seeking new stadium, pledge to lock in ticket prices”, Boston Globe, (4/19/2017).

<sup>86</sup> Robert A. Baade and Allen R. Anderson, “Minor League Teams and Communities”, Roger G. Noll and Andrew Zimbalist, editors, Sports, Jobs & Taxes, at 459.

<sup>87</sup> Id., at 464.

<sup>88</sup> Id.

<sup>89</sup> Id., at 467.

<sup>90</sup> Michelle San Miguel, “Pawtucket mayor says it's 'gut-wrenching' that other cities are courting PawSox”, NBC 10 News, (7/26/2017).

<sup>91</sup> Brad Petrishen, “Worcester city councilors love idea of wooing PawSox, but obstacles loom”, Worcester Telegram & Gazette, (8/13/2017).

<sup>92</sup> Kate Bramson, “RI commits to incentives for jobs, growth and begins to see results”, Providence Journal, (1/15/2017); see also Steven Frias, “Same old economic game”, Providence Journal, (5/6/2015).

response to its critics, the Commerce Corporation has indicated that Rhode Island will give out \$135 million in tax subsidies to various specific businesses, some of which are high tech companies, for which 1,073 jobs to 2,287 jobs are expected to be created as well as 2,141 temporary construction jobs.<sup>93</sup> In contrast, the taxpayer subsidy for building a new Pawsox stadium will produce far fewer jobs for the amount of the taxpayer subsidy spent compared to other Commerce Corporation approved deals, and these jobs are not expected to be high-tech in nature. For the Pawsox deal, state and local taxpayers are spending \$73.4 million, which consists \$38 million in debt and 30 years of interest costs, to build a new stadium. According to Brailsford & Dunlavey, which uses questionable assumptions, the building of the new stadium will directly produce only 162 permanent jobs, and 164 temporary construction jobs.<sup>94</sup> By comparison, GE Digital will get \$5.3 million in tax subsidies for hiring 100 people and \$11.7 million if they hire 300 people.<sup>95</sup>

The Commerce Corporation has defended the policy of providing tax subsidies to specific businesses as necessary to compete with neighboring states like Massachusetts.<sup>96</sup> However, there is no need to compete with Massachusetts by using taxpayer subsidies to building a new stadium for the PawSox because the Massachusetts state legislature “has an established precedent of not putting public money into sports stadiums.”<sup>97</sup>

## **21. The PawSox is in a weak bargaining position**

In 2015, the new PawSox ownership repeatedly indicated that they may leave Rhode Island unless a new stadium was built in Providence. Now they are indicating they may leave Rhode Island if a new stadium in Pawtucket is not built. However, the PawSox have limited options. Moving to Massachusetts may not be a viable option for the PawSox because state lawmakers are unlikely to subsidize building a new stadium. Montreal is another city that has been mentioned as a potential new home for the PawSox.<sup>98</sup> However, this city is located in a foreign land, far away from the Red Sox New England fan base. With the lease at McCoy Stadium ending after the 2020 season and the time needed for construction of a new stadium shrinking, the PawSox is in a weak bargaining position.

## **22. If the PawSox move, baseball can still be played at McCoy Stadium**

If the Pawsox were to leave Rhode Island, there is possibility that some other baseball team will play at McCoy Stadium. It will likely not be a AAA minor league team, but it could be a AA or A minor league baseball team or collegiate team. Before 1976, other minor league teams played

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<sup>93</sup> Kate Bramson, “RI commits to incentives for jobs, growth and begins to see results”, Providence Journal, (1/15/2017).

<sup>94</sup> Brailsford & Dunlavey, Economic & Fiscal Benefits Analysis of a New Downtown Pawtucket Ballpark, at 8-10.

<sup>95</sup> Kate Bramson, “RI Commerce Corp. Oks incentives for GE Digital, Finlay”, Providence Journal, (8/10/2016).

<sup>96</sup> Kate Bramson, “RI commits to incentives for jobs, growth and begins to see results”, Providence Journal, (1/15/2017).

<sup>97</sup> Brad Petrishen, “Worcester city councilors love idea of wooing PawSox, but obstacles loom”, Worcester Telegram & Gazette, (8/13/2017).

<sup>98</sup> Ian Donnis, “TGIF: 22 Things To Know About Rhode Island Politics & Media”, RI Public Radio, (5/26/2017).

at McCoy Stadium.<sup>99</sup> McCoy Stadium may not generate enough profit for the new PawSox ownership but it may be sufficient for another team.

### **23. Rhode Island will not lose tax revenues if the PawSox leave**

If the Pawsox were to leave, there would not be a significant drop in tax revenues. Consumers would shift their recreation and entertainment expenditures to other recreation and entertainment venues. As economists have noted, the “gross revenues spent at a stadium” and the “tax collections derived from them” are “in part substitutes for other entertainment and recreation expenditures by sports fans.”<sup>100</sup> The “lost tax revenues from stadiums is offset to a significant degree by increased tax revenues from” other sources of entertainment and recreation.<sup>101</sup> Also, in 2015, Antonio Pires, Pawtucket’s Administration Director, indicated that Pawtucket “was receiving no tax revenue from the team.”<sup>102</sup>

### **24. A new baseball stadium is not the economic solution for Pawtucket’s problems.**

Some proponents of a new Pawsox stadium have claimed that a new stadium can be economic catalyst for Pawtucket.<sup>103</sup> This is highly unlikely. Taxpayers have spent millions to build and renovate McCoy stadium since 1936, with little tangible economic benefits to show for it<sup>104</sup> In 2015, Antonio Pires, Pawtucket’s Administration Director, indicated that “Pawtucket won’t take a big economic development hit from the planned departure of the PawSox.”<sup>105</sup> Furthermore, he acknowledged that when he promoted the state financing of renovations at McCoy Stadium in the 1990s as Rhode Island House Finance Chairman, he “never sold it as economic development.”<sup>106</sup> Also, Commerce Secretary Stefan Pryor, stated when he was Newark, New Jersey’s deputy mayor for economic development that: “No arena is a panacea. There are those in the world who would tout a new stadium or a new arena as a catalyst beyond compare. I don’t think that’s a fair way to look at the Prudential Center or any other arena.”<sup>107</sup> A new stadium about a mile away from McCoy Stadium will not be the economic catalyst Pawtucket needs.

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<sup>99</sup> “Stadium Ready for Dedication”, Providence Journal, (7/4/1942); George Popkin, “Pawt. Indians’ Debut Tomorrow”, The Evening Bulletin, (4/21/1966).

<sup>100</sup> Roger G. Noll and Andrew Zimbalist, “Build the Stadium- Create the Jobs”, Roger G. Noll and Andrew Zimbalist, editors, Sports, Jobs & Taxes, at 15.

<sup>101</sup> Id.

<sup>102</sup> Ethan Shorey, “City devastated after ‘gut punch’ PawSox announcement”, Valley Breeze (2/24/2015).

<sup>103</sup> Kate Bramson and Katherine Gregg, “Many lawmakers wary of PawSox’ stadium bid”, Providence Journal (5/17/2017).

<sup>104</sup> Steven Frias, “Taxpayers strike out at McCoy Stadium”, Providence Journal, (2/18/2015).

<sup>105</sup> Ethan Shorey, “City devastated after ‘gut punch’ PawSox announcement”, Valley Breeze, (2/24/2015).

<sup>106</sup> Scott Mackay, “Pawtucket Wants State Financial Incentives If PawSox Get State Help Moving to Providence”, RI Public Radio, (3/4/2015).

<sup>107</sup> Sarah Portlock, “Prudential Center yet to deliver on Newark revitalization,” The Star-Ledger (3/22/2011).