

The History of MLB Antitrust Exemption and San Jose's Effort to Land the A's

Written by Maury Brown
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On Tuesday, [the City of San Jose filed an antitrust lawsuit](#) charging Major League Baseball has thwarted efforts to allow the Oakland Athletics to relocate there. The Giants currently have the rights to Santa Clara Co. and have said that they are not willing to relinquish it, even though former A's owner Walter Haas gave it to the Giants in 1990 to allow the Giants to potentially move to the Santa Clara area. After the Giants saw not one, but two referendums fail that would have allowed the Giants to relocate to San Jose, a last ditch-effort resulted in what is now AT&T Park. The problem was, the territory was reaffirmed as the Giants' even though they no longer were looking to move to the territory that Haas had relinquished.

The lawsuit at hand ([you can read it here](#)) is the latest attempt to overturn MLB antitrust exemption. Although the NFL sees limited antitrust exemption for television, baseball is the only N. American sports league to still see such sweeping antitrust privileges.

In 1922, the Supreme Court first considered the application of federal antitrust law to professional sports in *Federal Baseball Clubs, Inc. v. National League of Professional Baseball Clubs* ([read here](#)). In the opinion delivered by Oliver Wendell Holmes, he said that baseball was not interstate commerce, and therefore not subject to the Sherman Act:

The business is giving exhibitions of base ball, which are purely state affairs. It is true that in order to attain for these exhibitions the great popularity that they have achieved competitions must be arranged between clubs from different cities and States. But the fact that in order to give the exhibitions the Leagues must induce free persons to cross state lines and must arrange and pay for their doing so is not enough to change the character of the business.

Since then, there have been other antitrust cases surrounding relocation. Most notably, Al Davis sued the NFL in 1982 saying that they were blocking his efforts to move to the Raiders from

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Oakland to Los Angeles. Indeed, the court ruled in his favor. On the other hand, the court did not rule in favor of the Clippers in the '80s when they looked to move from San Diego to Los Angeles (see *NBA v. SDC Basketball Club, Inc.*). In that case, the Ninth Circuit held that sports league created restrictions on franchise movement do not constitute per se violations of antitrust law. In other words, each case must be individually evaluated against the Sherman Act which seeks to prevent monopolies in business.

Since then, the court has been leery of weighing in on league powers over relocation. Most recently a US Bankruptcy judge refused to address relocation as part of an attempt by former Blackberry co-CEO Jim Balsillie to purchase the Phoenix Coyotes and relocate them to Hamilton, Ontario, Canada. In his decision, Judge Redfield T. Baum wrote, "In hockey parlance, the court is passing the puck to the NHL who can decide to take another shot at the sale net or it can pass off the puck."

Back to [the San Jose lawsuit](#), there are some problems that if allowed to fully move forward do not bode well for the city. For one, this isn't a case where ownership of the A's is filing the suit, such as the case was with Al Davis and the Raiders. Davis argued he was being monetarily damaged for the NFL's efforts to block him. The City of San Jose is ostensibly trying to make the argument that the A's would make (the complaint seeks action for violation of California's Unfair Competition Law, Tortious Interference with Contractual Advantage, and Tortious Interference with Prospective Economic Advantage, and for violation of the federal Sherman Act, and violation of California's Cartwright Act, adding, "Plaintiffs have suffered and continue to suffer damages and antitrust injury in the millions of dollars due to Defendants' unreasonable restraint of trade."), but it's difficult to say that the city is being damaged to a level of extent that might allow antitrust exemption for baseball to be overturned.

But, the question is, does San Jose need this case to run the distance?

The fact that the last real challenge to baseball's antitrust exemption was in 1972 in Flood v Kuhn ([read here](#)) in which Curt Flood sought to break the reserve clause and allow for free agency says that baseball has been able to dodge the matter. But, recently, not only has San Jose been involved in going after MLB's antitrust exemption, but they are named in a class-action suit by fans over league broadcast blackout policies. Is San Jose simply doing this as a test case to see if they can garner the same result?

Major League Baseball's Executive Vice President for Economics & League Affairs Rob

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Manfred issued a statement in response to the lawsuit filed by the City of San Jose and was quick to defend the league's position.

"In considering the issues related to the Oakland Athletics, Major League Baseball has acted in the best interests of our fans, our communities and the league," said Manfred. "The lawsuit is an unfounded attack on the fundamental structures of a professional sports league. It is regrettable that the city has resorted to litigation that has no basis in law or in fact."

If MLB were concerned enough to prevent the antitrust case to go the distance, it could act as a forcing function to achieve the move by the A's. First off, the league constitution ([read here](#)) would need to be amended. While the complaint against MLB claims that the A's and Giants are currently the only single market in which territory is not shared, the fact is, the league has always seen Oakland and San Francisco as two distinct markets. In that, the Giants physical territory would need to be amended to move Santa Clara Co. back to the A's as it currently reads as follows:

City of San Francisco; and San Francisco, San Mateo, Santa Cruz, Monterey and Marin Counties in California; provided, however, that with respect to all Major League Clubs, Santa Clara County in California

To do this would require 75 percent approval by the league's owners. On top of that, 75 percent of the owners would have to vote in favor of allowing the A's to move to San Jose. It is safe to say that if one aspect was voted in favor, so would the other.

In the midst of all of this are the Giants who will be continuing to fight the matter tooth and nail. In order to have Selig, the league and the owners push the relocation through it will require indemnifying the Giants. To what extent and how that would happen is a question difficult to answer. While the league got the last relocation through in 2005 with the Expos relocating to Washington, DC against the Orioles' will, that was done with the creation of a regional sports network when MASN was created. At the time, the league agreed to the following:

- A guarantee that will keep Baltimore's annual revenues no lower than \$130 million. If they do drop below that threshold, MLB will make up the difference;
- A minimum franchise value for the Orioles at around \$360 million; and
- A 90 percent equity in MASN to the Orioles while the Nationals initially received only 10

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percent. That increases for the Nationals over the life of the 23-year agreement to 33 percent.

The problem is the Giants already own 30 percent of CSN Bay Area, and the A's are on CSN California. Both clubs would need to be able to back out of their agreements and allow for the creation of a new RSN, something that would flood the market with another RSN.

The other option would be for some form of revenue-sharing from the A's to the Giants. This would seem to run counter to one of the core issues at hand which is relocation to San Jose is designed to increase revenues from the state that they are now in Oakland. The A's could move to San Jose, but still be at a revenue disadvantage.

None of this is easy, even if the league were to finally stand up and say that they need to allow for the A's to relocate. From the beginning the issue has been one of self-preservation by the league and its clubs. After all, if San Jose were able to force MLB's hand, then it would set a precedent for other clubs in the league to relocate. The Tampa Bay Rays are still trying to figure out how to get out of Tropicana Field. If the A's went to San Jose, could that open up the possibility of Northern New Jersey pressing to get the Rays there against the will of the Yankees and Mets?

All we know is this... there will be many months for this to play out. The league may try to get the case dismissed, but that doesn't seem likely. San Jose may prevail in getting the case heard, but chances of them winning seem long. And finally, while it's likely a long shot, the league could lose antitrust exemption—a most coveted and fought after advantage for the league—at the risk of trying to fight the case. There will be many months to see if this is a game of chicken or not.



Maury Brown is the Founder and President of the [Business of Sports Network](#), which includes The Biz of Baseball, The Biz of Football, The Biz of Basketball and The Biz of Hockey. He [writes for Baseball Prospectus](#) and is a [contributor to Forbes](#)

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