

On Monday November 6, 1995, Cleveland Browns' owner Art Modell announced his intent to relocate the Cleveland Browns to the city of Baltimore, Maryland. Previously in 1984, Baltimore had lost their professional football team, the Baltimore Colts, to the city of Indianapolis, Indiana, in 1984. Modell's decision was not only a shock to the city of Cleveland, Ohio, but to the entire National Football League (NFL) community. If the Browns, a team with a tremendous amount of history, tradition, and a notoriously supportive fan base could pick up and move cities, then it was truly possible for any professional sports franchise to relocate. NFL Commissioner Paul Tagliabue described Modell's decision as, "more than a public relations jolt. It's a deep psychological jolt. It's a storied franchise. Both cities (Cleveland and Baltimore) are storied franchises in the NFL."ⁱ Between 1982 when the Oakland Raiders moved to Los Angeles and 1997 when the Houston Oilers moved to Tennessee, the NFL experienced seven different franchise moves. Four teams relocated just between 1995 and 1997! Some have called this phenomena "franchise free agency." The problem of franchise free agency in the NFL is an extremely important issue that has been debated on the floors of Congress and in multiple courtrooms. According to legal scholar Don Nottingham, "Franchise free agency—the tendency of franchises to shop for a new home when their current situation is anything less than ideal—has hit the NFL particularly hard."ⁱⁱ

Although seven NFL franchises moved cities during the fifteen-year time period between 1982 and 1997, none of the relocations' aftermath and fallout compared to that of the Browns move to Baltimore. Even though the team itself was physically relocated to Baltimore, the spirit of the Browns remained in Cleveland.

The city obtained the rights to the name, colors, logo, tradition, and history of the Cleveland Browns through a historic deal. This particular franchise relocation changed the landscape of franchise free agency and established an important precedent. The Cleveland Browns' move to Baltimore was a unique exception to the norm in franchise relocation and it created a new model that has already been followed and should continue to be followed in the future.

First and foremost, one must fully understand the phenomena known as franchise free agency in professional sports. Although team relocations occur in all major sports, no sport has been hit harder more recently with this problem than the NFL. In Major League Baseball, the Montreal Expos moved to Washington D.C. in 2004 which was the first franchise relocation for MLB in 33 years, and no team has relocated since. The National Basketball Association's relocation numbers are closer to the NFL. Five franchises changed cities since 1984, most recently with the Seattle SuperSonics moving to Oklahoma City, Oklahoma. As stated earlier, seven NFL franchises were relocated between 1982 and 1997, with four moves occurring between 1995 and 1997. NFL teams moved before the Oakland Raiders in 1982, but modern-day franchise free agency began with the Raiders since there had not been a NFL team to move in 22 years. Following the Raiders move to Los Angeles in 1982, the Baltimore Colts relocated to Indianapolis, Indiana, in 1984. Four years later in 1988, the St. Louis Cardinals left town for greener pastures, or perhaps dryer pastures, out in Arizona. NFL franchise movement took a seven-year break, but then the real chaos ensued between 1995 and 1997. In 1995, both Los Angeles football teams left the nation's second largest city and television market. The Los Angeles

Raiders moved back to Oakland and the Los Angeles Rams replaced the Cardinals in St. Louis. A year later, the Cleveland Browns replaced the Colts in Baltimore and became known as the Baltimore Ravens, and in 1997, the Houston Oilers moved east to Tennessee. Dave Anderson of *The New York Times* wrote, "Pro football now has come to mean the club owners' cash flow, the millions necessary to fund those teams and pay those players. Nobody except the club owner roots for a cash flow or a profit-and-loss sheet. But if the cash flow isn't there, if the profits aren't there, forget the fans who mistakenly thought a team and its players were theirs."ⁱⁱⁱ The city of Cleveland gained national attention because of the way it handled the Browns relocation. The city's reaction to the Browns' historic move to Baltimore reveals a minor solution to the problem of franchise free agency.

Goodbye Cleveland, Hello Baltimore: The Move

Regarding the relocation of his professional football team to Baltimore, Art Modell said, "But frankly, it (the move) came down to a simple proposition. I had no choice." Art Modell felt "forced" to move the Browns to Baltimore for many reasons, and the background information regarding the move must be fully comprehended to understand the aftermath. Modell insiders, such as friends and employees of Modell, point out to numerous details that led to the relocation, but ultimately a general consensus exists among scholars who have studied the issue that three major issues caused the Browns to leave the city of Cleveland.

First and perhaps most importantly, bankruptcy was quickly approaching Art Modell. He lost millions of dollars in lawsuits over the years and acquired substantial debt from taking out loans to improve Cleveland Municipal Stadium and

the Cleveland Browns football team. Michael G. Poplar, who was vice president/treasurer of the Cleveland Browns Stadium Corporation from 1975 to 1996 detailed Modell's money mismanagement in his book, *Fumble! The Browns, Modell and the Move: An Insider's Story*. Poplar described, in detail, Modell's "unfavorable" lease with the city of Cleveland for Cleveland Municipal Stadium. Art Modell and the city of Cleveland signed the lease agreement for Cleveland Municipal Stadium in October 1973. Art Modell agreed to lease the facility for \$1 per year, and in exchange, Stadium Corporation assumed the expenses of operations from the city and agreed to add \$10-\$20 million in improvements to the stadium over the duration of the 25 year lease. Also, Stadium Corporation assumed the bottom-line risks of turning a profit. If the stadium lost money during a fiscal year, Stadium Corporation funded the losses, not the city of Cleveland.^{iv}

In addition, the Cleveland Browns constantly lost money during the 1980s while the debt of the team and their owner increased substantially from not paying off high-interest loans. This was shocking since the Cleveland Browns' record between the years of 1980 and 1989 was 83-68-1, nearly a 55% winning percentage. The team went to the playoffs seven of those ten years and was consistently in the top five for attendance each of those seasons in the NFL, averaging more than 70,000 fans in attendance. Poplar wrote, "The fact is, if one looked at a ten-year summary of earnings from 1980 through 1990, the Browns would show red ink of between \$5 million and \$10 million in aggregate net results for the decade. Funding this ten-year loss was covered by bank loans. As even more significant losses continued in the 90s, the bank loans increased and increased and

increased.”^v Public perception at the time of the move was that the Browns were an extremely valuable team and a moneymaker. This was indeed half true. In 1995, *Financial World* magazine listed the Browns among the top five most valuable franchises in sports, but its estimate did not reflect the team’s monstrous amount of debt.^{vi} At the time of the move, Hal Lebovitz, a local Cleveland sports writer, reported Modell’s football team was over \$100 million in debt.

The reason Modell’s personal debt and the Cleveland Browns’ debt was important was due to the fact that Modell needed to make money in some way or else he was going to be forced to either sell his beloved football team or file for bankruptcy, neither of which was a viable option for the team owner. By relocating the franchise, Modell could maintain ownership in his team while bailing himself out of debt. Poplar laid out Baltimore’s deal for the Browns in a table in his book. The team would receive \$200 million for a brand new 70,000-seat stadium, a \$15 million training facility, and an addition \$60-65 million for relocation costs and miscellaneous items. The package totaled \$280 million and the team would receive all stadium operations revenue while paying no rent.^{vii} Furthermore, in Jon Morgan’s book, *Glory for Sale: Fans, Dollars, and the New NFL*, he noted regarding Baltimore’s deal, “Importantly, the team also received the right to sell up to \$80 million in personal seat licenses (PSLs).” Poplar also wrote, “It was not his ego that drove Art Modell and The Cleveland Browns to Baltimore. The team needed a new source of funds with which to keep operating, and they were called PSLs.”^{viii} Morgan described the deal’s potential profitability as “staggering.”^{ix}

The second major reason the Browns relocated to Baltimore was the failure of the politicians of both the city of Cleveland and the state of Ohio. The reality of the situation was that the city of Cleveland was broke and had been broke for many years. Their argument was that they did not have enough money to renovate Cleveland Municipal Stadium or build Modell a new stadium for the Browns. The package the city of Cleveland offered the Browns was \$175 million for renovation of Cleveland Municipal Stadium and \$14 million for reimbursement for capital improvements made to the stadium from 1973-1995. The packaged totaled \$189 million and the team would get rent-free use of the stadium and retain all stadium revenue. From these numbers, it was clear that Baltimore's deal was about \$90 million sweeter than Cleveland's.^x The city of Cleveland made the best offer they possibly could have at the time, but they were getting little to no support from the state of Ohio. Poplar stated, "The major difference between the deals was in the contribution by the states. Maryland was standing behind the entire cost of the Baltimore project with its special-purpose state lottery funds...In comparison, Cleveland would receive State of Ohio funds for Stadium renovation projected in the \$20-million range. That disparity was the major disadvantage faced by the City of Cleveland and Cuyahoga County. In competing for NFL franchises, the City of Cleveland was contending with entire states!"^{xi} It was unclear why Cleveland and Ohio politicians could not work together the way that Baltimore and Maryland politicians had. Poplar wrote, "Ohioans did not have political leaders who felt that providing funds for professional football was a high enough priority."^{xii} What was

clear was that Cleveland politicians were able to take on major construction and renovation projects in the 1990s, just not for the Cleveland Browns.

The second reason leads directly into the third reason for the relocation, and that is the fact the city of Cleveland built brand new state-of-the-art facilities for their Major League Baseball team, the Cleveland Indians, and their National Basketball Association team, the Cleveland Cavaliers. The bottom line was Modell believed he could not compete for a SuperBowl Championship without a new stadium and the city of Cleveland was unwilling to spend more money on another stadium after providing for the Indians and Cavaliers. Poplar noted, "John Moag (Chairman of the Maryland Stadium Authority) said to the reporter that in the era of moving professional sports franchises, one simple economic truth became clear: Cities that choose to make professional sports teams an economic priority—by spending big money on state-of-the-art facilities—will get and keep teams; cities that don't will lose them."^{xiii} Jacobs Field and Gund Arena were built next to each other in what was known as the Gateway Project. The two stadiums broke ground in 1992 and were opened for the 1994 MLB and NBA seasons. This was extremely important for numerous reasons. One, Art Modell was losing a tenant at Cleveland Municipal Stadium in the Cleveland Indians. He would no longer be generating any revenue from the Indians. Poplar noted, "Modell couldn't fathom the business leaders' total disregard for the revenues he would lose. 'I wonder, he said, 'how many of them would sit idly by and let revenues be wantonly removed from their business under the guise of civic progress.'"^{xiv} Two, Modell saw the building of Jacobs Field and Gund Arena as a slap in the face. He had been asking for

renovations to Cleveland Municipal Stadium for years now, and the city kept saying the stadium was fine and it could not afford renovations. However, when Dick Jacobs, owner of the Cleveland Indians, threatened to move the team if he was not granted a new stadium, the city stepped up and put together a package to keep the Indians in Cleveland. Poplar wrote, "Keeping the Indians in Cleveland has long been a problem. Keeping the Browns in Cleveland could be the next problem. All Art Modell was heard to say (regarding the Gateway project) was: 'Give me the same deal the city gave Dick Jacobs, and I'll be happy camper.'"^{xv} Unfortunately for Modell, the Browns and their fan base, that deal never came until it was too late, and the deal could not top Baltimore's staggering offer.

A Unique Solution: The Deal

The fallout and aftermath of the Browns' relocation to Baltimore and the deal struck by Art Modell, the NFL and the city of Cleveland make the move historically significant, not the move itself. Following the announcement of the move, Browns' fans and politicians began their fight to keep the team in Cleveland. Morgan wrote, "At 9:29 a.m. on the Monday of the noon announcement, Cleveland Mayor White launched a public relations jihad. The city filed a lawsuit in Cuyahoga County Common Pleas Court alleging that the Browns were breaking their contract with Cleveland and that the city would suffer irreparable harm as a result. Cleveland asked a judge to block the move."^{xvi} Along with the city, multiple Cleveland Browns' season ticket holders and fans filed lawsuits as well. *Sports Illustrated* writer Steve Rushin stated, "That's exactly what Cleveland has decided to do: Screw the man who screwed it. At least nine other lawsuits have been filed by fan groups and ticket

holders against the Browns, and Mayor Michael White has adopted the slogan ‘No team, no peace.’”^{xvii} Not only was the move debated in courtrooms, but also multiple congressional bills were introduced in an attempt to stop the move and prevent further franchise relocations. The reaction both locally in Cleveland and nationally was astounding. There had been multiple franchise relocations over the year, but none were met with as big of a resistance as the Browns relocation to Baltimore. Richard Sandomir of *The New York Times* wrote, “But Modell’s leave-taking was the most controversial because of the passionate fan support the Browns had enjoyed for 50 years, and the fervent nationwide campaign waged by the team’s supporters to keep them. Michael R. White, Cleveland’s mayor since 1990, helped lead that campaign, which generated international attention. The explosive situation led to death threats and anti-Semitic taunts against Modell.”^{xviii}

Almost everyone knew that the lawsuits filed would most likely fail. At best, it would keep the Browns in Cleveland for three “lame-duck” seasons until their lease with the city for Cleveland Municipal Stadium expired in 1998. The legal debates of franchise free agency started almost twenty years before Art Modell declared his intent to move the Browns to Baltimore. On March 1, 1978, Oakland Raiders owner, Al Davis, agreed in principle to relocate his team to Los Angeles, California. In the NFL, if an owner wishes to relocate his or her franchise then a vote must take place by the rest of the NFL owners on whether to approve or deny the move. This is referred to as Rule 4.3 of the NFL Constitution and it states that three-fourths of the NFL owners must approve a franchise move for it to occur. The NFL owners voted unanimously to disapprove the move of the Raiders to Los Angeles, so

Al Davis took the NFL to court in the infamous case known as *Raiders I*. Some legal scholars refer to this case as the “Super Bowl of Sports Litigation.” Antitrust lawyer Travis Tygart wrote, “The *Raiders I* decision has the most important antitrust implications on NFL regulation of team relocation. In the *Raiders I* suit, the Oakland Raiders joined the Los Angeles Coliseum and sued the NFL alleging that Rule 4.3 was an unreasonable restraint of trade in violation of section 1 of the Sherman Antitrust Act.”^{xix} The Ninth Circuit Court ruled in favor of Davis and the Los Angeles Coliseum allowing him to move the team to Los Angeles in 1982. The Court stated that football could survive with a less restrictive rule than 4.3 and this ruling prevents NFL owners for being able to block franchise relocations.^{xx} This is the precedent in courts regarding the issue of franchise free agency with regards to anti-trust laws. Cases have been brought before the courts in an attempt to overturn the *Raiders I* decision, but those efforts have not been successful. Tygart concluded, “The mere threat of an antitrust lawsuit in response to the NFL challenging a team’s relocation is equivalent to using a ‘nuclear weapon.’ The NFL is threatened by the potential liability stemming from a successful antitrust suit by a team attempting to relocate. Therefore, the NFL rarely pursues any legal effort to prevent relocation.”^{xxi} The city of Cleveland and the NFL would not be able to use the court’s to keep the Browns in Cleveland because of the *Raiders I* decision and precedent. The lawsuit by the city was merely a way to buy more time and delay the move to attempt to figure out a resolution.

Since anti-trust litigation would not work with regards to franchise relocation due to the precedent established in the *Raiders I* case, different options

had to be explored. Morgan wrote, “In subsequent weeks, (Mayor) White would pursue a two-track strategy. He would aggressively push the city’s lawsuit, even appearing in court and testifying about the team’s value to the city. At the same time, he would quietly open behind-the-scenes negotiations with the league aimed at resolving the dispute keeping his city in the NFL. ‘We want our team, our colors, and our name,’ he would say over and over again.”^{xxii} This is where the case of the Cleveland Browns move becomes very interesting. The city of Cleveland and the Browns’ rabid fan base were unsuccessful in preventing the move to Baltimore, but they were successful in keeping both tangible and intangible components of the team like their trademark, history, tradition, records, logo, and colors. Jennifer McGarry, a Trademark Attorney in the United States Patent and Trademark Office, stated, “The relocation of the Cleveland Browns was unique in that the community, while unsuccessful in keeping Art Modell’s team in town, did manage to keep the name of their beloved Browns from moving to Baltimore. This precedent should make all trademark owners wary, especially sports mark owners, particularly in light of recent legislation designed to make this the rule and not the exception.”^{xxiii} The city of Cleveland, Art Modell and the NFL reached a deal. When it comes to franchise free agency, this deal is as historically significant as the *Raiders I* case.

On February 8, 1996, at the NFL team owners meeting at the Chicago O’Hare Hilton hotel, all parties involved reach an agreement and signed the deal. The exact details of the deal include the following key points. First, the Browns franchise would remain in Cleveland and would resume playing no later than the 1999

season. Second, a new 72,000-seat stadium would be built in Cleveland and the NFL would provide substantial funds (\$28-48 million) for the stadium construction costs. The new stadium would be owned by the City of Cleveland and would have a 30-year lease with the NFL franchise beginning in 1999. The owners of the Cleveland's new franchise would reimburse the NFL. The City of Cleveland would not be obligated in any fashion to repay the funds to the NFL. Third, the heritage and records, including the Browns' name, logo, colors, history, playing records, trophies and memorabilia, would remain in Cleveland as property of the Cleveland Browns franchise. Fourth, Art Modell would pay approximately \$12 million in damages to the city of Cleveland including the City's legal and administrative costs and expenses. Lastly, all parties involved would drop their lawsuits.^{xxiv} Dave Goldberg, an AP Football Writer, stated it best: "The National Football League decided today to give Baltimore a team without a name and Cleveland a name without a team. The league approved the move of the Cleveland franchise to Baltimore, but the team's nickname, colors and tradition will stay in Ohio."^{xxv}

The deal between the city of Cleveland, Art Modell, and the NFL has been referred to as "unprecedented," "astonishing," "landmark," and "historic". NFL Commissioner Paul Tagliabue said in a statement, "This is a historic agreement. It keeps the Browns' franchise in Cleveland—with not only the Browns' name, logo and colors, but also the Browns' history, heritage, records and memorabilia." Mayor Michael White said, "We are pleased to announce that with this landmark agreement a new stadium owned by the citizens of Cleveland will be built with unprecedented financial assistance from the NFL." Peter King of *Sports Illustrated* quoted Modell

saying, “Cleveland got a hell of a deal, a hell of a deal. If I had gotten half of that deal a year ago, I’d have stayed in Cleveland. That’s how outrageous it is.”^{xxvi} Most saw this deal as a victory for all parties. Art Modell got his wish and was granted permission to move his team to Baltimore without having to deal with the courts anymore. The NFL avoided an expensive lawsuit if it tried to block the relocation and saved face in the process. The city of Cleveland was going to put the Browns franchise “on hold” until 1999, but would obtain a brand new 72,000 seat stadium as well as a new football team. In the end, it seemed to be the best possible solution to a problem that no one wanted to address. The deal between the city of Cleveland, Art Modell, and the NFL might have seemed like mere details at the time, but it has become historically significant and a precedent for future franchise relocations.

Houston vs. Cleveland: The Difference

At the end of the 1995 NFL season, the Cleveland Browns were not the only team to relocate. Following that season, Houston Oilers’ owner Bud Adams, announced his intent to move his team to Nashville, Tennessee. His reasons for moving were similar to that of Modell. He wanted a new state of the art stadium where he could make increased profits. Adams sent a letter to Houston mayor Bob Lanier saying that he would begin serious negotiations to move the Oilers if a commitment to a new stadium was not made. Karin Miller of the Associated Press wrote, “Adams asked Houston last year to build him a \$235 million stadium—one that he would not have to share with baseball’s Astros—but the mayor refused to use tax dollars. That is when Adams began looking to move.”^{xxvii} The deal the Oilers received from Nashville was perhaps better than the deal Modell received from

Baltimore. Nashville's offer to the Houston Oilers included a \$200 million 65,000-seat stadium, \$28 million in relocation costs, \$35 million contingency fund for miscellaneous items and payment to the NFL, and \$29 million in land acquisition and site improvement. In total, the package was worth approximately \$292 million and the team would operate the stadium and receive all revenues from the stadium.^{xxviii}

The Oilers move from Houston to Tennessee occurred within a year of the Browns move to Baltimore, yet the results were completely different. Unlike the city of Cleveland, the city of Houston did not retain the rights to the Oiler's name, logo, colors, history, tradition, etc. when the team was moved to Tennessee. Why did this occur? How come Houston did not get the same deal that Cleveland obtained? Although there are some similarities between the two moves, there are two major differences. Houston lacked the fan and political support that Cleveland had in order to reach their monumental deal. During the time period when the move was not yet complete, but seemed imminent, *Houston Chronicle* sports writer Willem Dicke wrote, "The seemingly uncaring attitude of fans and politicians in light of the Oilers possible move and the Astro's near-relocation out of this area is causing Houston's image to take a beating nationally."^{xxix} These crucial differences seem to be the reason the expansion football team that began playing in Houston in 2002 was named the Texans and was not a continuation of the Houston Oilers franchise.

The first major difference between Cleveland and Houston is the fact that while in Houston, the Oilers lacked the fan support that the Cleveland Browns thrived off of. The fans in Cleveland were extremely angry, upset, and even hostile.

On the other hand, the fans in Houston seemed apathetic to the move. For example, Rick Snider of *The Washington Times* wrote, “With the promise of anew stadium, complete with luxury boxes whose revenue team owners don’t have to share, Cleveland now has the NFL’s ear. After all, there are 70,000 season ticket-holders with the league’s largest fan club screaming, ‘No team, no peace!’ In contrast, a Houston rally to save the Oilers reportedly drew only 16 persons. That’s why owners aren’t even bothering to worry about Houston for now.”^{xxx} Similarly, Houston’s own, Willem Dicke wrote, “For their part, football fans in Houston who are willing to let the Oilers go because they don’t like the owner or because the team isn’t having a banner year are displaying the same kind of disloyalty that Art Modell and (Bud) Adams are. Cleveland fans hate Modell, and yet they’re still fighting to keep their team.”^{xxxi} Also, Richard Sandomir of *The New York Times* summarized this crucial difference, “The Rams, Raiders, and Oilers moves are all based on lack of fan support. The Browns move, which was based on the owner’s financial distress, may be the anomaly that kills opportunities for other teams by getting Congress involved. In Cleveland, Browns fans—including the end-zone Dawgs—turned out 70,000 a game in good times and bad. For their loyalty, they have been rewarded with the loss of their team.”^{xxxii} The official Browns Backers club was one of the largest fan clubs of any professional sports team on the planet with over 63,000 members and more than 200 chapters across the globe.^{xxxiii} Simply put, Houston’s fan base did not react as strongly as the fan base in Cleveland. Fans of the Cleveland Browns did everything in their power to keep their team in Cleveland. Morgan described perhaps the craziest act taken by Browns’ fans, stating, “About 35 lined

Flagler Drive in West Palm Beach on Nov. 26, barking at the team owner's penthouse and shouting 'Jump, Art, Jump!' An airplane flew overhead, towing a banner that read 'MODELL YOU CANT HIDE HERE!! WOOF. WOOF.'"^{xxxiv} The measures taken by Browns' fans were extreme and had never been witnessed before when a professional sports team relocated.

Several professors at the University of Massachusetts-Amherst noticed the difference in reaction between Cleveland and Houston fans. They asked, "Why were Cleveland Browns fans so vehement in their protests and lawsuits in their attempt to retain the Browns, while in Houston the fans were apathetic in their response to the possibility (and subsequent reality) of losing the Oilers?"^{xxxv} Their answer to this question is fan identification. According to Sutton et al, fan identification refers to a fan's personal and emotional commitment to their respective sport organization. Basically, when a customer identifies closely with their team he or she becomes more connected to that team and begins to define themselves in terms of that team.^{xxxvi} The authors go on to describe Browns' fans as having high levels of fan identification which refers to the strongest, most loyal and longest term-relationship a fan can have with a sport team. This level was not reached by the Houston Oilers' fan base. The authors state regarding the level of fan identification for Houston Oiler fans, "In contrast to the Cleveland Browns' situation, fan interest and support were lacking, indicative of small amounts of fan identification with the franchise."^{xxxvii} All of these examples, studies, and real-life occurrences point out the first obvious difference between the Cleveland and Houston situation. Browns' fans rallied behind their team and attempted everything in their power to keep the team

from leaving, while Oiler fans were apathetic about their relocation. Neither city or fan base kept their team from moving, however; at least Cleveland was able to maintain everything but their team while Houston lost everything.

The other key difference goes along similar lines, but relates to the actual cities and politicians in the cities. In Cleveland, Mayor Michael White tried everything in his power to keep the Browns from relocating. Unlike Cleveland Mayor Michael White who filed lawsuits, held rallies, and declared a public relations war against Modell, Houston's mayor, Bob Lanier, took a different approach. He made his offer, refused to budge, and then let Bud Adams take his team elsewhere without much of a fight. Richard Sandomir wrote, "In Houston, Lanier was unwilling to sacrifice much to keep the Oilers from moving and is not sorry...Apparently delighted to wave the Oilers goodbye, Lanier suggested that the Oilers be renamed the Nashville Welfare Mothers."^{xxxviii} Morgan described the situation in a similar manner, "Houston Mayor Robert Lanier showed that a city could just say no. To try to keep them in town, he made an offer to the NFL's Oilers. When they rejected it, Lanier decided that putting anything more on the table would be a bad investment. So Houston is losing the Oilers to Nashville."^{xxxix} Once it was determined that the Oilers were bolting for Tennessee, Lanier moved on to other important issues within his city. White did no such thing. He fought until he got what he believed was a fair deal under the circumstances. It is important to note that there is nothing wrong with the approach that Lanier took and some would most likely argue it was the right approach, but if he wanted the same results as Cleveland, he would have put up more of a fight and approached the situation in a similar manner that White had.

Clearly, he did not. Dicke wrote for the *Houston Chronicle*, “Governor George Bush, Mayor Bob Lanier (who has a lot to learn from Cleveland’s Michael White when it comes to supporting sports franchise) and Bob Eckels are seemingly doing little except competing for the first prize in a Neville Chamberlain impersonation contest.”^{xl} In Cleveland, the Browns were considered an “important issue” within the city, while in Houston the Oilers were not.

The 1996 season for the Houston Oilers was a disaster after fans learned the team was moving to Nashville. The team played in front of home crowds of less than 20,000 fans and finished with a very unimpressive 2-6 record at home games, while finishing with a quite impressive 6-2 road record. Instead of remaining in Houston, city officials agreed to a settlement to let the team out of their stadium lease early to move to Tennessee in 1997. For the 1997 and 1998 seasons, they played under the name the Tennessee Oilers and waited for their new stadium to be built in Nashville. Games were played at the Liberty Bowl Memorial Stadium in Memphis (1997) and Vanderbilt Stadium (1998). Following the 1998 season, Bud Adams announced he would be changing the name of the franchise before they moved into their brand new stadium. Bud Adams changed the franchise name from the Oilers to the Titans, and at the start of the 1999 season when Adam’s brand new stadium opened, the team was officially known as the Tennessee Titans.^{xli}

Even though the name was eventually changed from the Oilers to Titans, the history, records, logo, colors, etc. remained with Bud Adams in Nashville. The Tennessee Titans are simply a continuation of the Houston Oilers while the Baltimore Ravens became an expansion team and the Cleveland Browns took a

hiatus until 1999. Now, one must ask the important question of why is it important for a city to be able to retain all aspects of their sport franchise when the team is relocated? Some supporters might argue that the name, history, records, colors and logo are not important and what is important is the team itself playing in the city. For example, did Baltimore Ravens fans care when they won the Super Bowl in 2001 that their team was an expansion team and not the Baltimore Colts? No one can possibly answer this question because it is a personal question that is up to the individual fan to answer. The argument of this thesis is if a city cannot prevent their team from moving, they should be able to keep the spirit of the team as a consolation prize. This has to do with fan identification and the right of a city and team's fan base to hold onto memories from the past. All of the great moments and records that occurred in Houston are now part of Nashville's history while the new Houston Texans begin their own history similar to the situation with the Baltimore Ravens. The Houston Texans do not own any of Earl Campbell's great moments that occurred in Houston; rather those moments belong to Bud Adams and Nashville fans. The two American Football League championships won by the Oilers in 1960 and 1961 officially belong to Nashville, not Houston. On the contrary, all of Jim Brown's phenomenal records and the four AAFC and four NFL championships remain part of Cleveland's history, not Baltimore's. In Steve Rushin's *Sports Illustrated* article, he describes the emotion of a Cleveland fan named, Cleveland Brown. Rushin wrote, "And what the Cleveland Brown family asks of the Cleveland Brown franchise is this: When you go, leave your once noble name in Ohio...Cleveland Brown said, 'But when the Browns said they were moving, it really

affected me. Not because of my name, but because for 50 years support for that team by the people of Cleveland has been phenomenal.' And that, of course, is what makes this particular move so extraordinary. And so extraordinarily sad."^{xlii}

The Cleveland Deal Begins it's Legacy: The Aftermath

The Oilers did not follow in the Browns footsteps, but several professional sports teams relocated and left their history, colors, logo, records, etc., behind for their old city after the Browns' relocation. The situation with the city of Cleveland and the Browns should be and has become somewhat of a precedent. Since the Cleveland Browns departure for Baltimore, there are three cases involving franchise relocation in different sports and leagues that followed the Cleveland model. Major League Soccer's San Jose Earthquakes, National Basketball Association's Seattle SuperSonics, and Major League Baseball's Minnesota Twins have all used the Cleveland precedent as a blueprint to retain the culture of their beloved franchises for their cities.

In December 2005, the city of San Jose, California, lost their Major League Soccer (MLS) team. The Earthquakes left town for Houston and became the Houston Dynamo. The San Jose Earthquakes were a successful MLS franchise, winning two MLS Cup Championships in 2001 and 2003, but that was not enough to persuade their owners to stay in San Jose since attendance tended to be generally low for the league. The reasons for departing were similar to the NFL relocations discussed earlier, the owners were unhappy with the condition of their stadium and with the team's share of proceeds from parking and concession fees. The Earthquakes played their home games at Spartan Stadium on the campus of San Jose

State University. The Associated Press wrote, “San Jose officials had worked to keep the team from leaving, and even considered subsidizing a new stadium...San Jose will keep the Earthquakes team name, logo and colors, and the city has signed a letter of intent with the hopes of attracting a MLS expansion team, perhaps as early as 2007.” In 2008, the Earthquakes returned to San Jose under new owner Lew Wolff. The team picked up where they had left off three years earlier. The new expansion team retained all records, logos, colors and titles of the 1996-2005 San Jose Earthquake franchise and was a continuation of that franchise.^{xliii} The San Jose Earthquake’s almost followed the model set forward by the Cleveland Browns to a tee and is perhaps the best example of using the Cleveland precedent.

More recently, in 2008, the Seattle SuperSonics of the National Basketball Association (NBA) migrated south to Oklahoma City, Oklahoma. Once again, the stadium was the key issue for the relocation. After failed attempts to persuade city and state government officials to provide funding to update KeyArena, SuperSonic’s owner Howard Shultz sold his team to Oklahoma City businessman Clayton “Clay” Bennett. The Associated Press wrote regarding the sale of the SuperSonics, “The new owners have set a 12-month deadline to reach a new arena deal with Seattle officials—something the team’s previous owners did not accomplish in two years. After that, the new owners gain the option to move the team to Oklahoma. Until then, Seattle, come support your team!”^{xliv} Initially, most believed that Bennett really wanted to keep the team in Seattle as long as they were able to acquire the finances for a new arena, but the city and state never came up with those funds.

In November of 2007, only 15 months after purchasing the SuperSonics, Bennett announced his intent to move the team to Oklahoma City. Greg Johns, a local Seattle sportswriter, stated, "The bottom line for Bennett remains crystal clear, he told *The Oklahoman*. 'Without a new building, the team will leave,' he said. 'Whether it's now or at the end of the lease term, it will leave.' Seattle's only chance in Bennett's eyes is arriving at the same solution he's laid out since the day his group bought the team 15 months ago."^{xliv} Multiple lawsuits were filed, similar to the case in Cleveland, and in the end a similar settlement was reached. Percy Allen of *The Seattle Times* wrote, "His (Bennett) settlement this week with the city put the Sonics' name, colors, and logo on ice, but Bennett still will take what's being called the franchise's 'shared history' to Oklahoma City. The settlement allows Bennett to replicate and use copies of Sonics memorabilia, including the 1979 NBA trophy, championship banners, and the team's six retired jerseys."^{xlvi} The NBA is different from the NFL in the fact that the league owns the names and intellectual properties of teams and licenses them out to the owners. It is a league rule that owners can only give away the team's name to another owner, but the league approved of this settlement. Also, Bennett was required to pay the city of Seattle \$45 million with the possibility of an additional \$30 million if the city did not have a new NBA franchise by 2013. Bennett re-named the franchise the Oklahoma City Thunder and they began play in the 2008-2009 NBA season.

The example of the Seattle SuperSonics differs from the Cleveland precedent slightly. Yes, the city was able to retain the SuperSonics' name, logo and colors, but the history and records of the team was shared with newly named Oklahoma City

Thunder. Allen wrote, “For now, the two parties agree to share the history of the team that played 41 years in Seattle. The Oklahoma City team will refer to Sonics records, statistics and history as its own. According to the agreement, if Seattle is granted an expansion team in the next five years, that franchise will share the Sonics’ history with the Oklahoma City team. If Seattle lands a team through relocation of an existing franchise, most likely the Oklahoma City team will retain sole possession of the Sonics history.” The NBA did not want a team playing in Oklahoma City without a past history, hence the shared history between the two cities.^{xlvi} Other than sharing the history of the franchise, the relocation of the Seattle Supersonics to Oklahoma City strongly resembled the precedent established by the Cleveland Browns.

The third and final example of a city attempting to use the model laid out by the Cleveland Browns relocation is extremely unique. The Minnesota Twins remain in Minnesota and recently signed a long-term lease for their brand new ballpark, but through legislative action by the state’s congress, the team’s culture will remain in Minnesota if the team ever relocates. The Minnesota Twins opened their brand new open-air ballpark at the start of the 2010 Major League Baseball (MLB) season. Prior to the construction of Target Field, the Twins had previously shared the Hubert H. Humphrey Metrodome with Minnesota’s NFL team, the Vikings. Once again, ownership was not satisfied with their facility and wanted a new stadium. The team was rumored to be on the move or disbanded if a new stadium was not provided. In fact, in the early 2000s, MLB wished to contract the team and ownership was willing to sell the Twins to MLB, which would then essentially dump

the team. MLB selected the Twins and the Montreal Expos as the two possible candidates for contraction, and eventually the Expos were bought by MLB and moved to Washington D.C. and became known as the Washington Nationals. A court decision prevented the Twins disbandment and forced the Twins to play out their remaining lease at the Metrodome. In February 2002, the Minnesota Supreme Court refused to hear MLB's appeal of the injunction that forced the Twins to fulfill their Metrodome lease.

Eventually, the Twins were granted their wish for a new ballpark in 2006 when the team reached an agreement with Hennepin County and the state of Minnesota. Local and state government agreed to help finance the construction of a new outdoor open-air stadium and the Twin's ownership agreed to a provision that was signed into law that allows the state of Minnesota the right of first refusal to buy the team if it is ever sold, and requires the name, colors, World Series trophies and history of the team to remain in Minnesota if the Twins are ever moved. The statute (473.759) went into effect on July 1, 2006. The Twins paid about one-third of the stadium's cost, approximately \$130 million, and the rest of the funding would come from a 0.15% Hennepin County sales tax. The Twins were required to enter into a 30-year lease to play at the new stadium.^{xlvi} Essentially, this means that the citizens of Minnesota could someday acquire ownership of the team if it were to ever be sold. Minnesotans would have the right to match any offer made to buy the team and if they did match the offer, ownership would be forced to sell the team to the state. Also, even though the franchise was never moved, the state of Minnesota insured it would be able to keep the Twins heritage forever. The law, created by the

Minnesota state legislature, used what was established in Cleveland as the framework behind securing the Twins culture in Minnesota permanently.

The San Jose Earthquakes, Seattle SuperSonics, and Minnesota Twins all used some form the precedent established by the Cleveland Browns in order to retain their name, logo, colors, and history. What is amazing is the fact that the three teams came from three different sports in three different leagues. The groundwork now has been laid out in four major professional sports leagues: National Football League, Major Soccer League, National Basketball Association, and Major League Baseball. The Browns situation was the first of its kind and changed the way with which franchise free agency can be dealt.

Conclusion

Since the turbulent franchise relocation frenzy of the 1990s, the NFL has not relocated a team since the Oilers moved to Tennessee. The problem of franchise free agency in the NFL seems to have come to a halt, although there have been increasing rumors of Los Angeles obtaining a new franchise in the near future through either expansion or relocation. Hence, it is crucial to remember the case of the Cleveland Browns and the precedent it established if a team is relocated to Los Angeles. Professional sport franchises can be extremely important to fan bases, and if a team owner decides to relocate, the least he or she can do is leave behind the culture of the team. Alvin Lindsay writes regarding the Browns, "The unrelenting vigor the City of Cleveland displayed in fighting Art Modell demonstrates just how important franchises, along with their names, can be to a community. The fans of Cleveland basically told Modell that he could take the players, but he could not take

Cleveland's team, its name, its colors, and its tradition."^{xlix} The precedent established by the Cleveland Browns moving to Baltimore while leaving behind everything besides the actual football team has been and must continue to be followed. It is a solution for making a terrible situation into a somewhat acceptable situation. Lindsay summarizes this argument by writing, "There is a plaque affixed to the new Browns' stadium that poignantly summarizes the message of this Comment: 'We proved that the Browns belong in Cleveland, the home of the greatest fans in the world...OUR TEAM...OUR NAME...OUR COLORS.'"ⁱ

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ⁱⁱ Nottingham, Don. "Keeping the Home Team at Home: Antitrust and Trademark Law as Weapons in the Fight Against Professional Sports Franchise Relocation." *University of Colorado Law Review* 75 (2004): 1067-1068.

ⁱⁱⁱ Anderson, Dave. "Sports of the Times; Is greed Destroying N.F.L. Fans' Devotion?." *The New York Times*, November 12, 1995, sec. 8.

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^v Poplar, *Fumble*, 294.

^{vi} Morgan, Jon. *Glory for Sale: Inside the Browns' Move to Baltimore & the New NFL*. Baltimore, MD: Bancroft Pr, 1997, 245.

^{vii} Poplar, *Fumble*, 296.

^{viii} Poplar, *Fumble*, 327.

^{ix} Morgan, *Glory for Sale*, 272.

^x Poplar, *Fumble*, 296.

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- ^{xi} Poplar, *Fumble*, 297.
- ^{xii} Poplar, *Fumble*, 327.
- ^{xiii} Poplar, *Fumble*, 271.
- ^{xiv} Poplar, *Fumble*, 169.
- ^{xv} Poplar, *Fumble*, 178.
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