NO. 21-1243

In the Supreme Court of the United States

CITY OF OAKLAND,

Petitioner,

v.

OAKLAND RAIDERS, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF AMICUS CURIAE RUTH HENRICKS IN SUPPORT OF PETITIONER

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IDENTITY AND INTEREST OF AMICUS CURIAE

Pursuant to Supreme Court Rule 37, RUTH HENRICKS respectfully submits this Brief of Amicus Curiae in support of Petitioner City of Oakland.

Ruth Henricks is a plaintiff in a taxpayer waste action in San Diego Superior Court filed on behalf of the City of San Diego against the Chargers Football Company, the NFL and its franchise teams relating to the NFL team relocation policies and the damages the Chargers' departure from San Diego caused the City. Ms. Henricks operates a non-profit known as Special Delivery, which prepares and delivers over 300 fresh meals per day to elderly and home bound residents of San Diego.[1] Amicus Curiae has an interest in this case because she is active in her community and advocates on civic issues that affect her community and tax revenue.

The Chargers began playing in San Diego as a charter member of the American Football League in 1961. In 1965, San Diego voters approved a $27 million bond ($243 million in today's dollars) to build a stadium for the team. For the next 5 decades, City taxpayers

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[1] Pursuant to this Court's Rule 37.2, all parties with counsel listed on the docket have consented to the filing of this brief.

Pursuant to Rule 37.6, Amicus Curiae affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amicus Curiae or its counsel made a monetary contribution to its preparation or submission.

provided a flow of subsidies to keep the Chargers in San Diego, including a 10,000 seat expansion and renovation costing $78 million ($136 million in today's dollars) and culminating in a 10-year City "ticket guarantee.[2] To induce the City's subsidies, the Chargers repeatedly promised the team would stay in San Diego. In January 1997, the team's owner wrote: *Only in the case of severe financial hardship for the team—defined by very narrow, specific and confining conditions—could we request to renegotiate with the City*. Dean Spanos, January 29, 1997.

[2] Under the contractual guarantee, the City guaranteed the Chargers would sell 60,000 tickets for each game. If not enough fans bought actual tickets, the City made up the shortfall, at taxpayers' expense. Taxpayers paid over $36 million.

ARGUMENT

This case is of great importance to cities like San Diego [and Oakland] that hosted a National Football League ("NFL") franchise team but lost that team because they could not afford to pay the NFL's extortionate prices demanded by the team to stay. In San Diego, the demand was to provide the same income to the Chargers as they could theoretically make in Los Angeles playing in a $5 billion stadium.

Because cities like San Diego and Oakland who cannot pay such prices are those who are harmed, and richer cities that do pay the NFL's demanded prices have no incentive to sue, the Ninth Circuit's decision is certain to leave serious violations of the antitrust laws unremedied.

Damaged victims of the NFL's anti-competitive practices should be able to pursue their cases in federal court under federal antitrust laws without having to meet an inflated means test. Free competition would drive suppliers of the NFL product to markets like Oakland and San Diego, not away from them. These small, less affluent cities should be free to invoke the laws made to ensure all consumers have the benefits of competitive markets.

The NFL and its teams use their control of the supply of the NFL product to play cities off against each other. In San Diego, threats to move the team were made with the excuse that the team was not doing financially as well as other teams, or that the San Diego stadium was not as nice as the one in Los Angeles or Dallas. If there was free competition, why

did not a single team or group of owners step up to propose expansion teams for San Diego and Oakland? Even if victims can allege and prove agreements amongst team owners not to supply what the market demands, the Ninth Circuit says no case can be brought.

Like Petitioner City of Oakland, the City of San Diego was an obvious victim of that scheme: When it was unable to meet the NFL's economic demands, the NFL moved the Chargers to Los Angeles, leaving San Diego with an empty stadium and millions of dollars in financial losses. Under such circumstances, any victim city should be able to sue the NFL, as Oakland did here, alleging violations of the Sherman Act.

The NFL policies restrict the supply of new teams to prospective cities by taking votes amongst themselves on when teams can move or join the league. This allows them to extract supra-competitive prices, something cities like San Diego were unable to pay. San Diego is still paying off bonds incurred to pay for a prior Chargers' stadium expansion and renovations. Indeed, San Diego was threatened to either provide public financing for a new, luxurious stadium, or the city would lose the team. The extortive practices worked, and the NFL teams, in accordance with NFL policies, voted to move the Chargers to a richer market. For that, the franchise teams were handsomely paid.

Cities like Oakland (and San Diego) that face a restricted supply of teams and concomitant higher prices to keep them suffer losses when their teams leave. Denying standing to seek redress cements their suffering.

The Ninth Circuit used a "prudential" balancing test it attributed to *Associated General Contractors of California, Inc. v. California State Council of Carpenters* (*AGC*), 459 U.S. 519, 535 (1983) to deny Oakland and perforce San Diego "antitrust standing." The Ninth Circuit used an oversized version of standing to close the federal courthouse doors to victims of the NFL monopoly abuse of market power.

Section 4 of the Clayton Act provides simply: "*Any person* who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of the suit, including a reasonable attorney's fee."[3] The refusal of courts to exercise jurisdiction validly conferred by Congress through judicially created doctrines (such prudential standing) has been criticized.[4]

Amicus Curiae urges the Court to consider adopting the simple two-part standing test advanced by Professor Paul Mishkin. First, the federal antitrust claim issue has to appear in a "well pleaded" complaint. Second, the plaintiff's claim must be "substantial" and founded "directly" upon federal antitrust law.[5]

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[3] James H. Watz, *Section 7 of the Clayton Act: The Private Plaintiff's Remedies*, 7 B.C. L. REV. 333 (1966).

[4] Robert J. Pushaw, J*, A Neo-Federalist Analysis of Federal Question Jurisdiction*, 95 CALIF. L. REV. 1515, 1539 (2007).

[5] Robert J. Pushaw, J, *A Neo-Federalist Analysis of Federal Question Jurisdiction*, 95 CALIF. L. REV. 1515.

The two-part Mishkin test is compatible with the test this court announced in *Lexmark International, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 126 (2014). The Court in *Lexmark International* agreed that (1) courts are not free to deny congressionally granted causes of action on prudential grounds; and (2) any "prudential standing" doctrine must be limited to the conventional requirements of the zone-of-interests test and proximate cause.

This case provides the Court an opportunity to strike a most just balance between restraining invalid cases while protecting the rights of cities like San Diego and Oakland intended for them under the nation's competition laws.

Respectfully submitted,

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