The Port Covington TIF

*Did Baltimore “Protect This House”?*

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Introduction

In May 2016, on behalf of Sagamore Development Company, the Baltimore Development Corporation requested that Baltimore City’s Board of Finance approve $658.6 million in tax increment financing (TIF) for the Port Covington project. The lead financial partner in Sagamore Development is Kevin Plank, the Chairman of Under Armour (UA), the most successful Baltimore-resident business in many decades. UA is a sports clothing business that Plank founded in 1996; in 2016 its revenues were $4.8 billion and its net income available to shareholders was $198 million.

UA’s success is due to the high quality of its products and the entrepreneurial skills of its leaders, but the company’s marketing and its connection to the city has also contributed. Early in its history, UA’s ads featured the slogan “Protect This House. I Will.” Typically featuring tough football players (as did the champion Baltimore Ravens), the message was that athletes could overcome challenges and achieve athletic success by working hard
Of course, in the globalized economy no large U.S.-based apparel company can survive against its competition without outsourcing most of its manufacturing. However, local expenditures by UA have been significant, including more than two thousand employed at the company's headquarters and other locations in the city. Assistance from the state and the city contributed to this growth. For example, UA received seven separate One Maryland Tax Credits from 2003–2012, in total reducing its income tax by $22 million, with a cost to the state of $42,885 per certified job.\(^3\)

Plank's dedication to the area included significant philanthropy. He also reinvested some of his UA profits in Baltimore City and Baltimore County, including the revival of Sagamore Farm, where the legendary horse Native Dancer trained and stood at stud. Many people in the area were thus very favorably disposed when Plank's firm requested a TIF for the Port Covington development.

The megaproject magnitude of Port Covington (PC)—$6.9 billion in total project costs—which might otherwise have threatened its acceptability, in fact also contributed to its appeal. Given UA's focus on sports, the overused cliché "game-changer," which was frequently applied to the massive project, was actually appropriate. The proposed development covers 260 acres on the Middle Branch of the Patapsco River. As the area is split off from most of the city by Interstate 95, and contains brownfield properties, past efforts to develop portions of it had produced little of lasting value. And unlike some other areas in Maryland that have received TIFs, the Port Covington site has poor public infrastructure, and easily meets the blight test of being uneconomical to develop as is—though if the developer's illustration of the project at buildout is accurate, the location has a large upside.

Some $555 million of the TIF financing would be used for public infrastructure; most of the remaining bonds would be for a reserve fund. About half of the infrastructure spending would be for a new street grid of forty-two blocks, about one-quarter for forty acres of parks, with the remainder for site preparation and other transportation amenities, such as an extension to an existing light rail. The project also assumes more than $570 million in state and federal funding for rail and highway connections.

The anchor would be a new UA world headquarters and related facilities, which would add about 8,000 employees to the company's local headcount.\(^4\) Much of the remainder would be office and commercial properties, with vertical developers buying land now owned by Sagamore. There would be 14,000 residential units, though with fewer than nine hun-

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\(^3\) Candidate for 2008. The local economic development tax credit program.

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Figure 5.1. Port Covington Developer's Illustration of the Project at Buildout. Source: Sagamore Development.
population that is by design, predominantly white, affluent, and not currently residing in Baltimore City."

This chapter describes the process of considering and approving the TIF. It briefly reviews Baltimore's recent economic development history, and how the city has coped, admirably in many cases, with its budgetary challenges. The chapter then describes the basics of the TIF deal, and highlights important differences in the competing financial analyses of the TIF and the disputes that featured in the city council's review of the proposed TIF. It describes the agreement reached between the developer and community advocates, and discusses how the TIF could affect state formula grants to the city for K-12 education. The chapter concludes with an evaluation of the TIF decision-making process.

It is important to realize, though, that this chapter is just a first part of what will be a long story—while the project aspires to be as famous as Native Dancer, at present it is just a promising foal.8 Completing PC is expected to take twenty-five years, and it is likely that the actual project's history will differ from its original design. A late 2017 decline in the stock price of UA threatened the speed by which the project would proceed, though Sagamore also received a substantial equity investment in the project from Goldman Sachs.9 In addition, the city and the state joined the frenzied bidding for Amazon's HQ2, with Port Covington as the preferred location, with Republican governor Larry Hogan saying "I can tell you that the state has never put together an incentive package like this before. It's going to be mind-boggling for the folks at Amazon."10 The details of the offer were not made public, unlike revelations of the astoundingly generous offers from some other bidders, who if victorious would likely earn the "winner's curse." Had Amazon chosen Baltimore, the subsidies for PC would have been significantly higher than those described in this chapter.

Baltimore City's Economic Development History and Budget Strategies

The news from Baltimore in recent years has often been bad. The 2015 death of Freddie Gray after a "rough ride" in a police van set off an uprising in some of the poorest areas of town where many blacks understandably felt their lives didn't matter. That despair, and the associated criminality, substance abuse, weak family structure, and inadequate education, were already well known to fans of the award-winning HBO series The Wire. No one can reasonably dispute that the city needs effective economic development to help deal with these problems.

It may be reassuring that the city has had some economic development successes, including recently. During the 1970s and 1980s, Baltimore received many plaudits for its economic "renaissance." That revival was needed after Baltimore lost significant parts of its economic base and taxing population. An example of the decline is ship construction, which was a specialty during Baltimore's early years (the fast privateers made by Quaker shipbuilders were one reason the British attacked Baltimore's Fort McHenry in 1814). This tradition continued through World War II with the construction of Liberty cargo ships.11 But after the war, this industry shrank, as more generally did Baltimore's heavy industrial base, which included the now closed Sparrows Point steel plant. Even worse, globalization hurt the city's larger economic base of light manufacturing, whose products had been marketed particularly to the southeastern states. The city's population peaked in 1950 at 949,708 (which included many migrants from the South, white and black, who had come to work in the defense industry). By 2010, the population was 620,961, with much outmigraiton to the surrounding counties.

The city did not ignore its economic decline. Starting in the late 1950s, business leaders and politicians cooperated to revitalize part of downtown in the Charles Center development. That economic development coalition's influence peaked during the 1971–1987 leadership of Mayor William Donald Schaefer, who won national recognition for the urgency he brought to this mission ("Do It Now!"). and for the waterfront festival marketplace in the Inner Harbor, an approach that was copied worldwide. The city channeled its development incentives through a number of quasi-public entities that were insulated from public participation. The most important organizational legacy of this approach is the Baltimore Development Corporation (BDC), which describes itself as a "non-profit organization, which serves as the economic development agency for the City of Baltimore."12 However, in 2006, Maryland's higher court ruled that despite its 501(c)3 status, BDC is a public body that is subject to open meeting laws.13 Since that time, including during the PC planning, BDC has utilized exemptions in these laws to limit public disclosure of what it describes as "proprietary information."

Within the city, political support for the downtown/tourism-focused development strategy was mixed. The city has numerous residential neighborhoods with concentrated poverty, and representatives of these neighborhoods, especially minority-dominated ones, felt that "downtown" enjoyed all
the benefits of the city’s development. Schaefer’s successor as mayor, Kurt Schmoke, won his first campaign by promising to redress that perceived imbalance. But like all mayors who must live up to the developmental imperatives of the job, Schaefer’s successors still spent much of their time dealing with private investors who were willing to risk their own capital, but almost always conditioned on receiving significant financial assistance from the city. The results were often profitable office developments and residential gentrification in selected neighborhoods (e.g., Harbor East, Locust Point, Canton), many of which are next to the several branches of the Patapsco River that constitute Baltimore’s extended harbor. Many of Baltimore’s economic strengths are in these areas, and in its nonprofit education and health institutions. Its economic weaknesses are in older neighborhoods that have more than 16,000 vacant residential properties and many obsolete industrial facilities. In recent years, about 30 percent of the working-age population has been out of the labor force, with an additional 10 percent unemployed, and in some neighborhoods one-third of adults over twenty-five lacked a high school degree.

Two important factors have long helped the city cope with these economic challenges. The State of Maryland has provided much financial assistance to the city—for corrections, health, economic development, and particularly through a formula grant for K-12 education. The latter awards funds based on high educational needs and low local wealth—and since TIFs (for a time) reduce the amount of local general revenues while (intendedly) increasing assessed valuations, TIFs have the potential of reducing Maryland’s grant to Baltimore for education. This drawback is discussed below.

The city has also benefited from high-quality budgetary and financial management, which is confirmed by the city’s AA bond rating from Standard and Poor’s. By city charter, the mayor is extraordinarily powerful, controlling the Board of Estimates and having the authority to propose a budget to which the city council cannot add spending (though the council occasionally works around this rule). Mayor Martin O’Malley became famous for his Citistat management system, which was devoted to generating efficiencies in city operations. During O’Malley’s administration, following the lead of influential state legislator “Pete” Rawlings, the city began using TIFs, as well as payments in lieu of taxes (PILOT) agreements with for-profit firms.

After O’Malley became governor, the city’s budget professionals shifted toward an approach that required departments to bid for funds in relation to desired high-priority outcomes (e.g., “safer streets”). Under Mayor Stephanie Rawlings-Blake, the city, with Public Financial Management and other consultants, developed the ten-year financial plan “Change to Grow,” which emphasized reaching structural budget balance through improving services, investing in infrastructure, and reducing long-term pension and retiree health liabilities, while increasing the city’s income tax—paying population by reducing the residential property tax rate. Both outcome budgeting and the financial plan merited the praise they received, but they were largely disconnected from the project-based economic development strategy of which TIFs are a subset. The exception in the ten-year financial plan was the following statement:

In pursuing a review of tax expenditures, it will be important to balance both fiscal targets and job creation and redevelopment goals—targeting tax incentive dollars to maximize economic impact, ensuring a positive return on the City’s tax subsidy investments, and simultaneously continuing to focus on more broadly-based tax relief.

Was that difficult balance attained in the review of the Port Covington project?

Analyses of the Project’s Financial Details and Approval by the Executive

During 2016 Sagamore ran a positive, extensive, and costly campaign seeking approval of the project, with a slogan that resembled the UA brand: “We Will Build It. Together.” But although the promise of a Native Dancer-quality development might have tempted some to remember “Don’t look a gift horse in the mouth,” the TIF application received significant scrutiny.

The first was in largely private negotiations within the executive branch, with the lead taken by the BDC, and extensive work also done by the Department of Finance. The quasi-public role of the BDC, and the necessity that its recommendations be approved by the executive and legislative branches, requires that it exercise due diligence over developers’ proposals. Yet it is also widely viewed as an advocate for developer interests. The latter role appeared to dominate in March, when, repeating past controversies, the BDC violated the state’s open meeting law by excluding reporters from meetings on grounds of discussing confidential information.
about bond issuance. In fact, the agency talked about project details that should have been transparent; the minutes from these meetings were released later, after complaints from the press and public.24

Sagamore’s application for the TIF was 545 pages long. Much of the financial analysis was prepared by MuniCap, Inc., a consultant that was employed by the city but, following city policy for TIF applications, was paid by Sagamore. The application projected that at PC’s buildout, there would be an increase of $2.536 billion in property tax assessed value, from a base in PC of $73 million, with a $57 million increase of real property tax revenues at current tax rates. For the forty-one-year period in which bonds would be outstanding, using an annual inflation rate of 3 percent, MuniCap projected an undiscounted cumulative fiscal gain to the city of $1.766 billion. This calculation netted the city’s projected additional expenses from its projected additional revenues (of which new personal income taxes would slightly exceed new property taxes). MuniCap also calculated that the net fiscal impact to the city over the project’s length, discounted at 6 percent, would be $233 million.

Since the upfront costs would be large while the project’s benefits would take years to realize, Sagamore would pay special taxes through 2038; TIF incremental revenues would be insufficient to pay debt service until that time. The TIF bonds would be sold serially, potentially through a conduit in order to protect city’s bond rating, and directly to Sagamore as developer-held drawdown bonds. Three years later they would be converted and remarshaled to other purchasers.

One of the political disputes over this TIF was whether it was a tax subsidy or not, with Sagamore publicizing the latter view, including in a YouTube video.25 Not mentioned in this video, and largely neglected in political debates, was the great financial importance to the project of Enterprise Zone and Brownfield local tax credits. The projected direct revenue loss from these credits were respectively $313 million and $445 million.26 PC is an example of the “Super TIFs” described by Ev Paull in chapter 11 of this volume.

The city uses a “but for” test to decide whether a proposed TIF is justified. There was no question that the infrastructure in PC was inadequate for a large development. In the “but for” test, “the unleveraged internal rate of return was compared to the Real Estate Investor Survey published by Price Waterhouse Coopers and currently falls within the reported internal rate of return for comparable land development transactions.”27 Absent the TIF, the developer’s IRR was projected to be −1.9 percent, but with the TIF, that IRR increased to 9.2 percent.

Another firm, TischlerBise, Inc., employed by BUILD (Baltimoreans United in Leadership Development), an influential coalition of faith and progressive groups, suggested in a twenty-one-page memo that the MuniCap analysis was flawed. One of its criticisms ran against expectations, in suggesting that the IRR for the project was actually too low, when it was compared to other projects with similar high risks. The firm also suggested that the MuniCap analysis underestimated likely expense increases in city operating and capital budgets, and that it didn’t reveal significant assumptions for its calculations nor conduct sufficient sensitivity analyses of the pace or mix of development in PC. These criticisms, surprisingly, did not include any warning about MuniCap’s highly optimistic assumptions about receiving federal and state transportation funding for the project, even though contemporaneous reporting showed they were unrealistic.

One of the issues involved in executive branch approval was a waiver of the city’s Inclusionary Housing ordinance, which for a major development project such as PC would require that 20 percent of the residential units be in the “affordable” category. However, since under the law the city bears substantial responsibility for financing such units, but lacks sufficient funds to do so, the provision has always been waived during negotiations, which when concluded usually have required developers to provide lower levels of support for affordable housing. The mayor’s agreement with Sagamore set a target of 10 percent of the units with the affordability level defined at 80 percent of area median income (AMI) per household. Advocates for affordable housing wanted 20 to 25 percent of units to be affordable with a portion targeted to households with 30 percent of median income, which was viewed as unrealistic by the developers and the city’s staff. Housing advocates also wanted to require Sagamore to provide these units on site, instead of being allowed to contribute money to an inclusionary housing fund that would finance units off site. The latter would be cheaper, but likely to reinforce existing residential segregation by class and race.

City Council Review and the Community Benefit Agreement

The year 2016 was a mayoral election year in Baltimore, and victory in the Democratic primary was tantamount to general election victory. Mayor Blake had been criticized for not having strong connections to poor neighborhoods, and decided not to run for reelection. Some of the candidates to replace her emphasized how they would advocate for those neighborhood
interests in negotiations with Sagamore, but the eventual winner, State Senator Catherine Pugh, did not.

Those interests were represented in different ways. Six South Baltimore neighborhoods next to PC—Brooklyn, Cherry Hill, Curtis Bay, Lakeland, Mt. Winans, and Westport (aka “SB6”)—reached an agreement with Sagamore. In this agreement, Sagamore pledged that the communities would receive $39 million in benefits over a thirty-year period.

In contrast, opposed to the project as negotiated by the executive were three other coalitions—BUILD, Build Up Baltimore (unions), and People Organized for Responsible Transformation, Tax Subsidies and TIFs, or PORT3 (social justice advocates). Their main venue for demanding changes was the city council. The council’s strongest opponent of corporate subsidies, Carl Stokes, chaired its Taxation, Finance and Economic Development Committee, which in July and August held several hearings and work sessions on the TIF and related proposals. Most Democrats on the council did not support mandating the conditions demanded by opponents, but Sagamore and the opponents engaged in negotiations over a city-wide community benefits agreement (CBA) that would go beyond Sagamore’s pledges to SB6. During these negotiations, Sagamore’s counterparty, with BUILD agreeing to a $100 million CBA on September 8, and the other two coalitions remaining opposed. The CBA, at twenty-two pages long, was formally the “New Port Covington Amended and Restated Consolidated Memorandum of Understanding,” and incorporated the $39 million in previous SB6 promises. Once BUILD signed on, the full council pulled the TIF bill from the committee and approved it.

In the CBA, Sagamore pledged that 20 percent of the planned PC residential housing units will be “income restricted,” with at least 60 percent on site, with specified funding per unit from Sagamore for offsite units. Small percentages of these units would be at low AMI levels, should additional funding such as low-income housing tax credits be available. The opponents of the deal felt this allowed Sagamore to build too many high-income units, and that instead, as a condition of approving the TIF, the city should have required the developer to provide more assistance for those now in substandard housing. Similar opposition came from unions, including to the CBA’s requirement of a $17.48 minimum wage, instead of the higher “prevailing wage” (that is, the typical union wage). BUILD was more accepting of Sagamore’s promises, and also valued the CBA’s long list of financial commitments for workforce development, summer jobs, scholarships for college education, and local community organizations.

How the TIF Could Affect the City’s Education Grant from the State

Maryland’s state constitution guarantees a “thorough and efficient system of free public schools,” which has been interpreted as guaranteeing equal educational opportunities for students across the twenty-four local school systems. Since these systems’ financial resources and student needs vary substantially, the state education funding formula channels more money to jurisdictions with low fiscal capacity and with many students who are poor, are English-language learners, or have special needs; about 70 percent of total state aid has this equalizing intent. In 2016, this state aid was $11,172 per Baltimore City pupil, the highest among all systems and almost double the statewide average of $6,437.

As the PC TIF was being approved, the state’s Commission on Innovation and Excellence in Education was engaged in a multiyear study of how the current funding formula should be revised to meet the state’s equity goals. That formula calculates fiscal capacity as follows:

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\text{personal property values} \times 0.5 + \text{real property values} \times 0.4 + \text{public utilities’ assessable base} + \text{net taxable income}
\]

Given Baltimore City’s high poverty level (and thus low receipts from the income tax), its property tax share of combined property and income tax revenues in FY2015 was 73.1 percent, compared to a state average of 60.3 percent. To the extent that PC would increase tax revenues as measured by the fiscal capacity formula, Baltimore City would lose state aid. Opponents to PC cited a controversial TIF for a development at Harbor
Point, which preceded PC by several years, as helping cause such a decline in the city’s aid. Since TIF-stimulated additional property tax revenues in PC would be dedicated to paying for the TIF bonds, they could not be used to offset the lost state aid from this project (though PC-caused increased income taxes could be).

Consultants to the Maryland State Department of Education have suggested that the fiscal capacity formula be adjusted to hold TIF-employing governments harmless for this effect. In 2016, the Maryland General Assembly signaled its preference by enacting HB 285 (Chapter 258), which mandated temporary grants through fiscal year 2019 to offset any state school aid not received by school systems because of new TIFs, for low-wealth jurisdictions that were recipients of disparity grants from the state. In 2018, permanent legislation (HB 693, Chapter 387) excluded new property values associated with TIFs from the fiscal capacity measure, eliminating a disincentive for local jurisdictions to use TIFs, and putting pressure on the state budget, which was already structurally unbalanced over the medium term. On the other hand, if the state had not protected Baltimore from TIF-caused reductions in state aid, then the city might be unable to reduce property taxes for residential properties throughout the city, which is a critical part of its long-term growth strategy.

During consideration of the PC TIF, MuniCap prepared a forty-year projection of the impact of Port Covington on state education aid under current law. After the scheduled expiration of HR 285, the FY20 loss of state aid to the Baltimore school system would be $1.2 million, or roughly one-tenth of a percent of the base state aid, and would grow to 5 percent of that base aid at the end of the period; the undiscounted total over forty years would be $315 million. The loss of any aid for the system is a highly controversial subject; recent enrollment declines in the city’s public school–attending population necessitated planning for many layoffs, some of which were prevented by a temporary package of additional aid from the state.

**Evaluation**

In a 1987 book chapter critical of the earlier Baltimore economic development renaissance, Robert Stoker argued that a “shadow government” of quasi-public organizations dominated by business interests limited the public’s ability to influence the goals of the city’s development policy. And in an impressive 2001 dissertation, Dale Thomsen documented that from 1965–2000, the city council “willingly decided not to apply the range of mechanisms at its disposal for controlling the [city’s] economic development corporations (EDCs) and balancing the power that the Mayor exerted on the EDCs.”

While there are certainly people involved in opposing the PC TI who would argue that nothing has changed, a fair reading of the process is that it presented many opportunities to review, criticize, and change the proposal. Consideration of the project was no petty quarrel, but a serious discussion that absorbed the attention of many people in the city for at least a year. The quality of the project very likely improved because of the contributions from both its supporters and its critics during a sometimes heated dialogue.

That does not mean, however, that the process was perfect. Regarding the details of the TIF finances, it is reasonable to ask if the process should have included:

- more sensitivity analysis from the high risk of such a large development being carried out by a relatively novice developer;
- more serious consideration of incremental stages of development with a series of TIFs;
- more public discussion of the possible effect of the TIF debt and the use of conduit financing on the city’s debt capacity and future infrastructure spending, given possible changes to the current practices of bond raters and GASB;
- a more realistic (that is pessimistic) assumption about the availability of federal transportation funding;
- more recognition of the large revenue costs of the enterprise zone and brownfield tax credits; and
- alternatives to BDC’s “but for” judgment—for example, by comparing the City’s practice to that of Baltimore County, which has never used TIFs.

Turning to how TIFs affect policy choices, a typical complaint about TIFs is that they are distributionally inequitable. They may substitute for needed infrastructure spending in other areas of a jurisdiction and constrain funding for operating programs that don’t receive incremental tax revenues
while TIF bonds are serviced. Opponents of PC frequently projected these effects. One target was the “world class” parks planned by Sagamore to attract residents and businesses. Baltimore has nice parks, some of which were designed by the famous Olmsted firm, but as the city’s ten-year financial plan showed, all categories of infrastructure, including parks, need more funding than the city can afford given its structural budget challenges.

An important precedent here for the PC debate was the previous high-dollar city TIF for the Harbor Point project. Fern Shen reported on a council hearing exchange about this, beginning with comments from council member Stokes, with Sagamore lawyer Laria responding:

“We just gave a guy $60 million bucks to do public parks on a peninsula at Harbor Point and I am telling you the folk and the kids uptown will never—will never—set foot on that property,” he said.

The $140 million Sagamore is seeking to finance parks, Stokes observed, “is three times the budget annually of the Baltimore City Department of Recreation and Parks.”

Laria responded by saying that, “without world-class parks, the project will not succeed.” And he challenged the assertion that people from other parts of the city would not use the 40 acres of green space planned at Port Covington: “That is a low expectation that we should collectively seek to exceed.”

Stokes again used Harbor Point as an example. “Black kids are harassed at Harbor Point by the police and by other officials of the city because they’re not supposed to be at Harbor Point,” he said.

“They are kicked the hell out of Harbor Point.”

Stokes had a strong case. Yet Laria was not the firm’s only executive to imagine a more integrated and vibrant city. It would be bizarre, in fact, if the PC development would be exclusionary in practice when the anchor company relies heavily on athletes such as Cam Newton and Steph Curry to promote its brand. And the CBA has numerous elements that provide social mobility opportunities, part of a more general argument that PC was a growth opportunity that the city could not afford to turn down. Assuming PC is built, the burden will be on its sponsors to live up to their promises.

In addition, it is worth remembering that any decision-making process entails opportunity costs. When a developer comes to a city like Baltimore with a proposal like PC, it will crowd out some other issues from the top of the political agenda. It is to the city’s credit that PC was examined more closely than previous TIFs. But was that attention also a distraction from the focus that is needed to address the extensive crime and other social problems in the city? Developing effective responses to these seemingly intractable problems is more difficult than drawing master plans and pencil- ing out the finances of a TIF—but attempting to do so is more important for the city’s future.

Notes

3. Author’s calculation from data reported in Maryland Department of Legislative Services, 2014, Evaluation of the One Maryland Economic Development Tax Credits, August 6.
5. 3.4 million of the project’s 14.7 million gross square feet of buildings would be for commercial parking.
11. Similarly, the Martin Company assembled planes in its Middle River facility in Baltimore County, a separate jurisdiction that surrounds most of the city.
35. Len Lazarick, “Legislature’s Fiscal Chief Presses for Spending Reform,” MarylandReporter.com, January 24, 2017. One analysis projects that the hold harmless provision would have almost no effect on measures of funding equity by income, race, and special needs categories, given that some jurisdictions with low fiscal capacity do not use TIFs. Christopher Meyer, Expanding Education Opportunity in Maryland: The Role of Funding Formulas in Increasing Equity. Maryland Center on Economic Policy and the Abell Foundation, January, 2017.
40. For the record, the author of this chapter has no financial relationship with proponents or opponents.