

## **Statement of Senator John McCain**

### **Hearing before the Senate Committee on the Judiciary**

**“The FANS Act: Are Sports Blackouts and Antitrust Exemptions Harming Fans, Consumers, and the Games Themselves?”**

**Thursday, December 4, 2014**

Good Morning Chairman Leahy and Ranking Member Grassley.

Thank you for inviting me to testify this morning, and thank you to Senator Blumenthal for making this hearing happen. Senator Blumenthal’s commitment to advocating for consumers has made him a valuable partner to work with on this issue—an area where the rules and regulations far too often leave consumers holding the short end of the stick.

I am here this morning to discuss sports blackouts and to explain how the continued use of blackout rules and policies fail to serve the interests of consumers—in this case, loyal sports fans.

2014 has been a good year for those of us advocating an end to sports blackouts. In September, the FCC voted to eliminate its sports blackout rule. That rule prohibited a cable or satellite company from carrying a game that is blacked-out within the local broadcast area, leaving sports fans in the dark. Senator Blumenthal and I had been calling on the FCC to repeal this outdated rule for the past year and a half, and we applaud the FCC for unanimously spiking it this fall.

However, the FCC’s vote was not the final word on sports blackouts, failing to address the root causes for a majority of blackouts. Indeed, as FCC Chairman Tom Wheeler pointed out shortly after the vote in September: “[E]veryone needs to be aware of who allows blackouts to exist, and it is not the Federal Communications Commission.” The spotlight is now squarely on the leagues themselves and their own rules and practices, the most infamous being the NFL rule that requires blackouts when a home game does not sell out at least 72 hours before kickoff.

This is an issue that must be addressed by the league itself; and, if the NFL fails to show leadership, then through congressional action.

It is clear that blackout rules fail to serve their original stated purpose, which was to increase stadium attendance and improve the viewing experience. The record established leading

up to the FCC proceeding, including a large body of research by sports economists, underscored this point, demonstrating that any arguments in support of the blackout rule expired long ago. I hope this hearing will do the same.

The simple fact is that these rules only serve to benefit sports leagues and their member teams at the expense of the hardworking fans who support them so loyally through their money, time, and passion. Just last year, during the NFL wild card playoffs, fans of the Cincinnati Bengals, Indianapolis Colts, and Green Bay Packers came very close to experiencing blackouts when those games hadn't sold-out just days before kick-off. The blackouts in these regions were only averted when, at the last minute, local businesses bought-up tickets to bring the total above the NFL's required threshold.

There is something wrong with a situation in which the NFL can say to all those fans who have made the league what it is today, "you had better purchase tickets, or else." The NFL and its teams have benefitted from myriad public benefits, including an exemption from antitrust rules, a specialized tax status, and taxpayer dollars that subsidize their million-dollar football stadiums. These public benefits carry with them a responsibility back to the public—an obligation to treat their loyal fans with fairness.

We have been chipping away at these rules for some time, but there is still much work to be done. This year, Senator Blumenthal and I introduced the FANS Act, aimed at eliminating the various causes of sports blackouts. This legislation would condition the NFL and other leagues' antitrust exemption on ending blackout practices, including in those circumstances when stand-offs during contractual disputes between broadcasters and cable and satellite companies result in blackouts. We would strongly prefer that the league take the initiative itself, and demonstrate leadership by reforming anti-consumer policies and practices. But let's be clear, should the league fail to act, we will do everything we can do stand up for consumers by advancing the FANS Act and other initiatives.

I look forward to hearing from witnesses on the following panel on ways we can work together to finally blow the whistle on sports blackouts once and for all.

Thank you.