

Testimony of David R. Goodfriend
Founder and Chairman, Sports Fans Coalition
before the U.S. Senate Judiciary Committee
“The FANS Act: Are Sports Blackouts and Antitrust Exemptions Harming Fans,
Consumers, and the Games Themselves?”
November 19, 2014

Senator Blumenthal, Members of the Committee, thank you for inviting Sports Fans Coalition to testify on the FANS Act. My name is David Goodfriend and I am the founder and Chairman of Sports Fans Coalition, the nation’s largest multi-issue fan advocacy organization in the public policy arena. Founded in 2009, we now have tens of thousands of members from across the USA and are led by a diverse and seasoned board of directors.

One of our board members seated behind me, Brad Blakeman, worked in the George W. Bush White House. Since I worked for President Clinton, he and I do not agree on much. But we do agree on one thing: the government should not subsidize or support anti-fan activities by professional sports leagues. When a sports league receives a public benefit, the fans should get a fair return, or the subsidy should go away.

That is why Sports Fans Coalition is proud to have led the successful effort to end the FCC’s Sports Blackout Rule. The NFL’s blackout policy prohibits a local broadcaster from televising a game when tickets do not sell out 72 hours before kickoff. The FCC rule bolstered that anti-fan policy by requiring pay-TV companies likewise to impose such blackouts.

Sports Fans Coalition, National Consumers League and our allies’ efforts culminated in a unanimous 5-0 vote this past September 30th to end the 40-year-old, anti-fan Sports Blackout Rule.

That was a great moment for fans. But the league’s policy remains in place.

The NFL should end its local blackout policy once and for all, effective immediately.

Fans hate local blackouts. Just listen to two fans who told the FCC how they feel:

Denis Steinmiller, from North Tonawanda, New York said, “I’m a disabled Vietnam vet. I also suffer from [Post Traumatic Stress Disorder]. I am unable to attend the Bills games because of my disabilities. . . . Watching the Bills on TV is one thing I look forward to every year, as well as help me deal with PTSD. Please put all the games on TV for me and others who gave much of ourselves for our country.”

Mary Bash, from Masaryktown, Florida said, “For people like me, who are disabled, this blackout rule is discrimination to people with disabilities. I cannot physically attend a live game at any arena. I am stuck at home with only the television to bring me to the sports, or anything else, I enjoy watching. . . . The NFL blackout policy from the 70’s do[es] not reflect the times of today. Technology has changed. [The] NFL’s market has changed. Where do they think all that money comes from? It is us, the consumer who buys the products from their advertisers. It is us, the taxpayer, who built most of the arenas. It is us, the American citizen, who continues to foot the bill. . . .”

The fans are not alone in opposing local blackouts. Economists from Stanford, Michigan, and seven other top academic institutions proved in two separate FCC filings that the NFL’s local blackout policy does not serve its stated purpose of selling tickets or keeping games on broadcast TV.

Even other sports leagues have concluded that local blackouts do not work. The Commissioners of Major League Baseball and the National Hockey League recently stated in depositions that keeping games off local TV does not help to increase attendance.

The FCC agreed with all of this when it ended its own Sports Blackout Rule.

Now the NFL should do the right thing. It should listen to fans, economists, other leagues, all five Commissioners of the FCC, and Members of Congress from both parties and both chambers.

The NFL should end its local blackout policy.

Failing that, however, Congress should pass the FANS Act.

The Antitrust statutes currently shield leagues from liability when imposing local blackouts. The FANS Act would eliminate this get-out-of-jail-free card and with it, the last remaining government support for the NFL's local blackouts.

Sports Fans Coalition also believes that fans should not be used as pawns during contractual disputes between big TV companies. We should end sports take-downs as a tool for gaining leverage during contract disputes.

Section 3 of the FANS Act would do the job. It says to professional sports leagues, if you want to keep your antitrust exemption, here is something fans want in return: prohibit your distributors from taking down games during contract disputes.

Finally, I would like to make clear that Sports Fans Coalition fully supports putting as many games as possible on free, over-the-air broadcast TV.

The migration of sports off broadcast TV has created problems.

Just look at the L.A. Dodgers. When Time Warner Cable recently took over the team's TV distribution, 70% of local Dodgers fans ended up missing most of this past regular season because only Time Warner Cable subscribers could see the games. When Major League

Baseball and the LA Dodgers have received so much public subsidization, fans should have better access to those games.

Perhaps a revised FANS Act could require all sports leagues to maintain a certain amount of the games on free, over-the-air broadcast TV so that all fans have access to at least some games.

Thank you and I look forward to answering any questions.