



Testimony of
Sally Greenberg
Executive Director
National Consumers League

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

Before the
United States Senate
Committee on the Judiciary

December 4, 2014

I. Introduction

Good morning Senator Blumenthal and members of the committee. My name is Sally Greenberg and I am the Executive Director of the National Consumers League (NCL).¹ Founded in 1899, NCL is the nation's pioneering consumer organization. Our non-profit mission is to advocate on behalf of consumers and workers in the United States and abroad. I appreciate this opportunity to appear before the subcommittee to speak in support of S. 1721 and I commend you for considering this important bill.

II. In Return For Government Handouts to Sports Leagues, Consumers Get Blackouts, Higher Cable Bills and Rising Ticket Prices

Professional sports teams are part of the fabric of American culture. Millions of Americans define themselves, in part, by the teams they support. The professional sports leagues are also multi-billion dollar businesses that benefit from a multitude of public subsidies. These take the form of exemptions from federal antitrust laws, tax breaks and public funding for stadiums, infrastructure support from municipalities, and blackout policies that benefit the leagues and their broadcast partners.

¹ The National Consumers League, founded in 1899, is America's pioneer consumer organization. Our non-profit mission is to protect and promote social and economic justice for consumers and workers in the United States and abroad. For more information, visit www.nclnet.org.

As the leagues enjoy huge profits, taxpayers are right to question what they receive in return. Harvard University professor Judith Grant Long recently calculated that 70% of the capital costs of National Football League (NFL) stadiums have been provided by taxpayers, whether they are sports fans or not.² For example, the \$36 million that Hamilton County, Ohio taxpayers paid in debt service and operating costs for the Cincinnati Bengals and Reds' stadiums exceeded the \$23.6 million that the county cut from the health-and-human services spending budget. Cincinnatians are not alone. Despite a \$1.1 billion budget deficit, the Minnesota state legislature extracted \$506 million in public money to cover half the cost of the new Vikings stadium,³ despite the owner of the team's billion-plus net worth

A 2012 Bloomberg study estimated that tax exemptions on interest paid by municipal bonds issued for sports facilities cost the U.S. Treasury \$146 million per year. Over the life of the \$17 billion of exempt debt issued to build stadiums since 1986, taxpayers' subsidies to bondholders will total \$4 billion.⁴

Lavish taxpayer subsidies for stadia aren't the only way that taxpayers subsidize professional sports. The rising cost of acquiring professional sports programming is also a significant driver of rising cable bills, which have gone up

² Easterbrook, Gregg. "How the NFL Fleeces Taxpayers," *The Atlantic*. September 18, 2013. Online: http://www.theatlantic.com/magazine/archive/2013/10/how-the-nfl-fleeces-taxpayers/309448/?single_page=true

³ Ibid.

⁴ Kuriloff, Aaron and Preston, Darrell. "In Stadium Building Spree, U.S. Taxpayers Lose \$4 Billion," Bloomberg. September 5, 2012. Online: <http://www.bloomberg.com/news/2012-09-05/in-stadium-building-spree-u-s-taxpayers-lose-4-billion.html>

131% since 1998, at more than three times the rate of inflation.⁵ The cable industry reports that subscribers typically pay \$12-15 each month for the cost of sports-related programming.⁶ Due to the widespread practice of channel bundling, the increasing costs of sports programming are passed along to *all* cable and satellite subscribers regardless of whether they actually watch sports. The rising price of acquiring professional sports programming is also a major driver of the often-rancorous retransmission consent negotiations between broadcasters and cable and satellite providers. Increasingly, these fights result in consumers paying for content they don't receive due to programming blackouts. For example, in 2013 there were 127 blackouts, up from 91 in 2012 and 51 in 2011.⁷

Sports fans themselves are also footing an increasing burden. The high price of actually attending a professional game puts them out of reach for many Americans. From 2010-2013 the cost for a family of four to attend a NFL game increased by 8.51% to \$459.65.⁸ The costs for a family night out to the other major sports are similarly high: \$359.17 for the National Hockey League (NHL)⁹; \$333.58

⁵ Zara, Christopher. "Cable Bills Rising: Amid Comcast-TWC Merger Scrutiny, FCC Media Bureau Report Shows Pay-TV Price Hikes Outpacing Inflation," *International Business Times*. May 20, 2014. Online: <http://www.ibtimes.com/cable-bills-rising-amid-comcast-twc-merger-scrutiny-fcc-media-bureau-report-shows-pay-tv-1587304>

⁶ Sanserino, Michael. "Cable companies balk at rising costs for sports programming," *Pittsburgh Post-Gazette*. August 17, 2014. Online: <http://www.post-gazette.com/business/2014/08/17/Cable-companies-balk-at-rising-costs-for-sports-programming/stories/201408170064>

⁷ American Television Alliance. "Astronomical increase in broadcaster blackouts." Infographic. Online: http://www.americantelevisionalliance.org/wp-content/uploads/2014/04/ATVA_Planets.pdf

⁸ Team Marketing Report. "2014 NFL Fan Cost Index," September 2014. Online: https://www.teammarketing.com/public/uploadedPDFs/FOOTBALL_FCI_TWENTYFOURTEEN.pdf

⁹ Team Marketing Report. "NHL Fan Cost Index," October 2014. Online: <https://www.teammarketing.com/public/uploadedPDFs/nhl%20fci%2015.pdf>

for the National Basketball Association (NBA)¹⁰; and \$212.46 for Major League Baseball (MLB).¹¹

In return for the government largesse lavished on sports leagues, consumers are right to be outraged when essential services are cut to subsidize unaffordable tickets at publicly funded stadiums. Cable and satellite subscribers – fans and non-fans alike -- are angry that their bills go up due to ever-higher sports programming costs (when the games even make it on the air). The game is clearly rigged in favor of the professional sports leagues and taxpayers get the short end of the stick. It is time for Congress to step in and begin to level the playing field.

III. The FANS Act Would Benefit Consumers By Reigning In Cable Rate Hikes, Reducing Blackouts and Incentivizing Next-Generation Viewing Platforms

S. 1721, the Furthering Access and Networks for Sports (“FANS”) Act addresses the harms described above in a several important ways.

Section 3(a) of the bill conditions sports leagues’ antitrust exemptions upon a requirement that their broadcast partners not black out games as a result of contractual disputes with cable and satellite companies. The leagues value their

¹⁰ Team Marketing Report. “Slam dunk: NBA ticket price going up,” November 2014. Online: <https://www.teammarketing.com/public/uploadedPDFs/2014-15%20nba%20fci.pdf>

¹¹ Team Market Report FactBook. “2014 MLB Fan Cost Index,” March 2014. Online: <https://www.teammarketing.com/public/uploadedPDFs/2014%20mlb%20fci.pdf>

antitrust exemptions highly and they are unlikely to put those exemptions at risk. . Thus, the bill will make it less likely that broadcasters will be able to leverage the prospect of denying in-demand sports programming to subscribers as a way of extracting higher retransmission fees from cable and satellite companies. This alone would start to rein in one of the major contributors to rising cable and satellite bills.

Section 3(b) of the bill eliminates the antitrust exemption for local sports blackouts in the event that games do not sell out their tickets. This complements the Federal Communications Commission's recent 5-0 vote to eliminate the Sports Blackout Rule by also prohibiting private blackout agreements between the leagues and their programming partners. This will benefit millions of fans in smaller markets such as Buffalo, New York – which may have larger stadiums but smaller populations and thus are less likely to sell 85% of seats. It will also benefit broadcasters and other local businesses that are called upon to buy up unsold blocks of tickets in order to avoid a local television blackout.¹²

Section 3(c) of the the bill benefits consumers living in teams' overlapping broadcast territories by conditioning the leagues' antitrust exemptions on the provision of alternative platforms (such as via the Internet) for obtaining otherwise blacked out sports programming. This would particularly help Major League Baseball fans who live in states like Arkansas, Connecticut, Nevada and Oklahoma

¹² Eggerton, John. "Sports Fans Coalition: Sports Exec Alleges NFL Pressured Broadcasters To Buy Tickets," *Broadcasting & Cable*. February 24, 2014. Online: <http://www.broadcastingcable.com/news/washington/sports-fan-coalition-sports-exec-alleges-nfl-pressured-broadcasters-buy-tickets/129381>

(to name only a few)¹³ that are overlapped by separate clubs’ “home television territories” and thus subject to local blackouts. These baseball fans would have access to content, albeit paid content, over the Internet, similar to the way in which the NHL and NBA currently make their games available online.

Finally, Section 4 corrects a historical anomaly by bringing Major League Baseball under the auspices of the Clayton Act’s antitrust exemptions in the same way as the NFL, NBA and NHL are currently treated. This addresses a recommendation by the Supreme Court that Congress step in and address a problem created by a previous Court case that granted the MLB its anomalous exemption. In doing so, the statutory conditions placed on existing antitrust exemptions by this bill would also apply to MLB.

IV. Conclusion

In closing, I would like to reiterate NCL’s strong support for S 1721. This bill provides important remedies to the problem of some of the unfair and unbalanced subsidies and preferential policies that professional sports leagues have enjoyed at the expense of taxpayers and sports fans alike.

Senator Blumenthal and members of the committee, on behalf of the National Consumers League and America’s consumers, I commend you for your leadership in

¹³ For a complete map of the many overlapping MLB television territories, please see: http://www.bizofbaseball.com/images/MLB_Blackout_Map1000x733.gif

convening this hearing and thank you for your invitation to testify on this important topic. I look forward to answering any questions you may have.

Thank you.