Symposium
The House that Taxpayers Built: Stadiums, Speech and Public Funding

INTRODUCTION

For centuries, spectators have gathered to watch athletes compete as Olympians and gladiators, quarterbacks and shortstops. In the United States, the late-nineteenth century saw the benches and bleachers around local fields replaced by high capacity, specially-built sports stadia. In the 1990s, these municipal venues started being replaced by modern ballparks that are better equipped to capitalize on revenues beyond ticket sales. Many modern stadia contain fewer seats than their predecessors, but use nostalgic brick and interactive displays to embellish the complete fan experience. Among the grand concourses are high-end luxury boxes, countless dining options and team merchandise in every well-designed niche.

A modern stadium, such as the new Yankee Stadium in New York, however, can cost more than one billion dollars to construct. The teams are privately owned and it is the team owners and professional leagues that enjoy the revenues generated by stadium amenities. Nevertheless, the team bears the name of the city and provides both financial and social benefits to the surrounding region. Consequently, there is an ongoing debate as to the proper level of public and private funding of stadium construction. In recent years, as the following articles discuss, there has been increased pressure on municipalities to make substantial contributions to the cost of stadia or risk losing their teams to a city that will. The distinction between public and private is further blurred by, among other things, the use of private security forces to patrol these publicly funded arenas. Their control of objectionable speech, in the name of the fan experience, has spurred discussion of possible First Amendment implications.

The Symposium presented two panels, the first dealing with the economic and legal issues of stadium construction and the second discussing emerging First Amendment considerations. The speakers represented a diverse cross-section of professors, practitioners and team ownership. On the first panel, Professors Marc Edelman of the Rutgers University School of Law, Camden and

Victor Matheson of the College of the Holy Cross's Economics Department joined Everett M. Johnson, an attorney and former Commissioner of the Essex County Board of Taxation which recently oversaw the completion of a new stadium in Newark, New Jersey, and Nick Sakiewicz, CEO & Operating Partner of Keystone Sports and Entertainment, LLC, the organization currently building a stadium complex in Chester, Pennsylvania to host a Major League Soccer team starting in 2010. The second panel consisted of Professors Michael McCann of the Vermont Law School, Jeffrey Standen of the Willamette University College of Law and Howard M. Wasserman of the Florida International College of Law.

What follows are three brief discussions of the growing trend of publicly supported stadium construction and its legal implications. First, Professor Marc Edelman offers a history of the publicly funded stadia. Noting the superior bargaining position of sports franchises that are free to change cities if their conditions are not met, he contends that it is time to reexamine the monopoly powers long afforded to professional sports leagues. Next, Professor Jeffrey Standen presents a counter to the monopoly argument. He takes the position that competition in the world of entertainment is robust, therefore government subsidy is appropriate to ensure the societal benefits sports teams offer. Finally, Professor Victor Matheson and Professor Brad R. Humphreys of the University of Alberta discuss these competing policies in the context of the new Yankee Stadium in New York. After a series of private letter rulings from the IRS, much of the funding for that stadium has come from tax-exempt bonds which may become the norm in modern arena construction. If, as the professors contend, the IRS has made it easier for teams to demand public funding for stadia that are quickly becoming far more than a simple seat for a game, the line between public and private control will continue to blur.

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