

SPORTS FACILITIES

How the law affects the sports facilities industry

and the

LAW

Arizona Case Pits Environmentalists Against S.F. Giants' Training Facility

By Gary Chester, Senior Writer

Public objections over sports facilities are often directed at tax subsidies, but in one notable case it's all about the environment and quality of life. In *Norgaard-Larsen v. City of Phoenix*, 2021 U.S. Dist. LEXIS 128673, (D. Az. 2021), two Arizona residents are suing the cities of Phoenix and Scottsdale over the development of the San Francisco Giants' year-round training facility in Papago Park.

The plaintiffs are two individuals who alleged in a *pro se* complaint that the two cities unlawfully leased the land in Papago Park to the baseball team.

The defendants filed motions to dismiss the complaint and challenged the plaintiffs' legal standing to bring the lawsuit.

"The City of Scottsdale is confident that it will prevail in this suit," a Scottsdale spokesperson told the *Arizona Republic*.

But the court dealt the defense a blow in refusing to dismiss the lawsuit outright.

The Facts

Papago Park is a 1,500-acre park located between Tempe and Phoenix. Tempe residents voted in 2018 to designate the Tempe part of the park as a preserve. Phoenix owns the remaining 1,200 acres of land which is designated as a desert park and does not adhere to the same type of protections.

Phoenix leased nearly 37 acres of the park to Scottsdale in 2018; Scottsdale sub-leased it to the Giants for 25 years with an option to extend the lease for another 10 years. The Giants have played their spring training games at Scottsdale Stadium since 1986, but they began renovating the Papago Sports Complex for year-round

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Staffing Concerns at the 'Ol Ballgame

Why a good gig is losing its luster?

By Jim Riordan, Ph.D., Florida Atlantic University MBASport

Way back in the day, people would lie about their age so they could enlist in the armed forces. Me? I fibbed so I could join Local 176, the Licensed Ushers and Ticket-Takers Union in New York.

I had to develop and earn my seniority because it was a coveted job to be an usher and ticket-taker in a New York stadium or

arena. The seniority list for ushers at the old Shea Stadium once was 400 names long.

High school and college students used these part-time jobs to help cover their education expenses. Retirees supplemented their pensions. Husbands and wives viewed the work as secondary income streams.

These were good gigs, and no one wanted to give them up. Until now.

Traditional and social media stories

abound about the large numbers of Americans who are quitting their jobs in search of better opportunities in a wide-open employment landscape. But some people still are hesitant to return to the workforce since the nation "reopened" after the height of the pandemic.

On Sept. 6, 2021, the three unemployment benefits programs established under

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the CARES Act expired. At the time of the expiration, 7.2 million people were receiving benefits from at least one of the three programs.

It was right around this time that reports started to circulate of long lines at concession stands and entry gates at college football games. The reasoning for these delays was two-fold: Guests not being accustomed to the new e-ticketing and cashless concessions and parking, and a severe shortage of game-day employees to satisfy staffing needs.

The sudden dearth of personnel is being seen by those stadiums and arenas and other public assembly facilities that manage their own in-house operations as well as those that outsource the jobs to third-party contractors. Each account of game-day problems is unique, but they all still maintain a common thread.

A Big 10 program is seeking “volunteers” to help combat a shortage. Those stepping forward will be given a shirt, parking and a meal. An Atlantic Coast Conference university offered a flat rate of \$250 for a six-hour shift (more than \$41 an hour). Only 22 people signed up.

A program from the Southeastern Conference saw a no-show rate of 40% of the 1,500 required positions. In many cases, senior-level athletic department personnel are scanning tickets, performing pat-downs and bag checks and directing cars in parking lots.

The crisis is not limited to college events. An NFL stadium in the South is paying ushers and ticket-takers \$17 an hour. An NHL/NBA arena on the West Coast is paying close to \$20 an hour for the same service.

To deal with the staffing shortages, some

facilities are ramping up a tactic that already is common in many venues: “Deploy then re-deploy,” in which personnel are placed in the most-needed, most-important jobs at a given time and then moved to different positions as the event unfolds.

Some workers first are concentrated in the parking lots collecting fees and checking passes, while others are handling wand scans, bag-checks and ticket-taking at the entry gates. As the day progresses, many of those same workers are re-deployed to the stadium concourse or to on-field positions and posts within the seating area.

The re-deploy method works well in many venues across the country, but not in areas with strict labor union job jurisdictions. In those venues, a security guard, for example, performs security functions only and does not also take tickets or usher

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College Football Stadiums: A Vaccination Station?

By Kyle Conkle

Colleges and universities are in a unique position this year as they attempt to effectively approach how to implement policies and procedures that allow for fans to safely attend games in the midst of an on-going global pandemic. With the arrival of multiple COVID-19 vaccines and numbers decreasing collectively at times across the U.S. following distribution, colleges and universities have been hopeful that much of the “how to handle” issues related to the virus are behind them.

Unfortunately, that is not the case, and considering the consequences of potentially another year without attendance, figuring out an alternative has been the priority. Protecting the health and safety of players, coaches, spectators, and other personnel connected to college football is vitally important, but many colleges and universities can ill afford another year without the revenue that college football brings, especially for smaller schools reliant on such funds.

Certain states appear to be less concerned about implementing COVID-19 protocol, which in some cases has made the process simpler for universities operating underneath said umbrella, while others have been proactive in incorporating restrictions which may make the undertaking quite demanding. The varying rules and expectations across the country certainly have an impact on players, coaches, athletic administration, and fans. But what is the nature of enforcement and could it potentially violate any rights?

It could be argued that the inception of such ideas began through observation of what most locations necessitated for travel, and given the transfer conceptually, colleges and universities saw the writing on the wall with what could be absorbed to standardize within their domain in hopes of mitigating the risk of the rising Delta variant while protecting permissible admittance. With Tulane University being on the forefront



of the movement, the confining verbiage requires proof of a COVID-19 vaccination or a negative COVID-19 PCR test result within 72 hours of entering the stadium. The University of Oregon and Oregon State University quickly followed suit, but the school that perhaps made the most waves once they decided to go that route was Louisiana State University. Currently, it is on the respective schools to make the decision regarding capacities and protocol per local and state guidelines. Attempting to balance health and safety with personal choices and individual liberties has proven to be a challenging endeavor to say the least.

While many individuals are calling for a consistent set of guidelines instituted by the NCAA, they have only provided recommendations for vaccinated and unvaccinated people at this time. With politics playing a major role in how standards are received, the NCAA likely removed the target from their back by eliminating themselves from the equation. Although it may seem clear on the surface what to do, actually carrying it out may prove much more difficult.

For instance, many colleges and universities utilize volunteers or outside companies to handle ticket taking or access control. Most often, this only includes a simple ticket, but now these individuals may be tasked with checking a vaccination card or negative COVID-19 PCR test. Have these individuals had the time to be properly trained on recognizing official/falsified documents? Does a proper training for checking the aforementioned documents exist at this level yet? Are they prepared to handle the unruly fan looking for a case? Or is the requirement really just a way to cover the colleges and universities from liability without the actual intent to truly enforce?

The confusion is evident, but the latter option of a negative COVID-19 PCR test seems to be the scapegoat from legal ramifications. It is apparent that the vaccination is encouraged on many fronts within colleges and universities. However, no college or university has implemented only a vaccine mandate to enter a stadium, nor should anyone expect that to happen because of what could follow. For instance, if a fan at-

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tempts to enter the game, in this scenario, without a vaccination card and is denied entry after voicing religious objection, he or she may seek litigation, depending on jurisdiction. On the flip side, some will simply defer to the ideology behind if you do not want to go to the game, then do not go. Or, if you want to go to the game, either get a vaccination card or a negative COVID-19 PCR test, or go to a state that does not require it.

Governors play a larger role in this framework than many realize. For example, Florida Governor Ron DeSantis views a vaccine mandate as reducing individual freedom and violating patient privacy. On a similar note, Texas's Greg Abbott is not allowing schools that receive state funds to have a mandate. Consequently, should schools violate such executive orders, they risk losing funding integral to their overall operation.

As one can see, the issue is very complex and probably the most frustrating aspect is the lack of consistency so that individuals know what to expect. What should be expected is the rise of litigation pertaining to COVID-19 related issues, like mandates, emerge over the course of the football season. While enforcement may be the preeminent issue to operations personnel, one of the highest concerns on behalf of the teams will be the issue of forfeiture. Consequently, practitioners should remain aware of developments regarding rules, regulations, and legal issues for preparation purposes that diminishes the imminent risk; regardless of the manner it decides to surface through.

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The Never-Ending Stadium Funding Game

By Jordan Kobritz

Every sports league has an off-season when there's a break from having games on the field, even if it seems like they go on year 'round. The MLB season begins in February when players report for spring training and ends in late fall, some years in November, after the World Series. The NFL season begins with training camp in July and continues into mid-February with the Super Bowl.

Indoor sports—the NHL and NBA—begin with training camp in August and continue into June until after the final playoff round. But the stadium game—the quest for a new or renovated facility by some team in some league—seemingly never ends. And similar to the games on the field, the ultimate result is unpredictable.

The dance between owners and government bodies has an ebb and flow that is predictable, with owners initially demanding the entire cost of construction be funded with taxpayer dollars. They lobby public officials and threaten to move if their demands aren't met, before finally retreating to a position of contributing a portion of construction costs

from their own resources.

If they can't get what they want, sometimes owners actually move, as was the case with the St. Louis Rams when owner Stan Kroenke moved the franchise to Los Angeles.

Stadium games are currently going on in Florida with the Tampa Bay Rays threatening to move across the bay from St. Petersburg to Tampa for half a season and Montreal for the other half; Oakland where the Athletics have had ups and downs in their discussions with government officials on the city, county and state levels, using Las Vegas as their trojan horse; and Buffalo, where the NFL Bills are intent on getting a new stadium, with Austin, Texas looming as an alternative. All of these discussions have taken the course outlined above. How will they turn out?

As stated in this space before, predictions are a fool's game, although much less so in the stadium game than trying to predict the outcome of games on the field. In the case of the Rays, staying in St. Pete is the longest of long shots. When their lease on the Trop expires in 2027, they're bound for greener pastures, be it full time in a domed stadium in Tampa or Montreal, or a split season in

open-air stadiums in both locales.

Oakland is a toss-up between remaining in the Bay area or moving to Las Vegas. Sin City has garnered teams in two of the big four professional leagues in recent years, the NFL and NHL. Is there additional appetite and funding sources for a third? Maybe.

The Bills are the least likely of the three to move. The fan base is solid and the stadium proposal is still in its infancy with plenty of time and motivation on both sides to work out the details. But there are no guarantees, here or anywhere.

The only certainty is once these situations are resolved, others will arise, ensuring that the stadium games will go on and on. ●

Jordan Kobritz is a non-practicing attorney and CPA, former Minor League Baseball team owner and current investor in MiLB teams. He is a professor in the Sport Management Department at SUNY Cortland and maintains the blog, sportsbeyondthelines.com. The opinions contained in this column are the author's. Kobritz can be reached by email at jordan.kobritz@cortland.edu.

Legislation Introduced to Ensure Stadium Talks Are Open

Senator Patrick M. Gallivan (R-C-I, Elma) and Assemblyman Pat Burke (D, Buffalo) have re-introduced legislation (S.1714/A.8261) that would require those involved in negotiating a new lease and possible new stadium for the Buffalo Bills to follow New York's open meetings law and make their deliberations public.

Senator Gallivan first proposed the bill in 2014 when the last round of lease negotiations began between the team, Erie County and New York State. It passed the Senate unanimously in 2014, 2015 and 2016 but failed in the State Assembly.

The Buffalo Bills are now seeking a new stadium to be built near the football team's current facility, Highmark Stadium, in Orchard Park. The team's current lease is

scheduled to expire in 2023. Considering the vast amount of public dollars at stake, it is only right that public meetings be held to ensure the process is open and transparent, according to Senator Gallivan's office.

"The Buffalo Bills have an important cultural impact on Western New York, but as we consider how best to meet the long-term needs of the team, we must ensure that members of the community are involved in the process," Senator Gallivan said. "A project of this magnitude should not be negotiated in secret, especially when state and county taxpayers will be asked to help pay for it."

"Western New Yorkers should not be shut out of the process to determine the future of the Buffalo Bills," added Burke. "We've

already invested significantly to keep the Bills at home, including \$95 million in state and county funds for improvements to the team's Orchard Park stadium, and shown we're willing to be a partner in continuing this storied tradition in Western New York. With the vast amount of public funding involved and the team's crucial economic and cultural impact on our region, discussions on constructing a new stadium or additional renovations at the current stadium should be open and transparent to taxpayers."

The legislation would amend the public officers law and require any working group, subcommittee, advisory committee or subsidiary of the Erie County Stadium Corporation to make their deliberations open to the public. ●

Idaho State University Starts Alcohol Service at Holt Arena

Idaho State University announced last month that it would start selling alcohol at home football games.

As part of the new policy, beverages will be available at three separate vendor locations inside the facility. Patrons will be able to buy up to two beverages per transaction.

In conjunction with the new alcohol policy, the university also announced a fan code of conduct, which provides that a fan can be expelled from a game if they are intoxicated or impaired to the point of “irresponsible behavior.”

Florida Gulf Coast University to Allow Alcohol Sales at Athletic Events

Florida Gulf Coast University has announced that fans will soon have the option of purchasing beer and wine at home athletic events.

“FGCU fans aged 21-and-over will be able to purchase imported and domestic beers along with white and red wines,” according to a press release. “These items will be available at Alico Arena, Swanson Stadium, the FGCU Soccer Complex, and the Softball Complex. Additionally, select service may be added on individual event basis at the FGCU Tennis Complex.”

FGCU athletic director Ken Kavanagh elaborated:

“For over a decade, we have witnessed alcohol sales successfully managed at a number of our fellow Florida SUS institutions. Hence, we feel comfortable with this decision and believe that it will provide an opportunity to enhance the overall game day experience for many of our fans. In turn, it will be done with procedures designed to maintain a safe and enjoyable environment for all of our spectators.” ●

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guests to seats.

It is obvious that this crisis is not limited to the sports and entertainment industries. Shelves in supermarkets sit empty because there aren’t enough workers to stock items or to deliver the products. Some people have trouble getting their medications because the local pharmacy has closed for good for lack of workers.

Just as consumers expect the supermarket or pharmacy to be there and to have what they need, fans also count on top-notch experiences. The hope is that more people will return to the workforce after vaccine booster shots become more common and that others will feel better about taking jobs once they see crowded games not turning into super-spreader events.

But until then, fans will have to lower their expectations every time they set foot in a stadium or arena. ●

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As Fans Return to Sports Facilities So Do Security Issues – an Interview with Jim Riordan

Dr. Jim Riordan, the founder in 2000 of the MBA Sport Management program at Florida Atlantic University, was recently the subject of an exclusive interview with Sports Facilities and the Law, which follows.

Question: *Has the pandemic made sports facilities more secure or less secure, and why?*

Answer: Individuals who have been charged with the management and operation of professional, amateur and intercollegiate sports and entertainment organizations, as well as those who own and operate the public assembly facilities where events take place, have increased their concern for the proper maintenance and operation of said facilities since the outbreak of COVID-19.

Operating processes that have received increased attention include: access, egress and within-facility movement of guests and employees; deploying of social distancing strategies through the use of ticketing (seat allocation and assignments); attaining cleanliness and sanitizing certification from international accrediting agencies; and the increase in cleaning and sanitizing operations within a facility and/or organization administrative building (achieved through the frequency of applications as well as increase in quality and strength of the products/compounds used in the cleaning and sanitizing process). When it comes time to implement the processes and operations, an increase in staff will be required to properly implement these procedures to ensure the intended result of each operation comes to fruition. Properly trained parking lot attendants, gate/door attendants, building/event security personnel and ushering staff in seating areas always will provide the potential for a safe and pleasant experience for the guest. However, now amid the COVID crisis, there will be *additional*



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Operating processes that have received increased attention include: access, egress and within-facility movement of guests and employees; deploying of social distancing strategies through the use of ticketing; and the increase in cleaning and sanitizing operations within a facility.

— Jim Riordan

essential event staff to administer keener, finite and pandemic-specific policies and procedures.

Q: *Are there any dangers associated with security with the advent of E-tickets, and if so, what might they be?*

A: Though numbers are quickly dwindling, there remain individuals today who have no desire or enthusiasm to participate in the era of modern technology. They refuse to own or operate a personal computer, cell phone and, in some cases, still make use of a rotary dial telephone. This faction of people makes life somewhat difficult for those sport, entertainment and convention center event managers and their ticketing operations staff. Over the past few years, an increasing number of “sportainment” (sport and entertainment) event managers have been switching to an all-electronic method of ticket distribution and entering the facility (E-ticketing). Event tickets (and in many cases pre-paid parking passes) are sent directly to one’s smartphone for

scanning at the venue entrance and/or the venue parking lot entrance.

The main problem with E-ticketing (besides having a still-present fragment of society that refuses to partake in the knowledge needed to use it) is the same predatory issue that invades all modes of computer technology — phishing, hacking, scamming and theft of data. Devices used in E-ticketing are no different from a laptop or desktop. They all are computers and are subject to unlawful invasion and identity theft. Of course, users of smartphones, cell phones, tablets (all devices used in E-ticketing) are encouraged to keep their devices protected by installing and running anti-malware, anti-theft and identity protection software to help alleviate E-Ticket theft (among other items).

Q: *What is the most underestimated security risk by facility managers?*

A: A common concern regarding security and crowd management at sportainment events is having non-security or

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As Fans Return to Sports Facilities So Do Security Issues

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non-crowd-management experts or professionals interfere with the planning and designing of security/event operations.

Specifically, this usually comes in the form of the event's or venue's finance team and/or those individuals who were charged with marketing and or booking the event. It is the charge of the finance/accounting team, as well as those working with the event promoter, to put on a high-quality, professional event while at the same time doing so as cheaply as possible. In many (but not all) scenarios, the finance and booking people will look first to cut security, ushering and other event-related staff in order to cut back on the final bill presented to the event promoter. Doing so denies paying guests a well-rounded guest relations experience while they are in attendance.

There also is a very dangerous and irresponsible method of determining

event staffing cuts: setting the amount of staffing needed predicated *solely* on the number of tickets sold. Some finance, booking and marketing executives feel the same minimal staffing levels should be deployed for an anticipated crowd of 5,000 guests, be it for Disney on Ice or the band Metallica. Absolutely not. Event-staffing levels should be determined based on the type of performers/participants, demographics of the expected audience, history of the event and similar type of events. The director of security for the venue should have the final and binding say over all staffing levels.

Q: *Are drones still a security risk, and in what ways?*

A: In December 1979, during halftime of the New York Jets-New England Patriots game at Shea Stadium, the Electronic Eagles of the Radio Control Association of Greater New York was performing

an exhibition of remote-controlled airplanes. One airplane was in the shape of a lawn mower and went out of control, flying into the stands, hitting two men. One of the men died of his injuries a few days later.

While the technology, design and operation of man-controlled machines (now called drones) has improved tremendously, it should be remembered that the drones and the software controlling the devices are designed by humans. Most importantly, the drones are driven and directed in the communities (some quite dense in population) by humans. When you have human beings operating a machine, there always is a chance for error. The safest way to obtain overhead and side angle shots of the field or court of play is to have the camera attached to a cabling system above the court or field. ●

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NEWS DIGEST

George Mason Names Andrew Lieber Sr. Associate AD, Capital Planning, Facilities and Events

George Mason University Athletics has announced that Andrew Lieber has been named the department’s Senior Associate Athletics Director, Capital Planning, Facilities and Events.

Lieber brings with him a wealth of planning, operations, and sponsorship experience in the sports and entertainment industry with stops in the MLB, NFL, NBC, WNBA, and Independent Minor League Baseball. For the past five years, Lieber served as an associate at Brailsford & Dunlavy (B&D), providing strategic advisory services to collegiate athletics, professional sports teams, and municipal clients.

The Chicago native took a leadership role in more than 50 strategic advisement initiatives at B&D in program and facility improvements. During his time at B&D, he cultivated a passion for facilities into deliberate processes that connect institutional objectives with the physical environment to optimize strategic and financial returns.

As a B&D program advisor, Lieber was involved in the planning of projects totaling approximately \$1B. Some of his projects included ambitious plans for new and renovated facili-

ties at institutions such as Arizona State University, University of Pittsburgh, American University, and Catholic University, to name a few. Other experiences at B&D included long-term capital improvement plans with T-Mobile Park, Bush Stadium, Wrigley Field, and Nationals Ballpark.

Lieber also comes to Mason with a solid background in facilities management. Before B&D, Lieber was Manager of Ballpark Operations for the Washington Nationals. He was an integral part of a team that managed more than 300 events, including baseball, concerts, corporate events, and celebration events, during his stint from 2015 to 2016.

As Stadium Services Supervisor for three years (2012-2015) with the Kansas City Chiefs, Lieber managed a team with an annual budget of more than \$1M in personnel costs. He also spearheaded the sustainability initiatives as the project and operational manager.

Lieber began his professional career in Independent Minor League Baseball as an Intern followed by Manager, Stadium Operations at the Schaumburg Flyers in 2010 before moving to the Lake County Fielders for one season as the Director of Stadium and Baseball Operations under the same Ownership.

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NEWS DIGEST

UMaine Athletics Announces COVID-19 Vaccination Policy for Attendees of Basketball, Hockey Games

UMaine Athletics will require all guests attending home hockey and basketball events to provide full proof of a COVID-19 vaccination or proof of a negative COVID-19 PCR or antigen test, which must be administered within the previous 72 hours. Patrons must have a mask in place covering their nose and mouth prior to entry to the venues. The updated policy went into effect on Friday, Oct. 15.

Face coverings remain required indoors for all persons—students, staff, faculty, and visitors, on campus at all UMaine Athletics sporting events, regardless of vaccination status. All guests over the age of two will be required to wear a face covering, except while eating or drinking.

The University of Maine reserves the right to request additional screening of patrons prior to entering the building. The additional screening would consist of a symptom check and temperature scan.

If guests are unable to provide valid proof of vaccination, a valid negative test, or fail the enhanced screening, guests will be turned away from the event.

Virginia Tech AD Chastises Students for ‘Selfish and Embarrassing Student Behavior’

In mid-October, Virginia Tech Director of Athletics Whit Babcock and other school officials felt compelled to send the following letter to students:

Dear Virginia Tech students,

Fall means football in Blacksburg. Nothing matches the excitement of being in Lane Stadium to jump and cheer together in support of our Hokies. This unique, thrilling experience doesn't happen on its own. We depend on our incredible stadium staff and public safety personnel to move tens of thousands of people safely and efficiently in and out of Lane Stadium and take great care of us while we're there so we can enjoy the game. This only works when we demonstrate patience, mutual respect for those around us, and full cooperation with guidance and protocols.

It troubles us to write this message because of the high regard we hold for our students and the joy, curiosity, and excellence with which you embrace your education every day. Over the last several

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NEWS DIGEST

weeks, we have heard too many stories of selfish, inappropriate, and embarrassing student behavior at home football games. What we have heard falls short of Virginia Tech standards – and most importantly, creates an unsafe environment for all who attend.

This week, we are asking that every student attending this Saturday's home game (and all future games) take personal responsibility for a safe and positive fan experience that reflects the best of our community.

So, let's get it right this Saturday against Pitt and for the rest of the season. Starting this week, together we will be taking the following actions:

- Student attendance will be restricted to season ticket holders and a more limited number of student lottery winners.
- Students are expected to follow all new guidance for gate entry.
- Students will be expected to move to seats above the portals immediately to allow for all fans to take their seats safely and quickly.
- Virginia Tech Police Department will deploy law enforcement officers and security personnel in Lane Stadium to support a positive and safe fan experience.
- Students entering the game illegally or who violate line protocols will be referred to Student Conduct. Students who violate our Student Code of Conduct risk significant consequences.
- In addition, violators will be subject to ban from Virginia Tech athletic facilities by the police department.
- Virginia Tech is such a strong, vibrant community guided by our Principles of Community, which are always on display at our home football games in the fall. This year especially, we have so much to be proud of with being back on campus and in the full swing of the semester. But this is one area where we haven't brought our best. Let's change that starting Saturday and remind our community that we know and honor what it means to be a Hokie.

Tennessee Penalized After Fans Threw Objects onto the Playing Field

The Southeastern Conference announced last week that the University of Tennessee will be assessed a financial penalty and must meet requirements set forth by the Commissioner following interruption of its October 16 football game with the University of Mississippi due to fans throwing debris on to the field.

"The final minute of the Ole Miss-Tennessee football game was interrupted and delayed when some fans threw objects onto the playing field, interrupting the competitive opportunity for both teams, endangering contest participants and prompting relocation

of the University of Tennessee marching band and members of cheerleading squad.

"The disruption of Saturday night's game is unacceptable and cannot be repeated on any SEC campus," said SEC Commissioner Greg Sankey. "Today's actions are consistent with the oversight assigned by the membership to the SEC office, including the financial penalty and review of alcohol availability. We will use this opportunity to reemphasize to each SEC member the importance of providing a safe environment even with the intensity of competition that occurs every week. We will also reengage our membership in further review of the alcohol availability policy to consider additional measures for the sale and management of alcohol while providing the appropriate environment for collegiate competition."

Under the sportsmanship, game management and alcohol availability policies established by the Southeastern Conference, the University of Tennessee will:

- Be assessed a financial penalty of \$250,000, which will be deducted from the University's share of SEC revenue distribution.
- Be required to use all available resources, including security, stadium and television video, to identify individuals who threw objects on to the playing field or at the opposing team. All individuals identified as having been involved in disrupting the game shall be prohibited from attending Tennessee Athletics events for the remainder of the 2021-22 academic and athletic year.
- Review and update its Athletics Department game management procedures and alcohol availability policies to prevent a recurrence of Saturday night's disruption, which shall include an evaluation of agreed upon SEC Sportsmanship, Game Management and Alcohol policies to verify full compliance with existing standards.
- Following completion of this review and prior to the University of Tennessee's next home football game, the University shall provide a report to the Conference Office to summarize its efforts to identify and penalize offenders and its plan to enact policies to prevent future similar incidents while ensuring compliance with Conference standards.

The actions taken by the Conference are consistent with SEC Commissioner's Regulations related to the availability of alcoholic beverages at athletics events which states, "If cans or plastic bottles are used as projectiles or otherwise cause game management issues, the institution is subject to an immediate fine and suspension of the alcohol sales privilege."

The Conference did not suspend alcohol sales privileges for the University of Tennessee, "but reserved the right to do so if other requirements outlined above are not met."

Arizona Case Pits Environmentalists Against S.F. Giants' Training Facility

Continued From Page 1

training in 2019. The complex had been used by the Oakland Athletics until they moved to Mesa in 2014.

The plaintiffs base their case on a land deed issued in 1959 to Phoenix stating that the park should be used for “park, recreation, public convenience purposes, including the construction of a baseball stadium.”

The Litigation

The lawsuit was filed on behalf of the Friends of Papago Park (FOPP), a non-profit association of park users organized to protect the native habitat of the park. The complaint sets forth the following causes of action:

- Violation of the Land and Water Conservation Fund of 1965 (LWCFA);
- Violation of the Federal Property and Administrative Services Act

(FPASA);

- The Property Clause of the U.S. Constitution; and,
- The Contracts Clause of the U.S. Constitution.

Do the Plaintiffs Have Standing?

The court first addressed the issue of whether the plaintiffs had the right to bring the lawsuit. The court noted that the Constitution “grants the federal courts the power to hear only ‘Cases’ and ‘Controversies...Standing includes two components: Article III constitutional standing and prudential standing.’”

The court stated that prudential standing involves the question of whether the statute in issue grants a particular plaintiff the right to sue.

The Property Clause Claim

The Property Clause set forth in Article IV of the U.S. Constitution gives Congress the authority to govern federal lands. The defendants argued that the third-party standing doctrine bars the plaintiffs from bringing this claim.

The court rejected the argument and explained that the third-party standing doctrine does not bar the plaintiffs from bringing their claim. The court stated: “The third-party standing doctrine bars litigants from raising another person’s legal rights... In *Bond v. United States*, the Supreme Court explained that ‘[a]n individual has a direct interest in objecting to laws that upset the constitutional balance between the National Government and the States when enforcement of those laws causes injury that is concrete, particular, and redressable.’”

See Arizona on Page 13

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Arizona Case Pits Environmentalists Against S.F. Giants' Training Facility

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The court held that the plaintiffs (users of Papago Park) have a direct interest in the defendants' alleged use of excessive authority in permitting development of the training complex at the park. Thus, the Property Clause claim will continue.

The LWCFA and FPASA Claims and the Contracts Clause

The LWCFA is a 1965 law designed to promote citizen access to recreational facilities. The FPASA is a 1949 law relating to the use, management and transfer of federal lands. The court dismissed these claims because neither statute permits a private cause of action.

The Contracts Clause set forth in Article I of the Constitution restricts the power of the states to disrupt contractual arrangements. Since the plaintiffs did not allege that they have vested contractual

rights, the court dismissed the Contracts Clause claim.

The defendants also raised a statute of limitations defense. The basis for the argument was that the lease and sublease were entered into in 2018 and the lawsuit was commenced in 2021 after Arizona's two-year limitation period had expired. But the court ruled that the cause of action may not have accrued until September 2019, when a construction fence blocked one of the plaintiffs from entering a walking trail in the park.

The Takeaway

A basic description of this controversy is that the plaintiffs assert that the federal government granted this land to the municipalities in 1959 for a public purpose (recreation) and that the defendants have no legal right to put it to private use. They also contend that the deed restricts development to a stadium and a training



Gary Chester is a senior writer for Hackney Publications.

complex is substantially different from a stadium.

"When does it end?" Norgaard-Larsen told the *Republic*. "You can't just keep chipping away at public lands." ●

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