



Contextualizing Fan Action Committees:  
A Comment on *Catalyzing Fans*

David Fagundes\*

INTRODUCTION:  
THE SPORTS FAN AND THE LAW PROFESSOR

I have loved sports since I developed a consuming obsession with the Los Angeles Dodgers as a kid back in the 80s. My Comment on Markel, McCann, and Wasserman's *Catalyzing Fans*<sup>1</sup> thus comes from the perspective of a fan interested in how Fan Action Committees (FACs) might impact the fortunes of the teams I support, as well as from the perspective of a law professor interested in examining the authors' argument critically.

Inspired by this dual perspective, I will make two related points. First, I will say a bit more about the history of direct fan participation in sports, partly to provide context for the authors' discussion of FACs but also to raise some baseline concerns that complicate the authors' assumptions about how FACs would operate in the contemporary sports environment. Second, I want to say more about wealth effects and FACs. The authors address this issue, particularly in terms of franchise parity, but I think there's more to say about it, especially in terms of the possibility that FACs would accelerate the concerning trend of making professional sports an activity that is controlled by—and that caters to—the uber-wealthy. Finally, I will conclude with a brief reflection about my friend, Dan Markel, who was taken from us too soon.

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\* Professor of Law, Southwestern Law School. Thanks to Jessica Roberts for insightful comments on an earlier draft of this essay, and to the late Dan Markel for being a great friend and colleague.

<sup>1</sup> Dan Markel et al., *Catalyzing Fans*, 6 HARV. J. SPORTS & ENT. L. 1 (2015).

## I. FAN INFLUENCE IN SPORTS: SOME HISTORY AND CONTEXT

The authors of *Catalyzing Fans* decry the plight of the disenfranchised sports fan, for whom “disappointment is endemic” and who experiences “utter powerlessness” with respect to control over her team’s fate.<sup>2</sup> There is some truth to this pessimistic lament. Serious fans live and die with their teams’ successes and failures, but they don’t get to make decisions about who plays, or what strategies to use, or even how uniforms are designed. But the authors’ premise that supporters have no sway, financial or otherwise, over their teams overlooks a number of ways that fans actually do have some degree of influence.

First, fans can cast or withhold votes of confidence with their wallets. Most obviously, fans can choose to buy tickets for games or absurdly overpriced merchandise. The equation is pretty simple: More popular and successful teams sell more tickets and merchandise, and this requires teams to be responsive to fan interests, at least if they care about their financial bottom line.<sup>3</sup> The surprising success of the long-suffering Kansas City Royals during the 2014 Major League Baseball (MLB) season was accompanied by a not-so-surprising attendance boost, with the team drawing more fans than it had drawn in any season since before the 1994 MLB players’ strike.<sup>4</sup> Wins are not the only factor driving fan willingness to attend games. The presence or absence of popular players can also lead to butts in seats. The Cleveland Cavaliers’ re-acquisition of LeBron James was not cheap for the team, but has been rewarded with increased attendance—while Miami fans have punished their franchise by staying away from games.<sup>5</sup> Success also drives purchases of exorbitantly priced team-branded loot, as the sudden burst in

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<sup>2</sup> *Id.* at 3-4.

<sup>3</sup> Not all owners do care about their bottom line, of course. Before he was outed as a boor on racial issues, Donald Sterling was derided among L.A. sports fans for his frugality with the Clippers, letting them languish with a weak (and cheap) roster while making money thanks to the National Basketball Association (NBA)’s revenue-sharing rules.

<sup>4</sup> Blair Kerkhoff, *Royals attendance is up, even as Ned Yost’s comments touch a nerve with fans*, THE KANSAS CITY STAR (August 28, 2014, 11:57 AM), <http://www.kansascity.com/sports/mlb/kansas-city-royals/article1312830.html>, archived at <http://perma.cc/588U-H3KK> (providing a graph showing that Royals attendance fluctuates in concert with the team’s win/loss ratio).

<sup>5</sup> Andrew Flowers, *Trying to Measure the ‘LeBron Effect’ on Game Attendance*, FIVETHIRTYEIGHT (June 25, 2014, 2:47 PM), <http://fivethirtyeight.com/datalab/how-the-lebron-effect-affects-attendance/>, archived at <http://perma.cc/P6E3-WXXA>.

demand for Royals gear during the team's recent World Series run illustrates.<sup>6</sup>

Buying and abstaining from buying tickets or merchandise are not the only ways fans can affect their teams' financial bottom lines. While no fans have developed FACs quite yet, supporters have come up with a number of creative ways to express their collective opinions about their teams and to pressure decision-makers for outcomes they want. The most familiar example is the good old boycott, which fans frequently use to register their displeasure with a team's performance, management, or even social issues related to their team. In March 2014, for example, hardcore supporters of Italian soccer team Lazio organized a boycott of the team's home game against Atalanta that left the Stadio Olimpico empty, powerfully expressing their distaste for owner Claudio Lotito's questionable personnel decisions.<sup>7</sup> During the first round of the 2014 NBA playoffs, thousands of Clippers fans stayed home as a protest against Donald Sterling's tasteless racial remarks.<sup>8</sup> Just this past season, St. Louis's Time Out Bar & Grill announced that they were withdrawing support for the local National Football League Rams after some of its players staged a "Hands up, don't shoot" protest in support of victims of Ferguson police abuses.<sup>9</sup> And in a more positive vein, fans may provide financial support to charities favored by players they want to recruit

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<sup>6</sup> Haley Harrison, *Royals fans rush to buy playoff merchandise*, KMBC (October 1, 2014, 10:05 PM), <http://www.kmbc.com/news/royals-fans-rush-to-buy-playoff-merchandise/28363624>, archived at <http://perma.cc/Z2YW-RK4R>.

<sup>7</sup> Brian Homewood, *Stadio Olimpico lies almost empty as Lazio fans hold boycott in protest to club's owner*, THE DAILY MAIL (March 9, 2014), <http://www.dailymail.co.uk/sport/football/article-2576937/Stadio-Olimpico-lies-Lazio-fans-hold-boycott-protest-clubs-owner.html>, archived at <http://perma.cc/S2C2-RLUR>.

<sup>8</sup> David Leon Moore, *Ex-NBA star Mychal Thompson says black fans will boycott Clippers*, USA TODAY (April 27th, 2014, 3:13 PM), <http://www.usatoday.com/story/sports/nba/clippers/2014/04/27/los-angeles-clippers-donald-sterling-mychal-thompson/8295737/>, archived at <http://perma.cc/QV7E-6FET>. In a similar vein, the fan community "Vikings Message Board" shut down in protest when the Minnesota Vikings' reinstated Adrian Peterson despite allegations that he had engaged in child abuse. Ryan Grenoble, *Vikings Fan Shuts Down Popular Message Board Following Adrian Peterson Revelations*, THE HUFFINGTON POST (September 17, 2014, 11:59 AM), [http://www.huffingtonpost.com/2014/09/16/vikings-fans-shut-message-board-adrian-peterson\\_n\\_5831588.html](http://www.huffingtonpost.com/2014/09/16/vikings-fans-shut-message-board-adrian-peterson_n_5831588.html), archived at <http://perma.cc/UJ8-G4UF>.

<sup>9</sup> And, in turn, local residents offended by Time Out's boycott of the Rams organized a protest and boycott of the bar in retaliation. Lonnie K. Martens, *St. Louis Bar boycotts 'bone-headed' Rams; becomes target of angry protests*, BIZPAC REVIEW (December 3rd, 2014), <http://www.bizpacreview.com/2014/12/03/st-louis-bar-boycotts-bone-headed-rams-becomes-target-of-angry-protesters-162853>, archived at <http://perma.cc/6M6Y-FMEV>.

or to continue playing for their team. The authors, for example, point out that when the Miami Heat were trying to retain LeBron James in early 2014, area radio personalities organized a drive to get Heat fans to donate to James' preferred charity, the Boys and Girls Club of Broward County.<sup>10</sup>

Sports teams' supporters also use a variety of other collective devices to make their voices heard. The Green Bay Packers, for example, are the only publicly owned major sports team in America. The small-market Packers have flourished thanks in part to the revenue raised by five public offerings of stock in the team. While these shares are not tradable, they do entitle holders to attend the Packers' yearly shareholder meeting held at Lambeau Field, where owners can grill the Board of Directors about anything from financial strategies to why the team isn't running the ball more.<sup>11</sup> And some particularly organized—and motivated—fan clubs have agitated for changes in management, occasionally achieving some leverage in doing so. The “Save the Islanders Coalition” was instrumental in facilitating the near-acquisition of the New York Islanders hockey team by Dallas businessman—and total fraud—John Spano, who covered his chicanery in part by inviting leaders of the high-profile fan club to work in the Isles' front office.<sup>12</sup>

I offer these examples to provide context for the FACs proposal. While *Catalyzing Fans'* authors argue that fans experience “total powerlessness” over team decisions, this is not and has never quite been true. Indeed, the average fan does not wield anything like the control that owners or managers do, of course. But the notion of collective fan influence is not a proposal unique to *Catalyzing Fans*. The preceding examples are just some of many ways that supporters have organized themselves to make their voices heard by team management.<sup>13</sup>

That FACs are not *sui generis* does not mean that they are not a good idea. But the context I have provided has at least two implications for *Catalyzing Fans*. The first is that it answers a question posed by the authors: If

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<sup>10</sup> Markel et al., *supra* note 1, at 10.

<sup>11</sup> *Shareholders*, GREEN BAY PACKERS, <http://www.packers.com/community/shareholders.html> (last visited Feb. 28, 2015), archived at <http://perma.cc/D63D-RXWN>.

<sup>12</sup> *30 for 30: Big Shot* (ESPN television broadcast Oct. 22, 2013).

<sup>13</sup> Fans have even directly influenced the outcome of games on occasion. Boston's rowdy Royal Rooters, supporters of the Red Sox in the very early 1900s, taunted the opposing Pittsburgh Pirates mercilessly throughout the first World Series in 1903. Some Pittsburgh players later conceded that the Royal Rooters had hurt their performance and tipped the balance of the series in favor of Boston, who won by five games to three. LAWRENCE RITTER, *THE GLORY OF THEIR TIMES: THE STORY OF THE EARLY DAYS OF BASEBALL TOLD BY THE MEN WHO PLAYED IT* 27 (2010).

FACs are an attractive idea, why haven't they emerged already?<sup>14</sup> An answer that the authors don't consider is that there are extant means by which fans seek to influence the fates of their favorite teams. Second, and related, the existence of these various avenues for collective clout shows that the normative appeal of FACs is comparative, not absolute. That is, the right way to frame the question is not whether FACs are a good idea, as the authors have it, but rather "are FACs a superior means of organizing fans compared to present means of collective influence?" Acknowledging that FACs would be one of many ways, rather than the only way, for fans to leverage their influence on teams raises important concerns about tradeoffs. If the best way for fans to use their limited resources to shape the fates of the teams they support is to buy (or abstain from buying) tickets to games, for example, then creating FACs might siphon off crucial resources better spent elsewhere.

## II. FOR LOVE OR MONEY? WEALTH EFFECTS AND FACs

The authors of *Catalyzing Fans* are well aware of the potentially problematic wealth effects that FACs may have on sports leagues, though they focus on one particular concern: competitive parity within leagues.<sup>15</sup> As the authors argue, it seems entirely plausible that creating one more way for money to influence sports would favor already rich large-market teams at the expense of undercapitalized small-market ones. In this Part, I seek to explore a broader range of wealth effects and other disconnects between the idea of crowd-funding and aggregate fan happiness.

The appeal of the FAC derives from a simple equation: Money is a good measure of how much you love your team, so more devoted fans will be willing to contribute more to FACs, and influence will more or less track one's passion for one's team. This reasoning ignores the familiar fact that wealth is relative, not absolute. For a very rich fan, a FAC donation of \$10,000 may represent a tiny amount relative to his or her total wealth that he or she will never know is gone. For a poorer fan, giving \$25 to a FAC may make the difference between attending a game or staying home (or even between eating dinner and going hungry). The relativity of wealth means that absolute dollar value is a terrible measure of real fan passion. A deeply devoted, less wealthy fan who scrapes together \$50 to give to a FAC will have his or her influence swamped by a tycoon who tosses in \$5,000, even though the former may represent a much greater relative sacrifice and thus represent much greater devotion to a team.

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<sup>14</sup> Markel et al., *supra* note 1, at 37-39.

<sup>15</sup> *Id. passim*.

These wealth effects mean that FACs may not be a good measure for fan happiness, because they privilege the influence of the wealthy few over the many poor, falsely equating fans' passion with their financial liquidity. And this is all the more concerning as professional teams, concerned for their bottom line, increasingly tailor the fan experience more toward the wealthy fans who can shell out more for tickets, merchandise, and food, and less toward the working class people who comprise the broad base of their fan support. English soccer fans, for example, have lamented the orientation of teams toward the "prawn sandwich" brigade of relatively indifferent people who show up at games to enjoy a VIP corporate experience rather than passionately supporting the team.<sup>16</sup> American venues have gone in the same direction, introducing skyboxes and high-end amenities that increase profits but exclude average fans from the game-day experience.<sup>17</sup> FACs thus threaten to further exacerbate the rich/poor gap in sports by providing yet another means by which wealthier individuals enjoy advantages, even over more passionate but less wealthy middle- and lower-class fans.<sup>18</sup>

A related concern is that highly wealthy fans who are also intensely passionate about their teams may use FACs to wield outsized influence.<sup>19</sup> This is not necessarily a problem. A devoted and wealthy supporter could provide a much-needed capital boost needed to acquire key personnel or help fund a new facility. But even a well-meaning plutocrat could use FACs to make attempts at improvements to a team that end up doing more harm than good. Most fans probably think they know better than management how best to help the team. FACs would allow them to put their money where their mouth is, which is a concerning thought if one believes in the expertise of sports management professionals.<sup>20</sup> A related concern is that the

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<sup>16</sup> Andy Hunter, *United price hike targets prawn sandwich brigade*, THE INDEPENDENT (April 11, 2006), <http://www.independent.co.uk/sport/football/premier-league/united-price-hike-targets-prawn-sandwich-brigade-473667.html>, archived at <http://perma.cc/F74Z-38UK>.

<sup>17</sup> Eddie Brown, *Man caves are problem for NFL*, U-T SAN DIEGO (September 12, 2014, 5:31 PM), <http://www.utsandiego.com/news/2014/sep/12/man-caves-nfl-football/>, archived at <http://perma.cc/KV5Y-XF9T>.

<sup>18</sup> One poll found that the overwhelming majority of fans who attended the 2014 World Cup in Brazil were wealthy and white, even though Brazil is a highly diverse country both racially and socioeconomically. The Associated Press, *Most Attendees are White and Rich, Poll Suggests*, N.Y. TIMES, June 30, 2014, at D8, archived at <http://perma.cc/FLC2-CLKW>.

<sup>19</sup> The authors hint at this possibility, noting that FACs could consist of a large number of fans, or just a few. Markel et al., *supra* note 1, at 8.

<sup>20</sup> I'm honestly agnostic about whether sports management professionals would systematically do a better job of decisionmaking than fan collectives. One upside of

uber-rich could deploy FACs as a weapon of destruction aimed at a hated rival. Fans of the rival team could, of course, rally in its support to create a counterbalancing FAC, but this kind of arms race would then end up becoming a deadweight loss.<sup>21</sup> And in all of these cases, FACs would not be representing a broad cross-section of fan opinion, but the personal preferences of a few affluent supporters (or antagonists)—a concern all the more real as distribution of wealth in America becomes increasingly skewed.

But even if FACs did fairly reflect fan preferences, would that lead to good outcomes for supporters? Not all supporters want the same thing, of course. One fan could care only about maximizing wins, while another may care only about seeing exciting performances, while still another could want to see his or her favorite athlete get a lot of playing time. This variety of preferences may be an argument in favor of FACs: Different fans with different definitions of team success could use them to express their different preferences. But the result may well just be a cacophony. With tens of FACs each pushing in different directions, the marginal effect they each have would end up simply canceling each other out, again resulting in massive deadweight losses.

Next, consider the social costs of further monetizing fans' experience of sports. Everyone knows that professional sports are, well, professional. For all the high-minded talk about the glory of athletics and the way winning teams create civic pride, pro sports teams exist to generate revenue. But there are tiny corners of fandom that don't yet seem fully dominated by the almighty dollar, and one of them is the act of simply being a fan—rooting for your favorite players, cursing the ones you think aren't worth a damn, feeling the joy of victory and the agony of defeat. FACs could provide a way to deepen one's connection with a team. But it is also possible that giving people a financial incentive could soak every last aspect of the fan experience with the taint of cash. Don't like a player? Well don't just curse his name, pony up to the FAC devoted to getting rid of him. Worried that your top quarterback will be traded? Hey, if you don't shell out to the FAC that is raising money to keep him around, then you probably don't care about it all that much. As much behavioral research has shown, money changes everything: If you introduce a little money into the fan experience, you risk

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FACs is that (at least when they have a large number of contributors) they may harness collective wisdom that can check the tendency of single individuals to make shortsighted or biased decisions. See generally JAMES SUROWIECKI, *THE WISDOM OF CROWDS* (2004).

<sup>21</sup> This phenomenon is the inverse of what some economists have identified as the inefficiency of gift-giving. H. Kristl Davison, et al., *Confounding Issues in the Deadweight Loss of Gift-Giving*, 8 J. FOR ECON. EDUCATORS 1 (2008).

crowding out any of the idealistic, purely fun aspects of the professional sports fan experience that still remain.<sup>22</sup>

All of the points in this Part represent distinct critiques that raise difficult-to-answer empirical questions. But as the conversation about FACs continues, it is worth focusing on two questions that lie implicit in *Catalyzing Fans*. First, what kind of expertise do we trust the most? Are fans' collective opinions a valuable source of input about team decisions, or simply the ignorant, shortsighted voices of the uninformed masses? Are general managers subject to the kinds of behavioral biases that warrant correction, or are they experts whose decisions warrant deference? This question matters because giving fans greater influence is only a good idea if that influence will actually achieve the outcomes they want. Second, and related, what do fans want to maximize? The answer, as both the authors and I have noted, may not be uniform. Fans are supposed to want wins and championships above all else, but there are numerous other considerations at play. Some fans may prefer a team that plays a flashy style, while others may want to see defense—all regardless of win/loss records. Supporters may also favor players who are beloved for reasons unrelated to their skills, such as local heroes or purported “good guys,” and these preferences may work at cross-purposes with the desire to rack up wins. These questions don't have easy answers, but that is all the more reason to highlight them since part of whether FACs are a good idea requires some notion of what fans want and who is best situated to make that happen.

#### CONCLUSION: THE DEATH OF TIME

The foregoing parts have cast FACs in a critical light, but I want to be clear about my sense of the project: It's interesting, creative, and could prove to be a promising development for professional sports. But since the authors bill *Catalyzing Fans* as an “idea” paper, my comments have been designed to push on some unexplored aspects of the proposal, both descriptive and normative, in order to help enrich the discussion about it.<sup>23</sup> I hope that both of the points I've made in this brief essay—providing more context for the notion of fan activism and raising concern about the wealth effects of introducing even more commerciality into pro sports—do just that. But before concluding, I want to share a reflection about my friend, Dan Markel.

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<sup>22</sup> See, e.g., DAN ARIELY, PREDICTABLY IRRATIONAL: THE HIDDEN FORCES THAT SHAPE OUR DECISIONS (2008); Ernst Fehr & Simon Gächter, *Do Incentive Contracts Crowd Out Voluntary Cooperation?* (Ctr. for Econ. and Pol'y Research, Discussion Paper No. 3017, 2001).

<sup>23</sup> Markel et al., *supra* note 1, at 5.



When I heard last year that Dan Markel was co-authoring an article on sports, I was pleased but also very surprised. While I am a sports fan, my impression was always that Dan was not one. I base this conclusion on the exactly one conversation I had with Dan about sports. We were at a weekend workshop that he organized in late 2010, and I groused about having to miss seeing my Patriots play the hated Jets. Dan expressed bafflement at this, and a typically Markelian conversation<sup>24</sup> developed, as I tried to convince him of the virtues of being a fan. I don't think I succeeded, since Dan concluded that watching sports seemed to him a waste of time. Actually, he referred to it as "the death of time," invoking a phrase that he recalled rabbis using in Hebrew school to dismiss trivial diversions.<sup>25</sup>

What Dan was a fan of, though, was a well-crafted argument, regardless of subject matter. The fact that one of his last articles concerned a subject not particularly close to his heart provides the best illustration of this point: Dan's interests were truly ecumenical, embodying Susan Sontag's observation that a real writer is "someone who is interested in everything." And while many of his friends and colleagues have rightly noted that among the many tragedies of Dan's early passing is that so many articles will remain unwritten and arguments will remain unmade, I prefer to think of the more optimistic inverse of this point: Dan, in his too-brief time with us, produced a depth, range, and quality of work that would constitute a complete, highly distinguished career for most academics. And the possibility that *Catalyzing Fans* may start a serious conversation about how FACs might enhance fans' experience of sports is just one of the many ways that Dan's work will produce a humane legacy that will continue on even though he has left us.

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<sup>24</sup> By this, I mean a serious intellectual inquiry, even about something as un-serious as watching sports, that is leavened by wit and good humor.

<sup>25</sup> Dan's phrasing really stuck with me. When I find myself tempted to watch some random game instead of working, I think to myself, "Is this the death of time?"

