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Constitutional Law: Cubs Lose on Justice Ward's Error

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CONSTITUTIONAL LAW: CUBS LOSE ON JUSTICE WARD'S ERROR

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Chicago Cubs	0	0	0

Baseball purists have always believed that Abner Doubleday[1] never intended for the game to be played at night. If this is true, then Abner must be smiling in his grave after the Illinois Supreme Court decision in *Chicago National League Ballclub v. Thompson*[2] ("Thompson") not to allow the installation of lights in Wrigley Field. The court based its decision on state and city legislation regulating nighttime noise pollution.

FACTS

This case was unique in that it involved two of Chicago's more famous (or infamous) traditions, baseball and politics. The Chicago National League Ballclub, Inc. ("Cubs") has exclusively played its major league home games in venerable Wrigley Field since 1926. Wrigley Field, built in 1914, with its grass field, ivy-covered, brick outfield walls, small 37,000 seating capacity, manually operated scoreboards, and *no lights* is the oldest ballpark in the National League. It is the only major league park without lights.[3] Along with Ernie Banks[4] and a history of losing teams, the field is a symbol for the Cubs and a source of pride for the city of Chicago.[5]

Due to a change in ownership in 1981,[6] and amid changing economic conditions in baseball,[7] the Cubs began to think seriously about

1. Founded the game of baseball in approximately 1846. THE BASEBALL ENCYCLOPEDIA, THE COMPLETE & OFFICIAL RECORD OF MAJOR LEAGUE BASEBALL 9 (1st ed. 1974) (hereinafter THE BASEBALL ENCYCLOPEDIA).

2. 108 Ill. 2d 357, 483 N.E.2d 1245 (1985).

3. CHICAGO CUBS MEDIA GUIDE 4 (1983).

4. Known as "Mr. Cub." A Hall of Fame infielder who played for Chicago from 1953-1971. THE BASEBALL ENCYCLOPEDIA, *supra* note 1 at 268.

5. As Cook County Circuit Court Judge Richard Curry said in his trial court opinion, "For some generations Wrigley Field itself was the primary attraction and watching the Cubs play ball was merely an added curiosity." Chicago Nat'l League Ball Club, Inc. v. Thompson, No. 84CH 11384, slip op. at 5 (Cir. Ct. of Cook County Mar. 25, 1985).

6. Chewing gum magnate William Wrigley sold the team to the Tribune Co. *Id.* at 6.

7. It has become extremely difficult for baseball franchises to turn a profit. In 1984, the Cubs won the National League East pennant for the first time since 1945. Despite their best

equipping Wrigley Field with lights to allow for night games.[8] The problem with the idea was that Wrigley Field is located on the north side of Chicago, in the residential area of Lake View. Most of the buildings on the surrounding streets are multi-unit dwellings, which gives Lake View a highly concentrated population.[9] Night games, according to some, would disrupt the area and create a nuisance.[10]

In 1982, the Illinois state legislature passed an amendment to Title VI, section 25 of the state Environmental Protection Act, preventing nighttime noise pollution. It read in part:

> Baseball, football, or soccer sporting events played during nighttime hours, by professional athletes, in a city with more than 1,000,000 inhabitants, in a stadium at which such nighttime events were not played prior to July 1, 1982, shall be subject to nighttime noise emission regulations promulgated by the Illinois Pollution Control Board.[11]

In 1983, the city of Chicago passed a similar ordinance. It read in part:

> It shall be unlawful . . . to produce any sporting event . . . if any part of such athletic contest, sport, game or any other amusement as defined in Chapter 104 takes place between the hours of 8:00 p.m. and 8:00 a.m., and is presented in a stadium or playing field which is not totally enclosed and contains more than 15,000 seats where any such seats are located within 500 feet of 100 or more dwelling units.[12]

Both pieces of legislation in effect prevented the Cubs from installing lights in Wrigley Field.

In December 1984, the Cubs filed their complaint in the Circuit Court of Cook County seeking a declaratory judgment that the regulations violated the constitutional provision of separation of powers, the federal and state guarantees of due process and equal protection under the Fourteenth Amendment to the United States Constitution and Arti-

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performance and highest attendance in decades, the Cubs still lost money. *See, Say It Ain't So: The Cubs Could Leave Wrigley Field*, BUS. WK., June 17, 1985, at 61.

8. This was not the first suit involving the installation of lights in Wrigley Field. In 1968, minority shareholder William Shlensky unsuccessfully filed a stockholder's derivative suit against majority owner Phillip K. Wrigley. *See* Shlensky v. Wrigley, 95 Ill. App. 2d 173, 237 N.E.2d 776 (1968).

9. *Thompson,* 108 Ill. 2d at 364, 483 N.E.2d at 1248.

10. The threat of nighttime baseball was the reason the Lake View Citizen's Council intervened as a defendant in this case. *Id.* at 362, 483 N.E.2d at 1247.

11. ILL. REV. STAT. ch. 111 ½, para. 25 (1983).

12. CHICAGO, ILL., MUN. CODE §§ 104.1—14.1 (1983).

cle 1, Section II of the Illinois Constitution, and the Special Legislation Clause of the Illinois Constitution.[13] The Cubs sought to enjoin Illinois Governor James R. Thompson from enforcing the state regulation and the city of Chicago from enforcing the city ordinance.[14] The Lake View Citizens Council, composed of individuals residing or working in the area surrounding Wrigley Field, intervened as a defendant.[15]

In March 1985, the circuit court ruled against the Cubs on all claims.[16] On direct appeal, in October 1985, the Illinois Supreme Court delivered a straightforward opinion, unanimously affirming the circuit court's decision.[17]

THE COURT'S REASONING

Justice Ward, writing for the Illinois Supreme Court, first addressed the issue of separation of powers. The Cubs had argued that the state statute and the city ordinance deprived them of due process by "declaring as law the *conclusive presumption* that night baseball at Wrigley Field constitutes a private nuisance."[18]

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13. *Thompson,* 108 Ill. 2d at 361-62, 483 N.E.2d at 1247.

14. *Id.* at 362, 483 N.E.2d at 1247.

15. *Id.*

16. Chicago Nat'l League Ballclub, Inc. v. Thompson, No. 84CH 11384, slip. op. at 64, (Cir. Ct. of Cook County Mar. 25, 1985). Circuit Court Judge Richard Curry, writing a 64-page decision, first noted the problems that a major influx of fans would cause to the neighborhood at night. The judge thought the legislature and the city could properly regulate and saw the regulations as a modest exercise of police power, considering the "cumulative impact of crowd noise, traffic congestion, stadium-related litter, parking inadequacies, and crowd-related indignities." Judge Curry thought these problems would be magnified at night. *Id.* at 13.

The judge viewed it as significant that the regulations did not diminish the Cubs' present use of Wrigley Field. The judge also rejected the Cubs' claims that they were singled out for punishment and that the regulations violated equal protection. In summing up what was an emotion-charged and colorful opinion, Judge Curry wrote:

> Yes, you're out. O. . .U. . .T. . . The Cubs are out. The inning is over. The contest is lost. Now it's time for the box score, summary and wrap-up. Have you ever heard a post-mortem on a sporting event when some "intangible" wasn't cited as an element in the victory or the defeat? Well we have one in this case also. The Cubs lost, of course, for all the reasons stated above but, in addition thereto, they should have had a better scouting report before coming to court. Everyone around the courthouse is familiar with 'Justice'—with her robes flowing, her blindfold and her scales. What the Cubs 'book' on her failed to note is that she is a southpaw. Justice is a southpaw and the Cubs just don't hit lefties!!! *Id.* at 63.

17. *Thompson,* 108 Ill. 2d at 372, 483 N.E.2d at 1252.

18. *Id.* at 364, 483 N.E.2d at 1248 (emphasis added). In other words, the Cubs felt it was premature of the legislature and the city to declare night baseball a public nuisance, before lights had been given a chance. According to the Cubs, a determination should only be made by means of a civil suit when a citizen brought a claim for private nuisance *after* the lights had actually been installed. *See* Appellant's Illinois Supreme Court Brief at 17-18, Chicago Nat'l League Ballclub, Inc. v. Thompson, 108 Ill. 2d 357, 483 N.E.2d 1245 (1985) (hereinafter Appellant's Brief).

The supreme court disagreed, holding that it was clear under Illinois law that the legislature had broad discretion to determine not only what the public interest and welfare required, but the measures needed to secure such interest.[19] The court saw the legislature's amendment of section 25 of the Environmental Protection Act as proper protection of nearby residents' expectant interests from "intolerable" noise from nighttime sporting events.[20] The supreme court, agreeing with the circuit court below, felt the city of Chicago's ordinance was equally a proper use of police power to protect the public health, safety, morals, and welfare of the people, as provided for in the Illinois Constitution.[21]

The Cubs raised as an additional separation of powers argument that the legislature and city had overstepped their authority by incorrectly classifying the ballclub as a public nuisance,[22] and that because the regulations applied only to Wrigley Field, what was really being accomplished was a legislative attempt to enjoin a *private* nuisance.[23] Thus, the question of whether the private nuisance was to be abated should have been left to the judiciary and should not have been determined legislatively.[24]

The court rejected the Cubs' argument and stated that at times a private nuisance may interfere with public rights and can therefore become a public nuisance.[25] Thus, the court held that the enactments were within the power of the legislature and the city.[26]

The Cubs next attacked the constitutionality of the regulations as violating the state and federal Equal Protection Clauses[27] and the provi-

19. *Id.* at 364, 483 N.E.2d at 1252 (citing People v. McCarty, 86 Ill. 2d 247, 427 N.E.2d 147 (1981) (the Illinois legislature had discretion to classify cocaine as a narcotic drug) and Tometz v. Board of Educ., 39 Ill. 2d 593, 237 N.E.2d 498 (1968) (the legislature revised school bus routes to take into consideration segregation)).

20. *Thompson,* 108 Ill. 2d at 364, 483 N.E.2d at 1248.

21. *Id.* at 365, 483 N.E.2d at 1249.

22. A public nuisance is defined as "an interference with the rights of the community at large." W. PROSSER, THE LAW OF TORTS, § 88, at 572-73 (4th ed. 1971).

23. A private nuisance is a civil wrong based on a disturbance of rights in land. W. PROSSER, *supra* note 22, § 88 at 572-73.

24. *Thompson,* 108 Ill. 2d at 365, 483 N.E.2d at 1249.

25. *Id.* at 365, 483 N.E.2d at 1249. *See* PROSSER, *supra* note 22, § 88 at 572-73.

26. *Thompson,* 108 Ill. 2d at 365, 483 N.E.2d at 1249.

27. The Fourteenth Amendment to the United States Constitution states:

> "No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

U.S. CONST. amend XIV, § 1.

The Illinois Constitution states:

sion of the Illinois Constitution prohibiting special legislation.[28] The Cubs argued that the regulations affected only Wrigley Field and not other stadiums in the state.[29] Justice Ward rejected the Cubs' argument, because the language of the regulations did not single out Wrigley Field, and was unambiguous on its face.[30] The court added that constitutionally it was not required to provide uniform treatment to all persons in legislative classifications. "The legislature need not choose between legislating against all evils of the same kind or not legislating at all. Instead it may choose to address itself to what it perceives to be the most acute need."[31]

In analyzing the classifications in the regulations challenged in this case, the court linked the Cubs' claims for denial of equal protection and special legislation, because it believed that these claims were both to be judged by the same standard.[32] The court found the standard to be that unless the legislation operates to the disadvantage of a suspect classification or infringes upon a fundamental right, the legislation must simply have a rational relationship to a legitimate governmental interest to be constitutional.[33]

The declared purpose of Title VI of the state Environmental Protection Act was "to prevent noise which creates a public nuisance."[34] The court found that the amendment in question furthered a legitimate governmental interest in protecting the property and other interests of resi-

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"No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws."

ILL. CONST. art. I, § 2 (1970).

The court here defined a denial of equal protection as when arbitrary discrimination occurs against a person, which results from a withholding of a right, benefit or privilege by the government which does not have a reasonable basis for its action. *Thompson,* 108 Ill. 2d at 367, 483 N.E.2d at 1250.

28. The Illinois Constitution states: "The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law can be made applicable shall be a matter of judicial determination." ILL. CONST. art IV, § 13 (1970).

The court here defined special legislation as conferring a special benefit upon a person to the exclusion of others similarly situated. *Thompson,* 108 Ill. 2d at 367, 483 N.E. 2d at 1250.

29. *Thompson,* 108 Ill. 2d at 366, 483 N.E.2d at 1249.

30. *Id.* at 366, 483 N.E.2d at 1249.

31. *Id.* at 367, 483 N.E.2d at 1250. *See, e.g.*, Tometz v. Board of Educ., 39 Ill. 2d 593, 601-02, 237 N.E.2d 498, 503 (1968); Rockford Drop Forge Co. v. Pollution Control Bd., 79 Ill. 2d 271, 281, 402 N.E.2d 602, 606 (1980).

32. *See infra* notes 55-69 and accompanying text for detailed discussion of each classification.

33. *Thompson,* 108 Ill. 2d at 368, 483 N.E.2d at 1250. *See also* Ill. Hous. Dev. v. Van Meter, 82 Ill. 2d 116, 123, 412 N.E.2d 151, 154 (1980); Friedman & Rochester, Ltd. v. Walsh, 67 Ill. 2d 413, 422, 367 N.E.2d 1325, 1327 (1977).

34. ILL. REV. STAT., ch. 111 ½, para. 1025 (1983).

dents who live near Wrigley Field,[35] and further, that the classifications within the regulation reasonably related to preventing a public nuisance.[36] The court similarly found that the classifications within the city ordinance were equally reasonable.[37] The court concluded by pointing out that the classifications do not have to be precise, accurate, or harmonious as long as they accommodate the legislative purpose.[38]

ANALYSIS

The primary hurdle blocking the Cubs' case was establishing that the state statute and the city ordinance solely applied to and were intended for Wrigley Field. The Cubs' claims for violations of separation of powers, equal protection and special legislation were all premised on the claim that these regulations specifically applied to Wrigley.[39]

The legislative history of both the statute and the ordinance strongly supported the Cubs' point. The Cubs presented transcripts from the debate on the amendment on the floor of the state legislature.[40] There, Representative Levin, co-sponsor for the amendment, said: "We represent the Wrigley Field area of Chicago. *House Bill 1955 is aimed at making it difficult for the Chicago Cubs to put lights in Wrigley Field.*"[41]

Co-sponsor Marovitz also stated: "We should be proud of the uniqueness of Wrigley Field. *Let's retain the uniqueness of Wrigley Field and vote for House Bill 1955.*"[42]

Similarly, at a hearing concerning the city ordinance, a question that was put to counsel for the Lake View Citizens' Council clearly demonstrated the intent of the ordinance:

> ALDERMAN D'AMATO: "Would this effect any other stadiums other than Wrigley Field?"
> MR. DIAMOND: "At this point we do not believe so. Certainly it would affect Wrigley Field or any other stadium which attempted to relocate in the center of a residential area, but at the moment we do not believe that this in fact would affect any other stadium."[43]

The city of Chicago also admitted in a verified answer that the ordinance

35. *Thompson,* 108 Ill. 2d at 369, 483 N.E.2d at 1251.
36. *Id.* at 369, 483 N.E.2d at 1251.
37. *Id.* at 371, 483 N.E.2d at 1252.
38. *Id.*
39. Appellant's Brief, *supra* note 18, at 5-9.
40. *Id.* at 6-11.
41. *Id.* at 6 (emphasis added).
42. *Id.* at 7 (emphasis added).
43. *Id.* at 11.

"was directed solely at Wrigley Field and was solely intended to ban night baseball at Wrigley Field."[44]

Despite this evidence, the supreme court, relying on an earlier decision in *People v. Singleton*,[45] stated that because the language of the regulations was clear, its meaning should be given effect.[46] Yet, as the Cubs pointed out, this same supreme court had recently stated: "It is of course fundamental that in statutory construction, a court will seek to determine *the true intent of the legislature.*"[47] Even in *Singleton* the court hedged on its "clear on its face" ruling by saying: "We recognize, however, that this is not an inflexible rule; the statute may be interpreted as permissive, *depending upon the context of the provision and the intent of the drafters.*"[48] The court's rejection of legislative history presented by the Cubs was not consistent with its past decisions.[49]

In rejecting the Cubs' argument that the regulations affected only

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44. City of Chicago's Verified Answer at para. 13. (The city later attempted to recant its admission in a pleading called "Amended Paragraphs 8 and 13 of City of Chicago's Verified Answer" *See* Appellant's Brief at 9).

45. 103 Ill. 2d 339, 469 N.E.2d 200 (1984). (In *Singleton*, the supreme court held that the defendant, who was convicted of a felony, had to serve his term consecutively with another term for an earlier misdemeanor. The court refused to look beyond the language of Section 5-8-4(d) of the Unified Code of Corrections, which allowed consecutive sentences to be served. 103 Ill. 2d at 344, 469 N.E.2d at 203).

46. *Thompson*, 108 Ill. 2d at 366, 483 N.E.2d at 1249.

47. Chicago Tribune Co. v. Johnson, 106 Ill. 2d 63, 65, 477 N.E.2d 482, 484 (1985) (emphasis added). In this case, the supreme court denied a taxpayer's claim that a printing press was exempt from use tax. The court looked to the legislative history to show that "printing presses were not intended to be included as an exemption." 106 Ill. 2d at 65, 477 N.E.2d at 484.

48. *Singleton*, 103 Ill. 2d at 342, 469 N.E.2d at 202 (emphasis added).

49. In *Chicago Tribune*, the court lists other cases where it had ruled that it was fundamental to determine the legislative intent. 106 Ill. 2d at 69, 477 N.E.2d at 484 (citing People v. Beam, 74 Ill. 2d 240, 242, 384 N.E.2d 1315, 1316 (1979); People v. Savaiano, 66 Ill. 2d 7, 15, 359 N.E.2d 475, 479 (1976); People v. Scott, 57 Ill. 2d 353, 358, 312 N.E.2d 596, 599 (1974). However, in *Singleton*, the court relied on cases for the proposition that no further scrutiny is necessary when the language of the statute is clear on its face. 103 Ill. 2d at 342, 469 N.E.2d at 202. (citing People v. Boykin, 94 Ill. 2d 138,141, 445 N.E.2d 1174, 1175 (1983); Franzese v. Trinko, 66 Ill. 2d 136, 139-40, 361 N.E.2d 585, 587 (1977)). Thus the court seems to have chosen two roads on this issue and has given no clear indication of which one to take.

The United States Supreme Court has leaned toward relying on only the language of the document. It has said that when the terms of a statute are unambiguous, judicial inquiry is complete except in "rare and exceptional circumstances." Rubin v. U.S., 449 U.S. 424, 430 (1981). The Court has defined "rare and exceptional circumstances" as being the existence of "something to make plain the intent of Congress that the letter of the statute is not to prevail." To determine the intent of Congress the Court looks to structure and history. TVA v. Hill, 437 U.S. 153, 187 n.33, (1978) (citing Crooks v. Harrelson, 282 U.S. 55, 60 (1930)). Applying the Court's test to this case, the legislative history of the regulations provides strong support that they apply solely to Wrigley Field. Thus, based on this being a rare and exceptional circumstance, the language of the statute might stand a good chance of not prevailing.

Wrigley Field, the court relied on the fact that this legislation could also apply to future stadiums in the state and city.[50] This ideally is true, but considering the fact that no one has built a stadium in Chicago in fifty years, this is not realistic.[51] As the Cubs attempted to point out, the nighttime use restrictions would make it unlikely that anyone would build a stadium today.[52]

Putting aside the court's refusal to look beyond the language of the statute or ordinance, the classifications themselves, upon strict analysis, only questionably fulfill their purpose and tend to apply only to Wrigley. The purpose of section 25 of the Environmental Protection Act was to establish guidelines for protecting the interests of residents from nighttime noise pollution.[53] "That noise was to be limited on the basis of an *objective, quantitative* standard . . . ."[54]

In looking at the classifications of the statute and ordinance individually, the level of objectivity that the court apparently utilized should be critically examined.

A. Population

The state statute classified the amendment as applying only to a city with more than 1,000,000 people.[55] This legislation would only apply to Chicago, since it is the only city in Illinois with over 1,000,000 people. The Illinois supreme court said a legislative classification based on population would be sustained "where founded on a rational difference of situation or condition existing in the persons or objects upon which the classification rests and there is a reasonable basis for the classification in view of the objects and purposes to be accomplished."[56]

In applying this standard, the court reasoned that in a densely populated area more people would be affected by a nighttime ballgame. The court noted that the area would become overburdened with parking and streets would be busier and more dangerous for children. Also, since more residents would be at home at night, traffic patterns and police patrols would have to be altered. An increase in crime would also be a

50. *Thompson,* 108 Ill. 2d at 367, 483 N.E.2d at 1249-50.

51. Appellant's Brief, *supra* note 18, at 26-27.

52. *Id.* at 26.

53. *Thompson,* 108 Ill. 2d at 364, 483 N.E.2d at 1248.

54. *Id.* at 365, 483 N.E.2d at 1249 (emphasis added).

55. *See supra* note 11 and accompanying text.

56. *Thompson,* 108 Ill. 2d at 369, 483 N.E.2d at 1251 (citing People v. Palkes, 52 Ill. 2d 472, 477, 288 N.E.2d 469, 473 (1972) (quoting Dubois v. Gibbons, 2 Ill. 2d 392, 118 N.E.2d 295 (1954))).

factor.[57]

The inconsistency in this argument is that virtually the same problems exists on weekends when people, for the most part, are not working and children are not attending school. The Cubs have played weekend games at Wrigley since 1914 and have retained a good rapport with the neighborhood.[58] Therefore it seems inconsistent to believe a rational reason existed for the classification.

B. Professional Athletes

The state statute also limited the applicability of the amendment to baseball, football or soccer played by *professional* athletes.[59] The justification for this classification was that "there is a widely entertained opinion that amateur athletics, which are not profit-oriented, benefit the public."[60]

First of all, the statement that all amateur athletics are not profit oriented is not correct. An argument disproving the court's analysis would be the business of college football. Even though college athletes are not paid, revenue that is brought in from games goes to support the entire athletic department and other departments in the school.[61] There is clearly a profit motive. Additionally, professional sports also benefit the public in more ways than one. Teams bring revenue to the city[62] and are also a source of recreation and pride.[63]

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57. *Thompson*, 108 Ill. 2d at 369, 483 N.E.2d at 1251.

58. A demographic study conducted by the city of Chicago for the Cubs released in April 1985, states that 84% of those polled agreed that the Cubs are an asset to the neighborhood. Comm'r, Chicago Dep't of Economic Dev., *Survey Among Wrigley Field Neighborhood Residents* (April 1985) [hereinafter *The Study*].

59. *See supra* note 11 and accompanying text.

60. *Thompson*, 108 Ill. 2d at 370-71, 483 N.E.2d at 1251.

61. U.C.L.A. football and basketball, based on ticket and television revenue, primarily support the other 21 men's and women's sports. As an example, U.C.L.A., by going to the N.C.A.A. Men's Basketball Tournament, collected $400,000. This money will be used wherever it is necessary in the program. Telephone interview with Michael Sondheimer, U.C.L.A. Associate Athletic Director (March 25, 1987).

62. *The Study* reported that the presence of the Cubs injects $100 million annually into the neighborhood, Chicago, and the metropolitan economy. *The Study*, *supra* note 58, at i; (introductory letter from Commissioner Robert Mier (April 25, 1986)).

63. As Circuit Court Judge Curry put it so articulately in his opinion:

> "Baseball, the national pastime'—the thing of which young boys dream and old boys fantasize—the subject of songs, poems, satire, ballads and verse—the occupation of heroes and bums—the grist for the columnist and the gambler—the avocation of the bystander and the theatre for the grandstander—the ballast for the summer months and the leaven for the winter months—the theme which accomodates both nostalgia and expectation—a game that can be played as work, witnessed as fun and memorialized as history."

Chicago National League Ballclub, Inc. v. Thompson, No. 84CH 11384, slip. op. at 1-2.

More important, this classification does not help achieve the purpose of preventing noise pollution. Amateur night baseball or a college football game played at Wrigley Field would cause the same difficulties as the Cubs present to the residents of Lake View.

C. *Where Nighttime Events Were Not Played Prior To July 1, 1982*

The court also found it proper for the legislature to limit the scope of the amendment to stadiums where no nighttime events were held prior to July 1, 1982.[64] The court said it could address a problem one step at a time. "The legislature may select one phase of one field and apply a remedy there, neglecting the others."[65]

Prior to July 1, 1982, night games had been played in Chicago at Soldier Field, Comiskey Park, and Chicago Stadium— the only other places in the city of Chicago where professional sports are traditionally played.[66] Thus these stadiums were exempted from the amendment. Once again, the question of objectivity arises, as this supports the Cubs' position that this statute applies only to Wrigley.

D. *The City Ordinance*

The city of Chicago's ordinance is limited to a stadium or playing field which is not totally enclosed, contains more than 15,000 seats and is located within 500 feet of 100 or more dwelling units.[67] The court, appearing to acknowledge the shortcomings of the classifications, nevertheless supported the numbers by saying that "the classifications are not required to be precise, accurate or harmonious, so long as they accomplish the legislative purpose."[68]

One is left to wonder, however, that if the city is *objectively* trying to curb nighttime noise pollution, why make the numbers so specific? Comiskey Park, home of baseball's Chicago White Sox, was exempt from the amendment even though nearly the same number of people reside in a square-mile radius around the stadium as live around Wrigley Field.[69] Additionally, even though an enclosed stadium may block out noise, the problems of parking, traffic, litter and police protection would still exist.

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64. *Thompson,* 108 Ill. 2d at 371, 483 N.E.2d at 1252.

65. *Id.*

66. Appellant's Brief, *supra* note 18, at 6.

67. *See supra* note 12 and accompanying text.

68. *Thompson,* 108 Ill. 2d at 372, 483 N.E.2d at 1252.

69. According to a 1980 census, Comiskey Park has a population of 1,785 within a one-square mile radius of the park, as opposed to 1,336 for Wrigley Field. Comiskey's tract is somewhat larger. Appellant's Brief, *supra* note 18, at 40.

If the court had determined that the statute and the ordinance regulated only Wrigley, either through the statutory language or the legislative history, the Cubs would have had a much better chance of showing that this case was indeed a legislative attempt to enjoin a *private* nuisance, since a private nuisance is a specific landowner's unreasonable use of property to the disturbance of adjacent landowners.[70]

A finding of a private nuisance would have supported the Cubs' claim for a violation of the separation of powers principle, because the remedy for a private nuisance lies in the courts, not in the legislature.[71] It does seem that the court had these ramifications in mind. Although refusing to call this issue anything but a public nuisance, the court tried to dull the distinction between a private and public nuisance by saying "[a] private nuisance, however, that interferes with public rights can also constitute a public nuisance."[72] To support this statement, the court cited Prosser's treatise: ". . .[A] public nuisance may also be a private one when it interferes with the enjoyment of land, and that even apart from this there are circumstances in which a private individual may have a tort action for the public offense itself . . . ."[73] Comparing Prosser's words with the court's, it is questionable whether the court is correctly citing Prosser. Prosser's point is that a public nuisance may in some circumstances also be a private nuisance, not that private nuisances can convert into public nuisances, per the *Thompson* court.

The court cited another of its decisions, *Village of Wilsonville v. SCA Services,*[74] to support the proposition that nuisances could be both private and public. In *Village of Wilsonville*, however, the court never said why it could be both and did not reason that a private nuisance, that interferes with public rights, can also constitute a public nuisance.[75]

The refusal of the court to look beyond the language of the statute and ordinance was equally damaging to the Cubs' claims for equal protection and violation of special legislation. As the court said, both equal protection and special legislation require that legislation does not operate to the disadvantage of a suspect classification or infringe upon a funda-

70. Great Atl. & Pac. Tea Co. v. LaSalle Nat'l. Bank, 77 Ill. App. 3d 478, 485 (1st Dist 1979). *See generally* W. PROSSER & R. KEETON, THE LAW OF TORTS, § 87, at 619 (5th ed. 1984).

71. *See generally* W. PROSSER & R. KEETON, *supra* note 70, § 89, at 637-43.

72. *Thompson,* 108 Ill. 2d at 365, 483 N.E.2d at 1249.

73. *Id.* at 365, 483 N.E.2d at 1249 (citing PROSSER, *supra* note 22, § 88 at 572-73).

74. 86 Ill. 2d 1, 426 N.E.2d 824 (1981) (where the Illinois Supreme Court said a chemical waste dump constituted both a private and a public nuisance).

75. *Id.* at 21-22, 426 N.E.2d at 834.

mental right.[76] In other words, when a state through legislation creates a classification, it may not arbitrarily discriminate against one in favor of another similarly situated. It is the duty of the court to determine whether disparate treatment is arbitrary.[77] In the instant case, the supreme court would not admit that the legislation was arbitrary, in that it regulated only Wrigley, and thus there was no potential suspect classification for the court to analyze.

The court's rejection of the special legislation and equal protection claims was also based on the government's police power "to regulate, restrain or prohibit that which is harmful to the public welfare *even though the regulation, restraint or prohibition might interfere with the liberty or property of an individual.*"[78] Here too, if the court had found the legislation to apply only to Wrigley, the court's reasoning would have been affected. As the Cubs attempted to point out, the court itself had stated on previous occasions that the exercise of the police power concerning a claimed misuse of a specific parcel of land was not the province of a legislative body.[79]

CONCLUSION

If a reader adopts the Illinois Supreme Court's view, that it merely needed to rely on the language of the regulations, then this case is helpful for statutory interpretation. But, it is important to note the court's arbitrary analysis and its failure to focus on the means used to achieve the legislation. Knowing the true intent of the legislature and the city council, the only rational conclusion one can reach is that justice was not served. The Cubs and Wrigley Field were singled out by these pieces of legislation and their claims deserved more attention.

What this decision provides is a license for the legislature and the city to create discriminatory legislation, so long as they do not specifically refer to a chosen individual or group in the language of the statute or ordinance. An additional question that arises in this case is what happens when a legislature regulates an expectant interest and the interest turns out not to exist.

In April 1986, the Cubs, with the assistance of the city of Chicago's

76. *See supra* notes 27-28.

77. *See, e.g.*, Logan v. Zimmerman Brush Co., 455 U.S. 422, 441 (1982) (Blackmun, J., opinion).

78. *Thompson*, 108 Ill. 2d at 368, 483 N.E.2d at 1250 (citing People v. Warren, 11 Ill. 2d 420, 424-25, 143 N.E.2d 28, 31 (1957); City of Carbondale v. Brewster, 78 Ill. 2d 111, 398 N.E.2d 829 (1979)) (emphasis added).

79. Appellant's Brief, *supra* note 18, at 56. *See, e.g.*, *Village of Wilsonville*, 86 Ill. 2d at 21-22, 426 N.E.2d at 834.

Department of Economic Development, released a demographic study of residents that live in a one mile radius of Wrigley Field.[80] Of those polled, 78% were for some type of night game at Wrigley.[81] If the choice was between at least some type of regular season and post-season playoff game at night, or moving to a new stadium, the majority (72%) would opt for night games.[82] Thus, perhaps even though night games would cause some problems for the community, the community as a whole would be willing to live with the difficulties.

Granting, for the benefit of this casenote, the accuracy of these figures, several points beg to be addressed. The first is whether a true public nuisance (accepting the court's premise this is public) would exist if lights were installed in Wrigley Field. Although it is not necessary for an entire community to be effected by a public nuisance, the nuisance must interfere with those who come into contact with it.[83] Prosser says this number should be a considerable number.[84] This study changes nothing in this case, but should leave the court with something to think about, the next time it decides whether to allow a regulation of expectant interests.

This study also poses the question of who the Lake View Citizens' Council really represents. The opinions in this study raise some doubt as to whether the Council truly represents the interests of Lake View as a whole. Taking this point a step further, it would be interesting to know, of the people who are against lights at Wrigley, how many are truly concerned about noise pollution and are not just "day-baseball" loyalists.[85]

These questions make apparent the fact that the court's opinion does not resolve the issue of lights at Wrigley; if anything, it raises more questions. Why didn't the Cubs conduct this study before the trial? It certainly would not have hurt their case. In fact it might have helped tilt the argument in their favor. Finally, now that the Cubs are through in the courts, it appears that their only option is to take this study, return to the state legislature and city council, and attempt to have the regulations repealed.

For the time being, however, Wrigley Field will remain an example of baseball's past— with no lights and no night games. The Cubs, as a

80. *The Study*, *supra* note 58.

81. *Id.* at 5.

82. *Id.* at 6.

83. W. PROSSER & R. KEETON, *supra* note 70, § 90 at 645.

84. *Id.*

85. There is an organization against the installation of lights at Wrigley Field strictly for the love of "day" baseball. They are the C.U.B.S. (Citizens United for Baseball in Sunshine).

result, will have to reconcile if their home since 1914 will be part of their future.

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