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Volume 49 | Number 3 Article 1

2015

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(2015) "Table of Contents," *Georgia Law Review*: Vol. 49: No. 3, Article 1.
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GEORGIA LAW REVIEW

VOLUME 49 SPRING 2015 NUMBER 3

ARTICLES

Long before revelations of the National Security Agency's data collection programs grabbed headlines, scholars and the press decried the burgeoning harms to privacy that metadata mining and new surveillance technologies present. Through publicly accessible social media sites, web-tracking technologies, private data mining consolidators, and its own databases, the government is just a mouse click away from a wealth of intimate personal information that was virtually inaccessible only a decade ago. At the heart of the conundrum is the government's ability to source an unprecedented amount of personal data from private third parties. This trail of digital information is being insourced into government coffers with no constitutional accountability—much like governmental powers are being outsourced to private contractors without constitutional restraint.

These phenomena reveal a troubling trend: the diminishment of the Constitution's relevance when the government works in tandem with third parties. Outmoded Fourth Amendment doctrine offers no pathway around this problem. Nor has legislation kept apace with technological advancements to forestall abuses before they occur. Moreover, the primary theories for challenging the private exercise of public power—the private delegation and state action doctrines—rarely persuade modern courts.

Rather than focusing on the privacy aspects of big data, this Article proceeds from the standpoint of the structural Constitution, and reframes existing doctrines for rendering the government constitutionally accountable for actions taken through a third party, on the theory that exclusive reliance on the political branches for the protection of individual privacy rights in the age of big data is insufficient.

These private contractors profit heavily from their dealings with the federal government, but unfortunately not all of these contractors are so patriotic. Indeed, some steal from the treasury by invoicing goods or services they did not actually provide.

Congress attempted to reel in this dishonest practice with its enactment of the False Claims Act during the Civil War. To supplement the enforcement effort of the Department of Justice, Congress included a qui tam *provision allowing private citizens to sue fraudsters on behalf of the United States. As an anti-fraud statute, the issue regarding the necessary form of pleadings under Federal Rules of Civil Procedure 8 and 9 naturally arose as dispositive motions were argued on the grounds of insufficient "particularity."*

This Note examines the background of the False Claims Act, the purpose of notice pleading under the Federal Rules of Civil Procedure, and the current circuit split regarding the interpretation of "particularity." Then, it will argue that a strict interpretation is inconsistent with notice pleading and fails to supplement the Act by requiring hard to access documentation too early in the litigation. Finally, it will propose that a more lenient interpretation sufficiently serves the purposes of notice pleadings while more effectively supplementing the DOJ's effort.

For more than a half-century, Major League Baseball's exemption from antitrust laws has intrigued sports fans and legal scholars alike. It seems only fitting that America's pastime would have an exemption with origins as mysterious and debated as the sport itself. Created by the Supreme Court and reinforced by Congress, the "baseball exemption" in the modern era continues to generate litigation. Like an umpire determining whether a baseball is fair or foul, courts today must judge the boundaries of baseball's exemption.

Major League Baseball's owners may benefit from the exemption, but its fans often pay the price. The League has divided the United States into different geographic

television markets, which makes it more difficult for fans to watch out-of-market broadcasts. Upset over this policy, fans sued Major League Baseball in 2012 and alleged its broadcast policy unreasonably restrains trade, in violation of antitrust laws. In August of 2014, Judge Shira Scheindlin, in the Southern District of New York, denied Major League Baseball's motion for summary judgment.

To the detriment of baseball fans, this Note argues that baseball broadcasting falls within the broad "business of baseball" exemption to antitrust laws. This Note provides an overview of the baseball exemption, including its origins and developments in the judicial system. It also analyzes and challenges Judge Scheindlin's view of the exemption. As technology develops, litigation over the exemption will involve baseball activities, like broadcasting, that could have never been imagined when the exemption was first enacted, so understanding its boundaries is critical.

VOLUME 49 SPRING 2015 NUMBER 3
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Current subscription: $34.00 per year (plus $6.00 for foreign mailing) payable in advance. Single issues: $12.00 (plus $3.00 for foreign mailing). Prices may vary for symposium and special issues. Subscriptions will be renewed automatically unless cancellation is requested. Cancellation notice must be received prior to payment. Periodicals postage paid at Athens, Georgia and additional mailing offices. POSTMASTER: Send address changes to the *Georgia Law Review*, University of Georgia School of Law, Athens, Georgia 30602-6012.

Back issues are available from William S. Hein & Co., Inc., 1285 Main Street, Buffalo, New York 14209-1987, toll-free (800) 828-7571, by e-mail at mail@wshein.com, or in electronic format through HeinOnline, at http://heinonline.org.

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