



**For Immediate Release**

**November 21, 2006**

## **COURT URGED TO REJECT CHALLENGE TO NFL'S STADIUM SEARCH POLICY (*Johnston v. Tampa Sports Authority*)**

The Washington Legal Foundation (WLF) this week urged the U.S. Court of Appeals for the Eleventh Circuit in Atlanta to reject a constitutional challenge to a National Football League (NFL) policy that entails brief searches of all patrons entering NFL stadiums.

In a brief filed in *Johnston v. Tampa Sports Authority*, WLF argued that the searches are "reasonable" within the meaning of the Fourth Amendment and in any event are not subject to the Fourth Amendment because they are being carried out at the direction of private entities. The case is on appeal from a federal district court, which issued an injunction against such searches at games being played by the Tampa Bay Buccaneers, an NFL team.

"We are concerned that the decision below, if allowed to stand, will significantly impair the ability of stadium operators to protect their patrons from terrorists and others intent on doing harm," said WLF Chief Counsel Richard Samp after filing WLF's brief. "The district court essentially held that the operators of publicly owned stadiums are constrained from taking effective counter-terrorism measures until *after* there has been at least one successful terrorist attack on an American stadium," Samp said.

The case involves a challenge to a search policy adopted by the Tampa Bay Buccaneers in compliance with an NFL directive that such searches be conducted at all NFL venues. Pursuant to that policy, the Buccaneers required that all patrons entering their stadium in Tampa Bay submit to a brief, non-intrusive pat-down search to determine whether they are carrying explosive. Stadium personnel were directed that the searches should not extend below the waist. Because the Tampa Bay stadium (unlike many other NFL stadiums) is owned and operated by a public body -- the Tampa Sports Authority (TSA) -- the Buccaneers directed that TSA personnel carry out the search. Pursuant to its stadium lease, the Buccaneers had a contractual right to direct TSA to carry out such searches.

After a Buccaneers season-ticket holder filed suit, a federal district court in Tampa issued a preliminary injunction against TSA enforcement of the policy, finding that the policy violated the Fourth Amendment prohibition against "unreasonable searches." The TSA appealed that decision to the Eleventh Circuit.

In its brief, WLF argued that the mandated pat-down searches are not "unreasonable" within the meaning of the Fourth Amendment. WLF argued that the searches are minimally intrusive and are more than justified by the very real possibility that terrorist groups will attempt to kill large numbers of civilians by planting a bomb in a football stadium. In support of that argument, WLF cited a number of recent planned terrorist attacks on stadiums and recent statements by terrorist leaders that they hope to plant bombs in locations at which large numbers of American civilians are located.

WLF also argued that the Fourth Amendment has no application to the challenged policy because it was adopted by a private entity (the Buccaneers), and the Fourth Amendment's "search" limitation applies only to government entities. Although the TSA is a government entity, WLF argued that the issue of whether Fourth Amendment "state action" exists turns on whether the policy is *adopted* by a government entity. WLF argued that when the government's sole role is to carry out a search that it is contractually obligated to perform at the request of a private party, its actions do not constitute a "search" subject to Fourth Amendment limitations. WLF argued that the Fourth Amendment should be deemed inapplicable for the additional reason that the TSA was acting in a proprietary capacity when carrying out the search, and that governments have generally been deemed exempt from otherwise-applicable constitutional constraints when acting in that capacity.

WLF is a public interest law and policy center with supporters in all 50 States. It devotes a significant portion of its resources to ensuring that federal, state, and local governments possess the tools necessary to protect the country from those who would seek to destroy it or harm its citizens. WLF recently filed a brief in the U.S. Court of Appeals for the Second Circuit in *McWade v. Kelly*, opposing a Fourth Amendment challenge to a program of visual inspections in New York City's subways. That program of searches is designed to prevent terrorist attacks on the subways.

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For further information, contact WLF Chief Counsel Richard A. Samp, (202) 588-0302. A copy of WLF's brief is posted on its web site, [www.wlf.org](http://www.wlf.org).