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Rebecca Black

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“NO ONE LIKES US, WE DON’T CARE”:¹

THE LEGALITY OF TICKET BANS ON OPPOSING FANS

I. LOCALS ONLY: INTRODUCING ORIGINS OF TICKET RESTRICTIONS

Imagine you are a die-hard sports fan; finally, after years of waiting, your hometown team makes the playoffs.² The first game of the series is in enemy territory and you are restricted from buying a ticket because you do not live in the approved geographic zone.³ This was the reality for many Toronto Maple Leafs fans during the 2023 Stanley Cup Playoffs against the Florida Panthers.⁴ Maple Leafs

1. See Jason Kelce, Center, Phila. Eagles, Superbowl LII Parade at the Philadelphia Museum of Art (Feb. 8, 2018) (using what would become famous Philadelphia phrase “no one likes us, we don’t care” while giving speech during Superbowl LII parade); see also Max Rappaport, *From South London to South Philly: ‘No One Likes Us, We Don’t Care’*, BLEACHER REP. (Feb. 21, 2018), <https://bleacherreport.com/articles/2760569-from-south-london-to-south-philly-no-one-likes-us-we-dont-care> [<https://perma.cc/BCE8-TN8S>] (detailing phrase origins).

2. See *The Longest Postseason Droughts in NFL History*, OPTA ANALYST (Jan. 15, 2024), <https://theanalyst.com/na/2023/05/longest-postseason-droughts-in-nfl-history/> [<https://perma.cc/22QV-CEJH>] (discussing playoff droughts). Some of the longest postseason droughts include the former St. Louis Cardinals, now the Arizona Cardinals, and the Washington Commanders who are tied for twenty-five seasons, the Pittsburgh Steelers at twenty-four seasons, and the New Orleans Saints at twenty seasons. See *id.* (charting longest postseason droughts in National Football League (“NFL”).

3. See *Williams v. Nat’l Football League*, No. C14-1089, 2014 WL 5514378, at *1 (W.D. Wash. Oct. 31, 2014) (detailing San Francisco 49ers fans’ experience attempting to purchase primary-market tickets as Nevada resident), *aff’d*, 671 F. App’x 424 (9th Cir. 2016); see also Isabel Gonzalez, *NHL Playoffs: Panthers Restrict Ticket Sales for Home Games vs. Maple Leafs to U.S. Residents Only*, CBS SPORTS (May 2, 2023, 8:54 AM), <https://www.cbssports.com/nhl/news/nhl-playoffs-panthers-restrict-ticket-sales-for-home-games-vs-maple-leafs-to-u-s-residents-only/#:~:text=In%20an%20attempt%20to%20keep,is%20located%20in%20Sunrise%2C%20Florida> [<https://perma.cc/874G-KND3>] (detailing restrictions placed on Maple Leafs fans prior to Stanley Cup Playoff series).

4. See Frank Pingue, *Panthers Restrict Ticket Sales in Bid to Keep Maple Leafs Fans Out*, REUTERS (May 1, 2023, 2:33 PM), <https://www.reuters.com/sports/nhl/panthers-restrict-ticket-sales-bid-keep-maple-leafs-fans-out-2023-05-01/> [web.archive.org/web/20240508153657/<https://www.reuters.com/sports/nhl/panthers-restrict-ticket-sales-bid-keep-maple-leafs-fans-out-2023-05-01/>] (noting ticket restrictions Toronto Maple Leafs fans faced). Having made the second round of the Stanley Cup Playoffs for the first time in nineteen years, Maple Leafs fans were eager to attend games. See *id.* (noting Toronto’s excitement). Maple Leafs fans were presented with “[a]n ‘Important Event Info’ notice on Ticketmaster’s website [that] said sales for the games in Sunrise, Florida will be restricted to those living in the United States and that residency will be based on credit card billing address.” See *id.*

fans living in parts of Florida were precluded from buying a ticket because they resided outside of the Panthers-approved geographic fan zone.⁵

As of 2017, 41.5% of Americans do not live in the state in which they were born.⁶ However, this statistic does not stop fans from maintaining allegiance to their hometown team.⁷ One can often find a New York Yankees fan in California or a Chicago Blackhawks fan in Texas.⁸ Fans who grew up in one state but have since crossed state lines are being unfairly impacted by location-based ticket restrictions.⁹ These restrictions are meant to ‘pack the house’ with home fans to ensure a more favorable playing environment; however, the

(noting information presented to fans). Furthermore, fans were outraged to find out orders by residents outside of the United States will be canceled without notice or refunds. *See id.* (explaining fan sentiment).

5. *See id.* (explaining Maple Leafs fans’ plight in obtaining tickets for second-round Stanley Cup playoff series); *see also* Varnit Kaushik, *Sports Franchise Valuation Considerations*, EISNERAMPER (Jan. 14, 2022), <https://www.eisneramper.com/insights/sports-entertainment/sports-franchise-valuation-0122/> [<https://perma.cc/U5J9-XJCG>] (detailing how various television markets are used to create monetary value for sports franchises); *see also* 2022-2023 *Nielsen DMA Rankings*, US TVDB, <https://ustvdb.com/seasons/2022-23/markets/> [<https://perma.cc/YM2Z-5HYR>] (last visited Feb. 7, 2024) (organizing data surrounding local television markets across United States major geographical areas). Since CBS and Fox Sports broadcast most Sunday NFL games, each local area can only view two games at a time. *See id.* (explaining breakdown of television rights between broadcasts). The included map details which area of the country will be shown which game based on the station’s analytics of the desired market. *See id.* (describing how networks determine which game to show residents).

6. *See* Richard Florida, *The Geography of America’s Mobile and ‘Stuck,’ Mapped*, BLOOMBERG (Mar. 5, 2019, 1:14 PM), <https://www.bloomberg.com/news/articles/2019-03-05/mobile-vs-stuck-who-lives-in-their-u-s-birth-state> [web.archive.org/web/20240508153816/https://www.bloomberg.com/news/articles/2019-03-05/mobile-vs-stuck-who-lives-in-their-u-s-birth-state] (explaining which geographical groups of Americans are most likely to stay in home state). Interestingly, a “stuck belt” has been found running across the middle of the country covering Iowa, Wisconsin, Michigan, Ohio, and Pennsylvania, where between sixty to seventy-four percent of their residents live in the state they are born. *See id.* (describing phenomenon known as “stuck belt”).

7. *See* Ravi N. Mulani, *Cheering for the Home Team*, HARV. CRIMSON (Apr. 24, 2009), <https://www.thecrimson.com/article/2009/4/24/cheering-for-the-home-team-one/> [<https://perma.cc/XH7Q-SFUV>] (contrasting college students’ experiences moving away from home, cheering for their home sports teams).

8. *See* Robinson Meyer, *The Geography of NFL Fandom*, ATLANTIC (Sept. 14, 2014), <https://www.theatlantic.com/technology/archive/2014/09/the-geography-of-nfl-fandom/379729/> [<https://perma.cc/4H5E-W54Y>] (mapping NFL fans residency). Color coded map displays the breadth of fanbases across the country, with various pockets of color depicting teams. *See id.* (describing NFL fanbase map).

9. *See* Byard Duncan, “How is This Legal?” *Legions of Fans Say the Secondary Ticket Market is Rigged Against Them.*, REVEAL NEWS (Mar. 8, 2021), <https://revealnews.org/article/how-is-this-legal/> [<https://perma.cc/SB9W-5GDJ>] (noting economic impact ticket resellers have on fans). Because fans were unable to purchase tickets directly through the league, fans were forced onto reseller websites, which charged a premium for tickets. *See id.* (discussing experience on third-party reseller sites).

reality may have broader legal implications.¹⁰ What started as a harmless restriction may, in fact, be a constitutional violation.¹¹ Teams that continue to engage in restrictive ticket sales prevent fans from engaging in unobstructed interstate commerce.¹²

Sports teams are not alone in leveraging consumer location to satisfy their own business interests.¹³ Ticketmaster has capitalized on the opportunity by increasing the price of tickets for fans who have been negatively impacted by opposing fan ticket restrictions.¹⁴ This, along with recent high-profile concert ticket sales, has generated concerns of potential antitrust violations by Ticketmaster.¹⁵ The executive branch has taken a strong stance in stepping up antitrust enforcement and Ticketmaster has found itself on the shortlist of companies that may soon be involved in litigation.¹⁶

10. See Gregory Strong, *Canadian Residents Barred 24 Hours From Buying Tickets for Leafs Games in Florida, Panthers Say*, CANADIAN BROAD. CORP. (May 1, 2023, 10:43 AM), <https://www.cbc.ca/sports/hockey/nhl/panthers-ticket-sales-american-residents-maple-leafs-nhl-1.6827836> [<https://perma.cc/56CR-8CT4>] (alluding to Panthers’ capitalization on “home-ice advantage” by limiting number of opposing fans); see also Barry Schwartz & Stephen F. Barsky, *The Home Advantage*, 55 SOC. FORCES 641, 643 (1977) (finding home advantage in organized sports). For further discussion of home advantage in organized sports, see *infra* notes 131–141 and accompanying text.

11. For further discussion of Constitutional violations, see *infra* notes 26–35 and accompanying text.

12. For further discussion on the ways teams are restricting interstate commerce, see *infra* notes 74–85 and accompanying text.

13. See Jon Keegan & Alfred Ng, *There’s a Multibillion-Dollar Market for Your Phone’s Location Data*, MARKUP (Sept. 30, 2021, 3:51 PM), <https://themarkup.org/privacy/2021/09/30/theres-a-multibillion-dollar-market-for-your-phones-location-data> [<https://perma.cc/56M9-NGVL>] (outlining companies who utilize customer location data to time push notifications).

14. See Meghan Bragg, *Fact Check: What Do Ticketmaster Service Fees Cover?*, WCNC CHARLOTTE (Feb. 16, 2023, 11:55 AM), <https://www.wcnc.com/article/news/verify/ticketmaster-service-fees-charlotte-nc/275-b9234b03-a523-4d4c-932e-712649751a4c> [<https://perma.cc/QB9Q-QQ43>] (discussing additional fees Ticketmaster uses to increase original ticket prices).

15. See Josh Sisco, *Ticketmaster Could Face New Legal Threat This Fall*, *Sources Say*, POLITICO (July 28, 2023, 3:13 PM), <https://www.politico.com/news/2023/07/28/feds-home-in-on-ticketmaster-antitrust-case-00108771> [web.archive.org/web/20240508153859/https://www.politico.com/news/2023/07/28/feds-home-in-on-ticketmaster-antitrust-case-00108771] (discussing potential antitrust lawsuit against Live Nation Entertainment subsidiary Ticketmaster); see also Scott Andrzejewski, *Antitrust Complaints Filed Against Ticketmaster and Live Nation in California: An Overview and Analysis*, UNIV. CHI. BUS. L. REV. (Apr. 19, 2023), <https://businesslaw-review.uchicago.edu/online-archive/antitrust-complaints-filed-against-ticketmaster-and-live-nation-california-overview> [<https://perma.cc/83R8-CB9R>] (reviewing complaints filed asserting claims for relief). These claims focused on Ticketmaster’s monopolistic control of the primary and secondary ticket markets. See *id.* (describing control Ticketmaster has in secondary market).

16. See *Biden Administration Steps Up Antitrust Enforcement*, AM. BAR ASS’N, <https://www.americanbar.org/news/abanews/aba-news-archives/2021/11/antitrust-enforcement/#:~:text=Antitrust%20enforcement%20in%20the%20Biden,-making%20American%20businesses%20more%20competitive> [web.archive.org/

Section I of this Comment provides an introduction to ticket restrictions on opposing fans, and antitrust violations committed by Ticketmaster.¹⁷ Section II introduces background information about the Commerce Clause and Sherman Antitrust Act.¹⁸ Additionally, Section II discusses the history of ticket restrictions, methods by which fans obtain tickets, the existence of home-field advantage, and the way one court has already examined ticket restrictions.¹⁹ Section III analyzes violations of the Commerce Clause by various sports leagues and organizations, and evaluates the way Ticketmaster continues to violate antitrust regulations.²⁰ Section IV concludes the evaluation and predicts that restrictive ticket practices will continue if action is not taken.²¹

II. THE PRE-SALE: A BACKGROUND ON TICKET RESTRICTIONS AND DISTRIBUTION

A. The Relationship Between the Commerce Clause and Sherman Antitrust Act Explained

While the Commerce Clause and the Sherman Antitrust Act are constructed in isolation, their overall objectives remain similar.²² The Commerce Clause focuses on free trade among the states while the Sherman Antitrust Act remains concerned with efficiency

web/20240508224538/https://www.americanbar.org/news/abanews/aba-news-archives/2021/11/antitrust-enforcement/] (last visited Feb. 15, 2024) (discussing measures Biden Administration plans to take against antitrust allegations); see also Jarrett Renshaw, *Ticketmaster, Others Agree to Upfront, All-In Prices as Part of Biden War on Junk Fees*, REUTERS (June 15, 2023, 7:59 PM), <https://www.reuters.com/world/us/ticketmaster-live-nation-agree-all-in-prices-part-biden-war-junk-fees-2023-06-15/> [web.archive.org/web/20240508225048/https://www.reuters.com/world/us/ticketmaster-live-nation-agree-all-in-prices-part-biden-war-junk-fees-2023-06-15/] (covering concessions Ticketmaster made to delay litigation).

17. For further discussion of ticket restrictions on opposing fans and antitrust violations committed by Ticketmaster, see *supra* notes 2–16 and accompanying text.

18. For further discussion of background on the Commerce Clause and Sherman Antitrust Act, see *infra* notes 22–69 and accompanying text.

19. For further discussion of background on ticket sales and home-field advantage, see *infra* notes 74–158 and accompanying text.

20. For further discussion of the Commerce Clauses' impact on opposing fan ticket restrictions, and evaluation of claims leveraged against Ticketmaster for violations of antitrust regulations, see *infra* notes 159–216 and accompanying text.

21. For further discussion of findings and predictions surrounding Commerce Clause and antitrust violations, see *infra* notes 217–229 and accompanying text.

22. See Daniel J. Gifford, *Federalism, Efficiency, the Commerce Clause, and the Sherman Act: Why We Should Follow a Consistent Free-Market Policy*, 44 EMORY L.J. 1227, 1227–28 (1995) (detailing similarities between Commerce Clause and Sherman Antitrust Act).

objectives, preventing monopolies.²³ The Sherman Antitrust Act is “designed to preserve free and open markets, thereby enabling the competitive process to allocate goods and services in accordance with demand.”²⁴ While the Commerce Clause targets public restraints and the Sherman Antitrust Act targets private restraints, the two share a common concern with facilitating trade and furthering the efficient allocation of society’s resources.²⁵

1. *Commerce Clause: Regulating the Game with Foreign Nations, Among States*

Enacted in 1887, the Commerce Clause gives Congress the broad power to regulate interstate commerce.²⁶ The powers are granted to Congress through Article I, Section 8 of the Constitution.²⁷ Specifically, the Commerce Clause was designed to regulate commerce between the United States and foreign nations, and among states and the Indian Tribes.²⁸ In this context, “commerce” is to be understood

23. *See id.* at 1228 (highlighting main objectives of Commerce Clause and Sherman Antitrust Act).

24. *See id.* (boiling Sherman Antitrust Act down to main objective).

25. *See id.* (discussing overlap between two laws). Gifford touches on the intersection of the two, with a focus on furthering the allocation of society’s resources. *See id.* (pointing out common ground between Commerce Clause and Sherman Antitrust Act); *see generally* Bruce Johnsen & Moin A. Yahya, *The Evolution of Sherman Act Jurisdiction: A Roadmap for Competitive Federalism*, 7 UNIV. PA. J. CONST. L. 403 (2004) (discussing intersection of Commerce Clause and Sherman Antitrust Act).

26. *See* David Walter Brown, *The Exclusive Power of Congress to Regulate Interstate and Foreign Commerce*, 4 COLUM. L. REV. 490, 491 (1904) (describing Congress’s power to regulate interstate commerce); *see also* Clyde B. Aitchison, *The Evolution of the Interstate Commerce Act: 1887-1937*, 5 GEO. WASH. L. REV. 289, 289 (1937) (detailing origins of Commerce Clause). Aitchison discusses the antecedents of what we now know to be the Interstate Commerce Clause, specifically, the Cullom Act. *See id.* (discussing Cullom Act, approved by President Cleveland in 1887).

27. *See* U.S. CONST. art. I, § 8, cl. 3 (stating powers Congress has under Commerce Clause). The early Supreme Court viewed the Commerce Clause as limiting State power, opposed to the current interpretation where it has become a source for federal power. *See ArtI.S8.C3.1 Overview of Commerce Clause*, CONST. ANNOTATED, [https://constitution.congress.gov/browse/essay/artI-S8-C3-1/ALDE_00013403/\[web.archive.org/web/20240508225802/https://constitution.congress.gov/browse/essay/artI-S8-C3-1/ALDE_00013403/\]](https://constitution.congress.gov/browse/essay/artI-S8-C3-1/ALDE_00013403/[web.archive.org/web/20240508225802/https://constitution.congress.gov/browse/essay/artI-S8-C3-1/ALDE_00013403/]) (last visited Oct. 29, 2023) (discussing early view of Commerce Clause). Consequently, the “Court’s early interpretations of the Commerce Clause focused on the meaning of ‘commerce’ while paying less attention to the meaning of ‘regulate.’” *See id.* (explaining evolution of Commerce Clause interpretation).

28. *See ArtI.S8.C3.8.1 Overview of Foreign Commerce Clause*, CONST. ANNOTATED, [https://constitution.congress.gov/browse/essay/artI-S8-C3-8-1/ALDE_00001057/\[web.archive.org/web/20240508230317/https://constitution.congress.gov/browse/essay/artI-S8-C3-8-1/ALDE_00001057/\]](https://constitution.congress.gov/browse/essay/artI-S8-C3-8-1/ALDE_00001057/[web.archive.org/web/20240508230317/https://constitution.congress.gov/browse/essay/artI-S8-C3-8-1/ALDE_00001057/]) (last visited Oct. 29, 2023) (explaining “dicta urging or suggesting that Congress’s power to regulate interstate commerce restrictively is less than its analogous power over foreign commerce”). The four dissenting Justices in *Champion v. Ames* endorsed this view, writing “the power to regulate commerce . . . was intended to secure equality and freedom in

as the exchanging, buying, or selling of things having economic value between two or more entities; more simply put, anything sold between point A and point B.²⁹ With this understanding, small articles such as sporting event tickets can be evaluated in the aggregate to better understand their impact on interstate commerce.³⁰

While Congress's power may appear limitless, the Court determined in *United States v. Lopez*³¹ that certain activities are simply outside the purview of commerce or any sort of economic activity.³² An activity must have an economic impact in order for it to be within the purview of congressional regulation.³³ If an article in commerce constitutes economic activity in the aggregate, the Commerce Clause

commercial intercourse . . . not to permit the creation of impediments to such intercourse." See *Champion v. Ames*, 188 U.S. 321, 373 (1903) (Fuller, J., dissenting) (quoting dissenting opinion discussing Congress power over international commerce); see also Aitchison, *supra* note 26, at 295 (explaining groups effected by Commerce Clause); *Commerce*, BLACK'S L. DICTIONARY (11th ed. 2019) (defining commerce as "[i]ntercourse by way of trade and traffic between different peoples or states and the citizens or inhabitants thereof").

29. See *Commerce*, *supra* note 28 (identifying ways "commerce" was used in Commerce Clause); see also *Artl.S8.C3.2 Meaning of Commerce*, CONST. ANNOTATED, [https://constitution.congress.gov/browse/essay/artl-S8-C3-2/ALDE_00013404/\[web.archive.org/web/20240508230329/https://constitution.congress.gov/browse/essay/artl-S8-C3-2/ALDE_00013404/\]](https://constitution.congress.gov/browse/essay/artl-S8-C3-2/ALDE_00013404/[web.archive.org/web/20240508230329/https://constitution.congress.gov/browse/essay/artl-S8-C3-2/ALDE_00013404/]) (last visited Oct. 29, 2023) (explaining etymology of "commerce"). Chief Justice John Marshall broadly interpreted the Commerce Clause when deciding *Gibbons v. Ogden*, reasoning commerce encompassed not only buying and selling but also more generally intercourse and consequently navigation. See *id.* (citing *Gibbons v. Ogden*, 22 U.S. 1, 71 (1824)) (detailing conversation surrounding "passengers" if they constituted "commerce" and discussing Congress's power to impose embargos). See also Aitchison, *supra* note 26, at 296 (highlighting which parts of commerce are to be affected as well as economic value of goods).

30. See *Wickard v. Filburn*, 317 U.S. 111, 128 (1942) (establishing precedent whereby Commerce Clause grants Congress ability to regulate prices in industry). *Wickard* held that even if each individual activity has a trivial effect on interstate commerce, if all the activity were taken in the aggregate and the effects would be substantial, then that article could be regulated by the Commerce Clause. See *id.* at 124–25 (discussing holding of case); see also *Champion*, 188 U.S. at 345 (holding lottery tickets are subjects of traffic independent carriers and may be regulated under Commerce Clause).

31. *United States v. Lopez*, 514 U.S. 549 (1995).

32. See *id.* at 567 (holding "possession of a gun in a local school zone is no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce."). In *Lopez*, a student brought a concealed weapon into his high school in San Antonio, Texas and was charged under Texas law with firearm possession on school premises. See *id.* at 551 (explaining facts of case). The following day, the state charges were dropped, and federal charges were added because the student violated a federal criminal statute, namely the Gun Free School Zones Act of 1990. See *id.* (reviewing additional charges plus criminal statute involved). The Act was found to be unconstitutional because it exceeds the power of Congress to legislate under the Commerce Clause. See *id.* (holding Act unconstitutional because it exceeded power of Congress).

33. See *id.* at 556 (citing *Wickard v. Filburn*, 317 U.S. 111, 125 (1942)) (explaining for activity to be regulated under Commerce Clause, it must have economic effect on interstate commerce).

can regulate the article.³⁴ Under this framework, the regulation of sporting tickets is an activity that should be regulated under the Commerce Clause.³⁵

a. Supreme Court Precedent

In recent years, the Court has decided several other cases involving violations of the Commerce Clause.³⁶ In *Tennessee Wine & Spirits Retailers Association v. Thomas*,³⁷ the Court held that a state law which discriminates against out-of-state goods or nonresident economic actors can be sustained only upon a showing that it is narrowly tailored to “advance a legitimate local purpose.”³⁸ In *Tennessee Wine*, the states’ residency requirement favored residents over nonresidents, which the Court determined to be a violation of the Dormant Commerce Clause.³⁹ The ways in which Tennessee favored residents

34. See *Champion*, 188 U.S. at 361 (detailing articles taken in aggregate). The Court believed lottery tickets are subjects of traffic and therefore subjects of commerce. See *id.* at 354 (regulating transfer of tickets from state to state is regulation of commerce).

35. See *id.* at 363 (holding lottery tickets can be regulated under Commerce Clause). The exchange of event tickets can easily be equated to lottery tickets in the sense that they maintain their own intrinsic value and can be exchanged between people. See Jabari Young, *Prices are Surging, but Fans are Still Paying Top Dollar to Watch Live Sports*, CNBC (May 22, 2022, 8:41 AM), <https://www.cnbc.com/2022/05/22/inflation-is-rising-but-fans-are-paying-for-nba-nfl-other-sports-tickets.html> [<https://perma.cc/WCQ9-2HNA>] (explaining “[d]emand for sports attendance is usually ‘unresponsive to price changes’”).

36. See *Powers of Congress Supreme Court Cases*, JUSTIA, <https://supreme.justia.com/cases-by-topic/powers-of-congress/> [<https://perma.cc/6U5A-SDCY>] (last visited Oct. 8, 2023) (listing Supreme Court cases that discuss powers of Congress). Included in this list are cases such as *Haaland v. Brackeen* (2023), *Murphy v. NCAA* (2018), *Gonzales v. Raich* (2005), and *South Dakota v. Dole* (1987). See *id.* (listing cases touching on powers of Congress).

37. *Tenn. Wine & Spirits Retailers Ass’n v. Thomas*, 588 U.S. 504 (2019).

38. See *id.* at 509–13 (answering question whether Dormant Commerce Clause permits states to regulate liquor sales through state license policy); see generally Evan W. Saunders, *It’s 1919 Somewhere: What Tennessee Wine & Spirits Retailers Association v. Thomas Means for the National Hangover of the Twenty-First Amendment, the Dormant Commerce Clause, and Federal Legalization of Intoxicating Substances*, 86 BROOK. L. REV. 261 (2020) (providing further background on case and Dormant Commerce Clause).

39. See *Tenn. Wine*, 588 U.S. at 518 (holding protectionism not to be legitimate local purpose). Additionally, the Court held the residency requirement “has at best a highly attenuated relationship to public health or safety.” See *id.* at 540 (explaining Court holding). In *Tenn. Wine*, Tennessee required a license from the Tennessee Alcoholic Beverage Commission (“TABC”) to sell liquor. See *id.* at 510 (detailing facts of case). Under Tennessee Code Annotated § 57-3-204(b)(2)(A), “[t]o obtain an initial retail license, an individual must demonstrate that he or she has ‘been a bona fide resident’ of [Tennessee] for the previous two years” and there is a ten-year continuous residency requirement to renew a liquor license. See *id.* at 511 (explaining former Tennessee Code regarding residency requirements for liquor license). The TABC deferred voting on two license applications because the establishments did not satisfy the residency requirement. See *id.* at 504 (detailing history of case). The Executive Director of the TABC sought a declaratory judgment as

over nonresidents runs parallel to the ways sports teams have created an arbitrary physical location of their “fan zone,” prioritizing the needs of their fans while discriminating against opposing fans based on their residency.⁴⁰

Commentators have debated whether the powers of the Commerce Clause have become too far reaching by regulating activities outside the scope of the original intentions of the drafters.⁴¹ In 1964, the Court’s use of the Commerce Clause to enact a Civil Rights Act in *Heart of Atlanta Motel, Inc. v. United States*⁴² drew skepticism as judicial overreach.⁴³ This flagship decision came after Congress passed the Civil Rights Act of 1964, prohibiting discrimination on the basis of race in any place of public accommodation.⁴⁴ A motel in Atlanta that advertised to and accommodated out-of-state guests, yet refused to rent rooms to guests based on their race, challenged the Civil Rights Act of 1964 as unconstitutional.⁴⁵ Ultimately, the Court held that the Civil Rights Act was constitutional, citing the

to the constitutionality of the durational-residency requirements. *See id.* at 512–13 (highlighting relief sought).

40. *Compare id.* at 539–43 (discussing way Tennessee treated residents and non-residents differently regarding liquor licenses), with Wajih AlBaroudi, *NHL Playoffs 2022: Hurricanes Change Ticket Policy in Attempt to Keep Rangers Fans Out of PNC Arena*, CBS SPORTS (May 17, 2022, 4:10 PM), <https://www.cbssports.com/nhl/news/nhl-playoffs-2022-hurricanes-change-ticket-policy-in-attempt-to-keep-rangers-fans-out-of-pnc-arena/> [https://perma.cc/AHE3-PZEZ] (highlighting restrictions placed upon opposing fans and geographical area restricted by Carolina Hurricanes).

41. *See* David Forte, *Commerce, Commerce, Everywhere: The Uses and Abuses of the Commerce Clause*, HERITAGE FOUND. (Jan. 18, 2011), <https://www.heritage.org/the-constitution/report/commerce-commerce-everywhere-the-uses-and-abuses-of-the-commerce-clause> [https://perma.cc/8P2U-WC35] (highlighting origins of today’s debate surrounding definitions of “to regulate,” “commerce,” and “among the several states”).

42. *Heart Atlanta Motel, Inc. v. United States*, 379 U.S. 241 (1964).

43. *See id.* at 280 (Douglas, J., concurring) (criticizing Court’s use of Commerce Clause); *see also* Alberto B. Lopez, *The Road to, and Through, Heart of Atlanta Motel*, 2 SAVANNAH L. REV. 59, 71 (2015) (discussing concurring opinions of Justice Douglas and Justice Goldberg).

44. *See Heart Atlanta Motel*, 379 U.S. at 261–62 (holding under Commerce Clause, Congress has power to remove obstructions and restraints to interstate commerce). In 1964, Congress passed the Civil Rights Act (“CRA”). *See id.* at 246 (explaining facts of case). Title II of the CRA forbids racial discrimination in places of public accommodation such as hotels. *See id.* at 247 (detailing prohibitions of Title II of CRA). The Atlanta motel in question advertised to out-of-state guests and practiced a policy of discriminating against guests based on their race. *See id.* at 243 (explaining hotel’s violations). The motel brought the suit against the United States government to challenge the CRA as an unconstitutional extension of Congress’s power to regulate interstate commerce. *See id.* at 243–44 (explaining suit filed).

45. *See id.* at 254 (describing why motel was in violation of Commerce Clause).

power Congress has under the Commerce Clause to remove obstructions and restraints to interstate commerce.⁴⁶

The reasoning provided in *Heart of Atlanta Motel* rested on the idea that the motel’s refusal to provide adequate accommodations to travelers based on their race interfered significantly with interstate travel and thus impacted interstate commerce.⁴⁷ The same interference with interstate travel exists when certain groups are excluded from engaging in commerce through ticket restrictions.⁴⁸ Using *stare decisis*, activities that impede interstate travel can be regulated under the Commerce Clause.⁴⁹

b. Explanation of Dormant Commerce Clause

The Dormant Commerce Clause is not explicitly laid out in the Constitution.⁵⁰ Instead, it developed from judicial interpretation of the Commerce Clause where state laws have sanctioned differential treatment of in-state and out-of-state interests.⁵¹ Specifically, the

46. *See id.* at 261 (reasoning unavailability to African Americans to find reasonable accommodations interferes significantly with interstate travel). Additionally, the Court added evidence showing that racial discrimination has a disruptive effect on commercial intercourse. *See id.* (explaining why racial discrimination effects interstate commerce). Notably, both Justices Douglas and Goldberg agreed Section V of the Fourteenth Amendment would have been a sounder reasoning, protecting the right of all persons to move freely from state to state. *See id.* at 280, 293 (referencing concurring opinions of both Justice Douglas and Justice Goldberg); *see also* U.S. CONST. amend. XIV, § 5 (detailing powers designated to Congress).

47. *See Lopez*, *supra* note 43, at 67 (discussing effect of racial discrimination on interstate commerce).

48. For further discussion of restricted ticket sales, *see supra* notes 2–16 and accompanying text.

49. *See Constitutional Stare Decisis*, 103 HARV. L. REV. 1344, 1357 n. 87 (1990) (citing *Carter v. Coal Co.*, 298 U.S. 238, 318 (1936)) (referencing *stare decisis*’ role in Court’s decision in *Carter v. Coal*). *Stare decisis* refers to the legal principal of adhering to precedent. *See Stare Decisis*, BLACK’S L. DICTIONARY (11th ed. 2019) (defining *stare decisis* as “[t]he doctrine of precedent, under which a court must follow earlier judicial decisions when the same points arise again in litigation”).

50. *See* Michael DeBow, *Codifying the Dormant Commerce Clause*, 1995 PUB. INT. L. REV. 69, 73 (1995) (identifying no basis for Dormant Commerce Clause outlined in Constitution’s text). Justice Scalia argued Congress should be responsible for ensuring an area of trade free from interferences by States and the courts. *See id.* (expanding on Justice Scalia’s comment). Justice Scalia went as far to say that the language of the Constitution “gives no indication of exclusivity” where many of the powers “coexist with concurrent authority in the States.” *See id.* (highlighting Justice Scalia’s interpretation of Dormant Commerce Clause); *see also* *Tyler Pipe Indus., Inc. v. Wash. State Dep’t Revenue*, 483 U.S. 232, 260 (1987) (Scalia, J., concurring in part and dissenting in part) (highlighting strict originalist view of Constitution).

51. *See Granholm v. Heald*, 544 U.S. 460, 493 (2005) (holding both states’ laws violated Commerce Clause by favoring in-state wineries at expense of out-of-state wineries). State authority to engage in such economic discrimination was not the foundation of the Twenty-First Amendment. *See id.* at 484–86 (furthering purpose and role of Amendment).

Dormant Commerce Clause is implicated when a state law benefits in-state interests while hurting out-of-state interests.⁵² These laws are considered facially discriminatory, but courts have permitted them under the *Pike v. Bruce Church, Inc.*⁵³ balancing test.⁵⁴ This balancing test is more commonly referred to as the “*Pike* balancing test”; it evaluates whether the burdens on interstate commerce are “clearly excessive in relation to the putative local benefits.”⁵⁵ Even if the burden on commerce does not clearly outweigh local benefits, a law is still unconstitutional if the local interest could be promoted with a lesser impact on interstate commerce.⁵⁶ However, if states are able to show their interests outweigh the burden on other states through the *Pike* balancing test, their restrictions could be permissible.⁵⁷

Even so, “putative benefits,” and its illusive definition regarding the *Pike* balancing test, remain a point of contention among circuit courts, resulting in several circuit splits.⁵⁸ Some circuits have accepted a state’s assertions regarding alleged benefits of the law in question, giving deference to the state legislature.⁵⁹ However, other circuits have placed the local interests under greater scrutiny, requiring substantive proof of the alleged benefit to the state.⁶⁰ Promoting

52. *See id.* at 471 (highlighting when Dormant Commerce Clause is implicated).

53. *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970).

54. *See id.* at 142 (introducing balancing test to determine whether state law is clearly excessive to putative local benefit).

55. *See id.* at 142, 146 (holding state cannot enact law that places burden on interstate commerce that is excessive in relation to putative local benefits). In *Pike*, Arizona passed an act which required all cantaloupes grown and offered for sale in Arizona to be packed compactly in standard closed containers. *See id.* at 142 (introducing facts in case). Plaintiff, a cantaloupe grower in Arizona, routinely shipped fruits to California in uncrated containers until he was prohibited from shipping cantaloupes due to violation of the act. *See id.* at 139–40 (continuing to introduce facts in case). Plaintiff argued that it lacked the proper facilities to comply with the act, stating that the perishable nature of the fruit would not allow for acquisition of such facilities in time. *See id.* at 139 (explaining plaintiff claims); *see also* Nathan Gniewek, *Deference vs. Evidence: An Exploration of the Appropriate Application of Putative Benefits to the Pike Balancing Test*, 68 CATH. UNIV. L. REV. 163, 164 (2019) (detailing ways *Pike* has been evaluated by critics).

56. *See* Gniewek, *supra* note 55, at 168 (stating extent of burden on interstate commerce depends on nature of local interest involved); *see also* Joshua B. Ryan, *NEMA v. Sorrell: It’s “Lights Out” for the National Electrical Manufacturers Association - A Look at NEMA’s Failed Commerce Clause Challenge*, 14 VILL. ENV’T. L.J. 349, 354 (2003) (explaining *Pike* balancing test).

57. *See* Gniewek, *supra* note 55, at 177 (discussing application of *Pike*).

58. *See* Michael P. Allen, *The Supreme Court, Punitive Damages and State Sovereignty*, 13 GEO. MASON L. REV. 1, 10 n. 34 (2004) (discussing lack of guidance provided by courts regarding benefits of punitive damages); *see also* Gniewek, *supra* note 55, at 164 (explaining prevalence of circuit splits when discussing Dormant Commerce Clause).

59. *See* Gniewek, *supra* note 55, at 164 (discussing one approach circuit courts have taken).

60. *See id.* (discussing another approach circuit courts have taken).

a local interest does not preclude a court from determining that a statute’s burden to out-of-state actors is outweighed by local interest.⁶¹ Given the long-standing circuit split on this issue, it remains difficult to predict the way certain state laws will be evaluated under the *Pike* balancing test.⁶²

2. *Sherman Antitrust Act: What is Fair Play?*

The United States has a longstanding history of enacting anti-trust regulations in order to prevent monopolies.⁶³ For example, the Sherman Antitrust Act was passed by Congress in 1890 to authorize the federal government to institute proceedings against trusts, the existence of which could be disastrous for economic growth.⁶⁴ The Sherman Antitrust Act was passed as a response to public concern with the growth and influence of the railroad industry.⁶⁵ Today, there are both civil and criminal penalties for violations of the Sherman Antitrust Act.⁶⁶ The Act primarily aims to promote

61. See Ryan, *supra* note 56, at 366 (identifying parameters of *Pike* balancing test).

62. See Gniewek, *supra* note 55, at 164 (confirming uncertainty in circuit split surrounding *Pike* balancing test); see also Kate R. Bowers, *Supreme Court Narrows Dormant Commerce Clause and Upholds State Animal Welfare Law*, CONG. RSCH. SERV. (Aug. 31, 2023), <https://crsreports.congress.gov/product/pdf/LSB/LSB11031> [web.archive.org/web/20240508232923/https://constitution.congress.gov/browse/essay/artI-S8-C3-5-1/ALDE_00013407/] (noting recent debate over *Pike* test). Bowers states no opinion gained majority support when the Court recently discussed the Dormant Commerce Clause. See *id.* (highlighting continued questions surrounding *Pike* test).

63. See M. S. Hottenstein, *The Sherman Anti-Trust Law*, 44 AM. L. REV. 827, 827 (1910) (detailing intentions behind Sherman Act). Hottenstein details the history behind the bill’s introduction in the fifty-first Congress and the lengthy discussions that have followed since its enactment. See *id.* (explaining origins of Act); see also ArtI.S8.C3.5.1 *Sherman Antitrust Act of 1890 and Sugar Trust Case*, CONST. ANNOTATED, https://constitution.congress.gov/browse/essay/artI-S8-C3-5-1/ALDE_00013407/ [web.archive.org/web/20240508232923/https://constitution.congress.gov/browse/essay/artI-S8-C3-5-1/ALDE_00013407/] (last visited Oct. 29, 2023) (explaining Congress’s intentions for passing Act). Under the Act, Congress sought to regulate commerce as “traffic,” prohibiting every contract combination in the form of trust or otherwise. See *id.* (explaining commerce regulated). Congress made it a misdemeanor to “monopolize or attempt to monopolize any part of such commerce.” See *id.* (explaining Congress’s actions regarding monopolizing commerce).

64. See *United States v. E.C. Knight Co.*, 156 U.S. 1, 3 (1895) (holding Sherman Antitrust Act constitutional as applied to company with control of over ninety-eight percent of sugar-refining business).

65. See *Sherman Antitrust Act*, CORP. FIN. INST., <https://corporatefinanceinstitute.com/resources/economics/sherman-antitrust-act/> [https://perma.cc/EHC5-HDGN] (last visited Oct. 22, 2023) (explaining history behind Sherman Antitrust Act ratification).

66. See *Fifty Years of Sherman Act Enforcement*, 49 YALE L.J. 284, 291 (1939) (discussing penalties for violation of Act). Penalties range from small fines to imprisonment and dissolution of businesses. See *id.* (noting applicable penalties); see

economic fairness and competitiveness while also regulating interstate commerce.⁶⁷ Modern regulators must perform a balancing test to determine if a company is a monopoly or simply operating with a competitive edge.⁶⁸ Recently, Ticketmaster, a premier booking and ticketing service company, was accused of operating a monopoly.⁶⁹

Further, the Biden Administration has taken a strong stance against monopolies, so much so that President Biden issued an Executive Order on Promoting Competition in the American

also *The Antitrust Laws*, FED. TRADE COMM'N, <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/antitrust-laws> [https://perma.cc/WGD5-YK97] (last visited Oct. 22, 2023) (detailing civil and criminal penalties associated with violations of Act); Eshe Nelson & Carlos Tejada, *Pilgrim's Pride to Pay \$110 Million to Settle Charges of Fixing Chicken Prices*, N.Y. TIMES (Oct. 14, 2020), <https://www.nytimes.com/2020/10/14/business/pilgrims-pride-price-fixing.html> [web.archive.org/web/20240508232815/https://www.nytimes.com/2020/10/14/business/pilgrims-pride-price-fixing.html] (detailing allegations against Pilgrim's Pride). Pilgrim's Pride, one of the largest chicken producers in the United States, was accused of colluding from 2012 to 2017 to fix prices and rig bids across the United States. *See id.* (describing antitrust allegations against Pilgrim's Pride). The company entered a guilty plea in the U.S. District Court in Denver, paying a criminal fine of \$107,923,572. *See One of the Nation's Largest Chicken Producers Pleads Guilty to Price Fixing and is Sentenced to a \$107 Million Criminal Fine*, OFF. PUB. AFFS. (Feb. 23, 2021), <https://www.justice.gov/opa/pr/one-nation-s-largest-chicken-producers-pleads-guilty-price-fixing-and-sentenced-107-million> [https://perma.cc/R7LJ-24YU] (detailing Pilgrim's Pride's guilty plea). Not only did the company violate antitrust laws, but over ten individuals within Pilgrim's Pride have also had charges filed against them. *See id.* (noting other executives and employees who have also been charged). Inspector General of the Department of Commerce, Peggy E. Gustafson, noted the investigation demonstrates the government's desire to protect the integrity of the free market and maintain competition. *See id.* ("When competitor companies conspire to set prices that benefit themselves, American consumers are cheated. We will continue to work with our law enforcement partners to pursue such illegal activity and ensure perpetrators are held accountable.").

67. *See The Antitrust Laws*, *supra* note 66 (explaining purpose of Act); *see also* Jeffrey Gordon, *Baseball's Antitrust Exemption and Franchise Relocation: Can a Team Move?*, 26 FORDHAM URB. L. J. 1201, 1204 (1999) (postulating whether professional sports have fostered monopoly surrounding ticket sales).

68. *See* Mackinlee Rogers, *Striking the Balance Between Competition and Fairness: Sherman Antitrust Act Section Two and Utility Monopolies in Renewable Energy*, 91 MISS. L. J. 501, 536 (2023) (explaining monopoly evaluation). The balancing test is intended to weigh "the totality of the specific circumstances and refrains from insinuating a broad generalization," additionally, the balancing test is "best suited for an independent monopoly leveraging claim because it falls in line with the Supreme Court's recent increase in moving away from 'overly mechanical' analyses." *See id.* at 535–36 (discussing test).

69. *See* Andrzejewski, *supra* note 15 (reviewing complaints filed asserting claims for relief under California antitrust laws); *see also* Ben Sisario & Matt Stevens, *Ticketmaster Cast as a Powerful 'Monopoly' at Senate Hearing*, N.Y. TIMES (Jan. 24, 2023), <https://www.nytimes.com/2023/01/24/arts/music/ticketmaster-taylor-swift-senate-hearing.html> [web.archive.org/web/20240508233434/https://www.nytimes.com/2023/01/24/arts/music/ticketmaster-taylor-swift-senate-hearing.html] (detailing Senate hearing with Live Nation executive Joe Berchtold, accused of operating monopoly).

Economy during the first year of his presidency.⁷⁰ The conversation around antitrust regulations has zeroed in on pending legal cases against Meta and Amazon, two companies synonymous with influential American businesses in the twenty-first century.⁷¹ The case against Amazon is expected to take years to reach a conclusion.⁷² Nevertheless, it is likely that Lina Khan, Chair of the Federal Trade Commission (“FTC”), will continue to take big swings against some of the nation’s largest companies.⁷³

70. See Exec. Order No. 14036, 86 Fed. Reg. 36987 (2021) (explaining Biden Administration’s desire to promote competition within American economy); see also Aurelien Portuese, *Biden Antitrust: The Paradox of the New Antitrust Populism*, 29 GEO. MASON L. REV. 1087, 1088 (2022) (explaining Biden Administration’s motivation to regulate antitrust violations).

71. See The Daily, *Amazon’s Most Beloved Features May Turn Out to Be Illegal*, N.Y. TIMES, at 1:44 (Oct. 2, 2023), <https://www.nytimes.com/2023/10/02/podcasts/the-daily/amazon-ftc.html> [web.archive.org/web/20240508233823/https://www.nytimes.com/2023/10/02/podcasts/the-daily/amazon-ftc.html] (discussing lasting implications of lawsuit against Amazon). Barbaro discusses the key features of Amazon’s business model which are most at issue. See *id.* (explaining way Amazon handles checkout process to be in potential violation of antitrust violations). Additionally, Barbaro discusses the way that Amazon promotes sellers who establish the lowest price for a product not just on Amazon’s site, but across the internet. See *id.* (exploring additional violations of antitrust regulation); see also *FTC Sues Amazon for Illegally Maintaining Monopoly Power*, FED. TRADE COMM’N (Sept. 26, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-sues-amazon-illegally-maintaining-monopoly-power> [https://perma.cc/JS3P-XMWC] (detailing Federal Trade Commission’s position in lawsuit against Amazon).

72. See Haleluya Hadero, *The Amazon Antitrust Lawsuit is Likely to be a Long and Arduous Journey for the FTC*, ASSOCIATED PRESS (Oct. 10, 2023, 11:16 AM), <https://apnews.com/article/amazon-ftc-lina-khan-antitrust-lawsuit-da0b124e24183a3acd60367f05181f49> [https://perma.cc/3LFA-ZMZH] (explaining length of litigation between FTC and Amazon). The complaint accuses Amazon of strong-arming sellers in what it calls the “online superstore market” and “online marketplace services.” See *id.* (highlighting Amazon’s actions). It is estimated Amazon controls forty percent of the United States’ e-commerce sector. See *id.* (underlining Amazon’s market dominance). Amazon’s General Counsel responded to the lawsuit via a blog post, accusing the FTC of attempting to gerrymander the alleged market to portray Amazon as something they are not. See David Zapolsky, *The FTC’s Lawsuit Against Amazon Would Lead to Higher Prices and Slower Deliveries for Consumers—and Hurt Businesses*, AMAZON (Sept. 26, 2023), <https://www.aboutamazon.com/news/company-news/amazon-ftc-antitrust-lawsuit-full-response> [https://perma.cc/UAS2-RYFF] (responding to FTC lawsuit).

73. See Brian Fung & Catherine Thorbecke, *Lina Khan’s Rise was Heralded as an Antitrust Revolution. Now She Has to Pull it Off*, CNN (Oct. 17, 2023, 7:58 PM), <https://www.cnn.com/2023/10/16/tech/lina-khan-risk-takers/index.html> (explaining Khan’s larger goal of broadening scope of antitrust law). Khan has been largely regarded as a pioneer in antitrust regulation, hoping to creatively apply antitrust law. See *id.* (outlining Khan’s goals as chair of FTC); see generally Lina M. Khan, *Amazon’s Antitrust Paradox*, 126 YALE L.J. 710 (2017) (questioning Amazon’s business practices).

B. Drawing the Plays: A History of Ticket Restrictions

Ticket restrictions have existed in various forms throughout the past decade.⁷⁴ In 2023, the Florida Panthers made international headlines when the organization restricted ticket sales for the second round of the Stanley Cup playoff game versus the Toronto Maple Leafs.⁷⁵ The tickets were geographically restricted to the Florida Panthers “fanbase” within the United States.⁷⁶ Ticketmaster orchestrated the restrictive sale, determining customers’ locations based on their credit card billing address.⁷⁷ The online ticket reseller displayed a message informing fans that orders violating restrictions would be cancelled without notice or refund.⁷⁸

Similarly, a year prior during the 2022 Stanley Cup playoffs, the Carolina Hurricanes implemented a “restricted sales area” policy for the second-round playoff series versus the New York Rangers.⁷⁹

74. See Daniel Roberts, *Were the Seahawks’ and Broncos’ Ticket Bans Legal?*, FORTUNE (Jan. 15, 2014, 2:25 PM), <https://fortune.com/2014/01/15/were-the-seahawks-and-broncos-ticket-bans-legal/> [<https://perma.cc/3Q36-PGWX>] (describing ticket bans dating back to 2014 and detailing NFL’s restriction on ticket purchasing to opposing fans). This article discusses the same Seahawks ticket ban as described in *Williams*. For further discussion of *Williams*, see *infra* notes 151–158 and accompanying text.

75. See Gonzalez, *supra* note 3 (detailing Panthers’ restrictions on ticket sales to non-U.S. residents). Gonzalez compares Panthers’ policy to other teams in the National Hockey League’s (“NHL”) playoffs who did not restrict ticket sales. See *id.* (commenting on industry practices). Additionally, Gonzalez commented on the Panthers’ especially low season attendance during the NHL regular season, as the seventh lowest in the league. See *id.* (questioning tactics Panthers utilized during ticket distribution).

76. See Phil Tsekouras, *Florida Panthers Limit Non-U.S. Residents from Buying Maple Leafs Playoff Road Tickets*, CP24 (May 1, 2023, 2:26 PM), <https://www.cp24.com/news/florida-panthers-limit-non-u-s-residents-from-buying-maple-leafs-playoff-road-tickets-1.6378288> [<https://perma.cc/PE4A-3T7K>] (explaining first twenty-four hours of sales restricted). Anyone who did not have a specified billing address associated with their credit card would have their order cancelled and be issued a refund. See *id.* (explaining consequences for those who disregarded restriction).

77. See *id.* (detailing methods used to determine customers’ location); see also Strong, *supra* note 10 (explaining restriction based on credit card billing address).

78. See Strong, *supra* note 10 (summarizing ticket policy established by Ticketmaster). Strong criticizes the Florida Panthers’ decision to restrict a fan base that travels well. See *id.* (cautioning that fans will still find ways into arena); see also Jim Turner, *1.44 Million Canadians Flock to Florida During 2023’s First Quarter, Tourism Officials Say*, FOX 13 TAMPA BAY (June 7, 2023, 4:03 PM), <https://www.fox13news.com/news/1-44-million-canadians-flock-to-florida-during-2023s-first-quarter-tourism-officials-say> [<https://perma.cc/4ZNC-387Y>] (noting influx in tourism from Canada throughout winter). Canada is usually a top international country of origin for visitors to Florida and assuming the Toronto Maple Leafs’ fans would travel for the series is within reason. See *id.* (discussing historical tourism trends).

79. See Tabatha Wethal, *NHL Hurricanes Restrict Tickets to Prevent Opposing Fan Takeover During Series*, ATHLETIC BUS. (May 19, 2022), <https://www.athleticbusiness.com/operations/article/15292266/nhl-hurricanes-restrict-tickets-to-prevent-opposing-fan-takeover-during-series> [<https://perma.cc/EJC8-WZ5R>] (outlining

The Carolina Hurricanes limited ticket sales to an even smaller geographic area than the Florida Panthers, only including neighboring states.⁸⁰ Fans outside the geographic area were presented with a disclaimer on the Hurricanes’ website alerting them that any ticket purchased with a credit card billing address outside of that assigned geographic zone would be canceled without notice.⁸¹

Most recently, during the 2022 NFL Playoffs, other restrictive policies were implemented.⁸² The Tennessee Titans prohibited fans from transferring tickets to the playoff game against the Cincinnati Bengals until twenty-four hours before kickoff.⁸³ Each NFL franchise is entitled to implement its own regulations for its primary market ticket sales.⁸⁴ Although each team is entitled to implement its own regulations for its primary market ticket sales, there are questions as

Carolina Hurricanes’ restricted ticket sales policy). This policy worked in similar ways to that of the Florida Panthers’. *See id.* (detailing restrictions and ramifications for violations of Carolina Hurricanes’ policy). The team utilized fans’ billing address to ascertain their “location” and restrict sales accordingly, taking a more extreme step than the one taken by the Florida Panthers. *See id.* (explaining process used).

80. *See* AlBaroudi, *supra* note 40 (highlighting restrictions placed upon opposing fans and geographical area restricted by Carolina Hurricanes). Ticket sales were restricted to residents of North Carolina, South Carolina, and the southern parts of Virginia. *See id.* (detailing affected areas). The article acknowledges the shortcomings of the Hurricanes’ plan, primarily their inability to control the secondary market. *See id.* (commenting on inefficiencies of policy).

81. *See id.* (summarizing Carolina Hurricanes’ website disclaimer about residency restrictions). Specifically, the policy states:

PNC Arena is located in Raleigh, NC. Sales to this event will be restricted to residents of North Carolina/South Carolina and Southern Virginia. Residency will be based on credit card billing address. Orders by residents outside North Carolina/South Carolina and Southern Virginia will be canceled without notice and refunds given.

See id. (quoting Hurricanes’ policy).

82. *See* Chris Roling, *Titans Change Ticket Rules for Playoff Game to Try to Keep Bengals Fans Out*, USA TODAY (Jan. 20, 2022, 10:08 AM), <https://www.usatoday.com/story/sports/nfl/2022/01/20/titans-vs-bengals-nfl-playoff-tickets/6590045001/> [<https://perma.cc/4Z8B-Q3RL>] (discussing policies implemented by Los Angeles Rams and Tennessee Titans). Specifically, the Vice President of Ticketing for the Titans was quoted as saying:

We want Nissan Stadium to be two tone blue. And so by limiting this transfer window, it also limits the number of visiting team fans that we’ll have in the stadium. By limiting that transfer time would limit some of the resale and some of the transfer activity that would happen in advance.

See id. (quoting intentions of Tennessee Titans regarding ticket restrictions).

83. *See id.* (describing changed ticket transfer policy implemented by Tennessee Titans). Roling highlights the Cincinnati Bengals’ first playoff berth in thirty-one years. *See id.* (emphasizing fan desire for tickets). Roling also points out the manageable road trip from Cincinnati to Nashville and the Tennessee Titans’ desire to implement as many hurdles as possible to keep opposing fans out of their stadium. *See id.* (discussing logistics for Cincinnati fans’ travel to Nashville).

84. *See Club Ticket Terms and Conditions*, NAT’L FOOTBALL LEAGUE, <https://www.nfl.com/legal/clubs-game-ticket-policy> [<https://perma.cc/K7PT-9MLA>] (last visited Aug. 22, 2023) (detailing each NFL teams’ ticket terms and conditions).

to whether these restrictive practices violate the Commerce Clause and Antitrust Regulations.⁸⁵

C. The Playbook: Methods by Which Fans Obtain Tickets

Traditionally, fans obtained tickets through the box office.⁸⁶ However, in recent years the need for physical box offices has become increasingly obsolete.⁸⁷ With the rise of technology, several third-party ticket resellers have emerged and expanded the methods fans use to purchase and resell tickets.⁸⁸ Websites such as Ticketmaster, StubHub, SeatGeek, and Vivid Seats provide a platform for fans to buy after-market tickets.⁸⁹

Ticketmaster is the superpower amongst ticket resellers, claiming seventy percent of the market share for ticketing and live events.⁹⁰ Given its near-monopolistic position in the market, Ticketmaster has the ability to abuse its position and manipulate the marketplace, creating unfair conditions for fans.⁹¹ For example, Ticketmaster

85. See U.S. CONST. art. I, § 8, cl. 3 (stating powers Congress has under Commerce Clause, including ability to regulate interstate commerce and restrict states from impairing interstate commerce).

86. See Photograph of People Wait at Griffith Stadium in Washington, DC, to Buy Tickets for the 1925 World Series., in Amanda Krause, *16 Photos That Show the Lengths People Have Gone to Buy Tickets Throughout History*, BUS. INSIDER (Nov. 19, 2022, 8:32 AM), <https://www.businessinsider.com/how-people-bought-tickets-over-the-years-2022-11> [web.archive.org/web/20240508234345/https://www.businessinsider.com/how-people-bought-tickets-over-the-years-2022-11] (depicting line of people waiting outside box office to purchase tickets to 1925 World Series).

87. See Matthew J. Parlow, *The Law and Economics of Ticket Scalping*, 68 WAYNE L. REV. 345, 351–52 (2023) (confirming way internet has transformed secondary ticket market).

88. See Lawrence Pines, *StubHub's Top 5 Competitors in Ticket Reselling*, INVESTOPEDIA (Dec. 30, 2022), <https://www.investopedia.com/articles/company-insights/090816/stubhubs-top-4-competitors.asp> [https://perma.cc/8RDP-SJYN] (listing parties involved in third-party sporting tickets).

89. See *id.* (highlighting major ticket reselling organizations and their respective market position).

90. See Emily Lorsch, *Why Live Nation and Ticketmaster Dominate the Live Entertainment Industry*, CNBC (Jan. 25, 2023, 4:02 PM), <https://www.cnbc.com/2023/01/25/the-live-nation-and-ticketmaster-monopoly-of-live-entertainment.html> [https://perma.cc/FL74-ZN4A] (estimating Ticketmaster controls seventy percent of market share); see also Adam Hayes, *Is Ticketmaster a Monopoly?*, INVESTOPEDIA (Feb. 18, 2023), <https://www.investopedia.com/is-ticketmaster-a-monopoly-6834539#:~:text=According%20to%20insights%20from%20Yale,by%20far%20the%20industry%20leader> [https://perma.cc/75JW-SLJS] (observing extreme imbalance of market share among secondary ticket market players).

91. See Lorsch, *supra* note 90 (conditioning Ticketmaster's position in market with one of lopsided power); see also Matthew K. Finkelstein & Colleen Lagan, "Not For You"; *Only for Ticketmaster: Do Ticketmaster's Exclusive Agreements with Concert Venues Violate Federal Antitrust Law?*, 10 J. CIV. RTS. & ECON. DEV. 403, 414 (1995) (highlighting Ticketmaster's history of exclusive practices against competitors). Ticketmaster's agreements with venues generally extended over three to five years, allowing Ticketmaster to be the exclusive agent for the sale of tickets. See *id.* at 412

generates revenue by charging customers an additional service fee on top of the original ticket price, often amounting to more than seventy-five percent of the original ticket price.⁹² To lure customers away from Ticketmaster, competitors promise incentives such as zero fees.⁹³ The conversation around Ticketmaster’s potential violation of the Sherman Antitrust Act was reignited in 2022 when international pop star Taylor Swift released tickets for her world tour via Ticketmaster.⁹⁴

1. *Ticketmaster Knows This Road All Too Well*⁹⁵

In its forty-seven years as a ticket reseller, Ticketmaster has become accustomed to fielding allegations around its monopolistic-like actions.⁹⁶ While this Comment mainly discusses Ticketmaster’s sporting event tickets, the company is a major player in the broader

(explaining length of venue agreements). This raises questions of whether this behavior violates § 1 and § 2 of the Sherman Act. *See id.* (questioning potential Sherman Antitrust Act violations).

92. *See* Live Nation Entertainment, Inc., Annual Report (Form 10-K) (Feb. 23, 2022) (reviewing Live Nation Entertainment’s financial statement, including Ticketmaster’s financial statement, which details service fees as aspect of revenue in Notes to Consolidated Financial Statements); *see also* Mark Dent, *The Sneaky Economics of Ticketmaster*, HUSTLE (Feb. 9, 2024), <https://thehustle.co/the-sneaky-economics-of-ticketmaster/> [<https://perma.cc/3WTR-MUKN>] (discussing fees Ticketmaster charges fans).

93. *See StubHub Partners with Smartly.io to Drive Higher Brand Lift and Conversions Through Full-Funnel Strategy*, SMARTLY.IO, <https://www.smartly.io/case/stubhub> [<https://perma.cc/LG7P-ZSQY>] (last visited Oct. 22, 2023) (discussing StubHub strategy to scale and widen reach to new audiences by promoting brand awareness and tailoring marketing for specific groups of people).

94. *See* Anna Cooban, *Thousands of Taylor Swift Fans Left Hanging as Ticketmaster Suddenly Suspends Ticket Sales*, CNN (July 12, 2023, 4:28 AM), <https://www.cnn.com/2023/07/11/media/ticketmaster-taylor-swift-france-concert-ticket-glitch/index.html> [<https://perma.cc/4BN2-5EVR>] (detailing Ticketmaster site crash as fans tried purchasing tickets); *see also* Grace Connelly, *I Think I’ve Seen This Film Before: How Taylor Swift’s Eras Tour Has Exposed the Need to Investigate Ticketmaster’s Market Dominance*, 35 LOY. CONSUMER L. REV. 248, 254 (2023) (discussing complaint lodged against Ticketmaster involving violations of Sherman Antitrust Act and Clayton Antitrust Act). Additionally, Connelly explains how the release of Taylor Swift’s Eras Tour tickets shut down Ticketmaster’s site. *See id.* at 253 (explaining impact on Ticketmaster site). When the news broke of Ticketmaster shutting down, questions began circling about the power Ticketmaster holds in event sales and the need for ticket price regulations. *See* Sisco, *supra* note 15 (discussing federal government’s interest in regulating Ticketmaster).

95. *See* TAYLOR SWIFT, RED (TAYLOR’S VERSION) (Republic 2021) (referencing one of Taylor Swift’s most iconic songs, “All Too Well”).

96. *See* Maureen Tkacik & Krista Brown, *Ticketmaster’s Dark History*, AM. PROSPECT (Dec. 21, 2022), <https://prospect.org/power/ticketmasters-dark-history/> [<https://perma.cc/6KX3-PVP8>] (identifying Ticketmaster’s checkered history fighting anti-trust violation claims).

entertainment ticketing industry.⁹⁷ The question of Ticketmaster's market power was initially raised in 1994 when world-famous rock band Pearl Jam expressed antitrust concerns surrounding the company's control over ticket distribution.⁹⁸ In 2009, Ticketmaster once again came under scrutiny when it announced plans to merge with Live Nation, now Ticketmaster's parent company.⁹⁹ This plan was met with concern from both the public and the Department of Justice ("DOJ"), however it was ultimately permitted with structural safeguards in the hopes of preventing a monopoly.¹⁰⁰ The structural safeguards resulted in a consent decree among the DOJ, Live Nation, and Ticketmaster.¹⁰¹

However, the conversation around Ticketmaster's alleged monopolistic power was reignited during Taylor Swift's 2023-2024 Eras Tour.¹⁰² The highly anticipated Eras Tour originally provided

97. See Sarah Whitten & Lauren Feiner, *Senators Slam Live Nation Over Ticketmaster's Dominance, Botched Taylor Swift Sale*, CNBC (Jan. 25, 2023, 3:25 PM), <https://www.cnn.com/2023/01/24/senate-committee-live-nation-ticketmaster-hearing.html> [<https://perma.cc/6KX3-PVP8>] (discussing conversations regarding Ticketmaster's inability to handle bots). Ticketmaster was largely criticized for dropping the ball by not having the correct protections in place while being such a large, dominant company. See *id.* (explaining Ticketmaster leads competitors in size).

98. See Tkacik & Brown, *supra* note 96 (reporting Pearl Jam's fight against Ticketmaster); see also Connelly, *supra* note 94, at 249 (detailing Pearl Jam's assertion of antitrust concerns against Ticketmaster). The band alleged Ticketmaster had monopolistic control over ticket distribution and used that power to charge excessively high fees. See *id.* (explaining sale of Pearl Jam tickets). While the Department of Justice investigated the complaint, the result was "a two-sentence press release indicating that the investigation was closed, and the DOJ would 'continue to monitor competitive developments in the ticketing industry.'" See *id.* at 249-50 (indicating fans' frustrations with Department of Justice).

99. See Connelly, *supra* note 94, at 250 (merging in 2009, Ticketmaster expanded market reach when combined with Live Nation); see also *What do John Marshall and Taylor Swift Have in Common?*, PRES. VA. <https://preservationvirginia.org/what-do-john-marshall-and-taylor-swift-have-in-common/> [<https://perma.cc/6VMC-SX4C>] (last visited Mar. 22, 2024) (highlighting merger between Ticketmaster and Live Nation resulting in control of over seventy percent of concert ticket sales in U.S.).

100. See Christine A. Varney, Assistant Att'y Gen., U.S. Dep't of Just., *The Ticketmaster/Live Nation Merger Review and Consent Decree in Perspective*, Remarks as Prepared for the South by Southwest (Mar. 18, 2010) (explaining role Antitrust Division plays in course of major industry mergers). Varney spoke about how the Live Nation and Ticketmaster merger was both a horizontal and vertical integration, such that two direct competitors merged, but it was also a vertical integration since the businesses were situated above and below each other in the supply chain. See *id.* (expanding on integration of companies); see also Connelly, *supra* note 94, at 249 (discussing negative sentiment regarding merger).

101. See Varney, *supra* note 100 (explaining DOJ created policies to regulate and assuage public's fear of monopoly). See generally Milton Katz, *The Consent Decree in Antitrust Administration*, 53 HARV. L. REV. 415 (1940) (detailing consent decree in antitrust litigation). A consent decree is a settlement that resolves a dispute between two parties without assigning blame. See *id.* (defining consent decree).

102. See Connelly, *supra* note 94, at 253 (exploring how Ticketmaster's blunder in distribution of Eras Tour tickets sparked monopoly debate); see also Chairwoman Klobuchar, *Ranking Member Lee Announce Hearing on Lack of Competition in*

a presale ticket option to “Verified Fans” who received a pre-sale code.¹⁰³ However, Ticketmaster’s inability to handle the volume of traffic resulted in the cancellation of general ticket sales after fans had already waited hours in virtual ticket queues.¹⁰⁴ Ultimately, this resulted in exorbitant ticket prices and fans reacted by filing a class-action lawsuit against Ticketmaster and its parent company, Live Nation, alleging fraud, misrepresentation, and antitrust violations.¹⁰⁵

The effects of Taylor Swift’s Eras Tour went well beyond a renewal of antitrust litigation.¹⁰⁶ As of October 2023, the Eras Tour is projected to generate close to \$5.7 billion in consumer spending across

Ticketing Markets, KLOBUCHAR SENATE (Nov. 22, 2022), <https://www.klobuchar.senate.gov/public/index.cfm/2022/11/chairwoman-klobuchar-ranking-member-lee-announce-hearing-on-lack-of-competition-in-ticketing-markets#:~:text=November%2022%2C%202022,competition%20in%20the%20ticketing%20industry> [https://perma.cc/TP5P-DURH] (recounting conversation around Ticketmaster).

103. See Connelly, *supra* note 94, at 253 (explaining days leading up to Ticketmaster’s release of Eras Tour tickets); see also Karli Bendlin, *Taylor Swift’s Eras Tour: A Timeline of the Ticketmaster Fiasco*, PEOPLE (Mar. 29, 2023, 10:25 AM), <https://people.com/music/taylor-swift-eras-tour-ticketmaster-timeline/> [https://perma.cc/6X94-DWQ8] (taking readers through timeline of Ticketmaster fiasco).

104. See Bendlin, *supra* note 103 (explaining Ticketmaster cancelled general sale after extraordinarily high demands). The company anticipated 1.5 million “verified fans” and ended up with 14 million users, including bots. See *id.* (describing technical hurdles to ticket distribution).

105. See Juliana Kaplan, *This Taylor Swift Fan Says She’s ‘Embarrassed’ About Paying \$5,500 for Resale Tickets*, BUS. INSIDER (Jan. 15, 2024, 8:59 AM), <https://www.businessinsider.com/how-much-taylor-swift-tickets-regret-spending-eras-ticketmaster-stubhub-2022-11> [web.archive.org/web/20240508234440/https://www.businessinsider.com/how-much-taylor-swift-tickets-regret-spending-eras-ticketmaster-stubhub-2022-11] (detailing extraordinarily high price some fans paid to see Eras Tour). One fan recounted how she regrets her ticket purchase, two floor seats for just over \$5,500, feeling guilty and disappointed in Ticketmaster and Live Nation for letting the sale get to the point of frenzy. See *id.* (explaining emotions fans felt during ticket sale process); see also Rachel Treisman, *Dozens of Taylor Swift Fans Sue Ticketmaster in the Wake of its Ticket Sale Fiasco*, NPR (Dec. 6, 2022, 2:24 PM), <https://www.npr.org/2022/12/06/1140968805/taylor-swift-fans-ticketmaster-lawsuit> [https://perma.cc/5SPU-JR34] (detailing class-action lawsuit alleging ticketing platform has monopoly on primary and secondary markets). The lawsuit accuses Ticketmaster of engaging in fraudulent practices, including price discrimination. See *id.* (explaining lawsuit); see also Complaint at 1–60, *Barfuss v. Live Nation Ent., Inc.*, No. 2:23-cv-01114 (C.D. Cal. Feb. 14, 2023) (detailing complaint filed in California court).

106. See Caitlin O’Kane, *The Federal Reserve Says Taylor Swift’s Eras Tour Boosted the Economy. One Market Research Firm Estimates She Could Add \$5 Billion*, CBS NEWS (July 18, 2023, 5:09 PM), <https://www.cbsnews.com/news/taylor-swift-eras-tour-boosted-economy-tourism-federal-reserve-how-much-money-made/> [https://perma.cc/4X-MH-KZDN] (detailing money Eras Tour generated, as well as increase in tourism). Following Swift’s tour to Philadelphia, the Federal Reserve Bank of Philadelphia said that tourism in the area continued to show slight growth. See *id.* (explaining impact on City of Philadelphia). Chicago and Cincinnati saw similar tourism results as a by-product of the concert. See *id.* (commenting on increased tourism felt in other cities Swift toured in).

the United States.¹⁰⁷ One tour stop was Glendale, Arizona, home to Super Bowl LVII.¹⁰⁸ The opening night brought in more revenue for local businesses than the Super Bowl, effectively generating the same volume of business as the Super Bowl, two to three times a week for five months in cities all across the country.¹⁰⁹ If a commodity taken in the aggregate can be regulated through the Commerce Clause, certainly a \$5 billion enterprise can be regulated as well.¹¹⁰ The magnitude of revenue generated through Taylor Swift's tour has been compared to the gross domestic product of small countries.¹¹¹ Given the staggering amount of revenue in ticket sales, Congress has the ability to regulate the ticket industry under the Commerce Clause.¹¹²

2. *Policies Refereeing Ticket Sales*

As it stands today, each of the four major sports leagues, namely the National Football League ("NFL"), National Hockey League

107. See Jeannie Kopstein & Mariah Espada, *The Staggering Economic Impact of Taylor Swift's Eras Tour*, TIME (Aug. 23, 2023, 11:04 AM), <https://time.com/6307420/taylor-swift-eras-tour-money-economy/> [<https://perma.cc/VZC6-UL2Q>] (explaining how tour came at perfect time, post-pandemic, and concertgoers were eager to hear live music). Famously, an economist is quoted saying "[i]f Taylor Swift were an economy, she'd be bigger than 50 countries." See *id.* (quantifying Swift's success and impact); see also Abha Bhattarai, Rachel Lerman, & Emily Sabens, *The Economy (Taylor's Version)*, WASH. POST (Oct. 13, 2023, 6:00 AM), <https://www.washingtonpost.com/business/2023/10/13/taylor-swift-eras-tour-money-jobs/> [<https://perma.cc/HRT5-EHX5>] (commenting on economic impact of Eras Tour).

108. See TAYLOR SWIFT THE ERAS TOUR, <https://tstheerastour.taylorswift.com/> [<https://perma.cc/K93G-QVH8>] (last visited Sept. 22, 2023) (displaying unique aspects of each show in "Select Your Show" section, including dates of Glendale, Arizona show and surprise songs for those dates).

109. See Kopstein & Espada, *supra* note 107 (detailing staggering revenue Eras Tour brought to Glendale, Arizona).

110. See *Wickard v. Filburn*, 317 U.S. 111, 128 (1942) (establishing precedent whereby Commerce Clause grants Congress ability to regulate prices in industry, even if each individual activity has trivial effect on interstate commerce so long as in aggregate it would have substantial effects on interstate commerce); see also *Champion v. Ames*, 188 U.S. 321, 322 (1903) (holding lottery tickets were indeed subject of traffic and independent carriers may be regulated under Commerce Clause). For further discussion of the Commerce Clause's implications, see *infra* notes 159–204 and accompanying text.

111. See Kyle Fitzgerald, *Taylor Swift's Eras Tour Brings Jolt of Energy to US Economy*, NAT'L NEWS (Aug. 10, 2023), <https://www.thenationalnews.com/world/us-news/2023/08/10/taylor-swifts-eras-tour-brings-jolt-of-energy-to-us-economy/#:~:text=The%20Eras%20Tour%20is%20projected,GDP%20larger%20than%2050%20countries> [<https://perma.cc/W8TU-jC6T>] (comparing economic impact of Taylor Swift's Eras Tour with gross domestic product produced by fifty smallest countries).

112. See Krystal Hur & Bryan Mena, *First on CNN: Taylor Swift's Eras Tour Could Become the Highest Grossing Tour of all Time*, CNN (Aug. 17, 2023, 5:26 PM), <https://www.cnn.com/2023/08/17/business/taylor-swift-eras-tour-two-billion/index.html> [<https://perma.cc/W7YH-CCJF>] (analyzing survey conducted by research firm

(“NHL”), Major League Baseball (“MLB”), and the National Basketball Association (“NBA”), maintains its own policy surrounding ticket sales.¹¹³ In addition to league policies, each team has its own internal policies.¹¹⁴ Interestingly, most of the ticket purchasers affected by these policies are season ticket holders because the remainder of fans are more-or-less regulated through the Better Online Ticket Sales Act.¹¹⁵ The Act’s goal is to prevent the circumvention of security methods or other technological control measures used by online ticket issuers, including the use of ticket-buying bots that bypass security walls on authorized online ticket resellers.¹¹⁶ The ticketing

QuestionPro, indicating tour could gross \$2.2 billion in North American ticket sales alone).

113. See Nathan R. Scott, *Take Us Back to the Ball Game: The Laws and Policy of Professional Sports Ticket Prices*, 39 UNIV. MICH. J.L. REFORM 37, 38 (2005) (detailing disparity amongst leagues regarding ticket policies); see also Lenah Ann, *A Detailed List of the Major Professional Sports Leagues in the United States and Canada*, SPORTS BRIEF (Apr. 12, 2023, 8:24 PM), <https://sportsbrief.com/other-sports/33238-a-detailed-list-major-professional-sports-leagues-united-states-canada/> [<https://perma.cc/PW9B-A62R>] (listing four major sports leagues in United States and Canada as NHL, NFL, NBA, and MLB).

114. See *Philadelphia Eagles Ticket Disclaimer*, PHILA. EAGLES, <https://www.philadelphiaeagles.com/tickets/disclaimer> [<https://perma.cc/JX5Z-8GHX>] (last visited Feb. 11, 2024) (expanding on Philadelphia Eagles’ ticket policies and disclaimers). The Philadelphia Eagles’ Ticket Disclaimers largely mirrors the ticket policies of other teams in the NFL. See *id.* (indicating uniformity among NFL ticket policies). Some notable language in the Eagles’ disclaimer includes a warning not to sue, a notice of restricted license, an assumption of risks, release, waiver, covenant not to sue, and a severability clause. See *id.* (citing language in policy).

115. See Ashley Hall, *An Existential Crisis for the Season Ticket?*, LINKEDIN (Apr. 22, 2019), <https://www.linkedin.com/pulse/existential-crisis-season-ticket-ashley-hall/> [<https://perma.cc/2XKF-9XEP>] (estimating season ticket holder percentages for four major sports leagues as follows: seventy five percent for NFL, seventy percent for NBA, sixty percent for NHL, and forty percent for MLB). Season ticket holders range from fans who purchase a package, consisting of a few games, to fans who purchase the entire season. See *id.* (explaining which fans are considered season ticket holders); see also 15 U.S.C. § 45c (2016) (outlining parameters of Better Online Ticket Sales Act). This can include ticket prices that are skeptically low, indicating potential fraud. See *id.* (notifying fans how to potentially spot fraud). Additionally, “[t]he Act prohibits selling or offering to sell an event ticket obtained through such a circumvention violation if the seller . . . should have known about the violation.” See *Better Online Ticket Sales Act*, FED. TRADE COMM’N, <https://www.ftc.gov/legal-library/browse/statutes/better-online-ticket-sales-act> [<https://perma.cc/XD3D-VLKN>] (last visited Mar. 22, 2024) (explaining details of Act). Finally, the Act applies to “tickets for public concerts, theater performances, sporting events, and similar activities at venues with seating capacity of over 200.” See *id.* (explaining scope of Act).

116. See 15 U.S.C. § 45c (2016) (detailing goals of Better Online Ticket Sales Act); see also Sammi Elefant, *Beyond the Bots: Ticked-Off Over Ticket Prices or the Eternal Scamnation?*, 25 UCLA ENT. L. REV. 1, 26 (2018) (discussing intent behind Representative Marsha Blackburn’s Better Online Ticket Sales Act). Additionally, the Act proposed “federal criminal sanctions for the use of bot software, deeming any such use an ‘unfair or deceptive practice’ under the Federal Trade Commission Act.” See *id.* (discussing proposed sanctions for violation of Act).

industry is not federally regulated, however many states have implemented their own policies.¹¹⁷

A 2018 study of the event ticket market found that some state legislatures implemented price caps on the resale of event tickets, yet these laws are largely ignored because enforcement is difficult.¹¹⁸ Given the ongoing challenges in the secondary ticket industry, the United States Senate recently introduced the Fans First Act in hopes of addressing three main issues: price transparency; consumer protection; and bad actors seeking to resell tickets at extreme markups.¹¹⁹ The bipartisan Fans First Act works to strengthen the existing Better Online Ticket Sales Act and it has even gained support from Live Nation.¹²⁰

3. *Season Ticket Holders' Seat at the Table*

It is no secret that sports teams tend to have regional followings with dedicated local fans.¹²¹ Season ticket holders are the bedrock of a team's fanbase; NFL season ticket holders account for approximately eighty-five percent of ticket sales.¹²² Out of the other fifteen percent, some are local – not all non-season ticket holders are out of state or visiting fans.¹²³

117. See Graham Fenton, *Taming the Ticket Market: How a Closed Ticketing System Can Beat Back Scalpers and Recapture Lost Revenue*, 36 ENT. & SPORTS L. 57, 58 (2020) (explaining difference among state policies). State policies range from price caps on the resale of event tickets, to geographical bans on ticket sales within a certain range of event venues. See *id.* (noting specific state policies).

118. See Elefant, *supra* note 116, at 5 (discussing effect price caps have on resale market); see also *Event Ticket Sales: Market Characteristics and Consumer Protection Issues*, U.S. GOV'T ACCOUNTABILITY OFF. 40–42 (2018) (highlighting challenges regulating price caps on tickets). These challenges are amplified when dealing with resellers serving customers across state lines. See *id.* (explaining additional challenge when multiple states are involved).

119. See Daysia Tolentino, *Senate Introduces Legislation Addressing Fan Frustration Over Ticket Sales*, NBC NEWS (Dec. 8, 2023, 5:14 PM), <https://www.nbcnews.com/pop-culture/senate-introduces-ticketing-industry-fans-firstact-rcna128791> [<https://perma.cc/9KCK-BGZF>] (introducing proposed legislation regulating ticket industry and goal of bill).

120. See *id.* (noting Live Nation's support for bill).

121. See Matt King, *The 25 Best Cities to be a Sports Fan*, BLEACHER REP. (Dec. 29, 2014), <https://bleacherreport.com/articles/2313355-the-25-best-cities-to-be-a-sports-fan> [<https://perma.cc/L8NA-72CV>] (focusing on “Sports Towns” across America and passionate fan bases).

122. See Pat Evans, *Season Ticket Sales Change but They Remain Backbone of Attendance*, FRONT OFF. SPORTS (Apr. 28, 2019, 10:14 PM), <https://frontofficesports.com/season-baseball-tix-sxsw/#:~:text=The%20sports%20landscape%20is%20changing,-Sales%20and%20Services%20Jamie%20Brandt> [<https://perma.cc/8KAP-E26J>] (exposing makeup of NFL ticket sales and detailing which percentage of tickets are reserved for season ticket holders).

123. See Roling, *supra* note 82 (detailing challenges faced by fans impacted by ticket restrictions and options for impacted fans).

Each sports franchise has their own unique fanbase.¹²⁴ The Dallas Cowboys, for example, boast one of the largest geographic fanbases in the NFL.¹²⁵ Cowboys fans span the majority of Texas, New Mexico, Oklahoma, and Arkansas, naturally bleeding into neighboring states.¹²⁶ Additionally, they can be found as far as Montana and Virginia.¹²⁷ By using a ‘visitor billing address’ metric, it is just as likely that the Dallas Cowboys are restricting their own fans from purchasing tickets as they are opposing team’s fans from the same geographic region.¹²⁸ So the question remains, why restrict fans’ access based on their residence?¹²⁹ A popular answer posited is the idea of “home-field advantage”—limiting a visiting team’s opportunity to pack a stadium prevents a hostile environment at home.¹³⁰

D. Does Home Field Advantage Really Exist?

The elaborate geographical restrictions of ticket sales beg the question: are these measures worth the home-field advantage?¹³¹

124. See Madison Marx, *The Most Popular NFL Teams by County*, VIVID SEATS (May 11, 2023), <https://www.vividseats.com/blog/most-popular-nfl-teams-by-state-county> [web.archive.org/web/20240509010552/https://www.vividseats.com/blog/most-popular-nfl-teams-by-state-county] (detailing America’s NFL fandom by county).

125. See Bryson Treece, *Just How Big is the Cowboys Fanbase?*, INSIDE STAR (Sept. 7, 2021), <https://insidesthestar.com/just-how-big-is-the-cowboys-fanbase/> [https://perma.cc/FS7R-KCVY] (recognizing sphere of influence Dallas Cowboys organization holds).

126. See *id.* (highlighting how broad Dallas Cowboys’ fanbase spreads). See also Marx, *supra* note 124 (presenting map detailing Dallas Cowboy’s fanbase).

127. See Marx, *supra* note 124 (presenting shaded areas based on each county’s fandom). Specifically, the map details Dallas Cowboy fans in areas such as Montana and Virginia. See *id.* (recognizing areas of map).

128. See Treece, *supra* note 125 (underlining reach Cowboys’ fanbase has on all corners of country).

129. See Alex Brown, *Can Sports Teams Keep Rival Fans Away?*, ATLANTIC (Apr. 28, 2014), <https://www.theatlantic.com/politics/archive/2014/04/can-sports-teams-keep-rival-fans-away/441312/> [https://perma.cc/PLV6-DWUC] (questioning policy put in place by Seattle Seahawks’ restricting ticket access within specified geographic area). Many theories were postulated as to why ticket restrictions were put in place, a popular theory was to “protect home-field advantage.” See *id.* (predicting why ticket restrictions were implemented).

130. See J. Bowman, *Seahawks Protecting Home-Field Advantage, Limiting NFC Championship Tickets to Specific Region*, PROVINCE (Jan. 13, 2014), <https://theprovince.com/sports/football/seahawks-protecting-home-field-advantage-by-limiting-nfc-championship-tickets-to-specific-region> [https://perma.cc/UEE3-AZFV] (presenting explanation for why Seattle Seahawks restricted sales). Bowman discusses the benefits of a home field advantage. See *id.* (explaining advantages associated with welcoming home environment).

131. See Sam Panayotovitch, *NFL Odds: How Much is Home-Field Advantage Really Worth on the Spread?*, FOX SPORTS (Sept. 22, 2021, 8:28 PM), <https://www.foxsports.com/stories/nfl/nfl-odds-how-much-home-field-advantage-worth-spread> [https://perma.cc/MW78-J72J] (discussing long assumed three-point advantage home teams receive against spread).

Unsurprisingly, there is a notable advantage a team is afforded when playing on home turf.¹³² This advantage is more pronounced in indoor sports, specifically, ice hockey and basketball, while there is a lesser advantage in outdoor sports such as baseball and football.¹³³ The social support of a home crowd was identified as the reason for this disparity, with an indoor venue providing fans an opportunity to create a more hostile environment, as sound is trapped inside.¹³⁴

What causes “home field advantage” has been debated, but the 2020 season, with its Covid specific policies, demonstrated that fans play a measurable role.¹³⁵ The 2020 NFL season offered a unique opportunity to test fan impact on the outcome of the game when each team allowed minimal or no fans.¹³⁶ Winning percentages and scoring margins were strongly in favor of the home teams that played in front of fans versus the home teams that played in empty stadiums.¹³⁷ Acknowledging fans have a measurable role in a game’s outcome provides strong reasoning for the restrictive actions teams take to protect whatever advantage its fans can provide, especially during playoffs.¹³⁸

There are other ways teams have amplified their home field advantage, such as stadium design.¹³⁹ The Miami Dolphins designed

132. See Schwartz & Barsky, *supra* note 10, at 643–44 (finding existence of home advantage in organized sports).

133. See *id.* (presenting chart depicting study noting percentage of games won in home, neutral and away courts).

134. See *id.* (analyzing data collected throughout study and positing reason for disparity in win percentage).

135. See Tim McMillan, *Revealed: Science Offers the Surprising Truth Behind Football’s Home-Field Advantage*, DEBRIEF (Dec. 26, 2023), <https://thedebrief.org/revealed-science-offers-the-surprising-truth-behind-footballs-home-field-advantage/> [https://perma.cc/EKN4-TYHC] (discussing study dating back to 1970 on merits of home field advantage).

136. See Ben Caterine, *Home-Field Advantage: What Difference Do Fans Make?*, NW. SPORTS ANALYTICS GRP. (Dec. 13, 2020), <https://sites.northwestern.edu/nusportsanalytics/2020/12/13/home-field-advantage-what-difference-do-fans-make/> [https://perma.cc/QG9B-Z5AP] (questioning impact of coronavirus pandemic on NFL). Depending on the local restrictions on in-person gatherings, the thirty-two teams differed in the number of fans allowed in the stadium, if any, which ranged from 3,000 fans in some stadiums to over 30,000 in others. See *id.* (quantifying number of fans allowed in stadium).

137. See *id.* (noting difference between home teams with and without fan involvement).

138. See *id.* (noting advantage home environment provides teams).

139. See Tyler Lauletta, *The Dolphins Have a Clever, Built-In Home-Field Advantage That Kept Them 30 Degrees Cooler Than the Vikings on Sunday*, BUS. INSIDER (Oct. 17, 2022, 5:43 PM), <https://www.insider.com/dolphins-stadium-sideline-temperature-home-field-advantage-2022-10> [web.archive.org/web/20240509011713/https://www.businessinsider.com/dolphins-stadium-sideline-temperature-home-field-advantage-2022-10] (explaining sideline shade as underrated home field advantage).

a stadium where the home team is shaded, while the away team’s sideline is not protected from the sun.¹⁴⁰ This is one of the many permissible ways teams have found leverage when playing on home turf that do not involve a direct impact on fans.¹⁴¹

E. Economic Impact of Antitrust Violations

Free and open markets are the foundation of a vibrant economy, where aggressive competition among sellers gives consumers the benefits of lower prices, higher quality products, and greater innovation.¹⁴² Antitrust laws prohibit conduct by a single entity that unreasonably restrains competition by creating or maintaining monopoly power.¹⁴³ When competition is unreasonably restrained, companies can be penalized, such as the case for prominent telecommunications company AT&T when they were forced to undergo structural remedies.¹⁴⁴

To evaluate accused monopolies, the FTC conducts an extensive evaluation to see if the accused entity has “monopoly power” in any market.¹⁴⁵ This requires an in-depth study of the products sold by the entity as well, as the alternative products consumers would

140. See Amudalat Ajasa, *Dolphins Shady Home-Field Advantage Makes Opponents Hot*, WASH. POST (Nov. 14, 2022, 3:11 PM), <https://www.washingtonpost.com/climate-environment/2022/11/14/dolphins-hard-rock-sun-shade/> [https://perma.cc/9GM7-8376] (detailing adjustments away teams make when playing Dolphins).

141. See *id.* (counting permissible advantages in stadium design).

142. See Donald R. Richberg, *The Monopoly Issue*, 87 UNIV. PA. L. REV. 375, 379 (1939) (discussing benefits of antitrust regulations aimed at promoting vibrant economies); see also Alicia Ginsberg, *Google—Do Not Pass Go, Do Not Collect \$200: Why the Tech Giant is a “Bad” Monopoly*, 71 HASTINGS L.J. 783, 786 (2020) (citing new challenges antitrust legal system face with rise of technology and e-commerce markets). Ginsberg discusses the different competition characteristics present in the technology industries compared to those in traditional markets. See *id.* (recognizing changes technology presents in antitrust regulation).

143. See Ginsberg, *supra* note 142, at 785 (describing motivation behind antitrust laws in United States). Specifically, Ginsburg discusses the FTC’s mission to protect consumers and competition by preventing anticompetitive, deceptive, and unfair business practices. See *id.* (discussing FTC mission). Ginsberg continues to explain how courts have struggled to strike a balance between assuring adequate returns for innovation and foreclosing unnecessarily aggressive conduct likely to prolong monopolist income flow. See *id.* at 786 (highlighting courts’ struggle to find balance in application of antitrust regulation).

144. See Monika Schnitzer & Martin Watzinger, *How the AT&T Case Can Inform Big Tech Breakups*, PROMARKET (Feb. 20, 2023), <https://www.promarket.org/2023/02/20/when-considering-breaking-up-big-tech-we-should-look-back-to-att/> [https://perma.cc/39EJ-2T7A] (describing structural remedies imposed on AT&T).

145. See *Monopolization Defined*, FED. TRADE COMM’N, <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/single-firm-conduct/monopolization-defined> [https://perma.cc/SHL3-L77R] (last visited Oct. 21, 2023) (explaining how accused monopolies are evaluated).

turn to if the entity were to raise prices.¹⁴⁶ Next, both the FTC and courts determine if the entity gains or maintains its position in the market based on its conduct, taking into account entities that have superior products over the competition.¹⁴⁷ Assessing allegations of monopolies is a fact-intensive operation, where the investigators must investigate the markets and the means used to achieve or maintain the alleged monopoly.¹⁴⁸ Growing a monopoly by superior products, innovation, or business acumen is legal, however the same result achieved by exclusionary or predatory acts raises antitrust concerns.¹⁴⁹

F. One State's Shot: Washington's Take on Ticket Restrictions

In 2014, *Williams v. Nat'l Football League*¹⁵⁰ presented the issue of geographically restricted ticket sales to the United States District Court in the Western District of Washington.¹⁵¹ In *Williams*, the plaintiff filed a complaint alleging various constitutional and statutory violations arising out of the Seattle Seahawks' restriction of primary-market ticket sales for the 2014 National Football Conference Championship game.¹⁵² As a Nevada resident, the plaintiff

146. *See id.* (explaining ways competitors' prices can influence monopoly determination).

147. *See 10.2 The Monopoly Model*, UNIV. MINN. LIBRS., <https://open.lib.umn.edu/principleseconomics/chapter/10-2-the-monopoly-model/> [<https://perma.cc/E6JR-H7SV>] (last visited Oct. 29, 2023) (discussing market demand impact on industry pricing).

148. *See Monopolization Defined*, *supra* note 145 (emphasizing that each evaluation of monopoly allegations involves unique analysis of facts).

149. *See Richard Nieva, Google Has Maintained Illegal Monopoly for More Than a Decade, DOJ Claims*, FORBES (Sept. 12, 2023, 2:52 PM), <https://www.forbes.com/sites/richardnieva/2023/09/12/google-antitrust-trial-opening-statements/?sh=214c25094bf3> [<https://perma.cc/WK67-EL5W>] (arguing better products do not violate antitrust regulation). Nieva discusses the opening statements of a flagship antitrust trial between the United States Government and Google. *See id.* (explaining largest antitrust trial in decades). Google argues they won contracts due to their quality products and investments in research and development. *See id.* (noting Google's position). The DOJ argues Google illegally maintained a monopoly for a decade. *See id.* (noting DOJ position). The trial has been noted as the most pivotal tech antitrust battle since the DOJ took on Microsoft in the 1990s. *See id.* (explaining significance of trial).

150. *Williams v. Nat'l Football League*, No. C14-1089, 2014 WL 5514378 (W.D. Wash. Oct. 31, 2014), *aff'd*, 671 F. App'x 424 (9th Cir. 2016).

151. *See id.* at *1 (establishing precedent case brought before court concerning ticket restrictions); *see also* Krista D. Brown, *2014 Annual Survey: Recent Developments in Sports Law*, 25 MARQ. SPORTS L. REV. 617, 620 (2015) (discussing facts and holding of *Williams* and noting complaint alleged various constitutional and statutory violations).

152. *See* Brown, *supra* note 151, at 620 (detailing procedural history and holding of *Williams* case). *Williams* held the plaintiff failed to state a claim for economic discrimination and antitrust, as the primary allegations surrounded economic discrimination, and violations of the Washington Consumer Protection Act, as well as

alleged he was denied an opportunity to purchase tickets due to the geographic restriction on ticket sales.¹⁵³ While acknowledging a secondary market to purchase game tickets existed, the plaintiff contended the ticket sales restriction injured him because he was “excluded from the purchase of tickets” in the primary market.¹⁵⁴

Ultimately, this case was dismissed in large part because the plaintiff represented himself as a pro se plaintiff and ran into a number of procedural issues.¹⁵⁵ However, *Williams* addressed the idea of a “relevant market” when litigating antitrust claims and the natural monopoly the primary-market ticket seller possesses.¹⁵⁶ A relevant market can be understood as a market in which a particular product or service is sold, and can oftentimes be the intersection of a relevant product market and a relevant geographic market.¹⁵⁷ As we approach the ten-year anniversary of *Williams*’ dismissal, instances of ticket restrictions have only increased, leaving open the possibility of a successful lawsuit on similar facts.¹⁵⁸

violations of the Sherman Antitrust Act and the Clayton Act. *See id.* (explaining court’s decision).

153. *See id.* (highlighting facts of case).

154. *See Williams*, 2014 WL 5514378, at *1 (quoting plaintiff’s injury); *see id.* (reviewing plaintiff’s complaint explaining in-part injuries associated with restriction on ticket sales); *see also* Alexander P. Frawley, *Revoking the Revocable License Rule: A New Look at Resale Restrictions on Sports Tickets*, 165 UNIV. PA. L. REV. 433, 447 n.74 (2017) (noting how antitrust case was dismissed). While the antitrust case was dismissed, Frawley includes the fact the Clayton Act does not apply to football tickets since they are a revocable license. *See id.* (explaining why Clayton Act did not apply to *Williams*).

155. *See Williams*, 2014 WL 5514378, at *5 (dismissing case). The court’s reasons for dismissing *Williams* included the inability to establish standing, as well as other procedural hurdles. *See id.* (explaining reasonings for dismissing case).

156. *See* David Macdonald, *Product Competition in the Relevant Market Under the Sherman Act*, 53 MICH L. REV. 69, 70 (1954) (explaining term “relevant market” in context of Sherman Antitrust Act).

157. *See id.* (discussing relevant market and ways terms arises).

158. *See* Elaine C. Naughton, *Professional Sports Franchises Enforce Measures to Keep Out Opposing Fans, But Are They Legal?*, KY. L.J. (Jan. 27, 2016), https://www.kentuckyjournal.org/blog/index.php/2016/01/28/professional-sports-franchises-enforce-measures-to-keep-out-opposing-fans-but-are-they-legal#_ftnref17 [https://perma.cc/2FDZ-QPBY] (expressing long-term ramifications of case).

III. BREAKING DOWN THE PLAYBOOK: ANALYZING VIOLATIONS OF THE COMMERCE CLAUSE AND SHERMAN ANTITRUST ACT

A. Violations of the Commerce Clause

1. *Location Based Ticket Restrictions Constitute a Clear Violation of the Commerce Clause*

Congress should regulate the sale of sports tickets under the Commerce Clause.¹⁵⁹ “Commerce” has widely been understood as the exchange of goods between citizens.¹⁶⁰ In 1824, the Supreme Court held that intrastate activity could be regulated under the Commerce Clause so long as that activity is part of a larger interstate commercial scheme.¹⁶¹ The Court has made clear that Congress has the authority to regulate local commerce if the activity could become part of a continuous “current” of commerce that involves the interstate movement of goods.¹⁶² These safeguards were implemented almost two hundred years ago, before anyone could conceptualize the industrial waves that were about to hit the country.¹⁶³ In the two hundred years since the ratification of the Commerce Clause, crossing state lines has become routine; this applies to both the movement of people and the movement of goods.¹⁶⁴

159. For further discussion of the background of the Commerce Clause, see *supra* notes 22–35 and accompanying text.

160. See Herbert N. DeWolfe, *What Is Interstate Commerce?*, 13 CONST. REV. 143, 145 (1929) (answering lingering questions around Congress’s use of term “commerce”). Because the Constitution never defined the term “commerce,” there has been significant judicial interpretation to better understand the drafters’ intentions. See *id.* (explaining why term generates such discussion).

161. See *Gibbons v. Ogden*, 22 U.S. 1, 70–71 (1824) (holding intrastate activity is subject to regulation by Commerce Clause so long as specified activity is part of larger commercial scheme). *Gibbons v. Ogden* is widely known as a flagship case in the Commerce Clause’s history. See *id.* (noting extent of citing references).

162. See *Swift & Co. v. United States*, 196 U.S. 375, 399 (1905) (explaining Court’s interpretation of “current” of commerce). *Swift & Co.* centered around a beef trust developed in Chicago where the leading meatpackers agreed not to bid against one another to control prices. See *id.* at 390–92 (explaining facts of case). While this case centered around antitrust violations, the Court held that congressional power under the Commerce Clause justified regulations of the beef trade because the actions were part of a stream of commerce. See *id.* at 393 (explaining powers used to regulate). The Court determined the stream in this case ran from farm to retail store while crossing state lines. See *id.* at 398–99 (observing interstate commerce intersection with beef trade).

163. See Robert Longley, *How Much Has America Changed Since 1900? Census Bureau Reports on 100 Years in America*, THOUGHTCO. (Jan. 2, 2022), <https://www.thoughtco.com/census-bureau-reports-100-years-in-america-4051546> [https://perma.cc/H8ZB-ZG83] (detailing ways America changed since 1900’s in terms of demographics and technology).

164. See Mehreen S. Ismail, Justin M. Palarino, & Brian McKenzie, *More People Moved Across State Lines in 2021 Than in 2019, Many to Neighboring States*, U.S.

Since seemingly innocuous items have been found to qualify as an “article” of interstate commerce, it is not a leap to qualify sporting event tickets as an “article” of interstate commerce.¹⁶⁵ Each ticket can be viewed as a unique “article”— part of the exchange of goods between point A and point B.¹⁶⁶ While no one sale amounts to much, ticket sales viewed in the aggregate generate substantial commerce.¹⁶⁷ With this framework, it is understandable why Congress should have permission to regulate the exchange of sporting tickets.¹⁶⁸

2. *America’s Team Wallet: Scope of the Money at Stake*

It is no surprise that the sporting event ticket market is a multi-billion-dollar industry.¹⁶⁹ With the exception of 2020 and 2021

CENSUS BUREAU (June 8, 2023), <https://www.census.gov/library/stories/2023/06/state-to-state-migration.html#:~:text=People%20moving%20between%20states%20made,work%2C%20potentially%20influencing%20geographic%20mobility> [https://perma.cc/9PN6-XWDH] (finding more people moved across state lines in 2021 than 2019). Many of these people moved from highly populated areas in one state to a highly populated area in another state. *See id.* (explaining populated areas citizens moved between). Nearly 7.9 million people moved between states in 2021, accounting for 18.8% of all movers in 2021, compared to 16.7% of movers in 2019. *See id.* (providing statistics for 7.9 million movers). Some of these trends can be attributed to the coronavirus pandemic, which had sweeping effects on work and life circumstances as shifts to remote work became more prevalent, in turn allowing people to be more mobile. *See id.* (contextualizing rise in movers); *see also Effects of Transportation on the Economy*, NAT’L GEOGRAPHIC, <https://education.nationalgeographic.org/resource/effects-transportation-economy/> [https://perma.cc/VTG3-DQKF] (last visited Feb. 15, 2024) (highlighting how advances in travel helped drive settlement in western regions that became integral to nation’s industrialization).

165. *See* *Champion v. Ames*, 188 U.S. 321, 373 (1903) (holding lottery tickets are considered “articles” regulated by Commerce Clause). Lottery tickets function in a very similar way to that of a sporting event ticket: both are a piece of paper that grant the holder access to something of value. *See generally* Forrester F. Schrum IV, *A Lottery Ticket is an Express Written Contract and the General Assembly Waived Their Own Instrumentality From Sovereign Immunity!*, 71 MERCER L. REV. 1263 (2020) (explaining lottery ticket contracts).

166. *See* *Champion*, 188 U.S. at 371 (explaining need for article to travel between two places to engage in commerce).

167. *See* *United States v. Lopez*, 514 U.S. 549, 559 (1995) (discussing activities which, taken in aggregate, amount to substantial commerce). The Court in *Lopez* emphasized that the proper test to determine whether an activity should be regulated under the Commerce Clause is whether the activity substantially affects interstate commerce. *See id.* (explaining Court’s interpretation of substantial effects test). The Court made clear the substantial effect must be an economic effect. *See id.* at 563 (confirming substantial effect must be connected to economic effect).

168. *See* Michael A. Foster & Erin H. Ward, *Congress’s Authority to Regulate Interstate Commerce*, CONG. RSCH. SERV. (Nov. 15, 2021), <https://crsreports.congress.gov/product/pdf/IF/IF11971> [https://perma.cc/T4HE-7HX7] (noting Congress’s authority to regulate articles of commerce).

169. *See* Jeremy M. Evans, *The Changing Landscape of Taxing the Sports Industry*, 35 ENT. & SPORTS LAW. 32, 35 (2019) (discussing magnitude of sports industry); *see also* Darren Heitner, *Sports Industry to Reach \$73.5 Billion by 2019*, FORBES (Oct. 19, 2015,

when attendance was limited due to the coronavirus pandemic, the revenue of sporting event ticket sales has increased by almost a billion dollars on average per year.¹⁷⁰ In 2022 it was estimated that ticket revenues amongst the four largest sports (NFL, NHL, MLB, and NBA) exceeded \$14 billion.¹⁷¹ The number was projected to reach \$14.83 billion in 2023, and \$15.40 billion in 2024.¹⁷² The most popular and profitable of the four major sports is the NFL.¹⁷³ On average, any given NFL game is attended by 65,567 fans.¹⁷⁴ Each NFL game generates upwards of \$6.5 million in ticket sales alone.¹⁷⁵

7:15 AM), <https://www.forbes.com/sites/darrenheitner/2015/10/19/sports-industry-to-reach-73-5-billion-by-2019/?sh=2ee2122f1b4b> [<https://perma.cc/PE9D-7WJA>] (detailing where teams derive revenue from). Specifically, Heitner discusses revenues generated from ticket sales and game attendance. *See id.* (noting where revenue is generated).

170. *See* Christina Gough, *Revenue of Sports Event Tickets in the United States From 2017 to 2024*, STATISTA (Sept. 18, 2023), <https://www.statista.com/statistics/1302220/us-sports-events-market-size/#:~:text=However%2C%20revenue%20from%20sport%20ticket,over%2014%20billion%20U.S.%20dollars> [<https://perma.cc/WN4E-VQ5N>] (conditioning drop in ticket sales during 2020 and 2019 as result of coronavirus pandemic).

171. *See id.* (graphing estimated ticket revenues for 2022). “Bias due to regional differences in online penetration and price differences were avoided by including the share of the online population as well as the big mac index into the Modelling approach.” *See id.* (explaining process used to estimate ticket revenue).

172. *See id.* (projecting revenues of sports ticket market).

173. *See* Scott E. Backman, *NFL Players Fight for Their Freedom: The History of Free Agency in the NFL*, 9 SPORTS LAW. J. 1, 5 (2002) (highlighting NFL as most popular league surpassing previous holder MLB). By 1993, the NFL was the most popular sports league in America, measured by both television ratings and polling. *See id.* (explaining most popular sport by television ratings); *see also* Jannik Lindner, *Must-Know NFL Ticket Sales Statistics [Latest Report]*, GITNEX (Dec. 16, 2023), <https://blog.gitnux.com/nfl-ticket-sales-statistics/#:~:text=In%202020%2C%20NFL%20ticket%20sales,markets%20like%20StubHub%20or%20SeatGeek> [<https://perma.cc/63EQ-5F9U>] (highlighting NFL ticket sale revenues in 2020). The Dallas Cowboys had the highest average ticket price, while the Cincinnati Bengals had the lowest. *See id.* (listing average ticket prices).

174. *See* *NFL Attendance - 2022*, ESPN, https://www.espn.com/nfl/attendance/_/year/2022 [<https://perma.cc/HS35-DRFV>] (last visited Feb. 12, 2024) (counting each stadium’s season fan attendance). In 2022, the Dallas Cowboys had the highest average attendance with 93,465 fans per game while the Washington Commanders had the lowest average attendance with 58,106 fans per game. *See id.* (charting each NFL team’s season long average attendance); *see also* Lindner, *supra* note 173 (highlighting average fan attendance per game across NFL).

175. *See* Jakob Eckstein, *How the NFL Makes Money*, INVESTOPEDIA (Feb. 1, 2024), <https://www.investopedia.com/articles/personal-finance/062515/how-nfl-makes-money.asp> [<https://perma.cc/76TL-5NB7>] (explaining various streams of revenue NFL uses to generate revenue). Eckstein also discusses the business model used by the NFL. *See id.* (describing model).

These staggering numbers underscore why ticket sales, taken in the aggregate, need regulation from Congress.¹⁷⁶

3. *Playing Defense: The Argument for Ticket Sale Bans*

a. Balancing Local Purpose

It is likely that the leagues and individual teams will argue that restrictions on ticket sales do not violate the Commerce Clause.¹⁷⁷ To not run afoul of the Commerce Clause, the proposed restrictions must fall under an exception.¹⁷⁸ In order to find an exception, the teams and leagues must prove their restrictions of ticket sales strive to “serve a local purpose,” as instructed by Supreme Court precedent.¹⁷⁹ To do this, each team would have to draw on state laws to construct a defense under the Dormant Commerce Clause, and must demonstrate that the local benefit is outweighed.¹⁸⁰ In order to defend allegations, leagues and teams must show a positive impact through the *Pike* balancing test, described in Section II, that could justify restricting ticket access.¹⁸¹ There are few instances where states have utilized the Dormant Commerce Clause in order to circumvent violations of the Commerce Clause.¹⁸²

176. *See id.* (underscoring scope of money at play through ticket sales); *see generally* Mike Florio, *NFL National Revenue Reaches \$11.98 Billion in 2022*, NBC SPORTS (July 19, 2023, 4:47 PM), <https://www.nbcsports.com/nfl/profootballtalk/rumor-mill/news/nfl-national-revenue-reaches-11-98-billion-in-2022> [web.archive.org/web/20240509011915/https://www.nbcsports.com/nfl/profootballtalk/rumor-mill/news/nfl-national-revenue-reaches-11-98-billion-in-2022] (explaining official numbers came from annual financial statements published by Green Bay Packers). The staggering \$12 billion figure is shared by all thirty-two franchise and reflects a growth rate of 7.8 percent. *See id.* (highlighting increase in revenue). Each team received \$374.4 million in shared revenue. *See id.* (accounting for each franchises’ shared revenue); *see also* Eben Novy-Williams, *Booming NFL Looks Ahead With ‘Healthy Paranoia’ After Media Deals*, SPORTICO (Feb. 6, 2023), <https://www.sportico.com/leagues/football/2023/nfl-revenue-whats-next-1234708609/> [https://perma.cc/JE6K-J9UZ] (discussing YouTube Sunday Ticket package deal with NFL).

177. *See* Forte, *supra* note 41 (explaining defenses for Commerce Clause violations). Forte discusses Dormant Commerce Clause jurisprudence and inconsistent use of provision. *See id.* (commenting on inconsistencies surrounding Dormant Commerce Clause regulation).

178. *See id.* (explaining exceptions under Commerce Clause).

179. *See* Adam B. Thimmesch, *The Unified Dormant Commerce Clause*, 92 TEMP. L. REV. 331, 340 (2020) (furthering explanation of serving local purpose). For further discussion of Supreme Court precedent in Dormant Commerce Clause, *see supra* notes 36–49 and accompanying text.

180. For further discussion of the Commerce Clause defenses under the Dormant Commerce Clause, *see infra* notes 50–62 and accompanying text.

181. *See generally* United Haulers Ass’n, Inc. v. Oneida-Herkimer Solid Waste Mgmt. Auth., 550 U.S. 330 (2007) (holding instance where local benefits outweighed burden on interstate commerce).

182. *See* Larry Downes, *The Commerce Clause Wakes Up*, HARV. BUS. REV. (Sept. 2005), <https://hbr.org/2005/09/the-commerce-clause-wakes-up> [https://perma.

b. Fourth and Long: Steps to Utilize Dormant Commerce Clause as a Defense

Before the Dormant Commerce Clause can be employed, a state must first pass laws that permit ticket sale restrictions.¹⁸³ As of this writing, no state has implemented regulations regarding geographical restriction of initial ticket sales, although some states regulate the resale of tickets in the secondary market.¹⁸⁴ The motivation behind the existing laws focuses on regulating the ticket scalping market.¹⁸⁵ Many of the sixteen states that restrict above-face-value ticket sales for entertainment or sports events are home to multiple professional teams.¹⁸⁶ These restrictions range from no resale above face value (Arkansas), to up to twenty five percent of the ticket's face value (Pennsylvania).¹⁸⁷ These restrictions are specific to ticket scalpers and do not include ticket brokers.¹⁸⁸ However, these state initiatives exemplify legislatures' willingness to regulate the ticketing industry.¹⁸⁹

For the proposed regulations to come about, the leagues and teams must begin to lobby their states to create legislation that allows for geographical ticket restrictions.¹⁹⁰ If regulations are created, the

cc/F35J-AN2V] (noting limited instances Dormant Commerce Clause has been used to find laws Constitutional).

183. For further discussion of the Dormant Commerce Clause, see *supra* notes 50–62 and accompanying text.

184. See Judy Watson, *Ticket Scalping Laws in Other States*, OLR RSCH. REP. (OCT. 7, 2003), <https://www.cga.ct.gov/PS98/rpt%5Colr%5Chtm/98-R-0382.htm#:~:text=We%20identified%2015%20states%20in,%2C%20New%20Jersey%2C%20New%20York%2C> [https://perma.cc/2A76-SMUF] (outlining states with restrictions on ticket sales above face-value ticket prices). Watson details the fifteen states in addition to Connecticut that have placed restrictions on ticket sales price, as well as the applicable statute. See *id.* (counting states with restrictions on ticket sales).

185. See *id.* (providing arguments for and against regulation of secondary market ticket sales).

186. See *id.* (highlighting states such as California, Florida, Massachusetts, Minnesota, New York, and Pennsylvania).

187. See *id.* (citing guidelines provided for various state statutes, specifically Arkansas and Pennsylvania).

188. See Parlow, *supra* note 87, at 355 (detailing difference between ticket broker and ticket scalper). Ticket scalpers are often classified as one-off ticket resellers, whereas brokers have more organized operations. See *id.* (classifying scalpers as more akin to resellers). Traditional ticket brokers are typically afforded more favorable regulations when compared to ticket scalpers. See *id.* at 351 (detailing benefits ticket brokers afforded).

189. See Zachary H. Klein, *Who's the Boss? The Need for Regulation of the Ticketing Industry*, 5 BROOK. J. CORP. FIN. & COM. L. 185, 200 (2010) (noting need for regulation of secondary ticketing market to protect consumers from excessive prices). Additionally, Klein notes the need to rectify the illegal ticket exchanges that exist between ticket agents and secondary sellers. See *id.* (noting regulations role in harmonizing ticketing industry).

190. See James M. DeMarco, *Lobbying the Legislature in the Republic: Why Lobby Reform is Unimportant*, 8 NOTRE DAME J.L. ETHICS & PUB. POL'Y 599, 611 (1994)

leagues and teams could claim that such regulations favor local interests, and differential treatment of in-state compared to out-of-state fans could be permissible.¹⁹¹ However, as unlikely as it would be for states to enact such legislation, it would be even more unlikely such legislation would be successful in defending a Dormant Commerce Clause claim.¹⁹²

4. *Why Ticket Bans Could Prevent Unsportsmanlike Conduct*

A counterargument as to why ticket restrictions provide safeguards was displayed during the 2023 National League Championship Series (NLCS) when the Philadelphia Phillies, a team known for their passionate fanbase, faced off against the Arizona Diamondbacks.¹⁹³ Ahead of game three in Arizona, Phillies fans began buying multiple tickets to the game with the sole purpose of limiting Diamondback fans’ attendance in their home park.¹⁹⁴ Had

(observing role of administrative agencies). DeMarco discusses parties interested in lobbying Congress for protection of their interests at the policy-making level. *See id.* (explaining process for lobbying issues); *see also How to Lobby Your Elected Official*, RUTGERS EAGLETON INST. POL., <https://cawp.rutgers.edu/sites/default/files/library/howtobbyourelectedofficial.pdf> [<https://perma.cc/55EJ-CHDH>] (last visited Mar. 24, 2024) (reviewing methods to lobby legislators).

191. For further discussion of the potential regulations’ impact on the Dormant Commerce Clause, see *supra* notes 50–62 and accompanying text.

192. *See* Brian Frazelle, *Big Business Loses Dormant Commerce Clause as Tool Against States*, BL (May 19, 2023, 4:00 AM), <https://news.bloomberglaw.com/us-law-week/big-business-loses-dormant-commerce-clause-as-tool-against-states> [<https://perma.cc/7YDK-MQ8Y>] (discussing *National Pork Producers Council v. Ross*, 598 U.S. 356 (2023)). Frazelle explains the case’s holding, making clear the Dormant Commerce Clause is unlikely to become a deregulatory tool for states to utilize. *See id.* (discussing expected precedent laid by *National Pork Producers Council v. Ross*); *see also* Ben Bergman, *Are Pro Sports Teams Economic Winners for Cities?*, MARKETPLACE (Mar. 19, 2015), <https://www.marketplace.org/2015/03/19/are-pro-sports-teams-economic-winners-cities/> [<https://perma.cc/3UDX-HW55>] (discussing economists’ consensus on economic impact of sports stadiums). Bergman discusses the economic impact of sports on Chicago, a town with five major teams. *See id.* (arguing no impact on economics). Bergman thinks that if every sports team in Chicago were to disappear, the impact on Chicago’s economy would be a fraction of one percent. *See id.* (indicating baseball teams’ impact on cities is equivalent to midsize department store). Ultimately, Bergman concludes sports teams do not have much impact on a city because they do not spur new spending, just reallocating where in the city residents choose to spend their money. *See id.* (explaining minimal economic impact).

193. *See* Patrick Andres, *Phillies Fans Buy Cheap NLCS Tickets With No Plan to Attend Just to Block D-Backs Fans*, SPORTS ILLUSTRATED (Oct. 19, 2023), <https://www.si.com/mlb/2023/10/19/phillies-fans-buy-cheap-nlcs-tickets-block-diamondbacks-fans> [<https://perma.cc/PJ9Z-LFEU>] (discussing Philadelphia Phillies’ fans actions in purchasing tickets with the specific intention to block Arizona fans from attending game three of the NLCS series).

194. *See id.* (describing actions Phillies fans took as “enterprising”— purchasing upwards of fourteen tickets to game they had no intentions of attending); *see also* Henry Savage, *Tickets to Tonight’s NLCS Game are so Cheap, Phillies Fans are Buying Them so Diamondbacks Fans Can’t Go*, PHILA. INQUIRER (Oct. 19, 2023, 12:50 PM),

there been ticket restrictions on the NLCS game, fans with Pennsylvania billing zip codes would have faced more expensive hurdles to purchasing tickets.¹⁹⁵ The “prank” Phillies fans played on Diamondback fans goes against the spirit of competition in the same way restricting access for opposing fans diminishes a competitive atmosphere.¹⁹⁶ This situation begs the question of whether there is a time and a place for intentional ticket restrictions.¹⁹⁷

5. *How Roger Goodell Fumbled the Snap: Congress Has Entered the Sports Arena Before*

Congress teased its authority to insert itself in the sports realm in 2007 with the NFL’s “Spygate” scandal.¹⁹⁸ The House Committee on Oversight Reform has the authority to conduct hearings and investigations on any subject that falls under the jurisdiction of Congress, and their involvement in sports is not unprecedented.¹⁹⁹ The

<https://www.inquirer.com/phillies/phillies-nlcs-game-cheap-ticket-prices-arizona-diamondbacks.html> [<https://perma.cc/7XKQ-7FU6>] (drawing inspiration from inexpensive tickets, Phillies fans supported their team from afar in their own unconventional way). Interestingly, Savage comments how Ticketmaster has the most expensive ticket amongst ticket resellers at almost quadruple the price of the next most expensive reseller. *See id.* (highlighting Ticketmaster above market cost); *see also* Christian Arnold, *Phillies Fans Buy NLCS Game 3 Tickets to Ice Out ‘Loser’ Diamondbacks Fans*, N.Y. POST (Oct 19, 2023, 8:35 PM), <https://nypost.com/2023/10/19/phillies-fans-buy-nlcs-game-3-tickets-to-ice-out-diamondbacks-fans/> [<https://perma.cc/H5R3-VA5C>] (detailing fan experience purchasing tickets for Arizona based Phillies fans).

195. *See* Savage, *supra* note 194 (discussing prices among ticket resellers).

196. *See* Schwartz & Barsky, *supra* note 10, at 644 (noting home advantage is expected). Some level of home advantage is permissible, even enjoyable in most sports. *See id.* (conceding home advantage can be beneficial).

197. For further discussion of intentional ticket restrictions, *see supra* notes 2–13 and accompanying text.

198. *See* Don Van Natta Jr. & Seth Wickersham, *Spygate to Deflategate: Inside What Split the NFL and Patriots Apart*, ESPN (Sept. 8, 2015, 12:02 AM), https://www.espn.com/espn/otl/story/_/id/13533995/split-nfl-new-england-patriots-apart [<https://perma.cc/DD5D-VBJG>] (reporting group organized to discuss proper punishment and enforcement moving forward). The Spygate scandal was a controversy during the 2007 NFL season where the New England Patriots videotaped opposing coaches’ signals during games. *See id.* (introducing scandal). The New England Patriots were disciplined for videotaping the New York Jets’ signals from an unauthorized location during a game. *See id.* (referring to initial disciplinary actions taken by NFL). Commissioner Roger Goodell called it a violation of honest competition and league rules. *See id.* (evaluating NFL Commissioner’s interpretation of scandal). The New England Patriots coach, Bill Belichick, was then fined \$500,000, the maximum penalty allowed by the league and the largest ever imposed on a coach. *See id.* (explaining penalties against coach).

199. *See* Jeffrey B. Tracy, *Examining Congress’ Legal Position for Investigating Sports Leagues*, SPORTS LITIG. ALERT (Mar. 14, 2008) <https://sportslitigationalert.com/examining-congress-legal-position-for-investigating-sports-leagues/> [<https://perma.cc/BNJ9-S5AA>] (detailing Congress’s position investigating MLB steroid use, and NFL’s

New England Patriots’ questionable practices left the rest of the NFL frustrated by the lack of leadership from the league.²⁰⁰

So much so, the sports scandal caught the attention of United States Senator, Arlen Specter of Pennsylvania.²⁰¹ Specter threatened a congressional investigation, which would effectively force everyone involved—players, coaches, owners, and Commissioner Roger Goodell—to testify under oath.²⁰² While Spygate was kept in-house, due to the pleading of the NFL and “threat to the integrity of the game,” the incident opened the door to Congressional oversight into sports leagues.²⁰³ Congress should have intervened in 2007, as the leagues are comprised of business organizations that are subject to such oversight.²⁰⁴

“Spygate”); Van Natta Jr. & Wickersham, *supra* note 198 (questioning Congress’s ability to regulate NFL during “Spygate” and “Deflategate”).

200. See Alexander F. Tilton, *Mayer v. Belichick: “Spygate” Scandal is Not the Court’s Concern*, 18 SPORTS LAW. J. 341, 354 (2011) (highlighting reaction to videotaping allegations).

201. See Ken Sheehan, *Senator Specter’s Take on Spygate*, BLEACHER REP. (Feb. 18, 2008), <https://bleacherreport.com/articles/10061-senator-specters-take-on-spygate> [<https://perma.cc/T54Y-5LFS>] (criticizing Roger Goodell’s decision to have tapes destroyed). Senator Specter went on to comment that the American people are entitled to be sure about the integrity of the game. See *id.* (confirming Congress’s role in oversight would be to assure public that NFL adheres to Constitutional regulations). Senator Specter even analogized the violation to the Central Intelligence Agency destroying tapes. See *id.* (noting severity of situation).

202. See Van Natta Jr. & Wickersham, *supra* note 198 (describing process if House Committee on Oversight and Government Reform were to launch full scale investigation into New England Patriots); see also Don Banks, *Belichick Remorseful of Spygate*, SPORTS ILLUSTRATED (Apr. 1, 2008), <https://www.si.com/more-sports/2008/04/01/pats-meetings> [<https://perma.cc/LVT6-K8GF>] (walking through timeline once it was decided action would be taken against New England Patriots). The NFL gathered at its annual meeting at the Breakers Hotel where the league owners, along with the head coaches, were given an apology by Robert Kraft and Bill Belichick. See *id.* (introducing setting of apology issued by coach and team). It was widely agreed that a legal investigation into the scandal would be worse for the league. See *id.* (explaining larger ramifications of Congressional investigation). Robert Kraft apologized for the negative impact the scandal had on the other thirty-one clubs in the league, who he viewed as his business partners. See *id.* (noting apology of New England Patriots owner).

203. See generally Samuel J. Horovitz, *If You Ain’t Cheating You Ain’t Trying: “Spygate” and the Legal Implications of Trying Too Hard*, 17 TEX. INTELL. PROP. L.J. 305 (2009) (noting Congress’s opportunity to interfere in Spygate).

204. See Matt Egan, ‘Grave Urgency’: Over 400 Business Groups Plead with Congress to Prevent Rail Strike, CNN (Nov. 28, 2022, 1:18 PM), <https://www.cnn.com/2022/11/28/business/rail-strike-business-groups/index.html> [<https://perma.cc/K4BC-GENL>] (noting businesses calling on Congress to intervene and prevent strike). Egan demonstrates Congress’s ability to step into the business sphere to regulate commerce. See *id.* (drawing comparison between railroad strike and Congress’s hand in interstate commerce).

B. An Evaluation of Ticketmaster's Sherman Antitrust Act Violation

Shifting focus from the Commerce Clause to Sherman Antitrust Act considerations, Ticketmaster is in clear violation of the Sherman Antitrust Act, and the Federal Government is authorized to implement penalties for the repeated violations committed by the ticket seller.²⁰⁵ Over the next few months, the FTC is expected to begin a more formal evaluation of Ticketmaster's business operations.²⁰⁶ As the market leader, Ticketmaster is directly restricting commerce and fair economic competitiveness through its ability to fix prices.²⁰⁷

As it stands, Ticketmaster prevents fans from "shopping" for tickets, where a competitive secondary market would produce efficient benefits, resulting in a cooperative surplus.²⁰⁸ With no competition, ticket prices reach exorbitant costs, and seats ultimately remain empty, creating economic inefficiencies.²⁰⁹ Ticketmaster

205. See Andrzejewski, *supra* note 15 (reviewing complaints filed asserting claims for relief under California law focused on Ticketmaster's monopolistic control of primary and secondary ticket markets).

206. See David McCabe & Ben Sisario, *Justice Dept. is Said to Investigate Ticketmaster's Parent Company*, N. Y. TIMES (Jan. 24, 2023), <https://www.nytimes.com/2022/11/18/technology/live-nation-ticketmaster-investigation-taylor-swift.html> [web.archive.org/web/20240509012746/https://www.nytimes.com/2022/11/18/technology/live-nation-ticketmaster-investigation-taylor-swift.html] (explaining plans to investigate Ticketmaster's business operations).

207. See Madison Bloom, *Ticketmaster Faces Class Action Lawsuit Over Drake Ticket Prices*, PITCHFORK (Mar. 23, 2023), <https://pitchfork.com/news/ticketmaster-faces-class-action-lawsuit-over-drake-ticket-prices/> [https://perma.cc/VLF7-YE6G] (noting class action lawsuit against Ticketmaster over alleged price gauging). The class action lawsuit surrounds Drake's concerts on July 14 and 15 at the Bell Centre and Ticketmaster misleading consumers. See *id.* (explaining facts and claims of lawsuit). A Montreal resident purchased two "Official Platinum" seats for Drake's July 14 concert, with each seat costing \$789.54. See *id.* (detailing complaint). The next day, an additional show was added to the Ticketmaster website with the same seats listed for half the cost. See *id.* (explaining difference in price between seats). The lawsuit alleges Ticketmaster knew about the July 15 concert date in advance and withheld the information to artificially inflate the price, acting in bad faith. See *id.* (detailing complaint).

208. See *Busting the Live Nation-Ticketmaster Monopoly: What Would a Break-Up Remedy Look Like?*, AM. ANTITRUST INST. (July 11, 2023), <https://www.antitrustinstitute.org/work-product/busting-the-live-nation-ticketmaster-monopoly-what-would-a-break-up-remedy-look-like/> [https://perma.cc/L3QA-MTAD] (noting economic inefficiencies between parties in monopoly); see generally Charles H. Koch, Jr., *Cooperative Surplus: The Efficiency Justification for Active Government*, 31 WM. & MARY L. REV. 431 (1990) (detailing cooperative surplus). A cooperative surplus is an economic term used when two people decide how they can best share a surplus that they can jointly generate. See *id.* (defining cooperative surplus).

209. See John D. Tishler, *Ticket Scalping: An Economic Analysis and Proposed Solution*, 33 SANTA CLARA L. REV. 91, 118 (1993) (explaining economic inefficiencies specifically surrounding tickets).

continuously creates false scarcity by releasing limited quantities of tickets at a time, which in turn artificially raises prices.²¹⁰

Ticketmaster’s historical conduct demonstrates why behavioral remedies imposed by the consent decree do not work.²¹¹ In order to combat this, the Federal Government should require Ticketmaster to divest assets and impose civil and criminal penalties, to ensure the resale market remains competitive.²¹² Monopolies prevent economic growth when market frontrunners have such an advantage in their industry.²¹³ Ticketmaster loses its incentive to continuously better its product without a truly competitive market.²¹⁴ Fans ultimately pay the price for this missing incentive through increased ticket prices, hours-long queues, and competition with bots.²¹⁵ While Ticketmaster has been under scrutiny in the past, the renewed focus on antitrust regulations indicates the results of the DOJ investigation could differ from years past.²¹⁶

IV. CONCLUSION

A. The Final Whistle: What is Next for Ticket Bans on Opposing Fans?

Congress should assert its authority pursuant to the Commerce Clause and prohibit ticket sale restrictions.²¹⁷ Absent action from Congress, it is possible that the courts could decide this issue if a

210. See Bloom, *supra* note 207 (noting scarcity effect in Drake ticket sales).

211. See *Busting the Live Nation-Ticketmaster Monopoly: What Would a Break-Up Remedy Look Like?*, *supra* note 208 (noting failed behavioral remedies offered to Ticketmaster).

212. See Sisco, *supra* note 15 (discussing various ways Ticketmaster is operating with monopolistic tendencies); see also Kendall N. Kuntz, *United States v. AT&T, Inc.: Mega-Merger or Mega-Monopoly?*, 17 J. BUS. & TECH. L. 113, 137 (2022) (citing additional examples of monopolies broken up by federal government).

213. For further discussion of monopolies, see *supra* notes 63–69 and accompanying text.

214. See Sisco, *supra* note 15 (commenting on cyberattack Ticketmaster suffered during Eras Tour ticket distribution). Ticketmaster did not have the necessary security measures implemented on their website and, due to this lack of security, they suffered a cyberattack during the Taylor Swift Eras Tour ticket window. See *id.* (explaining Ticketmaster’s compliance in operating e-commerce business with limited security measures and lackluster security measures). Live Nation was criticized for lack of innovation and maintaining industry standards. See *id.* (detailing fallout for Live Nation).

215. See *id.* (explaining costs passed down to consumers).

216. See *Busting the Live Nation-Ticketmaster Monopoly: What Would a Break-Up Remedy Look Like?*, *supra* note 208 (discussing 2020 failed consent decree as example of botched antitrust enforcement).

217. For further discussion of why congressional action is needed, see *supra* notes 159–204 and accompanying text.

consumer, like in *Williams*, files a lawsuit due to their inability to purchase tickets.²¹⁸ Following the widespread attention garnered when Philadelphia Phillies fans bought seats at Arizona's Chase Field for the 2023 NCLS series, there is a high probability that similar instances may occur again.²¹⁹

Moreover, two of the largest and most high-profile international sporting events are slated within the next two years: the 2024 Paris Olympic Games and the 2026 FIFA World Cup, with games across the United States.²²⁰ Both events are eyeing restrictive ticket distribution systems, which will directly impact Americans' access.²²¹ Restricting access to tickets violates the Commerce Clause, and the legislature must step up to regulate the practice as it becomes more prevalent.²²²

218. See *Williams v. Nat'l Football League*, No. C14-1089, 2014 WL 5514378, at *1 (W.D. Wash. Oct. 31, 2014) (explaining suit filed against NFL for restricting ticket access), *aff'd*, 671 F. App'x 424 (9th Cir. 2016).

219. See Savage, *supra* note 194 (explaining process Phillies fans went through to preclude Diamondback fans from occupying Chase Field).

220. See Alison Baker, *The Most Watched Sporting Events in the World*, ROADTRIPS (Nov. 3, 2023), <https://www.roadtrips.com/blog/the-most-watched-sporting-events-in-the-world/> [<https://perma.cc/7S3V-EMVP>] (noting World Cup and Olympic Games as most watched sporting events).

221. See *Paris 2024 Olympic Games - How to Get Tickets? How Will Official Process Work? What are Key Dates? Which Events?*, EUROSPOORT (Nov. 28, 2022, 8:14 AM), https://www.eurosport.com/olympics/paris-2024-olympic-games-how-will-official-process-for-tickets-work-what-are-the-key-dates-which-eve_sto9248792/story.shtml [web.archive.org/web/20240509012713/https://www.eurosport.com/olympics/paris-2024-olympic-games-how-will-official-process-for-tickets-work-what-are-the-key-dates-which-eve_sto9248792/story.shtml] (detailing process for 2024 Olympic ticket distribution); see also *Ticketing and Hospitality*, INT'L OLYMPICS COMM., <https://olympics.com/ioc/ticketing> [<https://perma.cc/AR35-8Q83>] (last visited Oct. 30, 2023) (reviewing official ticketing policy); see also Mark Dent, *Is This the End of an Olympic Ticket Monopoly?*, HUSTLE (Feb. 9, 2024), <https://thehustle.co/is-this-the-end-of-an-olympic-ticket-monopoly/> [<https://perma.cc/958E-GRAE>] (describing previous process to purchase Olympic tickets). Every American who has purchased tickets to the Olympics in the past few decades has purchased tickets through either CoSports or their parent company, Jet Set Sports. See *id.* (introducing previous ticket seller). For every Olympics, CoSports purchased tickets available for Americans, reserved thousands of hotels, and then sold these amenities back to the American people at an inflated price. See *id.* (describing CoSports' process). This practice was sanctioned by the Olympic host cities as CoSports served as a sponsor for the games. See *id.* (explaining why this was legal); see also Eric Mullin, *Are 2026 FIFA World Cup Tickets on Sale Now?*, NBC SPORTS PHILA. (Feb. 6, 2024, 8:06 PM), <https://www.nbcsportsphiladelphia.com/soccer/world-cup/are-2026-fifa-world-cup-tickets-on-sale-now/247750/> [<https://perma.cc/3YG7-ZAJG>] (noting process to purchase World Cup tickets).

222. For further discussion of why the legislature must regulate restrictive ticket practices, see *supra* notes 159–204 and accompanying text.

B. Where Does Ticketmaster Begin Again?²²³

As the Ticketmaster lawsuit weaves through the courts, the DOJ will have the rare opportunity to make an example out of a high-profile company acting in bad faith.²²⁴ If the DOJ were to take a strong stance against Ticketmaster and Live Nation, it would rekindle the use of structural remedies available to combat dominant companies from using their market power to limit competition.²²⁵ In *United States v. AT&T*,²²⁶ the value of structural remedies was apparent, although the Court has seldom used them.²²⁷ Given the Biden Administration and the DOJ’s clear desire to take a strong stance against large companies violating antitrust laws, it is unlikely the case against Ticketmaster and Live Nation will be dismissed.²²⁸ While the bipartisan Fans First Act proposal indicates support for ticketing reform from both sides of the political aisle, it is unclear if changes to the ticketing industry will be forthcoming or if Ticketmaster will survive with a simple fine and requirement to alter business practices.²²⁹

*Rebecca Black**

223. See TAYLOR SWIFT, RED (TAYLOR’S VERSION) (Republic 2021) (referencing one of Taylor Swift’s songs, Begin Again).

224. See Rachel Treisman, *Senators Are Calling on the Justice Department to Look Into Ticketmaster’s Practices*, NPR (Feb. 23, 2023, 3:30 PM), <https://www.npr.org/2023/02/23/1158998797/ticketmaster-letter-senators-justice-department> [web.archive.org/web/20240509012935/https://www.npr.org/2023/02/23/1158998797/ticketmaster-letter-senators-justice-department] (describing scrutiny Ticketmaster is under).

225. See *Busting the Live Nation-Ticketmaster Monopoly: What Would a Break-Up Remedy Look Like?*, *supra* note 208 (highlighting impact of DOJ opinion).

226. *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982).

227. See *generally id.* (noting consent decree between AT&T and DOJ).

228. See Exec. Order No. 14036, 86 Fed. Reg. 36987 (2021) (noting Biden Administration’s desire to regulate antitrust violations).

229. See Zane Hill, *Will Swifties Cut Live Nation’s Size?*, L.A. BUS. J. (Oct. 30, 2023), <https://labusinessjournal.com/featured/live-nation/> [https://perma.cc/F8FP-S9YK] (discussing continued outcry from public regarding Ticketmaster’s business practices).

* J.D. Candidate, May 2025, Villanova University Charles Widger School of Law; B.A., Political Science, 2019, Boston College. This Comment is affectionately dedicated to my parents, Danielle and Brian, and brother, Andrew. Their endless love and support are appreciated more than they will ever know. A special thanks to Will for encouraging me through every version of this Comment, and to the MSLJ members for their outstanding edits. Lastly, my sincerest gratitude to my law school friends, especially my study buddy, Clayton, for celebrating the highs and reassuring me during the lows.