"No One Likes Us, We Don't Care": The Legality of Ticket Bans on Opposing Fans

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“NO ONE LIKES US, WE DON’T CARE”:

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. 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. This was the reality for many Toronto Maple Leafs fans during the 2023 Stanley Cup Playoffs against the Florida Panthers.

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).


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

(noticing 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-franchisevaluation-0112/ [https://perma.cc/US59-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://usvtvb.com/seasons/2022-23/markets/ [https://perma.cc/YM2Z-3HYR] (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).


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-5GD] (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. What started as a harmless restriction may, in fact, be a constitutional violation. Teams that continue to engage in restrictive ticket sales prevent fans from engaging in unobstructed interstate commerce.

Sports teams are not alone in leveraging consumer location to satisfy their own business interests. Ticketmaster has capitalized on the opportunity by increasing the price of tickets for fans who have been negatively impacted by opposing fan ticket restrictions. This, along with recent high-profile concert ticket sales, has generated concerns of potential antitrust violations by Ticketmaster. 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.

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

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

For further discussion of home advantage in organized sports, see infra notes 131–141 and accompanying text.

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 [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.

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

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).


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%20made%20easier%20for%20private%20suit%20complaint%20enforcement%20under%20the%20Biden%20administration%20and%20American%20businesses%20are%20expected%20to%20benefit%20from%20the%20new%20rules%20that%20are%20designed%20to%20make%20it%20easier%20for%20private%20suits%20to%20proceed%20against%20companies%20that%20violate%20antitrust%20law%20[web.archive.org/
Section I of this Comment provides an introduction to ticket restrictions on opposing fans, and antitrust violations committed by Ticketmaster. Section II introduces background information about the Commerce Clause and Sherman Antitrust Act. 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. Section III analyzes violations of the Commerce Clause by various sports leagues and organizations, and evaluates the way Ticketmaster continues to violate antitrust regulations. Section IV concludes the evaluation and predicts that restrictive ticket practices will continue if action is not taken.

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. The Commerce Clause focuses on free trade among the states while the Sherman Antitrust Act remains concerned with efficiency...
objectives, preventing monopolies.\textsuperscript{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.”\textsuperscript{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.\textsuperscript{25}

1. \textit{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.\textsuperscript{26} The powers are granted to Congress through Article I, Section 8 of the Constitution.\textsuperscript{27} Specifically, the Commerce Clause was designed to regulate commerce between the United States and foreign nations, and among states and the Indian Tribes.\textsuperscript{28} In this context, “commerce” is to be understood

\textsuperscript{23} See id. at 1228 (highlighting main objectives of Commerce Clause and Sherman Antitrust Act).

\textsuperscript{24} See id. (boiling Sherman Antitrust Act down to main objective).

\textsuperscript{25} See id. (pointing out 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, \textit{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).

\textsuperscript{26} See David Walter Brown, \textit{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, \textit{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).

\textsuperscript{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 \textit{Art.I.S8.C3.1 Overview of Commerce Clause, Const. Annotated}, https://constitution.congress.gov/browse/essay/art1-S8-C3-1/ALDE_00013403/ [web.archive.org/web/20240508225802/https://constitution.congress.gov/browse/essay/art1-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).

\textsuperscript{28} See \textit{Art.I.S8.C3.8.1 Overview of Foreign Commerce Clause, Const. Annotated}, https://constitution.congress.gov/browse/essay/art1-S8-C3-8-1/ALDE_00001057/ [web.archive.org/web/20240508230317/https://constitution.congress.gov/browse/essay/art1-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 \textit{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. With this understanding, small articles such as sporting event tickets can be evaluated in the aggregate to better understand their impact on interstate commerce.

While Congress’s power may appear limitless, the Court determined in United States v. Lopez that certain activities are simply outside the purview of commerce or any sort of economic activity. An activity must have an economic impact in order for it to be within the purview of congressional regulation. 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 Art.8.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/] (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).


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

a. Supreme Court Precedent

In recent years, the Court has decided several other cases involving violations of the Commerce Clause. In *Tennessee Wine & Spirits Retailers Association v. Thomas*, 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.” In *Tennessee Wine*, the states’ residency requirement favored residents over nonresidents, which the Court determined to be a violation of the Dormant Commerce Clause. The ways in which Tennessee favored residents

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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’”).


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.  

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. 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 drew skepticism as judicial overreach. 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. 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. Ultimately, the Court held that the Civil Rights Act was constitutional, citing the to the constitutionality of the durational-residency requirements.  


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 SwanL. 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.\footnote{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 affects 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).}

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.\footnote{See Lopez, supra note 43, at 67 (discussing effect of racial discrimination on interstate commerce).}

The same interference with interstate travel exists when certain groups are excluded from engaging in commerce through ticket restrictions.\footnote{For further discussion of restricted ticket sales, see supra notes 2–16 and accompanying text.}

Using stare decisis, activities that impede interstate travel can be regulated under the Commerce Clause.\footnote{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”).}

b. Explanation of Dormant Commerce Clause

The Dormant Commerce Clause is not explicitly laid out in the Constitution.\footnote{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).}

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.\footnote{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).}

Specifically, the...
Dormant Commerce Clause is implicated when a state law benefits in-state interests while hurting out-of-state interests. These laws are considered facially discriminatory, but courts have permitted them under the *Pike v. Bruce Church, Inc.* balancing test. 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.” 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. 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.

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. Some circuits have accepted a state’s assertions regarding alleged benefits of the law in question, giving deference to the state legislature. However, other circuits have placed the local interests under greater scrutiny, requiring substantive proof of the alleged benefit to the state. Promoting

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52. See id. at 471 (highlighting when Dormant Commerce Clause is implicated).
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, *Defere nece 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).
57. See Gniewek, supra note 55, at 177 (discussing application of *Pike*).
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.\textsuperscript{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 \textit{Pike} balancing test.\textsuperscript{62}

2. \textit{Sherman Antitrust Act: What is Fair Play?}

The United States has a longstanding history of enacting antitrust regulations in order to prevent monopolies.\textsuperscript{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.\textsuperscript{64} The Sherman Antitrust Act was passed as a response to public concern with the growth and influence of the railroad industry.\textsuperscript{65} Today, there are both civil and criminal penalties for violations of the Sherman Antitrust Act.\textsuperscript{66} The Act primarily aims to promote

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  \item \textsuperscript{61} See Ryan, \textit{supra} note 56, at 366 (identifying parameters of \textit{Pike} balancing test).
  \item \textsuperscript{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).
  \item \textsuperscript{66} See \textit{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. \textit{See id.} (noting applicable penalties); see
economic fairness and competitiveness while also regulating interstate commerce. Modern regulators must perform a balancing test to determine if a company is a monopoly or simply operating with a competitive edge. Recently, Ticketmaster, a premier booking and ticketing service company, was accused of operating a monopoly.

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 Economy. 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/202008232815/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. Arts. (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.”).


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 instituting 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).

Economy during the first year of his presidency. 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. 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.

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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-da0b124e24183a3acd6036705181f49 [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 Zapolis, 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/лина-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. 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. The tickets were geographically restricted to the Florida Panthers “fanbase” within the United States. Ticketmaster orchestrated the restrictive sale, determining customers’ locations based on their credit card billing address. The online ticket reseller displayed a message informing fans that orders violating restrictions would be cancelled without notice or refund.

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.

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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). Gonzales 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).

The Carolina Hurricanes limited ticket sales to an even smaller geographic area than the Florida Panthers, only including neighboring states. 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.

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

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80. See 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 supra note 40 (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 supra note 40 (detailing each NFL teams’ ticket terms and conditions).
to whether these restrictive practices violate the Commerce Clause and Antitrust Regulations.\textsuperscript{85}

C. The Playbook: Methods by Which Fans Obtain Tickets

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

Ticketmaster is the superpower amongst ticket resellers, claiming seventy percent of the market share for ticketing and live events.\textsuperscript{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.\textsuperscript{91} For example, Ticketmaster

\begin{itemize}
  \item \textsuperscript{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).
  \item \textsuperscript{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).
  \item \textsuperscript{89}See id. (highlighting major ticket reselling organizations and their respective market position).
  \item \textsuperscript{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. Crv. 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
\end{itemize}
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. To lure customers away from Ticketmaster, competitors promise incentives such as zero fees. 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.

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

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

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95. See *Taylor Swift, Red (Taylor’s Version)* (Republic 2021) (referencing one of Taylor Swift’s most iconic songs, “All Too Well”).

entertainment ticketing industry. 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. In 2009, Ticketmaster once again came under scrutiny when it announced plans to merge with Live Nation, now Ticketmaster’s parent company. 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. The structural safeguards resulted in a consent decree among the DOJ, Live Nation, and Ticketmaster.

However, the conversation around Ticketmaster’s alleged monopolistic power was reignited during Taylor Swift’s 2023-2024 Eras Tour. 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.cnbc.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).


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 publics fear of monopoly). See generally Milton Katz, The Consent Decree in Antitrust Administration, 53 HAW. 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


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/ (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).


the United States.\textsuperscript{107} One tour stop was Glendale, Arizona, home to Super Bowl LVII.\textsuperscript{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.\textsuperscript{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.\textsuperscript{110} The magnitude of revenue generated through Taylor Swift’s tour has been compared to the gross domestic product of small countries.\textsuperscript{111} Given the staggering amount of revenue in ticket sales, Congress has the ability to regulate the ticket industry under the Commerce Clause.\textsuperscript{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

\begin{itemize}
  \item \textsuperscript{107} See Jeannie Kopstein \& Mariah Espada, \textit{The Staggering Economic Impact of Taylor Swift’s Eras Tour}, \textit{TIME} (Aug. 23, 2023, 11:04 AM), https://time.com/6307420/taylor-swift-eras-tour-money-economy/ [https://perma.cc/VZG6-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, \textit{The Economy (Taylor’s Version)}, \textit{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).
  \item \textsuperscript{108} See \textit{TAYLOR SWIFT THE ERA TOUR}, https://tsheetastour.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).
  \item \textsuperscript{109} See Kopstein \& Espada, supra note 107 (detailing staggering revenue Eras Tour brought to Glendale, Arizona).
  \item \textsuperscript{110} See Wickard \textit{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 \textit{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.
(“NHL”), Major League Baseball (“MLB”), and the National Basketball Association (“NBA”), maintains its own policy surrounding ticket sales. In addition to league policies, each team has its own internal policies. 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. 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. The ticketing

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


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).

industry is not federally regulated, however many states have implemented their own policies.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{120}

3. \textit{Season Ticket Holders’ Seat at the Table}

It is no secret that sports teams tend to have regional followings with dedicated local fans.\textsuperscript{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.\textsuperscript{122} Out of the other fifteen percent, some are local—not all non-season ticket holders are out of state or visiting fans.\textsuperscript{123}

\begin{itemize}
\item \textsuperscript{117} See Graham Fenton, \textit{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. \textit{See id.} (noting specific state policies).
\item \textsuperscript{118} See Elefant, \textit{supra} note 116, at 5 (discussing effect price caps have on resale market); \textit{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. \textit{See id.} (explaining additional challenge when multiple states are involved).
\item \textsuperscript{120} See \textit{id.} (noting Live Nation’s support for bill).
\item \textsuperscript{122} See Pat Evans, \textit{Season Ticket Sales Change but They Remain Backbone of Attendance}, FRONT OFF. SPORTS (Apr. 28, 2019, 10:14 PM), \[https://frontofficesports.com/season-baseball-tix-ssw/#:~:text=The%20sports%20landscape%20is%20changing,-%20sales%20and%20services%20Jamie%20Brandt\] \[https://perma.cc/8KAP-EZ0J\] (exposing makeup of NFL ticket sales and detailing which percentage of tickets are reserved for season ticket holders).
\item \textsuperscript{123} See Roling, \textit{supra} note 82 (detailing challenges faced by fans impacted by ticket restrictions and options for impacted fans).
\end{itemize}
Each sports franchise has their own unique fanbase. The Dallas Cowboys, for example, boast one of the largest geographic fanbases in the NFL. Cowboys fans span the majority of Texas, New Mexico, Oklahoma, and Arkansas, naturally bleeding into neighboring states. Additionally, they can be found as far as Montana and Virginia. 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. So the question remains, why restrict fans’ access based on their residence? 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.

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?


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).


Unsurprisingly, there is a notable advantage a team is afforded when playing on home turf. 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. 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.

What causes “home field advantage” has been debated, but the 2020 season, with its Covid specific policies, demonstrated that fans play a measurable role. 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. 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. 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.

There are other ways teams have amplified their home field advantage, such as stadium design.
a stadium where the home team is shaded, while the away team’s sideline is not protected from the sun. 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.

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. Antitrust laws prohibit conduct by a single entity that unreasonably restrains competition by creating or maintaining monopoly power. When competition is unreasonably restrained, companies can be penalized, such as was the case for prominent telecommunications company AT&T when they were forced to undergo structural remedies.

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

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

142. See Donald R. Richberg, The Monopoly Issue, 87 U. PA. L. REV 375, 379 (1989) (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. 785, 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).


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 League150 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).


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, 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).


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. 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.

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. However, Williams addressed the idea of a “relevant market” when litigating antitrust claims and the natural monopoly the primary-market ticket seller possesses. 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. 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.
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).


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. Each ticket can be viewed as a unique “article”—part of the exchange of goods between point A and point B. While no one sale amounts to much, ticket sales viewed in the aggregate generate substantial commerce. With this framework, it is understandable why Congress should have permission to regulate the exchange of sporting tickets.

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. With the exception of 2020 and 2021 census (June 8, 2023), https://www.census.gov/library/stories/2023/06/state-to-state-migration.html#text=People%20moving%20between%20states%20made%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 Forrest 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).


169. See Jeremy M. Evans, The Changing Landscape of Taxing the Sports Industry, 35 Ext. & 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. In 2022 it was estimated that ticket revenues amongst the four largest sports (NFL, NHL, MLB, and NBA) exceeded $14 billion. The number was projected to reach $14.83 billion in 2023, and $15.40 billion in 2024. The most popular and profitable of the four major sports is the NFL. On average, any given NFL game is attended by 65,567 fans. Each NFL game generates upwards of $6.5 million in ticket sales alone.


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 L. 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], GITNUX (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).

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


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 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


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).

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

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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/5Coh/5Chtm/98-R-0382.htm#:~:text=We%20identified%2015%20states%20in,%20New%20York%20New%20Jersey%20[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. 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.

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. 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. Had
there been ticket restrictions on the NLCS game, fans with Pennsylvania billing zip codes would have faced more expensive hurdles to purchasing tickets. 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. This situation begs the question of whether there is a time and a place for intentional ticket restrictions.

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. 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. 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 quadrupole 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/1GR3-VASC] (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).

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”).


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).


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. Over the next few months, the FTC is expected to begin a more formal evaluation of Ticketmaster’s business operations. As the market leader, Ticketmaster is directly restricting commerce and fair economic competitiveness through its ability to fix prices.

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

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).


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/YL77-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).


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

Ticketmaster’s historical conduct demonstrates why behavioral remedies imposed by the consent decree do not work.\textsuperscript{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.\textsuperscript{212} Monopolies prevent economic growth when market frontrunners have such an advantage in their industry.\textsuperscript{213} Ticketmaster loses its incentive to continuously better its product without a truly competitive market.\textsuperscript{214} Fans ultimately pay the price for this missing incentive through increased ticket prices, hours-long queues, and competition with bots.\textsuperscript{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.\textsuperscript{216}

\section*{IV. Conclusion}

\textbf{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.\textsuperscript{217} Absent action from Congress, it is possible that the courts could decide this issue if a

\textsuperscript{210} See Bloom, \textit{supra} note 207 (noting scarcity effect in Drake ticket sales).

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

\textsuperscript{212} See Sisco, \textit{supra} note 15 (discussing various ways Ticketmaster is operating with monopolistic tendencies); see also Kendall N. Kuntz, \textit{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).

\textsuperscript{213} For further discussion of monopolies, see \textit{supra} notes 63–69 and accompanying text.

\textsuperscript{214} See Sisco, \textit{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. \textit{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. \textit{See id.} (detailing fallout for Live Nation).

\textsuperscript{215} \textit{See id.} (explaining costs passed down to consumers).

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

\textsuperscript{217} For further discussion of why congressional action is needed, see \textit{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


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


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?

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. 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. In United States v. AT&T, the value of structural remedies was apparent, although the Court has seldom used them. 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.

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.

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223. See Taylor Swift, Red (Taylor’s Version) (Republic 2021) (referencing one of Taylor Swift’s songs, Begin Again).


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


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