INFLATE-GATE: THE NFL SUNDAY TICKET'S ARTIFICIALLY INFLATED PRICES AND THE FUTURE OF NFL BROADCASTING RIGHTS

Abstract: In 2015, in *In re National Football League's Sunday Ticket Antitrust Litigation*, four plaintiffs filed a class action lawsuit against the National Football League (NFL) alleging that the league violated antitrust laws through its contract with NFL Sunday Ticket—a programming package that the NFL advertises as "the ultimate fan experience." Although the Sports Broadcasting Act has long protected the NFL from antitrust challenges to its telecasting contracts, some of these contracts, like the one with NFL Sunday Ticket, may not fall under its purview. The case is currently working through the appeals process, and its implications could completely alter the American sports broadcasting landscape. This Note examines the consequences of both potential outcomes of the litigation, ultimately arguing that a ruling for the plaintiffs would create a more competitive market for broadcasting rights which would benefit consumers. Additionally, because the NFL and other professional sports leagues are now multibillion-dollar industries, this Note argues that Congress should repeal the Sports Broadcasting Act to create a legal landscape that best accomplishes the goals of the Sherman Antitrust Act.

INTRODUCTION

Football dominates American culture and motivates fans to engage in seemingly outlandish behavior to show devotion to their teams.[1] One fanbase in particular, the Bills Mafia, has gained notoriety over the past decade for their antics, which include jumping through tables and making offerings to the Pit, a construction zone that is now the site of the Buffalo Bills' new stadium.[2] On gameday, these fans do anything they can to watch their team win.[3]

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[1] *See* Kevin Draper, *How the N.F.L. Stays So Popular, Despite Its Many Scandals*, N.Y. TIMES (Sep. 8, 2022), https://www.nytimes.com/2022/09/08/sports/football/nfl-football-scandals.html [perma.cc/3EWQ-LU2H] (explaining that in 2022, the NFL had its strongest ratings in six years, television networks continue to devote billions of dollars to football, and football remains the most popular high school sport in America).

[2] *See* David M. Johnson, *Broken Tables, Horses and Wolf Blitzer: Buffalo Bills Facts, Fans and History*, TIMES UNION, https://www.timesunion.com/projects/2024/buffalo-bills-facts/ [perma.cc/NH3B-MFNF] (Jan. 13, 2025) (listing jumping through tables and jumping into a pit on the grounds of the Bills stadium as common activities of Bills tailgaters).

[3] *See* Ryan Talbot, *Yes, Of Course, Someone Already Found a Way Into the Buffalo Bills' Pit (Video)*, SYRACUSE (Jan. 21, 2024), https://www.syracuse.com/buffalo-bills/2024/01/yes-of-course-someone-already-found-a-way-into-the-buffalo-bills-pit-video.html [perma.cc/YYC8-SKBR] (report-

Every Sunday afternoon from September to early February, Bills fans are among the over twenty million Americans who turn on their televisions to root for their favorite National Football League (NFL) team.[4] Those who live in Western New York can instantly access Bills games through their local broadcast stations but fans who live elsewhere may not have such direct access to the game.[5]

Fans have limited access to out-of-market games because NFL broadcasting rules require network affiliates to televise the games played within the affiliate's geographic region.[6] Therefore, fans living in their favorite team's primary market can always navigate to their local CBS or Fox station to access their favorite team's Sunday afternoon game.[7] Conversely, fans living outside of their favorite team's geographic region only have guaranteed over-the-air

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ing that a man jumped into "the Pit" prior to a Bills game after chants from fellow fans encouraged him to do so).

[4] *See* ESPN News Services, *NFL Averages 17.9M Viewers in 2023, up 7% from Previous Year*, ESPN (Jan. 10, 2024), https://www.espn.com/nfl/story/_/id/39277615/nfl-averages-179m-viewers-2023-7-previous-year [perma.cc/A3J2-WVWV] (providing viewership numbers from the 2023 NFL season for the three main broadcast networks: CBS, Fox, and NBC). CBS averaged 19.35 million viewers for its Sunday games. *Id.* This was a record high and a five percent increase from the previous year's viewership numbers. *Id.* Fox reported that it averaged 19.42 million viewers for its Sunday games. *Id.* The NFL also plays games on Thursday, Sunday, and Monday evenings, but this article focuses on games played on Sunday afternoons. *Schedule 2025*, NFL, https://www.nfl.com/schedules/ [perma.cc/DF2L-FTDM].

[5] *See In re* Nat'l Football League's Sunday Ticket Antitrust Litig., 933 F.3d 1136, 1143 (9th Cir. 2019) (noting that Rams fans who live in Los Angeles can consistently view Rams games through local CBS and Fox affiliates, but Seahawks fans living in Los Angeles do not have consistent access to Seahawks games on over-the-air television). For example, in Week Eight of the NFL season, the entirety of Upstate New York could view the Bills-Titans game on their local CBS affiliate. Liam McKeone, *NFL TV Coverage Map Week 7: Full Breakdown of CBS, Fox Broadcasts*, SPORTS ILLUSTRATED (Oct. 16, 2024), https://www.si.com/nfl/tv-coverage-map-week-7-full-breakdown-cbs-fox-broadcasts [perma.cc/T2X5-HVKS]. Outside of the greater Nashville area, almost nowhere south of Albany and west of Buffalo could watch the game on CBS. *Id.*

[6] *See* Kevin Draper, *Why People in Mississippi Have to Watch the Giants*, N.Y. TIMES (Nov. 19, 2017), https://www.nytimes.com/2017/11/19/sports/football/why-people-in-mississippi-have-to-watch-the-giants.html?smid=tw-nytsports&smtyp=cur [perma.cc/G9MA-T9G7] (explaining that NFL rules and broadcasting restrictions mandate that games of local teams are broadcast over-the-air in their home markets).

[7] *See* Ariel Y. Bublick, *Are You Ready for Some Football?: How Antitrust Laws Can Be Used to Break Up DirecTV's Exclusive Right to Telecast NFL's Sunday Ticket Package*, 64 FED. COMM. L.J. 223, 235 (2011) (noting that the NFL requires that stations broadcast the local team's game each week). Prior to 2014, the NFL defined a team's local market as the area within seventy-five miles of its stadium and would require stations to black out the team's home games if the team did not sell out eighty-five percent of their stadium within seventy-two hours of kickoff. Alicia Jessop, *The FCC's Elimination of the Sports Blackout Rule Is Not a Touchdown for NFL Fans*, FORBES, https://www.forbes.com/sites/aliciajessop/2014/09/30/the-fccs-elimination-of-the-sports-blackout-rule-is-not-a-touchdown-for-nfl-fans/ [perma.cc/49WC-ASFE] (Oct. 3, 2014). In 2014, the FCC eliminated this blackout rule, but broadcasters still view the radius as a rough indication of a team's home market. *See* Draper, *supra* note 6 (referring to blackout rules that affected teams' home markets and the last residual restriction).

access to the local team's Sunday afternoon games.[8] As a result, most fans who live outside of their favorite team's geographic region cannot consistently watch their favorite team on broadcast television.[9]

In 1994, the NFL partnered with DirecTV to offer a solution for out-of-market fans: the NFL Sunday Ticket.[10] The Sunday Ticket allows fans to subscribe to an exclusive service that provides access to every NFL telecast occurring during the 1:00 p.m. or 4:00 p.m. slates each Sunday.[11] For fans who live outside of their favorite team's local market, this is the only legal way to watch their team's games without using a VPN.[12]

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[8] *See* Bublick, *supra* note 7, at 235 (discussing the requirement that local affiliates air local team's games). In fact, even if a fan would normally have access to their favorite team's game because a network (for example, CBS) expanded a broadcast's range in anticipation of high ratings, if their local team is playing at home on a different station (for example, Fox), the network airing their favorite team's game must black it out to abide by NFL broadcasting rules. Draper, *supra* note 6.

[9] *See In re Nat'l Football League's Sunday Ticket Antitrust Litig.*, 933 F.3d at 1143 (explaining that the only way a Seahawks fan in Los Angeles could ensure they receive access to all their team's games would be to purchase the Sunday Ticket). Broadcast or over-the-air television refers to programs that networks broadcast for free to anyone with an antenna. *Over-The-Air Broadcast Television (OTA)*, TELEVISION BUREAU ADVERT., https://www.tvb.org/research-measurement-analytics/measurement/over-the-air-broadcast-television-ota/#:~:text=Learn%20more-,Over%2DThe%2DAir%20Broadcast%20Television%20(OTA),excluding%20vMVPDs%20from%20the%20bucket [perma.cc/RE5G-8EJV]. CBS, Fox, and NBC are all considered broadcast networks and televise games on Sundays. *See* Michael Schneider, *Most-Watched Television Networks: Ranking 2024's Winners and Losers*, VARIETY (Dec 26, 2024), https://variety.com/2024/tv/news/most-watched-channels-2024-tv-network-ratings-1236259845/ [perma.cc/7593-YXNT] (including CBS, Fox, and NBC in the category of broadcast networks when listing the most watched broadcast networks of the year).

[10] *See In re Nat'l Football League's Sunday Ticket Antitrust Litig.*, 933 F.3d at 1147 (denoting when the NFL and DirecTV started offering the Sunday Ticket).

[11] *See NFL, Google Announce Agreement to Distribute NFL Sunday Ticket on YouTube TV, Primetime Channels*, NFL (Dec. 22, 2022), https://www.nfl.com/news/nfl-google-nfl-sunday-ticket-youtube-tv-youtube-primetime-channels [perma.cc/NC6G-TMSQ] (describing the Sunday Ticket as allowing purchasers access to all out-of-market Sunday afternoon games).

[12] *See In re Nat'l Football League's Sunday Ticket Antitrust Litig.*, 933 F.3d at 1143 (listing the Sunday Ticket as the only way out-of-market fans can watch their local teams). Although the court did not acknowledge it, illegally streaming games has become a popular way for fans to watch their favorite team without paying for the Sunday Ticket. *See* Jon Hoefling, *One in Three Fans Admit to Using Illegal NFL Streams, According to Poll*, USA TODAY (Sep. 21, 2023), https://www.usatoday.com/story/sports/nfl/games/2023/09/21/illegal-nfl-streams-rising-in-popularity/70925341007/ [perma.cc/K8UF-8EG7] (reporting that the number of fans using illegal streams grows annually). Many of these fans report using illegal streams because they do not want to pay the high cost of the Sunday Ticket and other subscription services. *Id.* The only other legal way out-of-market viewers can ensure they can watch their favorite team is to set up a Virtual Private Network (VPN), which allows users to make it seem like their streaming device is connecting from a different geographic position from where the viewer lives. *See* Lillian Brown & Brendan Griffiths, *How to Watch NFL Games: Live Stream Football Without Cable from Anywhere*, BUS. INSIDER, https://www.businessinsider.com/guides/streaming/how-to-watch-nfl-football-without-cable-live-stream#how-to-watch-all-games [perma.cc/V86Z-K34T] (Sep. 4, 2025) (explaining how to use VPNs to watch any football game regardless of where one lives). For example, a Bills fan living in Boston could use a VPN to make it seem as though they were in Buffalo, ensuring that their "local" game would be the Bills game. *See id.* (describing how to set up a VPN to gain access to a specific team's games). Using VPNs to access region-locked content could violate the terms

For the past thirty years, legal scholars and consumers have questioned whether the NFL Sunday Ticket violates antitrust laws.[13] In 2015, in *In re National Football League's Sunday Ticket Antitrust Litigation*, a group of individuals and businesses who had subscribed to the Sunday Ticket filed a lawsuit alleging that the Sunday Ticket agreement between the NFL, its teams, and DirecTV violated the Sherman Antitrust Act.[14] The lawsuit, now a certified class action, is currently on appeal before the U.S. Court of Appeals for the Ninth Circuit.[15]

This Note discusses the potential impacts that the court's decision will have on the NFL broadcasting landscape.[16] It also addresses the Sports Broadcasting Act and questions whether NFL broadcasts should remain exempt from antitrust laws.[17] Part I of this Note provides background on the history of NFL broadcasting rights, the intersection of antitrust law and sports broadcasting agreements, and the current Sunday Ticket litigation.[18] Part II discusses the potential ramifications of the Ninth Circuit upholding or reversing the district court's dismissal of the class action lawsuit.[19] Part III argues that the U.S. Department of Justice should bring an antitrust suit seeking to enjoin the NFL from offering the Sunday Ticket and that Congress should repeal the Sports Broadcasting Act because professional sports teams no longer need an antitrust exemption to survive.[20]

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of use of certain streamers and therefore the VPN could stop working at any time. *See id.* (disclaiming that Business Insider does not condone the illegal use of VPNs).

[13] *See* Shaw v. Dallas Cowboys Football Club, Ltd., 172 F.3d 299, 300 (3d Cir. 1999) (alleging that the Sunday Ticket was an antitrust violation in 1999, five years after the NFL and DirecTV began offering it); David C. Moran, *Illegal Procedure? The Antitrust Implications of NFL Sunday Ticket*, 18 J.L. & COM. 397, 413 (1999) (arguing that the NFL Sunday Ticket violated Section 1 of the Sherman Antitrust Act and the court should rule in favor of the plaintiffs in *Shaw*).

[14] 933 F.3d at 1148–49.

[15] *See* A.J. Perez, *Plaintiffs Appeal After $4.7 Billion NFL Sunday Ticket Verdict Tossed*, FRONT OFF. SPORTS (Sep. 3, 2024), https://frontofficesports.com/nfl-sunday-ticket-appeal/ [perma.cc/GD3E-RL5K] (reporting that the Sunday Ticket subscribers appealed the district court's dismissal of their case to the Ninth Circuit). This is the second time this matter has appeared before the Ninth Circuit; in the first instance, the Ninth Circuit ruled in favor of the plaintiffs and sent the case to trial. *See In re Nat'l Football League's Sunday Ticket Antitrust Litig.*, 933 F.3d at 1159 (reversing the trial court's dismissal of the case).

[16] *See infra* notes 120–165 and accompanying text.

[17] *See infra* notes 180–193 and accompanying text.

[18] *See infra* notes 21–119 and accompanying text.

[19] *See infra* notes 120–165 and accompanying text.

[20] *See infra* notes 166–193 and accompanying text.

I. NBC TO INJURY: AN OVERVIEW OF NFL BROADCASTING HISTORY AND ANTITRUST LAW

Professional and collegiate sports leagues have a long, complex relationship with antitrust law.[21] To successfully operate, a league's member organizations must cooperate on scheduling, rules, revenue sharing, and form other agreements that will maximize the league's profits.[22] Nevertheless, courts have

[21] *See* COMPETITION AND PROFESSIONAL SPORTS, U.S. DEP'T OF JUST. 4, 6, 9 (2023) (summarizing antitrust claims against professional sports leagues over merchandise, employment, and broadcasting). The first significant ruling came in *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs* where the Court held that Major League Baseball (MLB) was exempt from antitrust laws. *See* 259 U.S. 200, 209 (1922) (affirming that baseball was exempt from antitrust laws because it did not involve interstate commerce). The only limitations the government imposed on baseball's antitrust exemption came in 1998 when Congress passed the Curt Flood Act. *See* COMPETITION AND PROFESSIONAL SPORTS, *supra*, at 4, 6, 7 (explaining the scope of Major League Baseball's antitrust exemption and mentioning the Curt Flood Act as a carve-out for activities related to employment). The act made baseball franchises subject to antitrust laws in the employment realm. *See* Curt Flood Act, 15 U.S.C. § 26(b) (stating that the MLB's employment agreements were now subject to the same antitrust laws as the employment agreements of other professional sports organizations). Most other professional sports franchises do not have an exemption and are subject to antitrust laws, an issue that individual athletes have used to their advantage. *See* Moultrie *ex rel.* O.M. v. Nat'l Women's Soccer League, LLC, 544 F. Supp. 3d 1063, 1078 (D. Or. 2021) (granting a preliminary injunction that prevented the National Women's Soccer League from enforcing their age restrictions on a fifteen-year-old athlete who wished to sign with a member franchise). For example, Olivia Moultrie, a fifteen-year-old soccer prodigy, sued the National Women's Soccer League (NWSL) over its rule that prohibited players under the age of eighteen from signing with its member franchises. *Id.* at 1077. Moultrie successfully showed that the rule constituted an antitrust violation as her claim met all the elements of the rule of reason test. *See id.* (ruling that the plaintiff had met her burden of establishing the elements necessary to gain a preliminary injunction against the NWSL). In other instances, sports leagues have faced antitrust challenges to their merchandising contracts. *See* Am. Needle, Inc. v. Nat'l Football League, 560 U.S. 183, 204 (2010) (challenging the NFL's grant of exclusive licensing power to Reebok). In these instances, the Court has maintained that although some activities of professional and collegiate sports leagues fall outside antitrust law, either by judicial precedent or by statute, the Sherman Act still applies to activities in which the leagues cannot make a compelling case that they are exempt. *See id.* (holding that, because the NFL could not successfully argue that an exclusive licensing deal was necessary to ensure competitive balance, they were still subject to antitrust laws and the rule of reason analysis). Although these cases are not directly relevant to the current Sunday Ticket litigation, they represent a move toward holding professional sports teams and leagues responsible for illicit collusion and antitrust violations. *See id.* at 202–03 (establishing that the NFL's licensing activity was still subject to the rule of reason analysis); U.S. Football League v. Nat'l Football League, 842 F.2d 1335, 1360 (2d Cir. 1988) (affirming that the district court was correct to apply a Rule of Reason analysis to the plaintiffs' challenge to NFL broadcasting); *Moultrie*, 544 F. Supp. 3d at 1077 (holding the NWSL to the widely accepted rule of reason standard).

[22] *See Am. Needle, Inc.*, 560 U.S. at 204 (explaining that professional sports teams can cooperate with each other to a certain extent without violating antitrust laws). The Court recognized that NFL teams have a shared interest in keeping the league profitable and thus can permissibly collaborate in several ways. *Id.* at 203–04.

held that this necessary cooperation does not exempt leagues from all antitrust claims, such as claims challenging broadcasting agreements.[23]

Section A of this Part provides an overview of NFL broadcasting history.[24] Section B discusses the Sherman Antitrust Act and the standard for a successful claim of an antitrust violation.[25] Section C details past cases where courts have considered how antitrust law applies to the NFL and its teams, both inside and outside of the broadcasting context.[26] Section D outlines how courts have applied antitrust laws to collegiate football broadcasts.[27] Finally, Section E summarizes the history of the current lawsuit that alleges that the Sunday Ticket violates the Sherman Antitrust Act.[28]

A. A History of NFL Broadcasting

In 1939, W2XBS became the first television station to broadcast an NFL game.[29] Over the next two decades, the NFL aired games sporadically and individual teams contracted with local television stations to broadcast their games.[30] As more American households purchased television sets, the NFL's viewership base increased from the one thousand people who watched the first televised NFL game in 1939 to the forty million people who viewed the NFL Championship Game in 1958.[31] The NFL gained even more viewers when, in

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[23] *See In re* Nat'l Football League's Sunday Ticket Antitrust Litig., 933 F.3d 1136, 1154 (9th Cir. 2019) (holding that antitrust law still applies to some areas of the NFL's behavior even though antitrust laws are looser in other areas that require cooperation between competitors).

[24] *See infra* notes 29–47 and accompanying text.

[25] *See infra* notes 48–60 and accompanying text.

[26] *See infra* notes 61–86 and accompanying text.

[27] *See infra* notes 87–101 and accompanying text.

[28] *See infra* notes 102–119 and accompanying text.

[29] Jake Kobrick, *NFL Television Broadcasting and the Federal Courts*, FED. JUD. CTR., https://www.fjc.gov/history/spotlight-judicial-history/nfl-television-broadcasting#:~:text=On%20October%2022%2C%201939%2C%20experimental,estimated%20to%20be%201%2C000%20people [perma.cc/JY9S-8274]. W2XBS eventually evolved into WNBC, the flagship station of the National Broadcasting Corporation (NBC). *Id.*

[30] *See id.* (explaining that in 1947, the NFL started allowing teams to sell their broadcasting rights to local stations). At first, television broadcasts did not lead to financial success for organizations that chose to broadcast their games. *Id.* Still, networks competed for the right to air important games, such as the annual NFL championship game. *See In re* Nat'l Football League's Sunday Ticket Antitrust Litig., 933 F.3d 1136, 1145 (9th Cir. 2019) (identifying Dumont, CBS, and NBC as different networks that bid for and acquired telecasting rights to NFL games before 1961).

[31] *See* Kobrick, *supra* note 29 (explaining that although only one thousand people viewed the first televised NFL game, an estimated 40 million viewed the 1958 championship game). Although the popularity of the NFL grew between 1939 and 1958, the viewership bump was partially because television ownership in the United States increased from nine percent in 1950 to ninety percent in 1960. *Television*, LIBR. OF CONG., https://guides.loc.gov/american-women-moving-image/television#:~:text=In%201950%20only%209%20percent,figure%20had%20reached%2090%20percent [perma.cc/9RKM-X3BN]. The NFL and football fans nicknamed the 1958 NFL championship game "The Greatest Game Ever Played" as the game went to sudden death overtime, providing the 40 million viewers with an exciting viewing experience. *See The Greatest Game Ever Played*, N.Y. GIANTS,

1970, it merged with its competitor, the American Football League.[32] Today, the Super Bowl regularly surpasses 115 million viewers and is annually the most watched television broadcast in the United States.[33]

Since 1998, CBS and Fox have held the rights to broadcast all of the Sunday afternoon NFL games.[34] Each Sunday, the networks air these games on their local affiliate stations nationwide.[35] One window of games begins at 1:05 p.m. and the other window kicks off at 4:05 p.m. or 4:25 p.m.[36] CBS and Fox own the rights to air multiple games in each time slot so they assign each of their local affiliates certain games to broadcast based on the games' regional or national importance.[37] In accordance with NFL rules and broadcasting contracts, typically only one of the two broadcasters can screen back-to-back

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https://www.giants.com/history/greatestgame [perma.cc/3S7K-Z4UY] (recapping the game and its place in football lore).

[32] *See* Kobrick, *supra* note 29 (revealing that the NFL merged with the AFL in 1970). Two years after the merger, the Super Bowl surpassed 50 million viewers, and its viewership has grown steadily since then. *See Super Bowl LVIII Draws 123.7 Million Average Viewers, Largest TV Audience on Record*, NIELSEN (Feb. 13, 2024), https://www.nielsen.com/news-center/2024/super-bowl-lviii-draws-123-7-million-average-viewers-largest-tv-audience-on-record/ [perma.cc/AE8K-CVZ8] (showing that the 1972 Super Bowl was the first time more than 50 million people tuned into the Super Bowl and that generally viewership has grown since).

[33] *See* Kate Gibson, *From Super Bowl LVIII to the Moon Landing, Here Are TV's Most-Watched Broadcasts*, CBS NEWS (Feb. 13, 2024), https://www.cbsnews.com/news/super-bowl-2024-viewership-ratings/ [perma.cc/JW5D-EQ6E] (explaining that almost all of the top thirty most-watched broadcasts in television history are Super Bowls).

[34] *See* Richard Sandomir, *Pro Football; CBS Guarantees Billions to Get N.F.L. Back*, N.Y. TIMES (Jan. 13, 1998), https://www.nytimes.com/1998/01/13/sports/pro-football-cbs-guarantees-billions-to-get-nfl-back.html [perma.cc/9B8J-PYTH] (reporting that CBS purchased the rights to air AFC games and Fox maintained the rights to air NFC games). CBS outbid NBC, who had owned the rights to air the AFC games since the AFL/NFL merger in 1970. *Id.* In 1993, Fox outbid CBS for the rights to air NFC games. *See* Leonard Shapiro & Tom Shales, *Fox Lands Contract to Televise the NFL*, WASH. POST (Dec. 17, 1993), https://www.washingtonpost.com/archive/politics/1993/12/18/fox-lands-contract-to-televise-the-nfl/7c20a84e-aa1b-4226-a0b4-fe724031cc17/ [perma.cc/5ZFT-ZEDQ] (reporting that Fox had purchased the rights to NFC games that exclusively aired on CBS in previous seasons). As of 2026, CBS and Fox remain the Sunday afternoon broadcasters. *Schedule 2025*, *supra* note 4.

[35] *See In re* Nat'l Football League's Sunday Ticket Antitrust Litig., 933 F.3d 1136, 1143 (9th Cir. 2019) (explaining that local affiliate stations telecast their assigned games over-the-air).

[36] *See Creating the NFL Schedule*, NFL, https://operations.nfl.com/gameday/nfl-schedule/creating-the-nfl-schedule/ [perma.cc/S964-2KJT] (listing when NFL games typically begin on Sunday afternoon).

[37] *See* Draper, *supra* note 6 (explaining how networks decide where to broadcast certain games). Networks typically assign each market the game that they believe will draw the biggest ratings in that market. *See id.* (explaining how CBS chooses where to air certain games). Networks will usually air games based on geographic proximity to a market but will also consider factors that they believe will maximize ratings such as where a team's quarterback went to college or the competitive nature of certain games. *See id.* (explaining that CBS aired New York Giants games in Oxford, Mississippi because the Giants quarterback, Eli Manning, attended the University of Mississippi).

games.[38] Consequently, most fans can only watch a maximum of three of the ten or more games played every Sunday afternoon.[39] Furthermore, a fan's geographic location, not their personal preference, determines their over-the-air viewing experience.[40]

Under the NFL's current broadcasting arrangement, fans who want to guarantee access to their favorite team's Sunday afternoon game must purchase the NFL Sunday Ticket.[41] The Sunday Ticket allows purchasers to watch every team's Sunday afternoon game, except the games CBS and Fox broadcast over-the-air in their region.[42] Unlike similar packages that other professional sports leagues offer, the Sunday Ticket does not allow consumers to purchase a single team's games at a cheaper price.[43] Instead, each of the thirty-two NFL teams agree to transfer the rights to telecast their games to the NFL and the NFL contracts with a single entity (formerly DirecTV, now YouTube TV) to offer the package of out-of-market games to consumers.[44] This arrangement allows NFL teams to earn over $60 million a year through their revenue-sharing agreement.[45]

Only one cable network, satellite service, or streamer can hold the rights to the Sunday Ticket at a time because the NFL sells the telecasting rights

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[38] *See Creating the NFL Schedule*, *supra* note 36 (stating that doubleheaders alternate week-by-week between networks such that only one network has permission from the NFL to air two games during most weeks).

[39] *See Schedule 2025*, *supra* note 4 (showing that there are usually at least ten games between the early and late windows).

[40] *See* Draper, *supra* note 6 (explaining that broadcast restrictions and requests from local stations lead networks to give local teams' games precedence over those of out-of-market teams).

[41] *See In re* Nat'l Football League's Sunday Ticket Antitrust Litig., 933 F.3d 1136, 1143 (9th Cir. 2019) (explaining that the Sunday Ticket, because it contains every Sunday afternoon game, is the only way for fans who do not live in their favorite team's market to access every broadcast of their favorite team's games).

[42] *See id.* (stating that the Sunday Ticket allows all purchasers access to every game not broadcast on local television).

[43] *See id.* (explaining that out-of-market fans have to purchase a package that includes every single Sunday afternoon game to ensure access to each of their favorite team's games); Thomas Harrigan, *At a New Low Price, Get MLB.TV All Season Long*, MLB (May 1, 2024), https://www.mlb.com/news/mlb-tv-price-drops-for-may-2024 [perma.cc/MLJ3-M3X3] (explaining how baseball fans can purchase a subscription to view their favorite team's games for a lower price than purchasing a subscription to view every MLB game); *NBA Team Pass*, NBA, https://support.watch.nba.com/hc/en-us/articles/115000585814-NBA-Team-Pass [perma.cc/Y6W8-XS5E] (explaining that Team Pass allows consumers to purchase access to all of their favorite team's games as opposed to the more expensive League Pass that provides access to every NBA game).

[44] *See* Eriq Gardner, *NFL Heads to the Supreme Court in TV Rights Case*, HOLLYWOOD REP. (Dec. 3, 2019), https://www.hollywoodreporter.com/business/business-news/nfl-tv-rights-why-league-aims-a-block-an-upheaval-1258901/ [perma.cc/GW8S-W9ZT] (describing the NFL's broadcasting structure where teams bundle their collective rights and negotiate as a collective with broadcasters).

[45] *See* Lillian Rizzo, *NFL 'Sunday Ticket' Goes to YouTube in Seven-Year, $2 Billion Annual Deal*, CNBC (Dec. 22, 2022), https://www.cnbc.com/2022/12/22/nfl-sunday-ticket-youtube-tv.html [perma.cc/XR73-Q33C] (reporting that YouTube TV purchased the Sunday Ticket for an annual payment of $2 billion).

through an exclusive rights deal.[46] In 2024, the cheapest Sunday Ticket package cost $479 for residential subscribers and had roughly 1.3 million purchasers.[47]

B. The Sherman Antitrust Act

The Sherman Antitrust Act protects consumers from the negative effects of agreements that unreasonably limit trade or monopolize a market.[48] The Act stands for the principle that uninhibited competition in the marketplace will lead to lower prices, higher quality products, and more choice for consumers.[49]

Section 1 of the Sherman Antitrust Act prohibits agreements or conspiracies that unreasonably restrain trade and Section 2 prohibits unilateral action or agreements to monopolize a market.[50]

Agreements that restrain trade in clearly unreasonable ways are per se illegal.[51] When a layman would understand that an agreement would have anti-

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[46] *See NFL*, *supra* note 11 (reporting that YouTube TV purchased the exclusive rights to offer the Sunday Ticket).

[47] *See* Mike Snider, *NFL Sunday Ticket Price: Breaking Down How Much It Costs, Plus Some Discounts*, USA TODAY (Sep. 8, 2024), https://www.usatoday.com/story/sports/nfl/2024/09/08/nfl-sunday-ticket-price-youtube-tv/75107041007/ [perma.cc/JTH4-BBGJ] (outlining the cost of the Sunday Ticket); Rob Golum, *Sunday Ticket Draws About 1.3 Million Fans to YouTube*, BLOOMBERG (Oct. 12, 2023), https://www.bloomberg.com/news/articles/2023-10-12/nfl-sunday-ticket-draws-an-estimated-1-3-million-fans-to-youtube?embedded-checkout=true [perma.cc/27HK-ZX4R] (estimating the number of Sunday Ticket subscribers).

[48] *See The Antitrust Laws*, U.S. DEP'T OF JUST., https://www.justice.gov/atr/antitrust-laws-and-you [perma.cc/GE3B-UB5D] (outlining Congress's reasoning for passing the Sherman Antitrust Act). In 1890, various trusts held monopolies over major industries, including the sugar and oil industries. *See Sherman Anti-Trust Act (1890)*, NAT'L ARCHIVES, https://www.archives.gov/milestone-documents/sherman-anti-trust-act [perma.cc/92W9-6TB2] (Mar. 15, 2022) (detailing that Congress passed the Sherman Act to give the federal government power to break up monopolies). With the Sherman Act, Congress sought to break up these monopolies because they were raising prices and impacting the market in a manner detrimental to consumers. *See* Apex Hosiery Co. v. Leader, 310 U.S. 469, 492–93 (1940) (providing the history of the Sherman Act to distinguish it from its attempted use against a labor union).

[49] *See* N. Pac. Ry. Co. v. United States, 356 U.S. 1, 4 (1958) (explaining that the Sherman Antitrust Act's premise is that robust competition benefits consumers because it drives prices down, increases consumer choice, and encourages actors in various marketplaces to innovate).

[50] *See* Sherman Antitrust Act, 15 U.S.C. §§ 1–2 (outlawing agreements that unreasonably restrict trade or monopolize markets). The Supreme Court has established that an unreasonable restraint of trade is an agreement to restrain trade that results in anticompetitive effects that outweigh any procompetitive justifications. *See* NCAA v. Bd. of Regents of Univ. of Okla., 468 U.S. 85, 113–14 (1984) (explaining that the agreement between the NCAA member institutions to pool their rights was an unreasonable restraint on trade because of the agreement's negative effects and the lack of any legitimate procompetitive justifications). Unilateral action to monopolize a market occurs when a single entity that holds power over resources fundamental to compete in a market uses that power to eliminate competition in the market. Otter Tail Power Co. v. United States, 410 U.S. 366, 377 (1973) (holding that an electric utility company's refusal to sell power to municipalities violated Section 2 of the Sherman Antitrust Act because it was a unilateral action to monopolize a market).

competitive effects, but the agreement is not per se illegal, defendants must show that the restraint's procompetitive effects outweigh its anticompetitive effects and that they could not have achieved those procompetitive effects through less restrictive means.[52] The Supreme Court and lower courts have dubbed this the "quick look test."[53]

If an agreement is not per se illegal and the quick look test does not suit the circumstances, courts will apply the "rule of reason test."[54] Courts have determined that to successfully allege a violation of Section 1 of the Sherman Act under the rule of reason test, private plaintiffs must prove four separate elements.[55] A plaintiff must show that (1) two or more entities agreed to (2) restrain trade in a market where the entities have enough power to do so, and (3) that the agreement's restraint on trade was unreasonable.[56] Lastly, private plaintiffs must also show that the anticompetitive practice injured them in order to establish standing.[57]

Oftentimes, plaintiffs easily prove the first element because they are basing their claim on an indisputable agreement between two parties, such as an agreement to sell goods at a certain price or not to compete in selling broad-

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[51] *See* Broad. Music, Inc. v. Columbia Broad. Sys., Inc., 441 U.S. 1, 19–20 (1979) (explaining that a per se antitrust violation is one that would seem to always restrict competition and decrease output).

[52] *See* Matthew Oakley, *Sunday Ticket: The Ninth Circuit's Expansion of the Quick Look Test Could Incidentally Help Fans Watch More Football for Less Money*, 29 JEFFREY S. MOORAD SPORTS L.J. 85, 102 (2022) (giving an overview of the quick look test). The Supreme Court has described the quick look test as a variant of the rule of reason, used when someone with a basic knowledge of economics could see how an agreement would hurt consumers and markets. *See* Cal. Dental Ass'n v. Fed. Trade Comm'n, 526 U.S. 756, 770 (1999) (summarizing the standard for the quick look test based on prior Supreme Court holdings). The quick look test lowered the standard to bring antitrust claims because it added the least restrictive means test as another burden that defendants must prove to rebut a prima facie claim of an antitrust violation. *See* Oakley, *supra*, at 102 (explaining how the quick look test differs from the rule of reason test).

[53] *See Cal. Dental Ass'n*, 526 U.S. at 779 (recognizing that the Court has created three categories for analyzing alleged antitrust violations under Section 1 of the Sherman Act). In *California Dental Ass'n*, the Court explained that evaluating whether an agreement is an unreasonable restraint of trade is more complex than running one of three tests (per se, quick look, rule of reason). *See id.* (explaining that the lines between the three analyses are often blurry). The Court proposed that instead of viewing their antitrust analyses through the lens of one of three tests, the public and legal community should see them as holistic evaluations of restraints and their justifications. *See id.* at 780–81 (rejecting the idea of categorical separation between types of restraints in favor of viewing judicial decisions as case-by-case analyses).

[54] *Broad. Music, Inc.*, 441 U.S. at 8, 24 (explaining that when an agreement does not fall into the per se category, it should be examined under a rule of reason analysis).

[55] Brantley v. NBC Universal, Inc., 675 F.3d 1192, 1197 (9th Cir. 2012) (laying out the four elements a plaintiff must plead to survive a motion to dismiss; a plaintiff must prove these same four elements at trial to successfully allege an antitrust violation).

[56] *See id.* (listing the elements of a rule of reason violation).

[57] *See id.* (acknowledging that establishing standing is the fourth element that private plaintiffs must show to successfully allege an antitrust violation under the rule of reason).

casting rights.[58] Nevertheless, the plaintiffs then have to show that the entities involved in the agreement had sufficient market power to actually affect competition.[59] Additionally, to prove that the agreement's restraint of trade was unreasonable, the plaintiffs must show not only that the agreement had legitimate anticompetitive effects, but also that those effects outweighed any procompetitive benefits resulting from the agreement.[60]

C. Antitrust Law and the NFL

In the eighty-six years that NFL teams have televised their games, the thirty-two teams and the league itself have faced numerous claims that they have engaged in monopolistic practices and violated antitrust law.[61] Although plaintiffs have ranged from the federal government to merchandise vendors to consumers, all have alleged that the NFL either illegally restrained trade or commerce under Section 1 of the Sherman Act and/or illegally conspired to monopolize trade or commerce under Section 2.[62]

Before 1961, the NFL allowed each team to sell the rights to telecast their games to broadcasting stations as long as those telecasting agreements com-

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[58] *See* Leegin Creative Leather Prods., Inc. v. PSKS, Inc., 551 U.S. 877, 884–85 (2007) (recognizing that the defendants formed an agreement that restrained trade through fixing prices for certain goods); NCAA v. Bd. of Regents of Univ. of Okla., 468 U.S. 85, 98 (1984) (acknowledging that the NCAA's agreements to only air a certain amount of football inarguably restrained trade).

[59] NCAA v. Alston, 594 U.S. 69, 88 (2021) (describing the rule of reason as partially an evaluation of market power).

[60] *See* Atl. Richfield Co. v. USA Petroleum Co., 495 U.S. 328, 342 (1990) (stating that the standard for an unreasonable restraint of trade is when its anticompetitive ramifications outweigh its procompetitive effects).

[61] *See* Am. Needle, Inc. v. Nat'l Football League, 560 U.S. 183, 186 (2010) (alleging that the NFL violated antitrust law when it provided an exclusive license to Reebok to create and sell hats bearing the logos of every NFL team); Shaw v. Dall. Cowboys Football Club, Ltd., 172 F.3d 299, 300 (3d Cir. 1999) (alleging that the NFL's original Sunday Ticket package illegally restrained competition, driving up prices on consumers in violation of anti-trust laws); U.S. Football League v. Nat'l Football League, 842 F.2d 1335, 1340–41 (2d Cir. 1988) (alleging that the NFL created and maintained a monopoly on the professional football market in violation of antitrust laws); United States v. Nat'l Football League (*Nat'l Football League I*), 116 F. Supp. 319, 321 (E.D. Pa. 1953) (alleging that the NFL's bylaw preventing the broadcast of certain football games in the region where other professional football teams played constituted an antitrust violation).

[62] Sherman Antitrust Act, 15 U.S.C. §§ 1–2; *see Am. Needle, Inc.*, 560 U.S. at 187–88 (demonstrating that merchandise vendors have filed antitrust lawsuits against the NFL); *Shaw*, 172 F.3d at 300 (demonstrating that consumers have filed antitrust lawsuits against the NFL); *Nat'l Football League I*, 116 F. Supp. at 321 (demonstrating that the federal government has filed antitrust lawsuits against the NFL). These lawsuits have established precedent that has affected subsequent antitrust claims and decisions regarding football broadcasting. *See In re* Nat'l Football League's Sunday Ticket Antitrust Litig., 933 F.3d 1136, 1145, 1147, 1148 (9th Cir. 2019) (using precedent from previous antitrust cases, even from other circuits, to reverse the dismissal of an antitrust case against the NFL).

plied with the league's bylaws.[63] One bylaw, Article X, prohibited teams from broadcasting their games within seventy-five miles of another team's home city on the same day that that team was playing a home game or televising their road game.[64] In 1953, in *United States v. National Football League I*, the U.S. Department of Justice challenged Article X as an unreasonable restraint of trade under Section 1 of the Sherman Antitrust Act.[65]

The U.S. District Court for the Eastern District of Pennsylvania held that Article X's prohibition on broadcasting out-of-town games in another team's territory during that team's home games was a reasonable and legal restraint on trade.[66] At the time of the lawsuit, multiple NFL teams were struggling to stay financially solvent and relied on ticket sales as their primary source of income.[67] Allowing out-of-town broadcasts during a local team's home games would have led some fans to stay home to watch the televised game instead of buying a ticket to the local game.[68] This reasoning justified the restraint on trade because the restriction ensured that a sufficient number of teams would avoid financial failure.[69] Nevertheless, the court also held that banning the broadcast of out-of-town games during a local team's away games violated antitrust laws because the out-of-town game would have no direct adverse effect on the local team's revenue.[70]

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[63] *See In re Nat'l Football League's Sunday Ticket Antitrust Litig.*, 933 F.3d at 1144 (explaining that, in the 1950s, individual teams would contract with stations such as DuMont, CBS, and NBC to televise their games).

[64] *See Nat'l Football League I*, 116 F. Supp. at 321 (providing an explanation of Article X of the NFL bylaws). The NFL included Article X in the bylaws because of concerns that weaker teams would continuously fail if the league did not put measures in place to protect their chances to achieve financial success. *See id.* at 323–24 (expanding on the logic behind the NFL's restrictive broadcasting rules).

[65] *See id.* at 321 (stating the grounds on which the government challenged the NFL bylaws).

[66] *See id.* at 326 (holding that restricting broadcasts of other teams' games was a reasonable restriction on trade and complied with the spirit of the Sherman Act).

[67] *See id.* at 323, 325 (explaining that a majority of NFL teams were headed toward financial failure and that ticket sales provided the largest share of the teams' incomes). The court provided examples of other ways that the league could maintain parity, including reasonable broadcasting restrictions that would protect a team's home territory. *See id.* at 324 (listing how the league could promote equality among its teams). These methods also included limiting the amount teams could offer in signing bonuses, placing weaker teams higher in the draft order, limiting roster sizes, and banning transactions between teams and free agents after a certain point in the season. *Id.*

[68] *See id.* at 324 (explaining that the Sherman Act did not prohibit rules that would protect NFL teams' home ticket sales from the damage outside broadcasts would cause). The U.S. District Court for the Eastern District of Pennsylvania emphasized that banning this agreement would not achieve the goals of the Sherman Act, primarily Section 1's goal of banning unreasonable restraints of trade. *See id.* at 326 (recognizing that holding the first provision of Article X to be an antitrust violation would not further the purposes behind antitrust law).

[69] *See id.* at 326 (holding that the first provision of Article X was a reasonable restraint on trade because it allowed teams to protect their financial wellbeing, in turn protecting the league).

[70] *See id.* (holding that the ban on televising out-of-market games during a local team's away game violated the Sherman Act). The NFL attempted to argue that allowing the telecast of a non-local

In 1961, still concerned about the financial success of weaker teams, the then-fourteen NFL teams pooled their broadcasting rights and granted CBS an exclusive license to televise all NFL games.[71] In 1961, in *United States v. National Football League II*, the U.S. District Court for the Eastern District of Pennsylvania held that this contract violated the court's 1953 order in *National Football League I*.[72] Instead of appealing the judgement, the NFL persuaded Congress to pass the Sports Broadcasting Act, which exempts professional sports teams from Section 1 of the Sherman Act when they pool their sponsored telecasting rights and sell them to television networks.[73] The Sports Broadcasting Act allowed the NFL and its teams to collectively sell their telecasting rights to over-the-air networks, namely CBS, ABC, NBC, and eventually Fox.[74]

Decades later, shortly after the NFL and DirecTV began offering the Sunday Ticket, a group of consumers brought a class action lawsuit against the NFL, claiming that the Sunday Ticket violated Section 1 of the Sherman Antitrust Act.[75] In 1999, the U.S. Court of Appeals for the Third Circuit heard the

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team's game into the territory could lead fans to watch the stronger team over their local team, indirectly affecting ticket sales because of decreased interest in the local team. *See id.* (relaying the defendant's counterargument to the court's holding). The court did not find this compelling as there was no evidence that this contention was true. *See id*. (noting the lack of evidence that the defendant's argument was more than conjecture). Thus, the court held that this provision of Article X was an unreasonable restraint of trade. *Id.*

[71] *See* United States v. Nat'l Football League (*Nat'l Football League II*), 196 F. Supp. 445, 446–47 (E.D. Pa. 1961) (explaining the contract with CBS that the government challenged in this case). The contract would have evenly distributed the licensing payment from CBS among the fourteen teams competing in the NFL. *See id.* (explaining the payout structure). This, in theory, would increase financial equity between the teams and improve competitive balance. *See Impact of Television*, NFL, https://operations.nfl.com/gameday/technology/impact-of-television/ [perma.cc/627F-J883] (explaining the purpose behind NFL revenue sharing).

[72] 196 F. Supp. at 447 (holding that the NFL-CBS agreement violated antitrust law given the precedent set in the previous 1953 case).

[73] *See* 15 U.S.C. § 1291 (providing professional football, basketball, baseball, and hockey leagues an exemption from the Sherman Antitrust Act that allowed them to pool their broadcasting rights for sale to over-the-air networks); *In re* Nat'l Football League's Sunday Ticket Antitrust Litig., 933 F.3d 1136, 1146 (9th Cir. 2019) (explaining the history of the Sports Broadcasting Act). The Sports Broadcasting Act exempts joint agreements between professional sports teams to pool their broadcasting rights and sell them to sponsored telecasters from Section 1 of the Sherman Act. *See* 15 U.S.C. § 1291 (detailing the exemption for professional football, baseball, basketball, and hockey leagues).

[74] Shapiro & Shales, *supra* note 34 (outlining the history of sponsored telecasts on NBC, ABC, CBS, and Fox). Before the 1994 season, Fox outbid CBS for the rights to broadcast the NFC games, ending CBS' decades-long association with the NFL. *Id.* Before this change, the NFL aired weekly games on CBS, ABC, and NBC, with each network having bid on and purchased the rights to certain games. *Id.* The Fox deal shook up the football broadcasting status quo. *Id.* The status quo was that CBS would broadcast NFC games, NBC would broadcast AFC games, and ABC would air Monday Night Football in prime time. *Id.*

[75] *See* Shaw v. Dall. Cowboys Football Club Ltd., 172 F.3d 299, 299–300 (3d Cir. 1999) (stating that the plaintiffs alleged that the Sunday Ticket violated Section 1 of the Sherman Act). This lawsuit bears striking similarity to the 2015 lawsuit that has led to the current antitrust litigation regarding the

case, *Shaw v. Dallas Cowboys Football Club Ltd.*, holding that the Sports Broadcasting Act's antitrust exemption did not apply to the Sunday Ticket because the Sunday Ticket was not a sponsored telecaster.[76]

In *Shaw*, the plaintiffs alleged that the Sunday Ticket involved a contract to unreasonably restrain trade because the only way for fans to access out-of-market games was to purchase the Sunday Ticket at a supracompetitive price.[77] In response, the NFL claimed that the rights they sold to DirecTV were rights to sponsored telecasts, therefore the Sports Broadcasting Act's exemption covered the Sunday Ticket.[78]

The Third Circuit examined the plain meaning of the Sports Broadcasting Act's text and held that the NFL selling the broadcasting rights of a game to a sponsored telecaster did not exempt all sales of that game's broadcast from Section 1 of the Sherman Act.[79] Furthermore, the court noted that the Sports Broadcasting Act's legislative history confirms that NFL executives understood that the antitrust exemption did not apply to broadcasts on cable or subscription television.[80] Although the class action lawsuit resulted in an out-of-court settlement, the Third Circuit's holding remains good law within its jurisdiction and persuasive authority elsewhere.[81]

Sunday Ticket. *Compare id.* (alleging that the Sunday Ticket is an antitrust violation in 1999), *with In re Nat'l Football League's Sunday Ticket Antitrust Litig.*, 933 F.3d at 1143–44 (explaining that the plaintiffs claim that the Sunday Ticket allows the NFL to charge consumers artificially high prices in violation of the Sherman Act).

[76] *See* 172 F.3d at 301–02 (defining what a sponsored telecast is and holding that the NFL's antitrust exemption only applies to the sponsored telecasters' over-the-air broadcasts, not the NFL's Sunday Ticket broadcasts).

[77] *See id.* at 300 (detailing the plaintiffs' specific claims). Supracompetitive prices are prices that are artificially high, often due to lack of competition in the market. *See* Sanders v. Brown, 504 F.3d 903, 909 (9th Cir. 2007) (providing "supracompetitive" as a synonym for artificially high prices).

[78] *See Shaw*, 172 F.3d at 300–01 (providing details on the NFL's defense to the claim of an antitrust violation). The NFL claimed that the sale to sponsored distributors such as Fox and CBS gave them residual rights in the sponsored broadcasts that they could sell to consumers exclusively through DirecTV. *See id.* (summarizing the NFL's full theory of why the Sunday Ticket was exempt from antitrust laws).

[79] *See id.* (holding that each sale of a game's broadcasting rights is distinct). The NFL incorrectly believed that it owned the rights to the sponsored broadcast itself when it only owned the rights to allow networks to telecast the games. *See id.* at 301 (explaining the issues with the NFL's defense to the allegations of an antitrust violation). The court recognized that adopting the NFL's construction of the Sports Broadcasting Act's text would allow them to avoid antitrust laws entirely because it would mean that any game shown through a sponsored telecast in a team's local market could also be shown on an exclusive streamer without violating any laws. *See id.* at 302 (highlighting the issues with the NFL's interpretation of the Sports Broadcasting Act).

[80] *See id.* at 302 (discussing the legislative history of the Sports Broadcasting Act and its intention to carve out a limited exception for sponsored, over-the-air television).

[81] *See generally In re* Nat'l Football League's Sunday Ticket Antitrust Litig., 933 F.3d 1136, 1147 (9th Cir. 2019) (citing *Shaw*, 172 F.3d at 301).

Outside of the broadcasting realm, the NFL has faced other allegations of antitrust violations.[82] In 2010, in *American Needle v. National Football League*, the Supreme Court held that the NFL's singular merchandising entity, NFLP LLC, possessed the ability to violate antitrust laws because it was comprised of thirty-two independently managed teams.[83] Even though the NFL teams license their logos and merchandise through one limited liability company, the teams each have separate decision-makers and compete with each other to sell licensed goods.[84] Consequently, their agreement to issue a collective exclusive license to Reebok impermissibly restrained trade, eliminated competition, and could have led to artificially high prices in violation of the Sherman Act.[85]

Together, these cases set the precedent that even though the Sports Broadcasting Act granted the NFL an exemption from antitrust law in some spheres, the Sherman Act still applies to all agreements that the exemption does not specifically address.[86]

D. Antitrust Law and Collegiate Football

Other professional sports leagues and athletic associations have also faced claims that their broadcasting agreements violate antitrust laws.[87]

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[82] *See* Am. Needle, Inc. v. Nat'l Football League, 560 U.S. 183, 187–88 (describing American Needle's antitrust claim against the NFL alleging that granting an exclusive license to sell headwear for all NFL teams violated the Sherman Act). American Needle brought an antitrust suit against the NFL because, in 2000, the NFL granted Reebok an exclusive license to sell headwear bearing the thirty-two NFL teams' logos. *Id.* at 187. This involved declining to renew American Needle's non-exclusive license to manufacture and sell apparel with the NFL team's logos on it. *Id.* The NFL and its teams had formed a limited liability company (LLC) to license and market their intellectual property and argued that the LLC was a single entity that could not conspire with itself. *See id.* (explaining the defenses the NFL asserted in its answer). The Supreme Court rejected the NFL's defense because each team that agreed to form the LLC was independently managed and had an interest in maximizing its profits. *See id.* at 201 (explaining why the NFL's LLC was subject to antitrust laws). In fact, the Court likened the agreement to that of a cartel and posited that if agreements such as the NFLP LLC allowed businesses to evade antitrust laws, all cartels could maintain legality if they formed a joint venture. *See id.* (explaining the risks of accepting the NFL's defense).

[83] *See id.* at 204 (holding that when teams have combined into a "single entity," the Sherman Act still applies to them for marketing products bearing their logos and other intellectual property).

[84] *See id.* at 197 (explaining that when teams are selling products, they are prioritizing their own financial success, not that of other members of the league, meaning that they are each separate decision-makers).

[85] *See id.* at 204 (holding that the NFL's contract with Reebok impermissibly restrained trade).

[86] *See id.* (clarifying that although other agreements between NFL teams may not constitute antitrust violations, the Sherman Act does apply to areas in which the law does not treat the NFL teams as a single entity); *Shaw*, 172 F.3d at 303 (holding that, because the Sunday Ticket is not sponsored telecasting, it does not fall under the Sports Broadcasting Act's antitrust exemption and is thus subject to antitrust law).

[87] *See* NCAA v. Bd. of Regents of Univ. of Okla., 468 U.S. 85, 88 (1984) (explaining that the University of Oklahoma and the University of Georgia filed an antitrust lawsuit against the NCAA for its restrictive football broadcasting rules).

For example, prior to 1984, the National Collegiate Athletic Association (NCAA) controlled the broadcasting rights for every college football game and forbade members from selling additional television rights to broadcasters.[88] Frustrated at the NCAA's limitations, a group of major college football schools negotiated their own deals with NBC and filed an antitrust lawsuit to prevent the NCAA from disciplining them.[89] In 1984, in *NCAA v. Board of Regents of the University of Oklahoma*, the U.S. Supreme Court held that the NCAA's control over collegiate football broadcasting violated Section 1 of the Sherman Antitrust Act.[90]

The NCAA's broadcast regulations restricted the number of times each college football team could appear on television and forbade member institutions from freely selling their rights to television networks.[91] Furthermore, the restrictions imposed a fixed amount that networks paid schools to air their games, meaning that prices did not reflect consumer demand or a competitive market.[92] Based on these factors, the Court held that the NCAA's broadcast plan was an unreasonable restraint of trade under Section 1 of the Sherman Act because it impermissibly restricted output and fixed prices.[93]

Whereas the members of the NFL or another professional sports league would likely be able to form the NCAA's agreement under the Sports Broadcasting Act's antitrust exemption, colleges could not because the exemption does not apply to collegiate sports.[94] Although the interdependent nature of a

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[88] *See id.* at 89–91 (providing the history of the NCAA football television plan). The plan placed caps on the number of times a team could appear on television, and teams who did not acquiesce were subject to discipline from the NCAA. *See id.* (giving the details of the plan and that the University of Pennsylvania received punishment when it did not agree to the plan).

[89] *See id.* at 95 (providing the history of the lawsuit). The new plan came from a coalition of schools who had organized to find a deal that would increase the number of times they could appear on television and maximize their financial gain. *See id.* (explaining why the schools negotiated a deal with NBC).

[90] *See id.* at 120 (holding that the NCAA broadcasting requirements violated the Sherman Antitrust Act).

[91] *See id.* at 99, 105 (highlighting that the NCAA limited the number of times schools could appear on television and did not allow them to negotiate the price of their telecasting rights with networks). Under the NCAA plan, schools could only appear on television six times per year at most, and each network paid a fixed amount to NCAA schools that were interested in televising their games. *See id.* at 93–94 (giving the pricing details of the NCAA plan).

[92] *See id.* at 92–93, 105 (explaining that the NCAA contracted with broadcasting networks to pay each school a set amount instead of allowing institutions to sell their television rights in the free market where various networks could compete for the rights).

[93] *See id.* at 120 (holding that the NCAA broadcasting plan violated antitrust law because it reduced the number of college football broadcasts and created fixed pricing structures independent of consumer demand). The Court noted in its decision that these anticompetitive effects were classic examples of antitrust violations. *See id.* at 100 (recognizing that courts usually find agreements that have the same effects as the NCAA's broadcasting plan to be per se antitrust violations).

[94] *See* 15 U.S.C. § 1291 (listing professional football, baseball, basketball, and hockey as the only sports where teams could pool their broadcasting rights without being subject to the Sherman Act).

competitive amateur football league requires the NCAA to maintain a certain level of control over member institutions, the broadcasting contract's negative effects on price and output were the exact restraints Congress intended to outlaw with the Sherman Act.[95] Further, because NCAA football is a unique product with no competitors, there were no procompetitive effects the NCAA could use to counter their broadcasting contract's negative effect on trade.[96] As a result, the Supreme Court struck down the plan and allowed individual schools and conferences to negotiate and sell their own television rights.[97]

In the four decades since the *Board of Regents* decision, college football broadcasting has significantly changed.[98] Today, almost every Football Bowl Subdivision game is televised, and games appear across broadcast, cable, and subscription television networks.[99] The current NCAA television landscape provides an example of how different sports teams, businesses, and institutions can come together to provide fans across the nation access to a wide variety of football games.[100] Additionally, it provides a model for simultaneously broadcasting

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[95] *See Bd. of Regents of Univ. of Okla.*, 468 U.S. at 107 (recognizing that the type of restrictions that the NCAA imposed significantly lessened the control that consumers had over the marketplace and were the paradigm of restraints that antitrust laws are meant to prevent).

[96] *See id.* at 115 (identifying college football as a unique product and explaining that the NCAA had no competitors in the broadcasting rights market). The Court suggested that the two largest indicators of procompetitive effects are price and output. *See id.* (explaining that if the plan had procompetitive effects, either price or output would improve). The plan's negative impact on both price and output was thus dispositive of any procompetitive effects. *See id.* (holding that the plan had no procompetitive effects).

[97] *See id.* at 120 (affirming the district court's ruling that the NCAA plan violated antitrust law).

[98] Seth Emerson, *How a Supreme Court Case Changed College Football Forever, from TV Deals to Realignment*, THE ATHLETIC (July 1, 2024), https://www.nytimes.com/athletic/5600962/2024/07/01/ncaa-college-football-supreme-court-1984/ [perma.cc/8Y34-QV9T] (explaining how the *Board of Regents* decision changed college football broadcasting).

[99] Nick Bromberg, *How to Watch College Football in 2024: Who's Playing on What Channel Now?*, YAHOO! SPORTS (Aug. 6, 2024), https://sports.yahoo.com/how-to-watch-college-football-in-2024-whos-playing-on-what-channel-now-145904573.html [perma.cc/S6LY-YZ5L] (highlighting that, in 2024, college football would be played on six networks and their subsidiary stations such as Fox Sports and ESPNU).

[100] *See id.* (showing that most institutions contracted to air their games on multiple channels because their athletic conference packaged games together to maximize the profits each member institution could make). Although member schools in each conference now bundle their rights with each other, these smaller bundles may be permissible joint ventures as the schools could argue that their revenue-sharing structures are necessary to maintain competitive balance within the conference. *See Bd. of Regents of Univ. of Okla.*, 468 U.S. at 117–18 (refuting the NCAA's defense that their control over all NCAA school's telecasts of football existed to promote competition, in part because there was no neutral standard or readily identifiable group of competitors). Each conference's television bundles have readily identifiable groups of competitors and as television deals have grown in monetary value, leagues such as the SEC have experienced more parity. *See* Dan Wetzel, *College Football Playoff: Parity Is About to Bring Chaos . . . Especially in the SEC*, YAHOO! SPORTS (Nov. 12, 2024), https://sports.yahoo.com/college-football-playoff-parity-is-about-to-bring-chaos—especially-in-the-sec-023117646.html [perma.cc/K9WU-53UN] (reporting that the increased involvement of NIL money,

a large amount of football games on over-the-air and cable television instead of through streaming services that charge subscribers hundreds of dollars.[101]

E. The Sunday Ticket Litigation

In 2015, almost twenty years after *Shaw*, in *In re National Football League's Sunday Ticket Antitrust Litigation*, four plaintiffs filed a similar class action lawsuit alleging that the Sunday Ticket violated Sections 1 and 2 of the Sherman Antitrust Act.[102] The U.S. District Court for the Central District of California dismissed the complaint because the court ruled that the plaintiffs failed to state a cognizable claim.[103] On appeal, the U.S. Court of Appeals for the Ninth Circuit reversed the district court's dismissal and reinstated the litigation.[104] The Ninth Circuit held that the plaintiffs' allegations that the agreement between NFL teams to exclusively sell broadcasting rights to out-of-market games to the Sunday Ticket platform could constitute impermissible restraints on competitive pricing and output.[105] The court also held that the plaintiffs had standing because even though they purchased the Sunday Ticket package from DirecTV, any alleged injury would have come as a product of the conspiracy between the NFL teams, the NFL, and DirecTV.[106] At the appeals level, the NFL did not dispute that the plaintiffs had alleged facts that would show that the Sunday Ticket restrained trade.[107]

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the ability to pay players, and the transfer portal were all reasons that SEC teams were more evenly matched in the 2024-2025 season).

[101] *See* Bromberg, *supra* note 99 (explaining where fans could find a series of Saturday college football games, all broadcast either over-the-air or on cable television). Ironically, because the NFL can make use of the Sports Broadcasting Act's antitrust exemption, they may have a better claim to legally institute this type of broadcasting structure than NCAA schools because the schools could be sued for pooling their broadcasting rights. *See* 15 U.S.C. § 1291 (exempting the NFL from antitrust violations that result from teams pooling their rights for sale in sponsored telecasts).

[102] Sherman Antitrust Act, 15 U.S.C. §§ 1–2; *see* 933 F.3d 1136, 1148 (9th Cir. 2019) (giving background on the complaint against the NFL that the plaintiffs were appealing to the Ninth Circuit).

[103] *See In re Nat'l Football League's Sunday Ticket Antitrust Litig.*, 933 F.3d at 1149 (discussing how the Sunday Ticket appeal came before the court).

[104] *See id.* at 1159 (reversing the district court's dismissal with prejudice).

[105] *See id.* at 1151–52 (holding that the plaintiffs alleged sufficient facts to support their claim that the Sunday Ticket caused injury to competition). The court explicitly highlighted the similarities between the restrictions in this case and those that the Supreme Court struck down in previous cases involving the NCAA. *Id.* at 1152.

[106] *See id.* at 1157 (explaining that the plaintiffs had standing to sue the NFL because the NFL conspired with DirecTV to offer the Sunday Ticket package). The court explained that the complaint's allegations that DirecTV worked with the NFL to set supracompetitive prices were sufficient to establish standing at that point in the case. *See id.* at 1158 (explaining why the defendants' contention that the plaintiffs did not have standing failed at this juncture).

[107] *Id.* at 1150.

On February 7, 2023, the U.S. District Court for the Central District of California certified the lawsuit as a class action.[108] The lawsuit now includes a class for residential subscribers and commercial subscribers to the Sunday Ticket.[109]

At trial, the plaintiffs argued that the Sunday Ticket agreement was an unreasonable restraint of trade because the thirty-two NFL teams and the NFL agreed to eliminate all competition in the out-of-market football telecasting which allowed them to charge supracompetitive prices for the Sunday Ticket.[110] To make their case, the plaintiffs presented evidence and expert testimony that but for the Sunday Ticket, fans would be able to access more out-of-market games at lower prices, a similar argument to that of the plaintiffs in *Board of Regents*.[111]

In its defense, the NFL argued that the Sunday Ticket was a nationally available premium product and fans could choose whether to purchase it.[112] They also alleged that the plaintiffs could not sufficiently prove that without the Sunday Ticket, more games would have been available at cheaper prices.[113]

On June 27, 2024, a jury returned a verdict finding that the NFL and its thirty-two teams violated antitrust laws by charging supracompetitive prices for the NFL Sunday Ticket.[114] The jury awarded the plaintiffs over $4.6 billion

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[108] *In re Nat'l Football League's Sunday Ticket Antitrust Litig.*, No. 2:15-ml-02668, 2023 WL 1813530, at *16 (C.D. Cal. Feb. 7, 2023).

[109] *See id.* (distinguishing the two classes of plaintiffs from each other). The commercial class is composed of all customers who bought the commercial Sunday Ticket package from June 27, 2011, to February 7, 2023. *Id.* The residential class is all customers who purchased the residential Sunday Ticket package between those same dates. *Id.*

[110] *See* Second Consolidated Amended Complaint for Damages and Declaratory and Injunctive Relief Pursuant to Sections 1 and 2 of the Sherman Act at 30–31, *In re* Nat'l Football League's Sunday Ticket Antitrust Litig., 2023 WL 1813530 (No. 15-ML-02668); *In re* Nat'l Football League's "Sunday Ticket" Antitrust Litig., No. 15-02668, 2024 WL 3628118 (C.D. Cal. Aug. 1, 2024) (arguing that the NFL's broadcasting agreements with CBS, Fox, and the Sunday Ticket provider reduced competition for over-the-air networks, limited the output of games, and ensured that anyone wishing to legally view out-of-market games at home would have to pay for the Sunday Ticket).

[111] *See* Second Consolidated Amended Complaint, *supra* note 110, at 35 (making the argument that NFL teams would create and/or sell their own broadcasts at cheaper prices if the agreement to pool rights for the Sunday Ticket did not exist).

[112] *See* Joe Reedy, *NFL Commissioner Roger Goodell Defends 'Sunday Ticket' Package as a Premium Product*, ASSOCIATED PRESS, https://apnews.com/article/nfl-sunday-ticket-lawsuit-goodell-c3c5944b2361f4d7e64b17092e523c21 [perma.cc/9SE8-VRBJ] (June 17, 2024) (reporting on NFL Commissioner Roger Goodell's testimony in defense of the Sunday Ticket and the arguments the defense presented at trial).

[113] *See In re Nat'l Football League's "Sunday Ticket" Antitrust Litig.*, 2024 WL 3628118, at *2, *8 (noting that the defendant's motion for judgment as a matter of law was partially based on allegations that the plaintiffs offered inadmissible expert testimony).

[114] *See* Ken Belson, *N.F.L. Ordered to Pay Billions in Sunday Ticket Lawsuit*, N.Y. TIMES (June 27, 2024), https://www.nytimes.com/2024/06/27/business/media/nfl-sunday-ticket-lawsuit-billions-damage.html [perma.cc/8H37-KLXL] (reporting that the jury returned a verdict for the plaintiffs).

in damages.[115] In response, the NFL filed a motion for judgment as a matter of law.[116] The district court granted the NFL's motion on August 1, 2024, overturning the jury verdict.[117] The district court judge granted the motion solely because the plaintiffs relied on inadmissible expert testimony that the judge determined was essential to a finding of class-wide injury.[118] The plaintiffs filed a notice of appeal to the Ninth Circuit on September 4, 2024, and are now preparing their briefs.[119]

II. COVERING THE SPREAD: THE POTENTIAL CONSEQUENCES OF THE NINTH CIRCUIT'S DECISION

This Part discusses the ramifications of the Ninth Circuit upholding or reversing the district court's judgment in *In re National Football League's Sunday Ticket Antitrust Litigation*.[120] Section A discusses how the Ninth Circuit's affirmation of the district court's decision could affect future antitrust claims targeting the NFL broadcasting structure and the significance of the reasoning behind the district court's judgment.[121] Section B discusses how a reversal in the Ninth Circuit could lead to a victory for the plaintiffs on the merits of their claims, fundamentally altering competition for broadcasting rights in a post-Sunday Ticket world.[122] Section C discusses the potential legal and financial ramifications for consumers if the NFL continues to sign exclusive broadcasting contracts with streaming services.[123]

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[115] *See id.* (reporting that the jury verdict awarded the plaintiffs billions of dollars in damages).

[116] *In re Nat'l Football League's "Sunday Ticket" Antitrust Litig.*, 2024 WL 3628118, at *8.

[117] *Id.*

[118] *See id.* (explaining that the district court granted the NFL's motion because a reasonable jury could not have found actual injury to the plaintiffs without the use of inadmissible expert testimony). The plaintiff's expert witnesses presented economic models that purported to show what consumers would pay to watch the same games in a world without the exclusive DirecTV Sunday Ticket package. *See id.* at *3, *7 (giving a general description of the contents of each expert's testimony). The plaintiffs used these models to meet their necessary burden of showing that the Sunday Ticket package caused class-wide injury. *See id.* at *8 (asserting that the plaintiffs failed to meet this burden without the expert testimony). The judge held that the experts did not rely on sound methodology, making their testimony inadmissible. *Id.* at *3.

[119] Mike Florio, *Notice of Appeal Is Filed in Sunday Ticket Class Action*, NBC SPORTS (Sep. 4, 2024), https://www.nbcsports.com/nfl/profootballtalk/rumor-mill/news/notice-of-appeal-is-filed-in-sunday-ticket-class-action [perma.cc/NB62-Q75J].

[120] *See infra* notes 124–165 and accompanying text.

[121] *See infra* notes 124–134 and accompanying text.

[122] *See infra* notes 135–154 and accompanying text.

[123] *See infra* notes 155–165 and accompanying text.

A. Moving the Goalposts: The Consequences of the District Court's Daubert Determination

In his judgment overturning the jury's verdict, Judge Phillip Gutierrez recognized that the plaintiffs had presented sufficient evidence for a reasonable jury to find that the Sunday Ticket was a conspiracy that illegally restrained trade.[124] The plaintiffs showed that the thirty-two NFL teams and the NFL agreed to a contract to not compete, selling their collective broadcasting rights to a service that fell outside their antitrust exemption contained in the Sports Broadcasting Act.[125] The court also admitted that the plaintiffs provided sufficient evidence that the Sunday Ticket agreement restricted output and controlled pricing at a level that constituted an unreasonable restraint of trade.[126] The judgment explicitly stated that a reasonable jury could have rejected the NFL's claims of procompetitive effects and/or accepted the plaintiff's proposals that less restrictive means would have achieved the same effects.[127] The judge only granted judgment to the defendants because, in his opinion, the plaintiffs could not have proven actual injury without inadmissible expert tes-

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[124] *See In re Nat'l Football League's "Sunday Ticket" Antitrust Litig.,* No. 15-02668, 2024 WL 3628118, at *8 (C.D. Cal. Aug. 1, 2024) (stating that the plaintiffs presented sufficient evidence for a jury to find that the Sunday Ticket met the requirements of the rule of reason test and violated Section 1 of the Sherman Act).

[125] *See id.* *1, *8 (ruling that the plaintiffs presented evidence sufficient for a reasonable jury to conclude that the NFL and its member organizations contracted with one another to limit the airing of out-of-market professional football games).

[126] *See id.* (explaining the specifics of the plaintiffs' lawsuit and admitting that they presented sufficient evidence to show the Sunday Ticket was in fact an unreasonable restraint of trade). Much of the plaintiffs' case would have been difficult, if not impossible for the NFL to disprove, a fact that the Ninth Circuit highlighted when it ruled that the plaintiffs had brought a cognizable claim in 2019. *See In re* Nat'l Football League's Sunday Ticket Antitrust Litig., 933 F.3d 1136, 1150–51 (9th Cir. 2019) (highlighting that the defendants did not contest that they had a contract between the thirty-two teams to reduce competition in the sale of NFL games and that a showing that the defendants have market power can usually satisfy the requirement that an agreement injures competition). Although the Ninth Circuit's decision only officially addressed whether the plaintiffs had pled sufficient allegations to show an antitrust violation, the decision relied on the text of the NFL's Sunday Ticket agreements and their similarities to the contracts the Supreme Court struck down in *NCAA v. Board of Regents of the University of Oklahoma*. *See id.* at 1151–52 (mentioning how similar this case was to *Board of Regents*); 468 U.S. 85, 88 (1984).

[127] *See In re Nat'l Football League's "Sunday Ticket" Antitrust Litig.,* No. 15-02668, 2024 WL 3628118, at *8 (deciding that there was sufficient evidence for a reasonable jury to find that the Sunday Ticket had anticompetitive effects and for them to either reject the NFL's procompetitive justifications or accept the plaintiffs' argument that there were less restrictive means to achieve those effects). In their complaint, the plaintiffs alleged that the Sunday Ticket restricted output and raised the prices of the out-of-market broadcasts to a supracompetitive level. Second Consolidated Amended Complaint, *supra* note 110, at 30–31. The plaintiffs also alleged that any procompetitive effects were baseless and, even if they had merit, that the teams did not require an exclusive agreement to achieve these alleged benefits. *See id.* at 44–45 (rebutting the defendants' procompetitive justifications for the Sunday Ticket contracts).

timony.[128] As a result, should the Ninth Circuit uphold the district court's decision, it seems that future plaintiffs will need only clear the hurdle of actual injury to succeed in their antitrust claims against the NFL and its teams.[129]

Although this may appear to be a low standard, a claim's success likely depends on the discretion of future judges hearing antitrust challenges to the Sunday Ticket.[130] Internal NFL memoranda supported the expert testimony that but for the Sunday Ticket, more NFL games would have been available each Sunday at a lower cost.[131] Additionally, the plaintiffs presented evidence that networks such as ESPN were willing to offer cheaper team-by-team packages if the NFL awarded them the rights to do so.[132] Still, because the judge

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[128] *See In re Nat'l Football League's "Sunday Ticket" Antitrust Litig.*, 2024 WL 3628118, at *8 (granting the defendants' motion for judgment as a matter of law because, without the experts' testimony, it would have been impossible for a reasonable jury to conclude that the class of plaintiffs would have paid less for access to out-of-market games if the Sunday Ticket did not exist). The judge excluded each of the expert's models for different reasons. *See id.* at *7–8 (providing the reasoning behind excluding each expert's testimony). The first expert, Dr. Rascher, based one of his models on the current college football landscape where most games are available over-the-air or on major cable stations. *Id.* at *3. The court took issue with this model because not every college football game appears on over-the-air networks. *See id.* at *6–7 (excluding Dr. Rascher's expert testimony). This led the court to conclude that Dr. Rascher's methodologies were unreliable to show that more games would have been available at a lower cost. *Id.* The second expert, Dr. Zona, presented models that proposed a world where a second distributor offered the Sunday Ticket "direct-to-consumer" instead of forcing them to purchase a satellite dish (which DirecTV required). *Id.* at *7–8. The court rejected these models because Dr. Zona failed to flesh out what a "direct-to-consumer" package would entail. *See id.* at *7 (explaining that Dr. Zona did not explain his definition of direct-to-consumer in his testimony). As a result, a reasonable jury did not possess enough information to decide whether the package would be economically reasonable or if another provider could have offered it to consumers. *See id.* (explaining that Dr. Zona's failure to define "direct-to-consumer" in sufficient detail meant no reasonable jury could conclude that, in a but for world, another package would have existed and that fans would have purchased it).

[129] *See id.* at *8 (ruling that the plaintiffs' failure to show class-wide injury caused the court to issue judgment as a matter of law for the defendants). The court's explicit recognition that the plaintiffs met their burden to present evidence that would pass the rule of reason test suggests that if other plaintiffs bring similar claims, they could secure a favorable verdict as long as they have more credible expert testimony or other evidence showing actual injury. *See id.* (implying that, had the plaintiffs presented evidence from which a reasonable jury could conclude injury, the judge would not have granted the defendant's motion for judgment as a matter of law).

[130] *See* Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 597 (1993) (setting the precedent that the trial judge is the gatekeeper of expert testimony and it is within their discretion to decide whether an expert witness's testimony relies on sound methodology and is relevant to the case). *Daubert* set the standard for expert testimony that all subsequent courts have followed, even with non-scientific evidence, such as the economic models in the Sunday Ticket case. *See* Kumho Tire Co. v. Carmichael, 526 U.S. 137, 147 (1999) (holding that the judge's discretionary power to decide the reliability and relevance of expert testimony extends to non-scientific expert testimony).

[131] Transcript of the Jury Trial Proceedings at 758, 761, *In re* Nat'l Football League's "Sunday Ticket" Antitrust Litig., 2024 WL 3628118 (No. 15-02668) (explaining that the NFL explored making their broadcasting model more like college football, airing their most popular/competitive games on flagship networks such as Fox and airing less popular games on subsidiary stations such as FX).

[132] *See* Mike Florio, *ESPN Proposed Dropping Sunday Price to $70 and Offering Single-Team Packages; NFL Declined*, NBC SPORTS (June 13, 2024), https://www.nbcsports.com/nfl/profootball

did not believe that the expert's testimony relied on sound methodology, it was within his discretion to enter judgment in favor of the defendants.[133] The Federal Rules of Evidence give judges this power, meaning that the success of future plaintiffs bringing similar claims may rely more on a judge's discretion than on the evidence the plaintiffs present.[134]

B. Opening the Playbook: How the NFL Could Adjust to a Post-Sunday Ticket World

Should the Ninth Circuit reverse the district court's judgment, and the plaintiffs ultimately receive a judgment or verdict in their favor, NFL teams could adopt several new strategies to broadcast their games on Sundays.[135]

After the Supreme Court's decision in *Board of Regents*, college football broadcasting exploded, with the major networks engaging in bidding wars for the rights to air the most competitive games.[136] Eventually, schools began to organize the sale of their broadcasting rights through their athletic confer-

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talk/rumor-mill/news/espn-proposed-dropping-sunday-price-to-70-and-offering-single-team-packages-nfl-declined [perma.cc/3LNJ-7HE7] (reporting that the plaintiffs presented evidence that ESPN tried to buy the rights to the Sunday Ticket and would have dropped the price to $70 in addition to offering single team packages).

[133] *See Daubert*, 509 U.S. at 597 (acknowledging that leaving the admissibility up to a judge's discretion could exclude valuable evidence but still holding that providing the judge that power is the best way to assess the validity of expert testimony). If a party loses because a judge excludes their expert testimony, they can appeal to a higher court, alleging that the trial judge abused their discretion in excluding the expert testimony. *See Kumho Tire Co.*, 526 U.S. at 158 (stating that Rule 702 of the Federal Rules of Evidence grants a trial judge discretion over the admissibility of expert testimony subject to an appeals court's review for abuse). Complicating matters, there is no set criteria a judge must use to evaluate whether an expert's testimony is relevant and reliable. *See id.* at 150 (clarifying that *Daubert* does not provide a definitive checklist that judges must use in evaluating the admissibility of expert testimony but rather provides a list of factors a judge could consider in making their evaluation).

[134] *See Kumho Tire Co.*, 526 U.S. at 158 (summarizing the powers that Rule 702 gives trial judges in assessing expert testimony, specifically that their determination of reliability of expert testimony should be based on their discretion, given the particularities of the matter before them).

[135] *See generally* Stewart Mandel, *College Football TV Guide: How to Watch New-Look Lineup in 2024*, THE ATHLETIC (Aug. 29, 2024), https://www.nytimes.com/athletic/5730788/2024/08/29/college-football-tv-guide-channels-2024/ [perma.cc/F24L-R2CV] (explaining which networks held the rights to each conference's games during the 2024 college football season); Brad Adgate, *Ahead of the 2024-25 Season More NBA Teams Have Dropped Their RSN*, FORBES (Aug. 19, 2024), https://www.forbes.com/sites/bradadgate/2024/08/19/ahead-of-the-2024-25-season-more-nba-teams-have-dropped-their-rsn/ [perma.cc/52ZD-B79V] (detailing how other sports leagues and associations broadcast their games).

[136] *See* Jason Kersey, *Exploring the History of College Football Media Rights*, THE OKLAHOMAN, https://www.oklahoman.com/story/sports/college/cowboys/2013/08/25/exploring-the-history-of-college-football-media-rights/60887384007/ [perma.cc/QRU2-K82D] (Aug. 28, 2013) (providing a brief history of college football broadcasting and noting when each major network started to bid on Big 12 football).

ences.[137] Today, networks pay these conferences billions of dollars to telecast their games and most conferences contract to air their games on multiple networks to maximize profits.[138] Each week, networks broadcast the most popular games on over-the-air television and air less competitive matchups on their subsidiary channels.[139] This means that all consumers have more access to each week's slate of college football games than they do to each week's slate of NFL games.[140]

Like NCAA member institutions, NFL teams are also split into conferences.[141] Each of these conferences contains four divisions.[142] In a post-

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[137] *See* Mandel, *supra* note 135 (detailing which networks bid on and purchased the rights to each major college football conference's games in 2024). In 2024, the major football conference aired their games on ABC, CBS, ESPN, Fox, TNT, the CW, NBC, and various affiliate networks. *See id.* (reporting on what days of the week each network will air games and the channels broadcasting the games).

[138] *See* Kevin Draper & Alan Blinder, *SEC Reaches $3 Billion Deal with Disney, Drawing CBS Ties Toward an End*, N.Y. TIMES (Dec. 10, 2020), https://www.nytimes.com/2020/12/10/sports/ncaafootball/sec-disney-deal.html [perma.cc/6C3N-ZT8J] (reporting that Disney, the parent company of ABC and ESPN, had signed a $3 billion contract with the Southeastern Conference to air all of the league's games for a decade); Adam Rittenberg, *Big Ten Completes 7-Year, $7 Billion Media Rights Agreement with Fox, CBS, NBC*, ESPN (Aug. 18, 2022), https://www.espn.com/college-football/story/_/id/34417911/big-ten-completes-7-year-7-billion-media-rights-agreement-fox-cbs-nbc [perma.cc/BY6W-9PWU] (reporting that the Big 10 had signed three contracts that would bring in over $7 billion to the conference itself, resulting in annual payouts of $80 to $100 million to each of its member schools).

[139] *See* Mary Omatiga, *What College Football Games Are on Today: Week 5 Saturday NCAA Top 25 Schedule, TV Channels, How to Watch*, NBC SPORTS (Sep. 28, 2024), https://www.nbcsports.com/college-football/news/what-college-football-games-are-on-today-week-5-saturday-ncaa-top-25-schedule-tv-channels-how-to-watch [perma.cc/9S4Y-HK9Z] (revealing that Disney would air Georgia versus Alabama, a game between two Top 5 teams, on ABC, while simultaneously airing Clemson versus Stanford, a game between a ranked and an unranked opponent, on ESPN). As a general rule, the less popular or competitive a network believes a college football game will be, the less accessible it will be to consumers. *See id.* (showing that games experts anticipated to be blowouts, such as LSU versus South Alabama and Texas versus Mississippi State, were only aired on subscription services instead of over-the-air or basic cable).

[140] *Compare id.* (showing the number of college football games fans had access to on September 28, 2024), *with* Donnie Druin, *NFL Week 4 TV Coverage Map*, SPORTS ILLUSTRATED (Sep. 28, 2024), https://www.si.com/nfl/cardinals/news/nfl-week-4-tv-coverage-map [perma.cc/PH8F-CCXA] (showing the number of NFL games fans could watch on September 29, 2024). Fans who only had access to over-the-air television had the opportunity to watch seven college football games and only a maximum of three NFL games. *Compare* Omatiga, *supra* note 139 (showing that fans could watch seven college football games on over-the-air on September 28), *with* Druin, *supra* (showing that fans could watch a maximum of three games over-the-air on September 29). Fans who had cable access had the opportunity to watch fourteen college football games but still only a maximum of three NFL games. *Compare* Omatiga, *supra* note 139, (showing that fans with cable could watch fourteen college football games on September 28), *with* Druin, *supra* (showing that even fans with cable could only watch three NFL games on September 29).

[141] *See* Matthew Jackson, *Which Teams Are in the NFC and AFC? How Do NFL Divisions Work? Everything to Know*, NBC, https://www.nbc.com/nbc-insider/nfl-divisions-explained-history-structure-how-they-work [perma.cc/54QW-AXJV] (Aug. 29, 2025) (explaining that the NFL has two conferences containing sixteen teams each).

Sunday Ticket world, NFL teams could pool their broadcasting rights within their division and sell those rights to networks.[143] This type of system, modeled after college football, would increase competition because networks would bid against each other for the rights to air each division's games.[144] Instead of only three Sunday afternoon games airing in each local market, if the four broadcast networks (ABC, CBS, Fox, NBC) all aired two games per week (one at 1:05 pm and one at 4:05 pm), a consumer with access to only over-the-air television could see a minimum of eight games every Sunday afternoon.[145] Other games could air on subsidiary networks such as Fox Sports 1 or CBS Sports Network.[146] Even though this would not guarantee that every fan had access to every game, it would increase the output of televised professional football

[142] *See id.* (explaining that both conferences contain four divisions organized by the region of the country where each team is based).

[143] *See* NCAA v. Bd. of Regents of Univ. of Okla., 468 U.S. 85, 120 (1984) (holding that the NCAA policy requiring member institutions to telecast their games through the NCAA was an antitrust violation and that schools were free to pool their telecasting rights together for sale to networks as a bundle). Like the schools suing the NCAA in *Board of Regents* and colleges today, NFL teams would likely also bundle their rights together to increase their overall revenue. *See id.* at 94–95 (relaying the history of the CFA schools' effort to sell their telecasting rights); Draper & Blinder, *supra* note 138 (noting that Disney signed a contract for the right to air the entire SEC's games, not just the games of a single school).

[144] *See* Sandomir, *supra* note 34 (covering the bidding war between CBS and NBC to air the American Football Conference's games). The major networks already attempt to outbid each other every time an NFL conference's broadcasting rights come up for sale. *See id*. (reporting that CBS had to guarantee billions of dollars to secure the rights to air AFC games after Fox outbid them for NFC games four years earlier). Additionally, the major networks also compete for the rights to each college conference's games, suggesting that bidding wars for bundles of NFL games are all but certain. *See* Michael McCarthy & Amanda Christovich, *NBC to Make Big Push for Big Ten Media Rights*, FRONT OFF. SPORTS (Feb. 16, 2022), https://frontofficesports.com/nbc-to-make-big-push-for-big-ten-media-rights/ [perma.cc/S9JK-MH82] (reporting that NBC was preparing a bid to secure the rights to Big 10 football games).

[145] *See* Peter Urban, *23 Free, 'Hidden' TV Channels You Can Find Over the Air*, AARP, https://www.aarp.org/entertainment/television/info-2022/free-over-the-air-antenna-tv-channels.html [perma.cc/WWT7-F6ZH] (Aug. 23, 2022) (listing ABC, CBS, Fox, and NBC as the well-known broadcasting networks). Each of these networks already airs the NFL in some capacity so they would likely have the capability to use their existing infrastructure to air two NFL games on Sunday afternoon every week. *See Schedule 2025*, *supra* note 4 (showing that each of the major broadcast networks airs at least one game each week as ESPN uses the same broadcasting infrastructure as ABC).

[146] *See* Omatiga, *supra* note 139 (showing that additional college football games air on subsidiary networks while the flagship networks air other games). The NFL's New Frontier memo, which the plaintiffs presented at trial, considered this option and laid out a plan that included broadcasting every game on a broadcast or cable network. *See* Joe Reedy, *Jury Begins Deliberations in Class-Action Lawsuit Against NFL by 'Sunday Ticket' Subscribers*, ASSOCIATED PRESS, https://apnews.com/article/nfl-sunday-ticket-lawsuit-1a3d5b7d1b10fe0e852f144f2168b834 [perma.cc/4HQG-8BMQ] (June 26, 2024) (reporting that the NFL considered putting games on FS1, CBS Sports Network, TNT, and other subsidiary networks if they lost the Sunday Ticket litigation).

while lowering consumer costs because more NFL games would appear on channels that fans can access with their current subscriptions and equipment.[147]

The NFL could also model their new broadcasting structure off of a different professional sports league, such as the National Basketball Association (NBA), which uses a hybrid structure to air their games.[148] The NBA broadcasts some games on national television each day but most games appear on either regional sports networks, like Bally Sports, or local network television, such as NBC Boston.[149] Fans living outside of their favorite team's local market can purchase the Team Pass.[150] The Team Pass allows fans to purchase a package of only their favorite team's games and gives them access to every one of those games not broadcast on national television.[151]

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[147] *See* Brad Adgate, *YouTube TV Is Forecast to Be the Largest Pay-TV Distributor in 2026*, FORBES (Apr. 7, 2024), https://www.forbes.com/sites/bradadgate/2024/04/07/youtube-tv-is-forecast-to-be-the-largest-pay-tv-distributor-in-2026/?sh=78c42e703805 [perma.cc/SB7F-Q2WE] (listing the number of people who subscribe to traditional cable and virtual distributors, such as YouTube TV, that provide similar channels). In 2023, 57.7 million people either had cable or subscribed to a virtual multi-channel programming distributor such as YouTube TV. *Id.* In 2023, 1.3 million people subscribed to the Sunday Ticket, meaning that if NFL teams adopted a model like college football's, it could result in over 50 million people having more access to NFL games. Golum, *supra* note 47.

[148] *See NBA Schedule*, NBA, https://www.nba.com/schedule?cal=all&region=1 [perma.cc/X32U-3S2J] (showing that most NBA games air on regional sports networks or on local network affiliates with each day having a few nationally televised games). The NBA plays eighty-two games, so the NFL could not directly adopt their model. *See id.* (showing that the NBA has eighty-two games). Nevertheless, the NFL could look at how the NBA works with national, regional, and local networks to design its own broadcasting model that best fits the league and fans' needs. *See* Ethan Strauss, *The NBA National TV Schedule: How It's Made, Its Intents and Its Discontents*, THE ATHLETIC (Dec. 21, 2020), https://www.nytimes.com/athletic/2265278/2020/12/21/nba-national-tv-schedule-how-its-made/ [perma.cc/23TA-Y885] (explaining how the NBA tries to design the schedule to have the most compelling games on national television while also accounting for player health and travel).

[149] *See NBA Schedule*, *supra* note 148 (showing the NBA schedule and the channels each game will air on). For example, on Friday, February 21st, the NBA aired back-to-back games on ESPN but the remaining seven games aired on regional sports networks or local CBS, NBC, ABC, or Fox affiliate stations in local markets. *See id.* (listing the NBA schedule for February 21, 2025).

[150] *See NBA Team Pass*, *supra* note 43 (providing information on what content is available for fans who purchase the NBA Team Pass). The Team Pass is a team-specific version of the NBA League Pass, a service that allows fans to access every NBA game not on national television. *See NBA League Pass*, NBA, https://support.watch.nba.com/hc/en-us/articles/115000585974-NBA-League-Pass [perma.cc/RQ8Y-6YEF]. The League Pass is similar to the NFL Sunday Ticket but, because each team has their own broadcast, fans can choose to watch the home or away feed. *See id.* (listing access to both the home and road feeds as features of the League Pass).

[151] *See NBA Team Pass*, *supra* note 150 (noting that the Team Pass provides the local or regional feeds of every game the selected team plays except for those subject to blackout restrictions or on national television). If a game is blacked out on Team Pass for a specific fan, they will likely still be able to access the game because blackouts only occur when games are shown nationally on cable or over-the-air in the market where the fan is located. *See League Pass Blackouts*, NBA, https://support.watch.nba.com/hc/en-us/articles/115002481154-League-Pass-Blackouts [perma.cc/C6X7-N3GY] (explaining that when a game is blacked out for a League or Team Pass subscriber, they should be able to find it on a regional sports network, a local network, or a national broadcaster).

The NFL could institute a similar model to the NBA, airing a few Sunday afternoon games on national television and allowing teams not playing in those contests to broadcast their games locally.[152] The NFL could then create a service like the Team Pass where out-of-market fans could purchase access to their favorite team's games at an affordable price.[153] In fact, many teams already have the infrastructure in place to do so because they air preseason football on local network affiliates.[154]

C. Running Up the Score

If the Ninth Circuit upholds the district court's decision, NFL teams and owners will not only continue to offer the Sunday Ticket but may also form even more exclusive deals with streaming services to maximize profits.[155]

Between 2022 and 2024, the price of the Sunday Ticket rose by almost $200.[156] For comparison, between 2012 and 2022 the price of the Sunday Ticket only increased by roughly $100.[157] The sharp increase in the price of the Sunday Ticket has not led to a decrease in subscribers, so it seems likely the NFL will continue to raise the price of the Sunday Ticket on an annual basis.[158]

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[152] *See In re* Nat'l Football League's Sunday Ticket Antitrust Litig., 933 F.3d 1136, 1154 (9th Cir. 2019) (recognizing that members of the NCAA, NHL, and MLB all sell at least some of their telecasting rights directly to broadcasters and that, should the plaintiffs prove the Sunday Ticket violates antitrust laws, the NFL could hypothetically do the same).

[153] *See NBA Team Pass*, *supra* note 150 (explaining that the Team Pass gives out-of-market fans access to all of their favorite team's games not on national television).

[154] *See* Adam Gorski, *How to Watch the Bills-Panthers Preseason Game*, WIVB, https://www.wivb.com/sports/buffalo-bills/how-to-watch-stream-bills-vs-panthers-preseason-game/ [perma.cc/82V5-U96A] (Aug. 24, 2024) (reporting that local CBS stations across Upstate New York would be airing the Buffalo Bills preseason game with an in-house broadcast team and sideline reporter).

[155] *See In re* NFL "Sunday Ticket" Antitrust Litig., No. 15-02668, 2024 WL 3628118, at *8 (C.D. Cal. Aug. 1, 2024) (ruling that the plaintiffs successfully presented evidence from which a reasonable jury could conclude that the anticompetitive effects of the NFL Sunday Ticket outweighed any procompetitive benefits, or that the NFL could have achieved those procompetitive benefits through less restrictive means). The issues the plaintiffs had in proving actual injury through but for worlds would probably extend to the NFL's exclusive streaming deal with Netflix because the plaintiffs may not be able to prove that they would have had cheaper access to the game but for the exclusivity agreement. *See id.* (ruling that the expert testimony of but for worlds was necessary to prove the plaintiffs would have paid less to see the games in the absence of the Sunday Ticket).

[156] *See* Snider, *supra* note 47 (reporting the price of the NFL Sunday Ticket in 2024); Todd Spangler, *YouTube's Regular Pricing for NFL Sunday Ticket Will Be Higher Than DirecTV's*, VARIETY (Apr. 11, 2023), https://variety.com/2023/digital/news/youtube-nfl-sunday-ticket-pricing-2023-season-1235578319/ [perma.cc/Z9DB-C5V3] (reporting that the price of Sunday Ticket increased from $293.94 in 2022 to $349 in 2023).

[157] *See* Spangler, *supra* note 156 (reporting the price of Sunday Ticket in 2022 as $293.34); Patrick Hipes, *DirecTV Slashing Price of NFL Package*, DEADLINE (Apr. 19, 2012), https://deadline.com/2012/04/nfl-sunday-ticket-directv-price-cut-nfl-package-259061/ [perma.cc/5G4K-5QMR] (reporting that the price of the Sunday Ticket in 2013 was $199.95).

[158] *See* Golum, *supra* note 47 (noting that the Sunday Ticket gained about 100,000 subscribers between 2022 and 2023 even as the price of the service increased). At trial, NFL Commissioner Roger

During the Sunday Ticket trial, the NFL commissioner and NFL owners testified that they want to keep the number of Sunday Ticket subscriptions relatively low so they do not lose their multi-billion-dollar broadcasting deals with Fox and CBS.[159] Additionally, the NFL has aired more and more games exclusively on streaming platforms every year and will likely continue to do so because of the large amount of money available through these deals.[160]

The revenue that the Sunday Ticket and exclusive streaming deals generate helped turn the NFL into a $22.2 billion industry in which the average team is worth $7.13 billion.[161] When games are offered exclusively through a certain service, consumers suffer because the output of professional football broadcasts decreases and the monetary cost of watching games increases.[162] As the

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Goodell testified that the NFL increases the price of the Sunday Ticket each year to limit its distribution because the NFL's over-the-air broadcasters see the Sunday Ticket as competition. *See* Ken Belson, *Why the N.F.L. Put a $7 Billion Antitrust Case in the Hands of an Unpredictable Jury*, N.Y. TIMES (June 25, 2024), https://www.nytimes.com/2024/06/25/business/media/nfl-sunday-ticket-lawsuit-cost-tv-deal.html [perma.cc/H4FT-WGBW] (recounting the testimony of the NFL commissioner and his reasoning for why the NFL tries to limit the amount of Sunday Ticket subscribers).

[159] *See* Belson, *supra* note 158 (reporting that Commissioner Goodell said the league wanted to minimize the damage that the Sunday Ticket had on Fox and CBS viewership); Florio, *supra* note 132 (reporting that Robert Kraft, owner of the New England Patriots, testified at a deposition that the NFL and team owners want to keep the number of Sunday Ticket subscriptions down). Each year CBS and Fox pay billions of dollars for the rights to air the Sunday afternoon games. *See* Belson, *supra* note 158 (mentioning that Fox and CBS pay billions to air the games that the NFL also broadcasts on Sunday Ticket). Subscriptions to the Sunday Ticket mean that fans have more choice over the games they watch and may watch a game on Sunday Ticket instead of on their local CBS or Fox affiliate. *See id.* (explaining that the Sunday Ticket can negatively impact the NFL's broadcast partners). As a result, the NFL has tried to find a middle ground where they brand the Sunday Ticket as an expensive, premium product so that only diehard fans or those with the means to pay the inflated prices purchase the Sunday Ticket, whereas other fans just watch whatever games are airing in their local market. *See id.* (recounting Commissioner Goodell's explanation that, although the Sunday Ticket hurt broadcast partners, the NFL still offers the Sunday Ticket at an expensive rate because of its "incredible" content).

[160] *See* Brad Adgate, *More NFL Games Will Be Exclusively Streamed This Season*, FORBES (Sep. 5, 2024), https://www.forbes.com/sites/bradadgate/2024/09/05/to-watch-every-nfl-game-this-season-will-cost-more-money/ [perma.cc/E2BR-BUZ5] (reporting that more games than ever would be exclusively streamed in 2024). In recent years, the NFL and its owners have signed over exclusive rights to air games to streaming services such as Amazon Prime, Peacock, and Netflix. *See id.* (announcing which streaming services had exclusive rights to games in 2024). In 2024, Netflix paid the NFL $150 million to air two games on Christmas Day and signed an agreement to exclusively air at least one game on Christmas in both 2025 and 2026. *See* Brad Adgate, *Here's What to Know as Netflix Streams Two NFL Games on Christmas*, FORBES (Dec. 19, 2024), https://www.forbes.com/sites/bradadgate/2024/12/19/heres-what-to-know-as-netflix-streams-two—nfl-games—on-christmas/ [perma.cc/AK3B-G6EG] (providing details on Netflix's deal with the NFL).

[161] *See* Kurt Badenhausen, *How NFL Teams and Owners Made $22 Billion Last Year*, YAHOO! SPORTS (Sep. 2, 2025), https://sports.yahoo.com/nfl-teams-owners-money-110000452.html [https://perma.cc/P5P8-FPVA] (reporting that the NFL generated $22.2 billion in revenue in 2024 and the average team is worth $7.13 billion).

[162] Drew Nathanson, *The NFL-Amazon Agreement vs. Antitrust Legislation: The Future of the National Football League in OTT Services*, 39 ENT. & SPORTS LAW. 80, 84 (2023) (explaining that exclusive streaming agreements reduce the output of professional football broadcasts because only

NFL signs more exclusive rights broadcasting deals, fans will need to pay hundreds of dollars for streaming subscriptions and the Sunday Ticket to watch all of their favorite team's games each year.[163]

The NFL's agreements with these streaming services are akin to miniature versions of the Sunday Ticket agreement, so if the plaintiffs' case is successful, it may provide a roadmap for those who wish to challenge exclusive streaming agreements as antitrust violations.[164] Conversely, should the Ninth Circuit hold that the district court judge permissibly dismissed the case, the avenues to allege that an exclusive streaming deal violates antitrust law may narrow.[165]

III. A HAIL MARY: HOW THE FEDERAL GOVERNMENT COULD RESTORE ORDER TO SPORTS BROADCASTING

Based on how slowly the case has progressed thus far, *In re National Football League's Sunday Ticket Antitrust Litigation* may not conclude for years.[166] Over that time period, fans will continue to pay hundreds of dollars

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fans who subscribe to the streaming service can view the games whereas all fans can access games broadcast over-the-air).

[163] *See* Adgate, *supra* note 160 (listing the monthly and annual prices of all the streamers and Sunday Ticket). If a person paid for one month of each service and the Sunday Ticket, it would cost over $500. *See id.* (listing prices that add up to $520.97).

[164] *See* Nathanson, *supra* note 162, at 82 (pointing out the similarities between the NFL Sunday Ticket and Amazon's exclusive Thursday Night Football package). The different deals have varying levels of similarity to the Sunday Ticket, with those bringing a suit against Amazon having a stronger case because the Thursday Night games moved directly from Fox to Amazon Prime. *See id.* at 84 (positing that the argument that the NFL moving Thursday Night Football to Amazon Prime is an antitrust violation is stronger than the argument that the Sunday Ticket is an antitrust violation because Thursday Night Football used to be available nationwide on over-the-air television). Fans bringing suits that one-off games violate antitrust laws would have to prove that the NFL would have aired these games on broadcast television instead of another cable channel such as the NFL Network. *See In re* NFL "Sunday Ticket" Antitrust Litig., No. 15-02668, 2024 WL 3628118, *1, *8 (C.D. Cal. Aug. 1, 2024) (issuing judgment for the defendants because the plaintiffs did not present sufficient evidence that without the Sunday Ticket they would have been able to access the games at a cheaper rate).

[165] *See In re* NFL "Sunday Ticket" Antitrust Litig., 2024 WL 3628118, at *8 (ruling that evidence of offers made to the NFL to broadcast the Sunday Ticket at a cheaper rate and internal NFL plans to offer more games on broadcast and cable television were not enough to independently show private plaintiffs would have paid less if the Sunday Ticket did not exist). It may seem like fans located in the primary markets of the teams playing in the exclusively streamed games would be able to prove they would have paid less for the games without the streaming deals because the games would have been broadcast over-the-air otherwise. *See* Draper, *supra* note 6 (explaining that, on Sunday afternoons, fans in a team's primary market always receive the broadcast of that team's game over-the-air). That is not the case because the NFL accounted for and circumvented this argument when signing the streaming deals and aired the games over-the-air in each team's local market. *See* Adgate, *supra* note 160 (reporting that the Chiefs-Steelers game would be broadcast on local CBS affiliates in Kansas City and Pittsburgh).

[166] *See* Maya Rustom, Note, *The New Era of NFL Antitrust Law, the Sunday Ticket Package: Was the Ninth Circuit Ruling a Touchdown or a Penalty?*, 48 PEPP. L. REV. 537, 558 (2021) (recounting that the Sunday Ticket lawsuit was originally filed in 2015, almost a decade before the 2024 appeal).

annually to ensure that they can watch all of their favorite team's games.[167] Instead of waiting for *In re National Football League's Sunday Ticket Antitrust Litigation* to work its way through the courts, the U.S. Department of Justice could take action to enjoin the NFL from offering the Sunday Ticket.[168] This Part argues that the Department of Justice should challenge the NFL Sunday Ticket as a violation of Section 1 of the Sherman Antitrust Act and that Congress should repeal the Sports Broadcasting Act to better reflect the present, where professional sports teams do not need to pool their rights to achieve financial success.[169] Section A of this Part analyzes the success and failures of the private plaintiffs' case, concluding that the Department of Justice should bring an antitrust suit to ban the Sunday Ticket in its current form.[170] Section B of this Part reexamines the Sports Broadcasting Act through the lens of modern sports broadcasting agreements and *In re National Football League's Sunday Ticket Antitrust Litigation*.[171] It concludes that the universal financial prosperity of professional sports franchises has eliminated the need for the Sports Broadcasting Act's broad antitrust exemption.[172]

A. Calling an Audible: Why the Department of Justice Should Sue to Enjoin the Sunday Ticket

Even if the Ninth Circuit remands the case for further proceedings, the private plaintiffs may encounter the same issues of proving class-wide injury because every model alleging injury will inherently involve unproven speculation about Sunday Ticket alternatives.[173] Unlike the private plaintiffs, the Department of Justice would have a much simpler time establishing standing, as they have done so before in a similar case, *United States v. National Football*

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[167] *See* Golum, *supra* note 47 (reporting that the Sunday Ticket has millions of subscribers every year who pay hundreds of dollars each).

[168] *See* United States v. Nat'l Football League, 116 F. Supp. 319, 321 (E.D. Pa. 1953) (asserting that the government filed the action to enjoin the NFL from enforcing a broadcasting restriction that the Department of Justice believed violated antitrust laws).

[169] *See infra* notes 173–193 and accompanying text.

[170] *See infra* notes 173–179 and accompanying text.

[171] *See infra* notes 180–193 and accompanying text.

[172] *See infra* notes 186–193 and accompanying text.

[173] *See In re* NFL "Sunday Ticket" Antitrust Litig., No. 15-02668, 2024 WL 3628118, at *5, *8 (C.D. Cal. Aug. 1, 2024) (explaining that the expert's but for worlds were based on worlds where NFL teams sold telecasting rights individually or in groups and excluding that testimony as unreliable). The judge highlighted that the expert was unable to offer definitive answers as to how teams would have shared revenue in the but for worlds and where exactly the games would have been broadcast. *See id.* at *5. Future experts will encounter the same issues because without concrete evidence from teams on how they would plan to broadcast their games in a world without the Sunday Ticket, no expert will be able to definitively answer those questions. *See id.* at *5–6 (explaining that the expert could not rely on an NFL memo imagining a world without the Sunday Ticket because the memo did not comply sufficiently with his but for models).

League I.[174] The Department of Justice has already made clear that it believes the Sunday Ticket is an antitrust violation.[175] Bringing a case would allow them to once again enforce the law in an area where private plaintiffs may not be able to achieve relief.[176]

If the Department of Justice brings a case, it could adopt the same case theory as the private plaintiffs because the U.S. District Court for the Central District of California made clear that the private plaintiffs presented sufficient evidence to satisfy every step of the rule of reason test.[177] Furthermore, the government could choose to only seek injunctive relief, eliminating damage calculations, another factor that hurt the plaintiffs' case after trial.[178] Although injunctive relief would not recoup money for fans who fell victim to the Sunday Ticket's supracompetitive pricing, it would stop the NFL from continuing to extract money from fans who simply want to ensure they can watch their favorite team play on Sunday afternoons.[179]

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[174] 116 F. Supp. 319, 330 (E.D. Pa. 1953) (enjoining the NFL from continuing to engage in broadcasting practices that violated antitrust law in a case where the Department of Justice filed claims against the NFL). Before the Sports Broadcasting Act granted the NFL an exemption for sponsored telecasting, the federal government was vigilant in enforcing antitrust laws against the NFL. *See* United States v. Nat'l Football League, 196 F. Supp. 445, 446 (E.D. Pa. 1961) (explaining that the government opposed the NFL's efforts to pool their rights for sale to CBS because it was an antitrust violation); *Nat'l Football League I*, 116 F. Supp. at 321 (explaining that the government filed an action against the NFL to enforce antitrust laws regarding Article X of the NFL bylaws).

[175] *See* Brief for the United States of America as Amicus Curiae in Support of Plaintiffs-Appellants at 25, Ninth Inning Inc. v. Nat'l Football League, No. 24-5493 (9th Cir. Jan. 17, 2025) (calling the Sunday Ticket an illegal practice and arguing that the district court should have given the plaintiffs an opportunity to argue for injunctive relief).

[176] *See Nat'l Football League I*, 116 F. Supp. at 321, 323 (explaining that the government brought the case to enforce the Sherman Act and to challenge the NFL's unreasonable restraint of trade).

[177] *See In re* NFL "Sunday Ticket" Antitrust Litig., 2024 WL 3628118, at *8 (ruling that it was reasonable for a juror to conclude that the Sunday Ticket was a conspiracy that unreasonably restrained trade and had anticompetitive effects that outweighed its procompetitive effects).

[178] *See id.* at *9 (explaining that even if the expert testimony had been admissible, the court would have granted a new trial because the amount awarded in damages was irrational). Because the plaintiffs sought monetary damages, they had to present expert witness testimony calculating the harm they suffered. *See id.* at *8 (ruling that without the expert testimony, the plaintiffs could not prove actual injury). If the plaintiffs had only sought injunctive relief, they would only have had to show a threatened loss, which would have created an easier path to win the case. *See* Brief for the United States of America, *supra* note 175, at 12 (explaining that a plaintiff seeking injunctive relief only needs to show a threatened loss as opposed to actual injury in an antitrust lawsuit).

[179] Brief for the United States of America, *supra* note 175, at 14–15 (arguing that the district court should have at least considered injunctive relief if the plaintiffs met the rule of reason test because injunctive relief would restore competition in the market). If the goal of antitrust relief is to free a market from unreasonable restraint and allow more competition to take place in that market, an injunction that bans the NFL from continuing to offer this version of the Sunday Ticket would do just that. *See* Ford Motor Co. v. U.S., 405 U.S. 562, 577–78 (1972) (listing the goals of antitrust relief as increasing freedom and competition in the market).

B. Reviewing the Tape: Congress Should Repeal the Sports Broadcasting Act

The Sunday Ticket litigation has brought national attention to the relationship between sports broadcasting and antitrust law.[180] Given that professional sports franchises have exponentially increased in value since the Sports Broadcasting Act took effect in 1961, Congress should reassess the need for professional sports franchises to remain exempt from antitrust laws in over-the-air broadcasting.[181]

When the NFL asked Congress to pass a law to exempt them from antitrust laws, it did so because revenue sharing was essential to the economic survival of weaker franchises such as the Dallas Cowboys.[182] Today, these concerns no longer exist because each NFL team is valued at over $5 billion and the Dallas Cowboys are the most valuable sports franchise in the entire world.[183] Teams also bring in millions of dollars each year in sponsorship, licensing, and merchandising deals as well as in ticket sales.[184] With the wide-

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[180] *See* Andrew Beaton & Louise Radnofsky, *NFL Ordered to Pay $4.7 Billion in Sunday Ticket Case*, WALL ST. J., https://www.wsj.com/sports/football/nfl-sunday-ticket-lawsuit-ruling-7c9364b9 [perma.cc/37RR-5CT3] (June 27, 2024) (reporting the Sunday Ticket verdict in the most subscribed to newspaper in the United States); *see also* Belson, *supra* note 114 (reporting the Sunday Ticket verdict in the New York Times, another one of the most subscribed to newspapers in the United States).

[181] *See* Kevin Baumer, *What Every NFL Owner Paid for Their Team—and What It's Worth Today*, BUS. INSIDER (Nov. 16, 2010), https://www.businessinsider.com/how-much-did-nfl-owners-paid-for-their-teams-2010-10 [perma.cc/W6UV-XBZP] (showing what each NFL team was worth when their current owner purchased them). For example, in 1960 the Hunt family purchased the Kansas City Chiefs for $25,000, and in 1959 Kenneth Adams Jr. purchased the Houston Oilers for $25,000. *See id.* (listing how much each owner paid for their team). As of 2024, those teams were worth $6.07 billion and $6.01 billion respectively. *See* Michael Ozanian, *CNBC's Official NFL Team Valuations 2024: Here's How the 32 Franchises Stack up*, CNBC, https://www.cnbc.com/2024/09/05/official-nfl-team-valuations-2024.html [perma.cc/EXD2-RADK] (Nov. 15, 2024) (listing the value of each NFL franchise in 2024).

[182] *See Telecasting of Professional Sports Contests: Hearing on H.R. 8757 Before the Antitrust Subcomm. of the H. Comm. on the Judiciary*, 87th Cong. 5, 10 (1961) (statement of Pete Rozelle, Comm'r, Nat'l Football League) (listing Dallas among the teams that were struggling to independently find telecasting partners and stating that only four NFL teams would have made a profit without television revenue). Commissioner Rozelle believed that allowing the then-fourteen NFL teams to pool their broadcasting rights was the only way to ensure that teams could consistently earn the television revenue necessary for their survival. *See id.* at 10 (testifying that Congress passing the Sports Broadcasting Act would allow the NFL to solve its teams' immediate financial problems).

[183] *See* Brett Knight & Justin Teitelbaum, *The World's 50 Most Valuable Sports Teams 2024*, FORBES, https://www.forbes.com/sites/brettknight/2024/12/12/the-worlds-50-most-valuable-sports-teams-2024/ [perma.cc/6VD8-KSY8] (Jan. 21, 2025) (showing that the Dallas Cowboys are the most valuable sports franchise in the entire world); Ozanian, *supra* note 181 (reporting that the NFL's least valuable franchise, the Cincinnati Bengals, are worth $5.25 billion).

[184] *See* Badenhausen, *supra* note 161 (reporting that, apart from television revenue, the main sources of money for NFL franchises are licensing and merchandising agreements, sponsorships with partners like alcohol brands, and tickets sales, especially for suites).

spread financial success of NFL franchises, one must ask: Is the Sports Broadcasting Act still necessary?[185]

Repealing the Sports Broadcasting Act would immediately throw NFL broadcasting into chaos because no team would have a broadcasting agreement.[186] Nevertheless, professional football is a lucrative product; just as NCAA member schools found broadcasting partners in the immediate aftermath of *Board of Regents*, professional football teams would find over-the-air and cable television partners to telecast their games.[187] Furthermore, consumers would have the ability to access a much wider variety of games because Sunday afternoon broadcasting would no longer be limited to the two networks who offered the NFL the most money.[188] Finally, even if out-of-market fans did not consistently receive their favorite team's games on broadcast television or their team partnered with a streamer to broadcast games, the costs of purchasing a Team Pass or subscribing to one streamer are significantly lower than a Sunday Ticket subscription.[189]

Although the NFL is the most financially successful professional sports league that the Sports Broadcasting Act covers, franchises in the other major sports leagues are still worth billions of dollars and have similar multi-billion-dollar agreements with networks and streamers.[190] Furthermore, unlike NFL teams, professional basketball and baseball teams already air many of their games locally, so repealing the Sports Broadcasting Act would impact them

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[185] *See id.* (reporting on the billions of dollars NFL teams bring in each year in revenue).

[186] *See* Sandomir, *supra* note 34 (reporting that each NFL conference bundles its games and sells the rights to networks as an exclusive package).

[187] *See In re* Nat'l Football League's Sunday Ticket Antitrust Litig., 933 F.3d 1136, 1146–47 (9th Cir. 2019) (recounting that after the Court ruled that the NCAA's broadcasting restrictions were an antitrust violation, both teams and broadcasters competed against each other in the marketplace to appear on the best networks and broadcast the best teams). For years, networks bid against each other to secure the two packages of games the NFL was offering. *See* Sandomir, *supra* note 34 (reporting that CBS outbid the other networks for the AFC games after Fox had outbid them for the NFC games years earlier). One can imagine that this would occur again to broadcast the most competitive divisions like the NFC West. *See id.* (reporting on bidding wars between broadcasters for NFL games).

[188] *See In re Nat'l Football League's Sunday Ticket Antitrust Litig.*, 933 F.3d at 1146–47 (recounting that once NCAA member institutions had the freedom to negotiate with broadcasters, there was a significant growth in the number of college football games that appeared on television). With four over-the-air networks that each have their subsidiary networks, it is easy to imagine the same growth in the number of NFL games on television on Sunday afternoon if the NFL loses its antitrust broadcasting exemption. *See id.* at 1147 (reporting that increased competition led to increased output of broadcasts).

[189] *See NBA Team Pass*, *supra* note 150 (listing the price of NBA Team Pass at $13.99 a month); Adgate, *supra* note 160 (listing the price of Netflix at $6.99 a month).

[190] *See* Mike Ozanian & Justin Teitelbaum, *Baseball's Most Valuable Teams*, FORBES (Mar. 28, 2024), https://www.forbes.com/lists/mlb-valuations/ [perma.cc/PCD9-ZB3K] (listing the average value of an MLB team at $2.4 billion); *Report: Warriors Lead Way as NBA Team Values Hit $4.6B Average*, REUTERS (Dec. 19, 2024), https://www.reuters.com/sports/report-warriors-lead-way-nba-team-values-hit-46b-average-2024-12-19/ [perma.cc/RGB4-MD26] (reporting that the average value of an NBA team is $4.6 billion).

less than it would the NFL.[191] Therefore, Congress should repeal the Sports Broadcasting Act because it is no longer needed to keep professional sports franchises financially solvent.[192] This decision would protect consumers and hold professional sports leagues to the same antitrust standards as the rest of the nation.[193]

CONCLUSION

In 1994, the NFL began offering the Sunday Ticket, branding it as a way for true fans to watch even more football. Instead, the Sunday Ticket imposes an unreasonable restraint on trade that has forced fans to pay supracompetitive prices to make sure they can watch their favorite team every Sunday. Although a class of plaintiffs secured a jury verdict that the Sunday Ticket constituted an antitrust violation, a judge overturned the verdict and dismissed the case on procedural grounds. Currently, the NFL can still offer the Sunday Ticket and increase their value by billions of dollars, taking advantage of fans' undying loyalties to their favorite teams.

To fix this injustice, the federal government should step in to end this antitrust violation and restore competition in the sports broadcasting market. The Department of Justice, which has already expressed its view that the Sunday Ticket violates antitrust laws, should act quickly to secure an injunction against the Sunday Ticket. Additionally, because of the success of professional sports franchises and the viability of sports broadcasting models other than that of the NFL, Congress should repeal the Sports Broadcasting Act. These actions would hold the NFL accountable for its existing antitrust violations and ensure that the NFL cannot continue to form anticompetitive broadcasting agreements that are no longer necessary for its survival. This, in turn, would achieve the goals of the Sherman Act: protecting consumers from the detrimental effects of conspiracies to unreasonably restrain trade.

JOHN L. HESS[194]

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[191] *See NBA Schedule*, *supra* note 148 (showing that most NBA teams air their games on local or regional television on any given night).

[192] *See Telecasting of Professional Sports Contests: Hearing on HR 8757*, *supra* note 182, at 10 (urging Congress to pass the Sports Broadcasting Act to make sure the NFL and other professional sports leagues could stay financially solvent); Knight & Teitelbaum, *supra* note 183 (showing that many American sports teams are now worth billions of dollars).

[193] *See* N. Pac. Ry. Co. v. United States, 356 U.S. 1, 4 (1958) (explaining that enforcing the Sherman Act promotes competition and in turn benefits consumers).

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