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The NFL's Collision with Antitrust Law: A Strategy for Defending the National Football League's Joint Agreements with Streaming Providers

Jack Mays

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The NFL's Collision with Antitrust Law: A Strategy for Defending the National Football League's Joint Agreements with Streaming Providers

*Jack Mays**

The next frontier of sports broadcasting is here. Media consumption has shifted dramatically in recent years. Streaming services have become the preferred medium for television shows and movies, and sports broadcasts have expanded beyond traditional cable to streaming services. Given this reconfiguration of public behavior, the Sports Broadcasting Act (SBA)—a 1961 exemption to antitrust law—should be construed to allow the National Football League (NFL) to collectively negotiate with streaming providers like Amazon Prime Video, Peacock, and Netflix.

The SBA exempts joint agreements between professional sports leagues and broadcasters from antitrust scrutiny when those agreements involve the “sponsored telecasting” of games. This Note argues that the SBA should be read to encompass modern streaming platforms, thereby permitting the NFL to negotiate collective, league-wide deals with streaming services. The legislature intended to provide an expansive view of the SBA when procompetitive benefits, such as preserved on-field competitive balance, necessitate such a view.

This Note examines how the SBA's statutory language should apply to streaming services and modern technology by analyzing consumer behavior and today's sports media market. This Note explores why “sponsored telecasting” should be read to include subscription-based, internet-only delivery in 2026, a question prior articles have not squarely addressed. Finally, this Note provides recommendations for the NFL to continue working with streaming providers while protecting consumers from the growing costs associated with fragmented sports broadcasting.

* Juris Doctor Candidate, Chapman University Dale E. Fowler School of Law, Class of 2026. I would like to extend my sincere and profound gratitude to Professor Abigail Patthoff, whose advice and guidance were invaluable to the completion of this project and my law school experience. I also want to thank the fantastic *Chapman Law Review* Volume 29 and our Faculty Advisor, Celestine McConville, for their support in making my time with *Chapman Law Review* so special.

I. KICKOFF

A. The NFL as a Business

The business of sport is different from any other business.¹ Most businesses do not have raucous fans and dedication to their brand dating back generations.² In business, the goal of every for-profit organization is to outsmart, outearn, and outproduce competitors in every aspect. On the playing field, sports leagues require intense competition. That competition keeps fans interested and the more competition between member organizations, typically, the more profitable the league becomes.³ In other words, “the quality of the product is the competition.”⁴ The National Football League (NFL) has mechanisms in place to ensure its teams remain competitive that are unique to sports leagues.⁵ For example, the NFL employs (1) a salary cap to ensure the wealthiest teams do not spend too much money on talent relative to the poorer teams;⁶ (2) revenue sharing;⁷ and (3) a reverse-order draft that allows the least successful teams from the previous year to have the first choices of the league’s newest talent.⁸

¹ Steve Jbara, *How Sports Ownership Differs from That of Other Businesses*, FORBES (June 3, 2022, at 8:30 ET), <https://www.forbes.com/councils/forbesbusinesscouncil/2022/06/03/how-sports-ownership-differs-from-that-of-other-businesses/> [<https://perma.cc/4TNV-NWLW>].

² I imagine children are less excited about getting a jersey with “JPMorgan Chase” sprawled across the front for a holiday gift than one representing their favorite football team.

³ *United States v. NFL (NFL I)*, 116 F. Supp. 319, 323 (E.D. Pa. 1953), *superseded by statute*, 15 U.S.C. § 1291.

⁴ The brilliant Dr. Thomas Campbell, Professor, Doy and Dee Henley Distinguished Professor of Jurisprudence, Chapman University Dale E. Fowler School of Law, coined this phrase.

⁵ *NFL I*, 116 F. Supp. at 324 (describing the devices available to sports leagues looking to protect weaker teams); *The NFL and Sample Sizes: It's Not Just the Salary Cap That Creates Parity*, EXACT SPORTS, <https://exactsports.com/the-nfl-and-sample-sizes-its-not-just-the-salary-cap-that-creates-parity/> [<https://perma.cc/UP8C-UGKA>] (last visited Mar. 11, 2026).

⁶ See Andrew Brandt, *Separating Fact from Fiction over How the NFL Salary Cap Works*, SPORTS ILLUSTRATED (May 17, 2023), <https://www.si.com/nfl/2023/05/17/nfl-business-football-explaining-salary-cap> [<https://perma.cc/U4DD-P9B5>].

⁷ Mark Mondello, *NFL – Its Unique Strategy and Dominating Valuation Proposition*, KROLL (Nov. 25, 2024), <https://www.kroll.com/en/reports/valuation/valuation-insights-h2-2024/nfl-unique-strategy-dominating-valuation-proposition> [<https://perma.cc/9ZEJ-R2WT>] (“[N]ational revenues are shared equally among all teams in the league, while local revenues remain under individual team control.”).

⁸ *The Rules of the Draft*, NFL FOOTBALL OPERATIONS, <https://operations.nfl.com/journey-to-the-nfl/the-nfl-draft/the-rules-of-the-draft/> [<https://perma.cc/DD2D-ZRWH>] (last visited Jan. 3, 2026).

The NFL is an unincorporated association with thirty-two member organizations.⁹ For those member organizations, there is an enormous incentive to win on the field. For example, as of 2000, the New England Patriots had never won a Super Bowl and had limited success in the playoffs. The Patriots were valued at \$464 million in 2000, tenth among all NFL organizations.¹⁰ After winning six Super Bowls from 2001–2018, the New England Patriots were recently valued at \$7.4 billion, the third highest valuation in the NFL.¹¹ Success on the field increases profits from attendance, merchandise, sponsorship, and more.¹²

At the same time, the NFL's member organizations must be careful not to compete too aggressively "in a business way."¹³ Normally, businesses do not work with their competitors, nor do they refrain from negotiating business deals to surrender unfettered control to another organization. For most businesses, that would be considered an illegal restraint on trade and would be barred by Sherman Act § 1. Sherman Act § 1 prohibits "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States."¹⁴ Courts have interpreted that section as prohibiting "only unreasonable restraints" of trade or commerce.¹⁵

Allowing each team in a sports league to operate independently would create enormous inequality. While the wealthiest teams would continue to be successful, the overall health of the league would suffer.¹⁶ Unsuccessful team owners sell their teams—or (for the fans) worse, relocate the franchises to other cities.¹⁷ Having and retaining sports teams has a well-

⁹ Chris Deubert, *The Most Powerful Legal Organization in Sports That You Don't Know*, FORBES (Feb. 29, 2024, at 12:21 ET), <https://www.forbes.com/sites/chrisdeubert/2024/02/29/the-most-powerful-legal-organization-in-sports-that-you-dont-know/> [https://perma.cc/5R2G-NYL5].

¹⁰ *NFL*, FORBES (June 6, 2013, at 14:24 ET), <https://www.forbes.com/2001/09/17/nfl.html> [https://perma.cc/EFQ9-GG4B].

¹¹ Justin Teitelbaum, *The NFL's Most Valuable Teams 2024*, FORBES (June 13, 2025), <https://www.forbes.com/sites/justinteitelbaum/2024/08/29/the-nfls-most-valuable-teams-2024/> [https://perma.cc/BE32-WBJC].

¹² Kurt Badenhausen, *How NFL Teams and Owners Made \$22 Billion Last Year*, SPORTICO (Aug. 28, 2025, at 8:00 PT), <https://www.sportico.com/leagues/football/2024/how-nfl-teams-owners-make-money-1234795113/> [https://perma.cc/62D2-AD7W].

¹³ *NFL I*, 116 F. Supp. 319, 323 (E.D. Pa. 1953), *superseded by statute*, 15 U.S.C. § 1291.

¹⁴ 15 U.S.C. § 1.

¹⁵ *State Oil Co. v. Khan*, 522 U.S. 3, 10 (1997).

¹⁶ *NFL I*, 116 F. Supp. at 324.

¹⁷ See Thomas Neumann, *Coyotes, Athletics Inspire List of Every Pro Team To Move Since 2000*, ATHLON SPORTS (Apr. 18, 2024, at 16:33 ET), <https://athlonsports.com/mlb/pro-sports->

documented history of providing economic and intangible benefits to the cities where the sports teams reside.¹⁸ Therefore, the legislature and judiciary have provided sports leagues relief from federal antitrust laws to preserve their success and keep sports teams in the living rooms and the cities of fans who root for them.

B. Antitrust Law Overview

The Sherman Act was enacted in 1890 to address growing concerns over monopolistic practices and anticompetitive behavior from American corporations.¹⁹ Sherman Act § 1 prohibits unreasonable restraints on trade,²⁰ while § 2 prohibits monopolization, attempted monopolization, and conspiracies to monopolize.²¹ To determine if Sherman Act § 1 has been violated, courts look at the nature of the restraint and apply either the per se rule or the rule of reason test.²² Under the per se rule, certain practices—such as price fixing or market allocation—are deemed inherently illegal, without the need for detailed market analyses.²³ Sports leagues are analyzed under the rule of reason test, not the per se rule.²⁴ Under the rule of reason test, courts assess the restraint's actual effect on competition by examining factors like market power, competitive harm, and potential procompetitive justifications.²⁵

While the rule of reason test is often applied to all industries, Congress has decided that concerted action by certain in-

franchise-relocation-every-pro-team-to-move-since-2000/ [https://perma.cc/TK5E-Q8QB] (listing teams that have relocated since the year 2000).

¹⁸ Arjun Sivakumar, *Owners Playing It Safe: A Law and Economics Explanation of Why Sports Franchises Relocate*, 10 WILLAMETTE SPORTS L.J. 1, 4–6 (2012); Mallory Newall, Johnny Sawyer & Bernard Mendez, *Americans Believe Sports Teams and Stadiums Are Positive for Cities*, IPSOS (Mar. 10, 2025), <https://www.ipsos.com/en-us/americans-believe-sports-teams-and-stadiums-are-positive-cities> [https://perma.cc/PX6F-9XDG].

¹⁹ RICHARD A. GIVENS, ANTITRUST: AN ECONOMIC APPROACH 1–1 to –2 (2017).

²⁰ See *Standard Oil Co. v. United States*, 221 U.S. 1, 62 (1911); Sarah A. Padove, *Topps Gets Exclusive License, Leaving Upper Deck on the Bench: An Analysis of Major League Baseball's Antitrust Exemption in the Modern Era*, 22 MARQ. SPORTS L. REV. 235, 237 (2011) (“The focus of Section One is on agreements between two or more competitors that unreasonably restrain trade. In order to demonstrate a violation of Section One, the plaintiff must show evidence of ‘(1) concerted action that (2) unreasonably restrains (3) interstate commerce.’” (quoting Brittany Van Roo, Note, *One Trilogy That Should Go Without a Sequel: Why the Baseball Antitrust Exemption Should Be Repealed*, 21 MARQ. SPORTS L. REV. 381, 383 (2010))).

²¹ *Pac. Bell Tel. Co. v. linkLine Commc'ns, Inc.*, 555 U.S. 438, 447 (2009).

²² See *Am. Needle, Inc. v. NFL*, 560 U.S. 183, 203 (2010).

²³ See *id.*

²⁴ See *O'Bannon v. NCAA*, 802 F.3d 1049, 1062 (9th Cir. 2015).

²⁵ See *Am. Needle*, 560 U.S. at 203.

dustries has positive effects that outweigh the concerns mitigated by the Sherman Act.²⁶

C. The NFL's Relationship with Antitrust Law

The history of sports antitrust law began in 1922 when the Supreme Court held that Major League Baseball (MLB) was exempt from the Sherman Act.²⁷ In the first case of what has been dubbed the "Baseball Trilogy," the United States Supreme Court held that the MLB was free from antitrust regulation because it was not engaged in interstate commerce.²⁸ In 1953, the Supreme Court upheld the MLB's exemption in a short opinion, holding that it was up to the legislature to overrule its 1922 decision, not the court.²⁹ Finally, in 1972, fifty years after the Court decided *Federal Baseball Club*, the Court upheld the exemption once again.³⁰

The judicially-created exemption, however, did not extend to the NFL.³¹ The NFL was founded in 1920 and, for the first thirty-three years of its existence, did not run into any trouble with antitrust law.³²

In 1951, however, the NFL altered its bylaws and required its teams to refrain from broadcasting games in certain scenarios.³³ In 1953, a federal district court in Pennsylvania ruled that the league's marketing territory restrictions were generally illegal under antitrust laws but acknowledged that some coordination was necessary for league stability.³⁴ The case focused on the

²⁶ Antitrust laws do not apply to certain agreements among common carriers, provided they are approved by the Federal Maritime Commission and labor unions acting in their self-interest, to name a few. 46 U.S.C. § 40307; *United Mine Workers v. Pennington*, 381 U.S. 657, 661–62 (1965).

²⁷ *Fed. Baseball Club, Inc. v. Nat'l League of Pro. Baseball Clubs*, 259 U.S. 200, 208 (1922); Padove, *supra* note 20, at 235.

²⁸ *Fed. Baseball Club*, 259 U.S. at 208–09.

²⁹ *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356, 356 (1953) ("The business has thus been left for thirty years to develop, on the understanding that it was not subject to existing antitrust legislation. The present cases ask us to overrule the prior decision and, with retrospective effect, hold the legislation applicable. We think that if there are evils in this field which now warrant application to it of the antitrust laws it should be by *legislation*." (emphasis added)).

³⁰ *Flood v. Kuhn*, 407 U.S. 258, 285 (1972) ("And what the Court said in *Federal Baseball* in 1922 and what it said in *Toolson* in 1953, we say again here in 1972: the remedy, if any is indicated, is for congressional, and not judicial, action.").

³¹ *Id.* at 278–79.

³² *National Football League*, BRITANNICA (Jan. 3, 2026), <https://www.britannica.com/topic/National-Football-League> [https://perma.cc/BZ9K-U2FP].

³³ *NFL I*, 116 F. Supp. 319, 321 (E.D. Pa. 1953), *superseded by statute*, 15 U.S.C. § 1291.

³⁴ *Id.* at 323.

NFL's restrictive policies, particularly its "blackout rule," which prevented the broadcast of games in markets where a local team was playing at home.³⁵ The court partially granted the government's injunction but allowed the NFL to restrict television broadcasts of home games in a team's local market.³⁶ Most importantly, it prohibited the NFL from collectively negotiating television contracts in a way that restrained trade.³⁷ In 1961, the NFL again tested the limits.³⁸ This time, the NFL pooled the broadcast rights of its teams and granted CBS the exclusive right to televise every game the NFL played that season.³⁹ A federal district court in Pennsylvania again struck down this restraint.⁴⁰

Instead of appealing the injunction, the NFL lobbied Congress, which in turn passed the Sports Broadcasting Act (SBA).⁴¹

The SBA reads:

The antitrust laws, as defined in section 1 of the [Sherman Act], shall not apply to any joint agreement by or among persons engaging in or conducting the organized professional team sports of football, baseball, basketball, or hockey, by which any league of clubs participating in professional football, baseball, basketball, or hockey contests sells or otherwise transfers all or any part of the rights of such league's member clubs in the sponsored telecasting of the games of football, baseball, basketball, or hockey, as the case may be, engaged in or conducted by such clubs.⁴²

The NFL has used the exemption from the SBA to generate astronomical revenues by pooling the broadcasting rights of its thirty-two member organizations and negotiating as one collective body.⁴³ The NFL, as one entity, has the freedom to negotiate with a number of broadcast companies and can use the bids as a negotiating tool against one another.⁴⁴ The broadcast companies have competitors, but there is no comparison to live sports.⁴⁵

³⁵ *Id.* at 321.

³⁶ *Id.* at 330.

³⁷ *Id.* at 327.

³⁸ See *United States v. NFL (NFL II)*, 196 F. Supp. 445, 446–47 (E.D. Pa. 1961), *superseded by statute*, 15 U.S.C. § 1291.

³⁹ *Id.*

⁴⁰ *Id.* at 447.

⁴¹ *In re NFL's Sunday Ticket Antitrust Litig.*, 933 F.3d 1136, 1146 (9th Cir. 2019).

⁴² 15 U.S.C. § 1291.

⁴³ Teitelbaum, *supra* note 11; Mike Florio, *Report: NFL National Revenue Hits \$13 Billion*, NBC SPORTS: PRO FOOTBALL TALK (July 8, 2024, at 19:57 PT), <https://www.nbcsports.com/nfl/profootballtalk/rumor-mill/news/report-nfl-national-revenue-hits-13-billion> [<https://perma.cc/7Q3Q-NGAH>].

⁴⁴ Jenna Blochowicz, *Bargaining for Exclusive Rights in Two-Sided Markets: The Case of the NFL and Broadcast Channels* 1 (Oct. 2023) (unpublished manuscript) (available at

While live sports have generally seen unparalleled success, the NFL has seen the largest revenue increase due to its immense popularity with fans.⁴⁶ Each year, the Super Bowl is seen by over 100 million people, and NFL games are consistently the most-watched television events every year.⁴⁷ In addition to its profitability, the NFL has also created opportunities through its success. The NFL has created jobs, advanced social justice initiatives, and provided its fans with an outlet for their passion and enthusiasm for the game, fostering a sense of community and shared experience.⁴⁸

D. The Streaming Era

The NFL's success is in part due to its ability to adapt to changing circumstances. Recently, the NFL has started broadcasting its games on streaming providers.⁴⁹ In 2025, the NFL broadcast games on Amazon Prime Video, Peacock, and Netflix. In 2021, the NFL's agreement with Amazon marked the first time the NFL entered into an exclusive broadcasting deal with a streaming provider.⁵⁰ Amazon agreed to an eleven-year deal to broadcast *Thursday Night Football*, a standalone broadcast that

<https://www.econ.iastate.edu/files/inline-files/jobmarketpaper-blochowicz.pdf> [<https://perma.cc/A846-C9JD>] (explaining that the NFL negotiates collectively with multiple broadcasters and leverages its competing bids to improve contract terms).

⁴⁵ Jacob Feldman, *Why the Biggest Tech Companies Are Suddenly Streaming Sports*, SPORTICO (May 28, 2024, at 05:55 PT), <https://www.sportico.com/business/tech/2024/why-sports-streaming-economics-bundle-fracture-nfl-netflix-1234781987/> [<https://perma.cc/6K3W-4NBF>].

⁴⁶ Badenhausen, *supra* note 12.

⁴⁷ The Associated Press, *Super Bowl LIX Averages Record Audience of 127.7 Million Viewers*, NFL (Feb. 11, 2025, at 15:29 PT), <https://www.nfl.com/news/super-bowl-lix-averages-record-audience-of-127-7-million-viewers> [<https://perma.cc/T6SG-VUSM>]; Anthony Crupi, *NFL Owns 72 of TV's Top 100 as Politics Loosens Sports' Grip*, SPORTICO (Jan. 3, 2025, at 05:55 PT), <https://www.sportico.com/business/media/2025/nfl-owns-73-of-top-100-broadcasts-election-undermine-sports-tv-dominance-1234822548/> [<https://perma.cc/G5Q3-RC78>].

⁴⁸ *Ten Reasons Why People Love the NFL*, CORNELL UNIV.: THE BOOKSHELF, <https://blogs.cornell.edu/learning/ten-reasons-why-people-love-the-nfl/> [<https://perma.cc/JFY-454E>] (last visited May 8, 2025); AM, *5 Reasons NFL Football Is World's Greatest Sport*, BLEACHER REPORT (June 7, 2018), <https://bleacherreport.com/articles/1059863-five-reasons-nfl-is-worlds-greatest-sport> [<https://perma.cc/QL8T-3KAD>]; *Inspire Change*, NFL, <https://www.nfl.com/causes/inspire-change/> [<https://perma.cc/4J6Y-9B78>] (last visited May 8, 2025); *NFL Inspire Change Contributions Reach \$300M as League Strengthens Efforts to Advance Social Justice*, NFL (May 18, 2023, at 11:01 PT), <https://www.nfl.com/news/nfl-inspire-change-contributions-reach-300m-as-league-strengthens-efforts-to-adv> [<https://perma.cc/R8UA-C8FR>].

⁴⁹ For purposes of this Note, "streaming" refers to paid subscription services with streamable content, and services like Amazon Prime Video, Peacock, and Netflix are referred to as "streaming providers" or "streaming services."

⁵⁰ Drew Nathanson, *The NFL-Amazon Agreement vs. Antitrust Legislation: The Future of the National Football League in OTT Services*, ENT. & SPORTS LAW., Spring 2023, at 80, 80.

airs every in-season Thursday night besides the final Thursday of the NFL season.⁵¹ The NFL added Peacock to its menu of broadcasters in 2023 when it provided the NBCUniversal streaming provider the exclusive right to broadcast a playoff game.⁵² The NFL also granted Peacock the exclusive right to broadcast the NFL's first-ever game in South America to kick off the 2024 regular season.⁵³ The NFL's most recent addition to its broadcasting partnerships is Netflix, which agreed to broadcast games on Christmas Day for three years.⁵⁴

The NFL's extension into streaming has been spurred by a shift in viewing habits across the United States. Streaming services, also known as over-the-top (OTT) services, have become one of the most popular ways to consume entertainment.⁵⁵ By the end of 2024, Netflix had over 300 million subscribers, adding 19 million more in Q4 of 2024.⁵⁶ Amazon Prime Video has over 200 million monthly viewers, according to a letter to shareholders from its CEO.⁵⁷ Peacock lags behind with 41 million subscribers but saw a 5 million subscriber jump in Q1 of 2025.⁵⁸ Streaming accounted for 43% of total television consumption in December 2024 and there is no indication that streaming popularity is going to slow down.⁵⁹

⁵¹ Alex Sherman & Jabari Young, *NFL Finalizes New 11-Year Media Rights Deal, Amazon Gets Exclusive Thursday Night Rights*, CNBC: SPORT (Mar. 18, 2021, at 19:09 ET), <https://www.cnbc.com/2021/03/18/nfl-media-rights-deal-2023-2033-amazon-gets-exclusive-thursday-night.html> [https://perma.cc/U9KL-JR2Q].

⁵² Antonio Pequeño IV, *NFL Adding Peacock-Only Playoff Game in First-of-Its-Kind Streaming Deal*, FORBES (May 15, 2023, at 20:10 ET), <https://www.forbes.com/sites/antoniopequenoi/2023/05/15/nfl-adding-peacock-only-playoff-game-in-first-of-its-kind-streaming-deal/> [https://perma.cc/JZ9A-9PET].

⁵³ *Comcast's Peacock and Amazon Prime Video to Stream Exclusive NFL Games*, REUTERS (Mar. 26, 2024, at 11:36 PT), <https://www.reuters.com/sports/nfl/comcasts-peacock-amazon-prime-video-stream-exclusive-nfl-games-2024-03-26/> [https://perma.cc/MSM4-XZJB].

⁵⁴ Nicole Sperling, *Netflix and the N.F.L. Sign a Three-Season Deal*, N.Y. TIMES (May 15, 2024), <https://www.nytimes.com/2024/05/15/business/media/netflix-nfl-live.html> [https://perma.cc/33NX-L44T].

⁵⁵ Nathanson, *supra* note 50.

⁵⁶ Nicole Sperling, *Netflix Adds 19 Million Subscribers in Latest Quarter*, N.Y. TIMES (Jan. 21, 2025), <https://www.nytimes.com/2025/01/21/business/media/netflix-earnings.html> [https://perma.cc/LK2Y-3SZM].

⁵⁷ Andy Jassy, *CEO Andy Jassy's 2023 Letter to Shareholders*, AMAZON NEWS (Apr. 11, 2024), <https://www.aboutamazon.com/news/company-news/amazon-ceo-andy-jassy-2023-letter-to-shareholders> [https://perma.cc/8N3N-RTCD].

⁵⁸ Jasmine Sheena, *Peacock Counts 41 Million Subscribers but Execs Warn that 'Challenges May Be Approaching'*, MARKETING BREW (Apr. 24, 2025), <https://www.marketingbrew.com/stories/2025/04/24/peacock-counts-41-million-subscribers-but-exec-warn-that-challenges-may-be-approaching> [https://perma.cc/H2FH-J5BB].

⁵⁹ Wayne Friedman, *YouTube, Netflix, Prime Hit Viewing Records in December*, MEDIAPOST (Jan. 21, 2025), <https://www.mediapost.com/publications/article/402715/>

Meanwhile, the NFL has been fighting an arduous battle regarding another aspect of its telecasting business model for the past ten years: the *NFL Sunday Ticket* case.⁶⁰ Since 1994, the NFL has offered NFL Sunday Ticket, which became the subject of an antitrust lawsuit in 2015 by subscribers alleging inflated prices due to exclusive agreements with DirecTV.⁶¹ Although a jury awarded \$4.7 billion in damages, the verdict was overturned by a judge citing inadmissible expert evidence and a flawed calculation of damages, and as of May 2026 the plaintiffs are appealing.⁶²

The NFL appears to be on a collision course headed straight at antitrust regulators or consumers looking to cash in on the NFL's efforts to partner with streaming providers.⁶³ Although there is no formal litigation pending against the NFL for its agreements with Amazon, Peacock, and Netflix, the NFL should be watching film and learning from past losses. Litigation against the NFL is likely to be felt by its fans and consumers of streaming services.⁶⁴ If the SBA applied to the NFL's relationships with streaming services, avoiding litigation could reduce the costs expended by the NFL and streaming providers, lowering the cost for fans.⁶⁵

[<https://perma.cc/4JGC-5T6Q>]; Mireia Fernández, *Netflix, Prime Video or Disney+? Which Is the Most Popular Streaming Service*, SOFTONIC (July 1, 2025, at 22:28 PT), <https://en.softonic.com/articles/video-streaming-stats-trends> [<https://perma.cc/D9KT-3RDC>].

⁶⁰ *In re NFL's Sunday Ticket Antitrust Litig.*, 933 F.3d 1136, 1143–44 (9th Cir. 2019); Alex Baime, *Order in the Field: A Brief Overview of the NFL Sunday Ticket Antitrust Litigation*, VAND. L. SCH. (Nov. 16, 2025, at 10:27 PT), <https://law.vanderbilt.edu/order-in-the-field-a-brief-overview-of-the-nfl-sunday-ticket-antitrust-litigation/> [<https://perma.cc/D4UF-2M77>].

⁶¹ See Alex Andrejev, *What to Know About 'NFL Sunday Ticket' Case that Could Cost the League Billions*, N.Y. TIMES: THE ATHLETIC (June 26, 2024), <https://www.nytimes.com/athletic/5578029/2024/06/25/nfl-sunday-ticket-lawsuit-explained/> [<https://perma.cc/CUZ5-DM3Q>].

⁶² See Maia Spoto & Rachel Graf, *NFL Gets \$4.7 Billion Sunday Ticket Jury Award Tossed Out*, BLOOMBERG LAW (Aug. 2, 2024, at 07:48 PT), <https://news.bloomberglaw.com/antitrust/nfl-gets-4-7-billion-jury-award-tossed-in-sunday-ticket-dispute> [<https://perma.cc/3VR8-H6SU>].

⁶³ See Danielle Williams, *NFL Tackled by Antitrust Litigation: Route to Renegotiation of Streaming Deals*, PRINCETON LEGAL J.: F., <https://legaljournal.princeton.edu/nfl-tackled-by-antitrust-litigation-route-to-renegotiation-of-streaming-deals/> [<https://perma.cc/J7Rj-U59X>] (last visited Apr. 3, 2026).

⁶⁴ Cf. Paul G. Mahoney, *The First Thing We Do, Let's Pay All the Lawyers*, 66 U. CHI. L. REV. 922, 929 (1999) (noting that, in the product liability context, consumers bear the risk of injury and higher product cost from increased liability).

⁶⁵ See Melissa De Witte, *There Are Unintended Consequences of Antitrust Regulation, Stanford Scholar's Research Reveals*, STAN. REP. (Sep. 27, 2023), <https://news.stanford.edu/stories/2023/09/antitrust-regulation-can-backfire> [<https://perma.cc/Q4R4-KJ8D>] (analyzing the substantial costs of antitrust actions that frequently fail to generate

The SBA applies to professional football, baseball, basketball, and hockey.⁶⁶ This Note explores the SBA as it pertains to football only, but there are themes that apply to all four leagues. Litigation is most likely to target the NFL because of its recent embrace of streaming services and exceptionally deep pockets.⁶⁷ However, the MLB created a telecast on Apple TV+⁶⁸ and the National Hockey League (NHL) uses ESPN+ to allow fans to access out-of-market games.⁶⁹

Prior to this Note's publication, the Federal Communications Commission (FCC) and Department of Justice (DOJ) announced that they were investigating the NFL for its agreements with streaming providers.⁷⁰ This Note does not comment on those investigations. The investigations, however, indicate the pressure on the NFL and the importance of developing a legal strategy to protect its current broadcast model. It is undeniable that the recent shift to streaming services has created confusion and has made it more expensive for some consumers to watch sports. This Note recognizes that there is still a long way to go, and congressional action may be necessary to protect consumers from inflated pricing and unnecessary confusion. However, targeting the NFL's antitrust exemption as it relates to streaming providers is the wrong way to address the issue.

corresponding benefits for consumers); *Lawsuit Costs Are Escalating, and U.S. Households Are Paying the Price*, U.S. CHAMBER OF COM. (Dec. 10, 2024), <https://www.uschamber.com/lawsuits/lawsuit-costs-are-escalating-and-u-s-households-are-paying-the-price> [<https://perma.cc/4LWH-4XUV>] (documenting that escalating litigation expenses are passed on to households through higher prices and reduced consumer welfare).

⁶⁶ 15 U.S.C. § 1291.

⁶⁷ Lillian Rizzo, *Streaming Deals Are Key to Future of NFL Viewership, Fandom*, CNBC: SPORT (Sep. 11, 2024, at 12:22 ET), <https://www.cnbc.com/2024/09/10/streaming-deals-are-key-to-future-of-nfl-viewership-fandom.html> [<https://perma.cc/49HP-WLKR>]; Badenhausen, *supra* note 12.

⁶⁸ "Friday Night Baseball" Returns to Apple TV+ on March 28, APPLE: NEWSROOM (Mar. 3, 2025), <https://www.apple.com/newsroom/2025/03/friday-night-baseball-returns-to-apple-tv-plus-on-march-28/> [<https://perma.cc/TR66-QMSD>].

⁶⁹ Andrea DiCristoforo, *The Walt Disney Company Announces 100 Exclusive National Hockey League Games Across ESPN, ESPN2, ESPN+, ABC and Hulu Beginning October 8*, ESPN PRESS ROOM (Aug. 29, 2024), <https://espnpressroom.com/us/press-releases/2024/08/the-walt-disney-company-announces-100-exclusive-national-hockey-league-games-across-espn-espn2-espn-abc-and-hulu-beginning-october-8/> [<https://perma.cc/TJJ8-3F4D>].

⁷⁰ Joe Flint, *NFL Makes Its Case to FCC During Regulatory Scrutiny*, WALL ST. J. (Apr. 22, 2026, at 00:01 ET), <https://www.wsj.com/business/media/nfl-makes-its-case-to-fcc-during-regulatory-scrutiny-390674fa> [<https://perma.cc/3C7C-R2UW>]; Jessica Toonkel & Dana Mattioli, *Justice Department Opens Investigation into NFL*, WALL ST. J. (Apr. 9, 2026, at 21:10 ET), <https://www.wsj.com/sports/football/nfl-investigation-justice-department-8835a936> [<https://perma.cc/2XJ4-RV3W>].

The goal of this Note is not to defend the NFL and help it enhance its revenue. The goal of this Note is to (1) look at an issue that will almost certainly be the subject of litigation over the next decade; (2) take a second look at a position that has been accepted by several courts despite a reasonable counterpoint; and (3) make suggestions to help the NFL and streaming services avoid impending litigation, the cost of which will ultimately fall on the consumer.

II. SURVEYING THE FIELD

A. Supreme Court Precedent

The Supreme Court has not addressed the meaning of “sponsored telecasting” under the SBA. Although it has limited the SBA’s scope in some contexts, the Court has yet to rule on whether the statute applies to subscription-based or streaming broadcasts. Instead, the Court’s sports broadcasting jurisprudence has primarily developed under the Sherman Act, leaving unresolved how the SBA interacts with emerging forms of media distribution.

1. *NCAA v. Board of Regents*

NCAA v. Board of Regents of the University of Oklahoma held that the National Collegiate Athletic Association’s (NCAA) centralized control over college football broadcasting violated the Sherman Act because it artificially limited output and fixed prices, thereby restricting consumer access to televised games.⁷¹

The case arose when the NCAA implemented a “television plan” that prohibited individual schools from negotiating their own broadcast deals, instead assigning a limited number of games to be nationally televised.⁷² The University of Oklahoma and the University of Georgia challenged the plan, arguing it constituted an unreasonable restraint of trade under Sherman Act § 1.⁷³

Applying the rule of reason test, the Court found that the plan restricted output, raised prices, and limited market competition.⁷⁴ Although the Court acknowledged that some coordination among competitors is necessary in sports, it concluded that

⁷¹ 468 U.S. 85, 88 (1984).

⁷² *See id.* at 91–94.

⁷³ *Id.* at 88.

⁷⁴ *Id.* at 104–06.

the NCAA's blanket control over broadcast rights lacked sufficient procompetitive justification.⁷⁵

Importantly, the SBA does not apply to college football. The SBA's antitrust exemption covers only professional football, baseball, basketball, and hockey, excluding college athletics by design.⁷⁶ As a result, the NCAA could not invoke the SBA's protections to shield its television plan from antitrust scrutiny.

Board of Regents remains a cornerstone in sports antitrust jurisprudence. While it confirms that joint media arrangements in sports can be anticompetitive, it is distinguishable from the NFL's current streaming agreements. The NCAA's centralized control reduced the number of games available for public viewing.⁷⁷ Unlike the NCAA's plan, which capped output and reduced access, the NFL's joint agreements with streaming services increase distribution and consumer choice.⁷⁸

2. *American Needle, Inc. v. NFL*

The Supreme Court in *American Needle, Inc. v. NFL* held that the NFL's exemption from antitrust law does not extend to exclusive licensing agreements made on behalf of its thirty-two teams because the teams are separate economic actors capable of concerted action under § 1 of the Sherman Act.⁷⁹

The dispute arose when the NFL, through its marketing arm NFL Properties (NFLP), entered into an exclusive licensing agreement with Reebok to produce and sell team-branded apparel.⁸⁰ This arrangement foreclosed competition from other vendors, including *American Needle*, which had previously held non-exclusive licenses.⁸¹ *American Needle* sued under § 1, arguing that the teams' collective licensing decision was an illegal restraint of trade.⁸²

⁷⁵ *See id.* at 117.

⁷⁶ 15 U.S.C. § 1291.

⁷⁷ *Bd. of Regents*, 468 U.S. at 105 (“The District Court found that if member institutions were free to sell television rights, many more games would be shown on television, and that the NCAA's output restriction has the effect of raising the price the networks pay for television rights.”).

⁷⁸ *See* Riley McAtee, *The Inflation of the NFL's Broadcast Calendar Isn't Slowing Down*, THE RINGER: NFL (Sep. 5, 2024, at 03:30 PT), <https://www.theringer.com/2024/09/05/nfl/nfl-2024-season-broadcast-windows-expansion-philadelphia-eagles-green-bay-packers-brazil> [<https://perma.cc/5C5C-6L7P>].

⁷⁹ 560 U.S. 183, 202–03 (2010).

⁸⁰ *Id.* at 187.

⁸¹ *Id.*

⁸² *Id.*

The Supreme Court unanimously agreed. It rejected the NFL's claim that the teams constituted a single entity for anti-trust purposes, holding that while they share some common interests, they remain "separate economic actors pursuing separate economic interests."⁸³ Because it could (and did) compete in the market for intellectual property, the NFL's collective decision to license exclusively through one vendor constituted concerted action, subject to antitrust scrutiny.⁸⁴

American Needle expressly rejected the single-entity theory.⁸⁵ The NFL argued that its agreement to collectively bargain with merchandisers was essentially a merger and therefore the NFL was one legal entity that could not be subject to antitrust scrutiny.⁸⁶ The NFL relied on a Supreme Court case that held that entities, although separate in form, may actually be one single legal entity for antitrust purposes if they are "controlled by a single center of decisionmaking and they control a single aggregation of economic power."⁸⁷ The *American Needle* Court rejected this argument, finding that the correct inquiry is whether the business relationship joins separate decision makers pursuing separate interests.⁸⁸ The Court determined that because the individual NFL teams and the NFL itself do not share common objectives in a business way, such as competing with each other to attract fans, the single-entity theory was inapplicable.⁸⁹

While *American Needle* reinforced that NFL teams may not freely collaborate in commercial markets without triggering anti-trust review, the Court once again acknowledged the unique nature of sports leagues.⁹⁰ Some level of cooperation—particularly in areas necessary to produce the league's core product—is essen-

⁸³ *Id.* at 197–99, 202–03 (quoting *Copperweld Corp. v. Indep. Tube Corp.*, 467 U.S. 752, 769 (1984)).

⁸⁴ *Id.* at 198, 200–01.

⁸⁵ *Id.* at 204.

⁸⁶ *Id.* at 197.

⁸⁷ *Id.* at 184 (quoting *Copperweld*, 467 U.S. at 769). The Supreme Court held that a parent corporation and its wholly owned subsidiary could conspire with each other under Sherman Act § 1. *Copperweld*, 467 U.S. at 777. The Court determined it was necessary to create this exception to the Sherman Act because a parent and its subsidiary have a unity of economic interest and because subjecting a parent and its subsidiary to antitrust regulations would create an overly burdensome and unworkable restriction on business. *Id.* at 776.

⁸⁸ *Am. Needle*, 560 U.S. at 195 (citing *Copperweld*, 467 U.S. at 769).

⁸⁹ *Id.* at 196–97.

⁹⁰ *Id.* at 202 ("The fact that NFL teams share an interest in making the entire league successful and profitable, and that they must cooperate in the production and scheduling of games, provides a perfectly sensible justification for making a host of collective decisions.").

tial.⁹¹ The Court made clear that not all collective actions are unlawful, so long as they are reasonably necessary to create the joint venture that is professional football. This distinction is crucial in evaluating the NFL's current streaming arrangements. Unlike the exclusive licensing at issue in *American Needle*, the NFL's collective sale of media rights to services like Amazon, Peacock, and Netflix does not foreclose the market. Competing networks and platforms remain free to bid on different packages. Moreover, centralized control over broadcasting rights may be reasonably necessary to present a cohesive, national football product—placing such agreements in a different antitrust posture than the vertical restraints in *American Needle*.⁹²

Notably, the Court upheld the notion expressed in 1961 that “the interest in maintaining a competitive balance’ among ‘athletic teams is legitimate and important.”⁹³ By 2010, the NFL had an annual revenue of over \$9 billion.⁹⁴ While the Court rejected the single-entity theory that would make the NFL's antitrust problems simpler, the Court's acknowledgment of the importance of competitive balance and the unique features of the NFL's business model indicate it would believe the rationale behind the SBA's enactment in 1961 still applies today.

B. Lower Court Cases Interpreting the SBA

Only *Shaw v. Dallas Cowboys Football Club, Ltd.*,⁹⁵ a Third Circuit case, and *Chicago Professional Sports Ltd. Partnership v. NBA*,⁹⁶ a district court case in Illinois, have explicitly addressed the question of whether “sponsored telecasting” applies to a broadcast that costs money for the consumer to access. While other lower courts have been faced with the question, those cases have failed to address it or simply accepted the arguments advanced in *Shaw* and *Chicago Professional Sports*. For the following reasons, the reasoning set forth in *Shaw* and *Chicago Professional Sports* is flawed.

⁹¹ See *id.* at 202–03.

⁹² See *id.*

⁹³ *Id.* at 204 (quoting *NCAA v. Bd. of Regents of Univ. of Okla.*, 468 U.S. 85, 117 (1984)).

⁹⁴ *League, Players Disagree on Interpretation of Revenue Figures*, NFL (Mar. 21, 2011, at 07:45 PT), <https://www.nfl.com/news/league-players-disagree-on-interpretation-of-revenue-figures-09000d5d81edda24> [https://perma.cc/8XH5-P6MT].

⁹⁵ 172 F.3d 299, 300 (3d Cir. 1999).

⁹⁶ 808 F. Supp. 646, 647 (N.D. Ill. 1992).

1. *Shaw v. Dallas Cowboys Football Club*

Shaw held that the SBA's exemption to antitrust law does not apply to subscription satellite broadcasting because "sponsored telecasting" applies only to free, open-air telecasts.⁹⁷ Subsequent cases have either accepted these rulings or not decided the issue.⁹⁸ In light of the advent of streaming services and the transformation of consumer habits, the decision in *Shaw*, which has been followed by subsequent courts, requires reconsideration.⁹⁹

In *Shaw*, the court addressed whether the NFL's sale of broadcast rights to satellite distributors fell within the SBA exemption.¹⁰⁰ The NFL argued that these sales were "residual" rights in "sponsored telecasting" and should be exempt from anti-trust scrutiny.¹⁰¹ However, the court rejected this claim, affirming the lower court's decision that "sponsored telecasting" applies only to commercially sponsored free broadcasts.¹⁰² The court reasoned that the plain language of the SBA explicitly limits its scope to "sponsored telecasting," which refers only to free, open-air broadcasts supported by commercial sponsorship.¹⁰³ The court held that the phrase "sponsored telecasting" cannot be read to include an NFL-created subscription-based service known as NFL Sunday Ticket, as doing so would contradict the Act's text and intent.¹⁰⁴

The appeals court in *Shaw* affirmed most of the analysis by the district court. Both courts took the view that the statute's plain language strictly applies to broadcasts that are freely available to the public and commercially sponsored.¹⁰⁵ The district court held that the NFL's attempt to categorize satellite broadcasts as "residual rights" in sponsored telecasts mischaracterized the nature of the transaction.¹⁰⁶ It found that while the NFL retains rights in its games, those rights are separate from and independent of "sponsored telecasting."¹⁰⁷ Ultimately, the appeals court affirmed the district court's holding that the

⁹⁷ See *Shaw*, 172 F.3d at 300.

⁹⁸ See, e.g., *In re NFL's Sunday Ticket Antitrust Litig.*, 933 F.3d 1136, 1147–48 (9th Cir. 2019).

⁹⁹ See, e.g., Friedman, *supra* note 59.

¹⁰⁰ *Shaw*, 172 F.3d at 299–300.

¹⁰¹ *Id.* at 300.

¹⁰² *Id.*

¹⁰³ *Id.* at 301.

¹⁰⁴ *Id.* at 301–03.

¹⁰⁵ *Id.* at 301–02.

¹⁰⁶ *Shaw v. Dall. Cowboys Football Club, Ltd.*, No. 97-5184, 1998 U.S. Dist. LEXIS 9896, at *6–7 (E.D. Pa. June 19, 1998), *aff'd*, 172 F.3d 299 (3d Cir. 1999).

¹⁰⁷ *Id.*

NFL's sale of satellite broadcast rights did not fall within the SBA's exemption.¹⁰⁸

2. *Chicago Professional Sports Ltd. Partnership v. NBA*

Chicago Professional Sports Ltd. Partnership v. NBA held that agreements with services like TNT and ESPN are not exempt from antitrust law because the broadcasts are not encompassed by the term "sponsored telecasting."¹⁰⁹ In *Chicago Professional Sports*, the National Basketball Association (NBA) argued that its restrictions on telecasts by "superstations"¹¹⁰ were protected under the SBA's antitrust exemption.¹¹¹ Central to this dispute was whether TNT constituted "sponsored telecasting" under the SBA.¹¹² The analysis focused on the plain language reading of the SBA in light of its legislative history and judicial interpretation.¹¹³

The NBA contended that its Superstation Same Night Rule was exempt from antitrust scrutiny because the SBA allows leagues to pool and sell their broadcasting rights to networks for "sponsored telecasting."¹¹⁴ The league pointed to TNT's advertising-supported model, the absence of per-event charges, and the network's widespread availability as factors supporting the characterization of TNT as a "sponsored telecast."¹¹⁵

The court, however, rejected the NBA's interpretation.¹¹⁶ The court argued that in 1961, "sponsored telecasting" referred to free, over-the-air television supported solely by advertisers.¹¹⁷ The court determined that TNT, as a cable network, is fundamentally different from over-the-air broadcasts. Unlike traditional broadcast networks, TNT generates a significant portion of its revenue from subscriber fees rather than solely from advertis-

¹⁰⁸ *Shaw*, 172 F.3d at 303.

¹⁰⁹ 808 F. Supp. 646, 648–49 (N.D. Ill. 1992).

¹¹⁰ A "superstation" is a television broadcast station that, while originally a local or regional channel, is distributed nationally via cable or satellite. Chad Whittle, *Ted Turner's Superstation WTBS: An Examination of Local News Coverage of America's First SuperStation in the Atlanta Journal-Constitution; 1970–1989*, 21 AM. COMM'N J. 1, 3 (2019). It broadcasts content intended for a local market but becomes available across a much broader geographic area. *See id.*

¹¹¹ *Chi. Pro. Sports*, 808 F. Supp. at 647–48.

¹¹² *Id.* at 647.

¹¹³ *Id.* at 649–50.

¹¹⁴ *Id.* at 647–48.

¹¹⁵ *See id.* at 649–50.

¹¹⁶ *Id.* at 650.

¹¹⁷ *Id.*

ing sponsorship.¹¹⁸ Thus, the district court concluded that TNT did not qualify as “sponsored telecasting” because it was a hybrid service requiring consumer payments.¹¹⁹ The court determined that TNT’s model did not align with the 1961 understanding of “sponsored telecasting.”¹²⁰

Other courts, and even the NFL’s lawyers, have acquiesced to this interpretation of the statute.¹²¹ This interpretation has doomed the NFL to an endless cycle of litigation over the scope of its authority to control its teams’ broadcast rights.

C. The *NFL Sunday Ticket* Case and its Impact

Enter *NFL Sunday Ticket*. Since 1994, the NFL has offered NFL Sunday Ticket, a subscription-based sports package that allows fans to watch out-of-market football games on Sundays during the NFL season.¹²² In 2015, a class of NFL Sunday Ticket subscribers complained that the NFL suppressed competition by entering into exclusive agreements with third parties and, absent the anticompetitive agreements, the class would have been able to access the games at lower prices.¹²³ The case survived one dismissal in 2017 when a U.S. district judge held that even if the NFL charged inflated prices, that was not sufficient to constitute an antitrust violation.¹²⁴ The case was later reinstated and culminated in a three-week trial where the jury found for the plaintiffs, awarding \$4.7 billion in damages.¹²⁵ Once again, judicial intervention saved the NFL as Judge Gutierrez of the Ninth Circuit granted the NFL’s motion for judgment as a matter of law

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 649–50.

¹²⁰ *Id.* at 650.

¹²¹ See *Kingray, Inc. v. NBA*, 188 F. 2d 1177, 1183 (S.D. Cal. 2002) (“‘Sponsored telecasting’ under the SBA pertains only to network broadcast television and does not apply to non-exempt channels of distribution such as cable television, pay-per-view, and satellite television networks.”); *In re NFL’s Sunday Ticket Antitrust Litig.*, 933 F.3d 1136, 1147–48 (9th Cir. 2019).

¹²² Andrejev, *supra* note 61.

¹²³ See Complaint at 7–8, *Ninth Inning Inc. v. NFL, Inc.*, No. 2:15-CV-05261 (C.D. Cal. July 13, 2015).

¹²⁴ Joe Reedy, *Federal Judge Overturns \$4.7 Billion Jury Verdict in ‘Sunday Ticket’ Lawsuit and Rules for NFL*, AP NEWS (Aug. 1, 2024, at 19:43 PT), <https://apnews.com/article/nfl-sunday-ticket-trial-f91c35820a1e59b3419d5bb1b88f9a08> [https://perma.cc/D8MD-4MR5]. By 2017, *Ninth Inning* had been consolidated with other cases involving NFL Sunday Ticket into *In re NFL’s Sunday Ticket Antitrust Litigation*. Order Granting Motion to Consolidate at *1, *In re NFL’s Sunday Ticket Antitrust Litig.*, No. ML 15-02668 (C.D. Cal. May 23, 2016), 2024 WL 6768841.

¹²⁵ Spoto & Graf, *supra* note 62.

based on (1) inadmissible expert evidence and (2) erroneous calculation of damages.¹²⁶

Judge Gutierrez ruled that the testimonies of two expert witnesses for the plaintiffs, Dr. Daniel Rascher and Dr. John Zona, had flawed methodologies.¹²⁷ He stated that their models and assumptions were not based on sound economic principles, and therefore, the jury's decision could not be supported by their testimony.¹²⁸ Judge Gutierrez found that the jury's damages award was based on an "irrational" calculation.¹²⁹ The jury had relied on its own "overcharge" figure of \$191.26 per subscriber, which was not tied to the evidence presented during the trial.¹³⁰ The judge stated that the jury failed to obey the court's instruction and should not have created its own overcharge figure.¹³¹

Judge Gutierrez also criticized Rascher's and Zona's economic models for being unsubstantiated.¹³² Rascher's model was compared to a college sports model, which lacked clear relevance to the NFL's market.¹³³ Zona's models assumed consumers would pay more with alternative distributors but lacked evidence to support that assumption.¹³⁴ Litigation is ongoing, but the jury's damages calculation appears unlikely to stand due to issues with the expert testimonies and damages calculation.

D. The Future of NFL Antitrust Litigation

In 2020, the Supreme Court denied certiorari in the *NFL Sunday Ticket* case.¹³⁵ Justice Kavanaugh, writing separately, clarified that the denial should not be viewed as agreement with the Ninth Circuit's legal analysis, which had allowed the case to proceed.¹³⁶ The Court denied certiorari because the appeal was made at the motion-to-dismiss stage and the Court is hesitant to

¹²⁶ Order Granting Defendants' Motion for Judgment as a Matter of Law at *7–8, *11, *In re NFL "Sunday Ticket" Antitrust Litig.*, No. ML 15-02668 (C.D. Cal. Aug. 1, 2024), 2024 WL 3628118.

¹²⁷ *Id.* at *6–8.

¹²⁸ *Id.* ("But without Dr. Rascher's and Dr. Zona's testimonies, it is impossible for a jury to determine on a class-wide basis that Sunday Ticket subscribers would have indeed paid less in the absence of Defendants' anticompetitive conduct.")

¹²⁹ *See id.* at *9–11.

¹³⁰ *Id.*

¹³¹ *Id.* at *11.

¹³² *See id.* at *5–8.

¹³³ *See id.* at *3–7.

¹³⁴ *See id.* at *7–8.

¹³⁵ *NFL v. Ninth Inning, Inc.*, 141 S. Ct. 56, 56 (2020) (mem.) (Kavanaugh, J., statement respecting the denial of certiorari).

¹³⁶ *Id.* at 57.

take interlocutory appeals.¹³⁷ Justice Kavanaugh's statement confirmed that the NFL is a joint venture and antitrust law allows the NFL's member organizations to coordinate with each other.¹³⁸

Legal scholars predict that the NFL's agreements with streaming providers will invite litigation.¹³⁹ Following the large jury award and Judge Gutierrez's decision to reinstate the case, it is possible that the NFL could reach a settlement agreement as other sports leagues often do when faced with similar litigation.¹⁴⁰ Depending on the outcome of that case, a new group of plaintiffs could bring claims against the NFL asserting similar claims to the *NFL Sunday Ticket* plaintiffs. The NFL could avoid this and similar litigation if it can convince a potentially NFL-friendly Supreme Court that the SBA covers agreements with streaming providers. As the *NFL Sunday Ticket* litigation eventually ends—and the NFL continues to home in on streaming providers for future media rights deals—the likelihood of litigation increases and the NFL needs to have strategies to avoid costly litigation, the costs of which will ultimately fall on its consumers.

¹³⁷ *Id.* at 56–57.

¹³⁸ *Id.* at 57.

¹³⁹ See Nathanson, *supra* note 50; Williams, *supra* note 63.

¹⁴⁰ Similar cases involving the NHL and MLB were settled in their infancy back in 2015 and 2016. Courtney Jorstad, *NHL and Subscribers Reach Antitrust Class Action Settlement*, TOP CLASS ACTIONS (June 15, 2015), <https://topclassactions.com/lawsuit-settlements/lawsuit-news/nhl-and-subscribers-reaches-antitrust-class-action-settlement/> [<https://perma.cc/33AZ-DZZZ>]; A.J. Perez, *MLB Settles Lawsuit, Enables Fans to Stream Games of Just One Team*, USA TODAY: SPORTS (Jan. 19, 2016, at 13:52 ET), <https://www.usatoday.com/story/sports/mlb/2016/01/19/mlb-class-action-lawsuit-single-team-streaming-mlb-tv/79006936/> [<https://perma.cc/X4NQ-8YRE>]. Although it was reaffirmed twice, MLB's exemption from antitrust laws remains limited. The Curt Flood Act of 1998 removed employment-related aspects of the exemption but did not extend to other MLB practices. William F. Saldutti IV, *Blocking Home: Major League Baseball Settles Blackout Restriction Case; However, a Collision with Antitrust Laws Is Still Inevitable*, 24 JEFFREY S. MOORAD SPORTS L.J. 49, 52 (2017). The NHL settlement allowed fans to purchase single-team packages for at least 20% less than the cost of bundled game packages for five years. See Laumann v. NHL, 117 F. Supp. 3d 299, 309–10 (S.D.N.Y. 2015). Fans also received an additional discount for the 2015–2016 season. *NHL, Broadcasters Settle Lawsuit Over TV Blackouts*, REUTERS (June 11, 2015, at 11:52 PT), <https://www.reuters.com/article/business/media-telecom/nhl-broadcasters-settle-lawsuit-over-tv-blackouts-idUSL1N0YX1ZW/> [<https://perma.cc/7FK6-46P3>]. This agreement provided fans with the option to buy games “a la carte” rather than paying for unwanted games. *Id.* The lawsuit involved Comcast, DirecTV, Madison Square Garden, the NHL, and several NHL teams. *Id.*

III. HOT ROUTES

A. Construction of the SBA

It is a fundamental rule that words should be interpreted according to their ordinary meaning.¹⁴¹ However, if the statute is ambiguous, the statute should be construed “in light of the statutory purpose.”¹⁴² Here, the SBA exempts from the Sherman Act any “joint agreement by or among persons engaging in” professional football when that joint agreement involves selling or otherwise transferring the “rights of such league’s member clubs in the *sponsored telecasting* of the games of football, baseball, basketball, or hockey, as the case may be, engaged in or conducted by such clubs.”¹⁴³ The term “sponsored telecasting” has been at the center of NFL antitrust litigation.¹⁴⁴

“Sponsored telecast” is not a defined term in the statute and the two words are not used together in this way in another bill, statute, or case outside of the context of the SBA.¹⁴⁵ Therefore, the statutory construction of “sponsored telecast” hinges on the ordinary meaning of its individual words. “Sponsor,” as defined by Merriam-Webster, in its verb form means “to be or stand sponsor for.”¹⁴⁶ The noun forms of “sponsor” include (1) “one who assumes responsibility for some other person or thing,” or (2) an entity that pays for or carries out a project, particularly one that funds a television program in exchange for advertising.¹⁴⁷ Oxford defines “sponsor” as providing financial support for an activity.¹⁴⁸ These definitions suggest that a “sponsored” telecast is one financially backed by an entity, typically in return for promotional opportunities. Cambridge reinforces this understanding while providing more specific scenarios where sponsorship occurs. Cambridge defines “sponsor” as (1) a business or organization that pays for someone to do something or for something to happen; (2) an entity that funds a sports event, concert, or sportsper-

¹⁴¹ *Burns v. Alcala*, 420 U.S. 575, 580–81 (1975).

¹⁴² *Mills Music, Inc. v. Snyder*, 469 U.S. 153, 185 (1985).

¹⁴³ 15 U.S.C. § 1291 (emphasis added).

¹⁴⁴ *See, e.g., Shaw v. Dall. Cowboys Football Club, Ltd.*, 172 F.3d 299, 299–300 (3d Cir. 1999).

¹⁴⁵ *Chi. Pro. Sports Ltd. P’ship v. NBA*, 808 F. Supp. 646, 650 (N.D. Ill. 1992).

¹⁴⁶ *Sponsor*, MERRIAM-WEBSTER (Jan. 2, 2026), <https://www.merriam-webster.com/dictionary/sponsor> [https://perma.cc/7EPN-QLSB].

¹⁴⁷ *Id.*

¹⁴⁸ *Sponsor*, OXFORD: ADVANCED AM. DICTIONARY, https://www.oxfordlearnersdictionaries.com/us/definition/english/sponsor_2 [https://perma.cc/8QFD-4ADH] (last visited Mar. 4, 2026).

son in return for advertising; and (3) a supporter who provides money for someone participating in a fundraising event.¹⁴⁹ Each definition emphasizes financial backing rather than implying that a “sponsored telecast” must be free. There is no indication that there was a more universal definition for the term “sponsored” in 1961 when the Act was passed.

While there are a number of definitions of “sponsor,” only one definition involves a television program. The most applicable definition should be the one used.¹⁵⁰ The NFL’s agreement with streaming services involves television programs. Therefore, the most on-point definition of “sponsored” is a past participle adjective that describes something being funded by an entity in return for advertising.

“Telecast,” according to Oxford, simply means a “broadcast on television.”¹⁵¹ If strictly interpreted, this definition could be read as excluding modern streaming methods. However, such an interpretation would be absurd, as technological advancements have changed how broadcasts are received. Courts generally avoid statutory constructions that lead to absurd results.¹⁵² Arguing that the choice of the word “telecast” applies only to actual television broadcasts would inevitably lead to absurd results.

Using the plain meaning of the terms and the most likely meaning of both terms, “sponsored telecast” means a broadcast that an entity has paid to fund in exchange for advertising. Under the plain meaning of the statute, the agreements the NFL has with Amazon and Netflix fall within the confines of the statute due to their advertising-supported business models. Although two cases considering the issue have held otherwise, a different reading than the one advanced in this Note contradicts the plain language of the statute.

The court in *Shaw* found one definition clearly “more apt” than the others and that definition means that the only sort of

¹⁴⁹ *Sponsor*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/sponsor> [<https://perma.cc/9FEK-3ZTZ>] (last visited May 8, 2025).

¹⁵⁰ See *Cyan, Inc. v. Beaver Cnty. Emps. Ret. Fund*, 583 U.S. 416, 433–34 (2018) (choosing to avoid reading a definition “in a most improbable way”); *Caminetti v. United States*, 242 U.S. 470, 485 (1917) (“[T]he sole function of the courts is to enforce [a statute] according to its terms.”).

¹⁵¹ *Telecast*, OXFORD: ADVANCED AM. DICTIONARY, https://www.oxfordlearnersdictionaries.com/us/definition/english/telecast_2 [<https://perma.cc/7GNQ-M2FX>] (last visited May 8, 2025).

¹⁵² See *Donovan v. FirstCredit, Inc.*, 983 F.3d 246, 253 (6th Cir. 2020) (citing *In re Corrin*, 849 F.3d 653, 657 (6th Cir. 2017)).

telecasting covered is one where “a business enterprise . . . pays for radio or television programming in return for advertising time.”¹⁵³ This is the correct reading. However, the *Shaw* court applied that reading incorrectly. The *Shaw* court claimed that meant that the statute was unambiguous, but that it unambiguously applied to free broadcasts only.¹⁵⁴ The district court seemed to say that only telecasts that were solely sponsored by advertising spending were covered by the rule, despite nothing in the plain language supporting that point.

Two hypotheticals illuminate the inaccuracy in the *Shaw* court's reasoning. In both hypotheticals, the NFL pools its teams' rights and negotiates with Amazon to broadcast games. In hypothetical one, Amazon receives money from advertisers and uses that money to broadcast an NFL game. In this scenario—according to *Shaw*'s reasoning—the NFL had satisfied the requirements of the SBA. In hypothetical two, instead of using the money it received from advertisers, it uses the money it received from its streaming subscribers. Here, Amazon used money from its streaming subscribers causing it to run afoul of the SBA. This creates an absurd result, creating an unnecessary accounting burden that does not aid fans or the general public. Thus, a simpler reading is preferred. The simpler reading would dictate that a telecast sponsored by advertisers, whether in whole or in part, would fall under the SBA.

The *Shaw* court cites to the *Chicago Professional Sports* case, which takes a different view from *Shaw* regarding the meaning of “sponsored telecast.” The court held that there is an equally likely chance that “sponsored telecast” refers only to free television as opposed to the meaning also including paid telecasts.¹⁵⁵ The court states that because antitrust exemptions should be read narrowly, the exemption only applies to free broadcasts.¹⁵⁶ Although antitrust exemptions are to be read narrowly, this does not insulate them from an analysis into legislative intent.¹⁵⁷ Under principles of statutory interpretation, words

¹⁵³ *Shaw v. Dall. Cowboys Football Club, Ltd.*, No. 97-5184, 1998 U.S. Dist. LEXIS 9896, at *8–9 (E.D. Pa. June 19, 1998) (second quotation quoting THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 17411 (3d ed. 1992)), *aff'd*, 172 F.3d 299 (3d Cir. 1999).

¹⁵⁴ *Id.* at *9–10.

¹⁵⁵ *Chi. Pro. Sports Ltd. P'ship v. NBA*, 808 F. Supp. 646, 650 (N.D. Ill. 1992).

¹⁵⁶ *Id.*

¹⁵⁷ *See Union Lab. Life Ins. v. Pireno*, 458 U.S. 119, 126 (1982) (holding that exceptions to antitrust laws are narrowly construed). *But cf. HollyFrontier Cheyenne Refin.*,

should be given their ordinary meaning unless they are ambiguous.¹⁵⁸ If there was a “likely chance” the legislature intended to apply only to free telecasts, Congress could have explicitly used the terms “public” or “free” in the SBA to limit the exemption to free, over-the-air broadcasts.¹⁵⁹ Paid broadcasting was an option at the time¹⁶⁰ and, although it was not widely used, the legislature could have made it clearer in the statute. Its choice not to do so suggests an intention to allow for adaptability.

While some courts, such as *Shaw*, have construed “sponsored telecasting” narrowly, a plain reading does not restrict the SBA exemption to free broadcasts. Instead, the phrase means any telecast with advertising. Here, when examining the statutory language closely, the term “sponsored telecast” most reasonably aligns with the definition advanced in this section.¹⁶¹ Conversely, the courts that have decided on the issue have taken the opposite view, and broadcasting has changed so much in light of evolving broadcasting technology that the phrase could reasonably be considered ambiguous.¹⁶² Even if the phrase “sponsored telecasting” is considered ambiguous, the phrase would still apply to streaming providers. To resolve ambiguity from the plain language reading, this Note next looks at the context in which “sponsored telecasting” is written.

LLC v. Renewable Fuels Ass’n, 594 U.S. 382, 396 (2021) (“But this Court has made clear that statutory exceptions are to be read fairly, not narrowly . . .”).

¹⁵⁸ United States v. Choctaw Nation, 179 U.S. 494, 531 (1900).

¹⁵⁹ 47 U.S.C. § 535 (referring to free television as a “[s]tate public television network”); N.Y. PUB. SERV. LAW § 215(2)(b) (LexisNexis 2026) (using the term “free broadcast television”).

¹⁶⁰ Allen N. Dixon III, Note, *Unauthorized Pay Television Reception Under Section 605 of the Communications Act*, 3 UC L. SF COMM’NS & ENT. J. 719, 719 n.1 (1981) (“Subscription television was first authorized by the Federal Communications Commission (FCC) in 1961.”).

¹⁶¹ See, e.g., *Sims v. Halliburton Co.*, No. 98-6300, 1999 U.S. App. LEXIS 15713, at *17 (10th Cir. July 14, 1999) (“Legislative intent is ascertained by looking at the precise wording of the Act and studying its history. Established rules of statutory construction are then applied to resolve any ambiguity.” (quoting *Holbert v. Echeverria*, 744 P.2d 960, 964 (Okla. 1987))).

¹⁶² See *Shaw v. Dall. Cowboys Football Club, Ltd.*, 172 F.3d 299, 301–02 (3d Cir. 1999); *Chi. Pro. Sports Ltd. P’ship v. NBA*, 808 F. Supp. 646, 650 (N.D. Ill. 1992).

B. Context of the SBA

1. The Statute as a Whole

To resolve ambiguity, the plain language is not the end of the inquiry.¹⁶³ Words must be read “in their context” and with a view to the overall statutory scheme in which they are written.¹⁶⁴ “It is ‘axiomatic that all parts of a statute must be read together in order to achieve a consistent whole.’”¹⁶⁵ Because the SBA is not part of a statutory scheme, this Note will view the context of “sponsored telecast” within the context of the rest of the short statute and not in light of any statutory scheme as a whole.

The SBA is written in a way that requires a broad interpretation. The legislature chose expansive wording, which indicates an intention to have the statute read broadly. The Supreme Court has found that the use of expansive terms in a statute support a finding that statutes should be given wide scope.¹⁶⁶ Here, the statute uses the terms “any” and “all” throughout.¹⁶⁷ The terms “any” and “all” refer to joint agreements and the rights of the league’s member clubs.¹⁶⁸

The statute takes great care in carving out exceptions for certain aspects of the statute. For example, the statute clearly applies to professional sports and the only sports that are exempted are football, baseball, hockey, and basketball—a deliberate limitation when viewed in its historical context. In the 1950s and 1960s, tennis, boxing, golf, and college football were also prominent and had large fanbases, yet Congress chose not to extend the antitrust exemption to these popular sports.¹⁶⁹ This se-

¹⁶³ Great Am. Ins. Co. v. Lowry Dev., LLC, 576 F.3d 251, 255 (5th Cir. 2009) (“To decipher legislative intent, courts ‘may look not only to the language used but also to its historical background, its subject matter, and the purposes and objects to be accomplished.’” (quoting Bailey v. Al-Mefty, 807 So.2d 1203, 1206 (Miss. 2001))).

¹⁶⁴ King v. Burwell, 576 U.S. 473, 486 (2015) (quoting FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 132 (2000)).

¹⁶⁵ Robbins v. Garrison Prop. & Cas. Ins. Co., 809 F.3d 583, 586 (11th Cir. 2015) (emphasis omitted) (quoting Forsythe v. Longboat Key Beach Erosion Control Dist., 604 So.2d 452, 455 (Fla. 1992)).

¹⁶⁶ Diamond v. Chakrabarty, 447 U.S. 303, 308 (1980) (“In choosing such expansive terms as ‘manufacture’ and ‘composition of matter,’ modified by the comprehensive ‘any,’ Congress plainly contemplated that the patent laws would be given wide scope.”).

¹⁶⁷ 15 U.S.C. § 1291.

¹⁶⁸ *Id.*

¹⁶⁹ See *Sporting Highlights for 1961*, TOPEND SPORTS, <https://www.topendsports.com/world/timeline/1961.htm> [https://perma.cc/4WXM-4HKX] (last visited May 8, 2025) (tennis); Nick Parkinson, *From Rumble in the Jungle to Cardiff, the Biggest Attendances in Boxing History*, ESPN (Mar. 19, 2018, at 18:23 ET),

lective approach to sports coverage demonstrates that more precise language was available but not preferred.

The legislature could have provided the same limiting language that it used to exclude other sports to the type of telecast, the type of agreement, or the type of media rights. Instead, the type of agreement the SBA applies to is “any joint agreement”; the type of rights the SBA applies to are transfers of “all or any part of the rights”; and the type of telecast is simply a “sponsored telecast,” which does not necessitate the telecast be free to consumers. When viewing the operative provisions of the SBA in context, it is clear that the exemption was intended to be read broadly. A broad reading of the SBA includes an exemption for joint agreements between the NFL and streaming providers. For example, Amazon runs paid advertisements and has an agreement with the NFL to broadcast the NFL’s properties.¹⁷⁰ Therefore, the NFL-Amazon agreement would qualify as “any joint agreement” by which the league transfers “all or any part of the rights” of the NFL’s member teams to telecast their games.

2. *In Pari Materia*

Additionally, to determine the intention of the SBA, the Act should be read in light of the MLB’s antitrust exemption. The MLB was exempted from antitrust law by a 1922 Supreme Court decision.¹⁷¹ The Supreme Court has read laws that pertain to a subject, or are *in pari materia*, to be construed “as if they were one law.”¹⁷² The rule of *in pari materia* is a canon that encompasses practical experience in statutory interpretation.¹⁷³ While the MLB antitrust exemption was provided by the Supreme

https://www.espn.com/boxing/story/_id/22837621/from-rumble-jungle-cardiff-biggest-attendances-boxing-history [https://perma.cc/5UCC-LVV3] (boxing); *1950’s PGA Significance in Golf History*, REINLAND GOLF CO.: FAMILY BLOG (July 5, 2024), <https://reinlandgolfco.com/blogs/reinland-golf-co-family-blog/1950s-pga-significance-in-golf-history> [https://perma.cc/B6SC-8VQR] (golf); Bill Becker, *N.C.A.A. REPORTS FOOTBALL BOOM; Attendance at College Grid Games Hits Record Gate Figures Move Up*, N.Y. TIMES (Jan. 9, 1963), <https://www.nytimes.com/1963/01/09/archives/ncaa-reports-football-boom-attendance-at-college-grid-games-hits.html> [https://perma.cc/ZHP3-7AUK] (college football).

¹⁷⁰ Mollie Cahillane, *Amazon Sees Strong Ad Data for NFL Black Friday*, SPORTS BUS. J. (Dec. 6, 2024), <https://www.sportsbusinessjournal.com/Articles/2024/12/06/amazon-nfl-black-friday-ad-performance/> [https://perma.cc/CR3C-4MQD].

¹⁷¹ *Fed. Baseball Club, Inc. v. Nat’l League of Pro. Baseball Clubs*, 259 U.S. 200, 208 (1922).

¹⁷² *Erlenbaugh v. United States*, 409 U.S. 239, 243 (1972) (quoting *United States v. Freeman*, 44 U.S. (3 How.) 556, 564 (1845)).

¹⁷³ *Id.*

Court rather than through legislative action, the rule should still be applicable because the Supreme Court decision was settled law by the time the SBA was passed. Also, while addressing this issue, the legislature could have included in the statute a law overturning the 1922 decision. When laws are drafted on the same subject and relate to the same matter, they are read together.¹⁷⁴ Although *Erlenbaugh*—the landmark case on the *in pari materia* canon—held that two statutes could not be read together because while they both applied to a scheme involving organized criminal activity, the means they used to accomplish that goal were different.¹⁷⁵ Here, there is no such difference. The goal in both *Federal Baseball Club* and the SBA is to provide an exemption to antitrust law for sports leagues and therefore, the two should be read together.

The decision to not alter the Supreme Court's exemption to the MLB indicates that the legislature believed sports leagues should receive wide latitude when it comes to antitrust exemptions. The legislature has had over 100 years to overturn the *Federal Baseball Club* decision but has not done so. In 1961, it was directly faced with the issue of whether sports leagues should be given an antitrust exemption but failed to overturn the Supreme Court's decision to exempt the MLB entirely. Eight years prior to the enactment of the SBA, the Court had determined that the legislature's inaction was an acquiescence to the MLB's exemption.¹⁷⁶ While antitrust exemptions are normally intended to be construed narrowly,¹⁷⁷ Congress has demonstrated a willingness to create specific exemptions for sports leagues when it believes broader application serves important policy objectives. When viewing the statute in light of the legislature's acquiescence to the MLB's complete exemption from antitrust law, it is clear that the legislature intended to provide a broad exemption for sports leagues to collectively bargain when selling their members' rights for telecasts.

Viewing the exemption under the SBA within its context to the statute as a whole and the application of broader antitrust principles to sports leagues, the legislative intent was to provide a broad exemption to sports leagues when entering into agreements with broadcasters.

¹⁷⁴ See *id.* at 243–44.

¹⁷⁵ *Id.* at 243–45.

¹⁷⁶ *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356, 357 (1953).

¹⁷⁷ *Shaw v. Dall. Cowboys Football Club, Ltd.*, 172 F.3d 299, 301 (3d Cir. 1999).

3. The SBA's Application to Modern Technology

If streaming services were available at the time the SBA was enacted, the SBA would have covered those agreements. The Supreme Court has determined that a statute's application may change over time in light of technological advancements.¹⁷⁸ "Technology evolves quickly but statutes do not."¹⁷⁹ Changes in technology happen too quickly for the legislature to update their statutes and often, changes in technology create circumstances that the legislature could have never imagined when drafting the statute.¹⁸⁰ Relying strictly on Congress to update statutes is an unworkable solution because technology advances much faster than legislation gets passed.¹⁸¹

Today, basic cable channels are not "free." Even before the agreements with streaming providers, consumers were paying for live sports whether they wanted to or not.¹⁸² While you can access television channels like CBS, NBC, and ABC for free with a digital television antenna, most options require you to purchase a basic cable package.¹⁸³ Basic cable packages cost between \$20-30/month, less money than every streaming service the NFL currently partners with.¹⁸⁴ In 1961, televisions with antennas were the norm.¹⁸⁵ Today, most Americans will purchase a television

¹⁷⁸ *Wis. Cent. Ltd. v. United States*, 585 U.S. 274, 284 (2018) ("While every statute's meaning is fixed at the time of enactment, new *applications* may arise in light of changes in the world.").

¹⁷⁹ Kyle J. Finnegan, Note, *The Technology Canon*, 112 GEO. L.J. 935, 935 (2024).

¹⁸⁰ *Id.* at 938–39.

¹⁸¹ Thomas B. Norton, Note, *Watch What You *Bleeping* Want: Interpretation of Statutes Dealing with Advancing Technology in Light of the Ninth Circuit Case of Disney Enterprises, Inc. v. VidAngel, Inc.*, 25 J. INTELL. PROP. L. 287, 308 (2018).

¹⁸² Josh Mathews, Comment, *Sports Broadcasting Blackouts: A Harbinger of Change in a Rapidly Evolving Media Landscape?*, 18 HOU. BUS. & TAX L.J. 202, 219 (2018) ("Armed with the power to raise prices and increase revenue, leagues effectively force all cable TV subscribers to pay for their product, regardless of if the consumer watches sports or not.").

¹⁸³ Mike Strayer, *What Is Basic Cable and How Do I Get It?*, CABLETV.COM (Aug. 1, 2022), <https://www.cabletv.com/reviews/what-is-basic-cable-and-how-to-get-it> [<https://perma.cc/S7E6-52AL>].

¹⁸⁴ Sarah Shriber, *Over-the-Air Audience Tracker Preview: Why Advertisers Should Watch TV Antenna Users*, CIVICSCIENCE (Apr. 16, 2024), <https://civicscience.com/over-the-air-audience-tracker-preview-why-advertisers-should-watch-tv-antenna-users/> [<https://perma.cc/U5K4-MKHZ>].

¹⁸⁵ See *Television: TV in the Antenna Age*, SFO MUSEUM, <https://www.sfomuseum.org/exhibitions/television-tv-antenna-age> [<https://perma.cc/K7UZ-4HJ7>] (last visited May 8, 2025).

and then purchase a cable package.¹⁸⁶ In that case, CBS and NBC do not come free with a television and, adopting the logic from *Shaw* and *Chicago Professional Sports*, an agreement with either of those networks would fall outside of SBA protection.

Additionally, in 1961, televisions were expensive to the point where most Americans did not have one in their home. The idea of “free” television was different than it is today. It makes sense why, in 1961, the legislature would choose to limit the exemption to sponsored telecasting to avoid extraneous costs to consumers. Today, streaming services are a regular part of Americans’ viewing experience. In 1961, television was very different than it is today.¹⁸⁷ Americans have been “cutting the cord” for over a decade,¹⁸⁸ and the number of cable television subscribers has steadily declined over the last decade.¹⁸⁹ In order to meet people where they are, the NFL needs to provide access through streaming providers in addition to traditional broadcasts.

Additionally, consumers are used to having everything in the palm of their hand—literally.¹⁹⁰ Mobile streaming is a major aspect of the viewing experience and streaming providers provide the easiest access to mobile streaming.¹⁹¹ In order to stream an out-of-market NFL game airing on CBS from a mobile device, a

¹⁸⁶ See *Beyond Big Data: The Audience Watching over the Air*, NIELSEN (Jan. 2024), <https://www.nielsen.com/insights/2024/beyond-big-data-the-audience-watching-over-the-air/> [https://perma.cc/7LU8-SE59].

¹⁸⁷ Forbes Agency Council, *Online Streaming Is the Future of Sports Broadcasting: It's Not 'If' You'll Cut Cable, but 'When,'* FORBES (Apr. 14, 2017, at 9:27 ET), <https://www.forbes.com/sites/forbesagencycouncil/2017/04/14/online-streaming-is-the-future-of-sports-broadcasting-its-not-if-youll-cut-cable-but-when/> [https://perma.cc/T2CE-74R6]; Gregory Bailey, Comment, *Streaming Is the Name of the Game: Why Sports Leagues Should Adapt to Consumers and Follow Ad Dollars Towards Live Streaming*, 26 JEFFREY S. MOORAD SPORTS L.J. 323, 332 (2019); Matthew Garrahan, *TV Networks Face Shaky Future in Changing Media Landscape*, FIN. TIMES (Aug. 27, 2015), <https://www.ft.com/content/15f65100-4c9c-11e5-b558-8a9722977189> [https://perma.cc/EH5P-SFGW].

¹⁸⁸ See Mathews, *supra* note 182, at 218.

¹⁸⁹ See *Number of Cable TV Subscriptions*, IBISWORLD (Aug. 18, 2025), <https://www.ibisworld.com/us/bed/number-of-cable-tv-subscriptions/4625/> [https://perma.cc/AB2U-59V7].

¹⁹⁰ See *Mobile Video in the United States – Statistics & Facts*, STATISTA (Dec. 17, 2025), <https://www.statista.com/topics/2725/mobile-video-in-the-united-states/> [https://perma.cc/ER8D-D7XS].

¹⁹¹ See *TV Viewing in November Interval Reaches Highest Level Since February, Streaming Nabs Largest Share of TV Ever in The Gauge™*, NIELSEN (Dec. 10, 2024), <https://www.nielsen.com/news-center/2024/tv-viewing-in-november-interval-reaches-highest-level-since-february-streaming-nabs-largest-share-of-tv-ever-in-the-gauge/> [https://perma.cc/B93H-BBSS].

consumer must have a subscription to Paramount+,¹⁹² and ESPN is in the process of creating a subscription service billed monthly that would supplant its current model which allows users to access most of its content with a cable subscription.¹⁹³ Streaming providers are better situated to provide mobile streaming, and excluding providers like Amazon or Netflix from the SBA exemption would prevent the NFL from reaching consumers through mobile streaming. Viewing the SBA under modern circumstances, the legislature would have included streaming services in its exemption.

C. Legislative History

The legislature's intent in enacting the statute was to provide sports leagues with an exemption to antitrust law when a league sells or transfers pooled television rights to a purchaser because the legislature recognized that the NFL was a unique product that benefits consumers in a unique way. Congress also intended to protect sports leagues from rival leagues; prevent the strongest teams from attaining insurmountable success over the weaker ones; and protect consumers.

1. Provide Sports Leagues with a Broad Carveout of Antitrust Law

Courts have consistently held that the principal inquiry in determining the effect of a statute is to determine the legislative intent.¹⁹⁴ If the statute's plain language is ambiguous, courts are permitted to view the statute in light of legislative history.¹⁹⁵ The legislature determined that the NFL should benefit from an anti-trust exemption because it determined that the fans' rights to ac-

¹⁹² See *NFL on CBS*, PARAMOUNT+, <https://www.paramountplus.com/shows/nfl-on-cbs/> [<https://perma.cc/DR4Y-7Y4R>] (last visited May 8, 2025).

¹⁹³ See Alex Sherman, *CNBC Sport: ESPN Braces for Brand Confusion with Upcoming Flagship Streaming Service*, CNBC: SPORT (Mar. 13, 2025, at 10:00 ET), <https://www.cnbc.com/2025/03/13/cnbc-sport-espn-braces-for-brand-confusion-with-streaming-service.html> [<https://perma.cc/S8JZ-KSJ7>].

¹⁹⁴ See *Transamerica Mortg. Advisors, Inc. v. Lewis*, 444 U.S. 11, 23–24 (1979) (clarifying that the “central inquiry” in determining whether Congress intended to create a private right of action was whether Congress intended to create such a remedy); *Hunt v. Superior Court*, 987 P.2d 705, 717 (Cal. 1999) (“Our role in construing a statute is to ascertain the Legislature’s intent so as to effectuate the purpose of the law.” (citing *People v. Snook*, 947 P.2d 808, 810 (1997))).

¹⁹⁵ See *Basic v. United States*, 446 U.S. 398, 404–05 (1980).

cess every game outweighed the antitrust concerns that are combated by the Sherman Act.¹⁹⁶

The Senate reports surrounding the passage of the SBA plainly state the purpose of the SBA was as follows:

The purpose of the proposed legislation is to enable the member clubs of a professional football, baseball, basketball, or hockey league, to pool their separate rights in the sponsored telecasting of their games and to permit the league to sell the resulting package of pooled rights to a purchaser, such as a television network, without violating the antitrust laws.¹⁹⁷

The Senate report makes no mention of the meaning of “sponsored” in its report on the SBA. The statute’s sole purpose was to exempt joint agreements “under which a league sells or transfers pooled television rights of its member clubs to a purchaser.”¹⁹⁸ The Senate Reports mention concerns about college football and expressly removes college football from the protection of the SBA.¹⁹⁹ Conversely, there is no mention of concerns about consumers paying for broadcasts.

Some argue the SBA was enacted solely to overturn Judge Grim’s 1953 and 1961 decisions invalidating the NFL’s pooled-rights sales to CBS, suggesting its scope is limited to reversing those rulings and applying only to sponsored network broadcasts.²⁰⁰ However, that reading is overly narrow; if Congress intended such a limited effect, it would have written the statute more restrictively—naming only the NFL and explicitly limiting it to free, over-the-air broadcasts.

A more persuasive counterargument comes from the legislative record itself: House Reports and hearing transcripts note that the SBA applies only to the “sponsored telecasting of games” and explicitly state that the bill “does not apply to closed circuit

¹⁹⁶ See Stephen F. Ross, *An Antitrust Analysis of Sports League Contracts with Cable Networks*, 39 EMORY L.J. 463, 469 (1990) (“The legislative record established that such a package sale was necessary to ensure that all road games would be televised back to the NFL franchises’ home areas. Thus, the House Judiciary Committee concluded that ‘the public interest in viewing professional league sports warrants’ an accommodation ‘with minimal sacrifice of antitrust principles.’”).

¹⁹⁷ S. REP. NO. 87-1087, at 1 (1961), *as reprinted in* 1961 U.S.C.C.A.N. 3042, 3042.

¹⁹⁸ *Id.* at 3.

¹⁹⁹ *Id.*

²⁰⁰ See, e.g., *Shaw v. Dall. Cowboys Football Club, Ltd.*, No. 97-5184, 1998 U.S. Dist. LEXIS 9896, at *10 (E.D. Pa. June 19, 1998), *aff’d*, 172 F.3d 299 (3d Cir. 1999); *U.S. Football League v. NFL*, 842 F.2d 1335, 1347 (2d Cir. 1988) (citing S. REP. NO. 87-1087, at 1).

or subscription television.”²⁰¹ At first glance, this language appears to exclude modern streaming services from the scope of the exemption. However, this view does not fully account for the significant changes in technology and consumer behavior since 1961.

While courts have not expressly adopted the “technology canon” of statutory interpretation, there is support for reading statutes with an eye toward how they apply to modern realities, particularly when the core purpose of the statute is at stake.²⁰² Today, most televised sports—including those accessible through traditional networks—are part of some form of subscription-based service, whether cable, digital bundles, or streaming platforms.²⁰³ Excluding streaming agreements from the SBA exemption risks undermining the very objectives the statute was meant to achieve: ensuring public access to games and maintaining competitive balance within the league. Moreover, requiring individual NFL teams to negotiate their own streaming rights could lead to fragmented coverage, higher consumer costs, and a diminished ability for smaller-market teams to stay financially competitive—conditions that could invite the emergence of rival leagues. While the House Report made reference to subscription television as outside the statute’s original scope, such comments should not override the broader legislative intent to preserve league-wide broadcasting arrangements that benefit fans and the sport as a whole.

The following quote from *NFL I* is telling: “The member clubs of the National Football League, like those of any professional athletic league, can exist only as long as the league exists. The League is *truly a unique business enterprise*, which is entitled to protect its very existency [sic] by agreeing to reasonable restrictions on its member clubs.”²⁰⁴ The drafters of the SBA intended for the NFL to have an exemption from antitrust law because sports leagues are such a unique property.²⁰⁵ By passing this Act, the legislature determined that public policy favors giving sports leagues the option to pool television rights of their teams over the concerns that are safeguarded by federal anti-

²⁰¹ *Telecasting of Professional Sports Contests: Hearing on H.R. 8757 Before the Antitrust Subcomm. of the Comm. on the Judiciary*, 87th Cong. 2 (1961); H.R. REP. NO. 87-1178, at 5 (1961).

²⁰² See Finnegan, *supra* note 179, at 939.

²⁰³ Strayer, *supra* note 183.

²⁰⁴ *NFL I*, 116 F. Supp. 319, 326 (E.D. Pa. 1953) (emphasis added), *superseded by statute*, 15 U.S.C. § 1291.

²⁰⁵ *Id.* at 323.

trust laws. The NFL is a unique property that requires unique protection from the Sherman Act.

Professional football has problems that no other business has.²⁰⁶ The 1953 and 1961 injunctions (*NFL I* and *NFL II*) that spurred the enactment of the SBA admitted that professional football was different from any other business but did not have authority to rely on to treat it differently. In 1953, the Pennsylvania court granted an injunction but acknowledged that the injunction likely meant that the whole league would be doomed because without the weaker team's retaining their financial viability, the league would fall.²⁰⁷ In 1961, the Eastern District of Pennsylvania was "obliged" to uphold the injunction.²⁰⁸ The legislature acted swiftly. The 1961 decision came down on July 20, 1961, and the statute that provided an antitrust exemption to professional sports leagues was enacted on September 30, 1961.²⁰⁹ The legislature identified a business in the NFL that was uniquely situated and required a unique exemption to antitrust law that would allow it to continue to reach NFL fans and retain its viability.

Today, how fans consume NFL properties has changed, but the NFL remains a unique product. It is unlikely that prohibiting the NFL from collectively negotiating its television rights deals with streaming providers would doom the less popular franchises given the current success and valuations of even the weakest teams.²¹⁰ However, the legislature's intent in 1961 was to provide an exemption that accounted for the NFL's unique business model and failing to interpret the exemption as applying to agreements with streaming providers would be contrary to legislative intent. Further, the other legislative intentions in enacting this statute would be at risk if the statute was read narrowly.

²⁰⁶ *Id.* ("The ordinary businessman is not troubled by the knowledge that he is doing so well that his competitors are being driven out of business.")

²⁰⁷ *Id.*

²⁰⁸ *NFL II*, 196 F. Supp. 445, 447 (E.D. Pa. 1961), *superseded by statute*, 15 U.S.C. § 1291.

²⁰⁹ *Id.*; Act of Sep. 30, 1961, Pub. L. No. 87-331, 75 Stat. 732.

²¹⁰ See Michael Ozanian, *CNBC's Official NFL Team Valuations 2024: Here's How the 32 Franchises Stack Up*, CNBC: SPORT (Nov. 15, 2024, at 11:37 ET), <https://www.cnbc.com/2024/09/05/official-nfl-team-valuations-2024.html> [https://perma.cc/4D9F-BNNB].

2. Protection from Rival Leagues

The legislature also intended to protect sports leagues from rival leagues. *NFL I* expressed concerns about the NFL and its ability to survive without horizontal agreements.²¹¹ In 1973, the House of Representatives proposed legislation that would alter the protections for sports leagues. The legislation was not passed, but the House Report provides insight into the rationale for the passage of the SBA.²¹² According to the 1973 House Report, the SBA was “specifically designed to establish parity between the National Football League and the American Football League.”²¹³

a. American Football League

When the SBA was passed in 1961, the NFL faced a formidable threat in the form of the American Football League (AFL). Following *NFL I*, the NFL’s individual teams operated their own broadcasting rights and the league continued on.²¹⁴ The AFL was founded in 1959 by Lamar Hunt, an oil tycoon from Texas.²¹⁵ The AFL’s business model was based in part on recruiting wealthy magnates who were unsuccessful in purchasing a team in the NFL to bring football teams to cities that did not have an NFL team.²¹⁶ The AFL operated in direct competition with the NFL and was able to gain traction. The AFL began play in 1960 and was able to negotiate a contract with ABC to broadcast its games from 1960–63.²¹⁷

The SBA was passed immediately after the AFL was organized, in part because of the risk the AFL presented to the NFL’s unique business model.²¹⁸ The AFL operated collectively and in

²¹¹ See *NFL I*, 116 F. Supp. at 326 (“The member clubs of the National Football League, like those of any professional athletic league, can exist only as long as the league exists.”).

²¹² See H.R. REP. NO. 93-483, at 2032, 2036–37, 2039 (1973), as reprinted in 1973 U.S.C.C.A.N. 2032, 2036–37, 2039.

²¹³ *Id.* at 2036. The Senate Reports noted that:

[I]f the 14 teams of the National Football League and the 8 teams of the American Football League are required to act separately in the sale of their television rights, only a handful of these teams will hereafter be able to secure coverage on the limited network facilities now available.

S. REP. NO. 87-1087, at 2 (1961), as reprinted in 1961 U.S.C.C.A.N. 3042, 3043.

²¹⁴ *In re NFL’s Sunday Ticket Antitrust Litig.*, 933 F.3d 1136, 1154 (9th Cir. 2019); *U.S. Football League v. NFL*, 842 F.2d 1335, 1346 (2d Cir. 1988).

²¹⁵ *U.S. Football League*, 842 F.2d at 1344.

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Sunday Ticket Antitrust Litig.*, 933 F.3d at 1145 (“While the NFL was precluded under *NFL I* from restricting the sale of telecasts, the AFL was not. As a result, the AFL

direct competition with the NFL. The AFL brought an antitrust suit against the NFL in 1962, alleging that the NFL was monopolizing professional football.²¹⁹ The leagues competed for top talent and viewership, which led to a “financial arms race” that was likely untenable in the long term.²²⁰ The two leagues agreed to merge in 1966 and eventually received Congressional approval.²²¹ That same year, “Congress amended the Sports Broadcasting Act specifically to confer antitrust immunity on the NFL-AFL merger.”²²²

b. United States Football League

The NFL, without any challengers and armed with protection from the SBA, enjoyed more success over the next decade and a half.²²³ In 1983, the United States Football League (USFL) launched as a spring alternative to the NFL. Positioned as a complement rather than a direct competitor, the USFL initially avoided scheduling conflicts with the NFL and attracted notable talent, including future Hall of Famers, by offering competitive salaries and opportunities for immediate play.²²⁴ However, under the influence of aggressive owners—most notably Donald Trump—the league shifted its strategy, moved toward a fall schedule, and filed an antitrust lawsuit against the NFL in 1986, alleging monopolistic control over television broadcasting rights and market access.²²⁵ Although the USFL technically won the suit, the symbolic \$1 in damages (tripled under antitrust law to

‘entered into league-wide television contracts,’ and pooled its television rights and revenues in a broadcast contract with ABC.” (citations omitted)).

²¹⁹ *Am. Football League v. NFL*, 205 F. Supp. 60, 61 (D. Md. 1962).

²²⁰ Michael B. Gray, *Michael B. Gray of Colorado Explores the AFL-NFL Merger of 1970: Transforming the Landscape of Professional Football*, SEA ISLE NEWS (May 24, 2024), <https://seaislenews.com/news/2024/may/24/michael-b-gray-of-colorado-explores-the-afl-nfl-me/> [<https://perma.cc/8CH6-TRV9>].

²²¹ *General History – Chronology (1960 to 1979)*, PRO FOOTBALL HALL OF FAME (Mar. 13, 2026, at 13:36 ET), <https://www.profootballhof.com/football-history/general-history-chronology-1960-to-1979/> [<https://perma.cc/T3CJ-DDB5>].

²²² *U.S. Football League*, 842 F.2d at 1347 (citing Act of Nov. 8, 1966, Pub. L. No. 89-800, § 6(b)(1), 80 Stat. 1508, 1515).

²²³ *Sunday Ticket Antitrust Litig.*, 933 F.3d at 1146.

²²⁴ Ben Rolfe, *History of the USFL: What It Is, How It Started, and Its Demise*, PRO FOOTBALL & SPORTS NETWORK (June 3, 2021, at 11:45 ET), <https://www.profootballnetwork.com/history-of-the-usfl/> [<https://perma.cc/Y6RT-SDA5>].

²²⁵ SMALL POTATOES: WHO KILLED THE USFL?, ESPN (ESPN 2009), <https://www.espn.com/watch/film/68d3cf4b-3f8b-40d8-9048-bddba97cf1a8/small-potatoes-who-killed-the-usfl> [<https://perma.cc/F63A-YG5E>].

§3) marked the league's practical defeat.²²⁶ Following the lawsuit, the USFL ceased operations and never played another game.²²⁷

Since the first iteration of the USFL, rival leagues, including ones sharing the USFL's namesake, have tried to emerge and compete with the NFL, each with varying degrees of success.²²⁸ Until a couple of years ago, due to the immense success of the NFL, NBA, NHL, and MLB, it was thought to be virtually impossible to directly compete for viewership and cachet with a major sports organization and win. However, recent developments in another sport—professional golf—indicate professional sports leagues' impenetrable armor may be cracking.

c. Rival Leagues Today

LIV Golf, backed by the Saudi Arabian government-owned Public Investment Fund (PIF), upended the structure of professional golf by paying players hundreds of millions of dollars to defect from the PGA Tour, the preeminent professional golf organization in the world.²²⁹ This fragmentation has prevented fans from seeing top golfers compete in the same tournaments and has destabilized the sport's traditional competitive model.²³⁰ The PIF's deep financial resources and strategic motives raise concerns that go far beyond golf, signaling the potential for similar disruption in other sports.²³¹ While such a threat may seem unlikely in leagues like the NFL, a sport like basketball could be vulnerable to a LIV-style challenge, where a new league backed by sovereign wealth could lure away talent and threaten the viability of existing organizations.²³²

²²⁶ *U.S. Football League*, 842 F.2d at 1335.

²²⁷ James R. Copland, *What Do We Mean by a "Pro-Business" Court—and Should We Care?*, 67 CASE W. RES. L. REV. 743, 750 (2017).

²²⁸ Thomas Barrabi, *XFL, USFL, Other Pro Football Leagues That Took on the NFL*, FOX BUS. (Feb. 6, 2020, at 18:52 ET), <https://www.foxbusiness.com/sports/xfl-usfl-aaf-nfl-pro-football-startups> [https://perma.cc/L3NM-8D56].

²²⁹ Bob Harig, *How We Got Here: A Timeline of LIV Golf and How the PGA Tour Eventually Embraced Its Rival*, SPORTS ILLUSTRATED (Mar. 12, 2024), <https://www.si.com/golf/news/timeline-liv-golf-how-pga-tour-adapted> [https://perma.cc/MC82-EU3Z].

²³⁰ John A. Fortunato, *Debating Outcomes of the Antitrust Challenges Between the PGA Tour and the LIV Golf Tour*, 33 MARQ. SPORTS L. REV. 751, 753 (2023).

²³¹ Joey D'Urso, *Saudi Arabia's Takeover of World Sport: Football, Golf, Boxing and Now Tennis?*, THE ATHLETIC (Mar. 10, 2024), <https://www.nytimes.com/athletic/5237849/2024/02/02/saudi-arabia-sport-investments/> [https://perma.cc/DYT8-MNVY].

²³² Reuters, *PIF Backing Proposed \$5 Billion Basketball League*, ESPN (Feb. 7, 2025, at 21:00 ET), https://www.espn.com/espn/story/_/id/43741075/pif-backing-proposed-5-billion-basketball-league [https://perma.cc/GS56-4QDW].

This development reveals that the legislative intent behind providing sports leagues with a reprieve from antitrust law to protect them from rival leagues is as relevant today as it was in 1961.²³³ Failing to extend the antitrust exemption to streaming providers would undermine legislative intent by providing additional avenues for rival leagues to gain a competitive advantage. The SBA was intended to prevent rival leagues from gaining a competitive advantage against sports leagues and thus, the SBA should be construed to apply to modern viewing experiences.

3. Establish Parity Among Member Organizations

Along with the concern that a rival league was better positioned to negotiate with broadcast companies than the NFL was, the legislature was also concerned with the league's competitive balance. In 1961, there was a concern that "the league's competitive balance on the field would eventually be destroyed if teams in major television markets continued to sell their broadcast rights individually."²³⁴ The SBA was designed to ensure that the most successful teams were not able to outperform the weaker teams on the field and ultimately run them out of business.²³⁵ At the time the SBA was passed, failing to provide an exemption for the NFL in procuring its television contracts could have led to the destruction of the entire league.²³⁶ Allowing member teams to compete against each other for television deals would lead to the top teams securing the most lucrative deals and allow them to continue to build their wealth.²³⁷ The weaker teams would then be forced to secure their broadcasting deals with what is left over, diminishing their leverage and lowering their profits.²³⁸ In

²³³ Chris Chen, Comment, *How American Sports Leagues Can Respond to the Rise of Sovereign Wealth Funds*, 11 EMORY CORP. GOVERNANCE & ACCOUNTABILITY REV. 305, 311–12 (2024).

²³⁴ *In re NFL's Sunday Ticket Antitrust Litig.*, 933 F.3d 1136, 1145 (9th Cir. 2019) (quoting *U.S. Football League v. NFL*, 842 F.2d 1335, 1346 (2d Cir. 1988)).

²³⁵ H.R. REP. NO. 93-483, at 4 (1973), as reprinted in 1973 U.S.C.C.A.N. 2032, 2035.

²³⁶ *NFL I*, 116 F. Supp. 319, 323 (E.D. Pa. 1953) ("If this should happen not only would the weaker teams fail, but eventually the whole league, both the weaker and the stronger teams, would fail, because without a league no team can operate profitably."), *superseded by statute*, 15 U.S.C. § 1291.

²³⁷ S. REP. NO. 87-1087, at 2 (1961), as reprinted in 1961 U.S.C.C.A.N. 3042, 3043 ("In similar vein, the Commissioner of the American Football League testified that television revenues are such a significant part of the overall financial success of a professional football team that it is necessary to prevent too great disparity in the television income of the various clubs.")

²³⁸ *NFL I*, 116 F. Supp. at 323 ("The winning teams usually are the wealthier ones and unless restricted by artificial rules the rich get richer and the poor get poorer.")

that world, the worst teams would not have the financial ability to keep up with the best teams, and only the best teams would be able to survive.²³⁹ This winner-take-all system works on the playing field but not in the boardroom. There must be less successful teams on the playing field because each game has a winner and a loser. For the league to survive, the under-performing teams need to have some way to retain their financial viability through a concerted effort from the league's governing body.

Television rights make up a majority of the NFL's revenue and without the exemption, the weakest teams would lose a bulk of the revenue that has allowed them to sign players, pay their coaches, and upgrade their stadiums.²⁴⁰ While there is a significantly smaller risk today than there was in 1961 that the league would eventually collapse and this exemption may no longer be necessary to preserve the league itself, courts must still interpret the statute according to its intent.²⁴¹ As streaming becomes the primary option for consumers, the NFL will rely on that revenue more and more.

Parity helps the fans as well. The more the revenue is spread across the league, the more the teams in smaller markets can compete. Forcing each team to compete in a business way would harm the fans because the poorer teams would not get the revenue sharing that is essential to the success of the NFL. If streaming services were the primary avenue to consume sports in 1961, the exemption would have applied to those providers as well. Therefore, to allow the NFL to continue operating how it has and how the legislature intended, the SBA exemption must apply to agreements with streaming providers.

4. Protect the Consumers

The central goal of antitrust law is to protect competition to benefit the consumer.²⁴² The Sherman Act was established with the American people in mind—with the goal of ensuring that one or several corporations could not get so large as to control the

²³⁹ *Id.* at 324 (“Thus, the net effects of allowing unrestricted business competition among the clubs are likely to be, first, the creation of greater and greater, inequalities in the strength of the teams; second, the weaker teams being driven out of business; and, third, the destruction of the entire League.”).

²⁴⁰ Jacob Eckstein, *How the NFL Profits: Revenue Streams Explained*, INVESTOPEDIA (Feb. 20, 2026), <https://www.investopedia.com/articles/personal-finance/062515/how-nfl-makes-money.asp> [<https://perma.cc/KG6W-EY4C>].

²⁴¹ *New Lamp Chimney Co. v. Ansonia Brass & Copper Co.*, 91 U.S. 656, 662 (1875).

²⁴² *State Oil Co. v. Khan*, 522 U.S. 3, 15 (1997).

prices or access to resources, thereby limiting the power of the American people.²⁴³ The SBA was enacted because the “public interest in viewing professional league sports” outweighed the concern that antitrust law typically protects.²⁴⁴

Enabling the exemption to extend to streaming providers increases access to fans. For sports leagues, allowing member teams to work together is not only necessary but beneficial. The Supreme Court found that even the NCAA, which lacks the same protections as the NFL, needs to work together to “widen consumer choice” and mutual agreement by sports leagues should be seen as procompetitive.²⁴⁵ Critics of streaming services joining the sports broadcasting fold have admitted as much.²⁴⁶ Allowing the NFL to work with streaming providers increases the number of viewing options and the number of games that fans can watch. On an average Sunday, the “free” options are limited to anywhere from three to five games, depending on the market a fan is in.²⁴⁷ Fans cannot watch most “out-of-market” games on the limited broadcast options such as CBS and FOX.²⁴⁸ Increasing the number of organizations that the NFL may work with increases the number of games that are nationally televised, increasing the number of games the average fan can watch. For example, adding Netflix has increased the number of primetime games, which are available to all fans.²⁴⁹

²⁴³ *Guide to Antitrust Laws*, FED. TRADE COMM'N, <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws> [<https://perma.cc/CU3X-WHBM>] (last visited May 9, 2025).

²⁴⁴ S. REP. NO. 87-1087, at 3 (1961), *as reprinted in* 1961 U.S.C.C.A.N. 3042, 3044 (“The committee is of the opinion that the public interest in viewing professional league sports warrants some accommodation of antitrust principles . . .”).

²⁴⁵ *NCAA v. Bd. of Regents of the Univ. of Okla.*, 468 U.S. 85, 102 (1984).

²⁴⁶ Scott M. Finney, Note, *Too Many, Too Late: The NFL's Inverse Accessibility Issue and the New RPO*, 25 N.C. J.L. & TECH. 161, 166 (2023) (“The inclusion of streaming services in NFL media deals is of course not a bad thing *per se*, and in some ways, it will increase accessibility to NFL games.”).

²⁴⁷ Most games are televised on broadcast networks like Fox, NBC, and CBS, but those stations only televise local games. On a typical Sunday, a maximum of two games per “window” will be televised, a 1:00 p.m. window and a 4:00 p.m. window. Currently, *Sunday Night Football* is offered on NBC's open-air channel. Brad Adgate, *More NFL Games Will Be Exclusively Streamed This Season*, FORBES (Sep. 6, 2024, at 09:18 ET), <https://www.forbes.com/sites/bradadgate/2024/09/05/to-watch-every-nfl-game-this-season-will-cost-more-money/> [<https://perma.cc/4EE6-4FBV>].

²⁴⁸ “Out-of-market” refers to NFL games that do not feature the local team or are not being broadcast in a viewer's geographic region based on league and network scheduling rules. *What Is the Regular Season Blackout Policy for Live Games on NFL+?*, NFL, <https://support.nfl.com/hc/en-us/articles/35869716961556-What-is-the-blackout-policy-for-live-games-on-NFL> [<https://perma.cc/TE7R-UWXN>] (last visited May 9, 2025).

²⁴⁹ Adgate, *supra* note 247.

NFL fans do not just care about their own teams—they care about players, coaches, and other teams across the league and increasing the number of nationally televised games increases that access.²⁵⁰ Adding streaming services into the catalogue of options increases the number of opportunities for fans to watch games. One alternative would be putting them on local stations or *NFL Sunday Ticket*, which restricts output.

Additionally, viewership is different today than it was in 1961.²⁵¹ For viewers without a cable or satellite television subscription, the change improves accessibility to NFL games. More and more Americans are preferring to watch content on their Smart TVs.²⁵² With streaming, fans will be able to watch games from almost anywhere, whether they are at home, at work, or traveling. The flexibility of streaming on a variety of devices will allow viewers to choose how and when they engage with the sport, giving fans a level of control over their viewing experience that was not previously possible with traditional broadcast television. Also, the NFL is growing in international markets. Streaming services expand the reach to those markets and increase the access for fans across the world.²⁵³

Although the current model has faced criticism for inconveniencing and confusing some viewers, there is no concrete evidence that the NFL's relationship with streaming providers has increased prices or diminished the product. For example, the shift of *Thursday Night Football* to Amazon Prime Video has not led to meaningful reductions in access or quality; instead, it has introduced new features and broader digital availability.²⁵⁴ Plaintiffs in *NFL Sunday Ticket* sought to prove that centralized control over out-of-market games harmed fans, relying on Dr. Rascher's claim that, in a "college football but-for world," games would have

²⁵⁰ See Casey Lambert, *How Fantasy Football Shaped the NFL's Rise to #1 Sport in America*, AZEE BRANDING, <https://azeebranding.com/how-fantasy-football-shaped-the-nfls-rise-to-1-sport-in-america/> [https://perma.cc/532D-NXNY] (last visited Apr. 10, 2026).

²⁵¹ See discussion *supra* Section III.C.4.

²⁵² Brad Adgate, *Report: Viewers Continue to Watch More Streaming Content on Smart TVs*, FORBES (June 4, 2024, at 13:03 ET), <https://www.forbes.com/sites/bradadgate/2024/06/04/report-viewers-continue-to-watch-more-streaming-content-on-smart-tvs/> [https://perma.cc/8QGZ-U3N2].

²⁵³ JAMES T. GRAY, SPORTS LAW PRACTICE § 8.07 (3d ed. 2025) ("NFLP sees one of its key areas of growth as being the international market. In 1989, NFLP opened an office in London. In 1989, gross retail sales of NFL-licensed products in England were expected to exceed \$50 million.").

²⁵⁴ Alex Davies, *'Thursday Night Football' Behind-the-Scenes: How Prime's NFL Coverage Comes to Life*, AMAZON NEWS (Sep. 2024), <https://www.aboutamazon.com/stories/amazon-prime-thursday-night-football-behind-the-scenes> [https://perma.cc/U4QH-ZACT].

been available on basic cable or free over-the-air channels.²⁵⁵ But the court rejected this theory, finding that Dr. Rascher's model was speculative, economically unsound, and unsupported by the actual structure of college football broadcasting, which itself includes premium and regional exclusives—even for top-ranked teams.²⁵⁶ Without reliable expert support, the jury's \$4.7 billion damages verdict was ultimately vacated as untethered to evidence and based on flawed assumptions about consumer payments.²⁵⁷ Thus, despite aggressive attempts to prove consumer harm from the NFL's broadcast strategies, the case underscores that no concrete showing has been made that fans have paid more or received less. Therefore, no basis exists to presume that streaming agreements would have anticompetitive or damaging effects.

In any event, the issue is not with the antitrust exemption itself, but the fragmented media landscape. Even if consumers are paying more to access every game because of the growing number of streaming providers, the better solution is to curb those adverse effects rather than eliminate the agreements entirely. This approach would clarify the NFL's options while allowing the legislature to craft a more targeted solution.

Ultimately, clarity will decrease litigation and save money for the fans. Currently, the NFL is operating as if the exemption applies, and it would take a lawsuit from the U.S. government or consumers to disrupt that. A lack of clarity has fueled the *NFL Sunday Ticket* lawsuit, which has dragged on for a decade with no clear resolution in sight. Extending the exemption to streaming providers would increase clarity and avoid litigation like *NFL Sunday Ticket*—the costs of which would ultimately be felt by the fans.²⁵⁸ Extending the antitrust exemption to include streaming providers would not only align with the SBA's original intent to protect consumers, but would also enhance fan access, reduce litigation costs, and provide the legal certainty necessary for the NFL to innovate without fear of protracted, costly legal battles that ultimately burden its viewers.

In sum, as made clear by the SBA's plain language, its context, and the legislative history, the intent was to provide an ex-

²⁵⁵ Order Granting Defendants' Motion for Judgment as a Matter of Law at *6–7, *In re NFL "Sunday Ticket" Antitrust Litig.*, No. ML 15-02668 (C.D. Cal. Aug. 1, 2024), 2024 WL 3628118.

²⁵⁶ *Id.* at *13–14, 17.

²⁵⁷ *Id.* at *30–31.

²⁵⁸ De Witte, *supra* note 65.

emption for joint agreements made by the NFL with broadcasters. Amazon, Netflix, and Peacock are broadcasters contemplated by the SBA.

IV. AUDIBLES

Sports leagues often seek declaratory judgment on legal disputes they need resolved.²⁵⁹ The NFL could seek a declaratory judgment to get on the offensive and avoid defending litigation from potential plaintiffs. At this moment, the NFL is exposed to litigation for the joint agreements with streaming services like Amazon and Netflix.²⁶⁰ Declaratory judgment would give the NFL the opportunity to avoid future litigation and “minimize the danger of avoidable loss” at a time when its future payout to the *NFL Sunday Ticket* subscribers is uncertain.²⁶¹

If the NFL wanted to play it safe, it could simulcast its games instead of having them only available on streaming providers. That would mean the NFL would offer both the paid option through the streaming services and the “free” option on a basic cable channel like ABC or CBS. Peacock currently simulcasts all *Sunday Night Football* games with its open-air affiliate.²⁶² The NFL can work with local broadcasts to simulcast the games to ensure sports fans can continue watching their own teams without a paid subscription. For example, when a *Thursday Night Football* game on Amazon Prime between the Dallas Cowboys and New York Giants is being played, the NFL can work with local Dallas and New York CBS affiliates to broadcast the game in those areas. That way, Dallas and New York residents could watch their favorite teams at no cost and those with an Amazon Prime subscription could watch the game from any-

²⁵⁹ The NHL sought a declaratory judgment to clarify whether its compliance with certain equalization rules was protected from antitrust challenges under the non-statutory labor exemption. *NHL v. NHL Players Ass’n*, 789 F. Supp. 288, 289 (D. Minn. 1992). The NBA sought a declaratory judgment to determine whether it could restrain the movement of one of its franchises, the Los Angeles Clippers, and impose charges related to the franchise’s relocation. *NBA v. SDC Basketball Club, Inc.*, 815 F.2d 562, 563 (9th Cir. 1987).

²⁶⁰ Nathanson, *supra* note 50.

²⁶¹ *United Food & Com. Workers Loc. Unions 137 v. Food Emps. Council, Inc.*, 827 F.2d 519, 524 (9th Cir. 1987) (stating that declaratory judgments “minimize the danger of avoidable loss and the unnecessary accrual of damages and . . . afford one threatened with liability an early adjudication without waiting until his adversary should see fit to begin an action after the damage has accrued”).

²⁶² *NFL Completes Long-Term Media Distribution Agreements Through 2033 Season*, NFL (Mar. 18, 2021, at 16:06 PT), <https://www.nfl.com/news/nfl-completes-long-term-media-distribution-agreements-through-2033-season> [<https://perma.cc/WJN8-8Q9P>].

where. Local stations already broadcast preseason games, so the infrastructure is there.

Obviously, those agreements would command less money from streaming providers because the exclusivity draws consumers to their platforms when it is the only option to watch a game. At the same time, the NFL gets to “double dip” and retain revenue from two sources for one game, which would help them recoup the losses from the price of exclusivity. This option would likely save the NFL from antitrust scrutiny given the well-established rule of reason test and the Ninth Circuit judge’s assessment of the *NFL Sunday Ticket* jury award. To state an antitrust claim, plaintiffs must allege: (1) a conspiracy between two or more distinct entities; (2) an intent to restrain trade; (3) actual harm to competition; and (4) that they have standing as parties harmed by the anticompetitive conduct.²⁶³ Elements one, two, and four are likely to be met, but element three—actual harm—would be near impossible to prove when the broadcast is simulcast.²⁶⁴ When the broadcast is simulcast, consumers can simply watch the broadcast on basic cable instead of paying for the streaming service.

Third, the NFL could work with Congress, as it did in 1961.²⁶⁵ With the FCC and DOJ launching investigations into the NFL’s agreements with streaming providers, this option has become increasingly appealing. As this Note concludes, removing the SBA’s exemption is neither sustainable for the NFL, nor beneficial to consumers. At the same time, inaction does little to address the challenges some consumers face.

A negotiated legislative solution would better serve all parties. Congress could enact a statute clarifying that the SBA applies to streaming providers, reducing uncertainty and limiting litigation, while also protecting consumers. For example, Congress could require simulcasts of certain games, limit the number of streaming providers the NFL may partner with to reduce subscription fragmentation, and permit broader account sharing. Such an approach would recognize the unique nature of professional sports leagues while protecting the fans who helped turn them into multi-billion-dollar enterprises.

²⁶³ Nathanson, *supra* note 50.

²⁶⁴ See *NCAA v. Bd. of Regents of the Univ. of Okla.*, 468 U.S. 85, 102 (1984).

²⁶⁵ *In re NFL's Sunday Ticket Antitrust Litig.*, 933 F.3d 1136, 1146 (9th Cir. 2019).

These are the most viable options for avoiding litigation based on the joint agreements with streaming providers. If the NFL seeks declaratory judgment, faces litigation from consumers, and/or does not come to an agreement with the FCC and DOJ, it will need a creative strategy, and this Note provides a framework.

V. ENDZONE

The SBA was enacted to preserve competitive balance and fan access, initially in response to restrictions on terrestrial broadcasts. Now, in response to a new technological shift, the SBA should be interpreted according to its original intent. The statutory text refers to “sponsored telecasting,” which read according to its plain language encompasses agreements with streaming providers. Even assuming the statute is ambiguous, a forward-looking and context-aware interpretation must account for how media consumption has fundamentally changed since the SBA’s passage in 1961. As viewers increasingly turn to subscription-based streaming platforms for media, the core purpose of the SBA—to promote access to games and preserve league-wide equity—would be undermined if courts refused to read the statute in line with modern technology. The collective sale of broadcast rights, whether to traditional networks or streaming providers like Amazon and Netflix, is not just economically sensible for leagues; it is vital to maintaining competitive parity, widespread viewer access, and a sustainable model for all thirty-two NFL franchises. Therefore, any solutions to consumer concerns must begin with recognizing that the SBA’s exemption applies to streaming providers. Interpreting the SBA according to legislative intent requires courts to exempt joint agreements with streaming providers—allowing sports leagues to meet their fans on the next frontier of sports broadcasting.