ARIZONA STATE SPORTS AND ENTERTAINMENT LAW JOURNAL

VOLUME 11 SPRING 2022 ISSUE 2

SANDRA DAY O'CONNOR COLLEGE OF LAW
ARIZONA STATE UNIVERSITY
111 EAST TAYLOR STREET
PHOENIX, ARIZONA 85004

SPORTS & ENTERTAINMENT LAW JOURNAL
ARIZONA STATE UNIVERSITY

VOLUME 11 SPRING 2022 ISSUE 2

THE INEVITABILITY OF MAJOR LEAGUE BASEBALL'S ANTITRUST EXEMPTION

EMILY PARKER*

CONTENTS

ABSTRACT

Major League Baseball has long enjoyed the benefit of a judicially created exemption from federal antitrust laws thanks to a string of singular Supreme Court cases stemming back to 1922. The antitrust exemption is considered an unpopular aberration, and many have called for its reversal either in the courts or the legislature. While the exemption has played a significant role in MLB's business operations over the past century, its enduring impact stems not from the exemption itself, but from its reformulation by the courts and legislatures. While the Supreme Court has expressed reluctance to

---

*J.D. Candidate, Class of 2022, Sandra Day O'Connor College of Law, Arizona State University; Note and Comment Editor, *Arizona State Sports & Entertainment Law Journal*.

reconsider the exemption's validity, its effects have been limited by lower court decisions and legislative enactments. Even if the exemption were eliminated, many of its core effects would remain intact as a result of legislative re-entrenchment over the past few decades. This Note argues that calling for the reversal of MLB's antitrust exemption is futile. Instead, critics should work to generate interest in legislatively alleviating some of the exemption's lingering negative effects. This Note begins by exploring the history of federal antitrust law and its intention, examines the antitrust exemption itself and its ongoing impacts on MLB, and ultimately proposes that advocates accept the exemption and construct creative piecemeal legislative solutions to alleviate any negative impacts.

INTRODUCTION

Major League Baseball's ("MLB") antitrust exemption is an unpopular aberration, solidified by almost a century of Supreme Court cases and judicial affirmation reaching back to 1922.[1] The antitrust exemption's impact has been re-entrenched over the past century through judicial affirmation and legislative re-entrenchment.[2] It is credited with facilitating the development of MLB's near-complete monopoly over professional baseball and has long been the subject of substantial ire and criticism.[3] The antitrust exemption's impact remains substantial in three notable areas: MLB's maintenance of territorial exclusivity amongst franchises, its relationship with Minor League Baseball ("MiLB"), and labor relations impacting minor league players.

While the exemption is not without its faults, this Note argues advocating for the exemption's repeal is futile in light of the Supreme Court's unwillingness to reconsider the issue and Congress's role in re-entrenching its most significant effects.[4] Some of the antitrust exemption's impacts have had a net positive impact on MLB's ability to maintain operational longevity.[5]

---

[1] *See* Roger I. Abrams, *Before the Flood: The History of Baseball's Antitrust Exemption*, 9 MARQ. SPORTS L.J. 307, 311 (1999).

[2] *See generally* Jeremy Ulm, Comment, *Antitrust Changeup: How a Single Antitrust Reform Could Be a Home Run for Minor League Baseball Players*, 125 DICK. L. REV. 227, 238 (2020).

[3] *See generally* Nathaniel Grow, *In Defense of Baseball's Antitrust Exemption*, 29 AM. BUS. L.J. 211 (2012).

[4] *See* Joseph Citelli, Comment, *Baseball's Antitrust Exemption and the Rule of Reason*, 3 ARIZ. ST. SPORTS & ENT. L.J. 56, 105 (2014).

[5] *See generally* Grow, *supra* note 3.

Where the exemption has allowed anti-competitive processes to take hold, congressional and public pressure have pushed MLB to adopt pro-competitive processes, thereby limiting the negative impacts of the exemption.[6] In light of this history and recent developments—including increased public attention paid to the troubling labor plight of minor leaguers—advocates should focus solely on encouraging piecemeal reforms, both congressional and through MLB itself.[7]

Section II of this Note begins by exploring the history of U.S. antitrust laws, including their origin, and intended function. Next, it examines the advent of MLB's novel antitrust exemption and the long judicial history affirming it, even while denying similar protection to other professional sports leagues. Taken together, these histories demonstrate how antithetical the antitrust exemption is in light of the U.S.'s economic identity.

Section III looks at three key areas of MLB's operations in which the antitrust exemption wields substantial influence. First, this section explores MLB's territorial exclusivity scheme, under which franchise relocation and creation is significantly limited and broadcasting deals are structured anti-competitively. Next, Section III discusses the ways in which the antitrust exemption has allowed MLB to dominate MiLB's structure entirely, expanding its monopoly to include virtually all professional baseball domestically. Finally, the section concludes by discussing arguably the most troubling current impact of the antitrust exemption: the labor relations between MLB and minor league players.

Section IV concludes by discussing some of the piecemeal ways forward for advocates concerned about the negative effects of the antitrust exemption. Creative individual reforms are necessary to combat any anti-competitive business practices by MLB because of the antitrust exemption's seeming inevitability and Congress's recent re-entrenchment of some of the exemption's most dire impacts.

---

[6] *See generally id.* at 237.

[7] *See* Jeff Passan, *Major League Baseball to Require Teams to Provide Housing for Minor League Players Starting in 2022*, ESPN (Oct. 17, 2021), https://www.espn.com/mlb/story/_/id/32419545/major-league-baseball-require-teams-provide-housing-minor-league-players-starting-2022-sources-say.

I. HISTORY OF ANTITRUST LAW IN THE UNITED STATES AND ITS RELATIONSHIP TO MAJOR LEAGUE BASEBALL

A. THE HISTORY OF U.S. ANTITRUST LAWS

Since the late 19th century, U.S. antitrust laws have defined not only interstate commerce, but America's broad economic approach to competition within markets.[8] Put simply, antitrust law is a set of policies designed to ensure competition amongst private economic actors.[9] Although this does not require interference with the particulars of a given industry such as pricing or other output-related decisions, it does give the government a framework by which to prevent private businesses with monopolies from taking advantage of their economic position to exploit consumers.[10] Traditional antitrust theory assumes that in the absence of monopolies, competition will flourish, leading to consumer welfare maximization.[11]

The general economic principles underlying antitrust laws value competition amongst economic players for the purposes of ensuring consumers receive competitive prices for a reasonable output of goods and services.[12] When one or more entities in a given market conspire to drive up prices or drive down output—thereby establishing a monopoly over that market—consumers may suffer through higher prices and unfairly distributed wealth.[13]

The Sherman Act of 1890 (the "Act") is the defining legislation of U.S. antitrust law.[14] The Act's passage was fundamentally premised on the notion that economic competition produces optimal outcomes for consumers, employees, and other actors in the market.[15] The Act aimed to protect both industry employees and consumers.[16] The cornerstone of consumer protection under the Act

---

[8] *See* Animesh Ballabh, *Antitrust Law: An Overview*, 88 J. PAT. & TRADEMARK OFF. SOC'Y 877, 878 (2006).

[9] *Id.*

[10] *See id.*

[11] *Id.* at 906.

[12] *See* Roger D. Blair & Wenche Wang, *Rethinking Major League Baseball's Antitrust Exemption*, 30 J. LEGAL ASPECTS SPORT 18, 19 (2020).

[13] *Id.*

[14] *Id.* at 22; Ballabh, *supra* note 8, at 885.

[15] Ulm, *supra* note 2, at 230.

[16] *Id.* at 227.

was to "encourage free and open competition," thereby keeping market prices reasonable.[17]

The Act similarly forbids collusion among would-be competitors whose joint action could prevent others from participating in a given market.[18] The Act is fundamentally aimed at actions—unilateral or otherwise—designed to restrain interstate trade and commerce.[19] It accomplishes this by prohibiting anti-competitive agreements and undermining the development of monopolies.[20]

The Sherman Act does not actually establish a complete ban on monopolies, however. The Act's application has historically utilized a legal distinction between monopolies which operate "competitively" and those whose anti-competitive behavior necessarily harms the economy by undermining competition.[21] For example, § 1 of the Act explicitly prohibits any contract, combination of contracts, or "conspiracy in restraint of trade or commerce among several states."[22]

In determining whether an action violates § 1 of the Act, it must be shown that the restraint of trade was unreasonable, and it resulted from "two or more persons acting in concert."[23] Finding a violation of § 1 of the Sherman Act further requires application of the rule of reason analysis.[24] The rule of reason allows the Court to determine whether an anticompetitive business practice is, in fact, generally harmful or if it nets a benefit for the economy.[25] This entails a cost-

---

[17] Robert P. Woods Jr., Comment, *The Development of Baseball's Antitrust Exemption*, 5 DUO. BUS. L.J. 61, 62 (2003).

[18] Blair & Wang, *supra* note 12, at 22.

[19] *Id.*

[20] Woods, *supra* note 17, at 62.

[21] Richard M. Steuer, *The Simplicity of Antitrust Law*, 14 U. PA. J. BUS. L. 543, 544 (2012).

[22] Woods, *supra* note 17, at 63.

[23] *Id.*

[24] *Id.*

[25] *Id.* Early application of the Rule of Reason test illustrates how it operates to selectively allow some monopolies to not only exist, but flourish, while others are found to violate the Sherman Act. In 1911, the Supreme Court found that John D. Rockefeller's economic giant Standard Oil company had violated the Sherman Antitrust Act in the course of developing a monopoly over the oil industry despite the presence of nominal competition. Ballabh, *supra* note 8, at 886. The Court ordered the division of Standard Oil into multiple, separate entities in order to break up the monopoly and foment competition in the oil industry. *Id.* Despite this holding, the Supreme Court also established the "rule of reason,"

benefit analysis to determine whether the costs of the anti-competitive business practices outweigh the general benefits.[26]

Courts may also apply a "per se illegal" analysis to determine whether a business practice violates § 1 of the Act.[27] Some business practices are so clearly harmful the court may find it to be a per se violation of the Act.[28] Under the per se illegal analysis, a business practice may be found in violation of the Act if it is "so blatantly anti-competitive" its benefits become irrelevant in the evaluation of its legality.[29] Where the court finds a per se violation has occurred, it will abstain from any discretionary determinations based upon the business's intention or market influence; the practice at issue will be found to violate the Act.[30]

Four kinds of anti-competitive business practices generally may be found to violate the Act under a per se illegal analysis;[31] these include price fixing, tying contracts, group boycott, and the horizontal division of a market.[32] The horizontal division of a market, whereby competitors agree to a set division of the market in a geographical area, may sound similar to MLB's territorial exclusivity requirements.[33]

Section 2 of the Act targets the intentional formation of monopolies.[34] Monopolies are fundamentally anticompetitive in that they are defined by the elimination of competition and takeover of a given market by a single entity.[35] In evaluating monopolistic business practices under the Act, the Supreme Court has adopted a

---

which functionally distinguished "evil" monopolies from acceptable ones; harmful monopolies were those whose operations "damage[d] the economic environment of its competitors." *Id.* This seemingly created an opening by which large companies could avert prosecution under the Sherman Act by sufficiently operating like an acceptable monopoly. *See generally id.* The "rule of reason" exception seems to have borne fruit for large companies almost immediately. *See generally id.* Despite the Supreme Court ruling against the Standard Oil Company's industry monopoly in 1911, the United States Steel Corporation succeeded against an antitrust suit in 1920 despite significant lobbying efforts in favor of regulations that would reduce competition in their industry. *Id.*

[26] Woods, *supra* note 17, at 63.

[27] *Id.* at 64.

[28] Ulm, *supra* note 2, at 249.

[29] Woods, *supra* note 17, at 64.

[30] Ulm, *supra* note 2, at 249.

[31] Woods, *supra* note 17, at 64.

[32] *Id.*

[33] *See* Palmer v. BRG of Georgia, Inc., 498 U.S. 46 (1990).

[34] Ulm, *supra* note 2, at 233.

[35] *Id.*

two-part test for determining whether a violation has occurred.[36] This analysis requires proving the existence of a monopoly in a given market, and then demonstrating the monopolist "took steps towards willful acquisition or maintenance of that power."[37]

Nevertheless, Antitrust laws themselves are not immune from criticism. In some ways, antitrust laws have fostered monopolies despite the Act's original intent to generate increased competition within industries.[38] The government itself has often granted legal privileges to companies or special interests within industries, thereby creating monopolies itself.[39] The creation of coercive monopolies allows the government to potentially prevent competition and extend legal privileges or even subsidies to a single entity, preventing meaningful competition within a given marketplace.[40]

Insofar as antitrust laws operate not to preclude coercive monopolies but rather to create and subsidize them, it is possible they serve to discourage more efficient business practices which might provide better services and products to consumers.[41] In some instances, monopolies created of their own volition through efficient business practices and beneficial participation in the marketplace may not only be innocuous, but rather be the highest manifestation of efficient economic engagement.[42] Entities which obtain a monopoly in this way, rather than by the government's grant, do not actually prevent other entities from entering the marketplace—they merely operate efficiently of their own accord.[43]

---

[36] *Id.*

[37] *Id.*

[38] *See* Ballabh, *supra* note 8, at 903.

[39] *Id.* at 903-04.

[40] *Id.* at 908.

[41] *See id.*

[42] *See id.*

[43] *See id.* Furthermore, whatever economic benefits may be derived from antitrust laws may be limited by the process of having to successfully bring an antitrust suit in order to enforce them. A crucial precondition to a successful antitrust suit is an actual threat to competition. Steuer, *supra* note 21, at 550. In fact, courts may find that activities violate other laws but are not themselves grounds for antitrust liability. *Id.* In Spectrum Sports, Inc. v. McQuillan, the Supreme Court held that the "notion that proof of unfair or predatory conduct alone" was insufficient to demonstrate a threat to competition such as would give rise to antitrust liability. *Id.*

B. THE ADVENT OF MLB'S NOVEL ANTITRUST EXEMPTION

Federal antitrust laws wield substantial influence over how professional sports leagues operate off the field.[44] Domestic professional sports leagues are huge economies in and of themselves, netting a cumulative billions of dollars in revenue annually.[45] The Supreme Court has thus seen fit to subject these economic giants to federal antitrust laws, requiring they engage in competitive practices, at least nominally precluding the creation of all-powerful sports monopolies.[46] Federal antitrust laws have often been a vehicle for doing away with sports-business practices which constitute "unreasonable restraints of trade," thereby giving athletes a greater say in their own professional destinies.[47]

Professional sports leagues have been targets for antitrust litigation for decades, and the courts have consistently required they be subject to antitrust regulation.[48] For example, in *Los Angeles Memorial Coliseum Commission v. National Football League*, the Ninth Circuit Court of Appeals held, within the National Football League ("NFL"), each individual franchise constituted an independent legal entity, operating in competition with one another.[49] The court reasoned treating the NFL as a single entity for the purposes of analysis under U.S. antitrust laws would completely free the league's business activities from regulation under § 1 of the Act.[50]

Such an outcome would suggest competitors could simply form together in a loose collection of legally independent entities to avoid antitrust liability.[51] The court characterized the relationship between

---

[44] *See* Ulm, *supra* note 2, at 231; PATRICK K. THORNTON, LEGAL DECISIONS THAT SHAPED MODERN BASEBALL 158 (2012).

[45] Christina Gough, *North American Sports Market Size*, STATISTA (Mar. 1, 2021), https://www.statista.com/statistics/214960/revenue-of-the-north-american-sports-market/.

[46] *Antitrust Labor Law Issues in Sports*, US LEGAL (Mar. 26, 2022), https://sportslaw.uslegal.com/antitrust-and-labor-law-issues-in-sports/#:~:text=Baseball%2C%20football%2C%20basketball%2C%20and,Baseball%20Club%20of%20Baltimore%2C%20Inc.

[47] THORNTON, *supra* note 44, at 158.

[48] *Antitrust Labor Law Issues in Sports*, *supra* note 46. In evaluating these antitrust suits, the Supreme Court has stated that the rule of reason analysis, rather than per se illegal analysis, will generally apply. Woods, *supra* note 17, at 64. The Court has expressed a willingness to apply a per se illegal analysis only when the business practice at issue "is a naked restraint of trade with no purpose except stifling of competition." *Id.*

[49] Ulm, *supra* note 2, at 231.

[50] *Id.*

[51] *Id.* at 231-32.

the NFL and its member teams as a collection of independent competitors who "engage in the very types of economic competition that the antitrust laws exist to preserve."[52]

The Supreme Court reframed the question around professional sports leagues and antitrust laws entirely in *American Needle, Incorporated v. National Football League*.[53] The Court held the key inquiry requires determining whether the NFL and similar leagues are groups of "separate economic actors pursuing separate economic interests."[54] In other words, while professional sports leagues are free to join together in forming an overarching league identity, the leagues' member teams and business practices will be subject to scrutiny under antitrust laws.[55] Agreements and business practices engaged in by member teams of a given league will then be subject to scrutiny under the Rule of Reason, wherein the courts may determine whether those practices are acceptable.[56]

While other major professional sports leagues have been subjected to the Act's requirements, MLB has long enjoyed a singular exemption from federal antitrust laws.[57] The Supreme Court's infamous initial decision on the matter reasoned that MLB was not "commerce," but merely "entertainment," thereby did not warrant adherence to the Act.[58] On its face, this characterization seems incongruous; MLB gross revenues exceed $3.5 billion annually, with the World Series alone continuing to draw millions of viewers each year.[59] Despite growing into a substantial industry in its own right, MLB remains exempt from federal antitrust laws. This section will begin by examining the history of MLB's antitrust exemption and the reason for its enduring impact.

One of the defining historical emblems of baseball's antitrust exemption (and a source of significant controversy) was MLB's long-standing reserve clause system. Developed in the 1870s by National League founder William Hulbert, the intent of the reserve clause was to allow owners to maintain lower player salaries by retaining control over each player on a given team's roster.[60] The

---

[52] *Id.* at 232.

[53] Am. Needle, Inc. v. Nat'l Football League, 560 U.S. 183, 195 (2010).

[54] *Id.*

[55] Ulm, *supra* note 2, at 232-33.

[56] *Id.*

[57] Bruce Fein, *Baseball's Privileged Antitrust Exemption*, 20 WASH. LAW. 37, 37 (2005).

[58] *Id.*

[59] *Id.* at 40.

[60] Woods, *supra* note 17, at 67-68.

reserve system gave each team exclusive rights over their players ' professional careers for many seasons, prohibiting that player from either negotiating with another team while under the reserve clause contract or even objecting to a trade or contract reassignment.[61]

Team owners recognized allowing competition amongst teams for players would necessarily increase players' salaries, thereby decreasing club ownership profits.[62] Although the reserve system was effectuated through reserve clauses inserted into individual player contracts, the system was not piecemeal or scattered; it was a widespread practice.[63] The practice was so ubiquitous it had the general effect of requiring that players acquiesce to its inclusion in their contracts at the risk of losing the opportunity to play professional baseball at all.[64]

The reserve clause was a key point of contention in the 20th and early 21st century's antitrust and labor disputes between MLB and its players.[65] The reserve clause functionally precluded players from freely moving between contracts and teams.[66] Under the reserve system, players could be traded or reassigned between teams and levels of play without their consent.[67] The reserve system further quashed competition between teams when it came to signing players because the reserve clause bound players to their teams for a designated length of years.[68] This amounted to a version of horizontal price fixing in what would otherwise be a violation of the Act.[69] The restrictions placed on players 'ability to compete in the marketplace for higher salaries made the reserve clause system a prime target for antitrust litigation in the 20th century.

1. *FEDERAL BASEBALL CLUB OF BALTIMORE, INC. V. NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS (1922)*

The antitrust exemption's origins stem from the Supreme Court's 1922 decision in *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*.[70] The early

---

[61] *Id.* at 68.
[62] *Id.*
[63] *Id.*
[64] *See generally id.*
[65] *See generally* Thomas J. Ostertag, *Baseball's Antitrust Exemption: Its History and Continuing Importance*, 4 VA. SPORTS & ENT. L.J. 54, 56 (2004).
[66] *Id.*
[67] *Id.* at 60.
[68] *See* THORNTON, *supra* note 44, at 158-59.
[69] *Id.* at 159.
[70] Grow, *supra* note 3, at 213.

years of professional baseball were fraught with inter-league competition both on and off the field.[71]

The Federal Baseball League arose in 1914 to compete against the well-established American and National Leagues.[72] The Federal League originally functioned as a series of minor league clubs in a handful of cities until expressing its intention to expand and compete directly with the American and National Leagues.[73] This "third major league" failed to successfully manifest and was ultimately dissolved by settling with the other two leagues in 1915.[74]

The leagues settled for millions of dollars, leaving only the American and National Leagues in operation and, crucially, rendering them responsible for distributing settlement funds amongst former Federal League clubs.[75] The settlement funds were unevenly distributed based upon the American and National Leagues' perceived interests.[76] Owners of former Federal League clubs in cities with American and National League teams were bought out, while others were offered pittances.[77]

Ned Hanlon, owner of the former Baltimore Terrapins, was offered a mere $50,000 as compensation for losing his franchise.[78] Hanlon rejected his proposed settlement offer and brought an antitrust suit against the leagues and owners who had benefited from the settlement funds' distribution.[79] Hanlon argued the unfair division of funds amongst former Federal League team owners constituted a "collusive arrangement" between the Federal League and American and National Leagues, stemming from a "combination and conspiracy in restraint of trade" which ultimately harmed shareholders and consumers.[80] While Hanlon won damages from the jury at the trial court level, the suit was appealed up to the Supreme Court in what is now known as the infamous *Federal Baseball* decision.[81]

In *Federal Baseball*, the Supreme Court held professional baseball was not subject to the federal antitrust laws which made this kind of collusion unlawful, arguing any interstate travel

---

[71] *See generally* Abrams, *supra* note 1, at 307.
[72] *Id.* at 307-08.
[73] Woods, *supra* note 17, at 70-71.
[74] *Id.* at 71.
[75] Abrams, *supra* note 1, at 308.
[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] *Id.*
[80] *Id.*
[81] *Id.*

involved in baseball was not a defining characteristic of MLB's operations, but rather "a mere incident" of the game itself.[82] Being neither fundamentally interstate nor commerce, putting on baseball games could not be subjected to antitrust scrutiny under the Sherman Act.[83]

2. *TOOLSON V. NEW YORK YANKEES (1953)*

Over 30 years later, the Court revisited the question of the baseball antitrust exemption in the 1953 case *Toolson v. New York Yankees*.[84] In *Toolson*, a minor league baseball player brought an antitrust suit over baseball's restrictive reserve clause.[85] The *Toolson* Court was asked to determine whether the reserve clause requiring Toolson accept reassignment to a new minor-league program violated the Sherman Act.[86] The Supreme Court reaffirmed their *Federal Baseball* decision (and MLB's exemption from antitrust laws) in a brief per curiam opinion, relying both on the doctrine of *stare decisis* and the notion that baseball had spent three decades developing on the assumption it was exempt from antitrust laws.[87] The Court indicated, if any change were to be made on this question, it would have to come from the legislature.[88]

3. *FLOOD V. KHUN (1972)*

About 20 years after Toolson, the Court weighed in for what would be the final time to date in the 1972 case *Flood v. Kuhn*.[89] The case arose when the St. Louis Cardinals's center fielder Curt Flood refused to accept a forced trade to the Philadelphia Phillies following the 1969 season.[90] Flood unsuccessfully requested the Commissioner of baseball release him from his contract and, upon

---

[82] *Id.* at 309.

[83] Grow, *supra* note 3, at 213; *see also* Fed. Baseball Club of Baltimore v. Nat'l League of Pro. Baseball Clubs, 259 U.S. 200 (1922).

[84] Grow, *supra* note 3, at 213.

[85] *See* Abrams, *supra* note 1, at 309-10.

[86] Woods, *supra* note 17, at 73.

[87] Abrams, *supra* note 1, at 310; Woods, *supra* note 17, at 73.

[88] Woods, *supra* note 17, at 73.

[89] Grow, *supra* note 3, at 213.

[90] THORNTON, *supra* note 44, at 159.

denial, filed suit against MLB.[91] Flood's suit alleged violations of state and federal antitrust and civil rights laws.[92]

The Supreme Court refused to change course, once again affirming their self-admittedly flawed line of cases stemming from *Federal Baseball*. The Supreme Court's decision in Flood, while acknowledging organized baseball did constitute interstate commerce, ultimately reaffirmed *Federal Baseball* and *Toolson*.[93] The Court reasoned Congress's failure to legislatively repeal baseball's antitrust exemption "implied a continued approval" of it. [94] Despite disagreeing with *Federal Baseball*'s original designation that organized baseball did not constitute interstate commerce, the Court again relied on the doctrine of *stare decisis* in holding that baseball's antitrust exemption would remain intact.[95]

The Court's majority opinion overtly conceded that *Federal Baseball* was incorrectly decided.[96] According to Justice Blackmun, MLB's antitrust exemption constituted an "established aberration," defaulting yet again to Congress's failure to unilaterally reverse course as defense of his rigid adherence to a flawed line of cases.[97] He stated without further articulation that baseball's "unique characteristics and needs" justified leaving the aberrant exemption in place and placing the onus on Congress to right any wrongs

---

[91] *Id.* Upon learning of his impending trade to Philadelphia, Flood promptly announced his retirement from baseball. *Id.* at 163. Despite a lucrative contract offer from the Phillies, Flood was unwilling to suffer even two years of playing baseball in Philadelphia. *Id.* Flood penned a moving request to then-Commissioner of baseball Bowie Kuhn in December of 1969, expressing his desire to be released from his restrictive contract with the Cardinals and allowed to pursue a career with a club other than the Phillies. *Id.* at 165. Perhaps expressing his broader sense of the injustices that he faced as a black man in baseball in the mid-20th century, Flood wrote: "After 12 years in the major leagues, I do not feel that I am a piece of property to be bought and sold irrespective of my wishes. I believe that any system that produces that result violates my basic rights as a citizen and is inconsistent with the laws of the United States and of the several states." *Id.* Commissioner Kuhn denied Flood's request and, shortly thereafter, his lawsuit commenced. *Id.* at 166.

[92] Abrams, *supra* note 1, at 311.

[93] *See id.*

[94] THORNTON, *supra* note 44, at 173.

[95] *Id.*

[96] Abrams, *supra* note 1, at 312.

[97] *Id.* at 311.

resulting therefrom.[98] This decision seemingly shut the door on any judicial changes to MLB's antitrust exemption, once again relegating the issue to the legislative sphere.[99]

II. THE ANTITRUST EXEMPTION'S ONGOING INFLUENCE

Today, the antitrust exemption remains in effect and maintains a fundamentally negative perception in the public eye.[100] In addition to the negative connotations generally associated with economic monopolies, the antitrust exemption is seen as a catch-all source of MLB's operational ills and its seemingly magnanimous influence over professional baseball domestically.[101] Favorable perceptions of the exemption seem to be the exception, rather than the rule, amongst academic and professional critics.[102]

In reality, however, the exemption's influence may be less monumental than generally assumed.[103] While *Federal Baseball*, *Toolson,* and *Flood* collectively form the historical through-line of jurisprudence on the question of baseball's antitrust exemption, more recent cases have begun to limit the reach of the exemption itself, even while leaving it firmly in place.[104] Some lower federal courts have attempted to limit the scope of the antitrust exemption in some instances, despite acknowledging they could not overturn it entirely.[105]

---

[98] *Id.* Despite being subjected to antitrust laws, professional leagues like the National Basketball Association and the NFL have both grown into successful behemoths of their respective sports without the unique exemption MLB has historically enjoyed. Fein, *supra* note 57, at 39.

[99] *See* Ulm, *supra* note 2, at 237.

[100] *See generally* Grow, *supra* note 3.

[101] *Id.*

[102] *Id.*

[103] *See id.* at 273.

[104] Woods, *supra* note 17, at 76-77.

[105] *Id.* at 77-78. In 1993, the federal court for the Eastern District of Pennsylvania held in Piazza v. Major League Baseball that organized baseball's antitrust exemption ought to be "narrowly construed," based on that court's reading of Flood v. Kuhn. *Id.* at 77. In that case, the court held that the antitrust exemption did not extend to issues around the purchase and relocation of existing teams. *Id.* In 1994, another court—the Supreme Court of Florida—again attempted to limit the antitrust exemption's application to issues involving the reserve system only in Butterworth v. National League of Professional Baseball Clubs. *Id.* at 78. Here, a justice writing for the majority argued that it would "defy legal logic and common sense" to find that baseball was intended to enjoy a sweeping exemption from U.S. antitrust law. *Id.*

The actual effects of the antitrust exemption have been further limited and diluted as a result of piecemeal legislative reforms.[106] The Curt Flood Act and Sports Broadcasting Act, for example, respectively limit and entrench key aspects of the antitrust exemption legislatively.[107] In the context of MLB's labor relations with respect to players and its broadcasting rights, the antitrust exemption is now largely obsolete; were it to be judicially reversed, MLB's operations would remain unchanged in these areas due to relevant legislative advancements.[108]

Additionally, major league players formed their own formal union in the late 1960s in an effort to lobby on their own behalf with MLB leadership and owners.[109] The union sought to circumvent MLB's antitrust exemption insofar as it created unsavory working and labor conditions for major league players themselves, establishing "a private regime prohibiting the same collusive conduct by the owners" would be prohibited by antitrust laws.[110] Between lower court decisions, legislative action, and player unionization, the antitrust exemption's actual influence has become increasingly limited over time.

Given the judicial limitations effect on the exemption, legislative re-entrenchment of it, and other influences on MLB's business operations, calls to repeal the exemption may be misplaced. In addition to the antitrust exemption's lessened influence, it could be argued the exemption has fostered some meaningful operational benefits for MLB—benefits which may now be crucial to the league's operation. Exploring some of MLB's unique influences may explain both the extent of the antitrust exemption's actual ongoing influence and whether that influence is inherently problematic.

A. TERRITORIAL EXCLUSIVITY AND CONTROL: MLB'S FRANCHISE RELOCATION POLICIES & BROADCASTING STRUCTURE

1. *FRANCHISE RELOCATION AND THE CREATION OF NEW TEAMS*

MLB exercises substantial influence over the geographic distribution of baseball teams.[111] The league's territorial exclusivity

---

[106] *See* Blair & Wang, *supra* note 12, at 18-19.
[107] *See generally id.*
[108] *Id.*
[109] Abrams, *supra* note 1, at 312.
[110] *Id.*
[111] *See generally* Fein, *supra* note 57, at 40.

scheme makes establishing a new franchise or relocating an existing team to a new city or market extremely challenging.[112] The league's requisite procedural restrictions have made team creation or relocation a rare occasion in MLB history.[113] The restrictions are designed to ensure established franchises will not have to compete with other teams within their geographic market.[114] This creates a functional "monopoly" over a given area for each team and ensuring that even teams who share a single media market may both remain successful.[115] This is accomplished not only by restrictive league procedures, but also by business practices which appear, on their face, to be fundamentally anti-competitive in nature and, therefore, potential sites for antitrust claims.

The challenges facing the creation of the Washington Nationals baseball team illustrates some of the challenges and controversies surrounding baseball's territorial exclusivity scheme.[116] Baltimore Orioles owner Peter Angelos worked tirelessly to prevent the creation of a MLB team in Washington, D.C. in hopes of protecting the Orioles from the inevitable interstate competition—and potential deflation of the Orioles's value—which another nearby MLB team would threaten. [117] Although Washington, D.C. ultimately got their team, Angelos secured "monopolistic control" over the Nationals's television rights with the silent consent of MLB. [118] MLB ultimately awarded Washington, D.C. their franchise, but simultaneously required the team "become a fringe minority partner in a new regional sports network," controlled by Angelos himself.[119]

This functionally maintained Angelos's control over broadcasting rights for not only his team, but for the new Nationals franchise as well.[120] The significant annual revenue generated by television rights is second only to ticket sales; Angelos has thereby successfully deprived an entirely separate team of crucial potential revenue, which could have significant implications for the Nationals's ability to compete on the field (and, by extension, the team's financial health and sustainability). [121] This plainly anti-competitive arrangement, whereby a single team's ownership can

---

[112] *Id.*
[113] *Id.*
[114] *Id.*
[115] *Id.*
[116] *See id.*
[117] *Id.*
[118] *Id.*
[119] *Id.*
[120] *Id.*
[121] *Id.*

maintain a functional monopoly over an entire geographic area, would likely ring antitrust alarm bells in any other industry.[122]

MLB's influence over team relocation efforts stands alone among major professional sports leagues.[123] While antitrust rulings have curbed the other professional sports leagues' ability to closely regulate team relocation efforts, MLB retains unique influence over this particular aspect of franchise activity.[124] MLB rules require three-quarters of all MLB clubs approve any potential franchise relocation.[125] Although this kind of hurdle is common amongst the other major professional sports leagues, MLB's antitrust exemption does ultimately allow it to exert greater influence over relocation efforts than its counterparts in other sports.[126] This is because other professional sports leagues, such as the NFL and NBA, are subject to various other antitrust holdings which have limited their ability to restrict and even prevent franchise relocation on various occasions.[127]

In the context of franchise relocation, the Ninth Circuit has held on multiple separate occasions the rejection of a franchise's request to relocate would be subject to a rule of reason analysis, allowing the court to evaluate myriad factors in determining whether the rejection is fundamentally anticompetitive.[128] The leagues remain free to establish reasonable, legitimate restraints on team relocation, thereby retaining some discretion in such determinations.[129] Taken together, however, these judicial antitrust rulings constrain arbitrary restrictions on franchise relocation requests in the other leagues—constraints to which MLB is notably exempt.[130]

---

[122] *See generally id.*

[123] Grow, *supra* note 3, at 232-33.

[124] *Id.* at 233.

[125] *Id.*

[126] *Id.* at 234.

[127] *Id.* at 234-35.

[128] *Id.*

[129] *Id.* at 235.

[130] *Id.* at 234-35. In *Los Angeles Memorial Coliseum Commission v. Nat'l Football League*, the Ninth Circuit found that there could be legitimate reasons for a sports league to restrict franchise relocation, such as protecting fan loyalties in a given city, preserving rivalries, preserving municipalities 'financial interests, and maintaining a team in a major media market, among others. Los Angeles Memorial Coliseum Commission v. Nat'l Football League, 791 F.2d 1356 (9th Cir. 1986). Similarly, the court in *Nat'l Basketball Ass'n v. SDC Basketball Club* held that the practice of rejecting a particular relocation request would be a "question of fact to be judged under the rule of reason." Nat'l Basketball Ass'n v. SDC Basketball Club, 815 F.2d 562 (9th Cir. 1986).

The Oakland Athletics sought approval from MLB to move the team to San Jose, despite the fact San Jose fell within the San Francisco Giants's "exclusive territory."[131] In order to move into that geographic area, the Athletics had to secure the approval of at least 75% of MLB franchises.[132] After the potential move had languished in a MLB committee created to analyze its likely impacts for four years, the City of San Jose filed suit alleging violation of antitrust laws.[133]

The Ninth Circuit reaffirmed the now long-standing antitrust exemption, stating the Supreme Court had fully intended to exempt the business of baseball from antitrust laws.[134] The Ninth Circuit articulated the two consistent, lasting themes informing judicial opinions on MLB's antitrust exemption: first, the principle of *stare decisis*, and second, the fact Congress had functionally accepted the Court's decisions by failing to overrule them legislatively.[135]

Despite appearing on their face as would-be antitrust law violations, the practical ease of MLB's relocation restrictions are notable points in favor of the antitrust exemption.[136] While the MLB's business restrictions with respect to relocation may seem overly restrictive, they may prevent unfavorable alternatives like cities or ownership groups engaging in disruptive and dramatic bidding wars, or teams "hold[ing] cities hostage" in an effort to extort a new stadium or favorable lease deal out of the city or taxpayers.[137] The possibility remains that repealing the antitrust exemption, rather than attempting to legislate specific restrictions where necessary, could lead to more frequent relocations and the resulting economic instability, to say nothing of franchise chaos within MLB itself.[138]

One benefit of the antitrust exemption in the context of franchise relocation is the longstanding, league-wide stability with respect to team location that MLB enjoys to the greatest extent of all professional leagues.[139] This stability is more than a shallow or nominal benefit, however. Frequent franchise relocation means increased negative impact on communities who lose out on the

---

[131] Blair & Wang, *supra* note 12, at 30.
[132] *Id.*
[133] *Id.* at 31.
[134] *Id.*
[135] *Id.*
[136] *See* Citelli, *supra* note 4, at 295.
[137] *Id.* at 295-96.
[138] *Id.* at 296.
[139] Grow, *supra* note 3, at 236 ("[O]nly a single MLB franchise has relocated since 1972—the 2005 move of the struggling Montreal Expos franchise to Washington, D.C.").

relocating franchise.[140] In addition to the intangible harms associated with losing a major professional sports team, the loss can result in negative financial effects for the former host city.[141]

Loss of a professional sports franchise can have the effect of rendering a city incapable of paying back unpaid debts on facilities like stadiums in addition to potential future losses from sports-related tourism and tax revenues cities may depend on.[142] Even receipt of a replacement franchise may fail to meaningfully make up for the loss of a former team.[143] And while MLB's structure does allow for team continuity and overarching league stability, Congress retains the ability to place pressure on MLB in the event the league arbitrarily rejects a proposed relocation or franchise expansion.[144] For example, Congress may intervene to ensure the MLB grants the "rejected suitor" city a franchise in place of the failed relocation request.[145]

Additionally, requiring MLB to approve any individual franchise relocation may actually have the benefit of decreasing the likelihood a given team will attempt (potentially successfully) to demand things like public stadium subsidies from potential host cities.[146] Because cities know MLB must approve any potential franchise relocation, it may give cities the necessary leverage to avoid such extortionate demands.[147]

Territorial exclusivity and the related restraints on franchise creation and relocation are significant sources of conflict over the antitrust exemption.[148] Insofar as MLB's territorial exclusivity scheme foments anti-competitive arrangements which actually cause harm to individual franchises, the legislature could threaten—or, as needed, establish—restrictions designed to encourage competition. For example, the legislature could formulate operational guidelines which require MLB to bring their related business practices into compliance with § 1 of the Act.[149]

---

[140] *Id.*

[141] *Id.* at 236-37.

[142] *Id.* at 237.

[143] *Id.* The intangible losses are not to be discounted as trivial; they may involve loss of civic identity or local pride for a city or state's residents as well as loss of "national visibility" for a given city.

[144] *Id.* at 238.

[145] *Id.*

[146] *Id.* at 223.

[147] *Id.* at 222-23.

[148] *See* Michael H. Juárez, *Baseball's Antitrust Exemption*, 17 HASTINGS COMM. & ENT. L. J. 737, 759 (1995).

[149] *Id.* at 759-60.

As with any other potentially anti-competitive business practice under the Act, MLB's restrictions on franchise creation and relocation could be legislatively subjected to the Act's requirements and, by extension, the Rule of Reason test.[150] Under such a structure, MLB would be required to justify its business practices in the context of its economic benefits, thereby ensuring that practices which are in fact beneficial if not crucial to MLB's operation would remain uninhibited by the Act's regulation.[151]

2. *DISTRIBUTION OF BROADCASTING RIGHTS*

Providing fans access to view a given team's games is an essential element of that team's brand management, facilitating brand awareness and loyalty.[152] In general, sports leagues utilize a business model wherein national media rights to view the league's games are sold on behalf of all of the teams within the league.[153]

By contrast, teams sell local media rights within their home territories, largely without competition.[154] This model facilitates game blackouts, wherein out-of-market media providers black out the local team's games.[155] This forces consumers to purchase both the media package which will allow them to watch out-of-market games as well as a subscription to their local or regional sports networks.[156] As a result, teams generate substantial revenue by selling the rights to broadcast their games to local or regional sports networks.[157] MLB's national television contracts bring in more than $1.5 billion annually.[158] That revenue is then split evenly between each MLB team, a system designed to promote an economically competitive balance amongst the teams.[159]

These broadcast rights arrangements have been anticompetitive and challenged on antitrust grounds in prior suits.[160] Because antitrust laws are designed to promote competition within a given marketplace, the unavailability of options for consumers looking to watch all of their team's games strongly suggests, in the absence of MLB's antitrust exemption, these business practices could be

---

[150] *Id.* at 760.
[151] *Id.*
[152] John A. Fortunato, *Sports Leagues' Game Exposure Policies: Economic and Legal Complexities*, 3 J. GLOBAL SPORT MGMT. 1, 2 (2018).
[153] *Id.*
[154] *Id.*
[155] *Id.*
[156] *Id.*
[157] *Id.*
[158] *Id.* at 3.
[159] *Id.* at 4.
[160] *Id.* at 2.

challenged under the U.S.'s antitrust laws.[161] In response, teams have argued restrictive media practices "are necessary to protect individual team broadcast revenue, ensure competitive balance, and the overall quality of the league."[162]

Competition requires consumers to have the option of choosing between two or more products which can be "acceptable substitutes for each other."[163] Sports leagues' anticompetitive broadcasting practices are protected by the Sports Broadcasting Act of 1961 which granted sports leagues an exemption from antitrust laws, allowing them to collectively sell their national broadcasting rights to the highest bidder.[164] Local broadcasting rights, however, revert back to the individual teams to sell and distribute within their own territory.[165] These local broadcasting rights can be a substantial source of revenue for teams on an individual basis.[166] In MLB, for example, the Los Angeles Dodgers bring in approximately $320 million per year from their regional sports broadcasting network, SportsNet LA.[167]

The ability to exclusively distribute local broadcasting rights is an anticompetitive practice in two significant ways. First, because most geographic areas have only one local MLB team (with exceptions in New York and Northern California), regional sports networks are beholden to the potentially exorbitant prices MLB teams are able to charge for their broadcasting rights.[168] This price may be passed on to consumers who only have one regional broadcast option for viewing their local MLB team and may be charged a monthly subscription price for access to that network.[169]

Additionally, MLB precludes out-of-market teams from competing with a given region's local team for broadcasting opportunities.[170] This means the New York Yankees may not sell the rights to broadcast their games in another team's home region, such as Boston or Washington D.C.[171] This model prevents teams

---

[161] *See id.*
[162] *Id.* at 10.
[163] *Id.* at 4.
[164] *Id.* at 6-7.
[165] *Id.* at 7.
[166] *Id.*
[167] *Id.*
[168] *See id.* at 7-8.
[169] *See id.* at 7.
[170] *Id.*
[171] *See id.*

from competing against one another for broadcast rights within a given territory.[172]

Despite being anticompetitive on their face, these broadcast rights restrictions may be not only beneficial but necessary to MLB's continued existence and vitality as a sports league.[173] Absent territorial exclusivity arrangements, MLB teams could infringe on other teams 'broadcast opportunities by seeking broadcast relationships within that team's territory, thereby potentially interfering with viewership for the local team.[174]

Local broadcasting deals already generate uneven levels of revenue for their local MLB teams. For example, while the Los Angeles Dodgers bring in approximately $320 million annually, the San Diego Padres local broadcast arrangement only brings in about $60 million per year.[175] It is reasonable to suspect by allowing teams to cross into one another's territories with respect to distribution of broadcasting rights would exacerbate existing revenue-related inequalities amongst MLB teams.[176]

Digital media distribution offers MLB fans the opportunity to watch out-of-market games that fans could not view in their home territories.[177] A fan who intended to watch every game available in a given season could do so by purchasing a subscription for a digital media distributor (like DirecTV or MLB.TV), cable to view the national broadcasts, and a regional sports network.[178] Notably, the content and cost of digital media distribution (both satellite and internet-based) are determined by MLB.[179] Fans 'ability to watch games using digital media is limited by the league's goal of maximizing league revenue through national distribution and protecting each team's ability to generate local revenue through regional network arrangements.[180]

B. THE RELATIONSHIP BETWEEN MLB & MILB: HISTORY AND REALIGNMENT

The unique relationship between major and minor league baseball has reached an historic and unprecedented turning point. In 2020, the most recent Professional Baseball Agreement ("PBA") expired, which has historically governed relations between MLB

---

[172] *Id.*
[173] *See id.*
[174] *See id.*
[175] *Id.*
[176] *See generally id.* at 6-8.
[177] *Id.* at 9.
[178] *Id.*
[179] *Id.*
[180] *Id.*

and MiLB. The negotiations were fraught, but the historic division of financial responsibility between the two leagues meant MLB had the benefit of wielding almost exclusive leverage in the discussions.[181]

The development of MiLB & growth of MLB "have been inextricably linked as far back as the late 19th century."[182] Early fiscal difficulties led to the creation of Player Development Plans ("PDP") wherein MLB executives took financial control over MiLB teams. [183] This facilitated the formal recognition of multiple hierarchized classifications of the minor leagues depending upon player skill level and requiring each MLB team take on many MiLB affiliates.[184]

These relationships were further formalized through Player Development Contracts ("PDCs") between individual MLB teams and their minor league affiliate programs.[185] Under the PDCs, MLB teams agreed to fund baseball operations for their affiliated MiLB teams, including paying salaries for everyone from players and coaches to scouts to medical staff.[186]

The division of financial costs and responsibilities between MLB and MiLB programs have remained consistent over the last several decades, with MLB organizations continuing to fund salaries for managers, coaches, and players.[187] They also retain responsibility for player development decision-making.[188] This financial relationship remains beneficial to MiLB organizations, whose values have consistently risen; some MiLB teams "are now valued as high as $49 million."[189]

These fraught negotiations came to an unsuccessful conclusion on September 30, 2020, when the prior PBA expired without the

---

[181] *See Why MLB's Minor Leagues as You Know Them Will End Sept. 30*, ESPN (Sept. 3, 2020), https://www.espn.com/mlb/story/_/id/29795127/why-mlb-minor-leagues-know-end-sept-30 [hereinafter *MLB's End*].

[182] Theodore McDowell, *Changing the Game: Remedying the Deficiencies of Baseball's Antitrust Exemption in the Minor Leagues*, 9 HARV. J. SPORTS & ENT. L. 1, 4 (2018).

[183] *Id.* at 5.

[184] *Id.*

[185] *Id.*

[186] *Id.* at 5-6.

[187] *Id.* at 6.

[188] *Id.*

[189] *Id.*

sides coming to an agreement on a new one.[190] MLB continues to stand by its proposal to drastically overhaul MiLB, largely to the latter's chagrin.[191] The organizational restructuring led to a reduction in minor league teams affiliated with MLB franchises from 162 to 120.[192]

To call these "negotiations" may be stretching that term's definition to its breaking point, however. MLB retains "all the leverage" in negotiations with MiLB, largely because of the financial divisions that have historically defined their PBAs in the past.[193] Among MLB's alleged justifications for MiLB team contraction is their desire to increase minor league players' salaries and improve players' work conditions, an endeavor which would be even cheaper and would result in fewer players on MiLB payrolls.[194]

MLB's alleged interest in improving working conditions for minor leaguers spurred MLB to announce impending facility upgrade requirements. Shortly after the PBA expired, MiLB owners and executives received MLB's proposed facility standards.[195] What many feared would be an extensive list of expensive changes has turned out to be a relatively benign list of improvements.[196] MiLB ownership has largely balked at the idea of facility improvements, while MLB executives have touted it as a driving motivator behind renegotiating the now-expired PBA.[197]

To the surprise of some MiLB owners, however, the list of required upgrades for most facilities proved not only unsurprising, but a relief; many of the proposed changes are of the kind likely to be paid for by municipalities, rather than MiLB organizations themselves.[198] The changes include sizing requirements for team clubhouses, improved food-prep and dining areas, better field

---

[190] Eric Fisher, *MiLB, MLB Continuing to Negotiate Absent Agreement*, SPORTBUSINESS (Oct. 2, 2020), https://www.sportbusiness.com/news/milb-continuing-to-negotiate-with-mlb-absent-agreement/.

[191] *See id.*

[192] Passan, *supra* note 7.

[193] *Id.*; Patrick OKennedy, *MLB Takeover of Minor League Baseball Is Almost Complete*, SBNATION (Nov. 4, 2020), https://www.blessyouboys.com/2020/11/4/21546362/mlb-takeover-of-minor-league-baseball-is-almost-complete.

[194] Passan, *supra* note 7.

[195] Kevin Reichard, *MiLB Facility Guidelines Released; Owners Sanguine*, BALLPARK DIGEST (Nov. 2, 2020), https://ballparkdigest.com/2020/11/02/milb-facility-guidelines-released-owners-sanguine/.

[196] *Id.*

[197] *Id.*

[198] *Id.*

lighting, overall improved training facilities for players, and separate facilities for female employees where necessary.[199] Not only do many newer MiLB facilities already meet these requirements, but the improvements that will be necessary in the wake of these new standards will likely be funded by municipalities.[200]

The structural relationship between MLB and MiLB could, in the absence of the exemption, possibly be subject to scrutiny under § 2 of the Act.[201] Vertical integration, a practice by which a monopolist "performs multiple stages of production" rather than contracting with external, competing entities.[202] This process has the potential to create a secondary monopoly whereby the monopolist suppresses prices in the production of its necessary goods in order to maximize their own profit margins.[203] Similarly, MLB's control over the business and baseball practices of MiLB represents a potential example of vertical integration which, in the absence of the exemption, could be found by courts to violate Section 2 of the Act.[204]

Although the relationship between MLB and MiLB would arguably violate federal antitrust laws in the absence of the exemption, the effect of that relationship has not been entirely negative.[205] Despite the shock of watching MLB eliminate 40 teams from MiLB affiliation, the minor leagues enjoyed a relatively successful 2021 season.[206] The contraction and overall restructuring of MiLB led to higher wages for minor leaguers, facility improvements, and improved travel conditions.[207] Salaries

---

[199] *Id.*

[200] *See id.* (noting that municipalities generally bear the financial responsibility for "permanent physical improvements," while teams pay for temporary ones only).

[201] Ulm, *supra* note 2, at 234.

[202] *Id.* at 233-34.

[203] *Id.* at 234.

[204] *Id.*

[205] *See generally* Chelsea Janes, *What a Restructured Minor League System Could Mean for Teams Lost in the Shuffle*, WASH. POST (Feb. 27, 2021), https://www.washingtonpost.com/sports/2021/02/27/minor-league-baseball-restructuring/.

[206] *See generally* Mark Feinsand, *Revamped Minor Leagues Enjoy Historic 2021*, MLB.COM (Sept. 23, 2021), https://www.mlb.com/news/minor-league-baseball-has-successful-2021-season.

[207] *Id.*

increased by between 38 and 72%, and greater increases are apparently coming in the future as well.[208]

The reduction in MiLB teams with formal MLB affiliation will allow MLB to regulate things more efficiently like team travel; MLB's restructuring will prevent MiLB teams from having to travel as frequently and as far as they have had to travel for games in the past.[209] MLB's control over MiLB will also mean improved facilities for players going forward, requiring MiLB teams to provide meals for players while they are at work, and potentially future salary increases as well.[210]

C. THE PLIGHT OF MINOR LEAGUERS: MLB'S LABOR POLICIES

While the casual fan may associate professional baseball with the lavish, multi-million dollar contracts make the headlines, the financial status of most minor leaguers could scarcely be more dire.[211] Although the cultural "sanctity" of baseball has long concealed MLB's problematic labor relations with minor leaguers, the veil of secrecy has begun to lift ever so slightly in recent years.[212] MiLB is a large organization employing approximately 6,000 players—but the majority earn less than $10,000 a year for what's often 50-70 hours of labor during each week of MiLB's five-month-long regular season.[213] For most MiLB players, annual net income from playing baseball is between $3,000 and $7,000—figures well below the federal poverty line.[214]

---

[208] *Id.*

[209] Janes, *supra* note 205.

[210] *Id.*

[211] *See* McDowell, *supra* note 182, at 3.

[212] *See* Garrett R. Broshuis, *Touching Baseball's Untouchables: The Effects of Collective Bargaining on Minor League Baseball Players*, 4 HARV. J. SPORTS & ENT. L. 51, 57 (2013).

[213] McDowell, *supra* note 182, at 2.

[214] *Id.* The complaint in *Senne v. Office of the Commissioner of Baseball* describes the pay structure at issue which the lawsuit claims violates the FLSA's minimum wage requirements. Nathaniel Grow, *The Save America's Pastime Act: Special-Interest Legislation Epitomized*, 90 U. COLORADO L. REV. 1013, 1017 (2018) (citing Complaint, Senne v. Off. of the Comm'r of Baseball, No. 3:14-cv-00608-JCS (N.D. Cal. 2014), 2014 WL 1028967 [hereinafter Senne Complaint]. According to the complaint, first-year minor league players are paid a monthly salary of only $1,100, to be paid only during MiLB's regular season. *Id.* For subsequent seasons, minor leaguers are compensated based on a "recommended salary scale," in which the competitive level of play determines a player's available salary range. *Id.* This scale dictates that players at the lowest

In 1962, MLB and MiLB agreed to a Player Development Plan which established MLB teams would fund its MiLB teams and operations, including providing salaries for all players and personnel.[215] While some costs have shifted to minor league team owners since the original Player Development Plan, MLB teams have continued to not only pay all of the salaries for players and personnel, but to make player development decisions.[216] This financial arrangement helps to explain the appallingly low wages paid to minor league players: MLB players have long footed the bill for minor leaguers' salaries without immediately reaping the competitive benefits of retaining those players.[217]

The first Collective Bargaining Agreement (CBA) between MLBPA and MLB came to fruition in 1968 and was the first of its kind in the history of professional sports.[218] The CBA cemented minimum salaries, pension plans, grievance procedures, and other positive benefits for players—all while explicitly limiting the scope of its beneficiaries to *major league* players, specifically.[219] The agreement explicitly stipulated "in making this Agreement the Association represents that it contracts for and on behalf of the

---

competitive level continue to receive only $1,100 a month, and players at the more advanced levels have the opportunity to receive up to $2,700 a month. *Id.* No matter how many years a player has been with MiLB, however, they are still only paid for the five-month regular season. *Id.* This caps the salary for a minor leaguer playing at the highest competitive levels of MiLB at about $16,000 annually. *Id. Senne* further alleges that these pay practices violate the FLSA's overtime pay standards. *Id.* During the season, players may work up to seventy-hour weeks in addition to mandatory (but unpaid) off-season requirements. *Id.* This pay structure means that most MiLB players earn well below the federal minimum wage of $7.25. *Id.* at 1017-18. In response to the plaintiffs' claims that MLB's pay practices violate the FLSA's pay provisions, MLB argued that pre-existing exemptions provided by the FLSA meant that minor leaguers were, in fact, not protected by the law at all. *Id.* at 1019 (citing Answer at 71-77, *Senne*, No. 3:14-cv-00608-JCS, 2014 WL 1028967. These exemptions pertained to "seasonal, amusement or recreational establishments" and workers "employed in a 'bona fide professional capacity.'" *Id.*

[215] Broshuis, *supra* note 212, at 61.

[216] *Id.* at 62.

[217] *See id.* at 62-63.

[218] *Id.* at 70 (citing Jeffrey S. Moorad, *Major League Baseball's Labor Turmoil: The Failure of the Counter-Revolution*, 4 VILL. SPORTS & ENT. L.J. 53, 63 (1997)).

[219] *Id.* at 73.

major league baseball players and individuals who may become major league baseball players during the term of this Agreement."[220]

When a player signs with a minor league team or is drafted by a MLB franchise, they sign a Uniform Player Contract ("UPC").[221] These contracts have the effect of not only reducing minor leaguers' bargaining power, but are arguably fundamentally anticompetitive.[222] These agreements represent the independent yet parallel actions of each MLB franchise to manipulate the market for players, creating a system by which MLB ownership continues to benefit. [223] This seemingly straightforward arrangement for professional baseball's organizational entities has created a complicated and frustrating situation for players on the ground. Requiring MLB to pay player salaries has "created a perverse business incentive" wherein MLB organizations are incentivized to pay MiLB players poverty wages in an effort to keep operation costs down.[224]

MLB's industry-wide pay scale for minor leaguers would undoubtedly violate the Act were it not for their novel antitrust exemption.[225] The exemption allows MLB to functionally collude in depressing salaries for MiLB players.[226] MLB owners set a minimum salary for all MiLB players, which must be the same across all first-year players in the minor leagues, per the Major League Rules ("MLRs").[227] MLB also establishes a cap on signing bonuses for minor leaguers; teams who exceed the cap established by the "Signing Bonus Pool" suffer penalties, such as being assessed additional taxes or losing draft picks.[228]

The Supreme Court remains unwilling to revisit the question of MLB's antitrust exemption, even in the face of would-be antitrust

---

[220] *Id.* at 73-74. Both the MLBPA and the courts have narrowly interpreted the phrase "individuals who may become major league baseball players," thereby perpetuating minor leaguers' exclusion from the MLBPA's protections. *Id.* The result of including this language is the exclusion of minor leaguers from MLBPA's representation and the CBA's protections. *Id.*

[221] Ulm, *supra* note 2, at 230.

[222] *Id.*

[223] *Id.*

[224] McDowell, *supra* note 182, at 7.

[225] *See, e.g.*, Grow, *supra* note 214, at 1018.

[226] McDowell, *supra* note 182, at 10.

[227] *Id.*; *The Official Professional Baseball Rules Book*, MAJOR LEAGUE BASEBALL, Rule 3(c)(2)(B), https://registration.mlbpa.org/pdf/MajorLeagueRules.pdf (last visited April 2, 2022).

[228] *Id.* at Rule 4(A)-(B).

suits brought by minor league players alleging serious labor-related problems. The Supreme Court's recent decision to deny certiorari in *Miranda v. Selig* is illustrative on this question.[229] A group of minor league baseball players sued MLB in 2017, alleging MLB's labor policies with regard to minor league players constituted collusion in violation of § 1 of the Act.[230] The suit was dismissed by the district court and its dismissal affirmed by the Ninth Circuit, citing the Supreme Court's long-held precedent granting MLB an antitrust law exemption.[231] The plaintiffs filed a petition for certiorari to the Supreme Court, attempting to broach not only the issue of baseball's antitrust exemption, but further inquiring into the Curt Flood Act's constitutionality under the equal protection clause.[232]

The Supreme Court denied certiorari, refusing to address any questions proposed by the suit and leaving the antitrust exemption in full effect.[233] It has been argued not even the doctrine of *stare decisis* should continue to protect this plainly egregious exemption.[234] The Supreme Court has subjected industries to the Act despite arguments those industries had developed wholly absent antitrust regulations, and yet refuses to do so for MLB specifically.[235]

Although the courts have proven unwilling to budge on baseball's antitrust exemption, a recent lawsuit took aim at MLB's labor practices without requiring an antitrust reversal. The case, *Senne v. Office of the Commissioner of Baseball*, was filed by former minor league pitcher Garret Broshuis.[236] Broshuis represents current and former minor leaguers in a class action suit alleging

---

[229] *See generally* Blair & Wang, *supra* note 13, at 33 (citing Miranda v. Selig, 138 S. Ct. 507 (2017)).

[230] *Id.* at 32-33 (citing Miranda v. Selig, 860 F.3d 1237 (9th Cir. 2017)).

[231] *Id.* at 33.

[232] *Id.* The Curt Flood Act's purpose is to "make the antitrust laws applicable to the MLB in its dealings with MLB players." *Id.* at 29. However, the Act excludes minor league players. *Id.* at 30.

[233] *Id.* at 33 (citing Miranda v. Selig, 138 S. Ct. 507 (2017)).

[234] Fein, *supra* note 57, at 39.

[235] *Id.* Not only has the Supreme Court frequently reversed precedent when circumstances warranted, but MLB's "interstate imprint" has grown substantially and now yields significant negative effects for the league and its players. *See id.*

[236] Grow, *supra* note 214, at 1014-15; *see also* Senne Complaint, *supra* note 214.

MLB's practices with regard to MiLB violated both the FLSA's federal minimum wage and overtime pay requirements.[237]

Senne was an unprecedented legal challenge to MLB's labor practice with respect to minor leaguers, charging MLB had violated various provisions of the FLSA.[238] These violations included MLB's failure to abide by federal minimum wage and overtime pay rules with regard to minor leaguers.[239] They also included failure to pay minor leaguers for their participation in "off-season" activities, such as spring training, instructional leagues, and other mandatory workout programs—all of which take place outside of MiLB's championship season.[240]

All told, the *Senne* lawsuit was seen by many in MLB and MiLB as a looming threat to "the future of minor league baseball."[241] *Senne* sparked concerns MLB could reduce the financial subsidies provided by teams to their MiLB affiliates in an effort to compensate for increased player payroll costs.[242] MiLB feared a decrease in subsidies could "potentially result in some minor league teams being driven out of business."[243] Crucially, *Senne* remains an active suit, with the Supreme Court recently declining to dismiss the class certification.[244]

The treatment of minor league players would likely violate federal antitrust law in the absence of the exemption.[245] The structure of MiLB player contracts means a single franchise may exert control over a player's career trajectory, pay, and working conditions for several years, denying that player the opportunity to "sell his skills on the open market."[246] It has been argued allowing minor leaguers to compete in an open market for players would allow them to compete for higher wage—a practice currently precluded by MLB's current relationship with MiLB.[247] If MLB

---

[237] Grow, *supra* note 214, at 1015.

[238] *Id.* at 1017.

[239] *Id.*

[240] *Id.*

[241] *Id.* at 1023-24.

[242] *Id.* at 1024 (citing Stanley M. Brand & Andrew J. Giorgione, *The Effect of Baseball's Antitrust Exemption and Contraction on Its Minor League Baseball System: A Case Study of the Harrisburg Senators*, 10 VILL. SPORTS & ENT. L.J. 49, 50 (2003)).

[243] *Id.* at 1024-25 (citing Brand & Giorgione, *supra* note 242).

[244] Passan, *supra* note 7.

[245] Ulm, *supra* note 2, at 246.

[246] *Id.* at 244.

[247] *Id.* at 247 (citing Complaint at 27-28, Miranda v. Selig, No. 14-cv-05349-HSG (N.D. Cal. Sept. 14, 2015), 2015 WL 5357854 [hereinafter Miranda Complaint]).

was precluded from engaging in the kind of anticompetitive practices which operate to suppress minor leaguers' wages, it is possible an open market for players could develop, ultimately resulting in higher wages at the minor league level.[248]

III. PIECEMEAL REFORMS: THE ONLY WAY FORWARD

The very notion of exempting a multi-billion-dollar industry from federal antitrust laws contradicts much about American economic identity.[249] However, in light of legislative developments, lower court decisions, and independent actions taken by MLB in response to public pressure, the antitrust exemption itself no longer can be said to independently influence MLB's business operations.

Some of the antitrust exemption's impacts, such as the ability to maintain stability amongst franchises, have a positive impact on MLB's operations. Other impacts, such as its broadcasting structures, have been solidified by legislation and would endure in the face of the exemption's repeal. The worst of its impacts—including the labor conditions experienced by minor leaguers—can and should be reformed through a combination of piecemeal legislative reform and public pressure on MLB's decisionmakers.

It is worth noting some of the concerns generally surrounding industry monopolies have not come to fruition despite MLB's functional monopoly over professional baseball. While manipulation of output and prices are some of the dominant concerns around monopolies, MLB does not, on its face, appear to be taking advantage of either of these aspects of their business, despite possessing a functional monopoly over professional baseball domestically.[250]

In terms of output, MLB already produces significantly more "product" for consumers than the other sports leagues; MLB teams

---

[248] *See id.* at 240 (citing Miranda Complaint, *supra* note 247). In applying a rule of reason analysis, the court will engage in an in-depth market analysis in determining whether a given practice or agreement is anticompetitive. *See id.* at 250. Given the discretionary nature of the analysis, it is difficult to gauge whether or not the treatment of minor leaguers would be a violation of the Sherman Act under a rule of reason analysis. *See id.* at 251.

[249] *See* Abbot Lipsky, *Protecting Consumers by Promoting Competition,* FED. TRADE COMM'N (Mar. 6, 2017) ("Competition is the fuel that drives America's free-market system."), https://www.ftc.gov/enforcement/competition-matters/2017/03/protecting-consumers-promoting-competition.

[250] *See* Grow, *supra* note 3, at 217.

play nearly double the games that NBA and NHL teams play annually, and the season extends for as long as is practical for weather purposes.[251] It does not appear baseball's singular antitrust exemption has resulted in artificially depleted output in relation to the other professional sports leagues.[252] MLB ticket prices do not appear to reflect monopolistic manipulation, either.[253] The average ticket price for attendance at one of MLB's 162 games is less than half the price charged for attendance at one of the other professional leagues' games.[254]

The cases over the last 20 years seem to indicate, while some courts and Congress may remain open to limiting the scope of the antitrust exemption under particular circumstances, its reversal remains unlikely.[255] Lower courts' unwillingness to break from baseball's long-standing antitrust exemption to any significant degree further cements the notion Congress can change the extent to which baseball may be subject to antitrust scrutiny.[256]

Congressional willingness to interfere in baseball's operational affairs has grown more prevalent in recent years.[257] Congress frequently wields the threat of legislatively repealing the antitrust exemption in order to influence MLB's actions and operations.[258] The limited nature of prior Congressional action with regard to MLB's antitrust exemption suggests Congress may remain unwilling to legislatively repeal the exemption in its entirety. Congress has been relatively selective in determining which issues warranted legislative protection.[259]

Repealing the exemption may actually have a very limited effect on baseball's operations; despite being technically subject to federal antitrust laws, most professional sports leagues engage in similarly anticompetitive conduct under the piecemeal protection of other legal precedents.[260] Additionally, Congress has wielded increasing influence over baseball by threatening revocation of the

---

[251] *Id.* at 218.
[252] *Id.*
[253] *Id.*
[254] *Id.*
[255] *See generally* Citelli, *supra* note 4, at 105.
[256] Ulm, *supra* note 2, at 247.
[257] Citelli, *supra* note 4, at 102.
[258] *Id.*
[259] *Id.* Congress opted to limit the Curt Flood Act of 1998 to issues involving labor protections for major league players, excluding other issues relating to minor leaguers, relocation restrictions, and other practices potentially implicated by antitrust laws. *See* Citelli, *supra* note 4, at 104.
[260] Grow, *supra* note 3, at 215.

antitrust exemption over the years.[261] This has allowed Congress to place legislative pressure on MLB to "extract various pro-competitive concessions," some of which would have been impractical to obtain through the kind of antitrust lawsuits which the exemption's repeal might otherwise make room for.[262] Merely subjecting MLB to federal antitrust law may not have yielded such significant benefits.[263]

Advocates concerned about the negative impacts of MLB's antitrust exemption—especially with respect to minor leaguers ' labor conditions—should focus instead on the enactment of creative, piecemeal legislative improvements. Congress has, at times, taken legislative action to lift the antitrust exemption's hold on certain aspects of MLB's operations.[264] Notably, these piecemeal policy changes have not "wreak[ed] havoc amongst the teams, owners, or players," but rather fostered new, innovative approaches to baseball operations without any significant interruption to the league at large.[265]

While members of Congress proposed and debated various potential revisions to baseball's antitrust exemption—and even extending comparable exemptions to other professional sports leagues—most efforts failed.[266] There has rarely (if ever) been any semblance of broad Congressional support for repealing baseball's antitrust exemption. [267] Some individual representatives have expressed dissatisfaction with baseball's policies or decisions by threatening repeal or limitation, but such threats have never come to fruition.[268]

Despite the Court's repeated appeals to Congress to limit baseball's antitrust exemption insofar as they were willing to, the first legislative action on this question did not arise until 1998.[269] In 1998, Congress passed the Curt Flood Act which not only eliminated the reserve system, but allowed major league baseball players to receive protection under U.S. antitrust laws, even in the face of the league's broader judicial exemption.[270] The Curt Flood

---

[261] *Id.*

[262] *Id.*

[263] *Id.* at 217.

[264] *See* Fein, *supra* note 57, at 39.

[265] *Id.*

[266] *See generally* J. Gordon Hylton, *Why Baseball's Antitrust Exemption Still Survives*, 9 MARQ. SPORTS L. J. 391, 400-02 (1999).

[267] *Id.* at 402.

[268] *See id.*

[269] Ostertag, *supra* note 65, at 65.

[270] Woods, *supra* note 17, at 78.

Act specifically brought major league baseball within the ambit of federal labor legislation by amending the Clayton Act to apply to MLB players.[271]

Although appearing to finally address concerns arising out of the ongoing antitrust exemption, the Curt Flood Act ultimately had only limited scope of influence.[272] It only subjected MLB to antitrust scrutiny with respect to the employment of major league baseball players.[273] This language not only implicitly excludes minor league baseball players by specifying its application to major leaguers only, but goes on to qualify itself as only subjecting MLB to antitrust scrutiny insofar as other professional sports leagues are subject to it.[274]

The Curt Flood Act also gives sole authority to bring suit against MLB for an antitrust violation to major league players themselves, rather than allowing the government or another injured actor to do the same.[275] The Act's limited scope ultimately precludes suits from being brought with respect to agreements involving umpires, franchise expansion or relocation, and minor league baseball operations.[276] Taken together, this means labor relations with respect to minor league baseball players and their contracts, as well as agreements regulating territorial exclusivity within MLB, remain exempt from antitrust scrutiny.[277]

One reason for congressional inaction on MLB's antitrust exemption is MLB's lobbying capabilities.[278] MLB's wealthiest beneficiaries of the antitrust exemption—club owners, for example—have significant resources to allocate to lobbying efforts in their favor; this stands in stark contrast to the few resources available to lobby in favor of minor league players' interests.[279] Minor league players lack both the vast, organized numbers and the political and financial connections allowing MLB ownership to successfully lobby in their own favor with Congress.[280]

MLB and MiLB have a history of effective and aggressive collective lobbying efforts. MiLB has significant reach, with over 160 teams across forty-two states, giving the organization the capacity to "exert influence over a large and geographically diverse

---

[271] Ulm, *supra* note 2, at 237.
[272] *Id.* at 238.
[273] *Id.*
[274] *Id.*
[275] *Id.*
[276] *Id.*
[277] *See generally id.* at 238-39.
[278] *See* Blair & Wang, *supra* note 12, at 38.
[279] *Id.*
[280] *Id.*

group of congressional representatives."[281] The most recent (and damaging) manifestation of these collective lobbying efforts led to the passage of the Save America's Pastime Act (*SAPA*) as part of Congress's 2018 omnibus spending bill.[282]

SAPA first took shape in 2016, when MLB and MiLB successfully lobbied two members of Congress, Representatives Brett Guthrie (R-KY) and Cheri Bustos (D-IL), to introduce the bill in the U.S. House of Representatives.[283] *SAPA* intended to explicitly exempt minor leaguers from the FLSA's pay protections, including minimum-wage and overtime requirements.[284] The original *SAPA* never made it out of the House of Representatives, but its proponents had only to wait a couple of years to see its key elements codified in federal legislation.[285]

Congress's 2018 omnibus spending bill ultimately included a modified, abbreviated version of the *SAPA*.[286] The new *SAPA* included narrower exclusions from the FLSA.[287] Now, players who made "a weekly salary greater than the weekly equivalent of the current minimum wage for a forty-hour work week" during MiLB's regular season would be exempted from the FLSA's pay protections.[288] This meant "as long as players were paid at least $290 per week" for the duration of the five-month season, they received no additional FLSA protections, regardless of the hours worked each week.[289]

While appearing to be a "modest improvement" on the original *SAPA*, this ultimately meant "little more than an additional $60 per month for players at the lowest levels of the minor leagues," while still withholding any compensation for any hours worked over forty each week, along with additional work performed outside of MiLB's regular season.[290]

When MLB sought to get *SAPA* passed, they enlisted minor league owners themselves to participate in the endeavor.[291] One minor league owner expressed an understanding that passing *SAPA*

---

[281] *Id.* at 1025.
[282] Save America's Pastime Act, H.R. 5580, 114th Cong. (2015).
[283] Grow, *supra* note 214, at 1025.
[284] *Id.*
[285] *Id.* at 1028.
[286] *Id.*
[287] *Id.* at 1029.
[288] *Id.*
[289] *Id.*
[290] *Id.*
[291] *MLB's End*, *supra* note 181.

could potentially help stave off the looming threats of contraction.[292] Minor league owners did their part to lobby representatives on behalf of MLB, despite knowing that MiLB players' exemption from federal labor laws would only be further solidified by its passage.[293] *SAPA* passed, and with just a few short paragraphs on page 1,967 of Congress's 2018 $1.3 trillion spending bill, minor leaguers' exemption from federal wage protections was legislatively solidified. [294] Some MiLB owners and their congressional representatives expressed feelings of betrayal when they learned two years later the MiLB contraction would move forward regardless, cutting the MiLB teams from 160 to 120.[295]

Although some congressional representatives—formerly home to some of the 40 MiLB teams eliminated in 2021—had supported the labor restrictions codified by SAPA based on their understanding *SAPA* would save MiLB from contraction, the circumstances have now changed substantially. [296] Some lawmakers, including those who had formerly supported *SAPA* when MLB lobbied for its passage, have expressed concern over MLB's use of the antitrust exemption to shield itself from legal scrutiny, especially in light of the recent MiLB contraction. [297] Given this significant change in circumstances, a pathway toward greater Congressional support for limiting the reach of MLB's antitrust exemption may be opening—even if Congress remains largely unwilling to repeal the exemption entirely.[298]

Congress should commit to a course of action which involves narrow, piecemeal involvement in MLB's business practices. First, Congress should pass legislation amending the Curt Flood Act to bring minor league players within the protections of federal antitrust laws. Doing so would allow minor league players to bring suit with respect to suppressed wages and poor working conditions without requiring courts to abide by the antitrust exemption's restrictions.[299] Minor leaguers' suits have languished and died in the lower courts over the years, unable to be decided on the merits because of the antitrust exemption.[300]

While such legislation would not guarantee the courts would find an antitrust violation had occurred with respect to minor

---

[292] *Id.*
[293] *See id.*
[294] *Id.*
[295] *Id.*
[296] *See generally id.*
[297] *See id.*
[298] *See id.*
[299] *See* Ulm, *supra* note 2, at 247.
[300] *See, e.g.*, *id.*

leaguers 'contracts, it would give them an opportunity to be heard in court which has long been denied to them as a result of the exemption.[301] At the very least, it would give courts the opportunity to meaningfully analyze whether baseball's business practices with respect to minor league players are anticompetitive for the first time in MLB's long history.[302]

Now is the crucial time for Congress to act. With the conclusion of MLB and MiLB's formal business partnership in recent months and MLB's expanding relationships with the Independent Leagues, Congress should act now to establish new labor norms. Once the dust settles between MLB and its new partnership leagues (including the stripped-down minor league franchises who have not been eliminated), it may become increasingly difficult for MLB to adapt to significant operational changes.

Congress should intervene now, when years of momentum on the issue of minor leaguers' pay provides adequate support for such action and professional baseball is in a state of significant flux. Congress could ensure MLB does not continue to take advantage of its antitrust exemption to entrench more problematic labor practices in their relationships with MiLB and the Independent Leagues. While this single legislative action may address only a narrow subset of potential issues stemming from the antitrust exemption, it would also signal to MLB they remain beholden to Congressional pressures and may not exercise complete control over professional baseball absent regulation.

Although Congress retains the ability to influence MLB's business operations through piecemeal legislative reforms, other sources of external pressure may be equally if not more likely to yield positive results for minor leaguers. One reason for MiLB players exclusion from Congressional action has been the lack of representation in negotiations.[303] For example, without a union to represent players, the Curt Flood Act's protections were negotiated

---

[301] Ulm, *supra* note 2, at 248.

[302] *Id.* Contrary to the notion that increasing player salaries is somehow impractical, requiring that each MLB franchise pay each of their signed minor league players a salary of $40,000 annually would lead to less than a 5% increase in each team's annual payroll expenses. *Id.* at 245. In fact, some teams have stepped up to the plate in terms of improving minor league player salaries and working conditions. *Id.* In 2019, the Toronto Blue Jays announced a prospective 50% increase in minor leagues' salaries. *Id.*

[303] Jeremy Venook, *Minor Leagues, Minimum Wages*, THE ATLANTIC (Sept. 21, 2016), https://www.theatlantic.com/business/archive/2016/09/minor-leagues-minimum-wage-lawsuit/500216/.

solely between MLB, MLBPA, and the Minor League Owners Association.[304] Not only do minor leaguers lack their own union through which to negotiate on their own behalf, but they cannot count on representation by MLBPA or MiLB itself.[305]

When it comes to minor leaguers, the MLBPA is caught in the crosshairs of conflicting incentives.[306] On the one hand, MiLB's players are potential future MLB players; on the other, without a spot on the 40-man roster, a minor leaguer cannot claim membership in the union.[307] It is entirely possible going to bat for minor leaguers 'interests could potentially conflict with the MLBPA's duty to represent its members 'best interests.[308]

Minor leaguers, on the other hand, have no formal union.[309] It has been argued unionizing could give minor league players significant leverage in their efforts to improve not only their salaries, but other labor issues such as medical care, players' food and meals, and related working conditions.[310] Although there are no formal external barriers to unionization, MiLB players have failed to unionize in part because MiLB players fear rocking the boat in a way which could "jeopardize the chance of reaching the majors and a big payday."[311]

There are also some structural barriers to unionization built into MiLB itself, including the fact most minor leaguers don't know each other and lack a formal avenue to develop relationships with one another around the league.[312] Because minor league franchises are spread out across the country and players frequently change location, organizing is difficult.[313] Another challenge lies in the sheer diversity of minor leaguers' experiences; some are drafted, some are signed with clubs, some will have a short tenure with MiLB and some will spend their entire professional careers there.[314] Logistical issues pertaining to movement between the majors and the minors contribute to the overall challenge of establishing a union

---

[304] *Id.*

[305] *Id.*; *see also* Grow, *supra* note 214, at 1023-24.

[306] *See* Venook, *supra* note 303.

[307] *Id.*

[308] *See id.*

[309] James Wagner, *Minor Leaguers Lack a Safety Net. A New Group Wants to Create One*, NY TIMES (Mar. 20, 2020), https://www.nytimes.com/2020/03/20/sports/baseball/minor-league-advocates.html?action=click&module=RelatedLinks&pgtype=Article.

[310] Grow, *supra* note 214, at 1040-41.

[311] McDowell, *supra* note 182, at 18; Wagner, *supra* note 309.

[312] *See* Venook, *supra* note 303.

[313] *See generally id.*

[314] *See id.*

for minor leaguers and, as a result, none has ever successfully emerged.

MLB has recently proven they are not immune to public pressure. In response to "mounting pressure from players and advocacy groups," MLB recently announced a policy requiring teams provide housing for minor leaguers beginning in 2022.[315]

Public outcry over minor leaguers' working conditions has swelled in recent years as advocacy organizations like Advocates for Minor Leaguers and More Than Baseball have worked to bring minor leaguers 'stories into the public eye.[316] These organizations have helped mobilize a larger discourse in part through social media use, demonstrating more organized efforts at advocacy amongst minor leaguers than has occurred previously.[317] Some have hinted this could signal a move toward minor league players unionization at some point in the future.[318]

IV. CONCLUSION

Baseball's antitrust exemption, solidified over 50 years' worth of Supreme Court decisions, remains a lasting, unpopular aberration in sports law. While the exemption is not without its faults, its impacts may be overblown in some respects, even if its impact is not entirely positive. In some respects, the exemption is merely the earliest version of a status quo developed legislatively over several decades. The impact of the exemption for MLB's operations has arguably resulted in some benefits as well, including greater stability within the league and amongst franchises.

The exemption wields significant influence with respect to MLB's business operations, but its enduring impact stems in large part from legislative re-entrenchment. Congress can and should take a more active role in adopting piecemeal legislation designed to remedy the individual problems which do arise from the exemption. Some of them—such as low wages for minor league players—require urgent attention. At a minimum, Congressional pressure could motivate MLB to pursue pro-competitive practices and policies. Given the recently restructured relationship between MLB and MiLB and some positive developments intended to benefit minor leaguers, now is the time for Congress to adopt legislation. This will not only benefit the players, but also signal to MLB that

---

[315] Passan, *supra* note 7.
[316] *Id.*
[317] *Id.*
[318] *Id.*

while it may retain a formal exemption from federal antitrust laws, MLB is not immune to regulation.