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Megan Young

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COMMENT

THREE STRIKES, YOU'RE OUT: EXAMINING THE BASEBALL TRILOGY AND THE PATH TO REMOVING ITS ANTITRUST EXEMPTION

MEGAN YOUNG*

There is no denying that baseball holds a special place in the heart of many Americans.¹ Since its inception, the sport has nourished a sense of community and nostalgia throughout cities across the nation.² However, behind America's pastime lies a puzzling, century-old precedent that plagues the baseball industry to this day.³ In 1922, the Supreme Court in *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*⁴ held that the "business of . . . [b]aseball" was not subject to the Sherman Antitrust Act⁵ because the "exhibitions of base ball" were not considered interstate commerce.⁶ Even more peculiar, the Supreme Court upheld this opinion on two separate occasions on the basis of congressional intent and stare decisis.⁷ The reasoning within these opinions bears virtually no resemblance to modern-day antitrust precedent.⁸ Furthermore, no major

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1. Aaron T. Walker, *Title VII & MLB Minority Hiring: Alternatives to Litigation*, 10 U. PA. J. BUS. & EMP. L. 245, 265 (2007) ("The courts and Congress seemingly hold baseball in high esteem. In part, it may be the nostalgia of baseball as 'America's pastime' that allows judges and lawyers, many of whom grew up during the pinnacle of baseball's popularity, to see baseball through rose-colored glasses.").

2. *Id.*

3. *Fed. Baseball Club of Balt., Inc. v. Nat'l League of Pro. Baseball Clubs*, 259 U.S. 200 (1922).

4. 259 U.S. 200 (1922).

5. Sherman Antitrust Act, 15 U.S.C. §§ 1–38.

6. *Fed. Baseball*, 259 U.S. at 202, 208.

7. See *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356 (1953) (per curiam) (upholding the ruling in *Federal Baseball*); *Flood v. Kuhn*, 407 U.S. 258 (1972) (same).

8. See *infra* Section II.A.

professional sport besides baseball has ever been awarded such a privilege.⁹ Yet, this line of precedent, coined the “Baseball Trilogy,” has prevailed for over a century.¹⁰

Baseball’s antitrust exemption has come with significant ramifications, such as labor violations in the minor leagues and anticompetitive practices relating to franchise relocation and intellectual property.¹¹ As a result, the Baseball Trilogy has been subject to criticism among the legal community for over one hundred years.¹² While Congress has introduced several bills in recent years to remove baseball’s antitrust exemption, these efforts have continuously died in committees.¹³ However, recent Supreme Court decisions, as well as statements from current justices, provide hope for the future.¹⁴ In fact, a case on appeal before the United States Court of Appeals for the Second Circuit may just be the ticket to removing the exemption once and for all.¹⁵ The plaintiffs, a group of minor league players, have expressed that the Second Circuit should hand the case over to the Supreme Court with a simple note attached: “Enough already.”¹⁶ After a century of unfair and outdated precedent, it is time for the Supreme Court to reconsider the Baseball Trilogy.¹⁷

9. Antitrust cases from other major sports industries demonstrate the glaring inconsistencies behind baseball’s antitrust exemption. *See, e.g.,* Radovich v. Nat’l Football League, 352 U.S. 445 (1957) (holding that football was not exempt from the Sherman Antitrust Act); Haywood v. Nat’l Basketball Ass’n, 401 U.S. 1204 (1971) (holding that basketball is subject to federal antitrust regulation); *McCourt v. Cal. Sports, Inc.*, 600 F.2d 1193 (6th Cir. 1979) (emphasizing that no sport, including professional hockey, enjoys the same antitrust privileges as baseball).

10. The Baseball Trilogy is a line of precedent including three cases that demonstrate the Supreme Court’s standard for antitrust regulation over the baseball industry: *Fed. Baseball Club of Balt., Inc. v. Nat’l League of Pro. Baseball Clubs*, 259 U.S. 200 (1922); *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356 (1953) (per curiam); *Flood v. Kuhn*, 407 U.S. 258 (1972). *See* Colleen Ganin, Note, *With San José at Bat, Federal Baseball is in the Bottom of the Ninth*, 56 ARIZ. L. REV. 1129, 1130 n.4 (2014).

11. *See infra* Section II.C.1.

12. *See infra* Section II.B.3.

13. Mike Lee’s Competition in Baseball Act, S. 1111, 117th Cong. (2021), as well as Bernie Sanders’ Save American Baseball Act, S. 3833, 117th Cong. (2022), are currently resting in Congressional Committees. *See infra* Section II.C.2.

14. *See infra* Section II.C.3.

15. *Nostalgic Partners, LLC v. Off. of the Comm’r of Baseball*, No. 1:21-cv-10876 (S.D.N.Y. Oct. 26, 2022), *appeal docketed*, No. 22-2859 (2d Cir. Nov. 1, 2022); Plaintiff’s Response to United States’ Statement of Interest at 3, *Nostalgic Partners*, No. 1:21-cv-10876 (S.D.N.Y. Dec. 12, 2022) (“This case should proceed to the Second Circuit and then to the Supreme Court, so the high court can revisit its century-old precedent that no longer has any foundation in law or policy.”).

16. Ronald Blum, *Justice Department: MLB Antitrust Exemption Should be Narrow*, AP NEWS (Feb. 1, 2023), <https://apnews.com/article/us-supreme-court-mlb-sports-new-york-yankees-manchattan-d894e0fff7be59617544f127c6579309>.

17. *Id.*

Part I of this Comment will discuss the history behind baseball's antitrust exemption.¹⁸ First, this Part will discuss the events that prompted the Supreme Court's review of the baseball industry, as well as Justice Holmes' reasoning in *Federal Baseball*.¹⁹ Second, this Part will examine the subsequent Supreme Court cases that challenged *Federal Baseball*, as well as the developments in the law following the Baseball Trilogy.²⁰ Finally, Part I will briefly discuss the antitrust standards that apply among other major sports industries in the U.S.²¹

Part II of this Comment will argue that the Baseball Trilogy should be overturned by the Supreme Court because its reasoning is flawed and outdated, as well as harmful to players and fans.²² First, Part II will challenge the reasoning of each case within the Baseball Trilogy, as well as its validity in comparison to modern-day precedent.²³ Second, Part II will demonstrate how baseball's antitrust exemption produces a biased and unpractical standard within the U.S. sports industry.²⁴ Third, Part II will discuss the long-time struggle of minor league players and how a removal of this exemption would benefit such players, as well as fans and team owners.²⁵ Finally, Part II will argue that the Supreme Court, as opposed to Congress, is the best vehicle for removing the antitrust exemption.²⁶

I. BACKGROUND

The United States' baseball industry has enjoyed an exemption from federal antitrust laws for over a century since the Supreme Court's decision in *Federal Baseball*.²⁷ In this 1922 opinion, Justice Holmes held that the "business of . . . [b]aseball" was not subject to the Sherman Antitrust Act because the "exhibitions of base ball" did not constitute interstate commerce.²⁸ This landmark decision would usher in a line a precedent, coined the Baseball Trilogy, which demonstrates the Supreme Court's steadfast reliance on congressional inaction and stare decisis as a means of

18. See *infra* Part I.

19. See *infra* Section I.A.

20. See *infra* Section I.B.

21. See *infra* Section I.C.

22. See *infra* Part II.

23. See *infra* Section II.A

24. See *infra* Section II.B.

25. See *infra* Section II.C.

26. See *infra* Section II.C.

27. See *Fed. Baseball Club of Balt., Inc. v. Nat'l League of Pro. Baseball Clubs*, 259 U.S. 200 (1922) (holding that the business of baseball was a purely state-affair because it failed to satisfy the definition of interstate commerce as defined by the Sherman Antitrust Act).

28. *Id.* at 202, 208.

protecting baseball's antitrust exemption.²⁹ Remarkably, this exemption has not been applied equally to other major professional sports organizations, such as the National Football League ("NFL"), the National Basketball Association ("NBA"), and the National Hockey League ("NHL").³⁰

This Section provides an overview of: (1) the origins of baseball's antitrust exemption;³¹ (2) the legal challenges and developments in the law following *Federal Baseball*;³² and (3) a brief summary of antitrust precedent in other major U.S. sports industries, including football, basketball, and hockey.³³

A. The Origins of Baseball's Antitrust Exemption

In 1890, Congress enacted the Sherman Antitrust Act ("SAA").³⁴ One of the major components of establishing standing under the SAA is the finding that a business is engaged in interstate commerce.³⁵ This is the precise concern that the Supreme Court addressed in *Federal Baseball*.³⁶ On review, the 1922 Supreme Court held that the business of baseball was not considered interstate commerce because the "exhibitions of base ball" were performed entirely within state-lines.³⁷ Furthermore, the Court held the travel of players was "a mere incident" to the business of baseball.³⁸ As a result, the Court concluded that baseball was not subject to antitrust regulation under the SAA.³⁹

1. The Sherman Antitrust Act Governs the Relationship Between Antitrust Law and the Baseball Industry

The SAA established the foundation for federal antitrust regulation by prohibiting the formation of monopolies and removing restraints upon free trade.⁴⁰ The Supreme Court established that the significance of the SAA lies

29. See *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356, 357 (1953) (per curiam) (upholding the ruling in *Federal Baseball* on the basis of congressional intent and stare decisis); *Flood v. Kuhn*, 407 U.S. 258, 261 (1972) (same).

30. See generally *Radovich v. NFL*, 352 U.S. 445 (1957); *Haywood v. NBA*, 401 U.S. 1204 (1971); *McCourt v. Cal. Sports, Inc.*, 600 F.2d 1193 (6th Cir. 1979).

31. See *infra* Section I.A.

32. See *infra* Section I.B.

33. See *infra* Section I.C.

34. See *infra* Section I.A.1.

35. See *infra* Section I.A.1.

36. See *infra* Section I.A.2.

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

38. *Id.* at 209; see *infra* Section I.A.2.

39. See *infra* Section I.A.2.

40. Jeffrey Gordon, Note, *Baseball's Antitrust Exemption and Franchise Relocation: Can a Team Move?*, 26 *FORDHAM URB. L.J.* 1201, 1203-04 (1999).

in the belief that “unrestrained interaction of competitive forces would lead to ‘the best allocation of economic resources, the lowest prices, the highest quality and the greatest material progress,’ while at the same time preserving political and social institutions.”⁴¹ Sports organizations typically bring antitrust violations under section 1 of the SAA.⁴² Section One serves to protect consumers within the market by obstructing “competitors from entering into agreements or taking actions that unreasonably would eliminate or reduce competition.”⁴³ In order to bring a successful claim under Section One, a plaintiff must prove: “(1) a contract, combination or conspiracy between two or more individuals or entities, (2) causing an unreasonable restraint of trade and (3) having an impact on interstate commerce.”⁴⁴ The foundation of the Baseball Trilogy rests upon *Federal Baseball*’s interpretation of the third prong of this test.⁴⁵ When *Federal Baseball* was written, an entity was not subject to the SAA if it did not engage in interstate commerce.⁴⁶ Whether or not an industry is subject to the SAA not only affects competitive practices but also labor and employment relations, such as bargaining rights and unionization.⁴⁷

2. *The Supreme Court Ruled that Baseball Was Not Subject to the Sherman Antitrust Act*

In 1922, the United States Supreme Court ruled that the baseball industry was exempt from antitrust regulation because the “exhibitions of base ball” did not qualify as interstate commerce.⁴⁸ The origins of this controversial ruling date back to when the industry was dominated by Organized Baseball, a sports association comprised of two separate leagues, the American League (“AL”) and the National League (“NL”).⁴⁹ In 1913, a third competitor, the Federal League (“FL”), emerged within the baseball

41. *Id.* (citing *N. Pac. Ry. Co. v. United States*, 356 U.S. 1, 4–5 (1958)).

42. Gordon, *supra* note 40, at 1204.

43. *Id.*

44. *Id.* at 1204–05.

45. See *Fed. Baseball Club of Balt., Inc. v. Nat’l League of Pro. Baseball Clubs*, 259 U.S. 200 (1922) (hinging its analysis on the determination of whether baseball was considered interstate commerce).

46. *Id.*

47. See William B. Gould IV, *Labor Issues in Professional Sports: Reflections on Baseball, Labor, and Antitrust Law*, 15 STAN. L. & POL’Y REV. 61 (2004), for a more detailed discussion on the relationship between the SAA and labor disputes in the baseball industry.

48. *Fed. Baseball*, 259 U.S. at 208.

49. See Joseph J. McMahon, Jr. & John P. Rossi, *A History and Analysis of Baseball’s Three Antitrust Exemptions*, 2 VILL. SPORTS & ENT. L.F. 213, 231 (1995) (providing a comprehensive overview of the history of baseball as it relates to league development).

industry.⁵⁰ The FL quickly became a fierce competitor in many cities dominated by Organized Baseball by attracting talented athletes with “player-friendly contracts.”⁵¹ In fact, roughly eighty players abandoned Organized Baseball in pursuit of FL franchises.⁵² The addition of a new league was a beneficial shift for players considering that the average yearly salary increased from \$3,200 to \$7,300.⁵³

While the rise of the FL was beneficial to many players, it spurred major tension with Organized Baseball.⁵⁴ Consequently, the AL and NL sought to frustrate the FL’s progress by refusing to honor contracts and participating in “player-raiding.”⁵⁵ In 1915, the final straw for the FL occurred when Organized Baseball refused to accommodate its merger inquiries.⁵⁶ Consequently, the FL filed a lawsuit against both of the leagues in the United States District Court for the Northern District of Illinois, arguing that Organized Baseball had violated the SAA.⁵⁷

The initial case appeared before Judge Kenesaw Mountain Landis, an avid baseball fan and future Commissioner of Organized Baseball.⁵⁸ In an effort to protect America’s pastime from antitrust regulation, Judge Landis obstructed proceedings for roughly a year by taking the matter under advisement.⁵⁹ During this time, seven of the eight teams from the FL grew frustrated with the constant roadblocks in litigation and struggled to afford the endless legal fees.⁶⁰ Consequently, all but one franchise entered into

50. The FL managed to quickly gain traction in the industry considering that baseball’s record setting profits that year attracted many willing investors. *See id.* at 233.

51. Avraham J. Sommer, *The National Pastime of the American Judiciary: Reexamining the Strength of Major League Baseball’s Antitrust Exemption Following the Passage of the Curt Flood Act and the Supreme Court’s Ruling in American Needle, Inc. v. NFL*, 19 SPORTS LAWS. J. 325, 327 (2012) (“Under Federal League contracts, players received automatic annual salary increases of 5% and were eligible for free agency after ten years of service in the league.”).

52. *Id.* at 327–28.

53. *Id.* at 328.

54. McMahon & Rossi, *supra* note 49, at 231.

55. Player-raiding involves convincing players to break their contractual obligations with one league in order to receive a higher salary in a different league. *See id.* at 233.

56. Nathaniel Grow, *Defining the “Business of Baseball”: A Proposed Framework for Determining the Scope of Professional Baseball’s Antitrust Exemption*, 44 U.C. DAVIS L. REV. 557, 566 (2010).

57. McMahon & Rossi, *supra* note 49, at 233.

58. *Id.* at 234.

59. *Id.*

60. *Id.* (“As the novelty of the Federal League wore off, attendance dropped at League games. Since the Federal League had no minor league affiliations, the Federal clubs were forced to carry approximately thirty players per team and the increased salary expense associated with a large roster. With the death of Robert Ward, one of the Federal League’s most significant financial backers, in October, 1915, all financial ‘indicators’ pointed toward a settlement.” (footnotes omitted) (quoting HAROLD SEYMOUR, *BASEBALL: THE GOLDEN AGE* 230 (1971))).

settlements with Organized Baseball resulting in the dissolution of the FL.⁶¹ These settlement agreements prompted Judge Landis to dismiss the case with the consent of all three leagues.⁶²

The Baltimore Terrapins (the “Terrapins”) refused to settle with Organized Baseball and proceeded to file a new lawsuit against the leagues in federal court.⁶³ The Terrapins argued that Organized Baseball violated the SAA when it dissolved the FL.⁶⁴ Furthermore, the Terrapins alleged that the nature of baseball’s reserve system was in conflict with the provisions of the SAA.⁶⁵ Initially, the district court found in favor of the Baltimore Terrapins.⁶⁶ However, Organized Baseball appealed to the D.C. Court of Appeals, which reversed the district court and remanded the decision.⁶⁷ The Terrapins appealed the decision, and the Supreme Court granted certiorari.⁶⁸

In an unanimous opinion by the Supreme Court, Justice Holmes explained that the baseball industry was exempt from antitrust regulation because the “exhibitions of base ball” did not satisfy the definition of interstate commerce under the SAA.⁶⁹ The Court began its analysis by conceding that baseball certainly involved the travel of players across state lines.⁷⁰ However, Justice Holmes reasoned that such movement across state lines was “a mere incident,” and thus, did not alter the nature of the game itself.⁷¹ The Court illustrated this point by using an analogy.⁷² It explained

61. *Id.*

62. *Id.* (“Under the settlement agreement, Organized Baseball paid \$600,000 to dissolve the Federal League.”).

63. *Id.* at 235.

64. *Id.*

65. *Id.* Baseball’s reserve system was created in 1879 when the franchises within the National League agreed that each team “had the right to ‘reserve’ their players, making them ineligible to play for another team, and could sell reserved players at will.” Christian L. Neufeldt, *Redeeming the Supreme Court: The Structure Behind the Baseball Trilogy and the Scope of the Baseball Antitrust Exemption*, 27 J. INTELL. PROP. L. 21, 28 (2019) (citing STUART BANNER, *THE BASEBALL TRUST: A HISTORY OF BASEBALL’S ANTITRUST EXEMPTION* 4–6 (2013)).

66. Sommer, *supra* note 51, at 328.

67. Nat’l League of Pro. Baseball Clubs v. Fed. Baseball Club of Balt., Inc., 269 F. 681 (D.C. Cir. 1921).

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

69. *Id.* at 208.

70. *Id.* at 208 (“Of course the scheme requires constantly repeated travelling on the part of the clubs, which is provided for, controlled and disciplined by the organizations, and this it is said means commerce among the States.”).

71. *Id.* at 209. (“According to the distinction insisted upon in *Hooper v. California*, 155 U.S. 648, 655, the transport is a mere incident, not the essential thing. That to which it is incident, the exhibition, although made for money would not be called trade or commerce in the commonly accepted use of those words. As it is put by the defendants, personal effort, not related to production, is not a subject of commerce.”).

72. *Id.*

that if a lawyer were sent across state lines to litigate a case, then one would not assert that the firm is engaged in interstate commerce.⁷³ Similarly, sending players across state lines does not categorize baseball as interstate commerce considering that the game itself is conducted solely within state lines.⁷⁴ As a result, the Court concluded that “exhibitions of base ball” were “purely state affairs,” and thus, failed to satisfy the third element necessary to fall under the scope of the SAA.⁷⁵ Therefore, the Court found it appropriate to dismiss the Baltimore Terrapins’ antitrust claims because baseball games were not considered interstate commerce.⁷⁶

B. Challenges to Federal Baseball Failed

Following the *Federal Baseball* opinion, the Second Circuit demonstrated a shift in ideology regarding baseball’s antitrust exemption in *Gardella v. Chandler*⁷⁷ when it expressed that there was “little doubt” that baseball was subject to the SAA.⁷⁸ However, in 1953, the Supreme Court ignored the Second Circuit’s reasoning in *Gardella* when it decided *Toolson v. New York Yankees, Inc.*⁷⁹ Instead, the Court held that congressional inaction and stare decisis protected baseball’s antitrust exemption.⁸⁰ In 1971, the Supreme Court recycled this reasoning in *Flood v. Kuhn*,⁸¹ the final case within the Baseball Trilogy.⁸² Roughly twenty years after the conclusion of the Baseball Trilogy, Congress enacted the Curt Flood Act of 1998⁸³ which provided a narrow exception to baseball’s antitrust exemption by subjecting major leagues employment issues to the SAA.⁸⁴ In the judiciary, the Baseball Trilogy spurred confusion among lower courts resulting in three lines of interpretation regarding baseball’s antitrust exemption.⁸⁵

1. The Supreme Court Upheld Federal Baseball

In 1949, the Second Circuit demonstrated a shift in ideology that implied disapproval of *Federal Baseball*’s ruling when it decided *Gardella*

73. *Id.*

74. *Id.*

75. *Id.* at 208; *see supra* note 44 and accompanying text.

76. *Fed. Baseball*, 259 U.S. at 209.

77. 172 F.2d 402 (2d Cir. 1949)

78. *Id.* at 412; *see infra* Section I.B.1.

79. 346 U.S. 356 (1953) (per curiam); *see infra* Section I.B.1.

80. *Toolson*, 346 U.S. at 357.

81. 407 U.S. 258 (1972).

82. *See infra* Section I.B.2.

83. Curt Flood Act of 1998, Pub. L. No. 105-297, 112 Stat. 2824.

84. *See infra* Section I.B.3.

85. *See infra* Section I.B.3.

v. Chandler.⁸⁶ Danny Gardella, a former New York Giants player, was one of the many athletes who was blacklisted from Major League Baseball (“MLB”) as a form of punishment for participating in the Mexican League, a major competitor of the MLB.⁸⁷ In response, Gardella filed suit against the MLB alleging that the organization had violated the SAA.⁸⁸ The district court dismissed the case on the grounds that *Federal Baseball* exempted the industry from antitrust regulation.⁸⁹ Gardella appealed to the United States Court of Appeals for the Second Circuit.⁹⁰

The Second Circuit explained that several advancements had occurred in baseball since the Supreme Court’s decision in 1922.⁹¹ Most notably, baseball was no longer considered a purely state affair.⁹² Expensive contracts now existed that allowed baseball games to be broadcasted all over the country using the radio and television.⁹³ Consequently, Judge Frank acknowledged that the circumstances surrounding the baseball industry “leave little doubt that the Constitutional power of Congress, under the commerce clause, extends to such a situation.”⁹⁴ Therefore, while the Second Circuit was bound to the Supreme Court’s opinion, it determined that baseball was likely subject to antitrust regulation.⁹⁵ However, upon learning of this conclusion, the MLB acted swiftly to settle the matter with Gardella outside of court.⁹⁶

The *Gardella* opinion led Congress to assume that the courts had resolved the inconsistencies within the *Federal Baseball* opinion, and thus, legislation was unnecessary.⁹⁷ This congressional inaction, or perhaps misunderstanding, would become the rationale behind future Supreme Court decisions that sought to protect *Federal Baseball* from reversal.⁹⁸ In fact, the

86. 172 F.2d 402, 412 (2d Cir. 1949).

87. In 1946, the Mexican League emerged as a major competitor of Organized Baseball. Similar to the Federal League, the Mexican League offered high salaries to American players in order to gain traction in the industry. Gardella was one of the many players who broke their contracts with Organized Baseball in pursuit of a higher salary. When the Mexican League collapsed in 1947, Organized Baseball was eager to teach a lesson to those who “jumped ship.” See Sommer, *supra* note 51, at 329.

88. *Gardella*, 172 F.2d at 403.

89. *Gardella v. Chandler*, 79 F. Supp. 260, 263 (S.D.N.Y. 1948).

90. *Gardella*, 172 F.2d at 403.

91. *Id.* at 403–04.

92. *Id.*

93. *Id.*

94. *Id.* at 412.

95. *Id.*

96. Larry C. Smith, *Beyond Peanuts and Cracker Jack: The Implications of Lifting Baseball’s Antitrust Exemption*, 67 U. COLO. L. REV. 113, 118 (1996).

97. Sommer, *supra* note 51, at 329.

98. *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356, 357 (1953) (per curiam); *Flood v. Kuhn*, 407 U.S. 258, 261 (1972).

controversy would resurface in just a few years when *Toolson v. New York Yankees, Inc.* came before the Court in 1953. George Toolson, a minor league player, was blacklisted by the MLB Commissioner for reserve clause violations.⁹⁹ The Yankees assigned Toolson to a new minor league club; however, he refused to report.¹⁰⁰ According to the reserve clause in Toolson's contract, he did not have the authority to negotiate his transfer.¹⁰¹ Consequently, Toolson filed suit against the New York Yankees alleging that the reserve system violated the SAA.¹⁰²

In a 7-2 opinion, the Court upheld *Federal Baseball* in a single paragraph.¹⁰³ The Court briefly explained that Congress had contemplated the revision of baseball's antitrust exemption, yet no legislation had ever been introduced.¹⁰⁴ Because of this inaction, the baseball industry relied on the exemption for over thirty years.¹⁰⁵ As a result, the Court concluded that *Federal Baseball* deserved the benefit of stare decisis because subjecting the baseball industry to antitrust laws would be a change that falls outside of the scope of the judiciary's authority.¹⁰⁶ In his dissent, Justice Burton heavily scrutinized the majority's refusal to acknowledge that baseball was engaged in interstate commerce.¹⁰⁷ However, Justice Burton conceded that the issue before the Court was a matter left for Congress to decide.¹⁰⁸ Consequently,

99. Sommer, *supra* note 51, at 330–31.

100. *Id.*

101. *Id.*

102. *Toolson*, 346 U.S. at 356.

103. *Id.* at 357.

104. *Id.*

105. *Id.*

106. *Id.*

107. Justice Burton listed the many reasons why the majority opinion was flawed in failing to acknowledge that baseball was engaged in interstate commerce:

In the light of organized baseball's well-known and widely distributed capital investments used in conducting competitions between teams constantly traveling between states, its receipts and expenditures of large sums transmitted between states, its numerous purchases of materials in interstate commerce, the attendance at its local exhibitions of large audiences often traveling across state lines, its radio and television activities which expand its audiences beyond state lines, its sponsorship of interstate advertising, and its highly organized 'farm system' of minor league baseball clubs, coupled with restrictive contracts and understandings between individuals and among clubs or leagues playing for profit throughout the United States, and even in Canada, Mexico and Cuba, it is a contradiction in terms to say that the defendants in the cases before us are not now engaged in interstate trade or commerce as those terms are used in the Constitution of the United States and in the Sherman Act.

Id. at 357–58 (Burton, J., dissenting).

108. *Id.* at 364.

the Supreme Court silenced the concerns raised by the Second Circuit through the *Toolson* ruling.¹⁰⁹

2. The Supreme Court Refused to Overturn Baseball's Exemption for a Final Time

In 1972, the Supreme Court, once again, confirmed its reluctance to overturn *Federal Baseball* in the *Flood v. Kuhn* opinion.¹¹⁰ This case arose from Curtis Flood's refusal to comply with baseball's reserve system.¹¹¹ Flood started his career with the Cincinnati Reds.¹¹² In 1958, Flood was traded to the Cardinals where he gained notoriety and experienced the peak of his baseball career.¹¹³ However, during the 1969 season, Flood was traded to the National League's Philadelphia Phillies.¹¹⁴ Flood vehemently opposed this transfer since he had no role in the negotiation process under the reserve clause.¹¹⁵ He contacted the MLB commissioner, Bowie Kuhn, and requested to be declared a free agent.¹¹⁶ However, Kuhn declined the request.¹¹⁷ Flood sued Kuhn in federal district court arguing that the reserve clause violated federal antitrust laws.¹¹⁸

In a 5-3 opinion, Justice Black carved out an exception to protect the baseball industry from losing its exemption.¹¹⁹ The Court asserted that the body of precedent on this issue was well-established and "fully entitled to the benefit of stare decisis."¹²⁰ The Court explained that these circumstances do not warrant a departure from stare decisis because the antitrust exception "rests on a recognition and an acceptance of baseball's unique characteristics

109. *Id.* at 356 (majority opinion).

110. 407 U.S. 258, 285 (1972).

111. *Id.* at 265.

112. *Id.* at 264.

113. *Id.*

114. *Id.* at 265.

115. *Id.*

116. Flood's letter to Kuhn read: "After 12 years in the Major Leagues, I do not feel I am a piece of property to be bought and sold irrespective of my wishes. I believe any system which produces that result violates my basic rights as a citizen." See Roger I. Abrams, *Blackmun's List*, 6 VA. SPORTS & ENT. L.J. 181, 183 n.14 (2007).

117. *Id.*

118. *Flood v. Kuhn*, 407 U.S. 258 (1972).

119. *Id.* at 282 ("With its reserve system enjoying exemption from the federal antitrust laws, baseball is, in a very distinct sense, an exception and an anomaly. *Federal Baseball* and *Toolson* have become an aberration confined to baseball.").

120. *Id.* ("Even though others might regard this as 'unrealistic, inconsistent, or illogical,' the aberration is an established one, and one that has been recognized not only in *Federal Baseball* and *Toolson*, but in *Shubert*, *International Boxing*, and *Radovich*, as well, a total of five consecutive cases in this Court." (citation omitted) (citing *Radovich v. NFL*, 352 U.S. 445, 452 (1957))).

and needs.”¹²¹ Additionally, the Court reinforced the legislative inaction argument from prior cases by explaining that Congress’ failure to enact reform is sufficient evidence to conclude that modifications are unnecessary.¹²² Moreover, the Court reiterated that the baseball industry has developed for decades under the pretense that antitrust laws do not apply to its business dealings.¹²³ The Court explained that the “retroactive effect” of repealing such an pivotal aspect of the industry would be outside the scope of the judiciary.¹²⁴ As a result, the Supreme Court upheld the ruling in *Federal Baseball*.¹²⁵

3. *After the Baseball Trilogy, Progressions in the Law Failed to Remedy Inequities in the Minor Leagues and Spurred Confusion Among Lower Courts*

Several years after the conclusion of the Baseball Trilogy, Congress finally adopted a narrow exception to baseball’s antitrust exemption with the enactment of the Curt Flood Act (“CFA”) in 1998.¹²⁶ The CFA provided Major League Baseball players with relief from the antitrust exemption by granting them the right to challenge their employers for labor and employment violations.¹²⁷ However, the CFA was careful to emphasize that this legislation applied only to matters involving employment disputes between the MLB and its players.¹²⁸ In fact, section B of the CFA delineated a number of matters that are still specifically excluded from antitrust regulation, including: “minor league baseball, the amateur draft, the relationship between the major leagues and the minors, franchise relocation, intellectual property, the Sports Broadcasting Act, and umpires”¹²⁹ The legislative history behind the CFA confirms that Congress intended this reform to leave antitrust precedent practically untouched.¹³⁰ Consequently,

121. *Id.* (“With its reserve system enjoying exemption from the federal antitrust laws, baseball is, in a very distinct sense, an exception and an anomaly.”).

122. *Id.* at 283 (“The Court, accordingly, has concluded that Congress as yet has had no intention to subject baseball’s reserve system to the reach of the antitrust statutes. This, obviously, has been deemed to be something other than mere congressional silence and passivity.”).

123. *Id.* at 290.

124. *Id.* at 274.

125. *Id.*

126. Curt Flood Act of 1998, 15 U.S.C. § 27a.

127. *Id.*

128. *Id.*

129. John T. Wolohan, *The Curt Flood Act: The Curt Flood Act of 1998 and Major League Baseball’s Federal Antitrust Exemption*, 9 MARQ. SPORTS L.J. 347, 367–68 (1999).

130. While Congress discussed the CFA, Senator Paul Wellstone expressed concerns regarding how the CFA would be interpreted by courts. He levied his approval upon the reassurance that precedent would remain otherwise intact. Senators Orrin Hatch and Patrick Leahy promised that the CFA was “intended to have no effect other than to clarify the status of major league players under

the CFA had no discernable impact on the precedent set forth in the Baseball Trilogy.¹³¹

Developments in baseball's antitrust exemption have not only occurred in the legislative branch but among courts, as well.¹³² Lower courts have struggled to establish a workable and consistent standard for assessing which issues fall under the scope of the antitrust exemption.¹³³ Instead, jurisdictions across the United States have created "their own muddled, conflicting standards, resulting in three general categories of divergent precedent."¹³⁴ The first category of cases includes jurisdictions that endorse a broad interpretation of precedent, finding little to no purpose for antitrust regulation in baseball.¹³⁵ The second category consists of jurisdictions that apply a narrow interpretation of the Baseball Trilogy and find the antitrust exemption appropriate only when seeking to protect the reserve system.¹³⁶ Finally, the third category represents a miscellaneous perspective that believes baseball's antitrust exemption only applies to matters that coincide with the "unique characteristics and needs" of baseball.¹³⁷

C. Baseball is the Only Sport that Enjoys an Antitrust Exemption

The center of the United States' sports industry includes the NFL, NHL, MLB, and NBA.¹³⁸ Each of these major sports markets possess similar qualities, however, the MLB remains the only major sports organization to enjoy an exemption from federal antitrust laws.¹³⁹

the antitrust laws." See Sommer, *supra* note 51, at 334 (quoting 145 CONG. REC. S9621 (daily ed. July 31, 1998) (statement of Sen. Orrin Hatch)).

131. *Id.*

132. Grow, *supra* note 56, at 580–81.

133. *Id.*

134. *Id.*

135. See generally Charles O. Finley & Co. v. Kuhn, 569 F.2d 527 (7th Cir. 1978); MLB v. Crist, 331 F.3d 1177 (11th Cir. 2003); New Orleans Pelicans Baseball, Inc. v. Nat'l Ass'n of Pro. Baseball Leagues, No. 93-253, 1994 WL 631144 (E.D. La. Mar. 1, 1994); McCoy v. MLB, 911 F. Supp. 454 (W.D. Wash. 1995); MLB v. Butterworth (*Butterworth II*), 181 F. Supp. 2d 1316 (N.D. Fla. 2001).

136. See generally Piazza v. MLB, 831 F. Supp. 420 (E.D. Pa. 1993); Morsani v. MLB, 663 So. 2d 653, 655 (Fla. Dist. Ct. App. 1995).

137. Flood v. Kuhn, 407 U.S. 258, 282 (1972). See generally Henderson Broad. Corp. v. Hous. Sports Ass'n, 541 F. Supp. 263 (S.D. Tex. 1982); Postema v. Nat'l League of Pro. Baseball Clubs, 799 F. Supp. 1475, 1489 (S.D.N.Y. 1992).

138. Leah Farzin, *On the Antitrust Exemption for Professional Sports in the United States and Europe*, 22 JEFFREY S. MOORAD SPORTS L.J. 75, 76 (2015).

139. See generally Radovich v. NFL, 352 U.S. 445 (1957); Haywood v. NBA, 401 U.S. 1204 (1971); McCourt v. Cal. Sports, Inc., 600 F.2d 1193 (6th Cir. 1979).

1. The National Football League is Subject to Antitrust Regulation

In 1957, the Supreme Court ruled that the business of football was interstate commerce, and thus, subject to the federal antitrust regulation.¹⁴⁰ William Radovich played football for the Detroit Lions from 1938 to 1941 and joined the Navy after his contract expired.¹⁴¹ Upon his return from service in 1945, Radovich played another season with the Detroit Lions.¹⁴² However, Radovich's father fell ill which prompted him to request a transfer to the Los Angeles Dons.¹⁴³ The Detroit Lions denied Radovich's request, so he broke his contract by signing with the Los Angeles Dons.¹⁴⁴ The NFL accused Radovich of violating the reserve clause in his contract and backlisted him by imposing by five-year suspension.¹⁴⁵ Radovich sued the NFL in federal court alleging violations under the Sherman Act.¹⁴⁶

The Ninth Circuit dismissed Radovich's case for lack of jurisdiction and failure to state a claim upon which relief can be granted.¹⁴⁷ Using the reasoning set forth in *Federal Baseball*, Judge Chambers explained that the football industry possessed many of the same qualities displayed in baseball.¹⁴⁸ The Ninth Circuit determined that if baseball was not categorized as interstate commerce, then football should not be either.¹⁴⁹ However, when Radovich appealed to the Supreme Court, it came to a much different conclusion.¹⁵⁰ The Court reasoned that the exception carved out in precedent for baseball was not to be applied to other sports organizations.¹⁵¹ Instead, the Court focused on the fact that a significant portion of the NFL's profits trace back to games scheduled in major cities and its large broadcasting agreements with radio and television companies.¹⁵² Consequently, the

140. *Radovich*, 352 U.S. 445.

141. *Id.* at 448.

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

147. *Radovich v. NFL*, 231 F.2d 620, 623 (9th Cir. 1956), *rev'd*, 352 U.S. 445 (1957).

148. *Id.* at 622 ("If our first step is correct: that we have the right to compare, then the second one is obvious. Football is a team sport. Its operation has just about the same aspects as baseball.").

149. *Id.* ("Further, it appears reasonable to us to assume that if Congressional indulgence extended to and saved baseball from regulation, then the indulgence extended to other team sports.").

150. *Radovich*, 352 U.S. 445.

151. *Id.* at 447-48 ("For the reasons hereafter stated we conclude that Toolson and Federal Base Ball do not control; that the respondents' activities as alleged are within the coverage of the antitrust laws; and that the complaint states a cause of action thereunder.").

152. *Id.* at 449, 453-54.

Supreme Court ruled that the business of football was considered interstate.¹⁵³

2. *The National Basketball Association is Subject to Antitrust Regulation*

In *Haywood v. National Basketball Association*,¹⁵⁴ the Supreme Court stated that the business of basketball was subject to antitrust regulation.¹⁵⁵ Spencer Haywood was a member of the 1968 Olympic Basketball Team and proceeded to attend college in the following years.¹⁵⁶ Haywood signed an employment contract with the American Basketball Association; yet, he ultimately withdrew the deal and signed with National Basketball League's Seattle Club.¹⁵⁷ However, this deal occurred less than four years after his high school graduation.¹⁵⁸ The NBA argued that Haywood was ineligible to be drafted, and thus, attempted to terminate the contract and impose sanctions upon Seattle's team.¹⁵⁹ Haywood filed suit in federal court against the NBA alleging violations under the SAA.¹⁶⁰ The case before the Supreme Court was largely centered around issues involving labor and employment controversies.¹⁶¹ However, the Supreme Court was swift to clarify in its opinion that "basketball . . . does not enjoy an exemption from antitrust laws."¹⁶² Lower courts have applied reasoning similar to *Haywood* on several occasions by holding that basketball is subject to antitrust regulation.¹⁶³

3. *The National Hockey League is subject to antitrust regulation.*

While the Supreme Court never directly ruled on the NHL's antitrust status, decisions from lower courts have indicated that the organization is subject to the SAA.¹⁶⁴ Most notably, the Sixth Circuit spoke on this issue

153. *Id.* at 447.

154. 401 U.S. 1204 (1971).

155. *Id.*

156. *Id.* at 1204-05.

157. *Id.* at 1205.

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.* at 1206.

162. *Id.* at 1205 ("The college player draft binds the player to the team selected. Basketball, however, does not enjoy exemption from the antitrust laws. Thus, the decision in this suit would be similar to the one on baseball's reserve clause which our decisions exempting baseball from the antitrust laws have foreclosed.").

163. *Denver Rockets v. All-Pro Mgmt., Inc.*, 325 F. Supp. 1049, 1060 (C.D. Cal. 1971) ("[T]he Supreme Court has held that all professional sports, with the exception of baseball, are governed by the antitrust laws."); see *Wash. Pro. Basketball Corp. v. NBA*, 147 F. Supp. 154, 155 (S.D.N.Y. 1956) (holding that professional basketball is subject to federal antitrust laws).

164. *McCourt v. Cal. Sports, Inc.*, 600 F.2d 1193 (6th Cir. 1979).

when it ruled on a labor dispute involving the reserve clause in a contract involving Dale McCourt, a Canadian hockey player.¹⁶⁵ While this opinion primarily delved into the nature of labor law, Judge Engel did commit a portion of the opinion to clarifying the antitrust standards for the NHL.¹⁶⁶ For example, the Sixth Circuit referred to the language in *Flood v. Kuhn* that stated “other professional sports operating interstate—football, boxing, basketball, and, presumably, hockey and golf—are not so exempt.”¹⁶⁷ The court explained that Justice Blackmun gave a “clear-cut warning” that other sports organizations were “not so blessed.”¹⁶⁸ The court explained, “[t]urning from the thus historically protected great American pastime to other less fortunate sports, I simply find no authoritative support for legalizing the sort of reserve clause sought to be imposed by the National Hockey League on its players.”¹⁶⁹ Consequently, the Sixth Circuit made clear that the antitrust exemption awarded to baseball does not apply to hockey nor any other sports organizations.¹⁷⁰ Lower courts have joined in agreement that the NHL is subject to the provisions of the SAA.¹⁷¹

II. ANALYSIS

After roughly a hundred years, the time has come for the Supreme Court to reconsider the validity of the Baseball Trilogy and its impact on the sports industry.¹⁷² The Supreme Court’s opinion in *Federal Baseball* demonstrated flawed reasoning because the baseball industry had established itself as a “national endeavor” well before 1922.¹⁷³ Furthermore, the *Toolson* and *Flood* opinions represent a misinterpretation of congressional intent, as well as a misapplication of *stare decisis*.¹⁷⁴ Moreover, given the similarities between baseball and other professional sports, removing the antitrust exemption would promote uniformity and fairness among the U.S. sports industry.¹⁷⁵ Lastly, removing the exemptions would benefit minor league players and fans because the industry would be forced to abandon its unethical practices

165. *Id.* at 1195.

166. *Id.* at 1214.

167. *Id.* (quoting *Flood v. Kuhn*, 407 U.S. 258, 282–83 (1972)).

168. *Id.*

169. *Id.*

170. *Id.*

171. *Neeld v. NHL*, 439 F. Supp. 446, 455 (W.D.N.Y. 1977); *Boston Pro. Hockey Ass’n v. Cheevers*, 348 F. Supp. 261, 265 (D. Mass. 1972); *Phila. World Hockey Club, Inc., v. Phila. Hockey Club, Inc.*, 351 F. Supp. 462, 517 (E.D. Pa. 1972).

172. *See supra* Part II.

173. Martin M. Tomlinson, *The Commissioner’s New Clothes: The Myth of Major League Baseball’s Antitrust Exemption*, 20 ST. THOMAS L. REV. 255, 261 (2008); *see infra* Section II.A.

174. *See infra* Sections II.B–C.

175. *See infra* Section II.B.

as it relates to labor disputes, franchise relocation, and anticompetitive strategies.¹⁷⁶

A. The Supreme Court's Reasoning in the Baseball Trilogy is Flawed and Fails to Reflect Modern Antitrust Standards

When the Supreme Court decided *Federal Baseball* in 1922, it failed to recognize that the “exhibitions of base ball” did, in fact, qualify as interstate commerce because baseball shamelessly marketed itself as a national brand.¹⁷⁷ While the Court decided *Federal Baseball* during an era defined by a narrow interpretation of the Commerce Clause, the opinion was inconsistent even by the standards set forth in the early 1920s.¹⁷⁸ Furthermore, the Supreme Court’s reliance on congressional inaction in *Toolson* and *Flood* rests upon misinterpretations of Congress’ intentions.¹⁷⁹ Finally, the stare decisis arguments within *Toolson* and *Flood* were misguided because they fail to fully consider the advancements within the baseball market following the *Federal Baseball* ruling from 1922.¹⁸⁰

1. The Supreme Court Incorrectly Decided Federal Baseball

In 1922, the Supreme Court awarded Organized Baseball its antitrust exemption based on the belief that the baseball industry did not engage in interstate commerce.¹⁸¹ However, the Court failed to acknowledge that the business of baseball established itself as a “national endeavor” long before the Court decided the case in 1922.¹⁸² For example, top players were constantly traded across state lines and between franchises.¹⁸³ Furthermore, companies consistently used players as “national endorsers and spokesmen” for advertising contracts.¹⁸⁴ Even details as simple as the names of its organizations signified that baseball was a national brand.¹⁸⁵ Phrases, such as National League, American League, Federal League, and World Series gave no indication that baseball was ever intended to be a purely state affair.¹⁸⁶ After all, baseball *is* America’s pastime.¹⁸⁷ These details were not addressed

176. See *infra* Section II.C.

177. See *infra* Section II.A.1.

178. See *infra* Section II.A.1.

179. See *infra* Section II.A.2.

180. See *infra* Section II.A.3.

181. See *supra* note 75 and accompanying text.

182. Tomlinson, *supra* note 173.

183. *Id.*

184. *Id.* at 261–62.

185. *Id.*

186. *Id.*

187. Walker, *supra* note 1, at 265.

within the opinion; however, they point to the conclusion that the business of baseball was engaged in interstate activity in 1922.¹⁸⁸

Most notably, less than a year after Justice Holmes authored *Federal Baseball*, he wrote the *Hart v. B.F. Keith Vaudeville Exchange*¹⁸⁹ opinion which produced a contrasting standard for those within the performance industry.¹⁹⁰ In *Hart*, the plaintiff, a manager for vaudeville performers, sought damages from antitrust violations arising under the SAA.¹⁹¹ The defendants argued that under the *Federal Baseball* opinion, vaudeville shows were not considered interstate commerce.¹⁹² In 1922, Justice Holmes explained that the “exhibitions of base ball” took place within state lines because the travel of players and equipment were “a mere incident.”¹⁹³ Similarly, vaudeville shows were performed entirely within state lines.¹⁹⁴ The shows, however, required the travel of people and equipment across state lines, such as performers, animals, and costumes.¹⁹⁵ Certainly, under the reasoning set forth in *Federal Baseball*, it would have been plausible to conclude that the vaudeville industry was exempt from antitrust regulation.¹⁹⁶ In fact, the defendants in the *Hart* case even cited to *Federal Baseball* as support for exempting the vaudeville industry from antitrust regulation.¹⁹⁷ However, Justice Holmes was not as generous on this day.¹⁹⁸ Despite the factual similarities between these two cases, Justice Holmes concluded that the interstate travel of performers is not merely incidental to the vaudeville industry.¹⁹⁹ However, the Court offered no justification as to why the vaudeville performers who travel across states lines are any different from baseball players who travel for games.²⁰⁰ These inconsistencies in Justice Holmes’ reasoning, as well as the lack of explanation, raise significant concerns as to the motivations behind the *Federal Baseball* opinion.

188. Tomlinson, *supra* note 173, at 262.

189. 262 U.S. 271 (1923).

190. *See id.*

191. *Id.* at 272.

192. *Id.* at 273.

193. *Fed. Baseball Club of Balt., Inc. v. Nat’l League of Pro. Baseball Clubs*, 259 U.S. 200, 209 (1922).

194. *Hart*, 262 U.S. at 272–73.

195. *Id.*

196. *See Ganin, supra* note 10, at 1140.

197. *Hart*, 262 U.S. at 273.

198. *Id.* at 274.

199. *Id.* (“The bill was brought before the decision of the *Base Ball Club Case*, and it may be that what in general is incidental, in some instances may rise to a magnitude that requires it to be considered independently. The logic of the general rule as to jurisdiction is obvious and the case should be decided upon the merits unless the want of jurisdiction is entirely clear. What relief, if any, could be given and how far it could go it is not yet time to discuss.”).

200. *See Ganin, supra* note 10, at 1140.

One could argue that the Supreme Court correctly decided *Federal Baseball* because the precedent available in the early 1920s construed the Commerce Clause quite narrowly.²⁰¹ However, this contention still fails to address how the reasoning in this opinion aligns with the modern developments of both the Commerce Clause and the baseball industry since 1922.²⁰² Beginning in the 1930s, President Roosevelt ushered in his New Deal ideology that heavily influenced the Supreme Court and broadened the interpretation of the Commerce Clause.²⁰³ Moreover, the baseball industry has developed significantly since the *Federal Baseball* opinion.²⁰⁴ In *Gardella*, the Second Circuit highlighted a few crucial expansions within the baseball industry, such as radio and television broadcasting agreements.²⁰⁵ Today, these types of agreements have become increasingly relevant considering that the baseball industry collects an exorbitant amount of profits from these deals.²⁰⁶ In 2021, the MLB generated a whopping \$1.84 billion in broadcasting agreements alone.²⁰⁷ The expansion of the Commerce Clause paired with baseball's reliance on broadcasting agreements raises significant concerns as to why *Federal Baseball* remains good law in 2023.²⁰⁸

2. *The Supreme Court's Reliance on Congressional Inaction in Toolson and Flood Was a Weak Basis for Upholding Federal Baseball*

The congressional inaction arguments within the *Toolson* and *Flood* opinions rests upon a misinterpretation of Congress' intentions and produces a standard that conflicts with modern-day precedent.²⁰⁹ In 1949, the *Gardella*

201. Samuel A. Alito, Jr., *The Origin of the Baseball Antitrust Exemption: Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*, 34 J. SUP. CT. HIST. 183, 193 (2009) ("In 1922, the Court saw the Commerce Power as a limited power that did not extend to all 'economic . . . activities that have a substantial effect on interstate commerce.' This approach forced the Court to draw fine—some would say arbitrary—lines." (alteration in original) (footnote omitted) (quoting *Gonzales v. Raich*, 545 U.S. 1, 17 (2005)).

202. Tomlinson, *supra* note 173, at 263.

203. *Id.* at 262–63 ("The new Court all but did away with Commerce Clause limits on federal power. This new jurisprudence culminated in *Wickard v. Filburn* . . .").

204. *Gardella v. Chandler*, 172 F.2d 402, 404 (2d Cir. 1949).

205. *Id.* ("They, or most of them, also sell for valuable consideration the right to broadcast play-by-play descriptions of the games over the radio and thus across state lines, and some of them sell the right to broadcast the games by television. Some of those to whom these broadcast rights are sold get, and use, the opportunity so provided to advertise goods, articles and commodities which are sold and distributed nationally and internationally.")

206. Christina Gough, *MLB Television Deals Value in the U.S. 2022*, by Network, STATISTA (Apr. 7, 2021), <https://www.statista.com/statistics/290067/income-distribution-of-mlb-regular-season-tv-audience/>.

207. *Id.*

208. *See id.* (illustrating the magnitude of the MLB's broadcasting agreements); *supra* note 203 and accompanying text.

209. Sommer, *supra* note 51, at 330–32.

court made clear that there was “little doubt that the Constitutional power of Congress, under the commerce clause, extends to such a situation.”²¹⁰ This phrasing effectively convinced Congress that *Gardella* “replaced the Supreme Court’s *Federal Baseball* precedent and negated the need for legislation.”²¹¹ However, Congress’ intentions were entirely distorted when baseball’s antitrust exemption returned to the Supreme Court in *Toolson*.²¹² The Supreme Court incorrectly concluded that Congress’ silence served as a sign of approval for the exemption.²¹³

The flawed reasoning within the *Toolson* opinion paved the way for another egregious mistake when the issue of baseball’s antitrust exemption returned to the Supreme Court in 1972.²¹⁴ Within the *Flood* opinion, Justice Blackmun acknowledged that since *Toolson*, Congress rejected over fifty bills, both supporting and opposing baseball’s antitrust exemption.²¹⁵ Justice Blackmun concluded that both houses supported the exemption because bills in support of baseball’s antitrust exemption managed to pass one house of Congress on two occasions.²¹⁶ Commentators believe that this occurred because the members of one house decided to pass the legislation for “public relations reasons.”²¹⁷ Yet, the members of that house did so “knowing that the other chamber would not go along.”²¹⁸ Therefore, these congressional actions were likely of no substantial value to the discussion of baseball’s antitrust exemption.²¹⁹ In turn, the congressional inaction arguments within the Baseball Trilogy rest upon problematic interpretations of Congress’ actions.²²⁰

Since the conclusion of the Baseball Trilogy, the Supreme Court has minimized the significance of congressional intent, especially within antitrust

210. *Gardella*, 172 F.2d at 412.

211. Sommer, *supra* note 51, at 330.

212. *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356, 357 (1953) (per curiam) (“Congress has had the ruling under consideration but has not seen fit to bring such business under these laws by legislation having prospective effect.”).

213. *Id.*

214. *Flood v. Kuhn*, 407 U.S. 258, 283 (1972) (“The Court, accordingly, has concluded that Congress as yet has had no intention to subject baseball’s reserve system to the reach of the antitrust statutes.”).

215. *Id.* at 281 (“Legislative proposals have been numerous and persistent. Since *Toolson* more than 50 bills have been introduced in Congress relative to the applicability or nonapplicability of the antitrust laws to baseball. A few of these passed one house or the other. Those that did would have expanded, not restricted, the reserve system’s exemption to other professional league sports.” (footnote omitted)).

216. *Id.*

217. Tomlinson, *supra* note 173, at 300.

218. *Id.*

219. *Id.*

220. *Id.*

cases.²²¹ For example, in 1989, the Supreme Court explained that “[i]t does not follow . . . that Congress’ failure to overturn a statutory precedent is reason for this Court to adhere to it.”²²² Furthermore, in 1990, the Supreme Court explained that “[c]ongressional inaction lacks ‘persuasive significance’ because ‘several equally tenable inferences’ may be drawn from such inaction, ‘including the inference that the existing legislation already incorporated the offered change.’”²²³ Most importantly, in 1997, the Supreme Court emphasized that congressional inaction “has less force with respect to the Sherman Act.”²²⁴ These warnings from the Supreme Court illustrate that the congressional intent arguments within the Baseball Trilogy would likely not be considered valid under modern precedent.²²⁵

Supporters of the exemption often argue that congressional intent is an adequate basis for upholding the Baseball Trilogy because Congress has reviewed many bills on this topic over the last century, yet none have ever managed to become law.²²⁶ This conclusion is oversimplified because it fails to account for several plausible explanations that account for the lack of legislative action.²²⁷ For example, possible explanations for the failure to legislate on this issue may include “congressional apathy toward the Federal Baseball decision, failure of the formation of a majority congressional group to change the decision, other congressional priorities, and sustained efforts of baseball owners to block any curative legislation.”²²⁸ None of these explanations directly point to the conclusion that Congress strongly approves of baseball’s antitrust exemption.²²⁹ As the Court explained in *Pension Benefit Corp. v. LTV Corp.*,²³⁰ attempting to read Congress’ intentions leaves

221. *State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997) (holding that congressional intent contains “less force with respect to the Sherman Act”).

222. *Patterson v. McLean Credit Union*, 491 U.S. 164, 175 n.1 (1989).

223. *Pension Benefit Guar. Corp. v. LTV Corp.*, 496 U.S. 633, 650 (1990) (quoting *United States v. Wise*, 370 U.S. 405, 411 (1962)).

224. *Khan*, 522 U.S. at 20–21 (“In the area of antitrust law, there is a competing interest, well represented in this Court’s decisions, in recognizing and adapting to changed circumstances and the lessons of accumulated experience. Thus, the general presumption that legislative changes should be left to Congress has less force with respect to the Sherman Act in light of the accepted view that Congress ‘expected the courts to give shape to the statute’s broad mandate by drawing on common-law tradition.’” (quoting *Nat’l Soc’y of Pro. Eng’rs v. United States*, 435 U.S. 679, 688 (1978))).

225. Tomlinson, *supra* note 173, at 297–98.

226. Philip L. Gregory & Donald J. Polden, *The Baseball Exemption: An Anomaly Whose Time Has Run*, 24 J. ANTITRUST & UNFAIR COMPETITION L. SECTION STATE BAR CAL. 154, 172 n.96 (2015) (citing William N. Eskridge, Jr., *Overruling Statutory Precedents*, 76 GEO L.J. 1361, 1405–06 (1998)).

227. *Id.*

228. *Id.*

229. *Id.*

230. 496 U.S. 633 (1990).

room for potential error in interpretation.²³¹ As a result, congressional inaction should not govern the analysis on the Baseball Trilogy.²³²

3. *The Supreme Court Incorrectly Asserted Stare Decisis as a Justification for Upholding the Reasoning in Federal Baseball*

Antitrust commentators describe the Baseball Trilogy as “stare decisis run amok.”²³³ In *State Oil Co. v. Khan*,²³⁴ the Supreme Court emphasized that “[s]tare decisis is not an inexorable command” where “changed circumstances” and “accumulated experience” warrant a modification of antitrust standards.²³⁵ In 2007, the Court held in *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*²³⁶ that “[f]rom the beginning the Court has treated the Sherman Act as a common-law statute. Just as the common law adapts to modern understanding and greater experience, so too does the Sherman Act’s prohibition on ‘restraint[s] of trade’ evolve to meet the dynamics of present economic conditions.”²³⁷ The phrasing in these cases indicates that significant developments within an industry are good cause for a court to avoid the application of stare decisis in antitrust cases.²³⁸ As previously discussed, the baseball industry has undergone many changes since *Federal Baseball*, such as broadcasting agreements.²³⁹ Therefore, the application of stare decisis in the Baseball Trilogy is likely no longer consistent with modern antitrust standards.²⁴⁰

The stare decisis framework in *Dobbs v. Jackson’s Women’s Health Organization*²⁴¹ presents significant complications for the validity of the Baseball Trilogy.²⁴² The Court stated that a crucial component of stare decisis application is whether the rule is “workable” and “can be understood and applied in a consistent and predictable manner.”²⁴³ As previously discussed

231. *Id.* at 650; *see supra* note 223 and accompanying text.

232. Tomlinson, *supra* note 173, at 299.

233. Abrams, *supra* note 116, at 182.

234. 522 U.S. 3 (1997).

235. *Id.* at 20 (alteration in original) (quoting *Payne v. Tennessee*, 501 U.S. 808, 828 (1991)).

236. 551 U.S. 877 (2007).

237. *Id.* at 899 (citations omitted) (first citing *Nat’l Soc’y of Pro. Eng’rs v. United States*, 435 U.S. 679, 688 (1978); and then citing *Nw. Airlines v. Inc. v. Transport Workers*, 451 U.S. 77, 98 & n.42 (1981)).

238. *Id.*; William N. Eskridge, Jr., *Overruling Statutory Precedents*, 76 GEO. L.J. 1361, 1381 (1988) (“*Flood v. Kuhn* is an almost comical adherence to the strict rule against overruling statutory precedents, particularly considering that the Sherman Act has developed essentially through a common law process.”).

239. *See supra* note 107.

240. *See supra* note 107.

241. 142 S. Ct. 2228 (2022).

242. *Id.*

243. *Id.* at 2272.

in Part I, the Baseball Trilogy has produced three divergent standards of application causing confusion among lower courts.²⁴⁴ For example, some courts interpret the exemption broadly, while others believe the exemption applies only to matters relating to the reserve system or other aspects unique to baseball.²⁴⁵ Furthermore, the controversies taking place within the minor leagues would likely point to the conclusion that this standard is not workable for parties yielding less power.²⁴⁶ Moreover, the Court explained that the “quality of the reasoning” is crucial to a stare decisis analysis.²⁴⁷ The reasoning within the Baseball Trilogy has long been criticized for its infamously weak legal reasoning and “dubious validity.”²⁴⁸ If precedent as crucial and fundamental as *Roe v. Wade*²⁴⁹ was not given the benefit of stare decisis, then the groundless reasoning in the Baseball Trilogy likely stands little chance under the framework in *Dobbs*.²⁵⁰

It is worth noting that congressional intent and stare decisis were not the only grounds on which the Supreme Court based its decision.²⁵¹ In fact, the *Toolson* court explained that the exemption should remain because the baseball industry had developed for thirty years under the impression that it was not subject to antitrust laws, and thus, now relies on the exemption.²⁵² Similarly, the *Dobbs* framework considers reliance as an element in the stare decisis analysis.²⁵³ However, the Supreme Court did not hesitate to overturn precedent that was older than baseball’s antitrust exemption one year prior to the *Toolson* opinion.²⁵⁴ For example, in 1952, the Supreme Court overturned *St. Louis v. Ferry Co.*,²⁵⁵ an eighty-two-year-old precedent, when it decided *Standard Oil Co. v. Peck*.²⁵⁶ Furthermore, that same year, the Supreme Court overturned *Mutual Film Corp. v. Industrial Commission of Ohio*,²⁵⁷ a thirty-

244. See *supra* Section I.B.3.

245. See *supra* notes 135–36 and accompanying text.

246. See *infra* Section II.C.1.

247. *Dobbs*, 142 S. Ct. at 2265–66.

248. *Radovich v. NFL*, 352 U.S. 445, 450 (1957); see *infra* Section II.B.3.

249. 410 U.S. 113 (1973).

250. See *Dobbs*, 142 S. Ct. at 2265–66, 2272.

251. See *supra* note 105 and accompanying text.

252. See *supra* note 105 and accompanying text.

253. *Dobbs*, 142 S. Ct. at 2276–78.

254. *Table of Supreme Court Decisions Overruled by Subsequent Decisions*, CONGRESS.GOV: CONST. ANNOTATED, <https://constitution.congress.gov/resources/decisions-overruled/> (last visited May 2, 2023) (describing how many years precedent existed before being overturned by the Supreme Court).

255. 78 U.S. (11 Wall.) 423 (1870).

256. 342 U.S. 382 (1952); *Table of Supreme Court Decisions Overruled by Subsequent Decisions*, *supra* note 254.

257. 236 U.S. 230 (1915).

seven-year-old precedent, when it decided *Joseph Burstyn, Inc. v. Wilson*.²⁵⁸ Moreover, it is well-established that the existence of the baseball industry does not detrimentally rely on its antitrust exemption.²⁵⁹ These inconsistencies in the Court's reasoning demonstrate that the 1953 Supreme Court was not afraid to overturn long-standing precedent that no longer reflected modern standards.²⁶⁰

B. Removing Baseball's Antitrust Exemption Would Promote Uniformity and Fairness Among Professional Sports

The legal reasoning in the Baseball Trilogy is not the only unworkable aspect of this precedent.²⁶¹ The Baseball Trilogy perpetuates a sense of favoritism within the sports industry because its antitrust exemption bestows several privileges that other major sports industries do not enjoy.²⁶² Furthermore, the principles behind baseball's antitrust exemption bear no similarity to other industries that rightfully deserve such exemptions.²⁶³ Finally, there is a consensus among federal courts and commentators that the exemption reflects an unfair and "dubious" nature.²⁶⁴

1. Baseball is Economically Identical to Other Professional Sports; yet, it Enjoys a Special Set of Privileges

In the Baseball Trilogy, the Supreme Court explained that the baseball industry should stand apart from other professional sports when it comes to antitrust regulation because of its "unique characteristics and needs."²⁶⁵ However, to this day, courts and commentators are unsure what exactly the *Flood* Court was referring to when it stated that baseball was different.²⁶⁶

258. 343 U.S. 495 (1952); *Table of Supreme Court Decisions Overruled by Subsequent Decisions*, *supra* note 254.

259. Tomlinson, *supra* note 173, at 259 ("There is no evidence that MLB actually needs an exemption from federal antitrust law, or that such an exemption would actually benefit the game. This can be seen most clearly by viewing other similarly situated sports like basketball and football, which have grown enormously in recent decades, while baseball no longer enjoys the place in the national spotlight that it once did. These sports have thrived despite never having been exempt from federal antitrust law.").

260. *Id.* at 300–03.

261. *See supra* Section II.B.1.

262. *See supra* Section II.B.1.

263. *See supra* Section II.B.2.

264. *See supra* Section II.B.3.

265. *Flood v. Kuhn*, 407 U.S. 258, 282 (1972).

266. Gregory & Polden, *supra* note 226, at 166 ("Instead, the Court alluded to 'baseball's unique characteristics and needs' but without ever describing them and attempting to balance them against the goals and purposes of the Sherman Act. Furthermore, in cases involving other professional sports where the antitrust exemption was found not to apply to team and league conduct, the Court had reiterated the ongoing viability of the baseball exemption, but failed to articulate any reason for this disparity in treatment." (footnote omitted) (quoting *Flood*, 407 U.S. at 282)).

Indeed, baseball has some unique characteristics, such as its reserve systems; however, the discussion of whether baseball should still enjoy an antitrust exemption never depended upon such differences.²⁶⁷ Instead, *Federal Baseball* indicated that whether or not baseball is deserving of an antitrust exemption depends upon its level of interstate activities.²⁶⁸ From this perspective, baseball is practically identical to other major professional sports, such as football, basketball, and hockey.²⁶⁹

In 2020, the MLB was the second-highest grossing sport in the entire world, generating over \$10.8 billion in revenue.²⁷⁰ MLB games accumulated the highest amount of attendance in 2022 at 64.6 million.²⁷¹ This is likely attributable to the fact that the MLB has significantly more games in a season than other sports; however, it does not detract from the reality that millions of fans spend money to travel over state lines to attend games.²⁷² In 2020, the MLB had ten broadcasting partnerships between the United States and Canada.²⁷³ Meanwhile, the NFL and NBA each had six deals, and the NHL had two.²⁷⁴ These facts illustrate that the MLB participates in just as many interstate activities as other major sports organizations.²⁷⁵ In some respects, such as attendance and broadcasting agreements, the MLB is even more active across state lines than other sports organizations.²⁷⁶

Regardless of baseball's similarities to other sports, it is the only organization to reap the benefits of an antitrust exemption.²⁷⁷ For example, the MLB's antitrust exemption allows the industry to make millions off of its minor league franchises using anticompetitive tactics and harmful labor practices.²⁷⁸ Furthermore, issues involving intellectual property, such as trademarks and licensing, are exempt from antitrust regulation.²⁷⁹ However,

267. See generally *Fed. Baseball Club of Balt. v. Nat'l League of Pro. Baseball Clubs*, 259 U.S. 200 (1922) (providing an analysis of baseball's level of interstate activities).

268. *Id.* at 204.

269. Tomlinson, *supra* note 173, at 259.

270. Maury Brown, *MLB Sets New Revenue Record Exceeding \$10.8 Billion For 2022*, FORBES (Jan. 10, 2023, 11:22 PM), <https://www.forbes.com/sites/maurybrown/2023/01/10/mlb-sets-new-revenue-record-exceeding-108-billion-for-2022/?sh=3b6463d877ee>.

271. *2022 American League Attendance & Team Age*, BASEBALL REFERENCE, <https://www.baseball-reference.com/leagues/AL/2022-misc.shtml> (last visited May 15, 2023).

272. *Id.*

273. *Top 10 Largest Sports Leagues by Revenue 2020, Which Sport Makes the Most Money?*, BIZVIBE (July 29, 2020), <https://blog.bizvibe.com/blog/largest-sports-leagues-by-revenue>.

274. *Id.*

275. *Id.*

276. *Id.*

277. *Flood v. Kuhn*, 407 U.S. 258, 282–83 (1972) (“Other professional sports operating interstate—football, boxing, basketball, and, presumably, hockey and golf—are not so exempt.”).

278. See *infra* Section II.C.1.

279. Gary R. Roberts, *A Brief Appraisal of the Curt Flood Act of 1998 from the Minor League Perspective*, 9 MARQ. SPORTS L.J. 413, 425 (1999).

the NFL was explicitly denied this same privilege in 2010.²⁸⁰ Moreover, baseball's veto power over franchise relocation is exempt from antitrust laws, which results in little to no movement among franchises.²⁸¹ Due to the antitrust exemption, MLB team owners maintain sole authority over matters of franchise relocation.²⁸² This highly concentrated degree of power often allows team owners to prioritize their personal financial motives over the interests of the franchise.²⁸³ For example, former Commissioner of Baseball, Fay Vincent, explained that team owners typically block franchise relocations because of "the desire to keep a city open as a 'baseball asset.'"²⁸⁴ In doing so, team owners may use the "threat" of relocation against the host city for personal financial gain while ignoring the economic benefits that relocation would have for others parties, such as players and fans.²⁸⁵

2. *Baseball's Antitrust Exemption is Unlike Other Antitrust Exemptions*

As previously discussed, baseball shares many similarities with other major sports organizations who are not exempt from the SAA.²⁸⁶ However, baseball shares little to nothing in common with other industries that rightfully deserve an antitrust exemption. For example, agricultural cooperatives were granted an antitrust exemption under the Capper-Volstead Act.²⁸⁷ Historically, farmers have exercised significantly less bargaining power than buyers in agricultural markets.²⁸⁸ In order to alleviate this inequity, the statute allows various groups of farmers to assemble by combining their output and participating in price fixing.²⁸⁹ While such an activity would typically be considered illegal under the SAA, Congress granted an exception, considering the immense impact that assisting farms

280. *See* *Am. Needle, Inc. v. NFL*, 560 U.S. 183, 201–02 (2010) (holding that the NFL could not grant exclusive licensing rights to a singular vendor because it violated the Sherman Antitrust Act).

281. Roberts, *supra* note 279, at 420.

282. Gordon, *supra* note 40, at 1252–53.

283. *Id.*

284. *Id.* at 1252.

285. *Id.*

286. *See supra* Section II.B.1.

287. Capper-Volstead Act of 1922, Pub. L. No. 67-146, 42 Stat. 388 (codified as amended at 7 U.S.C. §§ 291–92).

288. Aaron Gott, *The Capper-Volstead Act Gives Farm Cooperatives a Limited Exemption from Antitrust Liability*, ANTITRUST ATT'Y BLOG (Oct. 29, 2019) <https://www.theantitrustattorney.com/the-capper-volstead-act-gives-farm-cooperatives-a-limited-exemption-from-antitrust-liability/>.

289. Capper-Volstead Act of 1922, 42 Stat. at 388.

would have on the nation's food supply.²⁹⁰ In other words, the purpose of this exemption was to facilitate the production of necessary goods that have a direct impact on the interest of society.²⁹¹ Congress extended this same protection to union groups because, without an antitrust exemption, workers would have little bargaining rights, leading to work stoppages in major industries that produced necessary goods.²⁹²

The Capper-Volstead Act demonstrates the reoccurring themes that typically exist when granting antitrust exemptions, such as public welfare and functionality.²⁹³ For example, agricultural cooperatives received an exemption in order to allow less powerful farmers to combine their output and create a system that would benefit the nation's food supply.²⁹⁴ As previously discussed in Part I of this Comment, the history behind baseball's antitrust exemption is much different from the legislative intent behind the antitrust exemption awarded through the Capper-Volstead Act.²⁹⁵ First, the MLB does not experience an imbalance in its bargaining power, considering that it has a lengthy history of abusing its authority against its own players and other sports organizations.²⁹⁶ Furthermore, the business of baseball exists to provide Americans with sports entertainment, not a major societal function, such as food supply.²⁹⁷ Examining the legislative intent behind other antitrust exemptions highlights the strange and inequitable nature that baseball's exemption represents within the law.²⁹⁸

One could reasonably conclude that baseball's antitrust exemption serves a functional purpose because, after all, the Supreme Court explained that baseball deserved its exemption due to its "unique characteristics and

290. See, e.g., 59 CONG. REC. 7852 (May 28, 1920) (statement of Rep. Dick Morgan) ("Never before was there a time in our history when there was greater need to encourage the development of our agricultural interests. Our population is rapidly increasing. The demand for food products grows annually by leaps and bounds. We may safely encourage any system that will bring the producers and consumers in closer contact; that will provide a more efficient and more economical system of marketing, manufacturing, transporting, and distributing the products of the farm."); 59 CONG. REC. 8034 (May 31, 1920) (statement of Rep. Alben Barkley) ("The world needs more production. It is essential. If production is to increase, the conditions of marketing the produce of the farms must be improved and simplified. This measure, we hope, will assist in accomplishing this result.").

291. See *supra* note 290.

292. Gott, *supra* note 288 ("Without the labor exemption, for example, union activity would be a felony. And we have a baseball exemption because, well, America likes baseball.").

293. See *supra* note 290.

294. See *supra* note 290.

295. See *supra* Part I.

296. See *supra* Part I.

297. See *supra* note 290.

298. Flood v. Kuhn, 407 U.S. 258, 282 (1972) ("[B]aseball is, in a very distinct sense, an exception and an anomaly. *Federal Baseball* and *Toolson* have become an aberration confined to baseball.").

needs.”²⁹⁹ However, as previously discussed, legal commentators still cannot decipher what the Court meant by this.³⁰⁰ Furthermore, baseball’s antitrust exemption no longer serves the industry in the way that it once did.³⁰¹ For example, baseball is losing popularity while other non-exempt sports industries are thriving and expanding in both America and abroad.³⁰² In fact, the NFL is the highest grossing professional sports organizations in the world without ever enjoying an antitrust exemption.³⁰³ As a result, it is reasonable to conclude that baseball’s exemption does not seek to achieve a functional antitrust purpose.

3. *There is a Consensus Among Courts and Commentators That the Exemption Reflects an Unfair and “Dubious” Nature*

Over the years, federal courts and antitrust commentators have concluded that the Baseball Trilogy reflects overt inconsistency and unfairness.³⁰⁴ For example, when the Supreme Court decided *Radovich v. NFL*,³⁰⁵ Justice Clark was swift to emphasize the problematic nature of the exemption when he remarked, “[t]he Court did this because it was concluded that more harm would be done in overruling *Federal Baseball* than in upholding a ruling which at best was of dubious validity.”³⁰⁶ Furthermore, Justice Samuel Alito acknowledged that *Federal Baseball* “has been pilloried pretty consistently in the legal literature since at least the 1940s.”³⁰⁷ This conclusion has not wavered over the years, considering that the Supreme Court recently described the *Federal Baseball* opinion “as ‘unrealistic’ and ‘inconsistent’ and ‘aberration[al]’”³⁰⁸ in *NCAA v. Alston*.³⁰⁹

Lower courts and antitrust commentators have joined in agreement that the reasoning in the Baseball Trilogy is unpersuasive. The Second Circuit stated, “[w]e freely acknowledge our belief that *Federal Baseball* was not one of Mr. Justice Holmes’ happiest days, [and] that the rationale of *Toolson*

299. *Id.*

300. *See supra* note 266.

301. *See supra* note 259.

302. *See supra* note 259.

303. *Top 10 Largest Sports Leagues by Revenue 2020, Which Sport Makes the Most Money?*, *supra* note 273.

304. *See infra* note 307.

305. 352 U.S. 445 (1957).

306. *Id.* at 450.

307. Alito, Jr., *supra* note 201, at 192.

308. *NCAA v. Alston*, 141 S. Ct. 2141, 2159 (2021) (citing *Flood v. Kuhn*, 407 U.S. 258 (1972)) (alteration in original) (holding that the National Collegiate Athletic Association’s (“NCAA”) ban on allowing universities to provide name, image, and likeness (“NIL”) benefits to student athletes violated the Sherman Antitrust Act).

309. 141 S. Ct. 2141 (2021).

is extremely dubious.”³¹⁰ Justice John Paul Stevens explained “that it simply makes no sense to treat organized baseball differently from other professional sports under the antitrust laws.”³¹¹ Furthermore, legal scholars have consistently criticized this exemption over the years in antitrust literature.³¹² Some even describe *Federal Baseball* as “a source of embarrassment for scholars of Holmes.”³¹³ The fact that the Baseball Trilogy has sparked significant embarrassment among the legal community is likely an indicator that this precedent erodes the principle of fairness that courts strive to achieve.³¹⁴

C. The Supreme Court Should Overturn the Baseball Trilogy

The Supreme Court should overturn the Baseball Trilogy to alleviate the inequities that currently exist throughout the baseball industry.³¹⁵ For example, minor league players will finally enjoy the benefits of a livable wage and bargaining rights, while fans and the baseball industry as a whole will benefit from increased competition.³¹⁶ Since the conclusion of the Baseball Trilogy, much debate has ensued over whether Congress or the judiciary is a better vehicle for removing baseball’s antitrust exemption.³¹⁷ Over the years, Congress has continuously failed to legislate on this issue.³¹⁸ While recent bills provide some hope for the future, the Supreme Court is currently a more promising path, as a case awaits appeal in the Second

310. Salerno v. Am. League of Pro. Baseball Clubs, 429 F.2d 1003, 1005 (2d Cir. 1970).

311. John Paul Stevens, Assoc. Just., Sup. Ct. of the U.S., Keynote Address at the Sports Lawyers Association 41st Annual Conference Luncheon 14 (May 15, 2015), https://www.supremecourt.gov/publicinfo/speeches/JPS_SportsLawyersAssociation_05-15-15.pdf.

312. See, e.g., Todd McFall & Kyle Tatich, *Federal Baseball Turns 100: The Long Legal Game of Athletes Gaining Economic Rights in the United States*, 22 WAKE FOREST J. BUS. & INTELL. PROP. L. 314, 315–16 (2022); Sam C. Ehrlich, *Probing for Holes in the 100-Year Old Baseball Exemption: A New Post-Alston Challenge*, 90 U. CIN. L. REV. 1172, 1175 (2022); Andrew P. Osborn, *Down to Their Last Strike: How the MLB Antitrust Exemption Has Hurt Minor League Players’ Salaries and Why It Is Up to Them to Fight Back*, 47 J. CORP. L. 259, 260 (2021); Roger D. Blair & Wenche Wang, *Rethinking Major League Baseball’s Antitrust Exemption*, 30 J. LEGAL ASPECTS SPORT 18, 18–19 (2019); Gregory & Polden, *supra* note 226, at 154–56; Tomlinson, *supra* note 173, at 261; Mitchell Nathanson, *The Irrelevance of Baseball’s Antitrust Exemption: A Historical Review*, 58 RUTGERS L. REV. 1, 1–3 (2005); Morgen A. Sullivan, Note, “*A Derelict in the Stream of the Law*”: *Overruling Baseball’s Antitrust Exemption*, 48 DUKE L.J. 1265, 1265–68 (1999).

313. BASEBALL AND THE AMERICAN LEGAL MIND 75–76 (Spencer Weber Waller et al. eds., 1995).

314. *Id.*

315. See *infra* Section II.C.1.

316. See *infra* Section II.C.1.

317. See *infra* Section II.C.2.

318. See *infra* Section II.C.2.

Circuit.³¹⁹ In fact, an analysis of recent rulings, combined with past statements by current Justices, indicates that the 2023 Supreme Court will likely overturn the Baseball Trilogy.³²⁰

1. Players, Fans, and Team Owners Would Benefit from the Removal of Baseball's Antitrust Exemption

Throughout the history of baseball, minor league players have suffered more than any other group under the antitrust exemption.³²¹ As previously discussed, the Curt Flood Act provides a limited exception to baseball's antitrust exemption by allowing major league players "the right to bargain with their employers over matters deeply affecting their day-to-day lives."³²² However, the Curt Flood Act specifically excludes minor league players from enjoying any of the same rights as those granted to major league players.³²³ Because of this power imbalance, minor league players are subject to significantly poorer labor conditions.³²⁴ For example, minor league players are paid only five months out of the year, do not receive compensation for mandatory training outside of the season, and are ineligible to receive overtime.³²⁵ The majority of minor league players receive "less than \$10,000 per year, which falls well below federal poverty levels."³²⁶ Most recently, in 2019, the MLB sought "to standardize the number of minor league affiliates per major league club and dispense with the teams with facilities seen by the major league clubs as less-than-desirable."³²⁷ In 2020, the MLB's plan went into effect, and forty-three minor league teams lost their club affiliation.³²⁸

319. *See infra* Section II.C.2.

320. *See infra* Section II.C.3.

321. Chelsea Janes, *Senate Committee Appears Set to Revisit MLB's Antitrust Exemption*, WASH. POST (June 28, 2022, 5:24 PM), <https://www.washingtonpost.com/sports/2022/06/28/mlb-antitrust-exemption-congress-letter/> ("Minor league players are far and away the group most negatively impacted by baseball's antitrust exemption. MLB owners should not have a special license to underpay their workers . . .").

322. Robert Pannullo, *The Struggle for Labor Equality in Minor League Baseball: Exploring Unionization*, 34 A.B.A. J. LAB. & EMP. L. 443, 444 (2020).

323. *Id.*

324. Pete Garofalo, *The MLB Makes Millions on Minor Leaguers. It Refuses to Pay Minimum Wage.*, TALK POVERTY (Feb. 14, 2019), <https://talkpoverty.org/2019/02/14/mlb-makes-millions-minor-leaguers-refuses-pay-minimum-wage/> ("I'd work 70 hours a week, and I would get paid \$45 per game, so that comes out to like \$3 an hour," said Jeremy Wolf, a former minor league player who now runs More Than Baseball, an organization that aids minor leaguers. "The hot dog vendor makes more than the players do.").

325. Pannullo, *supra* note 322, at 446–47.

326. *Id.* at 447.

327. Ehrlich, *supra* note 312, at 1172.

328. *Id.* at 1173.

Fans were devastated when their small towns lost their minor league teams.³²⁹ Each of these obstacles for the minor leagues are a direct result of the MLB's antitrust exemption.³³⁰

Some believe that the minor leagues do not warrant lifting the exemption entirely because Congress could simply pass legislation equivalent to the Curt Flood Act for minor league players.³³¹ However, improving labor relations in the minor leagues is not the only reason for advocating against baseball's antitrust exemption. The Curt Flood Act explicitly states that issues relating to franchise relocation are exempt from antitrust laws.³³² As previously discussed, team owners often abuse this power for monetary gain at the expense of players and fans.³³³ This provision has also "resulted in virtually no requests for franchise relocation being granted while other sports subject to the Sherman Act's rule of reason have benefited themselves and their fans with expansive growth and innovation."³³⁴ In the past decades, the MLB has approved a single franchise relocation, while the NFL, NBA, and NHL have collectively partaken in twenty-two franchise relocations.³³⁵ Removing the MLB's veto power over franchise relocation would have several benefits, such as increased player salaries and increased franchise value.³³⁶ Moreover, a removal of the antitrust exemption means more competition will emerge within the baseball industry.³³⁷ This would "force Major League Baseball to expand into

329. Olafimihan Oshin, *Sanders Introduces Bill Targeting MLB's Antitrust Exemption*, HILL (Mar. 24, 2022, 5:00 PM), <https://thehill.com/homenews/senate/599655-sanders-introduces-bill-targeting-mlbs-antitrust-exemption> ("I think the time is now when these billionaires should start paying attention to the needs of the fans and the people of this country, rather than just their bottom line. . . . These are baseball oligarchs who, over the last year, eliminated their affiliation with over 40 minor league teams, not only causing needless economic pain and suffering, but also breaking the hearts of fans in small and mid-sized towns all over America . . .").

330. Pannullo, *supra* note 322, at 443.

331. Jeremy Ulm, *Antitrust Changeup: How A Single Antitrust Reform Could Be a Home Run for Minor League Baseball Players*, 125 DICK. L. REV. 227, 252 (2020).

332. *See supra* note 128 and accompanying text.

333. *See supra* note 278 and accompanying text.

334. Gregory & Polden, *supra* note 226, at 176.

335. *Id.*

336. Gordon, *supra* note 40, at 1248 ("It is estimated that moving to a new stadium will increase the fair market value of the franchise by \$30 million to \$50 million. For example, the Baltimore Orioles' franchise value increased by nearly 27%, leapfrogging six other baseball teams, after they moved into a new revenue-generating stadium in 1992."); Nina Totenberg, *Justice Sotomayor Takes Swing at Famed Baseball Case*, NPR (May 23, 2013, 5:23 PM), <https://www.npr.org/2013/05/23/186314129/justice-sotomayor-takes-swing-at-famed-baseball-case> ("Sotomayor asked what would happen if the [C]ourt were to take away the antitrust exemption. Wouldn't the players move around so much that fans would have no team loyalty? No, rejoined Karlan, the owners would just have to pay the players what they are worth in order to hold on to them, and instead of year-to-year contracts that leave players with no leverage, the owners would have to negotiate longer-term contracts.").

337. Smith, *supra* note 96, at 138–39.

untapped markets,” and thus, provide fans with more opportunities for sports entertainment.³³⁸ Finally, lifting the exemption benefits team owners in the long term because it would lead to fewer labor disputes.³³⁹ For these reasons, lifting baseball’s antitrust exemption is in the best interest of all parties, including players, fans, and owners.³⁴⁰

2. *The Judiciary is the Best Avenue for Removing Baseball’s Antitrust Exemption*

With the benefits of removing the exemption in mind, it begs the question—is it the responsibility of Congress or the judiciary to take action? Many believe that several bills introduced by Congress in recent years indicates that the “MLB’s antitrust exemption is on shakier footing than ever before.”³⁴¹ On March 10, 2022, Senator Mike Lee (R-UT), spoke out on baseball’s antitrust exemption when he announced, “I do think we should revisit it, and I think we should overturn that case.”³⁴² Senator Richard Durbin (D-IL) echoed Lee’s concerns by stating that his advice to the MLB is to “[t]hink of the fans. Do something for them. For goodness’ sakes.”³⁴³ Lee introduced a bill entitled the Competition in Professional Baseball Act³⁴⁴ in 2021, which seeks to remove the antitrust exemption entirely.³⁴⁵ The House version of the bill has accumulated thirty-three co-sponsors.³⁴⁶ In June 2022, the Senate Judiciary Committee sent a letter of inquiry to Advocates for Minor Leagues, a nonprofit organization that addresses labor issues in minor league baseball.³⁴⁷ On July 29, 2022 Senator Richard Blumenthal (D-CT)

338. *Id.* at 138–39 (“The NFL, for example, has faced competition each decade, and it is perhaps the strongest professional sports league in the country.”); Oshin, *supra* note 329 (“It would mean that other people would have the opportunity to start different Major League Baseball leagues. It would mean that baseball would be spreading to areas that now don’t have it. In other words, there would be finally competition. And the Major Leagues would not be able to do simply what they wanted to do.”).

339. Smith, *supra* note 96, at 137 (“With respect to the baseball labor market, however, the owners have always held the power and, as a result, have had little incentive to bargain in good faith with the players. Application of the antitrust laws to the conduct of baseball owners would give the owners a strong incentive to offer competitive, fair, and reasonable terms of employment to the players. This would dramatically decrease the likelihood of work stoppages and other labor problems in the future.”).

340. *Id.*

341. Janes, *supra* note 321.

342. Todd Ruger, *Senator Floats Reexamination of Baseball’s Antitrust Exemption*, ROLL CALL (Mar. 10, 2022, 12:24 PM), <https://rollcall.com/2022/03/10/senator-floats-reexamination-of-baseballs-antitrust-exemption/>.

343. *Id.*

344. Competition in Professional Baseball Act, H.R. 2511, 117th Cong. (2021).

345. Ruger, *supra* note 342.

346. *Id.*

347. The letter was addressed to the Executive Director for the Advocates for Minor Leagues, Harry Marino. The Senate’s motivation was to solicit additional information from the organization

informed the public that the Senate Judiciary Committee planned to hear testimony from Rob Manfred, the Major League Baseball Commissioner; however, this hearing did not occur.³⁴⁸ However, this bill has sat in the Subcommittee on Antitrust, Commercial, and Administrative Law since October 19, 2021.³⁴⁹ Furthermore, Senator Bernie Sanders (I-VT) introduced a bill on March 14, 2022, titled the Save American Baseball Act,³⁵⁰ which similarly aims to remove baseball's antitrust exemption.³⁵¹ However, Congress referred this bill to the Committee on the Judiciary where it has remained stagnant since.³⁵²

Tom Davis, the former chairman of the House Committee on Oversight and Government Reform, explained that he is doubtful that Congress can successfully resolve this issue.³⁵³ Over the years, bills have floated through Congress with the intention of removing baseball's antitrust exemption; however, each of these efforts have died at the committee level.³⁵⁴ Consequently, the court system is likely a more favorable route for opponents of baseball's antitrust exemption.³⁵⁵ It seems that the MLB is aware of this considering its legal strategies in recent years have reflected a hesitation to go to trial on cases relating to labor violations in the minor leagues.³⁵⁶ For example, in 2014, a class of minor league players sued the MLB in the United States District Court for the Northern District of California alleging that the MLB had violated the Fair Labor Standards Act, as well as California's labor laws, when it forced minor players to accept what the plaintiff's referred to

in order to examine the impacts of the antitrust exemption on labor and employment practices within the minor leagues. *See* Janes, *supra* note 321.

348. Diana Leiden, Jeanifer Parsigian & Angela A. Smedley, *Is it Strike 3 for MLB's Antitrust Exemption? The Latest Sports Antitrust Cases at Bat*, WINSTON & STRAWN LLP (Sept. 6, 2022), <https://www.winston.com/en/competition-corner/is-it-strike-3-for-mlbs-antitrust-exemption-the-latest-sports-antitrust-cases-at-bat.html>.

349. H.R. 2511.

350. Save American Baseball Act, S. 3833, 117th Cong. (2022).

351. Oshin, *supra* note 329.

352. S. 3833.

353. Christian Red, *Major League Baseball's Antitrust Exemption Once Again Faces Scrutiny on Capitol Hill*, FORBES (July 2, 2022, 7:00 AM), <https://www.forbes.com/sites/christianred/2022/07/02/major-league-baseballs-antitrust-exemption-once-again-faces-scrutiny-on-capitol-hill/?sh=5e494d2d1a15> (“[I]f anyone decides to take on MLB—particularly going after its antitrust exemption—the better strategy might be through the court system.”).

354. Gregory & Polden, *supra* note 226, at 172 n. 96 (citing *Flood v. Kuhn*, 407 U.S. 258, 281 (1972)).

355. *Id.* at 172–73.

356. Leiden et al., *supra* note 348.

as “starvation” wages.³⁵⁷ The case took place over the course of eight years.³⁵⁸ In May 2022, the MLB swiftly settled with minor league players for \$185 million in order to avoid the upcoming trial in June 2022.³⁵⁹ While this case involved issues relating to the Fair Labor Standards Act,³⁶⁰ there is no denying that the “heart of the case” lies in baseball’s antitrust exemption.³⁶¹ The controversial statements made by Congress just a few months prior, in March 2022, may explain why the MLB felt the sudden urge to settle the case before the June 2022 trial.³⁶²

Most importantly, a possible landmark case, *Nostalgic Partners, LLC v. Office of the Commissioner of Baseball*,³⁶³ is on appeal at the Second Circuit.³⁶⁴ In December 2021, a group of minor league teams filed suit in the United States District Court for the Southern District of New York alleging that the MLB violated section 1 of the SAA in 2020 when it eliminated forty-three minor league teams in May of that year.³⁶⁵ The plaintiffs informed the court that “[t]his is the ideal case to end Major League Baseball’s immunity from the antitrust laws once and for all.”³⁶⁶ The MLB fired back by moving to dismiss the case and even scolding the minor league for “‘publicly boasting’ that they are using the case as a vehicle to challenge the exemption.”³⁶⁷ Initially, the Department of Justice (“DOJ”) did not address the MLB’s motion to dismiss.³⁶⁸ Instead, the DOJ stated that baseball’s antitrust exemption “does not rest on any substantive policy interests that justify players and fans losing out on the benefits of competition.”³⁶⁹ Furthermore, it emphasized that “the ‘baseball exemption’ rests on a

357. Max Kutner, *Calif. Forecast: \$185M MLB Wage Deal Could Get Signoff*, LAW360 (Aug. 12, 2022, 5:27 PM), <https://www.law360.com/employment-authority/articles/1519190/calif-forecast-185m-mlb-wage-deal-could-get-signoff> (discussing the settlement from *Senne v. Office of the Commissioner of Baseball*, No. 3:14-cv-00608 (N.D. Cal. July 23, 2021)); *Senne v. Kan. City Royals Baseball Corp.*, No. 14-cv-00608, 2023 U.S. Dist. LEXIS 54274 (N.D. Cal. Mar. 29, 2023) (granting the motion to settle).

358. Leiden et al., *supra* note 348.

359. *Id.*

360. Fair Labor Standards Act, 29 U.S.C. § 203.

361. Leiden et al., *supra* note 348.

362. *See supra* note 334–34 and accompanying text.

363. No. 1:21-cv-10876, 2022 WL 14963876 (S.D.N.Y. Oct. 26, 2022), *appeal docketed*, No. 22-2859 (2d Cir. Nov. 1, 2022).

364. Plaintiff’s Response to United States’ Statement of Interest, *supra* note 15, at 3.

365. *Nostalgic Partners*, 2022 WL 14963876, at *1.

366. Plaintiff’s Response to United States’ Statement of Interest, *supra* note 15, at 3.

367. Leiden et al., *supra* note 348.

368. Matthew Perlman, *DOJ Calls Baseball’s Antitrust Exemption ‘An Aberration’*, LAW360 (June 16, 2022, 6:33 PM), <https://www-law360-com.ezproxy.law.umaryland.edu/articles/1503565/doj-calls-baseball-s-antitrust-exemption-an-aberration->

369. *Id.* (quoting Statement of Interest of the United States at 1, *Nostalgic Partners*, No. 1:21-cv-10876 (S.D.N.Y. Oct. 26, 2022)).

repudiated Commerce Clause rationale.”³⁷⁰ In response, the plaintiffs stated, “[t]his case should proceed to the Second Circuit and then to the Supreme Court, so the high court can revisit its century-old precedent that no longer has any foundation in law or policy.”³⁷¹ However, on October 26, 2022, the Southern District of New York granted the MLB’s Motion to Dismiss because the MLB’s antitrust exemption bars plaintiffs’ claim.³⁷² The plaintiffs promptly filed an appeal to the Second Circuit where oral arguments will occur on June 14, 2023.³⁷³

3. *The Non-partisan Nature of Baseball’s Antitrust Exemption May Prove Effective if the Issue Reaches the Supreme Court*

With bills idly resting in Congressional committees as they have in the past, it seems that *Nostalgic Partners* may provide a more promising path for the removal of baseball’s antitrust exemption.³⁷⁴ Consequently, a prediction of the Supreme Court’s interpretation of this case is useful.³⁷⁵ It appears that baseball’s antitrust exemption is a non-partisan issue, considering members of Congress from both ends of the political spectrum fervently support this cause.³⁷⁶ While the non-partisan nature of this issue has proven ineffective in accelerating the legislative process, it could potentially lead to a favorable outcome if *Nostalgic Partners* reaches the Supreme Court.³⁷⁷

Recent Supreme Court decisions, as well as comments made by the Justices in the past, indicate that the majority of the Court would likely vote to overturn the Baseball Trilogy if *Nostalgic Partners* is granted certiorari.³⁷⁸

370. *Id.* (quoting Statement of Interest of the United States, *supra* note 369, at 6).

371. Plaintiff’s Response to United States’ Statement of Interest, *supra* note 15, at 3.

372. Judge Andrew L. Carter, Jr. stated in the opinion:

Plaintiffs believe that the Supreme Court is poised to knock out the exemption, like a boxer waiting to launch a left hook after her opponent tosses out a torpid jab. It’s possible. But until the Supreme Court or Congress takes action, the exemption survives; it shields MLB from Plaintiffs’ lawsuit.

Nostalgic Partners, LLC v. Off. of the Comm’r of Baseball, No. 1:21-cv-10876, 2022 WL 14963876, at *2 (S.D.N.Y. Oct. 26, 2022).

373. Notice of Appeal at 1, *Nostalgic Partners*, No. 1:21-cv-10876 (S.D.N.Y. Oct. 26, 2022); Notice of Hearing Date at 1, *Nostalgic Partners*, No. 1:21-cv-10876 (2d Cir. Apr. 10, 2023).

374. *See supra* Section II.C.2.

375. In 2008, a commentator provided an analysis of how the 2008 Supreme Court would likely rule on this issue if the Court granted certiorari. *See Tomlinson, supra* note 173, at 300–03.

376. Republicans, Democrats, and Independents from the Senate and House of Representatives have joined forces on this issue. It is plausible that the implications of baseball’s antitrust exemption transcend political ideology. *See supra* Section II.C.1.

377. *See supra* Section II.C.1.

378. *See NCAA v. Alston*, 141 S. Ct. 2141, 2159 (2021) (describing *Federal Baseball* “as ‘unrealistic’ and ‘inconsistent’ and ‘aberration[al]’” (citing *Flood v. Kuhn*, 407 U.S. 258 (1972))); *see also* *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 551 U.S. 877, 899–904 (2007) (denoting strong disapproval for stare decisis arguments in the context of antitrust law).

For example, Justice Sotomayor insisted that she would have dissented to the legal conclusions within the Baseball Trilogy because she describes these cases as having “not much legal justification” and being “hopelessly outdated.”³⁷⁹ Furthermore, Justice Sotomayor remarked that “sometimes . . . the question is not whether the decision was wrong, but whether this is the right time to overrule it.”³⁸⁰ Justice Sotomayor’s statements from 2013 are parallel to Justice Gorsuch’s reasoning in the *NCAA v. Alston* opinion.³⁸¹ For example, he emphasized that “[w]hether an antitrust violation exists necessarily depends on a careful analysis of market realities. If those market realities change, so may the legal analysis.”³⁸² Furthermore, Justice Kavanaugh’s concurrence in *Alston* denoted a strong disapproval for labor violations in the context of sports and antitrust when he stated, “[n]owhere else in America can businesses get away with agreeing not to pay their workers a fair market rate on the theory that their product is defined by not paying their workers a fair market rate.”³⁸³ This ideology is a direct parallel to the MLB’s justification for paying its minor league players below the federal poverty line.³⁸⁴ Therefore, it is reasonable to conclude that Justice Kavanaugh would be sympathetic to the circumstances in *Nostalgic Partners*.³⁸⁵

In 2007, Chief Justice Roberts, Justice Thomas, and Justice Alito voted “without hesitation” to overturn a 96-year-old antitrust case in *Leegin Creative Products, Inc. v. PSKS, Inc.*³⁸⁶ on the basis that a stare decisis argument was no longer applicable to modern antitrust standards.³⁸⁷ This implies that a stare decisis argument will likely not be successful for the MLB if the case reaches the Supreme Court.³⁸⁸ Finally, as previously discussed, the Supreme Court’s stare decisis framework in *Dobbs* would present significant complications for the Baseball Trilogy on review.³⁸⁹ In light of recent opinions and comments from current Justices, it is likely that the Court may overturn the Baseball Trilogy if *Nostalgic Partners* is granted certiorari.

379. Totenberg, *supra* note 336.

380. *Id.*

381. *Alston*, 141 S. Ct. at 2158–59.

382. *Id.* at 2158 (citations omitted).

383. *Id.* at 2169 (Kavanaugh, J., concurring).

384. *See supra* Section I.C.1.

385. *Alston*, 141 S. Ct. at 2169.

386. *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 551 U.S. 877, 881–82 (2007).

387. Tyson Herrold & Carl Hittinger, *Baseball’s Antitrust Exemption Marks Its 100th Anniversary with a New Challenge*, JDSUPRA (Aug. 2, 2022), <https://www.jdsupra.com/legalnews/baseball-s-antitrust-exemption-marks-1866442/>.

388. *Id.*

389. *See supra* Section II.A.3.

CONCLUSION

For over a century, the reasoning behind the Baseball Trilogy has been defined by its “dubious validity.”³⁹⁰ It began when Justice Holmes exercised his judicial favoritism in the *Federal Baseball* opinion and ended with two cases that make a mockery of the Supreme Court’s understanding of congressional intent and stare decisis.³⁹¹ This exemption does not lie dormant at the foundation of the baseball industry, considering it affects the lives of real people each and every day.³⁹² This exemption has led minor league players to live below the federal poverty line and encouraged corrupt practices among team owners.³⁹³ Additionally, the MLB’s anticompetitive practices have deprived fans of the benefits that come with expanding baseball into new markets.³⁹⁴ Given the recent Supreme Court rulings and comments from current justices, there is hope for the future.³⁹⁵ However, the removal of baseball’s antitrust exemption now lies in the hands of the Court of Appeals for the Second Circuit.³⁹⁶ The path to achieving a better future for baseball hinges on the arguments that are currently taking place at the Second Circuit.³⁹⁷ What happens next may just change the future of baseball as we know it.

390. *Radovich v. NFL*, 352 U.S. 445, 450 (1957).

391. *See supra* Section II.A.

392. *See supra* Section II.C.1

393. *See supra* Section II.C.1

394. *See supra* Section II.C.1

395. *See supra* Section II.C.3.

396. Notice of Hearing Date, *supra* note 373.

397. *See supra* Section II.C.1.