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CONGRESS IN RELIEF: THE ECONOMIC IMPORTANCE OF REVOKING BASEBALL'S ANTITRUST EXEMPTION

I. INTRODUCTION

On November 26, 1996, the owners of the thirty major league baseball teams voted twenty-six to four to ratify a new collective bargaining agreement ("Agreement") with the Major League Baseball Players Association ("MLBPA") effective until the year 2000, with an MLBPA option to extend the Agreement until 2001. The MLBPA approved the Agreement on December 5, 1996, and it was officially approved on March 13, 1997. While those involved with baseball generally viewed the agreement as a significant breakthrough, as it assured at least five seasons without labor strife, the Agreement is only a temporary respite from future labor animosity. Since 1972, there have been eight work-stoppages in baseball, the most recent was a 232 day strike that began August 12, 1994 and eliminated the last seven and a half weeks of the 1994 regular season, the 1994 playoffs, the World Series, and the first three and a half weeks of the 1995 schedule.

Based on the pattern of coercive tactics, such as strikes by the players and lock-outs by the owners, aimed at forcing one side to concede to the other's demands, it is apparent that more stability is required to quell the reoccurring labor animosity in baseball. One major impediment to efficient negotiations is Major League Baseball's exemption to federal antitrust laws. The exemption, in effect, acts to remove the possibility that, in the event of a bargaining impasse, the MLBPA can dissolve and sue the owners for collusive bар-

2. Id.
3. Id.
4. Id.

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gaining tactics. This allows the union to resist more easily conceding to any terms which may result in drawn out negotiations, as occurred during the 1994 strike.

The best way to provide this stability is for Congress to pass legislation lifting baseball's antitrust exemption, thereby removing the inherent bargaining advantage that the exemption provides the owners. Lifting the exemption will in turn assuage the damage that baseball has suffered in terms of its fan support and public image as the "national pastime," and will help to preserve the future of baseball as a business enterprise.

This comment first explains the background of baseball's unique exemption from antitrust laws, how the exemption applies today in light of the present collective bargaining agreement, and case law that has limited the usefulness of the court-granted exemption. The comment also focuses on the other effects of the antitrust exemption on baseball as a business, such as the ability of the owners to block existing franchises from relocating. By blocking the moves, owners are able to extort huge sums of money from expansion cities. Additionally, this comment demonstrates how these practices have had the effect of insulating the owners in larger markets from financial danger and widening the disparity between small and large market teams. Finally, this comment proposes that Congress intervene and pass legislation making the baseball owners subject to antitrust laws.

7. See infra Part IV.
8. Baseball was recognized as "the preeminent American sport" in the Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs, 259 U.S. 200, 205 (1922), decision. The Court also noted that "millions of people follow the daily results of the games in the press." Id. However, today, baseball is being replaced by basketball and football in terms of fan interest. See discussion infra Part III.B.3.
9. See infra Part II.
10. See infra Part III.B.4.
11. See infra Part III.B.3.
13. See infra Part IV.
II. BACKGROUND

A. The Sherman Act

1. Overview

In order to promote competition and prevent unlawful restraints of trade and monopolies, Congress passed the Sherman Act ("the Act") on July 2, 1890.\textsuperscript{14} The Act, in effect, codified common law principles of trade restraints that banned anti-competitive arrangements, such as price-fixing cartels.\textsuperscript{15} Section 1 of the Act proclaims that "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal."\textsuperscript{16} Section 2 provides that "[e]very person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony."\textsuperscript{17}

Section 1 was intended to prevent cartels, horizontal mergers of monopolistic proportions, and predatory business tactics, while section 2 of the Act was intended to protect consumers by preventing one or a few large companies from dominating a market.\textsuperscript{18} The basic premise underlying the Act is the assumption that free competition among business entities will produce the best price levels.\textsuperscript{19} Furthermore, the Supreme Court has interpreted the Act to propose that collusion among competitors may produce prices which harm con-

\textsuperscript{16} 15 U.S.C. § 1 (1994); see United States v. Aluminum Co. of Am., 148 F.2d 416, 429 (2d Cir. 1945) (holding that in order to fall within section 2 of the Act the monopolist must have both the power to monopolize, and the intent to monopolize).
\textsuperscript{18} BORK, supra note 15, at 19-20. The main policy behind the laws was to advance consumer welfare. Id. at 21. The 53d Congress recognized that higher prices were brought out by a restriction on output, and a main policy goal of the antitrust laws were to prevent the monopolistic tendency to restrain output. Id.
2. Analysis of the Law

The Supreme Court has had extensive experience in dealing with antitrust violations in business and industry. In *United States v. Socony Vacuum Oil Co.*, the Court laid out the requirements for a *per se* violation of section 1 of the Act: "[a]ny combination formed for the purpose and with the effect of raising, depressing, fixing, pegging, or stabilizing the price of a commodity in interstate or foreign commerce is illegal *per se*." More recently, the Court summed up the criteria for a *per se* violation by holding that it is *per se* illegal, when the "surrounding circumstances make the likelihood of anti-competitive conduct so great as to render unjustified further examination of the challenged conduct." When the particular violation is not one that can be condemned as a *per se* violation, the Court has applied the Rule of Reason analysis to determine if the activity in question is an "unreasonable" restraint of trade. In order to determine whether an activity fails to satisfy the Rule of Reason, the Court considers "whether the restraint imposed ... merely regulates and perhaps ... promotes competition or whether ... it may suppress or even destroy competition." If it is the latter, then the restraint will likely be found unreasonable.

The Court has recognized that, in some cases, some col-

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22. Id. at 223.
24. Addyson Pipe & Steel Co. v. United States, 175 U.S. 211 (1899) (stating, in dicta, that if restraint of trade is ancillary to the main and lawful purpose of the contract, it may escape *per se* classification and may also be acceptable under the Rule of Reason balancing).
25. Board of Trade v. United States, 246 U.S. 231, 238 (1918). Justice Brandeis, writing the opinion of the Court, set up the following criteria for the Court to consider in determining the reasonability of a restraint: "[1] the facts peculiar to the business to which the restraint is applied; [2] its condition before and after the restraint was imposed; [and 3] the nature of the restraint and its effect, actual or probable." Id. "The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, [and] the purpose or end sought to be attained are all relevant facts." Id.
26. NCAA, 468 U.S. at 104.
laboration is needed in order to offer a good to the public. In that case, the Court will apply the Rule of Reason to determine whether the restraint of trade is outweighed by the benefit that the agreement provides to consumers. The Court has consistently recognized that in sports some collaboration is needed in order to have a competitive league and to offer a product to the public. In *NCAA v. Board of Regents of University of Oklahoma*, the Court was faced with an agreement among member colleges of the NCAA to restrict how often a particular team's games could be shown on television. The Court held that the agreement was not illegal *per se* because it recognized that, as in *Broadcast Music, Inc. v. Columbia Broadcasting Systems, Inc.*, some organization of and restraints on competition are needed to allow for college football games to exist. The colleges must agree on rules, such as rules of the games themselves and rules of player eligibility.

By combining all of the member schools into a single athletic association, the NCAA has enabled a product to be marketed which might otherwise be unavailable. Without a league, there would be no competition. For these reasons, the Court allowed the NCAA to justify the plaintiff's restraints instead of condemning them as illegal *per se*. As justification for the restraint of not allowing each school to negotiate its own television contract, the NCAA claimed that the plan promoted equality throughout the NCAA and allowed colleges to focus on academics and not on profits. The NCAA argued that this agreement allowed member schools to achieve this stated goal because each school does not have to worry about negotiating its own television contract.

27. *Id.* at 117.
28. *Broadcast Music, Inc. v. Columbia Broad. Sys., Inc.*, 441 U.S. 1 (1979) (holding that the establishment of a "blanket license" was reasonable because it offered an otherwise unavailable product and consumers could go elsewhere for the individual licenses).
31. *Id.* at 91-94.
34. *Id.* at 117.
36. *Id.* at 117.
37. *Id.* at 102.
38. *Id.*
ever, despite these arguments, the Court held that the challenged restraint did not enhance competition and that there were less intrusive means of achieving its goal of having a competitive league.  

3. Modern Antitrust Policy

The goal of modern antitrust policy has moved away from looking to protect the small competitor and has instead focused on economic efficiency. The courts, as well as the Department of Justice and Federal Trade Commission, have loosened their grip on prosecuting monopolistic behavior when the conduct benefits the consumer.

B. Baseball's History with Antitrust Laws

1. A Local Affair

The Supreme Court was first faced with determining whether baseball was susceptible to antitrust legislation in Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs. In this case, the plaintiff was a baseball club incorporated in Maryland, which, along with seven other teams, made up the Federal League of Professional Baseball. The plaintiff alleged that the defendants were guilty of an illegal conspiracy in restraint of trade when they purchased some of the constituent clubs of the Federal League and induced all of the clubs except for the plaintiff to leave their league and join the National League.

The plaintiff argued that baseball is susceptible to antitrust laws for the following reasons: (1) baseball constitutes interstate commerce; (2) an interstate relationship exists between clubs located in different states; (3) organized baseball generates an enormous amount of wealth; (4) baseball is an engage-

39. *Id.* at 119. Specifically, the Court said that the television restriction did not produce "any greater measure of equality throughout the NCAA than would a restriction on alumni contributions, tuition rates, or any other revenue producing activity." *Id.*


41. *Id.* at 5; see also Reiter v. Sonotone Corp., 442 U.S. 330, 343 (1979) (holding that Congress designed the Sherman Act as a "consumer welfare prescription").

42. 259 U.S. 200 (1922).

43. *Id.* at 207.

44. *Id.*
ment in moneymaking; (5) gate receipts were divided by agreement between the home club and the visiting club; and (6) there is a great difference between playing baseball for sport and the business of baseball. Nevertheless, the Supreme Court unanimously held otherwise. In the opinion of the Court, Justice Holmes wrote that giving exhibitions of baseball is a business of purely state affairs. The fact that by giving these exhibitions people may cross state lines is "merely incident, not the essential thing" of the business. Justice Holmes concluded that "personal effort, not related to production, is not a subject of commerce," and it does not become commerce because there is some transportation involved.

2. Federal Baseball Club of Baltimore Followed

Courts have repeatedly cited Federal Baseball Club of Baltimore as the authority in cases attacking baseball on antitrust grounds. In Toolson v. New York Yankees, Inc., a per curiam opinion, the plaintiffs, professional baseball players, alleged that the reserve clause in their contract was a violation of the Act because it was an illegal restraint on trade. The Court disagreed, based on the precedent of Federal Baseball Club of Baltimore. Furthermore, the Court

45. Id. at 201-206.
46. Id. at 206.
47. Id. at 208.
49. Id. at 209.
52. The reserve clause gives the club in organized baseball that first signs a player a continuing and exclusive right to that player's services. Michael L. Kaplan, Annotation, Application of Federal Antitrust Laws to Professional Sports, 18 A.L.R. Fed. 489, 515 (1996). That right is recognized and enforced by all the other clubs. Id. Therefore, once a player signs a contract with a team, he has no option but to come to an agreement with the team with which he is under contract because no other team is allowed to negotiate with him. Id. Recent collective bargaining agreements, however, have somewhat eliminated this restraint on player moves since the players are granted free agency after six years of service time in Major League Baseball. See discussion infra Part II.D.
53. Toolson, 346 U.S. at 362. The Court did note, however, that it was "a contradiction in terms" to say that baseball does not involve interstate commerce. Id.
54. Id. at 357.
noted that if there are evils which warrant antitrust laws to be applied to baseball, it is Congress' responsibility to impose them.\textsuperscript{55}

The Court's decision to reaffirm \textit{Federal Baseball Club of Baltimore} and to leave it to Congress to change the law was based partly on a 1952 report prepared by the Subcommittee on the Study of Monopoly Power of the House of Representatives Committee on the Judiciary.\textsuperscript{56} The report stated "[u]nder judicial interpretations of [the commerce clause], the Congress has power to investigate, and pass legislation dealing with professional baseball . . . if that business is, or affects, interstate commerce."\textsuperscript{57} The Court, therefore, asserted that \textit{stare decisis}\textsuperscript{58} must prevail, but that it would defer to any Congressional findings regarding baseball's effect on interstate commerce.\textsuperscript{59}

3. \textit{Flood v. Kuhn: A Deference to Precedent}

\textit{Flood v. Kuhn,}\textsuperscript{60} the Supreme Court's most recent decision concerning baseball and the federal antitrust laws, dealt

\textsuperscript{55} Id.

\textsuperscript{56} Id. at 358-59 (Burton, J., dissenting).


\textsuperscript{58} \textit{Stare decisis}, a Latin phrase, is judicial doctrine which means "to abide by, or adhere to, decided cases." \textit{BLACK'S LAW DICTIONARY} 1406 (6th ed. 1990). When the Supreme Court reexamines a prior holding, "its judgment is customarily informed by a series of prudential and pragmatic considerations designed to test the consistency of overruling a prior decision with the ideal of the rule of law, and to gauge the respective costs of reaffirming and overruling the prior case." Planned Parenthood v. Casey, 505 U.S. 833, 854 (1992). A court may consider the following factors in its decision to reaffirm or overrule: (1) whether the rule is subject to a kind of reliance that would lend a special hardship to the consequences of overruling and add inequity to the cost of repudiation; (2) whether related principles of law have so far developed as to have left the old rule obsolete; or (3) whether the facts have so changed or come to be perceived so differently so to have changed usefulness or justification of the old rule. \textit{Id.} at 854-55.

\textsuperscript{59} Toolson v. N.Y. Yankees, Inc., 346 U.S. 356, 359 (1963) (Burton, J. dissenting). \textit{Toolson} was decided along with two other cases, \textit{Kowalski v. Chandler}, 202 F.2d 413 (6th Cir. 1953), aff'd, 436 U.S. 356 (1953) and \textit{Corbett v. Chandler}, 202 F.2d 428 (6th Cir. 1953), aff'd 436 U.S. 356 (1953). While neither of these two cases dealt with the reserve clause, the fact that they were affirmed may suggest that that the Court understood baseball's exemption to extend beyond the reserve system. Larry C. Smith, \textit{Beyond the Peanuts and Cracker Jacks: Repealing Baseball's Antitrust Exemption}, 67 U. COLO. L. REV. 113, 119 n.43 (1996).

once again with the reserve clause. In Flood, Curtis Flood, the plaintiff, was traded to the Philadelphia Phillies in 1969 after a twelve season all-star career with the Saint Louis Cardinals. In December 1969, Flood complained to the Commissioner of Baseball and asked that he be made a free agent and be allowed to strike his own bargain with any other major league team. When the Commissioner refused, Flood brought an antitrust suit, alleging that the reserve clause, which binds his services to one club, was too restrictive and is an unreasonable restraint on trade.

Justice Blackmun, in writing the opinion of the Court, reached the following conclusions: (1) professional baseball is a business which is engaged in interstate commerce; (2) with its reserve system enjoying exemption from the federal antitrust laws, baseball is an exception and an anomaly; (3) the Federal Baseball Club of Baltimore and Toolson cases have become aberrations confined to baseball; (4) the cases are fully entitled to the benefit of stare decisis; (5) the exemption rests on a recognition and an acceptance of baseball's unique characteristics and needs; (6) baseball has been allowed to develop and expand unhindered by federal legislation action; and (7) a judicial overturning of Federal Baseball Club of Baltimore would cause retroactivity problems. Therefore, if any change is to be made in baseball's exemption, it should come by Congressional legislation.

4. Recent Signs of Limiting the Exemption in Lower Courts

Two lower court cases which arose from the same factual underpinnings have held that baseball's exemption should be limited to the reserve clause. A group of investors, includ-
ing Vincent Piazza, a plaintiff in *Piazza v. Major League Baseball*, sought to purchase the San Francisco Giants and move them to Tampa Bay. In order to accomplish this purchase, the plaintiffs formed a partnership called the Tampa Bay Baseball Club, Ltd. The investors executed a letter of intent to purchase the team for $115 million from the Giants owner, Robert Lurie. In return, Lurie agreed not to negotiate with any other investors and to use his best efforts to obtain approval from the rest of the owners. The sale was not approved by the owners. Rather, an alternate sale was approved to other investors who paid only $100 million for the Giants. The owners approved this deal because it would keep the Giants in San Francisco.

In the *Piazza* case, the plaintiffs brought suit asserting that the defendants violated sections 1 and 2 of the Act because Major League Baseball has “monopolized the market for Major League Baseball teams and that [it] has placed direct and indirect restraints on the purchase, sale, transfer, relocation of, and competition for such teams.” The plaintiffs claimed that these actions unlawfully restrained and impeded their opportunities to engage in the business of Major League Baseball.

(limiting the exemption to the reserve system); *Butterworth v. National League of Prof'l Baseball Clubs*, 644 So.2d 1021 ( Fla. 1994) (limiting the exemption to the reserve system). But see *McCoy v. Major League Baseball*, 911 F. Supp. 454, 457 (W.D. Pa. 1995) (holding that the exemption extends to the entire “business of baseball”).

75. Id. at 421.
76. Id. at 422.
77. Id.
78. Id. Approval of two-thirds of the owners is required for a franchise to be moved. Id.
79. Id. at 423.
81. Id.
82. Id. at 423-24. The plaintiffs also brought federal claims that their First and Fifth Amendments of the Constitution were violated and that they were deprived of their privileges and immunities guaranteed by Article IV, section 2 of the Constitution. Id. at 423.
83. Id. at 423-24. Football owners have been found guilty of unreasonably restraining trade when collaborating to prevent franchise relocation. *See Los Angeles Memorial Coliseum Comm'n v. National Football League*, 726 F.2d 1381 (9th Cir. 1984) (affirming district court's finding that football owners unreasonably restrained trade by preventing the Oakland Raiders from relocating to Los Angeles); *Los Angeles Memorial Coliseum Comm'n v. National Football League*, 791 F.2d 1356 (9th Cir. 1986) (affirming treble damage jury verdict in favor of the Coliseum).
In order to determine the scope of baseball’s antitrust exemption after Flood, the Piazza court analyzed the value of stare decisis. The court first explained that the American rule of stare decisis binds courts to adhere not only to results, but also to the rationales for results. The Piazza court recognized that although lower courts are bound by Supreme Court decisions, the Supreme Court may change the standard or result established in an earlier case if it determines it is “unsound in principle or unworkable in practice.” When the Piazza court interpreted Flood, it concluded that Flood effectively removed the “rule stare decisis” of Federal Baseball Club of Baltimore and Toolson by declaring that baseball is interstate commerce. The Piazza court also determined that the Supreme Court established a new rule that the exemption applies only to the reserve clause. Thus, the Piazza court concluded the lower courts are no longer bound to follow the broad rule in Toolson and Federal Baseball Club of Baltimore.

The Piazza court is the only federal court that has interpreted baseball’s antitrust exemption so narrowly, but the case was followed by the Florida Supreme Court in Butterworth v. National League of Professional Baseball Clubs. After the baseball owners voted against the sale of the Giants to the Tampa Bay investment group and Robert Lurie signed a contract to sell the team to a group of San Francisco investors, Florida Attorney General Robert Butterworth issued antitrust civil investigative demands (“CIDs”) to the National League of Professional Baseball Clubs and to its president, William D. White. The circuit court issued an order quashing the CID’s, stating that “decisions concerning ownership and location of baseball franchises clearly fall within the ambit of baseball’s antitrust exemption.”

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84. Piazza, 831 F. Supp. at 437.
85. Id. at 438 (quoting Planned Parenthood v. Casey, 947 F.2d 682, 691-92 (3d Cir. 1991)).
86. Id. at 437-38.
87. Id. at 438.
88. Id. Note that Tampa Bay, along with Arizona, was given an expansion franchise to start play in 1998. See discussion infra Part IV.A.2.
89. 644 So. 2d 1021 (Fla. 1994).
90. Id. A CID may be given by the Attorney General of Florida to anyone he has reason to believe may have information relevant to a civil antitrust proceeding. Id. at 1022 n.2.
91. Id. at 1022.
Supreme Court overruled and cited the rationale in *Piazza* to support its decision. The *Butterworth* court reasoned that since *Flood* stated that professional baseball "is engaged in interstate commerce," which contradicts *Federal Baseball Club of Baltimore's* holding that baseball exhibitions are "purely state affairs" and do not constitute interstate commerce, the precedential value of *Federal Baseball Club of Baltimore* and *Toolson* are limited to their facts. Therefore, the court concluded that baseball's antitrust exemption applies only to the reserve clause.

These two cases demonstrate a judicial step toward limiting baseball's exemption. Nevertheless, the Supreme Court has not specifically addressed the matter, and lower federal courts have not followed the *Piazza* and *Butterworth* holdings. For instance, in the 1995 decision in *McCoy v. Major League Baseball*, the court rejected the holdings in *Piazza* and *Butterworth*. The *McCoy* court recognized that the exemption applied to all aspects of the business of baseball. In so doing, the *McCoy* court quoted from the concluding paragraph of the *Flood* decision, which, in essence, stated that the business of baseball is not within the scope of federal antitrust laws.

Moreover, the *McCoy* court underscored that the Supreme Court retains the exclusive privilege of reversing itself on this issue. Therefore, the *Piazza, Butterworth,*

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92. *Id.* at 1025.
96. *Id.*
97. 911 F. Supp. 454, 457 (W.D. Wa. 1995). The dispute in *McCoy* arose out of the December 1993 impasse between the owners of the twenty-eight Major League Baseball teams and the players which, ultimately, lead to the 1994 baseball players strike. *Id.* at 454. The National Labor Relations Board ("NLRB") had filed suit against the owners and players for unfair labor practices. *Id.* Thereafter, the plaintiffs (both fans and businesses owners) sued the MLB owners for antitrust violations. *Id.* However, the court ultimately granted the defendant's motion to dismiss because (1) the antitrust exemption precluded plaintiff's claims, and (2) the plaintiff's lacked standing to bring such claims. *Id.*
98. *Id.* at 457.
100. *Id.* (citing *Flood v. Kuhn*, 407 U.S. 258, 285 (1972)).
101. *Id.* (citing *Salerno v. American League of Prof'l Baseball Clubs*, 429 F.2d
and McCoy decisions do not provide guidance as to where the Supreme Court would stand if these lower court decisions were heard regarding the scope of the baseball's antitrust exemption.

A case which could prove instrumental in determining the scope of the exemption is the recently filed lawsuit by New York Yankees owner, George Steinbrenner. On May 5, 1997, Steinbrenner filed suit in a federal district court in Tampa Bay, Florida against the other twenty-nine owners of Major League Baseball for "collaborating in a merchandising cartel that favors weak teams." The suit concerns baseball's executive council's order to the Yankees to cease and desist from selling Yankee tee shirts with Adidas logos on them at Yankee Stadium because baseball has a joint marketing agreement with another label. The outcome of this case will depend on the court's application of the breadth of the antitrust laws. Given that the case is filed in Florida and is bound by the Butterworth decision, it is likely that it will be decided the same way as Piazza and Butterworth in the lower court and that the exemption will be limited to the reserve clause.

B. Antitrust and Collective Bargaining: The Labor Exemptions

The MLBPA, the union which still exists today, was formed in December of 1953 to represent the needs of the modern Major League Baseball player. The MLBPA enjoys

1003, 1005 (2d Cir. 1970), cert. denied, 400 U.S. 1001 (1971)).


103. Id. Steinbrenner also alleges that baseball "runs a cartel for the licensing of club trademarks" and has required the Yankees and Adidas to reveal confidential competitive information to competitors." Id.

104. Id. In 1984, baseball clubs agreed to divide licensing and merchandising income from club trademarks equally. Id. This agreement is similar to those made by Dallas Cowboys owner Jerry Jones which circumvented the agreement NFL owners made with NFL Properties which allowed NFL properties to market the league and individual team trademarks jointly. Peter King, Making Waves, SPORTS ILLUSTRATED, Feb. 7, 1996, at 34. Jones signed an individual deal with Nike for $17.5 million and with Pepsi for $40 million. Id. The league filed suit, but dropped the suit after Jones counter-sued for antitrust violations. NFL and Dallas Cowboys Drop Suits Arising from Sponsorship Dispute, ENT. LITIG. REP., Jan. 30, 1997, available in LEXIS, News Library, Entlit File [hereinafter Dallas Cowboys Drop Suits]. For a discussion of the Steinbrenner versus Jones suits, see infra Part III.B.2.

105. GEORGE W. SCHUBERT, SPORTS LAW § 6.1 (1986). Baseball players first
the same statutory and non-statutory exemption to antitrust laws that all labor unions enjoy.\textsuperscript{106}

1. Statutory and Non-Statutory Labor Exemption

Labor unions enjoy a statutory labor exemption from the antitrust laws that originated in the Clayton Act\textsuperscript{107} and the Norris-La Guardia Act.\textsuperscript{108} The exemption allows unions to enter into agreements that could eliminate competition from other unions and give a union a virtual monopoly of all organizational activities in a particular industry.\textsuperscript{109} Congress furthered the union exemption from antitrust laws by passing the National Labor Relations Act,\textsuperscript{110} which granted the exception to parties engaged in collective bargaining.\textsuperscript{111} Collective bargaining is a device that stems from the National Labor Relations Act and permits a majority of the workers in a particular industry to be represented by a union, which will then bargain for the group it represents.\textsuperscript{112} The individuals thus lose their right to bargain separately.\textsuperscript{113}

In addition to the statutory labor exemption, case law has created a non-statutory labor exemption. The Supreme Court has allowed collusive arrangements by both labor and management which otherwise would violate section 1 of the Sherman Act when the conduct occurs during collective bargaining and is necessary to further the bargaining process.\textsuperscript{114}

One avenue that other sports' unions have used to prevent owners from using this exemption to unreasonably restrict the players from changing teams and getting higher salaries is to decertify the union and sue.\textsuperscript{115} This allows the attempt to unionize came in 1885 when they formed the Brotherhood of Professional Baseball Players. See Robert F. Burk, Never Just a Game: Players, Owners and American Baseball to 1920, at 96 (1994). After its formation, players wages increased dramatically. Id. at 99. The Brotherhood formed an independent league called the Players National League of Baseball Clubs. Id. at 105. The League fell apart in 1891 due to financial problems. Id. at 112. For a complete summary of the history of baseball's labor developments prior to 1921, see id.

\textsuperscript{106} Schubert, supra note 105, § 6.1.
\textsuperscript{111} Id.
\textsuperscript{112} Id.
\textsuperscript{113} Id.
\textsuperscript{114} See NLRB v. Truck Drivers Local Union No. 449, 353 U.S. 87 (1957).
players to allege collusive behavior in violation of the Act. The tactic has been very successful in football to gain free agency.\(^{116}\) In addition, the threat of a dissolution of the National Basketball League Player Association expedited the signing of a new collective bargaining agreement and prevented a strike before the 1996-97 season.\(^{117}\)

*Mackey v. National Football League*\(^{118}\) is the landmark case which has applied the non-statutory labor exemption to professional sports. This case dealt with the legality of the "Rozelle Rule," which provided that when a player's contract expired and the player signed with another team, the new team had to compensate the former team with either additional players, money, or a draft pick.\(^{119}\) If the teams could not reach an agreement on compensation, then NFL Commissioner Pete Rozelle would determine the outcome, and his decision was binding.\(^{120}\) Thirty-six players filed suit against the NFL charging that the Rozelle Rule constituted an illegal combination in restraint of trade by denying professional football players the right to freely contract for their services.\(^{121}\)

In order to determine if the players' claim would be undermined by the labor exemption to antitrust law because it was the product of collective bargaining, the court laid out a three-part test that must be met for the exemption to be granted.\(^{122}\) First, the alleged restraint on trade must primarily affect only the parties in the collective bargaining relationship.\(^{123}\) Second, the agreement must concern a manda-
tory subject of collective bargaining. Finally, antitrust laws will be overridden by the policy favoring collective bargaining when the agreement sought to be exempted is the product of bona fide, arm's length bargaining.

The *Mackey* court concluded that the third prong, arms' length bargaining, was not met because the players did not ever consider the rule before it was implemented. Therefore, the Rozelle Rule was not exempt from an antitrust suit by the players. While this case set the standard for applying the labor exemption for collective bargaining in professional sports to antitrust laws, the strict application of its rules against the owners was loosened by the Supreme Court in *Brown v. Pro Football*.

*Brown* has severely limited the application of antitrust legislation on collective bargaining in professional sports. Like *Mackey*, *Brown* dealt with the immunity that arose from what the Supreme Court has called the "non-statutory" labor exemption from the antitrust laws. As discussed previously, the Court has implied this exemption from federal labor statutes, which set forth a national labor policy favoring free and private collective bargaining.

The *Brown* case arose when the National Football League ("NFL"), and the NFL Player's Association, a labor union, began to negotiate a new collective bargaining agreement in March of 1989 to replace the old one that had expired in 1987. The owners proposed a plan that would allow each team to establish a "developmental squad" of up to six first year players who, as free agents, had failed to secure a position on a regular player roster. The owners plan called for

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124. *Id.*
126. *Mackey*, 543 F.2d at 614.
127. *Id.* at 616.
129. *Id.* at 231.
130. *Id.* at 235-36; *see* Connell Constr. Co. v. Plumbers & Steamerfitters Local Union No. 100, 421 U.S. 616 (1975); *see also*, Local Union No. 189, Amalgamated Meat Cutters v. Jewel Tea Co., 381 U.S. 676 (1965).
131. *Brown*, 518 U.S. at 236; *see supra* notes 82-84.
133. *Id.* In general, each team is limited to a roster of fifty-four active players and any player that is not on the active roster at the beginning of the season and is not on the injured reserve is declared a free agent.
all the team’s to pay the squad players a fixed salary. The owners presented the plan to the NFL Players Association, who subsequently rejected the salary offer of $1000 per week, and instead argued that the squad players should be able to negotiate their own salaries. Two months later, negotiations met an impasse, the NFL unilaterally implemented the developmental squad program, and advised club owners that not strictly following the $1000 a week salary would result in disciplinary action, including the loss of draft choices.

In May 1990, this suit was brought by 235 practice squad players against the league and its member teams on the grounds that the employers’ agreement to implement the $1000 weekly salary violated section 1 of the Act. The Federal District Court denied the owners claim of antitrust exemption and the players eventually prevailed with a jury verdict awarding them treble damages of over $30 million. On appeal, the Court of Appeals reversed, and the Supreme Court granted certiorari. The Supreme Court held in a 8-1 decision written by Justice Breyer, with Justice Stevens dissenting, that the non-statutory antitrust exemption applies in this case because “[the employer conduct] grew out of, and was directly related to, the lawful operation of the bargaining process,” “[i]t involved a matter that the parties were required to negotiate collectively,” and “it concerned only the parties to the collective-bargaining relationship.”

135. Id.
136. Id. at 235.
140. Id. at 250. In applying this standard, which is essentially the one set out in Mackey, Justice Breyer noted that the “holding is not intended to insulate from antitrust review every joint imposition of terms by employers, for an agreement among employers could be sufficiently distant in time and in circumstance from the collective-bargaining process that a rule permitting antitrust intervention would not significantly interfere with that process.” Id.
E. The New Major League Baseball Collective Bargain Agreement

On November 26, 1996, the MLBPA and the owners of the thirty major league baseball teams reached an agreement in principle for a new collective bargaining agreement. The major provisions of the new deal include a luxury tax and a revenue sharing agreement. Both are designed to benefit the small market teams which have suffered greatly because of their inability to pay as high of salaries as teams that draw from larger markets as well as have a steady stream of income from cable contracts.

The players' right to be free agents after six years of service time in Major League Baseball was continued, and they were granted credit for major league service time for regular-season games canceled by the strike. As part of the new collective bargaining agreement, owners and players agreed to work with Congress to “clarify that Major League

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142. David Lennon, Baseball Strikes a Pact, NEWSDAY, Nov. 27, 1996 at A90. The luxury tax calls for up to five teams to be taxed thirty-five percent of their payroll over $51 million in 1997, 35% on amounts over $55 million in 1998, 34% percent on amounts over $58.9 million in 1999, and the tax will disappear in 2000 and 2001. Id. The revenue sharing plan, which was first adopted by the owners on March 21, 1996, was implemented to transfer money from the large to the small market teams. Id. The formula begins at 60% for 1997, then increases to 80% in 1998, 85% in 1999, and finally reaching 100% in 2000 and 2001. Id.
143. The New York Yankees have a cable contract signed in 1989 from Madison Square Garden network that was worth $486 million over ten years. Tom Verducci, New York Yankees; Too Much Is Enough, SPORTS ILLUSTRATED, Mar. 23, 1998, at 92. This money has allowed the Yankees to have a 1998 payroll of over $70 million. Id. On the other side of the spectrum, the Pittsburgh Pirates have a payroll of $13 million. Pirates See 3B, More Power in Trade Discussions, SUN-SENTINEL (Fort Lauderdale, FL), May 11, 1998, at 3C.
144. Free agency got its roots in 1975 when an arbitrator declared that the reserve clause meant that the team a which holds the player under the reserve clause has the right to renew the player's expired contract for only one year, making the player free to sign with another club after that time. See Kansas City Royals Baseball Corp. v. Major League Baseball Players' Ass'n, 532 F.2d 615 (8th Cir. 1976). The terms of baseball’s free agency were first implemented in the collective bargaining agreement between Major League players and owners in 1975. Neil Weiner, Major League Labor and Management (visited Nov. 3, 1996) <http://www.backgroundbriefing.com/baseball.html> (copy on file with Santa Clara Law Review). After several years of major league service time, the players are no longer the property of the team that originally signed them for the duration of their careers. Id.
145. Lennon, supra note 142, at A90.
Baseball players are covered under the antitrust laws [and] have the same rights under antitrust laws as do other professional athletes.\textsuperscript{146} They also agreed not to change the application of the antitrust laws on anything besides labor laws, including franchise movements, broadcast rights and the draft.\textsuperscript{147} The Bill will be called the Curt Flood Act of 1997, in memory of Flood's efforts to implement free agency.

F. Recent Efforts to Limit or Remove the Exemption

Since the ruling in \textit{Toolson} there have been more than fifty bills introduced in Congress relative to baseball's exemption to antitrust laws,\textsuperscript{148} some which expanded the exemption and others that limited it.\textsuperscript{149} Congress has expressly granted baseball, along with hockey, football, and basketball, an exemption from antitrust laws for agreements covering telecasting of sports contests and combining of professional leagues.\textsuperscript{150} This exemption is limited to agreements where owners are involved in selling rights to the sponsored telecasting of games.\textsuperscript{151} Therefore, Congress explicitly did not address the issues of antitrust arrangements in any other contexts.

Last term, as a reaction to the labor wars in baseball that have alienated many fans, both houses of Congress put forth bills which would either completely strip baseball of any unique exemptions relative to other sports, or which would limit baseball's exemption to the reserve clause.\textsuperscript{152} However, none made it out of for a house vote. The closest a bill came to being presented for vote was Senate Bill 627, the Professional Baseball Reform Act of 1995.\textsuperscript{153} The bill calls for all antitrust laws that apply to other sports to be applicable to

\begin{footnotesize}
\begin{enumerate}
\item[146.] Hatch Temporarily Sends Baseball Bill to the Showers, CONGRESS DAILY/AM, May 2, 1997, available in WESTLAW, 1997 WL 8214608.
\item[147.] Id.
\item[149.] Id.
\item[153.] S. 627, 104th Cong. (1995).
\end{enumerate}
\end{footnotesize}
professional baseball as well.\textsuperscript{154} The bill, which was introduced by Senator Orrin Hatch (R-Utah) passed the Senate Judiciary committee by a 9 to 8 vote on August 3, 1996\textsuperscript{155} but was held up in the 100 person Senate and died on October 3, 1996.\textsuperscript{156} Senator Hatch said that the bill died with the strong approval mark of 60 votes and that he was optimistic about its future.\textsuperscript{157} Additionally, the bill passed the Judiciary Committee again on July 31, 1997 by an 11 to 6 vote.\textsuperscript{158}

Nevertheless, work is already under way between the players and the owners to hammer out a legislative proposal to limit the exemption. In early April of 1997, owners’ lobbyist Bill Cable met with Gene Orza, the deputy chief of the MLBPA, in order to begin the negotiations.\textsuperscript{159} Under the law they are drafting, the antitrust exemption “will remain in effect for team relocations, broadcasting contracts and the protection of minor league markets.”\textsuperscript{160} Senator Hatch has temporarily pulled his bill while owners and players try to reach agreement on their own.\textsuperscript{161} The impediment to the agreement is that the owners want the exemptions that apply to the remaining aspects of the game to be codified.\textsuperscript{162} Representative Jim Bunning, a Republican from Kentucky, and a former pitching star and baseball Hall of Fame Member, is waiting to see the outcome of the Senate Bill before he enters a similar bill in the House.\textsuperscript{163}

\textsuperscript{154} Id.
\textsuperscript{157} Id.
\textsuperscript{159} Scorecard, Legislation, Excising Baseball’s Exemption, SPORTS ILLUSTRATED, Mar. 31, 1997, at 29.
\textsuperscript{160} Id.
\textsuperscript{161} Hatch Temporarily Sends Baseball Bill to the Showers, CONGRESS DAILY/AM, May 2, 1997, available in WESTLAW, 1997 WL 8214608.
\textsuperscript{162} Id. This would be a very bad move by Congress concerning the franchise relocations. Baseball owners use the exemption to extort huge sums of money. See discussion infra Part IV.B.3.
\textsuperscript{163} Id.
III. ANALYSIS

A. Collective Bargaining in Baseball: A Contradiction in Terms

1. The New Collective Bargaining Agreement

The new collective bargaining agreement assures labor peace through the year 2000 and possibly 2001. Interim Commissioner Bud Selig announced the agreement by saying "baseball fans can finally look forward to five years of uninterrupted play." While it seemed like good news, Selig's statement confirmed the fear of most of those who follow baseball—that another labor war is likely to follow the expiration of this agreement. The main problem that seems to exist on the bargaining table is that the owners and the players view each other as adversaries and mistrust the other party's claimed intentions. This attitude leads to obstinate behavior and a reluctance to compromise, as evidenced by the eight work stoppages since 1972.

2. The Antitrust Exemption and Labor: Owners Have Substantial Leverage

The owners have a huge advantage in the bargaining process, as most of them operate their baseball teams at a loss and any of the losses that they suffer from work stoppages can be written off their taxes against earnings from other businesses. This tax write-off allows the owners to hold-fast during strikes, and even implement lock-outs, such as the thirty-two day lock-out in 1990 that the owners imposed until a new collective bargaining agreement was reached. Thus, the owners can hold out until terms they desire are agreed upon.

The owners' ability to operate above the antitrust laws

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165. Id.
166. Gary Shelton, Don't Believe It: Baseball Is Not Back, ST. PETERSBURG TIMES, Nov. 28, 1996, at C1 (arguing the new agreement is not the panacea the owners think it will be).
167. Id.
168. Id.
169. Id.
170. Baseball Labor Chronology, supra note 5.
“handed the owners a huge club that gives them unique leverage in bargaining and discourages them from accepting reasonable terms.”\(^{171}\) While this leverage has been mitigated through collective bargaining,\(^ {172}\) often bargaining leverage can be in the form of intimidation. Therefore, if the MLBPA believes that exemption gives the owners an unfair bargaining advantage, then it can hinder progress in negotiations. As evidence of this, during the 232 day strike that wiped out half of the 1994 season, including the World Series, Donald Fehr, the head of the player’s union, said that if Congress repealed baseball’s antitrust exemption, he would recommend that the MLBPA end the strike.\(^ {173}\)

B. How Far Does The Exemption Reach?

1. The Supreme Court Decisions

*Federal Baseball Club of Baltimore* set the precedent for holding that baseball should enjoy some exemption from antitrust laws.\(^ {174}\) In that opinion, Justice Holmes determined that the “business of baseball” is only a state affair\(^ {175}\) and the transportation involved in the game was “mere incident.”\(^ {176}\) While *Federal Baseball Club of Baltimore* is still cited as the law in so far as it determines that Congress had no intention of including the business of baseball within the scope of antitrust laws,\(^ {177}\) the rationale behind the holding that baseball does not involve interstate commerce has been clearly rejected.\(^ {178}\) In *Flood*, the Court considered the ramifications of overturning *Federal Baseball Club of Baltimore*, and rea-

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172. See supra Part III.A.


175. *Id.* at 208.

176. *Id.* at 209.


soned against it out of deference to precedent.\textsuperscript{179} The Court decided that it did not want to intervene and left it up to Congress to lift the exemption.\textsuperscript{180}

There is still, however, great ambiguity as to what extent the \textit{Flood} decision has left baseball's antitrust exemption intact.\textsuperscript{181} The facts particular to the case dealt exclusively with the reserve clause, and the Supreme Court has not had occasion to deal with any other aspect of baseball's business in regards to antitrust legislation. Recently, however, two decisions have been passed which argue that the antitrust exemption applies only to the reserve clause.\textsuperscript{182}

2. \textit{Piazza} and \textit{Butterworth}—Exemption Only Applies to the Reserve System.

In 1993, the District Court of Pennsylvania conducted a detailed analysis of baseball's antitrust exemption in \textit{Piazza v. Major League Baseball}\textsuperscript{183} and came to the conclusion that it applied only to the reserve clause.\textsuperscript{184} That case was later followed in \textit{Butterworth v. National League of Professional Baseball Clubs}.\textsuperscript{185} Both the rationale for limiting the exemption to the reserve clause expressed in these two cases and the policies behind them are very persuasive. However, there is no uniformity among the federal circuit courts. Therefore, Congress must act to ensure that the owners cannot operate the business of baseball without regard for antitrust laws.

The consequences of the exemption being limited to the reserve system would allow suits such as Steinbrenner's against the other owners. Regardless of whether or not his suit is successful, his complaint demonstrates the economic harm that collusive behavior can have on the business of baseball. When owners must disclose confidential information to competitors,\textsuperscript{186} it reduces the incentive to effectively market their team. While Steinbrenner did agree with the

\begin{itemize}
\item \textsuperscript{179} See discussion \textit{infra} Part III.B.3.
\item \textsuperscript{180} \textit{Flood}, 407 U.S. at 281.
\item \textsuperscript{181} See discussion \textit{infra} Part IV.B.2.
\item \textsuperscript{183} 831 F. Supp. 420 (E.D. Pa. 1993); see discussion \textit{supra} Part III.B.4.
\item \textsuperscript{184} \textit{Piazza}, 831 F. Supp. at 437; see discussion \textit{supra} Part II.B.3.
\item \textsuperscript{185} 644 So. 2d 1021 (Fla. 1994).
\item \textsuperscript{186} Steve Zipay, \textit{Boss In Trouble: Suit May Lead to Ban}, \textit{Newsday}, May 8, 1997, at A94.
\end{itemize}
other owners when he signed an agreement in 1984 to share licensing and merchandising income, teams in other sports have been able to strike deals with shoe companies to increase revenue and promote the team. When Dallas Cowboys' Owner Jerry Jones struck side deals with Nike, Pepsi, and American Express, all competitors of companies with which the NFL has contracts, the NFL filed suit against Jones for $300 million. The suit alleged that Jones violated terms of a 1963 agreement creating NFL properties to market the club and NFL trademarks jointly. This agreement is extremely comparable to the baseball pact that baseball owners claimed Steinbrenner was breaking.

However, the significance of the difference between how the antitrust exemption is applied in the two sports creates the disparity in how the cases are handled. Jones countersued NFL Properties, claiming it violated antitrust laws. As a result, the NFL dropped its suit against Jones and Jones retained the fruits of his efforts. On the contrary, because baseball owners are shielded by the antitrust laws, they can stand firm on not allowing Steinbrenner's suit to deter their position.

This dichotomy in the interpretation of the law results in economic disparity between baseball and all other sports. Where, in some instances, the owners favor the exemption because it benefits them economically as a whole, as in blocking franchise relocation, in other aspects, the exemption hinders owners individually, as in the Steinbrenner suit. Because of this inconsistency, Congress needs to pass a bill limiting the exemption to the reserve clause so that baseball owners can be held accountable for anti-competitive behavior, as are all other sports—under the Rule of Reason analysis.

3. Franchise Relocation and Restraint on Trade: Applying Other Sports' Restrictions to Baseball

Baseball's exemption has allowed the owners to combine

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187. *Dallas Cowboys Drop Suits, supra* note 104.
188. Peter King, *Making Waves: SPORTS ILLUSTRATED*, Feb. 7, 1996, at 34. The has a long-term contract with Coke, other sporting good companies, and Visa is the league's official credit card. *Id.*
189. *Id.*
190. *Id.*
191. *Dallas Cowboys Drop Suits, supra* note 104.
192. *See discussion infra* Part III.B.3.
forces and restrict the free movement of existing major league franchises. All other sports are governed by the Rule of Reason analysis regarding efforts to restrict franchise moves. In the case of Los Angeles Memorial Coliseum Commission v. National Football League, the Court of Appeals for the Ninth Circuit held that Rule 4.3 of Article IV of the NFL Constitution could be an unreasonable restraint on trade, and it was up to a jury to decide the question based on the particular facts of the case. Article 4.3 was a restriction in the NFL bylaws that required three-fourths of the team owners to vote affirmatively to approve a franchise relocation. The Court thus reinstated a judgment finding the NFL liable to the Raiders and the Los Angeles Coliseum, and enjoining the NFL from preventing the Raiders from relocating to Los Angeles.

The Piazza and Butterworth cases represent a major problem with a broad exemption applying to franchise relocation. When the owners were allowed to block the sale or move of a franchise without regard for the antitrust laws, the game is harmed. The restriction on franchise relocation shelters the owners from the market forces that have allowed other professional sports, such as basketball and football, to thrive. Indeed, professional football and basketball, which have climbed in fan popularity while baseball has suffered, are not given an exemption which renders them untouchable from the antitrust laws that restrict the conduct of most en-

194. See Los Angeles Memorial Coliseum Comm'n v. National Football League, 726 F.2d 1381 (9th Cir. 1984) (concluding that the unique structure of the NFL precludes application of the per se rule); Los Angeles Memorial Coliseum Comm'n v. National Football League, 791 F.2d 1356 (9th Cir. 1986) (upholding treble damages awarded to the Raiders and the Los Angeles Coliseum).
196. Id.
197. Id.
Baseball had an average attendance of 28,288 fans per game in 1997, totaling just over 63,000,000 for all thirty major league teams. This is just slightly higher than the attendance from 1995 of 52,000,000 and 1996 of 60,000,000, but still down from the seventy million who attended games in 1993. In addition, baseball’s television ratings in 1995 were at 22% of adults who watch television, down 9% from 1993. The main reason for baseball’s reduction in fan interest was the last players’ strike. Therefore, if lifting the antitrust exemption will lessen the chance of labor discord, as this comment suggests it would, then Congress must act to remove the exemption to restore baseball to its status as the preeminent professional sport in terms of fan interest.

Economic principles dictate that this standard should not be applied to baseball. By isolating baseball away from market forces, the game is being harmed by apathy from the fans. Baseball owners are allowed to extort huge amounts of money for expansion teams to enter the league, with the new teams in Arizona and Tampa Bay paying a record $130 million dollars each to enter the league in 1998. Indeed, the financial incentives that the exemption allows seem to predict that the owners would rather block a move of an existing team to a prospective expansion site so they could enjoy the expansion fees, as opposed to allowing a single team owner to gain all the benefit. There is no more obvious example than

200. In the 1995-1996 season, the National Basketball Association recorded its highest ever attendance, averaging 17,252 points a game. David DuPree, Attendance Takes an Early Tumble, USA TODAY, Jan. 9, 1997, at 6C. In fact, NBA attendance has risen every year since the 1991-92 season. Id. Although football attendance was down by 3.6% in 1996, with an average in-house attendance of 57,166 fans per game, that is due to a huge drop in a few teams, including the lameduck Houston which was playing its last season in Houston before it moved Nashville, Tennessee for the 1998 season. Mark Gaughan, Attendance Count Surges to Second Best in the NFL, BUFFALO NEWS, Jan. 1, 1997, at 1C.


203. Id.

204. See supra Part IV.

the new team in Tampa Bay. The fact that an expansion team was granted to the city is evidence that the owners believe it is a viable environment for Major League Baseball; however, the owners blocked the Giants from moving there before the 1992 season. 206 This blockage allowed the owners to collect the huge franchise fee. 207 If traditional antitrust laws were applied to this action, a court would be able to assess the facts surrounding the move in the same fashion as they were analyzed in the Raiders case and most likely find it to be an unreasonable restraint of trade and a violation of section 1 of the Act.

4. Spirit of Competition Should Be Focus for Baseball's Success

While opponents of lifting the exemption may argue that it provides stability to the game, 208 this is a naive assumption. Baseball is a sport which emphasizes competition. Capitalism also requires competition to operate efficiently. Thus, the two interests should coincide. By applying Justice Brandeis' Rule of Reason analysis to determine if the restraint imposed "merely regulates and perhaps . . . promotes competition, or whether it . . . suppress[es] or . . . destroy[es] competition," 209 the interests of both baseball and the Act promoting competition are protected.

In order for baseball to flourish as a sport, there must be competition both on and off the field. If a team is so good that there is no doubt that it will defeat all of its opponents, or so bad that it has no chance, then the sport will not generate interest. In a perfect league, all the teams will have a chance of winning against any opponent on any given day. The only way this could happen is if the league operated in the best interest of competition. If the owners are protected

206. See Piazza v. Major League Baseball, 831 F. Supp. 420 (E.D. Pa. 1993); see also Butterworth v. National League of Prof'l Baseball Clubs, 644 So. 2d 1021 (Fla. 1994). The author would like to stress that as a San Francisco Giants fan, the owner's collusion allowed me to continue to enjoy the Giants in San Francisco. However, since baseball is indeed a business no different from other professional sports, its antitrust actions should be evaluated under the same guidelines.
207. Arizona Diamondbacks, supra note 205.
from antitrust laws, they are not forced to act this way. Since the owners are able to block a franchise move through any sort of combining they wish, a team owner who is losing money and wishes to move his franchise is not able to take advantage of a move to a city that could offer him a better opportunity for a successful franchise. Tradition is an important part of baseball and a city that has been the home of a team deserves to keep the team if it is supported by a strong fan base. However, tradition should not allow the owners to conspire to restrain trade by blocking franchise relocations, especially when their motivation is higher profits for themselves. Clearly a non-competitive team playing to less than half capacity crowds serves no one’s interest. Therefore, baseball owners should be subject to Rule of Reason analysis to determine if a particular restraint on franchise relocation is unreasonable. Under this situation, the courts can factor in the tradition of a team in a certain city in its reasonableness analysis, thereby allowing the sanctity of the game to be balanced with modern economic principles.

5. **Supreme Court Following of Piazza and Butterworth Unlikely**

While the Piazza and Butterworth’s rationale that baseball’s exemption is limited to the reserve clause is reasonable, there is no reason to believe that rationale would be followed by the Supreme Court. The Court has acknowledged that the antitrust exemption granted to baseball is an aberration confined to baseball which “rests on a recognition and an acceptance of baseball’s unique characteristics and needs.” The Court also stressed in Flood that since Congress has not acted even after what has now been almost sixty-five years since the decision in Federal Baseball Club of Baltimore was handed down, then Congress must not have intended baseball to be subjected to the antitrust laws. Since Congress still has not acted, the Supreme Court will not likely limit the exemption to the reserve clause.

The Supreme Court has an obligation to uphold precedent in order to preserve the sanctity of the Court and allow it to set the laws that people rely on in making decisions in

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210. See discussion supra Part IV.
212. Id.
their lives.\textsuperscript{213} Since baseball has been left to develop since 1922 based on the holding in \textit{Federal Baseball Club of Baltimore} and its progeny, the Court would be ignoring its obligation as a standard setter by now limiting a decision this late in baseball's development.\textsuperscript{214} For this reason the only solution to limit or eliminate baseball's antitrust exemption is through Congress, and it has been far too long in the waiting.

C. \textit{Significance of Congressional Action}

1. \textit{Good Chance of Congressional Action in the Future}

Despite over seventy years of Congressional inaction since the Supreme Court's ruling in \textit{Federal Baseball Club of Baltimore},\textsuperscript{215} there is good reason to believe that Congress is poised to remove the exemption.\textsuperscript{216} First, lobbyists for the players claim that the resignation of Bob Dole as Senate Majority Leader is a major step in getting the exemption lifted.\textsuperscript{217} Senator Dole has a close friendship with a major baseball lobbyist, which lobbyists for the players claim was a major factor in Senator Dole blocking the legislation in the last session.\textsuperscript{218} In addition, Dole's replacement, Senator Trent Lott, a Republican from Mississippi, had been an original sponsor of antitrust legislation in the past.\textsuperscript{219} Furthermore, Senator Hatch, a co-sponsor of Senate Bill 627, claimed that he had the sixty votes necessary to invoke cloture\textsuperscript{220} and insure that a vote be taken.\textsuperscript{221}

The bill which the owners and players have agreed to draft is only a stepping stone to addressing the entire problem that baseball owners' insulation from antitrust laws has caused. While removing the exemption from labor is very important, it is not the comprehensive measure that is needed. The owners must not be able to continue to rebuke

\begin{itemize}
\item \textsuperscript{213} See supra note 58.
\item \textsuperscript{214} See \textit{Flood}, 407 U.S. at 282.
\item \textsuperscript{215} See supra Part III.B.3
\item \textsuperscript{216} See \textit{Ed Henry, Major League Lobbying: Baseball Owners, Players Slug It Out on Capitol Hill}, \textit{Plain Dealer}, Nov. 10, 1996, at 1H.
\item \textsuperscript{217} Id.
\item \textsuperscript{218} Id.
\item \textsuperscript{219} Id.
\item \textsuperscript{220} "Cloture" is a legislative rule whereby a filibuster is ended to permit a vote to be taken. \textit{Black's Law Dictionary} 1406 (6th ed. 1990).
\item \textsuperscript{221} \textit{Ed Henry, Major League Lobbying: Baseball Owners, Players Slug It Out on Capitol Hill}, \textit{Plain Dealer}, Nov. 10, 1996, at 1H.
\end{itemize}
market forces and prohibit teams losing money from moving in order to pad their own pockets with lucrative expansion fees.

2. Effect on Labor if Congress Lifts Exemption

While it has been said that baseball’s antitrust exemption is moot because of the prevalence of collective bargaining agreements and the decisions in *Piazza* and *Butterworth*, this is clearly not so. During the recent strike, the MLBPA said that they would end the strike if Congress repealed the exemption. In addition, a provision in the recent collective bargaining agreement called for both the players and the owners to jointly go to Congress to ask for the exemption to be repealed. These actions demonstrate that there is a bargaining advantage, whether real or perceived, which exists in the owners having the exemption. As this current collective bargaining agreement expires in 2000 or 2001, there is a great chance that there will be labor discord, as there has been more often than not since 1972 when an agreement expired. If the MLBPA and the owners cannot reach an agreement when the Collective Bargaining Agreement expires, then the player’s union may dissolve and sue the owners for antitrust violations if the exemption is lifted. This ability to sue will serve to balance the bargaining scale more evenly, since the suit will only be valid if the owners actually did collude to restrain trade.

3. Exemption Would Provide Uniformity

*McCoy v. Major League Baseball*, the most recent case addressing the scope of baseball’s antitrust exemption, rejected the rationale in *Piazza* that the exemption should be limited to the reserve clause. This decision demonstrated that there is no uniformity in the decisions as to the extent of baseball’s exemption. Where one court may lift the exemp-

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224. Lennon, supra note 142, at A90.
225. *Baseball Labor Chronology*, supra note 5.
227. Id. at 458.
tion for franchise relocation issues, another may not. Therefore, it is imperative that Congress pass legislation lifting the exemption altogether in order to allow baseball to operate under a uniform system of laws.

IV. PROPOSAL

Congressional abstinence from addressing baseball's exemption to the antitrust laws has allowed the baseball owners to operate the business of baseball without regard for the laws that govern all other industries. While it is true that baseball has long been recognized as the preeminent American sport,228 this is no reason to allow the owners of the teams to operate above the law.

The ideal legislation to lift the exemption should include the thrust of the Curt Flood Act in regards to labor, as well as the removal for franchise relocations. Therefore, all collusive behavior which is not exempted from statutory or non-statutory labor laws will be governed under Rule of Reason analysis. The owners would no longer be allowed to block franchise relocations without pro-competitive justifications which outweigh their anticompetitive effects. Furthermore, the baseball owners would no longer be allowed to extort huge sums of money from expansion cities by preventing them from acquiring an existing team in financial distress without justifying their decision with pro-competitive effects.

V. CONCLUSION

Baseball has recently suffered a period of fan disillusionment and disenchantment and has become less the national pastime it once was.229 While the new collective bargaining agreement offers the fans at least five years of uninterrupted play, there is still fear that embracing the game will only lead to more heartache for the fans.230 There needs to be a more encompassing solution to bring the game back to its standing as the quintessential representation of American boyhood dreams on a summer afternoon. A major step in that direction is congressional legislation. "Congress may not be able to solve every problem or heal baseball's self-

228. See supra note 8.
229. Shelton, supra note 166, at C1.
230. Id.
inflicted wounds, but [it] can do this: . . . pass legislation that will declare that professional baseball can no longer operate above the law.”\textsuperscript{231} Indeed, if the policy reasons for allowing \textit{Federal Baseball Club of Baltimore} and its progeny to stand was to protect the sanctity of America’s pastime,\textsuperscript{232} then the exemption must now be lifted in order to do the same. Indeed, “it is time that the [Congress] act and end this destructive aberration of the law.”\textsuperscript{233}

While baseball is a game that transcends all economic and social barriers, baseball owners operate their clubs as a business, and businesses must pay attention to profits. Congressional action to lift baseball’s antitrust exemption may appear to the owners to be detriment to revenue in the short-run for the owners, as they may not be able to use the exemption for their financial benefit.\textsuperscript{234} However, the owners also make a great deal of money on television contracts and ticket prices.\textsuperscript{235} If the business and labor strife keep the game on the field from being played, then fans will become even more disinterested and the owners will suffer in the long run.

In order to preserve baseball as both a viable business and the national pastime, Congress must enact legislation treating baseball as a business, subject to antitrust scrutiny. The Curt Flood Act, which has an excellent chance of passing in the next session,\textsuperscript{236} would be an excellent step in restoring the game. Ideally, a more encompassing bill similar to the one proposed in this paper would be implemented. Such a bill, as proffered in this comment, would be much more effective in limiting the chance of labor discord after the current agreement expires would provide a long-run equitable solution to may of the maladies to distract from the game.

\textit{Joshua Hamilton}

\textsuperscript{233} S. 627, 104th Cong. (1996).
\textsuperscript{234} See discussion supra Part IV.
\textsuperscript{235} Dortch, supra note 202, at 22.
\textsuperscript{236} See discussion supra Part IV.