



Fall 2020

Antitrust Changeup: How a Single Antitrust Reform Could Be A Home Run for Minor League Baseball Players

Jeremy Ulm

Follow this and additional works at: <https://ideas.dickinsonlaw.psu.edu/dlr>



Part of the Antitrust and Trade Regulation Commons, Business Administration, Management, and Operations Commons, Business Law, Public Responsibility, and Ethics Commons, Business Organizations Law Commons, Civil Law Commons, Civil Procedure Commons, Collective Bargaining Commons, Entertainment, Arts, and Sports Law Commons, Judges Commons, Jurisdiction Commons, Jurisprudence Commons, Legal History Commons, Legal Profession Commons, Legal Writing and Research Commons, Legislation Commons, Litigation Commons, Other Business Commons, Recreation Business Commons, Sports Management Commons, Supreme Court of the United States Commons, and the Unions Commons

Recommended Citation

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

Available at: <https://ideas.dickinsonlaw.psu.edu/dlr/vol125/iss1/7>

This Comment is brought to you for free and open access by the Law Reviews at Dickinson Law IDEAS. It has been accepted for inclusion in Dickinson Law Review by an authorized editor of Dickinson Law IDEAS. For more information, please contact lja10@psu.edu.

Antitrust Changeup: How a Single Antitrust Reform Could Be A Home Run for Minor League Baseball Players

Jeremy Ulm*

ABSTRACT

In 1890, Congress passed the Sherman Antitrust Act to protect competition in the marketplace. Federal antitrust law has developed to prevent businesses from exerting unfair power on their employees and customers. Specifically, the Sherman Act prevents competitors from reaching unreasonable agreements amongst themselves and from monopolizing markets. However, not all industries have these protections.

Historically, federal antitrust law has not governed the “Business of Baseball.” The Supreme Court had the opportunity to apply antitrust law to baseball in *Federal Baseball Club, Incorporated v. National League of Professional Baseball Clubs*; however, the Court held that the Business of Baseball was not interstate commerce and thus not subject to federal antitrust law. The Supreme Court upheld this stance twice more in *Toolson v. N.Y. Yankees, Incorporated* and *Flood v. Kuhn*. Further, the Supreme Court held that, if baseball was to become subject to antitrust law, Congress must be the party to enact such a change. In 1998, Congress passed the Curt Flood Act (“Flood Act”). The Flood Act applied antitrust law to certain aspects of baseball while explicitly not including other aspects, such as the employment of minor league baseball players.

This Comment argues that Congress should act again and pass legislation to apply federal antitrust law to minor league baseball. This Comment will analyze the low wages of minor leaguers and the impact that MLB’s antitrust law immunity has on those conditions. Further, this Comment argues that the rule of reason is the proper test for courts to apply to cases brought by minor leaguers. While this Comment does not predict the outcome of such cases, it argues that the true value of the appli-

* J.D. Candidate, Pennsylvania State University Dickinson Law, 2021. I would like to thank my dad for giving me a love for baseball and my mom for giving me a love for writing. Without the two of you, none of this would be possible.

cation of antitrust law is the ability for minor leaguers to bring suits at all.

TABLE OF CONTENTS

I. INTRODUCTION.....	229
II. BACKGROUND	230
A. <i>Basic Applicable Principles and Purposes of Federal Antitrust Law</i>	230
1. <i>Sherman Act § 1 and the Prohibition of Agreements Amongst Competitors</i>	231
2. <i>Sherman Act § 2 and the Prohibition of Monopolization</i>	233
3. <i>Antitrust Law and Union Bargaining</i>	234
B. <i>Judicial History of the “Business of Baseball” Exemption to Federal Antitrust Law</i>	236
C. <i>Passage and Treatment of the Curt Flood Act</i>	237
1. <i>Inclusions and Omissions Within the Flood Act</i>	238
2. <i>Judicial Treatment of the Business of Baseball After the Flood Act</i>	239
a. <i>Minor League Players’ Antitrust Claims</i> ..	239
b. <i>Other Determinations on the Scope and Impact of the Flood Act</i>	241
III. ANALYSIS	241
A. <i>Minor League Players’ Need for Reform</i>	241
1. <i>Wage Structure Under Minor League Baseball’s Uniform Player Contracts</i>	242
2. <i>Length and Viability of a Minor League Baseball Career</i>	243
3. <i>Major League Baseball’s Steps to Remedy the Problem</i>	245
B. <i>Antitrust Analysis</i>	246
1. <i>Current Scope of the Business of Baseball Exemption</i>	246
2. <i>The Non-Statutory Labor Union Exemption’s Applicability to Minor League Baseball</i>	248
3. <i>Proper Antitrust Test for Judging Minor League Baseball’s Conduct</i>	249
a. <i>Per Se Illegal Violations</i>	249
b. <i>Quick Look Rule of Reason</i>	250
c. <i>Rule of Reason</i>	250
IV. CONCLUSION	251

I. INTRODUCTION

“How can you not be romantic about baseball?”¹ Brad Pitt’s line from the movie *Moneyball* summarizes how many people feel about America’s Pastime.² It is a sport that captures its audience through a series of timeless moments that are remembered for decades and passed down as folklore for generations. Among the thousands of memorable moments are Jackie Robinson breaking the color barrier,³ the “shot heard round the world,”⁴ and the home run chase between Sosa and McGwire.⁵ Those memories are just the tip of the iceberg when it comes to the moments that have made baseball the game that it is today.

However, in the front office, the game loses its romanticism. Over the past three decades, professional baseball has grown financially at an incredible rate,⁶ and player salaries have skyrocketed.⁷ In 2019, Los Angeles Angels center fielder Mike Trout signed the largest contract in the history of North American sports, totaling almost \$430 million over 12 years.⁸ While players and fans may romanticize the high salaries, they remain just a dream for many who pursue a career in baseball.

Players who make it to “The Show” earn a sizeable income, whether they are on massive contracts like Trout, or even just earn the league minimum.⁹ However, minor league players (“minor leaguers”) play for the hope of future financial success and a love of the game, not because they immediately see impressive income.¹⁰

1. *MONEYBALL* (Columbia Pictures 2011).

2. See, e.g., Micah Chen, *America’s Pastime: 20 Reasons Why Baseball Will Always Hail over Football*, BLEACHER REPORT (Apr. 25, 2011), <http://bit.ly/3bTGIGR> [<https://perma.cc/59PU-7M9U>].

3. See, e.g., *Biography*, JACKIE ROBINSON, <http://bit.ly/2v7tKoi> [<https://perma.cc/66EP-M6P9>] (last visited Feb. 22, 2020).

4. See, e.g., *The Story Behind the Shot Heard Round the World*, NPR (Oct. 3, 2006), n.pr/2PefjW8 [<https://perma.cc/87TA-CPBR>].

5. See, e.g., Grant Brisbee, *The Misremembering of McGwire-Sosa*, SBNATION (Sept. 5, 2018), <http://bit.ly/2wFkUyv> [<https://perma.cc/R79D-D654>].

6. See Brown, *infra* note 155 (noting the increase in MLB annual revenue from \$1.2 billion in 1992 to \$10.7 billion in 2019).

7. See, e.g., Michael Hauptert, *MLB’s Annual Salary Leaders Since 1874*, SOCIETY FOR AMERICAN BASEBALL RESEARCH, <http://bit.ly/2ulOWGF> [<https://perma.cc/445U-K249>] (last visited Feb. 22, 2020) (noting the increase in highest player salary from \$6.1 million in 1992 to \$38.3 million in 2019).

8. See, e.g., Tyler Kepner & Kevin Draper, *Mike Trout Received a Huge Payday. But Others Still Dwarf Him*, THE NEW YORK TIMES (Mar. 19, 2019), <https://nyti.ms/2HMgbgL> [<https://perma.cc/MU83-6J9X>].

9. See, e.g., *MLB Minimum Salary Rises \$8,500 to \$563,500 Next Season*, USA TODAY (Nov. 13, 2019), <http://bit.ly/39X18gm> [<https://perma.cc/KZ8V-YN6F>] (last visited Feb. 22, 2020).

10. *Infra* Part III.A.

Minor leaguers sign Uniform Player Contracts (“UPCs”) regardless of which of the 30 Major League Baseball (MLB) franchises drafts them.¹¹ UPCs drastically reduce the bargaining power of minor leaguers and are arguably anticompetitive because they allow independently-owned franchises to act in unison rather than creating an open market for players.¹² Further, these UPCs may be the type of agreements that federal antitrust law forbids.¹³

Antitrust law and baseball have a long and interesting relationship.¹⁴ For the purposes of this Comment, the relevant areas of antitrust law include monopolization, horizontal agreements by competitors, and agreements by unions, all of which arise from the same principal of economic competition.¹⁵ Currently, most of MLB’s actions are protected from antitrust scrutiny, allowing the 30 member franchises to use tools like the UPCs.¹⁶ This Comment will show the need for the application of antitrust law to the employment of minor leaguers.¹⁷ This Comment will do so by analyzing the financial and contractual position of minor leaguers, as well as the proper tests to be applied under federal antitrust law.¹⁸ This Comment will also explain why Congress, rather than the judicial system, must be the body that brings about these changes.¹⁹

II. BACKGROUND

A. *Basic Applicable Principles and Purposes of Federal Antitrust Law*

The underlying purpose of the Sherman Antitrust Act²⁰ and other federal antitrust laws is the protection of economic competition in trade.²¹ This purpose arises from the premise that competition leads to the best economic, political, and social outcomes.²²

11. *Infra* Part III.A.

12. *Infra* note 126 and accompanying text.

13. *Infra* Part III.B.

14. *Infra* Parts II.B.–C.

15. See Sherman Antitrust Act, 15 U.S.C. §§ 1–7 (2018); Clayton Act, 15 U.S.C. §§ 12–27 (2018).

16. *Infra* Parts II.B.–C.

17. *Infra* Part III.A.

18. *Infra* Parts III.A., III.B.3.

19. *Infra* Parts II.B., III.B.1.

20. Sherman Antitrust Act, 15 U.S.C. §§ 1–7 (2018).

21. See *N. Pac. Ry. Co. v. United States*, 356 U.S. 1, 4 (1958) (“The Sherman Act was designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade.”).

22. *Id.* (“[U]nrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the

The Act's presumption in favor of economic competition affects every area of federal antitrust law.²³

1. *Sherman Act § 1 and the Prohibition of Agreements Amongst Competitors*

The plain text of Section 1 of the Sherman Act condemns any “contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade”²⁴ The Supreme Court has not strictly followed this prohibition, instead holding that only “unreasonable” restraints of trade are illegal.²⁵ This distinction between reasonable and unreasonable restraints is the “Rule of Reason.”²⁶ As the purpose of the Sherman Act is to preserve competition, the Supreme Court has held entire categories of agreements that foreclose competition, such as price-fixing agreements, to be per se illegal.²⁷

Sports leagues where multiple competitors join as a single entity offer an interesting variation on this issue. The Ninth Circuit Court of Appeals in *Los Angeles Memorial Coliseum Commission v. National Football League*²⁸ held that the individual franchises that compose the National Football League (NFL) are independent legal entities in competition with each other, for analysis under Section 1 of the Sherman Act.²⁹ The court based this decision on three points of analysis.³⁰ First, if the court allowed the NFL to act as a single entity, then it would be completely free from Section 1 scrutiny.³¹ This result would contradict how various courts previously treated the NFL.³² Competitors cannot evade antitrust scrutiny by

greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions.”).

23. *See id.* (“But even were that premise open to question, the policy unequivocally laid down by the Act is competition.”).

24. *See Sherman Antitrust Act*, 15 U.S.C. § 1 (2019).

25. *See Standard Oil Co. v. United States*, 221 U.S. 1, 60 (1911) (“[I]t was intended that the standard of reason which had been applied at the common law . . . was intended to be the measure used for the purpose of determining whether in a given case a particular act had or had not brought about the wrong against which the statute provided.”).

26. *See, e.g., Nat'l Soc'y of Prof'l Eng'rs v. United States*, 435 U.S. 679, 687 (1978) (citing *Standard Oil* as the source of the Rule of Reason).

27. *See United States v. Trenton Potteries Co.*, 273 U.S. 392, 397 (1927) (“The aim and result of every price-fixing agreement, if effective, is the elimination of one form of competition.”).

28. *L.A. Mem'l Coliseum Comm'n v. Nat'l Football League*, 726 F.2d 1381 (9th Cir. 1984).

29. *Id.*

30. *Id.*

31. *Id.* at 1388.

32. *Id.* (citing various cases that contradict with the contention that the NFL should be treated as a single entity); *see, e.g., Mackey v. Nat'l Football League*, 543

forming together into a single venture while retaining their legally separate identities.³³ Second, the necessity of NFL teams' cooperation, as a means to carry out their business as a league, does not prevent antitrust scrutiny, although it may bar a finding of per se illegality.³⁴ Again, failing to apply antitrust principles would result in contrary treatment of both the NFL and other highly cooperative industries.³⁵ Lastly, the court reasoned that the NFL based its argument on a flawed premise about the relationship between the league and its member teams.³⁶ While the NFL distributes a large share of its profits evenly amongst its member teams, independent owners operate the organizations.³⁷ As independent competitors, NFL teams engage in the very types of economic competition that the antitrust laws exist to preserve.³⁸

The U.S. Supreme Court took the analysis of the relationship between sports leagues and antitrust law further in *American Needle, Incorporated v. National Football League*.³⁹ The Court held that the relevant question is not whether courts should consider the NFL and similar leagues as single entities but rather whether the NFL is a group of "separate economic actors pursuing separate economic interests."⁴⁰ This inquiry required the court to examine whether the teams had actual economic competition between them, even though they formed a single legal entity in the form of a league.⁴¹ This holding does not mean that sports teams are unable to form leagues to cooperate with each other, as such a decision would undermine the very existence of leagues like the NFL and

F.2d 606, 623 (8th Cir. 1976) (allowing the NFL to coordinate as necessary for the league to carry out its business of putting on football games).

33. See *id.* at 1389 ("Nor do we find any support . . . for the proposition that agreements between legally separate persons and companies to suppress competition among themselves and others can be justified by labeling the project a 'joint venture.' Perhaps every agreement and combination to restrain trade could be so labeled.") (quoting *Timken Roller Bearing Co. v. United States*, 341 U.S. 593, 598 (1951)).

34. *Id.*

35. *Id.* [part from L.A. Mem'l that supports this, referencing Sealy] (citing *United States v. Sealy, Inc.*, 388 U.S. 350, 356–57 (1967)).

36. *Id.* at 1389 ("Finally, the district court considered the argument to be based upon the false premise that the individual NFL 'clubs are not separate business entities whose products have an independent value.'").

37. *Id.* at 1390.

38. *Id.* ("NFL clubs . . . compete with one another off the field as well as on to acquire players, coaches, and management personnel. In certain areas of the country where two teams operate in close proximity, there is also competition for fan support, local television and local radio revenues, and media space.")

39. See *Am. Needle, Inc. v. Nat'l Football League*, 560 U.S. 183 (2010).

40. *Id.* at 195.

41. *Id.* at 196.

MLB.⁴² Rather, the Rule of Reason subjects any member teams' agreements to antitrust scrutiny if those agreements involve the dealignment of the economic interests of the teams acting as a unit and the interests of the teams acting as economic competitors.⁴³

2. *Sherman Act § 2 and the Prohibition of Monopolization*

Section 2 of the Sherman Act prohibits any person or organization from monopolizing an economic market.⁴⁴ However, the Sherman Act does not outlaw monopolies that arise naturally.⁴⁵ The Supreme Court established a two-element test for a violation of Section 2 of the Sherman Act.⁴⁶ This test requires a plaintiff to show that the potential monopolist both has possession of monopoly power in a given economic market and took steps towards willful acquisition or maintenance of that power.⁴⁷ Monopoly power that arises from a "superior product, business acumen, or historic accident" is not a violation of Section 2.⁴⁸ When an organization has monopoly power in a market, the organization does not have to exercise its economic power over pricing to violate Section 2.⁴⁹ Monopolistic conduct is precisely the type of activity that the Sherman Act attempts to prevent, as it eliminates competition by its very nature.⁵⁰

One concern that often arises under Section 2 is vertical integration.⁵¹ Vertical integration is when an organization itself per-

42. *See id.* at 204.

43. *Id.* at 203 ("When 'restraints on competition are essential if the product is to be available at all,' per se rules of illegality are inapplicable, and instead the restraint must be judged according to the flexible Rule of Reason.").

44. Sherman Antitrust Act, 15 U.S.C. § 2 (2018) ("Every 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.").

45. *See, e.g.,* United States v. Aluminum Co. of Am., 148 F.2d 416, 432 (2d Cir. 1945) (stating that holding a monopoly is legal while monopolization is the prohibited conduct). A monopoly is an organization's control over an economic market. *Id.* Monopolization is using anticompetitive means to establish that control. *Id.*

46. *See* United States v. Grinnell Corp., 384 U.S. 563, 570–71 (1966).

47. *Id.*

48. *Id.* at 571.

49. *Aluminum Co.*, 148 F.2d at 427 ("[I]t is no excuse for 'monopolizing' a market that the monopoly has not been used to extract from the consumer more than a 'fair' profit.").

50. *Id.* at 429 ("Throughout the history of these statutes it has been constantly assumed that one of their purposes was to perpetuate and preserve, for its own sake and in spite of possible cost, an organization of industry in small units which can effectively compete with each other.").

51. Sherman Antitrust Act, 15 U.S.C. § 2 (2018).

forms multiple stages of production rather than having an outside competitor assist with each stage.⁵² While vertical integration alone does not create an antitrust violation, there are potential pitfalls.⁵³ When a monopolist vertically integrates into a second market, the monopolist could be creating a second monopoly.⁵⁴ This second monopoly does not typically result in a final price increase in a downstream market, provided the monopolist is already charging monopoly prices.⁵⁵ A secondary monopoly may, however, allow a monopolist to suppress prices in the downstream market below the competitive level and to increase the original monopoly's profit margins.⁵⁶ The relationship between Major and Minor League Baseball ("MiLB") may fit the model of vertically integrated monopolies in two separate markets, opening the door for potential antitrust scrutiny.⁵⁷ The current relationship between the Business of Baseball and antitrust law may bar such an inquiry, however.⁵⁸

3. *Antitrust Law and Union Bargaining*

The activities and agreements that unions and other labor organizations reach receive special treatment in antitrust law, both by statute and the common law.⁵⁹ The Clayton Act specifically carves out an exemption in antitrust law for the formation and operation of labor unions.⁶⁰ This exemption arises from the premise that society should protect human labor and not treat it as a mere economic

52. PHILLIP E. AREEDA, ET AL., *ANTITRUST ANALYSIS: PROBLEMS, TEXT, AND CASES* 450 (7th ed. 2013) (providing an example of vertical integration in a hypothetical manufacturing context).

53. *Id.* at 451 (providing illustration of a harmless and unavoidable instance of vertical integration).

54. *See, e.g.,* *Otter Tail Power Co. v. United States*, 410 U.S. 366, 378 (1973) (finding the creation of a secondary monopoly by refusing to allow the entrance of competitors in the downstream electric power distribution market).

55. AREEDA, ET AL., *supra* note 52, at 451.

56. *Id.* (providing an illustration of a change in distribution of profit margins between the original and secondary monopoly markets for aluminum pipe and ingot, respectively).

57. *See* *Teams by MLB Affiliation*, MiLB, <http://bit.ly/mlbteams> [<https://perma.cc/95NC-ZSEY>] (last visited Jan. 25, 2020) (showing the franchise structure between MLB and MiLB franchises).

58. *See* Parts II.B., II.C.

59. *Infra* notes 68–69 and accompanying text.

60. Clayton Act, 15 U.S.C. § 17 (2019) (“Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help . . . or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof.”).

good or commodity.⁶¹ As one may expect, however, this exemption is not an absolute protection for all contracts, combinations, or conspiracies into which a labor union may enter.⁶²

One important area to which the exemption does not extend is when a union acts in combination with a non-union organization.⁶³ While certain agreements to which a union is a party may be permissible under federal antitrust law, the addition of a business into such an agreement may subject the combination to antitrust scrutiny.⁶⁴ If a business's actions would violate the Sherman Act, those same actions are illegal if a union and business carry out a similar action while acting in combination.⁶⁵

Similarly, the Eighth Circuit Court of Appeals expanded upon the question of when union activities trigger antitrust scrutiny in *Mackey v. National Football League*.⁶⁶ Labor law may supersede antitrust law where the only restraint of trade arises from an agreement between the parties of a collective bargaining agreement.⁶⁷ Additionally, this preemption applies to only the subjects of mandatory collective bargaining.⁶⁸ Lastly, agreements can override antitrust law only when the agreement between parties arises from "bona fide arm's-length bargaining."⁶⁹ These distinctions are of great importance when analyzing the relationship between minor leaguers, MLB, and the Major League Baseball Players Association (MLBPA).

61. *Id.* ("The labor of a human being is not a commodity or article of commerce.").

62. *See, e.g., Int'l Org., United Mine Workers v. Red Jacket Consol. Coal & Coke Co.*, 18 F.2d 839, 843 (4th Cir. 1927) (clarifying that, while a labor union's ordinary function is not a violation of the Sherman Act, acts that are outside of legitimate union objectives are still subject to antitrust scrutiny).

63. *See Allen Bradley Co. v. Local Union No. 3, Int'l Bhd. of Elec. Workers*, 325 U.S. 797, 810 (1945).

64. *Id.* at 811.

65. *Id.* ("We know that Congress feared the concentrated power of business organizations to dominate markets and prices. It intended to outlaw business monopolies. A business monopoly is no less such because a union participates, and such participation is a violation of the Act.").

66. *See Mackey v. Nat'l Football League*, 543 F.2d 606, 614 (8th Cir. 1976).

67. *Id.*

68. *Id.*; W. E. Shipley, Annotation, *Subjects of mandatory collective bargaining under Federal Labor Relations Act*, 12 A.L.R.2d 265 (explaining areas where the Federal Labor Relations Act requires employers to use collective bargaining).

69. *Mackey v. Nat'l Football League*, 543 F.2d 606, 614 (8th Cir. 1976).

B. *Judicial History of the “Business of Baseball” Exemption to Federal Antitrust Law*

In 1922, the Supreme Court established an exemption to federal antitrust law for the “Business of Baseball” in *Federal Baseball Club, Incorporated v. National League of Professional Baseball Clubs*.⁷⁰ Relying on the narrow interpretation of the Commerce Clause⁷¹ in effect at that time, the Court held that the Business of Baseball was not interstate commerce and thus was not subject to federal antitrust law.⁷² The Court reached this conclusion by strictly defining the business as putting on individual baseball games, which by definition could not occur “among the several States.”⁷³ Teams and players came from different states to compete in these games, but this fact was not sufficient to meet the definition of interstate commerce.⁷⁴ This decision established the nearly century-long “Business of Baseball” exemption.⁷⁵

Thirty years after *Federal Baseball Club, Incorporated v. National League of Professional Baseball Clubs*, the Supreme Court upheld the exemption by issuing a one-paragraph per curiam opinion in *Toolson v. New York Yankees, Inc.*⁷⁶ Much like Jose Altuve,⁷⁷ *Toolson* managed to make up for what it lacked in size with a lasting impact on the game, for better or worse.⁷⁸ The Court took this opportunity to assign the role of subjecting the Business of Baseball to federal antitrust law to Congress.⁷⁹ Congress previously left baseball alone to develop as a market under the assumption that antitrust did not apply to the sport, leading the Court to believe that Congress was indeed the appropriate entity to change the relationship.⁸⁰

70. *Fed. Baseball Club, Inc. v. Nat'l League of Prof'l Baseball Clubs*, 259 U.S. 200, 208–209 (1922).

71. U.S. CONST. art. I, § 8, cl. 3.

72. *Fed. Baseball Club*, 259 U.S. 200.

73. *Id.*; U.S. CONST. art. I, § 8, cl. 3.

74. *Fed. Baseball Club*, 259 U.S. at 208–09 (“But the fact that in order to give the exhibitions the Leagues must induce free persons to cross state lines and must arrange and pay for their doing so is not enough to change the character of the business.”).

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

76. *Id.*

77. *Jose Altuve Player Profile*, ESPN, <http://bit.ly/JoseAltuveStats> (last visited Nov. 12, 2019) (listing Jose Altuve’s height as 5’6”).

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

79. *Id.* (“Congress has had the ruling under consideration but has not seen fit to bring such business under these laws by legislation having prospective effect.”).

80. *Id.* (“We think that if there are evils in this field which now warrant application to it of the antitrust laws it should be by legislation.”).

The third strike for those seeking the application of antitrust law to the Business of Baseball came 20 years later when the Court decided *Flood v. Kuhn*.⁸¹ In *Flood*, the Court clarified that, under a more modern and less restrictive view, baseball was clearly a business that took part in interstate commerce.⁸² The Court clarified that other sports leagues were also interstate commerce and were subject to antitrust law.⁸³ The Court did not, however, see fit to depart from the holdings of *Fed. Baseball Club* and *Toolson*.⁸⁴ Doubling down on past reasoning, the Court held once again that Congress was the appropriate authority to alter the interplay of baseball and antitrust.⁸⁵

Prior to *Flood*, Congress tried and failed multiple times to create legislation regarding the exemption, and the Supreme Court viewed this “positive inaction” as the legislature’s intent, or lack thereof, to apply antitrust law to baseball.⁸⁶ Additionally, the Court expressed concern about retroactivity issues that could arise if the Court overturned *Federal Baseball Club*.⁸⁷ Due to the forward-looking nature of legislation, Congressional action would not create the same concerns.⁸⁸ The Court loaded the bases for Congress to step up to the plate and settle the issue.

C. *Passage and Treatment of the Curt Flood Act*

Twenty-five years later, Congress passed the Flood Act, implementing the legislation the Supreme Court proposed in *Toolson* and *Flood*.⁸⁹ The Flood Act amended the Clayton Act, creating a new subsection titled “Application of the antitrust laws to professional major league baseball.”⁹⁰ The Flood Act appeared on its face to allow courts to hear cases on a broad variety of antitrust issues surrounding the modern Business of Baseball that the Busi-

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

82. *Id.* at 282.

83. *Id.* at 282–83.

84. *Id.* (“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.”).

85. *Id.* at 285 (“And what the Court said in *Federal Baseball* in 1922 and what it said in *Toolson* in 1953, we say again here in 1972: the remedy, if any is indicated, is for congressional, and not judicial, action.”).

86. *Id.* at 283.

87. *Id.*

88. *Id.* (“The Court . . . has voiced a preference that if any change is to be made, it come by legislative action that, by its nature, is only prospective in operation.”).

89. Curt Flood Act, 15 U.S.C. § 26b (2018).

90. *Id.*

ness of Baseball exemption previously prevented them from assessing.⁹¹ In reality, the specific language of the Flood Act showed just how limited the revocation of the exemption was and how rarely courts were willing to subject the Business of Baseball to antitrust scrutiny.⁹²

1. *Inclusions and Omissions Within the Flood Act*

The Flood Act subjects “the conduct, acts, practices, or agreements of persons in the business of organized professional major league baseball directly relating to or affecting employment of major league baseball players to play baseball at the major league level” to scrutiny under federal antitrust law where such conduct would not have been previously up for review.⁹³ This extension of antitrust law is valid only “to the same extent . . . [as] persons in any other professional sports business affecting interstate commerce.”⁹⁴ Courts give more leniency to cooperative agreements that are necessary to carry out the business of a sports league.⁹⁵ Additionally, while normally the government or any injured party can bring an antitrust action,⁹⁶ the Flood Act gives only MLB players standing to sue for an antitrust violation.⁹⁷

The Flood Act has far from eliminated the Business of Baseball exemption from federal antitrust law.⁹⁸ Only the specific agreements involving MLB players are subject to antitrust scrutiny, while all other facets of the business remain exempt.⁹⁹ The Flood Act provides a non-exhaustive list of exempt agreements.¹⁰⁰ This list includes agreements with umpires and agreements relating to franchise expansion, franchise relocation, and most important for the purpose of this Comment, minor league baseball.¹⁰¹ Not only does conduct “affecting employment to play baseball at the minor league level” remain free from antitrust scrutiny, but the reserve

91. *See, e.g.*, *Charles O. Finley & Co. v. Kuhn*, 569 F.2d 527, 541 (7th Cir. 1978) (denying plaintiff’s claim that MLB violated antitrust law by vetoing certain trades between member teams due to the Business of Baseball exemption).

92. *Infra* Part II.C.2.

93. Curt Flood Act, 15 U.S.C. § 26b (2018).

94. *Id.*

95. *See supra* notes 29–33, 35, 37–44 and accompanying text.

96. *See* 15 U.S.C. § 15 (2018) (“[A]ny person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States”); *id.* §§ 15(a), 15(c).

97. Curt Flood Act, 15 U.S.C. § 26b(c) (2018).

98. *Id.*

99. *Id.* § 26b(a).

100. *Id.* § 26b(b).

101. *Id.*

clause¹⁰² for minor leaguers and the relationship between Major and Minor League Baseball are also still exempt.¹⁰³ Further, the Flood Act explicitly states that Congress does not extend standing to sue under the Flood Act to minor leaguers.¹⁰⁴

While the plain text of the Flood Act removed only a narrow portion of the Business of Baseball exemption, in the two decades since Congress passed the Flood Act, plaintiffs have initiated a variety of suits seeking antitrust scrutiny in areas of the Business of Baseball other than the “conduct, acts, practices, or agreements . . . directly relating to or affecting employment of major league baseball players.”¹⁰⁵

2. *Judicial Treatment of the Business of Baseball After the Flood Act*

Since the passage of the Flood Act, plaintiffs have brought multiple cases seeking the courts’ application of antitrust law to various aspects of the Business of Baseball and questioning the Flood Act’s scope and impact.¹⁰⁶

a. Minor League Players’ Antitrust Claims

In 2015, a group of former minor league baseball players brought a class action suit on behalf of thousands of minor leaguers, alleging violations of both Section 1 and Section 2 of the Sherman Act by MLB and its 30 member franchises.¹⁰⁷ The complaint alleged that the MLB franchises “willfully acquired and maintained monopoly power” over the “market for minor league men’s profes-

102. *Reserve Clause*, BASEBALL REFERENCE, <http://bit.ly/2GnQsdQ> [https://perma.cc/C54T-958S] (last visited Jan. 25, 2020) (explaining the function and history of the reserve clause). The reserve clause is a concept in baseball where a player would be bound to a given team for longer than the length of the individual contracts he signed. *Id.* Free agency replaced the reserve clause in MLB after an arbiter held that the length of the reserve clause was not explicitly stated within MLB’s player contracts. *Id.* Minor leaguers currently lack union representation and the power to compel arbitration with MiLB or MLB. *See Delcos*, *infra* note 157.

103. *Reserve Clause*, *supra* note 102.

104. Curt Flood Act, 15 U.S.C. § 26b(c) (2018).

105. *Id.*

106. *See, e.g., Miranda v. Selig*, 860 F.3d 1237, 1238 (9th Cir. 2017) (questioning the applicability of federal antitrust law to minor league baseball); *City of San José v. Office of Comm’r of Baseball*, No. C-13-02787 RMW, 2013 WL 5609346, at *2 (N.D. Cal. Oct. 11, 2013), *aff’d by City of San José v. Office of the Comm’r of Baseball*, 776 F.3d 686 (9th Cir. 2015) (questioning the applicability of federal antitrust law to MLB franchise relocation); *Wyckoff v. Office of the Comm’r of Baseball*, 705 F. App’x 26, 28 (2d Cir. 2017) (questioning the applicability of federal antitrust law to MLB scouts).

107. *See Miranda v. Selig*, 860 F.3d 1237, 1238 (9th Cir. 2017).

sional baseball players,” in violation of Section 2 of the Sherman Act.¹⁰⁸ Further, plaintiffs alleged that the defendants “entered into a continuing agreement, combination or conspiracy in restraint of trade with the purpose, intent, and effect of restraining horizontal competition among the Defendants and the MLB,” in violation of Section 1 of the Sherman Act.¹⁰⁹ The district court dismissed the case.¹¹⁰ On appeal, the Ninth Circuit Court of Appeals held that the Business of Baseball exemption and the language of the Flood Act prohibited the minor leaguers from bringing federal antitrust law claims.¹¹¹

While the court refused to judge the case on its merits, the minor leaguers’ complaint still stated claims that would otherwise constitute antitrust violations.¹¹² Their argument focused on the UPCs that a minor league player must sign to play for an MLB franchise.¹¹³ The players alleged that the MLB franchises used these UPCs as a tool for “artificially and illegally depressing minor league wages . . . below what they would receive in a competitive market.”¹¹⁴ At the time of *Miranda*, the UPCs stated that first-year players would receive \$1,100 per month, only during the course of the season, resulting in annual earnings of less than \$10,000.¹¹⁵ The players contended that minor leaguers would be able to earn higher wages if MLB and its member franchises did not conspire to suppress minor leaguers’ wages and if the open market was able to assess the value of their services.¹¹⁶ While the scope of the Flood Act shows that Congress did not intend for minor leaguers to have standing to bring a case under federal antitrust law,¹¹⁷ perhaps that is the problem.

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

109. *Id.* at 28–29.

110. *Miranda v. Selig*, No. 14-cv-05349-HSG, 2015 WL 5357854 (N.D. Cal. Sept. 14, 2015), *aff’d*, 860 F.3d 1237 (9th Cir. 2017).

111. *Miranda v. Selig*, 860 F.3d 1237, 1240 (9th Cir. 2017).

112. *Miranda Complaint*, *supra* note 108, at 26–29.

113. *Id.* at 15–20.

114. *Id.* at 17.

115. *See Miranda*, 860 F.3d at 1239.

116. *Miranda Complaint*, *supra* note 108, at 24–25.

117. *See Miranda*, 860 F.3d at 1243–44 (discussing Congress’s intent to exclude minor league baseball from antitrust law as an extension of the historical Business of Baseball exemption); *see also infra* Part III.B.1.

b. Other Determinations on the Scope and Impact of the Flood Act

Courts have assessed the Business of Baseball exemption for areas outside minor league baseball as well. The Flood Act states that it does not extend the application of federal antitrust law to “the relationship between persons in the business of organized professional baseball and umpires or other individuals who are employed in the business of organized professional baseball by such persons.”¹¹⁸ The Second Circuit Court of Appeals analyzed this subsection of the Flood Act when a group of professional baseball scouts brought a class action suit against the Commissioner of MLB.¹¹⁹ As a condition of employment by a MLB franchise, the scouts had to sign Uniform Employee Contracts (“UECs”) provided by MLB.¹²⁰ Much like the UPCs that minor leaguers sign, the scouts’ UECs dictated their payment and other terms of their employment.¹²¹ The scouts argued that these UECs were an unreasonable restraint on their employment and prevented the scouts from obtaining a fair value for their services.¹²² Further, the plaintiffs argued that the court should not include scouts and their UECs within the Business of Baseball after the Flood Act because the restriction “serves no essential function in staging professional baseball games nor does such anticompetitive conduct enhance the vitality or viability of baseball.”¹²³ In light of Supreme Court precedent, the Second Circuit rejected the plaintiffs’ view of the Business of Baseball exemption and the limited exception to the exemption that the Flood Act created.¹²⁴ The court construed the Flood Act to apply to professional scouts, deciding that the scouts are “persons in the Business of Baseball.”¹²⁵

III. ANALYSIS

A. *Minor League Players’ Need for Reform*

The application of federal antitrust law to Minor League Baseball players is more than a hypothetical issue. Minor leaguers deal

118. Curt Flood Act, 15 U.S.C. § 26b(b)(5) (2018).

119. *Wyckoff v. Office of the Comm’r of Baseball*, 705 F. App’x 26, 28 (2d Cir. 2017).

120. Second Amended Complaint at 20, 23, 27–28, *Wyckoff v. Office of the Comm’r of Baseball*, No. 15-CV-05186-PGG, 211 F. Supp. 3d 615 (S.D.N.Y. Cal. Sept. 29, 2016).

121. *Id.*

122. *Id.* at 26–29.

123. *Id.* at 25.

124. *Wyckoff*, 705 F. App’x at 29.

125. *Id.*

with many issues due to the wage structure contained in the league's Uniform Player Contracts. Recently, MLB has responded with attempts to remedy these issues, but protection under the anti-trust laws would prevent MLB from changing its mind in the future.

1. Wage Structure Under Minor League Baseball's Uniform Player Contracts

MLB's annually-published Major League Rules ("MLR") include a copy of the UPC that all minor leaguers must sign in order to play for an MiLB team.¹²⁶ The MLR also states that the salary a minor leaguer receives "shall be the amount established by the Major Leagues for each Minor League classification or League."¹²⁷ The minimum salary for minor leaguers is \$1,100 per month for all first-year players.¹²⁸ The minor league UPCs state that minor leaguers and the team they play for "shall attempt annually to negotiate an applicable monthly salary rate for the next subsequent championship playing season."¹²⁹ If the parties are unable to reach an agreement about the pay rate, the club gets to set the salary, provided the new pay rate is not less than 80 percent of what the player made the previous season.¹³⁰

Additionally, minor leaguers earn payment for their work only during the regular season and the playoffs—not for their work during the off season or spring training.¹³¹ Based on these salary numbers, thousands of minor leaguers end up making less than \$10,000 per year,¹³² falling below the federal poverty level.¹³³ To make ends meet, minor leaguers settle for low-quality living arrangements, work minimum wage jobs during the off season, and cut costs wherever they can.¹³⁴

126. MAJOR LEAGUE BASEBALL, MAJOR LEAGUE RULES 205–231 (2019).

127. *Id.* at 29.

128. *Frequently Asked Questions: The Business of MiLB*, MiLB, <https://atmlb.com/2EGKeos> [<https://perma.cc/25PA-BK84>] (last visited Dec. 20, 2019).

129. MAJOR LEAGUE BASEBALL, *supra* note 126, at 209.

130. *Id.* at 210.

131. *Id.*

132. *Miranda v. Selig*, 860 F.3d 1237, 1239 (9th Cir. 2017).

133. *Federal Poverty Level (FPL)*, U.S. CENTERS FOR MEDICARE & MEDICAID SERVICES, <http://bit.ly/390wX8g> [<https://perma.cc/X8PA-DW38>] (last visited Dec. 20, 2019).

134. Emily Waldon, *'I Can't Afford to Play this Game': Minor-Leaguers open up about the Realities of Their Pay, and Its Impact on Their Lives*, THE ATHLETIC (Mar. 15, 2019), <http://bit.ly/2rbuRBg> [<https://perma.cc/A3H7-AB2E>] (detailing the financial struggles of several anonymous minor leaguers and the effect that their low salary has on their lives).

Some minor leaguers are able to survive their stint in the minor leagues by living off their signing bonuses.¹³⁵ Top draft picks receive signing bonuses over \$1 million.¹³⁶ Approximately 40 percent of players receive signing bonuses of less than \$10,000.¹³⁷ Without a signing bonus acting as a nest egg, minor leaguers drafted in later rounds are even more dependent on off-season jobs to make ends meet.

2. *Length and Viability of a Minor League Baseball Career*

A career in professional baseball does not guarantee financial success.¹³⁸ The annual MLB draft lasts 40 rounds, with each team receiving the rights to one player in each round, with a few exceptions.¹³⁹ MLB rosters allow for only 25 active players.¹⁴⁰ These numbers mean that, at any given time, there are 750 MLB players, while 1,200 new players enter the draft each year.¹⁴¹ It takes players drafted in the first two rounds of the MLB draft an average of four to six years to make it to the major leagues.¹⁴² Players taken in later rounds wait even longer in the minor leagues and are much

135. Generally, MLB draft picks bargain for and receive signing bonuses in addition to the salaries in the UPCs that they sign. Jim Callis, *Here are the 2019 Draft Pools and Bonus Values*, MAJOR LEAGUE BASEBALL (June 3, 2019), <https://atmlb.com/2HX1kQy>. MLB teams each have a limited pool from which they can draw signing bonus money. *Id.* MLB determines the value of each team's bonus pool based on the position of each team's draft picks in the first ten rounds of the draft. *Id.* MLB limits the signing bonuses for players drafted in rounds 11–40 to \$125,000 per player, unless a team decides to spend from its pool. *Id.* The average bonus pool in 2019 was \$8.8 million per team. *Id.* Bonus pools increase annually in line with annual increases in MLB's revenue. *Id.* See Weaver, *infra* note 136 for more information on the ranges and averages of MLB draft pick signing bonuses.

136. Levi Weaver, *On Minor-League Pay, MLB's Stance Doesn't Line up with the Facts*, THE ATHLETIC (Apr. 4, 2018), <http://bit.ly/2NZA0ot> [<https://perma.cc/H6YX-7M5J>] (last visited Jan. 25, 2020).

137. *Id.*

138. *But see* Josh Norris, *Lobbying Effort By MLB, MiLB Could Pay Off* (Mar. 21, 2018), BASEBALL AMERICA, <http://bit.ly/37tloFx> [<https://perma.cc/R69J-CDM8>] (containing an interview with MiLB President Pat O'Connor about the state of pay for minor leaguers and their opportunities).

139. *2019 Draft Tracker*, MAJOR LEAGUE BASEBALL, <https://atmlb.com/3aMdyZM> (last visited Jan. 25, 2020) (detailing the order and number of draft picks in the 2019 MLB draft); Jonathan Mayo, *Examining Impact of Houston's Lost Draft Picks*, MAJOR LEAGUE BASEBALL (Jan. 13, 2020) <https://atmlb.com/37sLwAi> (discussing the Houston Astros losing multiple future draft picks as a punishment for stealing signs during the 2017 regular season and playoffs).

140. MAJOR LEAGUE BASEBALL, *supra* note 126, at 6.

141. *Id.*

142. Cork Gaines, *Most Baseball Draft Picks Will Still Be In The Minors Four Years From Now*, BUSINESS INSIDER (June 7, 2013) <http://bit.ly/3aIohUV> [<https://perma.cc/27XG-3J87>].

less likely to make it to the majors.¹⁴³ The average MLB career lasts 6.85 years.¹⁴⁴ The terms of the UPCs and MLB's free agency system allow a single franchise to control a player for up to 12 years.¹⁴⁵ Given the average length of time players spend in the minor and major leagues, the average player will never have an opportunity to sell his skills on the open market.¹⁴⁶

Despite low wages in the minor leagues with little chance of progressing to the majors, not everyone in professional baseball agrees that the players are put in an unfair financial situation. In an interview about the topic of minor league player wages, MiLB President Pat O'Connor defended the league's payment structure.¹⁴⁷ O'Connor justified the low wages on the basis of upward mobility as follows:

This is not a career choice, and people want to debate about the fact that McDonald's worker[s] make more than minor league baseball players, and that's a fact. But I don't think that somewhere there's a major league in French fry prep that makes \$550,000 [as its] minimum wage or starting wage.¹⁴⁸

O'Connor also offered a grim look on how increasing wages for minor leaguers would affect MiLB.¹⁴⁹ O'Connor said, if minor league salaries hypothetically were to double or triple, it would lead

143. *MLB Amateur Entry Draft*, THE BASEBALL CUBE, <http://bit.ly/2RQp651> [<https://perma.cc/A5SP-TALK>] (last visited Jan. 25, 2020) (illustrating the lack of players drafted in late rounds). As an example, only 3 of the 150 players drafted in the final 5 rounds of the 2015 draft have made it to the MLB for any amount of time. *Id.* Compare this to the 50 percent of players from the first 2 rounds who, on average, would have made it to the MLB in this time. *Id.*

144. Sam Roberts, *Just How Long Does the Average Baseball Career Last?*, THE NEW YORK TIMES (July 15, 2007) <https://nyti.ms/37uRHE6> [<https://perma.cc/YKJ3-D3BN>] (last visited Jan. 25, 2020) (listing the average career length of players drafted from 1969–1993). Players drafted after 1993 were not included in the data because not all of their careers have yet ended. *Id.*

145. Weaver, *supra* note 136. A minor leaguer can become a free agent after playing for seven seasons in the minor league system of an MLB franchise. *Id.* If an MLB franchise adds a minor leaguer to the team's major league roster, the franchise would control the player's right at the major league level for another six years. *Id.* Between the years of minor league control and the years of major league control, a minor leaguer could spend 12 total years before becoming a free agent and having the opportunity to earn market value for his services. *Id.*

146. *Id.*

147. Whitney McIntosh, *The President of Minor League Baseball has Some Thoughts About Paying Players a Fair Wage*, SB NATION (Dec. 19, 2017) <http://bit.ly/2TXdb8o> [<https://perma.cc/GP24-4U7M>].

148. *Id.*

149. Weaver, *supra* note 136.

to MLB reducing the number of MiLB franchises accordingly.¹⁵⁰ That statement is far from solely fear mongering, as MLB is already proposing a reduction in the size of MiLB.¹⁵¹ Increasing the average minor leaguer's salary to \$40,000 annually would cost each MLB franchise \$6.815 million.¹⁵² For comparison, the average MLB payroll in 2019 was \$138.6 million.¹⁵³ Therefore, an increase of \$6.815 million would raise the average MLB payroll by less than 5 percent.¹⁵⁴ Additionally, MLB set a league record for revenue in 2019, grossing over \$10.7 billion.¹⁵⁵ Despite these statistics, MLB is only beginning to make changes.

3. *Major League Baseball's Steps to Remedy the Problem*

MLB and some of its member franchises are taking steps to address the issues surrounding minor league pay.¹⁵⁶ Before the 2019 season, one MLB franchise, the Toronto Blue Jays, announced plans to increase minor league salaries within its system by 50 percent.¹⁵⁷ The Major League Baseball Player's Association ("MLBPA") praised the raise, but MLB merely addressed future negotiations with MiLB.¹⁵⁸ MLB stated that salaries would be a focal point in discussions about the new Professional Baseball Agreement ("PBA") between MLB and MiLB.¹⁵⁹ The current PBA expires at the end of the 2020 regular season.¹⁶⁰

150. *Id.* ("If the cost of that talent is doubled or tripled, . . . MLB is not going to pay that much money for the talent. . . They're going to say, 'If 160 teams is going to cost [this much], we're just going to cut down on the number of teams.'").

151. J.J. Cooper, *MLB Proposal Would Eliminate 42 Minor League Teams*, *BASEBALL AMERICA* (Oct. 18, 2019), <http://bit.ly/30S17cJ> [<https://perma.cc/JWD6-N4YE>] (detailing a proposed plan by MLB ahead of negotiations in 2020 between MLB and MiLB on an updated Professional Baseball Agreement between the two organizations).

152. Weaver, *supra* note 136.

153. *MLB Team Payroll Tracker*, *SPOTRAC*, <http://bit.ly/37nj9U5> [<https://perma.cc/PJG5-RDTJ>] (last visited Jan. 25, 2020) (showing the total payroll for each MLB franchise during the 2019 season, as well as the league average).

154. Weaver, *supra* note 136.

155. Maury Brown, *MLB Sees Record \$10.7 Billion In Revenues For 2019*, *FORBES* (Dec. 21, 2019), <http://bit.ly/36rQsUK> (last visited Jan. 25, 2020).

156. *Supra* notes 136–145 and accompanying text.

157. John Delcos, *Toronto Blue Jays Boost Pay of Their Minor Leaguers; Major League Baseball Not Thrilled* (Mar. 18, 2019), *FORBES*, <http://bit.ly/2TS1YGm>.

158. *Id.*

159. Jeff Passan, *Sources: MLB Eyes Higher Salaries in Minors*, *ESPN* (Mar. 18, 2019), <https://es.pn/30RfyLF> ("The working conditions of minor league players, including their compensation, facilities and benefits, is an important area of discussion in those negotiations.").

160. Delcos, *supra* note 157.

More recently, MLB announced a plan to reduce the number of minor league teams affiliated with the MLB.¹⁶¹ The plan would focus on eliminating minor league teams with inadequate facilities.¹⁶² The plan would also lead to a restructuring of the multi-tiered system of MiLB.¹⁶³ Currently a minor leaguer's minimum salary is determined in part by the tier the player occupies.¹⁶⁴ Additionally, the plan would reduce the number of rounds in the MLB Amateur Draft to 20–25 rounds.¹⁶⁵ While this plan is still in its infancy and there will be extensive negotiations between MLB and MiLB, these proposed changes may impact the PBA and the current state of minor league baseball.

B. *Antitrust Analysis*

Several steps are important when analyzing the legality of MLB's treatment of minor leaguers under federal antitrust law. The first important step is to analyze the current scope of the Business of Baseball exemption and the changes that Congress would need to make to allow minor leaguers to bring suit against MLB.¹⁶⁶ The next step is to examine the collective bargaining process that led to the current state of minor leaguers and the potential that collectively bargained contracts preempt application of federal antitrust law in this case.¹⁶⁷ The third and final step is to select and apply the proper standard of review under federal antitrust law.¹⁶⁸ The conclusion from this analysis is that the current treatment of minor leaguers is a violation of federal antitrust law without the Business of Baseball exemption.

1. *Current Scope of the Business of Baseball Exemption*

The Flood Act has eliminated only portions of the Business of Baseball exemption.¹⁶⁹ While the Flood Act brought the employment of major league baseball players under the control of federal antitrust law, it also explicitly left other areas of the Business of

161. Cooper, *supra* note 151.

162. *Id.*

163. *Id.*; MAJOR LEAGUE BASEBALL, *supra* note 126, at 229–230; *Frequently Asked Questions*, *supra* note 128 (explaining the tiered structure of minor league baseball. Tiers range from rookie league to AAA, with the experience, skill, and compensation of players increasing at each level).

164. MAJOR LEAGUE BASEBALL, *supra* note 126, at 229–230; *Frequently Asked Questions*, *supra* note 128.

165. Cooper, *supra* note 151.

166. *Infra* Part III.B.1.

167. *Infra* Part III.B.2.

168. *Infra* Part III.B.3.

169. *Supra* Part II.C.

Baseball exemption intact.¹⁷⁰ The Flood Act did not subject the employment of minor leaguers to federal antitrust law.¹⁷¹ Instead, the remaining Business of Baseball exemption prevents minor leaguers from bringing suit against MLB for potential violations of federal antitrust law.¹⁷²

Courts have heard cases about several areas of the Business of Baseball since Congress passed the Flood Act,¹⁷³ and the employment of minor leaguers was the subject of one of those cases.¹⁷⁴ Generally, courts have followed the stance of the Supreme Court in regard to the Business of Baseball exemption.¹⁷⁵ In fact, courts have held that Congress specifically expressed its intent not to subject the employment of minor leaguers to antitrust law by excluding them from the Flood Act.¹⁷⁶ The exclusion makes courts even more hesitant to apply antitrust law to the employment of minor leaguers.¹⁷⁷ If the Business of Baseball exemption is going to change further, Congress likely will have to be the source of that change.¹⁷⁸

Considering the financial hardships minor leaguers face,¹⁷⁹ minor leaguers are justified in taking steps to improve their situations. Antitrust law exists to protect competition.¹⁸⁰ MLB's vertical integration with MiLB and its use of UPCs to dictate the wages of minor leaguers is arguably anticompetitive by nature.¹⁸¹ Minor leaguers believe that they would earn higher salaries in a truly competitive market for their services.¹⁸² Congress should amend the Flood Act or pass new legislation to subject the employment of minor leaguers to federal antitrust law.

If Congress were to pass that legislation, players like the plaintiffs in *Miranda v. Selig* would be able to have a court hear the merits of their case.¹⁸³ The proposed legislation would not guarantee that a court would find MLB to be in violation of federal anti-

170. *Supra* Part II.C.1.

171. Curt Flood Act, 15 U.S.C. § 26b(b) (2018).

172. *Id.*

173. *Supra* Part II.C.2.

174. *See* *Miranda v. Selig*, 860 F.3d 1237, 1238 (9th Cir. 2017).

175. *Flood v. Kuhn*, 407 U.S. 258, 284 (1972) (holding that Congress, not the Supreme Court or the judicial branch generally, is the proper entity to alter the Business of Baseball exemption).

176. *See, e.g.*, *Miranda*, 860 F.3d at 1239–40.

177. *Id.*

178. *Id.*

179. *Supra* Part III.A.

180. *Supra* Part II.A.

181. *See, e.g.*, *Miranda v. Selig*, 860 F.3d 1237.

182. *Miranda Complaint*, *supra* note 108, at 26–29.

183. *Miranda v. Selig*, 860 F.3d 1237, 1240.

trust law. Any court would still have to analyze these facts using the steps that would apply to any other antitrust case.¹⁸⁴ Nonetheless, the proposed legislation at least would give minor leaguers the opportunity to be heard and give courts the chance to decide if MLB's actions are truly anticompetitive. The following parts of this Comment will analyze the applicability of federal antitrust law to the current employment of minor leaguers in the event that Congress were to pass legislation allowing courts to do such analysis.

2. *The Non-Statutory Labor Union Exemption's Applicability to Minor League Baseball*

The Clayton Act allows labor unions to enter into contracts that might otherwise be in violation of federal antitrust law.¹⁸⁵ For these contracts to be valid, the agreement must serve a legitimate goal of the union.¹⁸⁶ The Eighth Circuit Court of Appeals created a three-part test in *Mackey v. National Football League* ("Mackey test") to determine if a collective bargaining agreement preempts federal antitrust law.¹⁸⁷ This test is useful because the MLR and the UPCs contained therein were drafted through collective bargaining between the MLBPA and MLB.¹⁸⁸ Therefore, the *Mackey* test can help determine if the MLR can preempt federal antitrust law.

The MLR immediately fails the first element of the *Mackey* test. The *Mackey* test requires that "the restraint on trade [in the agreement] primarily affects only the parties to the collective bargaining relationship."¹⁸⁹ While the majority of the MLR deals with the relationship between MLB and MLBPA members, it also heavily affects minor leaguers.¹⁹⁰ Minor leaguers are not members of the MLBPA.¹⁹¹ Further, while the MLBPA factors the impact on minor leaguers into their decision making process, the MLBPA does not represent minor leaguers in any legal capacity.¹⁹² Since

184. *Infra* Parts III.B.2. and III.B.3.

185. Clayton Act, 15 U.S.C. § 17 (2018).

186. *See, e.g.*, Int'l Org., *United Mine Workers v. Red Jacket Consol. Coal & Coke Co.*, 18 F.2d 839, 843–44 (4th Cir. 1927).

187. *Mackey v. Nat'l Football League*, 543 F.2d 606, 614 (8th Cir. 1976) (creating a three-element test for the non-statutory exemption that allows labor law to preempt antitrust law).

188. MAJOR LEAGUE BASEBALL, *supra* note 126, at 1.

189. *Mackey*, 543 F.2d at 614.

190. *See, e.g.*, MAJOR LEAGUE BASEBALL, *supra* note 126, at 205–231.

191. Delcos, *supra* note 157.

192. *Id.* (quoting MLBPA director, Tony Clark, as saying, "Although we don't represent legally the minor league group, we will continue to do the things that we can do to support them moving forward despite that").

the MLR fails the *Mackey* Test, a court would find that the MLR and the UPCs therein do not preempt federal antitrust law.

3. *Proper Antitrust Test for Judging Minor League Baseball's Conduct*

Antitrust law has multiple applicable court tests; the courts choose which test to use based on the nature of the violation and the facts at hand.¹⁹³ The standard of review in each antitrust case can impact the outcome before the trial begins.¹⁹⁴ Attorneys filing antitrust claims on behalf of minor leaguers must analyze what the appropriate standard of review would be if federal antitrust law were applicable to Minor League Baseball players.

a. Per Se Illegal Violations

Under the Sherman Act, certain economic restraints are held to be per se illegal.¹⁹⁵ Per se violations of the Sherman Act fall into specific categories.¹⁹⁶ Only specifically harmful actions are classified as per se violations.¹⁹⁷ If a court finds that a business committed a per se violation, the court will not consider the business's market power or intent before finding the business guilty of violating the Sherman Act.¹⁹⁸

The treatment of minor leaguers through the MLR likely does not fall into any of the per se illegal categories. Therefore, if minor leaguers brought a suit against MLB, the court would have to use a different standard of review.

193. See *AREEDA ET AL.*, *supra* note 52, at 144 (explaining that certain combinations should be condemned out of hand while others may have a positive economic impact).

194. *Id.* (explaining that the test used in a given case can shift the burden of proof between parties).

195. See, e.g., *United States v. Trenton Potteries Co.*, 273 U.S. 392, 397 (1927).

196. See, e.g., *id.* (condemning price-fixing as per se illegal); *Eastern States Retail Lumber Dealers' Ass'n. v. United States*, 234 U.S. 600, 612–13 (1914) (condemning concerted refusals to deal as per se illegal); *Fashion Originators' Guild, Inc. v. FTC*, 312 U.S. 457, 467–68 (1941) (condemning certain group boycotts as per se illegal).

197. *Nynex Corp. v. Discon*, 525 U.S. 128, 133 (1998) (“Yet certain kinds of agreements will so often prove so harmful to competition and so rarely prove justified that the antitrust laws do not require proof that an agreement of that kind is, in fact, anticompetitive in the particular circumstances. An agreement of such a kind is unlawful per se.”).

198. *Id.* at 136.

b. Quick Look Rule of Reason

In some antitrust cases, courts use an abbreviated or “quick look” rule of reason test.¹⁹⁹ The quick look rule of reason is an appropriate standard of review where an agreement is not so blatantly anticompetitive as to justify a finding of per se illegality.²⁰⁰ The quick look rule of reason does not require in-depth market analysis but rather a less formal assessment of the anticompetitive nature of an agreement.²⁰¹

The quick look rule of reason is not the proper test for the employment of minor league baseball players. While there is not a hard line rule delineating when to use the quick look rule of reason, the employment of minor leaguers is not a good fit for the rule.²⁰² The reduced emphasis on market analysis is not fitting when analyzing a practice that has been occurring since the start of the relationship between MLB and MiLB.²⁰³ Therefore, if minor leaguers brought a suit against MLB, the court would have to turn to the final prominent test for violations of federal antitrust law: the rule of reason.

c. Rule of Reason

Courts have used the rule of reason to test for violations of federal antitrust law since the early days of the Sherman Act.²⁰⁴ Unlike the quick look version, the full rule of reason involves in-depth market analysis to determine the anticompetitive impact of an agreement or practice.²⁰⁵ When a court analyzes an antitrust claim under the rule of reason, trials are notoriously in-depth and drawn out.²⁰⁶ While most antitrust suits end in a settlement,²⁰⁷ the

199. See *Cal. Dental Ass'n v. FTC*, 526 U.S. 756, 770–73 (1999).

200. *Nat'l Soc'y of Prof'l Eng'rs v. United States*, 435 U.S. 679, 692 (1978) (“While this is not price fixing as such, no elaborate industry analysis is required to demonstrate the anticompetitive character of such an agreement.”).

201. *Id.*

202. *Cal. Dental Ass'n v. FTC*, 526 U.S. 756, 781 (1999).

203. *Id.* (explaining that market clarity and experience is an important factor in assessing if a quick look is sufficient to find a violation of federal antitrust law).

204. See, e.g., *Standard Oil Co. v. United States*, 221 U.S. 1, 60 (1911).

205. *State Oil Co. v. Khan*, 522 U.S. 3, 10 (1997) (“[T]he finder of fact must decide whether the questioned practice imposes an unreasonable restraint on competition, taking into account a variety of factors, including specific information about the relevant business, its condition before and after the restraint was imposed, and the restraint’s history, nature, and effect.”).

206. Richard A. Posner, *A Statistical Study of Antitrust Enforcement*, 13 J.L. & ECON. 365, 374–81 (1970) (describing the length and in-depth nature of federal antitrust suits and analyzing length for suits brought by the government and by private parties).

207. *Id.* at 381.

amount of market data and level of analysis used is too unwieldy and unavailable for the purposes of this Comment. Therefore, it is impossible to make an accurate analysis—let alone a good faith hypothesis—about whether a court would find a violation of federal antitrust law in the current employment of minor leaguers.²⁰⁸

The more important outcome of this Comment is the path to allow the courts to do the analysis. Congress should pass legislation or amend the Flood Act so courts can hear claims like *Miranda v. Selig* and assess the merits of the plaintiffs' antitrust violation claims.²⁰⁹ The rule of reason is the proper test for claims like those in *Miranda v. Selig*.²¹⁰ While courts may decide that MLB's actions do not constitute a violation of federal antitrust law, minor leaguers deserve the opportunity to have their cases heard.

IV. CONCLUSION

Professional baseball has long enjoyed an exemption from federal antitrust law.²¹¹ Congress addressed the issue of the exemption by passing the Flood Act and subjecting the employment of MLB players to antitrust law.²¹² However, antitrust law still does not apply to the employment of minor leaguers.²¹³ The antitrust exemption and use of UPCs artificially suppresses minor leaguers' wages below their market value.²¹⁴ Minor leaguers are forced to choose among playing the game they love for below-poverty-level salaries, taking on second or even third jobs while playing as professionals, or quitting the game to continue to support themselves and their families.²¹⁵

208. See Gregg Steinman, Note, *Social Injustice in Minor League Baseball: How Major League Baseball Makes Use of an Antitrust Exemption to Exploit Its Employees*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 139 (2015), for further discussion on how courts would rule on a suit analyzing the potential antitrust violations that have been considered by this Comment.

209. *But see* Stanley M. Brand & Andrew J. Giorgione, *The Effect of Baseball's Antitrust Exemption and Contraction on its Minor League Baseball System: A Case Study of the Harrisburg Senators*, 10 VILL. SPORTS & ENT. L.J. 49, 51–52 (2003) (“Even if Minor League Baseball were to prevail on an antitrust claim, the litigation costs of defending such a charge would threaten the league’s survival. In the end, minor league player development would be stripped of its stability created by the player draft, reserve clause, and the PBA.”).

210. *Supra* Parts III.B.1. and III.B.2.

211. *Supra* Part II.B.

212. *Supra* Part II.C.1.

213. *Supra* Part II.C.1.

214. See *Miranda Complaint*, *supra* note 108 at 2, 22.

215. *Supra* Part III.A.

The courts have repeatedly held that altering the Business of Baseball antitrust exemption is a job for Congress.²¹⁶ For that reason, in order to prevent further economic harm to minor leaguers, Congress should pass legislation similar to the Flood Act that subjects the employment of minor leaguers to federal antitrust law and allows minor leaguers to bring claims of antitrust violations against MLB.²¹⁷

Furthermore, with this proposition, minor leaguers' claims would not be barred under the Labor Union exemption to federal antitrust law.²¹⁸ Minor leaguers are not members of the union that bargained for the terms of the UPCs at issue.²¹⁹ Therefore, these claims fail the *Mackey* Test, due to the lack of a collective bargaining relationship between minor leaguers and MLB.²²⁰ Since MLB cannot satisfy the *Mackey* Test, courts should not apply the Labor Union exemption.²²¹

Courts should analyze minor leaguers' claims under the Rule of Reason.²²² The analysis would involve a thorough analysis of the baseball market and a look at the anticompetitive harms and procompetitive benefits of UPCs.²²³ While it is uncertain whether courts would find that MLB and its UPCs violate antitrust law, minor leaguers at least would have their voices heard and could assure that MLB does not act in an unfair manner.²²⁴ The proposed alteration to the Business of Baseball antitrust exemption would be nothing short of a home run.

216. *Supra* Part II.C.2.

217. *Supra* Part III.B.

218. *Supra* Part III.B.2.

219. *Supra* Part III.B.2.

220. *Supra* Part III.B.2.

221. *Supra* Part III.B.2.

222. *Supra* Part III.B.3.c.

223. *Supra* Part III.B.3.c.

224. *Supra* Part III.B.3.c.