IN DEFENSE OF BASEBALL’S ANTITRUST EXEMPTION

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ABSTRACT

This Article challenges the overwhelming scholarly consensus opposing baseball’s historic antitrust exemption on policy grounds. The Article provides the first comprehensive defense of the exemption by advancing two primary arguments. First, it argues that the common criticisms of the baseball exemption are largely without merit. Specifically, given the treatment of the other major professional sports leagues under antitrust law, simply exposing baseball to antitrust liability alone will not yield the benefits that the exemption’s critics believe, and in some cases would actually harm the public interest.

Second, and perhaps more importantly, the Article argues that the existing literature has overlooked significant pro-competitive benefits that result from baseball’s antitrust exemption. Specifically, because baseball is loath to lose its exemption legislatively, Congress has been able to use threats of revocation to help extract a variety of valuable concessions from Major League Baseball (MLB). These concessions provide pro-competitive benefits that would not have been directly obtained through antitrust litigation alone. Perhaps most notably, every single round of league expansion in MLB history has been directly preceded by a Congressional threat to revoke the sport’s antitrust exemption. Therefore, baseball’s antitrust exemption provides Congress with considerable leverage over the sport, ultimately leading to significant, but heretofore overlooked, pro-competitive benefits for the public.

Thus, this Article rejects the existing scholarly consensus, and concludes that baseball’s antitrust exemption ultimately has a net pro-competitive effect.

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INTRODUCTION

Professional baseball’s judicially created exemption from antitrust law is among the most uniformly criticized doctrines in American jurisprudence. ¹ Scholarly commentators considering baseball’s unique antitrust status have derided it as “inexplicable and indefensible,”²


“illogical,”3 “irrational,”4 and “anachronistic.”5 Others have gone even further, declaring the exemption to be a “judicial embarrassment” and an “archaic reminder[] of judicial decision making at its arthritic worst,”6 not to mention a “grotesque legal anomaly” and an “arrogant testament to stubborn ignorance.”7

The exemption — which shields many of the activities of both Major League Baseball (“MLB”) as well as the lower-ranked, so-called “minor leagues” from antitrust scrutiny — dates back to the United States Supreme Court’s decision in the 1922 case of Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs.8 In Federal Baseball, Justice Oliver Wendell Holmes wrote for a unanimous Court holding that under then-prevailing precedent, the business of “giving exhibitions of base ball” was neither interstate in nature nor commerce, and thus was not subject to the Sherman Antitrust Act.9 Even though the Court has since significantly expanded its interstate commerce jurisprudence — and in the process applied antitrust law to other professional sports leagues10 — it has nevertheless affirmed Federal Baseball in two

ABRAMS, LEGAL BASES]. See also Edmund P. Edmonds, Over Forty Years in the On-Deck Circle: Congress and the Baseball Antitrust Exemption, 19 T. MARSHALL L. REV. 627, 660 (1994) (stating “the exemption is a judicial aberration without justification”); Carol Daugherty Rasnic & Dr. Reinhard Resch, Limiting High Earnings of Professional Athletes: Would the American Concept of Salary Caps be Compatible with Austrian and German Labor Laws?, 7 WILLAMETTE SPORTS L.J. 57, 58 (2010) (stating that the baseball exemption is “inexplicable”).


8 259 U.S. 200 (1922).

9 Id. at 208.


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Despite twice affirming baseball’s unique standing under antitrust law, the Supreme Court has not hesitated to criticize the doctrine in its subsequent opinions. For example, in its 1957 decision in Radovich v. National Football League,13 the Court admitted that Federal Baseball “was of dubious validity,”14 and would likely be decided differently if being raised “for the first time upon a clean slate.”15 Then in its most recent reaffirmance of the baseball exemption, the Flood Court acknowledged that the doctrine was “an exception and an anomaly,”16 and repudiated the original justification for the exemption by holding that “baseball is a business and it is engaged in interstate commerce.”17 Nevertheless, the Flood Court refused to overturn Federal Baseball, concluding that stare decisis concerns, as well as Congress’s failure to legislatively address the exemption, justified continued adherence to the prior baseball precedents.18

Scholars considering the baseball exemption as a matter of public policy have been less deferential. These commentators have overwhelmingly argued that the exemption should be revoked — either legislatively or judicially — in order to prevent professional baseball from perpetuating a variety of allegedly anticompetitive practices.19 Specifically, critics argue that if antitrust law were applied to baseball, MLB would no longer be able to: (i) place extortionate demands on municipalities for stadium tax subsidies; (ii) prevent the relocation of MLB franchises to other cities; (iii) adopt harmful labor restraints to the detriment of professional baseball players; (iv) enter professional tennis, Gunter Harz Sports, Inc. v. U.S. Tennis Ass’n, 665 F.2d 222, 223 (8th Cir. 1981). See also Thomas C. Picher, Baseball’s Antitrust Exemption Repealed: An Analysis of the Effect on Salary Cap and Salary Taxation Provisions, 7 SETON HALL J. SPORT L. 5, 14 n.53 (1997) (identifying cases).

14 Id. at 450.
15 Id. at 452.
16 Flood, 407 U.S. at 282.
17 Id.
18 Id. at 283-84.
19 See, e.g., Kathleen L. Turland, Note: Major League Baseball and Antitrust: Bottom of the Ninth, Bases Loaded, Two outs, Full Count, and Congress Takes a Swing, 45 SYRACUSE L. REV. 1329, 1375 (1995) (stating that the “removal of baseball’s exemption from the federal antitrust laws would have a positive effect on MLB and would benefit the public interest … forc[ing] the League into the competitive marketplace”).
anticompetitive broadcast agreements with cable television networks; (v) impose unreasonable ownership restrictions on its teams; and/or (vi) maintain various incompetent management practices (practices which allegedly led to MLB’s proposed elimination of two teams in the early 2000s and baseball’s steroid problem, among other issues).  

This Article challenges the prevailing scholarly consensus opposing baseball’s historic exemption from antitrust law on policy grounds. Specifically, the common wisdom regarding baseball’s antitrust exemption is flawed in two significant respects. First, critics of the exemption dramatically overstate the benefits that would be realized by applying antitrust law to professional baseball. Given the existing precedents from lawsuits involving the other major professional sports leagues, applying antitrust law to baseball will not provide the benefits that critics allege. Indeed, MLB’s operations are nearly identical to the other leagues in most significant respects despite its antitrust immunity, with the anticompetitive conduct attributed to baseball’s exemption largely endemic to all major professional sports leagues.

Second, and perhaps more significantly, the existing scholarly literature has largely overlooked the fact that Congress has obtained considerable leverage over baseball throughout the years by threatening to revoke the sport’s antitrust exemption. Congress has used this power to help extract various pro-competitive concessions from MLB, benefits that would not have been directly obtained via antitrust litigation alone. Perhaps most notably, every single round of expansion in MLB history has been directly preceded by a Congressional threat to revoke the sport’s antitrust exemption. As a result, the Article asserts that baseball’s antitrust exemption is actually net pro-competitive, given that Congress has used the threat of revocation to pressure baseball to provide benefits outweighing its minimal anti-competitive effects.

The significance of professional baseball’s unique standing under antitrust law is not merely an academic concern; indeed, MLB regularly finds itself embroiled in potential antitrust disputes. For instance, in 2011, commentators speculated that deposed Los Angeles Dodgers owner Frank McCourt might sue MLB under antitrust law after MLB Commissioner Bud

20 See generally Part I infra. Some commentators have additionally argued that baseball’s antitrust exemption should be revoked simply due to its anomalous status vis-à-vis the other professional sports leagues. See Part 1.G infra.

21 This Article does not address the separate issue of whether the Supreme Court’s continued adherence to its baseball antitrust precedents is justified as a matter of stare decisis. See, e.g., William N. Eskridge, Jr., Overruling Statutory Precedents, 76 GEO. L.J. 1361, 1381 (1988) (stating that “Flood v. Kuhn is an almost comical adherence to the strict rule against overruling statutory precedents”).

22 See infra note 314 and accompanying text.
Selig seized control of the club due to concerns regarding McCourt’s troubled finances and unresolved divorce proceedings.\(^2\) Similarly, in 2009, MLB faced threats of antitrust litigation from trading card manufacturer Upper Deck, after the league granted rival card manufacturer Topps an exclusive trademark license.\(^2\) The next time such a dispute results in full-blown antitrust litigation, the legitimacy of baseball’s exemption from antitrust law will undoubtedly be at issue.

Moreover, baseball’s anomalous antitrust status vis-à-vis the other major professional sports leagues was further highlighted recently by the U.S. Supreme Court’s 2010 decision in *American Needle v. National Football League*,\(^2\) in which the Court reaffirmed the applicability of Section One of the Sherman Act to the NFL. As a result, baseball’s antitrust exemption is likely to face renewed scrutiny in the future, necessitating a fuller and more accurate understanding of the exemption’s competitive effects.

This Article offers the first comprehensive defense of baseball’s unique status under antitrust law. Specifically, the Article departs from the overwhelming scholarly consensus by arguing that baseball’s antitrust exemption is actually net pro-competitive, and thus benefits the public interest. First, the Article considers the various allegedly anticompetitive harms critics assert are inflicted by the exemption, concluding that exposing baseball to antitrust liability alone will largely fail to address these practices given the prevailing precedents from cases involving the other professional sports leagues. Second, the Article argues that baseball’s antitrust exemption actually yields heretofore largely overlooked pro-competitive benefits to the public, due to the fact that Congress has used threats of


\(^{25}\) 130 S.Ct. 2201 (2010).
revoking the exemption to help extract valuable concessions from MLB, concessions that would not have been directly obtained simply through antitrust litigation against the league. As a result, the Article ultimately concludes that baseball’s antitrust exemption is net pro-competitive, as Congress has used the exemption to help obtain greater benefits for the public than would have been realized simply by applying antitrust law to the sport.

I. REVOKING BASEBALL’S ANTITRUST EXEMPTION WILL NOT CURB MLB’S ALLEGEDLY ANTICOMPETITIVE CONDUCT

Traditional economic theory suggests that a firm possessing an unregulated monopoly will either artificially reduce its output and/or artificially inflate its prices, to the detriment of consumers.\textsuperscript{26} Accordingly, because MLB is the only major professional baseball league operating in the United States, and the only professional sports league to enjoy antitrust immunity, one might expect to find that the league produces less output and/or charges higher prices than the other major professional sports leagues. However, this is not the case.\textsuperscript{27}

In actuality, only one of the other three major professional sports leagues — the NFL — fields more than the 30 franchises belonging to MLB.\textsuperscript{28} Meanwhile, each of the 30 MLB teams plays nearly twice as many (or more) regular season games than the teams in the other three professional leagues. Specifically, every MLB team plays 162 regular games per season, versus 82 games each for NBA and NHL franchises, and

\textsuperscript{26} See, e.g., Stephen F. Ross, Monopoly Sports Leagues, 73 MINN. L. REV. 643, 645 (1989) [hereinafter Ross, Monopoly Sports Leagues] (noting that “[e]conomic theories underlying the federal antitrust statutes suggest that monopolies result in higher prices, lower output, and a transfer of wealth from consumers to the producer/monopolist.”). See also Y. Shukie Grossman, Note: Antitrust and Baseball – A League of Their Own, 4 FORDHAM INTELL. PROF. MEDIA & ENT. L.J. 563, 573 (1993) (noting that “courts applying [antitrust’s] rule of reason focus on whether the activity harms consumer welfare by decreasing output and increasing prices.”).

\textsuperscript{27} See Roberts, The Case, supra note 1, at 308-09 (“virtually every example of arguably anticompetitive conduct of which baseball owners have been accused … is engaged in roughly the same manner by the other major sports league team owners who do not have baseball’s immunity.”); Stephen F. Ross, The Effect of Baseball’s Status as a Legal “Anomaly and Aberration”, in LEGAL ISSUES IN PROFESSIONAL BASEBALL 215, 264 (Lewis Kurlantzick, ed. 2005) [hereinafter Ross, Anomaly and Abberation] (“The other major professional sports leagues are subject to the antitrust laws, yet they feature much of the same anticompetitive behavior that characterizes MLB.”).

\textsuperscript{28} J.C. BRADBURY, THE BASEBALL ECONOMIST: THE REAL GAME EXPOSED 207 (2008). Specifically, the NFL has 32 teams, while MLB, the NBA, and the NHL each field 30 teams. Id.
just 16 games per year for NFL teams.\textsuperscript{29} Given that baseball is largely played outdoors, and MLB’s season already runs from late-March through late-October, the league would be hard-pressed to extend the length of its season in order to produce additional regular season games.\textsuperscript{30} Therefore, it is difficult to argue that MLB uses its status as an unregulated monopoly to significantly restrict output, at least in comparison to the other professional leagues.\textsuperscript{31}

Nor does MLB appear to exploit its antitrust exemption in order to charge artificially higher ticket prices than the other major sports leagues, as MLB’s average ticket price is less than half of those in the other three leagues.\textsuperscript{32} Even if one adjusts the average ticket price to reflect the fact that MLB’s regular season is significantly longer than the other leagues — with each individual MLB regular season game thus taking on lesser significance than those in the other leagues, presumably lowering consumer demand — MLB still has the second-lowest adjusted ticket price of the four major professional sports leagues, trailing only the NFL.\textsuperscript{33}

Perhaps recognizing that baseball’s antitrust exemption does not demonstrably result in the direct economic harm that traditional economic theory would suggest, its critics instead focus their attacks on other anticompetitive practices allegedly resulting from the exemption (as discussed below). These criticisms are largely misplaced; simply revoking baseball’s exemption alone will not result in the pro-competitive modifications to MLB’s activities that its opponents allege. Indeed, as this Part of the Article will show, antitrust law has proven to be largely ineffective at curbing these same anticompetitive practices in the other sports leagues.\textsuperscript{34}

\textsuperscript{29} Id.
\textsuperscript{30} See id. (noting same).
\textsuperscript{31} The argument that MLB uses its exemption to artificially reduce the number of major league teams will be specifically considered infra in Part I.A.1.
\textsuperscript{32} BRADBURY, supra note 28 at 207.
\textsuperscript{33} Id. See also id. at 208 (noting that because “[a] single game in an NFL season represents 6.25 percent of the football played by a team in that season, while a game in baseball represents 0.62 percent of the baseball played by a team … fans may be less willing to pay for the single game experience [for MLB] than they would in other sports.”).

This is not to suggest that MLB’s current operations are perfectly competitive. To the contrary, exposing MLB to a truly competitive marketplace — one in which it faced direct
A. Revoking Baseball’s Antitrust Exemption Will Not Prevent MLB Teams from Demanding Stadium Subsidies from Local Municipalities

Perhaps the most frequent criticism of baseball’s historic antitrust immunity is that the exemption enables MLB teams to place extortionate demands upon their host cities for new or improved, publicly funded stadiums.\textsuperscript{35} Specifically, critics allege that MLB uses its exemption to artificially reduce the number of teams competing at the major league level by intentionally withholding franchises from cities that could otherwise support a team.\textsuperscript{36} MLB teams then use this artificial scarcity, critics assert, to place pressure on their current communities to provide stadium subsidies

\textsuperscript{35}See, e.g., Mack and Blau, supra note 6, at 206 (“MLB also has repeatedly coerced municipalities into providing lucrative inducements to attract or retain a baseball franchise.”); Victor Matheson & Brad R. Humphreys, Pilots and Public Policy: Steering Through the Economic Ramifications, 16 VILL. SPORTS & ENT. L.J. 273, 275-76 (2009) (arguing that “baseball’s antitrust exemption results in fewer MLB franchises than would exist absent the exemption,” giving existing teams “significant market power [to] operate as unregulated monopolies,” and enabling them to use “the threat of leaving to extract concessions” from municipalities); Stephen F. Ross, Reconsidering Flood v. Kuhn, 12 U. MIAMI ENT. & SPORTS L. REV. 169, 196 (1994) [hereinafter Ross, Reconsidering] (“Allowed to freely collude and monopolize, baseball owners have cost taxpayers millions of dollars in stadium subsidies, [and] deprived millions of fans in ‘have-not’ cities of major league franchises”); Sullivan, supra note 3, at 1301 (“Through their monopoly power, owners have cost taxpayers millions in stadium subsidies”); Turland, supra note 19, at 1340 (asserting that “[d]emand for MLB franchises is considerable, yet many cities which could support a franchise do not have one … because of MLB’s rigid control over expansion and club relocation decisions,” with the result that “individual team owners are able to obtain substantial financial subsidies from the cities where franchises are located”); Andrew Zimbalist, The Practical Significance of Baseball’s Presumed Antitrust Exemption, 22 ENT. & SPORTS LAW. 1, 25 (2004) [hereinafter Zimbalist, Practical Significance] (arguing that MLB “has not hesitated to use its monopoly power to threaten team movement in order to extract larger public subsidies from existing host cities”).

\textsuperscript{36}See Craig Arcella, Note: Major League Baseball’s Disempowered Commissioner: Judicial Ramifications of the 1994 Restructuring, 97 COLUM. L. REV. 2420, 2446 (1997) (“Free-market League expansion would…eliminate the artificial scarcity of teams that the owners can maintain because of the exemption”); Andrew Zimbalist, Baseball Economics and Antitrust Immunity, 4 SETON HALL J. SPORT L. 287, 312 (1994) [hereinafter Zimbalist, Baseball Economics] (“MLB behaves like a standard monopoly in restricting supply (the number of teams) below the demand for teams from economically viable cities; that is, it creates an artificial scarcity.”).
or else face the potential relocation of the franchise to an unserved community.\textsuperscript{37} Such commentators point to statements like those made by former MLB Commissioner Fay Vincent, who once acknowledged that MLB kept a team out of Tampa Bay, Florida for a period of time in order to maintain the city as a “baseball asset.”\textsuperscript{38} In fact, one leading scholar has gone so far as to state that stadium tax subsidies represent the greatest public cost of baseball’s antitrust exemption.\textsuperscript{39}

There are two significant problems with this argument. First, exposure to antitrust liability has not prevented teams in the other professional sports leagues from seeking stadium subsidies from their host cities. To the contrary, teams in the other major sports leagues frequently threaten to relocate in order to extract significant stadium subsidies from their local communities. As but several of the plethora of examples, in the 1980s, Philadelphia granted the NFL’s Eagles thirty million dollars in stadium concessions after the team threatened to relocate to Phoenix, Arizona.\textsuperscript{40} Similarly, in the 1990s, the owners of the NBA’s Minnesota Timberwolves successfully forced Minneapolis to purchase the team-owned Target Center — at a total cost of $75 million — after threatening to relocate the franchise.\textsuperscript{41} Most recently, the NBA’s Sacramento Kings franchise has threatened to relocate to Anaheim if Sacramento does not build the team a new arena.\textsuperscript{42}

Thus, such stadium demands are endemic to all professional sports leagues. Indeed, between 1990 and 2000, there were a total of “seventy-seven major league facility lease re-negotiations, modernizations, or newly constructed [stadium] projects in professional football, baseball, basketball

\textsuperscript{37} See Jeffrey Gordon, Note: Baseball’s Antitrust Exemption and Franchise Relocation: Can a Team Move?, 26 FORDHAM URB. L.J. 1201, 1252 (1999) (arguing that “a significant motivation for baseball owners in denying a franchise’s relocation is the desire to keep a city open as a ‘baseball asset.’ This allows current owners to use the city as a relocation threat in order to force their existing communities to provide generous public subsidies for a new stadium”).

\textsuperscript{38} Ross, Reconsidering, supra note 35, at 169. Tampa Bay was ultimately awarded an MLB franchise in 1995. See infra note 306 and accompanying text. See also Zimbalist, Practical Significance, supra note 35, at 25 (arguing that Washington, D.C. was similarly denied a MLB franchise for a number of years).

\textsuperscript{39} Ross, Anomaly and Aberration, supra note 27, at 230 (“Among the ‘well documented’ welfare losses caused by anticompetitive conduct tolerated by the baseball exemption, surely the greatest is the vast amount of tax subsidies paid to baseball owners by the communities in which they play.”).

\textsuperscript{40} Ross, Monopoly Sports Leagues, supra note 26, at 651.

\textsuperscript{41} JAMES QUIRK & RODNEY FORT, HARD BALL: THE ABUSE OF POWER IN PRO TEAM SPORTS 128-29 (1999)

and hockey,” with the result that “[b]y 1997, almost one-half of the country’s major professional sports franchises were either getting new or renovated facilities, or had requested them.” In particular, 20 teams from the non-antitrust exempt NFL received new stadiums between 1989 and 2006. Meanwhile, 70 to 80 percent of the building costs for new sports stadiums across the four major sports have come from public sources since the 1970s. Therefore, experience shows that potential antitrust liability has little bearing on whether sports teams will successfully demand stadium subsidies from their host municipalities.

Indeed, it is unclear whether such demands violate antitrust law at all. As Professors Matthew Mitten and Bruce Burton have noted, “[n]otwithstanding the league’s limitation on the supply of franchises in the supply-demand equation, any economic harm to a city caused by competition among communities to attract a team is not compensable under the antitrust laws.”

In fact, one could argue that, if anything, baseball’s antitrust exemption actually decreases the frequency with which MLB franchises place extortionate demands upon their host cities. Because baseball’s antitrust immunity enables MLB to exercise greater control over franchise relocations than the other major sports leagues — as discussed in greater detail below — the exemption may actually hamper the ability of individual rogue teams to demand public stadium subsidies, as their host

45 Marc Edelman, Sports and the City: How to Curb Professional Sports Teams’ Demands for Free Public Stadiums, 6 RUTGERS J. L. & PUB. POL’Y 35, 42 (2008) [hereinafter Edelman, Sports and the City]. MLB teams have admittedly relied slightly more upon public funding for their new stadiums than the other leagues, but only by a rather insignificant margin. For instance, in the 1990s, on average 80 percent of the funding for a new MLB facility was from public sources, versus 73 percent for the NFL. Greenberg, supra note 43, at 385.
46 See QUIRK & FORT, supra note 41, at 127 (stating that “almost every city in the country is” facing stadium subsidy demands from professional sports teams); ANDREW ZIMBALIST, IN THE BEST INTERESTS OF BASEBALL?: THE REVOLUTIONARY REIGN OF BUD SELIG 173 (2006) [hereinafter ZIMBALIST, IN THE BEST INTERESTS OF BASEBALL] (conceding that “it must be acknowledged that [MLB Commissioner Bud] Selig and MLB are doing what any sports league would do: they are taking advantage of their economic circumstance and political power to extract the maximum possible benefit.”)
48 See Part I.B infra.
cities know that any relocation must first be approved by MLB as a whole. Therefore, critics incorrectly assert that exposure to potential antitrust liability alone would prevent MLB teams from demanding exorbitant stadium subsidies from their municipalities.

Perhaps more significantly, however, critics make an erroneous predicate assumption when advancing this argument. Specifically, these critics wrongly presume that revoking the exemption will result in a significant increase in the number of teams competing at the major league level, thus alleviating the artificial scarcity of teams that make such demands possible. In particular, critics allege that the exemption enables MLB to artificially reduce the number of major league teams in two ways: first by allowing MLB to restrict expansion, and second by preventing the formation of rival leagues challenging MLB’s dominant market position. However, as shown below, the revocation of baseball’s antitrust exemption would have a negligible effect on either alleged practice.

1. Antitrust Law Will Not Force MLB to Expand

First, despite frequent assertions to the contrary, revoking baseball’s antitrust exemption will not directly lead to the expansion of MLB. Indeed, no court has ever applied antitrust law to require a professional sports league to expand its membership.

Specifically, courts have rejected antitrust claims filed by parties seeking to force a professional sports league to expand on two separate occasions. First, in *Mid-South Grizzlies v. National Football League*, the Third Circuit Court of Appeals refused to order the NFL to admit the Memphis Grizzlies (of the defunct World Football League) into its league.

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49 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, 56 (2003) (arguing that the “exemption has had an obvious restraining effect on relocations at the major league level and has served the public interest well by reducing the ability of teams to force huge public subsidies out of local communities.”).

50 See generally Part I.A.1 infra.

51 See generally Part I.A.2 infra.

52 See, e.g., Ross, *Reconsidering*, supra note 35, at 196 (predicting that by “subjecting baseball to antitrust scrutiny … [MLB] can be expected to expand to a few lucrative new markets”); Larry C. Smith, Comment: *Beyond Peanuts and Cracker Jack: The Implications of Lifting Baseball’s Antitrust Exemption*, 67 U. COLO. L. REV. 113, 138 (1996) (“If the exemption is eliminated entirely, expansion into more North American markets is widely expected.”).


54 720 F.2d 772, 776 (3d Cir. 1982).
The court emphasized the fact that the Grizzlies did not allege that the NFL had harmed the team’s ability to compete with the league, but rather merely sought to join the league. Consequently, the Court held that the decision to deny the Grizzlies membership in the league was actually pro-competitive, because it left Memphis as an open market for a potential rival football league. Accordingly, the Court concluded that the NFL’s refusal to admit the Grizzlies did not violate the Sherman Act.

Similarly, in Seattle Totems Hockey Club v. National Hockey League, the Ninth Circuit Court of Appeals rejected an antitrust claim by the Seattle Totems of the former Western Hockey League, filed after the NHL refused to let the team into its league. As in Mid-South Grizzlies, the court noted that the Totems did not seek to compete with the NHL, but rather sought to join the league. Accordingly, the Court concluded that the NHL had not violated the Sherman Act by refusing to admit the Totems, because that decision left Seattle as a potential site for a team in a rival hockey league.

Thus, following Mid-South Grizzlies and Seattle Totems, it is apparent that courts are unwilling to use antitrust law to force professional sports leagues to expand. Indeed, this explains why a number of large U.S. cities currently lack NFL, NBA, and/or NHL franchises, despite the fact that those leagues remain subject to antitrust law. For example, Los Angeles has famously lacked an NFL franchise for 16 years, despite being the nation’s second largest media market. Similarly, other large cities without teams in one or more of the major professional sports leagues include Baltimore (no NBA or NHL team), Cleveland (no NHL team), Pittsburgh (no NBA team), San Diego (no NBA or NHL team), Seattle (no NBA or NHL team), and St. Louis (no NBA team). Therefore, it should come as no surprise that MLB fields as many teams as all but one of the other major

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55 Id. at 776-77.
56 Id. at 786.
57 Id. at 787-88.
58 783 F.2d 1347 (9th Cir. 1986).
59 Id. at 1350.
60 Id.
61 One earlier court did order a sports league to expand in an antitrust case, but its decision was later reversed on appeal. In State v. Milwaukee Braves, Inc., the trial court held that MLB violated Wisconsin antitrust law by failing to provide Milwaukee with an expansion franchise after the commercially successful Braves franchise relocated to Atlanta. See State v. Milwaukee Braves, Inc., 144 N.W.2d 1, 7-8 (1966). However, the Supreme Court of Wisconsin overturned the lower court decision, concluding that baseball’s antitrust exemption blocked the application of state antitrust law. Id. at 18.
63 See Edelman, How to Curb, supra note 34, at 290 (listing examples).
professional sports leagues despite its historic antitrust immunity,\textsuperscript{64} as antitrust law has never been applied to require sports leagues to expand against their will.

Moreover, as even some critics of baseball’s exemption acknowledge,\textsuperscript{65} the entire concept of judicially-mandated expansion is problematic in several respects. First, courts are poorly suited to decide whether a particular proposed expansion franchise would be financially sustainable, given that the success of a professional sports team depends not only on quantifiable data like the host city’s population and income demographics, but also on less quantifiable factors such as the enthusiasm of the prospective local fan base and the effect of possible league-wide talent dilution from over-expansion.\textsuperscript{66} In effect, such a suit seeks to have the court substitute its own business judgment for that of the league on these matters,\textsuperscript{67} a troubling proposition given that there is “no sensible set of principles [that] exists under current antitrust doctrine to explain when or why a joint venture partnership like a sports league might violate Section One of the Sherman Act if it grants or rejects a proposal to expand its membership … .”\textsuperscript{68}

Second, even if courts could be relied on to accurately gauge the expected profitability of a proposed expansion team, they are nevertheless particularly poorly suited to select between multiple competing expansion applications. Because only one specific expansion proposal will typically be before a court at a given time, courts may be forced to make expansion decisions in isolation without fully knowing whether other, potentially stronger expansion sites are more deserving of a team.\textsuperscript{69} This creates two problems. First, given that any court-ordered expansion likely would be finite, prospective owners may feel compelled to “race to the courthouse” in order to be the first to secure one of the few available expansion franchises.\textsuperscript{70} Second, prospective owners will likely file such suits in hometown courts, creating the possibility that a self-interested judge or jury will order a league to expand into the local community, even if another municipality is more deserving of the franchise.

However, even if baseball’s antitrust exemption were revoked, and a litigant could persuade a court to not only set aside the Mid-South Grizzlies

\begin{footnotes}
\item[64] See supra note 28 and accompanying text.
\item[65] See Ross, Monopoly Sports Leagues, supra note 26, at 709-10.
\item[66] Id. See also Edelman, How to Curb, supra note 34, at 304 (noting that the creation of “subjective, court-ordered criteria to determine how premier sports leagues must expand” would be problematic).
\item[67] See Ross, Monopoly Sports Leagues, supra note 26, at 709 (noting same).
\item[68] Roberts, Scope and Effect, supra note 34, at 330.
\item[69] Ross, Monopoly Sports Leagues, supra note 26, at 710.
\item[70] Id.
\end{footnotes}
and Seattle Totems precedents, but also the general concerns regarding judicially-mandated expansion, MLB expansion still would not be assured. Rather, MLB would have several plausible defenses it could assert as justification for refusing to expand under an antitrust rule of reason analysis.\footnote{Following the U.S. Supreme Court’s recent decision in American Needle, Inc. v. National Football League, 130 S.Ct. 2201 (2010), antitrust suits against professional sports leagues typically will be judged under the rule of reason, rather than a \textit{per se} standard of liability, given that sports leagues produce a product in which “restraints on competition are essential if the product is to be available at all.” \textit{Id.} at 2216.}

As an initial matter, MLB could argue that no cities capable of supporting an MLB franchise currently remain without a team. Indeed, it is unclear just how many strong candidates for MLB expansion exist following the relocation of the Montreal Expos to Washington D.C. in 2005.\footnote{See Martin J. Greenberg & Bryan M. Ward, \textit{Non-Relocation Agreements in Major League Baseball: Comparison, Analysis, and Best Practice Clauses}, 21 MARQ. SPORTS L. REV. 7, 8 n.11 (2010) (noting that the Montreal Expos became the Washington Nationals in 2005).} Most major cities in the U.S. are now home to at least one MLB team,\footnote{See Dean V. Baim, \textit{The Rational Behavior Behind NFL Relocations}, 30 U. Tol. L. REV. 443, 457 (1999) (stating that “[m]ost large cities already have MLB franchises.”).} with only secondary markets like Charlotte and Portland, Oregon lacking teams.\footnote{See Marc Edelman, \textit{The House that Taxpayers Built: Exploring the Rise in Publicly Funded Baseball Stadiums from 1953 Through the Present}, 16 VILL. SPORTS & ENT. L.J. 257, 262 (2009) (identifying cities without MLB franchises).} The ability of these smaller cities to successfully support an MLB franchise is far from certain; for example, despite boasting a larger population than some current MLB cities, Portland recently lost its minor league franchise after routinely ranking near the bottom of the Pacific Coast League in attendance.\footnote{Rob Neyer, \textit{Portland Gets Baseball!}, SBNATION.COM, Feb. 9, 2011, http://www.sbnation.com/mlb/2011/2/9/1985180/portland-gets-baseball (last accessed March 5, 2011).} Meanwhile, economists disagree regarding the viability of other potential expansion sites.\footnote{Compare GERALD W. SCULLY, \textit{THE BUSINESS OF MAJOR LEAGUE BASEBALL} 146 (1989) (predicting that hypothetical franchises in cities like Buffalo, Indianapolis, New Orleans, or Vancouver would have to play winning baseball almost immediately and continuously in order to produce revenues sufficient enough to support a team), \textit{with} Zimbalist, \textit{Baseball Economics}, supra note 36, at 316 (arguing in 1994 that “[t]here are enough economically-viable cities to support a gradual expansion to forty teams by the year 2004”). \textit{See also} G. Scott Thomas, \textit{Economic Clout Makes L.A. Sports Team Choice}, AM. CITY BUS. J., Oct. 4, 2004, http://sacramento.bizjournals.com/edit_special/3.html (last accessed June 13, 2010) (noting that no city presently without an MLB team “meets the income requirements” necessary for successfully hosting an MLB franchise).} Therefore, MLB could credibly assert that it has already placed a franchise in every city that is financially capable of supporting one, and thus that its decision to forgo
additional expansion is not anticompetitive.\textsuperscript{77}

MLB could also assert other defenses in support of a decision not to expand. For example, MLB could plausibly assert that expansion would spread the finite number of qualified major league players across too many teams, resulting in a dilution of the quality of play on the field, and thus hurting the attractiveness of its product as a whole.\textsuperscript{78} Similarly, MLB could also argue that it was justified in denying any single, standalone application for expansion in order to avoid the scheduling headaches created by having an uneven number of teams in the league.\textsuperscript{79}

Thus, a number of legal hurdles beyond just baseball’s antitrust exemption must be overcome before a court would use antitrust law to force MLB to expand. Accordingly, simply revoking baseball’s antitrust exemption alone is unlikely to spur significant expansion by MLB, contrary to the frequent assertions by the exemption’s opponents.\textsuperscript{80}

\textsuperscript{77} Meanwhile, although some municipalities currently hosting one or more MLB teams could conceivably support additional teams (such as New York City), see Daniel C. Glazer, \textit{Can’t Anybody Here Run This Game? The Past, Present and Future of Major League Baseball}, 9 SETON HALL J. SPORT L. 339, 426 (1999) (arguing same), such expansion would do little to reduce the prevalence of extortionate stadium demands identified by critics of baseball’s antitrust exemption, as further expansion to current MLB host cities would not reduce the supply of unserved communities seeking MLB teams.

\textsuperscript{78} See William F. Shughart II, \textit{Preserve Baseball’s Antitrust Exemption, or, Why the Senators Are out of Their League, in STEE-RIKE FOUR!: WHAT’S WRONG WITH THE BUSINESS OF BASEBALL?} 143, 153 (Daniel R. Marburger, ed. 1997) (arguing same). \textit{But see} Ross, \textit{Monopoly Sports Leagues, supra} note 26, at 664 (arguing that “[e]ven if [a] reduction in quality noticeably affects the fans’ enjoyment of the game … the dramatic increase in satisfaction in the new expansion cities will usually counterbalance any decreased satisfaction among fans in cities with teams.”); \textit{PAUL WEILER, LEVELING THE PLAYING FIELD: HOW THE LAW CAN MAKE SPORTS BETTER FOR FANS} 320-21 (2000) (arguing same).


\textsuperscript{80} See Myron L. Dale & John Hunt, \textit{Antitrust Law and Baseball Franchises: Leaving Your Heart (and the Giants) in San Francisco}, 20 N. KY. L. REV. 337, 356 (1993) (“even if the antitrust cases on the books were applied to MLB … the impact on MLB’s practices in the awarding or location of franchises would be minimal”); John Dodge, \textit{Regulating the Baseball Monopoly: One Suggestion for Governing the Game}, 5 SETON HALL J. SPORT L. 35, 56 (1995) (noting that the goal of “more franchises in heretofore unserved communities … would not necessarily be met by lifting the exemption”); Edmonds, \textit{supra} note 2, at 655 (“Whether the complete elimination of baseball’s antitrust exemption would promote expansion is questionable in light of the history of all major team sports.”).
2. Baseball’s Antitrust Exemption Does Not Block the Formation of Rival Leagues

Some critics of the baseball exemption similarly allege that revoking baseball’s antitrust immunity will result in the formation of one or more rival leagues challenging MLB’s dominant market position, thus increasing the number of teams competing at the highest level of professional baseball. These critics generally note that all of the major professional sports leagues except MLB have faced a rival challenger in the last 40 years, forcing the established leagues to expand more rapidly than they otherwise might have preferred. However, this line of criticism also suffers from several flaws.

As an initial matter, although MLB has not been forced to compete with an actual, on-field rival in recent years, it has faced threatened challenges on a number of occasions despite its antitrust immunity. For example, in the mid-1970s, promoters announced their intentions to form a World Baseball Association of up to 32 teams to rival MLB, but never succeeded in getting the league up and running. Similarly, Donald Trump threatened to form a rival baseball league in the 1980s, but saw his plans dissolve following the 1987 stock market crash. Most recently, in the aftermath of MLB’s infamous 1994 strike, a group of investors proposed the rival United Baseball League, a venture which advanced to the point of signing a long-term television contract, but ultimately folded when its television partner reneged on the deal. Although none of these leagues ever reached the point directly competing with MLB, the constant threat of the emergence of a rival league nevertheless provides a real check on MLB’s ability to abuse

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81 E.g., Michael J. Mozes & Ben Glicksman, Adjusting the Stream?: Analyzing Major League Baseball’s Antitrust Exemption After American Needle, 2 HARV. J. SPORTS & ENT. L. 265, 294 (2011); Michael J. Willisch, Comment: Protecting the “Owners” of Baseball: A Governance Structure to Maintain the Integrity of the Game and Guard the Principals’ Money Investment, 88 NW. U. L. REV. 1619, 1932-33 (1994) (“If the antitrust exemption is re-examined and lifted, alternative leagues could form and compete for everything from public stadium leases to expansion sites and star players.”).

82 See Zimbalist, Baseball Economics, supra note 36, at 309 (arguing same).


its monopoly power.\footnote{See Bradbury, supra note 28, at 202 ("As an organization, MLB is constantly on the lookout for new competitors. These virtual competitors stop it from acting like a monopolist."}).

Moreover, while it is true that MLB is the only major professional sports league that has not faced an actual on-field rival in the past forty years, that fact is somewhat misleading. Only one other professional sports league has faced a serious challenger in the last thirty years, and even that rival league — the United States Football League ("USFL") — did not compete directly with the NFL for fan attention, but instead held its games during the NFL’s spring and summer off-season.\footnote{See James B. Perrine, Media Leagues: Australia Suggests New Professional Sports Leagues for the Twenty-First Century, 12 Marq. Sports L. Rev. 703, 828 (2004) (noting that the USFL was the most recent major rival league in the United States).} Thus, since 1980, the existence of a direct rival to any of the established leagues has been exceedingly rare.

The reason that formidable rival leagues have not emerged over the last several decades has little to do with antitrust law. Rather, a prospective rival league in any of the four major sports must overcome a number of increasingly steep barriers to entry before competing head-to-head with an established league.\footnote{See Zimbalist, May the Best Team Win, supra note 85, at 28 (noting that “barriers to entry for a new league have become more formidable”).} In order to present a credible challenge to an existing league, a rival must secure stadium leases, television contracts, and hundreds of millions of dollars in capital to pay competitive player and management salaries,\footnote{See id. (noting same).} all of which make the formation of a serious rival league in any of the major professional sports unlikely. Moreover, the size of the existing professional leagues further deters the formation of potential rivals, as most cities capable of supporting a professional team already have a franchise in the established league.\footnote{See Ross, Monopoly Sports Leagues, supra note 26, at 660-61 (arguing same).} This factor is especially significant in the case of professional baseball, where the minor leagues provide franchises to the overwhelming majority of communities large enough to host a professional team.\footnote{See Grow, Defining, supra note 12, at 610 (noting that there are currently over 175 minor league franchises).}

Some commentators have also asserted that the existence of the minor leagues presents an additional barrier to entry by enabling MLB to control thousands of professional players, substantially reducing the pool of talent available to a potential rival league.\footnote{See Zimbalist, Baseball Economics, supra note 36, at 309 (noting that one of the chief concerns of the investors in Donald Trump’s proposed rival league in the 1980s “was access to minor league talent”).} However, there are two problems with this argument. First, a rival league could potentially challenge the restrictions MLB places on minor league players (i.e., the so-called reserve clause) on contract grounds.\footnote{See infra note 151.} More
“insurmountable lead in building a fan base,” an obstacle that any rival league will find extremely difficult, if not impossible, to overcome.92

Given these numerous barriers to entry, simply revoking baseball’s antitrust exemption alone is unlikely to spur the formation of a legitimate rival to MLB. Indeed, the availability of antitrust remedies has yielded little benefit to challengers of the other major professional sports leagues, with two different rival leagues realizing little benefit from successful antitrust lawsuits. Perhaps most famously, in United States Football League v. National Football League, the USFL successfully persuaded a jury that the NFL possessed an unlawful monopoly in violation of the Sherman Act.93 Nevertheless, the jury determined that the NFL’s abuse of its monopoly power resulted in de minimis harm to the USFL, awarding the league only a single dollar in damages.94

Meanwhile, in Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club, Inc.,95 the rival World Hockey Association ("WHA") filed an antitrust suit against the NHL, alleging that the established league had violated antitrust law by blocking its players from playing in the WHA.96 Although the district court concluded that the NHL had violated the Sherman Act, and issued injunctive relief against the league,97 this victory ultimately provided little benefit to the WHA, as most of its teams were nevertheless bankrupt within a few years.98

Finally, the assumption that baseball’s antitrust exemption would even shield MLB from a similar suit filed by a would-be rival is questionable as a practical matter. As Professor Gary Roberts has noted:

[If baseball were to engage today in interleague product market restraints (e.g., driving a competing league or entertainment producer out of business) … it is doubtful that the Court would reaffirm the exemption or, if it did,

significantly, however, even these critics acknowledge that the recent advent of independent minor leagues, more advanced collegiate baseball, and the increase in foreign talent, all provide additional sources of talent for a rival league, somewhat undermining the strength of this argument. See ZIMBALIST, MAY THE BEST TEAM WIN, supra note 85, at 27 (conceding same).

92 Edelman, Sports and the City, supra note 45, at 49.
93 842 F.2d 1335, 1341 (2d Cir. 1988).
94 See id. at 1380 (affirming jury award on appeal). This award was subsequently trebled, making the total damages owed by the NFL $3.
98 See Edelman, Sports and the City, supra note 45, at 49 n.69 (noting same).
that Congress would not legislate the exemption out of existence. Thus, for all practical purposes, baseball is constrained in essentially the same way as all sports leagues … .

Indeed, as discussed below, MLB is extremely reluctant to engage in blatantly anticompetitive practices, for fear of losing its cherished exemption. Therefore, the continued existence of the baseball antitrust exemption does not prevent the formation of potential rival baseball leagues.

For all of these reasons, critics wrongly blame baseball’s antitrust exemption for the fact that MLB has not faced a legitimate rival in recent decades. Rival leagues have become increasingly rare across all four major sports due to the significant barriers to entry that have arisen in the professional sports industry, with antitrust law providing little support to would-be rival leagues in the other sports. Thus, even without its exemption, baseball is unlikely to be challenged by an actual, on-field rival anytime soon, consistent with the recent experience of the other major professional sports leagues.

Therefore, the frequent criticism that baseball’s historic antitrust immunity allows MLB to place extortionate demands upon municipalities for stadium subsidies is without merit. First, such demands are endemic to all professional sports leagues, regardless of the league’s status under antitrust law. Perhaps more significantly, though, the predicate assumption upon which this line of criticism is premised — that revoking the exemption

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100 See generally Part II infra (discussing MLB’s reluctance to risk Congressional revocation of the exemption).
101 See BRADBURY, *supra* note 28, at 219 (noting that the “exemption is not a barrier to entry into the baseball market”).
102 Perhaps recognizing that simply revoking baseball’s antitrust exemption is unlikely to guarantee the development of a rival league, some commentators have called for MLB to be split into two leagues so that free market competition could cure its many problems. See Ross, *Monopoly Sports Leagues, supra* note 26, at 748 (“this Article has argued that a divestiture of [MLB] … into competing economic entities would best serve the public interest”); Andrew Zimbalist, *Baseball’s Antitrust Exemption: Why It Still Matters*, 13 Nine 1, 6 (2004), available at http://muse.jhu.edu/journals/nine/v013/13.1zimbalist.html [hereinafter Zimbalist, *Baseball’s Antitrust Exemption*] (concluding that it would “make sense for Congress to contemplate a forced divestiture of MLB into two leagues”). The soundness of such a proposal is beyond the scope of this article. However, the recognition that a forced divestiture of MLB into two separate leagues may be necessary to cure the league’s anticompetitive tendencies illustrates that revoking baseball’s antitrust exemption alone likely will not spur the creation of a rival league.
In Defense of Baseball’s Antitrust Exemption

will result in an increase in the number of teams competing at the major league level, eliminating the leverage that existing franchises have over their home communities — is also erroneous. Thus, as the experience of the other leagues has shown, revoking baseball’s antitrust exemption will not spur expansion or the emergence of a rival league to prevent MLB franchises from placing exorbitant demands for publicly funded stadiums upon their host cities.

B. Baseball’s Relocation Restrictions Do Not Warrant the Revocation of Its Antitrust Exemption

Another recurrent criticism of baseball’s antitrust exemption is that it unfairly enables MLB to prevent teams from relocating to new markets. Unlike many of the other frequent criticisms, this is one area where baseball’s exemption has actually given MLB an advantage over the other professional sports leagues. Specifically, baseball’s exemption allows MLB to place greater restrictions on franchise relocations than the other leagues, whose ability to regulate relocation has been curtailed by various antitrust rulings. Critics allege that MLB abuses this power by blocking relocations that would benefit the public interest. However, these criticisms disregard the beneficial aspects of MLB’s current relocation policies — including the maintenance of franchise continuity — and overstate MLB’s practical ability to impose anticompetitive restrictions. As a result, MLB’s relocation restrictions do not justify the revocation of its antitrust exemption.

MLB’s Constitution currently requires that any proposed franchise relocation be approved by a three-quarters majority of all MLB clubs. This rule is essentially identical to those adopted by the NFL and NHL, which similarly require that all relocations be approved by three-fourths of the current league membership. Meanwhile, the NBA currently requires

103 See, e.g., Charles Allen Criswell, Jr., Repeal of Baseball’s Longstanding Antitrust Exemption: Did Congress Strike Out Again?, 19 N. Ill. U. L. Rev. 545, 559 (1999) (arguing that the antitrust exemption should be revoked in order to prevent MLB from blocking relocations); Matheson & Humphreys, supra note 35, at 275 (noting that the “antitrust exemption also provides MLB with significant power to prevent any existing franchises from moving into New York City to fill any void left by the Mets’ or Yankees’ [hypothetical] departure.”).


approval by only a fifty percent majority of the league’s other 29 franchises. 106

Although MLB’s relocation policy is, on its face, extremely similar to those of the other leagues, in practice baseball’s antitrust exemption allows MLB to retain greater control over franchise relocation than the other major professional sports leagues. This is so because the other leagues are constrained by two antitrust decisions, Los Angeles Memorial Coliseum Commission v. National Football League 107 and National Basketball Association v. San Diego Clippers Basketball Club. 108

In Los Angeles Memorial Coliseum, the Oakland Raiders franchise sued the NFL after the league rejected its proposed move to Los Angeles. 109 Although the Ninth Circuit Court of Appeals held that the NFL’s rejection violated Section One of the Sherman Act, 110 it nevertheless recognized that legitimate reasons could exist for a sports league to restrict franchise movement. For instance, the court noted that a league might properly block a proposed relocation in order to protect the loyalty of fans in the franchise’s current city. 111 The court also acknowledged other concerns that might justify the denial of a proposed relocation, including maintaining some reasonable territorial restrictions, preserving traditional rivalries, giving municipalities time to recoup their investments in local stadiums, and maintaining a league presence in major television markets. 112 However, because none of these factors was specifically delineated in the NFL’s relocation guidelines, the court held that the league’s existing rule was ultimately anticompetitive. 113

Meanwhile, in San Diego Clippers, the court considered the NBA’s refusal to allow the Clippers franchise to relocate from San Diego to Los Angeles until after the team obtained league-wide approval, pursuant to the league constitution. 114 The Clippers argued that following Los Angeles Memorial, the NBA’s imposition of any restrictions on franchise relocation violated the Sherman Act. The Clippers court disagreed, holding that

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107 726 F.2d 1381 (9th Cir. 1984).
108 815 F.2d 562 (9th Cir. 1987).
109 L.A. Mem’l, 726 F.2d at 1385-86.
110 Id. at 1402.
111 Id. at 1396.
112 Id. at 1396-97.
113 Id. at 1396.
114 San Diego Clippers, 815 F.2d at 564-65.
neither a “franchise movement rule, in and of itself,” nor the NBA’s requirement of prior league approval, violated antitrust law. Rather, the court found that the permissibility of a particular relocation restriction was a question of fact to be judged under the rule of reason.

Thus, following Los Angeles Memorial and San Diego Clippers, antitrust law imposes some constraints on the ability of the NFL, NBA, and NHL to arbitrarily restrict league franchises from relocating to other cities, precedents that MLB does not have to directly worry about given its antitrust exemption. Nevertheless, the other leagues can impose legitimate restrictions on their teams, and therefore do retain some discretion with respect to relocation.

The different leagues have flexed this authority to varying degrees. For example, following Los Angeles Memorial, the NFL is notoriously hesitant to block proposed franchise relocations. Even though the league likely could have prevented several recent franchise moves — including the controversial relocation of the Cleveland Browns to Baltimore — the NFL has hesitated to do so for fear of a treble damages award, given the difficulty entailed in predicting whether a judge or jury will find a particular rejection to be legitimate. Instead, the NFL has adopted a de facto policy of permitting its franchises to relocate, with the league then occasionally granting the departed city a replacement expansion franchise.

Meanwhile, although the NBA has also generally permitted teams to relocate, it has been more willing to block certain proposed moves (such as its refusal to allow the Vancouver Grizzlies to be purchased and moved to St. Louis in the late-1990s).

In contrast, MLB has used the protection it receives from its antitrust

\[115\] Id. at 567-68.
\[116\] Id.
\[117\] See Ross, Myths, supra note 79, at 59 (“Leagues can develop anti-relocation policies that seek to constrain the ability of owners to use leverage to exploit local taxpayers, such as rules prohibiting relocations where the current fans are loyal and supportive … and rules that require a showing that the new location’s desirability is based on higher demand of fans, as opposed to more lucrative stadium deals.”).
\[118\] See Brand & Giorgione, supra note 49, at 56 (stating that in the NFL there is “an in terrorem effect, such that individual franchises are now essentially free to relocate without league oversight”).
\[119\] See Ross, Myths, supra note 79, at 59 (noting same).
\[120\] See Mitchell Nathanson, The Irrelevance of Baseball’s Antitrust Exemption: A Historical Review, 58 Rutgers L. Rev. 1, 43 (2005) [hereinafter Nathanson, Irrelevance] (“the NFL clearly does not have the power to compel teams to remain in cities they no longer wish to play in. However, as history has shown, the NFL has been quick to place expansion teams in cities that have lost established teams.”).
\[121\] See infra note 125.
\[122\] See Ross, Myths, supra note 79, at 59 (discussing same).
exemption to help cultivate the most franchise stability of the four major professional sports leagues.\textsuperscript{123} Whereas only a single MLB franchise has relocated since 1972 — the 2005 move of the struggling Montreal Expos franchise to Washington D.C.\textsuperscript{124} — franchises in the other sports leagues have frequently relocated over the same time period. Specifically, in the last 40 years, both the NFL and NBA have had seven franchise relocations,\textsuperscript{125} while the NHL has seen ten franchises move.\textsuperscript{126}

Such frequent franchise relocations harm the public interest by inflicting damaging effects on communities. Indeed, as various commentators have recognized, the loss of a professional sports franchise can be extremely damaging to a city, both financially and psychologically.\textsuperscript{127} Financially, losing a franchise can leave a city with significant unpaid debt on a stadium that is no longer generating the related tax revenues the city had expected (such as those generated by increased tourism).\textsuperscript{128} Meanwhile, the

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\item \textsuperscript{123} See Jean-Paul A. Escudier, \textit{Root, Root, Root for the Home Team: Is the Fans Act of 2001 Really Good for Baseball Fans?}, 65 LA. L. REV. 387, 399 (2004) (stating that as a result of its antitrust exemption, MLB “has been the most stable of all major professional sports leagues” when it comes to franchise relocation); L.A. Powe, Jr., \textit{What Does Bo Know?}, 82 VA. L. REV. 1369, 1381 (1996) (finding that baseball’s “antitrust exemption now functions (in conjunction with the willingness to use it) to impose a remarkable franchise stability on baseball.”). \textit{But see} Nathanson, \textit{Irrelevance}, supra note 120, at 24 (noting that “the volume of franchise relocation of [MLB] franchises actually exceeds that of the NFL since 1950.”).
\item \textsuperscript{124} See BRADBURY, supra note 28, at 214 (noting same).
\item \textsuperscript{125} Specifically, the NFL has seen the Oakland Raiders move to Los Angeles; the Baltimore Colts go to Indianapolis; the St. Louis Cardinals leave for Phoenix; the Los Angeles Raiders return to Oakland; the Los Angeles Rams move to St. Louis; the Cleveland Browns leave for Baltimore; and the Houston Oilers depart to Nashville. See Escudier, supra note 123, at 400 (listing same).
\item Meanwhile, the NBA has seen the New Orleans Jazz move to Salt Lake City; the Buffalo Braves become the San Diego Clippers; the San Diego Clippers then move to Los Angeles; the Kansas City Kings move to Sacramento; the Vancouver Grizzlies go to Memphis; the Charlotte Hornets leave for New Orleans; and the Seattle Supersonics become the Oklahoma City Thunder. See Greenberg & Ward, supra note 72, at 68, 71 (listing moves).
\item The ten NHL franchise relocations included the California Golden Seals move from Oakland to Cleveland, and then to Minnesota, before finally settling in as the Dallas Stars; the Kansas City Scouts relocate to Denver, and then to New Jersey; the Atlanta Flames move to Calgary; the Quebec Nordiques move to Denver; the Winnipeg Jets going to Phoenix; the Hartford Whalers leaving for Raleigh, North Carolina; and the Atlanta Thrashers depart to Winnipeg. See Borteck, supra note 1, at 1086 n.105 (listing relocations in NHL since 1980).
\item \textsuperscript{127} See, \textit{e.g.}, Turland, supra note 19, at 1339 (“if a franchise relocates to another city, the community can suffer a substantial loss of tax revenue and civic morale”).
\item \textsuperscript{128} See Mitten & Burton, supra note 47, at 115 (stating that “relocation of a major league professional sports team [can cause] … [t]he government entity that owns the playing facility [to] be left with a significant amount of debt incurred to attract or retain the
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psychological effects of losing a franchise include diminished "civic identity, community pride, [and] municipal self-esteem." 129 Although certainly difficult to quantify, these psychological effects can themselves result in financial harm, should the loss of the franchise reduce the city's national visibility. 130

Given the significant harm that franchise relocations can impose on cities, sports leagues have a strong interest in maintaining franchise stability. Indeed, even if an affected city ultimately receives a replacement franchise, the experience of losing a team can nevertheless severely damage fan loyalty in the community. 131 Moreover, considering that expansion franchises usually take several years to begin play, and then typically suffer through a number of losing seasons before becoming competitive, 132 even a replacement expansion team does not truly make an abandoned city whole.

Despite the negative effects inflicted by franchise relocations, at least one outspoken critic of baseball’s antitrust exemption has — somewhat counter intuitively — argued that the franchise instability in the other professional sports leagues is actually desirable, insofar as it creates political pressure which forces the leagues to grant replacement franchises to the abandoned cities, thus expanding the leagues. 133 There are two problems with this argument. First, this phenomenon does not occur with nearly the frequency one might expect. Of the twenty-four franchise relocations in the NFL, NBA, and NHL since 1972, only four have resulted in an expansion franchise being awarded to the abandoned city within a few franchise.”).


130 See id. at 819-20 (noting that the psychological benefits of a sports franchise can be “accompanied by some increase in tourism or other business activity, though economists differ whether there is a positive cost-benefit calculus found in these factors.”).

131 See Katherine C. Leone, Note: No Team, No Peace: Franchise Free Agency in the National Football League, 97 COLUM. L. REV. 473, 493 (1997) (stating that franchise relocation “erodes the fan base by destroying team loyalties, eliminates team rivalries, and increases public sentiment that team owners are greedy and self-motivated”); Mark S. Nagel et al., Major League Baseball Anti-Trust Immunity: Examining the Legal and Financial Implications of Relocation Rules, ENT. & SPORTS L.J., Jan. 2007, http://go.warwick.ac.uk/eslj/issues/volume4/number3/nagel/ (noting that “the city that loses the team could have fans who stop being customers of the league, or who might even be unwilling to support a future new replacement franchise in that area”).


133 See ZIMBALIST, MAY THE BEST TEAM WIN, supra note 85, at 152 (arguing that “[t]eam movement, then, can create the necessary political pressure and lead to expansion.”).
years of the move. Instead, the remaining municipalities were forced to try to persuade existing franchises to move to their cities, further exacerbating the stadium subsidy issue discussed above.

Perhaps more significantly, however, this basis for criticizing baseball’s antitrust exemption fails to recognize that, in practice, MLB’s ability to restrict franchise relocations is much more limited than its long-standing antitrust immunity would suggest. Specifically, on the rare occasions that MLB has publicly blocked a proposed relocation — such as the proposed move of the San Francisco Giants to Tampa Bay in the early 1990s — Congress has quickly intervened to pressure MLB into granting the rejected suitor an expansion franchise. As a result, the primary difference between MLB and the other professional leagues is that while the other leagues generally permit a franchise to relocate, and then occasionally grant an expansion team to the abandoned city, MLB instead has the ability to block a proposed relocation, but then generally will be forced to expand into the new city.

MLB’s process is preferable in several respects. Not only does baseball’s antitrust exemption enable MLB to protect its host cities from the damaging experience of losing a franchise, but it also protects the league from being placed in the untenable legal position that can result from relocation-related antitrust litigation. Specifically, following Los Angeles Memorial and San Diego Clippers, the other professional sports leagues face a potential “Catch-22,” risking antitrust litigation regardless of whether they approve or reject a proposed move. In either case, the city
disappointed by the league’s decision could elect to file suit challenging the
league’s collective action (or inaction) in what is sure to be a politically and
eemotionally charged atmosphere. As a result, these leagues must decide
whether to grant or deny a proposed relocation without being able to
accurately predict whether a court would determine its actions had violated
the Sherman Act. Moreover, given that “the net consumer welfare effects
of a sports franchise relocation” are nearly impossible to ascertain, it is
questionable whether the application of antitrust law in this arena truly
serves the public interest.

Therefore, while baseball’s antitrust exemption provides MLB with
definite advantages over the other professional sports leagues with respect
to franchise relocation, this difference does not warrant revoking the
exemption. Rather, MLB’s current system for handling relocation is, on the
whole, actually preferable to the approach taken by the other leagues,
insofar as MLB is able to maintain franchise continuity, while still facing
pressure from Congress should it unreasonably block a proposed relocation.

C. Baseball’s Antitrust Exemption and Labor Restraints

A third common criticism of baseball’s antitrust exemption is that it has
historically enabled MLB to adopt anticompetitive labor restraints, to the
detriment of professional baseball players. In particular, critics assert
that MLB relied on its exemption to shield the so-called “reserve clause”
from antitrust challenge. The reserve clause was a provision formerly
included in all baseball player contracts that precluded players from

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139 Id.
140 See Roberts, Scope and Effect, supra note 34, at 329 (noting that relocation
litigation is “unpredictable”).
141 Mitten & Burton, supra note 47, at 124.
142 See Roberts, Scope and Effect, supra note 34, at 329 (noting same).
143 See, e.g., Joseph Covelli, Note: Brown v. Pro Football, Inc.: At the Intersection of
Antitrust and Labor Law, Supreme Court’s Decision Gives Management the Green Light,
27 STETSON L. REV. 257, 293 (1997) (noting that the “[t]hroughout the history of
professional baseball, the clubs have continuously used their exemption from the antitrust
laws to restrict competition and impose various player restraints”).
144 See, e.g., Jason B. Myers, Shaking Up the Line-up: Generating Principles for an
Electrifying Economic Structure for Major League Baseball, 12 MARQ. SPORTS L. REV.
631, 664 (2002) (“For years, MLB has used its antitrust exemption primarily to perpetuate
the reserve clause system.”); SCULLY, supra note 76, at 192-93 (“The financial exploitation
of the players in the regime of the indefinite term reserve clause was the most important
abuse associated with the antitrust exemption.”); ZIMBALIST, MAY THE BEST TEAM WIN,
supra note 85, at 24 (“Historically, the principal effect of MLB’s exemption was that the
teams could continue to employ the reserve clause.”).
negotiating future contracts with anyone but their current employer. Put differently, the reserve clause represented an agreement between the MLB teams not to compete for each other’s players’ services, thus artificially lowering demand, and ultimately reducing players’ salaries. Critics allege that but for baseball’s antitrust exemption, a court would have invalidated the reserve clause pursuant to the Sherman Act.

This criticism is overstated. As an initial matter, while baseball’s antitrust exemption undoubtedly helped shield the sport’s reserve clause from antitrust scrutiny historically, the exemption no longer provides MLB with the same protection in this area. Instead, following Congress’s passage of the Curt Flood Act of 1998, baseball’s antitrust exemption no longer applies to antitrust lawsuits filed by current major league players, giving MLB players the right to challenge anticompetitive labor practices in court under antitrust law. As a result, today the antitrust exemption has little bearing on MLB’s labor relations.

Perhaps more significantly, however, major league players were able to rid themselves of the constraints of the reserve clause using contract law principles long before Congress gave MLB players the right to sue the league under antitrust law, and years before players in the other professional sports leagues obtained their own rights to unfettered free agency.

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146 See Rasnic & Resch, supra note 2, at 58 (“The reserve clause was clearly a violation of the Sherman Act. Its validity stemmed from the United States Supreme Court’s consistent, but inexplicable, exemption of professional baseball from the antitrust laws.”).


149 Following the U.S. Supreme Court’s decision in Brown v. Pro Football Inc., 518 U.S. 231 (1996), major league players must decertify their union before challenging a particular restraint on labor grounds. See Grow, Reevaluating, supra note 148, at 749-50 (discussing same).

150 See Martin M. Tomlinson, The Commissioner’s New Clothes: The Myth of Major League Baseball’s Antitrust Exemption, 20 ST. THOMAS L. REV. 255, 256 (2008) (stating that baseball’s exemption “has by and large been rendered irrelevant, at least in the context of labor relations between owners and players”); Ross, Anomaly and Aberration, supra note 27, at 230 (noting that “[r]epealing the antitrust exemption would not be enough” to prevent MLB from experiences strikes or lockouts).

151 The reserve clause had long been susceptible to attack under contract law principles. Courts had refused to enforce the reserve clause in contract disputes dating back to the early-1900s, finding that it lacked mutuality by effectively binding players to
Specifically, at the guidance of the Major League Baseball Players Association ("MLBPA"), pitchers Andy Messersmith and Dave McNally refused to sign contracts that included the reserve clause in 1975, instead choosing to play the season without a contract. At the end of the year, Messersmith and McNally asserted that the reserve clause only permitted their contracts to be renewed for a single season, and thus since their contracts had already been renewed for the 1975 season, the two players argued they were now eligible to negotiate with all MLB teams. Unsurprisingly, the owners disagreed, giving rise to a dispute ultimately decided by a panel of arbitrators — a right the players had earned as part of baseball’s 1970 collective bargaining agreement. The arbitration panel sided with Messersmith and McNally, finding that the reserve clause permitted only a single renewal. Following the decision, the owners and the MLBPA eventually negotiated a new collective bargaining agreement, granting free agency rights to all MLB players with six or more years of service.

Meanwhile, the threat of antitrust liability did not prevent the other major professional sports leagues from developing their own labor restraints. Each of the other sports leagues had some form of a reserve clause in place at the time the Flood suit challenging baseball’s reserve clause reached the Supreme Court in 1972. For example, the NFL utilized a reserve system into the mid-1970s that permitted a player’s current team to their teams for life, while permitting teams to release players with only ten days notice. See Nathanson, Irrelevance, supra note 120, at 10-11 (stating same).

MLB owners themselves recognized the infirmity of the reserve clause under contract law since at least the mid-1940s. Specifically, in 1946 then-MLB Commissioner Happy Chandler authored a report warning that the reserve clause “was in jeopardy of being nullified by the courts,” stating in particular that “the present reserve clause could not be enforced in an equity court in a suit for specific performance, nor as the basis for a restraining order to prevent a player from playing elsewhere, or to prevent outsiders from inducing a player to breach his contract.” See Jerold J. Duquette, Regulating the National Pastime: Baseball and Antitrust 45 (1999) (quoting report).

152 See Abrams, Legal Bases, supra note 2, at 117-33 (discussing history); Charles C. Alexander, Our Game: An American Baseball History 296 (1991) (same). See also Grow, Defining, supra note 12, at 562 n.16 (discussing same).


154 See Jones, supra note 145, at 659 (stating same). See also Grow, Defining, supra note 12, at 562 n.16 (discussing same).

155 See Jones, supra note 145, at 660 (noting same). See also Grow, Defining, supra note 12, at 562 n.16 (stating same).

156 See Alexander, supra note 152, at 297 (discussing same). See also Grow, Defining, supra note 12, at 562 n.16 (noting same).
reserve his services for an extra year following the expiration of his contract.\footnote{157}{See Scott E. Backman, NFL Players Fight for Their Freedom: The History of Free Agency in the NFL, 9 SPORTS LAW. J. 1, 8-10 (2002) (discussing history).} After that additional year, the player was eligible to sign a contract with another team, subject to the restrictive “Rozelle Rule,” which required the signing team to provide compensation to the player’s former club.\footnote{158}{Id.} Should the two teams be unable to agree upon the proper compensation — usually taking the form of a player from the signing team’s roster or a high draft pick — the NFL Commissioner was authorized to determine how much compensation to award, a risk that largely dissuaded teams from signing other franchises’ players.\footnote{159}{Id. Indeed, under the Rozelle Rule “only 34 players out of the 176 who played out their options signed with other teams.” \textit{Id.} at 10.} Although NFL players ultimately rid themselves of the Rozelle Rule in the 1976 antitrust case of \textit{Mackey v. National Football League},\footnote{160}{543 F.2d 606, 622 (8th Cir. 1976).} it wasn’t until 1993 that they were finally able to negotiate the right to unrestricted free agency.\footnote{161}{See Backman, \textit{supra} note 157, at 44 (noting that the NFL’s 1993 collective bargaining agreement granted certain players the right to unrestricted free agency).}

The NBA and NHL both utilized similar reserve systems through the mid-1970s. In the NBA, the reserve clause provided that a player’s current team had the right to renew his contract for a single season,\footnote{162}{See Robertson v. Nat’l Basketball Ass’n, 389 F.Supp. 867, 874 (S.D.N.Y. 1975) (discussing same).} after which time the player was free to sign with another club, subject to a compensation scheme similar to the NFL’s Rozelle Rule.\footnote{163}{See id. at 891 (noting same).} The NBA’s reserve clause eventually met its demise as part of the settlement of the landmark \textit{Robertson v. National Basketball Association} antitrust litigation.\footnote{164}{72 F.R.D. 64 (S.D.N.Y. 1976). \textit{See also} Dryer, \textit{supra} note 145, at 275 (discussing settlement); Jonathan B. Goldberg, \textit{Player Mobility in Professional Sports: From the Reserve Clause to Free Agency}, 15 SPORTS LAW. J. 21, 48 (2008) (same).} Meanwhile, players in the NHL did not have any free agency rights until 1972, and then had to live with a one-year option and compensation system similar to those of the NFL and NBA until the early-1980s.\footnote{165}{See Goldberg, \textit{supra} note 164, at 53-55 (detailing history).}

Therefore, while antitrust law certainly played a role in the demise of the reserve clause in the other major professional sports, the mere threat of antitrust liability alone did not prevent those leagues from adopting player restraints similar to those utilized by MLB. Indeed, despite baseball’s historic antitrust immunity, MLB players were nevertheless able to obtain a less restrictive free agency system quicker than the players in any of the
other major professional sports leagues. Some commentators have even gone so far as to argue that the existence of baseball’s antitrust exemption forced MLB players to form what is widely considered the strongest players’ union in professional sports, enabling the players to realize a variety of significant gains via labor law.

In addition to historically protecting labor restraints at the major league level, some commentators have also argued that baseball’s antitrust exemption allows the sport to implement anticompetitive restraints against minor league players as well. In particular, the status of minor league players under antitrust law differs from major league players in two significant respects. First, minor league players were excluded from the Curt Flood Act, which explicitly lifts baseball’s antitrust exemption only to permit antitrust lawsuits by current major league players. Second, unlike MLB players, minor league players have never formed a union, and thus have not enjoyed the benefits of collective bargaining like their major league colleagues.

As a result, critics assert that the exemption harms minor league players in two primary ways. First, critics allege that MLB uses its exemption to implement the MLB draft, limiting incoming minor league players’ employment options by allowing them to negotiate with only a single MLB

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166 See Weiler, supra note 78, at 159 (stating that “[f]ootball, hockey, and basketball players, who have known ever since [the Supreme Court’s 1953 decision in] Radovich that antitrust law does govern their sports, took significantly longer to secure a somewhat less free players market.”).

167 See, e.g., Goldberg, supra note 164, at 44 (stating that “it was because of [the] exemption that the MLBP became such a bargaining force”; William S. Robbins, Comment: Baseball’s Antitrust Exemption — A Corked Bat for Owners?, 55 LA. L. REV. 937, 962 (1995) (noting that “MLB players … decided to concentrate on using labor laws in their fight [with ownership] – perhaps because they realized the ineptness of antitrust laws in dealing with sports leagues”).

168 E.g., Michael H. Juarez, Note: Baseball’s Antitrust Exemption, 17 HASTINGS COMM. & ENT. L.J. 737, 746 (1995) (“Hence, many minor league players are forbidden from marketing their skills freely and, due to the antitrust exemption, will not be able to market themselves until six years after their first contract.”); David M. Szuchman, Note: Step Up to the Bargaining Table: A Call for the Unionization of Minor League Baseball, 14 HOFSTRA L.J. 265, 268 (1996) (stating that “the antitrust exemption affords MLB a tremendous advantage in structuring and managing minor league baseball”); ZIMBALIST, MAY THE BEST TEAM WIN, supra note 85, at 25 (“A second effect of the presumed exemption is that it has allowed MLB to follow restrictive labor market practices relating to its minor leagues.”).

169 See supra notes 147–148 and accompanying text.

franchise. See Zimbalist, May the Best Team Win, supra note 85, at 25 (arguing same).

Second, critics assert that after a player signs his initial contract, he must play in that team’s minor league system for at least four (and up to seven) years before receiving the opportunity to sign with another franchise. Absent baseball’s antitrust exemption, critics argue that both practices could be challenged under antitrust law.

While it is true that these practices would potentially be subject to antitrust review if baseball’s exemption were revoked, realistically there is no guarantee such a suit would ever be filed. Not only would such a suit cost the minor league player significant time and money, but it could also place his future career prospects in jeopardy. Indeed, given that minor league players have never even formed their own union, despite the significant gains that major league players have obtained via collective bargaining, the odds that a player would elect to challenge MLB are far from certain.

However, even if a minor league player did sue MLB under antitrust law, his chances of success are not guaranteed. An antitrust suit challenging minor league labor restraints would be decided under the rule of reason, in which the restraint’s alleged anticompetitive effects would be balanced against its pro-competitive benefits. MLB could point to several pro-competitive benefits in its defense as part of such an analysis. For example, MLB could argue that a draft of incoming minor league talent is necessary to preserve competitive balance, so as to prevent the wealthiest teams from consistently acquiring the best amateur talent each year by outbidding their more budget conscious rivals. On this point, MLB could note that each of the other major professional sports leagues also use a draft to allocate entry-level talent. Similarly, MLB could argue that restraints tying minor league players to their initial franchise for four or more years

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171 See Zimbalist, May the Best Team Win, supra note 85, at 25 (arguing same).
172 See id.
173 Id. at 26.
174 See Zimbalist, Baseball and Billions, supra note 84, at 179 (acknowledging same).
176 The legality of the drafts in the NFL, NBA, and NHL under antitrust law raise different issues than the MLB draft because the drafts in the other leagues are shielded from antitrust scrutiny by virtue of having been agreed to by the players’ union in each league during the collective bargaining process. See Zimbalist, Baseball Economics, supra note 36, at 308 n.103 (discussing same). In contrast, the MLB draft is not protected by a collective bargaining agreement because the affected minor league players have never formed a union. See Gould, supra note 170, at 82 (noting same).
are necessary to allow franchises to recoup the significant development costs they expend on minor league players.\textsuperscript{177} MLB could also note that by allowing minor league players to sign with a new franchise after as few as four years, these players have actually been granted greater rights than those obtained by major league players via collective bargaining (insofar as major league players must generally first accrue six years of service time before obtaining free agency). Furthermore, as will be discussed in greater detail below,\textsuperscript{178} MLB could argue that some restrictions on minor league players are necessary to preserve the minor league system itself, and the significant pro-competitive benefits it provides by supplying live professional baseball to over one hundred and seventy-five small communities across the country. Admittedly, a court could determine that these pro-competitive benefits do not justify the challenged restraints under the rule of reason, but ultimately the outcome of such a trial would be uncertain.

Thus, while baseball’s exemption indisputably helped shield the sport’s reserve clause from antitrust challenge as a historical matter, criticism on this ground has nevertheless been overstated. Indeed, despite MLB’s antitrust immunity, MLB players ultimately obtained the first and most favorable free agency system of the four major professional sports. Moreover, they now possess the right to sue the league under antitrust law following the Curt Flood Act.\textsuperscript{179} Meanwhile, although the exemption continues to protect MLB from antitrust suits filed by minor league players, the chances that such a suit would be filed if the exemption were revoked are far from certain, and even then the chances of success for such a suit are unclear.\textsuperscript{180} As a result, revocation of baseball’s antitrust exemption would not necessarily result in a significant modification of baseball’s labor relations.\textsuperscript{181}

\textsuperscript{177} See Anthony C. Krautmann & Margaret Oppenheimer, Training in Major League Baseball: Are Players Exploited?, in BASEBALL ECONOMICS: CURRENT RESEARCH 93 (John Fizel et al. eds., 1996) (“The underpayment of young players, so commonly attributed to exploitation, may be explained by the surplus necessary to recoup the team’s investment in the player during his minor league training.”). \textit{See also} Jones, supra note 145, at 681 (quoting same).

\textsuperscript{178} See generally Part I.G infra.

\textsuperscript{179} See supra notes 147–148 and accompanying text.

\textsuperscript{180} See supra notes 174–178 and accompanying text.

\textsuperscript{181} Although largely ignored in the existing literature, another group whose ability to file antitrust suits against MLB has potentially been hampered by the exemption is MLB umpires. Lower courts are divided as to whether the exemption protects MLB from umpire-filed antitrust suits. \textit{Compare} Salerno v. American League of Professional Baseball, 429 F.2d 1003 (2d Cir. 1970) (holding that exemption applies to antitrust suit filed by an umpire), with Postema v. Nat’l League of Prof’l Baseball Clubs, 799 F.Supp. 1475 (S.D.N.Y. 1992) (finding that the exemption does not shield MLB from antitrust suits filed by umpires).
D. Baseball’s Antitrust Exemption Does Not Facilitate Anticompetitive Broadcasting Agreements

Fourth, some critics allege that baseball’s antitrust immunity enables MLB to enter into anticompetitive broadcast agreements without fear of antitrust liability. Specifically, these commentators assert that individual MLB teams have formed a cartel to collectively market the broadcast rights for their games to cable and satellite television providers. As a result, critics argue that the exemption has led to a dramatic decline in the number of MLB games available for viewing on free, over-the-air network television, harming consumers.

There are two primary problems with this argument. First, it is questionable whether baseball’s antitrust exemption currently even applies to its broadcasting activities. In the only reported decision on the matter, Henderson Broadcasting Corp. v. Houston Sports Association, Inc., the Southern District of Texas held that the exemption did not shield the Houston Astros franchise from an antitrust suit relating to its local radio broadcasting agreements. In particular, the court argued that “broadcasting is not central enough to baseball to be encompassed in the baseball exemption,” while noting that the Supreme Court has subsequently refused “to extend the exemption to other professional sports, MLB umpires have themselves formed a relatively successful union. See Heather R. Insley, Comment: Major League Umpires Association: Is Collective Bargaining the Answer to or the Problem in the Contractual Relationships of Professional Sports Today?, 29 CAP. U. L. REV. 601, 616-17 (2001) (detailing history of labor gains achieved by the umpires’ union). Therefore, following the United States Supreme Court’s decision in Brown v. Pro-Football Inc., 518 U.S. 231 (1996), even if the exemption were revoked, the umpires would have to decertify their union before collectively asserting an antitrust claim against MLB, an eventuality that scholars have traditionally argued is unlikely. See Grow, Reevaluating, supra note 148, at 749-50 (discussing implications of Brown and the general scholarly consensus that union decertification is unlikely in professional sports labor disputes). As a result, the exemption likely has a minimal impact on umpires.

MLB owners to make “fans pay to view formerly free games on television”); ZIMBALIST, MAY THE BEST TEAM WIN, supra note 85, at 145 (“Hence, if MLB’s presumed antitrust exemption were narrowed or eliminated, MLB’s deals with ESPN … and with DirecTV … could be challenged on antitrust grounds.”).

See Ross, Reconsidering, supra note 35, at 170 (arguing that the increase in MLB broadcasts on cable networks “is attributable to the judicially created exemption baseball enjoys from the antitrust laws”).


Id. at 271.

Id. at 265.
in part because of the interstate broadcasting of the sports.”  

While one can certainly take issue with the Henderson court’s reasoning, it nevertheless remains the only reported precedent considering the issue. Therefore, any benefit MLB attempts to derive from its exemption in this realm is tenuous, given that it cannot assume the exemption will be applied to protect its broadcasting activities.

Second, these critics overlook the fact that the other sports leagues’ broadcasting activities are nearly identical to those of MLB, despite their lack of antitrust immunity. Each of the four major professional sports leagues currently has a national broadcast agreement with one or more of the over-the-air networks, permitting these networks to broadcast a variety of regular and post-season games. In addition, each of the leagues also has regular and/or post-season broadcast agreements in place with cable networks such as ESPN, TNT, and TBS, as well as its own proprietary cable television network (e.g., the MLB Network), providing additional broadcast outlets for each league’s product. Finally, each of the four leagues also permits individual teams to enter into their own regional television and radio broadcast agreements.

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187 Id. at 267.
188 See Grow, Defining, supra note 12, at 614-18 (criticizing Henderson).
189 The Henderson court did note that the Northern District of Texas had previously reached a differing outcome in an unreported case from 1958, Hale v. Brooklyn Baseball Club, Inc. Henderson, 541 F.Supp. 263 at 268 n.7. However, given that this decision is unreported, and was abrogated by Henderson, it provides little protection to MLB.
193 See Marc Edelman, Why the “Single Entity” Defense Can Never Apply to NFL Clubs: A Primer on Property-Rights Theory in Professional Sports, 18 Fordham Intell. Prop. Media & Ent. L.J. 891, 917 (2008) (noting same). Unlike the other three leagues, the NFL only permits its teams to sign regional television broadcast agreements for pre-season games. See id. (stating “in the NFL, clubs sell all non-preseason television rights on
Part of the similarity among the four leagues’ broadcasting activities is the result of the Sports Broadcasting Act of 1961 ("SBA").\(^{194}\) The SBA grants each league a limited antitrust exemption for purposes of jointly negotiating broadcast agreements for the “sponsored telecasting of [its] games.”\(^{195}\) However, “sponsored telecasting” has subsequently been interpreted to mean only broadcasts on free, over-the-air networks,\(^{196}\) and therefore the SBA does not protect the leagues’ collective broadcast agreements with cable providers.\(^{197}\)

Nevertheless, the other leagues’ agreements with cable networks have rarely been subject to antitrust scrutiny. Both the U.S. Department of Justice and the Federal Trade Commission have stated that although sports leagues’ cable broadcast agreements are beyond the scope of the SBA, they do not warrant antitrust action by the agencies.\(^{198}\) Meanwhile, the few privately filed antitrust lawsuits challenging sports leagues’ agreements with cable companies have generally been resolved at little cost to the leagues.\(^{199}\) For example, the NFL settled a lawsuit challenging its exclusive license of the “Sunday Ticket” television package to satellite provider DirecTV without having to agree to distribute the service more widely.\(^{200}\)

As a result, baseball gains no practical advantage from its exemption over the other leagues with respect to its broadcasting activity. Indeed, as will be discussed in greater detail below, if anything baseball’s antitrust exemption has actually hampered MLB’s ability to enter into potentially a collectivized, national basis”).


\(^{195}\) Id. See also Lacie L. Kaiser, Revisiting the Sports Broadcasting Act of 1961: A Call for Equitable Antitrust Immunity From Section One of the Sherman Act for All Professional Sports Leagues, 54 DePaul L. Rev. 1237 (2005); Stephen F. Ross, An Antitrust Analysis of Sports League Contracts with Cable Networks, 39 Emory L.J. 463, 468-71 (1990) [hereinafter Ross, Cable Networks].

\(^{196}\) Shaw v. Dallas Cowboys Football Club, 172 F.3d 299, 301 (3d Cir. 1999).

\(^{197}\) See id. at 301-02 (holding same).

\(^{198}\) See Duquette, supra note 151, at 95 (discussing same).

\(^{199}\) See Zimbalist, May the Best Team Win, supra note 85, at 145 (noting that “[t]he few challenges to pooled pay-TV deals in the NFL and NBA have all been resolved with little sacrifice by the leagues.”).


anticompetitive broadcast agreements. Specifically, while the NFL continues to exclusively license the “Sunday Ticket” package to DirecTV despite being subject to antitrust law, MLB’s efforts to enter a similar exclusive deal for its analogous “Extra Innings” package were thwarted in part by Congressional threats to revoke its antitrust exemption.\footnote{See infra notes 316-321 and accompanying text.} Therefore, criticisms of the exemption on the basis that it has enabled MLB to enter into anticompetitive broadcast agreements lack support as a practical matter.

\section*{E. Baseball’s Antitrust Exemption Has a Minimal Effect on the MLB’s Franchise Ownership Restrictions}

Next, several commentators allege that the antitrust exemption enables MLB to maintain unreasonable restrictions regarding who may own MLB franchises.\footnote{See, e.g., Genevieve F.E. Birren, NFL vs. Sherman Act: How the NFL’s Ban on Public Ownership Violates Federal Antitrust Laws, 11 SPORTS LAW. J. 121, 125 (2004) (stating that without its exemption “MLB would not have been permitted to … control who owns MLB teams”); \textsc{Zimbalist, May the Best Team Win, supra} note 85, at 33 (arguing that MLB’s “prohibition on municipal ownership constitutes a restriction of trade in the market to buy and sell franchises … protected by MLB’s presumed exemption.”).} Specifically, pursuant to the MLB Constitution, three-fourths of MLB franchises generally must approve the “sale or transfer of a controlling interest in any [MLB] Club.”\footnote{MLB \textsc{Const., supra} note 104, at art. V, § 2(b)(2).} Critics assert that MLB uses this rule to manipulate the bidding process for teams that are for sale, in order to both ensure that the desired ownership group is selected,\footnote{See \textsc{Zimbalist, May the Best Team Win, supra} note 85, at 10-11 (discussing attempts to pressure the former owners of the Boston Red Sox “to accept a bid from the [MLB] commissioner’s favored [bidding] group, despite the fact that it was $90 million lower than another bid”).} and to prohibit public or municipal ownership of MLB franchises.\footnote{See \textsc{id.} at 33 (noting that former San Diego Padres owner Joan Kroc “attempted to give her [team] to the city but was not allowed to do so” due to MLB’s prohibition of “municipal ownership of teams at the major league level”).}

Here again, however, the applicability of baseball’s antitrust exemption to the conduct at issue is uncertain. Indeed, several courts have held that the exemption does not shield MLB’s ownership restrictions from antitrust liability.\footnote{See \textsc{Piazza v. Major League Baseball, 831 F.Supp. 420 (E.D.Pa. 1993); \textsc{Butterworth v. National League of Professional Baseball Clubs, 644 So.2d 1021, 1025 (Fla. 1994); \textsc{Morsani v. Major League Baseball, 663 So.2d 653, 657 (Fla. Dist. Ct. App. 1995).}} Most notably, the court in \textsc{Piazza v. Major League Baseball} concluded that baseball’s exemption did not block an antitrust suit filed by two businessmen after MLB rejected their proposed purchase of the San
Francisco Giants in the early 1990s. The Piazza court reasoned that following the Supreme Court’s decision in Flood, baseball’s exemption only applies to the reserve clause. While subsequent courts have disagreed with the Piazza court’s logic, the decision nevertheless remains binding precedent in its district, and therefore poses a potential threat to MLB should it unreasonably interfere with future franchise sales.

Furthermore, this is another area in which MLB’s practices are remarkably similar to those adopted by the other major professional sports leagues, despite their lack of antitrust immunity. For example, each of the three other leagues also requires that the sale of a league franchise be approved by three-fourths of the rest of the league. Meanwhile, municipal or public ownership is extremely rare across the professional sports landscape. While it is true that courts have occasionally used antitrust law to strike down certain ownership restrictions imposed by the other leagues, they have also upheld such restrictions in other cases. Indeed, there are a variety of valid reasons why a league would seek to prevent a certain prospective owner from acquiring a franchise, including insufficient capital to run the team, or the appearance of a conflict of interest if the owner already owns another team in the same league.

Therefore, although baseball’s antitrust exemption does provide some potential protection to MLB from antitrust lawsuits arising from its franchise ownership restrictions, as a practical matter the actual effect of the exemption in this area is once again rather limited.

F. Baseball’s Antitrust Exemption Has Not Fostered Incompetent Management Practices

Another frequent criticism of baseball’s antitrust exemption is that it has

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208 Id. at 438.
fostered incompetent management practices across MLB. In particular, critics assert that the exemption has created an atmosphere of “laxity, inefficiency, and arrogance” by MLB management, resulting in a variety of alleged harms including baseball’s steroid era, the proposed elimination (or contraction) of teams in the early 2000s, a lack of innovation in MLB front offices, ineffective outreach to African Americans, and even the decision to award home-field advantage in the World Series to the league that wins the All-Star Game. Although not always clearly stated, the general logic of these criticisms appears to be that but for its antitrust exemption, MLB would have faced competition over the years in the form of rival leagues, which would have forced the game to develop more efficient management practices.

There are several problems with this line of criticism. Most glaringly, the underlying premise for these arguments — i.e., that but for the antitrust exemption, MLB would be subject to rival challengers — was specifically considered and rejected above. Thus, there is no reason to believe that

214 E.g., Ross, Reconsidering, supra note 35, at 196 (arguing that the exemption has “permitted rampant incompetence by [MLB] management not checked by forces of competition”).

215 Zimbalist, Baseball’s Antitrust Exemption, supra note 102, at 1.

216 See, e.g., Ham, supra note 7, at 227 (stating that the exemption “created a culture of invulnerability and arrogance that ultimately acted as blinders over the eyes of baseball as it raced toward a dangerous cliff lured by the euphoria of drugs, the metaphorical highs of long ball ecstasy, and the temptations of greed and money”); Mitchell Nathanson, The Sovereign Nation of Baseball: Why Federal Law Does Not Apply to “America’s Game” and How It Got That Way, 16 VILL. SPORTS & ENT. L.J. 49, 49 (2009) (arguing that baseball’s “de facto sovereignty,” resulting in part from its antitrust exemption, “led to the culture of corruption identified within the recently released Mitchell Report” discussing the evolution of baseball’s steroids problem).

217 See, e.g., ZIMBALIST, MAY THE BEST TEAM WIN, supra note 85, at 4 (stating that in a normal industry, baseball’s threatened contraction in the early-2000s “would run afoul of our nation’s antitrust laws”).

218 See Zimbalist, Baseball’s Antitrust Exemption, supra note 102, at 1 (arguing that baseball teams’ historic tendency to rely on “front offices … run by good old boys who followed a dubious lore of player evaluation as if it were a catechism” resulted from the exemption).

219 See STEFAN SZYMANSKI & ANDREW ZIMBALIST, NATIONAL PASTIME: HOW AMERICANS PLAY BASEBALL AND THE REST OF THE WORLD PLAYS SOCCER 10-11 (2005) (“Most recently, [baseball] has had problems sustaining interest among … African Americans. This marketing problem has been exacerbated by baseball’s protected monopoly.”).

220 See Zimbalist, Baseball’s Antitrust Exemption, supra note 102, at 1 (arguing same).

221 See, e.g., SZYMANSKI & ZIMBALIST, supra note 219, at 213 (arguing that baseball’s antitrust exemption has protected MLB from “competition from a rival league since 1915,” resulting in “an arrogant, lax, and inefficient business culture.”).

222 See supra Part I.A.2.
mere antitrust liability alone would have changed MLB’s alleged culture of incompetent management, or that revoking the exemption would have addressed the issues identified by its critics.

Moreover, even if MLB were subject to competition from a rival league, such competition alone would not address several of the asserted harms resulting from baseball’s allegedly incompetent management. For example, baseball’s steroid era has been attributed to a desire to win back fans that soured on the game following the damaging 1994 strike.223 If anything, direct competition from a rival league may have motivated MLB to be even more lax regarding steroid use, in order for the league to generate as much fan interest as possible.224 Similarly, MLB’s decision to increase the significance of the All-Star Game was a direct attempt to compete with other forms of entertainment,225 and thus also would unlikely have been affected by competition from a rival league.

Meanwhile, with respect to baseball’s proposed contraction in the early-2000s,226 simply exposing MLB to antitrust liability would not necessarily have prevented the league from announcing its intentions to eliminate two franchises. Indeed, the legality of MLB’s proposed contraction was unclear under antitrust law,227 as evidenced by the fact that the NBA has itself twice considered contracting teams — most recently in 2010 — despite itself

223 See, e.g., Daniel Healey, Fall of the Rocket: Steroids in Baseball and the Case Against Roger Clemens, 19 MARQ. SPORTS L. REV. 289, 296 (2008) (noting that the allegedly steroid-induced “homerun chase of 1998 is generally seen as the phenomenon that ‘brought fans back’ to baseball”).

224 Moreover, as even some of the exemption’s critics have noted, the MLBPA consistently opposed increased steroids testing, thus hampering MLB’s ability to address the problem irrespective of its antitrust exemption. See Ham, supra note 7, at 228 (acknowledging same).

225 See Zimbalist, Baseball’s Antitrust Exemption, supra note 102, at 1 (acknowledging that the decision was made to “boost [the All-Star Game’s] flagging television ratings”).

226 In the fall of 2001, MLB Commissioner Bud Selig announced that MLB planned to eliminate two franchises effective for the 2002 season. See ZIMBALIST, MAY THE BEST TEAM WIN, supra note 85, at 3 (discussing same). MLB eventually dropped its contraction plans, and today remains an association of 30 franchises. See Marc Edelman, Can Antitrust Law Save the Minnesota Twins? Why Commissioner Selig’s Contraction Plan was Never a Sure Deal, 10 SPORTS LAW. J. 45, 46 (2003) (noting same).

227 See Edelman, supra note 226, at 65 (stating “[t]here are too many undefined variables to predict on the merits whether an antitrust suit against MLB would prevent contraction of the Minnesota Twins.”). See also Josh Alloy, Addition by Contraction, in LEGAL ISSUES IN PROFESSIONAL BASEBALL 65, 83 (Lewis Kurlantzick, ed. 2005) (stating that under antitrust law, a league seeking to eliminate teams would have “to argue convincingly that the anticompetitive effects of dissolution of teams are outweighed by consumer benefits from the improved collective product and that the restriction is reasonably necessary for pursuing this business objective.”). But see ZIMBALIST, MAY THE BEST TEAM WIN, supra note 85, at 4 (arguing that reducing output during a period of significant revenue growth “would run afoul of our nation’s antitrust laws”).
being subject to antitrust liability.\textsuperscript{228} Thus, baseball’s antitrust immunity alone cannot be blamed for the league’s ill-fated contraction plans.

Therefore, the frequent criticisms that baseball’s exemption is to blame for a variety of the game’s alleged problems fail to withstand scrutiny. Because the revocation of the exemption alone would not guarantee the development of a rival challenger to MLB, simply exposing the game to antitrust liability is unlikely to address MLB’s allegedly incompetent management practices.

\textbf{G. Professional Baseball Differs From the Other Professional Sports Leagues in a Significant Respect Warranting Its Unusual Antitrust Status}

Finally, in addition to accusing baseball’s antitrust exemption of fostering specific anticompetitive practices, some critics argue that it is simply unfair to treat baseball differently than the other sports leagues under antitrust law.\textsuperscript{229} These critics allege that there is no principled difference between MLB and the other major professional sports leagues,\textsuperscript{230} and therefore assert that baseball’s anomalous status under antitrust law is unwarranted.\textsuperscript{231} However, these critics overlook (or understate) a significant difference between professional baseball and the other major sports leagues, one that relies upon baseball’s unique antitrust status: namely, the minor league system.

Unlike the NFL or NBA, which both primarily rely on colleges and universities to develop professional-caliber athletes in their respective

\textsuperscript{228} Joe Davidson, \textit{David Stern: Contraction Is On Table}, SACRAMENTO BEE, Oct. 22, 2010, \url{http://www.sacbee.com/2010/10/22/3125279/david-stern-contraction-could.html} (last accessed March 16, 2011) (reporting that NBA Commissioner David Stern acknowledged that the NBA was considering contracting one or more teams); QUIRK & FORT, supra note 41, at 64 (noting that in the mid-1980s “[r]umors existed that five [NBA] teams … were scheduled to be dropped by the league.”).

\textsuperscript{229} \textit{E.g.}, Sullivan, \textit{supra} note 3, at 1303 (arguing that “[f]or the judicial system to subject affiliates of all other professional sports to antitrust penalties, while dismissing baseball antitrust complaints under the antitrust exemption, is illogical and unfair.”).


sports, MLB primarily uses an extensive network of minor league teams to develop its players. Specifically, each MLB franchise has a direct affiliation with five to seven minor league teams (i.e., its farm system), each of which is classified depending upon the competitiveness of its league. These minor league teams develop future major league talent, agreeing to let MLB franchises move minor league players between their various affiliates as they deem appropriate. In exchange, MLB teams agree to pay the annual salaries of almost all minor league players and coaches, as well as subsidize a significant portion of the typically independently owned minor league teams’ operating costs. MLB’s financial commitment to the minor leagues is significant, with the average MLB franchise spending over $20 million per year on its farm system, more than $11.5 million of which covers the salaries of minor league players.

Because the relationship between major and minor league baseball is governed by a voluminous series of contractual agreements limiting competition between the major and minor league teams in a variety of respects, absent baseball’s antitrust exemption the minor league system potentially would be subject to antitrust attack. While the precise

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232 The NBA maintains a minor league, the NBA Development League (or “D-League”), but it produces a relatively small number of future NBA players. See Wong & Deubert, supra note 134, at 228 n.107 (reporting that only around 15% of NBA players spent time in the D-League).

Meanwhile, although NHL teams also maintain a network of minor league affiliates, these farm systems are generally much smaller than in MLB, with most teams residing in Canada (and thus not raising the same concerns under U.S. antitrust law). Jerome Ellig, The Baseball Anomaly and Congressional Intent, in REGULATION: ECONOMIC THEORY AND HISTORY 119, 125 (Jack High ed., 1991).

233 See Joseph A. Kohm, Jr., Baseball’s Antitrust Exemption: It’s Going, Going...Gone!, 20 NOVA L. REV. 1231, 1251 (1996) (discussing the organization of the minor leagues by competition and skill level); Roberts, The Case, supra note 1, at 309 (“Each of the teams in Minor League Baseball has a direct affiliation agreement with one major league team so that each MLB team is tied to a group of affiliated minor league teams, often referred to as its farm system.”). See also James R. Devine, The Racial Re-Integration of Major League Baseball: A Business Rather than Moral Decision; Why Motive Matters, 11 SETON HALL J. SPORTS L. 1, 27-39 (2001) (discussing the history of the farm system).

234 See Kohm, supra note 233, at 1252-53 (noting same).


236 See Roberts, The Case, supra note 1, at 309 (noting same); J. Gordon Hylton, Why Baseball’s Antitrust Exemption Still Survives, 9 MARQ. SPORTS L.J. 391, 394 (1999) (stating that the minor league “system raises serious antitrust problems, relying as it does on rules granting team’s exclusive territorial rights and restricting the freedom of players to
outcome of such a suit would be extremely difficult to predict, the majority of commentators believe that minor league baseball would change significantly if baseball’s antitrust exemption were revoked.\endnote{237} In particular, whether “as a result of adverse rulings in litigation or voluntarily out of the fear of treble damage liability,”\endnote{238} MLB franchises would likely significantly reduce or eliminate the financial subsidies they provide to minor league teams.\endnote{239} Meanwhile, should a minor league player successfully challenge any of the labor restraints discussed above,\endnote{240} minor league payroll costs could escalate rapidly. In either case, a number of minor league teams would likely go out of business — especially those serving the smallest minor league communities — harming the more than 40 million fans per year that attend minor league baseball games.\endnote{241}

Perversely then, applying antitrust law to professional baseball’s minor

\begin{footnotesize}
\begin{enumerate}
\item See, e.g., Jeff Friedman, Antitrust Exemption Vital For Minor League Survival: MLB & Parent Clubs Must Put Money Behind 1991 Stadium Standards, 1 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 118, 119 (2003) (“The antitrust exemption is crucial to Minor League Baseball’s existence.”); Roberts, The Case, supra note 1, at 310 (stating that “it seems virtually certain that there would be substantial changes to the current structure of minor league professional baseball” if the exemption were revoked); Eric D. Scheible, Note: No Runs. No Hits. One Error: Eliminating Major League Baseball’s Antitrust Exemption Will Not Save the Game, 73 U. MERCY L. REV. 73, 91 (1995) (stating that “baseball’s exemption is necessary to support the minor league system”); Szuchman, supra note 168, at 278 (“The antitrust exemption is extremely crucial to the workings of minor league baseball.”). See also Edmonds, supra note 2, at 659 (stating that “the loss of the exemption might create a significant restructuring” of the minor leagues’ “financial relationship with” MLB). But see Ross, Monopoly Sports Leagues, supra note 26, at 690-95 (arguing that antitrust immunity is unnecessary to preserve the minor leagues).
\item See Brand & Giorgione, supra note 49, at 50 (arguing that “the repeal of baseball’s antitrust exemption would affect the incentive that MLB has to continue its investment in the minor leagues”); Grossman, supra note 26, at 596 (concluding that “immunity from antitrust laws enables [MLB] to substantially subsidize minor league teams”).
\item See supra notes 171–173 and accompanying text.
\item See Brand & Giorgione, supra note 49, at 50 (arguing that “the repeal of baseball’s antitrust exemption … could lead to the elimination of many minor league teams, particularly at the Rookie and A levels”); Friedman, supra note 237, at 119 (“Without MLB’s support in terms of player salaries, travel, and equipment costs, people in small towns across the country may no longer have access to live professional baseball.”); Gould, supra note 170, at 88 n.169 (concluding that smaller market minor league teams like “the Oneonta (New York) Tigers and Lake Eisinoire (California) Storms of the world would almost certainly fade into oblivion if left to the vagaries of the free market”); Roberts, The Case, supra note 1, at 310 (concluding that revoking the antitrust exemption would likely “reduce the number of minor league teams and the number of communities that are home to minor league teams — to the detriment of the public interest”). See also Grow, Defining, supra note 12, at 609-10 (noting that over 43 million fans attended minor league baseball games in 2008 in over 175 communities).
\end{enumerate}
\end{footnotesize}
league structure could actually reduce the number of professional baseball games available to consumers, an outcome antithetical to antitrust law’s goal of increasing output.\textsuperscript{242} Indeed, even some critics of the exemption agree that baseball should retain its antitrust immunity to the extent necessary to preserve the minor leagues.\textsuperscript{243} Thus, baseball’s minor league structure distinguishes baseball from the other professional sports, and presents a strong pro-competitive justification for maintaining baseball’s anomalous antitrust status.

Therefore, the existing literature criticizing baseball’s historic antitrust immunity has significantly overstated the exemption’s practical effects. Despite frequent assertions to the contrary, revoking baseball’s exemption is unlikely to prevent MLB from (i) extracting stadium subsidies from local communities, (ii) imposing unfair labor restraints, (iii) entering anticompetitive broadcast agreements, (iv) imposing franchise ownership restrictions, or (v) fostering incompetent management, given both the prevailing antitrust precedents, as well as the experience of the other major professional sports leagues. Meanwhile, the exemption actually benefits the public by allowing MLB to maintain greater control over franchise relocation decisions, and shielding baseball’s minor league system from antitrust scrutiny. Consequently, because the common criticisms of baseball’s antitrust exemption largely lack merit, the overwhelming scholarly consensus opposing it is unjustified.

II. THE PRO-COMPETITIVE BENEFITS OF BASEBALL’S ANTITRUST EXEMPTION

In addition to overstating the anticompetitive effects of baseball’s antitrust exemption, the existing literature has also overlooked other significant — albeit less direct — pro-competitive benefits that have resulted from baseball’s anomalous antitrust status. Specifically, in addition to providing franchise stability and protecting the minor leagues, as discussed above,\textsuperscript{244} baseball’s antitrust exemption has also helped enable Congress to extract valuable concessions from MLB in exchange for its continued antitrust immunity.

Indeed, Congress has long recognized that the threat of potential antitrust action gives it significant leverage over professional baseball. As

\textsuperscript{242} Brand & Giorgione, supra note 49, at 52 (stating that a reduction of “output at the minor league level is antithetical to the policy underlying the antitrust laws to increase the quantity of the product”).

\textsuperscript{243} See Ross, Reconsidering, supra note 35, at 199 n.130 (stating that if any anticompetitive agreements exist in the minor leagues, then a court could “find the restriction to be the only remaining ‘unique characteristic and need’ of baseball and thus continue the exemption for that limited purpose.”)

\textsuperscript{244} See supra Parts I.B and I.G.
far back as 1913, two members of Congress successfully threatened to
investigate baseball for potential antitrust violations if Detroit Tigers’
great Ty Cobb were not reinstated, after he was suspended for refusing to report
to camp during a contract dispute.\textsuperscript{245} Since then, Congress has held more
than 60 hearings considering baseball’s antitrust status,\textsuperscript{246} using these
occasions to pressure baseball to change its behavior in a variety of ways.\textsuperscript{247}
Recognizing that it must maintain political goodwill with Congress to keep
its exemption,\textsuperscript{248} MLB has regularly agreed to modify its activities in
response to Congressional pressure.\textsuperscript{249}

Significantly, many of the benefits extracted by Congress would not
have been directly obtained simply by exposing baseball to antitrust
liability. For example, as discussed above, courts have been extremely
reluctant to use antitrust law to require the other professional sports leagues
to expand,\textsuperscript{250} or modify their television broadcast agreements.\textsuperscript{251} However,
by threatening to revoke baseball’s antitrust exemption, Congress has
pressured MLB to provide these very same concessions (among others),
substantially benefiting the public.

This article is not the first to recognize that the tenuous nature of
baseball’s antitrust exemption provides Congress with significant leverage
over the sport. For example, Professor Mitchell Nathanson discussed this
phenomenon in his 2005 \textit{Rutgers Law Review} article, “The Irrelevance of
Baseball’s Antitrust Exemption: A Historical Review.”\textsuperscript{252} However, what
the existing literature has failed to appreciate is the extent to which
Congress has used this power to help obtain pro-competitive concessions
from MLB that would not have been directly obtained via antitrust litigation
alone. Therefore, this phenomenon provides significant, but heretofore
overlooked, benefits to the public.

\textsuperscript{245} \textsc{Zimbalist, In the Best Interests of Baseball, supra note 46, at 26.}
\textsuperscript{246} \textsc{See Zimbalist, May the Best Team Win, supra note 85, at 135 (noting that
Congress has held more than 60 hearings since 1950).}
\textsuperscript{247} \textsc{See James Edward Miller, The Baseball Business: Pursuing Pennants and
Profits in Baltimore 6 (1990) (stating that Congressional hearings were held in the
1950s and early-60s to pressure “baseball to expand, to improve the situation of the minor
leagues, or to [provide] increased television or radio coverage”).}
\textsuperscript{248} \textsc{Ross, Anomaly and Aberration, supra note 27, at 252 (“To avoid congressional
repeal of the exemption, MLB must maintain political goodwill on Capitol Hill.”).}
\textsuperscript{249} \textsc{See Nathanson, Irrelevance, supra note 120, at 25 (stating that MLB has
“repeatedly allowed relocation and expansion to occur in an attempt to demonstrate to
Congress that [it is] acting reasonably even though [the] exemption technically allows [it]
to act unreasonably.”).}
\textsuperscript{250} \textsc{See supra Part I.A.1.}
\textsuperscript{251} \textsc{See supra Part I.D.}
\textsuperscript{252} Nathanson, \textit{Irrelevance, supra note 120.}
A. Congress Regularly Uses the Threat of Revoking Baseball’s Antitrust Exemption to Pressure MLB to Expand or Relocate Its Franchises

Congress has most frequently used the threatened revocation of baseball’s antitrust exemption to help obtain pro-competitive concessions from MLB in the area of franchise expansion and relocation. While antitrust law has proven unsuccessful at mandating expansion by professional sports leagues — and has only been used to prevent a league from blocking a proposed franchise move, rather than spurring an unintended relocation itself — Congress recognized as far back as the early 1950s that it could pressure sports leagues to expand or relocate teams in exchange for antitrust protection.253

Beginning in 1951, the U.S. House of Representative’s Subcommittee on the Study of Monopoly Power convened a series of hearings to consider the antitrust implications of professional baseball’s organization and practices.254 One of the primary complaints raised by the Subcommittee during the hearings was that MLB had failed to adjust or expand its circuit to reflect the country’s rapidly changing demographics, including the population’s significant migration to the west coast.255 Indeed, at the time the hearings began, nearly 50 years had passed since baseball last added or relocated a major league franchise.256 As a result, the sixteen MLB teams were located in a total of only ten cities, with none further west or south than St. Louis.257

The House Subcommittee warned baseball that it had better “get going” on broadening the geographic distribution of its franchises,258 threatening to revoke the sport’s antitrust exemption if it did not expand further west beyond the Mississippi River.259 In particular, the Subcommittee’s final

253 JOHN WILSON, PLAYING BY THE RULES: SPORT, SOCIETY, AND THE STATE 258 (1994) (“The possibility of ‘trading’ expansion for state protection was thus part of public policy debate as early as the 1950s.”).


255 See Hylton, supra note 236, at 399 (stating that “the principal complaint voiced during the Celler hearings [was] that Organized Baseball had too narrowly restricted the geographic location of major league teams”). See also Nathanson, Irrelevancy, supra note 120, at 26 (discussing the population growth in California between 1940 and 1950).

256 Nathanson, Irrelevancy, supra note 120, at 25.


258 MILLER, supra note 247, at 14.

259 Nathanson, Irrelevancy, supra note 120, at 27. See also id. at 29 (noting that the Subcommittee’s final report “again suggested the possibility of removing MLB’s antitrust
report specifically noted that Boston, St. Louis, and Philadelphia each had two major league teams at the time, with the competitively weaker team in each city routinely losing money. Given that larger cities like Los Angeles and San Francisco lacked even a single major league franchise, the Subcommittee warned baseball that this inequity could warrant the revocation of its antitrust exemption.

Faced with a direct threat to its antitrust immunity, baseball officials sought to assure the Subcommittee that they would address this problem shortly. More significantly, MLB quickly implemented plans to relocate the three troubled franchises identified in the Subcommittee’s report. First, MLB pressured the struggling Boston Braves franchise to move to Milwaukee, a minor league territory assigned to the team, after the owner of the Braves balked at allowing the St. Louis Browns to move to the city. The Braves ultimately agreed, and the National League (“NL”) owners formally approved MLB’s first franchise relocation in over fifty years on March 18, 1953. Later that same year, the American League (“AL”) owners permitted the Browns to move to Baltimore, after forcing the Browns’ owner, Bill Veeck, to sell his interest in the team.

Having successfully relocated two of the three franchises identified by the House Subcommittee to new cities in 1953, MLB turned its attention to the final team named in the report, the Philadelphia Athletics. Although the A’s ownership was motivated to sell the team in 1954, it strongly preferred to see the club remain in Philadelphia. Nevertheless, baseball was intent on moving the franchise to a new city, and AL owners voted to block a proposed sale of the team to a group of Philadelphia investors in October 1954. Instead, baseball officials favored another offer from real estate mogul Arnold Johnson, who intended to relocate the team to Kansas City. The A’s ownership ultimately relented to MLB’s wishes and agreed to sell the team to Johnson.
Therefore, just two and a half years after the House Subcommittee’s final report, MLB had acquiesced to Congressional threats to revoke its antitrust exemption by relocating each of the three struggling franchises identified in the Subcommittee’s report to a new market, including moving one west of St. Louis as the Subcommittee had requested. Nor did these three moves end baseball’s relocation bonanza. Indeed, just three years later both the Brooklyn Dodgers and New York Giants announced they were heading west (to Los Angeles and San Francisco, respectively), thus providing major league franchises to the two cities specifically identified in the Subcommittee’s report. In the process, these moves “greatly reduced the political pressure coming from members of Congress.”

In addition to pressuring baseball to relocate particular franchises, Congress has also used the threatened revocation of baseball’s antitrust exemption to pressure MLB to prevent other franchises from leaving their existing communities (at least temporarily). For example, in 1958, the U.S. Senate was set to begin a new series of hearings considering baseball’s antitrust status when news broke that the owner of the Washington Senators, Calvin Griffith, had agreed to move the team to Minneapolis. The Senate called Griffith to testify, ultimately coercing him into pledging that he was no longer exploring the relocation of the Senators franchise. When Griffith nevertheless considered reviving his plans the following year, his fellow owners forced him to abandon the move for fear that it would incite Congressional action regarding the exemption. Similarly, five years later, MLB refused to allow the Kansas City Athletics to relocate to Oakland after the Congressional delegations from Kansas and Missouri threatened to revoke baseball’s exemption should the team move.

Ultimately, however, Congress has most frequently used its leverage over baseball to pressure MLB to expand the number of major league teams. Indeed, Congressional threats against the antitrust exemption have

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270 See supra note 259 and accompanying text.
271 Nathanson, Irrelevance, supra note 120, at 36.
272 See supra note 261 and accompanying text.
273 Duquette, supra note 151, at 52. But see Miller, supra note 247, at 80 (noting that the Dodgers’ relocation resulted in Brooklyn congressman Emanuel Celler subjecting baseball to “withering criticism”).
274 Id. at 82.
275 Id.
276 Id. MLB ultimately allowed the Senators to move to Minneapolis in 1961, but only granting Washington an immediate replacement, expansion franchise. See infra note 286 and accompanying text.
277 Miller, supra note 247, at 138-39. MLB eventually permitted the Athletics to move to Oakland several years later, but first awarded Kansas City a replacement, expansion franchise, in order to placate the region’s Congressional representatives. See infra note 289 and accompanying text.
directly preceded every expansion in MLB history, beginning with its first in the early 1960s. In the late 1950s and early 1960s, the U.S. Senate’s Antitrust Subcommittee held a series of hearings concerning the Continental League, a proposed third major league backed by New York lawyer William Shea and legendary baseball executive Branch Rickey. Senator Estes Kefauver, a supporter of the new league, chaired the hearings, and proposed legislation revoking most of baseball’s antitrust exemption in order to help the Continental League compete with the two established major leagues.

MLB viewed Senator Kefauver’s bill and hearings as a significant threat to its cherished antitrust exemption. Ford Frick, MLB’s Commissioner at the time of the hearings, later recalled, “Baseball was scared. ... Pressure was being applied by the press and public opinion. The structure of baseball was under scrutiny by Congress. ... Compromise was in order, and it came quickly.” Indeed, in late June 1960, MLB convinced a majority of the Senate to recommit Senator Kefauver’s bill to committee. Shortly thereafter, MLB announced the first expansion in its long history. On July 18, 1960, the NL declared that it intended to add two new franchises, with the AL announcing its own two-team expansion a little over a month later. As a result, both Los Angeles and Minneapolis received AL franchises for the 1961 season, while the NL added teams in Houston and New York starting in 1962. Subsequent commentators have directly attributed MLB’s decision to expand to Congress’s threats to revoke baseball’s antitrust exemption.

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278 See, e.g., LOWE, supra note 254, at 42-43 (stating that “[o]bservers accurately credited...Senator Kefauver for the expansion within the two major leagues”).
279 DUQUETTE, supra note 151, at 52-53.
280 MILLER, supra note 247, at 81.
281 LOWE, supra note 254, at 36; Nathanson, Irrelevance, supra note 120, at 38-39.
282 FORD FRICK, GAMES, ASTERISKS AND PEOPLE 128-29 (1973). See also MILLER, supra note 247, at 83 (quoting same).
283 See DUQUETTE, supra note 151, at 53 (stating that MLB engaged in “some wrangling in Congress” with MLB ultimately “getting the best of the Continental League supporters”); LOWE, supra note 254, at 42 (reporting that the bill was “sent back to committee by a vote of 73 to 12”).
284 See Nathanson, Irrelevance, supra note 120, at 39 (noting same).
285 MILLER, supra note 247, at 83.
286 Technically, the existing Washington Senators franchise relocated to Minneapolis, with the AL granting Washington an immediate replacement, expansion franchise. Nathanson, Irrelevance, supra note 120, at 40.
287 LOWE, supra note 254, at 42.
288 E.g., Dodd, supra note 257 (quoting baseball historian Michael Shapiro as stating “[h]ad [MLB] not been pushed, it would have been years. ... I think they were going to fight [expansion] as long as they could.”); JOHN HELYAR, LORDS OF THE REALM: THE REAL HISTORY OF BASEBALL 494 (1994) (stating that MLB owners “agreed to add four
Following its initial success at pressuring MLB to expand, Congress continued to barter expansion for antitrust immunity in future years. For example, the Congressional delegations from Kansas and Missouri successfully pressured AL owners to grant an expansion franchise to Kansas City in October 1967, after the owners finally allowed the Kansas City Athletics to move to Oakland. As a result, the AL had to add an additional team as well — in order to maintain an even number of franchises for scheduling purposes — simultaneously launching the Seattle Pilots. Not wanting to be overshadowed, the NL then decided to expand itself, adding franchises in Montreal and San Diego. Thus, Congressional pressure to replace the departing Kansas City Athletics helped set in motion a series of events ultimately culminating in four new expansion franchises beginning play in 1969.

In the 1970s, Congress convened a series of hearings — most notably those of the U.S. House of Representatives’ Select Committee on Professional Sports — to consider various antitrust issues in professional sports, including the question of whether baseball should retain its anomalous antitrust protection. Congress used these hearings to once again press MLB to expand, pushing in part for an expansion franchise to be placed in Seattle (after the Pilots franchise had moved to Milwaukee in 1970). MLB officials assured Congress in 1976 that it intended to expand, with the AL announcing shortly thereafter that it was adding teams in both Seattle and Toronto to begin play during the 1977 season.

After MLB then went over a decade without adding any additional teams, a group of seventeen senators and representatives formed the Task...
Force on the Expansion of Major League Baseball in November 1987.\textsuperscript{299} The Task Force pressured MLB to expand, threatening to introduce legislation revoking baseball’s antitrust exemption in April 1988.\textsuperscript{300} In particular, Colorado Senator Tim Wirth and Florida Senator Connie Mack pressed baseball to grant their states expansion franchises.\textsuperscript{301} Baseball officials once again assured Congress that MLB was actively considering expansion, ultimately culminating in the NL’s announcement in 1991 that it would expand to Denver and Miami for the 1993 season.\textsuperscript{302}

This concession only provided baseball with a short respite, however. Congress convened a new series of hearings beginning in 1992, after MLB refused to allow the San Francisco Giants to be sold and moved to Tampa Bay.\textsuperscript{303} During these hearings, Senator Howard Metzenbaum proposed legislation revoking baseball’s antitrust exemption.\textsuperscript{304} Congressional pressure subsequently intensified during baseball’s extensive 1994 strike, with lawmakers from Arizona and Florida pushing particularly hard for baseball’s exemption to be revoked that winter in hopes of convincing MLB to resolve the strike in time for spring training to be held in their states.\textsuperscript{305} In response to this mounting Congressional pressure, baseball announced in January 1995 that it would be adding teams in both Tampa Bay and Phoenix.\textsuperscript{306}

Most recently, rather than pressure baseball to add additional teams, Congress instead acted to prevent the elimination of two already existing major league franchises. In November 2001, MLB announced that it intended to contract two teams that off-season, an announcement that immediately set off “a firestorm in Congress.”\textsuperscript{307} Legislators in both houses quickly introduced bills that would have revoked baseball’s antitrust exemption “with respect to the elimination or relocation of major league teams.”\textsuperscript{308} MLB ultimately elected to indefinitely postpone its contraction

\textsuperscript{299} MILLER, supra note 247, at 313. See also WILSON, supra note 253 at 259 (discussing same).
\textsuperscript{300} MILLER, supra note 247, at 313; ZIMBALIST, BASEBALL AND BILLIONS, supra note 84, at 141.
\textsuperscript{301} Peter Passell, As Team Owners Consider Designating Two Cities, What Price Expansion?, N.Y. TIMES, May 19, 1991 at S8.
\textsuperscript{302} WILSON, supra note 253, at 259.
\textsuperscript{303} Nathanson, Irrelevance, supra note 120, at 41.
\textsuperscript{304} DUQUETTE, supra note 151, at 102-03.
\textsuperscript{305} Murray Chass, In Baseball, No Games, But the Game is Expanding, N.Y. TIMES, Jan. 21, 1995 at 31.
\textsuperscript{307} Gould, supra note 170, at 85. See also supra note 226 (discussing contraction).
\textsuperscript{308} Brand & Giorgione, supra note 49, at 49. See also Escudier, supra note 123, at 388
plans in February 2002, a move that commentators have directly credited to Congress’s immediate and vocal response, and an outcome that would not have been assured simply by applying antitrust law to the sport.

Congress’s ability to extract franchise-related concessions in exchange for antitrust protection is not confined to professional baseball; Congress has also traded the NFL limited antitrust immunity in exchange for expansion. For example, several commentators have noted that the NFL’s addition of the Dallas Cowboys and Minnesota Vikings franchises in the early 1960s was directly tied to the league’s efforts to obtain a partial antitrust exemption allowing its clubs to collectively sell their television broadcast rights, culminating in the Sports Broadcasting Act of 1961. Several years later, in 1966, the NFL explicitly traded expansion franchises for Congressional legislation exempting the league’s proposed merger with the rival American Football League from antitrust law. Indeed, a Congressional report regarding the merger exemption bill bluntly stated: “One of the results of the merger will be the bringing of professional football teams to new cities. In addition to the two new teams added this year — Miami and Atlanta — the merger calls for two additional franchises in 1968 and two more franchises later.”

One of those franchises was ultimately awarded to New Orleans, after two Louisiana representatives helped push the legislation through Congress. Thus, Congress has routinely traded new or continued antitrust protection to both MLB and the NFL in exchange for various franchise-related concessions. In particular, by pressuring MLB to expand, relocate franchises (contrary to the team owner’s wishes), and defer contraction,

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310 See supra notes 226–228 and accompanying text.

311 E.g., Ross, Monopoly Sports Leagues, supra note 26, at 659 (stating that the additions of the Cowboys and Vikings provided an example of the NFL’s “considerable success in persuading Congress to grant [antitrust] exemptions’’); WILSON, supra note 253, at 258 (“The addition of the Dallas Cowboys and Minnesota Vikings was tied to the 1960s Sports Broadcasting Act”).

312 See Arthur T. Johnson, Congress and Professional Sports: 1951-1978, 445 ANNALS AM. ACAD. POL. & SOC. SCI. 102 (1979) (“Congressional support for the NFL merger legislation in 1966 partly was premised upon an expectation that league expansion would occur within a year.”).

313 WILSON, supra note 253, at 132.

314 Johnson, supra note 312, at 112. See also Ross, Monopoly Sports Leagues, supra note 26, at 659 (stating that New Orleans’s receipt of a franchise “coincided with the passage of the 1966 legislation allowing the NFL-AFL merger”).

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Congress has been able to help obtain significant pro-competitive benefits from baseball, benefits that would not have arisen directly through antitrust litigation alone. Perhaps most significantly, every single round of expansion in MLB history has been directly preceded by a Congressional threat to revoke the sport’s antitrust exemption. Thus, baseball’s antitrust exemption has helped provide significant pro-competitive benefits to the public, benefits that have been largely overlooked in the existing literature.

**B. Congress Also Pressures MLB to Make Other Concessions**

In addition to placing pressure on MLB regarding the number and location of its franchises, Congress has also successfully used the threatened revocation of baseball’s antitrust exemption to extract other concessions from the league. Most importantly, Congress helped persuade MLB to continue to make its “Extra Innings” pay-per-view package generally available to cable television subscribers.

Specifically, MLB announced in 2007 that it had reached a tentative agreement with DirecTV, granting the satellite provider the exclusive rights to the Extra Innings service. The deal outraged baseball fans subscribing to cable providers other than DirecTV, with the backlash quickly motivating Congress to enter the fray. Lawmakers held hearings investigating the proposed MLB-DirecTV agreement, during which they threatened to revoke baseball’s antitrust exemption. MLB ultimately caved into the political and public pressure, agreeing to cancel its exclusive agreement with DirecTV in order to sign a significantly less lucrative, non-exclusive deal.

Absent baseball’s antitrust exemption, the mere threat of potential antitrust liability alone likely would not have deterred MLB from entering its proposed, exclusive agreement with DirecTV. Indeed, the NFL continues to exclusively license its analogous “Sunday Ticket” package to DirecTV even after settling a class action antitrust lawsuit challenging the arrangement. Thus, Congress was able to use the threat of revoking baseball’s antitrust exemption to help pressure the league to provide a pro-

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316 Extra Innings is a service through which baseball fans can watch dozens of games per week that are not otherwise available on their local television stations. Tomlinson, *supra* note 150, at 307.
317 Id.
318 See id. at 308. (discussing same).
320 Tomlinson, *supra* note 150, at 308.
321 See *supra* note 200 and accompanying text.
competitive benefit to the public that may not have been obtained otherwise.

Congress has similarly used its leverage over MLB to extract other desired concessions. For example, the sport’s antitrust exemption was threatened in 1954 after the St. Louis Cardinals announced that they were renaming their park “Budweiser Stadium,” helping persuade MLB Commissioner Ford Frick to reject the Cardinals’ proposal. Then in 1990, the threat of Congressional hearings helped motivate MLB to provide more generous financial support to minor league baseball. Most recently, in the mid-2000s, Congress used the threat of revoking baseball’s antitrust exemption to help pressure the sport to adopt more stringent steroid testing requirements for its players.

Undoubtedly, these latter concessions lack the significance of those discussed above. Nevertheless, they provided some benefit to Congress that would not have been obtained simply by applying antitrust law to baseball, and therefore provide further evidence that Congress is able to use threats against baseball’s antitrust exemption to help pressure MLB to provide pro-competitive benefits to the public.

This is not to suggest that MLB always capitulates to Congressional pressure. For example, several Congressmen unsuccessfully threatened to revoke baseball’s antitrust exemption if Washington, D.C. was not awarded a replacement franchise shortly after the Senators relocated for the second — and final — time in 1971. Similarly, threats by a Louisiana Congressman to modify baseball’s antitrust status in the 1970s failed to force MLB to expand to New Orleans.

Nor is this meant to suggest that Congressional pressure was the sole factor motivating the various concessions discussed above. To the contrary, other factors undoubtedly played a role in many of these cases. For instance, the Brooklyn Dodgers’ decision to move to California was influenced in no small part by the sizable donation of prime real estate Los Angeles.

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322 Johnson, supra note 312, at 110.
323 See Bob Liodice, Ten Big Marketing Risks that Paid Off for Brands, ADVERTISING AGE, May 17, 2010 (noting same).
324 See DUQUETTE, supra note 151, at 100 (discussing same).
326 MILLER, supra note 247, at 179-80.
327 DUQUETTE, supra note 151, at 72.
Angeles provided to the team.\footnote{Edelman, How to Curb, supra note 34, at 286.} Meanwhile, MLB undoubtedly would have eventually expanded even without Congressional pressure,\footnote{Cf. Frank P. Joza, Jr. & John J. Guthrie, Jr., Relocating Teams and Expanding Leagues in Professional Sports: How the Major Leagues Respond to Market Conditions (1999) (arguing that professional sports leagues generally respond to market forces when deciding to expand).} albeit perhaps on a less expeditious schedule.

And finally, this is not to argue that the current regulatory scheme is ideal. To the contrary, not only does Congressional regulation of professional baseball risk draining legislative resources,\footnote{See Burger, supra note 5, at 226 (stating that “Congress has better ways to expend its resources than repeatedly entertaining lobbyists’ efforts spurred by the fate of a single franchise in a single sports league.”).} but it also requires Congress to take on a well-organized and well-funded lobby.\footnote{See Ellig, supra note 232, at 131 (noting that baseball enjoys a lobbying advantage due to the “common governance structure … between [the] major leagues and minor leagues”); Ross, Monopoly Sports Leagues, supra note 26, at 703 (stating that “[a]s a cohesive and interested group, [MLB] owners will lobby effectively.”).}

Nevertheless, baseball’s antitrust exemption has provided Congress with a mechanism to extract significant pro-competitive benefits from the sport. Given that many of these concessions were unlikely to have been directly obtained via antitrust litigation alone — in light of the prevailing judicial precedents and experience of the other professional sports leagues — baseball’s antitrust exemption has therefore helped generate important benefits for the public.

**CONCLUSION**

This Article has provided the first comprehensive defense of baseball’s historic antitrust immunity on policy grounds, and in the process challenged the overwhelming scholarly consensus that has made the exemption one of the most uniformly criticized doctrines in United States legal history. First, the Article argued that the common criticisms of the baseball exemption are largely unfounded. Specifically, given the treatment of the other major professional sports leagues under antitrust law, simply exposing baseball to antitrust liability alone will not yield the benefits that the exemption’s critics believe. Meanwhile, even in those few areas where revoking the exemption could force MLB to modify its existing practices — such as its franchise relocation policies and agreements with the minor leagues — such changes would, on the whole, actually do more harm than good to the public interest.

Perhaps more significantly, however, Part II of the Article argued that
the existing literature has largely overlooked the significant pro-competitive benefits that result from baseball’s antitrust exemption. Specifically, Congress has used the threat of revoking the exemption to help extract a variety of valuable concessions from baseball. These concessions — such as league expansion and the modification of a proposed, exclusive television broadcast agreement — provided pro-competitive benefits that likely would not have been directly obtained simply through antitrust litigation. Indeed, every single round of expansion in MLB history has been directly preceded by a Congressional threat to revoke the sport’s antitrust exemption. Thus, baseball’s anomalous antitrust status provides Congress with significant leverage over the sport, ultimately resulting in important, but heretofore overlooked, pro-competitive benefits for the public.

Therefore, given that the criticisms of baseball’s antitrust exemption are largely overstated, while its pro-competitive aspects have been widely overlooked, this Article rejects the existing scholarly consensus, and concludes that baseball’s antitrust exemption is ultimately net pro-competitive.