

**CONGRESS IS REINSTATING THE COLOR LINE: HOW  
THE SAVE AMERICA'S PASTIME ACT AND THE  
JUDICIAL ANTITRUST EXEMPTION CONTRIBUTE TO  
RACIAL INEQUITY IN PROFESSIONAL BASEBALL**

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ABSTRACT

*Racial inequity is a common theme in the United States, and America's pastime is no exception. Black representation in professional baseball has been on the decline for decades since its peak of nearly 20%. The law compounds on inequitable economic and political systems to make it more difficult for Black American-born baseball players to survive in the minor leagues and eventually make it to the major leagues. The Supreme Court created a federal antitrust exemption in 1922 that was upheld in subsequent cases. Later, the Curt Flood Act of 1998 made the federal antitrust exemption inapplicable to Major League Baseball players but not Minor League Baseball players. The Fair Labor Standards Act protects workers by establishing the federal minimum wage and requiring overtime compensation; however, in 2018, the Save America's Pastime Act exempted professional baseball from the overtime requirements. These laws allow major league organizations to pay minor league players below a living wage, essentially requiring that players have external financial support.*

*Protection of minor league players requires a solution that both (1) ensures players are paid a fair wage for their time working and (2) provides players with the flexibility to fairly contract their employment. To satisfy the first prong, Congress must repeal the Save*

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*America's Pastime Act and replace it with legislation that protects minor league players from exemption from the Fair Labor Standards Act. To satisfy the second prong, the Supreme Court must overturn the federal antitrust exemption for professional baseball. Together, these changes will provide an equitable playing field for all professional baseball players.*

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## INTRODUCTION

On April 15, 1947, Jackie Robinson broke the “Color Line” in Major League Baseball by becoming the first Black player in the league.<sup>1</sup> Representation of Black players in the major leagues steadily rose for the next few decades, reaching nearly 20% in the 1970s and 1980s.<sup>2</sup> Despite the continued increase in Black representation in the U.S. population since this peak,<sup>3</sup> the number of Black Major League Baseball players has declined to 7.6% in 2021.<sup>4</sup> Due to decades of systemic inequality leading to the racial wealth gap in America, white players have a decided advantage over Black players when it comes to developing and showcasing their skills.<sup>5</sup> White players not only have an advantage in developing to the necessary skill level to become major leaguers, but they are also more likely to have the financial freedom to accept the poverty wages of Minor League Baseball on their way to the major leagues.<sup>6</sup> These economic factors have led to the decline in Black players in professional baseball and pushed potential players toward other careers.<sup>7</sup>

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1. Nick Anapolis, *Robinson Debuts Five Days After Signing with Dodgers*, NAT’L BASEBALL HALL OF FAME, <https://baseballhall.org/discover/inside-pitch/robinson-signs-first-big-league-contract> (last visited Apr. 7, 2023); *Breaking the Color Line: 1940 to 1946*, LIBR. OF CONG., <https://www.loc.gov/collections/jackie-robinson-baseball/articles-and-essays/baseball-the-color-line-and-jackie-robinson/1940-to-1946/> (last visited Apr. 7, 2023).

2. Mark Armour & Daniel R. Levitt, *Baseball Demographics, 1947-2016*, SOC’Y FOR AM. BASEBALL RSCH., <https://sabr.org/bioproj/topic/baseball-demographics-1947-2016/> (last visited Apr. 7, 2023).

3. Christine Tamir, *The Growing Diversity of Black America*, PEW RSCH. CTR. (Mar. 25, 2021), <https://www.pewresearch.org/social-trends/2021/03/25/the-growing-diversity-of-black-america/> (“The U.S. Black population is . . . growing. In 2019, 46.8 million people in the U.S. identified their race as Black, either alone or as part of a multiracial or ethnic background. . . . [This number equates to] [a]bout 14% of the national population . . .”).

4. *Former NL MVP Jimmy Rollins Reflects on Decline of Black Players in Major League Baseball*, USA TODAY (Apr. 16, 2021, 8:08 PM), <https://www.usatoday.com/story/sports/mlb/2021/04/16/jimmy-rollins-decline-black-players-major-league-baseball/7262953002/>.

5. See *infra* Section I.E.

6. See *infra* Sections I.C., .E.

7. See *infra* Sections I.D–.E; Brittany Ghiroli, ‘We Are Making Pennies’: For Many Minor Leaguers, Unpaid Offseasons Prove More Grueling than the Actual Seasons, THE ATHLETIC (Feb. 15, 2022), <https://theathletic.com/3130271/2022/02/15/we-are-making-pennies-for-many-minor-leaguers-unpaid-offseasons-prove-more-grueling-than-the-actual-seasons/> [hereinafter *We Are*

Two distinct areas of law, antitrust and employment law, contribute to the difficult financial situation Black minor league players face. In *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*, the Supreme Court created a federal antitrust exemption for professional baseball, allowing professional baseball organizations to participate in anticompetitive practices.<sup>8</sup> The Curt Flood Act made the antitrust exemption inapplicable to Major League Baseball players but expressly left the exemption applicable to Minor League Baseball players.<sup>9</sup> Separately, the Save America's Pastime Act codified the inapplicability of the Fair Labor Standards Act to minor league players, preventing minor league players from receiving overtime compensation.<sup>10</sup>

Both exemptions, the antitrust exemption and the overtime pay exemption, contribute to the underwhelming compensation of minor league players.<sup>11</sup> Without adequate compensation at the minor league level, it is more difficult for players without external funding to support themselves while pursuing professional baseball.<sup>12</sup> Due to decades of institutional barriers, Black players are less likely to have external financial support, thus contributing to the decrease in the number of Black professional baseball players.<sup>13</sup>

Part I of this Note discusses the relevant background regarding Major and Minor League Baseball, including professional baseball's structure, the legal history of baseball's intersection with antitrust law and employment law, and

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*Making Pennies*] ("We are confident that several future major leaguers have walked away from the game, simply because this unfair system continues to be unworkable for their families."); Stephanie Apstein, *Why Baseball Is Losing Black America*, SPORTS ILLUSTRATED (July 17, 2020), <https://www.si.com/mlb/2020/07/17/preston-wilson-baseball-black-lives-matter> ("[B]aseball continues to lose Black athletes to sports such as basketball and football.").

8. See *Fed. Baseball Club of Balt., Inc. v. Nat'l League of Pro. Baseball Clubs*, 259 U.S. 200, 208–09 (1922).

9. See Curt Flood Act of 1998, Pub. L. No. 105-297, §§ 2–3, 112 Stat. 2824, 2824–26 (1998).

10. Consolidated Appropriations Act of 2018, Pub. L. No. 115-141, § 201(a), 132 Stat. 1126, 1126–27 (2018).

11. See *infra* Sections I.B–C.

12. See *infra* Section II.B.

13. See *infra* Section I.E.

economic inequality and its effect on the racial demographics of baseball. Part II examines insufficient remedies by Major League Baseball and its dependency on external financial sources for minor league players. Part III explains why focusing on unionization as a solution is misguided. Finally, Part IV proposes a two-part solution that addresses both the judicially created federal antitrust exemption for professional baseball and the legislatively created minimum wage exemption for Minor League Baseball players.

## I. BACKGROUND

This Part explains the relevant organizational structure, history, economics, and demographics of professional baseball. First, Section I.A details the relationship between Major League Baseball and Minor League Baseball, the trajectory for players to make it to the major leagues, and the slim probability that they will ever become major league players. Section I.B then explains the relevant legal history of organized baseball. Section I.C then identifies how the structure and practices of Minor League Baseball create and foster economic inequality. Section I.D describes the racial demographics of baseball players throughout the history of professional baseball. Finally, Section I.E examines how economic inequality in baseball disproportionately impacts Black players.

### A. *The Structure of Professional Baseball*

Major League Baseball (MLB) is comprised of thirty teams.<sup>14</sup> Minor League Baseball (MiLB) is comprised of 120 teams that are classified into a hierarchy of four levels: Low A, High A, Double A, and Triple A.<sup>15</sup> Each MLB team is affiliated with, or

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14. Steve Gardner, *Minor League Baseball Finally Resumes After Lost 2020 Season*, USA TODAY, <https://www.usatoday.com/story/sports/mlb/minors/2021/05/04/minor-league-baseball-season-begins-new-rules-structure/4926769001/> (May 4, 2021, 9:36 AM).

15. Jonathan Mayo, *Minors Return with New Look, Structure*, MAJOR LEAGUE BASEBALL (May 2, 2021), <https://www.mlb.com/news/new-minor-league-baseball-structure>. Low A is the

owns outright, one team at each minor league level.<sup>16</sup> The combination of a major league team and its four minor league teams is referred to as a baseball or MLB organization.<sup>17</sup>

Players born in the United States, its territories, and Canada are drafted by MLB organizations through the First-Year Player Draft, also known as the Rule 4 Draft.<sup>18</sup> To play professional baseball with an MLB or MiLB team, a player must sign a Uniform Player Contract (UPC).<sup>19</sup> Under the UPC, an MLB organization controls a player's baseball employment rights for up to seven seasons—years—in the minor leagues.<sup>20</sup> The UPC governs all players at the minor league level.<sup>21</sup> A player who refuses to sign the UPC is disqualified from playing with any

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lowest level and farthest from the MLB, and Triple A is the highest level and closest to the MLB. *See id.* Just a few years ago, there were 160 affiliated minor league teams, but in December 2020, MLB cut ties with forty teams across the country. Adam Wells, *MLB Sued Over 2019 Plan to Eliminate 40 Minor League Teams*, BLEACHER REP. (Dec. 20, 2021), <https://bleacherreport.com/articles/10021658-mlb-sued-over-2019-plan-to-eliminate-40-minor-league-teams>.

16. *See Mayo, supra* note 15.

17. For example, the New York Yankees organization includes the Tampa Tarpons (Low A), Hudson Valley Renegades (High A), Somerset Patriots (Double-A), and Scranton/Wilkes-Barre RailRiders (Triple-A), and the New York Yankees (MLB). *See New York Yankees Minor League Affiliates*, BASEBALL REFERENCE, <https://www.baseball-reference.com/register/affiliate.cgi?id=NYY> (last visited Apr. 7, 2023); *see also New York Yankees*, WIKIPEDIA, [https://en.wikipedia.org/wiki/New\\_York\\_Yankees#Minor\\_league\\_affiliations](https://en.wikipedia.org/wiki/New_York_Yankees#Minor_league_affiliations) (last visited Apr. 7, 2023).

18. *Rule 4 Draft*, MAJOR LEAGUE BASEBALL, <https://www.mlb.com/glossary/transactions/rule-4-draft> (last visited Apr. 7, 2023). Rather than entering the MLB through a draft, international players become eligible to sign with Major League organizations through free agency at age sixteen. *See Matt Eddy, Numbers Game: Age Isn't Everything on the International Market*, BASEBALL AM. (May 11, 2018), <https://www.baseballamerica.com/stories/numbers-game-age-isn-t-everything-on-the-international-market/>; Gabe Lacques, *Baseball Is Back: MLB, Players Agree on New CBA to Salvage 162-Game 2022 Season*, USA TODAY, <https://www.usatoday.com/story/sports/mlb/2022/03/10/mlb-lockout-2022-season-players-owners-opening-day/9429523002/> (Mar. 10, 2022, 7:35 PM).

19. MAJOR LEAGUE BASEBALL, THE MAJOR LEAGUE RULES 38, 46–47 (2021), <https://registration.mlbp.org/pdf/majorleaguerules.pdf> [hereinafter THE MAJOR LEAGUE RULES].

20. *Id.* at 191; Joon Lee, *Can a Union Fix This? Minor Leaguers Say Poverty-Level Pay, Poor Housing Are Driving a 'Mental Health Crisis'*, ENT. & SPORTS PROGRAMMING NETWORK (Sept. 30, 2021), [https://www.espn.com/mlb/story/\\_id/32172108/can-union-fix-minor-leaguers-say-poverty-level-pay-poor-housing-driving-mental-health-crisis](https://www.espn.com/mlb/story/_id/32172108/can-union-fix-minor-leaguers-say-poverty-level-pay-poor-housing-driving-mental-health-crisis) [hereinafter *Can a Union Fix This?*].

21. THE MAJOR LEAGUE RULES, *supra* note 19, at 191.

MLB or MiLB team until they are released by the organization that drafted them.<sup>22</sup>

The UPC imposes year-round obligations, including a conditioning regimen and off-season baseball leagues; however, players only receive a salary during the playing season and are uncompensated during the remainder of the year.<sup>23</sup> The official minor league playing season lasts approximately five months,<sup>24</sup> starting in April and ending in September.<sup>25</sup> Both minor and major leaguers are required to report to spring training by the first day of March.<sup>26</sup> However, despite having the same responsibilities and working from dawn to dusk,<sup>27</sup> minor leaguers play without getting paid.<sup>28</sup> In addition to players having contractual obligations year round, MiLB teams continue to operate the business for all twelve months of the year; therefore, “[b]aseball playing seasons are seasonal, but baseball organizations are not.”<sup>29</sup>

The path to the highest professional level is slower and less financially advantageous in baseball than it is in other sports.<sup>30</sup> In football, basketball, and sometimes hockey, draftees expect

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22. See *id.* at 39.

23. *Id.* at 192.

24. Zachary D. Rymer, *MLB Must Finally Answer for Exploitation in the Minor Leagues*, BLEACHER REP. (Feb. 12, 2014), <https://bleacherreport.com/articles/1957838-mlb-must-finally-answer-for-exploitation-in-the-minor-leagues>.

25. Sam Dykstra, *Toolshed: 2021 Minor League Schedule Quirks*, MINOR LEAGUE BASEBALL (Feb. 19, 2021), <https://www.milb.com/news/toolshed-2021-minor-league-schedule-quirks>.

26. See *Spring Training*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Spring\\_training](https://en.wikipedia.org/wiki/Spring_training) (last visited Apr. 7, 2023). Spring training is “a series of practices and exhibition games preceding the start of the regular season.” *Id.*

27. See *We Are Making Pennies*, *supra* note 7 (quoting a former minor league player who claimed that players are required to work from “6 a.m. to 6 p.m.” without getting paid during spring training).

28. Pat Garofalo, *The MLB Makes Millions on Minor Leaguers. It Refuses to Pay Minimum Wage.*, TALK POVERTY (Feb. 14, 2019), <https://talkpoverty.org/2019/02/14/mlb-makes-millions-minor-leaguers-refuses-pay-minimum-wage/> (“Each year, every major league team has their minor league players report to spring training. Most fans don’t know those minor league players have to work 31 straight days for no pay.”).

29. John Brucker, Comment, *[Screw] America’s Pastime Act: The Mirage of SAPA & Minor League Baseball Wages*, 51 SETON HALL L. REV. 517, 523 (2020).

30. Jason Catania, *Players to Go Straight from MLB Draft to the Show*, MAJOR LEAGUE BASEBALL (Sept. 18, 2020), <https://www.mlb.com/news/players-who-went-directly-from-the-draft-to-mlb>.

to, and most often do, play at the highest professional level the following year, whereas baseball players do not expect to and almost never play at the highest level—the major leagues—the following year.<sup>31</sup> Despite the tens of thousands of players who have been drafted,<sup>32</sup> only twenty-three players have ever gone directly from the draft to the majors.<sup>33</sup> Most major league players spent four to six years in the minors before reaching the majors.<sup>34</sup> Only approximately 15% of drafted players make it to the big leagues after just three years.<sup>35</sup> More talented and developed players, such as college draftees, typically graduate faster to the MLB; however, they usually still spend years in the minors.<sup>36</sup> Generally, college drafted players spend four to five years in the minor leagues while players drafted out of high school play in the minors for five to six years.<sup>37</sup>

This slow path only applies to players who ever make it to the majors. Between 1981 and 2010, only 17.6% of the players who were drafted and signed eventually made it to the major leagues.<sup>38</sup> Players who are drafted in earlier rounds, and thus likely more talented, have a greater chance of making it to the majors.<sup>39</sup> In contrast, players drafted in the eleventh round or later in the forty-round draft have a 10% chance of one day being a major league player.<sup>40</sup> Therefore, despite honing their

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31. *Id.*

32. With thirty MLB organizations and forty rounds in the draft that began in 1965, approximately 67,200 players have been drafted. See *MLB Draft History*, BASEBALL ALMANAC, [https://www.baseball-almanac.com/draft/baseball\\_draft.shtml](https://www.baseball-almanac.com/draft/baseball_draft.shtml) (last visited Apr. 7, 2023).

33. Catania, *supra* note 30.

34. Cork Gaines, *Most Baseball Draft Picks Will Still Be in the Minors Four Years from Now*, BUS. INSIDER (June 7, 2013, 4:54 PM), <https://www.businessinsider.com/chart-how-long-it-takes-a-draft-pick-to-reach-major-league-baseball-2013-6>.

35. *Id.*

36. *We Are Making Pennies*, *supra* note 7; see also Catania, *supra* note 30 (explaining that Albert Pujols and Jacob DeGrom, two “of the biggest names and best players in baseball,” did not make the major leagues for years).

37. *We Are Making Pennies*, *supra* note 7.

38. J.J. Cooper, *How Many MLB Draftees Make It to the Majors*, BASEBALL AM. (May 17, 2019), <https://www.baseballamerica.com/stories/how-many-mlb-draftees-make-it-to-the-majors/>.

39. See *id.* (explaining that players drafted in the first two rounds are more likely to make it to the majors than not, but players drafted in subsequent rounds have drastically worse odds).

40. See *id.*



craft over many years to become an elite baseball player, it is still improbable that a minor league player will make it to the major leagues.

To be eligible for the NFL draft, a player must be at least three years out of high school and have finished their collegiate eligibility.<sup>41</sup> Basketball players must be at least one year removed from high school and at least nineteen years old to be eligible for the NBA draft.<sup>42</sup> Baseball players are eligible for the Rule 4 Draft as soon as they graduate high school; however, if a baseball player chooses to attend a four-year university, they become ineligible for the draft until they complete their junior year or turn twenty-one years old.<sup>43</sup>

Athletes in all three sports may choose to attend college before pursuing professional athletics.<sup>44</sup> The National Collegiate Athletic Association (NCAA) is the largest athletic association and is represented at over 1,100 colleges and junior colleges.<sup>45</sup> The NCAA is divided into three divisions “based on the size of the institution, the level of competition, and the funding of the athletic program.”<sup>46</sup> Division I schools are often large and well-funded, allowing them to award many athletic scholarships.<sup>47</sup> In contrast, Division III schools are not allowed to give out any athletic scholarships.<sup>48</sup>

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41. Jeremy Mallari, *NFL Draft Eligibility Explained*, FRANCHISE SPORTS, <https://franchise.sports.co.uk/nfl-draft-eligibility-explained/> (last visited Apr. 7, 2023). Players are eligible for four playing seasons, which can be completed over five calendar years. *Am I Too Old to Play College Sports?*, ATHNET, <https://www.athleticscholarships.net/question/am-i-too-old-to-play-college-sports> (last visited Apr. 7, 2023).

42. John Holden, *Do Star Athletes Who Want to Play for the NBA Really Need College? What LaMelo Ball Got Right – and Wrong – About Why They Don’t*, THE CONVERSATION (Aug. 26, 2021, 8:16 AM), <https://theconversation.com/do-star-athletes-who-want-to-play-for-the-nba-really-need-college-what-lamelo-ball-got-right-and-wrong-about-why-they-dont-166636>.

43. *Rule 4 Draft*, *supra* note 18.

44. *See id.*; Mallari, *supra* note 41; Holden, *supra* note 42.

45. *See The Different Levels of Collegiate Competition*, STUDENT CAFFÉ, <http://studentcaffe.com/enrich/collegiate-sports/levels-of-competition> (Feb. 2019).

46. *Id.*

47. *Id.*

48. *Id.*

The NCAA divides athletic scholarships into two categories: “head count” sports and “equivalency” sports.<sup>49</sup> All scholarships for head count sports are full scholarships whereas scholarships for equivalency sports may be divided to give more students partial scholarships.<sup>50</sup> As a head count sport, each Division I basketball team may give out a maximum of thirteen full scholarships, and each team has sixteen players on average.<sup>51</sup> NCAA Division I football teams are divided into the Football Bowl Subdivision (FBS) and the Football Championship Subdivision (FCS).<sup>52</sup> The FBS is comprised of head count teams whereas the FCS is comprised of equivalency teams.<sup>53</sup> As such, FBS teams give out full scholarships to eighty-five players, and each team has 118 players on average.<sup>54</sup> In contrast, FCS teams may give out sixty-three full scholarships or spread that money around to give partial scholarships to more players on their average 104-player roster.<sup>55</sup> Similarly, as an equivalency sport, Division I baseball teams can give out 11.7 full scholarships that may be divided amongst the players on the team; however, only twenty-seven out of the thirty-five players on the team may receive a scholarship, and each scholarship must be worth at least 25% of a full scholarship.<sup>56</sup> That being said, some universities—including all teams playing in the Ivy League and Patriot

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49. *Athletic Scholarships: Head Count Versus Equivalency*, NEXT COLL. STUDENT ATHLETE, <https://www.ncsasports.org/blog/2009/09/22/athletic-scholarships-head-count-versus-equivalency/> (last visited Apr. 7, 2023).

50. *Id.*; see *Your Guide to the Complex World of Football Scholarships*, NEXT COLL. STUDENT ATHLETE, <https://www.ncsasports.org/football/scholarships> (last visited Apr. 7, 2023) [hereinafter *Football Scholarship Guide*].

51. See *A Guide to College Basketball Scholarships for High School Students*, NEXT COLL. STUDENT ATHLETE, <https://www.ncsasports.org/mens-basketball/scholarships> (last visited Apr. 7, 2023).

52. Patrick Pinak, *College Football Trivia: What Does ‘FBS’ and ‘FCS’ Actually Mean?*, FANBUZZ (July 29, 2022), <https://fanbuzz.com/college-football/what-does-fbs-stand-for/>.

53. See *Football Scholarship Guide*, *supra* note 50.

54. *Id.*

55. *Id.*

56. *How Baseball Scholarships Really Work*, NEXT COLL. STUDENT ATHLETE, <https://www.ncsasports.org/baseball/scholarships> (last visited Apr. 7, 2023).

League<sup>57</sup>—choose not to give any scholarships to baseball players, even though it is allowed by the NCAA.<sup>58</sup> Therefore, approximately 81% of basketball players and 72% of FBS players receive full scholarships while 61% of FCS players and 33% of baseball players may receive full scholarships.<sup>59</sup> Consequently, a high school student athlete with potential in both football and baseball will likely receive more scholarship money for football than baseball. Financial considerations are not unique to playing at the college level; two areas of law, antitrust law and employment law, have ensured that MLB organizations can pay minor league players poverty wages.

### B. Legal History

This Section explains how antitrust law and employment law impact the treatment of Minor League Baseball players. The Sherman Antitrust Act (Sherman Act), the Clayton Antitrust Act (Clayton Act), and the Federal Trade Commission Act are federal laws that prevent anti-competitive business practices.<sup>60</sup> In 1922, in *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*, the Supreme Court

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57. The Ivy League and Patriot League are subsets, or conferences, of Division I sports. See *About the Ivy League*, IVY LEAGUE, [https://ivyleague.com/sports/2017/8/13/HISTORY\\_0813173057.aspx](https://ivyleague.com/sports/2017/8/13/HISTORY_0813173057.aspx) (last visited Apr. 7, 2023); “Who We Are” – *About the Patriot League*, PATRIOT LEAGUE, <https://patriotleague.org/sports/2016/6/13/school-bio-patr-school-bio-aboutpl.html.aspx> (last visited Apr. 7, 2023). The Ivy League includes Brown, Columbia, Cornell, Dartmouth, Harvard, Penn, Princeton, and Yale. *About the Ivy League*, *supra*. The Patriot League includes American, Army West Point, Boston University, Bucknell, Colgate, Holy Cross, Lafayette, Lehigh, Loyola Maryland, and Navy. “Who We Are” – *About the Patriot League*, *supra*.

58. *How Baseball Scholarships Really Work*, *supra* note 56.

59. See *supra* notes 50–56 and accompanying text. All four percentages were calculated based on the average number of players on their respective teams. The FCS and baseball calculations assume that all scholarships are full scholarships; therefore, these percentages represent the highest possible percentage of players receiving full scholarships. The baseball percentage is only accurate for universities that award athletic scholarships to baseball players. For players the Ivy and Patriot Leagues, the percentage drops to zero.

60. See *The Antitrust Laws*, FED. TRADE COMM’N, <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/antitrust-laws> (last visited Apr. 7, 2023) [hereinafter *The Antitrust Laws*, FED. TRADE COMM’N].

exempted professional baseball from those antitrust laws.<sup>61</sup> Later, in 1997, Congress expressly repealed the judicially created antitrust exemption for interactions between organized baseball and major league players, but the law—the Curt Flood Act—expressly retained the exemption for interactions with minor league players.<sup>62</sup> More recently, in 2021, the Supreme Court spoke negatively of the antitrust exemption in *NCAA v. Alston*.<sup>63</sup> In 2022, the Senate expressed interest in potentially overturning the exemption.<sup>64</sup>

Independently, the Fair Labor Standards Act protects workers by establishing the federal minimum wage and requiring overtime compensation.<sup>65</sup> In 2018, the Save America's Pastime Act exempted professional baseball from the overtime requirements by declaring that Minor League Baseball players are seasonal workers within the Act's Seasonal Exemption.<sup>66</sup>

### 1. *Antitrust statutes and judicial action*

Federal antitrust laws protect consumers by prohibiting business practices that inhibit a free and competitive

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61. See *Fed. Baseball Club of Balt., Inc. v. Nat'l League of Pro. Baseball Clubs*, 259 U.S. 200, 207–09 (1922).

62. Curt Flood Act, Pub. L. No. 105-297, §§ 2–3, 112 Stat. 2824, 2824–26 (1998).

63. *NCAA v. Alston*, 141 S. Ct. 2141, 2159 (2021).

64. Save American Baseball Act, S. 3833, 117th Cong. (2d Sess. 2022); see also Joon Lee, *Senate Judiciary Committee Questions Legality of Major League Baseball's Antitrust Exemption*, ENT. & SPORTS PROGRAMMING NETWORK (June 28, 2022), [https://www.espn.com/mlb/story/\\_/id/34161128/senate-judiciary-committee-questions-legality-major-league-baseball-antitrust-exemption](https://www.espn.com/mlb/story/_/id/34161128/senate-judiciary-committee-questions-legality-major-league-baseball-antitrust-exemption) [hereinafter *Senate Judiciary Committee Questions Legality of MLB's Antitrust Exemption*]; Joon Lee, *Senate Judiciary Committee Asks MLB to Explain Potential Impact of Stripping Away League's Antitrust Exemption on the Minor Leagues*, ENT. & SPORTS PROGRAMMING NETWORK (July 18, 2022), [https://www.espn.com/mlb/story/\\_/id/34264833/senate-judiciary-committee-asks-mlb-explain-potential-impact-stripping-away-league-antitrust-exemption-minor-leagues](https://www.espn.com/mlb/story/_/id/34264833/senate-judiciary-committee-asks-mlb-explain-potential-impact-stripping-away-league-antitrust-exemption-minor-leagues) [hereinafter *Senate Judiciary Committee Asks MLB to Explain Potential Impact*]; Joon Lee, *Without Antitrust Exemption, MLB's Ability to Govern Working Conditions for Minor Leaguers 'May Not be Possible,' Says Rob Manfred*, ENT. & SPORTS PROGRAMMING NETWORK (July 29, 2022), [https://www.espn.com/mlb/story/\\_/id/34312433/mlb-ability-govern-working-conditions-minor-leaguers-not-possible-says-rob-manfred](https://www.espn.com/mlb/story/_/id/34312433/mlb-ability-govern-working-conditions-minor-leaguers-not-possible-says-rob-manfred) [hereinafter *Without Antitrust Exemption*].

65. See Fair Labor Standards Act, 29 U.S.C. §§ 206–07.

66. See Consolidated Appropriations Act of 2018, Pub. L. No. 115-141, § 201(a), 132 Stat. 1126, 1126–27 (2018).

marketplace.<sup>67</sup> Federal antitrust law is governed by three statutes: the Sherman Act, the Clayton Act, and the Federal Trade Commission Act.<sup>68</sup>

The first federal antitrust law, the Sherman Act, was enacted in 1890.<sup>69</sup> Section 1 of the Sherman Act prohibits “[e]very contract, combination . . . or conspiracy in restraint of trade or [interstate] commerce.”<sup>70</sup> In other terms, “to establish a violation of Section 1 of the Sherman Act, [there must be] (1) an agreement (2) affecting interstate commerce (3) that unreasonably restrains trade.”<sup>71</sup> Courts assess potential violations under Section 1 as either *per se* violations or violations of the rule of reason.<sup>72</sup> If the allegations of a *per se* violation are shown to be true, the court does not need to show that the actors *actually* restrained trade.<sup>73</sup> Activities that constitute *per se* violations include price fixing, market allocation, bid rigging, group boycotts, and tying arrangements.<sup>74</sup> For all other

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67. See James Chen, *Understanding Antitrust Laws*, INVESTOPEDIA (May 2, 2022), <https://www.investopedia.com/ask/answers/09/antitrust-law.asp>.

68. See *The Antitrust Laws*, FED. TRADE COMM’N, *supra* note 60.

69. *Id.*

70. Sherman Antitrust Act, 15 U.S.C. § 1.

71. *United States v. Blue Cross Blue Shield of Mich.*, 809 F. Supp. 2d 665, 671 (E.D. Mich. 2011). Generally, small restraints on trade, such as two individuals forming a partnership, are reasonable while larger acts that are inherently harmful to competition, such as bid rigging, are unreasonable. See *The Antitrust Laws*, FED. TRADE COMM’N, *supra* note 60; *Identifying Sherman Act Violations*, U.S. DEP’T. JUST. ARCHIVES, <https://www.justice.gov/archives/jm/antitrust-resource-manual-2-antitrust-division-field-offices> (Feb. 20, 2020). Bid rigging is “[t]he illegal practice between two or more parties who collude to choose who will win a contract . . . . When making bids, the ‘losing’ parties will purposely make lower bids in order to allow the ‘winner’ to succeed in securing the deal.” Chen, *supra* note 67.

72. See, e.g., *Standard Oil Co. v. United States*, 221 U.S. 1, 50–51, 64–66 (1911) (determining whether the Sherman Act was violated under the rule of reason); *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 218 (1940) (assessing whether the alleged anticompetitive practices were *per se* unlawful); see also *Antitrust Laws*, CORNELL L. SCH.: LEGAL INFO. INST., [https://www.law.cornell.edu/wex/antitrust\\_laws](https://www.law.cornell.edu/wex/antitrust_laws) (June 2022) [hereinafter *Antitrust Laws*, CORNELL].

73. See *Socony-Vacuum Oil Co.*, 310 U.S. at 218; see, e.g., *N. Pac. Ry. Co. v. United States*, 356 U.S. 1, 5 (1958) (stating that the *per se* test “avoids the necessity for an . . . investigation into the entire history of the industry involved, as well as related industries”).

74. See *Antitrust Standards of Review: The Per Se, Rule of Reason, and Quick Look Tests*, BONALAW P.C., <https://www.bonalaw.com/insights/legal-resources/antitrust-standards-of-review-the-per-se-rule-of-reason-and-quick-look-tests> (last visited Apr. 7, 2023).

potential violations, courts apply the rule of reason, which is a totality of the circumstances test.<sup>75</sup> This test asks whether, in totality, “the challenged practice promotes or suppresses market competition.”<sup>76</sup>

Section 2 of the Sherman Act prohibits monopolization, attempted monopolization, and conspiracies to monopolize any part of trade or interstate commerce.<sup>77</sup> In other terms, to establish a violation of Section 2 of the Sherman Act, there must be (1) monopoly power and (2) “the willful acquisition or maintenance of that power.”<sup>78</sup> Therefore, Section 1 prohibits multiple market participants from acting in concert to restrain trade whereas Section 2 prohibits one actor from using market dominance to restrain trade.<sup>79</sup>

Congress then enacted the Clayton Act in 1914, which clarified federal antitrust law by defining “unethical business practices.”<sup>80</sup> Where the Sherman Act is somewhat vague and theoretical about what constitutes anticompetitive behavior,<sup>81</sup> the Clayton Act expressly prohibits certain behaviors such as price discrimination and exclusive dealing.<sup>82</sup>

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75. *Standard Oil Co.*, 221 U.S. at 66; see also *Antitrust Laws*, CORNELL, *supra* note 72.

76. *Antitrust Laws*, CORNELL, *supra* note 72; see, e.g., *NCAA v. Board of Regents of the Univ. of Okla.*, 468 U.S. 85, 103–08, 113, 117–20 (1984) (finding the NCAA violated the Sherman Act under the rule of reason by restricting the number of football games universities could televise).

77. Sherman Antitrust Act, 15 U.S.C. § 2.

78. *Competition and Monopoly: Single-Firm Conduct Under Section 2 of the Sherman Act: Chapter 1*, U.S. DEP’T OF JUST. ARCHIVES, <https://www.justice.gov/archives/atr/competition-and-monopoly-single-firm-conduct-under-section-2-sherman-act-chapter-1> (Mar. 18, 2022) (citing *United States v. Grinnell Corp.*, 384 U.S. 563, 570–71 (1966)).

79. See 15 U.S.C. §§ 1–2.

80. Troy Segal, *Clayton Antitrust Act of 1914: History, Amendments, Significance*, INVESTOPEDIA, <https://www.investopedia.com/terms/c/clayton-antitrust-act.asp> (Aug. 30, 2022).

81. See 15 U.S.C. § 1 (“Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal.”).

82. See Clayton Antitrust Act § 3, 15 U.S.C. § 14. “Price discrimination is a competitive pricing strategy . . . [that] involves the use of different prices charged to various customers for the same product or service.” Melissa Horton, *3 Degrees of Price Discrimination*, INVESTOPEDIA, <https://www.investopedia.com/ask/answers/042415/what-are-different-types-price-discrimination-and-how-are-they-used.asp> (July 30, 2021). An exclusive dealing arrangement is

The Federal Trade Commission Act, also enacted in 1914, prohibits “unfair or deceptive acts or practices” that impact commerce.<sup>83</sup> This Act also created the Federal Trade Commission (FTC), which enforces civil violations of federal antitrust laws.<sup>84</sup> Although the FTC does not enforce the Sherman Act, the FTC can bring cases that allege essentially any of the same violations of the Sherman Act because all violations of the Sherman Act are also violations of the FTC Act.<sup>85</sup>

Whether federal antitrust laws apply to professional baseball was first addressed in *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*.<sup>86</sup> In this case, Federal Baseball Club of Baltimore, one professional baseball organization, alleged that National League of Professional Baseball Clubs, another professional baseball organization, conspired to monopolize the baseball business by acquiring a competing league’s constituent clubs.<sup>87</sup> Under the Sherman Act, any attempt to monopolize any aspect of interstate commerce is a felony.<sup>88</sup> The district court found that National League violated the Sherman Act and awarded Federal Baseball treble damages.<sup>89</sup> The Court of Appeals for the District of Columbia Circuit reversed, concluding that National League was not engaged in the restriction of trade because the game of baseball

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a “contract[] in which a seller agrees to sell all or a substantial portion of their products or services to a particular buyer” or vice versa. *Exclusive Dealing Arrangement*, CORNELL L. SCH.: LEGAL INFO. INST., [https://www.law.cornell.edu/wex/exclusive\\_dealing\\_arrangement](https://www.law.cornell.edu/wex/exclusive_dealing_arrangement) (Oct. 2022).

83. See Federal Trade Commission Act § 20, 15 U.S.C. § 57b-1.

84. *Id.* § 1; see Adam Hayes, *Federal Trade Commission (FTC): What It Is and What It Does*, INVESTOPEDIA, <https://www.investopedia.com/terms/f/ftc.asp> (Apr. 21, 2022). The Department of Justice enforces *criminal* violations of federal antitrust laws. See *U.S. Department of Justice Antitrust Division*, GIBBS L. GRP., <https://www.classlawgroup.com/antitrust/federal-laws/department-of-justice/> (last visited Apr. 7, 2023).

85. *The Antitrust Laws*, FED. TRADE COMM’N, *supra* note 60.

86. See *Fed. Baseball Club of Balt., Inc. v. Nat’l League of Pro. Baseball Clubs*, 259 U.S. 200, 207 (1922).

87. *Id.*

88. Sherman Antitrust Act, 15 U.S.C. § 2.

89. *Nat’l League of Pro. Baseball Clubs v. Fed. Baseball Club of Balt., Inc.*, 269 F. 681, 682 (D.C. Cir. 1920).

does not constitute trade.<sup>90</sup> The appellate court reasoned that the baseball games themselves are completely intrastate and the travel between states to get to and from games is simply incidental and thus not indicative of interstate commerce.<sup>91</sup> The Supreme Court affirmed the decision of the Court of Appeals, finding that the business of baseball does not constitute interstate commerce.<sup>92</sup> Rather, the Court found that the inducement of “free persons to cross state lines” to play in and witness baseball exhibitions does not “change the character of the business,” which is a “purely state affair[.]”<sup>93</sup>

The judicially created antitrust exemption for professional baseball was first challenged in 1952 in *Toolson v. New York Yankees*.<sup>94</sup> The Court reaffirmed the precedent set in *Federal Baseball* and stated that any “evils in this field which . . . warrant application . . . of the antitrust laws . . . should be [addressed] by legislation.”<sup>95</sup> The Court was persuaded that Congress’ inaction for thirty years between the ruling in *Federal Baseball* and the challenge before the court indicated Congress’ intent for the exemption to stand.<sup>96</sup> In contrast, Justice Burton’s dissent challenged the holding as well as the precedent that professional baseball does not fall within interstate commerce.<sup>97</sup> He argued that organized baseball is in fact engaged in interstate commerce, and thus beholden to the Sherman Act, because baseball utilizes various activities that cross state lines, including radio, television, recruiting and player contracts,

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90. *See id.* at 684–85, 688.

91. *See id.* at 684–85.

The business . . . was the giving of exhibitions of baseball. A game of baseball is not susceptible of being transferred. The players, it is true, travel from place to place in interstate commerce, but they are not the game. . . . It is local in its beginning and in its end. Nothing is transferred [and therefore] . . . the game effects no exchange of things according to the meaning of “trade and commerce.”

*Id.*

92. *Fed. Baseball*, 259 U.S. at 208–09.

93. *Id.*

94. *Toolson v. New York Yankees*, 346 U.S. 356, 356–57 (1953).

95. *Id.* at 357.

96. *Id.*

97. *Id.* (Burton, J., dissenting).



traveling, and purchasing supplies.<sup>98</sup> Although the majority concluded that Congress' inaction manifested its intent,<sup>99</sup> Justice Burton reasoned the opposite: because Congress has not enacted an "express exemption of organized baseball from the Sherman Act," its intent to provide organized baseball with that exemption is not apparent.<sup>100</sup>

The Supreme Court returned to the issue in *Flood v. Kuhn* a half-century after deciding *Federal Baseball*.<sup>101</sup> In *Flood*, the Court upheld the exemption under the same justification as it had in *Toolson*,<sup>102</sup> even though the Court expressly stated that "[p]rofessional baseball is a business and it is engaged in interstate commerce," making the reserve system an "anomaly" for being exempted from federal antitrust laws.<sup>103</sup> Despite the logical conclusion that antitrust laws should apply to professional baseball, the Court ruled that the anomaly was too well established by *Federal Baseball* and *Toolson* to overturn precedent.<sup>104</sup> The Court regarded the lack of legislation since *Toolson* not as "mere congressional silence and passivity" but as Congress' intent not to "subject baseball's reserve system to the reach of the antitrust statutes," which the Court should not disregard.<sup>105</sup> The Court concluded that if baseball's antitrust exemption were to be removed, it must be through a legislative action, not a judicial one.<sup>106</sup> As a result of this line of cases, the MLB and MLB organizations can employ anticompetitive practices that would be illegal in any other industry.

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98. *See id.* at 357–58.

99. *Id.* at 357 (majority opinion).

100. *See id.* at 364 (Burton, J., dissenting).

101. *See Flood v. Kuhn*, 407 U.S. 258, 259 (1972).

102. *See id.* at 284–85; *see also Toolson*, 346 U.S. at 357.

103. *Flood*, 407 U.S. at 282.

104. *See id.*

105. *Id.* at 283.

106. *Id.* at 284.

## 2. *The Curt Flood Act*

Following the Supreme Court's decision in *Flood*, Congress altered the professional baseball antitrust exemption for the first and only time through the passage of the Curt Flood Act (CFA) in 1998.<sup>107</sup> The CFA amended the Clayton Act by adding a section that made antitrust laws applicable to "baseball players . . . at the major league level."<sup>108</sup> Some argue that a broad interpretation of the CFA grants antitrust law protection for both MLB and MiLB players;<sup>109</sup> however, it is highly improbable that a court would agree with this interpretation given the clear language of the CFA.<sup>110</sup> The purpose section of the CFA makes it clear the CFA "does not change the application of the antitrust laws in any other context or with respect to any other person or entity" other than "major league baseball players . . . covered under the antitrust laws."<sup>111</sup> Section 3(b) of the CFA corroborates that purpose by explicitly stating that "[n]o court shall rely on the enactment of this [Act] as a basis for changing the application of the antitrust laws to" individuals playing "baseball at the minor league level."<sup>112</sup> Therefore, minor league players cannot challenge the UPC as an illegal restraint of trade under the Sherman Act even though major league players can challenge practices that are anticompetitive to their labor.<sup>113</sup>

## 3. *NCAA v. Alston*

In 2021, the Supreme Court discussed the professional baseball antitrust exemption yet again in *NCAA v. Alston*.<sup>114</sup> The

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107. See Curt Flood Act of 1998, Pub. L. No. 105-297, § 3(a), 112 Stat. 2824, 2824 (1998).

108. *Id.*

109. See Michael K. Hobbs, *Lifting the Antitrust Exemption Presents a Major Problem for Minor League Baseball*, 84 UMKCL. REV. 1059, 1068–69 (2016) ("In *Miranda*, Minor League players argue that the uniform player contracts should be subject to antitrust law because of a broad interpretation of the Curt Flood Act.").

110. See Curt Flood Act §§ 2–3.

111. See *id.* § 2.

112. *Id.* § 3(b)(1).

113. See *id.*

114. See *NCAA v. Alston*, 141 S. Ct. 2141, 2159–60 (2021).

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Court examined whether the NCAA should be awarded an antitrust exemption similar to professional baseball.<sup>115</sup> Despite the precedent set in *Federal Baseball*, the Court concluded that applying the Sherman Act is the default, not the exception.<sup>116</sup> In justifying this default application, Justice Gorsuch referred to professional baseball's exemption as "unrealistic," "inconsistent," and "aberration[al]."<sup>117</sup> Additionally, the Court cited an amicus brief from Advocates for Minor Leaguers that collected criticisms of professional baseball's antitrust exemption, focusing on the resulting mistreatment and poor conditions minor league players face.<sup>118</sup> This further indicates the Court's disapproval of the exemption.

Although the Court unanimously rejected an exemption for the NCAA, Justice Kavanaugh wrote separately to emphasize his distaste for price-fixing labor, which is a "textbook antitrust problem."<sup>119</sup> He criticized the business model, calling it "flatly illegal in almost any other industry in" the United States.<sup>120</sup>

All of the restaurants in a region cannot come together to cut cooks' wages on the theory that "customers prefer" to eat food from low-paid cooks. Law firms cannot conspire to cabin lawyers' salaries in the name of providing legal services out of a "love of the law." Hospitals cannot agree to cap nurses' income in order to create a "purer" form of helping the sick. News organizations cannot join forces to curtail pay to reporters to preserve a "tradition" of public-minded journalism. Movie studios cannot

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115. *See id.*

116. *See id.* at 2160.

117. *Id.* at 2159 (alteration in original) (quoting *Flood v. Kuhn*, 407 U.S. 258, 282 (1972)).

118. *See id.* (citing Brief for Advocates for Minor Leaguers as Amici Curiae Supporting Respondents, *NCAA v. Alston*, 141 S. Ct. 2141 (2021) (No. 20-512)).

119. *See id.* at 2167–68 (Kavanaugh, J., concurring).

120. *See id.* at 2167.

collude to slash benefits to camera crews to kindle a “spirit of amateurism” in Hollywood.<sup>121</sup>

As Justice Kavanaugh points out, baseball alone, for no apparent reason other than history, continues to enjoy the exemption that allows MLB organizations to utilize anticompetitive practices that contribute to the undercompensation of minor league players.

#### 4. *Congressional interest in the antitrust exemption*

On March 14, 2022, Senator Bernie Sanders introduced the Save American Baseball Act, which would repeal the antitrust exemption.<sup>122</sup> The bill was read twice and referred to the Senate Judiciary Committee.<sup>123</sup> In a bipartisan effort, the Senate Judiciary Committee took an interest in the antitrust exemption for professional baseball. On June 28, 2022, the Committee sent a letter to Advocates for Minor Leaguers requesting information about the effects of the exemption on players.<sup>124</sup> Following those responses, the Committee asked the Commissioner of Major League Baseball, Rob Manfred, to provide insight on how removing the exemption would impact professional baseball.<sup>125</sup> Senator Dick Durbin, one of the Senators who wrote the letter, said that Manfred’s response “raise[d] more questions than it answers” and reinforced the importance of examining the exemption.<sup>126</sup>

#### 5. *The Fair Labor Standards Act*

The Fair Labor Standards Act (FLSA) was enacted in 1938 with the purpose of eliminating “labor conditions detrimental to the . . . health, efficiency, and general wellbeing of workers

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121. *Id.*

122. Save American Baseball Act, S. 3833, 117th Cong. (2d Sess. 2022).

123. *Id.*

124. *Senate Judiciary Committee Questions Legality of MLB’s Antitrust Exemption*, *supra* note 64.

125. *Senate Judiciary Committee Asks MLB to Explain Potential Impact*, *supra* note 64.

126. *Without Antitrust Exemption*, *supra* note 64.

[engaged in interstate] commerce.”<sup>127</sup> To fulfill this purpose, the FLSA establishes the federal minimum wage,<sup>128</sup> which is currently \$7.25 per hour.<sup>129</sup> As such, employers must pay their employees at least \$7.25 per hour if they are engaged in commerce or the production of commerce.<sup>130</sup> Additionally, the FLSA establishes the forty-hour workweek.<sup>131</sup> After an employee meets the forty-hour threshold, their employer is required to compensate them with one and one half times the applicable pay rate for all hours beyond the threshold.<sup>132</sup>

The FLSA identifies certain occupations as exempt from the minimum wage requirements.<sup>133</sup> The current FLSA has a seasonal exemption stating that “any employee employed by an establishment which is an amusement or recreational establishment . . . [that] does not operate for more than seven months in any calendar year” is not subject to FLSA protections.<sup>134</sup> The FLSA’s Seasonal Exemption was initially intended to apply to concession stand workers at amusement parks and beaches because it was “designed to allow recreational facilities to employ young people on a seasonal basis.”<sup>135</sup> Nevertheless, Minor League Baseball may fall within this exemption because its playing season only lasts for five months during the spring and summer.<sup>136</sup>

The common law interpretation of the Seasonal Exemption has varied since the enactment of the FLSA. In *Jeffrey v. Sarasota White Sox*, the Eleventh Circuit allowed an MiLB team to utilize the Exemption because the nature of the business was playing baseball, which only took place during five months of the

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127. Fair Labor Standards Act, 29 U.S.C. § 202.

128. *Id.* § 206(a).

129. *Id.* § 206(a)(1)(C); see also *Federal Minimum Wage for 2021, 2022*, MINIMUM-WAGE.ORG, <https://www.minimum-wage.org/federal> (last visited Apr. 7, 2023).

130. 29 U.S.C. § 206(a).

131. *Id.* § 207(a)(1).

132. *Id.* § 207(b)(2).

133. *Id.* § 213(a).

134. See *id.* § 213(a)(3).

135. Brucker, *supra* note 29, at 522 (internal quotation marks omitted).

136. See *supra* notes 24–26 and accompanying text.

year.<sup>137</sup> However, in *Bridewell v. Cincinnati Reds*, the Sixth Circuit took a broader view of the organization's operations, finding that an MiLB team's off-season business practices made it non-seasonal and thus non-exempt.<sup>138</sup>

In 2014, in *Senne v. Office of the Commissioner of Baseball*, thousands of former minor leaguers from all thirty organizations sued Major League Baseball, the Commissioner of Baseball, and all thirty MLB teams.<sup>139</sup> The players alleged the defendants violated the FLSA by "failing to pay them a fair wage, overtime pay, and compensation for other required activities."<sup>140</sup> In response to the lawsuit, MLB increased its lobbying efforts by 300%, going from spending \$330,000 in 2015, to \$1.32 million in 2016 and 2017.<sup>141</sup>

#### 6. *The Save America's Pastime Act*

The Save America's Pastime Act (SAPA) was proposed in 2016 following the *Senne* lawsuit.<sup>142</sup> The original version of SAPA would have exempted minor league players from the

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137. See *Jeffrey v. Sarasota White Sox, Inc.*, 64 F.3d 590, 594, 596 (11th Cir. 1995).

138. *Bridewell v. Cincinnati Reds*, 155 F.3d 828, 829, 832 (6th Cir. 1998).

139. Mark Stanton, Comment, "*Juuuusst a Bit Outside*": A Look at Whether MLB Owners Can Justify Paying Minor Leaguers Below Minimum Wage Without Violating the Fair Labor Standards Act, 22 JEFFREY S. MOORAD SPORTS L.J. 727, 745-47 (2015); Alex Rahmanan, *Minor Leaguer's Fight for Fairer Wages Enters Final Innings: A Review of Senne V MLB*, LAWINSPOORT (Sept. 7, 2021), <https://www.lawinsport.com/topics/item/minor-leaguer-s-fight-for-fairer-wages-enters-final-innings-a-review-of-senne-v-mlb>.

140. See Rahmanan, *supra* note 139.

141. Phillip J. Closius & Joseph S. Stephan, *Myth, Manipulation, and Minor League Baseball: How a Capitalist Democracy Engenders Income Inequality*, 89 CIN. L. REV. 84, 99 (2020). In 2022, a \$185 million settlement was preliminarily settled after eight years of litigation. Lauren Berg, *MLB, Minor Leaguers Ink \$185M 'Starvation' Wage Deal*, LAW360 (July 15, 2022, 11:30 PM), <https://www.law360.com/classaction/articles/1512283/mlb-minor-leaguers-ink-185m-starvation-wage-deal>; Dorothy Atkins, *MLB, Minor Leaguers' \$185M Wage Deal Gets Initial OK*, LAW360 (Aug. 19, 2022, 4:42 PM), [https://www.law360.com/articles/1522835?e\\_id=ff063b9b-6986-43c4...e=engagement-alerts&utm\\_medium=email&utm\\_campaign=case\\_updates](https://www.law360.com/articles/1522835?e_id=ff063b9b-6986-43c4...e=engagement-alerts&utm_medium=email&utm_campaign=case_updates).

142. See Save America's Pastime Act, H.R. 5580, 114th Cong. (2016); see also Whitney McIntosh, *How Congress Screwed Over Minor League Baseball Players, Explained*, SB NATION (Mar. 23, 2018, 7:30 AM), <https://www.sbnation.com/mlb/2018/3/23/17152778/spending-bill-minor-league-baseball-explained-save-americas-pastime>.

FLSA's minimum wage and overtime pay requirements.<sup>143</sup> In response to public outcry following minor league players' opposition to the bill, Cheri Bustos, an original co-sponsor of the bill, withdrew her support one day later.<sup>144</sup> However, seemingly because of MLB's persistent lobbying efforts, Congress enacted a new version of SAPA two years later, burying the Act on page 1,967 of a 2,232-page omnibus bill with zero co-sponsors and no time for debate or amendments.<sup>145</sup>

This version of SAPA gave minor league players an inconsequential win: they must be paid the federal minimum wage, increasing their pay from \$1,100 per month to \$1,160 per month.<sup>146</sup> However, the Act exempted minor leaguers from the FLSA's overtime compensation requirements.<sup>147</sup> Because players work well over forty hours per week when accounting for time spent at the ballpark before, during, and after games, as well as other workouts and travel time, the majority of compensation that they miss out on is overtime pay, not minimum wage.<sup>148</sup>

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143. See H.R. 5580; see also Matthew Durham, *Minor League Compensation and the Save America's Pastime Act of 2018*, NEV. LAW., Aug. 2018, at 17, 18.

144. Ryan Fagan, *Sponsor of 'Save America's Pastime Act' Withdraws Support for Bill One Day Later*, SPORTING NEWS (June 30, 2016), <https://www.sportingnews.com/mlb/news/minor-league-save-americas-pastime-act-salaries-antitrust-rep-cheri-bustos-congress-support/9drbor8m7wj81v49166y7ztqv>.

145. See Consolidated Appropriations Act of 2018, Pub. L. No. 115-141, § 201(a), 132 Stat. 1126, 1126–27 (2018); Durham, *supra* note 143, at 18.

146. See Consolidated Appropriations Act § 201(a); McIntosh, *supra* note 142.

147. McIntosh, *supra* note 142; see Consolidated Appropriations Act § 201(a).

148. See McIntosh, *supra* note 142. According to the plaintiffs in *Senne*, players work eight hours per day for, on average, six or seven days per week during the season. Stanton, *supra* note 139, at 747 (citing Complaint para. 110, *Senne v. Off. of the Comm'r of Baseball*, No. 3:14-cv-00608 (JCS), 2014 WL 545501 (N.D. Cal. Feb. 7, 2014) [hereinafter *Senne* Complaint]). Between the 48–56 hours spent at the ballpark on game days and time spent traveling, packing, and unpacking, the plaintiffs believed they were entitled to “significant overtime hours.” *Id.* (citing *Senne* Complaint paras. 110, 113–14, 116, *supra*).

### C. *The Economics of Professional Baseball*

With a record MLB-wide revenue of \$10.8 billion in 2022, Major League Baseball is thriving.<sup>149</sup> Revenue is expected to continue to increase at “a 19% annual average . . . through 2028.”<sup>150</sup> According to Forbes’ 2023 MLB valuations, individual franchises are worth between \$1 billion and \$7.1 billion,<sup>151</sup> and the average value of an MLB team is at an all-time high of \$2.3 billion.<sup>152</sup> Minor league teams are worth “anywhere from \$3 [million to] \$25 million,”<sup>153</sup> indicating that minor league teams are not the poverty franchises MLB organizations claim.

Prior to the 2021 season, minor league players earned between \$6,090 and \$10,542, depending on the level they played at.<sup>154</sup> Although MLB touted minor league salary increases between 38% and 72% for the 2021 season, all players were still earning less than \$15,000 for the entire year, including off-season duties, such as workouts, spring training, and winter leagues.<sup>155</sup> Due to SAPA, this compensation is based on a forty-hour workweek despite minor league players working

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149. See R.J. Anderson, *MLB Sets New Record for League Revenue in 2022, Pulling in Estimated \$10.8 Billion*, CBS SPORTS (Jan. 11, 2023, 12:07 PM), <https://www.cbssports.com/mlb/news/mlb-sets-new-record-for-league-revenue-in-2022-pulling-in-estimated-10-8-billion-per-report/>.

150. Mike Ozanian, *Baseball’s Most Valuable Teams 2021: New York Yankees on Top at \$5.25 Billion*, FORBES (Mar. 26, 2021, 5:12 PM), <https://www.forbes.com/sites/mikeozanian/2021/03/26/baseballs-most-valuable-teams-new-york-yankees-on-top-at-525-billion/>.

151. *The Business of Baseball*, FORBES, <https://www.forbes.com/mlb-valuations/list/> (last visited Apr. 7, 2023).

152. Compare *The Business of Baseball*, *supra* note 151 (listing the valuations of all thirty teams, which average out to \$ 2.318 billion), with Steven Taranto, *Average MLB Team Now Valued at Record \$2.07 Billion After New Collective Bargaining Agreement*, CBS SPORTS (Mar. 24, 2022, 4:59 PM), <https://www.cbssports.com/mlb/news/average-mlb-team-now-valued-at-record-2-07-billion-after-new-collective-bargaining-agreement/> (stating that the average value of MLB teams was at an all-time high of \$2.07 billion in 2022).

153. *Frequently Asked Questions | The Business of MiLB*, MINOR LEAGUE BASEBALL, <https://www.milb.com/about/faqs-business> (last visited Apr. 7, 2023).

154. See Ryan Fagan, *Even After Overdue Salary Bump, Baseball’s Minor Leaguers Still Paid Far Below NBA, NHL Counterparts*, SPORTING NEWS (Feb. 12, 2021), <https://www.sportingnews.com/us/mlb/news/even-after-overdue-salary-bump-baseballs-minor-leaguers-still-paid-far-below-nba-nhl-counterparts/1gpql94asy7a10uo5nvc3yp4k> [hereinafter *Even After Overdue Salary Bump*].

155. *Id.*



seventy hours per week.<sup>156</sup> In 2021, the federal poverty line for a one-person household was \$12,880 per year.<sup>157</sup> Only players at the highest minor league level, Triple-A, exceeded this federal poverty threshold by earning \$14,700.<sup>158</sup> The minimum salary for a minor league player, at any level, did not meet the poverty threshold for a player supporting a spouse or children.<sup>159</sup> Despite the poverty threshold being set at \$12,880 per year, the MIT Living Wage Calculator estimated that an individual could not meet their basic needs earning less than \$26,225 per year anywhere in the United States.<sup>160</sup>

In April of 2023, MLB and the new union for minor league players ratified a collective bargaining agreement for the 2023 through 2027 seasons.<sup>161</sup> Per the agreement, minor league players' salaries increased by at least double at every level.<sup>162</sup> For the 2023 and 2024 seasons, players will earn between \$19,800 and \$35,800 for the entire year.<sup>163</sup> These increases are an important step in the right direction, but they are not sufficient. According to the MIT Living Wage Calculator's 2023 findings, only single players at the Triple-A level near the average living wage threshold whereas players at the Single-A or Double-A

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156. Garofalo, *supra* note 28 (quoting a former minor leaguer claiming that he worked seventy hours each week); Durham, *supra* note 143 (“[P]layers often work between 60 and 70 hours per week.”); Stanton, *supra* note 139, at 747 (citing *Senne* Complaint paras. 110, 113, 114, 116, *supra* note 148) (describing minor leaguers' claims of working “significant overtime” when considering the 48–56 hours at the ballpark and the time for traveling, packing, and unpacking).

157. Annual Update of the HHS Poverty Guidelines, 86 Fed. Reg. 7732, 7733 (Feb. 1, 2021). Alaska and Hawai'i are the only exceptions to this threshold. *Id.*

158. *See id.*; *Even After Overdue Salary Bump*, *supra* note 154.

159. *See Even After Overdue Salary Bump*, *supra* note 154; Annual Update of the HHS Poverty Guidelines, 86 Fed. Reg. at 7733.

160. Annual Update of the HHS Poverty Guidelines, 86 Fed. Reg. at 7733; *Can a Union Fix This?*, *supra* note 20.

161. *See* Evan Drellich, *Guide to Minor League Baseball's First CBA: Everything You Need to Know*, THE ATHLETIC (Apr. 3, 2023), <https://theathletic.com/4377736/2023/04/03/minor-league-baseball-cba-union/>; *infra* Part III (explaining collective bargaining agreements and the minor league union).

162. *Id.*

163. *Id.*

level do not come close.<sup>164</sup> Players with children at any minor league level do not meet the average living wage.<sup>165</sup>

When a UPC is executed, most players receive a signing bonus, which can help players support themselves through the minor league; however, signing bonuses vary drastically, and the majority of players do not sign for a significant amount of money.<sup>166</sup> In the 2012 draft, less than 10% of players received signing bonuses of \$400,000 or greater.<sup>167</sup> In contrast, 60% of players received \$100,000 or less; specifically, 21% received \$1,000 or less, 14% received between \$1,000 and \$5,000, and 5% received between \$5,000 and \$10,000.<sup>168</sup> Even when a player receives a substantial amount, agent fees and taxes can reduce that amount drastically.<sup>169</sup> For most players, the signing bonus cannot support them for even one year in the minor leagues, let alone the multiple years it takes to reach the majors.<sup>170</sup>

During the season, some players seek part-time work—such as driving for Uber, Lyft, or DoorDash—to supplement their inadequate weekly pay;<sup>171</sup> however, due to the limited off-hours players have aside from games, workouts, and traveling, part-time work is likely implausible and insufficient. While players' in-season compensation is inadequate, their complete lack of compensation for mandatory training during the off-season is more troubling, as players must find ways to make ends meet.<sup>172</sup> During the off-season, one player, Donnie Sellers,

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164. Amy K. Glasmeier, *New Data Posted: 2023 Living Wage Calculator*, MASS. INST. OF TECH. LIVING WAGE CALCULATOR (Feb. 1, 2023), <https://livingwage.mit.edu/articles/103-new-data-posted-2023-living-wage-calculator>; Drellich, *supra* note 161.

165. Glasmeier, *supra* note 164; Drellich, *supra* note 161.

166. *Can a Union Fix This?*, *supra* note 20.

167. *Id.*

168. *Id.*

169. *See, e.g., id.* (noting that although a player had a signing bonus of \$400,000, his take-home amount after fees and taxes was about \$250,000).

170. *See* Ben Badler, *Data Shows Most Players Don't Get Big Bonuses*, BASEBALL AM. (Oct. 7, 2016), <https://www.baseballamerica.com/stories/data-shows-most-players-don-t-get-big-bonuses/>.

171. Brucker, *supra* note 29, at 532–33.

172. *We Are Making Pennies*, *supra* note 7 (detailing the experiences of more than twenty minor leaguers who have struggled to make ends meet).

works full-time on weekdays loading car parts at a warehouse.<sup>173</sup> On weekends, he works washing tractor-trailers with his brother.<sup>174</sup> After working all day, every day, he lifts weights and pitches for several hours.<sup>175</sup> Other players' off-season work includes construction, moving furniture, UPS, washing dishes, coaching youth baseball, and working at gyms.<sup>176</sup> Although these additional jobs provide economic benefits, they can also have detrimental effects on their baseball careers if they get injured.<sup>177</sup> Players have even gone into debt to pay for their off-season expenses before they start receiving paychecks again.<sup>178</sup> With underwhelming compensation for the significant amount of time worked, external financial support is essentially a prerequisite to surviving in the minor leagues.<sup>179</sup>

#### D. *The Color Line and Racial Baseball Demographics*

The first professional baseball team, the Cincinnati Red Stockings, was created in 1869.<sup>180</sup> The first Major League, the National League, was formed in 1876.<sup>181</sup> Throughout the 1800s, Black players played on Black professional and amateur teams, but “[r]eflecting American society in general, . . . baseball remained largely segregated.”<sup>182</sup> In July of 1887, the International League banned future contracts with Black

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173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

177. *See id.*

178. *See* Connor Letourneau, *Playing Through Debt and Desperation, Minor-League Players Pursue Big-League Dreams*, S.F. CHRON., <https://www.sfchronicle.com/sports/giants/article/Playing-through-debt-and-desperation-minor-16275040.php> (July 21, 2021, 2:33 PM) (“More Than Baseball . . . has collected data suggesting that about 37% of minor-league players went into debt in 2019. As of late-June, that number was on track to spike to nearly 50% this season.”).

179. *See infra* Section II.B.

180. Matt Rothenberg, *Pro Baseball Began in Cincinnati in 1869*, NAT’L BASEBALL HALL OF FAME, <https://baseballhall.org/discover/pro-baseball-began-in-cincinnati-in-1869> (last visited Apr. 7, 2023).

181. *Drawing the Color Line: 1860s to 1890s*, LIBR. OF CONG., <https://www.loc.gov/collections/jackie-robinson-baseball/articles-and-essays/baseball-the-color-line-and-jackie-robinson/1860s-to-1890s/> (last visited Apr. 7, 2023).

182. *Id.*

players, shaping the “Color Line” that segregated professional baseball until the 1940s.<sup>183</sup> The Major League Color Line was officially broken when Jackie Robinson joined the Brooklyn Dodgers in April 1947.<sup>184</sup>

For the next few decades, there was a steady increase in Black American-born players, reaching almost 20% of MLB in the 1970s and 1980s.<sup>185</sup> More recently, the number of Black American-born players has been in decline and “is now at its lowest point in more than” forty years, which is “more than 50% lower than at its peak.”<sup>186</sup> In 2004, 9% of players at the major league level were Black, which lowered to 8.5% in 2011 and then 7.6% in 2021.<sup>187</sup> In 2022—for the first time in seventy-two years—there were no Black American-born players in the World Series.<sup>188</sup>

This Note focuses on Black American-born players rather than internationally born Black players, such as Afro-Latinos,

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183. *Id.*

184. *Breaking the Color Line: 1940 to 1946*, *supra* note 1.

185. See Earl Smith & Marissa Kiss, *Why Are There So Few Black American Players in MLB 74 Years After Jackie Robinson Took the Field?*, PHILA. INQUIRER (Apr. 1, 2021), <https://www.inquirer.com/opinion/commentary/baseball-black-african-american-players-jackie-robinson-20210401.html>; Armour & Levitt, *supra* note 2.

186. Joanna Shepherd Bailey & George B. Shepherd, *Baseball's Accidental Racism: The Draft, African-American Players, and the Law*, 44 CONN. L. REV. 197, 199–200 (2011).

187. RICHARD LAPCHICK, UNIV. OF CENT. FLA., THE 2004 RACIAL AND GENDER REPORT CARD: MAJOR LEAGUE BASEBALL 16 (2005), [https://43530132-36e9-4f52-811a-182c7a91933b.filesusr.com/ugd/7d86e5\\_1b8c51ba2f6b4d9d8c23f019b3f7d37f.pdf](https://43530132-36e9-4f52-811a-182c7a91933b.filesusr.com/ugd/7d86e5_1b8c51ba2f6b4d9d8c23f019b3f7d37f.pdf); RICHARD LAPCHICK, CHRISTINA CLOUD, AARON GEARLDS, TAVIA RECORD, ELIZABETH SCHULZ, JAKE SPIAK & MATTHEW VINSON, UNIV. OF CENT. FLA., THE 2011 RACIAL AND GENDER REPORT CARD: MAJOR LEAGUE BASEBALL 20 (2011), [https://43530132-36e9-4f52-811a-182c7a91933b.filesusr.com/ugd/7d86e5\\_48cda71eb6284f3cb9ab79ddc0d0a71c.pdf](https://43530132-36e9-4f52-811a-182c7a91933b.filesusr.com/ugd/7d86e5_48cda71eb6284f3cb9ab79ddc0d0a71c.pdf); RICHARD E. LAPCHICK, UNIV. OF CENT. FLA., THE 2021 RACIAL AND GENDER REPORT CARD: MAJOR LEAGUE BASEBALL 45 (Daniel Bowman, David Eichenberger, Spencer Ewing, A.J. Forbes, Alayshia Green, Brian Jackson, Brady Johnson-Schmeltzer, Amanda Kiernan, Taylor Middleton, Devon Miller, Kyle Richardson & Ashley Turner eds., 2021), [https://43530132-36e9-4f52-811a-182c7a91933b.filesusr.com/ugd/138a69\\_0fc7d964273c45938ad7a26f7e638636.pdf](https://43530132-36e9-4f52-811a-182c7a91933b.filesusr.com/ugd/138a69_0fc7d964273c45938ad7a26f7e638636.pdf).

188. Bob Nightengale, *With No Black Players in World Series, Astros Manager Dusty Baker Is 'Ashamed of the Game'*, USA TODAY, <https://www.usatoday.com/story/mlb/columnist/bob-nightengale/2022/10/28/dusty-baker-houston-astros-manager-world-series-black-players/10606567002/> (Oct. 29, 2022, 11:30 PM). Dusty Baker, one of the only two Black major league managers during the 2022 season, said that he is “ashamed of the game” upon hearing that there would be no Black American-born players in the World Series. *See id.*

for three main reasons. First, American-born players and international players enter the MLB system through different processes.<sup>189</sup> Second, this Note examines American history and economic systems that impact Black American-born players' ability to succeed in the minor leagues, and these considerations are not fully applicable to international Black players.<sup>190</sup> Third, internationally born players face difficulties related to their visas that are inapplicable to American-born players.<sup>191</sup>

#### E. *Income Inequality and Race in Professional Baseball*

Sportscasters and writers perpetuate stereotypes by claiming that young Black men do not want to play baseball because it is not as "cool" as basketball or football.<sup>192</sup> The reality is that systemic financial factors keep talented Black athletes from the sport.<sup>193</sup> Unfortunately, talent is not enough to make it to the Major Leagues; families need to spend thousands of dollars to send their children to showcase tournaments in big cities for them to get noticed.<sup>194</sup> Frugal spending would not generate

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189. See *supra* text accompanying note 18.

190. See *infra* Section I.E.

191. See *We Are Making Pennies*, *supra* note 7 ("Work visas for international players are very specific, so if players want to stay in the U.S. and work out at the team complex in the winter, their only option for income is to get an illegal job. Teams are aware of this and often look the other way. If they go home, these players often struggle to find the extra money or facilities needed to improve their performance.").

192. See, e.g., Leigh Steinberg, *Why Have African-American Players Disappeared in MLB?*, FORBES (Apr. 17, 2018, 1:33 PM), <https://www.forbes.com/sites/leighsteinberg/2018/04/17/why-have-african-american-players-disappeared-in-mlb/?sh=518c518c50df> ("The NBA and the NFL have also become more dominant, and the 'cool factor' has shifted. Baseball may be perceived as too long and boring for generations raised with action instantaneously flowing from social media and cell phones. Attention spans are attenuated.").

193. Smith & Kiss, *supra* note 185.

194. See Andrew McCutchen, *Left Out*, PLAYERS' TRIB. (Feb. 14, 2015), <https://www.theplayerstribune.com/articles/left-out>; see also Kahron Spearman, *Why Major League Baseball Is Losing Black Players*, DAILY DOT, <https://www.dailydot.com/irl/major-league-baseball-black-players/> (Feb. 7, 2022, 8:51 AM) ("[The young players are in a position that] if [they] don't have the funds and the ability to put them in a travel or select team, they may not even get a tryout in high school.") (first alteration in original) (quoting Karl Spencer, an employee of the University of Texas and President of 100 Black Men of Austin) (internal quotation marks omitted).

enough money for a low-income family to help their child become a professional baseball player.<sup>195</sup>

Across America, the effects of income inequality disproportionately impact communities of color, particularly Black communities.<sup>196</sup> The average net wealth of a Black family in America is approximately one-tenth that of a white family.<sup>197</sup> This disparity in generational wealth is a result of decades of prejudicial circumstances, including slavery, Jim Crow laws, employment discrimination, housing discrimination, and educational discrimination.<sup>198</sup> The racial wealth gap has led to broader inequities as well, such as a higher difficulty for Black Americans to achieve the American Dream.<sup>199</sup>

Even after young Black athletes become talented enough to pursue professional baseball, they are deterred by the harsh financial realities of Minor League Baseball.<sup>200</sup> While most picture education as the typical mechanism for achieving the American Dream,<sup>201</sup> it may also be accomplished through athletics, which provide talented players with the opportunity to make significant amounts of money.<sup>202</sup> In 2022, the minimum annual salary for major league players was \$700,000 and an

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195. See McCutchen, *supra* note 194.

196. See Liz Mineo, *Racial Wealth Gap May Be a Key to Other Inequities*, HARV. GAZETTE (June 3, 2021), <https://news.harvard.edu/gazette/story/2021/06/racial-wealth-gap-may-be-a-key-to-other-inequities/>.

197. *Id.*

198. See *id.*

199. See *id.*

200. See Peter O'Dowd & Camila Beiner, *Black Players in Baseball Make up Less Than 10% of the Sport Today. Why?*, WBUR (Aug. 27, 2021), <https://www.wbur.org/hereandnow/2021/08/27/black-baseball-players>; *supra* Section I.C.

201. *Discovering the New American Dream: Experiencing the Dream*, ECONOMIST: INTEL. UNIT, <https://discoveringthenewamericandream.eiu.com/experiencing-the-dream/> (last visited Apr. 7, 2023) (“[A] majority of Americans (76%), regardless of age, ethnicity and income, agree that education is the catalyst for achieving the American Dream . . .”).

202. See Brian Bencomo, *Sports and the American Dream*, CORNELL DAILY SUN (May 2, 2012), <https://cornellsun.com/2012/05/02/sports-and-the-american-dream/> (applying the American Dream to sports); Barbara Bean-Mellinger, *What Sport Has the Highest Average Salary?*, CHRON., <https://work.chron.com/sport-highest-average-salary-10203.html> (Sept. 22, 2020) (comparing salaries of athletes in professional athletic leagues in the United States).

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average annual salary of \$4.41 million.<sup>203</sup> The systems created by the professional baseball antitrust exemption and SAPA create barriers to minor league players' pursuit of the American Dream.<sup>204</sup> These economic barriers disproportionately harm Black athletes, often leading them away from baseball and into other professions.<sup>205</sup>

## II. CURRENT SUPPORT SYSTEMS ARE INEFFICIENT BANDAGES TO SYSTEMIC ISSUES

This Part explains how Major League Baseball relies on an insufficient patchwork system of external programs to financially support their minor leaguers, rather than providing adequate compensation. First, Section II.A examines housing support provided by the MLB. Second, Section II.B explains minor leaguers' reliance on external financial support from charitable organizations and family.

### A. Housing Support by MLB

Prior to the COVID-19 pandemic, MLB depended on volunteer "host families" to provide minor league players with housing, food, and transportation.<sup>206</sup> According to the President of the High-A Beloit Snappers and the Double-A Pensacola Blue Wahoos in the Miami Marlins organization, 50% of those teams' players were staying with host families.<sup>207</sup> While these families

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203. Soraya Aslam, *Taking It Home What Is the MLB Minimum Salary?*, *The Sun*, <https://www.the-sun.com/sport/5812790/mlb-baseball-minimum-maximum-salary/> (July 19, 2022, 11:21 AM).

204. See *supra* Sections I.B.1, .6.

205. See, e.g., McCutchen, *supra* note 194 ("I probably wouldn't be a Major League player right now if I didn't tear my ACL when I was [fifteen]. I thought I was going to play college football. Why? Economics. . . . I would have chosen that path because of the promise of a full scholarship."); see also *We Are Making Pennies*, *supra* note 7 ("We are confident that several future major leaguers have walked away from the game, simply because this unfair system continues to be unworkable for their families.").

206. *Can a Union Fix This?*, *supra* note 20.

207. *Id.*

are generous to open their homes to minor league players, it should be on the teams to fix this situation.<sup>208</sup>

Historically, players' inability to afford better accommodations forced them to frequently live together in overcrowded spaces under inadequate conditions.<sup>209</sup> One player reported living with up to twelve people in a three-bedroom apartment, which he referred to as "one of the best living situations [he had] been in during [his] time in the minor leagues."<sup>210</sup> While that player shared a bedroom with only one other person, another player slept in a living room with four other players.<sup>211</sup> The luckier players slept on bare mattresses on the floor,<sup>212</sup> whereas the unluckier players slept on air mattresses, pool rafts, or lawn chairs.<sup>213</sup> These apartments came with other health concerns as well. For instance, one group of players found a roach infestation in their apartment and another group of players "went nearly three days without power and running water."<sup>214</sup> Nevertheless, some players were ineligible for even these terrible apartments because of their low income, nonexistent credit, and overall lack of funds.<sup>215</sup> These players slept in their cars or at stadiums,<sup>216</sup> and one Mets minor league player experienced homelessness after the 2019 season.<sup>217</sup> Housing discrimination made it more difficult for Black players to find an apartment. Property managers are less

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208. Brittany Ghiroli, *Cockroaches, Car Camping, Poverty Wages: Why Are Minor-Leaguers Living in Squalor?*, THE ATHLETIC (Aug. 5, 2021), <https://theathletic.com/2750280/2021/08/05/cockroaches-car-camping-poverty-wages-why-are-minor-leaguers-living-in-squalor/> [hereinafter *Cockroaches, Car Camping, Poverty Wages*].

209. *Can a Union Fix This?*, *supra* note 20; Jeff Passan, *Major League Baseball to Require Teams to Provide Housing for Minor League Players Starting in 2022*, ENT. & SPORTS PROGRAMMING NETWORK (Oct. 17, 2021), [https://www.espn.com/mlb/story/\\_/id/32419545/major-league-baseball-require-teams-provide-housing-minor-league-players-starting-2022-sources-say](https://www.espn.com/mlb/story/_/id/32419545/major-league-baseball-require-teams-provide-housing-minor-league-players-starting-2022-sources-say).

210. *Can a Union Fix This?*, *supra* note 20.

211. *Id.*; *Cockroaches, Car Camping, Poverty Wages*, *supra* note 208.

212. *Can a Union Fix This?*, *supra* note 20.

213. *See Cockroaches, Car Camping, Poverty Wages*, *supra* note 208.

214. *Id.*

215. *See Passan*, *supra* note 209.

216. *Id.*; *Cockroaches, Car Camping, Poverty Wages*, *supra* note 208.

217. *Can a Union Fix This?*, *supra* note 20.



likely to respond to prospective Black tenants who inquire about open listings.<sup>218</sup> Even if landlords do communicate with prospective Black tenants, the renters “could still face discrimination when [the] property manager is deciding between different tenants or during the application process.”<sup>219</sup>

In September 2021, the owners of all thirty teams agreed to “provide housing for certain minor league players.”<sup>220</sup> Under the new Minor League Housing Policy (the Policy) effective for the 2022 season, all major league organizations must provide furnished housing accommodations to minor league players under a UPC.<sup>221</sup> Although nearly all major league organizations secured apartments for their minor leaguers,<sup>222</sup> and providing housing is an important step toward ensuring the health and safety of players, this initiative has some serious shortcomings.

First, the Policy only applies during the regular season and spring training, leaving players on their own to find housing for the off-season.<sup>223</sup> If players must find their own housing for half

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218. Jerusalem Demsas, *Black and Hispanic Renters Experience Discrimination in Almost Every Major American City*, VOX (Dec. 7, 2021, 8:30 AM), <https://www.vox.com/22815563/rental-housing-market-racism-discrimination>.

219. *Id.*

220. Passan, *supra* note 209.

221. *MLB to Provide Minor League Player Housing*, MINOR LEAGUE BASEBALL (Nov. 18, 2021), <https://www.milb.com/news/mlb-owners-to-provide-housing-to-minor-league-players-beginning-in-2022>.

222. Destiny Lugardo, *Inquirer Report Says Phillies Are ‘Believed to Be’ Only MLB Team that Failed to Secure Apartments for Minor League Players*, PHILLIES NATION (May 28, 2022), <https://www.philliesnation.com/2022/05/inquirer-report-says-phillies-are-believed-to-be-only-mlb-team-that-failed-to-secure-apartments-for-minor-league-players/>. The Philadelphia Phillies organization was the only organization unable to secure apartments for their minor leaguers. *Id.* Instead, players lived in hotel rooms. *Id.* The Double A players were required to “check in and out of their hotel rooms before and after a homestand and take all of their belongings with them on the road.” *Id.* The use of hotel rooms rather than apartments does not violate the policy; however, it does not create the same sense of belonging as an apartment. *See MLB to Provide Minor League Player Housing*, *supra* note 221 (“To the extent that apartments, rental homes, or host families are not feasible at a PDL level, Clubs may choose to provide hotel rooms that satisfy standards put in place.”); *see also* Lugardo, *supra* (“The Phillies are not in violation of the league’s new housing policy. Instead, they are essentially doing the bare minimum[,] and players are expressing frustration.”).

223. *See MLB to Provide Minor League Player Housing*, *supra* note 221; *see also* Jake Seiner, *Minor League Housing Plan Freezing Out Players With Families*, U.S. NEWS (Apr. 1, 2022, 12:46 PM),

the year, they face all the same barriers as they did before: housing discrimination, moving costs, and the inability to qualify for apartments.<sup>224</sup> Moreover, short-term rentals are typically more expensive and more scarce than long-term leases because landlords prefer long-term leases,<sup>225</sup> making it that much more difficult for players to find short-term leases. A player may want to stay in the city they play in for stability, but in many cities with minor league teams, “rental prices [have] increase[d] more than [10%] since the start of the pandemic.”<sup>226</sup> If a player cannot find a short-term lease and must sign a longer lease, they will be financially responsible for an apartment they do not utilize.<sup>227</sup> Consequently, the short-term nature of the policy creates more problems for players to fix.

Second, the Policy does not require MLB organizations to cover the costs of housing, so the costs may inevitably fall on the players.<sup>228</sup> The notion that players will receive less income to cover housing costs is not new.<sup>229</sup> Prior to the Policy, the San Diego Padres organization provided furnished apartments for their players at the rookie and A-ball levels; however, the organization deducted \$420—one week’s pay—every month.<sup>230</sup> It appears that some organizations are using the same tactic under the Policy; for instance, one player making \$2,000 per month must pay \$1,700 to rent at the team’s complex.<sup>231</sup> Requiring players to subsidize the Policy initiative puts them in

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<https://www.usnews.com/news/sports/articles/2022-04-01/minor-league-housing-plan-freezing-out-players-with-families> (“[The] new housing policy . . . provides a free housing option to minor league players during spring training and the regular season for the first time ever.”).

224. See Demsas, *supra* note 218; *Cockroaches, Car Camping, Poverty Wages*, *supra* note 208.

225. See Davina Ward, *How to Find a Short-Term Rental Apartment*, APARTMENT LIST, <https://www.apartmentlist.com/renter-life/short-term-rentals-guide> (Oct. 23, 2022).

226. *Cockroaches, Car Camping, Poverty Wages*, *supra* note 208.

227. See, e.g., *id.* (explaining that one player who was in the minor leagues for over five years was responsible for three different leases in 2019).

228. See *MLB to Provide Minor League Player Housing*, *supra* note 221.

229. See, e.g., *Cockroaches, Car Camping, Poverty Wages*, *supra* note 208.

230. *Cockroaches, Car Camping, Poverty Wages*, *supra* note 208.

231. Seiner, *supra* note 223.

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the same position as before, making the initiative effectively useless.

Third, the Policy is particularly unhelpful for players with families because it is unpredictable and does not consider players' needs for space and privacy. Just days before the 2022 season, some players were informed that their organizations were not taking their families into account when providing housing.<sup>232</sup> A few days before reporting to his club, a player whose wife was pregnant learned that he would be required to share a bedroom with another player.<sup>233</sup> With less than twenty-four hours until spring training, a player with a wife and five-month-old child was given vague responses regarding accommodations,<sup>234</sup> leaving him unsure when he would see his family and "devast[ed]" to think that he may "not see [his] child grow up for the first year of their life."<sup>235</sup> Therefore, the Policy has not only been unhelpful for players with families who need more flexibility and physical space but also left them in a precarious situation because their anticipated housing fell through with little to no time to recover.

Fourth, although housing is one of the biggest issues minor leaguers claim to face, their other expenses are still barely covered by their meager wages.<sup>236</sup> As one player noted, "[f]ree housing doesn't pay for diapers."<sup>237</sup>

Finally, it is unclear what would happen to players who are cut from their organization.<sup>238</sup> Will they lose their housing? If players were paid a living wage, they would be able to utilize

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232. *Id.*

233. *Id.* The inconsistency created additional problems for the player's wife, such as her inability to develop a relationship with a doctor during her pregnancy. *See id.*

234. *Id.* ("[Management has] told us it's a very fluid situation, that they may or may not help us out,' [a player] said. 'It just kind of depends on how much it's going to cost and what they can get approved.'").

235. *Id.*

236. *See We Are Making Pennies, supra* note 7.

237. *Id.* (quoting one player who had to turn down his invite to spring training because he could not leave his off-season job that provided the funds necessary to support his family).

238. *See MLB to Provide Minor League Player Housing, supra* note 221.

the income they earned to guarantee housing without relying on the MLB or MLB organizations.

Ultimately, the well-intentioned solution to merely provide housing is too vague and insufficient for minor leaguers' needs. Rather than providing inadequate measures, MLB organizations should simply pay their minor league players a living wage.

### B. *External Financial Support*

In addition to MLB's flawed plan to provide housing support, another shortcoming of the minor league system is that players must rely on external financial support. There are several nonprofit organizations with missions geared toward supporting minor league players and their families.<sup>239</sup> One organization, More Than Baseball, provides minor league players with stipends for nutritious meals and necessary baseball equipment to help them succeed professionally while managing to survive being vastly undercompensated.<sup>240</sup> Our Baseball Life, an organization formed by wives of former minor leaguers, provides professional baseball families with resources and information when they need to pick up their lives and move immediately as a result of being traded or signing with a new team.<sup>241</sup> Former minor league players and a labor leader created Advocates for Minor Leaguers, which provides "a collective voice for Minor League baseball players."<sup>242</sup>

Donations by major league players skyrocketed when the 2020 minor league season was cancelled.<sup>243</sup> Pitcher David Price donated \$1,000 to every minor league player in the Los Angeles

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239. See, e.g., *Our Mission*, MORE THAN BASEBALL, <https://www.morethanbaseball.org/mission> (last visited Apr. 7, 2023); OUR BASEBALL LIFE, <https://ourbaseballlife.com/> (last visited Apr. 7, 2023).

240. See *Our Mission*, *supra* note 239.

241. See OUR BASEBALL LIFE, *supra* note 239.

242. *About*, ADVOCES. FOR MINOR LEAGUERS, <https://www.advocatesforminorleaguers.com/about> (last visited Apr. 7, 2023).

243. *Can a Union Fix This?*, *supra* note 20.

Dodgers system.<sup>244</sup> Outfielder Shin-Soo Choo did the same for every minor league player in the Texas Rangers system.<sup>245</sup> Infielder Daniel Murphy donated \$100,000 to More Than Baseball and Our Baseball Life.<sup>246</sup> Pitcher Adam Wainwright donated \$250,000 to More Than Baseball.<sup>247</sup> In addition to large donations by individual players, the players' union donated \$1 million to support minor league players.<sup>248</sup> Although these donations are vast sums of money, they are insignificant individually. Based on the number of active roster spots, there may be 3,480 active minor league players at one time.<sup>249</sup> If the \$1 million union donation was spread among all minor leaguers,<sup>250</sup> each player would only receive approximately \$287.36.<sup>251</sup> Even if a minor league player in the Dodgers organization were to receive a \$1,000 donation from David Price as well as his share of the donations from the union, Adam Wainwright, and Daniel Murphy,<sup>252</sup> he would only receive approximately \$1,387.93 to cover all his expenses until the 2021 season.<sup>253</sup> Regardless, these large donations are the exception, not the rule; many players were compelled to donate during the 2020 season because minor leaguers could not make *any* money

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244. *Id.*

245. *Id.*

246. *Id.*

247. *Id.*

248. *See id.*; *infra* text accompanying notes 265–66 (explaining the major league players' union).

249. A Triple A or Double A team may have twenty-eight players, and a high A or low A team may have thirty players. THE MAJOR LEAGUE RULES, *supra* note 19, at 10. With thirty organizations having one of each type of team, the maximum number of active players at any one time is 3,480. *See Mayo, supra* note 15.

250. *See Can a Union Fix This?, supra* note 20.

251. This calculation assumes that the entire donated amount would go directly to players, rather than some amount being allocated to overhead costs. This calculation also assumes that all active roster spots were filled, even though that may not have been the case. Even if there were only 3,000 active minor league players at the time, rather than 3,480, each player would still only receive approximately \$333.33.

252. *Can a Union Fix This?, supra* note 20.

253. This calculation assumes that the entire donated amounts would go directly to players. This calculation also assumes that all active roster spots were filled. Even if there were only 3,000 active minor league players at the time, rather than 3,480, each player would still only receive approximately \$1,450 to cover all expenses until the 2021 season.

by playing baseball.<sup>254</sup> While players would otherwise have their miniscule income of less than \$15,000 per year,<sup>255</sup> the financial support provided by nonprofits and major league players is much lower.<sup>256</sup> Therefore, charitable donations, even when at their highest, are insufficient to remedy the miniscule compensation of minor league players.

When minor league players do not receive support from major league players and charities, they often turn to friends and family. One former minor league player “noticed a theme: [m]any of the players who moved up received financial support from their families.”<sup>257</sup> He received help from his family, which included his father, a white-collar criminal defense lawyer, to pay rent while other teammates did not.<sup>258</sup> Another former player referred to himself as “one of the lucky ones” because he was “a white, American-born male” with “parents who could mortgage their house to help [him], if necessary.”<sup>259</sup> Since Black families in America on average have lower incomes,<sup>260</sup> Black minor league players are less likely to have family members with disposable income to financially support them, adding another barrier for Black athletes to pursue professional baseball. One Mets Double-A player claimed that baseball was only “catering . . . to the wealthy, the people who have . . . money in their family.”<sup>261</sup> He stated that it is “extremely disappointing for a game that’s America’s pastime. It shouldn’t be [a] rich, [w]hite person’s pastime.”<sup>262</sup>

Aid provided by family, MLB, nonprofit organizations, and good Samaritans comprise an insufficient patchwork solution

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254. See *Can a Union Fix This?*, *supra* note 20.

255. See *id.*

256. See *supra* notes 239–54 and accompanying text.

257. *Can a Union Fix This?*, *supra* note 20.

258. *Id.*

259. Dirk Hayhurst, *An Inside Look into the Harsh Conditions of Minor League Baseball*, BLEACHER REP. (May 14, 2014), <https://bleacherreport.com/articles/2062307-an-inside-look-into-the-harsh-conditions-of-minor-league-baseball>.

260. See *supra* Section I.E.

261. *Cockroaches, Car Camping, Poverty Wages*, *supra* note 208.

262. *Id.* (first alteration in original).

to a systemic problem.<sup>263</sup> The antitrust exemption and federal minimum wage exemption make it nearly impossible for players to support themselves.<sup>264</sup> Instead, they must rely on the good graces of others to support their survival.<sup>265</sup>

### III. MINOR LEAGUE UNIONIZATION IS NOT A FEASIBLE SOLUTION

Another school of thought is that minor league players should be protected through unionization rather than legislation or judicial action.<sup>266</sup> The Major League Baseball Players Association (MLBPA) is the exclusive bargaining representative of all major league players.<sup>267</sup> In September of 2022, the MLBPA also became the representative of minor league players.<sup>268</sup> Although the MLBPA is famous for being the strongest players' union among the four major sports leagues,<sup>269</sup> unionization is not an appropriate long-term solution to protect minor league players.

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263. See *Can a Union Fix This?*, *supra* note 20.

264. See *supra* Sections I.B–C.

265. See *Can a Union Fix This?*, *supra* note 20; Hayhurst, *supra* note 259.

266. See, e.g., Robert Pannullo, Note, *The Struggle for Labor Equality in Minor League Baseball: Exploring Unionization*, 34 ABA J. LAB. & EMP. L. 443, 461 (2020); Lucas J. Carney, Note, *Major League Baseball's 'Foul Ball': Why Minor League Baseball Players Are Not Exempt Employees Under the Fair Labor Standards Act*, 41 IOWA J. CORP. L. 283, 308 (2015).

267. See *About*, MAJOR LEAGUE BASEBALL PLAYERS ASS'N, <https://www.mlbplayers.com/about> (last visited Apr. 7, 2023) (“The MLBPA is the union that represents players on the 40-man rosters of the [thirty] Major League baseball teams and oversees MLB Players, Inc., which exclusively represents the group commercial and licensing activities involving active players.”).

268. Alden González, Jeff Passan & Jesse Rogers, *Minor Leaguers Are Joining the MLBPA: Here's What the Unionization Means*, ENT. & SPORTS PROGRAMMING NETWORK (Sept. 14, 2022), [https://www.espn.com/mlb/story/\\_/id/34586802/minor-leaguers-joining-mlbpa-here-unionization-means](https://www.espn.com/mlb/story/_/id/34586802/minor-leaguers-joining-mlbpa-here-unionization-means).

269. See, e.g., *Cockroaches, Car Camping, Poverty Wages*, *supra* note 208; see also Matt Weyrich, *MLB Work Stoppages: History of Lockouts, Strikes in Baseball*, NBC SPORTS (Mar. 13, 2022), <https://www.nbcsports.com/washington/nationals/mlb-work-stoppages-history-lockouts-strikes-baseball> (explaining that the MLBPA has coordinated five strikes since 1972 that have cancelled more than 1,700 games). In the United States, there are four major professional sports leagues: Major League Baseball (MLB), National Football League (NFL), National Basketball Association (NBA), and National Hockey League (NHL). Victor Kiprop, *US Cities with Teams in All Four Major Sports Leagues*, WORLD ATLAS (July 2, 2019), <https://www.worldatlas.com/articles/us-cities-with-all-four-major-sports-teams.html>.

There were over twenty-five years of relative peace in the major league labor discussions following the 1994–95 strike;<sup>270</sup> however, the MLBPA and MLB have run into difficulty coming to terms in the last few years. During the 2020 season, the MLBPA and MLB spent two months in a heated battle to agree on a plan for the shortened season caused by the COVID-19 pandemic.<sup>271</sup> After back-and-forth between the parties in May and June, the MLB owners voted unanimously to give Commissioner Manfred the power to mandate a sixty-game plan without the MLBPA's input.<sup>272</sup>

This animosity has only gotten worse in the recent negotiations for the 2022 collective bargaining agreement (CBA). A CBA is “a written legal contract between an employer and a union representing the employees” that determines common details of employment.<sup>273</sup> In sports, a CBA dictates “rules that both owners and players agree to follow” in regard to employment.<sup>274</sup> Some common issues of collective bargaining include salaries, revenue sharing, trades, drafts, free agency, player discipline, safety standards, injury grievances and health benefits.<sup>275</sup> The MLBPA and MLB renegotiate the CBA every five years.<sup>276</sup>

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270. See Weyrich, *supra* note 269 (showing that, prior to the 2021–22 lockout, the last major work stoppage was the strike in 1994–95).

271. See R.J. Anderson, *MLB 2020 Season: Timeline of How Testy Negotiations Led to Rob Manfred Mandating a 60-Game Schedule*, CBS SPORTS (June 23, 2020, 10:56 PM), <https://www.cbssports.com/mlb/news/mlb-2020-season-timeline-of-how-testy-negotiations-led-to-rob-manfred-mandating-a-60-game-schedule/>.

272. See *id.* “By allowing the owners to unilaterally implement such a plan without the MLBPA, both sides retained the right to file a grievance against the other for not negotiating in good faith.” *2020 Major League Baseball Season*, WIKIPEDIA, [https://en.wikipedia.org/wiki/2020\\_Major\\_League\\_Baseball\\_season#Disagreement\\_over\\_plans\\_for\\_a\\_shortened\\_season](https://en.wikipedia.org/wiki/2020_Major_League_Baseball_season#Disagreement_over_plans_for_a_shortened_season) (last visited Apr. 7, 2023) (citing Brandon Wile, *MLB Owners Unanimously Vote to Proceed with 2020 Season*, THE SCORE, <https://www.thescore.com/mlb/news/1978938> (last visited Apr. 7, 2023)).

273. *What Is a Collective Bargaining Agreement?*, SOC'Y FOR HUM. RES. MGMT., <https://www.shrm.org/resourcesandtools/tools-and-samples/hr-qa/pages/collectivebargaining-agreement.aspx> (last visited Apr. 7, 2023).

274. *Collective Bargaining Agreements in Sports Leagues*, JUSTIA, <https://www.justia.com/sports-law/collective-bargaining-agreements-in-sports-leagues/> (July 2022).

275. *Id.*

276. See Ernesto Cova, *MLB CBA Explained: What It Is and How It Works*, FRANCHISE SPORTS, <https://franchisesports.co.uk/mlb-cba-explained/> (last visited Apr. 7, 2023).



Following a proposal by the MLBPA in November 2021, the MLB owners voted unanimously to institute a lockout upon the expiration of the 2016 CBA on December 2, 2021, thus preventing any team activities.<sup>277</sup> MLB did not offer a counterproposal on the core economic issues until forty-three days later.<sup>278</sup> Following the MLBPA's subsequent proposal, MLB committed to offering a counter-proposal; however, MLB ultimately offered no proposal and instead requested the assistance of a federal mediator which was swiftly rejected by the MLBPA.<sup>279</sup> MLB continuously set agreement deadlines for the MLBPA, threatening to cancel games if those deadlines were not met.<sup>280</sup> For the majority of the bargaining process, both sides were far apart on many key issues,<sup>281</sup> rather than just one or two. Ultimately, the lockout lasted ninety-nine days and ended when the MLBPA and MLB agreed to a new CBA.<sup>282</sup> The prevailing animosity between the MLBPA and MLB shows that

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277. See Chelsea Janes, *MLB Lockout Begins as CBA Expires with Owners and Players Still at Odds*, WASH. POST, <https://www.washingtonpost.com/sports/2021/12/02/mlb-lockout-2021/> (Dec. 2, 2021, 12:37 AM); Jesse Rogers, *Everything You Need to Know About MLB's Lockout*, ENT. & SPORTS PROGRAMMING NETWORK (Dec. 2, 2021), [https://www.espn.com/mlb/story/\\_/id/32754352/everything-need-know-mlb-looming-lockout](https://www.espn.com/mlb/story/_/id/32754352/everything-need-know-mlb-looming-lockout); Nick Selbe, *MLB Owners Vote Unanimously to Institute Lockout*, SPORTS ILLUSTRATED (Dec. 1, 2021), <https://www.si.com/mlb/2021/12/02/mlb-owners-vote-unanimously-institute-lockout-work-stoppage>.

278. See *MLB Lockout: MLB, MLBPA Agree on New CBA*, ENT. & SPORTS PROGRAMMING NETWORK (Mar. 10, 2022), [https://www.espn.com/mlb/story/\\_/id/32882139/mlb-lockout-mlb-mlbpa-agree-new-cba](https://www.espn.com/mlb/story/_/id/32882139/mlb-lockout-mlb-mlbpa-agree-new-cba).

279. Tim Stebbins, *MLB Lockout: Owners Won't Make Counteroffer, Seek Mediator*, NBC CHI. (Feb. 3, 2022), <https://www.nbcchicago.com/news/sports/nbcpsports/mlb-lockout-owners-wont-make-counteroffer-seek-mediator/2748588/>; Ronald Blum, *Locked Out MLB Players Reject Offer of Federal Mediation*, ASSOCIATED PRESS (Feb. 4, 2022), <https://apnews.com/article/mlb-sports-business-baseball-nyc-state-wire-def86914907a659ecd4e081955b589a1>.

280. *MLB Lockout: MLB, MLBPA Agree on New CBA*, *supra* note 278.

281. See Jules Posner, *With Spring Training Looming, Which Will Be the First Domino to Fall in CBA Negotiations for MLB?*, FORBES (Jan. 14, 2022, 6:01 PM), <https://www.forbes.com/sites/julesposner/2022/01/14/with-spring-training-looming-which-will-be-the-first-domino-to-fall-in-cba-negotiations-for-mlb/> ("[T]he largest issues regarding the new CBA involve revenue sharing, player arbitration, service time, and the luxury tax.").

282. R.J. Anderson, *MLB Lockout Ends as MLBPA, Owners Reach CBA Agreement: Five Takeaways with Baseball Set to Return*, CBS SPORTS (Mar. 12, 2022, 11:49 AM), <https://www.cbsports.com/mlb/news/mlb-lockout-ends-as-mlbpa-owners-reach-cba-agreement-five-takeaways-with-baseball-set-to-return/live/>. The players' representatives voted 26–12 to accept the deal, with eight of the nays being the entire executive committee of the union. *Id.* The owners then voted unanimously to ratify the agreement. *Id.*

collective bargaining is a volatile process. If the union ever weakens, or even dissolves, there would be nothing preventing MLB from returning to the poor conditions of the past.

Although bargaining is generally unpredictable, bargaining between MLB and minor league players is even more unpredictable. Both player groups are now represented by the same bargaining representative, but they are independent bargaining units, leaving the minor leaguers without the force or experience of the major leaguers.<sup>283</sup> Specifically, minor league players do not have the same bargaining power as major league players.<sup>284</sup> Strikes by major league players can have devastating financial consequences for MLB owners and other interested parties.<sup>285</sup> For example, the 1994–95 Major League Baseball Strike resulted in 948 games being cancelled, including the entire 1994 postseason.<sup>286</sup> As a result, NBC and ABC lost a combined \$595 million in advertising revenue, and the networks' partnership with MLB collapsed.<sup>287</sup> A theoretical minor league strike would likely do little in comparison given the smaller revenue those teams generate.<sup>288</sup> Therefore, without the major leaguers' bargaining power, minor leaguers have essentially no economic weapon to pressure MLB organizations to provide better terms of employment. Instead, the new minor league CBA was more likely influenced by the recent political

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283. See *Minor League Players Showing Interest in MLBPA Push for Unionization*, SPORTS ILLUSTRATED (Sept. 1, 2022), <https://www.si.com/mlb/2022/09/01/minor-league-players-showing-interest-mlbpa-push-unionization>.

284. See David M. Szuchman, Note, *Step Up to the Bargaining Table: A Call for the Unionization of Minor League Baseball*, 14 HOFSTRA LAB. & EMP. L.J. 265, 289 (1996).

285. See, e.g., Mike Farrell, *Sports Streaming Could Grow in Wake of Coronavirus*, NEXT TV, <https://www.nexttv.com/blogs/sports-streaming-could-grow-in-wake-of-coronavirus> (Apr. 13, 2020).

286. Weyrich, *supra* note 269.

287. Farrell, *supra* note 285.

288. Compare *The Business of Baseball*, *supra* note 151 (showing that the Miami Marlins had the lowest value of any Major league team in 2022 at \$240 million), with Sergei Klebnikov, *Minor League Baseball's Most Valuable Teams*, FORBES (July 8, 2016, 11:11 AM), <https://www.forbes.com/sites/sergeiklebnikov/2016/07/08/minor-league-baseballs-most-valuable-teams/> (explaining that the River Cats, valued at \$49 million, "have some of the most consistently successful . . . revenue numbers in minor league baseball" and generated "an estimated \$11.5 million in ticket revenues last season," which comprises more than half of their total revenue).

interest in minor league compensation.<sup>289</sup> Because interest in minor league players has fluctuated,<sup>290</sup> it is difficult to predict the minor league union's capabilities at any given time.

Moreover, current minor league players rarely speak out publicly about the poor conditions in the minor leagues.<sup>291</sup> Players fear that publicizing their treatment will come with professional retribution.<sup>292</sup> "The fear of losing their livelihood can [coerce minor league] players to stay quiet . . . even as they [ascend] to higher levels."<sup>293</sup> Additionally, minor league players' training grooms them to be camera-ready.<sup>294</sup> According to a major league player who spent time in the minors, minor league players are trained "to be subservient, to be quiet, to put their heads down, to not make waves, to not say anything that might ruffle feathers."<sup>295</sup> He believes that it is "impossible to stand up for your own rights when you're one versus the [MLB] machine. You can't have those conversations with teams and organizations. You can't sit down with the [General Manager]. You can't sit down with [the Commissioner of Baseball] . . ."<sup>296</sup> Furthermore, the more passive demeanor of minor league players makes it unlikely that minor league players will continue successfully negotiate without some kind of external support, such as from politicians, fans, or major league players.

Ultimately, the unpredictability of bargaining between the minor league union and MLB makes minor league unionization an insufficient solution that leaves a return to previous poor conditions as a possibility in the future. Consequently, minor leaguers must be protected through a more permanent solution.

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289. See *supra* note 64 and accompanying text (describing the recent congressional interest in the compensation of minor leaguers).

290. See *infra* notes 319–21 and accompanying text (comparing the recent interest to the unenacted FANS Act).

291. *Can a Union Fix This?*, *supra* note 20.

292. *Id.*

293. *Id.*

294. *Id.*

295. *Id.*

296. *Id.*

#### IV. THE WAY FORWARD: ADDRESSING PLAYERS' INABILITY TO RECEIVE COMPENSATION OR CONTRACT FAIRLY

Protection of minor league players and assurance that Black players have a more equal playing field for success require a solution that both (1) ensures players are paid a fair wage for their time working and (2) provides players with the ability to negotiate the terms and conditions of their employment on a level playing field. This Part proposes a two-step solution that accomplishes both prongs by first recommending that Congress repeal SAPA and replace it with legislation that protects minor leaguers from the Seasonal Exemption of the FLSA. Second, the Supreme Court must overturn *Federal Baseball*, thus eliminating the professional baseball antitrust exemption.

##### A. Ensuring Players Receive Just Compensation

Through the Save America's Pastime Act, Congress has effectively ensured that Minor League Baseball players remain at an unlivable wage will live by solidifying their exemption from overtime pay required by the FLSA.<sup>297</sup> Prior to SAPA, each jurisdiction made its own determination as to whether Minor League Baseball players were exempt from the FLSA, causing inconsistency across the minor leagues.<sup>298</sup> Although SAPA provided consistency—which is generally a positive thing—some players were better off before the bill was enacted in 2018.<sup>299</sup> Consequently, Congress' action harmed vulnerable minor league players.

To reverse the harm done by SAPA, Congress must first repeal the Act. This would, at the very least, remove the guarantee that minor leaguers are ineligible for overtime compensation.<sup>300</sup> Next, to ensure that minor league players are

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297. See *supra* Sections I.B.6, I.C.

298. See *supra* Section I.B.5.

299. See, e.g., *Bridewell v. Cincinnati Reds*, 155 F.3d 828, 829–32 (6th Cir. 1998) (finding that a MiLB team's off-season business practices made them non-exempt).

300. Consolidated Appropriations Act of 2018, Pub. L. No. 115–141, § 201(a), 132 Stat. 1126, 1126–27 (2018).

compensated for the long hours they put in consistently across jurisdictions, Congress needs to pass legislation that solidifies that Minor League Baseball players are not exempt from the FLSA and, consequently, are entitled to overtime pay.<sup>301</sup>

MLB's marketing blitz pushed the notion that the Save America's Pastime Act was necessary to support the Minor League Baseball industry and that the absence of this Act will cause economic instability and the eventual downfall of minor league teams, thus harming many local economies.<sup>302</sup> This argument is unfounded for two reasons. First, MiLB teams are incredibly valuable, both in terms of financial value and by supplying their respective MLB teams with talent.<sup>303</sup> Second, MiLB teams are not expected to be self-supporting, rather they are financially supported almost entirely by their MLB counterparts.<sup>304</sup> Consequently, increases in MiLB costs would likely be paid by the respective MLB teams.<sup>305</sup> Seeing as MLB organizations saw substantial revenues the last few years,<sup>306</sup> they are capable of bearing the burden of providing their minor league players with a living wage.

### B. *Allowing Players to Contract Fairly*

The federal antitrust exemption allows MLB organizations to engage in monopolistic practices that would otherwise be

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301. It is important to note that in the new CBA, the union and MLB agreed to "express joint support for legislation that would provide a narrowly tailored exemption from wage and hour laws that otherwise could apply to Players, provided the exemption would only apply to Players who are being compensated under the CBA." Drellich, *supra* note 161. Although support from MLB would be helpful, it is important that any legislation prioritizes the compensation of minor leaguers, not the bottom line of MLB owners.

302. See Ronald Blum, *Baseball Players in Minors to Lose Minimum Wage Protection*, ASSOCIATED PRESS (Mar. 23, 2018), <https://apnews.com/article/minor-league-baseball-lawsuits-ap-top-news-government-spending-laws-cb183f59e88948e8b9cd49ad07bde807> (explaining that the co-sponsors of the original 2016 bill referred to the exemption as "necessary" to protect the economies of cities where minor league teams are located).

303. See *supra* note 153 and accompanying text.

304. Hobbs, *supra* note 109, at 1070–71. MLB is responsible for funding all of MiLB, including equipment, umpires, operations, travel expenses, and the salaries of players and coaches. *Id.*

305. See *id.*

306. See *supra* Section I.C.

barred.<sup>307</sup> Although the practices at issue in *Federal Baseball* fell within the prohibitions of monopolies under Section 2 of the Sherman Act,<sup>308</sup> the mandatory UPC has greater modern implications on minor league players' compensation. "[T]o establish a violation of Section 1 of the Sherman Act, [there must be] (1) an agreement (2) affecting interstate commerce (3) that unreasonably restrains trade."<sup>309</sup> The UPC meets the first element because the thirty MLB organizations coordinate to establish the terms of minor league players' employment.<sup>310</sup> As for the third element, the UPC unreasonably restrains trade for two reasons. First, the UPC forces players to remain under the control of the MLB organization that drafted them for seven years.<sup>311</sup> Second, the UPC institutes universal pay rates for minor league players regardless of skill or experience.<sup>312</sup> Both aspects of the UPC prevent players from participating in a free market to negotiate for their labor. If the precedent that professional baseball is not interstate commerce were reversed, thus satisfying the second element, courts would likely find that the UPC meets all three elements and thus constitutes a violation of Section 1 of the Sherman Act.<sup>313</sup>

Removal of the antitrust exemption can be accomplished through either congressional legislation or judicial action.<sup>314</sup>

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307. See discussion *supra* Section I.B.1.

308. See *Fed. Baseball Club of Balt., Inc. v. Nat'l League Pro. Baseball Clubs*, 259 U.S. 200, 207–09 (1922); Sherman Antitrust Act, 15 U.S.C. § 2.

309. *United States v. Blue Cross Blue Shield of Mich.*, 809 F. Supp. 2d 665, 671 (E.D. Mich. 2011).

310. See THE MAJOR LEAGUE RULES, *supra* note 19, at 190–91.

311. See *id.* at 191.

312. *Id.* at 193–94.

313. Specifically, the UPC would be a *per se* violation of the Sherman Act because the MLB organizations' collusion to establish uniform compensation amounts to price fixing. See *supra* note 74 and accompanying text. As a *per se* violation, any minor league player bringing suit against a major league organization alleging that the UPC violates the antitrust laws would not have to prove that the organization actually hindered competition in order to prevail. See *Antitrust Laws*, CORNELL, *supra* note 72; *Standard Oil Co. of N.J. v. United States*, 221 U.S. 1, 62–68 (1911) (establishing this standard, known as the "Rule of Reason"); *Price Fixing*, FED. TRADE COMM'N, <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/dealings-competitors/price-fixing> (last visited Apr. 7, 2023).

314. See *Closius & Stephan*, *supra* note 141, at 97.

Some have argued that Congress should override the antitrust immunity,<sup>315</sup> especially given that precedent has urged Congress to do so.<sup>316</sup> However, it is highly unlikely that Congress will pass this legislation for two main reasons. First, Congress was prompted to act by multiple calls from the Supreme Court over the span of one hundred years, and yet the exemption remains unlegislated.<sup>317</sup> Congress has expressed a recent interest in overturning the exemption,<sup>318</sup> however, this is not the first time that Congress has threatened—but ultimately failed—to alter the exemption.<sup>319</sup> In 2001, the Fairness in Antitrust in National Sports (FANS) Act proposed applying antitrust laws to “the elimination or relocation of major league baseball franchises.”<sup>320</sup> Second, unlike Supreme Court justices who are appointed for life, Congress members’ votes can be swayed by MLB team owners’ deep pockets and lobbying efforts.<sup>321</sup> Consequently, the baseball antitrust exemption must be eliminated another way.

Previous Supreme Courts have declined to overturn the antitrust exemption out of respect for precedent,<sup>322</sup> however, the current Court would likely take a different approach. The Court’s characterization of the exemption as “unrealistic,” “inconsistent,” and “aberration[al]” in *Alston* suggests that the current justices do not respect the decision in *Federal Baseball* as

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315. See, e.g., *id.* at 105.

316. See, e.g., *Flood v. Kuhn*, 407 U.S. 258, 284 (1972); *Toolson v. N.Y. Yankees*, 346 U.S. 356, 356 (1953).

317. See, e.g., *Flood*, 407 U.S. at 284; *Toolson*, 346 U.S. at 356.

318. See Save American Baseball Act, S. 3833, 117th Cong. (2022); *Senate Judiciary Committee Questions Legality of MLB’s Antitrust Exemption*, *supra* note 64; *Senate Judiciary Committee Asks MLB to Explain Potential Impact*, *supra* note 64; see also *Without Antitrust Exemption*, *supra* note 64.

319. See, e.g., Fairness in Antitrust in National Sports (FANS) Act of 2001, S. 1704, 107th Cong. (2001).

320. *Id.* § 2.

321. See *Closius & Stephan*, *supra* note 141, at 99–100; *We Are Making Pennies*, *supra* note 7; see also James Chen, *Lobby*, INVESTOPEDIA, <https://www.investopedia.com/terms/l/lobby.asp> (Nov. 13, 2020) (explaining “lobbying”).

322. See, e.g., *Flood*, 407 U.S. at 284; *Toolson*, 346 U.S. at 356.

highly as previous Courts.<sup>323</sup> Additionally, the Court cited an amicus brief detailing the mistreatment of minor league players,<sup>324</sup> indicating that it is sympathetic to the plight of minor leaguers. Although the Court refers to legislation as the “orderly way” to fix the antitrust exemption,<sup>325</sup> its discontent with the exemption suggests that it is amenable to overturning *Federal Baseball* if the issue were brought before the Court again.<sup>326</sup> Legislation typically is the ideal way to enact legal changes because it is more representative of the nation;<sup>327</sup> however, it is appropriate to remedy injustice through judicial action if that injustice was created through judicial action.<sup>328</sup>

The Court may be presented with the opportunity to remedy this injustice soon. Following the restructuring of Minor League Baseball, forty minor league teams lost their affiliations with major league organizations.<sup>329</sup> In December of 2021, four of those teams, filed suit against the MLB, challenging the antitrust exemption.<sup>330</sup> The plaintiffs believe they “have

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323. *NCAA v. Alston*, 141 S. Ct. 2141, 2159 (2021) (alteration in original) (quoting *Flood*, 407 U.S. at 282).

324. *See id.* at 2159 (citing Brief for Advocates for Minor Leaguers as Amicus Curiae Supporting Respondents at 5, n.3, *NCAA v. Alston*, 141 S. Ct. 2141 (2021) (No. 20-512)).

325. *See id.* at 2160 (quoting *Flood v. Kuhn*, 407 U.S. 258, 279 (1972)).

326. *See* Chelsea Janes, *A Newly Filed Lawsuit is Trying to Upend Baseball’s Century-Old Status Quo*, WASH. POST, <https://www.washingtonpost.com/sports/2022/01/08/mlb-antitrust-lawsuit/> (Jan. 8, 2022, 4:54 PM) [hereinafter *A Newly Filed Lawsuit*].

327. *See The Legislative Branch*, THE WHITE HOUSE, <https://www.whitehouse.gov/about-the-white-house/our-government/the-legislative-branch/> (last visited Dec. 27, 2022) (describing the legislative branch and legislative process, which incorporate representation for the entire nation).

328. *See, e.g., State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997) (“[S]tare decisis is not an inexorable command. In the area of antitrust law, there is a competing interest, well-represented in this Court’s decisions, in recognizing and adapting to changed circumstances and the lessons of accumulated experience.”); *see also* Scott Bomboy, *A Short List of Overturned Supreme Court Landmark Decisions*, NAT’L CONST. CTR. (June 24, 2022), <https://constitutioncenter.org/blog/a-short-list-of-overturned-supreme-court-landmark-decisions> (listing examples of cases where the Supreme Court overturned its own landmark cases).

329. *See A Newly Filed Lawsuit*, *supra* note 326.

330. Maury Brown, *Lawsuit Filed Challenging MLB’s Antitrust Exemption over Minor League Takeover*, FORBES (Dec. 20, 2021, 1:08 PM), <https://www.forbes.com/sites/maurybrown/2021/12/20/lawsuit-filed-challenging-mlbs-antitrust-exemption-over-minor-league-takeover/>; Complaint at 5, *Nostalgic Partners, L.L.C. v. Off. of Comm’r of Baseball*, No. 1:21-cv-10876 (S.D.N.Y. Dec. 20, 2021) [hereinafter *Nostalgic Partners Complaint*].



objectively good reasons to believe that the Supreme Court would no longer apply the ‘unrealistic’ and ‘inconsistent’ and ‘aberration[al]’ baseball antitrust exemption if presented with a proper case for reconsidering it.”<sup>331</sup> The plaintiffs filed their suit in the United States District Court for the Southern District of New York.<sup>332</sup> The Antitrust Division of the U.S. Department of Justice submitted a statement of interest claiming that the exemption “does not rest on any [justifiable] substantive policy interests.”<sup>333</sup> Unsurprisingly, the district court dismissed the suit in accordance with the precedent in *Federal Baseball, Toolson, and Flood*.<sup>334</sup> The Court of Appeals for Second Circuit will likely adhere to that precedent and affirm the decision. The Supreme Court should then grant certiorari and overturn the exemption.

Eliminating the antitrust exemption—thus allowing players to sue MLB organizations, alleging that the UPC violates the Sherman Act—would give players at all levels the freedom to negotiate their employment contracts. This freedom could result in players receiving greater compensation based on their skills and market demand as well as other negotiable benefits, such as no trade clauses.<sup>335</sup>

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331. *A Newly Filed Lawsuit*, *supra* note 326 (alteration in original).

332. *See Nostalgic Partners Complaint*, *supra* note 330.

333. Statement of Interest of the United States at 1, *Nostalgic Partners, L.L.C. v. Off. of the Comm’r of Baseball*, No. 1:21-cv-10876 (ALC) (S.D.N.Y. June 15, 2022).

334. *See Opinion Granting Motion to Dismiss at 15–17, Nostalgic Partners, L.L.C. v. Off. of the Comm’r of Baseball*, No. 1:21-cv-10876 (ALC) (S.D.N.Y. Oct. 26, 2022).

335. *See, e.g., Katie Shonk, Why Great Negotiators Earn More Money*, HARV. L. SCH. PROGRAM ON NEGOT.: DAILY BLOG, <https://www.pon.harvard.edu/daily/salary-negotiations/great-negotiators-earn-money/> (Oct. 25, 2022) (explaining that negotiations can lead to earning more money); *No-Trade Clause*, MAJOR LEAGUE BASEBALL, <https://www.mlb.com/glossary/transactions/no-trade-clause> (last visited Dec. 27, 2022) (“A no-trade clause is a contractual clause that allows players to veto trades to certain teams.”).

### C. Other Considerations

#### 1. *The effect on mental health*

The financial hardship created by systemic economic inequity has led to a mental health crisis among minor league players.<sup>336</sup> Players say that the “dehumanizing” treatment and financial uncertainty contribute to their poor mental health.<sup>337</sup> One minor league player in the Diamondbacks organization failed a medical stress test.<sup>338</sup> One Triple-A player in the Orioles system was prescribed medication for stomach ulcers caused by housing-related stress.<sup>339</sup> One Double-A player in San Antonio revealed that thinking about finances led to his “mental breakdown.”<sup>340</sup> The financial hardship and pressures of being a professional athlete led one player to even attempt suicide.<sup>341</sup> Poor mental health impacts players’ performance on the field, thus impacting their ability to be promoted to higher levels.<sup>342</sup> Therefore, the financial troubles and mental anguish that minor league players face has risen to the level of life and death, which must be taken seriously.

#### 2. *Antitrust and employment law reforms align with MLB’s commitment to racial justice*

Since the widespread publicization of Black Lives Matter Movement in the summer of 2020, there has been a push for racial justice from both private and governmental action.<sup>343</sup>

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336. *Can a Union Fix This?*, *supra* note 20.

337. *See id.* According to one former minor league player, “[p]eople don’t understand the mental strain that comes along with . . . [not] know[ing] how much money you’re going to have at the end of each month and not knowing how you’re going to make ends meet.” *Id.*

338. *See Cockroaches, Car Camping, Poverty Wages*, *supra* note 208.

339. *Id.*

340. *Id.*

341. *See Can a Union Fix This?*, *supra* note 20.

342. *Cockroaches, Car Camping, Poverty Wages*, *supra* note 208.

343. *See* Zackary Okun Dunivin, Harry Yaojun Yan, Jelani Ince & Fabio Rojas, *Black Lives Matter Protests Shift Public Discourse*, PROC. NAT’L ACAD. SCI. U.S., Mar. 2022, at 1, 10–11

Although Black leaders have participated in racial justice activism for decades, the importance of economic and political reform for Black individuals has recently become more recognized by non-Black individuals in the United States.<sup>344</sup> Thus, alleviating systemic racism requires reforming numerous institutions and organizations, including professional sports such as Major League Baseball.

Major League Baseball has taken concerted efforts to convey the importance of social justice. During the peak of the Black Lives Matter Movement, major league teams vocalized their support for the movement in a myriad of ways.<sup>345</sup> On Opening Day, the coaches and players on the Washington Nationals and New York Yankees knelt while holding a continuous black cloth to demonstrate a moment of unity.<sup>346</sup> This kneeling followed a video produced by the Players Alliance, a new nonprofit organization comprised of current and former Black baseball players.<sup>347</sup> Players on the Nationals, the Yankees, the Los Angeles Dodgers, and the San Francisco Giants wore jerseys

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(“Progressively, the [Black Lives Matter Movement] evolved to become more expansive, beyond police killings, even beyond policing, to the social structures that create and maintain the conditions of Black life in the United States.”).

344. See, e.g., Exec. Order No. 13985, 86 Fed. Reg. 7009, 7009–13 (Jan. 20, 2021) (“It is therefore the policy of my Administration that the Federal Government should pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. Affirmatively advancing equity, civil rights, racial justice, and equal opportunity is the responsibility of the whole of our Government. Because advancing equity requires a systematic approach to embedding fairness in decision-making processes, executive departments and agencies (agencies) must recognize and work to redress inequities in their policies and programs that serve as barriers to equal opportunity.”).

345. See, e.g., James Wagner, *On Opening Day, a Rarity for M.L.B.: Support for Black Lives Matter*, N.Y. TIMES (July 23, 2020), <https://www.nytimes.com/2020/07/23/sports/baseball/mlb-black-lives-matter.html>.

346. *Id.*

The idea for the cloth and the moment of unity at Nationals Park came from Andrew McCutchen, a veteran outfielder for the Philadelphia Phillies, and was organized by players without M.L.B.’s involvement, according to a statement. They came to M.L.B. to finalize the efforts, and similar cloths were sent to the [fourteen] other stadiums that hosted games on Thursday and Friday.

*Id.* According to McCutchen, that “moment [was] important for all M.L.B. players to unite and show support for one another.” *Id.*

347. *Id.*

with patches inscribed with “Black Lives Matter” and “United for Change.”<sup>348</sup> The Tampa Bay Rays tweeted, and the Boston Red Sox retweeted, “Today is Opening Day, which means it’s a great day to arrest the killers of Breonna Taylor.”<sup>349</sup>

Aside from the support of individual teams and their players, the MLB issued a statement on its commitment to racial justice after meeting with the MLBPA, the Players Alliance, and individual players.<sup>350</sup> In this document, the MLB expressed that it “stands in solidarity with the Black community in the fight for racial and social justice” and acknowledges that the league itself needs to contribute to racial justice by “enhanc[ing] initiatives to improve Black representation in baseball on and off-the-field.”<sup>351</sup> This apparent commitment continued into the 2021 season when the MLB moved the All-Star Game from Atlanta to Colorado.<sup>352</sup> After Georgia passed a law with potential voter suppression implications for Black Georgians, Commissioner Manfred met with the MLBPA, the Players Alliance, and others.<sup>353</sup> Manfred then decided to relocate the All-Star Game and the MLB Draft in protest.<sup>354</sup> At the All-Star Game, MLB honored Henry “Hank” Aaron, a former major leaguer and civil rights activist who died the previous January,<sup>355</sup> with a tribute video and gifts presented to his

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348. Paul P. Murphy, *Baseball Is Making Black Lives Matter Center Stage on Opening Day*, CNN, <https://www.cnn.com/2020/07/23/us/opening-day-baseball-mlb-black-lives-matter-trnd/index.html> (July 24, 2020, 10:10 AM).

349. *Id.*

350. *See id.*

351. *Id.*

352. *See* Alden González, *MLB Moving 2021 All-Star Game from Atlanta Over Georgia Voting Law*, ENT. & SPORTS PROGRAMMING NETWORK (Apr. 2, 2021), [https://www.espn.com/mlb/story/\\_/id/31183822/mlb-moving-all-star-game-atlanta-georgia-voting-law](https://www.espn.com/mlb/story/_/id/31183822/mlb-moving-all-star-game-atlanta-georgia-voting-law) (“Major League Baseball announced Friday that it is moving the 2021 All-Star Game out of Atlanta in response to a new Georgia law that has civil rights groups concerned about its potential to restrict voting access for people of color.”); Bill Chappell, *MLB Moves All-Star Game to Colorado Amid Uproar Over Georgia Voting Law*, NPR (Apr. 6, 2021, 2:13 PM), <https://www.npr.org/2021/04/06/984711881/mlb-moves-all-star-game-to-colorado-amid-uproar-over-georgia-voting-law>.

353. *See* González, *supra* note 352.

354. *See id.*

355. *See* Henry Louis “Hank” Aaron, NAT’L PARK SERV., [https://www.nps.gov/features/malu/feat0002/wof/Henry\\_Aaron.htm](https://www.nps.gov/features/malu/feat0002/wof/Henry_Aaron.htm) (last visited Dec. 27, 2022).

widow, Billye Aaron.<sup>356</sup> MLB continues to honor Jackie Robinson, another former major leaguer and activist,<sup>357</sup> each year with Jackie Robinson Day and other tributes.<sup>358</sup> Therefore, structural reform aligns with MLB's express understanding that racial justice is essential and intertwined with baseball.<sup>359</sup>

### CONCLUSION

Minor League Baseball players have been left in unlivable conditions by the Save America's Pastime Act and decision in *Federal Baseball*.<sup>360</sup> The underwhelming compensation of minor leaguers is one of the main reasons that talented Black athletes are deterred from professional baseball, causing a drastic decline in the number of Black professional baseball players.<sup>361</sup> To create an environment in which Black athletes can choose to pursue professional baseball without considering the immediate threat of poverty, Congress must repeal and replace the Save America's Pastime Act, and the Supreme Court must overturn the judicially created antitrust exemption.

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356. Gabriel Burns, *Hank Aaron Honored Before Baseball All-Star Game*, ATLANTA JOURNAL-CONSTITUTION (July 13, 2021), <https://www.ajc.com/sports/atlanta-braves/hank-aaron-honored-before-mlb-all-star-game/IFG6GHYZUVFHRGKVPFLNJEUUU/>.

357. Tim Ott, *The Activism of Jackie Robinson*, BIOGRAPHY (Sept. 11, 2020), <https://www.biography.com/news/jackie-robinson-civil-rights-facts>.

358. See, e.g., *Jackie Robinson Day*, MLB CMTY., <https://www.mlb.com/mlb-community/jackie-robinson-day> (last visited Dec. 27, 2022); Major League Baseball (@MLB), INSTAGRAM (Jan. 31, 2022), <https://www.instagram.com/p/CZZkj4arIyI/> ("Days ahead of Jackie Robinson's 103rd birthday, MLB & the Georgia Historical Institute unveiled a new birth marker in his hometown of Cairo, GA. We are proud to honor & celebrate Jackie's legacy, & the impact his actions will continue to have on future generations.").

359. But see *Without Antitrust Exemption*, *supra* note 64 (pointing out that Commissioner Manfred "reject[s] the premise that [minor leaguers] are not paid a living wage," suggesting that Major League Baseball does not take the undercompensation of minor league players seriously) (alterations in original); Apstein, *supra* note 7 (explaining that Preston Wilson, a Black former major league player, said that MLB's statement regarding Black Lives Matter "took too long" and "didn't say enough").

360. See *supra* Sections I.B.1, .5–.6, I.C.

361. See *supra* Sections I.C.–E.