Antitrust and Baseball – A League of Their Own

Y. Shukie Grossman
NOTES

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INTRODUCTION

In its purest form, baseball symbolizes American progressivism. As our national pastime, baseball embodies the competitive spirit that propelled industrialization, technological advancement, and the overall growth of the United States into the world’s predominant economic power. For over a century, the game of baseball has entertained Americans and provided them with an athletic art form which they can appreciate and discuss, much like the theater. Acting in accordance with this perception of the game, the United States Supreme Court granted Major League Baseball (“Baseball”) an exemption from federal antitrust laws in 1922 based on a finding that the business of baseball does not implicate interstate commerce. No other professional sports league enjoys a comparable privilege, and despite perennial challenges to its validity, Baseball’s exemption has remained virtually unscathed.

With America’s economic evolution over the past seventy-one years, however, some contend that the business of Baseball has transformed the game into an industry which appears more concerned with finance than amusement. These critics deem the antitrust exemption “anachronistic, upholding a privileged status for a

1. One baseball historian notes that baseball was “the only well-established team sport when industrialism took hold,” suggesting an intrinsic correlation between the development of organized baseball and technological advancement. See Eugene C. Murdock, Ban Johnson: Czar of Baseball 3-4 (1982).

2. See Federal Baseball Club, Inc. v. National League, 259 U.S. 200 (1922). Although the Supreme Court has since held that Baseball’s business falls within interstate commerce, the Court has preserved the exemption, ruling that a change in the law must issue from Congress and not from the judiciary. See Flood v. Kuhn, 407 U.S. 258, 282, 284-85 (1972).
single, small group of wealthy sportsmen.” In December 1992, the antitrust exemption was the subject of a Senate subcommittee hearing where numerous legislators, team owners, and academics voiced their concerns and suggestions regarding the future of Baseball’s seemingly indelible exemption. Several senators subsequently introduced the Professional Baseball Reform Act of 1993 (“Reform Act”), providing that “the business of professional Baseball is in, or affects, interstate commerce.” Ratification of this legislation would essentially dissolve Baseball’s privileged status, which is predicated on the premise that the business of Baseball does not implicate interstate commerce.

Moreover, a federal judge in Pennsylvania recently held that Baseball’s antitrust exemption is limited to Baseball’s “reserve system,” an obsolete method which was once employed by Baseball teams to restrict player movement. The decision, Piazza v.


Among those who testified at the hearing against the exemption were: Sen. Howard M. Metzenbaum (D-Ohio), who chairs the Senate Judiciary Committee’s Antitrust, Monopolies and Business Rights Subcommittee; Sen. Paul Simon (D-III.); Donald M. Fehr, Executive Director of the Major League Baseball Players Association; Rodric Harrison, a former major and minor league pitcher; Sen. Connie Mack, III (R-Fla.); Rep. Michael Bilirakis (R-Fla.); Rick Dodge, Assistant City Manager of St. Petersburg, Fla.; Gene Kimmelman, Legislative Director of the Consumer Federation of America; Andrew Zimbalist, Robert A. Woods Professor of Economics at Smith College; and Roger G. Noll, Professor of Economics at Stanford University. Persons who testified in the exemption’s favor included: former Baseball Commissioner Fay Vincent; acting Baseball Commissioner Andrew H. “Bud” Selig, owner of the Milwaukee Brewers; Gary R. Roberts, Vice Dean and Professor of Tulane Law School; and San Francisco Mayor Frank M. Jordan. Senate Committee Takes Swings at Baseball’s Antitrust Exemption, 63 Antitrust & Trade Reg. Rep. (BNA) 743 (Dec. 17, 1992).


6. Id. § 2(1).


8. See infra note 78.
Major League Baseball, represents perhaps the most formidable challenge to Baseball's exemption in recent years. In fact, legislators in support of the bill to repeal the exemption believe the legislation now carries more weight in light of the Piazza decision. According to Senator Howard Metzenbaum (D-Ohio), who helped draft the bill to repeal the exemption, the decision "underscores the need for legislation that will make it clear that Major League Baseball must play by the same rules as every other professional sport."

Detractors of Baseball's antitrust exemption fail to realize that the exemption no longer provides Baseball with a competitive advantage over other professional sports leagues. With respect to broadcasting rights, a major source of revenue for professional sports franchises, all professional sports leagues are currently exempt statutorily from antitrust regulation. Furthermore, since the dissolution of the reserve clause, which Baseball teams utilized to control player movement, the antitrust exemption no longer affords Baseball the ability to restrict player salaries with greater ease than the rest of the professional sports leagues.

Presently, Baseball's exemption allows it to regulate franchise relocation and consequently, to prevent teams from wasting taxpayer dollars used to construct stadiums which have virtually no other use than to house baseball teams. In addition, the exemption enables Baseball to subsidize minor league franchises which otherwise might not survive without financial assistance. Thus, passage of legislation such as the Reform Act would only harm the sport's consumers by dissolving the important benefits of the exemption.

Part I of this Note briefly overviews the creation and goals of federal antitrust law and focuses on whether the business of Baseball would violate the Sherman Antitrust Act were the exemption lifted by legislative reform. Part II traces the history of Baseball's antitrust exemption since its inception in the 1920s and discusses

11. Id.
12. See infra notes 175-177 and accompanying text.
13. See infra notes 105-106 and accompanying text.
the Supreme Court's unwillingness to dissolve the exemption despite its subsequent finding that the business of Baseball implicates interstate commerce. Part III analyzes the Piazza decision and criticizes its narrow interpretation of Baseball's exemption. Part IV distinguishes Baseball from other professional sports leagues that are subject to the antitrust laws and argues that the current status of Baseball mandates preserving the exemption. In conclusion, this Note recommends that Congress not enact legislation that would terminate this exemption and suggests that courts attempting to apply antitrust law to Baseball adopt an expansive view of the exemption.

I. SECTIONS 1 & 2 OF THE SHERMAN ANTITRUST ACT CAN'T CATCH BASEBALL

A. Background

Antitrust legislation in the United States arose in response to the growing concentration of economic power in the hands of a relatively small portion of the population at the end of the nineteenth century.\(^{14}\) During this era, a limited number of individuals and corporations accumulated substantial wealth, and "trusts," which were believed to threaten competition, control prices and stifle individual initiative, were gradually developing.\(^{15}\) In response


\(^{15}\) *See* Standard Oil Co. v. United States, 221 U.S. 1 (1911). In *Standard Oil*, the Court noted that:

The debates . . . conclusively show . . . that the main cause which led to the legislation was the thought that it was required by the economic condition of the times, that is, the vast accumulation of wealth in the hands of corporations and individuals, the enormous development of corporate organization, the facility for combination which such organizations afforded, the fact that the facility was being used, and that combinations known as trusts were being multiplied, and the widespread impression that their power had been and would be exerted to oppress individuals and injure the public generally.

*Id.* at 50.
of these phenomena, Congress passed the Sherman Antitrust Act\(^{16}\) ("Sherman Act") in an attempt to prevent further concentration of power and preserve competition among sellers. The statute was intended to prevent or suppress devices or practices which create monopolies or restrain trade or commerce by suppressing or restricting competition and impeding the course of trade.\(^{17}\)

Generally, claims brought under the Sherman Act allege a violation of either section 1 or section 2. Section 1 provides that "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal."\(^{18}\) Section 2 states that "[e]very person who shall monopolize, or attempt to monopolize or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony."\(^{19}\)

B. The Business of Baseball Does Not Unreasonably Restrain Trade in Violation of Section 1

Since "the cooperation of teams off the playing field is necessary to effective and meaningful competition on the playing field," professional sports present particular problems for the application of section 1 criteria.\(^{20}\) Thus, courts have attempted to apply these principles in a manner that insures competition while respecting the collective nature of professional athletics.\(^{21}\) Based on the language of the Sherman Act, a claimant seeking relief under section 1 must satisfy a three-prong analysis: (1) whether the practice is in or affects interstate commerce; (2) whether the practice is a collabora-


\(^{21}\) Id. For further analysis of the applicability of section 1 to professional sports leagues, see Myron L. Dale & John Hunt, Antitrust Law & Baseball Franchises: Leaving Your Heart (And the Giants) in San Francisco, 20 N. KY. L. REV. 337, 342-50 (1993).
tive effort; and (3) whether the practice unreasonably restrains trade.\textsuperscript{22}

1. Interstate Commerce

In view of the fact that Baseball’s exemption is predicated on the premise that its activities are local and do not implicate interstate commerce,\textsuperscript{23} the first factor requiring analysis under section 1 is whether this understanding of the business of Baseball is still accurate. Since the inception of Baseball’s antitrust exemption in 1922,\textsuperscript{24} numerous decisions have held that professional sports leagues other than Baseball involve interstate commerce.\textsuperscript{25} In addition, the Supreme Court in Flood v. Kuhn,\textsuperscript{26} while preserving Baseball’s exemption, held that the League’s business falls within interstate commerce.\textsuperscript{27} Furthermore, the Reform Act proposed in Congress to repeal the exemption is specifically worded to describe the activities of Major League Baseball as in or affecting interstate commerce.\textsuperscript{28} Thus, were Baseball to lose its exempt status, the League’s business activities would satisfy the interstate commerce prong of section 1.

2. Collective Action

The second prong of the section 1 analysis requires resolving whether independently owned sports franchises can contract, combine, or conspire in violation of section 1. If a league constitutes a “single entity” pursuing a single purpose, then section 1 does not apply to it.\textsuperscript{29} If, however, a league consists of independent entities,

\begin{footnotesize}
\textsuperscript{22} See, e.g., Petruzzi’s IGA Supermarkets, Inc. v. Darling-Delaware Co., 998 F.2d 1224 (3d Cir. 1993); Haagen-Dazs Co. v. Double Rainbow Gourmet Ice Creams, Inc., 895 F.2d 1417 (9th Cir. 1990); Hahn v. Oregon Physician’s Serv., 860 F.2d 1501 (9th Cir. 1988).
\textsuperscript{24} See id.
\textsuperscript{26} 407 U.S. 258 (1972).
\textsuperscript{27} Id. at 282.
\textsuperscript{28} See supra note 5 and accompanying text.
\textsuperscript{29} Section 1 of the Sherman Act reaches unreasonable restraints of trade effected
\end{footnotesize}
each pursuing diverse yet competing purposes, section 1 prohibits collective action by such independent entities which unreasonably restrain trade.\textsuperscript{30}

Since federal antitrust laws currently do not apply to Baseball, no court has addressed whether or not Baseball constitutes a single entity for section 1 purposes. In order to ascertain whether section 1 would apply to Baseball were it to lose its exemption, it is instructive to look at decisions addressing this issue concerning football.

Perhaps the most prominent football decision confronting the single entity question is \textit{Los Angeles Memorial Coliseum Commission v. National Football League ("Raiders").}\textsuperscript{31} In Raiders, the owner of the then Oakland Raiders sought to move his franchise to the Los Angeles Coliseum.\textsuperscript{32} Pursuant to the National Football League’s ("NFL") constitution, which requires majority approval by a "contract, combination or conspiracy" between separate entities and not conduct that is "wholly unilateral." Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752, 767-68 (1984); Albrecht v. Herald Co., 390 U.S. 145, 149 (1968). In Copperweld the Court explained:

The reason Congress treat[es] concerted behavior more strictly than unilateral behavior is readily appreciated. Concerted activity is fraught with anti-competitive risk. It deprives the marketplace of the independent centers of decision making that competition assumes and demands. In any conspiracy, two or more entities that previously pursued their own interests separately are combining to act as one for their common benefit. This not only reduces the diverse directions in which economic power is aimed but suddenly increases the economic power moving in one particular direction. Of course, such mergings of resources may well lead to efficiencies that benefit consumers, but their anti-competitive potential is sufficient to warrant scrutiny even in the absence of incipient monopoly.

467 U.S. at 768-69.

30. See, e.g., National Collegiate Athletic Ass’n v. Board of Regents, 468 U.S. 85 (1984). In NCAA, the NCAA was charged with unreasonably restraining trade with respect to televising college football games. The Supreme Court held that the NCAA’s restrictions on price and output constituted unlawful restraints of trade, implicitly recognizing that competing sports league teams can constitute independent entities and are capable of collective action in violation of section 1 of the Sherman Act. \textit{Id.}


32. 726 F.2d at 1384.
of any relocation, the other owners vetoed the move. Consequently, the Raiders and the Los Angeles Coliseum sued the NFL claiming it impermissibly conspired to restrain trade in violation of section 1 of the Sherman Act. As its line of defense, the NFL contended it was a single-entity and therefore could not conspire to restrain trade. The Ninth Circuit ultimately held that the NFL was not a joint venture but a combination of separate business entities, each selling a product with a value independent of the products of others.

Conversely, the Third Circuit reached a different conclusion when applying section 1 combination and conspiracy principles to the thwarted attempt of a franchise to join the NFL. In Mid-South Grizzlies v. National Football League, the Mid-South Grizzlies, a franchise in the defunct World Football League ("WFL"), applied for admission to the NFL. The NFL denied the Grizzlies admission and the team subsequently brought suit alleging, inter alia, violations of section 1 of the Sherman Act. The NFL defended on the grounds that it was a single entity and thus not subject to section 1 scrutiny.

In ruling for the NFL, the Mid-South Grizzlies court stressed the necessity of collective action among NFL franchises in determining the site of a new franchise. The court noted that categorizing the NFL as a single-entity was appropriate in this particular instance—i.e., where the team seeking admission did not threaten to compete with existing franchises. In a situation where a fran-

33. Id. at 1385.
34. Id. at 1389.
35. Id. at 1387.
36. Id. at 1387-90.
38. 720 F.2d at 775-76.
39. Id.
40. Id. at 787.
41. Id.
42. Id. Since the Mid-South Grizzlies were located in Memphis, Tennessee, more than 200 miles away from the nearest NFL franchise in St. Louis, Missouri, the court determined that the NFL was not restraining competition by denying the Grizzlies admission. Id.
chise was attempting to join the League in an area already served by an existing franchise, however, the court conceded that viewing the NFL as a single-entity would be inappropriate.3

As applied to Baseball, it is possible to reconcile the differing opinions in Raiders and Mid-South Grizzlies as a function of their factual circumstances—i.e., intra-league competition versus inter-league competition—suggesting that were Baseball to lose its exemption, it would qualify as a single-entity in some circumstances but not in others. Nevertheless, with respect to Baseball, some economists contend that "section 1 anticonspiracy principles [are] ill suited for reviewing the internal decisions of an inherently joint venture partnership."4 This is particularly true in light of Baseball’s protracted playing season. Major League Baseball franchises play more than ten times as many games as professional football. Therefore, greater cooperation among Baseball teams off the playing field is necessary for effective competition on the playing field. As a result, the possibility exists that courts applying antitrust laws to Baseball would not find decisions rendered in the football context instructive due to the marked difference in structure between the two sports.

3. Unreasonable Restraints

Even if Baseball were to qualify as a group of independent entities engaged in interstate commerce under the first two prongs of section 1, Baseball would fail to meet the section’s third prong, which requires a given restraint to unreasonably restrain trade.45 If a restraint is reasonable, section 1 is inapplicable. In determining whether a restraint is reasonable, the Supreme Court applies either the per se test or the rule of reason test.

If an activity is illegal per se, the plaintiff must only prove that the defendant engaged in the activity and need not prove the activi-

43. Id. at 786-87.


45. The United States Supreme Court has stated that the Sherman Act only reaches those restraints that are unreasonable. See Standard Oil Co. v. United States, 221 U.S. 1, 58 (1911).
ty's anticompetitive effect. Conversely, the rule of reason test requires a comprehensive and sometimes complex review of the activity's anticompetitive effect. Because the per se rule may "over deter by intimidating businesses from engaging in conduct which may turn out to be more beneficial than harmful to competition," the Supreme Court has gradually limited the types of activities falling within the per se rule. Generally, the Court applies the rule only to horizontal arrangements under section 1 that involve activities such as price fixing, division of markets, or group boycotts.

If an activity is not illegal per se, courts, in reviewing a section 1 claim, will evaluate the practice under the rule of reason. The rule of reason requires the court to review the competitive effects

46. See Catalano, Inc. v. Target Sales, Inc., 446 U.S. 643 (1980); Northern Pacific R.R. v. United States, 356 U.S. 1 (1958). In Northern Pacific, the Court explained that:

[T]here are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use. This principle of per se unreasonableness not only makes the type of restraints which are proscribed by the Sherman Act more certain to the benefit of everyone concerned, but it also avoids the necessity for an incredibly complicated and prolonged economic investigation[,] . . . an inquiry so often wholly fruitless when undertaken.

Id. at 5.

47. ANDERSON & ROGERS, supra note 20, at 261.

48. Id.

49. Horizontal arrangements are agreements among competitors at the same level, e.g., manufacturers conspiring to set the price at which they will sell to all retailers, and are considered per se violations. LAWRENCE A. SULLIVAN, HANDBOOK OF THE LAW OF ANTITRUST 106 (1977). Vertical arrangements are agreements between those at different levels of the marketing-manufacturing structure, e.g., a distributor and its retailer conspiring to set the price at which they will sell products within a certain region. Id. at 657. Vertical agreements are considered to have potential benefits not present in horizontal arrangements. Thus, except for pricing arrangements, vertical agreements are generally reviewed under the rule of reason and are not considered illegal per se. See Continental T.V., Inc. v. GTE Sylvania, Inc., 433 U.S. 36 (1977).


of the business practice and weigh any potential benefits against the practice's negative effect on competition.\(^\text{53}\) Due to the unique nature of professional sports leagues, where teams are both competitors and completely interdependent upon each other, federal courts have repeatedly analyzed those leagues which are not exempt from antitrust laws under the rule of reason rather than the per se approach.\(^\text{54}\)

In recent years, many economists have stressed consumer welfare as the exclusive goal of antitrust law.\(^\text{55}\) They recommend that courts applying the rule of reason focus on whether the activity harms consumer welfare by decreasing output and increasing prices.\(^\text{56}\) If the activity does not have this negative effect, then it is not anticompetitive and does not violate section 1.\(^\text{57}\) The current trend appears to favor this view that the law should permit modes of integration that actually benefit the consumer by enhancing the efficiency of the integrating organizations.\(^\text{58}\)

Applying this thinking to sports leagues, one prominent theorist has noted that "some activities can only be carried out jointly. Perhaps the leading example is league sports. When a league of professional lacrosse teams is formed, it would be pointless to declare their cooperation illegal on the ground that there are no


\(^{56}\) Id.

\(^{57}\) Id.; see, e.g., Paschall v. Kansas City Star, 727 F.2d 692 (8th Cir. 1984). In Paschall v. Kansas City Star, the court held that vertical integration by a newspaper publisher did not constitute an illegal restraint of trade since plaintiff independent carriers were permitted to deliver newspapers for other publishers as well; thus, barriers to entry into newspaper publishing did not increase. 727 F.2d 692, 702 (8th Cir. 1984).

other professional lacrosse teams.\textsuperscript{59}

Thus, even if Baseball were deemed a group of independent entities engaged in interstate commerce, the League's current business activities—i.e., regulating franchise relocation—would not fall prey to section 1. Since collaboration among teams is necessary to effect viable competition, under a rule of reason analysis, the business of Baseball would not constitute an unreasonable restraint of trade.

C. Baseball Does Not Act as a Monopolist Under Section 2

Just as Baseball's activities would not constitute unreasonable restraints of trade in violation of section 1 were the exemption lifted—since the rule of reason analysis conducted under section 1 and the anti-competitive effects analysis conducted under section 2 are similar—the league's operations would not fall prey to section 2 either.\textsuperscript{60} Section 2 of the Sherman Act prohibits monopolizing, attempting to monopolize or conspiring to monopolize any part of interstate trade or commerce.\textsuperscript{61} Section 2 claims are never subject to a per se analysis. In order to state a monopolization claim under section 2 of the Sherman Act, a plaintiff must allege: (1) defendant's possession of monopoly power in the relevant geographic and product market; and (2) defendant's willful acquisition or maintenance of that power as distinguished from a justifiable business decision.\textsuperscript{62} Thus, the mere possession of a monopoly does not constitute the offense of monopolization. Rather, the monopolist must abuse that power. The ultimate question in such a claim is whether the monopolist's activity has an anticompetitive effect.

A claim against Baseball under section 2 might allege that the league is unlawfully maintaining monopoly power with the purpose of discouraging new teams and leagues from competing against it.\textsuperscript{63}

\textsuperscript{59} Bork, \textit{supra} note 55, at 278.

\textsuperscript{60} For further analysis of the applicability of section 2 of the Sherman Act to professional sports leagues, see Dale & Hunt, \textit{supra} note 21, at 350-54.


Courts addressing this issue with respect to other sports—i.e., football—however, have held that groups attempting to acquire a franchise and join the league do not have standing to sue under section 2 because they are seeking to join and not to compete with the league. Thus, the relevant caselaw suggests that the only permissible claims under section 2 are those emanating from competing leagues and from teams in such leagues.

Nonetheless, in the recent Piazza decision, the court addressed the question of whether a plaintiff attempting to purchase and transfer an existing Baseball franchise to another city maintains a legitimate section 2 claim against the league for interfering with the transaction. The court concluded that Major League Baseball willfully maintains monopoly power in a relevant product market—the market for Baseball teams generally. This assessment counters the wisdom of prior decisions alluded to above and is at best questionable.

Furthermore, in order to monopolize, a business must possess market power. Market power allows a business to affect the price which will prevail upon the relevant market. Whether a seller maintains such power depends upon the reaction to price changes initiated by that seller. Buyer reaction, in turn, depends upon the availability of substitutes for the seller's product. Because Baseball teams compete with not only other sports franchises but the whole of the entertainment industry, if Baseball were to charge unreasonable ticket prices, consumers would look elsewhere for entertainment. Thus, Baseball does not possess the requisite market power to monopolize the relevant market.

64. See, e.g., Mid-South Grizzlies v. National Football League, 720 F.2d 772, 788 (3d Cir. 1983) (summarily dismissing the Grizzlies section 2 claim because Congress had specifically permitted the NFL's monopoly with respect to determining franchise location).
65. Dale & Hunt, supra note 21, at 354.
67. Id. at *33.
68. See discussion infra part III.C.
69. SULLIVAN, supra note 58, at 30.
70. Id.
71. Id.
72. Id. at 30-31.
II. THE EVOLUTION OF BASEBALL’S ANTITRUST EXEMPTION

A. The Early Antitrust Challenges

American League Baseball Club of Chicago v. Chase\(^73\) involved the first antitrust challenge against Baseball.\(^74\) In Chase, Chicago’s American League franchise brought an action against Chase, one of the team’s players, to prevent him from jumping to the Federal League’s Buffalo franchise while still under contract with Chicago. Chase alleged that the player’s contract constituted an illegal restraint of trade and was therefore a violation of the Sherman Act.\(^75\) Although the Supreme Court of the State of New York held that the business of Baseball did not constitute interstate commerce and thus was not subject to the Sherman Act, the court ruled for Chase and dissolved the lower court’s injunction.\(^76\) The court explained that it would not interfere with the personal liberty of a citizen by “controlling his free right to labor wherever and for whom he pleases.”\(^77\)

Ironically, while the court in Chase openly rejected application of the federal antitrust laws to the business of Baseball, the opinion represented a successful challenge to the reserve clause\(^78\) and frus-

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\(^73\) 149 N.Y.S. 6 (1914).


\(^75\) 149 N.Y.S. at 15-16.

\(^76\) Id. at 20.

\(^77\) Id. In addressing the defendant’s antitrust allegation the court explained that baseball is merely “an amusement, a sport, a game that comes clearly within the civil and criminal law of the state.” Id. at 17. The court also stated that baseball was not a commodity or an article of merchandise subject to Congress’ power to regulate interstate commerce, and therefore, was outside the jurisdiction of the federal antitrust laws. Id. at 16-17.

\(^78\) The reserve clause was a provision in a player’s contract which conferred upon the organized baseball club which first signed a player a continuing and exclusive right to his services. At the same time, other teams could not extend to the player another offer. Therefore, the player was bound to the team perpetually. See Toolson v. New York Yankees, Inc., 346 U.S. 356, 362-63 (1953); Flood v. Kuhn, 407 U.S. 258, 264-65, 282 (1972).

Under the existing collective bargaining agreement, a veteran player whose contract expires becomes a “free agent” and is free to negotiate a contract with another team. His old team may then match the other team’s offer within a set time period or
trated efforts by the American and National Leagues to resist further attempts by the Federal League to recruit their players. This created a great deal of friction between the two factions. Although they subsequently attempted to reconcile their differences, negotiations ultimately collapsed. The Federal League, facing increasing financial difficulties, sued organized baseball for conspiring to restrain trade in violation of the federal antitrust laws. After several months without a decision, the two sides initiated settlement talks. By the end of the year, the two sides reached a satisfactory accommodation, and the Federal Baseball League withdrew its antitrust suit.

The Federal Baseball Club of Baltimore ("Baltimore Club"), however, was dissatisfied with the settlement agreement. As a result, the owners of the Baltimore Club filed suit in the Federal District Court of Philadelphia in 1916, alleging that organized baseball had conspired in restraint of trade. Anticipating an out-of-court settlement, the Baltimore Club withdrew its complaint.

When the Baltimore Club did not receive the anticipated settlement, it again filed suit—this time in Washington, D.C. The Supreme Court of the District of Columbia found in favor of the Baltimore Club, awarding it $80,000, which was tripled under the Sherman Act to $240,000. On appeal, the Court of Appeals of the District of Columbia reversed, concluding that baseball exhibitions do not constitute commerce under the Sherman Act.

the player will join his new team. See Kansas City Royals Baseball Corp. v. Major League Baseball Player's Ass'n, 532 F.2d 615 (8th Cir. 1976). In Kansas City Royals, Baseball owners unsuccessfully challenged the decision of an arbitration panel—established through collective bargaining between the League and the players—to allow players whose contracts had expired at the end of the season to declare themselves free agents. Id. at 623.

79. MURDOCK, supra note 1, at 109.
80. Id. at 113.
81. Id. at 114.
82. Id. at 117.
83. Id.
85. 269 F. at 685.
Court of Appeals explained:

The business in which the appellants were engaged, as we have seen, 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. Not until they come into contact with their opponents on the baseball field and the contest opens does the game come into existence. It is local in its beginning and in its end. Nothing is transferred in the process to those who patronize it. The exertions of skill and agility which they witness may excite in them pleasurable emotions, just as might a view of a beautiful picture or a masterly performance of some drama; but the game effects no exchange of things according to the meaning of [trade and commerce].

Underlying the court’s decision was its reasoning that organized baseball was not involved in any interstate activity. It upheld the legality of utilizing the reserve clause to ensure an even distribution of talent among teams. The court noted:

If the reserve clause did not exist, the highly skillful players would be absorbed by the more wealthy clubs, and thus some clubs in the league would so far outstrip others in playing ability that the contests between the superior and inferior clubs would be uninteresting, and the public would refuse to patronize them.

The case eventually reached the United States Supreme Court. In Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs, the Supreme Court unanimously affirmed the Court of Appeals’ decision, finding that “the business

86. Id. at 684-85.
87. Id. at 687.
88. Id.
89. See National League v. Federal Baseball Club, Inc., 269 F. 681, 688 (D.C. Cir. 1921) (vacating previous judgment of the court and reversing the judgment of the Supreme Court of the District of Columbia in order that the case be carried to the United States Supreme Court).
is giving exhibitions of baseball, which are purely state affairs.\textsuperscript{91} The Court emphasized that travelling to games is purely incidental to giving exhibitions and cannot comprise interstate commerce.\textsuperscript{92} Thus, \textit{Federal Baseball} provided professional Baseball with immunity from antitrust laws while tacitly acknowledging the validity of the reserve clause. The importance of this decision was not fully realized, however, until the Supreme Court re-examined Baseball’s exemption from the antitrust laws over thirty years later.

\textbf{B. Toolson: \textit{The Court Stands its Ground}}

In \textit{Toolson v. New York Yankees, Inc.},\textsuperscript{93} the United States Supreme Court for the first time was confronted with a direct challenge to Baseball’s reserve system.\textsuperscript{94} Instead of addressing the merits, the Court held that:

Congress has had the ruling [in \textit{Federal Baseball}] under consideration but has not seen fit to bring such business under these laws by legislation having prospective effect. The business has thus been left for thirty years to develop, on the understanding that it was not subject to existing antitrust legislation. The present cases ask us to overrule the prior decision and, with retrospective effect, hold the legislation applicable. We think that if there are evils in this field which now warrant application to it of the antitrust laws it should be by legislation.\textsuperscript{95}

The Court reaffirmed \textit{Federal Baseball} to the extent that Congress did not intend the antitrust laws to apply to the business of

\begin{itemize}
\item \texttt{91. Id. at 208.}
\item \texttt{92. Id. at 208-09.}
\item \texttt{93. 346 U.S. 356 (1953).}
\item \texttt{94. \textit{Toolson} was decided together with two companion cases. Kowalski v. Chandler, 202 F.2d 413 (6th Cir. 1953), aff'd, 436 U.S. 356 (1953); Corbett v. Chandler, 202 F.2d 428 (6th Cir. 1953), aff'd, 436 U.S. 356 (1953). The two companion cases dealt not with the reserve clause, but with other aspects of league structure, such as the Major League Agreement which, according to plaintiffs, unreasonably restricted the number and location of major league franchises and prevented them from obtaining major league status. That the Court's holding applied to the circumstances of all three cases suggests that it understood Baseball's exemption to extend beyond the reserve system.}
\item \texttt{95. 346 U.S. 356, 357 (1953).}
\end{itemize}
Thus, Toolson marked the first indication that the Court had determined that any alteration of Baseball’s exemption from antitrust regulation must ultimately come from Congress and not the judiciary.

C. Flood: Different Era Same Result

In 1972, the reserve clause received yet another legal challenge. In *Flood v. Kuhn*, Curt Flood, a player who had been traded against his will, brought suit claiming that the forced trade violated his constitutional rights. Specifically, he alleged that the forced trade violated antitrust laws as well as the Thirteenth Amendment’s prohibition against involuntary servitude.

The Federal District Court for the Southern District of New York refused to grant him an injunction which would have allowed him to negotiate with other teams. On appeal, the Second Circuit affirmed the district court’s decision on the basis of the *Federal Baseball* and *Toolson* decisions which placed the duty on Congress to address Baseball’s exemption. The Supreme Court affirmed the decision, citing the doctrine of stare decisis.

The Court emphasized that any change in federal antitrust policy must

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96. *Id.*

97. *Id.* Several years after *Toolson*, the Supreme Court further articulated its rational for continuing to uphold *Federal Baseball*. In *Radovich v. National Football League*, 352 U.S. 445 (1957), the Court noted:

Vast efforts had gone into the development and organization of Baseball since [the *Federal Baseball*] decision, and enormous capital had been invested in reliance on its permanence. Congress had chosen to make no change. All this, combined with the flood of litigation that would follow its repudiation, the harassment that would ensue, and the retroactive effect of such a decision, led the Court to the practical result that it should sustain the unequivocal line of authority reaching over many years.

*Id.* at 450-51.


100. *Id.* The Thirteenth Amendment states in relevant part: “Neither slavery nor involuntary servitude . . . shall exist within the United States, or any place subject to their jurisdiction. U.S. CONST. amend. XIII, § 1.


102. 443 F.2d at 268.

103. 407 U.S. at 284-85.
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originates from Congress.104

In the wake of Flood v. Kuhn, litigation involving Baseball’s antitrust exemption focused less on the reserve clause and more on non-labor related issues. This phenomenon resulted primarily from the 1976 Basic Agreement which effectively dissolved the reserve clause and granted veteran players a much stronger bargaining position.105 With the reserve clause intact, Baseball, by virtue of its exemption, was able to control two important aspects of the player market, the selection and continued employment of players and the equalization of playing strengths.106 As a result of the Basic Agreement and the dissolution of the reserve clause, therefore, much of the potency of Baseball’s exemption was lost.

Due to the Basic Agreement and the Supreme Court’s unequivocal mandate in Flood that any alteration of Baseball’s antitrust exemption must emanate directly from Congress, litigation involving Baseball’s antitrust exemption has surfaced only sporadically since that decision. More than twenty years passed before formidable litigation arose challenging the veracity of the Flood decision.

III. THE IMPACT OF PIAZZA v. MAJOR LEAGUE BASEBALL ON BASEBALL’S EXEMPTION

A. The Course of Events—The St. Petersburg Giants?

Piazza v. Major League Baseball107 arose in response to the thwarted transfer of the San Francisco Giants baseball club to St. Petersburg, Florida.108 Vincent M. Piazza, a Pennsylvania businessman, had formed a limited partnership with several other investors for the purpose of acquiring the Giants and moving the team to Florida.109 Questioning the character of several members of the limited partnership, Major League Baseball rejected Piazza’s pro-

104. Id.
105. Irwin, supra note 74, at 293.
108. Id. at *2.
109. Id. at *3.
posal to purchase and relocate the Giants and ultimately accepted a considerably less substantial offer from a different group of buy-
ers.\footnote{110}

Consequently, Piazza brought suit in the Eastern District Court of Pennsylvania, alleging, among other claims, violations of sections 1 and 2 of the Sherman Antitrust Act.\footnote{111} Piazza asserted that Major League Baseball monopolized the market for professional baseball franchises by precluding the sale and transfer of any given team without League approval.\footnote{112} In particular, Piazza alleged that:

Baseball’s actions placed direct and indirect restraints on the purchase, sale, transfer and relocation of Major League Baseball teams and on competition in the purchase, sale, transfer and relocation of such teams, all of which directly and indirectly affect interstate commerce; Major League Baseball is an unreasonable and unlawful monopoly created, intended and maintained by defendants for the purpose of permitting defendant team owners, an intentionally select and limited group, to reap enormous profits; and Baseball achieved these restraints on trade by engaging in an unlawful combination and conspiracy... the substantial terms of which have been to eliminate all competition in the relevant market [defined as the market for American League and National League Baseball teams], to exclude plaintiffs from participating in the relevant market, to establish monopoly control of the relevant market and to unreasonably restrain trade by denying the sale, transfer and relocation of the Giants to the Tampa Bay area.\footnote{113}

Thus, according to Piazza, the League effectively restrained his right to engage in the business of Major League Baseball by precluding his partnership from competitively bidding on the San Francisco Giants.\footnote{114}

\footnotesize
\begin{itemize}
\item \footnote{110}{Id. at *5-*7.}
\item \footnote{111}{Id. at *10.}
\item \footnote{112}{Id.}
\item \footnote{113}{Id. at *30 n.13 (citing Complaint at 104, 110-12).}
\item \footnote{114}{Id. (citing Complaint at 112).}
\end{itemize}
In response to Piazza's allegations, the League argued that:

(1) plaintiffs have failed to allege that Baseball’s actions restrained competition in a relevant market; (2) plaintiffs have no standing to assert a Sherman Act claim; and (3) Baseball is exempt from liability under the Sherman Act.\textsuperscript{115}

These contentions set the stage for the most comprehensive analysis of the interplay between the Sherman Act and Baseball in recent jurisprudence.

B. The Opinion—Shame On You Baseball!

Addressing Baseball’s first contention—that plaintiffs did not allege an injury to competition in a relevant product market because plaintiffs were seeking to join Baseball rather than to compete with it—the Piazza court attempted to distinguish the case before it from \textit{Mid-South Grizzlies v. National Football League},\textsuperscript{116} which Baseball invoked in support of its position.\textsuperscript{117}

In \textit{Mid-South Grizzlies}, the United States Court of Appeals for the Third Circuit affirmed the lower court’s dismissal of antitrust claims brought against the NFL by the Grizzlies, a former WFL team.\textsuperscript{118} The court found that the Grizzlies had shown “no actual or potential injury to competition resulting from the rejection of their application for an NFL franchise.”\textsuperscript{119} The court’s decision was premised primarily on the court’s acceptance of “major-league professional football” as the relevant product market for Sherman Act purposes.\textsuperscript{120} The court found that there was no evidence on record of a product market among league members susceptible to economic injury—i.e., between the Grizzlies, located in Memphis, Tennessee, and the St. Louis NFL franchise located almost 300 miles away.\textsuperscript{121} The court declined to state, however, that such a

\textsuperscript{115} Id. at *30.
\textsuperscript{116} 720 F.2d 772 (3d Cir. 1983), cert. denied, 467 U.S. 1215 (1984).
\textsuperscript{117} Piazza, 1993 U.S. Dist. LEXIS 10552, at *33.
\textsuperscript{118} For further discussion of the case, see supra notes 37-43 and accompanying text.
\textsuperscript{119} Id. (citing \textit{Mid-South Grizzlies}, 720 F.2d at 787).
\textsuperscript{120} Id. (citing \textit{Mid-South Grizzlies}, 720 F.2d at 783).
\textsuperscript{121} Id. at *33 (citing \textit{Mid-South Grizzlies}, 720 F.2d at 787).
scenario could never arise. The court noted that "within certain geographic submarkets two league members [could] compete with one another for ticket buyers, for local broadcast revenue, and for sale of the concession items like food and beverages and team paraphernalia." Nevertheless, the court denied the Grizzlies’ franchise application, concluding that it had no relevance to this particular product market and thus could not have injured competition.

The *Piazza* court, in rejecting the applicability of *Mid-South Grizzlies* to the instant case, pointed to two particular distinctions:

First, unlike the Grizzlies, plaintiffs here were not seeking to join Major League Baseball through creation of a franchise but were attempting to purchase an existing team. The import of this distinction turns upon the second distinction, which is that also unlike the Grizzlies, who identified the relevant product market as major-league professional football generally, plaintiffs here have identified the relevant product market as the market for existing American League and National League Baseball teams.

By identifying the relevant product market in the instant case as the team franchise market and not an intra-league market comprised of Major League Baseball generally, the *Piazza* court rejected Baseball’s contention that plaintiffs failed to allege a restraint on competition in a relevant product market.

Concluding that Baseball’s alleged exclusion of plaintiffs from a relevant market constitutes the sort of injury that Congress sought to redress through the antitrust laws, the *Piazza* court turned to Baseball’s second contention concerning plaintiffs’ standing to sue under the Sherman Act. Since plaintiffs had identified a “unique

122. *Id.*
123. *Id.* (citing *Mid-South Grizzlies*, 720 F.2d at 787).
124. *Id.* (citing *Mid-South Grizzlies*, 720 F.2d at 786).
125. *Id.*
126. *Id.* at *33-*34.
127. *Id.* at *34.*
and particularized injury to themselves" regarding an alleged unlawful exclusion from a relevant product market, the court rejected Baseball's contention that plaintiffs lacked standing to sue.\textsuperscript{128}

Having validated plaintiffs standing to sue under the Sherman Act, the court moved to Baseball's motion to dismiss plaintiff's Sherman Act claim—predicated on the notion that the United States Supreme Court exempted Baseball from liability under the federal antitrust laws.\textsuperscript{129} The court ascribed Baseball's exemption to the three seminal cases, \textit{Federal Baseball},\textsuperscript{130} \textit{Toolson},\textsuperscript{131} and \textit{Flood.}\textsuperscript{132}

Defining the scope of the exemption as established by the foregoing decisions, the court noted that the factual context in each of these three cases involved the reserve clause.\textsuperscript{133} Consequently, the issue the court deemed determinative of the instant conflict was whether the exemption is confined to that circumstance, which was not presented here, or whether the exemption applies to the "business of Baseball" generally and not to one particular facet of the game.\textsuperscript{134}

The court surmised that while an expansive view of Baseball's exemption may have been correct in the particular contexts of \textit{Federal Baseball} and \textit{Toolson}, the Court in \textit{Flood} stripped any precedential value those cases may have had beyond the particular facts there involved, i.e., the reserve clause.\textsuperscript{135} The court then set out to explain \textit{Flood}'s rationale for following \textit{Federal Baseball}.\textsuperscript{136}

\begin{enumerate}
\item[128.] \textit{Id.} at *42-*44.
\item[129.] \textit{Id.} at *43.
\item[130.] 259 U.S. 200 (1922). \textit{See supra} text accompanying notes 85-92.
\item[131.] 346 U.S. 356 (1953). \textit{See supra} text accompanying notes 93-97.
\item[132.] 407 U.S. 258 (1972). \textit{See supra} text accompanying notes 98-104.
\item[133.] \textit{Piazza}, 1993 U.S. Dist. LEXIS 10552, at *53.
\item[134.] \textit{Id.}
\item[135.] \textit{Id.} at *54.
\item[136.] The court summarized the Supreme Court's reasoning in \textit{Flood} as follows: [T]he Court first looked back to \textit{Toolson} and uncovered the following four reasons why the Court there had followed \textit{Federal Baseball}: (a) Congressional awareness for three decades of the Court's ruling in \textit{Federal Baseball}, coupled with congressional inaction. (b) The fact that baseball was left alone to develop for that period upon the understanding that the reserve system
\end{enumerate}
The court explained that the Supreme Court in *Flood* accorded *Federal Baseball* and *Toolson* the "continuing benefit of stare decisis by virtue of its emphasis on continued positive congressional inaction and concerns over retroactivity." The *Piazza* court further explained that the *Flood* Court acknowledged that "[w]ith its reserve system enjoying exemption from the federal antitrust laws, Baseball is, in a very distinct sense, an exception and an anomaly."\(^{137}\)

Based upon this analysis, the *Piazza* court inferred that the Supreme Court construed the *Federal Baseball* exemption as limited to the reserve clause.\(^{139}\) Since the reserve clause was not at issue in *Piazza*, the court rejected Baseball's argument that it is exempt from antitrust laws.\(^{140}\)

C. *Piazza*'s Misconceptions—A Lesson in the Significance of Judicial Precedent

The *Piazza* court's interpretation of *Flood v. Kuhn* threatens to return Major League Baseball to the confines of antitrust regulation by limiting the application of its exemption to the now defunct reserve system. Aside from the numerous policy considerations contravening this result,\(^{141}\) the court's legal foundations for this conclusion appear rather attenuated.

Perhaps the most overt example of the *Piazza* court's misconceptions lies in its categorical rejection of the decision in *Charles O. Finley & Co. v. Kuhn*,\(^{142}\) which offered a more expansive interpretation of *Flood*.\(^{143}\) In *Finley*, then Commissioner of Baseball was not subject to existing federal antitrust laws. (c) A reluctance to overrule *Federal Baseball* with consequent retroactive effect. (d) A professed desire that any needed remedy be provided by legislation rather than by court decree.

*Id.* at *54-*55 (citing *Flood*, 407 U.S. at 273-74).
137. *Id.* at *56.
138. *Id.* (citing 407 U.S. at 282).
139. *Id.* at *57.
140. *Id.* at *63.
141. See infra part IV.
142. 569 F.2d 527 (7th Cir.), cert. denied, 439 U.S. 876 (1978).
Bowie Kuhn did not approve the sale by Charles O. Finley & Co. ("Finley"), the owner of the Oakland Athletics ("Oakland") baseball club, of contract rights in three Oakland players to other clubs. Finley subsequently brought suit, claiming, among other things, that "the Commissioner conspired with others in violation of the antitrust laws." The district court held that the Commissioner was exempt from antitrust laws based on Federal Baseball and granted summary judgment in his favor.

Like plaintiffs in Piazza, Finley argued on appeal that the exemption applies only to the reserve system. The United States Court of Appeals for the Seventh Circuit disagreed, however, finding that "[d]espite the two references in the Flood case to the reserve system, it appears clear from the entire opinions in the three baseball cases, as well as from Radovich, that the Supreme Court intended to exempt the business of Baseball, not any particular facet of that business, from the federal antitrust laws.”

In reaching this conclusion, the Finley court explained that it looked back to Federal Baseball and Toolson and concluded that the Supreme Court had focused in those cases upon the business of Baseball, not just the reserve clause. The Finley court added that while the Supreme Court stated in Flood v. Kuhn that "[p]rofessional baseball is a business and it is engaged in interstate commerce" it nevertheless decided to "adhere once again to Federal Baseball and Toolson and to their application to professional baseball."

Because this represents the Finley court’s entire substantive discussion of Flood without noting the extent to which that decision allegedly turned upon the reserve clause, the Piazza court dismissed

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144. Finley, 569 F.2d at 531.
145. Id.
146. Id. at 541. In Radovich v. National Football League, 352 U.S. 445 (1957), the Supreme Court held that professional football is subject to antitrust laws due to the volume of interstate business involved. In reaching its conclusion, the Court explained that the exemption from antitrust laws carved for baseball applies exclusively to that sport.
147. Finley, 569 F.2d at 541.
148. Id. (quoting Flood v. Kuhn, 407 U.S. 258, 282, 284 (1972)).
Finley as inaccurate and as an unbinding precedent. The Piazza court further explained that "[a]pplication of the doctrine of stare decisis simply permits no other way to read Flood than as confining the precedential value of Federal Baseball and Toolson to the precise facts there involved."

Before Flood, the Piazza court conceded that lower courts were bound by both the rule of Federal Baseball and Toolson that the business of Baseball is not interstate commerce and, thus, not within the Sherman Act. The court's rejection of an expansive view of Baseball's exemption derives from its unwillingness to accept Finley's reading of Flood simply because the Seventh Circuit, in Finley, addressed the issue only marginally.

Moreover, the Piazza court ironically invoked Radovich to support the proposition that Baseball's exemption is limited, when, in fact, Radovich supports the opposite conclusion. In Radovich, the Supreme Court asserted that Baseball's exemption applies only to the business of organized Baseball, prohibiting its application to other professional sports. Though this statement clearly limits exemption from antitrust laws to the sport of baseball, it also suggests that within the context of baseball, the exemption applies generally to "the business of organized baseball" and not merely to the reserve system.

Aside from misapplying Radovich, the Piazza court ignored several other Supreme Court decisions suggesting that the Federal Baseball exemption extends to the "business of baseball" in general

150. Id. at *60.
151. Id. at *62.
152. For the same reason, the Piazza court also rejected the numerous other cases Baseball cited in support of its view. Id. at *63 n.22 (citing Professional Baseball Schools & Clubs, Inc. v. Kuhn, 693 F.2d 1085 (11th Cir. 1982); Triple-A Baseball Club Assocs. v. Northeastern Baseball, Inc., 832 F.2d 214 (1st Cir. 1987), cert. denied, 485 U.S. 935 (1988); Portland Baseball Club, Inc. v. Kuhn, 491 F.2d 1101 (9th Cir. 1974); Salerno v. American League of Professional Baseball Clubs, 429 F.2d 1003 (2d Cir. 1970), cert. denied, 400 U.S. 1001, 1007 (1971)).
153. Id. at *62 n.21.
and not merely to the reserve clause. In *United States v. Shubert,*\(^{155}\) the Court explained that it "was dealing [in *Federal Baseball*] with the business of baseball and nothing else."\(^{156}\) Similarly, in *United States v. International Boxing Club,*\(^{157}\) the Court held that *Toolson* applied to the business of baseball and did not extend to "other [sports leagues] merely because of the circumstances that they are also based on the performance of local exhibitions."

The court went so far as to argue that even if the exemption extends beyond the reserve system, that the exemption covers the "business of baseball" does little to "delineate the contours of the exemption"—i.e., what constitutes a relevant product market for the purposes of determining a redressable Sherman Act Injury.\(^{159}\) The *Piazza* court concluded that even if it were to accept *Finley,* it retained the latitude to limit that decision to particular circumstances. Thus, the *Piazza* court interpreted the *Federal Baseball* exemption, in light of *Finley,* as "one related to a particular market—the market comprised of the exhibition of baseball games—not a particular type of restraint (such as the reserve clause) or a particular entity (such as Major League Baseball)."\(^{160}\)

Operating under this ostensibly "expansive view" of the exemption, the *Piazza* court sought to determine in which market Baseball allegedly restrained competition. The court conceded that Baseball is immune from Sherman Act liability in the market comprised of baseball exhibitions.\(^{161}\) The court emphasized, however, that were another market implicated, even the expansive version of the *Federal Baseball* exemption as articulated by the *Finley* court would not apply.\(^{162}\)

According to the plaintiffs in *Piazza,* the relevant product mar-

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156. Id. at 228.
158. Id. at 242.
160. Id. at *66.
161. Id. at *67.
162. Id.
ket at issue in the case was the market for ownership of existing major league professional baseball teams.\textsuperscript{163} The court reduced this market to the following components: "(1) the product being sold is an ownership interest in professional baseball teams; (2) the sellers are team owners; and (3) the buyers are those who would like to become team owners."\textsuperscript{164}

Conversely, the court narrowed the expansive version of the \textit{Federal Baseball} exemption to a market defined by these components: "(1) the product is the exhibition of baseball games; (2) the sellers, as with the market defined by plaintiffs, are team owners; and (3) the buyers are fans and, perhaps, the broadcast industry."\textsuperscript{165} Thus, the \textit{Piazza} court couched these differing views of the relevant market in terms of different products and different consumers—while plaintiffs view the product as baseball teams and the owners as consumers, defendants view the product as baseball games and the fans as consumers.\textsuperscript{166}

As the court suggested, "it is conceivable that, although the precise products in plaintiffs’ market and the exempted market are different, these markets nonetheless overlap to such an extent that they should be treated identically for purposes of the expansive view of \textit{Federal Baseball}."\textsuperscript{167} More specifically, the acquisition of a business that is engaged in baseball exhibitions may still relate to the unique characteristics of baseball exhibitions. While this line of reasoning follows logically and seems sensible in light of the language of \textit{Federal Baseball}, the court refused to pursue this analysis because it lacked a sufficient factual record on which to base a decision.\textsuperscript{168} Since the purchase and transfer of a baseball franchise relates to baseball exhibitions—i.e., without a franchise in San Francisco, it would be difficult for baseball exhibitions to take place in that city—the court need not have speculated whether the facts in the instant case indicated any overlap between the two

\textsuperscript{163.} \textit{Id.}
\textsuperscript{164.} \textit{Id.}
\textsuperscript{165.} \textit{Id.} at *68.
\textsuperscript{166.} \textit{Id.}
\textsuperscript{167.} \textit{Id.} at *74.
\textsuperscript{168.} \textit{Id.}
defined "markets."\textsuperscript{169}

Another point on which the \textit{Piazza} court provided a less than satisfactory analysis involves its explanation of recent judicial constructions of the expansive version of the exemption. Certain courts have defined the exempted market as that which is central to the "unique characteristics and needs" of baseball.\textsuperscript{170} Though the \textit{Piazza} court conceded that "there seems to be agreement among these courts and others that, defined in this way, the exempted market includes (1) the reserve system and (2) matters of league structure,"\textsuperscript{171} the court asserted that "no court has analyzed or applied the expansive view of the \textit{Federal Baseball} exemption to the market for ownership interests in existing baseball teams."\textsuperscript{172} While the court is correct in its assessment of the dearth of decisions on this particular issue, the court failed to point out that the market for ownership in existing baseball teams is inextricably linked to matters of league structure.

Finally, even if Baseball were not exempt from scrutiny under the antitrust laws, the League's intervention in the transfer and relocation of the Giants does not constitute a violation of either sections 1 or 2 of the Sherman Act. Under a section 1 rule of reason analysis, the benefits to the consumer—such as sustaining the revenue associated with a Major League team—outweigh the harmful effects to competition—such as the inability of a buyer to purchase and relocate a franchise for personal financial gain.\textsuperscript{173}

\begin{itemize}
\item \textsuperscript{169} Even if the court viewed the relevant market more narrowly as the market for the purchase and transfer of the Giants only, where there was only one seller and one buyer group, including only those interested in the Giants, the overlap into the market for baseball exhibitions would remain the same.
\item \textsuperscript{171} See \textit{Piazza}, 1993 U.S. Dist. LEXIS 10552, at *70; see, e.g., Professional Baseball Schools & Clubs, Inc. v. Kuhn, 693 F.2d 1085 (11th Cir. 1982); Postema, 799 F. Supp. at 1489; \textit{Henderson}, 541 F. Supp. at 269; State v. Milwaukee Braves, Inc., 144 N.W.2d 1, 15 (Wis. 1966), \textit{cert. denied}, 385 U.S. 990 (1966).
\item \textsuperscript{172} \textit{Piazza}, 1993 U.S. Dist. LEXIS 10552, at *72.
\item \textsuperscript{173} See supra notes 45-59 and accompanying text.
\end{itemize}
Similarly, a claim under section 2 must be brought by a competing league or a team in such a league. Rejecting a buyer's attempt to purchase and transfer an existing franchise, therefore, does not constitute monopolization.

IV. THE CURRENT VALUE OF THE EXEMPTION

A. Revenue and Relocation

1. Revenue

Although Baseball's antitrust exemption arguably provides it with a competitive advantage over other professional sports, particularly in its ability to generate revenue, the Sports Broadcasting Act of 1961 allows all leagues to act collectively to maximize their revenues. Since its enactment, every league has experienced increased broadcasting revenues. As greater percentages of profits come from broadcasting revenues instead of gate receipts, Baseball's antitrust exemption is becoming less of an advantage. Moreover, Baseball's general exemption from antitrust regulation has been rendered inapplicable to conspiratory practices in broadcasting. Since broadcasting presently accounts for a large percentage of Baseball's overall revenue, those who argue that the current

174. See supra notes 63-72 and accompanying text.

The antitrust laws . . . shall not apply to any joint agreement by or among persons engaging in or conducting the organized professional team sports of football, baseball, basketball, or hockey, by which any league of clubs participating in professional football, baseball, basketball, or hockey contests sells or otherwise transfers all or any part of the rights of such league's member clubs in the sponsored telecasting of the games of football, baseball, basketball, or hockey, as the case may be, engaged in or conducted by such clubs.

Id.

177. See, Henderson Broadcasting Corp. v. Houston Sports Ass'n, Inc., 541 F. Supp. 263 (S.D. Tex. 1982). In Henderson, a Houston radio station, KYST, sued the Houston Astros and another radio station, KENR, charging violations of antitrust laws. Id. at 264. In particular, KYST alleged that the Astros cancelled its contract to broadcast Astro baseball games in a conspiracy with KENR to "divide and allocate advertising and audience territories in the greater Houston-Galveston radio broadcasting market, to eliminate competition for advertising revenue and listening audiences, and thus
business of Baseball therefore requires antitrust regulation ignore the reality that much of what they deem "business" does not lie within the parameters of the Federal Baseball exemption.

2. Relocation

Unlike the NFL which shares 90 percent of its revenues equally, Baseball shares only its joint revenues and a small portion of gate receipts. In addition, there are enormous differences in club resources based on market size. Baseball player salaries and benefits, on the other hand, are determined on an industry-wide basis. This factor alone suggests that the pressure to relocate is stronger in Baseball than in football.

Due to the unique nature of sports complexes (cities construct such stadiums almost exclusively to attract professional sports franchises), the relocation of a Major League Baseball team would place an undue financial burden on the city losing the franchise and consequently, the taxpayers. Stadiums and sports complexes cost several hundred million dollars to build and are generally financed by state and local authorities, which in turn are financed by the taxpayer. Because cities cannot relocate their stadiums and stadiums have few secondary uses, it is imperative that cities attract and retain sports franchises.

Even if several professional franchises in a metropolitan area utilize a stadium, individual teams still maintain strong bargaining power. Teams often threaten to relocate in order to negotiate a more favorable lease. Moreover, they often insist on the exclu-

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impose horizontal restraints on that radio market area." Id. The court held that broadcasting was not central enough to Baseball to fall under the purview of the exemption and consequently denied defendant's motion to dismiss. Id. at 271-72.


179. Id.

180. Id.


182. Id. at 374. The Baltimore Orioles and Baltimore Colts threatened to relocate their franchises unless they received greater benefits from the city of Baltimore. The Colts subsequently moved to Indianapolis when the city of Indianapolis offered the
sive right to use a stadium or to maintain the right to veto any potential tenant.\textsuperscript{183} As a result, stadiums tend to be under-utilized and may operate at a considerable loss.\textsuperscript{184}

Nevertheless, cities accept economic inefficiencies in operating a stadium because the franchises and their accompanying industries generate substantial revenues for the local business community.\textsuperscript{185} Cities often provide financial incentives to retain teams because of the substantial loss of tax revenues and the negative effect on the business community if a franchise relocates.\textsuperscript{186}

To further the point, if Baseball were not exempt from federal antitrust regulation, the San Francisco Giants would have played in St. Petersburg last season. Consequently, the municipality of San Francisco and its taxpayers would find themselves on the losing end of commercial warfare and suffer the consequences. If Baseball loses its ability to self-regulate, anyone could purchase any franchise and move it anywhere.\textsuperscript{187} While proponents of revoking the exemption ironically believe that imposing antitrust regulation will help restore the game of baseball to its pure artistic form, prostituting a professional baseball team to the highest bidder reduces the game to a mere commodity and further sterilizes its entertainment value.

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\textsuperscript{183} Id. at 374.

\textsuperscript{184} Id.

\textsuperscript{185} Id. at 374-75.

\textsuperscript{186} Id. at 375. Such incentives include free renovations, building sky boxes or new facilities, reduced taxes and low rents for municipal stadiums. Id. at 375 n.58.

\textsuperscript{187} Recently, a group of financiers in Washington, D.C. offered $150 million to purchase the San Diego Padres and to relocate them. \textit{See} Mark Maske, \textit{D.C. Group Offers Padres $150 Million, but No Sale}, \textit{WASH. POST}, Aug. 7, 1993, at F1. The proposed sale failed much in part to the owners' ability to veto such moves as a direct consequence of Baseball's antitrust exemption. Were Baseball to lose its exemption, the sale might take effect, stripping the city of San Diego of its baseball team.
B. Baseball Compares Favorably To Other Entities Exempt From Antitrust Regulation

Since the passage of the Sherman Act, both Congress and the judiciary have recognized the need to exempt certain industries from antitrust scrutiny. Consequently, many industries operate as monopolies and enjoy a large measure of exemption from antitrust laws.188

Perhaps the most analogous illustration of the purposes served by preserving Baseball’s antitrust exemption appears in the agricultural cooperative context.189 Under the Clayton Act190 and the Capper-Volstead Act,191 non-profit agricultural cooperatives do not constitute illegal combinations or conspiracies in restraint of trade.192 These provisions allow farmers to act collectively in cooperative associations without subjecting these associations to the strictures of antitrust laws.

These provisions were introduced to allow individual farmers, through agricultural cooperatives acting as entities, the same competitive advantage and responsibility available to businessman acting through corporations as entities.193 Consequently, farmer-producers may organize together, set association policy, fix prices at which their cooperative will sell their produce and otherwise operate like a business association without violating antitrust laws.

Similarly, Baseball’s antitrust exemption enables it to act collectively to provide affordable sports entertainment which serves a vital public interest. Without the exemption, owners could freely

193. Id. at 466.
move their franchises to more lucrative markets, regardless of whether the vacated community relies on the team as a source of revenue. Thus, like the agricultural cooperative, Major League Baseball requires the latitude to sustain a necessary and affordable product independent of the strictures of antitrust laws.

C. Minor League Markets

Additionally, repeal of Baseball's antitrust exemption might curtail the ability of millions of fans in smaller markets to watch live professional baseball, the very concern that several legislators articulated as the basis for the Senate subcommittee hearings. Fans attending minor league baseball games pay as little as $2 to see their team. Removing the exemption might deprive 150 smaller communities of both the social and economic contributions of minor league baseball considering that immunity from antitrust laws enables Major League Baseball to substantially subsidize minor league teams. In this particular instance, repealing the exemption would directly contravene Congress's alleged interest in protecting the fans.

CONCLUSION

The decision in Federal Baseball has remained unaltered by the Supreme Court for 71 years. The Court has refrained from action in part, at least, because Baseball's exemption from antitrust laws is not causing an unreasonable restraint of trade. Municipalities and fans alike benefit from the fact that Baseball can regulate itself and prevent franchise moves such as those which occur regularly in the National Football League.

194. Although it is conceivable that Baseball could become subject to antitrust laws with a stipulation that teams cannot freely move without League approval, the effectiveness of such a scenario is questionable.


196. Id.

197. Id.

It is an erroneous assumption that the public would benefit if Baseball lost its exemption. Baseball's exemption from the Sherman Act protects the cities that currently have teams. Although the Reform Act proposed in Congress would grant cities currently without teams, such as St. Petersburg, the benefit of the antitrust remedies provided by the Sherman Act, San Francisco and other cities of the American and National Leagues enjoy the benefits of Baseball's antitrust exemption.

Instead of attempting to bring Baseball in line with other sports by revoking or fatally narrowing its antitrust exemption, legislators and jurists should recall the purpose of the exemption at its inception—to allow the unimpeded development of professional baseball—and preserve it to insure that Major League Baseball and its subsidiary minor league franchises continue to provide entertainment for dedicated fans and generate revenue for deserving communities.

Y. Shukie Grossman