Repeal of Baseball’s Longstanding Antitrust Exemption: Did Congress Strike out Again?

INTRODUCTION

"Baseball is everybody’s business."¹

We have just witnessed the conclusion of perhaps the greatest baseball season in the history of the game. Not one, but two men broke the "unbreakable" record of sixty-one home-runs set by New York Yankee great Roger Maris in 1961;² four men hit over fifty home-runs, a number that had only been surpassed fifteen times in the past fifty-six years,³ while thirty-three players hit over thirty home runs;⁴ Barry Bonds became the only player to record 400 home-runs and 400 stolen bases in a career;⁵ and Alex Rodriguez, a twenty-three-year-old shortstop, joined Bonds and Jose Canseco as one of only three men to have recorded forty home-runs and forty stolen bases in a single season.⁶ This was not only an offensive explosion either. A twenty-year-old struck out twenty batters in a game, the record for a nine inning game;⁷ a perfect game was pitched;⁸ and Roger Clemens of the Toronto Blue Jays won his unprecedented fifth Cy Young award.⁹ Also, the Yankees won

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³ McGwire, Sosa, Ken Griffey Jr., and Greg Vaughn did this for the St. Louis Cardinals, Chicago Cubs, Seattle Mariners, and San Diego Padres, respectively. Id.
⁵ Id.
⁶ Id.
⁷ Id.
⁸ Kerry Wood of the Chicago Cubs was this twenty-year-old. Klein, supra note 2, at W8.
⁹ David Wells of the New York Yankees pitched that perfect game. Id.
¹⁰ Tim Wendel, ROGER AND OUT, After 15 Years and 3,153 Strikeouts, Clemens Still On His Game, U.S.A. TODAY BASEBALL WKLY., Nov. 18-24, 1998, at 16. Clemens accomplished this feat by going on a 15 game winning streak and capturing the pitcher's "Triple Crown," leading the league in wins, ERA, and strikeouts. Id. at 17. Clemens is one of only six people to capture the Triple Crown in two consecutive years, joining Walter Johnson, Lefty Grove, Christy Mathewson, Grover Cleveland Alexander, and Sandy Koufax. Id.
an astounding 114 games in the regular season; Cal Ripken took a day off, ending his consecutive games played record streak at 2,632 games; and the Cubs, a traditionally non-winning team, made the post season. The minor leagues even got into the picture when one of its players hit for the "home-run cycle," hitting a one-run homer, a two-run homer, a three-run homer, and a grand slam in a single game, the first time such an event ever had been recorded. On the heels of such an historic season, Congress joined the party and made it even more memorable by passing legislation which will partially repeal baseball’s longstanding exemption from antitrust laws.

In 1922, the Supreme Court of the United States ruled that baseball was not interstate commerce, and was thus not subject to the restrictions of antitrust laws. Since that time, numerous courts refused to hear cases attacking baseball on antitrust grounds. However, in almost every case that was decided this way, the courts have made it clear that their decisions were no longer based on the fact that baseball was not a form of interstate commerce, but instead the decisions were based upon the concept of stare decisis. The Supreme Court admits that the decision in Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs, was an aberration, but is an established aberration; the Court states that it will follow that decision so long as Congress enacts no legislation manifesting an opposite intent.

After innumerable failed bill proposals from either one house or the other, Congress finally answered the Court’s wishes and enacted such legislation. In large part because of the lobbying efforts of baseball owners, players, and minor league officials, the Senate passed the Curt Flood Act of

10. Klein, supra note 2, at 88.
11. Tyrone Horne of the Arkansas Travelers was the player to do this. Id.
15. 259 U.S. 200 (1922).
17. There were more than 50 such failures between 1953 and 1972. Id. at 281.
18. The recently signed collective bargaining agreement between owners and players called for joint lobbying of Congress by the two sides to enact such legislation. STEE-RIKE FOUR! WHAT’S WRONG WITH THE BUSINESS OF BASEBALL? 202 (Daniel R. Marburger ed., Praeger 1997) [hereinafter STEE-RIKE FOUR].
1998 in late July of 1998. In early October, the House passed it as well. President Clinton enacted the law on Tuesday, October 27, 1998.

Under the newly enacted Curt Flood Act of 1998, the practices of anyone involved in organized professional major league baseball that relate to the employment of major league baseball players are now subject to antitrust laws in the same manner as those involved in other professional sports businesses affecting interstate commerce. However, the bill makes no attempt to repeal baseball’s exemption as it applies to franchise relocation, nor does it attempt to change major league baseball’s existing relationship with the minor leagues.

Despite Congress’ good intentions, it remains to be seen whether limiting baseball’s antitrust applicability to only those things affecting employment of players solves baseball’s economic, competitive, and labor relations problems. As it stands now, owners will not be able to move their franchises to the location of their choice without approval from a majority of the other owners. Is this a fair system? It may be argued that this will maintain league and franchise stability, thereby keeping the fan base happy and intact. However, are we to believe that the owners want to keep a firm hand on relocation because they are concerned about the fans? The average fan probably would find that hard to believe. What are some of the motivating factors behind this desire to control relocation? If team stability is enhanced and the fan base is pacified, why should we care what the owners’ motivations are? What are the consequences to the owners who are denied the opportunity to move their team to a different city? These are the questions that need to be answered when considering the logic behind maintaining, at least in part, an archaic, useless, and aberrational exemption to antitrust laws. In attempting to answer these questions, this article will start with an overview of the litigation involving baseball and its antitrust exemption and then move into a discussion about the 1994 players strike, the major precipitating factor for the enactment of the Curt Flood Act. Finally, although it goes against conventional wisdom, it will be argued that giving baseball owners the right

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22. S. 9622.
23. Id.
24. For example, if a National League team were to move, twelve of sixteen national league owners would have to approve it, while eight of fourteen American League owners would have to. Thom Loverro, NL Owners Won’t Block Expos Move, WASH. TIMES, Sept. 15, 1998, available in WL 3458471.
to move their teams where they want to and when they want to will strengthen the game as a whole.

I. IN THE BEGINNING

The necessity for this Congressional action was a result of the ruling by Justice Oliver Wendell Holmes in 1922 in *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs.*25 The plaintiff in that case was the Baltimore baseball team that had been a member of the Federal League of Professional Base Ball Players.26 The suit claimed that the National League was monopolizing the business of baseball by buying up or otherwise inducing seven of the eight teams of the Federal League to leave, with the eighth team being the plaintiff.27 In a now infamous decision, Justice Holmes stated that baseball was not a form of interstate commerce and as such, was not constrained by the bounds of antitrust legislation.28 The Court reasoned that giving baseball exhibitions is a purely state affair.29 While acknowledging that teams must travel across state lines to perform the exhibitions, the Court stated that this transportation is a mere incident of the business, not the essential aspect of it.30 The essential aspect, according to the Court, is the personal effort put forth by the participants, which is unrelated to commerce.31

This anomalous decision was strengthened thirty-one years later in *Toolson v. New York Yankees, Inc.*32 The plaintiffs in this case were baseball players who sued the commissioner of Major League Baseball and the league owners for violations of antitrust laws in three different suits. Each of the plaintiffs were protesting the legality of the standard reserve clause in their contracts, which allowed the teams to unilaterally re-sign each of these players.33 The plaintiffs lost all three cases.34 In a one paragraph decision, the

26. *Id.* at 207.
27. *Id.*
28. *Id.* at 209.
29. *Id.* at 208. As will be discussed subsequently in this section, this decision is now deemed to be an aberration and the Court’s holding has been upheld only in the vain of stare decisis, with little regard to the reasoning used by the Court. *See* Flood v. Kuhn, 407 U.S. 258 (1972) (calling the decision in Federal Baseball an aberration, but an established one).
30. *Id.* at 209.
31. *Id.*
33. Toolson v. New York Yankees, 200 F.2d 198 (9th Cir. 1952); Kowalski v. Chandler, 202 F.2d 413 (6th Cir. 1953); Corbett v. Chandler, 202 F.2d 428 (6th Cir. 1953).
34. *See* cases cited *supra* note 33. Toolson received an adverse verdict while Kowalski’s and Corbett’s cases were dismissed at the lowest court level, and each was affirmed.
Court, without re-examining the underlying issues, affirmed the decisions. The Court reasoned that Congress had thirty years to consider changing or clarifying antitrust law so as to be applicable to baseball, and it failed to do so. The Court interpreted this to mean that Congress had no intention of applying federal antitrust laws to baseball, and that if baseball was in such a state that applicability of antitrust law was needed, it was for Congress to make that change.

The defendants in *United States v. Shubert* tried to apply this exemption to their business as well. The defendants' business consisted of producing theatrical exhibitions throughout the United States and operating dozens of theaters in eight states to show those exhibitions. The government sued, claiming the defendants were restraining trade in that business and attempting to monopolize it. The defendants acknowledged that under most applications of antitrust laws their actions would be included. However, under *Federal Baseball* and *Toolson*, "all other businesses built around the performance of local exhibitions are exempt." The Court did not agree, noting that while transportation may have been incidental to baseball exhibitions at the time *Federal Baseball* was decided, it was possible that transportation could rise to such a significant level that it could be considered independently, thus not creating the broad immunization argued for by the defendants. The Court held that *Toolson* was a narrow application of the stare decisis rule and was not good precedent for the case at hand. It was not only non-athletic businesses who found that they did not enjoy the same protected status as baseball. The Court has continually ruled that baseball, not professional sports in general, has the exemption all to itself.

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35. Toolson, 346 U.S. at 357.
36. Id.
37. Id.
39. Id at 223.
40. Id. at 224.
41. Id. at 227.
42. Id. at 229 (citing Hart v. B. F. Keith Vaudeville Exchange, 262 U.S. 271, 274 (1923)).
43. Id. at 230.
44. See generally United States v. International Boxing Club of N.Y., Inc., 348 U.S. 236 (1955); Radovich v. National Football League, 352 U.S. 445 (1957); Haywood v. National Basketball Ass'n, 401 U.S. 1204 (1971) (holding that boxing, football, and basketball, respectively, are not exempt from antitrust laws). The Radovich Court specifically limited the exception to baseball, "[W]e now specifically limit the rule there established [in Federal Baseball] to the facts there involved, i.e., the business of organized professional baseball."
The last major challenge to baseball’s exemption status was *Flood v. Kuhn*.\(^{45}\) In this case, the precursor to the coming of true free agency to major league baseball,\(^{46}\) Curt Flood sued the commissioner of baseball and challenged the reserve clause\(^{47}\) in his contract after he was traded to a team for whom he did not want to play.\(^{48}\) The Supreme Court went through a lengthy discussion of the history of the game itself and of the preceding litigation involving this issue.\(^{49}\) The Court then made eight findings: 1) Professional baseball is a business engaged in interstate commerce; 2) With its reserve system enjoying antitrust exemption, baseball is an anomaly and *Federal Baseball* and *Toolson* are aberrations confined to baseball; 3) The aberration is an established one fully entitled to the benefits of stare decisis; 4) Other professional sports do not enjoy the exemption; 5) The increased use of radio and television has not mandated an overruling of *Federal Baseball* and *Toolson*; 6) Congress’ silence for the past fifty years shows Congress’ intent not to include baseball under antitrust laws; 7) Retrospective action on this issue is to be avoided, thus any congressional action should be proactive in nature; and 8) Baseball’s slate is not clean and has not been so for half a century.\(^{50}\)

The Court acknowledged that while the exemption may be inconsistent and/or illogical, it is for Congress to remedy.\(^{51}\) It then repeated what was said in *Toolson*, “[w]ithout re-examination of the underlying issues, the [judgment] below [is] affirmed on the authority of *Federal Baseball* . . . , so far as that

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Radovich, 352 U.S. at 451. However, the Court did clearly intimate that if baseball was brought before the Court today with a clean slate and without the protection of stare decisis, that the Court would have no difficulty in finding the game subject to antitrust laws. *Id.* at 452.

46. Free agency is a system which allows the players to have complete control of where they play after performing a minimum number of years within the league. Jeffrey S. Moorad, *Major League Baseball’s Labor Turmoil: The Failure Of The Counter-Revolution*, 4 VILL. SPORTS & ENT. L.J. 53, 54 (1997).
47. The reserve clause in 1972 “allowed a team to renew a player’s contract for one year unilaterally upon its expiration, even if the player refused to re-sign with the team.” *Id.* at 56. Every new contract signed would contain this clause, thus creating a “hall of mirrors” in which players could not escape without retiring from the game altogether. The Basic Agreement between owner and players (signed in 1972 after the first league wide work stoppage in the game’s history) signaled the end of this system. The Agreement provided for arbitration of contract disputes, with one such hearing resulting in the ruling that the renewal clause expired after one season. *Id.* at 65. Today, the owners can unilaterally renew a contract only after the first three years (and sometimes only two years) of a player’s career and then must offer salary arbitration for three (or four) more years, after which the player becomes a free agent. *Id.* at 72.

49. *Id.* at 258-82.
50. *Id.* at 282-83.
51. *Id.* at 284.
decision determines that Congress had no intention of including the business of baseball within the scope of the federal antitrust laws."  

II. THE STRIKE

Under this system of business which, as shown, did not allow players the right to seek and gain judicial assistance in labor negotiations, baseball had been through five work stoppages in the past twenty years. The worst of these occurred in 1994-1995. The 1994 season began with no Basic Agreement, the collective bargaining agreement between the players association and the owners. The owners first proposal came in June of 1994 and was not met with particular fervor by the players association. In July of that year, the players countered with an offer equally effective in gaining a solution. A strike deadline was decided upon, and on August 12, 1994, twelve days after the owners failed to pay almost eight-million dollars into the players' pension and benefit funds as agreed to in the last Basic Agreement, the players went on strike. The strike continued throughout the remainder of the season, thus canceling the World Series and league championships.

The owners declared an impasse in negotiations in December and attempted to unilaterally install their most recent offer and alter provisions in the expired Basic Agreement. The players association filed an unfair labor practice claim with the National Labor Relations Board (NLRB), and the owners ultimately revoked their salary cap plan, fearing an adverse

52. Id. at 285 (quoting Toolson v. New York Yankees, Inc., 346 U.S. at 357).
54. Moorad, supra note 46, at 76.
55. The owners, claiming that sixty-percent of the leagues' teams were losing money, proposed to the players association that revenues be split evenly between owners and players, installation of a salary cap, elimination of salary arbitration, free agency after only four years (reduced from six) and a raise in the minimum salary. Id. at 76-77.
56. Id. at 77.
57. Id.
58. This was the first time since 1904 that the two best teams in baseball failed to face one another at the end of the season. Jack F. Williams, Jack A. Chambless, Title VII And The Reserve Clause: A Statistical Analysis of Salary Discrimination In Major League Baseball, 52 U. MIAMI L. REV. 461, 464 (1998).
59. Moorad, supra note 46, at 80. The owners implemented their salary cap provisions, a major sticking point in negotiations, and eliminated the salary arbitration clause in the old agreement as well as the clause not allowing the owners to participate in collusive practices. Employers are allowed to implement their last, best good faith offer while in collective bargaining negotiations if there is an impasse. "Good faith", however, is subject to NLRB interpretation, and employers cannot terminate their recognition of the established bargaining unit of their adversary. NLRB v. Ozanne Constr. Co., 112 F.3d 219, 223 (6th Cir. 1997).
determination. Ultimately, the NLRB did issue an injunction against the owners from unilaterally altering the Basic Agreement, as the two opposing sides had not yet reached an impasse. The players then called off the strike and returned to work, delaying the start of the season until April 26. Ultimately, a new agreement was reached. However, at the cost of approximately one billion dollars in lost profits and lost salaries, one has to wonder if it was worth it.

III. THE ACT

In response to the strike and in recognition of the fact that the exemption itself is an aberration which was probably erroneous when it was granted, both houses of Congress finally passed legislation which will, at least in part, repeal baseball’s exemption to antitrust laws. Hopefully, this will lessen the likelihood that such a happening will occur again. Under this act, the following section has been added to The Clayton Act as section 27:

The conduct, acts, practices, or agreements of persons in the business of affecting employment of major league baseball players to play baseball at the major league level are subject to the antitrust laws to the same extent such conduct, acts, practices, or agreements would be subject to the antitrust laws if engaged in by persons in any other professional sports business affecting interstate commerce.

60. Moorad, supra note 46, at 80.
61. Id. at 82.
62. Id.
63. The agreement runs through the year 2000, with a player option for 2001 and includes, among other things, that players are free agents after six years of service, that they can be eligible for salary arbitration after slightly over two years of service, an increase in the minimum salary to $200 thousand by the year 2000, a luxury tax to be imposed on wealthy teams, a tax on player salaries of 2.5 percent, and a clause for implementing revenue sharing in the year 2000. STEE-RIKE FOUR, supra note 18, at 200-02.
64. Moorad, supra note 46, at 83.
65. Since baseball is no longer exempt from antitrust laws, in so far as employment of major league players is concerned, the players now have an option to strike when there is labor strife. The players can still strike and possibly let the labor laws and the NLRB control the outcome, but this risks alienating fans who understandably have a negative attitude toward strikers who make millions of dollars playing a game which most people would play for free. The exemption would now afford the players the option of decertifying the union and suing the owners for any grievances which come about in labor negotiations, effectively ending the need to institute a work stoppage. Andrew Zimbalist, Baseball in the Twenty-First Century, in STEE-RIKE FOUR, supra note 18, at 174, 176.
However, the Act expressly limits the applicability of this statute to those matters directly relating to or affecting "employment of major league baseball players to play baseball at the major league level."67 The enumerated acts which the statute states are not covered by the repeal include those acts that affect minor league employment; acts affecting the agreement between the minor leagues and major leagues; acts affecting expansion, location or relocation, as well as franchise ownership issues; acts affecting the relationship between the owners and the commissioner; acts affecting the marketing or sales of the entertainment product; acts affecting the licensing of intellectual property rights owned by professional baseball teams individually or collectively; any act protected by the Sports Broadcasting Act of 1961;68 acts affecting relationship with umpires and other employees; and those acts done by people not in the business of organized professional major league baseball.69 Only major league baseball players have standing to sue under this act.70 However, two recent cases dealing with owners' rights to relocate their teams have held that the reasoning in Flood v. Kuhn limited the scope of the exemption to only the reserve clause and nothing else.71 The House stated that this bill has no effect on the decisions in those cases, so it is unclear whether the control baseball has over franchise relocation is subject to antitrust laws or not. At least another court has refused to follow the reasoning set forth in Piazza and Butterworth,72 so the confusion will continue to exist until the Supreme Court hears a case using the same argument.

67. Id.
69. H.R. 9942.
70. Id.
71. Piazza v. Major League Baseball, 831 F. Supp. 420 (E.D. Penn. 1993); Butterworth v. National League of Prof'l. Baseball Clubs, 644 So.2d 1021 (Fla. 1994). The Court's reasoning was that the Flood Court clearly stated that baseball was a business engaged in interstate commerce, Federal Baseball and Toolson had no precedential value anymore. Piazza, 831 F. Supp. at 436-37. The court restated that one of the reasons the Flood Court let the exemption stand was because baseball had been allowed to develop for thirty years with the belief that the reserve clause was exempt from antitrust laws. Id. The court reasoned that narrowly applying the rule of stare decisis, as was done in Toolson and Flood, results in only the reserve clause being exempt (result stare decisis versus rule stare decisis). Id.
72. McCoy v. Major League Baseball, 911 F. Supp. 454 (W.D. Wash. 1995) (pointing out that neither the Piazza court nor the Butterworth court referred to Flood's concluding paragraph, which included in the holding that because Congress had shown no intention of including the business of baseball within the scope of antitrust laws, the Court would not do so).
IV. REPEAL SHOULD BE EXPANDED TO INCLUDE FRANCHISE RELOCATION

To the casual baseball fan or sports fan in general, baseball appears to be in great financial shape. In this day and age, the top free agents command salaries of over ten million dollars . . . FOR ONE YEAR!73 In a pitcher's case, that is ten million dollars for thirty games, which is about the average number of starts a pitcher gets if he stays healthy. That is over $333,000 per game pitched.74 Naturally, one tends to raise an eyebrow when he hears it muttered that baseball is in an economic crisis. However, in cities such as Milwaukee, Pittsburgh, Montreal, and Minneapolis, this is the case. These small-market teams cannot contend with the large payrolls of their large-market brethren.75 With baseball enjoying an exemption from antitrust laws, teams such as these have two choices:76 1) they can either field a competitive, expensive team and lose millions of dollars a year, or 2) they can trade away all of their high quality, arbitration eligible players and millionaires, and cut their losses. Neither one is an attractive choice.77

The Montreal Expos have traded away or released a virtual all-star team in the past decade because it could not afford the payroll it would have demanded to keep those players together.78 Only through a very strong farm


75. Unlike football, baseball owners do not share revenues gained from local media contracts. As a result, teams in larger markets command a substantially larger amount of money than do smaller market teams. For example, in 1993, the New York Yankees brought in $63 million dollars in local media revenue alone. On the flip side, the Milwaukee Brewers earned only $21.5 million dollars in local media revenue. Bruce Johnson, *Why Baseball's Antitrust Exemption Must Go*, in STEE-RIKE FOUR, supra note 18, at 135, 136.

76. A third choice includes having a new state-of-the-art stadium built to generate the needed extra income. While this topic will be discussed in the course of this article, the article will not delve into all of the nuances associated with the stadium issue. That issue is of great magnitude right now in all of sports and warrants exclusive attention.

77. Before the abolishment of the reserve clause, baseball remedied this situation by allowing small market teams to pay its players what it could afford, and if the player's skills proved to be worth more than that price, the team would sell him to a team who could afford him. This form of "revenue sharing" allowed smaller market teams to compete more evenly with large market teams, at least financially speaking. JOHNSON, supra note 75, at 137.

78. For example, at their 1998 salaries, it would have cost Montreal $58 Million to keep the following people on the team: Larry Walker, Marquis Grissom, Moises Alou, Andres Galarraga, Mike Lansing, Mark Grudzielanek, Sean Berry, Mel Rojas, John Wetteland, Randy
team (minor league system) has the team remained somewhat competitive. The teams such as Pittsburgh and Minnesota are not so fortunate. While teams in other sports do undergo long stretches of putting out a poor quality of product, this is usually the result of bad management and poor coaching and has nothing to do with the fact that other teams are outbidding them for the top talent. There is no equivalent for the payroll-slashing Expos in any other team sport. Repealing baseball's exemption as it stands in relation to relocation of teams will help to do away with the discrepancy between large-market teams and small-market teams. As it stands right now, if an owner wants to move his team, three-fourths of the owners within his league has to approve it. This is a clear violation of antitrust laws as a restraint on trade and it is something owners in other leagues do not have to deal with, as evidenced by the four moved teams in the National Football League within the nineties. If baseball owners had this same freedom, it seems clear that market forces would drive the teams who are not able to survive in a certain city to a more lucrative market for their product. Only in baseball does one hear about the plight of

Johnson, Jeff Fassero, and Pedro Martinez. Salaries, supra note 73. That payroll would put Montreal in the top ten in the major leagues, and that's not including the fact that they would still need thirteen more players to fill out their roster. Pete Williams, Widening Gulf Could Break Have-Not Clubs, U.S.A. TODAY BASEBALL WKLY., Nov. 18-24, 1998, at 5. Keeping those players is asking a lot from a team which had a payroll of around ten million dollars this year and who drew under one million fans to their home games this year. Id. Mike Berardino, Expos' Future Remains Muddled; Fans Skeptical Over Threat of Relocation, SUN SENT. (Ft. Lauderdale), September 20, 1998, available in 1998 WL 12829436.

79. Year after year, Montreal continues to produce superstar caliber players, the most recent being Vladimir Guerrero.

80. Loverro, supra note 24.


82. As has already been mentioned, the building of a new stadium can be the great equalizer. The Colorado Rockies, Texas Rangers, and Cleveland Indians all have below average media revenue, and yet all three are among the top ten valued baseball franchises. Along with attracting more fans, new stadiums generally come with many perks for the owner, such as a hefty share in the revenue from concessions, parking, naming rights, and luxury seating (sky boxes). Mathias, supra note 81, at 256. Economist Gerald Scully estimates that a new stadium adds $50 million to $75 million to a franchise in increased value and first year revenue. Larry Stone, The New Ballpark/One Year Away, Greener Pastures, Mariners At A Crossroads: Will Stadium Revenue Improve Team? SEATTLE TIMES, July 5, 1998, available in 1998 WL 3160879. Five teams will be in new parks by the year 2000, and probably just as many are trying to get stadium funding for their own teams. Baseball, supra note 74, at 5B. According to the managing director of Prudential Securities Inc.’s Project Finance Group, as many as half of the 115 professional sports franchises are looking to build a new stadium. Janet Morrissey,
small-market teams. The New York Yankees will be a perennial contender because of the payroll advantages it has over much of the rest of the major league as a result of being in the nation’s largest market. However, the New York Giants, Jets, Knicks, Rangers, and Islanders do not enjoy such an advantage. In the other sports, an owner who is not able to survive in his market will leave to go to a better market, or will threaten to do so to get a better financial package from its present home city. While baseball owners threaten to do the same thing, it is a hollow threat. The San Francisco Giants and the Houston Astros both have attempted to relocate within the past five years and both attempts have been blocked by other owners. In fact, no team in baseball has relocated since 1971, when the Washington Senators became the Texas Rangers.

Allowing baseball owners to enjoy this same freedom would allow market forces to naturally narrow the gap between the “haves” and “have nots” by both allowing teams to move to more viable markets and by giving team owners in those markets more leverage to negotiate for new stadiums or better leases in existing stadiums. As a result, player salaries will be reduced and a more competitive balance would be found within the game, things which could only increase fan interest and support.

Economist Bruce Johnson hypothesizes that what is wrong with baseball is that there are too few teams in large-markets such as New York and Chicago, and too many teams in small-markets such as Minneapolis and Montreal. The New York City market is estimated at over nineteen-million people, and the markets in Minneapolis and Montreal consist of 2.5 million and three-million people, respectively. The Oakland/San Francisco market is estimated at just over six million people and yet it has the same number of major league baseball teams as New York does, two.

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83. These are respectively the two football teams, the basketball team, and the two hockey teams residing in New York. This does not include the two professional teams in Buffalo nor the basketball team in New Jersey.

84. For example, the Cleveland Browns, a football franchise rich in tradition, left for the more lucrative deal the city of Baltimore was giving them, which included a brand new, state-of-the-art stadium.

85. Butterworth v. National League of Prof ’l. Baseball Clubs, 644 So.2d 1021 (Fla. 1994) (deciding an antitrust suit brought by Tampa Bay investors who attempted to buy the Giants against the owners who denied the sale); Loverro, supra note 24.

86. Id.

87. JOHNSON, supra note 75, at 135.

88. William F. Shughart II, Preserve Baseball’s Antitrust Exemption, or, Why The Senators Are Out of Their League, in STER-RIKE FOUR, supra note 18, at 143, 151-52.

89. Id. Oakland/San Francisco supports the Giants and Athletics while New York...
This relatively low supply of major league baseball alternatives in large-markets such as New York creates a high demand for the product.\(^9^0\) As a result, teams in large-markets are capable of securing more lucrative television deals than are their small-market brethren. For example, in 1993, the New York Yankees brought in $63 million in media revenue while the Milwaukee Brewers brought in $21.5 million.\(^9^1\) Because of the limited supply of major league baseball, the Yankees also were able to sell $30 million in tickets while the Brewers sold only $17 million, and this was before the Yankees won two World Series.\(^9^2\)

The result of this discrepancy is that large-market teams set the pay scale and small-market teams cannot keep up.\(^9^3\) Thus, large-market teams have much larger payrolls. For example, the Yankees started the 1998 season with a payroll of over $63 million, compared with Milwaukee’s payroll of $32 million and Montreal’s of a mere $11 million.\(^9^4\)

A natural reaction to seeing the dissimilarities is to believe that if these small-market owners can not compete with their peers, they should leave the game. While this makes sense economically, it is not always that easy. In 1992, the owner of the San Francisco Giants attempted to sell his team to investors from the Tampa/St. Petersburg area for $115 million.\(^9^5\) The National League owners rejected the sale in a nine to four vote and the Giants were eventually sold for $100 million to an owner that wanted to keep the team in San Francisco, a loss of $15 million dollars for the previous owner Jeff Lurie.\(^9^6\)

While owners cited the need for league stability in rejecting the Giants’ sale, and movement of the Giants,\(^9^7\) one has to be skeptical of this purported reasoning. To become a host city of a major league baseball team, a current team must move to that city or that city must be awarded an expansion team.

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\(^9^0\) Both Los Angeles (market of over fourteen million potential customers) and Chicago (over eight million) have two baseball teams within the market; the Dodgers, Angels, Cubs and White Sox. \(Id.\)

\(^9^1\) JOHNSON, supra note 75, at 136. The bulk of the difference was caused by the Yankees $40 million local television deal. \(Id.\) While there has been no revenue sharing in baseball in the past, starting in the year 2000, the thirteen wealthiest teams will pool twenty-two percent of their local revenues into a fund which will be distributed to the rest of the league. STEE-RIKE FOUR, supra note 18, at 200-01.

\(^9^2\) JOHNSON, supra note 75, at 136.

\(^9^3\) \(Id.\)

\(^9^4\) Salaries, supra note 73.


\(^9^6\) \(Id.\)

\(^9^7\) \(Id.\)
The average value of a baseball team is $140 million. Expansion fees are estimated at $150 million per new team. Naturally, prospective buyers of major league teams would rather buy an existing team and move it to their desired location, as it is less expensive to do it that way. Moreover, the team purchased is already established with bona fide major league players and a farm system in place, so it would have a better chance of succeeding in a shorter amount of time than a team just starting out.

However, to sell a team and relocate it, three-quarters of the owners within that league (National or American) must approve of the move. Thus, the owners are given a choice: they can allow a rival team to be sold and relocated and get nothing for themselves, or they can reject the sale and award the city that was trying to lure the existing team away an expansion team, thus collecting $150 million to split among themselves. After voting down the Giants’ move to Tampa Bay/St. Petersburg in 1992, the owners awarded the area an expansion franchise in 1995 which began playing in 1998, but only after paying the hefty expansion fee. It is not surprising that owners are unwilling to allow franchises to move to potential expansion cities; however, league stability does not seem to be the motivating factor.

The Minnesota Twins are currently in a similar situation. The estimated value of the Twins, assuming they stay in the Metrodome, is $77 million. If the team was allowed to move to either a new stadium or new city, the value jumps to between $150 million and $170 million. Twins owner Carl Polhad has invested nearly $108 million in the team over the years, and the team records losses of nearly $10 million every year. Since the new governor of Minnesota has vowed not to spend any public money on a new stadium, unless financing from another source is available, the only viable option for Polhad to not lose millions of dollars is to sell the team to someone.
who would move it. The two potential ownership groups most talked about when baseball owners threaten to sell their team and move it are located in the Washington D.C. area and the Charlotte, N.C. area. Not surprisingly, these two areas of the country are also front runners for expansion teams if and when another expansion does take place.

If antitrust laws were applied to franchise relocation policies as well as to employment of players, situations like those of the San Francisco Giants or the Minnesota Twins would not be the case. Forcing an owner to sell his team for $15 million to $100 million less than the maximum worth of the franchise because the team is not allowed to move would presumably be considered an unreasonable restraint of trade and as such, would be disallowed under antitrust laws.

However, it is not the individual owners who deserve to have antitrust laws applied to this facet of the game, even though they will receive the most immediate benefits. The fans are the people who truly need protection and who will end up benefitting from the full application of antitrust laws. One may be skeptical of the notion that fans will benefit if their teams are allowed to move more freely than they are able to now. It has been argued that relocation can irreparably damage the bond between the host city and the sport itself. This was probably most evident when the Cleveland Browns of the National Football League were moved by Art Modell in 1995. Despite drawing an average of 70,407 fans per game (fourth in the league), the owner moved the team to the greener pastures of Baltimore. One long time fan compared Cleveland's last home game to his "brother's funeral," and an advisor to the team said the game was comparable to one he played in as a player shortly after John F. Kennedy had been shot. Some say this type of

110. These two groups have been mentioned numerous times as possible suitors of the Twins, the Montreal Expos, and the Houston Astros to name just a few. See Mathias, supra note 81, at 265; Loverro, supra note 24.
111. Mathias, supra note 81, at 265.
112. Id. at 266.
114. Peter King, Down . . . And Out. (Cleveland Browns Relocation), SPORTS ILLUSTRATED, Nov. 13, 1995, at 28-29. Modell had one of the worst stadium deals in the league with Cleveland. He had to pay nearly half of one million dollars a year to the city for rent and received no revenue from parking or concessions, as most teams do. Id. at 30. As a result, even though the team was valued at $160 million and Modell himself was worth $75 million, Modell had to borrow millions of dollars throughout the years to keep the team competitive. Id. His new deal makes such a scenario much less likely to occur.
115. Id. at 28.
movement destroys the community affiliation with that team, even when a new team moves into the city, as will happen with Cleveland in 1999.116

There is no denying the fact that fans of an exiting team may be irreparably hurt. Years of loyalty and memories can never be replaced, nor can they be shifted to an incoming team. However, if the team cannot economically and competitively survive in that community, fan sentiment should not be enough to keep the team in a no-win situation. If teams are able to go to more viable markets, fans of the game itself will benefit greatly, although it may be at the expense of fans of a particular team.117

Bruce Johnson makes a great analogy when he compares the New York Yankees and New York Mets to pizza parlors.118 The Mets and Yankees, metaphorically, are the only pizza parlors in town, serving 19 million customers. As a result, long lines form, allowing the owners to set the price per pie sky high since the market is there for expensive pizza. If other parlors moved into this market, the supply would be greater and the demand would be lessened. The two original parlors would thus have to lower their prices to compete with the new competition. If the two parlors tried to prevent competition, they would lose in any antitrust lawsuit brought against them.119 If team relocation was subject to antitrust laws, the same scenario would likely occur if the Mets and Yankees had to compete with other baseball teams for the New York market.120 As a result, one would think a lowering of the cost to attend a game would follow.

If this were to happen and less money was coming to teams individually, then teams would not be able to afford $10 million a year players.121 While the players' union certainly would not like this, the fans would. First of all,

117. Id. It is also questionable if keeping the exemption intact provides much protection for these fans anyway. In an attempt to keep struggling teams from moving into the Washington D.C. market and possibly taking away from his revenue, Peter Angelos, owner of the Baltimore Orioles, has suggested that Major League Baseball purchase the Twins and Expos and then disband them. Philip Hersh, For Expos, D.C. Likely To Mean Ditch Canada, CHI. TRIB., Mar. 7, 1999, sec. 3, at 5. He believes this would increase supply (as 50 more major league players would be available to the remaining teams) and thus decrease demand, resulting in a reduction in player salaries. Id. Whether this idea is plausible or not remains to be seen, but it is clear that keeping control of relocation in the owners' hands offers little protection for fans of small market teams.
118. JOHNSON, supra note 75, at 139.
119. Id.
120. This would not be a novel occurrence. Before 1953, one-half of all Major League Baseball cities had two teams, and New York had three. Id. at 141.
121. See SHUGHART II, supra note 88, at 153; JOHNSON, supra note 87, at 139. While Shughart II is opposed to repealing the exemption and Johnson is for it, both agree that a total repeal of the exemption will allow market forces to naturally drive down player salaries.
ticket prices would presumably be cheaper, and fans always like that. Second of all, the lowering of player salaries could possibly lessen some of the disenchantment many fans feel toward this game played by millionaires. Although the players still would be making millions of dollars each year, in this type of situation it seems there would be some semblance of sanity, as the owners would be spending less than they had been. Of course, baseball would still be the same game and many people would still be disgusted knowing the type of money people make playing it. Virtually nothing short of disbanding all of professional sports can be done to appease this portion of the population.

In addition, just because owners have the right to move does not necessarily mean that they will exercise that right. Allowing franchises to move to better markets may also convince owners to implement a true revenue sharing policy. Forced with the choice of competing with another New York team or sharing a larger portion of their profits, the Yankees just might consider the latter. In the past, there has been absolutely no revenue sharing among major league baseball teams. Starting in the year 2000, the thirteen wealthiest teams will share twenty-two percent of their revenue with the rest of the league. However, this really is not enough to make much of a difference. As a result of this, the Yankees will pay the most at $5.5 million and the Pittsburgh Pirates will receive the most at $4.5 million. While this may be a nice start, it does not bridge the gap between the “haves” and “have nots” of baseball. With the added revenue, Pittsburgh could increase its payroll from a little over $13 million in 1998 to about $18 million, a far cry from the Yankees’ payroll of well over $60 million. The National Football League has thrived for years by sharing a substantial portion of team revenues,

123. I have not computed the economic ramifications a team like the Yankees would face if another team moved into their market. However, it is not outside the realm of possibility that it would be more beneficial to such a team to agree to as much revenue sharing as would still allow them to profit more than they could with another team entering the market. This is mere speculation, however.
124. STEE-RIKE FOUR, supra note 18, at 200-01.
125. Id.
126. Salaries, supra note 73.
seventy-five percent to be exact. As a result, teams such as Green Bay have been able to compete with the larger city teams. If teams share equally in all of the income generated by the game itself, one would think individual owners would be less likely to want to move the team, as their revenue would be equal either way. Allowing franchise relocation at will does not mean owners will automatically seek greener pastures elsewhere. As it is, teams currently in financial difficulty are reluctant to try to move to a new city and usually do what they can to remain where they are, despite the economic disparity. Opening relocation decisions to antitrust legislation merely opens the door to the possibility. It would give owners some leverage to negotiate new deals with their existing cities to build new stadiums or give them better lease deals on existing stadiums, as it now would be possible to move the team without league approval. Either way, individual teams will be able to benefit from the exemption's repeal as it deals with franchise relocation, and fans will ultimately reap the benefits from this as well.

It has been suggested that subjecting league relocation decisions to antitrust laws would harm Major League Baseball as a whole; while individual teams probably would benefit from moving, the league itself would supposedly be hurt in numerous ways. First, the league would have to forgo any expansion fee it may have received if a team moves to a prospective city. Second, as a result of the previously mentioned supply/demand scenario, the league would earn less profits since the prices would have been

127. ZIMBALIST, supra note 65, at 182. Again, the stadium issue presents itself. NFL teams do not share revenues from luxury boxes or seat licenses. Mason & Slack, supra note 113, at 418. Thus, stadium economics and not market size determines the financial success of individual teams and owners. Id. This explains how 70 thousand fans per game was not enough to keep the Browns in Cleveland, and why Los Angeles, the nation's second largest market, has no NFL team. King, supra note 114, at 32.
129. Despite the aforementioned plight of the Minnesota Twins (see supra text accompanying notes 105-11), owner Carl Polhad has resisted selling his team to Carl Beaver, who wants a franchise in Charlotte, N.C. Harvey Burgess, Beaver Keeping His Options Open, HERALD (Rock Hill, S.C.), Oct. 15, 1998, available in WL 7645579. Polhad did some last minute haggling with the city to keep the Twins in Minneapolis for at least two years after Beaver made an offer for the team in 1997. Id. The Montreal Expos, another team in financial difficulty (see supra notes 78 and 79 with accompanying text), have also resisted selling the team to suitors in the Washington D.C. area in an attempt to keep the team in Canada. Eric Lipton, Expos' Owners Deal Setback to Washington Area's Baseball Bid, WASH. POST, Oct. 8, 1998, at C1, C11.
130. See SHUGHART II, supra note 88, at 153.
131. Mason & Slack, supra note 113, at 416; see also text accompanying notes 97-104.
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driven down. Third, the players' salaries would drop. And fourth, fan interest would fall if teams were allowed to move at will. While each team is individually owned, all are interdependent and need each other to survive, and would thus be worthless without the other teams' existence. It is argued that when the league is allowed to control player selection, compensation, revenue sharing, and ownership and location of franchises, competitive balance is at its highest and everyone individually and collectively benefits.

However, true competitive balance is at its highest when each team is on equal footing with each other and each team can afford the same talent. The line of thought that says that league control over franchise relocation promotes competitive balance ignores the fact that operating in this very mode has not produced any semblance of competitive balance. In 1998, twelve teams had payrolls of $48 million or more; eight of those twelve teams made the playoffs, and all but one of them had winning records. Only three of the eighteen teams under $48 million had winning records and two of those three had payrolls over $47 million. As of December 17, 1998, $917,325,000 had been guaranteed to seventy-three free agents during the offseason. Of that total, seventy-eight percent or $712.65 million, was spent by eight teams. Kevin Brown's yearly salary alone is more than some teams' entire payroll!

There can be no competitive balance in such a situation. Certainly, a team without a big budget payroll may occasionally get lucky and win a championship by having some outstanding rookies play well and by signing mid-level veterans who happen to have career years. However, logic dictates that the teams with the funds to buy the best players each year will put out the

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133. Id.
134. Id. at 146-47.
135. Id.
136. Id.
137. Baseball, supra note 74, at 5B. Surprisingly, the one team which did not have a winning record was the Baltimore Orioles, the team that spent a major league high $74.2 million. Id.
138. Id. The Toronto Blue Jays, San Francisco Giants, and St. Louis Cardinals had winning records with payrolls under $48 million. The Giants and Cardinals had payrolls of $47.9 million and $47.6 million respectively. Id.
139. Id.
140. Id. Los Angeles-$123.9 million, Baltimore-$121.2 million, Arizona-$118.9 million, the New York Yankees-$111.25 million, Anaheim-$81.7 million, Texas-$72.3 million, Atlanta-$42.5 million, and the New York Mets-$40.9 million. Id. The Mets also spent $123 million on two players before they became free agents. Id.
141. Kevin Brown earns $15 million per year, while the Montreal Expos started 1998 with an entire payroll of around $11 million. Baseball, supra note 74, at 5B; Salaries, supra note 74.
best product and will win more championships. One current baseball executive estimates that fifteen to eighteen of the thirty teams already have been eliminated from contending for the post-season in 1999 . . . and spring training was still two months away when he made that estimation.142

Such a situation is not good for the game of baseball or for any other team sport for that matter. Teams that monopolize all of the good talent will hurt the game.143 The public will not stay interested in a sport where only a couple of clubs are always in contention of winning a championship and the rest of the clubs are out of contention by the season’s beginning. Unfortunately, this is what happens when all of the superstar players are concentrated in only a few teams.144 The league has tried to lessen this by instituting the draft in such a way as to afford the poorest teams the opportunity to get the best young talent available before the better teams are able to.145 However, once those players become free agents, the concentration begins.146 This situation can only hurt the league as a whole. Fan interest will wane with no competition and a resulting loss of profits will follow.

CONCLUSION

Since owners do not share a substantial portion of their profits and do not promote competitive balance in any realistic way, it would be silly to allow them to control relocation of individual clubs under the reasoning that this promotes league stability and ensures competitive balance. If, as fans and law-makers, we could impose strict revenue sharing on the league, a baseball fan’s life would be good. However, we cannot force owners to share their money. What should have been done was to make baseball owners subject to antitrust lawsuits when they decide to block franchise relocation. Owners in most other team sports have this right. Giving this right to baseball owners would have offered the greatest likelihood of putting all clubs on equal footing, as teams will either move to where they can generate the necessary revenue to compete, or by influencing the richer teams to share revenue more generously. Thus, the game would have improved for fans, individual owners, and, eventually, for the league as a whole. While a World Series featuring the Kansas City Royals against the Milwaukee Brewers may not seem as exciting as one in which the Los Angeles Dodgers face the New York Yankees, the

142. Baseball, supra note 74, at 5B.
144. Id.
145. Id. at 493-94.
146. Baseball, supra note 74, at 5B; see also text accompanying note 137.
game at least needs the possibility of such a match-up. Right now, such a possibility does not even exist. Congress struck out in its attempt to save the game of baseball. Hopefully, we were not in the bottom of the ninth when it happened.

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