

**Down to Their Last Strike: How the MLB Antitrust  
Exemption has Hurt Minor League Players' Salaries and  
Why It is up to Them to Fight Back**

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## I. INTRODUCTION

Major League Baseball's (MLB) antitrust exemption has created harmful effects on player salary potential during the pre free-agency period of their careers. While there are varying views on the legitimacy of MLB's antitrust exemption, its effect on labor relations—specifically on minor league player salaries—has largely been ignored. This is a mystifying phenomenon, as nearly 90% of drafted minor league players will never play a single game in the MLB.<sup>1</sup> Although major league players are the most visible in the public eye, minor league players, due to being much larger in number, are overwhelmingly the most affected parties in player labor relations. The Major League Baseball Players Association (MLBPA) represents major league players in labor-related matters. This players' union has engaged in collective bargaining on the players' behalf for more than fifty years<sup>2</sup> and has made some progress in recent years in raising the salaries of arbitration period major league players.<sup>3</sup> However, minor league players are not represented by the association and the antitrust exemption has allowed teams to exploit minor league players at sub-minimum wage salaries,<sup>4</sup> with little intervention by Congress. In fact, Congressional intervention has often paved the way for even lower minor league player salaries.<sup>5</sup>

This Note analyzes how the developments in MLB antitrust law have affected Minor League Baseball players and observes player and union responses to those developments. Part II looks back at the history of the seminal U.S. Supreme Court cases that have created and reinforced the MLB antitrust exemption. It also describes the history of Minor League Baseball labor efforts since the league's inception and gives an overview of the Reserve Clause's impact on player freedom of contract over the years. Part III analyzes the failures of baseball's free agency system in addressing the labor constraints

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1. Ian Gordon, *Minor League Baseball Players Make Poverty-Level Wages*, MOTHER JONES (Jul.–Aug. 2014), <https://www.motherjones.com/politics/2014/06/baseball-broshuis-minor-league-wage-income/#:~:text=The%20minors%20are%20filled%20with,make%20it%20to%20the%20majors> [<https://perma.cc/8MWJ-Q3Y9>] (analyzing the current state of Minor League Baseball salaries); see also Richard T. Karcher, *The Chances of a Drafted Baseball Player Making the Major Leagues: A Quantitative Study*, BASEBALL RSCH. J., Spring 2017, at 52 (determining a drafted baseball player's chances of making the major leagues based upon the round a player is drafted, age when drafted and signed, and position).

2. *History*, MAJOR LEAGUE BASEBALL PLAYERS ASS'N, <https://www.mlbplayers.com/history> [<https://perma.cc/SS6J-XQGD>] (noting that the MLBPA was founded in the late 1960s, with the players approving the MLBPA constitution and bylaws in July 1967).

3. *Major League Baseball Minimum Wage*, BASEBALL ALMANAC, [https://www.baseball-almanac.com/charts/salary/major\\_league\\_salaries.shtml](https://www.baseball-almanac.com/charts/salary/major_league_salaries.shtml) [<https://perma.cc/9E3E-2RTC>].

4. "Starting pay for minor leaguers is between \$1,100 and \$2,150 a month, and only during the season, which can be as short as three months." Gordon, *supra* note 1.

5. Ronald Blum, *Baseball Players in Minors to Lose Minimum Wage Protection*, ASSOCIATED PRESS (Mar. 23, 2018), <https://apnews.com/article/minor-league-baseball-lawsuits-ap-top-news-government-spending-laws-cb183f59e88948e8b9cd49ad07bde807> [<https://perma.cc/44RV-J6YX>].

that existed under the old Reserve System. Lastly, Part IV recommends that Minor League Baseball players initiate suits against the MLB alleging both antitrust and labor law violations. Part IV argues that courts may be more willing to readdress the antitrust exemption when it is invoked alongside federal labor law violations.

## II. BACKGROUND

I do not feel that I am a piece of property to be bought and sold irrespective of my wishes . . . I believe that any system which produces that result violates my basic rights as a citizen and is inconsistent with the laws of the United States and of the several states.

— Curt Flood<sup>6</sup>

Minor League Baseball has a long labor history that has been directly shaped by the MLB Antitrust Exemption. Likewise, the MLB Antitrust Exemption has a long history, and it is important to highlight its development over the years for its impact on the players to be fully understood. Appreciation for the history of both the MLB Antitrust Exemption and Minor League Baseball labor will promote an awareness of the former's stark effects on the latter and allows for the recognition of the benefits that could be achieved by the Exemption's abolition.

### A. History of Minor League Labor Efforts

Minor League Baseball players, lacking both a players association and support from the legislative branch, have suffered the most from the antitrust exemption. The collective bargaining that has resulted from the creation of the MLBPA has not eliminated all exploitation of major leaguers, but it has significantly increased their pay and bargaining ability.<sup>7</sup> The status of minor league players has changed relatively little since that time. While the MLB has increased its minimum player salary by nearly 3,400% since 1975, U.S. households at large have enjoyed a 450% increase in their incomes while the minimum salary for minor league players has only increased by 69% in that time.<sup>8</sup> Exploitation is a tale as old as time for Minor League Baseball players.

#### 1. Minor League Baseball is Born

Minor League Baseball began in 1901 as the National Association of Professional Baseball Leagues (NAPBL).<sup>9</sup> Initially, there were 14 leagues with 96 teams.<sup>10</sup> For a couple of decades, many teams and leagues came and went.<sup>11</sup> While all the leagues and teams operated independently of the Major League Baseball teams—American League

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6. Ronald Blum, *Curt Flood Set Off the Free-Agent Revolution 50 Years Ago*, ASSOCIATED PRESS (Dec. 24, 2019), <https://apnews.com/article/709938d2eb0d5cd1b540cd4167e05585> [<https://perma.cc/BJB6-Z5SJ>].

7. Robert Pannullo, *The Struggle for Labor Equality in Minor League Baseball: Exploring Unionization*, 34 ABA J. LAB. & EMP. L. 443, 444 (2020).

8. *Id.* at 443.

9. *General History: The History & Function of Minor League Baseball*, MINOR LEAGUE BASEBALL, <https://www.milb.com/milb/history/general-history> [<https://perma.cc/ZY4R-MLAM>].

10. *Id.*

11. *See id.* (describing the early history of Minor League Baseball during its time as the NAPBL).

and National League—during this time, that changed by 1921.<sup>12</sup>

Before that year, Major League teams would buy players from NAPBL teams according to an agreement made between the NAPBL and the American and National Leagues.<sup>13</sup> Major League team owners decided that it would be cheaper to purchase NAPBL teams rather than pay them every time their team wanted to purchase a player.<sup>14</sup> By purchasing minor league teams, Major League owners could sign young, inexperienced players for long terms at low pay—allowing them to promote high-performing minor league players at a low financial cost.<sup>15</sup> This practice became widespread amongst most of the Major League teams by the 1940s.<sup>16</sup>

Soon, NAPBL began to see precipitous drops in attendance and revenue—largely credited to the increase in television consumption.<sup>17</sup> Despite the drops in attendance, the increase in television consumption proved beneficial for both the MLB and the NAPBL. Television blackouts of Major League games were in place in the territories of most NAPBL teams, and Major League teams paid NAPBL to allow television broadcast of Major League games in NAPBL territories.<sup>18</sup> This provided NAPBL teams with a surge of revenue and expanded the broadcast territory of Major League teams.<sup>19</sup>

This continued until 1962, when the Minor League Baseball system that exists today was created through the Player Development Plan.<sup>20</sup> The plan mandated that every Major League team operate at least five Minor League teams.<sup>21</sup> It further mandated that all players and coaches be paid salaries by the Major League team, even if the Minor League team was independently owned.<sup>22</sup>

## 2. The History of the Reserve Clause

The reserve clause was a provision within player contracts that required a player to commit to playing with a single team for an extended period of time.<sup>23</sup> In its early years, this usually meant for the duration of that player's career.<sup>24</sup> The system can be traced back to 1879 and was established well before the formation of the NAPBL.<sup>25</sup>

Curt Flood, a center fielder who played for the St. Louis Cardinals and other teams

12. *Id.*; see also Garrett R. Broshuis, *Touching Baseball's Untouchables: The Effects of Collective Bargaining on Minor League Baseball Players*, 4 HARV. J. SPORTS & ENT. L. 51, 58 (2012) (describing the evolution of the relationship between the National League and minor leagues).

13. *National Agreement for the Government of Professional Base Ball Clubs*, SOC'Y FOR AM. BASEBALL RSCH., <http://roadsidephotos.sabr.org/baseball/1903NatAgree.htm> [<https://perma.cc/GG4R-RVLP>].

14. Broshuis, *supra* note 12, at 59.

15. *See id.*

16. J.J. Cooper, *A Complete History Off The Working Agreement between Major And Minor Leagues*, BASEBALL AM. (Oct. 18, 2019), <https://www.baseballamerica.com/stories/a-complete-history-of-the-working-agreement-between-major-and-minor-leagues/> [<https://perma.cc/FY5H-MD6V>].

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. Broshuis, *supra* note 12, at 61.

22. *Id.*

23. *Reserve Clause*, SPORTS REFERENCE: BASEBALL REFERENCE, [https://www.baseball-reference.com/bullpen/reserve\\_clause](https://www.baseball-reference.com/bullpen/reserve_clause) [<https://perma.cc/PPQ3-T8WN>].

24. *Id.*

25. *Id.*

from 1956 to 1971, was the first to challenge the Reserve System. And although he lost his case at the Supreme Court, his lawsuit was just the beginning of a much larger player movement for labor change.<sup>26</sup> Various labor stoppages and strikes from 1972 to 1995 helped bring nominal improvements to the Reserve System.<sup>27</sup> The 1972 strike brought mandatory arbitration clauses for labor disputes.<sup>28</sup> Then, in 1975, two players decided to play the season without contracts so that they could sign with whatever team offered them the most money the following year.<sup>29</sup> In the required arbitration hearing that followed, the arbiter ruled for the players.<sup>30</sup> This is often considered the end of the Reserve System,<sup>31</sup> but in reality, it still exists today—unless one becomes a veteran Major League Baseball player.<sup>32</sup>

The modern free-agent system began on July 12, 1976.<sup>33</sup> Players who served six years on the active roster of a Major League team would be granted free agency to sign with any team.<sup>34</sup> This led to an explosion of salary levels in baseball,<sup>35</sup> but for the vast majority of professional players, the Reserve System remains effectively unchanged.<sup>36</sup>

### B. History of the MLB Antitrust Exemption

The MLB Antitrust Exemption's origins can be traced back to a point over a century ago when another league, known as the Federal League of Base Ball Clubs, attempted to become the third major league in professional baseball.<sup>37</sup> The National League and American League have made up the Major Leagues since that time—due much in part to the lawsuit the Federal League initiated against the two other leagues.<sup>38</sup>

#### 1. *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs, et al.*

The Federal League of Base Ball Clubs was formed in 1913 with the intent of

26. *Id.*

27. Blum, *supra* note 6.

28. *Reserve Clause*, *supra* note 23.

29. *Id.*

30. *Id.* (“In essence, [the arbiter] ruled that since the owners had written the contract, it was their responsibility to spell out its terms exactly.”).

31. Blum, *supra* note 6.

32. By “veteran player,” I am referring to Major League players who have completed the six-year Major League service obligation necessary to become free agents.

33. Blum, *supra* note 6.

34. *Id.*

35. *Id.*

36. *See infra* note 86, and accompanying text (explaining that most Major League players do not play long enough to reach free agency and, therefore, do not gain any of the benefits of the new free agent system).

37. *See generally* Emil H. Rothe, *Was the Federal League a Major League?*, SOC'Y FOR AM. BASEBALL RSCH.: RSCH. J. ARCHIVE, <http://research.sabr.org/journals/federal-league-a-major-league> [https://perma.cc/6C2C-2GRQ] (arguing that the Federal League was a major league despite its short existence).

38. “In the 100 years since the Federal League folded, no subsequent rival league has ever seriously challenged the major leagues’ control over the professional baseball industry.” Nathaniel Grow, *Judge Landis, the Federal League and Baseball’s First Antitrust Trial*, HARDBALL TIMES (Feb. 2, 2015), <https://tft.fangraphs.com/judge-landis-the-federal-league-and-baseballs-first-antitrust-trial/> [https://perma.cc/ZLM7-XWHF].

becoming a third major league.<sup>39</sup> It directly competed with the National League and American League from 1914 to 1915.<sup>40</sup> With strong financial support from several business magnates, the Federal League quickly began to sign talented players from the other two leagues.<sup>41</sup> Notably, many of the former American and National League players found the working conditions in the Federal League to be superior.<sup>42</sup> Eventually, the other two leagues began offering to raise players' salaries when they were offered more money from the Federal League.<sup>43</sup> The leagues also began to challenge Federal League player contracts in court.<sup>44</sup>

The leagues continued trading blows, eventually leading to the Federal League filing an antitrust lawsuit against the other leagues in early 1915.<sup>45</sup> The Federal League alleged that the American League and National League were violating the Sherman Antitrust Act by conspiring together to blackball, or secretly reject, any other leagues that attempted to compete with them.<sup>46</sup> More specifically, the Federal League's Baltimore team argued the dissolution of the Federal League was a restraint of trade that violated Sections 1 and 2 of the Sherman Antitrust Act.<sup>47</sup> The Federal League won a \$80,000 verdict at trial, which was trebled to a \$240,000 judgment under Section 7 of the Sherman Act.<sup>48</sup> The Court of Appeals reversed the trial verdict, holding that MLB was not subject to the restrictions of the Sherman Act, as the court found it was not engaged in interstate commerce.<sup>49</sup> That determination is fatal to any alleged violation of the Sherman Act, as Section 1 only bars contracts and conspiracy "in restraint of trade or commerce among the several States, or with foreign nations."<sup>50</sup> The Supreme Court unanimously affirmed this decision, holding baseball was a "purely state affair."<sup>51</sup> In his opinion, Justice Holmes wrote that any baseball business actions that crossed state lines were "mere incident, not the essential thing."<sup>52</sup>

## 2. *Toolson v. New York Yankees, Inc.*

Baseball's antitrust exemption did not come under fire again until 1951, in *Toolson*

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39. Rothe, *supra* note 37.

40. Grow, *supra* note 38.

41. Rothe, *supra* note 37.

42. *Id.*

43. *Id.*

44. *Id.* Bill Killefer's conflicting contracts with a Federal League team and the Philadelphia Nationals was the first of these cases to reach a federal court in 1914. For a contemporary newspaper account of the case, see *Old Complaint to Restrain Killifer: Federal League Uses Decision in Lajoie Case to Sustain Its Action*, N.Y. TIMES (Mar. 30, 1914), <https://timesmachine.nytimes.com/timesmachine/1914/03/30/100304313.pdf> [<https://perma.cc/3RP7-LLAC>] (discussing the bill in equity filed against William Killifer to restrain him playing with the Philadelphia National League Baseball Club).

45. Fed. Baseball Club of Balt., Inc. v. Nat'l League of Pro. Baseball Clubs, 259 U.S. 200, 207 (1922).

46. *Id.*

47. *Id.*

48. *Id.* In 2020 dollars, this is equivalent to nearly \$3.7 million. *CPI Inflation Calculator*, U.S. BUREAU LAB. STAT., [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm) [<https://perma.cc/5SLY-9ARQ>].

49. Nat'l League of Pro. Baseball Clubs v. Fed. Baseball Club of Balt., 269 F. 681, 688 (D.C. Cir. 1920), *aff'd sub nom.*, Fed. Baseball Club of Balt., Inc. v. Nat'l League of Pro. Baseball Clubs, 259 U.S. 200 (1922).

50. Sherman Antitrust Act of 1890, 15 U.S.C.A. § 1.

51. Fed. Baseball Club of Balt., 259 U.S. at 208.

52. *Id.* at 209.

v. *New York Yankees, Inc.*<sup>53</sup> George Toolson was a pitcher in the New York Yankees minor league system at the time.<sup>54</sup> Toolson was demoted from the Newark Bears, a Triple-A class Yankees minor league team, to the Binghamton Triplets, a Single-A class minor league team.<sup>55</sup> Toolson refused to report to Binghamton.<sup>56</sup> As a result, the New York Yankees placed him on the “ineligible list,” which barred him from playing professional baseball.<sup>57</sup> Toolson then sued the Yankees, alleging that the reserve clause that kept him from pursuing contracts with other major league teams was a violation of the Sherman Act and the Clayton Act.<sup>58</sup> At that time, the reserve clause kept professional baseball players under contract with one team for the entirety of their careers.<sup>59</sup>

Toolson hoped the courts would rule in his favor despite the clear precedent set by *Federal Baseball*.<sup>60</sup> It seemed clear that MLB was engaged in interstate commerce, considering development in the law of interstate commerce that had occurred since the *Federal Baseball* case.<sup>61</sup>

The District Court, recognizing the factual similarities between this case and *Federal Baseball*, refused to consider this context, and dismissed the case.<sup>62</sup> The Court of Appeals upheld the dismissal.<sup>63</sup> The Supreme Court also refused to consider the recent developments in interstate commerce law, noting an unwillingness to disturb the structure of a sport that has evolved for thirty years around the understanding that it is exempt from antitrust legislation.<sup>64</sup> Once again, the Court pushed the onus back onto Congress for solutions to this decades-long conflict.

### 3. *Flood v. Kuhn*

The Court considered the status of the antitrust exemption most recently in 1972. Curt Flood was traded to the Philadelphia Phillies without his knowledge following the

53. *Toolson v. N.Y. Yankees, Inc.*, 101 F. Supp. 93, 93 (S.D. Cal. 1951), *aff'd*, 200 F.2d 198 (9th Cir. 1952), *aff'd sub nom.*, *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356 (1953).

54. *George Toolson Register*, SPORTS REFERENCE: BASEBALL REFERENCE, <https://www.baseball-reference.com/register/player.fcgi?id=toolso001geo> [<https://perma.cc/FQ3L-5QH9>].

55. *Toolson*, 101 F. Supp. at 93.

56. *Id.*

57. *Id.* The ineligible list bans a player from playing professional baseball or appearing on the Hall of Fame ballot for as long as they remain on the list, which as of 2020, can be until death. Don Van Natta Jr., *Source: MLB Ineligible List Ends at Death for Banned Players*, ESPN (Jan. 17, 2020), [https://www.espn.com/mlb/story/\\_/id/28502513/source-mlb-ineligible-list-ends-death-banned-players](https://www.espn.com/mlb/story/_/id/28502513/source-mlb-ineligible-list-ends-death-banned-players) [<https://perma.cc/Q6Q3-W77D>].

58. *Toolson*, 101 F. Supp. at 93.

59. *Reserve Clause*, *supra* note 23.

60. *See Fed. Baseball Club of Balt.*, 259 U.S. at 208–09 (affirming that baseball games are purely state affairs).

61. *See* Brett J. Butz, *Grounding Into a Double Standard: Understanding and Repealing the Curt Flood Act*, 8 U. MASS. L. REV. 302, 313 (2012) (suggesting that “practical logic in 1953 should have dictated the conclusion that [Major League Baseball] was engaged in interstate commerce and subject to antitrust suits . . .”).

62. *Toolson*, 101 F. Supp. at 95.

63. *Toolson v. N.Y. Yankees Inc.*, 200 F.2d 198, 199 (9th Cir. 1952), *aff'd sub nom.* *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356 (1953).

64. *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356, 357 (1953).

1969 MLB season.<sup>65</sup> It angered Flood that he was informed unceremoniously by a low-level Cardinals employee, and he was unenthused at the prospect of playing in front of infamously unruly Philadelphia fans.<sup>66</sup> Flood then brought suit after the Commissioner of Baseball denied his request that the Reserve Clause be overruled to make him a free agent.<sup>67</sup>

The U.S. Supreme Court recognized that, despite their similar business models, professional football, boxing, basketball, and presumably hockey and golf did not enjoy the same antitrust exemption as professional baseball.<sup>68</sup> It also conceded that MLB was a business engaged in substantial interstate commerce and that its interstate activity had dramatically increased over the years—making the Reserve System’s exemption from antitrust laws “an aberration confined to baseball.”<sup>69</sup>

Nevertheless, the Court cited the importance of *stare decisis* and invoked the importance of consistency in law by reverently recounting MLB’s hallowed history and listing the names of 83 famous players.<sup>70</sup> Justice Blackmun’s impassioned soliloquy in Part I has become a target of ridicule and notoriety in the years since.<sup>71</sup> Curt Flood, despite being on a Hall of Fame trajectory and in the peak of his career at the time,<sup>72</sup> was blackballed by the MLB team owners and was unable to find a starting job for the rest of his career.<sup>73</sup>

65. Flood v. Kuhn, 407 U.S. 258, 265 (1972).

66. Terry Sloope, *Curt Flood*, SOC’Y FOR AM. BASEBALL RSCH., <https://sabr.org/bioproj/person/curtflood/> [https://perma.cc/U96Z-RCBX].

67. *Flood*, 407 U.S. at 265.

68. *Id.* at 282–83.

69. *Id.* (referring specifically to *Fed. Baseball Club of Balt.* and *Toolson*).

70. *Id.* at 262; *see id.* at 260–64 (recounting the history of baseball and invoking the sport’s sense of wonder; Justice Burger and Justice White refused to join in this Part, necessitating Justice Burger’s concurrence).

71. *See generally* Roger I. Abrams, *Blackmun’s List*, (Ne. Pub. L. & Theory Fac. Working Paper Series, Working Paper No. 08-2006, 2006), <http://ssrn.com/abstract=%20939545> [https://perma.cc/HTY3-PGF3] (describing how many of the individual players that Blackmun listed in Part I of his opinion were hurt by the very Reserve System that Blackmun defended in *Flood*); *see also* Nina Totenberg, *Justice Sotomayor Takes Swing at Famed Baseball Case*, NPR (May 23, 2013, 5:23 PM), <https://www.npr.org/2013/05/23/186314129/justice-sotomayor-takes-swing-at-famed-baseball-case> [https://perma.cc/9NXX-WRVW] (reporting on a re-enactment of the *Flood v. Kuhn* case sponsored by the Supreme Court Historical Society and presided over by famous baseball fanatic Justice Sotomayor).

72. Flood’s JAWS report shows that he currently ranks as the 46th best center fielder of all-time, despite his career effectively ending at age 31. *Curt Flood Overview*, SPORTS REFERENCE: BASEBALL REFERENCE, <https://www.baseball-reference.com/players/f/floodcu01.shtml> [https://perma.cc/5GAT-CFX8]. JAWS is a system “that evaluates a player’s worthiness for enshrinement in the National Baseball Hall of Fame by comparing him to the Hall of Famers at his position.” *JAWS: Definition*, MAJOR LEAGUE BASEBALL, <https://www.mlb.com/glossary/miscellaneous/jaws> [https://perma.cc/AESS-TZ7B]. An analysis of Flood’s 7-year peak WAR shows that he was still in his peak years of performance at the time he was blackballed, suggesting that he likely would have been an even higher-ranked all-time centerfielder if his career had continued uninterrupted. *Curt Flood Overview*, *supra*. WAR, or wins above replacement, is a measure of a player’s approximate overall value relative to a readily available replacement player. *Wins Above Replacement (WAR)*, MAJOR LEAGUE BASEBALL, <https://www.mlb.com/glossary/advanced-stats/wins-above-replacement> [https://perma.cc/K4CM-RPAM].

73. Allen Barra, *How Curt Flood Changed Baseball and Killed His Career in the Process*, ATLANTIC (July 12, 2011), <https://www.theatlantic.com/entertainment/archive/2011/07/how-curt-flood-changed-baseball-and-killed-his-career-in-the-process/241783/> [https://perma.cc/F4TQ-PXUC].

#### 4. *The Curt Flood Act of 1998*

Congress was not immediately persuaded by the Court's insistence that it be the ones to act, and baseball's antitrust exemption continued unabated for several decades. However, the 1994 MLB season ended several months early when the players went on strike.<sup>74</sup> The tensions in labor relations between the team owners and the players encouraged Congress to finally take action.<sup>75</sup> In 1998, the Curt Flood Act was signed into law with the intention of treating MLB players with the same antitrust protections as players in other professional sports.<sup>76</sup> However, the Act's scope was extremely limited and did not affect the vast majority of professional baseball players. Specifically, the Act only allows current MLB players to bring antitrust suits against the league.<sup>77</sup> However, for Major League players, the Act combined with the current Reserve System limits the path for players to challenge the actions of the league and team owners.<sup>78</sup>

### III. ANALYSIS

“A well-paid slave is nonetheless a slave.” — Curt Flood<sup>79</sup>

Over the years, there has been much literature written regarding other solutions to both the MLB antitrust exemption and Minor League Baseball player salaries. Unfortunately, writers rarely consider how these two specific issues are intertwined, and the recommendations for nonjudicial solutions have a history of failure.

#### A. *The New Reserve System: The Rise of Free Agency Has Not Eliminated Conflicts Created by the Reserve Clause*

Although Curt Flood failed in his attempt to reverse baseball's antitrust exemption,<sup>80</sup> his lawsuit did result in a few immediate collective bargaining wins for players.<sup>81</sup> Those collective bargaining wins resulted in the replacement of the former

74. Due to television revenue losses, the Major League Baseball team owners had cut payrolls significantly for the 1994 season, souring negotiations with the players for the next collective bargaining agreement. Craig Edwards, *MLB's Winning and Losing Efforts to Conquer TV, Part I: The Strike*, FANGRAPHS (Feb. 26, 2020), <https://blogs.fangraphs.com/mlbs-winning-and-losing-efforts-to-conquer-tv-part-i-the-strike/> [<https://perma.cc/6GQN-CUWJ>].

75. Lacie L. Kaiser, *Revisiting the Impact of the Curt Flood Act of 1998 on the Bargaining Relationship between Players and Management in Major League Baseball*, 2 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 230, 255 (2004).

76. Presidential Statement on Signing the Curt Flood Act of 1998, 34 WEEKLY COMP. PRES. DOC. 2150 (Oct. 27, 1998), <https://www.govinfo.gov/content/pkg/WCPD-1998-11-02/pdf/WCPD-1998-11-02-Pg2150.pdf> [<https://perma.cc/J82B-C29S>].

77. Curt Flood Act of 1998, Pub. L. No. 105-297, 15 U.S.C.A. § 26b. See 15 U.S.C.A. § 26b(c) (regarding standing to sue).

78. Kaiser, *supra* note 75, at 243.

79. See David Margolick, *Fielder's Choice*, N.Y. TIMES (Oct. 8, 2006), <https://www.nytimes.com/2006/10/08/books/review/Margolick.t.html> [<https://perma.cc/BJ48-KNDH>] (repeating Flood's oft-quoted retort to ABC Sports journalist Howard Cosell, who had suggested that any “man who makes \$90,000 a year” does not subsist on anything like “slave wages.”).

80. *Flood*, 407 U.S. at 282–85.

81. See *supra* Section II.B.3 (describing the decline of the Reserve System in Major League Baseball

reserve clause system with a new free agency system.<sup>82</sup> The destruction of the old reserve clause, however, was not the end of a reserve system in baseball, as is often implied in other scholarship.<sup>83</sup> The free agency system that replaced it is simply a reserve clause system with a fresh coat of paint; the creation of a New Reserve System.

The new system brought many advantages for established veteran players thanks to the opportunity for freedom of contract after six years of major league service.<sup>84</sup> Unfortunately, this system does not benefit minor league players or even the average major league player. Only about ten percent of professional baseball players ever get the call-up to the big leagues.<sup>85</sup> Of those who do get the call-up, the average major league player does not play long enough to reach free agency.<sup>86</sup> The average MLB player plays in the league for 5.6 years,<sup>87</sup> and 20% of major league players do not make it past their rookie season.<sup>88</sup> This means the average player falls short of the necessary service time to achieve free agency. This reality significantly narrows the financial advantages of free agency to a small pool of elite players.

Team front offices have created an additional hurdle to free agency by manipulating player service time.<sup>89</sup> The MLB season is 187 days in length—a player must spend 172 days of a season on a Major League team roster to earn a year of service time.<sup>90</sup> Service time manipulation is generally accomplished by waiting a few weeks after the season has

following the *Flood* lawsuit).

82. Blum, *supra* note 6.

83. See generally Nathaniel Grow, *In Defense of Baseball's Antitrust Exemption*, 49 AM. BUS. L.J. 211, 240–41 (2012) (defending the baseball antitrust exemption by asserting that the exemption no longer plays a measurable role in labor relations because “major league players were able to rid themselves of the constraints of the reserve clause” and “eventually negotiated a new collective bargaining agreement.”); Stephen F. Ross, *Reconsidering Flood v. Kuhn*, 12 U. MIA. ENT. & SPORTS L. REV. 169, 176 (1995) (stating that “ending the reserve system destroyed neither baseball nor its integrity.”).

84. Blum, *supra* note 6.

85. Gordon, *supra* note 1.

86. William D. Witnauer et al., *Major League Baseball Career Length in the Twentieth Century*, 26 POPULATION RSCH. & POL'Y REV. 371, 379 (2007). The authors suggest that the average number of years the average player remains in the league may be even lower if they had included pitchers in their study, due to their high frequency of injury. *Id.* at 376. The authors also excluded 618 players who made their debut after the September 1 roster expansion of any season and then never appeared in the Major Leagues again. *Id.* at 377. These are conspicuous omissions, especially considering the increased role that high-velocity relief pitchers and expanded September rosters play in today's game. See Jonah Keri & Neil Paine, *How Bullpens Took over Modern Baseball*, FIVETHIRTYEIGHT (Aug. 15, 2014, 11:27 AM), <https://fivethirtyeight.com/features/how-bullpens-took-over-modern-baseball/> [<https://perma.cc/RL5L-D7YT>] (describing the precipitous increase in the number of pitchers in play in recent years); see also Bob Nightengale, *Opinion: MLB to Fix Baseball's Worst Problem: Uneven Rosters, Terrible September Games*, USA TODAY (Mar. 14, 2019, 10:03 AM ET), <https://www.usatoday.com/story/sports/mlb/columnist/bob-nightengale/2019/03/14/mlb-rule-changes-roster-size-september/3160380002/> [<https://perma.cc/V83M-5LQU>] (explaining how some teams have up to 15 minor league players in the major league team dugout during September).

87. Witnauer et al., *supra* note 86.

88. *Id.* at 378.

89. See Ryan Probasco, *Revisiting the Service Time Quandary: Does Service Time Manipulation of Minor League Baseball Players Violate MLB's Collective Bargaining Agreement?*, 15 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 1, 2 (2019) (analyzing the legality of service time manipulation under the current collective bargaining agreement).

90. *Id.* at 9.

started to call a minor league player up to a major league roster.<sup>91</sup> By placing a player on a major league roster for just less than 172 days, a team can effectively push back free agency by another year. Service time manipulation is frowned upon generally, and teams normally attempt to deny such allegations by pointing to player development purposes for withholding major league call-ups.<sup>92</sup> While service time manipulation is not explicitly banned in the collective bargaining agreement, it is believed that teams use player development as a pretext for withholding major league call-ups, a cynical ploy to avoid the appearance of acting in bad faith.<sup>93</sup>

### B. History of Minor League Labor Efforts

Player career length, team manipulation of the collective bargaining agreements, and lack of free agency for minor league players all contribute to the New Reserve System that exists today.

### C. Legislative Attempts to Resolve Low Minor League Salaries Have Been Ineffective

Congress has intervened most prominently on two occasions to address labor issues in professional baseball. The first occasion was via the Curt Flood Act of 1998, as briefly described previously.<sup>94</sup> The Act's largest shortfall was its lack of application to the majority of professional baseball players, with its specific target for benefits aimed solely at MLB players.<sup>95</sup> In fact, the Senate Judiciary Committee amended the original draft of the Act to ensure that minor league players could not use the Act "as a bootstrap by which to attack conduct, acts, practices or agreements designed to apply to minor league employment."<sup>96</sup>

Following the old Reserve System's demise and the development of the new free agency system, it is debatable whether the Act even benefited the major league players it was written for. The Act narrowly benefits MLB players by freeing them from MLB's antitrust exemption in labor negotiations in the same manner as professional athletes in other sports.<sup>97</sup> However, under *Mackey v. National Football League*, professional athletes cannot bring antitrust suits regarding issues arising from disputes covered under

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91. Michael Baumann, *MLB's Service-Time Manipulation Farce Has Reached Unprecedented Proportions*, RINGER (Mar. 7, 2019, 9:11 AM), <https://www.theringer.com/mlb/2019/3/7/18254501/service-time-manipulation-vladimir-guerrero-jr-fernando-tatis-jr-peter-alonso> [<https://perma.cc/LF3C-2JU7>].

92. See Probasco, *supra* note 89, at 9 (citing team explanations for service time manipulation, such as "by offering boilerplate, '[player] needs more seasoning,' '[player] isn't ready,' or, '[player] needs to work on his defense' falsehoods," which often do not align with the statistical evidence of that player's performance at the minor league level).

93. *Id.*; Sheryl Ring, *A Possible Legal Argument Against Service-Time Manipulation*, FANGRAPHS (Mar. 2, 2018), <https://blogs.fangraphs.com/a-possible-legal-argument-against-service-time-manipulation/> [<https://perma.cc/3BKQ-DR8X>] (explaining how service time manipulation potentially violates the "implied covenant of good faith and fair dealing" in contract law).

94. See *supra* Part II.B.4 (describing the Curt Flood Act as Congress' first foray into MLB antitrust following many years of heightened labor tensions and decades of legislative inaction).

95. Curt Flood Act of 1998, *supra* note 77.

96. John T. Wolohan, *The Curt Flood Act of 1998 and Major League Baseball's Federal Antitrust Exemption*, 9 MARQ. SPORTS L. REV. 347, 368 (1999) (quoting CONG. REC. S 9494-9498 (July 30, 1998) (statement of Sen. Hatch)).

97. Curt Flood Act of 1998, *supra* note 77.

current collective bargaining agreements.<sup>98</sup> Minor league players, on the other hand, are not represented by the MLBPA, and would not be subject to the restrictions of *Mackey*.<sup>99</sup> Had Congress included minor league players into the Curt Flood Act's purview, MLB would no longer have been able to invoke the antitrust exemption's protections in suits by minor league players. Some scholars have opined that this would have been the obvious solution for removing the antitrust exemption's shackles from minor league players.<sup>100</sup> However, Congress's repeated decision to exclude minor league players from these types of protections, as well as legislation further eroding player protections,<sup>101</sup> reveals their intentions to protect MLB's status quo in labor.

The second intervention by Congress came in 2018 when the "Save America's Pastime Act" was signed into law by President Trump.<sup>102</sup> The legislation was largely the result of major lobbying efforts by MLB, stemming from concerns that their minor league player salary conventions would be declared illegal under federal law.<sup>103</sup> Specifically, MLB and the owners of Minor League Baseball teams sought to have their players exempted from minimum wage and overtime laws.<sup>104</sup> Notably, if MLB teams paid every player the minimum salary under the Fair Labor Standards Act (FLSA), it would cost each team about the salary of a single player on their major league roster—approximately \$4.8 million.<sup>105</sup> Under the law as passed, minor league players do not get paid during spring training (but are required to attend) and can be paid as little as \$1,160 a month, for a 40-hour workweek—a salary they receive only during weeks with games and regardless of the actual number of hours spent on baseball related activities.<sup>106</sup>

As it stands now, minor league players have few options for responding to these

98. Philip R. Bautista, *Congress Says, "Yooou're Out!!!" to the Antitrust Exemption of Professional Baseball: A Discussion of the Current State of Player-Owner Collective Bargaining and the Impact of the Curt Flood Act of 1998*, 15 OHIO ST. J. DISP. RESOL. 445, 475–76 (2000) (explaining that the decision in *Mackey v. National Football League*, 543 F.2d 606 (8th Cir. 1976), severely limits the ability of professional athletes to initiate antitrust suits on issues covered under collective bargaining agreements).

99. *Id.* The *Mackey* restrictions only apply to professional athletes covered under a collective bargaining agreement. *Id.* at 477. For further discussion on how and why minor league baseball players are not party to collective bargaining agreements, see *infra* Section III.C.

100. See Broshuis, *supra* note 12, at 96–98 (explaining that congressional action would be the quickest solution to minor league player friction with the antitrust exemption, but recognizing that Congress has "written owners a blank check" and that minor league players lack the lobbying power necessary to affect real change); Grow, *supra* note 83, at 245–46 (speculating that even if minor league players could sue on antitrust grounds they may not be successful, while conceding that the result of a future court's Sherman Act Rule of Reason analysis is "uncertain").

101. I address this claim in the remaining paragraphs of this Part by describing the harm to minor league players created by the Save America's Pastime Act.

102. See James Wagner, *Minor Leaguers Lack a Safety Net. A New Group Wants to Create One.*, N.Y. TIMES (Mar. 20, 2020), <https://www.nytimes.com/2020/03/20/sports/baseball/minor-league-advocates.html> [<https://perma.cc/4NAG-9G5X>] (explaining many of the struggles modern minor league players face).

103. Nathaniel Grow, *The Save America's Pastime Act: Special-Interest Legislation Epitomized*, 90 UNIV. COLO. L. REV. 1013, 1022–25 (2019).

104. *Id.* at 1025.

105. *Id.* at 1027.

106. See Whitney McIntosh, *How Congress Screwed over Minor League Baseball Players, Explained*, SB NATION (Mar. 23, 2018, 7:30 AM), <https://www.sbnation.com/mlb/2018/3/23/17152778/spending-bill-minor-league-baseball-explained-save-americas-pastime> [<https://perma.cc/F7SN-MH78>] (explaining the effect of the bill on minor league players, and noting that the \$1,600 amount was an increase from only \$1,100).

types of lobbying efforts by MLB and the owners. Minor league players would benefit from the ability to sue under antitrust law, as this type of coordinated effort is exactly what the Sherman Act meant to prevent.<sup>107</sup> They also would not run into the *Mackey* restrictions that major league players face when taking up antitrust suits against the League.<sup>108</sup>

*D. Efforts to Create a Minor League Baseball Union under the Current System Have Failed*

Despite the incentive for doing so, minor league players have yet to successfully unionize.<sup>109</sup> The best opportunity for unionization came during Marvin Miller's tenure as the executive director of the MLBPA in the 1960s.<sup>110</sup> However, Mr. Miller has explained that bringing in minor league players was not feasible at the time, as the MLBPA had very limited financial resources during that early period of its existence.<sup>111</sup> He also believed that young players would not want to "defy the owners, when they had stars in their eyes about making it to the major leagues . . . ."<sup>112</sup>

There ends the scant history of unionization in Minor League Baseball. Minor League Baseball players have never unionized, but the collective bargaining between MLB and the MLBPA has detrimentally affected minor league players. Early collective bargaining agreements between the MLBPA and MLB established that the MLBPA exclusively represents major league players and minor league players were not meant to benefit from any of its stipulations.<sup>113</sup> Various collective bargaining agreements over the years have directly affected the lives of minor league players, despite them lacking a seat at the negotiating table. Agreements have modified the rules for signing amateur players, changed the number of draft picks teams are to receive, and controlled salaries based on whether players have major league service time.<sup>114</sup>

It must also be considered that MLB players and Minor League Baseball players are often in competing bargaining positions to a certain extent. With limited payroll, many major league players recognize that increased minor league payrolls could lead to cuts of their own salaries.<sup>115</sup> While most major league players have experienced the struggle of life in the farm system, many view it as a "trial by fire" experience that makes one stronger (admittedly these are the opinions of major league players who have lived to see

107. Sherman Antitrust Act of 1890, 15 U.S.C. §§ 1–2.

108. Bautista, *supra* note 98.

109. Wagner, *supra* note 102.

110. See Richard Goldstein, *Marvin Miller, Union Leader Who Changed Baseball, Dies at 95*, N.Y. TIMES (Nov. 27, 2012), [https://www.nytimes.com/2012/11/28/sports/baseball/marvin-miller-union-leader-who-changed-baseball-dies-at-95.html?pagewanted=all&\\_r=0](https://www.nytimes.com/2012/11/28/sports/baseball/marvin-miller-union-leader-who-changed-baseball-dies-at-95.html?pagewanted=all&_r=0) [<https://perma.cc/Q7SQ-PQ85>] (eulogizing Marvin Miller and listing his career accomplishments upon his death in 2012).

111. Lily Rothman, *Emancipation of the Minors*, SLATE (Apr. 3, 2012, 11:08 AM), <https://slate.com/culture/2012/04/minor-league-union-thousands-of-pro-baseball-players-make-just-1100-per-month-where-is-their-cesar-chavez.html> [<https://perma.cc/C57D-9URU>].

112. *Id.*

113. Broshuis, *supra* note 12, at 73.

114. *Id.* at 73–76.

115. *Id.* at 55 n.16 (describing how many Major League players believe they should reap all of the game's financial benefits).

the light at the end of the tunnel).<sup>116</sup>

Additionally, Minor League Baseball players do not intend on staying minor players for long—they want to make it to a major league ballclub. It is unlikely that players intending to become MLB players are incentivized in any way to rock the boat when they are seemingly so close to their big break.<sup>117</sup> By the time a player realizes that they may not make the majors, they will very likely be nearing the end of their professional baseball career and unable to contribute to any meaningful unionization effort before they are released or leave the sport.

Not only have minor league players failed to unionize over the years, but MLBPA collective bargaining agreements directly affect minor league players—very often to their detriment.<sup>118</sup> There also exists noticeable structural hurdles that make unionization difficult to near impossible.<sup>119</sup> While unionization seems practicable in theory, history has shown that it is a difficult effort to take on.<sup>120</sup>

#### IV. RECOMMENDATION

I don't think I'll get the opportunity to play again. As big as it is, baseball is a closely knit unit. I doubt that even one of the 24 men controlling the game would touch me with a 10-foot pole. You can't buck the Establishment.

— Curt Flood<sup>121</sup>

This Note recommends overturning *Federal Baseball* for its anticompetitive effects on minor league players' abilities to negotiate salary. This recommendation distinguishes itself from past literature advocating for an overruling of *Federal Baseball* by proposing that the players bring a suit against MLB with simultaneous allegations of Sherman Act violations and federal labor law violations. This would differ from previous challenges to the antitrust exemption, which typically have only focused on challenging MLB based on a Sherman Act theory of law. Challenging the antitrust exemption alongside allegations

116. *Id.* at 52 n.1 (explaining that many major league players do not pity the plight of their minor league counterparts).

117. When asked why Minor League Baseball players haven't organized themselves, Garrett Broshuis told SB Nation the following:

Fear is the predominant issue for players . . . it's not that they didn't recognize the benefits of a union, but they were scared. They looked at me as if I might as well have been asking them to jump off of a cliff with me. They are so fearful of those owners, and what they might think about it, and how the owners might judge that decision to act collectively.

Marc Normandin, *Why Minor League Baseball Players Haven't Unionized*, SBNATION (Jun. 5, 2018, 11:00 AM), <https://www.sbnation.com/mlb/2018/6/5/17251534/mlb-draft-minor-league-baseball-union-phpa> [<https://perma.cc/BKC6-54DR>]; see also Broshuis, *supra* note 12, at 97 n.312 (quoting Broshuis, a former minor league player, who testified before Congress that no minor league player would jeopardize his career by acting against team owner interests).

118. See Rothman, *supra* note 111 (explaining that the 2007 collective bargaining agreement required all players—including minor league players—to add another year to their initial commitment with the team that drafted them).

119. See *supra* Section III.C for further discussion of these structural hurdles.

120. *Id.*

121. BRAD SNYDER, A WELL-PAID SLAVE: CURT FLOOD'S FIGHT FOR FREE AGENCY IN PROFESSIONAL SPORTS 134 (2007).

of other federal statute violations will give appellate courts more incentive to take such a case.

Previous authors have focused on the exemption's effects on consumers or between team owners, but minor league players—the exemption's biggest victims—are rarely considered. Increased pay for minor league players will only be achieved through the elimination of the MLB antitrust exemption.

*A. Legislative Fixes Would Face the Same Lobbying Challenges as in Previous Efforts, Like the Curt Flood Act and the Save America's Pastime Act.*

The alternative solution with the highest probability of success would be the passage of a legislative act expanding the benefits of the Curt Flood Act to Minor League Baseball players. Unfortunately, even as the most probable alternative, this route seems untenable based on legislative history. Congress has rarely intervened regarding matters in baseball labor, and when it has, it has either explicitly excluded Minor League Baseball players from the legislation or has used legislative power to further entrench them in the current exploitative labor system.<sup>122</sup>

It is clear that the best route to achieving legislative success is to build a lobbying network with the power and funding like that of MLB's.<sup>123</sup> The MLB lobby is an omnipresent force<sup>124</sup> in Washington D.C. and minor league players' best chance of success on Capitol Hill is to counter MLB's lobby with one of their own.

MLB's advantage here is they possess funding for these kinds of efforts that minor league players could only dream of—due much in part from retaining revenues that could otherwise be paying those very players.<sup>125</sup>

*B. Barriers to Unionization That Existed During Past Efforts Still Exist Today.*

The barriers to unionization that exist today are barriers that are difficult to overcome, particularly where the workforce is transient and temporary. There is always a power dynamic between ownership and a workforce, but this dynamic is heightened in the relationship between minor league players and their respective MLB teams. In Minor League Baseball, a player's continued employment depends on their ability to consistently be promoted.

This relationship between promotion to a higher position and continued employment is unique to Minor League Baseball and does not exist in many other career paths. For this reason, many players are hesitant to rock the boat.<sup>126</sup> Unlike other careers, cutting a

122. See *supra* Section III.C (explaining how legislative intervention has not helped Minor League players).

123. See Raymond Arke, *Major League Baseball is Almost Back, But It Never Left Capitol Hill*, OPEN SECRETS (Mar. 5, 2019, 1:20 PM), <https://www.opensecrets.org/news/2019/03/major-league-baseball-never-left-capitol-hill/#:~:text=Like%20any%20other%20major%20organization,the%20Republican%20tax%20reform%20bill> [https://perma.cc/C5JF-DCX3] (explaining that Major League Baseball spends over \$1 million per year lobbying in Washington D.C. and maintains a powerful PAC that contributes to political candidates on both sides of the aisle).

124. See *id.* (noting that MLB lobbying has involved a range of issues, from tax reform to government relations with Cuba).

125. See *id.* (citing the generous political contributions made by MLB owners and the league).

126. See *supra* Section III.C (explaining how players worry about how they are perceived by ownership).

player simply requires the reasoning that they were not promotable—a claim which is significantly easier to justify in baseball, where performance standards for promotion are often nebulous and unclear.<sup>127</sup>

Additionally, minor league players are highly unlikely to be welcomed into the existing player union due to their often adverse bargaining interests, such as the reality that the funding for any minor league player payroll increases would partially come out of Major League payrolls. Minor league players also have high turnover rates, and the consistent presence required to create a union simply does not exist.<sup>128</sup> As previously emphasized, very few Minor League Baseball players ever receive the call to the Major Leagues and, for many, their journey in professional baseball will end after a couple of years or less.<sup>129</sup> The logistics necessary to create an effective union do not exist in Minor League Baseball. For these reasons, this solution seems the most improbable of them all.

*C. The Minor League Baseball Reserve Clause Should Be Challenged in Suits Alleging Both Federal Labor Law Violations and Sherman Act Antitrust Violations*

The Reserve Clause is usually referred to as a contract feature of baseball's past, but it very much still exists today in the era of free agency.<sup>130</sup> Free agency signings attract the most attention of any MLB transactions and certainly involve the most money.<sup>131</sup> The development of this free agency system, along with the many labor disputes since the 1970s, has helped bring improvements to the contract status of many players.<sup>132</sup> This has helped settle many of the complaints among major league players about the unfair nature of being committed to a single employer for most of their careers.<sup>133</sup>

Despite these improvements, the existence of what this Note calls the “New Reserve System”<sup>134</sup> allows for the continued exploitation of minor league players—as well as many major league players. Minor league players are most affected by MLB's stagnant player wages in the face of perpetually increasing revenues.<sup>135</sup>

127. See *supra* note 91 and accompanying text (noting that teams often use unfounded opinion-based justifications for not promoting minor league players).

128. See *supra* Section III.C for a discussion of the structural impediments to the creation of a minor league union.

129. See *supra* note 86 and accompanying text (explaining that the average player does not make it in the league long enough to reach free agency).

130. See *supra* Section III.A (arguing that most players today are not affected in a positive way by the new free agency system).

131. See *Highest Paid Players, COT'S BASEBALL CONT.*, <https://legacy.baseballprospectus.com/compensation/cots/league-info/highest-paid-players/> [<https://perma.cc/GF57-5XD6>] (listing the publicly disclosed dollar value of the most expensive player contracts in baseball).

132. See *supra* Section II.A.2 (recognizing that, in recent years, many players who have played long enough to reach free agency have signed very lucrative playing contracts).

133. See Broshuis, *supra* note 12, at 52 n.1 (explaining that many Major League Baseball players are not dissatisfied with a system in which they came out on top).

134. See *supra* Section III.A (discussing the New Reserve System).

135. Professional baseball players have suffered decreasing wages in relation to total league revenue for several decades now. See generally Gabe Lacques, *MLB Players, Facing Stagnant Salaries and CBA Battle, Now Have Revenue-Sharing Fight on Hands*, USA TODAY (May 12, 2020, 1:39 PM), <https://www.usatoday.com/story/sports/mlb/2020/05/12/mlb-players-revenue-sharing-fight-coronavirus-pandemic/3110292001/> [<https://perma.cc/JM5V-MVM9>]. Owners were reportedly prepared to pay players a

The coordination between teams has allowed them to craft a system barring new talent from negotiating with multiple teams. When deciding to play professional baseball, a young player has no opportunity to advertise his services to multiple teams and to compete for the highest bidder. He must wait to be drafted and is then bound exclusively to that team—usually for his entire playing career.<sup>136</sup> Under any other circumstances, these employees would have the opportunity to sue potential employers for unfair restraint of competition under the Sherman Act.<sup>137</sup> Regardless of their potential success, they should be allowed to have their case heard before the courts.

When challenged on its own, courts have been hesitant to take on the antitrust exemption, due to *Federal Baseball's* precedential force.<sup>138</sup> *Senne v. Kansas City Royals Baseball* is a recent case that alleged MLB is violating federal labor laws in its treatment of Minor League Baseball players.<sup>139</sup> This Note advocates for a slightly different approach than the strategy used in *Senne*. Instead of litigating antitrust and Federal Labor Standards Act issues separately, the players should combine these issues into a single suit. Unlike the baseball antitrust exemption, the federal courts have not yet addressed the Fair Labor Standard Act's applicability to Minor League Baseball players, which would create a greater likelihood that different federal circuits could come to different conclusions on the issue. Under the Supreme Court Rules, this fractured jurisprudential checkerboard would increase the Supreme Court's likelihood of taking on an appeal regarding Minor League Baseball labor issues.<sup>140</sup>

Moreover, if one of these appeals had the antitrust exemption as an added issue, the Court may be more willing to revisit the topic. Adding the Federal Labor Standards Act as an issue would help overcome the barrier that many statutory precedents face when

50% share of revenues in 2020, but players typically get paid, in total, less than half of the league revenue (47.3% in 2019), whereas they were paid 52% of league revenue in 2007 and 63% as recently as 2003. *Id.*

136. See *supra* note 86 and accompanying text (explaining that the average player does not make it in the league long enough to reach free agency).

137. In *Toolson*, the Court cited *Federal Baseball* as the sole reason a player cannot challenge Major League Baseball by alleging a violation of federal antitrust laws. See 346 U.S. at 357.

138. In recent years, the Supreme Court has typically denied certiorari in cases where the plaintiff simply challenges the validity of the antitrust exemption or asserts the exemption does not apply to their suit. See generally *Miranda v. Selig*, 860 F.3d 1237 (9th Cir. 2017), *cert. denied*, 138 S.Ct. 507 (2017) (confirming that the exemption applies to Minor League Baseball); *Wyckoff v. Off. of Comm'r of Baseball*, 705 F. App'x 26 (2d Cir. 2017), *cert. denied*, 138 S.Ct. 2621 (2018) (holding that the exemption insulates Major League Baseball from antitrust claims by baseball scouts); *Right Field Rooftops v. Chicago Cubs Baseball Club*, 870 F.3d 682 (7th Cir. 2017), *cert. denied*, 138 S.Ct. 2621 (2018) (holding that monopolization claims fall under the antitrust exemption).

139. See *Senne v. Kan. City Royals Baseball*, 934 F.3d 918, 924 (9th Cir. 2019), *cert. denied sub nom. KS City Royals Baseball v. Senne*, No. 19-1339, 2020 WL 5882289 (U.S. Oct. 5, 2020) (affirming lower court decision to allow the suit to move forward as a class action by minor league players). *Senne* was originally filed against the Kansas City Royals, Major League Baseball, and the former commissioner in 2015, alleging that they had violated the Federal Labor Standards Act. *Id.* at 924–25. The denial of petition for certiorari on the appeal of the class certification means that this case will finally move forward as a class action suit. Chris Bumbaca, *Minor Leaguers Score Win in Quest for Fair Wages as Supreme Court Dismisses MLB Request*, USA TODAY (Oct. 5, 2020, 2:17 PM), <https://www.usatoday.com/story/sports/mlb/minors/2020/10/05/supreme-court-mlb-minor-league-salary-wages/3625838001/> [<https://perma.cc/7CHV-C52Q>].

140. See U.S. Sup. Ct. R. 10(a). In granting review on a writ of certiorari, the Supreme Court will consider if “a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter . . .”.

they reach the Supreme Court—the power of stare decisis. *Federal Baseball* possesses many of the characteristics common amongst precedents that the Supreme Court has overruled, particularly its negative treatment by lower courts.<sup>141</sup> *Federal Baseball*'s status as precedent has allowed it to mostly avoid appeal attempts to the Supreme Court thus far, but adding it to a list of other alleged federal labor violations could help persuade the Court to take it on again in the future.

#### V. CONCLUSION

Major League Baseball has used its antitrust exemption to exploit its players for many years. This effect has become more pronounced in the free agency era, especially for Minor League Baseball players. For the vast majority of players, the evolution of the Reserve System has made no impact on their quality of life. In addition to the league's own failure to address this problem, the legislature and collective bargaining have likewise lacked solutions. MLB players are represented by a union separate from minor league players and the transience of minor league players combined with conflicting interests have prevented them from joining the union or creating their own. Congress has explicitly left minor league players out of most labor-related baseball legislation, and when it has included them the legislation has only worked to further hurt Minor League Baseball salaries.

*Federal Baseball* and its subsequent judicial treatment have long been mocked and derided as bad law,<sup>142</sup> but it is not often considered actively harmful today due to its common association with the old Reserve System. However, under the New Reserve System, its role is as active and as relevant as it has ever been. The economic justice of thousands of professional baseball players is undermined by its continued precedential status. Unfortunately, past courts have shown little motivation to address *Federal Baseball* when challenged on its own. It is for this reason that this Note recommends the exemption should be challenged alongside other allegations of federal labor law violations. The Supreme Court may be more willing to revisit a question of its own precedent if an appeal of a federal labor law decision is accompanied by statutory interpretation issues. Minor League Baseball players' inability to achieve economic equity does not mean the status quo must remain—their fight will continue but the strategy needs to change.

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141. James F. Spriggs, II & Thomas G. Hansford, *Explaining the Overruling of U.S. Supreme Court Precedent*, 63 J. POL. 1091, 1103–05 (2001).

142. See Abrams, *supra* note 71 (describing how many of the players cited in Justice Blackmun's opinion in the *Flood* decision were actually hurt by the antitrust exemption).