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Senate Judiciary Committee
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Dear Senators Durbin, Grassley, Lee, and Blumenthal:

Thank you for your letter of June 28, 2022. Please find below my responses to the questions set forth in that letter.

1. Aside from baseball, do any American professional sports have a general exemption from the antitrust laws?

No. Major League Baseball is the only American professional sports league with a general antitrust exemption. The National Football League, National Basketball Association, National Hockey League, and other professional sports leagues thrive without any such exemption. In recent years, Major League Baseball has abused its exemption to the detriment of the American people. Unfortunately, there is legitimate reason to believe that the worst is yet to come. This inquiry is therefore as urgent as it is important.

The federal antitrust laws reflect the American people's "faith in the value of competition."¹ These laws are "as important to the preservation of economic freedom and our free-enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms."² The American people, through Congress, have never expressed an affirmative desire to exempt Major League Baseball from these laws.

Why, then, does baseball enjoy an antitrust exemption?

The answer goes back to the 1922 United States Supreme Court case *Federal Baseball*. In that case, the Court ruled that baseball did not involve interstate commerce and thus operated outside of Congress's jurisdiction.³ In other words, the Supreme Court held that the will of the American

people *could not* apply to baseball.⁴ Whether that was ever true, the Court has since recognized that it is no longer true.⁵ Rather than simply fixing its own mistake and repealing baseball’s antitrust exemption, however, the Supreme Court has left Congress to set things straight.⁶

In 1998, Congress took a step in that direction by passing the Curt Flood Act.⁷ The Curt Flood Act repealed baseball’s antitrust exemption with respect to matters directly relating to or affecting the employment of Major League players.⁸ The Act did not alter the other aspects of the exemption.⁹

The time has now come for Congress to expand the scope of the Curt Flood Act. Just last month, the Department of Justice weighed in on pending litigation against Major League Baseball, clarifying that the baseball exemption “does not rest on any substantive policy interests that justify players and fans losing out on the benefits of competition.”¹⁰ Yet baseball players and fans alike continue to lose out on the benefits of competition in increasingly distressing ways.

Most notably, Major League Baseball’s 30 team owners have openly conspired to reduce the cost of the Minor Leagues in ways that harm both Minor League players and fans (the “Minor League Conspiracy”). First, the owners force all Minor League players to sign the same Minor League Uniform Player Contract and collude on Minor League player pay.¹¹ As a result, most Minor League players make an annual salary of less than \$12,000—a number that falls below the federal poverty level.¹² Second, the owners artificially limit the number of Minor League teams with which each Major League team is permitted to affiliate. In 2020, Major League Baseball slashed the number of affiliated Minor League teams from 160 to 120, leaving 40 American cities without a team and over 1,000 Minor League players without a job.¹³ The Minor League Conspiracy has been devastating to baseball players and fans across the nation.¹⁴

This plainly anticompetitive conduct would undoubtedly violate generally applicable federal antitrust laws, but for baseball’s extraordinary and unjustified exemption.

The American people have never expressed the affirmative desire to exempt Major League Baseball from the antitrust laws. That should, and normally would, be enough to ensure that the laws apply. In this unique context, however, Congress must codify the will of the American people again by passing further legislation. In light of Major League Baseball’s recent abuses in the Minor Leagues, the time for Congress to do so is now.

2. What effect does the antitrust exemption have on the incidence of lockouts and work stoppages at the MLB level, and what impact do these incidents have on minor league players and teams?

The antitrust exemption does not directly affect the incidence of lockouts and work stoppages at the Major League level. Major League Baseball players are represented by a labor union, the Major League Baseball Players Association, which negotiates a collective bargaining agreement with Major League Baseball.¹⁵ As a result, so long as a union exists and collective bargaining is ongoing, lockouts and work stoppages at the Major League level are regulated by labor law rather than antitrust law. This is because of the so-called “nonstatutory labor exemption,” which immunizes certain concerted activity among employees and employers from federal antitrust law to “accommodat[e] . . . the congressional policy favoring collective bargaining.”¹⁶ Moreover, because of the Curt Flood Act, Major League players would be able to sue teams under the antitrust laws in the absence of a union and collective bargaining.

Minor League operations have traditionally continued uninterrupted during Major League work stoppages, meaning that—besides the small handful of Minor League players who are represented by the Major League Baseball Players Association—Minor League players and teams are not directly affected.¹⁷

3. MLB requires all minor league players to sign a Minor League Uniform Player Contract.

a. What role, if any, does MLB’s antitrust exemption play in enabling this conduct?

The antitrust exemption is *the* reason MLB owners can require Minor League players to sign the Minor League Uniform Player Contract. The exemption provides a loophole for MLB’s 30 team owners, enabling them to openly collude on Minor League player treatment in a manner that would otherwise be illegal.

Major League Baseball teams are competitors. Federal antitrust laws prohibit competitors from engaging in certain anti-competitive conduct, including wage fixing.¹⁸ Such collusion among competitors is ordinarily a per se, or categorical, violation, of the antitrust laws.¹⁹ In any event, there is no legitimate justification for the collusion in this case.²⁰

The product of the MLB owners’ collusion—the Uniform Player Contract—has a number of clauses that are exceedingly unfair to Minor League players. One is that players are paid only seasonally even though they are required to work year-round.²¹ Another is that players are controlled for seven seasons by the team that drafts them and have no ability to pursue a better deal with one of the 29 other Major League franchises during that time.²² A third is that players are forced to sign away the rights to their name, image, and likeness.²³

Additionally, Major League Baseball owners collude on a standard pay scale for all Minor Leaguers. According to this scale, players are paid \$400 per week in the Complex Leagues, \$500 per week in Single-A, \$600 per week in Double-A, and \$700 per week in Triple-A.²⁴

Because of this scale, and the fact that players are only paid a salary during the “championship playing season”—which does not include various, required periods of work—Minor League players are paid an annual salary of between \$4,800 and \$15,400.²⁵

But for baseball’s antitrust exemption, the current treatment of Minor League players would be illegal.

b. Please discuss the impact of the antitrust exemption on the negotiation of minor league players’ length of contract, wages, housing, or other working conditions. What effect would removing the antitrust exemption have on minor league player working conditions?

As discussed above, Minor League players do not enjoy the benefits of a fair, competitive market for their services. Instead, every Minor League player must sign the same seven-year Minor League Uniform Player Contract and, for the length of that contract, accept the wages and working conditions imposed on him by his team. Because players have no opportunity to entertain competing offers from other teams, they have no ability to negotiate for higher wages, better living conditions, or increased benefits. In short, baseball’s antitrust exemption permits teams to collusively suppress Minor League wages and prevent players from obtaining compensation that reflects their fair value to their Major League employers.

Absent the antitrust exemption, this conduct would be illegal. Major League Baseball owners would not be able to unilaterally impose on every player the Minor League Uniform Player Contract, nor would they be able to fix Minor League compensation at its current level. Instead, upon being drafted, players would be able to negotiate the length and terms of their initial Minor League contracts with their Major League teams, knowing that at the end of those initial contracts they would be free to sign with the Major League team willing to provide them the best overall compensation package. This competition would help drive wages and working conditions to their fair market level and help bring players out of poverty.²⁶

Currently, Major League Baseball’s commissioner makes an annual salary of \$17.5 million—an amount that has exceeded \$25 million when factoring in performance bonuses.²⁷ While this number may seem exorbitant to some, it is simply the amount that he commands on the open market. His employers—Major League Baseball’s 30 owners—believe that is what his labor is worth, and they are willing to pay him that amount to prevent him from seeking employment

elsewhere. It is unfair that Minor League player wages are not determined according to the same free market principles.

c. If a more tailored approach, like extending the Curt Flood Act to cover minor league players, was taken, what would be the impact?

While a wholesale repeal of the antitrust exemption would have the outcome set forth above, it would also have other impacts beyond the Minor Leagues, including on possible issues such as franchise location, ownership sales, and the licensing of intellectual property, among others.²⁸

Extending the Curt Flood Act to cover Minor League players—call it a “Minor League Curt Flood Act”—would have a more limited impact. As discussed above, the Curt Flood Act repealed baseball’s antitrust exemption with respect to conduct directly relating to or affecting the employment of Major League players. Similarly, a Minor League Curt Flood Act would repeal the exemption with respect to conduct directly relating to or affecting the employment of Minor League players.

This would render illegal the entire Minor League Conspiracy—both (1) the owners’ agreement to suppress Minor League player wages and working conditions and (2) the owners’ agreement to artificially limit the number of Minor League teams and in turn the overall number of Minor League players. A Minor League Curt Flood Act would not address the other aspects of baseball’s antitrust exemption.

4. Recent reports, including an article in *The Athletic* entitled “‘A failed system’: A corrupt process exploits Dominican baseball prospects. Is an international draft really the answer?” have identified rampant corruption and abuse in the market for international prospects, from giving performance-enhancing drugs to teenagers to shady dealings between scouts and trainers. To your knowledge, how widespread are these practices? And what role, if any, does MLB’s antitrust exemption play in creating the conditions that enable these practices?

Unfortunately, despite various efforts over recent years, such practices appear to remain widespread. The international entry system is at present a subject of collective bargaining between Major League Baseball and the Major League Baseball Players Association.²⁹ Thus, currently issues related to the market for international prospects are within the purview of labor law rather than antitrust law.

Although the problems in the market for international prospects are separate from the antitrust exemption, once international players arrive in the United States to play in the Minor Leagues, they face ongoing exploitation and hardship as a result of the exemption. The difficulties facing

American-born Minor Leaguers as a result of the oppressive Uniform Player Contract are exacerbated for international players, all of whom are living in a foreign country and most of whom do not speak English as a first language. Because these players rely on their Major League employers for work visas, it is even more difficult for them to stand up and ask for better treatment.

One particularly acute example of the mistreatment of Latin American players occurs during extended spring training.³⁰ Historically, players have not received any salary for extended spring training.³¹ Because Minor League players also do not receive a salary during the winter “off-season” or regular spring training, these players have traditionally gone *nine months* of the year performing services for their Major League employers without pay.

One Latin American player recently described his experience during extended spring training this way:

“When you are 19, 18, you don’t have enough money to buy a car here. And like, you don’t know how to speak English, you don’t know anybody and you’re stuck in a hotel and you don’t know where to go. So there’ll be guys, they go to Walmart and buy a bunch of bread, bread and ham and cheese almost every night, for a professional athlete. We used to do that all the time, maybe four, three times a week so you can get a good meal with the meal money they gave you.”³²

“You don’t make enough money to eat,” said another player.³³

During a trip to the Dominican Republic last winter, I spoke to a group of Minor Leaguers after they finished a long day of training—without pay. They admitted that upon returning home to their families and friends for the winter “off-season,” they were ashamed to admit how they had been treated in the United States.

“I was so excited to go play in America,” one player told me. “I had no idea I was going to be treated like garbage.”

5. In lobbying for the Save America’s Pastime Act (SAPA), MLB claimed the bill was necessary to prevent minor league contraction. However, despite its enactment, prior to the 2021 baseball season, dozens of minor league teams lost their affiliations with MLB clubs as a result of its reorganization of the minor leagues.

a. How did this reorganization affect minor league baseball players?

In 2018, Major League Baseball convinced Congress to pass the Save America's Pastime Act. The Act exempts Major League teams from paying Minor Leaguers according to the generally applicable federal minimum wage and overtime provisions of the Fair Labor Standards Act.³⁴ At the time, there were 160 Major League-affiliated Minor League teams. Major League Baseball, along with Minor League team owners with no choice but to join the effort, convinced Congress that the Act was necessary to prevent the elimination of some of those 160 affiliated Minor League teams.³⁵

That was a lie.

Just two years after obtaining the exemption, Major League Baseball eliminated 40 affiliated Minor League teams anyway.³⁶

Overnight, Major League Baseball's 30 owners wielded their unilateral power over our national pastime with reckless disregard for the players and fans who love the game. The Minor League contraction of 2020 stripped 40 American cities of their teams and ruthlessly eliminated more than 1,000 Minor League jobs. "In retrospect," one Minor League official said, "MLB played the Senate like a string quartet."³⁷

Through this process, those of us who love baseball learned a sad but important lesson: we live at the whim of Major League Baseball's 30 team owners.³⁸ They neither invented nor popularized the game. They do not and did not play it. Most of their teams play in stadiums funded by taxpayer dollars.³⁹ And yet, this has somehow become their game. They are, to borrow a phrase from journalist John Helyar, the "Lords of the Realm."⁴⁰

MLB owners' myopic focus on short-term profits was in 2020, and remains in 2022, the most important dynamic impacting the game of baseball. More important than allowing the nationwide supply of Minor League baseball talent to meet the nationwide demand for that talent. More important than our national policy in favor of competition. More important than their stated goal of "growing the game." Even more important than their own long-term economic self-interest—though they appear not to understand that yet.

The damage to the Minor League players and teams that were eliminated in 2020 can never be undone.⁴¹ Equally troubling, the 120 remaining Minor League teams and 5,400 remaining Minor League players live in greater fear of the Lords than ever before, worrying that their teams and jobs will be next.⁴²

The unfortunate reality is this: it is only a matter of time until the MLB owners inform us that they intend to take a wrecking ball to our national game once more. As we sit here today, another

round of Minor League contraction—fewer players and more devastated communities—appears inevitable. The owners have already indicated as much to those who are paying attention.⁴³

It is worth pausing to consider how the owners might act on the precipice of the next round of contraction. Armed with the power to dangle seats at their ever-shrinking table over the heads of the remaining 120 Minor League owners, it is scary to think what they might be able to accomplish. One can only wonder what the next “Save America’s Pastime Act” might look like.

The good news? Congress has the power to prevent this.

The saying goes: “Fool me once, shame on you. Fool me twice, shame on me.” It is time for the American people—through our elected representatives in Congress—to take back our national pastime. It is time to put an end to the Minor League Conspiracy by enacting a Minor League Curt Flood Act.

b. Did the antitrust exemption play any role in MLB’s ability to restructure the minor leagues in this way?

Yes. The 2020 Minor League contraction was “nothing less than a naked, horizontal agreement to cement MLB’s dominance over all professional baseball and to reduce output and boycott the 40 Ousted Teams from MLB affiliation.”⁴⁴ Like the other part of the Minor League Conspiracy—the coordinated exploitation of Minor League players—the coordinated contraction of Minor League teams was possible only because of baseball’s antitrust exemption. If Congress does not right this wrong, it is only a matter of time until it happens again.

c. What effect would repealing SAPA have on the minor leagues and minor league players?

Repealing the Save America’s Pastime Act would allow Minor League players to sue under the federal minimum wage and overtime laws. To be clear, in an open and competitive market, players would obtain compensation well above what is guaranteed by these laws. Therefore, an antitrust-based solution is far preferable and necessary regardless.

At the same time, there is not—nor was there ever—any reason for the Save America’s Pastime Act to be a part of the United States Code. The Major League Baseball owners’ stated reason for the law was a blatant and demonstrable lie. If for no other reason than to hold them accountable for that lie, Congress should repeal the Save America’s Pastime Act.

6. Is there any other information that you believe could help inform the Senate Judiciary Committee’s analysis of MLB’s century-old antitrust exemption?

There are roughly six thousand professional baseball players in the United States. More than five thousand of them play in the Minor Leagues. Minor League players are truly among the very best in the world at what they do.⁴⁵ They are also an integral part of an incredibly lucrative industry. Major League Baseball reported nearly \$11 billion in revenue in 2019,⁴⁶ and almost every single Major League player spends time in the Minor Leagues first.⁴⁷

Most Minor League players are living below the federal poverty level for one simple reason: baseball's unique antitrust exemption prevents them from obtaining fair compensation.

It is clear to all that baseball's antitrust exemption makes no sense as a matter of law. It is equally clear that it is up to Congress—led by this Committee—to fix it.

Baseball is not just a game. It is our national pastime. As Major League Baseball's commissioner said just last week, "the institution of baseball [is] significant to American culture."⁴⁸ He is right.

Because of baseball's cultural significance, how we—the American people—choose to respond to the Minor League Conspiracy will say something about who we are as a nation.

Are we a nation that believes in the value of competition and the free market, where every person and entity is equal before the law, and the best of the best obtain fair compensation in exchange for their hard work?

Or are we a nation that pays only lip service to these principles, instead granting the rich and powerful favored legal status, which they can exploit to obtain extra advantages they don't at all need?

If the answer is the former, Congress should put an end to the Minor League Conspiracy by enacting the Minor League Curt Flood Act.

Thank you for the opportunity to share my perspective on this important topic. I would be happy to provide further testimony upon request.

Sincerely,



Harry Marino
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Advocates for Minor Leaguers

¹ *Standard Oil Co. v. FTC*, 340 U.S. 231, 248 (1951).

² *United States v. Topco Assocs., Inc.*, 405 U.S. 596, 610 (1972).

³ *Federal Baseball Club of Baltimore v. National League*, 259 U.S. 200, 208-209 (1922).

⁴ See Stuart Banner, *The Baseball Trust: A History of Baseball's Antitrust Exemption* 91 (2013) (“The Court had *not* said that Congress intended to exempt baseball from the antitrust laws. Rather, the Court had determined that Congress *could not* apply the antitrust laws to baseball, because it lacked the power to do so.”).

⁵ *Flood v. Kuhn*, 407 U.S. 258, 282 (1972) (“Professional baseball is a business and it is engaged in interstate commerce.”); see also Banner, *The Baseball Trust* 92 (“*Federal Baseball* . . . rested on a particular conception of interstate commerce . . . that began to crumble very soon after.”).

⁶ *Flood*, 407 U.S. at 284 (“If there is any inconsistency or illogic in all this, it is an inconsistency and illogic of long standing that is to be remedied by the Congress and not by this Court.”); *id.* at 285 (“[T]he remedy, if any is indicated, is for congressional, and not judicial, action.”); see also *Toolson v. New York Yankees*, 346 U.S. 356, 357 (1953) (“We think that if there are evils in this field which now warrant application to it of the antitrust laws it should be by legislation.”).

⁷ Curt Flood Act of 1998, Pub. L. No. 105-297, 112 Stat. 2824 (codified at 15 U.S.C. § 26b). Curt Flood, the Major League player for whom the law was named, played an indispensable role in the fight for basic fairness in sports. See CURT FLOOD, <https://www.mlbplayers.com/curt-flood>.

⁸ 15 U.S.C. § 26b(a) (“[T]he conduct, acts, practices, or agreements of persons in the business of organized professional major league baseball directly relating to or affecting employment of major league baseball players . . . are subject to the antitrust laws.”).

⁹ The declared purpose of the Act was “to state that major league baseball players are covered under the antitrust laws” without “chang[ing] the application of the antitrust laws in any other context or with respect to any other person or entity.” Curt Flood Act of 1998, § 2. Some believe that by leaving the other aspects of the exemption untouched, Congress implicitly codified those aspects of the exemption. See *Miranda v. Selig*, 860 F.3d 1237, 1243 (2017) (citing the Curt Flood Act for the proposition that “Congress has made clear its intent to maintain the baseball exemption for anything related to the employment of minor league players, the reserve clause as applied to minor league players, and the relationship between major and minor league baseball.”). However, according to the then-Executive Director of the Major League Baseball Players Association—which along with Major League Baseball lobbied for enactment of the Curt Flood Act—the purpose of the law was just the opposite. See Congressional Testimony of Mr. Donald M. Fehr (February 13, 2002), available at https://www.judiciary.senate.gov/imo/media/doc/fehr_testimony_02_13_02.pdf (“When the Curt

Flood Act of 1998 was enacted, it was my view that the combination of *Piazza* and the CFA would virtually eliminate any special immunity for MLB.”); *see also Piazza v. Major League Baseball*, 831 F. Supp. 420, 436 (E.D. Pa. 1993) (“*Flood v. Kuhn* stripped from *Federal Baseball and Toolson* any precedential value those cases may have had beyond the particular facts involved there, *i.e.*, the reserve clause.”). The Supreme Court has not weighed in on this debate. Regardless, no one disputes that it is within Congress’s power to clarify its position with respect to the remaining aspects of the antitrust exemption.

¹⁰ Statement of Interest of the United States 1, *Nostalgic Partners, LLC, et al. v. Major League Baseball*, Case No. 21-10876 (S.D.N.Y.) (June 15, 2022).

¹¹ Ben Walker and Jake Seiner, *AP Exclusive: MLB raises salaries for minor leaguers in 2021*, AP NEWS (February 14, 2020), <https://apnews.com/article/1512f5a4cf9a65f16a2641244e0c00fd>; Attachment 3: *Minor League Uniform Player Contract*, MAJOR LEAGUE RULES (2021), <https://registration.mlbpa.org/pdf/majorleaguerules.pdf>.

¹² Joon Lee, *Can a union fix this? Minor leaguers say poverty-level pay, poor housing are driving a ‘mental health crisis’*, ESPN (September 30, 2021), https://www.espn.com/mlb/story/_/id/32172108/can-union-fix-minor-leaguers-say-poverty-level-pay-poor-housing-driving-mental-health-crisis (“In 2021, most minor leaguers will make between \$8,000 and \$14,000 from April to October, according to the uniform player contract. The U.S. federal poverty guideline for one person in most states is \$12,880 in annual income.”).

¹³ John H. Tucker, *A minor league pitcher-turned-St. Louis attorney prepares for the trial of a lifetime*, ST. LOUIS MAGAZINE (September 8, 2021), <https://www.stlmag.com/longform/a-minor-league-pitcher-turned-st-louis-attorney-prepares-for-the-trial-of-a-lifetime/> (“This past December, MLB wrested power from the National Association of Professional Baseball Leagues, the longtime minor league governing body, and cut the number of affiliate teams from 160 to 120, leaving more than 1,000 players—25 percent of its workforce—without jobs.”).

¹⁴ As one player put it, the situation in the Minor Leagues is “the most un-American thing I’ve ever seen.” Brittany Ghiroli, *‘We are making pennies’: For many minor leaguers, unpaid offseasons prove more grueling than the actual seasons*, THE ATHLETIC (February 15, 2022), <https://theathletic.com/3130271/2022/02/15/we-are-making-pennies-for-many-minor-leaguers-unpaid-offseasons-prove-more-grueling-than-the-actual-seasons/>.

¹⁵ COLLECTIVE BARGAINING AGREEMENT (2017-2021), <https://www.mlbplayers.com/cba>.

¹⁶ *Brown v. Pro Football, Inc.*, 518 U.S. 231, 254 (1996) (quoting *Connell Const. Co. v. Plumbers & Steamfitters Local Union No. 100*, 421 U.S. 616, 622 (1975)).

¹⁷ J.J. Cooper, *How Will The MLB Lockout Affect The Minor Leagues?*, BASEBALL AMERICA (March 1, 2022), <https://www.baseballamerica.com/stories/how-will-the-mlb-lockout-affect-the-minor-leagues/>. That said, these work stoppages can have some secondary effects on Minor Leaguers. For instance, during the most recent lockout, the Major League portion of the Rule 5 draft was postponed indefinitely. The Rule 5 draft allows one MLB team to pay another MLB team \$100,000 for the rights to a Minor League player who is in one of the final years of his seven-year Minor League Uniform Player Contract. Because players chosen in the Rule 5 draft must be placed directly on the Major League roster, each year several Minor League players are freed from the constraints of the restrictive Minor League Uniform Player Contract by way of the Rule 5 draft. This makes the Rule 5 draft a beacon of hope for Minor Leaguers. The postponement of this year’s Rule 5 draft was therefore a significant loss. It is a disturbing commentary on the inequity of the Minor League labor market that a mechanism by which MLB

teams pay *each other*—rather than *players*—for the rights to player services is seen as an exciting opportunity for player freedom. See RULE 5 DRAFT, <https://www.mlb.com/glossary/transactions/rule-5-draft>.

¹⁸ See *Anderson v. Shipowners' Ass'n of Pacific Coast*, 272 U.S. 359, 362, 365 (1926) (condemning association of shipowners for collusively suppressing wages); see also Eduardo Porter, *A New Legal Tactic to Protect Workers' Pay*, THE NEW YORK TIMES (April 14, 2022) <https://www.nytimes.com/2022/04/14/business/economy/wages-antitrust-law-us.html>.

¹⁹ See *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 218 (1940) (explaining that price-fixing is a per se violation of the antitrust laws); *Todd v. Exxon Corp.*, 275 F.3d 191, 201 (2d Cir. 2001) (“[A] horizontal conspiracy among buyers to stifle competition is as unlawful as one among sellers.”).

²⁰ See *State Oil Co. v. Khan*, 522 U.S. 3, 10 (1997) (explaining the antitrust “rule of reason”).

²¹ Attachment 3: *Minor League Uniform Player Contract* 192, MAJOR LEAGUE RULES (2021) <https://registration.mlbpa.org/pdf/majorleaguerrules.pdf> (“This Minor League Uniform Player Contract obligates Player to perform professional services on a calendar year basis, regardless of the fact that salary payments are to be made only during the actual championship playing season.”)

²² *Id.* 191 (“Club hereby employs Player to render, and Player agrees to render, skilled services as a Minor League Player in seven (7) separate championship playing seasons.”)

²³ *Id.* 197-98 (“Player agrees . . . that . . . all rights to Player’s name, voice, signature, biographical information and likeness shall belong to Club and that they may be used, reproduced, sold, licensed, or otherwise disseminated or published by Club or its licensees, assignees, and/or other designees directly or indirectly in any medium whatsoever for any purpose (including but not limited to in broadcast, in print, on trading cards, posters and other merchandise of any kind, in electronics, in audio, in video or in connection with any media), in any manner and at any time, including after the term of this Minor League Uniform Player Contract, that Club desires. Player acknowledges that the foregoing rights include, without limitation, all related copyright, trademark, trade name, service mark, right of publicity and/or right of privacy rights. Club may exploit each of the rights granted to it by Player pursuant to this Paragraph . . . without additional payment or other compensation to Player.”)

²⁴ Ben Walker and Jake Seiner, *AP Exclusive: MLB raises salaries for minor leaguers in 2021*, AP NEWS (February 14, 2020), <https://apnews.com/article/1512f5a4cf9a65f16a2641244e0c00fd> (specifying the \$400-\$700 per week pay scale). Teams are required to follow the scale for first-year players and in practice adhere to the scale for players in years two through seven with few, minor deviations. See Order re Dispositive Motions, Motion to Exclude, and Motion to Strike 80, *Aaron Senne, et al. v. Kansas City Royals Baseball Corp., et al.*, Case No. 14-00608 (N.D. Cal.) (March 15, 2022) (“Defendants concede that MLB does not allow Clubs to pay first-year players a salary that is higher than the uniform salary adopted by MLB for all first-year players . . . [and] do not meaningfully dispute that MLB has significant control with respect to setting minimum salaries for all players.”).

²⁵ Joon Lee, *Senate Judiciary Committee questions legality of Major League Baseball’s antitrust exemption*, ESPN (June 28, 2022), https://www.espn.com/mlb/story/_/id/34161128/senate-judiciary-committee-questions-legality-major-league-baseball-antitrust-exemption. Required periods of unpaid work include the entirety of “spring training” during the month of March in either Florida or Arizona, as well as the winter “off-season.”

²⁶ Perhaps the most compelling evidence that the current Minor League compensation package is below fair market value is the market for Minor League free agents—Minor League players who are able to endure seven years in the Minor Leagues without yet making the Majors and are therefore freed from the restrictions of the Uniform Player Contract. Having not been placed on a Major League roster after seven years, these players are rarely top prospects. Yet because they are able to seek employment with any of the 30 MLB teams, they benefit from competition and the operation of the free market. As a result, rather than an annual salary of \$4,800-\$15,400, these players often command annual salaries north of \$50,000.

²⁷ Don Van Natta Jr., *Rob Manfred wants you to know: He doesn't hate baseball, he wants to save it*, ESPN (June 29, 2022), https://www.espn.com/mlb/story/_/id/34130915/hate-baseball-wants-save-it.

²⁸ Michael McCann, *MLB's Antitrust Exemption Explained As Revocation Bill Looms*, SPORTICO (April 7, 2021), <https://www.sportico.com/law/analysis/2021/mlb-antitrust-exemption-1234626810/>.

²⁹ ESPN.com, *MLB lockout: MLB, MLBPA agree on new CBA*, ESPN (March 10, 2022), https://www.espn.com/mlb/story/_/id/32882139/mlb-lockout-mlb-mlbpa-agree-new-cba.

³⁰ When spring training ends at the end of March, dozens of young players—often from Latin America—who are not assigned to a full-season Minor League team stay at their Major League team's training complex in Florida or Arizona for more than two months of “extended” spring training.

³¹ Thanks to player advocacy, that has shifted over the past year, with most teams—but not all—currently paying salaries to players during extended spring training. See Evan Drellich, *In extended spring training, minor leaguers lament lack of pay: 'Just a mess'*, THE ATHLETIC (June 23, 2022), <https://theathletic.com/3378699/2022/06/23/minor-league-pay-extended-spring/>.

³² *Id.*

³³ *Id.*

³⁴ 29 U.S.C. § 213(a)(19) (clarifying that the FLSA's minimum-wage and overtime provisions do not apply to “any employee employed to play baseball who is compensated pursuant to a contract that provides for a weekly salary for services performed during the league's championship season (but not spring training or the off season) at a rate that is not less than a weekly salary equal to the minimum wage under section 206(a) of this title for a workweek of 40 hours, irrespective of the number of hours the employee devotes to baseball related activities”).

³⁵ According to one Minor League owner, “We were told very clearly if we didn't get that thing passed, we would be staring down the barrel of contraction. So we were all supremely motivated to help MLB pass that legislation.” Matt Welch, *How Government Devastated Minor League Baseball*, REASON MAGAZINE (November 2021), <https://reason.com/2021/10/10/how-government-devastated-minor-league-baseball/>.

³⁶ ESPN Staff, *Why MLB's minor leagues as you know them will end Sept. 30*, ESPN (September 3, 2020), https://www.espn.com/mlb/story/_/id/29795127/why-mlb-minor-leagues-know-end-sept-30.

³⁷ *Id.*

³⁸ Andrew Baggarly and more, *Control people: A look at MLB's 30 owners and power brokers*, THE ATHLETIC (June 19, 2020), <https://theathletic.com/1881215/2020/06/19/control-people-a-look-at-mlbs-30-owners-and-power-brokers/>.

³⁹ *Professional American Sports Stadium Funding (Chart)*, STADIUM SUBSIDY, https://en.wikipedia.org/wiki/Stadium_subsidy#In_the_United_States.

⁴⁰ John Helyar, *Lords of the Realm: The Real History of Baseball* 14 (1994) (“The players were more toothless than ever. The owners sat back, pleased. They were the masters of all they surveyed, the Lords of the Realm.”).

⁴¹ See Statement of Interest of the United States 2-3, *Nostalgic Partners, LLC, et al. v. Major League Baseball*, Case No. 21-10876 (S.D.N.Y.) (June 15, 2022) (“For many communities, Minor League Baseball is the only local professional sport available. In many more communities, Minor League Baseball is a vital source of jobs, tourism, and affordable entertainment. . . . Eliminating Minor League teams can therefore have wide-ranging effects on fans, players, and communities throughout the United States.”).

⁴² Each of the 120 remaining teams signed a contract called a “Professional Development License.” It is worth asking why Major League Baseball is so intent on ensuring that these contracts never see the light of day. See J.J. Cooper, *120 Minor League Teams Receive Professional Development Licenses*, BASEBALL AMERICA (January 14, 2021), <https://www.baseballamerica.com/stories/120-minor-league-teams-receive-professional-development-licenses/> (“The 120 teams have [30 days] to decide whether to sign the PDLs If a team fails to sign within the 30-day window, MLB . . . is . . . likely to simply offer the declining team’s PDL to a different team. . . . Non-disclosure agreements prohibit teams from discussing the terms of the new licenses.”).

⁴³ Jeff Passan, *MLB seeks ability to reduce size of Domestic Reserve List in latest labor offer to players’ union, sources say*, ESPN (February 14, 2022), https://www.espn.com/mlb/story/_/id/33291388/mlb-seeks-ability-reduce-size-domestic-reserve-list-latest-labor-offer-players-union-sources-say; Dan Gartland, *MLB Goes After Minor Leagues (Again)*, SPORTS ILLUSTRATED (February 15, 2022), <https://www.si.com/mlb/2022/02/15/mlb-lockout-minor-league-reserve-list-limits>.

⁴⁴ Complaint 2, *Nostalgic Partners, LLC, et al. v. Major League Baseball*, Case No. 21-10876 (S.D.N.Y.) (Dec. 20, 2021).

⁴⁵ For context, more than 25 million American kids play baseball and softball. Associated Press, *Put me in, coach: Youth baseball participation on the rise*, USA TODAY (August 23, 2019), <https://www.usatoday.com/story/sports/mlb/2019/08/23/put-me-in-coach-youth-baseball-participation-on-the-rise/40002827/>. For further context, in the United States, there are 1.3 million lawyers, Statista Research Department, *Number of lawyers in the United States from 2007 to 2021*, STATISTA (January 11, 2022), <https://www.statista.com/statistics/740222/number-of-lawyers-us/>, and more than 1 million doctors, Frédéric Michas, *U.S. physicians – statistics & facts*, STATISTA (October 19, 2021), <https://www.statista.com/topics/1244/physicians/>.

⁴⁶ Maury Brown, *How Major League Baseball Could Crack \$11 Billion In Revenues In 2022*, FORBES (April 7, 2022), <https://www.forbes.com/sites/maurybrown/2022/04/07/how-major-league-baseball-could-crack-11-billion-in-revenues-in-2022/?sh=30dc574c7f63>.

⁴⁷ Jason Catania, *Players to go straight from MLB Draft to The Show*, MAJOR LEAGUE BASEBALL (September 18, 2020), <https://www.mlb.com/news/players-who-went-directly-from-the-draft-to-mlb>.

⁴⁸ Don Van Natta Jr., *Rob Manfred wants you to know: He doesn’t hate baseball, he wants to save it*, ESPN (June 29, 2022), https://www.espn.com/mlb/story/_/id/34130915/hate-baseball-wants-save-it.