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Another Failed Pickoff Attempt: The Latest Challenge to MajorLeague Baseball's Antitrust Exemption

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Student Comments

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I. INTRODUCTION

"Baseball has been the national pastime for over one hundred years and enjoys a unique place in our American heritage. Major league professional baseball is avidly followed by millions of fans, looked upon with fervor and pride and provides a special source of inspiration and competitive team spirit especially for the young."[1] Baseball plays an important role in the fabric of American culture. However, baseball has changed drastically since the first professional game played back in 1871.[2] Today professional baseball is big business in the United States with combined 2012 annual revenues of $7.5 billion.[3] Major League Baseball ("MLB") teams must weigh the cost and benefits of maintaining an appropriate payroll while

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1. Flood v. Kuhn, 407 U.S. 258, 266 (1972).

2. Jack F. Williams et. al., *Public Financing of Green Cathedrals*, 5 ALB. GOV'T L. REV. 123, 127 (2012).

3. Matt Snyder, *Report: MLB Revenues in 2012 Were $7.5 Billion*, CBSSPORTS.COM (Dec. 9, 2012, 3:42 PM) http://www.cbssports.com/mlb/eye-on-baseball/21335810/report-mlb-revenues-in-2012-were-75-billion.

remaining competitive on the field.[4] This is especially true for those that are considered "small market" teams.[5]

For the last ninety years, baseball continues to receive a special immunity from the Sherman Act and other federal antitrust laws.[6] Starting in 1922, the United States Supreme Court granted baseball an antitrust exemption.[7] This allowed MLB to control many facets and activities related to baseball that other professional sports leagues, such as the National Football League ("NFL") and National Basketball Association ("NBA"), cannot.[8] Despite being widely criticized by many legal scholars and courts, neither the Supreme Court nor Congress has eliminated the exemption.[9] Among other things, the exemption allows MLB and owners of teams through concerted activity, to place very restrictive requirements on the ability of a franchise to move to a new city or market.[10] The Supreme Court struck down similar restrictions on franchise relocation in other professional sport leagues, which do not enjoy the benefit of an antitrust exemption.[11]

Part I of this comment provides an overview of the three Supreme Court cases that established baseball's antitrust exemption, often called the "Supreme Court baseball trilogy."[12] Further, Part I explores how the Court has denied expanding the exemption to other professional sports leagues.[13] Part II outlines the current scope of MLB's antitrust exemption and the three standards the lower courts have articulated in attempting to define it.[14] The majority of lower courts conclude that MLB's antitrust exemption applies to any activities that are related to the "business of baseball."[15] This comment argues that this is the wrong standard based on the Supreme Court baseball trilogy.[16]

Part III explains the latest challenge to MLB's antitrust exemption as it applies to franchise relocation.[17] This challenge centers on the proposed

4. *See* Adam Holzman, *In Baseball, No Competitive Balance Without Financial Balance*, YALE DAILY NEWS (Nov. 3, 2010), http://yaledailynews.com/blog/2010/11/03/holzman-in-baseball-no-competitive-balance-without-financial-balance/.

5. *See id.*

6. Fed. Baseball Club of Balt. v. Nat'l League of Prof'l Baseball Clubs, 259 U.S. 200, 208-09 (1922).

7. *Id.*

8. *Id.*

9. *See* Toolson v. New York Yankees, Inc., 101 F. Supp. 93, 94 (S.D. Ca. 1951).

10. *See* discussion *infra* Part III.A-B.

11. *See* discussion *infra* Part II.D.

12. *See* discussion *infra* Part II.A-C.

13. *See* discussion *infra* Part II.D.

14. *See* discussion *infra* Part III.A-C.

15. *See* discussion *infra* Part III.A.

16. *See* discussion *infra* Part V.

17. *See* discussion *infra* Part IV.

relocation of the Oakland Athletics to the city of San Jose.[18] Further Part III provides a close examination of the reasons for the Oakland Athletics' attempt to move to San Jose, the validity of MLB's refusal to allow the move, and how the refusal of the trial court to intervene illustrates the importance of resolving the conflict in the lower courts as to the current scope of any antitrust exemption MLB may enjoy.[19] Part IV provides the analysis of the latest challenge and argues that the court should have applied a different standard in interpreting the scope of MLB's antitrust exemption.[20] It also argues that the Supreme Court should review the exemption and eliminate it because the Court itself recognized the exemption became outdated, unrealistic, and illogical.[21] Finally, Part IV concludes by asserting that the exemption facilitates competitive imbalance in the MLB, and the exemption needs eliminated in regards to franchise relocation in order to force MLB to adopt methods similar to that of other professional sport leagues, such as a salary floor or other salary structures.[22]

II. THE ESTABLISHMENT OF BASEBALL'S ANTITRUST EXEMPTION: THE SUPREME COURT BASEBALL TRILOGY

A. Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs

Over ninety years ago, the Supreme Court first considered the application of federal antitrust law to baseball in *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*. [23] In *Federal Baseball*, a baseball team of the then defunct Federal League asserted that the American and National League (the two leagues that make up MLB) were in violation of federal antitrust law, specifically Sections One and Two of the Sherman Act.[24] The plaintiff claimed that MLB had conspired to monopolize the business of baseball by deliberately destroying the Federal League by buying up many of its constituent clubs and motivating all the remaining clubs except the plaintiff to leave the league.[25] The plaintiffs received a judgment in federal district court for $240,000.[26]

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18. *See* discussion *infra* Part IV.
19. *See* discussion *infra* Part IV.
20. *See* discussion *infra* Part V.A.
21. *See* discussion *infra* Part V.B.
22. *See* discussion *infra* Part V.C.
23. *Fed. Baseball*, 259 U.S. at 207-09.
24. Nat'l League of Prof'l Baseball Clubs v. Fed. Baseball Club of Balt., 269 F. 681, 682-83 (D.C. Cir. 1920).
25. *Fed. Baseball*, 259 U.S at 207.
26. *Nat'l League*, 269 F. at 682.

The Court of Appeals of the District of Columbia reversed and the Supreme Court granted certiorari.[27]

In a unanimous opinion, the Court held that professional baseball did not fit within the scope of federal antitrust law and therefore enjoyed an exemption.[28] Writing for the Court, "Justice Oliver Wendell Holmes, a former amateur [professional] baseball player [himself,]"[29] employed a two-part analysis.[30] First, Holmes looked to the method by which MLB generated most of its revenue at the time of *Federal Baseball*.[31] Because a majority of this revenue in 1922 came from the sale of tickets to a specific game, Holmes concluded that professional baseball was not interstate in nature and was a "purely state affair[s]."[32] Relying on the distinction in *Hooper v. California*,[33] Holmes noted that the fact that players and fans travel across state lines to different cities to see a game did not make baseball interstate commerce because the transport itself was "a mere incident, not the essential thing."[34] Second, Holmes held that baseball did not constitute commerce under the common legal understanding of those terms at the time, because the "commerce" being sought was the "personal effort" of the players at the exhibition games, and because it was "no[t] related to production, [it] is not a subject of commerce."[35] It is important to note that based on the Court's current interstate commerce jurisprudence "professional baseball is unquestionably engaged in interstate commerce."[36] Nevertheless, this deeply flawed opinion spawned an antitrust exemption for professional baseball that precluded all antitrust liability until 1972,[37] and the remnants of which continue to result in unjust limitations on franchise relocation.[38]

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27. *Fed. Baseball*, 259 U.S at 208.

28. *Id.* at 208-09.

29. Kevin E. Martens, *Fair or Foul? The Survival of Small-Market Teams in Major League Baseball*, 4 MARQ. SPORTS L.J. 323, 343 (1994).

30. *Fed. Baseball*, 259 U.S at 208-09.

31. *Id.*

32. *Id.*

33. Hooper v. California, 155 U.S. 648 (1895).

34. *Fed. Baseball*, 259 U.S at 209.

35. *Id.*

36. Nathaniel Grow, *Defining the "Business of Baseball": A Proposed Framework for Determining the Scope of Professional Baseball's Antitrust Exemption*, 44 U.C. DAVIS L. REV. 557, 568 (2010) (citing Flood v. Kuhn, 407 U.S. 258, 282 (1972)).

37. *See Flood*, 407 U.S. at 285.

38. *See* Andrew E. Borteck, *Note: The Faux Fix: Why a Repeal of Major League Baseball's Antitrust Exemption Would Not Solve Its Severe Competitive Balance Problem,* 25 CARDOZO L. REV. 1069, 1081-82 (2004).

B. Toolson v. New York Yankees

Until *Toolson v. New York Yankees*[39] in 1951, the Supreme Court chose not to reconsider the MLB's antitrust exemption.[40] *Toolson* dealt with a direct challenge to MLB's reserve clause.[41] The reserve clause was essentially "a provision included at the time in all baseball player contracts that precluded players from negotiating future contracts with anyone but their current employer."[42] In *Toolson*, a baseball player with the New York Yankees, assigned to one of their minor league teams, subsequently refused to report.[43] Based on this refusal the Yankees declared him ineligible, which prohibited him from playing for any other MLB organization.[44] The player brought suit, claiming that the reserve clause violated the Sherman Act.[45]

In a one paragraph, per curium decision, the Supreme Court affirmed the decision in *Federal Baseball* by a 7-2 vote.[46] Again, the Court held that federal antitrust laws do not apply to baseball.[47] In reaching this conclusion, the Court attempted to shift the burden of addressing whether baseball should enjoy an antitrust exemption to Congress.[48] The Court noted that Congress had proposed no legislation on whether federal antitrust laws should affect Major League Baseball and that if Congress wanted to eliminate the exemption they alone retained the duty to do so.[49] The Court did not mention its reasoning in *Federal Baseball.*[50] Rather, the Court's holding relied on the idea that Congress never intended baseball to be subject to federal antitrust law as demonstrated by the fact that Congress remained silent on the issue despite the holding in *Federal Baseball* thirty years prior.[51]

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39. 346 U.S. 356 (1953).
40. *See Toolson*, 346 U.S. at 357.
41. *See Toolson*, 346 U.S. at 362 (J. Burton dissenting).
42. Grow, *supra* note 36, at 561 (citing Ryan T. Dryer, *Beyond the Box Score: A Look at Collective Bargaining Agreements in Professional Sports and Their Effect on Competition*, 2008 J. DISP. RESOL. 267, 268 (2008); Joshua P. Jones, *A Congressional Swing and Miss: The Curt Flood Act, Player Control, and the National Pastime*, 33 GA. L. REV. 639, 642 (1999); Joseph A. Kohm, Jr., *Baseball's Antitrust Exemption: It's Going, Going . . . Gone!*, 20 NOVA L. REV. 1231, 1234-35 (1996)).
43. *Toolson*, 101 F. Supp. 93.
44. *Id.*
45. *Id.*
46. *Toolson*, 346 U.S. at 357.
47. *Id.*
48. *Id.*
49. *Id.*
50. *Id.*
51. *Toolson*, 346 U.S. at 357.

C. Flood v. Kuhn and The Curt Flood Act

In *Flood v. Kuhn*,[52] the Supreme Court issued its final decision to date on whether MLB is exempt from federal antitrust law.[53] Unlike the claim in *Toolson,* brought by a career minor leaguer,[54] the claim in *Flood* was brought by St. Louis Cardinal star outfielder Curt Flood.[55] By the end of his career Flood was a 7-time gold glove winner, a 3-time all-star, and a two-time World Series champion.[56] However in 1969, despite Flood's outspoken resistance, he was traded from the St. Louis Cardinals to the Philadelphia Phillies.[57] Flood refused to play for the Phillies, and asked that baseball commissioner Bowie Kuhn declare him a free agent.[58] Not surprisingly Kuhn declined Flood's request, citing the reserve clause.[59] As a result, Flood brought a claim alleging that the reserve clause violated federal and state antitrust law.[60] Relying on *Federal Baseball* and *Toolson*, the district court granted judgment in favor of Kuhn and the court of appeals affirmed.[61]

In a majority opinion written by Justice Blackmun, the Supreme Court affirmed the decision of the court of appeals in a 5-3 vote.[62] The *Flood* Court initially examined the decisions in *Federal Baseball* and *Toolson*.[63] Given changes in the Court's interstate commerce jurisprudence and the nature of baseball economics, the Court acknowledged that professional baseball was now certainly "a business and it is engaged in interstate commerce."[64] This essentially eviscerated the reasoning relied upon in *Federal Baseball*.[65] Further, it noted that subsequent Supreme Court decisions refused to extend the exemption to other professional sports such as football, basketball, and boxing, making *Federal Baseball* and *Toolson* an aberration confined to baseball.[66] Despite stating that the Court itself previously recognized that the distinction between baseball and other professional sports was "unrealistic, inconsistent, and illogical," the Court

52. *Flood*, 407 U.S. at 259.
53. *Id.*
54. Grow, *supra* note 36, at 569.
55. *Flood*, 407 U.S. 258 at 264.
56. *Curt Flood*, BASEBALL-REFERENCE.COM, http://www.baseball-reference.com/players/f/floodcu01.shtml (last visited Oct. 15, 2014).
57. *Flood*, 407 U.S. at 265.
58. *Id.*
59. *Id.*
60. *Id.*at 265-66.
61. Flood v. Kuhn, 443 F.2d 264, 265,-67 (2nd Cir. 1971).
62. *See Flood*, 407 U.S. at 259-85.
63. *See id.*at 265-68.
64. *Id.*at 282.
65. See *generally Federal Baseball*, 259 U.S. 200.
66. *See Flood*, 407 U.S. at 282-83.

stated that the aberration is an established one" and had been recognized in five total Supreme Court decisions for over half a century.[67] Thus, the Court concluded that the exemption was entitled to *stare decisis*.[68] Additionally, the Court expressed its concern over retroactivity problems that might result if *Federal Baseball* was overturned.[69] The Court again stressed that Congress, by its positive inaction, had allowed the Supreme Court decisions creating baseball's antitrust exemption to stand and this "clearly evinced a desire not to disapprove [of it] legislatively."[70] In affirming baseball's antitrust exemption, the majority concluded "what the Court said in *Federal Baseball* in 1922 and what it said in *Toolson* in 1953, we say again here in 1972: the remedy, if any is indicated, is for congressional, and not judicial, action."[71]

At this point in baseball's labor history, the players formed a union.[72] The players, through Major League Baseball Players Association ("MLBPA"), negotiated for a grievance and arbitration procedure in the 1970 Collective Bargaining Agreement ("CBA").[73] Through this process, the players challenged the reserve clause and, in 1975, Arbitrator Peter Seitz ruled that the reserve clause, as it had been interpreted, was incorrect and that it held only for one year and thus created the free agent.[74] This resulted in a quick death for the reserve clause, with many other sports leagues soon following.[75] Congress opted not to respond to the Court's decision in *Flood* until 1998.[76] Finally, seventy years after *Federal Baseball,* Congress altered baseball's antitrust exemption through the Curt Flood Act ("CFA").[77] However, the CFA repealed baseball's antitrust trust exemption in a narrow and limited way.[78] Specifically, it only "allow[ed] current major league players to file antitrust suits against MLB."[79]

67. *Id.*at 283.
68. *See id.*at 282.
69. *See id* at 283-84.
70. *Id.*at 284.
71. *Flood*, 407 U.S. at 285.
72. PAUL D. STAUDOHAR, PLAYING FOR DOLLARS: LABOR RELATIONS AND THE SPORTS BUSINESS 27 (3d ed. 1996).
73. *See id.* at 28.
74. *Id.*
75. *Id.*
76. Grow, *supra* note 36, at 575.
77. 15 U.S.C. § 26b (2012).
78. *See* Grow, *supra* note 36, at 575.
79. *Id.*

D. Major League Baseball's Antitrust Exemption Has Not Been Extended to Other Sports

As the Supreme Court mentioned in *Flood*, baseball's antitrust exemption has not been extended to other industries or professional sports.[80] For example, in *United States v. Shubert*[81] the Court refused to extend baseball's antitrust exemption to a theater company.[82] The *Shubert* Court held that the antitrust exemption established in *Federal Baseball* applies only to baseball and nothing more.[83] The Supreme Court also refused to extend the exemption to professional boxing.[84] In *Radovich v. National Football League*,[85] the Supreme Court considered whether the exemption was available to the NFL.[86] Despite the fact that professional baseball and football seem very similar, the Court refused to extend the exemption to the NFL.[87] The *Radovich* Court concluded that *Federal Baseball* applied only to professional baseball and would likely be decided differently if it were brought today.[88] For similar reasons the Court also refused to extend the exemption to the NBA in *Haywood v. National Basketball Association*.[89]

III. THE SCOPE OF BASEBALL'S ANTITRUST EXEMPTION

Although the aforementioned Supreme Court jurisprudence established that professional baseball has an exemption from federal antitrust law, it has done little to define its scope.[90] Defining this scope has been left up to the lower courts.[91] In order to determine if restrictions on franchise relocation should be subject to baseball's antitrust exemption, analysis of this scope is imperative.[92] The lower courts have articulated three different standards for defining the scope of baseball's antitrust exemption.[93]

80. *See Flood*, 407 U.S. at 282-83.
81. 348 U.S. 222 (1955).
82. *Id.*at 227-29.
83. *Id.*at 228.
84. *See* United States v. Int'l Boxing Club of New York, 348 U.S. 236, 243-44 (1955).
85. 352 U.S. 445 (1957).
86. *See id.* at 446.
87. *Id.* at 451-52.
88. *Id.*
89. 401 U.S. 1204, 1205-06 (1971).
90. Grow, *supra* note 36, at 580.
91. *Id.* at 580-81.
92. *See* discussion *infra* Part III.
93. *See* Grow, *supra* note 36, at 580-81.

A. The "Business of Baseball" is exempt from antitrust law

A majority of lower courts hold that the scope of baseball's antitrust exemption protects the "business of baseball."[94] Most of these courts have construed the business of baseball broadly; encompassing almost all activities associated with both baseball and non-baseball entities.[95] The first court to issue an opinion defining the scope of the business of baseball was the Seventh Circuit Court of Appeals in *Charles O. Finley & Co. v. Kuhn*.[96] In *Finley*, the plaintiff attempted to sidestep dismissal of his antitrust claim by baseball's exemption by claiming that *Flood* had limited the exemption to protect only baseball's reserve clause.[97] The Seventh Circuit rejected this argument, contending that the Supreme Court baseball trilogy did not specifically limit the exemption to any particular facet of baseball, but rather to the business of baseball as a whole.[98] The court did note that the exemption may not apply to all activities, such as those with only an attenuated relationship to the business of baseball.[99]

Two other courts, the Eleventh Circuit Court of Appeals and the Eastern District of Louisiana, have also found that the exemption applies to the business of baseball.[100] Although neither was specific about the limits of the exemption, the Eleventh Circuit concluded that it applied to activities that play an "integral part [to] the business of baseball."[101] In *Minnesota Twins Partnership v. State*,[102] the Supreme Court of Minnesota concluded that the sale and relocation of a baseball franchise was "an integral part of the business of professional baseball" and therefore was protected by the exemption.[103] However, other courts have held that the exemption is not unlimited, and may not apply to some dealings with teams and third parties.[104] Despite the "business of baseball" being the majority approach in defining the exemption's scope, the lower courts have been too vague in specifying exactly what this entails in order to promulgate a workable standard for future courts.[105]

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94. *Id.* at 581.
95. *Id.*
96. 569 F.2d 527 (7th Cir. 1978).
97. *Id.* at 540.
98. *Id.* at 541.
99. *Id.* at 541 n. 51.
100. *See* Prof'l Baseball Sch. & Clubs, Inc. v. Kuhn, 693 F.2d 1085, 1085-86 (11th Cir. 1982); *see also* New Orleans Pelicans Baseball, Inc. v. Nat'l Ass'n of Prof'l Baseball Leagues, Inc., CIV. A. 93-253, 1994 WL 631144, 8-9 (E.D. La. Mar. 1, 1994).
101. *See Prof'l Baseball Sch.*, 693 F.3d. at 1086.
102. 592 N.W.2d 847 (Minn. 1999).
103. *See id.* at 856.
104. *See* Major League Baseball v. Crist, 331 F.3d 1177, 1183 (11th Cir. 2003).
105. *See* Grow, *supra* note 36, at 580-85.

B. The Exemption Applies Only to the Reserve Clause

A few courts have taken the approach that baseball's antitrust exemption applies only to the reserve clause.[106] Because the reserve clause was eliminated by the 1970 CBA, these courts concluded that the exemption is essentially obsolete.[107] This standard was first articulated by the Eastern District of Pennsylvania in *Piazza v. Major League Baseball*.[108] In *Piazza*, an investment group led by Vincent Piazza[109] and Vincent Trendi attempted to purchase and move the Giants from San Francisco to Tampa Bay, Florida.[110] Despite having the highest bid of $115 million, the MLB rejected the proposed sale based on issues that arose after it did a background check of the two businessmen.[111] Instead, the Giants were sold to a group that kept the team in San Francisco.[112] Piazza and Triendi brought suit against MLB, alleging violations of the Sherman Act.[113] In response, MLB filed a motion to dismiss based on its antitrust exemption.[114] In an unexpected twist, the court denied the motion, finding that MLB's antitrust exemption did not apply because it was limited solely to the reserve clause.[115] The court reached this conclusion by examining the Supreme Court baseball trilogy and finding that, in each case, the factual context involved the reserve clause.[116] Further, the court found that *Flood* had "stripped [both] *Federal Baseball* and *Toolson* [of] any precedential value."[117] The court then analyzed *Flood* and found it clear that the decision intended to limit the exemption only to the reserve clause based on numerous references to the clause in the decision.[118]

The Supreme Court of Florida followed the reasoning of *Piazza* just two years later in *Buttersworth v. National League of Professional Baseball Clubs*.[119] The court in *Buttersworth* agreed with *Piazza* in all major aspects, including that *Flood* had dealt a serious blow to the precedential value of

106. *Id.* at 585.
107. *Id.* at 585-86.
108. 831 F. Supp. 420 (E.D. Pa. 1993).
109. Vincent Piazza was the father of former all-star slugging catcher Mike Piazza. *See Vincent Piazza*, THE GAZETTE (Sept. 30, 2013), http://www.montrealgazette.com/sports/Vincent+Piazza+left+father+former+York+Mets+catcher+Mike+Piazza+weeps+speaks+during+ceremony+inducting+into+Mets+Hall+Fame+Sunday+Sept+2013+York+Piazza+wife+Alicia+right+consoles+Piazza+father/8979542/story.html.
110. *See Piazza*, 831 F. Supp. at 422.
111. *Id.* 422-23.
112. *Id.* at 423.
113. *Id.* at 423-24.
114. *Id.* at 424, 433.
115. *Piazza*, 831 F. Supp at 421.
116. *Id.* at 435.
117. *Id.* at 436.
118. *Id.* at 437.
119. 644 So. 2d 1021 (Fla. 1994).

both *Federal Baseball* and *Toolson*.[120] One year later, the Second District Court of Appeals of Florida also held that MLB's antitrust exemption was limited to the reserve clause in *Morsani v. Major League Baseball*.[121] The decision in *Piazza* and the two Florida cases that followed it "ha[ve] been quite controversial."[122] This comment asserts that the decision in *Piazza* was correctly decided and that the court in *City of San Jose* should have followed it for the reasons discussed in Part IV below.[123]

C. "Unique Characteristics and Needs" Standard for the Exemption

Two courts have taken the approach that MLB's antitrust exemption protects activities somewhere between the "business of baseball" and just the reserve clause.[124] These courts have defined the scope of the exemption to protect only baseball's "unique characteristics and needs."[125] In 1982, the Southern District of New York first articulated this standard, concluding that the exemption did not extend to activities that dealt with only enhancing commercial success of MLB but instead activities that were integral to the league, clubs, and players.[126] The case, *Henderson Broadcasting Corp. v. Houston Sports Ass'n. Inc.*,[127] involved a radio station's claim that the Houston Astros cancelling a contract and giving it to another radio station violated federal antitrust laws.[128] The Astros' attempt to shield itself through baseball's antitrust exemption was struck down because the court concluded that radio broadcasting was not part of baseball in the way players, teams, and the reserve clause are.[129] In 1992, *Postema v. National League of Professional Baseball Clubs*,[130] adopted a similar reasoning, holding that umpire employment relations was not an essential part of baseball and therefore was not protected by the exemption.[131] Thus, these two courts have concluded that the exemption protects more than simply the reserve clause but only the unique characteristics and needs of baseball.[132]

120. *Id.* at 1025.
121. 663 So. 2d 653 (Fla. Dist. Ct. App. 1995).
122. *See* Grow, *supra* note 36, at 589.
123. *See infra* Part V.
124. Grow, *supra* note 36, at 589.
125. *Id.* (citing *Flood*, 407 U.S. at 282).
126. Henderson Broad. Corp. v. Houston Sports Ass'n, Inc., 541 F. Supp. 263, 265 (S.D. Tex. 1982).
127. *Id.*
128. *Id.* at 264.
129. *Id.*
130. 99 F. Supp. 1475 (S.D.N.Y. 1992)
131. Postema v. Nat'l League of Prof'l Baseball Clubs, 799 F. Supp. 1475, 1489 (S.D.N.Y. 1992).
132. Grow, *supra* note 36, at 589.

IV. THE LATEST CHALLENGE TO BASEBALL'S ANTITRUST EXEMPTION: CITY OF SAN JOSE V. OFFICE OF COMMISSIONER OF BASEBALL

The latest challenge to MLB's antitrust exemption has once again arisen over whether it protects restriction on franchise relocation.[133] On June 18, 2013, the City of San Jose brought suit against the Office of the Commissioner of Baseball and Allan Huber "Bud" Selig (collectively, "MLB").[134] The suit claimed that MLB had violated the Sherman Act, Cartwright Act, and state tort and unfair competition laws by refusing to approve the Oakland Athletics ("the A's") proposed relocation from Oakland to San Jose.[135] MLB moved to dismiss the claim based on baseball's antitrust exemption asserting that franchise relocation falls under the "business of baseball."[136]

The A's are an American League baseball team and are located in Oakland, California.[137] The club was founded in 1901 as the Philadelphia A's.[138] They won an impressive five World Series through 1930.[139] This was tied for the most of any team during that time period.[140] The club moved to Kansas City in 1955.[141] Thirteen years later, the A's moved from Kansas City to Oakland.[142] The A's won three straight World Series from 1972-74 and were also dominant in the 1990s, capturing three American League Pennants and the 1989 World Series.[143] Despite being a perennial playoff contender from 2000-2013, the A's have not returned to the World Series since 1990.[144]

Because of an outdated stadium and dwindling attendance, the A's began negotiating with the city of San Jose and various interest groups associated with it in 2004 about the possibility of relocation.[145] Despite support from San Jose, MLB and Bud Selig delayed approving the A's relocation for over four years.[146] There is little dispute that MLB intended to reject the A's relocation request.[147] This is largely due to the fact that

133. *See* City of San José v. Office of Comm'r of Baseball, C-13-02787 RMW, 2013 WL 5609346 (N.D. Cal. Oct. 11, 2013) at 1-2.
134. *Id.* at 2.
135. *Id.*
136. *Id.*
137. *Id.* at *3.
138. *City of San José*, 2013 WL 5609346 at *3.
139. *World Series Winners*, HISTORIC BASEBALL, http://www.historicbaseball.com/wseries/WS_winners.html (last visited Oct. 15, 2014).
140. *Id.*
141. *City of San José*, 2013 WL 5609346 at *3.
142. *Id.*
143. *Id.*
144. *Id.* at *8.
145. *Id.*
146. *City of San José*, 2013 WL 5609346 at 14.
147. *Id.* at 3.

San Jose falls within the San Francisco Giants operating territory according to the MLB constitution.[148] Under the MLB constitution, the A's relocation to San Jose would require approval by three-fourths of MLB clubs.[149] The San Francisco Giants have openly expressed their disapproval of the A's relocating into their operating territory and given this, it is extremely unlikely the A's would be able to obtain the three-fourths majority approval necessary for relocation.[150] As a result, the city of San Jose brought suit against MLB, alleging

> that the territorial rights restrictions in the ML Constitution and MLB's failure to act on the territorial dispute restrains competition in the bay area baseball market, perpetuates the Giants' monopoly over the [Santa Clara]market, and creates anticompetitive effects that lead to consumer harm in violation of federal and state antitrust laws.[151]

On October 11, 2013, the Northern District of California granted MLB's motion to dismiss San Jose's federal and state antitrust claims.[152] The court began its analysis by reviewing the Supreme Court's baseball trilogy and the scope of the exemption as defined by the circuit courts post *Flood*.[153] The court acknowledged that many courts have found the exemption to be illogical and that given the current interstate nature of baseball today it makes little sense.[154] Despite correctly recognizing that the exemption is essentially an "aberration" confined to baseball, the court refused to limit the exemption only to the reserve clause.[155] Instead the court adopted the "business of baseball" majority approach in determining what activities the exemption protects.[156] Because franchise relocation is clearly within the business of baseball, the court had little trouble deciding that the exemption applied.[157] Further, the court explained that even if it applied the "unique characteristics and needs" test articulated in *Henderson* and *Postema*, that franchise relocation was integral to the league's structure and thus still falls within the exemption.[158] Finally, the court acknowledged

148. *Id.*
149. *Id.*
150. *Id.*
151. *Id.* at *4.
152. *City of San José*, 2013 WL 5609346 at *2.
153. *Id.* at *2.
154. *Id.* at *5..
155. *Id.* at *10.
156. *Id.* at *11.
157. *City of San José*, 2013 WL 5609346 at *11.
158. *Id.*

Piazza, but expressly refused to follow it.[159] Like so many other lower courts, the court refused to remedy such an inconsistent and irrational doctrine, and instead shifted the burden of doing so to Congress.[160]

V. ANALYSIS - WHY THE DECISION IN CITY OF SAN JOSE WAS IMPROPER AND WHY THE SUPREME COURT SHOULD ELIMINATE MLB'S ANTITRUST EXEMPTION FOR GOOD

This comment argues that the decision in *City of San Jose* was improper. The court in *City of San Jose* should have abandoned the majority approach concluding that baseball's antitrust exemption applies to the "business of baseball."[161] Instead, it should have relied on the approach articulated in *Piazza,* which limited the scope of the exemption to only the reserve clause.[162] Next, this comment asserts that the decision should be accepted for review, and the Supreme Court should eliminate baseball's antitrust exemption. To start, the exemption is outdated and illogical.[163] Despite the fact that other professional sports, for all essential purposes are the same as baseball, they have not been extended the same antitrust exemption.[164] This is a reason the exemption has been one of the most widely criticized judicially created doctrines in recent memory.[165] Second, restrictions on franchise relocation provided for by baseball's antitrust exemption create competitive imbalance for smaller market teams looking to generate additional local revenue by moving to larger or more profitable cities or markets.[166] Further, because of the shield to antitrust law provided to it by its exemption, MLB has no incentive to try superior solutions to solve competitive imbalance problems that other professional sports have been forced to take such as payroll floors, better revenue sharing, or a more effective salary structure.[167]

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159. *Id.* at *10.
160. *See id.*
161. *Id.* at *11.
162. *See generally Piazza*, 831 F. Supp. 420.
163. *See City of San José*, 2013 WL 5609346 at *5.
164. *See* discussion *infra* Part II.4.
165. *See, e.g.*, Robert G. Berger, *After the Strikes: A Reexamination of Professional Baseball's Exemption from the Antitrust Laws*, 45 U. PITT. L. REV. 209, 209 (1983); H. Ward Classen, *Three Strikes and You're Out: An Investigation of Professional Baseball's Antitrust Exemption*, 21 AKRON L. REV. 369, 369 (1988); Connie Mack & Richard M. Blau, *The Need for Fair Play: Repealing the Federal Baseball Antitrust Exemption*, 45 FLA. L. REV. 201, 204 (1993); Brittany Van Roo, *One Trilogy That Should Go Without A Sequel: Why the Baseball Antitrust Exemption Should Be Repealed*, 21 MARQ. SPORTS L. REV. 381, 381 (2010).
166. *See* discussion *infra* Part IV.C.
167. *See* discussion *infra* Part V.C.

A. The Court in City of San Jose Should Have Applied Piazza

The court in *City of San Jose* and the majority of other courts have defined the scope of baseball's antitrust exemption as applying to the "business of baseball."[168] This comment argues that the court in *City of San Jose* should have adopted the minority approach articulated in *Piazza*.[169] Although some commentators have criticized *Piazza,*[170] this comment argues that it provides the correct standard for determining the scope of baseball's antitrust exemption.

In *Piazza*, the Eastern District of Pennsylvania concluded that MLB's antitrust exemption was limited solely to baseball's reserve clause.[171] Two additional courts have since agreed with the reasoning of *Piazza*.[172] Critics first attack *Piazza* by alleging that it misinterpreted *Flood*.[173] These critics assert that Judge John Padova relied too much on four references to the reserve clause cited in *Flood*.[174] This is simply untrue. Although the court mentioned the significance of these references, its decision did not rest solely on them.[175] Rather the court correctly asserted that *Flood* "stripped from *Federal Baseball* and *Toolson* any precedential value th[e]se cases may have [had] beyond the particular facts there involved, i.e., the reserve clause."[176] In reviewing *Flood*, the *Piazza* court noted that unlike *Toolson*, the Supreme Court made it clear that the reasoning in *Federal Baseball*, that baseball was not engaged in interstate commerce, was no longer applicable because the economics of baseball had changed very significantly since 1922.[177] It is clear baseball is now engaged in interstate commerce and thus *Flood* "entirely undercut [any of] the precedential value" that the reasoning in *Federal Baseball* had relied upon.[178]

With *Federal Baseball*'s precedential value all but eviscerated, the court in *Piazza* then examined why *Toolson* had followed *Federal Baseball*.[179] Three of the four reasons articulated dealt with the desire to leave remedy to Congress and their perceived awareness of the problem since 1922 and its fear of the consequences of retroactivity.[180] However, the fourth reason

168. *See City of San José*, 2013 WL 5609346 at *32-33; *see also Finley,* 569 F.2d at 541.
169. *See Piazza*, 831 F. Supp. at 438.
170. Grow, *supra* note 36, at 593-95.
171. *Piazza*, 831 F. Supp. at 436.
172. *Buttersworth*, 644 So. 2d at 1022; *Morsani*, 663 So. 2d at 654.
173. Grow, *supra* note 36, at 593-95.
174. *Id.*
175. *See Piazza*, 831 F. Supp. at 438.
176. *Id.* at 436.
177. *Id.* at 435-36.
178. *Id.* at 436.
179. *Id.*
180. *Piazza,* 831 F. Supp. at 436.

articulated in *Toolson* for following *Federal Baseball* was "[t]he fact that baseball was left alone to develop for that period upon the understanding that the reserve system was not subject to existing antitrust laws."[181] Based on this reason it is clear that the *Flood* Court viewed both cases before it as being limited to the reserve system and not the game generally.[182] Indeed, nowhere in either *Federal Baseball* or *Toolson* does it explicitly state that the exemption applies to the business of baseball generally. Instead, both cases involved issues at least largely related to baseball's reserve clause as was also the case in *Flood*.[183]

The court in *Piazza* also correctly identified the implications of *Toolson*. The decision by the Supreme Court in *Toolson* was a one paragraph, per curium decision.[184] Thus, the Supreme Court had little room to articulate any new standard for the scope of the exemption and refrained from doing so.[185] Some commentators have claimed that "*Toolson* had fundamentally altered the basis for baseball's antitrust exemption."[186] This interpretation incorrectly reads *Toolson*. Although *Toolson* never mentioned baseball's status as interstate commerce, which was the foundation for *Federal Baseball*[187] and expressly rejected by *Flood*,[188] it still affirmed the decision in *Federal Baseball* "so far as that decision determines that Congress had no intention of including the business of baseball within the scope of the federal antitrust laws."[189] However, this sentence merely extends an additional rationale for the *Toolson* decision.[190] It neither indicates that *Toolson* did not rely on *Federal Baseball*; nor was it not a decision based on *stare decisis*.[191] In fact, less than two years after *Toolson*, the Supreme Court stated in *Shubert* that "Toolson was a narrow application of the rule of *stare decisis*."[192] Since *Toolson* is therefore a decision based on *stare decisis*, lower courts, until *Flood*, were bound by the rule articulated in *Federal Baseball*.[193] That rule stated "that the business of baseball [was] not interstate commerce and [did not fall under] the Sherman Act."[194] As a result, "baseball's reserve system is exempt from

181. *Id.*
182. *Id.*
183. *Id.*
184. *See Toolson*, 346 U.S. at 356-57.
185. *Piazza*, 831 F. Supp. at 435-36.
186. Grow, *supra* note 36, at 596.
187. *See Federal Baseball*, 259 U.S. at 208-09.
188. *Flood*, 407 U.S. at 282.
189. *Toolson*, 346 U.S. at 357.
190. *See Piazza*, 831 F. Supp. at 436.
191. *Id.*
192. *Shubert*, 348 U.S. at 230.
193. *Piazza*, 831 F. Supp. at 438.
194. *Id.*

[federal] antitrust laws."[195] *Piazza* correctly asserted that *Flood* invalidated *Federal Baseball*'s reasoning regarding interstate commerce and instead adopted the approach that baseball's antitrust exemption applied only to the reserve clause.[196]

The importance of the references made regarding the reserve system in *Flood* can also not be overstated.[197] The court in *Piazza* correctly highlighted this.[198] The Court in *Flood* even begins its opinion by stating "[f]or the third time in 50 years the Court is asked specifically to rule that professional baseball's reserve system is within the reach of the federal antitrust laws."[199] Clearly the *Flood* Court believed it was being asked to specifically make a decision on baseball's reserve clause and not other activities related to the business of baseball.[200] In its reasoning, the *Flood* court stated in its second sentence that "[w]ith its reserve system enjoying exemption from the federal antitrust laws, baseball is, in a very distinct sense, an exception and an anomaly. Federal Baseball and Toolson have become an aberration confined to baseball."[201] The Court also specifically references the reserve clause additional times.[202] However, as the court in *Piazza* correctly points out, nowhere in any of the Supreme Court Trilogy cases does it specifically rule that the business of baseball is not within the reach of antitrust law.[203] *Piazza* was therefore correct in asserting that the Supreme Court reads *Federal Baseball* and *Toolson* as reserve clause cases.[204] Unlike other courts, *Piazza* correctly articulated the scope of baseball's antitrust exemption to being solely limited to the reserve clause.[205] Because the reserve clause was eliminated in 1976, the exemption is essentially obsolete and should not be used to restrict activities such as franchise relocation.[206]

B. The Exemption is Unrealistic, Inconsistent, and Illogical

This comment further asserts that MLB's antitrust exemption should be eliminated because it is "unrealistic, inconsistent and illogical."[207] Although the exemption may have had some validity when it was originally

195. *Id.*
196. *Id.*
197. *See Flood*, 407 U.S. at 259, 282, 285.
198. *See Piazza*, 831 F. Supp. at 436, 438.
199. *Flood*, 407 U.S. at 259.
200. *Id.*
201. *Id.* at 282.
202. *Id.* at 282, 285.
203. *Piazza*, 831 F. Supp. at 439.
204. *Id.* at 435-36.
205. *Id.* at 438.
206. *See* STAUDOHAR, *supra* note 72, at 35.
207. *Radovich*, 352 U.S. at 451-52.

created in 1922 by *Federal Baseball*, it is now almost certainly outdated.[208] Numerous legal commentators have been highly critical of the judicially created exemption over the last ninety years.[209]

Despite refusing to abolish the doctrine, the Supreme Court has been continually critical of the exemption.[210] Just four years after *Toolson*, the Court acknowledged in *Radovich* that extending an antitrust exemption to baseball and not other professional sports was "unrealistic, inconsistent, or illogical."[211] Further, the Court indicated that if *Federal Baseball* were decided today rather than 1922, it would likely be decided far differently.[212] In *Flood*, the Court acknowledged the Second Circuit's claim, in *Salerno v. American League of Professional Baseball Clubs*,[213] that *Federal Baseball* was not one of Justice Holmes' "happiest days" and that "the rationale of *Toolson* is extremely dubious."[214] The Second Circuit further indicated that because of the flawed reasoning of *Federal Baseball* and *Toolson*, it would not be the least bit surprised if the Supreme Court decided to overrule them.[215] The Court in *Flood* also concluded that the exemption was without a doubt "an aberration confined to baseball."[216] Despite acknowledging there was no practical reason baseball should be an aberration, the Court refused to eliminate the exemption because it was an "established aberration."[217]

The principle reason the Supreme Court has articulated for continuing to recognize baseball's antitrust exemption is that it is entitled to *stare decisis* and that Congress has failed to abolish the doctrine through legislation.[218] Additionally, because the CFA only repealed baseball's antitrust exemption in a narrow limited way, one might assume that Congress expressly agrees with *Federal Baseball* that MLB should be afforded an exemption for the "business of baseball."[219] This reasoning is flawed for numerous reasons. To begin, MLB's antitrust exemption was judicially created.[220] It was not implemented through prior legislation that Congress has decided not to repeal.[221] Instead, MLB's antitrust exemption

208. *See* Classen, *supra* note 165, at 387.
209. *Id.*
210. *See Flood*, 407 U.S. at 283-84; *Radovich*, 353 U.S. at 452; *Shubert*, 348 U.S. at 229-30.
211. *Radovich*, 352 U.S. at 451-52.
212. *Id.* at 452.
213. 429 F.2d 1003 (1970).
214. *Flood*, 407 U.S. at 268 n.9 (quoting *Salerno*, 429 F.2d at 1005).
215. *Salerno*, 429 F.2d at 1005.
216. *Flood*, 407 U.S. at 282.
217. *Id.*
218. *See* Mack, *supra* note 165, at 205-06.
219. *See* Grow, *supra* note 36, at 575-76.
220. Mack, *supra* note 165, at 205.
221. *Id.*

is the consequence of the flawed reasoning of *Federal Baseball* and *Toolson*, reasoning which the Supreme Court itself acknowledges is "unrealistic, inconsistent, [and] illogical."[222] Simply because MLB has been able to persuade legislators from abolishing the special status it receives each time Congress has considered eliminating the exemption, does not make the doctrine any less flawed.[223] The exemption allows MLB to regulate franchise relocation in a way that would be a violation of federal antitrust law in almost any other context.[224]

The Supreme Court has recognized that simply because Congress fails to act on an enormous decision, the Court is not absolved from reexamining its own precedent.[225] One of the reasons for this is because Congress may be unaware of the problem.[226] In this context, the CFA illustrates that Congress is clearly aware of the issues regarding baseball's antitrust exemption.[227] However, there are multiple other reasons aside from doctrinal acceptance that better explain why Congress has not eliminated the exemption.[228] Some of these reasons may include "disapproval of the decision by a congressional majority that might have been roadblocked (sic) by a minority; devotion of congressional attention to higher priorities; or strategic maneuvering by a congressional majority to exchange its support for curative legislation in return for other political promises."[229] Therefore, just because Congress has not abolished the exemption does not provide conclusive proof of congressional doctrinal acceptance.[230]

This comment agrees with commentators who have stated that the reason MLB's antitrust exemption still exists is because "neither Congress nor the Supreme Court wants to make the first move."[231] However, the Supreme Court created this problem and has openly recognized its mistake.[232] Therefore, it should be the one that gives MLB's antitrust exemption the quick death it deserves.[233] Further, the Court can eliminate the doctrine simply by eventually granting review of *City of San José* and delivering a concise opinion overruling its prior baseball trilogy and

222. *Radovich*, 352 U.S. at 451-52.
223. *See* Mack, *supra* note 165, at 206.
224. Mack, *supra* note 165, at 206.
225. Helvering v. Hallock, 309 U.S. 106, 119 (1940).
226. Morgen A. Sullivan, *"A Derelict in the Stream of the Law": Overruling Baseball's Antitrust Exemption*, 48 DUKE L.J. 1265, 1276-77 (1999).
227. 15 U.S.C. § 26(b); *see also* Sullivan, *supra* note 226, at 1277.
228. Sullivan, *supra* note 226, at 1277-79.
229. *Id.* at 1278.
230. *Id.* at 1279.
231. Van Roo, *supra* note 165, at 393.
232. *See Radovich*, 352 U.S. at 451-52.
233. *See* Sullivan, *supra* note 226, at 1304.

abolishing the exemption once and for all.[234] This is a much quicker and practical alternative to eliminating a flawed legal doctrine than asking a bogged down and partisan Congress to do so.[235]

C. The Exemption Creates Competitive Imbalance

Although some commentators have argued that the repeal of baseball's antitrust exemption would not result in more competitive balance,[236] this comment disagrees. Although revenue sharing has certainly helped many of baseball's smaller market teams compete,[237] the restrictions on franchise relocation aided by baseball's antitrust exemption continue to place some teams at a competitive disadvantage.[238] The A's and their failed attempt to successfully relocate to San José is a perfect example of this.[239] "Oakland is part of a three-city media market," which includes San Francisco and San José.[240] However, Oakland is by far the poorest.[241] Because MLB's territorial rights are protected by its antitrust exemption, the A's are unable to move to a city that is technically within their own media market.[242]

From 2004-2009, the A's saw their attendance steadily decrease to become one of the lowest in all of major league baseball.[243] Despite a small rise in attendance from 2010-2012, the A's still ranked twenty-ninth, thirtieth, and twenty-seventh in attendance for those years, respectively.[244] In the 2013 season, the A's were twenty-third in attendance despite a record of 96-66, tied for third best in all of MLB.[245] According to an A's spokesperson "[the A's] have exhausted their options in Oakland after years of trying to increase attendance."[246] Furthermore, the A's opening day

234. *See* John Becker, Comment, *Stepping Up to the Plate: Can the City of San José Overcome Baseball's Antitrust Exemption?*, 21 JEFFERY S. MOORAD SPORTS L.J. 431, 433-34 (2014).

235. *See* Sullivan, *supra* note 226, at 1304.

236. *See, e.g.*, Bortek, *supra* note 38, at 1108.

237. *See* Justin R. Hunt, Note, *To Share or Not to Share: Revenue Sharing Structures in Professional Sports*, 13 TEX. REV. ENT. & SPORTS L. 139, 165, 169 (2012).

238. *See* Matt Trueblood, *Power Ranking All 30 MLB Teams by Market Size*, BLEACHER REPORT (Jan. 13, 2012), http://bleacherreport.com/articles/961412-mlb-power-rankings-all-30-mlb-teams-by-market-size/page/4.

239. *See City of San José*, at **2, 11.

240. Trueblood, *supra* note 238.

241. *Id.*

242. MAJOR LEAGUE BASEBALL CONST. art. V, § 2(b)(3) (1921).

243. Rob Neyer, *A's attendance Continues Spiral Down*, ESPN.COM (May 5, 2010, 6:49 PM), http://espn.go.com/blog/ sweetspot/post/_/id/3480/as-attendance-continues-spiral-down.

244. *MLB Attendance Report – 2010-2012*, ESPN.COM, http://espn.go.com/mlb/attendance/_/year/2012 (last visited Oct. 15, 2014).

245. *MLB Attendance Report – 2013*, ESPN.COM, http://espn.go.com/mlb/attendance/_/year/2013 (last visited Oct. 15, 2014); MLB Standings – 2013, ESPN.COM, http://espn.go.com/mlb/standings/_/year/2013 (last visited Oct. 15, 2014).

246. Compl. ¶ 53, *City of San José*, 2013 WL 5609346.

payroll mirrors their low attendance.[247] The A's have ranked as one of the lowest spending teams in the league over the last four seasons.[248] Last season the A's total payroll was $60,664,500, which ranked twenty-seventh out of the thirty major league teams.[249] This is far from what some of the richest MLB teams spent, such as the New York Yankees ($228,835,490) and the 2013 World Series Champions, the Boston Red Sox ($150,655,500).[250] Even more concerning is the fact that the A's bay-area rival, the San Francisco Giants, ranked sixth in the league with a payroll of $140,264,334.[251] This was more than double the A's payroll for 2013.[252]

Not surprisingly, when a team has both low attendance and payroll, they often struggle to have success on the field. However, from 2000 to 2013, the A's were one of baseball's few anomalies to this trend. In fact, over this time period the A's made the playoffs seven times.[253] In addition, they had nine winning seasons and the sixth best regular season record in the league over that time.[254] The A's actually had more playoff appearances and regular season wins over this fourteen-season period than their higher-spending bay area rival the Giants.[255] How have the A's managed to be so successful despite maintaining such a smaller payroll than other successful franchises such as the New York Yankees, Boston Red Sox, Philadelphia Phillies, or Los Angeles Dodgers? Much of this credit is due to their superstar general manager Billy Beane.[256] Since taking over the A's general manager position in 1997,[257] Beane has been one of baseball's most successful general managers while maintaining a minuscule payroll.[258] He has been called "an innovative visionary in a field clogged with myopic

247. *See Cot's Baseball Contracts*, BASEBALL PROSPECTUS, https://www.baseballprospectus.com/compensation/cots/ al-west/oakland-athletics/ (last visited Oct 4. 2013).

248. *See Major League Baseball Team Payrolls 1998-2014*, STEVETHEUMP.COM, http://www.stevetheump.com/Payrolls.htm (last visited Sept. 15, 2014).

249. *2013 Team Payrolls*, CBSSPORTS.COM, http://www.cbssports.com/mlb/salaries (last visited Sept. 15, 2014).

250. *Id.*

251. *Id.*

252. *See id.*

253. *Oakland Athletics Team History & Encyclopedia*, BASEBALL-REFERENCE.COM, http://www.baseball-reference.com/teams/OAK/ (last visited Oct. 10 2013).

254. *Id.*

255. *Id.*; *San Francisco Giants: Team History & Encyclopedia*, BASEBALL-REFERENCE.COM, http://www.baseball-reference.com/teams/SFG/ (last visited Oct. 10, 2013).

256. Richard H. Thaler & Cass R. Sunstein, *Market Efficiency and Rationality: The Peculiar Case of Baseball*, 102 MICH. L. REV. 1390, 1390-91 (2004).

257. *Billy Beane Biography*, BIOGRAPHY.COM, http://www.biography.com/people/billy-beane-20839943#synopsis (last visited Oct. 15, 2014).

258. Thaler, *supra* note 256, at 1390-92.

traditionalists."[259] Unlike many before him, Beane stressed the importance of a new wave of advanced baseball statistics invented by self-educated Bill James.[260] He placed greater emphasis on statistics such as a player's on-base percentage and defensive contribution.[261] Further, he spoke out openly against many longstanding baseball practices, such as bunting.[262] He openly recruited players who had been cast off from other teams and routinely shied away from overpaying players with large contracts.[263] Beane has been so successful that in 2003, a book was published about his success by Michael Lewis.[264] In 2011, the book was turned into a film starring Brad Pitt as Beane that was nominated for six academy awards, including Best Picture.[265]

With this background in mind, one might jump to the conclusion that the A's "moneyball" approach is direct evidence that high attendance and payroll are not indicative of producing a championship caliber baseball team. Almost all commentators recognize that having a high team salary does not necessarily translate into on the field success; after all, some of the highest paying teams miss the playoffs each season.[266] However, there does appear to be a correlation between having a higher payroll and winning.[267] Although small market teams such as the A's, Tampa Bay Rays, and Minnesota Twins have been successful recently, the vast majority of teams in the lower one-third of the league in opening day payrolls have not.[268]

Most concerning for the A's is the trend that teams with lower payrolls struggle once they get into the playoffs.[269] As mentioned, the A's have been to playoffs seven times in the last fourteen seasons.[270] However, their regular season success has not translated in the playoffs and they have been

259. Adam Sternbergh, *Billy Beane of 'Moneyball' Has Given Up on His Own Hollywood Ending*, N.Y. TIMES (Sept. 21, 2011), http://www.nytimes.com/2011/09/25/magazine/for-billy-beane-winning-isnt-everything.html?pagewanted=all&_r=0.

260. *Id.*.

261. Thaler, *supra* note 256, at 1392-93.

262. *Id.* at 1391.

263. *Id.* at 1394.

264. Sternbergh, *supra* note 259; *See generally* MICHAEL LEWIS, MONEYBALL: THE ART OF WINNING AN UNFAIR GAME (2003).

265. Jeremy Potter, Note, *Legal Education and Moneyball: The Art of Winning the Assessment Game*, 11 CONN. PUB. INT. L.J. 327, 331 n.24 (2012); Patrick Dorsey, *'Moneyball' has 6 Noms, Including Picture, Actor*, ESPN.COM (Jan. 24, 2011), http://espn.go.com/espn/page2/index?id=7496683.

266. Dan Lependorf, *How Are Wins, Attendance and Payroll All Related?*, HARDBALL TIMES (Feb. 02, 2012), http://www.hardballtimes.com/main/article/how-are-wins-attendance-and-payroll-all-related/.

267. *See* Kevin Wells, *Does Money Really Buy World Series Titles?*, WASH. TIMES (Feb. 1, 2013), http://communities.washingtontimes.com/neighborhood/wells-baseball/2013/feb/1/does-money-really-buy-world-series-titles/.

268. *Id.*

269. *Id.*

270. *Oakland Athletics Team History & Encyclopedia*, *supra* note 253.

eliminated six times in first round, the American League Division Series ("ALDS").[271] In 2006, the lone time they made it past the first round, the Detroit Tigers quickly swept them in four games in the American League Championship Series ("ALCS").[272] Another successful small market team, the Minnesota Twins, have also struggled in the playoffs after sustaining continued success in the regular season.[273] Similar to the A's, the Twins have been to the playoffs six times since 2000.[274] Five of those times they have been eliminated in the ALDS (with a combined record of 2-15 in those series).[275] They advanced to the ALCS just once and were eliminated by the Anaheim Angels in five games.[276] The only other small market team to make the playoffs at least four times since 2000 is the Tampa Bay Rays.[277] In 2008, the underdog Rays reached the World Series in the franchises' first playoff appearance before falling 4-1 to the Philadelphia Phillies.[278] In their last three postseason appearances, the Rays have been eliminated in the ALDS.[279] Combined, these three small market teams played in twenty-one playoff series between 2000 and 2013, winning four and losing seventeen.[280] In this same time period, the New York Yankees, the team with typically the highest payroll,[281] has won thirteen postseason series and two World Series.[282] Despite having less playoff appearances and regular season wins than the A's during this time period, the San Francisco Giants have won two World Series Titles.[283] There is an even stronger correlation between payroll and winning World Series title.[284] "Seventeen of the last

271. *Id.*

272. *2006 ALCS: Detroit Tigers Over Oakland Athletics,* BASEBALL-REFERENCE.COM, http://www.baseball-reference.com/postseason/2006_ALCS.shtml (last visited Sept. 15, 2014).

273. *See Minnesota Twins Team History & Encyclopedia*, BASEBALL-REFERENCE.COM, http://www.baseball-reference.com/teams/MIN/ (last visited Oct. 15, 2014).

274. *Id.*

275. *Id.*

276. Sports Reference LLC, *2002 ALCS: Anaheim Angels Over Minnesota Twins*, BASEBALL-REFERENCE.COM, http://www.baseball-reference.com/postseason/2002_ALCS.shtml (last visited Sept. 15, 2014).

277. *Tampa Bay Rays Team History & Encyclopedia*, BASEBALL-REFERENCE.COM, http://www.baseball-reference.com/teams/TBD/ (last visited Sept. 15, 2014).

278. *2008 World Series: Philadelphia Phillies over Tampa Bay Rays,* BASEBALL-REFERENCE.COM, http://www.baseball-reference.com/postseason/2002_ALCS.shtml (last visited Sept. 15, 2014).

279. *Tampa Bay Rays Team History & Encyclopedia*, *supra* note 277.

280. *See Oakland Athletics Team History & Encyclopedia*, *supra* note 253; *Minnesota Twins Team History & Encyclopedia*, *supra* note 273; *Tampa Bay Rays Team History & Encyclopedia*, *supra* note 277.

281. Sternbergh, *supra* note 259.

282. *New York Yankees Team History & Encyclopedia*, BASEBALL-REFERENCE.COM, http://www.baseball-reference.com/teams/NYY/ (last visited Sept. 15, 2013).

283. *San Francisco Giants Team History*, *supra* note 255; *Oakland Athletics Team History & Encyclopedia*, *supra* note 253.

284. Wells, *supra* note 267.

eighteen World Series winners have had a payroll in the top fifteen" of the league.[285] The only team outside the top fifteen in payroll to win the World Series in the last eighteen years was the 1997 Florida Marlins, who ranked 25th out of 28 teams.[286]

This research and data suggests multiple things relevant to a team's payroll, attendance, and the impact MLB's antitrust exemption has. First, although some small market teams such as the A's have had recent success, the majority have struggled.[287] Next, even the small market teams who have had regular season success have struggled in the playoffs and only the 1997 Florida Marlins have managed to win a World Series.[288]

One reason small market teams tend to have lower payrolls is poor attendance. Despite being in the "same" three-city media market, the Giants 2013 average home game attendance of 41,584 nearly doubled that of the A's 22,337.[289] According to a 2010 census, the Giants' territory includes 4.2 million people; the A's territory 2.6 million.[290] The lower a team's attendance, the lower their gate receipts tend to be. Gate receipts refer to the amount of money brought in through ticket sales and can also mean tickets sold through the venue only (clubs seats).[291] Even with the MLB implementing revenue sharing to benefit small market teams,[292] these gate receipts still make up a large portion of a team's ability to increase its payroll.[293] In 2013 the Giants had gate receipts of $129 million (the Giants had a record of 76-82 and missed the playoffs).[294] In comparison the A's gate receipts were just $39 million.[295] Therefore, the Giants grossed $90 million more than the A's by playing in San Francisco instead of Oakland. The A's proposed move to San Jose would undisputedly help to alleviate this discrepancy between gate receipts for two teams in the same three-city media market.[296] However, MLB's antitrust exemption and constitution

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285. *Id.*

286. *Id.*

287. *See id.*

288. *Id.*; *see also Oakland Athletics Team History & Encyclopedia, supra* note 253; *Minnesota Twins Team History & Encyclopedia*, *supra* note 273; *Tampa Bay Rays Team History & Encyclopedia, supra note 277.*

289. *MLB Attendance Report- 2013, supra* note 245.

290. *City of San José*, 2013 WL 5609346, at *3.

291. *Gate Receipts*, SPORTINGCHARTS.COM, http://www.sportingcharts.com/dictionary/mlb/gate-receipts.aspx (last visited Sept. 15, 2013).

292. Hunt, *supra* note 237, at 160-61.

293. *See* Lependorf, *supra* note 266.

294. *Forbes MLB Team Valuations List: San Francisco Giants*, FORBES.COM, http://www.forbes.com/teams/san-francisco-giants/ (last visited Sept. 20, 2014).

295. *Forbes MLB Team Valuations List: Oakland Athletics*, FORBES.COM, http://www.forbes.com/teams/oakland-athletics/ (last visited Sept. 20, 2014).

296. *See* Trueblood, *supra* note 238.

currently blocks any legitimate chance of this.[297] Moving to San Jose would not only allow the A's to play in a wealthier city, but would also provide them with a new stadium.[298] Currently the A's play in the Coliseum, which is widely considered one of the worst MLB stadiums in the league.[299] They are the only MLB team that is forced to share their stadium with an NFL team.[300] New and appealing stadiums have been found to have a direct impact on improving attendance.[301]

By employing its outdated antitrust exemption, MLB has blatantly restricted the A's ability to relocate and increase its attendance and gate receipts. Last season, MLB essentially facilitated one team in a three city media market, the Giants, to make nearly four times more in gate receipts than their bay side counterparts, the A's.[302] This is even more alarming considering that the A's were one of the best teams in baseball last season while the Giants missed the playoffs.[303] This comment has highlighted the recent struggle that successful small market teams have encountered in the playoffs. How might have the A's fortune been different in the playoffs the last 14 years if they had been able to add another $10 or $20 million a year in payroll through increases in gate receipts? Of the nearly $168 million in gate receipts for 2013 between the two teams, the Giants were responsible for almost 80%.[304] If a successful move to San Jose and a new stadium helped the A's reduce that number to even 66% in favor of the Giants, the A's would recoup slightly over $57 million in gate receipts.[305] That would be nearly $20 million in additional revenue than the A's received in gate receipts for 2013.[306] Although this would reduce the amount they were awarded in revenue sharing,[307] it would still result in a significant increase in revenue that they could use to acquire an additional player or two to make a playoff push. However, because MLB's antitrust exemption allows MLB to restrict franchise relocation, small market teams that suffer from attendance problems, such as the A's or Rays, are unable to relocate to more profitable cities with new superior stadiums.[308] As a result, these teams are

297. MAJOR LEAGUE BASEBALL CONST. art. V, § 2(b)(3) (1921).

298. *See* Trueblood, *supra* note 238.

299. Orly Rios Jr., *The 5 Worst Stadiums in All of Major League Baseball*, BLEACHERREPORT.COM, http://bleacherreport.com/articles/589884-the-five-worst-stadiums-in-all-of-major-league-baseball/page/2 (last visited Sept. 15, 2014).

300. Trueblood, *supra* note 240.

301. Dennis Coates & Brad R. Humphreys, *Novelty Effects of New Facilities on Attendance at Professional Sporting Events*. 23 CONTEMP. ECON. POL'Y. 436, 452 (2005).

302. *Oakland Athletics*, *supra* note 295; *San Francisco Giants*, *supra* note 294.

303. *MLB Standings- 2013*, *supra* note 245.

304. *Oakland Athletics*, *supra* note 295; *San Francisco Giants*, *supra* note 294.

305. *Oakland Athletics*, *supra* note 295; *San Francisco Giants*, *supra* note 294.

306. *Oakland Athletics, supra* note 295.

307. *See generally,* Hunt, *supra* note 237.

308. MAJOR LEAGUE BASEBALL CONST. art. V, § 2(b)(3) (1921).

very dependent on revenue sharing and are restricted in their ability to relocate to increase their gate receipts, which could provide them with the additional revenue necessary to add key pieces that they might need to help win a World Series.

Other professional sports leagues have been forced to implement alternative solutions to maintain a competitive balance, because the Supreme Court has expressly refused to extend the antitrust exemption.[309] Unlike MLB, the NFL, National Hockey League, and NBA have a salary floor in addition to a salary cap.[310] A salary or payroll floor requires all franchises to spend a certain percentage of the salary cap per year.[311] Rather than using this model, MLB has what is known as a luxury tax.[312] The luxury tax or "competitive balance tax" essentially taxes teams that "exceed a certain salary threshold."[313] However, this is not a "hard" salary cap, or "a definitive maximum each franchise may spend on player payroll in a single year."[314] In 2013 MLB's luxury tax was $178 million.[315] The A's total payroll for the 2013 season was $69,164,500 or about 39% of the total luxury tax.[316]

Under the new NFL CBA, the salary floor requires every NFL team to spend no less than 89% of the salary cap.[317] The NFL also has a hard salary cap so that even the highest spending teams do not excessively outspend the teams that decide to simply meet the salary floor requirement.[318] This comment argues that MLB could obtain more competitive balance by abandoning its current salary structure and adopting one more closely resembling the NFL. Adopting an approach that mirrors the NBA, a 90% salary floor with a set luxury tax, would also be preferable to the current MLB structure.[319] The salary floor concept is just one of the reasons the

309. *See* discussion *supra* Part I.D.

310. Vittorio Vella, *Swing and a Foul Tip: What Major League Baseball Needs to Do to Keep Its Small Market Franchises Alive at the Arbitration Plate*, 16 SETON HALL J. SPORTS & ENT. L. 317, 331-39 (2006); The Canadian Press, *With Salary Cap (and Floor) Rising, the NHL's Economic Landscape Changes Again*, NHL.COM (Jun. 26, 2011), http://www.nhl.com/ice/news.htm?id=567398.

311. Vella, *supra* note 310, at 334-35.

312. Kristi Dosh, *Can Money Still Buy the Postseason in Major League Baseball? A 10-Year Retrospective on Revenue Sharing and the Luxury Tax*, 2007 DEN. U. SPORTS & ENT. L.J. 1, 19 (2007).

313. *Id.* at 19.

314. Vella, *supra* note 310, at 333-37.

315. *Luxury Tax*, FANGRAPHS, http://www.fangraphs.com/library/business/luxury-tax/ (last visited Sep. 25, 2014).

316. *Top Team Payrolls*, *supra* note 249, at 1.

317. Nat'l Football League, *NFL Collective Bargaining Agreement Between the NFL Management Council and the NFL Players Association Art. 12 Sec. 9* (2011), *available at* https://www.nflplayers.com/Articles/CBA-News/2011-Collective-Bargaining-Agreement/ (last visited Oct. 21, 2013).

318. *See* Vella, *supra* note 310, at 331-34.

319. Larry Coon, *Breaking Down Changes in New CBA*, ESPN.COM (Nov. 28, 2011), http://espn.go.com/nba/story/_/page/CBA-111128/how-new-nba-deal-compares-last-one.

other major professional sports leagues have a more competitive balance between large and small market teams than MLB.[320] If MLB franchises had unfettered access to franchise relocation, as they do in the other major professional sports leagues, MLB would likely be forced to adopt a structure similar to that of the NBA and NFL to stabilize the league.[321] As a result of adopting this new salary structure, one which likely features a salary floor, the league would see more competitive balance as payroll discrepancy between teams could drastically decrease.[322]

Because of the protection of its antitrust exemption, MLB has no reason to change its current salary structure and implement one that would help facilitate a much-needed change. MLB does not need to fear unfretted franchise relocation because through its antitrust exemption and Constitution it can rather easily prevent any relocation it finds unfavorable, as it did in *City of San Jose*.[323] This leaves teams that are looking to move to a new more profitable market or city with few options.[324] Rather than increasing their payroll to build a true championship team, these teams instead keep payrolls low and look to cash in on whatever revenue sharing they are entitled to which results in a competitive imbalance. [325] Other major professional sports leagues do not suffer from this dilemma because their franchises are not subject to these strict relocation restrictions provided for by baseball's antitrust exemption.[326] Critics of eliminating baseball's antitrust exemption claim that doing so will create unregulated and vast franchise movement.[327] Others assert that other professional leagues have less franchise movement than MLB so eliminating the exemption would serve little practical purpose.[328] These criticisms ignore that the number of teams that relocate in a given league can be for a number of different reasons. Asserting that MLB's antitrust exemption does not restrict franchise relocation simply because another sports league that does not enjoy the benefit of it has had fewer teams relocate is an overly simplistic interpretation of a complicated process.[329]

Further, the implementation of salary floors by the other three major sport leagues now makes these theories outdated and shortsighted.[330] If

320. Vella, *supra* note 310, at 331-39.
321. *See id.* at 331-32.
322. *Id.*
323. *City of San José*, 2013 WL 5609346, at *3.
324. *See supra* Part V.
325. *See* Vella, *supra* note 310, at 338-39.
326. *See* discussion *supra* Part I.D.
327. *See* Grow, *supra* note 36, at 233.
328. Mitchell Nathanson, *The Irrelevance of Baseball's Antitrust Exemption: A Historical Review*, 58 RUTGERS L. REV. 1, 24 (2005).
329. *Id.*
330. *See supra* note 310 and accompanying text.

MLB employed a similar salary floor, it could have its antitrust exemption lifted and have few concerns about the league's stability, because each new city or market would likely be required to pay somewhere around 90% of the total salary cap each season.[331] This would mean franchises would only move when they found buyers and cities that were willing to meet the requirements of the salary floor, a rather expensive commitment. Thus, although franchise relocation would still be rare, it could provide a solution for a team such as the A's and its quest to relocate to San Jose.[332]

Without question, a major benefit of MLB's antitrust exemption is that it stabilizes the league in regards to franchise relocation.[333] However, as a consequence these restrictions on franchise mobility can create competitive imbalance, especially for small market teams.[334] Implementing a salary floor rather than continuing to rely on its exemption is a superior alternative for MLB in regards to franchise relocation because it provides both stability and competitive balance.[335] Despite not having the luxury of an antitrust exemption, other major sports leagues facilitate franchise stability and competitive balance much more effectively than MLB.[336] One of the key reasons is that they have a salary floor and some combination of a hard cap or luxury tax.[337] In order to give all MLB teams a truly fair shot at winning World Series championships, and not simply the Yankees or other high payroll teams, baseball's archaic and flawed antitrust exemption must be eliminated in favor of adopting a structure similar to that of other major professional sport leagues.[338]

VI. CONCLUSION

Since Justice Holmes' opinion in *Federal Baseball*, MLB franchises have changed drastically in the way they generate revenue and how that affects their ability to produce a championship caliber baseball team.[339] Despite this, baseball's antitrust exemption still places many of the same restrictions on a franchise's ability to relocate as it did over ninety years ago.[340] There are both legal and practical reasons baseball's deeply flawed

331. *See supra* note 319 and accompanying text.
332. *City of San José*, 2013 WL 5609346, at 3.
333. Grow, *supra* note 36, at 233-34.
334. *See Vella*, *supra* note 310, at 338-39.
335. *See id.* at 331-339.
336. *Id.*
337. *Id.*
338. *Id.*
339. *See supra* Part II.A-C.
340. *See supra* Part II, IV.

antitrust exemption should be eliminated.[341] This comment has highlighted the three major reasons that removing the exemption is necessary.

First, as articulated in *Piazza*, the Supreme Court's decision in *Flood* should be read to interpret the exemption as pertaining solely to the reserve clause.[342] With the reserve clause now eliminated, MLB's antitrust exemption should be viewed as obsolete and not be available to place restrictions on activities such as franchise relocation.[343] Second, the exemption is not only outdated, but judicially recognized as unrealistic, inconsistent and illogical.[344] Because the exemption is a problem that was judicially created, the courts should remedy the issue rather than passing it off on Congress.[345] The Supreme Court has the power to address and fix this flawed doctrine by granting review of *City of San Jose*.[346] Simply because Congress has failed to address such an enormous decision does not prevent the Court from reexamining the Supreme Court baseball trilogy and articulating a solution to this problem.[347]

Finally, the exemption should be eliminated because it promotes competitive imbalance.[348] By placing restrictions on franchise relocation through its antitrust exemption, MLB puts small market teams in poorer cities at a competitive disadvantage.[349] There is an undisputed correlation between spending money and winning; only one team in the bottom half of total payroll has won a World Series in the last nineteen years.[350] Without the ability to relocate, many small market franchises, such as the A's, may be left with few options.[351] Instead, MLB should allow franchise relocation in a way that mirrors that of the other professional sports.[352] It can then adopt ways to stabilize the league and promote competitive balance through superior solutions such as a salary cap floor, a hard salary cap, or better revenue sharing.[353]

This comment acknowledges that the complete elimination of baseball's antitrust exemption would affect activities outside the scope of franchise relocation.[354] However, other professional sports leagues face the same

341. *See supra* Part V.
342. *See supra* Part V.A.
343. *See supra* Part V.A.
344. *See supra* Part V.B.
345. *See supra* Part V.B.
346. *See supra* Part V.B.
347. *See supra* Part V.B.
348. *See supra* Part V.C.
349. *See supra* Part V.C.
350. *See supra* Part V.C.
351. *See supra* Part V.C.
352. *See supra* Part V.C.
353. *See Vella, supra* note 310, at 333.
354. *See supra* Part V.C.

challenges and are still able to flourish.[355] The Supreme Court can no longer allow this outdated exemption to be an aberration confined to baseball, and must either recognize that it applies only to the reserve clause or abolish it entirely in order to provide the competitive balance that our nation's pastime now so desperately lacks.

355. *See supra* Part V.C.