The current state of Major League Baseball's antitrust exemption

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Introduction

In 1922, a unanimous Supreme Court held that professional baseball was not within the scope of the antitrust laws because the transportation of players between states was incidental to exhibition baseball games and did not affect interstate trade or commerce.

Justice Oliver Wendell Holmes thus created the infamous "antitrust exemption," which is the subject of three recent antitrust cases against Major League Baseball ("MLB") and has sparked interest from the Department of Justice ("DOJ"). The exemption is often misunderstood and has faced many challenges in its 100-year history.

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The exemption has never applied to other sports leagues, and it is not a blanket exemption from all antitrust scrutiny. In the aftermath of the 1994 baseball strike, Congress passed the Curt Flood Act of 1998 giving players the same right to bring suits against MLB for alleged antitrust violations as they have against other leagues like the NFL, NBA and NHL. As such, the exemption only applies to non-labor related antitrust claims against MLB. Yet despite recent challenges, the exemption lives on.

Creation of baseball's exemption

The Supreme Court created the baseball exemption in its 1922 decision in *Federal Baseball Club of Baltimore v. National League of Professional Base Ball Clubs*. The owner of the defunct Baltimore Terrapins of the Federal League sued the National League, American League, their presidents and the chairman of the National Commission, for conspiring to monopolize baseball and push the Federal League out of business, in violation of Section 1 of the Sherman Act.

The National and American Leagues had competed for a few years but signed the National Agreement in 1903, wherein the two leagues agreed to recognize each other as equals, honor each other's contracts and observe each other's reserve clauses. The National Agreement created the essential structure of professional baseball that lasted for decades and led to the modern-day MLB and baseball's role as America's pastime.

After a victory for the Terrapins at the trial court level, the Court of Appeals reversed and held that baseball was not subject to the roughly 30-year-old Sherman Act because baseball did not constitute interstate commerce. The Supreme Court agreed with the appeals court decision that the business of baseball is "giving exhibits of base ball, which are purely state affairs."

Justice Holmes' unanimous opinion distinguished players travelling across states from the central component of the business of baseball. Despite making money from games, the Court held that baseball was not in interstate commerce because games are played within the individual states and thus, not under the jurisdiction of the Sherman Act. This relatively short decision created baseball's exemption, leading to numerous challenges and speculation about what it does and does not mean.

Later Supreme Court rulings on baseball's exemption

The Supreme Court has issued two opinions on baseball's antitrust exemption since *Federal Baseball*. In 1953, the Supreme Court upheld *Federal Baseball* in *Toolson v. New York Yankees, Inc.* George Earl Toolson, a pitcher for the Newark Bears, the Class AAA affiliate of the New York Yankees, sought to break up the reserve clause and baseball's system that bound him to the Yankees organization.

The Court once again held that baseball was not in interstate commerce and therefore not subject to federal antitrust laws. In its per curiam ruling, the Court reasoned that baseball had 30 years to develop with the understanding that it was not subject to antitrust regulation and the Court worried about the retrospective repercussions of subjecting baseball to those laws.

The opinion also noted that Congress hadn't shown any intention of subjecting baseball to antitrust laws despite the 30 years since *Federal Baseball*. Deference to precedent and congressional intent likely saved *Federal Baseball* given the Court's shift during the intervening period toward a broad view of interstate commerce. The dissent in the 7-2 decision speculated that the majority is blinded by baseball's place as America's pastime.

The Supreme Court's second opinion post-*Federal Baseball* also involved the reserve clause. In 1972, in *Flood v. Kuhn*, the Supreme Court again upheld the exemption. When Curt Flood was traded against his wishes from the St. Louis Cardinals to the Philadelphia Phillies, he filed suit challenging the reserve clause arguing it violated the Sherman Act and the 13th Amendment.

The Court held that baseball's antitrust exemption was rooted in its unique status as a sport intertwined with U.S. culture and history, and that it was up to Congress to decide whether to eliminate the exemption. The Court also noted that Congress had several opportunities to subject baseball to antitrust laws but had failed to do so. Justice Harry Blackmun stated that *Federal Baseball* and *Toolson* are aberrations confined to baseball and suggested that this issue could be solved through collective bargaining, which later led to the elimination of the reserve clause and created free agency in baseball as we know it today.

Congress partially repealed MLB's antitrust immunity with the Curt Flood Act of 1998, but only to allow current MLB players to file antitrust suits against MLB. The Flood Act came about in the aftermath of the 1994 strike that saw the cancellation of the World Series. Both MLB and MLBPA (MLB Players Association) agreed to seek a limited repeal of the exemption to give baseball players the same rights as athletes in other U.S. professional sports leagues. However, the Flood Act states that it "does not change the application of the antitrust laws in any other context," and baseball's immunity otherwise remains largely intact today.

Today's challenges to baseball's exemption

MLB is currently facing three antitrust suits that challenge baseball's exemption. The most explicit challenge, and the case that has garnered the most attention, was filed by four unaffiliated minor league teams.

In *Nostalgic Partners v. Office of the Commissioner of Baseball*, plaintiffs, with support from the DOJ, alleged that MLB unlawfully reduced competition when it eliminated 40 minor league teams' affiliation with MLB during its 2020 reorganization of the minor leagues. As part of this reorganization, MLB reduced the number of affiliated minor league teams from 160 to 120. Four of these unaffiliated clubs sued MLB in late 2021, alleging an anticompetitive horizontal agreement to reduce output and boycott the unaffiliated teams.

Plaintiffs in *Nostalgic Partners* recognized that courts remain bound by the exemption precedent, but argued in opposition to MLB's motion to dismiss, that "[j]ust last Term, a unanimous Supreme Court [in *NCAA v. Alston*] cast the entire exemption into doubt, stating that the Court had 'once dallied with something that looks a bit like an antitrust exemption for professional baseball.'"

The DOJ also filed a statement of interest arguing that the exemption is illogical because the *Flood* court found that baseball *was* in interstate commerce and that lower courts shouldn't expand the exemption and apply it only to conduct "central to the business of baseball."

The district court dismissed the case because of the exemption, stating that "[p]laintiffs believe that the Supreme Court is poised to knock out the exemption, like a boxer waiting to launch a left hook after her opponent tosses out a torpid jab. It's possible. But until the Supreme Court or Congress takes action, the exemption survives; it shields MLB from Plaintiffs' lawsuit."

The 2nd U.S. Circuit Court of Appeals affirmed the dismissal — "we must continue to apply Supreme Court precedent unless and until it is overruled by the Supreme Court." This decision could set up the Supreme Court challenge that opponents of the exemption have long been waiting for.

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MLB also faces a suit from a former player, Daniel Concepcion, who alleges a conspiracy by MLB to fix minor league wages below the minimum wage. A federal judge in Puerto Rico dismissed these claims in late June 2022, holding that the claims were outside the statute of limitations and not subject to the antitrust laws. The court stated that it was bound by *Federal Baseball*, even if others feel it's "egregiously wrong," and rejected the players' arguments that they were protected by the Flood Act because minor league players are exempt from those protections. Plaintiffs have appealed this decision to the 1st U.S. Circuit Court of Appeals.

Finally, in *Casey's Distributing Inc. v. Office of the Commissioner of Baseball*, MLB and Fanatics, a manufacturer and online retailer of licensed sports apparel and merchandise, face a suit from a local merchandising company alleging that MLB's merchandising practices constitute an illegal exclusive dealing arrangement. The 2022 complaint in the Southern District of New York claims that MLB, in an effort to protect its minority stake in Fanatics, organized a boycott of Casey's and similar companies through agreements with other MLB licensees that prevent those licensees from selling to companies like Casey's, which ultimately limit competition on Amazon and other third-party online marketplaces. MLB has not yet responded to the complaint, and it remains to be seen how, if at all, MLB will utilize the exemption in that case.

Though MLB's antitrust exemption has endured for over 100 years, the Supreme Court may again be called on to decide whether it lasts.

About the authors

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