

ANALYZING THE SCOPE OF MAJOR LEAGUE
BASEBALL'S ANTITRUST EXEMPTION IN
LIGHT OF *SAN JOSE V. OFFICE OF THE
COMMISSIONER OF BASEBALL*

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INTRODUCTION

"If this ruling is unrealistic, inconsistent, or illogical, it is sufficient to answer . . . that were we considering the question of baseball for the first time upon a clean slate we would have no doubts. But Federal Baseball held the business of baseball outside the scope of the Act. . . . We, therefore, conclude that the orderly way to eliminate error or discrimination, if any there be, is by legislation and not by court decision."¹

To be a successful Major League Baseball franchise requires hard work and dedication by a team of great players and knowledgeable coaches, coupled with sound on-field decisionmaking, and a little luck. It also helps to have a lot of money. In the 2013 season, nearly half of major league teams spent more than \$100 million on player salaries.² In professional sports the "[t]eams with impressive records tend to show bigger revenues than teams in the cellar" largely because "[t]he richest teams enjoy competitive advantages" such as "the ability to bid for free agents or to pay to keep their own players who opt for free agency," and "the ability to hire top notch staffs."³ For the Oakland Athletics, however, such a high payroll figure is not a realistic option while playing in O.co Coliseum, an outdated stadium in desperate

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1 *Radovich v. Nat'l Football League*, 352 U.S. 445, 452 (1957) (footnote omitted).

2 *2013 Baseball Payrolls, List*, CBS SPORTS (Apr. 1, 2013, 1:57 PM), <http://www.cbsports.com/mlb/story/21989238/baseball-payrolls-list>.

3 *Chi. Prof'l Sports Ltd. P'ship v. Nat'l Basketball Ass'n*, 754 F. Supp. 1336, 1341–42 (N.D. Ill. 1991).

need of repair that the Commissioner of Major League Baseball bluntly calls “a pit.”⁴

Just thirty-five miles south of Oakland, however, the City of San Jose has attempted to give the Athletics an opportunity to do better. The city agreed in 2011 to help the Athletics build a new stadium in San Jose, and the San Jose City Council executed an agreement that gave the team a two-year option to purchase land owned by the city to build a new stadium.⁵ However, the team has been prevented from taking further action by Major League Baseball while the league considers whether to approve the team’s move.⁶ Tired of waiting on baseball, the City of San Jose decided to file a lawsuit against Major League Baseball for tortious interference and violation of state and federal antitrust laws.⁷ However, the city’s legal efforts ran into an even larger roadblock: Major League Baseball has historically enjoyed an exemption from federal antitrust laws that bars any claims that baseball’s conduct violates antitrust laws.

The Supreme Court first held that professional baseball was exempt from federal antitrust laws in *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*.⁸ In what would later be referred to as “not one of [his] happiest days,”⁹ Justice Holmes reasoned that the business of baseball was not a subject of interstate commerce and thus was not within the scope of Sherman Antitrust Act,¹⁰ which meant that anticompetitive behavior engaged in by organized baseball was not challengeable under the Act.¹¹

The Court confronted the applicability of the antitrust laws to professional baseball again in *Toolson v. New York Yankees, Inc.*¹² Rather than revisit the questionable reasoning that baseball was not interstate commerce or trade, the Court issued a one paragraph, per curiam opinion affirming the validity of *Federal Baseball* for the much broader proposition that “the business of providing public baseball games for profit between clubs of professional baseball players was not within the scope of the federal antitrust

4 Karl Buscheck, *Oakland A’s: Bud Selig Calls Coliseum a ‘Pit’ as ‘Perfect Storm’ Awaits*, BLEACHER REP. (Sept. 25, 2013), <http://bleacherreport.com/articles/1787591-oakland-as-bud-selig-calls-coliseum-a-pit-as-perfect-storm-awaits>. The stadium encountered multiple sewage leaks during the 2013 season, including one that flooded the team’s dugout in the middle of a game. *Id.*

5 Susan Slusser, *San Jose OKs Land Deal for Potential A’s Stadium*, S.F. CHRON. (Nov. 9, 2011), <http://www.sfgate.com/sports/article/San-Jose-OKs-land-deal-for-potential-A-s-stadium-2323382.php>.

6 *A’s Seek Territorial Rights Resolution*, ESPN (Mar. 7, 2012, 9:39 PM), http://espn.go.com/mlb/story/_/id/7658699/oakland-athletics-san-francisco-giants-odds-territorial-rights.

7 Complaint, *City of San Jose v. Office of the Comm’r of Baseball*, No. 13-CV-02787 RMW (N.D. Cal. June 18, 2013).

8 259 U.S. 200 (1922).

9 *Salerno v. Am. League of Prof’l Baseball Clubs*, 429 F.2d 1003, 1005 (2d Cir. 1970).

10 Sherman Antitrust Act, ch. 647, 26 Stat. 209 (1890) (codified as amended at 15 U.S.C. §§ 1–7 (2012)).

11 *Fed. Baseball*, 259 U.S. at 208–09.

12 346 U.S. 356 (1953) (per curiam).

laws.”¹³ The Court’s only support for that proposition was that Congress had not passed legislation to overturn *Federal Baseball*, which indicated Congress’s consent to the exemption.¹⁴

The Court directly addressed its judicially created baseball antitrust exemption for the third and final time in *Flood v. Kuhn*.¹⁵ While the Court noted that the exemption was “an exception and an anomaly,” the Court concluded that baseball’s reliance on the exemption was a greater concern that trumps any argument for overturning the exemption.¹⁶ Instead, the Court reasoned that a change or repeal of the exemption should be made by Congress.¹⁷ Without much analysis of congressional action, the Court concluded that Congress had no intent to make any change to the exemption, and thus Congress’s intent was for baseball to remain exempt from federal antitrust laws.¹⁸

These three cases, now referred to as the “baseball trilogy,” have confounded courts and scholars for generations. San Jose’s antitrust suit against Major League Baseball renews the challenge of defining the scope and applicability of the baseball antitrust exemption and the struggle to sort through the lower court precedent to arrive at a workable standard for the exemption. This Note will discuss the history of the exemption, the potential standards for applying the exemption, and analyze Judge Whyte’s order dismissing San Jose’s antitrust claims in *City of San Jose v. Office of the Commissioner of Baseball*¹⁹ to determine the persuasiveness the court’s opinion may have going forward as well as potential issues with the court’s reasoning.²⁰

13 *Id.* at 357.

14 *See id.* (“Without re-examination of the underlying issues, the judgments below are affirmed on the authority of [*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.”).

15 407 U.S. 258 (1972).

16 *Id.* at 282.

17 *Id.* at 283 (“The Court has expressed concern about the confusion and the retroactivity problems that inevitably would result with a judicial overturning of *Federal Baseball*. It has voiced a preference that if any change is to be made, it come by legislative action that, by its nature, is only prospective in operation.”).

18 *Id.* at 284–86.

19 *City of San Jose v. Office of the Comm’r of Baseball*, No. C-13-02787 RMW, slip op. at 2 (N.D. Cal. Oct. 11, 2013) (granting in part and denying in part defendants’ motion to dismiss).

20 This Note will focus solely on the district court opinion dismissing the state and federal antitrust claims. On January 23, 2014, the City of San Jose filed a notice of appeal to the Ninth Circuit. Notice of Appeal of Plaintiffs, *City of San Jose v. Office of the Comm’r of Baseball*, No. C-13-02787 RMW (N.D. Cal. Jan. 23, 2014). The city’s motion to expedite the case was granted on February 20, 2014, with briefing for the appeal scheduled through the end of April 2014. Order, *City of San Jose v. Office of the Comm’r of Baseball*, No. 14-15139 (9th Cir. Feb. 20, 2014) (order granting motion to expedite appeal). Court updates regarding the city’s appeal can be found at http://www.ca9.uscourts.gov/content/view.php?pk_id=0000000720.

First, in Part I, this Note will chronicle the history behind the creation and expansion of professional baseball's antitrust exemption. Part I will then turn to a discussion of the Court's rejection of efforts to apply the exemption to other sports, followed by an introduction to the Curt Flood Act and its change to the exemption. Finally, Part I will introduce the most recent challenge to baseball's antitrust exemption by the City of San Jose.

Next, Part II of this Note will detail the three main approaches to interpreting baseball's antitrust exemption and will look at how the courts have considered the effect, if any, of the Curt Flood Act in considering the exemption. Part II will examine the three different approaches applied to baseball's antitrust exemption: first, the narrow approach, which only prevents challenges to baseball's reserve clause; second, the "unique characteristics and needs" approach; and third, the broad approach, which grants an all-encompassing exemption. Part II will conclude by looking at how courts interpret the Curt Flood Act's effect on the exemption.

Finally, Part III of this Note will analyze the City of San Jose's and Major League Baseball's arguments regarding whether the exemption is limited to only the reserve clause, as well as the *San Jose* court's critique and ultimate dismissal of that approach. Then, Part III will discuss the *San Jose* court's consideration of the more narrow "unique characteristics and needs" standard, followed by a critique of the court's support of a broad, all-encompassing antitrust exemption. Lastly, Part III will examine the arguments regarding the effect of the Curt Flood Act, address the *San Jose* court's conclusion that the Act demonstrates that Congress explicitly preserved a broad exemption, and conclude with an analysis of the potential flaws with the court's conclusion.

I. PROFESSIONAL BASEBALL'S ANTITRUST EXEMPTION AND *CITY OF SAN JOSE* V. *OFFICE OF THE COMMISSIONER OF BASEBALL*

A. *The Supreme Court's Baseball Trilogy*

Professional baseball's historic antitrust exemption was born in 1922, out of the Supreme Court opinion in *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*.²¹ The president of the Federal League's Baltimore Terrapins brought an antitrust suit against the American League, the National League, the National Commission,²² and certain Federal League owners after the two leagues had bought out the owners of a majority of the Federal League teams, leaving the Terrapins without any base-

21 259 U.S. 200 (1922).

22 The National Commission was created in 1903 to oversee organized baseball, including interpreting and enforcing the National Agreement between the National League and the American League. See *The Commissionership: A Historical Perspective*, MLB.COM, http://mlb.mlb.com/mlb/history/mlb_history_people.jsp?story=com (last visited Mar. 8, 2014).

ball league to call home.²³ The Terrapins had refused the buyout offer the other teams had accepted, because the team's president was intent on having a major league team in Baltimore, which was not provided for as part of the buyout.²⁴ Writing for the unanimous Court, Justice Holmes reasoned that the business of baseball—providing exhibitions of baseball between teams—was a purely state affair and thus not a subject of interstate commerce.²⁵ Because the leagues were not subject to interstate commerce, they were not within the scope of the Sherman Antitrust Act,²⁶ and any conspiracy or anticompetitive behavior engaged in by the leagues did not create a cause of action under the Act.²⁷ The Court also noted that the essential business of baseball, the playing of the games themselves, was not trade within the meaning of the Sherman Act because it is actually labor—the personal effort of the players—and not manufacturing.²⁸ On that reasoning, the Court affirmed the D.C. Circuit's judgment for the American League and the National League.²⁹

23 *Fed. Baseball*, 259 U.S. at 207. In 1914 the Federal League, created just a year earlier, asked the National and American Leagues to allow it to participate as a member of the National Agreement. After the leagues rejected the Federal League's request, the Federal League began aggressively competing with the leagues by signing American and National League players, building new stadiums, and bringing an antitrust suit against the leagues. Edmund P. Edmonds, *Over Forty Years in the On-Deck Circle: Congress and the Baseball Antitrust Exemption*, 19 T. MARSHALL L. REV. 627, 630–31 (1994). By the end of 1915, however, the Federal League was incapable of keeping up the fight and entered an agreement with the American and National Leagues under which the Federal League teams were bought out, except the Baltimore Terrapins. *Id.* at 631.

24 See Michael W. Klein, *Rose Is in Red, Black Sox Are Blue: A Comparison of Rose v. Giarratti and the 1921 Black Sox Trial*, 13 HASTINGS COMM. & ENT. L.J. 551, 558–59 (1991) (noting that the Terrapins, seeking “[t]o counteract the folding of their team . . . demanded the right to purchase the St. Louis Cardinals and to move the club to Baltimore”).

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

26 Sherman Antitrust Act, ch. 647, 26 Stat. 209 (1890) (codified as amended at 15 U.S.C. §§ 1–7 (2012)). Sherman Act violations can be alleged as either a § 1 violation, which prohibits specific anticompetitive conduct, 15 U.S.C. § 1, or a § 2 violation, which prohibits end results that are anticompetitive in nature, *id.* § 2. A § 1 violation requires proof of (1) an agreement or conspiracy, (2) which unreasonably restrains trade, and (3) which affects interstate commerce. *Id.* § 1. A § 2 violation requires proof of “(1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power, as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.” *United States v. Grinnell Corp.*, 384 U.S. 563, 570–71 (1966).

27 *Fed. Baseball*, 259 U.S. at 208–09.

28 *Id.* at 208–09 (“[T]he transport [of players across state lines] is a mere incident, not the essential thing. That to which it is incident, the exhibition, although made for money would not be called trade or commerce in the commonly accepted use of those words. As it is put by the defendants, personal effort, not related to production, is not a subject of commerce.”).

29 *Id.* at 209.

Three decades later, the Supreme Court revisited its *Federal Baseball* holding for the first time in *Toolson v. New York Yankees, Inc.*³⁰ In a one paragraph, per curiam opinion, the Court held that *Federal Baseball* stood for the proposition that “the business of providing public baseball games for profit between clubs of professional baseball players was not within the scope of the federal antitrust laws.”³¹ The Court affirmed the validity of that proposition on the grounds that Congress had not passed legislation to overturn *Federal Baseball*, which indicated Congress’s consent to the exemption.³² If baseball, after having thirty years to develop with the understanding that the business was not subject to antitrust laws, was to be subject to the antitrust laws then, the Court declared, “it should be by legislation.”³³

The Supreme Court over the next twenty years declined to extend *Federal Baseball* and *Toolson* to other sports and entertainment industries.³⁴ Then, in 1972, the Court directly addressed its judicially created baseball antitrust exemption for the third and final time in *Flood v. Kuhn*.³⁵ After being traded from the St. Louis Cardinals to the Philadelphia Phillies, outfielder Curt Flood requested that he be made a free agent so that he could sign a contract to play with a different team.³⁶ When his request was denied, he filed a federal antitrust suit against the Commissioner of Baseball, the presidents of the two major leagues, and the twenty-four major league clubs.³⁷ Writing for the majority, Justice Blackmun provided a detailed history of the game of baseball and the Court’s reasoning and holdings in *Federal Baseball* and *Toolson* before affirming the validity of baseball’s antitrust exemption based on the authority of *Federal Baseball*.³⁸ Justice Blackmun noted that the exemption was “an exception and an anomaly” that was “confined to baseball” but, nevertheless, “the aberration [was] an established one . . . that has been recognized . . . [in] a total of five consecutive cases” by the Supreme Court.³⁹ Baseball’s antitrust exemption, Justice Blackmun wrote, “rests on a recognition and an acceptance of baseball’s unique charac-

30 346 U.S. 356 (1953) (per curiam).

31 *Id.* at 357.

32 *See id.* (“Without re-examination of the underlying issues, the judgments below are affirmed on the authority of [*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.”).

33 *Id.*

34 *See infra* Section I.B.

35 407 U.S. 258 (1972).

36 *Id.* at 265.

37 *Id.*

38 *Id.* at 285 (quoting the holding in *Toolson* that the judgment is affirmed on the authority of *Federal Baseball*’s determination that Congress did not intend to include the business of baseball within the scope of antitrust laws).

39 *Id.* at 282 (referencing the Court’s acceptance of baseball’s antitrust exemption in *Fed. Baseball Club of Balt., Inc. v. Nat’l League of Prof’l Baseball Clubs*, 259 U.S. 200 (1922), *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356 (1953) (per curiam), *United States v. Shubert*, 348 U.S. 222 (1955), *United States v. Int’l Boxing Club of N.Y., Inc.*, 348 U.S. 236 (1955), and *Radovich v. Nat’l Football League*, 352 U.S. 445 (1957)).

teristics and needs.”⁴⁰ The Court voiced its concern with overturning the exemption, instead concluding that such a change should be made by Congress, which had yet to have any “intention to subject baseball’s reserve system to the reach of the antitrust statutes.”⁴¹

In a dissent joined by Justice Brennan, Justice Douglas argued that *Federal Baseball* was “a derelict in the stream of the law that [the Court], its creator, should remove.”⁴² Attacking the conclusion reached by the majority that congressional inaction supports the continued affirmance of baseball’s antitrust exemption, Justice Douglas contended that if congressional inaction was the appropriate standard then the Court “should rely upon the fact that Congress has refused to enact bills broadly exempting professional sports from antitrust regulation.”⁴³ Having only granted professional sports one statutory exemption from antitrust laws, for broadcasting rights,⁴⁴ the Court should “not ascribe a broader exemption through inaction than Congress has seen fit to grant explicitly.”⁴⁵ Interpreting congressional inaction in this light, Justice Douglas concluded that “[t]he unbroken silence of Congress should not prevent us from correcting our own mistakes.”⁴⁶

Justice Marshall, in a dissent again joined by Justice Brennan, also took issue with the majority’s interpretation of Congress’s inaction. Justice Marshall argued that it was incorrect to say that Congress had acquiesced to the Court’s decisions in *Federal Baseball* and *Toolson*.⁴⁷ Rather, because the Court was inconsistent and isolated in distinguishing baseball from all other professional sports, Congress did not have to be as concerned with correcting the judicially created exemption.⁴⁸ The Court’s inconsistency also limited the

40 *Id.* at 282.

41 *Id.* at 283 (“The Court has expressed concern about the confusion and the retroactivity problems that inevitably would result with a judicial overturning of *Federal Baseball*. It has voiced a preference that if any change is to be made, it come by legislative action that, by its nature, is only prospective in operation.”). Baseball’s reserve system was based around a reserve clause in player contracts that obligated the player to only play for a single team, regardless of the length of the contract they had signed with that team. This prevented players from changing teams without first being unconditionally released by the team. See NEIL F. FLYNN, *BASEBALL’S RESERVE SYSTEM* 18–19 (2006).

42 *Id.* at 286 (Douglas, J., dissenting).

43 *Id.* at 287. Justice Douglas cited a committee report that had been authorized to investigate various bills designed to grant a complete exemption of all professional sports from federal antitrust laws. See H.R. REP. NO. 82-2002, at 1 (1952). The relevant bills “were introduced . . . by friends of baseball because they feared that the continued existence of organized baseball as America’s national pastime was in substantial danger by the threat of impending litigation.” *Id.*

44 See Sports Broadcasting Act of 1961, 15 U.S.C. § 1291 (2012) (exempting the National Football League, National Basketball Association, Major League Baseball, and National Hockey League from federal antitrust laws for purposes of agreeing to national television contracts).

45 *Flood*, 407 U.S. at 288 (Douglas, J., dissenting).

46 *Id.*

47 *Id.* at 292 (Marshall, J., dissenting).

48 *Id.*

power of Major League Baseball players to seek a change to the exemption since “[w]hatever muscle they might have been able to muster by combining forces with other athletes has been greatly impaired by the manner in which [the] Court has isolated them.”⁴⁹ Justice Marshall concluded that congressional inaction did not justify the continuance of the exemption and that the proper thing for the Court to do was to “admit our error and correct it.”⁵⁰

Starting with a holding that the business of baseball was not subject to the regulations of the Sherman Act because it was not part of interstate commerce and could not be considered “trade” within the meaning of the Act in 1922, professional baseball eventually came to be privileged with an exemption from federal antitrust laws by virtue of congressional inaction. The path to get there, however, left more questions than answers. Along the way, the nation’s other professional sports leagues would attempt to extend this privileged exemption to their respective sports.

B. *Applicability of Federal Baseball to Other Sports*

While baseball was granted an exemption from federal antitrust laws, the Court refused to extend the exemption to other professional sports leagues and entertainment industries. The first case came in 1955—*United States v. Shubert*—where the Court declined to extend the exemption to theater companies.⁵¹ The Court reasoned that *Toolson* was not necessarily an affirmation of *Federal Baseball* as much as “a narrow application of the rule of *stare decisis*.”⁵² The Court seemed to indicate, however, that the decision in *Federal Baseball* was limited to “specifically fixing the status of the baseball business under the antitrust laws and more particularly the validity of the so-called ‘reserve clause.’”⁵³ That same year, in *United States v. International Boxing Club of New York, Inc.*,⁵⁴ a companion case to *Shubert*, the Court also refused to extend the baseball exemption to professional boxing.

The Court continued its narrow reading of *Federal Baseball* and *Toolson* and elected not to extend the antitrust exemption to the other professional sports leagues. In *Radovich v. National Football League*⁵⁵ the Court held that, while acknowledging that such a decision may be “unrealistic, inconsistent,

49 *Id.*

50 *Id.* at 292–93 (“We do not lightly overrule our prior constructions of federal statutes, but when our errors deny substantial federal rights, like the right to compete freely and effectively to the best of one’s ability as guaranteed by the antitrust laws, we must admit our error and correct it. We have done so before and we should do so again here.”).

51 *United States v. Shubert*, 348 U.S. 222, 228 (1955) (reasoning that *Federal Baseball* applied only to “the business of baseball and nothing else”).

52 *Id.* at 230.

53 *Id.* at 229. It is important to note, however, that there is some question as to the importance of the reserve clause in *Federal Baseball*. See discussion *infra* Sections II.A, III.A.

54 *United States v. Int’l Boxing Club of N.Y., Inc.*, 348 U.S. 236, 242 (1955) (holding that the baseball exemption is not applicable to other types of local performance exhibitions).

55 *Radovich v. Nat’l Football League*, 352 U.S. 445 (1957).

or illogical,” the “interstate business involved in organized professional football places it within the provisions” of the Sherman Act, even if baseball was exempt from the Act.⁵⁶ In his dissent, Justice Frankfurter argued that whether the business of football, baseball, or any other enterprise was bound by federal antitrust laws was “a question for judicial determination” and emphasized that “full respect for *stare decisis* does not require a judge to forego his own convictions” once his colleagues have decided a judicial question differently.⁵⁷

The Court also declined to apply the antitrust exemption to conduct of professional basketball in 1971 in *Haywood v. National Basketball Association*.⁵⁸ However, the Court again seemed to interpret baseball’s exemption as limited to the reserve clause.⁵⁹ While the lack of exemption for basketball was noted without much reason or analysis, it was the last major professional sports league to receive consideration on the issue and it is possible that the Court by this point thought the holdings in *Shubert*, *International Boxing*, and *Radovich* had made the point explicitly clear that the baseball antitrust exemption only applied to baseball.

Consequently, in the twenty years following *Toolson*, the Supreme Court reaffirmed baseball’s antitrust exemption in the course of denying other groups and professional sports leagues similar exemptions. The affirmance was not ironclad, however, as the Court’s language in its various opinions left room to argue that the exemption was limited to baseball’s reserve clause.

C. Curt Flood Act of 1998

In 1998, Congress finally responded to the Supreme Court-created baseball exemption. However, it was the lobbying of Major League Baseball and the Major League Baseball Players’ Association following the 1997 Collective Bargaining Agreement, not congressional concern with the exemption, which prompted congressional action.⁶⁰ Named in honor of Curt Flood for

56 *Id.* at 452.

57 *Id.* at 455 (Frankfurter, J., dissenting).

58 *Haywood v. Nat’l Basketball Ass’n*, 401 U.S. 1204, 1205 (1971) (“Basketball . . . does not enjoy exemption from the antitrust laws.”).

59 *Id.* (noting that the decision involved in the suit “would be similar to the one on baseball’s *reserve clause* which our decisions exempting baseball from the antitrust laws have foreclosed” (emphasis added)).

60 See Edmund P. Edmonds, *The Curt Flood Act of 1998: A Congressional Response to Baseball’s Antitrust Exemption*, in 1 *BASEBALL AND ANTITRUST: THE LEGISLATIVE HISTORY OF THE CURT FLOOD ACT OF 1998*, at 1, 3 (Edmund P. Edmonds & William H. Manz eds., 2001) [hereinafter *BASEBALL AND ANTITRUST*] (noting that the legislation was a result of the “joint agreement between Major League Baseball and the Major League Baseball Players Association embodied in their most recent collective bargaining agreement to appeal to Congress for a legislative change” to bring the players within the protection of federal antitrust laws); John T. Wolohan, *The Curt Flood Act of 1998 and Major League Baseball’s Federal Antitrust Exemption*, 9 *MARQ. SPORTS L.J.* 347, 367 (1999) (“[A]s part of the 1997 Basic Agreement between MLB and the MLBPA both sides agreed that they would jointly request and lobby

his efforts challenging baseball's reserve clause in *Flood v. Kuhn*,⁶¹ the Curt Flood Act of 1998 explicitly granted baseball players the same antitrust rights that basketball and football players enjoyed.⁶² The Act's goal was to level the playing field between the team owners and the players, as well as help inject stability into baseball's labor relations, which had suffered through numerous work stoppages since the formation of the Major League Baseball Players' Association.⁶³

In an effort to accomplish this narrow goal, the Act specifically removed baseball's antitrust exemption only in regards to major league players. The exemption was to remain in effect in any other context. Congress made this explicitly clear in stating that the purpose of the Act was not to "change the application of the antitrust laws in any other context or with respect to any other person or entity."⁶⁴ The Act specifically identified six categories that would remain subject to the existing jurisprudence concerning the exemption: (1) minor league baseball players; (2) organized minor league baseball; (3) "franchise expansion, location or relocation, [and] franchise ownership issues;" (4) conduct and agreements related to the Sports Broadcasting Act of 1961; (5) umpires and other employees of organized professional baseball; and (6) any conduct or agreements with persons not in the business of Major League Baseball.⁶⁵

D. City of San Jose v. Office of the Commissioner of Baseball

The most recent challenge to the baseball antitrust exemption arises out of the efforts of the City of San Jose to build a new baseball stadium for the Oakland Athletics. In return, the team agreed to move thirty-five miles south of Oakland to San Jose and become the San Jose Athletics.⁶⁶ In November of 2011, the San Jose City Council executed an option agreement with the Athletics Investment Group, which gave the team a two-year option to purchase land owned by the city to build a new stadium.⁶⁷ However, the team has been prevented from taking further action by Major League Baseball. Specifically, the San Francisco Giants have objected to the possible move on the grounds that the league's bylaws grant the Giants exclusive territorial rights to San Jose and the surrounding area of Santa Clara County.⁶⁸ Since 2009, a

for the passage of a law clarifying that professional baseball players are covered under antitrust law. The result of this joint effort is the Curt Flood Act.").

61 See Edmonds, *supra* note 60, at 1–2.

62 Curt Flood Act of 1998, 15 U.S.C. § 26b (2012).

63 See Wolohan, *supra* note 60, at 348.

64 15 U.S.C. § 26b.

65 See *id.* § 26b(b)(1)–(6).

66 Slusser, *supra* note 5.

67 *Id.*

68 Complaint, *supra* note 7, at 25–26. The history of the Bay Area territory rights is an interesting side story of the case. Originally, Santa Clara County, where San Jose is located, was part of neither the Giants' nor the Athletics' territorial rights. Ken Belson, *In Tug of War over San Jose, A's and the Giants Remain at a Standoff*, N.Y. TIMES, Apr. 2, 2012, at D5. In

special Relocation Committee has been tasked with evaluating the territorial claims by each of the Bay Area teams, though no public recommendations have been made by the committee and Major League Baseball's official stance has been that the committee "is still at work."⁶⁹

After years of waiting, on June 18, 2013, the City of San Jose decided to file a lawsuit against Major League Baseball for tortious interference and violation of state and federal antitrust laws.⁷⁰ The city alleged that Major League Baseball interfered with and was actively preventing the fulfillment of the city's option agreement with the Athletics by preventing the team from relocating to San Jose and that Major League Baseball was an "unreasonable and unlawful monopoly" which excluded San Jose from competing with other cities for a Major League Baseball franchise.⁷¹ As a result, the city alleged it was deprived of between \$2.9 billion and \$4.1 billion in total new economic output related to the relocation of the Athletics, including indirect spending on the stadium, new tax revenue, and spending by fans and businesses.⁷²

Major League Baseball promptly filed a motion to dismiss the lawsuit, asserting that the possible relocation of a team falls squarely within the core of baseball's antitrust exemption.⁷³ As such, Major League Baseball argued that the city's antitrust claims under both federal and state antitrust law were barred.⁷⁴ Alternatively, Major League Baseball argued that the city's claim failed as a matter of law and warranted dismissal because the city could not establish any "unfair" or "wrongful act," either of which would be required to establish its claims absent a violation of the Sherman Act, from which baseball is exempted.⁷⁵ Major League Baseball also stated that the city's contract

1990 the owner of the Giants, Bob Lurie, was considering moving the team to Florida. *Id.* In an effort to help keep the Giants in the Bay Area, the Athletics' then-owner, Walter Haas, gave consent for the Giants to relocate to San Jose. *Id.* The Athletics claim that the agreement was contingent on the Giants obtaining a publicly funded stadium in San Jose; but when that failed to materialize, the Giants continued to claim the territorial rights to Santa Clara County anyway. *Id.*

69 *A's Seek Territorial Rights Resolution*, ESPN (Mar. 7, 2012, 9:39 PM), http://espn.go.com/mlb/story/_/id/7658699/oakland-athletics-san-francisco-giants-odds-territorial-rights (quoting Major League Baseball spokesperson Pat Courtney).

70 Complaint, *supra* note 7, at 34–41.

71 *Id.* at 28–29.

72 *Id.* at 31–33 (pleading that the new stadium would create \$1.8 billion in direct spending, \$1.5 million per year in new tax revenue for the city's General Fund, \$3.5 million per year in new property tax revenue, at least \$31.2 million in new sales tax revenue, and "that the net present value of the total net new economic output generated by the spending related to the operations of the ballpark would be approximately \$2.9 billion over a thirty-year period and \$4.1 billion over a fifty-year period").

73 Defendants' Motion to Dismiss Plaintiffs' Complaint Under Federal Rule of Civil Procedure 12(b)(6) at 8, *City of San Jose v. Office of the Comm'r of Baseball*, No. C-13-02787 RMW (N.D. Cal. Aug. 7, 2013) [hereinafter Defendants' Motion to Dismiss].

74 *Id.* at 5.

75 *Id.* at 11.

claims must be dismissed because the city had not—and could not—establish the essential elements of “damage” or “breach.”⁷⁶

Judge Ronald Whyte granted Major League Baseball’s motion to dismiss the city’s antitrust claims on October 11, 2013, but recognized serious flaws in the antitrust exemption for baseball.⁷⁷ The court ruled that the city’s state law tort claims were sufficient to survive the motion to dismiss.⁷⁸ The court noted that the exemption was “an ‘aberration’ that makes little sense”⁷⁹ but recognized that the Supreme Court’s holdings remain unchanged and provide a federal antitrust exemption for the business of baseball.⁸⁰ The case provides the most recent decision concerning the scope and applicability of an antitrust exemption for professional baseball, and like the cases that have come before it, the opinion leaves many important questions unanswered and fails to articulate a workable standard for future cases.

The Northern District of California’s opinion confronts many of the questions about the scope and applicability of professional baseball’s antitrust exemption that courts and scholars have debated since *Flood* and the Curt Flood Act. Specifically, what conduct or situations does the antitrust exemption apply to? What is the appropriate standard for applying the exemption to such cases? And what effect does the enactment of the Curt Flood Act have on the scope of the antitrust exemption? Part II of this Note will analyze the potential answers to these questions that lower courts have accepted and advanced.

II. WHAT TO MAKE OF ALL OF THIS? COURTS, SCHOLARS STRUGGLE TO DEFINE “THE BUSINESS OF BASEBALL” AND THE PROPER SCOPE OF MAJOR LEAGUE BASEBALL’S ANTITRUST EXEMPTION

As encountered again in the recent *San Jose* challenge, the scope and application of Major League Baseball’s antitrust exemption continues to frustrate courts and parties more than ninety years after it was first created in *Federal Baseball*. This has resulted in various approaches being taken by courts across the country. The City of San Jose argued that the exemption was limited to the reserve clause alone, a position that was most notably

⁷⁶ *Id.*

⁷⁷ *City of San Jose*, No. C-13-02787 RMW, slip op. at 2 (granting in part and denying in part defendants’ motion to dismiss).

⁷⁸ *Id.* at 4. Judge Whyte requested the parties provide the court with briefs on whether the state law claims should be dismissed as well. Order Setting Initial Case Management Conference, *City of San Jose v. Office of the Comm’r of Baseball*, No. C-13-02787 RMW (N.D. Cal. Nov. 8, 2013). After considering the issue in greater depth, Judge Whyte elected to decline supplemental jurisdiction over the state law tort claims and dismissed the case without prejudice. Judgment, *City of San Jose v. Office of the Comm’r of Baseball*, No. C-13-02787 RMW (N.D. Cal. Jan. 3, 2014) (ordering judgment in favor of Office of the Commissioner of Baseball).

⁷⁹ *City of San Jose*, No. C-13-02787 RMW, slip op. at 15 (quoting *Flood v. Kuhn*, 407 U.S. 258, 282 (1972)).

⁸⁰ *Id.* at 17.

adopted in *Piazza v. Major League Baseball*.⁸¹ Major League Baseball countered with an argument for a broad, all-encompassing exemption under which all aspects of the “business of baseball,” including league structure and franchise location, are exempt from antitrust law challenges.⁸² The court, while explicitly not endorsing a more narrow “unique characteristics and needs” standard that has been advanced by other courts, considered that standard as a middle ground under which San Jose would still fail on the reasoning that franchise relocation efforts are integral to the business of baseball.⁸³

This Part will detail the three main approaches to interpreting the breadth and application of professional baseball’s antitrust exemption and will look at how the courts have considered the effect, if any, of the Curt Flood Act in analyzing the exemption. This Part will first address the case law that advances the argument that the exemption is limited and only prevents challenges to baseball’s reserve clause. Second, this Part will analyze the “unique characteristics and needs” standard followed by other courts. Third, the argument that the exemption is broad and all-encompassing will be considered. Finally, this Part will conclude by looking at how the Curt Flood Act affects the exemption.

A. *Limiting the Exemption to Only the Reserve Clause*

The most thorough district court analysis considering the scope of the baseball exemption came in *Piazza v. Major League Baseball*.⁸⁴ The case arose as a result of an investment group’s failed attempt to purchase the San Francisco Giants and relocate the team to Tampa Bay, Florida.⁸⁵ When Major League Baseball rejected the sale to the group, the team was instead sold to another investment group, for \$15 million less.⁸⁶ Vincent Piazza and Vincent Tirendi, the leaders of the investment group seeking to move the team to Tampa Bay, then sued Major League Baseball for violating federal antitrust laws.⁸⁷ Specifically, they argued that Major League Baseball had “monopolized the market” for teams by placing “direct and indirect restraints on the purchase, sale, transfer, relocation of, and competition for” teams.⁸⁸ The court denied a motion by Major League Baseball to dismiss the antitrust claims based on baseball’s antitrust exemption. The court reasoned that *Flood* had invalidated the rule of *Federal Baseball* and *Toolson* and that the business of baseball was not interstate commerce and thus not subject to the Sherman Act. From this the court concluded that the only precedential

81 831 F. Supp. 420 (E.D. Pa. 1993).

82 *Id.* at 435.

83 *City of San Jose*, No. C-13-02787 RMW, slip op. at 13, 17 (internal quotation marks omitted).

84 *Piazza*, 831 F. Supp. at 436–41.

85 *Id.* at 421–22.

86 *Id.* at 423.

87 *Id.* at 423–24.

88 *Id.* at 424.

value remaining was based on the facts involved in *Flood*: the exemption of baseball's reserve system from federal antitrust laws.⁸⁹

The *Piazza* court's reasoning was found to be persuasive by courts in two ensuing cases. In *Butterworth v. National League of Professional Baseball Clubs*, the Florida Supreme Court was faced with the issue of whether baseball's antitrust exemption limited the Florida Attorney General's ability to conduct an antitrust investigation into the failed purchase of the San Francisco Giants by Vincent Piazza's investment group.⁹⁰ The court concluded that "[b]ased upon the language and the findings in *Flood* . . . baseball's antitrust exemption extends only to the reserve system."⁹¹

Similarly, in *Morsani v. Major League Baseball*, another group of investors brought a suit against Major League Baseball for violating federal antitrust laws after their attempted purchase and relocation of two teams, first the Minnesota Twins in 1984 followed by the Texas Rangers in 1988, were each blocked by Major League Baseball.⁹² In concluding that baseball's antitrust exemption was limited to the reserve clause, the court cited the Florida Supreme Court's decision in *Butterworth* as binding authority.⁹³

The *Piazza* holding's persuasiveness was essentially limited to just a single case since *Morsani* merely followed *Butterworth* as binding authority. The reasoning received some praise from academia as well, but it has generally been rejected as flawed and unpersuasive.⁹⁴

B. The "Unique Characteristics and Needs" Standard

A more narrow standard for interpreting the scope of professional baseball's antitrust exemption is commonly referred to as the "unique characteristics and needs" standard. The standard is commonly credited to two district court opinions, *Henderson Broadcasting Corp. v. Houston Sports Ass'n*⁹⁵ and *Postema v. National League of Professional Baseball Clubs*,⁹⁶ both of which rejected the application of the baseball exemption to situations involving non-baseball enterprises and employment relations with umpires.

In *Henderson Broadcasting*, the court reasoned that the baseball exemption was narrow in scope and its application was limited to conduct that was "central enough to the unique characteristics and needs of baseball" to be a part of the sport, comparable to how central the "players, umpires, the

89 *Id.* at 438.

90 *Butterworth v. Nat'l League of Prof'l Baseball Clubs*, 644 So. 2d 1021, 1021–23 (Fla. 1994).

91 *Id.* at 1025.

92 *Morsani v. Major League Baseball*, 663 So. 2d 653, 655–56 (Fla. Dist. Ct. App. 1995).

93 *Id.* at 657.

94 See 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, 589 (2010) (concluding that, while *Piazza* "has generated a split of opinion among scholars," it ultimately should be rejected).

95 541 F. Supp. 263 (S.D. Tex. 1982).

96 799 F. Supp. 1475 (S.D.N.Y. 1992), *rev'd on other grounds*, 998 F.2d 60 (2d Cir. 1993).

league structure and the reserve system are.”⁹⁷ The case involved a Houston radio station’s challenge to the Houston Astros’ decision to cancel the station’s broadcasting agreement for Astros’ games and enter into an agreement with a competing radio station that granted that station exclusive rights to broadcast the team’s games.⁹⁸ The court stated that “[t]he focus of the court in an antitrust action is the particular activity and the particular market in question.”⁹⁹ In reconciling baseball’s antitrust exemption with the antitrust laws (which favor competition), the key distinction for the court was that the broadcasting agreement at issue in the case involved “a distinct and separate industry” from baseball.¹⁰⁰ The court concluded that “[t]he baseball exemption today is an anachronism” that should not be extended to a context outside of the unique characteristics and needs of the game without reason.¹⁰¹

In *Postema*, the court framed the key question in baseball antitrust exemption cases as whether the conduct or actions in question were “central enough to baseball to be encompassed in the baseball exemption.”¹⁰² The case was initiated by a female former umpire who alleged that her termination constituted employment discrimination and a violation of antitrust laws.¹⁰³ In analyzing the applicability of baseball’s antitrust exemption to the termination of an umpire, the court concluded that because the Supreme Court’s baseball trilogy only “considered the baseball exemption in very limited contexts, *i.e.* with regard to baseball’s reserve clause and to its league structure,” the Court’s opinions on the breadth of exemption do not determine whether the exemption applies outside of league structure and player relations.¹⁰⁴ The court reasoned that the *Flood* Court’s statement that the exemption “rests on a recognition and an acceptance of baseball’s unique characteristics and needs”¹⁰⁵ indicated that “baseball might not be exempt from liability for conduct not touching on those characteristics or needs.”¹⁰⁶ Applying that standard, the court held that the baseball exemption did not extend to umpires because “[u]nlike the league structure or the reserve system, baseball’s relations with non-players are not a unique characteristic or need of the game.”¹⁰⁷

While the two courts adopted a “unique characteristics and needs” standard, they were not uniform in the parameters and application of the stan-

97 *Henderson Broad.*, 541 F. Supp. at 268–69 (internal quotation marks omitted).

98 *Id.* at 264.

99 *Id.* at 271.

100 *Id.*

101 *Id.* at 271–72.

102 *Postema v. Nat’l League of Prof’l Baseball Clubs*, 799 F. Supp. 1475, 1489 (S.D.N.Y. 1992) (quoting *Henderson Broad.*, 541 F. Supp. at 265), *rev’d on other grounds*, 998 F.2d 60 (2d Cir. 1993).

103 *Id.* at 1479–80.

104 *Id.* at 1488.

105 *Flood v. Kuhn*, 407 U.S. 258, 282 (1972).

106 *Postema*, 799 F. Supp. at 1488.

107 *Id.* at 1489.

dard. The *Postema* opinion specifically held that baseball umpires are not under the exemption.¹⁰⁸ The *Henderson Broadcasting* opinion, however, reasoned that “[r]adio broadcasting is not a part of the sport in the way in which players, *umpires*, the league structure and the reserve system are.”¹⁰⁹ While it may be argued that the reference to umpires in *Henderson Broadcasting* is merely dicta, the conflicting interpretations of the “unique characteristics and needs” standard may add weight to an argument that the standard lacks credibility.¹¹⁰

C. *Broad, All-Encompassing Exemption*

Exactly how far the exemption extends is far from clear. Major League Baseball, as one might expect, contends that baseball’s exemption is broad and encompasses all aspects of the business of baseball.¹¹¹ However, an argument for a narrower interpretation finds support in antitrust jurisprudence outside of the sports context, where exemptions from antitrust laws are generally construed narrowly.¹¹² The question left unsolved by the Supreme Court’s baseball trilogy is how to balance the narrow interpretation canon with the broad language in the Court’s opinions on baseball’s antitrust exemption.

The Seventh Circuit considered the issue for the first time after the Supreme Court’s *Flood* opinion in *Charles O. Finley & Co. v. Kuhn*.¹¹³ The case involved the efforts of the then-owner of the Oakland Athletics, Charles Finley, to sell the contract rights of three of the team’s pitchers to the Boston Red Sox and the New York Yankees for \$3.5 million.¹¹⁴ The Commissioner of Major League Baseball, Bowie Kuhn, rejected the deal on the grounds that it was inconsistent with the best interests of the league.¹¹⁵ Finley countered by suing the Commissioner for violation of federal antitrust laws and six other counts.¹¹⁶ With respect to baseball’s antitrust exemption, Finley argued on appeal that the exemption applied only to the reserve system.¹¹⁷

108 *Id.*

109 *Henderson Broad. Corp. v. Hous. Sports Ass’n*, 541 F. Supp. 263, 269 (S.D. Tex. 1982) (emphasis added).

110 For a brief argument on why the “unique characteristics and needs” standard may be flawed, see generally Grow, *supra* note 94, at 600–01 (arguing that the Court did not “intend[] to place a new limitation upon the exemption with the inclusion of this passage”).

111 Defendants’ Reply in Support of Motion to Dismiss Plaintiffs’ Complaint Under Fed. R. Civ. P. 12(b)(6) at 2, *City of San Jose v. Office of the Comm’r of Baseball*, No. 13-CV-02787 RMW (N.D. Cal. Sept. 20, 2013) [hereinafter Defendants’ Reply] (arguing that Supreme Court precedent has established “the broad scope of the exemption”).

112 See *Union Labor Life Ins. Co. v. Pireno*, 458 U.S. 119, 126 (1982) (“[E]xemptions from the antitrust laws must be construed narrowly.”).

113 569 F.2d 527 (7th Cir. 1978).

114 See *id.* at 531.

115 *Id.*

116 *Id.*

117 *Id.* at 540.

The court disagreed and instead concluded that it was clear, based on *Federal Baseball*, *Toolson*, *Flood*, and *Radovich*, that the Supreme Court “intended to exempt the business of baseball, not any particular facet of that business, from the federal antitrust laws.”¹¹⁸

Similarly, in *McCoy v. Major League Baseball*, a Washington district court confronted the issue of how broadly the business of baseball was to be interpreted.¹¹⁹ There, the fans and businesses that operated near major league stadiums brought a suit against Major League Baseball (which consisted of the twenty-eight major league teams, the American League, the National League, and the Commissioner of Baseball), alleging that the league violated antitrust and labor laws in failing to agree on a new collective bargaining agreement with the Major League Baseball Players’ Association during the 1994 baseball season.¹²⁰ As a result of the failure to reach a new labor agreement, the players went on strike and the remainder of the season was cancelled, as well as the 1994 World Series and a portion of the 1995 baseball season.¹²¹ The court presented the initial question as “whether the antitrust exemption is applicable to the business of baseball.”¹²² The court concluded that the scope of the exemption was “[t]he business of providing public baseball games for profit between clubs of professional baseball players.”¹²³

The problem with the interpretation that the exemption applies broadly to the business of baseball is that the issue turns to defining what exactly the business of baseball is. The interpretation is not a meaningful standard that courts can apply. Rather, it just shifts the debate. Or worse, courts may end up dismissing antitrust claims against professional baseball without actually

118 *Id.* at 541. The court did recognize that there was some limit to the exemption in a footnote, where the court “recognize[d] that [the] exemption does not apply wholesale to all cases which may have some attenuated relation to the business of baseball.” *Id.* at n.51. The court cited *Twin City Sportservice, Inc. v. Charles O. Finley & Co.*, 365 F. Supp. 235 (N.D. Cal. 1972), *rev’d*, 512 F.2d 1264 (9th Cir. 1975), for this proposition. Interestingly, San Jose relied on the final court opinion in that litigation for the argument that the exemption did not apply to all cases having anything to do with baseball. *City of San Jose v. Office of the Comm’r of Baseball*, No. C-13-02787 RMW, slip op. at 13 (N.D. Cal. Oct. 11, 2013). The court rejected the argument that the case supported the argument. *Id.* Part of the confusion over the relevance of the case may stem from the fact that the antitrust claims in the case were raised by the owner of a team *against* a plaintiff-concession company. *Twin City Sportservice*, 365 F. Supp. at 238. Because baseball holds the exemption, it obviously has no effect on the validity of another party’s anticompetitive conduct. This seems to indicate that—assuming the court in *Finley* did not misunderstand the facts of the case—the court’s meaning of “attenuated” is cases in which the alleged antitrust violations were not committed by a professional baseball-related party.

119 911 F. Supp. 454, 458 (W.D. Wash. 1995).

120 *Id.* at 455.

121 *Id.*

122 *Id.* at 456.

123 *Id.* at 457 (alteration in original) (quoting *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356, 357 (1953) (per curiam)).

applying any standard or analysis at all. That would be tantamount to Major League Baseball having an antitrust *exclusion*, not merely an exemption.¹²⁴

D. *Effect of the Curt Flood Act of 1998*

The Curt Flood Act clearly removed baseball's antitrust exemption in regard to players, but the effect of the Act in demonstrating congressional intent has been less than clear. The stated purpose of the Act was not to "change the application of the antitrust laws in any other context or with respect to any other person or entity."¹²⁵ The question has lingered whether this language is to be interpreted as Congress intending to afford complete antitrust protection to all conduct outside of player relations or, alternatively, as Congress remaining silent on the issue, leaving the competing lower court opinions as persuasive authority. Each option has been backed by various courts and academics.¹²⁶

The argument that the Act is agnostic regarding the scope of the exemption is supported by the specific text of the Act, which states that courts should not interpret the Act "as a basis for changing the application of the antitrust laws"¹²⁷ as well as the legislative history of the Act.¹²⁸ The argument that Congress actually meant to reinforce the business of baseball aspect of the antitrust exemption is premised on the fact that the courts had consistently interpreted the exemption that way. Thus, in stating that the Act "does not change the application of the antitrust laws" outside of covering Major League Baseball players under the federal antitrust laws,¹²⁹ Congress was solidifying the most common application of the antitrust exemption.

124 See, e.g., Joseph J. McMahon, Jr. & John P. Rossi, *A History and Analysis of Baseball's Three Antitrust Exemptions*, 2 VILL. SPORTS & ENT. L.F. 213, 243 (1995) ("[Courts have] failed to recognize the difference between an antitrust exclusion and an antitrust exemption. As a result, the scope of baseball's antitrust exemption has become whatever the reviewing court says it is.").

125 Curt Flood Act of 1998, 15 U.S.C. § 26b(d) (2012).

126 Compare Grow, *supra* note 94, at 576 (noting that "[w]hile some might read Section B of the [Curt Flood Act] as congressional endorsement of a broad antitrust exemption . . . in reality the statute remains agnostic regarding the remaining scope of the exemption" and should thus be read as "not implicat[ing] the scope of baseball's antitrust exemption . . . aside from the fact that it permits antitrust suits to be filed by current major league players"), with Wolohan, *supra* note 60, at 377 (arguing that "Congress[,] . . . by failing to include the entire business of baseball in the Curt Flood Act, wanted everything not having to do with player relations exempt from antitrust laws").

127 15 U.S.C. § 26b(b).

128 *Major League Baseball Antitrust Reform: Hearing on S. 53 Before the S. Comm. on the Judiciary*, 105th Cong. 1 (1997) (opening statement of Sen. Orrin G. Hatch, Chairman, Comm. on the Judiciary) ("Clarifying that antitrust laws apply to Major League Baseball is something that will benefit sports fans across the country Making it clear . . . that the antitrust laws apply to Major League Baseball . . . will not only put baseball on a level playing field with the other professional sports, but will also put the owners on a more level playing field with the players, and will thereby bring stability to labor relations in this area.").

129 15 U.S.C. § 26b.

In *Morsani v. Major League Baseball*, a Florida district court addressed the effect of the Curt Flood Act on Major League Baseball's antitrust exemption outside of the player-labor context.¹³⁰ The court concluded that in passing the Curt Flood Act, Congress preserved "the broadest aspects of the antitrust exemption" by "explicitly preserv[ing] the exemption for all matters 'relating to or affecting franchise expansion, location or relocation, franchise ownership issues, including ownership transfers.'"¹³¹ The court's conclusion has not been universally accepted, however.

In *Major League Baseball v. Butterworth*, another Florida district court considered the effect of the Act and came to a contrary result.¹³² Major League Baseball, just as it did in its litigation with San Jose,¹³³ asserted that the Act "constitut[ed] an endorsement by Congress of the exemption of the business of baseball."¹³⁴ Noting that Congress made clear that the Act was "not to affect issues other than direct employment matters," the court concluded that the proper interpretation of the Act is that it should not have any effect on whether the exemption applies to the case before the court.¹³⁵

Just as legal scholars have split on the effect of the Curt Flood Act, so too have the courts, even within the same state. With potentially persuasive authority for any number of standards for discerning the scope of Major League Baseball's antitrust exemption, Judge Whyte attempted to sort through options in deciding on Major League Baseball's motion to dismiss the most recent challenge to its privileged antitrust exemption.

III. THE PERSUASIVE AUTHORITY OF *SAN JOSE v. OFFICE OF THE COMMISSIONER OF BASEBALL* AND WHAT THE CASE MEANS FOR BASEBALL'S ANTITRUST EXEMPTION

As encountered again in San Jose's challenge of baseball's conduct under state and federal antitrust laws, the scope and application of Major League Baseball's antitrust exemption continues to frustrate courts and parties more than ninety years after it was first fashioned in the now infamous and hotly contested *Federal Baseball* opinion. This has resulted in various approaches being taken by courts across the country.¹³⁶ In this most recent challenge to the exemption, the City of San Jose argued that the exemption was limited to only the reserve clause, a position which was most notably adopted in *Piazza v. Major League Baseball*.¹³⁷ Major League Baseball countered with an argument for a broad, all-encompassing exemption that would shield all aspects of the business of baseball from antitrust claims, including

130 79 F. Supp. 2d 1331 (M.D. Fla. 1999).

131 *Id.* at 1335 n.12 (quoting 15 U.S.C. § 26b(b)(3)).

132 181 F. Supp. 2d 1316, 1331 & n.16 (N.D. Fla. 2001).

133 See Defendants' Reply, *supra* note 111, at 2 (arguing that Supreme Court precedent has established "the broad scope of the exemption").

134 *Butterworth*, 181 F. Supp. 2d at 1331 n.16.

135 *Id.*

136 See *supra* Sections II.A–C.

137 831 F. Supp. 420 (E.D. Pa. 1993).

league structure and franchise location.¹³⁸ The court, while not sanctioning a tapered “unique characteristics and needs” standard that has been advanced by other courts, considered that standard as a middle ground under which San Jose would still fail on the reasoning that franchise relocation efforts are integral to the business of baseball.¹³⁹

The Northern District of California opinion in *City of San Jose v. Office of the Commissioner of Baseball* provides yet another attempt to tackle the issue of the scope and applicability of the antitrust exemption of professional baseball. This Part will first analyze the parties’ arguments on the exemption being limited to only the reserve clause as well as the court’s critique and ultimate dismissal of the *Piazza* court’s conclusion that the exemption is limited to only the reserve clause. Next, this Part will explore the court’s consideration of the more narrow “unique characteristics and needs” standard. The court’s reflection on Major League Baseball’s argument for a broad, all-encompassing antitrust exemption will be critiqued. Finally, this Part will examine the respective parties’ arguments in relation to the effect of the Curt Flood Act, explore the court’s conclusion that the Act demonstrates that Congress explicitly preserved a broad interpretation of the exemption, and discuss the potential flaws with that conclusion.

A. *Limiting the Exemption to Only the Reserve Clause Lacks Persuasive Appeal*

In *Piazza v. Major League Baseball*, the court concluded that professional baseball’s antitrust exemption was limited to baseball’s reserve system and that this was the only context under which the federal antitrust laws did not apply to baseball.¹⁴⁰ San Jose argued that the factors the court relied on in *Piazza* offered strong reasons for the court to likewise narrowly construe the baseball exemption, specifically that: (1) the exemption was judicially created and as such it should be narrowly construed, (2) the reasoning for the exemption had been overturned in *Flood*, (3) the Supreme Court’s application of the exemption had been limited to labor issues, and (4) no other professional sport is exempt from antitrust laws.¹⁴¹ This interpretation is further supported by the explicit reasoning in *Flood*, where the Court noted 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.”¹⁴²

138 Defendants’ Reply, *supra* note 111, at 2.

139 *City of San Jose v. Office of the Comm’r of Baseball*, No. C-13-02787 RMW, slip op. at 17 (N.D. Cal. Oct. 11, 2013) (order granting in part and denying in part defendants’ motion to dismiss).

140 *Piazza*, 831 F. Supp. at 438; *see supra* Section II.A.

141 Memorandum of Points and Authorities of Plaintiffs in Opposition to Defendants’ Motion to Dismiss Plaintiffs’ Complaint Under Federal Rule of Civil Procedure 12(b)(6) at 4, *City of San Jose*, No. 13-CV-02787 RMW (N.D. Cal. Sept. 6, 2013) [hereinafter Memorandum in Opposition].

142 *Flood v. Kuhn*, 407 U.S. 258, 282 (1972) (emphasis added).

Counter to this, Major League Baseball argued that *Piazza* was a “widely criticized” opinion that has been summarily rejected.¹⁴³ The fundamental flaw in the *Piazza* court’s reasoning, Major League Baseball contended, was that the court incorrectly believed *Federal Baseball*, *Toolson*, and *Flood* had only dealt with baseball’s reserve clause.¹⁴⁴ In reality, those cases actually involved monopolization and restraint of competition allegations, claims broader than merely the reserve clause.¹⁴⁵

In the motion to dismiss the antitrust claims, Judge Whyte sided with Major League Baseball’s argument and openly “disagree[d] with the Eastern District of Pennsylvania’s opinion in *Piazza* that *Federal Baseball*, *Toolson* and *Flood* can be limited to the reserve clause.”¹⁴⁶ Judge Whyte refuted the argument for limiting baseball’s exemption to the reserve clause by concluding that “*Federal Baseball* and *Toolson* are broadly decided” and “not limited to the reserve clause either by the underlying facts . . . or the language used in the holdings.”¹⁴⁷ Looking to the text of those opinions, the court reasoned that the exemption cannot be limited to the reserve clause because the Court never referenced the reserve clause in *Federal Baseball* or *Toolson*, and the Court’s reference to the reserve clause in *Flood* was due to it being the only alleged conduct that violated antitrust laws.¹⁴⁸

The court’s holding rejecting *Piazza* finds additional support among scholars who have likewise noted that *Piazza* misinterpreted *Federal Baseball*, *Toolson*, and *Flood*.¹⁴⁹ The Northern District of California joins several federal and state courts that have also rejected *Piazza*.¹⁵⁰ *New Orleans Pelicans Baseball, Inc. v. National Ass’n of Professional Baseball Leagues*¹⁵¹ provides an illustrative example. There, two minor league teams, the AAA Denver Zephyrs and the AA Charlotte Knights, both attempted to relocate to New Orleans.¹⁵² Under the league rules governing Minor League Baseball, a higher classification team has priority over a lower classification team in cases

143 Defendants’ Reply, *supra* note 111, at 4.

144 *Id.* at 5.

145 *Id.*

146 *City of San Jose*, No. C-13-02787 RMW, slip op. at 15–16 (order granting in part and denying in part defendants’ motion to dismiss).

147 *Id.* at 15.

148 *Id.* at 16.

149 See, e.g., Grow, *supra* note 94, at 592–99 (noting that in *Flood* the reserve clause was the only anticompetitive restraint on trade that was being challenged and that *Federal Baseball* and *Toolson* never mentioned the reserve clause); Thomas J. Ostertag, *Baseball’s Antitrust Exemption: Its History and Continuing Importance*, 4 VA. SPORTS & ENT. L.J. 54, 62–63 (2004) (arguing that *Piazza* is mistaken because *Federal Baseball* dealt with more than the reserve clause and that if *Flood* was intended to overrule or narrow *Federal Baseball* or *Toolson*, then it would have made some reference to such a conclusion, which it failed to do).

150 See, e.g., *Minn. Twins P’ship v. State*, 592 N.W.2d 847, 855–56 (Minn. 1999) (concluding that *Piazza*’s reasoning was faulty and rejecting it); *McCoy v. Major League Baseball*, 911 F. Supp. 454, 457 (W.D. Wash. 1995) (same).

151 No. 73-253, 1994 WL 631144 (E.D. La. Mar. 1, 1994).

152 *Id.* at *1.

of such conflict.¹⁵³ The plaintiffs argued that *Piazza* should control on a summary judgment motion; the court, however, concluded that “[a]lthough *Piazza* presents an impressive dissent from precedent, this Court associates itself with the weight of authority.”¹⁵⁴ Judge Whyte echoed that conclusion and, as a result, provided support for the contention that it is unlikely courts will find *Piazza* persuasive going forward.

Future challengers to baseball’s antitrust exemption would be well advised to advance more compelling arguments for a narrow interpretation of the exemption. Not only has relying on *Piazza* been a losing argument in virtually every case in which it has been advanced, it has the potential to frame the issue as whether or not *Piazza* is the controlling precedent or, more broadly, whether or not baseball’s exemption was limited to the reserve clause by *Flood*. Framed in that context, challengers of the antitrust exemption will nearly always lose, based on the overwhelming rejection of *Piazza* and its faulty reasoning. This is precisely what happened to the City of San Jose, where Judge Whyte during oral argument indicated that the case could turn entirely on whether *Piazza* is the binding authority.¹⁵⁵

Challengers to baseball’s antitrust exemption may be more successful by advancing an argument for a strict reading and narrow application of the Supreme Court’s baseball trilogy. A court could apply the exemption to only the contexts contemplated in *Federal Baseball*, *Toolson*, and *Flood*, namely a league’s decision not to allow a team from a rival league to join its ranks¹⁵⁶ and challenges to the league’s labor structure.¹⁵⁷ Such an approach would avoid one of the principal criticisms of the *Piazza* court’s reasoning: that *Federal Baseball* and *Toolson* were not solely challenges to baseball’s reserve clause. This approach also comports with the results reached in several other cases in which lower courts have held that baseball’s antitrust exemption was inapplicable. For example, the Texas district court’s holding in *Henderson* that media broadcasting agreements are outside of the exemption,¹⁵⁸ the New York district court’s conclusion in *Postema* that relations between baseball and umpires are outside of the exemption,¹⁵⁹ the Florida Supreme

153 *Id.* at *5.

154 *Id.* at *8.

155 Transcript of Proceedings Before the Honorable Ronald M. Whyte United States District Judge at 10, *City of San Jose v. Office of the Comm’r of Baseball*, No. 13-CV-02787 RMW (N.D. Cal. Oct. 9, 2013) (discussing *Piazza* with Judge Whyte interjecting that it was clear “that if you follow *Piazza* . . . [San Jose] win[s]”).

156 *Fed. Baseball Club of Balt., Inc. v. Nat’l League of Prof’l Baseball Clubs*, 259 U.S. 200, 207–08 (1922).

157 *Flood v. Kuhn*, 407 U.S. 258, 265 (1972); *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356, 356 (1953) (per curiam); see also *Grow*, *supra* note 94, at 569 (noting that “Toolson [had] refused to accept his assignment” to the Yankees’ minor league affiliate and filed his antitrust suit alleging that “the reserve clause constituted an illegal restraint of trade”).

158 *Henderson Broad. Corp. v. Hous. Sports Ass’n*, 541 F. Supp. 263, 268–69 (S.D. Tex. 1982).

159 *Postema v. Nat’l League of Prof’l Baseball Clubs*, 799 F. Supp. 1475, 1489 (S.D.N.Y. 1992), *rev’d on other grounds*, 998 F.2d 60 (2d Cir. 1993).

Court's holding in *Butterworth* that baseball's exemption does not extend to the transfer of a baseball franchise,¹⁶⁰ and, most famously, the Pennsylvania district court's conclusion in *Piazza* that approval or rejection of the sale of a team is not within the bounds of the exemption.¹⁶¹

The *Piazza* court's argument that baseball's antitrust exemption is limited to only the reserve clause went much further than this approach envisions. The court in *Piazza* concluded that *Flood* had invalidated the "rule" of *Federal Baseball* and *Toolson*, and thus only lower courts were bound by the results of those cases, which the court believed to be that the reserve clause was exempt from the federal antitrust laws.¹⁶² Instead, this approach accepts that the "rule" of *Federal Baseball* and *Toolson* is not affected by *Flood*'s finding that baseball was clearly part of interstate commerce; the "rule" remains that the business of baseball is exempt from federal antitrust laws.¹⁶³ In order to define the scope of the exemption, however, this approach would argue that future courts should look to the general circumstances in the previous Supreme Court cases for guidance as to what conduct the Court intended its opinions to govern. Framed this way, challengers to baseball's antitrust exemption can advance an argument that both fits the Supreme Court's baseball trilogy and finds support in numerous lower court opinions. And a court that is uneasy with the "unrealistic, inconsistent, or illogical"¹⁶⁴ nature of the exemption has some middle ground—which can be supported by more than a single, heavily criticized case—to find the exemption inapplicable to certain situations. While this approach is not a home run legal argument, it may be better than relying on a *Piazza*-reserve clause position.

*B. The "Unique Characteristics and Needs" Standard Is a Narrow
but Potentially Persuasive Approach*

The "unique characteristics and needs" standard, an alternate standard used by some courts in determining whether baseball's antitrust exemption bars challenges to anticompetitive conduct, may have survived San Jose's challenge to the exemption. The narrow standard applies the baseball exemption only to limited conduct that is "central enough to the 'unique characteristics and needs' of baseball" to be a part of the sport.¹⁶⁵ In reconciling baseball's antitrust exemption with the antitrust laws that favor competition, the key distinction under this standard is whether the situation at issue in a particular case involves "a distinct and separate industry" from baseball.¹⁶⁶ The standard is based on the statement in *Flood* that the exemption

160 *Butterworth v. Nat'l League of Prof'l Baseball Clubs*, 644 So. 2d 1021, 1022, 1025 (Fla. 1994).

161 *Piazza v. Major League Baseball*, 831 F. Supp. 420, 441 (E.D. Pa. 1993).

162 *Id.* at 437–38.

163 *Flood v. Kuhn*, 407 U.S. 258, 284–85 (1972).

164 *Radovich v. Nat'l Football League*, 352 U.S. 445, 452 (1957).

165 *Henderson Broad. Corp. v. Hous. Sports Ass'n*, 541 F. Supp. 263, 268–69 (S.D. Tex. 1982).

166 *Id.* at 271.

“rests on a recognition and an acceptance of baseball’s unique characteristics and needs,”¹⁶⁷ which is interpreted as a signal that baseball was not to be exempt from liability for conduct not touching on those characteristics and needs.¹⁶⁸ While making clear that the court did not necessarily endorse the more narrow “unique characteristics and needs” test, Judge Whyte concluded that even under such a test, team relocation “falls squarely within the exemption” and San Jose’s claims would still be barred by the exemption.¹⁶⁹

San Jose asserted that anticompetitive conduct towards cities attempting to attract struggling teams is not an essential part of baseball nor does such conduct enhance the vitality or visibility of Major League Baseball.¹⁷⁰ However, this argument fails to actually apply the standard to the facts at issue. The question under the “unique characteristics and needs” standard is not whether it is essential for the league to violate antitrust laws in this particular context, but rather whether the context itself is a unique characteristic or need of the game. If the standard were to be applied as the city suggests, then the question would essentially become whether baseball has a unique need to violate the antitrust laws in this particular context. That would arguably amount to something closer to a reasonableness test.

Part of the confusion over how to apply the standard might come from the language used in *Postema*. The court concluded that “[u]nlike the league structure or the reserve system, baseball’s relations with non-players are not a unique characteristic or need of the game.”¹⁷¹ This would seem to suggest that the proper question was whether the context in question was part of a unique characteristic and need of the game of baseball. But in the very next sentence, the court stated that “[a]nti-competitive conduct toward umpires is not an essential part of baseball and in no way enhances its vitality or viability.”¹⁷² This seems to indicate that the court was applying the standard just as the City of San Jose was, that is to say, by asking whether the anticompetitive conduct at issue is essential to the game of baseball. The opinion failed to explain which interpretation it was applying.

The appropriate application of the “unique characteristics and needs” standard is further muddled by the fact that Major League Baseball asserted that *Henderson* and *Postema* actually support the league’s argument that the exemption is broad and encompasses more than simply the reserve clause.¹⁷³ Judge Whyte ultimately found Major League Baseball’s argument more persuasive and concluded that “there can be no dispute that team relocation is a

167 *Flood*, 407 U.S. at 282.

168 *Postema v. Nat’l League of Prof’l Baseball Clubs*, 799 F. Supp. 1475, 1488 (S.D.N.Y. 1992), *rev’d on other grounds*, 998 F.2d 60 (2d Cir. 1993).

169 *City of San Jose v. Office of the Comm’r of Baseball*, No. C-13-02787 RMW, slip op. at 17 (N.D. Cal. Oct. 11, 2013) (order granting in part and denying in part defendants’ motion to dismiss).

170 Memorandum in Opposition, *supra* note 141, at 6.

171 *Postema*, 799 F. Supp. at 1489.

172 *Id.*

173 Defendants’ Reply, *supra* note 111, at 5 n.7.

'league structure' issue and an 'essential part of baseball' that would fall within the exemption."¹⁷⁴ The court did not endorse or reject the narrower view of the exemption. Rather, the opinion rested on other precedent for the conclusion that team relocation is a component of league structure that falls squarely within the exemption.¹⁷⁵

However, the court's analysis raises some serious questions as to the validity of the standard. First, the court interpreted *Henderson* and *Postema* to stand for the proposition that "certain aspects of baseball, which are merely related to, but not *essential* to, the business of baseball . . . are not subject to the antitrust exemption."¹⁷⁶ Applying that standard, the court analyzed the issue as a question of whether the conduct is an essential or integral part of the business of baseball.¹⁷⁷ This is different than the precise standard that was articulated in both *Henderson* and *Postema*. Specifically, those cases applied the standard of whether the conduct at issue was a unique characteristic and need of baseball.¹⁷⁸ This presents the question of whether there is a difference between the "unique characteristics and needs" of baseball being exempt from antitrust law, or, as the *San Jose* court concluded, issues *integral* to baseball being exempt, but not issues merely related to the game. If there is a relevant difference, then the question instead becomes, which standard is more persuasive?

The argument that there is a distinct difference between the two standards is premised on the fact that something *unique* to baseball encompasses less conduct than something *integral* to baseball. Something "unique" is defined as something "without a like or equal"¹⁷⁹ while something that is "integral" is defined as "very important and necessary."¹⁸⁰ Thus, a unique standard is narrower and would likely place less conduct under the antitrust exemption than a broader integral standard. For example, fan attendance is integral to the game but is not a unique characteristic and need of the game. The success of movie theaters, museums, and performing arts centers are all based on consumers as spectators. A court that considers whether alleged anticompetitive conduct involves matters integral to the game will be more likely to answer in the affirmative than if the court was considering whether the conduct was unique.

174 *City of San Jose*, No. C-13-02787 RMW, slip op. at 14.

175 See *Prof'l Baseball Sch. & Clubs, Inc. v. Kuhn*, 693 F.2d 1085, 1085–86 (11th Cir. 1982) (holding that the "franchise location system . . . plainly concerns matters that are an integral part of the business of baseball" (citations omitted)).

176 *City of San Jose*, No. C-13-02787 RMW, slip op. at 13 (citing *Henderson Broad. Corp. v. Hous. Sports Ass'n*, 541 F. Supp. 263, 265–72 (S.D. Tex. 1982); *Postema*, 799 F. Supp. at 1489).

177 *Id.* at 14.

178 See *supra* Section II.B.

179 *Unique*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/unique> (last visited Mar. 8, 2014).

180 *Integral*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/integral> (last visited Mar. 8, 2014).

Next, we must ask which standard is a more persuasive interpretation of the scope and applicability of baseball's antitrust exemption. *Henderson* and *Postema* both base the "unique characteristics and needs" standard on a passage from *Flood* that the baseball exemption "rests on a recognition and an acceptance of baseball's unique characteristics and needs."¹⁸¹ The court in *Henderson* referenced the passage as the standard for whether the "unique characteristics and needs" of the game have any bearing on the industry and conduct involved in the action.¹⁸² Alternatively, the passage can be interpreted as merely providing a justification for the exemption.¹⁸³ If we take the former interpretation of the passage, for argument's sake, then the difference in the phrasing of the standard results in potentially significantly different outcomes. Under the latter interpretation, the language is not a standard at all.

The fact that there is a significant difference between which word we use in the standard reveals the flimsiness of the standard itself and demonstrates one of the reasons the "unique characteristics and needs" standard is ultimately unpersuasive, regardless of which definition a court applies. Second, as demonstrated in *City of San Jose v. Office of the Commissioner of Baseball*, the standard is clearly unworkable. Both parties cite the cases for completely different propositions. San Jose cites the standard for the proposition that conduct that is not unique to the game of baseball is not covered by the exemption. Major League Baseball argues that the cases that establish the standard stand for the proposition that baseball's antitrust exemption covers conduct outside of the reserve clause, including league structure. While this in and of itself is not necessarily an anomaly in the American judicial system, when coupled with the internal inconsistency in the cases¹⁸⁴ and external inconsistency between the two cases,¹⁸⁵ there appear to be substantial reasons for courts to reject the "unique characteristics and needs" standard in future cases.

C. Broad, All-Encompassing Exemption

Major League Baseball's primary stance is that baseball's exemption is broad and encompasses all aspects of the business of baseball.¹⁸⁶ San Jose

181 *Flood v. Kuhn*, 407 U.S. 258, 282 (1972).

182 *Henderson Broad. Corp. v. Hous. Sports Ass'n*, 541 F. Supp. 263, 271 (S.D. Tex. 1982) ("The issue in the case is not baseball but a distinct and separate industry The reserve clause and other 'unique characteristics and needs' of the game have no bearing at all on the questions presented. To hold that a radio station contract to broadcast baseball games should be treated differently for antitrust law purposes than a station's contract to broadcast any other performance or event would be to extend and distort the specific baseball exemption, [and] transform it into an umbrella to cover other activities and markets outside baseball").

183 See *Grow*, *supra* note 94, at 601.

184 See *supra* notes 170–72 and accompanying text.

185 See *supra* notes 108–10 and accompanying text.

186 Defendants' Reply, *supra* note 111, at 2 (arguing that Supreme Court precedent has established "the broad scope of the exemption").

attempted to rebut baseball's contention by arguing the exemption is limited to player-labor issues—specifically the reserve clause.¹⁸⁷ An argument for a narrow interpretation finds support in antitrust jurisprudence outside of the sports context.¹⁸⁸ But within the context of baseball's antitrust exemption, Judge Whyte noted that “[a]ll federal circuit courts that have considered the issue . . . have adopted the view that the exemption broadly covers the ‘business of baseball.’”¹⁸⁹ Exactly how far the exemption extends, however, is far from clear.

The Seventh Circuit addressed the issue in *Charles O. Finley & Co. v. Kuhn*.¹⁹⁰ It concluded that, based on *Federal Baseball*, *Toolson*, *Flood*, and *Radovich*, it is clear that the Supreme Court “intended to exempt the business of baseball, not any particular facet of that business, from the federal antitrust laws.”¹⁹¹ Major League Baseball relied on *Finley* in support of a broad antitrust exemption.¹⁹² Judge Whyte, in turn, also approvingly considered the court's reasoning in *Finley*, though the case was not cited for support of the court's ultimate conclusion that the exemption is not limited to the reserve clause.¹⁹³

However, there may be a valid argument that *Flood* does not stand for the proposition that the exemption is all-encompassing like Major League Baseball contends. While the Supreme Court at first justified baseball as being exempt from antitrust laws because it was not a subject of interstate commerce and was not trade under the Sherman Act,¹⁹⁴ that reasoning was subsequently rejected and the Court instead allowed baseball to continue to operate without being subject to antitrust laws because Congress had failed to expressly decide otherwise.¹⁹⁵ The doctrinal justification for the exemption, therefore, is based on the Court's interpretation of congressional intent in enacting the antitrust laws, specifically the Court's interpretation that Congress never intended that baseball be subject to those laws.

187 Memorandum in Opposition, *supra* note 141, at 6–8.

188 See *Union Labor Life Ins. Co. v. Pireno*, 458 U.S. 119, 126 (1982) (“[E]xemptions from the antitrust laws must be construed narrowly.”).

189 *City of San Jose v. Office of the Comm’r of Baseball*, No. 13-CV-02787 RMW, slip op. at 3 (N.D. Cal. Oct. 11, 2013) (order granting in part and denying in part defendants’ motion to dismiss).

190 569 F.2d 527 (7th Cir. 1978).

191 *Id.* at 541 (footnote omitted).

192 Defendants’ Reply, *supra* note 111, at 3 (quoting the holding from *Finley*, 569 F.2d at 541).

193 *City of San Jose*, No. 13-CV-02787 RMW, slip op. at 12 (noting the *Finley* court’s “substantial analysis” and its observation that the Supreme Court “intended to exempt the business of baseball, not any particular facet of that business” (quoting *Finley*, 569 F.2d at 541)). Judge Whyte reasoned that “*Federal Baseball* and *Toolson* are broadly decided” and not limited to the reserve clause. *Id.* at 15.

194 See *Fed. Baseball Club of Balt., Inc. v. Nat’l League of Prof’l Baseball Clubs*, 259 U.S. 200, 208–09 (1922).

195 See *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356, 357 (1953) (per curiam).

A closer look at the congressional record provides greater insight into Congress's actual support and opinion regarding the scope of the exemption and raises questions as to the *San Jose* court's reasoning. A House Judiciary Committee Report in 1952, based on extensive hearings and consideration of five proposed bills to alter the baseball exemption, advised against a blanket antitrust exemption for baseball.¹⁹⁶ The subcommittee also concluded that "courts may have to differentiate the unreasonable features of baseball's rules and regulations from those which are reasonable and necessary."¹⁹⁷ Interestingly, the subcommittee closed its report by stating its "earnest desire to avoid influencing pending litigation," finding it "unwise to attempt to anticipate judicial action with legislation."¹⁹⁸ Interpreting the Supreme Court's holding in *Flood* as providing professional baseball blanket immunity from antitrust laws, a conclusion based on congressional acceptance of *Flood* and *Toolson*, appears to overlook the fact that Congress did not believe that baseball was actually granted a complete exemption from the antitrust laws. If Congress thought it was not its place to influence the Court and the Court believed it was Congress's place to alter the exemption, then the acceptance of the status quo may lack the substantive evidence of congressional intent that the *Flood* Court and courts since have generally presupposed.

In *Flood*, the Court concluded that "the orderly way to eliminate error or discrimination" which may result from baseball's antitrust exemption "is by legislation and not by court decision."¹⁹⁹ This conclusion was justified, the Court reasoned, because "[c]ongressional processes are more accommodative, affording the whole industry hearings and an opportunity to assist in the formulation of new legislation. The resulting product is therefore more likely to protect the industry and the public alike."²⁰⁰ Such a justification either: (a) is fundamentally flawed and so impractical that it supports rejecting the conclusion that only Congress can provide a workable correction to baseball's antitrust exemption,²⁰¹ or, perhaps more persuasively, (b)

196 H.R. REP. NO. 82-2002, at 230 (1952) (noting club owners, baseball management, players, sports writers, and even sponsors of bills proposing a broad antitrust exemption for baseball all conclude that a carte blanche exemption is unwise).

197 *Id.* at 232.

198 *Id.*

199 *Flood v. Kuhn*, 407 U.S. 258, 279 (1972) (quoting *Radovich v. Nat'l Football League*, 352 U.S. 445, 452 (1957)).

200 *Id.*

201 In his *Flood* dissent, Justice Douglas argued that the Court has repeatedly rejected such justifications. *Id.* at 286 (Douglas, J., dissenting). For example, in *Helvering v. Hallock*, 309 U.S. 106 (1940), the Court held that:

It would require very persuasive circumstances enveloping Congressional silence to debar this Court from re-examining its own doctrines. To explain the cause of non-action by Congress when Congress itself sheds no light is to venture into speculative unrealities. . . . Various considerations of parliamentary tactics and strategy might be suggested as reasons for the inaction . . . but they would only be sufficient to indicate that we walk on quicksand when we try to find in the absence of corrective legislation a controlling legal principle. . . . [W]e cannot

may support the notion that the Court did not interpret the exemption as extending to situations like San Jose's efforts to build a new stadium for the Oakland Athletics, and similar third party contexts.

The justification that Congress provides a better forum for changing the antitrust exemption is arguably unsound. As exemplified by the congressional process in drafting the Curt Flood Act, the parties affected by the exemption do not have a voice in the congressional forum. Only players, owners, and officers of Major League Baseball took part in the drafting of the Curt Flood Act.²⁰² It is not reasonable or likely that third parties like cities, media companies, and advertisers have a proper forum to take part in such a debate on the proper parameters of the exemption because their interests are not ongoing and the size of a potential class of third parties makes lobbying ineffective. Cities are unaffected by the exemption unless they currently have a team or they hope to attract a team. Current cities would be most interested in curbing competition to attract their team away from the city, and at any given time only a few, if any, cities would actively be soliciting teams to relocate. Thus, Congress is in fact a poor forum for protecting the interests of third parties that may be significantly affected by the antitrust exemption.

Alternatively, it is possible to interpret the Court's reference to the benefits of a congressional forum as an indication that the Court never meant to shield baseball from antitrust actions brought by third parties like cities. As discussed above, Congress is not a sufficient forum for parties outside of baseball to have their concerns heard or addressed. Rather than committing such a fundamental lapse in reasoning, perhaps the Court in *Flood* did not consider third parties like cities to be barred from bringing antitrust claims by Major League Baseball's antitrust exemption. After all, *Federal Baseball, Toolson*, and *Flood* all concerned actions brought by executives of a baseball team or professional players.²⁰³ A third party like San Jose was never referenced in any of the Court's opinions. Significantly, the Court in *Flood* justified the benefits of the congressional forum on the notion that "[c]ongressional processes are more accommodative, *affording the whole industry* hearings and an opportunity to assist in the formulation of new legislation."²⁰⁴ Clearly, one would not consider a city like San Jose part of the baseball "industry." At best, the city is attempting to join the industry and is being kept out by the industry's rules. A narrow reading of *Flood* could justify

evade our own responsibility for reconsidering in the light of further experience, the validity of distinctions which this Court has itself created. . . . Surely we are not bound by reason or by the considerations that underlie *stare decisis* to persevere in distinctions taken in the application of a statute which, on further examination, appear consonant neither with the purposes of the statute nor with this Court's own conception of it.

Id. at 119–22 (footnote omitted).

202 See *supra* note 60 and accompanying text.

203 See *supra* Section I.A.

204 *Flood*, 407 U.S. at 279 (emphasis added) (quoting *Radovich*, 352 U.S. at 452).

a court's conclusion that the Supreme Court implicitly presumed the anti-trust exemption only applied to conduct between parties within the baseball industry, such as players, umpires, league management, and teams.

D. Effect of the Curt Flood Act of 1998 Remains a Doctrinal Challenge

*San Jose v. Office of the Commissioner of Baseball*²⁰⁵ also provides a great example of the continuing debate over the relevant effect of the Curt Flood Act on antitrust challenges outside of the player-labor context. Following a similar conclusion in *Morsani v. Major League Baseball*,²⁰⁶ the *San Jose* court concluded that the Act "provides further support for the Court's holding in *Flood* that Congress does not intend to change the longstanding antitrust exemption for 'the business of baseball' with respect to franchise relocation issues."²⁰⁷ While interpreting the Curt Flood Act as an indication that Congress was not intending to change the antitrust exemption is a reasonable conclusion, the court's quotation of *Morsani* may be read to indicate support for a broader interpretation of the Act. Specifically, the court quoted *Morsani* for the proposition that Congress had "preserv[ed] . . . the broadest aspects of the antitrust exemption" in passing the Curt Flood Act.²⁰⁸

Predictably, Major League Baseball argued that the Act preserved baseball's exemption with respect to all conduct outside of dealings with players.²⁰⁹ *San Jose* argued for a more narrow interpretation of Congress's intent in passing the Act, arguing that the Act "does not apply to aspects of baseball other than the employment of major league players."²¹⁰ *San Jose* further reasoned that Congress would have been aware of the line of cases limiting the scope of the exemption, and thus the explicit language that the Act does not affect current case law on the exemption outside of the labor context should be construed as proof that the Act does not apply to relocation and league structure issues.²¹¹

Judge Whyte seemed to agree with Major League Baseball's contention, though the opinion does not devote much attention to the issue.²¹² The congressional debate regarding the passage of the Curt Flood Act provides additional evidence that Congress may not have intended to endorse a broad

205 *City of San Jose v. Office of the Comm'r of Baseball*, No. C-13-02787 RMW (N.D. Cal. Oct. 11, 2013).

206 79 F. Supp. 2d 1331 (M.D. Fla. 1999).

207 *City of San Jose*, No. 13-CV-02787 RMW, slip op. at 17 (citations omitted).

208 *Id.* ("Congress explicitly preserved the exemption for all matters 'relating to or affecting franchise expansion, location or relocation' . . . Congress' preservation of the broadest aspects of the antitrust exemption in this recent legislation casts in sharp relief the misdirection in *Butterworth*." (quoting *Morsani*, 79 F. Supp. 2d at 1336 n.12 (citation omitted))).

209 Defendants' Motion to Dismiss, *supra* note 73, at 7.

210 Memorandum in Opposition, *supra* note 141, at 8.

211 *Id.*

212 *City of San Jose*, No. 13-CV-02787 RMW, slip op. at 17 ("The Curt Flood Act provides further support . . . that Congress does not intend to change the longstanding antitrust exemption for 'the business of baseball' with respect to franchise relocation issues.").

exemption from federal antitrust laws. The Senate Judiciary Committee specifically noted that the Act “does not affect the applicability or non-applicability of the antitrust laws in any other context beyond” player-labor issues.²¹³ At the committee hearing, Senator Orrin Hatch stated that the Act was written to make Major League Baseball subject to federal antitrust laws, like all other professional sport leagues, “except with regard to team relocation, the minor leagues, and sports broadcasting.”²¹⁴

During the discussion of the bill, Representative Henry Hyde described the bill as an agreement between “baseball players, . . . owners, and the minor leagues . . . on the application of the antitrust laws to labor relations in baseball.”²¹⁵ He further noted that the “bill was carefully drafted . . . to leave the remainder of the exemption intact” so that “nothing in [the] bill will affect in any way the protections afforded to the major league clubs by the non-statutory labor antitrust exemption.”²¹⁶ Of specific relevance to cities like San Jose, the Congressman stated that the “bill does not affect the application of the antitrust laws to anyone outside the business of baseball.”²¹⁷ Representative John Conyers discussed the need to rectify the “sorry Supreme Court decision . . . holding that baseball . . . was beyond the reach of antitrust laws.”²¹⁸ Of particular relevance, he cited the tens of millions of dollars in lost tax revenues for cities as a result of the 1994 World Series being cancelled due to the player strike.²¹⁹ He went on state that the legislation carefully protected professional baseball’s ability to limit franchise relocation.²²⁰ The Congressman advised a future court attempting to interpret the Act “to return to the purpose section of the bill for aid and interpretation,” which states Congress’s intention “that major league baseball players have the same rights under antitrust laws as do other professional athletes.”²²¹ Representative Jim Bunning voiced his opinion that the “exemption should be repealed altogether” as “[b]aseball is a multibillion dollar business that should have to play by the same rules as other sports and businesses.”²²² Representative Hutchinson noted that the legislation “recognizes the importance of an anti-

213 S. REP. NO. 105-118, at 6 (1997).

214 *Major League Baseball Antitrust Reform: Hearing on S. 53 Before the S. Comm. on the Judiciary*, 105th Cong. 2 (1997) (opening statement of Sen. Orrin G. Hatch, Chairman, Comm. on the Judiciary). It should be noted that the Act itself goes beyond merely exempting team relocation, the minor leagues, and sports broadcasts. Specifically, the Act also excludes umpires and other employees of organized baseball, franchise expansion, franchise location, franchise ownership issues, relationships between the Office of the Commissioner and team owners, and intellectual property rights. See Curt Flood Act of 1998, 15 U.S.C. § 26b(b) (2012).

215 144 CONG. REC. 24,328 (1998) (statement of Rep. Hyde).

216 *Id.*

217 *Id.*

218 *Id.* (statement of Rep. Conyers).

219 *Id.*

220 *Id.* at 24,329.

221 *Id.*

222 *Id.* (statement of Rep. Bunning).

trust exemption for certain aspects of the game so team owners may continue to cooperate on issues such as league expansion, franchise location and broadcast rights.”²²³

That Congress did not seek to preserve a broad interpretation of the antitrust exemption by enacting the Curt Flood Act, as Major League Baseball contended,²²⁴ is directly supported by the congressional record. Senator Paul Wellstone specifically raised the issue of the Act’s effect on the lower court holdings that baseball “enjoys only a narrow exemption from antitrust laws and that exemption applies only to the reserve system,” citing *Butterworth, Piazza*, and the lower state court opinion in the *Twins* case.²²⁵ Senator Orrin Hatch, in an attempt to clarify the legislative intent of the bill, stated that it was to have no effect on a court’s ultimate resolution of the scope of the antitrust exemption in other contexts or with other persons or entities.²²⁶ Senator Leahy also reiterated that the bill was to have no impact on the recent decisions in *Butterworth, Piazza*, and *Minnesota Twins v. State*.²²⁷ Senator Bilirakis argued that the bill was “an important first step in correcting” the judicially created baseball antitrust exemption.²²⁸ Senator Clay also questioned the existence of the baseball exemption, referring to *Flood* as an “erroneous” decision.²²⁹

Interpreting the Curt Flood Act as a preservation of a broad antitrust exemption is problematic for two reasons. First, it ignores the explicit indications by Congress that the Act was not meant to be interpreted as having any effect on the previously decided cases which interpreted the exemption narrowly, nor was the Act meant to prevent future courts from similarly interpreting the exemption in a narrow manner.²³⁰ Second, such an interpretation of the Act would expand and solidify the exemption despite the fact that the actual catalyst for the Act was to ensure the validity of the collective bargaining agreement, which had already been agreed to by the players and Major League Baseball.²³¹ That would mean Major League Baseball, in agreeing to support legislation eliminating a portion of the exemption, which they had already agreed not to rely on, somehow ended up with an even stronger, more expansive exemption. Such a confounding result²³² should not be created by judicial interpretation. While baseball players,

223 *Id.* at 24,330 (statement of Rep. Hutchinson).

224 Defendants’ Reply, *supra* note 111, at 5 (“Congress expressly preserved the antitrust exemption when it enacted the Curt Flood Act.”).

225 144 CONG. REC. 24,330 (1998) (statement of Sen. Wellstone).

226 *Id.* (statement of Sen. Hatch).

227 *Id.* (statement of Sen. Leahy).

228 *Id.* (statement of Sen. Bilirakis).

229 *Id.* at 24,331 (statement of Sen. Clay).

230 *See supra* Section II.D.

231 *See Edmonds, supra* note 60, at 3.

232 *See Wolohan, supra* note 60, at 377 (“A reasonable interpretation of Congress’ decision to only include Major League Baseball players, therefore would be that Congress did not want the entire business of baseball to be covered under a blanket antitrust exemption.”).

through the Major League Baseball Players' Association, may have consented to such a result, the labor aspect of the antitrust exemption is only one category affected by the exemption. The substantive rights of third parties, which were not considered or advocated for during drafting of the Act, should not be diminished because the players, who only cared about the labor aspects of the exemption that concerned them, consented to such a change.

CONCLUSION

Ninety years after its judicial creation, the antitrust exemption for professional baseball continues to be an anomaly that courts and scholars struggle both to justify and to apply to challenges of anticompetitive conduct by Major League Baseball. The most recent challenge to baseball's exemption renews the issues with the exemption's history and the lack of clarity on what exactly it means. The Northern District of California confronted these issues head-on and diligently attempted to make some sense of the muddled precedent dealing with the exemption.

The *San Jose v. Office of the Commissioner of Baseball* opinion provides some valuable persuasive authority for future courts but inevitably leaves questions remaining and is subject to some criticism for its reasoning. First, the court provides another strong rejection of *Piazza*, the most supportive case for challengers of the exemption, and adds additional weight to the position that baseball's antitrust exemption extends beyond merely the reserve clause.²³³ This Note concludes that the *San Jose* court's opinion should be read by future challengers to baseball's antitrust exemption as a signal that relying on *Piazza* is not only unlikely to be persuasive but potentially can be fatal to a challenger's argument.

Second, the opinion raises some questions regarding the validity of the "unique characteristics and needs" standard that has been used by previous courts. Specifically, the *San Jose* court exposes the inconsistency in the application of the standard and raises questions about the ultimate workability of the standard.²³⁴ A reasoned analysis of that standard leads to the conclusion that it should be rejected by future courts as too attenuated and ineffectual to provide any clarity in analyzing the scope and application of professional baseball's antitrust exemption.

Third, *San Jose* addresses Major League Baseball's argument that the antitrust exemption broadly covers the entire business of baseball. The court did not explicitly endorse such a broad view but indicated that the support of a broad view is stronger than the much narrower interpretation that the exemption applies only to the reserve clause.²³⁵ This Note challenges the notion that the Supreme Court's opinion in *Flood* should be interpreted as an affirmation of such a broad interpretation of the exemption. Rather, the language in the *Flood* opinion, and specifically its justification of Congress

233 See *supra* Section III.A.

234 See *supra* Section III.B.

235 See *supra* Section III.C.

being a better forum for removing the exemption,²³⁶ indicates that the Supreme Court arguably never intended for third parties outside of the baseball industry to be barred from challenging anticompetitive conduct by the league. *Flood* should correctly be interpreted by future courts as evidence that Major League Baseball's antitrust exemption only shields the league from challenges by teams, employees, and other parties that are part of the baseball industry and challenges to conduct that principally concerns only the baseball industry.

Finally, the *San Jose* court addresses the effect of the Curt Flood Act on the breadth of baseball's antitrust exemption. The court endorses the reasoning that the Act demonstrates Congress preserved a broad antitrust exemption.²³⁷ This conclusion is flawed and should be rejected because it ignores the explicit warnings by Congress that the Act was not meant to be interpreted as having any effect on the previously decided cases²³⁸ and because such an interpretation of the Act would expand the exemption despite the fact that the Act was a response to requests by baseball and its players to solidify labor relations.²³⁹ The substantive rights of the rest of the baseball industry and third parties, including cities, should not be diminished by the narrow consent of only a subset of the parties affected by the exemption.

236 See *Flood v. Kuhn*, 407 U.S. 258, 279 (1972).

237 See *supra* Section III.D.

238 See *supra* Section II.D.

239 See *Edmonds*, *supra* note 60, at 3.