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Stepping Up to the Plate: Can the City of San Jose Overcome Baseball's Antitrust Exemption?

John Becker

Comments

STEPPING UP TO THE PLATE: CAN THE CITY OF SAN JOSE OVERCOME BASEBALL'S ANTITRUST EXEMPTION?

I. Introduction

As the 2014 Major League Baseball ("MLB" or the "League") season begins, the future of the Oakland Athletics ("A's") will not only be determined on the field, but also in the courts.[1] The A's franchise is in need of a makeover, either in the form of a new ballpark in Oakland, or elsewhere.[2] Enter the city of San Jose, which is eager to increase its presence in the professional sports marketplace.[3] The city of San Jose is the largest U.S. city to lack an NFL, NBA, or MLB franchise, despite the fact that the city, along with the greater Silicon Valley region, has the resources to support a successful professional baseball club.[4] Not only does the city of San Jose covet the A's, but the A's franchise has also clearly expressed a desire to relocate to San Jose.[5] Preventing the marriage between the A's and the city of San Jose are the San Francisco Giants and MLB's ironfisted control over the location of its franchises.[6] Therefore, the city of San Jose has sued MLB, alleging

1. *See* Brian Costa, *Baseball's Battle for Silicon Valley: As Oakland A's Eye Move to San Jose, Giants Get Territorial*, Wall St. J. (June 28, 2013, 1:27 PM), http://online.wsj.com/article/SB10001424127887323873904578571490506017364.html (stating fight for rights to San Jose baseball market "is becoming baseball's version of the Hundred Years War, an intractable slog between neighboring kingdoms vying for land, power and wealth").

2. *See id.* (noting A's have played in Oakland Coliseum since 1968). Highlighting the need for a new stadium, "[o]n June 16, [2013,] a clogged pipe resulted in pools of raw sewage in the locker rooms during a game at the Oakland Coliseum." *Id.*

3. *See* Henry Grabar, *Can San Jose Really Sue Its Way to a Major League Baseball Team?*, Atlantic Cities (June 25, 2013), http://www.theatlanticcities.com/jobs-and-economy/2013/06/can-san-jose-really-sue-its-way-major-league-baseball-team/5982/ (discussing viability of San Jose as professional sports market).

4. *See id.* ("San Jose wants the A's, and has reserved a discounted plot of public land for the team"); *see also* Costa, *supra* note 1 (noting "treasure trove of corporate sponsors and disposable income" available to professional baseball team operating closest to Silicon Valley).

5. *See* Costa, *supra* note 1 (noting Cisco Systems, Inc. has agreed to back A's in constructing new ballpark in San Jose); *see also* Grabar, *supra* note 3 (noting A's have raised $500 million to build new ballpark in San Jose).

6. *See* Grabar, *supra* note 3 (revealing that San Francisco Giants and MLB asserted that San Jose baseball market belongs to San Francisco Giants).

that the League's efforts to disrupt the relocation of the A's from Oakland to San Jose violate federal antitrust laws.[7]

Professional baseball enjoys a unique status as "the only professional sport to enjoy a judicially created exemption from federal antitrust law."[8] As such, MLB is permitted to maintain monopolies in professional baseball markets by assigning specific territorial rights to its franchises.[9] MLB's unique status is the product of professional baseball's complex beginnings and the unwillingness of the courts and the legislature to disturb its development.[10]

The history of professional baseball in the United States dates back to 1871 when the National Association of Professional Baseball Players became the first professional baseball league.[11] Over the next several decades, a litany of competing professional baseball leagues emerged, such as the National League, the Players' League, the American League, and the Federal League.[12] Subsequently, the rules controlling the sport, franchise location, league size, and allocation of players continued to evolve.[13]

As professional baseball matured, the courts recognized that the sport enjoyed a "unique place in our American heritage," which in relation to other professional sports, placed it "on higher ground."[14] Congress and the courts have been reluctant to disturb

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7. *See id.* (noting San Jose filed lawsuit against MLB for "stalling the Oakland A's move to relocate to a plot of land just west of San Jose's Diridon Station.").

8. *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, 559 (2010) (noting United States Supreme Court's creation and affirmation of professional baseball's antitrust exemption from antitrust law); *see also* Fed. Baseball Club of Balt., Inc. v. Nat'l League of Prof'l Baseball Clubs, 259 U.S. 200, 208 (1922) (holding professional baseball is not subject to federal antitrust law).

9. *See* Grabar, *supra* note 3 (noting MLB's ability to control franchise geography and monopolize baseball markets affords league unique position in realm of major professional American sports).

10. For a discussion of the Supreme Court's holding in Flood v. Kuhn, 407 U.S. 258 (1972) and its recognition of the peculiar development of professional baseball in light of inconsistencies in case law, see *infra* notes 75-83 and accompanying text.

11. *See Flood*, 407 U.S. at 261 (discussing beginnings of professional baseball and upholding baseball's antitrust exemption).

12. *See id.* at 261-62 (noting professional baseball's lack of centralized development).

13. *See id.* (noting development of "the home run ball; the shifting of franchises; the expansion of leagues; the installation in 1965 of the major league draft").

14. *Id.* at 266-67 (discussing procedural history of *Flood v. Kuhn* and baseball's importance to American public, observing " 'it would be unfortunate indeed if a fine sport and profession . . . were to suffer in the least because of undue concentration by any one or any group on commercial and profit considerations' ") (quoting Flood v. Kuhn, 309 F. Supp. 793, 797 (S.D.N.Y. 1970)).

the sport's development, and therefore professional baseball evolved largely free from the purview of antitrust law.[15] Nevertheless, courts continue to receive complaints regarding baseball's antitrust exemption and the allocation of territorial rights.[16] In fact, the city of San Francisco threatened to sue MLB in 2009 when the league contemplated moving the A's to San Jose.[17]

On June 18, 2013, the city of San Jose filed suit against MLB alleging the League's refusal to allow the A's to relocate to San Jose violates federal and state antitrust laws.[18] Specifically, San Jose claims that MLB's constitutional provision restricting franchises from operating within another franchise's territory, without the written consent of that member, unreasonably restrains trade, constitutes conspiracy and violates antitrust law.[19] The city of San Jose not only seeks damages, but also requests that the court enjoin MLB from enforcing its constitution to the extent that it prevents the A's from relocating to San Jose.[20] Recently, U.S. District Judge Ronald M. Whyte dismissed San Jose's antitrust claims, ruling that they were barred by MLB's antitrust exemption.[21] However, San

15. *See infra* notes 79-83 and accompanying text (discussing Court's recognition of complexities associated with development of professional baseball). The Supreme Court concluded congressional inaction regarding baseball's status under antitrust law to demonstrate Congress' unwillingness to address issues associated with baseball's exemption. *Flood*, 407 U.S. at 283-84.

16. *See* Grow, *supra* note 8, at 563 ("MLB's restrictive territory allocation policies" have become "a regular source of antitrust complaints against the league.").

17. *See id.* (noting San Jose is within territory allocated to San Francisco Giants) (citing John Cote, *S.F. Threatens Suit if A's Move to San Jose*, S.F. CHRON. (Dec. 18, 2009, 4:00 AM), *available at* http://www.sfgate.com/athletics/article/S-F-threatens-suit-if-A-s-move-to-San-Jose-3205965.php ("The Giants have long-established territorial rights to San Jose, and say moving a team there would undercut their fan base and revenue.")); *see also* Costa, *supra* note 1 ("More than four years have passed since baseball commissioner Bud Selig appointed a committee to study the Athletics' proposed move from Oakland to San Jose. Yet because the Giants refuse to relinquish their exclusive rights to the area, the issue remains unresolved.").

18. *See generally* Complaint, City of San Jose v. Office of Comm'r of Baseball, No. 5:13CV02787, 2013 WL 2996788 (N.D. Cal. June 18, 2013) (setting forth San Jose's claims against MLB); *see also MLB's Refusal to Allow Oakland A's Move is Antitrust Violation, Suit Says*, 25 No. 6 WESTLAW J. ENT. INDUS. 1 (2013) (discussing complaint filed by city of San Jose).

19. *See MLB's Refusal to Allow Oakland A's Move is Antitrust Violation, Suit Says*, *supra* note 18, at 1-2 ("MLB is relying on a provision of its constitution that says 'no franchise shall be granted for an operating territory within the operating territory of a member without the written consent of such member.'").

20. *See id.* at 2 (discussing relief requested by city of San Jose).

21. *See* City of San Jose v. Office of Comm'r of Baseball, No. C-13-02787 RMW, 2013 WL 5609346, at *11 (N.D. Cal. Oct. 11, 2013) (holding "MLB's alleged interference with the A's relocation to San Jose is exempt from antitrust regulation"); *see also infra* notes 159-162 (discussing district court's holding in City of San Jose).

Jose plans to appeal the decision to the Ninth Circuit Court of Appeals.[22]

Part II of this article provides a brief background on the development of federal antitrust law in the United States and its application in the context of professional sports.[23] Part III discusses the Supreme Court cases that established and upheld professional baseball's antitrust exemption.[24] This section also addresses lower courts' interpretations of the scope of the exemption and how it relates to the issue of franchise relocation.[25] Part IV discusses the background and potential outcomes of San Jose's lawsuit against MLB, as well as the improbability that this case presents the proper opportunity for the court to eliminate baseball's exemption from antitrust law.[26] This article concludes that if San Jose is determined to acquire the A's, then its best course of action is to reach a settlement with MLB providing for the relocation of the franchise.[27]

II. BACKGROUND: ANTITRUST AND PROFESSIONAL SPORTS

Prior to discussing the creation of professional baseball's antitrust exemption, it is worth briefly discussing federal antitrust law and its application in the realm of professional sports.[28] In the late nineteenth century, Congress enacted the Sherman Antitrust Act ("the Act"), which was designed to combat anticompetitive prac-

22. *See S. Jose's Claims Against MLB Denied*, ESPN.COM (Oct. 11, 2013, 7:11 PM), http://espn.go.com/mlb/story/_/id/9809824/judge-rejects-san-jose-antitrust-claims-vs-mlb (noting San Jose's lawyer finding "'it hard to believe Major League Baseball is not subject to the same antitrust rules that apply to all other sports'").

23. For a discussion of the Sherman Antitrust Act and elements of an antitrust claim, see *infra* notes 28-39 and accompanying text.

24. For a discussion of the trilogy of Supreme Court cases pertaining to professional baseball's status under antitrust laws, see *infra* notes 41-83 and accompanying text.

25. For a discussion of the split in lower courts regarding the scope of baseball's antitrust exemption see *infra* notes 84-111 and accompanying text.

26. *See* Jared Feldman, *Analyzing Potential Outcomes of San Jose's Suit Against MLB*, YAHOO! NEWS (Jun. 28, 2013, 1:12 PM), http://news.yahoo.com/analyzing-potential-outcomes-san-jose-suit-against-mlb-171200518.html (discussing potential outcomes of San Jose's suit against MLB, asserting settlement is most likely result). For a discussion of the potential outcomes and impacts of a trial compared to those of a potential settlement agreement, see *infra* notes 143-208 and accompanying text.

27. For a discussion of the benefits of a potential settlement agreement, see *infra* notes 201-208 and accompanying text.

28. *See* Jeffrey Gordon, Note, *Baseball's Antitrust Exemption and Franchise Relocation: Can a Team Move?*, 26 FORDHAM URB. L.J. 1201, 1203-06 (1999) (discussing Sherman Antitrust Act).

tices, such as monopolization and other restraints on free trade.[29] The Sherman Antitrust Act sought to promote competition based on "the notion that the unrestrained interaction of competitive forces would lead to the 'best allocation of economic resources, the lowest price, the highest quality and the greatest material progress.'"[30]

Professional sports-related claims alleging violations of the Sherman Antitrust Act are generally brought under Section One of the Act.[31] This section states that "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal."[32] In order to state a claim under Section One of the Act, a plaintiff must show "(1) a contract, combination or conspiracy between two or more individuals or entities, (2) causing an unreasonable restraint of trade and (3) having an impact on interstate commerce."[33]

With respect to the first element, a party suing a professional sports league will usually argue that the league is composed of independent franchises, and thus any unreasonable restraint on competition between those franchises amounts to a violation of antitrust law.[34] As for the second element, a plaintiff may argue that the league's conduct is so obviously anticompetitive that it is per se illegal.[35] In the alternative, a plaintiff can argue that a league's restraint on trade is unreasonable by showing that any procompetitive effects associated with such a restraint are outweighed

29. *See id.* at 1203-04 (noting Sherman Antitrust Act responded to threats to competition posed by big business).

30. *Id.* at 1204 (discussing Congressional intent in enacting Sherman Antitrust Act).

31. *See id.* (discussing elements of antitrust claim under Section One of Sherman Antitrust Act).

32. 15 U.S.C. § 1 (2012). *See generally* Sherman Act, ch. 647, 26 Stat. 209 (1890) (codified as amended at 15 U.S.C. §§ 1-7 (2012)) (discussing penalty for illegal restraint of trade).

33. Gordon, *supra* note 28, at 1204 (discussing elements of professional sports related antitrust claims).

34. *See id.* (discussing first element of claim, stating "[i]f a sports league is considered a 'single entity' pursuing a single purpose, then by definition it cannot violate Section 1. However, if the league consists of independent entities, each pursuing a diverse and competing purpose, then any unreasonable restraint between league members constitutes an antitrust violation.").

35. *See id.* at 1205 (discussing per se illegal test, noting test applies to anticompetitive conduct "lack[ing] any redeeming virtue").

by the restraint's anticompetitive effects.[36] Finally, regarding the third element, it would appear obvious that a professional sports league, such as MLB, is engaged in interstate commerce, given that such leagues are composed of member clubs that travel from state to state to compete in events that are commonly broadcasted across the country.[37] Thus, any unreasonable restraint on trade would likely have an impact on interstate commerce.[38] However, as the next section discusses, the Supreme Court initially established professional baseball's exemption from federal antitrust law by finding that the business of professional baseball does not constitute interstate commerce.[39]

III. BASEBALL'S ANTITRUST EXEMPTION

"Baseball, unlike the other major professional American sports, enjoys wide-ranging exemption from antitrust laws."[40]

A. Origins: The Supreme Court Lineup

1. *Leading Off: Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*

In 1922, the United States Supreme Court handed down its first decision regarding the status of professional baseball under federal antitrust law.[41] In the early 1900s, professional baseball was composed of two principal leagues: the American League and the National League.[42] However, the American and National Leagues were not without competitors, such as the Federal League, which sought to assert itself as a rival in the landscape of professional baseball.[43] To challenge the American and National Leagues'

36. *See id.* (discussing rule of reason test, stating court determines whether restraint "'merely regulates or perhaps thereby promotes competition, or whether it . . . may suppress or even destroy competition'").

37. For a discussion of the Supreme Court's eventual recognition that professional baseball is engaged in interstate commerce, see *infra* notes 76-77 and accompanying text.

38. *See* Gordon, *supra* note 28, at 1204 (setting forth third element of antitrust claim).

39. For a discussion of Fed. Baseball Club of Balt., Inc. v. Nat'l League of Prof'l Baseball Clubs, 259 U.S. 200 (1922), see *infra* notes 41-54 and accompanying text (finding professional baseball exempt from federal antitrust laws).

40. *See* Grabar, *supra* note 3 (explaining creation of baseball's antitrust exemption).

41. *See* Grow, *supra* note 8, at 565-66 (discussing role of *Federal Baseball* in establishment of baseball's antitrust exemption).

42. *See id.* at 566 (describing American League and National League as "the predominant leagues in professional baseball during the 1910s.").

43. *See id.* (discussing Federal League's background).

supremacy, the Federal League brought an antitrust suit against the American and National Leagues.[44] In response to the Federal League's attempts to weaken the American and National Leagues' control over professional baseball, the American and National Leagues purchased seven of the eight Federal League teams, or "clubs".[45] As the lone member of the Federal League to reject the buyout, the owner of the Baltimore Terrapins decided to file a new suit against the American and National Leagues.[46] In *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*, the Baltimore Terrapins sued the American League and the National League, in addition to persons of power associated with these leagues, for their roles in conspiring to dismantle the Federal League.[47] The Baltimore club "alleged that these defendants conspired to monopolize the [baseball] business."[48]

Writing for a unanimous court, Justice Holmes held that professional baseball was not subject to federal antitrust law.[49] In his opinion, Justice Holmes summarized the "nature of the business" of baseball, concluding that "[t]he business is giving exhibitions of base ball, which are purely state affairs."[50] The Supreme Court rejected the notion that professional baseball's scheme, which involves teams travelling across state lines to compete, constitutes

44. *See id.* ("After the AL and NL rejected the Federal League's merger inquiries, the Federal League owners filed an antitrust suit against the two established leagues alleging violations of both Sections One and Two of the Sherman Act.").

45. *See id.* (noting threat of suit and cost of competing with Federal League drove American and National Leagues to purchase Federal League clubs).

46. *See* Roger I. Abrams, *Before the Flood: The History of Baseball's Antitrust Exemption*, 9 MARQ. SPORTS L.J. 307, 308 (1999) (noting "benefits of the settlement were not evenly distributed among participants in the Federal League," and describing Baltimore Terrapins owner as feeling insulted by offer).

47. *See* Fed. Baseball Club of Balt., Inc. v. Nat'l League of Prof'l Baseball Clubs, 259 U.S. 200, 207 (1922) (setting forth parties in suit); *see also* Gordon, *supra* note 28, at 1207 ("The Baltimore club, a member of the Federal League of Professional Baseball Clubs ('Federal League'), sued both major leagues (the American League and the National league).").

48. *Fed. Baseball*, 259 U.S. at 207 (stating plaintiff's allegations that defendants conspired to destroy Federal League "by buying up some of the constituent clubs and in one way or another inducing all those clubs except the plaintiff to leave their League"); *see also* Abrams, *supra* note 46, at 308 ("There was little doubt the owners had engaged in a combination and conspiracy in restraint of trade which injured the stockholders of the Baltimore franchise.").

49. *See Fed. Baseball*, 259 U.S. at 208 (affirming decision by appellate court "that the defendants were not within the Sherman Act").

50. *Id.* (holding professional baseball is not subject to federal antitrust law because baseball business does not amount to interstate commerce); *see also* Grow, *supra* note 8, at 567 (noting *Federal Baseball* court considered business of baseball was not intrastate commerce because "manner in which baseball teams generated revenue" at time was "the sale of tickets to baseball games held in a single state").

interstate commerce.[51] The Court emphasized "the fact that in order to give the exhibitions the Leagues must induce free persons to cross state lines and must arrange and pay for their doing so is not enough to change the character of the business."[52]

The Supreme Court's limited conception of the business of baseball as "providing exhibitions to the public" has become outdated since its 1922 decision.[53] Nevertheless, Justice Holmes's opinion in *Federal Baseball*, establishing that professional baseball does not fall under the purview of federal antitrust law, is the foundation of baseball's unique status among American professional sports.[54]

2. *Hit and Run: Toolson v. New York Yankees*

In 1953, the Supreme Court revisited the issue of professional baseball's status under antitrust laws.[55] In *Toolson v. New York Yankees*, the Court addressed three companion cases alleging that the owners of professional baseball clubs violated antitrust laws.[56] In those cases, the various plaintiffs alleged that baseball's enforcement of standard reserve clauses in players' contracts impermissibly restrained trade in violation of antitrust laws.[57] The standard reserve clause was a "provision included at the time in all baseball player contracts that precluded players from negotiating future contracts with anyone but their current employer."[58] In the *Toolson* case, a seasoned minor league player within the New York Yankees'

51. *See Fed. Baseball*, 259 U.S. at 208 ("It is true that in order to attain for these exhibitions the great popularity that they have achieved, competitions must be arranged between clubs from different cities and States.").

52. *See id.* at 208-09 ("That which in its consummation is not commerce does not become commerce among the State because the transportation that we have mentioned takes place.").

53. Flood v. Kuhn, 407 U.S. 258, 282 (1972) (acknowledging, "Professional baseball is a business and it is engaged in interstate commerce"); *see also* Grow, *supra* note 8, at 568 (noting *Federal Baseball* opinion is widely criticized, but conclusion that baseball games are "purely state affairs" reflected "realities of the professional baseball business in 1922").

54. *See* Grabar, *supra* note 3 (noting origin of baseball's antitrust exemption and Justice Holmes's finding teams' interstate travel "merely incidental").

55. *See* Toolson v. N.Y. Yankees, 346 U.S. 356, 357 (1953) (per curiam) (noting business of baseball had "been left for thirty years to develop, on the understanding that it was not subject to existing antitrust legislation").

56. *See id.* at 356 (addressing Kowalski v. Chandler, 202 F.2d 413 (6th Cir. 1953) and Corbett v. Chandler, F.2d 428 (6th Cir. 1952)).

57. *See id.* at 362-63 (Burton, J., dissenting) (asserting baseball is interstate commerce that should be subject to antitrust laws because Congress has neither expressly exempted professional baseball from these laws, nor has any court found implied exemption exists).

58. Grow, *supra* note 8, at 561 (explaining reserve clause).

organization sued the club after being "blacklisted" because he refused to report to the minor league team to which he had been assigned.[59] Overall, the plaintiffs in *Toolson* and one of the companion cases asserted that "organized baseball, through its illegal monopoly and unreasonable restraints of trade, exploits the players who attract the profits for the benefit of the clubs and leagues."[60] Specifically, in the case of *Toolson*, enforcement of the reserve clause precluded a minor league player from pursuing an opportunity to play in the major leagues elsewhere.[61] In addition to allegations regarding the reserve clause, the plaintiffs also contended that the owners of professional baseball clubs "entered into a combination, conspiracy and monopoly or an attempt to monopolize professional baseball in the United States."[62]

In the thirty-one years since the Supreme Court handed down its decision in *Federal Baseball*, the business of baseball had become more complex than "providing exhibitions to the public."[63] However, despite the advent of technologies and methods of broadcasting games, which transformed professional baseball into a form of interstate commerce, the *Toolson* court disposed of the three cases on the basis of the Court's decision in *Federal Baseball*.[64] In the beginning of its brief *per curiam* decision, the Court rehashed its holding in *Federal Baseball*, stating "the business of providing public baseball games for profit between clubs of professional baseball players was not within the scope of federal antitrust laws."[65] Rather than addressing the realities of the business of baseball in the 1950s, the Court upheld the exemption and delegated the job of

59. *Id.* at 569 (summarizing facts of *Toolson*).

60. *Toolson*, 346 U.S. at 362-64 (Burton, J., dissenting) (stating also, "because of illegal and inequitable agreements of interstate scope between organized baseball and the Mexican League binding each to respect the other's 'reserve clauses' they have lost the services of and contract rights to certain baseball players").

61. *See* Grow, *supra* note 8, at 569 (noting plaintiff's desire to play in Major Leagues and frustration with relegation to minor leagues for several years).

62. *Toolson*, 346 U.S. at 364 (Burton, J., dissenting) (summarizing allegations from *Toolson* and companion cases).

63. Grow, *supra* note 8, at 569 (noting significant changes in business of baseball since Supreme Court's *Federal Baseball* decision, "[m]ost notably, the broadcasting of baseball games across state lines via both radio and television"). For a discussion of the *Federal Baseball* decision, see *supra* notes 49-54 and accompanying text.

64. *See Toolson*, 346 U.S. at 357 (affirming lower courts' holdings on 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 federal antitrust laws").

65. *Id.* (affirming earlier opinions by seven-to-two vote, relying on holding in *Federal Baseball*).

altering the status of professional baseball under antitrust laws to Congress.[66] Instead of discussing whether the business of baseball constituted interstate commerce, the Supreme Court reinterpreted its decision in *Federal Baseball* "to stand for the proposition that Congress had never intended for baseball to fall within the purview of the Sherman Act in the first place."[67] Thus, the *Toolson* court recharacterized the justification for professional baseball's antitrust exemption from one based on the business of baseball to one based on congressional intent in the passage of federal antitrust laws.[68]

3. *Bases Loaded: Flood v. Kuhn*

In 1972, fifty years after its decision in *Federal Baseball*, the Supreme Court was once again presented with the task of ruling on baseball's antitrust status.[69] In *Flood v. Kuhn*, the petitioner, Curt Flood, brought an antitrust suit against the Commissioner of Baseball, Bowie Kuhn, stemming from Flood's frustration with being traded from the St. Louis Cardinals to the Philadelphia Phillies in 1969.[70] Flood, who had not been consulted about the trade, requested to be made a free agent by the commissioner so that he could sign with the team of his choosing.[71] After Commissioner Kuhn denied Flood's request on the basis of the reserve clause in the player's contract, Flood brought suit in federal court against Commissioner Kuhn, the two major leagues' presidents and all twenty-four MLB organizations.[72] The complaint alleged violations of antitrust law and the Thirteenth Amendment.[73] The district

66. *See id.* ("We think that if there are evils in this field which now warrant application to it of the antitrust laws it should be by legislation.").

67. Grow, *supra* note 8, at 570 (noting *Toolson* court did not uphold antitrust exemption on basis of Justice Holmes's reasoning in *Federal Baseball*).

68. *See id.* at 570-71 (discussing deceptive nature of *Toolson* decision considering congressional intent was not discussed in *Federal Baseball*).

69. *See* Flood v. Kuhn, 407 U.S. 258, 259 (1972) ("For the third time in 50 years the Court is asked specifically to rule that professional baseball's reserve system is within the reach of the federal antitrust laws.").

70. *See id.* at 265 (discussing facts of *Flood*).

71. *See id.* at 265-66 (noting Flood sat out 1970 season after refusing to play for Philadelphia Phillies).

72. *See id.* at 265 (noting Flood initially brought suit in Southern District of New York); *see also* Grow, *supra* note 8, at 574 (explaining that Flood was denied free agency because of reserve clause in his contract).

73. *See Flood*, 407 U.S. at 265-66 ("[C]omplaint charged violations of the federal antitrust laws and civil rights statutes, violation of state statutes and the common law, and the imposition of a form of peonage and involuntary servitude contrary to the Thirteenth Amendment . . . .").

court found in favor of the defendants, and the Second Circuit affirmed.[74]

In affirming the Second Circuit, the Supreme Court adhered to its precedent in *Federal Baseball* and *Toolson*.[75] However, unlike the *Toolson* court, Justice Blackmun, writing for the majority, sought to explicitly acknowledge and address certain issues and peculiarities associated with baseball's antitrust exemption.[76] Justice Blackmun began by proclaiming that "[p]rofessional baseball is a business and it is engaged in interstate commerce."[77] Next, the Court noted baseball's status under federal antitrust laws is "an exception and an anomaly," and that the Court's *Federal Baseball* and *Toolson* decisions "have become an aberration confined to baseball."[78] The Court went on to note that "the aberration is an established one," which had been recognized for fifty years and in five consecutive cases in the Supreme Court, and thus should be "fully entitled to the benefit of stare decisis."[79]

The opinion emphasized that since the Supreme Court's 1922 ruling in *Federal Baseball*, professional baseball "has been allowed to develop and to expand unhindered by federal legislative action."[80] Furthermore, the Court worried that if it overturned *Federal Baseball* it would result in substantial confusion and retroactivity issues.[81] Additionally, the *Flood* court disposed of the plaintiff's antitrust

74. *See* Flood v. Kuhn, 443 F.2d 264, 267-68 (2d. Cir. 1971) (affirming judgment of dismissal by five-to-three vote); *see also* Flood v. Kuhn, 316 F. Supp. 271, 284-85 (S.D.N.Y. 1970) (holding *Federal Baseball* and *Toolson* decisions were controlling).

75. *See Flood*, 407 U.S. at 284-85 ("We continue to be loath . . . to overturn those cases judicially when Congress, by its positive inaction, has allowed those decisions to stand for so long and, far beyond mere inference and implication, has clearly evinced a desire not to disapprove them legislatively.").

76. *See id.* at 282-83 (listing observations).

77. *Id.* at 282-84 (upholding *Federal Baseball* despite finding that professional baseball is engaged in interstate commerce); *see also* Grow, *supra* note 8, at 574 (suggesting Justice Blackmun's proclamation effectively "repudiat[ed] the primary holding in Federal Baseball").

78. *Flood*, 407 U.S. at 282 (discussing professional baseball's reserve system).

79. *Id.* (listing Supreme Court cases recognizing baseball's antitrust exemption, and noting exemption "rests on a recognition and an acceptance of baseball's unique characteristics and needs").

80. *Id.* at 283 (concluding failure to enact remedial legislation over fifty year period "deemed to be something other than mere congressional silence and passivity," and evinces no intention on the part of Congress to bring reserve system under antitrust laws).

81. *See id.* (stating Court's preference that any change to baseball's antitrust status "come by legislative action that, by its nature, is only prospective in operation"); *see also* Toolson v. N.Y. Yankees, 346 U.S. 356, 357 (1953) (per curiam) (discussing Court's concern with "retrospective effect" associated with overturning *Federal Baseball*).

claims founded in state law, agreeing with the reasoning of the lower courts regarding the inapplicability of state antitrust laws.[82] Justice Blackmun concluded the opinion by proclaiming the Court's staunch unwillingness to alter its stance on the status of professional baseball under federal antitrust laws, stating that, "what the Court said in Federal Baseball in 1922 and what it said in Toolson in 1953, we say again here in 1972: the remedy, if any is indicated, is for congressional, and not judicial, action."[83]

B. Pitching Out of a Jam: Difficulties with Franchise Relocation

1. *Interpretations of Baseball's Antitrust Exemption*

In general, the "business of baseball" is exempt from antitrust law.[84] However, lower courts disagree as to the range of activities that constitute the "business of baseball," and therefore the scope of baseball's antitrust exemption is not entirely clear.[85] In most cases, lower courts have held that baseball's exemption permits more than the mere enforcement of reserve clauses.[86] For instance, in *Finley v. Kuhn*, the Seventh Circuit analyzed the Supreme Court's decisions in *Federal Baseball*, *Toolson* and *Flood*, concluding that "the Supreme Court intended to exempt the business of baseball, not any particular facet of that business, from the federal antitrust laws."[87]

82. *See Flood*, 407 U.S. at 284-85 (agreeing with lower courts' rationales regarding state law antitrust claims in light of Supreme Court jurisprudence); *see also Flood*, 443 F.2d at 268 ("[A]s the burden on interstate commerce outweighs the states' interests in regulating baseball's reserve system, the Commerce Clause precludes the application here of state antitrust law."); *see also Flood*, 316 F. Supp. at 280 (emphasizing "nationwide character" of professional baseball and "necessary interdependence" of member teams require "uniformity" in regulation of baseball).

83. *Flood*, 407 U.S. at 285 (noting Supreme Court's strong reluctance to overturn *Federal Baseball* and *Toolson*).

84. *See* Grow, *supra* note 8, at 577 (noting *Federal Baseball*, *Toolson* and *Flood* still represent primary authorities for examining scope of baseball's antitrust exemption).

85. *See* Gordon, *supra* note 28, at 1210 (noting Supreme Court has not confronted challenge to baseball's antitrust exemption since *Flood*, resulting in split in federal courts regarding extent of exemption); *see also* Grow, *supra* note 8, at 580 (urging courts to hold "business of baseball" covers "business activities directly related to providing baseball entertainment to the public").

86. *See generally* Salerno v. Am. League of Prof'l Baseball Clubs, 429 F.2d 1003 (2d. Cir. 1970), *cert. denied*, 485 U.S. 925 (1988) (dismissing antitrust suit filed by discharged umpires); *see also* Prof'l Baseball Sch. and Clubs, Inc. v. Kuhn, 693 F.2d 1085 (11th Cir. 1982) (per curiam) (finding "franchise location system" to be "integral part of the business of baseball"). *See* Gordon, *supra* note 28, at 1210-11 (discussing cases interpreting business of baseball broadly).

87. Finley v. Kuhn, 569 F.2d 527, 541 (7th Cir. 1978), *cert. denied*, 439 U.S. 876 (1978) (downplaying references in *Flood* to reserve system in arriving at broad con-

In *Major League Baseball v. Crist*, the Eleventh Circuit considered whether the contraction of the number of teams in professional baseball leagues constituted a protected activity within the bounds of baseball's antitrust exemption.[88] Although the *Crist* court acknowledged that baseball's exemption is limited under certain circumstances, it ultimately interpreted the scope of the exemption broadly.[89] The *Crist* court concluded that the number of teams that may participate in league play was "central to baseball's league structure."[90] Thus, the Eleventh Circuit held that contraction of professional baseball teams constitutes an activity protected by professional baseball's antitrust exemption.[91]

On the other hand, a few courts have adopted a narrow view of baseball's antitrust exemption, contending that it only applies to the enforcement of reserve clauses.[92] In the 1993 case of *Piazza v. Major League Baseball*, the Eastern District of Pennsylvania became the first court to limit the scope of the exemption in this way.[93] In *Piazza*, an investment group sued MLB, alleging violations of federal antitrust laws after the league rejected the group's proposal to purchase the San Francisco Giants franchise and move the club to Tampa Bay.[94]

In its analysis, the *Piazza* court asserted that "[i]n each of the three cases in which the Supreme Court directly addressed the exemption, the factual context involved the reserve clause."[95] The *Piazza* court limited each of the three Supreme Court cases to their facts, contending that the *Flood* decision "stripped from Federal

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ception of exemption's scope); *see also* Gordon, *supra* note 28, at 1211 (noting *Finley* case was first post-*Flood* challenge to baseball's antitrust exemption).

88. *See* Major League Baseball v. Crist, 331 F.3d 1177, 1183 (11th Cir. 2003) (holding business of baseball clearly includes decision to contract).

89. *See Crist*, 331 F.3d at 1183 ("[A]ntitrust exemption has not been held to immunize the dealings between professional baseball clubs and third parties.").

90. *Id.* (noting decisions regarding number of teams and their organization into leagues are "basic elements of the production of major league baseball games," which affects revenue sharing).

91. *See id.* at 1184 ("[N]o inquiry into MLB's motives or desires could possibly change the fact that contraction implicates the heart of the 'business of baseball.'").

92. *See* Grow, *supra* note 8, at 585-86 (discussing decisions restricting baseball's exemption to player reserve system).

93. *See* Piazza v. Major League Baseball, 831 F. Supp. 420, 421 (E.D. Pa. 1993) (holding defendants could not claim exemption from antitrust liability because exemption only applied to baseball's "reserve system").

94. *See Piazza*, 831 F. Supp. at 422-24 (explaining that plaintiffs sued after Giants franchise was not only sold to different investor group, which elected to keep team in San Francisco, but also paid lower price than plaintiffs offered).

95. *Id.* at 435 (discussing allegations in *Federal Baseball*, *Toolson* and *Flood*).

Baseball and Toolson any precedential value those cases may have had beyond the particular facts there involved, i.e., the reserve clause."[96] Moreover, the *Piazza* court emphasized the repeated references to baseball's reserve system in the *Flood* opinion to support the assertion that the *Flood* Court had intended to limit the exemption to the reserve clause.[97]

In 1994, the Supreme Court of Florida adopted the Eastern District of Pennsylvania's reasoning in *Piazza* when it decided *Butterworth v. National League of Professional Baseball Clubs.* In *Butterworth*, the Supreme Court of Florida limited the applicability of baseball's antitrust exemption to the reserve clause.[98] A year later, the Second District Court of Appeal of Florida followed suit in *Morsani v. Major League Baseball.*[99] Ultimately, the strength of the argument that the antitrust exemption is limited to the reserve system has weakened since the *Butterworth* and *Morsani* cases were decided, and, as the *Crist* opinion reveals, even the Florida Attorney General has retreated from the assertion that baseball's antitrust exemption is so narrowly limited.[100]

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96. *Id.* (noting creation of exemption in *Federal Baseball* undermined by *Flood* court's recognition of baseball's engagement in interstate commerce). For a more detailed discussion of the Supreme Court's holding in *Flood*, see *supra* notes 75-83 and accompanying text.

97. *See Piazza*, 831 F. Supp. at 436 (demonstrating Supreme Court's intention to limit baseball's antitrust exemption to reserve clause); *see also* Gordon, *supra* note 28, at 1213 ("Piazza therefore held that baseball's exemption applies only to the reserve clause, not to the business of baseball and, more specifically, not to franchise relocation."); Grow, *supra* note 8, at 587 (noting reserve system referenced four times in *Piazza* opinion).

98. *See* Butterworth v. Nat'l League of Prof'l Baseball Clubs, 644 So. 2d 1021, 1024-25 (Fla. 1994) (noting analysis of Supreme Court baseball cases in *Piazza* and arriving at same conclusion regarding *Flood* and restriction of antitrust exemption to baseball's reserve system); *see also* Grow, *supra* note 8, at 588 (stating issue facing Florida Supreme Court was "whether the baseball exemption prevented Florida's Attorney General from issuing civil investigative demands to MLB as part of an antitrust investigation arising out of the same failed attempt to bring the San Francisco Giants to Tampa By that was at issue in Piazza").

99. *See* Morsani v. Major League Baseball, 663 So. 2d 653, 655-57 (Fla. Dist. Ct. App. 1995) (discussing allegations of MLB antitrust violations after several failed attempts to bring franchise to Tampa Bay). The *Morsani* holding relied on the Supreme Court of Florida's recent decision in *Butterworth* and without thoroughly discussing the reasoning in *Piazza* or the Supreme Court baseball cases. *See Morsani*, 663 So. 2d at 657 (discussing briefly holding in *Piazza*); *see also* Grow, *supra* note 8, at 588 (noting Florida Supreme Court's *Butterworth* decision was binding authority).

100. *See* Major League Baseball v. Crist, 331 F.3d 1177, 1183 (11th Cir. 2003) ("The 'business of baseball' is exempt from the federal antitrust laws . . . and the Attorney General no longer contends that the federal exemption extends only to the player reserve system.").

2. *The Realities of Franchise Relocation*

Franchise relocation rarely occurs in MLB.[101] As previously discussed, decisions concerning the structure of professional baseball are protected by baseball's antitrust exemption because those decisions are central to the "business of baseball."[102] In order for an American League franchise, such as the A's, to relocate, not only must three-quarters of the clubs within its league sign off on the move, but a majority of clubs in the National League must also approve the relocation.[103] Moreover, franchises seeking to relocate must comply with baseball's "boundary rules."[104] MLB's boundary rules prohibit a major league club from playing its home games within another club's territory or within fifteen miles of another club's territory.[105] However, a club may operate within another club's home territory if the latter club grants protected territory or provides written consent to the other club allowing it to operate within its boundaries.[106]

Professional baseball's boundary rules represent a clear violation of antitrust laws because they hinder competition through restriction of franchise movement, and they allow clubs to maintain monopolies in specified regions.[107] Thus, lawsuits arising from ac-

101. *See* Gordon, *supra* note 28, at 1213-14 (noting MLB "prohibits franchise movements 'except in the most dire circumstances where the local community has, over a sustained period, demonstrated that it cannot or will not support a franchise'").

102. Minn. Twins P'ship v. State, 592 N.W.2d 847, 856 (Minn. 1999) ("[T]he sale and relocation of a baseball franchise, like the reserve clause discussed in Flood, is an integral part of the business of professional baseball and falls within the exception."); *see also* Grow, *supra* note 8, at 609 ("[C]ontrol over franchise location locations decisions not only allows leagues to ensure that franchises are located only in cities large enough to support a team financially, but also that those cities are not overpopulated with too many teams."). For a more detailed discussion of interpretations of business of baseball and decisions regarding league structure, see *supra* notes 84-100 and accompanying text.

103. *See* Gordon, *supra* note 28, at 1214 (discussing MLB franchise relocation procedures).

104. *Id.* at 1215 (noting each major league club is granted territorial rights to geographic region).

105. *See id.* ("Each home territory is 'defined by the boundary lines of an entire country or counties (or parish or Canadian division or district).'"); *see also* Major League Rule 52(a)(1), (a)(4), (d)(1) (setting forth boundary rules).

106. *See* Major League Rule 52(a)(4) and (d)(1) (discussing boundary rules).

107. *See* Lester Munson, *San Jose Suit Appears to Be Strong: Major League Baseball Should Be Taking the City's Antitrust Lawsuit Very Seriously*, ESPN.COM (June 19, 2013), http://espn.go.com/mlb/story/_/id/9403225/the-san-jose-legal-case-oakland-strong (noting antitrust exemption, which protects territorial rights, is "slowly diminishing").

tual and potential relocations of franchises are not uncommon.[108] However, there is a split in the lower courts as to whether franchise relocation efforts, which violate antitrust laws, are protected by baseball's exemption.[109] While some courts have expanded the scope of baseball's exemption to include franchise relocation, the Eastern District of Pennsylvania has held that baseball's exemption is restricted to the reserve clause.[110] Thus, if a jurisdiction were to follow the rationale in *Piazza*, then preventing the purchase and relocation of a baseball club could be found to impermissibly violate antitrust laws.[111]

IV. SWINGING FOR THE FENCES: SAN JOSE'S SUIT AGAINST MAJOR LEAGUE BASEBALL

> *"I don't think anybody ought to have a right to put a big red X on my city and say, 'Don't go there,'. . . Whether they're selling hamburgers or baseball, that's not right."*
>
> –Chuck Reed, Mayor of San Jose[112]

A. MLB in San Jose: How the Giants Refuse to Return the Gesture

In 2009, MLB began seriously considering the relocation of the A's from Oakland to San Jose.[113] However, over the past four years, the A's have seen little progress regarding their request to move the team to San Jose.[114] The primary reason for this inaction is that "only one baseball team is freely allowed to move to the south end

108. *See* Gordon, *supra* note 28, at 1215-16 (discussing cases that addressed antitrust allegations associated with relocation of baseball franchises).

109. *See id.* at 1216 (noting decisions hinge on interpretation of antitrust exemption's scope). For a more detailed discussion of lower courts' interpretations of scope of baseball's antitrust exemption, see *supra* notes 84-100 and accompanying text.

110. *See generally* State v. Milwaukee Braves, Inc., 31 Wis.2d 699, *cert. denied*, 385 U.S. 900 (1966) (interpreting baseball's exemption to protect all decisions regarding league structure and organization). *But see supra* notes 92-97 and accompanying text (discussing narrow interpretation of antitrust exemption in *Piazza*).

111. For a more detailed discussion of the *Piazza* decision, see *supra* notes 92-97 and accompanying text.

112. Costa, *supra* note 1 (discussing San Jose's frustration with MLB's franchise relocation policies).

113. *See id.* ("More than four years have passed since baseball commissioner Bud Selig appointed a committee to study the Athletics' proposed move from Oakland to San Jose.").

114. *See* Munson, *supra* note 107 (noting A's are "[f]rustrated and angry after four years of inaction").

of the bay, and it's the Giants."[115] The San Francisco Giants currently have the exclusive territorial rights to Santa Clara County, which contains the city of San Jose.[116]

It may seem odd that the Giants control the rights to this area, considering that San Francisco is further from San Jose than Oakland.[117] However, the Giants acquired the rights to Santa Clara County in a 1990 agreement between former owners of the Giants and A's.[118] At that time, Giants owner Bob Lurie coveted a new ballpark for the team and sought to relocate the Giants to San Jose.[119] On the other side of the San Francisco Bay, the A's were experiencing a period of great success.[120] Therefore, Lurie asked Walter Haas, the owner of the A's at the time, to consent to the Giants' relocation to San Jose.[121] Described as a "civic-minded philanthropist who wanted to help the Giants stay in the region," Haas not only approved the move, but also asked for nothing in return.[122]

At the time of the agreement, Commissioner Bud Selig commended Haas for making a decision "in the best interests of baseball."[123] Aside from his philanthropic motivations, Haas and other A's officials felt confident about the direction of the franchise.[124] Thus, "dividing their territories and handing Silicon Valley to the

115. Grabar, *supra* note 3 (discussing territorial rights of San Francisco Giants).

116. *See* Munson, *supra* note 107 (acknowledging Giants' right to Santa Clara County market is "primary obstacle" in A's move to San Jose).

117. *See* Grabar, *supra* note 3 (noting irony of Giants' control of region containing San Jose).

118. *See* Costa, *supra* note 1 (suggesting agreement that split Bay Area market between Giants and A's was "seemingly innocuous"); *see also* Munson, *supra* note 107 (discussing "Giants' arguably accidental control of the San Jose market").

119. *See* Costa, *supra* note 1 (noting desire to move Giants to San Jose spurred by failure of Lurie to obtain public financing to build new ballpark in San Francisco); *see also* Munson, *supra* note 107 (noting Giants' desire to "escape Candlestick Park").

120. *See* Costa, *supra* note 1 (noting A's won 1990 American League pennant and ranked third among all baseball clubs in fan attendance).

121. *See id.* (reporting Lurie asked for Haas's consent to relocate in order to avoid challenge by A's); *see also* Munson, *supra* note 107 (acknowledging Haas's right to veto proposed move of Giants to San Jose had he not consented).

122. Costa, *supra* note 1 (discussing reasons for Haas's consent); *see also* Munson, *supra* note 107 (noting lack of compensation for approval of Giants' potential relocation).

123. Munson, *supra* note 107 ("[A]ccording to the lawsuit, Selig said, 'Walter Haas, the wonderful owner of the Oakland club who did things in the best interests of baseball, granted permission. . . . What got lost there is they [the A's] didn't feel it was permission in perpetuity.'").

124. *See* Costa, *supra* note 1 (citing former A's executive's statement that "[A's] didn't feel at the time that there was any significant downside to [their]

Giants hardly seemed like a major concession."[125] Ultimately, the Giants' attempt to secure public financing for a ballpark in San Jose failed and the team remained in San Francisco.[126] Despite never moving, the Giants retained the territorial rights to Santa Clara County.[127]

Today, the territorial divide remains, but the rights to Santa Clara County have become incredibly valuable.[128] The A's have already found a major sponsor and funding for a new stadium if a move to San Jose should occur.[129] Furthermore, A's owner Lew Wolff believes that relocating to San Jose is the only way the team can remain in northern California long-term, as the club has been unable to reach the necessary agreements for a new ballpark to be built within its current territory.[130] Thus, San Jose officials are determined to lure the A's to their city.[131]

However, the Giants ownership is unwilling to extend to the A's the same gesture of goodwill that Walter Haas extended to the Giants in 1990.[132] The Giants organization is unwilling to surrender its exclusive rights to Santa Clara County, because it appreciates the economic benefits of the San Jose market and currently avails itself of substantial sponsorships from tech companies in Silicon Valley.[133] Moreover, the owners of the Giants contend that their

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business"). For a more detailed discussion of prior success of A's franchise, see *supra* note 120 and accompanying text.

125. Costa, *supra* note 1 (discussing lack of understanding and concern for implications of granting Giants territorial rights to Santa Clara County at time of agreement).

126. *See id.* (noting Lurie sold Giants to investor group that financed Giants' new ballpark, AT&T Park).

127. *See id.* (noting current state of franchise geography in Bay Area); *see also* Munson, *supra* note 107 (discussing plaintiffs' argument that Giants' rights to San Jose expired because "the grant of San Jose territorial rights to the Giants was 'subject to their moving to Santa Clara County.'").

128. For a more detailed discussion of the economic appeal of professional baseball market in San Jose and Silicon Valley, see *supra* notes 3-5 and accompanying text.

129. For a more detailed discussion of potential sponsorship and funding, see *supra* note 5 and accompanying text.

130. *See* Costa, *supra* note 1 (noting Wolff's contention that A's have "exhausted all viable options for a new stadium within its territory, including failed talks in Oakland and nearby Fremont").

131. *See* Munson, *supra* note 107 (suggesting frustration over MLB's inaction regarding A's relocation request precipitated lawsuit by San Jose officials).

132. *See* Costa, *supra* note 1 (stating "Giants refuse to relinquish their exclusive rights to the area"); *see also* Bill Shaikin, *San Jose, MLB Should Try to Reach Deal on Criteria to Move A's*, L.A. TIMES (June 29, 2013, 3:58 PM), http://www.latimes.com/sports/la-sp-0630-down-the-line-20130630,0,2673045.story#axzz2b1QMG9yG (reporting Giants uninterested in selling rights to San Jose).

133. *See* Costa, *supra* note 1 (noting Yahoo and Oracle sponsor Giants).

decisions to purchase the club and finance its new ballpark were "part based on that territorial exclusivity."[134]

In order for the A's to relocate to San Jose, they would need the approval of three-quarters of MLB franchises.[135] However, MLB has not allowed its owners to vote on the issue and, furthermore, the potential result of such a vote is unclear.[136] Commissioner Selig "prefers unanimous votes," and "generally does not allow any vote unless he has a pretty good sense of the outcome."[137] Predictably, San Jose officials have grown frustrated with MLB's apparent unwillingness to address the potential relocation of the A's.[138]

On June 16, 2013, a plumbing issue that caused raw sewage to flow into the locker rooms of the outdated Oakland Coliseum reignited frustrations surrounding the unclear future of the A's.[139] Subsequently, the city of San Jose filed a lawsuit against MLB in the U.S. District Court for the Northern District of California on June 18, 2013.[140] San Jose does not want to wait any longer for the MLB or the franchise owners to make up their minds.[141] The city of San Jose is "pushing the go button," forcing MLB to either reach a set-

134. *Id.* (discussing Giants' interest in rights to Santa Clara County); *see also supra* notes 126-128 (discussing Giants' current territorial rights and financing of AT&T Park).

135. *See* Grabar, *supra* note 3 (describing MLB voting criteria for franchise relocation).

136. *See* Shaikin, *supra* note 132 (contending vote "would be divided and unpredictable, with the likelihood of intense lobbying").

137. *Id.* (noting MLB's concerns over certainty of ballpark construction and revenue projections).

138. *See id.* (noting Mayor Reed's contention vote could have been held years ago, and proposing "MLB gives San Jose criteria to meet, and the two sides agree on a deadline. If San Jose meets the criteria and the deadline, and if the A's fulfill their guidelines, then MLB lets the owners vote – with no guarantee of approval.").

139. *See* Costa, *supra* note 1 (noting incident "prompted renewed outcry for the [A's] . . . to get a new stadium").

140. *See generally* Complaint, City of San Jose v. Office of Comm'r of Baseball, No. 5:13CV02787, 2013 WL 2996788 (N.D. Cal. June 18, 2013) (noting plaintiffs composed of San Jose officials and organizations). For a more detailed discussion of the lawsuit, see *supra* notes 18-22 and accompanying text.

141. *See* Dennis O'Donnell, *Gameday: Who Has the Edge in the MLB. Vs. SJ Court Battle?*, CBS S.F. (June 19, 2013, 10:29 AM), http://sanfrancisco.cbslocal.com/2013/06/19/gameday-who-has-the-edge-in-the-mlb-vs-sj-court-battle/ (reporting, per Giants executive, Blue Ribbon Committee's "silence was a finding in itself" regarding relocation of A's); *see also* Costa, *supra* note 1 (noting MLB had no intention of MLB holding vote on relocation of A's at August owners meeting after San Jose filed suit).

tlement and address the potential relocation of the A's, or defend baseball's antitrust exemption in court.[142]

B. Assessing Potential Outcomes of Litigation

San Jose's suit against MLB joins a long line of challenges to baseball's league structure and overall antitrust exemption.[143] Some experts contend that San Jose has a strong case, arguing that current trends in American antitrust jurisprudence portend the end of baseball's exemption.[144] On the other hand, given the Supreme Court's repeated affirmation of the exemption, this lawsuit is perceived by others as a futile effort to attack baseball's antitrust status.[145] Others still believe that a settlement is the most likely outcome and that San Jose is simply attempting to force MLB to facilitate the relocation of the A's to San Jose.[146] This section will discuss the likelihood and impact of these various outcomes.[147]

1. *First Scenario: San Jose Wins on Appeal*

> *"San Jose's lawsuit against Major League Baseball could easily become [C]ommissioner Bud Selig's worst nightmare."*
>
> –Lester Munson[148]

The plaintiffs in this case contend that professional baseball is founded on competition between clubs, and therefore MLB's restrictions on relocation amount to "unreasonable, unlawful, and anticompetitive restraints under Section [One] of the Sherman

142. *See* O'Donnell, *supra* note 141 (arguing "San Jose doesn't want to litigate this thing. Baseball surely doesn't want to go to court on the remote possibility that Justice Scalia turns out to be an A's fan. . . . After four years of silence, baseball will have to finally be forced to act, or else.").

143. *See* Grow, *supra* note 8, at 606-07 ("Disputes regarding the league structure have been the single most common source of antitrust litigation involving professional baseball.").

144. *See* Munson, *supra* note 107 (stating baseball's antitrust "exemption is unlikely to survive the San Jose attack if the lawsuit is not settled and proceeds to trial. . . . The higher courts of the U.S. have been demonstrated an increasing unwillingness to grant MLB or any other sports league further exemptions from the antitrust laws.").

145. *See* Grabar, *supra* note 3 (noting Supreme Court has previously "punted on the issue, leaving it to Congress to change the law. For this reason, it's unlikely that they'll revise the 1922 decision this time around or ever.").

146. *See* Feldman, *supra* note 26 (discussing implications of potential settlement); *see also* Munson, *supra* note 107 (noting pressure on MLB resulting from suit).

147. For a discussion of why a settlement would be advisable for both parties, see *infra* notes 197-208 and accompanying text.

148. Munson, *supra* note 107 (discussing San Jose's lawsuit against MLB and potential impact to MLB's structure should it lose).

Act."[149] In response, MLB contends that this "lawsuit is an unfounded attack on the fundamental structures of a professional sports league."[150] MLB's contention is partially accurate, insofar as San Jose has directed its attack on MLB's ability to regulate the "business of baseball" and, in particular, its system of territorial rights – a cornerstone in the league's ability to control franchise location and maintain local monopolies free from the purview of federal antitrust laws.[151] At the same time, the lawsuit can hardly be considered "unfounded."[152] Preventing the relocation of MLB clubs is a clear violation of antitrust laws, albeit the type of violation that has been historically protected by baseball's exemption.[153] Opponents of the exemption argue that its breadth, force, and relevance have been fading since its creation in 1922, and therefore suggest that the courts should no longer recognize it.[154]

A central theme of San Jose's argument is that baseball's exemption is outdated.[155] This attack is directed at Justice Holmes's opinion in *Federal Baseball*, which created an antitrust exemption for professional baseball on the premise that baseball, in 1922, did not constitute interstate commerce.[156] As an indication of the weakening relevance of baseball's exemption, fifty years later Justice Blackmun explicitly stated in his opinion in *Flood* that baseball is, in fact,

149. Complaint at 7, City of San Jose v. Office of Comm'r of Baseball, No. 5:13CV02787, 2013 WL 2996788 (N.D. Cal. June 18, 2013) (noting provisions of MLB's constitution explicitly restrict competition in league composed of teams in competition with one another).

150. Munson, *supra* note 107 (quoting statement by executive president of MLB, Rob Manfred).

151. *See id.* (describing territorial rights of professional baseball franchises as "most vulnerable corner of baseball's foundation"). For a more detailed discussion of the effect of MLB's system of territorial rights, see *supra* notes 6-9 and accompanying text.

152. Munson, *supra* note 107 (contending baseball's antitrust exemption "unlikely to survive" if lawsuit proceeds to trial).

153. For a more detailed discussion of the issues and decisions regarding baseball's antitrust exemption and franchise relocation, see *supra* notes 107-111 and accompanying text.

154. *See* Munson, *supra* note 107 (arguing trends in law suggest San Jose has viable argument to defeat exemption).

155. *See* Complaint at 3, City of San Jose v. Office of Comm'r of Baseball, No. 5:13CV02787, 2013 WL 2996788 (N.D. Cal. June 18, 2013) (stating "[w]hereas baseball may have started as a local affair, modern baseball is squarely within the realm of interstate commerce. MLB Club ply their wares nationwide; games are broadcast throughout the country on satellite TV and radio, as well as cable channels; and MLB Clubs have fan bases that span from coast to coast.").

156. For a more detailed discussion of the holding in *Federal Baseball*, see *supra* notes 49-52 and accompanying text.

interstate commerce.[157] Nevertheless, the *Flood* court upheld the exemption, justifying its holding by falling back on the unique status and development of baseball, and thus abandoned the Court's original rationale set forth in *Federal Baseball* for creating the exemption.[158]

In addition to the depleted relevance of the Supreme Court's reason for granting baseball's antitrust exemption, courts are moving away from granting similar exemptions to other professional sports leagues.[159] In *American Needle, Inc. v. National Football League*, the Supreme Court found that sports leagues fall under the purview of antitrust laws.[160] The Court noted that each NFL team is "a substantial, independently owned, independently managed business . . . . They compete with one another, not only on the playing field, but to attract fans, for gate receipts, and for contracts with managerial and playing personnel."[161] The Court's unanimous decision in *American Needle* points to its growing aversion to protecting sports leagues from antitrust laws.[162]

Courts considering San Jose's claims against MLB will look to previous interpretations of the scope of baseball's antitrust exemption.[163] While most courts have adopted a broad interpretation as to the scope of the exemption, some courts have held that the Supreme Court's decisions in *Federal Baseball*, *Toolson* and *Flood* pertain only to the reserve clause.[164] For San Jose to prevail on its antitrust claims, it will have to convince the appellate court that these minor-

157. For a more detailed discussion of Justice Blackmun's findings in *Flood*, see *supra* notes 76-82 and accompanying text.

158. *See supra* notes 77-79 and accompanying text (ruling exemption is "fully entitled to the benefit of stare decisis," despite finding baseball qualified as interstate commerce).

159. *See* Munson, *supra* note 107 ("[H]igher courts of the U.S. have been demonstrating an increasing unwillingness to grant MLB or any other sports league further exemptions from the antitrust laws.").

160. Am. Needle, Inc. v. Nat'l Football League, 130 S.Ct. 2201, 2206 (2010) (declaring decisions made by NFL teams are covered by Section One of Sherman Act).

161. *Am. Needle*, 130 S.Ct. at 2205-06 (noting while teams "may be similar in some sense to a single enterprise, they are not similar in the relevant functional sense. While teams have common interests such as promoting the NFL brand, they are still separate, profit-maximizing entities, and their interests . . . are not necessarily aligned.").

162. *See* Munson, *supra* note 107 (stating *American Needle* opinion "offers MLB little hope of preserving its exemption on market territories").

163. For a more detailed discussion of the scope of baseball's antitrust exemption, see *supra* notes 84-100 and accompanying text.

164. For a more detailed discussion of how the narrow interpretation of baseball's antitrust exemption limits it to reserve clause, see *supra* notes 84-100 and accompanying text.

ity cases, such as *Piazza*, were correctly decided.[165] If San Jose can accomplish that goal, then the Ninth Circuit could potentially strike down the exemption.[166]

Of the three possible outcomes for this litigation, a victory for San Jose would have the greatest and most widespread impact.[167] A loss for MLB would pave the way for "MLB's most radical restructuring since the late Marvin Miller destroyed the owners' revered reserve clause. . . ."[168] Overruling baseball's exemption would "eliminate territorial rights across all baseball markets."[169] Consequently, any professional baseball team would be free to relocate to any city of its choosing.[170]

Ultimately, it is unlikely that this lawsuit will result in a victory for San Jose—at least not in the courtroom.[171] As previously noted, the district court recently dismissed San Jose's antitrust claims.[172] In its holding, the district court rejected San Jose's argument that baseball's exemption is limited to the reserve clause.[173] Additionally, the district court warned that the Ninth Circuit has previously

165. For a more detailed discussion of court decisions limiting applicability of exemption to reserve clause, see *supra* notes 92-99 and accompanying text.

166. *See* Ira Boudway, *San Jose Sues Over Baseball's Weird Business Geography*, BLOOMBERG BUS. WK. (June 19, 2013), http://www.businessweek.com/articles/2013-06-19/san-jose-sues-over-baseballs-weird-business-geography (discussing Curt Flood Act and acknowledging "'narrow strand of case law holding that now that player restraints are no longer exempt, [and] that the exemption is essentially gone'").

167. For a more detailed discussion of potential outcomes of *San Jose v. MLB*, see *supra* notes 133-135 and accompanying text.

168. *See* Munson, *supra* note 107 (likening impact of elimination of reserve clause and potential loss of antitrust exemption, noting if MLB loses exemption it "will find itself facing a new form of free agency").

169. *See* Feldman, *supra* note 26 ("MLB would lose its ability to dictate franchise locations, so any team could move anywhere with little or no oversight.").

170. *See id.* (proclaiming A's would even be able to move next to Giants' ballpark); *see also* Munson, *supra* note 107 (noting victory for San Jose could free financially weaker clubs to move if "they can produce greater profits as a third team in New York or a first team in Las Vegas").

171. *See* Flood v. Kuhn, 407 U.S. 258, 283 (1972)) (noting Supreme Court's strong reluctance to overturn *Federal Baseball* and *Toolson*, and that *Flood* court preferred that Congress remedy issues with baseball's antitrust exemption); *see also* Grabar, *supra* note 3 (indicating victory for San Jose unlikely because exemption has previously been upheld, and Supreme Court "punted on the issue, leaving it to Congress to change the law."); *see also* O'Donnell, *supra* note 141 (considering likelihood of elimination of baseball's exemption to be five percent). *But see* Munson, *supra* note 107 ("The exemption is unlikely to survive the San Jose attack if the lawsuit is not settled and proceeds to a trial.").

172. *See generally* City of San Jose v. Office of Comm'r of Baseball, No. C-13-02787 RMW, 2013 WL 5609346 (N.D. Cal. Oct. 11, 2013) (noting San Jose's state law tort claims were sufficiently pled to survive MLB's motion to dismiss).

173. *See City of San Jose*, 2013 WL 5609346 at *2 ("All federal circuit courts that have considered the issue . . . have *not* limited the antitrust exemption to the re-

adopted a broad view of the exemption's scope.[174] However, the district court also conceded that the Ninth Circuit adopted this broad interpretation of the exemption's scope "without substantial analysis" of the Supreme Court's controlling precedent in *Federal Baseball, Toolson* and *Flood*.[175] Nevertheless, if San Jose appeals the district court's decision, it is more likely that either MLB will prevail or the parties will settle.[176]

2. *Second Scenario: MLB Prevails in Court*

MLB is arguing that the antitrust exemption covers franchise location issues.[177] This argument is supported by the Supreme Court's decisions in *Federal Baseball, Toolson* and *Flood*.[178] The plaintiffs contend that the reasoning for the exemption is outdated, evidenced by the growing unwillingness of the Supreme Court to grant antitrust exemptions to professional sports leagues.[179] Nevertheless, although the Supreme Court has acknowledged each of the criticisms raised by the plaintiffs, the Court has continued to recognize the exemption as it applies to professional baseball.[180] In *City of San Jose v. Office of the Commissioner of Baseball*, the district court

serve clause, but have adopted the view that the exemption broadly covers the 'business of baseball.'").

174. *See id.* at *2 (noting Ninth Circuit has not limited antitrust exemption to reserve clause); *see also* Portland Baseball Club, Inc. v. Kuhn, 491 F.2d 1101, 1102-03 (9th Cir. 1974) (per curiam) (dismissing antitrust claims); *see also* Portland Baseball Club, Inc. v. Baltimore Baseball Club, Inc., 282 F.2d 680, 680 (9th Cir. 1960) (holding "that if professional baseball is to be brought within the pale of federal antitrust laws, the Congress must do it.").

175. *See City of San Jose*, 2013 WL 5609346 at *7 (discussing district court's interpretation of Ninth Circuit precedent).

176. *See S. Jose's Claims Against MLB Denied*, *supra* note 22 (noting San Jose's intention to appeal). For a discussion of the implications and likelihood of either a victory for MLB or a settlement, see *infra* notes 177-208 and accompanying text.

177. *See* Costa, *supra* note 1 (quoting former MLB commissioner Fay Vincent, stating, "'If there's any value in the antitrust exemption at all, that's the value, that these guys can get together and prohibit people from coming into their markets'"); *see also* Grow, *supra* note 8, at 607 (noting baseball's antitrust exemption originated from *Federal Baseball* decision involving league structure issues).

178. *See* Flood v. Kuhn, 407 U.S. 258, 282 (1972) (noting *Flood* Court's recognition of complex and incongruous development of judicially created antitrust exemption, nevertheless deciding to afford benefit of *stare decisis*).

179. For a more detailed discussion of the plaintiffs' arguments regarding the relevance of the Supreme Court's decision in *Federal Baseball* and current trends in Supreme Court jurisprudence, see *supra* notes 155-162 and accompanying text.

180. *See* Boudway, *supra* note 166 ("San Jose is not the first to note the evolution of baseball into big business. 'People believed in the 1940s, '50s, and '60s that the exemption was outdated and anomalous . . . . The Supreme Court has recognized that the antitrust exemption is, in fact, anomalous and yet they have reaffirmed it.'"). For a more detailed discussion of Justice Blackmun's observations regarding baseball's status under antitrust laws as "an exception and an anomaly,"

recognized that baseball's antitrust exemption is "unrealistic, inconsistent, or illogical," yet the court still dismissed San Jose's antitrust claims in accordance with baseball's longstanding exemption from antitrust laws.[181]

Moreover, the Court has repeatedly expressed its contention that the task of determining the status of professional baseball under antitrust laws lies with the legislature.[182] In *City of San Jose*, Judge Whyte reiterated the Supreme Court's explicit ruling that any change to baseball's exemption for "the business of baseball" must be made by Congress.[183] Considering the weight of Supreme Court precedent on this issue, it appears there is a slim chance that plaintiffs will prevail in challenging the validity of baseball's antitrust exemption.[184]

As for any arguments regarding the scope of baseball's antitrust exemption, it appears that MLB, once again, has the upper hand.[185] Not only have the majority of courts adopted a broad interpretation of the exemption's scope, but the few decisions that have limited the exemption are suspect.[186] The Eastern District of Pennsylvania's decision in *Piazza* resulted from a seemingly flawed analysis of the Supreme Court's decisions in *Federal Baseball*, *Toolson* and *Flood*.[187] First, the *Piazza* court incorrectly determined that the

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and noting that *Federal Baseball* and *Toolson* decisions are "an aberration confined to baseball", see *supra* notes 76-81 and accompanying text.

181. City of San Jose v. Office of Comm'r of Baseball, No. C-13-02787 RMW, 2013 WL 5609346, at *1 (N.D. Cal. Oct. 11, 2013) (quoting Radovich v. Nat'l Football League, 352 U.S. 445, 452 (1957)).

182. *See* Flood, 407 U.S. at 285 ("[W]hat the Court said in Federal Baseball in 1922 and what it said in Toolson in 1953, we say again here in 1972: the remedy, if any is indicated, is for congressional, and not judicial, action."). For a more detailed discussion of the *Toolson* court's conclusions and suggestions that issues with baseball's antitrust exemptions should be fixed by Congress, see *supra* note 66 and accompanying text.

183. *City of San Jose*, 2013 WL 5609346 at *10 (ruling Supreme Court's observation in *Flood* "that the business of baseball is now interstate commerce cannot override the Court's ultimate holding that Congressional inaction . . . shows Congress's intent that the judicial exception for 'the business of baseball' remain unchanged").

184. *See* Grabar, *supra* note 3 (acknowledging Supreme Court has "punted" on issue of baseball's antitrust exemption, opting instead to defer to Congress, thus making it unlikely Court will overturn *Federal Baseball*).

185. For a more detailed discussion of how the narrow interpretation of baseball's antitrust exemption limits it to reserve clause and an explanation for why the majority of courts do not limit the scope of the antitrust exemption to the reserve clause, see *supra* notes 84-100 and 164 and accompanying text.

186. *See* Grow, *supra* note 8, at 591-92 (arguing *Piazza*, *Butterworth*, and *Morsani* cases were wrongly decided).

187. *See id.* at 592 (arguing flaws in *Piazza* court's analysis "appl[y] with equal force" to *Butterworth* and *Morsani* cases); *see also* Gordon, *supra* note 28, at 1228-29

Federal Baseball and *Toolson* decisions only concerned the reserve clause.[188] Second, the *Piazza* court erred in concluding that the *Flood* decision "vitiated the precedential effect of Toolson."[189] Finally, commentators criticize the *Piazza* court for incorrectly concluding that the Supreme Court's decision in *Flood* limited the scope of baseball's antitrust exemption to the reserve clause.[190] In *City of San Jose*, Judge Whyte concluded that "the federal antitrust exemption for the 'business of baseball' remains unchanged, and [it] is not limited to the reserve clause."[191] In arriving at its decision, the court noted its disagreement with the Eastern District of Pennsylvania's opinion in *Piazza*, stating *Federal Baseball*, *Toolson* and *Flood* cannot "be limited to the reserve clause because the reserve clause is never referenced in any of those cases as part of the Court's holdings."[192]

If the Ninth Circuit adopts a broad interpretation of baseball's antitrust exemption, then MLB will prevail in defending the exemp-

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(stating flaws in *Piazza* court's analysis "consequently led the courts in both Piazza and Butterworth to conclude that baseball's exemption does not extend to franchise relocation."). For a more detailed discussion of the *Piazza* court's rationale, see *supra* notes 95-97 and accompanying text.

188. *See* Gordon, *supra* note 28, at 1228 (noting *Federal Baseball* opinion did not discuss reserve clause); *see also* Grow, *supra* note 8, at 600 ("[E]ven if the Piazza court correctly held that Flood had limited both Federal Baseball and Toolson to their facts, it nevertheless erred when concluding that those cases dealt simply with the reserve clause. In actuality, both cases involved more extensive allegations of anticompetitive conduct, meaning that neither case can properly be limited to cover only the reserve clause.").

189. Grow, *supra* note 8, at 596-97 (arguing *Piazza* court misinterpreted *Toolson* decision by making proposition in *Flood* "that Toolson was simply 'a narrow application of the doctrine of stare decisis,'" rather than recognizing *Flood* "explicitly affirmed Toolson's reinterpretation and expansion of Federal Baseball."); *see also* Gordon, *supra* note 28, at 1228-29 (stating *Piazza* court "wrongly interpreted Toolson as holding that baseball is not interstate commerce. In actuality, the Toolson court only reaffirmed baseball's exemption because Congress had not yet subjected baseball to federal antitrust laws.").

190. *See* Grow, *supra* note 8, at 592 ("[N]owhere in Flood did the Court specifically express its intent to limit the baseball exemption to the reserve clause"). Grow further argues the *Flood* Court's discussion of cases relating to umpire relations and franchise locations "without criticism thus illustrates that the Court understood that the baseball exemption applied to a variety of aspects of the baseball business . . . ." *Id.* at 592-95.

191. City of San Jose v. Office of Comm'r of Baseball, No. C-13-02787 RMW, 2013 WL 5609346, at *11 (N.D. Cal. Oct. 11, 2013) (discussing reasoning for dismissal of antitrust claims).

192. *Id.* at *10 (noting Supreme Court's holding in *Flood* addressed baseball's reserve system as "the only alleged anticompetitive restraint on trade in that case," and thus "naturally held that under *Federal Baseball* and *Toolson*, the reserve system, a part of the 'broader business of baseball,' continued to enjoy exemption from the antitrust laws").

tion.[193] After all, "decisions relating to the league structure were the primary impetus leading to *Federal Baseball*."[194] Therefore, under a broad interpretation of the exemption's scope, restricting franchise relocation, which violates antitrust laws, would be protected by baseball's exemption because franchise location decisions affect league structure and directly impact the "business of baseball."[195] Ultimately, a victory for MLB would be unsurprising and would simply maintain the league's current status quo.[196]

3. *Third Scenario: Settlement – Introducing the San Jose A's*

Initially, the plaintiffs optimistically viewed the district court's dismissal of their antitrust claims as a partial victory because it allowed San Jose to pursue allegations of contract interference relating to an agreement between the city and the A's to purchase land for a new ballpark in San Jose.[197] On the other hand, MLB was encouraged by the district court's dismissal because it eliminated the claims that posed the greatest risk to the league.[198] San Jose was dealt a further blow on December 27, 2013, when Judge Whyte dismissed the remaining claims against MLB.[199] Nevertheless, prevailing on the contract interference claim would not have automatically brought the A's to San Jose.[200]

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193. *See* Grow, *supra* note 8, at 607 (noting majority of courts consider antitrust exemption to cover decisions regarding league structure because such decisions are "integral to the business of baseball").

194. *Id.* at 611 (arguing standard for determining activities protected by exemption should be whether activity "directly affect[s] the business of providing baseball exhibitions" to public).

195. *Id.* at 609 (noting franchise location decisions prevent flooded markets, affect competitive balance, and ensure balanced allocation of teams nationwide); *see also id.* at 585-86 (discussing business of baseball and justifications for exempting restriction of franchise relocation).

196. *See* Feldman, *supra* note 26 (acknowledging greatest impact of MLB victory would be on San Jose's quest to acquire professional baseball club).

197. *See* John Woolfolk, *San Jose vs. MLB: Judge Splits Decision on Claims over A's South Bay Plans*, SAN JOSE MERCURY NEWS (Oct. 11, 2013, 11:40 AM), http://www.mercurynews.com/politics-government/ci_24290747/judge-dismisses-san-jose-antitrust-claims-against-mlb (noting plaintiffs encouraged by opportunity to continue litigating issue arising from MLB's delay in voting to approve relocation of A's).

198. *See id.* (noting district court's dismissal of antitrust claims represents legal win for MLB because it eliminated "'the heart'" of San Jose's case).

199. *See Judge Dismisses San Jose's Remaining Claims vs. MLB*, CSNBAYAREA.COM (Jan. 3, 2014, 8:45 PM), http://www.csnbayarea.com/athletics/judge-dismisses-san-joses-remaining-claims-vs-mlb (noting two remaining state law claims were dismissed without prejudice).

200. *See id.* (discussing insignificance of state law claims compared to illegal monopoly claims); *see also* Woolfolk, *supra* note 197 (reporting remaining claim "'isn't of itself going to get San Jose a baseball team,'").

Going forward, if the plaintiffs' ultimate goal is to secure the relocation of the A's to San Jose then their best course of action is to reach a settlement with MLB, rather than rely on an unlikely legal victory on appeal.[201] The potential terms of a settlement are uncertain, but it is likely that any agreement would include significant concessions to the San Francisco Giants.[202] In order to help predict the terms of a potential settlement agreement, it is worth considering the recent agreement between Baltimore Orioles owner Peter Angelos and MLB, which allowed the Montreal Expos to relocate to Washington D.C. and become the Washington Nationals.[203] As compensation for the Nationals entering that region's professional baseball market, Angelos received an incredibly lucrative television deal.[204] Similar remuneration may be offered to the Giants majority owner Charles Johnson, who would be relinquishing control over a thriving economic region.[205]

As for the impact of a settlement on the relative territorial rights of the two Bay Area clubs, it is possible that the A's and Giants could share the entire Bay Area market, similar to the way the Yankees and Mets share the New York baseball market.[206] In the end, such an agreement, although costly, would accomplish San Jose's goal of acquiring a professional baseball team.[207] As for

201. For a more detailed discussion of the likelihood that San Jose would lose at trial, see *supra* notes 171-195 and accompanying text.

202. *See* O'Donnell, *supra* note 141 (stating Giants would demand "outrageous ransom" from A's and MLB for forfeiture of exclusive territorial rights to Santa Clara County); *see also* Grabar, *supra* note 3 (predicting any settlement agreement would involve extremely favorable financial conditions for Giants owner).

203. *See* Grabar, *supra* note 3 (noting owner of Baltimore Orioles, Peter Angelos, expressed concern over impact of Expos' relocation on Orioles' revenue).

204. *See id.* (stating Angelos "leveraged his concern into a new television network, MASN, that carries the games of both teams but whose finances are remarkably, controversially favorable to Angelos and his Orioles"); *see also* Bruce Fein, *Taking the Stand: Baseball's Privileged Antitrust Exemption*, D.C. BAR, http://www.dcbar.org/bar-resources/publications/washington-lawyer/articles/october-2005-taking-the-stand.cfm (last visited May 5, 2014) (describing deal as "virtual expropriation of the Washington Nationals' broadcast rights," whereby Angelos was granted ninety percent ownership of MASN).

205. *See* Grabar, *supra* note 3 (speculating Giants would not settle for terms less lucrative than those received by Orioles and Angelos). For a more detailed discussion of the economic appeal of San Jose as a professional sports market, see *supra* notes 3-5 and accompanying text.

206. *See* Feldman, *supra* note 26 (noting decision to become two-team market would preclude other baseball clubs from moving to Bay Area pursuant to MLB restrictions on relocation).

207. *See id.* (noting San Jose is concerned with Bay Area territorial rights and acquiring A's, but "has no issue with the state of baseball outside the Bay Area"). For a more detailed discussion of San Jose's reasons for coveting the A's, see *supra* notes 4-8 and accompanying text.

MLB, a settlement agreement would ensure that professional baseball, for the time being, would not lose its treasured antitrust exemption.[208]

V. CONCLUSION

Baseball enjoys a privileged status among professional sports in the United States, and San Jose must accept this.[209] MLB has been allowed to develop under an antitrust shield for nearly a century.[210] This special dispensation has created an environment where viable markets, such as San Jose, cannot readily acquire a professional team if they are located in an existing club's territory.[211] Times have changed since Justice Holmes delivered his opinion in *Federal Baseball*.[212] Baseball's exemption has become outdated, supported by an anomalous progeny of Supreme Court cases.[213] Unfortunately for San Jose, while the Supreme Court has acknowledged the deficiencies in its *Federal Baseball* and *Toolson* decisions, it has decided not to redress them.[214] Given the Supreme Court's demonstrated reluctance to alter the status of professional baseball under federal antitrust laws, San Jose is unlikely to prevail in this lawsuit.[215] Ultimately, San Jose's officials would be wise to pursue a

208. *See* Feldman, *supra* note 26 (indicating settlement would not threaten MLB's control over franchise geography, but rather would simply adjust territorial rights of Giants and A's in Bay Area).

209. For a more detailed discussion of the unique status of professional baseball and MLB's ability to maintain monopolies by controlling franchise geography, see *supra* notes 8-9 and accompanying text.

210. *See* Flood v. Kuhn, 407 U.S. 258, 283 (1972) (concluding failure to enact remedial legislation over fifty year period "is an aberration that has been with us now for half a century, one heretofore deemed fully entitled to the benefit of stare decisis, and one that has survived the Court's expanding concept of interstate commerce. It rests on a recognition and an acceptance of baseball's unique characteristics and needs" and evinces no intention on the part of Congress to bring reserve system under antitrust laws).

211. *See* Munson, *supra* note 107 (discussing MLB's system regarding territorial rights for teams).

212. For a more detailed discussion of the Supreme Court's evolving justifications for the antitrust exemption, see *supra* notes 63-68 and accompanying text.

213. For a more detailed discussion of baseball's antitrust exemption as anomalous and Supreme Court's precedent upholding exemption as aberrations, see *supra* notes 75-83 and accompanying text.

214. For a more detailed discussion of the weaknesses in San Jose's argument arising out of the Supreme Court's determination that baseball's status under antitrust laws should be determined by Congress, see *supra* notes 177-184 and accompanying text.

215. For a more detailed discussion of the potential outcomes of the lawsuit, see *supra* notes 143-208 and accompanying text.

settlement.[216] Such an agreement will serve both parties' interests by providing for the relocation of the A's to San Jose and simultaneously preserving the MLB's antitrust exemption.[217]

*John Becker**

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216. For a more detailed discussion concluding settlement presents best option for San Jose to achieve goal of acquiring A's, see *supra* notes 143-208 and accompanying text.

217. For a more detailed discussion of the favorability of potential settlement, see *supra* notes 201-208 and accompanying text.

* J.D. Candidate, May 2014, Villanova University School of Law; B.A., Washington University in St. Louis, 2010.