Testimony of

The Honorable Bob Butterworth

February 13, 2002

Chairman Leahy and Senators, thank you for this opportunity.
I am here today at your invitation and because of a federal district court's interpretation of baseball's antitrust exemption which prevents me from carrying out my responsibilities to the people of Florida as their Attorney General.

Specifically, the district court has barred the State of Florida from conducting an antitrust investigation into Major League Baseball's handling of matters that could severely impact Florida's status in the major leagues and cause untold economic harm.

I believe it is incumbent upon this Congress to exercise its authority and make it clear that Major League Baseball must abide by the same rules of fair play as any other multi-billion dollar industry operating in America.

Were he alive today, Abner Doubleday would likely be astonished at how drastically the sport he is largely credited with inventing has been transformed.

What began as a simple game played in the pastures of rural America has become a major commercial enterprise conducted in big city boardrooms and multi-million dollar stadiums.

As much as we would like to cling to an idealized, "Field of Dreams" vision of baseball, it is time to face facts.

Baseball, at least as it pertains to the major leagues, is more than just a game...

...it is a very, very big business.

The time has come to treat it as such.

The time also may have come to recognize a sad irony about the nature of the game.

Namely, that while baseball remains America's pastime, its big league version is acting in a very un-American manner.

In the 1990s, my state became the proud home of two major league baseball teams, the Florida Marlins and the Tampa Bay Devil Rays.

Today, less than a decade since the first team arrived, there is the possibility that Florida could lose one or both of those teams in the not-too-distant future.

Such a move would of course have a significant, negative impact on the economies of the communities those teams represent and Florida as a whole.

For instance, our own internal estimates based upon publicly available information show that the annual economic impact of the Florida Marlins on the South Florida economy is approximately $193 million.

For Tampa Bay/St. Petersburg, which also has a 27-year lease arrangement with the Devil Rays, the estimated annual economic impact of the club is approximately $178 million.

As the nation's premier spring training site, our state could also suffer from the elimination of non-Florida teams that train here and generate millions of dollars in revenues.

Not to mention the financial harm that could come from the elimination of minor league squads in Florida.

If we do lose such valuable assets, it will not be because the people have decided they no longer want major league baseball in their state.

It will be because the powers that be -- the major league team owners and their commissioner -- have deemed it the financially prudent move to make.

And when and if they make that decision, it will almost certainly be made behind closed doors.

While the game of major league baseball is a spectator sport, the business of major league baseball is anything but.

Recent meetings of major league owners made that fact abundantly clear.

Last November 6th, a closed-door meeting resulted in a vote to reduce the number of major league teams from 30 to 28.

We are led to believe the two teams on the chopping block
are the Minnesota Twins and the Montreal Expos, but Major League Baseball continues to hold its cards close to the vest.

Commissioner Bud Selig in particular has done everything humanly possible to dodge questions about the future of specific teams.

He was not so reluctant to talk last year, however, when he entered the fray over a proposal before the Florida Legislature to authorize funding for a new stadium in downtown Miami.

In a letter to Senator J. Alex Villalobos dated April 25, 2001, Commissioner Selig said that unless funding was secured, the Marlins would be a prime candidate for contraction or relocation.

That letter said in part: "Relocation of Clubs and contraction of the number of Clubs in Major League Baseball are two options that are in fact being actively reviewed as part of a global plan of economic reorganization.

In the event the Marlins and the local community do not succeed in securing the necessary funding sources the Marlins will be a very likely candidate for each of those options.

We recognize that relocation and contraction are very significant actions.

Should the Marlins fail to secure legislation necessary to implement its funding plan, however, we believe such steps will be warranted.

Bluntly, the Marlins cannot and will not survive in South Florida without a new stadium."

This statement could only be viewed as a threat.

And rest assured, that threat was still in our minds when the owners voted on November 6th to contract.

It was within this atmosphere that I asserted my powers as Florida's attorney general.

About a week after the November 6th meeting, my office issued investigative subpoenas to the league, Commissioner Selig and Florida's two teams.

We did so armed with a Florida Supreme Court decision giving us clear authority to investigative potential antitrust violations by baseball under state antitrust law, Butterworth vs. National League of Professional Baseball Clubs.

In its ruling, the court made it clear that Major League Baseball's exemption is limited to the reserve system and does not extend to team relocation matters.

The goal of our proposed investigation was to obtain the answers to some fairly simple questions.

They included whether the Marlins or Devil Rays were to be eliminated and what the financial condition of each team actually was.

Three days before their response was due, the league
filed an action in Tallahassee federal district court to block our investigation.

The judge granted the league's request to quash our antitrust subpoenas.

In his ruling, he cited the baseball antitrust exemption, a judicial anomaly created in 1922 by the U.S. Supreme Court.

Rejecting the Florida Supreme Court decision, the district court judge said that exemption applied to all aspects of the business of baseball, including team location.

That view, however, is not universally held within the federal judiciary.

Most notably, a Pennsylvania federal court in Piazza vs. Major League Baseball ruled that the application of the baseball exemption is more narrowly limited to the league's player reserve system.

In other words, it exempts the league from antitrust law in its dealings with team members, but not in its dealings with the communities where those team members play.

We believe that well-reasoned decision is correct, and it is our hope that the U.S. Supreme Court will settle this matter once and for all by confirming it.

Toward that end, we have appealed the Florida federal district court ruling to the circuit court in Atlanta.

There is, of course, another forum in which this matter can be resolved.

Namely, right here in the United State Congress.

You have it within your power to clearly delineate those areas in which Major League Baseball is exempt from antitrust law and those in which it is not.

And certainly, one area in which it should not be exempt is in how it determines the fate of team franchises and the communities that support them.

Congress took a step in the right direction with the Curt Flood Act of 1998 with members of this committee even confirming that the passage of the act had no effect on the authority of state attorneys general to investigate baseball under state antitrust laws.

That point was made clear in the following exchange between Senators Wellstone, Hatch and Leahy:

Mr. Wellstone. Mr. President, late last night (July 30, 1998), the Senate passed by unanimous consent S. 53. I have been contacted by the Attorney General of my State, Hubert H. Humphrey III, and asked to try to clarify a technical legal point about the effect of this legislation.

The State of Minnesota, through the office of Attorney General, and the Minnesota Twins are currently involved in an antitrust-related investigation. It is my understanding that S. 53 will have no impact on this investigation or any litigation arising out of the investigation.

Mr. Hatch. That is correct. The bill simply makes it clear that major league baseball players have the same rights under the antitrust laws as do other professional athletes. The bill does not change current law in any other context or with respect to any other person or entity.

Mr. Wellstone. Thank you for that clarification. I also note that several lower courts have recently found that baseball currently enjoys only a narrow exemption from antitrust laws and that this exemption applies only to the reserve system.

For example, the Florida Supreme Court in Butterworth v. National League, 644 So.2d 1021 (Fla. 1994), the U.S. District Court in Pennsylvania in Piazza v. Major League Baseball, 831 F.

Supp. 420 (E.D. Pa. 1993) and a Minnesota State court in a case involving the Twins have all held the baseball exemption from antitrust laws is now limited only to the reserve system.

It is my understanding that S. 53 will have no effect on the courts' ultimate resolution of the scope of the antitrust exemption on matters beyond those related to owner-player relations at the major league level.

Mr. Hatch. That is correct. S. 53 is intended to have no effect other than to clarify the status of major league players under the antitrust laws.

With regard to all other context or other persons or entities, the law will be the same after passage of the Act as it is today.

Mr. Leahy. I concur with the satement [sic] of the Chairman of the Committee.

The bill affects no pending or decided cases except to the extent that courts have exempted major league baseball clubs from the antitrust laws in their dealings with major league players.

In fact, Section 3 of the legislation makes clear that the law is unchanged with regard to issues such as relocation.

The bill has no impact on the recent decisions in federal and state courts in Florida, Pennsylvania and Minnesota concerning baseball's status under the antitrust laws.

Mr. Wellstone. I thank the Senator. I call to my colleagues attention the decision in Minnesota Twins v. State by Humphrey, No. 62-CX-98-568 (Minn. dist. Court, 2d Judicial dist., Ramsey County April 20, 1998) reprinted in 1998-1 Trade Cases (CCH) 72,136.

Cong. Rec. H9945 (daily ed. Oct. 7, 1998) (statement of Senators Hatch, Leahy, and Wellstone).

The consequences of decisions to contract the major leagues or relocate teams are too important to the people of Florida for them to be made without proper checks that protect their interests.

The same can be said in relation to the people of any state where Major League Baseball is a vital part of the local economy.

For example, such has already been the case in Massachusetts, where the state attorney general was forced to intervene in the sale of the Boston Red Sox.

In that case, Major League Baseball was poised to accept a lower offer of $700 million for the purchase of the team despite two other higher bids.

The impact of that action would have been the deprivation of tens of millions of dollars for charities which would have benefitted from the trust that holds a majority share of the team.

Fortunately, the Massachusetts attorney general's action resulted in $30 million more for the charities.

In Florida, Major League Baseball came to us full of promises, including to directly or indirectly infuse millions of dollars into the surrounding economies.

In the process, it took advantage of remarkable tax benefits and local financial support from the host cities.

That same pattern has been followed throughout the country.

It is nothing less than a betrayal of the public trust to now conspire behind closed doors about the future of baseball in those communities that welcomed the major leagues.

The November 6 vote was akin to General Motors, Ford and every other car maker in America meeting to vote to shut down all Daimler-Chrysler factories so that they could sell more cars and make more profit.

This typically would be characterized as a concerted agreement to restrict output, which would be illegal in just about any other circumstance but baseball.

I for one believe it is time for the big leagues to play by the same rules as other multi-billion dollar industries.

And it just may be that the only way that will happen is through firm and decisive action on your part.

Unfortunately, the only game the major leagues seem to understand is hardball.

Finally, it bears repeating that every other professional sport in this country has done quite well without an antitrust exemption and on revenues that are far less than that of Major League Baseball.

Indeed, none of these sports suffer from Baseball's woes.

While the antitrust laws apply to these sports, the reality is that established antitrust analysis will require a balancing test of the pro-competitive versus anti-competitive effects of the conduct before it can be determined if that conduct violates the antitrust laws.

This analysis is known as the "rule of reason" analysis.

Even the Reagan Administration, which was not known for its antitrust activism, concluded that the "rule of reason" analysis required in most cases to determine whether the antitrust laws have been violated was sufficient protection for Major League Baseball to justify doing away with the exemption.

In a 1982 Congressional hearing, Deputy Assistant Attorney General Abbott B. Lipsky, Jr. of the Reagan Justice Department testified:

"It has been the position of the Antitrust Division for some time that baseball's exemption is an anachronism and should be eliminated.

I know of no economic data or other persuasive justification for continuing to treat baseball differently from the other professional team sports, all of which are now clearly subject to the antitrust laws.

As I stated earlier, antitrust courts have sufficient flexibility in the rule of reason analysis to take into account any special considerations that may be found to exist in baseball."

H.R. Rep. No. 103-871 (1994).

President Reagan's Justice Department was right.

Today, Congress has the opportunity to affirm that position and undo the travesty that is the baseball antitrust exemption.

Once again, I want to express my appreciation for allowing me to speak with you today.

I hope my comments have been helpful.

I also hope you will call on me or my staff for any further information you may need.

We stand ready to assist, and look forward to working with you any way we can to protect the people's interests.

Thank you.