Testimony of

The Honorable Patrick Leahy

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This week, spring training begins for major league baseball teams. This winter, instead of the usual discussions about player trades and signings and team prospects for the coming season, baseball fans in Minnesota, Florida, Montreal and many communities have been on a roller coaster ride that began with the baseball commissioner's announcement on November 6, 2001, that two unnamed teams would not be playing this season.

This hearing follows one Chairman Sensenbrenner and Representative Conyers held last year in the House Judiciary Committee. Today, we intend to explore the applicability of federal antitrust laws to professional baseball.

In 1998, Congress culminated decades of hearings on labor strife and other problems in major league baseball when we enacted the Curt Flood Act. Senator Hatch was the lead sponsor of that measure and I was his principal cosponsor. It was a bipartisan effort to clarify the law. By so doing we hoped to encourage labor peace in major league baseball. The principle purpose of the law was to make clear that federal antitrust laws apply to the relationships between major league baseball owners, teams and players.
Clarifying the law was intended to contribute to an atmosphere in which management and labor, owners and players, would resolve their differences through collective bargaining rather than through the legal alternatives available to them- lockouts, strikes and antitrust litigation. Sports pages over the last few weeks indicate that some discussions have resumed.

Whether the parties are successful in reaching a negotiated agreement and whether the new law contributes to creating an atmosphere in which they are encouraged to do so, rather than risk disruption of another season so soon after the loss of the 1994 World Series, remain open questions as we meet today. There may well come a day when a follow-up hearing devoted to that issue is required. For now, we challenge owners and players to negotiate in good faith and reach an agreement.

In 1997 and 1998 the major league baseball owners and players both worked closely with us to fulfill the terms of an earlier collective bargaining agreement in which the owners had agreed to lobby for application of the federal antitrust laws to labor management relations in baseball. I observed at the time that the stops and starts of that legislative journey would have tried the patience of Job and I complimented Senator Hatch for staying the course and getting the job done.

That statute, the Curt Flood Act, uses language suggested, as I recall, by the major league team owners, to make clear that the Act did not "change the application of the antitrust laws" to any other aspect of major league baseball. I thought then, and think now, that it was appropriate to adopt that provision and begin with the assumption that no industry, no company, and no person is above the law. The Curt Flood Act did not create or confirm any federal antitrust immunity but was written in terms of federal antitrust laws, in fact, applying to major league baseball. The only statutory provision that provides an exemption for major league baseball is the Sports Broadcasting Act, which also applies to professional football, basketball and ice hockey, and allows professional sports leagues to contract collectively with broadcast networks to telecast games nationally.

Major league baseball's claim to a unique antitrust exemption arose not from an act of Congress but from a decision by the United States Supreme Court. A trio of Supreme Court cases began in 1922 and culminated with Flood v. Kuhn some 50 years later. In the Flood case, the Supreme Court explicitly limited its holding to the reserve system and preserved an antitrust law exemption for that reserve system. The reserve system referred to the lifetime option of owners to retain exclusive rights to the services of players before the advent of free agency and arbitration. Justice Blackmun's opinion relied on the judicial doctrine of stare decisis, the principle that judicial decisions once made should be respected and upheld. He noted that in the 25 years that had intervened since an earlier Supreme Court's decision, a decision in which the Supreme Court had invited Congress to pass a statute to change the law if it chose, Congress had not acted and had by its "positive inaction" acquiesced in what he described as a legal anomaly and anachronism. Justice Blackmun relied in 1972 on principles of stare decisis - of keeping the status quo- and used congressional inaction as justification.

In the best-reasoned recent lower court opinion on this topic, Judge Padova of the Federal District Court for the Eastern District of Pennsylvania in Piazza v. Major League Baseball concluded in 1993 that the judicially-created and unique antitrust exemption for major league baseball was limited to the reserve system. That case involved the possible relocation of a team, and the District Court held that no baseball antitrust exemption prevented it from applying the law. Similarly, in Butterworth v. National League of Professional Baseball Clubs, Inc. involving a challenge to major league baseball's refusal to allow a group of investors to buy the San Francisco Giants and move the team to Tampa Bay, the Florida Supreme Court held in 1994 that no judicially-created federal antitrust exemption barred it from considering the proper application of federal law to protect competition and thereby consumers.
It was against this judicial backdrop that in 1998 Congress finally did act and eliminated the judicially-created exception preserved in limited form by Justice Blackmun in the Flood case. It was appropriate that we did it in a law named for the player who sacrificed his career to raise the issue. Our bill did not question that the antitrust laws apply to major league baseball, just as they apply to professional football, basketball, ice hockey, soccer and all professional sports. Professional sports are a business and the laws that apply to other businesses apply. The limited and anachronistic exception in the law that was preserved in the Flood case- baseball antitrust immunity for labor management relations- was eliminated by the Curt Flood Act.

Between the narrowness of the way the Supreme Court had perpetuated baseball's antitrust exemption-- only as it applied to labor-management relations-- and our work in the Congress, in which we struck the last remaining remnant of the judicially-created exception to the applicability of the antitrust laws, it seems that there is no longer any basis to contend that a general, free-floating baseball antitrust exemption somehow continues to exist.

Nor has such a special antitrust exemption been justified. When the Committee was engaged in hearings in 1995 that led to passage of the Curt Flood Act, after the work stoppage in 1994 and the lamentable and historic cancelling of the World Series, David Cone, an outstanding major league pitcher, testified and offered a trenchant question. He asked: If baseball were coming to Congress today to ask us to provide a statutory antitrust exemption, would we? That is the question I repeat today. What about major league baseball, as distinct from other professional sports and businesses, entitles it to special rules of law?

In my view, the heavy burden of justifying any exception from the rule of law is, and should be, squarely on the proponents of any antitrust exemption. I will ask the representative of major league baseball with us today, their general counsel, to explain precisely what such an exemption would permit and precisely why it is necessary.

There has been a fair amount of public outcry over the actions of the owners in unilaterally announcing the end of baseball in at least two cities within two days of the end of the World Series and less than two months after the tragic attacks of September 11, 2001. We have in recent days seen the yo-yoing of the possibility of a major league baseball franchise eventually moving to the national capital area and the recent suggestion that it may really be four, not just two, teams that need to be eliminated. Not only baseball fans in Minnesota and Montreal, but those of the Tampa Bay Devil Rays, the Florida Marlins, the Anaheim Angels, the Oakland A's, the Kansas City Royals, the San Diego Padres, the Toronto Blue Jays and even the world champion Arizona Diamondbacks are now worried, as their teams are being mentioned by knowledgeable commentators as teams with financial problems.

In the meantime, we have seen owners approve a merry-go-round of ownership swaps -- with the owner of the Montreal Expos being approved to buy the Florida Marlins, while the owner of the Marlins and a former owner of the Padres were approved to buy the Boston Red Sox, and the other owners joining together to buy and operate the Expos and prepared to pay the owner of the Minnesota Twins a hefty fee to terminate that team's existence. To an outsider, it seems that the major league baseball team owners take care of each other pretty well.

We will hear today how major league baseball owners continue to ask courts to create special legal exceptions and immunities for them and how they hold themselves above not only federal antitrust law but the powers of state law enforcement officers. We will also hear some discussion of pending legislative proposals by Senator Wellstone and Representative Conyers, which would

codify the ruling in the Piazza case by expressly providing in law that the federal antitrust laws apply to major league baseball franchise relocation.

This hearing provides us the opportunity to explore these issues of the rule of law and the state of the law with respect to major league baseball. I thank each of our witnesses for being with us today.

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