

July 18, 2022

Rob Manfred  
Commissioner of Baseball  
The Office of the Commissioner of Baseball  
1271 Avenue of the Americas  
New York, NY 10020

Dear Commissioner Manfred:

May 29, 2022 marked the 100-year anniversary of the Supreme Court’s unilateral creation of Major League Baseball’s (MLB) antitrust exemption in the case *Federal Baseball Club v. National League*.<sup>1</sup> As we mark this anniversary, we seek information about how MLB’s antitrust exemption impacts the league’s structure and operations, with a focus on the exemption’s impact on competition in the labor market for minor league ballplayers, as well as the operations of minor league teams. Your answers will help inform the Senate Judiciary Committee’s analysis of the necessity of this century-old exemption.

We ask that you provide answers to the following questions by July 26, 2022:

1. Baseball is the only American professional sport to have a general exemption from the antitrust laws. The Supreme Court, as recently as its 2021 decision in *NCAA v. Alston*, has characterized *Federal Baseball* as “unrealistic,” “inconsistent” and “aberrational.”<sup>2</sup> Recently, the U.S. Department of Justice (DOJ) filed a statement of interest in *Nostalgic Partners, LLC v. The Office of the Commissioner of Baseball*.<sup>3</sup> In its statement, DOJ states that the MLB antitrust exemption “does not rest on any substantive policy interests that justify players and fans losing out on the benefits of competition.”<sup>4</sup>
  - a. How do MLB’s structure and operations compare to other professional sports leagues, such as the National Basketball Association (NBA), the National Football League (NFL), and the National Hockey League (NHL)?
  - b. What justifies maintaining a general antitrust exemption for MLB that these other leagues do not have?
2. What effect does the antitrust exemption have on the incidence of lockouts and work stoppages at the MLB level, and what impact do these incidents have on minor league players and teams?

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<sup>1</sup> 42 S.Ct. 465 (1922).

<sup>2</sup> 141 S.Ct. 2141 (2021).

<sup>3</sup> *Nostalgic Partners, LLC v. The Office of the Commissioner of Baseball*, Case No. 1:21-cv-10876 (S.D.N.Y.).

<sup>4</sup> Statement of Interest of the United States 1, *Nostalgic Partners, LLC v. The Office of the Commissioner of Baseball*, Case No. 1:21-cv-10876 (S.D.N.Y.) (June 15, 2022).

3. MLB requires minor league players to sign a Minor League Uniform Player Contract.<sup>5</sup>
  - a. Please discuss the impact, if any, of the antitrust exemption on the negotiation of minor league players' length of contract, wages, housing, or other working conditions. What effect would removing the antitrust exemption have on minor league player working conditions and wages?
  - b. If a more tailored approach, like extending the Curt Flood Act (CFA) to cover minor league players and operations, was taken, what would be the impact? Please describe any provision of the CFA that should or should not cover minor league players and why.
4. Recent reports, including an article in *The Athletic* entitled "'A failed system': A corrupt process exploits Dominican baseball prospects. Is an international draft really the answer?", have identified rampant corruption and abuse in the market for international prospects, from giving performance-enhancing drugs to teenagers to shady dealings between scouts and trainers.<sup>6</sup>
  - a. To your knowledge, how widespread are these practices?
  - b. What steps, if any, has MLB taken to investigate and address these practices?
  - c. What role, if any, does MLB's antitrust exemption play in creating the conditions that enable these practices?
5. It has been reported that in lobbying for the Save America's Pastime Act (SAPA), MLB claimed that the bill was necessary to prevent minor league contraction.<sup>7</sup> However, despite the bill's enactment, prior to the 2021 baseball season, dozens of minor league teams lost their affiliations with MLB clubs as a result of MLB's reorganization of the minor leagues.<sup>8</sup>
  - a. How did this reorganization affect minor league baseball players?
  - b. Did the antitrust exemption play any role in MLB's ability to restructure the minor leagues in this way?

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<sup>5</sup> Attachment 3: Minor League Uniform Player Contract, MAJOR LEAGUE RULES (2021), <https://registration.mlbpa.org/pdf/majorleaguerules.pdf>.

<sup>6</sup> Maria Torres & Ken Rosenthal, 'A failed system': A corrupt process exploits Dominican baseball prospects. Is an international draft really the answer?, THE ATHLETIC (Jan. 20, 2022), <https://theathletic.com/3080470/2022/01/20/a-failed-system-a-corrupt-process-exploits-dominican-baseball-prospects-is-an-international-draft-really-the-answer/>.


<sup>7</sup> See, e.g., Evan Drellich, 'If we are forced to defend ourselves and fight for our mere survival, we will': MiLB president responds to MLB plan, THE ATHLETIC (Oct. 19, 2019), <https://theathletic.com/1306272/2019/10/19/if-we-are-forced-to-defend-ourselves-and-fight-for-our-mere-survival-we-will-milb-president-responds-to-mlb-plan/> (quoting Minor League Baseball President Pat O'Connor, "One of the premises [of the Save America's Pastime Act], and one of the well-known premises, was if we don't get this legislation for Major League Baseball, they're either going to cut [minor league] teams or they're going to come after us for more money.").


<sup>8</sup> Gabe Lacques, Major League Baseball issues invites for minor-league affiliates; here are teams that didn't make cut, USA Today (Dec. 9, 2020), <https://www.usatoday.com/story/sports/mlb/2020/12/09/mlb-announces-minor-league-affiliate-invites-some-teams-miss-cut/3805929001/>.

- c. What effect would repealing SAPA have on the relationship between MLB, the minor leagues, and minor league players?
  - d. Will MLB commit to maintaining all of its current 10-year Player Development License agreements with minor league clubs and ensuring no further contraction of minor league clubs occurs after their expiration?
6. Is there any other information that you believe could help inform the Senate Judiciary Committee's analysis of MLB's century-old antitrust exemption?

We appreciate your attention to this timely issue and look forward to working with you to ensure that players, communities, and fans can continue to enjoy America's pastime.

Sincerely,

  
RICHARD J. DURBIN  
Chair  
Committee on the Judiciary

  
CHARLES E. GRASSLEY  
Ranking Member  
Committee on the Judiciary

  
RICHARD BLUMENTHAL  
United States Senator

  
MICHAEL S. LEE  
United States Senator