



July 29, 2022

The Honorable Richard J. Durbin  
United States Senate  
Chair, Committee on the Judiciary  
Washington, D.C. 20510-6275

The Honorable Charles E. Grassley  
United States Senate  
Ranking Member, Committee on the Judiciary  
Washington, D.C. 20510-6275

The Honorable Richard Blumenthal  
United States Senate  
Committee on the Judiciary  
Washington, D.C. 20510-6275

The Honorable Michael S. Lee  
United States Senate  
Committee on the Judiciary  
Washington, D.C. 20510-6275

Re: Minor League Players

Dear Chairman Durbin, Ranking Member Grassley, Senator Blumenthal and Senator Lee:

We are in receipt of your letter dated July 18, 2022, which suggests that Major League Baseball's ("MLB") antitrust exemption is detrimental to Minor League players, and that removing the exemption would improve their working conditions. We respectfully submit that the opposite is true – the baseball antitrust exemption has meaningfully improved the lives of Minor League players, including their terms and conditions of employment, and has enabled the operators of Minor League affiliates to offer professional baseball in certain communities that otherwise could not economically support a professional baseball team.<sup>1</sup>

Before responding to the specific inquiries, two points are in order. First, the specific baseball exemption has allowed MLB and its Partner Leagues to organize and offer fan-friendly and affordable baseball, featuring 184 teams located in 43 states. Without the exemption, there would be baseball in far fewer communities, and without MLB's substantial subsidization, the cost of attending a Minor League baseball game would be significantly higher in many places. Second, many of the assertions about the compensation of Minor League players are wrong, incomplete or lack appropriate context. MLB spends approximately \$108,000 on a per capita basis on Minor League player compensation and benefits. 58% of drafted Minor League players receive a signing bonus of \$100,000 or more when they enter their initial contract. Those players who do not command larger signing bonuses generally will have very short baseball careers and transition to other careers in their early-twenties, and are truly seasonal employees who are free to obtain other employment or continue their education during the off-season. And during those

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<sup>1</sup> We have reviewed the letter, dated July 6, 2022, that Advocates for Minor Leaguers ("Advocates") sent the Committee in response to its inquiry, and will respond herein to some of the assertions in that letter.

few years they are pursuing their dream of becoming a Major League player despite the long odds, they are provided with health insurance, housing benefits, pension benefits, meals, and often tuition reimbursement to obtain a college degree or other training/education – benefits that are not available to most college-age employees in this country when they enter the workforce.

We respond to each of your questions below.

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.” 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*. 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.”**
  - 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?**

As a preliminary matter, MLB does not have a general exemption from the antitrust laws. The Supreme Court’s exemption for the “business of baseball” has been narrowed by Congress through the Curt Flood Act of 1998 (“the Curt Flood Act”), and further limits have been recognized.

MLB also is not the only professional sports league to benefit from an exemption from certain aspects of the antitrust laws. For example, all professional sports leagues with collective bargaining agreements benefit from non-statutory labor exemptions. And the Sports Broadcasting Act of 1961 exempts all professional sports leagues from the antitrust laws for a broad range of activities relating to broadcast and media rights. Although courts have recognized that other aspects of professional baseball are exempt from the antitrust laws, those aspects have developed in fan-friendly ways unique to professional baseball. For example, courts have held that franchise relocation falls within the scope of the exemption. And, not coincidentally, MLB has the greatest franchise stability of any professional sports league in the United States, which encourages fans to form lifelong bonds with their teams.

It also has been recognized that the Minor Leagues fall within the scope of the exemption, which has facilitated development of the Minor League system. Indeed, no other professional sport league supports a minor league system as extensive as Minor League baseball. One of the critical differences between MLB and other major sports leagues in the United States

is MLB's approach to player development. Other major sports leagues rely primarily on colleges and universities to identify and cultivate talent, at no cost to those leagues. For example, the NBA's G League consists of a quarter the number of MLB-affiliated Minor League clubs. And most NBA players go directly from college to the NBA, bypassing the development league entirely. The NFL has no development league at all. Its players are trained almost exclusively in college programs.

By contrast, and as detailed below, MLB spends over \$1 billion annually to support the Minor Leagues and Minor League players.<sup>2</sup> MLB's Minor Leagues feature more teams, across more markets, employing more players than any other professional league's developmental system. Such a system almost certainly would not be sustainable in many communities but for the centralized governance and coordination that MLB currently is able to provide under the baseball exemption. The Minor League system does not produce any net income for MLB and most Minor League clubs are not even owned by MLB Clubs. Rather, MLB Clubs subsidize the affiliated Minor League club owners by supplying them with players, which allows the Minor League clubs to continue to maintain low ticket prices and operate in certain areas that otherwise could not economically support a professional baseball team. Across the United States, millions of baseball fans are able to enjoy Minor League baseball because of MLB's substantial investment in its unique player development program.

**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?**

MLB agrees with Advocates that the baseball exemption has no impact on the incidence of lockouts and work stoppages at the Major League level. In this respect, we note that both the NHL and NBA have lost a significant number of games due to work stoppages over the past two decades, while MLB has lost none during the same period. Moreover, under the Curt Flood Act, professional baseball's exemption from the antitrust laws does not extend to conduct directly relating to or affecting the employment of Major League players.

Finally, as Advocates concedes, work stoppages at the Major League level have not affected the operation of the Minor League system. During the most recent work stoppage involving Major League players earlier this year – which ultimately did not result in the loss of any regular season games – all Minor League players were permitted to attend Spring Training and their access to Club facilities and resources was completely unaffected.

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<sup>2</sup> MLB will spend at least \$1.03 billion in 2022 to operate the Minor League system. Of that amount, about \$750 million will be spent on player compensation and benefits, with that amount rising to over \$800 million in 2023. MLB receives approximately \$25 million in revenue from Minor League operators each year. As a result, the net subsidy MLB Clubs provide to Minor League operations is over \$1 billion.

**3. MLB requires minor league players to sign a Minor League Uniform Player Contract.**

- 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?**

All Minor League players would be required to sign a Minor League Uniform Player Contract ("Minor League UPC") regardless of the baseball antitrust exemption. Uniform player contracts are not unique to professional baseball. Indeed, player contracts in every professional sport in the United States are standardized because it would be impossible to operate a sports league without standardized terms and conditions of employment. Moreover, many of the most significant terms and conditions contained in the Minor League UPC are the product of collective bargaining with the Major League Baseball Players Association ("Players Association") and therefore qualify for the non-statutory labor exemption to the antitrust laws.<sup>3</sup> For decades, the Players Association has consistently taken the position that the First-Year Player Draft and International Amateur Talent System are mandatory subjects of bargaining under the National Labor Relations Act, and, as a result, that MLB Clubs are legally required to

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<sup>3</sup> As a general matter, the non-statutory labor exemption makes irrelevant from an antitrust perspective certain joint union/employer activity directly related to the lawful operation of the bargaining process involving matters "that the parties were required to negotiate collectively." *Brown v. Pro Football*, 518 U.S. 231, 250 (1996). *See also Clarett v. Nat'l Football League*, 369 F.3d 124, 141 (2d Cir. 2004) ("[a]s a permissible, mandatory subject of bargaining, the conditions under which a prospective player, like Clarett, will be considered for employment as an NFL player are for the union representative and the NFL to determine"); *Wood v. NBA*, 809 F.2d 954, 959 (2d Cir. 1987) (as the draft is embodied in a collective bargaining agreement, its legality cannot be assessed without reference to federal labor legislation, and "no one seriously contends that the antitrust laws may be used to subvert fundamental principles of our federal labor policy"); *NBA v. Williams*, 45 F.3d 684, 693 (2d Cir. 1995) (challenged policies [including the draft] were implemented unilaterally by the NBA after negotiations with the union reached an impasse; the court held that the NBA's conduct still fell within the nonstatutory labor exemption); *Zimmerman v. Nat'l Football League*, 632 F. Supp. 398, 400 (D.D.C. 1986) ("[t]he labor exemption to the antitrust laws removes the supplemental draft from the restraints of the Sherman Act"); *Bridgeman v. NBA*, 675 F. Supp. at 960, 964 (D.N.J. 1987) ("players do not dispute that the restrictions at issue [including the draft] were covered by the labor exemption when the collective bargaining agreement was still in effect").

bargain with the Players Association over the terms upon which players sign their first professional contract with an MLB Club.<sup>4</sup>

Advocates complains about the following alleged conduct in its letter to the Committee, and claims that “[a]bsent the antitrust exemption, this conduct would be illegal”:

- “[P]layers are controlled for seven years by the team that drafts them and have no ability to pursue a better deal with one of the 29 other Major League franchises during that time.”
- “Minor League players do not enjoy the benefits of a fair, competitive market for their services.”
- “Because players have no opportunity to entertain competing offers from other teams, they have no ability to negotiate for higher wages, better living conditions, or increased benefits.”
- “[B]aseball’s antitrust exemption permits teams to collusively suppress Minor League wages and prevent players from obtaining compensation that reflects their fair value to Major League employers.”

In essence, Advocates contends that the First-Year Player Draft – under which a player must sign a contract with the team that drafts him or enter the draft again in a future year – is unfair and anticompetitive because it deprives players of the opportunity to market their services to every team. However, every major professional sports league in the United States allocates players through a draft system. Drafts promote competitive balance in their leagues and ensure that the worst-performing teams have an opportunity to return to competitiveness as quickly as possible.

But, more significantly for purposes of this letter, MLB’s First-Year Player Draft would not be subject to antitrust scrutiny even in the absence of the baseball exemption. Advocates neglects to inform the Committee that the First-Year Player Draft, and the terms and conditions upon which a player signs his first professional contract with a Major League Club, are a direct product of collective bargaining with the Players Association, and thus are not covered by antitrust laws pursuant to the non-statutory labor exemption. *See Wood*, 809 F.2d at 959 (as the draft is embodied in collective bargaining agreement, its legality cannot be assessed without reference to federal labor legislation, and “no one seriously contends that the antitrust laws may be used to subvert fundamental principles of our federal labor policy”). Although almost all drafted players are first assigned to a Minor League affiliate for development, the Major League Club is free to add a signed player to the Major League roster at any time pursuant to procedures

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<sup>4</sup> *See, e.g.*, MLB/Players Association Arbitration Panel Decision No. 90 (Arb. Nicolau, 1992) (“The [Players] Association . . . contend[s] that the baseball draft is . . . by its very nature a subject of mandatory bargaining.”).

negotiated with the Players Association, and many players are placed on and removed from the Major League 40-man roster several times during their careers.

Among the terms and conditions of Minor League employment that are negotiated with the Players Association as part of the amateur entry system, and thus qualify for protection under the non-statutory labor exemption, are:

- The terms and conditions under which an amateur player signs his first professional contract, including the requirement that players who are residents of the U.S. and Canada only can sign a contract after being eligible for selection in the First-Year Player Draft and that players who reside outside of the U.S. and Canada are subject to the International Amateur Talent System, which is a provision of the Basic Agreement negotiated with the Players Association.
- The eligibility criteria for the First-Year Player Draft and International Amateur Talent System.
- The age at which players can sign their first professional contract.
- The amount, form, and payment schedule of all signing bonuses that players receive when signing their first contract.
- The requirement that all drafted players, and all international players signed through the International Amateur Talent System, be tendered and sign a Minor League UPC.
- The permissible special covenants and addenda that may be included in the Minor League UPC.
- The bonus amounts that first-year players may receive if they remain under contract with a Major or Minor League club for a period that may not exceed 90 days (referred to as a “Contingent Payment”).
- The incentive bonuses that players may receive when promoted to higher classifications in the Minor Leagues (referred to as the “Incentive Bonus Plan”).
- The amount and terms of college scholarship or other tuition reimbursement benefits that players receive under the terms of their initial Minor League UPC (referred to as the “Continuing Education Program”).
- The terms of the Rule 5 Draft, under which Minor League players who are not added to a Major League Club’s 40-man roster within either four or five years are eligible for selection by other Major League Clubs. As a result, 83% of Minor League players are either promoted to the 40-man roster (and signed to a Major

League UPC) or released after five years, and 91% of players are either promoted or released after their sixth year under contract.

For this reason, Advocates' primary contention that "the antitrust exemption is *the* reason MLB owners can require Minor League players to sign the Minor League Uniform Player Contract" is just plain wrong because this requirement is the product of collective bargaining. The Office of the Commissioner and the Players Association expressly agreed in collective bargaining that "[a]ll drafted players must sign a Minor League Uniform Player Contract." (*See* Memorandum of Understanding Between the Office of the Commissioner and Players Association, dated November 22, 2011, Exhibit 101, Paragraph 2.h.) The bargaining parties also expressly agreed that a Club and drafted player only may modify the Minor League UPC by agreeing to specific covenants set forth in the agreement, and that no Club may provide a player with "additional compensation" beyond that contained in the standardized Minor League UPC. *See* Major League Rule 3(c).<sup>5</sup>

Thus, because many of the most significant terms and conditions of employment for Minor League players are the product of collective bargaining with the Players Association, removing the baseball exemption would not subject them to antitrust scrutiny because of the non-statutory labor exemption. However, if the baseball exemption was repealed, MLB's ability to mandate improved working conditions and benefits for all Minor League players would be at risk, and players who are not prospects (which is most players) likely would not have the leverage to obtain the benefits that they currently receive in a system of individual negotiations. In addition, if MLB was unable to mandate minimum standards and regulations for Minor League operators, it would be very difficult to operate the Minor League system, which requires a high degree of uniformity and regulation to protect both the integrity of the competition and the well-being of players, staff and umpires. Finally, if left solely to the individual decisions of the MLB Clubs, some may choose to maintain fewer than four affiliates, and some may not keep certain affiliates in their existing communities.

The uniform benefits and standards that MLB is now able to mandate without subjecting the League to antitrust litigation include the following:

**Housing.** MLB mandates that all Clubs provide no-cost housing benefits to approximately 90% of Minor League players during all assignments, including Spring Training and the championship season – a benefit which few employers in the United States offer to their employees.

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<sup>5</sup> Other than salary rates for players in their very first season after being drafted or signed under the international system, which rates are established by MLB for each Minor League classification, MLB does not dictate to MLB Clubs the salary that Minor League players are paid during each subsequent season covered by the Minor League UPC. Each Club makes that decision in accordance with federal and state wage payment laws, subject to a floor set by MLB.

**Training Standards.** In its license agreement with the operators of Minor League clubs, MLB sets minimum standards for the training areas in Minor League ballparks, including standards for clubhouses, weight rooms, training rooms, and meal rooms, among other things. MLB also mandates standards for travel to road games; standards for hotel accommodations when on the road; the composition of the Minor League schedule, including mandatory off days; the playing rules for each Minor League; and uniform rules for Minor League operators that are designed to protect player safety. These uniform standards and protections, which inure to the benefit of Minor League players, would be subject to an antitrust challenge without the baseball exemption.

**Health Insurance Benefits.** Health insurance benefits are not mandated by state or federal law. MLB requires all Clubs to provide Minor League players with quality health insurance under a “Cadillac” health insurance plan. Without this mandate from MLB, players who are not top prospects – *i.e.*, the overwhelming majority of Minor League players – almost certainly would not receive the same health insurance benefits as more highly touted prospects.

**Pension Benefits.** Most employees in the United States do not receive pension benefits pursuant to a defined benefit pension plan. MLB mandates that all Clubs provide such benefits to Minor League players. Without this central mandate, it is likely that some MLB Clubs would not maintain pension plans for their Minor League players.

**Meals.** In addition to providing a *per diem* to Minor League players when they are on the road, Clubs also provide at least two meals to players when they are at both home and road ballparks.

**Integrity Policies.** MLB subjects all Minor League players to uniform policies designed to protect the integrity of the game, including policies that prohibit players from betting on baseball. The Minor League Baseball Drug Prevention and Treatment Program is designed to eliminate performance-enhancing drugs from the game, and to assist players with substance abuse issues. MLB also promotes important public policies by, for example, imposing discipline on Minor League players for domestic violence and sexual assault, and prohibiting the use of smokeless tobacco during games. Without the baseball exemption, Major League Baseball may not be able to ensure the integrity of the game in the Minor Leagues.

**Number of Affiliates.** MLB requires that each Club maintain four Minor League affiliates. Without that mandate, some Clubs may choose to carry fewer than four affiliates and conduct more player development activities in their Florida and Arizona complexes, thereby depriving communities across the country of their teams.

**Minor League Exclusive Territories.** In an effort to make operating a Minor League club economically viable to the operator, MLB guarantees the operator an exclusive territory in which other Minor League clubs may not operate. Without the ability to offer that exclusivity,



and to protect those decisions from antitrust scrutiny, many Minor League affiliates would not be economically viable.

- 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.**

As explained above, because many of the terms and conditions of employment in the Minor Leagues are the product of collective bargaining with the Players Association, extending the Curt Flood Act to cover Minor League players would not subject the terms and conditions of their employment to challenge under the antitrust laws. However, without the baseball exemption, MLB may not be permitted to mandate that MLB Clubs provide the benefits to Minor League players described above. MLB Clubs currently spend about \$750 million on Minor League player compensation and benefits each year.<sup>6</sup> If the baseball exemption were to be repealed, Minor League players could be forced to engage in individual negotiations for health, pension, housing and meal benefits that likely would result in many (or even most) Minor League players receiving fewer benefits than MLB currently requires.

Subjecting Minor League operations to antitrust scrutiny would not be in the interests of fans or local communities. As described in more detail below, without the central mandate from MLB that each Club must maintain four Minor League affiliates, and the organization of the Minor League affiliates into competitive baseball leagues, some Clubs instead may choose to develop players in their Arizona and Florida complexes, which have better player development facilities and amenities and more Club personnel to attend to players' development. There also may be fewer – not more – games conducted by each Minor League affiliate because some Clubs will choose to provide players with more rest and training time during the season, rather than actual game experience, during their development period.

- 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.**

- a. To your knowledge, how widespread are these practices?**
- b. What steps, if any, has MLB taken to investigate and address these practices?**

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<sup>6</sup> MLB Clubs spend an additional \$250 million annually to subsidize non-player costs in the Minor Leagues.

**c. What role, if any, does MLB’s antitrust exemption play in creating the conditions that enable these practices?**

As noted above, the International Amateur Talent System is the product of collective bargaining with the Players Association and is unaffected by the antitrust exemption. Combatting corruption and abuses in the International Amateur System is a top priority and MLB has gone to great lengths to address these issues. MLB has implemented multiple programs aimed at combatting PED use by international amateur players, including establishing the Trainer Partnership Program (“TPP”) in 2018. Through the TPP, MLB has worked with more than 100 independent trainers in the Dominican Republic, Venezuela and other countries to implement a voluntary drug testing program for international amateur players. Additionally, MLB has devoted significant resources to investigating allegations of corruption and inappropriate dealings between Clubs and trainers, imposing discipline where appropriate.

For more than a decade, MLB has advocated for an international draft as the best way to effectively reform the system and address continuing concerns over corruption and abuses in the International Amateur Talent System. MLB’s proposal to the Players Association on the international draft during the most recent round of collective bargaining would have provided more money to amateur players than the *status quo* and removed all incentives for informal agreements with young teenagers in foreign countries. MLB is not alone in this view – many independent trainers in the Dominican Republic who develop amateur baseball players, government officials in the Dominican Republic, and many former MLB players from Latin American countries believe that an international draft would create greater transparency and eliminate many of the problematic aspects of the current system. The subject of an international draft is covered by the Basic Agreement between MLB and the Players Association and, therefore, cannot be challenged under the antitrust laws pursuant to the non-statutory exemption described above.

Finally, MLB expends significant resources to ensure that Clubs, independent trainers, players, and third parties comply with MLB rules and regulations designed to prevent corruption and prohibited conduct; and MLB assesses sanctions when warranted. The baseball exemption gives the Commissioner the ability to investigate and sanction misconduct without subjecting MLB’s remedial efforts to antitrust challenges brought by those who are the subject of our investigations and penalties.

**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. 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.**

**a. How did this reorganization affect minor league baseball players?**

Notwithstanding Advocates' claims, the primary beneficiaries of the restructuring of the Minor Leagues are the players themselves, who no longer must play in substandard facilities, endure onerous travel to games, and be subjected to inconsistent working conditions based on the affiliate to which they happen to be assigned.

Indeed, the reorganization resulted in improved working conditions for all Minor League players. Prior to the restructuring, many Minor League players were required to travel extraordinarily long distances because affiliates in some leagues were geographically dispersed and, in some cases, affiliates were distant from their affiliated Major League Club. For example, the Washington Nationals Triple-A affiliate was in Fresno, California – almost 3,000 miles from Nationals Park. After the reorganization, the Nationals are now affiliated with Rochester, New York, which facilitates player movement between the two teams. Better geographic alignment has dramatically reduced the overall travel burden on Minor League players. The distance between a Club's Triple-A affiliate and its Major League home city decreased by an average of more than 200 miles. Likewise, intra-affiliate travel has been reduced by an average of 200 miles per trip, which is very important to players because almost all travel at the Minor League level is by bus.

Another key reason for the reorganization was to improve the quality of Minor League player facilities and working conditions. MLB's new mandatory standards, such as larger and refurbished clubhouses, brighter stadium lights and all-weather practice areas for hitting and pitching, will ensure that Minor League players play in facilities suitable for professional athletes. (Previously, numerous Minor League ballparks contained significantly worse player amenities than those in many college baseball facilities.) We expect \$250 million to be spent on improving player development amenities at Minor League affiliates in 2022-23 after \$35 million was spent in 2021. Further, under the restructuring, MLB Clubs and their Minor League affiliates have assumed full responsibility for providing players with multiple nutritious meals and snacks in both home and visiting clubhouses. The restructuring also requires MLB Clubs and Minor League clubs to cover the costs of clubhouse attendants, who provide various services to players. Both meals and attendant services previously were paid in part by player dues, which may no longer be imposed.

By 2023, forty of the forty-three communities that lost Major League affiliates as part of the reorganization plan to replace the affiliated club with a baseball team competing in a professional MLB Partner League, another professional league, or a collegiate summer wood bat league (two of which are directly affiliated with MLB).<sup>7</sup> MLB assisted with the transition of a number of those teams to other leagues, including by paying entry costs into Partner Leagues, financially subsidizing certain leagues, or, in the case of the Appalachian League, running the

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<sup>7</sup> Of the three former affiliates that have not joined another league, one was offered the opportunity but declined, another is in discussions to join a Partner League, and the third had its stadium lease terminated prior to (and unrelated to) the restructuring.

league in partnership with USA Baseball. Under the new Appalachian League format, the Danville Otterbots set their all-time attendance record.

All told, MLB has partnerships with 184 baseball teams in communities located in 43 of the 50 states. The Pioneer League, whose teams were previously affiliated with MLB Clubs, enjoyed a record-setting debut in its first season as an MLB Partner League, setting all-time highs in attendance and revenue. Pioneer League President Mike Shapiro said, “I think it’s a remarkable testament to the value of Minor League Baseball in states like Montana and Utah and Idaho and Colorado. I think it’s a testament to the value of the Pioneer League in those specific communities. . . . We’ve proven our point that we’re viable and sustainable and a great product. The future looks really, really cool.”

The exemption has allowed MLB to enforce regulations that have reduced travel and improved the quality of Minor League facilities. Removing the exemption would not be in the interests of Minor League players because, absent the exemption, enforcement of such centrally-issued regulations would be subject to antitrust challenge.

**b. Did the antitrust exemption play any role in MLB’s ability to restructure the minor leagues in this way?**

The baseball exemption enables MLB to mandate, without being subjected to antitrust litigation, that Clubs maintain a certain number of affiliates, that those affiliates receive a territory that is protected from competition from other operators of affiliated Minor League clubs, and that those operators adhere to a myriad of rules and regulations designed to maintain competitive integrity, protect fans and players, and set minimum standards for player working conditions. In 2020, MLB awarded licenses to 120 operators that enable them to operate affiliated Minor League clubs in their communities for at least ten years, ensuring fans will have continuity with their local teams for the next decade or more.

Advocates fails to mention that a primary reason why Minor League baseball exists in 120 communities is that the Major League Clubs – as a group – have agreed to supply players to the Minor League clubs in exchange for the operator’s agreement to adhere to specified minimum standards and a small ticket tax. While Advocates claims in its letter that Minor League players are not compensated based on their “fair value,” the revenues of most Minor League clubs are insufficient to support even the current salaries and benefits of players. If MLB Clubs eliminated or curtailed their financial subsidy to Minor League clubs, and players were compensated at the Minor League level by the club operators at a level commensurate with Minor League revenues, Minor League player salaries and benefits would be *lower*, not higher.

The basic economics of Minor League baseball belie Advocates’ argument that MLB Clubs have used the baseball exemption to suppress Minor League salaries in order to increase League profits. To the contrary, as set forth above, MLB Clubs provide a net subsidy to the Minor League operators of over \$1 billion per year. Indeed, revenue from the Minor Leagues

constitutes 0.2% of total league revenue, but MLB Clubs spend 10% of league revenue to operate the Minor League system. Virtually all of MLB's revenues are derived at the Major League level, and the Major League players who help generate that revenue receive about half of those revenues under the system negotiated with the Players Association. Accordingly, the Minor League system is not a meaningful revenue source for MLB Clubs, but rather a significant expense that is incurred to develop players for the Major Leagues and to spread professional baseball to communities that otherwise would not have teams of their own.

Without MLB's centralized mandates, the Minor League system would evolve differently, and likely in a manner that would be less favorable to players, fans and local communities. Some MLB Clubs may decide to develop players in their state-of-the-art Arizona and Florida training complexes rather than supply players to four affiliates that generally contain less favorable player amenities. Smaller market Clubs may choose to operate fewer than four affiliates, exacerbating the competitive balance issues that already exist at the Major League level. And without the ability to mandate that Clubs maintain an equal number of affiliates, and coordinate where those affiliates are located, MLB could not organize the Minor Leagues into competitive leagues offering a high-quality entertainment product to fans. Some Clubs might choose to limit the number of games in which their players participate, making it difficult for the Minor League operators to generate sufficient revenue. And some Clubs might choose to relocate their affiliates contrary to the desires of MLB, which might be powerless to prevent it. (One of the recurring themes during the 2020 restructuring was local communities and elected officials requesting that MLB direct certain Major League Clubs to maintain affiliations in their communities).

Because of a desire to preserve the system of Minor League baseball, Congress expressly reaffirmed the applicability of the exemption to the Minor Leagues when it passed the Curt Flood Act in 1998. *See* 15 U.S.C. § 26b(b)(1)–(2). Congress understood then that without the exemption, Minor League baseball could develop in a manner contrary to the public's interest. The same holds true today.

**c. What effect would repealing SAPA have on the relationship between MLB, the minor leagues, and minor league players?**

SAPA clarified that Minor League players may be treated as exempt under the Fair Labor Standards Act ("FLSA") provided the players are paid the federal minimum wage for 40-hours per week during the championship season. Prior to the enactment of SAPA, most Minor League players were already exempt under the FLSA pursuant to the seasonal amusement exemption. 29 C.F.R. § 779.385. Currently, the minimum salary for domestic Minor League players is \$400 (Rookie Level), \$500 (Single-A and High-A), \$600 (Double-A), or \$700 (Triple-A) per week during the championship season, each of which is substantially more than required by SAPA.

As an initial matter, it is important to understand where the Minor League system fits into MLB's business. MLB derives over 99% of its revenue from the staging of Major League

Baseball games. MLB utilizes Minor League baseball to develop players for promotion to the Major Leagues and to provide professional baseball entertainment to communities across America that do not have Major League Clubs. Each MLB Club carries approximately 250 Minor League players under contract, with most based in the United States (or Canada), but some assigned to the Club's facility in the Dominican Republic. However, there are only 26 roster spots on a Major League Club (28 in September only), and Clubs carry significantly more Minor League players than they need to field a roster of Major League players.

The Minor League system is generally comprised of two broad categories of players – prospects who have a higher likelihood of becoming Major League players, and non-prospects who hope to defy the odds against them of ever reaching the Major Leagues, at which point they will earn a minimum salary of \$700,000 and an average salary of \$4.4 million.

**Non-Prospects.** Nearly 95% of players drafted after the 10<sup>th</sup> round of the First-Year Player Draft are never promoted to the Major Leagues. As a result, there is massive turnover in the system, with over 1,000 Minor League players released each year and replaced by new players from the draft or the international system. Advocates' claims that most "Minor League players are living below the federal poverty level" and that Congressional action is required to "help bring players out of poverty" are inaccurate and ignore the *bona fide* career trajectories of millions of young, non-baseball-playing Americans trying to break into ultra-competitive fields. The average career of a Minor League player who does not become a Major League player is about three years. The average age of all Minor League players who transition out of the Minor Leagues into other jobs is about 23 years old – younger than many individuals who are in graduate school, apprenticeship/training programs, post-college internship programs, or served in the military.<sup>8</sup>

Unlike workers in this country who only have access to low-paying jobs, many of the young men who sign a Minor League contract after being drafted had other educational or career opportunities and, for many, more financially lucrative opportunities in the short-term than becoming a Minor League baseball player. But for the non-prospects in particular, they chose to devote several years after high school or college to pursue their dream of becoming professional baseball players before starting their non-baseball careers – not at all dissimilar to the millions of young adults who devote several years trying to break into acting, music, or politics before

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<sup>8</sup> The experience of Harry Marino, the Executive Director of Advocates, is fairly typical. He graduated from Williams College and signed a Minor League contract with the Arizona Diamondbacks in June 2012. After his release in October 2012, he signed a Minor League contract with the Baltimore Orioles in February 2013 and was released in March 2014. In the fall of 2014, he enrolled in the University of Virginia School of Law, and earned his Juris Doctor in 2017. Mr. Marino, like most Minor League players who are not top prospects, presumably understood he likely would transition to a career off the field, but chose to play baseball for a few years after college before starting his legal career.

moving on to other occupations. And while doing so, the players are provided with health care, housing benefits, pension benefits, meals, and often tuition reimbursement to obtain a college degree or other training/education. The players are also permitted to work in other employment – or continue their education – during the offseason. After several seasons, most players move on to other careers or further education, while some continue in the game as scouts, coaches, managers or front office employees.

**Prospects.** The amateur players who are considered by Major League Club scouts to be most talented receive large signing bonuses following either High School or their junior years of college. The top 120 signing bonuses awarded to players selected in the 2021 First-Year Player Draft were at least \$500,000, with virtually every first-round selection receiving a signing bonus between \$2 million and \$8 million. Over 700 players who signed their first Minor League UPC in 2021 received signing bonuses of over \$100,000, and 70% of AA and AAA players either received a signing bonus of at least \$100,000 or are earning a salary of at least \$100,000. MLB Clubs spend about \$750 million per year in total compensation and benefits for all Minor League players, which is the equivalent of \$108,000 per player on a per capita basis. Pursuant to the Basic Agreement with the Players Association, most of the signing bonus pool is allocated to the players with the greatest likelihood of making the Major Leagues. However, as a matter of policy, MLB requires all Clubs to provide the same benefit package to all Minor League players, regardless of their prospect status, and all players – irrespective of their skill level – receive similar salaries.

With this background in mind, it becomes apparent that Advocates is mistaken when it claims that all Minor League players would receive higher compensation and better benefits if compensation was determined based on “free market principles.” On the contrary, under such a system, the top prospects – a relatively small number of players who already currently receive the largest signing bonuses – may do better. But the much larger number of non-prospect players likely would do worse. The truth is, the supply of aspiring professional baseball players significantly exceeds the demand by Major League Clubs for players to fill out their Minor League rosters.

Similarly, treating Minor League players as non-exempt employees under the FLSA is not in the interests of any Minor League player. Presently, because all MLB Clubs pay Minor League players significantly more than the federal minimum wage (even excluding signing bonuses and benefits) during the championship season, treating players as non-exempt under federal law would not have a material impact on their earnings. But classifying Minor League players as hourly employees may have a significant detrimental impact on the ability of some players to make the Major Leagues by outworking the competition.

Unlike salaried employees, hourly employees work a fixed schedule that is determined by the employer. They are not permitted to perform work outside of their schedule without approval, and are not paid for days or periods in which they do not work. Such a system is antithetical to ultra-competitive fields such as acting, music, sports, or other creative or entertainment pursuits in which the chance of success is slim but the potential reward is

substantial. Individuals trying to enter these fields have significant latitude to determine how much time to devote to their craft to stand out from their competitors. A large portion of the hours worked by Minor League players is for their own development as they try to advance in a system in which over 1,000 players are released and replaced each year by a new group of players.

In passing SAPA, Congress recognized that it would not be in the interests of Minor League players to “clock in” for each day of work; to arrive and leave the ballpark at set times; to only engage in additional training, conditioning or preparation (such as studying video) with the permission of the Club; to not be paid for off-days or time spent on the injured list; or to have their hours of work monitored, tracked and regulated by their Clubs in a manner similar to other non-exempt employees. Treating Minor League players as hourly employees is simply not compatible with the nature of their work as professional athletes.

**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?**

MLB will of course honor its contractual obligations under all of the recently-awarded 10-year Player Development License agreements and agreements with the Partner Leagues. That is not to say that the League will automatically renew each and every agreement in perpetuity and under the same terms. Indeed, prior to the recent Minor League reorganization, the roll-overs of affiliate-related terms without meaningful negotiations with the National Association resulted in certain Minor League affiliates failing to make adequate investments and improvements in players’ facilities and amenities.

That said, MLB believes that the current Minor League structure is sustainable and beneficial to Minor League players and affiliates, and to the many fans who enjoy Minor League baseball. MLB therefore has no current plans for further reductions to the number of Minor League affiliates.<sup>9</sup>

**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?**

The antitrust exemption helps ensure that MLB Clubs maintain deep and enduring relationships with their fan bases, whereas franchises in other major professional sports regularly

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<sup>9</sup> These 10-year commitments were premised on the validity of the Minor League system’s centralized structure and the mandates that govern all of the affiliates, including those reflected in the terms of the license agreements, such as territorial exclusivity. In the event that the baseball exemption is repealed and those mandates are deemed impermissible under the antitrust laws, the foundation of the system, and the 10-year commitments to maintain current affiliations that go along with it, would be in question.

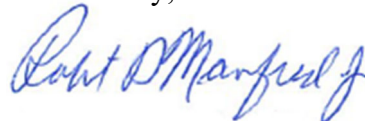


relocate from one market to another. In the last 50 years, only one MLB Club has relocated to another market (from Canada to the United States). In that same period, 14 NBA, 10 NFL, and 9 NHL franchises have relocated. MLB differs from other professional sports leagues because MLB's antitrust exemption allows it to enforce a rigorous process that ensures Club relocation is carefully considered and vetted before a loyal fan base loses its team. *See City of San Jose v. Office of the Comm'r of Baseball*, 776 F.3d 686, 688 (9th Cir. 2015) (noting that an MLB "special Relocation Committee" spent years investigating the implications of a potential relocation before holding that "antitrust claims against MLB's franchise relocation policies are in the heartland of those precluded by" the antitrust exemption). By contrast, when owners in other leagues seek to relocate, they often are able to use the threat of antitrust claims (and the possibility of treble damages) to force the league's hand. *See Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 726 F.2d 1381 (1984) (action challenging NFL's rules on franchise relocation); *Nat'l Basketball Ass'n v. SDC Basketball Club, Inc.*, 815 F.2d 562 (9th Cir. 1987) (declaratory judgment action brought by NBA to ensure that it would not violate the antitrust laws if it enforced its relocation rules).

MLB appreciates and shares your concern for the wellbeing of Minor League baseball players and the communities in which they play. MLB will continue to make improvements to the terms and conditions of employment for Minor League players that began as part of the Minor League restructuring in 2020. But many of the concerns suggested by your letter would not be addressed by repealing professional baseball's antitrust exemption because so many important terms and conditions of employment of Minor League players are the product of collective bargaining with the Players Association and are therefore not subject to the antitrust laws. In addition, MLB's ability to establish and maintain better working conditions and to enforce compliance across the operations of all affiliated Minor League affiliates may not be possible without the antitrust exemption. Finally, removing the exemption is not in the interests of the 120 communities in which affiliated Minor League baseball is currently played. Without coordinated oversight and decision-making by MLB, it is likely that more Minor League affiliates will leave their existing communities for a superior player-development environment, and that fewer – rather than more – Minor League clubs affiliated with MLB Clubs will exist in the future.

We appreciate your consideration and would be happy to answer any further questions.

Sincerely,

A handwritten signature in blue ink that reads "Robert D. Manfred, Jr." in a cursive style.

Robert D. Manfred, Jr.  
Commissioner