No. 23-283

IN THE

Supreme Court of the United States

TRI-CITY VALLEYCATS, INC., AND ONEONTA ATHLETIC CORPORATION,

Petitioners,

v.

THE OFFICE OF THE COMMISSIONER OF BASEBALL,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF *AMICUS CURIAE* MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION IN SUPPORT OF PETITIONERS

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STATEMENT OF INTEREST OF *AMICUS CURIAE* MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION[1]

Since 1966, the Major League Baseball Players Association ("MLBPA") has represented professional baseball players signed to a Major League Uniform Players' Contract for collective bargaining with Major League Baseball and its 30 Clubs. In August 2022, MLBPA also became the exclusive collective bargaining representative for the approximately 5,500 Minor League players employed by the Major League Clubs. On March 31, 2023, Minor League players ratified an historic first collective bargaining agreement, achieving significant improvements in player salaries and other terms and conditions of employment.

For decades, professional baseball players were subject to Major League Baseball's unilaterally-imposed "reserve system" and other restrictions on players' freedom of contract, which were protected by this Court's judicially-created baseball exemption from the federal antitrust laws. See *Flood* v. *Kuhn*, 407 U.S. 258, 282 (1972); *Fed. Baseball Club of Balt.* v. *Nat'l League of Prof. Baseball Clubs*, 259 U.S. 200 (1922); *Toolson* v. *N.Y. Yankees, Inc.*, 346 U.S. 356 (1953) (per curiam). From its inception, MLBPA has worked to eliminate or limit the scope of Major League Baseball's antitrust exemption and supported the efforts of others aggrieved by the exemption. MLBPA's consistent position has been that Major League Baseball should

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[1] Pursuant to Supreme Court Rule 37.2, *amicus curiae* states that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amicus curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief. Both parties received notice of the filing of this brief as required in Rule 37.2.

not have an exemption and that the exemption harms players, fans, cities, states, and other businesses.

On October 27, 1998, MLBPA's efforts to eliminate the exemption as applied to Major League players succeeded when Congress passed the Curt Flood Act of 1998. See 15 U.S.C. § 26b(a). The Act makes all matters "directly relating to or affecting employment of major league baseball players" subject to the federal antitrust laws. *Id.*

But MLBPA's interests continue to be adversely affected by baseball's special exemption from the antitrust laws. MLBPA now represents Minor League players.[2] Major League Baseball and its 30 Clubs' ability to engage in anti-competitive conduct in their management of the Minor Leagues threatens Minor League players' interests. MLB and its Clubs can seek to engage in further franchise contraction (eliminating teams and jobs) without regard to anti-competitive intent and effect. Moreover, under this Court's decision in *Brown* v. *Pro Football, Inc.*, 518 U.S. 231 (1996), but for the baseball exemption, Minor League players would, like other professional athletes, still have access to their antitrust rights for restraints in the labor market in the event they choose at some point no longer to be represented by a union in collective bargaining. *Id.* at 235-36.

In addition to its concrete interests, MLBPA offers a unique perspective to this Court on the Curt Flood Act.

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[2] Specifically, MLBPA represents all players who are employed by one of the 30 Major League Clubs and signed to a current Minor League Uniform Player Contract, excluding *inter alia* players who are members of MLBPA's existing bargaining unit of Major League players (that is, players on a 40-man roster of a Major League Club or one a Major League injured or inactive list), and players assigned to Minor Leagues located entirely outside the United States and Canada.

That legislation resulted from Major League Baseball and MLBPA's agreement, after the season-ending work stoppage that cancelled the 1994 World Series, to pursue removal of the exemption from Major League Baseball's labor market. The Act is frequently mischaracterized as proof that Congress acquiesced to the baseball exemption as applied to other areas. MLBPA will show that Congress's intent—reflected in the Act's unambiguous text—was quite the opposite.

SUMMARY OF ARGUMENT

MLBPA supports the Petition's request that this Court reconsider its creation of the baseball exemption, which is acknowledged both to be wrong and effectively to license unlawful conduct. MLBPA's brief focuses on two points that support this Court's review.

First, MLBPA can offer a distinctive perspective on the origins, purposes, and implications of the Curt Flood Act for the baseball exemption, because the legislation was the result of a collective bargaining agreement between MLBPA and Major League Baseball. The history leading up to Congress's enactment of the Curt Flood Act and the text of the Act itself eviscerate the rationale for citing the Act as support for statutory *stare decisis* in this case. The Act expressly states that it should not be interpreted to have any implications beyond elimination of the antitrust exemption in the market for Major League players' services. This history of the Act calls out ongoing litigation about whether the exemption is limited to the reserve system and makes clear that Congress is *not weighing in on the courts' assessment of that question and wishes its action to have no effect on that judicial analysis.*

Second, eliminating the baseball exemption would result in significant pro-competitive benefits in the baseball industry, including in the market for player

services, as this case illustrates. In 2020, Major League Baseball took control over previously independent Minor Leagues; and, as a result, roughly 40 Minor League clubs lost their affiliation with Major League Clubs. They and the communities supporting them suffered significant harm as a result of this anticompetitive conduct. Numerous Minor League players for these clubs lost their jobs.

In addition, if Minor League players were to choose in the future to cease being represented by a union, or if Major League Baseball were otherwise to take action that affected players *outside of the collective bargaining process*, Major League Baseball would likely lose its nonstatutory labor exemption under this Court's decision in *Brown*, 518 U.S. 231. In that situation, if the judicially-created baseball exemption were eliminated, employees would be able to avail themselves of the same antitrust rights as employees in any other industry. Absent that change, Major League Baseball can engage in anticompetitive conduct in the market for players' services with impunity.

ARGUMENT

I. THE BASEBALL EXEMPTION SHOULD BE ELIMINATED BECAUSE IT IS WRONG AND HAS SIGNIFICANT ANTI-COMPETITIVE CONSEQUENCES

MLBPA endorses the Petition's demonstration that the baseball exemption from the federal antitrust laws is undisputedly wrong as a matter of statutory interpretation. It is also bad for baseball, baseball fans and affected communities, as well as for all economic sectors professional baseball affects. It is universally acknowledged to be error, including by this Court. See *NCAA* v. *Alston*, 141 S. Ct. 2141, 2159 (2021); ("aberrational" (cleaned up)); *Flood*, 407 U.S. at 282 (an

"anomaly"); *Haywood* v. *Nat'l Basketball Ass'n*, 401 U.S. 1204 (1971) (basketball enjoys no antitrust exemption); *Radovich* v. *Nat'l Football League*, 352 U.S. 445 (1957) (refusing to give professional football an antitrust exemption); *United States* v. *Int'l Boxing Club of N.Y.*, 348 U.S. 236 (1955) (applying antitrust laws to boxing); Stephen F. Ross, *Reconsidering* Flood v. Kuhn, 12 U. Miami Ent. & Sports L. Rev. 169 (1995); Ed Edmunds, *Over Forty Years in the On-Deck Circle: Congress and the Baseball Antitrust Exemption*, 19 T. Marshall L. Rev. 627 (1994).

The statutory *stare decisis* rationale that has propped up the baseball exemption for decades can no longer bear its weight. This Court has increasingly made clear that, with respect to federal statutes that create common law frameworks for judicial lawmaking—*i.e.*, statutes like the Sherman Act—statutory *stare decisis* is a relatively weak presumption. The Court now "view[s] stare decisis as having less-than-usual force in cases involving the Sherman Act." *Kimble* v. *Marvel Ent., LLC*, 576 U.S. 446, 461 (2015). See, *e.g.*, *Leegin Creative Leather Prods., Inc.* v. *PSKS, Inc.*, 551 U.S. 877 (2007) (overruling Sherman Act precedent); *State Oil Co.* v. *Kahn*, 522 U.S. 3, 20-22 (1997) (same); *Copperweld Corp.* v. *Indep. Tube Corp.*, 467 U.S. 752 (1984) (same); *Cont'l T.V., Inc.* v. *GTE Sylvania Inc.*, 433 U.S. 36 (1977) (same). See also Petition at 4; William N. Eskridge, *Overruling Statutory Precedent*, 76 Geo. L. J. 1361, 1376-81 (1987-88).

Moreover, as MLBPA details below, any argument that the Curt Flood Act reflects acquiescence by Congress in the continued existence of the exemption is fatally undermined by the text, purpose and legislative history of the Act. In light of that reality, and the con-

tinuing anticompetitive harm that the baseball exemption inflicts on players, fans and communities, this Court should correct this error in its caselaw now.

A. The Genesis of the Curt Flood Act and Its Significance In this Case

In light of the Curt Flood Act and its history described below, this Court should reassess its decision in *Flood* v. *Kuhn* to hold its nose and allow the baseball exemption to survive based on Congressional acquiescence. In fact, Congress has made clear that courts are free to proceed to determine the scope, if any, of baseball's exemption.

From 1966 until the effective date of the Curt Flood Act of 1998, MLBPA represented private sector employees who did not have the protection of federal or state antitrust laws under *Federal Baseball Club* and *Toolson*. As a result, starting in 1879, players were subject to professional baseball's reserve clause. The reserve clause "centers in . . . the confinement of the player to the club that has him under the contract; the assignability of the player's contract; and the ability of the club annually to renew the contract unilaterally, subject to a stated salary minimum." *Flood*, 407 U.S. at 259 n.1.

For decades, in the absence of antitrust protection, MLBPA sought for players the basic right of freedom to contract through collective bargaining and the grievance arbitration process. In 1975, through grievance arbitration, MLBPA won a limited right of "free agency" for players. See *In re Nat'l League & Am. League Clubs & MLBPA*, 66 Lab. Arb. 101 (1975), *aff'd Kan. City Royals* v. *MLBPA*, 532 F.2d 615 (8th Cir. 1976). This right has been codified and modified in various forms in every ensuing collective bargaining agreement, and MLBPA has assiduously protected it.

See, *e.g.*, *In Matter of Arbitration Between the MLBPA and the 26 Major League Baseball Clubs*, 86-2, 87-3, and 88-1 (challenging Major League Baseball owners' conspiracy artificially to suppress player salaries by colluding to eliminate bidding on free agents).

MLBPA maintained its opposition to the baseball exemption throughout this period. It supported the lawsuit that led to this Court's decision in *Flood* v. *Kuhn*; and after *Flood* was decided, it supported parties seeking to limit the scope of the baseball exemption to the reserve system. The courts in *Piazza* v. *Major League Baseball*, 831 F. Supp. 420 (E.D. Pa. 1993), and *Butterworth* v. *Nat'l League of Pro. Baseball Clubs*, 644 So. 2d 1021 (Fla. 1994), concluded that the exemption is so limited, while the Minnesota Supreme Court held that it was not. See *Minn. Twins P'ship* v. *State ex rel. Hatch*, 592 N.W.2d 847 (Minn. 1999).

There can be no argument that the applicability of the baseball exemption somehow promotes labor peace. Throughout the years leading up to the passage of the Curt Flood Act, Major League Baseball and MLBPA had tumultuous labor relations. Against the backdrop of the baseball exemption, eight times between 1972 and 1995, the parties' collective bargaining agreement—known as the Basic Agreement—expired, and eight times, Major League Baseball experienced either a strike or a lockout. See M.R. McCarthy, *Revenue Sharing in Major League Baseball: Are Cuba's Political Managers on Their Way Over Too?* 7 Vand. J. Ent. & Tech. L. 555, 558-60 (2020). This pattern was broken after passage of the Curt Flood Act.[3]

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[3] *See* N. Grow, *Reevaluating the Curt Flood Act of 1998*, 87 Neb. L. Rev. 747, 753 (2008) ("after averaging one work stoppage less than every three years from 1972 to 1996, MLB has not experienced a single strike or lockout in the eleven years since CFA's passage").

The August 1994 strike, which resulted in the cancellation of the rest of the 1994 season and its World Series, proved a turning point for baseball. In the aftermath of that strike, Major League Baseball and MLBPA agreed jointly to seek the elimination of baseball's antitrust exemption in the market for Major League players' services. MLBPA, however, wanted to ask Congress to eliminate the baseball exemption in that labor market without creating any implication that Congress had endorsed the continuing application of the baseball exemption to other baseball-related markets. See, *e.g.*, S. Fehr, *The Curt Flood Act and Its Effect on the Future of the Baseball Antitrust Exemption*, 14 Antitrust 25, 27-28 (Spring 2000).

The result of these twin goals was a provision in the parties' 1997 Basic Agreement. That provision required the league and union to work together "to pass a law that will clarify that Major League Baseball Players . . . have the same rights under the antitrust laws as do other professional athletes, . . . along with a provision that makes it clear that the passage of that bill does not change the application of the antitrust laws in any other context or with respect to any other person or entity." Nat'l League of Pro. Baseball Clubs, *1997 Basic Agreement*, Article XXVIII (Mar. 1997).

This provision of the Basic Agreement came to fruition in the Curt Flood Act, where the language of the Basic Agreement is repeated almost verbatim in the Act's purpose section:

> **Major league baseball subject to antitrust laws.**
>
> Subject to subsections (b) through (d) [of this section], the conduct, acts, practices, or agreements of persons in the business of organized professional major league baseball directly relating to or

> affecting employment of major league baseball players to play baseball at the major league level are subject to the antitrust laws to the same extent such conduct, acts, practices, or agreements would be subject to the antitrust laws if engaged in by persons in any other professional sports business affecting interstate commerce.

15 U.S.C. § 26b(a). In addition, the Act states:

> No court shall rely on the enactment of this section as a basis for changing the application of the antitrust laws to any conduct, acts, practices or agreements other than those set forth in subsection (a).

Id. § 26b(b). Put differently, the Curt Flood Act—the culmination of a process agreed to in bargaining between the League and MLBPA—was intended to have no effect one way or the other on the question whether and to what extent professional baseball's antitrust exemption exists in areas not "directly relate[d] to or affect[ing]" the employment of Major League players.

Senator Hatch made this clear on the Senate floor:

> This amendment, while providing major league players with the antitrust protections of their colleagues in the other professional sports, such as basketball and football, is absolutely neutral with respect to the state of the antitrust laws between all entities and in all circumstances other than in the area of employment as between major league owners and players. Whatever the law was the day before this bill passes in those other areas it will continue to be after the bill passes. Let me emphasize that the bill affects no pending or decided cases except to the extent a court would consider exempting major league clubs from the antitrust laws in their dealings with major league

players.

144 Cong. Rec. S9496, S9496 (July 30, 1998). At the time of Senator Hatch's floor statement, both *Piazza* and *Butterworth* had been decided and *Minnesota Twins Partnership* was pending. The question whether the baseball exemption was restricted to the reserve system was in active litigation, and Senator Hatch thus explained why a "bill that ought to be rather simple to write goes to such lengths to emphasize its neutrality." *Id.* See also *id.* ("the parties and the Committee agree that Congress is taking no position on the current state of the law one way or the other"); *id.* at S9497 ("Nor can the courts use the enactment of this Act to glean congressional intent as to the validity or lack thereof of [actions described in subsection (b) of the Act]").

Senator Wellstone was equally clear in a colloquy with the Act's co-sponsors Senators Hatch and Leahy:

> 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 [citing, *inter alia*, *Piazza* and *Butterworth*]. It is my understanding that [the Curt Flood Act] 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.

144 Cong. Rec. S9621, S9621 (July 31, 1998). Senator Leahy responded that "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." *Id.* [4]

Finally, in his presidential signing statement, President Clinton confirmed that the Act "in no way codifies or extends the baseball exemption." 34 *Weekly Comp. of Pres. Docs.* 2150 (Oct. 27, 1998).

In *Flood*, this Court relied on Congressional inaction in declining to overrule a decision it clearly believed was wrong. 407 U.S. at 268. The Curt Flood Act deeply undermines any argument for such reliance. It terminates the baseball exemption for the market for Major League players' services. This was the subject of *Flood*. Indeed, that decision opens with Justice Blackmun's (in)famous tribute to "The Game" which focuses the stability of team rosters and traditions, resulting from the unfair "reserve system" that held players captive to specific teams. If that wholly unfair labor arrangement was, indeed, part of the tradition of baseball, surely the Curt Flood Act banished that rationale for good.

But the Curt Flood Act goes further. It was enacted during the pendency of significant litigation about whether the baseball exemption was limited to the reserve system[5], and Congress went out of its way to

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[4] *See also* S. Rep. No. 104-231, at 15 (1996) ("The Committee wishes to make clear that by supporting these particular modifications of baseball's judicially created antitrust exemption in S. 627, it does not intend to imply that more comprehensive change is not also justified – or to imply that the courts should not act decisively themselves to limit further baseball's exemption in appropriate cases. Indeed, a Federal court and the highest court of a State have already taken such action [citing *Piazza* and *Butterworth*].")

[5] MLBPA acknowledges that courts have since disagreed with *Piazza*, *see*, *e.g.*, *Major League Baseball* v. *Crist*, 331 F.3d 1177 (11th Cir. 2003). But what is critical is that at the time the Curt

make clear that it did not want its action to have any effect at all on that litigation. Instead, Congress left to the courts the question of the scope of the baseball exemption and whether enactment of the Curt Flood Act effectively eliminated it (as it would if it were confined to the reserve system). Far from demonstrating acquiescence to the baseball exemption, the history of Congress's enactment of the Curt Flood Act frees this Court from concerns about Congressional acquiescence to its prior erroneous decision, and allows this Court to consider the issue on its merits.

Applying statutory *stare decisis* to the decisions creating the baseball exemption does not achieve the goals that doctrine serves. It does not "promote[] the evenhanded, predictable, and consistent development of legal principles . . . ." *Kimble*, 576 U.S. at 455. No one would rely on the legal principles or lack thereof that form the premises of the baseball exemption. It does not "foster[] reliance on judicial decisions;" *id.* instead, practitioners, academics, and those affected by the industry's anticompetitive conduct wonder why baseball among all industries remains above the law. And it does not "contribute[] to the actual and perceived integrity of the judicial process," *id.*, when the Court has acknowledged and refused to correct its error, and allowed one highly visible entity to get away with otherwise unlawful conduct. As just shown, none of the public benefits of *stare decisis* flow from allowing the baseball exemption to continue, particularly in light of this Court's general willingness to overturn longstanding precedent it views as wrong.

Flood Act passed, Congress was aware of the cases holding that the baseball exemption was confined to the reserve system and explicitly instructed that its enactment of the Curt Flood Act should not be used to affect that judicial decision making.

B. Eliminating the Baseball Exemption Would have Pro-Competitive Benefits in the Baseball Industry

Although the Curt Flood Act eliminated the baseball exemption in the market for the services of Major League players, the exemption, as long as it survives, will continue to have a pernicious effect on baseball players, fans, and communities, and actual and potential effects on Minor League players in at least two ways.

First, Minor League baseball players—as well as communities across the country—have suffered and may continue to suffer from Major League Baseball and its Clubs' anticompetitive agreements artificially to limit the number of Minor League affiliates.

Indeed, this case provides an excellent illustration of anticompetitive actions by Major League Baseball and its Clubs that affect Minor League Clubs and players that are facilitated by the baseball exemption. In 2020, Major League Baseball took control over previously independent Minor Leagues. The 30 Clubs agreed that each Club would have exactly four Minor League affiliates, handpicked by Major League Baseball. See Pet. 13. Roughly 40 Minor League clubs lost their affiliation; they and the communities supporting them suffered significant harm. *Id.* The negative effects on players are obvious: There are significantly fewer jobs for Minor League players than existed before Major League Baseball unilaterally contracted 40 clubs. If the baseball exemption is allowed to continue, Major League Baseball and its Clubs will undoubtedly seek to rely on it in further efforts to contract the number of Minor League affiliates, with corresponding negative effects on players, communities and baseball itself. In this regard, while the parties' Minor League

collective bargaining agreement contains an agreement by Major League Baseball not to contract for the duration of that agreement (until December 2027), Major League Baseball refused to extend its commitment not to contract affiliates beyond that point.[6]

Second, although the Curt Flood Act eliminated the baseball exemption in the market for Major League player services, the baseball exemption will nonetheless continue to have a significant impact on Minor League players in the labor market.

This Court has found in federal labor law a "nonstatutory" antitrust exemption that applies to restraints in the labor market in the presence of a collective bargaining relationship. See generally *Brown*, 518 U.S. at 235-36. In *Brown*, this Court held that the nonstatutory labor exemption protected a multi-employer bargaining unit's decision to impose a specific salary scale on a group of employees represented by a union, even after the parties' collective bargaining agreement expired and the union and employers had negotiated to impasse.

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[6] Major League Baseball and MLBPA disagree about whether Major League Baseball would be required to bargain with MLBPA about a decision to eliminate Clubs. In labor law parlance, the issue is whether contraction is a mandatory subject of bargaining. *See NLRB* v. *Katz*, 369 U.S. 736 (1962) (identifying certain issues as mandatory subjects of bargaining). MLBPA asserts that bargaining about contraction is mandatory, but Major League Baseball says it is not. *See* Nat'l League of Pro. Baseball Clubs, *2022-2026 Basic Agreement*, Attachment 8, https://bit.ly/3LpoUqs (last accessed Sept. 28, 2023). In the context of the Minor Leagues, Major League Baseball agreed not to contract for the duration of its Minor League collective bargaining agreement; the agreement states that neither party waives its rights as to this issue.

This Court, however, did not define the "outer boundaries" of the nonstatutory labor exemption. *Id.* at 250. And it cautioned that its holding

> is not intended to insulate from antitrust review every joint imposition of terms by employers, for an agreement among employers could be sufficiently distant in time and in circumstances from the collective-bargaining process that a rule permitting antitrust intervention would not significantly interfere with that process. See, *e.g.*, 50 F.3d, at 1057 (suggesting that exemption lasts until collapse of the collective-bargaining relationship, as evidenced by the decertification of the union); *El Cerrito Mill & Lumber Co.*, 316 N.L.R.B. at 1006-1007 (suggesting that 'extremely long' impasse, accompanied by 'instability' or 'defunctness' of multiemployer unit, might justify union withdrawal from group bargaining).

Id. As a result, if Minor League players were to choose for whatever reason in the future to cease being represented by a union, or if Major League Baseball were to otherwise take action that affected players *outside of the collective bargaining process*, Major League Baseball would lose its nonstatutory labor exemption. In that situation, if the judicially-created baseball exemption were eliminated, Minor League players would be able to avail themselves of the same antitrust rights as employees in any other industry.

CONCLUSION

This Court should grant the petition, overrule its prior decisions, and eliminate the baseball exemption. The decision of the Second Circuit should be reversed.

Respectfully submitted,

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