ANTITRUST LAW—BASEBALL—THE SALE AND RELOCATION OF A PROFESSIONAL BASEBALL FRANCHISE IS AN INTEGRAL ASPECT OF THE SPORT AND THEREFORE EXEMPT FROM ANTITRUST LAW SO THAT CIVIL INVESTIGATIVE DEMANDS CANNOT BE ENFORCED—*Minnesota Twins Partnership v. State Of Minnesota*, 592 N.W.2d 847 (Minn. 1999).

I. INTRODUCTION

Baseball occupies a special place in the history of this country. Described as the "National Pastime," the game has captured the hearts of fans young and old.[1] But baseball is special for another reason as well. Perhaps in recognition of its special place in our culture, baseball has enjoyed a unique exemption from antitrust laws since 1922.[2] Though other sports have sought to obtain this exemption as well, none have been granted such immunity.[3] Only baseball has enjoyed this exemption, though it too, has seen at least a portion of the exemption slip away through the enactment of *The Curt Flood Act of 1998*.[4]

While judicial inquiries originally focused on the labor

1. Indeed, baseball has been played in the United States through almost all of the country's history. *See* Pat Brady, *Baseball and Its Myths* (last modified Dec. 21, 1999) <http://xroads.virginia.edu/~CLASS/am483_97/projects/brady/myth.html>. According to Brady, the first game was organized in the United States outside of Brooklyn as Congress considered a fugitive slave law. *See id.* As early as the Civil War, game scores appeared in local newspapers. *See id.*

2. This exemption was created by the Supreme Court in the case of *Federal Baseball Club of Baltimore, Inc. v. National League of Prof'l Baseball Clubs, Inc.*, 259 U.S. 200 (1922). The exemption has survived two challenges in the Supreme Court in *Toolson v. New York Yankees, Inc.*, 346 U.S. 356 (1953) and *Flood v. Kuhn*, 407 U.S. 258 (1972), and many more in the state courts and the lower federal courts.

3. See United States v. International Boxing Club, 348 U.S. 236 (1955) (boxing); Radovich v. National Football League, 352 U.S. 445 (1957) (football); Haywood v. National Basketball Ass'n, 401 U.S. 1204 (1971) (basketball).

4. Pub. L. No. 105-297, 112 Stat. 2824 (1998) (hereinafter "The Curt Flood Act"). The Act specifically removes matters involving employment of players from baseball's antitrust exemption. *See id.* §27(a).

aspects of baseball's antitrust exemption,[5] that issue now has been resolved through the passage of the *Curt Flood Act.*[6] What is left of the exemption is debatable,[7] though the Act unequivocally indicates that the exemption remained unchanged outside of the employment of athletes.[8]

Included in those areas left unchanged by *The Curt Flood Act* are franchise ownership and relocation.[9] While a Major League Baseball team has not been allowed to move since 1972,[10] when the Washington Senators moved to Texas to become the Rangers, the Major League Baseball owners are on the verge of allowing the Minnesota Twins to move, should the Twins not receive a new stadium.[11] This may

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5. *See, e.g.*, Toolson v. New York Yankees, Inc., 346 U.S. 356 (1953); Flood v. Kuhn, 407 U.S. 258 (1972)

6. *See* The Curt Flood Act, §27(a).

7. *See* John T. Wolohan, *The Curt Flood Act of 1998 and Major League Baseball's Federal Antitrust Exemption*, 9 MARQ. SPORTS L.J. 347 (1999). While Professor Wolohan concludes that the antitrust exemption has actually been strengthened by the Act, he points out that others may interpret the Act differently in light of the differing determinations made by federal and state courts. *See id. Compare* Postema v. National League of Professional Baseball Clubs, 799 F. Supp. 1475, 1488 (S.D.N.Y. 1992) *with* Piazza v. Major League Baseball, 831 F. Supp. 420 (E.D. Pa. 1993). Aside from his opinion, Professor Wolohan also provides a very comprehensive review of the Act. *See* Wolohan, 9 MARQ. SPORTS L.J. 347.

8. *See* The Curt Flood Act, §27(b).

9. *See id.* §27(b)(3).

10. *See* Jeffrey Gordon, *Baseball's Antitrust Exemption and Franchise Relocation: Can a Team Move?*, 26 FORDHAM URB. L.J. 1201, 1213 (1999) (relying on a Letter from Thomas J. Ostertag, General Counsel, Major League Baseball, to Jeffrey Gordon (Nov. 6, 1997) (on file with the *Fordham Urban Law Journal*)).

11. *See* Minnesota Twins Partnership v. State of Minnesota, 592 N.W.2d 847, 849 (Minn. 1999). The prospects for the erection of a new stadium are now all but dead in Minnesota. On November 2, 1999, the people of St. Paul, Minnesota rejected a proposed half-cent sales tax for the funding of a new stadium in that city. *See* Kevin Duchschere and Curt Brown, *Stadium Tax Fails; Coleman: 'The People Have Spoken'* (last modified Nov. 3, 1999) <http://www.startribune.com/stOnLine/cgi-bin/article?thisSlug=stad03>. After the rejection of the proposed tax, Twins owner, Carl Pohlad, expressed his disappointment in a brief statement, indicating that he hoped a "Minnesota solution for the future of the Minnesota Twins" could be found. *See* Carl Pohlad, *Statement from Twins Owner Carl Pohlad* (last modified Nov. 2, 1999) <http://www.mntwins.com/sports/twins/pressreleases/votestatement.html>. Mr. Pohlad further stated that he would take time to consider what future steps he might take to sell the team. *See id.* The response of at least one Minnesota sports commentator to all of this: "Mr. Pohlad, do what you must." *See* Patrick Reusse, *Reusse: It's Time for Pohlad to Do What He Must* (last modified Nov. 3, 1999) <http://www.startribune.com/stOnLine/cgi-bin/article?thisSlug=PATR03>.

Minnesota is not alone. Since the proposed relocation of the Twins, the

signal the beginning of an alarming trend, where baseball owners use the exemption as a means by which they may move teams in pursuit of what they deem valid business interests; whereas, in the past, the exemption allowed the Commissioner of Major League Baseball to prevent the relocation of teams.[12] The first opportunity for a post-*Curt Flood Act* application of the exemption as it pertains to the proposed sale and relocation of a team was presented to the Minnesota Supreme Court in *Minnesota Twins v. State of Minnesota.*[13]

II. *MINNESOTA TWINS PARTNERSHIP V. STATE OF MINNESOTA*, 592 N.W.2d 847 (MINN. 1999)

A. Statement of Facts

In October 1997, Carl Pohlad announced that he had executed a deal whereby the Minnesota Twins baseball club would be sold to the North Carolina Major League Baseball, L.L.C. and subsequently move to North Carolina unless the Minnesota Legislature agreed to publicly finance a new

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Montreal Expos have also been the subject of relocation predictions that have put the team in North Carolina on the heels of a failed deal between North Carolina investors and the Twins. *See Queen City Makes Another Pitch for Major League Baseball* (visited Nov. 14, 1999) <http://www.gocarolinas.com/news/charlotte/1999/06/25/major_league.html>. The predicted move, made by an unnamed ESPN analyst, puts the Expos in Charlotte next year, though the Expos limited the possibility to a fifty-percent chance. *See id.* Notably, the group of investors interested in luring the Expos from Montreal included Michael Jordan of NBA fame. *See id.*

Though the Expos and Twins have both considered a move to North Carolina, it remains doubtful that North Carolina voters are willing to pay for these teams. *See Charlotte on Twins: 'Not Here Either,'* (last modified May 7, 1998) <http://wcco.com/sports/stories/sports-980520-175859.html>. In a poll of the citizens of the Charlotte, North Carolina area, nearly two thirds of those polled expressed an unwillingness to spend tax dollars on a new stadium for the Twins. *See id.*

12. *See Baseball's Antitrust Immunity: Hearing Before The Subcomm. on Antitrust Monopolies and Business Rights of the Comm. on the Judiciary,* 102 Cong. 4-5 (1992) (statement of Fay Vincent, former Commissioner of Baseball). In his statement, Mr. Vincent wrote: "The immunity permits baseball . . . to prevent migration or transfer of a franchise if the move is not in the best interests of baseball. Eliminating the immunity would have some unattractive consequences." *Id.*

13. 592 N.W.2d 847 (Minn. 1999)

stadium for the Twins.[14] Shortly after Mr. Pohlad's announcement, a delegation of Minnesota's leading politicians, including then-Governor Arne Carlson, visited with Allan "Bud" Selig, Acting Commissioner of baseball,[15] to discuss the possible approval of the Twins' proposed relocation by the owners of Major League Baseball teams.[16] In Minnesota's subsequent special legislative session, all bills proposed for the erection of a new stadium in order to prevent the threatened relocation failed.[17]

Before the end of that year, the Minnesota Attorney General served the Twins with civil investigative demands[18] (CID's) in connection with an investigation by that office for state antitrust violations.[19] The CID's requested documents concerning, *inter alia*, the financial viability of the Metrodome, the methods used by others to obtain new

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14. *See Minnesota Twins*, 592 N.W.2d at 849. The proposed relocation of the Twins still remains unsettled, though with the failure of the referendum in the city of St. Paul, the future for baseball in Minnesota now appears bleak. *See* Duchschere and Brown, *supra* note 11 and accompanying text. As a result of the failed referendum, the proposed sale of the Twins to prospective owners interested in keeping the team in Minnesota has now failed to meet the precondition that the city assist with building a new stadium. *See* Jerry Bell, *Stadium Letter From the President of the Minnesota Twins* (last modified Sept. 10, 1999) <http://www.mntwins.com/sports/twins/pressreleases/stadiumletter9-10.html>. The passage of the sales tax would have been the second of four steps necessary to keep the Twins in Minnesota. *See* Kevin Duschere, Jay Wiener and Curt Brown, *Twins Sale Announced* (last modified Oct. 8, 1999) <http://www.startribune.com/stOnLine/cgi-bin/article?thisStory=80990731>. The first step was the letter of intent to sell the team from Carl Pohlad to Glen Taylor, owner of the Minnesota Timberwolves, and Robert Naegele, Jr., managing partner of the Minnesota Wild. *See id.* The third step would have been the approval of the sales tax by the Minnesota Legislature and Governor Jesse Ventura. *See id.* The final step would have required the procurement of $108 million from the state government as well. *See id.*

15. Commissioner Selig later became the permanent Commissioner of Baseball on July 2, 1998. *See Bud Selig* (visited Sept. 25, 1999) <http://www.infoplease.com/ipsa/A0109635.html>.

16. *See Minnesota Twins*, 592 N.W.2d at 849.

17. *See id.*

18. *See* MINN. STAT. §8.31(2)(1998). This provision allows the attorney general to initiate discovery through CID's even before a civil action is filed. *See id.* The attorney general need only have a reasonable basis to believe that a person has violated or will violate certain laws, including antitrust transgressions. *See id.*

19. *See Minnesota Twins*, 592 N.W.2d at 849. The attorney general also served CID's to the Milwaukee Brewers, the American League, the National League, the Office of the Commissioner of Major League Baseball, and North Carolina Major League Baseball, Ltd. all appellants in this action along with the Twins. *See id.*

stadia, the proposal made by North Carolina Major League Baseball, the relocation of the Washington Senators to Minnesota, and general information on Major League Baseball governance and structure[20].

B. Procedural History

In January 1998, the Twins filed a motion for a protective order in opposition to the CID's issued by the attorney general,[21] arguing that professional baseball's antitrust exemption precluded the Minnesota Attorney General from investigating the Twins; that the Constitution's Commerce Clause also precluded the investigation; and that the extreme breadth of the CID's made compliance unduly burdensome.[22] The Ramsey County District Court denied the motion for a protective order on April 20, 1998.[23] The district court found baseball's exemption to be limited to the "'narrow area of the reserve clause.'"[24] The court also found the Commerce Clause argument impossible to determine without a factual record.[25]

On April 20, 1998 the Twins moved for certification of the case directly to the court of appeals.[26] The trial court refused that certification on May 11, 1998, but the court at that time did limit the extent of the CID's to documents from the prior six years pertaining to revenue sharing in professional baseball, relocation of teams and correspondence regarding

20. *See id.* at 849-50. The Hubert H. Humphry Metrodome is the stadium where the Twins play their home games.

21. *See id.* at 850. The motion was made pursuant to MINN. R. CIV. P. 26.03, which states that the court may make an order prohibiting or limiting discovery to protect a party from, *inter alia*, undue burden or expense.

22. *See Minnesota Twins*, 592 N.W.2d at 850.

23. *See id.* At the same time the court granted the State of Minnesota's motion to compel. *See id.*

24. *See id.* (quoting *Piazza v. Major League Baseball*, 831 F. Supp. 420 (E.D. Pa. 1993)). The reserve clause is a clause found in each player's contract that provides for the maintenance of the reserve system in Major League Baseball. *See id.* at 853, n.8. The reserve system is an arrangement by which only one team can have the "rights" to a player at one time. *See id.* The system allows teams to draft, sign, and trade players without interfering market pressures from other teams, which were not allowed to negotiate for the rights of a player already claimed by another club. *See id.*

25. *See id. at 850.*

26. *See Minnesota Twins*, 592 N.W.2d at 850.

new stadia.[27] The Twins then petitioned the court of appeals for discretionary review but were denied.[28] The appeals court agreed with the court below that review under the Commerce Clause would be premature and noted that the Twins would have the right to raise the antitrust exemption on appeal if prosecution were to occur.[29]

The Twins appealed to the Supreme Court of Minnesota, which granted certification in order to resolve the antitrust exemption and Commerce Clause issues.[30] The Supreme Court held that the intended sale of a professional baseball team was an indivisible aspect of the professional baseball business and, as such, is exempt under antitrust law, such that compliance could not be compelled with CID's served by the attorney general pursuant to an antitrust investigation and founded upon the planned sale and relocation.[31]

C. Prior Law

In *Minnesota Twins*, the Supreme Court of Minnesota overruled the trial court's determination that professional baseball's antitrust exemption was limited to the reserve system used by professional baseball clubs.[32] In reversing that decision, the court disagreed with the United States District Court for the Eastern District of Pennsylvania's interpretation of the exemption in *Piazza v. Major League Baseball.*[33] That disagreement arose out of differing interpretations of the trilogy[34] of United States Supreme Court cases defining baseball's exemption from antitrust laws.[35] To better understand the court's analysis, it is useful to review those three cases as well as *Piazza.*

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27. *See id.*
28. *See id.*
29. *See id.*
30. *See Minnesota Twins*, 592 N.W.2d at 856.
31. *See id.*
32. *See id.* at 856.
33. *See id.* (discussing Piazza v. Major League Baseball, 831 F. Supp. 420 (E.D. Pa. 1993)).
34. *See* Federal Baseball Club of Baltimore, Inc. v. National League of Prof'l Baseball Clubs, Inc., 259 U.S. 200 (1922); Toolson v. New York Yankees, Inc., 346 U.S. 356 (1953); Flood v. Kuhn, 407 U.S. 258 (1972).
35. *See Minnesota Twins*, 592 N.W.2d at 850.

1. *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs, Inc.*[36]

In *Federal Baseball*, the Supreme Court established professional baseball's antitrust exemption by determining that the Commerce Clause did not apply to baseball.[37] The plaintiff was the only club left from the Federal League of Baseball Players, the other seven clubs having been induced to join the National League.[38] The plaintiff alleged violations of the Sherman Act[39] and Clayton Act[40] in the form of a conspiracy to destroy the Federal League.[41] The plaintiff won a verdict for $80,000 and the trial court entered a judgment for treble that amount.[42] The Court of Appeals for the District of Columbia reversed, finding baseball outside the scope of the antitrust laws.[43]

The Supreme Court affirmed the decision of the appellate court.[44] Justice Holmes, writing for the majority, described baseball as exhibitions that are wholly state affairs.[45] The Court indicated that the fact that players must be induced or even paid to cross state lines for the business to function was not sufficient to alter the character of the enterprise.[46] The movement across state lines, the Court opined, was just incident to the game and not essential.[47] Furthermore, the Court insisted that the exhibition itself did not represent commerce as the term would commonly be used.[48] The Court pointed out that transportation without commerce could not reasonably be called "interstate commerce."[49]

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36. 259 U.S. 200 (1922)
37. *See Federal Baseball*, 259 U.S. at 209.
38. *See id.* at 207.
39. *See* 15 U.S.C. § 1 (West 1999).
40. *See* 15 U.S.C. § 12 (West 1999).
41. *See Federal Baseball*, 259 U.S. at 207.
42. *See id.* at 207-08.
43. *See id.* at 208.
44. *See id.* at 209.
45. *See Federal Baseball*, 259 U.S. at 208.
46. *See id.* at 209. The Court distinguished between interstate commercial activities, which can be properly regulated under the Sherman Act, and activities that do not amount to interstate commerce, which cannot be regulated by the Act. *See id.*; *see also* The Sherman Antitrust Act, 15 U.S.C. § 1 (West 1999).
47. *See Federal Baseball*, 259 U.S. at 209.
48. *See id.*
49. *See id.*

2. *Toolson v. New York Yankees, Inc.*[50]

Thirty-one years after *Federal Baseball*, the Supreme Court revisited that decision in *Toolson* and preserved the exemption carved out by *Federal Baseball*.[51] The Court, per curiam, held that baseball remained exempt from the antitrust laws[52]. In affirming its earlier decision, the Court simply referred to Congress' inaction regarding the exemption created by *Federal Baseball*.[53] The Court explained curtly that the Legislature had not addressed the issue in the past three decades and any changes should find their source in that branch of government.[54]

3. *Flood v. Kuhn*.[55]

Nineteen years after *Toolson*, the Supreme Court again found reason to examine baseball's antitrust exemption in the case of *Flood v. Kuhn*.[56] *Flood* involved the plight of the St. Louis Cardinals' great center-fielder, Curt Flood, who had

50. 346 U.S. 356 (1953).

51. *See Toolson*, 346 U.S. at 357. *Toolson* involved a suit by George Earl Toolson, a professional baseball player who played under contract with the Newark International Baseball Club, Inc. *See* Toolson v. New York Yankees, 101 F. Supp. 93 (S.D. Cal. 1951). When Toolson's contract was allocated to the Binghamton Exhibition Co., Inc., Toolson refused to report to Binghamton. *See id.* Consequently, he was placed on the team's "ineligible list." *See id.* Toolson then brought suit against baseball alleging a deprivation of his livelihood. *See id.*

52. *See Toolson*, 346 U.S. at 357.

53. *See id.*

54. *See id.* Despite the succinctness of the per curiam decision, Justice Burton, joined by Justice Reed, found error in the majority's decision as well as in *Federal Baseball*. *See id.* (Burton, J., dissenting). Justice Burton first enumerated the abundant interstate commercial activities involved with the sport, including, *inter alia*: travel; receipts and expenditures; fans crossing state lines; interstate advertising; radio and television; and the farm system. *See id.* at 357-58 (Burton, J., dissenting). The Justice also noted that the 1952 House Subcommittee on the Study of Monopoly Power described baseball as interstate in nature. *See id.* at 358-59 (Burton, J., dissenting) (citing H.R. REP. No. 2002, at 4-6 (1952)). Justice Burton expressed a preference for a rule whereby any exemption from antitrust laws should be made explicitly by Congress, rather than the majority's preference to subject professional baseball to the antitrust laws only through an explicit inclusion made by the Legislature. *See id.* at 364 (Burton, J., dissenting). The dissent argued that even if baseball was not considered commerce in 1922, it certainly was in 1953, and the decision of the Court should reflect that aspect of the sport. *See id.* at 357 (Burton, J., dissenting).

55. 407 U.S. 258 (1972).

56. *See Flood*, 407 U.S. at 259.

been traded to the Philadelphia Phillies against his wishes in October 1969.[57] In response to the trade, Mr. Flood petitioned the Commissioner of Baseball to be made a free agent.[58] The commissioner denied the petition and, as a result, Mr. Flood instituted an antitrust suit against Major League Baseball in the Southern District of New York.[59]

The district court denied Mr. Flood's request for a preliminary injunction and ultimately held that *Federal Baseball* and *Toolson* governed the case and as such, the antitrust exemption insulated Major League Baseball from challenge.[60] On appeal, the Second Circuit affirmed.[61] The Supreme Court granted certiorari to re-examine the issue of baseball's antitrust exemption.[62]

Writing for the majority, Justice Blackmun commenced his analysis by reviewing the history of the antitrust exemption.[63] Justice Blackmun noted the protection afforded to baseball for more than a half-century following *Federal Baseball*.[64] The Justice recognized the rise of new

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57. *See id.* at 264. Although probably most famous for his antitrust suit against baseball, Flood also excelled at the game. *See* Pat Brady, *Little Old Curt Flood* (last modified Dec. 21, 1997) <http://xroads.virginia.edu/~CLASS/am483_97/projects/brady/life.html>. In his first professional baseball season, Flood had a .340 batting average with 29 homeruns. *See id.* Flood played a major role with the St. Louis Cardinals teams of the 1960's, acting as a captain for the team from 1965-69. In that time as captain, the Cardinals won three pennants and a World Series title, one of two titles Flood would receive in his career. *See id.* Flood's lifetime statistics include a .293 batting average (including 6 seasons in which he batted over .300), 85 homeruns, 851 runs scored, 636 runs batted in and 88 stolen bases. *See The Baseball Encyclopedia* 897 (Rick Wolff et al. eds., Macmillan Publishing Co. 9th ed. 1984). Flood also set records performing error-free in the field for over 396 consecutive chances and 226 consecutive games. *See* Brady, *supra.*

58. *See Flood,* 407 U.S. at 264. In his letter to the commissioner, Flood defined the purpose of his antitrust suit: "I do not feel I am a piece of property to be bought and sold irrespective of my wishes. I believe that any system which produces that result violates my basic rights as a citizen and is inconsistent with the laws of the United States and the several states.'" Mark R. McCallum, *A Closer Look at Curt Flood* (visited Oct. 19, 1999) <http://fastball.com/pastime/otf/1999/flood. html> (quoting Curt Flood).

59. *See Flood,* 407 U.S. at 265. Flood also refused to play for the Philadelphia Phillies and sat out the entire 1970 season. *See id.* at 266.

60. *See id.* at 266-68.

61. *See id.* at 268.

62. *See id.* at 269.

63. *See Flood,* 407 U.S. at 269

64. *See id.* at 269-70

arguments based on the changing economy, especially radio and television, but also recognized the Court's reluctance to overturn *Federal Baseball* despite that changing environment.[65] Justice Blackmun quoted a 1952 House Report on Monopoly Power, which stated that nothing short of the antitrust exemption already created in *Federal Baseball* could adequately protect the game.[66]

The Court then acknowledged *Toolson*'s reliance on *Federal Baseball* as providing baseball with an explicit exemption from antitrust laws.[67] The Court enumerated four reasons for the *Toolson* Court's decision to continue the exemption: 1) Congress was aware of the decision and took no action; 2) baseball had been left alone to develop for over thirty years; 3) the Court was disinclined to retroactively overrule *Federal Baseball*; and 4) the Court preferred that the legislature address any changes that might occur.[68] The Court next chronicled the progression of cases that refused to extend the baseball exemption, even to other sports.[69]

With this perspective, the Court provided eight basic points regarding professional baseball's antitrust exemption.[70] First, baseball is an interstate commercial business.[71] Second, *Federal Baseball* and *Toolson* are an anomaly distinct to baseball.[72] Third, that anomaly is firmly entrenched and remains effective because of the unique characteristics of baseball.[73] Fourth, other sports are not

65. *See id.* at 272 n.12.

66. *See id.* at 272-73 (citing *The Study of Monopoly Power*, H.R. REP. NO. 2002, at 229 (1952)).

67. *See Flood*, 407 U.S. at 273.

68. *See id.* at 273-74.

69. *See id.* at 274-80 (citing United States v. Schubert, 348 U.S. 222 (1955) (refusing to extend the exemption to theatrical productions and explaining that *Toolson* was decided based solely on *stare decisis*); United States v. International Boxing Club, 348 U.S. 236 (1955) (refusing to extend the exemption to boxing though a strong dissent argued that the Court had then made baseball America's sport of choice); Radovich v. National Football League, 352 U.S. 445 (1957) (unequivocally limiting the antitrust exemption to baseball, and therefore refusing to extend it to football, and finding that the exemption was never overturned because of the danger involved in doing so); Haywood v. National Basketball Association, 401 U.S. 1204 (1971) (similar decision regarding basketball)).

70. *See id.* at 282-83.

71. *See Flood*, 407 U.S. at 282.

72. *See id.* at 282.

73. *See id.*

similarly exempt from antitrust laws.[74] Fifth, the addition of mass media has done nothing to disturb the well-established precedent.[75] Sixth, baseball's exemption has been the subject of legislative proposals but has not been changed by any act of Congress.[76] Seventh, the Court has asserted a preference that any change that might occur be prospective, a change that is best achieved through legislative action if any action is to be taken at all.[77] And eighth, baseball's antitrust exemption is not a new or novel issue, it has been settled for over fifty years and *stare decisis* dictates preservation of the exemption.[78] Based on these points, the decision was affirmed.[79]

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74. *See id.* at 282-83.
75. *See Flood*, 407 U.S. at 283.
76. *See id.* at 283.
77. *See id.*
78. *See id.*
79. *See Flood*, 407 U.S. at 285. Chief Justice Burger offered a short concurrence, in which the Chief Justice called for legislative action to remedy the inconsistency created by *Federal Baseball* and *Toolson*. *See id.* at 285-86 (Burger, C.J., concurring).

Justice Douglas, joined by Justice Brennan, dissented. *See id.* at 286 (Douglas, J., dissenting). Justice Douglas opined that since the Court created this "derelict," it can and should destroy it. *Id.* The Justice noted that Commerce Clause jurisprudence had changed over the years and could now reach all facets of industrial society, including baseball. *See id.* at 286-87 (Douglas, J., dissenting). Justice Douglas echoed the opinion of Justice Burton in *Toolson*, stating that the Court should not provide an exemption from Congress's inaction, rather, the Court should rely on that inaction as a refusal to explicitly grant an exemption to all sports. *See id.* at 287-88 (Douglas, J., dissenting). *See also Toolson*, 346 U.S. at 364 (Burton, J., dissenting).

Justice Marshall, also joined by Justice Brennan, dissented as well. *See id.* at 288 (J. Marshall, dissenting). Justice Marshall argued that the decisions in *Federal Baseball* and *Toolson* should be overturned, but the decision should be made prospective only, in an effort to honor the reliance interests which baseball has come to expect. *See id.* at 290, 293 (Marshall, J., dissenting).

Despite his loss in the Supreme Court, Flood's efforts were not in vain. In 1975, two baseball players, Andy Messermith and Dave McNally, won an arbitration hearing after challenging the reserve clause. *See* Pat Brady, *Heading Home: Legacies* (last modified Dec. 21, 1997) <http://xroads.virginia.edu/~CLASS/am483_97/projects/brady/legacies.html>. The arbitrator, Peter Seitz, decided the reserve clause restricted players to a single team for only one year, thus heralding the beginning of free agency in baseball. *See id.* Further proof of Flood's victory came on January 21, 1997, the day after Flood's death from throat cancer. *See id. See also, Curt Flood*, (visited Oct. 19, 1999) <http://cbs.infoplease.com/ipa/A0194106.html>. On that day, The Curt Flood Act was introduced by Senator Orrin Hatch and soon thereafter became law. *See id. See also* Pub. L. No. 105-297, 112 Stat. 2824 (1998).

4. *Piazza v. Major League Baseball.*[80]

Though *Flood* preserved baseball's antitrust exemption, it did so in the context of a labor dispute,[81] as did *Toolson*,[82] which involved a challenge to the player reserve system utilized by Major League Baseball.[83] The fact that those cases centered around labor disputes proved important when the Eastern District of Pennsylvania decided *Piazza v. Major League Baseball.*[84] *Piazza* did not involve a labor controversy, rather it involved the failed relocation of the San Francisco Giants to Tampa Bay[85]. That planned relocation was contemplated pursuant to a proposed sale of the team to the Tampa Bay Baseball Club, Ltd., an organization headed by Vincent Piazza and his business partner Vincent Tirendi.[86] The Tampa Bay organization had been formed after Robert Lurie, the owner of the Giants, had signed a letter of intent to sell the team to its members.[87] Shortly after the execution of the letter of intent, the prospective owners applied to Major League Baseball for proper approval from the other owners.[88] In denying approval, the Ownership Committee made some questionable statements implicating Piazza and Tirendi as possibly connected to the Mafia.[89] The owners also encouraged Lurie to breach his agreement with Piazza's group and seek other options that could keep the Giants in San Francisco.[90] As a result of baseball's actions,

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80. 831 F. Supp. 420 (E.D. Pa. 1993).

81. *See Flood*, 407 U.S. at 265.

82. *See Toolson*, 346 U.S. at 362 (Burton, J., dissenting). *See also supra* note 51 and accompanying text.

83. *See Piazza*, 831 F. Supp. at 435.

84. *See id.* at 422. *Piazza* was followed by an action brought by the Florida Attorney General in *Butterworth v. National League of Prof'l Baseball Clubs*, 644 So.2d 1021 (Fla. 1994), which was based upon the same situation as *Piazza*, and also agreed with the outcome of *Piazza*.

85. *See id.* at 422

86. *See id.* Vincent Piazza is the father of Mike Piazza, the all-star catcher for the New York Mets who was drafted by the Los Angeles Dodgers as a favor to Vincent, a close friend of Tommy Lasorda, the manager of the Dodgers at the time. *See Minnesota Twins*, 592 N.W.2d at 855, n.17.

87. *See Piazza*, 831 F. Supp. at 422. The members of the Tampa Bay Baseball Club included Piazza, Vincent Tirendi, and PT Baseball, Inc., all from Pennsylvania, as well as four Florida businessmen. *See id.*

88. *See id.*

89. *See id.* at 422-23.

90. *See id.* at 423. Though Tampa Bay did not get the Giants, it did eventually

Piazza and Tirendi claimed that Major League Baseball never planned to allow the sale and intended to do all in its power to undermine the would-be owners.[91] On this basis, the would-be owners filed an antitrust suit against Major League Baseball, who, in turn, moved to dismiss relying on its antitrust exemption.[92]

In addressing baseball's antitrust exemption the court first reviewed the history of the exemption from *Federal Baseball* through *Flood*.[93] Judge Padova took special notice of the language used in *Flood* and posited that the antitrust exemption had been severely limited by that case.[94] The court quoted the portion of the text that it found most limiting: "'For the third time in 50 years the Court is asked specifically to rule that professional baseball's *reserve* system is within the reach of antitrust laws.'"[95] The court interpreted this language, combined with the rule that antitrust exemptions must be construed narrowly, to mean that the antitrust exemption applied only to baseball's

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acquire a team through expansion on March 9, 1995. *See History of Tampa Bay Baseball* (visited Oct. 22, 1999) <http://www.devilray.com/team/drhistory.htm>.

91. See Piazza, 831 F. Supp. at 423

92. *See Piazza*, at 421. In their suit, Piazza and Tirendi asserted a number of claims: violation of the First and Fifth Amendments, violation of their civil rights, violation of the Sherman Act, and a number of Pennsylvania State claims including claims for slander, conspiracy, libel and tortious interference with contractual relations. *See id.* at 423-24. The Constitutional claims were dismissed by the court because under those claims, the extent of the government's involvement was not sufficient to label any offenses as "state action." *See id.* at 425-26. The court employed the test formulated in *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 936 (1982), under which the violation must arise out of a privilege granted under color of government authority and the private party can fairly be described as associated with the government. *See Piazza*, 831 F. Supp. at 425. The plaintiffs failed to meet the second requirement since the only link between the government and Major League Baseball that could be provided was the antitrust exemption, which merely meets the first part of the test, but does not address the issue of association. *See id.* at 425-26.

The § 1983 claim, however, was allowed to proceed. *See id.* at 427. This was because baseball failed to argue that any civil rights had not been denied, relying instead on its assertion that no state action was involved. *See id.* But Piazza provided evidence that the City of San Francisco substantially contributed to the effort to keep the Giants in San Francisco such that state action reasonably could be found. *See id.* at 427-28.

93. *See id.* at 433-35.

94. *See id.* at 436.

95. *Id.* (quoting *Flood*, 407 U.S. at 259) (emphasis added).

reserve system.[96] The court further provided that even if the exemption applied beyond the reserve system, the exemption applies only with regard to the business of providing the spectacle of baseball, and that the sale of a franchise is not sufficiently related to that purpose.[97]

In closing, Judge Padova recognized that recent decisions applied the exemption only to issues that were integral to Major League Baseball.[98] From this the court found two aspects of the sport explicitly exempted: 1) the reserve system, and 2) the league structure.[99] Finally, the court noted that ownership interests had never been reviewed with respect to their centrality to the game and such an analysis would require a factual background, thus defeating a motion for dismissal.[100]

D. The Opinion of the Minnesota Twins Court.

In *Minnesota Twins v. State of Minnesota,*[101] the court addressed the issue of whether an intended sale and relocation of a Major League Baseball team is a unique and integral aspect of professional baseball and therefore within baseball's exemption to antitrust law such that civil investigative demands (CID's), issued pursuant to an antitrust investigation, could not be enforced.[102] Justice Anderson, writing for a unanimous court, held that such a transaction is integral to the business of professional baseball and, therefore, the CID's could not be enforced.[103]

The court opened its analysis by establishing the

96. *See Piazza*, 831 F. Supp. at 438 (citing Group Life & Health Ins. Co. v. Royal Drug Co., 440 U.S. 205, 231 (1979)).

97. *See id.* at 439-40. For this assertion, the court relied on the distinction drawn in *Federal Baseball* between the exhibitions and the movement of players. *See id.* at 440.

98. *See id.* (citing Postema v. National League of Prof'l Baseball Clubs, 799 F. Supp. 1475, 1488 (S.D.N.Y 1992) (determining that relations with umpires are not an integral part of the game)).

99. *See id.* at 440.

100. *See Piazza*, 831 F. Supp. at 440-41. The case never made it to trial because a six million dollar settlement was reached the day before jury selection. *See* Wolohan, *supra* note 7, at 363.

101. 592 N.W.2d 847 (Minn. 1999).

102. *See Minnesota Twins*, 592 N.W.2d at 849.

103. *See id.* at 856.

standard for the issuance of CID's.[104] Such demands may be made by the attorney general, the court stated, pursuant to any investigation of unlawful practices.[105] However, such a demand must be made in accordance with a valid prosecution, the court directed, and a valid claim of exemption will make an otherwise proper demand unenforceable.[106]

The court then identified the basis for the CID's in the instant case.[107] Those bases were: a conspiracy to restrain trade, unlawful use of monopoly power, an unlawful boycott of the State of Minnesota and price fixing.[108] All of these allegations were made under the antitrust laws of the state of Minnesota[109] which, the court noted, are read consistently with the antitrust laws of the United States.[110] Thus, Justice Anderson framed the issue as the extent of the antitrust exemption afforded to Major League Baseball from the federal, and therefore the Minnesota, antitrust laws.[111]

After determining the principal issue, the court then proceeded to review baseball's antitrust exemption in much the same manner as the *Flood* and *Piazza* courts.[112] The court started with the broad holding of *Federal Baseball*, that professional baseball was not an object of interstate commerce, and traced the exemption from *Federal Baseball* through *Piazza*.[113] Like the *Piazza* court, Justice Anderson noted that the *Toolson* and *Flood* decisions specifically addressed the reserve clause.[114] Yet the justice also explained that both of those decisions rested squarely on the doctrine of *stare decisis*.[115] In fact, the court noted, *Flood*

104. *See id.* at 850-51.
105. *See id.* at 851 (citing MINN. STAT. § 8.31(1), (2) (1998)).
106. *See Minnesota Twins*, 592 N.W.2d at 851.
107. *See id.*
108. *See id.*
109. *See* MINN. STAT. § 8.31 (1998).
110. *See Minnesota Twins*, 592 N.W.2d at 851.
111. *See id.*
112. *See id.* at 852.
113. *See id.* at 852-55.
114. *See Minnesota Twins*, 592 N.W.2d at 852-53.
115. *See id.* at 852. *Stare decisis* is defined as "[t]he doctrine of precedent, under which it is necessary for a court to follow earlier judicial decisions when the same points arise again in litigation." BLACK'S LAW DICTIONARY 1414 (7th ed. 1999).

rested on the doctrine even though the original decision, *Federal Baseball*, created the exemption based on an interpretation of the Commerce Clause that was clearly outdated at the time of *Flood*.[116]

From this inconsistency, the court proceeded to reveal an ambiguity within the *Flood* decision.[117] The court noted that *Flood* examined only the reserve clause in reaching its decision, yet the *Flood* holding more broadly professes its compliance with *Federal Baseball* and *Toolson*, which held that the business of baseball is completely exempt from antitrust regulation.[118] The court further stated that the vast majority of federal cases give *Flood* a broad meaning.[119]

The court conceded, however, that not all post-*Flood* cases gave the decision an expansive interpretation.[120] The court pointed to *Piazza*, which gave *Flood* a very narrow interpretation in a decision involving facts quite similar to the case at bar, limiting the exemption to the reserve clause.[121] Justice Anderson interpreted *Piazza* as an attempt to make sense of the Supreme Court's unwillingness to overrule *Federal Baseball*.[122] The justice argued that *Piazza* failed to recognize that the *Flood* Court unequivocally followed the decisions of *Federal Baseball* and *Toolson* and would not overrule the long-standing decision, leaving that task to Congress.[123] Finally, the court recognized that *Piazza* did leave open the issue of whether ownership of a Major League Baseball franchise constituted an integral part of the game.[124]

Despite the attractiveness of the *Piazza* court's decision to limit baseball's antitrust exemption, the court refused to follow that court's lead.[125] The court chose instead to

116. *See id.* at 854.
117. *See id.*
118. *See Piazza*, 831 F. Supp. 854 (quoting *Flood*, 407 U.S. at 284).
119. *See id.* at 854-55 (citing Charles O. Finley & Co. v. Kuhn, 569 F.2d 527, 541 (7th Cir. 1978); Portland Baseball Club, Inc. v. Kuhn, 491 F.2d 1101, 1103 (9th Cir. 1974); McCoy v. Major League Baseball, 911 F. Supp. 454, 457 (W.D. Wash. 1995)).
120. *See Minnesota Twins*, 592 N.W.2d at 855.
121. *See id.*
122. *See id.*
123. *See id.* at 856.
124. *See Minnesota Twins*, 592 N.W.2d at 855.
125. *See id.* at 856.

conform to the decisions of the vast majority of courts that have given baseball a broad exemption from antitrust laws.[126] Without analysis the court concluded that the sale of a Major League Baseball franchise is integral to the business of baseball.[127] In support of its conclusion the court cited one prior decision from a different jurisdiction.[128] Furthermore, since it is an integral part of the business, the court stated that under the established precedent, precedent the court was loathe to challenge, the sale of a team is exempt from antitrust regulation.[129] As a result, the court decided that the Minnesota Twins were exempt from the CID's, which could not be enforced, since the underlying investigation was unfounded.[130] Thus, the court's conclusion was that the business of Major League Baseball, an integral part of which is the sale and relocation of a team, is exempt from state and federal antitrust laws and therefore the Twins were not required to answer the CID's issued by the attorney general pursuant to an antitrust investigation that could not be prosecuted.[131]

III. CONCLUSION

Surprisingly, *Minnesota Twins* never referred to the *Curt Flood Act* in its analysis. Perhaps that is a simple oversight, or perhaps it is a literal reading of the Act which states that no court may rely on the act in changing antitrust law as it applies to ownership interests or relocation.[132] It may be argued, though, that no change did occur. After all, the majority of the cases weighed in favor of a complete exemption for the business of baseball, and only twice have

126. *See id.*
127. *See id.*
128. *See Minnesota Twins, 592 N.W.2d* at 856. That decision was *State v. Milwaukee Braves, Inc.*, 144 N.W.2d 1, 15 (1966), which held that admission of a new member into Major League Baseball was integral enough to the business as to fall within the antitrust exemption when the new member replaces a relocated existing member. *See Minnesota Twins*, 592 N.W.2d at 856 n.20.
129. *See Minnesota Twins*, 592 N.W.2d at 856. The court indicated that the privilege of overturning Supreme Court decisions should rest exclusively with the Supreme Court. *See id.*
130. *See id.* at 856.
131. *See id.*
132. See Curt Flood Act of 1998, §27(b)(3).

the courts weighed against that interpretation.[133]

Regardless of the Minnesota court's decision in relation to the *Curt Flood Act*, the decision represents the weak position occupied by localities in their fight to retain sports franchises in their respective cities. If a city cannot look to antitrust law to aid it in keeping its teams, then all that is left is to give in to the demands made by owners or to suffer the consequences. The State of Minnesota did not wish to give in to Carl Pohlad's demands. However, after *Minnesota Twins*, Minnesota has little choice: it must either watch helplessly as the team relocates to a locale that either has or will provide the required facility, or submit to Mr. Pohlad's demands. More and more, these demands are coming in the form of stadium requests, a phenomenon certainly not exclusive to baseball.[134] The more localities give into these demands, the more the owners profit; but do the cities themselves gain any benefit?

At least one study has determined that the cities do not gain any significant benefit from attracting or keeping sports franchises.[135] Joseph Bast, president of the Heartland Institute, argues that subsidization of sports franchises has grown out of control.[136] He argues that the only benefit, besides the financial benefit to the owners, may be found in civic pride, and that benefit is no more substantial than the boon to civic pride that could be felt from other more positive uses of tax dollars.[137]

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133. *See Piazza*, 831 F. Supp. 420 (E.D. Pa. 1993); *Butterworth*, 644 So.2d 1021 (Fla. 1994); *see also supra* note 84 and accompanying text.

134. Minnesota knows this fact all too well as the Minnesota Vikings, a National Football League Franchise, also has demanded a new stadium in order to remain financially competitive in the NFL. Sid Hartman, *McCombs Demands Stadium*, MINNEAPOLIS STAR-TRIBUNE, Sept. 1, 1999, at 1A. See also, Daniel Kraker, *Ransom Notes, Stadium News from around the Country* (visited Sep. 25, 1999) <http://www.ilsr.org/newrules/ransomnotes.html>, for a quick overview of cities with professional sports franchises forced to address new stadium issues.

135. *See* Joseph L. Bast, *Sports Stadium Madness: Why It Started, How to Stop It* (last modified Feb. 23, 1998) <http://www.heartland.ord/sprtstad.htm>.

136. *See id.*

137. *See id.* Professor Bast argues that whatever benefit would be derived by a community from professional sports must be measured against the opportunity cost of using funds for sports rather than other community development. *See id.* He opines that the money could be used to fund schools, parks, or other public facilities, which would in turn, "[s]urely . . . have a positive effect on the community's image and its residents' self-esteem." *Id.* If, instead, the money were

Professor Bast concludes that tax dollars are used to subsidize sports because of the scarcity of teams and the strong demand for the product – it is simply a problem of supply and demand.[138] Moreover, this paucity of franchises allows team owners to blackmail local officials, requiring more resources for the teams, and allowing less for genuine civic issues, such as schools and public safety.[139] This problem of supply and demand reminds us that all professional sports, including baseball, are businesses. But unlike other sports businesses, baseball can make decisions relying on an antitrust exemption. The actions of the Twins, and Major League Baseball generally, while within the antitrust exemption, illustrate the precarious situation created for localities by the exemption. While the *Curt Flood Act* did not remove the exemption with respect to the sale and relocation of franchises, maybe it should have. As Senator Metzenbaum stated during the 1992 Hearing on The Validity of Major League Baseball's Exemption from the Antitrust Laws: "If decisions about the direction and future of major league baseball are going to be dictated by the business interests of team owners, then the owners should be required to play by the same antitrust rules that apply to any other business." [140]

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left to the public for its own consumption, Professor Bast suggests, better private facilities such as restaurants, businesses, or even theme parks might be developed. *See id.*

138. *See id.*

139. *See The Validity of Major League Baseball's Exemption From the Antitrust Laws: Hearing Before the Subcomm. on Antitrust, Monopolies, and Business Rights of the Senate Comm. on the Judiciary*, 102d Cong. at 3 (1992) (opening statement by Senator Metzenbaum).

140. *Id.* at 2.