

[SCREW] AMERICA'S PASTIME ACT: THE MIRAGE OF SAPA & MINOR LEAGUE BASEBALL WAGES

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I. INTRODUCTION

The dream of becoming a professional baseball player is an aspiration as all-American as the sport itself. And while baseball and hot dogs are a timeless duo, it is unsurprising that few young people are as enchanted by the prospect of becoming a professional hot dog vendor. Curiously, though, in all but a select few professional ballparks, the hot dog vendor actually makes more money than the ballplayer.¹ Jeremy Wolf, a minor league baseball player formerly in the New York Mets organization, attests, "I was paid \$45 per game . . . \$3 [per] hour for 70 hours a week . . . I played in front of 8,000 people [each] night and went to bed hungry. [A]fter seven months of work, I left with less money than I started . . ."²

Be that as it may, Major League Baseball (MLB), for its part, presides over this puzzling reality as puppeteer.³ Players at the MLB level earn astounding wealth; however, members of a major league team's *minor* leagues—the multi-tiered system below it that employs thousands of Minor League Baseball (MiLB) players who form the lifeblood of an organization's future—fight to pay rent and eat a decent meal, all while vying rigorously for a promotion to MLB. Because of the inherent symbiosis between MLB and MiLB, the wage disparity between the two entities defies common sense, but not logic: MLB is a business and a good one at that.

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¹ Pat Garofalo, *The MLB Makes Millions on Minor Leaguers. It Refuses to Pay Minimum Wage.*, TALK POVERTY (Feb. 14, 2019), <https://talkpoverty.org/2019/02/14/mlb-makes-millions-minor-leaguers-refuses-pay-minimum-wage>.

² Jeremy Wolf, *I've Lived My Dream*, BASEBALL & BUSINESS (June 6, 2018), <https://www.baseballandbusiness.com/ive-lived-my-dream>.

³ *See id.* ("Minor league baseball players work in a system that is fraught with corruption; billionaire team owners collectively suppress wages of their lowest employees, won't let them build a union, and won't let them talk with team officials about their treatment. Whereas, [MiLB] owners profit off of free labor, use public money to build gaudy stadiums, and neglect to spend the money on the well being of the players, the entertainment.").

Conceived as a “survival-of-the-fittest” proving ground, MiLB fosters ultra-competitive playing mentalities that, in theory, churn out the best players. There is a fundamental difference, however, between athletic-Darwinism and downright impoverishment. An ongoing class action lawsuit, *Senne v. Kansas City Royals*, has illuminated the contours of baseball’s wage war between MiLB players and MLB owners.⁴ Unfortunately, a federal law titled “Save America’s Pastime Act” (SAPA) was subsequently enacted and now stands as a formidable obstacle for players contesting the low wages through *Senne* or in other fora. Hence, the future and role of baseball’s minor league system, as a whole, has been thrown in flux.

This Comment establishes that SAPA does not “save” any aspect of professional baseball and, in fact, actually obstructs major avenues of it. Specifically, Part II lays the groundwork of this country’s professional baseball landscape to give the reader a sense of what the life of a professional player outside the purview of MLB really entails. Part III details the applicable labor and employment law that has long governed all tracks of professional baseball as well as the rise and fall of *Senne*. Part IV delves into SAPA and its impact on *Senne*, and Part V explores projections relative to each in forecasting the sport’s future. Finally, Part VI concludes.

II. THE PROFESSIONAL BASEBALL LANDSCAPE

All players striving to reach the pinnacle of professional baseball in this country—universally regarded as MLB—must first run the gauntlet that is minor league baseball. Two separate tracks of minor league baseball exist: “affiliated” and “independent.” Though there are cultural and structural distinctions between each track, the same laws uniformly govern compensation, and players feel the brunt of them in either setting—but, as this Comment will illustrate, to varying degrees.

A. *The “Affiliated” State of Affairs*

There are thirty MLB teams and each one sponsors several minor league feeder-teams below it. Sponsored MiLB teams are organized into classes roughly reflecting the skill level and experience of the players; typically, the classes are labeled, in escalating order, “rookie level,” “A,” “AA,” and “AAA.”⁵ The relationship between MLB and MiLB is governed by Player Development Contracts, which are agreements between MLB and MiLB organizations to affiliate with one another for a certain

⁴ See *Senne v. Kan. City Royals Baseball Corp.*, 934 F.3d 918 (9th Cir. 2019).

⁵ *Senne v. Kan. City Royals Baseball Corp.*, 105 F. Supp. 3d 981, 991 (N.D. Cal. 2015).

2020]

COMMENT

519

period.⁶ MiLB teams who enter this agreement are colloquially known as “affiliated.”

MLB rules require that its affiliated MiLB teams issue the same Uniform Player Contract (UPC) to every minor league player.⁷ Under the UPC, players receive a salary during the playing season *only* (which lasts approximately half a year) and are uncompensated during the remainder of the year.⁸ Still, the UPC imposes duties and obligations that “continue in full force throughout the calendar year,” mandating a strenuous off-season conditioning regimen, unpaid participation in preseason spring training,⁹ and, for some, postseason instructional leagues or winter leagues.¹⁰ “MLB has long taken the position that minor league baseball is not intended to be a career, but a “short-term seasonal apprenticeship” on the way (hopefully) to [reaching MLB].”¹¹ Accordingly, MiLB contracts trigger compensation for just half the year while imposing year-round responsibilities and stints of mandatory unpaid labor.¹²

The incongruities between MLB and MiLB player contracts are staggering. While MLB revenue reached a record high in 2018 at \$10.3 billion,¹³ the average affiliated MiLB player is still paid less than \$7,500 per year¹⁴—significantly below the national poverty line.¹⁵ Typically, a first-year player under the UPC earns a fixed salary of \$1,100 per month, while a more senior player who has reached the upper levels of the

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* (emphasis added).

⁹ Garofalo, *supra* note 1 (“Each year, every major league team has their minor league players report to spring training. Most fans don’t know those minor league players have to work 31 straight days for no pay If you’re requiring someone to work, you should be paying them the minimum wage. It’s a fairly basic principle.”).

¹⁰ *Id.*

¹¹ Mitchell Williams, *Saving America’s Pastime Means Not Paying Minor League Players*, JDSUPRA (Jan. 25, 2019), <https://www.jdsupra.com/legalnews/saving-america-s-pastime-means-not-45220>.

¹² *Id.*

¹³ Maury Brown, *MLB Sees Record Revenues of \$10.3 Billion for 2018*, FORBES (Jan. 7, 2019, 3:31 PM), <https://www.forbes.com/sites/maurybrown/2019/01/07/mlb-sees-record-revenues-of-10-3-billion-for-2018/#5d9168f75bea>.

¹⁴ Maury Brown, *Minimum Wage Exemption Is the Culmination of a Battle Over MLB and Minor League Economics*, FORBES (Mar. 26, 2018), <https://www.forbes.com/sites/maurybrown/2018/03/26/the-fragile-economics-between-mlb-the-minors-and-the-minimum-wage-exemption/#7731b7f63c21>.

¹⁵ Bill Baer, *Blue Jays’ Minor League Pay Raises Making a Difference*, NBC SPORTS (Aug. 22, 2019, 3:42 PM), <https://mlb.nbcsports.com/2019/08/22/blue-jays-minor-league-pay-raises-making-a-difference>.

minor leagues can negotiate for slightly more.¹⁶ For comparison, the annual salary of an MLB player ranges from \$550,000, the league minimum, to \$42 million, the highest amount per season.¹⁷ Moreover, MLB safeguards its wealth through unionization: the MLB Players Association.¹⁸ Despite a binding UPC agreement issued by the MLB itself, MiLB players are excluded from union representation—further evidence of the incongruity between the two entities.¹⁹

This Comment does not advocate for wages anywhere near that of MLB, but simply for minor league wages to exceed the national poverty level and represent a fair, living wage in exchange for services that MLB exclusively oversees. The first-year UPC rate—\$1,100 per month—serves as the basis for this argument.

B. *Across the Ledger: An “Independent” Look*

In addition to affiliated professional baseball, there is a companion track: independent professional baseball (sometimes referred to as “Indy Ball”). An independent professional team, as the name indicates, is independently owned and operated for profit outside the ambit of MLB and often has “much less cash to go around.”²⁰ There is, however, significant crossover between many of the players in the affiliated and independent professional ranks.²¹

Indy Ball notoriously serves one of two functions for a professional player: either a springboard or a safety-net. If a player is not on the radar of an MLB team, he may prove himself in an independent league with the hope that his contract is purchased by an affiliate of MLB. Or, if a player is released from the affiliated ranks for any number of reasons (commonly as a result of nonperformance, an injury, age, or a failed drug

¹⁶ Ronald Blum, *Baseball Players in Minors to Lose Minimum Wage Protection*, AP NEWS (Mar. 23, 2018), <https://www.apnews.com/cb183f59e88948e8b9cd49ad07bde807>.

¹⁷ USA TODAY, <https://www.usatoday.com/sports/mlb/salaries> (last visited Sep. 16, 2020).

¹⁸ Mike Axisa, *Congress’ ‘Save America’s Pastime Act’ Would Allow Teams to Pay Minor-Leaguers Less Than Minimum Wage*, CBS SPORTS (Mar. 22, 2018), <https://www.cbssports.com/mlb/news/congress-save-americas-pastime-act-would-allow-teams-to-pay-minor-leaguers-less-than-minimum-wage>.

¹⁹ *See id.*

²⁰ Bill Baer, *Ever Wonder How Much Money an Independent League Player Makes?*, NBC SPORTS (Jan. 23, 2018, 4:16 PM), <https://mlb.nbcsports.com/2018/01/23/ever-wonder-how-much-money-an-independent-league-player-makes>.

²¹ J.J. Cooper, *Sources: MiLB Ready to Agree to Significant Reduction in Teams*, BASEBALL AM. (Apr. 21, 2020), <https://www.baseballamerica.com/stories/sources-milb-ready-to-agree-to-significant-reduction-in-teams> (discussing the possibility that certain independent league teams may actually be “added to affiliated ball”).

2020]

COMMENT

521

test), he may continue his career in the independent circuit and aim to return to the affiliated side of the ledger.²² And because the affiliated system is intentionally set up for high turnover, the utility of its independent counterpart is especially relevant.

Though the affiliated track is the leading vehicle to MLB stardom, the independent track's rich history and successes make it a viable "Plan-B" for certain players or situations. For instance, the safety-net function is seen in the Atlantic League, as it showcases a culture of accomplished, veteran talent in which 40% boast of *previous* MLB experience—a number far exceeding any affiliated MiLB organization.²³ Another independent league, the Frontier League, exhibits the springboard function through a much younger demographic of players—often players who are undrafted and *begin* their career there—but of which hundreds have had their contracts purchased by an affiliated MiLB organization, and thirty-eight have reached MLB.²⁴ While the probability of any player in either track reaching MLB is statistically low (as is customary of the sport), the functions of Indy Ball prove a valued complement to the affiliated system.

III. THE LEGISLATIVE & JUDICIAL FRAMEWORKS

The Fair Labor Standards Act (FLSA) establishes the federal minimum wage, \$7.25 per hour, and is the foundation of any wage disparity analysis.²⁵ The FLSA regulates the compensation of 135 million workers, both full and part-time, in the private and public sectors.²⁶ While the federal minimum wage is based on a standard 40-hour workweek, the FLSA also requires premium overtime pay in the event an employee exceeds that total.²⁷ As long as an employee is at least sixteen-years-old, there is no limit to the hours in a day or the number of days in a week that an employer may require an employee to work.²⁸ And when a protected employee exceeds the forty-hour

²² Jeff Zimmerman, *Independent League to Affiliated Baseball: Who Makes the Move?*, THE HARDBALL TIMES (Feb. 12, 2016), <https://tbt.fangraphs.com/independent-league-to-affiliated-baseball-who-makes-the-move> ("In-season acquisitions cost a major league team \$4,000, with \$3,000 going to the independent league team and \$1,000 to the league.").

²³ *About Us*, ATLANTIC LEAGUE, <http://www.atlanticleague.com/about-us/about-us>.

²⁴ *Alumni*, FRONTIER LEAGUE, <http://frontierleague.com/alumni>.

²⁵ *Wages and the Fair Labor Standards Act*, U.S. DEPT. OF LABOR, <https://www.dol.gov/agencies/whd/flsa>. There are also state minimum wage claims to be made, which will be introduced and explored to follow.

²⁶ *Who Is Covered*, U.S. DEPT. OF LABOR, <https://webapps.dol.gov/elaws/elg/min-wage.htm#who>.

²⁷ *Id.*

²⁸ *Id.*

threshold, he is entitled to “one and one half times [the] regular rate of pay for all hours worked in excess.”²⁹

Nonetheless, the FLSA specifies exemptions for employees of certain establishments and in certain occupations,³⁰ to which minor league baseball is no stranger. Section 213(a)(3) states the following exemption(s) from minimum wage and overtime compensation:

“[A]ny employee employed by an establishment which is an amusement or recreational establishment” is exempt from federal minimum wage and overtime provisions if “(A) *it does not operate for more than seven months in any calendar year*[:];] or, (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33-1/3 per centum of its average receipts for the other six months of such year.”³¹

Generally speaking, and as will be further expounded upon, because a minor league baseball season does not last longer than the allotted seven calendar months (typically only five months—April through August), teams are exempt from minimum wage and overtime lawsuits brought by players (hereinafter described as the Seasonal Exemption).³²

Such immunity, however, contradicts the original legislative intent of the law. The FLSA’s Seasonal Exemption was initially intended to apply to, namely, “concessionaires at amusement parks and beaches.”³³ The traditional rationale for the Seasonal Exemption paid homage to “the archetypal seasonal amusement or recreational establishment [as being] seasonal in the climatological sense of the word, in that it was highly weather-dependent.”³⁴ It was also “designed ‘to allow recreational facilities to employ young people on a seasonal basis.’”³⁵ Indeed, baseball remains a predominantly warm-weather game, and many stadiums rely considerably on part-time employees, such as college students home for the summer, to run concessions and fill off-field positions. But the exemption seems almost offensively

²⁹ *Id.*

³⁰ U.S. Department of Labor, Wage and Hour Division, *Fact Sheet #18: Section 13(a)(3) Exemption for Seasonal Amusement or Recreational Establishments Under the Fair Labor Standards Act (FLSA)*, U.S. WAGE AND HOUR DIVISION (Revised July 2008), <https://www.dol.gov/whd/regs/compliance/whdfs18.pdf>.

³¹ The Fair Labor Standards Act of 1938, 29 U.S.C. § 213(a)(3)(A) and (B) (2018) (emphasis added).

³² See Charlotte S. Alexander & Nathaniel Grow, *Gaming the System: The Exemption of Professional Sports Teams from the Fair Labor Standards Act*, 49 U.C. DAVIS L. REV. 123, 127 (2015).

³³ *Id.* at 133–34.

³⁴ *Id.* at 136.

³⁵ *Id.*

inconsistent with the modern realities of the sport's main attraction: *the players*. Today, professional players continue to train and remain employed by their respective teams year round, and the teams employing them operate the business for all twelve months of the year. Baseball playing seasons are seasonal, but baseball organizations are not.

This dichotomy proves a controversial analysis under the Seasonal Exemption.³⁶ Any two courts assessing the Seasonal Exemption may agree that an organization provides an exemption-worthy recreational service but disagree as to the extent of its seasonality.³⁷ In *Jeffrey v. Sarasota White Sox*, the Eleventh Circuit concluded that the Sarasota White Sox, an MiLB team, could cite to the Seasonal Exemption because the nature of its business (i.e., its main feature) was the baseball playing season alone—a de facto “loss” in the players’ quest for increased compensation.³⁸ Just a few years later, however, in *Bridewell v. Cincinnati Reds*, the Sixth Circuit, focusing less on the nature of the business’s core function (i.e., length of the playing season), took a broader view of the organization’s entire operations, including its off-season business presence, and deemed the team non-exempt—a “win” for the players.³⁹

Nearly two decades passed without a federal court hearing another baseball-related wage complaint before the inaugural filing of *Senne v. Kansas City Royals* in 2015, a class action brought prior to SAPA that challenged the hotly-contested Seasonal Exemption.⁴⁰ Spearheading the litigation, Garrett Broshuis, Esq., a young attorney and former MiLB player with playing experience at every level of the minor league system,⁴¹ humanized and lent credence to the issue.⁴² Importantly, Broshuis lived and experienced firsthand the plight complained of: that despite so many minor leaguers proving unable to ascend to MLB, every

³⁶ *Id.* at 140; *see id.* at 153.

³⁷ Alexander & Grow, *supra* note 32, at 154.

³⁸ *See* *Jeffrey v. Sarasota White Sox*, 64 F.3d 590, 596–97 (11th Cir. 1995); *see also* *Adams v. Detroit Tigers*, 961 F. Supp. 176, 181 (E.D. Mich. 1997) (“Tiger Stadium does not offer recreation or amusement, i.e., does not ‘operate,’ for more than seven months in a year. Thus, the Tigers are exempt from Michigan wage and hour laws.”).

³⁹ *See* *Bridewell v. Cincinnati Reds*, 155 F.3d 828, 832 (6th Cir. 1998).

⁴⁰ *See* *Senne v. Kan. City Royals Baseball Corp.*, 114 F. Supp. 3d 906, 908 (N.D. Cal. 2015).

⁴¹ *See* Bill Shaikin, *Minor Leaguers Could be Paid Minimum Wage—And No More*, L.A. TIMES (Mar. 23, 2018, 10:44 AM), <https://www.latimes.com/sports/mlb/la-sp-minor-league-baseball-wage-20180323-story.html>.

⁴² Garrett Broshuis, *Players*, BASEBALL REFERENCE, <https://www.baseball-reference.com/register/player.fcgi?id=broshu001gar>.

player deserves to be fairly compensated in the pursuit.⁴³ To that end, *Senne* aims to “reverse the tide of [MiLB’s] unlivable wages” and, at last, “impose a just system of pay.”⁴⁴

The plaintiffs in *Senne*, beginning as a single class of forty-five minor league players, brought a trio of claims under the federal FLSA and state wage-and-hour laws of California, Arizona, and Florida.⁴⁵ They alleged the following: (1) MLB does not pay the players at all during spring training, extended spring training, or in the instructional leagues; (2) players should qualify as protected employees and no longer be labeled as exemption-worthy apprentices under the FLSA; and (3) players should be paid overtime for routinely exceeding the forty-hour workweek with compensable activities.⁴⁶ Unfortunately for players, complicated choice-of-law and forum-related questions surfaced and quickly halted the momentum.⁴⁷ These considerations led to an extensive retooling of the complaint, as well as the formation of pivotal sub-classes as the suit progressed.⁴⁸ The players filed a Second Amended Complaint and a collective action was preliminarily certified in October of 2015; thousands of players with a stake in the litigation

⁴³ Shaikin, *supra* note 41.

As a freshman at the University of Missouri, Max Scherzer was not the most effective pitcher on his team. A senior named Garrett Broshuis went 11–0. Scherzer became a first-round draft pick, threw two no-hitters, won three Cy Young awards and signed a contract that guarantees him \$210 million. The Broshuis story is much more common. He became a fifth-round pick, spent six years in the minor leagues and zero days in the major league. Millions were but a dream. Broshuis went back to school. He got a law degree. In 2014, his firm filed a lawsuit that demanded minor leaguers be paid the minimum wage. The suit is ongoing.

This suit, of course, is *Senne*.

⁴⁴ Blake Yagman, *Senne v. Royals Is the Case that Could Change Major League Baseball*, FANSIDED (Oct. 25, 2017), <https://fansided.com/2017/10/25/senne-v-royals-lawsuit-could-change-mlb>.

⁴⁵ *Id.* Of note, the lead plaintiff is Aaron Senne, a former minor leaguer who was drafted multiple times, first by the Minnesota Twins and later by the (then) Florida Marlins. *Id.* Senne was unable to support his wife and children on his MiLB salary alone (“\$3,000 for the entire 2010 season, \$3,000 in 2011, about \$7,000 in 2012, and \$3,000 in 2013”), was “forced to take on additional jobs,” and eventually retired in 2013, initiating this lawsuit in 2014. *Id.*

⁴⁶ *Senne v. Kan. City Royals Baseball Corp.*, 934 F.3d 918, 924 (9th Cir. 2019).

⁴⁷ *Id.* at 951 (Ikuta, J., dissenting) (“The proposed classes here comprise employees who reside in at least 19 states, who are suing employers who are headquartered in at least 22 states, relating to work that took place in three different states No wonder the district court concluded that consideration of the plaintiffs’ claims on a classwide basis would be overwhelmed by individualized choice-of-law inquiries.”).

⁴⁸ *Id.* at 924–26.

2020]

COMMENT

525

received notice of suit, and a whopping 2,200 opted in and joined the cause.⁴⁹

Thoroughly unnerved by the traction of *Senne*, and only exasperated by the increased media attention and obvious financial repercussions of an aggregation of claims, MLB went on the offensive in 2016. The league moved to de-certify the players' collective action, and, in response, the players doubled-down in moving to certify a Rule 23(b)(2) class and a multitude of Rule 23(b)(3) state classes.⁵⁰ At this time, neither the players' Rule 23(b)(2) class nor their series of Rule 23(b)(3) state classes gained certification, and their collective action was thwarted by de-certification.⁵¹ The players had failed to prove the required predominance, a similarly situated nature, and standing—a big win for MLB.⁵²

The players “moved for reconsideration, narrowing [the scope of] their proposed classes significantly in response to the concerns the district court expressed,” introducing four current players to cure the standing dilemma and issuing a widespread expert survey, all in the hopes of propelling a novel “continuous workday” theory and gaining certification.⁵³ The district court found evidentiary value in the survey and deemed it sufficient to satisfy the previously missing predominance and similarly situated requirements, thereby re-certifying the FLSA collective action and certifying a California class.⁵⁴ Nonetheless, it denied certification to the Arizona, Florida, and (b)(2) classes, finding that the “choice-of-law concerns [still] defeated predominance for the [state] classes and undermined ‘cohesiveness’ for the (b)(2) class.”⁵⁵

While this ebb and flow of litigation ensued, MLB aggressively lobbied to counteract the claims and greatly diminish the merits of *Senne*. With its efforts culminating in the enactment of SAPA, MLB managed to do just that.

⁴⁹ *Id.* at 924.

⁵⁰ *Id.*

⁵¹ *Id.* at 924–26.

⁵² *Senne*, 934 F.3d at 925.

⁵³ *Id.*

⁵⁴ *Id.* at 926.

⁵⁵ *Id.*

IV. THE SAPA “ROADBLOCK”

A. SAPA: Language & Rationale

Congress enacted SAPA “to clarify certain requirements under the [FLSA]”⁵⁶ and completely insulate MLB from pay-practice legal challenges brought by its minor league players—undeniably stemming from *Senne*, which featured large-scale backing from players and unique leadership at its helm. The language of SAPA is as follows:

[A]ny employee employed to play baseball who is compensated pursuant to a contract that provides for weekly salary of services performed during the league’s championship season (but not spring training or the off season) at a rate that is not less than a weekly salary equal to the minimum wage under section 6(a) for a workweek of 40 hours, irrespective of the number of hours the employee devotes to baseball related activities.⁵⁷

Read in conjunction with the foundational FLSA, SAPA provides teams with a safe harbor to a federal minimum wage and bars all professional players from qualifying for overtime pay.⁵⁸ Of course, the bulk of compensation a professional player misses out on as a non-protected employee is *overtime*—not minimum wage. When accounting for all the constituent activities born of playing games (i.e., practices, workouts, and traveling, to name a few), the time spent greatly exceeds the forty-hour per week benchmark.⁵⁹

SAPA, though, only fortifies the Seasonal Exemption. Instead of continuing to rely on the questionable notion that players are seasonal apprentices and not actual workers,⁶⁰ MLB decided to “rewrite the law to explicitly say so.”⁶¹ Though it concedes federal minimum wage, SAPA reinforces MLB’s long-held administrative argument that minor league

⁵⁶ Save America’s Pastime Act, H.R. Con. Res. 5580, 114th Cong. (2018).

⁵⁷ Consolidated Appropriations Act of 2018, H.R. Res. 1625, 115th Cong. (2018) (enacted).

⁵⁸ The federal wage and overtime restraints are constricting, but *state* wage and overtime laws are separate and distinct. This Comment hopes to serve as a catalyst for future state-driven pursuits toward fair compensation.

⁵⁹ *Senne*, 934 F.3d at 923–24 (“For example, a team spring training schedule for one of the San Francisco Giants’ affiliates describes that at 6:30 AM, there was an ‘Early Van for Treatment and Early Work’; at 7:00 AM, the ‘Regular Van’ departed; at 7:45 AM, the ‘Early Work’ begin; and then between 9:00 AM and 11:00 AM, the team would perform activities such as ‘Stretch,’ ‘Throwing Program,’ and ‘Batting Practice.’ Lunch was to be at 11:00 AM, before a 12:10 PM bus to a neighboring city for a 1:00 PM away game.”) (footnote omitted).

⁶⁰ Shaikin, *supra* note 41.

⁶¹ *See id.*

2020]

COMMENT

527

players should be precluded from the benefits received by non-exempt employees under the FLSA because of the incalculable nature of a baseball player's hours.⁶² Broshuis contends, however, that the calculation of hours argument—i.e., the inability of players to clock in and out of the job, in a factory-like manner⁶³—is a ploy to justify minor leaguers receiving an unfair wage.⁶⁴ In practice, SAPA marginally increases the salary of an affiliated player subject to the baseline \$1,100 per month to the federal minimum wage of \$1,160; the downside, of course, is an outright capping of federal dollars at that amount, deflating the principal aim of *Senne* to receive a wage indicative of the actual hours being worked.⁶⁵ Players continue to work overtime-worthy hours, but SAPA disrupts the efficacy of bringing suit.

MLB's campaign in support of SAPA was riddled with deception.⁶⁶ "Flex[ing its] political muscle . . . and get[ting] things done in secret that benefit only [itself]," MLB lobbied for the law in a covert and rushed manner.⁶⁷ Ultimately found on page 1,967 of the 2,232-page omnibus spending bill passed by Congress in March of 2019, SAPA's inconspicuous placement, too, connotes underhandedness.⁶⁸ The law also championed a patently misleading rationale: that without SAPA, MiLB teams would be forced to make drastic budgetary cuts, threatening their existence and, as a result, hurting the economy in cities where they play.⁶⁹ In essence, MLB cloaked itself with the distorted motif that it was acting as a vigilante of minor league baseball, expressly declaring that SAPA was *saving* teams from destruction—even though MLB, *not* MiLB, pays the salaries of its affiliated players by way of the UPC. MLB, in an attempt to authorize this misnomer, reasoned that paying every minor leaguer the wages sought in *Senne* would force it to

⁶² *Id.* ("Where are [we] going to put the time clock? Who is punching in and out? When I decide I want to go to work out and lift weights, is that overtime? What if I decide I want to take extra batting practice?").

⁶³ *Id.* ("Not everybody works in a factory anymore," [Broshuis] said. "Industries of all different types have figured out a way to comply with wage and hour laws. MLB can find a way to do it. They are sophisticated businessmen.").

⁶⁴ *Id.*

⁶⁵ Marc Normandin, *Why Congress Killing Independent Baseball Is Actually Good*, SB NATION (Mar. 26, 2018), <https://www.sbnation.com/mlb/2018/3/26/17136192/congress-mlb-spending-bill>.

⁶⁶ Blum, *supra* note 16 (stating that, according to the nonpartisan Center for Responsive Politics, the MLB spent \$1.32 million on lobbying expenses in both 2016 and 2017, up from the \$330,000 total spent in 2015).

⁶⁷ *Id.*

⁶⁸ See Save America's Pastime Act, H.R. Con. Res. 5580, 114th Cong. (2018).

⁶⁹ See generally Blum, *supra* note 16. In turn, we find that SAPA threatens precisely this with respect to independent professional teams.

ask its affiliates to contribute to their players' salaries, putting them out of business entirely.⁷⁰

Basic accounting renders that reasoning ill-founded. At any given moment during the season, there are roughly 4,500 active players on affiliated minor league rosters nationwide.⁷¹ Paying each player, say, an extra \$300 per month to fairly compensate him for his time equates to, roughly, \$8,000,000 in total per season⁷²—the equivalent of one-third of the amount the Atlanta Braves paid one of its MLB players to suit up and play for another team in 2019.⁷³ Furthermore, teams paid \$4,500,000 for “one average major leaguer” in 2018⁷⁴—the equivalent of one MLB team paying two hundred MiLB players the federal minimum wage for twelve months.⁷⁵ SAPA grants minimum wage for just the half-year playing season,⁷⁶ yet paying players “at least minimum wage *all year round* would barely put a dent in [MLB’s] bottom line.”⁷⁷

Even so, MLB Commissioner Rob Manfred is adamant that “[MiLB] would not exist were it not for the fact that [MLB] subsidizes player costs, to the tune of several hundred million dollars a year.”⁷⁸ SAPA, then, reads as an expression of MLB’s belief that it is already paying out more money to MiLB than MLB thinks it is worth. Through SAPA, MLB can simultaneously keep those current subsidies relatively stable and splinter the initiative of *Senne*.⁷⁹

B. *The Bittersweet Certification of Senne*

The *Senne* litigation seeks a *fair* wage; that is, the minimum wage coupled with the overtime pay and benefits granted to a protected employee under the FLSA.⁸⁰ Unfortunately, by capping the federal compensation of minor league professional baseball players, SAPA hampers future wage litigation and endangers any active lawsuit.⁸¹

⁷⁰ Axisa, *supra* note 18.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* (explaining how the Atlanta Braves ended up paying Adrian Gonzales over 20 million dollars to play for the New York Mets—a divisional rival, no less—in 2018).

⁷⁴ Garofalo, *supra* note 1.

⁷⁵ *Id.*

⁷⁶ *Id.* (stating that SAPA “explicitly [says] players are only paid for 40 hours of work during the season ‘irrespective of the number of hours the employee devotes to baseball related activities,’ and that players don’t need to be paid for spring training *or the off season*”).

⁷⁷ *Id.* (emphasis added).

⁷⁸ Shaikin, *supra* note 41.

⁷⁹ *Id.*

⁸⁰ *See id.*

⁸¹ Normandin, *supra* note 65.

Players are now subject to the federal minimum wage of \$7.25 per hour for a forty-hour workweek,⁸² but it is “the most hollow of victories” without any possibility of the valuable benefits from FLSA non-exemption in its entirety.⁸³

Although SAPA appears to shield MLB from disputes regarding federal wage law, it does not preempt state-law based claims. Accordingly, *Senne*’s objective to obtain a fair wage, post-SAPA, hinges on the success of its *state* class actions: California, Arizona, and Florida.⁸⁴ On appeal, the players petitioned for review of the uncertified Arizona and Florida classes, while MLB challenged the district court’s certification of the California class.⁸⁵ The Ninth Circuit, “call[ing] a great number of balls and strikes,”⁸⁶ affirmed in part and reversed in part,⁸⁷ resulting in a favorable outcome for the players despite the persistence of MLB to this point. The court affirmed the California class’s certification and reversed as to the Arizona and Florida classes, certifying each.⁸⁸

Unbeknownst to most minor league players, an employee subject to both state and federal minimum wage laws may be entitled to the higher of the two.⁸⁹ The three state classes in *Senne* were assembled in accord with that premise: Florida’s minimum wage is \$8.56 per hour; Arizona’s is \$12.00; and California’s is \$13.00—each higher than the federal minimum wage, and significantly so in Arizona and California.⁹⁰ Thus, for instance, an affiliated player receiving California’s minimum wage would earn a monthly salary of \$1,760—a seven hundred dollar raise—simply by skirting SAPA.⁹¹ And, fortunately for players, state minimum wages continue to rise; the lowest earners in twenty-four states saw “pay bump[s]” in 2020, and other states are slated to provide

⁸² Shaikin, *supra* note 41.

⁸³ *Id.*

⁸⁴ *Senne*, 934 F.3d at 926.

⁸⁵ *Id.*

⁸⁶ *Id.* at 927.

⁸⁷ *Id.* at 950.

⁸⁸ *Id.* at 927–51.

⁸⁹ *Minimum Wage*, U.S. DEPT. OF LABOR, <https://www.dol.gov/general/topic/wages/minimumwage>.

⁹⁰ See *State Minimum Wage Laws*, U.S. DEPT. OF LABOR, <https://www.dol.gov/agencies/whd/minimum-wage/state>; see also Andrew Soergel, *24 U.S. States Will See a Minimum Wage Increase in 2020*, U.S. NEWS (Jan. 2, 2010), <https://www.usnews.com/news/articles/best-states/minimum-wage-by-state>.

⁹¹ See Soergel, *supra* note 90.

similar boosts in the coming years.⁹² So long as players claim a “home” state—i.e., that their labor is performed in just a single state—they should be eligible to receive that higher state payout.

While it is true that interstate traveling is commonplace in professional baseball,⁹³ the state classes constructed in *Senne* are deliberately intrastate. Hence, any concerns of blurring or misapplying the applicable state wage laws are surely “overstated.”⁹⁴ The California class consists solely of players in the California League, playing exclusively within the confines of California throughout the entire playing season.⁹⁵ And the California League is unorthodox in that regard—a professional league regularly consists of teams from numerous states, not one.⁹⁶ This concept of singularity holds true in the Arizona and Florida classes as well.⁹⁷ Those classes consist of players who remain in either Arizona or Florida, respectively, for the entirety of the services sued upon.⁹⁸ Thus, MLB cannot assert the alleged “administrative cost involved in attempting to comply with a patchwork of multiple states’ wage laws” as an argument for de-certification because these classes were strategically engineered to avoid such a complication.⁹⁹

Though the upshot of each class differs, all three are useful. The California class is potentially the most profitable because, in addition to California’s higher minimum wage, players seek greater compensation for the entire playing season.¹⁰⁰ The Florida and Arizona classes do not target the entire playing season—rather, spring training and

⁹² *Id.*; see Ben Giles, *Major League Baseball Wants Players Exempt from Minimum Wage Law*, ARIZ. CAPITOL TIMES (Jan. 23, 2019), <https://azcapitoltimes.com/news/2019/01/23/major-league-baseball-wants-players-exempt-from-minimum-wage-law>.

⁹³ That is, teams travel *across state lines*, nation and region-wide, to play the various teams in their division or league.

⁹⁴ *Senne*, 934 F.3d at 933 n.8.

⁹⁵ *Id.* at 952 n.2 (Ikuta, dissenting) (“The California class was defined as ‘[a]ny person who, while signed to a Minor League [UPC], participated in the California League on or after February 7, 2010, and had not signed a Major League [UPC] before then.’”).

⁹⁶ See *The History of the California League*, MiLB.COM, <https://www.milb.com/california/history>; see also *Midwest League*, WIKIPEDIA, https://en.wikipedia.org/wiki/Midwest_League (listing sixteen teams spanning seven states: Illinois; Indiana; Iowa; Kentucky; Michigan; Ohio; and Wisconsin).

⁹⁷ *Senne*, 934 F.3d at 952 n.1 (Ikuta, dissenting) (“The Florida and Arizona classes were defined (respectively) as including ‘[a]ny person who, while signed to a Minor League [UPC], participated in spring training, instructional leagues, or extended spring training in [Florida or Arizona] on or after Feb 7, 2009, and had not signed a Major League [UPC] before then.’”).

⁹⁸ *Id.* at 933 n.8.

⁹⁹ *Id.* at 932.

¹⁰⁰ *Id.* at 944.

instructional league play—but are equally, if not more, fruitful: while more transient, it is work uncompensated entirely as it stands today.¹⁰¹ To be successful, players in the California class must first show that they have worked certain hours as employees and then that those hours were improperly deemed overtime exempt.¹⁰² Meanwhile, the Arizona and Florida classes must merely show that players have worked *at all*, and nothing more, to receive the pled compensation.¹⁰³ Fortunately, California has expansive definitions of “employ” and “hours worked” to help players meet the state’s more stringent burden.¹⁰⁴ And absent a convincing reason to adopt the federal standard (which, as we know, eliminates substantial protections to players), California does not import it—another big positive for players.¹⁰⁵ Less liberal states are split, however, with respect to their incorporating the FLSA:¹⁰⁶ Arizona is silent on incorporation, and Florida expressly incorporates.¹⁰⁷ At any rate, state law is poised to prove decisive in *Senne*.

Keen on this, MLB is actively petitioning states to pass legislation that matches federal law.¹⁰⁸ And as a “major component of commerce and tourism, . . .” state legislators appear increasingly submissive to the motivations of MLB.¹⁰⁹ For example, Arizona recently introduced a bill to exempt minor leaguers from the *state’s* minimum wage, despite “a lot of effort” being required to revise the current law.¹¹⁰ Of note, the bill contained an antagonistic “retroactivity clause” to negate *Senne’s* remaining thrust.¹¹¹ Therefore, as MLB continues to stymie the mission of its minor leaguers through sheer financial leverage, a consensus on the attainability of state compensation remains unknown.

¹⁰¹ *Id.* at 942.

¹⁰² *Id.* at 944.

¹⁰³ *Senne*, 934 F.3d at 942.

¹⁰⁴ *Id.* at 945–46.

¹⁰⁵ *Id.* at 945 n.25.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Mitchell Atencio, *Major League Baseball Wants Exemption from Arizona’s Minimum Wage Law*, ARIZ. CENT. (Jan. 24, 2019, 6:00 AM), <https://www.azcentral.com/story/news/politics/legislature/2019/01/24/mlb-wants-arizona-exempt-minor-league-players-minimum-wage-laws/2662327002>.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

V. IMPLICATIONS OF SAPA: MUSINGS & EXTRAPOLATIONS

The SAPA “roadblock,” and its impact on *Senne*, is consequential to both tracks of the professional baseball system—affiliated and independent. Unfortunately, the latter faces looming extermination, and the former is merely confronted with the devil it already knew (i.e., grossly unfair wages with respect to time spent working). Nevertheless, both are destined to face inevitable overhauls in the coming years as a result of this constricting piece of federal legislation.¹¹²

A. *The Future of Affiliated Compensation*

1. Out-of-Pocket Pay

One MLB organization, the Toronto Blue Jays, took the effects of SAPA to heart. Conscious that SAPA could temper the appeal of playing minor league baseball, the Blue Jays’ president, Mark Shapiro, declared a 50% pay raise “for any player . . . from the lowest rung in the Dominican Summer League to the highest level at [AAA].”¹¹³ Since more minor league players than ever are insulated by the fallback of a college education, Shapiro hoped to curtail the risk of players leaving baseball prematurely or pursuing outside careers with more stable and quality pay.¹¹⁴ He also recognized the “incredibly strong business imperative to pay players more.”¹¹⁵ That is, a player who worries less about money can eat healthier, sleep better, and practice more.¹¹⁶ In turn, the organization stands to make an exceptional return on its investment as better-groomed players reach and contribute to the parent club.¹¹⁷

The raise, unfortunately, is still a far cry from a truly sustainable and livable wage; however, on the bright side, players have seen pragmatic benefits that they previously considered luxuries. Of note, the raise effectively “allow[s] a player to go from sharing a four-bedroom apartment to a two-bedroom.”¹¹⁸ Further, it eliminates the need for players to seek in-season, part-time work like driving for DoorDash, Uber, or Lyft—a prevalent means to supplement inadequate

¹¹² See Normandin, *supra* note 65; see also David Waldstein, *M.L.B. Said to Be Pushing for Overhaul of Minor Leagues*, N.Y. TIMES (Oct. 18, 2019), <https://www.nytimes.com/2019/10/18/sports/baseball/minor-league-changes.html>.

¹¹³ Baer, *supra* note 15 (“A happy workforce is a productive workforce.”).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

weekly earnings during off-hours.¹¹⁹ Unfortunately, to date, the Blue Jays are the lone MLB guardian paying sizable out-of-pocket wages and longing for the preservation of its minor leaguers.¹²⁰ While it does not yet appear that other teams have taken steps to follow suit in this regard, it looks all but certain that modifications to the current minor league system *are* impending in connection with SAPA—though far less altruistic ones, to be sure.

2. Systematic Overhaul

As external lobbying in support of SAPA came and went, MLB began contemplating a radical internal restructuring.¹²¹ The league is exploring the possibility of using the expiration of its current operating agreement with 160 affiliated minor league teams, set to expire in 2020, to reorganize the affiliated system and reform the working conditions of minor league players.¹²² This experiment would include the following: (1) a cut to the amateur draft; (2) an upgrade of facilities (from MiLB to MLB standards); (3) an adjustment of teams' geographical proximity to one another; (4) an improvement in transportation and hotel accommodations; and, most pertinent to this Comment, (5) *an increase in compensation*.¹²³

But concerns with the proposal have proponents of higher pay treading lightly. Notably, it is unclear how an increase in compensation factors into a system with a SAPA-imposed federal ceiling and *Senne's* evolving state wage pursuits. Additionally, the current proposed plan would facilitate widespread UPC terminations, “eliminat[ing] roughly 1,400 players, . . .”¹²⁴ and only benefit the remaining minor leaguers. Further, it would be fatal to many minor league owners because the proposal directly affects the cachet and financial attraction of owning and operating a team—will it still exist tomorrow?¹²⁵ Along with the forty-two teams directly targeted in the restructuring,¹²⁶ many others stand to “wither away” per the financial inability to sustain the new

¹¹⁹ Stephanie Apstein, *Meet Peter Bayer, the Minor Leaguer Working for DoorDash During Baseball's Coronavirus Suspension*, SPORTS ILLUSTRATED (Mar. 14, 2020), <https://www.si.com/mlb/2020/03/14/minor-leaguer-doordash-coronavirus> (“Like many minor league baseball players, Bayer earns the bulk of his income from doing things other than playing baseball.”).

¹²⁰ See Baer, *supra* note 15.

¹²¹ See Waldstein, *supra* note 112; see also Brown, *supra* note 13.

¹²² Waldstein, *supra* note 112.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

model moving forward.¹²⁷ A revenue-sharing plan has been rumored to offset this possibility,¹²⁸ but the credibility of that intention remains to be seen.

The origins of this hypothesized new model stem, in part, from MLB's response to the highly criticized lack of player compensation and substandard work environments that *Senne* voiced and SAPA silenced.¹²⁹ President and CEO of MiLB, Pat O'Connor, commented on the budding dissonance between MLB and MiLB, "There's an array of emotion. [We're] concerned. [We're] angry. [We're] disappointed. We thought we had a partnership . . . stronger than this."¹³⁰ Blaming MiLB, MLB maintains that MiLB has "indicated that [it] would prefer to simply eliminate franchises."¹³¹ rather than "[foot] cost increases for improving facilities, working conditions and pay."¹³² In essence, MLB cornered MiLB between a rock and a hard place: it must either pour the limited funds it has into saving teams or cut them entirely.

Maybe, then, with so many players looking for a place to play, independent professional baseball could become a haven for unemployed affiliated players. Perhaps SAPA did nothing at all to "save" minor league baseball except for unintentionally sanctify the independent circuit. While it is an inviting consolation, the implications of SAPA appear much graver for the independent side of the ledger—and they come without any opportunity for out-of-pocket compensation or showy restructuring efforts to cushion the fall.

B. *Death to Indy Ball*

An independent track that is deprived of significant overhead capital is naturally confronted with a much bleaker outlook in response to SAPA: its mortality.¹³³ Unlike affiliated players provided a marginal increase in monthly salary under SAPA, independent professional players are entitled to a much bigger jump in pay because their baseline earnings are less than that of their affiliated counterparts.¹³⁴ As part of

¹²⁷ *Id.*

¹²⁸ Waldstein, *supra* note 112.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *MLB Says It is Committed to Protecting Minor League Teams*, STAR TRIBUNE (Dec. 28, 2019), <https://www.startribune.com/mlb-says-it-is-committed-to-protecting-minor-league-teams/566538502>.

¹³² *Id.*

¹³³ See J.J. Cooper, *End Of Indy Leagues?*, BASEBALL AMERICA (March 22, 2018, 11:21 AM), <https://www.baseballamerica.com/stories/save-americas-pastime-act-could-wound-or-kill-indy-leagues>.

¹³⁴ Normandin, *supra* note 65.

the “small business side of baseball,”¹³⁵ the independent leagues are quite vulnerable to any mandated increase in wages; owners are not equipped to pay their players a minimum wage, federal or state.¹³⁶ The first domino fell in November of 2019 when the five-team Canadian-American Association merged with the nine-team Frontier League¹³⁷—a “major shakeup in the independent baseball landscape.”¹³⁸ For better or worse, it is apparent that Indy Ball was a more stable entity *without* SAPA.¹³⁹

While SAPA is merely a “safe harbor” at present—allowing teams to benefit from it if they so choose—it would have devastating consequences on independent organizations if it were made an affirmative requirement.¹⁴⁰ Factoring in the promise of *Senne’s* ongoing state-law efforts and MLB’s proven and unrelenting indifference toward the indispensability of its minor league system, a concerted effort by MLB to make SAPA mandatory is foreseeable.¹⁴¹ If so, this obligation would drive “most, if not all, of the independent leagues out of business.”¹⁴² The Frontier League provides players a meager salary of \$725 per month,¹⁴³ meaning that it would have to raise its wages by 60% to reach the \$1,160 standard set by SAPA—an unrealistic expectation.¹⁴⁴ Intriguingly, the Atlantic League generates enough revenue such that it is “unlikely to see its salary structure altered significantly under the new setup,” and could plausibly seek to monopolize the independent landscape by poaching newly unemployed players and paying them higher wages.¹⁴⁵ But aberrations aside, independent baseball does not

¹³⁵ *Id.*

¹³⁶ *Id.* (“[T]he salary caps for entire [independent] teams could very well be less than what some people reading this sentence make in a year.”).

¹³⁷ Chad Lindskog, *Frontier League Announces Merger with Can-Am League*, EVANSVILLE COURIER & PRESS (Oct. 16, 2019, 3:30 PM), <https://www.courierpress.com/story/sports/baseball/otters/2019/10/16/frontier-league-announces-merger-can-am-league/3977863002>.

¹³⁸ Ballpark Digest Editors, *Can-Am League, Frontier League Merger Announced*, BALLPARK DIGEST (Oct. 16, 2019), <https://ballparkdigest.com/2019/10/16/can-am-league-frontier-league-merger-announced>.

¹³⁹ See Cooper, *supra* note 133.

¹⁴⁰ Nathaniel Grow, *The Save America’s Pastime Act: Special-Interest Legislation Epitomized*, 90 U. COLO. L. REV. 1013, 1044 (2019).

¹⁴¹ See *id.* at 1015–16.

¹⁴² *Id.* at 1043.

¹⁴³ Normandin, *supra* note 65.

¹⁴⁴ See Grow, *supra* note 140, at 1043–44.

¹⁴⁵ Normandin, *supra* note 65 (“[T]he Atlantic League is still succeeding because it generated enough revenue to pay players and deal with workmen’s compensation insurance. If anything, the league could grow as independent baseball competition begins to die, because now there will be voids around the country to fill.”).

compete with, or directly profit, MLB in any meaningful way.¹⁴⁶ Thus, it is seen as an unsympathetic victim to SAPA.¹⁴⁷ Death to independent baseball, from MLB's perspective, is like a tree falling in a forest—would it even make a sound?

The presumption that a corporate juggernaut like MLB has little pecuniary incentive to look out for the independent circuit is misguided, however. SAPA-induced extermination will have a disparate impact on small-town America—the heart of minor league baseball—where fewer MLB teams are located and the populations of minor league teams soar.¹⁴⁸ Of course, while MLB lobbyists did not factor in supporters of the “Sugar Land Skeeters or Sonoma Stompers,”¹⁴⁹ an estranged independent community—presumably those who are, first and foremost, fans of *baseball*—could have an indirect strain on the profitability of MLB.¹⁵⁰ Less contact with live baseball will flat-line enthusiasm in certain regions of the country, and the next generation of young players will begin choosing other sports at a rate even faster than they already are.¹⁵¹ MLB has had little reason to care much about its image or development in recent years because it has been relishing in record revenue and capitalizing on a generation of consumers who revere the sport with unconditional adoration.¹⁵² Now, however, fans and aspiring players alike have been enlightened to the exploitation characteristic of minor league baseball,¹⁵³ and only time will tell how that realization bodes for MLB.

¹⁴⁶ *Id.*

¹⁴⁷ *See id.*

¹⁴⁸ Cooper, *supra* note 133 (“I tell you who gets hurt the worst, it’s not only the players They lose out because they don’t have the opportunity. The other who loses out is these communities with 1,000 seat ballparks. It’s a cheap night out for local families.”).

¹⁴⁹ Normandin, *supra* note 65.

¹⁵⁰ Bob Cook, *Even More Reasons Why Children Are ‘Abandoning’ Baseball*, FORBES (May 22, 2015, 5:39 PM), <https://www.forbes.com/sites/bobcook/2015/05/22/even-more-reasons-why-children-are-abandoning-baseball/#14936fc23e82> (“[T]he Great American Pastime [may] become the Great American Niche.”).

¹⁵¹ *Id.*

¹⁵² Kari Paul, *Why the Biggest Battle in Major League Baseball is Happening Off the Field*, MARKET WATCH (Feb. 27, 2017, 10:36 AM), <https://www.marketwatch.com/story/5-ways-mlb-is-trying-to-get-younger-fans-interested-in-baseball-2017-02-22>.

¹⁵³ Dirk Hayhurst, *An Inside Look into the Harsh Conditions of [MiLB]*, BLEACHER REPORT (May 14, 2014), <https://bleacherreport.com/articles/2062307-an-inside-look-into-the-harsh-conditions-of-minor-league-baseball>.

2020]

COMMENT

537

Though the downstream appraisal of MLB misfeasance is speculative for now, the uncertainty presently surrounding Indy Ball only crystallizes the facade of SAPA.¹⁵⁴ As the state of independent baseball buoys, those that value the sport as entertainment (fueling the origins of the Seasonal Exemption, to begin with) are, for the first time, forced to consider the underlying compensatory shortcomings of those who actually *do* the entertaining: the players. The eradication of Indy Ball altogether—along with its invisible conditions—could be cleansing for the sport writ large,¹⁵⁵ but its demise would undoubtedly create large “voids around the country” for legions of devoted baseball fans.¹⁵⁶ Forever subjected to the hypocrisy of a law that proclaims to *save* baseball, MLB would, without reservation, bear that cross.¹⁵⁷

VI. CONCLUSION

MLB has been fluent in profit for well over a century, but few realized it had the insensitivity to tyrannize its very own players. Most notably, MLB snaked the passage of misleading federal legislation titled “Save America’s Pastime Act” as a proxy for magnificent greed at the expense of its minor league system. And while victory at the federal level for pay-protesting litigants has become all but futile, state wage laws may prove a viable alternative for those represented in *Senne*.

But, win or lose, SAPA has accelerated the denigration of minor league baseball and given rise to turmoil on *both* sides of the ledger. The possibility of elimination confronts a major portion of the independent track, meaning less baseball to be celebrated nationwide and even fewer opportunities for players to make it big. Moreover, the affiliated track is unlikely to bridge that gap as it is slated for considerable downsizing in the coming years.

Despite all this, fans of the game should look fondly upon the grit exemplified by its minor leaguers in the face of a self-indulgent parent company. By utterly failing to account for and appropriately value its future players, MLB has forsaken a “priceless” maxim long preceding even our national pastime: *know thyself*.

¹⁵⁴ Normandin, *supra* note 65.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *See id.*