AMATEUR DRAFT "SIGNING BONUS POOLS": THE LATEST INEQUITY MADE POSSIBLE BY BASEBALL'S ARCHAIC ANTITRUST EXEMPTION

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INTRODUCTION

For decades, Major League Baseball ("MLB") has continually attempted to lower the amount of "signing bonus" money given to players selected in its annual draft. Considering these young amateurs have not played a single professional inning at the time they sign their first MLB contracts, the idea of doling out millions of dollars based solely on future potential has historically made team owners uneasy. However, history demonstrates that these owners simply can't help themselves when the most promising amateur talent becomes available, as signing bonuses have continued to climb in spite of efforts to suppress them. In 2011, MLB owners and the players union collectively introduced the concept of "Signing Bonus Pools," which create a *de facto* fixed amount teams can spend annually on amateur draft picks before incurring significant penalties. For well over a century, baseball has "painted the corners" of permissible and impermissible anticompetitive conduct; this Note argues the Signing Bonus Pools are "just a bit outside"[1] the acceptable boundaries of federal antitrust and labor policy.

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Part I of this Note describes the process of baseball's amateur draft and how it affects draftees' ability to negotiate the terms of their first MLB contract. Part II traces baseball's historical attempts to curb escalating bonus figures given to these players and details the latest attempt via the Signing Bonus Pool system. Part III is an extensive history of the evolution of baseball's judicially crafted exemption from the antitrust laws that generally prohibit anticompetitive conduct, followed by an examination in Part IV of the scope of the undefined contours of this unique exemption. Part V turns to labor law, briefly discussing the tension between federal antitrust and labor policy and how these bodies of law frequently intersect in the professional sports context, focusing most closely on the "nonstatutory labor exemption" from antitrust law. Part VI pieces the aforementioned statutory and policy considerations together and argues that, but-for baseball's archaic antitrust exemption, the "Signing Bonus Pool" system included in the newest collective bargaining agreement would be invalid.

I. MAJOR LEAGUE BASEBALL'S AMATEUR DRAFT

The Rule 4 Draft, also often referred to as baseball's "amateur draft" or "first-year player draft," provides the process major league teams use to select amateur players and receive exclusive negotiating rights.[2] Each June, all major league teams partake in the Rule 4 Draft, selecting players in the reverse order of the teams' winning percentages from the previous year.[3] Players themselves do not declare for the draft; anyone can be selected as long as he[4] meets the eligibility criteria. Generally speaking, a player is eligible for selection in the Rule 4 Draft if he: (1) is a resident of the United States or Canada (including Puerto Rico);[5] (2) has never previously signed a Major League or Minor League contract; and (3) is either a high school player who has graduated and not yet attended college, a college player at least 21 years of age from a four-year school who has completed either junior or senior year, or a junior college player ("Juco"), regardless of how many years of school he has completed.[6]

When a team selects an eligible player, he is placed on that club's "Negotiation List," which grants the selecting team the right to negotiate exclusively with that player for a designated period of time.[7] For players who still retain eligibility to play college baseball, this exclusive negotiating period ends at midnight the following August 16; for players who cannot return to college baseball, the period closes one week prior to the next Rule 4 Draft.[8] If a drafted player does not sign before the exclusive negotiation period closes, he may be drafted again by any team in the next Rule 4 Draft for which he is

[1] MAJOR LEAGUE, Paramount Pictures (1989).

[2] Major League Rules, R. 4 (2008), *available at* http://www.bizofbaseball.com/index.php?option=com_content&view=article&id=4451:major-league-baseball-rules-2008 (last visited Dec. 4, 2013) (hereinafter "Major League Rules").

[3] *Id.* at 4(c).

[4] Only one woman has ever been selected in the Rule 4 Draft: Carey Schueler, daughter of Chicago White Sox General Manager Ron Schueler, was selected in the 43rd round in 1993. Schueler did not sign; instead she played college basketball. *Knuckleballers support Japanese girl*, MLB.com (Dec. 4, 2008), *available at* http://mlb.mlb.com/news/print.jsp?ymd=20081204&content_id=3702682&vkey=news_mlb&fext=.jsp&c_id=mlb. While there are no rules that specify only men can be drafted, the author for simplicity and consistency will use the masculine gender throughout.

[5] Major League Rules, R. 3(a) (concerning eligibility to sign Major League or Minor League contracts). Players are considered "residents" of the state where their high school or college is located, regardless of their place of birth. *Id.* at 4(a).

[6] Major League Rules, R. 3(a); *see also First-Year Player Draft Official Rules*, MLB.com, *available at* http://mlb.mlb.com/mlb/draftday/rules.jsp (last visited Dec. 4, 2013) (providing a concise summary).

[7] Major League Rules, R. 4(d), (e).

[8] *Id.* at 4(d).

eligible (although the same team cannot select him again unless the player consents and notifies baseball's Commissioner).[9] For college juniors or Juco players, this in all likelihood will be the next year's draft. High school players who do not sign and plan to attend a four-year college program, however, will not be eligible again for at least two more years.[10] Players who are eligible for the Rule 4 Draft but are not selected by any team are considered "free agents" and may sign with any Major or Minor League team after the draft concludes.[11]

Until the 2012 Rule 4 Draft, selectees could sign either major league contracts (placing them on the team's "40-man roster"[12]) or minor league contracts.[13] The type of contract signed had major financial implications: players who signed major league contracts received a substantially higher major league minimum salary[14] and began accruing major league "service time." Six years of service time entitled the player to become eligible for free agency.[15] Thus, teams typically offered major league contracts only to the best amateur players who would only need minimal time in the minor leagues before becoming major league contributors. On the other hand, teams could "reserve" players who signed minor league contracts for up to seven seasons in the minor leagues,[16] and players did not begin accruing MLB service until placed on the team's 40-man roster.

There are some exceptions,[17] but the combination of minor league "reserving" and major league "service time" could potentially allow a player to be bound to a franchise for over a decade before being

[9] *Id.* at 4(h).
[10] *Id.* at 3(a).
[11] *Id.* at 4(i).
[12] MLB teams are comprised of "25-man" and "40-man" rosters. The 25-man roster consists of players who are eligible to play for the MLB team (often referred to as the "MLB roster" or "active roster"). The 40-man roster consists of the 25-man roster plus an additional 15 players who are reserved to the team but not on the current MLB roster, which typically consists of highly regarded minor league players.
[13] *See* Part II.C., *infra*. Rule 4 Draftees are now only allowed to sign minor league contracts.
[14] Minor league salaries are not readily shared but are typically only a few thousand dollars per month, depending on what level of the minor leagues the player is currently at. *See, e.g., For Padres farmhands, work doesn't end on field*, MLB.com (Jan. 9, 2013), *available at* http://sandiego.padres.mlb.com/news/article.jsp?ymd=20130109&content_id=40900554 (estimating the salary for first-year players at about $1,110 a month); *see also Pay Structure of Minor League Baseball Players*, National Sports and Entertainment Law Society (Mar. 17, 2010), *available at* http://nationalsportsandentertainment.wordpress.com/2010/03/17/pay-structure-of-minor-league-baseball-players (estimating minor league salaries between $850 per month and $2,150 per month for Class A players and Triple A players, respectively). In contrast, the major league minimum in 2012 was $480,000 for the season. *See* 2012 MLB CBA Article VI, *available at* http://www.mlb.com/pa/pdf/cba_english.pdf (last visited Dec. 4, 2013).
[15] *See* 2012 MLB CBA, *supra* n. 14, at Article XX.
[16] MINOR LEAGUE UNIFORM PLAYER CONTRACT, § VI, *available at* http://www.bizofbaseball.com/index.php?option=com_content&view=article&id=4451:major-league-baseball-rules-2008&catid=7:selection-of-docs&Itemid=25 (last visited Dec. 4, 2013) (see Attachment 3 of the Major League Rules.).
[17] Players who spend four seasons in a team's minor league system must be added to the team's 40-man roster or they become eligible for the "Rule 5 Draft," meaning they can be selected by another team and placed on that team's active 25-man roster. *See* Major League Rules, Rule 5(c). The selected player returns to his previous team if he does not stay on his new team's 25-man roster for the entirety of the ensuing season. Players drafted out of high school receive an additional year (fifth season) before becoming Rule 5 eligible.

allowed to freely negotiate a contract as a free agent.[18] Because of low salaries and limited bargaining power, amateur draftees for years sought lucrative "signing bonuses"—one-time bonus payments in addition to their regular salary—before signing their first contract with the team. For decades, MLB has collectively made efforts to keep such bonuses as low as possible.

II. BASEBALL AND AMATEUR SIGNING BONUSES

The Rule 4 Draft was implemented in 1965, to provide the league with competitive balance and to help curb what many within baseball perceived as "out of control" amateur signing bonuses.[19] In the late 1930s and early 1940s, before the advent of the Rule 4 Draft, teams directly competed for young amateur players, signing them directly out of high school or early in their college careers.[20] Prior to World War II, competition was not intense, and teams only had to offer modest bonuses—if any[21]—to obtain amateur players. However, after World War II, baseball entered a new era, and competition for amateur talent suddenly became fierce.[22] Signing bonuses to sway the best young players to one franchise over another began to sharply escalate, starting in 1941 with the Detroit Tigers signing outfielder Dick Wakefield for $52,000.[23] Thus began the era of the "Bonus Babies,"[24] as well as the origins of baseball owners' historical attempts to curb the amount of money being doled to young players who had yet to play one inning of professional baseball.

A. Pre-1965 Efforts to Curb Signing Bonuses

In 1946, baseball made its first effort to combat large signing bonuses by instituting the "bonus rule."[25] Simply stated, the bonus rule prohibited teams from stashing players within their minor league teams if they received a signing bonus in excess of a fixed amount, typically between $4,000 and $6,000.[26] Such players had to be on a major league roster and could not be sent to the minor leagues without first being placed on waivers, becoming available to other teams.[27] The bonus rule was initially in effect from 1946 to 1950 but was difficult to enforce; rumors of under-the-table payments to players or

[18] For example, under the current system, a college player drafted and signed in 2012 could be reserved until 2015, at which point the team would need to add him to the 40-man roster or risk losing the player in the next Rule 5 Draft. The player could spend another three seasons reserved on the 40-man roster until 2018, at which point he would have to be added to the 25-man roster or released. After six years of service time on the 25-man roster, the player would be first eligible for free agency at the conclusion of the 2024 season—12 years after being drafted.

[19] Staudohar, Paul D., *et. al.*, *The Evolution of Baseball's Amateur Draft*, 15 NINE: A Journal of Baseball History and Culture 27, 29 (2006).

[20] Steve Treder, *Cash in the Cradle: The Bonus Babies*, The Hardball Times (Nov. 1, 2004), *available at* http://www.hardballtimes.com/main/article/cash-in-the-cradle-the-bonus-babies.

[21] In 1936, the Cleveland Indians famously signed future Hall of Famer Bob Feller straight out of high school for one dollar. Allan Simpson, "Bonus Concerns Created Draft; Yet Still Exist," Baseball America (June 4, 2005) (on file with the author).

[22] *Id.*

[23] *Evolution of the Bonus Record*, Baseball America (June 4, 2005), (hereinafter "Baseball America, *Evolution*") (on file with the author).

[24] Treder, *supra* note 20.

[25] Simpson, *supra* note 21.

[26] *Id.*

[27] *Id.*

their family members were common.[28] In spite of the bonus rule, in 1950, Pittsburgh Pirates General Manager Branch Rickey gave left-handed pitcher Paul Pettit a $100,000 signing bonus, the first six-figure bonus in baseball history.[29]

Baseball owners abandoned the bonus rule at their 1950 Winter Meetings, replacing the rule in 1953 with a stronger version: players receiving bonuses in excess of a fixed amount were required to be immediately placed on the team's major league roster for two calendar years.[30] As before, these players could not be sent to the minor leagues without first clearing waivers.[31] A few players signed during this period emerged as superstars, such as Al Kaline, Harmon Killebrew, and Sandy Koufax.[32] The "Bonus Baby" era also saw one of the greatest signing periods of young African American and Latin American talent in baseball history, including Hall of Famers Frank Robinson, Roberto Clemente, Willie McCovey, Bob Gibson, Billy Williams, and Orlando Cepeda. However, none of these players received a signing bonus large enough to trigger the bonus rule.[33]

The reformed bonus rule still proved difficult to enforce, as teams still circumvented the rule with secret payments, fake injuries, or in the case of Phillies pitcher Tom "Money Bags" Qualters, spent entire seasons on a major league roster without playing a single inning.[34] The rule lasted until 1957, when it was abolished and replaced with an unrestricted draft of first-year players on minor league rosters.[35] Players who signed as free agents after the 1958 season were eligible for this "Rule 5 Draft" if they were not placed on the team's 40-man roster following their first season.[36] Players who were taken in the Rule 5 Draft had to be kept on that new team's 25-man roster the following season.[37]

From 1958-63, teams spent an estimated $45 million on bonuses and first-year player salaries.[38] In 1964, the Los Angeles Dodgers signed outfielder Rick Reichardt for a then-record $205,000.[39] The following year, MLB instated the amateur draft, both to provide competitive balance to the league as well as to help curb "out of control" amateur signing bonuses.[40] On June 8, 1965, the Kansas City Athletics

[28] *Id*. For example, rumor has it the Boston Braves signed future Hall of Famer Eddie Mathews for an amount below the bonus limit, but as part of the deal, the team also hired Mathews' father as a scout and bought a home for Mathews' mother.

[29] *Id*. Pettit ended his career three years later with a 1-2 record, having pitched in twelve games.

[30] Treder, *supra* note 20; *see also* Simpson, *supra* note 21.

[31] Simpson, *supra* note 21.

[32] Treder, *supra* note 20.

[33] *Id*.

[34] *Id*. One of the more "scandalous episode[s]" of the era involved Kansas City Athletics infielder Clete Boyer, who signed a Bonus Baby contract in 1955 and played just under two underwhelming years with the major league club. Then, just days before the bonus rule restrictions expired in June 1957, Boyer was sent to the New York Yankees as the "player to be named later" in a trade that had been consummated the previous winter. The rest of the American League strongly objected, suspecting the Yankees had circumvented the bonus rule by stashing their player on Kansas City's roster. Nonetheless, the commissioner approved the trade, thus beginning a decades long tradition of Kansas City serving as a *de facto* minor league affiliate for the rest of Major League Baseball. *See* Beltran, Carlos; Damon, Johnny; Greinke, Zack.

[35] Simpson, *supra* note 21.

[36] *Id*.

[37] *Id*.

[38] *Id*.

[39] Baseball America, *Evolution*, *supra* note 23. Reichardt played ten seasons, hitting 116 home runs with a career .261 average.

[40] Staudohar, *supra* note 19 at 29.

chose outfielder Rick Monday with the first ever baseball amateur draft selection.[41] Monday signed for approximately $104,000, nearly half of what Reichardt received the year before.[42] No player would surpass the $200,000 bonus figure again until 1979.[43]

B. Signing Bonuses After 1965

For the first 25 years of the Rule 4 Draft, the issue of signing bonuses was "rarely discussed . . . as draft pick compensation remained at tolerable levels."[44] However, beginning in the 1990s, signing bonuses again started to escalate as highly enviable amateur talent began to use the threat of returning to college baseball if teams did not meet their contract demands.

In the 1990s, a pair of Scott Boras' clients helped break the $1 million bonus record with such threats. In 1990, the defending champion Oakland Athletics selected high school pitcher Todd Van Poppel fourteenth overall; several lesser teams passed on Van Poppel because they feared they could not pay enough to lure him away from a scholarship offer to pitch for the University of Texas.[45] Oakland did indeed sign Van Poppel with a $1.2 million major league contract, including a $500,000 signing bonus.[46] The following season, the New York Yankees signed high school pitcher Brien Taylor to a minor league contract with a $1.55 million bonus, the first minor league seven-figure bonus.[47] Taylor—or allegedly, his mother—insisted in negotiations that the Yankees match Van Poppel's record sum from the previous year, using as leverage the threat of playing college baseball and re-entering the draft in the future.[48] Throughout the 1990s, teams continued to establish new bonus records: infielder Josh Booty signed for $1.6 million in 1994; pitchers Kris Benson for $2 million in 1996 and Rick Ankiel for $2.5 million in

[41] *Id*. Monday hit 241 home runs and batted .264 over the course of an 18-year career, most fondly remembered for preventing two protestors from burning the American flag in the outfield during a 1976 game at Dodger Stadium.
[42] *Id*.
[43] Baseball America, *Evolution*, *supra* note 23.
[44] Bobby Hubley, *Signing Bonuses & Subsequent Productivity – Predicting Success in the MLB Draft*, HAVERFORD COLLEGE DEPARTMENT OF ECONOMICS (Spring 2012), *available at* http://triceratops.brynmawr.edu/dspace/handle/10066/8212. One notable exception would be Bo Jackson, the Heisman-winning Auburn University running back who signed a then-record, three-year $1.066 million major league contract (of which $100,000 was considered the bonus, the rest considered major league salary) with the Kansas City Royals in 1986. Jackson was also the first overall pick of the 1986 NFL draft, but rejected the Tampa Bay Buccaneers' reported $7 million contract offer to instead play baseball. *See Bo Jackson Takes Royals Over N.F.L.*, N.Y. TIMES (June 22, 1986), *available at* http://www.nytimes.com/1986/06/22/sports/bo-jackson-takes-royals-over-nfl.html. For another example of Tampa Bay's sports futility, *see* Part IV.A., *infra* (discussing Tampa Bay's decades-long courtship of a professional baseball team).
[45] John C. Graves, *Controlling Athletes with the Draft and the Salary Cap: Are Both Necessary?*, 5 Sports Law. J. 185, 186 (1998).
[46] Baseball America, *Evolution*, *supra* note 23. Van Poppel ended his career in 2004 with a career record of 40-52 and a 5.58 earned run average.
[47] *Id.*
[48] Graves, *supra* note 45 at 186-87*; see also* Jeff Passan, *The arm that changed the Major League draft*, Yahoo! Sports (June 5, 2006), *available at* http://sports.yahoo.com/mlb/news?slug=jp-taylor060506. Taylor struggled with shoulder injuries and never pitched in the Major Leagues; Scott Boras in 2006 said of him, "still to this day, [Taylor] is the best high school pitcher I've seen in my life." Mike Axisa, *Looking Back: The Brien Taylor Story*, Fangraphs (Jan. 4, 2012), *available at* http://www.fangraphs.com/blogs/index.php/looking-back-the-brien-taylor-story/.

1997; outfielder Corey Patterson for $3.7 million in 1998; and outfielder Josh Hamilton for $3.96 million in 1999.[49]

Just two weeks before the 2000 Rule 4 Draft, MLB's vice president of baseball operations Sandy Alderson called a meeting of scouting directors to address the skyrocketing bonuses given to amateur draftees.[50] While that year's number one selection received about one million dollars less than Hamilton the prior year,[51] the Chicago White Sox nonetheless signed Stanford outfielder Joe Borchard for $5.3 million, yet another record bonus at the time.[52] One year later, the Chicago Cubs and Texas Rangers signed pitcher Mark Prior and infielder Mark Teixeira, respectively, to major league contracts worth a combined $20 million.[53]

Teams offered these escalating bonus figures despite "slot recommendations" they had been receiving from MLB Commissioner Bud Selig. "Slot recommendations" are suggested bonus amounts corresponding to where the draftee was picked, with earlier round selections receiving larger suggested bonuses. Teams regularly spent much more than the suggested amounts; in 2007, teams spent 30% more in the first round of the amateur draft than recommended by the Commissioner, and by 2011, that figure had doubled to 60%.[54] In 2009, Selig strongly expressed his desire for a "hard slotting" system in the next collective bargaining agreement between the owners and players, which would make the slot "recommendations" fixed and non-negotiable. "[W]e need slotting," he said in an interview. "There is no question about it. . . . [W]e're going to have slotting."[55]

C. "Signing Bonus Pools" and the 2012 Collective Bargaining Agreement

Bud Selig did not get slotting. However, MLB's latest Collective Bargaining Agreement ("2012 CBA"), valid through December 1, 2016, does drastically impact the ability of draft picks to negotiate signing bonuses.

Beginning with the 2012 CBA, every pick in the first ten rounds of the Rule 4 Draft is assigned a dollar value, and prior to each draft, every MLB team is assigned a "Signing Bonus Pool" that is calculated by adding up the total value of the picks each team possesses.[56] For example, in the 2012 Rule 4 Draft, with thirteen picks in the first ten rounds, the Minnesota Twins had the highest Signing Bonus

[49] Baseball America, *Evolution*, *supra* note 23.

[50] Simpson, *supra* note 21.

[51] *Id*. Adrian Gonzalez received a $3 million signing bonus from the Florida Marlins after being drafted first overall in 2000.

[52] *Id*. Borchard's major league career ended in 2007, with 26 home runs and a .205 batting average in over 800 plate appearances.

[53] *Id*.

[54] Dustin Palmateer, *Sizing Up the CBA Again*, Baseball Prospectus (Feb. 28, 2012), *available at* http://www.baseballprospectus.com/article.php?articleid=16111.

[55] John Manuel, *Selig Again Comes Out Strong For Slotting*, Baseball America (Oct. 9, 2009), *available at* http://www.baseballamerica.com/blog/draft/2009/10/selig-again-comes-out-strong-for-slotting/.

[56] *Summary of Major League Baseball Players Association-Major League Baseball Labor Agreement*, MLB.com, http://mlb.mlb.com/mlb/downloads/2011_CBA.pdf (hereinafter "MLB CBA Summary"). In 2012, the predetermined value of the first overall pick was $7.2 million; the 300th pick was valued at $125,000. *2012 Aggregate Bonus Pools*, Baseball America, *available at* www.baseballamerica.com/blog/draft/2012/02/2012-aggregate-bonus-pools (Feb. 20, 2012) (hereinafter "Baseball America Aggregate Bonus Pools").

Pool," totaling $12,368,200.[57] The Los Angeles Angels of Anaheim, with only eight picks in the first ten rounds, had the lowest Signing Bonus Pool at just $1,645,700.[58] In the 2013 Rule 4 Draft, the Houston Astros led all teams with a Signing Bonus Pool of $11,698,800; the Washington Nationals had the smallest at $2,737,200.[59]

The Signing Bonus Pools represent a soft cap on the amount of money each team can spend on signing bonuses for players selected in the first ten rounds of the Rule 4 Draft. Teams are allowed to exceed their Signing Bonus Pool threshold, but they are penalized heavily for doing so, both financially and by surrendering future draft picks.[60] Penalties increase in severity depending on the amount a team spends over its Signing Bonus Pool:

Excess Spending	**Financial Penalty**	**Forfeited Draft Picks**
Between 0-5%	75% of overage	None
Between 5-10%	75% of overage	Next draft's 1st round
Between 10-15%	100% of overage	Next draft's 1st and 2nd rounds
Over 15%	100% of overage	Next two draft's 1st and 2nd rounds[61]

Signing bonuses for players selected after the tenth round do not count against a team's Signing Bonus Pool as long as the player signs for under $100,000. If a team signs a player for an amount over $100,000, however, the overage counts against the team's Signing Bonus Pool.[62] MLB distributes the proceeds of these financial penalties to teams in accordance with its revenue sharing agreement, although teams exceeding their Signing Bonus Pools are ineligible to receive them.[63] Likewise, draft picks forfeited under this system are awarded to other MLB teams via lottery system, but teams that exceed their Signing Bonus Pools are ineligible to receive such picks.[64] Additionally, under the 2012 CBA, Rule 4 draftees are no longer allowed to sign major league contracts, which previously allowed teams to split up large signing bonuses over a term of years.[65] For example, under the old system in 2009, the Washington Nationals signed the first overall selection Stephen Strasburg to a four-year major league contract worth $15.1 million; however, the deal was structured where only $7.5 million of that sum constituted a "signing bonus."[66] The rest came in salary, payable over the course of the four-year contract. Under the 2012 CBA, teams no longer have the option to break up large signing bonus amounts over a period of years, but instead must pay them up front.

After announcing the new labor deal including these reforms, MLB labor executive Rob Manfred defended the Signing Bonus Pools as "economic reforms that we think will help our weakest clubs have

[57] *Id*. The Twins acquired the additional three draft picks as compensation for the loss of free agents Michael Cuddyer and Jason Kubel.

[58] *Id*. The Angels forfeited two selections by signing free agents Albert Pujols and C.J. Wilson.

[59] Jim Callis, *Draft Bonus Pools Rise 8.2 Percent*, Baseball America (Apr. 2, 2013), *available at* http://www.baseballamerica.com/draft/draft-bonus-pools-rise-8-2-percent.

[60] MLB CBA Summary, *supra* note 56, at 2.

[61] *Id*.

[62] *Id*.

[63] *Id*.

[64] *Id*. Odds of winning in this lottery system are to be based on the team's winning percentage and revenue from the prior MLB season.

[65] *Id*.

[66] *Nats, Strasburg beat deadline*, ESPN.com news services, (Aug. 18, 2009, 5:15 PM), *available at* http://sports.espn.go.com/mlb/news/story?id=4403920.

access to talent at a truly affordable price[.]"[67] In the 2012 Rule 4 Draft, the first draft under the new spending rules, overall spending totaled $207.8 million, an 11% decrease from the $233.6 million spent the previous draft.[68] Spending on first round selections dropped an even higher 17%, down from $89.5 million to $74.3 million.[69] Ten of MLB's thirty teams exceeded their Signing Bonus Pool amount, though none reached the second tier of penalties resulting in forfeited future draft picks.[70]

Most recently, spending in the 2013 Rule 4 Draft eclipsed $219 million, a 6% increase from the year before.[71] However, 2013 spending was still over $14 million less than spending in 2011, the last year without the Signing Bonus Pools.[72] Additionally, while spending rose 6%, the cumulative amount of Spending Bonus Pools of all teams rose 8.2% from the year before.[73] Thus, the moderate increase in 2013 actual spending did not keep pace with the increase in the allotted spending amount. Similar to the prior year, many teams went over their signing bonus pool amounts, but none reached the second tier of penalties.[74]While there have only been two Rule 4 drafts thus far with Signing Bonus Pools, the immediate impact is clear: the system has quickly and significantly curbed amateur spending, a goal that MLB has continued to seek for nearly eighty years.

III. BASEBALL AND THE ANTITRUST EXEMPTION

Under baseball's draft and minor league system, amateur players have little to no control over where they may sign their first contract, their initial salary, and the length of time before they can freely negotiate a new contract. MLB not only provides a single franchise with exclusive negotiating rights over a drafted player, but now, with the Signing Bonus Pool system, also greatly undermines the player's ability to negotiate a contract with that team. This, of course, is not unique to baseball, as every major professional sports league operates in a similar fashion.

Sports drafts and "reserving" players to a single franchise look like obvious violations of the Sherman Antitrust Act,[75] which generally prohibits business conduct that reduces competition or undermines the free market. Specifically, the legislation provides that "[e]very contract . . . or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal."[76] By assigning negotiation rights of a player to one team, whether through a draft or a reserve clause in the player's contract, the player is deprived of shopping the free market and awarding his skills to the highest bidder. The United States Supreme Court has held that antitrust law applies to the National Basketball Association ("NBA"),[77] the National Football League ("NFL"),[78] and professional boxing.[79]

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[67] Staff Report, *New Labor Deal Features Major Draft Changes*, Baseball America, (Nov. 22, 2011), *available at* www.baseballamerica.com/today/draft/news/2011/2612639.html.

[68] *Spending drops 11 percent overall*, ESPN.com (July 18, 2012), *available at* http://espn.go.com/mlb/story/_/id/8178376/spending-amateur-baseball-draft-drops-17-percent-first-round-11-percent-overall.

[69] *Id.*

[70] *Id.*

[71] Ronald Blum, *MLB draft spending up 6 percent this year*, Yahoo! News, (July 18, 2013), *available at* http://news.yahoo.com/mlb-draft-spending-6-percent-200727677.html.

[72] *Id.*

[73] Jim Callis, *Draft Bonus Pools Rise 8.2 Percent*, Baseball America (Apr. 2, 2013), *available at* http://www.baseballamerica.com/draft/draft-bonus-pools-rise-8-2-percent.

[74] Blum, *supra* note 71.

[75] Sherman Antitrust Act, ch. 647, 26 Stat. 209 (1890) (codified at 15 U.S.C. § 1-7).

[76] 15 U.S.C. § 1 (West 2012).

[77] Haywood v. Nat'l Basketball Ass'n, 401 U.S. 1204, 1205 (1971).

Lower courts, both state and federal, have held that the Sherman Act applies to other professional sports as well.[80] Baseball, however, is noticeably absent.

As discussed later in this Note, federal labor law generally protects professional sports from what would otherwise be obvious antitrust violations.[81] However, only baseball enjoys an additional layer of protection in the form of a unique exemption from antitrust law. This section analyzes in detail the "Baseball Trilogy" of cases that created and upheld this exemption multiple times throughout the 20th century, demonstrating its odd genesis and continued existence. Understanding the history of the exemption aids in defining its scope, which is necessary to determine whether anticompetitive conduct—such as the Signing Bonus Pool system—is permissible. Anticompetitive conduct that falls outside the boundaries of baseball's unique antitrust exemption loses considerable protection, becoming salvageable solely if certain labor law standards are satisfied.

A. *Federal Baseball*

The dispute that spawned baseball's antitrust exemption began with the "Baseball War" that took place between the established American and National Leagues (collectively the "Major Leagues") and the upstart Federal League in the 1910s.[82] The Federal League operated as a rival third league in direct competition with the Major Leagues; after just two seasons of play in 1914 and 1915, the Federal League had already swiped several Major League stars to their side with lucrative contract offers.[83] In order to maintain their supremacy, the Major Leagues bought out seven of the eight owners of Federal League teams, causing the Federal League to fold.[84] The eighth owner, Ned Hanlon of the Baltimore Terrapins, refused to accept the buyout and brought suit against the Major Leagues for conspiring to monopolize the business of baseball.[85]

The lawsuit found its way to the United States Supreme Court, where Justice Oliver Wendell Holmes, speaking for a unanimous court, held that professional baseball did not constitute "interstate commerce" and thus was not within the scope of the Sherman Act.[86] Justice Holmes described the business activity at the heart of the case as "giving exhibitions of base ball, which are purely state affairs."[87] While acknowledging that teams had to cross state lines to compete with one another, Justice Holmes found that "the transport [of ball players] is a mere incident, not the essential thing," and was "not enough to change the character of the business," which was to provide intrastate entertainment in the form of sporting exhibitions.[88] Additionally, the Court found that playing baseball was a "personal effort, not

[78] Radovich v. Nat'l Football League, 352 U.S. 445, 451-52 (1957).

[79] United States v. Int'l Boxing Club of N.Y., Inc., 348 U.S. 236, 240-41 (1955).

[80] *See* Gunter Harz Sports, Inc. v. United States Tennis Ass'n, 665 F.2d 222 (8th Cir. 1981) (tennis); Blalock v. Ladies Prof'l Golf Ass'n, 359 F. Supp. 1260, 1263 (N.D. Ga. 1973) (golf); Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club, Inc., 351 F. Supp. 462, 466 n. 3 (E.D. Pa 1972) (hockey).

[81] *See* Part V.A, *infra* (describing the "nonstatutory" labor exemption).

[82] *See* Roger I. Abrams, *Before the* Flood*: The History of Baseball's Antitrust Exemption*, 9 Marq. Sports L.J. 307, 307-08 (1999); Nathaniel Grow, *Defining the "Business of Baseball": A Proposed Framework for Determining the Scope of Professional Baseball's Antitrust Exemption*, 44 U.C. Davis L. Rev. 557, 566 (2010).

[83] Abrams, *supra* note 82, at 308.

[84] Grow, *supra* note 82 at 566; *see also* Fed. Baseball Club of Baltimore, Inc. v. Nat'l League of Prof. Baseball Clubs, 259 U.S. 200, 207 (1922).

[85] Grow, *supra* note 82, at 566.

[86] *Fed. Baseball*, 259 U.S. at 207-09.

[87] *Id.* at 208.

[88] *Id.*

related to production," and therefore did not constitute trade or commerce.[89] Justice Holmes' *Federal Baseball* opinion has been "widely disparaged" by courts and critics as poorly reasoned or even "ludicrous,"[90] but "when viewed in light of the business of professional baseball at the time the Supreme Court decided the case, and considering the Court's then-existing interstate commerce jurisprudence, the opinion becomes more reasonable [and] easier to understand."[91]

B. *Toolson v. New York Yankees*

A significantly less justifiable opinion came thirty-one years later when the Supreme Court revisited the issue of baseball and antitrust laws in *Toolson v. New York Yankees*.[92] In *Toolson*, the plaintiff was a New York Yankees minor league player who was frustrated over spending several seasons without promotion to the major league team.[93] Toolson was assigned to a minor league affiliate in 1950, refused join the team, and was subsequently blacklisted by all other baseball owners for doing so.[94] Toolson brought suit alleging an illegal restraint of trade in violation of the Sherman Act.[95]

In a one-paragraph *per curiam* opinion, the Court affirmed its previous *Federal Baseball* decision, holding that the sport was not within the scope of the Sherman Act.[96] The Court stated that it had been 31 years since the *Federal Baseball* decision, and Congress had not passed any corrective measures, noting that "if there are evils in this field which now warrant application to it of the antitrust laws, it should be by legislation."[97]

Most notably, the Court ended its opinion by holding that *Federal Baseball* was affirmed "so far as that decision determines that Congress had no intention of including the business of baseball within the scope of the federal antitrust laws,"[98] despite the fact that *Federal Baseball* made absolutely no mention of congressional intent. In fact, Justice Holmes' reasoning in *Federal Baseball* was that the sport was solely intrastate in nature and did not constitute interstate commerce,[99] which the *Toolson* dissent noted was clearly no longer the case.[100] One commentator has gone so far as to call *Toolson* "the greatest bait-and-switch scheme in the history of the Supreme Court."[101]

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[89] *Id.*

[90] *See* Grow, *supra* note 82, at 567 n. 51.

[91] *Id.* at 567-69. When reading *Federal Baseball*, one must keep in mind that it was decided during the *Lochner* era, when the Court interpreted Congress's Commerce Clause powers very narrowly. For example, just four years prior to *Federal Baseball*, the Supreme Court held that Congress did not have power under the Commerce Clause to prohibit the transportation of goods in interstate commerce produced using child labor. *See* Hammer v. Dagenhart, 247 U.S. 251 (1918).

[92] 346 U.S. 356 (1953).

[93] Grow, *supra* note 82, at 569.

[94] *Id.*

[95] *Toolson*, 346 U.S. at 362-63.

[96] *Id.* at 356-57.

[97] *Id.* at 357.

[98] *Id.*

[99] *Fed. Baseball*, 259 U.S. at 208-09.

[100] *See Toolson*, 346 U.S. at 357-58 (J. Burton, dissenting) (discussing the travel of baseball teams between states, "receipts and expenditures of large sums transmitted between states," fans traveling across state lines to attend games, radio and television programming that crossed state lines, advertising that crossed state lines, and baseball's "highly organized" minor league system across the country). *Toolson* was also decided well after cases such as

C. Intervening Non-Baseball Cases

Between 1953 and 1972, the Supreme Court confronted its *Federal Baseball* and *Toolson* precedents several times in disputes involving activities or sports other than baseball. For example, in a case involving a theater company just three years after *Toolson*, the Court described *Federal Baseball* as "dealing with the business of baseball, and nothing else,"[102] and construed *Toolson* to be "a narrow application of the rule of stare decisis."[103] In a companion case, the Court refused to extend baseball's antitrust exemption to professional boxing, stating that *Federal Baseball* was not applicable to other types of businesses built around live exhibitions of presentation or athletics.[104]

The Supreme Court also addressed baseball's exemption as it pertained to professional football and basketball during this time period. In *Radovich v. National Football League*, the Court extensively discussed *Federal Baseball* and *Toolson*, acknowledging that *Federal Baseball* was "of dubious validity," and if raised "for the first time upon a clean slate," the case would be decided differently.[105] The Court limited its baseball holdings to "the facts there involved, i.e., the business of organized professional baseball,"[106] and likewise refused to extend baseball's antitrust exemption to professional basketball several years later for the same reasons.[107]

D. *Flood v. Kuhn*

The most recent Supreme Court decision discussing baseball's antitrust exemption arose out of the struggles of Curt Flood, an outfielder traded by the St. Louis Cardinals to the Philadelphia Phillies after the 1969 season.[108] Flood, a fourteen-year veteran, was not consulted about the trade and only received formal notice after the teams finalized the deal.[109] Unable under the terms of his contract to play for any team except the Phillies, Flood sat out the 1970 season and filed suit in the Southern District of New York, alleging that his inability to consider offers from other teams violated federal and state antitrust law.[110] Both the district court and the Second Circuit held that, pursuant to *Federal Baseball* and *Toolson*, baseball's activities at issue were exempt from antitrust scrutiny.[111]

Justice Blackmun wrote the majority opinion for a divided 5-3 Court.[112] Blackmun's opinion—notable for its opening paean of the "national pastime"[113]—acknowledged that "[p]rofessional baseball is

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NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937), and Wickard v. Filburn, 317 U.S. 111 (1942), which greatly expanded Congress' Commerce Clause power.

[101] Kevin McDonald, *Antitrust and Baseball: Stealing Holmes*, 1998 J. Sup. Ct. Hist. 89, 100 (1998).

[102] United States v. Shubert, 348 U.S. 222, 228 (1955).

[103] *Id*. at 230.

[104] United States v. Int'l Boxing Club, 348 U.S. 236, 242 (1955).

[105] Radovich v. Nat'l Football League, 352 U.S. 445, 450-52 (1957).

[106] *Id*. at 451.

[107] *See* Haywood v. Nat'l Basketball Ass'n, 401 U.S. 1204, 1206 (1971).

[108] Flood v. Kuhn, 407 U.S. 258, 265 (1972).

[109] *Id.*

[110] *Id.* at 265-66.

[111] Flood v. Kuhn, 316 F. Supp. 271, 285 (S.D.N.Y. 1970); Flood v. Kuhn, 443 F.2d 264, 268 (2d Cir. 1971).

[112] Flood v. Kuhn, 407 U.S. 258, 285 (1972). Justice Powell recused himself from the vote because he owned approximately $44,000 in Anheuser-Busch stock, the beer company that owned the St. Louis Cardinals. BRAD SNYDER, A WELL-PAID SLAVE: CURT FLOOD'S FIGHT FOR FREE AGENCY IN PROFESSIONAL SPORTS 287 (2006).

[113] Part I of Blackmun's opinion includes a list of over eighty of the game's most celebrated players. *Flood*, 407 U.S. at 262-63. "The list seems endless," Blackmun would write. This author agrees. In fact, Justice White, a "no-

a business and it is engaged in interstate commerce,"[114] a direct renunciation of the primary reasoning of *Federal Baseball*. However, the Court recognized that the exemption was an "acceptance of baseball's unique characteristics and needs" and thus refused to overturn the half-century "aberration" on *stare decisis* grounds.[115] Despite acknowledging that the exemption had become "unrealistic, inconsistent, or illogical" since created in 1922 (especially considering the Court refused to extend the exemption to other professional sports), the Court nonetheless held that judicial overturn was improper in the face of "positive inaction" on the part of Congress.[116]

E. The Curt Flood Act of 1998

Over twenty-five years after the *Flood v. Kuhn* decision and just over one year after the death of Flood himself, President Clinton signed the Curt Flood Act of 1998 ("CFA"), a limited repeal of baseball's antitrust exemption.[117] Section (a) of the CFA allows major league baseball players to individually file antitrust suits against the league "to the same extent such conduct, acts, practices, or agreements would be subject to the antitrust laws if engaged in by persons in any other professional sports business" so long as the lawsuit "directly relates to or affects employment of major league baseball players[.]"[118]

Section (b), however, expressly prevents courts from relying on the CFA as a basis for an antitrust challenge relating to:

> "any conduct, acts, practices, or agreements of persons engaging in, conducting or participating in the business of organized professional baseball relating to or affecting employment to play baseball at the minor league level, **any organized professional baseball amateur or first-year player draft**, or any reserve clause as applied to minor league players[.]"[119]

Additionally, Section (b) expressly limits the CFA as it pertains to MLB's relationship agreement with minor league baseball affiliates, matters of franchise "expansion, location, or relocation, [or]. . . ownership issues," matters arising under the Sports Broadcasting Act of 1961, matters involving MLB's relationship with umpires, or the acts of "persons not in the business of organized professional major league baseball."[120] Thus, while the CFA rights some of the "Baseball Trilogy's" wrongs, it does not overrule those decisions in their entirety.

IV. SCOPE OF BASEBALL'S ANTITRUST EXEMPTION

While the Supreme Court has addressed baseball's antitrust exemption in three separate opinions, it has never specifically addressed its scope.[121] As a result, lower courts have struggled with how to

nonsense guy who refused to demean an opinion . . . with sports trivia," joined all of Blackmun's opinion except for Part I. Snyder, *supra* note 112, at 303. For a history of Blackmun's self-proclaimed "sentimental journey," see Roger I. Abrams, *Blackmun's List*, 6 Va. Sports & Ent. L.J. 181 (2007).

[114] *Flood*, 407 U.S. at 282.

[115] *Id*.

[116] *Id.* at 282-84.

[117] *See* 15 U.S.C. § 26b (West 2012).

[118] 15 U.S.C. § 26b(a).

[119] 15 U.S.C. § 26b(b)(1) (emphases added).

[120] 15 U.S.C. §§ 26b(b)(2)-(6).

[121] *See* Grow, *supra* note 82, at 561 n. 10 (listing cases).

construe the exemption and consistently apply it to various baseball activities, leading one commentator to conclude that the scope of the exemption is "whatever the reviewing court says it is."[122] A summary and critique of post-*Flood v. Kuhn* lower court decisions construing the exemption—some narrowly, some expansively—is provided in this section, as well as two intermediate approaches advocating for more rigorous, case-by-case examination.

A. Narrow Interpretation

Lower courts that have adopted narrow interpretations of baseball's antitrust exemption generally do so on the basis that Supreme Court precedent is limited to baseball's now-obsolete "reserve clause," which was a provision in every baseball contract that essentially bound that player indefinitely to one team.[123] These courts in essence argue that the Supreme Court has gradually chiseled away the broad holding of *Federal Baseball*—total exemption—by upholding *Federal Baseball* narrowly on the specific facts brought before the Court in *Toolson* and *Flood*.

For example, in *Piazza v. Major League Baseball*, two Pennsylvania investors sued MLB for preventing them and four other Florida investors from purchasing the San Francisco Giants and moving the team to Tampa Bay.[124] MLB's Ownership Committee, however, rejected the sale because a "serious question" allegedly arose in the investors' personal background check.[125] Instead, another investor bought the team for $15 million less than the plaintiffs had offered, and the team remained in San Francisco.[126] The plaintiffs claimed, in part, that MLB had "unlawfully restrained and impeded plaintiffs' opportunities to engage in the business of Major League Baseball," thereby violating the Sherman Act.[127]

The *Piazza* court ultimately denied MLB's motion to dismiss the antitrust claims.[128] In doing so, the court undertook a lengthy examination of the evolution of the exemption from *Federal Baseball* to *Toolson* to *Flood*, and found that "[i]n each of the three cases in which the Supreme Court directly addressed the exemption, the factual context involved the reserve clause."[129] Additionally, the *Piazza* court believed that the *Flood* Court had "stripped from *Federal Baseball* and *Toolson* any precedential value . . . beyond the particular facts there involved" because it explicitly repudiated that professional baseball did not constitute interstate commerce.[130] Furthermore, the *Piazza* court also noted several instances where the *Flood* Court referenced how baseball's "reserve system" enjoyed antitrust exemption, which the *Piazza* court believed "made clear" that baseball's antitrust exemption was limited solely to the reserve clause.[131] *Piazza* was the first decision where a court held that baseball's exemption was limited

[122] Joseph J. McMahon, Jr. & John P. Rossi, *History and Analysis of Baseball's Three Antitrust Exemptions*, 2 Vill. Sports & Ent. L.J. 213, 243 (1995).

[123] The reserve clause was removed in baseball's 1976 collective bargaining agreement, which for the first time granted free agency to players with at least six years of MLB service. *See* 1976-1979 Basic Agreement, *Article XVII – Reserve System* (1976), *available at* http://bizofbaseball.com/docs/1976CBA.pdf.

[124] Piazza v. Major League Baseball, 831 F.Supp. 420, 422 (E.D. Pa. 1993).

[125] *Id*. at 422-23. The asserted "clear implication" was that the owners believed the plaintiffs were involved in organized crime because of their Italian descent.

[126] *Id*. at 423.

[127] *Id*. at 423-24.

[128] *Id*. at 421.

[129] *Id*. at 433-35.

[130] *Id*. at 436.

[131] *Id*.

solely to the reserve clause, leading to numerous opinions from commentators as to the soundness of its reasoning.[132]

In addition to *Piazza*, two Florida state court decisions have also restricted baseball's antitrust exemption to the reserve clause. In 1994, the Florida Supreme Court held that baseball's antitrust exemption did not preclude the Florida Attorney General from issuing civil demands under state law to MLB as part of an investigation of the same failed sale at issue in *Piazza*.[133] The court held that "[b]ased upon the language and the findings in *Flood*, we come to the same conclusion as the *Piazza* court: baseball's antitrust exemption extends only to the reserve system."[134] Following this decision, a Florida state court of appeals also held that baseball's antitrust exemption only applied to the reserve system and did not protect MLB from allegedly blocking two efforts to relocate MLB teams to Tampa Bay, as well preventing an effort to locate an expansion team in Tampa Bay.[135]

While these opinions include some of the most exhaustive discussions of the language used in the Baseball Trilogy and the scope of its holdings, they are, to be frank, wrongly decided. While the reserve clause was the anticompetitive conduct at issue in *Toolson* and *Flood*, the Supreme Court did not provide any such limitation in their holdings. These lower courts that have narrowly interpreted the exemption also do not give enough weight to the broad language used in *Toolson* and *Flood* regarding congressional inaction after *Federal Baseball*. The famous "bait-and switch" Court in *Toolson*, for example, held that baseball was exempt "so far as . . . Congress had no intention of including the **business of baseball** within the scope of the federal antitrust laws."[136] Additionally, while *Flood* explicitly rejected the antiquated *Federal Baseball* justification that baseball was not engaged in interstate commerce, it nonetheless adhered to *Federal Baseball's* holding that baseball is **generally** exempt from antitrust scrutiny, making no "reserve clause" limitations.[137] Put another way, the *Flood* Court did not say "*Federal Baseball* was wrong, so we uphold solely on *stare decisis* grounds, limited to similar cases involving the reserve clause." Rather, it is as if the *Flood* Court said "*Federal Baseball* was wrong, but we nonetheless continue to uphold its validity because Congress has not decided otherwise." Since the *Flood* Court merely criticized *Federal Baseball's* reasoning but did not strip any of its precedential value, the narrowed interpretation advocated by these courts simply does not comport with the Supreme Court's decision in *Flood*.

B. Broad Interpretation

On the other side of the spectrum, a number of lower courts have construed baseball's antitrust exemption as broadly protecting the "business of baseball" without making much effort to meaningfully define its boundaries. For example, in an attempt to interpret the scope of the exemption six years after the *Flood* decision, the Seventh Circuit disregarded specific references to the reserve system in *Flood* and opined that "it appears clear from the entire opinions in the three baseball cases. . . that the Supreme Court intended to exempt the business of baseball, not any particular facet of that business, from the federal

[132] *See* Grow, *supra* note 82, at 589 n. 215 (listing commentators who believe *Piazza* was correctly decided); *Id. at* n. 217 (listing commentators who believe *Piazza* was incorrectly decided); *Id.* at 592-600 (arguing that *Piazza* was wrongly decided).

[133] Butterworth v. Nat'l League of Prof. Baseball Clubs, 644 So. 2d 1021, 1022 (Fla. 1994).

[134] *Id*. at 1025.

[135] *See* Morsani v. Major League Baseball, 663 So. 2d 653, 655-56 (Fla. Dist. Ct. App. 1995). Tampa Bay continued to seek a major league team and eventually received a franchise in 1995, after nearly three decades of effort. The expansion Tampa Bay Devil Rays began play in 1998.

[136] Toolson v. New York Yankees, Inc. 346 U.S. 356, 357 (1953) (emphasis added).

[137] Flood v. Kuhn, 407 U.S. 258, 284 (1972).

antitrust laws."[138] Four years later, the Eleventh Circuit similarly held in a one-paragraph opinion that "the exclusion of the business of baseball from the antitrust laws is well established" and reached activities that "plainly concern matters that are an integral part of the business of baseball."[139]

In another case, fans and business owners filed a federal class action lawsuit in the state of Washington after the 1994 players strike seeking monetary and injunctive relief.[140] The plaintiffs argued that the court should rely on the aforementioned *Piazza* and *Butterworth* decisions, which narrowly interpreted the antitrust exemption to matters involving the reserve clause.[141] The district court, however, rejected the reasoning of those cases as against the "great weight of authority" interpreting the scope of the exemption, and held the "business of baseball" was generally exempt.[142] The court acknowledged that a comprehensive analysis of the scope of the exemption was lacking, but made no attempts to define it.[143]

The Supreme Court of Minnesota also adopted a broad interpretation of baseball's exemption in a suit arising out of a proposed relocation of the Minnesota Twins to North Carolina in the late 1990s.[144] The court acknowledged that "the *Flood* opinion is not clear about the extent of the conduct that is exempt from antitrust laws," but nevertheless held that the "entire business of baseball" was exempt from antitrust scrutiny in conformance with the "great weight of federal cases."[145] Similarly, in a 2003 case involving MLB's proposed plan to contract two franchises, the Eleventh Circuit held that the exemption broadly protected the "business of baseball."[146] The plaintiff—the Attorney General for the state of Florida—acknowledged that the exemption covered more than just the reserve clause, but nonetheless argued that the alleged conduct was beyond its vague boundaries.[147] However, the court easily set aside the argument, stating that the applicability of the exemption in the present case was "so apparent" that further analysis was unnecessary.[148]

This line of cases demonstrates that the broad "business of baseball" approach provides little to no guidance on how to actually apply the standard; courts simply articulate that *Federal Baseball*, *Toolson*, and *Flood* exempt the business of the sport as a whole and move on without much analysis. Future courts should reject this dismissive approach and analyze the contours of the exemption more diligently, as it is well settled that implied exemptions from the Sherman Act must be narrowly construed.[149]

C. Intermediate Approaches

One intermediate approach between the narrow/broad extremes is the "unique characteristic and needs" standard, which two federal courts since the *Flood* decision have applied. These courts emphasize a singular passage in *Flood* where the Court stated that the baseball antitrust exemption "rests on a

[138] Charles O. Finley & Co. v. Kuhn, 569 F.2d 527, 541 (7th Cir. 1978).
[139] Prof. Baseball Schools and Clubs, Inc. v. Kuhn, 693 F.2d 1085, 1086 (11th Cir. 1982).
[140] McCoy v. Major League Baseball, 911 F.Supp. 454, 455-56 (W.D. Wash 1995).
[141] *Id*. at 457.
[142] *Id*.
[143] *Id*.
[144] Minn. Twins Partnership v. State ex rel. Hatch, 592 N.W.2d 847, 849 (Minn. 1999).
[145] *Id*. at 854-55.
[146] Major League Baseball v. Crist, 331 F.3d 1177, 1183 (11th Cir. 2003).
[147] *Id*.
[148] *Id*.
[149] *See* Group Life & Health Ins. Co. v. Royal Drug Co., 440 U.S. 205, 231 (1979) (collecting cases).

recognition and an acceptance of baseball's unique characteristics and needs."[150] For example, in *Henderson Broadcasting Corporation v. Houston Sports Association*, a local radio station alleged that the Houston Astros violated antitrust laws by awarding exclusive broadcast rights to another station.[151] The *Henderson* court noted a "perplexing" inconsistency in the Supreme Court's antitrust exemption jurisprudence: the Court in *Radovich* had refused to extend the exemption to professional football because the game broadcasts constituted interstate commerce, yet the Court still reaffirmed the baseball exemption in *Flood* despite explicitly acknowledging that the business of baseball comprised interstate commerce.[152] The court rectified this apparent contradiction by interpreting *Flood's* upholding of the exemption as protecting only the "unique characteristics and needs" of the game of baseball.[153] The court then held that broadcasting was "not central enough" to these unique characteristics to warrant inclusion under the exemption, as it was not "part of the sport in the way in which players, umpires, the league structure, and the reserve system are."[154]

Similarly, in *Postema v. National League of Professional Baseball Clubs*, a federal district court considered an antitrust challenge brought by a female minor league umpire.[155] Relying on the same *Flood* passage as the *Henderson* court, the *Postema* court ultimately held that the exemption did not "encompass umpire employment relations" because the alleged anticompetitive conduct towards umpires "is not an essential part of baseball."[156]

In addition to the "unique characteristics and needs approach," another commentator recently published a persuasive analysis determining the proper scope of baseball's antitrust exemption, which focuses on the "often overlooked" aspect of the Supreme Court's baseball trilogy, namely that baseball's antitrust exemption "protects only those activities directly related to the business of providing baseball entertainment to the public."[157] This approach relies on the "central focus" of Justice Holmes' *Federal Baseball* opinion, which emphasized that "exhibitions of base ball" were intrastate affairs put on for public exhibition.[158] The analysis then notes that *Toolson*—although unexpectedly adding a new "Congressional intent" justification for baseball's exemption—"nevertheless confirms the original scope of the *Federal Baseball* decision as being focused on the business of supplying baseball exhibitions to the public."[159] *Flood's* subsequent emphasis on *stare decisis* (as well as Justice Blackmun's "sentimental journey" of baseball's status as an American institution) thus "evidences an appreciation of the exemption's historical focus," which as first proffered by Justice Holmes nearly a century ago, was that the exemption shields the business aspects of baseball that directly relate to providing public entertainment.[160] Under this interpretive approach, activities "directly related" to this purpose—such as decisions regarding league rules, league structure, franchise ownership, broadcast agreements, and labor disputes—would fall under the exemption, but "tangential activities" such as licensing, concessions, or sponsorship agreements would not.[161]

[150] Flood v. Kuhn, 407 U.S. 258, 282 (1972).
[151] 541 F.Supp. 263, 264 (S.D. Tex. 1982).
[152] *Id.* at 268-69.
[153] *Henderson*, 541 F.Supp. at 268-269.
[154] *Id*.
[155] 799 F.Supp. 1475, 1477 (S.D.N.Y. 1992).
[156] *Id*. at 1488-89.
[157] Grow, *supra* note 82, at 568.
[158] *Id*.
[159] *Id.* at 578.
[160] *Id.* at 579-80.
[161] *Id*. at 605.

These intermediate approaches have not gained the similar judicial acceptance as the broad "business of baseball" approach.[162] In fact, the most recent judicial examination of baseball's antitrust exemption adopted the broad "business of baseball" approach (albeit after lengthy analysis) and explicitly refused to endorse the intermediate *Henderson* and *Postema* tests.[163] However, these intermediate analyses represent steps in the right direction for future courts because they acknowledge the irrationality of baseball's unique status and attempt to rectify this one-of-a-kind exemption not enjoyed by other professional sports. Thus, by adopting a plausible intermediate approach, lower courts can attempt to remedy unfair anticompetitive practices made possible by the archaic exemption—such as the Signing Bonus Pools—without having to openly (and controversially) call for the exemption's complete elimination.

V. THE NONSTATUTORY LABOR EXEMPTION FROM ANTITRUST LAW

At this point, any fan of American sports previously unfamiliar with antitrust law would undoubtedly be wondering the following: if baseball is the only professional sport that enjoys an exemption from the federal antitrust laws, how does every other major professional American sport also hold a draft of amateur players and lawfully limit rookie salaries? After all, the NFL, NBA, and NHL have held drafts since 1936, 1949, and 1963, respectively.[164] The short answer is that their legality is contingent on the collective bargaining process between team owners and the respective players unions. A discussion of this intersection between antitrust and labor law and policy follows, as an understanding of both the underlying purpose and elements of the "nonstatutory labor exemption" will show that MLB's Signing Bonus Pools are deficient from a labor law perspective.

There is an inherent tension between federal antitrust and labor law; antitrust law "promotes competition and condemns cooperation among competitors," while labor law "by contrast, encourages cooperation among competitors in employment."[165] This tension was rectified both statutorily and by common law in the form of exemptions of labor union activity from antitrust scrutiny.

First, the Norris-LaGuardia Act[166] and Sections 6 and 20 of the Clayton Act[167] form what is known as the "statutory labor exemption." The combined effect of these statutes is the immunization of labor unions from antitrust law; the Clayton Act declares that "labor of a human being is not a commodity or article of commerce," and the Norris-LaGuardia Act prevents federal courts from enjoining certain labor-related activities.[168] Thus, courts have held that "[t]hese statutes declare that labor unions are not combinations or conspiracies in restraint of trade" in violation of the Sherman Act.[169]

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[162] *See id.* at 581 (stating that a majority of lower courts apply the "business of baseball" approach).

[163] *See City of San Jose, et. al., v. Office of the Comm'r of Baseball*, No. C-13-02787-RMW, at 17 (N.D. Cal., Oct. 11, 2013) *available at* http://www.sanjoseca.gov/DocumentCenter/View/22745 (holding that alleged interference with the Oakland Athletics' relocation to San Jose, California, is exempt from antitrust scrutiny). The court did acknowledge that the exemption was an illogical aberration, but was bound by Supreme Court precedent to exempt the broad "business of baseball." *Id*. at 15-16.

[164] Staudohar, *supra* note 19, at 28. Heisman-winning tailback Jay Berwanger of the University of Chicago, the first ever NFL draft selection, instead chose to pursue business and never played a down in the NFL.

[165] Gabriel Feldman, *Antitrust Versus Labor Law in Professional Sports: Balancing the Scales after* Brady v. NFL *and* Anthony v. NBA, 45 U.C. Davis L. Rev. 1221, 1227 (2012).

[166] 29 U.S.C. §§ 101-115 (West 2012).

[167] 15 U.S.C. § 17; 29 U.S.C. § 52.

[168] Feldman, *supra* note 165, at 1228.

[169] *See* Connell Const. Co., Inc. v. Plumbers and Steamfitters Local Union No. 100, 421 U.S. 616, 621-22 (1975).

In addition to the statutory labor exemption, the Supreme Court has created an additional "nonstatutory" labor exemption protecting collective bargaining agreements between employers and unions from antitrust sanctions.[170] It is the nonstatutory labor exemption, created by the Court in 1965[171]—coincidentally the same year as the inaugural Rule 4 Draft—that shields anti-competitive conduct such as amateur drafts from antitrust scrutiny, because the draft is the result of arms-length collective bargaining between the employers and employees of the sport.

The nonstatutory labor exemption was first notably analyzed in the sporting context in the mid-1970s when the Eighth Circuit held in *Mackey v. National Football League* that the terms of a collective bargaining agreement were protected from antitrust scrutiny under the nonstatutory labor exemption. Such terms were upheld if three factors were satisfied: (1) terms of the agreement must "primarily affect only the parties to the collective bargaining relationship;" (2) terms of the agreement must concern "a mandatory subject of collective bargaining;" and (3) the agreement must be the "product of bona fide arm's-length bargaining" between labor and management.[172] The Sixth, Eighth, and Ninth Circuits later followed this three-step analysis.[173]

In 1996, the Supreme Court seemingly (though not explicitly) adopted the *Mackey* three-prong analysis in *Brown v. Pro Football*.[174] The precise issue in *Brown* was whether the NFL owners could unilaterally impose a fixed salary on substitute "developmental squad" players during the brief period between the expiration of one collective bargaining agreement, but before the execution of the next.[175] The Court held that the nonstatutory labor exemption permitted such conduct because it:

> "took place during and immediately after a collective bargaining negotiation . . . grew out of, and was directly related to, the lawful operation of the bargaining process . . . involved a matter that the parties were required to negotiate collectively ... [a]nd it concerned only the parties to the collective bargaining relationship."[176]

Thus, the Court adopted all three prongs of *Mackey*. However, the Second Circuit, which "ha[d] never regarded the Eighth Circuit's test in *Mackey* as defining the appropriate limits of the non-statutory exemption,"[177] interpreted the Supreme Court's *Brown* decision as relying heavily on the "mandatory subject of bargaining prong" at the expense of the others.[178] In *Clarett v. NFL*, Ohio State University running back Maurice Clarett challenged the NFL's rule requiring a player to wait three full seasons after graduating high school before becoming eligible for the draft.[179] One of Clarett's primary arguments that the rule was impermissible was because it affected prospective players outside of the union; then-Judge Sotomayor rejected this argument because the NFL's draft eligibility rules had "tangible effects on the

[170] *See id.* at 622 ("the goals of federal labor law never could be achieved if [the effects of collective bargaining] were held a violation of the antitrust laws.").

[171] *See* Local Union No. 189, Amalgamated Meat Cutters & Butcher Workmen of N. Am. v. Jewel Tea Co., Inc., 381 U.S. 676, 711 (1965).

[172] Mackey v. Nat'l Football League, 543 F.2d 606, 614 (8th Cir. 1976).

[173] *See* Stephen J. Matzura, *Will Maple Bats Splinter Baseball's Antitrust Exemptions?: The Rule of Reason Steps to the Plate*, 18 Widener L.J. 975, 1000 n. 154 (2009) (listing cases).

[174] 518 U.S. 231 (1996).

[175] *Brown*, 518 U.S. at 233-35.

[176] *Id.* at 250.

[177] Clarett v. Nat'l Football League, 369 F.3d 124, 133 (2d Cir. 2004).

[178] *Id.*.

[179] *Id*. at 126.

wages and working conditions of *current* NFL players" and thus constituted a mandatory subject of collective bargaining—that is, the union had the right to disfavor new members (drafted rookies) at the expense of current members in order to seek the best deal for the union overall, if it chose to do so.[180]

At first glance, decisions such as *Brown* and *Clarett* seem to foreclose a nonstatutory labor exemption challenge to the Signing Bonus Pools. These cases demonstrate that collective bargaining agreements can permissibly impose restrictions on drafted rookies as a prerequisite to playing in a professional sport, including the setting of a fixed, non-negotiable entry salary. However, as discussed more fully below, baseball's unique minor league structure and more onerous reserve system separates it from other professional sports. Courts, in the interest of equity and fairness, should look for ways to remedy abuses made possible by baseball's unique system.

VI. ANALYSIS

A. The Signing Bonus Pools Do Not Qualify for the Nonstatutory Labor Exemption and Thus Would be Invalid But-For the Antitrust Exemption

By nature of baseball's vast minor league system, amateur baseball players who are selected in the Rule 4 Draft are treated significantly differently than amateur players in other professional sports. Putting aside the nuances of each sport's collective bargaining agreement, the dispositive difference is simply this: baseball draftees are subject to the unfavorable terms and conditions within MLB's collective bargaining agreement, and yet *even after they sign minor league contracts*, these draftees still do not become members of the player's union ("Major League Baseball Players Association" or "MLBPA"). Only once these players reach the major leagues (if ever) do they receive benefits from the collective bargaining unit that bartered away their right to meaningfully negotiate a salary for the union's own benefit.[181]

Baseball is the only American sport that operates in this fashion. Both the NFL and NBA have collective bargaining agreements that similarly disfavor newly drafted players at the expense of veterans, but these disfavored players immediately achieve union status and enjoy the other benefits of collective bargaining. For example, the NBA's current collective bargaining agreement has a "hard slotting" system for rookies selected in the first round of its draft; teams cannot sign players for an amount greater than 120% of the hard slot amount.[182] Once signed, players become members of the players union; during their first two seasons, the player can be assigned to the NBA Developmental League (the NBA's equivalent to a minor league system), but the player still collects his NBA salary.[183] Additionally, NBA rookies who are drafted in the first round are only "reserved" to their teams for four seasons: two guaranteed years, and two consecutive one-year team options.[184] All other players (non-first round draft selections) become eligible for free agency after three seasons.[185] Similar to the NBA system, the NFL utilizes "hard slots"

[180] *Id*. at 140 (emphasis added).

[181] The 2012 CBA specifically states that its purpose is to set forth the "terms and conditions of employment of all Major League Baseball Players," and it serves as the "sole and exclusive collective bargaining agent for all Major League Players, and individuals who may become Major League Players" during its duration (meaning that players who are minor leaguers at the start of the CBA but are then promoted to the major leagues become covered).

[182] *See Highlights of the Collective Bargaining Agreement Between the National Basketball Association (NBA) and the National Basketball Players Association (NBPA)*, National Basketball Association at 4, *available at* http://www.nba.com/.element/mp3/2.0/sect/podcastmp3/PDF/CBA101.pdf (Aug. 2010).

[183] *Id*. at 13.

[184] *Id*. at 9.

[185] *Id*.

for rookie salaries and "reserves" rookies to their teams for only four seasons (five for first-round selections).[186] Rookies become members of the players union once they sign. Compare these systems to major league baseball, where draft selections are not union-represented while in the minor leagues, make fractions of the major league salary, and are not eligible for free agency until completing six full seasons of major league service or seven full seasons of minor league service (or a combination of both).

Baseball's Signing Bonus Pool system violates the first prong of *Mackey* because the Signing Bonus Pools are a provision of a collective bargaining agreement that "primarily affects" members who are not parties to the agreement. Amateur athletes remain outside the collective bargaining unit even after they sign unfavorable contract terms imposed on them by that collective bargaining unit.

It is well settled law that employers and collective bargaining units may not conspire together to affect wages or terms of employment for persons outside the agreement.[187] However, prospective professional athletes in other sports, such as the aforementioned Maurice Clarett, have been unsuccessful in challenging professional sports drafts on this basis.[188] A similar challenge within professional basketball took place in the late 1980s, when college star Leon Wood challenged provisions of the NBA draft as affecting persons outside the collective bargaining unit.[189] The Second Circuit rejected the claim, stating that a "commonplace consequence of collective agreements" was disadvantaging **new employees** at the expense of senior ones.[190] In *Clarett*, the court similarly stated that "conditions under which a prospective player . . . will be considered for employment **as an NFL player** are for the union representative and the NFL to determine."[191] As these cases make clear, the collective bargaining process, via the nonstatutory labor exemption, can legally disfavor new union members; but this presumes that the new member subject to the unfavorable conditions thereafter becomes represented by the union and its collective bargaining agreement. The Signing Bonus Pool system, which inhibits the salaries of drafted amateur baseball players, does not withstand such scrutiny because these players remain outside the collective bargaining process even after the collective bargaining agreement imposes the unfavorable treatment. Federal labor policy should not encourage such conduct.

B. The Signing Bonus Pools Exemplify Why Courts Should More Carefully Scrutinize Baseball's Antitrust Exemption

Under the broad and commonly accepted "business of baseball" interpretation of baseball's antitrust exemption, the Signing Bonus Pool system would certainly be permissible, as it affects how millions of dollars are allocated among minor league players across all baseball franchises. And, as previously stated, the conflicting narrow interpretation (that the exemption only applies to baseball's reserve system) is severely flawed and should not be relied on.[192] Thus, a court wishing to invalidate this unfair system that contravenes federal labor policy will have to utilize an intermediate approach.

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[186] NFL Collective Bargaining Agreement, Art. VII, Sec. 3 (Aug. 2011), *available at* http://nfllabor.files.wordpress.com/2010/01/collective-bargaining-agreement-2011-2020.pdf.

[187] *See* United Mine Workers of Am. v. Pennington, 381 U.S. 657, 666 (1965) (stating that "there is nothing in the labor policy indicating that the union and the employers in one bargaining unit are free to bargain about the wages, hours, and working conditions of other bargaining units **or to attempt to settle these matters for the entire industry**.") (emphasis added).

[188] *See, e.g.,* Clarett v. Nat'l Football League, 369 F.3d 124, 140-41 (2d Cir. 2004).

[189] Wood v. Nat'l Basketball Ass'n, 809 F.2d 954, 960 (2d Cir. 1987).

[190] *Id*. at 960 (emphasis added).

[191] *Clarett*, 369 F.3d at 141 (emphasis added).

[192] *See* Part IV.A., *supra.*

As an initial matter, such an antitrust challenge would not necessarily run afoul of the Curt Flood Act ("CFA"), which expressly provides that "[n]o court shall rely on the enactment of [the CFA] as a basis for changing the application of the antitrust laws to . . . litigation initiated by amateur or minor league players."[193] The key phrase is "basis for changing the application of the antitrust laws[.]" The CFA was not meant to alter the application of the antitrust exemption as it existed at the time it was passed in 1998. During a Senate debate on the CFA, Senator Paul Wellstone specifically asked for confirmation that the CFA would not overturn recent lower court rulings narrowing the scope of the exemption.[194] The bill's sponsors confirmed the CFA was "intended to have no other effect than to clarify the status of major league players under the antitrust laws," and the CFA would not change the law relating to "all other context or persons or entities."[195] Thus, if one can interpret the "Baseball Trilogy" in a way where the Signing Bonus Pools are outside the scope of the exemption, the CFA would not act as a bar to an antitrust suit.

A court could plausibly find the Signing Bonus Pools beyond the scope of the exemption under either intermediate approach outlined in this Note. The Signing Bonus Pools are not part of the "unique characteristic and needs" of the sport of professional baseball, nor a system that is necessary "for the business of providing baseball exhibitions to the public."[196] They are an unnecessary addition to the Rule 4 Draft and reservation of players to minor league teams, which are practices that help preserve competitive balance and directly affect the quality of the product on the field in a much more clear and direct manner. In contrast, the Signing Bonus Pools are not similarly necessary to preserve competitive balance. Baseball still can thrive under a system (as it did until 2012) where players are reserved to the team that drafts them but can still freely negotiate a contract with that team.

One of the primary justifications for the Signing Bonus Pools is that smaller-market teams will not be priced out from signing the best amateur talent, thus preserving competitive balance.[197] However, teams that fail to sign draft picks are already given compensation picks in the following season's Rule 4 Draft at the same spot,[198] so concerns that small market teams will suffer competitively from escalating bonus amounts are only realized if those teams *repeatedly* fail to sign picks year in and year out. Additionally, as an alternative to the Signing Bonus Pools, baseball could simply allow the trading of draft picks between clubs, which is currently not allowed.[199] This trading of draft picks would allow small market teams to continue receiving substantial value for high draft picks, instead of failing to sign elite amateur players or intentionally selecting lesser-talented players that can be signed for cheaper amounts. For example, if a small market team holds the #1 overall pick but knows it cannot afford to spend more than $10 million, and the #1 available player has threatened he will not sign for less than $15 million,

[193] 15 U.S.C. § 26(b) (2006).
[194] 144 Cong. Rec. 18,459 (1998).
[195] *Id*.
[196] *See* Part IV.C., *supra*.
[197] Staff Report, *New Labor Deal Features Major Draft Changes*, Baseball America, (Nov. 22, 2011), *available at* www.baseballamerica.com/today/draft/news/2011/2612639.html (statement of Rob Manfred, MLB executive vice president of labor relations and human resources, that the Signing Bonus Pools are "economic reforms that we think will help our weakest clubs have access to talent at a truly affordable price").
[198] *See* Jonathan Mayo, *All but one first-rounder signed before deadline*, MLB. com (July 13, 2012), *available at* http://mlb.mlb.com/news/article.jsp?ymd=20120711&content_id=34843532&c_id=mlb&vkey=news_mlb.
[199] *See* Jayson Stark, *How the new CBA changes baseball*, ESPN.com (Nov. 22, 2011), *available at* http://espn.go.com/mlb/story/_/id/7270203/baseball-new-labor-deal-truly-historic-one (stating that the latest CBA only allows MLB teams to trade extra picks they receive from teams penalized for going over their Signing Bonus Pool, which marks "the first time in history that clubs will be allowed to trade draft choices," and that "[a]ll other draft picks remain untradeable.").

giving the team the option to trade the pick makes a great deal of sense. The team will shop the pick in exchange for talent the team values for, at a minimum, $10 million. The more enticing the top amateur player in that year's draft class, the more the small market team could extract from another MLB franchise for the right to draft him. Overall competitive balance would not suffer because the small market team would still receive talent and value for its high draft selections.

Crafting a perfect solution that promotes competitive balance and satisfies both large and small market teams is no doubt difficult, but that is what collective bargaining is for. What collective bargaining is not for, however, is to implement a system that unfairly suppresses the wages of parties not represented by the agreement, which is precisely what baseball has done with the Signing Bonus Pools.

CONCLUSION

In 2011, before the Signing Bonus Pool system, the Pittsburgh Pirates (a team which, until 2013, went twenty years without a winning season[200]) selected and signed top pitcher Gerritt Cole for $8 million with the first overall selection, and spent $17 million for its entire 2011 draft class.[201] For a low-budget team like the Pirates—which opened that season with MLB's fourth-lowest payroll[202]—the money was wisely spent: the $17 million the Pirates used to lock up *decades'* worth of promising amateur talent was equal to about 3/4 of *one season* of the previous year's prize free agent Prince Fielder.[203] A year after drafting Cole, however, with the Signing Bonus Pools in place, the Pittsburgh Pirates were unable to get top collegiate pitcher Mark Appel to sign for $4.8 million after selecting him eighth overall.[204] The assigned pick value under the Signing Bonus Pool was just $2.9 million.[205]

The Signing Bonus Pool system is primarily justified for two reasons: to ensure that (1) small-market teams have the opportunity to sign top amateur talent and preserve competitive balance; and (2) the best players in the amateur draft do not go unsigned over large contract demands. In the case of the Pirates and Mark Appel, both concerns came to fruition as the small market club lost out on the draft's arguable top amateur talent, who went unsigned. Rather, the purpose of the Signing Bonus Pool system is simply to suppress bonus amounts given to draftees, a goal that Major League Baseball has been eyeing since the post-World War II era.

Baseball already has a draft system that is meant to promote competitive balance, which is permissible under both federal labor law and baseball's antitrust exemption. However, adding the Signing Bonus Pools to that draft system is one step too far. Now baseball teams not only have exclusive negotiating rights with drafted players, but also incredible leverage in the amount of bonuses these players

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[200] *Pirates Year-By-Year Results*, Pirates.com, *available at* http://pittsburgh.pirates.mlb.com/pit/history/year_by_year_results.jsp (last visited Dec. 4, 2013).

[201] Palmateer, *supra* note 54.

[202] *2011 Baseball Payrolls-List*, ESPN.com, *available at* http://sports.espn.go.com/espn/wire?section=mlb&id=6278496, (Mar. 31, 2011). Only the San Diego Padres, Tampa Bay Rays, and Kansas City Royals spent less than Pittsburgh's $46,047,000.

[203] Fielder signed a nine-year $214 million contract with the big-spending Detroit Tigers that paid $23 million in 2012 salary alone. *Prince, Tigers Reach nine-year deal*, MLB.com, *available at* http://mlb.mlb.com/news/article.jsp?ymd=20120124&content_id=26452690&vkey=news_det&c_id=det (Jan. 24, 2012).

[204] *Spending drops 11 percent overall*, ESPN.com, *available at* http://espn.go.com/mlb/story/_/id/8178376/spending-amateur-baseball-draft-drops-17-percent-first-round-11-percent-overall, (July 18, 2012).

[205] Mayo, *supra* note 198.

can negotiate for as well. With the addition of the Signing Bonus Pools, Major League Baseball has a system where amateur players can be assigned to an organization—potentially for over a decade—before they can meaningfully negotiate a salary. These restrictions are the creation of a labor union that does not (and in all likelihood never will) represent these amateur players. This system is impermissible, but-for the antitrust exemption baseball enjoys. It is yet another example of why courts should take a more critical eye when construing the scope of baseball's archaic exemption, which permits inequities that contravene federal antitrust and labor policy such as this.