

No. 23-283

In the
Supreme Court of the United States

TRI-CITY VALLEYCATS, INC., ET AL.,
Petitioners,

v.

THE OFFICE OF THE COMMISSIONER OF BASEBALL,
Respondent.

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

**BRIEF OF *AMICUS CURIAE* RENSSELAER
COUNTY REGIONAL CHAMBER OF
COMMERCE, INC. IN SUPPORT OF
PETITIONERS**

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CORPORATE DISCLOSURE STATEMENT

Under Rule 29.6 of the Rules of this Court, *amicus curiae* Rensselaer County Regional Chamber of Commerce, Inc. states the following:

Rensselaer County Regional Chamber of Commerce, Inc. is a not-for-profit corporation incorporated under the laws of the State of New York. It has no shareholders, parents, subsidiaries, or affiliates.

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INTEREST OF *AMICUS CURIAE*¹

Amicus curiae Rensselaer County Regional Chamber of Commerce, Inc. is the principal business, civic, and economic development alliance for the “Rensselaer Gateway” communities in the state of New York, including Rensselaer County, the cities of Cohoes and Watervliet, and the villages of Green Island and Waterford. The Chamber’s membership includes more than 900 diverse business and community organizations. The Chamber serves as an active advocate in municipal, state, and national business and government organizations and represents its membership on public policy issues. Promoting a robust competitive environment for its member businesses to thrive for the benefit of consumers in the Rensselaer Gateway communities has long been one of the Chamber’s central concerns.

Rensselaer County is the home of Petitioner Tri-City ValleyCats, one of the minor league teams stripped of its big league affiliation as a result of the restraints challenged here. The Chamber submits this brief because the antitrust exemption for baseball blocks judicial scrutiny of the anticompetitive harm inflicted on the Chamber’s constituents as a result of Major League Baseball’s orchestration of a horizontal agreement among its 30 rival clubs to restrict the output of affiliations with minor league teams and to eliminate the previously competitive market among

¹ This brief was not authored in whole or part by counsel for a party. No one other than the Chamber or its counsel made a monetary contribution to the brief’s preparation or submission. The Chamber provided counsel of record timely notice of its intent to file this brief.

minor league teams for these valuable, coveted affiliations. As discussed below, competition for affiliation benefited consumers in Rensselaer Gateway and elsewhere as teams strived to create a better product and improve the fan experience by, for example, investing in their facilities and adding desirable amenities.

SUMMARY OF THE ARGUMENT

This case presents a compelling example of how the baseball antitrust exemption encourages Major League Baseball and its member clubs to engage in collusive restraints while paying no mind to whether the resulting anticompetitive harm to competition and to consumers outweighs any plausible procompetitive justification.

The anticompetitive effects of the restraints challenged here are borne by minor league cities across the country, many of which are small towns. For such communities, the local presence of minor league baseball has long generated substantial economic benefits. Those benefits are far greater for communities with teams affiliated with a big league club than for teams without such affiliation. Therefore, prior to imposition of the restraints challenged here, minor league teams and their local communities competed vigorously for the chance to affiliate with big league clubs, incentivizing widespread investment in new and renovated stadiums and other fan-friendly amenities. The economic benefits of this sort of “competition for the contract” are well recognized and ordinarily protected by the antitrust laws.

The horizontal agreement among MLB and its member clubs to restrict the number of minor league affiliations for each club—thereby stripping 40 existing minor league teams of their big league affiliations—and to eliminate those 40 teams from competing for such affiliations in the future, has significant pernicious effects on consumer welfare in affected minor league communities. Among other things, fans of teams stripped of their big league affiliations are deprived of the chance to watch prized big league prospects. Such teams are less likely to attract fans. Attendance naturally flags, and the teams are saddled with greater expenses. Some of the teams stripped of their affiliations by these restraints are already defunct. And for those that survive, even assuming they had the means to make future investments in their products and facilities, the restraints here eliminate their incentive to do so. They are foreclosed from competing for affiliation.

Unless this Court corrects this judicially created anachronistic anomaly and subjects MLB and its member clubs to the antitrust laws that govern the rest of us, the anticompetitive effects of restraints like these will never be remedied nor even measured. This Court should grant the petition for certiorari, reverse the decision of the Second Circuit, and eliminate the baseball exemption.

ARGUMENT

The petition presents the question whether this Court should overrule *Flood v. Kuhn*, 407 U.S. 258 (1972), and revoke baseball’s aberrational and irrational common-law antitrust immunity. Professional baseball in the United States, through the MLB and the minor league system, is a critical business driver in scores of markets across the country. The baseball exemption provides some participants in these markets with a license to enter into collusive restraints heedless of whether the resulting anticompetitive harm outweighs any plausible procompetitive justifications. To protect and promote competition for the benefit of consumers ranging from fans to small businesses, this Court should grant the petition and eliminate the baseball antitrust exemption once and for all.

This brief focuses on the pernicious effects on local communities of the horizontal agreement among MLB clubs to not only cap the number of minor league affiliations for each club—thereby stripping 40 existing minor league teams of their big league affiliations—but also to eliminate those 40 teams from competing for such affiliations in the future. As the petition points out, the market for affiliations between MLB clubs and minor league teams “led to millions of dollars in commercial exchanges and even greater downstream effects for local economies, minor league players and local workers.” (Pet. at 34-35.) Stripping a minor league team of its affiliation substantially lessens the benefits to the economy of its local community. Additionally, the competition that prevailed among minor league teams for affiliation

with big league teams spurred investment in facilities and innovation in amenities that enhanced consumer welfare, including the construction and renovation of new stadiums. The restraints challenged here suppress that competition, which deprives fans of those welfare-enhancing benefits.

The restraints

The century-plus relationship between MLB and minor league baseball has enabled MLB teams to foster and develop their pool of baseball talent without the expense of operating their own farm teams. (C.A.J.A. 20, ¶ 51.) MLB teams provide their minor league affiliates with players and coaches and financial assistance. (C.A.J.A. 20, ¶ 51.) Minor league teams cut their major league counterparts a percentage of ticket revenue. (C.A.J.A. 20, ¶ 51.)

Before MLB orchestrated the horizontal restraints at issue here, affiliation between major league teams and minor league teams was the object of vigorous competition. Big league teams competed with each other to affiliate with minor league teams, and minor league teams competed with each other to affiliate with big league teams. The robust competition for affiliations had significant benefits for fans and for those communities—particularly small ones—that competed for affiliation. As of 2019, the minor leagues comprised 160 affiliated minor league teams in the United States, Canada, and Mexico. (C.A.J.A. 19-20, ¶ 49.)

All of that changed when MLB imposed its plan to reduce the total number of minor league affiliates and to eliminate the affiliations of 40 minor league

teams. Not only did the resulting horizontal agreement strip 40 teams of their current affiliations, but it eliminated them entirely from competing for future affiliations. (See C.A.J.A. 23, ¶ 58, alleging that “[t]hose teams would be subject to a boycott from MLB affiliation.”)

Petitioners, including the Tri-City ValleyCats of Rensselaer County, are among the 40 eliminated and excluded teams. They allege that MLB’s restraints are the product of a horizontal agreement among the 30 major league clubs to restrict output and block the ousted and excluded teams from competing for affiliations. (C.A.J.A. 23-24, 31, 38-39, ¶¶ 58-61, 91, 111-113.) They claim resulting antitrust injury, including the loss of enterprise value resulting from, among other things, their inability to attract top talent and to supply their fans and sponsors with a superior product. (C.A.J.A. 26, ¶¶ 68-72.) They highlight the resulting diminishment of economic benefits to their fans, sponsors, and local communities. (C.A.J.A. 27, ¶ 73-74.)

The district court concluded that—but for the unique exemption from the antitrust laws that baseball and baseball alone has enjoyed since 1922—the Petitioners had stated a plausible violation of the antitrust laws. (Pet. App. at 5a-6a.) The court reasoned that the horizontal restraints at issue, among other things, “serve[] to reduce competition between rivals by preventing plaintiffs from competing with each other for affiliations and preventing MLB clubs from competing with each other to affiliate with more minor league teams.” (Pet. App. at 12a.) The court identified Petitioners’ “inability to

compete for affiliations,” as the source of their antitrust injury. (*Id.*)

But the baseball exemption shielded the restraints from scrutiny. (Pet. App. at 19a-20a.) The Second Circuit affirmed on grounds of the exemption alone. (Pet. App. at 2a-4a.)

One of the exemption’s evils is that, in a case like this one, it effectively precludes a plaintiff from conducting discovery and otherwise leveraging the truth-seeking function of the adversarial process to develop a robust record that proves the competitive harm of the challenged restraints. Over the years, the exemption has allowed the anticompetitive conduct of MLB and its member clubs to escape scrutiny, not only in instances (like this one) where lawsuits were filed and then dismissed, but undoubtedly in many other instances in which the affected parties lacked the incentive to raise any challenge at all because of the exemption’s inhibiting effect. It is time that MLB and its member clubs were subject to the same antitrust laws as everyone else. Unless this Court grants this petition and corrects this judicial anomaly, the pernicious effects of the restraints challenged here on consumers throughout the country, including within the Rensselaer Gateway, will neither be remedied nor even measured. And those effects are significant.

Foreclosing competition for major league affiliations harms consumer welfare

The Sherman Act promotes consumer welfare by protecting competition. *See Reiter v. Sonotone Corp.*, 442 U.S. 330, 343 (1979) (noting that floor debates “suggest that Congress designed the Sherman

Act as a ‘consumer welfare prescription’”) (citation omitted). A restraint that has the effect of reducing competition violates the Sherman Act when it “harms consumer welfare.” See *Rebel Oil Co. v. Atlantic Richfield Co.*, 51 F.3d 1421, 1433 (9th Cir. 1995). Depending on the market affected, the “consumers” at issue may comprise individuals, not-for-profit entities, and even businesses, large and small.

To be sure, not every exclusive agreement that restrains trade harms consumer welfare and violates the antitrust laws. But the courts have long recognized that eliminating competition among those who would seek to obtain those exclusive arrangements is pernicious. See *United States v. Yellow Cab Co.*, 332 U.S. 218, 229 (1947) (“It is true, of course, that exclusive contracts for the transportation service in question are not illegal. But a conspiracy to eliminate competition in obtaining those exclusive contracts is what is alleged in this case and it is a conspiracy of that type that runs afoul of the Sherman Act.”) (citation omitted), *overruled on other grounds* by *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752, 760 (1984); *Parmelee Transportation Co. v. Keeshin*, 144 F. Supp. 480, 485 (N.D. Ill. 1956) (denying motion to dismiss antitrust claim arising from allegations that defendant conspired to eliminate plaintiff from railroad-transfer business and grant exclusive contract to defendant’s company noting that the “allegation of the elimination of competition for the contract” was sufficient for antitrust injury).

Accordingly, as the Seventh Circuit observed in *Paddock Publications, Inc. v. Chicago Tribune Co.*,

103 F.3d 42, 45 (7th Cir. 1996) (Easterbrook, J.), “[c]ompetition-for-the-contract is a form of competition that antitrust laws protect.” Even where exclusive contractual relationships foster procompetitive benefits, the existence of such benefits depends on the continuation of competition in the form of competition-for-the-contract, to prevent the exclusive arrangements from stifling competition in the long run:

Every year or two, General Motors, Ford, and Chrysler invite tire manufacturers to bid for exclusive rights to have their tires used in the manufacturers’ cars. Exclusive contracts make the market hard to enter in mid-year but cannot stifle competition over the longer run, and competition of this kind drives down the price of tires, to the ultimate benefit of consumers.

Id.; see also Elyse Dorsey & Jonathan M. Jacobson, “Exclusionary Conduct in Antitrust,” 89 ST. JOHN’S L. REV. 101, 123-24 (Spring 2015) (noting that competition for business “is often a significant driver of consumer benefits, and preserving competition for the contract is, accordingly, a high priority in antitrust law”).

The robust competition that previously existed among minor league teams for affiliation with an MLB club is a form of “competition for the contract.” MLB’s decision to eliminate this competition, as well as to eliminate the ability of its member teams to compete amongst themselves for additional or alternative affiliations, is causing injury not only to the minor

league teams that are barred from competition, and those MLB teams that might want to affiliate with them in the future, but also to consumers of minor league baseball and the local businesses that benefit from having an affiliated minor league baseball team in their communities.

Minor league baseball as an economic engine and the competitive advantage of affiliation

Minor league baseball teams make substantial contributions to the local economies in their home communities, which, in many cases, are small towns. The presence of a minor league team has “significant positive effects” on local per capita income.² Several members of Congress from districts with teams impacted by the restrictions challenged in this lawsuit have gone on the record about the importance of minor league baseball to their communities—both as an amenity offering family-friendly entertainment and as an economic driver.³

² Nola Agha, *The Economic Impact of Stadiums and Teams: The Case of Minor League Baseball*, 14 J. SPORTS ECON. 227, 227 (2013) (showing that the presence of a minor league teams has “significant positive effects” on local per capita income).

³ See Press Release from Rep. Lori Trahan, Save Minor League Baseball Task Force Co-Chairs Trahan, McKinley, Rose, and Simpson Lead Introduction of Congressional Resolution Supporting Minor League Baseball, (Jan. 28, 2020), <https://trahan.house.gov/news/documentsingle.aspx?DocumentID=1355>). The press release links to the text of a bipartisan Congressional resolution referring to “the economic stimulus and development” provided by minor league baseball and devastation to communities that the loss of the MLB affiliation would have. See Supporting Minor League Baseball, and for other purposes,

The benefits that accrue to communities with minor league baseball teams are greater with affiliated teams than non-affiliated teams. Affiliated teams are much more likely to offer fans the opportunity to watch prized major league prospects and future big league stars—and sometimes even the chance to watch major league players on short-term stints, such as those coming back from injury. (C.A.J.A. 21, 26, ¶¶ 54, 69.) The advantage of affiliation is undeniable.⁴

The Tri-City ValleyCats of Rensselaer County are a notable example. In 2020, an economic consulting firm set out to consider the economic benefits of the club—then an affiliate of the Houston Astros—on the local economy.⁵ The study found that

H.R. 815, 116th Cong. 2020, <https://www.congress.gov/116/bills/hres815/BILLS-116hres815ih.pdf>.

⁴ Even otherwise positive media coverage of MLB’s restructuring acknowledges that lack of affiliation disadvantages teams, makes them less valuable, and puts their survival in question. See *I Was Wrong: Why MLB’s Restructuring of the Minors Turned Out Mostly Better Than Expected*, ESPN (Jan. 28, 2020), https://www.espn.com/mlb/story/_/id/33144413/why-mlb-restructuring-minors-turned-mostly-better-expected (acknowledging that “[a]ffiliation is crucial to the value of a club,” and quoting minor league team owner as stating that “[i]t’s just disingenuous for anybody to say the relationship with MLB is not better than any alternative”). The piece casts doubt on whether teams stripped of affiliation would survive. See *id.* (quoting another minor league owner: “You do wonder what the sustainability of the [new Appalachian independent collegiate summer] league is.”).

⁵ Circle Analytics, Inc., 2020 ECONOMIC IMPACT REPORT TRI-CITY VALLEYCATS, (2020) at 3,

the team's gross economic output for one year of operations exceeded \$55 million, benefiting 763 local jobs, and producing \$2.4 million in indirect business taxes.⁶ The team attracted visitors to the area comprising 20 percent of the club's total attendance, with visitor expenditures of \$180 per day in food, lodging, gasoline, miscellaneous retail and other expenses.⁷

Since the team was stripped of its affiliation, however, these economic benefits have decreased significantly.⁸ Between 2019 (before affiliation was stripped) and 2021 (after affiliation was stripped), the Tri-City ValleyCats suffered a twenty-five percent drop in attendance.⁹ As attendance has dropped, expenses have increased (among other things, the team no longer has a major league club paying the

https://tcvalleycats.com/sports/bsb/2022-23/releases/2020_TCValleyCats_Economic_Impact_Report.pdf.

⁶ *Id.* at 6.

⁷ *Id.* at 5.

⁸ See allegations in Complaint, *Tri-City ValleyCats, et al. v. Houston Astros Inc., et al.*, Index No. 650308/2021 (N.Y. Sup. Ct., Jan. 14, 2021). See also C.A.J.A. 26, ¶¶ 68, 70.

⁹ Compare *2019 Affiliated Attendance by Average*, BALLPARK DIGEST, Sep. 9, 2019, <https://ballparkdigest.com/2019/09/09/2019-affiliated-attendance-by-average/> (showing ValleyCats attendance at 131,529 total and 3,869 average per game) to *Frontier League Summer 2021 Attendance*, POINTSTREAKSTATS, <http://pointstreak.com/baseball/attendance.html?leagueid=200&seasonid=32988> (last visited Oct. 19, 2023) (showing attendance at 100,519 total and 2,393 per game); see also Complaint, *supra* note 8, at 17, 19, ¶¶ 46, 51.

salaries of its players and coaches) and sponsorship deals to fill the resulting revenue gaps are harder to come by.¹⁰

As a general matter, without affiliation, team values plummet. One minor league team stripped of its affiliation recently sold for only \$1 million, while comparable affiliated teams continued to sell for \$8 million or \$10 million.¹¹ Not surprisingly, in the longer run, unaffiliated minor league teams do not have an impressive survival rate.¹² Several teams stripped of their affiliation by MLB have

¹⁰ See C.A.J.A., *supra* note 8, at 26, ¶¶ 68, 70, 71.

¹¹ See, e.g., ESPN, *supra* note 4 (“The Binghamton (New York) Rumble Ponies, who remain as the Mets’ Double-A affiliate, were sold last year for \$10 million, which several sources say is consistent with the market before contraction. The Vermont Lake Monsters, on the other hand, lost affiliation and sold for about \$1 million, far short of the \$8 million that other teams in their league had sold for previously.”). See also C.A.J.A., *supra* note 8, at 26, ¶ 68.

¹² Jeff Sanders, *Will MLB Sever Ties with Minor League Baseball?*, SAN DIEGO UNION-TRIB., Dec. 15, 2019, 2019 WLNR 37545438 (“Further proof that the independent baseball model is not a viable long-term plan, Minor League Baseball contends, is the fact 11 of the just over 100 teams in the five largest independent leagues in 1999 still had a team in 2019.”).

already gone out of business.¹³ Others are struggling to survive.¹⁴

¹³ Defunct teams include the Charlotte Stone Crabs, Lancaster JetHawks, the Hagerstown Suns, and the Florida FireFrogs. See Jake Seiner, *Cities Stripped Of Minor League Teams Finding Ways Forward*, AP NEWS, (June 24, 2021), <https://apnews.com/article/college-sports-mlb-lifestyle-baseball-business-973e1c0765d5eebe06763faacda0e38f>, (discussing teams that could not survive or may not continue to exist); Dennis Maffezzoli, *Stone Crabs No Longer Part of Florida State League*, SARASOTA HERALD TRIB., (Dec. 9, 2020), <https://www.heraldtribune.com/story/sports/2020/12/09/stone-crabs-no-longer-part-florida-state-league/3866777001/> (quoting Stone Crabs former general manager “Minor League Baseball as we knew it doesn’t exist anymore.”); Bill Shaikin, *In Lancaster, MLB Promised Baseball. The City Might Prefer an Amphitheater*, L.A. TIMES, (Mar. 10, 2021), <https://www.latimes.com/sports/story/2021-03-10/lancaster-minor-league-jethawks-rob-manfred-pecos-league> (noting that “[t]he remaining merchandise is on sale, at 50% off,” “[t]he hope that the lone minor league team in Los Angeles County might play some sort of baseball this year has been extinguished,” and “the city has commissioned a study to see how the ballpark might be best used now that the JetHawks are dead, citing an amphitheater as one option”); Karim Allif, *Hagerstown Suns did not have Their Affiliation with the Washington Nationals Renewed*, DC NEWS NOW, (Nov. 21, 2020), <https://www.dcnewsnow.com/news/hagerstown-suns-did-not-have-their-affiliation-with-the-washington-nationals-renewed/> (“It is with a heavy heart that I’m writing to let you know that the Washington Nationals have decided not to renew their affiliation with the Hagerstown Suns. This brings 40 years of Hagerstown Suns baseball to a close.”); *Wikipedia*, “Florida Fire Frogs,” https://en.wikipedia.org/wiki/Florida_Fire_Frogs, (last visited Oct. 18, 2023).

¹⁴ Adam Friedman, *Jackson Generals Not Invited to Join the New Minor League Baseball, Future Is Uncertain*, JACKSON SUN, (Dec. 9, 2020),

Competition for affiliation enhances consumer welfare

Given the comparative advantage in benefits accruing to affiliated teams over non-affiliated teams, it is no surprise that minor league teams and their communities have competed vigorously among themselves for coveted affiliations. Such competition has been a significant driver of improvements to the product of minor league baseball, benefiting fans and consumers.

Among the most obvious examples is the renovation and construction of new stadiums. In the early 1990s, after MLB imposed new minimum standards for minor league stadiums, a “building boom” erupted in minor league towns nationwide.¹⁵

<https://www.jacksonsun.com/story/news/local/2020/12/09/jackson-generals-werent-invited-join-new-minor-league-baseball/6503932002/>; *see also* Circle Analytics, Inc., JACKSON GENERALS 2020 ECONOMIC IMPACT REPORT (2020), <https://img.mlbstatic.com/mlb-images/image/upload/milb/cb48mk1aihtj5oya10l1.pdf> (outlining the negative economic impacts of Jackson losing its MiLB team); *Norwich Sea Unicorns Looking at Options After Affiliation With Detroit Tigers Ends.*, NBC CT, (Dec. 9, 2020), <https://www.nbcconnecticut.com/news/sports/norwich-sea-unicorns-looking-at-options-after-affiliation-with-detroit-tigers-ends/2379996/>; Jake Seiner, *supra* note 12 (discussing teams with questionable future).

¹⁵ *General History: The History and Function of Minor League Baseball*, MINOR LEAGUE BASEBALL, <https://www.milb.com/milb/history/general-history>, (“1991 Baseball’s Facilities Standards went into effect, setting minimum standards for Minor League ball parks and touching off the biggest building boom in history. More than half the teams in the Minors now play in stadiums built or completely renovated since

One analyst observed that, “between 1991 and 1995, 107 minor league ballparks were constructed or renovated in the United States and Canada compared to only seventeen between 1985 and 1990.”¹⁶

The construction and renovation of stadiums, and other investments in fan-friendly amenities, continue to be an important mode of competition among minor league teams and their local communities.

Again, the Tri-City Valley Cats are illustrative. The ValleyCats—in conjunction with the Dormitory Authority of the State of New York and the Hudson Valley Community College in Troy, New York—broke ground in 2001 on a new 4,500-seat stadium on the grounds of Hudson Valley Community College.¹⁷ After building the new stadium, the ValleyCats invested in new scoreboard, concession equipment and video

that time.”); Kevin Reichard, *MiLB Facility Guidelines Released. Owners Sanguine*, BALL PARK DIGEST, (Nov. 2, 2020), <https://ballparkdigest.com/2020/11/02/milb-facility-guidelines-released-owners-sanguine/> (“MLB’s insistence on improved ballparks in the 1990 PBA is seen by many observers as fueling the growth in Minor League Baseball over the last 30 years: they gave teams reasons to ask municipalities for improved ballparks, and they significantly enhanced the ballpark experience for fans.”).

¹⁶ See Saul Spigel, *Minor League Baseball Stadium Financing and Lease Terms*, CONNECTICUT GENERAL ASSEMBLY OLR RESEARCH REPORT, (Apr. 5, 1999), (<https://www.cga.ct.gov/P599/rpt%5c.htm/99-R-0453.htm>).

¹⁷ See *DASNY Chair Joins Groundbreaking for Baseball Stadium in Troy*, Dormitory Authority State of New York Press Release,” (May 7, 2001), <https://www.dasny.org/dasny/news/2001/stadium.php>.

equipment (2002), a pavilion (2004), picnic areas (2005 and 2018), and a video board (2015).¹⁸ Before the ValleyCats were stripped of their affiliation, the team planned to spend an additional \$1.8 million for other capital expenditures.¹⁹ But with attendance and revenue down, and the team precluded from even competing for affiliation, these plans are likely to be abandoned.²⁰

Other examples of investment by teams striving to earn and maintain their affiliations include a \$27 million renovation to Charlotte County Stadium performed to attract the then-affiliated Charlotte Stone Crabs, and the Keizer City Council's decision to approve an urban renewal bond for the construction of a stadium for the Salem-Keizer Volcanos.²¹ New York City also paid for a ballpark on Staten Island

¹⁸ See Circle Analytics, Inc., *supra* note 5, at 5.

¹⁹ *Id.* at 7.

²⁰ See Complaint, *supra* note 8, at 19, ¶ 52.

²¹ See Dennis Maffezzoli, *Stone Crabs no Longer Part of Florida State League*, SARASOTA HERALD-TRIB., (Dec. 9, 2020), <https://www.heraldtribune.com/story/sports/2020/12/09/stone-crabs-no-longer-part-florida-state-league/3866777001/>; Gary Horowitz, *Volcanoes Have Staying Power*, STATESMAN J., (June 19, 2016), <https://www.statesmanjournal.com/story/news/2016/06/18/volcanoes-staying-power/86104646/>.

specifically for its Yankee affiliated team,²² and many other localities have made similar investments.²³

But for many teams and communities, the incentive to make investments like these is now gone. The MLB-orchestrated restraints challenged in this lawsuit have made the economic case for these investments a loser by not only stripping 40 teams of their affiliation but also by eliminating competition for future affiliations. The resulting anticompetitive harm is borne not only by these teams but also by businesses and fans in their communities. The antitrust laws should provide no refuge for collusion that harms consumer welfare. The baseball antitrust exemption should be revoked so that Petitioners' case can be evaluated on its merits.

CONCLUSION

This Court should grant the petition for certiorari, reverse the decision of the Second Circuit, and eliminate the baseball exemption.

²² See Dan Martin & Ken Davidoff, *Staten Island Yankees 'Shocked' Big-League Team Dumped Them*, N.Y. POST, (Nov. 9, 2020), <https://nypost.com/2020/11/09/staten-island-yankees-shocked-big-league-team-dumped-them/>.

²³ See, e.g., David Van Den Berg, *Ballpark Boom, New Minor League Stadiums Spring Up Across the Region*, REGION FOCUS, (Winter 2009), https://www.richmondfed.org/-/media/richmondfedorg/publications/research/econ_focus/2009/winter/pdf/feature3.pdf.

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