

IN THE SUPREME COURT OF THE UNITED STATES

No. A-_____

JORDAN WYCKOFF, INDIVIDUALLY AND ON BEHALF OF ALL OTHER SIMILARLY
SITUATED, DARWIN COX,

Petitioners,

— *v.* —

OFFICE OF THE COMMISSIONER OF BASEBALL, AN UNINCORPORATED ASSOCIATION DOING
BUSINESS AS MAJOR LEAGUE BASEBALL, ALLAN H. SELIG, ROBERT D. MANFRED, JR., KANSAS CITY
ROYALS BASEBALL CORP, MIAMI MARLINS, L.P., SAN FRANCISCO BASEBALL ASSOCIATES LLC,
BOSTON RED SOX BASEBALL CLUB L.P., ANGELS BASEBALL LP, CHICAGO WHITE SOX LTD., ST.
LOUIS CARDINALS, LLC, COLORADO ROCKIES BASEBALL CLUB, LTD., THE BASEBALL CLUB OF
SEATTLE, LLLP, THE CINCINNATI REDS, LLC, HOUSTON BASEBALL PARTNERS LLC, ATHLETICS
INVESTMENT GROUP, LLC, ROGERS BLUE JAYS BASEBALL PARTNERSHIP, CLEVELAND INDIANS
BASEBALL CO., L.P., CLEVELAND INDIANS BASEBALL CO., INC., PADRES L.P., SAN DIEGO PADRES
BASEBALL CLUB, L.P., MINNESOTA TWINS, LLC, WASHINGTON NATIONALS BASEBALL CLUB, LLC,
DETROIT TIGERS, INC., LOS ANGELES DODGERS LLC, LOS ANGELES DODGERS HOLDING
COMPANY LLC, STERLING METS L.P., ATLANTA NATIONAL LEAGUE BASEBALL CLUB, INC., AZPB
L.P., BALTIMORE ORIOLES, INC., BALTIMORE ORIOLES LIMITED PARTNERSHIP, THE PHILLIES,
PITTSBURGH ASSOCIATES, L.P., TAMPA BAY RAYS BASEBALL LTD., RANGERS BASEBALL EXPRESS,
LLC, RANGERS BASEBALL, LLC, CHICAGO CUBS BASEBALL CLUB, LLC, MILWAUKEE BREWERS
BASEBALL CLUB, INC., MILWAUKEE BREWERS BASEBALL CLUB, L.P., NEW YORK YANKEES P'SHIP,

Respondents.

**APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A
WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

To the Honorable Ruth Bader Ginsburg, as Circuit Justice for the United States Court of Appeals
for the Second Circuit.

Petitioners Jordan Wyckoff and Darwin Cox respectfully request that the time to file a
Petition for Writ of Certiorari in this matter be extended for sixty days to and including January 29,
2018. The court of appeals issued its opinion on August 31, 2017. *See App. at 1a, infra.* Absent an
extension of time, the petition would be due on November 29, 2017. Petitioners are filing this

application at least ten days before the date. *See* S. Ct. R. 13.5. This Court would have jurisdiction over the judgment under 28 U.S.C. § 1254(1).

Background

At issue in this litigation is the continued validity of baseball's exemption from antitrust laws. Petitioners are two former Major League Baseball ("MLB") scouts, who brought suit on behalf of a putative class of scouts. They allege that MLB and its 30 teams conspired to suppress the competition in the labor market for scouting services, thus suppressing scouts' salaries. In any other labor market, that kind of horizontal restraint is prohibited by the Sherman Act.

The district court dismissed for failure to state a claim, holding that the antitrust exemption this Court recognized nearly one hundred years ago bars the suit. *Wyckoff v. Office of the Comm'r of Baseball*, 211 F. Supp. 3d 615, 627 (S.D.N.Y. 2016). The court of appeals affirmed, "refus[ing] Plaintiffs' invitation to adopt a narrower reading of baseball's antitrust exemption." App. at 3a-4a. Regarding itself bound by this Court's precedent, it held "that Defendants' conduct in this case is insulated from antitrust scrutiny." *Id.* at 4a.

Reasons for Granting an Extension of Time

The time to file a Petition for a Writ of Certiorari should be extended for sixty days for these reasons:

First, the decision to file a petition was made only in the last few days. Seeking this Court's review in any case is a serious decision, and litigants should carefully deliberate before filing a petition. Special care will be necessary in writing a petition in this case because petitioners will ask the Court to overrule a 95-year-old precedent of this Court. The seminal decision in *Federal Baseball Club of Baltimore v. National League*, 259 U.S. 200 (1922), recognizing an antitrust exemption for professional baseball, was based on a view of interstate commerce that this Court abandoned long ago. The judicially-recognized exemption has been roundly criticized by judges and commentators

alike for decades, and during the most recent challenge of that exemption in this Court 45 years ago, a Member of this Court described it as a “derelict in the stream of law.” *Flood v. Kuhn*, 407 U.S. 258, 286 (1972) (Douglas, J., dissenting). The antitrust exemption survived that last challenge purely on *stare decisis* grounds, and even those grounds have been eroded away since then—both by congressional action and by changes in how this Court views *stare decisis* for antitrust actions.

Petitioners and their counsel have taken time to carefully consider the merits and appropriateness of petitioning this Court to reexamine one of its own longstanding precedents. Having concluded that they should petition this Court and ask it to overrule *Flood* and *Federal Baseball*, petitioners need additional time to devote equal care to the writing of such a petition.

No meaningful prejudice would arise from the extension. Respondents will continue to benefit from the lower court’s dismissal of the action, so a short delay will not prejudice them. And Petitioners would greatly benefit from the extra time devoted to writing the petition.

Conclusion

For the foregoing reasons, the time to file a Petition for Writ of Certiorari in this matter should be extended sixty days to and including January 29, 2018.



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*Attorneys for Petitioners, individually and on behalf of
all those similarly situated*

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16-3795-cv
Wyckoff v. Office of the Comm'r of Baseball, et al.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York on the 31st day of August, two thousand seventeen.

Present: ROSEMARY S. POOLER,
GERARD E. LYNCH,
Circuit Judges.
BRIAN M. COGAN,¹
District Judge.

JORDAN WYCKOFF, Individually and on behalf of all others
similarly situated, DARWIN COX,

Plaintiffs-Appellants,

v.

16-3795-cv

OFFICE OF THE COMMISSIONER OF BASEBALL, an
unincorporated association doing business as MAJOR LEAGUE
BASEBALL, ALLAN H. SELIG, ROBERT D. MANFRED, JR.,
KANSAS CITY ROYALS BASEBALL CORP, MIAMI
MARLINS, L.P., SAN FRANCISCO BASEBALL
ASSOCIATES LLC, BOSTON RED SOX BASEBALL CLUB
L.P., ANGELS BASEBALL LP, CHICAGO WHITE SOX LTD.,
ST. LOUIS CARDINALS, LLC, COLORADO ROCKIES
BASEBALL CLUB, LTD., THE BASEBALL CLUB OF
SEATTLE, LLLP, THE CINCINNATI REDS, LLC, HOUSTON
BASEBALL PARTNERS LLC, ATHLETICS INVESTMENT

¹ Judge Brian M. Cogan, United States District Court for the Eastern District of New York, sitting by designation.

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GROUP, LLC, ROGERS BLUE JAYS BASEBALL PARTNERSHIP, CLEVELAND INDIANS BASEBALL CO., L.P., CLEVELAND INDIANS BASEBALL CO., INC., PADRES L.P., SAN DIEGO PADRES BASEBALL CLUB, L.P., MINNESOTA TWINS, LLC, WASHINGTON NATIONALS BASEBALL CLUB, LLC, DETROIT TIGERS, INC., LOS ANGELES DODGERS LLC, LOS ANGELES DODGERS HOLDING COMPANY LLC, STERLING METS L.P., ATLANTA NATIONAL LEAGUE BASEBALL CLUB, INC., AZPB L.P., BALTIMORE ORIOLES, INC., BALTIMORE ORIOLES LIMITED PARTNERSHIP, THE PHILLIES, PITTSBURGH ASSOCIATES, L.P., TAMPA BAY RAYS BASEBALL LTD., RANGERS BASEBALL EXPRESS, LLC, RANGERS BASEBALL, LLC, CHICAGO CUBS BASEBALL CLUB, LLC, MILWAUKEE BREWERS BASEBALL CLUB, INC., MILWAUKEE BREWERS BASEBALL CLUB, L.P., NEW YORK YANKEES P'SHIP,

*Defendants-Appellees.*²

Appearing for Appellants: Garrett R. Broshuis, Korein Tillery, LLC (Robert L. King, George A. Zelcs, *on the brief*), St. Louis, MO.

Judith S. Scolnick, Peter A. Barile, III, Christopher M. Burke, Scott + Scott, Attorneys at Law, LLP, New York, NY, and San Diego, CA.

Michael Dell'Angelo, Patrick F. Madden, Berger & Montague, P.C., Philadelphia, PA.

Appearing for Appellees: Elliot R. Peters, Keker & Van Nest LLP (John W. Keker, R. Adam Lauridsen, Thomas E. Gorman, *on the brief*), San Francisco, CA.

Elise M. Bloom, Adam M. Lupion, Proskauer Rose LLP, New York, NY.³

Appeal from the United States District Court for the Southern District of New York (Gardephe, J.).

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of said District Court be and it hereby is **AFFIRMED**.

² The Clerk of Court is respectfully directed to amend the caption as above.

³ Appearing for Appellees other than Baltimore Orioles Limited Partnership and Baltimore Orioles, Inc.

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Plaintiffs-Appellants Jordan Wyckoff, individually and on behalf of other professional baseball scouts, and Darwin Cox (collectively, “Plaintiffs”), appeal from the November 3, 2016 judgment of the United States District Court for the Southern District of New York (Gardephe, J.). That judgment dismissed Plaintiffs’ purported class action suit alleging violations of the Sherman Act, New York’s Donnelly Act, and the Fair Labor Standards Act by the Office of the Commissioner of Baseball, doing business as Major League Baseball, its current and former Commissioner, and its 30 professional baseball clubs (the “Franchises”) (collectively, “Defendants”). We assume the parties’ familiarity with the underlying facts, procedural history, and specification of issues for review.

Plaintiffs argue primarily that Defendants conspired to decrease competition in the labor market for professional baseball scouts in violation of the Sherman Act and New York’s Donnelly Act. Moreover, they argue that the district court erred by ignoring factual allegations indicating that the professional baseball scouts’ claims fall outside professional baseball’s long-recognized exemption from antitrust regulation. We disagree and affirm the district court’s decision.

This Court reviews a district court’s dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6) de novo. *Stratte-McClure v. Morgan Stanley*, 776 F.3d 94, 99-100 (2d Cir. 2015). When reviewing the dismissal of a complaint for failure to state a claim, this Court accepts as true the factual allegations in the complaint and draws all reasonable inferences in plaintiff’s favor. *See Adelson v. Harris*, 774 F.3d 803, 807 (2d Cir. 2014).

Section 1 of the Sherman Act prohibits “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce.” 15 U.S.C. § 1. Since 1922, however, the Supreme Court has recognized a judicially created exemption from antitrust regulation for the business of baseball. *See Fed. Baseball Club of Balt. v. Nat’l League of Prof’l Baseball Clubs*, 259 U.S. 200, 208-09 (1922). Despite heavy criticism, the Supreme Court has repeatedly affirmed baseball’s antitrust exemption. *See Toolson v. New York Yankees, Inc.*, 346 U.S. 356, 357 (1953) (per curiam) (“[T]he business of providing public baseball games for profit between clubs of professional baseball players was not within the scope of the federal antitrust laws.”); *Flood v. Kuhn*, 407 U.S. 258, 282, 284 (1972) (recognizing that baseball’s antitrust exemption was an established “aberration” and “adher[ing] once again to *Federal Baseball* and *Toolson* and to their application to professional baseball”). Our Court has applied this precedent to exempt from antitrust regulation certain claims brought by professional baseball umpires against the American League. *See Salerno v. Am. League of Prof’l Baseball Clubs*, 429 F.2d 1003, 1005 (2d Cir. 1970) (Friendly, J.) (“[P]rofessional baseball is not subject to the antitrust laws.”).

In 1998, Congress passed the Curt Flood Act, which created an exception to baseball’s antitrust exemption for major league baseball players. *See* 15 U.S.C. § 26b. The Act clearly stated that this exception applied only to major league baseball players and not to others “employed in the business of organized professional baseball.” *Id.* § 26b(b)(5).

In light of the binding precedent from the Supreme Court and from this Circuit, and the limited exception created by Congress in the Curt Flood Act, we refuse Plaintiffs’ invitation to

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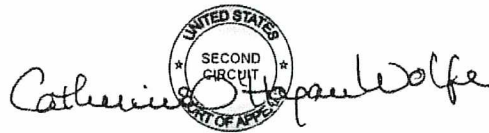
adopt a narrower reading of baseball's antitrust exemption here. Because we are bound by that precedent, we hold that Defendants' conduct in this case is insulated from antitrust scrutiny.

Plaintiffs' own allegations foreclose their argument that they are not involved in the business of baseball. The complaint states that professional baseball scouts "assess baseball players and project the players' abilities to perform at the major league level, and they present that information to the Franchises." App'x at 41 ¶ 93. Plaintiffs acknowledge that this information is "important and valuable to the Franchises," because it "guide[s] the Franchises' decisions on how to rank players to be acquired" through free agency, the amateur draft, and other player acquisition means. App'x at 41 ¶¶ 95-96. Plaintiffs further acknowledge that because the Franchises "place importance on the acquisition and development of baseball players, . . . a scout who is good at evaluating baseball players has great value." App'x at 48 ¶ 127. Based on Plaintiffs' allegations, the district court properly concluded that professional baseball scouts are involved in the business of baseball and, therefore, that the complained-of conduct fails to state a claim for which relief can be granted under existing precedent.

We have considered the remainder of Plaintiffs' arguments and find them to be without merit. Accordingly, the judgment of the district court hereby is AFFIRMED.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

The block contains a handwritten signature, "Catherine O'Hagan Wolfe", written in cursive. Overlaid on the signature is the official seal of the United States Second Circuit Court of Appeals. The seal is circular with "UNITED STATES" at the top, "SECOND CIRCUIT" in the center, and "COURT OF APPEALS" at the bottom.

IN THE SUPREME COURT OF THE UNITED STATES

No. A-_____

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Petitioners,

— v. —

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BASEBALL CLUB, INC., MILWAUKEE BREWERS BASEBALL CLUB, L.P., NEW YORK YANKEES P'SHIP,

Respondents.

CERTIFICATE OF SERVICE

I, Christopher A. Hoffman, counsel for Petitioners, certify that on this 17th of November,
2017, one copy of Application for Extension of Time to File a Petition for a Writ of Certiorari in the
above-captioned case was sent via UPS for overnight delivery to the following counsel:

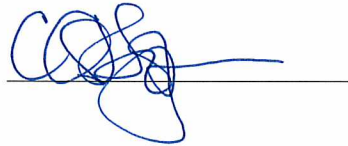
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I further certify that, in accordance with Rule 29 of this Court, all parties required to be served have been served.

I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in blue ink, consisting of stylized, overlapping loops and a long horizontal stroke extending to the right, positioned above a thin horizontal line.