No. 25-416

In the Supreme Court of the United States

CANGREJEROS DE SANTURCE BASEBALL CLUB, LLC, ET AL., PETITIONERS

v.

LIGA DE BÉISBOL PROFESIONAL DE PUERTO RICO, INC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF OF AMICI CURIAE SENATORS MIKE LEE AND CORY BOOKER IN SUPPORT OF PETITIONERS

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IDENTITY AND INTEREST OF AMICI CURIAE[1]

Amici curiae are United States senators with varying committee assignments and political perspectives regarding antitrust policy. *Amici* took an oath to defend the Constitution and are committed to the separation of powers it guarantees. *Amici*, collectively and with their colleagues in Congress, are responsible for writing, repealing, and amending federal legislation setting antitrust policy for the United States. They hold unique perspectives on both the direct subject matter of this litigation—professional baseball's exemption from the antitrust laws—and the assumptions about the meaning of Congressional inaction that have been used to justify the exemption's continued vitality. *Amici* have an interest in restoring the antitrust laws to their full force as applied to the business of baseball, and in ensuring that the judicial branch does not encroach upon Congress's exclusive exercise of the legislative function. *Amici* maintain that a sound antitrust policy unencumbered by judicial overreach is essential to a free market and healthy economy.

Senator Mike Lee is the senior United States Senator from Utah, who has served since 2011. Senator Lee is the Chairman of the U.S. Senate Judiciary Subcommittee on Antitrust, Competition Policy, and Consumer Rights.

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[1] Pursuant to Rule 37.6, *amici* state that no counsel or party authored this brief in whole or in part and that no person other than *amici* or their counsel made a monetary contribution to its preparation or submission. Counsel of record for all parties received notice of this brief at least 10 days before its due date.

Senator Cory Booker is the senior United States Senator from New Jersey, who has served since 2013. Senator Booker is the Ranking Member of the U.S. Senate Judiciary Subcommittee on Antitrust, Competition Policy, and Consumer Rights.

INTRODUCTION AND SUMMARY OF ARGUMENT

In 1922, this Court created an exemption to the antitrust laws for professional baseball, holding that professional baseball is not interstate commerce. *See Federal Baseball Club of Baltimore v. Nat'l League of Pro. Baseball Clubs*, 259 U.S. 200 (1922). This Court subsequently concluded that *Federal Baseball*'s rationale is fundamentally flawed. Despite reaching that conclusion decades ago, the Court has continued to exempt professional baseball from the antitrust laws based on *stare decisis*, insisting that Congress must correct the Court's error by amending the antitrust laws to remove a supposed constitutionally mandated exemption that never existed.

Such rigid application of *stare decisis* to preserve an admittedly incorrect decision should not stand. The Court's continued adherence to *Federal Baseball* is inconsistent with its judicial power under the Constitution to interpret the law, not make it. *Stare decisis* cannot change this basic precept of our constitutional order. Age does not transform this Court's precedent from an interpretation of the law into the law itself. When that interpretation is wrong—as this Court has already acknowledged about *Federal Baseball*—the law must govern, not the erroneous interpretation. The decisions that elevate *Federal Baseball*'s mistaken understanding above the statutory text cannot be reconciled with this foundational constitutional principle.

Moreover, Congress should not be required to act to fix a mistaken interpretation—this Court can and should overrule *Federal Baseball* now. This Court

routinely corrects its own mistakes, especially in cases turning on questions of constitutional interpretation, and even when Congress possesses the power to overrule an erroneous opinion. Doing so is particularly appropriate here because the error is universally acknowledged and produces inconsistent application of the antitrust laws. In these circumstances, the factors this Court considers when deciding whether to overrule incorrect precedent—the quality of *Federal Baseball*'s reasoning, the workability of the rule it established, its consistency with other decisions, subsequent developments, and reliance interests—favor abandoning *Federal Baseball*'s incorrect rule.

The ultimate purpose of *stare decisis* does too. *Stare decisis* is not an end in itself and should be followed only when doing so furthers the fundamental values safeguarded by deciding like cases alike: consistency, fairness, and the rule of law. The Court's treatment of *Federal Baseball* and its progeny has resulted in the opposite. Rather than applying uniform principles to identically situated parties, the Court has applied contradictory standards: total exemption for baseball, none at all for every other sport. With no basis in the text of the laws enacted by Congress, that approach undermines rather than strengthens the rule of law.

The Court should grant the petition and overrule *Federal Baseball* and its progeny.

ARGUMENT

I. THIS COURT SHOULD OVERRULE *FEDERAL BASEBALL* RATHER THAN REQUIRING CONGRESS TO CORRECT THE COURT'S MISTAKE

A. Continued Adherence To Admittedly Wrong Precedent Usurps Congressional Authority

This Court recognized decades ago that professional baseball's antitrust exemption derived from a demonstrably incorrect understanding of interstate commerce and the business of baseball. Pet. 3-6. It has been clear for over half a century not only that "[p]rofessional baseball is a business and it is engaged in interstate commerce" but also that professional baseball's judge-made exemption from the antitrust laws is "an aberration," "an anomaly," "unrealistic, inconsistent, or illogical." *Flood v. Kuhn*, 407 U.S. 258, 282 (1972).

Although professional baseball's antitrust exemption was created entirely by this Court, with no statutory basis, it has persisted because this Court has insisted that Congress must fix the Court's mistake, and that Congress's decision not to do so requires leaving the error intact. *Toolson v. New York Yankees*, 346 U.S. 356, 357 (1953) (per curiam); *Flood*, 407 U.S. at 283-284. First, in *Toolson*, the Court reaffirmed *Federal Baseball*'s holding "[w]ithout reexamination of the underlying issues." 346 U.S. at 357. Instead, the Court reasoned that "Congress has had the ruling under consideration but has not seen fit to bring such business under these laws by legislation." *Ibid.* Then, in *Flood*, the Court acknowledged

that *Federal Baseball* was wrongly decided but again declined to correct its mistake, reasoning that the "aberration" was "to be remedied by the Congress and not by this Court." *Flood*, 407 U.S. at 282-284.

That logic undermines the Constitution's separation of powers. Although *Flood* made clear that Congress has the authority to overrule *Federal Baseball*, this Court can and should fix its own mistake. The Court's insistence on following its own incorrect precedent instead of the laws passed by Congress usurps the legislative power that the Constitution reserves to the political branches. The Constitution vests federal courts only with "the power 'to say what the law is.'" *Gamble v. United States*, 587 U.S. 678, 713 (2019) (Thomas, J., concurring) (quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803)). "Unelected judges" have no power to make law—that is reserved to "the American people * * * through democratically responsive processes." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 423 (2024) (Gorsuch, J., concurring). *Stare decisis* therefore cannot "elevate[] demonstrably erroneous decisions * * * over the text of the Constitution and other duly enacted federal law." *Gamble*, 587 U.S. at 711 (Thomas, J., concurring).

Toolson and *Flood* went astray by elevating *Federal Baseball* over the plain text of the antitrust laws. In the century since *Federal Baseball* was decided, this Court has rightly recognized that only Congress—not the courts—can establish an exemption from the antitrust laws in the first instance. *United States v. Int'l Boxing Club*, 348 U.S. 236, 243 (1955). But what *Toolson* and *Flood* failed to recognize is that continuing to apply such an atextual judicial

exemption also usurps Congress's legislative power. "By applying demonstrably erroneous precedent instead of the relevant law's text," such decisions "exercise[] 'force' and 'will'"—legislative powers reserved to the political branches. *Gamble*, 587 U.S. at 711-712 (Thomas, J., concurring).

Stare decisis does not license courts to legislate, whether by making law in the first instance or by treating their past mistakes as law. *Loper Bright*, 603 U.S. at 423 (Gorsuch, J., concurring). No matter how longstanding a precedent is, it can only ever say what the law means. Accordingly, this Court has not hesitated to overrule its own precedent when it was contrary to the law. *Ramos v. Louisiana*, 590 U.S. 83, 115-118 (2020) (Kavanaugh, J., concurring in part) (collecting cases); *Loper Bright*, 603 U.S. at 424 (Gorsuch, J., concurring) (noting that, in recent years, the Court has overruled one to two prior decisions per Term). When this Court's interpretation is wrong—as the Court has long acknowledged *Federal Baseball* is—it is the statute, not the interpretation, that should govern.

B. Congress's Silence Is Not Approval Of A Baseball Antitrust Exemption

Congressional inaction cannot constitute an endorsement of *Federal Baseball*'s judge-made exemption from the antitrust laws. *Toolson*'s and *Flood*'s reliance on Congressional inaction wrongly ignored this Court's precedent establishing that it need not force Congress to correct the Court's own interpretive errors. Indeed, this Court has warned against placing excessive interpretive weight on Congressional inaction. *Helvering v. Hallock*, 309 U.S. 106,

119 (1940). "To explain the cause of non-action by Congress when Congress itself sheds no light is to venture into speculative unrealities." *Id.* at 119-120. That is in part because, although "[v]arious considerations of parliamentary tactics and strategy might be suggested as reasons for the inaction," they "would only be sufficient to indicate that we walk on quicksand when we try to find in the absence of corrective legislation a controlling legal principle." *Id.* at 120-121. Inferring Congressional intent from Congressional silence thus plays a dangerous game of speculation. For that reason, *stare decisis* is not an inexorable command even in the statutory context, regardless of Congress's ability to fix the error. *See, e.g., Loper Bright*, 603 U.S. at 423-424 (Gorsuch, J., concurring).

Indeed, for at least two reasons, professional baseball's antitrust exemption is an interpretive misstep that this Court should correct itself. First, when the *Toolson* Court initially invoked Congressional inaction to preserve the exemption, Congress would have believed it had no authority to overrule *Federal Baseball*. The core of *Federal Baseball*'s holding is that professional baseball is not interstate commerce. 259 U.S. at 208-209. Under *Federal Baseball*, Congress lacked power under the Commerce Clause to bring professional baseball within the scope of the antitrust laws. *See* U.S. Const. art. I., § 8, cl. 3 (giving Congress power "to regulate Commerce with foreign Nations, among the several States, and with the Indian tribes"). Congress's decision not "to bring [professional baseball] under these laws by legislation having prospective effect" therefore reflected the Court's reasoning in *Federal Baseball* that Congress

lacked power to do so. *Toolson*, 346 U.S. at 357. Despite that Congress's inaction might have been due to a desire not to be in defiance of the Court's reasoning in *Federal Baseball*, the *Toolson* Court nevertheless concluded that Congress must have "had no intention of including the business of baseball within the scope of the federal antitrust laws." *Ibid.*

Second, regardless of Congress's authority to end professional baseball's antitrust exemption, the Court was aware that there were other explanations for Congress's inaction besides its supposed accession to *Federal Baseball*'s interpretive error. In fact, Congress had considered legislation that would clarify the application of the antitrust laws to professional sports but rejected a broad exemption for "all professional sports enterprises." *Int'l Boxing Club*, 348 U.S. at 243-244. Specifically, "[w]ith respect to baseball, the Subcommittee recommended a postponement of any legislation until the status of *Federal Baseball* was clarified in the courts." *Id.* at 244. So even while this Court waited for Congress to take some action regarding professional baseball's antitrust exemption, Congress was waiting for the courts to do the same, perhaps in light of the uncertainty about Congress's authority to act at all. That détente offers no interpretive aid and demonstrates that this Court should fix this legal aberration rather than asking Congress to do it.

C. A Judicially Criticized, Atextual Antitrust Exemption Benefiting A Single Industry Undermines Rule-Of-Law Values *Stare Decisis* Is Meant To Support

Toolson's and *Flood*'s applications of *stare decisis* are as flawed as *Federal Baseball*'s understanding of interstate commerce. "*Stare decisis* is not an inexorable command." *Loper Bright*, 603 U.S. at 407 (internal quotation marks omitted). "[T]he doctrine of *stare decisis* does not dictate, and no one seriously maintains, that the Court should *never* overrule erroneous precedent." *Ramos*, 590 U.S. at 118 (Kavanaugh, J., concurring in part) (original emphasis). The most salient factors that this Court considers when deciding whether to overrule a past decision—as well as the values underlying *stare decisis*—confirm that the Court should abandon the mistaken result in *Federal Baseball*.

First, *Federal Baseball* rested on poor reasoning. *See Janus v. AFSCME, Council 31*, 585 U.S. 878, 917 (2018) (overruling previous decision partly because it "was poorly reasoned"). *Federal Baseball*'s conclusion that the business of baseball is not interstate commerce ignored the innumerable aspects of professional baseball that rely on interstate activity or have interstate effects; was contrary even to the Court's existing and contemporaneous decisions; and is impossible to reconcile with the more expansive understanding of interstate commerce that prevails today. Pet. 3-6, 16-19. Although there are reasonable differences of opinion regarding the correct understanding of interstate commerce, there can be no serious doubt that it encompasses professional

baseball under even the most restrictive modern views. *Compare United States v. Lopez*, 514 U.S. 549, 585-587 (1995) (Thomas, J., concurring) (explaining that, when the Constitution was ratified, "commerce" would have been understood to mean trade or transportation of goods and services), *with Federal Baseball*, 259 U.S. at 208-209 (acknowledging that, even in 1922, professional baseball required transportation across state lines). Indeed, this Court has already said so. *Flood*, 407 U.S. at 282. That makes *Federal Baseball* and its progeny the rare example of precedent that is not just "egregiously" or "demonstrably" wrong but *admittedly* so. *See Loper Bright*, 603 U.S. at 425 (Gorsuch, J., concurring).

Second, the rule announced in *Federal Baseball* is unworkable. *See Janus*, 585 U.S. at 917 (overruling prior decision partly because it had "proved unworkable"). This Court's repeated refusal to extend *Federal Baseball*'s logic in increasingly similar circumstances amply demonstrates the decision's impracticality. Pet. 5-6. And even though the Court has since made explicit that *Federal Baseball*'s rule is "specifically limit[ed] * * * to the facts there involved, i.e., the business of organized professional baseball" (*Radovich v. NFL*, 352 U.S. 445, 451 (1957)), difficult line-drawing questions abound, as the decision below amply illustrates. *See* Pet. App. 21a-24a (collecting cases). What exactly constitutes "the business of organized professional baseball"? Agreements to broadcast games? *See* Pet. App. 24a (citing *Henderson Broad. Corp. v. Houston Sports Ass'n, Inc.*, 541 F. Supp. 263 (S.D. Tex. 1982)). Concession sales in baseball stadiums? Pet. App. 24a (citing *Twin City Sportservice, Inc. v. Charles O. Finley & Co.*, 512 F.2d 1264 (9th Cir.

1975)). And is *Federal Baseball*'s exemption limited to baseball, or is it even more exclusive, benefiting only the baseball leagues involved in *Federal Baseball* itself? Pet. App. 18a-21a; *see* Pet. i (second question presented). In this case, the court of appeals struggled with this question because it is difficult to define the precise scope of a judge-made exemption to Congress's laws when the exemption's application depends solely on the facts of century-old precedent.

Third, *Federal Baseball* is inconsistent "with other related decisions." *Janus*, 585 U.S. at 917 (considering this factor in overruling precedent). Its conclusion that professional baseball is not interstate commerce is impossible to reconcile with "the Court's expanding concept of interstate commerce." *Flood*, 407 U.S. at 282. And, as already explained, this Court has repeatedly declined to extend *Federal Baseball*'s benefits to identically situated defendants, including other major American sports leagues such as the NFL and the NBA. *Radovich*, 352 U.S. at 451-452; *Haywood v. NBA*, 401 U.S. 1204, 1205-1206 (1971) (Douglas, J., in chambers); *Flood*, 407 U.S. at 282-283 (noting that "football, boxing, basketball, and, presumably, hockey and golf" are not exempt from the antitrust laws). This Court long ago abandoned any effort to reconcile those results with the solicitude afforded baseball. *Radovich*, 352 U.S. at 451-452 (acknowledging the possibility of "error or discrimination" but declining to either overrule *Federal Baseball* or extend its logic to identical facts).

Fourth, although *Federal Baseball*'s core conclusion that professional baseball is not interstate commerce was wrong even in 1922, "developments since the decision was handed down" remove any

conceivable doubt. *Janus*, 585 U.S. at 917 (considering this factor in overruling precedent). Professional baseball in the twenty-first century is a multi-billion-dollar international industry. Maury Brown, *MLB Revenues Hit Record $12.1 Billion in 2024*, Forbes (Jan. 27, 2025).[2] Producing that revenue requires considerable interstate activity. As even *Federal Baseball* acknowledged, exhibitions of baseball games between clubs located in different States require extensive transportation and travel over state lines. 259 U.S. at 208-209. As of late September 2025, the league's most-traveled team this year, the then-reigning and now-repeat World Series champion Los Angeles Dodgers, has traveled 48,649 miles to play games in every corner of the country. *2025 MLB Travel Schedule*, MLB Savant.[3] Even the league's least-traveled team, the Cleveland Guardians, has racked up 25,453 miles in 2025, repeatedly crossing state lines in travel that makes the business of baseball possible. *Ibid.*

Modern professional baseball also relies on interstate commerce in other ways that *Federal Baseball* entirely failed to consider. Professional baseball relies on selling unending streams of merchandise and tickets, both in stadiums and online, which follow fans across state borders. The games are broadcast in every State (and around the world) on television, radio, and the internet. Major League Baseball clubs even own and operate Minor League teams located in

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[2] https://www.forbes.com/sites/maurybrown/2025/01/27/mlb-revenues-hit-record-121-billion-in-2024/.

[3] https://baseballsavant.mlb.com/visuals/map?team=&year=2025 (last visited Nov. 6, 2025).

other States. *E.g.*, Benjamin Hill, *With Tarpons, Tampa throws back to the future*, Minor League Baseball (Dec. 11, 2017).[4]

All four of these *stare decisis* considerations were before the Court or even expressly acknowledged in *Toolson* and *Flood*. *Flood*, 407 U.S. at 282-284 (acknowledging that *Federal Baseball* was wrong, inconsistently applied, and contrary to modern conceptions of interstate commerce); *Toolson*, 346 U.S. at 357-358 (Burton, J., dissenting) (recounting the many ways in which professional baseball was "engaged in interstate trade or commerce" by 1953). *Toolson* and *Flood* nonetheless refused to overrule *Federal Baseball* based on two factors: Congressional inaction and Major League Baseball's supposed reliance interests. *Toolson*, 346 U.S. at 357; *Flood*, 407 U.S. at 283-284. As explained above, Congress's silence on this topic does not justify continued adherence to *Federal Baseball*'s mistaken result. *Supra* pp. 7-9.

As for Major League Baseball's reliance interests, *Toolson* and *Flood* placed excessive weight on any such interests. *Toolson* emphasized that professional baseball had "been left for thirty years to develop, on the understanding that it was not subject to existing antitrust legislation." 346 U.S. at 357. But as Justice Gorsuch has explained, "reliance" will "not often supply reason enough on [its] own to abide a flawed decision, for almost any past decision is likely to benefit some group eager to keep things as they are and content with how things work." *Loper Bright*, 603 U.S. at 425 (Gorsuch, J., concurring). So, although

[4] https://www.milb.com/news/gcs-263154244.

the professional baseball leagues are "content with" their *sui generis* exemption from antitrust regulation, that can hardly be sufficient reason on its own to uphold *Federal Baseball*'s mistaken rule.

Regardless, the experience of the other professional sports leagues that do not enjoy baseball's special status shows that the reliance concerns voiced in *Toolson* and *Flood* were overstated. To the extent *Toolson* was animated by the Court's fear that America's pastime could not exist in its current form without a judge-made exemption from the antitrust laws, that fear was unfounded. To take just one example: Over half a century ago, the business of professional football was denied the exemption baseball enjoys. *Radovich*, 352 U.S. at 451-452. Nonetheless, professional football has thrived for over fifty years without such an exemption. Justin Teitelbaum, *The NFL's Most Valuable Teams 2025*, Forbes (Aug. 28, 2025).[5]

Toolson's and *Flood*'s misapplication of *stare decisis* to preserve *Federal Baseball*'s erroneous ruling is particularly concerning because it undermines the very values that *stare decisis* should secure. *See Loper Bright*, 603 U.S. at 411 (overruling past precedent was particularly appropriate where that decision undermined the values justifying *stare decisis*). "[*S*]*tare decisis* is not an end in itself." *Citizens United v. FEC*, 558 U.S. 310, 378-379 (2010) (Roberts, C.J., concurring). "Its greatest purpose is to serve a constitutional ideal—the rule of law." *Ibid.* By ensuring that like cases are decided alike, *stare decisis*

[5] https://www.forbes.com/sites/justinteitelbaum/2025/08/28/the-nfls-most-valuable-teams-2025/.

"promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne v. Tennessee*, 501 U.S. 808, 827 (1991).

The overly rigid and narrow version of *stare decisis* applied by *Toolson* and *Flood*, which preserves a single admittedly mistaken decision to the benefit of just one industry, undermines those values. The application of *Federal Baseball* has not been evenhanded and predictable. Instead, the Court has repeatedly refused to extend its rule to parties who were, in every relevant respect, identically situated to professional baseball. *Radovich*, 352 U.S. at 451-452; *see also id.* at 456 (Harlan, J., dissenting) (arguing that *stare decisis* required extending *Federal Baseball*'s rule to professional football). The Court has justified that special treatment on the basis that "[n]o other business * * * has such an adjudication" in its favor. *Radovich*, 352 U.S. at 452 (majority opinion). So, rather than applying the same rule to similarly situated parties, *Toolson* and *Flood* require applying different rules depending on the identity of the parties. *See* Pet. 5-6. *Stare decisis* cannot justify—let alone require—a result so at odds with basic notions of fairness and the rule of law.

And while other parties are denied the advantages of the "inconsistent" and "illogical" antitrust exemption enshrined by *Toolson* and *Flood*, baseball benefits from those decisions' incoherence twice over. *Flood* endorsed the lower courts' conclusion that the baseball-player plaintiff's state antitrust law claims were preempted "because state antitrust regulation would conflict with federal policy." 407 U.S. at 284.

Because the potential "burden on interstate commerce outweigh[ed] the [S]tates' interests in regulating baseball's reserve system," the Court concluded that "the Commerce Clause precludes the application here of state antitrust law." *Ibid.* *Flood* thus applied a doctrine born from the conclusion that baseball is not interstate commerce to preempt state antitrust law, reasoning that the burden of state regulation on interstate commerce outweighed the States' interest. A doctrine that exists to ensure consistent, evenhanded, and predictable decision making cannot support logic so at war with itself.

II. PROFESSIONAL BASEBALL'S ANTITRUST EXEMPTION IS INCONSISTENT WITH SOUND COMPETITION POLICY

In addition to the serious separation-of-powers concerns described above, professional baseball's antitrust exemption is contrary to this Court's recognition that the importance of marketplace competition requires narrowly interpreting any exemptions from the antitrust laws. That interpretive canon reflects not only appropriate deference to Congress's policy determinations, but also the particular importance of the antitrust laws.

The same year it decided *Flood*, this Court recognized that the antitrust laws are "as important to the preservation of economic freedom and our free-enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms." *United States v. Topco Assocs., Inc.*, 405 U.S. 596, 610 (1972). This Court explained that, under the antitrust laws, "the freedom guaranteed each and every business, no matter how small, is the freedom to

compete." *Ibid.* "Implicit in such freedom is the notion that it cannot be foreclosed with respect to one sector of the economy." *Ibid.*

Because the freedom to compete is so foundational, "[i]t is settled law that 'immunity from the antitrust laws is not lightly implied.'" *United States v. Philadelphia Nat'l Bank*, 374 U.S. 321, 348 (1963). This canon of construction reflects the "indispensable role of antitrust policy in the maintenance of a free economy." *Ibid.* Since then, both this Court and the lower courts have applied the canon to narrowly construe antitrust exemptions. *See Fed. Mar. Comm'n v. Seatrain Lines, Inc.*, 411 U.S. 726, 733 (1973) ("[A] broad reading * * * would conflict with our frequently expressed view that exemptions from antitrust laws are strictly construed."); *Laumann v. NHL*, 56 F. Supp. 3d 280, 297 (S.D.N.Y. 2014) ("Exceptions to the antitrust laws are to be construed narrowly.").

This Court has honored that approach by repeatedly refusing to afford broad antitrust exemptions to the other major sports leagues, such as the NFL and NBA. *See Am. Needle Inc. v. NFL*, 560 U.S. 183, 202-203 (2010); *Haywood*, 401 U.S. at 1205-1206 (Douglas, J., in chambers); *Radovich*, 352 U.S. at 451-452; *Int'l Boxing Club*, 348 U.S. at 240-244; *NCAA v. Alston*, 594 U.S. 69, 88 (2021). Yet the Court has failed to complete the logical progression by eliminating professional baseball's judge-made antitrust exemption. Even aside from the significant concerns about *Federal Baseball*, *Toolson*, and *Flood* described above, no sound competition policy justifies applying a different rule to baseball than to every other professional sports league. Baseball is analytically identical

to other professional sports and should be subject to the same rules ensuring robust competition.

As this Court has also recognized, Congress has considered and rejected a broad exemption for professional sports as inconsistent with the competition policy underlying the antitrust laws. *Int'l Boxing Club*, 348 U.S. at 243-244. *International Boxing Club* quoted at length from a 1952 Report by the House Subcommittee on Monopoly Power entitled "Organized Baseball," in which the Subcommittee declared its opposition to four proposed bills forbidding the application of the antitrust laws to "organized professional sports." *Id.* at 243 (quoting H.R. Rep. No. 82-2002, at 230 (1952)). The report explained:

> The requested exemption would extend to all professional sports enterprises and to all acts in the conduct of such enterprises. The law would no longer require competition in any facet of business activity of any sport enterprise. Thus, the sale of radio and television rights, the management of stadia, the purchase and sale of advertising, the concession industry, and many other business activities, as well as the aspects of baseball which are solely related to the promotion of competition on the playing field, would be immune and untouchable. Such a broad exemption could not be granted without substantially repealing the antitrust laws.

H.R. Rep. No. 82-2002, at 230.

Both Congress and the Court have thus recognized that professional baseball's antitrust exemption is inconsistent with the guarantee of free competition

underlying the antitrust laws. Although Congress has the authority to do so, it is not Congress's job to fix this Court's mistakes. The Court has both the power and the duty to do so itself. The Court should grant review to overturn *Federal Baseball* and its progeny, ensuring competition in the sport of professional baseball both on and off the field.

* * * * *

For a century, professional baseball has been shielded from antitrust laws by a court-created exemption that this Court acknowledges rests on incorrect legal reasoning. This anomaly flouts basic constitutional principles by allowing a judicial mistake to stand above the law and undermine the separation of powers. Modern professional baseball bears no resemblance to the localized exhibitions the 1922 Court imagined; it is a multi-billion-dollar interstate enterprise indistinguishable from other professional sports.

For these reasons, amici urge the Court to grant certiorari and overrule *Federal Baseball*, *Toolson*, and *Flood*. In doing so, the Court will correct a longstanding error and reaffirm constitutional principles by restoring the separation of powers. The time has come for America's pastime to compete on a level playing field, subject to the same laws as other interstate businesses.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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