No. 25-416

IN THE

Supreme Court of the United States

CANGREJEROS DE SANTURCE CLUB, LLC, *et al.*,
Petitioners,

v.

LIGA DE BEISBOL PROFESSIONAL
DE PUERTO RICO, INC., *et al.*,
Respondents.

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

BRIEF OF MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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STATEMENT OF INTEREST OF *AMICUS CURIAE* MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION[1]

Since 1966, the Major League Baseball Players Association ("MLBPA") has represented professional baseball players who are signed to a Major League Uniform Players' Contract in collective bargaining with Major League Baseball and its 30 Clubs. In September 2022, MLBPA also became the exclusive collective bargaining representative for the approximately 5,500 Minor League players employed by the Major League Clubs. On March 31, 2023, Minor League players ratified an historic first collective bargaining agreement, achieving significant improvements in player salaries and other terms and conditions of employment.

For decades, professional baseball players were subject to Major League Baseball's unilaterally-imposed "reserve system" and other restrictions on their freedom of contract. This Court protected these restrictions through a judicially created baseball exemption from the federal antitrust laws. See *Flood* v. *Kuhn*, 407 U.S. 258 (1972); *Fed. Baseball Club of Balt.* v. *Nat'l League of Prof. Baseball Clubs*, 259 U.S. 200 (1922); *Toolson* v. *N.Y. Yankees, Inc.*, 346 U.S. 356 (1953) (per curiam).

From its inception, MLBPA has worked to eliminate or limit the scope of Major League Baseball's antitrust exemption and supported the efforts of others aggrieved by the exemption. MLBPA's consistent position has

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[1] Pursuant to Supreme Court Rule 37.2, *amicus curiae* states that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amicus curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief. Both parties received notice of the filing of this brief as required in Rule 37.2.

been that Major League Baseball should not have an exemption and that the exemption harms players, fans, cities, states, and other businesses.

On October 27, 1998, MLBPA's efforts to eliminate the exemption as applied to Major League players succeeded when Congress passed the Curt Flood Act of 1998. See 15 U.S.C. § 26b(a). The Act makes all matters "directly relating to or affecting employment of major league baseball players" subject to the federal antitrust laws. *Id.*

The MLBPA offers a unique perspective to this Court on the Curt Flood Act. That legislation resulted from Major League Baseball and MLBPA's agreement to remove the exemption as it pertained to anything affecting player employment after the season-ending strike that cancelled the 1994 World Series. The Act is frequently mischaracterized as proof that Congress ratified the baseball exemption in other areas. MLBPA will show that Congress's intent—reflected in the Act's unambiguous text—was quite the opposite.

But MLBPA's interests continue to be adversely affected by baseball's special exemption from the antitrust laws. MLBPA now represents Minor League players.[2] Major League Baseball and its 30 Clubs can continue to manage the Minor Leagues without regard to anti-competitive intent and effect. But for the baseball exemption, Minor League players would, like

[2] Specifically, MLBPA represents all players who are employed by one of the 30 Major League Clubs and signed to a current Minor League Uniform Player Contract, excluding players assigned to Minor Leagues located entirely outside the United States and Canada.

other professional athletes, have antitrust recourse for restraints in the labor market in the event they choose at some point no longer to be represented by a union. *Brown*, 518 U.S. at 235-36.

SUMMARY OF ARGUMENT

MLBPA supports the Petition's request that this Court correct its mistake and overturn the baseball exemption, or in the alternative, limit the exemption to the precise context in which it arose. MLBPA's brief focuses on two points in support of review.

First, MLBPA can offer a distinctive perspective on the origins, purposes, and implications of the Curt Flood Act because the legislation was the result of a collective bargaining agreement between MLBPA and Major League Baseball. The history leading up to Congress's enactment of the Curt Flood Act and the text of the Act itself eviscerate any argument that the Act supports baseball's antitrust exemption. The Act's text expressly states that it should not be interpreted to have any implications beyond elimination of the antitrust exemption in the market for Major League players' services. The Act also calls out ongoing litigation about the scope of the exemption and makes clear that Congress is *not weighing in on the courts' assessment of that question*.

Second, eliminating the baseball exemption would result in significant pro-competitive benefits in the baseball industry, including in the market for player services. This case provides a useful example. In addition, if Minor League players were to choose in the future to cease being represented by a union, or if Major League Baseball were otherwise to take action that affected players *outside of the collective bargaining process*, Major League Baseball would likely lose its

nonstatutory labor exemption under this Court's decision in *Brown*, 518 U.S. 231. In that situation, if the judicially-created baseball exemption were eliminated, employees would be able to avail themselves of the same antitrust rights as employees in any other industry. Absent that change, Major League Baseball can engage in anticompetitive conduct in the market for Minor League players' services with impunity.

ARGUMENT

I. THE BASEBALL EXEMPTION SHOULD BE ELIMINATED BECAUSE IT IS WRONG AND HAS SIGNIFICANT ANTI-COMPETITIVE CONSEQUENCES

MLBPA supports the Petition in arguing that the baseball exemption from the federal antitrust laws is undisputedly wrong as a matter of statutory interpretation. It is also bad for baseball, baseball fans and affected communities, as well as for all economic sectors professional baseball affects. It is universally acknowledged to be error, including by this Court. See *NCAA* v. *Alston*, 594 U.S. 69, 94 (2021); ("aberrational" (cleaned up)); *Flood*, 407 U.S. at 282 (an "anomaly"); *Haywood* v. *Nat'l Basketball Ass'n*, 401 U.S. 1204 (1971) (basketball enjoys no antitrust exemption); *Radovich* v. *Nat'l Football League*, 352 U.S. 445 (1957) (refusing to give professional football an antitrust exemption); *United States* v. *Int'l Boxing Club of N.Y.*, 348 U.S. 236 (1955) (applying antitrust laws to boxing); Stephen F. Ross, *Reconsidering* Flood v. Kuhn, 12 U. Miami Ent. & Sports L. Rev. 169 (1995); Ed Edmonds, *Over Forty Years in the On-Deck Circle: Congress and the Baseball Antitrust Exemption*, 19 T. Marshall L. Rev. 627 (1994).

The statutory *stare decisis* rationale that has propped up the baseball exemption for decades can no

longer bear its weight. This Court has increasingly made clear that statutory *stare decisis* is a relatively weak presumption especially with respect to federal statutes that create common law frameworks for judicial lawmaking, *e.g.*, statutes like the Sherman Act. The Court now "view[s] stare decisis as having less-than-usual force in cases involving the Sherman Act." *Kimble* v. *Marvel Ent., LLC*, 576 U.S. 446, 461 (2015). See, e.g., *Leegin Creative Leather Prods., Inc.* v. *PSKS, Inc.*, 551 U.S. 877 (2007) (overruling Sherman Act prece dent); *State Oil Co.* v. *Kahn*, 522 U.S. 3, 20-22 (1997) (same); *Copperweld Corp.* v. *Indep. Tube Corp.*, 467 U.S. 752 (1984) (same); *Cont'l T.V., Inc.* v. *GTE Sylvania Inc.*, 433 U.S. 36 (1977) (same); see also William N. Eskridge, *Overruling Statutory Precedent*, 76 Geo. L. J. 1361, 1376-81 (1987-88). Baseball's unique status as a beneficiary of "excessively strict" *stare decisis* is out step with the rest of the law. Eskridge, 76 Geo. L. J. at 1380.

Moreover, as MLBPA details below, any argument that the Curt Flood Act reflects acquiescence by Congress in the continued existence of the exemption is fatally undermined by the text, purpose and legislative history of the Act. In light of that reality, and the continuing anticompetitive harm that the baseball exemption inflicts on players, fans and communities, this Court should correct this error in its caselaw and reverse the First Circuit's expansion of the baseball exemption.

A. The Genesis of the Curt Flood Act and Its Significance In this Case

In light of the Curt Flood Act and its history described below, this Court should reverse its decision in *Flood* v. *Kuhn* to hold its nose and allow the baseball exemption to survive based on Congressional

acquiescence. In fact, Congress has made clear that courts are free to determine the scope, if any, of baseball's exemption.

From 1966 until the Curt Flood Act took effect in 1998, MLBPA represented private-sector employees who did not have the protection of federal or state antitrust laws under *Federal Baseball Club* and *Toolson*. As a result, going back to 1879, players were subject to professional baseball's reserve clause. The reserve clause "centers in . . . the confinement of the player to the club that has him under the contract; the assignability of the player's contract; and the ability of the club annually to renew the contract unilaterally, subject to a stated salary minimum." *Flood*, 407 U.S. at 259 n.1.

For decades, in the absence of antitrust protection, MLBPA fought for players' basic freedom to contract through collective bargaining and the grievance arbitration process. In 1975, through grievance arbitration, MLBPA won a limited right of "free agency" for players. See *In re Nat'l League & Am. League Clubs & MLBPA*, 66 Lab. Arb. 101 (1975), *aff'd Kan. City Royals* v. *MLBPA*, 532 F.2d 615 (8th Cir. 1976). MLBPA has vigorously protected this right in every ensuing collective bargaining agreement. See, *e.g.*, *In Matter of Arbitration Between the MLBPA and the 26 Major League Baseball Clubs*, 86-2, 87-3, and 88-1 (challenging Major League Baseball owners' colluding to suppress player salaries by eliminating bidding on free agents).

MLBPA maintained its opposition to the baseball exemption throughout this period. It supported the lawsuit that led to this Court's decision in *Flood* v. *Kuhn*. After *Flood*, it supported parties seeking to limit the scope of the baseball exemption to the reserve clause, with multiple courts agreeing. See *Piazza* v.

Major League Baseball, 831 F. Supp. 420 (E.D. Pa. 1993); *Butterworth* v. *Nat'l League of Pro. Baseball Clubs*, 644 So. 2d 1021 (Fla. 1994); but see *Minn. Twins P'ship* v. *State ex rel. Hatch*, 592 N.W.2d 847 (Minn. 1999).

There can be no argument that the applicability of the baseball exemption somehow promotes labor peace. Eight times between 1972 and 1995, the collective bargaining agreement—known as the Basic Agreement—expired, and eight times, Major League Baseball experienced either a strike or a lockout. See M.R. McCarthy, *Revenue Sharing in Major League Baseball: Are Cuba's Political Managers on Their Way Over Too?* 7 Vand. J. Ent. & Tech. L. 555, 558-60 (2020).

The August 1994 strike, which cancelled the rest of the 1994 season and its World Series, proved a turning point for baseball. In the aftermath of that strike Major League Baseball and MLBPA agreed jointly to eliminate baseball's antitrust exemption in the market for Major League players' services. MLBPA, however, wanted Congress to eliminate the baseball exemption in that labor market without endorsing the continued application of the baseball exemption to other baseball-related markets. See, *e.g.*, S. Fehr, *The Curt Flood Act and Its Effect on the Future of the Baseball Antitrust Exemption*, 14 Antitrust 25, 27-28 (Spring 2000).

The result of this effort was a provision in the parties' 1997 Basic Agreement. That provision required the league and union to work together "to pass a law that will clarify that Major League Baseball Players . . . have the same rights under the antitrust laws as do other professional athletes." Nat'l League of Pro. Baseball Clubs, *1997 Basic Agreement*, Article XXVIII (Mar. 1997).

This agreement came to fruition in the Curt Flood Act, where the language of the Basic Agreement is repeated almost verbatim in the Act's purpose section:

Major league baseball subject to antitrust laws.

> Subject to subsections (b) through (d) [of this section], the conduct, acts, practices, or agreements of persons in the business of organized professional major league baseball directly relating to or affecting employment of major league baseball players to play baseball at the major league level are subject to the antitrust laws 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 affecting interstate commerce.

15 U.S.C. § 26b(a).

In addition, the Act states:

> *No court shall rely on the enactment of this section as a basis for changing the application of the antitrust laws* to any conduct, acts, practices or agreements other than those set forth in subsection (a).

Id. § 26b(b) (emphasis added). Put differently, the Curt Flood Act—the culmination of a process agreed to in bargaining between the League and MLBPA—was intended to have no effect one way or the other on the question whether and to what extent professional baseball's antitrust exemption exists in areas not "directly relate[d] to or affect[ing]" the employment of Major League players.

Senator Hatch made this clear on the Senate floor:

> This amendment, while providing major league players with the antitrust protections of their

> colleagues in the other professional sports, such as basketball and football, is *absolutely neutral with respect to the state of the antitrust laws* between all entities and in all circumstances other than in the area of employment as between major league owners and players. Whatever the law was the day before this bill passes in those other areas it will continue to be after the bill passes. Let me emphasize that the bill affects no pending or decided cases except to the extent a court would consider exempting major league clubs from the antitrust laws in their dealings with major league players.

144 Cong. Rec. S9496, S9496 (July 30, 1998) (emphasis added). At the time of Senator Hatch's floor statement, multiple cases regarding the scope of the baseball exemption were pending. Senator Hatch thus explained why a "bill that ought to be rather simple to write goes to such lengths to emphasize its neutrality" on that question. *Id.*; see also *id.* ("the parties and the Committee agree that *Congress is taking no position on the current state of the law* one way or the other") (emphasis added); *id.* at S9497 ("Nor can the courts use the enactment of this Act to glean congressional intent as to the validity or lack thereof of [actions described in subsection (b) of the Act]").

Senator Wellstone was equally clear in a colloquy with the Act's co-sponsors Senators Hatch and Leahy:

> Several lower courts have recently found that baseball currently enjoys only a narrow exemption from antitrust laws and that this exemption applies only to the reserve system. It is my understanding that [the Curt Flood Act] will have *no effect on the courts' ultimate resolution of the scope of the antitrust exemption* on matters beyond

> those related to owner-player relations at the major league level.

144 Cong. Rec. S9621, S9621 (July 31, 1998) (emphasis added). Senator Leahy responded that "the bill has no impact on the recent decisions in federal and state courts . . . concerning baseball's status under the antitrust laws." *Id.*[3]

Finally, in his presidential signing statement, President Clinton confirmed that the Act "in no way codifies or extends the baseball exemption." 34 *Weekly Comp. of Pres. Docs.* 2150 (Oct. 27, 1998).

The Curt Flood Act vitiates the supposed Congressional inaction on which this Court's decision in *Flood* rested. 407 U.S. at 268. That decision opens with Justice Blackmun's (in)famous tribute to "The Game," which focuses the stability of rosters and traditions resulting from the unfair reserve system that held players captive to specific teams. If that wholly unfair labor arrangement was, indeed, part of a tradition Congress wished to preserve, surely the Curt Flood Act banished that rationale for good. The act terminates the baseball exemption in the market for Major League players' services, going even further than the reserve system alone.

Further, Congress went out of its way to make clear that it did not want the Curt Flood Act to have any effect at all on pending litigation regarding the scope

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[3] *See also* S. Rep. No. 104-231, at 15 (1996) ("The Committee wishes to make clear that by supporting these particular modifications of baseball's judicially created antitrust exemption in S. 627, it does not intend to imply that more comprehensive change is not also justified – or to imply that the courts should not act decisively themselves to limit further baseball's exemption in appropriate cases. Indeed, a Federal court and the highest court of a State have already taken such action.")

of the baseball exemption.[4] Instead, Congress left to the courts the question of the scope of the baseball exemption and whether enactment of the Curt Flood Act effectively eliminated it. Far from ratifying the baseball exemption, the history of Congress's enactment of the Curt Flood Act frees this Court from concerns about Congressional acquiescence and allows it to consider the issue on its merits.

The continued existence of the baseball exemption does not serve the goals of statutory *stare decisis*. It does not "promote[] the evenhanded, predictable, and consistent development of legal principles . . . ." *Kimble*, 576 U.S. at 455. This Court's trilogy of baseball exemption cases is so widely disparaged as inconsistent with antitrust law that no reasonable litigant would rely on their legal principles (or lack thereof) in other cases. For similar reasons, the baseball exemption cannot "foster[] reliance on judicial decisions." *Id.* Instead, practitioners, academics, those adversely affected by the exemption, and this Court itself, wonder why baseball alone remains above the law. And it does not "contribute[] to the actual and perceived integrity of the judicial process," *id.*, when the Court openly allows one highly visible entity to get away with unlawful conduct.

Even if *stare decisis* could have saved a narrow version of the baseball exemption in the past, the First Circuit's expansion of the exemption warrants

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[4] MLBPA acknowledges that courts have since disagreed with *Piazza*, *see*, *e.g.*, *Major League Baseball* v. *Crist*, 331 F.3d 1177 (11th Cir. 2003). But what is critical is that at the time the Curt Flood Act passed, Congress was aware of the cases holding that the baseball exemption was confined to the reserve system and explicitly instructed that its enactment of the Curt Flood Act should not be used to affect that judicial decision making.

reversal. This Court has hesitated before expanding judicially created doctrines to "new context[s]" when Congress is better positioned to weigh the relevant tradeoffs. *See Egbert v. Boule*, 596 U.S. 482, 498 (2022). That's exactly what happened here. The decision below grants the exemption to a new league in a new context, decades after Congress showed its capacity to legislate on the issue and refused to bless baseball with any kind of antitrust immunity. This Court has unanimously recognized that the baseball exemption is "aberrational." *Alston* 594 U.S. at 95 (cleaned up). Instead of merely disparaging the exemption, this Court should "exercise the truer modesty of ceding an ill-gotten gain, and forthrightly return the power to" create antitrust exemptions to Congress. *Egbert*, 596 U.S. at 504 (Gorsuch, J., concurring) (internal quotation marks omitted).

B. Eliminating the Baseball Exemption Would have Pro-Competitive Benefits in the Baseball Industry

Although the Curt Flood Act eliminated the baseball exemption in the market for the services of Major League players, the exemption, as long as it survives, will continue to have a pernicious effect on Major and Minor League baseball players, fans, and communities.

First, this case illustrates the kinds of anticompetitive abuses blessed by baseball's antitrust exemption. Petitioner Thomas Axon allegedly took over the Cangrejeros de Santurce baseball club, intending to transform the club from a struggling historical relic into a competitive entity. Pet. at 8–9. This effort supposedly included millions of dollars in investments, increased player quality, and improved fan experience. *Id.* The rest of the league was unhappy about this additional competition, and so allegedly shut down

the effort by suspending Axon and preventing his improvements. *Id.* at 9. This is the kind of nakedly anticompetitive conduct which would "be flatly illegal in almost any other industry in America." *Alston*, 594 U.S. at 109 (Kavanaugh, J., concurring). Despite this, the First Circuit saw these allegations as just part of the "business of baseball." But the business of baseball, now a multi-billion-dollar, international enterprise, is "not above the law." *Id.* at 112. And the law, duly enacted by Congress, requires baseball to play by the same rules as every other industry and refrain from anticompetitive conduct. Contrary to Major League Baseball's assertions, these rules do not strangle or ruin sports. Football and basketball fared just fine after this Court refused to grant them their own version of the baseball exemption, with Professional football even surpassing baseball to become the nation's most popular sport.

Second, Major League Baseball has abused its antitrust exemption in recent history to wreak havoc on the lives and livelihoods of Minor League players, teams, and the communities that support them. In 2020, Major League Baseball took control over previously independent Minor Leagues. The 30 Clubs agreed that each Club would have exactly four Minor League affiliates, handpicked by Major League Baseball. Roughly 40 Minor League clubs lost their affiliation. They and the communities supporting them suffered significant harm. *Id.* There are also significantly fewer jobs for Minor League players than existed before Major League Baseball unilaterally contracted 40 clubs. Major League Baseball and its Clubs will undoubtedly seek to rely on the baseball exemption for any similar

efforts in the future, with corresponding negative effects on players, communities and baseball itself.[5]

Third, the baseball exemption unfairly conditions protection for players on the collective bargaining process. This Court has found a "nonstatutory" antitrust exemption for labor market restraints imposed by employers under a collective bargaining agreement. See *Brown*, 518 U.S. at 235-36.

This Court, however, has not defined the "outer boundaries" of the nonstatutory labor exemption. *Id.* at 250. And it cautioned that it does not insulate from antitrust review every joint imposition of terms by employers, for an agreement among employers could be sufficiently distant in time and in circumstances from the collective-bargaining process that a rule permitting antitrust intervention would not significantly interfere with that process. See *Brown* v. *Pro Football, Inc.*, 50 F.3d. 1041, 1057 (D.C. Cir. 1995)

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[5] In this regard, while the parties' Minor League collective bargaining agreement contains an agreement by Major League Baseball not to further contract minor league teams until December 2027, Major League Baseball refused to extend its commitment not to contract affiliates beyond that point. In addition, Major League Baseball and MLBPA disagree about whether Major League Baseball would be required to bargain with MLBPA about a decision to eliminate Clubs. In labor law parlance, the issue is whether contraction is a mandatory subject of bargaining. See *NLRB v. Katz*, 369 U.S. 736 (1962) (identifying certain issues as mandatory subjects of bargaining). MLBPA asserts that bargaining about contraction is mandatory, but Major League Baseball says it is not. See Nat'l League of Pro. Baseball Clubs, *2022-2026 Basic Agreement*, Attachment 8, https://bit.ly/3LpoUqs (last accessed Nov. 3, 2025). Major League Baseball agreed not to contract for the duration of its Minor League collective bargaining agreement, but the agreement states that neither party waives its rights as to this issue.

(suggesting that exemption lasts until collapse of the collective-bargaining relationship, as evidenced by the decertification of the union); *El Cerrito Mill & Lumber Co.*, 316 N.L.R.B. at 1006-1007 (1995) (suggesting that 'extremely long' impasse, accompanied by 'instability' or 'defunctness' of multiemployer unit, might justify union withdrawal from group bargaining). *Id.*

As a result, if Minor League players were to choose for whatever reason in the future to cease being represented by a union, or if Major League Baseball were to otherwise take action that affected players *outside of the collective bargaining process*, Major League Baseball would lose its nonstatutory labor exemption. In that situation, players would be able to avail themselves of the same antitrust rights as employees in any other industry if and only if *Flood* is overturned.

CONCLUSION

This Court should grant the petition, overrule its prior decisions, and eliminate the baseball exemption. The decision of the Second Circuit should be reversed.

Respectfully submitted,

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