



Minor League Baseball and the Competitive Balance: Examining the Effects of Baseball’s Antitrust Exemption

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I. INTRODUCTION

On Sunday, October 1, 2006, the Tampa Bay Rays lost their final game of the season to the Cleveland Indians by a score of 6 to 3.² The loss was the Rays' one hundred and first of the season, giving them the worst record in Major League Baseball.³ As a result, they were awarded the first overall pick in the 2007 Draft.⁴ Since their first season, as an expansion club in 1998, the Rays had never finished a season with more than 70 wins.⁵ With the number one pick, the Rays chose an athletic, six-foot-five-inch left-handed pitcher from Vanderbilt University named David Price.⁶ Price made his major league debut on September 14, 2008, and since then has won 72 games for the Rays, was named an All-Star in 2010, 2011 and 2012, and won the 2012 Cy Young Award.⁷ Relying on Price and other players they drafted and developed in their minor league system, the Rays have won 90 games in every season but one since 2007.⁸ The Rays' success would not have been possible without Minor League Baseball's antitrust exemption.

Minor League Baseball has been exempt from the nation's antitrust laws since 1922.⁹ As a result, Minor League Baseball is immune from antitrust suits challenging any of its agreements or practices.¹⁰ After discussing the creation and scope of baseball's exemption, this paper examines the effects of Minor League Baseball's antitrust immunity on minor league players, clubs, fans, communities, and parent clubs. This paper examines both

² 2006 *Tampa Bay Devil Rays - Schedules, Box Scores, and Splits*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/teams/TBD/2006-schedule-scores.shtml> (last visited Dec. 17, 2013), *archived at* <http://perma.cc/6PZE-4KTE>.

³ *MLB Standings - 2006*, ESPN.COM, http://espn.go.com/mlb/standings/_/year/2006 (last visited Dec. 17, 2013), *archived at* <http://perma.cc/CPG7-GMMK>.

⁴ *1st Round of the 2007 MLB June Amateur Draft*, BASEBALL-REFERENCE.COM, http://www.baseball-reference.com/draft/?query_type=year_round&year_id=2007&draft_round=1&draft_type=junreg (last visited Dec. 17, 2013), *archived at* <http://perma.cc/LT7W-S3G8>.

⁵ *Tampa Bay Rays - Team History & Encyclopedia*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/teams/TBD/> (last visited Dec. 17, 2013), *archived at* <http://perma.cc/XWH2-2ENF>.

⁶ *David Price, lhp, Devil Rays*, BASEBALL AMERICA (June 7, 2007), <http://www.baseballamerica.com/online/draft/news/2007/263974.html>, *archived at* <http://perma.cc/59YT-VSTZ>.

⁷ *David Price Player Page*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/p/priceda01.shtml> (last visited Dec. 17, 2013), *archived at* <http://perma.cc/YX3G-RU4N>.

⁸ See *Tampa Bay Rays - Team History & Encyclopedia*, *supra* note 5.

⁹ See *infra* Part II.B.

¹⁰ See *infra* Part II.D.

the benefits and the disadvantages of Minor League Baseball's antitrust exemption, specifically analyzing the First-Year Player Draft, international amateur free agency rules, the minor league reserve system, college baseball's inability to replace Minor League Baseball, the minor league minimum salary, the minor league drug-testing program, and Minor League Baseball's contributions to Major League Baseball's competitive balance.

II. MINOR LEAGUE BASEBALL'S ANTITRUST EXEMPTION

A. *The Antitrust Prohibition: The Sherman Antitrust Act and the Rule of Reason*

United States federal law prohibits unreasonable restraints on trade.¹¹ Section 1 of the Sherman Antitrust Act, enacted in 1890, proscribes, "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations."¹²

Read literally, Section 1 is extremely restrictive, as it would seem to prohibit all interstate private contracting.¹³ Private contracting inherently entails restraint, and Section 1 outlaws every contract that restrains interstate trade.¹⁴ To prevent this extreme result, the Supreme Court has interpreted Section 1 in a manner that avoids this problem.¹⁵ The Court's gloss on Section 1, known as the Rule of Reason analysis, gives the Sherman Antitrust Act more flexibility.¹⁶ The key inquiry under the Rule of Reason analysis is whether a particular restraint on trade promotes competition or unreasonably suppresses it.¹⁷ The Rule of Reason analysis requires courts to conduct a three-step process to determine whether a restraint violates Sec-

¹¹ 15 U.S.C.A. § 1 (West 2004). See also *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 551 U.S. 877, 885 (2007).

¹² 15 U.S.C.A. § 1 (West 2004).

¹³ See *Nat'l Soc'y of Prof'l Engineers v. United States*, 435 U.S. 679, 687–88 (1978).

¹⁴ *Id.*

¹⁵ See *id.* at 688.

¹⁶ *Id.*

¹⁷ *Id.* at 691 ("From Mr. Justice Brandeis' opinion for the Court in *Chicago Board of Trade*, to the Court opinion written by Mr. Justice Powell in *Continental T. V., Inc.*, the Court has adhered to the position that the inquiry mandated by the Rule of Reason is whether the challenged agreement is one that promotes competition or one that suppresses competition.").

tion 1.¹⁸ First, the plaintiff must prove the restraint produces significant anticompetitive effects in the relevant product and geographic markets.¹⁹ If the plaintiff can establish this, the burden shifts to the defendant, who must prove that the restraint also produces pro-competitive effects and that these pro-competitive effects outweigh the restraint's anticompetitive effects.²⁰ If the defendant meets his burden, the burden then shifts back to the plaintiff who, to prevail, must prove that the restraint's legitimate objectives can be achieved in a substantially less restrictive manner.²¹ This Rule of Reason analysis is the standard that courts use to judge antitrust suits brought against professional sports leagues, except professional baseball.²²

*B. The Creation of Professional Baseball's Antitrust Exemption:
The Supreme Court*

Professional baseball is unique in that it is exempt from the Sherman Antitrust Act's proscription against unreasonable restraints on trade.²³ That is, with one small exception, professional baseball is immune from antitrust suits challenging its agreements or actions.²⁴ Professional baseball's anti-

¹⁸ See *Nat'l Hockey League Players' Ass'n v. Plymouth Whalers Hockey Club*, 325 F.3d 712, 718 (6th Cir. 2003) (citations omitted).

¹⁹ *Id.* (citing *Tanaka v. Univ. of S. Cal.*, 252 F.3d 1059, 1063 (9th Cir. 2001)).

²⁰ *Id.* See also *Cont'l Television, Inc. v. GTE Sylvania Inc.*, 433 U.S. 36, 50 n.16 (1977) ("The probability that anticompetitive consequences will result from a practice and the severity of those consequences must be balanced against its pro-competitive consequences.").

²¹ *Plymouth Whalers*, 325 F.3d at 718 (citations omitted). See also *Leegin*, 551 U.S. at 885 (The court "weighs all of the circumstances of a case in deciding whether a restrictive practice should be prohibited as imposing an unreasonable restraint on competition.") (quoting *Cont'l T. V.*, 433 U.S. at 49).

²² Courts consistently use the Rule of Reason analysis where the challenged restraint involves an industry in which some restraint is necessary to ensure the availability of the industry's product. *Plymouth Whalers*, 325 F.3d at 719 ("[C]ourts consistently have analyzed challenged conduct under the rule of reason when dealing with an industry in which some horizontal restraints are necessary for the availability of a product such as sports leagues.") (quoting *Law v. Nat'l Collegiate Athletic Ass'n*, 134 F.3d 1010, 1019 (10th Cir. 1998)). Professional sports leagues make up one such industry, where some restraints on trade are necessary to produce their product, professional sporting events. *Am. Needle, Inc. v. Nat'l Football League*, 560 U.S. 183, 203 (2010) (In professional sports leagues, "restraints on competition are essential if the product is to be available at all.") (quoting *Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Okla.*, 468 U.S. 85, 101 (1984)).

²³ *Flood v. Kuhn*, 407 U.S. 258, 282-83 (1972).

²⁴ See *infra* Part II.D.

trust exemption is rooted in three Supreme Court decisions and is defined today by a number of lower court decisions and the Curt Flood Act.

Professional baseball's antitrust exemption was created by the Supreme Court in its 1922 decision, *Federal Baseball Club of Baltimore v. Nat'l League of Prof'l Base Ball Clubs*.²⁵ The plaintiff in *Federal Baseball* was a professional baseball club from Maryland that was a member of the Federal League, a professional league comprised of eight teams that was attempting to compete with Major League Baseball.²⁶ The plaintiff sued Major League Baseball under the Sherman Antitrust Act, alleging that Major League Baseball conspired to monopolize the business of professional baseball by buying a number of the Federal League clubs and inducing the league's other clubs to leave the Federal League as well.²⁷

In a unanimous and rather cryptic decision written by Justice Holmes, the Supreme Court held that the entire business of professional baseball is exempt from the Sherman Antitrust Act because professional baseball does not entail interstate commerce.²⁸ Specifically, the Court stated that the baseball games are the essential aspect of the professional baseball business, as they are what the paying public consumes.²⁹ Further, the Court stated that even though these games are played by clubs from different states, the games themselves are purely state affairs.³⁰ According to the Court, even though the games require the professional baseball clubs to pay to transport their players across state lines, transporting players is merely incidental to the games and is not the essence of the business of baseball.³¹ Thus, the mere transportation of players across state lines does not itself transform the professional baseball business into one that entails interstate commerce.³²

It was not until 1953 that the Supreme Court reexamined the professional baseball antitrust exemption.³³ In *Toolson v. New York Yankees, Inc.*, a one paragraph, per curiam opinion, the Court affirmed *Federal Baseball* and the existence of professional baseball's antitrust exemption.³⁴ The court provided four reasons for affirming *Federal Baseball*: (1) Congress was aware for

²⁵ 259 U.S. 200 (1922).

²⁶ *Id.* at 207. At the time, Major League Baseball consisted of sixteen teams, eight in the American League and eight in the National League. *Id.*

²⁷ *Id.*

²⁸ *Id.* at 208.

²⁹ *Id.*

³⁰ *Id.* ("The business is giving exhibitions of base ball, which are purely state affairs.").

³¹ *Id.* at 208–09.

³² *Id.* at 209.

³³ *Piazza v. Major League Baseball*, 831 F. Supp. 420, 434 (E.D. Pa. 1993).

³⁴ *Toolson v. New York Yankees, Inc.*, 346 U.S. 356, 357 (1953).

over three decades of baseball's antitrust exemption created by *Federal Baseball*, yet did not enact contrary legislation to negate it; (2) Congress let professional baseball develop for over three decades with the understanding that baseball was not subject to the antitrust laws; (3) overruling *Federal Baseball* would produce the unwanted consequence of retroactive effect; and (4) the Court wanted any change to baseball's exemption to be made by legislation rather than by the Court.³⁵ Justices Burton and Reed dissented, arguing that the revenue sources of and circumstances surrounding professional baseball in 1953 did not warrant the exemption.³⁶

The Court next reexamined³⁷ baseball's exemption in 1972, in *Flood v. Kuhn*.³⁸ In *Flood*, the Court once again affirmed baseball's exemption, specifically with regard to baseball's reserve clause.³⁹ The plaintiff in that case, Curtis Flood, was a professional baseball player who played for the St. Louis Cardinals for twelve years, from 1958 to 1969.⁴⁰ In October of 1969, the Cardinals traded him to the Philadelphia Phillies.⁴¹ Flood did not want to play for the Phillies and requested free agency.⁴² The Commissioner denied Flood's request, so Flood decided to sit out the 1970 season.⁴³ Flood sued the Commissioner of Major League Baseball, the Presidents of the National and American Leagues, and the twenty-four Major League Baseball clubs, challenging Major League Baseball's reserve clause.⁴⁴ Major League Baseball's reserve clause in 1972 stated that a player was confined to the club that had him under contract, that clubs could freely assign their players' contracts, and that clubs could annually renew their players' contracts unilaterally subject to a minimum salary.⁴⁵ Flood claimed that baseball's reserve clause violated the federal antitrust laws.⁴⁶

The Court began its opinion by stating that professional baseball in 1972 was engaged in interstate commerce and that baseball's exemption was "an exception and an anomaly . . . an aberration confined to baseball," as professional basketball, football, and hockey were (and still are) subject to

³⁵ *Id.*

³⁶ *Id.* at 364–65.

³⁷ *Piazza*, 831 F. Supp. at 435.

³⁸ *Flood*, 407 U.S. at 258.

³⁹ *Id.* at 285.

⁴⁰ *Id.* at 264.

⁴¹ *Id.* at 265.

⁴² *Id.* at 265–66.

⁴³ *Id.* The Phillies sold Flood's rights to the Washington Senators after the 1970 season; Flood played for the Senators during his final season, in 1971. *Id.* at 266.

⁴⁴ *Id.* at 265–66.

⁴⁵ *Id.* at 259 n.1.

⁴⁶ *Id.* at 265.

the Sherman Antitrust Act.⁴⁷ Nevertheless, the Court affirmed baseball's exemption with regard to baseball's reserve clause, explaining that the exemption had been in effect for fifty years and was entitled to stare decisis.⁴⁸ The Court justified its holding with reasoning similar to that in *Toolson*: Congress could have, but did not, enact legislation amending baseball's exemption; if the Court were to overturn the exemption, it would produce retroactivity problems; and if the exemption were to be amended, the Court felt it should be done via legislative, not judicial, action.⁴⁹ Because it failed to clearly do so itself, this holding left for the lower courts to decide how to further define the outer limits of baseball's exemption.

*C. Defining the Scope of Professional Baseball's Antitrust Exemption:
The Lower Courts*

Since the 1972 decision in *Flood*, the Supreme Court has been silent on the issue of baseball's exemption. As a result, until the passage of the Curt Flood Act⁵⁰ in 1998, which, arguably, implicitly defined the reach of baseball's exemption,⁵¹ the lower courts were left to decide the scope of the exemption. *Flood* affirmed the existence of baseball's exemption, but did so expressly only with regard to baseball's reserve system.⁵² As a result, lower court decisions following *Flood* have grappled with whether or not baseball's exemption extends beyond the reserve system to other aspects of professional baseball, including Minor League Baseball, franchise relocation, contraction, the Commissioner's authority to act "in the best interests of baseball," radio broadcasting, and clubs' relationships with umpires.

The Ninth Circuit considered whether baseball's exemption extends to Minor League Baseball in 1974 in *Portland Baseball Club, Inc. v. Kuhn*.⁵³ In 1968, two expansion clubs joined Major League Baseball, the Seattle Pilots and San Diego Padres.⁵⁴ Because these two expansion clubs were in cities located in the territory of the minor league Pacific Coast League (PCL), the

⁴⁷ *Id.* at 282.

⁴⁸ *Id.* at 283–84 (“We continue to be loath, 50 years after Federal Baseball and almost two decades after Toolson, to overturn those cases . . . Accordingly, we adhere once again to Federal Baseball and Toolson and to their application to professional baseball.”).

⁴⁹ *Id.*

⁵⁰ 15 U.S.C.A. § 26b (West 2002).

⁵¹ See *infra* Part II.d.

⁵² *Flood*, 407 U.S. at 259 (“The Court is asked specifically to rule that professional baseball's reserve system is within the reach of the federal antitrust laws.”).

⁵³ *Portland Baseball Club, Inc. v. Kuhn*, 491 F.2d 1101 (9th Cir. 1974).

⁵⁴ *Id.* at 1102.

PCL clubs were compensated pursuant to Major League Baseball's procedures at the time.⁵⁵ The owner of the Portland Beavers, one of the PCL clubs, was unsatisfied with the compensation the PCL received and sued the Commissioner of Major League Baseball alleging antitrust violations.⁵⁶ The Ninth Circuit rejected the plaintiff's argument, holding that Minor League Baseball falls within baseball's antitrust exemption.⁵⁷

On the issue of franchise relocation, the courts have split with regard to whether it falls within baseball's exemption. In *Piazza v. Major League Baseball*, the plaintiffs, comprised of a group of investors, sued Major League Baseball after the major league owners rejected the plaintiffs' bid to purchase the San Francisco Giants and move the franchise to Tampa Bay, Florida.⁵⁸ The District Court for the Eastern District of Pennsylvania held that baseball's exemption is limited to baseball's reserve system and thus franchise relocation falls outside of baseball's exemption.⁵⁹ In *Butterworth v. Nat'l League of Prof'l Baseball Clubs*, which arose out of the same facts as *Piazza*, the Florida Supreme Court deferred to *Piazza*, holding that franchise relocation is not covered by baseball's exemption.⁶⁰

By contrast, the Minnesota Supreme Court examined the issue of franchise relocation in 1999 in *Minnesota Twins Partnership v. State ex rel. Hatch* and reached the opposite conclusion.⁶¹ In 1997, the owner of the Minnesota Twins announced that he had reached a deal to sell the Twins to a group of investors from North Carolina.⁶² The investors planned to move the Twins to North Carolina if the Minnesota legislature failed to pass legis-

⁵⁵ *Id.*

⁵⁶ *Id.* at 1102-03.

⁵⁷ *Id.* at 1103 (citing *Flood*, 407 U.S. at 258).

⁵⁸ *Piazza v. Major League Baseball*, 831 F. Supp. 420, 422-23 (E.D. Pa. 1993). The Giants owner subsequently sold the Giants to a group of investors from San Francisco. *Id.* at 423.

⁵⁹ *Id.* at 440-41 (asking whether the market for ownership interests in baseball franchises is central to professional baseball and thus exempt; answering, no, due to stare decisis, but noting that franchise relocation could relate to essential matters of professional baseball).

⁶⁰ *Butterworth v. Nat'l League of Prof'l Baseball Clubs*, 644 So. 2d 1021, 1025 (Fla. 1994) ("[W]e come to the same conclusion as the *Piazza* court: baseball's antitrust exemption extends only to the reserve system."). Florida Attorney General Robert Butterworth issued antitrust civil investigative demands regarding the sale of the Giants. *Id.* at 1022. The focus of Attorney General Butterworth's investigation was whether "[a] combination or conspiracy in restraint of trade in connection with the sale and purchase of the San Francisco Giants baseball franchise" occurred. *Id.*

⁶¹ 592 N.W.2d 847 (Minn. 1999).

⁶² *Id.* at 849.

lation authorizing funding for a new stadium in Minnesota.⁶³ The legislature did not authorize the funding, but Major League Baseball rejected the sale to the investors.⁶⁴ The Minnesota Attorney General served the Twins with civil investigative demands as part of his investigation into possible state antitrust violations.⁶⁵ The Minnesota Supreme Court, unlike the courts in *Piazza* and *Butterworth*, held that franchise sale and relocation does fall within baseball's exemption.⁶⁶

In *Major League Baseball v. Butterworth*, the District Court for the Northern District of Florida answered the question of whether Major League Baseball's decision to contract some of its clubs falls within the exemption.⁶⁷ That case arose out of Major League Baseball's announcement that it would contract two Major League Baseball clubs, later revealed to be the Montreal Expos and Minnesota Twins,⁶⁸ and would reduce Major League Baseball from thirty to twenty-eight teams for the 2002 season.⁶⁹ The district court held that Major League Baseball's decision to contract its clubs falls within the exemption, explaining that, "[i]t is difficult to conceive of a decision more integral to the business of major league baseball than the number of clubs that will be allowed to compete."⁷⁰

In 1978, the Seventh Circuit examined the issue of whether the Commissioner's authority to "act in the best interests of baseball" falls within

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at 856 ("We choose to follow the lead of those courts that conclude the business of professional baseball is exempt from federal antitrust laws. Further, we conclude that the sale and relocation of a baseball franchise, like the reserve clause discussed in *Flood*, is an integral part of the business of professional baseball and falls within the exemption.").

⁶⁷ *Major League Baseball v. Butterworth*, 181 F. Supp. 2d 1316, 1318 (N.D. Fla. 2001) *aff'd on other grounds*, *Major League Baseball v. Crist*, 331 F.3d 1177 (11th Cir. 2003).

⁶⁸ Associated Press, *Yep it Was Them - Twins, Expos Were Only Teams Targeted for Contraction*, SI.COM (Jan. 28, 2002, 10:57 PM), http://sportsillustrated.cnn.com/baseball/news/2002/01/28/contraction_twinsexpos_ap/ (last visited April 2, 2014).

⁶⁹ *Major League Baseball v. Butterworth*, 181 F. Supp. 2d at 1318.

⁷⁰ *Id.* at 1332. The district court noted that it did not rely on the Curt Flood Act, passed in 1998, to decide the case because, according to the district court's interpretation of the Act, the Act did not change the application of the antitrust laws to any components of professional baseball except major league employment terms. *Id.* at 1331 n.16 ("[T]he business of baseball is exempt; the exemption was well established long prior to adoption of the Curt Flood Act and certainly was not repealed by that Act."). See also *infra* Part II.D.

baseball's exemption.⁷¹ In *Charles O. Finley & Co., Inc. v. Kuhn*, the owner of the Oakland Athletics sued Major League Baseball, alleging federal antitrust law violations after the Commissioner voided the Athletics' sale of three players to other major league clubs on the grounds that the sale was "inconsistent with the best interests of baseball, the integrity of the game and the maintenance of public confidence in it."⁷² The Seventh Circuit broadly defined the exemption's scope and held that the Commissioner's authority to act "in the best interests of baseball" falls within the exemption, as the exemption covers the entire business of baseball.⁷³

The District Court for the Southern District of Texas took up the issue of radio broadcasting in 1982 in *Henderson Broad. Corp. v. Houston Sports Ass'n, Inc.*⁷⁴ The plaintiff in *Henderson*, a Houston radio station, sued the Houston Astros after the Astros cancelled their contract with the plaintiff to broadcast their games and instead signed an agreement granting exclusive rights to another Houston radio station.⁷⁵ The district court denied the defendant's motion to dismiss, adopting a narrow view of baseball's exemption and holding that radio broadcasting agreements are not covered by baseball's exemption.⁷⁶

In 1992, the District Court for the Southern District of New York answered the question of whether professional baseball clubs' relationships with umpires are covered by baseball's exemption.⁷⁷ In *Postema v. Nat'l League of Prof'l Baseball Clubs*, the district court held that clubs' relationships with umpires are not covered by the exemption, reasoning that these relationships, unlike the reserve system, are not unique nor essential to professional baseball.⁷⁸ This decision, together with the other lower court decisions above, defined the outer limits of baseball's exemption until the passage of the Curt Flood Act in 1998.

⁷¹ *Charles O. Finley & Co., Inc. v. Kuhn*, 569 F.2d 527, 541 (7th Cir. 1978).

⁷² *Id.* at 531.

⁷³ *Id.* at 541.

⁷⁴ 541 F. Supp. 263, 264 (S.D. Tex. 1982).

⁷⁵ *Id.*

⁷⁶ *Id.* at 271 (The court explained its holding: "The issue in the case is not baseball but a distinct and separate industry, broadcasting. Defendant, HSA, is sued in its capacity as a 'network.' The reserve clause and other 'unique characteristics and needs' of the game have no bearing at all on the questions presented.")

⁷⁷ *Postema v. Nat'l League of Prof'l Baseball Clubs*, 799 F. Supp. 1475, 1489 (S.D.N.Y. 1992) *rev'd*, 998 F.2d 60 (2d Cir. 1993).

⁷⁸ *Id.* ("The Court concludes that Defendants have not shown any reason why the baseball exemption should apply to baseball's employment relations with its umpires. Unlike the league structure or the reserve system, baseball's relations with non-players are not a unique characteristic or need of the game.")

D. *Professional Baseball's Antitrust Exemption Today:
The Curt Flood Act of 1998*

In 1998, Congress finally addressed baseball's exemption when it passed the Curt Flood Act.⁷⁹ The Curt Flood Act narrows baseball's exemption, albeit very slightly, and arguably in the process more clearly defines the scope of the exemption.⁸⁰ The purpose of the Curt Flood Act is to carve out an exception to baseball's exemption. Specifically, it authorizes major league players to bring antitrust suits against Major League Baseball regarding matters directly affecting their employment. However, the Act limits this power to the extent that players in other professional sports are able to bring antitrust suits regarding matters directly affecting their employment.⁸¹ As such, this is a rather narrow exception,⁸² since players in other professional sports leagues are limited in their ability to sue regarding their employment terms.⁸³ The other professional sports leagues are immune from antitrust liability relating to their respective collective bargaining processes because each league's players' association must decertify before it can pursue any antitrust action.⁸⁴

More important than granting this limited exception to baseball's exemption, according to many commentators, the Curt Flood Act better defines the scope of baseball's exemption, albeit implicitly.⁸⁵ The Act proclaims that it does not "chang[e] the application of the antitrust laws" regarding, nor "create, permit or imply a cause of action by which to challenge under the antitrust laws," any components of baseball other than major league employment terms.⁸⁶ The Act goes on to list a number of

⁷⁹ 15 U.S.C.A. § 26b (West 2002).

⁸⁰ *See id.*

⁸¹ *Id.* ("[T]he 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."). *See also Major League Baseball v. Butterworth*, 181 F. Supp. 2d at 1331 n.16.

⁸² Sarah A. Padove, *Topps Gets Exclusive License, Leaving Upper Deck on the Bench: An Analysis of Major League Baseball's Antitrust Exemption in the Modern Era*, 22 MARQ. SPORTS L. REV. 235, 244 (2011).

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *See infra* note 91 and accompanying text.

⁸⁶ 15 U.S.C.A. § 26b (West 2002) ("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 [Major League Baseball players' employ-

categories to which it cautions it does not subject the antitrust laws: Minor League Baseball, the reserve system, the First-Year Player Draft, the Professional Baseball Agreement,⁸⁷ Major League Baseball franchise expansion, location, relocation and ownership issues, marketing or sales of professional baseball's entertainment product and licensing of intellectual property rights, issues protected by the Sports Broadcasting Act of 1961, umpires, and issues between professional baseball and persons not in professional baseball.⁸⁸

This language in the Act can be interpreted in two different manners. One possibility is that Congress only spoke regarding major league employment terms, and was agnostic regarding all other components of professional baseball, wishing to leave the scope of the exemption as it existed in 1998. This is the plain meaning of the Act's language, and the one adopted by the District Court for the Northern District of Florida in its 2001 decision, *Major League Baseball v. Butterworth*.⁸⁹

Another possible interpretation is that the Act excludes major league employment terms from baseball's exemption, but implicitly affirms the exemption for all other components of professional baseball. This is the position adopted by many commentators, including Stanley Brand, the Vice President of Minor League Baseball.⁹⁰ It is also the position adopted by two

ment terms] . . . this section does not create, permit or imply a cause of action by which to challenge under the antitrust laws, or otherwise apply the antitrust laws to, any conduct, acts, practices, or agreements that do not directly relate to or affect employment of major league baseball players to play baseball at the major league level[.]”).

⁸⁷ This is the agreement between Major League Baseball clubs and their minor league affiliates.

⁸⁸ 15 U.S.C.A. § 26b (2002).

⁸⁹ *Major League Baseball v. Butterworth*, F. Supp. 2d at 1331 n.16 (“Plaintiffs assert that the Curt Flood Act[,], adopted in 1998, constitutes an endorsement by Congress of the exemption of the business of baseball. I disagree.”).

⁹⁰ See Stanley M. Brand & Andrew J. Giorgione, *The Effect of Baseball's Antitrust Exemption and Contraction on Its Minor League Baseball System: A Case Study of the Harrisburg Senators*, 10 VILL. SPORTS & ENT. L.J. 49, 67 n.92 (2003) (“[The Curt Flood Act states that] franchise expansion, location or relocation, franchise ownership issues, and relationship between Office of Commissioner and franchise owners continue to enjoy protection from any antitrust action.”). See also J. Gordon Hylton, *Why Baseball's Antitrust Exemption Still Survives*, 9 MARQ. SPORTS REV. 391 (1999) (“Although the Curt Flood Act technically limits professional baseball's antitrust immunity, the statute actually reconfirms the sport's seventy-five year old exemption to the federal antitrust laws. By abrogating only that part of the immunity that applies to labor relations at the major league level, the statute implicitly (and explicitly) leaves intact the remainder of the immunity.”) (footnote omitted); James T. Masteralexis & Lisa P. Masteralexis, *If You're Hurt, Where Is Home? Recently*

courts, the District Court for the Middle District of Florida in 1999,⁹¹ and the District Court for the Northern District of California in 2013.⁹² An argument supporting this position is that in passing the Act, Congress examined baseball's exemption and chose only to exclude major league employment terms. If Congress had wanted to subject any other component of professional baseball to the antitrust laws, it could have excluded that component in the Act as well. However, the response to this argument is that Congress also could have explicitly affirmed the exemption with regard to professional baseball's other components, but did not.

Either way, there is uniform agreement that Minor League Baseball is covered by baseball's exemption.⁹³ The remainder of this paper examines

Drafted Minor League Baseball Players Are Compelled to Bring Workers' Compensation Action in Team's Home State or in Jurisdiction More Favorable to Employers, 21 MARQ. SPORTS L. REV. 575, 590 f.106 (2011) (“[T]he Curt Flood Act . . . reinforced that minor league baseball players were exempt from antitrust laws.”); Padove, *supra* note 82, at 252 (“Congress expressed its intent that the exemption should continue to apply to other components of the business of baseball.”); Gary R. Roberts, *A Brief Appraisal of the Curt Flood Act of 1998 from the Minor League Perspective*, 9 MARQ. SPORTS REV 413, 428 (1999) (“The second and clearly more reasonable way to interpret [the Curt Flood Act] is that it denies antitrust standing to any plaintiff other than major league players who must rely in any way on the Act as a basis for defeating a Federal Baseball/Flood defense.”).

⁹¹ See *Morsani v. Major League Baseball*, 79 F. Supp. 2d 1331, 1335 n.12 (M.D. Fla. 1999) (“[T]he Curt Flood Act . . . explicitly preserved the exemption for all matters ‘relating to or affecting franchise expansion, location or relocation, franchise ownership issues, including ownership transfers[.]’”) (quoting 15 U.S.C.A. § 26b (West 2002)).

⁹² See *City of San Jose v. Office of Comm’r of Baseball*, C-13-02787 RMW, 2013 WL 5609346 (N.D. Cal. Oct. 11, 2013) (“The Curt Flood Act provides further support for the Court’s holding in *Flood* that Congress does not intend to change the longstanding antitrust exemption for “the business of baseball” with respect to franchise relocation issues.”).

⁹³ See, e.g., 15 U.S.C.A. § 26b (West 2002); *Portland*, 491 F.2d at 1103; Brand & Giorgione, *supra* note 90, at 50; Stanley M. Brand, *The Case for the Minor League Baseball Antitrust Exemption*, ANTITRUST, Spring 2000, at 31; Nathaniel Grow, *Defining the “Business of Baseball”: A Proposed Framework for Determining the Scope of Professional Baseball’s Antitrust Exemption*, 44 U.C. DAVIS L. REV. 557, 610 (2010) [hereinafter Grow, *Defining the “Business of Baseball”*]; Nathaniel Grow, *In Defense of Baseball’s Antitrust Exemption*, 49 AM. BUS. L.J. 211, 244 (2012) (“minor league players were excluded from the protections of the Curt Flood Act”) [hereinafter Grow, *In Defense of Baseball’s Antitrust Exemption*]; Hylton, *supra* note 90, at 402; Padove, *supra* note 82, at 250; Roberts, *supra* note 90, at 420 (“Everyone involved in the [Curt Flood Act’s] negotiations believed that the only reasonable interpretation of [the Act’s] language . . . would exclude from the Act’s coverage [] everything associated with minor league baseball[.]”); Martin M. Tomlinson, *The Commissioner’s*

the effects of Minor League Baseball's exemption, including Minor League Baseball's immunity from antitrust suit, the First-Year Player Draft, international amateur free agency rules, the minor league reserve system, college baseball, the minor league minimum salary, the minor league drug-testing program, and Major League Baseball's competitive balance.

III. MINOR LEAGUE BASEBALL'S IMMUNITY FROM ANTITRUST SUIT

Due to baseball's antitrust exemption created by the Supreme Court and modified by the lower courts and the Curt Flood Act, Minor League Baseball is immune from antitrust suits challenging any of its agreements or practices.⁹⁴ Thus, minor league players lack standing to bring antitrust challenges to the First-Year Player Draft, minor league reserve system, international amateur free agency rules, minor league minimum salary, minor league drug-testing program, or any other practice they believe is unfair. While Minor League Baseball's immunity slightly disadvantages minor league players, it is unlikely that minor leaguers would be better off if they were able to bring antitrust suits against Minor League Baseball.

If Minor League Baseball was subject to the antitrust laws, a minor league player could bring an antitrust suit challenging any aspect of Minor League Baseball that he believes disadvantages him. For example, a player could challenge the First-Year Player Draft or minor league reserve system if he thinks it unfairly limits his employment options, negotiating leverage, or control over his career.⁹⁵ He could contest the international amateur free agency rules or minor league minimum salary if he believes they arbitrarily limit the amount of money he can earn.⁹⁶ He could also oppose the minor league drug-testing program if he considers its terms unfair.⁹⁷ But, because Minor League Baseball is exempt from the antitrust laws, minor leaguers are unable to bring any of these suits.

Nevertheless, minor league players are likely no worse off under the current exemption than they would be if they could bring these antitrust suits against Minor League Baseball. Even if a minor leaguer could bring any of the above suits, it would be very costly for him to do so. The cost of

New Clothes: The Myth of Major League Baseball's Antitrust Exemption, 20 ST. THOMAS L. REV. 255, 296 (2008); Garrett R. Broshuis, *Touching Baseball's Untouchables: The Effects of Collective Bargaining on Minor League Baseball Players*, 4 HARV. J. SPORTS & ENT. L. 51, 96 (2013).

⁹⁴ See *supra* Part II.D.

⁹⁵ See *infra* Parts IV, VI.

⁹⁶ See *infra* Parts V, VIII.

⁹⁷ See *infra* Part IX.

such a suit to any one minor leaguer would likely outweigh its benefits to him. The suit would likely cost the player significant time and money unless it were taken pro bono. In addition, the suit could jeopardize the player's career if his parent club decides he is not worth the distraction.⁹⁸ There is also no guarantee that the player would prevail. A court would determine the legality of the challenged practice under the Rule of Reason analysis,⁹⁹ and it is possible that the court would find that the pro-competitive benefits of Minor League Baseball's restrictive practices, individually and as a group, outweigh their anticompetitive effects,¹⁰⁰ and that the benefits cannot be achieved in a less restrictive manner.¹⁰¹ Furthermore, minor leaguers have never formed a players' union despite the probable benefits of collective bargaining,¹⁰² so it is unlikely they would bring an antitrust suit,

⁹⁸ Grow, *In Defense of Baseball's Antitrust Exemption*, *supra* note 93, at 245.

⁹⁹ See *supra* Part II.A. Under the Rule of Reason analysis, if the plaintiff-minor leaguer could show the challenged restraint produces anticompetitive effects, Minor League Baseball would have to prove that the pro-competitive benefits of the restraint outweigh its anticompetitive effects. If Minor League Baseball could meet its burden, to prevail, the minor leaguer would have to prove that the restraint's legitimate objectives could be achieved in a substantially less restrictive manner. See *supra* Part II.A.

¹⁰⁰ Minor League Baseball certainly believes this. The legislative history of the Curt Flood Act bears out that Minor League Baseball and the Members of Congress who represented communities with minor league clubs (successfully) lobbied for a carve out for Minor League Baseball in the Curt Flood Act. See Brand & Giorgione, *supra* note 90, at 53.

¹⁰¹ See *infra* Parts IV (explaining the benefits and anticompetitive effects of the Draft); V (doing the same for international free agency rules); VI (minor league reserve system); VIII (minor league minimum salary); IX (minor league drug-testing program); and X (Minor League Baseball's importance to the competitive balance at the big league level).

¹⁰² Many reasons have been posited as to why minor leaguers have never formed a union. Most likely, it is due to a number of factors, including the high rate of turnover of players — 1,238 players were drafted in 2012 and close to that same number were released; the large geographic area over which minor leaguers are spread, including Canada, the U.S., and Mexico; the disparity in talent levels between triple-A and rookie-league players; the sheer number of minor leaguers playing at one time — there are nearly 8,000 active minor league players each year; the manner in which minor leaguers view themselves — many players do not see themselves as minor leaguers, they see themselves as future major leaguers; the fear of becoming known for the wrong reasons while trying to get called-up; and, most fundamentally, the competition between minor leaguers for promotions — minor leaguers are competing and not cooperating with each other. See, e.g., Michael Baumann, *How 18 Teams Passed on Michael Wacha*, ESPN.COM (Oct. 30, 2013, 10:23 AM), http://espn.go.com/blog/sweetspot/post/_id/41964/how-18-teams-passed-on-michael-wacha (last visited Apr. 2, 2014); *MLB.com Frequently Asked Questions - Web-*

the benefits of which are more uncertain, if given the opportunity.¹⁰³

If a minor leaguer did bring an antitrust suit, the suit would threaten Minor League Baseball's survival, and as a result, it would destabilize the minor leaguer's employment, regardless of which party prevailed. Even if Minor League Baseball won, its litigation costs to defend against the suit would threaten its stability.¹⁰⁴ According to Minor League Baseball's Vice President, Stanley Brand, Minor League Baseball's revenue¹⁰⁵ and cash flows are insufficient to cover these litigation expenses.¹⁰⁶ If the minor leaguer prevailed and the challenged restraint was judged to be in violation of the antitrust laws, Minor League Baseball's removal of the restraint would likely destabilize Minor League Baseball's structure, threatening the employment of all minor leaguers, including the plaintiff.

In addition to benefiting minor league players in the aggregate, Minor League Baseball's immunity from antitrust suit protects the minor league structure. As Part X explains, this structure enables small-market clubs to develop inexpensive major league talents and is thus crucial to the continued competitive balance in Major League Baseball.¹⁰⁷ The sections that follow discuss the different aspects of Minor League Baseball's structure and examine their individual costs and benefits.

IV. THE FIRST-YEAR PLAYER DRAFT

One of the pillars of Minor League Baseball's structure is the First-Year Player Draft (the "Draft"), one of the two primary channels through which amateur talent enters the minor league system. Major League Baseball institutes the Draft every June; major league clubs select, sign, and assign to their minor league affiliates amateur players from the United States, Canada,

site Questions, MiLB.COM, <http://www.milb.com/milb/info/faq.jsp?mc=website> (last visited Dec. 17, 2013). In addition, there is little incentive for a parent union to get involved and organize minor leaguers into a union because there is too little money available in the minors. Lily Rothman, *Emancipation of the Minors*, SLATE.COM (Apr. 3, 2012, 11:08 AM), http://www.slate.com/articles/sports/sports_nut/2012/04/minor_league_union_thousands_of_pro_baseball_players_make_just_1_100_per_month_where_is_their_cash_chavez.html (last visited April 2, 2014).

¹⁰³ See Grow, *In Defense of Baseball's Antitrust Exemption*, *supra* note 93, at 246.

¹⁰⁴ See Brand & Giorgione, *supra* note 90, at 51–52.

¹⁰⁵ Revenue is generated from sources such as television deals, ticket sales and stadium signage. See Brand & Giorgione, *supra* note 90, at 52.

¹⁰⁶ See Brand & Giorgione, *supra* note 90, at 51–52.

¹⁰⁷ See *infra* Part X.

and Puerto Rico.¹⁰⁸ The Draft falls within baseball's exemption and thus cannot be challenged on antitrust grounds.¹⁰⁹ While amateur players selected in the Draft are arguably worse off than if there were no Draft, the Draft contributes to the major league competitive balance.

The Draft limits a player's employment options and negotiating leverage. When a major league club selects an amateur player in the Draft, the club owns his draft rights, and the player can negotiate only with that one club.¹¹⁰ Without the Draft, an amateur player could negotiate with multiple clubs and choose whichever club he wishes, perhaps the club that offers the best deal or the club with whom, because of their current roster, the player believes he can reach the major leagues in the shortest amount of time.¹¹¹

In practice however, the Draft does not significantly disadvantage amateur players in this manner. First, even with the Draft, it is likely that the major league club that places the highest value on an amateur player and is thus willing to offer the player the best deal will select him in the Draft.¹¹² In addition, if a minor league player's path to the majors is blocked in his current organization and it is likely that he could reach the majors in less time in another organization, the current system has a solution for him: the Rule 5 Draft. In the Rule 5 Draft, major league clubs can select and keep other major league clubs' eligible minor league players.¹¹³ Minor leaguers eligible to be selected in the Rule 5 Draft include players signed at nineteen or older who have played professional baseball for four years and players who signed at eighteen and have played professional baseball for five years.¹¹⁴

¹⁰⁸ *About the Rule 5 Draft*, MiLB.COM, <http://www.milb.com/milb/events/rule5draft.jsp> (last visited Dec. 17, 2013).

¹⁰⁹ See *supra* Part II.D.

¹¹⁰ *MiLB.com Frequently Asked Questions — Minor Leagues On-the-Field*, MiLB.COM, <http://www.milb.com/milb/info/faq.jsp?mc=onfield> (last visited Dec. 17, 2013). However, if the player was drafted as a senior in high school, he may decline the contract offer from the team that selects him, attend college and play baseball there, and after three years of college be eligible to be drafted again by any major league club.

¹¹¹ See Joseph A. Kohm, Jr., *Baseball's Antitrust Exemption: It's Going, Going . . . Gone!*, 20 NOVA L. REV. 1231, 1252 (1996).

¹¹² This is especially true with the new Draft bonus pool caps instituted by the 2012 Basic Agreement, which limit spending on draftees.

¹¹³ See *About the Rule 5 Draft*, *supra* note 108. Clubs draft in the reverse order of how they finished in the previous season's regular season standings, with the worst team drafting first. *Id.* The Rule 5 Draft takes place every December. *Id.*

¹¹⁴ *Id.* All minor leaguers on a big league club's 40-man roster are "protected" and ineligible for the Rule 5 Draft. *Id.*

For instance, suppose the Royals have two first basemen on their major league roster signed to long-term deals. Further suppose that the Royals have a minor league first baseman, Juan Gonzalez, who is ready to play in the majors. Gonzalez's path to the majors is blocked in the Royals organization. But, if Gonzalez is eligible for the Rule 5 Draft, another team could select Gonzalez from the Royals' minor league system in the Rule 5 Draft. That team would be required to pay the Royals \$50,000,¹¹⁵ and would then have to keep Gonzalez on their 25-man major league roster for the entirety of the next season.¹¹⁶ If Gonzalez does not remain on that team's 25-man roster, the team must offer him back to the Royals for \$25,000.¹¹⁷ Notable players who were selected in the Rule 5 Draft and given an opportunity to reach the majors with another organization include Roberto Clemente, Johan Santana, Dan Uggla, and Josh Hamilton.¹¹⁸

The First-Year Player Draft also limits the amount of money that players selected in the Draft can earn in a signing bonus. This limit is dictated not by what the market or the selecting club is willing to pay for their talents, but rather arbitrarily by the 2012 Basic Agreement.¹¹⁹ Before the 2012 Basic Agreement, clubs could spend as much as they wanted on their draftees' signing bonuses.¹²⁰ The 2012 Basic Agreement limited the amount clubs can spend on signing bonuses by placing a cap on the aggregate amount (i.e. the "pool") of bonuses that each major league club may spend on its draftees' signing bonuses in any one First-Year Player Draft.¹²¹ The cap covers all bonuses paid to players selected in the first ten rounds, and any bonus paid to players selected in rounds 11 through 40 that exceeds

¹¹⁵ *Id.* After the Padres select Gonzalez, he is automatically placed on the Padres' 40-man roster. *See id.*

¹¹⁶ *See id.*

¹¹⁷ *See id.*

¹¹⁸ *See id.* Interestingly, Russell Wilson, the Seattle Seahawks star quarterback, was selected by the Texas Rangers from the Colorado Rockies' system in the 2013 Rule 5 Draft. Wilson was drafted in the fourth round by the Rockies and played two seasons in their minor league system before beginning his NFL career. *See* Richard Justice, *Rangers Pick NFL QB Wilson in Rule 5 Draft*, MLB.COM (Dec. 12, 2013, 11:37 AM), http://mlb.mlb.com/news/article/mlb/rangers-pick-nfl-qb-russell-wilson-in-rule-5-draft?ymd=20131212&content_id=64621900&vkey=news_mlb (last visited Dec. 17, 2013).

¹¹⁹ *See* Adam Kilgore, *New Rule for MLB Draft Include a Cap on Player Bonuses*, WASH. POST, (June 3, 2012), http://articles.washingtonpost.com/2012-06-03/sports/35462523_1_draft-order-stephen-strasburg-washington-nationals. (last visited Dec. 17, 2013).

¹²⁰ *See id.*

¹²¹ *See id.*

\$100,000.¹²² Every year, each club is given its own cap, which is determined by its win-loss record in the previous season.¹²³ The team with the worst record receives the highest cap.¹²⁴

Although the cap is not technically a hard cap, it is in effect because the penalties for exceeding it are so severe. The penalty for a club that exceeds its cap by 0 to 5 percent is a tax of 75 percent on the excess.¹²⁵ However, the penalty for a club exceeding its cap by more than a mere 5 percent is so steep that no club can justify exceeding the cap by this amount. A team that exceeds its cap by more than 5 percent and up to 10 percent is taxed at the same 75 percent rate on the excess, but it also loses its first round pick in the following year's First-Year Player Draft.¹²⁶ The penalties only grow more severe the more a club exceeds its bonus pool cap.¹²⁷

These bonus pool caps have had a significant effect on the bonuses offered to draftees, and thus on the amount draftees have earned. The 2012 First-Year Player Draft was the first in which clubs were limited by their capped bonus pools in the bonuses they could offer their draftees.¹²⁸ Signing bonuses in the 2012 Draft were 11 percent lower than the 2011 Draft, when teams had no limit on the bonuses they could offer to their draftees.¹²⁹

However, although the caps seem to disadvantage draftees, on the whole, they benefit Major League Baseball. The caps significantly contribute to the competitive balance at the big league level. The caps help the worst major league clubs¹³⁰ improve, since the clubs with the worst records are assigned the highest caps,¹³¹ which makes it easier for these clubs to sign their draft picks, relative to better clubs with lower caps. The caps also help

¹²² Jim Callis, *Draft Bonus Pools Rise 8.2 Percent*, BASEBALL AMERICA (Apr. 2, 2013), <http://www.baseballamerica.com/draft/draft-bonus-pools-rise-8-2-percent/> (last visited Dec. 17, 2013).

¹²³ *See id.*

¹²⁴ *See id.* For instance, the Astros finished with the worst record in 2012 and were awarded the largest bonus pool cap for the 2013 First-Year Player Draft, \$11,698,800, while the Nationals, who finished with the best record in 2012 were awarded a cap of \$2,737,200 for the 2013 Draft. *See id.* *See also MLB Standings - 2012*, ESPN.COM, http://espn.go.com/mlb/standings/_/year/2012 (last visited Dec. 17, 2013).

¹²⁵ Callis, *supra* note 122.

¹²⁶ *See id.*

¹²⁷ *See id.*

¹²⁸ *See id.*

¹²⁹ Associated Press, *Spending Drops 11 Percent in MLB Draft*, THE DAILY NEWS (July 19, 2012, 12:43 AM), http://thedailynewsonline.com/sports/article_54902e5e-d15c-11e1-999e-0019bb2963f4.html (last visited Dec. 17, 2013).

¹³⁰ I.e. those that finished the previous season with the worst record.

¹³¹ *See* Callis, *supra* note 122.

small-market teams sign their top draft picks by modifying the negotiating leverage and framework of these clubs and their draftees. With clubs capped, draftees are less likely to demand incredibly large bonuses since they know the clubs that drafted them are limited in the amount they can spend.

V. INTERNATIONAL AMATEUR FREE AGENCY RULES

Another one of the pillars of Minor League Baseball's structure are the international amateur free agency rules, the second of the two primary channels through which amateur talent enters the minor league system. Major league clubs may sign amateur players from outside of the U.S., Canada and Puerto Rico as free agents, outside the confines of the First-Year Player Draft.¹³² Prior to 2012, Major League Baseball did not regulate the signing bonuses to which major league clubs could sign international free agents.¹³³ However, like it did with the Draft, the 2012 Basic Agreement placed caps on the total amount of bonuses to which each club can sign international amateur free agents during each signing period.¹³⁴ These caps contribute to the competitive balance in Major League Baseball and make international amateur free agents only slightly worse off than they would be without a cap.

Like the new Draft bonus pool caps, each club's international free agency bonus pool cap is determined by the club's winning percentage during the previous year.¹³⁵ For the 2013-2014 signing period, caps ranged

¹³² See T.J. Quinn, *Concern Over MLB Rule in Latin America*, ESPN.COM (Mar. 1, 2012, 12:17 PM), http://espn.go.com/espn/otl/story/_/page/MLB-rule-change/major-league-baseball-rule-change-free-agent-pay-causes-concern-dominican-republic-venezuela, archived at <http://perma.cc/FZ3A-QZPC>.

¹³³ See, e.g., Jim Callis, *MLB's Amateur Attitude is Baffling*, BASEBALL AMERICA (July 13, 2011), <http://www.baseballamerica.com/online/prospects/column/2011/2612097.html>, archived at <http://perma.cc/U5CK-AEWB>; Quinn, *supra* note 132.

¹³⁴ See, e.g., Ben Badler, *International Bonus Pools for 2013-14*, BASEBALL AMERICA (Apr. 9, 2013), <http://www.baseballamerica.com/international/international-bonus-pools-for-2013-14/>, archived at <http://perma.cc/P9M-9QPK>; Quinn, *supra* note 132; Jesse Sanchez, *Allotment for International Signings Vital to Clubs*, MLB.COM (Apr. 30, 2013, 12:22 PM), http://mlb.mlb.com/news/article.jsp?ymd=20130430&content_id=46192310&vkey=news_mlb&c_id=mlb, archived at <http://perma.cc/9TD2-5UGL>; *Summary of Major League Baseball Player Associations - Major League Baseball Labor Agreement*, MLB.COM 5, http://mlb.mlb.com/mlb/downloads/2011_CBA.pdf (last visited Dec. 17, 2013), archived at <http://perma.cc/W7UP-CGXX>. The cap does not apply to players who previously signed a contract with a major or minor league club, nor to players who are at least 23 years old and have played professionally for five years. Sanchez, *supra*.

¹³⁵ See Sanchez, *supra* note 134.

from \$4.94 million for the Astros, who had the lowest winning percentage in 2012, to \$1.85 million for the Nationals, who had the highest winning percentage.¹³⁶ Also like the Draft bonus pool cap, the bonus pool cap for international amateur free agents is technically soft, but hard in practice. This is because the penalties are severe for clubs that exceed their cap. A club that exceeds its cap by 0 to 5 percent is taxed at a 75 percent rate on the excess.¹³⁷ But a club that exceeds its cap by more than a mere 5 percent is taxed at a 75 percent rate on the excess and is restricted to signing only one international amateur free agent to a bonus over \$500,000 in the following year's international amateur free-agent signing period.¹³⁸ A club that exceeds its cap by 10 percent is taxed at a 100 percent rate on the excess and may not sign any international free agent to a bonus over \$500,000 in the following year's international amateur free-agent signing period.¹³⁹ The Rays, who exceeded their cap by 28 percent for the 2012-2013 international amateur free-agent signing period, were taxed on the overage at 100 percent and were prohibited from signing any international amateur free agent to a bonus over \$250,000 during the 2013-2014 signing period.¹⁴⁰

These caps, like the Draft caps, benefit Major League Baseball by contributing to the competitive balance. The international free-agent bonus pool caps prevent large-market clubs from consistently outbidding their small-market counterparts for the best international amateur talent. However, in theory, these caps hurt international amateur players. These players are now limited in the amount they can earn via their signing bonus. Major

¹³⁶ See *id.*

¹³⁷ *Summary of Major League Baseball Player Associations - Major League Baseball Labor Agreement*, *supra* note 134.

¹³⁸ *Id.*

¹³⁹ *Id.* at 4.

¹⁴⁰ Ben Badler, *International Reviews: Tampa Bay Rays*, BASEBALL AMERICA (Feb. 11, 2013), <http://www.baseballamerica.com/today/prospects/international-affairs/2013/2614691.html>, archived at <http://perma.cc/3JH6-PUCR>; see also Ben Badler, *Penalties for Exceeding Pools Depend on International Draft*, BASEBALL AMERICA (Apr. 9, 2013), <http://www.baseballamerica.com/international/penalties-for-exceeding-pools-depend-on-international-draft/>, archived at <http://perma.cc/3JDX-HXFY>. The Cubs also exceeded their cap by more than 15 percent during the 2012-2013 international amateur free-agent signing period, and suffered the same penalties as the Rays. See Phil Rogers, *Cubs Ignore Stop Sign on International Signings*, CHI. TRIB., July 4, 2013, http://articles.chicagotribune.com/2013-07-04/sports/ct-spt-0705-rogers-cubs-chicago-20130705_1_erling-moreno-gleyber-torres-jed-hoyer, archived at <http://perma.cc/GJD8-QBZT>. The Cubs incurred these penalties strategically, believing that the crop of international talent available during the 2012-2013 signing period was far superior to that which will be available during the 2013-2014 signing period. *Id.*

league clubs are no longer able to offer each player the amount the club believes the player is worth. A club that does not want to incur the penalty for exceeding its cap will offer players smaller bonuses than it otherwise would have without the cap.

However, in practice, the cap will only slightly affect amateur free agents. While the cap has significantly reduced the amount of money that a few clubs can spend on international free-agent bonuses, the cap has had little to no effect on the amount that most clubs can spend on these free agents. Figure 1 compares the average amount each club spent on international free-agent bonuses during the 2010-2011 and 2011-2012 signing periods, the two signing periods before the cap was implemented when clubs were not limited in the amount of bonuses to which they could sign international free agents, to the amount clubs may spend during the 2013-2014 signing period under their respective caps.

Figure 1					
International Free-Agent Bonus Pool Caps (all amounts in U.S. dollars, millions)					
	A	B	C	D	E
Team	2010-2011 ¹⁴¹	2011-2012 ¹⁴²	Average of A and B	2013-2014 ¹⁴³	D - C
Rangers	3.57	12.83	8.20	1.94	-6.26
Mariners	6.47	6.67	6.57	2.58	-3.99
Blue Jays	4.18	7.57	5.88	2.82	-3.06
Yankees	5.27	2.93	4.10	1.88	-2.22
Pirates	5.00	4.09	4.55	2.43	-2.12
Royals	2.70	6.80	4.75	2.99	-1.76
Athletics	4.73	1.22	2.98	1.93	-1.05
Braves	3.28	2.49	2.89	1.89	-1.00
Tigers	2.53	3.03	2.78	2.01	-0.77
Padres	2.75	3.48	3.12	2.50	-0.62
Cardinals	2.47	2.63	2.55	2.06	-0.49
Reds	1.56	1.98	1.77	1.86	0.09
Cubs	4.16	4.54	4.35	4.56	0.21
Rays	1.73	1.79	1.76	1.98	0.22
Mets	1.69	2.86	2.28	2.67	0.39
Phillies	1.49	2.05	1.77	2.29	0.52
Giants	0.85	1.81	1.33	1.91	0.58
Indians	2.47	3.58	3.03	3.64	0.61
Brewers	1.39	1.63	1.51	2.23	0.72
Red Sox	1.64	3.25	2.45	3.18	0.73
Orioles	1.18	1.02	1.10	1.96	0.86
Nationals	0.85	1.12	0.99	1.85	0.86
Angels	0.62	1.35	0.99	1.99	1.00
Diamondbacks	1.42	0.88	1.15	2.36	1.21
Astros	5.13	2.12	3.63	4.94	1.31
Twins	2.54	2.31	2.43	3.91	1.48
White Sox	0.35	0.78	0.57	2.17	1.60
Dodgers	0.31	0.18	0.25	2.11	1.86
Marlins	1.19	1.38	1.29	3.40	2.11
Rockies	1.96	1.45	1.71	4.21	2.50

¹⁴¹ *International Spending by Team - 2010*, BASEBALL AMERICA (Mar. 2, 2011), <http://www.baseballamerica.com/today/prospects/international-affairs/2011/2611345.html>, archived at <http://perma.cc/5KJ6-2T7H>.

¹⁴² *International Spending by Team - 2011*, BASEBALL AMERICA (Mar. 15, 2012), <http://www.baseballamerica.com/today/prospects/international-affairs/2012/2613090.html>, archived at <http://perma.cc/6LAX-Q37D>.

¹⁴³ Sanchez, *supra* note 134.

As Figure 1 demonstrates, the cap requires eleven clubs to spend less than they spent before they were capped. Under their respective caps, each of these eleven clubs has less money to spend on international free-agent bonuses during the 2013-2014 signing period than the average amount they spent in the last two signing periods before they were capped. Of those eleven clubs, only a handful are being forced to significantly reduce the amount they can spend. The other nineteen clubs may spend as much money under their respective caps during the 2013-2014 signing period as they spent when they were not capped. As these numbers attest, the new international free-agent bonus pool caps have not affected the spending of the majority of clubs on international free agents, and likely will not significantly affect the amount that international amateur free agents will earn in the future. As such, these caps make international amateur free agents only slightly worse off than they would be without the caps.

VI. MINOR LEAGUE BASEBALL'S RESERVE SYSTEM

A third pillar of Minor League Baseball's structure is the minor league reserve system, the mechanism that keeps amateur talent in the minor league system. When an amateur player signs a professional contract with the club that selects him in the First-Year Player Draft, the contract must be seven years in length.¹⁴⁴ This is what is known as the minor league reserve system. While the reserve system may slightly disadvantage some minor leaguers, it is necessary for the continued existence of Minor League Baseball, and thus benefits minor league players, clubs, fans, communities, and parent clubs overall.

Due to the minor league reserve system, minor league players have little control over their careers after they are drafted and sign a minor league contract. Upon signing a minor league contract with a big league club, for the seven-year duration of the contract, the club may unilaterally call-up,

¹⁴⁴ Major League Rule 3(b). This assumes the draftee signs a minor league contract, which is required by the 2012 Basic Agreement. See *Summary of Major League Baseball Player Associations - Major League Baseball Labor Agreement*, *supra* note 134, at 4. Even before it was required, prior to the 2012 Basic Agreement, it was very rare for a club to sign a draftee to a major league contract. See *infra* note 196. After a player's initial seven-year contract expires, the player becomes a minor league free agent and may sign with any club. Major League Rule 55. However, four years after signing his initial contract, the player may be eligible to be selected by another major league club in the Rule 5 Draft. See *supra* Part IV.

send-down, trade, or release the player.¹⁴⁵ Without the reserve system, an amateur player would be free to sign a short-term minor league contract with the club that drafts him. This could prove advantageous for the player. After that contract expires, the player would be free to sign with whichever team offered him the best deal. If the minor leaguer had a productive season in the last year of his initial contract, he could benefit by being the subject of a bidding war between major league clubs. Furthermore, even if the drafted player does sign a long-term, seven-year initial contract, he would probably receive greater consideration from the club signing him.¹⁴⁶

Interestingly, major league players, who are unionized and enjoy the benefits of collective bargaining, are nonetheless subject to their own major league reserve system.¹⁴⁷ The major league reserve system requires every major league player to play for the club with which he is under contract for six seasons before he is eligible to sign with another club as a free agent.¹⁴⁸ Minor leaguers, who are not unionized, must wait only one more year than major leaguers before attaining free agency and, unlike their major league counterparts, are eligible to be selected by another organization after four years via the Rule 5 Draft.¹⁴⁹

Without the minor league reserve system, however, Minor League Baseball would fall apart. Under the current system, major league clubs invest a significant amount of money in their minor league affiliates.¹⁵⁰ Spe-

¹⁴⁵ Broshuis, *supra* note 93, at 64. While the player may choose to retire, once he retires, he may not sign another professional baseball contract, even internationally, until his seven-year contract expires. Broshuis, *supra* note 93, at 64.

¹⁴⁶ Masteralexis & Masteralexis, *supra* note 90, at 596.

¹⁴⁷ See Grow, *In Defense of Baseball's Antitrust Exemption*, *supra* note 93, at 245-46.

¹⁴⁸ See Grow, *In Defense of Baseball's Antitrust Exemption*, *supra* note 93, at 245-46.

¹⁴⁹ See *supra* Part IV.

¹⁵⁰ The majority of minor league clubs are independently owned, although several minor league clubs are owned by their major league parent clubs, including the Tampa Yankees, Springfield Cardinals, and Gwinnett Braves. *MiLB.com Frequently Asked Questions - The Business of MiLB*, MILB.COM, <http://www.milb.com/milb/info/faq.jsp?mc=business> (last visited Dec. 17, 2013), *archived at* <http://perma.cc/HS23-N9FJ>. Notable minor league owners include billionaires Robert E. Rich Jr. who owns the Buffalo Bisons and Herb Simon who co-owns the Reno Aces. Chris Smith, *How Billionaires Like Warren Buffett Profit from Minor League Baseball Ownership*, FORBES (June 8, 2012, 12:40 PM), <http://www.forbes.com/sites/chris-smith/2012/06/08/billionaires-like-warren-buffett-profit-from-minor-league-baseball-ownership/>, *archived at* <http://perma.cc/5WQP-D9AL>; *see also* Sean Pendergast, *Not So Minor League*, DALL. OBSERVER, July 4, 2013, <http://www.dallasobserver.com/2013-07-04/news/not-so-minor-league/>, *archived at* <http://perma.cc/PGR7-9QXD>. Warren Buffet owned a 25 percent stake in the Omaha Storm Chasers, the Triple-A affiliate of the Kansas City Royals, for twenty-one years until he sold his ownership

cifically, under the Professional Baseball Agreement, a major league club must pay for the salaries of its minor league players; minor league coaches; minor league managers and minor league trainers; health insurance for its minor league players, coaches and managers; equipment for its minor leaguers; five dozen baseballs for every game played by one of its minor league affiliates; and minor league spring training costs.¹⁵¹ In 2007, major league clubs spent an average of over \$20 million on their farm systems, including an average of \$11.5 million, or 6.2 percent of the revenue they generated, to pay the salaries of their minor league players.¹⁵²

In exchange for its investment in its minor league system, a major league club receives a number of benefits. Most importantly, the major league club receives multiple venues to develop its minor league players, the ultimate goal of which is to produce productive major league players.¹⁵³ In

stake in 2012. *Warren Buffett Announces New Storm Chasers Owners*, KETV OMAHA (June 20, 2012, 8:23 AM), <http://www.ketv.com/sports/Warren-Buffett-announces-new-Storm-Chasers-owners/-/9674600/15157146/-/hnapw9/-/index.html>, archived at <http://perma.cc/927S-BPP5>. A minor league club owner hires a front office staff to manage the club's business, while the major league club controls the minor league players, including their signings, assignments, promotions, demotions, and releases. Broshuis, *supra* note 93, at 62. Minor league clubs do not share the revenue they generate with their parent club, except for revenue generated from ticket sales, of which they must share a small percentage with their parent club. Robert J. Chalfin, *The Economics of Minor League Baseball*, WHARTON ENTREPRENEURSHIP BLOG (Aug. 19, 2013), <http://beacon.wharton.upenn.edu/entrepreneurship/2013/08/the-economics-of-minor-league-baseball/>, archived at <http://perma.cc/8V2V-FUB6>.

¹⁵¹ See, e.g., S. REP. NO. 105-118, at 10 (1995) (Antitrust Subcommittee hearing, testimony of James F. Rill, former Assistant Attorney General for the Antitrust Division of the United States Department of Justice); Kohm, *supra* note 111, at 1251-52; Bill Pennington, *Baseball; Minor Leagues Hit the Mark*, N.Y. TIMES, July 28, 2002, <http://www.nytimes.com/2002/07/28/sports/baseball-minor-leagues-hit-the-mark.html?pagewanted=all&src=pm>, archived at <http://perma.cc/ZTP3-YJBP>.

¹⁵² Andrew Zimbalist, *There's More Than Meets the Eye in Determining Players' Salary Shares*, SPORTS BUSINESS JOURNAL (Mar. 10, 2008), <http://www.sportsbusiness-daily.com/Journal/Issues/2008/03/20080310/Opinion/Theres-More-Than-Meets-The-Eye-In-Determining-Players-Salary-Shares.aspx>, archived at <http://perma.cc/8FC9-EZ9T>.

¹⁵³ Even the highest-rated prospects spend time developing in the minor leagues before reaching the big leagues. There are very few exceptions, including most recently Mike Leake, who became the twenty-first player since the First-Year Player Draft began in 1965 to play in the majors without appearing in a minor league game. *Mike Leake - Player Page*, MiLB.COM, http://www.milb.com/milb/stats/stats.jsp?sid=milb&t=p_pbp&pid=502190 (last visited Dec. 17, 2013), archived at <http://perma.cc/PY5V-3YJN>. Leake was selected by the Cincinnati Reds in the first round, eight overall, of the 2009 Draft out of Arizona State University and was

addition, a major league club's minor league affiliates help spread the parent club's fan base geographically and build fan interest in the parent club's minor league prospects (who will, if all goes according to plan, eventually play for the big league club), in the parent club itself, and in professional baseball more generally.¹⁵⁴ Minor league clubs also provide their parent club with a venue where injured big league players can rehabilitate from an injury and return to form.¹⁵⁵ A minor league club, especially one at the triple-A level, also provides its parent club with backup players whom the parent club can call-up to the major leagues to replace major league players who are injured or performing below expectations.

For instance, in 2012, the Boston Red Sox major league roster was ravaged by injury.¹⁵⁶ Over the course of that season, the Red Sox called up twenty-three different players from their minor league affiliates, primarily from Triple-A Pawtucket, to replace their injured big leaguers.¹⁵⁷ Some of the players the Red Sox called up were top prospects who would have been eventually called up even had the injuries not occurred. This group included Will Middlebrooks and Ryan Kalish.¹⁵⁸ However, most of the players called up to replace the injured Red Sox were career minor leaguers whom the Red Sox had signed and stashed in the minors just for the purpose of providing protection in case of injury at the major league level. This group included, among others, Daniel Nava, Aaron Cook, Mauro Gomez, and Pedro Ciriaco.¹⁵⁹

However, without the minor league reserve system, major league clubs would have little incentive to continue investing in their minor league affiliates.¹⁶⁰ If draftees were not required to sign seven-year contracts, major league clubs would have little guarantee of a return, i.e. big league produc-

on Cincinnati's opening day roster in 2010. *Id.* Former New York Yankee pitcher Jim Abbott and former Toronto Blue Jay first baseman John Olerud are two other notable former players who never played in the minor leagues. Kohm, *supra* note 111, at 1253 n.152.

¹⁵⁴ See Andrew Zimbalist, *Baseball Economics and Antitrust Immunity*, 4 SETON HALL J. SPORT L. 287, 304 (1994).

¹⁵⁵ See *id.*

¹⁵⁶ Joe McDonald, *Red Sox Got Help From Below*, ESPNBOSTON.COM (Sep. 4, 2012, 2:46 PM), http://espn.go.com/boston/mlb/story/_/id/8334674/pawtucket-helped-boston-red-sox-made-postseason, archived at <http://perma.cc/LX2N-EG3Z>.

¹⁵⁷ *Id.*

¹⁵⁸ See *id.*

¹⁵⁹ See *id.*

¹⁶⁰ S. REP. NO. 105-118, at 10 (1995) (Antitrust Subcommittee hearing, testimony of James F. Rill, former Assistant Attorney General for the Antitrust Division of the United States Department of Justice).

tion, on their investment in their minor league players, as it takes years for minor leaguers to fully develop their skills in order to reach the big leagues.¹⁶¹ Thus, without the minor league reserve system, major league clubs would invest significantly less money than they currently do in their minor league affiliates.¹⁶²

If major league clubs stopped investing in their minor league affiliates, many minor league clubs would fold, most likely those at the lower-levels of the minor leagues and those in small, rural towns across America.¹⁶³ On its own, without the subsidy that their parent club currently pays them, the revenue these minor league clubs generate is inadequate to cover their operating costs.¹⁶⁴ Thus, the availability of Minor League Baseball in many towns and cities would be eliminated. This would negatively affect the defunct clubs' baseball fans and communities for the following reasons.

In 2013, Minor League Baseball contained fifteen leagues comprised of 230 total teams,¹⁶⁵ 176 of which charged admission.¹⁶⁶ These clubs provide live, community-based, family-friendly, affordable professional baseball to over 175 cities across America. In 2013, more than 41.5 million fans attended a minor league game.¹⁶⁷ Illustrative of the magnitude of the minor league fan base are the Indianapolis Indians, the triple-A affiliate of the Pittsburgh Pirates.¹⁶⁸ The Indians led all minor league clubs in total at-

¹⁶¹ See *id.*

¹⁶² See Brand, *supra* note 93, at 31–32 (citation omitted).

¹⁶³ Brand & Giorgione, *supra* note 90, at 50–51.

¹⁶⁴ Minor league clubs' revenue sources include: ticket sales, luxury suites, parking, stadium sponsorships, stadium naming rights, advertising, concessions, merchandise and stadium leases (which enable clubs to generate revenue from non-baseball events, e.g. concerts). See, e.g., Chalfin, *supra* note 150; Smith, *supra* note 150.

¹⁶⁵ See *Teams By Name*, MiLB.COM, <http://www.milb.com/milb/info/teams.jsp> (last visited Dec. 17, 2013), archived at <http://perma.cc/V8A5-EYUL>.

¹⁶⁶ See *Tribe Named Triple-A Freitas Winners*, MiLB.COM (Dec. 6, 2013, 10:18 AM), http://www.milb.com/news/article.jsp?ymd=20131206&content_id=64442770&fext=.jsp&vkey=news_1117&sid=1117, archived at <http://perma.cc/CQ86-VLPU>.

¹⁶⁷ Blake Arlington, *MiLB Attendance Exceeds 41.5 Million*, MiLB.COM (Sep. 17, 2013, 12:35 PM), http://www.milb.com/news/article.jsp?ymd=20130917&content_id=60849022&fext=.jsp&vkey=news_t422&sid=t422, archived at <http://perma.cc/LLC9-B29Y>. This total was an increase of 275,000 from 2012. *Id.* Minor League Baseball attendance has exceeded 41 million in each of the last nine years, and has increased in 25 of the last 32 seasons. *Id.*

¹⁶⁸ *Indianapolis Indians - Homepage*, MiLB.COM, <http://www.milb.com/index.jsp?sid=t484> (last visited Dec. 17, 2013), archived at <http://perma.cc/QX92-CVY3>.

tendance in 2013 with 637,579 total attendees,¹⁶⁹ which is more than eight NBA teams¹⁷⁰ and eight NHL teams¹⁷¹ drew during their most recent full seasons. Another example of the popularity of minor league baseball are the Dayton Dragons, the single-A affiliate of the Cincinnati Reds.¹⁷² The Dragons currently boast the longest consecutive sellout streak for any professional sports franchise, 983 games.¹⁷³

Many of these baseball fans who attended minor league games in 2013 would have no other opportunity to watch live professional baseball.¹⁷⁴ Some fans are limited geographically; but for many, it is the cost of attending a major league game that is prohibitive. The average minor league ticket in 2013 cost \$7,¹⁷⁵ almost four times less than the average major league ticket price of \$27. Further, the ticket price is but one aspect of the total cost of attending a game. As measured by the Fan Cost Index, the total cost of attending a major league game, including the prices of two adult tickets, two child tickets, four hot dogs, four sodas, two beers, a program or scorecard, and parking, was \$207.80 in 2013.¹⁷⁶ By stark contrast, the Fan Cost Index of attending a minor league game in 2013 was \$62.52

¹⁶⁹ *MiLB Attendance Exceeds 41.2 Million*, MiLB.COM (Sep. 17, 2013, 7:00 AM), http://www.milb.com/news/article.jsp?ymd=20130917&content_id=60843450&fext=.jsp&vkey=pr_milb&sid=mil, archived at <http://perma.cc/Y2FP-NWVY>. The Columbus Clippers led all domestic clubs in average attendance at 9,212 per game. *Id.* The Monterrey Sultans of the Mexican League led all minor league clubs in average attendance at 11,145 per game. *Id.*

¹⁷⁰ See *NBA Attendance Report - 2013*, ESPN.COM, http://espn.go.com/nba/attendance/_/year/2013/sort/homeTotal (last visited Dec. 17, 2013), archived at <http://perma.cc/5EEH-6LPJ>. The teams were Phoenix, Charlotte, Indiana, Atlanta, Milwaukee, Detroit, New Orleans and Sacramento, during the 2012-2013 season. *Id.*

¹⁷¹ See *NHL Attendance Report - 2011-12*, ESPN.COM, http://espn.go.com/nhl/attendance/_/year/2012/sort/homeTotal (last visited Dec. 17, 2013), archived at <http://perma.cc/NWZ5-2E56>. These teams were Colorado, New Jersey, Winnipeg, Anaheim, Columbus, Dallas, New York Islanders and Phoenix, in 2011-2012. *Id.* The 2011-2012 season was the last full NHL season; the 2012-2013 NHL season was shortened by a lockout.

¹⁷² *Dayton Dragons - Homepage*, MiLB.COM, <http://www.milb.com/index.jsp?sid=t459> (last visited Dec. 17, 2013), archived at <http://perma.cc/4T26-JL6A>.

¹⁷³ *MiLB Attendance Exceeds 41.2 Million*, *supra* note 169.

¹⁷⁴ S. Rep. No. 105-118, at 10 (1995).

¹⁷⁵ *Id.*

¹⁷⁶ Jon Greenberg, *MLB Fan Cost Index 2013*, FAN COST EXPERIENCE (Apr. 3, 2013), <http://www.fancostexperience.com/>, archived at <http://perma.cc/X98V-R4N8>. The top three clubs in Fan Cost Index in 2013 were the Boston Red Sox (\$336.99), New York Yankees (\$324.30) and Chicago Cubs (\$298.20). *Id.* The Arizona Diamondbacks had the lowest Fan Cost Index, at \$122.53. *Id.*

and included all the same amenities.¹⁷⁷ From these figures it is clear that Minor League Baseball is the only affordable live professional baseball for many fans.

Beyond reducing the availability of live professional baseball, eliminating minor league clubs would also threaten the stability of the local economies and infrastructures of many of their towns.¹⁷⁸ Many cities with minor league clubs have developed their downtown infrastructure around the ballpark.¹⁷⁹ With the team gone, many local businesses, such as restaurants, pubs, hotels, shops, and parking facilities, which depend on the thousands of fans traveling by their establishments on game days, would lose vital sources of revenue and likely be financially devastated as a result. Thus, repealing the minor league reserve system would threaten the existence of Minor League Baseball and would devastate minor league players, clubs, fans, communities, and parent clubs. Furthermore, as Part X explains, by mandating that players contract with their clubs for seven years, the reserve system gives clubs the time they need to fully develop inexpensive major league talent and in this way significantly contributes to the competitive balance at the major league level.¹⁸⁰

VII. COLLEGE BASEBALL

The minor league system, composed of the Draft, international amateur free agency and the reserve system, serves a unique talent-development function and is irreplaceable. College baseball could not function as an adequate replacement for Minor League Baseball.¹⁸¹ While the NBA and NFL indirectly utilize the NCAA to develop their athletes, the NCAA cannot serve the same function for Major League Baseball.¹⁸² Colleges are unable to train and develop baseball players as well as minor league teams.¹⁸³ Even if they could, most players need more time to develop than the four years they have in college.¹⁸⁴ Before reaching the major leagues, even the best college

¹⁷⁷ *Family of Four Can See Ballgame for \$62*, MiLB.COM (Apr. 24, 2013, 2:00 PM), http://www.milb.com/news/article.jsp?ymd=20130424&content_id=45660354&vkey=pr_&fext=.jsp&sid=, archived at <http://perma.cc/BUP2-N7TH>.

¹⁷⁸ Brand, *supra* note 93, at 31–32.

¹⁷⁹ *See id.*

¹⁸⁰ *See infra* Part X.

¹⁸¹ *See* Brand & Giorgione, *supra* note 90, at 58–60.

¹⁸² *See id.*

¹⁸³ *See id.*

¹⁸⁴ *See id.*

baseball players spend a number of years in the minors after leaving college to further develop their skills.¹⁸⁵

Additionally, many professional baseball players are foreign born¹⁸⁶ and do not speak English well enough to attend an American university. College baseball is not a viable option for these players. Furthermore, the college baseball season is relatively short and consequently does not allow for the same amount of player development as a minor league season.¹⁸⁷ The college baseball season extends for only three months, during which time teams typically play three games per week.¹⁸⁸ By contrast, the typical minor league regular season extends for five months and during that time, teams play almost every day.¹⁸⁹ Due to university scheduling restraints, specifically the summer break, extending the college baseball season is unlikely.¹⁹⁰ However, players need the length of a minor league season to fully develop their skills.¹⁹¹ While many elite college baseball players compete during the summer in one of the premier collegiate summer leagues such as the Cape Cod League, the competition in the summer leagues is too insubstantial and their seasons are too short to serve any significant developmental purpose.¹⁹² If the summer leagues were expanded in an attempt to replace Minor League Baseball to include more teams and thus less skilled players to fill the rosters, the level of competition in these leagues would decline even further.¹⁹³

¹⁸⁵ See *id.*

¹⁸⁶ 28 percent (243 total) of all major leaguers on 2012 major league opening day roster were foreign born. *Opening Day Rosters Feature 243 Players Born Outside of the U.S.*, MLB.COM (Apr. 5, 2012, 1:16 PM), http://mlb.mlb.com/news/article.jsp?ymd=20120405&content_id=27953108&vkey=pr_mlb&c_id=mlb, archived at <http://perma.cc/NR45-8N7C>.

¹⁸⁷ Brand & Giorgione, *supra* note 90, at 58–60.

¹⁸⁸ The University of Maryland's 2014 regular season, their last as members of the ACC, one of the premier college baseball conferences, extends from February 14, 2014, until May 13, 2014. *Maryland Baseball - 2014 Schedule*, UMTERPS.COM, http://www.umterps.com/SportSelect.dbml?DB_OEM_id=29700&SPID=120725&SPSID=716381 (last visited Dec. 17, 2013), archived at <http://perma.cc/J8LZ-CAX3>.

¹⁸⁹ The 2014 regular season schedule of the Pawtucket Red Sox, Boston's Triple-A affiliate and a member of the International League, extends from April 3, 2014, until September 1, 2014. *PawSox - 2014 Schedule*, MiLB.COM, <http://www.milb.com/schedule/index.jsp?sid=c533&m=04&y=2014> (last visited Dec. 17, 2013), archived at <http://perma.cc/JWD8-6BQR>.

¹⁹⁰ Brand & Giorgione, *supra* note 90, at 58–60.

¹⁹¹ See *id.*

¹⁹² See *id.*

¹⁹³ See *id.*

Moreover, the quality of college baseball coaches, facilities and competition are for the most part inferior to those in the minor leagues.¹⁹⁴ Lastly, in the absence of Minor League Baseball, if Major League Baseball increased its reliance on college baseball to develop baseball prospects, it is plausible that college baseball would be subjected to the scandals to which college basketball and football are accustomed.¹⁹⁵ College baseball would become more of a business, toxically mixing academics, athletics, and revenue-generating power, like college basketball and football, and college baseball players would face increased illicit pressure from agents and boosters. For all of these reasons, college baseball could not adequately replace Minor League Baseball.

VIII. MINOR LEAGUE BASEBALL'S MINIMUM SALARY

When major league clubs select amateur players in the First-Year Player Draft or sign them as international free agents, the clubs sign these players to minor league contracts, with few exceptions.¹⁹⁶ These contracts typically compensate players with a lump-sum signing bonus and then with a yearly salary. The salaries in minor league contracts are often the minor league minimum, which is quite low. For instance, the entry-level minor league minimum salary is \$1,100 per month, which is only paid for the five-month baseball season, for a total annual salary of \$5,500.¹⁹⁷ Most minor leaguers earn annual salaries of less than \$10,000.¹⁹⁸ Further, most minor leaguers are offered a small signing bonus that is inadequate to offset their annual minor league salary. Unlike high draft choices who are offered sign-

¹⁹⁴ *See id.*

¹⁹⁵ *See id.*

¹⁹⁶ Clubs are no longer permitted to sign draftees to major league contracts. *See supra* note 144. Players who signed major league contracts with the club that selected them in the First-Year Player Draft, before the 2012 Basic Agreement prohibited it, include Stephen Strasburg, Bryce Harper and Mark Teixeira. *See Nationals Sign Bryce Harper for \$9.9M*, ESPN.COM (Aug. 17, 2010, 3:00 PM), <http://sports.espn.go.com/mlb/news/story?id=5468993>, archived at <http://perma.cc/65EU-C73U>. Recent amateur international free agents who signed major league contracts include Jose Iglesias and Yoenis Cespedes. Ken Rosenthal, *Cespedes Deal with A's a Head-Scratcher*, FOXSPORTS.COM (Feb. 14, 2012, 9:23 AM), <http://msn.foxsports.com/mlb/story/oakland-athletics-four-year-deal-with-cuban-player-yoenis-cespedes-raises-questions-021312>, archived at <http://perma.cc/YQ6C-ER5A>; Alex Speier, *For Jose Iglesias, a Long, Hard Road to Acceptance*, WEEI.COM (June 3, 2013, 7:27 AM), <http://www.wei.com/sports/boston/baseball/red-sox/alex-speier/2013/06/03/jose-iglesias-long-hard-road-acceptance>, archived at <http://perma.cc/QC5W-EPMY>.

¹⁹⁷ Broshuis, *supra* note 93, at 63.

¹⁹⁸ *Id.*

ing bonuses of hundreds of thousands or even millions of dollars, players drafted in the later rounds of the First-Year Player Draft typically are offered signing bonuses of only a few thousand dollars.¹⁹⁹ In exchange for this modest compensation, minor leaguers are required to spend most of their time during the season at work or traveling for work.

This Part first explains why minor leaguers could collectively bargain for a higher minimum wage if they unionized and if Minor League Baseball was subject to the antitrust laws—and why they would likely be successful. Then, this Part illustrates why, if Minor League Baseball was subject to the antitrust laws and the reserve system was abolished, but minor leaguers did not unionize, very few, if any, minor leaguers would earn more money than they currently do under the reserve system. Finally, this Part clarifies why, even with baseball's exemption, minor leaguers who are worth the money will earn it.

If Minor League Baseball was subject to the antitrust laws and minor league players were to unionize, it is likely the players could increase the minor league minimum salary. Minor league hockey players in the American Hockey League (AHL) and East Coast Hockey League (ECHL), who are unionized, are compensated with a significantly higher minimum salary than are minor league baseball players.²⁰⁰ Professional hockey is subject to the antitrust laws, and through collective bargaining, minor league hockey players negotiated a higher minimum wage in exchange for granting the AHL and ECHL labor exemptions from antitrust liability.²⁰¹ The talent in the AHL relative to the NHL is comparable to that at the Triple-A level in baseball relative to the big leagues. The minimum salary in the AHL is \$41,500 for U.S. clubs and \$43,000 for Canadian clubs for the 2013-2014 season.²⁰² AHL players also receive a per diem of \$67.²⁰³ The minimum salary for minor league baseball players in Triple-A is \$10,750 plus a \$25 per diem.²⁰⁴ From this comparison, it seems that if Minor League Baseball was subject to the antitrust laws and its players unionized, they, like their

¹⁹⁹ *Id.* at 63–64. See also Garrett Broshuis, *Playing for Peanuts*, BASEBALL AMERICA (Mar. 31, 2010), <http://www.baseballamerica.com/today/minors/season-preview/2010/269689.html>, archived at <http://perma.cc/JSD6-QLZ9> [hereinafter Broshuis, *Playing for Peanuts*].

²⁰⁰ Masteralexis & Masteralexis, *supra* note 90, at 592–93.

²⁰¹ *Id.*

²⁰² *Agreements - AHL PHPA CBA*, PROF. HOCKEY PLAYERS' ASS'N, <http://www.phpa.com/index.php/site/agreements#Minimum%20Salary> (last visited Dec. 17, 2013), archived at <http://perma.cc/A3VV-3CQW>.

²⁰³ *Id.*

²⁰⁴ Broshuis, *supra* note 93, at 101.

hockey counterparts, could negotiate a higher minimum wage in exchange for granting their leagues labor exemptions from antitrust liability.

If Minor League Baseball was subjected to the antitrust laws and the minor league reserve system was removed, but minor leaguers did not unionize, it is possible but unlikely that some minor league baseball players would earn more money. This is due in large part to the fact that, without the reserve system, minor leaguers could negotiate minor league deals of any length they chose.²⁰⁵ Players could sign short-term initial contracts with the club that drafts them, and then be eligible to sign a new deal with any club only a few years later. If the minor leaguer produced impressive statistics and showed promise during his initial contract, when that contract expired, he would have the leverage to demand a better deal from his current club, or leave and sign a deal with another club willing to offer him more money. On this open market, productive and promising minor league players could in theory earn significantly more than they would otherwise earn during the later years of their reserve system-mandated seven-year contract.²⁰⁶

One way to estimate how much more these minor leaguers could earn is to look to the recent contracts signed by young, high-risk, high-reward major leaguers. In recent years, a trend has emerged among major league clubs—they sign their best young major league stars to long-term deals soon after they reach the major leagues.²⁰⁷ Although these players are somewhat unproven and thus slightly risky, they have high ceilings. These high-risk, high-reward deals benefit both the players and the clubs. The players contract away the risk that their talent will never materialize (perhaps as a result of injury or simply because their production never matches their talent), by guaranteeing themselves millions of dollars regardless of how they perform in the future. Clubs benefit by locking in their young stars at a certain dollar amount, which may turn out to be a bargain if the player reaches his full potential. These deals typically pay the player more money in the early years of the deal than they would otherwise earn via the major league minimum and via arbitration, but less money in the later years than

²⁰⁵ See *supra* Part VI.

²⁰⁶ However, if a minor leaguer was only willing to sign a short-term deal with the club that drafts him, he would surely earn significantly less in his initial contract because the club would have no incentive to invest significant money in a player they were unsure they would be able to keep long enough to fully develop into a major league player.

²⁰⁷ See Adam Berry, *Long-Term Deals for Young Players Rise Rapidly*, MLB.COM (Apr. 17, 2012, 10:00 AM), http://mlb.mlb.com/news/article.jsp?ymd=20120417&content_id=28892156&c_id=mlb, archived at <http://perma.cc/5YLG-F8V8>.

he might potentially have earned as a free agent on the open market. Figure 2 depicts some of these contracts.

Figure 2 ²⁰⁸				
High-Risk, High-Reward Contracts				
Player	Club	Age	Duration of Contract ²⁰⁹	Total Guaranteed Value of Contract
Anthony Rizzo	Cubs	23	7	\$41 million
Carlos Santana	Indians	26	5	\$21 million
Alcides Escobar	Royals	25	4	\$10.5 million
Salvador Perez	Royals	21	5	\$7 million
Jonathan Lucroy	Brewers	25	5	\$11 million
Jon Niese	Mets	25	5	\$25 million
Andrew McCutchen	Pirates	25	6	\$51.5 million
Cory Luebke	Padres	27	4	\$12 million
Cameron Maybin	Padres	25	5	\$25 million
Madison Bumgarner	Giants	22	5	\$35 million
Matt Moore	Rays	22	5	\$14 million
Derek Holland	Rangers	25	5	\$28 million
Sergio Santos	Blue Jays	28	3	\$8.25 million

To illustrate one such mutually beneficial contract, in May 2013, the Cubs signed Anthony Rizzo to a seven-year, \$41 million deal.²¹⁰ Under the deal, the Cubs paid Rizzo a \$2 million signing bonus, and \$750,000 in 2013 and \$1.25 million in 2014, when Rizzo would have otherwise been subject to the major league minimum,²¹¹ which was \$490,000 in 2013.²¹² In the four years when Rizzo would have otherwise been arbitration-eligible, the Cubs will pay Rizzo \$5 million annually in 2015 and 2016, and \$7

²⁰⁸ *Id.* See also *Cubs, Anthony Rizzo Agree to Deal*, ESPNCHICAGO.COM (May 14, 2013, 2:27 AM), http://espn.go.com/chicago/mlb/story/_id/9268539/chicago-cubs-lock-anthony-rizzo-7-year-41-million-deal, archived at <http://perma.cc/7QKE-GCED>.

²⁰⁹ In years.

²¹⁰ *Cubs, Anthony Rizzo Agree to Deal*, *supra* note 208.

²¹¹ *Cubs, Anthony Rizzo Agree to Deal*, *supra* note 208; Charlie Wilmoth, *Cubs Extend Anthony Rizzo*, MLB TRADE RUMORS (May 13, 2013, 11:11 AM), <http://www.mlbtraderumors.com/2013/05/cubs-to-sign-anthony-rizzo-to-seven-year-extension.html>, archived at <http://perma.cc/4AUP-K3NJ>.

²¹² *MLBPA Info - Frequently Asked Questions*, MLBPLAYERS.COM, <http://www.mlb.com/pa/info/faq.jsp#minimum> (last visited Dec. 17, 2013), archived at <http://perma.cc/W9BC-X5P4>.

million annually in 2017 and 2018.²¹³ In 2019, when Rizzo would have otherwise been eligible for free agency, the Cubs will pay him \$11 million.²¹⁴ The deal also gives the Cubs options for 2020 and 2021 worth \$14.5 million each.²¹⁵ Thus, this deal benefits Rizzo by contracting away his risk of injury and ineffectiveness and by increasing his compensation above what he likely would have otherwise earned in contract years one and two. It benefits the Cubs by locking in a rate of compensation for contract years three through seven that is likely less than Rizzo would have otherwise earned in arbitration and then in free agency even if Rizzo does not reach his full potential.

Without the reserve system, the most talented minor league prospects who perform well during a short-term initial contract might be offered deals more *similar* to those in Figure 2 than the deals to which they are currently signed. The minor leaguers' deals would never reach the *actual* level of the deals in Figure 2, because while these minor leaguers would have similar ceilings to the big leaguers signed to the deals in Figure 2, the minor leaguers would be less developed and thus significantly more risky to their clubs. Nevertheless, even if the minor leaguers signed deals for a small fraction of the deals in Figure 2, they would still earn much more than they currently do. For a top prospect minor league pitcher, even a deal for a fraction of the amount as those in Figure 2 might be desirable to contract away the risk of a career-threatening injury to his pitching-arm.

However, even in the absence of the reserve system, the number of minor leaguers who would sign larger deals than those to which they currently are signed would be very small since most minor league players are too risky to warrant lengthy, high-dollar contracts. Many clubs would be unlikely to sign even their best prospects to larger deals, as it is very common for even the most promising minor league prospects to never materialize. The Red Sox top 10 prospects in 2006 and 2007, depicted in Figure 3, are instructive. The Red Sox farm systems in 2006 and 2007 were some of their strongest ever. Even so, two of the Red Sox top ten prospects in 2007 never reached the majors while another two produced negative career WAR.²¹⁶ In fact, in 2006, when the Red Sox farm system was at its pinna-

²¹³ *Cubs, Anthony Rizzo Agree to Deal*, *supra* note 208; Wilmoth, *supra* note 211.

²¹⁴ *Id.*

²¹⁵ *Cubs, Anthony Rizzo Agree to Deal*, *supra* note 208.

²¹⁶ All career WAR figures are from [fangraphs.com](http://www.fangraphs.com). WAR is a single statistic that measures a player's total contributions to his team. See generally *What is WAR?*, FANGRAPHS, <http://www.fangraphs.com/library/misc/war/> (last visited Dec. 18, 2013), archived at <http://perma.cc/YEL2-2GEB>.

cle, the Red Sox top-rated prospect was Andy Marte, who disappointingly turned out to be a below-average major leaguer.

Figure 3				
Boston Red Sox Top 10 Prospects				
Prospect Rank ²¹⁷	2006		2007	
1	Andy Marte	*	Jacoby Ellsbury	*****
2	Jon Lester	*****	Clay Buchholz	****
3	Jonathan Papelbon	*****	Michael Bowden	**
4	Craig Hansen	*	Daniel Bard	**
5	Dustin Pedroia	*****	Lars Anderson	*
6	Jacoby Ellsbury	*****	Dustin Pedroia	*****
7	Kelly Shoppach	***	Bryce Cox	-
8	Manny Delcarmen	**	Craig Hansen	*
9	Jed Lowrie	***	Kris Johnson	**
10	Clay Buchholz	****	Jason Place	-
-	never reached majors			
*	negative career WAR			
**	career WAR of 0-5			
***	career WAR of 6-10			
****	career WAR of 11-15			
*****	career WAR of 15+			

Baseball America's list of top ten prospects in 2006, shown in Figure 4, further illustrates that even many of the most highly-regarded minor league prospects never reach their potential and do not successfully transition into productive major leaguers. Thus, even they carry significant risk to their clubs. Of the top ten rated minor league prospects in all of baseball in 2006, two have produced a negative career WAR while two more have produced a WAR of less than five.²¹⁸ The fact is, nine out of ten players drafted

²¹⁷ Chip Buck, *A Look Back at Baseball America's Top Red Sox Prospects in 2006*, FIRE BRAND OF THE AMERICAN LEAGUE (May 23, 2013), <http://firebrandal.com/2013/05/23/a-look-back-at-baseball-americas-top-red-sox-prospects-in-2006/> (2006 top 10 prospects), archived at <http://perma.cc/ZM7F-RS3N>; Jim Callis, *Top 10 Prospects - Boston Red Sox*, BASEBALL AMERICA (Nov. 10, 2006), <http://www.baseballamerica.com/today/prospects/rankings/organization-top-10-prospects/2007/262814.html> (2007 top 10 prospects), archived at <http://perma.cc/BN25-S48N>.

²¹⁸ See *infra* figure 4.

never play in the big leagues;²¹⁹ of those who do, only one player out of every eight stays for six years or more.²²⁰ Based on these statistics and cautionary tales, major league clubs would rather have many prospects under contract at low salaries²²¹ than a smaller and more selective pool of top prospects earning high salaries.

Figure 4			
Baseball America's Top 10 Prospect List: 2006			
Prospect Rank ²²²	Prospect	Organization	Career WAR ²²³
1	Delmon Young	Devil Rays	*
2	Justin Upton	Diamondbacks	*****
3	Brandon Wood	Angels	*
4	Jeremy Hermida	Marlins	**
5	Stephen Drew	Diamondbacks	****
6	Francisco Liriano	Twins	*****
7	Chad Billingsley	Dodgers	*****
8	Justin Verlander	Tigers	*****
9	Lastings Milledge	Mets	**
10	Matt Cain	Giants	*****
-	never reached majors		
*	negative career WAR		
**	career WAR of 0-5		
***	career WAR of 6-10		
****	career WAR of 11-15		
*****	career WAR of 15+		

Nevertheless, minor leaguers who are worth large investments will earn this money even under the current arrangement. Whether or not these play-

²¹⁹ Ben Reiter, *Three Days in June*, SPORTS ILLUSTRATED, Oct. 28, 2013, at 32. One major league club's scouting department analyzed every First-Year Player Draft since 1990 and found that if in a single Draft a club drafts nine future big league players, four future everyday major league players (those who make at least 1,500 major league plate appearances or who face 1,500 batters in the major leagues), or 3 above-average major league players (players who produce a WAR of a total of six in their six pre-free agency seasons in the majors), that club's Draft would rank in the 95th percentile. *Id.*

²²⁰ Zimbalist, *supra* note 154, at 290.

²²¹ See Broshuis, *supra* note 93, at 62.

²²² 2006 Top 100 Prospects, BASEBALL AMERICA (Feb. 22, 2006), <http://www.baseballamerica.com/today/prospects/rankings/top-100-prospects/2006/26660.html>, archived at <http://perma.cc/KS2Q-LWGG>.

²²³ All career WAR stats are from <http://www.fangraphs.com>.

ers received a large signing bonus when they were drafted or signed as an international free agent, as soon as they reach the majors, they shed the low salary dictated by their minor league contract. Upon reaching the majors, players earn the major league minimum,²²⁴ which was \$490,000 in 2013.²²⁵ And, once a player has three years of major league service time under his belt, he is eligible for salary arbitration,²²⁶ through which he can receive a huge increase in pay.²²⁷ For example, David Price made \$10.1 million as an arbitration-eligible player in 2013.²²⁸ The minimum salary increases even for minor league players who get called-up and spend only a single day on a major league roster before being returned to the minors.²²⁹ Upon returning to the minors, that player's minor league minimum salary increases to \$79,900 for 2013 and \$81,500 for 2014.²³⁰ Even minor leaguers who never reach the big leagues may earn a significant increase upon becoming a minor league free agent when their seven-year initial contract expires. Minor league free agents²³¹ typically earn salaries between \$60,000 and

²²⁴ 2012-2016 *Basic Agreement*, MLB.COM 10–11, http://www.mlb.com/pa/pdf/cba_english.pdf (last visited Dec. 18, 2013), *archived at* <http://perma.cc/M8DL-UW39>.

²²⁵ *Id.* at 11.

²²⁶ *Id.* at 17–18. The term “arbitration eligible” is misleading; there were no arbitration hearings in 2013, as all of the 133 players who filed for arbitration settled with their clubs. *See* Associated Press, *Arbitration Ends with No Hearings*, ESPN.COM (Feb. 18, 2013, 2:26 PM), http://espn.go.com/mlb/spring2013/story/_/id/8958928/mlb-players-pitch-first-arbitration-shutout-39-year-history, *archived at* <http://perma.cc/H7N8-6DVH>.

²²⁷ Major league players who are eligible for arbitration are players with three to six years of major league service time, and players with at least two but less than three years of major league service time who are in the top 22 percent of players by service time. *See* Associated Press, *Drew Storen Arbitration Eligible*, ESPN.COM (Oct. 23, 2012, 9:12 PM), http://espn.go.com/mlb/story/_/id/8543736/drew-storen-washington-nationals-arbitration-players, *archived at* <http://perma.cc/4CCL-YXX9>.

²²⁸ Jerry Crasnick, *Rays Announce David Price's Deal*, ESPN.COM (Jan. 2, 2013, 3:41 PM), http://espn.go.com/mlb/story/_/id/8800724/david-price-agrees-one-year-deal-tampa-bay-rays-avoids-arbitration, *archived at* <http://perma.cc/4WPU-UDZC>.

²²⁹ *See* 2012-2016 *Basic Agreement*, *supra* note 224, at 11.

²³⁰ 2012-2016 *Basic Agreement*, *supra* note 224, at 11. If this minor leaguer had been playing at the Triple-A level in 2013, after spending only one day in the major leagues, upon returning to Triple-A his salary would increase from \$10,750 to \$79,900. *See* Broshuis, *supra* note 93, at 101.

²³¹ There were 630 minor league free agents following the 2013 season, including Doug Davis, Joel Pineiro, Andy LaRoche and even Brandon Wood (the number three ranked prospect in baseball in 2006, *see supra* figure 4). Andrew Simon, *Minor League Free Agents Can Fill Major Roles*, MLB.COM (Nov. 28, 2012, 9:58 AM), <http://>

\$125,000,²³² a significant increase from the \$5,500 minor league minimum.

As these numbers demonstrate, the current system allows minor league players to earn the money they are worth. Furthermore, because of the low success rate of prospects, shown above, the current system is necessary to enable clubs to have under contract the large number of prospects they need to ensure they develop and produce inexpensive major league talent. This is crucial to the competitive balance in the manner in which Part X elucidates.

IX. THE MINOR LEAGUE DRUG-TESTING PROGRAM

Because minor leaguers are not unionized, Major League Baseball can unilaterally formulate, implement and enforce new minor league drug-testing policies and procedures at any time.²³³ For example, in July 2010, Major League Baseball unilaterally decided to begin conducting random blood testing for HGH in the minor leagues.²³⁴ At the time, Major League Baseball could not also conduct such testing in the major leagues because the Major League Baseball Players' Association had not agreed to it.²³⁵ The details of the minor league blood tests, including permissible and impermissible levels of HGH in a player's body and blood drawing procedures, were set by Major League Baseball in its sole discretion.²³⁶ Minor leaguers were forced to comply with whatever Major League Baseball decided.²³⁷

mlb.mlb.com/news/article.jsp?ymd=20121128&content_id=40437190&vkey=news_mlb&c_id=mlb, archived at <http://perma.cc/L224-AUNP>.

²³² Broshuis, *Playing for Peanuts*, *supra* note 199.

²³³ See Michael S. Schmidt, *Baseball Using Minor Leagues for a Drug Test*, N.Y. TIMES (July 22, 2010), available at http://www.nytimes.com/2010/07/23/sports/baseball/23doping.html?_r=0, archived at <http://perma.cc/EBG4-8HPS>.

²³⁴ See *id.*

²³⁵ See *id.*

²³⁶ See *id.*

²³⁷ See *id.* 105 minor leaguers were suspended in 2012 for violating the minor league drug policy. *Minor League Suspensions in 2012*, MiLB.COM (Mar. 15, 2012, 7:00 PM), http://www.milb.com/news/article.jsp?ymd=20120315&content_id=27309088&fext=.jsp&vkey=pr_milb, archived at <http://perma.cc/3H2-FJBT>. See also Matt Eddy, *Minor League Drug Program Suspensions 2013*, BASEBALL AMERICA (Dec. 4, 2013), <http://www.baseballamerica.com/minors/minor-league-drug-program-suspensions-index/> (detailing all 2013 minor league suspensions for players violating the drug-testing program), archived at <http://perma.cc/96N2-BBMG>. See generally Maury Brown, *Rob Manfred on Minor League Drug Testing Program*, FANGRAPHS (Aug. 11, 2010), <http://www.fangraphs.com/blogs/rob-manfred-on-minor-league-drug-testing-program/> (explaining why minor leaguers violate the minor league drug-testing program), archived at <http://perma.cc/9YJ-DCSG>.

In addition, minor leaguers do not have access to the same grievance procedures regarding the drug-testing program that are available to major leaguers.²³⁸ A major leaguer who tests positive for a banned substance can challenge the positive test on appeal to an independent panel of arbitrators on the grounds that the tester failed to follow testing protocol.²³⁹ For example, in February 2012, Ryan Braun of the Milwaukee Brewers successfully appealed his positive test for elevated testosterone, when an arbitrator overturned Braun's test on the grounds that the tester failed to ship Braun's urine sample as soon as possible to the testing facility, which was required by the drug program.²⁴⁰ Minor leaguers are entitled to no such luxury. A minor leaguer can only request that the second half of his sample be re-tested.²⁴¹

As these examples illustrate, the minor league drug-testing program harms minor leaguers in the sense that they lack control over their own drug-testing and are denied access to grievance procedures to challenge positive test results. However, overall the program's benefits outweigh these harms. In addition to eradicating banned substances in the minor leagues, the minor league drug-testing program also serves as an experimental program to test the efficacy of new drug-testing procedures that Major League Baseball wants to implement in the major leagues.²⁴² As a result, many of the new drug-testing procedures implemented unilaterally by Major League Baseball in the minor leagues are later implemented in the major leagues, after the Major League Baseball Players' Association observes how the new procedures function in the minor leagues and agrees to adopt them in the major leagues.²⁴³

For instance, in November 2011, sixteen months after Major League Baseball began conducting random blood testing for HGH in the minor leagues, the Major League Baseball Players' Association agreed to expand the major league drug-testing program to include random blood testing for HGH.²⁴⁴ This same phenomenon occurred in 2001, when Major League

²³⁸ Broshuis, *supra* note 93, at 92.

²³⁹ *See id.*

²⁴⁰ *Ryan Braun Wins Appeal of Suspension*, ESPN.COM (Feb. 24, 2012, 2:24 PM), http://espn.go.com/mlb/story/_/id/7608360/milwaukee-brewers-ryan-braun-wins-appeal-50-game-suspension, archived at <http://perma.cc/6Z9X-DE88>.

²⁴¹ Broshuis, *supra* note 94, at 92.

²⁴² *See* Schmidt, *supra* note 233.

²⁴³ *See id.*

²⁴⁴ *See* Michael S. Schmidt, *Baseball to Expand Drug-Testing Program*, N.Y. TIMES (Jan. 10, 2013), available at <http://www.nytimes.com/2013/01/11/sports/baseball/baseball-and-union-agree-to-in-season-blood-testing-for-hgh.html>, archived at <http://perma.cc/QH7L-HDEY>. The major league drug-testing program was further ex-

Baseball unilaterally began testing for steroids in the minor leagues.²⁴⁵ One year later, the Major League Baseball Players' Association agreed to start the process of implementing steroid testing in the majors.²⁴⁶ Thus, in addition to removing drugs from the minor leagues, the minor league drug-testing program helps expand the major league drug-testing program. Removing drugs from baseball benefits everyone: the leagues, the players, the owners, and the fans.

X. THE COMPETITIVE BALANCE IN MAJOR LEAGUE BASEBALL

Now more than ever, the minor league system in place, and by extension baseball's exemption from antitrust law, is essential to the competitive balance in Major League Baseball. This system includes the First-Year Player Draft and amateur international free agency, the channels through which players enter the system, as well as the minor league reserve system, the mechanism that keeps players in the system. Clubs in major markets, including New York, Boston, Los Angeles, Chicago, Philadelphia and San Francisco, routinely outspend clubs in small markets, such as Tampa Bay, Miami, Minnesota, Kansas City and Oakland, by huge margins on their major league payrolls. For instance, in 2013 the Yankees' opening day payroll was greater than the combined opening day payrolls of the Athletics, Rays, Marlins and Astros.²⁴⁷ Yet, the Yankees did not make the playoffs in 2013, but the Athletics and Rays did.²⁴⁸

The Yankees, Athletics and Rays are part of much a larger phenomenon, where in recent years small-market teams, despite filling their rosters with substantially less-costly players, have met and even exceeded the performance of their large-market competitors.²⁴⁹ The explanation for this phenomenon is well-known and easy to understand, but difficult to execute.²⁵⁰ Small-market teams stock their major league rosters with players whose talent meets and even exceeds that of the more costly players who populate the rosters of large-market clubs, but who cost substantially less. These players

panded in January 2013 to include random blood testing during the season for HGH and high levels of (synthetic) testosterone. *Id.*

²⁴⁵ Schmidt, *supra* note 233.

²⁴⁶ *Id.*

²⁴⁷ *See infra* figure 7.

²⁴⁸ *See id.*

²⁴⁹ *See id.*

²⁵⁰ There are many reasons why highly drafted players fail to realize their potential, chief of which are injury and bad habits both on and off the field. Other highly drafted players simply are not as talented as the clubs that drafted them believed.

cost their teams less because they are in their pre-arbitration and arbitration years.²⁵¹ So, while these players' salaries are limited by the major league reserve system, their talent and production is unlimited.²⁵²

Small-market teams are able to compete with large-market teams for these inexpensive, productive players because the acquisition and development of these players is not dependent on how much money a team can spend. Instead, clubs primarily acquire these players in the First-Year Player Draft,²⁵³ where large-market teams cannot outspend small-market teams.²⁵⁴ Equally important is the minor league reserve system, through which clubs develop the talent they acquire in the Draft. Thus, small-market clubs are not constrained by their limited funds from drafting and developing talented players who, when they reach the big league level cost their clubs next to nothing. This strategy is known as "building [a major league roster] from within" and has proven so successful that in the past few years it has been nearly universally adopted by major league general managers, even those of large-market clubs.²⁵⁵

²⁵¹ See *supra* notes 224-26.

²⁵² For example, the Angels' Mike Trout earned \$510,000 in both 2012 and 2013, \$20,000 above the major league minimum and significantly below the major league average of \$3.2 million, yet he produced a major league-leading WAR of 10.7 in 2012 and 9.2 in 2013. See, e.g., *2012 Major League Baseball Batting Leaders*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/leagues/MLB/2012-batting-leaders.shtml> (last visited Dec. 18, 2013), *archived at* <http://perma.cc/RV52-AWUR>; *2013 Major League Baseball Batting Leaders*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/leagues/MLB/2013-batting-leaders.shtml> (last visited Dec. 18, 2013), *archived at* <http://perma.cc/DRN3-V8G3>; Jay Jaffe, *Mike Trout's 2013 Salary in Perspective*, SPORTS ILLUSTRATED (Mar. 4, 2013), <http://mlb.si.com/2013/03/04/mike-trout-angels-salary/>, *archived at* <http://perma.cc/W49W-YXVR>; *Mike Trout - Stats - Batting*, ESPN.COM, http://espn.go.com/mlb/player/stats/_id/30836/mike-trout (last visited Dec. 18, 2013), *archived at* <http://perma.cc/9AR2-D3Y5>.

²⁵³ Others are acquired via international amateur free agency.

²⁵⁴ See *supra* Part IV (discussing the new bonus pool caps for the First-Year Player Draft).

²⁵⁵ Red Sox Manager John Farrell, speaking about his opponent, the Cardinals, before the 2013 World Series, stated: "They're probably the blueprint of what many organizations aspire to. The number of homegrown players that they've drafted, developed - they're the epitome of what player development and scouting is." Brian MacPherson, *What the Red Sox Want To Be As an Organization, the Cardinals Already Are*, PROVIDENCE J. RED SOX BLOG (Oct. 22, 2013, 6:38 PM), <http://blogs.providencejournal.com/sports/red-sox/2013/10/what-the-red-sox-want-to-be-as-an-organization-the-cardinals-already-are.html>, *archived at* <http://perma.cc/466A-EHNB>. Likewise, Theo Epstein, the Chicago Cubs General Manager, echoed Farrell's sentiments while explaining where he went wrong in his previous job as General Man-

Over the past six years, the Tampa Bay Rays have been the small-market team that has employed this strategy of building from within with the most success. By building from within, the Rays have been able to consistently compete with, and beat, clubs who have spent substantially more money on their rosters. Since 2008, the Rays have made the playoffs four times,²⁵⁶ the same number of times as the Yankees and once more than the Red Sox,²⁵⁷ two of the Rays' free-spending divisional foes. As further proof, they have won 90 games five times in the last six years, more times than any other club during that period.²⁵⁸ Yet, the Rays' opening day payrolls over the last six years, shown in Figure 5, have been some of the lowest in all of baseball. During that span, the Rays' payroll ranked second-to-last during two seasons, and never ranked higher than nineteenth.²⁵⁹ In fact, the Rays' payrolls between 2008 and 2013 were on average \$39 million below the average major league payroll.²⁶⁰

ager of the Red Sox: "Wouldn't it be great if we could just say, screw free agency altogether. We're going with a purely home-grown lineup. We're going with old-school, Branch Rickey-style, pre-free agency, pre-draft whatever? Middlebrooks at third, Lowrie or Iglesias at short, Pedroia at second, Rizzo at first, Lavarney catching, Ellsbury in center, Reddick in right, Kalish in left . . . that might be a better team in some ways and resonate more with the fans than what we ended up with . . . When you make a mistake in the draft, you just keep drafting. You keep finding another player to develop. When you make a mistake in free agency, you're stuck with it for the duration of the deal and it can be a real impediment." Dan Shaughnessy, *Covering the Bases - In a Lengthy Interview, Theo Epstein Discusses the Challenge in Chicago and His Legacy in Boston*, BOS. GLOBE, June 14, 2012, http://www.boston.com/sports/baseball/redsox/articles/2012/06/14/q__a_with_theo_epstein_on_red_sox_and_cubs/?page=full, archived at <http://perma.cc/4CEB-TCPL>.

²⁵⁶ See *infra* figure 5.

²⁵⁷ See MLB regular season standings for the years 2008 through 2013 on ESPN.COM. In fact, only three clubs have made as many playoff appearances as the Rays since 2008: the Yankees, Cardinals and Phillies, who have each made four playoff appearances. See also Jerry Crasnick, *What's Next for Tampa Bay?*, ESPN.COM (Oct. 9, 2013, 3:50 AM), http://espn.go.com/mlb/playoffs/2013/story/_id/9795416/tampa-bay-rays-fall-short-boston-red-sox-2014-season-looks-promising, archived at <http://perma.cc/K7P5-C58B>.

²⁵⁸ See *Tampa Bay Rays — Team History & Encyclopedia*, *supra* note 5.

²⁵⁹ See *infra* figure 5.

²⁶⁰ See *2013 Tampa Bay Rays Compensation*, BASEBALL PROSPECTUS, <http://www.baseballprospectus.com/compensation/?team=TBA> (last visited Dec. 18, 2013).

Figure 5				
Tampa Bay Rays: Success of Building from Within, 2008-2013				
Year	Opening Day Payroll ²⁶¹	Payroll Rank ²⁶²	Regular Season Result ²⁶³	Postseason Result ²⁶⁴
2008	43.8	29	Won Division Title ²⁶⁵	Lost in World Series to Phillies
2009	63.3	25	Missed Playoffs	-
2010	71.9	19	Won Division Title; Best Record in AL	Lost in LDS ²⁶⁶ to Rangers
2011	41.1	29	Won Wild Card	Lost in LDS to Rangers
2012	64.2	25	Missed Playoffs; Won 90 Games	-
2013	57.9	28	Won Wild Card	Lost in LDS to Red Sox

The key to the Rays' success has been utilizing the Draft and minor league and major league reserve systems to stock their major league roster with cheap, homegrown talent.²⁶⁷ The Rays' 2013 starting rotation consisted of David Price, Matt Moore, Chris Archer, Alex Cobb and Jeremy Hellickson and was one of the best in baseball.²⁶⁸ As shown in Figure 6, every single member of the Rays' 2013 starting rotation was developed by the Rays in their farm system, and all but one—Archer—was drafted by the Rays. Yet perhaps no other statistic better expresses the Rays' approach than this: Roberto Hernandez is the only pitcher acquired by the Rays via

²⁶¹ See *2012 MLB Salaries By Team*, USATODAY.COM (Apr. 5, 2014, 2:46 PM), <http://content.usatoday.com/sportsdata/baseball/mlb/salaries/team/>, archived at <http://perma.cc/8RLH-XJ95>. All payroll figures are in millions, U.S. dollars.

²⁶² See *id.*

²⁶³ *MLB Team History — Tampa Bay Rays Season Results*, ESPN.COM, http://espn.go.com/mlb/history/teams/_/team/tb (last visited Dec. 18, 2013), archived at <http://perma.cc/MW63-RWMU>.

²⁶⁴ *Id.*

²⁶⁵ The Rays play in the American League East division.

²⁶⁶ League Divisional Series.

²⁶⁷ Andrew Friedman, the Rays' General Manager, speaking about the 2011 First-Year Player Draft, said, "June 6, 7 and 8 will be among the most important days in the history of this franchise. Because young players are so important to us, we have a chance in this year's draft to impact our future in a way that's unprecedented." Erik Hahmann, *An Interview with Andrew Friedman*, SBNATION.COM (Feb. 14, 2011, 8:01 AM), <http://www.draysbay.com/2011/2/14/1992236/an-interview-with-andrew-friedman>, archived at <http://perma.cc/QZH8-EG2W>.

²⁶⁸ Alex Kienholz, *2013 Top 5 Rotations: Tampa Bay Rays*, SBNATION.COM (Mar. 21, 2013, 10:00 AM), <http://www.beyondtheboxscore.com/2013/3/21/4130404/2013-top-5-rotations-tampa-bay-rays>, archived at <http://perma.cc/6XL9-N2JB>.

free agency to start a game for the Rays over the last eight years.²⁶⁹ In that span, Tampa Bay starting pitchers had 1,207 games started by pitcher-spitcher acquired through means other than free agency.²⁷⁰

Figure 6			
2013 Tampa Bay Rays A.L. Wild Card Winner — Rank in Payroll: 28th			
Player	Acquisition by Tampa Bay ²⁷¹	2013 Salary ²⁷²	2013 WAR ²⁷³
Evan Longoria ²⁷⁴	Drafted in 2006 in 1st Round (3rd overall)	\$2,500,018	6.3
Alex Cobb	Drafted in 2006 in 4th Round (109th overall)	\$502,200	4.0
Desmond Jennings	Drafted in 2006 in 10th Round (289th overall)	\$501,800	3.0
David Price	Drafted in 2007 in 1st Round (1st overall)	\$9,831,954	2.8
Matt Moore	Drafted in 2007 in 8th Round (245th overall)	\$1,100,000	2.6
Chris Archer	Traded for in 2011 from Cubs ²⁷⁵	N/A ²⁷⁶	2.2
Jeremy Hellickson	Drafted in 2005 in 4th Round (118th overall)	\$503,000	-0.8 ²⁷⁷

Tampa Bay is not the only small-market club to remain competitive by building from within. Figure 7 shows the 2013 Opening Day payrolls of each club and notes which clubs made the playoffs. As Figure 7 attests, the clubs with the fifteen highest payrolls in 2013 fared no better as a group than did the clubs with the fifteen lowest payrolls. The same number of teams—five—made the playoffs from the fifteen clubs with the lowest payrolls as from the fifteen clubs with the highest payrolls. In fact, the clubs

²⁶⁹ Tim Britton, *Red Sox Could Learn A Lot From the Rays About Cultivating Home-Grown Pitchers*, PROVIDENCE J., July 25, 2013, <http://www.providencejournal.com/sports/red-sox/content/20130725-red-sox-could-learn-a-lot-from-the-rays-about-cultivating-home-grown-pitchers.ece>, archived at <http://perma.cc/S475-DYEL>.

²⁷⁰ *Id.*

²⁷¹ All acquisition information is from ESPN.COM.

²⁷² All salary figures are from ESPN.COM.

²⁷³ All WAR figures are from ESPN.COM.

²⁷⁴ In addition to their completely homegrown starting rotation, the Rays' best position player, by any metric, for the past six years has been Evan Longoria, who is likewise homegrown.

²⁷⁵ *Chris Archer - Player Page*, MiLB.COM, http://www.milb.com/milb/stats/stats.jsp?sid=milb&t=p_pbp&pid=502042 (last visited Dec. 18, 2013), archived at <http://perma.cc/3FEF-MN6N>. Originally drafted in 2006 in the 5th round (161st overall) by Cleveland; acquired from the Cubs for Matt Garza. *Id.*

²⁷⁶ Archer presumably earned the major league minimum in 2013.

²⁷⁷ Hellickson's WAR in 2012 was 2.9 and in 2011 was 3.5. *Jeremy Hellickson Stats - Pitching*, ESPN.COM, http://espn.go.com/mlb/player/stats/_/id/30506/jeremy-hellickson (last visited Dec. 18, 2013), archived at <http://perma.cc/XST8-T5RN>.

ranked twenty-seventh (Oakland) and twenty-eighth (Tampa Bay) in payroll each made the playoffs.

Figure 7			
2013 Major League Playoff Teams by Payrolls Rank			
Payroll Rank ²⁷⁸	Club	Payroll ²⁷⁹	Playoff Teams ²⁸⁰
1.	New York Yankees	\$228,835,490	
2.	Los Angeles Dodgers	\$216,597,577	x
3.	Philadelphia Phillies	\$165,385,714	
4.	Boston Red Sox	\$150,655,500	x
5.	Detroit Tigers	\$148,414,500	x
6.	San Francisco Giants	\$140,264,334	
7.	Los Angeles Angels	\$127,896,250	
8.	Chicago White Sox	\$119,073,277	
9.	Toronto Blue Jays	\$117,527,800	
10.	St. Louis Cardinals	\$115,222,086	x
11.	Texas Rangers	\$114,090,100	
12.	Washington Nationals	\$114,056,769	
13.	Cincinnati Reds	\$107,491,305	x
14.	Chicago Cubs	\$104,304,676	
15.	Baltimore Orioles	\$90,993,333	
16.	Atlanta Braves	\$89,778,192	x
17.	Arizona Diamondbacks	\$89,100,500	
18.	Milwaukee Brewers	\$82,976,944	
19.	Kansas City Royals	\$81,491,725	
20.	Pittsburgh Pirates	\$79,555,000	x
21.	Cleveland Indians	\$77,772,800	x
22.	Minnesota Twins	\$75,802,500	
23.	New York Mets	\$73,396,649	
24.	Seattle Mariners	\$72,031,143	
25.	Colorado Rockies	\$71,924,071	
26.	San Diego Padres	\$67,143,600	
27.	Oakland Athletics	\$60,664,500	x
28.	Tampa Bay Rays	\$57,895,272	x
29.	Miami Marlins	\$36,341,900	
30.	Houston Astros	\$22,062,600	

²⁷⁸ *MLB Salaries - 2013 Team Payrolls*, CBSSPORTS.COM, <http://www.cbssports.com/mlb/salaries> (last visited Dec. 18, 2013), *archived at* <http://perma.cc/3QX4-LXPC>.

²⁷⁹ *Id.*

²⁸⁰ *MLB Standings - 2013*, ESPN.COM, <http://espn.go.com/mlb/standings> (last visited Dec. 18, 2013), *archived at* <http://perma.cc/W7ZM-AQDQ>.

Like the Rays, each of the other four clubs that made the playoffs despite ranking in the bottom fifteen in payroll in 2013 did so primarily by building from within. Each team had cheap, homegrown talent on its roster that made key contributions to the club's success. Figures 6, 8, 9, 10 and 11 detail the contributions, measured in WAR, produced by the homegrown talent of each of these five playoff teams. As these figures show, each of these clubs received substantial contributions from a number of inexpensive players whom the clubs drafted and developed. Furthermore, these figures only include fully-homegrown players and do not include the low-priced players whom these clubs traded for as minor leaguers and developed in their own farm system, but whom the clubs did not draft. These partially-homegrown players further contributed to the clubs' success.

The Braves won the National League (NL) East division title with an incredible nine players on their major league roster whom they drafted and developed and who produced a WAR of at least one.²⁸¹ Like the Rays, the majority of the Braves' 2013 starting rotation—Mike Minor, Kris Medlen and Julio Teheran—was homegrown.²⁸² In 2013, these three pitchers each produced WAR of at least 3.1²⁸³ and started a total of 93 games, winning 42 of them.²⁸⁴ Yet, the Braves paid Teheran and Minor less than \$1 million in combined salaries, while Medlen earned \$2.6 million, which by all measures were bargain salaries for their production. In addition, five of the Braves' eight everyday position players—Andrelton Simmons, Freddie Freeman, Jason Heyward, Brian McCann and Evan Gattis—also were drafted and developed from within.

²⁸¹ See *infra* figure 8.

²⁸² See *Atlanta Braves Pitching Stats - 2013*, ESPN.COM, http://espn.go.com/mlb/team/stats/pitching/_/name/atl/atlanta-braves (last visited Dec. 18, 2013), *archived at* <http://perma.cc/N5GZ-YB3J>.

²⁸³ See *infra* figure 8.

²⁸⁴ See *supra* note 283.

Figure 8			
2013 Atlanta Braves			
N.L. East Division Winner - Rank in Payroll: 16th			
Player	Acquisition by Atlanta ²⁸⁵	2013 Salary ²⁸⁶	2013 WAR ²⁸⁷
Andrelton Simmons	Drafted in 2010 in 2nd Round (70th overall)	\$491,250	6.7
Freddie Freeman	Drafted in 2007 in 2nd Round (78th overall)	\$560,000	5.5
Jason Heyward	Drafted in 2007 in 1st Round (14th overall)	\$3,650,000	3.6
Craig Kimbrel	Drafted in 2008 in 3rd Round (96th overall)	\$655,000	3.3
Kris Medlen	Drafted in 2006 in 10th Round (310th overall)	\$2,600,000	3.3
Julio Teheran	Signed as non-drafted free agent in 2007	\$490,000	3.2
Mike Minor	Drafted in 2009 in 1st Round (7th overall)	\$505,000	3.1
Brian McCann	Drafted in 2002 in 2nd Round (64th overall)	\$12,000,000	2.2
Alex Wood	Drafted in 2012 in 2nd Round (85th overall)	N/A ²⁸⁸	1.1
Evan Gattis	Drafted in 2010 in 23rd Round (704th overall)	\$490,000	0.6

The Pirates relied on the Draft and their minor league system to produce the core of their first team to reach the playoffs in 21 years.²⁸⁹ Starling Marte,²⁹⁰ Neil Walker,²⁹¹ Andrew McCutchen (the 2013 NL MVP),²⁹² and Pedro Alvarez,²⁹³ the Pirates' first through fourth hitters in their lineup for most of 2013, and Gerrit Cole, one of their top starting pitchers who started

²⁸⁵ All acquisition information is from ESPN.COM.

²⁸⁶ All salary figures are from ESPN.COM.

²⁸⁷ All WAR figures are from ESPN.COM.

²⁸⁸ Wood presumably earned the major league minimum in 2013.

²⁸⁹ Jay Jaffe, *A Look Back At the Last Pirates Teams to Reach the Postseason*, SPORTS ILLUSTRATED (Sep. 25, 2013), <http://mlb.si.com/2013/09/24/pirates-playoffs-barry-bonds-jim-leyland/>, archived at <http://perma.cc/SW5J-WZ56>.

²⁹⁰ Associated Press, *Pirates Place Starling Marte on DL*, ESPN.COM (Aug. 24, 2013, 7:50 PM), http://espn.go.com/mlb/story/_/id/9597666/pittsburgh-pirates-place-starling-marte-dl-bruised-hand, archived at <http://perma.cc/49ZT-M8XA>.

²⁹¹ *Cardinals 4, Pirates 3 - August 13, 2013 - Box Score*, ESPN.COM, <http://scores.espn.go.com/mlb/boxscore?gameId=330813124&teams=pittsburgh-pirates-vs-st.-louis-cardinals> (last visited Dec. 18, 2013), archived at <http://perma.cc/K7Z-QCVP>.

²⁹² *Id.*

²⁹³ Tom Singer, *Hurdle Slots Alvarez at No. 6 in Batting Order*, MLB.COM, http://mlb.mlb.com/news/article.jsp?ymd=20130904&content_id=59567924¬ebook

Game 5 of the 2013 NLDS,²⁹⁴ were all drafted and developed by the Pirates.²⁹⁵

Figure 9			
2013 Pittsburgh Pirates N.L. Wild Card Winner - Rank in Payroll: 20th			
Player	Acquisition by Pittsburgh ²⁹⁶	2013 Salary ²⁹⁷	2013 WAR ²⁹⁸
Andrew McCutchen	Drafted in 2005 in 1st Round (11th overall)	\$4,708,333	8.2
Starling Marte	Signed as non-drafted free agent in 2007	\$500,000	5.5
Neil Walker	Drafted in 2004 in 1st Round (11th overall)	\$3,300,000	3.9
Pedro Alvarez	Drafted in 2008 in 1st Round (2nd overall)	\$700,000	3.4
Gerrit Cole	Drafted in 2011 in 1st Round (1st overall)	N/A ²⁹⁹	1.3

The Indians' 2013 WAR leader,³⁰⁰ Jason Kipnis, was drafted and developed by the Indians. And, in addition to the homegrown players listed in Figure 10, the Indians received key contributions in 2013 from players who were homegrown in the sense that they spent a number of years developing in the Indians' minor league system but who were originally drafted or signed by other organizations. Carlos Santana, for instance, was originally signed as an international amateur free agent by the Dodgers in 2004, but he spent two and a half years developing in the Indians' minor league system

²⁹⁴ [_id=59568954&vkey=notebook_pit&c_id=pit](http://perma.cc/7S5H-PVNE) (last visited Dec. 18, 2013), archived at <http://perma.cc/7S5H-PVNE>.

²⁹⁴ Matt Snyder, *Pirates Name Gerrit Cole Game 5 Starting Pitcher*, CBSSPORTS.COM (Oct. 7, 2013, 6:38 PM), <http://www.cbssports.com/mlb/eye-on-baseball/24046075/pirates-name-gerrit-cole-game-5-starting-pitcher>, archived at <http://perma.cc/CB5-8ESE>.

²⁹⁵ See *infra* figure 9.

²⁹⁶ All acquisition information is from ESPN.COM.

²⁹⁷ All salary numbers are from ESPN.COM.

²⁹⁸ All WAR numbers are from ESPN.COM.

²⁹⁹ Cole presumably earned the major league minimum in 2013.

³⁰⁰ Indians - WAR Leaders, FANGRAPHS, <http://www.fangraphs.com/leaders.aspx?pos=all&stats=bat&lg=all&qual=0&type=6&season=2013&month=0&season1=2013&ind=0&team=5&roster=0&age=0&filter=&players=0> (last visited Dec. 18, 2013), archived at <http://perma.cc/53ZD-ZP64>.

after the Indians traded for him in 2008.³⁰¹ Santana finished second on the Indians in Offensive WAR in 2013.³⁰² Starting pitchers Corey Kluber and Zach McAllister were also developed by the Indians in their minor league system. Kluber was originally drafted by the Padres in 2007,³⁰³ but was traded to the Indians in 2010,³⁰⁴ after which he spent two plus years developing with the Indians' triple-A affiliate.³⁰⁵ McAllister was originally drafted by the Yankees in 2006, and spent more than two seasons developing in the Indians' minor league system after being acquired from the Yankees in 2010.³⁰⁶

Figure 10			
2013 Cleveland Indians			
N.L. Wild Card Winner — Rank in Payroll: 21st			
Player	Acquisition by Cleveland ³⁰⁷	2013 Salary ³⁰⁸	2013 WAR ³⁰⁹
Jason Kipnis	Drafted in 2009 in 2nd Round (63rd overall)	\$509,400	5.9
Lonnie Chisenhall	Drafted in 2008 in 1st Round (29th overall)	\$492,900	1.4
Cody Allen	Drafted in 2011 in 23rd Round (698th overall)	\$492,600	1.4
Danny Salazar	Signed as non-drafted free agent in 2006	N/A ³¹⁰	1.2

³⁰¹ Carlos Santana - Player Page, MiLB.COM, http://www.milb.com/milb/stats/stats.jsp?sid=milb&t=p_pbp&pid=467793 (last visited Dec. 18, 2013), *archived at* <http://perma.cc/G5AY-PWJ3>.

³⁰² *Cleveland Indians Batting Stats - 2013*, ESPN.COM, http://espn.go.com/mlb/team/stats/batting/_/name/cle/seasontype/2/cat/offWARBR/cleveland-indians (last visited Dec. 18, 2013), *archived at* <http://perma.cc/6U9F-XB7G>.

³⁰³ Corey Kluber Player Page, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/k/klubeco01.shtml#trans> (last visited Dec. 18, 2013), *archived at* <http://perma.cc/4BRG-X7XL>.

³⁰⁴ *Id.*

³⁰⁵ Corey Kluber - Player Page, MiLB.COM, http://www.milb.com/milb/stats/stats.jsp?sid=milb&t=p_pbp&pid=446372 (last visited Dec. 18, 2013), *archived at* <http://perma.cc/Z5XT-EZRC>.

³⁰⁶ Zach McAllister - Player Page, MiLB.COM, http://www.milb.com/milb/stats/stats.jsp?sid=milb&t=p_pbp&pid=502083 (last visited Dec. 18, 2013), *archived at* <http://perma.cc/4YJH-PAX9>.

³⁰⁷ All acquisition information is from ESPN.COM.

³⁰⁸ All salary figures are from ESPN.COM.

³⁰⁹ All WAR figures are from ESPN.COM.

³¹⁰ Salazar presumably earned the major league minimum in 2013.

Like the Rays and Braves, the Athletics filled their starting rotation with pitchers they drafted and developed. Three of the Athletics' five starting pitchers, Sonny Gray, A.J. Griffin and Dan Straily, who combined to make 69 starts for the Athletics in 2013,³¹¹ were drafted and developed by the Athletics. The aggregate cost of these three pitchers to the Athletics in 2013 was less than \$1.5 million,³¹² yet these three pitchers won a combined 29 games³¹³ and produced 4.9 total WAR for Oakland.³¹⁴

Figure 11			
2013 Oakland Athletics			
N.L. West Division Winner - Rank in Payroll: 27th			
Player	Acquisition by Oakland ³¹⁵	2013 Salary ³¹⁶	2013 WAR ³¹⁷
A.J. Griffin	Drafted in 2010 in 13th Round (395th overall)	\$492,500	2.3
Yoenis Cespedes	Signed as international free agent in 2012	\$8,500,000	1.7
Sonny Gray	Drafted in 2011 in 1st Round (18th overall)	N/A ³¹⁸	1.4
Dan Straily	Drafted in 2009 in 24th Round (723rd overall)	\$492,500	1.2
Sean Doolittle	Drafted in 2007 in 1st Round (41st overall)	\$492,500	1.2

Figures 6, 8, 9, 10 and 11 show how five clubs, each of which spent less on their 2013 payrolls than the majority of clubs, nevertheless fielded better teams than many of the clubs that spent much more on their payrolls. These small-market clubs could not afford to pay the salaries demanded by high-priced veterans. So, instead, they filled their rosters with talented players whom they drafted and developed in their minor league systems. For this reason, the First-Year Player Draft, amateur international free agency and the minor league and major league reserve systems are vital to the continued competitive balance in Major League Baseball.

³¹¹ *Oakland Athletics Pitching Stats - 2013*, ESPN.COM, http://espn.go.com/mlb/team/stats/pitching/_/name/oak/year/2013/cat/gamesStarted/order/true/oakland-athletics (last visited Dec. 18, 2013), archived at <http://perma.cc/G5KF-7XBQ>.

³¹² See *infra* figure 11.

³¹³ See *supra* note 311.

³¹⁴ See *infra* figure 11.

³¹⁵ All acquisition information is from ESPN.COM.

³¹⁶ All salary figures are from ESPN.COM.

³¹⁷ All WAR figures are from ESPN.COM.

³¹⁸ Gray presumably earned the major league minimum in 2013.

XI. CONCLUSION

On Wednesday, October 2, 2013, seven years after the Rays lost to the Indians to finish the 2006 season with the worst record in the majors, they once again faced the Indians in a game where a loss would end their season.³¹⁹ Only this time, the game was the AL Wild Card Game.³²⁰ Alex Cobb, the Rays' 2006 fourth-round draft pick, pitched six scoreless innings and got the win, and Desmond Jennings, the Rays' 2006 tenth-round draft pick, doubled home two runs to advance the Rays to the ALDS to face the Red Sox.³²¹ Although the Rays would go on to lose to the Red Sox in four games,³²² the Rays' 2013 season was another milestone in their remarkable run of success.

As this paper explains, the Rays' success was made possible by the system that is protected from antitrust challenge by baseball's antitrust exemption. The First-Year Player Draft, amateur international free agency rules, the minor league and major league reserve systems, the minor league and major league minimum salaries, and even the minor league drug-testing program are essential to the continued competitive balance in Major League Baseball. Each of these components, individually and as a group, produces additional, wide-ranging effects, both positive and negative, on minor league players, clubs, fans, communities, and parent clubs. As this paper demonstrates, the system's benefits far outweigh its costs, as the system is necessary to the continued existence of Minor League Baseball, and in most cases its disadvantages are more substantial in theory than they are in practice.

³¹⁹ Tampa Bay Rays - 2013 Schedule, ESPN.COM, http://espn.go.com/mlb/team/schedule/_/name/tb/year/2013/tampa-bay-rays (last visited Dec. 18, 2013), *archived at* <http://perma.cc/CVC2-RZVX>.

³²⁰ Associated Press, *Alex Cobb guides Rays past Indians, Into ALDS vs. Red Sox*, ESPN.COM, <http://espn.go.com/mlb/recap?id=331002105> (last visited Dec. 18, 2013), *archived at* <http://perma.cc/C57C-V8T5>.

³²¹ *Id.*

³²² *See supra* note 319.

