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Reevaluating the Curt Flood Act of 1998

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Reevaluating the Curt Flood Act of 1998

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I. INTRODUCTION

For nearly ninety years, Major League Baseball (“MLB”) has enjoyed the unique status of being the only professional sports league operating under a judicial exemption from federal antitrust law. MLB’s antitrust exemption dates back to the United States Supreme Court’s 1922 landmark opinion in *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*,¹ in which the Court held that because baseball games were “purely state affairs,”² federal antitrust law—which governs only interstate commerce—did not apply to the business of baseball.³ Despite the dubious nature of this holding,⁴ the Court subsequently reaffirmed *Federal Baseball* on two separate occasions.⁵

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1. 259 U.S. 200 (1922).

2. *Id.* at 208.

3. *Id.*

4. Many commentators have criticized the logic of the Court’s *Federal Baseball* opinion. See, e.g., Salerno v. Am. League of Prof’l Baseball, 429 F.2d 1003, 1005 (2d Cir. 1970) (“We freely acknowledge our belief that *Federal Baseball* was not one of Mr. Justice Holmes’ happiest days. . . .”); ROGER I. ABRAMS, LEGAL BASES: BASEBALL AND THE LAW 45–69 (Temple Univ. Press 1998) (quoting same); H. Ward Classen, *Three Strikes and You’re Out: An Investigation of Professional Baseball’s Antitrust Exemption*, 21 AKRON L. REV. 369, 376 (1988) (reporting that *Federal Baseball* has been “widely criticized”); Robert M. Jarvis & Phyllis Coleman, *Early Baseball Law*, 45 AM. J. LEGAL HIST. 117, 117 n.2 (2001) (finding the opinion had been “much-criticized”).

5. Flood v. Kuhn, 407 U.S. 258 (1972); Toolson v. N.Y. Yankees, 346 U.S. 356 (1953). For a greater discussion of the exemption, see *infra* note 12.

For its part, Congress waited nearly eight decades before finally addressing MLB's longstanding antitrust exemption for the first time by passing the Curt Flood Act of 1998 ("CFA" or "Act").⁶ Members of Congress boasted that the CFA was landmark legislation "bringing the rule of antitrust law to baseball."⁷ In reality, however, the Act was much less sweeping, simply lifting MLB's antitrust exemption in a single, limited respect. Specifically, the CFA allowed MLB players to file antitrust lawsuits "directly relating to or affecting employment of major league baseball players to play baseball at the major league level" against the league.⁸ In other words, under the CFA only current MLB players have standing to bring an antitrust suit against the league, and then only so long as the players assert antitrust claims directly related to the terms or conditions of their employment—as opposed to antitrust suits involving issues affecting the minor leagues, broadcasting, franchise ownership, expansion, or relocation.⁹ Thus, the CFA left MLB's exemption intact in all respects, aside from suits affecting the employment of players at the major league level brought by current players themselves.

Before the CFA, MLB's antitrust exemption had prevented players from bringing antitrust suits against the league, even when MLB owners engaged in anticompetitive conduct, or negotiated with the players in bad faith.¹⁰ MLB's antitrust exemption thus placed baseball players on unequal footing in comparison to athletes in other professional sports leagues,¹¹ because none of the other leagues enjoy an exemption from federal antitrust law, professional athletes in other sports have always been able to assert antitrust claims against their respective leagues during labor disputes. The CFA corrected this inequality, granting MLB players the same right enjoyed by athletes in the other professional sports leagues.

With MLB's antitrust exemption having long been a popular subject of legal scholarship,¹² and because the CFA marked Congress'

6. 15 U.S.C. § 26b (2006).

7. Reynolds Holding, *Do Baseball Bigwigs Deserve Special Treatment? Why, Exactly, Should Those Who Already Have it Easy be Further Protected by a Monopoly?*, S.F. CHRON., Nov. 22, 1998, at 5.

8. 15 U.S.C. § 26b(a) (2006).

9. *Id.*

10. See, e.g., Flood, 407 U.S. 258.

11. E.g., the National Basketball Association ("NBA"), National Football League ("NFL"), and National Hockey League ("NHL").

12. See, e.g., ABRAMS, *supra* note 4; Robert G. Berger, *After the Strikes: A Reexamination of Professional Baseball's Antitrust Exemption from the Antitrust Laws*, 45 U. PITT. L. REV. 209 (1983); M. Lindsey Cowen, *Baseball and the Law—Yesterday and Today*, 32 VA. L. REV. 1164 (1946); John Eckler, *Baseball—Sport or Commerce?*, 17 U. CHI. L. REV. 56 (1949); Mitchell Nathanson, *The Irrelevance of Baseball's Antitrust Exemption*, 58 RUTGERS L. REV. 1 (2005); Morgen A. Sullivan, "A Derelict in the Stream of Law": *Overruling Baseball's Antitrust Exemption*, 48

first legislative foray into the field, the Act quickly generated substantial scholarly consideration.¹³ These commentators almost unanimously concluded that the CFA accomplished “virtually nothing,”¹⁴ would have “no practical effect” on the game,¹⁵ and ultimately had only “symbolic value.”¹⁶ This skepticism was based on the United States Supreme Court’s 1996 opinion in *Brown v. Pro Football Inc.*,¹⁷ in which the Court held that the so-called “nonstatutory labor exemp-

DUKE L.J. 1265 (1999); Comment, *Monopsony in Manpower: Organized Baseball Meets the Antitrust Laws*, 62 YALE L.J. 576 (1953); Comment, *Organized Baseball and the Law*, 46 YALE L.J. 1386 (1937).

13. The Marquette Sports Law Journal devoted a symposium to the legislation, publishing a total of eight perspectives on the CFA. See Roger I. Abrams, *Before the Flood: The History of Baseball’s Antitrust Exemption*, 9 MARQ. SPORTS L.J. 307 (1999); Ted Curtis, *The Flood Act’s Place in Baseball Legal History*, 9 MARQ. SPORTS L.J. 403 (1999); Edmund P. Edmonds, *The Curt Flood Act of 1998: A Hollow Gesture After All These Years?*, 9 MARQ. SPORTS L.J. 315 (1999); J. Gordon Hylton, *Why Baseball’s Antitrust Exemption Still Survives*, 9 MARQ. SPORTS L.J. 391 (1999); Alfred Dennis Mathewson, *Ali to Flood to Marshall: The Most Triumphant of Words*, 9 MARQ. SPORTS L.J. 439 (1999); Marianne McGettigan, *The Curt Flood Act of 1998: The Players’ Perspective*, 9 MARQ. SPORTS L.J. 379 (1999); Gary R. Roberts, *A Brief Appraisal of the Curt Flood Act of 1998 From the Minor League Perspective*, 9 MARQ. SPORTS L.J. 413 (1999); John T. Wolohan, *The Curt Flood Act of 1998 and Major League Baseball’s Federal Antitrust Exemption*, 9 MARQ. SPORTS L.J. 347 (1999).

In addition to this symposium, the CFA was also separately considered by a number of other commentators. See, e.g., Philip R. Bautista, *Congress Says, “Yooou’re Out!!!” to the Antitrust Exemption of Professional Baseball: A Discussion of the Current State of Player-Owner Collective Bargaining and the Impact of the Curt Flood Act of 1998*, 15 OHIO ST. J. ON DISP. RESOL. 445 (2000); J. Philip Calabrese, *Antitrust and Baseball*, 36 HARV. J. ON LEGIS. 531 (1999); Charles Allen Criswell, Jr., *Repeal of Baseball’s Longstanding Antitrust Exemption: Did Congress Strike Out Again?*, 19 N. ILL. U. L. REV. 545 (1999); Jennifer Dyer, *The Curt Flood Act of 1998: After 76 Years, Congress Lifts Baseball’s Antitrust Exemption on Labor Relations But Leaves Franchise Relocation Up to the Courts*, 3 T.M. COOLEY J. PRAC. & CLINICAL L. 247 (2000); Joshua P. Jones, *A Congressional Swing and Miss: The Curt Flood Act, Player Control, and the National Pastime*, 33 GA. L. REV. 639 (1999); Peter M. Macaluso, *Bang the Gavel Slowly: A Call for Judicial Activism Following the Curt Flood Act*, 9 B.U. PUB. INT. L.J. 463 (2000).

14. Roberts, *supra* note 13, at 432; see also Macaluso, *supra* note 13, at 480 (stating the CFA “accomplishes little”); Sullivan, *supra* note 13, at 1266 (determining the CFA had a “limited” impact).
15. Hylton, *supra* note 13, at 391; see also Abrams, *supra* note 13, at 312 (finding the Act “would not change one iota of the relationship between the major league club owners and the major league players”); Wolohan, *supra* note 13, at 375–76 (concluding the CFA will have “very little” impact on negotiations between MLB and the players union). But see McGettigan, *supra* note 13, at 379 (arguing that the CFA “should reduce the likelihood of work stoppages” in MLB).
16. Calabrese, *supra* note 13, at 531; see also BRAD SNYDER, *A WELL-PAID SLAVE: CURT FLOOD’S FIGHT FOR FREE AGENCY IN PROFESSIONAL SPORTS* 349 (Viking 2006) (finding the CFA was “a posthumous but hollow victory” for the legislation’s namesake, Curt Flood); Abrams, *supra* note 13, at 312; Mathewson, *supra* note 13, at 439 (“I find the Act only a symbolic tribute.”).
17. 518 U.S. 231 (1996).

tion” prevented unionized NFL players from asserting an antitrust suit against the league, even during impasses in the players’ union’s negotiations with the NFL.¹⁸ The nonstatutory labor exemption provides that collective bargaining agreements are exempt from antitrust law to the extent they affect “mandatory subjects” of collective bargaining (i.e., wages, hours, and certain other terms and conditions of employment).¹⁹ Because *Brown* prevents unionized players from filing antitrust actions relating to many of the most common subjects of collective bargaining, players generally must now disband or “decertify” their union in order to pursue such antitrust suits.

Therefore, although the CFA permits players to file antitrust lawsuits against MLB, under *Brown*, MLB players must generally first decertify their union—the Major League Baseball Players Association (“MLBPA”)—in order for such a suit to succeed.²⁰ Otherwise, the suit would quickly be dismissed pursuant to *Brown* and the nonstatutory labor exemption.

Commentators were skeptical of the efficacy of the CFA largely because they did not believe MLB players would ever decertify the MLBPA.²¹ Union decertification is a “costly process” for the players, requiring that the players forgo union benefits such as agent certification and union-managed pension and disability plans.²² Players would also risk losing the benefits they had obtained in previous collective bargaining agreements.²³ Therefore, in light of *Brown*, the common consensus at the time of the CFA’s passage was that the Act

18. *Id.*; see also Wolohan, *supra* note 13, at 376.

19. See, e.g., Kieran M. Corcoran, *When Does the Buzzer Sound?: The Nonstatutory Labor Exemption in Professional Sports*, 94 COLUM. L. REV. 1045 (1994); Lee Goldman, *The Labor Exemption to the Antitrust Laws as Applied to Employers’ Labor Market Restraints in Sports and Non-Sports Market*, 3 UTAH L. REV. 617, 650–53 (1989); Abraham Spira, *Almost Three Decades Later, Is Mackey Still Viable?*, 17 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 805, 811–13 (2007); Comment, *Antitrust Law—Nonstatutory Labor Exemption—Second Circuit Exempts NFL Eligibility Rules from Antitrust Scrutiny—Clarett v. National Football League*, 118 HARV. L. REV. 1379 (2005); Shawn Treadwell, Note, *An Examination of the Nonstatutory Labor Exemption From the Antitrust Laws, in the Context of Professional Sports*, 23 FORDHAM URB. L.J. 955, 962 (1996).

20. See, e.g., Bautista, *supra* note 13, at 478; Roberts, *supra* note 13, at 433. While the nonstatutory labor exemption does not apply to negotiations over so-called “non-mandatory subjects” of collective bargaining, due to the extensive history of labor negotiations between MLB and the MLBPA, it is unlikely that the players could persuasively assert that a grievance relates to a non-mandatory subject. Bautista, *supra* note 13, at 476–78.

21. Bautista, *supra* note 13, at 478; Edmonds, *supra* note 13, at 341; Lacie L. Kaiser, *Revisiting the Impact of the Curt Flood Act of 1998 on the Bargaining Relationship Between Players and Management in Major League Baseball*, 1 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 230, 250 (2004); Roberts, *supra* note 13, at 433.

22. Roberts, *supra* note 13, at 433.

23. Edmonds, *supra* note 13, at 341.

would have little impact on baseball, or upon negotiations between MLB and the MLBPA.

Upon reflection eleven years later, however, the initial skepticism of these commentators appears to have been misplaced. The enactment of the CFA has directly coincided with—and indeed helped to usher in—MLB's longest sustained period of labor peace in nearly forty years. While it is, of course, difficult for outsiders to the negotiations between MLB and the MLBPA to ascertain the precise impact of the CFA, the CFA's effect upon labor relations between players and owners is nevertheless apparent. The passage of the CFA has caused MLB owners to moderate their bargaining positions, resulting in more harmonious labor negotiations with the MLBPA.

This Essay reconsiders the CFA's unexpected impact by first briefly reviewing the Act, and then examining how the CFA has changed the tenor of labor negotiations between MLB owners and the MLBPA. The Essay concludes that despite the general skepticism at the time of its passage, the CFA has nevertheless helped foster baseball's recent, unprecedented labor peace.

II. THE CURT FLOOD ACT OF 1998

The CFA originated through a compromise between MLB owners and the MLBPA, as part of the 1996 collective bargaining agreement.²⁴ In that agreement, both MLB and the MLBPA agreed to lobby Congress to pass legislation granting players a limited right to file an antitrust suit against the league.²⁵ The MLBPA sought this legislation in order to place MLB players on equal footing with players in the other professional sports leagues, who have always enjoyed the right to pursue antitrust suits against their leagues.²⁶ Meanwhile, MLB was willing to give its players the ability to file an antitrust suit because it believed that the Supreme Court's decision in *Brown* had substantially minimized the value of the right.²⁷ The joint lobbying efforts were ultimately successful, resulting in Congress's passage of the CFA in 1998. The Act was named in honor of former MLB player Curt Flood—the named petitioner in the Supreme Court's most recent reaffirmance of MLB's antitrust exemption, *Flood v. Kuhn*²⁸—who sacrificed his playing career to challenge MLB's antitrust exemption in the early 1970s.²⁹

24. Jones, *supra* note 13, at 662 (quoting agreement).

25. *Id.*; see also Macaluso, *supra* note 13, at 476.

26. Gregg Krupa, *Action Suits Players—Baseball Union Gets Boost From Senate*, BOSTON GLOBE, July 30, 1998, at D6, available at 1998 WLNR 2376277 (quoting chief MLBPA outside counsel Stephen Fehr).

27. See Abrams, *supra* note 13, at 312.

28. 407 U.S. 258 (1972).

29. See generally SNYDER, *supra* note 16.

Specifically, the CFA added a new provision to the Clayton Act of 1914,³⁰ applying only to MLB players.³¹ Section A allows MLB players to bring antitrust suits against the league “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”³² Section B contains a number of express limitations to the Act, stipulating that the CFA does not apply to litigation involving either amateur or minor league players, nor to lawsuits arising out of disputes involving “franchise expansion, location or relocation, [or] franchise ownership issues, including ownership transfers”³³ Section C further restricts the CFA’s reach, limiting standing under the Act only to current or former major league baseball players.³⁴ Not only is this final provision largely redundant, but it also “creates confusion because the Act does not create a cause of action to sue.”³⁵

Therefore, despite the initial proclamations by politicians boasting that the CFA profoundly limited MLB’s antitrust exemption,³⁶ in reality the Act’s reach was much more limited.

III. THE EFFECT OF THE CFA

In light of the CFA’s limited scope, commentators’ predictions that the Act would be largely impotent were understandable. In fact, such predictions have proven correct in at least two respects: no MLB player has ever filed suit under the CFA,³⁷ nor have MLB players subsequently attempted to decertify their union. However, the common consensus that the CFA would have no practical effect on the game

30. 15 U.S.C. §§ 12–27 (2006). The Clayton Act supplemented the Sherman Antitrust Act of 1890 by prohibiting particular types of anticompetitive conduct, including mergers and acquisitions which may substantially lessen competition, 15 U.S.C. § 18, and price discrimination. 15 U.S.C. § 13.

31. Wolohan, *supra* note 13, at 367.

32. 15 U.S.C. § 26b (2006).

33. *Id.*; see also Criswell, *supra* note 13, at 547 (noting that “the bill makes no attempt to repeal baseball’s exemption as it applies to franchise relocation”).

34. 15 U.S.C. § 26b.

35. Roberts, *supra* note 13, at 427.

36. See Holding, *supra* note 7, at 5.

37. In fact, only three courts have ever even cited the CFA. Two of these courts cited the Act as part of their consideration of MLB’s antitrust exemption, in litigation unrelated to collective bargaining between the league and the MLBPA. *Major League Baseball v. Butterworth*, 181 F. Supp. 2d 1316, 1331 n.16 (N.D. Fla. 2001); *Morsani v. Major League Baseball*, 79 F. Supp. 2d 1331, 1335 n.12 (M.D. Fla. 1999). The only other court to cite the CFA was the United States District Court for the District of Oregon in *Johnson v. Harper/Collins*, No. 06-3036-AA, 2006 WL 2225814 (D. Or. July 31, 2006). In *Johnson*, a *pro se* plaintiff alleged that the defendant publishing company had violated federal copyright and “Major League Baseball’ antitrust laws” by using his likeness without permission. *Id.* at *1. The court properly found that the plaintiff—who had never been an MLB player—lacked standing to bring an antitrust claim under the CFA. *Id.*

has proven erroneous in one significant respect: the CFA helped to usher in MLB's longest period of sustained labor peace in nearly four decades.

Between 1972 and 1996, MLB and the MLBPA negotiated five separate collective bargaining agreements; each negotiation was highly contentious, resulting in eight separate work stoppages during the course of the five negotiations.³⁸ Since the passage of the CFA, however, MLB has gone more than a decade without a strike or lockout. During this time, MLB owners and the MLBPA have negotiated two separate collective bargaining agreements,³⁹ each without incident. Thus, after averaging one work stoppage less than every three years from 1972 to 1996, MLB has not experienced a single strike or lockout in the eleven years since CFA's passage.

MLB owners have helped facilitate this sustained labor peace by fostering a more cooperative atmosphere in negotiations with the MLBPA by moderating their negotiating positions on critical issues. For instance, in the three negotiations prior to the enactment of the CFA, MLB owners consistently pressed the MLBPA to adopt a salary cap limiting the total number of dollars that an individual team could spend on its players' salaries,⁴⁰ an issue that the MLBPA has long considered a non-starter. In fact, during the midst of the 1994 players' strike, MLB owners attempted to unilaterally impose a salary cap on players during an impasse in negotiations, only to have the National Labor Relations Board strike the plan down.⁴¹

Many in the industry suspected that the owners would seek to revisit the possibility of a salary cap in the negotiations that led to the 2002 collective bargaining agreement.⁴² However, the owners ulti-

38. Bautista, *supra* note 13, at 456-66; Calabrese, *supra* note 13, at 540. For a history of the eight work stoppages, see Matthew Ryan McCarthy, *Revenue Sharing in Major League Baseball: Are Cuba's Political Managers on Their Way Over Too?*, 7 VAND. J. ENT. L. & PRAC. 555, 558-60 (2005).

39. See MAJOR LEAGUE BASEBALL, 2007-2011 BASIC AGREEMENT (2006), http://mlb-players.mlb.com/pa/pdf/cba_english.pdf (last visited November 1, 2008); MAJOR LEAGUE BASEBALL, 2003-2006 BASIC AGREEMENT (2002), http://www.bizofbaseball.com/docs/2002_2006basicagreement.pdf (last visited November 1, 2008).

40. McCarthy, *supra* note 38, at 559-60 (noting that the owners had sought a salary cap during the 1985, 1990, and 1994 negotiations with the MLBPA).

41. See Kaiser, *supra* note 21, at 258 n.160 (citing Paul D. Staudohar, *The Baseball Strike of 1994-95*, MONTHLY LAB. REV., Mar. 1997, at 21, available at <http://www.bls.gov/opub/mlr/1997/03/art4full.pdf>).

42. See Eric Fisher, *Single-entity Leagues Receive Validation From Federal Court*, WASH. TIMES, Apr. 23, 2000, at A3, available at 2000 WLNR 344407 (reporting the owners' "ultimate goal of a salary cap remains elusive"); Ronald Blum, *Baseball Suffers From Brounout*, VERO BEACH PRESS J. (Florida), Jan. 24, 1999, at B7, available at 1999 WLNR 6160905 ("Even though the next round of collective bargaining likely won't begin until after the 2001 season, salary cap talk filled the air.").

mately chose not to seek a salary cap in the 2002 negotiations,⁴³ the first time they had not pursued a cap in over two decades. Moreover, the owners also pledged not to unilaterally impose any labor provisions upon players,⁴⁴ a notable departure from their course of conduct in prior negotiations. Similarly, during the negotiations leading to the 2006 collective bargaining agreement, the owners once again elected not to seek a salary cap, resulting in unprecedentedly harmonious negotiations,⁴⁵ and causing chief MLBPA negotiator Donald Fehr to marvel at the ease with which the union was able to work with ownership.⁴⁶

This moderation in the MLB owners' negotiating position can be attributed, at least in part, to the CFA. Specifically, by giving players the legal right to bring an antitrust suit—and accordingly the ability to seek treble damages—the CFA has forced MLB owners to approach their negotiations with the MLBPA more cautiously. Although the threat is slim that MLB players will actually file an antitrust suit—after the Supreme Court's decision in *Brown*⁴⁷—it is nevertheless a threat that did not exist prior to the enactment of the CFA. While MLB players must first decertify their union before suing ownership, the threat of decertification can nevertheless serve as a real and powerful weapon.⁴⁸ For instance, NFL players have successfully decertified their union in order to obtain bargaining concessions from league owners.⁴⁹ Meanwhile, the threat of decertification in the NBA caused league owners to publicly threaten players with a prolonged lockout

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43. Eric Fisher, *Will Baseball Strike Out Again?*, 18 INSIGHT ON NEWS 30, Apr. 29, 2002), available at 2002 WLNR 5078223 (reporting that owners were seeking to modify the terms of the prior agreement's revenue sharing and luxury tax systems, rather than seek a salary cap).
 44. Andrew Zimbalist, *All Right All You Lawyers, Play Ball!*, BUS. WK., April 15, 2002, at 108, available at 2002 WLNR 7756445.
 45. ESPN.com, MLB players, owners announce five-year labor deal, Oct. 25, 2006, <http://sports.espn.go.com/mlb/news/story?id=2637615> (last visited November 3, 2008) (noting that MLB owners did not campaign against the players publicly during the 2006 negotiations, a common ownership tactic in previous negotiations).
 46. *Id.* ("I'd been waiting for most of that time to see if we could ever get to the place where we reached an agreement prior to expiration," said union head Donald Fehr, whose first negotiations as union chief was in 1985. "And while I always understood intellectually it was possible and that was the goal, I'm not really sure I believed that it could happen.").
 47. See *supra* notes 17–19 and accompanying text.
 48. See McGettigan, *supra* note 13, at 380 ("the mere prospect of [an antitrust] challenge can serve to moderate the actions of employers and the content of their bargaining proposals").
 49. Through decertification, NFL players obtained the right to free agency after prevailing at trial against the league in *McNeil v. National Football League*, 790 F. Supp. 871 (D. Minn. 1992); see also Dyer, *supra* note 13, at 270 (noting that decertification of the NFL Players Association eventually resulted in concessions by NFL owners); Mathew Levine, *Despite His Antics, T.O. Has a Valid Point: Why*

during a 1995 labor dispute.⁵⁰ Thus, the threat of decertification, and with it an antitrust suit by the players, presents a credible risk to league owners.⁵¹ Indeed, Steven Fehr—the MLBPA’s chief outside counsel who was involved in both the 2002 and 2006 negotiations, as well as the lobbying efforts leading to the enactment of the CFA—believes that the CFA has had an “atmospheric” effect on the union’s negotiations with MLB owners.⁵²

Moreover, the fact that the MLBPA required MLB owners to agree to help lobby Congress to pass the CFA is also instructive.⁵³ The MLBPA—the shrewdest and most successful players’ union of the four major professional sports leagues⁵⁴—is unlikely to have pursued an ineffective legislative initiative. The union was well aware of the Supreme Court’s opinion in *Brown* when it sought the enactment of the CFA,⁵⁵ and would not have pursued the Act unless it believed the CFA would impact the tenor of its negotiations with the owners.⁵⁶ Along these lines, Donald Fehr stated at the time of the CFA’s passage that the Act would “be a significant step toward minimizing the labor discord and disruptions in play that have plagued our national pastime,”⁵⁷ and would create “an important opportunity to forge a new and better relationship between major league owners and players.”⁵⁸ Fehr would later note that “[t]here is now no doubt that players will

NFL Players Deserve A Bigger Piece of the Pie, 13 VILL. SPORTS & ENT. L.J. 425, 448–49 (2006).

50. Jeffrey L. Kessler & David G. Feher, *What Justice Breyer Could Not Know at His Mother’s Knee: The Adverse Effects of Brown v. Pro Football on Labor Relations in Professional Sports*, ANTITRUST, Spring 2000, at 41, 43.
51. See Zimbalist, *supra* note 44, at 108 (finding with respect to the 2002 negotiations that MLB “players, rather than striking as in 1994, are likely to take a decidedly different tack, too: decertify their union and sue the owners on antitrust grounds.”).
52. Telephone Interview with Steven Fehr, Primary Outside Counsel, Major League Baseball Players Association (“MLBPA”) (April 17, 2008).
53. See *supra* notes 24–27 and accompanying text.
54. See Levine, *supra* note 49, at 437 (finding that the MLBPA is “one of the strongest labor unions in the country”); Ross Newhan, *Selig and Fehr Are No Fools on the Hill*, L.A. TIMES, Jan. 15, 2008, available at 2008 WLNR 772295 (“At a time when unions are being devastated by corporations and conglomerates, the Major League Baseball Players Association remains among the nation’s strongest.”).
55. Mathewson, *supra* note 13, at 443; see also Thomas J. Ostertag, *Baseball’s Antitrust Exemption: Its History and Continuing Importance*, 4 VA. SPORTS & ENT. L.J. 54, 65–66 (2004) (confirming that the owners and players were both aware of *Brown* when they agreed to lobby Congress).
56. See Mathewson, *supra* note 13, at 443 (“Surely [the MLBPA] did not use the collective bargaining process to obtain a bargaining tool without some strategy as to how it would use the Act in the future.”).
57. Murray Chass, *Baseball: Deal Struck on Antitrust Bill*, N.Y. TIMES, July 30, 1998, at C3, available at 1998 WLNR 2976074.
58. Editorial, *Bringing Baseball Back*, WASH. TIMES, Aug. 22, 1998, at C2, available at 1998 WLNR 385825.

be able to consider antitrust litigation as an option in any future dispute” with MLB.⁵⁹ Even MLB commissioner Bud Selig believed the CFA would improve the sport’s labor relations, stating, “We are hopeful that this legislation will bring to an end the sort of acrimony that led to eight work stoppages over the past three decades.”⁶⁰

Skeptics of the CFA will likely dismiss the Act’s impact on labor relations between MLB and the MLBPA, and instead argue that the league’s sustained labor peace is the result of other factors, such as the tremendous financial success enjoyed by both MLB owners and players in recent years, or the belief that baseball could not afford another damaging work stoppage after the disastrous 1994 players’ strike.⁶¹ While both of these factors have undoubtedly contributed at some level to MLB’s current labor peace, neither factor fully explains the dramatic shift in labor relations between MLB and the MLBPA since the passage of the CFA.

First, while MLB has certainly experienced great financial success in recent years, this factor alone cannot explain the sport’s sustained labor peace. For example, the 1994 strike came on the heels of one of MLB’s most successful seasons ever, during which the sport generated record attendance figures.⁶² Moreover, the 2002 collective bargaining agreement was reached during a period in which MLB purported to be in the midst of significant financial struggles. The 2002 agreement was negotiated in the aftermath of the MLB-commissioned “Blue Ribbon Report,” issued in July 2000, which found that only three of the thirty MLB teams had operated profitably over the previous five years.⁶³ Therefore, baseball’s current and unprecedented period of peaceful labor relations cannot simply be attributed to MLB’s current profitability, as the league’s recent labor history shows both that MLB has (i) experienced a labor stoppage during a period of great financial success, and (ii) negotiated a new collective bargaining agreement without incident during a period of alleged financial turmoil.

59. *Antitrust Exemption Removed From Baseball Labor Matters*, N.Y. TIMES, Oct. 28, 1998, at D7.

60. *Bringing Baseball Back*, *supra* note 58, at C2.

61. See Kaiser, *supra* note 21, at 259 (suggesting that MLB and the MLBPA believed “they could not upset society’s view of baseball by having yet another strike or lockout”). The 1994 strike resulted in the first cancellation of the annual World Series championship in ninety years, and was estimated to have cost the owners over \$700 million in revenue, and players over \$243 million in lost wages. Bautista, *supra* note 13, at 466.

62. Harry Rosenthal, *Census Book Portrays U.S. By the Numbers*, CAPITAL TIMES (Wisconsin), Nov. 1, 1995, at 11A (reporting that MLB set a then-record attendance figure of 71 million fans in 1993).

63. RICHARD C. LEVIN, ET AL., MAJOR LEAGUE BASEBALL, THE REPORT OF THE INDEPENDENT MEMBERS OF THE COMMISSIONER’S BLUE RIBBON PANEL ON BASEBALL ECONOMICS 12, (2000), http://www.mlb.com/mlb/downloads/blue_ribbon.pdf (last visited Nov. 1, 2008).

Baseball's current labor relations also cannot be explained simply by virtue of the fact that the owners and players may be hesitant to experience another extended work stoppage after the disastrous 1994 strike. Notably, some of the same commentators who suggested shortly after the CFA's passage that the legislation would not have an impact on labor relations, also predicted that the league would continue to experience labor strife in the future.⁶⁴ Despite such dire predictions, MLB owners and the MLBPA have twice negotiated new collective bargaining agreements without acrimony since the passage of the CFA, in 2002 and 2006.⁶⁵ Of these, the 2002 agreement is particularly noteworthy. That agreement marked the first labor agreement reached by MLB and the MLBPA in thirty years without a work stoppage,⁶⁶ despite the fact that heading into the negotiations, many industry insiders were predicting that another stoppage was imminent due to the contentious issues at stake.⁶⁷

The 2006 agreement between the owners and players was also reached with remarkable ease.⁶⁸ That agreement is notable insofar as it came several months *prior* to the expiration of the 2002 agreement—an unprecedented accomplishment for baseball.⁶⁹ Indeed, the announcement of the agreement came as a surprise to many because it had largely been negotiated out of the public eye.⁷⁰ Thus, despite dire predictions at the time of the CFA's passage that the Act would do nothing to prevent continued labor strife, MLB owners and the MLBPA have nevertheless concluded two subsequent collective bargaining agreements after surprisingly peaceful negotiations. Accordingly, any suggestion that baseball's current labor peace is solely the

64. Bautista, *supra* note 13, at 478 (predicting “in all probability. . . [an] impasse during the next negotiations”); Calabrese, *supra* note 13, at 544 (“The threat of renewed labor unrest has undermined the goodwill that resulted from owner-player cooperation in lobbying for passage of the Act.”); Edmonds, *supra* note 13, at 342 (“the prospect of labor peace in [MLB] has not been significantly advanced by the passage of the [CFA]”); Jones, *supra* note 13, at 690 (“As the specter of yet another work stoppage rears its ugly head with the current collective bargaining agreement’s expiration in 2001, Congress, with the Flood Act, took a noble, yet ineffective, shot at bridging the gap in labor relations . . .”).

65. See MAJOR LEAGUE BASEBALL, 2007–2011 BASIC AGREEMENT (2006), http://mlb-players.mlb.com/pa/pdf/cba_english.pdf (last visited November 1, 2008); MAJOR LEAGUE BASEBALL, 2003–2006 BASIC AGREEMENT (2002), http://www.bizofbaseball.com/docs/2002_2006basicagreement.pdf (last visited Nov. 1, 2008).

66. See McCarthy, *supra* note 38, at 559–60 (reporting history).

67. See Calabrese, *supra* note 13, at 544 n.96 (citing articles discussing players’ expectations of a stoppage, and the owners’ plans to seek a salary cap); Chris Jenkins, *Baseball’s Collective Head in Sand? Labor War Looms in 2002; Few Players Seem to Care*, SAN DIEGO UNION-TRIB. (California), Apr. 1, 2002, at C1, available at 2001 WLNR 12005079.

68. See *supra* notes 45–46 and accompanying text.

69. ESPN.com, *supra* note 45.

70. *Id.*

result of hesitancy by MLB and the MLBPA to experience another work stoppage runs contrary to the conventional wisdom shared by both commentators and MLB insiders at the time of the CFA's passage.

Thus, while the CFA is not solely responsible for ushering in MLB's current and unprecedented labor peace, the Act must nevertheless be credited with having helped to change the tone of negotiations between MLB and the MLBPA—contrary to predictions at the time of its enactment.

IV. CONCLUSION

Despite the original skepticism surrounding the CFA, the Act has in actuality helped to usher in MLB's longest sustained period of labor peace in nearly forty years. While this newfound labor harmony undoubtedly results from more than the CFA alone, a closer examination of the other most plausible explanations reveals that MLB's current labor reconciliation cannot be explained simply as the result of baseball's current profits, nor the sport's hesitancy to experience another damaging work stoppage. Indeed, by increasing the antitrust risk to MLB owners for negotiating in bad faith, the CFA has helped alter the tenor of labor negotiations between the owners and the MLBPA.