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Baseball's Exemption from Section One of the Sherman Antitrust Act Applies to the National League's Decision to Deny the Sale and Transfer of a Franchise

William D. Georges

PETITIONERS' BRIEF

I. BASEBALL'S EXEMPTION FROM SECTION ONE OF THE SHERMAN ANTITRUST ACT APPLIES TO THE NATIONAL LEAGUE'S DECISION TO DENY THE SALE AND TRANSFER OF A FRANCHISE.

The National League's decision to deny the purchase and transfer of the Philadelphia Phillies is exempt from section one of the Sherman Antitrust Act, 15 U.S.C. § 1 (1988 & Supp. V 1993). *See Federal Baseball Club, Inc. v. National League of Professional Baseball Clubs*, 259 U.S. 200 (1922). Contrary to the holding of the Twelfth Circuit, (R.App.21), the exemption is not limited to the reserve clause, rather it is applicable to the entire business of baseball, including restrictions on franchise transfers.[1] *Toolson v. New York Yankees*, 346 U.S. 356, 357 (1953); *Charles O. Finley & Co. v. Kuhn*, 569 F.2d 527, 541 (7th Cir.) (finding that "[t]he Supreme Court has held three times that 'the business of baseball' is exempt from the federal antitrust laws"), *cert. denied*, 439 U.S. 876 (1978).

This Court has explicitly reaffirmed baseball's exemption from the antitrust laws. *See Flood v. Kuhn*, 407 U.S. 258, 273-74 (1972); *Toolson*, 346 U.S. at 357. Moreover, this Court has recognized that baseball is entitled to unique status and treatment under the antitrust laws. In each of three separate cases this Court recognized the unique characteristics and needs of baseball while clearly defining and reaffirming the exemption. *See Radovich v. National Football League*, 352 U.S. 445 (1957); *United States v. International Boxing Club*, 348 U.S. 236 (1955); *United States v. Shubert*, 348 U.S. 222 (1955). This Court has repeatedly emphasized the importance of *stare decisis* in upholding the exemption. *Flood*, 407 U.S. at 282; *Toolson*, 346 U.S. at 357. This Court has also held that only Congress should modify such a long standing rule of law and that Congress has examined, ratified and sanctioned baseball's antitrust exemption. *See Flood*, 407 U.S. at 273-74; *Radovich*, 352 U.S. at 450; *Shubert*, 348 U.S. at 230.

1. The reserve system required players to contract with their clubs for a specified period, gave the clubs latitude to assign player contracts and subjected players to renewal at predetermined minimum salaries. *Flood*, 407 U.S. at 259 n.1.

A. This Court's Repeated Determinations That Baseball Is Exempt from the Antitrust Laws Is Controlling.

Over seventy years ago this Court exempted baseball from the antitrust laws, thereby precluding claims such as those brought by the Phoenix Phillies herein. *Federal Baseball*, 259 U.S. at 201. This Court reaffirmed that holding in *Toolson*, noting that Congress had not seen fit during the ensuing thirty-one years to establish through legislation that the antitrust laws would apply to baseball. 346 U.S. at 356-57. That reasoning was expressly endorsed yet a third time by this Court in *Flood v. Kuhn*. 407 U.S. at 282. In *Flood*, this Court stated that the baseball exemption "has been with us for half a century, . . . heretofore deemed fully entitled to the benefit of *stare decisis* . . . ." *Id.* *Flood* recognized the exemption as a considered accommodation to the special issues facing baseball, stating that the exemption operated "on a recognition and an acceptance of baseball's unique characteristics and needs." *Id.* *Flood* also established that though baseball was engaged in interstate commerce, it should remain exempt from the antitrust laws due to *stare decisis* and substantial policy reasons such as industry reliance and legislative intent. *Id.*

This Court has often emphasized that "the doctrine of *stare decisis* is of fundamental importance to the rule of law." *Patterson v. McLean Credit Union*, 491 U.S. 164, 172 (1989) ("*[S]tare decisis* is a basic self-governing principle within the Judicial Branch, which is entrusted with the sensitive and difficult task of fashioning and preserving a jurisprudential system that is not based upon 'an arbitrary discretion.' ") (citations omitted). "*Any* departure from the doctrine of *stare decisis* demands special justification." *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984) (emphasis added). The doctrine is of greatest force when the Court construes legislation. *See, e.g., Smith v. Allwright*, 321 U.S. 649, 665 (1944). In *Toolson*, this Court upheld baseball's antitrust exemption finding that "Congress had no intention of including the business of baseball within the scope of the federal antitrust laws." *Toolson*, 346 U.S. at 357.

The burden borne by a party "advocating the abandonment of an established precedent is greater where the Court is asked to overrule a point of statutory construction." *Patterson*, 491 U.S. at 172. In the area of statutory interpretation, considerations of *stare decisis* are paramount, where, like here, the "legislative power is implicated, and Congress remains free to alter what we [the Court] have done." *Id.* at 172-73 (citations omitted). To overturn a settled point of statutory construction, the challenging party must prove

that the established interpretation is unworkable or that the purpose of the statute is frustrated. *See id.* The Phoenix Phillies cannot meet such a burden in this case. Moreover, the record does not reflect a single fact that would indicate that baseball's exemption is unworkable or in contravention of the purpose of the Sherman Act.

B. This Court Has Clearly Held That Only Congressional Action Can Bring Baseball Within the Scope of the Federal Antitrust Laws.

In every case in which this Court has examined baseball's exemption from the antitrust laws, this Court has directly expressed that baseball's exemption must be upheld so long as Congress refuses to enact legislation that would place baseball within the purview of federal antitrust laws. *See Flood*, 407 U.S. at 283 (holding that if any change to baseball's antitrust exemption is to be made, it must be by legislative action); *Radovich*, 352 U.S. at 451 ("[A]s long as the Congress continues to acquiesce we should continue to adhere to — but not extend — the interpretation of the Act made in those cases."); *United States v. Shubert*, 348 U.S. 222, 230 (1955) (if baseball's exemption is to be amended "the appropriate remedy lies with Congress"); *Toolson*, 346 U.S. at 357 ("Congress had no intention of including the business of baseball within the scope of the antitrust laws.").

1. *Congress has acknowledged and sanctioned this Court's determination that the business of baseball in general is exempt from the antitrust laws.*

This Court has concluded that Congress has no intention to subject baseball to the reach of the antitrust laws. *Toolson*, 346 U.S. at 357. Moreover, this Court has expressed "concern about the confusion and retroactivity problems that inevitably would result with the judicial overturning of *Federal Baseball*," due to the considerable reliance placed upon the exemption by the baseball industry and associated communities and municipalities. *Flood*, 407 U.S. at 284. In *Radovich*, this Court also noted the possibility for a flood of litigation and harassment that would ensue in the baseball industry if baseball's exemption were overturned judicially. *Radovich*, 352 U.S. at 452. Such compelling policy reasons, based in the doctrine of *stare decisis*, led the *Flood* Court to conclude that it would not overturn *Federal Baseball* and *Toolson* when "Congress, by its positive inaction, has allowed those decisions to stand for so long and, far

beyond mere inference and implication, has clearly evinced a desire not to disapprove them legislatively." *Flood*, 407 U.S. at 283-84.

Congress has actively considered amending the antitrust exemption on numerous occasions, clearly evincing a desire not to disapprove of baseball's exemption. *Flood*, 407 U.S. at 283. This Court has, on several occasions, invited the Congress to overturn baseball's exemption. *See, e.g., id.*; *Radovich*, 352 U.S. at 450; *Shubert*, 348 U.S. at 230; *Toolson*, 346 U.S. at 357. Nonetheless, between the *Toolson* decision in 1953 and *Flood* in 1972, Congress witnessed the introduction of more than fifty bills relative to the applicability of the antitrust laws to baseball. *Flood*, 407 U.S. at 281. Of those bills, the only ones to pass, acted to *expand*, not contract baseball's antitrust exemption. *Id.*

Congress has never seen fit to limit or repeal the exemption, even though it has held numerous hearings over the years at which the questions of the continuation and breadth of baseball's exemption have been debated at length. *See, e.g.*, H.R. Rep. No. 4994, 103d Cong., 2d Sess. (1994); H.R. Rep. No. 1094, 102d Cong., 2d Sess. (1992); H.R. Rep. No. 2002, 82d Cong., 2d Sess. (1952). Moreover, Congress has acknowledged and sanctioned the breadth of baseball's exemption from the antitrust laws. At a hearing before the Senate Antitrust Subcommittee, baseball's blanket antitrust immunity was recognized, as was the power for owners to "use such antitrust immunity as they see fit to either block or approve franchise relocation." H.R. Rep. No. 1094 at 2-3. In the same report to the Subcommittee, baseball was recognized as a unique institution with "special public interest obligations" and not merely another business. *Id.* at 5. Importantly, the Subcommittee received testimony establishing that baseball's exemption from the antitrust laws is "very important to baseball in terms of migration of franchises" and is thus *essential* to the economic health and integrity of the game. *Id.* at 7.

2. *Congress, through active legislative consideration, has proven to be the appropriate forum for modification of baseball's exemption.*

This Court should adhere to its own well established precedent and defer amending baseball's exemption to the legislature, especially when Congress is actively considering baseball's antitrust immunity. *Shubert*, 348 U.S. at 230 (if baseball's exemption is to be amended "the appropriate remedy lies with Congress"). There are currently several proposed bills pending before Congress relative to baseball's exemption. *See, e.g.*, H.R. Rep. No. 4994, 103d Cong., 2d

Sess. (1994). The bills consider limited revocation of the exemption, special provisions for the draft, the minor leagues, the Player's Association and special protection for the "business of baseball." *See id.* The bills also provide for the *prospective* application of their provisions. The ability of Congress to conduct investigations and inquiries concerning proposed or possibly needed statutes is unique to the legislature and is a compelling reason for this Court to yield to Congress on the issue of amending baseball's exemption. *See Gibson v. Florida Legislative Investigation Comm.*, 372 U.S. 539, 544 (1963).

Congress has probed into the economic and policy considerations behind baseball's antitrust immunity. Specifically, with regard to franchise relocation, Congress, as recently as 1992, inquired into the ultimate ability of the Commissioner of Baseball to stay a franchise relocation in order to protect the fans and the community. H.R. Rep. No. 1094 at 10. As a result of this exemption, baseball has a strong record regarding franchise stability. H.R. Rep. No. 4994 at 5. Congress recognized that baseball has not abused its antitrust exemption and consequently made no recommendation regarding remedial legislation.

Clearly, substantial policy reasons exist for the continuation of baseball's antitrust exemption including franchise stability, the economic interests of the community, preventing relocation solely for the profit of an individual owner and the integrity of the "Great American Game." Congress is the appropriate body for assessing the validity of these policy issues and promulgating appropriate legislation. *See Portland Baseball Club, Inc. v. Baltimore Baseball Club, Inc.*, 282 F.2d 680, 680 (9th Cir. 1980) ("[A]s we read *Toolson* and *Radovich* the Supreme Court is still holding to the proposition that if professional baseball is to be brought within the pale of federal antitrust laws, the Congress must do it.").

C. Baseball's Exemption from the Antitrust Laws Applies to the Entire Business of Baseball.

The entire business of baseball is exempt from federal antitrust laws. *Flood*, 407 U.S. at 283; *Toolson*, 346 U.S. at 357; *Federal Baseball*, 259 U.S. at 206. Moreover, this Court explicitly stated in *Radovich v. National Football League*, that baseball's unique exemption applies to the business of baseball in general, and is not limited to baseball's reserve system. 352 U.S. 445, 451 (1957) ("[W]e now specifically limit the rule [exemption] there established to the facts there involved, i.e., the business of organized professional baseball.");

see also Toolson, 346 U.S. at 357; *Federal Baseball*, 259 U.S. at 207. Questions of league structure and transfer relocation are part of the business of professional baseball and are thus clearly under the umbrella of baseball's exemption from federal antitrust laws. Therefore, the National League's decision to deny approval of the Phoenix Phillies' purchase and transfer of the Philadelphia Phillies is protected from the scrutiny of the antitrust laws.

Federal Baseball, the case establishing baseball's exemption from the antitrust laws, did *not* involve the reserve clause. *See Finley*, 569 F.2d at 546. The issue in *Federal Baseball* was whether the major leagues could be held liable under the antitrust laws for refusing to admit a franchise owned by the plaintiff, the owner of a team in a competing league. Although the plaintiff alleged, among other things, that the reserve clause was anti-competitive, *Federal Baseball* was not a case in which the antitrust issue was the reserve clause; rather, like this case, it was about whether baseball may decide with whom and where it wants to play ball. This Court has *never* limited baseball's exemption to the reserve clause. *See Flood*, 407 U.S. at 283; *Toolson*, 346 U.S. at 357.

This Court has applied the exemption to the entire business of baseball and, until the Twelfth Circuit's decision, every circuit court to have considered baseball's exemption has similarly held that the entire business of baseball is exempt. Indeed, it is the entire "business of baseball" and not just the reserve clause that is covered by the doctrine of *stare decisis*.

The Seventh Circuit, in *Charles O. Finley & Co. v. Kuhn*, in rejecting plaintiff's contention that baseball's exemption is limited to the reserve clause, concluded that "it appears clear from the entire opinions of the three baseball cases, as well as from *Radovich*, that the Supreme Court intended to exempt the business of baseball, not any particular facet of that business, from the federal antitrust laws." 569 F.2d at 541.

In upholding the dismissal of an antitrust complaint against baseball that challenged, among other things, "the franchise location system," the Eleventh Circuit concluded "the exclusion of the business of baseball from the antitrust laws is well established. Each of the activities appellant alleged as violative of the antitrust laws plainly concerns matters that are an integral part of the business of baseball." *Professional Baseball Schools & Clubs, Inc. v. Kuhn*, 693 F.2d 1085, 1085-86 (11th Cir. 1982). In *Salerno v. American League of Professional Baseball Clubs*, 429 F.2d 1003, 1004-05 (2d Cir. 1970), *cert. denied*, 400 U.S. 1001 (1971), the Second Circuit affirmed the dis-

missal of antitrust claims by former American League umpires, citing the broad exemption that the *entire* business of baseball enjoys.

With particular reference to control over franchise location, the First Circuit held that a minor league franchise could be granted only by permission of the National Association of Professional Baseball Leagues. *Triple-A Baseball Club Assocs. v. Northeastern Baseball, Inc.*, 832 F.2d 214, 216 (1st Cir. 1987), *cert. denied*, 485 U.S. 935 (1988). The First Circuit proclaimed that "[f]or those not familiar with the Great American Game we point out that professional baseball has had a long-standing exemption from the antitrust laws." *Id.* Finally, the Ninth Circuit affirmed the dismissal of antitrust claims by a former minor league owner who objected to major league franchises being located in his territory. *Portland Baseball Club, Inc. v. Kuhn*, 491 F.2d 1101, 1103 (9th Cir. 1974) (holding dismissal of antitrust claim proper on authority of *Flood*); *accord Portland Baseball Club, Inc. v. Baltimore Baseball Club, Inc.*, 282 F.2d 680 (9th Cir. 1980).

This resoundingly clear rule of law has also been followed by both federal and state courts. *See, e.g., Postema v. National League of Professional Baseball Clubs*, 799 F. Supp. 1475, 1489 (S.D.N.Y. 1992) (holding baseball's exemption immunizes baseball from antitrust challenges to its league structure and its reserve system), *rev'd on other grounds*, 998 F.2d 60 (2d Cir. 1993); *Mid-South Grizzlies v. National Football League*, 550 F. Supp. 558, 565 (E.D. Pa. 1982) ("Unlike professional baseball, professional football does not enjoy the good fortune of being *totally exempt* from the antitrust laws.") (emphasis added), *aff'd*, 720 F.2d 772 (3d Cir. 1983), *cert. denied*, 467 U.S. 1215 (1984); *cf. Henderson Broadcasting Corp. v. Houston Sports Ass'n, Inc.*, 541 F. Supp. 263 (S.D. Tex. 1982) (refusing to apply antitrust exemption where *league structure* was not at issue); *State v. Milwaukee Braves, Inc.*, 144 N.W.2d 1, 15 (Wis.) (in rejecting the State of Wisconsin's attempt to prevent a baseball franchise in that state from relocating in Atlanta, the court held that baseball's exemption *at least* protects agreements and rules that provide for the league structure of professional baseball), *cert. denied*, 385 U.S. 990 (1966).

1. *The Twelfth Circuit erred by limiting baseball's exemption to the reserve clause.*

The Twelfth Circuit erred in its interpretation of this Court's clear precedent when it determined that baseball's exemption from the antitrust laws applies only to the reserve system. (R.App.21). The Twelfth Circuit relied upon *Flood* where the issue before the

Court was whether baseball's reserve system was exempt from the application of the antitrust laws. 407 U.S. at 260. Contrary to the Twelfth Circuit's conclusion that the *Flood* decision limited the "precedential value of *Federal Baseball* to disputes involving the reserve clause," (R.App.21), the Court in *Flood* held that it would adhere to the rule that professional baseball is exempt from the antitrust laws. *Flood*, 407 U.S. at 285.

The Twelfth Circuit's reliance on *Piazza v. Major League Baseball*, 831 F. Supp. 420 (E.D. Pa. 1993), is also erroneous. (R. App.21). *Piazza* is the *only* case to hold that baseball's exemption is limited to the reserve clause. However, the *Piazza* court conceded that the "physical relocation of a team and [b]aseball's decisions regarding such a relocation *could* implicate matters of league structure, and thus be covered by the exemption." *Id.* at 441 (emphasis added). *Piazza*, a district court case, is not binding upon this Court, particularly when there is direct and substantial precedent to the contrary. *See Flood*, 407 U.S. at 283-84; *Radovich*, 352 U.S. at 451; *Toolson*, 346 U.S. at 357; *Federal Baseball*, 259 U.S. at 201. In a subsequent opinion, the *Piazza* court recognized that "[o]ther courts considering the issue have concluded that Baseball's antitrust exemption extends beyond the reserve system" and concluded that "there is *substantial* ground for difference of opinion" regarding the breadth of the exemption. *Piazza v. Major League Baseball*, 836 F. Supp. 269, 271 (E.D. Pa. 1993) (emphasis added).

2. *The National League's decision to deny the transfer of the Philadelphia Phillies to Phoenix is clearly within the purview of baseball's antitrust exemption.*

There is simply no legal support for the proposition espoused by the Phoenix Phillies that the exemption is limited to the reserve clause. (R.App.21). To the contrary, the National League's vote and subsequent denial of the Phoenix Phillies' attempt to move the Philadelphia Phillies to Phoenix is within baseball's exemption from the antitrust laws. (R.App.18).

Moreover, baseball's exemption must apply to the National League's decision to deny the transfer of the Philadelphia Phillies as a necessary step to maintain the structure of professional baseball. *See State v. Milwaukee Braves, Inc.*, 144 N.W.2d 1, 15 (Wis.) ("[T]he exemption at least covers the agreements and rules which provide for the structure of the organization and the decisions which are necessary steps in maintaining it."), *cert. denied*, 385 U.S. 990 (1966).

Here, the activities alleged in the complaint fall squarely within baseball's exemption and are protected from the scrutiny of the antitrust laws as business activity directly related to the unique needs of professional baseball. (R.2). The purchase, sale and relocation of the Philadelphia Phillies, comprise matters of league structure which are an integral part of the business of baseball and are at the crux of baseball's exemption.

3. *The National League's decision to reject Respondent's purchase of the Philadelphia Phillies does not even implicate the antitrust laws.*

Even if section one of the Sherman Act applied to the business of baseball, the Phoenix Phillies' attempt to purchase the Philadelphia Phillies had no effect on competition and therefore cannot give rise to an antitrust claim. Indeed, the law is clear that a rejected applicant to a professional sports league cannot invoke the antitrust laws. *See, e.g., Seattle Totems Hockey Club, Inc. v. National Hockey League,* 783 F.2d 1347 (9th Cir.), *cert. denied,* 479 U.S. 932 (1986). Moreover, the Phoenix Phillies agreed in their contract of March 15, 1993, that the sale of the Philadelphia Phillies was *contingent* upon the subsequent approval of the National League. (R.App.16). In the instant case, the Phoenix Phillies attack the very monopoly that they seek to join.

Courts routinely reject antitrust claims made by unsuccessful applicants for franchises in every major professional sport except baseball, where the issue has never arisen due to its antitrust exemption. *See Seattle Totems,* 783 F.2d at 1347 (hockey); *Mid-South Grizzlies v. National Football League,* 720 F.2d 772 (3d Cir. 1983), *cert. denied,* 467 U.S. 1215 (1984) (football); *Levin v. National Basketball Ass'n,* 385 F. Supp. 149 (S.D.N.Y. 1974) (basketball). At the heart of each of these cases is the fundamental proposition that an applicant for a franchise is not seeking to compete with the professional league, but rather to join it. Absent an attempt to compete, there can be no harm to competition and, thus, no antitrust violation. *Mid-South Grizzlies,* 720 F.2d at 785 ("Sherman Act liability requires an injury to competition."); *see also Levin,* 385 F. Supp. at 152 ("The law is well established that it is competition, and not individual competitors, that is protected by the antitrust laws.").

In *Mid-South Grizzlies,* the owners of a World Football League team brought an antitrust action against the National Football League ("NFL") after their application for admission to the NFL had been rejected. In affirming the trial court's decision in favor of the NFL, the Third Circuit concluded that "[t]he Grizzlies have

simply failed to show how competition in any arguably relevant market would be improved if they were given a share of the NFL's monopoly power." *Id.* at 787. In the instant case, there is no conceivable argument that competition would be affected in Phoenix where no other baseball franchises exist.

Similarly, in *Seattle Totems Hockey Club*, the Ninth Circuit held that since the Totems were seeking to join and not compete with the National Hockey League, there could be no implication of the antitrust laws. 783 F.2d at 1350; *accord Levin*, 385 F. Supp. at 152 (plaintiffs seeking to be partners in the operation of a sports league for plaintiffs' profit had no anti-competitive injury, and thus claim did not implicate the antitrust laws). The application of the foregoing cases to the case at bar is clear: this Court need not consider the contours of baseball's antitrust exemption where the actions complained of are not anti-competitive in nature and do not even implicate the antitrust laws.

II. THE NATIONAL LEAGUE IS A SINGLE ENTITY CONSISTING OF FOURTEEN TEAMS AND IS THEREFORE INHERENTLY INCAPAPBLE OF CONSPIRING WITH ITSELF IN VIOLATION OF SECTION ONE OF THE SHERMAN ANTITRUST ACT.

A determination by this Court that baseball is properly exempt from antitrust liability renders the issue of whether the National League constitutes a single entity moot. However, if this Court decides that baseball is no longer exempt from antitrust liability, the National League should nonetheless be characterized as a single entity and therefore incapable of conspiring with itself in violation of section one of the Sherman Act. As the following arguments demonstrate, the district court in the case *sub judice* properly found the National League to constitute a single entity. Accordingly, the decision of the Twelfth Circuit should be reversed.

A. Section One of the Sherman Act Was Not Designed to Police Internal Decisions of a Single Entity.

Plaintiff's antitrust claim is based, in part, on section one of the Sherman Antitrust Act.[2] The central purpose of the Sherman Act is to protect "the economic freedom of participants in the relevant market." *Associated Gen. Contractors, Inc. v. California State Coun-*

2. Section one of the Sherman Act provides in pertinent part that, "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in the restraint of trade or commerce among the several states . . . is declared to be illegal." 15 U.S.C. § 1 (1988 & Supp. V 1993).

cil of Carpenters, 459 U.S. 519, 538 (1983). To prove a section one violation a plaintiff must show proof of a concerted action by a plurality of actors to impose an unreasonable restraint on trade. *Id.* at 769; *see also City of Mt. Pleasant v. Associated Elec. Coop., Inc.*, 838 F.2d 268, 274 (8th Cir. 1988).

Although many elements must be satisfied in order to state a section one claim, the fundamental threshold issue in any section one case is the requirement that the challenged conduct involve concerted action between separate legal entities. *Volvo N. Am. Corp. v. Men's Int'l Professional Tennis Council*, 857 F.2d 55, 70 (2d Cir. 1988). Unilateral actions of a single entity do not give rise to antitrust liability under section one of the Sherman Act. *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752, 769 (1984).

Section one targets concerted activity as opposed to unilateral activity because "[c]oncerted activity is inherently fraught with anticompetitive risk. It deprives the marketplace of the independent center of decision making that competition assumes and demands. In any conspiracy, two or more entities that previously pursued their own interests separately are combining to act as one for their common benefit." *Id.* at 768-69. Classifying the teams of the National League as multiple entities would not further the purposes of section one. When making internal decisions, the teams of the National League are not separate economic actors pursuing separate economic interests, so agreements among them do not suddenly bring together economic power that was previously pursuing divergent goals. Rather, agreements and coordination between teams are necessary in order for the League to compete effectively. Internal decisions to implement a single firm's policies, such as franchise relocation decisions, do not raise the antitrust dangers that section one was designed to police.

Nonetheless, characterizing the National League as a single entity will not act as a bar to all antitrust liability. The National League would still remain subject to the antitrust provisions of section two of the Sherman Act prohibiting predatory monopolistic behavior. *See* 15 U.S.C. § 2 (1988 & Supp. V 1993).

B. Characterizing the National League as a Single Entity Is Wholly Consistent with Antitrust Precedent.

1. *The functional test for determining plurality set forth in Copperweld applies to the characterization of the National League.*

While this Court has not had the opportunity to decide whether a professional sports league should be regarded as a single entity, this Court in *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752 (1984), set forth a new and functional standard for determining plurality under section one of the Sherman Act. This new standard is wholly applicable to the case at bar. The Court of Appeals for the Twelfth Circuit, in deciding that the National League did not constitute a single entity for the purposes of applying section one, erred in at least two respects. First, the Twelfth Circuit inappropriately applied a narrow reading of this Court's decision in *Copperweld.* The Twelfth Circuit's holding would wrongly limit *Copperweld*'s applicability to only parallel factual situations. Secondly, the Twelfth Circuit relied upon discredited precedent by applying case law based on the intra-enterprise conspiracy doctrine which this Court reversed when it ruled in *Copperweld.*

In *Copperweld*, a corporation and its wholly owned subsidiary were found to be incapable of conspiring under section one of the Sherman Act. The rationale behind this rule was based, in large part, on the parent corporation's control over its subsidiary. *Id.* at 777. While it is true that *Copperweld* dealt specifically with a wholly owned subsidiary, the focus was on the economic substance, control and unity of such an arrangement, not merely its parent-subsidiary form. *Id.* at 767. Furthermore, it was unnecessary for this Court to apply the new standard to any other business arrangement because the sole issue before the Court was specifically limited to the application of section one of the Sherman Act to a parent and its wholly owned subsidiary.

It is significant to note, however, that post-*Copperweld* courts have found that a subsidiary need not be wholly owned by a parent to apply this Court's *Copperweld* analysis. *See, e.g., Computer Identics Corp. v. Southern Pac. Co.*, 756 F.2d 200, 204-05 (1st Cir. 1985) (indicating non-wholly owned affiliates may act as one entity "both in fact and in action"); *Aspen Title & Escrow, Inc. v. Jeld-Wen, Inc.*, 677 F. Supp. 1477, 1486 (D. Or. 1987) (granting summary judgment under section one of Sherman Act in case involving less than full ownership based on inability to conspire); *Satellite Fin. Planning Corp. v. First Nat'l Bank of Wilmington*, 633 F. Supp. 386, 395 (D. Del.

1986) (finding *Copperweld* applicable notwithstanding fact that parent does not completely own subsidiary).

2. *This Court expressly rejected the intra-enterprise conspiracy doctrine relied upon by the Twelfth Circuit.*

To contend that *Copperweld* does not apply to the case at bar is to elevate form over substance. In resting the determination on the substance of the arrangement rather than the form, this Court specifically rejected the intra-enterprise conspiracy doctrine previously used by courts to find a section one conspiracy between entities with certain ownership characteristics. *Copperweld*, 467 U.S. at 777. "The intra-enterprise conspiracy doctrine looks to the form of an enterprise's structure and ignores reality." *Id.* at 772. Courts that had relied on the intra-enterprise conspiracy doctrine before this Court's decision in *Copperweld* include the Ninth Circuit in *Los Angeles Memorial Coliseum Comm'n v. National Football League*, 726 F.2d 1381, 1391 (9th Cir.), *cert. denied*, 469 U.S. 990 (1984), and the Second Circuit in *North Am. Soccer League v. National Football League*, 670 F.2d 1249 (2d Cir.), *cert. denied*, 459 U.S. 1074 (1982). The business arrangements in the cases under which the intra-enterprise conspiracy doctrine developed differ materially from the business of baseball. Individual National League teams cannot, and do not make the League product. Interdependence among the teams is essential to create a baseball game, whereas other business arrangements that produce a tangible product do not depend upon joint action for their existence.

The Twelfth Circuit reversed the district court on the single entity issue based primarily on the decision in *Los Angeles Memorial*. (R.App.22). The validity of *Los Angeles Memorial*, a pre-*Copperweld* case, is suspect as it was premised on a finding of concerted action that was later rejected by this Court. After *Copperweld*, the fact that League member clubs are separately organized and allowed a significant degree of operational autonomy should have little relevance to the question of single entity status.

3. *The substance and form of the National League are indicative of a single entity comprised of fourteen member teams.*

In *Copperweld* this Court acknowledged that while in form a parent corporation and its wholly owned subsidiary were legally distinct entities, in substance they operated as a single integrated enterprise and therefore constituted a single entity. 467 U.S. at 771-74. A review of the limited stipulated facts contained in the record evi-

dences a similar result. While the individual teams of the National League are, in form, legally distinct from one another, *substantively* the member teams operate as a single integrated enterprise.

The structure of the National League allows the member teams to manage their day-to-day affairs. This includes such matters as individual stadium ticket sales and local broadcasting rights. (R.App.8). Member teams also possess the ability to make certain decisions regarding franchise personnel, including decisions affecting players and coaches. *See Los Angeles Memorial*, 726 F.2d at 1390. The National League, like a partnership, allows its members to run less important affairs. However, such practices do not account for a determination that the member teams are separate entities. Important or significant decisions are still left to the League as a whole without an individual team having independent authority to act. In determining the single entity status of a parent company and its wholly owned subsidiary, this Court relied on the control and "complete unity of interest" present rather than the number of legal entities involved. *Copperweld*, 467 U.S. at 771. A parent and wholly owned subsidiary were found to constitute a single entity because "[t]heir objectives are common, not disparate; their general corporate actions are guided or determined not by two separate corporate consciousness, but one." *Id.*

Clearly the teams of the National League have a common objective. These ultimate objectives are for the National League as a single entity to succeed. This objective is achieved by the success of each individual member team so that quality competition exists on the playing fields. Furthermore, mechanisms are in place for each team to succeed. In fact, each team depends upon the economic success of other teams because a large percentage of monies obtained by individual member teams are divided and shared equally. (R.App.7-8). Not only do all member teams equally share revenues derived from several sources but these revenues typically account for a large part of a member team's income. (R.App.6-7). Proceeds from the annual All Star Game, playoff games and World Series games are divided and shared equally among the member teams. (R.App.7). Additionally, member teams divide the revenues from nationally televised regular season games. (R.App.7). Finally, proceeds from the sales of team paraphernalia are also divided equally among the member teams. (R.App.8). Almost three-quarters of a team's income is derived from shared revenue sources. (R.App.8).

The effect of this significant revenue sharing is that while one member team can generate substantial revenues from the sale of its own team's paraphernalia, the revenue from those sales are divided equally among every other member team. In fact, member teams have agreed to have the Commissioner of Baseball retain the right to license the various member teams' paraphernalia. (R.App.8). These revenue sharing agreements create a strong financial structure of economic interdependence.

The National League also has mechanisms in place to ensure that each member team remains in existence for the betterment of the League. This was illustrated when ownership of the Philadelphia Phillies was declared vacant and the team was taken under receivership by the National League. (R.App.14). Rather than allowing a member team to fail, the National League supported the team until a new owner could be found. (R.App.14). These actions alone are significantly indicative of a single integrated enterprise.

With regard to this Court's requirement of corporate actions being determined by one consciousness, the National League is structured so that no one team can act independently without the consent of the other member teams *and* the Commissioner of Baseball, the overseer of the National League. For instance, according to the National League's rules and regulations, for any change in a franchise to occur, a super-majority approval from the owners in the League is required. (R.App.14). Additionally, the American League owners must also approve a change by a super-majority. (R.App.14). Furthermore, the Commissioner of Baseball has many individual and supreme powers, including the complete authority to intervene in such a process by overruling a final decision of the member teams of the National League. (R.App.14). As the Twelfth Circuit noted, the Commissioner's supreme powers are exercised "in the best interests of baseball." (R.App.14).

In addition to the broad and supreme voting powers the Commissioner possesses, the Commissioner has the ultimate authority to negotiate and form all of the national television and radio contracts that apply to the member teams. (R.App.7). The Commissioner also controls the operations of the national paraphernalia marketing organization. (R.App.7).

Individual team owners lack autonomous control over their respective teams. Every member team of the National League must act in conformance with the League's rules and regulations. Individual teams or owners are not given complete autonomy in conducting the business of baseball, even with respect to an owner's

own team. The League has not only prevented owners from managing their own teams and banned owners from being actively involved with their respective team, but the League, on at least one occasion, unilaterally stripped an owner of a National League team because of that owner's conduct and held the team under receivership until the League found a new owner. (R.App.14).

Actual control over member teams is based upon the structure of the League, governed by rules and regulations and policed by the Commissioner of Baseball. A team owner's control is greatly limited by the Commissioner's plenary authority over each team and the League. *See Milwaukee Am. Ass'n v. Landis*, 49 F.2d 298, 299 (N.D. Ill. 1931) (finding the Commissioner of Baseball endowed "with all the attributes of a benevolent but absolute despot and all the disciplinary powers of the proverbial pater familias"). "The Commissioner has general authority, without rules or directives, to punish both clubs and/or personnel for any act or conduct which, in his judgment, is 'not in the best interests of baseball' within the meaning of the Major League Agreement." *Atlanta Nat'l League Baseball Club, Inc. v. Kuhn*, 432 F. Supp. 1213, 1222 (N.D. Ga. 1977). The Commissioner himself and not any individual team owner, decides what conduct is not within the "best interests of baseball." *Id.*

The powers granted or exercised by the Commissioner further support a determination that, based on control aspects, the member teams lack the independence and autonomous control necessary to find a plurality of actors. Any argument that team owners have ultimate control of a team would be unfounded. Because section one of the Sherman Act applies only to distinct and separate entities and not unilateral conduct, *Copperweld*, 467 U.S. at 768 (citing *Albrecht v. Herald Co.*, 390 U.S. 145, 149 (1968)), this Court should reverse the Twelfth Circuit.

In addition, under a *Copperweld* analysis the National League is sufficiently unified to constitute a single entity. In *Copperweld*, this Court analogized the structure of a single entity as "a multiple team of horses drawing a vehicle under the control of a single driver." *Copperweld*, 467 U.S. at 771. This analogy is certainly applicable to the structure of the National League with each of the fourteen member teams being the horses, sufficiently controlled by the League as a whole acting to further the best interests of baseball.

4. *Case law involving other professional sport leagues supports single entity characterization of the National League.*

The ultimate success of each National League team is directly related to and dependent on the financial success of every other team in the League. National League teams are therefore not economic competitors, but act together as a single business enterprise. The fact that teams are not economic competitors has already been found to be true in other professional sport leagues. *See Los Angeles Memorial Coliseum Comm'n v. National Football League,* 726 F.2d 1381, 1391 (9th Cir.) (noting member teams "not true competitors, nor can they be"), *cert. denied,* 469 U.S. 990 (1984); *Smith v. Pro Football, Inc.,* 593 F.2d 1173, 1178 (D.C. Cir. 1978); *Mackey v. National Football League,* 543 F.2d 606 (8th Cir. 1976).

The Third Circuit has found that the lack of quantity and quality of competition existing between member teams of the National Football League evinces a single entity. *Mid-South Grizzlies v. National Football League,* 720 F.2d 772, 786-87 (3d Cir. 1983), *cert. denied,* 467 U.S. 1215 (1984). It is further evidenced by the fact that individual teams are merely component parts of the League and are not capable of producing the same product individually. *See id.*; *San Francisco Seals v. National Hockey League,* 379 F. Supp. 966, 969 (C.D. Cal. 1974). In evaluating the National Hockey League, a district court noted that the member teams' objectives are to produce a sport "so as to assure all members of the league the best financial return." *Id.*

The Twelfth Circuit below, in making its decision, relied, in part, on the Ninth Circuit's decision in *Los Angeles Memorial Coliseum.* (R.App.22). However, in that case the Ninth Circuit erred in its characterization of the member teams of the National Football League. Under a *Copperweld* analysis, the determination of the Ninth Circuit would have differed, notwithstanding the court's reliance on the discredited intra-enterprise conspiracy doctrine. Rather than finding the member teams sufficiently independent, the Ninth Circuit would have found member teams of the National Football League, like the National League, to be ultimately interdependent and therefore a single entity because they share a unity of interest and purpose. Further, the general corporate actions of the National League are guided and determined by one consciousness and not individual teams acting independently. The Phoenix Phillies remain free to produce baseball as a product, but not baseball as a *National League* product. Member teams of the National

League are wholly interdependent in producing National League baseball.

Further, the opinion in *Los Angeles Memorial* was not unanimous. The dissenting judge's lengthy opinion presciently applied a *Copperweld* analysis to a sports league, concluding that the League was a single entity by showing that individual teams were unable to produce a separate and individual service or good and that product which was produced could only be the result of the joint activities of all members. *Id.* at 1403-10 (Williams, J., dissenting in part).

The majority in *Los Angeles Memorial* noted that section one of the Sherman Act only applies to competitors which act to eliminate competition thereby causing harm to consumers. *Id.* at 1391. The court immediately proceeded to state that member teams are not "true competitors, nor can they be." *Id.* By finding member teams were not true competitors, the court essentially found there to be a unity of interest and purpose. If the Ninth Circuit had the benefit of this Court's *Copperweld* analysis, this pronouncement would have weighed heavily in finding that the National Football League constituted a single entity. Similarly, Justice Rehnquist once stated that even though individual National Football League teams compete on the playing field, "they rarely compete in the marketplace." *North Am. Soccer League v. National Football League*, 459 U.S. 1074, 1077 (1982) (Rehnquist, J., dissenting) (finding the structure of a professional league a matter of necessity for its successful operation).

C. Valid and Legal Internal Decisions by a Single Entity Should Be Upheld and Judicial Orders Imposing an Opposite Result Are Unjust.

1. *The National League has been purposefully structured to best achieve its objectives.*

This Court has noted that "a business enterprise should be free to structure itself in ways that serve efficiency of control, economy of operations and other factors dictated by business judgment without increasing its exposure to antitrust liability." *Copperweld*, 467 U.S. at 773. Both this Court and Congress have recognized the unique nature of baseball. *See Flood v. Kuhn*, 407 U.S. 258, 282 (1972) (recognizing "baseball's unique characteristics and needs"); H.R. Rep. No. 1094, 102d Cong., 2d Sess. 5 (1992) (distinguishing baseball from other businesses due to inherent "special public interest obligations"). Just as baseball has been recognized as a

unique business, the manner in which the National League is structured is likewise unique.

There are no requirements that all single entities, such as partnerships, be uniformly structured. To the contrary, partnerships are free to allow, for instance, differing profit, loss and liquidation distributions. This is a fundamental advantage of the partnership form of business. While some partnerships may distribute profits or losses on a pro-rata basis, this is certainly not a requirement of a partnership. Furthermore, revenue may be allocated in a manner inconsistent with a partner's capital contributions and profit allocation.

Without recounting the history of baseball from the appellate court's opinion, the appellate court correctly stated that the National League has "long maintained strict control over baseball franchises and players." (R.App.6). The National League was structured in such a manner to allow team owners to divide the markets for the production of baseball and control that production and "related activities [both] on and off the field." (R.App.6). These control mechanisms permit the League to obtain their objectives, including the successful economic and athletic promotion of all member teams.

2. *The effect of imposing the will of an applicant to the National League among the majority of existing member teams violates the entity's internal decision making structure.*

Not only are the Phoenix Phillies asking this Court to order the sale of a member team of the National League, notwithstanding a vote against it, but the Phoenix Phillies further seek an order to move that member team from Philadelphia to Phoenix, Arizona. When the Phoenix Phillies commenced the negotiations for the purchase of a member's interest, they were fully aware that the sale would be contingent on the affirming vote of a super-majority of other member teams of the National League. The possibility that the vote would result differently than the Phoenix group would have liked was of no surprise. While the Phoenix Phillies would not be able to produce Major League Baseball as a member of the National League, the National League did nothing to impede or prohibit the Phoenix group from creating a new league. Entering the *National League,* however, required approval from existing member teams.

If this Court decides in favor of the Phoenix Phillies, the consequences to all single entities, regardless of the type of business in-

volved, would be significant. The National League's long-standing rules and regulations have been relied upon for many decades. These rules and regulations determine each member team's rights with respect to all other member teams and the League. Accepting the Phoenix Phillies' argument would have the functional effect of creating and granting a *non*-League member rights which would be grossly inconsistent with the National League's rules and regulations. The Phoenix Phillies' petition to this Court to impose the will of an *applicant* to a single entity upon the majority of *existing* members of that entity should not be rewarded. The organizational structure of the National League, its management controls and voting provisions are structured to prevent precisely this type of unwarranted external pressure.

Another purpose of the voting structure is to allow for the efficient operation of the League by having teams placed in optimum locations. The resulting decisions are internal decisions of a single entity. If the Phoenix group intended to move the Philadelphia team to a distant location such as Japan or Mexico City rather than Phoenix, members of the National League should have the authority to deny such a plan. This Court warned that "[s]ubjecting a single firm's every action to judicial scrutiny for reasonableness would threaten to discourage the competitive enthusiasm that the antitrust laws seek to promote." *Copperweld*, 467 U.S. at 775. A court imposing the will of a partner upon the majority would render a majority vote completely ineffective and useless.

The district court properly found that because the National League constitutes a single entity no section one liability could be found. Affirming this decision will not prohibit the National League from being subject to section one liability if the League engages in non-exempt activity or attempts to foreclose parties from engaging in a competing product. *See United States Football League v. National Football League*, 842 F.2d 1335 (2d Cir. 1988).

D. As Evidenced by the Differing Factual Determinations by the District and Appellate Courts, a Genuine Issue of Material Fact Exists and the Proper Procedure Therefore Is to Remand this Case to the District Court for a Determination by a Jury.

Summary judgment is appropriate if the record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). In this

context, the term "material" means that a fact has the capacity to sway the outcome of the litigation under the applicable law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The court's responsibility is not to resolve disputed issues of material fact, but to determine whether there exist any factual issues to be tried. *Id.* at 247-49. In reviewing an order granting summary judgment, the record is examined in the light most favorable to the summary judgment loser and all reasonable inferences are to be resolved in that party's favor. *See Pagano v. Frank*, 983 F.2d 343, 347 (1st Cir. 1993). The standard under which the Court weighs the merits of the motions does not change simply because cross-motions have been filed. *United States v. Hall*, 730 F. Supp. 646, 648 (M.D. Pa. 1990). If an issue of material fact exists, both summary judgment motions should fail.

The characterization of a business form as a single entity or multiple entity and consequently its ability to combine or conspire in violation of section one of the Sherman Act is a question of fact. *Murray v. Toyota Motor Distrib., Inc.*, 664 F.2d 1377, 1379 (9th Cir.), *cert. denied*, 457 U.S. 1106 (1982). On the basis of the stipulated facts in the case *sub judice*, the district court, in the proceedings below, found the fourteen National League baseball teams to constitute a single entity. (R.4). Upon review of this determination, the appellate court reversed the single entity characterization and found the National League susceptible to section one liability. (R.App.21).

This Court should reverse the Twelfth Circuit's characterization. When sufficient evidence exists to declare, as a matter of law, that individual sport franchises are single entities, such a determination is appropriate. *See, e.g., Williams v. I.B. Fischer Nev.*, 794 F. Supp. 1026, 1030 (D. Nev. 1992), *aff'd*, 999 F.2d 445 (9th Cir. 1993). The arguments contained herein present sufficient evidence to reverse the appellate court. Additionally, affirming the Twelfth Circuit on the single entity determination would effectively order the move of a Major League Baseball team from Philadelphia to Phoenix.

If this Court does not believe that reversing the appellate court is appropriate, this case should be remanded to the district court to permit a jury to determine the fact question of whether or not the National League is a single entity. If "reasonable minds" are capable of finding different results regarding a question of fact, the issue should be decided by a jury. *Los Angeles Memorial*, 726 F.2d at 1387. Characterizing the teams of the National League as multiple

and distinct entities as a matter of law when sufficient evidence exists to enable reasonable minds to differ is inappropriate as a genuine issue of material fact is in dispute.

CONCLUSION

For the reasons set forth above, Petitioners respectfully request that this Court reverse the judgment of the United States Court of Appeals for the Twelfth Circuit, or alternatively remand to the United States District Court for the District of Villanova to permit a jury to determine the material fact question of whether or not the National League is a single entity.

Respectfully submitted,
William D. Georges
Sidney S. Liebesman
Attorneys for Petitioners