

# **PITCHING FOR REFORM: CANGREJEROS' PUSH TO LEVEL THE LEGAL PLAYING FIELD BY CHALLENGING BASEBALL'S ANTITRUST EXEMPTION**

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## **ABSTRACT**

For over one-hundred years, professional baseball has enjoyed an antitrust exemption unique among American major sports leagues, stemming from Supreme Court decisions in *Federal Baseball* and its progeny. This exemption has significantly influenced the evolution and structure of Major League Baseball (MLB). Despite extensive criticism and challenges for judicial and legislative reform, the exemption persists today.

However, new efforts have emerged to comprehensively disrupt this framework. In 2023, *Nostalgic Partners* was brought and structured to reach the U.S. Supreme Court. Plaintiffs anticipated they would lose at the lower court levels and garnered widespread support for the Court to grant a writ of certiorari and hear the case. Nonetheless, their effort fell one step short after MLB induced settlement at the last moment.

Now, *Cangrejeros* follows in its footsteps by building on several procedural arguments raised in *Nostalgic Partners* and levying similar group boycott claims. Further, *Cangrejeros* projects as an improved avenue to revisit arguments for and against the exemption because it is better positioned than prior cases to reach the Supreme Court.

That said, this Note makes two arguments. First, upon expected appeal from the First Circuit, the Supreme Court should hear *Cangrejeros* because it challenges procedural issues critical to the

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exemption's status, is flexible in scope to feasibly address such issues in whole or in part, and is less likely to settle given MLB's absence as a named party. Second, upon grant of certiorari, the Supreme Court should eliminate the exemption based on the substantive strength of Plaintiffs' group boycott claims as pled.

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## INTRODUCTION

Since 1922,<sup>1</sup> professional baseball has enjoyed a unique exemption from antitrust scrutiny<sup>2</sup> that has been widely criticized as anti-competitive and harmful to antitrust policy.<sup>3</sup> Nonetheless, the

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1. See *Fed. Baseball Club of Balt., Inc. v. Nat'l League of Pro. Baseball Clubs*, 259 U.S. 200 (1922).

2. See Samuel A. Alito, Jr., *The Origin of the Baseball Antitrust Exemption: Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*, 34 J. SUP. CT. HIST. 183 (2009).

3. See Brief for Petitioner at 11, *Nostalgic Partners v. Off. of Comm'r of Baseball*, 2023 WL 4072836 (2d Cir. 2023) (No. 22-2859) [hereinafter Brief for Plaintiff-Appellant in *Nostalgic Partners* (2d Cir. 2023)]; see also *Cangrejeros de Santurce Baseball Club, LLC v. Liga de Beisbol Profesional de Puerto Rico, Inc.*, 680 F. Supp. 3d 107, 110(D.P.R. 2023); *Nat'l Collegiate Athletic Ass'n v. Alston*, 594 U.S. 69, 94 (2021) (refusing to extend baseball to other sports leagues and describing past decisions as “unrealistic” and “aberrational”) (Kavanaugh, J., dissenting, stating that the NCAA and other sports leagues are not “above the law”); see also Justice John Paul

exemption persists due to judicial apprehension in stare decisis, lack of meaningful of Congressional action, historical reliance by Major League Baseball (MLB) and its affiliates, and progressively protective measures by MLB to stymie reform efforts.

That said, new efforts have emerged to disrupt this long-standing framework. In 2023, *Nostalgic Partners, L.L.C. v. Office of Commissioner of Baseball*<sup>4</sup> gained significant traction towards Supreme Court review. In that case, four former minor league baseball teams sued MLB for conspiring to exclude them and thirty-six other teams<sup>5</sup> from the new Professional Development League (the “PDL”) in violation of the Sherman Antitrust Act of 1890 (the “Sherman Act”).<sup>6</sup> Plaintiffs brought the case fully expecting to lose at the lower court levels<sup>7</sup> and gathered widespread support in their subsequent appeal to the Supreme Court.<sup>8</sup> Ultimately, the case fell one step short after MLB induced settlement, likely fearing that the Court would grant certiorari and eliminate the exemption.<sup>9</sup>

Now, *Cangrejeros de Santurce Baseball Club, L.L.C. v. Liga de Béisbol Profesional de Puerto Rico*<sup>10</sup> follows in its footsteps and

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Stevens (Ret.), Address at Sports Lawyers Association, 41st Annual Conference Luncheon (May 15, 2015) (“It simply makes no sense to treat organized baseball differently from other professional sports under the antitrust laws.”) (transcript available at [https://www.supremecourt.gov/publicinfo/speeches/JPS\\_SportsLawyersAssociation\\_05-15-15.pdf](https://www.supremecourt.gov/publicinfo/speeches/JPS_SportsLawyersAssociation_05-15-15.pdf)).

4. See e.g., *Nostalgic Partners, LLC v. Off. of Comm’r of Baseball*, No. 22-2859, 2023 WL 4072836 (2d Cir. 2023).

5. See *Nostalgic Partners v. Off. of Comm’r of Baseball*, 637 F. Supp. 3d 45, 49 (S.D.N.Y. 2022).

6. See 15 U.S.C.A § 1 (1890).

7. Plaintiffs even requested the Second Circuit to affirm the District Court’s decision, to which the Second Circuit obliged. See *Nostalgic Partners*, 2023 WL 4072836 at \*1.

8. This includes respected scholars and the U.S. Department of Justice. See e.g., Edelman & Holden, Brief of Amicus Curiae in Support for the Petition of Certiorari, *Tri-City ValleyCats v. Off. of the Comm’r of Baseball*, 144 S. Ct. 389 (2023) (No. 23-283) [hereinafter Edelman et al. Amici Curiae in *Tri-City ValleyCats*]; see also Statement of United States at 1, n.3, *Nostalgic Partners v. Off. of Comm’r of Baseball*, No. 21-10876 (S.D.N.Y. June 15, 2022), ECF 35 (“DOJ Statement of Interest”) [hereinafter DOJ Statement of Interest in *Nostalgic Partners* (S.D.N.Y. 2022)].

9. See Chris Deubert, *Settlement Saves MLB Antitrust Exemption (For Now)*, LINKEDIN (November 21, 2023), <https://www.linkedin.com/pulse/settlement-saves-mlb-antitrust-exemption-now-chris-deubert-7dzoe/>.

10. See e.g., *Cangrejeros de Santurce Baseball Club, LLC v. Liga de Beisbol Profesional de Puerto Rico, Inc.*, No. 23-1589 (1st Cir. 2023).

projects as a promising avenue to revisit the exemption. Here, a former owner of a Puerto Rican professional baseball team sued his respective league and the league's other teams for conspiring to exclude him from competing in violation of section 1 of the Sherman Act.<sup>11</sup> To that end, *Cangrejeros* addresses several procedural issues core to the exemption's status, including (i) whether the exemption extends "beyond MLB and its affiliates," (ii) whether the exemption applies to conduct outside the "business of baseball," and (iii) whether the exemption remains good law altogether.<sup>12</sup> It is also flexible in scope, as the Supreme Court can and should address such issues in whole or in part. Further, *Cangrejeros* is in a good position to circumvent or overcome the hurdles described above, especially because MLB cannot induce settlement as a non-party.<sup>13</sup>

This Note argues that the Supreme Court should grant certiorari for *Cangrejeros* and hear the case after Plaintiffs expectedly appeal following judgment from the First Circuit. This Note then argues that the Supreme Court should eliminate the exemption based on the substantive strength of Plaintiffs' group boycott claims as pled.

In doing so, this Note briefly discusses how baseball's antitrust exemption was formed, why it persists today, and how far the exemption extends. This Note then compares the facts, procedural history, and substantive antitrust analysis of *Nostalgic Partners* and *Cangrejeros* to conclude that *Cangrejeros* is well-equipped to both reach the Supreme Court upon appeal and to comprehensively challenge baseball's antitrust exemption.

## I. HISTORY AND EVOLUTION OF BASEBALL'S ANTITRUST EXEMPTION

### A. FORMATION OF THE EXEMPTION

Antitrust violations within professional sports are often derived from anti-competitive arrangements prohibited by section 1 of the

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11. See *Cangrejeros de Santurce Baseball Club, LLC v. Liga de Beisbol Profesional de Puerto Rico, Inc.*, 680 F. Supp. 3d 107, 111 (D.P.R. 2023).

12. Brief for Petitioner at 6, *Cangrejeros de Santurce Baseball Club, LLC v. Liga de Beisbol Profesional de Puerto Rico, Inc.*, No. 23-1589 (1st Cir. 2023) (No. 00118069980) [hereinafter Brief for Plaintiff-Appellant in *Cangrejeros* (1st Cir. 2023)].

13. See *Local Number 93, International Asso. of Firefighters, etc. v. Cleveland*, 478 U.S. 501, 529 (1986) (stating that a non-party may present evidence and have opinions heard, but does not have power to create or reject a settlement).

Sherman Act.<sup>14</sup> Such arrangements are a product of collusion between industry competitors, often referred to as joint ventures.<sup>15</sup> As the Supreme Court concluded in *American Needle, Inc. v. National Football League*,<sup>16</sup> most professional sports leagues are joint ventures subject to antitrust scrutiny, with many competing teams governed by one coordinating league body.<sup>17</sup>

However, professional baseball is a joint venture uniquely exempt from antitrust scrutiny, enabling MLB to engage in anti-competitive behavior<sup>18</sup> that other professional sports leagues cannot.<sup>19</sup> The exemption was derived from and strengthened by the “baseball trilogy”<sup>20</sup> in *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*; *Toolson v. New York Yankees*; and *Flood v. Kuhn*.

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14. Specifically, section 1 of the Sherman Act stipulates that “[e]very contract, combination...or conspiracy, in restraint of trade or commerce among the several States...is declared to be illegal.” See 15 U.S.C.A § 1 (1890); see also *Relevant Sports, LLC v. United States Soccer Fed’n, Inc.*, 61 F.4th 299, 306 (2d. Cir. 2023) (holding soccer associations’ geographic market division policy constituted a restraint on competition in violation of Section 1 of the Sherman Act); *National Collegiate Athletic Ass’n v. Board of Regents*, 468 U.S. 85, 104 (1984) (stating that college athletic association’s planned television arrangement “has a significant potential for anticompetitive effects” in violation of Section 1 of the Sherman Act).

15. See *Am. Needle, Inc. v. Nat’l Football League*, 560 U.S. 183, 199 (2010).

16. See Marc Edelman & John Holden, *Baseball’s Anti-Competitive Antitrust Exemption*, 65 B.C. L. REV. 1695, 1741 (2024) (“[I]n the 2010 case *American Needle v. National Football League*, the Supreme Court unanimously held that the NFL’s collectivizing of the rights to use individual team marks on branded apparel represented a form of concerted action, subject to scrutiny under [the Sherman Act § 1].”); see generally *Am. Needle, Inc. v. Nat’l Football League*, 560 U.S. 183 (2010).

17. See Jeremy Ulm, *Antitrust Changeup: How a Single Antitrust Reform Could Be A Home Run for Minor League Baseball Players*, 125 DICK. L. REV. 227, 233 (stating the sports leagues are subject to antitrust scrutiny under the Rule of Reason for collusive agreements amongst member teams).

18. Examples include the ability for MLB to contract its number of franchises and affiliates without anti-competitive review, to execute exclusive product licensing and market agreements, and to designate exclusive territorial rights for franchises. See Marc Edelman & John Holden, *supra* note 17, at 1741.

19. This was confirmed in *Alston*, with the Court refusing to expand an antitrust exemption beyond professional baseball. See *Nat’l Collegiate Athletic Ass’n v. Alston*, 594 U.S. 69, 94 (2021).

20. See *Piazza v. Major League Baseball*, 831 F. Supp. 420, 438 (E.D. Pa. 1993); see also *City of San José v. Office of the Comm’r of Baseball*, 2013 U.S. Dist. LEXIS 147543 1, \*17 (N.D. Cal. 2013) (referring to *Federal Baseball*, *Toolson*, and *Flood* as the “trilogy of Supreme Court cases”).

In *Federal Baseball*, the Supreme Court held that professional baseball teams were exempt because they did not engage in interstate commerce.<sup>21</sup> At the time, professional baseball was construed as a local game, with the transfer of players by interstate travel deemed incidental to the primary purpose of playing baseball intrastate.<sup>22</sup> Thus, the indirect effect of interstate movement of players and equipment was insufficient to trigger scrutiny under section 1 of the Sherman Act.<sup>23</sup>

Though it is not a part of the “baseball trilogy,” in *Wickard v. Filburn*, the Supreme Court broadly expanded previous interpretations of interstate commerce to include even wholly intrastate activities if the aggregate effect “exerts a substantial economic effect on interstate commerce.”<sup>24</sup> While *Wickard* did not mention baseball nor antitrust law,<sup>25</sup> scholars Marc Edelman and John Holden argue that “its broadened definition of interstate commerce signaled to baseball players the potential opportunity to once again challenge MLB’s conduct under federal antitrust principles.”<sup>26</sup>

Nonetheless, in a subsequent challenge by baseball players in *Toolson*, the Supreme Court maintained that MLB and its teams were not subject to antitrust scrutiny.<sup>27</sup> The Court cited four main rationales for their decision that today represent significant hurdles for meaningful reform: (1) reliance by MLB,<sup>28</sup> (2) concerns over retroactivity,<sup>29</sup> (3) Congressional inaction,<sup>30</sup> and (4) separation of powers concerns in

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21. See *Fed. Baseball Club of Balt., Inc. v. Nat’l League of Pro. Baseball Clubs*, 259 U.S. 200, 208 (1922).

22. See Samuel A. Alito, Jr., *supra* note 3.

23. See *id.*

24. *Wickard v. Filburn*, 317 U.S. 111, 125 (1942).

25. See *id.* (pertaining instead to an individual farmer growing wheat primarily for personal use).

26. See Marc Edelman & John Holden, *supra* note 17, at 1720-21.

27. See *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356, 357 (1953).

28. See *id.* (stating that MLB had developed and evolved their structure for over thirty years [since *Federal Baseball*] with the understanding that it was exempt from antitrust scrutiny).

29. See *id.* (expressing concerns over implementation in overruling *Federal Baseball* with retroactive effect).

30. See *id.* (stating Congress was aware of the *Federal Baseball* ruling and considered remedial legislation but ultimately did nothing).

effecting legislation by resolving inconsistency among *Federal Baseball* and *Wickard*.<sup>31</sup>

In *Flood*, the Court seemingly addressed this inconsistency, referring to baseball's exemption as "an exception and an anomaly" and that baseball "is engaged in interstate commerce."<sup>32</sup> Even so, the Court again refused to overturn *Federal Baseball*, citing to the judicial principle of stare decisis and baseball's "reliance" interest as the bases for continuing the exemption.<sup>33</sup>

Over fifty years later, the Supreme Court has not revisited the exemption. However, the instant case in *Cangrejeros* presents an ideal opportunity for the Court to do so with finality.

#### B. WHY THE EXEMPTION PERSISTS

The Supreme Court itself has criticized and narrowed the exemption<sup>34</sup> set by *Federal Baseball*, calling it "anomal[ous]," "unrealistic," "inconsistent," and "illogical."<sup>35</sup> Yet, the exemption has long persisted largely due to deference for stare decisis and judicial apprehension for intervention.<sup>36</sup>

The Court itself has justified its caution by maintaining that Congress is the proper authority for remedy,<sup>37</sup> highlighting concerns over retroactive implementation,<sup>38</sup> and referencing the romanticization of baseball as a "national pastime."<sup>39</sup> However, several Justices have

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31. See *id.* (arguing that the Court resolving inconsistent interpretations of interstate commerce between *Federal Baseball* and *Wickard* would effectively create legislation, a power delegated to and better fit for Congress).

32. *Flood v. Kuhn*, 407 U.S. 258, 275, 282 (1972).

33. See *id.* at 275 ("in reliance on the Federal Base Ball precedent, the baseball business had grown and developed" [quoting *Toolson*, 346 U.S. at 357] [per curiam]).

34. See *Radovich v. Nat'l Football League*, 352 U.S. 445, 451 (1957) (holding that antitrust laws apply to the NFL and "specifically limit[ed] the rule" of *Federal Baseball* "to the facts that were involved").

35. *Flood*, 407 U.S. at 282 (quotation omitted).

36. See *id.* at 275.

37. See *id.* at 285 (stating that "the remedy . . . is for congressional, and not judicial, action"); see also *Toolson*, 346 U.S. at 357.

38. See *Flood*, 407 U.S. at 283 (restating that "[t]he Court has expressed concern about the confusion and the retroactivity problems that inevitably would result with a judicial overturning of *Federal Baseball*").

39. *Id.* at 264, 266, 286 (Douglas, J., dissenting, adding "[o]nly a romantic view of a rather dismal business account over the last 50 years would keep [a derelict in the stream of the law that we, its creator, should remove] in midstream").

recently expressed their contempt for baseball's exemption, suggesting an evolved perspective should the issue reach the Supreme Court again.<sup>40</sup>

Given the Court's shifting perspective and apparent readiness for change, the most significant obstacle to overturning the baseball exemption is actually reaching the Supreme Court. In recent years, MLB has been progressively protective in resolving antitrust litigation. These efforts can be seen in recent lucrative settlement offers like in *Senne v. Kansas City Royals Baseball Corp.*<sup>41</sup> —and reportedly *Nostalgic Partners*<sup>42</sup> —as well as in the growth of MLB's Congressional lobbying efforts.<sup>43</sup> Much of this is attributable to Plaintiffs having incentive to settle with MLB, such as the ousted minor league teams in *Nostalgic Partners*.<sup>44</sup> To that end, some experts suggest that a party with

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40. See Nat'l Collegiate Athletic Ass'n v. Alston, 594 U.S. 69, 94 (2021) (refusing to extend baseball to other sports leagues and describing past decisions as “unrealistic” and “aberrational”) (Kavanaugh, J., dissenting, stating that the NCAA and other sports leagues are not “above the law”); see also Justice John Paul Stevens (Ret.), Address at Sports Lawyers Association, 41st Annual Conference Luncheon, *supra* note 4.

41. See *Senne v. Kansas City Royals Baseball Corp.*, No. 14-CV-00608-JCS, 2023 WL 4238509 (N.D. Cal. June 27, 2023); see also Lauren Berg, *MLB Judge OKs \$185M Wage Deal, \$55M Fees Over Objectors*, LAW360 (March 29, 2023) <https://www.law360.com/articles/1591577/mlb-judge-oks-185m-wage-deal-55m-fees-over-objectors>; Robert Pannullo, *The Struggle for Labor Equality in Minor League Baseball: Exploring Unionization*, 34 ABA J. OF LAB. & EMP. L. 3, 456 (2020) (labeling *Senne* a class-action suit “alleg[ing] that baseball's minor league wages and labor practices violate the minimum wage and overtime rules in the Fair Labor Standards Act of 1938”).

42. See Chris Deubert, *Settlement Saves MLB Antitrust Exemption (For Now)*, LINKEDIN (November 21, 2023), <https://www.linkedin.com/pulse/settlement-saves-mlb-antitrust-exemption-now-chris-deubert-7dzo/>.

43. See Robert Pannullo, Fall 2020 *The Struggle for Labor Equality in Minor League Baseball: Exploring Unionization*, 34 ABA J. OF LAB. & EMP. L. 3, 459-460 (2020) (discussing MLB's increased lobbying efforts to pass the Save America's Pastime Act in the context of *Senne v. MLB*, including a year-over-year increase in lobbying funding by almost \$1 million by the MLB from 2016 to 2017).

44. See *Nostalgic Partners v. Off. of Comm'r of Baseball*, 637 F. Supp. 3d 45, 49 (S.D.N.Y. 2022) (where ousted minor league teams had greater incentive to settle on financial terms given low likelihood alternative of injunctive relief [having lost affiliations under the already implemented PDL] permitting re-entry into MiLB).



incentives focused on court-granted equitable (non-monetary) relief is key to prevent settlement.<sup>45</sup>

Beyond the Court's reluctance and MLB's efforts behind the scenes, continued Congressional inaction is a significant barrier to eliminating the exemption. The Supreme Court has held that "positive inaction" by the legislature of not applying antitrust law to baseball is an expression of legislative intent.<sup>46</sup> Even positive action by Congress is widely viewed as opaque, circular, and a "hollow gesture."<sup>47</sup> Over the past thirty years, proposals have been introduced —often for ulterior or politically-driven reasons —but were never expected to pass.<sup>48</sup>

In sum, the exemption might be an "aberration confined to baseball."<sup>49</sup> But judicial adherence to stare decisis and lack of meaningful Congressional action have empowered MLB to evolve its league structure and policies in reliance on the exemption to the point where some believe it is necessary for the league to function.<sup>50</sup> Consequently, this "aberration" persists today.<sup>51</sup>

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45. See Marc Edelman and John Holden, *Why is Baseball entitled to an Anti-Trust Exemption*, Zicklin School of Business (February 13, 2024) (citing the Department of Justice or a state attorney general as viable candidates), [https://youtu.be/fzIRhVXA8MY?si=tD2t\\_mt0tjyGFPo2/](https://youtu.be/fzIRhVXA8MY?si=tD2t_mt0tjyGFPo2/).

46. *Flood*, 407 U.S. at 283, 285 (quoting *Toolson*, 346 U.S. at 357, that "Federal Baseball . . . determine[d] that Congress had no intention of including the business of baseball within the scope of the federal antitrust laws").

47. See Edelman et al. Amici Curiae in *Tri-City ValleyCats*, *supra* note 9, at 6–8 (discussing the failure of the Curt Flood Act of 1998 in addressing the issues raised by the baseball exemption); see generally 15 U.S.C. § 12 (1998).

48. See e.g., Abby Livingston, *MLB took its All-Star game out of Georgia to protest voting restrictions. Now Ted Cruz wants to strip it of its anti-trust immunity*, THE TEXAS TRIBUNE (Apr. 13, 2021) (reporting that Texas Senator Ted Cruz pushed to remove baseball's antitrust exemption because he was not happy that MLB moved the All-Star game from Georgia to Colorado over election voting concerns), <https://www.texastribune.org/2021/04/13/ted-cruz-major-league-baseball-georgia-anti-trust/>.

49. *Flood*, 407 U.S. at 282.

50. See Jeremy Ulm, *Antitrust Changeup: How a Single Antitrust Reform Could Be A Home Run for Minor League Baseball Players*, 125 DICK. L. REV. 227, 237 (citing *Flood*, 407 U.S. at 275 [discussing "retroactivity issues that could arise if the Court overturned Federal Baseball"]).

51. See *Flood*, 407 U.S. at 282.

## C. REACH AND LIMITS OF THE EXEMPTION

Baseball's exemption covers conduct that falls within the scope of the "business of baseball."<sup>52</sup> However, what constitutes the "business of baseball" remains unclearly defined by the Supreme Court.<sup>53</sup> At best, the Court in *Flood* pointed to a reliance interest particularly for exempting the now-defunct<sup>54</sup> "reserve clause,"<sup>55</sup> citing to trial court findings "that some form of reserve on players is a necessary element of the organization of baseball as a league sport."<sup>56</sup>

A resulting lack of judicial and congressional<sup>57</sup> guidance has led to the non-uniform application of the "business of baseball" standard by the lower courts.<sup>58</sup> All told, widely different rulings among the lower courts in how to construe the "business of baseball" standard have led to "muddled, conflicting standards . . . of diverging precedent."<sup>59</sup>

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52. *Flood*, 407 U.S. at 285 (1972) (quoting *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356, 357 (1953), that "Federal Baseball...determine[d] that Congress had no intention of including the business of baseball within the scope of the federal antitrust laws"); see *Federal Baseball*, 259 U.S. at 208; see also *Toolson*, 346 U.S. at 357 ("[T]he business of providing public baseball games for profit...was not within the scope of federal antitrust laws.").

53. See 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, 580 (2010).

54. A few years after *Flood*, the "reserve clause" was struck down during arbitration between MLB and Major League Baseball Players' Association (the "MLPBA"). See Roger Abrams, *Arbitrator Seitz Sets the Players Free*, BASEBALL RES. J., Fall 2009, at 79.

55. See Brief for Plaintiff-Appellant in *Nostalgic Partners* (2d Cir. 2023), *supra* note 4, at 26 (stating the "reserve clause" bound players to their teams, requiring players with expiring contracts to only negotiate for a new contract with their existing team).

56. *Flood*, 407 U.S. at 267, 275.

57. See e.g., Brief for Plaintiff-Appellant in *Nostalgic Partners* (2d Cir. 2023), *supra* note 4, at 22 (arguing that positive Congressional inaction influenced the exemption of the "reserve clause," relying on the fact that "[r]emedial legislation has been introduced repeatedly in Congress but none has ever been enacted," quoting *Flood*, 407 U.S. at 283).

58. Grow, *supra* note 54, at 580.

59. *Id.*

Some courts apply the exemption narrowly, interpreting *Flood* as limiting the exemption to the “reserve clause.”<sup>60</sup> Supporters of this narrow view often cite to the long-held judicial canon that “exemptions from antitrust laws are strictly construed.”<sup>61</sup>

Other courts interpret the exemption broadly to include any aspect that can reasonably be connected<sup>62</sup> to the “business of baseball.”<sup>63</sup>

Finally, other courts adopt an ad hoc approach, “attempting to discern the ‘integral’ or ‘central’ parts of the business.”<sup>64</sup> Adopting courts might limit the exemption to the “unique characteristics”<sup>65</sup> of the business and apply the exemption only to those activities.<sup>66</sup> Similarly,

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60. See *Piazza v. Major League Baseball*, 831 F. Supp. 420, 437 (E.D. Pa. 1993) (*Flood* “confin[ed] the precedential value of *Federal Baseball* and *Toolson* to the precise facts there involved”); see also *Minnesota Twins P’ship v. Minnesota*, No. 62-CX-568, 1998 WL 35261131 (Minn. Dist. Ct. Apr. 20, 1998) (“[T]he ruling in *Flood* confines the antitrust exemption to the narrow area of the reserve clause.”); *Butterworth v. Nat’l League of Pro. Baseball Clubs*, 644 So. 2d 1021, 1025 (Fla. 1994) (agreeing with *Piazza*, because “none of the other cases have engaged in such a comprehensive analysis of *Flood* and its implications [and] simply state that baseball is exempt and cite to one or more of the baseball trilogy without any discussion at all”); *Morsani v. Major League Baseball*, 663 So. 2d 653, 657 (Fla. Dist. Ct. App. 1995) (following *Butterworth* and *Piazza*).

61. *Fed. Mar. Comm’n v. Seatrains Lines, Inc.*, 411 U.S. 726, 733 (1973); see *Major League Baseball v. Crist*, 331 F.3d 1177, 1186 (11th Cir. 2003) (stating that “antitrust exemptions must be strictly construed” in finding that the “business of baseball” exemption should not be read broadly); see also *Grp. Life & Health Ins. Co. v. Royal Drug Co.*, 440 U.S. 205, 231 (1979); *Union Lab. Life Ins. Co. v. Pireno*, 458 U.S. 119, 126 (1982) (stating that antitrust exemptions “must be construed narrowly”).

62. See *Edelman et al. Amici Curiae in Tri-City ValleyCats*, *supra* note 9, at 2.

63. These might include control over signing and paying players, size of the baseball field, and rules of the game. See DOJ Statement of Interest in *Nostalgic Partners* (S.D.N.Y. 2022), *supra* note 9, at 1, 8-11; see also *Charles O. Finley & Co. v. Kuhn*, 569 F.2d 527, 541 (7th Cir. 1978); *Portland Baseball Club, Inc. v. Kuhn*, 491 F.2d 1101, 1103 (9th Cir. 1974).

64. See also Brief for Plaintiff-Appellant in *Nostalgic Partners* (2d Cir. 2023), *supra* note 4, at 26; see e.g., *Wyckoff v. Off. of Comm’r of Baseball*, F. Supp. 3d 615, 626 (S.D.N.Y. 2016) (stating that scouts are “an integral part of” and are “central to the ‘business of baseball’”).

65. See *Flood v. Kuhn*, 407 U.S. 258, 282 (1972); see e.g., Brief for Plaintiff-Appellant in *Cangrejeros* (1st Cir. 2023), *supra* note 13, at 42 (arguing that the unlawful conduct of San Juan’s Mayor has nothing to do with the “unique characteristics” or the needs of operating a baseball league and thus falls outside the narrow scope of the exemption).

66. See *Postema v. Nat’l League of Pro. Baseball Clubs*, 799 F. Supp. 1475, 1489 (S.D.N.Y. 1992), *rev’d on other grounds*, 998 F.2d 60 (2d Cir. 1993).

courts might only exempt activities that are “central” to operating a baseball league, such as control over signing and paying players, size of the field, and rules of the game.<sup>67</sup>

Contemporary litigation has added another layer of confusion concerning scope and application: whether the exemption applies broadly to “professional baseball”<sup>68</sup> or specifically to “MLB and its affiliates.”<sup>69</sup> In *Cangrejeros*, Defendants (Liga de Béisbol Profesional de Puerto Rico) argue that the exemption only applying to MLB “is absurd” given that MLB is not a legal entity and was not a party to *Federal Baseball* despite the exemption consistently applying to them.<sup>70</sup> Alternatively, Plaintiffs contend<sup>71</sup> that unwarranted expansion violates the principle that antitrust exemptions are “to be construed narrowly”<sup>72</sup> because no entity outside MLB has ever been covered by the exemption and the Supreme Court has repeatedly called the exemption “illogical”<sup>73</sup> outside of deference for stare decisis. Further, the Court has consistently

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67. Grow, *supra* note 54, at 580.

68. Brief for Respondent at 16, *Cangrejeros de Santurce Baseball Club, LLC v. Liga de Beisbol Profesional de Puerto Rico, Inc.*, No. 23-1589 (1st Cir. 2023) (No. 00118091182); see *Flood*, 407 U.S. at 279 (referring to the “business of organized professional baseball”).

69. Brief for Plaintiff at 6, *Cangrejeros de Santurce Baseball Club, LLC v. Liga de Beisbol Profesional de Puerto Rico, Inc.*, 2023 WL 4195663 (D.P.R. 2023) (No. 23-1589); see Brief for Plaintiff-Appellant in *Cangrejeros* (1st Cir. 2023), *supra* note 13, at 1.

70. Brief for Respondent at 18, *Cangrejeros de Santurce Baseball Club, LLC v. Liga de Beisbol Profesional de Puerto Rico, Inc.*, No. 23-1589 (1st Cir. 2023) (No. 00118091182) (adding that “Major League Baseball as a concept was born in 1921...yet the appeals court ruling under review in *Federal Baseball*...was issued in 1920 before the Major League Agreement was even signed”) (citing *Nat’l League Pro. Baseball Clubs v. Fed. Baseball Club of Balt.*, 269 F.681 [D.C. App. 1920]).

71. See Brief for Plaintiff-Appellant in *Cangrejeros* (1st Cir. 2023), *supra* note 13, at 22.

72. See Brief for Plaintiff-Appellant in *Cangrejeros* (1st Cir. 2023), *supra* note 13, at 22 (citing *Grp. Life & Health Ins. Co. v. Royal Drug Co.*, 440 U.S. 205, 231 [1979]; *Union Lab. Life Ins. Co. v. Pireno*, 458 U.S. 119, 126 [1982] [antitrust exemptions “must be construed narrowly”]; *Fed. Mar. Comm’n v. Seatrain Lines, Inc.*, 411 U.S. 726, 733 [1973] [holding that broad construction “would conflict with (the Court’s) frequently expressed view that exemptions from antitrust laws are strictly construed”]).

73. *Nat’l Collegiate Athletic Ass’n v. Alston*, 594 U.S. 69, 94 (2021).

ruled that baseball's antitrust exemption does not extend to other professional sports leagues.<sup>74</sup>

In sum, it is uniformly acknowledged that baseball's antitrust exemption is contained within the scope of the "business of baseball."<sup>75</sup> Yet, despite a century of legal developments and jurisprudence,<sup>76</sup> both Congress and the Supreme Court have failed to clearly define what the "business of baseball" actually encompasses. This lack of clarity forces lower courts, along with the leagues and players presenting cases before them, to grapple with defining the exemption's scope on their own, leading to confusion and a spectrum of divergent rulings.<sup>77</sup> The Supreme Court should intervene to resolve this longstanding inconsistency and reassess baseball's antitrust exemption.

## II. EXEMPTION DISRUPTORS: NOSTALGIC PARTNERS AND CANGREJEROS

Despite extensive criticism and challenges for judicial and legislative reform, the exemption persists today. However, two cases recently emerged to disrupt this framework.

In 2023, *Nostalgic Partners*<sup>78</sup> gained significant traction towards Supreme Court review but fell one step short following settlement with

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74. See *Radovich v. Nat'l Football League*, 352 U.S. 445, 451 (1957) (holding that antitrust laws apply to the NFL and "specifically limit[ed] the rule" of Federal Baseball "to the facts that were involved"); see also *United States v. Int'l Boxing Club*, 348 U.S. 236, 242 (1955) ("Federal Baseball could not be relied upon as a basis of exemption for other segments of the entertainment business, athletic or otherwise."); *Alston*, 594 U.S. at 94 (finding that the Court "refused to extend Federal Baseball's reasoning to other sports leagues").

75. See *Federal Baseball*, 259 U.S. at 208; see also *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356, 357 (1953) ("[T]he business of providing public baseball games for profit...was not within the scope of federal antitrust laws."); *Flood*, 407 U.S. at 285 (quoting *Toolson*, 346 U.S. at 357, that "Federal Baseball...determine[d] that Congress had no intention of including the business of baseball within the scope of the federal antitrust laws").

76. *Federal Baseball* was decided in 1922. *Fed. Baseball Club of Balt., Inc. v. Nat'l League of Pro. Baseball Clubs*, 259 U.S. 200 (1922).

77. See *Edelman et al. Amici Curiae in Tri-City ValleyCats*, *supra* note 9, at 1-2; see also *Grow*, *supra* note 54, at 580-91 ("[L]ower courts applying baseball's antitrust exemption have developed their own muddled, conflicting standards.").

78. See *e.g.*, *Nostalgic Partners*, No. 22-2859, 2023 WL 4072836 (2d Cir. 2023).

MLB.<sup>79</sup> Now, *Cangrejeros*<sup>80</sup> follows in its footsteps and projects as an improved avenue to revisit the exemption.

This section compares the facts, substantive antitrust analysis, and procedural history of *Nostalgic Partners* and *Cangrejeros* as a foundational basis to conclude that *Cangrejeros* is well-equipped to both reach the Supreme Court if appealed from the First Circuit and to comprehensively challenge baseball's antitrust exemption.

#### A. SIMILAR FACTS AND SUBSTANTIVE ANTITRUST CLAIMS

*Nostalgic Partners* and *Cangrejeros* share many factual similarities involving allegations of antitrust violations and injuries stemming from their respective baseball leagues. Most notably, Plaintiffs assert claims of conspiratorial behavior to exclude and restrain competition via group boycott in violation of section 1 of the Sherman Act.<sup>81</sup>

In *Nostalgic Partners*, four former Minor League Baseball (MiLB) teams ("Plaintiffs") sued MLB ("Defendants")<sup>82</sup> and its franchises for conspiring to exclude them and thirty-six other MiLB teams from the new Professional Development League (the "PDL").<sup>83</sup> The PDL constituted a major shift in minor league control and structure by replacing the long-governing Professional Baseball Agreement (the "PBA").<sup>84</sup> The PDL removed a third-party intermediary that facilitated affiliations between MLB franchises and MiLB teams and effectively cut forty MiLB teams by limiting each MLB franchise to a maximum of four MiLB teams.<sup>85</sup>

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79. See Chris Deubert, Settlement Saves MLB Antitrust Exemption (For Now), LINKEDIN (November 21, 2023), <https://www.linkedin.com/pulse/settlement-saves-mlb-antitrust-exemption-now-chris-deubert-7dzoe/>.

80. See e.g., *Cangrejeros de Santurce Baseball Club, LLC v. Liga de Beisbol Profesional de Puerto Rico, Inc.*, No. 23-1589 (1st Cir. 2023).

81. See Brief for Plaintiff-Appellant in *Cangrejeros* (1st Cir. 2023), *supra* note 13, at 19 (referring to the agreement as "a conspiracy to drive one of its owners out of business to suppress competition"); see also *Nostalgic Partners v. Off. of Comm'r of Baseball*, 637 F. Supp. 3d 45, 48, 51 (S.D.N.Y. 2022).

82. Via the "Office of Commissioner of Baseball."

83. See *Nostalgic Partners*, 637 F. Supp. 3d at 49.

84. See *id.* at 48. (adding that the PBA governed the relationship between MLB clubs and MiLB teams "from 1903 until 2020" and permitted each MLB club to "choose as few or as many minor league affiliates as they wished," up to as many as six affiliates).

85. See *id.* at 49.

To that end, Plaintiffs asserted that the PDL was a restraint on trade in violation of section 1 of the Sherman Act.<sup>86</sup> Plaintiffs argued that<sup>87</sup> MLB seized control over a market it neither owned nor operated by reducing the number of MiLB affiliates for MLB clubs, boycotting Plaintiffs and artificially reducing output.<sup>88</sup>

In *Cangrejeros*, former owner (Thomas Axon) and investors of Cangrejeros de Santurce Baseball Club (“Plaintiffs”) claimed Liga de Béisbol Profesional de Puerto Rico (“Liga” or the “League”)<sup>89</sup> and its five other clubs (collectively “Defendants”) violated section 1 of the Sherman Act by engaging in a concerted boycott to exclude Plaintiffs from the relevant markets for “investing in and operating top-tier professional baseball teams in Puerto Rico.”<sup>90</sup>

In 2019, Thomas Axon purchased the Cangrejeros team<sup>91</sup> with a vision to restore the team’s competitive and economic success by providing a “higher-quality professional baseball product in Puerto Rico.”<sup>92</sup> Over the next three years, Plaintiffs assert that Axon made the following pro-competitive changes: increased player quality,<sup>93</sup> improved fan experiences, broadened the fan base, established and promoted new broadcasts,<sup>94</sup> enhanced sponsorships,<sup>95</sup> and expanded merchandising opportunities. Plaintiffs also claim that such efforts were met with resistance by other Liga teams, many of whom feared increased costs and more economic competition.<sup>96</sup>

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86. *See id.* at 48, 51.

87. *See id.* at 20.

88. *See id.* at 52.

89. Also referred to hereinafter as the “League.”

90. *Cangrejeros de Santurce Baseball Club, LLC v. Liga de Beisbol Profesional de Puerto Rico, Inc.*, 680 F. Supp. 3d 107, 110 (D.P.R. 2023).

91. *See* Complaint at 14, *Cangrejeros de Santurce Baseball Club, LLC v. Liga de Beisbol Profesional de Puerto Rico, Inc.*, No. CV 3:22-01341-WGY, 2023 WL 4195663 (D.P.R. 2023) (No. 1) (Axon purchased the team through “Cangrejeros LLC.”).

92. *See id.* at 2-3, 14.

93. *See id.* at 3 (citing higher player salaries and improved player benefits, including travel and accommodations).

94. *See id.* (claiming that Axon financed broadcast costs for Fox Sports Network to show games in the United States and commissioned a documentary on Fox Sports Network to “bring more attention to Cangrejeros and Puerto Rico’s baseball culture”).

95. *See id.* at 15 (including a private merchandising agreement with Lids Sports, which resulted in \$350,000 in team apparel revenue sales).

96. *See id.* at 3.

In May 2022, Liga and its teams unanimously voted to “terminate the investor-operating agreement of Cangrejeros LLC and to seize all of Plaintiffs’ economic and operation rights in the franchise . . . .”<sup>97</sup> Plaintiffs asserted this termination was an “unlawful seizure” given that it came “without any compensation or due process of law.”<sup>98</sup> Two weeks later, Liga selected Impulse Sports, an entity that had filed for incorporation in Puerto Rico eleven days before Liga terminated Plaintiffs’ ownership interests, as Cangrejeros’ new investor-operator.<sup>99</sup>

To that end, Plaintiffs claim that Liga and its independent teams engaged in “concerted” and “conspiratorial acts,” organized by the League president, in violation of section 1 of the Sherman Act.<sup>100</sup> Specifically, Defendants’ unanimous vote to remove Plaintiffs as owners-operators constituted an “unreasonable restraint of trade to boycott and exclude Plaintiffs from the relevant markets and to replace them with a more malleable competitor in Impulse Sports.”<sup>101</sup> This led to reduced horizontal competition, product quality, and output amongst teams with “no procompetitive justification,” allegedly violating antitrust laws<sup>102</sup> under both per se<sup>103</sup> and rule of reason analyses.<sup>104</sup>

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97. *Id.* at 22.

98. *Id.*

99. *See id.*

100. *Id.* at 30.

101. *Id.* at 2.

102. *Id.* (adding that “less restrictive alternatives existed than to totally exclude Plaintiffs”).

103. Per se designations typically refer to illegal or blatantly wrong activities. Common examples are price fixing or wage fixing, which are obvious threats to artificially reducing output and raising prices within the relevant market. *See* N. Pac. Ry. Co. v. United States, 356 U.S. 1, 5 (1958); *see also* United States v. Socony-Vacuum Oil Co., 310 U.S. 150, 228 (1940).

104. Rule of reason requires Plaintiffs to show that Defendant’s behavior produced a net anti-competitive effect within the relevant market, which typically encompasses “all interchangeable substitute products.” *Nostalgic Partners v. Off. of Comm’r of Baseball*, 637 F. Supp. 3d 45, 52 (S.D.N.Y. 2022) (citing *Bd. of Regents v. Nat’l Collegiate Athletic Ass’n*, 546 F. Supp. 1276, 1296 [W.D. Okla. 1982]) (quoting *Emigra Grp., LLC v. Fragomen, Del Rey, Bernsen & Loewy, LLP*, 612 F. Supp. 2d 330, 359 [S.D.N.Y. 2009]).



## B. DISTRICT COURTS' DISMISSALS ON PROCEDURAL GROUNDS

Given the timing and factual similarities of both cases, the district court's findings in *Nostalgic Partners* provide valuable context for assessing the relative substantive strength of antitrust claims brought in *Cangrejeros*.<sup>105</sup>

In *Nostalgic Partners*, the district court reluctantly dismissed the case<sup>106</sup> after granting MLB's motion to dismiss on procedural grounds, holding that MLB's antitrust exemption procedurally barred Plaintiffs' claims.<sup>107</sup> Yet, the district court found many of Plaintiffs' arguments substantively compelling, finding that Plaintiffs demonstrated plausible evidence of an agreement to restrain trade in violation of the Sherman Act.<sup>108</sup> The court also found that Plaintiffs sufficiently alleged antitrust injury, Defendants produced a net anti-competitive effect within the relevant market under a full rule of reason analysis, and Plaintiffs benefiting from MLB's alleged anti-competitive scheme does not preclude their antitrust claim.<sup>109</sup> Nonetheless, the court held that Plaintiffs' claims were ultimately barred by the exemption,<sup>110</sup> as "minor league affiliations are central to the business of baseball" even if the standard is interpreted "narrowly."<sup>111</sup>

In *Cangrejeros*, the district court granted Defendants' motion to dismiss on procedural grounds, but acknowledged that it "boldly goes

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105. See *Cangrejeros de Santurce Baseball Club, LLC v. Liga de Beisbol Profesional de Puerto Rico, Inc.*, 680 F. Supp. 3d 107, 111 (D.P.R. 2023). (where the district court cites to *Nostalgic Partners* in acknowledging criticism of baseball's antitrust exemption); see also Brief for Plaintiff-Appellant in *Cangrejeros* (1st Cir. 2023), *supra* note 13, at 34, 38 (where Plaintiffs draw from *Nostalgic Partners* in arguing for the limited scope of the exemption).

106. See *Nostalgic Partners*, 637 F. Supp. 3d at 47 (stating that "until the Supreme Court or Congress takes action, the exemption survives; it shields MLB from Plaintiffs' lawsuit").

107. See *id.* (MLB filed a motion to dismiss on three grounds: (1) Plaintiffs lack antitrust standing; (2) Plaintiffs fail to state an antitrust violation; and (3) MLB's antitrust exemption bars Plaintiffs' claim.).

108. See *id.* at 54 (finding that "Plaintiffs have pleaded sufficient facts" that MLB has "reduced competition in the market").

109. See *id.* at 50.

110. See *id.* at 53.

111. *Id.*

where no lower court has gone before”<sup>112</sup> by extending the antitrust exemption beyond MLB and its affiliates to all of “professional baseball.”<sup>113</sup> Citing to *Toolson*<sup>114</sup> and *Flood*,<sup>115</sup> the court stated that “[t]he wording is clear: the antitrust exemption applies to professional baseball.”<sup>116</sup> And given that Plaintiffs were participants within “the only top-tier professional baseball league in Puerto Rico,” the exemption applies.<sup>117</sup> Further, the court ruled that even under narrow interpretations of the exemption, Plaintiffs’ alleged conspiracy regarding “an owner of a professional baseball franchise that was dismissed under Liga’s regulations”<sup>118</sup> is encompassed within the “business of baseball” standard.<sup>119</sup> Thus, Defendants’ actions are exempt from antitrust scrutiny because Cangrejeros is “a professional baseball team, and [Plaintiffs’] antitrust claims arise in the context of the business of baseball.”<sup>120</sup>

However, *Nostalgic Partners* provides useful groundwork for substantive analysis of antitrust standing for *Cangrejeros* should a higher court determine the case is not procedurally barred. Both cases concern claims of section 1 of the Sherman Act—violations stemming from a conspiratorial horizontal agreement to exclude and restrain competition.<sup>121</sup> Both also allege substantial anti-competitive effects,<sup>122</sup> with the district court in *Nostalgic Partners* discussing the threshold issues for collusion and determining that Plaintiffs sufficiently “pleaded an antitrust violation” through a detailed competitive effects analysis.<sup>123</sup>

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112. *Cangrejeros de Santurce Baseball Club, LLC v. Liga de Beisbol Profesional de Puerto Rico, Inc.*, No. CV 3:22-01341-WGY, 2023 WL 4195663 at \*2, \*7 (D.P.R. 2023).

113. *Id.* at \*7.

114. 346 U.S. at 357 (1955).

115. 407 U.S. at 272 (1972).

116. *Cangrejeros*, 2023 WL 4195663, at \*5.

117. *Id.* at \*6.

118. *Id.* at \*7.

119. *See e.g.*, *Right Field Rooftops, LLC v. Chicago Baseball Holdings, LLC*, 87 F. Supp. 3d 874, 884-885 (N.D. Ill. 2015) (holding that Plaintiff’s argument that the exemption only applies to business “necessary to produce the game on the field” is unsupported by relevant case law).

120. *Cangrejeros*, 2023 WL 4195663, at \*7.

121. *See Nostalgic Partners v. Off. of Comm’r of Baseball*, 637 F. Supp. 3d 45, 49 (S.D.N.Y. 2022); *see also Cangrejeros*, 2023 WL 4195663, at \*2.

122. *See Nostalgic Partners*, 637 F. Supp. 3d at 47; *see also Cangrejeros*, 2023 WL 4195663, at \*3.

123. *Nostalgic Partners*, 637 F. Supp. 3d at 47.

And while some of the district court's substantive analysis in *Nostalgic Partners* is specific to the Second Circuit,<sup>124</sup> it provides a contemporary basis for what might ultimately be expected in *Cangrejeros*.

### C. APPELLATE PROCESS AS A PATHWAY TO THE SUPREME COURT

In addition to the district court's substantive analysis for antitrust standing, *Nostalgic Partners*' subsequent appellate process challenged the exemption's procedural hurdles, garnered widespread support for grant of certiorari, and influenced a viable pathway for appeal that Plaintiffs in *Cangrejeros* have similarly followed. While *Nostalgic Partners* fell short of the Supreme Court, it was likely due to settlement barriers from MLB that *Cangrejeros* is better positioned to circumvent or overcome.<sup>125</sup>

Following the district court's decision to grant MLB's motion to dismiss, Plaintiffs in *Nostalgic Partners* appealed to the Second Circuit. In doing so, Plaintiffs conceded that the lower courts are bound by Supreme Court precedent in being unable to eliminate MLB's antitrust exemption.<sup>126</sup> Further, Plaintiffs conceded that minor league affiliations are central to the "business of baseball"<sup>127</sup> and that it is up to the Judiciary (not Congress) to correct its "own error"<sup>128</sup> of baseball's exemption. Accordingly, Plaintiffs implored the Second Circuit to affirm the district court's ruling and to "dispatch this case to the Supreme Court with a message attached: Enough already."<sup>129</sup>

Similarly, Plaintiffs in *Cangrejeros* argue on appeal to the First Circuit that the district court erred by (1) overextending the exemption to include a Puerto Rican league unaffiliated with MLB and (2) encompassing conduct that suppressed competition within the "business

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124. *Id.* at 48 (citing the Second Circuit's three-part Gatt test in finding that Plaintiffs sufficiently alleged antitrust injury).

125. See Chris Deubert, Settlement Saves MLB Antitrust Exemption (For Now), LINKEDIN (November 21, 2023), <https://www.linkedin.com/pulse/settlement-saves-mlb-antitrust-exemption-now-chris-deubert-7dzoe/> (arguing that, in the wake of *Nostalgic Partners*, "any other party that believes it has been adversely affected by MLB's antitrust exemption . . . may now see a clearer and easier path to challenging MLB and the exemption").

126. See Brief for Plaintiff-Appellant in *Nostalgic Partners* (2d Cir. 2023), *supra* note 4, at 21.

127. See *id.* (citing *Wyckoff v. Off. of Comm'r of Baseball*, F. Supp. 3d 615, 626 [S.D.N.Y. 2016]).

128. See *id.* (quoting *Girouard v. United States*, 328 U.S. 61, 69 [1946]).

129. *Id.*

of baseball.”<sup>130</sup> Plaintiffs add that doing so ignores the Supreme Court’s directive to construe antitrust exemptions narrowly.<sup>131</sup>

As to the first point, Plaintiffs contend that the antitrust exemption is limited to “MLB and its affiliates” because no entity outside of MLB has ever been covered by the exemption.<sup>132</sup> Deference for the exemption was formed in the context of a “reliance interest” for MLB and its affiliates set by *Federal Baseball*.<sup>133</sup> In the present case, Plaintiffs claim the League is not “part of MLB or its Minor League Affiliates,”<sup>134</sup> the district court agreed,<sup>135</sup> and Defendants “have not even attempted to show that [Liga] ever relied on the exemption.”<sup>136</sup> Accordingly, although Liga is a “professional baseball league,”<sup>137</sup> it should be treated like other professional sports leagues subject to antitrust laws.

As to the second point, Plaintiffs argue that even if the exemption applies to the Puerto Rican League, the district court nonetheless erred by overextending the “business of baseball” standard for the

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130. On October 31, 2024, Plaintiffs presented to the First Circuit oral arguments on the motion to dismiss, pursuant to Fed. R. Civ. P. 12(b)(6). The First Circuit is considering the arguments and will likely issue a ruling on the motion to dismiss in early 2025. See Transcript of Oral Argument at 6:31-6:45, *Cangrejeros de Santurce Baseball Club, LLC v. Liga de Beisbol Profesional de Puerto Rico, Inc.*, No. 23-1589 (1st Cir. 2023) (transcript available at [https://www.ca1.uscourts.gov/sites/ca1/files/oralargs/23-1589\\_20241031.mp3](https://www.ca1.uscourts.gov/sites/ca1/files/oralargs/23-1589_20241031.mp3)); see also Reply Brief for Petitioner at 4, *Cangrejeros de Santurce Baseball Club, LLC v. Liga de Beisbol Profesional de Puerto Rico, Inc.*, No. 23-1589 (1st Cir. 2023) (No. 00118102722).

131. See Reply Brief for Petitioner at 4, *Cangrejeros*, No. 23-1589 (No. 00118102722) (citing *Group Life*, 440 U.S. at 231).

132. Brief for Plaintiff-Appellant in *Cangrejeros* (1st Cir. 2023), *supra* note 13, at 1, 22; see *Radovich v. Nat’l Football League*, 352 U.S. 445, 451 (1957) (holding that antitrust laws apply to the NFL and “specifically limit[ed] the rule” of Federal Baseball “to the facts that were involved”); see also *United States v. Int’l Boxing Club*, 348 U.S. 236, 242 (1955) (“Federal Baseball could not be relied upon as a basis of exemption for other segments of the entertainment business, athletic or otherwise.”); *Nat’l Collegiate Athletic Ass’n v. Alston*, 594 U.S. 69, 94 (2021) (refusing “to extend Federal Baseball’s reasoning to other sports leagues”).

133. See *id.* at 24 (citing *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356, 357 (1953)).

134. *Id.* at 32 (citing Winter League Agreement, “[E]ach Winter League is not and shall be not considered to be a Minor League, and each Winter League Club is not and shall not be considered to be a Minor League Club.”).

135. See Reply Brief for Petitioner at 9-10, *Cangrejeros*, No. 23-1589 (No. 00118102722).

136. *Id.* at 34-35.

137. *Cangrejeros*, 2023 WL 4195663, at \*6.

exemption.<sup>138</sup> Liga's conduct was "far outside the narrow" standard established by *Federal Baseball* and its progeny, with the "business of baseball" language referring only to activities<sup>139</sup> that are "central" to operating a baseball league.<sup>140</sup> Contrastingly, Defendants' scheme had nothing to do with the rules necessary to operate a baseball league, but was rather "an agreement among team owners . . . to suppress competition for players, fans, and sponsors."<sup>141</sup> To that end, Plaintiffs argued that no case law supports such a scheme under the *Federal Baseball* exemption, nor have Defendants contested that a conspiracy is not central to the "business of baseball."<sup>142</sup>

Additionally, Plaintiffs criticized<sup>143</sup> the district court for siding with an expansive view<sup>144</sup> of the "business of baseball" standard condemned by the Department of Justice in *Nostalgic Partners*.<sup>145</sup> Had the district court alternatively applied a narrow<sup>146</sup> or ad hoc interpretation,<sup>147</sup> Defendants' conduct would assuredly not be encompassed.<sup>148</sup>

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138. See Brief for Plaintiff-Appellant in *Cangrejeros* (1st Cir. 2023), *supra* note 13, at 22; see also Transcript of Oral Argument at 3:15-3:57, 25:28-26:20, *Cangrejeros de Santurce Baseball Club, LLC v. Liga de Beisbol Profesional de Puerto Rico, Inc.*, No. 23-1589 (1st Cir. 2023) (adding that the "business of baseball" standard should be limited to "the central operations of putting the product of baseball onto the field," such as player rules and rules of the game) (transcript available at [https://www.ca1.uscourts.gov/sites/ca1/files/oralargs/23-1589\\_20241031.mp3](https://www.ca1.uscourts.gov/sites/ca1/files/oralargs/23-1589_20241031.mp3)).

139. These might include control over signing and paying players, size of the field, or the rules of the game. See DOJ Statement of Interest in *Nostalgic Partners* (S.D.N.Y. 2022), *supra* note 9, at 1, 8-11.

140. Brief for Plaintiff-Appellant in *Cangrejeros* (1st Cir. 2023), *supra* note 13, at 4, 19.

141. Reply Brief for Petitioner at 3, *Cangrejeros*, No. 23-1589 (No. 00118102722); see Brief for Plaintiff-Appellant in *Cangrejeros* (1st Cir. 2023), *supra* note 13, at 19 (referring to the agreement as "a conspiracy to drive one of its owners out of business to suppress competition").

142. See Reply Brief for Petitioner at 2-3, *Cangrejeros*, No. 23-1589 (No. 00118102722).

143. See Brief for Plaintiff-Appellant in *Cangrejeros* (1st Cir. 2023), *supra* note 13, at 19.

144. See *Right Field Rooftops*, F. Supp. 3d. at 878; *Wyckoff*, F. Supp. 3d at 626 (stating that scouts are "an integral part of" and are "central to the 'business of baseball'").

145. See DOJ Statement of Interest in *Nostalgic Partners* (S.D.N.Y. 2022), *supra* note 9, at 1, 9 n.3 (stating that *Right Field Rooftops* decision went "far beyond conduct central to offering public baseball games").

146. See e.g., *Piazza*, 831 F. Supp. at 440-41 (exemption does not apply to anti-competitive conduct by MLB to exclude a particular owner from purchasing an MLB franchise); *Twin City Sportservice, Inc. v. Charles O. Finley & Co., Inc.*, 512 F.2d 1264

Plaintiffs in *Cangrejeros* summarily appeal that “[t]he illogical, anachronistic exemption should not have been extended to a league that is not part of MLB, and thus allowed to do further harm to competition and antitrust policy.”<sup>149</sup>

### III. *CANGREJEROS*: A GRAND SLAM FOR CHALLENGING THE EXEMPTION

*Cangrejeros* appears well-equipped to both reach the Supreme Court upon appeal and to comprehensively challenge baseball’s antitrust exemption. Unlike *Nostalgic Partners*, MLB cannot directly induce settlement because they are not a party.<sup>150</sup> Upon expected appeal from the First Circuit, *Cangrejeros* presents a strong case for the Supreme Court to grant certiorari and hear the case because it challenges several procedural issues critical to the exemption’s scope and status, including (i) whether the exemption extends beyond “MLB and its affiliates,” (ii) whether the exemption applies to conduct outside the “business of baseball,” and (iii) whether the exemption remains good law altogether.<sup>151</sup> Further, Plaintiffs’ substantive claims of group boycott present a clear antitrust violation under section 1 of the Sherman Act absent the exemption.<sup>152</sup> While rebuttable rationales against *Cangrejeros*

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(9th Cir. 1975) (exemption does not apply to anti-competitive conduct directed at MLB stadium concessionaires); *Laumann v. Nat’l Hockey League*, 56 F. Supp. 3d 280, 297 (S.D.N.Y. 2014); *Postema*, 799 F. Supp. at 1489.

147. See *Flood*, 407 U.S. at 282 (referring to ad hoc approach in reviewing the “unique characteristics” or needs of operating a baseball league).

148. See Brief for Plaintiff-Appellant in *Cangrejeros* (1st Cir. 2023), *supra* note 13, at 42 (arguing that Defendants’ unlawful conduct and the involvement of San Juan’s Mayor have nothing to do with the “unique characteristics” or the needs of operating a baseball league).

149. *Id.* at 29.

150. See Ct. Docket, *Cangrejeros de Santurce Baseball Club, LLC v. Liga de Beisbol Profesional de Puerto Rico, Inc.*, No. 23-1589 (1st Cir. 2023).

151. Brief for Plaintiff-Appellant in *Cangrejeros* (1st Cir. 2023), *supra* note 13, at 6.

152. See *Klor’s, Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207, 212 (1959) (citing *Eastern State Retail Lumber Dealers’ Ass’n v. United States*, 234 U.S. 600 [1914]; *Binderup v. Pathe Exchange, Inc.*, 263 U.S. 291 [1923]; *Fashion Originators’ Guild v. Federal Trade Commission*, 312 U.S. 457 [1941]; *Kiefer-Stewart Co. v. Joseph E. Seagram & Sons*, 340 U.S. 211, 214 [1951]; *Times-Picayune Publishing Co. v. United States*, 345 U.S. 594, 625 [1953]; *Northern Pacific Ry. Co. v. United States*, 356 U.S. 1, 5 [1958]).

may exist, it projects as an excellent opportunity for the Court to re-examine and eliminate the exemption.

#### A. COMPREHENSIVELY CHALLENGING THE EXEMPTION

*Cangrejeros* is well-positioned to reach the Supreme Court and to wholly challenge the exemption for four reasons. First, *Cangrejeros* can overcome historic exemption hurdles to reaching the Supreme Court. Second, *Cangrejeros* addresses core procedural exemption issues, building on the groundwork established in *Nostalgic Partners*. Third, *Cangrejeros* is flexible in scope, as the Court could feasibly address such issues in whole or in part. Fourth, Plaintiffs' claims of group boycott as pled project a clear antitrust violation that enable the Court to eliminate the exemption.

First, *Cangrejeros* can circumvent or overcome historic hurdles in deference for stare decisis, Congressional inaction, and settlement before certiorari could be granted. *Cangrejeros* is “boldly”<sup>153</sup> novel in extending its reach to a small Puerto Rican baseball league likely independent from MLB. Thus, *Cangrejeros* questions the deference given for the baseball exemption because the scope of “baseball” as applied to an independent foreign league is unclear.<sup>154</sup> Similarly, arguments for deference due to positive Congressional inaction are weakened because no “[r]emedial legislation has been introduced”<sup>155</sup> regarding its applicability to other baseball leagues.

Most importantly, *Cangrejeros* does not involve MLB as a party, meaning MLB cannot induce settlement. Nor can MLB interfere in Supreme Court proceedings absent a formal request for argument time via an amicus brief.<sup>156</sup> To that end, MLB's absence circumvents the narrative against interference of a “national pastime” that “enjoys a unique place in our American heritage.”<sup>157</sup> It also avoids the messiness

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153. *Cangrejeros*, 2023 WL 4195663, at \*2, 7.

154. Rather, as implied by the *Cangrejeros* position, courts should not assume automatic deference for the baseball exemption when external factors do not fit within the scope of “baseball.” See e.g., *Flood*, 407 U.S. at 275, 282.

155. *Id.* at 283.

156. See Scott Harris, Memorandum to Those Intending to File an Amicus Curiae Brief in the Supreme Court of the United States, SUPREME COURT OF THE UNITED STATES OFFICE OF THE CLERK (January 2023) (citing Supreme Court Rule 37.3 for amicus curiae briefs filed in a case seeking oral argument before the Court).

157. *Flood*, 407 U.S. at 266, 282 (quoting *Flood v. Kuhn*, 309 F. Supp. 793, 797 (S.D.N.Y. 1970)).

of incorporating opaque Congressional legislation that is particularly targeted towards MLB and its affiliates.<sup>158</sup> Additionally, Plaintiffs seek court-granted equitable relief to “return [their] investor-operator interest in the Cangrejeros Franchise,”<sup>159</sup> decreasing their incentive for settlement.<sup>160</sup>

Second, *Cangrejeros* addresses procedural issues critical to the exemption, including (i) whether the exemption extends beyond “MLB and its affiliates,” (ii) whether the exemption applies to conduct outside the “business of baseball,” and (iii) whether the exemption remains good law altogether.<sup>161</sup>

For (i), Plaintiffs argue that Liga should be treated like other sports leagues subject to antitrust scrutiny<sup>162</sup> because they are not “part of MLB [n]or its Minor League Affiliates,”<sup>163</sup> such that an extension would violate the principle that antitrust exemptions should be construed narrowly.<sup>164</sup> Alternatively, Defendants argue that the exemption applies

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158. See Edelman et al. Amici Curiae in Tri-City ValleyCats, *supra* note 9, at 6-8 (discussing the failure of the Curt Flood Act of 1998 in addressing the issues raised by the baseball exemption).

159. Complaint at 14, *Cangrejeros de Santurce Baseball Club, LLC v. Liga de Beisbol Profesional de Puerto Rico, Inc.*, No. CV 3:22-01341-WGY, 2023 WL 4195663 (D.P.R. 2023) (No. 1).

160. See Brief for Respondent at 10, *Cangrejeros de Santurce Baseball Club, LLC v. Liga de Beisbol Profesional de Puerto Rico, Inc.*, No. 23-1589 (1st Cir. 2023) (No. 00118091182) (arguing that Plaintiffs were rightfully dismissed for violating assumed obligations under the League’s Constitution).

161. Brief for Plaintiff-Appellant in *Cangrejeros* (1st Cir. 2023), *supra* note 13, at 6.

162. See *id.* at 27; see also *Radovich v. Nat’l Football League*, 352 U.S. 445, 451 (1957) (holding that antitrust laws apply to the NFL and “specifically limit[ed] the rule” of Federal Baseball “to the facts that were involved”); *International Boxing Club*, 348 U.S. at 242 (“Federal Baseball could not be relied upon as a basis of exemption for other segments of the entertainment business, athletic or otherwise.”); *Nat’l Collegiate Athletic Ass’n v. Alston*, 594 U.S. 69, 94 (2021) (refusing “to extend Federal Baseball’s reasoning to other sports leagues”).

163. See Brief for Respondent at 32, *Cangrejeros*, No. 23-1589 (1st Cir. 2023) (No. 00118091182) (citing Winter League Agreement, “[E]ach Winter League is not and shall be not considered to be a Minor League, and each Winter League Club is not and shall not be considered to be a Minor League Club.”).

164. See Brief for Plaintiff-Appellant in *Cangrejeros* (1st Cir. 2023), *supra* note 13, at 22 (citing *Group Life*, 440 U.S. at 231; *Union Lab. Life Ins. Co. v. Pireno*, 458 U.S. at 126 [antitrust exemptions “must be construed narrowly”]; *Fed. Mar. Comm’n v. Seatrain Lines, Inc.*, 411 U.S. at 733 [stating broad construction “would conflict with



broadly to “the business of organized professional baseball,”<sup>165</sup> with the exemption transferring to Liga via its affiliation with MLB as business partners in the Winter League Agreement.<sup>166</sup> Regardless of whom is correct, both sides implicitly (and the district court explicitly<sup>167</sup>) acknowledge the issue’s novelty in debating the exemption’s scope, which only the Supreme Court (within the Judiciary) is well-positioned to address.<sup>168</sup>

Similarly, for (ii), Plaintiffs contend that the “business of baseball” standard refers only to activities that are “central” to operating a baseball league, while Defendants argue that Thomas Axon’s role as owner-operator of the Cangrejeros franchise falls within a broader interpretation of the “business of baseball.”<sup>169</sup> Again, both sides acknowledge uncertainty in scope for the exemption by attempting to distinguish from and align with varied lower court interpretations of the standard.<sup>170</sup> To that end, *Cangrejeros* provides an avenue for the Supreme Court to clarify the matter.

For (iii), Plaintiffs do not primarily challenge the broader *Federal Baseball* exemption as good law given the “unique facts of this case.”<sup>171</sup> Nonetheless, Plaintiffs cite the issue as an “alternative version” of claims (i) and (ii) to “preserve it for possible Supreme Court review.”<sup>172</sup>

Third, to that end, *Cangrejeros*’ flexibility in scope permits the Supreme Court to feasibly address procedural exemption issues in whole or in part. Each of Plaintiffs’ three procedural challenges flow from each

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[the Court’s] frequently expressed view that exemptions from antitrust laws are strictly construed”]).

165. *Cangrejeros de Santurce Baseball Club, LLC v. Liga de Beisbol Profesional de Puerto Rico, Inc.*, No. CV 3:22-01341-WGY, 2023 WL 4195663 at \*6 (D.P.R. 2023) (quoting *Radovich*, 352 U.S. at 451).

166. *See* Brief for Respondent at 31, *Cangrejeros*, No. 23-1589 (1st Cir. 2023) (No. 00118091182) (arguing that “MLB and the Liga conduct business of baseball together” via the Winter League Agreement).

167. *Cangrejeros*, 2023 WL 4195663, at \*2, 7 (stating it “boldly goes where no lower court has gone before” by extending the applicability of the exemption to Liga de Beisbol).

168. *See id.* at \*10 (stating that “congressional intervention is unlikely [and]...the Supreme Court may well need to take responsibility itself”).

169. *Id.* at \*5.

170. *See* *Grow*, *supra* note 54, at 580.

171. Brief for Plaintiff-Appellant in *Cangrejeros* (1st Cir. 2023), *supra* note 13, at 6.

172. *Id.* at 6, 25 (citing to *Alston*, 594 U.S. at 94, “where a unanimous Supreme Court expressed contempt for...the Federal Baseball exemption and cast doubt on its continued existence”)

other. For example, the Supreme Court could narrowly find that the exemption is limited to “MLB and its affiliates”<sup>173</sup> without “re-examination of the underlying issues.”<sup>174</sup> The Court could also clarify how far the “business of baseball” standard set by *Toolson* extends to remedy subsequent non-uniform applications among the lower courts.<sup>175</sup> Yet, in light of resurging public discontent from several Justices,<sup>176</sup> the Court may also revisit the exemption as a whole in by deciding whether it remains good law.

Fourth, Plaintiffs’ claims of concerted boycott by Defendants to exclude them from competing in the relevant market of professional baseball in Puerto Rico represent a clear antitrust violation outside the baseball exemption.<sup>177</sup> The district court in *Nostalgic Partners* found the same claim with comparable facts to be substantively compelling, holding that Plaintiffs demonstrated plausible evidence of an agreement to restrain trade in violation section 1 of the Sherman Act.<sup>178</sup> Further, courts have consistently held that concerted efforts to exclude and restrain competition from the relevant product market are anti-competitive and forbidden,<sup>179</sup> including sports leagues.<sup>180</sup> Thus, Plaintiffs’ claims are likely to succeed as pled.<sup>181</sup>

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173. *Id.* at 1.

174. *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356, 357 (1953).

175. *See id.* (interpreting that “this Court [in Federal Baseball] held that the business of providing public baseball games for profits between clubs of professional baseball players was not within the scope of federal antitrust laws”).

176. *See* Justice John Paul Stevens (Ret.), Address at Sports Lawyers Association, 41st Annual Conference Luncheon, *supra* note 4.

177. *See* *Cangrejeros de Santurce Baseball Club, LLC v. Liga de Beisbol Profesional de Puerto Rico, Inc.*, No. CV 3:22-01341-WGY, 2023 WL 4195663 at \*2 (D.P.R. 2023).

178. *See* *Nostalgic Partners v. Off. of Comm’r of Baseball*, 637 F. Supp. 3d 45, 47 (S.D.N.Y. 2022).

179. *See* *Klor’s*, 359 U.S. at 212 (citing *Eastern State Retail Lumber Dealers’ Ass’n v. United States*, 234 U.S. 600 [1914]; *Binderup v. Pathe Exchange, Inc.*, 263 U.S. 291 [1923]; *Fashion Originators’ Guild v. Federal Trade Commission*, 312 U.S. 457 [1941]; *Kiefer-Stewart Co. v. Joseph E. Seagram & Sons*, 340 U.S. 211, 214 [1951]; *Times-Picayune Publishing Co. v. United States*, 345 U.S. 594, 625 [1953]; *Northern Pacific Ry. Co. v. United States*, 356 U.S. 1, 5 [1958]).

180. *See* Jeremy Ulm, *Antitrust Changeup: How a Single Antitrust Reform Could Be A Home Run for Minor League Baseball Players*, 125 DICK. L. REV. 227, 233 (stating the sports leagues are subject to antitrust scrutiny under the Rule of Reason for collusive agreements amongst member teams).

181. *See* *Cangrejeros*, 2023 WL 4195663 at \*2.

B. REBUTTING ANTICIPATED ARGUMENTS AGAINST *CANGREJEROS*

While *Cangrejeros* projects as a strong case for Supreme Court review, some rationales exist disfavoring it as a viable avenue for Supreme Court review. These include factual uncertainty of Plaintiffs' antitrust claims, inapplicability to MLB's reliance argument, possible incentive to settle, and supplemental procedural issues.

Unlike *Nostalgic Partners*,<sup>182</sup> the district court in *Cangrejeros* granted Defendants' motion to dismiss without substantive antitrust review.<sup>183</sup> While Plaintiffs' allegations of group boycott constitute a classic antitrust violation,<sup>184</sup> their validity and strength are unclear absent direct review. It is also possible the First Circuit overturns the district court's decision to dismiss based on the case's "boldly"<sup>185</sup> novel subject matter and circuit split regarding the "business of baseball" standard.<sup>186</sup> If so, the Supreme Court could (as it has previously done, albeit now unlikely) grant certiorari but still punt the broader exemption issue to Congress to resolve.<sup>187</sup>

As argued by Plaintiffs, Liga is distinct from "MLB and its affiliates"<sup>188</sup> such that it should be treated like other professional sports leagues not subject to the exemption.<sup>189</sup> However, this distinction might simultaneously suggest that Liga does not sufficiently reflect MLB's evolution and reliance interest<sup>190</sup> to warrant broader "re-examination of the underlying issues."<sup>191</sup> Comparably, the Supreme Court may wish to

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182. See *Nostalgic Partners*, 637 F. Supp. 3d at 49-54.

183. See *Cangrejeros*, 2023 WL 4195663, at \*2, 10.

184. See *Klor's*, 359 U.S. at 212 (collecting cases).

185. See *Cangrejeros*, 2023 WL 4195663, at \*2, 7.

186. See *Grow*, *supra* note 54, at 580 (arguing that lack of clarity by the Supreme Court has led to "muddled, conflicting standards...of diverging precedent").

187. See *Flood*, 407 U.S. at 285 (stating that "the remedy...is for congressional, and not judicial, action"); see also *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356, 357 (1953).

188. Brief for Plaintiff-Appellant in *Cangrejeros* (1st Cir. 2023), *supra* note 13, at 1, 5.

189. See *id.* at 27; see also *Radovich v. Nat'l Football League*, 352 U.S. 445, 451 (1957) (holding that antitrust laws apply to the NFL and "specifically limit[ed] the rule" of Federal Baseball "to the facts that were involved"); *International Boxing Club*, 348 U.S. at 242 ("Federal Baseball could not be relied upon as a basis of exemption for other segments of the entertainment business, athletic or otherwise."); *Alston*, 594 U.S. at 94 (refusing "to extend Federal Baseball's reasoning to other sports leagues").

190. See *Flood*, 407 U.S. at 267, 275.

191. *Toolson*, 346 U.S. at 357.

incorporate, rather than avoid, the messiness of related Congressional legislation that particularly targets MLB and its affiliates.<sup>192</sup>

Plaintiffs also possess an incentive to settle given their request for monetary relief via treble damages from antitrust injuries sustained.<sup>193</sup> MLB has used this incentive to influence settlement in cases like *Nostalgic Partners*<sup>194</sup> and to avoid Supreme Court review. Yet, in the present case, MLB cannot induce settlement as a non-party.<sup>195</sup> Further, Plaintiffs' monetary incentive to settle is mitigated by their focus on equitable relief in a returned interest.<sup>196</sup>

Finally, *Cangrejeros* contains other supplemental procedural issues. Plaintiffs also brought a Civil Rights Act claim, alleging that Defendants and the Mayor of San Juan suppressed requests for stadium improvements and private investment, as well as conspired to prevent the team from moving to another location in Puerto Rico.<sup>197</sup> In response, Defendants brought a motion to dismiss under the doctrine of res judicata on the basis that a prior state court judgment on the same matter is preclusive.<sup>198</sup> Plaintiffs argue on appeal to the First Circuit that the district court erred in its accompanying rulings.<sup>199</sup> While the Supreme Court has final say, such procedural matters add complexities that might lessen the attractiveness of *Cangrejeros* as a test case for the exemption.

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192. See Edelman et al. Amici Curiae in Tri-City ValleyCats, *supra* note 9, at 6–8 (discussing the failure of the Curt Flood Act of 1998 in addressing the issues raised by the baseball exemption).

193. See Complaint at 42, *Cangrejeros*, 2023 WL 4195663 (D.P.R. 2023) (No. 1) (seeking “three times the amount of damages sustained by Plaintiffs allowed by Section 4 of the Clayton Act”).

194. See Chris Deubert, Settlement Saves MLB Antitrust Exemption (For Now), LINKEDIN (November 21, 2023), <https://www.linkedin.com/pulse/settlement-saves-mlb-antitrust-exemption-now-chris-deubert-7dzoe/>.

195. See Ct. Docket, *Cangrejeros de Santurce Baseball Club, LLC v. Liga de Beisbol Profesional de Puerto Rico, Inc.*, No. 23-1589 (1st Cir. 2023).

196. See Complaint at 42, *Cangrejeros*, 2023 WL 4195663 (D.P.R. 2023) (No. 1) (seeking to “order Defendants to return the investor-operator interest for [Cangrejeros], end the suspension of Axon, and require that any future attempt by the League to remove and/or suspend Axon...be subject to a determination of an agreed-upon neutral arbitrator”); *cf.* Complaint at 32, *Nostalgic Partners v. Off. of Comm’r of Baseball*, (No. 1:21-cv-10876) (S.D.N.Y. 2022) (No. 1) (seeking to prevent MLB from “continuing to implement” the already existing Professional Development League).

197. See *Cangrejeros*, 2023 WL 4195663, at \*2-3.

198. See *id.* at \*7-8.

199. See Brief for Plaintiff-Appellant in *Cangrejeros* (1st Cir. 2023), *supra* note 13, at 43-49.

Nonetheless, *Cangrejeros* projects as an improved avenue to the Supreme Court because it comprehensively and flexibly challenges core procedural issues, is less likely to settle given MLB's absence as a named party, and presents strong substantive antitrust claims of group boycott.

### CONCLUSION

Following in the footsteps of *Nostalgic Partners*, *Cangrejeros* offers an excellent opportunity to revisit baseball's long-standing antitrust exemption. *Cangrejeros* discusses several procedural issues critical to the exemption's status, is flexible in scope to feasibly address such issues in whole or in part, is well-positioned to navigate anticipated hurdles to reaching the Supreme Court, and presents classic antitrust violations (as pled) stemming from group boycott. Thus, the Supreme Court should grant certiorari for *Cangrejeros*, hear the case, and eliminate the exemption.