



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com  
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

## DOJ Calls Baseball's Antitrust Exemption 'An Aberration'

By **Matthew Perlman**

Law360 (June 16, 2022, 6:33 PM EDT) -- The U.S. Department of Justice has waded into a suit from minor league teams that lost their affiliations with Major League Baseball clubs, urging a New York federal court to view baseball's antitrust exemption narrowly and noting that the exemption is based on a rationale that has already been discredited by the U.S. Supreme Court.

The DOJ filed a statement of interest on Wednesday in a suit being brought by four minor league teams against MLB over **the realignment** of baseball's minor league system that stripped 40 clubs of their big league affiliations.

The suit, filed in federal court for the Southern District of New York, looks to challenge baseball's exemption from the antitrust laws, created by a 1922 Supreme Court ruling, with allegations that MLB is orchestrating a group boycott that prevents the minor league teams from competing for affiliations. MLB has **moved to toss** the case based on the exemption and the teams have acknowledged the district court is currently bound by precedent and will need to dismiss the suit.

The DOJ's statement did not take a position on MLB's motion but said baseball's judicial carveout from antitrust scrutiny "does not rest on any substantive policy interests that justify players and fans losing out on the benefits of competition."

"The Supreme Court has repudiated the original Commerce Clause justification for the 'baseball exemption,' leaving it as an aberration with respect to other sports and other antitrust exemptions," the statement said.

The high court established the exemption in **Federal Baseball Club v. National League**, finding that the business of baseball is a purely state affair that did not satisfy the interstate commerce element of the Sherman Act. The DOJ said this holding came despite the fact that teams routinely crossed state lines to play games and increase their commercial prospects, as they do today, and that the Supreme Court has since recognized that's the case.

The statement pointed to rulings from the high court's 1972 **Flood v. Kuhn** case, affirming the exemption but questioning its reasoning, and last year's **NCAA v. Alston** decision that **also called** the carveout into question.

The DOJ noted that the courts never extended a similar reprieve to any other professional sport. And in addition to being unique to baseball, the DOJ said the exemption is also an anomaly among antitrust exemptions because the others are intended to "reconcile competing legal authorities or substantive policy goals."

As an example, the DOJ said the state-action doctrine exempts certain activity directed by state governments from scrutiny under federal antitrust laws in recognition that Congress never intended to restrict the ability of states to regulate their own economies.

"By contrast, the 'baseball exemption' rests on a repudiated Commerce Clause rationale," the statement said.

The DOJ's statement also argued that the court should view the exemption narrowly, contending it should be confined to what the Supreme Court has articulated, which is conduct "central to providing

professional baseball games to the public." While it may cover things such as the MLB's structure, the statement said, it should not reach "conduct beyond the scope of the offering of exhibitions of professional baseball."

The teams — former affiliates of the New York Yankees, Houston Astros, San Francisco Giants and Detroit Tigers — filed suit in December against the MLB following a move in 2020 to reduce the number of minor league affiliates of major league clubs from 160 teams to 120. According to the complaint, big league baseball teams are meant to compete with one another for affiliations with minor league clubs that develop talent and serve as a place for rehabilitating injured MLB players.

But the realignment, according to the suit, effectively narrowed the competitive pool of minor league teams and imposed a boycott of those that lost their affiliations.

The complaint acknowledges that its Sherman Act claims are barred by the Supreme Court's century-old ruling on baseball's exemption but contends the case is a good vehicle for getting the holding overturned.

MLB argued in its April dismissal bid that the minor league teams are attempting to manufacture "an artificial test case" for attacking the ruling and are ignoring other fatal problems with their complaint, including that the teams lack standing to bring the case.

A representative for MLB declined to comment Thursday. Representatives for the minor league teams and the DOJ did not respond to a request for comment.

The government is represented by Jonathan S. Kanter, Doha G. Mekki, David B. Lawrence, Daniel S. Guarnera, Eric D. Dunn, Daniel E. Haar and Nikolai G. Levin of the DOJ's Antitrust Division.

The teams are represented by David J. Lender, Eric S. Hochstadt and Zachary A. Schreiber of Weil Gotshal & Manges LLP and James W. Quinn and Emily M. Burgess of Berg & Androphy.

MLB is represented by John L. Hardiman, Benjamin R. Walker and Jacob G. Singer of Sullivan & Cromwell LLP.

The case is Nostalgic Partners LLC et al. v. The Office of the Commissioner of Baseball, case number 1:21-cv-10876, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Rachel Scharf and Ivan Moreno. Editing by Jay Jackson Jr.