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A Called Third Strike: Professional Baseball's Antitrust Exemption in a Post-*Dobbs* World

ABSTRACT

Professional baseball has long enjoyed exemption from federal antitrust law due to a trio of Supreme Court cases. The last of these cases, Flood v. Kuhn, *upheld the exemption on the basis of stare decisis, yet rejected the constitutional foundation on which it rested. This Comment argues that in the wake of the recent Supreme Court case,* Dobbs v. Jackson Women's Health Organization, *the Roberts Court has provided a clear analytical framework for analyzing constitutional stare decisis that should apply to* Flood. *Applying the* Dobbs *framework, this Comment then shows how* Flood *fails every factor favoring continued stare decisis protection and should be overturned.*

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INTRODUCTION

In one season, Aaron Judge hit sixty-two homeruns,[1] the Seattle Mariners broke the longest playoff drought in Major League Baseball (MLB) history,[2] and the trumpets of Edwin Diaz became a craze of their own.[3] The collective fascination with these phenomena in an age of soundbite entertainment shows that professional baseball still holds a special place in American culture. This is, after all, "[t]he Game" that Justice Blackmun—an avid baseball fan himself—waxed about in 1972.[4]

Professional baseball is profitable. Its broadcasting rights fetch hefty price tags.[5] Its franchises individually are worth billions.[6] In 2019, MLB reported record gross revenues of $10.7 billion.[7] But, what if it was profitable *without* the absence of traditional government oversight? Unlike other professional sports leagues like the National Football League (NFL) and the National Basketball Association (NBA), MLB has an exemption from federal antitrust law through a trio of Supreme Court cases, *Federal Baseball Club v. National League*,[8] *Toolson v. New York*

1. James Wagner, *After Hitting No. 62, Aaron Judge Acknowledges Pressure of Chase,* N.Y. TIMES (Oct. 5, 2022), https://www.nytimes.com/2022/10/05/sports/baseball/aaron-judge-yankees-rangers.html [https://perma.cc/LYP8-8LS4].

2. Matt Snyder, *Mariners Clinch Postseason Berth for First Time Since 2001, Snapping Longest MLB Playoff Drought*, CBS SPORTS (Oct. 1, 2022, 12:39 AM), https://www.cbssports.com/mlb/news/mariners-clinch-postseason-berth-for-first-time-since-2001-snapping-longest-mlb-playoff-drought/ [https://perma.cc/772S-34R7].

3. *See* Benjamin Hoffman, *M.L.B.'s Best Closer Entrances*, N.Y. TIMES (Sept. 1, 2022), https://www.nytimes.com/interactive/2022/09/01/sports/baseball/edwin-diaz-timmy-trumpet.html [https://perma.cc/648S-N97A].

4. *See* Flood v. Kuhn, 407 U.S. 258, 260–64 (1972).

5. *See* Mike Ozanian, *MLB Deals with Apple and NBC Sports Are Worth a Combined $115 Million Annually*, FORBES (Mar. 9, 2022, 9:19 AM), https://www.forbes.com/sites/mikeozanian/2022/03/09/mlb-deals-with-apple-and-peacock-worth-115-million-annually-combined/?sh=5c14a690185c [https://perma.cc/NS6S-KW4B].

6. *See* Steven Taranto, *Average MLB Team Now Valued at Record $2.07 Billion After New Collective Bargaining Agreement*, CBS SPORTS (Mar. 24, 2022, 4:59 PM), /https://www.cbssports.com/mlb/news/average-mlb-team-now-valued-at-record-2-07-billion-after-new-collective-bargaining-agreement/ [https://perma.cc/4HS6-RD4P].

7. Maury Brown, *MLB Sees Record $10.7 Billion in Revenues for 2019*, FORBES (Dec. 21, 2019, 7:02 PM), https://www.forbes.com/sites/maurybrown/2019/12/21/mlb-sees-record-107-billion-in-revenues-for-2019/?sh=1c99ffba5d78 [https://perma.cc/6AJU-MBDL].

8. *See* Fed. Baseball Club v. Nat'l League, 259 U.S. 200, 208–09 (1922) (creating MLB's antitrust exemption).

Yankees, Inc.,[9] and *Flood v. Kuhn*.[10] The implications of the exemption are far-reaching. Theoretically, MLB team owners may act in concert to keep players' wages down (as they do for their minor league players)[11]; collude to bar a franchise from relocating to another city because that relocation could infringe upon another franchise's revenue stream,[12] or engage in anticompetitive behavior to secure lucrative broadcasting deals.[13] Simply put, while virtually every other American industry is subject to accountability and governmental oversight under federal antitrust law, "the Game" is not.

Professional baseball's antitrust exemption was allowed to continue in the Supreme Court's last direct consideration of the issue in 1972. In *Flood v. Kuhn*, the Burger Court held that the exemption was an "aberration that has been with us now for half a century, one heretofore deemed fully entitled to the benefit of *stare decisis* . . . ."[14] However, stare decisis, the venerable practice of resolving litigation on the strength of precedents, is no longer the ironclad bulwark against overruling controversial cases that it once was. In *Dobbs v. Jackson Women's Health Organization*,[15] the Roberts Court indicated its willingness to forgo traditional stare decisis deference in the face of what it considers "bad law," even when the precedential cases have consistently been upheld. Moreover, this Supreme Court has also recently signaled its disfavor towards extending another sports-related antitrust exemption in *NCAA v. Alston*.[16]

An opportunity to strike down *Flood* is making its way towards the Court from the United States District Court for the Southern District of

9. *See* Toolson v. N.Y. Yankees, Inc., 346 U.S. 356, 357 (1953) (affirming MLB's antitrust exemption).

10. *See* Flood v. Kuhn, 407 U.S. 258, 284 (1972) (reaffirming MLB's antitrust exemption).

11. *See* Shakeia Taylor, *Minor-Leaguers and Their Advocates Hope Congress Will Revoke MLB's Antitrust Exemption. Here's How They Are Pushing for Change.*, CHI. TRIB. (Aug. 27, 2022), https://www.chicagotribune.com/sports/breaking/ct-minor-league-baseball-labor-issues-20220827-dazcccyspvg7xbjbfp45ueavai-story.html [https://perma.cc/8DTD-5RKC].

12. *See* Maury Brown, *How MLB Relocation And Expansion Would Play Out*, FORBES (Jan. 7, 2019), https://www.forbes.com/sites/maurybrown/2019/01/07/inside-how-mlb-relocation-and-expansion-would-play-out/?sh=3651b335634d [https://perma.cc/D9D7-PDNK].

13. *See id.*

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

15. *See* Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228, 2262 (2022) ("Some of our most important constitutional decisions have overruled prior precedents.").

16. *See* NCAA v. Alston, 141 S. Ct. 2141, 2165–66 (2021).

New York.[17] The case, *Nostalgic Partners, LLC v. Off. of the Comm'r of Baseball*, is an antitrust lawsuit brought by nearly forty minor league teams against MLB, alleging it orchestrated a conspiracy between its teams to eliminate the minor league teams through league restructuring.[18] The plaintiffs squarely asked for MLB's antitrust exemption to be overturned.[19] Although the district court judge dismissed the claim on the basis of the exemption, the judge did note that it was "possible" for the exemption to be overturned, but the Supreme Court or Congress must do so.[20]

In the light of the Court's aversion to antitrust exemptions in *Alston* and the existence of a ripe case that may overturn the exemption, this Comment will apply the *Dobbs* framework of stare decisis to *Flood* and show why it is time for professional baseball's exemption to be rejected. Part II will provide an organization and historical overview of professional baseball and the roots of its exemption. Part III will discuss stare decisis generally, how it was rejected in *Dobbs*, and how *Dobbs*, a constitutional case, can be applied to *Flood*, a statutory case. Part IV will then apply the *Dobbs* framework to *Flood* and make the case for rejecting the exemption once and for all.

I. BACKGROUND OF THE EXEMPTION

A. Professional Baseball's Organizational Structure

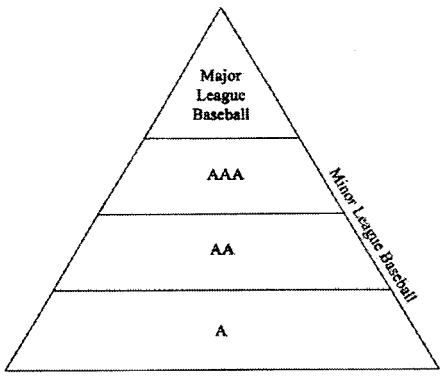
Before examining the origins of the antitrust exemption, an understanding of professional baseball's organizational structure is necessary. It is best to think of professional baseball as a giant pyramid.

17. *See* Complaint at 30–32, Nostalgic Partners, LLC v. Off. of the Comm'r of Baseball, No. 21-cv-10876 (ALC), 2022 WL 14963876 (S.D.N.Y. Oct. 26, 2022). *But see* Opinion Granting Motion to Dismiss at 17, Nostalgic Partners, LLC v. Off. of the Comm'r of Baseball, No. 21-cv-10876 (ALC), 2022 WL 14963876 (S.D.N.Y. Oct. 26, 2022) (reaffirming MLB's antitrust exemption).

18. *See* Opinion Granting Motion to Dismiss, *Nostalgic Partners, LLC* at 3.

19. *See* Complaint, *Nostalgic Partners, LLC* at 29–30.

20. Opinion Granting Motion to Dismiss, *Nostalgic Partners, LLC* at 2.



Today, at the top, is MLB. MLB is comprised of two conferences, or "leagues," the American League (AL) and the National League (NL), which consolidated under the same governing body, MLB, at the turn of the twenty-first century.[21] On the pyramid beneath MLB are the minor leagues, or "farm teams," which serve as the major league clubs' talent incubators for players moving from high school and college baseball to the MLB.[22] The "highest" of these on the pyramid, directly below the MLB, are the Triple A (AAA) clubs.[23] Below AAA clubs sit Double A (AA) and Single A (A) clubs, respectively.[24] While historically various major league clubs had independent control of their own minor league teams, in 2021, following the COVID-19 pandemic and the significant financial turmoil that resulted from the pandemic, MLB, as an organization, took over control of the minor leagues from their parent MLB teams.[25]

21. Murray Chass, *Baseball; League Presidents Out as Baseball Centralizes*, N.Y. TIMES (Sept. 16, 1999), https://www.nytimes.com/1999/09/16/sports/baseball-league-presidents-out-as-baseball-centralizes.html?searchResultPosition=30 [https://perma.cc/YEZ4-RF5K] ("Major league club owners voted unanimously today to abandon the traditional arrangement and consolidate all operating functions in the commissioner's office.").

22. *See How the Minor Leagues Work*, MILB (Apr. 20, 2016), https://www.milb.com/news/gcs-173407668 [https://perma.cc/A7QH-5EME].

23. *See id.*

24. *See id.*

25. *See* Chelsea Janes, *For the First Time in History, Minor League Baseball Players Have a Union*, WASH. POST (Sept. 14, 2022), https://www.washingtonpost.com/sports/2022/09/14/minor-league-baseball-union/ [https://perma.cc/33P6-NJGH].

Through this takeover, MLB plays a centralized role in minor league players' contracts, pay, and housing.[26]

B. History of the Exemption

1. Federal Baseball Club v. National League

Professional baseball's antitrust exemption traces its roots back a century ago to an ancestor of MLB, the Federal Baseball Club. While professional baseball today is consolidated in a pyramid, in the early 1900s, the sport was much less centralized. The AL and the NL were the two dominant leagues of professional baseball among several others,[27] each of which was competing for a stake in the sport.[28] One of those rival leagues, the Federal Baseball League, sprung up in 1913 and began to lure players away from the NL and AL with lucrative salaries.[29] At the time, the AL and the NL agreed to use a contract device known as the "reserve clause," which bound a player to the team he was playing for and prevented him from leaving the club on his own.[30] This meant that "a player was his club's property for as long as he played baseball or until his employer assigned his contract to another club or 'released' the player from his services."[31] The Federal League was an attractive out for AL and NL players, with lucrative contracts and no reserve clause.[32] In response, the AL and the NL threatened its players with blacklisting.[33] The AL and the NL also offered some Federal League owners access to buy AL and NL teams, splintering the Federal League soon after its formation.[34]

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26. *See id.*

27. The Negro Leagues were also founded around this time. In addition to garden-variety collusive conduct, professional baseball also systematically disenfranchised Black players from the sport through pervasive racism and discrimination. *See* Michael J. Haupert, *The Economic History of Major League Baseball*, ECON. HIST. ASSOC. (Dec. 3, 2007), https://eh.net/encyclopedia/the-economic-history-of-major-league-baseball/ [https://perma.cc/466T-THKL]. Thankfully, the likes of Jackie Robinson, Satchel Paige, Willie Mays, and Hank Aaron would go on to break the color barrier of professional baseball in the coming decades.

28. *See id.*

29. *See id.*; William B. Tsimpris, *A Question of (Anti)Trust:* Flood v. Kuhn *and the Viability of Major League Baseball's Antitrust Exemption*, 8 RICH. J.L. & PUB. INT. 69, 72 (2004).

30. *Id.* at 70.

31. *Id.*

32. *See* Haupert, *supra* note 27.

33. Tsimpris, *supra* note 29, at 72–73.

34. *See* Haupert, *supra* note 27.

After the Federal League folded, several of its former teams brought suit against the AL and the NL, alleging MLB destroyed the Federal League by "buying up some of the constituent clubs and in one way or another inducing all those clubs except the plaintiff to leave their League . . . ."[35] The plaintiff alleged such actions were in violation of federal antitrust law.[36] The Taft Court rejected this argument, holding that the business of professional baseball "is giving exhibitions of [baseball], which are purely state affairs."[37] Therefore, the Court reasoned that professional baseball was not involved in interstate commerce and, for that reason, was exempt from federal antitrust regulations.[38]

2. Toolson v. New York Yankees, Inc.

In 1953, the Supreme Court was once again asked to consider professional baseball's exemption from federal antitrust law in *Toolson*. The plaintiff, George Toolson, was a minor league pitcher with the New York Yankee's AAA minor league club, the Newark Bears.[39] After years of playing for the club, Toolson refused to report to an assignment with the Yankees' A club in Binghampton.[40] Instead, he wanted a chance to play at a higher level with different club.[41] In response, the Yankees' organization enforced the reserve clause, effectively blacklisting him by "plac[ing Toolson] on the ineligible list which prevented him from entering into a contract with any other major league organization or minor league team."[42] In response, Toolson sued, alleging MLB had engaged in monopolistic behavior and asking for professional baseball's antitrust exemption from *Federal League* to be overturned.[43]

In an unsigned *per curiam* opinion, the Court rejected Toolson's argument.[44] It held that "if there are evils in this field which now warrant application to it of the antitrust laws[,] it should be by legislation."[45] In

35. Fed. Baseball Club v. Nat'l League, 259 U.S. 200, 207 (1922).

36. *See id.* at 207–08.

37. *Id.* at 208.

38. *See id.* at 209.

39. *See* Gordon Hylton, *Why Baseball's Antitrust Exemption Still Survives*, 9 MARQ. SPORTS L.J. 391, 396 (1999).

40. *See id.*

41. *See id.* ("Toolson refused to report to Binghampton and tried to obtain a position with a team in the AAA Pacific Coast League.").

42. *See id.*

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

44. *Id.*

45. *Id.*

affirming *Federal Baseball Club*, the Court acknowledged the aberration yet deferred to Congress to act on the issue.[46]

3. Flood v. Kuhn

The most expansive attack on professional baseball's antitrust exemption came in 1972 in *Flood v. Kuhn*.[47] The circumstances prompting *Flood* were similar to those of *Toolson*: frustration of the players with the MLB's restrictive use of the reserve clause.[48] The plaintiff, Curtis Flood, was a successful baseball player with the major league St. Louis Cardinals.[49] After years in St. Louis, Flood was traded to the Philadelphia Phillies.[50] Flood was not warned of the prospective trade and was told of the trade the day after it occurred.[51] In an effort to avoid a move to Philadelphia, Flood then requested to be made a free agent by the Commissioner of Baseball.[52] When that request was denied, Flood brought suit against the league and refused to play for Philadelphia, instead sitting out for the season.[53] In his suit, Flood claimed the reserve clause was a violation of antitrust law, calling it:

> [A]n unreasonable restraint of trade in violation of Sections 1 and 2 of the Sherman Act because the teams collectively agree to contract with players only on uniform terms and agree to divide the player market by giving each team exclusive rights to bargain with its players and because it is enforced by group boycott and concerted refusal to deal on the part of all professional teams against any player seeking to escape its restrictions.[54]

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46. *See id.*

47. 407 U.S. 258 (1972).

48. *Compare id.* at 362 (Burton, J., dissenting) (describing the plaintiffs' allegation of damage suffered from "standard 'reserve clause[s]' in their contracts"), *with* Flood v. Kuhn, 407 U.S. 258, 259 (1972) ("For the third time in 50 years the Court is asked specifically to rule that professional baseball's reserve system is within the reach of the federal antitrust laws.").

49. *Flood*, 407 U.S. at 264.

50. *Id.* at 265.

51. *See id.*

52. A free agent is a player who is able to sign with other teams and is not bound by a contract with a team. *See id.* ("[Flood] asked that he be made a free agent and be placed at liberty to strike his own bargain with any other major league team.").

53. *Id.* at 265–66.

54. Flood v. Kuhn, 309 F. Supp. 793, 801 (S.D.N.Y. 1970), *aff'd*, 443 F.2d 264 (2d Cir. 1971), *aff'd*, 407 U.S. 258 (1972).

The Court rejected Flood's claim, once again upholding the antitrust exemption propagated by *Federal Baseball Club* and *Toolson*.[55] Unlike its holding in *Federal Baseball Club*, the *Flood* Court found that professional baseball did engage in interstate commerce.[56] However, the Court also held that because Congress had remained silent on the issue since *Federal Baseball Club*, the exemption was "fully entitled to the benefit of *stare decisis*, and one that has survived the Court's expanding concept of interstate commerce. It rests on a recognition and an acceptance of baseball's unique characteristics and needs."[57]

The Court rejected the original premise of the exemption established in *Federal Baseball Club*—the lack of jurisdiction through interstate commerce—but *still* upheld the exemption under stare decisis and separation of powers principles.[58] It is the Court's reliance on stare decisis that suggests the future viability of baseball's antitrust exemption has the potential to go another inning.

*C. Developments in Professional Baseball Post-*Flood

While professional baseball's antitrust exemption was upheld in *Flood*, not all the issues prompting the litigation are in effect today. For example, the reserve clause's application, which spawned *Toolson* and *Flood*, was limited to only the first few seasons of a player's career by a 1982 collective-bargaining agreement between MLB and the players' union, the powerful Major League Baseball Players Association (MLBPA).[59] With the new free-agency system, players' salaries exploded.[60]

Starting in the late 1980's, the *scope* of professional baseball's antitrust exemption has also been hotly litigated. In *Piazza v. Major League Baseball*, a lawsuit brought by investors who wanted to move the San Diego Giants to Tampa, Florida, the U.S. District Court for the Eastern District of Pennsylvania held professional baseball's exemption was limited to the reserve-clause issue raised in *Toolson* and *Flood*.[61] In another case, the Florida Supreme Court adopted the *Piazza* holding on the

55. *Flood*, 407 U.S. at 284.

56. *Id.* at 282.

57. *Id.*

58. *See id.* at 282–85.

59. Sam C. Ehrlich, *Probing for Holes in the 100-Year-Old Baseball Exemption: A New Post-*Alston *Challenge*, 90 U. CIN. L. REV. 1172, 1201 (2022).

60. *See id.*

61. Piazza v. MLB, 831 F. Supp. 420, 422, 438 (E.D. Pa. 1993).

scope of professional baseball's exemption.[62] But the reach of these cases was curtailed by congressional action. In 1998, spurred by Curtis Flood's stand against MLB, Congress passed the Curt Flood Act, which granted limited antitrust protections to major league players in labor disputes, but preserved all other aspects of professional baseball's exemption.[63] Congress made an important distinction in subsection (b) of the Act, where it expressly delineated instances where the antitrust exemption remains in effect, such as: minor league player labor issues, agreements with umpires, sports broadcasting rights, and franchise relocation.[64]

II. STARE DECISIS

A. Generally

Stare decisis is the venerable legal principle that "today's Court should stand by yesterday's decisions—[it] is 'a foundation stone of the rule of law.'"[65] Stare decisis requires future courts to respect precedent and limits deconstruction of a prior court's precedent. While stare decisis is not an absolute doctrine that future courts must adhere to, it is the preferred course of action to maintain the integrity of the judiciary over time. In recognizing the significance of the doctrine, the Court stated that "[*s*]*tare decisis* is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process."[66]

The Supreme Court has applied the doctrine of stare decisis in three distinct, context-driven ways: statutory stare decisis, constitutional stare decisis, and common law stare decisis.[67] Statutory stare decisis is categorically stronger than its constitutional counterpart because legislative redress may serve as a remedy to correct an errant application

62. *See* Butterworth v. Nat'l League, 644 So. 2d 1021, 1025 (Fla. 1994).

63. Edmund P. Edmonds, *The Curt Flood Act of 1998: A Hollow Gesture After All These Years?*, 9 MARQ. SPORTS L.J. 315, 318 (1999).

64. *See* Curt Flood Act of 1998, Pub. L. No. 105-297, §§ 3(b)(1)–(6), 112 Stat. 2824, 2824–25.

65. Kimble v. Marvel Ent., LLC, 576 U.S. 446, 455 (2015) (quoting Michigan v. Bay Mills Indian Community, 572 U.S. 782, 798 (2014).

66. Payne v. Tennessee, 501 U.S. 808, 827 (1991).

67. *See* William N. Eskridge, Jr., *Overruling Statutory Precedents*, 76 GEO. L.J. 1361, 1362 (1988) ("The answer lies, in part, with the three-tiered hierarchy of stare decisis the Court has created, at least in theory.").

of stare decisis in a statutory matter. "*[S]tare decisis* carries enhanced force when a decision . . . interprets a statute. Then, unlike in a constitutional case, critics of [the] ruling can take their objections across the street, and Congress can correct any mistake it sees."[68]

On the other hand, stare decisis is at its weakest in constitutional cases. Constitutional precedent may only be overturned by constitutional amendment or by the Court itself in a future case. In *Dobbs*, the Court explained this application of stare decisis: "[W]hen one of our constitutional decisions goes astray, the country is usually stuck with the bad decision unless we correct our own mistake. An erroneous constitutional decision can be fixed by amending the Constitution, but our Constitution is notoriously hard to amend."[69] This means that when a case that was decided on constitutional grounds and interpretation comes up for future reconsideration, the Court will be more willing to overturn it (rejecting stare decisis) as the Court is the only practical way to overturn constitutional precedent.

Finally, common law stare decisis operates in between the statutory stare decisis and constitutional stare decisis, in terms of relative strength.[70] Common law stare decisis "enjoy[s] a strong presumption of correctness."[71]

In deciding whether to apply stare decisis to a case, the Court generally considers a variety of factors. Such factors include quality of reasoning, workability, consistency with related decisions, future factual developments, and societal reliance.[72]

B. Dobbs *and Stare Decisis*

In the 2022 case, *Dobbs v. Jackson Women's Health Organization*, the Supreme Court overturned *Roe v. Wade* and *Planned Parenthood v. Casey*, the two landmark cases that established a constitutional right to abortion.[73] In doing so, the Supreme Court declined to extend the protection of stare decisis to *Roe* and *Casey*.[74] Instead, Justice Alito, writing for the majority, outlined a framework to consider whether stare

68. *Kimble*, 576 U.S. at 456.

69. Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228, 2262 (2022).

70. *See* Eskridge, *supra* note 67, at 1362.

71. *Id.*

72. *See* BRANDON J. MURRILL, CONG. RSCH. SERV., THE SUPREME COURT'S OVERRULING OF CONSTITUTIONAL PRECEDENT 12 (2018).

73. *Dobbs*, 142 S. Ct. at 2243.

74. *Id.*

decisis protection should be afforded.[75] The Court considered five factors: "the nature of [the previous case's] error, the quality of their reasoning, the 'workability' of the rules they imposed on the country, their disruptive effect on other areas of the law, and the absence of concrete reliance."[76]

The first factor laid out by the Court in determining whether to adhere to stare decisis is the nature of the error.[77] The Court explained the importance of this factor in that while "[a]n erroneous interpretation of the Constitution is always important . . . some are more damaging than others."[78] This factor suggests an inverse relationship exists between the "damage" that a prior holding creates and the Court's willingness to extend the protection of stare decisis to that prior holding. The Court explained that in the case of *Roe*, as upheld by *Casey*, the decision was "egregiously wrong and deeply damaging . . . [because its] constitutional analysis was far outside the bounds of any reasonable interpretation of the various constitutional provisions to which it vaguely pointed."[79] As the Court concluded, this factor is of particular importance when precedent "wrongly removed an issue from the people and the democratic process."[80]

The Court explained that beyond a case being incorrectly decided, the next important factor in a ruling's stare decisis consideration was the quality of reasoning.[81] The Court pointed to the legal arguments developed and deployed in *Roe* and *Casey*, noting their inconsistencies and lack of historical, textual, or precedential support.[82]

Next in the Court's stare decisis framework is the "workability" of the rules propagated by the case in question.[83] The Court stated that "whether a precedent should be overruled is whether the rule it imposes is workable—that is, whether it can be understood and applied in a consistent and predictable manner."[84] The Court considered factors such as whether application of the rule would yield consistent results in various

75. *Id.* at 2264–65.
76. *Id.* at 2265.
77. *Id.*
78. *Id.*
79. *Dobbs*, 142 S. Ct. at 2265.
80. *Id.*
81. *Id.* at 2265–66.
82. *Id.* at 2266.
83. *Id.* at 2272; *see also* MURRILL, *supra* note 72, at 12–13.
84. *Dobbs*, 142 S. Ct. at 2272

cases, how many circuit conflicts have been spawned by the rule, and the ease of the rule's application.[85]

After addressing the workability of the rule, the Court considered whether the previous precedent had a disruptive effect on other areas of law.[86] There, the Court analyzed areas of law outside the Fourteenth Amendment and abortion law that were affected by the rules propagated by *Roe* and *Casey*.[87] The Court also weighed how the rules "ha[ve] failed to deliver the 'principled and intelligible' development of the law that *stare decisis* purports to secure."[88]

Finally, the Court considered reliance interests in its stare decisis framework. The Court stated that "[t]raditional reliance interests arise 'where advance planning of great precision is most obviously a necessity.'"[89] The Court then analyzed what other areas of law depended upon *Roe* and *Casey* before concluding there was a lack of reliance interests and stating that "[n]othing in this opinion should be understood to cast doubt on precedents that do not concern abortion."[90]

C. *The Case for Applying the* Dobbs *Framework to* Flood

While *Flood*'s use of stare decisis is statutory, and therefore inherently stronger than the constitutional stare decisis for *Roe* and *Casey*, *Dobbs*' constitutional stare decisis framework still can be applied to *Flood* and the professional baseball exemption.

First, inherent to professional baseball's antitrust exemption is its original grounding in a flawed interpretation of the Constitution. In *Federal Baseball Club*, the Court held professional baseball was not engaging in interstate commerce and therefore was outside the scope of Congress' Commerce Clause power.[91] While the Court in *Flood* admitted that finding professional baseball was not engaged in interstate commerce was untenable due to the Court's expansion of the scope of the Commerce Clause, it still decided to afford the inherently stronger application of statutory stare decisis because Congress theoretically could act to bring professional baseball back under the governance of the Sherman Antitrust

85. *Id.* at 2272–74.

86. *Id.* at 2275.

87. *Id.* at 2275–76.

88. *Id.* at 2276 (quoting June Med. Servs. L.L.C v. Russo, 140 S. Ct. 2103, 2152 (2020) (Thomas, J., dissenting), *abrogated by Dobbs*, 142 S. Ct. 2228).

89. *Id.* (quoting Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 856 (1992)).

90. *Id.* at 2280.

91. Fed. Baseball Club v. Nat'l League, 259 U.S. 200, 208 (1922).

Act.[92] This application of stare decisis, however, is flawed because it applies *statutory* stare decisis to what was originally a *constitutional* decision, namely, that professional baseball was not involved in interstate commerce and thus could not be regulated under the Commerce Clause.[93] Had the Court in *Federal Baseball Club* considered the scope and application of the Sherman Antitrust Act to professional baseball, then statutory stare decisis would have been proper. Then, of course, the decision would have been grounded in the Court's interpretation and application of the Act instead of the constitutional question of the reach of Congress' enumerated powers.

Second, *Dobbs*' constitutional stare decisis framework should be applied to *Flood* and professional baseball's exemption due to the Court's duty to "correct [its] own mistake."[94] Professional baseball's exemption was originally fashioned by the Court in *Federal Baseball Club* as a matter of constitutional interpretation. Congress did not establish it through legislation. While the Court in *Flood* attempted to downplay the inconsistency of the exemption in *Flood* by laying the onus of correction at Congress' feet,[95] subsequent congressional inaction could also be interpreted as an indicator that Congress believes that only the Court can right its own wrong through corrective case precedent.[96]

While no precise analog exists for reclassification of a statutory stare decisis case to a constitutional stare decisis case, this may simply be because the Court has never been asked to do so. A missing analog is not lethal to reclassifying a case's stare decisis framework. Changes in law demand changes in legal application.[97] So too here.

Using the *Dobbs* factors of constitutional stare decisis, it is clear that *Flood* and professional baseball's antitrust exemption is anachronistic and should not be afforded the protection of stare decisis.

92. Flood v. Kuhn, 407 U.S. 258, 291 (1972).

93. *See Fed. Baseball Club*, 259 U.S. at 208.

94. *See Dobbs*, 142 S. Ct. at 2262.

95. *See Flood*, 407 U.S. at 285.

96. *Cf. id.* at 287–88 (Douglas, J., dissenting).

97. *See* United States v. Gaudin, 515 U.S. 506, 521 (1995) ("And we think *stare decisis* cannot possibly be controlling when, in addition to those factors, the decision in question has been proved manifestly erroneous, and its underpinnings eroded, by subsequent decisions of this Court.").

III. APPLYING THE *DOBBS* FRAMEWORK TO THE EXEMPTION

A. Nature of the Error

Applying *Dobb*'s first factor to the holding and reasoning of *Flood*, and what subsequent history has revealed about the decision, it appears the case generally was the type of harmful, "erroneous interpretation of the Constitution"[98] *Dobbs* warned of and disfavored. Indeed, *Flood* upheld the baseball exemption for two principal reasons: (1) stare decisis itself, and (2) Congress' silence on the exemption in the time between *Federal Baseball Club* and *Flood*.[99]

In *Flood*, the Court applied stare decisis to the baseball exemption from *Federal Baseball Club*.[100] The Court's logic there, however, was fundamentally flawed in that it afforded stare decisis protection to a holding that the Court itself recognized was no longer on viable legal footing.

In *Federal Baseball Club*, the Court created the exemption by holding that because professional baseball was not engaged in interstate commerce, federal antitrust statutes could not constitutionally reach it through the Commerce Clause.[101] Fifty years later, and with an expansion of the Commerce Clause from cases such as *Wickard v. Filburn*,[102] the Court in *Flood* acknowledged that professional baseball was, in fact, engaged in interstate commerce.[103] Justice Douglas noted this fact in his dissent:

> An industry so dependent on radio and television as is baseball and gleaning vast interstate revenues would be hard put today to say with the Court in the *Federal Baseball Club* case that baseball was only a local exhibition, not trade or commerce.[104]

In doing so, the Court in *Flood* pulled the proverbial constitutional rug out from under the feet of professional baseball's antitrust exemption.

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98. *Dobbs*, 142 S. Ct. at 2265.

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

100. *Id.*

101. Fed. Baseball Club v. Nat'l League, 259 U.S. 200, 208 (1922).

102. *See* Wickard v. Filburn, 317 U.S. 111, 127–29 (1942) (holding that the Commerce Clause powers extend to intrastate activities that affect interstate commerce).

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

104. *Id.* at 287 (Douglas, J., dissenting) (citing H. R. Rep. No. 2002, 82d Cong., 2d Sess., 4, 5 (1952)).

However, instead of then overturning the exemption, the Court afforded it stare decisis protection, rather than remediate the initial flawed reasoning.[105]

Second, the Court in *Flood* deferred to congressional action, as opposed to disposing of the exemption itself.[106] However, congressional inaction does not discharge the Court's duty to strike down the exemption. And as the Court noted in *Dobbs*, legislative motive arguments are disfavored and often unpersuasive.[107] Moreover, as the Court warned in *United States v. O'Brien*, "[i]nquiries into congressional motives or purposes are a hazardous matter."[108] Justice Marshall focused on this particular issue in his dissent in *Flood*:

> Has Congress acquiesced in our decisions in *Federal Baseball Club* and *Toolson*? I think not. Had the Court been consistent and treated all sports in the same way baseball was treated, Congress might have become concerned enough to take action. But, the Court was inconsistent, and baseball was isolated and distinguished from all other sports. In *Toolson*[,] the Court refused to act because Congress had been silent. But the Court may have read too much into this legislative inaction.[109]

Inferring Congressional acceptance from silence, the Court permitted outdated, inconsistent case precedent to stay in effect.

Finally, the nature of the Court's error in *Flood* is of particular concern in that the holding "wrongly removed an issue from the people and the democratic process."[110] While Congress clearly acted on the issue of legislating business and marketplace competition through the Sherman Antitrust Act, the Court in *Federal Baseball Club* and *Flood* took exemptions away from the democratic process of congressional legislation. This is yet another indicator of the profound nature of the exemption's foundational error.

B. Quality of Reasoning

Dobbs' first factor also logically informs and supports the second consideration: the quality of reasoning. For the reasons already listed,

105. *Id.* at 282.
106. *Id.* at 284.
107. Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228, 2255 (2022).
108. United States v. O'Brien, 391 U.S. 367, 383 (1968).
109. *Flood*, 407 U.S. at 292 (Marshall, J., dissenting).
110. *Dobbs*, 142 S. Ct. at 2265.

Flood also scores poorly here, too. And a poor quality of reasoning supports denying the extension of stare decisis.[111]

The quality of *Flood*'s reasoning is flawed in that it affords stare decisis to *Federal Baseball Club* and the exemption, while simultaneously rejecting the foundation of *Federal Baseball Club*'s argument that professional baseball is exempt from antitrust litigation because it does not engage in interstate commerce.[112] The Court's holding on the lack of interstate commerce in *Federal Baseball Club* was the entire crux of the exemption.[113] *Flood* rejected that finding but still upheld the exemption on stare decisis, without any constitutional grounding.[114]

Rejecting the central holding of a precedential Supreme Court case is grounds enough to withhold stare decisis protection. For example, in *West Virginia State Board of Education v. Barnette*, the Court declined to extend stare decisis to a previous case, *Minersville School District v. Gobitis*, because the central argument of that decision was found to be incompatible with the Establishment Clause of the First Amendment.[115] By explicitly rejecting the central support of the holding in *Federal Baseball Club* yet failing to overturn that case (or provide a meaningful distinction for why it did not do so), the Court's reasoning in *Flood* was of poor quality. This weighs against affording stare decisis to professional baseball's exemption.

In addition to stare decisis, the Court in *Flood* also protected *Federal Baseball Club* by pointing to the lack of congressional action on removing the exemption:

> We continue to be loath, 50 years after *Federal Baseball* and almost two decades after *Toolson*, to overturn those cases judicially 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.[116]

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111. *See* Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31, 138 S. Ct. 2448, 2479 (2018) (acknowledging the weight of quality of reasoning concerning stare decisis).

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

113. *See* Fed. Baseball Club v. Nat'l League, 259 U.S. 200, 208 (1922).

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

115. *See* Minersville Sch. Dist. v. Gobitis, 310 U.S. 586 (1940), *overruled by* W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624, 642 (1943) ("We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.").

116. Flood, 407 U.S. at 283–84.

The quality of the reasoning on this deference to Congress is similarly weak. As the Court noted in *Dobbs* itself, "[t]his Court has long disfavored arguments based on alleged legislative motives."[117] The legislative argument used in *Flood* puts the onus on Congress to rectify a problem that was created by the Court, not Congress. Acting on its own *Federal Baseball Club*, the Court carved out an exemption for professional baseball, and professional baseball alone. While statutory stare decisis, like the one employed in *Flood*, is considerably stronger because "Congress remains free to alter what [the Court has] done[,]"[118] the Court outkicks its coverage by suggesting that Congress can legislatively fix the Court's *own* exemption after the Court itself flatly rejected the outdated interpretation of the Commerce Clause on which its holding depended. Justice Douglas sharply critiqued the Court's reliance on Congress on this point:

> If congressional inaction is our guide, we should rely upon the fact that Congress has refused to enact bills broadly exempting professional sports from antitrust regulation . . . . There can be no doubt "that were we considering the question of baseball for the first time upon a clean slate" we would hold it to be subject to federal antitrust regulation. The unbroken silence of Congress should not prevent us from correcting our own mistakes.[119]

C. Workability of Rules

The next factor from *Dobbs* to consider in stare decisis protection is the workability of rules. Can the precedent "be understood and applied in a consistent and predictable manner[?]"[120] While consistency with other rulings is a separate stare decisis factor[121] not expressly employed by the

117. *See* Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228, 2255 (2022); *see also* Pension Benefit Guar. Corp. v. LTV Corp., 496 U.S. 633, 650 (1990) ("Congressional inaction lacks 'persuasive significance' because 'several equally tenable inferences' may be drawn from such inaction . . . .").

118. Halliburton Co. v. Erica P. John Fund, Inc., 573 U.S. 258, 274 (2014); *see also* Ramos v. Louisiana, 140 S. Ct. 1390, 1413 (2020) (Kavanaugh, J., concurring) ("[T]he Court has ordinarily left the updating or correction of erroneous statutory precedents to the legislative process.").

119. *Flood*, 407 U.S. at 287–88 (Douglas, J., dissenting) (quoting Radovich v. NFL, 352 U.S. 445, 452 (1957)).

120. *Dobbs*, 142 S. Ct. at 2272.

121. *See* United States v. Gaudin, 515 U.S. 506, 521 (1995).

Court in *Dobbs*, professional baseball's exemption can be examined through a consistency analysis to highlight the *Flood* rule's lack of workability.

Flood's exemption for professional baseball is the antithesis of consistent and predictable. For starters, professional baseball is the only sport to which the Court extended an exemption from federal antitrust litigation. By contrast, the Court denied similar exemptions for professional boxing,[122] football,[123] basketball,[124] and college athletics.[125] The Court in *Flood* acknowledged this inconsistency in the application of federal antitrust to professional sports:

> Accordingly, we adhere once again to *Federal Baseball* and *Toolson* and to their application to professional baseball. We adhere also to *International Boxing* and *Radovich* and to their respective applications to professional boxing and professional football. If there is any inconsistency or illogic in all this, it is an inconsistency and illogic of long standing that is to be remedied by the Congress and not by this Court.[126]

Further complicating the workability of professional baseball's exemption rule is the determination of the scope of the rule. As stated *supra,* following *Flood*, courts have sought to define the scope of the antitrust exemption—specifically, whether it extended only to the reserve clause in players' contracts or to *all* elements of professional baseball.[127] While Congress did legislatively revoke professional baseball's antitrust exemption in major league labor matters with the 1998 Curtis Flood Act,[128] the Supreme Court has never definitively settled the matter as to the scope of the exemption, leaving its application unclear. This lack of clarity is indicative of a lack of workability of the exemption, as its boundaries are not clearly defined.

122. United States v. Int'l Boxing Club of N.Y., 348 U.S. 236, 243–45 (1955).

123. Radovich v. NFL, 352 U.S. 445, 451–52 (1957).

124. Haywood v. NBA, 401 U.S. 1204, 1205 (1971).

125. NCAA v. Alston, 141 S. Ct. 2141, 1259 (2021).

126. *See* Flood v. Kuhn, 407 U.S. 258, 284 (1972).

127. *See* Piazza v. MLB, 831 F. Supp. 420, 438 (E.D. Pa. 1993).

128. *See* Curt Flood Act of 1998, Pub. L. No. 105-297, § 3, 112 Stat. 2824, 2824–26 (partially revoking MLB's antitrust exemption).

D. Effects on Other Areas of Law

"Effect on other areas of law" is the next *Dobbs* factor to apply to *Flood* and the exemption.[129] This factor weighs heavily when a ruling, such as *Flood*, "has failed to deliver the 'principled and intelligible' development of the law that *stare decisis* purports to secure."[130] While the effects of the exemption and *Flood* are consistently cited in antitrust litigation, *Flood* has also been cited in unrelated case law, generally in regards to its holding on congressional inaction.[131] These citations are disruptive, as they draw out from *Flood* the questionable premise of congressional inaction as symbolic of acquiescence. However, as discussed previously, congressional inaction on professional baseball's exemption should be interpreted not as acquiescence but as Congress' signaling to the Court to right the wrong *it* created.[132] Furthermore, such citations to *Flood* are arguably illusory, as they cast *Flood* as a traditional statutory stare decisis case, where congressional action may undo the Court's prior precedent. But as professional baseball's exemption was originally grounded in an outdated constitutional interpretation of the Commerce Clause, it is more appropriate to cast *Flood* as a constitutional case, not as a statutory case.

As the effects of *Flood*'s errant holding are found in other areas of law outside of antitrust litigation, it has had a disruptive effect on other areas of law, weighing against the continued protection of stare decisis.

E. Reliance Interest

The final *Dobbs* factor to apply to *Flood* and professional baseball's exemption is reliance interests. Reliance interests are important "because

129. Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228, 2275–76 (2022) (discussing the fourth factor, the effect on other areas of law).

130. June Med. Servs. L.L.C. v. Russo, 140 S. Ct. 2103, 2152 (2020), *abrogated by Dobbs*, 142 S. Ct. 2228.

131. *See, e.g.*, Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A., 511 U.S. 164, 187 (1994) (citing *Flood* and interpreting the Securities Exchange Act of 1934); Jenco v. Islamic Republic of Iran, 154 F. Supp. 2d 27, 37 (D.D.C. 2001) (citing *Flood* and interpreting the Foreign Sovereign Immunities Act); La. Forestry Ass'n, Inc. v. Sec'y U.S. Dep't of Lab., 745 F.3d 653, 674 (3d Cir. 2014) (citing *Flood* and interpreting the Immigration and Nationality Act).

132. *See* Flood v. Kuhn, 407 U.S. 258, 287 (1972) (Douglas, J., dissenting) ("If congressional inaction is our guide, we should rely upon the fact that Congress has refused to enact bills broadly exempting professional sports from antitrust regulation.").

certain parties would suffer hardship if a case were overruled[,]" as they relied on the case's existence to structure their conduct.[133]

Reliance interests in professional baseball's antitrust exemption are markedly absent, weighing in favor of overturning the precedent. The greatest indicator of a lack of reliance interests is the Court's consistent refusal to extend similar exemptions to other professional sports. As mentioned previously, the Court has denied extending the exemption to every other sport that has petitioned for one, from boxing[134] to college athletics.[135] Had the Court used professional baseball's exemption as a template and afforded similar protections consistently to other sports, the reliance interest of keeping professional baseball's exemption intact would be exponentially greater due to the sheer size of the sport's industry and its assured reliance on such an exemption. However, due to the Court's consistent rejection of such exemptions, the reliance interest of professional sports on *Flood* is non-existent.

While professional baseball itself has been sheltered under *Flood* for decades, professional baseball's reliance is undeserving of continued stare decisis protection because it is not clearly defined, which renders the MLB's reliance on the exemption weak. Notwithstanding the inherent difficulty of identifying with sufficient precision the conduct protected under the antitrust exemption, the cost of implementing leaguewide conduct around a rule of decision that seemingly exists as "a derelict on the waters of the law" counsels against such an exercise.[136] As discussed earlier, the district court in *Piazza v. Major League Baseball* held professional baseball's exemption to only extend to the reserve-clause system at issue in *Flood*.[137] Notwithstanding such a narrow construction of the exemption, the Supreme Court itself has never directly settled the issue of just how far the exemption extends, leaving pervading uncertainty in its scope that weighs against reliance.

But even if professional baseball's reliance on the exemption were to be accepted as strong—perhaps because it has persisted for so many years—the totality of poor performance on other constitutional stare decisis factors weighs heavily against continued application of stare decisis. In nearly every other factor, *Flood* and the exemption's flaws

133. Murrill, *supra* note 72, at 18.

134. *See* United States v. Int'l Boxing Club of N.Y., 348 U.S. 236, 243–45 (1955).

135. *See* NCAA v. Alston, 141 S. Ct. 2141, 2159 (2021).

136. *See* Lambert v. People of the State of California, 355 U.S. 225, 232, 78 S. Ct. 240, 245, 2 L. Ed. 2d 228 (1957) (Frankfurter, J., dissenting).

137. *See* Piazza v. MLB, 831 F. Supp. 420, 438 (E.D. Pa. 1993) (limiting MLB's antitrust exemption to its reserve system).

have been laid bare as anachronistic and legally untenable. As the Court has consistently stated, its stare decisis analysis is not an elemental test, but is instead conducted by weighing various and specific factors.[138] By that logic, notwithstanding that the case for stare decisis protection loses by a score of four to one, when the *weight* of the factors is considered, it may even be a shutout.

CONCLUSION

Professional baseball's antitrust exemption has survived for half a century on life support. When, in 1972, the Supreme Court announced that its outdated constitutional interpretation no longer supported the exemption, the protection from antitrust scrutiny that professional baseball enjoys was left legally underpinned only by statutory stare decisis. In the last several years, the Supreme Court has not only applied constitutional stare decisis factors to strike down longstanding precedent, but it has shown a marked skepticism towards protectionism in sports-related antitrust. With a new challenge to professional baseball's antitrust exemption waiting in the wings, this Comment has argued that because the original case carving out the exemption was based on a constitutional interpretation, it is *constitutional* stare decisis, not *statutory* stare decisis that should be applied to the challenge. And applying the *Dobbs*' constitutional stare decisis factors to *Flood* and the exemption, the anachronistic and ripe-for-overruling antitrust exemption strikes out.

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138. *See* Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31, 138 S. Ct. 2448, 2478 (2018).

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