IN THE SUPREME COURT OF FLORIDA

CASE NO. _____

ROBERT A. BUTTERWORTH,
Attorney General of
the State of Florida,

Petitioner,

vs.

THE NATIONAL LEAGUE OF
PROFESSIONAL BASEBALL CLUBS
and WILLIAM D. WHITE,
as President,

Respondent.
_____/

ON DISCRETIONARY REVIEW FROM THE DISTRICT COURT
OF APPEAL OF FLORIDA, FIFTH DISTRICT

AMICUS CURIAE BRIEF
(Revised*)

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*Revised Amicus Curiae Brief contains no substantive changes. All revisions are for grammatical purposes..

Exhibit "A"

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STATUTES/RULES

I. STATEMENT OF THE CASE AND FACTS

There are only two major leagues of professional baseball: the National League of Professional Baseball Clubs ("National League"), and the American League of Professional Baseball Clubs ("American League"). These two leagues, their executives, the 28 individually-owned-and-operated constituent member baseball franchises, the various franchise owners, and the Office of Major League Baseball (its Commissioner and executives) comprise what is commonly known and referred to as "major league baseball" (hereinafter jointly referred to as "Baseball").

The professional baseball franchise known as the San Francisco Giants ("Giants") is located in San Francisco, California. The Giants franchise is a constituent member of the National League and is owned by Robert Lurie. (R.1). On August 6, 1992, Lurie signed a letter of intent to sell the Giants for $115 million to a group of investors from the Tampa/St. Petersburg, Florida area ("Tampa Investors"). (R.13). The interests of the Tampa Investors was bifurcated. The Tampa Investors not only desired to purchase the Giants, they also hoped someday in the not-too-distant future they could apply to (and win the approval of) Baseball's Relocation Committee; the Tampa Investors would eventually seek to relocate the Giants to Florida. (R.13). Baseball's Ownership Committee approved of the Tampa Investors as *purchasers* of the Giants. (R.13). There was one remaining hurdle before the Tampa Investors could actually acquire a control interest in the Giants -- the approval of three-quarters of the 28 clubs in the two major leagues. (R.235).

In spite of the approval and recommendation of the Ownership Committee -- and apparently fearing that if the Tampa Investors purchased the Giants franchise they would be in

a strong position to subsequently persuade Baseball's Relocation Committee to approve of the relocation of the Giants to Florida -- certain persons inside Baseball engaged in an extraordinary campaign to undercut the Tampa Investors' offer to purchase the Giants. It was believed that the campaign of Baseball amounted to a civil conspiracy with persons *inside* and *outside* of "baseball"; furthermore, it was believed that the activity took place during the period of August 1992 through October 1992 (a time when the agreement between Lurie and the Tampa Investors was awaiting approval by the 28 club owners). (R.13). On November 10, 1992 Baseball (e.g., the 28 owners) voted against approval of the *sale* of the Giants franchise to the Tampa Investors. Less than two weeks later, Lurie sold a part of the Giants to a San Francisco-based investor group, while retaining the remainder. It was believed the San Francisco-based investor group was assembled (a) while the Lurie-Tampa Investor agreement was awaiting approval, and (b) as a result of the believed conspiratorial conduct of Baseball. Today, the Giants remain in San Francisco.

Suspecting that Baseball possibly violated either the federal or Florida antitrust laws, the Office of the Attorney General of the State of Florida ("Petitioners") began an investigation of Baseball's conduct as it relates to the underlying efforts of the Tampa Investors to *purchase* an ownership interest in the Giants. (R.14-15). Pursuant to Section 542.28, Florida Statutes, petitioner issued Antitrust Civil Investigative Demands ("CIDs") upon certain parties who are a part of Baseball. Specifically, the CIDs were served upon the National League and William D. White, as its president ("Respondent" and/or "Baseball"). (R.2, R.15).

Baseball, asserting it is exempt from federal and state antitrust regulation, sought venue in the Circuit Court for the Ninth Judicial Circuit in and for Osceola County, Florida, and filed

a petition seeking relief in the form of setting aside the CIDs. (R.1-4). Petitioner filed a cross-motion (and memorandum of law) to compel compliance with the CIDs. (R.12-28). In turn, Baseball filed a responsive memorandum of law in support of the petition to set aside. (R.29-64). The trial court entertained arguments, and on January 4, 1993 the court issued an Order which: (a) granted Baseball's petition to set aside the CIDs; and (b) denied petitioner's motion to compel. (R.65-68).

Petitioner timely filed a notice of appeal with Florida's District Court of Appeal for the Fifth District. The parties filed respective briefs; the Attorney General as Appellant (R.69-114), and Baseball as Appellee (R.115-154). Without opinion and analysis, the intermediate appellate court affirmed the trial court's decision, however, the court certified the following question to the Florida Supreme Court as a question of great public importance:

> DOES THE ANTITRUST EXEMPTION FOR BASEBALL RECOGNIZED BY THE UNITED STATES SUPREME COURT IN FEDERAL BASEBALL CLUB OF BALTIMORE, INC. V. NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS, 259 U.S. 200, 42 S. CT. 200, 42 S. CT. 465, 66 L. Ed. 898 (1922) AND ITS PROGENY EXEMPT ALL DECISIONS INVOLVING THE SALE AND LOCATION OF BASEBALL FRANCHISES FROM FEDERAL AND FLORIDA ANTITRUST LAW?

(R.233-234).

II. ISSUES BEFORE THE COURT

A. WHETHER THE SCOPE OF THE PROFESSIONAL BASEBALL ANTITRUST EXEMPTION IS UNLIMITED.

B. WHETHER THE SALE OF AN OWNERSHIP INTEREST IN AN EXISTING PROFESSIONAL BASEBALL FRANCHISE REQUIRES CONSIDERATIONS WHICH ARE UNIQUE

ONLY TO BASEBALL. ADDITIONALLY, WHETHER RELOCATION OF A PROFESSIONAL BASEBALL FRANCHISE REQUIRES CONSIDERATIONS WHICH ARE UNIQUE ONLY TO BASEBALL.

C. WHETHER AN UNDUE BURDEN IS PLACED ON INTERSTATE COMMERCE IF STATES REGULATE THE SALE OF AN OWNERSHIP INTEREST IN AN EXISTING BASEBALL FRANCHISE OR THE RELOCATION OF A BASEBALL FRANCHISE.

III. SUMMARY OF ARGUMENT

A. The so-called professional baseball antitrust exemption is not unlimited. This limited exemption was created by the U.S. Supreme Court in 1922 on two very narrow issues. The 1922 case, as well as its progeny (two subsequent decisions by the Supreme Court), express the breadth and scope of what most assuredly is a limited exemption from antitrust regulation.

B. The sale of an ownership interest in a baseball team involves investment and financing strategies which are no more unique than any other multimillion dollar business transaction. Baseball is a multi-billion dollar industry in which very few majority shareholders (owners) are involved in the day-to-day management of the corporation. Likewise, the relocation of a baseball franchise (corporation) to a fertile business climate (in the instant case, a community with one of the nation's top television markets and a state-of-the-art indoor baseball facility) does not require any business considerations which are unique only to an industry such as Baseball.

C. The existing body of case law has never held that state regulation of collusive conduct on the part of Baseball, when the underlying transaction is an effort by a consumer to purchase an existing professional baseball franchise, would burden interstate commerce. The

United States Supreme Court does not look favorably upon preempting state regulation of anti-competitive behavior.

IV. ARGUMENT

Jurisdiction, and the question certified to this Honorable Court is pursuant to 9.030(a)(2)(A)(v), Florida Rules of Appellate Procedure (1993).

A. Respondent asserts that in the case of Federal Baseball Club of Baltimore v. National League, 259 U.S. 200, 42 S. Ct. 465, 66 L. Ed. 898 (1922), the Supreme Court held that baseball was not subject to antitrust laws. (R.32, R.124). This all-encompassing and blanketed concept of what the purported holding was in Federal Baseball is nothing more than an attempt to give a limited exemption the tentacles of infinity. Even the trial court in the instant case disagrees with Respondent's assertion. According to Judge R. James Stroker:

> "The exemption uniquely applies to professional baseball and quite clearly contradicts the entire existing body of law concerning the application of antitrust regulation. It continues to exist because it is a longstanding and "established aberration" in the law which is entitled to the benefit of stare decisis (citation omitted).
>
> While baseball's antitrust exemption clearly continues to exist, it is not unlimited in its scope. Because the exemption is aberrant and rests solely on stare decisis, lower courts have given it an increasingly narrow interpretation."

(R.66). Contrary to what Baseball would like to believe, the exemption is not limitless. After all, as the petitioner notes, even the First Amendment has limits. (R.20). Federal Baseball and its progeny, Toolson v. New York Yankees, Inc., 346 U.S. 356, 74 S. Ct. 78, 98 L. Ed. 64 (1957) and Flood v. Kuhn, 407 U.S. 258 , 92 S. Ct. 2099, 32 L. Ed. 2d 728 (1972), expressly illustrate that the so-called baseball exemption has limitations. Under fact-specific analyses, the court in Federal Baseball, Toolson and Flood construed the application of the antitrust laws to professional baseball and established the scope of any resultant exemption.

The baseball exemption from antitrust regulation finds its roots in the seventy year-old case of Federal Baseball. The specific facts of Federal Baseball are important and should not be reviewed without a close analysis. In Federal Baseball, the pertinent facts were: (a) eight clubs who comprised what was known as the "Federal League" was a somewhat worthy financial-competitor league against the two major leagues, the American and National Leagues. Of course this competition resulted in a war between the Federal League and the two major leagues. A settlement of this baseball war was reached, at least with some of the clubs from the rival Federal League. Owners in the two major leagues allowed seven of the eight Federal League clubs to join the major leagues as new-member clubs. The only remaining team in the Federal League was the Federal Base Ball Club of Baltimore ("Baltimore Club"). However, the Baltimore Club was essentially put out of business because it could not find any professional baseball players.[1]

Apparently dissatisfied in not becoming a new member-club in the two major leagues, and not having access to any players to form new teams in what was left of the Federal League, the Baltimore Club sued the major leagues in federal court. The Baltimore Club alleged that the conduct of the major leagues in using the reserve clause to dry-up the pool of professional talent, as well as the conduct of Baseball in not allowing the Baltimore Club into either of the two major leagues as a new member-club, was violative of the federal antitrust laws designed to prevent monopolistic activity. Essentially, there was a monopolization by the two major leagues

[1] Professional baseball players in the two major leagues could not cross-over and join the Baltimore Club or any start-up team in a rival league because of the "reserve clause" in every major league baseball player's contract. The reserve clause was the term commonly used to describe the system by which teams in the two major leagues controlled the rights to their players beyond the expiration of the player's contract with the team. This essentially prohibited a player from going to another team or league for fear the player would be identified as a traitor.

in the *putting on of exhibitions of professional baseball games*. The Baltimore Club could not put on an exhibition because it had no players to form a team and no one to play an exhibition with.[2]

As to the holding in Federal Baseball, the author of the opinion, Justice Oliver Wendell Holmes, wrote that the business of baseball is the putting on of exhibitions of professional baseball, which is an *intra*state affair, and therefore, the federal antitrust laws governing *interstate* commerce were inapplicable. Arguably, this amounted to a federal antitrust exemption for Baseball as to its decisions to: (a) not admit a new member-club, and (b) to prevent its players from leaving a team in mid-season, etc. (i.e., reserve clause). The Supreme Court did not state that even if the activities of organized baseball amounted to interstate trade or commerce those activities would be exempt from *federal* antitrust laws. See Toolson, 346 U.S. at 360. The petitioner herein has have justifiably criticized the reasoning of Justice Holmes which concluded that the "putting on of exhibitions of baseball is not interstate commerce." The petitioner is not alone (citations omitted). (R.90). The United States Supreme Court has even reversed the conclusion of Justice Holmes in this regard.[3] What has evolved since the 1922 case was decided and the so-called baseball exemption was born, is an effort to stretch that case's language and perpetuate Justice Holmes' flawed reasoning. The chief culprit of this effort is Baseball, whom whenever named as a defendant in an a lawsuit alleging collusive activity on it's part, consistently assert a broad-brush application of a narrow antitrust exemption from

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[2] See also the opinion of the Circuit Court, Federal Base Ball Club of Baltimore v. National League, 269 F. 681 (D.C. Cir. 1920); and State of Wisconsin v. Milwaukee Braves, Inc., 144 N.W.2d 1, 12-13 (1966).

[3] See Flood v. Kuhn, 407 U.S. 258, 92 S. Ct. 2099, 32 L. Ed. 2d 728 (1972) (the third case in this trilogy of Supreme Court cases involving the baseball exemption).

federal law ... an exemption which is based upon the flawed reasoning of Justice Holmes.

Second, Toolson. Thirty-one years after Federal Baseball, the Supreme Court was once again faced with professional baseball and application of federal antitrust laws. In 1953, the complaint of New York Yankees outfielder George Toolson -- and a host of professional baseball players who filed companion cases -- reached the high court. See Toolson v. New York Yankees, 346 U.S. 356, 74 S. Ct. 78, 98 L. Ed. 64 (1953). These players filed federal antitrust claims in federal court against Baseball regarding the reserve clause in their contracts. Without re-examination of the underlying issues (as the court points out), and critical of Justice Holmes' reasoning, the Toolson court, in a short per curiam opinion, affirmed the lower court decision dismissing the lawsuit of the players. The court in Toolson followed Federal Baseball solely because stare decisis ruled the day. See Flood v. Kuhn, 407 U.S. at 276 (Toolson was a narrow application of the rule of stare decisis). Today however, anyone asserting that under any given set of circumstances stare decisis should still rule the day, should take note of the Supreme Court's recent opinion in Payne v. Tennessee, 111 S. Ct. 2597 (1991). "Stare decisis needn't be followed when governing decisions are unworkable or are badly reasoned." Id, 111 S. Ct. at 2609.

Nevertheless, the Toolson case is important for two reasons. First, the case establishes that the so-called "business of baseball" which is exempt from antitrust regulation under a Federal Baseball analysis is "the giving of exhibitions of baseball games between professional baseball clubs."[4] Baseball, as a party defendant, has consistently tried to expand the definition

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[4] Toolson v. New York Yankees, Inc., 346 U.S. at 356-57, 74 S.Ct. at 78, 98 L.Ed. at 68 (1953). See also Federal Baseball Club of Baltimore v. National League, 259 U.S. at 209, 42 S. Ct. at 466 (the "business of baseball" is giving exhibitions of base ball, which are purely state affairs).

and meaning of the "business of baseball." See (*e.g.*, R.32, R.37, R.41, and R.127-28). The second reason why Toolson is important is the fact that if one takes a close look at the case, as well as Federal Baseball, the important part of *putting on the exhibition* is having an adequate supply of players; therefore, the reserve clause in player contracts appeared, at least at that time, to be a unique way in which to satisfy the needs of Baseball to keep a stable supply of players in the two major leagues. It is thus concluded that the first two cases in this trio of baseball cases, Federal Baseball and Toolson, establish: (1) those cases contained allegations of *federal* antitrust violations; (2) the facts in those cases were limited to either the *forced inclusion of a non-member club* into the either of the two major leagues or the *reserve clause* in player contracts; and (3) the opinion of the Court in the second case, Toolson, was based strictly upon the doctrine of stare decisis.

The third and final case in which the Supreme Court has specifically dealt with application of antitrust laws to the sport of professional baseball is Flood v. Kuhn, 407 U.S. 258, 92 S. Ct. 2099, 32 L. Ed. 2d 728 (1972). This case reached the Supreme Court in 1972 on the appeal of professional baseball player Curtis Flood. Like New York Yankees outfielder George Toolson, Flood took on Baseball's owners and league executives because of the reserve clause contained in the contracts of professional baseball players. As Justice Blackmun noted in the opening paragraph of Flood, "the Court is asked specifically to rule that professional baseball's reserve [sic] clause is within the reach of the federal antitrust laws (emphasis added)." Id, 407 U.S. at 259, 92 S. Ct. at 2100.

In noting the scope of the baseball exemption, the Flood Court held "it seems appropriate now to say that ... professional baseball is a business engaged in interstate commerce .... [w]ith

its *reserve system* enjoying exemption from the federal antitrust laws, baseball is, in a very distinct sense, an exception and an anomaly. Federal Baseball and Toolson have become an aberration confined to baseball (emphasis added)." Flood, 407 U.S. at 282, 92 S. Ct. at 2112.

Thus, there are only two instances in which the Supreme Court expressly holds that this *judicially* created antitrust exemption for Baseball can apply: (a) when the underlying activity concerns enforcing the reserve clause in player contracts; and (b) when the underlying activity is aimed at preventing a non-member club from forcing its way into one of the two major leagues. A unique characteristic and need for the exemption under these two scenarios sounds somewhat plausible at best. As to players, there is a need to prevent the wealthiest team or wealthiest owner from buying-up all of the top players. As to a non-member club forcing its way into the league, if this were allowed, the league structure (*i.e.*, the number of teams per division would never find stability).[5] Therefore, the scope of the baseball exemption, as set forth by the Supreme Court, seems to be limited to the two characteristics and needs which are arguably unique only to baseball: players and league/divisional alignments (each involves the actual "putting on of the exhibition before the fans").

Respondent asserts that some inferior courts have expanded the baseball exemption to include matters relating to the relocation of franchises. For this proposition, respondent cites State of Wisconsin v. Milwaukee Braves, 144 N.W.2d 1 (1966). In the Milwaukee Braves case, the court held that Wisconsin antitrust law was inapplicable to the conduct of Baseball which surrounded the relocation of the Milwaukee Braves to Atlanta. However, the court specifically

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[5] The two major leagues presently are comprised of two divisions per league. The National League has an Eastern Division comprised of 7 teams, and a Western Division comprised 7 teams. Likewise, the American League has an Eastern Division comprised of 7 teams, and a Western Division comprised of 7 teams. The member teams play a pre-determined schedule of 162 regular season games.

noted that the type of decision involved in that case, in essence, was *whether or not to admit a new member* team in order to replace an existing member which desired to move to Atlanta. Id, 144 N.W.2d at 15. The court went on to conclude that the exemption does not cover every type of business activity to which a baseball club or league might be a party. Id. Respondent then cites the per curiam opinion in Professional Baseball Schools & Clubs, Inc. v. Kuhn, 693 F. 2d 1085 (11th Cir. 1982). Since per curiam opinions provide no legal analysis of underlying facts and issues, respondent's reliance upon Professional Baseball Schools to give an expansive scope of a limited exemption is misguided. As a matter of fact, a close analysis of Professional Baseball Schools reveals that the case involved players. Not only are these cases non-binding, they are clearly distinguishable. The opinion of the circuit court in the instant case is also worth noting here. A close analysis of Judge R. James Stroker's Order illustrates that the only thing which he expressly held to be exempt from antitrust regulation was the matter of *relocation*:

> "[I]f Baseball's decision to keep the Giants in San Francisco is exempt from antitrust laws, then the necessary discussions, negotiations, and associations leading to that [relocation] decision [by Baseball] must also be protected and exempted business activity. While the actions and decisions of baseball in the area of league structure may give rise to civil causes of action sounding in contract or tort, they cannot form the basis for violations of antitrust law."

(R.67-68).

Finally, while the relocation issue and the fact that respondent can cite no case where an existing owner would not have an antitrust claim against Baseball if Baseball utilized unjustified collusive conduct to prevent that owner from relocating his franchise, it is clear that anti-competitive conduct toward those who seek to purchase an ownership interest in an existing team has never been considered by any court to fall under the so-called exemption. See Piazza v. Major League Baseball, ___ F. Supp. ___ (E.D. Pa., August 4, 1993) (Case No. 92-7173).

(R.155, 207); see also Postema v. National League of Professional Baseball Clubs, 799 F. Supp. 1475 (S.D.N.Y. 1992) (rejecting Baseball's argument that a female umpire's state antitrust claims were preempted by the so-called baseball exemption, the court explained that "the exemption does not provide baseball with blanket immunity for anti-competitive behavior in every context in which it operates").

In a nutshell, the scope of the baseball exemption is not unlimited. The trilogy of U.S. Supreme Court cases hold, if anything, the breadth and scope of the baseball exemption is limited to: (a) that conduct of Baseball which pertains to the reserve clause in player contracts, and (b) forced inclusion of a non-member club.

B. Throughout the term of this litigation, respondents have "lumped together" the act of *purchasing* a team and the act of *relocating* a team. The reason for this is quite simple. There is not one single case which has held that the singular act of buying an ownership interest in an existing major league baseball franchise falls under the scope of the limited baseball exemption. See Piazza v. Major League Baseball ___ F. Supp. ___ (E.D. Pa., August 4, 1993) (Case No. 92-7173) (anti-competitive conduct toward those who seek to purchase an ownership in an existing team has never been considered an essential part of the exhibition of baseball games, thus the conduct has never been afforded immunity from antitrust regulation).

The individual franchises are investments, plain and simple. The 28 teams are individual corporations operating for profit. Like any other corporation, the individual teams have a board of directors, executive officers, clerical and staff employees, etc. Until recently, professional baseball franchise owners enjoyed tremendous tax benefits if they owned at least eighty-percent of the franchise. In other words, baseball is a business. There is nothing unique about the way

the Chicago Cubs are run than there is for the way that a traveling circus is run. A baseball corporation's largest traveling asset is probably the roster of its performing players. The largest traveling asset of a good circus is probably also its roster of performers. If you want to purchase a baseball corporation you review the financial statements of the corporation, etc. If you want to buy a circus, it appears you would take some of the very same steps in evaluating the earning potential on your investment. Any *unique* considerations in purchasing a baseball corporation certainly does not appear to be unique only to Baseball. In the instant case, the Tampa Investors were poised to purchase the San Francisco Giants, the only unique consideration (to which only Baseball is privileged) is the fact that Baseball was able to act with reckless and malicious impunity under the guise of a claimed antitrust exemption.

Relocation. Although there is some case law on application of the exemption to the underlying conduct of baseball regarding matters of relocation, the instant case does not present an issue which is ripe for analysis in this regard. The governing rules and procedures of Baseball specifically set forth that the purchase of an interest in an existing member club is distinct from an effort to relocate an existing club. A prerequisite to relocating a club -- is to own a club. As to ownership, the Major League Agreement, the governing document between the two major leagues and their owners, specifies in pertinent part:

> "The vote of three-quarters of the Clubs in the League in which the described transaction is occurring, together with a majority vote of the Clubs in the other League, shall be required for the approval of any of the following:
>
> (ii) The sale or transfer [sic] of a control interest in any Club. [sic]."

(emphasis added). Major League Agreement, Art. V, sec. 2 (ii). (R.235). That same Agreement provides the procedures of the leagues as to relocation of a franchise:

"The vote of three-quarters of the Clubs in League in which the described transaction is occurring, together with a majority vote of the Clubs in the other League, shall be required for the approval of any of the following:

(iii) The relocation of a club in either League's Circuit; provided, however, the transfer of a club to any city in the Circuit of the other Major League shall require the three-quarters approval of the Clubs in such other League, as provided in Major League Rule 1(c)(1).

Major League Agreement, Art. V, sec. 2 (iii). (R.235). Part of the Major League Agreement includes the Major League Rules ("MLR"). The MLR also specifically address relocation:

"IF A MAJOR LEAGUE CLUB transfers its location to another city, such club shall notify the Commissioner of the transfer as soon as the agreements or proceedings necessary to effect such transfer and relocation have been completed. [sic]."

Major League Rules, Rule 1(c)(2). (R.236).

The Tampa Investors never got past the "purchase" aspect in their efforts to acquire the Giants. This bifurcated consideration was a prerequisite. The claimed conspiracy in the instant case must start with a determination as to whether or not there was a civil conspiracy to prevent the Tampa Investors from *purchasing* the San Francisco Giants. Any secondary consideration, such as collusive conduct to prevent an "owner" from relocating a franchise would be premature under the facts as known at this time.

Lastly, respondent asserts that the efforts of the Tampa Investors to acquire an ownership interest in the Giants is a matter pertaining to league structure. (R.38-39). Nothing could be further from being an accurate assertion. If the ownership of an existing franchise were to change hands, absolutely nothing about the "structure" of the league would change. There would still be 28 teams, and they would still play 162 games a year.

C. Respondent asserts that any state regulation of the sale of an any ownership interest (partial or whole) in an existing baseball franchise would place an undue burden on interstate

commerce. (R.42). The same argument is made by the respondent with respect to the relocation of professional baseball franchises. (R.42). Baseball cites two cases to perpetuate this mythical claim. (R.44). Respondent cites State of Wisconsin v. Milwaukee Braves, Inc., 144 N.W.2d 1 (1966) and the decisions of the Second Circuit and the Supreme Court in Flood v. Kuhn:

> [I]t is apparent that each league extends over many states, and that, if state regulation were permissible, the internal structure of the leagues would require compliance with the strictest antitrust standard. Flood, 443 F. 2d at 268.
>
> Hence, as the burden on interstate commerce outweighs the states' interests in regulating baseball's reserve system, the Commerce Clause precludes the application here of state antitrust law (emphasis added). Flood, 407 U.S. at 284, 92 S. Ct. at 2113, 32 L. Ed. 2d at 744-45.

Respondent's use of these cases is misplaced. As set forth earlier in this brief, the Wisconsin Supreme Court summarized its holding in Milwaukee Braves as a holding which gave foremost consideration to the fact that the State of Wisconsin was asking Baseball to admit a new member team to replace the Braves. The court furthered that if each state were allowed to apply its own laws to force baseball to admit a new-member club to a deserving community then there would perhaps be havoc. The court never held that any form of state antitrust regulation to certain conduct unrelated to forced inclusion would be inapplicable. As to the opinions in Flood, both the Court of Appeals and the Supreme Court stated that the interests of the states in regulating baseball's reserve system was outweighed by the undue burden on interstate commerce.

Essentially, respondent's *uniformity* argument is an attempt to assert a federal *preemption* argument, and to give Baseball unfettered discretion to be above any and all laws. However, preemption must find its root in some Congressional policy. In California v. ARC America Corp., 490 U.S. 93, 102 (1989), the Supreme Court noted its strong opposition for preemption

in the context of regulation of anti-competitive behavior. The ARC America Court recognized that Congress must provide an express statement that state law in a particular area is preempted. The Court's preemption analysis in ARC America, which resulted in a holding that federal antitrust laws were intended to supplement and not displace state antitrust remedies, turned on Congressional *policy* as described in the Clayton Anti-trust Act. In the instant case, Baseball has an even weaker argument. The purported baseball exemption does not find its source in any statutory statement of Congress.

Lastly, respondent claims that the plain language of the Florida Antitrust Act is a basis for inapplicability of the Act to any underlying transaction which involves either the sale of an ownership interest in a professional baseball franchise, or the relocation of a professional baseball franchise. (R.45). The Florida Antitrust Act provides, in pertinent part: "Any activity or conduct ... exempt from the provisions of the antitrust laws of the United States is exempt from the provisions of this chapter." § 542.20, Fla. Stat. (1991). As set forth above, there are only two possible circumstances in which Baseball might be exempt from federal antitrust regulation: (a) when the underlying activity concerns enforcing the reserve clause in player contracts; and (b) when the underlying activity is aimed at preventing a non-member club from forcing its way into one of the two major leagues. Neither of those circumstances are at issue here.

V. CONCLUSION

The professional baseball antitrust exemption is an aberration which finds its roots in the 1922 Supreme Court decision in Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs. Indeed, Justice Oliver Wendell Holmes, author of the opinion,

was not having one of his better days as a jurist. However, much is ascertained from the opinion he wrote in the Court's behalf. The exemption afforded by Federal Baseball and its progeny is a limited exemption. The activity in which Baseball might be exempt from federal antitrust regulation is limited to: (a) when the underlying activity concerns enforcing the reserve clause in player contracts; and (b) when the underlying activity is aimed at preventing a non-member club from forcing its way into one of the two major leagues. The recent federal court decisions in Postema v. National League of Professional Baseball Clubs, and Piazza v. Major League Baseball, as well as the U.S. Supreme Court case of Flood v. Kuhn and its parents, dictate that the courts review the underlying activity of baseball and the surrounding transaction(s) at issue on a case-by-case basis to determine if the activity and transaction falls under the limited exemption.

As to an effort to acquire an ownership interest in an existing franchise, and subsequent efforts to relocate that franchise, these matters call for *bifurcated* considerations and should be view in this manner as a matter of law. In the instant case, the trial court did not view the sale of the San Francisco Giants as a separate transaction, when indeed it was. The relocation of a baseball franchise was a separate and distinct transaction, for which even the Major League Baseball rules provide for different considerations. Indeed, there can be no relocation of a baseball team unless one owns a baseball team. Acquiring majority ownership is a prerequisite, and therefore a distinct transaction itself. Because the trial court apparently viewed the circumstances surrounding the efforts of the Tampa Investors' efforts to purchase the San Francisco Giants and *possibly* relocate the franchise to the St. Petersburg (Florida) Suncoast Dome at a subsequent date -- as one single transaction -- the trial court's determination that the

entire underlying transactions and the surrounding activity was exempt, was error as a matter of law. The order quashing the CIDs should be vacated and the trial court should be instructed to grant the Petitioner's Cross-Motion to Compel Compliance.

047

FILED
SID J. WHITE
OCT 14 1993
CLERK, SUPREME COURT
By _____ Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CASE NO. 82,287

ROBERT A. BUTTERWORTH,
Attorney General of
the State of Florida,

Petitioner,

vs.

THE NATIONAL LEAGUE OF
PROFESSIONAL BASEBALL CLUBS
and WILLIAM D. WHITE,
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Respondent.
_____/

NOTICE OF FILING REVISED AMICUS CURIAE BRIEF

Plaintiffs, FRANK L. MORSANI, individually, and for the use and benefit of TAMPA BAY BASEBALL GROUP, INC., individually, by and through their undersigned counsel, hereby provide notice of filing of Plaintiffs' *revised* Amicus Curiae Brief, and further state:

1. On October 4, 1993, plaintiffs filed an Amicus Curiae Brief.

2. Revisions to the Amicus Curiae Brief are non-substantive changes which reflect punctuation and/or grammatical corrections to the original Amicus Curiae Brief filed on October 4, 1993. The *revised* Amicus Curiae Brief is hereby attached (Exhibit "A").

Dated this 11th day of October, 1993.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by mail this 11th day of October, 1993 to: Jerome W. Hoffman, Esquire, Assistant Attorney General, Department of Legal Affairs, Antitrust Section, PL-01, The Capitol, Tallahassee, Florida 32399-1050; Gregory A. Presnell, Esquire, Akerman Senterfitt & Eidson, Post Office Box 231, Orlando, Florida 32802; Robert J. Kheel, Esquire, Willkie Farr & Gallagher, 153 East 53rd Street, New York, New York 10022.

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