

## NOTE

### BASEBALL'S MINOR LEAGUERS CALL FOUL: HOW THE SAVE AMERICA'S PASTIME ACT STRIKES OUT WITHIN STATE LINES

#### I. INTRODUCTION

It is becoming more frequent for major league professional baseball players to have their salaries reach hundreds of millions of dollars.<sup>1</sup> Due to those staggering numbers, it is reasonable for the public to assume that all professional baseball players have the highest quality of living.<sup>2</sup> However, that is not always the case.<sup>3</sup> At the lower levels of professional

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1. See, e.g., Emily Caron, *Padres, Manny Machado Agrees to Biggest Free Agent Contract in History*, SPORTS ILLUSTRATED (Feb. 19, 2019), <https://www.si.com/mlb/2019/01/19/manny-machado-padres-10-year-300-million-deal-biggest-free-agent-contract-ever> (stating that in February 2019, Manny Machado signed a ten-year, \$300 million contract with the San Diego Padres); Jesse Dougherty, *Nationals and Stephen Strasburg Agree to Seven-Year, \$245 Million Deal*, WASH. POST (Dec. 9, 2019, 6:54 PM), <https://www.washingtonpost.com/sports/2019/12/09/stephen-strasburg-contract-nationals/>; Kyle Lesniewski, *Milwaukee Brewers, Christian Yelich Nearing Nine-Year, \$215 Million Contract Extension, Per Report*, SB NATION: BREW CREW BALL (Mar. 3, 2020, 3:40 PM), <https://www.brewcrewball.com/2020/3/3/21163641/milwaukee-brewers-christian-yelich-nearing-200-million-contract-extension-per-report/>; Brian Pascus, *Angels Star Mike Trout Reportedly Finalizing Richest Contract in Sports History: 12 Years, \$430 Million*, CBS NEWS (Mar. 19, 2019, 12:59 PM), <https://www.cbsnews.com/news/mike-trout-contract-angels-richest-sports-history-12-years-430-million-report/>; Jeremy Venook, *Two Superstars Gamble on Record-Breaking Deals*, ATLANTIC (Mar. 13, 2019), <https://www.theatlantic.com/entertainment/archive/2019/03/bryce-harper-or-manny-machado-better-mlb-contract/584644> (stating that in March 2019, Bryce Harper signed a thirteen-year, \$330 million contract with the Philadelphia Phillies); Jabari Young, *Gerrit Cole Agrees to Historic \$324 Million Deal with Yankees, Reports Say*, CNBC (Dec. 11, 2019, 5:46 PM), <https://www.cnbc.com/2019/12/11/gerrit-cole-agrees-to-historic-324-million-deal-with-yankees-reports.html>.

2. See *infra* Part II.A.

3. Chris Isidore, *Battle to Keep Minor League Baseball Players' Pay Below Minimum Wage*, CNN (July 1, 2016, 1:32 PM), <https://money.cnn.com/2016/07/01/news/companies/minor-league-baseball-pay/index.html>. Most minor leaguers make below minimum wage. *Id.* There have only been five minor leaguers who signed a long-term contract before making their Major League Baseball (“MLB”) debut: Jon Singleton of the Houston Astros for five years, \$10 million in June 2014; Scott Kingery of the Philadelphia Phillies for six years, \$24 million in March 2018; Eloy Jimenez of the Chicago White Sox for six years, \$43 million in March 2019; Evan White of the Seattle Mariners for six years, \$24 million in November 2019; and Luis Robert of the Chicago White Sox for six years, \$50 million in January 2020. Mike Axisa, *Five Prospects Who Could Follow Luis Robert and Sign*

baseball, players make approximately \$1,100 per month and are not eligible for overtime pay or benefits.<sup>4</sup> These players must attend mandatory spring training for a month, but they are not compensated for that time.<sup>5</sup>

During Game Two of the 2019 American League Divisional Series between the Minnesota Twins and the New York Yankees, Yankees fans chanted “Uber! Uber!” at the Twins’ starting pitcher Randy Dobnak.<sup>6</sup> Six months earlier, while attending 2019 spring training under a minor league contract, Dobnak had to drive for Uber in order to survive financially.<sup>7</sup> The media characterized this situation as a “feel-good story,”<sup>8</sup> but that was far from the case.<sup>9</sup> Minor League Baseball (“MiLB”) players are not paid nearly enough to make ends meet,<sup>10</sup> even though Major League Baseball (“MLB”) has more than enough money to pay these players at least minimum wage.<sup>11</sup>

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*Long-Term Extensions Before Making Their MLB Debut*, CBS SPORTS (Jan. 2, 2020, 4:33 PM), <https://www.cbssports.com/mlb/news/five-prospects-who-could-follow-luis-robert-and-sign-long-term-extensions-before-making-their-mlb-debut>.

4. Isidore, *supra* note 3.

5. Ted Berg, *MLB Teams Need Catchers at Spring Training. They Just Don’t Want to Pay Them*, USA TODAY (Mar. 6, 2019, 9:00 AM), <https://ftw.usatoday.com/2019/03/mlb-spring-training-no-pay-minor-leaguers>.

6. Andy Nesbitt, *Yankees Fans Ripped for Chanting ‘Uber!’ at Twins’ Starting Pitcher*, USA TODAY (Oct. 6, 2019, 8:58 AM), <https://www.usatoday.com/story/sports/ftw/2019/10/06/yankees-fans-ripped-for-chanting-uber-at-twins-starting-pitcher/40270101>.

7. Bob Nightengale, *From Uber Driver to Postseason Starter, Twins’ Randy Dobnak May be Baseball’s Best Story*, USA TODAY (Oct. 5, 2019, 12:02 PM), <https://www.usatoday.com/story/sports/mlb/columnist/bob-nightengale/2019/10/05/mlb-playoffs-twins-randy-dobnak-uber-driver-alds-starter/3879148002>.

8. *See, e.g., id.*; Zach Braziller, *Yankees Get Best of Twins’ Uber-Driving Success Story*, N.Y. POST (Oct. 6, 2019, 5:15 AM), <https://nypost.com/2019/10/06/yankees-get-best-of-twins-uber-driving-success-story>; Kathleen Elkins, *MLB Pitcher Randy Dobnak, Who Was Just Called up to the Majors, Has Been Driving for Uber and Lyft for 2 Years*, CNBC (Sept. 6, 2019, 2:11 PM), <https://www.cnn.com/2019/09/05/twins-pitcher-randy-dobnak-drives-for-uber-and-lyft-on-the-side.html>; Mike McFeely, *McFeely: ‘No Regrets’ is Baldelli’s Mantra as Twins Try to Stay Alive*, INFORUM (Oct. 7, 2019, 6:00 PM), <https://www.inforum.com/sports/baseball/4710369-McFeely-No-regrets-is-Baldellis-mantra-as-Twins-try-to-stay-alive>; Ben Walker, *Driven Out: Twins Rookie - and Ex-Uber Guy - Tagged by Yanks*, YAHOO SPORTS (Oct. 5, 2019, 9:45 PM), <https://sports.yahoo.com/driven-twins-rookie-ex-uber-guy-tagged-yanks-005659415--mlb.html>.

9. *See* Garrett Broshuis (@broshuis), TWITTER (Oct. 5, 2019, 9:06 PM), <http://twitter.com/broshuis/status/1180650396508925953> (showing that Minor League Baseball (“MiLB”) players are compensated poorly); *infra* Part II.A.3.

10. *See infra* Part II.A.3.

11. *See* Gabe Lacques, *How Much Profit Might MLB Owners Make by Selling Their Teams?*, USA TODAY (Aug. 28, 2019, 5:40 PM), <https://www.usatoday.com/story/sports/mlb/2019/08/28/mlb-team-values-royals-sale/2143368001>; *infra* Part IV.B.

MLB has discretion in setting the salaries of its MiLB players.<sup>12</sup> Instead of paying these MiLB players a livable wage, MLB, together with MiLB, lobbied U.S. Congress in order to have MiLB players exempt from minimum wage and overtime requirements under the Fair Labor Standards Act (“FLSA”).<sup>13</sup> These organizations were successful in their lobbying efforts.<sup>14</sup> In March 2018, Congress passed an amendment to the FLSA, called the “Save America’s Pastime Act” (“SAPA”), which exempts MiLB players from certain federal minimum wage and overtime requirements.<sup>15</sup> MiLB players work well over forty hours per week and many of these players are paid at or below poverty wage.<sup>16</sup> Before this bill was passed, MLB paid MiLB players below FLSA minimum wage requirements because they believed these players fell under the FLSA’s “seasonal workers” exemption.<sup>17</sup>

In an ongoing case that began in 2014, *Senne v. Office of the Commissioner of Baseball*, numerous former MiLB players sued MLB regarding state wage and hour laws, as well as previous FLSA violations.<sup>18</sup> There are reasons to believe that they will succeed in their lawsuit.<sup>19</sup> Although MiLB players are currently exempt from minimum wage standards under federal law, these players are not necessarily exempt from minimum wage standards under state law.<sup>20</sup> As a solution to this conflict of law, this Note proposes that states pass legislation that explicitly prevents the exemption of MiLB players from state minimum wage laws.<sup>21</sup> More specifically, this Note focuses on the State of Arizona, because Arizona has a state minimum wage law, as well as fifteen MLB organizations that have facilities located in that state.<sup>22</sup>

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12. Isidore, *supra* note 3.

13. Mike Axisa, *Congress’ ‘Save America’s Pastime Act’ Would Allow Teams to Pay Minor-Leaguers Less than Minimum Wage*, CBS SPORTS (Mar. 22, 2018, 12:19 AM), <https://www.cbssports.com/mlb/news/congress-save-americas-pastime-act-would-allow-teams-to-pay-minor-leaguers-less-than-minimum-wage>.

14. Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C., *Saving America’s Pastime Means Not Paying Minor League Players*, JD SUPRA (Jan. 25, 2019), <https://www.jdsupra.com/legalnews/saving-america-s-pastime-means-not-45220>.

15. *Id.*

16. *Id.*

17. *Id.* (stating that “seasonal workers” fall under a Fair Labor Standards Act (“FLSA”) exemption, which prevents those types of employees from earning minimum wage).

18. *Senne v. Kan. City Royals Baseball Corp.*, 934 F.3d 918, 924 (9th Cir. 2019).

19. *See infra* Part III.

20. *See* Tim Gallen, *Appeals Court Allows Minor-League Baseball Players to Sue for Minimum Wage in Arizona*, PHX. BUS. J. (Aug. 21, 2019, 12:23 AM), <https://www.bizjournals.com/phoenix/news/2019/08/20/appeals-court-allows-minor-league-baseball-players.html?ana=knxv>.

21. *See infra* Part IV.A. This Note only focuses on MiLB players receiving minimum wage and does not discuss Independent League players. *See infra* Part III.

22. *See infra* Part II.A.1.

## II. BACKGROUND/HISTORY

Part II of this Note addresses the background and history of professional baseball and labor law.<sup>23</sup> Specifically, Subpart A of this Note discusses the background of MLB and MiLB, including the MLB and MiLB systems, the potential for a MiLB union, and the organizational differences between MLB and MiLB.<sup>24</sup> Subpart B deals with the FLSA,<sup>25</sup> while Subpart C explores both the 2016 and 2018 SAPA and its implications on the current lawsuit, *Senne v. Office of the Commissioner of Baseball*, regarding MiLB minimum wage.<sup>26</sup>

### A. Background of MLB and MiLB

There are thirty MLB organizations and each of them has a complex system of MiLB teams.<sup>27</sup> During the offseason, each MLB organization is eligible to have as many as forty players on its MLB roster, thirty-eight on its Triple-A (“AAA”) roster, thirty-seven on its Double-A (“AA”) roster, and thirty-five on every other minor league affiliate roster.<sup>28</sup> Each MLB organization has about seven minor league affiliates;<sup>29</sup> therefore, each club can have up to 290 players under contract at one time.<sup>30</sup> Although MLB has a players’ association, MiLB does not have anything similar.<sup>31</sup> The existence of a players’ association is not the only difference between MLB and MiLB.<sup>32</sup> For example, MiLB players are subjected to poorer conditions and earn a significantly lower wage than MLB players.<sup>33</sup>

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23. See *infra* Part II.

24. See *infra* Part II.A.

25. See *infra* Part II.B.

26. See *infra* Part II.C.

27. See Zachary Rymer, *Power Ranking All 30 MLB Teams’ 2019 World Series Hopes*, BLEACHER REP. (Mar. 29, 2019), <https://bleacherreport.com/articles/2827941-power-ranking-all-30-mlb-teams-2019-world-series-hopes#slide0> (showing that there are thirty MLB teams); see also *Overview of Baseball’s Minor League Organization*, SPORTS ADVISORY GRP., <http://www.thesportsadvisorygroup.com/resource-library/business-of-sports/overview-of-baseballs-minor-league-organization> (last visited Feb. 8, 2021).

28. J.J. Cooper, *Ask BA: How Many Players Are in Each Organization?*, BASEBALL AM. (Aug. 21, 2018), <https://www.baseballamerica.com/stories/ask-ba-how-many-players-are-in-each-organization>.

29. *Id.*

30. *Id.*

31. See *infra* Part II.A.2.

32. See *infra* Part II.A.3.

33. See *infra* Part II.A.3.

### 1. MLB and the MiLB System

All MLB organizations have at least six classes of minor league affiliates: AAA, AA, Class-A Advanced (“A+”), Class-A (“A”), Class-A Short Season (“A-”), and Rookie Level.<sup>34</sup> AAA is the highest level of MiLB and Rookie Level is the lowest.<sup>35</sup> These organizations have only one AAA, AA, A+, and A level team, but some have multiple A- and Rookie Level teams.<sup>36</sup> Players in AAA are generally more experienced and prepared to compete in MLB, while players in A- and Rookie Level are usually just beginning their careers.<sup>37</sup> MiLB teams are located throughout the country, regardless of their MLB affiliation.<sup>38</sup> Specifically, Arizona is home to the spring training facilities of fifteen MLB organizations.<sup>39</sup> All of those teams, except for one, have a Rookie Level affiliate in the Arizona League (“AZL”).<sup>40</sup>

Players become part of an MLB organization through the MLB draft or free agency.<sup>41</sup> Every year, over 1,000 amateur baseball players are drafted and many of these players are assigned to MiLB teams throughout the country.<sup>42</sup> There are forty rounds in the MLB draft and the draftees

34. *Overview of Baseball's Minor League Organization*, *supra* note 27. All MLB teams have multiple Rookie Level affiliates. *See Teams by MLB Affiliation*, MiLB.COM, <https://www.milb.com/about/affiliations> (last visited Feb. 8, 2021). Due to the MLB's reorganization of the minor league system, short-season leagues will be eliminated in 2021. J.J. Cooper, *Short-Season Minor League Baseball Will Disappear in 2021*, BASEBALL AM. (Nov. 24, 2020), <https://www.baseballamerica.com/stories/short-season-minor-league-baseball-will-disappear-in-2021>.

35. *Overview of Baseball's Minor League Organization*, *supra* note 27 (assuming no other levels of MiLB, such as extended spring training).

36. *See generally Teams by MLB Affiliation*, *supra* note 34. All organizations have a Dominican Summer League Rookie Level team and most organizations have an Arizona League (“AZL”) or Gulf Coast League (“GCL”) team. *See generally id.*

37. *Overview of Baseball's Minor League Organization*, *supra* note 27.

38. *See generally 2021 Minor League Baseball*, MINOR LEAGUE SOURCE, <http://minorleaguesource.com/bblinkstate.html> (Dec. 11, 2020) (showing multiple MiLB teams in various locations around the USA and other countries).

39. *About the Cactus League*, CACTUS LEAGUE, <https://cactusleague.com/about.php> (last visited Feb. 8, 2021).

40. *See* Bryan Kilpatrick, *Rockies Not Currently Looking into Complex League Team*, SB NATION: PURPLE ROW (Nov. 4, 2018, 8:00 AM), <https://www.purplerow.com/2015/11/4/9663894/colorado-rockies-prospects-rookie-league-arizona-complex-team>. The Colorado Rockies is the only team with a spring training facility in Arizona who does not have an affiliate in the AZL. *Id.*

41. *See* Amanda Lane, *The 2017 MLB Draft: How It All Works*, SB NATION: LOOKOUT LANDING (June 10, 2017, 12:00 PM), <https://www.lookoutlanding.com/2017/6/10/15776034/how-the-2017-draft-works-what-it-means-for-mariners>. Teams are assigned a draft order in reverse order of the standings of the previous season, so the team with the worst record goes first and the team with the best record goes last. *Id.* Amateur players in the United States, Canada, and U.S. territories are eligible to be drafted. *Id.* Players from outside those areas are not subject to the draft and they are signed to clubs by way of free agency. *Id.*

42. *See id.*

consist of high school players who just graduated, junior college players, college players who have played three years or have turned twenty-one years old, and players who have been drafted in previous years but did not sign.<sup>43</sup> However, due to the COVID-19 pandemic, the 2020 MLB Draft was cut from forty rounds to five rounds, and it is possible that the 2021 MLB Draft will be trimmed to twenty rounds.<sup>44</sup> Therefore, fewer players will enter the MiLB system during the next two years, which might expedite a proposal recently set forth by MLB to eliminate forty-two MiLB teams.<sup>45</sup>

After players become part of an MLB organization, they progress through MiLB one level at a time, but sometimes the more talented players skip levels.<sup>46</sup> There have only been twenty-two players who have gone directly to the MLB and skipped MiLB completely.<sup>47</sup> The majority of drafted players spend the entirety of their careers in MiLB and never reach MLB.<sup>48</sup> Even first-round draftees are not guaranteed to make the top level of professional baseball.<sup>49</sup>

## 2. Discussions Regarding a MiLB Union

Unlike in MLB, MiLB does not have a players' association, and it is uncertain if they will ever have one.<sup>50</sup> The MLB Players Association ("MLBPA") was formed in 1954, but it did not have a collective

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43. *Id.*

44. Eric Longenhagen, *In the Time of COVID-19, Sweeping Changes Are Made to the Amateur Draft*, FANGRAPH (Jan. 13, 2021, 10:49 AM), <https://blogs.fangraphs.com/in-the-time-of-covid-19-sweeping-changes-are-made-to-the-amateur-draft>. There is no clear financial incentive for MLB to add rounds to the draft during these years. *Id.*

45. *Id.*; see *infra* Part III.C.3.

46. See *Overview of Baseball's Minor League Organization*, *supra* note 27; see, e.g., Wendy Thurm, *Straight to the Majors: The Players Who Skipped the Minors on Their Way to Pro Careers, Part II*, SB NATION (Feb. 4, 2012, 9:38 AM), <https://www.sbnation.com/2012/2/4/2769203/straight-to-the-majors-the-players-who-skipped-the-minors-on-their>.

47. Mike Wilson, *Vols' Garrett Crochet Is First Player to Skip Minors Since 2010, Makes Debut for White Sox*, KNOX NEWS (Sept. 18, 2020, 10:52 PM), <https://www.knoxnews.com/story/sports/college/university-of-tennessee/other-sports/2020/09/18/garrett-crochet-tennessee-vols-baseball-chicago-white-sox-debut/5828505002>. Garrett Crochet became the first player to go from the draft to the MLB without playing in the minor leagues since Mike Leake in 2010. *Id.*

48. See, e.g., J.J. Cooper, *How Many MLB Draftees Make It to the Majors*, BASEBALL AM. (May 17, 2019), <https://www.baseballamerica.com/stories/how-many-mlb-draftees-make-it-to-the-majors> (stating that between 1981 and 2010, only 17.6% of players who were drafted and signed to a contract ended up making the MLB).

49. See, e.g., *id.* (highlighting that from 1981-2010, 27% of first round picks did not reach the MLB).

50. See Marc Normandin, *Why Minor League Baseball Players Haven't Unionized*, SB NATION (June 5, 2018, 11:00 AM), <https://www.sbnation.com/mlb/2018/6/5/17251534/mlb-draft-minor-league-baseball-union-phpa>.

bargaining agreement with MLB until Marvin Miller was appointed as the first executive director of the MLBPA in 1968.<sup>51</sup> Mr. Miller considered including MiLB players in different collective bargaining agreements throughout the years; however, these players were never included.<sup>52</sup> In 2012, on the reason he did not include MiLB players under the umbrella of the MLBPA, Mr. Miller stated:

The appeal of unionizing every pro baseball player, though, was always outweighed by a lack of resources, the geographic decentralization of the minors, and the dreamy idealism of the players. The notion that these very young, inexperienced people were going to defy the owners, when they had stars in their eyes about making it to the Major Leagues—it's just not going to happen.<sup>53</sup>

MiLB players are too fearful to organize a union.<sup>54</sup> These players do recognize the benefits of a union, but “[t]hey are so fearful of [the] owners, and what they might think about it, and how the owners might judge that decision to act collectively.”<sup>55</sup> In other words, MiLB players are afraid that if they unionize, they will no longer be employed by any MLB organization, which would effectively eliminate their chances of fulfilling their lifelong dream of playing in the Major Leagues.<sup>56</sup>

However, there are minor league unions in other professional sports—the Pro Hockey Players' Association (“PHPA”) was founded in 1967, one year before the MLBPA's first collective bargaining agreement.<sup>57</sup> The PHPA, which is the only players' association that represents minor league professional athletes in a U.S. major league sport,<sup>58</sup> represents over 1,500 players and is currently the oldest and largest players' association in professional sports.<sup>59</sup>

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51. *Id.*

52. *Id.*

53. *Id.* Marvin Miller spoke about his decision to avoid bringing MiLB players under the MLB Players Association's umbrella. *Id.*

54. *Id.*

55. *Id.* (quoting Garrett Broshuis, a former MiLB player and current MiLB wage and hour attorney).

56. *Id.*

57. *Id.*

58. Victor Kiprof, *US Cities with Teams in All Four Major Sports Leagues*, WORLDATLAS (July 2, 2019), <https://www.worldatlas.com/articles/us-cities-with-all-four-major-sports-teams.html>. The U.S. major league sports are baseball (the MLB), basketball (the NBA), football (the NFL), and hockey (the NHL). *Id.*

59. *History*, PRO. HOCKEY PLAYERS' ASS'N, <https://phpa.com/site/history> (last visited Feb. 8, 2021). Since 1968, the Pro Hockey Players' Association (“PHPA”) has expanded to include players from the former Central Hockey League, the former International Hockey League, and the current ECHL (formally known as the East Coast Hockey League). *Id.*

The PHPA was founded because players on the Portland Buckaroos, a now-defunct team in the Western Hockey League (“WHL”), realized that the wives of Canadian hockey players who played in the United States were returning to Canada to give birth since, at the time, there were no health plans in existence in the United States that would cover their medical expenses.<sup>60</sup> Players in the WHL then began to unify and gain benefits, such as a group pension and healthcare coverage plans.<sup>61</sup> The American Hockey League (“AHL”), which serves as the primary developmental league for the National Hockey League (“NHL”), began to take notice of the successes of the WHL players’ union and approached the WHL with a vision to create one unified players’ association for professional hockey players outside the NHL.<sup>62</sup>

Similar to MLB, NHL organizations pay the salaries of their minor league players.<sup>63</sup> However, that is where many of the similarities between the leagues end.<sup>64</sup> During the 2018-2019 NHL season, the total league revenue was \$5.09 billion.<sup>65</sup> MLB has more than twice the revenue of the NHL: during the 2019 season, MLB grossed a record \$10.7 billion in revenue.<sup>66</sup> Yet, even with that striking difference in revenue generated, the NHL’s minor league players in the AHL are making a minimum salary that is higher than the minimum salaries of MiLB players.<sup>67</sup>

### 3. Differences Between MLB and MiLB

The differences between MLB and MiLB are stark.<sup>68</sup> As discussed above, not only is there a difference in terms of organized unions,<sup>69</sup> but also in the drastically different conditions that the players endure on a daily basis.<sup>70</sup> Two of the utmost discrepancies between these leagues are

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60. *Id.*

61. *Id.*

62. *Id.*

63. Normandin, *supra* note 50.

64. *Id.*

65. Christina Gough, *Total Revenue of NHL 2005-2019*, STATISTA (Jan. 14, 2020), <https://www.statista.com/statistics/193468/total-league-revenue-of-the-nhl-since-2006>.

66. 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/#59d8e64b5d78>.

67. Normandin, *supra* note 50. Larry Landon, Executive Director of the PHPA, stated: “When I played back in 1981, I made \$17,000 in the American Hockey League; I want to say the per diem was probably \$12. Well, now the per diem is \$74, the average salary in the [American Hockey League] is approximately \$118,000, while the minimum salary is around \$50,000.” *Id.*

68. See generally *Difference Between Major and Minor League Baseball*, ELECTRO-MECH SCOREBOARD CO., <https://www.electro-mech.com/team-sports/baseball/difference-of-major-and-minor-league-baseball> (last visited Feb. 8, 2021).

69. See *supra* Part II.A.2.

70. See Dirk Hayhurst, *An Inside Look into the Harsh Conditions of Minor League Baseball*,



the players' salaries and living conditions.<sup>71</sup> Many MiLB players live with multiple teammates in cramped apartments, with host families, or on "futons in people's basements."<sup>72</sup> These living conditions result from the low salaries of MiLB players.<sup>73</sup> These players make as little as \$1,100 per month, while the minimum salary in MLB is \$550,000 per year, or approximately \$45,833 per month.<sup>74</sup> MiLB players sometimes work ten-hour days, seven days a week.<sup>75</sup> For the amount of time MiLB players work, their salaries are extraordinarily low.<sup>76</sup>

Another discrepancy between the leagues, which has only recently occurred due to the COVID-19 pandemic, is the delay of the 2020 MLB season and the outright cancellation of the 2020 MiLB season.<sup>77</sup> Since MiLB players are only paid during the season, these players have found

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BLEACHER REP. (May 14, 2014), <https://bleacherreport.com/articles/2062307-an-inside-look-into-the-harsh-conditions-of-minor-league-baseball> ("Being a minor league player is a brutal experience—a brutal experience you, dear minor league player, can never speak of. If you ever decide to tell the general public of your disgust with professional baseball, that it's paying you in stale beer and day-old hot dogs for the honor of playing among its chosen immortals, expect your words to echo off into the endless vacuum.").

71. See Axisa, *supra* note 13; Scott Boeck, *MLB Salaries: The All-Near-League Minimum Team*, USA TODAY (Mar. 29, 2019, 1:23 PM), <https://www.usatoday.com/story/sports/mlb/2019/03/29/mlb-salaries-league-minimum-baseball/3306763002>.

72. Normandin, *supra* note 50. Garrett Broshuis commented on the living conditions and salaries of MiLB players:

Very early on in my career, I looked around and noticed things didn't seem quite right. You have the bat boy in some cases making more money per game than the first baseman is making. You're cramming six guys into a two-bedroom apartment, just to make ends meet and split the rent as many ways as possible. You have players sleeping on futons in people's basements, because a host family saves you a lot of money. Host families are great, but why are we asking people in the community to take in professional baseball players in a \$10 billion industry?

*Id.*

73. See Axisa, *supra* note 13; Boeck, *supra* note 71.

74. Axisa, *supra* note 13; Boeck, *supra* note 71; Berg, *supra* note 5.

75. Mitchell Hartman, *For Some Minor League Baseball Players, Wages Can Seem Like Peanuts*, MARKETPLACE (Apr. 5, 2018), <http://marketplace.org/2018/04/05/minor-league-baseball-draws-fans-and-dispute-over-pay>.

76. Rob Garver, *The 'Save America's Pastime Act' in Congress Is Trying to Justify Low Pay for Some Baseball Players*, BUS. INSIDER (June 2, 2016, 9:18 PM), <https://www.businessinsider.com/the-save-americas-pastime-act-in-congress-is-trying-to-boost-pay-for-some-baseball-players-2016-7>. On day games, as Broshuis stated, players are "putting in six hours or so," while night games are ten-hour days. *Id.*

77. See J.J. Cooper & Josh Norris, *The 2020 Minor League Season Is Cancelled. So What Happens Next?*, BASEBALL AM. (June 30, 2020), <https://www.baseballamerica.com/stories/the-2020-minor-league-season-is-canceled-so-what-happens-next>; R.J. Anderson, *2020 MLB Schedule: Key Dates for 60-Game Season, Including Opening Day, Trade Deadline and More*, CBS SPORTS (July 2, 2020, 11:34 AM), <https://www.cbssports.com/mlb/news/2020-mlb-schedule-key-dates-for-60-game-season-including-opening-day-trade-deadline-and-more>; Tom Goldman, *In a Pandemic, the Paupers of Professional Baseball Are Getting Help*, NPR (Apr. 6, 2020, 10:11 AM), <https://www.npr.org/2020/04/06/827834984/in-a-pandemic-the-paupers-of-professional-baseball-are-getting-help>.

themselves in crippling financial distress.<sup>78</sup> MiLB player contracts, as well as MLB player contracts, have a provision permitting such contracts to be suspended during any national emergency.<sup>79</sup> However, MLB players, unlike most MiLB players, have enough money to support themselves without having a steady source of income.<sup>80</sup> Both MLB and MiLB players were instructed to leave their spring training complexes when the outbreak occurred, which sent many MiLB players “scrambling to make ends meet because they hadn’t received a paycheck from teams since the end of the 2019 season.”<sup>81</sup> In a generous move by MLB, financial support was given to MiLB players to help cover costs of living, although that financial support only amounted to \$400 per week plus health benefits for a short period of time.<sup>82</sup> Some MLB players have helped MiLB players during this crisis: Shin-Soo Choo, an outfielder for the Texas Rangers, gave \$1,000 to each of the 190 MiLB players in the Rangers’ system; Adam Wainwright, a pitcher for the St. Louis Cardinals, donated \$250,000 to a fund for MiLB players in the Cardinals’ system; and Daniel Murphy, an infielder for the Colorado Rockies, contributed \$100,000 to a fund for all MiLB players.<sup>83</sup> When Shin-Soo Choo announced his donation, he expressed his sympathy for MiLB players:

I will never forget the minor leagues. Every day, I had to make a schedule of meals. I had to plan things out. I don’t want players to have to do the same thing. I don’t want them to have to worry about these kinds of things. People are really having a tough time. I can help. I can help people because of baseball and I want to give back.<sup>84</sup>

A further discrepancy between the leagues is that most MiLB teams are not owned by the MLB organization of which the team is affiliated; almost one-quarter of the teams in MiLB are owned by only ten ownership groups.<sup>85</sup> MLB also provides all of the baseball functions surrounding

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78. See Goldman, *supra* note 77.

79. Associated Press, *MLB Extends Support to Minor Leaguers Through May*, ABC NEWS (Mar. 31, 2020, 11:43 AM), <https://abcnews.go.com/Sports/wireStory/mlb-extends-support-minor-leaguers-69896460>; see Nathaniel Grow (@NathanielGrow), TWITTER (Mar. 14, 2020, 8:46 AM), <https://twitter.com/NathanielGrow/status/1238808771863945216>.

80. See, e.g., Anthony Olivieri, *Selling Stretchy Pants, Driving for Uber: Without Minor League Baseball, Many Players Must Take on Second Jobs*, ESPN (Aug. 19, 2020), [https://www.espn.com/mlb/story/\\_/id/29681985/selling-stretchy-pants-driving-uber-minor-league-baseball-many-players-take-second-job](https://www.espn.com/mlb/story/_/id/29681985/selling-stretchy-pants-driving-uber-minor-league-baseball-many-players-take-second-job); Boeck, *supra* note 71.

81. Associated Press, *supra* note 79. Players from high-risk countries, such as Venezuela, were exempted from leaving camp. *Id.*

82. *Id.*

83. Goldman, *supra* note 77.

84. *Id.*

85. David Broughton, *Who Owns the Teams?*, SPORTS BUS. J. (Aug. 4, 2014), <https://www.sportsbusinessdaily.com/Journal/Issues/2014/08/04/Franchises/Minor-leagues->

MiLB, such as coaches, players, staff, umpires, equipment, and anything else that is used to perform on the field.<sup>86</sup> Therefore, MLB has an interest in keeping MiLB player salaries as low as possible.<sup>87</sup> Similarly, the owners of MiLB teams also have an interest in keeping MiLB player salaries low<sup>88</sup>—MiLB owners assume that if MLB organizations are forced to pay MiLB players more money, then these organizations might decrease the financial subsidies provided to their affiliates.<sup>89</sup>

### B. Background of the FLSA

The FLSA sets the federal minimum standards for minimum wage and overtime pay.<sup>90</sup> In attempting to exempt MiLB players from these minimum standards, MLB previously asserted that two exemptions to FLSA minimum wage and overtime provisions covered its pay practices for MiLB players.<sup>91</sup> These two exemptions are the “seasonal, amusement or recreational establishments” exemption and the employees in a “bona fide professional capacity” exemption.<sup>92</sup> Both of these arguments set forth by MLB proved unsuccessful.<sup>93</sup>

First, the “seasonal, amusement or recreational establishment” exemption specifically exempts businesses that “d[o] not operate for more

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owners.aspx. The following persons all own three or more teams: Ken Young, 7th Inning Stretch, Beaver Sports Properties, Brett Sports & Entertainment (which includes National Baseball Hall of Famer George Brett), Elmore Sports Group, Greenberg Sports Group, HWS Group, and Rich Baseball. *Id.*

86. *Frequently Asked Questions, The Business of MiLB*, MiLB, <https://www.milb.com/about/faqs-business> (last visited Feb. 8, 2021).

87. Michael Baumann, *The Disgrace of Minor League Baseball*, RINGER (Apr. 20, 2018, 5:50 AM), <https://www.theringer.com/mlb/2018/4/20/17259846/minor-league-baseball-anti-labor-ronald-acuna-scott-kingery>.

88. Josh Norris, *Lobbying Effort by MLB, MiLB Could Pay Off*, BASEBALL AM. (Mar. 21, 2018), <https://www.baseballamerica.com/stories/lobbying-effort-by-mlb-milb-could-pay-off-with-labor-law-exemption>.

89. *See, e.g.*, Stanley M. Brand & Andrew J. Giorgione, *The Effect of Baseball's Antitrust Exemption and Contraction on Its Minor League Baseball System: A Case Study of the Harrisburg Senators*, 10 VILL. SPORTS & ENT. L.J. 49, 50 (2003) (contending that any changes decreasing “the incentive that MLB has to continue its investment in the minor leagues . . . could lead to the elimination of many minor league teams, particularly at the Rookie and A levels”).

90. Carol S. Maue, *The Rule of Law: The Top 10 Reasons for Fair Labor Standards Act Violations*, DAILY MESSENGER (Sept. 1, 2017, 3:14 PM), <https://www.mppnow.com/news/20170901/rule-of-law-top-10-reasons-for-fair-labor-standards-act-violations>.

91. *See* Brian MacPherson, *Minor League Baseball: Squeezed by Low Pay*, PROVIDENCE J. (Feb. 23, 2015, 3:13 PM), <https://www.providencejournal.com/article/20150221/sports/150229787>.

92. *Id.*

93. Nathaniel Grow, *The Save America's Pastime Act: Special-Interest Legislation Epitomized*, 90 U. COLO. L. REV. 1013, 1019-21 (2019). For an excellent discussion regarding why either the “seasonal, amusement or recreational establishments” exemption or the workers employed in a “bona fide professional capacity” exemption would not prevail, see generally *id.*

than seven months in a calendar year” or “during the preceding calendar year, its average receipts for any six months of such year were not more than [one-third] of its average receipts for the other six months of such year.”<sup>94</sup> This exemption fails because many teams maintain year-round business operations, and multiple courts have held that these teams fail to qualify under that exemption.<sup>95</sup>

Second, the “bona fide professional” exemption specifically exempts “any employee employed in a bona fide executive, administrative, or professional capacity.”<sup>96</sup> The United States Department of Labor states that the exemption does not apply to “‘blue collar’ workers who perform work involving repetitive operations with their hands, physical skill, and energy.”<sup>97</sup> Baseball players perform their specified work using their physical skill.<sup>98</sup> Therefore, MLB had to find another way to ensure that the FLSA minimum wage and overtime pay provisions would not apply to MiLB players.<sup>99</sup>

### C. Background of the SAPA

The SAPA paved a way for FLSA minimum wage and overtime pay provisions to not apply to MiLB players.<sup>100</sup> The idea for the SAPA first came about in December 2014<sup>101</sup> at the MLB Winter Meetings.<sup>102</sup> Due to

94. 29 U.S.C. § 213(a)(3).

95. See *Bridewell v. Cincinnati Reds*, 68 F.3d 136, 139 (6th Cir. 1995) (holding that “[w]hile a truly seasonal business that employs an insignificant number of workers year-round could conceivably qualify for the exemption, the fact that the Reds employ 120 year-round workers compels the conclusion that they operate year-round”); *Liger v. New Orleans Hornets NBA Ltd. P’ship*, 565 F. Supp. 2d 680, 684 (E.D. La. 2008) (stating that “the Court finds that the Hornets are a year-round operation, and thus, cannot qualify for the exemption”).

96. § 213(a)(1).

97. 29 C.F.R. § 541.3(a) (2018).

98. See generally Robert Hughes, *What Are the Skills Needed to Become an Excellent Baseball Player?*, BATS FINDER (Apr. 19, 2016), <https://www.batsfinder.com/skills-needed-to-become-an-excellent-baseball-player> (emphasizing how hand-eye coordination and other skills are crucial to fielding, catching, and hitting for baseball players).

99. See *infra* Part II.C.2.

100. See Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, § 201, 132 Stat. 348, 1126-27 (2018).

101. Craig Calcaterra, *Baseball Will Lobby to Have Congress Exempt Minor Leaguers from the Fair Labor Standards Act*, NBC SPORTS (Dec. 19, 2014, 3:25 PM), <http://mlb.nbcsports.com/2014/12/19/baseball-will-lobby-to-have-congress-exempt-minor-leaguers-from-the-fair-labor-standards-act>. Stan Brand, the Vice President of the Minor League Baseball Trade Association, spoke to a group of MiLB owners where he proposed legislation to clarify that professional baseball players are not covered by federal wage and hour laws. *Id.*

102. *Id.* The Winter Meetings are technically a minor-league event. Mike Axisa, *2019 MLB Winter Meetings: Everything You Need to Know Going into the Busiest Week of Baseball’s Offseason*, CBS SPORTS (Dec. 9, 2019, 2:25 PM), <https://www.cbssports.com/mlb/news/2019-mlb-winter-meetings-everything-you-need-to-know-going-into-the-busiest-week-of-baseballs-offseason>. MiLB

a fear that the wages of MiLB players would increase, MLB and MiLB formed a joint lobbying campaign to introduce federal legislation specifically exempting MiLB players from the FLSA.<sup>103</sup>

### 1. The 2016 SAPA

In June 2016, Representative (“Rep.”) Brett Guthrie (R-Ky.) and Rep. Cheri Bustos (D-Ill.), introduced the SAPA into the United States House of Representatives.<sup>104</sup> This 2016 bill, which was ultimately not enacted, stated that “any employee who has entered into a contract to play baseball at the minor league level” would be excluded from the protections afforded by the FLSA.<sup>105</sup> This provision would have applied to any lawsuit “commenced before, on, or after the date of [its] enactment.”<sup>106</sup> As a result, the *Senne* case<sup>107</sup> would have been unable to proceed.<sup>108</sup> Due to a large outcry of public backlash,<sup>109</sup> Rep. Bustos withdrew her support for the SAPA within one week of introducing the bill.<sup>110</sup> Even with the retracted support of a sponsoring representative, MLB Commissioner Rob Manfred explained in July 2016 that he did not believe MiLB players should be entitled to overtime.<sup>111</sup> Commissioner

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clubs get together to “network, seek potential employees, discuss industry trends, handle business matters, and attend seminars.” *Id.*

103. Norris, *supra* note 88.

104. H.R. 5580, 114th Cong. (2016); Aaron Blake, *After Outcry over Minor League Baseball Bill, Congresswoman Can't Disown It Fast Enough*, WASH. POST (June 30, 2016, 3:32 PM), <https://www.washingtonpost.com/news/the-fix/wp/2016/06/30/after-outcry-over-bill-on-minor-league-baseball-pay-congresswoman-cant-disown-it-fast-enough>. The father of Representative (“Rep.”) Bustos, Gene Callahan, spent years as a chief lobbyist for the MLB, fighting to preserve its exemption from the Sherman Antitrust Act. Callahan, *Gene*, ABRAHAM LINCOLN PRESIDENTIAL LIBR. & MUSEUM, <https://www2.illinois.gov/alplm/library/collections/oralhistory/illinoisstatecraft/general/Pages/CallahanGene.aspx> (last visited Feb. 8, 2021).

105. H.R. 5580 § 2(a).

106. *Id.* § 2(b).

107. *See infra* Part III.C.

108. H.R. 5580 § 2(b); *see Senne v. Kan. City Royals Baseball Corp.*, 105 F. Supp. 3d 981, 998 (N.D. Cal. 2015) (showing that this case would not have been allowed to proceed since it commenced before the Act would have been passed).

109. Blake, *supra* note 104. Multiple press outlets expressed their disapproval with this bill, including headlines from Deadspin (“Evil Congressmen Want to Make Living Wage for Minor Leaguers Illegal”), SB Nation (“Here’s Why the Save America’s Pastime Act Is a River of Molten Sewage”), ESPN (“A Stiff Arm to Minor League Pay Increases”), USA Today (“The ‘Save America’s Pastime Act’ in Congress Will Do Nothing of the Sort”), and The Sporting News (“Despicable ‘Save America’s Pastime Act’ Aims to Screw Minor Leaguers”). *Id.*

110. *Id.* Rep. Bustos stated: “In the last 24 hours, several concerns about the bill have been brought to my attention that have led me to immediately withdraw my support of the legislation.” *Id.* Rep. Bustos publicly withdrew her support of the 2016 Save America’s Pastime Act (“SAPA”) on Twitter. Cheri Bustos (@RepCheri), TWITTER (June 30, 2016, 11:24 AM), <https://twitter.com/RepCheri/status/748537612701470721>.

111. Ronald Blum, *MLB Doesn’t Think Minor Leaguers Should Get Overtime*, ASSOCIATED PRESS (July 12, 2016), <https://apnews.com/6c7f98a16ed7419eb59ba1e7e4c0ea47>.

Manfred thought that it made “no sense” if MiLB players were subject to traditional workplace overtime rules because there would be a large administrative burden in order to keep track of players’ hours.<sup>112</sup>

## 2. The 2018 SAPA

Even though the 2016 SAPA failed, MLB was determined to get a similar bill passed by the federal government.<sup>113</sup> In early 2018, the federal government shut down twice for brief periods of time.<sup>114</sup> Due to these shutdowns, Congress faced a March 23, 2018 deadline to pass a spending bill to provide funding for the government.<sup>115</sup> Five days before that deadline, on March 18, 2018, a report was released to the public stating that the spending bill was going to include a provision exempting MiLB players from the FLSA.<sup>116</sup> Two days before the deadline, on March 21, 2018, Congress released a draft version of the spending bill that contained a modified provision of the 2016 SAPA.<sup>117</sup> Unlike the 2016 bill, the 2018 SAPA contained a more narrow exemption from the FLSA.<sup>118</sup> Another

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112. *Id.* Commissioner Manfred explained:

This is not a dollars-and-cents issue. It is the irrationality of the application of traditional workplace overtime rules to minor league baseball players. It just makes no sense. I want to take extra BP—am I working, or am I not working? Travel time—is every moment that you’re on a bus, is that your commute that you don’t get paid for or is that working time? Where’s the clock? Who’s going to punch a clock to keep track of those hours? When you’re eating in a clubhouse with a spread that the employer provided, is that working time or is that your lunch break? We could figure out the economics. The administrative burden associated with the application of these laws to professional athletes that were never intended to apply to professional athletes is the real issue. And the litigation is going to run its course, but I have to tell you this is an area where excessive regulation could have a really dramatic impact on the size of minor league baseball.

*Id.*

113. See Mike DeBonis, *Spending Bill Could Quash Minor League Baseball Players’ Wage Claims*, WASH. POST (Mar. 18, 2018, 10:26 PM), [https://www.washingtonpost.com/powerpost/spending-bill-could-quash-minor-league-baseball-players-wage-claims/2018/03/18/d31cd76e-2b0a-11e8-8ad6-fbc50284fce8\\_story.html](https://www.washingtonpost.com/powerpost/spending-bill-could-quash-minor-league-baseball-players-wage-claims/2018/03/18/d31cd76e-2b0a-11e8-8ad6-fbc50284fce8_story.html).

114. Dylan Matthews, *All 20 Previous Government Shutdowns, Explained*, VOX (Jan. 12, 2019, 12:32 PM), <https://www.vox.com/policy-and-politics/2018/1/19/16905584/government-shutdown-history-clinton-obama-explained>.

115. See Richard Cowan, *Congress Struggles to Meet Deadline for Government Funding Bill*, REUTERS (Mar. 19, 2018, 8:28 PM), <https://www.reuters.com/article/us-usa-fiscal-congress/congress-struggles-to-meet-deadline-for-government-funding-bill-iduskbn1gw028>.

116. DeBonis, *supra* note 113.

117. J.J. Cooper, *MLB, MiLB Lobbying Pays Off*, BASEBALL AM. (Mar. 21, 2018), <https://www.baseballamerica.com/stories/mlb-milb-lobbying-pays-off-in-save-america-pastime-act>.

118. See Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, § 201, 132 Stat. 348, 1126-27 (2018) (showing that a MiLB player would be exempt from minimum wage and overtime provisions under the FLSA only if that player is paid a weekly salary greater than the weekly equivalent of the current minimum wage for a forty-hour work week during the league’s championship season).

change to the 2018 bill was that it would not apply retroactively to any previous lawsuit that was filed relating to the FLSA.<sup>119</sup> With the support of leaders from both the Republican and Democratic parties, even with another outcry of negative media attention surrounding the bill,<sup>120</sup> the 2018 SAPA stayed in the final version of Congress' spending bill and was signed into law on March 23, 2018, by President Donald J. Trump.<sup>121</sup> The 2018 SAPA finally added an exemption to the FLSA specifically stating that the FLSA's minimum wage and overtime provisions do not apply to MiLB players.<sup>122</sup> The idea that originated from the 2014 Winter Meetings finally came to fruition four years later.<sup>123</sup>

### III. LEGAL ISSUE

In order for many MiLB players to be paid a living wage, Arizona should pass legislation that explicitly prevents the exemption of MiLB players from state minimum wage laws.<sup>124</sup> Part III of this Note addresses the conflict that arises when players are not paid minimum wage, even though they play in a state with a set minimum wage law.<sup>125</sup> Subpart A looks at litigation involving state minimum wage laws, as well as

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119. Compare Consolidated Appropriations Act, 2018, § 201, with H.R. 5580, § 2(b), 114th Cong. (2016). Therefore, the *Senne* case would not automatically be dismissed. See *infra* Part III.C.

120. See, e.g., Whitney McIntosh, *How Congress Screwed over Minor League Baseball Players, Explained*, SB NATION (Mar. 23, 2018, 7:30 AM), <https://www.sbnation.com/mlb/2018/3/23/17152778/spending-bill-minor-league-baseball-explained-save-americas-pastime>; Smith Eibeler, LLC, *Congress Passes the "Save America's Pastime Act" to Screw Minor League Baseball Players out of Minimum Wage and Overtime Pay*, N.J. EMP. LAWS. BLOG (Mar. 30, 2018), <https://www.newjerseyemploymentlawyersblog.com/congress-passes-save-americas-pastime-act-screw-minor-league-baseball-players-minimum-wage-overtime-pay>; Emma Baccellieri, *Congress Is Likely Getting Ready to Legalize the Underpayment of Minor League Baseball Players*, DEADSPIN (Mar. 21, 2018, 11:25 PM), <https://deadspin.com/congress-is-likely-getting-ready-to-legalize-the-underp-1823975788>.

121. Chris Opfer, *Minor League Baseball Players Are Big Losers in Spending Deal*, BLOOMBERG L. (Mar. 26, 2018, 8:58 AM), <https://www.bna.com/minor-league-baseball-n57982090193> (stating that the bill "has continued to gain bipartisan support, including from leadership"); John Wagner & Mike DeBonis, *Trump Signs \$1.3 Trillion Spending Bill Despite Veto Threat on Twitter*, WASH. POST (Mar. 23, 2018, 2:13 PM), <https://www.washingtonpost.com/news/post-politics/wp/2018/03/23/trump-threatens-to-veto-omnibus-bill-because-it-does-not-address-daca-recipients>.

122. 29 U.S.C. § 213(a)(19) (stating that the minimum wage and overtime provisions do not apply with respect to "any employee employed to play baseball who is compensated pursuant to a contract that provides for a weekly salary for services performed during the league's championship season (but not spring training or the offseason) at a rate that is not less than a weekly salary equal to the minimum wage under section 206(a) of this title for a workweek of 40 hours, irrespective of the number of hours the employee devotes to baseball related activities").

123. Calcaterra, *supra* note 101 (showing that the idea for the SAPA first came about during the 2014 Winter Meetings); Opfer, *supra* note 121 (showing that the SAPA was passed into law in 2018).

124. See *infra* Part IV.A.

125. See *infra* Part III.

professional sports teams that have been sued under the FLSA.<sup>126</sup> Subpart B argues that MiLB must abide by state minimum wage laws, specifically analyzing states with both MiLB teams and state legislation regarding professional athletes.<sup>127</sup> Subpart C examines the details of the *Senne* case, including its significance, factual history, procedural history, and prospective future.<sup>128</sup> Importantly, this Note does not discuss the Vancouver Canadians, an affiliate to the Toronto Blue Jays, or any Independent League teams.<sup>129</sup>

#### A. *Court Proceedings Involving State Minimum Wage Laws*

Multiple courts have held that the most basic employment rights, such as minimum wage, are governed by the laws of the state in which an employee works.<sup>130</sup> In 2003, the United States Supreme Court stated that “[a] basic principle of federalism is that each State may make its own reasoned judgment about what conduct is permitted or proscribed within its borders, and each State alone can determine what measure of punishment, if any, to impose on a defendant who acts within its jurisdiction.”<sup>131</sup> Therefore, each state has the ability to set minimum wage laws and enforce them as they wish.<sup>132</sup>

In *Sullivan v. Oracle Corporation*,<sup>133</sup> a 2011 Ninth Circuit case, three non-residents of California sued Oracle Corporation (“Oracle”) to recover unpaid overtime wages for work they performed while in California.<sup>134</sup> These employees were hired to train Oracle’s customers in the use of the

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126. See *infra* Part III.A.

127. See *infra* Part III.B.

128. See *infra* Part III.C.

129. *Minor League Teams by State - Minor League Champions*, ROAD TO SHOW (Dec. 1, 2020), [http://www.stevetheump.com/minor\\_league\\_teams.htm](http://www.stevetheump.com/minor_league_teams.htm). The Vancouver Canadians will be the High-A affiliate to the Toronto Blue Jays starting in 2021. Scott Mitchell, *Vancouver Canadians Staying in Jays’ Family with Prime MiLB Affiliate*, TSN (Dec. 9, 2020), <https://www.tsn.ca/vancouver-canadians-staying-in-jays-family-with-prime-milb-affiliate-1.156215>.

130. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 422 (2003); *Sullivan v. Oracle Corp.*, 254 P.3d 237, 246 (Cal. 2011); *In re Takata Airbag Prods. Liab. Litig.*, No. 15-2599, 2016 U.S. Dist. WL 6072406, at \*8 (S.D. Fla. 2016).

131. *Campbell*, 538 U.S. at 422; *In re Takata Airbag Prods. Liab. Litig.*, 2016 WL 6072406, at \*8 (following the holding in *Campbell*, which states that “each State may make its own reasoned judgment about what conduct is permitted or proscribed within its borders”).

132. See *Campbell*, 538 U.S. at 422.

133. 662 F.3d 1265 (9th Cir. 2011).

134. *Id.* at 1267; *Sullivan*, 254 P.3d at 239-40; Anthony Oncidi, *California Overtime Requirements Apply to Work Performed by Non-Resident Employees*, PROSKAUER (Jan. 1, 2012), <https://www.jdsupra.com/legalnews/california-overtime-requirements-apply-t-40472> (showing that the instructors lived in Arizona and Colorado, but they worked occasionally within California state lines).



company's products.<sup>135</sup> The Ninth Circuit Court of Appeals, as well as the California Supreme Court, ruled that California's overtime requirements apply to work performed in California by non-residents.<sup>136</sup> Even though these Oracle employees were in California solely for work-related purposes, Oracle was still required to abide by California's state overtime requirements.<sup>137</sup>

#### 1. Professional Sports Teams Have Previously Been Sued Under the FLSA

Cheerleaders of professional sports teams have sued both the National Basketball Association ("NBA") and National Football League ("NFL") franchises, respectively, for failing to pay minimum wage and overtime for their work.<sup>138</sup> Similar to baseball players, cheerleaders are required to show up well before each game, practice in preparation for the game, and comply with each organization's personal appearance policies.<sup>139</sup>

In January 2014, cheerleaders for the Oakland Raiders, an NFL franchise, sued the team, alleging that they were paid less than minimum wage and "denied overtime pay despite working nine-hour days with no lunch break."<sup>140</sup> This case reached a \$1.25 million settlement months later in September 2014.<sup>141</sup>

The following year, in September 2015, a Milwaukee Bucks cheerleader filed a federal lawsuit alleging that the Bucks, a NBA franchise, failed to pay her minimum wage or overtime for her work.<sup>142</sup> The cheerleaders worked thirty to forty hours per week, making only

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135. *Sullivan*, 254 P.3d at 239.

136. *Sullivan*, 662 F.3d at 1267; *Oncidi*, *supra* note 134.

137. *Sullivan*, 662 F.3d at 1267; *Sullivan*, 254 P.3d at 239.

138. *See, e.g., Cheerleaders: 'F-L-S-A! The Law Says You Have to Pay!'*, AXLEY (Feb. 1, 2016), [https://www.axley.com/publication\\_article/cheerleaders-f-l-s-a-the-law-says-you-have-to-pay](https://www.axley.com/publication_article/cheerleaders-f-l-s-a-the-law-says-you-have-to-pay); Scott Gleeson, *Oakland Raiders Cheerleaders Collect on \$1.25 Million Class-Action Settlement*, USA TODAY (May 15, 2017, 2:01 PM), <https://www.usatoday.com/story/sports/nfl/raiders/2017/05/15/oakland-raiders-cheerleaders-raiderettes-lawsuit-settlement/101714468> (stating that cheerleaders from the Cincinnati Bengals, New York Jets, Tampa Bay Buccaneers, and Buffalo Bills sued their respective teams after the Oakland Raiders cheerleaders filed suit); Brendan O'Brien, *Milwaukee Bucks Cheerleader Files Minimum Wage Lawsuit Against Team*, REUTERS (Sept. 25, 2015, 1:10 PM), <https://www.reuters.com/article/us-usa-wisconsin-cheerleader-iduskcn0rp21120150925>.

139. O'Brien, *supra* note 138. Cheerleaders are required to arrive 2.5 hours before each game, practice five to ten hours per week, attend fifteen to twenty hours of workout sessions per week, and publicly appear through salon visits, tanning sessions, and uniform maintenance that they pay for themselves. *Id.*

140. Gleeson, *supra* note 138.

141. *Id.*

142. O'Brien, *supra* note 138 (accusing the Bucks of violating the FLSA and Wisconsin wage and payment laws).

\$3.50 to \$4.50 an hour, and were not compensated for any overtime.<sup>143</sup> However, this case also never reached trial.<sup>144</sup> Two years after this case was filed, a Wisconsin federal judge signed-off on a settlement deal between the two sides.<sup>145</sup> The Bucks paid more than \$229,000 in the settlement agreement, which is about \$3,900 for each of the cheerleaders who took part in the settlement.<sup>146</sup> As shown by previous cases, professional sports organizations have been reluctant to fight in the court system.<sup>147</sup> If organizations have settled with cheerleaders regarding minimum wage requirements, it is reasonable to assume that MLB organizations would do the same with MiLB players.<sup>148</sup>

### B. MiLB Player Salaries Must Abide by State Minimum Wage Laws

This Note argues that the salaries for MiLB players must comply with the state minimum wage laws in whichever state the player is performing work.<sup>149</sup> Almost half of the states in the country have a state minimum wage law and a MiLB team.<sup>150</sup> Some states, including Arizona and Minnesota, were unsuccessful when they tried to introduce state legislation exempting MiLB players from state minimum wage laws.<sup>151</sup> Even though many states claim that MiLB players should not fall under their state minimum wage laws, those same states tax traveling athletes and employees who create revenue within their jurisdiction.<sup>152</sup>

#### 1. States with a Minimum Wage Law and a MiLB Team

Forty-five states have a state minimum wage law.<sup>153</sup> The other five states without a state minimum wage law must abide by the \$7.25 federal minimum wage requirement under the FLSA.<sup>154</sup> Fifteen minor league teams are located in states without a state minimum wage law,<sup>155</sup> while

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143. *Id.*

144. Matthew Guarnaccia, *Milwaukee Bucks Dancers Score Final OK in Wage Suit*, LAW360 (Nov. 22, 2017, 3:34 PM), <https://www.law360.com/articles/987677>.

145. *Id.*

146. *Id.*

147. *See* O'Brien, *supra* note 138.

148. *See supra* Part III.A.1.

149. *See infra* Part IV.A.

150. *See infra* Part III.B.1.

151. *See infra* Part III.B.2.

152. *See infra* Part III.B.3.

153. *See State Minimum Wages, 2020 Minimum Wage by State*, NCSL (Aug. 20, 2020), <https://www.ncsl.org/research/labor-and-employment/state-minimum-wage-chart.aspx>.

154. *Id.* (stating that Alabama, Louisiana, Mississippi, South Carolina, and Tennessee have not adopted a state minimum wage).

155. *See Minor League Teams by State, supra* note 129. Currently, Alabama has three teams: the Birmingham Barons (AA), Montgomery Biscuits (AA), and Rocket City Trash Pandas (AA);

the other teams are located in states that *do* have a state minimum wage law.<sup>156</sup>

Arizona is one of the states with a set minimum wage.<sup>157</sup> Arizona's minimum wage was \$12 per hour in 2020.<sup>158</sup> Arizona hosts fifteen MLB organizations every year for spring training.<sup>159</sup> Fourteen of those teams also have a Rookie Level affiliate in Arizona.<sup>160</sup> It appears to be in the interest of MLB to find a way to make sure that MiLB players are not paid the state minimum wage in Arizona during spring training and the Rookie Level seasons.<sup>161</sup>

## 2. State Legislation Attempting to Exempt MiLB Players from State Minimum Wage Laws

State legislation attempting to exempt MiLB players from state minimum wage and overtime laws has been proposed in multiple states.<sup>162</sup> Republican Arizona House Rep. T.J. Shope introduced H.B. 2180 into the Arizona State Legislature in 2019.<sup>163</sup> The bill proposed that Arizona change the state's minimum wage laws to mirror the FLSA, specifically the provision exempting MiLB players from earning the \$7.25 federal minimum wage and overtime pay.<sup>164</sup> Under Arizona law, the only people who do not earn state minimum wage are those who work for a close family member, who casually babysit, or who work for the federal or state

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Mississippi has two teams: the Biloxi Shuckers (AA) and Mississippi Braves (AA); South Carolina has five teams: the Augusta GreenJackets (A), Charleston RiverDogs (A), Columbia Fireflies (A), Greenville Drive (A), and Myrtle Beach Pelicans (A+); Tennessee has five teams: the Chattanooga Lookouts (AA), Jackson Generals (AA), Memphis Redbirds (AAA), Nashville Sounds (AAA), and Tennessee Smokies (AA); and Wyoming does not have any teams. *Id.*

156. *See id.* As previously stated, this Note does not include any Independent League teams; this Note also does not include the Vancouver Canadians because that team is located outside the United States. *See id.*

157. Mitchell Atencio, *Major League Baseball Wants Exemption from Arizona's Minimum Wage Laws*, AZ CENT. (Jan. 24, 2019, 6:00 AM), <https://www.azcentral.com/story/news/politics/legislature/2019/01/24/mlb-wants-arizona-exempt-minor-league-players-minimum-wage-laws/2662327002>.

158. *Id.* (explaining that under Proposition 206, Arizona citizens voted to approve minimum wage increases from \$11 per hour in 2019 to \$12 per hour in 2020).

159. Judy Hedding, *Spring Training Baseball in Arizona 2019*, TRIP SAVVY (Sept. 15, 2019), <https://www.tripsavvy.com/spring-training-baseball-in-arizona-p2-2683215>.

160. *Minor League Teams by State*, *supra* note 129 (demonstrating that the Colorado Rockies do not have a Rookie Level team in Arizona).

161. *See infra* Part III.B.2.

162. *See, e.g.*, Atencio, *supra* note 157; Tim Walker, *House Labor Panel Ok's Minimum Wage Exemption for Minor League Baseball Players*, MINN. LEGISLATURE (Mar. 27, 2019, 6:25 PM), <https://www.house.leg.state.mn.us/sessiondaily/SDView.aspx?StoryID=13838>.

163. Atencio, *supra* note 157.

164. *Id.*

government.<sup>165</sup> If this bill passed, MiLB players would have been added to those categories.<sup>166</sup> However, this bill died due to legal questions regarding whether lawmakers could change the state minimum wage law that voters previously approved.<sup>167</sup>

Arizona was not the only state to try to pass a bill regarding professional baseball players.<sup>168</sup> In 2019, Democrat Tim Mahoney, a Minnesota House Rep., introduced H.F. 2543 into the Minnesota State Legislature, which attempted to change Minnesota state law by exempting MiLB players from employment laws setting minimum wage and overtime rules.<sup>169</sup> The MiLB team in Minnesota plays in St. Paul, which already has a city ordinance recognizing that MiLB players fit into the minimum wage and overtime exemption of the “artistic and creative professionals” category of individuals who are trainees or apprentices.<sup>170</sup> Although this bill passed through the Minnesota House Labor Committee with a bipartisan vote, and was in front of the Minnesota State Senate, it died due to opposition from the public and Minnesota House Democrats.<sup>171</sup>

Both of these state legislatures have attempted, and failed, to pass statewide exemptions regarding MiLB players and state minimum wage standards.<sup>172</sup> After these failures, it is reasonable to assume that the *Senne*

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165. *Id.*

166. *See id.*

167. Howard Fischer, *Minor League Players Must Be Paid for spring training, Says Federal Appeals Court*, FRONTERAS (Aug. 19, 2019, 2:29 PM), <https://fronterasdesk.org/content/1121816/minor-league-players-must-be-paid-spring-training-says-federal-appeals-court>.

168. Walker, *supra* note 162.

169. *Id.* Minnesota has only one minor league team, the St. Paul Saints, an Independent League baseball team. *Id.* However, the St. Paul Saints will become the AAA team of the Minnesota Twins in 2021. La Velle E. Neal III, *St. Paul Saints to Become Twins' Top Minor-League Team; Class AA in Wichita*, STAR TRIB. (Dec. 1, 2020, 3:10 PM), <https://www.startribune.com/st-paul-saints-to-become-minnesota-twins-top-minor-league-team-class-aa-team-in-wichita/573243571/?refresh=true>. This Note does not inquire into the constitutional validity of this proposed law; however, unless there is an obvious abuse of the legislative power, a Minnesota court should not interfere with the decisions of the legislature. Linda Geller Dubinsky, *The Minnesota Mandatory Seat Belt Law: No Right to Be Reckless?*, 10 HAMLIN L. REV. 229, 242-43 (1987) (citing *State v. Edwards*, 177 N.W.2d 40 (Minn. 1970)).

170. Walker, *supra* note 162. This Note does not consider the legal difficulties of contrasting state minimum wage laws with municipal minimum wage laws. *See supra* Part III.B.2. Nor will this Note examine how active a judge would be in the trial process if a suit arises regarding this issue in Minnesota. Leonard Axelrod, *The Role of Judges in the Adversary Proceeding*, HAMLIN J. PUB. L., Winter 1981, at 25, 27.

171. Peter Callaghan, *Legislature's Inaction Turns St. Paul Saints into Minimum-Wage Sinners*, MINNPOST (June 19, 2019), <https://www.minnpost.com/state-government/2019/06/legislatures-inaction-turns-st-paul-saints-into-minimum-wage-sinners>.

172. Fischer, *supra* note 167.

case will gain more support, since Arizona does not have anything that exempts MiLB players from state minimum wage laws.<sup>173</sup>

### 3. Jock Tax Implications on State Law

For more than twenty years, states have been levying a tax, notably called the “jock tax,” on traveling professional athletes.<sup>174</sup> The jock tax originated in the late 1980s and early 1990s due to Chicago Bulls superstar, Michael Jordan.<sup>175</sup> Since Jordan was making millions of dollars playing basketball for the Bulls,<sup>176</sup> the State of California, where Jordan played some of his games, wanted to acquire a portion of his salary.<sup>177</sup>

The jock tax is calculated by the number of days that the athlete spends in the state, whether it is for practices, games, or meetings.<sup>178</sup> Twenty-one states have a jock tax and everyone who travels with the team must pay the tax, including the coaches, players, trainers, and equipment managers.<sup>179</sup> All four major U.S. professional sports leagues are subject to the jock tax.<sup>180</sup> A player’s per-game salary will fluctuate, based on taxes, depending on the specific state where a player plays their games.<sup>181</sup> Some players may even pay more under the jock tax than the amount of money that they earn in salary from playing in the games.<sup>182</sup> If state governments expect players to incur the burden of paying a tax on the income they generate in a respective state, then it is reasonable to assume that players should also receive the benefit of that same state’s minimum wage law.<sup>183</sup>

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173. See *infra* Part III.C.3.

174. Brady Wilson, “Jock Tax” Hangs over NBA Finals, AMS. FOR TAX REFORM (June 16, 2016, 10:46 AM), <https://www.atr.org/jock-tax-hangs-over-nba-finals>.

175. Steven Kutz, *This Is What a Pro Athlete’s Tax Return Looks Like*, MARKETWATCH (Aug. 29, 2016, 9:51 AM), <https://www.marketwatch.com/story/the-jock-tax-and-why-a-professional-athletes-tax-form-can-be-as-big-as-a-bible-2016-07-27>.

176. *Michael Jordan NBA Salary*, HOOPSHYPE, <https://hoopshype.com/player/michael-jordan/salary> (last visited Feb. 8, 2021).

177. Kutz, *supra* note 175.

178. Wilson, *supra* note 174.

179. *Id.*

180. Stefanie Loh, *Fun Facts About the Jock Tax*, SAN DIEGO UNION TRIB. (Apr. 20, 2015, 6:30 AM), <https://www.sandiegouniontribune.com/sports/nfl/sdut-jock-tax-fun-facts-origins-super-bowl-money-2015apr20-story.html>. Additionally, individual sport athletes (i.e., golfers and tennis players) are subject to the jock tax as well. *Id.*

181. See, e.g., Kutz, *supra* note 175 (stating that if the New York Jets play a game in Florida against the Miami Dolphins, the Jets players’ checks will be higher than if it were a home game, since Florida has no income tax).

182. Tim Griffin, *Spurs Players Among Hundreds Due for Tax Windfall with Repeal of Memphis ‘Jock Tax,’* MY SA (May 31, 2016, 11:27 AM), <https://www.mysanantonio.com/sports/spurs/article/Spurs-players-among-hundreds-due-for-tax-windfall-7954586.php>.

183. See *supra* Part III.B.3.

### C. *Senne v. Office of the Commissioner of Baseball*

In February 2014, current attorney and former MiLB pitcher, Garrett Broshuis, filed suit on behalf of a group of then current and former MiLB players who alleged that MLB's minor league pay practices did not compensate players in accordance with the FLSA.<sup>184</sup> Specifically, the *Senne* lawsuit asserted that MLB violated the FLSA by failing to pay MiLB players in accordance with federal minimum wage and overtime rules during the regular season and by failing to pay these players anything for their participation in spring training, fall instructional leagues, and mandatory offseason workout programs.<sup>185</sup>

#### 1. Factual History Behind the *Senne* Case

Originally, the *Senne* case began under the name *Senne v. Kansas City Royals Baseball Corporation*.<sup>186</sup> Aaron Senne was a former collegiate baseball player at the University of Missouri from 2007 to 2010.<sup>187</sup> He was drafted twice by the Minnesota Twins, in 2006 and 2009 respectively, and once by the Florida Marlins in 2010.<sup>188</sup> He played in MiLB from 2010 to 2013, but he was never able to make it into MLB.<sup>189</sup> After retiring from baseball in 2013, Mr. Senne, with the help of his attorney Garrett Broshuis, filed a class-action lawsuit in California against MLB under the FLSA.<sup>190</sup> Similar to Mr. Senne, Mr. Broshuis played collegiate baseball at the University of Missouri and was subsequently drafted to play professional baseball.<sup>191</sup> Mr. Broshuis was drafted in 2004 by the San Francisco Giants.<sup>192</sup> He was a fifth-round MLB draft pick and spent all six years of his professional career in MiLB.<sup>193</sup> After Mr. Broshuis retired from baseball, he attended law school.<sup>194</sup> He received his

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184. Complaint at 4-5, *Senne v. Kan. City Royals Baseball Corp.*, 105 F. Supp. 3d 981 (N.D. Cal. 2015) (No. 3:14-cv-00608); see, e.g., Ian Gordon, *Minor League Baseball Players Make Poverty-Level Wages*, MOTHER JONES, July-Aug. 2014, <https://www.motherjones.com/politics/2014/06/baseball-broshuis-minor-league-wage-income>.

185. Complaint at 2-4, *Senne*, 105 F. Supp. 3d 981 (No. 3:14-cv-00608).

186. 105 F. Supp. 3d 981, 981 (N.D. Cal. 2015).

187. See *2010 Baseball Roster*, UNIV. MO. ATHLETICS, <https://mutigers.com/sports/baseball/roster/aaron-senne/3696> (last visited Feb. 8, 2021).

188. *Aaron Senne*, BASEBALL REFERENCE, <https://www.baseball-reference.com/register/player.fcgi?id=senne-001aar> (last visited Feb. 8, 2021).

189. Blake Yagman, *Senne v. Royals Is the Case that Could Change Major League Baseball*, FANSIDED (Oct. 25, 2017), <https://fansided.com/2017/10/25/senne-v-royals-lawsuit-could-change-mlb>.

190. *Id.*

191. *Garrett Broshuis*, BASEBALL REFERENCE, <https://www.baseball-reference.com/register/player.fcgi?id=broshu001gar> (last visited Feb. 8, 2021).

192. *Id.*

193. *Id.*

194. Bill Shaikin, *Minor Leaguers Could Be Paid Minimum Wage—And No More*, L.A. TIMES

law degree from Saint Louis University,<sup>195</sup> and then in 2014, together with Mr. Senne and other former MiLB players, filed this class action lawsuit.<sup>196</sup>

## 2. Procedural History of the *Senne* Case

The first time a decision was rendered in *Senne*, albeit only an order to show cause, was on January 6, 2015.<sup>197</sup> Ten months after that decision, in October 2015, the United States District Court for the Northern District of California granted conditional certification of the former MiLB players' FLSA claims.<sup>198</sup> Besides the players' FLSA federal claims,<sup>199</sup> the players also proposed three classes with state law claims.<sup>200</sup> The California class consisted of players who played in the California League, while the Arizona and Florida classes consisted of players who participated in spring training, extended spring training, and the instructional league.<sup>201</sup> However, in July 2016, that same court denied the former MiLB players' motion for class certification under Rules 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure.<sup>202</sup> The court decertified the FLSA collective due to the finding of wide variations among the players regarding the types of activities, and circumstances under the activities, in which these players engaged.<sup>203</sup>

The *Senne* case was appealed to the Ninth Circuit Court of Appeals.<sup>204</sup> The decision from this appeal, which was issued over three years after the opinion from the District Court, certified all three of the proposed classes.<sup>205</sup> When examining the California class, the Ninth Circuit, citing *Sullivan v. Oracle Corporation*, explained that when

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(Mar. 23, 2018, 10:44 AM), <https://www.latimes.com/sports/mlb/la-sp-minor-league-baseball-wage-20180323-story.html>.

195. *Garrett Broshuis*, KOREIN TILLERY, <https://www.koreintillery.com/garrett-broshuis> (last visited Feb. 8, 2021).

196. Shaikin, *supra* note 194; *Senne v. Kan. City Royals Baseball Corp.*, 105 F. Supp. 3d 981, 981 (N.D. Cal. 2015).

197. *Senne v. Kan. City Royals Baseball Corp.*, No. 14-cv-00608, 2015 U.S. Dist. LEXIS 1119, at \*1 (N.D. Cal. Jan. 6, 2015).

198. *Senne*, 2015 U.S. Dist. LEXIS 143011, at \*24-25.

199. *See supra* Part II.C.2.

200. Wayne D. Garris Jr., *Denial of Class Certification Reversed in Major Win for Minor League Baseball Players*, WOLTERS KLUWER, <http://www.employmentlawdaily.com/index.php/news/denial-of-class-certification-reversed-in-major-win-for-minor-league-baseball-players> (last visited Feb. 8, 2021).

201. *Id.*; *see supra* Part II.A. Even though the *Senne* case does not consist of any Rookie Level affiliates, teams in the AZL and GCL could have been included in that case because all such teams are each located within one state, respectively. *See Minor League Teams by State*, *supra* note 129.

202. FED. R. CIV. P. 23(b)(2), (3); Garris Jr., *supra* note 200.

203. Garris Jr., *supra* note 200.

204. *Senne v. Kan. City Royals Baseball Corp.*, 934 F.3d 918, 918 (9th Cir. 2019).

205. *Id.* at 919.

considering state law claims, the federal district court must use the choice of law provisions from the forum state.<sup>206</sup> All of the work performed by the players occurred in California, thus California law should apply.<sup>207</sup> The Ninth Circuit then focused on the Arizona and Florida classes, holding that Arizona law should apply to the work performed in Arizona, whereas Florida law should apply to the work performed in Florida.<sup>208</sup> Therefore, Arizona or Florida law should apply, respectively, to the players' work during spring training, extended spring training, and the instructional league.<sup>209</sup> The Ninth Circuit declined to apply California law to the Arizona and Florida classes.<sup>210</sup> The court applied *Sullivan*, in which it ruled that under California's choice of law principles, a state has a legitimate interest in applying its wage laws extraterritorially only in two limited circumstances: first, "when a state's resident employee of that state's resident employer leaves the state 'temporarily during the course of the normal workday,'" and second, "when the traveling, resident employee of a domestic employer would otherwise be left without the protection of another state's law."<sup>211</sup> Neither of these limited circumstances were applicable in *Senne*.<sup>212</sup> Therefore, this case was remanded back to the district court to advance with further proceedings.<sup>213</sup>

### 3. The Proposed Future of the *Senne* Case

MLB petitioned the United States Supreme Court for a writ of certiorari.<sup>214</sup> MLB argued that the decision by the Ninth Circuit directly conflicts with the Third Circuit's decision in *Ferreras v. American Airlines, Inc.*<sup>215</sup> In that decision, the Third Circuit held that "raw data that shows when airport workers clock in and clock out isn't enough to show their individual schedules are all similar enough to make them eligible to pursue labor law claims in a class action."<sup>216</sup> MLB also contended that the Ninth Circuit erred when it held that specific testimony in the cases did

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206. Garris Jr., *supra* note 200.

207. *Id.*; *Senne*, 934 F.3d at 930.

208. *Senne*, 934 F.3d at 933; Garris Jr., *supra* note 200.

209. Garris Jr., *supra* note 200.

210. *Senne*, 934 F.3d at 934.

211. *Id.* at 935.

212. *Id.*

213. *Id.* at 950.

214. Ryan Boysen, *MLB Seeks Justices' Input on Minor League Wage Class Cert.*, LAW360 (Jan. 10, 2020, 4:20 PM), <https://www.law360.com/articles/1233071>. Nevertheless, this Note will not be preempted because the 2018 SAPA does not apply retroactively to any previous lawsuit that was filed relating to the FLSA, so players could still receive backpay. *See supra* Part II.C.2.

215. *Ferreras v. Am. Airlines, Inc.*, 946 F.3d 178, 178 (3d Cir. 2019); Boysen, *supra* note 214.

216. Boysen, *supra* note 214.



not have to be “rigorously analyzed.”<sup>217</sup> In the 2011 Supreme Court decision of *Wal-Mart v. Dukes*, the Court raised the bar for bringing wage and hour claims in a class action.<sup>218</sup> However, the Ninth Circuit relied on the 2016 Supreme Court decision of *Tyson v. Bouaphakeo*<sup>219</sup> to get around the “rigorous analysis” standard.<sup>220</sup> In *Tyson*, the ruling allowed a class of workers to rely on statistical analysis to show average hours worked for purposes of establishing class-wide liability under the FLSA.<sup>221</sup> MLB argued that the facts in the *Senne* case, as compared to *Tyson*, are

less clear-cut, because while the *Tyson* workers were clearly spending all of their time at the plant doing actual work, many of the baseball players suing the league allegedly arrive early or stay late at the ballpark to eat, watch television or practice in the batting cages when they’re less crowded, among other things.<sup>222</sup>

Fortunately for the players, the case will soon proceed to trial because the Supreme Court denied certiorari in October 2020.<sup>223</sup> The players will be able to sue under both state and federal law.<sup>224</sup> However, since the 2018 SAPA “appl[ies] prospectively to work performed on or after March 23, 2018,” the players’ FLSA federal claims will be limited to hours worked before the 2018 SAPA came into effect.<sup>225</sup>

In October 2019, Baseball America, a baseball magazine, reported that MLB has proposed an idea to eliminate forty-two MiLB teams.<sup>226</sup> Currently, MLB and MiLB are negotiating a new Professional Baseball

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217. *Id.*

218. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350-52 (2011); Leigh Kamping-Carder, *Wal-Mart Ruling Raises Bar for Class Actions*, LAW360 (June 20, 2011, 11:51 AM), <https://www.law360.com/articles/252442>.

219. 136 S. Ct. 1036 (2016).

220. Boysen, *supra* note 214.

221. *Tyson Foods, Inc.*, 136 S. Ct. at 1046; Philip M. Oliss et al., *What the Narrow Tyson Ruling Means for Class Actions*, LAW360 (Mar. 23, 2016, 12:27 PM), <https://www.law360.com/articles/774960/what-the-narrow-tyson-ruling-means-for-class-actions>.

222. Boysen, *supra* note 214.

223. Chris Bumbaca, *Minor Leaguers Score Win in Quest for Fair Wages as Supreme Court Dismisses MLB Request*, USA TODAY (Oct. 5, 2020, 2:17 PM), <https://www.usatoday.com/story/sports/mlb/minors/2020/10/05/supreme-court-mlb-minor-league-salary-wages/3625838001>.

224. Zachary Zagger, *9th Circ. Ruling Puts Minor League Pay Back on the Table*, LAW360 (Aug. 21, 2019, 8:29 PM), <https://www.law360.com/articles/1190135/9th-circ-ruling-puts-minor-league-pay-back-on-the-table>.

225. Cara Salvatore, *New Law Won't Affect Wage Suit, Minor Leaguers Tell 9th Circ.*, LAW360 (Apr. 10, 2018, 10:02 PM), <https://www.law360.com/articles/1031806>; *see also* Zagger, *supra* note 224.

226. J.J. Cooper, *MLB Proposal Would Eliminate 42 Minor League Teams*, BASEBALL AM. (Oct. 18, 2019), <https://www.baseballamerica.com/stories/mlb-floats-proposal-that-would-eliminate-42-minor-league-teams>.

Agreement (“PBA”) since the most recent PBA expired in October 2020.<sup>227</sup> MLB is looking to dramatically improve minor league facilities, as well as to take control over how MiLB teams are organized in relation to MLB affiliations.<sup>228</sup> MLB deputy commissioner Dan Halem stated:

From the perspective of MLB clubs, our principal goals are upgrading the minor league facilities that we believe have inadequate standards for potential MLB players, improving the working conditions for MiLB players, including their compensation, improving transportation and hotel accommodations, providing better geographic affiliations between major league clubs and their affiliates, as well as better geographic lineups of leagues to reduce player travel.<sup>229</sup>

With this proposal, MLB will most likely avoid future suits by MiLB players regarding wages,<sup>230</sup> since the forty-two teams affected are mostly at the A+ level or below.<sup>231</sup> However, as previously stated, even if MLB avoids future suits regarding wages, MiLB players will still be able to sue for backpay prior to the passage of the 2018 SAPA.<sup>232</sup> Regarding the lower levels of MiLB (especially Rookie and Class A levels), players’ and

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227. J.J. Cooper, *A Complete Guide to MLB and MiLB’s Negotiations*, BASEBALL AM. (Nov. 27, 2020), <https://www.baseballamerica.com/stories/a-complete-guide-to-mlb-and-milbs-negotiations>.

228. Cooper, *supra* note 226. In August 2020, MLB presented MiLB with a proposal for a single-elimination tournament called the Baseball Cup, where all thirty MLB teams and their MiLB affiliates would participate; however, it is unclear if MiLB player salaries would be affected. R.J. Anderson, *MLB, MiLB Negotiations Reportedly Include Proposal for Single-Elimination Tournament*, CBS SPORTS (Aug. 28, 2020, 3:36 PM), <https://www.cbssports.com/mlb/news/mlb-milb-negotiations-reportedly-include-proposal-for-single-elimination-tournament>.

229. Cooper, *supra* note 226.

230. *See id.*

231. *See The Minor League Teams that Could Lose M.L.B. Ties*, N.Y. TIMES (Nov. 16, 2019), <https://www.nytimes.com/2019/11/16/sports/baseball/mlb-minor-league-proposal.html>.

The forty-two teams eliminated would be: Auburn Doubledays (A-), Batavia Muckdogs (A-), Billings Mustangs (Rookie), Binghamton Rumble Ponies (AA), Bluefield Blue Jays (Rookie), Bristol Pirates (Rookie), Burlington Bees (A), Burlington Royals (Rookie), Chattanooga Lookouts (AA), Clinton LumberKings (A), Connecticut Tigers (A-), Danville Braves (Rookie), Daytona Tortugas (A+), Elizabethton Twins (Rookie), Erie SeaWolves (AA), Florida Fire Frogs (A+), Frederick Keys (A+), Grand Junction Rockies (Rookie), Great Falls Voyagers (A+), Greeneville Reds (Rookie), Hagerstown Suns (A), Idaho Falls Chukars (Rookie), Jackson Generals (AA), Johnson City Cardinals (Rookie), Kingsport Mets (Rookie), Lancaster Jethawks (A+), Lexington Legends (A), Lowell Spinners (A-), Mahoning Valley Scrappers (A-), Missoula PaddleHeads (Rookie), Ogden Raptors (Rookie), Orem Owlz (Rookie), Princeton Rays (Rookie), Quad Cities River Bandits (A), Rocky Mountain Vibes (Rookie), Salem-Keizer Volcanoes (A-), State College Spikes (A-), Staten Island Yankees (A-), Tri-City Dust Devils (A-), Vermont Lake Monsters (A-), West Virginia Power (A), and Williamsport Crosscutters (A-). *Id.* A report from December 2020 stated that MLB invited 119 teams to join MiLB beginning in 2021. Bryan McWilliam, *Report: MLB Invites 119 Teams to Join MiLB in 2021*, SCORE (Dec. 9, 2020), <https://www.thescore.com/mlb/news/2067239>. 120 teams were expected to receive invites, but an issue with a Rockies affiliate in Fresno currently remains unresolved. *Id.*

232. *See Salvatore, supra* note 225.

coaches' salaries, as well as their worker's compensation insurance, can be a significant share of a club's total expenses.<sup>233</sup> MLB claimed that MiLB teams have refused to address inadequate facilities and that MLB owners have subsidized too much of the cost of minor league operations.<sup>234</sup> In response, MiLB publicly stated that they are willing to discuss facility improvements, but MLB owners want to pass the cost of higher MiLB salaries onto MiLB owners.<sup>235</sup>

MLB Commissioner Rob Manfred was not pleased with MiLB owners taking this fight public, nor was he happy about U.S. Congress subsequently becoming involved.<sup>236</sup> Congress formed a bipartisan task force to oppose this proposal by MLB.<sup>237</sup> Senator Bernie Sanders (D-Vt.) and the House Minority Leader Rep. Kevin McCarthy (R-Ca.) are among the more than 100 members of Congress who have signed letters urging Commissioner Manfred to not complete this deal.<sup>238</sup> During the 2018 cycle, the MLB Commissioner's Office contributed \$267,000 to federal candidates for U.S. Congress (fifty-five percent of those donations were to Democrats, while forty-five percent were to Republicans).<sup>239</sup> The two politicians who received the highest amounts—they both received \$10,000—were Senator Heidi Heitkamp (D-N.D.) and Senator Jon Tester (D-Mont.).<sup>240</sup> As of February 2021, Senator Tester is promoting a petition for MLB to keep its partnership with Montana's MiLB teams.<sup>241</sup> Even politicians who received contributions from the Commissioner's Office, including Rep. Brett Guthrie (R-Ky.), who was a sponsor for the 2016 SAPA, are now opposing the MiLB elimination proposal set forth by the

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233. Cooper, *supra* note 226.

234. Bill Shaikin, *MLB Threatens to Walk Away from Minor League Baseball*, L.A. TIMES (Dec. 13, 2019, 11:21 PM), <https://www.latimes.com/sports/story/2019-12-13/baseball-major-leagues-minor-leagues-fight-agreement>.

235. *Id.*

236. *Id.* One MiLB owner said: "Rob [Manfred] is attempting to decimate the industry, destroy baseball in communities and eliminate thousands of jobs, and he's upset that the owners of the teams have gone public with that information in an effort to save their teams." *Id.*

237. Bill Shaikin, *Bernie Sanders Is on a Crusade to Save 42 Minor League Baseball Teams*, L.A. TIMES (Dec. 6, 2019, 6:00 AM), <https://www.latimes.com/sports/story/2019-12-06/bernie-sanders-major-league-minor-league-baseball-rob-manfred>.

238. *Id.* When Senator Sanders was asked if he could recall any other issues on which he has been aligned with Rep. McCarthy, he laughed and stated, "[P]robably not too many. I think that's fair to say." *Id.*

239. *Major League Baseball Commissioner's Ofc PAC Contributions to Federal Candidates, 2018 Cycle*, OPENSECRETS.ORG, <https://www.opensecrets.org/pacs/pagcot.php?cmte=C00368142&cycle=2018> (last visited Feb. 8, 2021).

240. *Id.*

241. *Sign Your Name: Demand Major League Baseball Keep Its Ties to Montana*, JON TESTER U.S. SENATE, <https://secure.ngpvan.com/jmXMLS63kCjkS0SgI--nA2?emci=25abd957-8d17-ea11-828b-2818784d6d68&emdi=26abd957-8d17-ea11-828b-2818784d6d68&ceid=303679> (last visited Feb. 8, 2021).

Commissioner's Office.<sup>242</sup> Moreover, some of these same politicians who are opposing this proposal voted in favor of the 2018 SAPA.<sup>243</sup> Although MLB's lobbying efforts paid off with the passing of the 2018 SAPA, it seems that politicians are now changing their stance on how they regard MLB.<sup>244</sup>

#### IV. PROPOSED SOLUTION

MLB tried, and failed, to get a state law passed in Arizona that would be consistent with the 2018 SAPA.<sup>245</sup> Due to this failure, Arizona should amend the current state minimum wage law by explicitly adding a provision stating that MiLB players are not exempt from state minimum wage law and should be paid pursuant to Arizona's minimum wage statute.<sup>246</sup> Arizona has been a focus of the *Senne* lawsuit, presumably because half of MLB organizations have their spring training facilities located within the state.<sup>247</sup>

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242. Compare *Major League Baseball Commissioner's Ofc PAC Contributions to Federal Candidates, 2018 Cycle*, *supra* note 239 (showing that Guthrie received \$6,000), with Letter from Lori Trahan et al., Congresswoman, U.S. House of Representatives, to Rob Manfred et al., Comm'r, Major League Baseball (Nov. 19, 2019) (showing Rep. Guthrie as a signatory to a letter opposing the MLB's "radical proposal to eliminate numerous [MiLB] clubs").

243. Compare *Major League Baseball Commissioner's Ofc PAC Contributions to Federal Candidates, 2018 Cycle*, *supra* note 239 (showing that Reps. Guthrie, David Joyce, and McCarthy all received contributions from the MLB Commissioner's Office), and Letter from Lori Trahan et al., Congresswoman, U.S. House of Representatives, to Rob Manfred et al., Comm'r, Major League Baseball (Nov. 19, 2019) (showing that Reps. Guthrie, Joyce, and McCarthy were signatories on a letter opposing the MLB's proposal to eliminate MiLB teams), with *Final Vote Results for Roll Call 127, H.R. 1625 (TARGET Act)*, HOUSE.GOV (Mar. 22, 2018, 12:59 PM), <https://clerk.house.gov/evs/2018/roll127.xml> (showing that Reps. Guthrie, Joyce, and McCarthy all voted in favor of H.R. 1625, which included the 2018 SAPA).

244. See *supra* Part III.C.3.

245. Fischer, *supra* note 167; Ben Giles, *Major League Baseball Wants Players Exempt from Minimum Wage Law*, AZ. CAP. TIMES (Jan. 23, 2019), <https://azcapitoltimes.com/news/2019/01/23/major-league-baseball-wants-players-exempt-from-minimum-wage-law>.

246. See *infra* Part IV.A.

247. See Hedding, *supra* note 159 (listing the teams whose spring trainings take place in Arizona: Arizona Diamondbacks, Chicago Cubs, Chicago White Sox, Cincinnati Reds, Cleveland Indians, Colorado Rockies, Kansas City Royals, Los Angeles Angels, Los Angeles Dodgers, Milwaukee Brewers, Oakland Athletics, San Diego Padres, Seattle Mariners, San Francisco Giants, and Texas Rangers).

A. *The State of Arizona Should Amend the Current State Minimum Wage Law by Explicitly Adding a Provision to the Law Stating that MiLB Players Are Not Exempt from the State Minimum Wage Law*

Effective as of January 1, 2020, Arizona's minimum wage was \$12.00 per hour.<sup>248</sup> However, there are specific groups that are exempt from Arizona minimum wage under Arizona Revised Statutes Annotated § 23-362, including “any person who is *employed by a parent or a sibling*,” any person “who is *employed performing babysitting services in the employer's home on a casual basis*,” any person *employed by the State of Arizona or the United States government*, or any person *employed in a small business that grosses less than \$500,000 in annual revenue, if that small business is “exempt from having to pay a minimum wage under section 206(a) of [T]itle 29 of the United States Code.”*<sup>249</sup>

MiLB players are not “employed by a parent or a sibling”; they are not “performing babysitting services”; they are not employed by “the State of Arizona or the United States government”; nor are they “employed in a small business.”<sup>250</sup> MiLB players are not included in these exemptions.<sup>251</sup> However, as the *Senne* case illustrates, MLB is reluctant to pay MiLB players their legal minimum wage in Arizona.<sup>252</sup>

To make sure that MiLB players earn the Arizona minimum wage, § 23-362 should be amended to include a provision that explicitly mentions MiLB players.<sup>253</sup> For example, the amended statute would specifically state:

Major League Baseball organizations must abide by the minimum wage standards set forth in this Article for all their employed Minor League Baseball Players performing work in Arizona.<sup>254</sup>

This amendment would apply to all players “under a minor league contract” working in Arizona.<sup>255</sup> Accordingly, players “under a minor league contract” would include MiLB players at spring training in Arizona, MiLB players on a Rookie Level team in Arizona, and any MiLB players playing a baseball game in Arizona under contract with an MLB

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248. Labor Department, *Frequently Asked Questions (FAQs) About Minimum Wage and Earned Paid Sick Time*, INDUS. COMM'N ARIZ., <https://www.azica.gov/labor-frequently-asked-questions-english> (last visited Feb. 8, 2021). As of January 1, 2021, the Arizona minimum wage will increase each year by the cost of living. *Id.*

249. ARIZ. REV. STAT. ANN. § 23-362(A)–(C) (2020) (emphasis added).

250. *See supra* Part II.B.

251. *See* § 23-362.

252. *See supra* Part II.C.2.

253. *See supra* Part IV.A.

254. *See supra* Part IV.A.

255. *See supra* Part IV.A.

organization.<sup>256</sup> The term “performing work” would specifically apply to when MiLB players are receiving treatment from team doctors, as well as when MiLB players are playing games, practicing, preparing for games and practices (including, but not limited to, early work, stretching, throwing, and watching film), and eating team meals.<sup>257</sup> Considering that MiLB players are not part of the MLBPA, these players have no voice in collective bargaining agreements with MLB.<sup>258</sup> Since the MLBPA has a responsibility to secure the best deal possible for its members, until MiLB players become a part of the MLBPA, these MiLB players will not be included in any collective bargaining agreement.<sup>259</sup> Therefore, no collective bargaining agreement exists with respect to MiLB players that would supersede state law.<sup>260</sup> With the addition of this provision, all doubt would be eliminated as to the statutory implications of not paying MiLB players state minimum wage in Arizona.<sup>261</sup>

### B. MLB Organizations Have the Funds to Pay MiLB Players

As of 2021, the most valuable franchise in MLB is the New York Yankees, currently valued at \$5 billion with \$683 million in revenue.<sup>262</sup> The least valuable franchise is the Miami Marlins, currently valued at

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256. See *supra* Part IV.A. If out-of-state MiLB teams play a game in Arizona, these players must also be paid Arizona minimum wage for their time worked in Arizona. See generally Emily Caron, *Arizona State, Chase Field Paving Way for Expanded NCAA, MLB Ballpark Partnerships*, FRONT OFF. SPORTS (Jan. 21, 2020), <https://www.frntofficesport.com/arizona-state-chase-field-diamondbacks> (showing that Chase Field, home of the Arizona Diamondbacks, is beginning to host college sporting events, so it is possible that further expansions, such as hosting MiLB games, will take place in the near future).

257. See Matt Gelb, *Minor-League Phillies Put On the Feedbag*, PHILA. INQUIRER (May 5, 2016), [https://www.inquirer.com/philly/sports/phillies/20160508\\_Minor-league\\_Phillies\\_put\\_on\\_the\\_feedbag.html](https://www.inquirer.com/philly/sports/phillies/20160508_Minor-league_Phillies_put_on_the_feedbag.html) (showing that MiLB players sometimes get team-catered meals); Greg Joyce, *IronPigs Are Chasing Big-League Dreams, but at What Cost?*, LEHIGH VALLEY LIVE (Jan. 2, 2019), [https://www.lehighvalleylive.com/ironpigs/2016/07/ironpigs\\_chasing\\_big-league\\_dr.html](https://www.lehighvalleylive.com/ironpigs/2016/07/ironpigs_chasing_big-league_dr.html) (discussing how MiLB players prepare for baseball games); *Athletic Training Alum Scores Honor in Minor League Baseball*, UINDY360 (Sept. 19, 2018), <https://news.uindy.edu/2018/09/19/athletic-training-alum-scores-honor-in-minor-league-baseball> (highlighting the different types of work that a MiLB athletic trainer performs on MiLB players on a daily basis); *supra* Part IV.A.

258. Darby Robinson, *MLB Just Got 5.1 Billion Reasons to Pay Minor Leaguers a Higher Wage*, SB NATION: DRAYS BAY (Nov. 16, 2018, 3:33 PM), <https://www.draysbay.com/2018/11/16/18098912/mlb-fox-5-1-billion-contract-pay-minor-league-players-higher-living-wage>.

259. *Id.*

260. See George Lawrence, *Do Union Contract Agreements Supersede Overtime Labor Laws?*, CHRON, <https://smallbusiness.chron.com/union-contract-agreements-supersede-overtime-labor-laws-59019.html> (last visited Feb. 8, 2021); *supra* Part IV.A.

261. See *supra* Part IV.A.

262. *The Business of Baseball*, FORBES, <https://www.forbes.com/mlb-valuations/list> (last visited Feb. 8, 2021).

\$980 million with \$222 million in revenue.<sup>263</sup> During the 2020 season, the New York Yankees' highest-paid player was Gerrit Cole, who was paid \$36 million,<sup>264</sup> while the Miami Marlins' highest-paid player was Starling Marte, who was paid \$11.5 million.<sup>265</sup> MLB grossed a record \$10.7 billion in revenue for the 2019 season, which is an increase from the \$10.3 billion in revenue grossed the prior year.<sup>266</sup> MLB benefits from media rights deals with ESPN, Turner Sports, and Fox, which agreed to a \$5.1 billion extension that runs through the 2028 season.<sup>267</sup> Commissioner Manfred has described the league as "thriving."<sup>268</sup> MLB clearly has the money to pay MiLB players minimum wage.<sup>269</sup>

*C. Paying MiLB Players Minimum Wage in Arizona Will Not Hurt  
MLB Organizations Financially*

The monthly minimum salaries for most MiLB players are \$1,100 at the Rookie Level<sup>270</sup> and \$0 during spring training.<sup>271</sup> Arizona is home to the spring training facilities of fifteen MLB organizations.<sup>272</sup> All such organizations, except for one, have a Rookie Level affiliate in the AZL.<sup>273</sup> A MLB team with a standard setup of seven minor league affiliates is permitted to have up to 250 players under a minor league contract per year, with thirty-five players on the AZL Rookie team roster.<sup>274</sup> Garrett Broshuis, the attorney for the MiLB players in the *Senne* case, stated that

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263. *Id.*

264. *New York Yankees 2020 Payroll*, SPOTRAC, <https://www.spotrac.com/mlb/new-york-yankees/payroll/2020> (last visited Feb. 8, 2021).

265. *Miami Marlins 2020 Payroll*, SPOTRAC, <https://www.spotrac.com/mlb/miami-marlins/payroll/2020> (last visited Feb. 8, 2021).

266. Jabari Young, *Major League Baseball Revenue for 2019 Season Hits a Record \$10.7 Billion*, CNBC (Dec. 22, 2019, 12:11 PM), <https://www.cnbc.com/2019/12/22/report-mlb-revenue-for-2019-season-a-record-10point7-billion.html>.

267. *Id.*

268. *Id.*

269. Baumann, *supra* note 87; *see supra* Part IV.B.

270. Ronald Blum, *Baseball Players in Minors to Lose Minimum Wage Protection*, ASSOCIATED PRESS (Mar. 23, 2018), <https://apnews.com/cb183f59e88948e8b9cd49ad07bde807>. MLB raised salaries in the Rookie and Short-Season A levels to \$400 a week, which is about \$1,600 per month, for the 2021 season. Kevin Reichard, *MLB Raising MiLB Salaries for 2021*, BALLPARK DIG. (Feb. 15, 2020), <https://ballparkdigest.com/2020/02/15/mlb-raising-milb-salaries-for-2021>. However, \$1,600 per month is still considerably less than the salary these players would make under the state minimum wage in Arizona. *See infra* Part IV.C.

271. *See Berg, supra* note 5.

272. *About the Cactus League, supra* note 39.

273. *Compare id.* (showing that the Colorado Rockies have a spring training facility in Arizona), with 2019 Arizona League Overall Standings, MiLB, <http://m.milb.com/standings/#/js/standings/?c=rok&o=121> (last visited Feb. 8, 2021) (showing that the Colorado Rockies do not have an affiliate in the AZL). *See Kilpatrick, supra* note 40.

274. Cooper, *supra* note 28.

MiLB players work “seven days a week more often than six days,” and when there are night games, MiLB players usually work ten-hour days.<sup>275</sup> Based on those numbers, even though they are undoubtedly on the higher end, MiLB players work an average of 300 hours per month.<sup>276</sup> Using an average of 300 hours per month, a MiLB player in Arizona during the Rookie Level season, who makes the minimum salary of \$1,100 per month,<sup>277</sup> would make approximately \$3.67 per hour.<sup>278</sup> In total, the entire Rookie Level team would make approximately \$38,500 per month.<sup>279</sup>

As of 2020, the minimum wage in Arizona was \$12 per hour.<sup>280</sup> If each MiLB player earned Arizona’s \$12 per hour minimum wage during the AZL Rookie Level season, they would receive a raise of over \$8.00 per hour.<sup>281</sup> In total, that thirty-five-man roster on each AZL Rookie Level team would combine to make \$126,000 per month; therefore, each player would make \$3,600 per month.<sup>282</sup>

During spring training, MiLB “players are working 31 or 32 straight days . . . and a lot of times it’s 10 hours a day.”<sup>283</sup> The players are not paid

275. Garver, *supra* note 76. Regarding MiLB players, Garrett Broshuis stated that:

You’re working seven days a week more often than six days. For a [seven] o’clock game, you’re often getting to the ballpark around [one] o’clock, many, many hours before the game because you have all the pregame work you have to do. And you often aren’t leaving until [eleven]. Those are [ten-]hour days. Even on day games, you’re putting in six hours or so.

*Id.*

276. *See supra* Part IV.C (determining an average of 300 hours per month by multiplying 10 hours per day by 30 days per month).

277. Blum, *supra* note 270.

278. *See supra* Part IV.C (determining an average of \$3.67 per hour by dividing \$1,100 per month by 300 hours per month).

279. *See supra* Part IV.C (determining that the entire Rookie Level team would make approximately \$38,500 per month by multiplying thirty-five, the roster size of a Rookie Level team, by a salary of \$1,100 per month).

280. ARIZ. REV. STAT. ANN. § 23-363(A)(4) (2020). The minimum wage increased on January 1, 2021, and on January 1 of successive years, by the increase in the cost of living. *Id.* § 23-363(B). The 2021 statewide minimum wage is \$12.15 per hour, and in the City of Flagstaff, the minimum wage is \$15 per hour. Fox 10 Staff, *Minimum Wage in Arizona Increased to \$12.15 an Hour on Jan. 1*, FOX 10 PHX. (Dec. 29, 2020), <https://www.fox10phoenix.com/news/minimum-wage-in-arizona-increases-to-12-15-an-hour-on-jan-1>.

281. *See supra* Part IV.C (determining a raise of over \$8.00 per hour by subtracting \$3.67, the per-hour salary of a Rookie Level player making \$1,100 per month, from \$12, the per-hour minimum wage in Arizona). This calculation also assumes that MiLB players would be paid Arizona’s state minimum wage for any hours worked above forty hours per week. *Id.*

282. *See supra* Part IV.C (determining that each player would make \$3,600 per month by multiplying \$12, the per-hour minimum wage in Arizona, by 300 hours per month; determining a total of \$126,000 per month by multiplying thirty-five, the roster size of a Rookie Level team, by \$3,600, which is the amount that each player would make per month under Arizona’s per-hour minimum wage). This calculation also assumes that MiLB players would be paid Arizona’s state minimum wage for any hours worked above forty hours per week. *Id.*

283. Berg, *supra* note 5 (quoting former MiLB pitcher Garrett Broshuis).



for this time.<sup>284</sup> Assuming that 250 players (the maximum number of players under a minor league contract, per year), who are all at spring training in Arizona on a minor league contract, work thirty-two days for ten hours per day, they would combine to make \$960,000 during spring training under the Arizona state minimum wage.<sup>285</sup> Thus, instead of making \$0 during spring training—and having to drive for Uber in order to make a living, like Twins' starting pitcher Randy Dobnak—each player would make \$3,840 over that period of time.<sup>286</sup>

For an MLB organization in Arizona to pay state minimum wage to all of its players under minor league contracts during spring training and to all of its players on their AZL Rookie team roster,<sup>287</sup> it would cost the team a total of \$1,212,000.<sup>288</sup> The Kansas City Royals, who are the least valuable franchise with a spring training facility located in Arizona, have a total value of \$1.025 billion with \$251 million in revenue.<sup>289</sup> The cost of \$1,212,000 to pay their MiLB players in Arizona would only be approximately 0.12% of the team's total value (or approximately 0.48% of the team's total revenue).<sup>290</sup>

*D. MLB Organizations Will Receive a Return on Investment if They Pay MiLB Players Minimum Wage in Arizona*

During spring training, players are given a small amount of money each week for food.<sup>291</sup> All of the food money, unless it is used to purchase

284. *Id.*

285. *See supra* Part IV.C (determining that all 250 MiLB players combined would make \$960,000 during spring training by multiplying \$12, Arizona's minimum wage, by ten hours per day, the amount of time that MiLB players are working per day, by thirty-two days, the amount of days that MiLB players work during spring training, by 250 players, the average maximum number of players at spring training under a minor league contract).

286. *See Nesbitt, supra* note 6; *supra* Part IV.C (determining that each MiLB player would make \$3,840 during spring training by multiplying \$12, Arizona's minimum wage, by ten hours per day, the amount of time that MiLB players are working per day, by thirty-two days, the amount of days that MiLB players work during spring training).

287. *About the Arizona League*, MiLB, <https://www.milb.com/arizona/about> (last visited Feb. 8, 2021). The AZL Rookie League lasts for about two months. *Id.*

288. *See supra* Part IV.C (determining the cost of \$1,212,000 by first multiplying \$126,000, the amount that the thirty-five man roster on each AZL Rookie Level team would combine to make per month, by two months, the average length of the AZL Rookie League season, and then adding \$960,000, the amount that all 250 MiLB players combined would make during spring training).

289. *The Business of Baseball, supra* note 262.

290. *See supra* Part IV.C (determining that the cost of \$1,212,000 would only be approximately 0.12% of the team's value (or approximate 0.48% of the team's revenue) by first dividing \$1,212,000, the cost of a MLB club to pay Arizona minimum wage to all its players under minor league contracts during spring training and to all its players on their AZL Rookie team roster, by \$1.025 billion (or \$251 million), the approximately value (or revenue) of the Kansas City Royals, and then multiplying by 100).

291. Hayhurst, *supra* note 70.

fast food, is usually spent within a few days into each week.<sup>292</sup> During the season, players sometimes do not make enough money to eat; Jeremy Wolf, a thirty-first round pick by the New York Mets, said that “[he] would play hungry, and [he] would go to bed hungry. [He] played in front of 10,000 people a night, and [he] wouldn’t have food to eat after a game, and [he] wouldn’t have enough money to go get food.”<sup>293</sup>

Many MiLB players are crammed into apartments and are forced to sleep on air mattresses, sleeping bags, and couches.<sup>294</sup> Adequate sleep can maintain, and even improve, an athlete’s ability on the field by improving reaction times, reducing injury rates, improving overall health, lengthening athletic careers, improving accuracy, improving sprint times, and decreasing mental errors.<sup>295</sup> Many studies on sleep’s influence on athletic ability support these observations, such as a 2013 study that reported that MLB players’ strike zone judgment while at bat worsened as the season lengthened, likely due to sleep loss and the fatigue of travel.<sup>296</sup> Some teams have begun to take notice of these studies.<sup>297</sup> The Tampa Bay Rays pushed back their morning spring training sessions by one hour, while the New York Yankees pushed their schedules back by two hours.<sup>298</sup> By paying minimum wage to MiLB players, these players will be able to live in their own place, eat healthier, and receive an adequate amount of sleep each night.<sup>299</sup>

MLB organizations want to see their investments prosper.<sup>300</sup> MiLB “players are commodities and if [organizations] allow these commodities to mature the way that they should, [the organization has] more

292. See, e.g., *id.* (“In spring training, you were given only \$120 per week in meal money, no paycheck. That \$120 was gone in three nights at a sit-down restaurant—or you could stretch it by eating fatty fast food all week. Ironic, since there are rules about proper diet and being in shape; they go out the window when you’re barely paid enough to eat.”).

293. Daniel Gallen, *Minor League Baseball Salaries Hover at Poverty Levels While Major League Teams Earn Big Profits*, WITF (July 8, 2019, 9:27 AM), <https://www.witf.org/2019/07/08/minor-league-baseball-salaries-hover-at-poverty-level-while-major-league-teams-earn-big-profits>. Jeremy Wolf created the nonprofit “More Than Baseball,” which is focused on improving the living and working situations for baseball players around the country. *Id.* During the COVID-19 pandemic, More Than Baseball gave away close to \$8,000 for grocery reimbursements to over 100 MiLB players. Goldman, *supra* note 77.

294. Hayhurst, *supra* note 70; Normandin, *supra* note 50.

295. *Pro Baseball Teams Should Sleep Soundly if They Want to Win this Year*, AM. SLEEP APNEA ASS’N (Apr. 4, 2017), <https://www.sleepapnea.org/pro-baseball-teams-should-sleep-soundly-if-they-want-to-win-this-year>.

296. *Id.*

297. *Id.*

298. *Id.* Both the Tampa Bay Rays and the New York Yankees pushed back their spring training schedules to start later in the morning to encourage players to get more sleep so their players can perform better on the field. *Id.*

299. See *supra* Part IV.D.

300. Gallen, *supra* note 293.

opportunity to create wins, [the organization has] more opportunity to create major leaguers.”<sup>301</sup> For example, if an organization signs a player with a \$50,000 signing bonus, but that player has to go find his own job in the offseason, and therefore cannot focus twelve months a year on baseball, then the organization is wasting its investment.<sup>302</sup> If these players are paid minimum wage, organizations will see their investments prosper.<sup>303</sup>

## V. CONCLUSION

When the general public hears the name, “Save America’s Pastime Act,” they might assume that the Act was created to save baseball.<sup>304</sup> However, the name is terribly misleading.<sup>305</sup> After years of lobbying efforts from MLB, there is now a federal law that exempts MiLB players from federal minimum wage and overtime standards.<sup>306</sup>

MLB controls the pay structure of MiLB players.<sup>307</sup> MiLB players do not have a players’ union, nor will they probably ever have one; they are paid lower than minimum wage; they do not have adequate living conditions; they do not have enough money to eat.<sup>308</sup> A hurdle, the SAPA, stands between MiLB players making a livable wage and them not having enough money to adequately eat or sleep.<sup>309</sup>

Although MiLB players are exempt from federal minimum wage and overtime provisions, they are not exempt from state minimum wage laws.<sup>310</sup> The case of *Senne v. Office of the Commissioner of Baseball* is fighting for the rights of MiLB players.<sup>311</sup> Although this case will most likely not be resolved anytime in the near future, all parties have many options to consider.<sup>312</sup>

Arizona should specifically enact a law that does not exempt MiLB players from state minimum wage provisions.<sup>313</sup> MiLB players are significantly underpaid, yet MLB easily has the funds to pay them a living

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301. *Id.* (quoting Jeremy Wolf).

302. *Id.*

303. *Id.*

304. *See supra* Part I.

305. *See supra* Part II.C.2.

306. *See supra* Part II.C.2.

307. Isidore, *supra* note 3.

308. *See supra* Parts II.A.2–3, IV.D.

309. *See supra* Part II.C.

310. *See supra* Part III.B.

311. *See supra* Part III.C.

312. *See supra* Part III.C.3.

313. *See supra* Part IV.A.

wage.<sup>314</sup> MiLB players are an investment and MLB teams want to see a return on their investments.<sup>315</sup> Paying MiLB players well below minimum wage will lower the likelihood of these players creating a successful return on investment.<sup>316</sup> After the passage of the 2018 SAPA, MiLB players must fight for their rights in the judiciary.<sup>317</sup> The State of Arizona must participate in this effort.<sup>318</sup> Therefore, in order for these players to maintain an adequate quality of life, Arizona must enact a state law that explicitly does not exempt MiLB players from state minimum wage provisions.<sup>319</sup>

*Daniel Ryan Axelrod\**

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314. *See supra* Part IV.B.

315. *See supra* Part IV.D.

316. *See supra* Part IV.D.

317. *See supra* Part III.C.

318. *See supra* Part III.C.2; Part IV.A.

319. *See supra* Part IV.A.

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