

THE SAVE AMERICA'S PASTIME ACT: SPECIAL-INTEREST LEGISLATION EPITOMIZED

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Buried deep within the 2,232-page omnibus federal spending bill passed by Congress in March 2018 was an obscure, half-page provision entitled the “Save America’s Pastime Act” (SAPA). The SAPA was inserted into the spending bill at the last minute at the behest of Major League Baseball (MLB) following several years—and several million dollars’ worth—of lobbying efforts. MLB pursued the legislation to insulate its minor league pay practices from legal challenge after they had become the subject of a federal class action lawsuit alleging that the league’s teams failed to pay minor league players in accordance with the Fair Labor Standards Act’s (FLSA) minimum-wage and overtime provisions. The SAPA helps shield MLB from these claims by creating a new statutory exemption largely excluding most professional baseball players from the protections of the FLSA.

This Article provides the first substantive analysis of the SAPA. Specifically, it asserts that although initial assessments concluded that the provision would shield MLB from any future liability for its minor league pay practices, a closer reading of the statute reveals that it contains several potential ambiguities that could give rise to unanticipated liability for the league. Nevertheless, the Article asserts that the SAPA significantly reduces the odds that MLB will be forced to make substantial changes to its minor league pay practices in the future. At the same time, the Article evaluates the broader implications of the SAPA for federal minimum wage and maximum-hour law generally.

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INTRODUCTION

With annual salaries frequently reaching into the tens of millions of dollars,¹ the public rarely associates professional baseball players with subsistence-level living. And while that certainly holds true for players fortunate enough to play at the highest, major league level of the sport, for those toiling away in the lower-tiered minor leagues the reality can be vastly different. Indeed, the salary for many minor league players can range from as little as \$2,750 to \$14,500 per *year*, placing them at or below the federal poverty line.²

The plight of underpaid minor league players was recently highlighted by a federal class action lawsuit filed by former-minor-league-pitcher-turned-attorney Garrett Broshuis.³ In

1. See, e.g., *MLB Salaries*, USA TODAY, <https://www.usatoday.com/sports/mlb/salaries/> (last visited Jan. 11, 2019) [<https://perma.cc/G5K7-WGAV>] (reporting that 130 MLB players will make at least \$10 million in 2018).

2. See Levi Weaver, *On Minor-League Pay, MLB's Stance Doesn't Line Up with the Facts*, ATHLETIC (Apr. 4, 2018), <https://www.theathletic.com/293189/2018/04/04/on-minor-league-pay-mlbs-stance-doesnt-line-up-with-the-facts/> [<https://perma.cc/75TS-AKDG>] (recounting salary scale per level of minor league baseball, while noting that the “federally-recognized poverty line is \$12,140 per year for single-individual households”). That having been said, a not-insignificant percentage of minor league players are able to subsidize their relatively meager monthly salaries by drawing upon the signing bonuses they received from their MLB clubs when first entering the professional ranks, bonuses that can range anywhere from \$10,000 to several million dollars. See *id.* (reporting that “[t]he top 64 picks [in the MLB draft] last year all received a bonus of over \$1,000,000 before taxes, but roughly 40% of players . . . signed for one-time bonuses of \$10,000 or less”).

3. See Dave Matter, *Minor Leaguer-Turned-Lawyer Targets MLB in Lawsuit*, ST. LOUIS POST-DISPATCH (June 25, 2014), http://www.stltoday.com/sports/baseball/minor-leaguer-turned-lawyer-targets-mlb-in-lawsuit/article_713f4d65-e981-5565-a4a2-2e36ed1e627c.html [<https://perma.cc/5AEK-RNX8>] (discussing Broshuis' minor league playing career and reporting that he “has spearheaded

Senne v. Office of the Commissioner of Baseball, Broshuis filed suit on behalf of a group of then-current and former minor league players who contended that Major League Baseball's minor league pay practices failed to compensate players in accordance with both federal minimum wage and overtime law, as established by the Fair Labor Standards Act (FLSA).⁴

Rather than adjust its minor league pay practices or simply defend the *Senne* lawsuit on its merits, MLB instead sought to insulate its minor league wage scale from legal scrutiny by pursuing a new statutory exemption excluding minor league players from the FLSA.⁵ After several years of lobbying, these efforts ultimately proved fruitful when Congress inserted MLB's requested provision—dubbed the “Save America's Pastime Act” (SAPA)—into an omnibus spending bill that was passed by Congress and signed into law by President Trump in March 2018.⁶

a class action lawsuit against Major League Baseball, aimed toward improving the salaries and working conditions for minor leaguers”).

4. See Complaint, *Senne v. Office of the Comm’r of Baseball*, No. 3:14-cv-00608 (N.D. Cal. Feb. 7, 2014) [hereinafter *Senne* Complaint]; see also 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/3/> [https://perma.cc/XX3B-2A7D] (stating that Broshuis “helped file *Senne v. MLB*, a federal lawsuit on behalf of 20 former minor league players who allege that Major League Baseball violated the Fair Labor Standards Act and state laws by paying them less than minimum wage and failing to compensate them for overtime”).

As noted below, minor league players are employed directly by MLB teams, which then assign these players to their various minor league affiliate clubs. See *infra* note 46 and accompanying text (discussing same).

MLB is not the only U.S. professional sports league to be sued under federal wage-and-hour law in recent years. Several teams in the National Football League (NFL) as well as one National Basketball Association (NBA) franchise, have had their cheerleader pay practices challenged under the FLSA. See Charlotte S. Alexander & Nathaniel Grow, *Gaming the System: The Exemption of Professional Sports Teams from the Fair Labor Standards Act*, 49 U.C. DAVIS L. REV. 123, 125–26 (2015) (observing that five NFL franchises were sued under the FLSA in 2014 and 2015); Brendan O'Brien, *Milwaukee Bucks Cheerleader Files Minimum Wage Lawsuit Against Team*, REUTERS (Sept. 25, 2015), <https://www.reuters.com/article/us-usa-wisconsin-cheerleader-idUSKCN0RP21120150925> [https://perma.cc/TS7D-YH5C] (reporting that a “former Milwaukee Bucks cheerleader has filed a federal lawsuit accusing the National Basketball Association team of failing to pay her at least a minimum wage or overtime for her work”).

5. See *infra* Section II.A (discussing MLB's lobbying efforts); see also Weaver, *supra* note 2 (reporting that MLB spent \$1.32 million lobbying members of Congress in calendar year 2017 alone).

6. See Mike Murphy, *Here's Why These Baseball Players May Suffer from the \$1.3 Trillion Spending Bill*, MARKETWATCH (Mar. 23, 2018, 1:47 PM),

This Article provides the first substantive analysis of the SAPA and its implications for both the professional baseball industry and federal employment law more generally. In particular, it asserts that although initial assessments of the SAPA concluded that the law largely foreclosed the possibility that minor league players could rely on the FLSA in the future, a closer examination of the provision reveals that its statutory text is potentially more open to interpretation than originally suspected. Indeed, several possible ambiguities or potential loopholes in the law—including its applicability to MLB’s spring and fall training periods, for instance—leave the league more susceptible to a future claim under the FLSA than it had undoubtedly anticipated.⁷ At the same time, however, the Article nevertheless concludes that the enactment of the SAPA significantly reduces the odds that MLB will be forced—through the *Senne* litigation or another similar lawsuit—to make substantial changes to its minor league pay practices.⁸ In addition, the Article considers the implications of the SAPA for the so-called “independent” minor leagues (i.e., those operating free from any association with MLB).

The Article proceeds in three parts. Part I provides a brief history of the legal dispute that served as the impetus for the SAPA, namely the *Senne* federal class action lawsuit filed on behalf of minor league baseball players in 2014. Part II then reviews the legislative history of the SAPA before identifying and analyzing several potential ambiguities in the statutory text that could limit the scope of its applicability. Finally, Part III assesses the implications of the SAPA, not only for the professional baseball industry but also for the FLSA more broadly.

I. THE MINOR LEAGUE WAGE LITIGATION

The impetus for the SAPA came in February 2014 with the filing of the *Senne v. Office of the Commissioner of Baseball*

<https://www.marketwatch.com/story/heres-why-these-baseball-players-may-strike-out-if-congress-passes-the-spending-bill-2018-03-22> [https://perma.cc/ZYA8-TDEE] (reporting that “Minor-league baseball players may come out losers in the \$1.3 trillion spending bill that’s been signed into the law on Friday” due to a provision that allows “Major League Baseball to pay minor-league players less than a minimum wage”).

7. See *infra* Section II.B (identifying potential loopholes in the SAPA).

8. See *infra* Section III.A (discussing the likely effects of the SAPA on the *Senne* case and fight for greater minor league wages).

lawsuit.⁹ The *Senne* case presented a first-of-its-kind challenge to MLB's minor league pay practices. Specifically, the plaintiffs asserted that MLB and its teams collectively violated the FLSA in several ways, including: (1) by failing to pay minor league players in accordance with federal minimum-wage and overtime rules during the regular season; and (2) by failing to pay these same players anything at all for their participation in spring training, fall instructional leagues, and mandatory off-season workout programs.¹⁰ In particular, the *Senne* plaintiffs' complaint contended that MLB's league rules specify that all first-year minor league players must receive a salary of \$1,100 per month paid only during the regular playing season.¹¹ After a player's first season, MLB teams then compensate their players pursuant to a recommended salary scale, under which players competing at the lowest levels of minor league baseball would continue to be paid \$1,100 per month, while players in more advanced levels could receive upwards of \$2,700 per month.¹² Because these salaries are paid only during the regular season, however, even at the highest end of the recommended wage scale a player would receive at most around \$16,000 for the year.¹³ Indeed, because players are often required to work fifty to seventy hours per week during the playing season, along with mandatory, unpaid spring training and off-season workout regimens, the *Senne* plaintiffs alleged that most minor league players earned far below the federally

9. *Senne* Complaint, *supra* note 4. Shortly after the *Senne* lawsuit was filed, a second, very similar collective-action suit was filed in the same federal district court on behalf of a group of minor league players originally hailing from Latin America. *Marti v. Office of the Comm'r of Baseball*, No. 3:14-cv-03289 (N.D. Cal. July 21, 2014). Aside from specifically highlighting the plight of Latin American minor league players, the *Marti* case was largely duplicative of the *Senne* case. *See* Complaint at 22–24, *Marti v. Office of the Comm'r of Baseball*, No. 3:14-cv-03289 (N.D. Cal. July 21, 2014). Not surprisingly, the *Marti* case was ultimately merged with the *Senne* suit. *See Senne v. Kan. City Royals Baseball Corp.*, 105 F. Supp. 3d 981, 998 (N.D. Cal. 2015) (noting that the *Senne* and *Marti* suits had been consolidated).

10. *Senne* Complaint, *supra* note 4, at 2 (“They receive no overtime pay, and instead routinely receive less than minimum wage during the championship season.”).

11. *Id.* at 21.

12. *Id.*

13. *See* *Weaver*, *supra* note 2 (recounting salary scale per level of minor league baseball).

prescribed \$7.25 minimum wage after accounting for all of their working hours.¹⁴

Although such an industry-wide, collectively determined pay scale would normally run afoul of the Sherman Antitrust Act, MLB teams have been able to agree to pay these uniform salaries due to the fact that the league is the beneficiary of a unique, judicially-created exemption from federal antitrust law.¹⁵ Dating back to the U.S. Supreme Court's decision in the 1922 case of *Federal Baseball Club of Baltimore v. National League*,¹⁶ federal courts have almost uniformly held that MLB and its teams may permissibly operate outside the scope of the Sherman Act.¹⁷ While Congress partially repealed this exemption via the Curt Flood Act of 1998 (CFA),¹⁸ that limited provision only gave current major league players the right to pursue antitrust lawsuits against MLB.¹⁹ Meanwhile, lawsuits brought by minor league players were not included within the scope of the CFA²⁰ and therefore the league presumptively continues to be shielded by baseball's antitrust exemption.²¹ Without the fear of accruing liability under federal antitrust law—and because minor league players have never undertaken

14. *Senne* Complaint, *supra* note 4, at 2.

15. See, e.g., Theodore McDowell, *Changing the Game: Remediating the Deficiencies of Baseball's Antitrust Exemption in the Minor Leagues*, 9 HARV. J. SPORTS & ENT. L. 1, 4 (2018) (stating that "MLB's federal antitrust exemption enables [the] exploitation" of minor league players).

16. 259 U.S. 200 (1922); see also NATHANIEL GROW, *BASEBALL ON TRIAL: THE ORIGIN OF BASEBALL'S ANTITRUST EXEMPTION* (2014) (discussing the history of the *Federal Baseball* litigation).

17. See Nathaniel Grow, *Defining the "Business of Baseball": A Proposed Framework for Baseball's Antitrust Exemption*, 44 U.C. DAVIS L. REV. 557 (2010). Although originally premised on the finding in *Federal Baseball* that professional baseball did not constitute interstate commerce, the Supreme Court's more recent jurisprudence has upheld the exemption on the basis of both *stare decisis* and Congressional inaction. See *Flood v. Kuhn*, 407 U.S. 258, 283–84 (1972).

18. 15 U.S.C. § 26b (2018). For more on the history and effect of the Curt Flood Act, see generally Nathaniel Grow, *The Curiously Confounding Curt Flood Act*, 90 TUL. L. REV. 859 (2016).

19. Pub. L. No. 105-297, 112 Stat. 2824 (codified at 15 U.S.C. § 26b (2012)).

20. *Id.* at 2824–25 (codified at 15 U.S.C. § 26b(b)) (stating that "[t]his section does not create, permit or imply a cause of action by which to challenge under the antitrust laws, . . . the business of organized professional baseball relating to or affecting employment to play baseball at the minor league level, . . . [including] any reserve clause as applied to minor league players; . . . or any other matter relating to organized professional baseball's minor leagues").

21. See, e.g., *Miranda v. Selig*, 860 F.3d 1237, 1239–40 (9th Cir. 2017) (applying baseball's antitrust exemption to a lawsuit challenging MLB's minor league pay practices under the Sherman Act).

to form their own union²²—MLB and its teams have thus been free to set a uniform, minor league wage scale without fear of legal liability. At least, that is, until the filing of the *Senne* case.

Although MLB teams could easily afford to pay their minor league players a living wage,²³ the league nevertheless elected to litigate *Senne*, asserting a variety of defenses on its behalf.²⁴ Perhaps most significantly for present purposes, MLB contended that two preexisting FLSA exemptions covered its minor league pay practices, namely those pertaining to (1) “seasonal, amusement or recreational establishments” and (2) workers “employed in a ‘bona fide professional capacity.’”²⁵

The first of the exemptions cited by MLB excludes businesses that provide amusement or recreational services to the public on a seasonal basis from the FLSA requirement to pay either the minimum-wage or overtime benefits.²⁶ Specifically, 29 U.S.C. § 213(a)(3) exempts these businesses from the FLSA so long as they either: (1) operate for seven months or fewer in a calendar year; or (2) generate at least three-fourths of their revenue within six months of the year.²⁷ Prior to the *Senne* case, courts had been divided as to the applicability of this exemption to professional sports teams.²⁸ On the one hand, because a sports team’s playing season—and thus its provision of amusement or recreation to the public—often runs seven months or fewer, some courts have ruled that professional

22. See Nathaniel Grow, *In Defense of Baseball’s Antitrust Exemption*, 49 AM. BUS. L.J. 211, 244 (2012) (finding that “unlike MLB players, minor league players have never formed a union and thus have not enjoyed the benefits of collective bargaining as have their major league colleagues”).

23. See Tom Goldman, *Fight Against Low, Low Pay in Minor League Baseball Continues Despite New Obstacles*, NPR (Aug. 3, 2018), <https://www.npr.org/2018/08/03/635373608/fight-against-low-low-pay-in-minor-league-baseball-continues-despite-new-obstacles> [https://perma.cc/5TLC-NYTX] (“Bumping up minor league pay wouldn’t necessarily break major league baseball’s \$10 billion bank. Roughly 200 players are in a minor league system for each major league team. If minor league pay rose to \$2,000 a month, year-round, that’s \$24,000 per player—an extra outlay of \$4.8 million per team. A little more than the average salary of one major league player.”).

24. See Defendants Office of the Commissioner of Baseball and Allan Huber “Bud” Selig’s Answer to the Second Amended Complaint at 71–77, *Senne v. Office of the Comm’r of Baseball*, No. 3:14-cv-00608-JCS (N.D. Cal. May 22, 2014) (asserting thirty different affirmative defenses in the case).

25. *Id.* at 72 (citing 29 U.S.C. §§ 213(a)(1)–(3) (2012)).

26. 29 U.S.C. § 213(a)(3).

27. *Id.*

28. See Alexander & Grow, *supra* note 4, at 154–58 (surveying case law).

teams may qualify for protection under the exemption.²⁹ On the other hand, because most professional teams maintain extensive, year-round business operations, other courts have held that these franchises fail to qualify as “seasonal” establishments and thus are not covered by the provision.³⁰ Therefore, while MLB could certainly have argued that its minor league pay practices were excluded from the FLSA on this ground,³¹ its likelihood of success on the seasonal-amusement-or-recreational defense was far from certain.

Meanwhile, the league’s contention that it was covered by the “bona fide professional” exemption was more of a stretch. In 29 U.S.C. § 213(a)(1), the FLSA states that its minimum-wage and overtime provisions “shall not apply with respect to . . . any employee employed in a bona fide executive, administrative, or professional capacity.”³² While MLB could theoretically contend that minor league baseball players fall within this exemption given that they are employed in a “professional capacity” (i.e., as “professional baseball players”), the U.S. Department of Labor’s subsequent regulations defining and delimiting the exemption undercut the league’s argument.³³ Specifically, the relevant regulation explains:

The section 13(a)(1) exemptions . . . do not apply to manual laborers or other “blue collar” workers who perform work involving repetitive operations with their hands, physical skill and energy. Such nonexempt “blue collar” employees

29. See *Jeffery v. Sarasota White Sox, Inc.*, 64 F.3d 590, 596 (11th Cir. 1995) (“Defendant’s operation at the baseball complex in Sarasota lasts approximately five months each year which is two months less than the seven month period afforded under 29 U.S.C. § 213(a)(3).”); *Adams v. Detroit Tigers, Inc.*, 961 F. Supp. 176, 180 (E.D. Mich. 1997) (“[I]t is undisputed that Tiger games are not played during the months of November through March, limiting batboys’ employment to only seven months of the year.”).

30. See *Bridewell v. Cincinnati Reds*, 68 F.3d 136, 139 (6th Cir. 1995) (“While 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) (“[T]he Court finds that the Hornets are a year-round operation, and thus, cannot qualify for the exemption under 29 U.S.C. § 213(a)(3)(A).”).

31. See *Alexander & Grow*, *supra* note 4, at 169–70 (laying out the case that MLB teams could qualify as exempt, seasonal, recreational establishments under the FLSA).

32. 29 U.S.C. § 213(a)(1) (2012).

33. 29 C.F.R. § 541 (2018).

gain the skills and knowledge required for performance of their routine manual and physical work through apprenticeships and on-the-job training, not through the prolonged course of specialized intellectual instruction required for exempt learned professional employees such as medical doctors, architects and archeologists.³⁴

As this regulation makes clear, employees—such as minor league baseball players—hired for their physical skill acquired through on-the-job training, rather than intellectual study, do not qualify as exempt professionals under the FLSA. Therefore, MLB's odds of avoiding liability in the *Senne* case on the basis of the “bona fide professionals” exemption appeared to be quite remote.³⁵

In addition to these as-of-yet-unresolved substantive defenses, MLB also challenged the plaintiffs' attempts to proceed with the case on a collective action basis.³⁶ Specifically, the

34. *Id.* § 541.3.

35. MLB also attacked the *Senne* case on various procedural grounds. Initially, the league sought to have the lawsuit transferred from a California federal court to one in Florida, likely to avail itself of favorable 11th Circuit precedent regarding whether a professional sports team qualified as a seasonal-amusement-or-recreational establishment under the FLSA, a request that was ultimately denied by the court. Order re Motions to Dismiss and Motions to Transfer, *Senne v. Kan. City Royals Baseball Corp.*, No. 3:14-cv-00608-JCS (N.D. Cal. May 20, 2015); *see also* *Jeffery v. Sarasota White Sox, Inc.*, 64 F.3d 590 (11th Cir. 1995) (holding that a minor league baseball team was an exempt, seasonal employer under the FLSA). MLB's official stated reason for requesting the transfer of the lawsuit was that Florida would provide a more convenient venue for the parties considering the number of MLB teams with spring training facilities located in the state, along with the state's nexus to many of the contracts at issue. *See* Motion to Transfer Action to the Middle District of Florida at 7–12, *Senne v. Office of the Comm'r of Baseball*, No. 3:14-cv-00608-JCS (N.D. Cal. May 23, 2014).

At the same time, MLB also contested the California court's personal jurisdiction over a number of its teams due to their lack of any consistent physical presence in the state. The *Senne* court eventually agreed to dismiss eight of the thirty MLB clubs from the case on this basis. *Id.* at 82 (dismissing the Atlanta Braves, Baltimore Orioles, Boston Red Sox, Chicago White Sox, Cleveland Indians, Philadelphia Phillies, Tampa Bay Rays, and Washington Nationals from the case).

36. Under the FLSA, class action lawsuits are characterized as “collective action” cases. *See, e.g.*, Kristin M. Stastny, Note, *Eleventh Circuit Treatment of Certification of Collective Actions Under the Fair Labor Standards Act: A Remedial Statute Without a Remedy?*, 62 U. MIAMI L. REV. 1191, 1202 (2008) (“While employees retain the option to proceed individually or collectively under the FLSA, employees wishing to proceed . . . are required to use the section 16(b)

league argued that individual differences between the plaintiffs—such as those relating to the total number of hours a player worked in a given week or teams' varied off-season training expectations for their players—rendered collective action treatment of the dispute improper.³⁷ The *Senne* court initially sided with the plaintiffs on the matter, agreeing to grant preliminary, conditional approval for the plaintiffs to proceed with the case as a collective action. This initial decision effectively expanded the scope of the litigation from just the fifty-or-so named plaintiffs to potentially encompass all players who played in the minor leagues between 2011 and 2015 without being promoted to the major leagues.³⁸

After additional discovery, however, the court reversed this preliminary approval in July 2016, finding that the plaintiffs could not prove that their claims were sufficiently similarly situated to qualify for collective action status under the FLSA.³⁹ The district court continued to shift its thinking on the matter, though, eventually certifying a narrower class of plaintiffs upon further reconsideration.⁴⁰ As a result, the *Senne* plaintiffs were ultimately allowed to move forward with a class focused solely on the work experience of players playing in a single minor league—the California League—but only then for work performed during spring training and the regular season, not the off-season.⁴¹ Both parties eventually appealed this out-

collective-action provisions; the Federal Rule of Civil Procedure 23 class-action mechanism is not available as an alternative mechanism.”).

37. See Order Granting Motion for Conditional Certification Pursuant to the Fair Labor Standards Act at 9–16, *Senne v. Kan. City Royals Baseball Corp.*, No. 3:14-cv-00608-JCS (N.D. Cal. Oct. 20, 2015) (summarizing defendants' arguments against collective-action certification).

38. See *id.* at 24 (“The Court finds that under the lenient standard that applies to conditional certification, Plaintiffs have met their burden.”).

39. Order re: 1) Motion for Class Certification; 2) Motion to Decertify the Fair Labor Standards Act Collective Action; and 3) Motion to Exclude Plaintiffs' Expert Declaration and Testimony, *Senne v. Kan. City Royals Baseball Corp.*, No. 3:14-cv-00608-JCS (N.D. Cal. July 21, 2016).

40. Order re: 1) Motion for Reconsideration Regarding Class and Collective Certification; 2) Motion to Exclude; 3) Motion to Intervene; and 4) Motion for Leave to File Sur-Reply, *Senne v. Kan. City Royals Baseball Corp.*, No. 3:14-cv-00608-JCS (N.D. Cal. March 7, 2017). This does not necessarily mean that the players now excluded from the *Senne* case are completely foreclosed from seeking relief. Rather, these players must instead now file a separate lawsuit covering a narrower category of players within which they would be included.

41. *Id.* at 68–69 (“The Court certifies the following FLSA Collective: Any person who, while signed to a Minor League Uniform Player Contract, participated in the California League, or in spring training, instructional leagues,

come to the Ninth Circuit, an appeal that remains pending as of the date of this writing.⁴²

Despite having succeeded at substantially reducing the scope of the litigation at the district court level, the *Senne* lawsuit continued to present a significant threat to MLB. Indeed, given the uncertain applicability of the FLSA's seasonal-amusement-and-recreational and "bona fide professional" exemptions to the league and its teams, the case—or a future one like it—still threatened to result in MLB's minor league pay practices being declared illegal under federal wage-and-hour law. As a result, the league remained highly motivated to find other mechanisms through which it could insulate its minor league pay practices from legal challenge under the FLSA.

II. THE SAVE AMERICA'S PASTIME ACT

Cognizant of its potentially precarious legal status under federal employment law, MLB opted to pursue a legislative solution to its minor league legal dilemma by lobbying Congress to exclude minor league players from the scope of the FLSA. Despite the initial pushback these efforts received from the media and public, the league's lobbying was ultimately successful, culminating with the passage of the SAPA in 2018.⁴³ Nevertheless, the rushed, closed-door manner in which the final version of the SAPA was both drafted and enacted into law resulted in several potential ambiguities in the statutory text. In turn, these ambiguities raise questions regarding the SAPA's applicability to work performed by minor league players during several periods of the baseball calendar, including the spring and fall training sessions.

A. *The SAPA's Legislative History*

The idea of seeking a statutory exemption excluding minor league baseball players from federal minimum-wage and overtime law was first floated publicly in December 2014 by Stan

or extended spring training, on or after February 7, 2011, and who had not signed a Major League Uniform Player Contract before then.”)

42. *Senne v. Kansas City Royals Baseball Corp.*, No. 14-cv-00608-JCS (N.D. Cal. March 7, 2017), *appeal filed*, *Senne v. Kansas City Royals Baseball Corp.*, No. 17-16276 (9th Cir., June 20, 2017).

43. Pub. L. No. 115-141, Div. S, Title II, Mar. 23, 2018, 132 Stat. 1126.

Brand, the vice president of the Minor League Baseball (MiLB) trade association. Speaking to a group of minor league owners at baseball's annual Winter Meetings, Brand announced that in the coming year his organization would be "seeking legislation to clarify that professional baseball players are not covered by these federal wage and hour laws."⁴⁴ Along those lines, Brand noted that while he did "not want to overstate the threat [the *Senne*] suit presents," his "honest assessment [was] that it [was] equally perilous for" the future of minor league baseball as the specter of Congress repealing baseball's antitrust exemption was back in the 1990s.⁴⁵

In particular, MiLB appeared to be concerned over the potential financial ramifications that a successful ruling in favor of the plaintiffs in the *Senne* case could have for minor league owners. Even though minor league teams do not pay their players' salaries—minor league players are instead employed and paid by MLB franchises, who then assign these players to various minor league affiliate teams for development⁴⁶—MiLB nevertheless feared that a victory by the plaintiffs in *Senne* could have disastrous effects on the minor league business model. Specifically, minor league owners worried that if MLB was forced to pay minor league players larger salaries, then the league could choose to offset these added expenditures by decreasing the financial subsidies its teams provide to their minor league affiliates.⁴⁷ In a worst-case scenario, MiLB believed

44. Craig Calcaterra, *Baseball Will Lobby to Have Congress Exempt Minor Leaguers from the Fair Labor Standards Act*, NBC SPORTS (Dec. 19, 2014), <http://mlb.nbcsports.com/2014/12/19/baseball-will-lobby-to-have-congress-exempt-minor-leaguers-from-the-fair-labor-standards-act/> [https://perma.cc/6F9T-S4SX].

45. *Id.* Brand was presumably referring to the passage of the CFA, early versions of which MiLB feared could be read to repeal the exemption as it applied to the minor leagues. See Grow, *supra* note 18, at 883 (noting that "minor league owners feared that an overzealous court could read [an early version of the CFA] as a repudiation of the antitrust exemption as applied to minor league baseball").

46. See David M. Szuchman, Note, *Step Up to the Bargaining Table: A Call for the Unionization of Minor League Baseball*, 14 HOFSTRA LAB. L.J. 265, 299 (1996) ("[T]he major leagues retain almost exclusive control over the minor league players and therefore, these players are the employees of MLB.").

47. Cf. 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, which could lead to the elimination of many minor league teams, particularly at the Rookie and A levels").

that a reduction of these subsidies could potentially result in some minor league teams being driven out of business.⁴⁸

The prospect of MiLB launching an extensive lobbying effort was no idle threat, as minor league owners have historically wielded considerable influence over Congress. Because MiLB is made up of more than 160 teams spread throughout forty-two states, the association's politically connected membership can exert influence over a large and geographically diverse group of congressional representatives.⁴⁹ Recounting collective lobbying efforts by MLB and MiLB dating back to the 1950s, former Congressman Emanuel Celler once famously quipped, "I have never known, in my 35 years of experience, as great a lobby that descended upon the House than the organized baseball lobby They came upon Washington like locusts."⁵⁰ Conversely, because minor league baseball players—unlike their major league brethren—have never unionized,⁵¹ the players failed to mount an effective, organized effort to rebut MiLB's lobbying efforts on Capitol Hill.

MLB opted to join MiLB in a joint lobbying campaign, an effort that eventually succeeded in persuading two members of Congress to introduce legislation exempting minor league baseball players from the FLSA's minimum-wage and overtime protections. In June 2016, Representatives Brett Guthrie (a Republican from Kentucky) and Cheri Bustos (a Democrat from Illinois) introduced the SAPA in the U.S. House of Representatives.⁵² In its original form, the bill specified that "any em-

48. See *id.* (discussing the potential "elimination of many minor league teams" should MLB reduce the financial subsidies it provides to minor league baseball teams).

49. See Gary R. Roberts, *A Brief Appraisal of the Curt Flood Act of 1998 from the Minor League Perspective*, 9 MARQ. SPORTS L.J. 413, 418 (1999) (stating that the minor leagues "contain[] roughly 175 domestic teams located in almost as many congressional districts, most with local owners and deep roots in their respective communities," making their "political influence in Congress, and especially in the House of Representatives, . . . substantial"); see also Nathaniel Grow, *Congress Is Asked to "Save America's Pastime,"* FANGRAPHS (June 30, 2016), <https://www.fangraphs.com/blogs/congress-is-asked-to-save-americas-pastime/> [<https://perma.cc/H7C4-HNF3>] (discussing same).

50. ROGER I. ABRAMS, *LEGAL BASES: BASEBALL AND THE LAW* 61 (1998).

51. See Grow, *supra* note 22, at 244 (finding that "unlike MLB players, minor league players have never formed a union and thus have not enjoyed the benefits of collective bargaining as have their major league colleagues").

52. H.R. 5580, 114th Cong. (2016); see also McDowell, *supra* note 15, at 15–16 (reporting that "recent congressional action has been taken to try and *reduce* the legislative protection afforded to minor leaguers. A new bill, the 'Save America's

ployee who has entered into a contract to play baseball at the minor league level” would be excluded from the protections afforded by the FLSA.⁵³ Notably, the proposed provision would not just have applied prospectively, but in fact would have covered any lawsuit “commenced before, on, or after the date of [its] enactment,” effectively negating the *Senne* lawsuit’s claims under the FLSA.⁵⁴

The prospect of Congress passing a legislative exemption shielding MLB—an organization with annual revenues surpassing \$10 billion⁵⁵—from the legal obligation to pay some of its employees the minimum wage quickly triggered a wave of outcry from media commentators.⁵⁶ Within a matter of days, articles with titles such as *Here’s Why the Save America’s Pastime Act Is a River of Molten Sewage*⁵⁷ and *Evil Congressmen Want to Make Living Wage for Minor Leaguers Illegal* popped up across the internet.⁵⁸ The public backlash to the bill was so vociferous, in fact, that Representative Bustos—the original Democratic cosponsor of the SAPA—announced that she was withdrawing her support for the legislation less than a week after she had introduced it.⁵⁹ Indeed, estimates suggest that

Pastime Act,’ seeks to amend the FLSA to specifically exclude MiLB players from the statute’s minimum wage and overtime compensation requirements”).

53. H.R. 5580, § 2(a).

54. *Id.* § 2(b).

55. See Maury Brown, *MLB Sets Record for Revenues in 2017, Increasing More Than \$500 Million Since 2015*, FORBES (Nov. 22, 2017), <https://www.forbes.com/sites/maurybrown/2017/11/22/mlb-sets-record-for-revenues-in-2017-increasing-more-than-500-million-since-2015/> [<https://perma.cc/76AC-4ABZ>] (reporting that MLB earned “record gross revenues, surpassing the \$10 billion mark for the first time” in 2017).

56. See, e.g., Ryan Fagan, *Despicable “Save America’s Pastime Act” Aims to Screw Minor Leaguers*, SPORTING NEWS (June 29, 2016), <http://www.sportingnews.com/mlb/news/minor-league-save-americas-pastime-act-salaries-antitrust-exemption-broshuis-congress/1jln290glubcd18af2tjyb1u7l> [<https://perma.cc/C84U-UBJ2>]; see also William F. Saldutti IV, *Blocking Home: Major League Baseball Settles Blackout Restriction Case; However, A Collision with Antitrust Laws Is Still Inevitable*, 24 JEFFREY S. MOORAD SPORTS L.J. 49, 80 n.227 (2017) (reporting that the initial version of the SAPA “received a strong negative response because the Act would put a cap on minor league salaries rather than raising them to an acceptable level as compared to the large salaries of MLB players”).

57. Grant Brisbee, “SBNATION (June 30, 2016, 1:57 PM), <https://www.sbnation.com/mlb/2016/6/30/12068178/> [<https://perma.cc/9Z79-36UY>].

58. Patrick Redford, *DEADSPIN (June 29, 2016, 10:10 PM), <https://deadspin.com/evil-congressmen-want-to-make-living-wage-for-minor-lea-1782859513> [<https://perma.cc/Y6CU-6S3L>].*

59. See Aaron Blake, *After Outcry over Minor League Baseball Bill, Congresswoman Can’t Disown It Fast Enough*, WASH. POST (June 30, 2016),

paying minor league players an annual salary of just \$24,000 would, at most, cost each MLB team a total of \$4.8 million per year, an amount equaling “little more than the average salary of *one* major league player.”⁶⁰

Recognizing that his league was losing the public-relations battle, MLB Commissioner Rob Manfred publicly addressed the minor league wage issue ahead of the All-Star Game in July 2016. According to Manfred, the league’s concern over the *Senne* lawsuit was “not a dollar-and-cents issue,” but rather an issue of the feasibility of applying the FLSA to professional baseball players.⁶¹ As Manfred explained:

[The issue] 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 [batting practice]—am I working, or am I not working? Travel time. You know, is every moment that you’re on the 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 provides, is that working time, or is that your lunch break? We can figure out the economics. The administrative burden associated with the application of these laws to professional athletes that were never intended to apply for professional athletes is the real issue.⁶²

Taking the commissioner at his word, it was not clear why these administrability concerns necessitated depriving minor league players of both the minimum wage and overtime. Indeed, if MLB’s worry was simply the feasibility of calculating the number of hours its players worked—and not the financial cost of having to pay minor leaguers a living wage—then there would be no reason for MLB to pursue legislation completely

<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/> [<https://perma.cc/WL93-S8M7>].

60. Goldman, *supra* note 23.

61. See Ronald Blum, *MLB Doesn’t Think Minor Leaguers Should Get Overtime*, ASSOCIATED PRESS (July 12, 2016), <https://apnews.com/6c7f98a16ed7419eb59bale7e4c0ea47> [<https://perma.cc/ZWX2-YR4X>].

62. *Id.*

removing minor league players from the protection of the FLSA.⁶³ Instead, the league would have simply sought legislation specifying that so long as minor league players receive a certain minimum annual salary, then they would not be entitled to any additional compensation, overtime or otherwise. Such a provision would have been similar to the so-called “bona fide professionals” exemption discussed above,⁶⁴ under which professionals earning more than \$23,660 per year do not receive additional protection under the FLSA.⁶⁵ Given this criticism of the bill, not to mention the public backlash it generated, it was not particularly surprising that the SAPA ultimately languished in the House of Representatives throughout the rest of the term of the 114th Congress.

More than a year and a half later, however, word came that Congress was once again considering legislation exempting minor league baseball players from the FLSA. After the federal government briefly shut down twice in early 2018, Congress faced a March 23 deadline to pass a spending bill providing continued funding for the government.⁶⁶ Five days before the deadline, the *Washington Post* reported that the spending bill being drafted by Congress was expected to include a provision exempting minor league players from the FLSA.⁶⁷ Although details were initially sparse, three days later Congress released a draft version of its spending bill containing a modified version of the SAPA.⁶⁸

63. Moreover, Commissioner Manfred’s stated administrability concerns are also undercut by the fact that myriad other industries are able to resolve similar issues when calculating the number of hours their employees work.

64. See *supra* notes 32–34 and accompanying text (discussing exemption).

65. See Bruce Levine, *Labor & Employment Law*, 66 SYRACUSE L. REV. 1027, 1043 (2016) (explaining that a “salary level test” [is] used to determine whether an employee is exempt from overtime requirements under the professional, administrative, or executive exemptions,” and stating that the salary level test is currently set at a threshold of a “weekly amount of \$455 (or \$23,660 annualized”).

66. See Richard Cowan, *Congress Struggles to Meet Deadline for Government Funding Bill*, REUTERS (Mar. 19, 2018, 6:28 PM), <https://www.reuters.com/article/us-usa-fiscal-congress/congress-struggles-to-meet-deadline-for-government-funding-bill-idUSKBN1GW028> [<https://perma.cc/85ZS-L9A7>].

67. Mike DeBonis, *Spending Bill Could Quash Minor League Baseball Players’ Wage Claims*, WASH. POST (Mar. 18, 2018), <https://www.washingtonpost.com/powerpost/spending-bill-could-quash-minor-league-baseball-players-wage-claims/2018/03/18/d31cd76e-2b0a-11e8-8ad6-fbc50284fce8> [<https://perma.cc/FB7F-NFWV>].

68. See 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>

Rather than completely exclude minor league baseball players from the minimum-wage and overtime laws, the new version of the SAPA contained a slightly more narrowly tailored exemption. Under the bill, a minor league player would be exempt from the FLSA's minimum-wage and overtime provisions only if he is paid a weekly salary greater than the weekly equivalent of the current minimum wage for a forty-hour work week during the championship (i.e., regular and playoff) season.⁶⁹ In other words, as long as players were paid at least \$290 per week during the 2018 championship season, then they would not be entitled to any additional compensation—overtime or otherwise—even when working more than forty hours in a single week.

In this respect, the revised SAPA was a modest improvement over the original version of the bill. Instead of denying minor league players any rights at all under the FLSA, the new language provided that teams must, at the very least, pay players the minimum wage for their first forty hours worked each week during the regular season in order to take advantage of the new exemption. Indeed, Commissioner Manfred sought to deflect criticism of the bill by boasting that it would provide a raise to some minor league players.⁷⁰ That having been said, the revised bill did little to meaningfully improve the economic reality for most minor leaguers, as the raise Manfred highlighted amounted to little more than an additional \$60 per month for players at the lowest levels of the minor leagues.⁷¹ In exchange, these players still could not seek compensation for any hours worked over forty per week, nor for any work performed during spring training or the off-season.⁷²

-americas-pastime-act [https://perma.cc/M5BV-3ARC] (discussing the provision's inclusion in Congress's omnibus spending bill).

69. H.R. 1625, 115th Cong. § 201 (2018).

70. See Weaver, *supra* note 2 (quoting Manfred as stating that “a lot of players in the low minor leagues are actually going to get a raise this year, in order to meet the requirements of the statute. So that's a good thing for those players!” (emphasis omitted)).

71. See Josh Timmers, *Congress, Baseball Team Up to Cheat Minor Leaguers*, SBNATION (Mar. 23, 2018, 10:30 AM), <https://www.bleedcubbieblue.com/2018/3/23/17153290/> [https://perma.cc/STC6-5P98] (reporting that the “upshot of [the revised SAPA] is players at the lowest levels of the minor leagues are going to get a \$60 a month pay raise”).

72. See Bill Shaikin, *Minor Leaguers Could Be Paid Minimum Wage—And No More*, L.A. TIMES (Mar. 23, 2018, 10:40 AM), <http://www.latimes.com/sports/mlb/la-sp-minor-league-baseball-wage-20180323-story.html> [https://perma.cc/FSG4-

In addition, the new version of the SAPA included one other notable change. Rather than applying retroactively to any previously filed lawsuit—as it had in its original form—the revised SAPA only applied on a prospective basis, thereby not directly undercutting the *Senne* litigation.⁷³ As a result, despite the revised SAPA’s passage, MLB continued to face potential liability for its past underpayment of minor league players, even though the new exemption largely shielded it from future liability under the FLSA.

Despite these modest improvements over the original version of the bill, the new version of the SAPA was nevertheless heavily criticized by media commentators.⁷⁴ This criticism was not enough to persuade Congress to remove the provision from the spending bill, however, as it reportedly had the support of leaders from both political parties.⁷⁵ As a result, the revised SAPA remained in the final version of Congress’s omnibus legislation and was ultimately signed into law by President Trump on March 23, 2018, marking the successful culmination of two-and-a-half years of lobbying efforts by MLB and MiLB.⁷⁶

B. *Interpreting the SAPA*

Considering the rushed manner in which the revised SAPA was pushed through Congress—without the legislation being subjected to committee hearings or any other substantive de-

F8V2] (“Minor leaguers do not need to be paid during spring training or the offseason and do not need to be paid for more than 40 hours per week “irrespective of the number of hours the employee devotes to baseball related activities.”).

73. See *supra* notes 54–54 and accompanying text (discussing the expansive applicability of the original version of the SAPA).

74. See, e.g., 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> [<https://perma.cc/UP4Q-8DVU>]; Whitney McIntosh, *How Congress Screwed Over Minor League Baseball Players, Explained*, SBINATION (Mar. 23, 2018, 7:30 AM), <https://www.sbnation.com/mlb/2018/3/23/17152778/spending-bill-minor-league-baseball-explained-save-americas-pastime> [<https://perma.cc/FCA9-2TUU>].

75. See Chris Opfer, *Minor League Baseball Players Are Big Losers in Spending Deal*, BLOOMBERG BNA (Mar. 22, 2018), <https://www.bna.com/minor-league-baseball-n57982090193> [<https://perma.cc/ZG78-GFJA>] (reporting that “the bill has . . . bipartisan support, including from leadership”).

76. See Murphy, *supra* note 6 (reporting that the omnibus spending bill signed into law included the provision excluding minor league players from the FLSA).

liberative process—it should come as no surprise that the language ultimately enacted into law is anything but a model of clarity. Specifically, in its final form, the SAPA added a new exemption to Section 213 of the FLSA specifying that the statute's minimum-wage and overtime provisions do not apply to:

[A]ny 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 off season) 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.⁷⁷

While the legislative history recited above makes it relatively clear what MLB and MiLB were hoping to accomplish with the enactment of this legislation, the specific language used nevertheless gives rise to several potential interpretive questions. First, one possible question raised by the final wording of the SAPA is whether players are entitled to any pay for the two time periods specifically identified in the provision's parenthetical, namely spring training and the off-season. While the statutory text makes clear that minor league players are only entitled to the minimum wage for forty hours per week during their league's championship (i.e., regular and playoff) season,⁷⁸ one could potentially read the subsequent parenthetical in one of two ways.

On the one hand, the “but not spring training or the off season” language in the parenthetical could be read to suggest that players are not entitled to any compensation during these time periods. In other words, so long as the players receive the minimum wage for forty hours per week during the regular season, this provision would appear to curtail the players' rights to receive any compensation during the other specified time periods. Indeed, the fact that the parenthetical immediately follows the phrase “a contract that provides for a weekly salary for services performed during the league's championship season” strongly suggests that the “but not spring training or

77. 29 U.S.C.A. § 213(a)(19) (West 2018).

78. *Id.*

the off season” language should be understood to modify the time period during which a player must be compensated via a “weekly salary for services performed.”⁷⁹ This is certainly the interpretation that MLB and MiLB intended when they pursued the legislation.

On the other hand, however, one could argue that the language in the parenthetical can be interpreted quite differently. Specifically, the provision could also be read as suggesting that the SAPA’s exemption applies only during the regular season and does not affect a player’s rights under the FLSA during other times of the year. Put differently, the phrase “but not spring training or the off season” could thus be read to suggest that the SAPA does not apply at all during these time periods, meaning that players would remain subject to the protection of the FLSA for all hours worked outside their league’s regular playing season.

This latter reading of the SAPA traditionally would have been bolstered by the longstanding interpretive norm that FLSA exemptions were to be narrowly construed due to the Act’s remedial purpose.⁸⁰ Shortly after the SAPA was enacted into law, however, the U.S. Supreme Court overturned that traditional interpretive guidance in *Encino Motorcars, LLC v. Navarro*, holding that “[b]ecause the FLSA gives no ‘textual indication’ that its exemptions should be construed narrowly, ‘there is no reason to give [them] anything other than a fair (rather than a “narrow”) interpretation.’”⁸¹

Consequently, following *Encino Motorcars*, the strength of this latter interpretation of the SAPA has been weakened considerably. To be sure, it is possible that an enterprising plaintiff’s attorney or a court could still try to interpret the paren-

79. *Id.*

80. See *A.H. Phillips, Inc. v. Walling*, 324 U.S. 490, 493 (1945) (“The Fair Labor Standards Act was designed ‘to extend the frontiers of social progress’ by ‘insuring to all our able-bodied working men and women a fair day’s pay for a fair day’s work.’ Any exemption from such humanitarian and remedial legislation must therefore be narrowly construed, giving due regard to the plain meaning of statutory language and the intent of Congress. To extend an exemption to other than those plainly and unmistakably within its terms and spirit is to abuse the interpretative process and to frustrate the announced will of the people.” (citation omitted)); see also Alexander & Grow, *supra* note 4, at 145 (noting the traditional rule that “because the FLSA is a remedial statute . . . [it] must be interpreted in the broadest possible manner, with any exemptions construed narrowly”).

81. 138 S. Ct. 1134, 1142 (2018) (quoting ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW* 363 (2012)).

thetical language as limiting the SAPA to providing an FLSA exemption covering only the regular minor league playing season. But considering the origins of the legislation—and MLB's and MiLB's lobbying efforts in particular—Congress undoubtedly intended to codify an exemption denying minor league players any right to compensation during the spring training and off-season time periods. As a result of this history, along with the final enacted text of the provision, an interpretation of the statute along these lines is probably warranted.

Even then, however, the SAPA's reference to "spring training" raises another interpretative challenge, namely how the law should apply to players assigned to so-called extended spring training programs.⁸² Specifically, rather than assign all of their players to minor league affiliate franchises to begin play in early April, MLB teams often ask upwards of forty of their minor league prospects to stay behind at their spring training facility for additional coaching and skill training.⁸³ Instead of playing on a competitive, traveling team, these players work out and scrimmage every day until being assigned to a short-season minor league affiliate franchise in mid-June.⁸⁴

The applicability of the SAPA to minor leaguers in extended spring training is uncertain. For example, these players could assert that they are performing services "during the league's championship season"—insofar as they are being employed as professional baseball players during MLB's traditional regular-season months of April, May, and early June—and therefore should be owed the prevailing federal minimum wage for forty hours of work per week during this time period.⁸⁵

At the same time, however, because these players are not actually competing in regular-season, championship competition, an MLB franchise could argue that they continue to fall within the SAPA's carve-out for spring training, and thus are not entitled to any compensation at all. Indeed, the *Macmillian*

82. See generally Tony Lastoria, *What Is Extended Spring Training?*, 247SPORTS (May 28, 2017), <https://247sports.com/mlb/indians/Article/What-is-extended-spring-training-74906773/> [<https://perma.cc/7C6Z-VYM2>] (describing extended spring training).

83. See *id.* (noting that extended spring training often runs from early April until early June).

84. See *id.* (describing the day-to-day schedule of a player in extended spring training).

85. 29 U.S.C.A. § 213(a)(19) (West 2018).

dictionary defines “spring training” as “the time every spring when baseball teams train and prepare for the summer playing season.”⁸⁶ Accordingly, MLB teams could argue that insofar as players in extended spring training are engaged in additional training and preparation ahead of their assignment to a regular-season club in mid-June, they remain engaged in “spring training” for purposes of the SAPA.

The correct interpretation in this regard thus ultimately comes down to the question of how one defines the term “the league” in the language quoted above. If “the league” constitutes MLB itself, then players in extended spring training are entitled to the minimum wage for forty hours per week during April, May, and June. Alternatively, however, if “the league” is interpreted as being the competitive, regular-season minor league to which a player is eventually assigned in mid-June, then players in extended spring training would continue to properly fall within the SAPA’s carve-out for spring training, and thus arguably not be owed compensation for the April through early June time period.

Consequently, both sides can assert plausible interpretations of the SAPA on this question. Ultimately, however, because minor league players are “employed to play baseball” by MLB franchises, the SAPA’s use of the term “the league” is probably most naturally interpreted to mean MLB itself. As a result, then, minor leaguers have the stronger of the two hypothetical arguments laid out above, and are thus rightfully owed compensation for time spent in extended spring training.

In addition to the question of how the SAPA applies to extended spring training, the act also gives rise to another interpretive challenge: What rights do minor league players have at times other than those specifically identified in the statute? While the three time periods referenced in the provision—that is, the championship (regular and playoff) season, spring training, and the off-season—certainly cover most of the calendar year, there is one potential remaining portion of a minor league player’s working year that is not mentioned in the SAPA: the fall training season.

86. *Spring Training (Noun)*, MACMILLIANDICTIONARY, <https://www.macmillan.com/us/dictionary/american/spring-training> (last accessed Feb. 15, 2019) [<https://perma.cc/HA9J-XDZ5>].

Specifically, most MLB teams host so-called fall instructional leagues for some of their minor league players immediately following the conclusion of the regular minor league season in early September.⁸⁷ Similar to extended spring training, during this four-week fall session teams provide additional skill training and strength-and-conditioning instruction to their minor league players,⁸⁸ work for which minor league players traditionally have not been compensated.⁸⁹ In addition to these team-run fall instructional leagues, MLB also operates the Arizona Fall League (AFL), a developmental league in which MLB teams each send six or seven minor league players to play on one of six squads for a six-week season running from early October to mid-November.⁹⁰ Unlike the team-run fall instructional leagues, however, players appearing in the AFL have traditionally been paid a flat-rate salary of an unspecified amount by MLB.⁹¹

The SAPA does not appear to limit the applicability of the FLSA to either of these fall work periods. Indeed, under the *expressio unius est exclusio alterius* canon of statutory construction, the U.S. Supreme Court has held that when Congress

87. See Tony Lastoria, *Instructional League FAQ*, 247SPORTS: INDIANS BASEBALL INSIDER (Sept. 4, 2014), <https://247sports.com/mlb/indians/Article/Instructional-League-FAQ-105170469> [<https://perma.cc/HDP8-6Z4W>] (discussing fall instructional leagues).

88. See *id.* (“Commonly referred to as ‘Instructs,’ the camp is basically broken up into two camps, one for the Fall Instructional Program (FIP) and the other just a Strength and Conditioning Program (SCP).”).

89. See *Senne* Complaint, *supra* note 4, at 2–3 (noting that players are not compensated for work performed during a one-month instructional league following their team’s regular playing season).

90. See Jordan Shusterman, *So, What Actually Is the Arizona Fall League Anyway?*, MLB (Nov. 7, 2018), <https://www.mlb.com/cut4/what-is-the-arizona-fall-league-anyway/c-300040124> [<https://perma.cc/HZV7-WFUP>] (explaining that “each Major League team only send[s] between 6-8 players” to one of the AFL’s six teams); *2018 Arizona Fall League Schedule Unveiled*, MLB (Aug. 8, 2018), <https://www.mlb.com/news/arizona-fall-league-2018-schedule/c-289434680> [<https://perma.cc/R42F-FHK5>] (reporting that the AFL runs “from mid-October through the Saturday prior to Thanksgiving”); see also Jeff Friedman, *Antitrust Exemption Vital for Minor League Survival: MLB & Parent Clubs Must Put Money Behind 1991 Stadium Standards*, 1 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 118, 121 (2003) (“Currently, MLB owns the Arizona Fall League, a developmental league created to enhance player development.”).

91. See *Arizona Fall League & AZ Instructional League*, CUB REPORTER, <https://www.thecubreporter.com/book/export/html/3812> (last visited Jan. 25, 2019) [<https://perma.cc/QMD4-BCFH>] (“Players assigned to the AFL do not accrue MLB or minor league service time, each player receives the same salary, and the salaries are paid out of a special fund managed by MLB.”).

“express[es] one item of [an] associated group or series [it] excludes another left unmentioned.”⁹² In other words, because Congress specifically mentioned spring training and the off-season as time periods during which players are not entitled to compensation under the broader interpretation of the SAPA discussed above,⁹³ the failure to include any fall training periods in the parenthetical language suggests that neither the team-run fall instructional leagues nor the AFL are included within the scope of the provision.

This line of reasoning is especially persuasive in light of the precise wording of the parenthetical inserted into the SAPA. Rather than suggesting that the time periods referenced in the provision are merely illustrative—for example, by including language along the lines of “such as” or “including”—the SAPA states much more conclusively that the only two time periods during which players are not entitled to compensation are spring training and the off-season. This language in no way suggests that Congress intended these time periods be read merely as examples of the sorts of work periods during which the FLSA does not apply.⁹⁴ Rather, the plain text of the statute clearly suggests that the only time periods covered by the exemption are—at most—a league’s championship season, spring training, and the off-season. Consequently, even if a court were to hold that minor league players are not entitled to compensation during spring training or the off-season under the SAPA as discussed above,⁹⁵ it should nevertheless hold that the new exemption does not apply to work performed during the fall training period.

That having been said, the potential financial implications of a court holding that the SAPA does not apply to the fall training period would likely be quite modest. Assuming that a team runs a four-week-long fall instructional league for fifty of its players, and assuming that the players work an average of forty hours per week, the total cost to the franchise to pay its

92. *Chevron U.S.A., Inc. v. Echazabal*, 536 U.S. 73, 80 (2002) (citing *United States v. Vonn*, 535 U.S. 55, 65 (2002)); *see also* NORMAN SINGER & SHAMBIE SINGER, 2A SUTHERLAND STATUTORY CONSTRUCTION § 47:23 (7th ed. 2018) (discussing the canon of construction).

93. *See supra* notes 78–81 and accompanying text (considering the import of the “but not spring training or the off season” language appearing in the parenthetical portion of the SAPA).

94. 29 U.S.C.A. § 213(a)(19) (West 2018).

95. *See supra* notes 79–81 and accompanying text.

players in accordance with the federal minimum wage would be a total of \$58,000, or about \$1,160 per player. While such added income would likely be welcomed by minor league players attempting to get by on less than \$15,000 per year, it is still unlikely to meaningfully improve the players' financial positions.

Ultimately, then, regardless of how future courts interpret the SAPA, the legislation provides MLB and MiLB with the bulk of the relief that they sought. Indeed, at a minimum, following the enactment of the SAPA, minor league baseball players are not entitled to any compensation above and beyond the federal minimum wage for the first forty hours they work per week during the five-month-long regular season. In this respect, professional baseball's multi-year lobbying campaign certainly paid dividends.

III. THE IMPLICATIONS OF THE SAPA

Setting aside precisely how courts should ultimately interpret the SAPA, the statute will nevertheless clearly affect the future development of minor league baseball. Most notably, the SAPA's new exemption has potential implications for the ongoing litigation over MLB's minor league pay practices, dramatically reducing the odds that MLB will be forced to meaningfully alter its minor league pay practices in the *Senne* lawsuit or another similar case filed under the FLSA. Meanwhile, the legislation is also unlikely to significantly impact the operations of the so-called "independent" minor leagues (i.e., those operating free from any association with MLB), as those leagues' pay practices will likely continue to be shielded by a different FLSA exemption. Finally, and more broadly, the SAPA's special-interest origins highlight the murky policy justification supporting many of the FLSA's other exemptions, suggesting that a thorough review of all of the existing exceptions to the federal minimum-wage and overtime provisions is in order.

A. Implications for Minor League Wage Reform

Perhaps most obviously, the enactment of the SAPA is likely to have significant ramifications for the *Senne* lawsuit and the ongoing effort to force MLB to reform its minor league pay practices. As noted above, because the final version of the

SAPA only applies prospectively, rather than retroactively, the legislation does not directly undercut the *Senne* litigation.⁹⁶ Nevertheless, by eliminating the threat that MLB's minor league pay practices would be declared illegal going-forward, the new provision undercuts much of the leverage the plaintiffs hoped to gain over the league in the lawsuit. As a result, the new statute makes it substantially less likely that the *Senne* plaintiffs will be able to force MLB to significantly modify its treatment of minor league players through the suit.

Indeed, at a minimum, the SAPA clearly states that once a player is paid at least the minimum wage for the first forty hours he works each week during the regular season, that player is ineligible for any additional pay or overtime benefits.⁹⁷ A significant thrust of the *Senne* lawsuit was that minor league players frequently work fifty to seventy hours per week in-season, once accounting for all of the time spent preparing for, playing in, and traveling to each game, without being fully compensated for this labor under the FLSA.⁹⁸ The SAPA forecloses the possibility that MLB will face legal liability on these grounds moving forward.

That having been said, depending on how the SAPA is interpreted in light of the potential ambiguities discussed above,⁹⁹ the *Senne* plaintiffs could regain some of their leverage over MLB if they can convince the court to hold that the new provision does not shield the league's spring training, fall training, and off-season pay practices from the requirements of the FLSA.¹⁰⁰ In particular, securing a ruling that the SAPA does not apply to work performed during spring training would modestly boost the *Senne* plaintiffs' case. Not only would such a ruling force MLB to compensate players for a six-to-eight-week time period during which they are not

96. H.R. 1625, 115th Cong. (2017) (discussing the applicability of the SAPA to existing lawsuits).

97. 29 U.S.C.A. § 213(a)(19) (West 2018).

98. *Senne* Complaint, *supra* note 4, at 2.

99. *See supra* notes 78–81 and accompanying text (discussing different possible interpretations of the parenthetical language included in the SAPA).

100. Admittedly, the final class certification ruling issued by the trial court in *Senne* refused to certify a plaintiff's class based on work performed during the off-season, although that decision could be overturned on appeal. *See* Order re: 1) Motion for Reconsideration Regarding Class and Collective Certification; 2) Motion to Exclude; 3) Motion to Intervene; and 4) Motion for Leave to File Sur-Reply, *supra* note 41 and accompanying text (discussing the trial court's final class certification ruling).

currently paid, but it would also give the plaintiffs a potential pressure point to use to push for more substantive reform of MLB's minor league pay practices. Potential spring training liability, combined with the fact that the SAPA does not appear to shield MLB from liability for work performed during the fall training period,¹⁰¹ would restore some of the leverage that the *Senne* plaintiffs were believed to have lost vis-à-vis MLB following the passage of the SAPA.

However the court ultimately interprets the SAPA with respect to spring training and the off-season, the new legislation clearly prevents minor league players from challenging MLB's regular-season pay practices under the FLSA.¹⁰² Therefore, to the extent that minor league players wish to force the league to reform its in-season pay practices through litigation, they will now have to rely on state, rather than federal, law.

Proceeding under state-level wage-and-hour laws offers both potential advantages and disadvantages for minor league players. On the one hand, state employment laws may provide a higher minimum wage than the FLSA. California's state minimum wage is currently \$11 per hour,¹⁰³ for instance, while New York's is \$11.10 per hour,¹⁰⁴ both well above the current federal minimum of \$7.25.¹⁰⁵ At the same time, players' chances of success may be greater under state wage-and-hour law, as these statutes frequently do not incorporate an exemption for seasonal-amusement or recreational businesses like the one appearing in the FLSA.¹⁰⁶

On the other hand, seeking relief under state law would likely prove to be a costlier and more time-intensive process for minor league players. Rather than being able to seek nation-

101. *See supra* notes 87–94 and accompanying text (contending that work performed during any fall instructional periods clearly falls outside the scope of the SAPA).

102. *See supra* notes 74–77 and accompanying text (noting that the SAPA clearly forecloses the possibility of MLB being forced to fully compensate minor league players for all hours worked during the regular playing season).

103. CAL. LAB. CODE § 1182.12 (West 2017) (identifying an \$11 minimum wage for employees working for “any employer who employs 25 or fewer employees” during calendar year 2019).

104. N.Y. LAB. LAW § 652 (McKinney 2016) (establishing an \$11.10 minimum wage for employees working “outside of the city of New York and the counties of Nassau, Suffolk, and Westchester,” with a higher minimum wage applying to employers in those areas).

105. 29 U.S.C. § 206(a)(1)(C) (2012).

106. *See generally* CAL. LAB. CODE § 1182 (West 2017).

wide relief through a single collective action lawsuit filed under federal law, pursuing remedies under state law would likely necessitate filing multiple class action lawsuits across the country.¹⁰⁷ Whether low-paid minor league players can find attorneys willing to take such cases on a contingency basis is uncertain given that these suits would individually provide less potential damages exposure for MLB than would a single nationwide case. At the same time, it is also possible that MLB and/or MiLB could seek exemptions to the state-level minimum-wage and overtime laws similar to those provided by the SAPA. Legislation was introduced in the Minnesota state legislature in March 2018, for instance, proposing an exemption for minor league baseball players under the state's wage-and-hour law.¹⁰⁸ Similarly, MLB lobbied the Arizona state legislature to create its own state-level exemption in 2019,¹⁰⁹ an effort that—if successful—would shield half of the league's teams from any potential spring-training-related liability.¹¹⁰ Should efforts like these successfully result in new state-level exclusions being enacted, players could find their road to relief blocked under state law as well.

Consequently, the ability of minor league baseball players to significantly improve their financial position via lawsuits filed under federal or state wage-and-hour law appears to be far from certain. To the extent that minor league players wish to improve their financial circumstances, then, they may find

107. The *Senne* court, for instance, ultimately refused to certify a class of plaintiffs beyond those players in the California League, a minor league containing franchises exclusively located in the state of California. See Order re: 1) Motion for Reconsideration Regarding Class and Collective Certification; 2) Motion to Exclude; 3) Motion to Intervene; and 4) Motion for Leave to File Sur-Reply, *supra* note 40 and accompanying text (discussing the trial court's final class certification ruling).

108. See S.M. Chavey, *St. Paul Saints Seek State Minimum Wage Exemption, Saying Salary Cap Threatens Operations*, TWIN CITIES (Mar. 15, 2018, 9:09 PM), <https://www.twincities.com/2018/03/15/st-paul-saints-seek-minimum-wage-exemption-salary-cap-threatens-operations/> [<https://perma.cc/NS7S-79CW>] (reporting that “[t]he owners of the St. Paul Saints are seeking an exemption from having to pay its players Minnesota’s minimum wage”).

109. See Mitchell Atencio, *Major League Baseball Wants Exemption from Arizona’s Minimum Wage Laws*, AZCENTRAL (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/> [<https://perma.cc/QNW5-SQD3>].

110. Cf. *Cactus League*, MLB.COM, <https://www.mlb.com/spring-training/cactus-league> (last visited Mar. 8, 2019) [<https://perma.cc/W3S3-TNCW>] (reporting that fifteen of MLB's thirty teams hold their spring training preparations in Arizona).

that they have no choice but to unionize.¹¹¹ By forming their own union, minor league players would gain considerable new leverage over MLB.¹¹² Not only would organizing a minor league union allow players to negotiate for better wages, it could also force MLB to come to the bargaining table to discuss other issues, such as the quality of medical care and food that the teams provide to minor league players, as well as MLB's existing, unilaterally imposed penalty structure for the use of performance-enhancing and recreational drugs.¹¹³

That having been said, despite the potential benefits of unionization, the odds that minor league players would elect to form their own union appear to be quite slim. Minor leaguers have long resisted possible unionization for a variety of reasons. In some cases, players do not want to risk the possibility that their unionization efforts could deter a team from promoting them to the major league level, thereby jeopardizing a potentially lucrative MLB career.¹¹⁴ Indeed, because the average career span for a minor league player is relatively short,

111. While major league players are represented by the Major League Baseball Players Association, this union does not represent most minor league players. See, e.g., James T. Masteralexis & Lisa P. Masteralexis, *If You're Hurt, Where Is Home? Recently Drafted Minor League Baseball Players Are Compelled to Bring Workers' Compensation Action in Team's Home State or in Jurisdiction More Favorable to Employers*, 21 MARQ. SPORTS L. REV. 575, 576 (2011) ("The Major League Baseball Players Association (MLBPA) does not represent minor league players, as it only represents 'all Major League Players, and individuals who may become Major League Players during the term' of the Basic Agreement" (quoting 2007–2011 BASIC AGREEMENT 1 (2007)), http://www.steroidsinbaseball.net/cba/cba_07_11.pdf [<https://perma.cc/YJ2W-WFS7>]); McDowell, *supra* note 15, at 17 ("The MLBPA, which does not actually represent minor league players, has consistently bargained away the rights of minor leaguers in CBA negotiations with MLB.").

112. See Garrett R. Broshuis, *Touching Baseball's Untouchables: The Effects of Collective Bargaining on Minor League Baseball Players*, 4 HARV. J. SPORTS & ENT. L. 51, 98–99 (2013) (observing that the unionization of minor league players "would force the owners to engage in collective bargaining over 'wages, hours, and other terms and conditions of employment.'").

113. See Nathaniel Grow, *The Remaining Path Forward for Minor League Players*, FANGRAPHS (Mar. 22, 2018), <https://www.fangraphs.com/blogs/the-remaining-path-forward-for-minor-league-players/> [<https://perma.cc/UBE9-78CT>] (discussing the ways in which forming a minor league union would benefit players).

114. See *Senne Complaint*, *supra* note 4, at 1 (alleging that "[e]fforts to unionize minor leaguers have been unsuccessful because minor leaguers fear retaliation by the seemingly omnipotent Defendants. Striving towards a lifelong dream of playing in the major leagues, minor leaguers are reluctant to upset the status quo").

players may not believe that the potential short-term benefit of forming a union outweighs the perceived risk.¹¹⁵ In other cases, some players may oppose unionization on political or ideological grounds, while those born outside the United States may not be familiar with their rights under federal labor law.¹¹⁶ As a result, a substantial number of minor leaguers have historically been reluctant to join a unionization effort.¹¹⁷

With the formation of a minor league union appearing unlikely, the SAPA has thus substantially reduced the odds that MLB will be forced to meaningfully change its minor league pay scale insofar as it has largely foreclosed relief under federal wage-and-hour law. While the possibility certainly remains that the plaintiffs in the *Senne* lawsuit—or another one like it—could still successfully argue their way around the SAPA and force MLB to modestly increase minor league wages during the spring training, fall training, and/or off-season time periods, such changes may be difficult to achieve judicially, and, in any event, would at best represent relatively modest improvements for players. Consequently, the SAPA will likely prove to have provided MLB with important legal protection, allowing its minor league business model to remain largely intact despite the threat initially posed to it by the *Senne* litigation.

B. *The Future of Independent Minor League Baseball*

While most fans typically associate minor league baseball with those teams and leagues that are directly aligned with MLB, the SAPA also has potential implications for the so-called

115. See Grow, *supra* note 113 (reporting same).

116. See *id.* (observing that “players from Latin American countries may not be familiar with our nation’s tradition of unionization, nor their rights under federal labor law”).

117. To be sure, MLB players were able to overcome several of these same factors—most notably the potential risks of unionizing given their relatively short career spans and political or ideological opposition within their membership—when forming their own union. Realistically, then, the perceived risk of jeopardizing a lucrative MLB career in order to lead a minor league unionization effort is probably the predominant factor holding minor league players back from forming their own union. See Marc Normandin, *How Minor League Baseball Players Can Begin Unionizing*, SBNATION (July 12, 2018, 10:00 AM), <https://www.sbnation.com/mlb/2018/7/12/17518102/minor-league-baseball-unions-mlb-garrett-broshuis-mlbpa> [<https://perma.cc/65FB-X4ZB>] (finding that “there haven’t been enough [minor league players] willing to risk release and unemployment in baseball by unionizing”).

“independent” minor leagues: those existing despite lacking any formal affiliation with the major league game. Because these independent leagues—such as the Atlantic League, Frontier League, Pacific Association, and American Association—do not receive any financial subsidies from MLB, their teams typically walk an extremely fine line between profitability and financial extinction.¹¹⁸ Indeed, unlike their MLB-affiliated brethren, independent minor league teams must fund their own players’ and coaches’ salaries along with “covering major costs such as travel, lodging, equipment, and workers’ compensation.”¹¹⁹ These additional expenses, combined with the fact that independent teams routinely draw fewer than three thousand paying fans per game, often make running a profitable franchise quite difficult.¹²⁰

Consequently, several media commentators speculated that the passage of the SAPA could serve as a death knell for most, if not all, of the independent leagues.¹²¹ The Frontier League, for instance, imposes a salary cap of \$75,000 on its teams for the entire season, which amounts to approximately \$725 per player, per month.¹²² The roughly \$1,160 minimum

118. See BEN LINDBERGH & SAM MILLER, *THE ONLY RULE IS IT HAS TO WORK: OUR WILD EXPERIMENT BUILDING A NEW KIND OF BASEBALL TEAM* 7 (2016) (describing independent minor leagues as being “in perpetually critical financial condition, one down year away from drowning in debt”).

119. Andrew Beaton, *How Independent Baseball Teams Make Money. Or Don't.*, WALL ST. J. (Aug. 24, 2015), <https://www.wsj.com/articles/how-independent-baseball-teams-make-money-or-dont-1440381696> [<https://perma.cc/E86C-SFFP>].

120. See *id.* (“[T]he Atlantic League boasts the highest average attendance among the biggest independent leagues, with 4,119 fans a game this year. Teams in the largely Midwestern Frontier League have averaged 2,247, while the American Association and Canadian American Association have averaged 3,119 and 2,007, respectively.”).

121. See J.J. Cooper, *End of Indy Leagues?*, BASEBALL AM. (Mar. 22, 2018), <https://www.baseballamerica.com/stories/save-americas-pastime-act-could-wound-or-kill-indy-leagues/> [<https://perma.cc/3Y4R-6MNP>] (stating that if the SAPA were to pass, “there will likely be significantly fewer independent league baseball teams around the country this year. [sic] as some leagues will likely be put out of business by the increased costs required for players [sic] salaries”); Jeff Passan, *10 Degrees: The Upbeat Treatment of Shohei Ohtani's Spring Is a Joke—And Entirely Unnecessary*, YAHOO SPORTS (Mar. 26, 2018), <https://sports.yahoo.com/10-degrees-upbeat-treatment-shohei-ohtanis-spring-joke-entirely-unnecessary-050702269.html> [<https://perma.cc/4L9Q-B3EJ>] (contending that the SAPA could inflict “collateral damage [on] low-level independent leagues [who] now must pay minimum wage to players, which essentially murders their business”).

122. See Cooper, *supra* note 121 (“The Frontier League has a \$75,000 salary cap per team, which is an average of \$725 per player, per month.”). Independent league players are often able to live off of such a low salary by living rent free

monthly salary specified by the SAPA, then, would equate to a nearly 60 percent increase in salary obligations for each Frontier League team, a burden that could very well make it financially infeasible for many of the league's teams to continue their operations. Meanwhile, the ramifications of the SAPA for the independent Pacific Association looked to be even more dire, as teams in that league are permitted to spend no more than \$25,000 per year on player salaries,¹²³ an amount that would be more than consumed by a single month's payroll in compliance with the SAPA.

While it is undoubtedly true that an obligation to pay players \$1,160 per month under the SAPA would drive most, if not all, of the independent leagues out of business, the new provision is nevertheless unlikely to spell the end of independent minor league baseball. This is because the SAPA does not affirmatively require minor league teams to pay their players the minimum wage. Instead, the provision merely specifies that if a team wishes to take advantage of the safe harbor offered by the new exemption—and thereby be excluded from the FLSA's normal minimum-wage and overtime obligations—it must pay its players at least the current minimum wage for forty hours worked each week during the team's regular playing season.¹²⁴

Should the independent minor leagues continue to pay their players less than the current equivalent of \$290 per week, then they will not qualify for protection under the SAPA. But that does not necessarily mean that they are in violation of the law. Indeed, the independent minor league teams can still rely on other exemptions under the FLSA to shield their pay practices. Most notably, the independent leagues appear to have a

with a local host family. Bill Baer, *Ever Wonder How Much Money An Independent League Player Makes?*, NBCSPORTS (Jan. 23, 2018, 4:16 PM), <https://mlb.nbcsports.com/2018/01/23/ever-wonder-how-much-money-an-independent-league-player-makes/> [<https://perma.cc/3ZZJ-EE6A>] (quoting a tweet by independent-league player Kaleb Earls discussing his living conditions).

123. *Id.*

124. See Nathaniel Grow, *Whither the Independent Leagues?*, FANGRAPHS (Mar. 27, 2018), <https://www.fangraphs.com/blogs/whither-the-independent-leagues/> [<https://perma.cc/2KQC-YN8W>] (“Nothing in the text of the new law affirmatively requires that minor-league baseball players receive the minimum wage. Instead, the provision merely specifies that the normal federal minimum-wage and overtime rules will not apply to minor-league players who are paid \$7.25 per hour for 40 hours each week during their teams’ regular playing season.”).

strong argument that their operations fall within the seasonal-amusement-and-recreation exemption established under 29 U.S.C. § 213(a)(3). As noted above, this exception generally applies to businesses that provide amusement or recreational services to the public and operate for seven months or fewer in a calendar year.¹²⁵

The independent minor league teams clearly satisfy the first requirement, as their entire business model is based upon the provision of amusement to the public.¹²⁶ And these leagues will also typically meet the seasonal-duration requirement as well because their playing seasons will usually run for fewer than seven months per year.¹²⁷ Meanwhile, because the independent minor leagues generally maintain extremely modest, if not altogether nonexistent, off-season operations, these leagues can credibly contend that courts should distinguish prior decisions holding that teams in MLB and the National Basketball Association (NBA) are not “seasonal” establishments due to their extensive year-round business activities.¹²⁸ Consequently, as long as the independent minor leagues continue to operate seven months or less per year while engaging in minimal off-season business activities, they should—for better or worse—remain exempt from the FLSA under the seasonal-amusement-or-recreation exemption, regardless of the new statutory language enacted in the SAPA.

While it is true that a future plaintiff could potentially argue that the enactment of the SAPA should effectively foreclose professional baseball teams from continuing to rely on the sea-

125. See *supra* note 26 and accompanying text (discussing the seasonal exemption).

126. Cf. Alexander & Grow, *supra* note 4, at 162 (“Because a sports team’s game-day operations provide amusement or recreational services directly to the public, those facets of its business will presumably almost always satisfy this . . . stage of the analysis.”).

127. The Frontier League’s 2018 season is scheduled to last five months (May to September), for instance, while the Atlantic League’s season will span six months (April to September). *Frontier League Announces 2018 Schedule*, FRONTIER LEAGUE (Oct. 26, 2017), <https://www.frontierleague.com/2017/10/16/frontier-league-announces-2018-schedule/> [https://perma.cc/D6AU-DVN6] (describing the Frontier League’s 2018 schedule); *2018 Atlantic League Schedule Announced*, ATLANTIC LEAGUE (Oct. 23, 2017, 7:28 AM), http://atlanticleague.com/mobile/about/team-of-the-week/?article_id=860 [https://perma.cc/D83S-AX8J] (same regarding the Atlantic League).

128. See *supra* note 30 and accompanying text (discussing the prior adverse rulings in cases involving the Cincinnati Reds (MLB) and New Orleans Hornets (NBA)).

sonal exemption, such an argument is ultimately unpersuasive. As an initial matter, the text of the seasonal exemption in Section 213(a)(3) is itself relatively straightforward and clear: so long as an amusement-or-recreation-providing business operates seven months or fewer per year, it is exempt from the FLSA's minimum-wage and overtime requirements.¹²⁹ Meanwhile, there is no reason to think that Congress intended to foreclose teams from continuing to rely on the seasonal exemption due to its passage of the SAPA. The SAPA may have simply been viewed as necessary for cases in which a baseball team did not qualify for the seasonal exemption due to the duration of its season, but in which Congress nevertheless wished to avoid imposing the FLSA's overtime requirements on the team.¹³⁰

As a result, despite some contrary speculation in the popular press,¹³¹ the SAPA is unlikely to dramatically affect the operations of the independent minor leagues.

C. *Special Interest Exemptions in the FLSA*

Finally, in addition to its obvious implications for the professional baseball industry, the SAPA also serves to highlight the questionable manner in which Congress has, all too often, created exceptions to the FLSA's minimum-wage and overtime protections. Indeed, as noted above, the SAPA is a textbook piece of special interest legislation, having been passed entirely at the behest of MLB and MiLB.¹³² Even worse, the act was slipped into a massive federal spending bill at the last minute, preventing it from being subjected to any sort of meaningful deliberative process.¹³³

Sadly, the process employed to enact the SAPA into law appears to be much more common than one might expect when it comes to the FLSA and its exemptions. Section 213(a) of the FLSA currently contains thirteen exceptions to the Act's mini-

129. See Grow, *supra* note 124 (arguing same).

130. Similarly, just because Congress elected to pass a specific exclusion covering minor league players does not mean that it intended to foreclose the applicability of the seasonal-amusement-and-recreational exemption to other non-player employees of minor league teams.

131. See sources cited *supra* note 121 and accompanying text (noting same).

132. See *supra* Section II.A.

133. See *supra* notes 66–76 and accompanying text (reporting that the final version of the SAPA was released just five days before being signed into law).

mum-wage and maximum-hour protections.¹³⁴ While several of these exemptions—such as the “bona fide professionals” exemption discussed above¹³⁵—are broad enough to apply to a host of professions and industries, others “are so specific as to suggest” that they were enacted in order to serve as “special interest concessions.”¹³⁶ Section 213(a)(5), for instance, excludes those “employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life” from both the federal minimum-wage and overtime rules.¹³⁷ Similarly, Section 213(a)(10) excludes “any switchboard operator employed by an independently owned public telephone company that has not more than seven hundred and fifty stations” from these same protections,¹³⁸ while Section 213(a)(17) exempts broad categories of “computer systems analyst[s], computer programmer[s], software engineer[s], [and] other similarly skilled worker[s].”¹³⁹

Meanwhile, Section 213(b) establishes another twenty-one exemptions excluding other professions from the FLSA’s overtime provisions.¹⁴⁰ And as with Section 213(a), many of these limitations to the overtime rules also suggest special-interest-driven origins. Section 213(b)(5), for example, denies overtime compensation to “any individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state,”¹⁴¹ while Section 213(b)(9) does the same for those employed “as an announcer, news editor, or chief engineer by a radio or television station” residing in a small media market.¹⁴²

134. 29 U.S.C.A. § 213(a) (West 2018).

135. See *supra* notes 32–34 and accompanying text (discussing exemption).

136. Alexander & Grow, *supra* note 4, at 130–31 (observing that “[o]ther [FLSA] exemptions are so specific as to suggest similar trades of votes for special interest concessions”).

137. 29 U.S.C. § 213(a)(5) (2012).

138. *Id.* § 213(a)(10).

139. *Id.* § 213(a)(17).

140. *Id.* § 213(b).

141. *Id.* § 213(b)(5).

142. *Id.* § 213(b)(9). Specifically, the provision denies overtime to:

[A]ny employee employed as an announcer, news editor, or chief engineer by a radio or television station the major studio of which is located (A) in a city or town of one hundred thousand population or less, according to the latest available decennial census figures as compiled by the Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the Office of Management and Budget, which has a total population in

Similarly, Section 213(b)(15) excludes “any employee engaged in the processing of maple sap into sugar (other than refined sugar) or syrup” from the maximum-hour laws,¹⁴³ while Section 213(b)(27) applies to “any employee employed by an establishment which is a motion picture theater.”¹⁴⁴

Thus, the SAPA simply provides the most recent example illustrating that Congress has often been all too willing to exclude particular professions from the protection of the FLSA for no apparent reason other than to appease a particularly effective special interest group.¹⁴⁵ Indeed, rather than reflect any consistent underlying policy preference, the FLSA’s hodgepodge of exceptions appears to serve no purpose other than succumbing to the lobbying efforts of various wealthy, motivated groups of employers. And as with the minor league baseball players affected by the SAPA, many of the other exemptions highlighted above appear to have targeted unorganized sets of employees—such as crustacean farmers and maple syrup refiners—who presumably lacked the political influence necessary to muster sufficient opposition to these lobbying efforts.¹⁴⁶ Given these dynamics, then, it should come as no surprise that Congress appears to have frequently granted a num-

excess of one hundred thousand, or (B) in a city or town of twenty-five thousand population or less, which is part of such an area but is at least 40 airline miles from the principal city in such area

Id.

143. *Id.* § 213(b)(15).

144. *Id.* § 213(b)(27).

145. See Alexander & Grow, *supra* note 4, at 130–31 (observing that “[o]ther [FLSA] exemptions are so specific as to suggest similar trades of votes for special interest concessions”). While some scholars have suggested that courts should generally invalidate special interest legislation, see generally Jerry L. Mashaw, *Constitutional Deregulation: Notes Toward a Public, Public Law*, 54 TUL. L. REV. 849 (1980) (suggesting that the Supreme Court should invalidate special-interest legislation). Others have contended that because “there is no basis to legally distinguish or question the legitimacy of statutes passed at the behest of special interest groups from other kinds of statutes, it would seem therefore that the judicial response to all statutes should be the same.” Jonathan A. Macey, *Special Interest Groups Legislation and the Judicial Function: The Dilemma of Glass-Steagall*, 33 EMORY L.J. 1, 2–3 (1984). As a result, litigants certainly face an uphill battle in contesting special interest legislation on that ground alone in court.

146. Cf. Peter L. Kahn, *The Politics of Unregulation: Public Choice and Limits on Government*, 75 CORNELL L. REV. 280, 280 (1990) (observing that public choice theory would predict that “small groups of beneficiaries are more effective in lobbying for special interest legislation than those larger groups which pay the bills are in resisting it”).

ber of politically connected industries their desired protection under the FLSA.

Consequently, the addition of minor league baseball players to the list of professions excluded from the FLSA highlights the overdue need for Congress to conduct a thorough review of all of the FLSA's current exemptions. By undertaking such a review, Congress would hopefully seize the opportunity to "create some uniformity and [consistent] policy rationale[s] for carving out certain industries or occupations" from the law's basic minimum-wage and overtime protections,¹⁴⁷ thereby providing additional coherency to federal employment law.

CONCLUSION

This Article has examined the SAPA, a piece of special interest legislation enacted in 2018 at the behest of MLB to immunize the league's minor league pay practices from challenge under the FLSA. Although initial assessments of the law concluded that it largely foreclosed the possibility that minor league players could successfully sue the league under the FLSA, a closer reading of the provision reveals several potential ambiguities in the statutory language that could reduce the scope of protection afforded to professional baseball. At a minimum, it appears that professional baseball teams remain susceptible to claims that they have failed to pay minor league players in accordance with the FLSA during fall training periods. Nevertheless, the Article ultimately concludes that the SAPA has significantly reduced the odds that MLB will be forced to substantially modify its minor league pay practices moving forward, thereby helping entrench the existing financial structure of minor league baseball. As a result, the Article has urged Congress to reevaluate all of the current exemptions to the FLSA as many appear to serve equally questionable policy objectives as that of the SAPA.

147. Alexander & Grow, *supra* note 4, at 180.