

# A TALE OF TWO CITIES: NEW OWNERSHIP AND THE NEED FOR A SALARY CAP IN THE MLB

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\* © J.D. Candidate, Benjamin N. Cardozo School of Law, 2025; B.A. in Sociology, University of San Diego, 2021. Thank you to Professor Matthew Wansley for his mentorship and invaluable guidance throughout the development of this Article. I am grateful to the editors of Stetson Business Law Review for their hard work in preparing this Article for publication. I would also like to thank Ted Scofield and Colin Matheson for their expertise and insightful feedback, which were instrumental in refining this Article. Finally, I wish to extend my deepest gratitude to my mother for her unwavering support. This Article is dedicated to my father, whose love for a well-played game and a well-reasoned debate has shaped my approach to life. I hope this Article sparks the kind of conversation he always enjoyed.

## I. INTRODUCTION<sup>1</sup>

Major League Baseball (MLB), like most U.S. sports leagues, is structured as an unincorporated joint venture that oversees individually operating teams.<sup>2</sup> Although the league has enforced some form of revenue sharing, each franchise is an independent for-profit business.<sup>3</sup> Most teams, however, do not always try to maximize profits.<sup>4</sup> Many team owners are individuals with ties to their local communities who are motivated in part by the prestige, passion, or pride of owning a team.<sup>5</sup> Given baseball's history as America's "National Pastime,"<sup>6</sup> individuals tend to pursue team ownership positions inspired by their love for the game and view owning a baseball team more like a luxury good than a profit opportunity.<sup>7</sup>

With rising team valuations across the sports industry, leagues are realizing that sports teams can be stable business ventures beyond that of a vanity asset.<sup>8</sup> To adapt, U.S. sports leagues have expanded their bylaws to include new forms of corporate ownership, such as private equity funds and sovereign wealth funds, essentially pricing out wealthy individuals.<sup>9</sup> The

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1. Throughout this Note, all monetary quantities are provided in U.S. dollars. Some currency is converted from the Great Britain pound (£) to the U.S. dollar (\$). These conversions were done as of January 2025.

2. Lacie L. Kaiser, *The Flight from Single-Entity Structured Sport Leagues*, 2 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 1, 5 (2004). See, e.g., N. Am. Soccer League v. Nat'l Football League, 670 F.2d 1249, 1251 (2d Cir. 1982).

3. Kaiser, *supra* note 2.

4. *Can Corporate Ownership Save Baseball?*, FORBES (June 19, 2013, 4:52 PM) [https://www.forbes.com/2007/02/16/baseball-team-ownership-biz-cx\\_mw\\_0217baseball.html?sh=633bcabb7728](https://www.forbes.com/2007/02/16/baseball-team-ownership-biz-cx_mw_0217baseball.html?sh=633bcabb7728) [<https://perma.cc/3RDP-GALR>].

5. Travis Sawchik, *What the Braves Going Public Could Reveal about MLB's Finances*, THE SCORE (Nov. 18, 2022), <https://www.thescore.com/mlb/news/2484488> [<https://perma.cc/WG8K-HUB4>]; see also Kathy Babiak & Daniel Yang, *Team Ownership and Philanthropy in Professional Sport: A Perspective on Organizational Generosity*, 4 FRONTIERS SPORTS AND ACTIVE LIVING 1, 4–6 (2022).

6. *Baseball History, American History and You*, NAT'L BASEBALL HALL OF FAME, <https://baseballhall.org/baseball-history-american-history-and-you> [<https://perma.cc/73TA-62BF>] (last visited May 26, 2025).

7. Sawchik, *supra* note 5 ("Sports teams are a bit of a vanity asset, like owning a Picasso, and the highest bidder is going to be a very rich person who wants to own the team so they (can) call themselves an owner of a sports team.").

8. Thomas Barrabi, *MLB Ownership Rule Change Puts Private Equity in Scoring Position*, FOXBUSINESS (Nov. 29, 2019, 10:05 AM), <https://www.foxbusiness.com/sports/mlb-ownership-rule-change-private-equity> [<https://perma.cc/MB3X-WGN6>].

9. *Id.* For example, the NHL and the NBA revised their bylaws to first allow private equity funds, see Andrew B. White et al., *Still Hot: Why Global Sports Keep Attracting Record-Breaking Investments*, MORGAN LEWIS (Apr. 27, 2023), <https://www.morganlewis.com/pubs/2023/04/still-hot-why-global-sports-keep-attracting-record-breaking->

MLB has now turned to deep-pocket corporate investors willing and capable of spending unprecedented amounts of money in a league without a salary cap.<sup>10</sup> Immense spending is not exclusive to corporate entities since individual owners would presumably spend if they could,<sup>11</sup> but many individual owners often lack the aggregate financial resources of these incoming corporate entities.<sup>12</sup>

While a team's wealth does not necessarily promise it a championship, the integrity of the game may be questioned since wealthier teams can spend exorbitant salaries to hire the best players with the mere fee of a luxury tax.<sup>13</sup> Without proper competitive balance tactics, the MLB risks extreme payroll disparity and will begin to resemble the English Premier League (EPL)<sup>14</sup>—a league devoid of competitive balance tactics and plagued with immense inequality where the same teams dominate the pitch year after year.<sup>15</sup> Of the “Big Four” U.S. sports leagues, the National Football League (NFL), the National Basketball

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investments [<https://perma.cc/G6AU-WCQ4>], and then sovereign wealth funds, see Tim Bontemps, *Adam Silver: No Plans to Let Sovereign Wealth Funds Control NBA Teams*, ESPN (July 10, 2023, 9:39 PM), [https://www.espn.com/nba/story/\\_/id/37992076/adam-silver-no-plans-let-sovereign-wealth-funds-control-nba-teams](https://www.espn.com/nba/story/_/id/37992076/adam-silver-no-plans-let-sovereign-wealth-funds-control-nba-teams) [<https://perma.cc/Z2PC-ME26>], to purchase noncontrolling ownership interests in individual teams.

10. Chris Smith, *Institutional Opportunity: New League Rules Opening the Door to Private Equity Firms*, SPORTS BUS. J. (Nov. 16, 2020) [hereinafter Smith, *Institutional Opportunity*], <https://www.sportsbusinessjournal.com/Journal/Issues/2020/11/16/Finance/Private-equity.aspx> [<https://perma.cc/B7DH-MYY8>].

11. For example, Steve Cohen, owner of the New York Mets, is worth around \$20 billion and spent over \$370 million in the 2023 MLB season. See *Mets' Steve Cohen Cautions Spending Doesn't Mean a Title*, ESPN (Feb. 20, 2023, 12:50 PM), [https://www.espn.com/mlb/story/\\_/id/35702298/mets-steve-cohen-cautions-spending-mean-title](https://www.espn.com/mlb/story/_/id/35702298/mets-steve-cohen-cautions-spending-mean-title) [<https://perma.cc/WFJ9-DXPL>]; *Steve Cohen*, FORBES, <https://www.forbes.com/profile/steve-cohen/?sh=159803c163f8> [<https://perma.cc/VKS9-DB5C>] (last visited May 26, 2025). Similarly, Sheikh Mansour bin Zayed Al Nahyan, owner of EPL team Manchester City, is worth at least \$16.8 billion and has spent a reported \$2 billion since his ownership in 2008. See *Most English Fans Feel Negative About SWFs, but Newcastle and Man City Reap Rewards*, SWF ACAD. (Mar. 30, 2022), <https://globalswf.com/news/most-english-fans-feel-negative-about-swfs-but-newcastle-and-man-city-reap-rewards> [<https://perma.cc/2RK8-5KS3>]; Harry Thomas-Humphreys, *Who Owns Manchester City and How Much Have the Club Spent During Their Reign?*, METRO (Sept. 16, 2024, 1:39 PM), <https://metro.co.uk/2024/09/16/owns-man-city-much-money-spent-players-21612952/> [<https://perma.cc/B593-XGRL>].

12. Barrabi, *supra* note 8.

13. Matthew J. Parlow, *In Pursuit of Competitive Balance or Payroll Relief?*, 9 ARIZ. ST. SPORTS & ENT. L.J. 58, 78–79 (2020).

14. Chase Browndorf, *Sacrifice Fly: Advancing MLB Ownership Policies into the Post-Covid Era at the Expense of the Antitrust Exemption*, 10 ARIZ. ST. SPORTS & ENT. L.J. 1, 4 (2021) [hereinafter Browndorf, *Sacrifice Fly*].

15. Matthew Brooker, *English Football Could Use NFL-Style Socialism*, BL (Feb. 24, 2023, 12:00 AM), [https://www.bloomberglaw.com/bloomberglawnews/antitrust/X872C6TC000000?bna\\_news\\_filter=antitrust](https://www.bloomberglaw.com/bloomberglawnews/antitrust/X872C6TC000000?bna_news_filter=antitrust) [<https://perma.cc/Z85C-N7M8>].

Association (NBA), and the National Hockey League (NHL) all have salary caps; the MLB is the only major U.S. sports league that does not implement one.<sup>16</sup> The MLB must enforce a salary cap, following every other major U.S. sports league,<sup>17</sup> to combat the inequality that will only exacerbate as new corporate owners enter the playing field.<sup>18</sup>

The MLB Constitution and its bylaws are governing contractual agreements negotiated in private that drive the behind-the-scenes of baseball financing.<sup>19</sup> This Note intends to illuminate the new amendments made to these legal rules as the baseball industry continues to evolve behind closed doors.<sup>20</sup> Further, this Note proposes that if the MLB wishes to continue to expand its bylaws to include new forms of corporate ownership, such as private equity funds and sovereign wealth funds, the league must enforce a salary cap as a safeguard.<sup>21</sup> Part I describes the background of changing ownership entities in the MLB, explaining the difference between controlling and noncontrolling owners and how the MLB's ownership bylaws contrast with other major U.S. sports leagues. Part II explores the ongoing issue of competitive balance in the MLB and how private equity funds and sovereign wealth funds will substantially intensify the league's wealth disparity. Part III is a comparative analysis of the MLB and the EPL, foreshadowing potential risks for the MLB. Part IV considers the MLB's increasingly shaky antitrust exemption and proposes possible solutions that will promote overall competitive balance but ultimately argues a salary cap is essential if the MLB

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16. Joshua Burton, *Peace of Play: For Labor Harmony, Baseball Needs Antitrust Exemption to Go and Salary Cap to Stay*, 39 CARDOZO ARTS & ENT. L.J. 271, 282 (2021) (explaining that the NFL, NBA, and NHL Collective Bargaining Agreements (CBAs) include salary cap and floor provisions, while the MLB CBA merely provides for a Competitive Balance Tax (CBT) which imposes no limits on individual team payroll).

17. *Id.*

18. Smith, *Institutional Opportunity*, *supra* note 10; Parlow, *supra* note 13, at 58–59.

19. See generally Michael J. Willis, *Protecting the "Owners" of Baseball: A Governance Structure to Maintain the Integrity of the Game and Guard the Principals' Money Investment*, 88 NW. U. L. REV. 1619, 1633 (1994); see also Gregor Lentze, *The Legal Concept of Professional Sports Leagues: The Commissioner and an Alternative Approach from a Corporate Perspective*, 6 MARQ. SPORTS L.J. 65, 76 (1995) ("This loss of autonomy by judicial interference results in a higher risk and uncertainty for the monetary investments. Thus, it is in the team owner's interest that their investments are governed by an internal authority that provides more certainty than outside judicial forces.").

20. See generally Willis, *supra* note 19, at 1625–26.

21. See Barrabi, *supra* note 8.



wishes to continue expanding its bylaws to include corporate owners.

### A. Background

This section examines the evolving ownership structure of MLB teams, beginning with the league's historical preference for individual owners and its expansion into corporate ownership.<sup>22</sup> Then, the section explores the increasing presence of private equity funds in minority ownership positions, highlighting the distinctions between controlling and noncontrolling owners.<sup>23</sup> Lastly, the section compares the MLB's ownership model to those of other major U.S. sports leagues.<sup>24</sup>

#### 1. Ownership Structure in the MLB

With the dramatic rise in team valuations, ownership has shifted from primarily individual owners to include corporations and private equity funds.<sup>25</sup> While this decision enables teams to capitalize on their increasing valuations, the profit-driven nature of private equity funds introduces concerns about the long-term implications for league governance and the sport's integrity.<sup>26</sup>

##### i. Individual Owners

Private ownership by individual investors has been the most common form of ownership throughout professional sports teams.<sup>27</sup> The MLB traditionally preferred private individual ownership to keep the sport of baseball separate from "outside interests, [thus] maintaining baseball's self-governance, profitability, and [minimal] financial disclosure."<sup>28</sup> One of the primary reasons for keeping team ownership confined to wealthy individuals is to

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22. See discussion *infra* Section I.A.

23. See discussion *infra* Sections I.A., I.B.

24. See discussion *infra* Section I.C.

25. Barrabi, *supra* note 8.

26. Bill Shaikin, *Private Equity Firms Invest in MLB Teams Because Revenue is Plentiful*, L.A. TIMES (Mar. 14, 2022, 5:00 AM), <https://www.latimes.com/sports/dodgers/story/2022-03-14/private-equity-firms-invest-in-mlb-teams-because-revenue-is-plentiful> [<https://perma.cc/5P77-8PYC>].

27. Brad Smith, *How Different Types of Ownership Structures Could Save Major League Baseball Teams from Contraction*, 2 HOFSTRA J. INT'L BUS. & L. 86, 100 (2003) [hereinafter Smith, *Different Types of Ownership Structures*].

28. *Id.* at 102.

ensure that team owners are committed to managing the club in the “best interests of baseball” and to prevent outside business ventures.<sup>29</sup> Former MLB Commissioner Bud Selig favored private, local owners because he believed that these types of owners offered better business advantages by being more accountable and connected to the fans.<sup>30</sup>

## ii. Corporations as Owners

While individual investors remain the preferred form of ownership, the MLB also allows corporations to own teams.<sup>31</sup> For example, CBS owned the New York Yankees for nine years before selling to George Steinbrenner in 1973, and the Walt Disney Company owned the Los Angeles Angels from 1999 to 2003.<sup>32</sup> It was not uncommon for media companies to purchase sports teams until these corporations struggled with team operations and backlash from fans.<sup>33</sup> As a result, media companies sold their interest back to local billionaires and acquired the broadcasting rights instead.<sup>34</sup> Individuals serve as the principal owners of every MLB team except the Toronto Blue Jays and the Atlanta Braves.<sup>35</sup> Toronto-based media company Rogers Communication owns the Blue Jays.<sup>36</sup> The Atlanta Braves are the only MLB team publicly traded as a standalone entity following a 2023 split-off from parent company Liberty Media.<sup>37</sup>

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29. *Id.*

30. *Can Corporate Ownership Save Baseball?*, *supra* note 4.

31. Barrabi, *supra* note 8 (“The publicly traded company said the Braves posted adjusted operating income of \$94 million in fiscal 2018 and record revenue of \$442 million. In perhaps the most well-known instance of corporate ownership of a pro sports franchise, the Walt Disney Company owned the Los Angeles Angels franchise from 1999 until 2003. And while the late George Steinbrenner’s name is synonymous with the New York Yankees, he purchased the team from television and media company CBS, which owned the team for nine years and sold it for \$10 million, taking a loss on the deal.”).

32. *Id.*

33. Forbes, *Media Companies Dump Sports Teams*, YOUTUBE (Aug. 1, 2011) [hereinafter Forbes YouTube Video], <https://www.youtube.com/watch?v=kh-iI7T1lw8&t=74s> [https://perma.cc/2A92-W4ZX].

34. *Id.*

35. Zach Mentz, *Atlanta Braves Become Only Publicly Traded Team in MLB*, CLEVELAND.COM, (July 26, 2023, 11:44 AM) <https://www.cleveland.com/sports/2023/07/atlanta-braves-become-first-publicly-traded-team-in-mlb.html> [https://perma.cc/MM98-4M3L].

36. *Id.*

37. Sawchik, *supra* note 5 (explaining that the MLB created a rule in 2017 prohibiting a team from going public, but the Braves were “grandfathered in” to avoid this restriction).

## iii. Private Equity Funds

Before 2019, the MLB limited all forms of ownership (controlling or noncontrolling) to individual investors and corporations.<sup>38</sup> In 2019, the MLB changed its bylaws, allowing private equity firms to acquire minority stakes in teams.<sup>39</sup> The league decided that teams may sell up to 30% of their shares to private equity funds, with no individual private equity fund owning more than 15% of a team.<sup>40</sup> Of the thirty MLB teams, private equity funds hold ownership interests in eighteen teams.<sup>41</sup> For example, sports-team private equity firm Arctos Sports Partners holds minority ownership stakes in the Los Angeles Dodgers (the league's second-highest-valued team at \$5.45 billion), the Boston Red Sox (the third-highest-valued team at \$4.5 billion), the Chicago Cubs (the fourth-highest-valued team at \$4.22 billion), the San Francisco Giants (the fifth-highest-valued team at \$3.8 billion), the Houston Astros (valued at \$2.42 billion), and the San Diego Padres (valued at \$1.78 billion).<sup>42</sup> Arctos Sports Partners' total assets grew almost 69% from 2022 to 2023, reaching \$6.64 billion.<sup>43</sup>

The MLB expanded its ownership rules to include private equity firms as minority owners due to the increase in team valuations.<sup>44</sup> Team valuations have skyrocketed largely because of

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38. Barrabi, *supra* note 8.

39. *Id.*

40. Owen Poindexter, *Arctos Sports Partners Grows MLB Portfolio to Six Teams*, FRONT OFF. SPORTS (Mar. 16, 2022, 5:41 PM), <https://frontofficesports.com/arctos-sports-partners-grows-mlb-portfolio-to-six-teams> [<https://perma.cc/VB4F-G2HN>].

41. Shlomo Sprung, *Bought in: The State of Private Equity in Sports*, BOARDROOM (Sept. 15, 2023), <https://boardroom.tv/sports-private-equity-investment-nba-mlb-mls-nhl> [<https://perma.cc/5BMP-G4M3>].

42. Poindexter, *supra* note 40. As of 2024, the Yankees are the highest-valued team in the MLB at \$7.55 billion. Mike Ozanian & Justin Teitelbaum, *Baseball's Most Valuable Teams*, FORBES (Mar. 28, 2024, 6:30 AM), <https://www.forbes.com/lists/mlb-valuations/> [<https://perma.cc/6YQS-FF3M>].

43. Brendan Coffey, *Arctos Sports Reports \$6.6 Billion in Assets, Up 69% on Year*, YAHOO SPORTS (May 2, 2023), <https://sports.yahoo.com/arctos-sports-reports-6-6-182145735.html> [<https://perma.cc/MT3E-F8YE>].

44. Barrabi, *supra* note 8. See also Maury Brown, *MLB Sets New Revenue Record, Exceeding \$10.8 Billion for 2022*, FORBES, (Jan. 10, 2023, 11:16 AM) <https://www.forbes.com/sites/maurybrown/2023/01/10/mlb-sets-new-revenue-record-exceeding-108-billion-for-2022/?sh=61788227ee1> [<https://perma.cc/332V-7FR6>] ("Before any expenses, MLB saw revenues of between \$10.8-\$10.9 billion [in 2022], a new record that has been confirmed by the league. The increase surpasses the prior record set in 2019 of \$10.7 billion.").

inflating media rights from deals with streaming services and the expanding sports betting industry.<sup>45</sup> Rising team valuations have “priced out all but the world’s wealthiest individuals from the bidding process.”<sup>46</sup> With current minority owners looking to capitalize on increasing team valuations by selling their interests, few wealthy individuals can afford the price, prompting the MLB to open ownership opportunities to private equity funds.<sup>47</sup>

A defining difference between individual owners and private equity funds is that private equity funds are not motivated by the love of the game nor the joy of ownership.<sup>48</sup> Instead, the funds evaluate investment opportunities on a strict profit-oriented basis.<sup>49</sup> Previously, the MLB, under former Commissioner Selig, took a critical stance toward trusts, nonprofit organizations, and publicly traded ownership structures, viewing them as problematic due to their potential conflicting responsibilities that could compromise the “best interests of baseball.”<sup>50</sup> However, with rising valuations across the league, the MLB, under current Commissioner Rob Manfred, has now welcomed private equity funds to become minority team owners.<sup>51</sup>

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45. Chase Browndorf, *A New Kind of Pitch: The Rise of Sports-Dedicated Private Equity Funds and the Future of the Single Entity Defense*, 28 JEFFREY S. MOORAD SPORTS L.J. 335, 344–45 (2021) [hereinafter Browndorf, *A New Kind of Pitch*] (“This significant growth [of team valuations] has largely been driven by ‘ballooning media rights values’ mainly from deals with streaming services like Amazon, Hulu, and YouTube, as well as loosening restrictions on sports betting. As an added incentive, the signing of multi-million dollar league broadcasting deals corresponds with typical investment fund holding periods (typically seven to fifteen years), providing investors with an all-but-guaranteed source of revenue for the life of the fund. Indeed, with valuations soaring, the promise of significant returns, and a favorable atmosphere for ‘first movers,’ sports teams represent a type of mature ‘unicorn,’ for private equity funds seeking to invest.” (footnote omitted)).

46. Barrabi, *supra* note 8.

47. *Id.* (“The entry of private equity would mark a noticeable shift in an MLB ownership structure traditionally dominated by wealthy individuals or well-known public companies. The rule change would also provide a way for current owners, especially those looking to cash out their minority stakes, to capitalize on soaring MLB team valuations, many of which currently exceed \$2 billion.”).

48. Shaikin, *supra* note 26.

49. *Id.*

50. Smith, *Different Types of Ownership Structures*, *supra* note 27, at 102–03.

51. Barrabi, *supra* note 8.

## 2. *The Differences Between Controlling and Noncontrolling Owners*

As opposed to controlling owners, noncontrolling owners possess minimal, if any, say in a franchise's operations.<sup>52</sup> They are functionally passive shareholders.<sup>53</sup> In addition, noncontrolling owners realize less of a profit during a sale and receive less recognition and public notoriety than the principal, controlling owners.<sup>54</sup> All MLB teams must have a principal owner with a controlling interest in the club,<sup>55</sup> and the MLB requires that three-fourths of the league's teams approve the sale or transfer of a controlling interest in any team.<sup>56</sup> Controlling team owners must be individuals or privately owned corporations, except for the publicly traded Atlanta Braves.<sup>57</sup> In contrast, becoming a noncontrolling minority team owner in the MLB is substantially easier: teams are free to sell their equity to minority owners as long as the Commissioner approves of the transfer.<sup>58</sup> The broad and unambiguous language in the MLB Constitution empowers the Commissioner to reject the transfer of ownership for any reason with the ultimate goal of protecting the "best interests of baseball."<sup>59</sup>

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52. *Id.*

53. *Id.*

54. *Id.*

55. See MAJOR LEAGUE CONST. art. V, § 2. The MLB Constitution defines "control" as "the power or authority to influence substantially the management policies of the Club." *Id.*

56. *Id.*

57. See discussion *supra* Section I.A.2.

58. MAJOR LEAGUE CONST. art. V, § 2. The MLB Constitution states that "[a] sale or transfer of a non-control interest in any Club shall require only the approval of the Commissioner." *Id.*

59. See *Charles O. Finley & Co. v. Kuhn*, 569 F.2d 527, 534 (7th Cir. 1978) ("The Commissioner has been given broad power in unambiguous language to investigate any act, transaction or practice not in the best interests of baseball, to determine what preventive, remedial or punitive action is appropriate in the premises, and to take that action."); see also Chantz Martin, *Hall of Famer Reggie Jackson Claims Former Commish Bud Selig Blocked Him from Purchasing Oakland A's*, FOX SPORTS (Mar. 23, 2023, 3:17 PM), <https://www.foxnews.com/sports/mlb-legend-reggie-jackson-claims-former-commish-bud-selig-blocked-him-from-purchasing-franchise> [<https://perma.cc/E9YV-56J5>] (stating how Reggie Jackson claims to have been blocked from purchasing the Oakland A's in the early 2000s despite having enough funds to purchase the team simply because then-MLB Commissioner Selig did not want the sale to occur).

### 3. MLB Ownership Compared to Other U.S. Leagues

The NBA, NHL, and MLB all allow corporations to be minority or controlling owners in addition to individuals.<sup>60</sup> The NFL was unique because it did not permit any form of ownership outside of individual ownership (with the notable exception of the “grandfathered-in” Green Bay Packers, a team publicly traded under a community ownership structure).<sup>61</sup> However, in August 2024, the NFL announced that private equity funds may now purchase noncontrolling ownership positions in football teams despite continuing to restrict other forms of institutional ownership.<sup>62</sup>

The MLB was the first league to introduce private equity ownership in 2019.<sup>63</sup> Immediately after, the NBA and NHL changed their bylaws to allow private equity ownership.<sup>64</sup> Like the MLB, other U.S. leagues have enjoyed an increase in team valuations, thus wanting (or rather needing) to introduce a new class of investors to improve liquidity.<sup>65</sup> Since this development, private equity funds now hold ownership stakes in over one-third of U.S. professional men’s sports teams.<sup>66</sup> Because most U.S. leagues expanded their ownership restrictions, private equity funds are buying minority ownership positions in teams across multiple leagues.<sup>67</sup> For example, in addition to investing in six of the highest-valued MLB teams, Arctos Sports Partners has bought minority team ownership positions in the NBA, NHL, and Major

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60. Ed Dixon, *Private Property: Where Do the Top Sports Leagues Stand with Private Equity?*, SPORTSPRO (Jan. 14, 2022), [https://www.sportspromedia.com/features/sport-private-equity-nba-nfl-mlb-nhl-mls-laliga-serie-a-bundesliga-ligue-1-premier-league/?zephhr\\_sso\\_ott=dKMcXA](https://www.sportspromedia.com/features/sport-private-equity-nba-nfl-mlb-nhl-mls-laliga-serie-a-bundesliga-ligue-1-premier-league/?zephhr_sso_ott=dKMcXA) [https://perma.cc/PY6E-TLF9].

61. Smith, *Different Types of Ownership Structures*, *supra* note 27, at 104.

62. Judy Battista, *NFL Owners Vote to Allow Private Equity Funds to Buy Stakes in Teams*, NFL (Aug. 27, 2024, 4:50 PM), <https://www.nfl.com/news/nfl-owners-vote-to-allow-private-equity-funds-to-buy-stakes-in-teams> [https://perma.cc/RQN5-HY4Z] (“A team can sell stakes to multiple funds for a total of 10 percent of ownership, although each stake must be for at least 3 percent. And a fund can hold stakes in more than one team at the same time -- up to six teams.”).

63. Andrew B. White et al., *supra* note 9.

64. *Id.*

65. A.J. Perez, *Why Sports Teams Welcome Private Equity Ownership*, FRONT OFF. SPORTS, (Jan. 29, 2022, 8:45 AM) <https://frontofficesports.com/why-sports-teams-are-welcoming-private-equity-ownership> [https://perma.cc/UY9T-QC9C].

66. Diego Lasarte, *More than a Third of US Pro Sports Teams Are Tied to Private Equity*, QUARTZ (Sept. 13, 2023), <https://qz.com/sports-teams-private-equity-report-1850835931> [https://perma.cc/84LV-GWBF].

67. *Id.*

League Soccer and has acquired stakes in several European soccer teams.<sup>68</sup>

After introducing private equity fund ownership, the NBA and NHL updated their bylaws in 2023 to explicitly include sovereign wealth funds as minority team owners.<sup>69</sup> Later, in 2023, sovereign wealth fund Qatar Investment Authority invested \$200 million for a 5% stake in Monumental Sports and Entertainment, which is the parent company of the Capitals (NHL), Mystics (WNBA), and Wizards (NBA).<sup>70</sup> The MLB has yet to introduce sovereign wealth fund ownership, though there is no outright ban from a team selling its stakes to a sovereign wealth fund.<sup>71</sup> This may soon change; in 2022, the MLB permitted its franchises to sell the commercial rights to sign sponsorship deals throughout international markets, leading to speculation that the MLB may follow the other two leagues in attracting sovereign wealth fund ownership.<sup>72</sup>

## B. The Issue: A Need for a Salary Cap

While new forms of corporate ownership provide increased financial opportunities for teams,<sup>73</sup> they also create anti-competition concerns because profit-oriented corporate owners typically have access to substantially more money than individual owners.<sup>74</sup> Sports leagues with salary caps are in a better position to mitigate this unwanted consequence of expanded ownership by preventing disparate spending.<sup>75</sup> The MLB is the only U.S. sports league without a salary cap and, therefore, is at risk of competitive imbalance as corporate owners inevitably spend more on team payrolls.<sup>76</sup>

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68. Poindexter, *supra* note 40.

69. Bontemps, *supra* note 9.

70. David Rumsey, *PIF, Other Sovereign Wealth Funds Now Have Entry Point into NFL*, FRONT OFF. SPORTS, (Aug. 27, 2024, 6:56 PM) <https://frontofficesports.com/pif-other-sovereign-wealth-funds-now-have-entry-point-into-nfl/>. [<https://perma.cc/6WH3-KRCJ>].

71. *Id.*

72. Karim Zidan, *Saudi Arabia Has Bought into Soccer and Golf. Will the NBA and NFL Be Next?*, GUARDIAN (June 9, 2023, 6:06 PM), <https://www.theguardian.com/sport/2023/jun/09/saudi-arabia-soccer-golf-nba-nfl-sportswashing> [<https://perma.cc/M3BE-FMH3>].

73. Perez, *supra* note 65.

74. Smith, *Institutional Opportunity*, *supra* note 10.

75. Paul D. Staudohar, *Salary Caps in Professional Team Sports*, COMP. & WORKING CONDITIONS, 3, 3 (1998).

76. Parlow, *supra* note 13, at 74.

### 1. *The Goal of Competitive Balance*

The concept of competitive balance is not new and is widely discussed across all sports leagues.<sup>77</sup> The prevailing belief is that sports leagues must mandate regulations to secure their longevity and growth by ensuring that each team has a realistic chance each season to make the playoffs.<sup>78</sup> Competitive balance is jeopardized when large-market teams generate significantly higher revenues than smaller teams, enabling the larger franchises to have outsized payrolls, guaranteeing them a disproportionate percentage of the best players in the league.<sup>79</sup> These large-market teams would, therefore, be more likely to clinch championships, extinguishing hope amongst fan bases as the same super-teams continue to dominate on the field.<sup>80</sup>

Sports leagues strive to prevent super-teams from arising through a range of competitive balance tactics, including revenue sharing, salary caps, luxury taxes, alterations to the amateur draft, limitations on “rookie and veteran contracts, and free agency reforms.”<sup>81</sup> These balancing tactics are typically negotiated and implemented within a league’s collective bargaining agreement (CBA), which is the governing agreement between the players’ union, team owners, and league management, such as the Office of the Commissioner.<sup>82</sup> The MLB’s CBA sets a minimum salary for players, determines the league playoff procedures, and manages free agency.<sup>83</sup> CBAs are particularly imperative to league operations since many competitive balance tactics are unreasonable restraints on trade that would otherwise violate antitrust laws.<sup>84</sup> Because the terms and conditions of employment

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77. *Id.* at 58 (“[P]rofessional sports league commissioners invoke [competitive balance tactics] with great regularity to underscore the importance they place on its underlying value: that for the health, longevity, and growth of the league, teams must have a realistic chance—season-to-season or over another period of time—to be a winning team and ultimately compete in the playoffs and for a championship.”).

78. *Id.*

79. *Id.* at 58–59.

80. *Id.* at 59 (“In turn, these big-market super teams would then dominate both the regular season and playoffs, leading to almost predetermined outcomes game-to-game and season-to-season. Fans would thus lose interest in these lopsided contests—and thus the leagues—because only a few franchises had the real ability to win most games and, ultimately, the championship.”).

81. *Id.*

82. Burton, *supra* note 16, at 282.

83. *Id.*

84. Parlow, *supra* note 13, at 70.



contracts are agreed upon through the collective bargaining process, the agreements are protected from antitrust scrutiny.<sup>85</sup>

Courts respect CBAs in U.S. sports leagues for the sake of labor law, even though the competitive balance tactics in these agreements would violate antitrust regulations.<sup>86</sup> The United States Supreme Court in *American Needle, Inc. v. National Football League* held that competitive balance is “unquestionably an interest that may well justify a variety of collective decisions made by the teams.”<sup>87</sup> As for salary caps across the leagues,<sup>88</sup> the court in *National Basketball Association v. Williams* held that the NBA’s salary cap does not violate federal antitrust law because implementing a salary cap to maintain competitive balance outweighs any anti-competitive consequences.<sup>89</sup>

Not all leagues enforce the same competitive balance tactics since collective bargaining negotiations occur on a league-by-league basis.<sup>90</sup> For example, among the “Big Four” U.S. sports leagues, the NFL, NBA, and NHL all have salary caps, while the MLB does not.<sup>91</sup> The NFL and NHL use a hard salary cap, while the NBA uses a soft salary cap.<sup>92</sup> A hard salary cap means a team’s

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85. *Id.*; see also *Nat’l Basketball Ass’n v. Williams*, 857 F. Supp. 1069, 1078 (S.D.N.Y. 1994) (“Antitrust immunity exists as long as a collective bargaining relationship exists. Accordingly, the NBA is granted the declaration it seeks—the continued implementation of these challenged measures [salary caps] by the NBA do not violate the antitrust laws as long as the collective bargaining relationship exists.” (citation omitted)).

86. Parlow, *supra* note 13, at 70 (“Given the special status that labor law provides for CBAs, courts are often vigilant in ensuring that both sides—the league/owners and the players—adhere to the terms to which they agreed. In this regard, the collective bargaining process places a premium on the importance for both sides to know what issues matter most to them, negotiate them into the CBA as best they can, and be willing to live with the results of the CBA for the entire term of the agreement.”).

87. *Am. Needle, Inc. v. Nat’l Football League*, 560 U.S. 183, 204 (2010).

88. A salary cap is exactly what it sounds like—teams are limited to how much they can spend on all their players as a whole. Staudohar, *supra* note 75, at 3; see also Parlow, *supra* note 13, at 74–75 (“The underlying theory of a salary cap in both cases—for parity purposes—is that by precluding or limiting higher-revenue teams from outspending other teams, the league will experience better team competitive balance.”).

89. *Nat’l Basketball Ass’n*, 857 F. Supp. at 1079 (“Even under a rule of reason analysis, however, it appears that the Players have failed to show that the alleged restraints of trade are on balance unreasonably anti-competitive. The pro-competitive effects of these practices, in particular the maintenance of competitive balance, may outweigh their restrictive consequences. Indeed, the Salary Cap seems to operate as a mechanism to distribute 53 per cent defined gross revenue to the Players.”).

90. Parlow, *supra* note 13, at 70.

91. Burton, *supra* note 16, at 282.

92. *Id.* at 291–92; Parlow, *supra* note 13, at 75 (“In both the NBA and NFL, the parameters of the salary cap are negotiated through collective bargaining with the yearly amount of the cap being determined as a percentage of the league’s revenues from the previous year.”).

payroll cannot exceed a designated threshold decided upon by the league with limited exceptions.<sup>93</sup> A soft salary cap allows teams to spend above the identified threshold but imposes massive penalties if the limit is exceeded.<sup>94</sup> Penalties for not adhering to a soft salary cap include fines, loss of draft picks, and player contract cancellations.<sup>95</sup>

Unique to the major U.S. sports leagues, the MLB utilizes a Competitive Balance Tax (also known as a luxury tax) as opposed to a salary cap.<sup>96</sup> The Competitive Balance Tax places no restrictions on an individual team's payroll and only fines a team that spends over the prescribed threshold.<sup>97</sup> Teams are free to spend on players as long as they can afford to pay the associated luxury tax.<sup>98</sup> Large-market teams, which often boast the highest payrolls, possess the financial resources to absorb these luxury tax penalties with ease.<sup>99</sup> This financial advantage allows the large-market, high-payroll franchises to consistently build rosters that achieve success not only in the regular season but also in the playoffs, further engraining their dominance.<sup>100</sup>

In 1998, the MLB established the Commissioner's Blue Ribbon Panel on Baseball Economics to research the economic state of the league.<sup>101</sup> The Blue Ribbon Panel examined the 1995–2001 MLB seasons and found that the large revenue disparities across the league had caused “chronic competitive imbalance” and that the limited revenue sharing and the luxury tax approved in the 1996 MLB CBA were unsuccessful in moderating the payroll disparity and improving competitive balance.<sup>102</sup> The Blue Ribbon Panel addressed that low-revenue clubs needed to “incur staggering

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93. Parlow, *supra* note 13, at 74.

94. *Id.* at 74–75.

95. *Id.* at 75.

96. *Id.* at 77 (“Luxury taxes are similar to salary caps in that they attempt to limit teams’ overall payroll expenses so that higher-revenue teams cannot substantially outspend other teams in the league. While the NBA adopts a luxury tax in conjunction with its salary cap, MLB dispenses with the salary cap and solely implements a luxury tax—called the competitive balance tax—to achieve its parity goals.”).

97. Burton, *supra* note 16, at 273.

98. *Id.*

99. Parlow, *supra* note 13, at 78–79.

100. *Id.*

101. Andrew E. Bortek, *The Faux Fix: Why a Repeal of Major League Baseball’s Antitrust Exemption Would Not Solve Its Severe Competitive Balance Problems*, 25 CARDOZO L. REV. 1069, 1095 (2004).

102. MLB UPDATED SUPPLEMENT TO THE REPORT OF THE INDEPENDENT MEMBERS OF THE COMMISSIONER’S BLUE RIBBON PANEL ON BASEBALL ECONOMICS (2001), <https://roadsidephotos.sabr.org/baseball/BRPanelupd.htm> [<https://perma.cc/WX4V-84VG>].

operating losses” to subsidize a competitive payroll for a chance to make the playoffs.<sup>103</sup> Given the correlation between high player salaries and on-the-field success, the report showed that from 1995 to 2001, only five teams with payrolls in the bottom half of the league qualified for the postseason, with none advancing past the first round of the playoffs, and only the teams with payrolls in the top quartile of the league had won a World Series game.<sup>104</sup>

The “chronic competitive imbalance” identified by MLB’s Blue Ribbon Panel<sup>105</sup> remains evident today. In 2022, four MLB teams had 100-plus wins (the Atlanta Braves, the New York Mets, the Los Angeles Dodgers, and the Houston Astros), while four teams had 100-plus losses (the Washington Nationals, the Cincinnati Reds, the Pittsburgh Pirates, and the Oakland A’s).<sup>106</sup> The 100-plus-win teams averaged almost \$226 million in payroll spending, while the 100-plus-loss teams averaged less than \$87 million.<sup>107</sup> Additionally, over the past ten MLB seasons since 2024, teams with the top ten payrolls have reached the postseason 53% of the time, compared to just 31% for middle-tier teams and 20% for those teams in the bottom third.<sup>108</sup> This imbalance is further highlighted by the fact that the Kansas City Royals remain the only team with a payroll in the league’s bottom half to win the World Series since 2010.<sup>109</sup>

## 2. Current Ownership and the Salary Cap

Traditionally, ultra-high-net-worth individuals bought ownership interests in baseball teams using their own capital or

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103. *Id.*

104. *Id.* (“From 1995 through 2001, a total of 224 MLB postseason games were played. During this period, five clubs whose payrolls fell in the lower half of the industry qualified for the postseason, and they won a total of five games. None advanced past the first round of the playoffs. No team outside the top payroll quartile has won a World Series game during the period, and only one has reached the World Series. (The 1998 San Diego Padres, then in payroll Quartile II, won the National League pennant but were swept in the World Series in four straight games by the New York Yankees.) The seven-year postseason record for 1995-2001 is 219-5 (a .978 winning percentage) in favor of the top two payroll quartiles.”).

105. *Id.*

106. Jesse Rogers, *MLB Is a Sport Divided by Historic Payroll Disparity—So What’s Next?*, ESPN (June 5, 2023, 7:00 AM), [https://www.espn.com/mlb/story/\\_/id/37775153/mlb-divided-historic-payroll-disparity-next](https://www.espn.com/mlb/story/_/id/37775153/mlb-divided-historic-payroll-disparity-next) [<https://perma.cc/RW35-26Q2>].

107. *Id.*

108. John Romano, *A World Series between Yankees (Wallets) and Dodgers (Bank Accounts)*, TAMPA BAY TIMES (Oct. 24, 2024), <https://www.tampabay.com/sports/rays/2024/10/24/romano-thu/> [<https://perma.cc/A8NX-PZW7>].

109. Rogers, *supra* note 106.

by privately raising funds from other individuals.<sup>110</sup> The owners hoped to grow the valuations of their teams and ultimately sell their ownership interest to another individual or leave it to their descendants.<sup>111</sup> The infamous Steinbrenner family is perhaps the quintessential example of this traditional model.<sup>112</sup> Owners certainly did not plan to lose money, but as a general rule, profitability took a back seat to the joy of owning a baseball team.<sup>113</sup> Today, however, inflating media rights has transformed team ownership positions from vanity investments into valuable liquid assets.<sup>114</sup>

The contrast between traditional individual ownership and private equity funds could not be more glaring.<sup>115</sup> Private equity funds operate through a fund manager, known as a general partner, who approaches potential investors, known as limited partners, to make a capital commitment to the fund as a future investment.<sup>116</sup> When the committed funds are ready to be deployed, the general partner calls the capital, which is pooled together into an investment vehicle or “fund” with a typical lifecycle of seven to fifteen years.<sup>117</sup> Classic private equity funds function by purchasing companies using a mixture of debt and

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110. Browndorf, *A New Kind of Pitch*, *supra* note 45, at 336–37.

111. *Id.* at 337.

112. Barrabi, *supra* note 8 (“[T]he late George Steinbrenner’s name is synonymous with the New York Yankees.”); Lucas Weick, *Passing the Torch: Hank and Hal Steinbrenner Now Fully in Charge of Yankees*, BLEACHER REP. (July 14, 2010), <https://bleacherreport.com/articles/420173-the-passing-of-the-torch-hank-and-hal-now-fully-in-charge-of-yankees> [<https://perma.cc/2P8L-PB6E>] (“It had been speculated that the Steinbrenner family would consider selling the Yankees after George died, but Hal said that there is no chance that the Yankees are going to be sold. So it looks as if the Yankees will remain in the hands of the Steinbrenner family for the foreseeable future, and possibly long after Hank and Hal’s tenure as owners.”).

113. Sawchik, *supra* note 5.

114. Adam Le & Alex Lynn, *The New Playbook: How Private Equity Fell in Love with Sport*, PRIV. EQUITY INT’L (Nov. 3, 2020), <https://www.privateequityinternational.com/the-new-playbook-how-private-equity-fell-in-love-with-sport> [<https://perma.cc/7BZV-KEN6>]; see also Browndorf, *A New Kind of Pitch*, *supra* note 45, at 344–45 (“This significant growth [of team valuations] has largely been driven by ‘ballooning media rights values’ mainly from deals with streaming services like Amazon, Hulu, and You-Tube, as well as loosening restrictions on sports betting. As an added incentive, the signing of multi-million dollar league broadcasting deals corresponds with typical investment fund holding periods (typically seven to fifteen years), providing investors with an all-but-guaranteed source of revenue for the life of the fund. Indeed, with valuations soaring, the promise of significant returns, and a favorable atmosphere for ‘first movers,’ sports teams represent a type of mature ‘unicorn,’ for private equity funds seeking to invest.” (footnotes omitted)).

115. Le & Lynn, *supra* note 114.

116. Browndorf, *A New Kind of Pitch*, *supra* note 45, at 337.

117. *Id.*

equity financing, enhancing the company's value through a variety of operational and structural actions, and reselling the company a few years later to generate often a tremendous return for the fund.<sup>118</sup> Private equity funds usually intend to invest in these mature companies for no longer than a decade and require their investors to commit capital for the same amount of time.<sup>119</sup> At the end of the fund's stated duration, the fund manager sells or transfers their ownership stakes and returns the capital to its investors.<sup>120</sup>

When corporate entities, such as private equity funds, become minority owners, controlling team owners can use the capital provided by these deep-pocket entities to pay outsized compensation and ensure the opportunity to acquire the most talented players, thus gaining a competitive advantage over the smaller market teams.<sup>121</sup> Given that private equity firms are holding record levels of investable "dry powder" awaiting deployment for them to secure new funds,<sup>122</sup> teams will come into considerably more capital to invest into players' salaries and can seek the most lucrative contracts.<sup>123</sup> Private equity funds tend to manage companies by leveraging substantial debt and cutting expenses at every opportunity to improve efficiency.<sup>124</sup>

By spending money on superstar teams, owners hope there will be an increase in team valuations, a surge of excitement amongst fans, and that the team and their ownership stake will become more valuable.<sup>125</sup> As a result, individual owners tend to focus on long-term investment with high-risk management.<sup>126</sup> Conversely, private equity funds are more interested in generating liquidity for their investors within their short-term horizons.<sup>127</sup> In other words, most individual owners desire to invest in local

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118. William Magnuson, *The Public Cost of Private Equity*, 102 MINN. L. REV. 1847, 1855–56 (2018).

119. HOLGER SPAMANN, CORPORATIONS 14 (2d ed. 2018).

120. *Id.*

121. Zachary A. Greenberg, *Tossing the Red Flag: Official (Judicial) Review and Shareholder Fan Activism in the Context of Publicly Traded Sports Teams*, 90 WASH. U. L. REV. 1255, 1262–63 (2013).

122. *As Sports Leagues Resume Play, Hogan Lovells' Sports, Media & Entertainment Group Identifies Seven Key Trends to Watch in the Sports Sector*, HOGAN LOVELLS (Sept. 24, 2020) [hereinafter *As Sports Leagues Resume Play*], [<https://perma.cc/6RAT-C6X4>].

123. Greenberg, *supra* note 121, at 1262–63.

124. Magnuson, *supra* note 118, at 1847, 1858–59.

125. See generally Greenberg, *supra* note 121, at 1262–63.

126. Le & Lynn, *supra* note 114.

127. *Id.*

franchises with the team's best interest in mind, while private equity funds aim to maximize profits within a short period.<sup>128</sup>

With their short-term investment horizons and structural incentives to increase the value of the team quickly,<sup>129</sup> private equity funds are more likely to spend money on the biggest names in baseball to generate more revenue for a quick return.<sup>130</sup> In contrast, corporations operate with perpetual durations and face less pressure to make a quick return on investment.<sup>131</sup> Corporations like Disney that are worth hundreds of billions of dollars, though capable, are not as driven to spend on team operations.<sup>132</sup> Rather than taking on debt by negotiating stratospheric salaries like private equity funds,<sup>133</sup> corporations are more focused on maintaining their own business operations.<sup>134</sup>

Private equity funds as minority owners hold minimal decision-making power regarding team operations, such as player acquisition and salary negotiations to player contracts,<sup>135</sup> thus keeping wealthy individuals in control of day-to-day team operations as controlling owners.<sup>136</sup> However, this will not hinder private equity funds since they are not looking to make decisions on managing team operations.<sup>137</sup> Instead, their sole focus is seeking a return with strict monetary incentives in spending.<sup>138</sup> Even with noncontrolling ownership positions, private equity funds are providing significant investments into team franchises.<sup>139</sup> Private equity funds presumably purchase stakes in teams if they believe the controlling owners will act in alignment with the private equity fund's short-term, profit-driven motives.<sup>140</sup> Consequently, private equity funds, although in minority ownership positions, often mirror the powers of controlling owners in that they would not otherwise invest in the team unless they

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128. Browndorf, *A New Kind of Pitch*, *supra* note 45, at 339.

129. SPAMANN, *supra* note 119.

130. Browndorf, *A New Kind of Pitch*, *supra* note 45, at 339.

131. Forbes YouTube Video, *supra* note 33.

132. *See generally* Forbes YouTube Video, *supra* note 33.

133. Browndorf, *A New Kind of Pitch*, *supra* note 45, at 339.

134. *See generally* Forbes YouTube Video, *supra* note 33.

135. *See* Barrabi, *supra* note 8.

136. *See Can Corporate Ownership Save Baseball?*, *supra* note 4.

137. *See generally* Forbes YouTube Video, *supra* note 33.

138. Le & Lynn, *supra* note 114.

139. Barrabi, *supra* note 8 (explaining that sports banking firm Galatioto Sports Partners has "purportedly established a \$500 million fund to invest in MLB franchises.").

140. Browndorf, *A New Kind of Pitch*, *supra* note 45, at 361–62.

find a controlling owner with similar spending horizons.<sup>141</sup> This trend is only the beginning of further expansion into corporate ownership positions as team valuations continue to soar.<sup>142</sup> Since the expansion of the bylaws, there has been an “arms race” in the MLB, a league without a salary cap, as private equity firms are looking to invest to raise new funds.<sup>143</sup>

### 3. Future Possibilities on Ownership & the Salary Cap

Amongst the U.S. sports leagues that allow corporate ownership, the MLB, NHL, and NBA all allow private equity funds to acquire minority ownership positions.<sup>144</sup> Given that both the NHL and NBA attract sovereign wealth funds to invest in minority ownership positions,<sup>145</sup> it is reasonable to assume that the MLB will experience the same interest. Permitting sovereign wealth funds to acquire ownership positions presents even more of a competitive balance concern than private equity funds and introduces new worries of “sportswashing.”<sup>146</sup> While the NHL and NBA have restricted sovereign wealth funds to noncontrolling ownership positions,<sup>147</sup> the foreign funds have demonstrated a willingness and eagerness to obtain majority ownership positions in other sports like European soccer.<sup>148</sup>

Sovereign wealth funds are a form of an international investment vehicle utilized by a country’s government.<sup>149</sup> Sovereign wealth funds differ from a country’s official reserve in

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141. *Id.* at 362.

142. Barrabi, *supra* note 8.

143. Browndorf, *A New Kind of Pitch*, *supra* note 45, at 339; *see also As Sports Leagues Resume Play*, *supra* note 122.

144. Dixon, *supra* note 60.

145. *See Bontemps*, *supra* note 9.

146. Fred Frommer, *Sportswashing*, BRITANNICA MONEY, <https://www.britannica.com/money/sportswashing> [<https://perma.cc/ZHM3-ZTXN>] (last visited Mar. 29, 2025) (“Sportswashing” is defined as “the use of an athletic event by an individual or a government, a corporation, or another group to promote or burnish the individual’s or group’s reputation, especially amid controversy or scandal.”); *see also* Brett Knight, *Saudi Money is Supercharging Athletes’ Pay—And Shaking Up the Sports World*, FORBES (May 16, 2023, 6:15 AM), <https://www.forbes.com/sites/brettknight/2023/05/16/saudi-money-is-supercharging-athletes-pay---and-shaking-up-the-sports-world/?sh=594df7e21214> [<https://perma.cc/DH2Z-5DYY>].

147. Bontemps, *supra* note 9.

148. Knight, *supra* note 146.

149. Amy Keller, *Sovereign Wealth Funds: Trustworthy Investors or Vehicles of Strategic Ambition? An Assessment of the Benefits, Risks and Possible Regulation of Sovereign Wealth Funds*, 7 GEO. J.L. & PUB. POL’Y 333, 338 (2009).

that sovereign wealth funds are typically less interested in liquidity, exhibit higher risk tolerances, and pursue higher rates of return.<sup>150</sup> As a result, sovereign wealth funds can hold diversified portfolios that include equity, fixed income, real estate, and other investments like hedge funds and private equity firms.<sup>151</sup> Sovereign wealth funds have begun investing within other foreign countries, such as the United States, to maintain diverse portfolios beyond their domestic assets.<sup>152</sup> Like any diligent investor, sovereign wealth funds aim to diversify their portfolio throughout various asset classes, economic sectors, and geographic regions.<sup>153</sup> This type of investment strategy allows sovereign wealth funds to limit their country's dependence on a few commodities and establish dependable endowments for the future.<sup>154</sup>

Unlike private equity funds that focus on short-term investment opportunities, sovereign wealth funds traditionally maintain long-term investment horizons, which allow them to endure short-term volatility.<sup>155</sup> This raises the question of what incentivizes sovereign wealth funds to spend tremendous sums on player salaries. In short, sovereign wealth funds spend because they can.<sup>156</sup> Sovereign wealth funds operate differently than public companies and private equity funds in that they can operate with less scrutiny and primarily serve macroeconomic objectives that indirectly support their governments' political goals.<sup>157</sup> The sovereign wealth funds currently investing in sports are the Qatari Investment Authority and Saudi Arabia's Public Investment Fund—both of which are investment vehicles for authoritarian governments.<sup>158</sup> As a result, sovereign wealth funds are not subject to the same restraints experienced by private equity funds through

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150. *Id.*

151. *Id.* at 336.

152. *Id.* at 338.

153. *Id.*

154. *Id.*

155. *Id.* at 341.

156. Paul Rose, *Regulating Strategic Sovereign Wealth*, 48 *BYU L. REV.* 1345, 1361 (2023).

157. *Id.* at 1361.

158. Caroline Bologna, *What Is 'Sportswashing'?*, HUFFPOST (June 9, 2023, 2:24 PM), [https://www.huffpost.com/entry/what-is-sportswashing-pga-golf\\_l\\_647f717de4b0a7554f473efc](https://www.huffpost.com/entry/what-is-sportswashing-pga-golf_l_647f717de4b0a7554f473efc) [https://perma.cc/3ZC3-EXJ9].



the U.S. Securities and Exchange Commission (SEC)<sup>159</sup> and, instead, are subject to the government's unfettered discretion.<sup>160</sup>

Sovereign wealth funds possess ulterior motives with unique, often political incentives that transcend generating a return and maximizing profits (typically the main incentive for public companies and private equity funds).<sup>161</sup> In that regard, sovereign wealth funds appear to resemble individual owners—just with significantly more spending power.<sup>162</sup> Sovereign wealth funds have underlying intentions rooted in bolstering their nations' images, analogous to individual owners looking for team ownership positions as a vanity investment.<sup>163</sup> To accomplish their goal, foreign governments have turned to a new phenomenon called “sportswashing,” a tactic used by sovereign wealth funds to create excitement for new sports opportunities and to generate a positive national image.<sup>164</sup> For example, concerns about “sportswashing” were raised in 2022 when countries known for human rights violations hosted major international sporting events: China hosting the 2022 Winter Olympics and Qatar hosting the 2022 Fédération Internationale De Football Association (FIFA) World Cup.<sup>165</sup> Additionally, the Saudi Public Investment Fund sparked “sportswashing” controversy when developing the LIV Golf Tour to compete with the Professional Golfers' Association (PGA).<sup>166</sup>

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159. See generally Press Release, SEC, SEC Enhances the Regulation of Private Fund Advisers (Aug. 23, 2023), <https://www.sec.gov/news/press-release/2023-155> [<https://perma.cc/FX2L-L8CX>].

160. Rose, *supra* note 156, at 1347 (“Internationally, the international economic order—with its focus on both democratization and marketization—has come under attack from emerging powers, including China, Brazil, Russia, India, and other powers which ‘share an ambivalence, or even an outright rejection, of the foundational precepts . . . which shaped the post-Cold War world order.’”).

161. *Id.* at 1361.

162. Steve Cohen, owner of the New York Mets and the wealthiest owner in the MLB, is worth just over \$20 billion. *Steve Cohen*, FORBES (Dec. 24, 2023), <https://www.forbes.com/profile/steve-cohen/?sh=159803c163f8> [<https://perma.cc/VKS9-DB5C>]. The Public Investment Fund is worth \$776 billion, and the Qatar Investment Authority is worth \$475 billion. See *Top 100 Largest Sovereign Wealth Fund Rankings by Total Assets*, SWFI, <https://www.swfinstitute.org/fund-rankings/sovereign-wealth-fund> [<https://perma.cc/7JH-Q-96P9>].

163. See generally Sawchik, *supra* note 5.

164. Frommer, *supra* note 146 (“Sportswashing” is defined as “the use of an athletic event by an individual or a government, a corporation, or another group to promote or burnish the individual’s or group’s reputation, especially amid controversy or scandal.”).

165. Nicole Antolino, *Love Doesn’t LIV Here Anymore: Legal Battles Onset Between the PGA Tour, Professional Golfers, and the LIV Golf Tour*, 30 JEFFREY S. MOORAD SPORTS L.J. 289, 316–17 (2023).

166. *Id.* at 293–96 (“The reported \$255 million LIV Series is financed by Saudi Arabia’s PIF, a feature many American individuals and corporations take issue with as part of

Rather than focusing on generating a quick return for investors like private equity funds,<sup>167</sup> sovereign wealth funds are motivated beyond economic productivity to promote their government's international perception.<sup>168</sup>

Like private equity funds, sovereign wealth funds are willing to spend the money needed to acquire the best athletes across leagues.<sup>169</sup> Sovereign wealth funds are not afraid to make enormous payments for short-term player contracts, as evidenced by Saudi Arabia's Public Investment Fund (PIF) paying Cristiano Ronaldo more than £200 million (\$248.65 million) annually to play for two-and-a-half years for the PIF-owned Saudi Pro League team Al Nassr in 2023.<sup>170</sup> Within one year, the Public Investment Fund's influence extended to half of the world's ten highest-paid athletes: Ronaldo, who earned \$260 million; Neymar, with \$108 million; and Karim Benzema, with \$106 million—all playing for PIF-owned Saudi Pro League teams;<sup>171</sup> additionally, Lionel Messi, earning \$135 million, endorsed Saudi Arabia as a tourism ambassador, while Jon Rahm, earning \$218 million, joined the Saudi-backed LIV Golf Tour.<sup>172</sup>

Critics frequently raise substantial concerns about the growing power and influence of sovereign wealth funds, opposing their involvement in professional sports.<sup>173</sup> Some Americans even perceive sovereign wealth fund ownership as a potential national security risk, prompting calls for government investigations.<sup>174</sup> However, the irony is avid sports fans generally welcome the acquisition of their favorite team by an uber-wealthy owner, regardless of the corporate entity, because of the widespread belief

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America's unhealed trauma from 9/11 and more recent criticisms of the Saudi Arabia's human rights violations.”).

167. Browndorf, *A New Kind of Pitch*, *supra* note 45, at 339.

168. Zidan, *supra* note 72.

169. Knight, *supra* note 146.

170. Reuters, *Cristiano Ronaldo 'Happy' in Saudi Arabia, Wants Other Players to Join Him*, CNN SPORTS (June 2, 2023, 5:06 AM), <https://www.cnn.com/2023/06/02/football/cristiano-ronaldo-saudi-arabia-transfer-window-spt-intl/index.html> [https://perma.cc/AN3M-NU7T].

171. Justin Birnbaum, *The World's 10 Highest-Paid Athletes 2024*, FORBES (May 16, 2024, 7:27 AM), <https://www.forbes.com/sites/justinbirnbaum/2024/05/16/the-worlds-10-highest-paid-athletes-2024/> [https://perma.cc/QXL6-9NJV].

172. *Id.*

173. Bologna, *supra* note 158.

174. Dan Papszun, *PGA Deal's Real Estate, Data Stir National Security Review Calls*, BL (June 9, 2023, 3:03 PM), <https://news.bloomberglaw.com/business-and-practice/pga-liv-deal-draws-lawmakers-calls-for-national-security-review> [https://perma.cc/WPB2-Y38B].

that greater financial resources translate into superior players and more victories.<sup>175</sup>

### C. Analysis: A Comparison to the English Premier League

The liberalization of ownership rules among U.S. sports leagues is unprecedented.<sup>176</sup> To understand the unknown terrain of private equity fund and sovereign wealth fund ownership, the U.S. can turn to European soccer.<sup>177</sup> Specifically, private capital vehicles hold ownership stakes in more than one-third of football clubs in Europe's "Big Five" leagues (England, Germany, Spain, Italy, and France).<sup>178</sup> Within the EPL's twenty teams, seven clubs have private equity participation, and two clubs have venture capital participation.<sup>179</sup>

Most notably, in 2022, an American investment group led by the Los Angeles Dodgers co-owner Todd Boehly and private equity firm Clearlake Capital purchased Chelsea Football Club (FC).<sup>180</sup> Boehly and Clearlake utilized a leveraged buyout structure to acquire Chelsea FC for \$5.4 billion, the most expensive deal in sports history, after Russian oligarch Roman Abramovich was forced to sell the team due to sanctions imposed after Russia invaded Ukraine.<sup>181</sup> This landmark transaction underscored the

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175. Rick Maese & Scott Clement, *Americans are Uneasy about Middle East Sports Push, Post-UMD poll finds*, WASH. POST (Nov. 9, 2023), <https://www.washingtonpost.com/sports/2023/11/09/middle-east-sports-polling/> ("Avid sports fans are more open to the gulf nations' involvement, with at least one-third saying they would be comfortable with investments from each country compared with about [one] in [four] fans overall. That could be because avid sports fans are familiar with how the investment can turn a team's fortunes.").

176. White et al., *supra* note 9.

177. Browndorf, *Sacrifice Fly*, *supra* note 14, at 4 ("American sports leagues have gradually loosened ownership restrictions, enabling private funds to acquire minority stakes in professional teams (mirroring their European counterparts, which allow investment funds to obtain controlling interests in sports teams).").

178. Paul MacInnes, *Private Capital Funds 35% of Clubs in Europe's Top Leagues, Research Shows*, THE GUARDIAN (Aug. 3, 2023), <https://www.theguardian.com/football/2023/aug/03/private-capital-funds-35-of-clubs-in-europes-top-leagues-research-shows> [<https://perma.cc/76FS-8EGY>].

179. Sebastian McCarthy, *Private Equity Has Stakes in More than a Third of Europe's Top Football Clubs*, FIN. NEWS (Aug. 3, 2023, 6:04 PM), <https://www.fnlonon.com/articles/private-equity-has-stakes-in-more-than-a-third-of-europes-top-football-clubs-20230803> [<https://perma.cc/77MM-N5EJ>].

180. Tariq Panja & Rory Smith, *Inside the Chelsea Sale: Deep Pockets, Private Promises and Side Deals*, N.Y. TIMES (May 24, 2022), <https://www.nytimes.com/2022/05/24/sports/soccer/chelsea-sale-abramovich-boehly.html> [<https://perma.cc/A6WL-WQXV>].

181. *Id.* See also Carlie Porterfield, *Billionaire Todd Boehly-Led Group Completes \$5.4 Billion Purchase of Chelsea FC*, FORBES (May 31, 2022, 10:58 AM), <https://www.forbes.com/sites/carlieporterfield/2022/05/30/billionaire-todd-boehly-led-group-completes-54-billion->

increasing involvement of private equity funds in professional sports, bringing with them unprecedented levels of debt and capital previously known only to corporate mergers and acquisitions.<sup>182</sup>

Sovereign wealth funds have also emerged as prominent players in the fight for ownership positions throughout the EPL.<sup>183</sup> Unlike in U.S. leagues, sovereign wealth funds can acquire majority ownership positions in the EPL, though not without controversy.<sup>184</sup> In October 2021, the Saudi-owned Public Investment Fund acquired 80% of the English soccer club Newcastle United FC for \$358 million.<sup>185</sup> The acquisition proved to be popular among Newcastle fans because the sale allowed the club to contend for a Champions League spot just seventeen months after it had been relegated to the Championship Division of the English Football League.<sup>186</sup> During the transfer of ownership in October 2021, Newcastle failed to win a match that season.<sup>187</sup> With the Public Investment Fund as the controlling owner, the team hired soccer manager Eddie Howe and spent £92 million (\$114.38 million) on new players, and, as one might expect, the club's fortunes on the pitch quickly turned around.<sup>188</sup>

European soccer, specifically the EPL, presents itself more as a harbinger of the MLB than other U.S. leagues because the EPL, like the MLB, does not use a salary cap.<sup>189</sup> The EPL embraces a free market, placing no limits on what teams may spend on

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purchase-of-chelsea-fc/?sh=5cfac05327e [https://perma.cc/R8FN-WT2E] (stating that sale of Chelsea FC went for \$5.4 billion).

182. McCarthy, *supra* note 179 (“Although you always have a figure at the forefront of the club, like Todd Boehly for Chelsea, behind the scenes you have multiple private equity firms that are fueling this with a lot of debt and capital,” said Nicolas Moura, EMEA private capital analyst at Pitchbook and author of the report.”).

183. *Most English Fans Feel Negative About SWFs, but Newcastle and Man City Reap Rewards*, *supra* note 11.

184. *Premier League Urged to Review Details of Deal Made Between Saudi Arabia Wealth Fund, Newcastle United*, FOX NEWS (Mar. 2, 2023, 1:41 PM), <https://www.foxnews.com/sports/premier-league-urged-to-review-details-of-deal-made-between-saudi-arabia-wealth-fund-newcastle-soccer-club> [https://perma.cc/Q889-ESV2] (“The Premier League was urged Thursday to review a legally binding promise made by the owners of English soccer club Newcastle in 2021 that Saudi Arabia’s sovereign wealth fund was separate from the country’s government.”).

185. *Id.*

186. *Id.*

187. *Most English Fans Feel Negative About SWFs, but Newcastle and Man City Reap Rewards*, *supra* note 11.

188. *Id.*

189. Knight, *supra* note 146.

personnel.<sup>190</sup> Consequently, wealthy EPL teams are incentivized to chase their winnings with little regard for their payrolls.<sup>191</sup> Over the past decade, the league has transformed itself into a league of the rich and the poor—of winners and losers—dominated by the same six teams that happen to be the wealthiest in the league.<sup>192</sup> These teams have since been titled “The Big Six”: Arsenal, Chelsea, Liverpool, Manchester City, Manchester United, and Tottenham.<sup>193</sup> Year by year, money has continued to drive success in the league, so much so that the gap has widened between the elite group of “The Big Six” and everyone else.<sup>194</sup>

English soccer team Manchester City is an exemplary depiction of what transpires when an immensely wealthy owner controls a team in a league without a salary cap.<sup>195</sup> In 2008, Sheikh Mansour bin Zayed Al Nahyan, who has a net worth of at least \$16.8 billion and is the chair of the Emirates Investment Authority, vice chair of Mubadala Investment Company, and board member of the Abu Dhabi Investment Authority and three of the world’s top twenty sovereign wealth funds, purchased the struggling Manchester City club.<sup>196</sup> Before his ownership, the struggling team averaged twelfth place in the EPL, but thanks to the Sheikh’s willingness to spend whatever is needed to win, the team has risen to become one of the most successful in all of

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190. *Can Corporate Ownership Save Baseball?*, *supra* note 4. However, the EPL has implemented its Profit and Sustainability Rules to limit the financial losses that Premier League clubs can incur within a given timeframe. These regulations impact club spending by requiring teams to maintain a balance between income and expenditure, similarly to the UEFA’s Financial Fair Play regulations. Dom Farrell, *What are Premier League Profit and Sustainability Rules? Everton handed fresh points deduction for financial fair play breach*, THE SPORTING NEWS (Apr. 8, 2024, 9:20 AM), <https://www.sportingnews.com/us/soccer/news/premier-league-profit-sustainability-rules-financial-fair-play/42ef3c1a91043e191482250d> [<https://perma.cc/VG8L-MVGE>].

191. *Can Corporate Ownership Save Baseball?*, *supra* note 4.

192. Brooker, *supra* note 15.

193. Ryan Kelly, *Who are The Premier League ‘Big Six’? Top English Clubs & Nickname Explained*, GOAL (Apr. 21, 2021), <https://www.goal.com/en-us/news/who-are-premier-league-big-six-top-english-clubs-nickname-explained/130iokmi8t8dt1k3kudou73s1k> [<https://perma.cc/242S-L6VX>]; *see also* Brooker, *supra* note 15 (“Anyone who has followed soccer in England over the past few decades is aware of the issue. The Premier League, for all its spectacular international success, has become dominated by a cabal of six to seven rich clubs (notwithstanding the astonishing success of Leicester City, which won the league as a 5,000-1 outsider in 2016).”).

194. Brooker, *supra* note 15.

195. *Most English Fans Feel Negative About SWFs, but Newcastle and Man City Reap Rewards*, *supra* note 11.

196. *Id.*; *see also* Andy Restrepo, *Who is Man City Owner Sheikh Mansour and What’s His Net Worth?*, AS (June 7, 2023), <https://en.as.com/soccer/who-is-man-city-owner-sheikh-mansour-and-whats-his-net-worth-n-2> [<https://perma.cc/VDG9-M2J4>].

Europe.<sup>197</sup> As of June 2023, Manchester City has won seven Premier League titles, three Football Association Challenge Cups (FA Cups), and six English Football League (EFL) Cups.<sup>198</sup> Since the Sheikh's takeover, a reported £2.5 billion (\$3.11 billion) has been invested in the club;<sup>199</sup> it is no surprise the team is now a dominant powerhouse.

Sheikh Mansour's seemingly unlimited spending has led to concern across European soccer.<sup>200</sup> Mansour is considered the "most damaging" owner to English football because of his impact on the EPL's governance and overall prosperity.<sup>201</sup> In a 2022 survey, almost a third of soccer fans picked him as the worst EPL owner, presumably based on Manchester City's repeated sanctions for infringing the Financial Fair Play (FFP) regulations of the Union of European Football Associations (UEFA) and an ongoing investigation by the EPL.<sup>202</sup> The FFP regulations are intended to keep club expenses from exceeding their revenues.<sup>203</sup> Without a salary cap, the FFP regulations are considered the only barrier preventing "oil-rich teams" from purchasing all the best players,<sup>204</sup> but teams can continue to operate around these rules.<sup>205</sup> Not surprisingly, Mansour retains great popularity among Manchester City fans, with a 90.5% approval rating,<sup>206</sup> thus further exposing the general public's hypocrisy of disliking deep-pocketed owners until a wealthy investor is willing to dig deep and buy victories for their team.<sup>207</sup>

Given the dearth of competitive balance tactics utilized in the EPL (the lack of a salary cap, the risk of relegation, and no draft), the league has become, with apologies to British author Charles

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197. *Most English Fans Feel Negative About SWFs, but Newcastle and Man City Reap Rewards*, *supra* note 11.

198. Restrepo, *supra* note 196.

199. *Id.*

200. *Most English Fans Feel Negative About SWFs, but Newcastle and Man City Reap Rewards*, *supra* note 11.

201. *Id.* ("In terms of his impact on the overall health and governance of English football, Mansour is regarded as the 'most damaging' owner.").

202. *Id.*

203. Knight, *supra* note 146.

204. *Id.*

205. *Id.*

206. *Most English Fans Feel Negative About SWFs, but Newcastle and Man City Reap Rewards*, *supra* note 11.

207. Maese & Clement, *supra* note 175.

Dickens, a true Tale of Two Cities.<sup>208</sup> The EPL has turned to the U.S. leagues in adopting their competitive balance tactics by implementing a revenue-sharing system.<sup>209</sup> Even with the revenue-sharing system in effect, the competitive balance tactic has not appeared to level the playing pitch, as the EPL still faces immense inequality.<sup>210</sup> However, in 2024, the EPL proposed implementing a spending cap as early as the 2025–2026 season in an attempt to prevent “the super-rich teams from dominating the league amid concerns over a growing gulf between the haves and have-nots.”<sup>211</sup> Unsurprisingly, four of “The Big Six” clubs—Manchester City, Chelsea, Manchester United, and Arsenal—were the only teams to oppose the salary cap proposal, highlighting their vested interest in maintaining their financial dominance within the league.<sup>212</sup>

#### D. The Solution: A Salary Cap

Some individuals have been calling for the MLB to change its bylaws to preclude new corporate entities from acquiring team ownership positions.<sup>213</sup> Not only is that decision unlikely to occur with changing antitrust law,<sup>214</sup> but it is also illogical since ownership changes are occurring because of rising team valuations.<sup>215</sup>

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208. Jenni Reid, *England's Prized Soccer League to Face Regulation and Tough New Ownership Rules*, CNBC (Feb. 23, 2023, 9:29 AM), <https://www.cnbc.com/2023/02/23/englands-prized-soccer-league-to-face-regulation-and-tough-new-ownership-rules.html> [https://perma.cc/6ZLZ-S6AE].

209. Brooker, *supra* note 15.

210. *Id.*

211. *Premier League Clubs Take Step Towards Spending Cap*, REUTERS (Apr. 29, 2024, 12:57 PM), <https://www.reuters.com/sports/soccer/premier-league-clubs-vote-favour-spending-cap-bbc-reports-2024-04-29/>.

212. Of the twenty EPL teams, sixteen clubs voted in favor of the salary cap, while Chelsea, owned by private equity fund Clearlake Capital, abstained and Manchester City, owned by Sheikh Mansour bin Zayed Al Nahyan, Manchester United, and Aston Villa dissented. *Id.*; see discussion *supra* Section III (providing the clubs' respective owners by name).

213. See generally Joshua Diemert, *Does MLB Have a Plan to Prevent Sportswashing?*, SBINATION: PINSTRIPE ALLEY (Jan. 14, 2023, 9:00 AM), <https://www.pinstripealley.com/2023/1/14/23550253/mlb-offseason-fifa-world-cup-mets-yankees-red-sox-cohen-henry-qatar-nationals-angels> [https://perma.cc/7XE5-RUUJ].

214. Browndorf, *Sacrifice Fly*, *supra* note 14, at 14.

215. Barrabi, *supra* note 8.

### 1. Why Ownership Restrictions Will Not Work

The MLB has traditionally been exempt from federal antitrust laws due to the *Federal Baseball Club of Baltimore* Supreme Court ruling in 1922.<sup>216</sup> The Supreme Court believed the exhibitions of baseball were purely a state affair, thus establishing the MLB's infamous antitrust exemption.<sup>217</sup> The Supreme Court in *Toolson v. New York Yankees* affirmed this decision and clarified that the exemption applied to the entire sport of professional baseball.<sup>218</sup> The *Toolson* Court proceeded to hold that the reserve clause in player contracts was not an illegal restraint on trade, given the MLB's antitrust exemption.<sup>219</sup> In 1972, the MLB's antitrust exemption and its reserve clause were called into question once again in *Flood v. Kuhn*.<sup>220</sup> Ultimately, the Supreme Court upheld the *Federal Baseball Club of Baltimore* and *Toolson* decisions bound by the doctrine of stare decisis, yet urged Congress to address the issue.<sup>221</sup>

In a twenty-plus-year-delayed response to the *Flood* decision, Congress eventually passed the Curt Flood Act in 1998, which provided a caveat to the MLB's antitrust exemption in subjecting all player employment matters to federal antitrust law.<sup>222</sup> The Curt Flood Act has been the only successful federal legislation to restrict the scope of the MLB's antitrust exemption.<sup>223</sup> However, the Act stated that the exception to the exemption was strictly limited to employment matters, maintaining the MLB's antitrust exemption for all other aspects of baseball, such as the minor league system and ownership policies.<sup>224</sup>

Given the long-held *Federal Baseball Club of Baltimore* Supreme Court ruling and the unambiguous language of the Curt

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216. Fed. Baseball Club of Balt. v. Nat'l League of Pro. Base Ball Clubs, 259 U.S. 200 (1922).

217. *Id.* at 208–09.

218. *Toolson v. New York Yankees, Inc.*, 346 U.S. 356, 357 (1953); see also Browndorf, *Sacrifice Fly*, *supra* note 14, at 12.

219. *Toolson*, 346 U.S. at 357. The MLB's reserve clause was a provision in baseball player contracts that prevented players from negotiating future contracts with any other team besides their current employer. Nathaniel Grow, *Defining the "Business of Baseball": A Proposed Framework for Determining the Scope of Professional Baseball's Antitrust Exemption*, 44 U.C. DAVIS L. REV. 557, 561 (2010).

220. *Flood v. Kuhn*, 407 U.S. 258 (1972).

221. *Id.* at 285.

222. Curt Flood Act, 15 U.S.C.A. § 26b(a) (West 2002).

223. Browndorf, *Sacrifice Fly*, *supra* note 14, at 13.

224. Curt Flood Act, 15 U.S.C.A. § 26b(b) (West 2002).



Flood Act, the MLB appears capable of blocking any transfer of ownership.<sup>225</sup> That assumption has been called into question, however, by the landmark ruling in *Piazza v. Major League Baseball*.<sup>226</sup> In *Piazza*, the Eastern District of Pennsylvania doubted whether team ownership constitutes the “business of baseball” to be protected under the MLB’s antitrust exemption<sup>227</sup>—the Supreme Court postulated the same regarding the reserve clause.<sup>228</sup> As a result of the *Piazza* ruling, the MLB lacks a clear right to block ownership transactions under its antitrust exemption, which could prevent the league from changing its bylaws to restrict or deny ownership to emerging corporate entities.<sup>229</sup>

Additionally, it would be illogical for the MLB to use its antitrust exemption to restrict private equity fund and sovereign wealth fund ownership when the problem is beyond that of new owners; the “problem” is that rising team valuations, primarily as a result of national media rights, are outpricing wealthy individuals from ownership positions.<sup>230</sup> At first glance, the Commissioner, who has a wide scope of discretion to make decisions, would appear to possess the authority to set ownership restrictions.<sup>231</sup> However, even with the heightened discretionary power established in *Charles O. Finley & Co. v. Kuhn*,<sup>232</sup> the Commissioner has the ultimate job of protecting the interest of the league.<sup>233</sup> Rejecting new forms of ownership is explicitly against the “best interests of baseball” since an illiquid market jeopardizes curbing the continued increase of valuations “in a way that neither the financial crisis nor even the ongoing pandemic have been able

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225. Browndorf, *Sacrifice Fly*, *supra* note 14, at 22.

226. *Piazza v. Major League Baseball*, 836 F. Supp. 269 (E.D. Pa. 1993).

227. *Id.* at 270.

228. *Flood v. Kuhn*, 407 U.S. 258, 275 (1972).

229. Browndorf, *Sacrifice Fly*, *supra* note 14, at 22.

230. Smith, *Institutional Opportunity*, *supra* note 10.

231. *Charles O. Finley & Co. v. Kuhn*, 569 F.2d 527, 534 (7th Cir. 1978) (“The Commissioner has been given broad power in unambiguous language to investigate any act, transaction or practice not in the best interests of baseball, to determine what preventive, remedial or punitive action is appropriate in the premises, and to take that action.”).

232. *Id.* at 534.

233. MAJOR LEAGUE CONST. art. II, § 2 (“The Commissioner shall . . . interpret and from time to time establish policy and procedure in respect to the provisions of the Constitution, Bylaws and playing rules and any enforcement thereof and any decision emanating therefrom shall be final and unappealable.”).

to.”<sup>234</sup> Thus, the MLB is left with little choice but to expand its ownership policies.<sup>235</sup>

Not only is mandating ownership restrictions likely a losing battle, but also blocking these new types of investors is a closed-minded approach that is ultimately harmful to baseball.<sup>236</sup> By precluding new corporate entities from ownership opportunities, the MLB would stifle the league’s economic development and prevent teams from obtaining much-needed capital.<sup>237</sup> Until August 2024, sovereign wealth funds were barred from investing in NFL teams due to the league’s rigid adherence to its individual ownership model and hard salary cap.<sup>238</sup> This restriction effectively cut the NFL off from lucrative opportunities to infuse significant capital into its teams, limiting its ability to compete with other global sports leagues: in 2023, Ronaldo earned approximately \$260 million to play for the Saudi Pro League team Al Nassr, while the salary cap for an entire NFL team was \$224.8 million.<sup>239</sup> However, this dynamic is poised to shift following the NFL’s 2024 decision to amend its ownership bylaws. The new bylaws now permit private equity investment and allow sovereign wealth funds to hold a minority stake in a private equity fund with noncontrolling ownership in an NFL team.<sup>240</sup>

Despite the NFL’s historically cautious stance on expanding its ownership bylaws, the league shifted its perspective, now viewing the influx of liquidity from private equity and sovereign wealth funds as a “positive development” for reinvestment in NFL

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234. Smith, *Institutional Opportunity*, *supra* note 10.

235. *Id.*

236. Keller, *supra* note 149, at 349.

237. *Id.*

238. Zidan, *supra* note 72.

239. As expected from the drastic increase in team valuations from media revenue, the NFL raised its hard salary cap an unprecedented \$30.6 million to \$255.4 million per team in February 2024. See Dan Graziano, *NFL Salary Cap Rises \$30.6 Million to Record \$255.4 Million per Team*, ESPN (Feb. 23, 2024, 1:36 PM), [https://www.espn.com/nfl/story/\\_/id/39584679/nfl-salary-cap-rises-306-million-record-2554-million-per-team](https://www.espn.com/nfl/story/_/id/39584679/nfl-salary-cap-rises-306-million-record-2554-million-per-team) [https://perma.cc/BMB6-MMH5]; see also Cristiano Ronaldo tops Forbes’ 2023 football rich list, ESPN (Oct. 14, 2023, 7:33 AM), [https://www.espn.com/soccer/story/\\_/id/38656368/cristiano-ronaldo-lionel-messi-lead-forbes-2023-football-rich-list](https://www.espn.com/soccer/story/_/id/38656368/cristiano-ronaldo-lionel-messi-lead-forbes-2023-football-rich-list) [https://perma.cc/HUW4-NTQQ].

240. Rumsey, *supra* note 70 (“[A]t least, state-controlled entities like the Public Investment Fund of Saudi Arabia—the financial backer of LIV Golf—will not be allowed to directly pump cash into NFL clubs. However, the rules will not prohibit the PIF and others from being investors in a private equity fund that purchases an ownership stake in a team. A sovereign wealth fund will be allowed to own up to 7.5% of an entity that owns a maximum of 10% of an NFL club.”).

teams.<sup>241</sup> Recognizing the financial potential, the NFL, like many other sports leagues, acknowledged that private equity and sovereign wealth funds—based on their previous spending patterns—are likely to invest substantially more capital into teams than individual private owners if given the ability to assume ownership stakes.<sup>242</sup> Similarly, with rising team valuations and a limited amount of ultra-wealthy individuals, the MLB should not turn away needed capital by restricting the expansion of corporate ownership and ought to embrace the positive development of new forms of corporate ownership.<sup>243</sup>

## 2. *Why a Salary Cap Is the Better Option*

Rather than turning to ownership restrictions that would limit the league's growth, the MLB should reevaluate its competitive balance tactics to promote better parity throughout the league.<sup>244</sup> Of the potential competitive balance tactics (revenue sharing, salary caps, and a drafting system), the MLB has adopted all but one.<sup>245</sup> MLB Commissioner Manfred is focused on improving television distribution and revenue disparity.<sup>246</sup> However, changing the revenue-sharing methodology would not be enough to foster competitive balance if the MLB continues to allow ownership expansion to private equity funds with the investable “dry powder” needed to acquire the best athletes in the league.<sup>247</sup>

The implementation of a salary cap is a hotly disputed topic in the MLB due to the conflicting interests among players and owners.<sup>248</sup> Players want to be able to sell their services to the highest bidder, but a salary cap restricts how much the players on

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241. Battista, *supra* note 62 (statement of NFL Commissioner Roger Goodell) (“I think it’s an appropriate thing to give teams that liquidity to reinvest in the game, into their teams. I think it’s a positive development for us.”).

242. Browndorf, *A New Kind of Pitch*, *supra* note 45, at 339; *see also* Knight, *supra* note 146.

243. Barrabi, *supra* note 8.

244. Smith, *Institutional Opportunity*, *supra* note 10.

245. Parlow, *supra* note 13, at 59.

246. Mike Chiari, *Report: MLB Eyes ‘System That Gets to a Salary Cap’ Despite MLBPA’s Resistance*, BLEACHER REP. (Mar. 1, 2023), <https://bleacherreport.com/articles/10067252-report-mlb-eyes-system-that-gets-to-a-salary-cap-despite-mlbpas-resistance> [<https://perma.cc/L8KF-XBTT>].

247. *As Sports Leagues Resume Play, Hogan Lovells’ Sports, Media & Entertainment Group Identifies Seven Key Trends to Watch in the Sports Sector*, *supra* note 122; *see also* Shaikin, *supra* note 26.

248. Alexander H. Buttermann, *Baseball’s Antitrust Exemption and an Owner-Imposed Salary Cap: Can They Coexist?*, 12 A.B.A. ENT. & SPORTS LAW, Sept. 1, 1994, at 3, 8.

the team as a whole may be paid, limiting sky-high salaries to any one or two star players.<sup>249</sup> Owners argue that a salary cap would increase financial stability so that salaries can follow increasing and decreasing revenue trends.<sup>250</sup> Meanwhile, players argue that a salary cap would restrict the free market, reducing their income.<sup>251</sup> The powerful MLB players' union vehemently opposes a salary cap,<sup>252</sup> but new concerns arise as more corporate owners enter a league with no salary cap.

Steve Cohen, the New York Mets' owner since 2020 and the league's wealthiest owner as of 2024, has sparked some controversy with his aggressive spending strategies.<sup>253</sup> Determined to deliver a World Series title to the Mets, Cohen invested over \$370 million during the 2023 season.<sup>254</sup> Despite this unprecedented expenditure, the Mets underperformed, finishing fourth in the National League East with a losing record.<sup>255</sup> Undeterred by these setbacks, Cohen doubled down on his vision by orchestrating the largest sports contract in American history during the 2024–2025 offseason: a fifteen-year, \$765 million contract with outfielder Juan Soto.<sup>256</sup> This historic agreement underscores the vast financial disparity across the league,<sup>257</sup> as the

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249. Staudohar, *supra* note 75, at 3.

250. Buttermann, *supra* note 248, at 8.

251. *Id.* at 8–9.

252. James Wagner, *M.L.B. Has Labor Peace, but Also Plenty of Posturing*, N.Y. TIMES (Feb. 26, 2023), <https://www.nytimes.com/2023/02/26/sports/baseball/mlb-salary-cap.html> [<https://perma.cc/7UJD-PTZE>] (“We’re never going to agree to a cap,” Tony Clark, the executive director of the M.L.B. players’ union, said in a meeting . . . . He added later: ‘A salary cap is the ultimate restriction on player value and player salary. We believe in a market system. The market system has served our players, our teams and our game very well.’”).

253. *Mets’ Steve Cohen Cautions Spending Doesn’t Mean a Title*, *supra* note 11.

254. *Id.*

255. *MLB Standings 2023*, ESPN (2023) [https://www.espn.com/mlb/standings/\\_/group/league](https://www.espn.com/mlb/standings/_/group/league) [<https://perma.cc/TLW2-WHLM>].

256. Although Juan Soto secured the largest overall contract in American sports history, his annual salary is far from comparable to soccer players, the world’s highest-paid athletes per year as seen by Cristiano Ronaldo’s contract with the Saudi-owned team Al Nassr. Dennis Romboy, *Juan Soto is getting paid how much to play baseball?*, YAHOO!SPORTS (Dec. 9, 2024), <https://sports.yahoo.com/juan-soto-getting-paid-much-211000427.html>? [<https://perma.cc/9WQV-K2TB>].

257. During the 2023–2024 offseason, the Los Angeles Dodgers paid Shohei Ohtani \$700 million for a ten-year contract, which was the largest sports contract in American history at the time. Kyle Irving, *Does MLB Have a Salary Cap? How Baseball’s Luxury Tax Compares with NFL, NBA, NHL Contract Limitations*, SPORTING NEWS (Dec. 22, 2023), <https://www.sportingnews.com/us/mlb/news/mlb-salary-cap-luxury-tax-nfl-nba-nhl-contracts/4b84e9dcb056cb3c9685ace1> [<https://perma.cc/FGF2-7924>].

deal alone is worth at least half the total valuation of a dozen MLB teams.<sup>258</sup>

Rather than implementing a salary cap, the league has considered compromising with the MLB Players Association by instituting a salary floor.<sup>259</sup> A salary floor mandates a minimum spending threshold for a team's payroll.<sup>260</sup> A salary floor would be beneficial for small-market teams with low-spending owners, such as the Oakland A's.<sup>261</sup> The logic behind implementing a salary floor is that low-spending team owners should not be entitled to receive shared revenue from other teams if they are not willing to invest the revenue back into their own team roster.<sup>262</sup> While a salary floor could be a positive step toward achieving payroll parity, large-market teams with spendthrift owners will continue to generate consistent revenue and attract investors with pooled capital looking for a quick return.<sup>263</sup> A salary cap is needed to address the destructive payroll disparity and foster competitive balance across the league.<sup>264</sup>

## II. CONCLUSION

The MLB can and should continue to open its doors to new forms of ownership as team valuations rise, but a salary cap must be implemented to protect the integrity of America's favorite sport.<sup>265</sup> Without a salary cap, the league will remain unregulated, giving financial freedom to investors incentivized to overspend.<sup>266</sup> To utilize better competitive balance tactics, the MLB should look

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258. Romboy, *supra* note 256.

259. Rogers, *supra* note 106.

260. Parlow, *supra* note 13, at 96.

261. In the 2023 season, the MLB experienced the largest payroll difference in its history with a gap of nearly \$297 million between the New York Mets and the Oakland A's. *Yankees' Steinbrenner Irked by A's and Other Low-Spenders, Says it's 'Not Good for the Game'*, NBC SPORTS (June 13, 2023, 6:36 PM), <https://www.nbcsports.com/mlb/news/yankees-steinbrenner-irked-by-as-and-other-low-spenders-says-its-not-good-for-the-game> [<https://perma.cc/6SVB-3WJZ>].

262. Rogers, *supra* note 106.

263. See generally Barrabi, *supra* note 8 ("Leagues want consistency and owners who are in it for the love of sports, offering benefits to the community and supporting goals of the league," Phil de Picciotto, president of sports marketing agency Octagon, recently told Institutional Investor. "None of these are private equity qualities.").

264. Chiari, *supra* note 246.

265. Barrabi, *supra* note 8.

266. Rogers, *supra* note 106.

to American football rather than English football.<sup>267</sup> NFL teams operate similarly to corporations in that they are forced by the league to maximize revenue, and team owners act as their own board of directors to mitigate reckless expenditures.<sup>268</sup> In fact, the NFL is regarded as one of the most successful leagues due to its socialist competitive balance tactics, such as a hard salary cap and an equitable revenue-sharing system that allows for a successful model for self-regulation.<sup>269</sup> By running team operations as a business, the NFL has been considered undoubtedly the most financially successful sports league because it excels in competitive parity.<sup>270</sup>

Former MLB Commissioner Selig once favored local owners under the notion that private individuals are passionate and inspired by their love for baseball.<sup>271</sup> However, this perspective is outdated. Rather than viewing U.S. sports as purely an American pastime, the leagues must understand that as they start to open ownership positions to new corporate entities, the teams should also operate as a corporate entity with proper regulations ensuring competitive balance.<sup>272</sup>

Philip Knight Wrigley of the infamous Wrigley family identified more as a businessman than a baseball fan after inheriting the Chicago Cubs from his father, William Wrigley Jr., in 1932.<sup>273</sup> The younger Wrigley often prioritized maximizing revenue and minimizing expenses, once stating, "Baseball is too much of a sport to be called a business, and too much of a business to be called a sport."<sup>274</sup> While Wrigley's team management style is

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267. *Can Corporate Ownership Save Baseball?*, *supra* note 4 ("The English Premier League, meanwhile, has traditionally been a football league modeled more closely on American baseball. It places no limits on what a team may spend. Consequently, margins are often thrown out the window by management teams tempted to chase winning up the payroll ladder.").

268. *Id.*

269. Brooker, *supra* note 15; *see also Can Corporate Ownership Save Baseball?*, *supra* note 4 ("The English Premier League, meanwhile, has traditionally been a football league modeled more closely on American baseball. It places no limits on what a team may spend. Consequently, margins are often thrown out the window by management teams tempted to chase winning up the payroll ladder.").

270. *Can Corporate Ownership Save Baseball?*, *supra* note 4.

271. *Id.*

272. *Id.*

273. Andrew Steele, *Philip Wrigley*, SOC'Y FOR AM. BASEBALL RSCH., <https://sabr.org/bioproj/person/philip-wrigley> [<https://perma.cc/28NN-SP3L>].

274. *Id.*

by no means lauded,<sup>275</sup> it illustrates the duality that baseball is both a cherished sport and a hard-nosed business.<sup>276</sup> The implementation of a salary cap would further effectuate this duality. By balancing the competitiveness of the game with today's economic realities, a salary cap would foster the long-term sustainability of baseball as America's beloved sport and a thriving business.<sup>277</sup>

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275. Much to the fans' chagrin, Philip Wrigley focused more on advertising the baseball experience at Wrigley Field to the public, win or lose. *Id.*

276. See *Can Corporate Ownership Save Baseball?*, *supra* note 4; see also Steele, *supra* note 273 ("He led the Wrigley Co. to success through innovative marketing and relentless quality control, but as Cubs owner and president, he found himself caught in a quandary he never solved. 'Baseball is too much of a sport to be a business,' he once remarked, 'and too much of a business to be a sport.'").

277. Chiari, *supra* note 246.