



Spring 5-27-2020

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Recommended Citation

Kevin Togami, *Bottom of the Ninth Circuit: Senne v. Kansas City Royals Baseball Corporation*, 40 Loy. L.A. Ent. L. Rev. 311 (2020).

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BOTTOM OF THE NINTH CIRCUIT: *SENNE V. KANSAS CITY ROYALS BASEBALL CORPORATION*

*Kevin Togami**

Major League Baseball (“MLB”) is a multi-billion-dollar business. While MLB contracts can be worth well over \$300 million, there are thousands of minor leaguers in the shadows of MLB making between \$3000 to \$7500 a year. These players survive in poor living conditions, receiving salaries far below federal minimum wage. They endure years of financial struggle for the marginally slim chance of playing in “The Show.”

In *Senne v. Kansas City Royals Baseball Corporation*, minor leaguers took a stand and voiced their frustration with this unfeasible lifestyle. They filed a class action lawsuit against MLB asserting claims under the Fair Labor Standards Act (“FLSA”) and various state wage and hour laws. Over the last five years, the two parties have been battling over whether the minor leaguer’s claims can continue as a class action or if they must pursue their claims individually. On August 16, 2019, the Ninth Circuit Court of Appeals, in a 2-1 split decision, certified all proposed classes by the minor leaguers.

This Comment analyzes the class certification arguments of each side and asserts that the Ninth Circuit correctly ruled in favor of the minor league players. Using both practicality and public policy, this Comment underscores the majority’s arguments and ultimately contends that the decision should be upheld if writ of certiorari were to be granted.

* J.D. Candidate, 2021, Loyola Law School, Los Angeles. The author would like to thank Professor Grace Parrish and the staff and editors of *Loyola of Los Angeles Entertainment Law Review*, for their assistance and feedback. He would like to acknowledge the players out there chasing their baseball dreams, especially his friend Christian Donahue, who inspired the selection of this Comment’s topic. Most notably, he would like to thank his parents, Burt and Carol Togami, and his brother, Ryan Togami, for their endless love and aloha.

I. INTRODUCTION

A Major League Baseball player has less than the blink-of-an-eye, a 0.4 second window, to decode a pitch and swing his bat.¹ In professional baseball history, the fastest pitch ever thrown was recorded at 105 miles-per-hour.² In 2019, the longest home run of the season traveled over 500 feet.³ Major League Baseball (“MLB”) is replete with players who possess crowd-wowing athletic traits. Notable players like Bryce Harper, Gerrit Cole, and Manny Machado each have team contracts worth well over \$300 million.⁴ While these big-league athletes are compensated with fame and fortune, there are thousands of talented individuals struggling in the shadows to dig themselves out of financial instability. Behind the curtain of MLB’s Minor League Baseball (“MiLB”) system, there are athletes receiving annual salaries lower than half the amount of federal minimum wage.⁵ Most minor leaguers earn between \$3000 and \$7500 each year after taxes and clubhouse fees.⁶ With an income this low, dozens of players survive by squeezing into tiny apartments, sleeping on mattresses on dirty floors, and relying on peanut butter as a daily meal.⁷

1. Brent Pourciau, *Key to Improve Hitter Reaction Time*, TOPVELOCITY, <https://www.topvelocity.net/key-to-improve-hitter-reaction-time/> [https://perma.cc/F22G-7PUB].

2. Joey Nowak, *For Chapman, It’s Fast, Faster, Fastest*, MLB (Aug. 4, 2014), <https://www.mlb.com/news/chapman-dominates-burns-up-radar-gun-consistently/c-87417898> [https://perma.cc/T957-U5GU].

3. *Statcast Leaderboard*, MLB, <http://m.mlb.com/statcast/leaderboard#hr-distance,r,2019> [https://perma.cc/XM7M-ZZE9].

4. David Adler, *Where Do Strasburg, Cole, Rendon Contracts Rank?*, MLB (Dec. 16, 2019), <https://www.mlb.com/news/largest-contracts-in-mlb-history-c300060780> [https://perma.cc/RE9S-L8JC].

5. *Compare Minimum Wage*, U.S. DEP’T OF LAB., <http://www.dol.gov/agencies/whd/minimum-wage> [https://perma.cc/Z4J9-YTK9] (making \$7.25 an hour amounts to roughly \$15,000 a year), with Theodore McDowell, *Changing the Game: Remediating the Deficiencies of Baseball’s Antitrust Exemption in the Minor Leagues*, 9 HARV. J. SPORTS & ENT. L. 1, 2 (2018) (noting that minor leaguers earn less than \$10,000 a year).

6. McDowell, *supra* note 5, at 2.

7. *Id.* at 3.

MLB has a history of underpaying its workers,⁸ and minor leaguers are among other victims who have been exploited by the harsh pay practices of MLB. Minor leaguers assert “many—if not most” players fall “below the federal poverty line,”⁹ making less than half the pay of fast food workers around the United States.¹⁰ Since 1976, big league salaries have increased over 2000%, while minor league salaries have only risen 75%.¹¹ When factoring in inflation, minor leaguers actually earn less today than they did in 1976.¹² Jared Eichelberger, a former minor leaguer, recalled doing whatever he could to eat because “it was almost survival.”¹³

8. See *Behrens v. MLB Advanced Media, L.P.*, No. 18-cv-03077-PAE, 2019 U.S. Dist. LEXIS 114628 (S.D.N.Y. July 9, 2019); Jon Steingart, *Major League Baseball Subsidiary Agrees to \$1.3M Wage Settlement*, BLOOMBERG L. (Jan. 7, 2019, 1:06 PM), <https://news.bloomberglaw.com/daily-labor-report/major-league-baseball-subsidiary-agrees-to-1-3m-wage-settlement> [<https://perma.cc/7KFQ-RMYL>] (highlighting that MLB paid “\$1.275 million to settle a lawsuit alleging it underpaid workers who handle[d] video of games.”).

9. Second Consolidated Amended Complaint for Violations of Federal and State Wage and Hour Laws at 28, *Senne v. Kansas City Royals Baseball Corp.*, 315 F.R.D. 523, 536 (N.D. Cal. 2016) (No. 14-cv-00608-JCS) [hereinafter *Senne Complaint*]; *Annual Update of the HHS Poverty Guidelines*, DEP’T OF HEALTH AND HUM. SERVS. (January 17, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-01-17/pdf/2020-00858.pdf> [<https://perma.cc/66J9-82UL>] (identifying the 2020 federal poverty line as \$12,760 for a one-person household, and \$17,240 for a two-person household).

10. Ted Burg, *Most Minor League Ballplayers Earn Less Than Half As Much Money As Fast-food Workers*, USA TODAY SPORTS: FOR THE WIN (Mar. 6, 2014, 3:25 PM), <https://ftw.usatoday.com/2014/03/minor-leaguers-working-poor-lawsuit-mlb-bud-selig> [<https://perma.cc/8YA7-FU2C>] (“[F]ast food workers typically earn between \$15,000 and \$18,000 a year, or about two or three times what minor league players make.”).

11. Brandon Sneed, *This Is What It’s Like to Chase Your Pro Baseball Dreams. . . For 12 Bucks an Hour*, BLEACHER REPORT (Apr. 3, 2017), <https://bleacherreport.com/articles/2700299-this-is-what-its-like-to-chase-your-pro-baseball-dreamsfor-12-bucks-an-hour> [<https://perma.cc/DXA3-5DDE>]; see McDowell, *supra* note 5, at 3.

12. Sneed, *supra* note 11; see McDowell, *supra* note 5, at 3.

13. Michelle Hartman, *For Some Minor League Baseball Players, Wages Can Seem Like Peanuts*, MARKETPLACE (Apr. 5, 2018), <https://www.marketplace.org/2018/04/05/minor-league-baseball-draws-fans-and-dispute-over-pay/> [<https://perma.cc/XF66-WWY2>]; Sneed, *supra* note 11.

Some could argue that this poor lifestyle is the price players must pay to have an opportunity to make millions of dollars.¹⁴ However, with MLB bringing in a record \$10.7 billion in 2019 alone, it would not necessarily break their bank to pay minor leaguers a salary consistent with federal minimum wage.¹⁵ In 2019 alone, over 1200 players were drafted.¹⁶ Among these draftees, more than 80% of them will never make it to the big leagues.¹⁷ For the players that do, it takes 4–6 years for most players in the minor leagues to make it to the highest level.¹⁸ Therefore, many minor leaguers who fail to reach the majors find themselves years older with broken dreams and little money. For players that stay in the minor leagues hoping for their shot, they routinely put in sixty-hour work weeks, yet receive no overtime pay or compensation for the rigorous training they do in preparation for their seasons.¹⁹

MLB does not have a sense of urgency to change their pay practices because they maintain legal dominance over minor league players. MLB exploits minor leaguers through the use of strict contracts, its antitrust exemption, and the newly passed Save America's Pastime Act ("SAPA").²⁰ Under the antitrust law exemption, MLB can keep minor league wages low because it has absolute authority over the terms of minor league contracts

14. See, e.g., Hartman, *supra* note 13 (remarks of sports lawyer, Kenneth Shropshire, noting that it is a "luxury to be a professional baseball player" and there is "an upside if . . . [players] are successful in the end.").

15. Maury Brown, *Breaking Down MLB's New 2017-21 Collective Bargaining Agreement*, FORBES (Nov. 30, 2016, 11:10 PM), <https://www.forbes.com/sites/maurybrown/2016/11/30/breaking-down-mlbs-new-2017-21-collective-bargaining-agreement/#1772437b11b9> [<https://perma.cc/PS58-PLP3>].

16. J.J. Cooper, *How Many MLB Draftees Make It to the Majors*, BASEBALL AMERICA (May 17, 2019), <https://www.baseballamerica.com/stories/how-many-mlb-draftees-make-it-to-the-majors/> [<https://perma.cc/5BZT-52U7>].

17. Kent Babb & Jorge Castillo, *Baseball's Minor Leaguers Pursue Their Dreams Below the Poverty line*, WASHINGTON POST (Aug. 26, 2016), https://www.washingtonpost.com/sports/nationals/the-minor-leagues-life-in-pro-baseballs-shadowy-corner/2016/08/26/96ab542e-6a07-11e6-ba32-5a4bf5aad4fa_story.html [<https://perma.cc/6CG5-CLBY>].

18. Cork Gaines, *Most Baseball Draft Picks Will Still Be in the Minors Four Years from Now*, BUS. INSIDER (June 7, 2013, 1:54 PM), <https://www.businessinsider.com/chart-how-long-it-takes-a-draft-pick-to-reach-major-league-baseball-2013-6> [<https://perma.cc/Y2PJ-FPV4>].

19. *Id.*; *Senne v. Kansas City Royals Baseball Corp.*, 934 F.3d 918, 924 (9th Cir. 2019); see also *Senne Complaint*, *supra* note 9, at 2–3, 39.

20. See generally McDowell, *supra* note 5.

and working conditions.²¹ To further strengthen their legal leverage over minor leaguers, MLB paid millions of dollars lobbying to pass the SAPA, which “formalized what has been the status quo—no overtime pay and no pay during spring training and the off-season.”²² SAPA protects MLB from legal liability for future wage disputes initiated by any minor leaguers under the federal Fair Labor Standards Act (“FLSA”).²³ Due to these legal barriers, it has become increasingly difficult for minor leaguers to establish a case for better work-life quality.

In *Senne v. Kansas City Royals Baseball Corporation*, minor league baseball players across the United States took a stand and voiced their frustration with their unfeasible lifestyle.²⁴ Before the SAPA was passed, minor league players filed a class-action lawsuit against MLB, asserting federal claims under the FLSA and state wage-and-hour laws.²⁵ The Northern District Court of California has yet to analyze the merits of these claims because the two parties are currently in a battle over whether the suit can continue as a class-action, or if the minor leaguers must bring separate, individual claims for recovery.²⁶ The minor leaguers aimed to certify classes in Florida, Arizona, and California.²⁷ Because players and teams involved were from various states across the country, the court used the governmental interest test to decide whether an entanglement of state laws would prevent the class from being certified.²⁸ Initially, the district court certified the California class, but

21. Sneed, *supra* note 11.

22. Tom Goldman, *Fight Against Low, Low Pay in Minor League Baseball Continues Despite New Obstacles*, NPR (Aug. 3, 2018, 5:38 PM), <https://www.npr.org/2018/08/03/635373608/fight-against-low-low-pay-in-minor-league-baseball-continues-despite-new-obstacles> [https://perma.cc/GCR4-AH2Z].

23. Nathaniel Grow, *The Save America’s Pastime Act: Special-Interest Legislation Epitomized*, 90 U. COLO. L. REV. 1013, 1015 (2019).

24. *See generally* *Senne v. Kansas City Royals Baseball Corp.*, 934 F.3d 918 (9th Cir. 2019).

25. *Id.* at 924.

26. *See generally* 934 F.3d 918.

27. *See* *Senne v. Kansas City Royals Baseball Corp.*, No. 14-cv-00608-JCS, 2017 U.S. Dist. LEXIS 32949, at *10–11 (N.D. Cal. Mar. 7, 2017).

28. *Senne*, 934 F.3d at 928.

not the Arizona or Florida class.²⁹ On appeal by both MLB and the minor leaguers, the Ninth Circuit Court of Appeals decided that this entanglement did not prevent class certification, so it certified all three proposed classes.³⁰

Using the governmental interest test to resolve the choice-of-law issue, the Ninth Circuit weighed the interests of each player and team's home state against the interests of the state where the work took place.³¹ Controversially, the court was split in its decision.³² The majority certified each class because, in selecting which state law would apply, the court held that the interests of the other states were not superior to the state where players worked.³³ In her dissenting opinion, Justice Sandra Ikuta critiqued the majority's decision, highlighting flaws in the majority's interpretation of how the governmental interest test should be applied.³⁴

This Comment asserts that the Ninth Circuit correctly certified each proposed class for three reasons. First, the majority's approach to choice-of-law principles avoids complications arising from the entanglement of state laws. Second, in balancing the burdens placed on the players, the teams, and the overall judicial system, the majority's general principle is more practical than the strict principle called for by the dissenting opinion. Third, public policy favors class certification because if the class is broken into individualized claims, some minor leaguers will not have a remedy in court for MLB's exploitation of their time and services. For these three reasons, the Ninth Circuit correctly decided to keep the minor leaguers' class action lawsuit alive.

In Part II, this Comment explores MLB's infrastructure, minor league pay, and MLB's established legal advantages in order to illustrate why the minor league players filed their lawsuit. Part III provides the legal framework the Ninth Circuit used for choice-of-law issues, federal class certification, and the FLSA's collective certification. In Part IV, this Comment walks through the procedural history of the *Senne* decision and the reasoning used by the majority and dissenting opinions. Part V analyzes the Ninth Circuit

29. See generally *Senne*, 2017 U.S. Dist. LEXIS 32949.

30. *Senne*, 934 F.3d at 928.

31. *Id.* at 928, 936.

32. See generally 934 F.3d 918.

33. See *id.* at 936–37.

34. See generally *id.* at 951–63 (Ikuta, J., dissenting).

ruling, bolsters the reasoning behind the majority opinion, and highlights flaws in the dissenting opinion, while concluding that the case holding was correct. If MLB files for appeal and the Supreme Court of the United States grants a writ of certiorari, the Supreme Court should rule in favor of the minor leaguers and maintain the certifications of each class.

II. BACKGROUND

A. *The Major League Baseball System*

“MLB is an unincorporated association whose members are the thirty MLB Clubs named as defendants” in *Senne*.³⁵ Each MLB club is affiliated with several Minor League Baseball teams, which are organized into levels based on the skills and experiences of the players.³⁶ MLB and its thirty franchise teams rely on their minor league system, which has nearly 200 affiliate teams across the country, employing around 6000 players.³⁷

MLB’s rules govern all minor league teams, coaches, and players.³⁸ The rules control the terms of work for both minor and major league players.³⁹ Under these rules, each minor league team must “use the same uniform player contract (“UPC”) when signing these previously amateur [minor

35. MAJOR LEAGUE AGREEMENT OF 1921, ART. II, § 1 [hereinafter MAJOR LEAGUE AGREEMENT], https://ipmall.law.unh.edu/sites/default/files/hosted_resources/SportsEntLaw_Institute/League%20Constitutions%20&%20Bylaws/MLConstitutionJune2005Update.pdf [<https://perma.cc/7PLV-BT9N>]; see OFFICIAL BASEBALL RULES, MAJOR LEAGUE BASEBALL 1.01 (2019), <https://img.mlbstatic.com/mlb-images/image/upload/mlb/ub08blsefk8wkkd2oemz.pdf> [<https://perma.cc/2GUD-CZ4L>] (“Baseball is a game between two teams of nine players each, under direction of a manager, played on an enclosed field in accordance with these rules, under jurisdiction of one or more umpires.”).

36. MAJOR LEAGUE RULES, MAJOR LEAGUE BASEBALL § 51(A)–(B) (2019), <https://registration.mlbpa.org/pdf/MajorLeagueRules.pdf> [<https://perma.cc/VL5A-ECQB>] (“Each Minor League shall be classified as a Class AAA, Class AA, Class A, Short-Season A or Rookie League.”).

37. *Senne*, 934 F.3d at 923 (majority opinion); *Senne* Complaint, *supra* note 9, at 29 (estimating “that, at any given time, the Defendants collectively employ around 6,000 minor leaguers total.”).

38. See generally MAJOR LEAGUE RULES, *supra* note 36.

39. *Id.*

league] players.”⁴⁰ UPCs last for seven years, giving MLB teams exclusive rights over players during the duration of the contract.⁴¹ Under these agreements, first-year players are paid a salary of “\$1,100 per month” during the championship season, which lasts approximately five months out of the year.⁴² For the remainder of the seven months, the players are not compensated.⁴³ Although athletes are only compensated within this five-month season, the UPC imposes duties on minor leaguers that last throughout the calendar year.⁴⁴

The UPC implicitly requires all players to participate in training outside the championship season and maintain a professional athlete’s physical condition year-round.⁴⁵ Every March, Minor League Baseball teams conduct spring training in Arizona and Florida, where all thirty MLB franchises operate minor league training.⁴⁶ The UPC implies spring training is mandatory,⁴⁷ even though virtually all players are not compensated if they choose

40. Senne Complaint, *supra* note 9, at 32 (analyzing MAJOR LEAGUE RULES, *supra* note 36, § 3(b)).

41. *See* MAJOR LEAGUE RULES, *supra* note 36, § 3(b).

42. Senne Complaint, *supra* note 9, at 2, 35.

43. *See* MAJOR LEAGUE RULES, *supra* note 36, art. VII.B (“The obligation to make such payments to Player shall start with the beginning of Club’s championship playing season The obligation to make such payments shall end with the termination of Club’s championship playing season”).

44. *Id.* (obligating players to “perform professional services on a calendar year basis, regardless of the fact that salary payments are to be made only during the actual championship playing season.”).

45. *Id.* art. VI.D (“Club may require Player to maintain Player’s playing condition and weight during the off-season”); *id.* art. XII (maintaining that “[p]layer agrees to . . . keep in first-class condition”).

46. *Senne*, 934 F.3d at 923; *see* Senne Complaint, *supra* note 9, at 4 n.12 (stating all teams “maintain spring training sites in Florida and Arizona.”).

47. *Senne*, 934 F.3d at 923; *see* MAJOR LEAGUE RULES, *supra* note 36, art. VI.B (“Player’s duties and obligations under this Minor League Uniform Player Contract continue in full force and effect throughout the calendar year, including . . . Club’s training season.”).

to participate.⁴⁸ Spring training lasts approximately four weeks,⁴⁹ and once it concludes, some players are assigned to minor league teams while others stay back until the end of June for “extended spring training.”⁵⁰ Many players receive zero pay throughout extended spring training because it happens before the championship season starts.⁵¹ Additionally, after the championship season ends, some players are selected to play in “instructional league[s]” for an additional month of games.⁵² Similar to spring training, “the UPC strongly implies that participation in these leagues is required,” although players are again not compensated for participating.⁵³ From the moment they sign with a team, these players believe they have no choice but to participate in the unpaid training because passing on these opportunities could hinder their chances of advancing to the major leagues.⁵⁴

B. *The Road to the Major League*

MLB clubs acquire players through an amateur draft or free agency.⁵⁵ Every June, MLB hosts a forty-round draft where teams choose amateur players and receive exclusive rights to the talents of each selected player.⁵⁶ If a player is not selected through the draft, he is open to sign with an MLB team through free agency, which is a period of time where players not under

48. See MAJOR LEAGUE RULES, *supra* note 36, art. VII.B (Spring Training is outside the championship season, so MLB does not have to pay players based on the UPC).

49. *Senne*, 934 F.3d at 923; see *Senne Complaint*, *supra* note 9, at 39.

50. *Senne*, 934 F.3d at 924; see *Senne Complaint*, *supra* note 9, at 37.

51. See *Senne Complaint*, *supra* note 9, at 37 (“Upon information and belief, many of these players will not earn paychecks until the end of June, when the Rookie and Short-Season A leagues begin.”).

52. See *Senne Complaint*, *supra* note 9, at 3 n.6 (stating that after the championship season, “each MLB Franchise selects around 30–45 players to participate in an instructional league to further hone the minor leaguers’ skills. It usually lasts around one month.”).

53. *Id.* at 37.

54. See Pat Garofalo, *The MLB Makes Millions on Minor Leaguers. It Refuses to Pay Minimum Wage.*, TALK POVERTY (Feb. 14, 2019), <https://talkpoverty.org/2019/02/14/mlb-makes-millions-minor-leaguers-refuses-pay-minimum-wage/> [<https://perma.cc/4RWM-T9WS>].

55. See generally MAJOR LEAGUE RULES, *supra* note 36, §§ 4–5.

56. *Id.* § 4(a)–(h).

contract may sign with a mutually interested team.⁵⁷ Through the MLB draft, top picks receive multi-million dollar signing bonuses, while the remaining majority receive significantly less.⁵⁸ Out of forty rounds, players drafted as early as the tenth round have received “as little as a \$1,000 signing bonus.”⁵⁹

Each MLB team depends on their minor league network, holding affiliate contracts with multiple minor league teams spread across the following class levels: Rookie; Short Season A; A; A-Advanced; Double-A; and Triple-A.⁶⁰ Most players typically start at the Rookie level and aim to advance to higher classifications as they play.⁶¹ Each organization in MLB generally has more than 200 minor league players under contract.⁶² Accordingly, there are approximately 6000 players in the minor leagues who are fighting to obtain a spot on a major league roster.⁶³ With around 1000 new players coming in from the draft every year, a late round draft pick’s chance of making it to the major league is very slim.⁶⁴

MLB has “direct financial control” over all levels of the minor leagues.⁶⁵ The minimum salary for an MLB player in 2019 was \$555,000.⁶⁶ On the other hand, the annual income of most minor league players is between \$3000 and \$7500 after taxes and clubhouse dues.⁶⁷ Despite this wage gap, minor league franchise values “continue to appreciate, having risen

57. *Id.* § 4(i).

58. McDowell, *supra* note 5, at 3.

59. *Id.*

60. *Id.* at 6.

61. *Senne*, 105 F. Supp. 3d at 991; *Senne Complaint*, *supra* note 9, at 33–34.

62. McDowell, *supra* note 5, at 6.

63. *Id.* at 2.

64. Cooper, *supra* note 16 (showing the later a player is drafted dramatically decreases their odds of reaching the majors).

65. McDowell, *supra* note 5, at 5.

66. Brown, *supra* note 15.

67. McDowell, *supra* note 5, at 2.

steadily even during the most recent economic recessions.”⁶⁸ Minor league teams “are now valued as high as \$49 million.”⁶⁹ Although it appears that MLB has the funds to pay their players at least minimum wage, it has not taken any action because their advantages in the legal system diminish the need for wage changes.

C. Major League’s Legal Dominance Over Minor Leaguers

MLB’s control over the minor league system’s finances, rules, and contracts enables MLB to operate the minor league system at a minimal cost by keeping player wages low. MLB continues to have a strong grip on the pay of minor league players for three reasons. First, MLB uses the language in its UPC to restrain minor league pay. Second, MLB has a nearly impenetrable legal defense against employment litigation due the antitrust exemption and advantageous federal statutes. Third, using its abundance of money and wide geographical reach, MLB has further mitigated its legal risks by lobbying for favorable laws that limit future litigation.

1. Restrictions on Minor Leaguers by the UPC

UPCs stipulate that players are “obligate[d] [to] perform professional services on a calendar year basis, regardless of the fact that salary payments are to be made only during the actual [five-month] championship playing season.”⁷⁰ If a player refuses to sign a UPC, he would not be allowed to play for any major or minor league baseball club.⁷¹ Since all MLB organizations impose UPCs on their players, minor-league players have no leverage to negotiate.⁷² While an MLB club may “trade, promote, demote, or assign any player at-will,” the UPCs restrict a minor leaguer’s ability to move to another team.⁷³ UPCs give MLB teams exclusive rights over the players’ athletic

68. *Id.* at 6.

69. *Id.*

70. See MAJOR LEAGUE RULES, *supra* note 36, art. VI.B.

71. *Id.* art. XXV.

72. McDowell, *supra* note 5, at 9–10.

73. *Id.*

talents for seven years.⁷⁴ Though a minor leaguer “may voluntarily retire at any time, he cannot sign with any other domestic, Canadian, or Mexican team for the remaining term of his contract without the written consent of the MLB commissioner and the baseball club for which he is under contract.”⁷⁵ In addition to UPCs, MLB also reaps the legal benefits stemming from the antitrust exemption of the Curt Flood Act.⁷⁶

2. Antitrust Exemption: Curt Flood Act

MLB’s exploitation of minor league players stems from its legally authorized power to do so under the federal antitrust exemption.⁷⁷ The antitrust exemption derives from judicial rulings spanning a century of cases, which solidified that the business of baseball does not implicate federal antitrust laws.⁷⁸ For the antitrust exemption to be changed, congressional action is needed.⁷⁹ In 1998, Congress passed the Curt Flood Act.⁸⁰ The statute amended federal statutory law to assure that MLB players were subject to the protection of antitrust laws for any labor issues.⁸¹ However, while some player advocates perceived the new law as a victory, the statute explicitly excluded minor league players from being protected by federal antitrust laws.⁸² Accordingly, MLB is able to keep minor league wages low because the players are statutorily denied the ability to bring antitrust claims for conduct “relating to or affecting employment to play baseball at the minor league

74. See MAJOR LEAGUE RULES, *supra* note 36, § 3(b).

75. McDowell, *supra* note 5, at 9–10; see MAJOR LEAGUE RULES, *supra* note 36, § 14(b).

76. See McDowell, *supra* note 5, at 8–10.

77. *Id.* at 8.

78. *Id.*; see, e.g., *Federal Baseball Club v. National League*, 259 U.S. 200, 208–09 (1922); *Toolson v. New York Yankees*, 346 U.S. 356, 357 (1953); *Flood v. Kuhn*, 407 U.S. 258, 284 (1972).

79. See *Flood*, 407 U.S. at 282–83.

80. Curt Flood Act of 1998, 15 U.S.C. § 26b (2012).

81. See *id.* § 26b(a).

82. See *id.* § 26b(c) (“Only a major league baseball player has standing to sue under this section.”).

level.”⁸³ With no antitrust protection, the minor leaguers alternatively turn to the FLSA for federal minimum wage and overtime claims against MLB.⁸⁴ However, the Save America’s Pastime Act marks another roadblock to the minor leaguers’ pursuit for recovery.

3. Save America’s Pastime Act and the Curtailing of Future FLSA Claims

In 1938, Congress passed the FLSA in order to protect workers from harsh labor practices and ensure that they receive a reasonable minimum standard of living.⁸⁵ However, while many United States citizens could empathize with the wage issues minor leaguers currently face, Congress has recently taken precautions to *reduce* legislative protection for minor leaguers under the FLSA.⁸⁶ Specifically, the Save America’s Pastime Act created an exemption to the FLSA that effectively excluded the minor league players from the statute’s minimum wage and overtime compensation requirements.⁸⁷

SAPA was introduced in direct response to the *Senne* case.⁸⁸ Rather than adjust its minor league pay practices or simply defend the *Senne* lawsuit on its merits, MLB instead sought further legal protection “by pursuing a new statutory exemption excluding minor league players from the FLSA.”⁸⁹ Because the minor league system is made up of more than 160 teams spread across forty-two states, MLB assumes influential power over many congressional representatives throughout the country.⁹⁰ Since minor league players never unionized, they were incapable of fighting back against MLB’s

83. *Id.* § 26b(b)(1).

84. *See generally* Fair Labor Standards Act, 29 U.S.C. §§ 201–216 (2012); *see generally* *Senne v. Kansas City Royals Baseball Corp.*, 934 F.3d 918, 924 (9th Cir. 2019); *see also* *Senne Complaint*, *supra* note 9, at 82.

85. *See* 29 U.S.C. § 202.

86. *See* McDowell, *supra* note 5, at 15.

87. *See* 29 U.S.C. § 213(a)(19); Grow, *supra* note 23, at 1015.

88. McDowell, *supra* note 5, at 16.

89. Grow, *supra* note 23, at 1015; *see* 29 U.S.C. § 213(a)(19).

90. Grow, *supra* note 23, at 1025.

powerful lobbying strategies.⁹¹ After MLB's extensive efforts, President Donald Trump signed off on their requested provision in March of 2018.⁹² Under the SAPA, FLSA minimum wage protection is not given to:

[A]ny employee employed to play baseball who is compensated pursuant to a contract that provides for a weekly salary for services performed during the league's championship season (but not spring training or the off season) at a rate that is not less than a weekly salary equal to the minimum wage ... for a workweek of 40 hours, irrespective of the number of hours the employee devotes to baseball related activities.⁹³

Thus, players are exempt from the FLSA once they are paid the minimum wage amount for a forty-hour work week, leaving MLB with no requirement to pay any additional compensation when players work over forty hours.⁹⁴ The Save America's Pastime Act applies on a prospective basis, so it only shields MLB from future liability under the FLSA.⁹⁵ Therefore, *Senne v. Kansas City Royals Baseball Corporation* may be the first and last case where minor leaguers are able to recover for claims under the FLSA.

III. SENNE'S LEGAL FRAMEWORK

Since Congress passed SAPA, the certification of the classes in *Senne* holds even more weight as the minor leaguers look to recover for unfair wage practices. The Ninth Circuit addressed issues revolving around federal class certification, choice-of-law principles, and the FLSA's collective classification provision.

91. *Id.*

92. *Id.* at 1015; *see generally* 29 U.S.C. § 213(a)(19).

93. 29 U.S.C. § 213(a)(19).

94. *Id.*; Grow, *supra* note 23, at 1015.

95. Grow, *supra* note 23, at 1030.

A. *Obtaining Federal Class Certification*

Federal Rule of Civil Procedure 23 governs federal class certification claims.⁹⁶ The Ninth Circuit opinion reviewed by this Comment focuses on the law of Rule 23(b)(3).⁹⁷ Before analyzing Rule 23(b)(3), a party seeking class certification must first satisfy the four requirements delineated in Rule 23(a): (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation.⁹⁸ After a rigorous analysis, the district court held that the classes of minor leaguers satisfied the requirements of Rule 23(a).⁹⁹

The first Rule 23(a) element, numerosity, requires that a class must be “so numerous that joinder of all members is impracticable.”¹⁰⁰ Generally, courts will “find that the numerosity factor is satisfied if the class comprises 40 or more members and will find that it has not been satisfied when the class comprises 21 or fewer.”¹⁰¹ With the presence of multiple minor league teams in the state of each class, which includes 25–35 players on each team, the district court concluded that the minor leaguers had enough members to establish the element of numerosity for all classes.¹⁰²

The second element, commonality, requires that there be “questions of law or fact common to the class.”¹⁰³ The common injury may arise out of “shared legal issues with divergent factual predicates [or] a common core of salient facts coupled with disparate legal remedies.”¹⁰⁴ Because the class members share common issues of whether their playing seasons are

96. FED. R. CIV. P. 23.

97. *See Senne*, 934 F.3d at 928.

98. FED. R. CIV. P. 23(a)(1)–(4).

99. *See Senne v. Kansas City Royals Baseball Corp.*, No. 14-cv-00608-JCS, 2017 U.S. Dist. LEXIS 32949, at *1 (N.D. Cal. Mar. 7, 2017); *see also Senne v. Kansas City Royals Baseball Corp.*, 315 F.R.D. 523, 536 (N.D. Cal. 2016).

100. FED. R. CIV. P. 23(a)(1).

101. *See, e.g., Celano v. Marriott Int’l, Inc.*, 242 F.R.D. 544, 549 (N.D. Cal. 2007).

102. *Senne*, 2017 U.S. Dist. LEXIS 32949, at *140; *see Senne*, 315 F.R.D. at 562.

103. FED. R. CIV. P. 23(a)(2).

104. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998).

considered “work” and if they are subject to minimum wage and overtime, the district court found that the commonality element is satisfied.¹⁰⁵

The third element, typicality, requires that “claims or defenses of the representative parties [be] typical of the claims or defenses of the class.”¹⁰⁶ Analyzing “[t]he test of typicality . . . [considers] ‘whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.’”¹⁰⁷ In *Senne*, in order to avoid complications arising from off-season training at different locations, the minor leaguers narrowed their class claims to work that happened within the championship season.¹⁰⁸ Accordingly, the district court ruled that the minor leaguers’ class claims “meet the typicality requirement because they are ‘reasonably coextensive with those of absent class members.’”¹⁰⁹

The fourth element, adequacy, requires the named representative to “fairly and adequately protect the interests of the class.”¹¹⁰ Even class members who are absent “must be afforded adequate representation before entry of a judgment which binds them.”¹¹¹ The adequacy test asks two questions: “(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?”¹¹² The district court in *Senne* acknowledged that with minor leaguers working varying amounts of hours, some class members who worked longer might receive less compensation than the potential amount from an individualized claim.¹¹³ However, the district court found that this would not impair the California class’s

105. *Senne*, 2017 U.S. Dist. LEXIS 32949, at *140.

106. FED. R. CIV. P. 23(a)(3).

107. *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (quoting *Schwartz v. Harp*, 108 F.R.D. 279, 282 (C.D. Cal. 1985)).

108. *See Senne*, 2017 U.S. Dist. LEXIS 32949, at *141.

109. *Id.* at *140 (quoting *Hanlon*, 150 F.3d at 1020).

110. FED. R. CIV. P. 23(a)(4).

111. *Hanlon*, 150 F.3d at 1020.

112. *Id.*

113. *Senne*, 2017 U.S. Dist. LEXIS 32949, at *140.

ability to adequately represent its members, “so long as class members are adequately informed of their right to opt out of the class and the potential for a larger recovery if they proceed individually.”¹¹⁴

While the four Rule 23(a) elements are met, the *Senne* classes must also meet the criteria of Rule 23(b)(3).¹¹⁵ A Rule 23(b)(3) class may be certified if “questions of law or fact common to class members predominate over any questions affecting only individual class members,” and if “a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.”¹¹⁶ Therefore, the minor leaguers have the burden to show a “predominance” element and a “superiority” element.¹¹⁷

The superiority element of Rule 23(b)(3) requires that a class action be “superior to other available methods for fairly and efficiently adjudicating the controversy.”¹¹⁸ The superiority inquiry requires the court to consider four factors: (1) the class members’ interests in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already begun by or against class members; (3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (4) the likely difficulties managing the class action.¹¹⁹ In *Senne*, the court found superiority to be satisfied because the class members did not have an interest in pursuing separate actions—that is, no other ongoing litigation was present—and the circumstances of the case “will not require so many individualized inquiry as to make it unmanageable.”¹²⁰

114. *See id.* at *141–42. Although adequacy was found for the California class, the Arizona and Florida classes were denied adequacy due to choice-of-law issues. Since adequacy and predominance were denied for the same reasons, the court addressed them collectively in its predominance analysis.

115. *See id.* at *143; FED. R. CIV. P. 23(b)(3). Classes must meet the 23(a) requirements and meet the criteria of either 23(b)(1), (b)(2), or (b)(3).

116. FED. R. CIV. P. 23(b)(3).

117. *See Frieri v. Sysco Corp.*, No. 16-CV-1432 JLS (NLS), 2019 U.S. Dist. LEXIS 207481 (S.D. Cal. Dec. 2, 2019).

118. FED. R. CIV. P. 23(b)(3).

119. *Id.* 23(b)(3)(A)–(D).

120. *See Senne v. Kansas City Royals Baseball Corp.*, No. 14-cv-00608-JCS, 2017 U.S. Dist. LEXIS 32949, at *171 (N.D. Cal. Mar. 7, 2017).

The other element of Rule 23(b)(3), predominance, is a focal point in the Ninth Circuit's analysis in *Senne*. The predominance element focuses on "the relationship between the common and individual issues," and tests whether proposed classes are "sufficiently cohesive to warrant a judgment from class representation."¹²¹ Determining "[t]he predominance inquiry 'asks whether the common aggregation-enabling issues in the case are more prevalent or important than the non-common, aggregation-defeating individual issues.'"¹²² A class action like *Senne*, which requires the court to apply multiple state laws, implicates the predominance requirement of Rule 23(b)(3).¹²³ To find predominance, the *Senne* court must analyze which state law applies to each class.¹²⁴ If the conflict between state laws is too complicated and undermines the common legal question applicable to all class members, then predominance will not be found.¹²⁵ Since an unfixable conflict of state laws defeats predominance, the Ninth Circuit must use choice-of-law principles to decide if this entanglement can be fixed or not.

B. Addressing Choice-of-Law Issues

The Ninth Circuit uses California's choice-of-law analysis because a district court considering state law claims brought in federal court must utilize the choice-of-law rules of the forum state.¹²⁶ By default, California courts would apply California law unless a party timely invokes the law of another state.¹²⁷ The party who invokes an outside state's laws must demonstrate that the foreign law, rather than California law, should apply to class

121. *Amchem Prods. v. Windsor*, 521 U.S. 591, 623 (1997); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022 (9th Cir. 1998).

122. *Tyson Foods Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (quoting 2 W. RUBENSTEIN, NEWBERG ON CLASS ACTIONS § 4:50, at 196–97 (5th ed. 2012)).

123. *See Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1189–90 (9th Cir. 2001).

124. *Id.* at 572.

125. *Id.* at 580–81.

126. *See Klaxon Co. v. Stentor Electric Mfg. Co.*, 313 U.S. 487, 496–97 (1941).

127. *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 561 (9th Cir. 2019) (quoting *Bernhard v. Harrah's Club*, 546 P.2d 719, 721 (1976)).

claims.¹²⁸ This objecting party “must satisfy California’s three-step governmental interest test,” which is used to resolve choice of law issues.¹²⁹

First, the court determines whether the relevant law of each of the potentially affected jurisdictions with regard to the particular issue in question is the same or different. Second, if there is a difference, the court examines each jurisdiction’s interest in the application of its own law . . . to determine whether a true conflict exists [between the multiple state laws]. Third, if the court finds that there is a true conflict, it carefully evaluates and compares the nature and strength of the interest of each jurisdiction in the application of its own law ‘to determine which state’s interest would be more impaired if its policy were subordinated to the policy of the other state,’ and then ultimately applies ‘the law of the state whose interest would be the more impaired if its law were not applied.’¹³⁰

To interpret the governmental interest test, the Ninth Circuit uses the California Supreme Court’s decision in *Sullivan v. Oracle Corporation* to guide them in *Senne*’s choice-of-law issue.¹³¹ In *Sullivan*, the court held that overtime provisions apply to day-long or week-long work performed in California for a California employer by an out-of-state resident.¹³² The majority and dissenting opinions in *Senne* rely heavily on their own interpretations of *Sullivan* as reviewed in Part IV.¹³³ In addition to federal class certification, the minor league players also sought to establish a collective under the FLSA.¹³⁴

128. *See id.* (quoting *Bernhard*, 546 P.2d at 721).

129. *Id.*

130. *Kearney v. Salomon Smith Barney, Inc.*, 137 P.3d 914, 922 (Cal. 2006) (quoting *Bernhard*, 546 P.2d at 723).

131. *Sullivan v. Oracle Corp.*, 254 P.3d 237 (Cal. 2011); *see Senne v. Kansas City Royals Baseball Corp.*, 934 F.3d 918, 929–37 (9th Cir. 2019).

132. *Sullivan*, 254 P.3d at 247.

133. *See generally Senne*, 934 F.3d 918; *see infra* Part IV.

134. *Senne*, 934 F.3d at 924.

C. *Establishing a Collective Under the Fair Labor Standards Act*

The FLSA permits employees to bring federal claims on behalf of “themselves and other employees similarly situated.”¹³⁵ Notably, “[t]here is no established definition of the FLSA’s ‘similarly situated’ requirement, nor is there an established test for enforcing it.”¹³⁶ As a result, the *Senne* court developed its own standard:

Party plaintiffs are similarly situated, and may proceed in a collective, to the extent they share a similar issue of law or fact material to the disposition of their FLSA claims. Significantly, as long as the proposed collective’s ‘factual or legal similarities are material to the resolution of their case, dissimilarities in other respects should not defeat collective treatment.’¹³⁷

Courts generally use this standard, one similar to the Rule 23(b)(3) standard, to certify a FLSA collective.¹³⁸ Due to the similarity between the minor leaguers’ proposed collective and their proposed classes, the Ninth Circuit has in effect given practically identical treatment to both groups in *Senne* when considering the impact of any choice-of-law claims.¹³⁹ After the Save America’s Pastime Act, a statute applied on a prospective basis, the denial of this proposed collective would leave minor leaguers with no FLSA claims going forward.¹⁴⁰

135. 29 U.S.C. § 216(b).

136. *Campbell v. City of Los Angeles*, 903 F.3d 1090, 1111 (9th Cir. 2018).

137. *Senne*, 934 F.3d at 948 (citing *Campbell*, 903 F.3d at 1114, 1117).

138. *Id.*; see FED. R. CIV. P. 23(b)(3).

139. See *Senne*, 934 F.3d at 948 (rejecting defendants’ FLSA arguments with the same reasoning the court used to reject defendants’ Rule 23(b)(3) arguments).

140. Grow, *supra* note 23, at 1030.

IV. *SENNE V. KANSAS CITY ROYALS BASEBALL CORPORATION*A. *Procedural History*

The legal battle between minor leaguers and MLB began in 2015.¹⁴¹ The players asserted claims under the federal FLSA and various state wage and overtime laws against MLB.¹⁴² The minor leaguers alleged that they were not paid during spring training, extended spring training, or the instructional leagues.¹⁴³ They further alleged that minor leaguers are MLB employees and the activities the players perform throughout the calendar year constitute compensable work, so MLB has unlawfully “exploited minor leaguers by paying salaries below minimum wage.”¹⁴⁴ Additionally, the minor leaguers asserted that while they are paid little during the championship season, they routinely worked overtime without receiving compensation.¹⁴⁵ Hence, the minor leaguers requested certification for multiple 23(b)(3) classes for claims under the state laws of California, Florida, Arizona, in addition to the federal FLSA, on behalf of themselves and all persons similarly situated in the three years prior to the filing of the action.¹⁴⁶

On October 20, 2015, the Northern District Court of California conditionally certified the minor leaguers proposed FLSA collective, defined as follows:

All Minor League Baseball players employed by MLB or any MLB franchise under the Minor League Uniform Player Contract who worked or work as Minor League players at any time since

141. *Senne v. Kansas City Royals Baseball Corp.*, 105 F. Supp. 3d 981, 991 (N.D. Cal 2015).

142. *Id.* (filing claims under the laws of California, Florida, Arizona, North Carolina, and New York).

143. *See generally* *Senne Complaint*, *supra* note 9.

144. *Id.* at 35.

145. *Id.*

146. *Senne*, 105 F. Supp. 3d at 992.

February 7, 2011, but who had no service time in the Major Leagues at any time of performing work as a Minor Leaguer.¹⁴⁷

More than 2200 minor league players opted into this FLSA collective.¹⁴⁸ In response, MLB asked the court to decertify this FLSA collective on grounds that the minor leaguers are not “similarly situated” and the defenses they “plan to assert will require too many individualized inquiries to allow for class treatment of their claims.”¹⁴⁹

On July 21, 2016, the district court denied the minor leaguers’ requests for class certification under Rule 23 for all proposed Rule 23(b)(3) classes, and also decertified the FLSA collective it had preliminarily certified.¹⁵⁰ The court concluded that choice-of-law issues defeated predominance because “(1) the winter off-season training claims entailed work performed in dozens of different states with no common schedule or situs; and (2) the championship season claims involved frequent travel between state lines for away games.”¹⁵¹ The district court held that the winter off-season work claims “fatally undermined predominance because the court would be required to undertake an overwhelming number of individualized inquiries in determining which activities constituted compensable ‘work’ and how much time was spent doing ‘work.’”¹⁵²

The minor leaguers then filed a renewed motion for class certification under Rule 23 and sought recertification of a narrower FLSA class.¹⁵³ In a motion for reconsideration, they asked the court to certify a set of narrowed

147. *See Senne v. Kansas City Royals Baseball Corp.*, No. 14-cv-00608-JCS, 2015 U.S. Dist. LEXIS 143011, *49 (N.D. Cal. Oct. 20, 2015).

148. *Senne v. Kansas City Royals Baseball Corp.*, 315 F.R.D. 523, 530 (N.D. Cal. 2016).

149. *Id.* at 531.

150. *See generally id.*

151. *Senne v. Kansas City Royals Baseball Corp.*, 934 F.3d 918, 925 (9th Cir. 2019) (summarizing *Senne*, 315 F.R.D. at 580–81).

152. *Id.* (citing *Senne*, 315 F.R.D. at 577–84).

153. *See Senne v. Kansas City Royals Baseball Corp.*, No. 14-cv-00608-JCS, 2017 U.S. Dist. LEXIS 32949, at *49 (N.D. Cal. Mar. 7, 2017).

classes that they contend would address the concerns expressed by the court in the previous class certification order.¹⁵⁴

“[T]he district court recertified the narrowed FLSA collective and certified a California (b)(3) class[,]” ruling that “‘predominance and [the] ‘similarly situated’ requirements could be met” using the narrower class definition.¹⁵⁵ However, the court ruled opposite for the Arizona and Florida classes, holding that choice-of-law provisions in those states defeated predominance.¹⁵⁶ The minor leaguers petitioned the Ninth Circuit to review the denial of certification for the Arizona and Florida classes, and MLB “likewise petitioned to appeal the certification of the California class” and FLSA collective.¹⁵⁷ The Ninth Circuit granted both petitions and consolidated the cross-appeals into one matter.¹⁵⁸

B. Choice-of-law vs. Predominance: The Ninth Circuit’s View

The Ninth Circuit first addressed whether an entanglement of state laws undermines the proposed Rule 23(b)(3) classes. The district court was “split on the impact of choice-of-law questions” on predominance.¹⁵⁹ It ruled that choice-of-law concerns did not defeat the predominance requirement for the California class, but held otherwise for the Arizona and Florida classes.¹⁶⁰

To make choice-of-law determinations, the Ninth Circuit relied on the California Supreme Court’s decision in *Sullivan v. Oracle Corporation*.¹⁶¹ In *Sullivan*, the California Supreme Court addressed whether California’s overtime law applied to non-resident employees of a California corporation who worked primarily in their home states of Colorado and Arizona, but also

154. *Id.*

155. *Senne*, 934 F.3d at 926 (summarizing *Senne*, 2017 U.S. Dist. LEXIS 32949, at *49).

156. *Senne*, 2017 U.S. Dist. LEXIS 32949, at *170.

157. *Senne*, 934 F.3d at 926.

158. *Id.*

159. *Id.* (summarizing decision in *Senne*, 2017 U.S. Dist. LEXIS 32949).

160. *See generally Senne*, 2017 U.S. Dist. LEXIS 32949.

161. *Id.* at 929; *see also Sullivan v. Oracle Corp.*, 254 P.3d 237 (Cal. 2011).

worked in California for “entire days or weeks” at a time.¹⁶² *Sullivan* applied California’s three-step governmental interest analysis for choice-of-law questions: (1) whether the relevant laws in each impacted state differed; (2) whether a true conflict existed; and (3) “which state’s interest would be more impaired if its policy were subordinated to the policy of the other state.”¹⁶³ The *Sullivan* court acknowledged that there was a difference between relevant laws of the impacted states.¹⁶⁴ However, a true conflict was doubtful because “California . . . unambiguously asserted[] a strong interest in applying its overtime law to . . . all work performed[] within its borders.”¹⁶⁵ Even if there was a true conflict, applying another state’s law over California’s law would bring the “greater impairment.”¹⁶⁶ Using this analysis, *Sullivan* ultimately concluded that California law applied to all work performed for days or weeks at a time within the state’s borders, regardless of whether it was performed by residents or non-residents.¹⁶⁷

1. California Class

Relying on *Sullivan*, the Ninth Circuit held that “California law should apply to the (b)(3) California class.”¹⁶⁸ MLB argued that while *Sullivan* involved a California corporation, “most of the MLB Club Defendants with affiliates in the California League are located outside California.”¹⁶⁹ However, the Ninth Circuit interpreted *Sullivan* to indicate that California law

162. *Sullivan*, 254 P.3d at 239, 243.

163. *See Bernhard v. Harrah’s Club*, 546 P.2d 719, 723 (1976).

164. *Sullivan*, 254 P.3d at 239, 243.

165. *Id.* at 246 (referring to language in multiple California statutes illustrating California’s strong interest in applying its law to work within its borders).

166. *See id.* at 247.

167. *Id.* at 241, 243.

168. *Senne v. Kansas City Royals Baseball Corp.*, 934 F.3d 918, 930 (9th Cir. 2019).

169. *Id.* (summarizing Defendants-Appellees/Cross-Appellant’s Consolidated Principal and Response Brief, *Senne v. Kansas City Royals Baseball Corp.*, 934 F.3d 918 (9th Cir. 2019) (Nos. 17-16245, 17-16267, 17-16276)).

should apply to the California class regardless of where teams were headquartered.¹⁷⁰

MLB contended that numerous states outside of California have a competing interest in applying their own laws and regulating work performed in California.¹⁷¹ However, the Ninth Circuit emphasized that, like in *Sullivan*, California's interest in applying its laws to work performed within its borders for days or weeks at a time still "reigns supreme" regardless of whether another state expressed an interest in applying its own wage laws.¹⁷² The Ninth Circuit also made two additional points to bolster its conclusion.¹⁷³

First, the Ninth Circuit found that since the minor leaguers met their burden of showing that California law could constitutionally be applied, the burden then shifts to MLB "to demonstrate that foreign law, rather than California law, should apply to class claims."¹⁷⁴ However, MLB failed to meet this burden because they only *speculated* that claims might be subject to another state's law, which "*might*" impair the state's interest more, not that it would.¹⁷⁵ MLB argued that some players' work time in California was minimal in light of their overall career.¹⁷⁶ However, the court emphasized that despite the short time minor leaguers spent in California, they still worked for "entire days or weeks" at a time while in the state, just as the plaintiffs in *Sullivan* did to successfully trigger California law.¹⁷⁷

Second, the court highlighted the impracticality of not applying the law of the state where work was done to the employees who performed work in

170. *Id.*

171. *Id.* at 930–31 (citing Defendants-Appellees/Cross-Appellant's Consolidated Principal and Response Brief, *supra* note 169, at 47–48).

172. *Id.* at 931.

173. *Id.*

174. *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 590 (9th Cir. 2012) (quoting *Washington Mut. Bank v. Superior Court*, 103 Cal. Rptr. 2d 320 (2001)).

175. *Senne*, 934 F.3d at 931.

176. *Id.* at 931–32.

177. *Sullivan v. Oracle Corp.*, 254 P.3d 237, 243 (Cal. 2011).

that state.¹⁷⁸ The court reasoned this would be an “unworkable scheme.”¹⁷⁹ Under this approach, employers would need to obtain the residency of each employee, adjust the wages for each employee according to their resident state, and actively comb through each state’s labor laws to make sure they abide by the specific laws applied to that employee’s work.¹⁸⁰ Requiring that this tedious and difficult process be applied to each employee would create unfair administrative and business practices that would be detrimental to citizens of states with high wage laws or strict labor laws.¹⁸¹

2. Arizona and Florida Classes

The Ninth Circuit reversed the district court’s determination that “choice-of-law considerations defeated predominance and adequacy [requirements] for the proposed Arizona and Florida 23(b)(3) classes.”¹⁸² Using California’s three-step governmental interest analysis, the court ruled that Arizona law applies to work performed in Arizona and Florida law applies to work performed in Florida.¹⁸³ Under the first element, the court found that the “differences in state law are ‘material,’ meaning that ‘they make a difference in litigation.’”¹⁸⁴ For the second element, the court concludes that a “true” conflict does not exist despite many arguments by MLB.¹⁸⁵ On the third and final requirement, the court believed there was a “clear answer”: in deciding which law should apply, the interests of an alien state are highly unlikely to overcome the interests of the state where work is done.¹⁸⁶ The court admittedly reached this conclusion without specifically

178. *Senne*, 934 F.3d at 931–32.

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.* at 933 (summarizing decision in *Senne v. Kansas City Royals Baseball Corp.*, No. 14-cv-00608-JCS, 2017 U.S. Dist. LEXIS 32949 (N.D. Cal. Mar. 7, 2017)).

183. *Id.*

184. *Id.* (quoting *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 590 (9th Cir. 2012)).

185. *Id.*

186. *Id.* at 936 (citing *Sullivan v. Oracle Corp.*, 254 P.3d 237, 245–47 (Cal. 2011)).

inquiring into the interests potentially expressed by any state’s statutory language or case law.¹⁸⁷

3. FLSA Collective

The Ninth Circuit used the same logic as above to affirm the FLSA’s Collective certification.¹⁸⁸ Under the FLSA standard for collective certification, “as long as the proposed collective’s ‘factual or legal similarities are material to the resolution of their case, dissimilarities in other respects should not defeat collective treatment.’”¹⁸⁹ “Because the FLSA collective covers work performed during . . . [times where] the players received no pay,” the court found two common legal questions that would drive litigation: (1) “[A]re the players employees[?]” and (2) “[D]o the activities they perform during those times constitute compensable work?”¹⁹⁰ Because MLB might be subject to statutory violations based on whether the minor leaguers are permitted to perform compensable work outside of scheduled practice and game times, the court ultimately affirmed the FLSA collective for the minor leaguers’ overtime claims.¹⁹¹ However, although the minor leaguers’ collective and classes were ultimately certified, it was not a unanimous decision.¹⁹²

C. The Other Side of The Argument: Justice Ikuta’s Dissent

In her dissent, Justice Ikuta argued that the framework the majority used to address the intersection between class certification and choice-of-law issues created significant practical and logistical problems, and “overlooked” California’s complex principles.¹⁹³ Justice Ikuta asserted the majority incorrectly drew from California’s choice-of-law analysis the general principle that a state has the “predominant interest in regulating conduct that

187. *Id.*

188. *See generally id.*

189. *Id.* at 948 (quoting *Campbell v. City of Los Angeles*, 903 F.3d 1090, 1114 (9th Cir. 2018)).

190. *Id.* at 949.

191. *Id.*

192. *See id.* at 951 (Ikuta, J., dissenting).

193. *Id.* at 951.

occurs within its borders.”¹⁹⁴ The dissent argued that the simplicity of the majority’s holding creates a slippery slope where any class going forward will readily be able to be certified “without any fuss” from choice-of-law issues.¹⁹⁵

1. Choice-of-Law and Predominance Issue

Justice Ikuta emphasized that the proposed classes are comprised of employees who “reside in at least 19 states, who are suing employers headquartered in 22 states, relating to work that took place in three different states.”¹⁹⁶ Additionally, the dissent noted that UPCs contain a New York choice-of-law provision, so an additional state’s interest must be included in the complicated choice-of-law issue.¹⁹⁷ Thus, the potentially affected jurisdictions include: (1) Arizona and Florida, where the employees trained for varying lengths of time; (2) the states in which the players reside, which include at least 19 states; (3) the states in which the players’ teams are located; and (4) New York, the state of MLB’s headquarters and the selected law of the UPC’s choice-of-law provision.¹⁹⁸

Justice Ikuta noted that “when application of the law of the place of the wrong would defeat the interests of litigants and of the states concerned,” the court should “not apply that law.”¹⁹⁹ “Even where . . . a contractual choice-of-law provision” exists, “California applies the law of the parties’ choosing only after considering the relevant state interests.”²⁰⁰ Thus, courts must apply the governmental interest analysis.²⁰¹

194. *Id.* at 956.

195. *Id.* at 951.

196. *Id.*

197. *Id.*; see MAJOR LEAGUE RULES, *supra* note 36, art. XXV (stating that the UPC “shall be governed by and interpreted in such a manner as to be effective and valid under New York law.”).

198. See *Senne*, 934 F.3d at 951.

199. *Id.* at 956 (quoting *Reich v. Purcell*, 432 P.2d 727, 729–30 (Cal. 1967)).

200. *Id.* at 957.

201. *Id.*

Regarding the interpretation of *Sullivan*, Justice Ikuta contended that the majority’s extension of the case, which “establish[es] a general rule that California has a superior interest in applying its law to wage-and-hour claims that arise within its borders,” is not supported by *Sullivan*.²⁰² “*Sullivan* expressly limited its analysis to the particular facts of the case before it: a case involving California overtime law, a California employer, and employees residing in Arizona and Colorado.”²⁰³ Thus, Justice Ikuta argued that *Sullivan* should be read narrowly and does not imply that its rule would apply to out-of-state employers.²⁰⁴ Ultimately, Justice Ikuta concluded “*Sullivan* stands for the proposition that the determination of which state’s law applies requires a careful analysis of each relevant state’s law and policies.”²⁰⁵

Justice Ikuta emphasized the specific steps the court must go through to decide which state law applies.²⁰⁶ First, the court “must analyze the contractual choice-of-law provision.”²⁰⁷ If the provision does not govern, the court must decide if minimum wage laws and overtime laws of Arizona and Florida apply by their terms to nonresident employees who work for nonresident employers.²⁰⁸ Then, the court must “identify relevant laws of each potentially affected jurisdictions” and “determine whether there is a conflict between those laws and the resident laws of the parties.”²⁰⁹ If there is a conflict, then the court must “compare the amount of each jurisdiction’s interest in applying their specific laws to determine whether a true conflict exists under the circumstances of the particular case.”²¹⁰ Under the facts of this specific case, Justice Ikuta asserted that the choice-of-law inquiries cannot be neatly solved with the generalized rule of the majority, so none of the

202. *Id.* (citing *Sullivan v. Oracle Corp.*, 254 P.3d 237, 239–40 (Cal. 2011)).

203. *Id.* at 959 (citing *Sullivan*, 254 P.3d at 239–40).

204. *Id.*

205. *Id.* at 960.

206. *Id.* at 961.

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

classes should be certified.²¹¹ Justice Ikuta states that this generalized strategy is contrary to the requirement that California courts undertake the governmental interest analysis in every case.²¹²

2. Practicality

Justice Ikuta also contended that the majority's practicality arguments were logically reversed because using a generalized rule would actually make business practices more impractical for employers and employees.²¹³ She stated that if the law of the state where the work physically takes place always applies, it would require employers to research and comply with various state laws whenever their employees traveled for short conferences or business meetings.²¹⁴ An employer would be required to research applicable state law whenever an employee travels across state lines.²¹⁵ Justice Ikuta claimed the majority's rule would also place a burden on employees because they would no longer be protected by the laws of their resident state or employer's state while traveling for work, which would force them to earn less money for work travel.²¹⁶ Thus, Justice Ikuta argued that the more optimal solution is to adhere strictly to choice-of-law principles.²¹⁷ However, in light of the justice system's goal in class certification to "achieve economies of time, effort, and expense,"²¹⁸ the majority's simplified interpretation of the law is more ideal than a rigorous choice-of-law analysis for every class certification case.²¹⁹

211. *Id.* at 962.

212. *Id.*

213. *Id.* at 963.

214. *Id.* at 960.

215. *Id.*

216. *Id.*

217. *Id.*

218. See FED. R. CIV. P. 23(b)(3) advisory committee's note, which explains that "[s]ubdivision (b)(3) encompasses those cases in which a class action would achieve economies of time, effort, and expense . . ."; see also *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 615 (1997) (citation omitted).

219. See generally *Senne*, 934 F.3d 918.

V. KEEPING IT CLASSY: INTERPRETING *SULLIVAN* BROADLY

The Ninth Circuit correctly certified each proposed class for three reasons. First, the majority opinion's interpretation of *Sullivan* in applying the choice-of-law analysis avoids complications arising from the entanglement of state laws. Second, the practicality of the majority's general principle is superior to a strict governmental interest test in consideration of the burdens placed on the employer, the employee, and the overall judicial system. Third, the policy behind certifying the class is heavily in favor of the minor leaguers. If the class is broken into individualized claims, these minor leaguers will no longer have a legal solution for MLB's exploitation of their time and services. Thus, the Ninth Circuit was correct in allowing the minor leaguers to follow through with their class action lawsuit.

A. *Predominance and Choice-of Law*

In *Senne*, the majority and dissent disagreed on whether the choice-of-law inquiries related to the circumstances of this case are enough to overcome the predominant interest of the state where work was done.²²⁰ Justice Ikuta argued that the differing circumstances of each class member made it too complicated to apply the state law where work was performed to the class's minor leaguers.²²¹ However, under these circumstances, it is highly unlikely that an alien state's interests would have a *stronger* interest in applying their law over the law of the state where work is performed, and thus, the majority was correct.

1. Refuting MLB's Entanglement of Law Arguments

MLB argued that choice-of-law complications should prevent the certification of a class action. This case consists of players who reside in at least nineteen states, who are suing teams that are headquartered in at least twenty-two states, relating to work that occurred in three states.²²² Thus, it is understandable that the states where the players reside, where the teams are headquartered, and where the work took place all have an interest in applying their own laws to this case. However, the question still remains which state has the *strongest* interest in applying their law or which state would be

220. *See generally id.*

221. *See id.* at 951 (Ikuta, J., dissenting).

222. *Id.* at 960–61.

most impaired if the law of another state was applied.²²³ Under most circumstances, the prevailing answer to this question would be the state where the work was done.²²⁴ If a class is too broad, the minor leaguers would be able to address some of these state law complications by narrowing their class, just as they did after the denial of their initial class proposal.²²⁵

MLB argued that non-California states have an interest in applying their laws to the California class and so forth for the other certified classes.²²⁶ “To evaluate whether a claim seeks to apply the force of a state statute beyond the state’s boundaries, courts consider where the conduct that ‘creates liability’ occurs.”²²⁷ “If the conduct that ‘creates liability’ occurs in California, California law properly governs that conduct.”²²⁸ Here, the conduct that “creates liability” is the minor leaguers’ participation in unpaid training located in California, Arizona, or Florida, so the laws of those states should respectively apply.²²⁹ Furthermore, in *Sullivan*, the California Supreme Court unambiguously asserted a strong interest in applying its overtime law to all nonexempt workers, and all work performed within its borders.²³⁰ “Ordinarily, the statutes of a state have no force beyond its boundaries.”²³¹ Consistent with a predominance analysis, it would be highly unlikely that any

223. *Sullivan v. Oracle Corp.*, 254 P.3d 237, 239, 243 (Cal. 2011).

224. *See Senne*, 934 F.3d at 935 (majority opinion) (asserting that “a state has a legitimate interest in applying its wage laws extraterritorially only in *two* limited circumstances.”).

225. *See generally Senne v. Kansas City Royals Baseball Corp.*, No. 14-cv-00608-JCS, 2017 U.S. Dist. LEXIS 32949, at *49 (N.D. Cal. Mar. 7, 2017).

226. Defendants-Appellees/Cross-Appellants’ Reply Brief on Cross-Appeal at 23–24, *Senne v. Kansas City Royals Baseball Corp.*, 934 F.3d 918 (9th Cir. 2019) (Nos. 17-16245, 17-16267, 17-16276), 2018 U.S. 9th Cir. Briefs LEXIS 525, at *30–31.

227. *Oman v. Delta Air Lines, Inc.*, 889 F.3d 1075, 1079 (9th Cir. 2018); *Sullivan*, 254 P.3d at 248; *see also* *RJR Nabisco, Inc. v. European Cmty.*, 136 S. Ct. 2090, 2101 (2016).

228. *Oman*, 889 F.3d at 1079; *Sullivan*, 254 P.3d at 248; *see also* *Diamond Multimedia Sys., Inc. v. Superior Court*, 968 P.2d 1036, 1060 (Cal. 1999).

229. *Oman*, 889 F.3d at 1079; *see generally Senne*, 934 F.3d 918.

230. *See Sullivan*, 254 P.3d at 245–46.

231. *Oman*, 889 F.3d at 1079; *see* *N. Alaska Salmon Co. v. Pillsbury*, 162 P.93, 94 (Cal. 1916).

other state would have an interest *stronger* than California regarding work done extensively within its borders.²³²

MLB also argued that since “Arizona and Florida have among the least protective wage laws in the country,” the interests of these states would not be impaired when a more protective statute of another state is applied because the government interest test considers the amount of harm to states.²³³ However, this logic is flawed because it considers only the employee in a statute governing an employer-employee relationship. To illustrate, applying an outside state’s more protective laws to the Arizona class is still harmful to Arizona’s laws because it would ultimately defy the intent of Arizona’s legislation to pass less protective statutes. MLB’s assumption that there is no harm in applying a more protective statute is erroneous because it neglects to consider the employer as well. The difference in protection, regardless of whether it is more or less, would still affect the interest of the state whose laws are not applied. Here, the interest of the state where work was completed would still be most impaired by the application of an outside state’s laws.

2. Why Choice-of-Law Does Not Defeat Predominance

The majority asserted that predominance is not overcome by choice-of-law inquiries.²³⁴ In employment cases, employee differences would not eliminate predominance if the “liability arises from a common practice or policy of an employer.”²³⁵ The same reasoning applies here. “Although the existence of blanket corporate policies is not a guarantee that predominance will be satisfied, such policies ‘often bear heavily on questions of predominance and superiority.’”²³⁶ Here, the UPC acts as a blanket corporate policy because every player in the MLB system is required to sign it in order to

232. *See Senne*, 934 F.3d at 933–35.

233. Defendants-Appellees/Cross-Appellants’ Reply Brief on Cross-Appeal, *supra* note 226, at 28.

234. *See Senne*, 934 F.3d at 928–37.

235. *Id.* at 938 (quoting NEWBERG ON CLASS ACTIONS § 23:33 (5th ed. 2012)) (internal quotation marks omitted).

236. *Id.* (quoting *In re Wells Fargo Home Mortg. Overtime Pay Litig.*, 571 F.3d 953, 958 (9th Cir. 2009)).

play.²³⁷ The differences between minor league players are not enough to undermine predominance because there are no material conflicts of state law necessitating individual inquiries that overpower the legal questions common to the class.²³⁸ Additionally, courts generally have the ability to mitigate class differences by using its power to require the class definition be narrowed. By allowing the minor leaguers to narrow their class, the court makes sure the general legal issue reigns over the differences between each class member.

The majority's interpretation is the most practical solution. If a judge can assume the state law where the work is completed would apply in most scenarios, the judge would avoid a deep dive into outside state statutes, formulating their own interpretation of another state's statute, or weighing the state's interest in applying its law versus other states. Allowing a judge to interpret an outside state's statute risks error by the court because the judge would lack understanding of the outside state legislature's intent behind passing the statute. A strict reading of *Sullivan* requiring a thorough and deep dive into another state's statutes would create chaos in any class action case for a judge. Additionally, it would be outside the scope of a judge's power to go through the statute of every state involved in this case and interpret it without any awareness of the context behind why each state legislation passed the statute in the first place. Accordingly, the majority's interpretation makes the judicial process for class actions more efficient by eliminating this risk of error.

B. Practicality of Applying the Law Where Work was Done

Given the differences in state laws, the determination of which law applies under these circumstances would have a dramatic impact on interstate businesses because employers would need to strategically modify their policies and hiring processes in order to comply with whichever state law applies to their traveling employees. The majority and dissent disagree on the practicality of generally applying the law where work is performed. The majority stated that applying the law where work is performed is the most practical for businesses and would avoid disadvantaging employees.²³⁹ On

237. McDowell, *supra* note 5, at 9.

238. Defendants-Appellees/Cross-Appellants' Reply Brief on Cross-Appeal, *supra* note 226, at 26–27.

239. *Senne*, 934 F.3d at 932.

the other hand, Justice Ikuta stated that applying the law where work is performed is a more impractical option and any issues would be easily remedied if an employer paid employees according to the employer's state laws.²⁴⁰

1. Ikuta's Approach is Impractical

Justice Ikuta's dissent offers an approach that is impractical. Ikuta believes the majority's concerns would be eased if the state law at issue merely requires an employer to pay each of its employees according to the laws of the employer's resident state, even where the employee is working in another state.²⁴¹ Truck drivers and traveling salespeople partake in occupations for which complications may arise under the majority's stance.²⁴² Because travel is dispersed, state law protection under these circumstances becomes complicated because questions would arise over which state law should prevail. However, if the court automatically applies the law of the state where an MLB Club is located to work outside of that state, it might create unequal pay and labor treatment towards minor leaguers spread across different teams for practically identical work. This rule provides competitive advantages to teams located in states with lower wage laws. The UPC binds players to their team for seven years, so players have no say on where they play. Under Justice Ikuta's interpretation, if a player from an Ohio team and a player from an Arizona team complete identical work in California for an extended period of time, the differing wage laws of Ohio and Arizona create an imbalance in the financial treatment of the two players for the same type of work. Under the majority opinion, both players would be subject to California's laws, which avoids this imbalance.

2. The Practicality of the Majority's Approach

If the law of the state where work is not applied, "employers and employees would [both] be subject to an unworkable scheme."²⁴³ Employers would have to obtain the residency of each employee, adjust their wages for each employee according to their state of residence, and actively comb through each state's labor laws to ensure they abide by the specific law of

240. *Id.* at 960 (Ikuta, J., dissenting).

241. *Id.*

242. *Id.*

243. *Id.* at 932 (majority opinion).

that one employee.²⁴⁴ Under this “unworkable scheme,” non-resident employees working at the same worksite “side-by-side” in the same positions would be “owed vastly different minimum wages” and are subject to different laws regarding lunch and rest breaks.²⁴⁵ Requiring this tedious and difficult process would create unfair administrative and business practices that would hurt citizens of states with high wage laws or strict labor laws.²⁴⁶ It would not be in any state’s interest to put this big of an administrative burden on both employers and employees alike.²⁴⁷

While explaining that the law of the state where work is performed should be the law applied, the majority acknowledged that a state has a legitimate interest in applying its wage laws extraterritorially only in two limited circumstances, neither of which apply in *Senne*.²⁴⁸ The first circumstance is “when a state’s resident employee of that state’s resident employer leaves the state ‘temporarily during the course of the normal workday.’”²⁴⁹ This is reasonable because if an employee works in an outside state frequently enough to be viewed as a normal part of his/her workday, then subjecting the employee to that outside state’s laws aligns with the majority’s opinion that the law of the state where work is done should apply. The second circumstance is “when the traveling, resident employee of a domestic employer would otherwise be left without the protection of another state’s law.”²⁵⁰ This is valid because leaving employees without any protection of a state law would dangerously put them at risk of having no claim for any injustice stemming from their labor. Here, the minor leaguers spent not hours, but “days or weeks at a time working in a state.”²⁵¹ Since *Senne* would not be under either circumstance, the law where work is done should apply.

244. *See id.*

245. *Id.*

246. *Id.*

247. *Id.*

248. *Id.* at 935.

249. *Id.* (quoting *Sullivan v. Oracle Corp.*, 254 P.3d 237, 242 (Cal. 2011)).

250. *Sullivan*, 254 P.3d at 246.

251. *See id.* at 243.

C. Public Policy Behind Maintaining Class Certification

Public policy perspectives also support the certification of the minor leaguer's classes. MLB sought class decertification because they would want to avoid a heavier financial impact from a class payout. However, class decertification would flatline the claims for many individual minor leaguers.

1. Why MLB Wants Class Decertification

MLB saves money by refusing to pay minor leaguers adequate salaries. Minor league team owners worry that if MLB has to pay minor leaguers more money, then the league could counter these costs by moving the burden to its minor league affiliates.²⁵² Accordingly, if the burden of these costs ultimately falls on the finances of the minor league, then some minor league teams may not survive.²⁵³ In the face of a class-action lawsuit, there is potential for a similar result. A class-action lawsuit would probably place a heavy financial burden on MLB's profits. A lawsuit of this caliber would ensure consistent relief for all members in the minor leaguers' class. With thousands of players in the *Senne* class, a certification creates a likelihood that MLB's finances would take a massive hit. Class certification strengthens the minor leaguers' leverage in settlement negotiations, as a class-action payout could reach over tens of millions of dollars.²⁵⁴ However, considering MLB is a multi-billion-dollar business, a class-action payout would not likely result in the complete demise of the association. On the other hand, class certification is crucial for many minor leaguers, as decertification may curtail their pursuit of a legal remedy.

2. Why Minor Leaguers Need Class Certification

Senne was filed to create a voice for the thousands of Minor Leaguers who were suppressed by MLB's inhumanely low wages.²⁵⁵ If the class is

252. See Grow, *supra* note 23, at 1024.

253. *Id.* at 1024–25.

254. See Charles Gibbs, Note, *Consumer Class Actions After AT&T v. Concepcion: Why the Federal Arbitration Act Should not be Used to Deny Effective Relief to Small-Value Claimants*, 2012 U. ILL. L. REV. 1345, 1365–67 (2012) (providing examples of multi-million-dollar class action payouts).

255. See generally *Senne v. Kansas City Royals Baseball Corp.*, 934 F.3d 918 (9th Cir. 2019).

decertified, this voice would be silenced. Decertifying the class would eliminate the opportunity for many players to receive any compensation because a player who is required to try his case on his own will likely not be able to afford quality legal representation against MLB, an entity with endless resources. Since MLB team owners pay the salaries of minor leaguers, they are incentivized to keep player's pay "low because minor leaguers do not directly contribute to the owners' main commercial products"—that is, the major league teams.²⁵⁶ *Senne* is minor leaguers' rare opportunity to fight against these harsh wage practices.

Ironically, MLB's position is that "being a Minor League Baseball player is not a career but a short-term seasonal apprenticeship in which the player either advances to the Major Leagues or pursues another career."²⁵⁷ Contrary to this definition, players can spend approximately four to six years in the minor leagues before even getting a chance to play in a major league game.²⁵⁸ Although minor leaguers contribute years of their lives to their respective organizations, MLB still refuses to pay them a respectable rate. In an age where career moves are common, these "short-term seasonal apprenticeship[s]" last longer than the working stints of professionals in other industries.²⁵⁹ This exploitation will only continue unless the minor leaguers find leverage through this class action lawsuit.

Unfortunately for the minor leaguers, they lost even more legal leverage moving forward. The Save America's Pastime Act largely eliminates MLB's future liability under the FLSA for their minor league pay practices.²⁶⁰ Minor leaguers were unable "to mount an effective, organized effort to" combat MLB's lobbying efforts to get the act passed.²⁶¹ By eliminating

256. McDowell, *supra* note 5, at 7.

257. *Major League Baseball Statement*, MAJOR LEAGUE BASEBALL (June 30, 2016), <https://www.mlb.com/press-release/major-league-baseball-statement-187167466> [<https://perma.cc/AK59-EXHD>].

258. Gaines, *supra* note 18.

259. *Major League Baseball Statement*, *supra* note 257; see *Employee Tenure Summary*, U.S. BUREAU OF LABOR STATISTICS (September 20, 2018, 10:00 AM), <https://www.bls.gov/news.release/tenure.t01.htm> [<https://perma.cc/PG8F-L7HD>] (stating that the median years of tenure with employers for men aged between 20–24 is less than two years, and for men aged between 25–34 is less than three-and-a-half years).

260. Grow, *supra* note 23, at 1038.

261. *Id.* at 1025.

legal risks rooted in the minor league business process, the Save America's Pastime Act undercuts a lot of the leverage the minor leaguers hoped to gain in *Senne*.²⁶² This statute makes it substantially less likely that minor leaguers will be able to influence MLB in modifying their pay practices. Therefore, proving MLB's liability through this class action lawsuit and recovering damages for past harm may be the only chance for these minor leaguers to be fairly compensated.

VI. CONCLUSION

Baseball is America's favorite pastime. However, the recently passed Save America's Pastime Act is hypocritical in its name because it excludes the one party that is most meaningful to the game: the players. *Senne v. Kansas City Royals Baseball Corporation* may be the first and last case of its kind due to this recent legislative act. The Ninth Circuit made the right decision in interpreting the choice-of-law principles broadly and keeping the class action together. The majority's broad application of *Sullivan* to the minor leaguers' circumstances avoids complications arising from the entanglement of state laws. The law of the state where work is done should apply because it is the most practical for the employer, the employee, and the overall judicial process. In addition to giving the minor leaguers a voice, a class action would also provide the best method in fairly and efficiently adjudicating this controversy. Decertifying the class would prove devastating to minor leaguers because many players are unable to afford pursuing their own individual cases due to the poor financial situations created by MLB. Accordingly, if a writ of certiorari were to be granted, the Supreme Court of the United States should affirm the Ninth Circuit's class certification and keep the voice of the minor leaguers alive.

262. *See id.* at 1038.