# CONGRESSIONAL BUDGET OFFICE
# COST ESTIMATE

September 23, 1997

## S. 53
## Curt Flood Act of 1997

*As ordered reported by the Senate Committee on the Judiciary on July 31, 1997*

S. 53 would remove major league baseball's current exemption from antitrust laws, except that it would retain the antitrust exemption for minor league baseball and for decisions regarding league expansion, franchise location, the amateur draft and broadcast rights, and employment relations with nonplayers, such as umpires. By removing the antitrust exemption under these limited circumstances, S. 53 would allow the players to challenge in federal court certain conduct by the team owners. Therefore, enacting S. 53 would impose additional costs on the U.S. court system to the extent that additional antitrust cases are filed. However, CBO does not expect any resulting increase in caseload or court costs to be significant.

Because enactment of S. 53 would not affect direct spending or receipts, pay-as-you-go procedures would not apply to the bill. S. 53 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA) and would impose no costs on state, local, or tribal governments.

S. 53 would impose a new private-sector mandate as defined in UMRA by applying the antitrust laws to the conduct of owners of major league baseball teams in employment relations with major league players. As a result, the owners would be prohibited from engaging in anticompetitive employment-related activities that are now permissible under their judicially-created exemption from the antitrust laws. Thus, if enacted, S. 53 would place owners of major league baseball teams in the same position as owners in the other major professional sports leagues by making their actions subject to judicial review. In most lawsuits alleging an antitrust violation, federal courts would review the conduct of owners under the "rule of reason" standard and examine the economic consequences of the action for its procompetitive and anticompetitive effects. Some conduct, such as collusion, would be *per se* violations of antitrust law. Owners found to be in violation would be subject to treble monetary damages.

If enacted, S. 53 would represent an explicit reversal by the Congress of a portion of baseball's 75-year old exemption from the antitrust laws created by the Supreme Court's decision in *Federal Baseball Club, Inc.* v. *National League of Professional Baseball Clubs*, 259 U.S. 200 (1922). In that case, the Court determined that baseball was not a business involved in interstate commerce and, therefore, was not subject to the antitrust laws, which prohibit anticompetitive behavior and unreasonable restraint of trade. In subsequent legal challenges to the ruling in *Federal Baseball*, the most noteworthy being *Flood* v. *Kuhn*, 407 U.S. 258 (1972), the Supreme Court acknowledged that its 1922 decision was flawed, yet it declined to overturn baseball's antitrust exemption on the grounds that this anomaly should be rectified by the Congress. Thus, the bill would impose a new legislatively-crafted enforceable duty on the business of baseball, which fits the definition of a private-sector mandate in UMRA.

CBO estimates that the direct cost, as defined in UMRA, of the private-sector mandate in S. 53 would not likely exceed the $100 million statutory threshold. Direct costs would be imposed on owners to the extent that they would have to employ counsel to defend their actions against antitrust suits from which they are now immune. Moreover, baseball operates under a collective bargaining agreement that runs through the 2000 season, and players have the option to extend the current agreement through the 2001 season. Under that agreement, players have recourse against owners who engage in collusion on the terms of player contracts and can recover treble damages through a process of binding arbitration. Consequently, S. 53 would probably impose no direct costs from 1998 through 2000 or 2001 because no antitrust suits would be initiated while the collective bargaining agreement is in effect. Costs in subsequent years are not likely to exceed the $100 million statutory threshold. CBO does not count possible monetary damages that may be assessed against owners for antitrust infractions a cost of complying with a private-sector mandate because CBO assumes that owners would comply with the law's prohibition against anticompetitive behavior.

The CBO staff contacts for this estimate are Susanne S. Mehlman (for federal costs), and Matt Eyles (for the private-sector impact). This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.