

PETITION FOR REINSTATEMENT OF PETE ROSE TO MAJOR LEAGUE BASEBALL AND FOR ELIGIBILITY TO THE NATIONAL BASEBALL HALL OF FAME

Peter Edward Rose respectfully petitions the Commissioner of Baseball, Robert D. Manfred, Jr., for reinstatement under Major League Rule 15(c). By voluntary agreement dated August 23, 1989 between Commissioner A. Bartlett Giamatti and Mr. Rose,¹ “Peter Edward Rose [was] ... declared permanently ineligible in accordance with Major League Rule 21 and placed on the Ineligible List.” As also stipulated by the parties, “Nothing in this Agreement shall deprive Peter Edward Rose of the rights under Major League Rule 15(c) to apply for reinstatement.”

Mr. Rose has previously applied for reinstatement, most recently in 2015 to Commissioner Manfred. As he has publicly expressed, Mr. Rose appreciates the time and effort that both Commissioner Selig and Commissioner Manfred devoted to reviewing and considering those petitions. Mr. Rose accepts the decisions issued in response to his prior petitions, and here he advances the new argument that his lifetime ban is disproportionate relative to other punishments imposed for serious violations that also undermined the integrity of the game. Mr. Rose requests that Commissioner Manfred consider this petition in light of recent rule violations by club officials, managers, and players who have severely impugned the integrity of the game of baseball. An in-person meeting with counsel present is requested.

By this petition, Mr. Rose asks the Commissioner to reconsider his status on the permanently ineligible list due to its disproportionate nature. Mr. Rose continues to express repentance for his acts in violation of Major League Rule 21. However, in recent years, intentional and covert acts by current and past owners, managers, coaches, and players altered the outcomes of numerous games, including the World Series, and illegally enhanced both team and player performance. It has never been suggested, let alone established, that any of Mr. Rose’s actions influenced the outcome of any game or the performance of any player. Yet for the thirty-first year and counting, he continues to suffer a punishment vastly disproportionate to those who have done just that. Given the manner in which Major League Baseball has treated

¹ A copy of this “Agreement and Resolution,” captioned as “In the Matter of: Peter Edward Rose, Manager Cincinnati Reds Baseball Club,” and issued by the Office of the Commissioner of Baseball, is attached to this Petition as Exhibit 1.

and continues to treat other egregious assaults on the integrity of the game, Mr. Rose's ongoing punishment is no longer justifiable as a proportional response to his transgressions. Nor is it in keeping with the goal of an equitable and uniform discipline policy across Major League Baseball. Proportionality in the administration of baseball rules, and in other aspects such as arbitration, is the guiding principle for determining fairness.

This petition includes an addendum addressing Mr. Rose's Eligibility for the National Baseball Hall of Fame. It is directed to Tim Mead, President of the National Baseball Hall of Fame. Commissioner Manfred's 2015 decision correctly noted that "the issue of whether Mr. Rose should be eligible for Hall of Fame election under the bylaws of that organization presents an entirely different policy determination that is focused on a range of considerations distinct from the more narrow question before me – i.e., whether I believe that Mr. Rose's reinstatement would be consonant with the policy rationale underlying Rule 21. Thus, any debate over Mr. Rose's eligibility for the Hall of Fame is one that must take place in a different forum."² Because the substance of this petition bears on Mr. Rose's eligibility for nomination to the Hall of Fame, it is incorporated accordingly.

REASONS FOR GRANTING THE PETITION

I. THE JUSTIFICATION FOR MR. ROSE'S INITIAL PENALTY IS NOT AT ISSUE TODAY

A lifetime ban from Major League Baseball represents the harshest possible penalty for rules violations. While severe, the penalty of permanently ineligible status imposed on Mr. Rose by his voluntary agreement with Commissioner Giamatti reflected a common sense appreciation of the gravity of his misconduct, confirmed by the text of Rule 21. The underlying policy is transparent and integral to the game: to ensure that the outcomes of all competitions and the character of player and management performance are solely the result of the abilities, intelligence, and work ethic of all participants, unaided by any other factors.

² Office of the Commissioner, *Decision of Commissioner Robert D. Manfred, Jr. Concerning the Application of Rose for Removal From The Permanently Ineligible List* (December 14, 2015) at 2, available at http://mlb.mlb.com/documents/8/4/6/159619846/Commissioner_s_Decision_on_Pete_Rose_Reinstatement_u35dqem0.pdf.

A manager or player gambling on baseball outcomes thus qualifies as a manifest threat to the integrity of the game. The background is well known. The 1919 Black Sox gambling scandal, in which players accepted money from a gambling syndicate and thereby directly affected the outcome of a World Series in pursuit of their own monetary gain, resulted in the promulgation of Rule 21. But the punishments determined and administered by Commissioner Kenesaw Mountain Landis were accomplished prior to and without necessity of any written rule, given the obvious endangerment to the integrity of the game from the players' deliberate actions to alter the outcomes of games by means external to their competitive abilities.

Mr. Rose does not dispute the severity of his violations. In a recent interview he stated as much, saying “[p]eople should know that I'm very sorry that I made the mistake that I did. ... If you want to look back, which you can, I should have admitted to him [Commissioner Giamatti] the first time he called me in the office in January of '89, but I didn't.”³ Whether Mr. Rose's punishment was justifiable and proportional in 1989 is not at issue in this petition.

The agreement between Commissioner Giamatti and Mr. Rose expressly contemplated the possibility of reconsideration and removal from the ineligible list under appropriate future circumstances. Thirty years later, those circumstances present themselves, and Mr. Rose's banishment from the game of baseball requires reconsideration in the context of Major League Baseball's subsequent treatment of proven attacks upon the integrity of the game.

II. RECENT EVENTS DEMONSTRATE THAT MAJOR LEAGUE BASEBALL'S STANDARD OF PROPORTIONAL DISCIPLINE FOR THREATS TO THE INTEGRITY OF THE GAME HAS EVOLVED

In 1989, Mr. Rose's misconduct could reasonably have been perceived as a uniquely egregious threat to the integrity of baseball, with the Black Sox as the only comparable historical analogy. But more recent misconduct has equally, or likely more egregiously, undermined the integrity of baseball and the fundamental fairness of the game. There has never been any allegation that Mr. Rose's misconduct was intended to gain a competitive advantage over other teams. It did not change results of plays or games to his personal benefit in terms of outcomes on the field. No game outcome or player or manager performance was ever affected.

³ ESPN Backstory: “Banned for Life*” episode (*aired* Jan 19, 2020).

When it comes to subsequent violations of Major League Baseball rules – namely steroid use and electronic sign stealing – this is clearly not the case. They have intentionally and dramatically affected the results of plays and games, including the outcomes of two consecutive World Series. These acts manifestly and deliberately violate the spirit and letter of the rules designed to protect the integrity of the game. Hallowed records have been rendered meaningless or incoherent by any objective metric. Hundreds of millions of dollars, likely far more, have gone to owners, management, and players that were the direct and proximate result of premeditated tampering with the most sacred rules of the game

The December 13, 2007 “Report to the Commissioner of Baseball of an Independent Investigation into the Illegal Use of Steroids and Other Performance Enhancing Substances by Players in Major League Baseball” (“Mitchell Report”), prepared by Senator George J. Mitchell, thus concluded that “[f]or more than a decade there has been widespread illegal use of anabolic steroids and other performance enhancing substances by players in Major League Baseball, in violation of federal law and baseball policy.”⁴ It added:

Club officials routinely have discussed the possibility of such substance use when evaluating players. Those who have illegally used these substances range from players whose major league careers were brief to potential members of the Baseball Hall of Fame.⁵

The seriousness of this “widespread”⁶ usage of illegal substances is, of course, tragic and indisputable. The Mitchell Report listed, among other reasons, its “threat to the integrity of baseball,” quoting Commissioner Giamatti’s following definition of “cheating” as “fit[ting]... precisely” the findings made:

...acts of cheating are intended to alter the very conditions of play to favor one person. ... They destroy faith in the games’ integrity and fairness; if participants and spectators alike

⁴ George J. Mitchell, *Report to the commissioner of Baseball of an Independent Investigation into the Illegal Use of Steroids and Other Performance Enhancing Substances by Players in Major League Baseball* (hereinafter “Mitchell Report”) (Dec 13, 2007) at SR-1, available at <http://files.mlb.com/mitchrpt.pdf>.

⁵ *Ibid.* The Mitchell Report quotes players’ estimates of between 20% and close to 50% of major league players using anabolic steroids between roughly 1988 and 1994, noting that “it is a fact that between 5 and 7 percent of the players who participated in an anonymous survey taken in 2003 tested positive for performance enhancing substances.” *Id.* at SR-2.

⁶ *Id.* at SR-35.

cannot assume integrity and fairness, and proceed from there, the contest cannot in its essence exist.⁷

In the wake of the Mitchell Report, Major League Baseball moved to strengthen penalties for future (not past) steroid use, ultimately enacting a collectively bargained Joint Drug Program in 2015 that remains in place today. This program calls for disciplinary action against players who test positive for performance enhancing substances: an 80-game suspension for a first violation, a 162-game suspension for a second violation, and a permanent suspension for a third violation, with the option to apply for discretionary reinstatement after two years.⁸ These penalties represent the outside limits on punishment. Factors such as influence on game outcomes or on personal achievement records are not considered. There is no sanction for knowledge or countenance of steroid usage by team management or officials.

Only one Major League player has ever tested positive for performance enhancing substances three times, resulting in the same penalty as Mr. Rose. Commissioner Manfred promptly reinstated that player after he had served two years on the permanently ineligible list.⁹

On January 13, 2020, Commissioner Manfred released a statement regarding an investigation and factual findings on allegations that the Houston Astros had engaged in electronic sign-stealing methods throughout 2017 and 2018, in violation of Major League Baseball rules. The factual findings could not have been more damning, determining that nearly all the Houston Astros players, as well as their Manager, Bench Coach, and other club employees, were aware of the sign-stealing scheme and actively participated to varying degrees. According to Commissioner Manfred, the investigation revealed:

Most of the position players on the 2017 team either received sign information from the banging scheme or participated in the scheme by helping to decode signs or bang on the trash can. Many of the players who were interviewed admitted that they knew the scheme was wrong because it crossed the line from what the player believed was fair competition and/or violated MLB rules.¹⁰

⁷ *Ibid.* (Quoting “Decision in the Appeal of Kevin Gross” in Giamatti, A. Bartlett, *A Great and Glorious Game: Baseball Writings of A. Bartlett Giamatti*. Kenneth Robson, ed., Algonquin Books of Chapel Hill, 1998, pp.72-73).

⁸ Major League Baseball’s Joint Drug Prevention and Treatment Program at 37-38, available at <http://www.mlb.com/pa/pdf/jda.pdf>.

⁹ Erin Fish, *MLB reinstates Mejia after PED Suspension* (July 6, 2018), available at <https://www.mlb.com/news/mlb-reinstates-pitcher-jenrry-mejia-c284514412>.

¹⁰ Statement of the Commissioner, *In re Houston Astros Decision* (hereinafter “Houston Astros Decision”) (January 13, 2020) at 5, available at

During that same 2017 season, Major League Baseball had already completed an investigation regarding the Red Sox's use of an Apple watch in the dugout to receive and transmit information about opponents' signs. In his summary of the investigation into the Astros, Commissioner Manfred wrote:

I issued a memorandum that same day to all Clubs reiterating the rules regarding the use of electronic equipment to steal signs, and putting all Clubs on notice that future violations would be taken extremely seriously by my office. I specifically stated in the memorandum that the General Manager and Field Manager of Clubs would be held accountable for any violations of the rules in the future. Thus, all Clubs were put on notice as of September 15, 2017 that any use of electronic equipment to steal signs would be dealt with more severely by my office.¹¹

Yet, despite that announcement, the Houston Astros organization deliberately continued to engage in direct and flagrant violation of the rules throughout their 2017 World Series Championship postseason and the 2018 season.¹² The Field Manager and General Manager, explicitly put on notice by Mr. Manfred's memo, received but one-year suspensions without pay, nowhere near the magnitude of the penalty received by Mr. Rose. Explaining his disciplinary decisions, Commissioner Manfred wrote:

[T]he Astros' violation of rules in 2017 and 2018 is attributable, in my view, to a failure by the leaders of the baseball operations department and the Field Manager to adequately manage the employees under their supervision, to establish a culture in which adherence to the rules is ingrained in the fabric of the organization, and to stop bad behavior as soon as it occurred.¹³

On his decision to discipline only the General Manager and Field Manager, Commissioner Manfred continued:

Assessing discipline of players for this type of conduct is both difficult and impractical. It is difficult because virtually all of the Astros' players had some involvement or knowledge of the scheme, and I am not in a position based on the investigative record to determine with any degree of certainty every player who should be held accountable, or

<https://img.mlbstatic.com/mlb-images/image/upload/mlb/cglrhmlrwwbkacty2717.pdf>.

¹¹ *Id.* at 3.

¹² In addition to the revelations regarding the Astros' use of electronic methods to decipher pitch signals in 2017 and 2018, an investigation is underway regarding similar rules violations by the Boston Red Sox organization throughout their 2018 championship season. The results of that investigation and any subsequent disciplinary decisions are still pending.

¹³ Houston Astros Decision at 4-5.

their relative degree of culpability. It is impractical given the large number of players involved, and the fact that many of those players now play for other Clubs.¹⁴

In other words, the scale of the violation in scope and magnitude served as basis for refusal to administer any additional punishments.

III. MAJOR LEAGUE BASEBALL HAS A LONGSTANDING PRACTICE OF ENFORCING PROPORTIONAL DISCIPLINE FOR ALL CLUBS, EXECUTIVES, MANAGERS, COACHES, AND PLAYERS IN RESPONSE TO THREATS TO THE INTEGRITY OF THE GAME

The game of baseball is about the equal treatment of all. That is why the steroids era and electronic sign-stealing scandals captured the attention of the baseball world, generating outrage from fans, players, and clubs alike.¹⁵ The actions undertaken during each of these scandals quite literally created unequal playing fields, undermining the belief and reality that the successes and failures of each Major League Baseball team are the result of a fair competition among talented and hard-working players on the field.

In Major League Baseball's pursuit of pure competition over the course of a 162 game season, there is a longstanding recognition that in baseball, as in life, proportionality underlies the principle of basic fairness. Consistent with this approach, throughout its history, Major League Baseball has attempted to enforce proportional discipline against any clubs, executives, managers, coaches, and players who have committed rules violations at any level of the game. The same policy specifically underlies arbitration practices.

Commissioner Giamatti made clear one rationale for Mr. Rose's lifetime ban was proportionality relative to the prior gambling scandals of the Black Sox era, writing "there had

¹⁴ *Id.* at 5.

¹⁵ *See, e.g.*, ESPN, *Survey: Fans want Astros players punished for sign-stealing scandal* (Jan 18, 2020) ESPN, available at https://www.espn.com/mlb/story/_/id/28507148/survey-fans-want-astros-players-punished-sign-stealing-scandal; Alden Gonzalez and Jesse Rogers, *MLB players, execs on sign-stealing scandal: Astros' tarnished rep, what they knew and more* (Jan 15, 2020) ESPN, available at https://www.espn.com/mlb/story/_/id/28484172/mlb-players-execs-sign-stealing-scandal-astros-tarnished-rep-knew-more; Jesse Rogers, *Dallas Keuchel apologizes for sign stealing, says ex-teammates should as well* (Jan 24, 2020) ESPN, available at https://www.espn.com/mlb/story/_/id/28556285/dallas-keuchel-apologizes-sign-stealing-says-ex-teammates-well.

not been such grave allegations since the time of Landis” as justification for the agreement of a lifetime ban he reached with Mr. Rose.¹⁶

Proportionality was also clearly directly behind the recommendations made by Senator Mitchell in his report on steroids, wherein he wrote:

I urge the Commissioner to forego [sic] imposing discipline on players for past violations of baseball’s rules on performance enhancing substances, including the players named in this report, except in those cases where he determines that the conduct is so serious that discipline is necessary to maintain the integrity of the game.¹⁷

Senator Mitchell continued, arguing that “[s]pending more months, or even years, in contentious disciplinary proceedings will keep everyone mired in the past.”¹⁸ In his opinion, the fact that the violations were distant in time, many players were no longer playing in Major League Baseball, and there were countless unknown steroid users who did not appear in his report at all, weighed in favor of the Commissioner moving forward without imposing discipline on any players.¹⁹ Mitchell clearly considered the proportionality of potential responses to a challenging time in the game. His recommendation of no punishments for players named in his report, which was ultimately followed by Commissioner Selig, reflected Mitchell’s understanding of the era and the need to move forward. In his own words, “I learned that letting go of the past and looking to the future is a very hard but necessary step toward dealing with an ongoing problem. That is what baseball now needs.”²⁰

Commissioner Manfred likewise explained his decision in the Astros sign-stealing scandal with proportionality in mind. On his decision regarding discipline of Astros players, he wrote, “I am not in a position based on the investigative record to determine with any degree of certainty every player who should be held accountable, or their relative degree of culpability.”²¹ Commissioner Manfred implicitly recognized that the principle of proportional discipline could not support the issuance of punishments to any of the players involved in the sign-stealing scheme.

¹⁶ Associated Press, *Pete Rose Banned for Life: Giamatti Says He Bet on Games; Appeal Possible in Year* (Aug 24, 1989) LA Times, available at <https://www.latimes.com/archives/la-xpm-1989-08-24-mn-1531-story.html>.

¹⁷ Mitchell Report at SR-33.

¹⁸ *Ibid.*

¹⁹ *Id.* at SR 33-34.

²⁰ *Id.* at SR-34.

²¹ Houston Astros Decision at 5.

The investigation into the Astros' practices identified a set of players that Commissioner Manfred knows beyond a doubt participated in the scheme. He could have chosen to punish those known players, but that would have been disproportionate toward that group, since the investigation clearly revealed that the scope of the sign stealing practices went far beyond only those known players. Countless additional unnamed players who committed the same offenses would not have been punished at all. By the same token, Commissioner Manfred could have punished every Astros player, but that would have resulted in unfair punishment for players who were in fact never involved, another disproportionate response. Ultimately, the Commissioner made a decision based on principles of fairness and proportionality to not discipline any of the offending players.

It is therefore beyond dispute that proportionality has long been the governing norm when Major League Baseball Commissioners have assessed discipline throughout the history of the game. That guiding principle has not changed, but Major League Baseball's reactions to potential threats to the integrity of the game have greatly evolved since Mr. Rose's conduct resulted in a lifetime ban from the game in 1989, and more particularly since his 2015 petition for reinstatement. As a result, the pattern of discipline for rules violations has reformed significantly, and recent Commissioners have set a clear precedent that serious violations of the rules no longer necessitate lifetime bans from the game of baseball.

These facts require an analysis of the proportionality of Mr. Rose's continued status as the only living former player on baseball's permanently ineligible list. In this petition, we apply the same principled analysis of proportionality used by past Commissioners, Senator Mitchell, and Commissioner Manfred to the case of Mr. Rose, and find that the time has clearly come to remove him from baseball's permanently ineligible list.

IV. THIS PETITION DOES NOT QUESTION OR DISPUTE ANY OF THE INTERNAL DISCIPLINE DECISIONS MADE BY MAJOR LEAGUE BASEBALL

By this petition, Mr. Rose raises no questions about, nor does he seek to dispute or challenge, any of the more recent internal disciplinary decisions made by Major League Baseball. The current Commissioner and other Major League Baseball Officials involved with

recent disciplinary actions have had to exercise their discretion and authority to address challenging circumstances in the game.

Mr. Rose also recognizes that many baseball commentators, fans, executives, managers, and players have called for steroid users and participants in the electronic sign-stealing scandal to be penalized more harshly.²² This logically presents the question why this petition seeks clemency for Mr. Rose rather than argues for harsher penalties for others.

It was clearly critical for the League to fully investigate and determine the scope and severity of rules violations during both the steroid era and the current electronic sign-stealing scandals. The pursuit of those investigations may well have given Major League Baseball good reason to immunize potential testimony from wrongdoers and make decisions to not prosecute past offenses or rules violations. The League's longstanding interest in maintaining proportional and fair discipline has also clearly informed recent decisions on appropriate penalties for various rules violations, and indicates that Major League Baseball feels confident that the game's current disciplinary standards are sufficient to uphold the integrity of the game.²³

As such, this petition takes all discipline imposed by Major League Baseball in past and present cases as justified. This means the only way to render more proportional penalties across

²² A recent ESPN poll found “Fifty-eight percent of adults responded that Astros players should have been penalized by MLB commissioner Rob Manfred,” and “the vast majority (72% of adults and 76% of MLB fans) said they would support MLB taking additional steps to punish players who were involved in sign stealing.” ESPN, *Survey: Fans want Astros players punished for sign-stealing scandal* (Jan 18, 2020) ESPN, available at https://www.espn.com/mlb/story/_/id/28507148/survey-fans-want-astros-players-punished-sign-stealing-scandal; Players and executives also offered their thoughts to ESPN, saying “‘It’s hard for me not to look at my own numbers against them and be pissed,’ a retired major league pitcher said. ‘Everyone involved deserves to be seriously punished because it’s wrong.’” and “‘It doesn’t seem like there are any consequences for players for doing this stuff, so as a result, why would they stop?’ one executive asked.” Alden Gonzalez and Jesse Rogers, *MLB players, execs on sign-stealing scandal: Astros’ tarnished rep, what they knew and more* (Jan 15, 2020) ESPN, available at https://www.espn.com/mlb/story/_/id/28484172/mlb-players-exec-s-sign-stealing-scandal-astros-tarnished-rep-knew-more.

²³ In a recent interview, Commissioner Manfred stated as much, saying that the punishment suffered by managers and general managers who have lost their jobs is the “kind of message that will serve as a deterrent to this behavior going forward.” Julia Limitone, *Exclusive: MLB commissioner says Red Sox World Series investigation still ongoing* FOX Business, available at <https://www.foxbusiness.com/sports/mlb-commissioner-red-sox-world-series-sign-stealing>.

the game is to reconsider Mr. Rose's lifetime ban from baseball. Mr. Rose's past discipline, which has clear ongoing effects on his life, must be considered in context of the current disciplinary practices implemented by Major League Baseball.

V. MR. ROSE'S LIFETIME BAN HAS BECOME A DISPROPORTIONATE PENALTY RELATIVE TO RECENT PENALTIES FOR HARMING THE INTEGRITY OF BASEBALL

The time has come to recognize that Mr. Rose's penalty has become grossly disproportionate relative to Major League Baseball's treatment of severe wrongdoing by ownership, management, and players. At a minimum, basic fairness and principles of equal punishment and consequence for equivalent violations mandates a grant of clemency to Mr. Rose – as governors and presidents do all the time when it becomes clear that criminals, however wrong their initial conduct was, end up serving penalties that are disproportionate to others who are similarly situated.

There cannot be one set of rules for Mr. Rose and another for everyone else. No objective standard or categorization of the rules violations committed by Mr. Rose can distinguish his violations from those that have incurred substantially less severe penalties from Major League Baseball.

A. PROPORTIONALITY OF PENALTIES FOR MORAL TURPITUDE

That Mr. Rose's violation is properly viewed as an act of moral turpitude does not differentiate it from actions by Major League Baseball managers and players throughout the history of the game. The following represent examples in addition to the transgressions just reviewed. Major League baseball has never punished other acts of moral turpitude with the severity reserved for involvement in illicit gambling, further highlighting the disproportionate nature of Mr. Rose's penalty.

It is well established that Adrian "Cap" Anson, an early star and manager with the Chicago White Stockings, inducted into the Hall of Fame in 1939, led a revolt in the late 19th century of white players, officials, and fans against black athletes in baseball.²⁴ In his highly regarded biography of perhaps Baseball's greatest performer and celebrated Hall of Famer, Ty

²⁴ Rampersad, Arnold, *Jackie Robinson: A Biography*. Alfred A. Knopf, 1997, p. 115.

Cobb, Al Stump described the man “[b]y inheritance, communality, and disposition, ... [as] a fixed racial bigot.”

The use of the ritual scurrility of “nigger” or “nigra” was employed in public by Cobb throughout his life. In his later years, even when black stars Jackie Robinson, Satchel Paige, and Larry Doby finally were admitted to the segregated major leagues after World War II, his attitude did not change; blacks did not belong on pro ball fields any more than in the white men’s parlor. Speaking to friends in private, he regularly dropped “coon,” “smoke,” “Sambo,” and “shine” into his discourse.²⁵

In the 1980s, some Major League Baseball players were called to testify regarding their purchases of cocaine from a Philadelphia Phillies clubhouse caterer. Multiple players were involved in the wide-reaching scandal, though none were ultimately suspended, with the Commissioner opting to waive their suspensions after receiving commitments from the players regarding community service and ongoing drug testing.²⁶

In August, 2015, Major League Baseball announced a new Domestic Violence Policy, imposing discipline on players who had perpetrated abuse against their significant others. In the years since, numerous players have received disciplinary suspensions ranging from zero to 100 games. Several have returned to play pivotal roles in recent World Series championship seasons. Prior to 2015, MLB did not have a domestic violence policy in place at all, and players and managers accused of domestic violence faced neither suspensions from the game, nor investigations.

These acts of virulent racism, using and dealing cocaine, and perpetrating domestic violence comprise actions of moral turpitude as, if not more, serious than the actions of Mr. Rose. Yet, while today Major League Baseball may condemn racism, recreational drug use, and domestic violence, Ty Cobb remains a Hall of Famer, the players involved in the cocaine scandal were never suspended, and domestic violence perpetrators have received a maximum suspension of 100 games, with perpetrators prior to 2015 facing no consequences at all. As such, Mr. Rose’s

²⁵ Stump, Al, *Cobb*. Algonquin Books of Chapel Hill, 1996, pp. 72-73. Anson and Cobb were hardly alone among Hall of Famers. According to Hall of Fame sportswriter Fred Lieb, Rogers Hornsby and Tris Speaker were self-admitted members of the Ku Klux Klan. Lieb, Fred, *Baseball As I have Known It*. Penguin Group, 1980, p. 54.

²⁶ Hal Bodley, *Ueberroth took action in 1986 cocaine scandal*, USA Today (March, 4, 2004), available at

https://usatoday30.usatoday.com/sports/baseball/columnist/bodley/2004-03-04-bodley_x.htm.

ongoing ban over three decades cannot be viewed as a proportional response based on Major League Baseball's historical and present treatment of actions of moral turpitude.

B. PROPORTIONALITY OF PENALTIES FOR KNOWLEDGE OF THE OFFENSE AS SERIOUS AND AGAINST BASEBALL'S RULES

Nor can prior knowledge of an offense as a serious violation of Major League Baseball rules distinguish Mr. Rose's misconduct from that subsequently committed by team officials and players around the league. Mr. Rose fully acknowledges that he knew gambling on the game of baseball was against the rules. A sign was posted in every clubhouse reminding players and coaches of Rule 21 and the consequences for its violation. Yet, clubs and players involved in subsequent scandals affecting the integrity of the game received clear notice prior to their violations that their actions were against the rules as well.

Commissioner Manfred's September 15, 2017 memo stating, "that any use of electronic equipment to steal signs would be dealt with more severely by my office"²⁷ is an equally clear statement to team officials, managers, and players that this type of behavior was a significant rules violation, akin to the Rule 21 sign posted in clubhouses around the league. The Astros continued to violate this rule despite clear direction from the Commissioner warning of the severity of future offenses.²⁸

Like gambling and electronic sign stealing, steroid use is also explicitly barred by Major League Baseball rules, as the players using steroids, and teams unofficially sanctioning their use throughout the era were undoubtedly aware. As early as 1991, in a memo sent to all clubs, Commissioner Fay Vincent clarified that the use of performance-enhancing drugs was a violation of Major League Baseball rules, writing, "[t]his prohibition applies to all illegal drugs and controlled substances, including steroids or prescription drugs for which the individual in

²⁷ Houston Astros Decision at 3.

²⁸ Reports have indicated that the Boston Red Sox organization also continued to violate the rules regarding the use of electronic devices to decipher opponents' signs. A full investigation into their practices is currently underway. Julia Limitone, *Exclusive: MLB commissioner says Red Sox World Series investigation still ongoing* FOX Business, available at <https://www.foxbusiness.com/sports/mlb-commissioner-red-sox-world-series-sign-stealing>.

possession of the drug does not have a prescription.”²⁹ In the introduction to his memo, Commissioner Vincent highlighted the clear and present threat posed to the integrity of the game by performance-enhancing drugs, writing:

No less compelling, however, is the need to maintain the integrity of the game. Drug involvement or the suspicion of drug involvement is inconsistent with maintaining these objectives.³⁰

In the earliest years of the steroid era, teams and their employees were on clear notice that the use of steroids or other performance-enhancing drugs would be considered a serious violation of the integrity of the game, yet those violations continued unabated and with minimal discipline imposed by the League for decades. Mr. Rose’s lifetime ban is clearly not proportional to the more lenient recent penalties for acts committed in flagrant violation of well-known rules of baseball.

C. PROPORTIONALITY OF PENALTIES FOR HARM TO THE INTEGRITY OF THE GAME OF BASEBALL

Commissioner Manfred’s response to Mr. Rose’s 2015 petition for reinstatement focused on risks to the integrity of the game as his principal concern and rationale for denying the request.

“Under the Major League Constitution, my only concern has to be the protection of the integrity of play on the field through appropriate enforcement of the Major League Rules... Indeed, in considering Mr. Rose’s application for reinstatement, I, as Commissioner of Baseball, must determine the risk that Mr. Rose will impact the integrity of the game.”³¹

Mr. Rose does not dispute this finding. He has publicly and repeatedly expressed remorse for the consequences of his misconduct.

Given the scope and detrimental impacts of both the steroid era and the electronic sign-stealing schemes detailed in Section II above, it is no less evident that there are similarly

²⁹ Office of the Commissioner of Baseball, *Fay Vincent Memo re: Baseball’s Drug Policy and Prevention Program* (June 7, 1991) at 2, available at <http://www.steroidsinbaseball.net/assets/memo.pdf>.

³⁰ *Id.* at 1.

³¹ Office of the Commissioner, *Decision of Commissioner Robert D. Manfred, Jr. Concerning the Application of Rose for Removal From The Permanently Ineligible List* (December 14, 2015) at 3.

significant risks that the clubs, managers, coaches, and players involved in those scandals threaten the future integrity of the game.

In assessing the appropriate punishments for those acts, Major League Baseball did not determine that a lifetime ban for any of the involved parties was necessary to safeguard the integrity of the game. There exists no reasonable basis to conclude that the nearly 80-year-old Mr. Rose today poses a greater threat to the integrity of the game than active club executives, managers, coaches, and players who have knowingly engaged in rules violations to gain a competitive advantage and thus impact outcomes of Major League Baseball games over the course of the past three decades.

D. PROPORTIONALITY OF PENALTIES FOR EFFECT ON THE OUTCOMES OF PLAYS, GAMES, AND RECORDS

As noted, a critically important distinction between Mr. Rose's transgressions against the game of baseball and analogous scandals throughout history is the actual impact of those actions on in-game results, the outcomes of games, and even World Series championships. In this area, the actions of Mr. Rose are favorably distinguishable from other violations of Major League Baseball rules.

Mr. Rose has long maintained that he never bet against his team. His actions were wrong and against the rules. They greatly harmed the reputation of the game of baseball. But no evidence has ever been presented that his off-the-field gambling impacted the outcome of a game or season.

In contrast, the 2017 and 2018 World Series champions have both explicitly been linked to electronic sign-stealing schemes. Players on opposing teams and observers have expressed that there is clear evidence the cheating conducted in violation of baseball's rules by the Astros and Red Sox led to changes in the outcomes of games, perhaps determining the outcomes of two consecutive World Series.

Veteran catcher Stephen Vogt said, "When you'd go to Houston, it always seemed like they were on pitches ... As a catcher, when you see your pitcher execute a perfect slider down in the zone with two strikes and someone doesn't even flinch at it, you start to get alarm bells going

off in your head.”³² According to the New York Times, “[f]rom 1910 through 2016, only two teams — the 1948 Yankees and the 1995 Cleveland Indians — led the majors in slugging percentage while also recording the fewest strikeouts. The Astros did it in both 2017 and 2019.”³³ The advantage conferred by knowing what pitch was coming has led to historic seasons for the Astros in recent years, which fans will forever view with suspicion due to the club’s now exposed practice of illegal electronic sign stealing.

Likewise, it is well known that the players who took steroids, and owners, executives, coaches, and managers who looked the other way, did so with knowledge, and indeed the goal of gaining the competitive advantage that performance-enhancing drugs confer. The Mitchell Report named dozens of players, including many superstars of the era, as known or suspected users of performance enhancing drugs.³⁴ It also indicted club officials for taking no action, despite widespread knowledge that the record setting years seen throughout the game in the 1990’s and early 2000’s were inexorably tainted by steroid use.

A fair and rational assessment of threats to the integrity of the game and proportional penalties for those acts must consider the impacts of rules violations on the outcomes of actual games. By this measure, compared to the actions of Mr. Rose, many of the subsequent scandals occurring during the years in which he has been exiled equally, or perhaps even more so, undermine the integrity of baseball and the fairness of the game. Yet the penalty received by Mr. Rose for his actions has already been far more significant than any penalty received for violations in the years since.

VI. A FAIR AND PROPORTIONAL SYSTEM OF JUSTICE AND DISCIPLINE WITHIN MAJOR LEAGUE BASEBALL IS ESSENTIAL TO UPHOLDING THE INTEGRITY OF THE GAME

Once Major League Baseball assumes responsibility for punishing rule violations and transgressors, the sport’s own integrity demands that it do so rationally and even-handedly. If

³² Tyler Kepner, *The Rise and Sudden Fall of the Houston Astros* (Jan. 18, 2020) NY Times, available at <https://www.nytimes.com/2020/01/18/sports/houston-astros-cheating.html?smid=nytcore-ios-share>.

³³ *Ibid.*

³⁴ See Mitchell Report at SR-18. The Report states: “Some of those named are prominent, including winners of significant post-season awards. Many played in the World Series or in All-Star games.”

Major League Baseball continues to punish in some cases and not others, or give out differential punishments for similar conduct, its ethical standing will become compromised. Penalty discrepancies not only harm the individuals whom they affect, but they also contribute to a perception of the institution as inconsistent and possibly discriminatory.

If the steroid era and the electronic sign-stealing scandal have taught the Major League Baseball community anything, it is that the sport can expect new and evolving tests of the game's integrity for years to come. Resolving unjustifiable punishment differentials will be critical for the long-term integrity of baseball itself, and will be of great value when the time arrives for future Commissioners to protect the game for generations. If baseball believes its current approach to discipline for all those involved in the game is proportional and fair in relation to current circumstances in the game, Mr. Rose must be removed from the permanently ineligible list.

Mr. Rose knows better than any current or former baseball player alive today that no person is above the game. His current request for reinstatement reflects his deep desire to ensure that he can devote his remaining years to teaching the next generation of baseball players the lasting consequences for harming the integrity of America's pastime. In his own words, "[j]ust to take baseball out of my heart penalized me more than you could imagine. ... You could tell I loved the game the way I played the game. So, then you take that away from somebody, you know. I'm able to hide it, you know, on the outside but it's ate me up inside, for all those years."³⁵ Should he be removed from the permanently ineligible list today, Mr. Rose would still have spent more than 30 years exiled from the game of baseball, a far higher price for his actions than any other violation of baseball's rules, no matter how egregious, has generated since. Mr. Rose's continuing status on the permanently ineligible list is clearly no longer a proportional penalty relative to how the League treats serious threats to the integrity of the game, and for the foregoing reasons, Mr. Rose requests that his petition for reinstatement to the game of baseball be granted.

Should Commissioner Manfred wish to meet with Mr. Rose and discuss this petition further, Mr. Rose would be grateful and appreciative for the opportunity.

³⁵ ESPN Backstory: "Banned for Life*" episode (*aired* Jan 19, 2020).

ELIGIBILITY OF PETE ROSE FOR THE NATIONAL BASEBALL HALL OF FAME

Mr. Rose respectfully requests that National Baseball Hall of Fame President Tim Mead review and consider the foregoing arguments made in support of his petition for reinstatement insofar as they pertain to his eligibility for the National Baseball Hall of Fame.

As articulated in his petition, Mr. Rose's status on the permanently ineligible list is a vastly disproportionate penalty compared to those received by others who have violated baseball's rules and regulations. The disproportionate penalty Mr. Rose continues to serve has resulted in a complete ban on his consideration for the Baseball Hall of Fame, per Rule 3(E) of the The Baseball Writers' Association of America Rules for Hall of Fame Election, stating, "Any player on Baseball's ineligible list shall not be an eligible candidate."³⁶ For all other baseball rules violations, the perpetrators remain eligible for the Hall of Fame and the voters determine the merits of their case for induction, taking into consideration to whatever degree they choose transgressions by otherwise eligible candidates. But for Mr. Rose, his violations have uniquely resulted in a complete and total ban from Hall of Fame consideration for his lifetime and beyond.³⁷

Mr. Rose does not dispute that Hall of Fame voters can and should consider past violations of Major League Baseball rules and regulations when selecting Hall of Fame inductees, especially as those violations relate to the integrity of the game. Indeed, recent Hall of Fame voting indicates that the voters take violations that impacted the outcomes of games or individual performance particularly seriously. No known or suspected steroid users have yet reached the threshold of 75% of votes needed for induction, despite many of those players appearing on the Hall of Fame Ballot for nearly a decade or more.

³⁶ BBWAA Election Rules, National Baseball Hall of Fame, *available at* <https://baseballhall.org/hall-of-famers/rules/bbwaa-rules-for-election>.

³⁷ "Any player on Major League Baseball's ineligible list will not be considered for induction into the Baseball Hall of Fame, even after the banned individual's death, a hall spokesman told ESPN on Saturday." Don Van Natta, *Hall of Fame says deceased players on MLB's ineligible list won't be on ballots* (Jan 18, 2020) ESPN, *available at* https://www.espn.com/mlb/story/_/id/28509763/hall-fame-says-deceased-players-mlb-ineligible-list-ballots.

It is also indisputable that the rosters of the 2017 and 2018 Houston Astros were full of talented players, many of whom will likely merit future consideration for the Hall of Fame. When that time comes, as is true for players linked to steroid use, Hall of Fame voters will ultimately be given the chance to consider and analyze the performance of players on the field in context of the rules violations that may have contributed to their great success.

The voters have never had that chance with respect to Mr. Rose. In fact, Hall of Fame voters are currently able to consider all living former Major League Baseball players for induction, except Mr. Rose.

The Hall enshrines players based on their outstanding contributions to the game of baseball on the field. Mr. Rose's accolades and accomplishments on the field of play are indisputable, as are his sins off the field. Yet it has never been established that the conduct resulting in Mr. Rose's ban impacted a single play or game throughout his long career, in stark contrast to the actions of many players who are currently, or will one day be, considered by the Hall of Fame voters.

Hall of Fame voters are trusted to make decisions regarding players suspected of steroid use, and they will be afforded the opportunity to consider players known to have illegally used electronic methods to steal and decipher signs to the benefit of their performance. They should likewise be given the opportunity to consider and weigh Mr. Rose's contributions to baseball history and decide whether he should be enshrined in Cooperstown.

In light of the arguments made here and throughout this petition regarding Mr. Rose's disproportionate penalty of a lifetime ban from the game of baseball when compared to current discipline enacted in response to threats to the integrity of the game of baseball, Mr. Rose requests that Mr. Mead take action to remove Rule 3(E) of the The Baseball Writers' Association of America Rules for Election.³⁸

Mr. Rose knows no outcome is guaranteed should he become eligible for election to the Baseball Hall of Fame. He seeks only to be fairly considered alongside his peers for his long career in the game of baseball.

³⁸ BBWAA Election Rules, National Baseball Hall of Fame, *available at* <https://baseballhall.org/hall-of-famers/rules/bbwaa-rules-for-election>.

Dated: February 5, 2020

Respectfully Submitted,

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[†] Mr. Rosenbaum thanks William Lacker for his contributions to the drafting of this Petition for Reinstatement.

Exhibit 1

OFFICE OF THE COMMISSIONER
OF BASEBALL
350 PARK AVENUE
NEW YORK, NEW YORK

In the Matter of:)

Peter Edward Rose, Manager,)
Cincinnati Reds Baseball Club)

AGREEMENT AND RESOLUTION

On March 6, 1989, the Commissioner of Baseball instituted an investigation of Peter Edward Rose, the field manager of the Cincinnati Reds Baseball Club, concerning allegations that Peter Edward Rose engaged in conduct not in the best interests of baseball in violation of Major League Rule 21, including but not limited to betting on Major League Baseball games in connection with which he had a duty to perform.

The Commissioner engaged a special counsel to conduct a full, fair and confidential inquiry of the allegations against Peter Edward Rose. Peter Edward Rose was given notice of the allegations and he and his counsel were generally apprised of the nature and progress of the investigation. During the inquiry, Peter Edward Rose produced documents, gave handwriting exemplars and responded to questions under oath upon oral deposition. During the deposition, the special counsel revealed key evidence gathered in the inquiry to Peter Edward Rose and his counsel.

On May 9, 1989, the special counsel provided a 225-page report, accompanied by seven volumes of exhibits, to the Commissioner. On May 11, 1989, the Commissioner provided a copy of the Report and exhibits to Peter Edward Rose and his counsel, and scheduled a hearing on May 25, 1989 to give Peter Edward Rose an opportunity to respond formally to the information in the report. Peter Edward Rose received, read and is aware of the contents of the Report. On May 19, 1989, Peter Edward Rose requested, and subsequently received, an extension of the hearing date until June 26, 1989. Peter Edward Rose acknowledges that the Commissioner has treated him fairly in this Agreement and has acted in good faith throughout the course of the investigation and proceedings.

Peter Edward Rose will conclude these proceedings before the Commissioner without a hearing and the Commissioner will not make any formal findings or determinations on any matter including without limitation the allegation that Peter Edward Rose bet on any Major League Baseball game. The Commissioner has determined that the best interests of Baseball are served by a resolution of this matter on the following agreed upon terms and conditions:

1. Peter Edward Rose recognizes, agrees and submits to the sole and exclusive jurisdiction of the Commissioner:

- A. To investigate, either upon complaint or upon his own initiative, any act, transaction or practice charged, alleged or suspected to be not in the best interests of the national game of Baseball; and

B. To determine, after investigation, what preventive, remedial or punitive action is appropriate in the premises, and to take such action as the case may be.

2. Counsel for Peter Edward Rose, upon his authority, have executed a Stipulation dismissing with prejudice the civil action that was originally filed in the Court of Common Pleas, Hamilton County, Ohio, captioned Peter Edward Rose v.

A. Bartlett Giamatti, No. A8905178, and subsequently removed to the United States District Court from the Southern District of Ohio, Eastern Division, Docket No. C-2-89-577.

3. Peter Edward Rose will not avail himself of the opportunity to participate in a hearing concerning the allegations against him, or otherwise offer any defense to those allegations.

4. Peter Edward Rose acknowledges that the Commissioner has a factual basis to impose the penalty provided herein, and hereby accepts the penalty imposed on him by the Commissioner and agrees not to challenge that penalty in court or otherwise. He also agrees he will not institute any legal proceedings of any nature against the Commissioner or any of his representatives, either Major League or any Major League Club.

5. The Commissioner recognizes and agrees that it is in the best interests of the national game of Baseball that this matter be resolved pursuant to his sole and exclusive authority under the Major League Agreement.

THEREFORE, the Commissioner, recognizing the benefits to Baseball from a resolution of this matter, orders and directs that Peter Edward Rose be subject to the following disciplinary sanctions, and Peter Edward Rose, recognizing the sole and exclusive authority of the Commissioner and that it is in his interest to resolve this matter without further proceedings, agrees to accept the following disciplinary sanctions imposed by the Commissioner:

a. Peter Edward Rose is hereby declared permanently ineligible in accordance with Major League Rule 21 and placed on the Ineligible List.

b. Nothing in this Agreement shall deprive Peter Edward Rose of the rights under Major League Rule 15(c) to apply for reinstatement. Peter Edward Rose agrees not to challenge, appeal or otherwise contest the decision of, or the procedure employed by, the Commissioner or any future Commissioner in the evaluation of any application for reinstatement.

c. Nothing in this agreement shall be deemed either an admission or a denial by Peter Edward Rose of the allegation that he bet on any Major League Baseball game.

Neither the Commissioner nor Peter Edward Rose shall be prevented by this agreement from making any public statement relating to this matter so long as no such public statement contradicts the terms of this agreement and resolution.

This document contains the entire agreement of the parties and represents the entire resolution of the matter of Peter Edward Rose before the Commissioner.

Agreed to and resolved this 23rd day of August 1989,

Peter Edward Rose
Peter Edward Rose

A. Bartlett Giamatti
A. Bartlett Giamatti

Commissioner of Baseball

Witnessed by:

Reuven J. Katz
Reuven J. Katz, Esquire
Katz, Teller, Brant & Hild

Witnessed by:

William J. ...