No. 25-199

In the Supreme Court of the United States

DANIEL CONCEPCION, *et al.*,

Petitioners,

v.

OFFICE OF THE COMMISSIONER OF BASEBALL, DBA MLB, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

BRIEF *AMICI CURIAE* OF CANGREJEROS DE SANTURCE BASEBALL CLUB LLC, SANTURCE MERCHANDISING LLC, AND THOMAS J. AXON SUPPORTING NEITHER PARTY

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STATEMENT OF INTEREST AND SUMMARY OF ARGUMENT*

Amici curiae—Cangrejeros de Santurce Baseball Club LLC, Santurce Merchandising LLC, and Thomas J. Axon—are the former investor-operators of a team in Puerto Rico's top professional baseball league, Liga de Béisbol Profesional de Puerto Rico, which we refer to as the Puerto Rico League. They also are the plaintiffs in *Cangrejeros de Santurce Baseball Club, LLC v. Liga de Béisbol Profesional de Puerto Rico*, 146 F.4th 1 (1st Cir. 2025), decided July 21, 2025.

Amici's lawsuit presses federal antitrust claims against the Puerto Rico League and its other teams. The complaint alleges that the defendants engaged in an unlawful conspiracy to boycott and remove amici from ownership of the Cangrejeros de Santurce baseball team, which is based in Santurce, the largest barrio of San Juan. In any other context, these claims easily would have survived a motion to dismiss. But the First Circuit affirmed the dismissal of the claims for a single reason: They involve professional baseball and are, in the court's view, therefore barred by the so-called baseball antitrust exemption. See *Cangrejeros*, 146 F.4th at 12, 19.

The baseball exemption is an anomaly of federal antitrust law, and it is long past time to overturn it. The Court has never articulated a common-law justification for the exemption, nor one grounded in the Sherman Act's rule of reason. The exemption assuredly has no basis in the text

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* Counsel for amici affirm that they timely notified counsel of record for all parties of their intent to file this brief. No counsel for any party authored this brief in whole or in part. No party, counsel for a party, or third party made a monetary contribution intended to fund the preparation or submission of this brief.

of the Sherman Act, either. Rather, its genesis is *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs*, 259 U.S. 200 (1922), decided at the height of the *Lochner* era—a time when the Court routinely invalidated economic regulations in favor of its own notion of appropriate public policy. Matching that description to a tee, *Federal Baseball* held that baseball is a wholly intrastate activity, and thus it may not be federally regulated under the Commerce Clause at all. That line of reasoning has long since been repudiated. See *Wickard v. Filburn*, 317 U.S. 111 (1942).

When the baseball exemption next came before the Court in *Toolson v. New York Yankees*, 346 U.S. 356 (1953) (per curiam), the Court reached the puzzling conclusion that it was *Congress* who wished the business of baseball to escape the antitrust laws, despite that there is no textual (or even contextual) hint of that fact in the Sherman Act. The Court thus backtracked just four years later in *Radovich v. NFL*, 352 U.S. 445 (1957), in which the NFL asked the Court to extend the exemption to professional football. There, the Court explained that if it were "considering the question of baseball for the first time upon a clean slate," it "would have no doubts" that the baseball exemption is unjustified on its own terms. *Id.* at 452. For that reason, the Court declined to extend the exemption from professional baseball to professional football, even while upholding the exemption for baseball. As the Court noted at the time, the result is "inconsistent" and "illogical," amounting to an "unrealistic" interpretation of congressional intent. *Id.*

Yet in *Flood v. Kuhn*, 407 U.S. 258 (1972), the Court again reaffirmed the exemption on *stare decisis* grounds, even while acknowledging that the reasoning underlying *Federal Baseball* had been abandoned.

Today, only *stare decisis* is left to explain the baseball exemption. That is not enough. "[*S*]*tare decisis* is not an inexorable command," and in "the area of antitrust law" especially, the Court must be open to "recognizing and adapting to changed circumstances and the lessons of accumulated experience." *State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997) (cleaned up). Appreciating that "Congress expected the courts to give shape to the [Sherman Act's] broad mandate by drawing on common-law tradition," the Court often has "reconsidered its decisions construing the Sherman Act when the theoretical underpinnings of those decisions are called into serious question." *Id.* at 20-21 (cleaned up).

If the baseball exemption's theoretical underpinnings were dubious from the start, they are entirely nonexistent today. Unlike in 1922, baseball is now a major-league moneymaker, generating billions in annual revenues for massive corporations. For that reason among others, Congress in 1998 overturned the exemption's application to the only conduct at issue in *Toolson* and *Flood*: conduct relating to or affecting "employment of major league baseball players." See 15 U.S.C. § 26b(a). More recently, this Court questioned the exemption's continuing viability in *NCAA v. Alston*, 594 U.S. 69 (2021), a unanimous decision that called the antitrust "exemption for professional baseball" "aberrational." *Id.* at 95. Against that background, the time has come for the Court to overrule the baseball exemption once and for all.

As explained in the petition, the exemption lacks any rational footing in the law, and the traditional reasons for adhering to precedent are absent. Yet while amici agree that the first question presented thus warrants the Court's attention, they are skeptical that this case is a suitable vehicle for answering it. Petitioners concede that they failed to object to the magistrate judge's report and recommendation under 28 U.S.C. § 636(b)(1)(C). See Pet.

8. The court of appeals accordingly dismissed their appeal summarily, without taking plenary merits briefing. See Pet. App. 4a. The first two questions posed in the petition are therefore presented only "abstractly," given that they are "irrelevant to the ultimate outcome" of the appeal—likely rendering the case an unsuitable vehicle for review. See Stephen M. Shapiro, et al., *Supreme Court Practice* 249 (10th ed. 2013).

Amici's forthcoming certiorari petition—which we intend to file in fewer than three weeks—also will present the question whether the baseball exemption should be overruled. But unlike in this case, the First Circuit in *Cangrejeros* addressed the merits of the issue, not only reaffirming the exemption in a published opinion but also extending it to a new context not involving Major League Baseball. And amici's case does not implicate any waiver questions or any other practical impediments to further review. It is therefore a clean opportunity for the Court to reconsider the baseball exemption.

Ultimately, amici take no position on whether the Court should grant review in this case. If the Court denies the petition here, it should do so knowing that the first question posed here will be presented again in a matter of weeks. Or if it grants the petition, it should grant review in *Cangrejeros* at the same time, to ensure that there are no practical obstacles to the Court's resolution of all aspects of the first question. Regardless of which path the Court takes, the point remains the same: The Court should grant review of the first question presented in an appropriate case.

ARGUMENT

Amici submit this brief to emphasize two brief points: *First*, the Court should revisit and overturn the judicially-created baseball antitrust exemption in an appropriate case. *Second*, and regardless of whether it grants or denies

the petition here, the Court should be aware of the forthcoming petition in *Cangrejeros*, which presents a clean vehicle for doing so.

A. The Court should overturn the baseball exemption

1. The exemption lacks legal justification

Unlike every other professional sport and virtually every other business, professional baseball enjoys an "aberrational" immunity from the antitrust laws—one that is entirely judicially created. *Flood*, 407 U.S. at 282. Under this exemption, MLB and—following the First Circuit's *Cangrejeros* decision—all other professional baseball leagues are free to engage in openly anti-competitive conduct, demonstrably harming consumers and the public at large without fear of criminal liability or the treble-damages civil liability that all other sports leagues and industries would face.

Not surprisingly, the exemption's origins were questionable from the start. The Court held that federal antitrust laws do not apply to "the business * * * of base ball" (*Federal Baseball*, 259 U.S. at 208) based on a narrow view of interstate commerce that, although comfortably at home in the *Lochner* era, was discarded two decades later (*Wickard*, 317 U.S. at 127-129).

Although the legal foundation for *Federal Baseball* already had been abrogated by the 1950s, the Court nonetheless upheld the decision in *Toolson*, "without [even a] re-examination of the underlying issues." 346 U.S. at 357. The Court held simply that "the business of baseball" is not "within the scope of federal antitrust laws" under *Federal Baseball*, period. *Id.*

Another 23 years later, the Court revisited the exemption in *Flood*. While recognizing that the exemption was an "anomaly" and "aberration," the Court declared that, in the absence of congressional action, the exemption was

"entitled to the benefit of *stare decisis.*" *Flood*, 407 U.S. at 282 (citation omitted). It gave no other justification for continuing the exemption.

Although the Court has declined to reexamine the baseball exemption in the years since, commentators (including Members of the Court) have not practiced the same restraint. As Justice Alito explained in the *Journal of Supreme Court History*:

> *Federal Baseball* has been pilloried pretty consistently in the legal literature since at least the 1940s. Commentators have called it: baseball's most infamous opinion; a clearly wrong decision based on a curious and narrow misreading of the antitrust laws and/or an utter misunderstanding of the nature of the business of baseball; a remarkably myopic decision, almost willfully ignorant of the nature of baseball; and a simple and simplistic decision that forms a source of embarrassment for scholars of Holmes.

Hon. Samuel A. Alito, Jr., *The Origin of the Baseball Antitrust Exemption: Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*, 34 J. SUPREME COURT HISTORY 183, 185 (2009) (cleaned up). More recently in *Alston*, the Court indicated its continuing discomfort with the baseball exemption, repeating "criticisms of the decision as unrealistic and inconsistent and aberrational." 594 U.S. at 95 (cleaned up).

The exemption is indeed all of those things: Neither the Court nor any commentator has been able to offer any explanation for the exemption grounded in the Sherman Act's common-law backdrop or its rule of reason. "One commentator speculated that the Court simply exempted baseball from the antitrust laws because it was the national pastime." Alito, *supra*, at 185. Whatever the case, "[t]he orderly way to temper [the Sherman] Act's

policy of competition is by legislation and not by court decision." *Alston*, 594 U.S. at 96 (cleaned up). That alone is reason finally to reevaluate the exemption.

2. Baseball is big business, and league tactics are facially anticompetitive

Changed factual circumstances since the Court's last word on the subject confirm yet further that it is past time to overrule the baseball exemption. When the Court issued its decision in *Flood*, the going price for an MLB baseball club was around $12.6 million. Michael J. Haupert, *The Economic History of Major League Baseball*, ECONOMIC HISTORY ASSOCIATION, Table 3, perma.cc/-PJ4T-T9WT. Adjusted for inflation, that would be about $75 million today. But the value today of an average MLB club is more than 35 times greater: over $2.6 *billion*. See Justin Teitelbaum & Brett Knight, *Baseball's Most Valuable Teams 2025*, FORBES (Mar. 26, 2025), perma.cc/-YM5L-ZC9W. There has been commensurate growth in MLB's league-wide revenues. In 2024, they were over $12 billion—a 33% increase from 2014 alone. Maury Brown, *MLB Revenues Hit Record $12.1 Billion in 2024*, FORBES (Jan. 27, 2025), bit.ly/467O6Lt. Simply put, baseball is not just America's national pastime—first and foremost, it is "big business." *MLB v. Butterworth*, 181 F. Supp. 2d 1316, 1319 (N.D. Fla. 2001).

With an anomalous antitrust exemption in the hands of such "big business," both MLB and the Puerto Rico League unsurprisingly have put it to use, employing flagrantly anticompetitive tactics to protect their market positions in ways that no one else could. They have used, for example:

- restraints on franchise relocation;
- unilateral reductions to the number of major and minor league teams;

- restrictions on non-player employees; and
- mergers and acquisitions of competing leagues.

See Marc Edelman & John T. Holden, *Baseball's Anti-competitive Antitrust Exemption*, 65 BOSTON COLLEGE L. REV. 1695 (2024).

And in *Cangrejeros*, the exemption permitted the Puerto Rico League and its franchises to conspire (successfully) to oust an investor-operator of a competing team, without any federal antitrust scrutiny. See 146 F.4th at 15-16. In no other context would these tactics remotely be permissible. And the results have been predictable: higher prices and lower-quality services, harming players and fans alike.

B. The lower courts are applying the exemption in highly variable ways

Reevaluation of the baseball exemption is especially warranted because its scope and application has divided the federal circuits and state high courts. While some courts have interpreted the exemption narrowly, others have applied it broadly so that it insulates any anti-competitive conduct related to any professional baseball league. Without guidance from this Court, courts will continue to apply the exemption inconsistently to cases presenting similar facts. The exemption regrettably has "become whatever the reviewing court says it is." Joseph J. McMahon, Jr. & John P. Rossi, *A History and Analysis of Baseball's Three Antitrust Exemptions*, 2 VILLANOVA SPORTS & ENTERTAINMENT L.J. 213, 243 (1995). The Department of Justice's Antitrust Division recently identified the continued "disagreement on the scope of the exemption" among lower courts. See Brief for the United States as Amicus Curiae at 7, *Nostalgic Partners, LLC v. Office of the Commissioner Baseball*, No. 22-2859 (2d. Cir. Jan. 30, 2023), ECF 63.

For example, some courts have articulated a narrow reading of the exemption, interpreting it to insulate from antitrust scrutiny only the specific tactic that was at issue in *Toolson* and *Flood*: MLB's "reserve system," which at that time permitted each team to retain its players at the team's sole option, in perpetuity. See *Butterworth v. National League of Professional Baseball Clubs*, 644 So. 2d 1021, 1024 (Fla. 1994); *Piazza v. MLB*, 831 F. Supp. 420, 440-441 (E.D. Pa. 1993) (similar). Because the reserve clause is no longer in use, the baseball exemption is essentially a dead letter in Florida state courts. On that reasoning, the Florida Supreme Court in *Butterworth* declined to apply the exemption to a dispute concerning the sale and relocation of a franchise.

Other courts have reached the opposite conclusion concerning relocation decisions. In *Minnesota Twins Partnership v. State*, 592 N.W.2d 847 (Minn. 1999), for example, the Minnesota Supreme Court read *Toolson* and *Flood* more broadly, "conclud[ing] that the sale and relocation of a baseball franchise * * * falls within the exemption." *Id.* at 852-856. The Ninth Circuit reached the same result in *City of San Jose v. Office of the Commissioner of Baseball*, 776 F.3d 686 (9th Cir. 2015), where it held that any conduct that is "central to" the business of baseball is covered by the exemption. Applying that test, it rejected the plaintiffs' franchise relocation challenge because relocation decisions are "central to" the business of baseball. *Id.* at 690.

Other circuits have interpreted the exemption more broadly still, as covering nearly any conduct touching professional baseball in any way. For example, the Seventh Circuit exempted the Chicago Cubs' attempt to fix the prices for seating on rooftops adjacent to Wrigley Field on the grounds that adjacent rooftop pricing was "part and parcel of * * * providing public baseball games for profit." *Right Field Rooftops, LLC v. Chicago Cubs Baseball Club*,

870 F.3d 682, 689 (7th Cir. 2017) (citation omitted). But that decision conflicts with the Eleventh Circuit's decision in *MLB v. Crist*, 331 F.3d 1177 (11th Cir. 2003), where the court applied the "central to" test to hold that the exemption does *not* "immunize the dealings between professional baseball clubs and third parties." *Id.* at 1183. It likely also conflicts with the First Circuit's decision in amici's case, where the court held that the exemption does not extend to conduct lacking a "direct on-the-field impact." *Cangrejeros*, 146 F.4th at 16.

The lower courts' various interpretations of the exemption have produced a mishmash of conflicting substantive tests that are generating variable results on analytically similar facts. Even if the question whether the exemption should be discarded were not independently worthy of review (it surely is), the widespread disagreements over its implementation would warrant the Court's attention in their own right.

C. The petition in *Cangrejeros* will be an ideal vehicle for revisiting the exemption

Amici's petition in *Cangrejeros*, which we anticipate filing the first week of October, will be a clean vehicle for revisiting *Federal Baseball*, *Toolson*, and *Flood*. If not for the First Circuit's reaffirmation (and expansion) of the exemption, amici's federal antitrust claims would have survived the defendants' motion to dismiss. See *Cangrejeros de Santurce Baseball Club, LLC v. Liga de Béisbol Profesional de Puerto Rico*, 680 F. Supp. 3d 107, 111 (D.P.R. 2023) ("Following the direction of the Supreme Court's baseball exemption, this Court allows the Defendants' motions to dismiss."). Indeed, the federal antitrust claims were the only claims the dismissals of which the First Circuit affirmed, and the basis for its decision was the baseball exemption alone. See *Cangrejeros*, 146 F.4th at 19. Thus, the exemption's scope and validity are the

only issues that will be presented in amici's forthcoming petition, which will be presented free of any complications related to waiver or alternative holdings.

The *Cangrejeros* case also exemplifies the division among the lower courts. The First Circuit in *Cangrejeros* was the first court in more than 100 years since *Federal Baseball* to apply the exemption to a league other than MLB or its affiliates or predecessors. The First Circuit openly acknowledged that "[n]o other case has ever broadly interpreted the exemption to apply to entities not part of MLB." *Cangrejeros*, 146 F.4th at 12.

Amici's case also raises important issues concerning the conduct covered by the exemption. The First Circuit held that the exemption insulated the Puerto Rico League from scrutiny for ousting amici from the League because they were attempting to increase competition among teams for players and fans. See *id.* at 15-16. For example, amici attempted to improve their standing with fans and players by commissioning a documentary film about the team, offering higher salaries to players, and proposing a preseason exhibition tournament. *Id.* at 7. They also attempted to repair the team's dilapidated stadium at an estimated cost of $2 million. *Id.* But the League and other team owners were threatened by these efforts and thus engaged in a scheme to seize amici's franchise and boot them from the League. *Id.* at 8. The First Circuit held that the exemption applies to this game-adjacent conduct.

The League and the other teams' antitrust conspiracy targeting amici is a classic restraint of trade in violation of the Sherman Act. But because the district court and court of appeals held that the arbitrary, judge-made baseball exemption applies here, the conduct was insulated from federal antitrust scrutiny. That decision warrants plenary review by this Court, either in parallel with the current case or on its own.

CONCLUSION

If the Court grants review here, it should grant review in *Cangrejeros* as well and consider the cases together. Or if it denies review here, it should revisit and overturn the baseball exemption in *Cangrejeros* alone.

Respectfully submitted.

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