

IN THE  
**Supreme Court of the United States**

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DANIEL CONCEPCION, *et al.*,

*Petitioners,*

*v.*

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

*Respondents.*

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ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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**PETITIONERS' SUPPLEMENTAL  
BRIEF IN SUPPORT OF THEIR  
PETITION FOR A WRIT OF CERTIORARI**

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## INTRODUCTION

Pursuant to Supreme Court Rule 15.8, Petitioners, Daniel Concepcion, Aldemar Burgos, and Sidney Duprey Conde (collectively “Concepcion Petitioners”), individually and on behalf of the class they represent, file this Supplemental Brief to call to the Court’s attention the intervening matter of the September 18, 2025 Amicus Brief filed in this case by Amicus Curiae Cangrejeros de Santurce Baseball Club LLC, Santurce Merchandising LLC, and Thomas J. Axon (collectively “the amici”), basically arguing support for granting the Concepcion Petitioners’ Petition for Writ of Certiorari but further requesting that the amici’s “forthcoming” petition for writ of certiorari be consolidated with the Concepcion Petition because the amici will also be making the same argument in its petition for writ of certiorari as Concepcion’s Petition makes, i.e., that the Concepcion Petitioners’ Petition for Writ of Certiorari and their “forthcoming” petition for certiorari should both be granted so that this Court can abrogate its 103-year-old mistaken decision in *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs* 259 U.S. 200 (1922) and its progeny, creating a “business of baseball” exemption from the federal anti-trust laws.

However, in a not too subtle “alternative”, the amici suggest that if the Court denies the Concepcion Petitioners’ Petition for Writ of Certiorari, it should do so without prejudice to granting the amici’s “forthcoming” petition because the amici’s not yet filed “forthcoming” petition for writ of certiorari will be a “cleaner” petition, unencumbered by any possible “waiver” argument that could possibly prevent the Court from granting certiorari to decide the issue of whether the “business of baseball” antitrust exemption should be abrogated.

While the amici’s argument – that the Concepcion Petitioners’ Petition for Writ of Certiorari should be granted in order to abrogate this Court’s judicially created “business of baseball” antitrust exemption – is correct, their insinuation that their “forthcoming” petition for writ of certiorari, should be granted possibly *in lieu of* the Concepcion Petition, is incorrect<sup>1</sup>.

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1. The amici’s suggestion that the Concepcion Petitioners’ Petition for Writ of Certiorari might not be a “clean” case because of a supposed 28 U.S.C. §636 “waiver” is incorrect. The Concepcion Petitioners preserved their antitrust claims by arguing at length before the magistrate judge that the “business of baseball” exemption was invalid and that they would ultimately be seeking Supreme Court review to abrogate it since the District Court (and the First Circuit) had no authority to overturn binding Supreme Court precedent regarding the “business of baseball” antitrust exemption. The magistrate judge acknowledged that neither he nor the First Circuit had authority to overturn this Court’s “business of baseball” antitrust exemption and that only this Court could overturn those decisions, citing and quoting *Hohn v. United States* 524 U. S. 236, 252-253 (1998). (Appendix, p. 32a) The Concepcion Petitioners made the same argument regarding the futility of objecting to the magistrate’s decision to the First Circuit in Concepcion’s appeal which the First Circuit incorrectly rejected, despite later acknowledging in the amici’s case that it could not overturn binding Supreme Court precedent. *Cangrejeros De Santurce Baseball Club, LLC; Santurce Merchandising LLC; Thomas J. Axon, v. Liga De Béisbol Profesional De Puerto Rico, Inc.* 146 F.4th 1, 14 (1st Cir. 2025). Failing to make a futile objection to a magistrate judge’s refusal to overturn a Supreme Court precedent is not a waiver of the right to petition this Court to abrogate its precedent (*Lorin Corp. v. Goto & Co.* 700 F.2d. 1202, 1206 (8th Cir. 1983); *Thomas v. Arn* 474 U. S. 140, 155-156 (1985)) See also the Concepcion Petitioners’ Petition for Writ of Certiorari herein at pp. 29-31. Failure to make a futile objection to a magistrate’s refusal to overturn a Supreme Court decision is not an impediment to the propriety and necessity of this Court granting the Concepcion Petitioners’ Petition for Writ of Certiorari

The amici claim they will be making the same arguments in support of abrogating the “business of baseball” antitrust exemption as the Concepcion Petitioners. But they did not make those arguments in their First Circuit appeal in *Cangrejeros De Santurce Baseball Club, LLC; Santurce Merchandising LLC; Thomas J. Axon, v. Liga De Béisbol Profesional De Puerto Rico, Inc.* 146 F.4th 1, 11 (1st Cir. 2025).

In the amici’s case, unlike Concepcion, they did not assert that this Court’s broad “business of baseball” antitrust exemption should be abrogated. Instead, they argued that the broad business of baseball antitrust exemption did not apply to them because there was no claim that Major League Baseball (“MLB”) or its affiliates violated the federal antitrust laws and that the exemption should not apply to a situation where the club owners of a non-MLB-affiliated league conspired to deprive an owner of membership of his non-MLB-affiliated team in the non-MLB-affiliated league. Nonetheless, the First Circuit held that the amici’s claim was barred by the “business of baseball” antitrust exemption because it was an antitrust claim by an owner of a professional baseball team. Thus, the amici tried to nibble at the edges of the “business of baseball” exemption without directly challenging the entire “business of baseball” exemption. In contrast, the Concepcion Petitioners’ Petition for Certiorari *does* seek to abrogate the entire “business of baseball” exemption, which has been affirmatively applied to bar antitrust claims for every aspect of professional baseball, including,

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to correct its “business of baseball” antitrust exemption decision. Indeed, this is the only and last chance for this Court to correct that decision and provide relief for the thousands of minor leaguers who, without a grant of certiorari, will be denied their antitrust remedies for MLB’s wage fixing antitrust violations.

most importantly, the persons most adversely affected by the “business of baseball” antitrust exemption – the minor league baseball players who have been deprived, for 103 years, of their rights to receive competitive, non-wage fixed compensation (*National Collegiate Athletic Association v. Alston* 594 U. S. 69, 95, 110 (2021)) simply because of the aberrant “business of baseball” antitrust exemption created by this Court. (See Concepcion Petition for Certiorari, pp. 9 through 23.)

The Concepcion Petition presents the most appropriate, compelling case for review and abrogation by this Court of its “business of baseball” antitrust exemption holdings in *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs* 259 U.S. 200 (1922), in *Toolson v. N.Y. Yankees, Inc.* 346 U.S. 356 (1953) and in *Flood v. Kuhn* 407 U.S. 258 (1972)

### **THE CURT FLOOD ACT**

The Concepcion Petitioners’ Petition for Writ of Certiorari also presents the best and *only* case for review of the unconstitutionality of the Curt Flood Act [15 U.S.C. §26(b)] which provides antitrust law protection to Major League baseball players, but not to Minor League baseball players, in violation of their equal protection rights. That unconstitutional equal protection issue was not raised and decided in the amici’s case and cannot be raised for the first time in the amici’s petition for writ of certiorari.

### **REQUEST FOR CONTINUANCE OF SEPTEMBER 29, 2025 COURT CONFERENCE**

On September 3, 2025, MLB filed a waiver of its right to file an opposition to the Concepcion Petitioners’ Petition for Writ of Certiorari in this case. In light of MLB’s waiver,



this Petition for Writ of Certiorari was distributed on September 10, 2025, to the Court for its consideration at its September 29, 2025 Court Conference, pursuant to Supreme Court Rule 15.5.

However, on September 18, 2025, the amici filed their amicus brief in this case. That amicus brief was an “intervening matter” which occurred after the Concepcion Petitioners filed their Petition for Writ of Certiorari, and thus required the Concepcion Petitioners to file this Supplemental Brief in order to apprise the Court of their position regarding the amici’s suggestion that the Concepcion Petitioners’ Petition for Writ of Certiorari and the amici’s prospective petition for writ of certiorari should be consolidated for certiorari consideration, or in the “alternative”, that only the amici’s petition should be granted as presenting a “cleaner” case for certiorari review. As set forth above and in the amici’s amicus brief, the amici indicated that their “forthcoming” petition would seek only a limited abrogation of the “business of baseball” antitrust exemption and may not seek abrogation of the antitrust exception as to MLB’s wage-fixing of Minor League baseball players’ compensation. The Concepcion Petitioners seek to have this Court abrogate the “business of baseball” antitrust exemption in its entirety, including abrogating the antitrust exemption for MLB’s wage fixing of Minor League baseball players’ compensation.

Therefore, the Concepcion Petitioners file this Supplemental Brief to make the Court aware that the Concepcion Petitioners are not averse to the Court granting certiorari in both Concepcion’s case and the amici’s case and considering them together. However, even if the Court does not consolidate consideration of both petitions, it should grant the Concepcion Petition, which presents the better and more complete, once and for all,

case for the needed abrogation of the entire “business of baseball” antitrust exception.

As set forth in the accompanying application, the Concepcion Petitioners hereby request that the Court extend the time to consider their Petition for Writ of Certiorari beyond the September 29, 2025 Court Conference to the following October 10, 2025 Court Conference, in order to give the Court sufficient time and opportunity to fully consider this Supplemental Brief. *Evans v. Atlantic Richfield Co.* (1976) 429 U.S. 1334, 1335

### CONCLUSION

The Concepcion Petitioners’ Petition for Writ of Certiorari should be granted, either alone, or in consolidation with the amici’s “forthcoming” petition for writ of certiorari.

Respectfully submitted,

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