

Nos. 16-283 & 16-413

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

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SCOTT GILCHRIST AND THE ESTATE OF  
CARLTON CHESTER “COOKIE” GILCHRIST,  
*Petitioners,*

v.

NATIONAL FOOTBALL LEAGUE AND  
NFL PROPERTIES, LLC,  
*Respondents,*

v.

KEVIN TURNER AND SHAWN WOODEN, ET AL.,  
*Respondents,*

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RAYMOND ARMSTRONG, ET AL.,  
*Petitioners,*

v.

NATIONAL FOOTBALL LEAGUE AND  
NFL PROPERTIES, LLC,  
*Respondents,*

v.

KEVIN TURNER AND SHAWN WOODEN, ET AL.,  
*Respondents.*

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

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**SUPPLEMENTAL BRIEF**

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Respondents file a supplemental brief to address factual misrepresentations presented for the first time in Petitioners' Reply Briefs. Those briefs misrepresent both the cause of death of class representative Kevin Turner and the implications of that death under the settlement. According to Gilchrist, the settlement somehow turned on the fact that Turner had "ALS, not CTE," when he "actually had CTE." Gilchrist Reply Br. at 1. Similarly, Armstrong claims that "recent developments" support certiorari: "Although Mr. Turner was thought to have ALS when this settlement was negotiated, researchers at Boston University's CTE Center announced earlier this month that he actually had CTE." Armstrong Reply Br. at 5. The brief thus suggests that, given the supposed diagnosis of CTE, Turner did not have ALS, and "[p]erhaps this development will affect the compensation provided to his survivors . . . ." *Id.*

Such surmise provides no basis for certiorari and is irresponsibly false. Both briefs repeat an initial mischaracterization of a press report by Dr. Ann McKee of Boston University's Brain CTE Center,<sup>1</sup> which indicated that an autopsy revealed that Turner had CTE. For Petitioners, the circumstances of Turner's death, nowhere presented below, is now a basis for certiorari. Worse yet, this claim is then the basis for Petitioners to disparage the settlement on Twitter and in the press,<sup>2</sup> and now in this Court.

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<sup>1</sup> Dr. McKee was among the experts whose scientific work was considered by the district court and the Third Circuit also recognized it. *See, e.g.*, PA 46a, 152a-157a, 209a.

<sup>2</sup> *See* [https://www.washingtonpost.com/news/early-lead/wp/2016/11/03/former-nfl-player-kevin-turners-death-caused-by-cte-not-als/?tid=sm\\_tw\\_ps](https://www.washingtonpost.com/news/early-lead/wp/2016/11/03/former-nfl-player-kevin-turners-death-caused-by-cte-not-als/?tid=sm_tw_ps), posted early on November 4, 2016, at <https://>

The reality is otherwise. As reported in the press,<sup>3</sup> Dr. McKee issued a clarification that Turner *did* have ALS and that his CTE may have been a contributing factor in the development of that disease.<sup>4</sup> Dr. McKee stated that “she did not mean to suggest that Turner and other deceased athletes . . . had been misdiagnosed by their clinicians . . . .”<sup>5</sup>

Counsel for the Armstrong Petitioners did not correct his public misrepresentations, and both reply briefs mislead this Court on the same issue.<sup>6</sup> The possibility of a finding of CTE upon Mr. Turner’s death is something that both courts below squarely considered.<sup>7</sup>

The settlement was premised on providing remedies to retired NFL players who faced certain identifiable conditions without awaiting death and a CTE diagnosis. The only reason that Kevin Turner has not

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[twitter.com/deepakguptalaw?lang=en](https://twitter.com/deepakguptalaw?lang=en); <http://www.sportsbusinessdaily.com/Daily/Closing-Bell/2016/11/03/NFL-legal.aspx>.

<sup>3</sup> See, e.g., *CBS Sports*: “**Correction:** Boston University clarifies in a statement that Kevin Turner did in fact die of ALS, but CTE was the cause of him getting the disease.” <http://www.cbssports.com/nfl/news/former-patriot-ctes-caused-him-to-develop-als/>.

<sup>4</sup> “*BU researcher clarifies, but stands by findings in Kevin Turner case,*” <https://www.bostonglobe.com/sports/football/2016/11/04/researcher-clarifies-but-stands-findings-kevin-turner-case/luRMtMu9Awq84NkBAGpvEJ/story.html>.

<sup>5</sup> *Id.*

<sup>6</sup> Further, Armstrong, for the first time on reply, ties this to a discovery dispute in a state court insurance coverage matter that has no bearing on the present case. Armstrong Reply Br. at 6.

<sup>7</sup> See, e.g., PA 25a, PA 25a n.8 (“all players are at risk of CTE”), and PA 102a-103a.

recovered is that objectors, who could have opted out, have tied up this case on meritless appeals.

Respectfully submitted,

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