



## MEMORANDUM

TO: Zygmunt Wilf  
Chairman and Owner

Mark Wilf  
President and Owner

FROM: Donald S. Prophete

DATE: July 18, 2014

RE: Employment Analysis of Chris Kluwe Investigation

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Please find below our evaluation and analysis of Mr. Kluwe's allegations against the Minnesota Vikings.

### **I. INTRODUCTION**

The Minnesota Vikings Football, LLC ("Vikings" or "team") retained Robins, Kaplan, Miller & Ciresi L.L.P. ("RKMC" or the "Investigators") on or about January 2, 2014, to conduct an independent investigation into the allegations raised by former Vikings punter Christopher Kluwe ("Kluwe") against members of the Vikings coaching staff and management. The Vikings directed RKMC to investigate this matter objectively and without "any purpose to prosecute, defend, or implicate in wrongdoing any entity or person." It is my understanding that the investigation was completed satisfactorily by the attorneys at RKMC.

### **II. BACKGROUND**

By way of brief background, Kluwe was a punter for the Vikings from 2005 until his release on May 6, 2013. Kluwe remained the Vikings starting punter through the end of the 2012 season. On May 6, 2013, the Vikings released Kluwe with one year remaining on his

contract. Kluwe claims that the Vikings released him for activism in support of marriage equality in Minnesota. Kluwe alleged that: (1) Special Teams Coordinator Mike Priefer made homophobic comments during the 2012 season, (2) efforts were made by the Vikings organization to discourage him from continuing to publicly support marriage equality, even after receiving express support for his activities from Vikings' Owner Zygi Wilf, and (3) the Vikings released him because of his public stance although he remained "a good punter."

Kluwe further alleges that his relationship with Priefer began to sour during the 2012 season after he made his support of marriage equality known through various conversations with Priefer and other members of the team. Kluwe ultimately alleges that his release from the Vikings in May 2013, for ostensible "performance-related" reasons was a subterfuge to hide Priefer's, and potentially others', retaliation against him.

General Manager Rick Spielman reported that while he sought input from members of the scouting and special teams departments and from Head Coach Leslie Frazier, the ultimate decision to release Kluwe was his. Ownership had no involvement in the decision. Kluwe's support of marriage equality and other activism played no part in the decision to release him. It was purely a football decision. The findings, discussed below, support this conclusion.

As part of its investigation, RKMC interviewed numerous members of the Vikings' staff and management, in addition to other related parties. RKMC also reviewed more than 121GB of electronic data and paper documents from Vikings employees, consultants, and former employees. To ensure reliability of its investigation, RKMC conducted all of its interviews in conjunction with former Federal Bureau of Investigation Special Agents from WayPoint Inc. The following individuals were interviewed:

<b>NAME</b>	<b>RELATIONSHIP TO VIKINGS (TITLE)</b>	<b>INTERVIEW DATE(S)</b>
Anderson, Jeff	Executive Director of Communications	1-7-14
Bagley, Lester	Former Vice President of Public Affairs/Stadium Development (now Executive Vice President – Public Affairs & Stadium Development)	1-10-14
Brzezinski, Rob	Former Vice President of Football Operations (now Executive Vice President – Football Operations)	1-7-14
Frazier, Kieron	Associate Counsel	1-7-14
Frazier, Leslie	Former Vikings Head Football Coach (and current Tampa Bay Buccaneers Defensive Coordinator)	6-13-14
Hagan, Bob	Director of Public Relations	1-7-14
Huizinga, Trish	Executive Assistant to Owners and Lester Bagley	1-13-14
Kanavy, Tom	Former Vikings Strength and Conditioning Coach	4-17-14
Kluwe, Chris	Former Vikings Punter	1-24-14 5-5-14
Kuhn, Scott	Pro Scout	4-28-14
Larson, Lisa	Director of Human Resources	1-7-14
Levine, Lisa	Public Relations Consultant to the Vikings	5-1-14
Loeffler, Cullen	Long Snapper	4-23-14
Longwell, Ryan	Former Vikings Kicker	4-16-14
McLaurin, Aaron	Former Vikings Assistant Strength and Conditioning Coach (currently with the New York Jets)	5-9-2014
Monnens, Ryan	Director of Pro Scouting	4-28-14

<b>NAME</b>	<b>RELATIONSHIP TO VIKINGS (TITLE)</b>	<b>INTERVIEW DATE(S)</b>
Paton, George	Assistant General Manager	4-28-14
Patterson, Don	Player Development consultant to the Vikings	5-1-14
Pico, Les	Executive Director of Player Development/Legal	2-5-14 5-6-14
Priefer, Mike	Special Teams Coordinator	1-6-14 5-13-14 6-5-14
Redmond, Mary	Assistant to the Head Coach	1-7-14
Robinson, Jeff	Pro Scout	4-28-14
Spielman, Rick	Former General Manager (now Executive Vice President & General Manager)	1-13-14
Streight, Martin	Former Vikings Assistant Strength and Conditioning Coach	5-22-14
Tabor, Chris	Cleveland Browns Special Teams Coordinator	7-16-14
Walsh, Blair	Kicker	4-14-14
Warren, Kevin	Vice President of Legal Affairs & Chief Administrative Officer (now Executive Vice President – Legal Affairs & Chief Administrative Officer)	2-6-14 5-23-14
West, Tom	Assistant Director of Public Relations	1-7-14
White, Chris	Former Vikings Assistant Special Teams Coach (currently University of Iowa Coach)	1-14-14
Wilf, Mark	Vikings President & Owner	5-9-14
Wilf, Zygi	Vikings Chairman & Owner	5-9-14

### **III. PURPOSE OF OUR ENGAGEMENT**

You have asked us to review RKMC's investigative materials that you provided and to provide you with an assessment of the investigation's findings from an employment law perspective, to help the Vikings decide how to address Kluwe's claims fairly and in accordance with the law and team policies. You have directed us to be non-partisan in our assessment of the evidence uncovered by the Investigators.

In light of Kluwe's allegations, we believe there are four critical questions that we must answer to determine how the Vikings should proceed in response to Kluwe's claims. They are:

1. Did Special Teams Coordinator Mike Priefer make homophobic comments during the 2012 season?
2. Did members of the Vikings' coaching staff or management improperly try to discourage Kluwe from his activism in favor of marriage equality and LGBT rights?
3. Did Kluwe's activism on behalf of marriage equality and equal rights motivate the Vikings' decision to release him from the team in May 2013?
4. Were there institutional failures in the Vikings organization that harbored or created a hostile work environment on the basis of sexual orientation?

We address each of the above questions in our analysis below.

#### **IV. ANALYSIS OF THE RKMC INVESTIGATION**

##### **A. Did Special Teams Coach Mike Priefer Make Homophobic Comments**

##### **During the 2012 Season?**

##### **1. Kluwe's Primary Claims**

Kluwe published an article on January 2, 2014, on DEADSPIN titled “I Was An NFL Player Until I Was Fired By Two Cowards And A Bigot” claiming that the Vikings released him because of his public support of marriage equality. In the article, Kluwe makes several specific allegations concerning his performance and potential reasons for his discharge, which are addressed below.

In the article, Kluwe chronicles the events leading to his release in May 2013 from the Vikings. Kluwe alleges specifically that (1) Special Teams Coach Mike Priefer made homophobic comments during the 2012 season, (2) Head Coach Leslie Frazier (“Frazier”) and General Manager Rick Spielman participated in efforts to discourage him from continuing to publicly support marriage equality, despite having received express support for his activities from Vikings’ Owner Zygi Wilf, and (3) the Vikings released him because of his public stance although he remained “a good punter.”

According to Kluwe, around September 7 or 8, 2012, his relationship with Priefer began to change after DEADSPIN published a letter Kluwe wrote to Maryland delegate Emmett C. Burns, Jr., in which Kluwe aggressively criticized Burns’ anti-marriage equality stance. In the letter, Kluwe stated to Burns that supporting marriage equality “won’t magically turn you into a lustful cockmonster.” Kluwe later said that the extensive publication and reporting of his views caused his relationship with Priefer to progressively deteriorate during 2012 and into 2013.

Specifically, throughout the months of September to November 2012, Kluwe alleges both during his interviews and in various publications that Priefer made the following homophobic statements:<sup>1</sup>

- “We should round up all the gays, send them to an island, and then nuke it until it glows” near the end of November 2012;
- Asked whether he [Kluwe] had written any letters defending “the gays” recently;
- Denounced as disgusting the idea that two men would kiss;
- Constantly belittled or demeaned any idea of acceptance or tolerance of gay rights;
- Stated on multiple occasions that [Kluwe] would wind up burning in hell with the gays, and that the only truth was Jesus Christ and the Bible;
- “You’ll burn in hell with the gays”;
- “Jesus Christ is the only salvation”;
- “The Bible is the only book that’s right . . . it doesn’t matter what else you read”;
- “Two men kissing, that’s disgusting” and “that’s just gross”;
- Used the word “fag” once or twice; and
- Made comments about “homosexual sex” and “gay parades.”

According to Kluwe, many of these remarks occurred during the Vikings’ specialist meetings, which were usually attended by Priefer, Kluwe, Long Snapper Cullen Loeffler, Kicker Blair Walsh, and sometimes Assistant Special Teams Coach Chris White. Kluwe reported that Priefer made between one or two derogatory comments in specialist meetings a week, depending on how outspoken Kluwe had been at the time.

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<sup>1</sup> The substance of Kluwe’s claims were evinced from interviews with RKMC and from the various publications in which Kluwe was either interviewed or specifically penned the article.

## **2. Priefer's Response to Kluwe's Claims**

In his first of three interviews<sup>2</sup> on January 6, 2014, Priefer denied making any inappropriate statements about gay individuals or marriage equality. He categorically denied saying, "We should round up all the gays, send them to an island, and then nuke it until it glows" during a special teams meeting.

Similarly, no other members of the special teams coaching staff or the special teams players, other than Loeffler, supported Kluwe's claim that Priefer made the above statement.<sup>3</sup> Teammates, such as Walsh, said that it did not sound like something Priefer would have said. White confirmed that he did not hear Priefer make the comment and that he "absolutely" would have remembered it if he had.

Loeffler reported, however, that he did hear Priefer make a comment about "putting all the gays on an island and nuking it" while on the practice field at Winter Park. Loeffler said that Priefer made this statement after becoming frustrated that Loeffler and Kluwe were not focused on football during practice. Loeffler commented that he did not think that Priefer was serious when he made the "nuclear" comment and that he thought Priefer was just trying to stop Kluwe and Loeffler's joking around. Furthermore, Loeffler said that both he and Kluwe

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<sup>2</sup> Altogether, RKMC interviewed Priefer three times on the following dates: (1) January 6, 2014, (2) May 13, 2014, and (3) June 5, 2014.

<sup>3</sup> Every member of the special teams staff interviewed denied ever hearing any comments by Priefer about gay individuals or marriage equality. Specifically, then-Assistant Special Teams Coach Chris White and Head Strength and Conditioning Coach Tom Kanavy denied hearing Priefer use homophobic language. White said that he never heard Priefer or anyone in the Vikings organization use homophobic language and that he never heard Priefer say that Kluwe would burn in hell and that the only truth was Jesus Christ and the Bible. According to White, those alleged statements do not sound like something Priefer would say. Kanavy also said that he never heard Priefer make any derogatory comments about gay individuals.

Interviewees outside of coaches and special teams players similarly denied witnessing the statements alleged by Kluwe. Executive Director of Player Development/Legal Les Pico said that he never heard Priefer make a homophobic comment. Lester Bagley, the Vikings' Vice President of Public Affairs and Stadium Development, said he never heard Priefer say anything inappropriate or demeaning.

laughed off Priefer's comment at the time. Loeffler did not corroborate Kluwe's claims regarding any other comments Priefer allegedly made.

During his second interview on May 13, 2014, when confronted with Loeffler's statement, Priefer noted that "[i]f [Loeffler] remembers me saying something on the practice field, I am not going to disagree with it." While Priefer accepted what Loeffler conveyed and acknowledged that he may have made the statement, he was adamant that any comment was made in jest, as Loeffler confirmed. Priefer said, "It was a joke between three people, three men."

**B. Did Members of the Vikings' Coaching Staff and Management Improperly Try to Discourage Kluwe from His Activism in Favor of Marriage Equality and Equal Rights?**

In published articles and in his interviews, Kluwe claimed that Priefer, Frazier and other members of coaching and management attempted to discourage him from his activism in favor of marriage equality or equal rights. The record supports the conclusion that players and management were concerned about the distraction that Kluwe's activism was creating, as opposed to the nature and content of his activism. The record does not support the contention that members of management and the coaching staff were focused on discouraging Kluwe based on the nature of his activism.

Prior to writing the letter to Burns, Kluwe reported that he approached the Vikings legal department in the summer of 2012 to ask if he could advocate on behalf of marriage equality. Vikings Vice President of Legal Affairs & Chief Administrative Officer Kevin Warren gave him approval to advocate on behalf of marriage equality with the understanding that his views should be expressed as a private citizen and not as a member of the Vikings. Kluwe agreed.

According to Kluwe, immediately after DEADSPIN's publication of his letter to Burns, Frazier told Kluwe to stop speaking out on "this stuff." When Kluwe resisted, Kluwe recalled that Frazier told him to continue with his advocacy "[i]f that's what you feel you have to do." Kluwe said the atmosphere was tense as he left Frazier's office.

Frazier recalled meeting with Kluwe about the letter, but said he did not discuss the specific views set forth in the letter with him. He recalled telling Kluwe that he did not want his letter to create a distraction from the game by changing the conversation from the game to Kluwe. Frazier explained that he also did not want Kluwe's teammates to be distracted from the game by answering questions about Kluwe. Because some players had been asked about the letter, Frazier said his concern was that they were being asked questions about someone other than the opponent. Frazier wanted Kluwe and the players focused on football.

Next, according to Kluwe, Frazier initiated a conference call with the Vikings' outside public relations consultant Lisa Levine and asked what to do about Kluwe's media inquiries and his continued advocacy. Kluwe participated in the call with Frazier and Levine. Levine denied Kluwe's claims that the Vikings were in any way attempting to limit Kluwe's activism or expression of his views, but instead, were cognizant of his time demands during the season and told him to focus on the larger media to get more exposure in his limited time.

After Kluwe's meetings with Frazier in early September of 2012, Priefer voiced support for Kluwe's activism, even as he acknowledged Kluwe's political views differed from his own. Spielman stated that Kluwe's political views were not a distraction. He further stated that the Vikings encouraged Kluwe to speak his mind. Spielman said that, except for the language Kluwe used, Spielman and his wife, in a private conversation, commended Kluwe for speaking his mind.

In contrast, Pico said that generally there was a “buzz” around the Vikings about the marriage amendment and Kluwe’s involvement. He observed that players thought of Kluwe’s activism as a “distraction” although many players agreed with Kluwe’s stance.

Kluwe reported that his teammates never told him to tone things down. However, Longwell and Loeffler described conversations with Kluwe in which they, respectively, told him to “lower his profile” and “focus on what he’s getting paid to do.”

Spielman acknowledged that the topic of Kluwe spending more time on issues other than football did come up “during the heat of battle” because “we want our total focus on football.” But, Spielman said that the issue did not influence his decisions. Spielman also said that Kluwe’s position on the proposed marriage amendment was not discussed. Rather, the discussion of Kluwe came up after a series of games where people said Kluwe was making a lot of money and performing poorly. Kluwe’s poor performance triggered discussions that the Vikings “might need to make a move” (i.e., replace Kluwe).

Other Vikings employees and players observed the impact of Kluwe’s activism. For instance, Vikings former kicker Ryan Longwell said that he noticed Priefer’s frustration with Kluwe’s “off-the-field” issues. He also noted that Frazier had asked Longwell to try to “get Kluwe to calm down.” According to Longwell, Kluwe’s response was that “[h]e can stand for anything [he] wants.” Longwell pointed out that “[e]veryone in the organization was having to deal with” the results of Kluwe’s activism and he noticed after he left the Vikings that Kluwe appeared to think he had carte blanche to go “full throttle” now that there was no veteran player like Longwell to tell him to “tone it down.”

**C. Did Kluwe’s Activism on Behalf of Marriage Equality and Equal Rights Impact or Motivate the Vikings’ Decision to Release Him From the Team in May 2013?**

**1. Management and Coaches’ Assessment of Kluwe’s 2012 Performance**

On DEADSPIN and during his interviews,<sup>4</sup> Kluwe claimed that his performance as a punter in 2012 was consistent with prior years. As such, Kluwe concluded that his release had to be related to his statements regarding marriage equality.

Investigators examined Kluwe’s claims and other evidence regarding his performance in the seasons before his release by the Vikings. The evidence revealed that dissatisfaction concerning Kluwe’s punting performance began to manifest as beginning in 2011 and as the 2012 season progressed. Specifically, Kluwe’s inconsistent performance became a recurring topic of questioning at Priefer’s press conferences. For example, during an October 4, 2012 press conference, a reporter asked Priefer if Kluwe had been “more up and down” during the season than Priefer would have liked.

Priefer’s primary concerns with Kluwe’s performance were that he made line-drive punts and did not force enough fair catches. He was also concerned by Kluwe’s inconsistency punting outdoors. Priefer thought that the wind and cold weather in Chicago and Green Bay affected Kluwe’s ability to get good field position, which made him very unproductive outdoors. Priefer told Investigators that he recommended that the Vikings replace Kluwe at the end of the 2012 season. Other special teams coaches had similar concerns regarding Kluwe’s punting problems.

Assistant General Manager George Paton agreed with Priefer that the “biggest issue was Kluwe’s inability to kick outdoors as well as his outdoor hang time.” Paton said that Kluwe’s

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<sup>4</sup> Kluwe was interviewed on two separate occasions on January 24, 2014 and May 5, 2014.

numbers were “below the league average” and “his leg was not strong enough.” Paton also explained that Kluwe was neither a great directional kicker nor good at placing the ball inside the 20-yard line.

Spielman noted that as General Manager, he is constantly looking to upgrade positions during the season. He felt that Kluwe’s performance was subpar during the 2012 season. In light of what he viewed as Kluwe’s poor performance, Spielman recalled trying out punters during the 2012 season and even signing one punter on a futures contract. Spielman recalled that the Vikings did not immediately sign him because Kluwe was the holder for Blair Walsh who was having a Pro Bowl caliber season. Spielman and coaches did not want to disrupt Walsh’s season by bringing in a new holder. Spielman noted that but for Walsh’s success, the Vikings probably would have signed the workout punter for the season.

Spielman reported that at the conclusion of the 2012 season, the coaches, including special teams, engaged in a year-end evaluation of all the team’s players. In Kluwe’s case, the special teams coaches “pretty unanimous[ly]” agreed that Kluwe should be released from the team. White agreed that Kluwe “can only kick right.” Head Coach Frazier said Kluwe was “a very poor directional punter.” Frazier pointed to games against Chicago, Tampa Bay, and Green Bay as games where Kluwe turned in a “very poor performance” and where directional punting was a “key component in those games.”

Vice President of Football Operations Rob Brzezinski also believed that Kluwe “struggled” with directional punting. Like Brzezinski, Spielman said that Kluwe was “horrible with directional punting to the left,” and “from that standpoint, strategically, other teams’ defenses break that down.”

Of all the evaluators in 2012, Priefer gave Kluwe the highest grade. After the year-end meeting, Paton downgraded his score for Kluwe. Pro Scout Jeff Robinson recalled that he liked Kluwe more than the other scouts and coaches at the end of the 2012 season, but that Kluwe had a poor 2012 season. Pro Scout Scott Kuhn recalled that the group consensus at the end of the 2012 season was that Kluwe was too highly paid and too erratic for kicking outdoors. In determining whether to keep the status quo at punter, pro scouts, including Monnens, Robinson, and Kuhn, and Assistant General Manager Paton had various views regarding retaining Kluwe and were in favor of upgrading the position.

After the end-of-season personnel meeting, there was a “subset meeting” with Frazier, Paton, Brzezinski, and Spielman where decisions to release players were made. Both Frazier and Brzezinski agreed that Kluwe should be released. Spielman made the final decision to release Kluwe with input from the other coaches and staff. Ownership had no involvement in the decision.

## **2. Outside Evaluators’ Assessments of Kluwe’s 2012 Performance**

In addition to the internal assessment concerning Kluwe’s performance, the Investigators also retained the services of former Chicago Bears General Manager Jerry Angelo and two-time Pro Bowl Punter Craig Hentrich to conduct an independent analysis of Kluwe’s 2012 season. In grading Kluwe, the evaluators considered criteria including, but not limited to: (1) get-off time; (2) gross punting average; (3) net punting average; (4) hang time; (5) directional punting; and (6) pooch punting.

Hentrich gave Kluwe an overall season grade of “C.” For directional punting,<sup>5</sup> Hentrich also gave Kluwe a “C” with the caveat that this is a difficult criterion to evaluate because NFL coaches have different philosophies on directional punting. Hentrich’s grade was based on his judgment “that every punt of the season appeared to be a right or a middle punt.” Angelo also thought that Kluwe was very predictable, as most of his punts were to the right or down the middle of the field.

For “get-off time,” Hentrich gave Kluwe an “A” and said that Kluwe’s average get-off time of 1.83 seconds for 96 punts was “a very impressive statistic.” Hentrich said that he “did not record a single get-off time over 2.0 seconds,” and noted that the average get-off time range of an NFL punter is “between 1.90-2.10 seconds.” Hentrich noted that Kluwe was “able to get the ball off on time and in rhythm” “even with a few bad snaps.” Angelo agreed that Kluwe’s get-off time was very good.<sup>6</sup>

With respect to gross average, Hentrich said that Kluwe’s gross average was good, but noted that “[h]aving the opportunity to play 15 of 21 games in domes does make this significantly easier to accomplish.” Hentrich determined that Kluwe would most likely be in the top third of the NFL for gross punting average.

Hentrich gave Kluwe a “B+” for net punting average, which he defined as “[g]ross punting average minus total return yards.” Net punting average is also affected by touchbacks (-20 yards). Hentrich calculated Kluwe’s net punting average at 40.44 yards, which he said was “difficult to do.” He noted that net punting is a statistic that reflects not only the ability of a

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<sup>5</sup> Hentrich defined “directional punting” as “[t]he punter’s ability to place his punts in certain areas of the field.” Hentrich also stated that “[d]irectional punting, especially in a Dome, should be something that every NFL punter should be able to do with relative consistency.”

<sup>6</sup> Prierer agreed that Kluwe’s get-off time deserved an A and said, “That was one thing he did well.” White also agreed, and said that Kluwe’s “only strength” was “incredible get off.” Frazier said that Kluwe’s get-off time was “very good” and stated “Kluwe was one of the best” with regard to get-off time and “avoided getting blocked.”

punter to hit good punts, but also a punt team's ability to cover those punts. Hentrich determined that Kluwe's net punting average should put him in the top third of the NFL for that statistic.

Hentrich gave Kluwe a "D" for hang time, defined as the "time from when the ball touches the punter's foot until the ball hits the ground or the opposing team catches the ball." He said that a 4.12 second average hang time is "very poor for an NFL punter" and noted that "[h]aving the opportunity to play 15 of 21 games in domes is a luxury most punters do not have, and I would expect this statistic to be in the 4.3-4.4 range." Hentrich said that Kluwe did not have a punt over 5.0 seconds of hang time in the 2012 season, which in Hentrich's opinion, puts Kluwe in the bottom third of the NFL for his ability to hit high hang time punts. Angelo noted that "many" of Kluwe's "longer punts are driven with little hang time, making it easy for an opponent's returner to find daylight without having defenders on him after he catches and secures the ball."<sup>7</sup>

Hentrich did not separately grade Kluwe's indoor and outdoor performance, but he noted that Kluwe's hang time statistics were worse outdoors. Indoors, Hentrich said that Kluwe averaged 4.21 seconds for 71 punts. In outdoor games, Kluwe averaged 3.88 seconds for 25 punts. Hentrich also opined that the "outdoor punt combination of 46 yards per punt and a 3.88 second hang time average" was "dangerous." Conversely, Angelo said that he did not find Kluwe's indoor and outdoor punting performance to be radically different.<sup>8</sup>

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<sup>7</sup> Kluwe's hang time was of concern to several interviewees. Priefer said he would give Kluwe a D or an F for hang time.

<sup>8</sup> No Vikings personnel agreed with Kluwe's assessment of his performance outdoors. Priefer said that Kluwe was not very good in outdoor stadiums. Brzezinski also had concerns about Kluwe's ability to punt outdoors in Green Bay and Chicago, as did all of the scouts.

Hentrich gave Kluwe a “C” for pooch punting, which are punts “that occur on the scoring side of midfield.” Hentrich noted that the goal of pooch punting “is to pin the opposing team inside the 20-yard line.” Hentrich explained that his “C” grade was due to Kluwe’s “inability to consistently pin the opposing team inside the 20-yard line when the situation arises.” Angelo disagreed, and said that Kluwe did “a very good job of placing the ball inside the 20 when he’s around midfield.” Angelo said, in his evaluation, “this is what [Kluwe] does the best consistently.”<sup>9</sup>

Hentrich gave Kluwe an overall grade of “C” for the 2012 season. Angelo said that, if he had held the title of General Manager of the Minnesota Vikings for the 2012 season, he would have “in all likelihood” released Chris Kluwe as the Vikings’ punter. He explained that his experience has shown him that “once players get into the later years of their career, they are more prone to decline and inflexible to change.” Angelo said that the Vikings’ impending move to TCF Bank Stadium, with a minimum of 11 outdoor games, would have made his decision even easier because Kluwe would not likely be able to maintain his performance outdoors.

Angelo said that, in his professional opinion, a team would be justified in releasing Kluwe if the team did not like (1) Kluwe’s style; (2) where he was in his career given his age; or (3) Kluwe’s veteran salary. Angelo thought it was reasonable for the Vikings to release Kluwe after his 2012 season given Kluwe’s age and the presumption that his leg strength would diminish as he got older. Angelo said this was especially true in light of the fact that the team would soon be playing in an open-air stadium for two seasons. Angelo noted that a punter’s hang time and distance are the most important criteria when playing outdoors.

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<sup>9</sup> Priefer gave Kluwe a B- or C for pooch punting. Priefer said the “line-drive kick” was “killing our football team.”

### **3. Kluwe's 2012 Statistics vs. Career Statistics**

Kluwe claimed on DEADSPIN that his 2012 statistics were consistent with his career statistics, which would have put him “right in the middle of the pack” of NFL punters in 2013. Kluwe expanded on this claim during his interview with Investigators. Kluwe said, “I think I’m a good punter in the NFL. I don’t think I’m the best punter in the NFL, but I am a very good punter in the NFL. And the fact remains is that I still have the physical skills to punt in the NFL.” Kluwe then stated that he was better than at least five punters who played in the NFL during the 2013 season: Sav Rocca of the Washington Redskins, Ryan Quigley of the New York Jets, Spencer Lanning of the Cleveland Browns, and “a couple” of other punters that Kluwe said he could name if he looked at their statistics.

However, a review of Kluwe’s performance reveals that there were several categories in which Kluwe’s 2012 statistics fell below his pre-2012 averages. For instance, Kluwe’s 12 fair catches in 2012 were the third fewest of his career, nearly 3 fair catches below his pre-2012 season average of 14.7. Also, Kluwe’s longest punt of 2012 – 59 yards – was 4 yards shorter than what he averaged during his first seven seasons in the NFL. The category in which Kluwe’s 2012 statistics decreased the most from his pre-2012 average was the number of punts downed within the opponent’s 20-yard-line. In 2012, Kluwe recorded only 18 punts downed within the opponent’s 20-yard-line, the second fewest of his career and more than seven below his pre-2012 career average.

Notably, after the DEADSPIN article was published, Kluwe acknowledged in multiple interviews that his 2012 statistics were down in relation to other NFL punters in 2012. In actuality, of the 32 punters who had at least 40 punts during the 2012 regular season, Kluwe ranked 22nd in gross punting average, 17th in net punting average, 27th in fair catches, and 31st

in punts placed within the opponent's 20-yard-line. Kluwe's longest punt of 2012 (59 yards) ranked 30th when compared to the season-long punts of the other 32 qualified punters in 2012.

#### **4. The Drafting of Jeff Locke**

On April 27, 2013, the Vikings drafted punter Jeff Locke in the fifth round of the NFL draft. According to Kluwe, "Multiple pundits questioned the Vikings' decision to draft a punter in the fifth round, as there were still several positions of need, and several players at those positions still available to be drafted." Members of the special teams coaching staff and scouting unit interviewed<sup>10</sup> stated that the Vikings drafted Locke with an eye toward upgrading the punter position. Kluwe's support of marriage equality and other activism played no part in the decision. Paton said that the Vikings goal was to draft the best players available in the 2013 draft. Paton said that Locke was a "guy with a big leg" and the Vikings "felt that if he was available, they would take him." Paton explained that the Vikings had "struck gold" with Blair Walsh the previous year and that if Locke was still available when the time came, "he would be too big to pass up."

Brzezinski agreed that the Vikings were interested in upgrading the punter position as the 2013 draft approached. Brzezinski also stated that the Vikings felt they had success drafting for this position, given the previous year's acquisition of Walsh in the draft, which further compelled them to draft Locke.

Frazier noted that Locke was a premier college punter and that his directional punting, hang time, and ability to kick for distance were all important reasons for the Vikings drafting him. Frazier noted that when Locke was available in the fifth round, the Vikings decided to

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<sup>10</sup> The members of the Vikings' special teams and scouting departments in 2012-13 included: (1) Scott Kuhn, Pro Scout; (2) Ryan Monnens, Director Pro Scouting; (3) Mike Priefer, Special Teams Coach; (4) Jeff Robinson, Pro Scout; and (5) Chris White, Assistant Special Teams Coach.

draft him because they did not want another team to draft him first. White stated that he was “impressed with the kid.”

According to Locke’s draft profile on CBS SPORTS and the website NFLDraftScout.com, Locke was rated as the best punter in the 2013 draft (1 out of 54) and was projected to be drafted in the 3rd or 4th round. In 2013, Locke was paid \$405,000 versus Kluwe’s \$1.4 million slated salary.

##### **5. The Vikings Recommendation of Kluwe to Other Teams**

After the Vikings released Kluwe, Priefer recalled that he spoke favorably to coaches from other teams, including the Cleveland Browns, who made inquiries about him.<sup>11</sup> He recalled telling them that “He [Kluwe] doesn’t bring ‘off the field stuff’ on the field.” Spielman similarly spoke favorably of Kluwe to Reggie McKenzie of the Oakland Raiders, telling him that he would definitely “take a shot on Chris.” Spielman also told McKenzie that he had no concerns about the “off-field stuff.” Spielman said to McKenzie that Kluwe’s political views were not a distraction. On May 15, 2013, the Oakland Raiders signed Kluwe to a one-year contract. After competing with Punter Marquette King during the preseason, the Raiders released Kluwe on September 1, 2013.

After his release by the Raiders, Kluwe participated in tryouts with the Chicago Bears, Buffalo Bills, and Cincinnati Bengals. Ultimately, no team signed Kluwe to a contract in 2013, and he has yet to be signed by any NFL teams for the 2014 season as of the date of this memorandum.<sup>12</sup> There is no evidence that anyone at the Vikings said anything disparaging

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<sup>11</sup> Cleveland Browns Special Teams Coordinator Chris Tabor, a former assistant special teams coach for the Chicago Bears, was familiar with Kluwe’s punting and said that Chicago always “did well” against Kluwe. Tabor said Kluwe’s performance was not up to where it should have been.

<sup>12</sup> Investigators contacted the Oakland Raiders, Buffalo Bills, Chicago Bears, and Cincinnati Bengals to ask for interviews regarding their evaluation of Kluwe as a potential punter. No one affiliated with these teams agreed to an interview.

about Kluwe or in any way undercut Kluwe's opportunities with other teams. Additionally, there is no evidence that any other team expressed concerns to the Vikings about Kluwe's activism.

**D. Were There Institutional Failures in the Vikings Organization that Harbored or Created a Hostile Work Environment on the Basis of Sexual Orientation?**

The investigation did not reveal any systemic or institutional problems with respect to homophobic behavior within the Vikings organization. Many interviewees said that they did not hear any intentionally derogatory or harassing comments toward gay individuals. Several, however, noted "insensitive" or "immature" comments, such as, the clothing someone was wearing "looks gay."

**1. Were Homophobic Statements Made by Members of Management, and How Pervasive Were these Statements?**

As previously noted, Priefer did not deny that he might have made the statement that "We should round up all the gays, send them to an island, and then nuke it until it glows." As such, Kluwe's claim in this regard should be credited. However, no other witnesses recalled hearing Priefer make any other inappropriate statements, including Loeffler who acknowledged only hearing the single comment on the practice field. There was also very limited evidence supporting the existence of a hostile work environment based on sexual orientation or support of marriage equality.

**2. To What Extent Did Members of Management Know of Inappropriate Homophobic Statements and Failed to Take Steps to Address Them?**

Kluwe himself stated that he never reported any of Priefer's alleged statements to management, Human Resources or anyone else other than in discussions with Loeffler and Walsh. The investigation did reveal, however, that some time on May 2, 2013, Kluwe discussed Priefer's alleged statement with Les Pico, Vikings Executive Director of Player Development/Legal. According to Kluwe, he asked Loeffler to sign an affidavit stating that he had heard Priefer make homophobic statements. Loeffler then met with Pico to discuss the affidavit.

Kluwe similarly went to Pico's office to ask Pico about where to find a notary. When he arrived at Pico's office, Loeffler was still inside, and Pico invited Kluwe to come in and "talk this over." Kluwe told Pico during the meeting about the alleged homophobic comments Priefer made, including Priefer's alleged "nuclear" comment. According to Kluwe, Loeffler corroborated Kluwe's allegation about the "nuclear" comment. Kluwe stated Pico said, "Oh, boy, this is . . . trouble." Kluwe stated that the three of them discussed Loeffler's concerns that Loeffler would be blacklisted from the NFL if his name became associated with a controversy involving Priefer.

According to Kluwe, it did not appear that Pico was going to tell anyone else about what was discussed in the meeting out of concern that doing so would jeopardize Loeffler's job with the Vikings. Kluwe said that Pico was known as someone whom the players could talk to and who would address their issues fairly and quickly.

Pico said that “Kluwe was adamant that Pico keep the entire conversation confidential and not disclose any part of it to anyone in the Vikings organization.” Pico recalled telling Kluwe that their conversation was confidential. Kluwe then told Pico that he knew his time with the Vikings was finished and that all he wanted to do was to compete in the NFL and not be “blackballed”; if he was not blackballed, then “there would be no issue.” Pico said, “Kluwe was adamant that he was not making a report to Pico because [Kluwe] knew he ‘was already done with the Vikings.’” Kluwe told Pico he wanted the affidavit because it would provide him “leverage.” Loeffler said that Pico told him that even though Kluwe wanted the discussion to remain confidential, that Pico works for the Vikings and felt a need to alert Spielman and Warren about this potentially serious situation.

Pico told investigators that after meeting with Kluwe and Loeffler on May 2, 2013, he felt he was “in a bind” regarding what to do next. On the one hand, Pico said he wanted to respect Kluwe’s confidentiality. But on the other hand, Pico felt he had to notify someone about the allegedly “hostile work environment.” Pico said he tried to balance these interests by informing Spielman and Warren that there was a problem between Kluwe and Priefer, but not divulging anything specific about what Kluwe alleged. Pico said he hoped that although he did not report any specifics, that Spielman and Warren would investigate the issue further. At certain points in his second interview, Pico said that he told Spielman and Warren about “derogatory statements between Priefer and Kluwe.” Pico stated that he did not consider Kluwe’s discussion with him to constitute a formal report and that, because Pico had promised Kluwe confidentiality, Pico would not convey specifics of the allegations to Spielman or Warren.

The independent investigation found no written or verbal communication or written document—whether email, memorandum, calendar appointment, text message, voicemail, etc.—wherein Pico raised any issue regarding Kluwe to anyone.

During his interview, Investigators asked Kluwe why he did not bring Priefer's comments to the attention of others within the Vikings organization sooner. Kluwe explained that at the time, he did not know he was going to be released from the Vikings so he thought Priefer's remarks were "a momentary unpleasant thing" that would pass as they moved on to the next year. Kluwe said that going over a coach's head is "a very easy way to lose your job." Kluwe also reportedly told PROFOOTBALLTALK in January 2014 that he did not complain within the Vikings organization after hearing Priefer's alleged comments because "he didn't trust anyone."

Investigators also asked Kluwe why, after his release, he decided to publish his allegations on the Internet, rather than bringing them directly to the Wilfs. Kluwe responded that he did not have the Wilfs' phone numbers, that he wanted to make his allegations public in the interest of transparency, and that he wanted to bring attention to the fact that Priefer's behavior is something that happens across the country on a daily basis and is not acceptable.

### **3. Vikings' Culture with Respect to Harassment**

The Vikings have included anti-harassment and diversity training in annual training sessions for all coaches and staff for the past nine years and for all players for at least the last three years. They have conducted the training both internally and through the use of outside providers.

Kluwe reported that Vikings ownership was supportive of his advocacy on behalf of marriage equality. Kluwe recalled a conversation in which Zygi Wilf expressed support for

Kluwe's stance against Minnesota's proposed marriage amendment. Kluwe described a conversation with Vikings Owner Zygi Wilf before a game against the Jacksonville Jaguars on September 9, 2012, in which Wilf said, "Chris, I'm proud of what you've done. Please feel free to keep speaking out." Wilf also told Kluwe that he had just come from the wedding of a business partner's son to his same-sex partner in New York, and "it was one of the most beautiful things [he'd] ever seen." Further, over the last four years, the Wilf Family Foundation has donated \$500,000 to Garden State Equality, a New Jersey civil rights organization advocating for lesbian, gay, bisexual, transgender equality and anti-bullying.

**E. What Are the Reasonable Conclusions that May Be Drawn From the Investigation and the Weight of the Evidence?**

**1. Priester's Alleged Homophobic Statements**

There is support in the record through Loeffler that Priester made the single homophobic statement to Kluwe that "We should round up all the gays, send them to an island, and then nuke it until it glows." Priester's inability to completely refute that he had made the statement in question lends credibility to the claim. Other than Kluwe's allegations, there is no support in the record that Priester made any additional statements of this nature.

To the contrary, virtually all witnesses interviewed, other than Kluwe, described Priester as well-respected and liked by players and the Vikings' front office. Among the players and coaches, for instance, Frazier, Walsh, Loeffler, Longwell, and White spoke of Priester in positive terms. Frazier said that he had a "positive" opinion of Priester and stated that Priester was a "good leader, a teacher, a good communicator" and was "well-respected by players." Loeffler did not believe that Priester's criticisms of himself, Walsh, or Kluwe were unfair. For his part, White also agreed that Priester never criticized Kluwe unjustifiably. Front office personnel

relayed similar comments about Priefer who was not heard to say anything inappropriate, demeaning, or to make comments about gay individuals.

2. **Attempts to Discourage Kluwe's Marriage Equality and Equal Rights Activism**

The record supports the conclusion that players and management were concerned about the distraction that Kluwe's activism was creating, as opposed to the nature and content of his activism. The record does not support the contention that members of management and the coaching staff were focused on discouraging Kluwe based on the nature of his activism.

3. **Kluwe's Release in 2013**

The record does not support the claim that the Vikings released Kluwe because of his activism on behalf of marriage equality, but instead because of his declining punting performance in 2012 and potentially because of the distraction caused by Kluwe's activism, as opposed to the substance of such.

Throughout the independent investigation, interviewees characterized Kluwe in similar ways: someone who is highly intelligent, reads a lot, a prankster or jokester, comfortable with the media and seems to enjoy attention. Walsh stated that Kluwe spent much of his free time in the locker room doing interviews. Walsh also said that Kluwe "loves the attention," "was focused on everything but football," and wanted to be in the spotlight.

Kluwe's locker room behavior stood out to some interviewees and included stories about Kluwe dropping his pants in front of 20-25 business people as they were being escorted through the locker room on a tour. Interviewees also recalled Kluwe making fun of the coaches' speeches on the white board in the locker room and leaving it there even when the press came in. Kluwe also made fun of the Vikings' then Head Strength and Conditioning Coach Tom

Kanavy, an alumnus of—and former coach at—Penn State University, concerning the Jerry Sandusky/Penn State situation. In his interview, Kanavy explained that Kluwe cut the seat out of his pants and then put them on to imitate a victim of the Penn State child-abuse scandal. According to Kanavy, Kluwe said that he was a “Penn State victim” and to “stay away” from him while his buttocks were exposed.<sup>13</sup>

There is consistent and weighty evidence from the record, mostly from Kluwe himself, that he viewed his performance as a member of the Vikings in an inflated manner. For instance, Kluwe, in at least one article, described himself as a very good punter. In another he stated that his performance in 2012 was consistent with his previous years’ performance with the Vikings. He also stated that he believed he had a good year in 2012.

The objective evidence, in addition to the subjective evaluation of coaches, special teams staff members and external evaluators, simply contradict Kluwe’s view of his performance in 2012. No interviewed witness agreed that Kluwe had a good year in 2012. The objective facts establish that Kluwe had 18 punts that were downed inside the 20-yard line, which was the lowest number since his rookie year. He struggled in games outdoors, specifically against the Bears, which negatively impacted the Vikings in the 2012 season and in previous years, and over 20 of Kluwe’s punts during the 2012 season had a hang time of less than 4.0 seconds. While Kluwe’s numbers overall were average for the NFL, a closer look at several categories placed him at the bottom of the league. For instance, 60 percent of Kluwe’s punts were returned, which was the highest in the league.

There is also the issue of Kluwe’s age (31) and salary (\$1.3 million) in 2012 and slated salary of \$1.4 million in 2013. Several coaching staff members noted that Kluwe’s age,

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<sup>13</sup> In Kluwe’s second interview, he first said that he did not remember this supposed locker room behavior, but that “it’s very possible” that he did it because he likes “to play practical jokes,” and “obviously, it didn’t stick in my mind, but, you know, I—it is definitely—if people said they saw it, then yeah, I probably did it.”

previous knee injury and leg strength showed a punter in decline. Also, the Vikings were able to sign drafted punter Locke for \$405,000, less than one-third of Kluwe’s scheduled 2013 salary. Finally, a look at Locke’s performance in 2013 versus Kluwe’s performance in 2012, establishes that Locke bested Kluwe’s numbers in several kicking categories at one-third of the salary as a rookie.

NAME (YEAR)	# OF PUNTS	GROSS PUNT AVG.	NET PUNT AVG.	INSIDE THE 20	FAIR CATCHES	LONG
Chris Kluwe (2012)	72	45	39.7	18	12	59
Jeff Locke (2013)	75	44.2	39.2	23	20	65

**4. Hostile Work Environment**

We did not find any support for the contention that the Vikings lacked institutional controls with respect to its workplace environment as it relates to homophobia. To the contrary, the evidence establishes that the Wilf Family Foundation has been a strong supporter of equal rights, specifically anti-bullying, for the LGBT community. Other than the statement made by Priefer, the record is devoid of any support for the contention that the Vikings harbored a homophobic hostile work environment.

**V. CONCLUSION**

In sum, our review of RKMC’s investigative materials you provided fails to establish that Kluwe’s activism in support of marriage equality and other equal rights motivated his release from the team in May of 2013.

We also did not find sufficient evidence to establish that members of the Vikings organization attempted to discourage Kluwe from engaging in marriage equality or equal rights activism or that the Vikings harbored a homophobic hostile work environment. The record does, however, support the conclusion that the distractions caused by the level, but not the

nature, of Kluwe's activism did create some discomfort in the organization during the 2012 season in which Kluwe's punting performance was unsatisfactory to the team. The investigation materials support that the Vikings released Kluwe for football performance reasons and not his views on marriage equality.