No. _____

In The
Supreme Court of the United States

PATRICIA L. HARRISON,

Petitioner,

v.

THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES COMMISSION, ET AL.,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Did the district court abuse its discretion by sanctioning Petitioner *sua sponte* pursuant to Federal Rules of Civil Procedure Rule 11 after settlement and dismissal by the state and federal courts?

2. Did the district court abuse its authority by sanctioning Petitioner *sua sponte* pursuant to 28 U.S.C. 1927 and its inherent authority where there was no evidence of or finding of bad faith conduct by the district court?

3. Did the district court fail to apply other proper legal standards and fail to follow proper procedures and were its determinations of fact clearly erroneous?

LIST OF ALL PARTIES TO THE PROCEEDING.

Petitioner is Patricia Logan Harrison, a civil rights attorney who has devoted her career to protecting the rights of citizens who have intellectual or related disabilities. Respondents are the Office of the Governor, Henry D. McMaster, Nimrata "Nikki" Haley; the South Carolina Department of Health and Human Services, Joshua Baker, Christian Soura, the South Carolina Department of Disabilities and Special Needs, Patrick J. Maley, Lois Park Mole, Susan Beck, Beverly Buscemi, Stanley Butkus, Kathi Lacy, William Barfield, Thomas Waring and William Danielson.

LIST OF ALL PROCEEDINGS

Federal Proceedings.

In re: Patricia L. Harrison, Respondent - Appellant, Estate of Latoya Nicole Valentine, by and through Debra Grate, Personal Representative; Debra Grate, in Her Individual Capacity, Plaintiffs,

vs.

The South Carolina Department of Health and Human Services; the Office of the Governor; Henry D. Mcmaster; Nimrata "Nikki" Haley; Joshua Baker; Christian Soura; the South Carolina Department of Disabilities and Special Needs; Mary Poole; Patrick J. Maley; Lois Park Mole; Susan Beck; Beverly Buscemi; Stanley Butkus; Kathi Lacy; William Barfield; Thomas Waring; Robert Kerr; William Danielson, Defendants - Appellees, the State of South Carolina; Pickens County Disabilities and

Special Needs Board; Elaine Thena; John Owens; Diane Anderson, Defendants, William Bouton, Respondent. Docket Number 22-1383, Fourth Circuit Order affirming district court issued on February 21, 2023 (unpublished) and reconsideration denied on March 28, 2023.

The Estate of Latoya Nicole Valentine, by and through Debra Grate, Personal Representative and Debra Grate, in her individual capacity, Plaintiffs,

vs.

The State of South Carolina; the Office of the Governor; Henry D. McMaster; Nimrata "Nikki" Haley; Joshua Baker; Christian Soura; the South Carolina Department of Health and Human Services; the South Carolina Department of Disabilities and Special Needs; the Pickens County Disabilities and Special Needs Board; Mary Poole; Patrick Maley; Lois Park Mole; Susan Beck; Beverly Buscemi; Stanley Butkus; Kathi Lacy; William Barfield; Thomas Waring; Robert Kerr; William Danielson; Elaine Thena; John Owens; and Diane Anderson; Defendants, Docket Number 3:18-cv-00895-JFA, Order granting in part and denying in part Defendants' motions to dismiss (ECF 80), Order denying Defendants's motion for RICO Case Statement (ECF 103), Summary Judgment in favor of all Defendants except Diane Anderson dated August 5, 2021 (ECF 273), Order dismissing case dated September 27, 2021 (ECF 275), Post-settlement Order granting Summary Judgment to all Defendants dated September 27, 2021 (ECF 276), Order transferring case to State Court dated October 5, 2021 (ECF 277), Text Order vacating Summary

Judgment dated October 25, 2021 (ECF 284), Order dismissing case October 25, 2021 (ECF 286), Notice of Settlement approved by State Court dated December 17, 2021 (ECF 287), Order to Show Cause issued on December 17, 2021 (ECF 288), sanctions issued on March 29, 2022 (ECF 320), Order denying stay dated April 19, 2022 (ECF 325).

State Proceedings.

The Estate of Latoya Nicole Valentine, by and through Debra Grate, Personal Representative and Debra Grate, in her Individual Capacity, Plaintiffs,

vs.

The State of South Carolina, the Office of the Governor, Henry D. McMaster, Nimrata "Nikki" Haley, Joshua Baker, Christian Soura, the South Carolina Department of Health and Human Services, the South Carolina Department of Disabilities and Special Needs, the Pickens County Disabilities and Special Needs Board, Robert Kerr, Patrick Maley, Mary Poole, Lois Park Mole, Susan Beck, Beverly Buscemi, Kathi Lacy, William Barfield, Thomas Waring, Kerr & Company, William Danielson, Elaine Thena, John Owens and Diane Anderson, Stanley Butkus, and Sam Waldrep, Defendants. Pickens County Court of Common Pleas, Docket Number 2018CP3901274. Settlement approved December 17, 2021.

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Opinion, U.S. Court of Appeals, Fourth Circuit, filed 2/21/23 is at Appendix A1.

Opinion of the U.S. District Court for the District of S.C., filed 3/29/2222 is at A4.

Rehearing Order, U.S. Court of Appeals for the Fourth Circuit, filed 3/28/23 is at A33.

JURISDICTION

The United States Court of Appeals for the Fourth Circuit affirmed the order of the district court sanctioning Petitioner on February 21, 2023. Petitioner timely filed a petition for a panel and *en banc* rehearing, which was denied on March 28, 2023. This Court's jurisdiction is invoked under 28 U.S.C. § 1254.

APPLICABLE LAW

Citations to applicable law are contained in Appendix A, including Rule 11 of the Federal Rules of Civil Procedure, 1993 Advisory Committee Notes, 28 U.S.C. 1927, 42 U.S.C. § 12101**,** 29 U.S.C. § 794, § 1983, § 1396a(a)(19), 42 U.S.C. 1396a(a)(23), 42 U.S.C. 1396n(c), and 42 C.F.R. §441.302 and South Carolina District Court Local Rules IV and V.

STATEMENT OF THE CASE

A. Factual Background and Lower Court

Nikki Valentine was a severely intellectually disabled woman who had the mental capacity of a

pre-school child. Instead of providing less restrictive in-home Medicaid funded services, the State placed Valentine in a congregate residential facility where she suffered abuse, neglect and exploitation for years. This facility was operated by the Pickens County Disabilities and Special Needs Board (PCDSNB) under contract with the Department of Disabilities and Special Needs (SCDDSN). SCDDSN provided those services under contract with the State Medicaid Agency, the South Carolina Department of Health and Human Services (SCDHHS).

Valentine was assaulted in April, 2017 by the group home manager, Diane Anderson. When law enforcement arrived, Defendant John Owens, the assistant director of the Pickens County Disabilities and Special Needs Board, attempted to justify the assault by telling the officer that staff was under stress because they were tremendously understaffed. Petitioner provided affidavits and audits documenting that funds paid to Defendants for the purpose of providing services to SCDDSN Medicaid participants were being illegally diverted for other, unauthorized purposes, leaving clients like Valentine without the support services they needed.

Upon learning of the assault, Grate removed Valentine from the facility and she provided care for her sister in her own home. None of the Defendants informed Grate that Valentine was entitled to receive in-home services, which included the feasible alternatives of nursing, personal care attendant services and respite services, all funded by Medicaid.

On September 21, 2017, when getting out of the shower in Grate's home, Valentine suffered a seizure and fell, hitting her head on the toilet. Valentine was

unresponsive by the time the fire fepartment arrived. By the time EMS arrived, Valentine's heart beat and respiration had stopped and her skin was already cold. She was transported by ambulance to the Oconee Medical Center just before midnight where she was pronounced dead at quarter past midnight. Neither the EMS records nor the hospital records contain any evidence suggesting that Valentine died of a heart attack. No contact was made with Valentine's primary physician, Dr. Jony Bolinger and Grate was not aware that her sister suffered from hyponatremia.

More than a month after Valentine's death, the Oconee County Coroner completed his report concluding that the cause of Valentine's death was "Cardiac Arrhythmia with Sudden Death and Probable Coronary Thrombus." According to the coroner's report, his conclusion was based on a 1:25 a.m. phone call from a hospital nurse on the night Valentine was pronounced dead. The coroner did not speak to the attending physician, Dr. McGuff. The coroner's report states that Valentine did not have a primary care physician and there is no indication that Coroner Addis communicated at all with Valentine's long time primary care physician, Dr. Bolinger, who was familiar with her history of hospitalization and ER visits resulting from hyponatremia. The office of coroner is an elected position in South Carolina and the coroner was under investigation by the South Carolina Law Enforcement Division when the district court issued its order granting summary judgment to all Defendants except Diane Anderson.

After Valentine died, Grate retained Attorney Robert Wilkins of the Greenville, South Carolina law

firm Wilkins and Bouton to represent her. Wilkins petitioned the probate court for Grate to be appointed as personal representative. He issued subpoenas in March of 2018 to all known medical providers to obtain Valentine's medical records. Grate sought this representation because she believed that Valentine had been subjected to abuse and neglect in the Medicaid-funded group home.

Attorney Wilkins believed the case had merit and he sought assistance from Petitioner because of her extensive experience litigating Medicaid and disability rights cases. This lawsuit was filed in the federal court in April, 2018, before Attorney Wilkins received the requested medical records, because the Governor, SCDHHS and SCDDSN were still applying an erroneous one-year statute of limitations to ADA public accommodations cases until 2022. *Timpson v. Anderson Cty. Disabilities & Special Needs Bd.*, 31 F.4th 238, 249 (2022).

It was not until Wilkins' law firm received these medical records that Grate learned, for the first time, that her sister suffered from hyponatremia, and that she had been admitted to Baptist Easley Hospital for three days in 2012 with a diagnosis of "severe hyponatremia." Grate was unaware that Valentine had been receiving ongoing treatment for that life-threatening condition from her primary physician, Dr. Bolinger. Valentine's next of kin was not informed on numerous occasions when she received treatment in the ER for hyponatremia, human bites, an overdose and other medication errors and other unreported injuries. When Valentine was treated in the ER for the second human bite in August, 2017, staff informed the hospital that "we just need a statement saying she

isn't going to die." Grate also learned when Pickens County Disabilities and Special Needs Board finally provided records that Valentine was regularly assaulted by other clients hitting and pushing her and pulling her hair.

Instead of obtaining the required consent from Valentine's next of kin at federally mandated annual meetings to approve her Support Plan, staff at the group home caused either Valentine or Diane Anderson to sign "freedom of choice" forms, always "choosing" the Pickens County Disabilities and Special Needs to provide those Medicaid-funded services. Federal law at 42 U.S.C. 1396a(a)(23) and 42 C.F.R. 441.302 require that the legal representative of an incompetent waiver client participate in developing the Support Plan and that the representative choose the provider and the services to be provided on the client's Support Plan.

In violation of CMS's "final rule" issued in 2014 that requires "conflict free" case management, that agency provided both case management and residential services, without obtaining input from Valentine's legal representative.

When Attorney Wilkins was called into active military duty, his partner, William Bouton became co-counsel with Petitioner. Attorney Bouton also agreed with Wilkins and Petitioner that the case was meritorious. He and Petitioner determined together that the state law claims should be removed to the state circuit court after hundreds of pages of medical records were received by Wilkins' office and reviewed by Petitioner. Plaintiffs' counsel filed a complaint in the Pickens County Court of Common Pleas on November 30, 2018. At Attorney Bouton's suggestion, a wrongful death claim was included in

the complaint filed in the state court, a claim that was never included in the complaints filed in the federal court.

The district court ordered Plaintiffs to file a second amended complaint not to exceed 35 pages in the federal action. That complaint was filed on December 26, 2018 and it did not include a wrongful death cause of action, which was included only in the state action. This amended complaint was filed after Petitioner reviewed thousands of pages of records provided by the Pickens County Disabilities and Special Needs Board. Prior to filing that complaint, Petitioner had also reviewed hundreds of pages of medical records, in addition to her years-long ongoing review of audits, investigations and reports documenting increasing rates of abuse, neglect and exploitation in SCDDSN residential programs.

Teams of state funded attorneys filed motions to dismiss the federal claims, but all counts survived those motions in an order the district court issued in August, 2019. In response, counsel filed an affidavit sworn by Deborah McPherson, a former member of the governing board of SCDDSN, who had been appointed by Governor Sanford. McPherson reported that she notified Governor Haley by letter, prior to Valentine being assaulted by Anderson, of her concerns about increasing rates of abuse, neglect and exploitation in SCDDSN residential programs and the misuse of federal funds allocated to provide services to SCDDSN Medicaid waiver participants. Attached to former Commissioner McPherson's affidavit and letter were ongoing communications with former governor Haley's staff, transmitting dozens of media reports that supported her concerns regarding the failure to protect the health and

welfare of SCDDSN clients and the agencies' failure to assure accountability for funds paid to SCDDSN.

The district court dismissed nearly all of the Defendants' motions to dismiss. ECF 80. Defendants then asked the district court to order Plaintiffs to file a "RICO Case Statement," but the district court judge also denied that motion in September, 2019.

The next two years were spent in discovery disputes initiated by the Defendants, who were attempting to avoid having state officials sit for depositions. These officials knew that federally mandated cost reports had not been provided for the program at issue since 2012 and they were familiar with increasing rates of abuse, neglect and exploitation in SCDDSN programs.

The district judge severely limited the scope of the few depositions he allowed Plaintiffs to take, prohibiting counsel from asking officials about their knowledge of systemic abuse, neglect and exploitation in SCDDSN programs and he prohibited, under threat of sanctions, questions regarding the alleged diversion of funds allocated by the South Carolina General Assembly to provide services to DDSN clients. To prevent counsel from deposing state officials, the court relied primarily on the Apex Doctrine, which had never been adopted by the Fourth Circuit or, to the knowledge of Petitioner, by this Court. *UNCW Corp. v. Westchester Surplus Lines Ins. Co.*, 2023 U.S. Dist. LEXIS 68057 (2023).

Plaintiffs took depositions of four witnesses: Diane Anderson, the staff member who witnessed Anderson assaulting Valentine and other abusive treatment in the group home, the assistant director of the Pickens County Disabilities and Special Needs Board, John Owens, and the former finance director

of the South Carolina Department of Disabilities and Special Needs, William Barfield.

SCDHHS Director Anthony Keck had testified that he "threw down the gauntlet" to then Governor Haley in 2014 in regards to his concerns that SCDDSN's Medicaid programs were not being operated in compliance with federal law. Three weeks later, Governor Haley replaced SCDHHS Director Keck with her Deputy Chief of Staff, Christian Soura in 2014. Soura had no prior experience managing a Medicaid program.

Christian Soura had joined the Office of the Governor as Haley's "dollar a year man," claiming to be working for $1 a year. During discovery, Plaintiffs' counsel discovered that when Soura arrived in South Carolina, Governor Haley's attorney had set up a "private non-profit" organization called "South Carolinians Transforming Government." Its sole employee was Christian Soura, paying Soura more than $100,000.00 a year. Because this "non-profit" was private, its donors were never disclosed. Several years later, when Soura became a paid member of Haley's staff, Haley's attorney dissolved "South Carolinians Transforming Government."

The district judge opined in a hearing in this case that this arrangement between Soura and Governor Haley: "stinks to high heaven, in my opinion. It stinks to high heaven. And it's terrible." Petitioner and the district judge then had the following exchange:

> Harrison: Now we know that money was laundered. Now we know that Christian Soura was parading

> himself around as the governor's official, but he was getting money under the table.
>
> THE COURT: You proved all that. But I still never connected it to the case.

Once appointed as Director of SCDHHS, Soura hired Governor Haley's budget officer Joshua Baker as SCDHHS' Budget and Finance Director. Baker held that position until he was appointed by Governor McMaster as Director of SCDHHS in 2017. During the years when Soura and Baker were officials at SCDHHS, SCDDSN failed to produce federally mandated cost reports for Medicaid programs costing more than $550 million a year. During this time when those cost reports were not being provided, and up until Valentine's death in 2017, a private company operated by Defendant Robert Kerr (formerly Director of SCDHHS) was providing paid "consulting" services to SCDDSN on Medicaid reimbursement issues.

A 2012 audit by the United States Department of Health and Human Services Office of Inspector General (USOIG) reported that: "The State agency claimed unallowable room-and-board costs because neither the State agency nor the Department had adequate controls to (1) ensure that the Department followed applicable Federal law and guidance or its own guidance or (2) detect errors or misstatements on the local DSN boards' cost reports." USOIG reported again in an audit released in 2015 repeated those findings. The 2015 USOIG audit also revealed that SCDHHS failed to reduce its claim to the federal government for a $9,962,995 Medicaid

overpayment that had been identified in July 2010 "because it did not have controls in place to ensure that it refunded the Federal share of all overpayments within the required time after it was notified of overpayments."

Joshua Baker, his chief of staff and another top official at SCDHHS resigned suddenly on the same day in 2021. A month later the DDSN Commission fired its director, Mary Poole. In 2021, Poole sued members of the governing board of DDSN alleging wrongful termination, defamation and conspiracy. The state court ordered SCDDSN to pay Poole backpay and she settled that litigation in 2023.

Counsel provided the district court with audits, investigations and reports from state, federal and independent contractors hired by SCDHHS documenting the ongoing failure to protect the health and welfare of Medicaid participants, showing that Respondents were failing to assure financial accountability for federal funds, but the district judge refused to consider those, declaring them to be "irrelevant."

On April 9, 2020, SCDHHS counsel filed the report of the Oconee County Coroner, which the coroner prepared more than a month after Valentine died without communicating with either the attending physician at the hospital or Valentine's long-time treating physician, Dr. Bolinger. ECF 125.

It was not until May, 2021 that the district judge granted summary judgment motions to all remaining defendants except Diane Anderson. ECF 249. On August 5, 2021, the district judge denied Plaintiffs' motions to reconsider and the court issued an amended summary judgment order, again dismissing all defendants except Anderson. At this

point, Plaintiffs were facing an expensive trial against a judgment-proof defendant, as Anderson's sole asset was an old Volkswagen.

The next month, at mediation in September, 2021, Defendants offered to pay Plaintiffs $300,000.00 in settlement of all claims.

Upon receipt of the settlement agreement, on September 27, 2021, the district judge immediately issued an order dismissing the case, specifying that the order was without costs. ECF 275. Inexplicably, that same day, the federal court issued a Judgment in favor of all Defendants. ECF 276.

Then, on October 5, 2021, the district judge transferred the case to state court for approval of the settlement agreement. ECF 277.

Plaintiffs moved to amend/correct the improper Judgment that the district judge had filed on September 27, 2021, the same day he had dismissed the case. Defendants' counsel objected to Plaintiffs' motion, requiring briefing and a hearing that was held on October 25, 2021. At that hearing, the district judge agreed to vacate the improper Judgment and assured the parties that:

> I'm going to vacate the judgment that's been entered and reenter a Rubin Order indicating that the entire case has settled as to all defendants, *therefore putting an end to this case completely*. I'm going to leave in place my order referring the case to state court for approval of the settlement, which I understand has already been done. ...We'll just do our standard 60-day Rubin Order for the entire case. *That will extinguish*

> *all the claims. No appeal by anybody of any rulings I made earlier.*
> (Emphasis added).

The district judge then issued a second order dismissing the federal case, again without costs, on October 25, 2021. ECF 286.

On December 16, 2021, the state circuit court issued an order approving the settlement of both the state and federal claims. That order allocated half of the funds passing to the Estate of Nikki Valentine to the wrongful death claim.

On December 17, 2021, Attorney Woodington filed a notice of settlement in the federal court. Just a few hours later, the district court judge issued a *sua sponte* 35 page Order to Show Cause, requiring Petitioner to file a response within 14 days.

The court invited Defendants' counsel to respond to the Order, by supporting their claims for fees and costs, contrary to the court's prior orders dismissing the case "without costs." Only the Governor's Office, SCDDSN and SCDHHS responded. The Pickens County Disabilities and Special Needs Board Defendants and Diane Anderson elected not to pursue sanctions against Plaintiffs' counsel.

When Attorney Bouton was diagnosed with covid just before Christmas, the district judge granted his request for an extension of time, specifically extending the time to respond "for attorney William Bouton ONLY." ECF 290. Upon separate motion by Petitioner's counsel, the court granted Petitioner an additional two weeks to file a response to his Rule to Show Cause.

The court held a Show Cause hearing on March 18, 2022. On March 29, the district court issued its

order relieving Attorney Bouton, but imposing sanctions against Petitioner.

Petitioner timely filed a notice of appeal in the Fourth Circuit on April 1, 2022. ECF 321. The district court denied Petitioner's motion to stay on April 26, 2022. ECF 325.

The Fourth Circuit affirmed the district court on February 21, 2023 and denied Petitioner's motion requesting rehearing on March 28, 2023.

B. Framework of SCDDSN/SCDHHS Medicaid Waiver Program

An audit of Medicaid programs operated by SCDDSN that was released in 2012 by by the United States Department of Health and Human Services Office of Inspector General described the Medicaid program at issue in this case:

> Under a Title XIX section 1915(c) waiver approved by CMS, the State agency operates a waiver program that provides long-term care and support for individuals with intellectual or related disabilities. Section 1915(c) allows for payment of the cost of home or community based services that are provided under a written plan of care to individuals in need of the services. Costs that are not related to the provision of this care, as well as room-and-board costs, are not allowable under such a waiver.
>
> The State agency provides administrative oversight and monitoring of the waiver program. However, it contracts with the South Carolina Department of Disabilities and

> Special Needs (the Department) to provide waiver services. The Department provides these waiver services through contractual arrangements with a network of 39 local Disabilities and Special Needs Boards (local DSN boards).

Medicaid waiver applications, once approved by the federal Medicaid agency, CMS: "carry the force and effect of law." *Joseph v. SCDLLR*, 417 S.C. 436, fn 9 (2016). The waiver application for the program at issue in this case stated that:

> SCDDSN operates as an organized health care delivery system (OHCDS). This system of care is comprised of SCDDSN and the local DSN County Boards and together they form an OHCDS. The OHCDS establishes contracts with other qualified providers to furnish home and community based services to people served in this waiver. (b) Providers of waiver services may direct bill their services to SCDHHS. (c) At a minimum, waiver participants are given a choice of providers, regardless of their affiliate with the OHCDS, annually or more frequent if requested or warranted (d) SCDDSN will assure that providers that furnish waiver services under contract with the OHCDS meet applicable provider qualifications through the state 's procurement process. (e) SCDDSN assures that contracts with providers meet applicable requirements via QIO reviews of the provider, as well as periodic record reviews. (t)

> SCDDSN requires its local DSN County Boards to perform annual financial audits.

The waiver application requires SCDDSN to prepare annual cost reports and requires SCDHHS to submit claims to the federal court based upon those cost reports. The USDHHS OIG reported in its audit released in 2012 that:

> The State agency claimed unallowable room-and-board costs because neither the State agency nor the Department had adequate controls to (1) ensure that the Department followed applicable Federal law and guidance or its own guidance or (2) detect errors or misstatements on the local DSN boards' cost reports.

After that audit, SCDDSN simply stopped providing these federally mandated cost reports and SCDDSN fabricated claims for Medicaid reimbursement from 2012 until 2019.

42 U.S.C. 1396n(c)(2) requires that:

> A waiver shall not be granted under this subsection unless the State provides assurances satisfactory to the Secretary that—
> (A) necessary safeguards (including adequate standards for provider participation) have been taken to protect the health and welfare of individuals provided services under the waiver and *to assure financial accountability for funds expended with respect to such services*... (Emphasis added.)

REASONS FOR GRANTING THE WRIT.

1. Did the district court abuse its discretion by sanctioning Petitioner *sua sponte* pursuant to Federal Rules of Civil Procedure Rule 11 after settlement and dismissal by the state and federal courts?

A. This Court should grant certiorari because the circuits are split on the standard that district judges must apply before ordering *sua sponte* sanctions pursuant to Rule 11.

1. The District Court Disregarded Clearly Established Fourth Circuit Precedent.

The district judge below was bound by Fourth Circuit precedent that required evidence "akin to a contempt of court" before sanctioning an attorney *sua sponte* for violation of Rule 11. In *Hunter v. Earthgrains Co. Bakery*, 281 F.3d 144, 151 (2002), citing the Ninth Circuit, the Fourth Circuit ruled:

> Importantly, a sua sponte show cause order deprives a lawyer against whom it is directed of the mandatory twenty-one day "safe harbor" provision provided by the 1993 amendments to Rule 11. In such circumstances, a court is obliged to use extra care in imposing sanctions on offending lawyers. United Nat'l Ins. Co. v. R&D Latex Corp., 242 F.3d 1102, 1115-16 (9th Cir. 2001) (noting that sua sponte Rule 11 sanctions for allegedly baseless legal claims are to be

> examined closely as there is no "safe harbor" available). The Advisory Committee contemplated that a sua sponte show cause order would only be used "in situations that are akin to a contempt of court," and thus it was unnecessary for Rule 11's "safe harbor" to apply *to sua sponte* sanctions.

Even where sanctions are imposed pursuant to a motion by opposing counsel and the allegedly offending lawyer has a 21 day "safe harbor" and opportunity to cure a Rule 11 violation, the Fourth Circuit has held that sanctions may not be imposed under Rule 11 unless the legal argument has "absolutely no chance of success under the existing precedent." *Lokhova v. Halper,* 30 F.4th 349, 354 (2022), citing *Hunter,* 281 F.3d at 153. Here, the district court imposed sanctions *sua sponte* after the Defendants agreed to pay, and after the state court approved a settlement wherein Plaintiffs received $300,000.00, in addition to waiving any potential Medicaid lien recovery. It cannot be said that Plaintiffs had no chance of success.

In *Blue v. United States Dep't of Army*, 914 F.2d 525, 534 (1990), another case decided before the 1993 amendments to Rule 11, the Fourth Circuit recognized "the role that federal courts have played in the struggle for equal opportunity under law." Noting that "It was in the federal courtroom that litigation brought to life the abstract guarantees of racial justice," that court recognized that "[m]any rights and remedies once thought novel and unprecedented won the approval of the Supreme Court of the United States." In issuing sanctions the district judge disregarded binding Fourth Circuit

precedence that "The fact that a civil rights litigant pressed a legal position which courts had previously rejected was not thought to constitute a species of sanctionable conduct." Id. The Fourth Circuit noted that had counsel in *Brown v. Board of Ed.,* 347 U.S. 483, 98 L. Ed. 873, 74 S. Ct. 686 (1954) not pursued their claims in the face of the contrary precedent of *Plessy v. Ferguson,* 163 U.S. 537, 41 L. Ed. 256, 16 S. Ct. 1138 (1896), "The civil rights movement might have died aborning." Id.

Like the case in *Blue*, this case was brought to enforce rights granted under the Civil Rights Act and this Court "has cautioned district courts not to casually impose sanctions" on civil rights counsel. Quoting *Christiansburg Garment Co. v. EEOC,* 434 U.S. 412, 421-22, 54 L. Ed. 2d 648, 98 S. Ct. 694 (1978), the Fourth Circuit reminded district judges that:

> It is important that a district court resist the understandable temptation to engage in post hoc reasoning by concluding that, because a plaintiff did not ultimately prevail, his action must have been unreasonable or without foundation.

Id. at 534.

The Fourth Circuit concluded in *Blue* that: "We are unwilling to witness the evisceration of this purpose through sanctions awarded in a manner that leaves a lasting reluctance on the part of plaintiffs to vindicate the legal rights which Congress gave them." Id. at 535.

2. The Second, Ninth and Eleventh Circuits Have Adopted an "Akin to Contempt" Standard.

The Second, Ninth and Eleventh Circuits have also adopted the "akin to a contempt" standard, requiring a showing of contemptuous conduct before a district court can impose Rule 11 sanctions *sua sponte*. In *Hadges v. Yonkers Racing Corp.*, 48 F.3d 1320, 1329 (2d Cir. 1995), two years after the 1993 amendments, the Second Circuit ruled unanimously that a court may not impose Rule 11 sanctions against a party or attorney unless there is evidence of bad faith or actions "akin to contempt of court."See also *In re Pennie & Edmonds LLP,* 323 F.3d 86, (2003), where a majority of the Second Circuit panel ruled:

> In recommending the "safe harbor" provision, the rule-makers explicitly noted its unavailability for sanction proceedings initiated by a court and expressed their view that, as a result, court-initiated sanction proceedings would be used only in more egregious circumstances:
>
> > Since show cause orders will ordinarily be issued only in situations that are akin to a contempt of court, the rule does not provide a "safe harbor" to a litigant for withdrawing a claim, defense, etc., after a show cause order has been issued on the court's own initiative.

In *United Nat'l Ins. Co. v. R&D Latex Corp.,* the Ninth Circuit also ruled in a unanimous published decision that *sua sponte* Rule 11 sanctions "will ordinarily be imposed only in situations that are akin to a contempt of court." 242 F.3d 1102, 1116 (9th Cir. 2001) (quoting *Barber v. Miller,* 146 F.3d 707, 711 (9th Cir. 1998)). Subsequently, in *Gonzales v. Texaco Inc.*, 344 Fed. Appx. 304, 308 (2009), in an unpublished decision, that court again reversed an award of sanctions pursuant to Rule 11 because: "...prior to imposing court-initiated sanctions, the district court is required to determine whether counsel's conduct is 'akin to contempt.'" The Ninth Circuit ruled that the district court erred by applying a "reasonableness" standard, which is the appropriate standard for party-initiated, but not court-initiated, Rule 11 sanctions." Thus, it determined that the district court abused its discretion in failing to apply the "akin to contempt" standard, remanding to consider whether the attorneys' conduct was akin to contempt. Id.

The Eleventh Circuit in *Kaplan v. DaimlerChrysler, A.G.*, 331 F.3d 1251, 1256 (11th 2003) joined the Fourth and Ninth Circuits in a unanimous decision applying the "akin to contempt" rationale to court-initiated, Rule 11 sanctions. Citing *Hunter v. Earthgrains Co. Bakery*, 281 F.3d 144, 151 (4th Cir. 2002) and *Barber v. Miller*, 146 F.3d 707, 711 (9th Cir. 1998). That Court also recognized that *sua sponte* Rule 11 sanctions "must be reviewed with 'particular stringency.'" Id.

3. The Fifth Circuit Rejects an "Akin to Contempt" Standard

The Fifth Circuit, on the other hand, is in conflict with these other circuits and this conflict should be resolved by granting *certiorari* in this case. While recognizing that "the procedure for sanctions imposed sua sponte differs when requested by counsel," the Fifth Circuit held that district courts may impose sanctions *sua sponte* under Rule 11 by applying only an "objective, not subjective, standard of reasonableness under the circumstances." *Jenkins v. Methodist Hosps.,* 478 F.3d 255, 264 (5th 2007). In conflict with its sister courts discussed above, the *Jenkins* court found no distinction between sanctions requested by opposing counsel or those imposed *sua sponte* by the court, ruling that: "an attorney's good faith will not, by itself, protect against the imposition of Rule 11 sanctions." Id.

4. The Sixth and Eighth Circuits Have Declined to Adopt the "Akin to Contempt" Standard

The Sixth Circuit declined to adopt an "akin to contempt" standard of review in *Johnston v. Hildebrand (In re Bagsby)*, 40 F.4th 740, 747 (6th 2022). Instead, that court, like the Fifth Circuit applies "an objective standard when evaluating the imposition of sanctions sua sponte."

The Eighth Circuit in *Norsyn, Inc. v. Desai,* 351 F.3d 825, 831 (8th Cir. 2003) likewise declined to apply an "akin to contempt of court" standard to *sua sponte* sanctions issued pursuant to Rule 11, recognizing the conflicting standard that has been

adopted by the Second, Fourth and Ninth Circuits. Instead, the Eighth Circuit simply held that "sua sponte issuance of sanctions is to be reviewed with 'particular strictness.'" Citing *MHC Inv. Co. v. Racom Corp*., 323 F.3d 620, 623 (8th Cir. 2003). That court ruled that:

> We need not now decide whether an attorney's conduct must be "akin to contempt of court" in order to justify a district court in issuing sanctions on its own initiative; nor need we scrutinize the litany of reasons set forth by the district court in this case to support its entry of sanctions against [the attorneys]. Instead, we hold that the district court committed a clear abuse of its discretion when it ordered [the attorneys] jointly and severally liable for Defendants' attorney fees and costs.

5. This Court Should Grant *Certiorari* to Resolve the Split in the Circuits

District courts have sanctioned civil rights attorneys based on Rule 11 violations at a significantly higher rate than other attorneys. "Still Chilling After All These Years: Rule 11 of the Rules of Civil Procedure and Its Impact on Federal Civil Rights Plaintiffs after the 1993 Amendments," 37 Valparaiso University Law Review 1, Fall, 2003 at *2. This Court should grant *certiorari* due to the split in the circuits as to whether district courts must apply an "akin to contempt" standard in considering whether to impose *sua sponte* Rule 11 sanctions.

B. The Court Should Grant Certiorari Because the Imposition of Sanctions Was Untimely.

During the litigation below, prior to settlement, none of the defense attorneys, who had 297 years of combined experience, moved for sanctions. The district court assured the parties that the case would be forever ended upon the state court's approval of the mediated settlement agreement.

The Third Circuit in *Mary Ann Pensiero, Inc. v. Lingle,* 847 F.2d 90 (3d Cir. 1988), motivated by a concern that Rule 11 motions be filed and decided in a timely manner, adopted a requirement that "all motions requesting Rule 11 sanctions be filed in the district court before the entry of a final judgment." Id. at 100. Subsequently, in *Simmerman v. Corino*, 27 F.3d 58, 60 (3d 1993), the Third Circuit applied the same rule where trial court invoked its *sua sponte* authority to impose sanctions.

In the case now before this Court, on May 24, 2021, the district judge in this case granted summary judgment to all defendants except the group home manager who assaulted Valentine. ECF 249. He dismissed the case the first time on September 27, 2021, after Plaintiffs settled the case for $300,000.00. ECF 275 Inexplicably, the district court then filed judgment in favor of all defendants that same day. ECF 276. At the hearing held on October 25, 2021 on Plaintiffs' motion to vacate the improper post-settlement issuance of summary judgment the district judge informed the parties that his order dismissing the case would put "an end to this case completely and "[t]hat will extinguish all the claims."

Just hours after receiving notice that the state court approved the settlement, the district court issued an untimely 35 page Order to Show Cause on December 17, 2021. ECF 286, ECF 287 and ECF 288.

In *Pensiero,* the Third Circuit held that:

> The Advisory Committee Notes accompanying the rule explain that notice should be given promptly upon the discovery of a rule violation. There is no reason why prompt action should be required of an opposing party and yet not similarly required of the court. ...Their imposition three months later was an abuse of discretion.

Id. at 63-64. In this case, the district judge issued its Order to Show Cause seven months after awarding summary judgment to all but one judgement-proof Defendant.

The Court should grant *certiorari* because the issuance of the Order to Show Cause and imposition of sanctions was untimely.

1. Did the district court abuse its authority by sanctioning Petitioner *sua sponte* pursuant to 28 U.S.C. 1927 and its inherent authority where there was no evidence of or finding of bad faith conduct by the district court?

This Court reviews the award of sanctions pursuant to a court's inherent authority, and under 28 U.S.C. § 1927, for abuse of discretion. *Chambers*

v. NASCO, Inc., 501 U.S. 32, 55 (1991). The district court not only invoked every conceivable legal theory on which sanctions could be imposed, but he also threatened to levy every conceivable sanction against Petitioner, including attorneys' fees and costs. *Blue v. United States Dep't of Army,* 914 F.2d 525, 535 (4th Cir. 1990).

As in *Blue*, the judge sought to forever deter civil rights claims to enforce the Medicaid Act under Section 1983 and chilled any attorney from bringing claims under the ADA to enforce the rights of SCDDSN clients. In this case claims were brought by a severely disabled Medicaid beneficiary and the court demonstrated no concern for the deterrent effect its decision would create upon impoverished persons who have meritorious claims, or civil rights attorneys who might consider taking on such worthy and meritorious representations. Id. at 535 and 550. As the Fourth Circuit recognized "an edict of such imposing dimensions may chill meritorious as well as meritless claims and dissuade deserving parties from ever bringing suit for fear of the concomitant burden of sanctions." Id. at 535.

"Congress had a momentous purpose in mind" when it enacted the ADA and other civil rights statutes at issue in this case. This Court should be "unwilling to witness the evisceration of this purpose through sanctions awarded in a manner that leaves a lasting reluctance on the part of plaintiffs to vindicate the legal rights which Congress gave them." Id.

Section 1927 only authorizes monetary damages, allowing a court to require "[a]ny attorney . . . who so multiplies the proceedings in any case unreasonably and vexatiously" to "satisfy personally the excess

costs, expenses, and attorneys' fees reasonably incurred because of such conduct." 28 U.S.C. § 1927. That statute does not, however, authorize district courts to issue nonmonetary sanctions, *sua sponte* or not, such as those issued by the district judge in this case.

In addition, this Court long ago established that an award of sanctions under 28 U.S.C. § 1927 or the district court's inherent authority requires a finding of recklessness or bad faith. *Chambers v. Nasco, Inc.*, 501 U.S. 32, 50, 115 L. Ed. 2d 27, 111 S. Ct. 2123 (1991). The district judge made specific findings that conduct of co-counsel Bouton did not demonstrate bad faith or malicious conduct. However, he abused his authority by failing to make any finding that Petitioner acted in bad faith and the record below contains no such evidence.

Indeed, at a hearing in this case, the district judge complimented Petitioner:

> And I don't mean to be derogatory, because I've always admired your spunk and your grit. You are obviously a very fine lawyer that provides zealous advocacy for your client. You probably put in a lot of pots of coffee and stay up late at night studying these intricate regulations. And that certainly is something to be proud of.

In the order imposing sanctions, the district judge recognized the good faith of Petitioner: “This Court has no doubt that Harrison’s actions are fueled by an innate desire to effectuate change in a system she sees as broken, corrupt, and in need of a complete overhaul.” Absent from his order, however,

was any finding that Petitioner acted in bad faith, thus he abused his discretion to the extent that sanctions were awarded pursuant to 28 U.S.C. 1927 or the court's inherent authority and that order should be vacated.

By imposing sanctions upon Petitioner, not only has the district court chilled Petitioner, but the district court's ruling will have a chilling effect on any civil rights attorney contemplating challenging violations of the federal rights of intellectually disabled Medicaid participants or SCDDSN clients seeking to enforce their rights under the ADA.

2. Did the district court fail to apply other proper legal standards and fail to follow proper procedures and were its determinations of fact clearly erroneous?

This Court ruled in *Cooter & Gell v. Hartmarx Corp*. that: "A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence.", 496 U.S. 384, 405, 110 L. Ed. 2d 359, 110 S. Ct. 2447 (1990).

A. The District Court Failed to Comply with Local Rules Requiring Referral to the Chief Judge.

Fourth Circuit precedent required the district judge to refer allegations of misconduct to the Chief Judge of the South Carolina District Court pursuant to Local Disciplinary Rules IV and V.

In *In re Kunstler,* 914 F.2d 505, 524 (4th 1990), the Fourth Circuit recognized that:

> It is particularly inappropriate to use sanctions as a means of driving certain attorneys out of practice. Such decisions are properly made by those charged with handling attorney disbarment and are generally accompanied by specific due process provisions to protect the rights of the attorney in question. . . .

The lower court violated Appellant's due process rights by refusing to comply with the district court's disciplinary process which provides for an independent review prior to making public allegations of misconduct that warrant sanctions. In *Hunter v. Earthgrains*, controlling Fourth Circuit precedent required that where a district court judge determines that a sanction more severe than admonition, reprimand of censure, is warranted "it should refer the matter to the appropriate disciplinary authorities." *Hunter,* 281 F.3d at 151. In that opinion, the Fourth Circuit also instructed that the failure to survive summary judgment does not, in itself warrant sanctions. Id., citing this Court's ruling in *Christianburg Garment Co. v. EEOC,* 434 U.S. 412, 421-22 (1977).

Local Disciplinary Rules IV and V required the district court judge to report any misconduct, as defined by the South Carolina Supreme Court Rules of Professional Conduct, to the Chief Judge of the district court. As in *Blue v. United States Dep't of Army,* the district court below "plainly did not follow these procedures in this case, instead imposing the

disciplinary penalty sua sponte based on its own observations of counsel's behavior." 914 F.2d 525, 550 (1990). The Fourth Circuit held that the district court does not have authority to "impose disciplinary penalties at its own behest for any unethical conduct which occurs before it," but the applicable federal rules only "allow a court the ability to deal summarily with disruptive conduct in the courtroom" through sanctions without following these procedures. Id.

In this case, as in *Blue,* Petitioner's conduct clearly did not "threaten the orderly administration of justice in the courtroom," and the district judge failed to provide for "notice, an opportunity to be heard, and an *independent arbiter*." Id. (Emphasis added.) Citing *In re Chaplain,* 621 F.2d 1272, 1275 (4th Cir. 1980) (exercise of summary contempt powers may only be appropriate "when immediate action is required to preserve order in the proceedings and appropriate respect for the tribunal").

The purpose of the sanctions appears to have been to drive Petitioner out of business. The sanctions now prevent Petitioner from becoming a certified mediator, further limiting her ability to make a living practicing law.

Because the district court failed to follow these mandatory disciplinary procedures, Petitioner respectfully requests that this Court will vacate the district court's reprimand of counsel for a breach of professional ethics and the accompanying sanction. See *In re Thalheim,* 853 F.2d 383, 386-88 (5th Cir. 1988); *In re Abrams*, 521 F.2d 1094, 1104-05 (3d Cir. 1975).

B. The District Court Clearly Violated Rule 11's Prohibition Against Imposing Sanctions for Alleged Discovery Abuse.

Much of the district court's sanction order complains of conduct during discovery, after the court denied Defendants motions to dismiss and request to require Petitioner to file a RICO Case Statement. These proceedings were initiated by Respondents, not Petitioner. In any event, Rule 11(d) prohibits the district court from issuing Rule 11 sanctions for conduct related to discovery.

Affirming the district court's ruling would create confusion by appearing to establish a rule mandating that a certain number of depositions be taken to avoid risk of sanctions. The Federal Rules of Civil Procedure do not require an attorney to take a single deposition and the district court failed to provide any controlling case law that would authorize sanctions based on the district court's opinion that the attorney should have taken certain witnesses' depositions.

C. The District Court's Finding that Petitioner's Theory of Death Caused by Hyponatremia "Lacks Any Foundation" is Clearly Erroneous.

The district court disregarded all medical evidence presented by Petitioner, as well as circumstantial evidence that support Plaintiffs' allegations that Defendants' failure to notify Grate of historical and ongoing treatment for hyponatremia and failure to provide in-home nursing services contributed to her death. Neither

the EMS report nor the ER report contain any evidence indicating that Valentine died of coronary thrombosis (a heart attack). Those records do not even suggest testing that would have been required to substantiate that cause of death. Valentine was dead on arrival at the hospital, although she was not pronounced dead until after midnight. At the time EMS arrived, she was not breathing, she had no heart beat and her skin was already cold.

As this Court ruled in *United States v. Diebold, Inc.*,: "On summary judgment the inferences to be drawn from the underlying facts contained in such materials must be viewed in the light most favorable to the party opposing the motion." 369 U.S. 654, 655 (1962). When the materials before a district court raised a genuine issue as to ultimate facts, it was improper for the district court to grant a motion for summary judgment. Fed. R. Civ. P. 56(c). Id.

Instead of viewing all evidence in a light most favorable to Plaintiffs, as the district court was required to do in considering the motions for summary judgment under Rule 56(c), the district court ignored all medical evidence and accepted as true the conclusion of the coroner, without even consulting the attending physician at the hospital or Valentine's own primary care physician.

These symptoms described in the EMS and ER reports and Grate's affidavit are consistent with sudden death resulting from hyponatremia and there is not even a mention of a heart attack in those reports. "Cardiac arrest" means that the heart stopped. It does not mean that the individual suffered a heart attack. https://www.cedars-sinai.org/blog/heart-attack-cardiac-arrest-and-heart-failure.html. "A heart attack is when blood flow to

the heart is blocked, and sudden cardiac arrest is when the heart malfunctions and suddenly stops beating unexpectedly."

In addition to disregarding evidence supporting Plaintiffs' claim that hyponatremia contributed to her death, the district court committed clear error by sanctioning Petitioner for a claim for wrongful death, based on the coroner's conclusion, when that cause of action was contained only in the separate state action filed in the Pickens County Court of Common Pleas that was not included in the federal action. *Lokhova v. Halper*, 30 F.4th 349, 355 (4th Cir. 2020).

The district court's finding that "Counsel avers this head trauma caused Valentine's death" also finds no support in the record. Order at page 4 of 35. Plaintiffs never claimed that Valentine's death resulted from a head injury.

Debra Grate's affidavit also is consistent with symptoms of hyponatremia, as are the records of EMS and the hospital and the district court erred in sanctioning Petitioner (but not co-counsel who suggested the wrongful death cause of action in the state court) for alleging that hyponatremia contributed to Valentine's death.

D. The District Court's Finding that Petitioner Vexaciously and "Relentlessly Pursue[d] Litigation" Against the Individual Defendants for "Nearly Three Years" is Clearly Erroneous

The district court denied nearly all of the Defendants' motions to dismiss, keeping alive all of the causes of action on August 6, 2019. ECF 80. It was Defendants who relentlessly pursued motions to

quash Plaintiffs' notices to take depositions and/or subpoenas for depositions, based primarily upon the "Apex Doctrine" which had not been adopted by the Fourth Circuit. Rule 11(d) specifically prohibits district courts from sanctioning attorneys for "disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37."

In September, 2019, the district court denied Defendants' motion to require Plaintiffs to file a "RICO Case Statement." ECF 103. These two rulings, along with the agreement of both Attorneys Wilkins and Bouton that the case had merit, provided a good faith belief during the years between the court denying Defendants' motions and the issuance of summary judgment that Plaintiffs' claims were not frivolous and that they had a serious "chance of success." As the Fourth Circuit ruled in *Hunter v. Earthgrains Co. Bakery*:

> That is to say, as Judge Wilkins recently explained, the legal argument must have "absolutely no chance of success under the existing precedent." Id. Although a legal claim may be so inartfully pled that it cannot survive a motion to dismiss, such a flaw will not in itself support Rule 11 sanctions -- only the lack of any legal or factual basis is sanctionable. Simpson v. Welch, 900 F.2d 33, 36 (4th Cir. 1990). We have aptly observed that "the Rule does not seek to stifle the exuberant spirit of skilled advocacy or to require that a claim be proven before a complaint can be filed. The Rule attempts to discourage the needless filing of groundless lawsuits." Cleveland Demolition Co. v. Azcon

> Scrap Corp., 827 F.2d 984, 988 (4th Cir. 1987). And we have recognized that "creative claims, coupled even with ambiguous or inconsequential facts, may merit dismissal, but not punishment." Brubaker v. City of Richmond, 943 F.2d 1363, 1373 (4th Cir. 1991) (quoting *Davis v. Carl*, 906 F.2d 533, 536 (11th Cir. 1990)).

281 F.3d 144, 154 (4th Cir. 2002).

The district court did not rule upon the motions for summary judgment until May, 2021. The court disregarded all evidence of the upstream Defendants' knowledge of systemic abuse, neglect and exploitation of clients in SCDDSN residential facilities, in violation of their obligation under 42 U.S.C. 1396n(c)(2) to provide safeguards to assure the health and welfare of Medicaid waiver participants and to inform beneficiaries of feasible alternatives under the waiver. *Wood v. Tompkins,* 33 F.3d 600, 602 (6th 1994), *Waskul v. Washtenaw Cty. Cmty. Mental Health,* 979 F.3d 426 (6th Cir. 2020).

The court simply disregarded as irrelevant massive evidence presented by Plaintiffs of Defendants' failure to assure financial accountability for Medicaid funds, including audits by the United States Department of Health and Human Services Office of Inspector General reporting that SCDHHS and SCDHHS did not have controls in place to comply with federal law. Plaintiffs presented uncontradicted evidence that from 2012 until after the death of Valentine that SCDDSN failed to provide federally mandated cost reports, showing that SCDHHS was submitting fabricated claims to the federal government. Affidavits of former

SCDDSN Commissioner Deborah McPherson support Plaintiffs claims, as do the affidavits of two other former DDSN Commissioners advising that it is SCDDSN private counsel that has a history of dragging out litigation for years.

This scheme required the knowledge and cooperation of a large number of persons, including officials at SCDDSN and SCDHHS. After the court refusing to require Plaintiffs to provide a RICO Case Statement, Petitioner had a good faith belief in all causes of action against all Defendants named in the original and second amended complaint.

E. The Court should grant *certiorari* due to the issues of national importance raised in the underlying case.

Petitioner calls to the Court's attention the national importance of the issues raised in this case involving the rights of Medicaid participants to enforce provisions of the Medicaid Act through private actions brought under 42 U.S.C. 1983.

In Planned Parenthood S. Atl. v. Baker, 941 F.3d 687, 693 (4th Cir. 2019) Governor McMaster, a Respondent in this case issued two executive orders directing SCDHHS Director Joshua Baker, another Respondent in this case, to violate private rights of a Medicaid participant to choose from all qualifying providers by excluding a qualified Medicaid provider from billing Medicaid for services allowed under the provisions of the Medicaid Act. The Fourth Circuit affirmed the order of the district court judge finding that the actions of McMaster and Baker violated 42 U.S.C. 1396a(a)(23) of the Medicaid Act.

More recently, Robert Kerr, another Respondent in this case, argued to this Court in *Kerr v. Planned Parenthood S. Atlantic,* 2023 U.S. LEXIS 2558 (2023) that Medicaid participants have no private right under Section 1983 to enforce *any* spending clause legislation. According to the arguments of these Respondents, the sole enforcement mechanism when a state violates the requirements of the Medicaid Act is for CMS to terminate funding. The facts and evidence presented in this case clearly demonstrate the national importance of Medicaid participants having the right to enforce provisions of the Medicaid Act when states disregard their obligations under federal law.

This Court recently rejected the arguments of South Carolina and 20 other states in their amicus brief filed in *Health and Hospital Corporation of Marion Cty. v. Talevski,* 599 U. S. ___, 2023 U.S. LEXIS 2421 (2023), arguing that spending clause statues may not ever be enforced under Section 1983. In a 7 to 2 decision, this Court ruled that:

> "Laws" means "laws," no less today than in the 1870s, and nothing in petitioners' appeal to Reconstruction-era contract law shows otherwise. Consequently, as we have previously held, §1983 can presumptively be used to enforce unambiguously conferred federal individual rights, unless a private right of action under §1983 would thwart any enforcement mechanism that the rights-creating statute contains for protection of the rights it has created. ...And we discern no incompatibility between private enforcement under §1983 and the statutory scheme that

> Congress has devised for the protection of those rights. Accordingly, we affirm the lower court's judgment that respondent's §1983 action can proceed in court.

This Court should grant *certiorari* to prevent the chilling effect caused by the district court's sanction orders which will prevent impoverished Medicaid participants from enforcing their rights in federal court, while allowing the State of South Carolina to spend Medicaid funds without regard to their obligations to assure financial accountability for those funds and their obligation to protect the health and welfare of Medicaid waiver participants. The district court's sanctions order appears to be intended to forever silence and put out of business the Petitioner, who has spent her entire career protecting the rights of intellectually disabled citizens of South Carolina.

CONCLUSION

Justice Stevens, concurring in part and dissenting in part, observed in *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 413 in 1990 that:

> I still believe that most lawyers are wise enough to know that their most precious asset is their professional reputation.

Notes to the 1993 amendments instruct district courts that show cause orders will "ordinarily be issued only in situations that are akin to a contempt of court..." However, there is a split amongst the

Circuits as to whether courts must apply an "akin to contempt" standard or an "objective reasonableness" standard to *sua sponte* sanctions issued pursuant to Rule 11. This Court should grant *certiorari* to resolve this conflict.

As the Federal Circuit recognized in *1-10 Indus. Assocs. v. United States*:

> A formal order of sanction of any kind imposed by a court necessarily tarnishes an attorney's professional reputation. Just as it is the duty of the court imposing sanctions to do so only when truly warranted, it is our duty on appeal to review the facts of such a case with great care to determine whether a sanction has been properly imposed.

528 F.3d 859, 861 (F.Cir. 2008). The Fourth Circuit recognized in *Brubaker v. City of Richmond*, 943 F.2d 1363, 1387 (4th Cir. 1991) that : "It is particularly inappropriate to use sanctions as a means of driving certain attorneys out of practice."

Petitioner is a solo practitioner who has represented intellectually disabled citizens of South Carolina her whole legal career. That career will likely be ended in the event that *certiorari* is not granted due to the chilling effect of the sanctions order, leaving the State free to continue to divert funds allocated to provide services to SCDDSN Medicaid waiver participants, while subjecting those individuals in residential facilities to continuing risk of abuse, neglect and exploitation. Petitioner respectfully prays that this Court will grant this Petition for *certiorari* for the reasons set forth above.

Respectfully submitted,

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