No. 23-486

In the Supreme Court of the United States

SIDNEY POWELL, BRANDON JOHNSON, HOWARD KLEINHENDLER, JULIA HALLER, GREGORY ROHL & SCOTT HAGERSTROM,
Petitioners,

v.

GRETCHEN WHITMER, JOCELYN BENSON, CITY OF DETROIT, MICHIGAN, *ET AL.*,
Respondents.

ON PETITION FOR WRIT OF *CERTIORARI* TO THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITIONERS' MOTION TO SUPPLEMENT QUESTIONS PRESENTED AND TO EXPEDITE

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United States v. Fortner, 455 F.3d 752 (7th Cir. 2006) 4

United States v. Games-Perez, 695 F.3d 1104 (10th Cir. 2012) 6

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Univ. of Texas v. Camenisch, 451 U.S. 390 (1981) 16

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E.D. Mich. Electronic Filing Policies and Procedures, R10(a), (e)-(f) 22

Other Authorities

Peter Baker, *Biden Warns That 'Big Lie' Republicans Imperil American Democracy*, THE NEW YORK TIMES (Nov 2, 2022) 29

Molly Ball, *The Secret History of the Shadow Campaign That Saved the 2020 Election*, TIME (Feb. 4, 2021) 30

BUILDING CONFIDENCE IN U.S. ELECTIONS: REPORT OF THE COMMISSION ON FEDERAL ELECTION REFORM (Sept. 2005) 32

Richard C. Chen, *Summary Dispositions as Precedent*, 61 WM. & MARY L. REV. 691 (2020) 4

Memo. of Rep. John Conyers, Jr., as *Amicus Curiae* Supporting Respondents, *Moss v. Bush*, 828 N.E.2d 994 (Ohio 2005) (No. 04-2088) 29

2 M. Farrand, RECORDS OF THE FEDERAL CONVENTION OF 1787 (1911) 31

Fed. Jud. Ctr., *Emergency Election Litigation in Federal Courts: From Bush v. Gore to Covid-19* (2023) 32

Mollie Hemingway, RIGGED: HOW THE MEDIA, BIG TECH & THE DEMOCRATS SEIZED OUR ELECTIONS (Regnery 2021) 32

Sharona Hoffman, *Birth After Death: Perpetuities and the New Reproductive Technologies*, 38 GA. L. REV. 575 (2004) 12

Lachlan Markey & Jonathan Swan, *Scoop: High-powered group targets Trump lawyers' livelihoods*, Axios (Mar. 7, 2022) 28

Mot. to Join *Amicus* Brief, at 2, *Moss v. Bush*, 828 N.E.2d 994 (Ohio 2005) (No. 04-2088) 29

Project 65's About page (Mar. 7, 2022) 28

John Rawls, A THEORY OF JUSTICE (Belknap 1971) 29

S. Shapiro, K. Geller, T. Bishop, E. Hartnett, D. Himmelfarb, SUPREME COURT PRACTICE § 6.27 (10th ed. 2013) 3

Joseph Story, 2 COMMENTARIES ON EQUITY JURISPRUDENCE (1884) 33

Georgene M. Vairo, RULE 11 SANCTIONS (Richard G. Johnson ed., 3d ed. 2004) 6

Xi Wang, THE TRIAL OF DEMOCRACY: BLACK SUFFRAGE AND NORTHERN REPUBLICANS, 1860-1910 (1997) 33

13C CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE & PROCEDURE § 3533.3.1 (3d ed.) 15-16

INTRODUCTION

Petitioners respectfully move to supplement the Questions Presented and to expedite the Court's consideration of this matter. Petitioners seek the former because respondent City of Detroit's brief in opposition ("BIO") makes the non-obvious claim that its request for bar-referral relief was not part of its motion for sanctions under FED. R. CIV. P. 11(c)(2) but rather a motion under E.D. Mich. Local Rule 83.22(c):[1]

> The only significant difference between the served motion and the filed motion was the addition of three paragraphs at the end of the motion seeking referrals for disciplinary proceedings, but those paragraphs were explicitly limited to relief sought under Eastern District of Michigan Local Rule 83.22—not Rule 11.

Detroit BIO 5. The current Questions Presented address Rule 11 and 28 U.S.C. § 1927, Pet. i., requiring a supplemented question on Rule 83.22(c). Expedited review—in the form of summary reversal—is warranted for two reasons. First, the petition-stage briefing shows that sanctions were clear error, making merits briefing and argument unnecessary. Second, there is the exigency of lifting the chill on First Amendment petition rights that the sanctions pose, as well as an urgency to clarify the justiciability of claims under the Elections and Electors Clauses well in advance of the 2024 election. That clarity is required to avoid repeating the 2020 election's serial irregularities and is timely as part of implementing this Court's supervening decision in *Moore v. Harper*, 143 S.Ct. 2065 (2023). Specifically, as explained below, the Court should narrow *Lance v. Coffman*, 549 U.S. 437 (2007), its actual holding.

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[1] The cited local rules and guidance are available on the district court's website at https://www.mied.uscourts.gov/index.cfm?pagefunction=rulesPlansOrders and https://www.mied.uscourts.gov/PDFFIles/policies_procedures.pdf, respectively.

TIMING OF DETROIT'S AND MICHIGAN'S RESPONSE

Petitioners file this motion on February 13, three days before the conference scheduled for February 16. Consequently, under S.Ct. R. 21.4, no response is required until February 23, 2024, three days after the ordinary schedule for the Court to release an order from the conference, assuming *arguendo* an order issues from that conference. Petitioners have notified counsel for respondents that, in the absence of further order of the Court, petitioners consent to extending the time to respond to this motion to March 1, 2024 (*i.e.*, 10 days from the scheduled release of orders from the February 16 conference).

Michigan waived its BIO and thus would have 30 days to file a BIO if the Court requests one, S.Ct. R. 15.3, in addition to the opportunity to respond to this motion. Detroit already has filed its BIO, but has the opportunity to respond to this motion. If the Court expedites this matter without merits briefing and argument, petitioners respectfully request that the Court set an expedited—and not extendable—schedule for the respondents' opposition to this motion and petitioners' reply, as well as—if the Court wishes—an opportunity for Michigan to file a BIO and petitioners to reply.

REASON TO SUPPLEMENT THE QUESTIONS PRESENTED

Responding to the argument that the filed Rule 11(c)(2) motion improperly added bar-referral relief not requested in the served motion, Detroit claims that its request for bar-referral relief was a separate motion under Local Rule 83.22(c). If the issue of the bar-referral relief's lawfulness is not fairly included within the existing Questions Presented on Rule 11 (Pet. i), petitioners respectfully move to supplement the Questions Presented in response to Detroit's non-obvious new claim:

> Whether the bar-referral relief complied with Local Rule 83.22(c) and with the Due Process Clause and Article III of the federal Constitution.

Although the lower courts found the need for bar-referral relief based on Rule 11, Pet.App:57a, 60a-61a, with Local Rule 83.22(c) cited as an afterthought, Pet.App:135a (quoted in Section I.C.1, *infra*), Detroit's non-obvious new claim may require supplementing the Questions Presented, which a petitioner may achieve by supplemental brief or a motion to supplement the Questions Presented. *See* S. Shapiro, K. Geller, T. Bishop, E. Hartnett, D. Himmelfarb, SUPREME COURT PRACTICE § 6.27 (10th ed. 2013).

REASON TO EXPEDITE THIS MATTER

Even without a Michigan BIO, the petition-stage briefing makes clear that this Court can reverse the sanctions without merits briefing and argument, which makes summary disposition an appropriate option. Importantly, expedition would serve two important goals. First, it would help thaw the sanctions' extreme chill of the First Amendment petition rights of counsel and their clients. Second, deciding the case this term could implement *Moore* by clarifying the limited *Lance* holding before the 2024 election and the likely spate of litigation under the Elections and Electors Clauses.

A "summary reversal does not decide any new or unanswered question of law, but simply corrects a lower court's demonstrably erroneous application of federal law." *Maryland v. Dyson*, 527 U.S. 465, 467 n.1 (1999); *CSX Transp., Inc. v. Hensley*, 556 U.S. 838, 840 (2009) (summary reversal for "clear error" applying the Court's prior decisions); *Allen v. Siebert*, 552 U.S. 3, 7 (2007) (summary reversal where the Court's prior decision "precludes [the lower court's] approach"); *Gonzales v. Thomas*,

547 U.S. 183, 185 (2006) (summary reversal where for error "obvious" from binding precedent). Indeed, the Court occasionally uses follow-on summary decisions to flesh out issues in recently decided cases. *See*, *e.g.*, *Lambrix v. Singletary*, 520 U.S. 518, 538-39 (1997); Richard C. Chen, *Summary Dispositions as Precedent*, 61 WM. & MARY L. REV. 691, 694 (2020).[2] Exigency can also justify summary proceedings. *United States v. Fortner*, 455 F.3d 752, 754 (7th Cir. 2006). Although perhaps easier when an issue presented for summary disposition is legal, "the Court has not shied away from summarily deciding fact-intensive cases where, as here, lower courts have egregiously misapplied settled law." *Wearry v. Cain*, 577 U.S. 385, 394-95 (2016) (collecting cases). Finally, if the Court denies expedited hearing or summary reversal, the Court can instead require merits briefing and argument. *Rosario v. Rockefeller*, 410 U.S. 752, 756-58 (1973).

With supervening decisions like *Moore* calls a lower court's analysis of an issue into question, the Court can grant, vacate, and remand ("GVR") for the lower courts' consideration of the new precedent. *Lawrence v. Chater*, 516 U.S. 163, 166 (1996). Because petitioners already have dismissed their complaint, however, the issue here under the Elections and Electors Clauses is whether an Article III controversy existed between December 15, 2020, and the dismissal of the case in January of 2021. If so, the claim for sanctions under § 1927 is not viable. Given the issue's locus in sanctions

[2] Three days after the Sixth Circuit rejected petitioners' claim under the Elections and Electors Clauses, this Court elevated a three-justice concurrence from *Bush v. Gore*, 531 U.S. 98, 113 (2000) (Rehnquist, C.J., concurring), to a holding that "federal courts must not abandon their own duty to exercise judicial review" for those clauses of the Constitution. *Moore*, 143 S.Ct. at 2089-90.

litigation and the sound policy against "extensive and needless satellite litigation," *Chambers v. NASCO, Inc.*, 501 U.S. 32, 51 (1991), petitioners respectfully submit that the Court should decide the Article III issue without a GVR.

With that background, petitioners respectfully submit that two sets of issues warrant an expedited summary decision here. The sanctions under Rule 11, § 1927, and—taking Detroit's new claim at face value—Local Rule 83.22(c) all represent clear error. *See* Sections I.A-I.C, *infra*. Moreover, the exigency of not only the chill on the legal profession and thus on the public's ability to exercise its right of petition but also the looming threat of continued unresolved violations of the Elections and Electors Clauses in the 2024 election warrant expedited resolution by this Court. *See* Sections II.A-II.B, *infra*.

I. THIS COURT DOES NOT REQUIRE MERITS BRIEFING OR ARGUMENT TO REVERSE THE LOWER COURTS.

Although petitioners raise numerous "cert-worthy" splits in Circuit authority, this matter can be resolved summarily based on the clear error in the lower courts' decisions. None of the sanctions at issue here were warranted under Rule 11, under 28 U.S.C. § 1927, or under E.D. Mich. Local Rule 83.22(c).

A. This Court does not require merits briefing or argument to reverse the Rule 11 sanctions.

The petition explains that Rule 11's ambiguities leave the rule impermissibly vague. This Court's calling out those ambiguities in a summary order in this action will allow temporary clarity—or at least caution—until the ambiguity and Circuit splits are resolved by amending Rule 11. What is clear after Detroit's BIO, however, is that the lower-court decisions' clear error warrants summary reversal.

1. Detroit was not entitled to relief under Rule 11.

Although a summary reversal likely cannot resolve splits in Circuit authority on Rule 11, ruling in petitioners' favor does not require resolving every basis on which the lower courts' decisions deviated from what Rule 11 requires. Detroit's Rule 11 motion violated several bright-line rules under Rule 11(c). When "properly raise[d],"[3] such "mandatory claim processing rules ... are unalterable." *Manrique v. United States*, 581 U.S. 116, 121 (2017) (internal quotations omitted). These bright-line, clear errors warrant summary reversal for several independent reasons:

- Rule 11(c)(2) requires that motions "describe the specific conduct that allegedly violates Rule 11(b)," FED. R. CIV. P. 11(c)(2), which "was intended to reduce … practice of making threats or sending vague 'Rule 11 letters' designed to bully an opponent into withdrawing a paper or position." Georgene M. Vairo, RULE

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[3] Parties are not confined to the precise arguments they made below and can raise new *arguments* here to support a preserved *claim*. *Citizens United v. FEC*, 558 U.S. 310, 330-31 (2010); *Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 379 (1995). Even if petitioners did not explicitly raise an objection below, petitioners may raise it on appeal under plain-error review. *United States v. Olano*, 507 U.S. 725, 736-37 (1993); *see, e.g.*, *Brickwood Contractors, Inc. v. Datanet Eng'g, Inc.*, 369 F.3d 385, 396 (4th Cir. 2004) (*en banc*) (*Olano* plain-error review applies to civil sanctions); *accord PT Pukuafu Indah v. United States SEC*, 661 F.3d 914, 926 (6th Cir. 2011); *Mike Ousley Prods., Inc. v. WJBF-TV*, 952 F.2d 380, 383 (11th Cir. 1992); *Isaacson v. Manty*, 721 F.3d 533, 539-40 (8th Cir. 2013); *see also United States v. Curtis*, 400 F.3d 1334, 1335-36 (11th Cir. 2005) (plain-error review applies to petition for rehearing); *accord United States v. Games-Perez*, 695 F.3d 1104, 1122 (10th Cir. 2012) (Gorsuch, J., dissenting from the denial of rehearing *en banc*); *United States v. Balde*, 943 F.3d 73, 92 (2d Cir. 2019) (collecting cases for plain-error review on rehearing petitions). Petitioners sufficiently raised the propriety of Rule 11(c)(2) sanctions generally and safe-harbor issues specifically in district court, Pet.App:70a-71a, and the Sixth Circuit. *See* Opening Br. 3 (Issue VI), 14-15, 81-83; Reply Br. 31-32; Pet. for Rehearing 3-7. Detroit itself includes compliance with Rule 11(c)(2) as a Question Presented. *See* Detroit BIO i (question 1).

11 SANCTIONS, at 24 (Richard G. Johnson ed., 3d ed. 2004). Detroit cannot meet this test for at least four reasons. First, in addition to excluding the filed sanction motion's brief, Detroit's served motion omitted bar-referral relief and the Young report,[4] Pet.App. 337a-343a, but the filed motion included both. Pet.App: 389a-390a, 413a-414a. Second, even Circuits that allow serving motions without the eventually filed brief require identicality. *Roth v. Green*, 466 F.3d 1179, 1192 (10th Cir. 2006); *Burbidge Mitchell & Gross v. Peters*, 622 F. App'x 749, 757 (10th Cir. 2015) ("the motion must provide sufficient 'notice [of the claimed sanctionable conduct] for the protection of the party accused of sanctionable behavior'") (quoting *Roth*, 466 F.3d at 1192). Third, while summary reversal may not resolve the brief-versus-no-brief split,[5] Detroit's motion to exceed the brief's page count makes clear, as applied here, that Detroit's served motion (with no brief) was insufficiently specific because an overlong brief was needed "in order to address the full scope of legal and factual issues raised in the Motion." App:382a. If the district court needed the gloss, the safe harbor required Detroit first to serve in on petitioners. Fourth,

[4] Detroit demanded a wholesale dismissal, but the claim against the unlawful signature-verification guidance remained viable. *See* Sections I.B.2.a-I.B.2.c, II.B.5, *infra*. Detroit's motion needed to—but did not—indicate what precise portions of the complaint should be stricken as allegedly violative of Rule 11(b)(2)-(3), and why. As indicated in note 6, *infra*, the arguments that Detroit sought to reference was unclear.

[5] *Compare Uptown Grill, L.L.C. v. Camellia Grill Holdings, Inc.*, 46 F.4th 374, 389 (5th Cir. 2022) (Rule 11 requires identical motion *and brief*) *with Star Mark Mgmt., Inc. v. Koon Chun Hing Kee Soy & Sauce Factory*, 682 F.3d 170, 175-76 (2d Cir. 2012) (Rule 11 allows merely a notice of motion).

Detroit's motion did not make key arguments, incorporating them instead from an earlier filing. Pet.App.341a, In the Sixth Circuit and Eastern District, incorporation or perfunctory arguments waive an issue. *Northland Ins. Co. v. Stewart Title Guar. Co.*, 327 F.3d 448, 452-53 (6th Cir. 2003); *Atlas Techs., LLC v. Levine*, 268 F.Supp.3d 950, 962 (E.D. Mich. 2017). The slapdash motion that Detroit served was insufficiently specific to put petitioners on notice of the basis for sanction or even that Detroit would actually file that motion without first preparing a compliant motion.[6]

- In addition to violating Rule 11(c)(2)'s safe harbor with respect to specificity, Detroit's filed motion violated an even more fundamental requirement for *all motions* in federal court: "The motion must: … state with particularity the grounds for seeking the order; and … state the relief sought." FED. R. CIV. P. 7(b)(1)(B)-(C). Again, in the Sixth Circuit and the Eastern District, purporting to raise an argument by citing a prior filing or in a perfunctory manner waives the issue. *Northland Ins.*, 327 F.3d at 452-53; *Atlas Techs.*, 268 F.Supp.3d at 962. Under the local rules and guidance, movants need not submit proposed orders, but must serve proposed orders if submitted. Detroit did not serve a proposed order, which—if prepared and served—might have clarified the basis for bar-referral relief under Rule 11 versus Local Rule 83.22(c).

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[6] Detroit's incorporation confused not only petitioners' counsel, *see* Errata (Jan. 30, 2024), but also the district court. *See* Pet.App.75a (correcting Detroit's page range to "ECF No. 39 at Pg ID 2808-2[8]33)") (court's alteration).

- Rule 11(c)(2) requires that motions "be made separately from any other motion." FED. R. CIV. P. 11(c)(2). In the petition-stage briefing, Detroit claims that its request for bar-referral relief was under Local Rule 83.22(c), not under Rule 11. Detroit BIO 5. By its terms, Local Rule 83.22(c) neither authorizes nor invites motions. Adding a separate Local Rule 83.22(c) component to the served Rule 11(c)(2) motion violated Rule 11(c)(2)'s safe harbor on separate motions. *Cf. Roth*, 466 F.3d at 1192 ("the plain language of [Rule 11] requires a copy of the actual motion for sanctions to be served on the person(s) accused of sanctionable behavior").

Under the circumstances, Detroit's filing its motion on January 5, 2021, constituted the initial service of Detroit's motion for sanctions on petitioners.[7] Because petitioners voluntarily dismissed within 21 days of that service, Rule 11(c)(2) prohibits sanctions.

2. Michigan was not entitled to relief under Rule 11.

Although they waived filing their own BIO, the Michigan respondents cannot show an entitlement to Rule 11 sanctions unless Detroit can. Specifically, on January 14, 2021, plaintiffs voluntarily dismissed, and Michigan filed a Notice of Joinder/Concurrence (ECF:84) with Detroit's motion. As such, Michigan's otherwise-untimely and unspecific request is wholly derivative of Detroit's rights. If this Court

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[7] Rule 11(c)(2) allows the non-moving party "21 days after service" to withdraw or correct a paper, FED. R. CIV. P. 11(c)(2), and Rule 6(d) provides an additional three days for email service. FED. R. CIV. P. 6(d); *Carruthers v. Flaum*, 450 F. Supp. 2d 288, 305 (S.D.N.Y. 2006). By filing on day 21, Detroit shortchanged petitioners a day under Rule 11(c)(2) and three days under Rule 6(d).

finds Detroit ineligible for Rule 11 sanctions for failing to comply with the mandatory claims-processing requirements of Rule 11(c)(2)'s safe harbor, this Court need not even hear from Michigan on the issue of sanctions under Rule 11(c)(2).

3. The splits in Circuit authority could be addressed further by amending Rule 11.

For the clear error identified in Sections I.A.1-I.A.2, *supra*, and the exigencies identified in Sections II.A-II.B, *infra*, petitioners respectfully submit that this Court can and should resolve this matter summarily. A summary reversal likely would not resolve the significant splits in Circuit authority that petitioners identified. *See* Pet. 8-16. If not, those splits can be resolved by amending Rule 11. The Civil Rules Committee next meets April 9, 2024. For their part, petitioners will identify these Circuit splits to the Committee and propose amendments to resolve them. For its part, the Court could highlight these Circuit splits as part of a summary decision.

By calling attention to the issue *ex cathedra*, the Court could inform the bench and bar that Rule 11 contains layers of cert-worthy uncertainty and perhaps incentivize the Committee to act as expeditiously as practical. *But see Sanders v. United States*, 373 U.S. 1, 32 (1963) (Harlan, J., dissenting), *abrogated in part*, PUB. L. NO. 104-132, Title I, §§ 105-106, 110 Stat. 1217, 1219-20 (1996). Notwithstanding Justice Harlan's argument to leave rule development "to focused adjudication on a case-by-case basis, or to the normal rule-making processes of the Judicial Conference," *id.*, it likely would avoid unnecessary satellite sanction litigation for this Court to identify these issues in a summary reversal, even if that *per curiam* decision did not resolve *all* these issues.

B. This Court does not require merits briefing or argument to reverse the § 1927 sanction.

The Sixth Circuit upheld sanctions under 28 U.S.C. § 1927 because petitioners purportedly conceded in No. 20-815 that the Electoral College's vote on December 14 would moot their petition. Pet.App:29a (Sixth Circuit); *id.* 80a (district court), Then, petitioners did not dismiss the suit in district court when Detroit served a version of its Rule 11 motion. *Id.* 29a. As explained in this Section, Detroit's BIO failed to make the required showing for mootness, and—while Michigan deserves an opportunity to attempt to make the required showing if Michigan still supports the sanction under § 1927, Michigan cannot possibly make the required showing.

Mootness requires two things that were impossible to show in December of 2020. First, that interim relief or events have *completely and irrevocably eradicated the effects* of the alleged violation." *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979) (emphasis added, internal quotation marks, alterations, and citations omitted). Second, that "it is impossible for a court to grant any effectual relief whatever." *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 161 (2016) (internal quotations omitted). Moreover, defendants bear the burden of proving mootness. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000). Finally, for both Article III and the availability of suit under *Ex parte Young*, courts assume the plaintiffs' merits views. *Warth v. Seldin*, 422 U.S. 490, 500 (1975); *Verizon Md. Inc. v. Pub. Serv. Comm'n of Maryland*, 535 U.S. 635, 638 (2002). Because the claim remained viable, Michigan cannot show relief was impossible.

1. Detroit was not entitled to relief under § 1927.

Perhaps unaware of its burden to prove mootness, Detroit did not attempt to prove that no relief was possible and even admitted that Electoral College votes can swap after December 14. BIO 23 (citing Hawaii's 1960-61 example). While Detroit implies that partisan alignment had something to do with Hawaii in 1961 and would not apply to Michigan's 2020 election, *id.*, that says nothing about what this Court might have done and discredits the Michigan respondents by implying they would ignore a lawful court ruling on a partisan basis. Relief was *possible*. *See* Section I.B.2, *infra*; *cf.* Sharona Hoffman, *Birth After Death: Perpetuities and the New Reproductive Technologies*, 38 GA. L. REV. 575, 602 (2004) ("the common law Rule [Against Perpetuities] is a rule of *logical possibility*") (emphasis added). Detroit has not shown an entitlement to relief under § 1927.

2. Michigan was not entitled to relief under § 1927.

The Due Process Clause entitles Michigan to try to show an entitlement to relief under § 1927. As explained in this Section, it would be impossible for Michigan to show that entitlement.

a. The Elections and Electors Clause claim was not moot.

The operative complaint sought declaratory relief under the Elections and Electors Clauses: "A declaratory judgment declaring that Michigan's failed system of signature verification violates the Electors and Elections Clause by working a de facto abolition of the signature verification requirement[,]" Pet.App:333a (¶ 233(6)), as well as "such other relief as is just and proper[.]" Pet.App:334a (¶ 233(13)); *cf.* FED. R. CIV.

P. 54(c) ("final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings").[8] Because the requested relief was not tied to the 2020 election, relief remained possible even after the 2020 election concluded.[9] But even if this Court reads the complaint as somehow tied to the 2020 election, the application to future elections would follow under the "capable of repetition, yet evading review" exception to mootness. *See* Section I.B.2.c, *infra*.[10]

b. A concession about *interim relief for 2020* in this Court would not prove mootness *on the merits for all time* in the district court.

The Sixth Circuit's decision to hold petitioners to their statement in No. 20-815 was plain error, three times over. First, defendants bear the burden of proving mootness, which requires the impossibility of any relief. Second, the admission does not estop petitioners. Third, and most importantly, the admission concerned interim

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[8] Detroit tries to bolster its blunderbuss sanctions motion by noting that the motion included this type of "general prayer" language, Detroit BIO 15 n.8, but Rule 54(c) applies to judgments, not to Rule 11 motions. To the contrary, Rule 11 requires specificity. *See* FED. R. CIV. P. 11(c)(2).

[9] To the extent that the underlying litigation concerned only the 2020 election—as respondents and the lower courts have unjustifiably assumed—respondents' motions to dismiss in district court were gratuitous, given that the fate of the underlying litigation clearly hung on the actions of this Court in No. 20-815. Indeed, petitioners dismissed the case within a few days of this Court's denial of emergency relief in No. 20-815. Under the circumstances, all that was required in district court was a motion to stay proceedings until this Court acted on the appeal. *See*, *e.g.*, *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936); *Betancourt v. Indian Hills Plaza LLC*, 615 F.Supp.3d 650, 652 (E.D. Mich. 2022) (citing *Landis*); *cf. Gray v. Bush*, 628 F.3d 779, 785 (6th Cir. 2010) (citing *Landis*). Respondents' fee award under § 1927 is grossly excessive *vis-à-vis* the time necessary to stay proceedings in the district court.

[10] Secretary Benson's unlawful guidance was vacated in March, after this case was dismissed. *Genetski v Benson*, 2021 Mich. Ct.Cl. LEXIS 3, *19 (Mar. 9, 2021).

relief for 2020 in this Court, not merits relief for all time in the district court. Petitioners outline these three points to demonstrate why Michigan cannot possibly meet its burden of proving the impossibility of relief.

First, while petitioners undoubtedly told this Court that their petition in No. 20-815 would be moot if the Electoral College voted, Pet.App:80a, Michigan cannot show how that admission adds up to demonstrating the impossibility of any relief: "A case becomes moot … only when it is impossible for a court to grant any effectual relief whatever." *Campbell-Ewald*, 577 U.S. at 161 (internal quotations omitted). Petitioners have offered explanations why their initial statement was wrong, and the Sixth Circuit's rejection of those arguments as "makeweight" is undermined by that court's failure to recognize that the complaint stated a claim for unilateral executive action by Secretary Benson in violation of the Elections and Electors Clauses. *Compare* Pet.App:21a-22a, 26a, 29a *with* First Am. Compl. ¶¶ 15.C, 30, 96, 190(h) (App:234a, 238a-239a, 266a-267a, 318a). Moreover, petitioners cite—and Detroit admits, Detroit BIO 23—the 1960-61 example of Hawaii's electors being swapped after the Electoral College voted. Unlikely and impossible pose different tests. Even without a swap, declaring the Democrat slate improperly elected would at least *partially* redress the Republican's slate's unequal-footing injury:

> The difficulty is attributable to the gap between what the President ultimately desires (to be declared the victor of Wisconsin) on one hand, and what a court can award him on the other. But the President's complaint can be read as more modestly requesting a declaration that the defendants' actions violated the Electors Clause and that those violations tainted enough ballots to "void" the election. Were we to grant the President the relief he requests and declare the election results void, the alleged injury—the unlawful appointment of electors—would be

> redressed. True, our declaration would not result in a new slate of electors. But the fact that a judicial order cannot provide the full extent or exact type of relief a plaintiff might desire does not render the entire case nonjusticiable.

Trump v. Wis. Elections Comm'n, 983 F.3d 919, 924 (7th Cir. 2020) (citing *Church of Scientology v. United States*, 506 U.S. 9, 12-13 (1992)); *Clinton v. City of New York*, 524 U.S. 417, 433 n.22 (1998); *see also Franklin v. Massachusetts*, 505 U.S. 788, 803 (1992) (declaratory relief against Secretary could partially redress injury). With *some* relief possible, some claims still were viable and the case was thus not moot.

Second, while admissions count as a quantum of evidence that could carry the day for Michigan *if petitioners bore the burden of proof*, it is Michigan that bears the burden of proof. *Friends of the Earth*, 528 U.S. at 190. For petitioners' admission to qualify as dispositive, the admission would need to trigger estoppel, which a withdrawn statement in an unsuccessful petition could never do, given the lack of reliance and inequitable conduct. *See*, *e.g.*, *Markel v. William Beaumont Hosp.*, 510 Mich. 1071, 1078-79 (2022); *Gjokaj v. HSBC Mortg. Servs.*, 602 F. App'x 275, 279 (6th Cir. 2015); *Dickerson v. Colgrove*, 100 U.S. 578, 580 (1879). Petitioners' statement in No. 20-815 would prove nothing, even if it applied to the district court merits.

Third, and most importantly, the admission in the petitioners' request for interim relief for the 2020 election in this Court in No. 20-815 is simply inapposite to merits relief for 2020 and subsequent elections in the district court. "Once the opportunity for a preliminary injunction has passed, … the preliminary injunction issue may be moot even though the case remains alive on the merits." 13C CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE & PROCEDURE § 3533.3.1 & n.43 (3d ed.)

(collecting cases). As this Court explained, "[t]his … is simply another instance in which one issue in a case has become moot, but the case as a whole remains alive because other issues have not become moot." *Univ. of Texas v. Camenisch*, 451 U.S. 390, 394 (1981); *accord Tropicana Product Sales, Inc. v. Phillips Brokerage Co.*, 874 F.2d 1581, 1583 (8th Cir. 1989) (merits case survives mootness of preliminary injunction); *Gjertsen v. Bd. of Election Comm'rs*, 751 F.2d 199, 201 (7th Cir. 1984) (same in election case based on potential repeat injury in future elections); *Boagert v. Land*, 543 F.3d 862, 864 (6th Cir. 2008) ("[d]ismissal of these preliminary-injunction appeals, of course, does not render moot the underlying district court litigation").[11] Significantly, even if the 2020 election were conceded, the district court still could have provided injunctive or declaratory relief against the signature-verification policy for *future elections*. The suggestion that the concession in No. 20-815 controlled the proceedings in the district court is frivolous and plain error.

c. The violations of the Elections and Electors Clause claim was capable of repetition, yet evading review.

Finally, even if the complaint were somehow limited to the 2020 election, that still would not require dismissal in the district court under the "capable of repetition, yet evading review" exception to mootness. *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 463 (2007) (exception applies to elections). The exception has two conditions:

> (1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation

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[11] Significantly, the defendant in *Boagert* was Michigan's then-Secretary of State in her official capacity as well as her individual capacity. *Bogaert*, 543 F.3d at 863.

> that the same complaining party will be subject to the same action again.

Id. at 462 (internal quotation marks omitted). Regardless of whether petitioners' clients would be candidates for the Republican slate of electors in a future election, they likely would be voters and Republican Party officials in their counties. As explained in Sections II.B.2-II.B.5, *infra*, that suffices for Article III standing.

3. The justiciability of Elections and Electors Clause claims is crucial to resolve before the 2024 election.

If all things were held constant here except that the district court had dismissed the Elections and Electors Clause claim, it would be appropriate to "GVR" this case for reconsideration under *Moore* and the Sixth Circuit's having overlooked a viable Elections and Electors Clause claim based on Secretary Benson's unlawful guidance on signature verification. *See* Section II.B.5, *infra*; Pet.App:333a (¶ 233(6); Pet. 25-26.[12] But this is sanctions litigation, not merits litigation, and a GVR would put too much emphasis on satellite sanctions litigation. *See Chambers*, 501 U.S. at 51 (courts should avoid "extensive and needless satellite litigation"). In addition to petitioners' having voluntarily dismissed the complaint, *Genetski* already vacated Secretary Benson's unlawful guidance. Thus, with respect to the Elections and Electors Clause claim, Article III is the only remaining issue. As explained in Section II.B.3, *infra*, this Court can cure that by confining *Lance* to its actual holding.

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[12] For threshold and jurisdictional purposes, the guidance was unlawful. *Verizon*, 535 U.S. at 638 (sovereign immunity); *Warth*, 422 U.S. at 500 (Article III).

C. This Court does not require merits briefing or argument to reverse the bar-referral relief.

Detroit's BIO claims that Detroit added bar-referral relief to its filed sanction motion as a separate motion under Local Rule 83.22(c). Detroit BIO 5. If true, that raises a series of procedural, jurisdictional, and Due Process questions, none of which require merits argument or briefing and all of which constitute clear error justifying summary reversal.

1. The district court lacked a sufficient basis to apply Local Rule 83.22(c) to non-Michigan counsel.

The district court found the need for bar-referral relief based on Rule 11, Pet.App:57a, 60a-61a, with Local Rule 83.22(c) later cited as an afterthought:

> This warrants a referral for investigation and possible suspension or disbarment to the appropriate disciplinary authority for every state bar and federal court in which each attorney is admitted, see Fed. R. Civ. P. 11 Advisory Committee Notes (1993 Amendment) (explaining that such referrals are available as a sanction for violating the rule); E.D. Mich. LR 83.22(c)(2).

Pet.App:135a. The district judge thus did not parse Local Rule 83.20(a)(1) to resolve the local rules' application to each petitioner, choosing instead to find all counsel responsible under Rule 11(c)(1) via an overbroad interpretation of "responsible" as meaning "involved." *See* FED. R. CIV. P. 11(c)(1). Procedurally, that begs the question of whether *any court* has found the facts required to apply Local Rule 83.22(c) to the non-Michigan counsel, assuming *arguendo* that the bar-referral portion of Michigan's sanction motion lay under Local Rule 83.22(c) and not under Rule 11, as Detroit now

claims.[13]

Specifically, Local Rule 83.22(c) applies only to "an attorney who is a member of the bar of this court or has practiced in this court as permitted by LR 83.20." E.D. Mich. Civil R. 83.22(c). For non-Michigan counsel (*i.e.*, petitioners Haller, Johnson, Kleinhendler, and Powell), Local Rule 83.20 defines the covered scope as follows:

> As used in this rule, except as provided in LR 83.20(i)(1)(D), "practice in this court" means, in connection with an action or proceeding pending in this court, *to appear in, commence, conduct, prosecute, or defend the action or proceeding; appear in open court; sign a paper; participate in a pretrial conference; represent a client at a deposition; or otherwise practice in this court or before an officer of this court.* A person practicing in this court must know these rules, including the provisions for sanctions for violating the rules. A person is not permitted to circumvent this rule by directing the conduct of litigation if that person would not be eligible to practice in this court.

E.D. Mich. Civil R. 83.20(a)(1) (emphasis added).[14] The only actions by the non-signing non-Michigan counsel that are potentially relevant are knowingly being listed as non-signing "of counsel" on the papers. That does not fit within the definition of "practice in this court."

With respect to petitioners Haller, Johnson, and Kleinhendler, the only claim is that their names appeared in the signature block as "of counsel," without their having even arguably signed or e-filed anything. Pet.App:335a. For three reasons,

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[13] Although petitioners start with the purely procedural point of the local rule's application to the non-Michigan counsel, the far more important jurisdictional and Due Process points raised in Sections I.C.2-I.C.5, *infra*, apply to all petitioners.

[14] In pertinent part, Local Rule 83.20(i)(1)(D) covers cosigning papers and counseling clients in an action or proceeding pending in the Eastern District. *Id.* 83.20(i)(1)(D)(i), 83.20(i)(1)(D)(iii).

Local Rule 83.22(c) does not apply to petitioners Haller, Johnson, and Kleinhendler based on their names' appearing in a signature block.

- First, for e-filed documents, the federal rules define signing a "filing made through a person's electronic-filing account and authorized by that person, together with that person's name on a signature block." FED. R. CIV. P. 5(d)(3)(C). Clearly, that does not apply to counsel who did not e-file a document, even if their name appeared in the signature block.
- Second, the Local Rule includes "sign a paper" among its list of actions that constitute "practice in this court." E.D. Mich. Civil R. 83.20(a)(1). Although the list ends with the catchall "otherwise practice in this court," that generic phrase cannot include "being listed in the signature block of a paper" because that would render the inclusion of "sign a paper" mere surplusage.[15] "[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme." *Marx v. General Revenue Corp.*, 568 U.S. 371, 386 (2013). Moreover, the *ejusdem generis* canon requires limiting the catchall phrase to actions like the actions in the preceding list (*e.g.*, responding to intra-party discovery not filed in court). *Washington State Dept. of Social and Health Servs. v. Guardianship Estate of Keffeler*, 537 U.S. 371, 384 (2003). "We typically use *ejusdem generis* to ensure that a general

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15 A "paper" is defined as "a pleading, motion, exhibit, declaration, affidavit, memorandum, order, notice, and any other filing by or to the Court." E.D. Mich. Electronic Filing Policies and Procedures, R1(l) (incorporated by E.D. Mich. Local Rule 5.1.1(a)) (hereinafter, "E.D. Mich. Electronic Filing Policies and Procedures").

word will not render specific words meaningless." *CSX Transp., Inc. v. Alabama Dept. of Revenue*, 562 U.S. 277, 295 (2011). Under this Court's clear guidance, then it would be clear error to include non-signing "of counsel" as "otherwise practicing in this court" when "signing a paper" is specifically listed as a basis to "practice in this court."

- Third, the unpublished extra-Circuit district court decision[16] on which the district court relied, *Morris v. Wachovia Sec., Inc.*, 2007 U.S. Dist. LEXIS 52675 (E.D. Va. July 20, 2007) (No. 3:02-cv-0797-REP), actually demonstrates that interpreting Rule 11(c)(1)'s "responsible" to mean "involved" is untenable. The counsel at issue—Steven G. Schulman—was a court-appointed lead counsel in class-action litigation, *id.* at *5, who tried to blame the violation on subordinate counsel. *Id.* at *26 ("Schulman counters that he should not be sanctioned because his reliance on others to investigate the facts and the law in the case was reasonable"). The court analyzed each alleged violation of Rule 11 and reached a mixed conclusion. *Compare id.* at *32-33 ("Schulman cannot be held accountable as a person responsible for the violations involving the Baldiswieler and White testimony") *with id.* at *35 ("Schulman is responsible, within the meaning of Rule 11(c), for the 'stock loan' claim violation"). That analysis belies the district court's rote analysis here that anyone who allows their name to be associated with litigation by having their name appear in the

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[16] District courts "lack authority to render precedential decisions binding other judges, even members of the same court." *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 428 (2011).

signature block is *per se* "responsible" under Rule 11(c)(1). Significantly here, the court exonerated Schulman for misleading references to the Baldiswieler and White testimony in opposing summary judgment, notwithstanding that he was court-appointed class counsel and that his name appeared in the signature block of the opposition as a non-signed counsel. *See* Pl.'s Opp'n to Mot. Summ. J. 36, Morris v. Wachovia Sec., Inc., No. 3:02-cv-0797-REP (E.D. Va. June 21, 2004) (available on LEXIS).[17]

For these reasons, petitioners Haller, Johnson, and Kleinhendler cannot be sanctioned under Local Rule 83.22(c) simply for their names' appearing in the signature block.

With respect to petitioner Powell, "/s/ Sidney Powell*" caveated "Application for admission pro hac vice Forthcoming" appeared on the document, Pet.App: 334a-335a, but—because she did not and could not e-file documents—that does not constitute signing the document under the federal rules. *See* FED. R. CIV. P. 5(d)(3)(C) (defining "signature"). Moreover, that "e-signature" was gratuitous in that it was not required for filing, was illusory in the sense that the district court's local rules do not allow admission *pro hac vice*, E.D. Mich. Civil R. 83.20 Comment (Pet.App: 222a), and did not comply with the local rules and guidance for multiple signatures that apply when a document requires multiple signatures. E.D. Mich. Electronic Filing Policies and Procedures, R10(a), (e)-(f). Under the circumstances, petitioner Powell also challenges Local Rule 83.22(c)'s application to her based on documents including "/s/

17 Petitioners will seek leave to lodge the opposition pursuant to S.Ct. R. 32.3.

Sidney Powell*" in the signature block.

2. Detroit was not entitled to bar-referral relief.

Detroit has no direct stake in bar-referral relief against petitioners, and its general interest in having the law enforced cannot support standing. *Linda R. S. v. Richard D.*, 410 U.S. 614, 619 (1973); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 574-78 (1992). While movants for an attorney-fee sanction would have an Article III interest in recovering their fees, movants "must demonstrate standing … for each form of relief that they seek (for example, injunctive relief and damages)." *TransUnion LLC v. Ramirez*, 141 S.Ct. 2190, 2208 (2021). Because *Willy v. Coastal Corp.*, 503 U.S. 131, 133 (1992), involved attorney-fee sanctions, *Willy* is irrelevant. In short, Detroit has no Article III interest in the bar-referral relief.

3. Michigan was not entitled to bar-referral relief.

Although petitioners refer to the state respondents as Michigan to distinguish them from Detroit, the state respondents are the Governor and Secretary of State in their official capacities, Pet.App:224a, which are executive offices. *League of Women Voters of Mich. v. Sec'y of State*, 506 Mich. 905, 908 (2020); *Sharp v. Genesee Cty. Election Comm'n*, 145 Mich. App. 200, 205 (Ct. App. 1985) (citing MICH. CONST. art. 5, § 21). The Michigan Attorney Discipline Board is "the adjudicative arm of the Supreme Court for discharge of its exclusive constitutional responsibility to supervise and discipline Michigan attorneys." *Grievance Adm'r v. Underwood*, 462 Mich. 188, 193 (2000) (interior quotation marks omitted). Moreover, Michigan's judicial power is "vested exclusively" in the judicial branch. MICH. CONST. art. 6, § 1. Like the federal government, Michigan's government is one of separated powers with each branch

confined to its own powers unless otherwise provided in the constitution:

> The powers of government are divided into three branches: legislative, executive and judicial. *No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.*

MICH. CONST. art. 3, § 2 (emphasis added). The party seeking relief from a federal court bears the burden of proving its standing, *Renne v. Geary*, 501 U.S. 312, 316 (1991), and the state respondents have not produced any evidence that Michigan's Governor or its Secretary of State has an Article III interest in bar-referral relief against petitioners. Accordingly, the state respondents lack an Article III interest in bar-referral relief against petitioners for the same reason that Detroit lacks an Article III interest. *See* Section I.C.1, *supra*.

4. Bar referrals violated petitioners' Due Process rights.

Although Detroit cited Local Rule 83.22(c), Detroit did not designate relief under a particular subpart of that provision, citing instead all three (*i.e.*, Michigan's Attorney Grievance Commission, disciplinary authorities in other jurisdiction, and the Eastern District's chief judge). Pet.App:429a. Although the district court appears to rely primarily on Rule 11, it also cited Local Rule 83.22(c) for bar-referral relief without invoking the show-cause process by the Chief Judge under Local Rule 83.22(c)(3), Pet.App:135a (quoted in Section I.C.1, *supra*), and the Sixth Circuit rejected petitioners' Due Process arguments to affirm because "that rule permits such referrals rather than proscribes them." Pet.App:36a. This was error for three reasons.

First, the Rules Enabling Act authorizes federal court rules, 28 U.S.C. § 2072, which includes local rules that are consistent with the federal rules. FED. R. CIV. P.

83(a)(1). Federal Rule 11(c)(3) requires a hearing, and—at least as applied here—no hearing is required under Local Rule 83.22(c)(1)-(2). As such, as applied here, the local rule is inconsistent with the federal rules and thus impermissible.

Second, and relatedly, the federal rules prohibit sanctioning or disadvantaging a person without prior actual notice:

> No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

FED. R. CIV. P. 83(b). By expressly listing "sign a paper" as a form of "practice in this court," Local Rule 83.22(c) in no way gives notice that having a non-signer's name in the signature block qualifies as "otherwise practicing in this court." To the contrary, under the surplusage and *ejusdem generis* canons, Local Rule 83.22(c)'s list assures non-Michigan counsel that having one's name in the signature block—by itself—*cannot* constitute "practice in this court." *See* Section I.C.1, *supra*.

Third, and most importantly, imposing the bar referrals without a hearing violated Due Process. Significantly, the Sixth Circuit reversed the bad faith finding for protected First Amendment activity. Pet.App:8a. Initiating bar referrals required the district court to provide petitioners due-process protections under either Rule 11(c)(3)[18] or that court's inherent authority. A finding "tantamount to bad faith … would have to precede any sanction under the court's inherent powers," *Roadway Express v. Piper*, 447 U.S. 752, 767-68 (1980), *abrogated in part on other grounds*,

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[18] The district court disavowed Rule 11(c)(3) as its basis. Pet.App:55a n.10.

PUB. L. NO. 96-349, § 3, 94 Stat. 1154, 1156 (1982), and the Sixth Circuit reversed the district court's bad faith showing *vis-à-vis* petitioners' purportedly improper purpose that the Sixth Circuit found protected by the First Amendment. Pet.App:8a. The bar referrals must be vacated for failing to provide a hearing.

5. Principles of federalism do not require abstention.

On August 26, 2021, the day after the district court entered its sanction order, a back-dated docket entry provides as follows:

> On this date, the Clerk of the Court sent the Court's August 25, 2021 decision to the Michigan Attorney Grievance Commission and the appropriate disciplinary authority for each jurisdiction where Plaintiffs' counsel is admitted, referring the matter for investigation and possible suspension. (AFla) (Entered: 02/18/2022)

Docket, *King v. Whitmer*, No. 2:20-cv-13134-LVP-RSW (E.D. Mich.).[19] An action against petitioners is proceeding before Michigan's Attorney Discipline Board (the "Board") as *Grievance Administrator v. Rohl*, Nos. 23-29-GA, 23-30-GA, 23-32-GA, 23-33-GA, 23-34-GA, 23-36-GA, 23-37-GA (Mich. Atty. Disc. Bd.). Notwithstanding this state-law action before a state board, principles of abstention have no application to a direct appeal from a U.S. district court's final judgment on issues of federal law under federal rules of court procedure. To the contrary, this matter is squarely within federal appellate jurisdiction, 28 U.S.C. §§ 1291, 1254(1), on issues of federal law.

Although abstention may—or may not—preclude petitioners' challenging the

[19] The body of the docket entry identifies its entry date as "02/18/2022," but the docket shows the action as having occurred on "08/26/2021." Relief is not moot against referrals that already occurred; Michigan authorities *sua sponte* dropped proceedings against the two counsel for whom the Sixth Circuit reversed sanctions. Pet.App:35a.

Board's proceedings under federal laws such as 42 U.S.C. § 1983, *see Middlesex Cty. Ethics Comm'n v. Garden State Bar Ass'n*, 457 U.S. 423, 425 (1982) (citing *Younger v. Harris*, 401 U.S. 37, 44 (1971), and its progeny), that is not the relief that petitioners seek here. Petitioners seek *vacatur* of a federal district court's order on issues of federal law in a direct federal appeal of the district court's order. That relief would not apply directly to the Board or to the Board's proceedings. Abstention doctrines are thus irrelevant to petitioners' entitlement to relief here.

To the contrary, federal courts have a virtually unflagging obligation to resolve issues within their jurisdiction:

> Federal courts, it was early and famously said, have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. Jurisdiction existing, this Court has cautioned, a federal court's "obligation" to hear and decide a case is "virtually unflagging." Parallel state-court proceedings do not detract from that obligation.

Sprint Communs., Inc. v. Jacobs, 571 U.S. 69, 77 (2013) (quoting *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)). Given the Court's clear jurisdiction here, 28 U.S.C. §§ 1291, 1254(1), this Court can and should review the district court's misinterpretation of Local Rule 83.20(a)(1)'s scope and application here.

II. THIS CASE PRESENTS AN IDEAL VEHICLE TO RESOLVE TWO ISSUES OF PROFOUND IMPORTANCE.

Notwithstanding that the issues presented here can be resolved summarily, this case presents an ideal vehicle to resolve two crucial issues fundamental to our form of government. First, the Court should clarify and highlight the ground rules for issuing sanctions under Rule 11's safe harbor. Second, the Court should clarify the

justiciability of claims under the Elections and Electors Clauses.

A. It is crucial to the legal profession and to the public's First Amendment rights to clarify the splits in Circuit authority on sanctions.

Notwithstanding that the Sixth Circuit reversed the improper-purpose finding, Pet.App:8a, and the district court's failure to comply with due-process requirements, *see* Section I.C.4, *supra*, the potentially career-ending sanctions remain in place. The satellite sanctions proceedings here have beyond dwarfed the original election litigation, even more so when one considers that—far from being *compelled* to move to dismiss in the district court—the defendants could simply have sought a stay or extension until this Court resolved an expedited appeal. *See* note 9, *supra*. But "extensive … satellite litigation" is not truly "*needless*" to its proponent—Detroit or its counsel—if the goal is to crush petitioners. *Compare Chambers*, 501 U.S. at 51 *with* Lachlan Markey & Jonathan Swan, *Scoop: High-powered group targets Trump lawyers' livelihoods*, Axios (Mar. 7, 2022) (founder described "65 Project" as effort to "not only bring the grievances in the bar complaints, but shame [the lawyers] and make them toxic in their communities and in their firms").[20] This Court should make clear that harassing, vindictive, destructive satellite sanction litigation does not pay.

With roles reversed and similar election claims similarly dismissed early, sanctions not only have been denied (albeit on technical grounds), *Moss v. Bush*, 828 N.E.2d 994, 997 (Ohio 2005), but Democrats argued that "[f]or over two hundred

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[20] Project 65's About page listed Detroit's counsel as a consulting counsel https://web.archive.org/web/20220307173320/https://the65project.com/about/ (dated Mar. 7, 2022) (last visited Feb. 13, 2024).

years, one of the strengths of our democracy has been that citizens may question the results of an election," so "courts must show determined restraint before imposing sanctions against those who seek to vindicate the public interest through an election contest."[21] Justice requires that these *founding principles* be applied equally, without first knowing one's side in a dispute. John Rawls, A THEORY OF JUSTICE 136-42 (Belknap 1971). Given the First Amendment nexus not only for petitioners themselves as lawyers, *NAACP v. Button*, 371 U.S. 415, 428-29 (1963) (lawyers exercised First Amendment expression and association rights), but also the general necessity for the public to have counsel to enforce the public's First Amendment right of petition, the chill from the vague standards at issue here is intolerable. *Cf. FCC v. Fox TV Stations, Inc.*, 567 U.S. 239, 253-54 (2012) (void for vagueness doctrine). This Court should use this litigation to clarify the ambiguities presented here.

B. It is crucial to the Nation to clarify the justiciability of claims under the Elections and Electors Clauses.

Democrats and their media allies are fond of professing their pure defense of "democracy" against an attack from the right. *See*, *e.g.*, Peter Baker, *Biden Warns That 'Big Lie' Republicans Imperil American Democracy*, THE NEW YORK TIMES A18 (Nov 2, 2022). This talking point assumes "anti-democracy" as the opposition, when in fact the opposition presses different *democratic* ideals. The National Voting Rights

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[21] Memo. of Rep. John Conyers, Jr., as *Amicus Curiae* Supporting Respondents, at 2, 6, *Moss v. Bush*, 828 N.E.2d 994 (Ohio 2005) (No. 04-2088); *accord* Mot. to Join *Amicus* Brief, at 2, *Moss v. Bush*, 828 N.E.2d 994 (Ohio 2005) (No. 04-2088) (motion of Sen. Feingold and Reps. Clay, Frank, Kucinich, Jackson Lee, Lofgren, McDermott, Meehan, Nadler, Oberstar, Payne, Sanchez, Schiff, Scott, Van Hollen, Waters, Wexler, and Woolsey to join Conyers brief).

Act maintains the twin goals of maximizing lawful voters' ballot access and protecting electoral integrity, 52 U.S.C. § 20501(b)(2)-(3), but those two goals can compete.

Unfortunately, because major newspapers "are virtually Democratic Party broadsheets," *Tah v. Glob. Witness Publ'g, Inc.*, 991 F.3d 231, 254 (D.C. Cir. 2021) (Silberman, J., dissenting in part), some Democrats actually may believe their party's political talking points. *See*, *e.g.*, Detroit's BIO 2 (suggesting that the 2020 election did not involve irregularities). As explained in Section II.B.1, *infra*, election laws are under coordinated attack that makes it impossible to know who won the most *lawful* votes. Enabled by a compliant media, Democrats and their allies have launched an unprecedented campaign—across allied media, high-technology gatekeepers to media, and government—to propagate false narratives and insulate those narratives from rebuttal. Molly Ball, *The Secret History of the Shadow Campaign That Saved the 2020 Election*, TIME (Feb. 4, 2021); *Murthy v. Missouri*, 144 S. Ct. 7, 7-8 (2023) (Alito, J., dissenting from grant of application for stay). Censorship is rampant. As a result, the public may not understand what actually divides the two sides, much less the role of the Democrats and their allies in creating the division.

Little—if anything—could be more important that this Court's preserving the fairness of elections: "[T]he political franchise of voting … is regarded as a fundamental political right, because preservative of all rights." *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). As Madison explained at the Constitutional Convention, "'[t]he qualifications of electors and elected [are] fundamental articles in a Republican [Government] and ought to be fixed by the Constitution,'" and "'[i]f the Legislature

could regulate those of either, it can by degrees subvert the Constitution.'" *Oregon v. Mitchell*, 400 U.S. 112, 210 (1970) (quoting 2 M. Farrand, RECORDS OF THE FEDERAL CONVENTION OF 1787, at 249-50 (1911)) (Harlan, J., concurring in part and dissenting in part). The justiciability of the Elections and Electors Clauses is fundamental, so it is unconscionable for this Court's *Lance* decision to enable unapproved non-legislative actors to neuter election-integrity laws for political ends without federal judicial review of that federal issue.

"Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government." *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). Significantly, as explained in Section II.B.1, *infra*, "fraud" as applied to elections is not limited to ballot-stuffing and other criminal activity. Fraud "'debase[s] or dilute[es] … the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.'" *Id.* (quoting *Reynolds v. Sims*, 377 U.S. 533, 555 (1964)). As such, government has an interest in preventing voter fraud and ensuring voter confidence. *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 189 (2008). As the branch of government with the final say on what the law—and especially the Constitution—is, *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803) ("[i]t is emphatically the province and duty of the judicial department to say what the law is"); *City of Boerne v. Flores*, 521 U.S. 507, 524 (1997) ("power to interpret the Constitution ... remains in the Judiciary"), this Court should act to ensure adherence to election law and the Constitution whenever those issues fall within an Article III case or controversy.

Petitioners do not ask this Court to referee the 2020 election. Instead,

petitioners ask this Court to clarify the ground rules for 2024 and beyond. Deciding that issue in the throes of the 2024 election will be as difficult and unpleasant as in 2020. The Court can and should decide the issue easily now. The need is urgent, and the task will only get more difficult the longer the Court avoids it.

1. The coordinated attack against election-integrity measures represents an immediate and serious threat to democracy.

The volume of federal election-related cases continues to increase; emergency litigation more than doubled from the previous presidential election cycle. Fed. Jud. Ctr., *Emergency Election Litigation in Federal Courts: From Bush v. Gore to Covid-19*, at 11 (2023).[22] Proving an adage, Democrats and their allies proved that a pound of prevention is worth an ounce of cure, partly by focusing on the fortuitous excuse of the COVID pandemic to nullify or weaken ballot-integrity measures (*e.g.*, signature or witness requirements for absentee ballots) through a pre-election litigation spree and through non-legislative tweaks like Secretary Benson's guidance. *See* Mollie Hemingway, RIGGED: HOW THE MEDIA, BIG TECH & THE DEMOCRATS SEIZED OUR ELECTIONS, 14-20 (Regnery 2021). While this was no doubt effective, it was corrosive to many. *Roman Catholic Diocese v. Cuomo*, 141 S.Ct. 63, 68 (2020) ("even in a pandemic, the Constitution cannot be put away and forgotten"); *cf.* BUILDING CONFIDENCE IN U.S. ELECTIONS: REPORT OF THE COMMISSION ON FEDERAL ELECTION REFORM, at 46 (Sept. 2005) (absentee ballots are "the largest source of potential voter fraud"). This Court should not enable that conduct to continue by failing to act.

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[22] Available at https://perma.cc/JMQ2-B5DC (last visited Feb. 13, 2024).

Although actual fraud like ballot stuffing has a storied history in "machine" politics,[23] election chicanery is neither wholly past, *Crawford*, 553 U.S. at 195 & n.12 (discussing recent examples of fraud from ten states), nor confined to actual fraud:

> By constructive frauds are meant such acts …, as, *although not originating in any actual evil design*, or contrivance to perpetuate a positive fraud or injury upon other persons, are yet, by their tendency to deceive or mislead other persons, or to *violate private or public confidence*, or to *impair or injure the public interests*, deemed equally reprehensible with positive fraud.

Joseph Story, 2 COMMENTARIES ON EQUITY JURISPRUDENCE § 258 (1884) (emphasis added); *cf. Baker v. Humphrey*, 101 U.S. 494, 502 (1879) (distinguishing constructive and actual fraud) (citing Story, EQUITY JURISPRUDENCE §§ 258, 311). Intentional partisan violations of the Elections and Electors Clauses may not be as corrupt as ballot stuffing, but they have similarly corrosive effects: public distrust in election results and election officials. Thus Court must recognize the problem and take steps—such as the one requested here regarding *Lance*—to avoid a repeat of 2020.

2. The development of a body of "candidate standing" law shows the need to clarify *Lance*.

Although a Circuit split exists, *compare* Pet. 21-22 (citing *Donald J. Trump for*

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[23] "The reality that northern fraud could hurt the party as much as southern black disfranchisement, and eventually hurt the whole system of congressional elections, alarmed Republicans. … One serious fraudulent practice in northern cities ... was that of recent immigrants casting votes by using false naturalization papers as their certificates of citizenship." Xi Wang, THE TRIAL OF DEMOCRACY: BLACK SUFFRAGE AND NORTHERN REPUBLICANS, 1860-1910, at 68 (1997); *Crawford*, 553 U.S. at 195 & n.11 ("flagrant examples of such fraud in other parts of the country have been documented throughout this Nation's history by respected historians and journalists" and citing Tammany Hall political machine); *Barr v. Chatman,* 397 F.2d 515, 515-16 & n.3 (7th Cir. 1968) (199 Chicago voters cast 300 party-line Democratic votes, as well as three party-line Republican votes in one election).

President, Inc. v. Sec'y Pa., 830 F.App'x 377, 387 (3d Cir. 2020); *Bognet v. Sec'y Pa.*, 980 F.3d 336, 348-52 (3d Cir. 2020), vacated *sub nom. Bognet v. Degraffenreid*, 141 S.Ct. 2508 (2021)) *with* Pet. 21 (citing *Carson v. Simon*, 978 F.3d 1051, 1058 (8th Cir. 2020); *Wood v. Raffensperger*, 981 F.3d 1307, 1314 (11th Cir. 2020)), the law appears to be evolving to hold that candidates have standing. *See* Judicial Watch *Amicus* Br. 13-14; *cf. Mecinas v. Hobbs*, 30 F.4th 890, 897-900 (9th Cir. 2022) (finding that political parties have competitor standing to challenge allegedly unlawful election regulations). But candidate standing has a Goldilocks problem.

Specifically, candidates generally will not be known until after the primary election, but—by the time we know the candidate—there is a *Purcell* problem of suing too close to an election for injunctive relief from a federal court. *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S.Ct. 1205, 1207 (2020) ("lower federal courts should ordinarily not alter the election rules on the eve of an election") (citing *Purcell*). Either the case is too cold because—without a candidate—it is unclear who has standing to sue, or the case is too hot with the election just around the corner.

With *Moore* recognizing that the Elections and Electors Clauses present a federal question, *Moore*, 143 S.Ct. at 2089-90 ("federal courts must not abandon their own duty to exercise judicial review"), this Court should not unintentionally foreclose a federal forum for voters to exercise their civil rights. As this Court explained, "the rights of voters and the rights of candidates do not lend themselves to neat separation." *Bullock v. Carter*, 405 U.S. 134, 143 (1972). *Bullock* concerned the level of scrutiny, not the presence of injury. *Id.* ("laws that affect candidates always have

at least some theoretical, correlative effect on voters”). For standing, a “personal stake in a fraction of a vote … [is] sufficient to support standing.” *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 223 n.13 (1974). The clear candidate-versus-voter divide perceived under *Lance* has no basis in either Article III or *Lance*.

3. Although correctly and narrowly decided, *Lance* is applied incorrectly and overbroadly to injure voters.

Rightly or wrongly, *Lance* has come to stand for the proposition that voters do not have standing to sue under the Elections and Electors Clauses. *See* Pet.App:192a (citing *Bognet*); Section II.B.4, *infra* (petitioners submit that this reading of *Lance* is wrong). This reading of *Lance* goes far beyond what *Lance* actually held:

> The only injury plaintiffs allege is that the law—specifically the Elections Clause—has not been followed. This injury is precisely the kind of undifferentiated, generalized grievance about the conduct of government that we have refused to countenance in the past. *It is quite different from the sorts of injuries alleged by plaintiffs in voting rights cases where we have found standing*. Because plaintiffs assert no particularized stake in the litigation, we hold that they lack standing to bring their Elections Clause claim.

Lance, 549 U.S. at 442 (citation omitted, emphasis added). Without concrete injury to protect, structural or procedural protections fall short as a “right *in vacuo*” that cannot support Article III standing. *Summers v. Earth Island Inst.*, 555 U.S. 488, 496-97 (2009). As the emphasized text explains, a *Lance* type of generalized-grievance plaintiff is entirely different from plaintiffs with concrete Article III injuries.

Unlike the *Lance* plaintiffs, a concrete-injury plaintiff “is not forbidden to object that her injury results from disregard of the federal structure of our Government.” *Bond v. United States*, 564 U.S. 211, 225-26 (2011); *Defenders of Wildlife*, 504 U.S. at 571-72 & n.7 (procedural rights); *cf. United States v. Munoz-*

Flores, 495 U.S. 385, 393 (1990) (violation of Origination Clause is justiciable); *INS v. Chadha*, 462 U.S. 919, 935-36 (1983) (bicameralism and presentment). Whether characterized as procedural, structural, or federalism, constitutional protection comes into play under Article III only if the plaintiff suffers cognizable injury. But *Lance* did not hold—and could have held, as the question was not presented—that a plaintiff who suffers concrete injury from an election policy cannot challenge that policy under the Elections or Electors Clauses.

4. Under hornbook law, *anyone* with an Article III injury from a voting policy can challenge the policy under the Elections and Electors Clauses.

There is no legal basis to deny a party suffering cognizable Article III injury from an election policy the right to assert that the policy violated the Elections or Electors Clauses. To the contrary, when an election policy inflicts cognizable injury (*e.g.*, an equal protection, due process, vote dilution, or competitive injury) on a plaintiff, the plaintiff can challenge the election policy under the Elections or Electors Clauses, along with any other basis the plaintiff has to challenge the election policy:

> [O]nce a litigant has standing to request invalidation of a particular [government] action, [the litigant] may do so by identifying all grounds on which the agency may have failed to comply with its statutory mandate.

DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 353 & n.5 (2006). The rationale is simple: outside of taxpayer standing, standing doctrine has no nexus requirement. *Duke Power Co. v. Carolina Envtl. Study Group, Inc.*, 438 U.S. 59, 78-81 (1978). This is hornbook law. For example, in *Duke Power*, "[i]t [was] enough that several of the 'immediate' adverse effects were found to harm appellees," without considering future

unlikely harms. 438 U.S. at 73-74. Thus, the plaintiffs could use aesthetic injury from a new nuclear power plant's release of hot water into manmade lakes to support a takings challenge to damage caps on a hypothetical catastrophic future nuclear accident. This Court could solve the Article III standing issue here by recognizing that an unlawful policy tilted the competitive environment in Democrats' favor for voters, candidates, and parties and thereby intentionally diluted Republicans' votes.

5. Republican voters and candidates suffered competitive injury and vote dilution from the Secretary's unlawful signature-verification policy.

As the Sixth Circuit gleaned from the complaint's allegations on partisan mail-in voting preferences, Pet.App:235a, 280a (citing data by Thomas Davis), "Democrats … voted absentee more than Republicans did." Pet.App:17a. That, coupled with the allegations about Secretary Benson's signature-verification guidance suffices to show an Article III controversy under the Elections and Electors Clauses.

- "Counting ballots without signatures, or without attempting to match signatures, and ballots without postmarks, *pursuant to direct instructions from Defendants*."
- "Local election officials must follow Secretary Benson's instructions regarding the conduct of elections."
- "'[T]he Election Commission "instructed election workers *to not verify signatures on absentee ballots*, to backdate absentee ballots, and to process such ballots regardless of their validity."'

- "[C]ounting ballots without signatures, or without attempting to match signatures, and ballots without postmarks, *pursuant to direct instructions from Defendants*[.]"

First Am. Compl. ¶¶ 15.C, 30, 96, 190(h) (App:234a, 238a-239a, 266a-267a, 318a) (emphasis added). Petitioners respectfully submits that these allegations show that Republican voters and candidates had competitive or unequal-footing standing to challenge Secretary Benson's signature-verification guidance, both *vis-à-vis* 2020 and—until *Genetski* vacated that guidance—*vis-à-vis* future elections.

If those allegations do not establish standing, 28 U.S.C. § 1653 authorizes plaintiffs or petitioners to supplement jurisdictional allegations for the first time on appeal, provided that the jurisdiction existed when the case was filed. *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 831 (1989). Under § 1653, to the extent necessary, petitioners would supplement the allegations of jurisdiction as follows:

- On information and belief, based on an analysis of 2020 Michigan voting data, which discovery likely could prove, only 9 of Michigan 83 counties voted 50% or more for former Vice President Biden in 2020, only 5 counties voted for him at a rate of 60% or more, those 5 counties—Washtenaw, Ingham, Oakland, Wayne, and Kalamazoo—represented more than 2,100,000 votes and more than 1,500,000 mail-in votes, and those 5 counties were the top five Michigan counties by the percentage of the electorate voting by mail.
- On information and belief, which discovery likely could prove, Secretary Benson adopted her signature-verification guidance with the specific intent to

maximize Democrat votes by counting mail-in ballots that would not count in the absence of that guidance to benefit of Democrat candidates.

Petitioners respectfully submit that, prior to the *Genetski* judgment's taking effect, an Article III controversy existed to challenge the signature-verification guidance.

RELIEF REQUESTED

Based on the foregoing, petitioners respectfully request that the Court enter the following relief:

- Provide respondents a reasonable opportunity from 10 to 30 days from the date of the Court's order requesting a response, *compare* S.Ct. R. 21.4 *with* S.Ct. R. 15.3—which shall not be extended—to respond to this motion or, alternatively for the Michigan respondents, to file a brief in opposition to the petition for a writ of *certiorari*, to which responses petitioners may file a reply in support of this motion and to a Michigan BIO, if Michigan files a BIO.
- Pursuant to Rule 15.5, waive the 14-day delay to distribute any brief in opposition that the Michigan respondents file.
- Supplement the Questions Presented to include whether the bar-referral relief complied with Local Rule 83.22(c) and with the Due Process Clause and Article III of the federal Constitution.
- Decide the case based on the parties' briefing of the petition and this motion.
- Reverse and vacate the district court's sanction-related decisions and orders, including the decisions dated August 25, 2021, and December 2, 2021.
- Remand with instructions to dismiss these proceedings.

- If this Court reverses the bar-referral relief with respect to any petitioner, direct the Clerk to advise the Michigan's Attorney Discipline Board, with a reference to that Board's matter captioned *Grievance Administrator v. Rohl*, Nos. 23-29-GA, 23-30-GA, 23-32-GA, 23-33-GA, 23-34-GA, 23-36-GA, 23-37-GA (Mich. Atty. Disc. Bd.).
- Issue a declaratory judgment that *Lance v. Coffman*, 549 U.S. 437 (2007), has no application to litigation in which the plaintiff—whether a voter or any other person or entity—adequately pleads or otherwise establishes an Article III case or controversy against a challenged election policy, in which case claims under the Elections and Electors Clauses may proceed against the challenged policy along with any other claim that the election policy violates applicable law.
- If the Court denies expedited review, set the case for expeditious merits briefing and argument.

Petitioners also respectfully request that the Court issue such other relief as is just.

CONCLUSION

The petition for a writ of *certiorari* should be granted with a supplemented question on the viability of bar-referral sanctions under the district court's Local Rule 83.22(c). The Court should summarily reverse the Sixth Circuit's partial affirmance of the district court's sanction decisions and orders. Alternatively, if the Court requests merits briefing and argument, petitioners respectfully request that the Court set an expeditious briefing schedule with argument timed to enable a decision as far in advance of the 2024 election at possible.

Dated: February 13, 2024

Respectfully submitted,

/s/ Lawrence J. Joseph

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CERTIFICATE AS TO FORM

Pursuant to Sup. Ct. Rules 21 and 33, I certify that the foregoing motion is proportionately spaced, have a typeface of Century Schoolbook, 12 points, and contains 40 pages (and 11,262 words) respectively, excluding this Certificate as to Form, the Table of Authorities, the Table of Contents, and the Certificate of Service.

Dated: February 13, 2024

Respectfully submitted,

/s/ Lawrence J. Joseph

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CERTIFICATE OF SERVICE

I hereby certify that, on February 13, 2024, in addition to electronically filing the foregoing motion, I caused one copy of that document to be served by Federal Express, next-day service, on the following counsel:

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In addition, I certify that on the same day, I electronically transmitted courtesy copies of the foregoing document to the email addresses identified above.

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