No. 23-_____

In the Supreme Court of the United States

L. LIN WOOD,

Petitioner,

v.

CITY OF DETROIT,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner, L. Lin Wood, was an attorney licensed to practice in federal and state courts in the State of Georgia. On November 25, 2020, plaintiffs filed a lawsuit in the Eastern District of Michigan against the Michigan Governor, the Michigan Secretary of State and the Michigan Board of State Canvassers, seeking injunctive relief concerning the results of the 2020 presidential election. The complaint was voluntarily dismissed on January 14, 2021.

Mr. Wood's name appeared on the signature page of the complaint, under the heading "Of Counsel." On January 5, 2021, the City of Detroit sought sanctions against Mr. Wood pursuant to Fed. R. Civ. P. 11. The state defendants did not seek sanctions against Mr. Wood.

Detroit sent a letter to Mr. Wood on December 15, 2020, enclosing a short motion for Rule 11 sanctions. The district court concluded the rule's 21-day safe harbor period began running that day. The motion, however, differed significantly from the motion for sanctions it ultimately filed and litigated in its allegations and request for sanctions. The Sixth Circuit upheld most of the district court sanctions order. The questions presented are:

1. Whether an attorney whose name is designated as "Of Counsel" on the signature page of a frivolous pleading that the attorney did not sign, file, submit or later advocate, may nonetheless be held responsible for Rule 11 sanctions.

2. Whether the serving of a short sanctions motion, that seeks relief significantly different from that ultimately sought in a subsequently filed motion

and brief, nonetheless initiates the 21-day safe-harbor period pursuant to Rule 11(c)(2).

PARTIES TO THE PROCEEDINGS

Petitioner and Interested Party-Appellant

- L. Lin Wood

  Petitioner was an interested party in the district court and the appellant in the Sixth Circuit, seeking the review of sanctions imposed in the district court.

Respondent and Intervenor Defendant-Appellee

- City of Detroit

  Respondent was an intervenor defendant in the district court and appellee in the Sixth Circuit. Sanctions were granted in favor of Detroit.

Respondents and Defendants-Appellees

- Governor Gretchen Whitmer
- Michigan Secretary of State Jocelyn Benson

  Respondents were defendants in the district court and appellees in the Sixth Circuit.

Respondents and Interested Parties-Appellants (Consolidated with Petitioner in Sixth Circuit)

Appellants in Sixth Circuit Case No. 21-1786

- Sidney Powell
- Brandon Johnson
- Howard Kleinhendler
- Julia Haller
- Gregory Rohl
- Scott Hagerstrom

  Co-Appellant Respondents were counsel for the plaintiffs in the district court and appellants in the court of appeals. On information and belief,

the other lawyers are petitioning this Court separately.

Appellants Whose Judgments Were Reversed

- Emily Newman
- Stefanie Juntilla

Appellants were plaintiffs' attorneys in the district court. The trial court's sanctions orders against these attorneys were reversed in the court of appeals. Sixth Circuit Case Nos. 21-1787 and 22-1010.

District Court Parties Who Did Not Participate in the Court of Appeals

Plaintiffs

- Timothy King
- Marian Ellen Sheridan
- John Earl Haggard
- Charles James Ritchard
- James David Hooper
- Daren Wade Rubingh

Defendant

- The Michigan Board of State Canvassers

Intervenor-Defendants

- Robert Davis
- Democratic National Committee
- Michigan Democratic Party

LIST OF PROCEEDINGS

U.S. Court of Appeals for the Sixth Circuit

Nos. 21-1785, 21-1786, 21-1787, 22-1010

Timothy King, Et Al., *Plaintiffs,* L. Lin Wood (21-1785); Gregory J. Rohl, Brandon Johnson, Howard Kleinhendler, Sidney Powell, Julia Haller, and Scott Hagerstrom (21-1786); Emily Newman (21-1787); Stefanie Lynn Junttila (22-1010), *Interested Parties-Appellants,* v. Gretchen Whitmer; Jocelyn Benson; City of Detroit, Michigan, *Defendants-Appellees.*

Final Judgment: June 23, 2023

Rehearing Denial: August 8, 2023

U.S. District Court, Eastern District of Michigan

No. 20-cv-13134

Timothy King, Et Al., *Plaintiffs,* v.
Gretchen Whitmer, Et Al., *Defendants.* and City of Detroit, Democratic National Committee, Michigan Democratic Party, and Robert Davis, *Intervenor-Defendants.*

Final Sanctions Order: December 2, 2021

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PETITION FOR A WRIT OF CERTIORARI

L. Lin Wood respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The Sixth Circuit's opinion is reported below at 71 F.4th 511 and reprinted in the Appendix ("App") at 1a-39a. The district court's opinion and order denying Plaintiff's Emergency Motion for Declaratory, Emergency, and Permanent Injunctive Relief is unpublished and reprinted at (App.169a-201a). The district court's first Opinion and Order is published at 556 F.Supp.3d 680 and reprinted at (App.65a-168a); its second unpublished Opinion and Order is reprinted at (App.40a-64a).

JURISDICTION

On June 23, 2023, the Sixth Circuit issued an Opinion affirming in part and reversing in part the district court's opinion and order sanctioning petitioner. Petitioner timely sought rehearing en banc. On August 8, 2023, the Sixth Circuit denied the petition for rehearing en banc. The district court had jurisdiction under 28 U.S.C. §§ 1331, 1343, 1367, and the Sixth Circuit had jurisdiction pursuant to 28 U.S.C. § 1291.

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

FEDERAL RULE OF CIVIL PROCEDURE INVOLVED

Federal Rule of Civil Procedure 11 and its accompanying Advisory Committee Notes are reproduced at (App.206a-228a). In 2007, the Rule 11 safe harbor provision[1] at issue here was moved from Rule 11(c)(1)(A) to Rule 11(c)(2) as part of the general restyling of the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 11 advisory committee's note to 2007 amendment. The 2007 amendment did not change the substance of Rule 11, which has remained the same since the 1993 amendment.

[1] The requirement in Rule 11(c)(2) that the movant serve a motion for Rule 11 sanctions more than 21 days before filing is referred to as the "safe-harbor provision." *See* Fed. R. Civ. P. 11 advisory committee's note to 1993 amendment (referring to this requirement as a "safe harbor").

INTRODUCTION

Following this Court's decision in *Pavelic & LeFlore v. Marvel Ent. Grp.*, 493 U.S. 120 (1989), Rule 11 of the Federal Rules of Civil Procedure was significantly amended, and the current rule went into effect on December 1, 1993. Prior to the amendments, the rule had come under significant criticism, which included that the Rule had a "chilling effect" on zealous advocacy, especially novel theories, that it affected plaintiff's lawyers unfairly particularly in civil rights litigation, that it created satellite litigation, and that it reduced civility among attorneys. Theodore C. Hirt, *A Second Look at Amended Rule 11*, 48 AM. U. L. REV. 1007, 1010 (1999). Though the goal of the 1993 amendments was to reduce Rule 11 satellite litigation, a search of the Westlaw computer database of district court and court of appeals decisions revealed the existence of over 10,000 cases citing to Rule 11 and attorney sanctions or discipline through July 2023. Peter A. Joy, *The Relationship Between Civil Rule 11 and Lawyer Discipline: an Empirical Analysis Suggesting Institutional Choices in The Regulation of Lawyers*, 37 LOY. L.A. L. REV. 765, 788 (2004).

Since the amendments, this Court has yet to issue any decision substantively interpreting the current rule. Two significant questions are raised here. First, the 1993 amendments expanded the scope of who may be held responsible for frivolous pleadings by allowing a court to impose sanctions "on any attorney, law firm, or party that violated the rule or is responsible for the violation." However, when the signing attorney simply indicates that another attorney is "Of Counsel" on the

offensive pleading without providing a signature line, even with the other attorney's consent, has the other attorney "presented" the pleading "by signing, filing, submitting, or later advocating it" as required by Rule 11(b)? This Court's answer to that important question will have a significant impact on future Rule 11 litigation.

Secondly, circuit courts of appeal are split on the definition of the sufficiency of the motion that needs to be served on opposing counsel, thereby triggering the safe harbor time frame. This Court should resolve the split and require compliance with Rule 11's safe harbor provision as it is written, rather than some relaxed notice requirement.

STATEMENT OF THE CASE

On behalf of three Republican Party county chairs and three candidates to serve Michigan as Republican electors, attorneys Rohl, Hagerstrom and Powell filed suit against Michigan Governor Gretchen Whitmer, Michigan Secretary of State Jocelyn Benson and the Michigan Board of State Canvassers regarding Michigan's 2020 election. The City of Detroit intervened permissively. Rohl, Hagerstrom, and Powell signed the operative complaint, which Rohl e-filed on November 25, 2020. (App.520a-619a). The complaint listed petitioner and others as "Of Counsel" without their signatures. *Id.* The district court denied petitioners' motion for emergency relief on December 7, 2020. (App.169a-201a).

On December 15, Detroit served petitioner with a 7-page Rule 11(c)(2) motion, which cited an improper purpose under Rule 11(b)(1), mootness, laches, standing, and the invalidity of the constitutional arguments under Rule 11(b)(2), and the "supposed fraud in the processing and tabulation of absentee ballots" under Rule 11(b)(3). (App.229a-238a) (citing district court's denial of emergency relief for legal issues and pages 1-19 of Detroit's opposition to emergency relief for factual issues). As to factual allegations, the served motion did not "describe the specific conduct" violative of Rule 11(b)(3). Fed. R. Civ. P. 11(c)(2); (App.229a-238a). On page 2 of the motion, the footnote seeks concurrence with the relief sought from attorney Powell only. (App.232a).

On the 21st day following the service of the 7-page motion, January 5, 2021, Detroit filed a 10-page sanction motion supported by a 38-page brief and 167 pages of exhibits. (App.239a-519a). In addition to adding significant detail, the filed version added bar-referral relief which was not sought in the first motion. (App.229a-238a).

On January 14, 2021, plaintiffs voluntarily dismissed as to all respondents. On January 28, 2021, the state respondents moved for sanctions under 28 U.S.C. § 1927 and the court's inherent authority against the other lawyers, but not petitioner. On July 6, 2021, the district court held a non-evidentiary hearing on the sanctions motion, at which Detroit raised additional issues. Acting pursuant to Rule 11(c)(2), § 1927, and its inherent authority—but not Rule 11(c)(3)—the district court awarded sanctions against every attorney whose name appeared on the pleadings—$21,964.75 to the State defendants and $153,285.62 to Detroit, as

well as non-monetary sanctions including referral of all attorneys to each particular state bar for disciplinary proceedings. (App.64a; App.167a). The district court premised the sanctions on deterring future suits "designed primarily to spread the narrative that our election processes are rigged." (App.161a).

The Sixth Circuit rejected the improper-purpose and inherent-authority findings as protected speech, (App.9a), and some of the factual allegations, (App. 17a-18a, 23a-24a), but otherwise upheld reduced sanctions. (App.37a). Because the state defendants had not sought any sanctions against petitioner in the district court, the court of appeals reversed the $19,639.75 award to the State of Michigan (App.33a) but upheld the reduced award of $132,810.62 for Detroit. The court reasoned that the district court had not abused its discretion regarding the allegations about Dominion, the Braynard and Young statistics, and the some of the affidavits associated with vote counting at the TCF Center. (App.11a, 15a, 16a, 17a). Significantly, none of these bases for upholding sanctions appeared within Detroit's December 15, 2020, motion. (App.229a-238a). The court reversed the sanctions order as it related to two of the attorneys, Emily Newman and Stefanie Juntilla, because of the minimal role they played in the underlying litigation.

The Sixth Circuit denied rehearing en banc (App.202a) but granted petitioner's motion to stay the mandate pending his petition for a writ of certiorari. (App.204a). The stay underscores that these sanctions "present a substantial question" for this Court's review. Fed. R. Civ. P. 41(d)(1).

REASONS FOR GRANTING THE PETITION

Two significant questions are raised here. First, the 1993 amendments expanded the scope of who may be held responsible for frivolous pleadings by allowing a court to impose sanctions "on any attorney, law firm, or party that violated the rule or is responsible for the violation." However, when the attorney who actually signs and files the offending pleading simply indicates that another attorney is "Of Counsel" without providing a signature line, even with the other attorney's consent, the question arises as to whether that "Of Counsel" attorney "presented" the pleading "by signing, filing, submitting, or later advocating it" as required by Rule 11(b). The answer should be that he has not.

Secondly, this Court has yet to determine the specificity of the notice requirement set forth in Rule 11(c)(2). If counsel is served with notice that opposing counsel is intent on seeking sanctions pursuant to Rule 11, and thereby granted 21 days in which to withdraw the complained of pleading, counsel should be entitled to know exactly what it is opposing counsel is referring to. The notice required to trigger the 21-day safe harbor provision in the majority of the circuits, is the identical motion the sanctions-seeker is intent on filing with the court. The Seventh Circuit and the Federal Circuit have taken a different approach and will affirm sanctions in situations where the movant only provides informal written notice. The resolution of that split is dispositive as to the petitioner here because the December 15, 2020, bare bones motion and the January 5, 2021, motion and brief were significantly different. And, depending on the date used in the calculation, the

voluntary dismissal of the complaint against all parties on January 14, 2021, was either within or without the 21-day safe harbor period.

I. MERELY LISTING AN ATTORNEY'S NAME ON A PLEADING AS "OF COUNSEL" IS NOT A SIGNATURE.

This Court last addressed this question prior to the 1993 amendments in *Pavelic & LeFlore v. Marvel Ent. Grp.*, 493 U.S. 120 (1989). This Court concluded that, based upon a plain reading of the rule, only the attorney whose signature appeared on the offending pleading could be sanctioned. The 1983 version of the rule read:

> The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. . . . If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction. . . .

Fed. R. Civ. P. 11 (1983) (amended 1993)

In the situation where the district court had imposed Rule 11 sanctions on the law firm that employed the attorney who signed the pleading, this

Court, understanding the plain meaning of the former rule, held, "The purpose of the provision in question, however, is not reimbursement but 'sanction;' and the purpose of Rule 11 as a whole is to bring home to the individual signer his personal, nondelegable responsibility." *Pavelic & LeFlore v. Marvel Ent. Grp.*, *supra*, at 126 (1989).

The 1993 amendments to Rule 11 still, however, require that a pleading must be signed by an attorney, or by the person appearing without counsel, or the pleading will be stricken. Fed. R. Civ. P. 11(a). As this Court stated in *Bus. Guides, Inc. v. Chromatic Commc'ns Enterprises, Inc.*, 498 U.S. 533, 542 (1991), a pre-1993 amendment case,

> The heart of Rule 11 is sentence [5],[2] which explains in detail the message conveyed by the signing of a document. A signature certifies to the court that the signer has read the document, has conducted a reasonable inquiry into the facts and the law and is satisfied that the document is well grounded in both, and is acting without any improper motive.

---

2 The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Bus. Guides, Inc. 498 U.S. at 541-42.

The same cannot be said about an attorney's name on the pleading without the requisite signature.

Like federal district courts across the nation, the Eastern District of Michigan instituted Electronic Filing Policies and Procedures beginning with the mandatory electronic maintenance of court files as of June 1, 2004. The Court approved mandatory electronic filing on November 30, 2005. Rule 10 of the policies and procedures dictates the manner in which documents are to be electronically signed. It states:

> R10 Signatures
>
> (a) *See* Fed. R. Civ. P. 5(d)(3)(C).
>
> (b) A paper filed electronically must include a signature block containing the name of the filing user represented by "s/", "/s/" or a scanned signature, firm name (if applicable), street address, telephone number, primary e-mail address, and bar ID number (where applicable). The format of the signature block should substantially conform to the following sample:
>
> SAMPLE: /s/John Doe
> Doe Law Firm
> 123 Main Street
> Detroit, MI 48200
> (313) 555-1234
> jdoe@doelaw.com
> P12345

E.D. Mich. Elec. Filing Policies and Procedures, R10.

Rule 5(d)(3) of the Federal Rules of Civil Procedure also addresses the requirement that electronically filed documents must be signed. Subrule (C) designates

what a signed filing consists of. "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, constitutes the person's signature." Fed. R. Civ. P. 5(d)(3)(C).

The Sixth Circuit, in affirming the sanctions levied against the petitioner, has placed countless other attorneys at risk of being held responsible for pleadings they did not draft, did not read, and for which they had no responsibility. Such a rule is untenable, and this Court, having yet to examine the 1993 amendments, should remedy the error.

II. CIRCUITS ARE SPLIT REGARDING THE SPECIFICITY OF THE NOTICE THAT TRIGGERS THE "SAFE HARBOR" TIME FRAME.

Under case law from the Fifth and Tenth Circuits, a motion for Rule 11 sanctions is barred if the movant fails to serve the identical motion at least 21 days before filing the motion with the court, a requirement of Rule 11(c)(2). In *Uptown Grill, L.L.C. v. Camellia Grill Holdings, Inc.*, 46 F.4th 374 (5th Cir. 2022), cert. denied sub nom. *Camellia Grill Holdings Inc. v. Grill Holdings, L.L.C*, 143 S. Ct. 735 (2023), the Fifth Circuit concluded,

> We hold today that the Rule 11 safe harbor provision requires identicality. Here, as the district court found, the served motion and the filed motion contained substantial differences. The motions were thus not identical, and the district court properly denied the motion and declined to enter sanctions.

Id. at 389.

Here, Detroit's brief differed significantly in its specificity of the allegations as well as its request for relief. The December 15, 2020, notice contained only a 7-page, bare bones motion. On January 5, 2021, the motion had grown to 10 pages, and it was accompanied by a 38-page brief with 167 pages of exhibits, seeking monetary as well as non-monetary sanctions including referrals of all attorneys to their state bar associations to seek disbarment. The case was voluntarily dismissed nine days later, on January 14, 2021. The lack of compliance with Rule 11(c)(2) should have resulted in denial of the sanctions.

Similar to the Fifth Circuit, the Ninth Circuit has held that a warning letter is insufficient to trigger the Rule 11 safe-harbor provision. *Barber v. Miller*, 146 F.3d 707 (9th Cir. 1998). There, the defendant (Imageware) served the plaintiff's attorney (Carlsen) with a letter, explaining the deficiencies of the complaint and stating that a Rule 11 motion for sanctions would be filed if the complaint was not dismissed. *Id.* at 709. Carlsen responded to the letter, "demanding that Imageware 'stop threatening sanctions.'" *Id.* Imageware then filed a motion to dismiss and stated that the complaint was so clearly deficient that sanctions were warranted. *Id.* Next, the district court dismissed the complaint, and noted that it would retain jurisdiction to consider any motion for sanctions. *Id.* Imageware then sent Carlsen another letter, putting Carlsen on notice that Imageware would seek sanctions. *Id.* A month later, Imageware filed the motion for sanctions, which the district court granted under Rule 11. *Id.*

The Ninth Circuit reversed. *Id.* at 710-11. Although the Ninth Circuit recognized that it was "abundantly clear" that Imageware had given "repeated notice" of

the complaint's shortcomings, Imageware "did not follow the procedure required by Rule 11(c)(1)(A) for an award of sanctions upon its motion." *Id.* at 710. Although "Imageware had given multiple warnings to [Barber] about the defects of [the] claim[,]" the safe-harbor was not triggered because "[t]hose warnings were not motions . . . and the Rule requires service of a motion." *Id*. The Ninth Circuit noted that the requirement of a motion "was deliberately imposed, with a recognition of the likelihood of other warnings." *Id.* Indeed, the Ninth Circuit noted that the 1993 amendment to Rule 11 specifically requires a motion—rather than a warning letter—to trigger the safe-harbor provision:

> To stress the seriousness of a motion for sanctions and to define precisely the conduct claimed to violate the rule, the revision provides that the "safe harbor" period begins to run only upon service of the motion. In most cases, however, counsel should be expected to give informal notice to the other party, whether in person or by a telephone call or letter, of a potential violation before proceeding to prepare and serve a Rule 11 motion.

Id. (quoting Fed. R. Civ. P. 11 advisory committee's note to 1993 amendment). Accordingly, the Ninth Circuit recognized that "[i]t would therefore wrench both the language and purpose of the amendment to the Rule to permit an informal warning to substitute for service of a motion." *Id*.

The Tenth Circuit has also reversed the imposition of Rule 11 sanctions where the moving party failed to serve the motion more than 21 days before filing. *Roth v. Green*, 466 F.3d 1179 (10th Cir. 2006). There, although

the moving party served warning letters well before filing the motion, the motion itself was not served before filing. *Id.* at 1192. The Tenth Circuit therefore reversed the imposition of sanctions, recognizing that "the plain language of subsection (c)(1)(A) requires a copy of the actual motion for sanctions to be served on the person(s) accused of sanctionable behavior at least twenty-one days prior to the filing of that motion." *Id.* The Tenth Circuit further noted that warning letters "are supplemental to, and cannot be deemed an adequate substitute for, the service of the motion itself." *Id.* It further explained as follows:

> The reason for requiring a copy of the motion itself, rather than simply a warning letter, to be served on the allegedly offending party is clear. The safe harbor provisions were intended to "protect[] litigants from sanctions whenever possible in order to mitigate Rule 11's chilling effects, formaliz[e] procedural due process considerations such as notice for the protection of the party accused of sanctionable behavior, and encourag[e] the withdrawal of papers that violate the rule without involving the district court. . . . " 5A Charles Alan Wright and Arthur R. Miller, FEDERAL PRACTICE AND PROCEDURE § 1337.2, at 722 (3d ed. 2004). Thus, "a failure to comply with them [should] result in the rejection of the motion for sanctions. . . . " *Id.* at 723.

Roth, 466 F.3d at 1192 (alterations in original). The Tenth Circuit recognized that the Seventh Circuit, in *Nisenbaum v. Milwaukee Cty.*, 333 F.3d 804 (7th Cir. 2003), has held otherwise and "espoused the opposite stance[,]" but nonetheless found the Seventh Circuit's

analysis "unpersuasive" because, among other things, the Seventh Circuit provided "no analysis of the language of Rule 11(c)(1)(A) or the Advisory Committee Notes[.]" *Roth, supra,* at 1193 (citing *Nisenbaum*, 333 F.3d at 808).

The Second, Third, Fourth, Fifth, and Eighth Circuits have similarly recognized that compliance with the Rule 11 safe-harbor period is a prerequisite to granting a motion for Rule 11 sanctions. *See Star Mark Mgmt., Inc. v. Koon Chun Hing Kee Soy & Sauce Factory*, 682 F.3d 170, 175-76 (2d Cir. 2012) ("An informal warning in the form of a letter without service of a separate Rule 11 motion is not sufficient to trigger the 21-day safe harbor period."); *Gordon v. Unifund CCR Partners*, 345 F.3d 1028, 1030 (8th Cir. 2003) (reversing the imposition of Rule 11 sanctions where, among other things, the movant "did not serve a prepared motion on Appellant prior to making any request to the court"); *Brickwood Contractors, Inc. v. Datanet Eng'g, Inc.*, 369 F.3d 385, 389 (4th Cir. 2004) (en banc) (recognizing that Rule 11 "imposes mandatory obligations upon the party seeking sanctions, so that failure to comply with the procedural requirements precludes the imposition of the requested sanctions"); *In re Pratt*, 524 F.3d 580, 586-88 (5th Cir. 2008) (finding that sanctions were precluded under Fed. R. of Bankr. P. 9011—which contains the same safe-harbor provision as Rule 11—where the movant served only warning letters, but not the actual motion, prior to filing); *In re Miller*, 730 F.3d 198, 204-05 (3d Cir. 2013) (reversing the imposition of sanctions under Fed. R. of Bankr. P. 9011 where the movant did not comply with the requirements of the safe-harbor provision).

The Fifth Circuit also expressly rejected the Seventh Circuit's holding in *Nisenbaum*, explaining that "the Seventh Circuit did not address the language of Rule 11, the Advisory Committee Notes to the Rule, or any other Rule 11 jurisprudence" and concluding that "[b]ecause the Seventh Circuit provided little analysis and cited no authority for its holding, the propriety of its holding has been called into doubt on more than one occasion." *Pratt*, 524 F.3d at 587-88 (citations omitted).

Accordingly, had this case arisen in those circuits, Detroit's motion for Rule 11 sanctions would have been denied. In sharp contrast, the Seventh Circuit has held that a Rule 11 motion may be granted despite the movant's noncompliance with Rule 11(c)(2). As this Court has recognized, the Federal Rules are "as binding as any statute duly enacted by Congress, and federal courts have no more discretion to disregard [a] Rule's mandate than they do to disregard constitutional or statutory provisions." *Bank of Nova Scotia v. United States*, 487 U.S. 250, 255 (1988). The unambiguous language of Rule 11(c)(2) requires that a motion for Rule 11 sanctions be served more than 21 days before filing. Fed. R. Civ. P. 11(c)(2) (providing that a motion for sanctions "must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets"). Certiorari is warranted to resolve the circuit split on this important issue.

Further, Advisory Committee Notes to the 1993 amendment to Rule 11 further confirm that: (i) service of the Rule 11 motion itself must be effected more than

21 days before filing the motion with the district court; and (ii) warning letters cannot take the place of the motion. Indeed, the Advisory Committee Notes expressly distinguish between a warning letter and a formal motion. *See*, Fed. R. Civ. P. 11, advisory committee's note to 1993 amendment, *supra*, App.226a.

It is inconsistent with Rule 11 to find that a letter with a bare bones motion can satisfy Rule 11(c)(2)'s requirement of "the" motion. *Cf. Hall v. Hall*, 138 S. Ct. 1118, 1130 (2018) (quoting *United States v. Vonn*, 535 U.S. 55, 64 (2002)) ("Advisory Committee Notes are 'a reliable source of insight into the meaning of a rule.'"). This is especially true, given that the Advisory Committee drew a specific distinction between letters and motions, and concluded that only service of the motion itself can trigger the safe-harbor period.

The majority approach above is consistent with the text of Rule 11(c)(2) and the Advisory Committee Notes to the 1993 amendment to Rule 11. In contrast, "[a] substantial compliance approach ignores the plain language of the FRCP and the Advisory Committee Notes." Julian Viksman, *Adding to the List: The Latest Development in the Anomalous Seventh Circuit Substantial Compliance Approach*, 59 B.C. L. REV. Vol. 59, E-Supplement 409, 424 (2018). As a leading treatise on civil procedure correctly explained:

> Note that informal notice—rather than formal service—of a potential violation is insufficient to trigger the beginning of the twenty-one day safe harbor period. The Advisory Committee Note explains that although informal notice does not trigger the safe harbor period, it usually is expected that informal notice will be given before a party prepares and

> serves a formal motion under Rule 11 for sanctions.

5A Arthur R. Miller et al., FEDERAL PRACTICE & PROCEDURE § 1337.2 (4th ed. Oct. 2020 update).

Proper interpretation of Rule 11 is an important issue. Although this Court has not yet had occasion to interpret Rule 11 since the safe-harbor provision was added in 1993, this Court has previously granted certiorari to clarify the scope of Rule 11 prior to the amendments. *See Willy v. Coastal Corp.*, 503 U.S. 131 (1992) (analyzing whether Rule 11 sanctions may be imposed where the district court lacks subject-matter jurisdiction); *Bus. Guides, Inc. v. Chromatic Commc'ns Enters., Inc.*, 498 U.S. 533 (1991) (analyzing whether Rule 11 imposes a standard of objective reasonableness); *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384 (1990) (analyzing whether Rule 11 sanctions may be imposed after a stipulation of dismissal, deciding the appropriate standard of appellate review, and determining whether attorney fees may be imposed as a Rule 11 sanction); *Pavelic & LeFlore v. Marvel Entm't Grp.*, 493 U.S. 120 (1989) (determining whether Rule 11 permits the imposition of sanctions against a law firm). It is equally important that the Rule 11 safe-harbor provision be interpreted properly and uniformly amongst the circuits. This Court should grant certiorari to resolve the circuit split concerning the proper interpretation of Rule 11(c)(2).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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November 6, 2023