No. 24- 1129

IN THE

Supreme Court of the United States

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SUPREME COURT, U.S.

JOAN CAROL LIPIN,

Petitioner,

v.

ARTHUR DODSON WISEHART AKA
ARTHUR D. WISEHART AND MARK APELMAN,

Respondents.

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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QUESTION PRESENTED

A voluntary dismissal *without prejudice* under Rule 41(a)(1)(A)(i), (B) terminates the entire action, inclusive of all claims, *without* a court order, and permits a plaintiff to replead the same claims, to add new parties and claims within one year of the notice or within the applicable statute of limitations for the claim(s) whichever time-period closes last.

"When a complaint is withdrawn under Rule 41(a)(1), the merits of that complaint are not an appropriate area of further inquiry for the federal court. ... the Rules Enabling Act does not give us authority to create a generalized federal common law of malicious prosecution divorced from concerns with the efficient and just processing of cases in federal court." *Cooter & Gell v. Hartmarx*, 496 US. 384, 412 (1990)

The question presented, in which there is a divide among the courts, is whether it is constitutionally permissible for a district court to reopen a case, issue further orders and a prefiling partial judgment on the merits of some claims (not all) under Rule 11(b), (c)(1), (3), (4) after a plaintiff has filed a Rule 41(a)(1)(A)(i), (B) voluntary dismissal *without prejudice* that immediately terminated the entire action, not some of the plaintiff's claims.

PARTIES TO THE PROCEEDING

Petitioner Joan Carol Lipin was the plaintiff in the district court and appellant below.

Respondent Arthur Dodson Wisehart aka Arthur D. Wisehart was a defendant in the district court and appellee below.

Respondent Mark Apelman was a defendant in the district court and appellee below.

RELATED PROCEEDINGS

Joan Carol Lipin v. Arthur Dodson Wisehart aka Athur D. Wisehart and Mark Apelman, No. 23-cv-684, U.S. District Court for the Southern District of Ohio, Western Division, Cincinnati. Judgment entered April 25, 2024.

Joan Carol Lipin v. Arthur Dodson Wisehart aka Athur D. Wisehart and Mark Apelman, No. 24-3365, U.S. Court of Appeals for the Sixth Circuit. "NOT RECOMMENDED FOR PUBLICATION Order" or judgment entered November 26, 2024.

Joan Carol Lipin v. Arthur Dodson Wisehart aka Arthur D. Wisehart, Art Wisehart, Arthur Wisehart, C. Winston Wisehart aka Charles Winston Wisehart, Charles W. Wisehart, Winston Wisehart, Arthur Dodson Wisehart in his capacity as Trustee of the Dorothy R. Wisehart Trust, Arthur Dodson Wisehart in his Capacity as Trustee of the AMW Family Trust, Mark Apelman aka Mark N. Apelman, Mark Apelman-Powers, J. Does 1-10, **No. 24-cv-620.** U.S. District Court for the Southern District of Ohio, Western Division, Cincinnati. Judgment entered on January 30, 2025.[1]

---

1. As of right under Rule 41(a)(1)(A)(i), (B), plaintiff filed her repleaded complaint in the same district court on October 28, 2024, No. 24-cv-620. The defendant parties immediately moved to stay all pleadings and discovery dates in the statutory declaratory judgment and 42 U.S.C. § 1983 action pending the report and recommendation of the same magistrate judge that had yet to be filed. The magistrate judge granted the defendants' motion. PACER Docket "Notation Order" entered 11/19/2024:

> NOTATION ORDER—This matter is before the Court on Defendants' Motion to Suspend all Pleading and Discovery Dates (doc. 11) and Plaintiff's Response in Opposition (doc. 12). Having considered this matter, and noting the Report and Recommendation recommending dismissal of this action with prejudice that is currently pending before Judge Barrett (doc. 6), the undersigned finds Defendants' request well taken. Accordingly, Defendants' motion (doc. 11) is hereby GRANTED. All applicable pleading and discovery deadlines in this matter are hereby STAYED pending disposition of the pending Report and Recommendation. This Order does NOT include any deadlines for the filing of objections and responses to the pending Report and Recommendation.

Plaintiff filed her objections thereto, PACER DOC 15 PAGE ID 296. The magistrate judge filed her report and recommendation, PACER DOC 6. PAGE ID 212, to dismiss the repleaded complaint *with prejudice*, No. 24-cv-620, based on the district court's prior partial prefiling res judicata judgment on some of the claims in the complaint filed by Petitioner that was affirmed by the Sixth Circuit, Pet. App. 1a, Plaintiff filed her objections to the report and recommendation, PACER DOC 18 PAGE ID 523. The same district court adopted the same magistrate judge's report and recommendations PACER DOC 6 PAGE ID 212 and entered judgment on January 30, 2025. PACER DOC 20 PAGE ID 362, under *Rooker-Feldman* and its prior partial prefiling judgment on the merits of some claims (not all). The Clerk of Court also entered judgment, PACER DOC 20 PAGE ID. Plaintiff filed her Rule 60(b) objections, PACER DOCS 20; 21, PAGE ID 363; 462. The district court overruled each Rule 60(b) motion, PACER DOC 25 PAGE ID 693. Plaintiff filed a presently pending notice of appeal in the repleaded complaint inclusive of declaratory judgment relief, claims under 42 U.S.C § 1983, new parties and claims, No. 24-cv-620, Sixth Circuit No., 25-3098, PACER DOC 28 PAGE ID 740.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the "NOT RECOMMENDED FOR PUBLICATION" order or judgment of the United States Court of Appeals for the Sixth Circuit filed in No. 24-3365.

OPINIONS BELOW

The judgment of the Court of Appeals for the Sixth Circuit is reported at 2024 U.S. App. LEXIS 30281 and reproduced Appendix ("Pet. App") 1a,. The judgment of the United States District Court for the Southern District of Ohio, Western Division, Cincinnati, is reported at 2024 U.S. Dist. LEXIS 76005 *; 2024 WL 1793396 and reproduced beginning at Pet. App. 9a. The supplemental report and recommendation of the magistrate judge is reported at 2023 U.S. Dist. LEXIS 214124 *; 2023 WL 8360616 and reproduced beginning at Pet. App. 14a. The report and recommendation of the magistrate judge is reported at 2023 U.S. Dist. LEXIS 211557 and reproduced beginning at Pet. App. 18a. The order of the magistrate judge filed on November 16, 2023, is unreported. It is located on PACER Docket at DOC 14 PAGE ID 694 and reproduced beginning at Pet. App. 67a. The panel rehearing and rehearing en banc order of the Court of Appeals for the Sixth Circuit is reported at 2025 U.S. App. LEXIS 2215 and reproduced beginning at Pet. App. 72a. The order to stay the mandate of the Court of Appeals for the Sixth Circuit is reported at 2025 U.S. App. LEXIS 6123 and reproduced beginning at Pet. App. 74a.

JURISDICTION

On November 26, 2024, the Sixth Circuit affirmed the district court's judgment. *Id.* 1a. Petitioner's petition for a panel rehearing and rehearing en banc was denied on January 30, 2025. *Id.* 70a. This petition is therefore timely, and the Court has jurisdiction under 28 U.S.C. 1254(1).

FEDERAL RULE OF CIVIL PROCEDURE PROVISIONS AND STATUTORY PROVISIONS INVOLVED

Rule 41 provides, in part, as follows:

> (a) Voluntary Dismissal.
>
> (1) *By the Plaintiff.*
>
> (A) *Without a Court Order.* Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing:
>
> (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or
>
> *****
>
> (B) *Effect.* Unless the notice or stipulation states otherwise, the dismissal is *without prejudice.* But, if the plaintiff previously dismissed any federal or state court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits. Rule 41(a)(1)(A)(i), (B); emphasis in the original.

Federal Rules of Civil Procedure 11(b), (c)(1), (3), (4) under Rule 11 provides, in part, as follows: ***

> (b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper, whether by signing, filing, submitting, or later advocating it, an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> (c) Sanctions.
>
> (1) *In General.* If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.
>
> *****
>
> (3) *On the Court's Initiative.* On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).
>
> (4) *Nature of a Sanction.* A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty

into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

28 U.S. Code § 1927 provides as follows:

> Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

18 U.S. Code § 1964—Civil Remedies under the Racketeer and Corrupt Organizations Act ("RICO") provides, in part, as follows:

> (a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.
>
> *****

> (c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages [s]he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962.

42 U.S. Code § 1983—Civil action for deprivation of rights provides, in part, as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, ...

THE *ROOKER-FELDMAN* DOCTRINE

The *Rooker-Feldman* prohibits a federal district court from exercising subject matter jurisdiction over a suit that is a de facto appeal from a state court judgment. If a plaintiff brings a de facto appeal from a state court judgment, the doctrine requires that the district court dismiss the suit for lack of subject matter jurisdiction.

Rooker-Feldman applies only when the federal plaintiff both asserts as her injury legal error or errors by the state court and seeks as her remedy relief from the state court judgment. 18B Charles Alan Wright et al., *Fed. Prac. & Proc.* § 4469.1, at 97, 101 (2d ed. 2002)

Importantly, a plaintiff is not barred under *Rooker-Feldman* from filing a federal action because a federal district court has subject matter jurisdiction to adjudicate the claims of a nonparty to a completed state court proceeding. *Johnson v. De Grandy*, 512 U.S. 997, 1006 (1994) (holding the district court properly refused to give preclusive effect to the state supreme court's decision).

Also, it is well-established a federal court has subject matter jurisdiction to adjudicate the claims of a plaintiff that the defendant party(s) by chicanery and fraud procured judgments in the federal courts because *Rooker-Feldman* does not bar a plaintiff from filing a federal action.

THE EXTRINSIC FRAUD EXCEPTION TO *ROOKER-FELDMAN*

Under the extrinsic fraud exception to *Rooker-Feldman*, a federal district court has subject matter jurisdiction to adjudicate an action that was filed during the pendency of the state court action because the plaintiff could not have sought appellate review of the state court judgment that the defendant parties procured by chicanery and fraud.

Further, a federal district court has subject matter jurisdiction to review a state court judgment that is

allegedly procured through fraud when a "state-court loser" complains that the winner owes his triumph not to sound legal principles, or even unsound ones, but to fraud because then "the loser is not really complaining of an injury caused by a state court judgment, but of an injury caused by the winner's chicanery." *In Sun Valley Foods Co.*, 801 F.2d 186 (6th Cir. 1986).

If the cause and effect of the injuries to a plaintiff is derived from the chicanery and fraud of the defendant parties who procured the state court judgment then the plaintiff does not assert as a legal wrong an allegedly erroneous decision by a state court but rather alleges injuries to the plaintiff by the adverse parties who procured the state court judgment based, in whole or in part, on the alleged extrinsic fraud, and not that she has been harmed by legal errors made by the state courts. Because a district court has subject matter jurisdiction to adjudicate it is required, to review *all* claims of the complaint and all exhibits that are attached to the complaint. If an exhibit is referred to in the complaint the exhibit is deemed to be a part of the pleadings, is central to the plaintiff's claim, and simply fills in the contours and details of the plaintiff's complaint. *Weiner v. Klais & Co.*, 108 F.3d 86. 89 (6th Cir. 1997) (quoting *Venture Assoc. Corp. v. Zenith Data Sys. Corp.*, 987 F.2d 429, 431 (7th Cir. 1993)); *Yeary v. Goodwill Industries-Knoxville, Inc.*, 107 F.3d 443, 445 (6th Cir. 1997) (finding that the consideration of other materials that "simply filled in the contours and details of the plaintiff's complaint, and added nothing new.)"

STATEMENT OF THE CASE

This case concerns whether it is constitutionally permissible and practically important for a district court to reopen the case, issue further orders and enter a partial prefiling res judicata judgment on some of the claims (not all) under Rule 11(b), (c)(1), (3), (4), if the Petitioner voluntarily dismissed her entire action *without prejudice* under Rule 41(a)(1)(A)(i), (B) that immediately disposed of the entire action, not just some of Petitioner's claims upon the filing of the notice.

This petition therefore presents substantial constitutional and procedural questions.

I. Legal Background

"A case voluntarily dismissed *without prejudice* under Rule 41(a)(1) counts as a final proceeding under Rule 60(b)." *Waetzig v. Halliburton Energy Services, Inc.*, 145 S. Ct. 690 (2025).

The plain meaning and ordinary intent of Federal Rule of Civil Procedure 41 concerns voluntary dismissal of an action, not a claim. *State Treasurer of Michigan v. Barry*, 168 F.3d 8, 19 n. 9 (11th Cir. 1999) (Cox, J., specifically concurring) (internal marks omitted)).

The Sixth Circuit has stated that "a 'district court's subsequent order to the same effect [is] superfluous.'" *Warfield v. Allied Signal TBS Holdings, Inc.*, 267 F. 3d 538, 541 (6th Cir. 2001)

If a plaintiff files a self-executing Rule 41(a)(1) notice that voluntarily dismissed the entire action *without prejudice*, not some claims of the plaintiff, *without* a court order and with the right to replead, add parties and claims, "the action is no longer pending," *Cooter & Gell v. Hartmarx Corp.* 496 U.S. 384, 395, 1990.

A district court therefore "is immediately deprived of jurisdiction over the merits of the case when it is voluntarily dismissed." *See Anago Franchising, Inc. v. Shaz, LLC*, 677 F.3d 1272, 1279 (11th Cir. 2012).

As held by this Court in its recent opinion, a "Rule 41(a)(1) dismissal of a case *without prejudice* constitutes a final proceeding under Rule 60. *Waetzig v. Halliburton, Inc.*, 145 S. Ct. 690 (2025).

Further, it is well-established that *Cooter & Gell* is in tandem with the intent of Rule 11 and Rule 41(a)(1) to curb abuses of the judicial system. 496 U.S. at 397-398.

Cooter & Gell, stated that a district court does retain jurisdiction to consider or decide a limited set of collateral issues after the entire action is voluntarily dismissed, *Id.* 496 U.S. at 395.

Under *Cooter & Gell*, a district court does retain collateral jurisdiction to impose sanctions under Federal Rule Civil Procedure 11 for filing a frivolous complaint after a Rule 41(a)(1)(A)(i), (B) voluntary dismissal *without prejudice* notice. *Id.* at 388-90. The Court has identified the collateral issues: (1) the imposition of costs, (2) the imposition of attorney's fees, (3) the imposition of contempt sanctions, and (4) the imposition of *Rule 11* sanctions. *Id.*

at 395-396. These issues do "not signify a district court's assessment of the legal merits of the complaint." *Id.* at 396-98.

A district court's Rule 11(b), (c)(1), (3), (4) partial prefiling judgment on some of the claims post-voluntary dismissal of a plaintiff *without prejudice* of her entire case under the self-executing Rule 41(a)(1) notice, however, *does* "signify a district court's assessment of the legal merits of the complaint." *Id.* at 396-98.

In view of the foregoing, an appellate court is required to first decide whether the district court's jurisdiction over the issue is constitutionally permissible. If this test is satisfied the appellate court then is required to decide whether the district court's jurisdiction over the issue is practically important. The Sixth Circuit did not conduct the requisite two-part test.

Simply put, it is not constitutionally permissible for a district court to retain continuing jurisdiction to issue orders and render a sua sponte legal assessment of case by entering a Rule 11(b), (c)(1), (3), (4) partial prefiling judgment on the merits some of the claims *after* the plaintiff has enabled the self-executing Rule 41(a)(1) voluntary dismissal *without prejudice* notice that immediately divested the district court's subject matter jurisdiction over the entire action. *Willy v. Coastal Corp.*, 503 U.S. 131, 137-38 (1992).

Willy v. Coastal Corp., Id., therefore underscores that if a district court retains collateral jurisdiction and inherent power after a self-executing Rule 41(a)(1) voluntary dismissal *without prejudice* of the entire case

to reopen the case, issue orders, a legal assessment of the case, and a Rule 11(b), (c)(1), (3), (4) partial prefiling res judicata judgment on the merits some of the claims of the plaintiff based on its own sua sponte *Rooker-Feldman* analysis, it would mean that the court was considering a case or controversy, even when it lacked the jurisdiction to do so. *Id.*

As stated by Justice O'Conner,

> "Because a Rule 11 sanction does not signify a district court's assessment of the legal merits of the complaint, the imposition of such a sanction after a voluntary dismissal does not deprive the plaintiff of [her] right under Rule 41(a)(1) to dismiss an action without prejudice. '[D]ismissal . . . without prejudice' is a dismissal that does not 'operat[e] as an adjudication upon the merits,' Rule 41(a)(1), and thus does not have a res judicata effect. Even if a district court indicated that a complaint was not legally tenable or factually well founded for Rule 11 purposes, the resulting Rule 11 sanction would nevertheless not preclude the refiling of a complaint. Indeed, even if the Rule 11 sanction imposed by the court were a prohibition against refiling the complaint (assuming that would be an 'appropriate sanction' for Rule 11 purposes), the preclusion of refiling would be neither a consequence of the dismissal (which was without prejudice) nor a 'term or condition' placed upon the dismissal (which was unconditional), see Rule 41(a)(2)."

Cooter & Gell, 496 U.S. 397.

Justice Scalia's observations in *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 at 17, 18 (1987) also are important. In the *Pennzoil Co.* case Justice Scalia stated he did not believe that "the so-called *Rooker-Feldman* doctrine" prevented the Court from being able to decide Texaco's challenge to the constitutionality of the Texas stay and lien provisions" because that challenge neither involved issues litigated in state court nor issues inextricably intertwined with those litigated in state court. *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 at 17, 18 (1987).

In *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 283 (2005), Justice Ginsburg observed that the *Rooker-Feldman* doctrine has only been applied by the Court to bar federal subject matter jurisdiction twice, namely, in the two cases that give the doctrine its name and that the lower courts often misapply the Rooker-Feldman doctrine."

Justice Ginsburg also carefully articulated that the *Rooker-Feldman* "doctrine has sometimes been construed to extend far beyond the contours of the *Rooker* and *Feldman* cases, overriding Congress' conferral of federal court jurisdiction concurrent with jurisdiction exercised by state laws and superseding the ordinary application of preclusion laws." *Id.*

This Court defined the exact cases where the *Rooker-Feld*man doctrine may be applied, and stated that it is "confined to cases [...] brought by state-court losers complaining of injuries caused by state court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Id.* at 284.

Importantly, the Court reversed the appellate court's judgment on the grounds that the *Rooker-Feldman* doctrine did not apply and it established that "[w]hen there is parallel state and federal litigation, *Rooker-Feldman* is *not* triggered simply by the entry of judgment in state court." *Exxon Mobil Corp.*, 544 U.S. 280, 291, 291 (2005)

The precedent in the Sixth Circuit that a district court has Article III jurisdiction and subject matter jurisdiction under the extrinsic fraud exception to *Rooker-Feldman* has caused a divide in the circuit courts and an intra-circuit split in view of its affirmance of the district court's Rule 11(b), (c)(1), (3), (4) partial prefiling res judicata judgment. Pet. App. 1a

In re Sun Valley Foods Co., 801 F.2d 186 (6th Cir. 1986), the Sixth Circuit held that *Rooker-Feldman* does not prevent the lower federal courts from reviewing state-court judgments that are allegedly procured through chicanery and fraud on the grounds that when a "state-court loser" complains that the winner owes his triumph not to sound legal principles, or even unsound ones, but to chicanery and fraud, then the loser is not really complaining of an injury caused by a state-court judgment, but of an injury caused by the winner's chicanery. See *Exxon Mobil*, 544 U.S. At 284.

In view of the foregoing, the concurring in part and dissenting in part of Justice Stevens in *Cooter & Gell* is materially relevant and important:

> "Rule 11 and Rule 41(a)(1) are both designed to facilitate the just, speedy and inexpensive determination of cases in federal court.

Properly understood, the two Rules should work in conjunction to prevent the prosecution of needless or baseless lawsuits. Rule 11 requires the court to impose an 'appropriate sanction' on a litigant who wastes judicial resources by filing a pleading that is not well grounded in fact and warranted by existing law or a good-faith argument for its extension, modification, or reversal. Rule 41(a)(1) permits a plaintiff who decides not to continue a lawsuit to withdraw [her] complaint before an answer or motion for summary judgment has been filed and avoid further proceedings on the basis of that complaint. The Court today, however, refuses to read the two Rules together in light of their limited, but valuable, purposes. By focusing on the filing of baseless complaints, without any attention to whether those complaints will result in the waste of judicial resources, the Court vastly expands the contours of Rule 11, eviscerates Rule 41(a)(1), and creates a federal common law of malicious prosecution inconsistent with the limited mandate of the Rules Enabling Act. 496 U.S. at 410

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Rule 41(a)(1) satisfies the interest in preventing the abusive filing of repetitious, frivolous lawsuits. Second, and of equal importance, by giving the plaintiff the absolute, unqualified right to dismiss [her] complaint without permission of the court or notice to [her] adversary, the framers of Rule 41(a)(1) intended

to preserve the right of the plaintiff to reconsider [her] decision to file suit 'during the brief period before the defendant had made a significant commitment of time and money.' *Ante* at 496 U.S. 397. The Rule permits a plaintiff to file a complaint to preserve [her] rights under a statute of limitations and then reconsider that decision prior to the joinder of issue and the commencement of litigation. *Id.* at 411

In theory, Rule 11 and Rule 41(a)(1) should work in tandem. When a complaint is withdrawn under Rule 41(a)(1), the merits of that complaint are not an appropriate area of further inquiry for the federal court. The predicate for the imposition of sanctions, the complaint, has been eliminated under the express authorization of the Federal Rules before the court has been required to take any action on it, ... *Id.*

*****

"The Court holds, however, that a voluntary dismissal does not eliminate the predicate for a Rule 11 violation because a frivolous complaint that is withdrawn burdens 'courts and individuals alike with needless expense and delay.' *Ante* at 496 U.S. 398. That assumption is manifestly incorrect with respect to courts. The filing of a frivolous complaint which is voluntarily withdrawn imposes a burden on the court only if the notation of an additional civil proceeding on the court's docket sheet can be said to constitute a burden. By definition, a

voluntary dismissal under Rule 41(a)(1) means that the court has not had to consider the factual allegations of the complaint or ruled on a motion to dismiss its legal claims. *Id.* at 412

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"The Court's observation that individuals are burdened, even if correct, is irrelevant. *Rule 11 is designed to deter parties from abusing judicial resources, not from filing complaints.* .... [T]he Rules Enabling Act does not give us authority to create a generalized federal common law of malicious prosecution divorced from concerns with the efficient and just processing of cases in federal court. *Id.*

*****

If a plaintiff files a false or frivolous affidavit in response to a motion to dismiss for lack of jurisdiction, I have no doubt that he can be sanctioned for that filing. In those cases, the action of the party constitutes an abuse of judicial resources. But when a plaintiff has voluntarily dismissed a complaint pursuant to Rule 41(a)(1), a collateral proceeding to examine whether the complaint is well grounded will stretch out the matter long beyond the time in which either the plaintiff or the defendant would otherwise want to litigate the merits of the claim. An interpretation that can only have the unfortunate consequences of encouraging the filing of sanction motions and discouraging

> voluntary dismissals cannot be a sensible interpretation of Rules that are designed "to secure the just, speedy, and inexpensive Fed. Rule Civil Proc. 1." Id. at 13

Accordingly, a district court's continuing inherent power under collateral jurisdiction to reopen the case, issues orders, and enter a Rule 11(b), (c)(1), (3), (4) (A)(i), (B) partial prefiling judgment on the merits of some claims of the plaintiff, based on its sua sponte analysis of the *Rooker-Feldman* doctrine, that in form or substance both constitutes a res judicata or issue preclusion judgment on the merits of some claims and eviscerates the intent and plain meaning of the plaintiff's right to replead the same claims, add new parties and claims under Rule 41(a)(1)(A)(i), (B), is not constitutionally permissible or practically important.

Further, it is well-established that Rule 11 does not preclude a party from initiating an independent action for malicious prosecution or abuse of process in a federal court.

The Sixth Circuit's affirmance, Pet. App. 1a; 72a, of the district court's post-Rule 11(b), (1), (3), (4) partial prefiling res judicata judgment on the merits of some claims of the Petitioner, that adopted the magistrate judge's supplemental report and recommendation, *Id.* 14(a), and also the magistrate judge's report, recommendation and order to show cause *Id.* 18a, in reliance on the inapplicable Rooker-Feldman doctrine that were entered after the magistrate judge granted the Respondents' motion to extend the time to answer by December 8, 2023, *Id.* 68a; 69a; 71a, also is contrary to

the Court's holding in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 245-246 (1944) (creating the standard for fraud on the court).

Further, by affirming under *Cooter & Gell*, the Sixth Circuit's "Not Recommended for Publication" order or judgment is at odds with *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987); *Exxon Mobil Corp.*, 544 U.S. 280, 291, 291 (2005); and with its own precedent in *In re Sun Valley Foods Co.*, 801 F.2d 186 (6th Cir. 1986), all of which creates a divide among the circuit courts and an intra-court divide within the Sixth Circuit.

II. Factual Background

Petitioner Joan Carol Lipin sued the Respondent step-son Arthur Dodson Wisehart and Respondent Mark Apelman, as Principal I and Principal II, in the United States District Court for the Southern District of Ohio, Western Division, Cincinnati, under the provisions of the Racketeer Influenced and Corrupt Organizations Act ("RICO") and 42 U.S.C. § 1983. for the injuries to Petitioner that were caused and continue to be caused by the Respondents' chicanery and fraud in procuring multiple state court and federal court judgments in the State of Colorado and in the State of Ohio to facilitate the end-goals of each racketeering enterprise the Respondent step-son established without standing, aided and abetted by his co-Respondent. (PACER DOC 3; Page ID 282)

Respondents' continuing hub-spoke wheel racketeering modus operandi, for more than a decade, was to pillage plunder, and steal substantial liquid assets and commercial real estate properties belonging to Petitioner in situ in the

State of Ohio, in the State of Colorado, or in State of New York by procuring state court and federal court judgments by chicanery and fraud on the courts to accomplish the end-goals of each racketeering enterprise established by each Respondents and both of them.

The claims under RICO and 42 U.S.D. § 1983 allege injuries caused to Petitioner by Respondents who conspired to instigate and instigated with state actors a criminal proceeding against Petitioner in the Common Pleas Court, Preble County, Ohio, in tandem with the judgments the Respondents procured by chicanery and fraud in the Ohio state courts or in the Colorado state or federal courts (PACER DOC 3, Page ID 282), as alleged under each Count below:

> *COUNT I*: The Scheme to Infiltrate and Control by Obstruction of Justice, Fraud, and Public Records Tampering to Facilitate the Enterprise, and Substantive Racketeering—18 U.S.C. §§ 1962(c) and 1964 [*Id.*, Page ID 295-297, ¶¶ 55-63]
>
> *****
>
> *COUNT II*: Racketeering Conspiracy 18 U.S.C. §§ 1962(d) and 1964 Against Defendants 1 and 2 (*Id.*, Page ID 297-300, ¶¶ 62-76)
>
> *****
>
> *COUNT III*: The Real Estate Scheme to Continue the Racketeering Enterprise by using the Expired Dorothy R. Wisehart

Trust Agreement or Trust Contract, and the Terminated AMW Family Trust to Commit Civil Theft (*Id.*, Page ID 300-301, ¶¶ 77-82)

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COUNT IV: Civil Rights Violations Action under the Constitution of the United States (violation of 42 United States Code Section 1983) (*Id.*, Page ID 301-304, ¶¶ 83-92), that alleges as follows:

> 83. Plaintiff repeats and re-alleges the factual statements and allegations of paragraphs 1 through 82, as if in full force and effect hereto.
>
> 84. At all times relevant, Defendants 1 and 2 were "persons" within the meaning of RICO, 18 U.S.C. § 1961(3).
>
> 85. On or about October 10, 2023, Defendants 1 and 2 caused the Preble County Sheriff's Office to telephone Plaintiff with the fabricated and false claim that allegedly Plaintiff had leased, as the owner, the same two farms to two different farmers and had received farm rental income from one farmer who was threatened by Defendants 1 and 2 and therefore refused to farm the two farms.
>
> 86. After the Preble County Detective had discussed the matter with Plaintiff, the

Preble County Sheriff's Office declined to prosecute Plaintiff based on her veracity.

87. Defendants 1 and 2 subsequently have conceded the foregoing in a court filing.

88. Each Defendant conspired to commit common law fraud upon the plaintiff, upon all the Courts, and upon the public, and did commit common law fraud upon all the Courts, plaintiff, and the public in furtherance of the goals of the enterprise.

89. Defendant 2 and 1 committed public records tampering in the State of Colorado during the pendency of the ejectment and trespass civil litigation Plaintiff commenced against Defendant 1 by threatening the Colorado Delta County Public Assessor and causing the Colorado Delta County Assessor (a) to destroy on June 13, 2017, the four separate and different Quit Claim Deeds in the name of "Lipin, Joan Carol," that had been recorded by Teri A. Stephenson, Delta County, State of Colorado Clerk and Recorder, and (b) to substitute the legally recorded title of ownership Deeds in the name of "Lipin, Joan Carol," with forgeries that Defendants 1 and 2 had manufacture in the name of "Wisehart, Dorothy R. Trust," and thereafter procured a court-ordered fraudulent transfer of each real property to the "Wisehart, Dorothy R. Trust.

90. Defendants 1 and 2 used that predicate racketeering scheme in the State of Ohio when each of them procured the Certified Decision and Judgment in Case No. 22-cv-032572, to fraudulently transfer to Arthur Dodson Wisehart, Trustee, the four separate and different real estate properties, farms, and houses situated thereupon of which Plaintiff is the recorded deeded title owner and taxpayer, as described with specificity in the declaratory judgment action, Case No. 22-cv-032420, in which all defendants defaulted, see Exhibit 1 at paragraphs 5-6 that stated as follows:

> 5. Plaintiff Lipin also has standing to commence this declaratory judgment action because she is, and at all times relevant, has been the real estate taxpayer of (a) the real property and farm located at 5291 New Paris Gettysburg Road, Parcel Number G2291263000000100, Jefferson Township; (b) the separate real property and farm located at 5291 New Paris Gettysburg Road, Parcel Number G22913510000001000, Jefferson Township; (c) the real property and farm located at 5640 Oxford Gettysburg Road, Parcel Number F21810100000001000, Jackson Township; and (d) the real property and farm located at 4526 Crubaugh Road,

Parcel Number G22912500000004000, Jefferson Township ("Properties"), each, and all of them, situated in Preble County, Ohio 45347.

6. Further, Plaintiff Lipin also is, and at all times relevant, has been (a) the Recorded Deeded Joint Survivorship Title Owner with her husband Arthur McKee Wisehart of (i) the Property located at 5291 New Paris Gettysburg Road, Parcel Number G2291263000000100, Jefferson Township and (ii) the separate Property located at 5291 New Paris Gettysburg Road, Parcel Number G229135100000001000, Jefferson Township, each, and all of them, situated in Preble County, Ohio 45347, and (b) the Recorded Deeded Title Owner of the Property located at (i) 5640 Oxford Gettysburg Road, Parcel Number F21810100000001000, Jackson Township and (ii) at 4526 Crubaugh Road, Parcel Number G229125000000004000, Jefferson Township, each, and all of them, situated in Preble County, Ohio 45347, and therefore has standing to commence this declaratory judgment action.

91. Plaintiff does not have access to sufficient information to identify the

amount of [the] damages [she has] incurred because that information is in the sole possession of the Defendants.

92. WHEREFORE, Plaintiff respectfully prays for a judgment against Defendant Arthur Dodson Wisehart a/k/a Arthur D. Wisehart and Defendant Mark Apelman, and for relief as follows:

(a) Treble damages to compensate the Plaintiff for her loss of profits from the defendants' improper court-ordered fraudulent transfers of real property to Defendant 1 and other incidental and consequential damages including, but not limited to, the financial benefits flowing from the real properties and farm cash rental agreements;

(b) Injunctive relief;

(c) Restitution of the Ohio and Colorado properties in the name of Plaintiff who of which Plaintiff is the recorded legal title owner and taxpayer;

(d) Restitution of the cash rental farm income;

(e) Reasonable attorney's fees and costs;

(f) Such other and further relief as the Court deems just and proper.

See *Bridge v. Phoenix Bond & Indemnity Co.*, 553 U.S. 639 (2008) (A plaintiff asserting a claim under the Racketeer Influenced and Corrupt Organizations Act predicated on mail fraud need not show, either as an element of its claim or as a prerequisite to establishing proximate causation, that it relied on the defendants' alleged misrepresentations in that case).

III. Procedural Background

Petitioner filed her complaint on October 23, 2023, and the amended complaint on October 25, 2023. (*Id.* Page ID 282) Shortly after both defendants were joined, counsel for Respondents admitted to Petitioner that "he did not know how to answer the amended complaint," inclusive of the exhibit documents that are attached to the complaint (*Id.*, Page ID 282-655) and moved for an extension of time to answer by December 8, 2023, as discussed below. The magistrate judge granted Petitioner's motion to file for "Electronic Filing Rights" permission (PACER Doc 6 Page ID 661) on October 31, 2023, after she had determined the amended complaint and the exhibit documents attached to the complaint satisfied the pleading requirements under Fed. R. Civ. P. 8 and that the complaint was sufficient "to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see* also *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), holding that "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable infer to draw the reasonable inference that the defendant is liable for the misconduct alleged."

Precedent in the Sixth Circuit holds that "documents" that are attached to a complaint are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to the plaintiff's claim. *Weiner v. Klais & Co.*, 108 F.3d 86, 89 (6th Cir. 1997) (quoting *Venture Assoc. Corp. v. Zenith Data Sys. Corp.*, 987 F.2d 429, 431 (7th Cir. 1993)); *Yeary v. Goodwill Industries-Knoxville, Inc.*, 107 F.3d 443, 445 (6th Cir. 1997) (finding that the consideration of other materials that "simply filled in the contours and details of the plaintiff's complaint, and added nothing new.)"

On November 16, 2023, the magistrate judge entered an order, App. Pet. 67a; PACER DOC 14 Page ID 694, that granted the Respondents' (1) motion to extend the time to answer to December 8, 2023, App. Pet. 69a; 71a; PACER DOC 14 Page ID 694; (2) the Respondent's pro hac vice motion to appear as co-counsel on behalf of his co-Respondent. The same counsel represented both Respondents, *Id.* 68a; 69a; 70a; PACER DOC 14 Page ID 696-697. The order also denied Petitioner's motion to disqualify Respondent as pro hac vice co-counsel for his co-Respondent, *Id.* 70a; PACER DOC 14 Page ID 696).

Petitioner filed a Rule 60(b) motion on November 20, 2023, PACER DOC 15 Page ID 698, to vacate, in part, the order entered on November 16, 2023 order. The magistrate judge or district judge did not decide or rule on Petitioner's motion.

Instead, on November 28, 2023, the magistrate judge entered her sua sponte report, recommendation, and order to show cause why Petitioner's complaint should not be dismissed with prejudice under issue preclusion

and why Rule 11 and 28 U.S.C. § 1927 sanctions should not be imposed against her. Pet. App., beginning at 18a that stated as follows:

> III. Analysis
>
> A. This Court Lacks Jurisdiction Based on *Rooker-Feldman* and Lipin's Lack of Standing; Issue Preclusion Further Bars Claims Lipin invokes federal question jurisdiction because all four of her claims are based on federal law, including RICO (Counts I-III) and the civil rights statute, 42 U.S.C. § 1983 (Count IV). She also alleges diversity jurisdiction, despite the fact that all claims cite to federal statutes, not state law. ... this Court lacks jurisdiction based on the *Rooker-Feldman* doctrine and Lipin's lack of standing." [fn omitted] *Id.* at 22a-23a
>
> *****
>
> Lipin is a state court loser who consistently refuses to accept judgments against her, and who seeks to overturn the impact of those judgments in this Court. The *Rooker Feldman* doctrine, established by two U.S. Supreme Court rulings issued 60 years apart, draws its support from 28 U.S.C. § 1257 and the principle that only the U.S. Supreme Court has appellate jurisdiction over the civil judgments of state courts. See *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). To determine the applicability of the

Rooker-Feldman doctrine, the district court "must determine the source of the plaintiff's alleged injury." *McCormick v. Braverman*, 451 F.3d 382, 393 (6th Cir. 2006). When a plaintiff complains not of a state court decision but of a third party's actions—but where that "third party's actions are the product of a state court judgment, then a plaintiff's challenge to those actions [is] in fact a challenge to the judgment itself." *Abbott v. Michigan*, 474 F.3d 324, 329 (6th Cir. 2007), citing *McCormick v. Braverman*, 451 F.3d 382 (6th Cir. 2006)." *Id.* at 23-24a

*****

For the moment, though, it is enough to say that the Rooker-Feldman doctrine bars this case based on the prior Ohio and Colorado state court judgments. *Accord Tropf v. Fidelity Nat. Title Ins. Co.*, 289 F.3d 929 (6th Cir. 2002) (holding that plaintiffs' federal claims were barred under Rooker-Feldman...." *Id.* at 25a

*****

Admittedly, *Rooker-Feldman* divests this Court of subject matter jurisdiction only to the extent that Plaintiff's alleged injuries arise from the judgments rendered by the Preble County Ohio Court of Common Pleas or the Delta County Colorado state court. To the extent that Lipin seeks to relitigate adverse judgments entered against her ... , the Rooker-Feldman doctrine

> has no application. .... And, despite the fact that collateral estoppel and res judicata are ordinarily affirmative defenses, see Fed. R. Civ. P. 8(c), they may be raised sua sponte by a court in "special circumstances," ...." *Id.*

On November 28, 2023, Petitioner voluntarily dismissed the entire case *without prejudice* by filing the Rule 41(a)(1)(A)(i), (B) notice, PACER DOC 19 Page ID 743; district court's PACER Docket entry that stated as follows:

11/28/2023		***Civil Case Terminated per doc 19 (md) (Entered: 11/28/2023)

Without waiting for Petitioner's objections and response to the report, recommendation, and order to show cause, the magistrate judge filed a sua sponte supplemental report and recommendation, *Id.* at 14a, in which she stated the Petitioner's federal question action, PACER DOC 1 Page ID 278, could not be dismissed with prejudice under:

> "*** Rule 41(a)(1)(A). The rule permits dismissal as of right "before the opposing party serves either an answer or a motion for summary judgment." (Docs. 18, 19). Under Rule 41(a)(1)(B), a voluntary dismissal is 'without prejudice' unless 'the plaintiff previously dismissed any federal- or state-court action based on or including the same claim,' in which case the voluntary dismissal 'operates as an adjudication on the merits.' Id. In addition, Rule 41(d)

> may permit the award of attorney's fees in certain cases in which a plaintiff has engaged in vexatious litigation. Although Plaintiff has repeatedly litigated the same claims and lost, she does not appear to have previously voluntarily dismissed her claims." *Id.* at 15a
>
> *****
>
> "By voluntarily dismissing her case, Plaintiff has effectively short-circuited the Court's ability to dismiss her complaint with prejudice. Because dismissal under Rule 41(a)(1) operates without court action and is presumptively *"without prejudice," the Court no longer has such authority.*" *Id.* at 16a; emphasis added.

Petitioner filed her timely objections and response to the magistrate judge's reports, recommendations, PACER DOC 21 Page ID 749.

The district court adopted the reports and recommendations of the magistrate judge, entered the Rule 11(b), (c)(1), (3), (4) partial prefiling res judicata judgment on the merits of some claims, Pet. App. 9a:

> ORDERS the following: 1) The first two recommendations in the prior Report (Doc. 17), which recommend that this case be dismissed with prejudice, are VACATED AS MOOT; 2) The remaining recommendations in paragraph 3 of the prior Report (Doc. 17) are ADOPTED; 3) Plaintiff Lipin is hereby ENJOINED and

> BARRED from filing any new pro se lawsuit, in her name or anyone else's name that raises her claim of ownership in any of the four Ohio parcels of real estate that make up the Ohio farms or in the Paonia Colorado property at issue in this case; 4) Based on her vexatious history, Plaintiff Lipin is hereby formally warned that if she initiates any new civil case that is subsequently found to be frivolous, she will be declared to be a vexatious litigant in this Court subject to additional pre-filing restrictions. Specifically, she will be required to obtain a certification of an attorney in good standing that any new claims are not frivolous and that the suit is not brought for any improper purpose; and 5) Plaintiff Lipin is also hereby warned that any additional filings of any type that are found to be vexatious are likely to result in additional sanctions, including but not limited to monetary sanctions. IT IS SO ORDERED." *Id.* at 12a

As discussed above, the Sixth Circuit affirmed the district court's judgment under *Cooter & Gell* on November 26, 2024, without conducting the required two-part constitutionally permissible and practically important test concerning whether the district court had inherent power and collateral jurisdiction to entry the Rule 11(b), (c)(1), (3), (4) partial prefiling res judicata judgment on the merits of some claims.

REASONS FOR GRANTING THIS PETITION

The Court should grant certiorari because of the important constitutional and procedural due process rights to a plaintiff under a Rule 41(a)(1) voluntary dismissal *without prejudice* notice that constitutes a "final proceeding" under Rule 60(b). *See Waetzig v. Halliburton Energy Services, Inc.*, 145 S. Ct. 690 (2025).

Further, certiorari should be granted because the Sixth Circuit's judgment has compounded the existing circuit split by confusion and it has created an intra-circuit Sixth Circuit split on the issue whether a federal district court has collateral jurisdiction and inherent power to eviscerate a Rule 41(a)(1)(A)(i), (B) voluntary dismissal *without prejudice* to any other party with the right to replead the same claims, add new parties and claims by imposing a partial prefiling res judicata judgment on the merits of some claims that is tantamount to a res judicata dismissal *with prejudice* by making a legal determination of the claims sua sponte under the inapplicable *Rooker-Feldman* doctrine and under Rule 11(b), (c)(1), (3), (4).

See Brown v. First Nationwide Mortg. Corp., 206 F. App'x 436, 440 (6th Cir. 2006) (the plaintiff's allegations of fraud in connection with the state court proceedings . . . did not constitute "complaints of injuries caused by the state court judgments," because they do not claim that the source of [plaintiff's] alleged injury is the foreclosure decree itself"); *In re Sun Valley Food Co.*, 801 F. 2d 186 (6th Cir. 1986) holding that plaintiff is not barred under the *Rooker-Feldman* extrinsic fraud exception if the injuries to the plaintiff were caused by a defendant's chicanery and fraud in the procurement of a state court judgment

because it is an independent claim. *See* also *Compare Frame v. Lowe*, No. 09-2673 (RBK/AMD), 2010 U.S. Dist. LEXIS 10494, at *16 (D.N.J. Feb. 8, 2010); *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004),

The Eighth Circuit is unwilling to create an extrinsic fraud exception to *Rooker-Feldman*. Similarly, the Tenth Circuit does not recognize "an 'extrinsic fraud' exception to *Rooker-Feldman*." *See Myers v. Wells Fargo Bank*, 685 F. App'x 679 (10th Cir. 2017) (citing *Tal v. Hogan*, 453 F.2d 1244, 1256 (10th Cir. 2006); *Bradshaw v. Gatterman*, 658 F. App'x 359, 362 (10th Cir. 2016)); *Campbell v. Tabas*, Civ. A. No. 16-6513, 2017 U.S. Dist. LEXIS 115722, at *7 (E.D. Pa. July 25, 2016) (explaining that the Sixth and Ninth Circuits have adopted the exception, but the Second, Fourth, Fifth, Seventh, Eighth, Tenth, and Eleventh Circuits have rejected the fraud exception to *Rooker-Feldman*).

In *Cooter & Gell*, however, this Court held because a Rule 11 sanction does not signify a district court's assessment of the legal merits of the complaint, the imposition of such a sanction after a voluntary dismissal does not deprive the plaintiff of his right under Rule 41(a) to dismiss an action without prejudice. "Dismissal *without prejudice*" is a dismissal that does *not* "operat[e] as an adjudication upon the merits," Rule 41(a)(1), and thus does *not* have a *res judicata* effect. Even if a district court indicated that a complaint was not legally tenable or factually well founded for Rule 11 purposes, the resulting Rule 11 sanction would nevertheless *not* preclude the refiling of a complaint. Indeed, even if the Rule 11 sanction imposed by the court were a prohibition against refiling the complaint (assuming that would be an "appropriate

sanction" for Rule 11 purposes), the preclusion of refiling would be neither a consequence of the dismissal (which was without prejudice) nor a "term or condition" placed upon the dismissal (which was unconditional), see Rule 41(a)(2). *Cooter & Gell v. Hartman*, 496 U.S. 384, 397 (1990)

The Sixth Circuit's affirmance of the district judgment therefore was wrong for the further reasons that no evidence exists within the four-corners of the complaint that would support the district court's arbitrary and capricious conclusion that allegedly "Plaintiff's initiation of this new federal lawsuit based on demonstrably false factual and legal premises is in violation of Rule 11 and 28 U.S.C. § 1927," Pet. App. 55a, and that "[a]n appellate federal court must satisfy for itself not only of its own jurisdiction, but also of that of the lower courts in a cause under review." *Mitchell v. Maurer*, 293 U.S. 237, 244, 55 S. Ct. 162, 165 (1934); *Absolute Activist Value Master Fund v. Devine*, 2021 U.S. App. LEXIS 16110 (11th Cir. May 28, 2021).

Accordingly, this Court should grant certiorari to resolve the existing and compounded divide among the circuit courts and the intra-circuit divide in the Sixth Circuit. See S. Ct. R. 10(a).

CONCLUSION

The Court should grant the petition, and vacate the judgment below.

Respectfully submitted,

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