No. 25-

IN THE

Supreme Court of the United States

BRET HEALY,

Petitioner,

v.

SUPREME COURT OF SOUTH DAKOTA, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Federal Rule of Civil Procedure 11 permits a court to sanction represented parties for violations of that rule. In *Business Guides, Inc.* v. *Chromatic Communications Enterprises, Inc.*, 498 U.S. 533 (1991), this Court held that "Rule 11 imposes an objective standard of reasonable inquiry on represented parties who sign papers or pleadings." *Id.* at 934–35. But this Court expressly left open "whether or under what circumstances a *nonsigning* party may be sanctioned." *Id.* at 935 (emphasis added).

The courts of appeals are in an acknowledged split on that still-open question. Two circuits hold represented, nonsigning parties to an objective standard of reasonable inquiry—*i.e.*, negligence. On the other hand, at least five circuits require a more stringent showing—that the represented, nonsigning party have had actual knowledge of the wrongful conduct or took affirmative action that caused the violation.

The question presented is: Whether Federal Rule of Civil Procedure 11 permits sanctions to be imposed on represented parties who do not sign the pleading, motion, or other paper at issue based on an objective standard of reasonable inquiry.

PARTIES TO THE PROCEEDING

Petitioner Bret Healy was plaintiff in the district court and appellant below.

Respondents Supreme Court of South Dakota, Healy Ranch Inc., Barry Healy, Bryce Healy, Larry Mines, Sheila Mines, Mary Ann Osborne, Albert Steven Fox, Janine M. Kern, Mark E. Salter, Jon C. Sogn, Patricia J. Devaney, Scott P. Myren, and Steven R. Jensen were defendants in the district court and appellee below.

RELATED PROCEEDINGS

- *Healy* v. *Supreme Court of South Dakota et al.*, No. 4:23-cv-04118, U.S. District Court for the District of South Dakota. Judgment entered April 11, 2024.

- *Healy* v. *Supreme Court of South Dakota et al.*, No. 24-1996, U.S. Court of Appeals for the Eighth Circuit. Judgment entered April 3, 2025.

There are no other proceedings in state or federal courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The decision of the Court of Appeals for the Eighth Circuit is unreported but available at 2025 WL 999468 and is reproduced at Appendix ("Pet. App.") 1a. The decision of the U.S. District Court for the District of South Dakota is unreported but available at 2023 WL 8653851 and reproduced at Pet. App. 8a.

JURISDICTION

The Eighth Circuit filed its decision on April 3, 2025. On May 9, 2025, the Eighth Circuit denied rehearing *en banc*.

On July 1, 2025, Justice Kavanaugh extended the time to file a petition for a writ of certiorari to September 6, 2025. This petition is timely, and the Court has jurisdiction under 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

Federal Rule of Civil Procedure 11 provides in relevant part:

(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:

> (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation[.]
>
> …

(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.

STATEMENT OF THE CASE

I. Legal Background

A. Federal Rule of Civil Procedure 11 allows district courts to sanction lawyers, law firms, or parties under certain circumstances. Specifically, Rule 11(b) prohibits the presentation of "a pleading, written motion, or other paper" for "any improper purpose, such as to harass" (Rule 11(b)(1)) or without a colorable basis in the law (Rule 11(b)(2)). Rule 11(b), by its terms, applies to those who submit papers to a court—*i.e.*, "an attorney or unrepresented party," who "by signing, filing, submitting, or later advocating" the paper certifies that it does not violate the rule. If "Rule 11(b) has been violated," then Rule 11(c)(1) permits courts to sanction "any attorney, law firm, or party that violated the rule or is responsible for the violation."

B. Rule 11 has been understood to "impose[] a duty on attorneys to . . . conduct[] a reasonable inquiry and . . . determine[] that any papers filed with the court are well grounded in fact, legally tenable, and not interposed for any improper purpose." *Cooter & Gell* v. *Hartmarx Corp.*, 496 U.S. 384, 388 (1990) (citation modified).

In *Business Guides, Inc.* v. *Chromatic Communications Enterprises, Inc.*, 498 U.S. 533 (1991), this Court addressed whether Rule 11 also imposed that "objective standard of reasonable inquiry on represented parties who sign pleadings, motions, or other papers." *Id.* at 535. A narrow majority said yes, holding that "[a] signature sends a message to the district

court that this document is to be taken seriously," *id.* at 546, and so "any signer must conduct a 'reasonable inquiry' or face sanctions," *id.* at 549. Thus, the Court held that Rule 11 "imposes on any party who signs a pleading, motion, or other paper . . . an affirmative duty to conduct a reasonable inquiry into the facts and the law before filing, and [] the applicable standard is one of reasonableness under the circumstances." *Id.* at 551. The Court noted, however, that it "ha[d] no occasion to determine whether or under what circumstances a *nonsigning* party may be sanctioned." *Id.* at 554 (emphasis added).

Justice Kennedy, joined by Justices Marshall and Stevens, and in part by Justice Scalia, dissented. The dissenters objected to extending Rule 11 to cover those not acting as attorneys. *Id.* at 554–55 (Kennedy, J., dissenting). However, Justice Kennedy further observed that, although "[t]he majority does not tell us what standard it thinks should be applied in deciding whether to sanction a represented party who has not signed a Rule 11 paper," the "chilling impact of the majority's negligence standard will be much greater if the majority applies it in that circumstance as well." *Id.* at 566. The dissent further noted that such a "result seems a plausible consequence of the majority's reasoning." *Ibid.*

C. Rule 11 was amended substantially in 1993. In relevant part, that amendment clarified that it is "an attorney or unrepresented party" who is bound by the certifications set forth in Rule 11(b)—as opposed to the previous version, which said simply "attorney[s]

or part[ies]," without limiting the latter to unrepresented parties. Further, Rule 11(c)(1) further specified whom a court may sanction: "any attorney, law firm, or party that violated the rule or is responsible for the violation." Previously, the equivalent section in the pre-1993 rule had stated a court may "impose upon the person who signed [the paper], a represented party, or both, an appropriate sanction." See Fed. R. Civ. P. 11 (1983).

II. Factual and Procedural Background

A. This litigation originated in "a longstanding and oft-litigated dispute regarding ownership of the Healy family farm-ranch business[.]" Pet. App. 9a. Ultimately, after several actions were filed in state and federal courts in South Dakota, all the claims concerning ownership of the ranch were resolved against Petitioner. *Id*. 9a–10a. This petition does not concern those claims.

After the claims had worked their way through the courts, Petitioner was left to consider whether he had any further avenues for relief. He hired a lawyer. That lawyer filed a complaint in federal court under 42 U.S.C. § 1983 and other statutes against the sitting Justices of the South Dakota Supreme Court and others, seeking to void the judgments relating to the ownership of the ranch. *Id*. 10a–11a. Petitioner's attorney signed and filed the complaint; Petitioner did not. Complaint at 30, *Healy* v. *Sup. Ct. of S.D.*, No. 4:23-cv-04118, 2023 WL 8653851 (D.S.D. Dec. 14, 2023), Dkt. No. 1.

B. Defendants moved to dismiss and for sanctions. After an oral argument focusing mostly on the merits of the claims, the district court, in a written decision, dismissed the complaint. Pet. App. 9a. At the end of the written decision, the court then considered the defendants' motions for sanctions.

The district court first observed that Rule 11 "requires 'a reasonable inquiry of the factual and legal basis for a claim before filing.'" Pet. App. 39a–40a (quoting *Miller* v. *Bittner*, 985 F.2d 935, 938 (8th Cir. 1993)). It stated that the standards for sanctioning an attorney and party turned on the same analysis; the court "'must determine whether a reasonable and competent attorney would believe in the merit of an argument' in deciding whether a party has violated Rule 11." *Id*. at 40a (quoting *Coonts* v. *Potts*, 316 F.3d 745, 753 (8th Cir. 2003)).

On the basis of that analysis, which focuses on the lack of a reasonable basis for the claims, the court determined that sanctions were appropriate against Healy personally. The court explained, "[t]he number of obvious obstacles to the claims—the *Rooker-Feldman* doctrine, Eleventh Amendment and judicial immunity, lack of supplemental jurisdiction, and *res judicata*—render the claims generally to lack valid legal basis." *Id*. at 41a. The court added that the South Dakota state courts had found there was not a reasonable basis for Healy to have filed a prior state-court action, and therefore that his motive in filing that action was to prevent the sale of disputed property. *Ibid*. Without any evidentiary hearing or analysis of

Healy's knowledge about or purpose with respect to *this* Section 1983 federal-court action, the district court summarily stated that Healy's motives for this suit were "similar" to the original state-court action that was resolved back in 2019. *Ibid.*

Accordingly, the court summarized, given the claims "were not warranted by existing law or a good faith, nonfrivolous argument for some modification or extension of existing law," the "history of litigation combined with the absence of merit of the claims" justified sanctioning Healy under Rules 11(b)(1) and (2). *Ibid.* Yet the court did not sanction Healy's attorney, who had signed all court papers submitted on Healy's behalf and argued on his behalf.

The court thereafter entered judgment, directing Petitioner to pay over $49,000 to certain defendants. *Id.* at 7a.

C. Petitioner timely appealed to the United States Court of Appeals for the Eighth Circuit. Petitioner argued on appeal that "[s]ome measure of 'bad faith'" was needed to support a sanction against Petitioner rather than his attorney, but "[n]o such finding was made here." Brief of Plaintiff-Appellant at 9–10, *Healy* v. *Sup. Ct. of S.D.*, No. 24-1996, 2025 WL 999468 (8th Cir. Apr. 3, 2025).

The court of appeals affirmed the Rule 11(b)(1) sanctions in a three-sentence decision, noting simply that "the district court did not abuse its discretion in

sanctioning Healy."[1] Pet. App. 2a (citing *Ivy* v. *Kimbrough*, 115 F.3d 550, 553 (8th Cir. 1997)).

REASONS FOR GRANTING THE PETITION

I. There Is An Entrenched Circuit Split On The Question Presented

In *Business Guides,* this Court left unresolved "whether or under what circumstances a nonsigning party may be sanctioned." 498 U.S. at 935; see *United States* v. *Int'l Bhd. of Teamsters,* 948 F.2d 1338, 1344 n. 3 (2d Cir. 1991) ("Whether a subjective or objective standard applies to parties who do not sign . . . papers was left open by the Supreme Court in *Business Guides*[.]"). Today, the "[f]ederal courts disagree on the scienter required to impose sanctions on a represented party," *First Am. Bank* v. *Fobian Farms, Inc.*, 906 N.W.2d 736, 750 (Iowa 2018), and "the cases do not express a clear holding as to whether non-signatory parties are held to a bad faith or an objective reasonableness standard," *In re Kilgore*, 253 B.R. 179, 188 (Bankr. D.S.C. 2000).

A. At Least Five Circuits Apply A Heightened Test

Most circuits require, in order to justify sanctioning nonsigning represented parties, a showing more demanding than that required to sanction attorneys or signing represented parties. Specifically, these circuits require a factual showing at least that the

[1] The Eighth Circuit did not mention the Rule 11(b)(2) sanctions.

represented party had actual knowledge of the wrongful conduct on the basis of which the sanction was imposed or, further, took some affirmative action that caused or was responsible for the violation.

1. The seminal case is the Second Circuit's decision in *Calloway* v. *Marvel Entertainment Group*, 854 F.2d 1452 (2d Cir. 1988), *rev'd on other grounds sub nom. Pavelic & LeFlore* v. *Marvel Ent. Grp.*, 493 U.S. 120 (1989). There, the court held that "a party represented by an attorney should not be sanctioned for papers signed by the attorney unless the party had actual knowledge that filing the paper constituted wrongful conduct, *e.g.,* the paper made false statements or was filed for an improper purpose." *Id*. at 1474. Thus, the Second Circuit held, the district court's "appli[cation] [of] an 'objectively reasonable' test" to [the represented party's] conduct" was erroneous. In so concluding, the circuit relied on its prior decision in *Browning Debenture Holders' Committee* v. *DASA Corp.*, which ruled that parties should not be held responsible for wrongful conduct by their attorneys unless the party was "personally . . . aware of or otherwise responsible" for the misconduct. 560 F.2d 1078, 1089 (2d Cir. 1977).

District courts within the Second Circuit continue to apply the *Calloway* rule in assessing whether sanctions against represented parties are appropriate. See, *e.g.*, *Omni Elevator Corp.* v. *Int'l Union of Elevator Constructors & its Loc. 27 Affiliate*, 2022 WL 780272, at *9 (W.D.N.Y. Mar. 15, 2022) (declining to impose sanctions on party because no showing of "the

requisite 'actual knowledge'"); *Goldman* v. *Barrett*, 2019 WL 4572725, at *5 (S.D.N.Y. Sept. 20, 2019) ("Plaintiffs may have 'authorized making the frivolous allegations' in the Amended Complaint, and defended those allegations, but Barrett has not argued—much less demonstrated—that they had 'actual knowledge that [the] filing . . . constituted wrongful conduct.'").

2. In the years since, other circuits have lined up behind or elaborated upon *Calloway*.

In *White* v. *General Motors*, the Tenth Circuit, "agree[d] with those circuits that have expressed the view that the sanctioning of a party requires specific findings that the party was aware of the wrongdoing." 908 F.2d 675, 685–86 (10th Cir. 1990) (citing, *e.g.*, *Calloway*). District courts within the Tenth Circuit continue to apply this rule. See, *e.g.*, *Geiger* v. *Chubb Grp.*, 2025 WL 813662, at *8 (D. Colo. Mar. 14, 2025) (refusing to sanction represented party; "the sanctioning of a party requires specific findings that the party was aware of the wrongdoing" and there was "no evidence that Ms. Geiger was aware of the wrongdoing of her counsel" (citation modified)); *McNeal* v. *Zobrist*, 2007 WL 121156, at *3 (D. Kan. Jan. 11, 2007) ("[T]he Court declines to impose sanctions against plaintiff, . . . as there is no evidence that she insisted, against the advice of counsel, that the claims be asserted or that she had a sufficient understanding of the nature, elements and limitations of the attempted claims to independently evaluate the applicability to the alleged facts.").

The Fifth Circuit has arguably gone further. In reversing the imposition of sanctions against represented parties who did not "sign[] any pleading," that court explained that "the 'represented party' against which sanctions are levied must be a party who had some direct personal involvement in the management of the litigation and/or the decisions that resulted in the actions which the court finds improper under Rule 11." *Indep. Fire Ins. Co.* v. *Lea*, 979 F.2d 377, 378–79 (5th Cir. 1992). That rule continues to be applied today when district courts in the Fifth Circuit are faced with sanctions applications against represented parties. See *Cordova* v. *La. State Univ. Agric. & Mech. Coll. Bd. of Supervisors*, 2023 WL 2770122, at *5, *7 n.2 (W.D. La. Feb. 27, 2023) (declining to order sanctions against represented party and citing *Independent Fire Insurance Co.*, 979 F.2d at 379).

Same for the Sixth and Eleventh Circuits. In *Rentz* v. *Dynasty Apparel Industries*, the Sixth Circuit explained that "[c]ourts have generally declined to impose sanctions on represented parties" but that a narrow carveout existed where the client's "conduct . . . cause[d] his attorneys to violate Rule 11." 556 F.3d 389, 399 (6th Cir. 2009). Sanctions against the client were unwarranted in *Rentz* since, among other reasons, "there [wa]s no evidence that Rentz misled his counsel." *Id.* at 398. District courts within the Sixth Circuit continue to apply this standard. *E.g.*, *King* v. *Whitmer*, 556 F. Supp. 3d 680, 696 n.9 (E.D. Mich. 2021) (declining to sanction represented party, as "the Sixth Circuit has reserved such sanctions for occasions where the party can be said to have caused the

violation"), *reversed in part on other grounds*, 71 F.4th 511 (6th Cir. 2023).

Finally, in *Byrne* v. *Nezhat*, the Eleventh Circuit vacated sanctions imposed against a represented party because the plaintiff "was not involved in the management of her case or the decisions that resulted in the actions the court found improper under Rule 11." 261 F.3d 1075, 1120 (11th Cir. 2001) (citing *Indep. Fire Ins. Co.,* 979 F.2d at 379), *abrogated on other grounds by Bridge* v. *Phoenix Bond & Indem. Co.*, 553 U.S. 639 (2008). As elsewhere, this rule continues to guide the application of Rule 11 sanctions to represented parties within that circuit. See *Tacoronte* v. *Cohen*, 654 F. App'x 445, 450–51 (11th Cir. 2016) (vacating Rule 11 sanctions against represented party but not his attorney, for further consideration in light of *Byrne*'s guidance that "the sanction should fall upon the individual responsible for the filing of the offending document"); *In re Banco Latino Int'l*, 309 B.R. 390, 393 (Bankr. S.D. Fla. 2004) (applying *Byrne* and declining to sanction represented party).

B. Two Circuits Require Only Negligence

1. Rather than requiring "actual knowledge" of or participation in the "wrongful conduct," *Calloway*, 854 F.2d at 1474, the Ninth Circuit applies a negligence-like standard.

In its own opinion in *Business Guides* itself, the Ninth Circuit explained that an "objective standard of reasonableness" guided the assessment of whether Rule 11 sanctions were appropriate for "lawyers and

represented parties alike[.]" *Bus. Guides, Inc.* v. *Chromatic Commc'ns Enters., Inc.*, 892 F.2d 802, 809, 811–12 (9th Cir. 1989) ("*Business Guides I*"), *aff'd*, 498 U.S. 533 (1991). In doing so, *Business Guides I* expressly split with the Second Circuit's decision in *Calloway*. *Id*. at 810–12 ("We do not agree with the Second Circuit's reasons for adopting a subjective standard for represented parties."); see also *Vakalis* v. *Shawmut* Corp., 925 F.2d 34, 37 n.2 (1st Cir. 1991) (noting that the Ninth Circuit in *Business Guides I* split from the Second Circuit in *Calloway* on the propriety of sanctioning "[parties] as well as their attorneys, without the benefit of a factual record showing that the [parties] had actual (i.e. 'subjective') knowledge that the attorneys had violated Rule 11.").

Soon after this Court affirmed *Business Guides I* solely as to represented parties who *signed* papers, the Ninth Circuit applied its reasonable-inquiry rule to represented, *nonsigning* parties. See *Pan-Pac. & Low Ball Cable Television Co.* v. *Pac. Union Co.*, 987 F.2d 594 (9th Cir. 1993). In *Pan-Pacific*, the Ninth Circuit affirmed the imposition of a $160,000+ fine against a represented party—even though the party "acted throughout th[e] litigation through" a law firm—because "Low Ball was well-positioned to investigate the facts supporting its claims" but "Low Ball failed to make a reasonable inquiry into the bases of its" claims. *Id*. at 597.

Courts within the Ninth Circuit continue to recite the general rule that "[p]arties that are represented by counsel should be held to an objective standard of

'reasonable inquiry' into the facts." *Philips* v. *Berman*, 2024 WL 3859161, at *7 (D. Guam Aug. 19, 2024) (quoting *Bus. Guides I*, 892 F.2d at 811); see also *Lone Wolf Distributors, Inc.* v. *Bravoware, Inc.*, 2017 WL 874570, at *4–*5 (D. Idaho Mar. 3, 2017) (citing rule from *Pan-Pacific* and sanctioning represented party).

And the Ninth Circuit has affirmed application of this test. See, *e.g.*, *Radin* v. *Hunt*, 499 F. App'x 684 (9th Cir.), *aff'ing* 2012 WL 13006187 (C.D. Cal. Feb. 27, 2012). In *Radin*, the district court considered sanctions against a nonsigning represented plaintiff and her attorney. See 2012 WL 13006187, at *7; see also Complaint at 5, *Radin*, 2012 WL 13006187, Dkt. No. 1 (signed only by attorney). The district court applied the same standard to both the nonsigning party and her attorney: whether the filing "is both baseless and made without a reasonable and competent inquiry," *Radin*, 2012 WL 13006187, at *7 (quoting *Townsend* v. *Holman Consulting Corp.*, 929 F.2d 1358, 1362 (9th Cir. 1991))—*i.e.*, the "objective" test from *Business Guides I*, see 892 F.2d at 808. The Ninth Circuit approved the district court's "declining to impose Rule 11 sanctions against Plaintiff or her counsel," reasoning only that the Plaintiff's complaint was not objectively "frivolous" so "as to require the district court to impose sanctions." 499 F. App'x at 685. The circuit drew no distinction between the test for sanctions on the nonsigning plaintiff and on her counsel. See *ibid.*

2. The Eighth Circuit, like the Ninth Circuit, does not require a showing that the represented party was actually aware of the wrongdoing. Instead, it has said

"the established standard for imposing sanctions is an objective determination of whether a party's conduct was reasonable under the circumstances." *In re Mahendra*, 131 F.3d 750, 759 (8th Cir. 1997) (citation omitted).

The Eighth Circuit has applied that standard, including in the cases cited by the courts below. In *Miller* v. *Bittner*, 985 F.2d 935 (8th Cir. 1993), which the district court relied on, Pet. App. 39a–40a, the circuit applied the "objective reasonableness standard" to assessing sanctions sought against a represented party where the attorney filed the complaint. *Id.* at 938–39 (rejecting sanctions under that standard). And in the decision below, the Eighth Circuit relied entirely on *Ivy* v. *Kimbrough*, 115 F.3d 550 (8th Cir. 1997), which also applied this standard. Pet. App. 2a.

In *Ivy*, the Eighth Circuit assessed whether Rule 11 sanctions against a represented party and his attorney were appropriate. The court rejected the argument made by appellants there that the sanctions had to "be based on subjective bad faith." *Id.* at 553. Instead, the court applied the same standard in reviewing *both* the attorney's and the party's conduct. Without differentiating between counsel and party, the court affirmed the imposition of Rule 11 sanctions because the attorney and the client "ignored" both "defendants' well-supported motions for summary judgment" and the district court's warnings that "their claims appeared to be frivolous [and] that much of their conduct seemed aimed at the media." *Ibid.*

Further, district courts within the Eighth Circuit follow an objectively-reasonable standard: "The general standard for imposition of Rule 11 sanctions is that the conduct of a party or its counsel was objectively unreasonable." *Saylor* v. *Nebraska*, 2018 WL 1732178, at *4 (D. Neb. Apr. 10, 2018); see *Ideal Instruments, Inc.* v. *Rivard Instruments, Inc.*, 243 F.R.D. 322, 348 (N.D. Iowa 2007) (applying rule and sanctioning party: "Rivard possessed the sophistication in the manufacture and testing of 'detectable' needles to recognize the flaws in Dr. Hoff's evidence[.]"). Indeed, the district court here applied that very standard. Pet. App. 39a–40a (stating Rule 11 "requires 'a reasonable inquiry of the factual and legal basis for a claim before filing.'" (quoting *Miller*, 985 F.2d at 938)). And the court expressly described the test in terms applicable to a lawyer rather than a party, describing the task before it as "determin[ing] whether a reasonable and competent attorney would believe in the merit of an argument in deciding whether a party has violated Rule 11." *Id.* at 40a (quotation marks and citation omitted).

II. Rule 11 Does Not Support The Sanctioning Of A Represented, Nonsigning Party Based On Negligence

In interpreting Rule 11, as for other statutes, the "task is to apply the text, not to improve upon it," even if a competing interpretation might "more effectively achieve the purposes of the Rule." *Pavelic & LeFlore* v. *Marvel Ent. Grp.*, 493 U.S. 120, 126 (1989).

A. On the question presented, Rule 11 is clear. It says, "the court may impose a reasonable sanction on any attorney, law firm, or party that violated the rule *or is responsible for the violation*." Fed. R. Civ. P. 11(c)(1) (emphasis added). As the Advisory Committee explained in instituting this language, "[t]he revision permits the court to consider whether . . . the party itself should be held accountable for their part *in causing a violation*." Rule 11 Advisory Committee Note—1993 Amendment (emphasis added); see *Hall* v. *Hall*, 584 U.S. 59, 72–73 (2018) ("Advisory Committee Notes are 'a reliable source of insight into the meaning of a rule'" (quoting *United States* v. *Vonn*, 535 U.S. 55, 64 n.6 (2002)). In other words, "Rule 11 . . . requires personal responsibility" for the wrongful conduct. *Lake* v. *Gates*, 130 F.4th 1054, 1062 (9th Cir. 2025) (Bumatay, J., concurring) (concerning respective liability when multiple attorneys submit a brief); see also Gregory P. Joseph, *Sanctions: Fed. Law of Lit. Abuse* § 5 (2025) ("A . . . party's 'responsibility for the violation' should turn on his or her personal involvement.").

Thus, the Sixth Circuit was correct to observe that Rule 11 limits such a sanction to circumstances where his "conduct . . . cause[d] his attorneys to violate Rule 11." *Rentz*, 556 F.3d at 399. And, for a represented party to "cause" or be "responsible for" his attorneys' filing an action for an improper purpose or otherwise in violation of the rule, he must at least actually know the facts underlying the violation, if not take some further step to bring the violation about.

B. To be sure, this conclusion requires treating represented parties who *do not* sign pleadings or other papers differently from those, whether parties or lawyers, who *do* sign papers. That difference is well-grounded. *Business Guides* was limited by its own terms to represented parties who sign papers. And since that decision, the amendments to Rule 11 have made it all the clearer that the rule requires differential treatment as between signing and nonsigning parties.

The premise of Rule 11(c)—the sanctions provision—is that Rule 11(b) has been violated. And the conceit of Rule 11(b) is that "by signing, filing, submitting, or later advocating" a pleading or other paper, the signor, filer, submitter, or advocate has certified the paper's compliance with the rule and is therefore exposed to sanction if the paper does not comply. Only "an attorney or unrepresented party" so certifies. The Rule thus uses the signing of a paper by attorneys and unrepresented parties as a device to force signors to adhere to a certain level of diligence and reasonableness. "The essence of Rule 11 is that signing is no longer a meaningless act; it denotes merit." *Business Guides*, 498 U.S. at 546.

To ignore this distinction and impose sanctions on the basis of a nonsigning, represented party's supposed negligence thus contradicts the rule's text and structure. In short, the approach the District Court took here (applying Eighth Circuit precedent) skips the first step in the inquiry—which is to identify the primary violation for which the nonsigning party is to

be held "responsible" under Rule 11. See *Souran* v. *Travelers Ins. Co.*, 982 F.2d 1497, 1507 (11th Cir. 1993) (noting that "[u]nless a pleading has been signed in violation of Rule 11, sanctions are improper").

C. The approach taken below also ignores that sanctioning a represented party is a most severe punishment. That is, courts have "generally declined to impose sanctions on represented parties," *Rentz*, 556 F.3d at 398, for the good reason that "fining a represented party is a very severe sanction that should be imposed with sensitivity to the facts of the case," *United States* v. *Milam*, 855 F.2d 739, 743 (11th Cir. 1988); see also 5A *Wright & Miller's Federal Practice & Procedure* § 1336.2 (4th ed.) ("Imposing a sanction on a represented client has been met with disfavor").

The Eighth and Ninth Circuits' objective-reasonableness inquiry undermines that sensitivity by extending *Business Guides* beyond represented parties who affirmatively sign papers. And it does so despite the 1993 amendments to Rule 11 adding the language that Justice O'Connor identified was missing in *Business Guides*—thus confirming that *Business Guides* does not automatically resolve the question (presented here) that it expressly left open. See *Bus. Guides, Inc.*, 498 U.S. at 533–34 ("A represented party's signature would fall outside the Rule's scope only if the phrase 'attorney or party' were given the unnatural reading 'attorney or *unrepresented* party.' Had the Advisory Committee responsible for the Rule intended to limit the certification requirement's

application to *pro se* parties, it would have expressly distinguished between represented and unrepresented parties[.]").

Imposing on clients a duty of reasonable inquiry, moreover, holds a represented party to the same standard as his attorney even though nonsigning, represented parties typically rely on advice of counsel in assessing what legal claims and tactics are warranted or viable. See, *e.g.*, *Simon DeBartolo Grp., L.P.* v. *Richard E. Jacobs Grp., Inc.*, 186 F.3d 157, 177 (2d Cir. 1999) ("Permitting a Rule 11(b)(1) [improper purpose] determination to turn entirely on a Rule 11(b)(2) violation would . . . render a client responsible for the frivolous claims asserted by its attorneys[.]"). Under such a rule, "every award against an attorney under Rule 11 could also be assessed against the client." *Byrne*, 261 F.3d at 1120 n.88 (quotation marks omitted). This result contradicts the plain design of the rule to deter improper litigation by leveraging the sobering effect of a signature on a document submitted to a court, and to incentivize those who sign pleadings—especially lawyers, who also bear professional obligations—to uphold the Rule's standards. Rule 11 Advisory Committee Note—1983 Amendment (The rule "emphasiz[es] the responsibilities of the attorney and reenforc[es] those obligations by the imposition of sanctions.").

III. Resolving The Split Is Important And This Case Is An Ideal Vehicle

"[S]anctions should not be used lightly" and courts must "remain alert to the possibility of overkill."

EEOC v. *Gen. Dynamics Corp.*, 999 F.2d 113, 119 (5th Cir. 1993). That is especially so when the sanction is aimed at a represented party who has not presented a paper to a court and almost certainly relies on the guidance of counsel. The consequences for litigants, especially unsophisticated individuals, are severe. There is the financial penalty, of course, but it is more than that—the reputational stigma that attaches to a party from a court's opprobrium.

Business Guides expressly left open the question of the appropriate standard under Rule 11 for nonsigning represented parties, signaling that the Court understood the issue to be distinct and important. And Justice Kennedy emphasized the issue in his dissent in *Business Guides*. He criticized the majority for "not tell[ing] us what standard it thinks should be applied in deciding whether to sanction a represented party who has not signed a Rule 11 paper," and he warned that the "chilling impact of the majority's negligence standard will be much greater if the majority applies it in that circumstance as well." *Bus. Guides, Inc.*, 498 U.S. at 566. The Eighth and Ninth Circuits have indeed imposed "this most troubling and chilling liability" in exactly that circumstance, as Justice Kennedy feared, *id.* at 555. Those courts have not desisted from their position over many years even as other circuits have rejected it. This Court should now step in to clarify exactly what risks nonsigning, represented parties face when litigating in federal court.

This petition is an ideal vehicle to do so. The proper standard required under Rule 11 for sanctions

on a represented, nonsigning party is a pure question of law. And this appeal cleanly tees the legal issue up. The district court invoked an objective standard and sanctioned Petitioner under Rule 11—but not Petitioner's attorney—even though Petitioner was represented by counsel and only the lawyer signed the complaint. The Eighth Circuit affirmed in a short, unpublished order, citing only its opinion in *Ivy*. Pet. App. 2a. Clarification of the standard for imposition of sanctions on nonsigning, represented parties like Petitioner would thus require vacatur and remand to the district court for application of the appropriate standard in the first instance.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

Respectfully submitted,

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT, FILED APRIL 3, 2025

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 24-1996

BRET HEALY,

Plaintiff-Appellant,

HEALY RANCH PARTNERSHIP,

Plaintiff,

v.

SUPREME COURT OF SOUTH DAKOTA; HEALY RANCH INC.; MARY ANN OSBORNE; BARRY HEALY; BRYCE HEALY; ALBERT STEVEN FOX; LARRY MINES; SHEILA MINES; JANINE M. KERN; MARK E. SALTER; JON C. SOGN; PATRICIA J. DEVANEY; SCOTT P. MYREN; STEVEN R. JENSEN,

Defendants-Appellees.

Appeal from United States District Court
for the District of South Dakota - Southern

Appendix A

Submitted: March 27, 2025
Filed: April 3, 2025
[Unpublished]

Before SMITH, SHEPHERD, and GRASZ, Circuit Judges.

PER CURIAM.

Bret Healy appeals after the district court[1] dismissed his civil action and imposed sanctions pursuant to Fed. R. Civ. P. 11(b)(1).

After careful review of the record, we conclude the dismissal was proper because Claim 1 was barred by the *Rooker-Feldman*[2] doctrine; Claims 2, 3, and 4 were barred by res judicata; and Claim 5 was barred by judicial immunity. *See Dalton v. NPC Int'l, Inc.*, 932 F.3d 693, 695 (8th Cir. 2019) (standard of review); *see also Waller v. Groose*, 38 F.3d 1007, 1008 (8th Cir. 1994) (per curiam) (affirmance permitted on any grounds supported by record). We also conclude the district court did not abuse its discretion in sanctioning Healy. *See Ivy v. Kimbrough*, 115 F.3d 550, 553 (8th Cir. 1997) (standard of review).

Accordingly, we affirm the judgment.

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1. The Honorable Roberto Lange, Chief Judge, United States District Court for the District of South Dakota.

2. *Rooker v. Fid. Tr. Co.*, 263 U.S. 413, 416 (1923); *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462, 482 (1983).

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA, SOUTHERN DIVISION, FILED APRIL 11, 2024

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

4:23-CV-04118-RAL

BRET HEALY, HEALY RANCH PARTNERSHIP,

Plaintiffs,

vs.

SUPREME COURT OF SOUTH DAKOTA, HEALY RANCH INC., MARY ANN OSBORNE, BARRY HEALY, ALBERT STEVEN FOX, LARRY MINES, SHEILA MINES, BRYCE HEALY,

Defendants.

ORDER ON POST-DISMISSAL MOTIONS AND FOR SANCTIONS AMOUNTS

On December 14, 2023, this Court entered an Opinion and Order Dismissing Case and for Sanctions, Doc. 67, explaining why Plaintiffs Bret Healy and Healy Ranch Partnership had no viable federal claims in this case, granting the various defendants' motions to dismiss, granting certain defendants' motions for attorneys' fees and costs, and inviting those defendants' attorneys to

file affidavits setting forth the amounts of fees and costs sought. That opinion and order ended with the statement, "once this Court determines the amount of sanctions to impose, this case will be dismissed." Doc. 67 at 26.

After entry of that opinion and order. Plaintiffs filed a Motion for Reconsideration, Doc. 74, and supporting brief and accompanying materials. Doc. 75. Plaintiffs then filed a Motion for Leave to File Second Amended Complaint, Doc. 86, proposed Second Amended Complaint, Doc. 86-1, and brief in support thereof. Doc. 87. Plaintiffs then filed a Second Motion for Extension of Time to Accomplish Service, Doc. 90, seeking more time to serve the justices of the Supreme Court of South Dakota and one circuit judge who sat by designation, whom Plaintiffs sued contending that, in ruling on an appeal where Plaintiffs were the appellants, the justices "took actions in the complete absence of all jurisdiction." Doc. 63 at 351-60. The CM/ECF filings in this case indicate that all the justices subsequently were served. Docs. 101, 102, 103, 104, 105, 106, rendering this last motion moot. Defendants oppose the various motions. Docs. 76, 77, 78, 79, 88, 89, 92.

Meanwhile, the attorneys representing the defendants entitled to receive attorneys' fees and costs filed affidavits and then supplemental affidavits after doing further legal work to respond to Plaintiffs' ongoing and longstanding strategy of litigiousness over matters already resolved legally in final decisions in this and other courts. Docs. 68, 69, 70, 71, 80, 83, 95; *see also Healy v. Fox*, 572 F. Supp. 3d 730 (D.S.D. 2021), *aff'd*, *Healy v. Fox*, 46 F.4th 739 (8th Cir. 2022); *Healy v. Osborne*, 934 N.W.2d 557 (S.D. 2019); *Healy*

Ranch, Inc. v. Healy, 978 N.W.2d 786 (S.D. 2022); *Healy Ranch P'ship v. Mines*, 978 N.W.2d 768 (S.D. 2022). This Court deems those amounts proper to award as sanctions.

More recently, the justices and one judge sitting by designation on the Supreme Court of South Dakota handling Plaintiffs' prior appeal filed a Motion to Dismiss, Doc. 109, and supporting brief, Doc. 110, as well as a motion to relieve them from needing to answer. Doc. 98. This Court already had provided its reasoning on why Plaintiffs had no viable claim against the justices and judge sitting by designation. Meanwhile, Plaintiffs' attorney Tucker Volesky filed a Motion to Withdraw, Doc. 107, citing a conflict of interest without additional explanation. In another federal case pending before the undersigned. Plaintiff Bret Healy (represented initially by attorney Volesky) is suing a clerk of court, circuit judge and county after entry of a memorandum decision imposing sanctions of $240,000 against Plaintiff Bret Healy under the state law version of Rule 11, as well as $10,000 against Volesky, and the fallout from that state court ruling might be the source of the conflict of interest. *Healy v. Miller*, 4:24-cv-4053-RAL. Doc. 1, Doc 1-1. Volesky filed a motion to continue deadlines and sought a hearing on his motion to withdraw. Doc. 112. Some of the defendants have filed a motion to prohibit Plaintiff Bret Healy from appearing prose on behalf of his fellow plaintiff Healy Ranch Partnership. Doc. 111. Indeed, a non-lawyer can represent himself, but not others, including business entities. *See Smith v. Rustic Home Builders, LLC*, 826 N.W.2d 357, 359-60 (S.D. 2013) (citing *United States v. Hagerman*, 545 F.3d 579, 581 (7th Cir. 2008)).

This Court is unpersuaded that there is cause to reconsider its decision, deems the proposed second amended complaint to be futile for the reasons contained in the prior opinion and order, and for reasons explained therein concludes that the judicial officers of the State of South Dakota are entitled to be dismissed. This Court deems the requested amounts for sanctions to be proper. The remaining motions are largely moot, though this Court will allow Volesky to withdraw from representing Plaintiffs. Judgment of dismissal will now enter. Therefore, it is

ORDERED that Plaintiffs' Motion for Reconsideration, Doc. 74, Plaintiffs' Motion for Leave to File Second Amended Complaint, Doc. 86, and Plaintiffs' Motion for Continuance, Doc. 112, are denied. It is further

ORDERED that Plaintiffs' Motion for Extension of Time to Accomplish Service, Doc. 90, and the motion to relieve state judicial officers from answering. Doc. 98, are denied as moot. It is further

ORDERED that the judicial officers' Motion to Dismiss, Doc. 109, is granted to the extent it had not already been granted, for the reasons contained in the prior opinion and order. Doc. 67. It is further

ORDERED that attorney Volesky's Motion to Withdraw, Doc. 107, is granted. It is further

ORDERED that judgment for sanctions enters against Plaintiffs, jointly and severally, and in favor of

Defendant Mary Ann Osborne for $16,487.51; in favor of Defendants Healy Ranch, Inc., Barry Healy, Bryce Healy, Larry Mines and Sheila Mines for $14,463.63; and in favor of Defendant Steven Fox for $18,320.56. It is finally

ORDERED that judgment of dismissal with prejudice enters in favor of the defendants on all claims.

DATED this 11th day of April, 2024.

BY THE COURT:

/s/ Roberto A. Lange
ROBERTO A. LANGE
CHIEF JUDGE

APPENDIX C — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA, SOUTHERN DIVISION, FILED DECEMBER 14, 2023

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

4:23-CV-04118-RAL

BRET HEALY, HEALY RANCH PARTNERSHIP,

Plaintiffs,

vs.

SUPREME COURT OF SOUTH DAKOTA, JANINE KERN, MARK SALTER, JON SOGN, PATRICIA DEVANEY, SCOTT MYREN, STEVEN JENSEN, OFFICIALLY AND INDIVIDUALLY, HEALY RANCH INC., MARY ANN OSBORNE, BARRY HEALY, ALBERT STEVEN FOX, LARRY MINES, SHEILA MINES, BRYCE HEALY,

Defendants.

Filed December 14, 2023

OPINION AND ORDER DISMISSING CASE AND FOR SANCTIONS

Plaintiffs Bret Healy and Healy Ranch Partnership ("HRP") filed a Complaint in this case against the Supreme

Court of South Dakota, Healy Ranch Inc., Mary Ann Osborne, Barry Healy, Bryce Healy, Albert Steven Fox, Larry Mines, and Sheila Mines. Doc. 1. The Complaint invoked federal question jurisdiction under 28 U.S.C. § 1331 and alleged four causes of action: 1) Violation of Due Process against the Supreme Court of South Dakota relating to an appellate decision it rendered allegedly depriving Plaintiffs of their property and liberty interests; 2) Fraud, Misrepresentation, or Other Misconduct against various defendants; 3) Fraud Upon the Court against various defendants; and 4) Injunctive and Declaratory Relief under 28 U.S.C. § 2201. Doc. 1 at 27-30. Plaintiffs then amended the Complaint, naming as defendants Judge Jon Sogn and the Justices of the Supreme Court of South Dakota, in their official and individual capacities, and adding a claim for deprivation of civil rights under 42 U.S.C. § 1983. Docs. 32, 32-1, 63. This Court held a hearing on pending motions on November 20, 2023, and now grants the motions to dismiss and for sanctions.

I. Procedural History and Related Facts

Plaintiffs' claims relate to a longstanding and oft-litigated dispute regarding ownership of the Healy family farm-ranch business, Healy Ranch, Inc. ("HRI"), and the litigation and judgments from state and federal courts against Plaintiff Bret Healy resolving the ownership dispute. Like the current matter, the prior proceedings—including *Healy v. Osborne*, 2019 SD 56, 934 N.W.2d 557 (S.D. 2019) ("*Healy I*"); *Healy Ranch, Inc. v. Healy*, 2022 SD 43, 978 N.W.2d 786 (S.D. 2022) ("*Healy II*"); *Healy Ranch P'ship v. Mines*, 2022 SD 44, 978 N.W.2d 768 (S.D.

2022) ("Mines"); and *Healy v. Fox*, 572 F. Supp. 3d 730 (D.S.D. 2021) ("Fox"), *aff d, Healy v. Fox*, 46 F.4th 739 (8th Cir. 2022)[1]—resolved various claims which, though based on alternative legal theories and seeking distinct forms of relief, ultimately attempted to assert that HRP and Plaintiff Bret Healy had greater ownership interests in HRI and its assets. Having lost in each prior case, Plaintiffs Bret Healy and HRP again seek to relitigate ownership of Healy Ranch assets by alleging constitutional errors and fraud in the prior litigation.

In the Prayer to the Complaint, Plaintiffs sought to have this Court vacate, void or set aside various final judgments of state and federal courts; to declare Plaintiff Bret Healy to own two-thirds of the shares of HRI, contrary to what was adjudicated in state court; to reduce

1. The court in *Healy I* specifically "decline[d] to address Bret's claim of ownership" and instead "center[ed] on the timeliness of Bret's claims." *Healy I*, 934 N.W.2d at 563. The court found Bret's contract and torts claims untimely and barred by the statutes of limitations; in so deciding, the *Healy I* court effectively prevented Bret Healy from challenging that each of Bret, Barry, and Bryce owned one-third of HRI, indirectly confirming the ownership status quo. In *Healy II*, a quiet title action, Plaintiffs attempted to argue HRP owned the Healy ranch, but the Supreme Court of South Dakota determined the claim was barred under res judicata. In *Mines*, HRP, controlled by Bret, argued that it, and not HRI, owned certain land and filed an action to quiet title to property, but the court decided against HRP and determined the Mineses retained title. Lastly, in *Fox*, this Court determined Plaintiff Bret Healy's action under 18 U.S.C. § 1964(c) of the Racketeer Influenced and Corrupt Organizations Act was barred by res judicata and ruled for the defendants, which the Eighth Circuit affirmed on the same grounds.

Barry and Bryce Healy's ownership of HRI to one-sixth each, contrary to what was adjudicated in state court; and for other and further relief. Doc. 1 at 30.

Each of the defendants filed motions to dismiss under Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction. The Supreme Court of South Dakota invoked Eleventh Amendment immunity and the *Rooker-Feldman* doctrine, Docs. 17, 18, and the remaining defendants argued the action was barred under the *Rooker-Feldman* doctrine and res judicata. Docs. 19, 20, 23, 24, 27, 28. Indeed, in addition to losing in prior state-court cases, Plaintiff Bret Healy previously had sued Defendants Albert Steven Fox, Bryce Healy, and Mary Ann Osborne in this Court under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.* ("RICO"), and had lost before this Court, *see Fox*, 572 F. Supp. 3d at 734, and on appeal, *Healy v. Fox*, 46 F.4th at 742. Both this Court and the Eighth Circuit concluded that res judicata barred Plaintiff Bret Healy's claims based on his prior unsuccessful state-court litigation on related claims in *Healy I*. The Eighth Circuit in affirming this Court also referenced Plaintiff Bret Healy losing a quiet title counterclaim in *Healy II*, which was "an overt effort to litigate the same *cause of action* that he litigated in [*Healy I*]." *Fox*, 46 F.4th at 743 (quoting *Healy II*, 978 N.W.2d at 799). Plaintiffs' current Amended Complaint reads as an attempt to have this Court reverse *Healy I, Healy II*, and *Fox* and declare Bret Healy the winner, notwithstanding the Supreme Court of South Dakota decisions and the prior federal court litigation affording res judicata effect to those decisions.

Appendix C

Plaintiffs resist dismissal and argue the *Rooker-Feldman* doctrine and res judicata do not bar their claims. Docs. 33, 34, 35. Plaintiffs filed a Motion and proposed Amended Complaint within 21 days of the first motion to dismiss, which this Court granted under Fed. R. Civ. P. 15(a)(1)(B). Docs. 32, 32-1, 62. The Amended Complaint names not only the Supreme Court of South Dakota but also adds all of its current justices (plus one Second Circuit judge who sat by designation on *Healy I* and *Healy II*). Doc. 63. The Amended Complaint adds a fifth claim under 42 U.S.C. § 1983 contending, rather astonishingly, that the justices and judge sitting by designation in handling the appeals "took actions in the complete absence of all jurisdiction"—notwithstanding that the Plaintiffs were the appellants in the cases who invoked appellate jurisdiction—and thereby violated Plaintiffs' due process and equal protection rights. Doc. 63 ¶¶ 351-360. The Amended Complaint retains the same Prayer as the original Complaint, though it adds requests to "[d]eclar[e] Plaintiff's future rights and remedies unaffected by" all past decisions and to award Plaintiffs punitive damages, attorney's fees, and costs. Doc. 63 at 34.

All defendants except the Supreme Court of South Dakota, the Justices, and Judge Sogn, also filed motions seeking sanctions under Fed. R. Civ. P. 11(b) and 28 U.S.C. § 1927. Docs. 29, 30, 31. Plaintiffs oppose those motions. Doc. 36. Plaintiffs filed a "Motion for Preliminary Injunction and Restraining Order." Doc. 52. Because the motion did not meet the requirements of Fed. R. Civ. P. 65(b), this Court refused to enter a preliminary injunction. Doc. 59 at 4. At the conclusion of a motion hearing on

November 20, 2023, this Court denied the Plaintiffs a preliminary injunction because the *Dataphase* factors, particularly the absence of a showing of likelihood of success on the merits, favored denial of the requested preliminary injunction. Doc. 62. This Court now addresses the remaining motions.

II. Motions to Dismiss

A. Rule 12(b)(1) Standard

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) challenges the court's subject matter jurisdiction. Such a challenge can be either facial or factual in nature. *Moss v. United States*, 895 F.3d 1091, 1097 (8th Cir. 2018); *Osborn v. United States*, 918 F.2d 724, 729 n.6 (8th Cir. 1990). Regardless of whether the jurisdictional attack is facial or factual, the plaintiff has the burden of proving subject matter jurisdiction. *V S Ltd. Pshp. v. HUD*, 235 F.3d 1109, 1112 (8th Cir. 2000). Under a facial attack, the "court restricts itself to the face of the pleadings, and the non-moving party receives the same protections as it would defending against a motion brought under Rule 12(b)(6)." *Jones v. United States*, 727 F.3d 844, 846 (8th Cir. 2013) (quoting *Osborn*, 918 F.2d at 729 n.6). As such, courts must accept a plaintiff's factual allegations as true and make all inferences in the plaintiff's favor "but need not accept a plaintiff's legal conclusions." *Retro Television Network, Inc. v. Luken Commc'ns, LLC*, 696 F.3d 766, 768-69 (8th Cir. 2012). When determining whether to grant a Rule 12(b)(6) motion for failure to state a claim, a court generally must ignore materials outside the pleadings,

but it may "consider matters incorporated by reference or integral to the claim, items subject to judicial notice, matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint whose authenticity is unquestioned . . . without converting the motion into one for summary judgment." *Dittmer Props., L.P. v. FDIC*, 708 F.3d 1011, 1021 (8th Cir. 2013) (internal quotations and citation omitted).

In contrast, where a factual attack is made on the court's subject-matter jurisdiction, because "its very power to hear the case" is at issue, "the trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case," without transfouning the motion into one for summary judgment. *Osborn*, 918 F.2d at 730 (citation omitted); *see also Gould, Inc. v. Pechiney Ugine Kuhlmann*, 853 F.2d 445, 451 (6th Cir. 1988) ("When a challenge is to the actual subject matter jurisdiction of the court, as opposed to the sufficiency of the allegation of subject matter jurisdiction[,] . . . the district court has the power to resolve any factual dispute regarding the existence of subject matter jurisdiction."). In a factual attack on a court's jurisdiction, "the court considers matters outside the pleadings, and the non-moving party does not have the benefit of [Rule] 12(b)(6) safeguards." *Osborn*, 918 F.2d at 729 n.6 (internal citation omitted). Therefore, in deciding a factual challenge to subject matter jurisdiction, the court need not view the evidence in the light most favorable to the non-moving party. *See Osborn*, 918 F.2d at 729 n.6, 730.

Appendix C

The challenge to subject matter jurisdiction in this case has both facial and factual dimensions to it. Plaintiffs' Complaint and Amended Complaint reference the prior litigation and decisions in state and federal courts, so this Court can refer to the prior decisions whether the challenge is facial or factual.

"[F]ederal courts are courts of limited jurisdiction." *United States v. Afremov*, 611 F.3d 970, 975 (8th Cir. 2010). This Court "has a special obligation to consider whether it has subject matter jurisdiction in every case." *Hart v. United States*, 630 F.3d 1085, 1089 (8th Cir. 2011). "This obligation includes the concomitant responsibility to consider *sua sponte* the Court's subject matter jurisdiction where the Court believes that jurisdiction may be lacking." *Id.* (cleaned up) (quoting *Clark v. Baka*, 593 F.3d 712, 714 (8th Cir. 2010) (per curiam)). Thus, this Court rejected Plaintiffs' argument that it should ignore whether federal subject matter jurisdiction exists because the motions to dismiss related to the original Complaint and not to the Amended Complaint. *See* Doc. 59 at 5-6.

Plaintiffs invoke federal question jurisdiction under 28 U.S.C. § 1331; there is no complete diversity of citizenship between the parties. Under 28 U.S.C. § 1331, federal district courts have jurisdiction over cases arising out of federal law, including federal statutes and the United States Constitution. *Cagle v. NHC Healthcare-Maryland Heights, LLC*, 78 F.4th 1061, 1066 (8th Cir. 2023). Merely identifying a federal issue, however, is not enough to confer federal jurisdiction; rather, the right being enforced must arise from federal law. *See id.* Further, alleging federal

question jurisdiction is not always enough to establish a court's power to hear a case because other bars to jurisdiction may exist. *See, e.g.*, U.S. Const. amend. XI (recognizing state sovereign immunity); *Rooker v. Fidelity Tr. Co.*, 263 U.S. 413, 44 S. Ct. 149, 68 L. Ed. 2d 362, 68 L. Ed. 362 (1923) (describing a district court's lack of appellate jurisdiction over state court rulings); *Dist. of Columbia Ct. of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983) (same).

Here, Claim 1 alleges a violation of Due Process under the Fourteenth Amendment and Claim 5 alleges a deprivation of rights under 42 U.S.C. § 1983. Both arise under federal law and, therefore, can potentially confer subject matter jurisdiction on this Court. Claims 2 and 3, however, do not allege a federal question sufficient for jurisdiction, despite Plaintiffs' assertion that Fed. R. Civ. P. 60 and SDCL 15-6-60(b) serve as the basis from which federal jurisdiction arises. Rule 60 is a procedural rule that does not create an independent basis of federal jurisdiction. *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 370, 98 S. Ct. 2396, 57 L. Ed. 2d 274 (1978) ("[I]t is axiomatic that the Federal Rules of Civil Procedure do not create or withdraw federal jurisdiction.") (citing Fed. R. Civ. P. 82 ("These rules do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts.")).[2] SDCL 15-6-60(b), of course, is a state

2. In addition to being a non-jurisdictional procedural rule, Plaintiffs' argument under Rule 60 fails for two more reasons. First, even if mention of Rule 60 were sufficient to confer jurisdiction on this Court, Rule 60 does not apply to these facts. Rule 60 allows parties to seek relief from judgments obtained

by fraud, misrepresentation, other misconduct, or fraud on the court. However, the "fraud on the court" exception applies when the defrauded court, which is the one that originally rendered the decision, is the court in which the action alleging fraud is brought. *Williams v. Apker*, 774 F. Supp. 2d 124, 128 (D.D.C. 2011) ("Rule 60(b), however, only provides a federal district court with subject matter jurisdiction over requests for reconsideration of federal district court decisions; it does not give the court jurisdiction to relieve a party from state court judgments." (citations omitted)); *Small v. Milyard*, 488 Fed. App'x 288, 290 (10th Cir. 2012) ("By alleging misconduct and other improprieties in the state court, [petitioner] is attacking the validity of the state-court proceedings and his conviction or sentence. Such an attack does not fall under Rule 60(b)." (citation omitted)); *Holder v. Simon*, 384 Fed. App'x 669, 670 (9th Cir. 2010) ("Rule 60(b) does not provide a basis for subject matter jurisdiction over a claim for relief from a state court judgment." (citations omitted)); *see also United States v. Sierra Pac. Indus., Inc.*, 862 F.3d 1157, 1168 (9th Cir. 2017) ("[R]elief for fraud on the court is available only where the fraud was not known at the time of settlement or entry of judgment." (citations omitted)). Here, Plaintiffs allege fraud on the state court by arguing the defendants in *Healy I* engaged in fraudulent conduct by producing false corporate records and a false email, misrepresenting facts, and making false statements. Doc. 63 ¶¶ 311-37. Plaintiffs then attempt to argue that the alleged fraud on the South Dakota state court, by extension, constitutes fraud on this federal Court because this Court relied on the *Healy I* case when it decided *Fox*. Yet, Plaintiffs provide no support for their proposition that fraud in state court can somehow become fraud in a federal court or for their position that this Court can vacate a state judgment or a federal judgment that the Eighth Circuit affirmed.

Second, even if Rule 60 were jurisdictional, the *Rooker-Feldman* doctrine would still apply and defeat this Court's jurisdiction. Plaintiffs are requesting this Court review and vacate the prior state court rulings for fraud in those proceedings against the *Rooker-Feldman* doctrine, and Rule 60 cannot overcome this

procedural rule that does not apply in federal court. Claim 4 references the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, but that statute is not an independent source of federal jurisdiction. *Zutz v. Nelson*, 601 F.3d 842, 850 (8th Cir. 2010) ("[T]he Declaratory Judgment Act . . . does not provide an independent basis for federal jurisdiction." (quoting *Victor Foods, Inc. v. Crossroads Econ. Dev.*, 977 F.2d 1224, 1227 (8th Cir. 1992))). Plaintiffs do not argue for original jurisdiction over Claim 4 anyway. *See* Doc. 34 at 1-2. Therefore, this Court only has jurisdiction over the present action if Claims 1 or 5 are not subject to other jurisdictional bars, such as sovereign immunity and the *Rooker-Feldman* doctrine, as Defendants argue.

B. *Rooker-Feldman* Doctrine

The *Rooker-Feldman* doctrine takes its name from two decisions of the Supreme Court of the United States: *Rooker v. Fidelity Tr. Co.*, 263 U.S. 413, 44 S. Ct. 149, 68 L. Ed. 2d 362, 68 L. Ed. 362 (1923), and *Dist. of Columbia Ct. of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983). The doctrine holds that 'only the United States Supreme Court has been given jurisdiction to review a state-court decision,' so federal district courts generally lack subject-matter jurisdiction over 'attempted appeals from a state-court judgment.' *Friends of Lake*

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jurisdictional hurdle because, despite Plaintiffs' citations to out-of-circuit cases, the Eighth Circuit does not recognize fraud as an exception to the *Rooker-Feldman* doctrine. *See Eiler v. Avera McKennan Hosp.*, 2016 U.S. Dist. LEXIS 38021, 2016 WL 1117441, at *3 (D.S.D. Mar. 21, 2016) (citing *Fielder v. Credit Acceptance Corp.*, 188 F.3d 1031, 1035-36 (8th Cir. 1999)).

View Sch. Dist. 25 v. Beebe, 578 F.3d 753, 758 (8th Cir. 2009) (quoting 18B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 4469 (2d ed. 2002)). An appeal from a state court applies not only to direct appeals, but also to federal actions alleging "general constitutional claims that are 'inextricably intertwined' with specific claims already adjudicated in state court." *Lemonds v. St. Louis Cnty.*, 222 F.3d 488, 492-93 (8th Cir. 2000) (quoting *Feldman*, 460 U.S. at 482 n.16); *see also Prince v. Ark. Bd. Of Exam'rs in Psych.*, 380 F.3d 337, 341 (8th Cir. 2004) ("Once a party has litigated in state court . . . he 'cannot circumvent *Rooker-Feldman* by recasting his or her lawsuit as a [section] 1983 action.' (quoting *Bechtold v. City of Rosemount*, 104 F.3d 1062, 1065 (8th Cir. 1997) (second alteration in original))). The state and federal constitutional claims are "inextricably intertwined" if the federal claim succeeds only upon a determination that the state court wrongly decided the issue before it. *Id.* at 493.

The Eighth Circuit uses a four-part test to determine whether a federal action violates *Rooker-Feldman*: (1) plaintiff must have lost in state court, (2) plaintiff complains of injury arising from the state court judgment, (3) the action invites the district court to review and reject the state court ruling, and (4) the state court decision was rendered prior to the federal court action. *Fochtman v. Hendren Plastics, Inc.*, 47 F.4th 638, 643 (8th Cir. 2022) (explaining the circumstances in which the doctrine applies); *Christ's Household of Faith v. Ramsey Cnty.*, 618 F. Supp. 2d 1040, 1044 (D. Minn. 2009) (numbering the doctrine as a four-part test); *see also Exxon Mobil Corp.*

v. Saudi Basic Indus. Corp., 544 U.S. 280, 284, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005).[3]

Here, the elements of the *Rooker-Feldman* doctrine apply to Plaintiffs' Claims 1 and 5. First, Plaintiff Bret Healy lost in *Healy I* and *Healy II* when the Supreme Court of South Dakota determined Bret Healy did not prevail on his claims and, consequently, his efforts to prove ownership of more than one-third of HRI or its assets. *Healy I*, 934 N.W.2d at 565; *Healy II*, 978 N.W.2d at 800-03.

Second, the state court judgments affecting ownership of HRI and its assets caused the injury of which Plaintiffs complain. Claim 1 of the Complaint, both in the initial pleading and as amended, specifically alleges the Supreme Court of South Dakota (and the judge and justices thereof) "deprived" Plaintiffs of "significant property and liberty interests" without meaningful hearing and due process by deciding Plaintiff Bret Healy only owned one-third of

3. Plaintiffs attempt to conduct a separate analysis under each *Rooker* and *Feldman* and claim that neither case individually applies to this current litigation, making the *Rooker-Feldman* doctrine inapplicable. The Eighth Circuit, however, applies the *Rooker-Feldman* doctrine as a single, four-part analysis derived from the Supreme Court's interpretation of the doctrine in *Exxon Mobil. See, e.g., Fochtman*, 47 F.4th at 643 (8th Cir. 2022); *Shelby Cnty. Health Care Corp. v. Southern Faini Bureau Cas. Ins. Co.*, 855 F.3d 836, 840 (8th Cir. 2017); *Caldwell v. DeWoskin*, 831 F.3d 1005, 1008 (8th Cir. 2016); *Germain Real Estate Co., LLC v. HCH Toyota, LLC*, 778 F.3d 692, 695 (8th Cir. 2015). This Court will also apply the unified doctrine, as binding precedent would counsel, instead of interpreting and applying the cases independently as Plaintiffs do.

HRI. Doc. 1 ¶¶ 279-87; Doc. 63 ¶¶ 302-10. Claim 5 contends the Supreme Court of South Dakota (and the judge and justices thereof) adjudicated the prior related cases "in the complete absence of all jurisdiction" and deprived Plaintiffs of civil rights, due process, and equal protection in violation of 42 U.S.C. § 1983 by rulings effectively limiting Plaintiff Bret Healy to ownership of just a one-third interest in HRI. Doc. 63 at ¶¶ 351-60. Therefore, the deprivation of rights causing the injury alleged in both Claims 1 and 5 arises from the state-court judgments.

Third, to remedy such allegedly unconstitutional conduct, Plaintiffs directly ask this Court to vacate, void, or set aside "the judgments issued in *Healy I, Healy II*, [and] *HRP v Mines*" and declare "Plaintiff's future rights and remedies unimpaired by the decisions issued in" those cases. Doc. 1 at 30; Doc. 63 at 34. Such relief invites this Court to "review and reject" the prior state-court judgments in violation of the *Rooker-Feldman* doctrine. *See Fochtman*, 47 F.4th at 643; *Exxon Mobil*, 544 U.S. at 284. Plaintiffs, however, argue both that their present claims are not "inextricably intertwined" with prior state cases[4] and that this Court is not being asked to review and

4. Whether the federal claims must be "inextricably intertwined" with the state-court rulings for the *Rooker-Feldman* bar to apply is a bit of an open question in the Eighth Circuit after *Exxon Mobil*. *Compare Robins v. Ritchie*, 631 F.3d 919, 925 (8th Cir. 2011) (finding federal claims barred under an "inextricably intertwined" *Rooker-Feldman* analysis), *with Edwards v. City of Jonesboro*, 645 F.3d 1014 (8th Cir. 2011) (finding *Rooker-Feldman* did not bar the claims without using the "inextricably intertwined" test). Nonetheless, Plaintiffs' underlying position in arguing lack of entwinement is that this Court can decide the issues presented

reject the state-court judgments because the state court "previously presented with the same claims declined to reach their merits." *Simes v. Huckabee*, 354 F.3d 823, 830 (8th Cir. 2004). Although the state circuit court and Supreme Court did not directly address Plaintiffs' due process claims, the analysis is not as simple as Plaintiffs suggest.

Plaintiffs' reliance on *Simes* mistakes the exception to the rule for the rule itself. In fact, in *Prince*, which was decided that same year, the Eighth Circuit wrote that the "*exception* to the *[Rooker-Feldman]* doctrine we recognized in *Simes* did not apply" to the plaintiff's claim when the plaintiff "*could have raised* all of his constitutional challenges . . . in his state court case." *Prince*, 380 F.3d at 341-42 (emphasis added). Whether preclusion under the *Rooker-Feldman* doctrine applied depended on whether the litigants had a "reasonable *opportunity* to raise their federal claims." *Id.* at 341 (emphasis added). The state court in *Prince* did not reach the merits of each claim because the plaintiff had

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to it without undeunining the state-court judgments. *See Prince*, 380 F.3d at 341 (explaining state and federal constitutional claims are "inextricably intertwined" if the federal claim succeeds only by determining the state court wrongly decided the issue). For this reason, this Court addresses the argument under the third requirement of the *Rooker-Feldman* doctrine, which similarly asks whether the Plaintiff is requesting this Court undermine the state-court decision by reviewing and rejecting it, ostensibly for having been wrongly decided. *See Fochtman*, 47 F.4th at 643 (emphasizing that "federal district courts are courts of original jurisdiction" unable to "serv[e] as appellate courts to review state court judgments").

voluntarily dismissed the action with prejudice, but that final judgment was still sufficient under *Rooker-Feldman* to preclude the plaintiff from presenting his constitutional due process and § 1983 claims in the federal court. *Id.* at 340. Similarly, in this case, the final judgments and dismissal of the claims in *Healy I* for being barred by the statute of limitations, and by later courts for res judicata, are sufficient under *Rooker-Feldman* to preclude Plaintiffs from bringing their constitutional due process and § 1983 claims in this Court.

Moreover, the Eighth Circuit after *Simes* cleared up the confusion about the effect on *Rooker-Feldman* analysis of the absence of a final judgment. The Eighth Circuit in *Dodson v. Univ. of Ark. for Med. Scis.*, 601 F.3d 750 (8th Cir. 2010), acknowledged

> [i]t appears there is some tension in [the Eighth Circuit's] prior precedents as to whether the *Rooker-Feldman* doctrine will bar a federal court from exercising jurisdiction when a state court previously ruled against the plaintiff without reaching the merits of the dispute. In *Friends of Lake View*, for example, this court stated 'the *Rooker-Feldman* doctrine does not bar federal claims brought in federal court when a state court previously presented with the same claims declined to reach their merits.'" *Friends of Lake View*, 578 F.3d at 758 (quoting *Simes*[, 354 F.3d at 830]). In other cases, however, this court held "[a]pplication of the *Rooker-Feldman* doctrine does not depend

> on a final judgment on the merits of an issue.["] *Goetzman v. Agribank, FCB (In re Goetzman)*, 91 F.3d 1173, 1178 (8th Cir. 1996).

Dodson, 601 F.3d at 755 n.5 (fourth alteration in original). In *Dodson*, a couple enrolled in an in vitro fertilization ("IVF") program at the University of Arkansas for Medical Sciences and created eighteen embryos. *Id.* at 752. According to a contract the couple signed with the IVF program, the medical director of the program would have control over the embryos if, prior to implantation, the couple divorced. *Id.* They did divorce before the embryos were implanted, and when the wife still wanted to go through with the procedure, the IVF program refused to do so without the consent of both former spouses. *Id.* The husband refused to consent, so the wife sued him in state court, asserting the divorce decree allowed her to unilaterally proceed with implantation. *Id.* The state court disagreed. *Id.* Dodson then sued the University of Arkansas for Medical Sciences in another attempt to allow her to implant the embryos, but she lost after the defendants successfully asserted sovereign immunity under state law. *Id.* at 753. Dodson then filed suit in federal court, alleging constitutional violations in a § 1983 action. *Id.*

The Eighth Circuit did not apply the *Simes* exception and affirmed the district court's dismissal under the *Rooker-Feldman* doctrine because "the state court discussed the merits of [plaintiff's case extensively and dismissed [the prior case] with prejudice." *Id.* at 755. The Eighth Circuit also emphasized how the relief plaintiff

sought on constitutional grounds, which would require the return of the embryos to the plaintiff, "would wholly undermine" the state court's ruling that the contract governing the disposition of the embryos on divorce effectively relinquished plaintiff's "control and direction" over the embryos. *Id.* Here, multiple courts in multiple proceedings have extensively discussed Plaintiffs' claims regarding ownership of HRI before dismissing the cases with prejudice. *See Healy I, Healy II, Mines, Fox*, and *Healy v. Fox*, 46 F.4th 739. Granting the relief Plaintiffs seek on constitutional grounds, which is vacating prior court judgments and redetermining ownership of HRI, "would wholly undermine" the state court rulings that Bret Healy owns just one-third of HRI.

The fourth and final requirement for the *Rooker-Feldman* doctrine to apply—that the state court judgments were rendered before Plaintiffs initiated the present action—is also met. Judgment entered in *Healy I* on September 25, 2019; *Healy II* on August 3, 2022; and *Mines* on August 3, 2022. Plaintiffs did not file their Complaint and initiate this action until August 2, 2023. Doc. 1.

Accordingly, the *Rooker-Feldman* doctrine plainly applies to Claims 1 and 5 and prevents consideration of those federal causes of action. This Court therefore lacks subject matter jurisdiction over the action and must dismiss it.

C. Eleventh Amendment

Even if the *Rooker-Feldman* doctrine did not apply, this Court lacks subject matter jurisdiction over Defendant Supreme Court of South Dakota, as an entity, and over the Justices and Judge Sogn in their official capacities, under the Eleventh Amendment to the United States Constitution. The Eleventh Amendment limits federal jurisdiction, explaining federal jurisdiction does not "extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend. XI. This includes suits against the judiciary of a state. *See Denke v. S.D. Dep't of Soc. Servs.*, 829 F.2d 688, 689 (8th Cir. 1987) (recognizing the Eleventh Amendment bar suits "against the state or one of its agencies"); S.D. Const. art. II ("The powers of the government of the state are divided into three distinct departments, the legislative, executive and judicial; and the powers and duties of each are prescribed by this Constitution."); S.D. Const. art. V, § 1 ("The judicial power of the state is vested in a unified judicial system consisting of a Supreme Court, circuit courts of general jurisdiction and courts of limited original jurisdiction as established by the Legislature."). Suits against state actors, including judges, in their official capacities also constitute actions against the state which are barred by the Eleventh Amendment. *See Kruger v. Nebraska*, 820 F.3d 295, 301 (8th Cir. 2016) ("[C]laims against state officials in their official capacities are really suits against the state." (citations omitted)).

D. Judicial Immunity

Even if the *Rooker-Feldman* doctrine did not apply, this Court would have to dismiss the claims against the Justices and Judge Sogn in their individual capacities because such claims are barred by judicial immunity.[5] *See Sample v. City of Woodbury*, 836 F.3d 913, 916 (8th Cir. 2016) ("Where an official's challenged actions are protected by absolute immunity, dismissal under Rule 12(b)(6) is appropriate" (citation omitted)); *Stump v. Sparkman*, 435 U.S. 349, 355-56, 362-63, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978) (acknowledging a judge's "absolute immunity" when acting in his judicial capacity). Judicial immunity means a "judge is immune from suit, including suits brought under section 1983 to recover for alleged deprivation of civil rights, in all but two narrow sets of circumstances." *Schottel v. Young*, 687 F.3d 370, 373 (8th Cir. 2012). The two circumstances where judicial immunity does not apply are when the alleged actions are "not taken in the judge's judicial capacity" or were "taken in the

5. Although Judge Sogn and the Justices have not submitted a written motion to dismiss on the Amended Complaint, counsel for these Defendants argued dismissal was appropriate on the basis of judicial immunity at the motion hearing held on November 20, 2023. Judge Sogn and the Justices had not been named as defendants in the case prior to Plaintiffs amending the Complaint, the motion for which was granted at the hearing, so Defendants were timely in asserting the defense. *See* Fed. R. Civ. P. 12 (requiring a defendant to answer within 21 days of being served or allowing a defendant to assert a defense for failure to state a claim upon which relief can be granted by motion under Rule 12(b)(6) prior to filing an answer). Therefore, this Court addresses the argument here.

complete absence of all jurisdiction." *Mireles v. Waco*, 502 U.S. 9, 11-12, 112 S. Ct. 286, 116 L. Ed. 2d 9 (1991). "An act is a judicial act if it is one normally performed by a judge and if the complaining party is dealing with the judge in his judicial capacity," *Schottel*, 687 F.3d at 374 (citing *Birch v. Mazander*, 678 F.2d 754, 756 (8th Cir. 1982)), and immunity applies even if the "action [the judge] took was in error . . . or was in excess of his authority," *Mireles*, 502 U.S. at 13 (citation omitted).

Plaintiffs claim Judge Sogn and the Justices acted in ways that "did not sufficiently relate [to] the Supreme Court's authorized functions" and "took actions in the complete absence of all jurisdiction," Doc. 63 ¶¶ 352-53, but they have failed to allege any facts supporting such bold assertions. Plaintiffs' claims against Judge Sogn and the Justices is simply that they—in their appellate review of *Healy I, Healy II*, and *Mines*—made legal and factual errors so significant that the actions no longer "sufficiently related" to the functions of an appellate court. Plaintiffs specifically argue these Defendants found facts and weighed evidence. However, these actions, even if erroneous, were undoubtedly judicial acts "normally performed by a judge" in Plaintiffs' dealings with the "judge[s] in [their] judicial capacity." *Schottel*, 687 F.3d at 374 (citation omitted). Further, the Supreme Court of South Dakota has appellate jurisdiction over final judgments from circuit courts, meaning the judges, in adjudicating the matter, were not acting "in the complete absence of all jurisdiction." *See* S.D. Const. art. V, § 5 ("The Supreme Court shall have such appellate jurisdiction as may be provided by the Legislature, and the Supreme

Court or any justice thereof may issue any original or remedial writ which shall then be heard and determined by that court"); SDCL 15-26A-3 ("Appeals to the Supreme Court from the circuit court may be taken as provided in this title from: (1) A judgment . . . "). The Plaintiffs were the parties invoking state appellate jurisdiction as the appellants in *Healy I* and *Mines* and cross-appellants in *Healy II*, making it a particularly ironic argument for the Plaintiffs to assert that the Justices and Judge Sogn sitting by designation acted "in the complete absence of all jurisdiction." Judicial immunity prevents Plaintiffs from suing Judge Sogn and the Justices in their individual capacities.

E. Supplemental Jurisdiction

Before a federal district court may exercise supplemental jurisdiction over state-law claims, there must be a claim over which the federal court has original jurisdiction. *See* 28 U.S.C. § 1367(a) ("[I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy."). In such circumstances, the court may then adjudicate the state-law claims or decline to exercise supplemental jurisdiction when the claims triggering original federal jurisdiction are dismissed. 28 U.S.C. § 1367(c)(3) ("The district courts may decline to exercise supplemental jurisdiction . . . [if] the district court has dismissed all claims over which it has original jurisdiction"); *Aldridge v. City of St. Louis*, 75 F.4th 895,

901 (8th Cir. 2023). "A district court's decision whether to exercise [supplemental] jurisdiction after dismissing every claim over which it had original jurisdiction is purely discretionary." *Aldridge*, 75 F.4th at 901 (quoting *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 639, 129 S. Ct. 1862, 173 L. Ed. 2d 843 (2009)). "District courts should consider such factors as 'the circumstances of the particular case, the nature of the state law claims, the character of the governing state law, and the relationship between the state and federal claims.'" *Id.* (quoting *City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 173, 118 S. Ct. 523, 139 L. Ed. 2d 525 (1997)). Other relevant factors include "judicial economy, convenience, fairness, and comity." *Wilson v. Miller*, 821 F.3d 963, 970 (8th Cir. 2016) (citing *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350, 108 S. Ct. 614, 98 L. Ed. 2d 720 (1988)).

Here, there is no viable federal claim because Claims 1 and 5 are jurisdictionally barred by *Rooker-Feldman* and must be dismissed. Even if the *Rooker-Feldman* doctrine did not apply, Eleventh Amendment immunity and judicial immunity apply and require dismissal of Counts 1 and 5. This Court's jurisdiction over Counts 2, 3, and 4—notwithstanding Plaintiffs' argument to the contrary—depend on the existence of a federal claim in Counts 1 or 5. Because Plaintiffs have no viable federal claim, this Court cannot exercise supplemental jurisdiction over the remaining claims, Claims 2, 3, and 4. Further, even if this Court had the power to exercise supplemental jurisdiction over the remaining claims, it would decline to do so. There are currently three related pending cases in Brule County filed by Plaintiff Bret Healy against some of these same

defendants, so plainly there is an adequate state forum to adjudicate any of his state-law claims.

F. Rule 12(b)(6) Motion to Dismiss under Res Judicata

Defendants Healys, Mineses, HRI, Osborne, and Fox also move to dismiss under Fed. R. Civ. P. 12(b)(6), arguing that the principle of res judicata bars Claims 2, 3, and 4.[6] This Court ordinarily would not reach such issues when it dismisses for lack of federal jurisdiction. But this Court must consider whether to impose sanctions against Plaintiffs, so it becomes necessary to consider all arguments barring Plaintiffs' claims in determining if the claims are in fact frivolous or presented for an improper purpose. The concept of res judicata includes both claim preclusion and issue preclusion. *Taylor v. Sturgell*, 553 U.S. 880, 892, 128 S. Ct. 2161, 171 L. Ed. 2d 155 (2008); *see also Am. Fam. Ins. Grp. v. Robnik*, 2010 SD 69, 787 N.W.2d 768, 774 (S.D. 2010). Claim preclusion "forecloses 'successive litigation of the very same claim, whether or not relitigation of the claim raises the same issues as the earlier suit[,]'" while "[i]ssue preclusion, in contrast, bars

6. Claims 1 and 5 do not apply to these Defendants, nor do Plaintiffs argue they do, because these Defendants are not state actors. *See Meier v. City of St. Louis*, 78 F.4th 1052, 1058 (8th Cir. 2023) (stating "due process rights [under the Fourteenth Amendment] are protected only against infringement by state actors"); *Youngblood v. Hy-Vee Food Stores, Inc.*, 266 F.3d 851, 855 (8th Cir. 2001) ("Only state actors can be held liable under Section 1983."). Therefore, the res judicata analysis only addresses Claims 2, 3, and 4.

'successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment,' even if the issue recurs in the context of a different claim." *Taylor*, 553 U.S. at 892 (quoting *New Hampshire v. Maine*, 532 U.S. 742, 748-49, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (2001)). "By precluding parties from contesting matters that they have had a full and fair opportunity to litigate, these two doctrines protect against the expense and vexation attending multiple lawsuits, conserve judicial resources, and foster reliance on judicial action by minimizing the possibility of inconsistent decisions." *Id.* (cleaned up) (quoting *Montana v. United States*, 440 U.S. 147, 153-54, 99 S. Ct. 970, 59 L. Ed. 2d 210 (1979)).

"[A] federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered." *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81, 104 S. Ct. 892, 79 L. Ed. 2d 56 (1984). Therefore, this Court looks to South Dakota law to define the preclusive effect of the prior final judgments against Plaintiffs in *Healy I, Healy II*, and *Mines*. *See Hanig v. City of Winner*, 527 F.3d 674, 676 (8th Cir. 2008) (stating that federal courts "must give preclusive effect to state-court judgments whenever the courts of the State from which the judgments emerged would do so. . . . [T]he issue we must decide turns on the South Dakota law of issue and claim preclusion." (internal citation omitted)).

While South Dakota law recognizes the difference between claim and issue preclusion, *see Merchants State*

Bank v. Light, 458 N.W.2d 792, 793-94 (S.D. 1990), it has applied the same four elements in both claim and issue preclusion cases:

> (1) the issue in the prior adjudication must be identical to the present issue, (2) there must have been a final judgment on the merits in the previous case, (3) the parties in the two actions must be the same or in privity, and (4) there must have been a full and fair opportunity to litigate the issues in the prior adjudication.

Dakota, Minn. & E. R.R. Corp. v. Acuity, 2006 SD 72, 720 N.W.2d 655, 661 (S.D. 2006). When applying the elements of res judicata, "a court should construe the doctrine liberally, unrestricted by technicalities. However, because the doctrine bars any subsequent litigation, it should not be used to defeat the ends of justice." *People ex rel. L.S.*, 2006 SD 76, 721 N.W.2d 83, 90 (S.D. 2006).

"Res judicata applies only if the second action is brought on the same 'cause of action' as the first." *Hicks v. O'Meara*, 31 F.3d 744, 746 (8th Cir. 1994) (citation omitted). "A cause of action is comprised of the facts which give rise to, or establish, the right a party seeks to enforce." *Merchants State Bank*, 458 N.W.2d at 794. South Dakota has often stated that the test to determine whether a cause of action is the same is "whether the wrong sought to be redressed is the same in both actions." *Hicks*, 31 F.3d at 746; *Nelson v. Hawkeye Sec. Ins. Co.*, 369 N.W.2d 379, 381 (S.D. 1985); *Hanig*, 527 F.3d at 676. "To make this determination, South Dakota law requires we look to the

underlying facts which give rise to each cause of action." *Hicks*, 31 F.3d at 746; *see also Frigaard v. Seffens*, 1999 SD 123, 599 N.W.2d 646, 648-49 (S.D. 1999) (stating "[t]he *same transaction* is again at issue involving precisely the same subject matter and parties" (emphasis added)); *Bank of Hoven v. Rausch*, 449 N.W.2d 263, 266-67 (S.D. 1989) (holding res judicata applied since the second claim "*arose out of the transaction or occurrence* that was the subject matter of the [other party's] claim" (emphasis added)). The Eighth Circuit has noted that South Dakota res judicata law uses language and analysis consistent with the "nucleus of operative fact" approach. *Ruple v. City of Vermillion*, 714 F.2d 860, 861-62 (8th Cir. 1983) ("It is now said, in general, that if a case arises out of the same nucleus of operative fact, or is based upon the same factual predicate, as a former action, that the two cases are really the same 'claim' or 'cause of action' for purposes of res judicata. . . . The Supreme Court of South Dakota has recently made clear that it adheres to the practical definition of 'cause of action' just discussed.").

Res judicata plainly bars the claims pleaded here because the state-law claims—Claims 2, 3, and 4—arise out of the same nucleus of facts where "the wrong sought to be redressed is the same" as in the prior state court case. In *Healy I, Healy II*, and the prior federal litigation, like in this case, "the wrong sought to be redressed" is Plaintiff Bret Healy's assertion to greater ownership in HRI and its assets, or in the case of *Mines*, HRP's claim to HRI assets. Plaintiffs attempt to argue the wrongs sought to be redressed in this case relate to "frauds, misrepresentations, misconduct and fraud upon the

courts" occurring in the litigation of the prior cases, Doc. 34 at 4, but Plaintiffs' Prayer for relief requests this Court "[d]eclar[e] Bret Healy owner of two-thirds of all the outstanding shares of HRI capital stock," Doc. 63 at 34, thereby undermining this argument. Indeed, Plaintiffs' Prayer in the Amended Complaint seeks to have this Court vacate all prior state and federal decisions and declare "Plaintiffs' future rights and remedies unaffected by" those decisions. Doc. 63 at 34. The first element of res judicata is met because the "fraud, misrepresentation and misconduct" claims arise out of the same nucleus of facts.

The second element of res judicata under South Dakota law is satisfied because the prior litigation resulted in a final judgment or, more specifically, multiple final judgments—from courts of competent jurisdiction affecting Bret Healy's ownership in HRI. Plaintiffs argue that the state courts somehow lacked jurisdiction. But South Dakota state courts are courts of general jurisdiction, and the Supreme Court of South Dakota has jurisdiction over appeals in state court. *See* S.D. Const. art. V, § 5 ("The circuit courts have original jurisdiction in all cases"); SDCL 15 26A-3 ("Appeals to the Supreme Court from the circuit court may be taken as provided in this title from: (1) A judgment . . . "); *Novak v. Novak*, 2007 SD 108, 741 N.W.2d 222, 228 (S.D. 2007) ("A grant of summary judgment on all issues is a final determination of the rights of the parties involved and is a final judgment pursuant to SDCL 15-6-54(a)."). The Supreme Court of South Dakota affirmed the final judgments in *Healy I, Healy II*, and *Mines*. And the Eighth Circuit affirmed this Court's dismissal of the prior federal case, *Fox*, as

being barred by res judicata. *Healy v. Fox*, 46 F.4th at 746 ("[W]e conclude that all four factors required to apply *res judicata* are present here. . . . [W]e affirm the district court's dismissal of Bret's complaint.").

The third element of res judicata—that the parties are the same or in privity—is also met as to the Healys, Mineses, HRI, Osborne, and Fox. In determining who constitutes a party to an action for "the purpose of determining the conclusiveness of prior judgments, 'the courts look beyond the nominal parties, and treat all those whose interests are involved in the litigation and who conduct and control the action or defense as real parties, and hold them concluded by any judgment that may be rendered.'" *JAS Enters., Inc. v. BBS Enters., Inc.*, 2013 SD 54, 835 N.W.2d 117, 125 (S.D. 2013). Here, there is some variation as to which parties in this present case were parties to the prior cases litigating the issue of HRI ownership, but each Defendant claiming res judicata has litigated a matter in which preclusive effect can be applied to these claims by Bret and HRP. *See Healy I* (claims including those of Bret Healy against the Healys, Osborne, Fox, and HRI); *Healy II* (claims by HRP and Bret Healy against HRI); *Mines* (claims by HRP against the Mineses).

The fourth and final element for res judicata under South Dakota law is that the party against whom res judicata is being asserted had a full and fair opportunity to litigate the issues in the prior adjudication. Claim preclusion in South Dakota applies not only to "relitigation of issues previously heard and resolved; it also bars

prosecution of claims that could have been raised in the earlier proceeding, even though not actually raised." *Am. Fam. Ins. Grp.*, 787 N.W.2d at 775 (citation omitted). "When a party to litigation fails to develop all of the issues and evidence available in a case, the party is not justified in later trying the omitted issues or facts in a second action based on the same claim," *id.* (citation omitted), even if evidence is not discoverable during the litigation, Est. of Johnson ex rel. *Johnson v. Weber*, 2017 SD 36, 898 N.W.2d 718, 733 (S.D. 2017) (citations omitted) (collecting and listing cases).

Plaintiffs had a prior opportunity to present Claims 2, 3, and 4. Notwithstanding Plaintiffs' arguments to the contrary, Plaintiffs knew of the alleged fraud right after the decision in *Healy I*, as they claim the "fraud" caused a misstatement in the *Healy I* opinion. Even if Plaintiffs' claims were factually true, Plaintiffs had multiple opportunities in the subsequent litigation, including in the prior federal case, to have alleged the fraud Plaintiffs believe occurred in *Healy I*. They did not do so.

Plaintiffs did not challenge state court jurisdiction in any previous case, and for good reason given the obviousness of state jurisdiction and Plaintiffs having commenced the prior state cases of *Healy I* and *Mines*, and appealing the lower court decisions in *Healy I, Healy II*, and *Mines*. But now Plaintiffs claim a lack of state jurisdiction. The South Dakota circuit court rendering the initial judgment was a court of general jurisdiction, plainly making it able to hear the case. *Bingham Farms Tr. v. City of Belle Fourche*, 2019 SD 50, 932 N.W.2d

916, 920 (S.D. 2019) ("South Dakota circuit courts are courts of general jurisdiction, and we have held that our Constitution confers broad authority upon circuit courts to 'hear all civil actions.' (citations omitted)); see also S.D. Const. art. V, § 5 ("The circuit courts have original jurisdiction in all cases except as to any limited original jurisdiction granted to other courts by the Legislature. The circuit courts and judges thereof have the power to issue, hear and determine all original and remedial writs.").

Further, the court in *Healy II* necessarily found *Healy I* had jurisdiction in the case because it determined res judicata barred Plaintiffs' claims, meaning Plaintiffs did, or could have, litigated their claims in *Healy I*. Likewise, in the prior federal case, Plaintiffs did not assert prior fraud on the state court in *Healy I* or lack of state court jurisdiction as they now do, despite having the same knowledge at the time of this proceeding that they did during the pendency of the prior federal case. Res judicata on several levels now bars the extraordinary relief Plaintiffs seek from this Court reversal or vacating of the Eighth Circuit final decision from the prior litigation and reversal and vacating of three final decisions of the Supreme Court of South Dakota.

III. Motions for Sanctions

Federal Rule of Civil Procedure 11(b) governs a party's representations to the court and, in the case of noncompliance with the rule, the imposition of sanctions. Rule 11 outlines a party's obligations as follows:

Appendix C

> 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:
>
> (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
>
> (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
>
> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

Fed. R. Civ. P. 11(b). This Rule requires "a reasonable inquiry of the factual and legal basis for a claim before

filing." *Miller v. Bittner*, 985 F.2d 935, 938 (8th Cir. 1993) (citation omitted). There has been reasonable inquiry where the prefiling investigation uncovers both a factual and legal basis for the plaintiff's allegations. *Vallejo v. Amgen, Inc.*, 903 F.3d 733, 747 (8th Cir. 2018) (citation omitted). "The District Court must determine whether a reasonable and competent attorney would believe in the merit of an argument" in deciding whether a party has violated Rule 11. *Id.* (quoting *Coonts v. Potts*, 316 F.3d 745, 753 (8th Cir. 2003).

This Court also has an "inherent power" to impose sanctions for a party's bad faith conduct. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 45-46, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991). "A court may impose sanctions under Rule 11 even where it lacks subject matter jurisdiction." *Strobel v. Burgess*, 4:19-CV-04073-KES, 2020 U.S. Dist. LEXIS 20536, 2020 WL 528229, at *2 (D.S.D. Feb. 3, 2020) (citing *Willy v. Coastal Corp.*, 503 U.S. 131, 136 37, 112 S. Ct. 1076, 117 L. Ed. 2d 280 (1992). In addition, 28 U.S.C. § 1927 states that anyone "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."

In *Healy I*, both the lower court and Supreme Court of South Dakota on appeal imposed sanctions in the form of attorneys fees on Plaintiff Bret Healy because "there is no evidence in the record to suggest that Bret had any reasonable basis to believe his claims were valid when

he filed the lawsuit or that they could survive the statute of limitations defense." *Healy I*, 934 N.W.2d at 567. The Supreme Court continued: "Bret filed the lawsuit for the purposes of preventing sale of the property, not because he believed his partnership interest remained enforceable." *Id.* Bret's motives in filing this suit against many of the same parties he sued in *Healy I* are similar. The number of obvious obstacles to the claims—the *Rooker-Feldman* doctrine, Eleventh Amendment and judicial immunity, lack of supplemental jurisdiction, and res judicata—render the claims generally to lack valid legal basis. Although Bret Healy's counsel at the hearing provided zealous representation, the arguments made about why the *Rooker-Feldman* doctrine or judicial immunity did not apply or how res judicata does not bar the state-law claims were not warranted by existing law or a good faith, nonfrivolous argument for some modification or extension of existing law. The history of litigation combined with the absence of merit of the claims justify an award of attorneys fees to the non-state defendants as sanctions under Fed. R. Civ. P. 11(b)(1) and (2).

IV. Conclusion

For the reasons explained, it is therefore

ORDERED that the Defendants' motions to dismiss, Docs. 17, 19, 23, and 27, are granted. It is further

ORDERED that the motions for sanctions, Docs. 29, 30, and 31, are granted. It is further

ORDERED that the attorneys representing the parties who sought sanctions file within 21 days of this order affidavits setting forth what reasonable attorneys fees and costs were incurred exclusively related to defending this lawsuit. It is finally

ORDERED that once this Court determines the amount of sanctions to impose, this case will be dismissed.

DATED this 14th day of December, 2023.

BY THE COURT:

/s/ Roberto A. Lange
ROBERTO A. LANGE
CHIEF JUDGE

APPENDIX D — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT, FILED MAY 9, 2025

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 24-1996

BRET HEALY,

Appellant,

HEALY RANCH PARTNERSHIP

v.

SUPREME COURT OF SOUTH DAKOTA, *et al.*,

Appellees.

Appeal from U.S. District Court for the
District of South Dakota - Southern
(4:23-cv-04118-RAL)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

May 9, 2025

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler