

No. 25-882

IN THE

Supreme Court of the United States

ANDREW D. PARKER; PARKER DANIELS KIBORT, LLC,

Petitioners,

v.

BILL GATES, CLINT HICKMAN, JACK SELLERS,
THOMAS GALVIN, AND STEVE GALLARDO,

Respondents.

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Pursuant to Supreme Court Rules 15(2) and 24(2), Respondents object to each of Petitioners' four Questions Presented. None presents an issue that is properly before this Court. Each blatantly mischaracterizes the district court's Sanctions Order—which the Ninth Circuit Court of Appeals affirmed—and continues the pattern of misrepresentation for which Petitioners were sanctioned.

Petitioners' first Question Presented implies Petitioners were sanctioned “to send a message’ not to file politically disfavored lawsuits.” [Pet. for Writ of Certiorari (“Cert.Pet.”), i.] But that is not what happened. The district court sanctioned Petitioners because they lied to the court. Their filings made “false, misleading, and unsupported factual assertions”; “their claims for relief did not have an adequate factual or legal basis grounded in a reasonable pre-filing inquiry” in violation of Rule 11 of the Federal Rules of Civil Procedure; and, they “acted at least recklessly in unreasonably and vexatiously multiplying the proceedings by seeking a preliminary injunction based on Plaintiffs’ frivolous claims, in violation of 28 U.S.C. §1927.” [App.94-95 (*Sanctions Order*).]¹ And the court imposed the sanctions “with the broader goal of deterring similarly baseless filings” and “to send a message to those who might file similarly baseless suits in the future.” [*Id.*96.]

The second Question Presented implies that Petitioners were sanctioned for presenting “novel” or “long shot” legal arguments. [Cert. Pet., i.] But that, too, is

¹ In this Response, “App.” is Petitioners’ Appendix. The Respondents have not submitted an Appendix.

incorrect. Petitioners were not sanctioned for filing a difficult-to-win case. They were sanctioned because their filings rested on speculations and presumptions. [*Id.*83-86.] There were “yawning gaps between the factual assertions made, the harm claimed, and the ultimate relief requested.” [*Id.*83.] Petitioners sought to fill these gaps “with allegations that were false and misleading,” and “with assertions regarding elections in other jurisdictions that provided little if any support for their claims and served only to muddy the waters.” [*Id.*85.] And “they appeared to assume the very thing they had the burden to allege and ultimately prove,” alleging in their FAC that Arizona’s electronic tabulation system “must be *presumed* to be compromised and incapable of producing verifiable results.” [*Id.* (emphasis added by the district court) (*quoting* App.231 (*FAC*), ¶181).]

The third Question Presented suggests that the district court construed Petitioners’ filings in the way least favorable to them and sanctioned them based on that unfavorable characterization. [Cert. Pet., i.] But the district court did no such thing. Rather, it gave Petitioners “the benefit of the doubt” when it was possible to treat their statements as “unpersuasive arguments rather than as false assertions of fact[.]” [App.81 (*Sanctions Order*).] And, “[o]ut of an abundance of caution,” the district court “refrain[ed] from considering” two paragraphs in the FAC “to be sanctionable as false allegations” because the Respondents had not cited those paragraphs in their Motion for Sanctions and so there was “at the least the possibility of an issue whether Plaintiffs were given sufficient notice that these paragraphs were potentially sanctionable.” [*Id.*68, n.3.]

Finally, the fourth Question Presented implies that the district court relied upon *Purcell v. Gonzalez*, 549 U.S. 1 (2006), to sanction Petitioners. [Cert.Pet., i.] But that did not happen either. *Purcell* is not dispositive of any sanctions issue in this appeal because *Purcell* was just one of several reasons the district court issued sanctions against Petitioners. Thus, revisiting *Purcell* would not meaningfully alter any of the district court's analysis. Moreover, Petitioners' request that this Court review and overturn *Purcell* is an improper collateral attack on the Ninth Circuit's Merits Opinion. This collateral attack is particularly inappropriate because the petition for writ of certiorari stemming from that Opinion was already denied in Supreme Court Case No. 23-1021.

PARTIES TO THE PROCEEDING

Petitioners are Andrew D. Parker and Parker Daniels Kibort, LLC, counsel for the underlying plaintiffs.

The Respondents are the Maricopa County Board of Supervisors, who were sued in their official capacities and were defendants in the underlying proceedings who were awarded attorneys' fees in defending against this patently frivolous lawsuit.

Other defendants were the Arizona Secretary of State and the Pima County Board of Supervisors, all sued in their official capacities.

The plaintiffs in the underlying lawsuit were Kari Lake and Mark Finchem, who were candidates for Arizona statewide office in 2022.

RULE 29.6 STATEMENT

Respondent Maricopa County Board of Supervisors is a political subdivision of the state of Arizona and so is a government entity.

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STATEMENT OF THE CASE

This matter involves a run-of-the-mill application of Rule 11 of the Federal Rules of Civil Procedure and 28 U.S.C. §1927 sanctions against Petitioners. The United States District Court for the District of Arizona imposed the sanctions because Petitioners made numerous false and misleading allegations in filings they signed, demonstrating their failure to conduct the minimal pre-filing inquiry required by Rule 11, and also because they unreasonably and vexatiously multiplied the proceedings. [App.89, 95 (*Sanctions Order*).] The Ninth Circuit Court of Appeals affirmed, concluding that Petitioners “made false, misleading, and unsupported factual assertions in their first amended complaint (‘FAC’) and motion for preliminary injunction and did not undertake a reasonable pre-filing inquiry[,]” and also that it was not “clearly erroneous” for the district court to determine that Petitioners acted in bad faith in filing their MPI. [App.2 (*Appellate Sanctions Opinion*).]

On May 4, 2022, Petitioners filed a FAC on behalf of their clients that sought a court order preventing Maricopa County, and other similarly situated Arizona polities, from using any electronic machines in connection with voting in the 2022 midterm elections and in subsequent elections, and to mandate that paper ballots be used instead. But the FAC made several material, demonstrably false allegations. For example, it alleged Arizona did not use paper ballots, [App.222 (*FAC*), ¶153], and sought an Order requiring Arizona to use paper ballots, [*id.*174-75, ¶7]. But, Arizona law requires votes to be cast on paper ballots, except in very limited circumstances. [App.86, *Sanctions Order*.] The FAC also alleged that Arizona’s electronic election equipment is “untested and

unverified” and has not been subjected to neutral, expert analysis. [App.173 (*FAC*), ¶2; *id.*185, ¶57.] But as the district court explained, “Arizona’s equipment undergoes thorough testing by independent, neutral experts with the Secretary of State’s Certification Committee and a testing laboratory accredited by the Election Assistance Commission (‘EAC’).” [App.175 (*Sanctions Order*).] These procedures are mandated by law, and the testing of election equipment is a matter of public record. A reasonable investigation, as required by Rule 11, would have revealed that this testing occurred.

In addition to resting on false allegations, the FAC also rested on speculative ones. For example, it alleged that Arizona’s electronic voting systems are “potentially susceptible to malicious manipulation[,]” [App.180 (*FAC*), ¶33], or “potentially insecure[,]” [*id.*178, ¶23], or have weaknesses that “at the very least, call into question” their tabulation results, and so the electronic systems “must be *presumed* to be compromised and incapable of producing verifiable results,” [*id.*231, ¶181 (emphasis added)]. And the FAC demanded that the electronic systems not be used in future elections “unless and until the electronic voting system is made open to the public and subjected to scientific analysis by objective experts *to determine whether it is secure from manipulation or intrusion.*” [*Id.*172-73, ¶1 (emphasis added).] As the district court noted, this language was “speculative on its face[,]” but the FAC “never established any adequate factual or legal basis” to undergird their speculation. [App.84-85 (*Sanctions Order*).]

On May 20, 2022, Respondents’ counsel sent Petitioners a Rule 11 letter that identified many of the FAC’s false allegations and demanded that Petitioners

voluntarily dismiss the lawsuit. [*Id.*58.] Petitioners disregarded the Rule 11 letter and lodged their MPI on June 8, 2022. [*Id.*] Relying on the FAC’s false allegations and speculative claims, the MPI sought an injunction prohibiting Respondents “from using computerized equipment to administer the collection, storage, counting, and tabulation of votes in any election until such time that the propriety of a permanent injunction is determined.” [App.243 (*MPI*).] Respondents and the other defendants filed motions to dismiss. [*Id.*58 (*Sanctions Order*).] The district court held a hearing on the MPI and the MTDs on July 21, 2022. [*Id.*58-59.] On August 26, 2022, the district court granted the MTDs and denied the MPI. [*Id.*59.]

Respondents moved for sanctions under Rule 11 and §1927. [*Id.*] On December 1, 2022, the district court entered its Order granting the sanctions request. It found that the plaintiffs made “false, misleading, and unsupported factual assertions” and “their claims for relief did not have an adequate factual or legal basis grounded in a reasonable pre-filing inquiry,” in violation of Rule 11, and they “acted at least recklessly in unreasonably and vexatiously multiplying the proceedings by seeking a preliminary injunction based on [p]laintiffs’ frivolous claims, in violation of Section 1927.” [*Id.*94-95.] The district court applied the sanctions against plaintiffs’ *attorneys* “who signed and filed the offending papers.” [*Id.*96.] It imposed the sanctions “with the broader goal of deterring similarly baseless filings initiated by anyone, whether an attorney or not” and “to send a message to those who might file similarly baseless suits in the future.” [*Id.*]

The plaintiffs appealed the dismissal of their lawsuit. The Ninth Circuit Court of Appeals affirmed

the dismissal on October 16, 2023 (the “Merits Opinion”). [App.134-42.] The plaintiffs then filed a petition for writ of certiorari from the Merits Opinion, which this Court rejected in Supreme Court Case No. 23-1021. Petitioners separately appealed the Sanctions Order. On March 14, 2025, a divided panel of the Ninth Circuit Court of Appeals affirmed (the “Sanctions Opinion”). [App.1-26.] Petitioners sought rehearing and *en banc* review on March 28, 2025. The Court of Appeals denied the petition on August 21, 2025, [App.143-44], with a published dissent (the “En Banc Dissent”), [App. 143-67].

ARGUMENT

Introduction

Contrary to Petitioners’ claims, they were not sanctioned because they brought a long-shot, novel, or politically disfavored lawsuit. Nor were they sanctioned because they challenged election procedures, or because they represented disfavored clients. Petitioners were sanctioned because they made objectively false and misleading statements in documents that they signed and filed in a federal district court, and because they unreasonably and vexatiously multiplied the proceedings by ignoring a Rule 11 letter Respondents sent them on May 22, 2022, that warned them that their lawsuit was frivolous, and filing their MPI weeks later anyway. They violated the requirements of Rule 11 of the Federal Rules of Civil Procedure and 28 U.S.C. §1927, and they were sanctioned as a result. [App.56-97 (*Sanctions Order*).]

Petitioners appealed the Sanctions Order and lost. [App.1-26 (*Appellate Sanctions Opinion*).] Petitioners asked for rehearing or rehearing *en banc* and lost again—twice. The Panel that heard their appeal

declined to rehear it, and the full court declined to grant *en banc* review. [App.143-44 (*Appellate Order Denying Rehearing*).] Judge VanDyke, joined by five other judges, dissented in the *En Banc* Dissent. [*Id.*144-67.] But that just means twenty-two active Ninth Circuit judges chose *not* to sign onto the dissent, presumably because they agreed that the appeal had been rightly decided and there was no need for *en banc* review.¹

Now, Petitioners ask this Court to either GVR this matter, adopting the *En Banc* Dissent as its Opinion, or else grant the Petition and order briefing. [Cert.Pet., 3.] The Court should do neither. This case presents no federal circuit court split in need of deconfliction, no important federal question of law in need of settlement, and no previous ruling that has been improperly applied by a lower court. Nor, as Petitioners suggest, would it be appropriate for the Court to reassess *Purcell*, [*id.*, 12-14], given that the plaintiffs in the Merits Opinion had the opportunity to appeal the application of *Purcell* in the underlying lawsuit, but chose not to.

Rule 11 and §1927 are clear, serve important purposes, and were properly applied by the district court and upheld by the Court of Appeals. The Court should deny the Petition.

¹ Twenty-eight of the twenty-nine active Ninth Circuit judges voted whether to rehear the appeal *en banc*. Judge Desai was recused. [App.144 (*Appellate Order Denying Rehearing*).]

I. The Sanctions Do Not Present Any Legal Issues Worthy of the Court's Review.

The Petition does not present any legal issues which are worthy of this Court's review and clarification. The Sanctions Order was based upon straightforward applications of Rule 11 and §1927. The legal standards applicable to Rule 11 and §1927 are applied every day without need for clarification in district courts across the country, and the legal standards for both were correctly applied here.

For the Rule 11 sanctions, the district court correctly based its ruling upon the "*Holgate* Analysis," which applies in the Ninth Circuit when "a complaint is the primary focus of a Rule 11 proceeding[.]" *Holgate v. Baldwin*, 425 F.3d 671, 676 (9th Cir. 2005). Under that analysis, "a district court must conduct a two-prong inquiry to determine (1) whether the complaint is legally or factually baseless from an objective perspective, and (2) if the attorney has conducted a reasonable and competent inquiry before signing and filing it." [App.61 (*Sanctions Order*) (quoting *Holgate*, 425 F.3d at 676)].

Applying the *Holgate* Analysis, the district court found that Petitioners attempted to paste over "the gaps between their factual assertions, claimed injuries, and requested relief with false, misleading, and speculative allegations." [*Id.*87.] As discussed more fully below, the district court found that Petitioners' filings made materially false statements in two categories: statements alleging that Arizona did not use paper ballots and statements alleging that Maricopa County does not test its tabulation machines. [*Id.*73, 76.] The district court also found that Petitioners made statements that were too speculative or based on conjecture. [*Id.*87.] These

findings satisfy the first prong of the *Holgate* Analysis. For the second prong, the district court found that “any objectively reasonable investigation of this case would have led to publicly available and widely circulated information contradicting Plaintiffs’ allegations and undercutting their claims.” [*Id.*89.] These findings fully support Rule 11 sanctions under the correct legal standard.

Petitioners and the En Banc Dissent disagree with the district court’s findings, but their disagreements do not create a legal question for this Court to resolve. The Petition is really asking the Court to review how the district court characterized Petitioners’ allegations and factual representations, which entirely turns on the facts and circumstances of this particular case. The Petition does not ask the Court to clarify any question of generally applicable law. Thus, the Petition presents the exact kind of issues where this Court routinely refuses to grant certiorari. *See Rice v. Sioux City Mem’l Park Cemetery*, 349 U.S. 70, 79 (1955) (“it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties. . .”).

Beyond that, there is no merit to Petitioners’ contentions that the Sanctions Order was meant to punish Petitioners for making novel or long-shot arguments. The Sanctions Order explains that Petitioners were sanctioned for making materially false statements in court without conducting an adequate investigation into those statements. [App.73, 76, 87.]

Similarly, the district court did not sanction Petitioners because they represented disfavored clients or viewpoints. Nor did it create a new category of “public trust” sanction, whereby courts will make

“subjective judgment[s] about the social utility of a claim” and sanction “disfavored types of claims.” [Cert.Pet., 9-10.] To the contrary, the district court expressly rejected Respondents’ arguments that Petitioners brought the lawsuit with an improper political purpose. [*Id.*90-91 (*Sanctions Order*).]

The Ninth Circuit commented that Petitioners’ arguments that the district court sanctioned them on these bases “mischaracterize[d] the nature of the district court’s concern.” [App.9.] It explained that “[t]he district court’s statement does not blanketly prohibit all voting-related litigation[,]” but “the district court stressed that plaintiffs’ attorneys are being sanctioned because they filed a *baseless* action.” [*Id.* (emphasis in original).] False statements made to the court are not “creative, aggressive, and novel,” as Petitioners assert. [Cert.Pet., 11.] They are just false.

Nor, as Petitioners falsely claim, did the district court sanction them to send a message “not to file politically disfavored lawsuits”, [Cert.Pet., i], especially those that are “election-based”, [*id.*, 6]. Petitioners mischaracterize the Sanctions Order, which stated that the sanctions were imposed “to send a message to those who might file similarly baseless suits in the future.” [App.96 (*Sanctions Order*).] The context makes clear that the district court intended to deter litigation based upon obviously false allegations. [App. 94-96.] This was perfectly consistent with the court’s sanctioning authority under Rule 11. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 393 (1990) (“[T]he central purpose of Rule 11 is to deter baseless filings.”).

The district court was obviously concerned by the subject matter of these false statements. But, as discussed below, it sanctioned Petitioners because the statements were false, not because the statements

concerned elections. The court's goal was not to prevent anyone from challenging election procedures, or to silence "politically disfavored lawsuits"; it was to compensate Respondents for having to litigate a frivolous case based upon false allegations and to deter other attorneys from bringing lawsuits based on false allegations. [App.96 (*Sanctions Order*) ("the Court finds that payment of the Maricopa County Defendants' reasonable attorneys' fees is an appropriate sanction for the conduct of Plaintiffs' counsel, which forced Defendants and their counsel to spend time and resources defending this frivolous lawsuit").]

The sanctions awarded under §1927 likewise do not present anything for the Court to review. Again, the district court applied the correct legal standard in analyzing whether to award sanctions under §1927, noting that it would sanction Petitioners only if the record showed that they "unreasonably or vexatiously" multiplied the proceedings and did so with subjective bad faith. [App.92-93 (*Sanctions Order*).] The court found that Petitioners' MPI violated §1927 because it doubled down on the false statements made in the FAC, rather than correcting those statements following the receipt of Respondents' Rule 11 letter. [*Id.*92-94.] The court further sanctioned Petitioners because they waited seven weeks after filing the FAC to move for injunctive relief, despite claiming it was needed immediately. [*Id.*] Petitioners' delays in seeking the injunction, coupled with their continuance of materially false allegations and requests for status quo relief, led the court to find that Petitioners acted with subjective bad faith. Again, the district court applied the correct standard and made the appropriate findings to support the sanctions. Petitioners' arguments contest the district court's interpretation of the facts and allegations, not the application of the law

to those findings, so this is another issue where Petitioners ask the Court to make rulings specific to this case only. Certiorari should not be granted in such circumstances.

Ultimately, the Petition asks the Court to review whether Petitioners' statements constitute knowingly false statements. It does not ask for clarification on how materially false statements should be treated under the law, which is well settled as to how such statements are treated. The Petition only concerns facts and allegations specific to this case and does not present any opportunity for clarification concerning the application of Rule 11 or §1927. Consequently, the Petition does not present any issues worthy of this Court's review. *Rice*, 349 U.S. at 79. Petitioners' efforts to reframe these issues in a manner to sound enticing to the Court rely upon deliberate misrepresentations of the record and are entirely unavailing.

II. The District Court Did Not Abuse its Discretion in Imposing Rule 11 Sanctions.

A. Petitioners Were Properly Sanctioned For Making Baseless Allegations.

The district court correctly performed the required *Holgate* Analysis before imposing sanctions. Using this analysis, it determined that the FAC contained baseless allegations, unsupported by any evidence. There were three primary strands of baseless allegations and frivolous claims.

First, the allegations regarding paper ballots were false and the request that the district court order Respondents to use paper ballots was frivolous because they already used paper ballots. It is well-known that Arizona uses paper ballots to conduct its elections, as is required by Arizona law. [App.37

(*Sanctions Order*) (citing relevant Arizona statutes).] Petitioners, who had an obligation under Rule 11 to make a reasonable inquiry by reading the controlling statutes before filing the FAC, knew or should have known that Arizona voters vote with paper ballots. In fact, the record before the district court demonstrated that Petitioners' clients, the plaintiffs in the lawsuit, had "voted on paper ballots for nearly twenty years." [*Id.*68.] Yet, Petitioners repeatedly and falsely alleged that Arizona did not use paper ballots and requested an Order requiring the state to use paper ballots at all future elections. [See *id.*65-73 (reviewing each allegation and request for relief in the FAC and MPI in which Petitioners alleged Arizona does not use paper ballots).]

A few examples will illustrate the baselessness of Petitioners' allegations regarding Arizona's ballots. As the district court noted, despite that Arizona law requires the use of paper ballots and Arizona conducts its elections with paper ballots, Paragraph 58 of the FAC alleged that "[p]rior to 2002, most states, including Arizona, conducted their elections overwhelmingly using relatively secure, reliable, and auditable paper-based systems." [*Id.*66.] Paragraph 59 alleged that Congress allotted "[b]illions of federal dollars" that "were spent to move states, including Arizona, from paper-based voting systems to electronic, computer-based systems." [*Id.*] Paragraph 60 alleged that "[s]ince 2002, elections throughout the United States have increasingly and largely been conducted" using computer-based systems "that are far more difficult to audit than paper-based systems[.]" [*Id.*60-61.] In Paragraphs 168 and 171 of the FAC, Petitioners alleged that the plaintiffs "will be required to cast [their] vote[s]" in the 2022 midterm election "through electronic voting systems." [*Id.*68.] And in

Paragraph 153, Petitioners asked for an Order requiring “an election conducted by paper ballot, as an alternative to the current framework.” [*Id.*65.]

These allegations, that Arizona did not use paper ballots to conduct its elections, were objectively baseless, false, and misleading. Petitioners’ materially false statements in this regard were so pronounced that the Court of Appeals opined that “[a] reasonable person reading the amended complaint would believe, contrary to the facts, that Arizona does not use paper ballots at all in its elections.” [App.7 (*Appellate Sanctions Opinion*).] Because the allegations and requested relief relating to paper ballots were both false and frivolous, this is the quintessential situation where Rule 11 sanctions are appropriate.

The second strand of baseless allegations were those regarding the testing of Arizona’s electronic elections equipment. It is a matter of public record that Arizona’s electronic tabulation equipment “undergoes thorough testing by independent, neutral experts with the Secretary of State’s Certification Committee and a testing laboratory accredited by the Election Assistance Commission (‘EAC’).” [App.75 (*Sanctions Order*).] This testing is required by Arizona law. Ariz. Rev. Stat. Ann. §16-442. Respondents’ electronic tabulation equipment, for example, “was tested by Pro V&V, an EAC-accredited testing laboratory, and tested—in public—by the Secretary of State’s Equipment Certification Committee.” [App.75.]

Despite this well-known fact, Petitioners alleged in Paragraph 20 of the FAC that the Secretary of State’s certification of Respondents’ equipment “was improper, *absent objective evaluation*.” [*Id.* (emphasis not in FAC, but added by the district court).] And they alleged in Paragraph 57 that “Arizona intends to rely

on electronic voting systems to record some votes and to tabulate all votes cast in the State of Arizona in the 2022 Midterm Election, without disclosing the systems and subjecting them to neutral, expert analysis.” *[Id.]* As the district court concluded, Petitioners’ “FAC does not merely allege that testing of Arizona’s equipment is insufficient or unreliable; it alleges that the equipment has not been subjected to objective evaluation or neutral, expert analysis, which is not true.” *[Id.]* 76. As the court explained, “Plaintiffs and their experts may be entitled to opine about the sufficiency of the testing that Arizona’s machines undergo, but they are not entitled to allege that no such testing takes place.” *[Id.]* But, that is precisely what Petitioners did. They were properly sanctioned for doing it.

The third strand of baseless allegations were those based entirely on speculation and conjecture. Petitioners’ FAC alleged that Arizona’s electronic voting systems were “potentially susceptible” to being manipulated by bad actors, are “potentially insecure,” and have vulnerabilities that “call into question” whether their ballot tabulation is correct. *[Id.]* 84. And Petitioners demanded that Arizona must be prohibited from using its electronic election equipment “unless and until the electronic voting system is made open to the public and subjected to scientific analysis by objective experts to determine whether it is secure from manipulation or intrusion.” *[Id.]*

As the district court noted, “[t]his is speculative on its face.” *[Id.]* But Petitioners “never established any adequate factual or legal basis to support such presumption[s].” *[Id.]* 85. Instead, they attempted to “fill the gap between their assertions about Arizona’s voting equipment and their speculative conclusions” with false and misleading allegations and “assertions

regarding elections in other jurisdictions that provided little if any support for their claims and served only to muddy the waters.” [*Id.*] What Petitioners failed to do, however, was offer any actual evidence to support their speculative allegations and conclusions.

In sum, the district court granted Rule 11 sanctions based upon these materially false statements. Given that these statements were the basis of the awarded sanctions, the Petition’s silence on these three points is deafening. While the Petition repeatedly asserts that the district court mischaracterized Petitioners’ allegations, the Petition makes no attempt to argue that the allegations discussed above were not materially false. Nor does it explain how the district court misinterpreted Petitioners’ allegations.

Instead, the Petition misquotes the Sanctions Order while ignoring the actual reasons that the Sanctions Order was issued. And it suggests that, if the Sanctions Order is allowed to stand, “sanctions ‘will be used to chill vigorous advocacy[,]’” suggesting that “[t]he sanctions in this case have grave implications for our justice system and will deter attorneys from bringing creative, aggressive, or novel claims of the sort that are often necessary to shape and reshape our legal landscape.” [Cert.Pet., 7 (quoting App.12 (*Appellate Sanctions Dissent*)).] But Petitioners were not sanctioned because they brought an aggressive complaint. They were sanctioned because they made baseless claims.

Petitioners’ avoidance of discussing their materially false statements is a tacit admission that they cannot articulate any defensible basis for making these statements in court. The Petition’s silence is thus a *de facto* admission that sanctions were warranted.

B. Petitioners Did Not Make a Reasonable Inquiry.

The district court also correctly conducted the second part of the *Holgate* Analysis by considering whether Petitioners made the reasonable inquiry required by Rule 11 before signing and filing their FAC. It determined that they had not; or, if they *had* conducted the inquiry, they filed their lawsuit knowing that they were making false and misleading allegations. [App.89 (*Sanctions Order*).] Either way, the conduct violated Rule 11 and was sanctionable. [*Id.*] As the court explained, “any objectively reasonable investigation of this case would have led to publicly available and widely circulated information contradicting Plaintiffs’ allegations and undercutting their claims.” [*Id.*89.]

Having conducted the required *Holgate* Analysis and determined that Petitioners failed their Rule 11 duty, the district court imposed sanctions against them. [*Id.*94-97.]

C. The Court of Appeals Properly Affirmed the Rule 11 Sanctions.

The Court of Appeals affirmed the Sanctions Order. It stated that its “review of the FAC demonstrates that all of the unsupported factual allegations identified by the district court are present.” [App.6 (*Appellate Sanctions Opinion*).] That court noted that, although Petitioners argued on appeal that the FAC “acknowledges, presumes, and requires that Arizona use paper ballots[,]” no one reading the FAC would have understood that to be the case. Instead, “the FAC makes no mention of the use of paper ballots” but “asks that the court order an election conducted by paper ballots, *as an alternative to the current framework.*”

[*Id.*6-7 (emphasis added).] The Court of Appeals concluded that “[t]he plain meaning” of Petitioners’ language in the FAC supported the finding of the district court, and it was not an abuse of discretion for the district court to find “that these factually misleading statements rendered the FAC factually insufficient and open to sanction.” [*Id.*7.]

The Court of Appeals also concluded that the second part of the *Holgate* Analysis was satisfied: Petitioners had not made a reasonable pre-filing inquiry as required by Rule 11. [*Id.*7-8.] Petitioners had “present[ed] incorrect facts to the court,” demonstrating either that they had not conducted the required inquiry or, if they had conducted it, they disregarded it. [*Id.*8.] Regardless, “no reasonable attorney ‘would have found the complaint to be well-founded.’” [*Id.* (quoting *Holgate*, 425 F.3d at 677).] So “the district court did not abuse its discretion in concluding that Lead Attorneys did not conduct a reasonable inquiry.” [*Id.*]

Rule 11 gives the district courts the discretion to assess sanctions because the district courts are “[f]amiliar with the issues and litigants” so they are “better situated than the court of appeals to marshal the pertinent facts and apply the fact-dependent legal standard mandated by Rule 11.” *Cooter*, 496 U.S. at 402. The Ninth Circuit gave appropriate deference to the district court’s findings in this regard. This Court has said that it is proper to affirm an award of Rule 11 sanctions when the district court “applied the correct legal standard and offered substantial justification for its finding of a Rule 11 violation.” *Id.* at 405. That is precisely what happened here. So the Ninth Circuit was correct to affirm the grant of sanctions and there is no reason to grant certiorari.

1. *Bost v. Ill. St. Bd. of Elections.*

Petitioners assert that this Court’s decision in *Bost v. Ill. St. Bd. of Elections*, 146 S. Ct. 513 (2026), “conclusively shows that Petitioners did not violate Rule 11 by bringing claims dependent on the argument that candidates have standing to challenge election procedures in advance of an election without showing a near-certainty of inaccurate election results.” [Cert.Pet., 8.] But *Bost* is inapposite. First, it has nothing to do with sanctions. *Bost* concerned whether candidates have standing to bring pre-enforcement challenges to the procedures that will govern their election. *Bost*, 146 S. Ct. at 519. There is no indication that the *Bost* candidates, or their attorneys, made false and misleading accusations and brought baseless claims without having conducted the reasonable inquiry required by Rule 11. And Petitioners were not sanctioned because they represented candidates who brought a pre-enforcement challenge to election procedures: they were sanctioned because they violated Rule 11’s requirements. *Bost*, therefore, offers no instructive authority on whether sanctions should have been awarded in this case, and Petitioners cannot rely on *Bost*’s holding to assert that they were wrongly sanctioned.

2. Light Least Favorable.

The *En Banc* Dissent accused the district court of “read[ing Petitioners’] complaint out of context and in the light least favorable to [Petitioners].” [App.144 (*En Banc Dissent*).] Petitioners cite to *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), for the proposition that a complaint’s allegations should be construed in the light most favorable to the plaintiff when it is viewed in relation to Rule 11 sanctions. According to Petitioners, the district court “employ[ed] a creative

reading that relied upon twisting and contorting plaintiffs' arguments and drawing all inferences against Petitioners[.]” [Cert.Pet., 10 (quotation marks and citation omitted).]

There are at least two problems with Petitioners' argument. First, *Scheuer* does not stand for the proposition that Petitioners claim. In *Scheuer*, this Court noted that “in passing on a motion to dismiss, whether on the ground of lack of jurisdiction over the subject matter or for failure to state a cause of action, the allegations of the complaint should be construed favorably to the pleader.” *Scheuer*, 416 U.S. at 236. This Court has never said that rule should apply to sanctions, and that is not the law in the Ninth Circuit. Thus, the district court was under no obligation to view the allegations in the light most favorable to Petitioners.

Nevertheless, the record is clear that the district court *did* read the FAC in the light most favorable to Petitioners when considering sanctions. As already noted, the district court gave Petitioners “the benefit of the doubt” when it was possible to treat their statements as “unpersuasive arguments rather than as false assertions of fact[.]” [App.81 (*Sanctions Order*).] And the Sanctions Order is replete with examples of the district court giving Petitioners the benefit of the doubt. For example, the district court declined to consider two of the FAC's paragraphs as sanctionable because Respondents had not objected to them in their Motion for Sanctions. [*Id.*68, n.3.] Additionally, the district court rejected Respondents' contention that the FAC's allegations that Arizona's tabulation results are not subject to vote-verifying audits were sanctionable. [*Id.*76-77.] The district court concluded that the paragraphs Respondents

cited “may be reasonably read as an assertion that Arizona’s tabulation results are not objectively evaluated, which, as discussed, is not true.” [*Id.*] But the district court explained that even though these paragraphs facially include material misstatements of the facts, other paragraphs in the FAC “allege that Arizona’s existing audit regime is insufficient, necessarily implying that such a regime exists.” [*Id.*77.] The court thus read the FAC in the light *most favorable* to Petitioners and declined to sanction them.

It did the same regarding the allegations about the Cyber Ninjas’ much publicized and much maligned hand-count of Maricopa County’s ballots following the 2020 general election. [*Id.*77-79.] Respondents asked the district court to sanction Petitioners for repeating the Cyber Ninjas’ debunked claims without noting that they had been disproven. [*Id.*] But the district court concluded that, because the cited paragraphs of the FAC “quote[d] and summarize[d] the Cyber Ninjas’ report” they were not Petitioner’s “direct allegations” and so were not sanctionable. [*Id.*78.]

The district court did the same with the FAC’s allegations that Respondents’ electronic tabulation machines can be connected to the Internet. [*Id.*79-81.] The court decided that, although Petitioners claims were in direct contradiction to more persuasive evidence offered by Respondents, it would “treat them as unpersuasive arguments rather than as false assertions of fact, allowing Plaintiffs the benefit of the doubt.” [*Id.*81.]

When the district court decided sanctions were warranted, it did not “employ a creative reading that relied upon twisting and contorting plaintiffs’ arguments and drawing all inferences against Petitioners”, as they allege. [Cert.Pet., 10.] It looked at the actual

words of the FAC. For example, the district court noted that the FAC stated that “Plaintiffs seek for the Court to Order, an election conducted by paper ballot, *as an alternative to the current framework.*” [App.65 (*Sanctions Order*) (emphasis added).] It is impossible to fairly construe that request as anything other than an assertion that “the current framework” does not utilize paper ballots to conduct elections. And as already noted above, there are many more allegations in the FAC that are impossible to fairly construe as anything other than false, misleading, and baseless claims.

In sum, the district court gave Petitioners the benefit of the doubt, and construed the FAC in their favor, every time that it could do so. Petitioners’ assertions to the contrary are unavailing. And even if the district court viewed the allegations less favorably than the En Banc Dissent,² this Court has said that

² Apparently missing the irony, the En Banc Dissent did to the district court judge what it accused the district court of doing to Petitioners: it read the Sanctions Order in the light least favorable to the district court. Despite the district court’s clear statement that it imposed sanctions to deter future frivolous filings, and the plethora of evidence from the Sanctions Order supporting that clear statement, the En Banc Dissent accused the judge of imposing sanctions “to deter a specific type of election litigation.” [App.147.] It asserted that the district court had “weaponize[d] sanctions to chill *politically* disfavored litigation.” [*Id.*151 (emphasis in original).] Even worse, the En Banc Dissent asserted that the district court made an “express declaration” that it imposed sanctions to “send a message’ to other litigants who may raise similar election-law disputes.” [*Id.*150-51.] The En Banc Dissent offered no citation for this alleged “express declaration,” nor could it, for none exists in the Sanctions Order. One cannot fairly read the Sanctions Order and arrive at such a low view of the district court and its ruling. This Court should give the En Banc Dissent no weight as a result.

the discretion to make those determinations lies with the district court and not with the courts of appeals. *Cooter*, 496 U.S. at 402 (“[T]he district court is better situated than the court of appeals to marshal the pertinent facts and apply the fact-dependent legal standard mandated by Rule 11.”). This is no basis to grant certiorari.

III. The District Court Properly Applied §1927.

When considering whether to sanction Petitioners under §1927, the district court again applied the correct legal standard. Section 1927 provides that “[a]ny attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.” 28 U.S.C. §1927. As the district court explained, “a finding of subjective bad faith” is required to impose sanctions under §1927. [App.62 (*Sanctions Order*) (quoting *Blixseth v. Yellowstone Mtn. Club, LLC*, 796 F.3d 1004, 1007 (9th Cir. 2015)).] “Bad faith is present when an attorney knowingly or recklessly raises a frivolous argument or argues a meritorious claim for the purpose of harassing an opponent.” [Id. (quoting *Blixseth*, 796 F.3d. at 1007).] The district court explained, citing *In re Keegan Management Co., Securities Litigation*, 78 F.3d 431, 436 (9th Cir. 1996), that “[s]anctions based on recklessness must be accompanied by a finding that the objectionable conduct is frivolous or was intended to harass.” [App.62 (*Sanctions Order*).]

After conducting the required analysis, the district court imposed sanctions against Petitioners under this statute. [App.92-94 (*Sanctions Order*).] Petitioners

allege that they were sanctioned under §1927 because the district court incorrectly applied *Purcell*. But that does not accurately describe the multiple reasons why Petitioners were sanctioned. Although *Purcell* was part of the district court’s decision to dismiss the MPI, it was only one of several factors which led to the district court’s decision to sanction Petitioners.

A. The District Court Properly Imposed §1927 Sanctions.

The record reveals that the district court sanctioned Petitioners because they “acted at least recklessly in unreasonably and vexatiously multiplying the proceedings by seeking a preliminary injunction based on Plaintiffs’ frivolous claims, in violation of Section 1927.” [App.95 (*Sanctions Order*).] Petitioners were sanctioned under §1927 for several reasons.

First, Petitioners violated §1927 when they knowingly persisted in their false allegations that Maricopa County did not use paper ballots by including those allegations in the MPI weeks after they had received Respondents’ Rule 11 letter explaining how these allegations were false. Specifically, the district court noted that the opening paragraph of the MPI alleged that “[e]xperience has now shown the move to computerized voting in Arizona was a mistake” so “[a] return to the tried-and-true paper ballots of the past—and of the present, in countries like France, Taiwan, and Israel—is necessary.” [*Id.*71-72 (italics in the Sanctions Order removed).] The district court found that this statement was necessarily based upon the assertion that Maricopa County did not use paper ballots. [*Id.*] The district court also found Petitioners’ comparison between electronic voting systems and “the prior practice by which ‘American voters recorded their votes by hand on paper ballots that were counted

by human beings” to be another attempt to mislead the court into thinking that Arizona did not use paper ballots. [*Id.*] Further, the fact that the MPI asked the district court to order Maricopa County to utilize paper ballots in the 2022 election was a direct representation to the court that paper ballots were not being used. [*Id.*; *id.*86 (noting that the MPI requested “an Order that all Arizona ballots be cast on paper, by hand”).]

The district court was particularly troubled by these statements because the MPI came weeks after Petitioners had received the Rule 11 letter explaining that these allegations were categorically false because Maricopa County already used paper ballots pursuant to Arizona law. [*id.* 93.] Given that the MPI both expanded and accelerated the proceedings, and that Petitioners knew these allegations were false when they filed the MPI, their conduct clearly “multiplie[d] the proceedings unreasonably and vexatiously.” And their knowledge of the falsity of these allegations when the MPI was filed provided the evidence of subject bad faith necessary to issue sanctions under §1927.

Second, Petitioners were sanctioned because their belated request for a preliminary injunction violated the *Purcell* doctrine. The district court found that the relief the MPI sought was “remarkable[,]” “massive,” and “perhaps unprecedented” in its scope and impact. [*Id.*86-87.] Among other things, Petitioners asked the court to “declar[e] it unconstitutional for any public election to be conducted using any model of electronic voting system to cast or tabulate votes” and to order “that all Arizona ballots be cast on paper, by hand, and that every vote be counted, by hand, according to specific procedures outlined by Plaintiffs.” [*Id.*86

(cleaned up).] Even if the court would have agreed that this requested relief concerning how ballots should be tabulated was warranted, it would have been impossible for Arizona to implement it “mere months” before the upcoming 2022 election. [*Id.*] Because Petitioners asked for this relief shortly before the 2022 election, they “bore a substantial burden to demonstrate that such an intervention was constitutionally required and in the public interest.” [*Id.*87.] But Petitioners “never had a factual basis or legal theory that came anywhere close to meeting that burden.” [*Id.*]

Third, and related to the second point, Petitioners were sanctioned for their litigation conduct. As the district court explained, Petitioners “waited nearly seven weeks after filing this case to move for a preliminary injunction, despite alleging imminent and irreparable injury in their original Complaint.” [*Id.*93.] As a result, “[b]y the time of the MPI hearing on July 21, 2022, the midterm election was fewer than four months away.” [*Id.*] This was problematic because, among other things, the Rule 11 letter included a discussion of the *Purcell* doctrine, which necessitated the district court denying Petitioners’ claims for relief in advance of the 2022 elections. [*Id.*] Yet Petitioners waited several weeks after receiving this letter, and months after first alleging imminent harm, to bring the MPI. This delay exacerbated Petitioners’ *Purcell* problems because each day they delayed bringing the MPI, their requested relief related to the 2022 election became more and more impossible to implement and their claim thus became more and more frivolous.³ In bringing the MPI weeks

³ Petitioners attempt to argue that this is excusable because they also requested relief in future elections. But that argument

after receiving the Rule 11 letter, Petitioners frivolously and vexatiously expanded the litigation, forcing Respondents to engage in significant legal work on a short timeline to respond to the MPI. Respondents' reasonable attorneys' fees is a perfectly appropriate sanction in response to this conduct.

Based upon the above, the district court concluded that Petitioners "knew or reasonably should have known that the Court could not and would not grant the wide-ranging, latebreaking relief they sought." [*Id.*94.] Accordingly, the court found that Petitioners "acted at least recklessly in multiplying the proceedings" in violation of §1927. [*Id.*] These findings amply support an award of sanctions under §1927.

B. The Court of Appeals Properly Affirmed the §1927 Sanctions.

As with Rule 11, the decision to sanction a party under §1927 rests within the district court's discretion. *Kaass L. v. Wells Fargo Bank, N.A.*, 799 F.3d 1290, 1292 (9th Cir. 2015) ("We review all aspects of an award of § 1927 sanctions for an abuse of discretion."). Appellate courts will only reverse a district court's finding of subjective bad faith, necessary for §1927 sanctions, if it is "clearly erroneous." [App.10 (*Appellate Sanctions Opinion*).] The Ninth Circuit agreed with the district court that the relief that Petitioners sought in the MPI was "a complete overhaul of the Arizona election system," which was "impossible under the time constraints." [*Id.*] It further agreed that the MPI was

is a red herring. The MPI requested this relief for the 2022 election, which was impossible to achieve. Petitioners were sanctioned for requesting this relief in relation to the 2022 election and were not sanctioned for their requests relating to future elections.

frivolous “for the same reasons as the FAC, as it reiterated many of the same factual misrepresentations.” [*Id.*] And it explained that “[t]he district court’s express finding that this behavior was reckless and met the standard for bad faith under §1927 is not clearly erroneous.” [*Id.*] Though the discretion to sanction Petitioners stayed with the district court, the Ninth Circuit also independently concluded that Petitioners’ conduct was worthy of sanctions under §1927. Thus, the Ninth Circuit was correct to affirm the Sanctions Order.

C. Petitioners’ Request for the Court to Revisit *Purcell* is Inappropriate.

In an effort to manufacture a legal issue to entice the Court’s review, Petitioners suggest that the Court should use this Petition to revisit the *Purcell* principle, which establishes that challenges to election procedures governing an upcoming election cannot succeed when they are brought so close to the election that they cannot practically be implemented. The Court should not revisit this principle here, for several reasons.

First, *Purcell* is not dispositive of any of the issues presented. Though Petitioners assert that *Purcell* is the only reason they were sanctioned under §1927, this is simply not true. As discussed above, the district court sanctioned Petitioners pursuant to §1927 for several reasons, of which *Purcell* was only one. Consequently, a ruling reversing the §1927 sanctions based upon the frivolousness of Petitioners’ MPI due to *Purcell* would not change anything; the sanctions under §1927 based upon Petitioners’ knowingly false statements to the district court would still stand. Because any *Purcell* analysis would not change the result of any sanctions award in this case, this appeal

does not present an appropriate vehicle for analyzing *Purcell*.

Second, if Petitioners wanted to ask the Court to revisit *Purcell*, they should have asked the Court to do so in the merits appeal. As discussed, the merits appeal, concerning the dismissal of Plaintiffs' election procedures challenge, continued on a separate appellate track that resulted in a separate petition for writ of certiorari to this Court in Supreme Court Case No. 23-1021. During the merits appeal, Petitioners and their clients never asked any court to review *Purcell*. Similarly, Petitioners in the sanctions appeal have never before challenged the viability of *Purcell*. Because Petitioners did not raise this *Purcell* issue until the Petition, it is waived. See *United States v. Ortiz*, 422 U.S. 891, 898 (1975) ("We therefore decline to consider this issue, which was raised for the first time in the petition for certiorari"). But Petitioners' waiver here is more severe than a standard waiver because they did not raise their challenge to *Purcell* through the whole of the merits appeal in addition to the sanctions appeal. Given that the merits appeal turned heavily on *Purcell*, Petitioners' attempts to raise the issue now is both waived and an improper collateral attack on the Ninth Circuit's Merits Opinion, which relied upon *Purcell*.

Third, there is little to no meaningful guidance to be given on the intersection between *Purcell* and a sanctions award because both are highly variable and generally left to the discretion of the district court. The moment that an election procedures challenge violates *Purcell* is wildly variable based upon several factors including: the nature of the election procedures challenged; the nature of the election (local, general, primary, etc.); the relief requested; the size of the

jurisdiction; and several other factors. There can be no brightline rule for when a challenge violates *Purcell* because these variables are fact intensive and vary case-by-case. And, as discussed, the circumstances in which district courts issue sanctions is similarly variable because such decisions are generally left in the district court's discretion. *Cooter*, 496 U.S. at 404-05 (“Although district courts’ identification of what conduct violates Rule 11 may vary, some variation in the application of a standard based on reasonableness is inevitable.”).

Although Petitioners ask this Court to revisit *Purcell*, they were properly sanctioned under any reasonable formulation of the *Purcell* principle (as well as reasons having nothing to do with *Purcell*). Accordingly, this Petition does not provide a proper basis for the Court to revisit *Purcell* and its progeny.

CONCLUSION

Rule 11 serves an important purpose in American jurisprudence. It is not broken, and it does not need to be modified. Respondents urge this Court to decline Petitioners' invitation to lower the ethical standards that prevent attorneys from misleading federal courts. For the foregoing reasons, this Court should deny Petitioner's Petition for a Writ of Certiorari.

Respectfully submitted,

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