No. 21-1442

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

KEVIN O'ROURKE, NATHANIEL L. CARTER, LORI CUTUNILLI, LARRY D. COOK, ALVIN CRISWELL, KESHA CRENSHAW, NEIL YARBROUGH, and AMIE TRAPP, *et al.*,

Plaintiffs – Appellants,

v.

DOMINION VOTING SYSTEMS, INC., FACEBOOK, INC. n/k/a META PLATFORMS, INC.*, a Delaware corporation, CENTER FOR TECH AND CIVIC LIFE, an Illinois non-profit organization, *et al.*,

Defendants – Appellees.

On Appeal from the United States District Court
for the District of Colorado
The Honorable N. Reid Neureiter
Magistrate Judge
D.C. No. 20CV03747

DEFENDANTS-APPELLEES' JOINT ANSWER BRIEF

Oral Argument Is Requested

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*After the district court order dismissing this case, Facebook, Inc. changed its name to Meta Platforms, Inc.

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CORPORATE DISCLOSURE STATEMENT

US Dominion, Inc. has 100 percent ownership in Defendant-Appellee Dominion Voting Systems, Inc.

After the district court order dismissing this case, Defendant-Appellee Facebook, Inc. changed its name to Meta Platforms, Inc. ("Meta"). Meta is a publicly traded corporation with no parent corporation. No publicly held corporation owns more than 10 percent of Meta's stock.

Defendant-Appellee Center for Tech and Civic Life is an Illinois private, non-profit corporation. It has no parent corporation and no publicly held corporation owns more than 10 percent of its stock.

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CERTIFICATE REGARDING SEPARATE BRIEFING

Pursuant to 10th Cir. R. 31.3(B), undersigned counsel certify that this separate answer brief for Defendants-Appellees Dominion, Meta, and CTCL is necessary. In the district court, five sets of defendants—Dominion, Meta, CTCL, Michigan state officials, and Pennsylvania state officials—sought and obtained sanctions against Appellants. Generally, the government defendants raised one set of arguments for sanctions, and the non-government defendants raised a distinct (though partly overlapping) set of arguments. This reflected, among other things: the unique course and timing of interactions between the parties; the fact that all claims against the government defendants were voluntarily dismissed following their service of sanctions motions; differences in the legal theories advanced by Appellants with respect to government versus non-government defendants; and distinctions in the substantive and procedural objections that Appellants raised to each sanctions motion. Therefore, one brief from the government defendants and one brief from the non-government defendants is the most appropriate means to present each defendant's position in this appeal.

PRELIMINARY STATEMENT

Sanctions are never to be imposed lightly. In some cases, however, they are a necessary response to attorney conduct that grievously violates the ethical and professional standards applicable to every officer of the court. As the district court determined—based on well supported factual findings and legal analysis—this is one such case. The district court did not abuse its discretion in concluding that Plaintiffs' counsel (hereinafter "Appellants") engaged in three types of sanctionable conduct.

First, Appellants created and filed a suit that rests on an objectively frivolous theory of Article III standing: namely, that any registered voter, anywhere in the country, no matter whom they voted for or whether they voted at all, can file suit in any federal court in the United States against anyone who they believe did anything improperly affecting a presidential election. No precedent supports this theory; binding precedent forecloses it. Yet Appellants persisted in their case—indeed, they sought to expand it several times—even after receiving Rule 11 letters, motions to dismiss, and judicial admonitions identifying this fundamental and fatal defect. And they made no serious effort, at any point in these proceedings, to

refute or distinguish the "veritable tsunami" of decisions (many of them issued recently) confirming that their case was objectively frivolous.

Second, Appellants filed a series of federal pleadings—including a Complaint, a proposed Amended Complaint, and numerous motions and briefs—containing extremely serious allegations that they made no real effort to investigate or verify. Appellants' own clients had no firsthand knowledge of most of the allegations. Instead, Appellants relied almost entirely on factual claims and expert affidavits from other (unsuccessful) lawsuits—which in some cases they copied directly into their own filings. But Appellants did not speak to *any* of the lawyers or "experts" who originally submitted those materials. Nor did they take steps to verify the larger conspiracy theory they assembled from these and other "facts" that they found on the internet. This violated Appellants' personal duty to undertake a pre-filing inquiry reasonable under the circumstances.

Third, Appellants engaged in this whole course of conduct with an improper purpose. As the district court found, this improper purpose was clear from the objective frivolity of their Article III legal theory, and it was separately confirmed by their misrepresentations about a *TIME Magazine* article on which they based a proposed civil RICO allegation.

The district court's finding of bad faith is only bolstered by Appellants' repeated misrepresentation of precedent (including cases from which they copied and pasted allegations), and by Appellants' use of this case to level false and irrelevant attacks on Dominion, Meta, and CTCL.

Appellants contend that the district court abused its discretion in imposing sanctions. It did not. The district court consistently articulated and applied the correct legal standards under 28 U.S.C. § 1927, Federal Rule of Civil Procedure 11, and its inherent authority. Moreover—despite Appellants' insistence otherwise—Dominion, Meta, and CTCL complied with Rule 11's procedural requirements. And Appellants offer no reason for this Court to second-guess the district court's calibrated fee award.

Every lawyer who appears in court must comply with very basic rules of professional conduct. That is true no matter what views they hold or how earnestly they believe in their cause. For the legal system to function properly—and for courts to maintain integrity and order—lawyers must uphold the ethical standards that apply to us all. But as the district court found, Appellants repeatedly violated those obligations. Allowing such conduct to pass unsanctioned would only invite more of it. This Court should therefore affirm the district court's award of sanctions.

RESTATEMENT OF THE ISSUES

I. Whether the district court abused its discretion in sanctioning Appellants for pursuing an objectively frivolous lawsuit that Plaintiffs lacked Article III standing to bring in federal court.

II. Whether the district court abused its discretion in sanctioning Appellants for failing to conduct an inquiry reasonable under the circumstances before filing this lawsuit and associated pleadings.

III. Whether the district court abused its discretion in sanctioning Appellants for filing this case and certain pleadings in bad faith.

IV. Whether the district court abused its discretion in determining an appropriate sanctions award against Appellants.

STATEMENT OF THE CASE

Dominion, Meta, and CTCL have already set forth a detailed statement of the case in the related merits appeal. In the interests of efficiency, we assume the Court's familiarity with that background and focus on the procedural history most relevant to the sanctions issue.

A. The Original and Proposed Amended Complaints

On December 22, 2020, Appellants filed a sprawling 409-paragraph Complaint alleging that Dominion, Meta, and CTCL—along with two

private individuals, up to 10,000 unnamed co-conspirators, and officials in Pennsylvania, Michigan, Georgia, and Wisconsin—had undertaken a vast, secretive conspiracy to subvert the results of the 2020 presidential election. Aplt. App., Vol. I at 19–102. Many factual allegations that Appellants inserted into the Complaint were copied wholesale from pleadings or affidavits in other unsuccessful lawsuits seeking to block or reverse the certification of the results of the presidential election. *Id.*

Appellants selected Kevin O'Rourke as their lead plaintiff and attached an affidavit—which (as they later conceded) contained false statements—in which O'Rourke claimed that he had "not voted" in "the previous two presidential election cycles." Aplt. App., Vol. I at 106, ¶ 11; *see also* Aplt. App., Vol. VII at 1565–66. On behalf of O'Rourke and other named individuals, as well as a putative class of 160 million registered voters from across the United States, the Complaint sought $160 billion in "nominal" damages. Aplt. App., Vol. I at 100; *see also* Aplt. App., Vol. XI at 2572. Contrary to Appellants' repeated claims that they sought only money damages—and that they did not seek a judicial order undoing or contesting the election results—the Complaint also sought declaratory and injunctive relief to render the "actions of the Defendants, as herein

described . . . unconstitutional and ultra vires, thereby making them legal nullities." Aplt. App., Vol. I at 101. Those "actions" of the official defendants included actions related to the administration and certification of the 2020 presidential election. *See, e.g.*, *id.* at 31 ¶ 59, 32–33 ¶¶ 68–69, 33–34 ¶¶ 72–74, 37 ¶¶ 93–95, 40 ¶ 125.

Appellants served Dominion and Meta in January 2021.[1] In short order, both defendants sent letters to Appellants in which they requested withdrawal of the Complaint on the ground that it violated Federal Rule of Civil Procedure 11. *See* Aplt. App., Vol. VIII at 1729–31; *id.*, at 1811–13. Quoting an opinion that dismissed one of the complaints from which Appellants had copied and pasted allegations in their own filing, Meta emphasized that a litigant cannot "use a 'federal court as a forum in which to air his generalized grievances about the conduct of government.'" *Id.* at 1812 (quoting *Feehan v. Wis. Elections Comm'n*, No. 20 Civ. 1771, 2020 WL 7250219, at *7 (E.D. Wis. Dec. 9, 2020)).

[1] Appellants initially filed defective summonses, s*ee* ECF 6, delayed in serving several defendants, *see* Aplt. App., Vol. VIII at 1755, and filed notices of appearance that violated the district court's local rules governing signatures, *see* ECF 10.

Despite these clear and early warnings about sanctionable conduct, Appellants persisted with their case. Dominion and Meta therefore filed motions to dismiss on February 16, 2021, explaining that the Complaint failed to establish Article III standing and failed to state a claim on which relief could be granted. *See* Aplt. App., Vol. II at 242–87. Appellants responded three weeks later with opposition briefs that ignored virtually all the precedents and arguments set forth by Dominion and Meta. *See id.* at 301–23; *see also* Aplt. App., Vol. III at 711–36. In fact, Appellants' briefs each devoted less than two pages of argument to standing, and those pages consisted almost entirely of a discussion of *Anderson v. Celebrezze*, 460 U.S. 780 (1983), a case that did not address or decide any Article III issue. *See* Aplt. App., Vol. VI at 1192–93; *id.* at 1297; Aplt. App., Vol. VII at 1479 & n.3. Not only did Appellants choose not to engage in good faith (or at all) with the very same Article III arguments that Meta and Dominion had already presaged in their Rule 11 letters, but they did so despite helping themselves to ten extra pages beyond the clear limit established by local rules. *See* Judge Neureiter's Practice Standards for Civil Cases, Section E.2; *see also* ECF 42 at 1.

Meanwhile, Appellants served CTCL, which informed them that it would also seek immediate dismissal. *See* Aplt. App., Vol. VIII at 1755. In response, Appellants stated that they would be filing an amended complaint by March 9, 2021. When Appellants did not file by that date, CTCL proceeded to file its motion to dismiss. *See* Aplt. App., Vol. IV at 737–57. Like Dominion and Meta, CTCL explained that the Complaint improperly asserted "only a generalized grievance," adding that "eight federal district courts, three unanimous appellate panels, and two Supreme Court Justices [had] rejected attacks on the legality of CTCL's" grant program. *Id.* at 743 & n.1 (collecting federal cases); *id.* at 746–47.

On March 11, 2021, Magistrate Judge Neureiter held an initial status conference. During that conference, Appellants announced that they would defend the original Complaint while also seeking leave to amend it, a plan that Judge Neureiter approved. *See* Aplt. App., Vol. IV at 767–70. All parties expressly confirmed their consent to proceed before a magistrate judge. *See* Aplt. App., Vol. II at 288–89; *see also* ECF 50–54. Recently, Appellants have explained that they consented because they specifically hoped to avoid judicial oversight and believed a magistrate judge would simply rubber stamp their case: "One of the reasons that we

consented to the magistrate, I've said this a couple of times, is because we don't need the judge . . . . No, we just need the magistrate to sit quietly off to the side and sign orders that we present after argument, whether that be for discovery or depositions or subpoenas or requests for production of documents, whatever the case may be." Gary Fielder, *Episode #1: Introduction*, YouTube (Mar. 18, 2022), *available at* https://www.youtube.com/watch?v=X7ArQmWjCIw. This statement may explain (though it does not excuse) Appellants' choice to ignore Judge Neureiter's pointed warnings throughout the initial conference that they needed to address the significant issues that had been identified with respect to Article III standing. *See* Aplt. App., Vol. IV at 771–74, 781–82.

Four days after the initial status conference, Appellants docketed a motion for leave to file an amended complaint. Aplt. App., Vol. V at 891–1006. Appellants' proposed Amended Complaint did not contain any new allegations responsive to the Article III defects that Dominion, Meta, and CTCL had identified—and that Judge Neureiter had warned them just days earlier they would need to address. Rather than respond to the serious concerns that had been raised in Rule 11 letters, the motions to dismiss, and the district court's admonition, Appellants instead decided

to expand the case by adding 152 new plaintiffs (none of whom offered a novel or distinct basis for satisfying Article III). *See* Aplt. App., Vol. V at 878. Appellants also added 473 new paragraphs and six new causes of action, including a civil RICO claim against Meta and CTCL that—as Judge Neureiter later found—rested on misrepresentations of a *TIME Magazine* article. *See* Aplt. App., Vol. V at 891–1005; *see also* Aplt. App., Vol. XI at 2629 ("[O]n review of the *Secret History* article, not one word is remotely supportive of the existence of an illegal, illegitimate, or unconstitutional effort to rig the 2020 election, which is what the article is cited for in Plaintiffs' proposed Amended Complaint.").

On March 29, 2021, Dominion, Meta, and CTCL filed oppositions to Appellants' motion for leave to file the proposed amended complaint. Once again, all three defendants emphasized that the plaintiffs clearly lacked Article III standing—supporting that argument with reference to substantial legal authority and devoting their principal contentions to the complete absence of any sufficient allegation of injury-in-fact. *See* Aplt. App., Vol. VI at 1263–1319. And once again, Appellants decided to respond without addressing most of the arguments or cited cases. *See id.* at 1366–75, 1413–21, 1433–42. Indeed, Appellants' briefs cited virtually

no caselaw interpreting or applying Article III's familiar injury-in-fact requirement; instead, they cited a grab bag of habeas rulings, criminal law cases, and merits opinions, plus one case holding that nominal damages can satisfy the redressability element of Article III standing. *See generally id.* Consistent with their prior practice, Appellants filed these reply briefs late, this time attributing their delay to "computer malfunctions which ultimately caused late delivery." ECF 78 at 1.

B. The Service of Sanctions Motions on Appellants

In light of these developments, it was clear that Appellants were not upholding their duties as officers of the Court. Despite repeated warnings—including from the presiding judge—they had multiplied the proceedings and burdened the defendants with a prolix pleading that made no apparent effort to address a glaring Article III defect. Moreover, the Complaint (even with the proposed amendments) retained extensive copy-and-paste allegations from other failed suits, included objectively frivolous and incomprehensible causes of action, leveled extraneous (and false) attacks on each of the defendants, sought a preposterous damages award, and sought injunctions aimed directly at state law elections administration. *See* Aplt. App., Vol. I at 19–102; Aplt. App., Vol. V at 891–

1005. As if that were not enough, Appellants appeared to have lodged their pleadings without a reasonable pre-filing investigation.

For these reasons, Dominion, Meta, and CTCL served Appellants with Rule 11 sanctions motions between April 5 and 12, making clear that they would in fact ask the Court to impose sanctions if Appellants did not withdraw their legally and factually defective pleadings. *See* Aplt. App. Vol. VIII, at 1755, 1818; Aplt. App., Vol. IX at 2032.

Rather than recognize and uphold their professional obligations, however, Appellants decided to double down. They persisted in the suit. They did not provide a written response to the sanctions motions. And shortly thereafter, they sought to *expand* the litigation once again, this time by requesting consent "to join approximately 350 new plaintiffs." *Id.* at 1781–82. Defendants did not consent to that improper request.

C. Oral Argument and Dismissal of the Case

Judge Neureiter scheduled argument on the pending dispositive motions for April 27, 2021. The night before the hearing, in clear violation of their meet-and-confer obligations, Appellants filed a motion seeking judicial notice of several dozen sources—ranging across cases, books, articles, websites, and online videos pushing a conspiracy theory

championed by a pillow salesman named Mike Lindell (CEO of MyPillow, Inc.). *See* Aplt. App., Vol. VII at 1525–31. Most of these materials had been publicly available at the time Appellants drafted their pleadings.

At the April 27th hearing, Appellants stood by their claims of a vast conspiracy aimed at the election—and again announced their intention to join hundreds of additional plaintiffs to this lawsuit, each of whom would submit an affidavit stating that they "feel very passionate" that their "rights have been violated" by Defendants. *Id.* at 1687. But Appellants still did not offer any serious response to the wall of Article III precedent cited by Defendants that foreclosed their position.

After denying the judicial notice motion as "sand bagging in the worst way," Judge Neureiter directly questioned Mr. Fielder about the Article III standing issue: "Why didn't you cite a single case of the dozens that have been issued by Federal District Courts across the country dismissing the claims exactly like yours on the basis of standing[?] You didn't mention any of them in either your motion to amend or your opposition to the motions to dismiss. Why not?" *Id.* at 1675. Yet even given this opportunity, Mr. Fielder still failed to respond to most of the cited cases, offering only irrelevant distinctions as to a handful of them

(*e.g.*, that they involved official defendants or requests for interim relief, facts that did not make their Article III analysis any less apposite). *Id.* at 1675–76. As the hearing progressed and Mr. Fielder persisted in evasive and frivolous answers, Judge Neureiter pointedly added: "I'm a little bit shocked that you, even today, given this opportunity, you're not responding to these cases. Supreme Court cases, Tenth Circuit cases, Eleventh Circuit cases, and dozens of District Courts that dismiss cases just like this on the basis of lack of standing." *Id.* at 1685.

Ultimately, when Judge Neureiter asked Mr. Fielder to identify legal authorities that best supported his position, Mr. Fielder cited two Supreme Court merits cases that did not address Article III standing at all—and then invoked *Brown v. Board of Education*. *See id.* at 1701–03.

On April 28, 2021, Judge Neureiter dismissed the Complaint for lack of standing and denied as futile the pending motion for leave to amend. *See* Aplt. App., Vol. VII at 1536. Consistent with the Rule 11 letters, multiple motions to dismiss, and earlier judicial admonitions that Appellants had received, Judge Neureiter concluded that the case presented only a "generalized grievance about the operation of government, or about the actions of the Defendants on the operation of

government, resulting in abstract harm to all registered voting Americans." *Id.* at 1584–85. He emphasized that this "is not the kind controversy that is justiciable in a federal court," *id.* at 1585, and that "a veritable tsunami of decisions [found] no Article III standing in near identical cases to the instant suit," *id.* at 1592. Judge Neureiter further noted that "Plaintiffs' arguments . . . are cursory and neither cite nor distinguish any of the cases that have found a lack of standing among voter plaintiffs making challenges to the 2020 election." *Id.* at 1521.

The very next day, Appellants filed a notice of appeal. *Id.* at 1572. They also submitted a "correction" to Mr. O'Rourke's affidavit, clarifying that he had voted in the 2020 election despite stating otherwise under oath in his original affidavit. *See* Aplt. App., Vol. VII at 1565–66.

D. The Filing of Sanctions Motions

On May 21, 2021, Dominion, Meta, and CTCL moved for sanctions under Federal Rule of Civil Procedure 11, 28 U.S.C. § 1927, and the district court's inherent authority. *See* Aplt. App., Vol. VIII at 1716–28, 1748–70, 1783–89. Each defendant attached the original Rule 11 motion they had already served on Appellants, and Meta and CTCL also attached more fulsome memoranda of law supporting their positions.

One month later, Appellants filed their opposition briefs. *See id.* at 1947–61; Aplt. App., Vol. IX at 1987–2006. Although the sanctions motions expressly contended that Appellants had failed to conduct an adequate pre-filing investigation and had submitted pleadings with improper motives, Appellants did not submit any affidavits, declarations, or other sworn testimony describing their own investigatory efforts or purposes in filing suit. Rather, Appellants addressed these issues in their brief—where they tacitly conceded that they had simply parroted "facts" from other unsuccessful cases (as well as sources they found online) without conducting any further inquiry of their own into the underlying veracity of those allegations (and without speaking to any of the lawyers or supposed experts who had filed those statements in other cases). *See* Aplt. App., Vol. IX at 1989–90. Further, despite direct argumentation on this point in the sanctions motions, Appellants failed to clarify why they continued pressing these copycat averments after their primary authors had already been sanctioned for making them or had expressly acknowledged that no reasonable person would have believed them. *See, e.g.*, *US Dominion Inc. v. Powell*, No. 21 Civ. 40, Dkt. 22 at 27–28 (D.D.C. Mar. 22, 2021) (concession by Sidney Powell that no reasonable person

would accept her allegations as fact). And Appellants offered no response to specific contentions that they had materially misrepresented the facts, history, and outcome of cases on which they purported to rely. *See* Aplt. App., Vol. VIII at 1763–64; Aplt. App., Vol. IX at 2083–84.

Judge Neureiter set a hearing on the sanctions motions for July 16, 2021. Two days before that hearing, he issued a detailed order setting forth questions "that the parties [should] be prepared to discuss." Aplt. App., Vol. IX at 2103–06. Contrary to Appellants' claim in this Court that they suffered from a lack of constitutionally adequate notice, they were advised to be ready to address (among other things) "the appropriate legal standard for a reasonable pre-filing inquiry under Rule 11 of the Federal Rules of Civil Procedure and whether reliance on press/media reports, or factual allegations made in other lawsuits, is enough to satisfy the requirement of a reasonable pre-filing inquiry." *Id.* at 2104.

At the sanctions hearing, Judge Neureiter heard argument from all parties—including over an hour of oral argument by Appellants (both of whom participated). As Appellants confirmed at the hearing, they "didn't speak to any of the experts" whose writings they took from other cases, Aplt. App., Vol. XI at 2464, they "never spoke to Sidney Powell . . . [or]

Lynn Wood" or any of the other lawyers whose pleadings they copied, *id.* at 2465, and they "did not speak with any of the affiants personally" in copying affidavits from other lawsuits, *id.* at 2488. Rather, Appellants found information on the internet and put it in their pleadings: "I was just amassing all of this data, and it all seemed to be connected. I was just connecting dots, and I put it in the complaint to establish what I was looking at . . . I put it in there." *Id.* at 2485. To support that work, Appellants repeatedly solicited funds online, persuading "approximately 2,100 people" to donate "approximately $95,000." *Id.* at 2476. When asked whether he would file the same Complaint today, Mr. Walker answered (without hesitation), "Yes." *Id.* at 2491.

Five days after the sanctions hearing, Appellants filed a motion seeking an evidentiary hearing on whether they had conducted a reasonable pre-filing inquiry. *Id.* at 2558–62. Judge Neureiter denied their motion: "That train left the station last Friday. The sanctions motions have been argued and submitted." *Id.* at 2564. Whereas Appellants professed surprise at having been questioned on the ethical adequacy of their pre-filing investigation, Judge Neureiter explained that the relevance of that issue was "obvious from the day of the filing of the

first sanctions motion." *Id.* He also pointed to his own pre-hearing order, which had provided "fair notice" that the parties should be prepared to address the adequacy of Appellants' pre-filing investigation. *Id.* Because Appellants had already chosen not to "present witnesses or documentary evidence in opposition to Defendants' sanctions motions"—and because "neither made any request to present witness testimony or documentary exhibits at the motions hearing"—they were not free to demand that the Court afford yet another opportunity after the hearing was complete. *Id.*

E. The Imposition of Sanctions

On August 3, 2021, Judge Neureiter issued an order granting Defendants' sanctions motions. *See id.* at 2567–2634.[2] In reaching this conclusion, Judge Neureiter first noted that "this was not a normal case in any sense." *Id.* at 2571. For starters, "[t]he Complaint is one enormous conspiracy theory." *Id.* By virtue of that theory, Plaintiffs "came seeking a determination from a federal court in Colorado that the actions of multiple state legislatures, municipalities, and state courts in the

[2] The defendant state officials from Pennsylvania and Michigan also sought sanctions against Appellants based largely on the same (or overlapping) grounds as Dominion, Meta, and CTCL. *See* Aplt. App., Vol. at 1732–47 (PA), 1927–43 (MI). The district court granted their sanctions motions as well. Aplt. App., Vol. XI at 2630–33 & n.9.

conduct of the 2020 election should be declared legal nullities." *Id.* This "would have included the certification of the votes of the states and the subsequent inauguration of President Biden." *Id.* At the same time, "the main focus of the suit, at least as emphasized by Plaintiffs' counsel in argument, was a demand for a massive amount of money, likely greater than any money damage award in American history." *Id.* at 2572. Indeed, the requested "nominal amount" of "$160 billion" in damages was "greater than the annual GDP of Hungary." *Id.*

Against that background, Judge Neureiter identified three separate grounds warranting sanctions. First, Judge Neureiter imposed sanctions based on the objective frivolity of Plaintiffs' standing contentions, which he found to be the "most patent deficiency in Plaintiffs' wide-ranging, scatter-shot Complaint." *Id.* at 2579. In support of that conclusion, Judge Neureiter cited *Collins v. Daniels*, 916 F.3d 1302 (10th Cir. 2019), where this Court affirmed a sanctions award on the ground that "the plaintiffs' attorney had sued without any 'objectively reasonable basis for asserting standing to sue.'" *Id.* at 2584, 2616 (citation omitted). The same logic applied here for a simple reason: "[T]here was no good faith basis for believing or asserting that Plaintiffs had standing to bring the claims

they did." *Id.* at 2616. Judge Neureiter found that "Plaintiffs' effort to distinguish this case from what [he] referred to as a 'veritable tsunami' of adverse precedent was not just unpersuasive but crossed the border into the frivolous." *Id.* at 2582. He therefore concluded that "[n]o reasonable attorney would have believed Plaintiffs, as registered voters and nothing more, had standing to bring this suit." *Id.* at 2617.

Second, Judge Neureiter found that Appellants had failed to engage in a pre-filing inquiry that was "reasonable under the circumstances." Fed. R. Civ. P. 11(b). He reasoned that "[t]he circumstances of this case both allowed for and mandated significant diligence and investigation before filing suit"—not least because Appellants were fully aware "that numerous lawsuits making similar allegations had failed." Aplt. App., Vol. XI at 2597–98. As Judge Neureiter explained, "[l]awyers who conceive of a lawsuit seeking $160 billion dollars, making allegations questioning the validity of a Presidential election, and the fairness of the basic mechanisms of American democracy, must conduct extensive independent research and investigation into the validity of the claims before filing suit." *Id.* But "this lawsuit was filed with a woeful lack of investigation into the law and (under the circumstances) the facts." *Id.*

at 2615. Appellants copied whole sections of the Complaint from failed lawsuits, undertook virtually no independent fact research or investigation, and filed client affidavits that were "notable only in demonstrating no firsthand knowledge by any Plaintiff of any election fraud, misconduct, or malfeasance." *Id.* at 2573; *see also id.* at 2619–21. Under the surrounding circumstances in which Appellants had leveled such explosive charges with such a shockingly frail inquiry into their truth, this was sanctionable: "The lawsuit put into or repeated into the public record highly inflammatory and damaging allegations that could have put individuals' safety in danger. Doing so without a valid legal basis or serious independent personal investigation into the facts was the height of recklessness." *Id.* at 2615.

Finally, Judge Neureiter found that "Plaintiffs' counsel acted with objective bad faith in filing this lawsuit and dumping into a public federal court pleading allegations of a RICO conspiracy that were utterly unmerited by any evidence." *Id.* at 2627. With respect to this basis for sanctions, Judge Neureiter determined that Appellants had engaged in affirmative misrepresentations to the Court. *See id.* at 2630 ("No reasonable lawyer acting in good faith, as an officer of the court, would

have . . . made representations to the Court saying the allegations of a conspiracy to rig the election could be supported with citations to an article [that] says the exact opposite.").

On September 29, 2021, Appellants sought reconsideration of the sanctions order. *See* Aplt. App., Vol. XII at 2814–29. On October 5, 2021, Judge Neureiter denied that motion in relevant part because Appellants identified "no intervening change in controlling law," "no new evidence that was previously unavailable," and no "clear error to be corrected or a manifest injustice that needs to be prevented." *Id.* at 2930–33.

On November 22, 2021, following extensive briefing on the proper amount of sanctions, Judge Neureiter issued a final sanctions order directing Appellants to pay $62,930.00 to Dominion, $62,930.00 to CTCL, and $50,000.00 to Meta. *See* Aplt. App., Vol. XIII at 2958. In assessing these amounts, Judge Neureiter properly reviewed and applied this Court's precedents. For Rule 11 and inherent authority sanctions, those precedents direct attention to four factors: "(1) the reasonableness of the proposed fees, (2) the minimum amount required to deter misconduct, (3) the offender's ability to pay, and (4) 'other factors' as the court sees fit, such as the offending party's history, experience, and ability; the severity

of the violation; and the risk of chilling zealous advocacy." *King v. Fleming*, 899 F.3d 1140, 1155 (10th Cir. 2018); *see also Farmer v. Banco Popular of N. Am.*, 791 F.3d 1246, 1259 (10th Cir. 2015) (inherent authority sanctions). In contrast, sanctions under Section 1927 are "victim-centered" and aim only at ensuring compensation. *Hamilton v. Boise Cascade Express,* 519 F.3d 1197, 1205 (10th Cir. 2008). Here, as confirmed by his detailed and painstaking 21-page opinion, Judge Neureiter carefully tested the evidence before him against those legal standards and determined appropriate sanctions awards.

F. Appellate Proceedings

On November 4, 2021, before Judge Neureiter imposed a specific award of sanctions, Appellants appealed his order granting the sanctions motions. *See* No. 21-1394. When this Court issued an order to show cause directing Appellants to explain whether the district court had issued an appealable final order, Appellants dismissed their procedurally improper appeal. *See* Aplt. Resp. to Dec. 8, 2021 Order (Dec. 22, 2021).

On December 22, 2021, Appellants filed a notice of appeal from Judge Neureiter's final order awarding sanctions. Since then, Appellants have received multiple extensions, missed this Court's filing deadline at

least once, and failed to comply with the Court's settled meet and confer requirements for motions seeking an extension of time. *See, e.g.*, Order Granting Mot. for Ext. of Time (Feb. 11, 2022); Order Granting Mot. for Ext. of Time (Mar. 15, 2022); Order Granting Mot. to File Br. Out of Time (Apr. 11, 2022); *see also* No. 21-1161, Mot. to File Late; No. 21-1442, Mot. to File Late and Court's Order; *but see* Aplt. Br. at 13 (asserting that "the record establishes [their] professionalism and diligence").[3]

[3] Appellants taped hours of podcast episodes about the case (and why they believed they should win) even while they sought these extensions and insisted that they needed more time for briefing. *See* Gary Fielder, *Episode #1: Introduction*, YouTube (Mar. 18, 2022) (providing an update on the case and describing corporate entity established to receive donations for further lawsuits); Gary Fielder, *Episode #2: Vindication*, YouTube (Mar. 29, 2022), *available at* https://www.youtube.com/watch?v=zLL7i79du_s (describing the logic of bringing suit and discussing Complaint's allegations); Gary Fielder, *Episode #3: Frivolous Lawyers, Constitutional Crisis, and Tina Peter's Indictment*, YouTube (Apr. 15, 2022), *available at* https://www.youtube.com/watch?v=SdMo8LqN0-w (detailing alleged differences between Appellants' case and other 2020 election cases); Gary Fielder, *Episode #4: The Goose*, YouTube (Apr. 21, 2022), *available at* https://www.youtube.com/watch?v=QVPVIv0I8jg; Gary Fielder, *Episode #5: The Sovereign People and Public Persons*, YouTube (Apr. 28, 2022), *available at* https://www.youtube.com/watch?v=0DM9dTTxxho&t=2820s; Gary Fielder, *Episode #6: The 4 Elements*, YouTube (May 7, 2022), *available at* https://www.youtube.com/watch?v=Gezp_7g1cyU.

STANDARD OF REVIEW

This Court reviews the district court's decision to impose sanctions for abuse of discretion. *Farmer*, 791 F.3d at 1256. Affirmance is therefore required unless the district court "based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Fleming*, 889 F.3d at 1147 (citation omitted).

SUMMARY OF ARGUMENT

I. Appellants identify no abuse of discretion warranting reversal of the district court's well-reasoned, well-supported decision**.**

First, Appellants identify no error in the district court's statement of the law governing the imposition of sanctions under 28 U.S.C. § 1927, Federal Rule of Civil Procedure 11, and its own inherent power.

Second, Appellants' procedural objections are largely forfeited and wholly meritless. Most of these objections relate only to Rule 11 (one of three independent grounds for sanctions) and misstate both the law and the facts. Dominion properly served Appellants by email in light of Appellants' own explicit demand that all communication between them and Dominion occur by email. Meta was not required by the Rule 11 safe harbor provision to serve a full memorandum of law on Appellants at the

same time as it served its sanctions motion. CTCL served Appellants with the same sanctions motion that it later filed in court and thus did not add any new "substantial allegations" to its argument for sanctions. And the district court acted squarely within its discretion—as supported by the text and purpose of Rule 11, and considerable judicial authority—in imposing Rule 11 sanctions following dismissal of the Complaint. Nor is there merit to Appellants' due process argument: they received ample notice and opportunity to be heard on the question of whether they should be sanctioned for failing to conduct an adequate pre-filing investigation.

Finally, Appellants identify no error (let alone a reversible abuse of discretion) in the district court's finding that they engaged in several forms of sanctionable misconduct. Appellants pursued this lawsuit based on an objectively frivolous legal theory—and persisted in that course despite repeated and unequivocal warnings. Appellants filed a Complaint and proposed Amended Complaint without conducting any reasonable investigation into their own factual allegations, many of which they either lifted from sources on the internet or conjured from their own "intuition." And throughout these proceedings, Appellants engaged in conduct evincing improper motives—including adherence to a patently

frivolous legal theory, the misrepresentation of sources on which they purported to base claims, and violations of their duty of candor.

II. Appellants broadly dispute the district court's sanctions award. But they do not identify any supposed error, so this objection fails.

ARGUMENT

I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN IMPOSING SANCTIONS ON APPELLANTS

Reviewing the extraordinary record in this case, the district court found that sanctions were warranted under 28 U.S.C. § 1927, Rule 11, and its own inherent authority. That decision should be affirmed: the district court properly stated the governing law; the district court—as well as Dominion, Meta, and CTCL—complied with all procedural requirements; and the district court properly exercised its discretion in determining that Appellants violated basic rules of attorney conduct.

A. The District Court Properly Stated the Law

Three independent sources of law empower federal courts to impose sanctions for attorney misconduct: 28 U.S.C. § 1927, Federal Rule of Civil Procedure 11, and the court's inherent authority to protect its docket from abuse. The district court invoked all three grounds in its sanctions

order—and, in so doing, it correctly stated the governing law (a point that Appellants did not dispute below and do not appear to dispute here).

1. 28 U.S.C. § 1927

Section 1927 provides that an attorney who "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." As the district court recognized, "[g]iven this statutory language, '[a] court may assess attorney[s'] fees against an attorney under § 1927 if (a) the actions of the attorney multiply the proceedings, and (b) the attorney's actions are vexatious and unreasonable." Aplt. App., Vol. XI at 2594.

More specifically, counsel may be sanctioned under Section 1927 if, "viewed objectively," their conduct "manifests either intentional or reckless disregard of the attorney's duties to the court." *Braley v. Campbell*, 832 F.2d 1504, 1512 (10th Cir. 1987) (en banc); *see also* Aplt. App., Vol. XI at 2594. Sanctions may thus be awarded under Section 1927 for "acting recklessly or with indifference to the law," *Miera v. Dairyland Ins. Co.*, 143 F.3d 1337, 1342 (10th Cir. 1998), or "when the entire course of the proceedings was unwarranted," *Dominion Video Satellite, Inc. v.*

Echostar Satellite L.L.C., 430 F.3d 1269, 1278 (10th Cir. 2005); *see also* Aplt. App., Vol. XI at 2594. This Court has affirmed the imposition of sanctions under Section 1927 where plaintiffs' counsel acted with "indifference to well-established law" by opposing a motion to dismiss, *Steinert v. Winn Grp., Inc.*, 440 F.3d 1214, 1225 (10th Cir. 2006), and where plaintiffs' counsel "commenced the action . . . without grounds" and "continued to assert claims for liability . . . long after it would have been reasonable and responsible to have dismissed the claims," *Dreiling v. Peugeot Motors of Am., Inc.*, 768 F.2d 1159, 1165 (10th Cir. 1985); *see also Baca v. Berry*, 806 F.3d 1262, 1277 (10th Cir. 2015) (sanctions proper where plaintiffs persisted even after responsive filings "hammered home" the "intractability" of their case); *Roth v. Green*, 466 F.3d 1179, 1188–90 (10th Cir. 2006) (finding sanctions proper where plaintiffs' counsel failed to acknowledge precedent that clearly foreclosed their claims).

Notably, as the district court accurately explained, "the attorney's conduct is judged objectively; subjective bad faith is not required to justify § 1927 sanctions." Aplt. App., Vol. XI at 2594. "Where, 'pure heart' notwithstanding, an attorney's momentarily 'empty head' results in an objectively vexatious and unreasonable multiplication of proceedings at

expense to his opponent, the court may hold the attorney personally responsible." *Hamilton*, 519 F.3d at 1203; *see also* Aplt. App., Vol. XI at 2596 ("If a lawyer pursues a path that a reasonably careful attorney would have known, after appropriate inquiry, to be unsound, the conduct is objectively unreasonable and vexatious" (citation omitted)).

Upon finding that counsel engaged in sanctionable conduct under Section 1927, a court may award litigants their reasonable fees and costs arising from "proceedings that would not have been conducted" but for "the objectionable conduct of counsel." *Baca*, 806 F.3d at 1268; *see also Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178, 1186 n.5 (2017). While this does not include sanctions for the initiation of a case, it may cover sanctions for any subsequent multiplication of proceedings—*e.g.*, the filing of the Amended Complaint or persisting in opposition to a motion to dismiss proving an objective lack of jurisdiction. Aplt. App., Vol. XI at 2595; *see Steinert*, 440 F.3d at 1225–26; *Loncar v. W. Peak, LLC*, No. 08 Civ. 1592, 2011 WL 1211522, at *3, 6 (D. Colo. Mar. 30, 2011).

2. Rule 11

Rule 11(b) imposes an obligation on counsel to ensure that all pleadings, motions, or other papers contain only contentions "warranted

by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law." Fed. R. Civ. P. 11(b)(2). Rule 11 also imposes an "affirmative duty to conduct a reasonable inquiry into the facts and the law before filing." *Collins*, 916 F.3d at 1320 (citation omitted). And it prohibits filings "presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation." Fed. R. Civ. P. 11(b)(1). "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." Fed. R. Civ. P. 11(c)(1).

Distilling these rules, the district court reasoned that "[t]he 'central purpose of Rule 11 is to deter baseless filings in district court' and 'streamline the administration and procedure of the federal courts.'" Aplt. App., Vol. XI at 2590 (citation omitted). Where "a complaint is the primary focus of a Rule 11 proceeding, '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.'" *Id.* (citation omitted). Rule 11 turns on "objective reasonableness—whether a reasonable attorney admitted to practice before the district court would file such a document." *Collins*, 916 F.3d at 1320. This rule is "intended to eliminate any empty-head pure-heart justification for patently frivolous arguments." *Id.* (citation omitted). Rule 11 imposes a continuing obligation on counsel: "A litigant's obligations with respect to the contents of . . . papers are not measured solely as of the time they are filed with or submitted to the court, but include reaffirming to the court and advocating positions contained in those pleadings and motions after learning that they cease to have any merit." Fed. R. Civ. P. 11 advisory committee's note to 1993 amendments.

Unlike a motion for sanctions under Section 1927 or the court's inherent power, a Rule 11 motion must first be served on opposing counsel, so that they have an adequate opportunity to reconsider and withdraw the offending papers. Fed. R. Civ. P. 11(c)(2). Under this safe harbor rule, a motion may be filed if the offending papers are not "withdrawn or appropriately corrected within 21 days after service." *Id.*

3. Inherent Authority

Finally, the district court properly recognized that "[f]ederal courts have certain 'inherent powers' which are not conferred by rule or statute 'to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.'" Aplt. App., Vol. XI at 2592 (quoting *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630–31 (1962)). Although "inherent powers must be exercised with restraint and discretion," it is "undisputed that 'a court may assess attorney's fees when a party has "acted in bad faith, vexatiously, wantonly, or for oppressive reasons."'" *Id.* at 2593 (quoting *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44–46 (1991)).

A court's inherent power supports sanctions for litigation-related conduct that "abuses the judicial process," *Chambers*, 501 U.S. at 44–45, including the same kinds of frivolous filings that are compensable under Section 1927, *see Farmer*, 791 F.3d at 1257. "Unlike Rule 11, sanctions under the Court's inherent authority appear to require a finding of bad faith on the part of the attorney to be sanctioned." Aplt. App., Vol. XI at 2593 (citations omitted). This standard may be met where the complaint is plainly frivolous. *See Sterling Energy, Ltd. v. Friendly Nat. Bank*, 744 F.2d 1433, 1437 (10th Cir. 1984) ("[A] case can be so frivolous as to reflect

impermissible conduct"); *Mountain W. Mines, Inc. v. Cleveland-Cliffs Iron Co.*, 470 F.3d 947, 954 (10th Cir. 2006); *Towerridge, Inc. v. T.A.O., Inc.*, 111 F.3d 758, 768 (10th Cir. 1997).

B. The District Court—and Dominion, Meta, and CTCL—Complied with Rule 11's Procedural Requirements

Although Appellants do not dispute the applicable legal standard, they do assert that the sanctions award should be reversed on various procedural grounds. Specifically, they contend that (1) Dominion, Meta, and CTCL did not comply with Rule 11's procedural requirements; (2) the district court was prohibited from imposing Rule 11 sanctions following dismissal; and (3) the district court violated their constitutional due process rights by denying their post-briefing, post-argument motion for an evidentiary hearing. These procedural arguments are meritless.

1. Dominion, Meta, and CTCL Complied with Rule 11's Procedural Requirements

On appeal, Appellants contend that Dominion, Meta, and CTCL did not comply with Rule 11's safe harbor procedural requirements. This contention—which relates only to Rule 11 (and not to the other two independent grounds for sanctions)—lacks merit and should be rejected.

First, Appellants contend that Dominion failed to comply with Rule 11's safe harbor requirement because its sanctions motion, though

timely, was served via email. Aplt. Br. at 35–37. This objection is baseless. On February 3, 2021, Dominion sent Appellants a letter via email and certified mail requesting withdrawal of the Complaint based on violations of Rule 11(b). Aplt. App., Vol. VIII at 1729–31. Appellants do not dispute that their counsel received this letter. Following a phone call in which Appellants and Dominion disagreed on the issues raised by that Rule 11 letter, Appellants expressly demanded that all further communications between the parties be in writing. Aplt. App., Vol. IX at 2022, 2028. Dominion honored that request and thereafter communicated with Appellants exclusively via email—including on April 9, 2021, when Dominion served its sanctions motion on Appellants through email, the very mode of communication that Appellants had insisted upon. *See id.* at 2032. Indeed, Dominion sent its sanctions motion to the exact same email addresses—criminaldefense@fielderlaw.net and enrnestjwalker@gmail.com—to which it had previously sent its Rule 11 letter (and which Appellants had placed on file with the district court's electronic-filing system). *Id.* at 2022.[4] This method of service was proper

[4] Appellants do not ever actually deny receiving this email, nor do they identify any supposed prejudice resulting from service by email.

under Rule 5(b)(2)(E), which provides that service is permissible by any "electronic means that the [recipient] consented to in writing." Dominion thus fully complied with the rules in serving its Rule 11 motion.

Second, Appellants contend that Meta failed to comply with Rule 11 because when it asked the district court to impose sanctions, it filed both its original sanctions motion (which had been served on Appellants) and a memorandum of law supporting that motion (which had not). Aplt. Br. 37–38. They further contend that CTCL failed to comply with Rule 11 by filing a sanctions motion that was not (in their view) identical to the motion that CTCL originally served on them. *Id*. at 38.

Because Appellants did not raise either of these arguments below, they have forfeited both points and must demonstrate plain error to obtain reversal. *See Richison v. Ernest Grp., Inc.*, 634 F.3d 1123, 1128 (10th Cir. 2011); *Brickwood Contractors, Inc. v. Datanet Engineering, Inc.*, 369 F.3d 385, 390–96 (4th Cir. 2004) (en banc) (safe harbor defense can be forfeited). But Appellants cannot show any error at all, let alone plain error. Under Rule 11, the motion served on Appellants needed only to provide "sufficient notice of the claimed sanctionable conduct." *Burbidge Mitchell & Gross v. Peters*, 622 F. App'x 749, 757 (10th Cir.

2015) (cleaned up). In applying that standard, this Court has expressly "declin[ed] 'to read into the rule a requirement that a motion served for purposes of the safe harbor period must include supporting papers such as a memorandum of law and exhibits.'" *Id.* (citation omitted). In other words, because Rule 11 refers only to service of a "motion" on counsel, it does not also require service of a separate memorandum of law. *See Ideal Instruments, Inc. v. Rivard Instruments, Inc.*, 243 F.R.D. 322, 339 (N.D. Iowa 2007) ("Rule 11 says nothing about requiring service of the brief in support of a Rule 11 motion to trigger the twenty-one day 'safe harbor.'").

Here, Meta complied with those requirements: it served a motion on Appellants and (more than 21 days later) filed that same motion in the district court along with a legal memorandum. There was nothing improper about that process. Although Appellants insist otherwise and invoke *Roth v. Green*, 466 F.3d 1179, 1192 (10th Cir. 2006), *Roth* held only that service of a warning letter does not satisfy the Rule 11 safe harbor rule. It neither held nor implied that Rule 11's safe harbor period requires service of a legal memorandum alongside a sanctions motion.

CTCL, in turn, served a motion on Appellants and then (more than 21 days later) filed the *exact same* motion in the district court along with

a memorandum. To the extent Appellants now assert (for the first time) that CTCL's district court filing contained new "substantial allegations, such as improper motive," they are simply mistaken: every basis for sanctions that CTCL addressed in its district court filing—including "improper purpose"—was identified in the original sanctions motion it served on Appellants. *See* Aplt. App., Vol. VIII at 1775–76 (full page of sanctions motion served on Appellants concerning "improper purpose").

For these reasons, Dominion, Meta, and CTCL complied with Rule 11's procedural requirements. Appellants err in disputing that fact.

2. The District Court Did Not Err in Imposing Post-Dismissal Sanctions Under Rule 11

Appellants next argue that the district court erred in imposing Rule 11 sanctions because it dismissed the case a few days before the 21-day "safe harbor" period expired. Aplt. Br. at 37–40. Once again, Appellants raise arguments limited to Rule 11: they do not dispute (nor could they) the district court's power to impose sanctions under Section 1927 or its inherent judicial power following the dismissal of their case.[5]

[5] Moreover, Appellants did not raise in the district court any challenge to the timeliness of Meta and CTCL's motions for sanctions. *See generally* Aplt. App., Vol. IX at 1987–2005. As to Meta and CTCL, this argument is thus forfeited and subject to only plain error review.

Regardless, Appellants misstate the law. The purpose of the Rule 11 safe harbor provision is to ensure that a party has an opportunity to reconsider and withdraw papers that violate Rule 11. It would defeat that purpose for a party to *first* initiate Rule 11 practice after a case has been dismissed, since the offending lawyer has no opportunity to remedy their own misconduct. Consistent with that understanding, this Court has suggested (in an unpublished ruling) that "it is an abuse of discretion to grant a Rule 11 motion that is filed after the dismissal of the case because it is then impossible to comply with the safe-harbor provision." *Mellott v. MSN Commc'ns, Inc.*, 492 F. App'x 887, 888 (10th Cir. 2012); *see also Steinert*, 440 F.3d at 1223 (noting, without adopting, the Third Circuit's rule "that sanction issues under Rule 11 and the inherent power of the court must be decided before or concurrent to the final judgment").

But *Mellott* (and the precedents it cited) did not concern a case like this one. In *Mellot*, the defendant had not served a Rule 11 motion on the plaintiff before dismissal, yet still sought Rule 11 sanctions *after* the case was voluntarily dismissed. *See* 492 F. App'x at 888. On that fact pattern, the core purpose of Rule 11's safe harbor provision—to give plaintiffs the opportunity to withdraw offending papers before facing sanctions—

clearly was not satisfied. Here, by contrast, each of the moving parties served Appellants with Rule 11 motions well in advance of dismissal, affording Appellants plenty of time to withdraw their defective pleadings prior to dismissal of the case. Furthermore, as discussed below, there is powerful evidence that Appellants had in fact conclusively decided *not* to withdraw the offensive papers within the Rule 11 safe harbor period.

Many courts to have considered circumstances like these have held that Rule 11 sanctions *can* be imposed after dismissal—at least so long as the Rule 11 motion was served prior to dismissal, the court dismissed the case within the safe harbor window, and it was clear from their acts or statements that counsel otherwise had no intention of abandoning their claims within the safe harbor window. Judge Ellis in *Giganti v. Gen-X Strategies, Inc.*, 222 F.R.D. 299, 306–07, 309 (E.D. Va. 2004), and Judge Collins in *Truesdell v. S. California Permanente Med. Grp.*, 209 F.R.D. 169, 179 (C.D. Cal. 2002), have offered particularly clear and thorough explanations of this point. *See also, e.g.*, *Consumer Crusade, Inc. v. Pub. Tel. Corp. of Am.*, No. 05 Civ. 00208, 2006 WL 2434081, at *4 (D. Colo. Aug. 21, 2006) ("[T]he Court finds that, so long as the Defendants complied with the procedural requirements of Rule 11(c)(1)(A), and so

long as the Plaintiff's Complaint was pending at the time the Defendants *served* their motion on the Plaintiff, the fact that the motion was not actually *filed* until after dismissal of the action does not strip the Court of jurisdiction to hear the motion." (emphasis in original)); *Johnson ex rel. U.S. v. Univ. of Rochester Med. Ctr.*, 715 F. Supp. 2d 427, 429 (W.D.N.Y. 2010) (rejecting an argument based on non-compliance with the safe harbor provision where "plaintiff . . . continued to press the frivolous claims even after they had been dismissed" (emphasis in original)); *In re Kitchin*, 327 B.R. 337, 362 (Bankr. N.D. Ill. 2005) ("Plaintiffs can not now complain about the loss of the safe harbor provision when it deliberately and knowingly rejected that option.").

These cases rest on close adherence to Rule 11's text and purpose. By its terms, Rule 11 contains no deadline for the imposition of sanctions on counsel who violate the requirements set forth in Rule 11(b). And the safe-harbor procedures set forth in Rule 11(c) are recognized as waivable rather than jurisdictional. *See, e.g.*, *Rector v. Approved Fed. Sav. Bank*, 265 F.3d 248, 253 (4th Cir. 2001). Where a party has received a Rule 11 motion, has had a full and fair opportunity to consider it, and has made a clear and conclusive choice to adhere to his filings, he has "knowingly

waived the benefit of the twenty-one day period." *Giganti*, 222 F.R.D. at 307; *see also id.* ("The party against whom sanctions were sought could not be heard to complain about the loss of the benefit of the twenty-one day safe harbor when it was clear that the party rejected that option."). Moreover, with respect to the rule's purposes, where a party has been injured by a counsel's violations of Rule 11 and has served a sanctions motion—and where the recipient counsel has made clear that he will not budge—it makes no sense to strip the party of any Rule 11 remedy just because the district court happens to dismiss the case within 18 rather than 21 days. *See id.* at 309 ("[A] movant's right to seek Rule 11 sanctions would be cut off through no fault of the movant and importantly, with no notice to the movant to be found anywhere in the Rule's language.").

Applied here, these principles support the district court's decision to impose Rule 11 sanctions. When Dominion, Meta, and CTCL initially informed Appellants that their filings violated Rule 11(b), Appellants refused for months to withdraw their pleadings. Even after Defendants had served their Rule 11 motions in early April—more than two weeks before the case was dismissed—Appellants stood by their filings: they defended their original Complaint, presented oral argument on the

pending motions to dismiss, filed a motion for judicial notice in support of their claims, proposed an Amended Complaint adding new claims and over 150 new plaintiffs, and waited less than 24 hours after dismissal to file a notice of appeal. At the sanctions hearing, Appellants confirmed that they would "file the same complaint today with all of these same allegations." Aplt. App., Vol. XI at 2482. To this day, Appellants insist that they will take this case to the Supreme Court.[6]

In these circumstances, it would disserve the text and purpose of Rule 11—and conflict with well-reasoned judicial authority—to hold that dismissal of the case precluded any sanctions under Rule 11. (Even in that event, however, the decision below should be affirmed on the basis that sanctions were proper under Section 1927 and inherent authority.)

3. The District Court Did Not Deny Due Process

Appellants argue that the district court violated their due process rights by denying their request for an evidentiary hearing. Aplt. Br. at 52. That claim is meritless. "The basic requirements of due process with

[6] *See* Gary Fielder, *Episode #1: Introduction*, YouTube (Mar. 18, 2022) ("If they rule against us, well, goodness willing, we'll get our petition for writ of certiorari filed in the United States Supreme Court and we'll make our argument there . . . .").

respect to the assessment of costs, expenses, or attorney's fees are notice that such sanctions are being considered by the court and a subsequent opportunity to respond." *Braley v. Campbell*, 832 F.2d 1504, 1514 (10th Cir. 1987). Here, Appellants had no shortage of notice: they were served with multiple Rule 11 letters, multiple sanctions motions, multiple briefs in support of the pending sanctions motions, and a detailed order from the district court concerning issues to be addressed at a hearing. Nor did Appellants lack any opportunity to respond: they submitted numerous briefs in opposition to the pending sanctions motions and participated in a prolonged oral argument where they spoke extensively about their motives, claims, and pre-filing inquiry. It was Appellants' own decision not to submit evidence or affidavits alongside their opposition briefs, and it was their own decision not to request the opportunity to present evidence at the hearing scheduled by the district court. The district court afforded Appellants ample process and did not violate their rights in denying an untimely request for a second hearing. *See id.* at 1514 ("[T]he sanction inquiry may properly be limited to the

record in most instances."); *see also Chung v. Lamb*, No. 20 Civ. 1278, 2021 WL 4852417, at *4 (10th Cir. Oct. 19, 2021).

C. The District Court Properly Exercised its Discretion in Imposing Sanctions on Appellants

The district court carefully applied the governing legal principles set forth above and correctly concluded that sanctions were warranted under Rule 11, Section 1927, and the court's inherent authority. Aplt. App., Vol. XI at 2630–32. That determination should be affirmed for three independent reasons: *first*, Appellants filed and continued to pursue objectively frivolous legal claims; *second*, Appellants failed to conduct a reasonable pre-filing inquiry; and *third*, Appellants brought and pursued this bad-faith lawsuit with improper motives.

1. Appellants Advanced an Objectively Frivolous Theory of Article III Standing

The principal basis on which the district court imposed sanctions is the objective frivolity of Appellants' legal claims—in particular, the theory of Article III standing on which they based their lawsuit. *See* Aplt. App., Vol. XI at 2579 ("The most patent deficiency in Plaintiffs' wide-ranging, scatter-shot Complaint was the individual Plaintiffs' lack of standing."). Appellants filed and prosecuted this case on the indefensible premise that any registered voter, anywhere in the country, no matter

whom they voted for or whether they voted at all, can file suit in any federal court in the United States against anyone who they believe did anything improperly affecting a presidential election. As the district court found, this theory was foreclosed by a "veritable tsunami" of precedent, and Appellants' efforts to distinguish those cases "was not just unpersuasive but crossed the border into frivolous." *Id.* at 2582. For the reasons in our Joint Answer Brief in the merits appeal, the district court was right.

Appellants say nothing here to demonstrate otherwise. Instead, they cite *Predator International Inc. v. Gamo Outdoor USA, Inc.* for the proposition that the district court committed error by requiring them "'to prove standing conclusively at the pleading stage.'" Aplt. Br. at 16 (quoting 793 F.3d 1177, 1194 (10th Cir. 2015)). *Predator* is irrelevant. There, a district court sanctioned a party for forum shopping, prejudicial delay, and failing to offer new evidence of standing despite previously dismissing one of its own claims based on lack of evidence of standing. *See id.* at 1187. This Court reversed—holding, with respect to the final basis for sanctions, that sanctions for lack of evidence are improper at the pleading stage where a party's complaint adequately alleges Article

III standing. *See id.* at 1194. Here, in contrast, the district court's dismissal for lack of standing (and its related sanctions ruling) was not based on insufficient evidence. Rather, the district court found that the Complaint and Proposed Amended Complaint did not properly allege standing, and that Appellants' assertions to the contrary arose from objectively frivolous legal arguments foreclosed by precedent.

This Court has affirmed the imposition of sanctions where there was "no objectively reasonable basis for asserting standing to sue" and counsel's arguments in favor of standing "ignored controlling precedent." *Collins*, 916 F.3d at 1320–21; *see also Roth*, 466 F.3d at 1188–90 (holding that a district court did not abuse its discretion in finding that counsel violated Rule 11 where there were "a host of legal impediments to [clients] prevailing on their claims" and counsel disregarded precedent); *Steinert*, 440 F.3d at 1225 (holding sanctions were warranted under Section 1927 where counsel acted with "indifference to well-established law"); *Harrison v. Luse*, 760 F. Supp. 1394, 1399 (D. Colo. 1991) ("Rule 11 is violated where it is patently clear that a claim has absolutely no chance of success under the existing precedents, and where no reasonable argument can be advanced to extend, modify, or reverse the law as it

stands."), *aff'd* 951 F.2d 1259 (10th Cir.) (unpublished). On this basis, the decision below should be affirmed.

2. Appellants Failed to Perform a Reasonable Inquiry Before Filing Their Pleadings

In the alternative, this Court may affirm on the separate ground that Appellants failed to conduct a reasonable pre-filing inquiry.

As noted above, Rule 11(b) imposes a duty on attorneys to conduct an "inquiry reasonable under the circumstances" before filing a pleading in federal court. Based on that mandatory inquiry, attorneys must personally certify that the "factual contentions" in their pleadings and motions "have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery." Fed. R. Civ. P. 11(b)(3). Thus, "[t]he attorney must 'stop, look, and listen,' before signing a document subject to Rule 11." *Adamson v. Bowen*, 855 F.2d 668, 673 (10th Cir. 1988) (quoting *Lieb v. Topstone Indus., Inc.*, 788 F.2d 151, 157 (3d Cir. 1987)).

Because the "standard under Rule 11 is fact specific, the court must consider all the material circumstances in evaluating the signer's conduct." *Garr v. U.S. Healthcare, Inc.*, 22 F.3d 1274, 1279 (3d Cir. 1994). For example, courts must assess "how much time for investigation was

available to the signer" and "whether he had to rely on a client for information as to the facts underlying the pleading." *CTC Imports & Exports v. Nigerian Petroleum Corp.*, 951 F.2d 573, 578 (3d Cir. 1991) (quoting Rule 11 advisory committee's note to 1983 amendment).

Here, the district court properly found that Appellants failed to meet this standard: they did not conduct a pre-filing inquiry reasonable under these (or any) circumstances. *See* Aplt. App., Vol. XI at 2618–27.

This was not a case where Appellants could rely on client knowledge alone: their clients' affidavits "are notable only in demonstrating no firsthand knowledge by any Plaintiff of any election fraud, misconduct, or malfeasance," and they are "replete with conclusory statements about what must have happened in the election." *Id.* at 2573. Not only did the affidavits provide *no* support for Appellants' allegations, at least one of them turned out to be false. *See supra* at 5, 15; *see also Fleming Sales Co. v. Bailey*, 611 F. Supp. 507, 519 (N.D. Ill. 1985) (reasonable inquiry requires counsel "not to accept the client's version on faith, but to probe the client in that respect"). Given their clients' lack of relevant knowledge as to the overwhelming majority of the facts in this case, Appellants could not reasonably have relied on their clients to satisfy their ethical

obligations under Rule 11. *See Hadges v. Yonkers Racing Corp.*, 48 F.3d 1320, 1329–30 (2d Cir. 1995) (reasonableness of reliance depends upon circumstances). Thus, the district court concluded that Appellants were not relying on their "clients for any substantive information or evidence about the allegations in the case." Aplt. App., Vol. XI at 2624.

Apart from their clients, Appellants relied most heavily on claims and affidavits that they discovered online while reviewing other cases (all of which proved unsuccessful). This reliance, too, was misplaced as a matter of law. As the district court reasoned, "numerous courts' rejection of the lawyers' arguments and factual claims should have put Plaintiffs' counsel on notice to be very cautious before repeating these damaging allegations via a massive cut-and-paste job, without additional strenuous verification efforts." *Id.* at 2620. But rather than take extra caution, Appellants took none: by their own confession, they "spoke to no one" when they should have spoken to "the other lawyers whose complaints they were copying" and the "expert[]s whose affidavits or reports they were citing." *Id.* Although Appellants insist that they were entitled to borrow factual allegations made by other members of the bar, including attorneys general, Rule 11 rejects that position. *See Garr*, 22 F.3d at 1280

(holding that "an attorney signing a pleading must make a reasonable inquiry *personally*"); *see also Pavelic & LeFlore v. Marvel Ent. Grp.*, 493 U.S. 120, 126 (1989) ("[T]he purpose of Rule 11 as a whole is to bring home to the individual signer his personal, nondelegable responsibility.").

Simply put, no reasonable attorney would believe they could satisfy Rule 11(b) by scouring the internet for filings in other cases, ransacking those filings for factual allegations, and repackaging the results to a federal court without speaking to *any* of the lawyers, fact witnesses, or experts whose claims they appropriated. That is doubly true when some of those very same lawyers publicly disavowed their own prior allegations as wholly incredible. *See supra* at 16–17. And it is triply true when a lawyer not only copies facts without any investigation into their truth, but also merges all manner of discrete claims into a gargantuan conspiracy theory with no personal inquiry concerning the basis for some of the most sweeping claims of alleged nefarious agreement. Yet here, Appellants did all that—and did so despite the fact that the failure of the complaints they were parroting "should have been, if not bright red, at least flashing yellow lights warning [them]." Aplt. App., Vol. XI at 2626.

To be clear, this is not to say that lawyers are prohibited from

relying on news reports and "information from other persons" in building a lawsuit. *Garr*, 22 F.3d at 1278. Lawyers can and often do reasonably rely on information from third party witnesses when filing a lawsuit. *See id.* But counsel cannot do what Appellants did here: assemble an *ad hoc* collection of internet articles, complaints and affidavits from other (failed) lawsuits, and supposed personal intuitions into a lawsuit without speaking to anyone involved or undertaking any further inquiry. *See id.* at 1278–81 (affirming the imposition of sanctions on counsel for failure to conduct reasonable pre-filing inquiry where counsel relied only on the complaint in another case and a newspaper article).

Appellants' non-inquiry was especially unreasonable given that they faced "no time constraints requiring [them] to file . . . on an expedited basis." *Id.* at 1280; *cf. CTC Imports & Exports*, 951 F.2d at 579 ("The shorter the time the more reasonable it is for an attorney to rely on the client . . . ."). As the district court noted, Appellants claimed they were focused on a "damages case, rather than a case primarily seeking an injunction to stop or reverse the election," and so they did not face "concern about the running of the statute of limitations." Aplt. App., Vol. XI at 2623. Indeed, Appellants now concede that "[t]he case was not for

prospective relief, but retroactive relief." Aplt. Br. at 33. Accordingly, "[t]here was nothing to prevent Plaintiffs' counsel from waiting some months" to undertake the pre-filing investigation required by Rule 11. Aplt. App., Vol. XI at 2623.

Appellants resist these conclusions on several grounds. *First*, they block-quote Mr. Walker's statements at the sanctions hearing. Aplt. Br. at 23–24. But these statements only confirm the patent inadequacy of Appellants' pre-filing inquiry: reading Dominion's contracts, watching videos about the inner workings of its machines, and relying on counsel's trial instincts hardly constitutes an investigation into the truth of the far-reaching and fantastical accusations that Appellants made against Dominion—and it surely does not support Appellants' equally sweeping claims against Meta and CTCL, for which they identified no meaningful inquiry. As the district court found, Appellants' lack of "experience or training in running elections or assessing the validity of elections" rendered their substantial reliance on "personal assessments of what happened on election night" legally insufficient as an investigative basis for the allegations in this case. Aplt. App., Vol. XI at 2621–22.

Second, Appellants contend that the district court abused its

discretion by "finding all of the Plaintiffs' evidence false." Aplt. Br. at 26 (cleaned up). But the district court did no such thing. To the contrary, at the outset of its analysis, it explained that it "need not draw conclusions about the truth of the factual allegations in the Complaint and Amended Complaint to impose sanctions based on inadequate inquiry." Aplt. App., Vol. XI at 2618. Instead, the district court did what the law requires: "assess and make findings about the scope and reasonableness of Plaintiffs' counsel's inquiry and investigation to determine whether it was proper, under the circumstances, for a lawyer to have ever made the allegations in a public court filing in the first place." *Id.* at 2619.

Finally, Appellants complain that the district court wrongly applied a heightened standard. Aplt. Br. at 20. Here too, they err. Rule 11 requires an inquiry that is reasonable under the circumstances. In identifying those circumstances, it was proper for the district court to consider the context in which Appellants investigated their case and submitted allegations to a federal court. That context included official findings at the state and federal level that many of the allegations included in Appellants' filings were false. *See* Aplt. App., Vol. XI at 2598–2603. It also included "the volatile conditions surrounding the 2020

election, the extremely serious and potentially damaging allegations against public servants and private entities, [and] the remarkable request to declare void and ineffective the certification of the electoral votes of several states." *Id.* at 2624–25. Under virtually any pre-filing circumstances, Appellants' internet searches here did not comply with the requirements of Rule 11(b). The context identified by the district court only further (and appropriately) supported that conclusion.

3. Appellants Acted with an Improper Purpose Throughout the District Court Proceedings

A final, independent basis for affirming the decision below is that Appellants pursued this suit with an improper purpose. The district court found that Appellants acted in "bad faith with respect to the filing" because "[n]o reasonable attorney would have believed Plaintiffs, as registered voters and nothing more, had standing to bring this suit." Aplt. App., Vol. XI at 2617; *see also In re Kunstler*, 914 F.2d 505, 519 (4th Cir. 1990) ("The fact that so many allegations in the complaint lacked a basis in law or in fact strongly supports the court's finding of improper purpose."); *Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1362 (9th Cir. 1990) (en banc) ("[E]vidence bearing on frivolousness . . . will often be highly probative of purpose."). Separately, the district court

found that Appellants acted with an improper motive in "dumping into a public federal court pleading allegations of a RICO conspiracy that were utterly unmerited by any evidence." Aplt. App., Vol. XI at 2627. Here, the district court cited Appellants' egregious misrepresentation of a *TIME Magazine* article that they proffered as the principal basis for a proposed civil RICO claim. *See id.* at 2627–30. Appellants offer no credible basis for disturbing these findings, both of which fully support sanctions.

But there is more. Appellants repeatedly violated their duty of candor to the district court by regurgitating allegations from failed lawsuits without disclosing that those lawsuits had been rejected. To offer just one example, Appellants described a suit filed in Wisconsin as "bring[ing] to light a massive election fraud," Aplt. App., Vol. I at 77, ¶ 283, but never disclosed that the very opinion they cited rejected the plaintiffs' request for relief. Aplt. App., Vol. XII at 2914. Time and again, Appellants misrepresented the holdings of prior cases or sought to pass off rejected allegations as established facts—all in an effort to induce the district court to allow their case to proceed. That conduct further supports a finding of improper purpose. *See In re Blagg*, 43 F. App'x 266, 267 (10th Cir. 2002) (affirming sanctions for attorney's

"misrepresent[ation]" of "state of the law"); *Braley*, 832 F.2d at 1512 (sanctions warranted when conduct "manifests intentional or reckless disregard of the attorney's duties to the court").

The district court's finding is also supported by Appellants' use of their lawsuit to level inflammatory attacks against Dominion, Meta, and CTCL that are completely unmoored from their claims and ungrounded in the pleadings (or reality). *See, e.g.*, Aplt. App., Vol. VIII at 1766 (identifying gratuitous, false accusations of criminal wrongdoing and statutory violations by CTCL with no relevance to the claims in the case). Lawyers engaged in litigation enjoy privileges against defamation suits, but that privilege is not a license to file frivolous cases. *See Sterling*, 744 F.2d at 1437 (describing "frivolous allegations" with "a criminal connotation" as "clearly a factor to be considered in determining whether the allegations were made in bad faith"); *Rhodes v. MacDonald*, 670 F. Supp. 2d 1363, 1378 (M.D. Ga. 2009) (finding that "personal attacks on opposing parties" that "added nothing to the advancement of [p]laintiff's legal cause of action" showed improper purpose). Appellants' repeated departure from the scope of their claims to level outrageous accusations

against Dominion, Meta, and CTCL offers still more evidence that they have proceeded with improper motives.

For all these reasons, the district court's conclusion that Appellants violated their fundamental professional duties—and were therefore subject to sanctions under Section 1927, Rule 11, and the court's inherent authority—was fully justified by the record and should be affirmed.

II. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DECIDING AN APPROPRIATE FEE AWARD

Appellants devote two pages to criticism of the district court's fee award—but do not identify any particular error in his analysis. To the contrary, they "accept opposing counsels' representations as to the hours expended, and the reasonableness of their hourly rate." Aplt. Br. at 48. At most, they contest the district court's finding of bad faith and, on that basis, dispute its conclusion that hours expended on seeking dismissal of the original complaint count toward the final award. *Id.* at 49. Not so.

To start, because Appellants never raised this argument before the district court, it is forfeited and must be reviewed for plain error. *See Richison*, 634 F.3d at 1128. But under any standard, the district court did not commit any errors in its fee award. Indeed, both Rule 11 and the district court's inherent authority would support sanctions for time spent

responding to the original complaint. For CTCL, so would Section 1927, since by the time CTCL was served, Appellants already had received motions to dismiss and nonetheless made a choice to further multiply the ongoing proceedings. And with respect to all filings subsequent to the original motions to dismiss—including time spent preparing for oral argument and opposing Appellants' proposed amended complaint—all three sources of sanctions authority support the district court's award. *See* Aplt. App., Vol. XI at 2617 ("I find that sanctions should be awarded under Rule 11, [28] U.S.C. § 1927, and the Court's inherent authority.").

* * *

Although the imposition of sanctions is an extraordinary measure, it is warranted—indeed, essential—in this case. From the very outset, Appellants have treated their suit (and the federal judiciary) as a soapbox from which to spread damaging and dangerous conspiracy theories about public servants, private companies, and our democracy itself. Moreover, they have done so in flagrant disregard of the rules applicable to lawyers who appear in any federal court. Appellants have pursued objectively frivolous legal claims without even trying to cure threshold jurisdictional defects that doom their claims. They have leveled outrageous accusations

in court filings with virtually no investigation (apart from a Google search and some scattered plagiarism) to verify their own claims. And they have contravened their ethical duties of truth, candor, and accuracy.

To this day, Appellants insist they did nothing wrong. They stand by their claims, strangely asserting that "everything the Plaintiffs alleged has come true." Aplt. Br. at 8. Indeed, Appellants have made clear that if given the chance, they would do it all again. And if this Court does not affirm the imposition of sanctions, they (and others like them) surely will.

In an effort to justify their misconduct, Appellants insist that they are humble seekers after truth—and that the district court's ruling was an attack on their freedom of speech. Appellants are free to pursue and espouse whatever "truth" they want in their personal lives. But they appeared in this case as lawyers. They engaged in the conduct here at issue as lawyers. They induced people to join and finance their suit as lawyers. In that professional capacity, they enjoy special privileges—which they exercise subject to heightened responsibilities, including their ethical obligations as officers of the court. As the district court found, Appellants repeatedly violated those rules, which apply to lawyers of *all* backgrounds, ideologies, and partisan persuasions when they appear in

court. The First Amendment offers no defense for such clear attorney misconduct. *See Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1071 (1991); *King v. Whitmer*, 556 F. Supp. 3d 680, 727–28 (E.D. Mich. 2021).

CONCLUSION

For the foregoing reasons, this Court should affirm the district court's orders imposing sanctions on Appellants.

Respectfully submitted this 10th day of May, 2022.

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ORAL ARGUMENT STATEMENT

Because this appeal presents questions concerning the entry of sanctions against two members of the bar, oral argument is appropriate.

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

I certify that the information on this form is true and correct to the best of my knowledge and belief formed after a reasonable inquiry. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) in that it was prepared in a proportionally spaced typeface in size 14 Century Schoolbook font using Microsoft 365 MSO.

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By: s/ *Joshua Matz*

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I hereby certify that on this 10th day of May, 2022, the foregoing was digitally submitted to the Tenth Circuit Court of Appeals via the Court's CM/ECF system, that there were no required privacy redactions to be made, per 10th Cir. R. 25.5, and that the digital submission has been scanned for viruses with SentinelOne Agent, Version 21.7.5.1080, updated April 25, 2022, and is currently free of viruses.

By: s/ *Joshua Matz*

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of May, 2022, a true and correct copy of the foregoing was sent via this Court's CM/ECF system to all counsel of record.

By: s/ *Joshua Matz*