IN THE SUPREME COURT OF IOWA

SENATOR ROBY SMITH, SENATOR JIM CARLIN, SENATOR CHRIS COURNOYER, SENATOR ADRIAN DICKEY, SENATOR JASON SCHULTZ, SENATOR DAN ZUMBACH, FORMER SENATOR ZACH WHITING, REPRESENATIVE BROOKE BODEN, REPRESENTATIVE BOBBY KAUFMANN, REPRESENTATIVE CARTER NORDMAN, and REPRESENTATIVE JEFF SHIPLEY, Plaintiffs, v. IOWA DISTRICT COURT FOR POLK COUNTY, Defendant.	Sup. Ct. No. _____ Polk County No. CVCV061476 **Petition for Writ of Certiorari** **Trial Date: March 14, 2022** **(Compelled Production of Privileged Documents Due Imminently)**

Senators Roby Smith, Jim Carlin, Chris Cournoyer, Adrian Dickey, Jason Schultz, and Dan Zumbach; former Senator Zach Whiting; and Representatives Brooke Boden, Bobby Kaufmann, Carter Nordman, and Jeff Shipley (collectively, "the Legislators") submit this petition for writ of certiorari under Iowa Rule of Appellate Procedure 6.107 seeking review of the district court's February 28 order to compel overruling their claims of legislative privilege.

TABLE OF CONTENTS

INTRODUCTION

Amid the busiest weeks of the legislative session, the district court ordered ten legislators and one former legislator—none of whom are parties to this suit—to comply with subpoenas for all communications and documents shared with non-legislators about two elections bills passed in 2021. In ordering production to the League of United Latin American Citizens of Iowa ("LULAC"), the court improperly rejected the Legislators' claims of legislative privilege and other objections to the subpoenas. And by piercing their legislative privilege to compel disclosure, the district court breached the separation of powers in direct conflict with *Des Moines Register & Tribune Co. v. Dwyer*, 542 N.W.2d 491 (Iowa 1996).

This Court should step in now to correct these errors. The practical and constitutional harms will be inflicted as soon as the Legislators comply with the district court's unprecedented order. And the Legislators have no other way to seek relief and obtain the protections secured by legislative privilege and the Iowa Constitution's separation of powers.

The Legislators' petition for a writ of certiorari should be granted to consider these substantial and important issues before this case causes irreparable constitutional harm.

BACKGROUND

LULAC sued the Secretary of State and the Attorney General challenging several provisions of Iowa's elections law under the Iowa Constitution. *See* Am. Pet. ¶¶ 13–14. It points mainly to statutory amendments reducing the time for requesting and submitting absentee ballots, regulating the process for returning absentees ballots and in-person absentee voting, and reducing the hours that polling places are open on election day by one hour. *See id.* ¶¶ 2, 40–67. And it brings four state constitutional claims.

First, LULAC alleges that these provisions, individually and collectively, unduly burden the right to vote under article II, section 1, of the Iowa Constitution. *See* Am. Pet. ¶¶ 75–88. Second, it contends that the limits on who may return another voter's absentee ballot violate the right to free speech and association under article 1, section 7. *See id.* ¶¶ 89–94. Third, it alleges that the statute's treatment of absentee ballots that arrive after the polls have closed violates the equal-protection requirement of article I, section 6. *See id.* ¶¶ 95–101. And fourth, it claims that the challenged provisions unconstitutionally target Democratic voters because of their political beliefs in violation of the equal-protection and free-speech protections of sections 6 and 7 of article I. *See id.* ¶¶ 102–06. LULAC thus seeks a declaratory judgment that the challenged provisions

violate the Iowa Constitution and an injunction against the Secretary of State and Attorney General prohibiting their enforcement of the provisions. Am. Pet. ¶¶ A–B.

In November and December 2021, LULAC subpoenaed Senators Roby Smith, Jim Carlin, Chris Cournoyer, Adrian Dickey, Jason Schultz, and Dan Zumbach; former Senator Zach Whiting; and Representatives Brooke Boden, Bobby Kaufmann, Carter Nordman, and Jeff Shipley. The substantively identical subpoenas to each of the Legislators broadly seek all documents related to two election bills that ultimately enacted into law the provisions challenged in this suit. *See* Plaintiff's Mtn. to Compel Discovery from Legislators, Ex. 1, at 7–8 (Attached as Ex. B). They also sought documents "concerning the presence or absence of voter fraud in Iowa." *Id.* at 8. The subpoenas specifically requested documents from meetings with or communications from "any individuals who are not Legislators," including "lobbyists, advocates, and any other member of the public." *Id.* at 7. And they exclude internal communications that were only with other legislators. *See id.* at 7–8.

The Legislators served a timely objection to the subpoenas. *See* Plaintiff's Mtn. to Compel Discovery from Legislators, Ex. 2. They informed LULAC that they would not produce any materials in response to the subpoena because "[a]ll of the requested materials are protected by legislative privilege." *Id.* They also

objected that any production would "violate the privacy interests of third parties" and "their rights under article I, section 20, of the Iowa Constitution 'to make known their opinions to their representatives and to petition for a redress of grievances.'" *Id.* And they objected that "the subpoenas are overly broad and unduly burdensome and do not seek material that's relevant to your constitutional challenge to Iowa's election statutes." *Id.*

About three weeks after receiving the Legislators' objections, LULAC moved to compel seeking to enforce the subpoenas. The Legislators resisted the motion, renewing all their objections to the subpoenas, including their claim of legislative privilege. *See* Legislators' Resist. to Mtn. to Compel at 2. They also pointed the court to this Court's holding in *Des Moines Register & Tribune Co. v. Dwyer*, 542 N.W.2d 491, 501–03 (Iowa 1996), that the judiciary lacks the power to order the release of records from the Legislature because it would interfere with the Legislature's constitutional powers. *See* Legislators' Resist. to Mtn. to Compel at 2, 9–10, 13. And they argued that compelling production over their claim of privilege would likewise violate the separation of powers. *See id.*

Five weeks after hearing the motion to compel—and two weeks before the scheduled bench trial—the district court granted LULAC's motion in large part. *See* Order to Compel at 12–13

(Attached as Ex. A). The district court recognized that all the documents subpoenaed by LULAC were covered by Iowa's legislative privilege. *See id.* at 2–5. But relying mainly on federal precedent, the court reasoned that the privilege is qualified and should give way to LULAC's interest in obtaining discovery. *See id.* at 3, 6–11.

The court thus applied a five-factor test used by federal courts to balance when state legislators may rely on legislative privilege in federal court. *See id.* at 3, 6–11. The court concluded that nearly all the factors favored compelling discovery. *See id.* at 7–11. In conducting this analysis, the court rejected the Legislators arguments the requested documents aren't relevant to any valid Iowa constitutional claim brought by LULAC—again relying only on federal precedent. *See id.* at 6–8.

The district court also rejected the Legislators' claim based on the public's privacy interests and rights under article I, section 20 of the Iowa Constitution. *See id.* at 11–12. Citing *Dwyer*, 542 N.W.2d at 501—the only time it did so—the district court recognized that disclosure could have a "chilling effect" on communication with legislators. Order to Compel at 11. But it reasoned that the concern could be mitigated with a protective order. *Id.* at 12.

Thus, the district court ordered the Legislators to comply with most of the requests in LULAC's subpoenas. *Id.* at 12–13. The court only denied the motion "[t]o the extent this request seeks work

product of Legislators in the form of meeting summaries or notes" that were not exchanged with a non-Legislator. *Id.*

The Legislators requested the district court to stay any order to compel to provide opportunity to seek appellate review. *See* Legislators' Resist. to Mtn. to Compel at 7 n.2, 18. But the district court did not do so in its order. So the next day, they renewed their stay request to the district court pending consideration of this petition for writ of certiorari. *See* Motion to Stay Order to Compel.

ARGUMENT

I. The district court acted illegally—and breached the separation of powers—by piercing legislative privilege to order the Legislators comply with LULAC's subpoena for legislative documents.

The district court properly recognized that Iowa legislators are protected by legislative privilege. *See* Order to Compel at 2–4. And it correctly held that all the documents requested by LULAC's subpoenas fall within the scope of that privilege because they all pertain to the legislative process. *See* Order to Compel at 4–5. But the court went astray by deciding that Iowa's legislative privilege is qualified and should be pierced here. *See id.* at 3, 6–11. And its order thus breaches the Iowa Constitution's separation of powers.

A. The district court improperly relied on federal precedent to adopt a feeble legislative privilege and glossed over Iowa authority that courts lack power to order the Legislature to produce confidential documents.

The district court wrongly decided that legislative privilege in Iowa is qualified—rather than absolute—and subject to the federal multi-factored balancing test. *See* Order to Compel at 2. The court relied on federal cases that balance the interests of state legislators with the federal interest in enforcing federal law in federal court. *See id.* at 3, 6–11. Such a balancing makes sense in that context, where the federal sovereign interest is supreme. *See* U.S. Const. art. VI, para. 2. As the United States Supreme Court explained, "federal interference in the state legislative process is not on the same constitutional footing with the interference of one branch of the Federal Government in the affairs of a coequal branch." *United States v. Gillock*, 445 U.S. 360, 370 (1980). But in state court, considering state constitutional claims, there is no similar supreme interest to offset the separation-of-power concerns. And piercing that privilege *is* an interference of one branch of *state* government in the affairs of a coequal branch.

This Court has made clear that it respects the separation of powers. In fact, the Court has held that the judiciary lacks the power to order the release of records from the Legislature because it would interfere with the Legislature's constitutional powers. *See*

Dwyer, 542 N.W.2d at 501–03. That case involved open-records requests for legislative phone records, which the Iowa Senate asserted were confidential. The Court reasoned that article III, section 9—which provides "[e]ach house shall . . . determine its rules of proceedings"—deprived the judiciary of "the power to interfere with or contradict" the legislative determination that the records were confidential. *Id.* at 503.

In doing so, the Court broadly read "rules of proceedings" to cover any procedures related to communications with the public given the "integral part" that the communication plays in the legislative process. *Id.* at 499. And the Court clarified that it didn't matter whether the procedure was formally adopted or just informal practices. *See id.* at 502.

The Court also justified its decision because of the importance of communication between the public and legislators. It quoted Thomas Jefferson explaining that "to give to the will of the people the influence it ought to have, and the information which may enable them to exercise it usefully, it was part of the common law, adopted as the law of this land, that their representatives, in the discharge of their functions, should be free from the cognizance or coercion of the coordinate branches, Judiciary and Executive; and that their communications with their constituents should of right, as of duty also, be free, full, and unawed by any." *Id.* at 499. And it

cited several other courts that agreed elected officials could maintain the confidentiality of communications because of the "chilling effect" and "lack of candor or unwillingness to participate in the decision making process" that would flow from compelled disclosure. *Id.* at 499–500 (cleaned up).

At bottom, in *Dwyer* the Court essentially reaffirmed a long common-law tradition of deferring to legislative privilege. *See id.* at 495 ("[F]or it hath not been used aforetime that the justices should in any wise determine the privileges of the parliament the determination and knowledge of that privilege belongs to the parliament and not to the justices." (quoting 1 William Blackstone, *Commentaries on the Laws of England* 164 (13 ed. 1800) (cleaned up)). And under *Dwyer*, the district court lacked the power to interfere with the Legislature by ordering production like it did.

Cases other than *Dwyer* also support a robust, absolute legislative privilege. Without using the term "legislative privilege" this Court has already recognized that legislators have absolute—not qualified—immunity while acting in their official capacities. *See Hlubek v. Pelecky*, 701 N.W.2d 93, 96 (Iowa 2005) ("Absolute immunity ordinarily is available to certain government officials such as legislators, judges, and prosecutors acting in their official capacities." (citing *Owen v. City of Independence*, 445 U.S. 622, 637 (1980))); *Teague v. Mosley*, 552 N.W. 2d 646, 649–50 (Iowa 1996)

(adopting absolute "legislative immunity" for elected county officials performing legislative functions and applying it to section 1983 claim and purported state statutory claim).

The Court has also suggested, without deciding, that questioning of an agency leader in a court hearing about the agency's appropriations request "may have invaded the realm of legislative immunity." *In re D.C.V.*, 569 N.W.2d 489, 494–95 (Iowa 1997). And it has recognized an absolute privilege in other contexts, like the judicial deliberative privilege. *See Off. of Citizens' Aid/Ombudsman v. Edwards*, 825 N.W.2d 8, 19–21 (Iowa 2012) (applying the long-recognized mental-process privilege and contrasting it with the absolute judicial deliberative privilege). And again, *Dwyer* too put no qualification on its holding that the judiciary had no power to order the release of Legislative documents. *See Dwyer*, 542 N.W.2d at 503.

The district court erred in failing to follow this Iowa precedent and instead adopting the inappropriate standard used to balance the federal sovereign interest against state legislative privilege in federal court. This Court should make clear that legislative privilege is absolute in state court civil proceedings.

B. Even if legislative privilege in Iowa is qualified, it cannot be pierced here.

But even if legislative privilege should be qualified in state civil proceedings, there is no reason to pierce it here. LULAC's subpoenas to the Legislators broadly seek all documents related to two election bills that were enacted into law. *See* Plaintiff's Mtn. to Compel, Ex. 1, at 7–8 (Attached as Ex. B). This includes documents from meetings with or communications from "any individuals who are not Legislators," including "lobbyists, advocates, and any other member of the public." *Id.* at 7. LULAC hasn't demonstrated this evidence about the legislative process and individual legislator's motivations is relevant to any claim they bring. And if the privilege could be pierced here in a run-of-the-mill suit challenging the constitutionality of an Iowa statute, the legislative privilege would soon offer little protection at all.

LULAC asserts that it needs the subpoenaed documents as evidence for "the legislative intent behind" the challenged statutes. *See* Plaintiff's Mtn. to Compel at 8. And it points specifically to one legislator who "publicly offered voter fraud as a justification" for the statutes. *Id.* But even if LULAC has a valid legal theory for its claim, the individual motivations of legislators are irrelevant to the constitutionality of an Iowa statute under the Iowa Constitution. And neither LULAC nor the district court cited a single Iowa case holding to the contrary.

That may be because the Iowa Supreme Court has repeatedly held that the views of an individual legislator are not persuasive in determining legislative intent. *See, e.g.*, *AFSCME Iowa Council 61 v. State*, 928 N.W.2d 21, 36 (Iowa 2019) (reaffirming that evidence from legislators is "inadmissible on the subject of legislative intent" and noting that "Iowa legislators individually and collectively can have multiple or mixed motives"); *Willis v. City of Des Moines*, 357 N.W.2d 567, 571 (Iowa 1984) ("We have rejected as inadmissible opinions offered by legislators on the subject of legislative intent."); *Tennant v. Kuhlemeier*, 120 N.W. 689, 690 (Iowa 1909) ("[T]he opinions of individual legislators, remarks on the passage of an act or the debates accompanying it, or the motives or purposes of individual legislators, or the intention of the draughtsman are too uncertain to be considered in the construction of statutes."). The Court has explained:

> The legislative process is a complex one. A statute is often, perhaps generally, a consensus expression of conflicting private views. Those views are often subjective. A legislator can testify with authority only as to his own understanding of the words in question. What impelled another legislator to vote for the wording is apt to be unfathomable. Accordingly we are usually unwilling to rely upon the interpretations of individual legislators for statutory meaning. This unwillingness exists even where, as here, the legislators who testify are knowledgeable and entitled to our respect."

Iowa State Ed. Association-Iowa Higher Ed. Ass'n v. Public Emp. Relations Bd., 269 N.W.2d 446, 448 (Iowa 1978).

More recently, this Court rejected a challenge to Iowa's public sector collective bargaining statutes based on an alleged improper motive to "impinge on freedom of association with AFSCME." *AFSCME Iowa Council 61*, 928 N.W.2d at 41. The Court held that it would "not inquire into the subjective motives of individual legislators" agreeing that it should not "peer past the statutory text to infer some invidious legislative intention." *Id.* (cleaned up). While the Legislators cited *AFSCME Iowa Council 61* to the district court, it did not follow or try to distinguish the case. *See* Legislators' Resist. to Mtn. to Compel at 15—16; Order to Compel at 6–9.

With no valid basis to inquire into alleged improper legislative intent, there's no reason to linger long over the other federal factors. LULAC cannot show a serious need, and it matters not if the evidence can be obtained from other sources. But indeed the district court's order to compel shows that requested documents *can* be obtained from other sources if they exist, as she ordered the intervening political parties to provide all their communications with legislators about the bills. *See* Order to Compel at 15. And if evidence exists of some improper partisan intent, it would likely be found in such communications.

Even if the relevance of the requested documents were a closer call, a proper consideration of how piercing the privilege would still counsel against compelling production. The district court minimized the harm that ordering production would cause. *See* Order to Compel at 10. It didn't give any weight to the burdens on citizen-legislators trying to respond to the request. Nor did it acknowledge that these burdens are particularly weighty now in the middle of the busiest weeks of the legislative session.

The court also improperly reasoned that communications with others outside the Legislature about legislation "raise a lower interest" than internal legislative documents. Order to Compel at 10. But communication with the public and the enactment of legislation are both at the core of those legislative duties covered by the privilege. *See Dwyer*, 542 N.W.2d at 499 ("Public communication with senators is an integral part of the senate's performance of its constitutionally granted authority to enact laws."); *Edwards v. Vesilind*, 790 S.E.2d 469, 480 (Va. 2016) ("A legislator's communication regarding a core legislative function is protected by legislative privilege, regardless of where and to whom it is made."). And the chilling effect on both the public and legislators of knowing that their communications can be ordered produced by a court, even with a protective order, would have severe negative consequences on the functioning and accessibility of the Legislature.

The district court also gave undue weight to a Florida Supreme Court decision considering the scope of its privilege in a partisan gerrymandering case. *See* Order to Compel at 10–11 (discussing *League of Women Voters of Florida v. Florida House of Representatives*, 143 So.3d 135 (Fla. 2013)). But the Florida Constitution includes an explicit provision prohibiting partisan gerrymandering. And the Florida Supreme Court relied on it to hold that the legislative privilege must give way to an express constitutional provision limiting the legislature. *See id.* at 147–50. And in any event, there was a compelling dissent that would have even so adopted an absolute privilege. *See id.* at 156–61 (Canady, J., dissenting).

Legislative privilege protects the Legislators from these subpoenas. And the district court's contrary order to compel violates the separation of powers. Appellate review is appropriate on this basis alone.

II. The district court also improperly rejected the Legislators' objection that compelling production would violate the public's privacy interests and rights under article I, section 20, of the Iowa Constitution

Article I, section 20, of the Iowa Constitution provides that "[t]he people have the right freely . . . to make known their opinions to their representatives and to petition for a redress of grievance." Iowa Const. art. I, § 20. Over two decades ago in *Dwyer*, the Iowa Supreme Court recognized "a citizen's right to contact a legislator

in person, by mail, or by telephone without any fear or suspicion that doing so would subject the citizen to inquiries from the press or anyone else regarding the nature of the conversation." *Dwyer*, 542 N.W.2d at 501. The Court elaborated, "Apart from the inconvenience or possible harassment generated, a citizen subjected to inquiry about contacting a senator, may, on refusing to discuss the content, find negative inferences are drawn from that fact alone." *Id.* And it favorably cited a New Jersey court's reasoning it could "'think of little else'" than disclosing communication between an elected official and the public, "'which would have a more chilling effect on the free and open communication on which elected officials should be able to rely.'" *Id.* at 499 (quoting *N. Jersey Newspaper Co. v. Freeholders*, 584 A.2d 275, 276 (N.J. App. Div. 1990)).

The Court in *Dwyer* relied on this right as further justification for the Legislature's decision to maintain confidentiality of its communications with the public and as support for the Court's holding that it couldn't constitutionally interfere by ordering release. But even if this Court holds that legislative privilege offers no protection here, this constitutional right offers an independent basis not to enforce LULAC's subpoena.

Because it was 1996, the Court in *Dwyer* only discusses in-person, mail, and telephone communications. *See id.* at 501. But there's no reason the right shouldn't apply to other modern modes

of communications. And just as recognized in *Dwyer*, releasing the communications sought by LULAC would chill members of the public from engaging with their legislators out of fear that their communications will become public. *See id.* at 499, 501. Not only does this harm the Legislators and their ability to perform their legislative duties, but it also harms the citizens of Iowa directly who have this constitutional right infringed. Indeed, these members of the public are not even on notice that this subpoena threatens their rights. And as *Dwyer* explains, even putting them on notice and requiring them to appear here to protect that interest is itself a harm that the right protects. *See id.* at 501.

The district court agreed that *Dwyer* recognized this interest and the court reasoned that it was a "valid concern" here. Order to Compel at 12. Indeed, its discussion of this separate objection is the only time the court cited or discussed *Dwyer* at all. *See id.* at 1–12. But the district court reasoned that "the concerns about publicity are less prevalent" than a public records case like *Dwyer*. *Id.* at 12. And it entered a protective order to mitigate the concern while still permitting LULAC to obtain evidence for its case.

But this analysis ignores that the information isn't relevant to any valid claim in this case. And this case is the subject of significant public attention, so any difference with *Dwyer* is minimal.

And even if a person communicating with a legislator doesn't become known to the public, the production of their records here could still have negative chilling effects. Whether that comes from being questioned further by the lawyers in this proceeding or even just knowing that their communications are no longer subject to the confidentiality protections recognized for the past 25 years since *Dwyer*. Therefore, this Court should also protect these rights under article I, section 20, of the Iowa Constitution by granting the Legislators' petition.

III. Reviewing the order to compel now is the only way to protect the legislative privilege and avoid a breach of the separation of powers.

The Court should review the district court's order compelling the Legislators to produce legislative documents to LULAC now. One of the main purposes of legislative privilege is protecting legislators from the burdens of litigation. *See Edwards*, 790 S.E.2d at 478 (following the reasoning of the D.C. and Fourth Circuits that "subjecting legislators to discovery procedures can prove just as intrusive as naming legislators as parties to a lawsuit" (cleaned up)); *League of Women Voters of Florida, Inc. v. Lee*, No. 4:21CV186, 2021 WL 5283949, at *2 (N.D. Fla Nov. 4, 2021) ("[Legislative privilege furthers the policy goals behind legislative immunity by preventing

parties from using third-party discovery as an end-run around legislative immunity—harassing legislators through burdensome discovery requests.").

If this court doesn't grant the petition for certiorari—and the Legislators must comply with the district court's order and attempt to collect and produce the ordered documents—they will have lost the protections the privilege is meant to preserve. Responding is a significant burden on part-time citizen-legislators—especially in the middle of their annual legislative session. *See* Iowa Const. art. III, div.2, § 2 ("The general assembly shall meet in session on the second Monday of January of each year."). Any required compliance with the subpoena will thus be time that prevents them from completing their legislative duties during this session.[1]

Citizen legislators are contacted in many ways. For example, Representative Jeff Shipley has an official and unofficial email account; Facebook and Twitter accounts capable of receiving communications in multiple ways; home and capitol mailing addresses; and a personal cell phone all publicly listed for the public to contact him. *See* Iowa Legislature, Representative Jeff Shipley, https://

---

[1] The Legislators also raised this burden as an independent objection to the subpoena under Iowa Rule of Civil Procedure 1.1701. *See* Legislators' Resist. to Mtn. to Compel at 16–18. But the district court implicitly rejected this objection as well, providing another basis for reversal.

perma.cc/4EVD-TZ4N; Facebook, Jeff Shipley, https://www.facebook.com/peaceloveiowa. Citizen-legislators cannot control how the public will try to reach them. Nor would we particularly want them to since their public availability and responsiveness is a feature—not a bug—of representative democracy at the state level.

Citizen-legislators can't realistically be expected to remember every communication or other document that they received about a particular bill during a previous legislation. Nor can we expect them to have a system in place to collect and index all communications through the various channels to be able to respond to broad subpoena requests like LULAC's. And given the dispersed and varied software systems and devices of different types, there is no easy centralized way to search for these documents. Thus even trying to locate and collect responsive materials or confirming that they don't have any responsive documents is a burden. Legislative privilege exists to protect against these burdens. And this Court should enforce that protection here.

But it's not just a practical harm on the Legislators. Allowing the district court order to stand will also cause an institutional harm by breaching the separation of powers between two coequal branches of government. The courts must "leave intact the respective roles and regions of independence of the coordinate branches of

government." *Dwyer*, 542 N.W.2d at 495. And overriding the Legislature's decision that communications between the public and legislators are confidential would impede its ability to effectively perform its legislative functions—and weaken the public's access to its elected representatives. And letting the district court's order stand would "embrace an imbalance . . . between the judicial and legislative branches [that] would be inconsistent with the principle of respect due to co-equal branches and would undermine the founded independence of all three branches of state government." *Id.* at 496.

All these harms will be avoided if this Court grants the petition and reverses the district court's order to compel. But even if this Court ultimately rejects the Legislators' claim of privilege here, justice will still be best served by granting the petition and deciding this case. Legislative privilege is an important question that goes to the heart of the separation of powers. The Legislators are elected members of a coequal branch of government. The Iowa Supreme Court should decide the contours of the privilege, not just a single district court judge. And if the district court is correct that it has the power to compel this production—despite *Dwyer*'s holding that the judiciary lacks the power to interfere with the Legislature's confidentiality decisions—this Court should say so rather than letting *Dwyer* be implicitly overruled by the district court.

CONCLUSION

For these reasons, Senators Roby Smith, Jim Carlin, Chris Cournoyer, Adrian Dickey, Jason Schultz, and Dan Zumbach; former Senator Zach Whiting; and Representatives Brooke Boden, Bobby Kaufmann, Carter Nordman, and Jeff Shipley respectfully request that the Court grant their petition for writ of certiorari. The district court's rejection of their claim of legislative privilege deserves appellate review.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

/s/ Samuel P. Langholz
SAMUEL P. LANGHOLZ
Assistant Solicitor General
Iowa Department of Justice
1305 E. Walnut Street, 2nd Floor
Des Moines, Iowa 50319
(515) 281-5164
(515) 281-4209 (fax)
sam.langholz@ag.iowa.gov

ATTORNEY FOR CERTIORARI PLAINTIFFS

/s/ W. Charles Smithson
W. CHARLES SMITHSON
Legal Counsel and
Secretary of the Senate
Iowa State Capitol
1007 E. Grand Avenue

Des Moines, Iowa 50319
(515) 281-5307
charlie.smithson@legis.iowa.gov

ATTORNEY FOR CERTIORARI PLAINTIFFS SENATOR ROBY SMITH, SENATOR JIM CARLIN, SENATOR CHRIS COURNOYER, SENATOR ADRIAN DICKEY, SENATOR JASON SCHULTZ, SENATOR DAN ZUMBACH AND FORMER SENATOR ZACH WHITING

CERTIFICATE OF FILING AND SERVICE

The undersigned certifies that on March 2, 2022, this petition was electronically filed with the Clerk of the Supreme Court and served on counsel of record for all parties before the district court using EDMS.

/s/ *Samuel P. Langholz*
Assistant Solicitor General