

IN THE SUPREME COURT OF IOWA

SENATOR ROBY SMITH,
et al.,

Plaintiffs,

v.

IOWA DISTRICT COURT FOR
POLK COUNTY,

Defendant.

Sup. Ct. No. 22-0401

Polk County No. CVCV061476

**Reply in Support of
Petition for
Writ of Certiorari**

The district court's order compelling the production of legislative documents in the face of a claim of legislative privilege deserves review by the Iowa Supreme Court. In its resistance, LULAC offers serious arguments why it should ultimately prevail on the merits—as do the Legislators in their petition. But that's all LULAC argues. It doesn't even try to resist the Legislators' other arguments why certiorari review is warranted.

Indeed, LULAC *can't* dispute that the district court's order is unprecedented. Or that it poses extraordinary separation-of-powers questions. Or that the Legislators have no other avenue but this petition to protect their legislative privilege and constitutional interests. LULAC has thus failed to give the Court any legitimate reason that this petition should not be granted.

To comply with this Court’s scheduling order and facilitate prompt consideration of the petition, the Legislators do not attempt to respond to all the defects in LULAC’s arguments about the scope of legislative privilege, Iowa’s separation-of-powers doctrine, and LULAC’s novel constitutional challenge. The parties will have the chance to fully brief the merits of those substantial and important issues if the Court grants the petition. But as the Legislators’ petition reveals, the weight of Iowa authority supports their claim that the district court’s order is illegal. And while LULAC cherry-picks favorable authority from other jurisdictions, it has still pointed to *no* Iowa precedent authorizing the district court’s order to compel. Nor any Iowa authority recognizing a constitutional challenge to a statute based on the individual motivations of legislators.

Even so, the Court doesn’t now need to decide that the Legislators will succeed on the merits. (Though they will.) The court need only decide whether the district court’s order and Legislators’ claims should get appellate review *at all*. If they should, the Court must grant this petition. Otherwise, the harm will be inflicted. And these non-parties will have no way to undue it.¹ Nor will they even

¹ Recognizing this possible irreparable harm, the district court granted the Legislators’ motion to stay its order to compel pending the resolution of this appeal. *See* Order of March 10, 2022. At LULAC’s request, the district court then continued the trial *See* Order of March 14, 2022. A new trial date has not yet been set. *Id.*

have a way to know for future disputes whether *Des Moines Register & Tribune Co. v. Dwyer*, 542 N.W.2d 491 (Iowa 1996), is still good law or if the courts now have the power—despite *Dwyer*'s holding and centuries of legislative privilege—to order production of confidential Legislative documents.

The Legislators urge the Court to promptly grant their petition for writ of certiorari to consider these substantial and important issues before this case causes irreparable constitutional harm.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

The undersigned certifies that on March 14, 2022, this reply 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
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