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. 22-0401 Polk County No. CVCV061476 **Resistance to Petition for Writ of Certiorari**

League of United Latin American Citizens of Iowa ("LULAC") is the Plaintiff in the above-captioned district court action. LULAC, by and through its undersigned counsel, respectfully submits this resistance to the Petition for Writ of Certiorari, as per the Court's order on March 9, 2022.

TABLE OF CONTENTS

INTRODUCTION

In this case, the district court must decide whether two recently enacted statutes comply with the Iowa Constitution. Relevant to that determination is the question of whether the Legislature intended to make it harder for voters with certain political viewpoints to successfully vote in Iowa elections. At issue in this appeal is the district court's order directing 11 legislators (the "Legislators") to comply with two identical subpoenas that the plaintiff LULAC issued under the district court's authority and Iowa Rule of Civil Procedure 1.1701. The subpoenas were narrowly drafted to seek ***only*** materials related to ***external*** communications directly and centrally related to LULAC's claims—communications entirely between legislators or their staff, or otherwise internal to the Legislature, were not requested. LULAC requested the communications themselves, as well as any meeting summaries or notes that the Legislators had of any meetings or communications with persons or entities outside the Legislature relevant to LULAC's claims.

The Legislators objected to the subpoenas in their entirety, claiming all of the materials sought by LULAC were subject to the legislative privilege, and refused to produce any documents. In considering LULAC's motion to compel, the district court acted exactly as it should have: it thoughtfully and carefully considered the competing interests of LULAC as a plaintiff, the

judicial branch as an agent of constitutional review, the Legislators as members of a co-equal branch, and the members of the public who interact with the Legislature. After carefully considering each of these interests, as well as the specific nature of LULAC's claims and the relevance and need for the evidence at issue, the district court issued an order in which it granted LULAC's motion to compel in part and denied it in part. The district court's order expressly shielded any documents that could be deemed internal, specifically denying LULAC's motion to the extent it sought any legislative work product in the form of meeting summaries or notes, even if related to meetings or communications with external parties. But the district court granted the motion to compel as it related to external communications themselves, and directed the Legislators that they were to produce any such responsive communications. At the same time, the district court ordered that those external communications were to be subject to a protective order to avoid public disclosure. That protective order is highly deferential to the Legislators, permitting them to designate "*any* documents or information they believe is protected by the Legislative privilege … as 'Attorneys' Eyes Only.'"

The Legislators now seek certiorari review of this Court under Iowa Rule of Appellate Procedure 6.107, arguing that it was ***illegal*** for the district

court to engage in the analysis ***at all***. They insist that legislators have *absolute* immunity from civil discovery in any and every case, without citing a single case from Iowa or any other jurisdiction that reaches this conclusion. And they mistakenly rely on *Des Moines Reg. & Tribune Co. v. Dwyer*, which addressed a different and narrower issue: whether the Iowa Legislature is empowered to set its own rules for what it discloses in public records requests. 542 N.W. 2d 491, 494 (Iowa 1996). Moreover, even in *Dwyer*, the Court expressly found that deference to the Legislature's rules was appropriate only "*so long as constitutional questions are not implicated*." *Id.* at 496 (emphasis added).

The Legislators' argument should be rejected. LULAC's subpoenas—and the district court's order enforcing them—do not implicate the Legislature's "constitutionally-granted power to determine its own rules of proceedings," *id*. at 493, but reversing the district court's order would directly undermine the judiciary's power to "play an undiminished role as an independent and equal coordinate branch of government." *State v. Tucker*, 959 N.W. 2d 140, 150 (Iowa 2021) (citing *Webster Cnty. Bd. of Supervisors v. Flattery*, 268 N.W.2d 869, 873 (Iowa 1978)). The Legislators ignore the Court's longstanding precedent in which it has stressed that when faced with competing prerogatives from co-equal branches of Iowa government, the judiciary must work to achieve a "balance of power between our branches of

government" and facilitate "harmonious cooperation" when the branches "inevitably intersect." *State v. Hoegh*, 632 N.W.2d 885, 889 (Iowa 2001). Instead, the Legislators argue that the judiciary's power to conduct judicial review—and subpoena evidence to inform that review—must yield, always and absolutely, to the Legislature's prerogative. That view is wholly unsupported and does not generate a proper issue for appeal. The Legislators' half-hearted contestation of the district court's application of the qualified legislative privilege are similarly ill-suited for a certiorari appeal because they do not concern whether the district court committed legal error. Finally, LULAC has repeatedly expressed its willingness to meet and confer with the Legislators to minimize the burden of searching and producing responsive documents to the extent possible; that is the proper vehicle to address the Legislators' complaints about the volume of documents sought or their scheduling concerns, neither of which require the Supreme Court's intervention. The Legislators' petition should be denied so that the parties can complete discovery process expeditiously and the district court can resolve the important constitutional claims before it.

BACKGROUND

On March 9, 2021, LULAC filed suit challenging Senate File 413 (2021) and Senate File 568 (2021), two omnibus election bills that restrict

nearly every form of voting that Iowans—particularly Democratic and minority voters—relied on in 2020. Despite record-breaking turnout in the 2020 election and no allegations of fraudulent activity, the Iowa Legislature enacted these bills to implement new limitations on voter registration opportunities, the timeframes for receiving and returning absentee ballots, the methods through which absentee ballots can be returned, and the voting hours on Election Day, among other voting practices and procedures. LULAC alleged that these restrictions violate the Iowa Constitution in four ways: (1) they collectively impose an unconstitutional burden on the fundamental right to vote protected by the Iowa Constitution (Count I); (2) the new restrictions on who can return absentee ballots violate the free speech and association guarantees of the Iowa Constitution (Count II); (3) the different deadlines by which certain voters can return their absentee ballots deny voters equal protection of the laws (Count III); and (4) the laws violate the Iowa Constitution's guarantees of free speech and equal protection because the legislature passed them with the invidious purpose of discriminating against certain voters on the basis of their political viewpoints (Count IV).

Between November 19 and December 17, 2021, LULAC served third-party subpoenas on the Legislators, requesting that each produce several narrow categories of documents in their possession. *See, e.g.*, Pet. for Writ of

Cert., Ex. B. LULAC expressly limited its requests to documents that were *shared with non-legislators*, excluding any internal communications among legislators or their staffs. Subject to that important limitation, the requests sought documents or communications concerning: (1) the consideration, enactment, implementation, and enforcement of SF 413, House File 590 ("HF 590"), and/or SF 568; (2) the state interests or other justifications for the enactment of SF 413, HF 590, and/or SF 568; and (3) the presence or absence of voter fraud in Iowa. *Id*.

On December 3, 2021, counsel representing all 11 Legislators sent written objections to LULAC's subpoenas. Pl.'s Mot. to Compel Disc. from Legislators, Ex. 2. For each document request, the Legislators asserted legislative privilege, invoked the purported privacy interests of third parties under Article I, Section 20 of the Iowa Constitution, and claimed that the subpoenas were overly broad, unduly burdensome, and sought materials not relevant to the case. *Id*.

In response to these objections, LULAC's counsel requested a meet and confer, which occurred on December 6, 2021. During that conference, counsel for the Legislators reiterated their position that the legislative privilege barred *all* discovery sought by LULAC and confirmed that the Legislators would not be producing any documents in response to the subpoenas.

LULAC filed its motion to compel on December 23, 2021, less than a week after Legislators' counsel accepted service for the last legislator. The Legislators requested and received an extension of their December 30, 2021 deadline for a resistance—which LULAC did not oppose—and filed their Resistance on January 10, 2022. LULAC filed its reply on January 18, and the district court heard argument on the motion on January 21.

On February 28, 2022, the district court issued an order granting in part and denying in part LULAC's motion to compel. The court carefully analyzed the roots and scope of the legislative privilege, and explained that because Iowa's Constitution has no corollary to the Speech and Debate Clause of the U.S. Constitution, the legislative privilege in Iowa is a feature of only common law and the Iowa Constitution's separation of powers. Ord. Regarding Mot. to Compel Disc. at 3-4 (attached as Ex. A to the Pet. for Writ of Cert.) ("Order"). The Court also looked to authority from other states whose constitutions do not include a Speech or Debate Clause, explaining that in those instances the legislative privilege is a qualified one which—even if it applies—much be balanced against other competing interests. *Id*. at 4 (considering *League of Women Voters of Fla. v. Fla. House of Representatives*, 132 So.3d 135 (Fla. 2013)). The Court determined that the documents at issue involved the Legislators' legislative process, and therefore

applied a balancing test that weighed the qualified legislative privilege against the competing interests raised in this case. *Id.* at 5.

Following the well-trod analysis adopted by federal courts nationwide when confronted with discovery objections invoking the common law legislative privilege, the district court found that the privilege should yield to permit the requested discovery here. Specifically, the district court considered (1) the relevance of the evidence to this litigation; (2) the availability of other evidence: (3) the seriousness of the litigation; (4) the roles of the Legislators in this litigation; and (5) the extent to which discovery would impede the legislative process. *Id*. at 6-10. The district court determined that the first four factors weighed in favor of discovery, explaining that Count IV of LULAC's Petition raises a claim against the "law-making process itself" where legislative intent is directly relevant, *id*. at 6-7, that the legislature's communications are a primary source for determining legislative intent, *id*. at 8, that this case involves allegations of restrictions on the fundamental right to vote protected by the Iowa Constitution, *id.* at 8-9, and that the fact that the Legislators themselves are not parties here made legislative privilege less of a concern because the Legislators "have no personal stake in the litigation and face no direct adverse consequence if the plaintiffs prevail." *Id.* at 9 (quoting *Benisek v. Lamone*, 241 F. Supp. 3d 566, 576 (D. Md. 2017)). While the

district court thought the discovery might have some slight impediment on the legislative process, the court noted this concern was significantly mitigated by LULAC's decision to seek only communications with individuals outside the Legislature, *id*. at 10, and that in this context this factor was not significant enough to prohibit the requested discovery. *Id*. Indeed, in holding that these documents must be produced, the district court explained that if the Legislature got to pick and choose which documents to hide in a case directly implicating legislative intent, then it could "circumvent the constitutional standards regarding intent to favor or disfavor a political party or an incumbent by concealing evidence of that intent from the public." *Id.* at 10 (quoting *League of Women Voters of Fla.*, 132 So. 3d at 149).

The district court also rejected the Legislators' claim that production here would violate the rights of third parties to privacy in communications with Legislators. The district court first noted that, contrary to the Legislators' claim, this right is not directly protected by Article I, § 20 of Iowa's Constitution. *Id.* at 11. As to any chilling effect on communications between the public and the Legislature, the district court explained that such a concern is significantly less relevant in cases that do not involve public opens records requests, that such privacy concerns could be mitigated by a protective order, and that the importance of this discovery to this litigation outweighed these

concerns. *Id.* at 12. Moreover, as the district court pointed out, although "discovery of a third-party's communication with a Legislator could chill such speech, it may also reveal relevant information regarding an alleged discriminatory intent of the legislation intended to limit the ability of some Iowans to vote." *Id*. Accordingly, the district court granted LULAC's motion to compel production of requested communications and documents exchanged with non-legislators, but denied the motion to the extent that LULAC sought Legislators' work product in the "form of meeting summaries or notes." *Id.* at 12-13.

On March 2, 2022, the Legislators filed their Petition for Writ of Certiorari with this Court.

LEGAL STANDARD

The Legislators seek this court's review under Iowa Rule of Appellate Procedure 6.107, which provides in relevant part that any party claiming a judge "exceeded the judge's jurisdiction or otherwise acted illegally may commence an original certiorari action in the supreme court by filing a petition for writ of certiorari." Certiorari under this rule is available "only under very limited circumstances" where "in the exercise of judicial functions, an officer exceeds the bounds of proper jurisdiction or otherwise acts illegally." *McKeever v. Gerard*, 368 N.W.2d 116, 118 (Iowa 1985). To establish

illegality under the certiorari rule, the petitioner must demonstrate that "there is not substantial evidence to support the findings on which the inferior court or tribunal based its conclusions of law" or the judge "does not apply the proper rule of law." *Id*.

ARGUMENT

I. The district court correctly found that legislative privilege in Iowa is a common law, qualified privilege.

The district court correctly held that, in Iowa, legislative privilege is rooted in common law and is not absolute. Order at 3. The Legislators do not meaningfully contest the district court's conclusion that there is no "explicit[]" basis for legislative privilege in the Iowa Constitution. *Id.* at 11. Instead, they insist that constitutional principles and *Dwyer* establish an absolute common law legislative privilege that can *never* be pierced. The Legislators' strained reading of *Dwyer* and adjacent separation of powers issues do not warrant this Court's intervention, nor do they establish that the district court failed to "apply the proper rule of law." *McKeever*, 368 N.W.23 at 118.

The principles of the Iowa Constitution require a delicate balance between the branches—not an absolute legislative privilege against judicial intrusion. Unlike the federal Constitution, the Iowa Constitution does not contain an equivalent to the Speech or Debate Clause. Order at 3. As a result,

the Legislators' constitutional argument relies entirely on the general principle that the coequal branches should not interfere with each other. Pet. at. 9. But, of course, the Iowa Constitution does not contemplate *zero* interference between the branches because "some functions inevitably intersect." *State v. Hoegh*, 632 N.W.2d 885, 889 (Iowa 2001). Instead, *Dwyer* makes clear that "the separation of powers doctrine" only requires that the courts "leave intact the *respective roles and regions of independence* of the coordinate branches." *Dwyer*, 542 N.W.2d at 495 (emphasis added). The Legislators have failed to establish that the subpoena in this case interferes with a "region[] of independence" of the Legislature or that, if it did, the separation of powers doctrine requires an absolute abdication by the courts.

Unlike *Dwyer*, this petition primarily concerns *judicial* affairs rather than legislative affairs. The Legislators are resisting compliance with a subpoena issued by an Iowa district court seeking documents relevant to a lawsuit challenging Iowa statutes for constitutional infirmities. In that sense, the petition concerns the core function of judicial review and whether Iowa courts have control over their own proceedings. Even if the Legislators are able to identify an important legislative interest or function that is implicated by judicial proceedings, any conflicting interests must be resolved through "harmonious cooperation among the three branches." *Hoegh*, 632 N.W. 2d at

889. That harmony is fulfilled by a qualified privilege that delicately balances the circumstances of the request and the interests at stake, not an absolute deference to the Legislature.

The deference afforded to the Legislature in *Dwyer* was informed by unique circumstances that simply do not apply to a subpoena. First, *Dwyer* concerned public records requests that would be available to all for any reason—not the limited realm of civil discovery supervised by a court. 542 N.W. 2d at 494. Second, the "determinative issue" in *Dwyer* was "whether the senate's policy on release of detailed phone records constitutes a senate rule of proceeding." *Id.* at 497. Here, the Legislators have not identified any senate rules that would be violated by compliance with a subpoena—they simply invoke the individuals' preference not to disclose. Third, the *Dwyer* court gave deference to the legislature's rules only "*so long as constitutional questions are not implicated*." *Id.* at 496 (emphasis added). Here, LULAC has raised multiple constitutional questions which implicate the legislative process and, in contrast to *Dwyer*, finding an absolute legislative privilege from civil discovery *would* impair the "independence of the judiciary in construing and interpreting" the Iowa Constitution. *Id*. ("The question here is not one involving a preservation of the independence of the judiciary in construing

and interpreting statutes … but of recognizing and respecting the prerogatives of the Iowa Senate as committed to it by the Iowa Constitution.").

The Legislators' invocation of absolute privilege against civil liability further *supports* finding only a qualified legislative privilege from civil discovery. As this Court has recognized, the American judicial system writ large has rejected "private damages actions as a means of controlling unconstitutional conduct." *Venckus v. City of Iowa City*, 930 N.W.2d 792, 803 (Iowa 2019). Instead, the judicial branch relies on other mechanisms that "restrain official conduct, including vigorous judicial oversight." *Id.* Secretary of State Paul Pate faces no possibility of personal liability in this suit, yet he must nevertheless comply with civil discovery to enable judicial review of the state's actions. In the same way, the Legislators are immune from civil liability—but that does not extend to all forms of oversight, including judicial review and the accompanying civil discovery.[1] The fact of immunity from

[1] The Legislators misread *In re D.C.V.* when they suggest that absolute legislative immunity extends to immunity from discovery. That case considered the trial court's requirement that a high-level official be called to testify. The Court's proposed solution was not absolute immunity from providing testimony, but simply that "consideration should be first given to calling lesser-ranking officials before a department head is called to testify." *In re D.C.V.*, 569 N.W.2d 489, 495 (Iowa 1997).

liability *necessitates* robust oversight mechanisms, otherwise the Legislature's authority would be unchecked.

Finally, it should be emphasized how extreme an *absolute* legislative privilege would be. Even other privileges recognized by Iowa courts that have a more express constitutional hook, such as the newsperson's privilege, are not absolute. *See, e.g.*, *Winegard v. Oxberger*, 258 N.W.2d 847, 851 (Iowa 1977) ("Freedom of the press, precious and vital though it is to a free society, is not an absolute."). LULAC is not aware of any precedent providing for an absolute common law legislative privilege—even in states that have a Speech or Debate Clause conferring an express constitutional legislative privilege, courts have held that separation of powers principles still permit the judiciary to compel disclosure of legislative records. *See Hartz v. McClatchy Co.*, LLC, No. 2021-CA-0634-MR, 2022 WL 332866, at *6 (Ky. Ct. App. Feb. 4, 2022). Where core judicial functions intersect with the activity of the legislature, the coequal branches must be balanced—it would undermine separation of powers principles to yield, absolutely, to the legislature's prerogative.

II. The district court correctly weighed the equities of the qualified legislative privilege.

Certiorari is only appropriate if the district court "does not apply the proper rule of law." *McKeever*, 368 N.W.2d at 118. If the Court concurs that the legislative privilege in Iowa is qualified, the district court's fact-specific

evaluation of whether to pierce the privilege in this instance is not appropriate for certiorari review. Here, the district court applied the correct rule of law; its five-factor analysis in considering the application of common law legislative privilege is supported by ample precedent. *See Bethune-Hill v. Va. State Bd. of Elections*, 114 F. Supp. 3d 323, 337-38 (E.D. Va. 2015) (citing cases). These factors are consistent with how Iowa courts asses other forms of qualified privilege. *See*, *e.g.*, *Winegard*, 258 N.W.2d at 852 (considering the importance of the information to the cause of action, the other reasonable means to obtain it, and whether the action is "patently frivolous" in applying newsperson's privilege). In particular, the Court should not second-guess the district court's thoughtful application where, as here, the Legislators have not meaningfully addressed the standard. *See, e.g.*, Pet. at 15 ("With no valid basis to inquire into alleged improper legislative intent, there's no reason to linger long over the other federal factors.").

A. The narrow requests do not injure the Legislators or their contacts.

The district court ordered production of a very narrow set of documents—namely, external communications that do not pierce the Legislators' internal workings. Order at 2. Moreover, those documents are to be produced subject to an aggressive protective order which permits the Legislators to designate "*any* documents or information they believe is

protected by the Legislative Privilege … as 'Attorneys' Eyes Only.'" *Id.* at 16 (emphasis added). Notably, the district court did not set a date certain for the Legislators' compliance, and instead directed that discovery proceed through the ordinary meet and confer process.

In the face of an eminently reasonable and narrow discovery obligation, the Legislators are only able to articulate a burden by exaggerating the impact of the district court's order on themselves and on the members of the public they communicate with. Contrary to the Legislators' representation, this burden was not wholly rejected by the Court and the Legislators are free to raise burden objections, so long as they formally assert that objection and "identify whether documents are being withheld based on the objection." *Id.* at 17. Put another way, the district court simply resolved the legislative privilege issue—which was asserted by the Legislators in blanket fashion—and left other specific objections to be resolved through further process.

In terms of the burden on Legislators, the petition raises a parade of horribles that have not occurred and there is no reason to expect that they will. First, the Legislators complain that the order came down during "the busiest weeks of the legislative session." Pet. at 3. But that window is already passing, and the district court did not order them to comply within that timeframe. Second, they argue that legislators "can't realistically be expected to

remember every communication or other" regarding a particular bill. *Id.* at 22. Nobody has asked them to do that. Third, the Legislators claim they cannot "have a system in place to collect and index all communications." *Id.* Nobody has required or requested that they create or implement such a system. As with any civil discovery, LULAC is ready to meet and confer to discuss a reasonable search for responsive documents. The Legislators have not identified any action by the district court or by LULAC to suggest that unreasonable burdens would be imposed upon them.

The Legislators also raise the prospect that disclosing their external communications risks creating a "chilling effect" on communications between the public and legislators. Pet. at 16. But these claims rely on a combination of exaggerations and conclusory assertions. In *Dwyer*, this Court recognized the potential of a chilling effect where the public might fear "inquiries from the press" or "possible harassment." 542 N.W.2d at 501. Those concerns only apply to public disclosure from a public records request, not civil discovery produced with an "Attorneys Eyes Only" designation. Indeed, the Legislators admit that "members of the public are not even on notice" of the subpoena, Pet. at 19, so it is unclear how their speech will be chilled by the Legislators' compliance. *See also*, *id.* (describing chilling effect "out of fear that their communications will become public"). Further, as the district court noted,

although "discovery of a third-party's communication with a Legislator could chill such speech, it may also reveal relevant information regarding an alleged discriminatory intent of the legislation intended to limit the ability of some Iowans to vote," Order at 12, so there are concerns of chill on the public's associational rights in denying the requested discovery as well. The district court took pains to mitigate the concerns of chill raised by the Legislators through an appropriate protective order, and the Legislators' conclusory assertion that a chilling effect will result, "even with a protective order" is insufficient to create an issue for appeal. Pet. at 16.

B. The documents sought are directly relevant to LULAC's claims.

The district court correctly determined that the documents sought by LULAC go to the heart of their well-pled claims. In particular, Count IV—which alleges that SF 413 and SF 568 were enacted to deliberately target and impose burdens on voters from a particular political party—constitutes a claim "against the law-making process itself." Order at 6. As other courts have consistently noted, "proof of a legislative body's discriminatory intent is relevant and extremely important as direct evidence." *Id.* at 7 (citing *Bethune-Hill*, 114 F. Supp. 3d at 339).

In response, the Legislators ask this Court to apply the reasoning of *AFSCME Iowa Council 61 v. State* to a starkly different context. In *AFSCME,*

the plaintiffs' claim was that the statute was "arbitrary." 928 N.W. 2d 21, 30 (Iowa (2019). In that context, this Court appropriately determined that the applicable standard was the "rational basis test." *Id.* at 32. Under rational basis review, this Court has declined to inquire into the "subjective motives of individual legislators." *Id.* at 41. Here, LULAC does not allege that SF 413 and SF 568 were arbitrary, but rather that they were deliberately designed to disfavor voters with certain viewpoints. When certain viewpoints are singled out, the appropriate standard is not rational basis, but strict scrutiny. *See Christian Legal Soc. Chapter of the Univ. of Cal., Hastings Coll. of the L. v. Martinez*, 561 U.S. 661, 684–85 (2010) ("because the university singled out [certain viewpoints] for disadvantageous treatment, we subjected the university's regulation to strict scrutiny"); *see also Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829 ("When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant."). In the context of alleged viewpoint discrimination, courts have recognized that singling out voters with a certain viewpoint is a relevant and actionable form of unconstitutional motive. *See e.g.*, *Shapiro v. McManus*, 203 F. Supp. 3d 579, 596 (D. Md. 2016).

Moreover, the Legislators' entire discussion of admissibility and the permissible inferences from certain kinds of evidence is not properly before the Court. As the district court correctly recognized, "it would be inappropriate for the Court to announce, in the abstract, conclusions regarding legal standards that have not been fully briefed." Order at 7. Instead, "decisions about future admissibility … will be addressed in future proceedings." *Id.* Here, the Court need not address whether the Legislators' communications would be admissible, or what inferences a fact-finder may draw from those documents; it is simply enough that the communications are "reasonably calculated to lead to the discovery of admissible evidence." *Id.* at 14; *see also* Iowa R. Civ. P. 1503(1). Even if the Legislators are correct that the "individual legislator's motivations" do not establish the constitutionality of an Iowa statute, Pet. at 13, their communications may reveal relevant information, including the knowledge or justifications the Legislature writ large relied upon in considering SF 413 and SF 568.

Finally, the Legislators undermine the entirety of their argument by pointing out that the requested documents "can be obtained from other sources if they exist." *Id.* 15. Here, it is important to distinguish between the availability of the requested documents as a factual matter and as a practical matter. Factually, the Legislators are right—any external communications are

presumably in the possession of those non-legislators as well. However, this fact undermines the Legislators' privilege claim because it is inconceivable that an ordinary citizen could refuse to comply with a subpoena on the grounds that the requested documents involve Iowa legislators. In that sense privilege has already been waived and, as the district court noted, they "raise a lower interest in the legislative privilege." Order at 10.

As a practical matter, there is no other means for LULAC to obtain the requested communications. LULAC has no conceivable method for guessing all of the external entities or persons who may have communicated with the Legislators regarding SF 413 and SF 568. Even if LULAC possessed that extraordinary insight, it would be an enormous waste of resources to separately subpoena each of those interlocutors, rather than direct discovery towards the common denominator. As the district court recognized, the nexus of relevance is "the law-making process itself," so it is appropriate to direct these requests toward that process, rather than the myriad of external entities who interact with it. *Id.* at 6.

CONCLUSION

For the reasons stated herein, the Legislators Petition for Writ of Certiorari should be denied.

Dated: March 14, 2022

Respectfully Submitted,

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**Pro hac vice application to be filed*

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon the parties below by e-filing on March 14, 2022.

/s/ Shayla McCormally