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Via CM/ECF

Lyle W. Cayce, Clerk
United States Court of Appeals for the Fifth Circuit

Re: No. 22-50435, *LULAC Texas v. Hughes*

Dear Mr. Cayce:

I write to bring to the panel's attention *Jackson Municipal Airport Authority v. Harkins*, No. 21-60313 (5th Cir. May 10, 2023), which is germane to three issues in this appeal.

First, the plaintiffs have challenged (at 15-23) appellate jurisdiction. But as the Legislators' reply brief explained (at 6-7), adopting their arguments would violate the rule of orderliness, *see Branch v. Phillips Petroleum Co.*, 638 F.2d 873, 879 (5th Cir. 1981), and improperly disregard *in re Hubbard*, 803 F.3d 1298, 1305 (11th Cir. 2015), which relied on Fifth Circuit precedent. *Harkins* vindicates the Legislators. Slip. Op. at 4-7. Invoking *Branch* and *Hubbard*, *Harkins* reaffirms that non-party "Legislators have the right to immediately appeal the district court's order" under the collateral-order doctrine. *Id.* at 5 (citation omitted).

Second, the plaintiffs have argued (at 40-47) that sharing a document with a third party automatically waives legislative privilege. As the Legislators explained, that argument fails because the privilege protects the legislative process to which non-legislators may be an integral part. *See* Appellants' Br. 35-41; Appellants' Reply Br. 17-21. Again, *Harkins* supports the Legislators' position. It confirms that the privilege "covers all aspects of the legislative process" and that, "[c]onsequently, some communications with third parties, such as private communications with advocacy groups," may be privileged when they "bear[] on potential legislation." Slip Op. at 11. Legislators waive their privilege, *Harkins* explained, only by "*publicly reveal[ing]*" such documents. *Id.*

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Third, Harkins' discussion of the need for a privilege log implicitly rejects plaintiffs' apparent theory that because the privilege is "qualified," *id.* at 3, the plaintiffs are entitled to documents bearing on "legislative motive," given their relevance to a racial-discrimination claim, *id.* at 11. Specifically, *Harkins* explained that a privilege log is necessary to assess whether a document had been publicly disclosed or "ha[s] no connection whatsoever with 'legitimate legislative activity,'" —not whether that document is relevant to the question of racial bias. *Id.* Plaintiffs have never claimed that the documents at issue, which have already been logged, fall into one of those categories.

Respectfully submitted.

/s/ Lanora C. Pettit

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cc: all counsel of record (via e-mail)

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