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April 6, 2023

Lyle W. Cayce
Clerk of Court
U.S. Court of Appeals for the Fifth Circuit
F. Edward Hebert Building
600 S. Maestri Place
New Orleans, LA 70130-3408

Re: *LULAC Texas, et al. v. Hughes, et al.*, Case No. 22-50435
Argument Held: August 2, 2022
Panel: Richman, Wiener, Jr., Willett

Dear Mr. Cayce:

Pursuant to Rule 28(j), LULAC Plaintiffs-Appellees submit *Turtle Mountain Band of Chippewa Indians, et al. v. Howe, et al.*, Case No. 23-1597 (8th Cir. April 3, 2023) (Attachment A), in which the Eighth Circuit dismissed for lack of jurisdiction an interlocutory appeal filed by the North Dakota Legislative Assembly and various North Dakota state legislators, challenging several discovery orders denying their assertions of state legislative privilege in response to subpoenas. *See* Attachments B, C (discovery orders on appeal).

In the first discovery order on appeal, the district court (Welte, C.J.) affirmed a magistrate judge's decision to deny a state representative's motion to quash a subpoena requiring him to testify regarding North Dakota's state legislative redistricting process. *See* Attachment B. In the second order, the district court affirmed a magistrate judge's decision to grant the Plaintiffs' motion to enforce a subpoena for production of documents from members of the North Dakota Legislative Assembly. *See* Attachment C. In both orders the district court agreed with the magistrate judge that the state legislative privilege supplies only a qualified privilege, and further explained in the second order that legislative communications with third parties "are not protected by the state legislative privilege." Attachment C at 3; *see also* *Turtle Mountain Band of Chippewa Indians, et al. v. Howe, et al.*, Case No. 3:22-cv-00022, ECF Nos. 49, 64 (D.N.D. March 27, 2023) (magistrate judge orders).

The third-party legislators and the North Dakota Legislative Assembly filed a notice of interlocutory appeal on March 27, 2023 as to both orders. *See* *Turtle Mountain Band of Chippewa Indians, et al. v. Howe, et al.*, Case No. 3:22-cv-00022, ECF No. 80 (D.N.D. March 27, 2023). The Eighth Circuit dismissed the appeal *sua sponte* on April 3, 2023, explaining in full: "The court

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has carefully reviewed the original file of the United States District Court and orders that this appeal be dismissed for lack of jurisdiction.” Attachment A.

Sincerely,

/s/ Uzoma N. Nkwonta
Uzoma N. Nkwonta

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