No. 22-50407

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, et al.,

Plaintiffs-Appellees,

v.

GREG ABBOTT, et al.,

Defendants,

RYAN GUILLEN, TEXAS HOUSE MEMBER, BROOKS LANDGRAF, TEXAS HOUSE MEMBER & JOHN LUJAN, TEXAS HOUSE MEMBER,

Third-Party Movants-Appellants.

On Interlocutory Appeal from the United States District Court
for the Western District of Texas
(No. 3:21-cv-00259-DCG-JES-JVB)

RETRIEVED FROM DEMOCRACYDOCKET.COM

PRIVATE PLAINTIFFS-APPELLEES' OPPOSITION TO MOTION FOR STAY PENDING APPEAL

Nina Perales
MEXICAN-AMERICAN LEGAL
DEFENSE & EDUCATIONAL FUND
110 Broadway Street
San Antonio, TX 78205
(210) 224-5476

Counsel for LULAC Plaintiffs

Aria Branch
ELIAS LAW GROUP LLP
10 G Street, NW, Suite 600
Washington, D.C. 20002
(202) 968-4490

Counsel for Voto Latino Plaintiffs

(Additional parties and counsel on following pages)

Ezra D. Rosenberg
Pooja Chaudhuri
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
1500 K Street, Suite 900
Washington, DC 20005
(202) 662-8600

Robert Notzon
THE LAW OFFICE OF ROBERT NOTZON
1502 West Avenue
Austin, TX 78701
(512) 474-7563

Lindsey B. Cohan
DECHERT LLP
515 Congress Avenue, Suite 1400
Austin, TX 78701
(512) 394-3000

Counsel for Texas NAACP

Chad W. Dunn
BRAZIL & DUNN, LLP
4407 Bee Caves Road
Bldg. 1, Suite 111
Austin, TX 78746
(512) 717-9822

Mark P. Gaber
MARK P. GABER PLLC
P.O. Box 34481
Washington, DC 20043
(715) 482-4066

Molly E. Danahy
P.O. Box 26277
Baltimore, MD 21211
(208) 301-1202

Kevin J. Hamilton
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
(206) 359-8000

Max Renea Hicks
LAW OFFICE OF MAX RENEA HICKS
P.O. Box 303187
Austin, TX 78703
(512) 480-8231

Additional Counsel for Voto Latino Plaintiffs

David A. Donatti
ACLU FOUNDATION OF TEXAS, INC.
P.O. Box 8306
Houston, TX 77288
(713) 942-8146

Counsel for Fair Maps Plaintiffs

George (Tex) Quesada
Sean J. McCaffity
SOMMERMAN MCCAFFITY QUESADA & GEISLER, LLP
3811 Turtle Creek Blvd., Suite 1400
Dallas, TX 75219
(214) 720-0720

Counsel for MALC

Gary Bledsoe
THE BLEDSOE LAW FIRM, PLLC
6633 E Highway 290, Suite 208
Austin, TX 78723
(512) 322-9992

RETRIEVED FROM DEMOCRACYDOCKET.COM

Jesse L. Gaines
6015 Meadowbrook Drive
Fort Worth, TX 76112
(817) 654-1161

Counsel for the Brooks Plaintiffs

Martin Golando
THE LAW OFFICE OF MARTIN GOLANDO, PLLC
2326 Magnolia
San Antonio, TX 78201
(210) 471-1185

Counsel for Rep. Veronica Escobar and Trey Martinez Fisher

Nickolas A. Spencer
SPENCER & ASSOCIATES, PLLC
9100 Southwest Freeway, Suite 122
Houston, TX 77074
(713) 863-1409

Counsel for Intervenor Plaintiffs

RETRIEVED FROM DEMOCRACYDOCKET.COM

CERTIFICATE OF INTERESTED PERSONS

1. In the district court, this case is captioned as *League of United Latin American Citizens, et al. v. Abbott, et al.*, No. 3:21-cv-259-DCG-JES-JVB (lead case). In this Court, it is captioned as *League of United Latin American Citizens, et al. v. Ryan Guillen et al.*, No. 22-50407.

2. The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

3. Counsel for Private Plaintiffs-Appellees further certify under Federal Rule of Civil Procedure 26.1 that no organizational plaintiff has any parent corporation and no publicly held corporation owns 10% or more of stock in any organizational plaintiff.

RETRIEVED FROM DEMOCRACYDOCKET.COM

<u>LULAC Plaintiffs-Appellees</u>

a. League of United Latin American Citizens (LULAC)
b. Southwest Voter Registration Education Project
c. Mi Familia Vota
d. American GI Forum of Texas
e. La Union del Pueblo Entero
f. Mexican American Bar Association of Texas
g. Texas Hispanics Organized for Political Education
h. William C. Velasquez Institute
i. Fiel Houston, Inc.
j. Texas Association of Latino Administrators and Superintendents
k. Emelda Menendez
l. Gilberto Menendez

m. Jose Olivares
n. Florinda Chavez
o. Joey Cardenas
p. Proyecto Azteca
q. Reform Immigration for Texas Alliance
r. Workers Defense Project
s. Paulita Sanchez
t. Jo Ann Acevedo
u. David Lopez
v. Diana Martinez Alexander
w. Jeandra Ortiz

The following attorneys have appeared on behalf of the LULAC Plaintiffs-Appellees either before this Court or in the District Court:

Nina Perales
Fatima L. Menendez
Kenneth Parreno
Samantha T. Serna
MEXICAN AMERICAN LEGAL DEFENSE & EDUCATIONAL FUND (MALDEF)
110 Broadway, Suite 300
San Antonio, TX 78205
(210) 224-5476

Denise Hulett
MALDEF
1512 14th Street
Sacramento, CA 95814
(916) 444-3031

RETRIEVED FROM DEMOCRACYDOCKET.COM

Brooks Plaintiffs-Appellees

a. Roy Charles Brooks
b. Sandra Puente
c. Jose R. Reyes
d. Shirley Anna Fleming
e. Louie Minor, Jr.
f. Norma Cavazos
g. Felipe Gutierrez

h. Phyllis Goines
i. Eva Bonilla
j. Clara Faulkner
k. Deborah Spell
l. Beverly Powell

The following attorneys have appeared on behalf of the Brooks Plaintiffs-Appellees either before this Court or in the District Court:

Jesse Gaines
P.O. Box 50093
Fort Worth, TX 76103
(817) 714-9988

Mark P. Gaber
MARK P. GABER PLLC
PO Box 34481
Washington, DC 20043
(715) 482-4066

Molly Elizabeth Danahy
P.O. Box 26277
Baltimore, MD 21211
(208) 301-1202

Sonni Waknin
10300 Venice Blvd. Apt 204
Culver City, CA 90095
(732) 610-1283

Chad W. Dunn
BRAZIL & DUNN
4407 Bee Caves Road, Building 1, Suite 111
Austin, TX 78746
(512) 717-9822

K. Scott Brazil
BRAZIL & DUNN
13231 Champion Forest Dr., Suite 406
Houston, TX 77069

RETRIEVED FROM DEMOCRACYDOCKET.COM

(281) 580-6310

Voto Latino Plaintiffs-Appellees

a. Voto Latino
b. Akilah Bacy
c. Orlando Flores
d. Marilena Garza
e. Cecilia Gonzales
f. Agustin Loredo
g. Cinia Montoya
h. Ana Ramon
i. Jana Lynne Sanchez
j. Jerry Shafer
k. Debbie Lynn Solis
l. Angel Ulloa
m. Mary Uribe
n. Rosalinda Ramos Abuabara

The following attorneys have appeared on behalf of the Voto Latino Plaintiffs-Appellees either before this Court or in the District Court:

Abha Khanna
ELIAS LAW GROUP LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
(206) 656-0177

Aria C. Branch
David Fox
Kathryn E. Yukevich (withdrew on April 5, 2022)
Francesca Gibson
Richard Alexander Medina
ELIAS LAW GROUP LLP
10 G St. NW, Suite 600
Washington, DC 20002
(202) 968-4490

Kevin J. Hamilton
PERKINS COIE LLP

RETRIEVED FROM DEMOCRACYDOCKET.COM

1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
(206) 359-8000

Max Renea Hicks
LAW OFFICE OF MAX RENEA HICKS
P.O. Box 303187
Austin, TX 78703
(512) 480-8231

Plaintiff-Appellee Mexican American Legislative Caucus (MALC)

a. Mexican American Legislative Caucus

The following attorneys have appeared on behalf of MALC either before this Court or in the District Court:

George (Tex) Quesada
Sean J. McCaffity
SOMMERMAN McCAFFITY, QUESADA & GEISLER, LLP
3811 Turtle Creek Blvd., Suite 1400
Dallas, TX 75219
(214) 720-0720

Plaintiff-Appellee Texas NAACP

a. Texas State Conference of the NAACP

The following attorneys have appeared on behalf of Plaintiff-Appellee Texas NAACP either before this Court or in the District Court:

Ezra D. Rosenberg
Jon M. Greenbaum
Pooja Chaudhuri
Sofia Fernandez Gold
LAWYERS COMMITTEE FOR CIVIL RIGHTS UNDER LAW
1500 K Street, NW, Suite 900
Washington, DC 20005
(202) 662-8345

RETRIEVED FROM DEMOCRACYDOCKET.COM

Brian Raphel
Neil Steiner
DECHERT LLP
1095 Avenue of the Americas
New York, NY 10036
(212) 641-5692

Lindsey Beth Cohan
DECHERT LLP
515 Congress Avenue, Suite 1400
Austin, TX 78701
(512) 394-3027

Gary L. Bledsoe
THE BLEDSOE LAW FIRM, PLLC
7901 Cameron Road
Building 3-360
Austin, TX 78754
(512) 322-9992

Robert Stephen Notzon
LAW OFFICE OF ROBERT NOTZON
1502 West Avenue
Austin, TX 78701
(512) 474-7563

RETRIEVED FROM DEMOCRACYDOCKET.COM

Fair Maps Plaintiffs-Appellees

a. Fair Maps Texas Action Committee
b. OCA-Greater Houston
c. North Texas Chapter of the Asian Pacific Islander American Public Affairs Association
d. Emgage
e. Turner Khanay
f. Angela Rainey
g. Austin Ruiz
h. Aya Eneli
i. Sofia Sheikh
j. Jennifer Cazares
k. Niloufar Hafizi

l. Lakshmi Ramakrishnan
m. Amatulla Contractor
n. Deborah Chen
o. Arthur Resa
p. Sumita Ghosh
q. Anand Krishnaswamy

The following attorneys have appeared on behalf of the Fair Maps Plaintiffs-Appellees either before this Court or in the District Court:

Allison Jean Riggs
Hilary Harris Klein
Mitchell Brown
Noor Taj
SOUTHERN COALITION FOR SOCIAL JUSTICE
1415 West Highway 54, Suite 101
Durham, NC 27707
(919) 323-3380

Andre I. Segura
LAW OFFICE OF ANDRE IVAN SEGURA
5225 Katy Freeway, Suite 350
Houston, TX 77007
(713) 942-8146

Ashley Alcantara Harris
David A. Donatti
Thomas Paul Buser-Clancy
ACLU FOUNDATION OF TEXAS
P.O. Box 8306
Houston, TX 77288
(713) 942-8146

Jerry Vattamala
Patrick Stegemoeller
Susana Lorenzo-Giguere
ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND (AALDEF)
99 Hudson Street, 12th Floor
New York, NY 10013

RETRIEVED FROM DEMOCRACYDOCKET.COM

(212) 966-5932

Yurij Rudensky
BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW
120 Broadway, Suite 1750
New York, NY 10271
(646) 292-8310

Plaintiff-Appellee the United States of America

The following attorneys have appeared on behalf of Plaintiff-Appellee the United States of America either before this Court or in the District Court:

Daniel Joshua Freeman
Holly Frances Balsley Berlin
Jacki Lynn Anderson
Jasmin Camille Lott
Jaye Allison Sitton
Timothy F. Mellett
U.S. DEPARTMENT OF JUSTICE
950 Pennsylvania Ave NW
Washington, DC 20530
(202) 305-4355

RETRIEVED FROM DEMOCRACYDOCKET.COM

Michelle Christine Rupp
U.S. DEPARTMENT OF JUSTICE
4 Constitution Square
Washington, DC 20530
(202) 305-0565

Thomas Christian Herren, Jr.
U.S. DEPARTMENT OF JUSTICE
150 M Street NE
Washington, DC 20530
(202) 514-1416

Plaintiffs-Appellees Veronica Escobar and Trey Martinez Fisher

a. Veronica Escobar, U.S. Representative of the 16th Congressional District of Texas

b. Trey Martinez Fisher

The following attorneys have appeared on behalf of Plaintiffs-Appellees Escobar and Fisher either before this Court or in the District Court:

Martin Anthony Golando
THE LAW OFFICE OF MARTIN GOLANDO, PLLC
2326 Magnolia
San Antonio, TX 78201
(210) 471-1185

<u>Intervenor Plaintiffs-Appellees</u>

a. Sheila Jackson Lee
b. Alexander Green
c. Jasmine Crockett
d. Eddie Bernice Johnson

The following attorneys have appeared on behalf of Intervenor Plaintiffs-Appellees either in this Court or in the District Court:

Gary L. Bledsoe
THE BLEDSOE LAW FIRM, PLLC
7901 Cameron Road
Building 3-360
Austin, TX 78754
(512) 322-9992

RETRIEVED FROM DEMOCRACYDOCKET.COM

Nickolas A. Spencer
SPENCER & ASSOCIATES, PLLC
9100 Southwest Freeway, Suite 122
Houston, TX 77074
(713) 863-1409

<u>Former Plaintiffs</u>

a. Damon James Wilson – Dismissed February 9, 2022

The following attorneys have appeared on behalf of Mr. Wilson in the District Court:

Richard Scott Gladden
LAW OFFICE OF RICHARD GLADDEN
1200 West University Dr., Suite 307
Denton, TX 76201
(940) 323-9300

<u>Defendants</u>

a. State of Texas
b. Greg Abbott, in his official capacity as Governor of the State of Texas
c. John Scott, in his official capacity as Texas Secretary of State
d. Jose A. Esparza, in his official capacity as Deputy Secretary of State of Texas
e. Dan Patrick, in his official capacity as Lieutenant Governor and Presiding Officer of the Texas Senate
f. Dade Phelan, in his official capacity as Speaker of the Texas House of Representatives (dismissed May 2, 2022)

The following attorneys have appeared on behalf of Defendants either before this Court or in the District Court:

Patrick K. Sweeten
Christopher D. Hilton
Courtney Brooke Corbello
Eric A. Hudson
Jack Buckley Disorbo
Kathleen Hunker
Edward L. Marshall
William Thomas Thompson
OFFICE OF THE TEXAS ATTORNEY GENERAL
P.O. Box 12548
Austin, Texas 78711
(512) 936-1414

Jeffrey Michael White (Terminated May 2, 2022)
Law Office of Jeffrey M. White, PLLC
7804 Yokohama Ter.
Austin, TX 78744
(817) 688-1301

RETRIEVED FROM DEMOCRACYDOCKET.COM

Third-Party Movants-Appellants

a. Ryan Guillen
b. Brooks Landgraf
c. John Lujan

The following attorneys have appeared on behalf of Third-Party Movants-Appellants either before this Court or in the district court:

Adam K. Mortara
LAWFAIR LLC
125 S. Wacker Dr., Suite 300
Chicago, IL 60606
(773) 750-7154

Frank H. Chang
John Michael Connolly
Taylor A.R. Meehan
Jeffrey S. Hetzel
CONSOVOY McCARTHY PLLC
1600 Wilson Blvd., Ste. 700
Arlington, VA 22209

RETRIEVED FROM DEMOCRACYDOCKET.COM

Neutral Parties

a. Texas Legislative Council

The following attorney has appeared on behalf of the Texas Legislative Council either before this Court or in the district court:

Alyssa Bixby-Lawson
OFFICE OF THE TEXAS ATTORNEY GENERAL
P.O. Box 12548
Austin, TX 78711
(210) 270-1118

Three-Judge District Court

a. Judge David C. Guaderrama

b. Judge Jerry E. Smith
c. Judge Jeffrey V. Brown

/s/ Aria Branch
Aria Branch
ELIAS LAW GROUP LLP
10 G St. NE, Suite 600
Washington, DC 20002
(202) 968-4490
Attorney of Record for Voto Latino Plaintiffs-Appellees

RETRIEVED FROM DEMOCRACYDOCKET.COM

TABLE OF CONTENTS

Page

TABLE OF CONTENTS xvi

INTRODUCTION 1

STATEMENT OF THE CASE 3

STATEMENT OF JURISDICTION 5

ARGUMENT 5

I. The Court has no jurisdiction. 5

A. The denial of the motion to quash is not a final decision. 5

B. The denial of the motion to quash is not appealable under the collateral order doctrine. 6

C. The denial of the motion to quash is not reviewable via a writ of mandamus 10

II. No stay pending review of the motion to quash is warranted. 13

A. The Legislators are unlikely to succeed on the merits and do not present a serious legal question. 14

B. The Legislators do not face irreparable harm. 17

C. Issuance of a stay will harm Private Plaintiffs 18

D. A stay is not in the public interest 19

III. There is no basis for a stay pending a decision in *Merrill*. 19

CONCLUSION 21

CERTIFICATE OF COMPLIANCE 24

CERTIFICATE OF SERVICE 24

RETRIEVED FROM DEMOCRACYDOCKET.COM

INTRODUCTION

This Court's precedent is clear: state legislators have only a "qualified" legislative privilege, which "must be strictly construed and accepted only to the very limited extent that permitting a refusal to testify or excluding relevant evidence has a public good transcending the normally predominant principle of utilizing all rational means for ascertaining the truth." *Jefferson Cmty. Health Care Ctrs., Inc. v. Jefferson Par. Gov't*, 849 F.3d 615, 624 (5th Cir. 2017) (*quoting Perez v. Perry*, No. SA-11-CV-360-OLG-JES, 2014 WL 106927, at *1 (W.D. Tex. Jan. 8, 2014)). The three-judge district court's unanimous ruling faithfully applied that precedent, holding that the Legislators are not entirely exempt from being deposed and that disputes about legislative privilege are better resolved in the context of specific questions and answers. The three-judge court therefore adopted a procedure that protected the secrecy of purportedly privileged information while allowing discovery to move forward in these highly expedited and important cases.

RETRIEVED FROM DEMOCRACYDOCKET.COM

The Legislators seek a stay of that order pending this Court's review. But this Court has no jurisdiction over their interlocutory appeal or by mandamus. The denial of a motion to quash—even one by a non-party on privilege grounds—is not a final decision of a district court. *A-Mark Auction Galleries, Inc. v. Am. Numismatic Ass'n*, 233 F.3d 895, 898 (5th Cir. 2000); *Nat. Gas Pipeline Co. of Am. v. Energy Gathering, Inc.*, 2 F.3d 1397, 1405 n.16 (5th Cir. 1993). Nor is such an order

reviewable under the collateral order doctrine. *See Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 106 (2009); *A-Mark*, 233 F.3d at 898. And this Court does not have mandamus authority, because mandamus may issue only in aid of future appellate jurisdiction, and review of any final judgment must be by the Supreme Court under 28 U.S.C. § 1253, not by this Court.

Even if the Court had jurisdiction, it should deny the requested stay. The three-judge court's order adheres to this Court's precedent and to the practice of district courts in this Circuit and elsewhere for decades. The order did not reject the Legislators' privilege claims outright, but merely held that the Legislators are not entirely exempt from being deposed, and it adopted a procedure to adjudicate any privilege objections the Legislators may raise. The Legislators cite no cases rejecting such a procedure, and the cases they cite precluding depositions involve very different circumstances.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Nor do the Legislators face irreparable harm. The order preserves the confidentiality of purportedly privileged information subject to further review, and the burden of sitting for a single deposition is minor—particularly because the Texas Legislature is not in session. In contrast, Private Plaintiffs would face severe harm from a stay, which risks disrupting the expedited schedule and could preclude review in time for the 2024 election cycle. The public interest favors a prompt resolution of the case on the merits, not unnecessary delay.

The Legislators alternatively request a stay pending the Supreme Court's decision in a different redistricting case, *Merrill v. Milligan*, No. 21-1086 (U.S.). But *Milligan* has nothing to do with the legislative privilege, which is the sole issue that has been appealed, and it could not possibly moot the need for Private Plaintiffs to depose the Legislators.

The Court should therefore deny the Motion.

STATEMENT OF THE CASE

In October 2021, the Texas Legislature enacted bills that redrew the state's congressional, state Senate, state House of Representatives, and Board of Education districts. Multiple sets of private plaintiffs (the "Private Plaintiffs") filed separate lawsuits for injunctive relief, alleging that the new maps discriminate against voters of color in violation of the United States Constitution and Section 2 of the Voting Rights Act. Among the claims raised by Private Plaintiffs are claims that the electoral maps were enacted with discriminatory intent. The United States filed a similar suit of its own, and all ten cases were consolidated in the Western District of Texas in El Paso before a three-judge district court (Judges Jerry Smith, Jeffrey Brown, and David Guaderrama). The three-judge court set an expedited schedule—with a discovery deadline of July 15, 2022 and trial set to begin on September 28, 2022—to ensure that full review may be completed before the 2024 election starts. ECF Nos. 96, 109.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Discovery has proceeded apace. The parties have produced documents, answered interrogatories, and begun scheduling depositions. But when the United States served deposition subpoenas upon three members of the Texas Legislature—Representatives Ryan Guillen, Brooks Landgraf, and John Lujan (the "Legislators")—the Legislators balked. They moved to quash the United States' deposition subpoenas, arguing that "legislative privilege and immunity" categorically protects them, and by extension other legislators, from sitting for any depositions at all. ECF No. 259. And when Private Plaintiffs served deposition subpoenas upon the same three Legislators, the Legislators moved to quash those too. ECF No. 278.

RETRIEVED FROM DEMOCRACYDOCKET.COM

On May 18, 2022, the three-judge court unanimously denied both motions. ECF No. 282. The court emphasized that the Legislators have relevant information that is not even potentially privileged. *Id.* at 4. And it explained that "[w]hether state legislative privilege attaches is fact- and context-specific; for the purposes of depositions, 'it depends on the question being posed.'" *Id.* at 2 (quoting *Perez v. Perry*, No. SA-1-CV-360-OLG-JES, Dkt. 102 at 5 (W.D. Tex. Aug. 1, 2011)).

The court ordered the depositions, scheduled for next week, to go forward. *Id.* But it adopted a procedure to preserve the Legislators' claims of legislative privilege for adjudication on a more developed record. The Legislators may invoke legislative privilege in response to particular questions, and any answer given will be provided

subject to the privilege claim and under seal, not to be revealed publicly or relied on by any party until the court addresses the privilege claim. *Id.* at 4-5.

The Legislators filed an interlocutory appeal and moved the three-judge court to stay its ruling pending appeal, ECF No. 283. Without waiting for a ruling from the district court, the Legislators filed this motion the next day. The district court denied the Legislators' motion for a stay pending appeal just hours later. ECF No. 296.

STATEMENT OF JURISDICTION

RETRIEVED FROM DEMOCRACYDOCKET.COM

For the reasons given in Part I of the Argument section, the Court has no jurisdiction over the Legislators' appeal or motion to stay.

ARGUMENT

I. The Court has no jurisdiction.

This Court has no jurisdiction over the Legislators' motion or appeal, because the three-judge court's denial of the motion to quash is not a final order, is not appealable under the collateral order doctrine, and is not reviewable by this Court via mandamus.

A. The denial of the motion to quash is not a final decision.

The denial of the motion to quash is not appealable as a "final decision." 28 U.S.C. § 1291. "A final decision 'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" *Hall v. Hall*, 138 S. Ct. 1118, 1123-24 (2018) (quoting *Ray Haluch Gravel Co. v. Cent. Pension Fund*, 571 U.S. 177,

183 (2014)). The order denying the motion to quash is not "final" in that sense—litigation in the three-judge court continues. The fact that the subpoenas at issue are directed to non-parties does nothing to change that. *A-Mark*, 233 F.3d at 898 (holding that a discovery order concerning enforcement of a non-party subpoena was not "a separate final order under § 1291" and not immediately appealable by the non-party); *Nat. Gas Pipeline Co. of Am.*, 2 F.3d at 1405 n.16 ("A discovery order, even one directed at a non-party, is not a final order and hence not appealable.").

B. The denial of the motion to quash is not appealable under the collateral order doctrine.

RETRIEVED FROM DEMOCRACYDOCKET.COM

The denial of the motion to quash also is not appealable under the "collateral order doctrine." The "collateral order doctrine" expands the final judgment rule to allow the immediate appeal of "a 'small class' of collateral rulings that, although they do not end the litigation, are appropriately deemed 'final.'" *Mohawk*, 558 U.S. at 106 (quoting *Cohen v. Beneficial Ind. Loan Corp.*, 337 U.S. 541, 545-46 (1949)). But it is a "well-settled rule in this circuit that discovery orders may not be appealed under the" collateral order doctrine. *A-Mark*, 233 F.3d at 899. That includes discovery orders that require third parties to turn over information. *Id.*[1] It also

[1] In contrast, a district court's *denial* of a discovery request directed at a third party is at least sometimes immediately appealable, because there would otherwise be no way to appeal the ruling. *See Wiwa v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 816 (5th Cir. 2004). But this exception does not apply here, because the order at issue allowed discovery to proceed.

includes orders to turn over information protected by the attorney-client privilege. *Mohawk*, 558 U.S. at 114 ("[T]he collateral order doctrine does not extend to disclosure orders adverse to the attorney-client privilege."). As the Supreme Court explained in *Mohawk*, a party that wishes to challenge such an order without disclosing the purportedly privileged information must "defy [the] disclosure order" and risk being held in contempt, which would allow for an immediate appeal. *Id.* at 111. The Court explained that "the limited benefits of applying the blunt, categorical instrument of § 1291 collateral order appeal to privilege-related disclosure orders simply cannot justify the likely institutional costs." *Id.* at 112. And it reiterated that "[t]he class of collaterally appealable orders must remain narrow and selective in its membership." *Id.* at 113 (quotation marks omitted).

RETRIEVED FROM DEMOCRACYDOCKET.COM

This rule prohibiting the immediate appeal of an order to turn over privileged information is fully applicable to claims of governmental and legislative privilege. *See Am. Trucking Ass'ns v. Alviti*, 14 F.4th 76, 84 (1st Cir. 2021) (legislative and deliberative process privilege); *Corporación Insular de Seguros v. Garcia*, 876 F.2d 254, 257–59 (1st Cir. 1989) (legislative privilege); *Newton v. NBC*, 726 F.2d 591, 593–94 (9th Cir. 1984) ("government privilege"); *Nat'l Super Spuds, Inc. v. New York Mercantile Exch.*, 591 F.2d 174, 176–81 (2d Cir. 1979) ("governmental privilege"). That makes sense. The Supreme Court's reasoning in *Mohawk* with respect to the attorney-client privilege applies equally to legislative and

governmental privileges: the issue can be reviewed after final judgment, and a litigant who feels strongly about his or her privilege claim can defy the discovery order and obtain immediate review via contempt. *Mohawk*, 558 U.S. at 111.

Moreover, the strongest argument for allowing an immediate appeal here—that the privilege "provides a right not to disclose the privileged information in the first place" that is violated absent immediate review—was just as present in *Mohawk*, and the Court rejected it. *Id.* at 109. The Supreme Court held that between the possibility of contempt, protective orders, and other means of review, the attorney-client privilege was adequately protected without immediate appeal under the collateral order doctrine. *Id.* at 109–12. If that was adequate to protect materials covered by the attorney-client privilege, as *Mohawk* held, it must also be adequate to protect legislative privilege, which is "at best . . . qualified" rather than absolute. *Jefferson*, 849 F.3d at 624 (quoting *Perez*, 2014 WL 106927, at *2).

RETRIEVED FROM DEMOCRACYDOCKET.COM

In a line of cases decided decades before *Mohawk*, this Court did allow "immediate appeal by a governmental entity where the government is not a party to the lawsuit and asserts some governmental privilege to resist release of the subpoenaed material." *Branch v. Phillips Petroleum Co.*, 638 F.2d 873, 877 (5th Cir. 1981) (citing *Cates v. LTV Aerospace Corp.*, 480 F.2d 620, 622 (5th Cir. 1973)). But none of those cases involved legislative privilege. *See id.* at 879 ("'executive' or 'official information' privilege"); *Cates*, 480 F.2d at 622 ("executive privilege");

Carr v. Monroe Mfg. Co., 431 F.2d 384, 386 (5th Cir. 1970) (state-law privilege covering unemployment records). And as this Court explained in *Branch*, the reasoning in this line of cases—"that forced disclosure would irretrievably breach the claim of privilege and render an appeal from final judgment meaningless"—was, even at the time, difficult to square with the Supreme Court's approach to the collateral order doctrine. *Branch*, 638 F.2d at 878 (quoting *Cates*, 431 F.2d at 387).

The Supreme Court's subsequent decision in *Mohawk* has eliminated any doubt by expressly holding that an interest in not disclosing purportedly privileged information does not render an order collateral. The *Branch* line of cases is therefore no longer good law, and this Court has not applied it since *Mohawk* was decided. *See, e.g.*, *United States v. Tanksley*, 848 F.3d 347, 350 (5th Cir. 2017) ("If . . . a Supreme Court decision 'expressly or implicitly' overrules one of our precedents, we have the authority and obligation to declare and implement this change in the law.").

RETRIEVED FROM DEMOCRACYDOCKET.COM

In arguing for jurisdiction, the Legislators cite, along with *Branch*, *Whole Woman's Health v. Smith*, 896 F.3d 362, 367-69 (5th Cir. 2018).[2] But *Whole Woman's Health* involved an order requiring a religious body to turn over sensitive

[2] The Legislators also cite *In re Hubbard*, 803 F.3d 1298 (11th Cir. 2015), but *Hubbard* is not a decision from this Circuit, and it was based entirely on the *Branch* line of cases (from before the Fifth Circuit—Eleventh Circuit split) that are irreconcilable with the Supreme Court's subsequent decision in *Mohawk*.

internal documents, threatening "the heart of the constitutional protection of religious belief and practice" in violation of the First Amendment. *Id.* at 368. The Court's decision was specifically based on "precedent holding that interlocutory court orders bearing on First Amendment Rights remain subject to appeal pursuant to the collateral order doctrine" even after *Mohawk*. *Id.* at 368. That reasoning does not apply to legislative privilege, an "at best . . . qualified" privilege that does not carry the same express constitutional protection. *Jefferson*, 849 F.3d at 624; *Perry v. Schwarzenegger*, 591 F.3d 1147, 1155 (9th Cir. 2010) (noting that the First Amendment privilege is "a privilege of constitutional dimensions" and involves a right "of a high order").

RETRIEVED FROM DEMOCRACYDOCKET.COM

C. The denial of the motion to quash is not reviewable via a writ of mandamus.

The Legislators alternatively urge the Court to construe their notice of appeal as mandamus petition. But they have not *filed* a mandamus petition. And this Court has held in this very context—an improper interlocutory appeal from a subpoena enforcement decision—that an appellant may not "petition for a writ of mandamus without writing any petition, without serving anything even arguably construable as such on the district court (the nominal defendant in a mandamus action), and without paying any attention at all to the directly applicable federal rule of appellate procedure," Rule 21. *EEOC v. Neches Butane Prods. Co.*, 704 F.2d 144, 152 (5th

Cir. 1983). The Court therefore may not "consider today whether [it] would grant a petition for a writ of mandamus when no petition has been presented to [it]." *Id.*

Even if a mandamus petition were filed, it would be beyond this Court's jurisdiction, because any appeal from the three-judge court's eventual final judgment must go directly to the Supreme Court. The Court's mandamus authority comes from the All Writs Act, which provides that the Court "may issue all writs necessary or appropriate in aid of [its] jurisdiction[] and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). The All Writs Act "extends to the potential jurisdiction of the appellate court where an appeal is not then pending *but may be later perfected*." *FTC v. Dean Foods Co.*, 384 U.S. 597, 603 (1966) (emphasis added). It does not enlarge the Court's jurisdiction to allow review in cases that will never be reviewable here after a final judgment. *Clinton v. Goldsmith*, 526 U.S. 529, 534-35 (1999); *see also United States v. Denedo*, 556 U.S. 904, 914 (2009) ("The authority to issue a writ under the All Writs Act is not a font of jurisdiction."); *United States v. Alkaramla*, 872 F.3d 532, 534 (7th Cir. 2017) (the All Writs Act "simply authorizes a federal court to issue writs in aid of jurisdiction it already has").

RETRIEVED FROM DEMOCRACYDOCKET.COM

No appeal to this Court could ever "be perfected" in this case, *Dean Foods*, 384 U.S. at 603, because this is a suit for injunctive relief in a case required to be heard by a three-judge district court, and the Supreme Court has exclusive appellate jurisdiction in such cases. 28 U.S.C. §§ 1253, 2284; *see also* 28 U.S.C. § 1291

(divesting courts of appeals of jurisdiction "where a direct review may be had in the Supreme Court"). This Court therefore has no eventual jurisdiction that could be "aid[ed]" by issuing a writ of mandamus. 28 U.S.C. § 1651(a).

It does not matter that the order from which the Legislators seek relief is not itself an order granting or denying an injunction, and thus is not itself appealable to the Supreme Court. The question under the All Writs Act is not whether a particular court has appellate jurisdiction over the order being challenged—the All Writs Act only comes to bear when the challenged order is *not* immediately appealable by statute. Rather, under the All Writs Act, the question is whether an "existing statutory authority," *Goldsmith*, 526 U.S. at 534-35, grants this Court the *potential* to have appellate jurisdiction over a final judgment in the case, and whether that future jurisdiction would be aided by issuing a writ now to protect that future jurisdiction. And the only "existing statutory authority" granting appellate jurisdiction here is § 1253, which places exclusive appellate jurisdiction with the Supreme Court.

RETRIEVED FROM DEMOCRACYDOCKET.COM

In any event, the Legislators' motion makes no showing that the requirements for a writ of mandamus are met. "[T]he party seeking issuance of the writ [must] have no other adequate means to attain the relief he desires." *Kerr v. United States Dist. Court for N. Dist. of Cal.*, 426 U.S. 394, 403 (1976). Here, however, the Legislators have another means of obtaining immediate review: they can defy the

Court's order and subject themselves to an immediately appealable contempt finding. *See U.S. ex rel. Pogue v. Diabetes Treatment Centers of Am., Inc.*, 444 F.3d 462, 473–74 (6th Cir. 2006) (denying mandamus because third-party "has a clear alternate route to achieve review of this order. If HCA seeks to challenge the propriety of the district court's order, it may disobey the order and suffer a contempt citation."); *Admiral Ins. Co. v. U.S. Dist. Ct. for Dist. of Arizona*, 881 F.2d 1486 (9th Cir. 1989) ("Typically, a nonparty aggrieved by a discovery order must subject himself to civil contempt to gain appellate review."). Moreover, the Legislators' entitlement to relief is not "clear and indisputable." *Kerr*, 426 U.S. at 403. As explained in the next section, the district court's ruling was correct, and not the "judicial 'usurpation of power'" that could justify a writ of mandamus. *Id.* at 380.

RETRIEVED FROM DEMOCRACYDOCKET.COM

II. No stay pending review of the motion to quash is warranted.

If the Court had jurisdiction, then in addressing the stay motion, it would need to consider: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 433 (2009). The Legislators fail to meet their burden of showing a stay is warranted under those factors. Nor do they show that "there is a

serious legal question involved and the balance of equities heavily favors a stay." *Weingarten Realty Invs. v. Miller*, 661 F.3d 904, 910 (5th Cir. 2011).

A. The Legislators are unlikely to succeed on the merits and do not present a serious legal question.

The three-judge court's unanimous decision denying the motion to quash was correct and consistent with this Court's precedent. The three-judge court did *not* reject the Legislators' privilege claims: it merely held that the issue was "not ripe for decision" and that the application of legislative privilege would depend on the questions that were asked and the answers given. ECF No. 282 at 2. The three-judge court therefore outlined a procedure to enable a ruling on legislative privilege while preserving the confidentiality of potentially privileged materials: the Legislators must sit for their depositions, but any purportedly privileged material will be sealed and may not be disclosed to anyone until the court rules on the privilege claim. *Id.* at 4–5. As the court noted, the same approach was initially used to address legislative privilege claims during the prior round of redistricting litigation in Texas, *id.* at 4, and other courts have used it as well, *e.g.*, *Nashville Student Organizing Comm. v. Hargett*, 123 F. Supp. 3d 967, 971 (M.D. Tenn. 2015).

RETRIEVED FROM DEMOCRACYDOCKET.COM

The Legislators mount no specific challenge to that procedure; their position is that they may not be deposed at all. The Legislators must therefore show not merely that some matters might be privileged, but that they are entirely exempt from being deposed. They make no such showing.

Legislative privilege in this federal-question case is a question of federal common law, not of Texas law. *Jefferson Cmty. Health Care Ctrs.*, 849 F.3d at 624; Fed. R. Evid. 501. And this Court has held that under federal law, "the legislative privilege for state lawmakers is, at best, one which is qualified," so it "must be strictly construed and accepted only to the very limited extent that permitting a refusal to testify or excluding relevant evidence has a public good transcending the normally predominant principle of utilizing all rational means for ascertaining the truth." *Jefferson Cmty. Health Care Ctrs.*, 849 F.3d at 624 (quoting *Perez*, 2014 WL 106927, at *1). This is not dictum—it is a necessary part of one of *Jefferson*'s reasons for rejecting the appellants' arguments. *See id.*; *Jaco v. Garland*, 24 F.4th 395, 406 n.5 (5th Cir. 2021) ("Alternative holdings are not dicta and are binding in this circuit."). And many cases in this Circuit and elsewhere have applied that same approach and permitted depositions of legislators to proceed in cases like this one. *See, e.g.*, *Perez v. Perry*, No. 5:11-cv-360 (W.D. Tex. Aug. 1, 2011), ECF No. 102, at 5-6 (three-judge court); *Perez v. Perry*, No. 5:11-cv-360, 2014 WL 106927, at *2 (W.D. Tex. Jan. 8, 2014) (three-judge court); *Texas v. Holder*, No. 1:12-cv-128 (D.D.C. Apr. 20, 2012), ECF No. 84, at 3 (three-judge court); *Veasey v. Perry*, No. 2:13-cv-193 (S.D. Tex. June 18, 2014), ECF No. 341.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Practically conceding that they cannot win under this Circuit's precedent, the Legislators argue that the result would be different elsewhere. Mot. at 10. But this

Circuit's own precedent controls, and regardless, the federal cases from other circuits that Legislators cite involved facts that made the relevant legislators' motivations irrelevant. *See Am. Trucking Ass'ns, Inc. v. Alviti*, 14 F.4th 76, 88–90 (1st Cir. 2021) (quashing subpoena of legislators in Dormant Commerce Clause case because the result would turn entirely on discriminatory effect, rendering evidence of discriminatory intent irrelevant); *Lee v. City of Los Angeles*, 908 F.3d 1175, 1187 (9th Cir. 2018) (refusing to allow depositions based on "the factual record in this case," where court found sufficient support that legislators whom plaintiffs sought to depose did act because of racial motivation, but that subsequent actions by others showed that final maps were not product of that motivation); *In re Hubbard*, 803 F.3d 1298, 1312 (11th Cir. 2015) (quashing subpoenas because "as a matter of law, the First Amendment does not support the kind of claim [plaintiff] makes here" and thus there was no valid federal purpose for the subpoena).[3] Here, in contrast, Plaintiffs' claims include claims for intentional race discrimination in violation of

RETRIEVED FROM DEMOCRACYDOCKET.COM

[3] *Tenney v. Brandhove*, 341 U.S. 367 (1951), involved legislative immunity, not evidentiary privilege. The issues are distinct. *See Jefferson Cmty. Health Care Ctrs.*, 849 F.3d at 624. And because the question is one of federal law, *id.*, the Legislators' reliance on Texas state cases is misplaced.

the Fourteenth and Fifteenth Amendments to which legislative motivation is directly relevant.[4]

B. The Legislators do not face irreparable harm.

The Legislators do not face irreparable harm without a stay. They argue that once they answer questions as to which they assert privilege, "the cat is out of the bag." Mot. at 15. But the three-judge court's order prevents that result, by prohibiting the dissemination of any answers that are given subject to privilege until the court rules on the privilege claim. ECF No. 282 at 4–5. The Legislators do not explain why that procedure is inadequate. And *In re Kellogg Brown & Root, Inc.*, 756 F.3d 754, 756 (D.C. Cir. 2014), on which they rely, involved an order that denied application of the privilege and thus would have allowed public dissemination of the contested materials.

RETRIEVED FROM DEMOCRACYDOCKET.COM

There is also the burden, however slight, of sitting for a deposition in the first place. But the Texas Legislature is not in session. And as the three-judge court explained, "there are likely to be relevant areas of inquiry that fall outside of topics potentially covered by state legislative privilege," and as to which the Legislators

---

[4] *Village of Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252 (1977), does not hold that legislators can never be deposed. Indeed, it noted that plaintiffs in that case had been allowed, "both during the discovery phase and at trial, to question Board members fully about materials and information available to them at the time of the decision" and merely concluded that there had been "no abuse of discretion" in barring specific questions of legislators already on the stand at trial, under "the circumstances of this case." *Id.* at 270 n.20.

would properly be deposed regardless. ECF No. 282 at 4. The Legislators are public officials, they participated in the redistricting process, and they know facts that are not otherwise available. The Legislators do not seriously dispute this: they make no effort to argue that there are no non-privileged issues for examination, and rely on inapposite cases involving immunity from *suit*, not from testimony. Mot. at 15–16.

C. Issuance of a stay will harm Private Plaintiffs.

A stay will severely harm Private Plaintiffs by delaying the resolution of this time-sensitive case. Discovery closes in fewer than 60 days, and trial is set for September. ECF No. 96. And there is a great deal of discovery to take in these ten consolidated cases: The three-judge court has permitted each side 75 depositions (or no more than 325 hours of deposition testimony). ECF No. 220. Much of that discovery, and many of those depositions, will be of Texas legislators. A stay of such depositions pending this Court's review will therefore delay the close of discovery, and ultimately the trial.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Such a delay would have serious consequences. Already, under the present schedule, one set of elections will be held under districts that Plaintiffs allege discriminate on the basis of race in violation of federal law; delay raises the prospect that a second set of elections—out of just five sets that will ever occur under the challenged maps—may also take place. None of the cases the Legislators cite involved a similar circumstance: *In re Perry*, a state case, did not involve a stay, 60

S.W.3d 857 (Tex. 2001), and *United States v. Baylor University Medical Center* did not involve time-sensitive litigation. 711 F.2d 38 (5th Cir. 1983).

D. A stay is not in the public interest.

Finally, the public interest favors the prompt and orderly adjudication of Plaintiffs' claims on the merits, not the disruption and delay that will follow from a stay pending review of a discovery dispute. *Weingarten Realty Invs.*, 661 F.3d at 913 ("[T]he public interest in speedy resolution of disputes prevails . . . ."). The three-judge court's procedures already ensure that no purportedly privileged information will be made public before the privilege objection is adjudicated. No one is bringing claims against the legislators, so there is no question of their "defending themselves in litigation." Mot. at 17. And the Legislators make no showing that, with the Legislature out of session, the depositions will meaningfully interfere with their public duties.

RETRIEVED FROM DEMOCRACYDOCKET.COM

III. There is no basis for a stay pending a decision in *Merrill.*

In the alternative, the Legislators seek a stay pending the Supreme Court's decision in *Merrill v. Milligan*, No. 21-1086 (U.S.). But *Milligan* relates to the substance of Section 2 claims under the Voting Rights Act—it has nothing to do with legislative privilege, the sole subject of the only pending appeal in this case.

The Legislators' argument is a transparent attempt to manufacture immediate appellate review over the three-judge court's separate, and unreviewable, case-

management decision to deny a motion by the defendants to entirely stay these cases until the Supreme Court decides *Milligan*. *See* ECF Nos. 241 (motion); 246 (order). The defendants did not appeal and could not have appealed that case-management decision. And the fact that a different issue raised by different parties is now (improperly, as explained above) pending before this Court does not change the unreviewability of that separate decision.

In any event, the three-judge court was right to deny the stay pending a decision in *Milligan*, and there is no basis for a stay of the Legislators' depositions until *Milligan* is decided. *Milligan* cannot possibly moot either this case or the need to depose the Legislators, because it concerns solely claims under Section 2, not the intentional discrimination claims as to which the challenged depositions are most directly relevant. Even as to Section 2, as Justice Kavanaugh observed in his concurrence in the order granting a stay in *Milligan*, "[t]he stay order does not make or signal any change to voting rights law." *Merrill v. Milligan*, 142 S. Ct. 879, 879 (2022) (Kavanaugh, J., concurring). This Court and the district court are bound to apply the law as it is, unless and until the Supreme Court rules otherwise. Moreover, a stay of the Legislators' depositions pending the resolution of *Milligan* sometime next year would render the close of discovery in less than two months and the September trial date impossible, and could preclude resolution of these cases on the merits in advance of the 2024 election.

RETRIEVED FROM DEMOCRACYDOCKET.COM

None of the cases the Legislators cite supports their extraordinary request. Each involved a stay where the issues presented on appeal were identical to those before the Supreme Court and thus could be mooted by the Supreme Court's decision. *DeOtte v. Nevada*, 20 F.4th 1055, 1060 (5th Cir. 2021); *United States v. Hines*, 850 F. App'x 269, 270 (5th Cir. 2021); *United States v. Martinez*, 670 F. App'x 885, 886 (5th Cir. 2016). Here, in contrast, there is no overlap between the substantive Section 2 issue before the Supreme Court and the Legislators' appeal, which relates solely to their legislative privilege. And no matter what the Supreme Court says about Section 2, the need to depose the Legislators regarding Private Plaintiffs' constitutional claims, which rest on a separate legal foundation, will remain.

RETRIEVED FROM DEMOCRACYDOCKET.COM

CONCLUSION

The Court should deny the motion.

Dated: May 20, 2022

Respectfully Submitted,

/s/ Aria Branch
Aria Branch
ELIAS LAW GROUP LLP
10 G Street, NW, Suite 600
Washington, D.C. 20002
(202) 968-4490

Kevin J. Hamilton
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
(206) 359-8000

Max Renea Hicks
LAW OFFICE OF MAX RENEA HICKS
P.O. Box 303187
Austin, TX 78703
(512) 480-8231

Counsel for Voto Latino Plaintiffs

Nina Perales
MEXICAN-AMERICAN LEGAL
DEFENSE & EDUCATIONAL FUND
110 Broadway Street
San Antonio, TX 78205
(210) 224-5476

Counsel for LULAC plaintiffs

Ezra D. Rosenberg
Pooja Chaudhuri
LAWYERS' COMMITTEE FOR CIVIL
RIGHTS UNDER LAW
1500 K Street, Suite 900
Washington, DC 20005
(202) 662-8600

Robert Notzon
THE LAW OFFICE OF ROBERT NOTZON
1502 West Avenue
Austin, TX 78701
(512) 474-7563

Lindsey B. Cohan
DECHERT LLP
515 Congress Avenue, Suite 1400
Austin, TX 78701
(512) 394-3000

Counsel for Texas NAACP

Chad W. Dunn
BRAZIL & DUNN, LLP
4407 Bee Caves Road
Bldg. 1, Suite 111
Austin, TX 78746
(512) 717-9822

David A. Donatti
ACLU FOUNDATION OF TEXAS, INC.
P.O. Box 8306
Houston, TX 77288
(713) 942-8146

Counsel for Fair Maps Plaintiffs

George (Tex) Quesada
Sean J. McCaffity
SOMMERMAN MCCAFFITY QUESADA &
GEISLER, LLP
3811 Turtle Creek Blvd., Suite 1400
Dallas, TX 75219
(214) 720-0720

Counsel for MALC

RETRIEVED FROM DEMOCRACYDOCKET.COM

Mark P. Gaber
MARK P. GABER PLLC
P.O. Box 34481
Washington, DC 20043
(715) 482-4066

Molly E. Danahy
P.O. Box 26277
Baltimore, MD 21211
(208) 301-1202

Jesse L. Gaines
6015 Meadowbrook Drive
Fort Worth, TX 76112
(817) 654-1161

Counsel for the Brooks Plaintiffs

Gary Bledsoe
THE BLEDSOE LAW FIRM, PLLC
6633 E Highway 290, Suite 208
Austin, TX 78723
(512) 322-9992

Nickolas A. Spencer
SPENCER & ASSOCIATES, PLLC
9100 Southwest Freeway, Suite 122
Houston, TX 77074
(713) 863-1409

Counsel for Intervenor Plaintiffs

Martin Golando
THE LAW OFFICE OF MARTIN GOLANDO, PLLC
2326 Magnolia
San Antonio, TX 78201
(210) 471-1185

Counsel for Rep. Veronica Escobar and Trey Martinez Fisher

RETRIEVED FROM DEMOCRACYDOCKET.COM

Attorneys for Private Plaintiffs-Appellees

CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limits of Fed. R. App. P. 27(d)(2) because this document contains 5,174 words, excluding parts exempted by Rule 32(f).

This document complies with the typeface and type-style requirements of Fed. R. App. P. 27(d)(1) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

/s/ Aria Branch

RETRIEVED FROM DEMOCRACYDOCKET.COM

CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the CM/ECF system. I certify that counsel for the Third-Party Movants-Appellants are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Aria Branch