

No. 22-50662

**In the United States Court of Appeals
for the Fifth Circuit**

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

STATE OF TEXAS, ET AL.,
Defendant,

JOAN HUFFMAN, TEXAS SENATE MEMBER, ET AL.,
Appellants.

On Appeal from the United States District Court
for the Western District of Texas, El Paso Division

**APPELLANTS' UNOPPOSED MOTION TO HOLD THE
APPEAL IN ABEYANCE**

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Appellants respectfully request that the Court hold this appeal in abeyance, including briefing deadlines, pending further proceedings. Appellants submit that this relief is warranted for the same reasons as set forth in this Court’s stay order dated July 27, 2022—a panel of this Court in “the pending *Hughes* case” is considering materially the same legal issues as present in this appeal. Stay Order at 10 (referencing *LULAC Texas, et al. v. Hughes, et al.*, Case No. 22-50435)). And it would be a waste of the parties’ and this Court’s resources to brief and review largely duplicative arguments in this case before that one is decided. Appellee the United States of America does not oppose this motion. In further support thereof, Appellants state as follows:

1. Texas enacted redistricting legislation in October 2021. Private plaintiffs sued, alleging the legislation violated Section 2 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments. The United States Department of Justice joined the litigation, alleging Section 2 violations.

2. Private litigants have also joined the United States Department of Justice in a suit against Texas over other election-related legislation. *La Union Del Pueblo Entero v. Abbott*, No. 5:21-cv-844-XR (W.D. Tex.) (the SB 1 Litigation). In that litigation, the district court ordered the documents of Texas legislators produced over legislative privilege and attorney-client privilege objections. The legislators appealed that order (the *Hughes* case) and the parties agreed to stay the district court’s order pending appellate review.

3. On July 25, 2022, in the underlying redistricting litigation here, the district court likewise ordered Texas legislators (Appellants here) to produce documents

over legislative privilege objections, relying in significant measure on the reasoning expounded in the district court opinion under review in the *Hughes* appeal. The district court ordered Appellants to produce the legislative documents by August 1, 2022—the day before this Court’s scheduled argument in *Hughes*.

4. On July 27, 2022, Appellants filed an emergency stay motion explaining that the legislative privilege arguments in this case overlap with those in *Hughes* in significant respect. For that reason, among others, Appellants moved for a stay of the district court’s order “until this Court issues an opinion in *Hughes*, and/or an administrative stay.” Appellants’ Motion at 2.

5. On July 27, 2022, a panel of this Court granted Appellants’ emergency motion for an administrative stay and “STAYED” the district court’s order “pending further order of this court.” Stay Order at 11. The panel further ordered that the motion to stay “until the pending *Hughes* case is decided” be “CARRIED WITH THE CASE.”

6. On August 2, 2022, a panel of this Court heard argument in *Hughes*. As of the filing of this motion, that case remains pending.

7. On September 12, 2022, a briefing notice was entered in this appeal, providing that Appellants’ opening brief is due October 24, 2022.

8. Appellants respectfully submit that this case should be held in abeyance for materially the same reasons as were set forth in their emergency stay motion. Specifically, the legal issues in this case are materially similar to those that are set to be decided in the *Hughes* case, and briefing in this case would in large measure just duplicate the briefing from the *Hughes* case, and present the same legislative privilege

issues to a different panel of this Court while the *Hughes* panel is already considering those issues. The parties' and this Court's resources would be more efficiently used by awaiting a decision in the *Hughes* case, after which the parties can determine whether any issues in this appeal still warrant this Court's attention.

9. For the foregoing reasons, Appellants request that this Court hold this case in abeyance, including the briefing deadlines, pending a decision in *Hughes*. Appellants further request that the Court direct the parties to file a joint status report stating their respective positions regarding whether the briefing schedule should continue to be held in abeyance either (1) within 7 days of the issuance of a decision in *Hughes* or (2) by November 4, 2022, whichever occurs sooner.

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Respectfully submitted.

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CERTIFICATE OF SERVICE

I filed this motion with the Court via ECF, which will electronically notify all parties who have appeared in this case. I further certify that the document has been scanned with the most recent version of Symantec Endpoint Protection and is free of viruses.

/s/ Ryan S. Baasch

RYAN S. BAASCH

CERTIFICATE OF COMPLIANCE

This motion complies with Rule 27(d)(2) because it contains [X] words, excluding the parts exempted by rule. This motion complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface (14-point Equity) using Microsoft Word (the same program used to calculate the word count).

/s/ Ryan S. Baasch

RYAN S. BAASCH