

No. 22-50407  
c/w No. 22-50648

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**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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LEAGUE OF UNITED LATIN AMERICAN CITIZENS, et al.,

*Plaintiffs-Appellees,*

SHEILA JACKSON LEE, et al.,

*Intervenor Plaintiffs-Appellees,*

v.

GREG ABBOTT,

*Defendant,*

RYAN GUILLEN, TEXAS HOUSE MEMBER, et al.,

*Movants-Appellants.*

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LEAGUE OF UNITED LATIN AMERICAN CITIZENS, et al.,

*Plaintiffs-Appellees,*

SHEILA JACKSON LEE, et al.,

*Intervenor Plaintiffs-Appellees,*

v.

GREG ABBOTT,

*Defendant,*

TODD HUNTER, TEXAS HOUSE MEMBER, et al.,

*Movants-Appellants.*

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**APPELLANTS' STATUS REPORT**

Pursuant to this Court's June 17, 2022 order, Appellants submit this monthly status report apprising the Court of the status of the district court proceedings.

1. These appeals arise from ongoing redistricting litigation. They have been consolidated and held in abeyance pending further rulings from the district court.

2. As previously reported, Texas legislators and legislative staff appealed after the district court ordered them to sit for depositions and answer all questions regarding the legislative process, over their legislative immunity and privilege objections. The district court's orders stated that legislatively privileged testimony would remain under seal while Plaintiffs filed motions to contest the privileged nature of the testimony. Order 4-5, ECF 282; Order, ECF 340; Order, ECF 409.<sup>1</sup>

3. A panel of this Court denied the legislators' motion for a stay pending appeal, the depositions proceeded, and this appeal was held in abeyance.<sup>2</sup>

4. As the district court's orders anticipated, Plaintiffs deposed Texas legislators and legislative staff and then filed various motions to use legislatively privileged testimony given in the depositions. Those motions remain pending, with deposition transcripts before the district court for its *in camera* review. U.S. 1st Mot. to Compel,

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<sup>1</sup> All references to ECF numbers in this status report refer to the entries in the district court's docket in *LULAC v. Abbott*, No. 3:21-cv-259 (W.D. Tex.), unless otherwise indicated.

<sup>2</sup> There is another related appeal regarding an order compelling production of legislators' documents that arises from the same redistricting litigation. *See LULAC v. Patrick*, No. 22-50662. The Fifth Circuit stayed that order, pending the Fifth Circuit's decision in *LULAC Texas v. Hughes*, No. 22-50435. Order, *Patrick*, No. 22-50662, ECF 30. Discussed below, *Hughes* has now been decided, 68 F.4th 228 (5th Cir. 2023), and in light of *Hughes*, the legislators have asked the Fifth Circuit to summarily reverse and vacate, or alternatively vacate and remand, the order appealed from in *Patrick*. Status Report ¶5, *Patrick*, No. 22-50662, ECF 100.

ECF 520; U.S. 2d Mot., ECF 538; Pls. 1st Mot., ECF 521; Pls. 2d Mot., ECF 539; U.S. 3d Mot., ECF 598; LULAC Pls. Joinder, ECF 601; U.S. 4th Mot., ECF 635; LULAC Pls. Mot., ECF 637; Legislators' Resp., ECF 551; Legislators' Resp., ECF 609; Legislators' Resp., ECF 643; U.S. Reply, ECF 565; Pls. Reply, ECF 568; U.S. Reply, ECF 615; U.S. Reply, ECF 656; LULAC Pls. Reply, ECF 662.

5. Then last month, this Court issued two opinions relevant to the legislative privilege issues at issue in this appeal and in the related motions still pending in the district court. *See LULAC Texas v. Hughes*, 68 F.4th 228 (5th Cir. 2023); *Jackson Mun. Airport Auth. v. Harkins*, 67 F.4th 678 (5th Cir. 2023). In *Hughes*, the Fifth Circuit confirmed that legislators may “invoke legislative privilege to protect actions that occurred within the sphere of legitimate legislative activity or within the regular course of the legislative process.” 68 F.4th at 235 (quotation marks omitted). The court rejected that “the legislative privilege must yield” to plaintiffs’ Voting Rights Act claims in that case. *Id.* at 237-38 (cleaned up); *see also Harkins*, 67 F.4th at 687 (explaining legislative privilege applies to communications with third parties outside the legislature if those communications are still within the sphere of legitimate legislative activity).

6. In light of *Hughes* and *Harkins*, the parties will be submitting supplemental briefs regarding all pending legislative privilege motions in the district court, most of which relate to the depositions at issue in this appeal. Order 1-2, ECF 703.

7. The Court could continue to hold this appeal in abeyance pending the district courts’ resolution of the pending motions regarding privileged deposition

testimony, which relate to the orders compelling depositions that are the subject of these consolidated appeals. The district court's resolution of those pending motions, informed by *Hughes* and the forthcoming supplemental briefing, could narrow the issues for appeal or potentially resolve these consolidated appeals.

8. In the alternative, in light of *Hughes*, the Court could vacate the orders that compelled depositions, to be preceded by supplemental briefing if the Court deems necessary. The orders compelling depositions, issued before *Hughes*, relied on this Court's decision in *Jefferson Community Health Care Centers, Inc. v. Jefferson Parish Government*, 849 F.3d 615, 245 (5th Cir. 2017). *See* Order 2, ECF 282 (quoting *Jefferson Parish* for the proposition that legislative privilege “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”). In *Hughes*, this Court stated that *Jefferson Parish* “provides no support for the idea that state legislators can be compelled to produce documents concerning the legislative process and a legislator's subjective thoughts and motives.” 68 F.4th at 240. Here, it follows that *Jefferson Parish* is not a basis for compelling depositions concerning the legislative process and their subjective thoughts and motives. *Hughes*, moreover, relied on a Ninth Circuit decision concluding that legislative privilege barred depositions in a redistricting case. *Id.* at 239 (discussing *Lee v. City of Los Angeles*, 908 F.3d 1175, 1187-88 (9th Cir. 2018)).

9. Appellants request that this Court continue to hold these appeals in abeyance or in the alternative vacate the orders that compelled depositions, to be preceded by supplemental briefing if the Court deems necessary.

10. Appellants will file another monthly status report no later than July 10, 2023.

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Respectfully submitted,

Dated: June 8, 2023

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### CERTIFICATE OF SERVICE

I filed the foregoing with the Court via ECF, which will electronically notify all parties who have appeared in this case. The document has been scanned and is free of viruses.

Dated June 8, 2023

/s/ Frank H. Chang

Frank H. Chang

*Counsel for Legislators,  
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