

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 22-50662

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

STATE OF TEXAS, *et al.*,

Defendants

JOAN HUFFMAN, TEXAS SENATE MEMBER, *et al.*,

Movants-Appellants

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS

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JOINT STATUS REPORT

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The parties submit the following joint status report stating their respective positions regarding whether the briefing schedule in this case should continue to be held in abeyance.

1. This is an interlocutory appeal in which appellants, state legislators who are not parties to the underlying litigation, challenge a three-judge district court's order requiring them to produce documents over their assertions of state legislative

privilege. Doc. 467. The dispute arises in the context of the United States' enforcement action under Section 2 of the Voting Rights Act of 1965, in which the United States alleges that the 2021 Texas Congressional plan has a discriminatory purpose and discriminatory result and that the 2021 Texas House plan has a discriminatory result. Doc. 318.

2. During the pendency of this appeal, this Court issued two opinions that bear on the discovery dispute at issue in this appeal. *LULAC Texas v. Hughes*, No. 22-50435, 2023 WL 3494770 (5th Cir. May 17, 2023); *Jackson Mun. Airport Auth. v. Harkins*, No. 21-60312, 2023 WL 3333607 (5th Cir. May 10, 2023).

3. Supplemental briefing on the effect of *Hughes* and *Harkins* on discovery motions pending before the district court currently is underway. See, e.g., Docs. 706-708.

4. Meanwhile, in their May 24, 2023, joint status report, the parties set forth different views on the appropriate next steps in this appeal in light of *Hughes* and *Harkins*. The Legislators contended that this Court should either summarily reverse the district court's discovery order or vacate and remand, preceded by supplemental briefing if the Court deems it necessary. The United States contended that there is no basis for summary reversal and vacatur of the district court's order and, instead, that a remand would be appropriate. In the alternative, the United States suggested that it could file with the district court a motion under

Rule 62.1 of the Federal Rules of Civil Procedure requesting an indicative ruling on whether and how the court would modify its discovery order in light of *Hughes* and *Harkins* while the briefing schedule in this appeal remains stayed.

5. In the absence of further guidance from this Court, the United States plans to file a Rule 62.1 motion with the district court on or before July 26, 2023. If the district court issues an indicative ruling or indicates that the motion raises a substantial issue, the United States would notify this Court, which could then remand for further proceedings in accordance with Rule 12.1 of the Federal Rules of Appellate Procedure.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I certify that on June 26, 2023, I electronically filed the foregoing JOINT STATUS REPORT with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system.

I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Jonathan L. Backer  
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