

IN THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

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In re: NORTH DAKOTA  
LEGISLATIVE ASSEMBLY *et al.*,  
  
*Petitioners.*

No. 23-1600

RESPONDENTS' MOTION  
FOR AN EXTENSION

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The respondents respectfully move the Court for an extension of time to file a petition for rehearing en banc. The current deadline is Tuesday, June 20, and the respondents request an extension of 30 days. The new deadline, if the Court were to grant the request, would be Thursday, July 20.

The reason for the requested extension is the trial in the underlying case. This matter is before the Court on a petition for a writ of mandamus seeking relief from discovery orders in *Turtle Mountain Band of Chippewa Indians v. Howe*, No. 3:22-0022 (D.N.D.). That case went to trial from June 12 until today, and post-trial briefs are due on June 30.\* Attorneys for the

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\* The plaintiffs made an offer of proof at trial under Rule 103 of the Federal Rules of Evidence to preserve their claim of error.

respondents have been consumed with that trial and do not have enough time after trial to prepare a petition for rehearing by the current deadline.

Although the requested extension is longer than the Court usually grants, this case presents unusual circumstances. The legislative-privilege issues presented here are important, and the panel's 2-1 decision conflicts with decisions of other circuits on those issues. *See, e.g., Jackson Mun. Airport Auth. v. Harkins*, 67 F.4th 678, 686-87 (5th Cir. 2023) (requiring legislators to produce a privilege log); *id.* at 687 (holding that some legislative communications with third parties are non-privileged). A thorough petition for rehearing en banc will allow the entire Court to consider these important issues fully.

Dated: June 15, 2023

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

This document complies with the Length Limits of Federal Rules of Appellate Procedure 27(d)(2)(A) because, excluding the parts of the document exempted by Federal Rules of Appellate Procedure 32(f), this document contains 256 words.

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/s/ Bryan L. Sells  
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June 15, 2023

## CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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