

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

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

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.

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.

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 409.¹

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.

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, 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;

¹ 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.

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. As discussed in Appellants' previous Status Reports, this Court recently issued two published 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*, this Court 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).

6. While affirming the broad nature of the legislative privilege, the *Harkins* decision suggested that the legislators could be required to produce a privilege log. *See* 67 F.4th at 687. The state legislators in *Harkins* filed a petition for rehearing, including a request to review the panel's analysis concerning the privilege-log requirement. *See* Pet'n 10-17, No. 21-60312 (5th Cir. June 14, 2023). On August 25, 2023, the *Harkins* panel withdrew its published decision (67 F.4th 678) and substituted it with an unpublished decision (2023 WL 5522213). On August 29, 2023, the en banc Fifth Circuit vacated the unpublished *Harkins* decision and granted rehearing in that case (2023 WL 5542823).

7. There was 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. A panel of this Court stayed that order, pending this Court's decision in *LULAC Texas v. Hughes*, No. 22-50435. Order, *Patrick*, No. 22-50662, ECF 30. On July 18, 2023, after the issuance of the *Hughes* decision, the *Patrick* panel sua sponte issued a dispositive order vacating the district court's order compelling document production. Order, No. 22-50662, ECF 107.

8. In the district court, on June 23, 2023 and June 24, 2023, in light of *Hughes*, the United States and Private Plaintiffs submitted their supplemental briefs concerning all pending discovery motions, many relating to the depositions at issue in this appeal. *See* U.S. 1st Supp. Br., ECF 706; Pls. 1st Supp. Br., ECF 707; *see also* Order 1-2, ECF 703. The state defendants and the legislators submitted their consolidated supplemental brief on July 28, 2023, in the district court. Defs. & Legislators' 1st Supp. Br., ECF 720. The United States and Private Plaintiffs filed their replies on August 11, 2023. U.S. 1st Supp. Reply, ECF 724; Pls. 1st Supp. Reply, ECF 726.

9. In light of this Court's vacatur of the district court's July 25, 2022 order in *Patrick*, the district court ordered the parties to submit additional supplemental briefs. *See* Order, ECF 719. The United States' and Private Plaintiffs' supplemental briefs were filed on August 10, 2023. U.S. 2d Supp. Br., ECF 722; Pls 2d Supp. Br., ECF 723. And the state defendants and legislators submitted their supplemental brief on August 31, 2023. Defs. & Legislators' 2d Supp. Br., ECF 731. The United States and Private

Plaintiffs submitted their replies on September 14, 2023 and September 22, 2023, respectively. U.S. 2d Supp. Reply, ECF 734; Pls. 2d Supp. Reply, ECF 735.

10. Appellants request that this Court continue to hold these appeals 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 pending and forthcoming supplemental briefing, could narrow the issues for appeal or potentially resolve these consolidated appeals.

11. Appellants will file another monthly status report no later than November 9, 2023.

Respectfully submitted,

Dated: October 10, 2023

/s/ Frank H. Chang
TAYLOR A.R. MEEHAN
FRANK H. CHANG
CONSOVOY MCCARTHY PLLC
1600 Wilson Blvd., Suite 700
Arlington, Virginia 22209
(703) 243-9423
taylor@consovoymccarthy.com
frank@consovoymccarthy.com

ADAM K. MORTARA
LAWFAIR LLC
125 South Wacker, Suite 300
Chicago, IL 60606
(773) 750-7154
mortara@lawfairllc.com

*Counsel for Legislators,
Movants-Appellants*

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: October 10, 2023

/s/ Frank H. Chang

Frank H. Chang

*Counsel for Legislators,
Movants-Appellants*