United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
May 22, 2025
Lyle W. Cayce
Clerk

No. 24-50128
CONSOLIDATED WITH
No. 24-50449

LEAGUE OF UNITED LATIN AMERICAN CITIZENS; SOUTHWEST VOTER REGISTRATION EDUCATION PROJECT; MI FAMILIA VOTA; AMERICAN GI FORUM OF TEXAS; LA UNION DEL PUEBLO ENTERO; MEXICAN AMERICAN BAR ASSOCIATION OF TEXAS; TEXAS HISPANICS ORGANIZED FOR POLITICAL EDUCATION; WILLIAM C. VELASQUEZ INSTITUTE; FIEL HOUSTON, INCORPORATED; TEXAS ASSOCIATION OF LATINO ADMINISTRATORS AND SUPERINTENDENTS; EMELDA MENENDEZ; GILBERTO MENENDEZ; JOSE OLIVARES; FLORINDA CHAVEZ; JOEY CARDENAS; PROYECTO AZTECA; REFORM IMMIGRATION FOR TEXAS ALLIANCE; WORKERS DEFENSE PROJECT; PAULITA SANCHEZ; JO ANN ACEVEDO; DAVID LOPEZ; DIANA MARTINEZ ALEXANDER; JEANDRA ORTIZ,

Plaintiffs—Appellants,

versus

GREG ABBOTT, *in his official capacity as Governor of the State of Texas*,

Defendant—Appellee,

AND

LIEUTENANT GOVERNOR DAN PATRICK; SPEAKER OF THE TEXAS HOUSE OF REPRESENTATIVES REP. DADE PHELAN; SEN. JOAN HUFFMAN; SEN. BRYAN HUGHES; SEN. PAUL BETTENCOURT; SEN. DONNA CAMPBELL; SEN. JANE NELSON; SEN. BRIAN BIRDWELL; SEN. CHARLES PERRY; SEN. ROBERT

NICHOLS; SEN. KELLY HANCOCK; REP. TODD HUNTER; REP. BROOKS LANDGRAF; REP. J.M. LOZANO; REP. JACEY JETTON; REP. RYAN GUILLEN; REP. MIKE SCHOFIELD; REP. ANDREW MURR; REP. DAN HUBERTY; REP. HUGH SHINE; REP. BRAD BUCKLEY; SHARON CARTER; ANNA MACKIN; SEAN OPPERMAN; CHRIS GOBER; COLLEEN GARCIA; ADAM FOLTZ,

Third-party Respondent- Appellees,

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

STATE OF TEXAS; JANE NELSON, *in her Official Capacity as Texas Secretary of State*,

Defendants.

Appeal from the United States District Court
for the Western District of Texas
USDC Nos. 3:21-CV-259, 3:21-CV-299,

Before DENNIS, HAYNES, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:[*]

In this redistricting dispute, Plaintiffs moved to compel discovery from non-party legislators and the State of Texas, among others. The district court largely denied Plaintiffs' motions based on legislative privilege, so

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

Plaintiffs appealed. But the orders are not immediately appealable, so we must DISMISS for lack of jurisdiction.

We generally have jurisdiction to review only final decisions that end the litigation on the merits. 28 U.S.C. § 1291; *X Corp. v. Media Matters for Am.*, 120 F.4th 190, 195 (5th Cir. 2024). The "collateral order doctrine" provides a narrow exception to review interlocutory decisions that are (1) conclusive, (2) resolve important questions separate from the merits, and (3) are effectively unreviewable on appeal from the final judgment. *Whole Woman's Health v. Smith*, 896 F.3d 362, 367 (5th Cir. 2018) (citing *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 106 (2009)). Because Defendants concede the first two prongs, we address only the third.

Discovery orders "are traditionally unappealable" under the collateral order doctrine. *Mississippi v. JXN Water*, 134 F.4th 312, 318 (5th Cir. 2025). We have departed from this proposition where non-parties are compelled to produce potentially privileged documents because "non-parties . . . cannot move for a new trial," and "even if they could, a new trial cannot retract privileged information that has been shared into the public domain." *La Union Del Pueblo Entero v. Abbott*, 68 F.4th 228, 234 (5th Cir. 2023); *see La Union del Pueblo Entero v. Abbott*, 93 F.4th 310, 319 (5th Cir. 2024); *Whole Woman's Health v. Smith*, 896 F.3d 362, 367–68 (5th Cir. 2018).

The discovery orders at issue here do not fall within that unique set of circumstances or implicate similar concerns. The district court *denied* Plaintiff parties' request for discovery, keeping whatever legislative privilege may exist intact. Plaintiffs can appeal that denial when the litigation concludes without suffering harm other than the customary delay that attends all litigation. *See P.H. Glatfelter Co. v. Windward Prospects Ltd.*, 847 F.3d 452, 459 (7th Cir. 2017) ("[P]lenary appeal from a final judgment is precisely why discovery orders" denying motions to compel "are

interlocutory and not immediately appealable"). Plaintiffs undoubtedly prefer review now. But we cannot manufacture jurisdiction merely because an adverse ruling "may burden litigants in ways that are only imperfectly reparable by appellate reversal of a final district court judgment." *Mohawk Indus.*, 558 U.S. at 107. The district court's orders denying discovery are not appealable at this juncture. The appeal is DISMISSED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

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May 22, 2025

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Banc

No. 24-50128 LULAC v. Abbott
Consolidated with
No. 24-50449 USDC No. 3:21-CV-259
USDC No. 3:21-CV-299

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and Fed. R. App. P. 39, 40, and 41 govern costs, rehearings, and mandates. **Fed. R. App. P. 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. Fed. R. App. P. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari**. Additionally, you MUST confirm that

this information was given to your client, within the body of your motion to withdraw as counsel.

The judgment entered provides that each party bear its own costs on appeal.

Sincerely,

LYLE W. CAYCE, Clerk

Lisa E. Ferrara

By:_____
Lisa E. Ferrara, Deputy Clerk

Enclosure(s)

Mr. Frank H Chang
Mr. William Francis Cole
Mr. Daniel Joshua Freeman
Ms. Katherine Elmlinger Lamm
Ms. Taylor A.R. Meehan
Ms. Nina Perales
Mr. Patrick Strawbridge