

In the Supreme Court of the United States

UNITED STATES, PETITIONER

v.

TEXAS, ET AL.

*ON WRIT OF CERTIORARI BEFORE JUDGMENT TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

RESPONDENTS' JOINT MOTION FOR DIVIDED ARGUMENT

Pursuant to Rule 21 and 28.4 of this Court, Respondent the State of Texas (“Texas”) and Intervenor-Respondents Erick Graham, Jeff Tuley, and Mistie Sharp (“Intervenor-Respondents”) jointly file this motion for divided oral argument. Respondents request that argument time be divided as follows: 20 minutes for Texas, and 10 minutes for Intervenor-Respondents. Petitioner the United States does not oppose respondents’ request to divide time.

1. Texas and the Intervenor-Respondents have been represented by separate counsel throughout this litigation. They have filed separate briefs in the district court, the court of appeals, and this Court. And they presented separate arguments in the district court at the hearing on petitioner’s motion for temporary restraining order or preliminary injunction.

2. Although generally aligned, Texas and the Intervenor-Respondents have separate interests in this litigation. Texas seeks prevent the United States from enjoining Texas as a State, all the members of its judiciary, and its citizens. Intervenor-

Respondents seek to ensure that they retain the right to bring constitutionally permissible lawsuits.

3. This Court regularly hears separate oral argument from governmental and private parties when they are both on the same side of an appeal, across a wide range of subject matters. *See, e.g., Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020); *Dep't of Homeland Security v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891 (2020); *Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rights Comm'n*, 138 S. Ct. 1719 (2018). Texas and the Intervenor-Respondents likewise believe that here the Court would benefit from oral argument by both Texas and the private party Intervenor-Respondents. Divided argument is especially appropriate in light of the great public importance of the case and the significant consequences that petitioner's claims will have if successful, including for governmental and private parties in Texas alike. *See* Stephen M. Shapiro, *et al.*, *Supreme Court Practice* 777 (10th ed. 2013) ("Having more than one lawyer argue on a side is justifiable . . . when they represent different parties with different interests or positions.").

4. For the foregoing reasons, both Texas and the Intervenor-Respondents believe that their participation in oral argument would be of material assistance to the Court. They therefore request that the Court divide oral argument time as described above between counsel for Texas and counsel for Intervenor-Respondents.

Respectfully submitted,

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