

In the Supreme Court of the United States

WHOLE WOMAN’S HEALTH ET AL., PETITIONERS

v.

AUSTIN REEVE JACKSON, 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, Respondents Judge Austin Reeve Jackson, Stephen Brint Carlton, Katherine A. Thomas, Cecile Erwin Young, Allison Vordenbaumen Benz, and Ken Paxton (the “State Respondents”), Respondent Penny Clarkston (“Respondent Clarkston”) and Respondent Mark Lee Dickson (“Respondent Dickson”) (collectively, “Respondents”) jointly file this motion for divided oral argument. Respondents request that argument time be divided as follows: 20 minutes for the State Respondents, and 10 minutes for Respondent Dickson. Petitioners do not take any position on the motion and defer to the Court.

1. The State Respondents and Respondent Dickson have been represented by separate counsel throughout this litigation. They filed separate briefs in the district court, the court of appeals, and when this case was initially before this Court on petitioners’ application for injunctive relief.

2. Although generally aligned, the State Respondents and Respondent Dickson have separate interests in this litigation. The State Respondents assert this suit is

barred by sovereign immunity, while Respondent Dickson has standing arguments specific only to him.

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). Respondents likewise believe that here the Court would benefit from oral argument by both the State Respondents and Respondent Dickson. Divided argument is especially appropriate in light of the great public importance of the case and the significant consequences that petitioners’ 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. Respondent Clarkston, although also represented by separate counsel, believes she is adequately represented by the argument that the State Respondents will present.

5. For the foregoing reasons, the State Respondents and Respondent Dickson request that the Court divide oral argument time as described above between counsel for the State Respondents and counsel for Respondent Dickson.

Respectfully submitted,

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