

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

**United States of America,**

Plaintiff,

v.

**The State of Texas,**

Defendant.

Case No. 1:21-cv-00796-RP

**MOTION FOR EXPEDITED CONSIDERATION OF  
MOTION TO INTERVENE**

Proposed intervenors Erick Graham, Jeff Tuley, and Mistie Sharp respectfully move for expedited consideration of their motion to intervene. In support thereof, the proposed intervenors state as follows:

1. The proposed intervenors filed their motion to intervene as of right and, alternatively, for permissive intervention, on September 22, 2021.
2. The State's opposition to the United States' motion for preliminary injunction is due on Wednesday, September 29, 2021. The Court has set a preliminary-injunction hearing for Friday, October 1, 2021. It also appears that the parties are engaging in limited, expedited discovery before the preliminary-injunction hearing.
3. As set forth in the motion to intervene, the proposed intervenors seek intervention to protect their interest in filing civil-enforcement lawsuits under the Texas Heartbeat Act that clearly do not implicate constitutionally protected activity.
4. As also set forth in the motion to intervene, the proposed intervenors will not be adequately represented by the State of Texas in protecting this interest because the

State has no enforcement capability under the Heartbeat Law. The proposed intervenors also intend to present arguments, evidence, and testimony at the preliminary-injunction hearing that the State will not present.

5. The proposed intervenors therefore respectfully request a ruling on their motion as soon as possible to allow them the opportunity to prepare for and meaningfully participate in the preliminary-injunction proceedings to protect their interests, as well as participate in the limited expedited discovery.

6. Texas is unopposed to this request and to the motion to intervene. The United States has stated that it will not file its response to the motion to intervene until Tuesday, September 28, at noon. That is less than 24 hours before the preliminary-injunction opposition briefs are due, and less than three days before the preliminary-injunction hearing is set to begin. That timetable will not permit meaningful participation by the proposed intervenors to adequately present their interests and offer evidence and testimony that will not be presented by any other party.

7. The proposed intervenors respectfully ask the Court to instruct the United States to respond to the motion to intervene by Saturday, September 25, 2021, at 05:00 P.M. central time. The proposed intervenors would then file their reply by Sunday, September 26, 2021, at 5:00 P.M. central time. The proposed intervenors also respectfully ask rule on the motion to intervene by the end of the day Monday, September 27, 2021, so that they can (if the motion is granted) participate in limited expedited discovery before the hearing date of October 1, 2021.

### **CONCLUSION**

The motion for expedited consideration of the motion to intervene should be granted.

Respectfully submitted.

HEATHER GEBELIN HACKER  
Texas Bar No. 24103325  
ANDREW B. STEPHENS  
Texas Bar No. 24079396  
Hacker Stephens LLP  
108 Wild Basin Road South, Suite 250  
Austin, Texas 78746  
(512) 399-3022 (phone)  
heather@hackerstephens.com  
andrew@hackerstephens.com

/s/ Jonathan F. Mitchell  
JONATHAN F. MITCHELL  
Texas Bar No. 24075463  
Mitchell Law PLLC  
111 Congress Avenue, Suite 400  
Austin, Texas 78701  
(512) 686-3940 (phone)  
(512) 686-3941 (fax)  
jonathan@mitchell.law

GENE P. HAMILTON\*  
Virginia Bar No. 80434  
Vice-President and General Counsel  
America First Legal Foundation  
300 Independence Avenue SE  
Washington, DC 20003  
(202) 964-3721  
gene.hamilton@aflegal.org

\* *pro hac vice* application  
pending

Dated: September 23, 2021

*Counsel for Movants Erick Graham,  
Jeff Tuley, and Mistie Sharp*

### CERTIFICATE OF CONFERENCE

I certify that on September 23, 2021, I conferred with counsel for the parties on the relief requested in this motion. The State of Texas is unopposed. Lisa Newman, counsel for the United States, stated that the United States will file a response to the intervention motion by Tuesday, September 29, at noon, which is less than 24 hours before the preliminary-injunction opposition is due. Ms. Newman also stated that “we don’t consent to the requested participation by non-parties.”

/s/ Jonathan F. Mitchell  
JONATHAN F. MITCHELL  
*Counsel for Movants Erick Graham,  
Jeff Tuley, and Mistie Sharp*

### CERTIFICATE OF SERVICE

I certify that on September 23, 2021, I served this document through CM/ECF upon all counsel of record in this case.

/s/ Jonathan F. Mitchell  
JONATHAN F. MITCHELL  
*Counsel for Movants Erick Graham,  
Jeff Tuley, and Mistie Sharp*

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

**United States of America,**

Plaintiff,

v.

**The State of Texas,**

Defendant.

Case No. 1:21-cv-00796-RP

**[PROPOSED] ORDER GRANTING MOTION FOR EXPEDITED  
CONSIDERATION OF MOTION FOR INTERVENTION**

The motion for expedited consideration of the motion to intervene is GRANTED. The United States shall file its response to the motion to intervene by Saturday, September 25, 2021, at 05:00 P.M. central time. The proposed intervenors shall file their reply by Sunday, September 26, 2021, at 5:00 P.M. central time. The Court will endeavor to rule on the motion to intervene by the end of the day Monday, September 27, 2021.

---

ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE