

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

Bear Creek Bible Church, et al.,

Plaintiffs,

v.

**Equal Employment Opportunity
Commission, et al.,**

Defendants.

Case No. 4:18-cv-00824-O

RESPONSE TO COURT'S ORDER OF AUGUST 18, 2021

Yesterday the Court ordered the parties to meet and confer and “propose at least four dates for a hearing” on the pending motions for class certification and summary judgment. *See* Order, ECF No. 105. The Court instructed the parties to propose dates between August 20, 2021, and September 3, 2021.

Counsel have conferred and respectfully ask the Court to schedule the hearing for Friday, August 27, 2021, which is by far the most convenient date for both sides. If August 27 is not possible, then the parties respectfully ask the Court to set the hearing for Thursday, August 26, 2021. Although the Court has ordered us to provide two additional dates, the parties are unable to propose additional hearing dates between August 20, 2021, and September 3, 2021, that would work for both sides.

The week of August 30, 2021, is problematic for both plaintiffs’ counsel and defendants’ counsel. Mr. Mitchell is in the midst of litigating a constitutional challenge to Texas’s recently enacted fetal-heartbeat law (Senate Bill 8), and Judge Pitman has set a hearing on a motion for preliminary injunction for Monday, August 30, 2021. *See Whole Woman’s Health v. Jackson*, No. 1:21-cv-00616-RP (W.D. Tex.), ECF Nos. 60–61. The law is scheduled to take effect on September 1, 2021. If the

district court issues a preliminary injunction before September 1, then Mr. Mitchell will need to draft and file an emergency-stay application to the U.S. Court of Appeals for the Fifth Circuit, as well as a reply brief in support of the emergency-stay application. Mr. Mitchell needs to keep his calendar clear during the week of August 30 to ensure that he has sufficient time to litigate this expected emergency motion. In addition, Mr. Takemoto will be on leave on August 31.

Mr. Mitchell also has a major brief due on Tuesday, August 24, 2021, and another major brief due on Wednesday, August 25, 2021, at noon central time, and he needs to focus his time on those briefing responsibilities between now and August 25.

For these reasons, the parties respectfully request that the Court set the hearing for Friday, August 27, 2021, if possible, with Thursday, August 26, 2021, as a backup date.

In addition, the defendants respectfully request that the motions hearing be held remotely. The Department of Justice is currently in Phase 2 of Framework for Returning to Normal Operations Status¹. In this phase, the Department is operating with maximum telework flexibilities.² Most employees, including counsel for the defendants, are teleworking full time. In addition, under this phase, the Department discourages travel, particularly to areas where there are high rates of COVID-19 community transmission. As of August 19, 2021, the Centers for Disease Control and Prevention have indicated that there is a high level of community transmission in Tarrant County and the District of Columbia, where Mr. Takemoto works. The defendants appreciate the benefits of in-person hearings. However, in light of Department

1. <https://www.justice.gov/doj/page/file/1284406/download>
2. <https://www.justice.gov/doj/page/file/1406671/download>

of Justice policies and to limit the spread of COVID-19,³ the defendants ask that the upcoming hearing be held remotely. Plaintiffs do not oppose this request.

Respectfully submitted.

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Dated: August 19, 2021

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3. Although counsel are fully vaccinated, the CDC reports that the new “Delta variant seems to produce the same high amount of virus in both unvaccinated and fully vaccinated people” and accordingly can be transmitted regardless of whether one is vaccinated. *See* <https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html>.

CERTIFICATE OF SERVICE

I certify that on August 19, 2021, I served this document through CM/ECF

upon:

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