Nos. 19-840; 19-1019

IN THE
SUPREME COURT OF THE UNITED STATES

CALIFORNIA, ET. AL.
*Petitioners*,
v.

TEXAS, ET AL.
*Respondents*.

TEXAS, ET AL.
*Cross-Petitioners,*
v.

CALIFORNIA, ET AL.
*Cross-Respondents.*

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

**MOTION OF RESPONDENT UNITED STATES HOUSE OF REPRESENTATIVES FOR ENLARGEMENT OF ARGUMENT TIME AND DIVIDED ARGUMENT**

Pursuant to Rules 21, 28.3, and 28.4 of the Rules of this Court, the United States House of Representatives (House), a respondent aligned with the petitioners in No. 19-840 (collectively, California), respectfully moves to enlarge the total time for oral argument and to divide argument. The House has a unique institutional interest in defending the constitutionality of an Act of Congress when the Executive Branch argues, as here, that the statute is invalid. In this instance, the House believes that the Court would benefit from hearing from the House at oral argument. For this reason, the House asks the Court to extend the total argument time devoted to

the parties supporting California to 40 minutes, and to divide that time between California and the House as follows: 30 minutes for California, and 10 minutes for the House.

The House has conferred with the other parties. California does not oppose the House's request to enlarge and divide oral argument, so long as the total argument time allotted to California remains at 30 minutes. The United States consents to the House's request to divide oral argument, but opposes enlargement of argument. Texas and the individual respondents oppose the House's request to divide and enlarge argument.

**STATEMENT**

1. This case concerns the constitutionality of Section 5000A of the Affordable Care Act (ACA)—the provision sometimes known as the "individual mandate," which this Court construed as a lawful choice and upheld in *National Federation of Independent Business* v. *Sebelius*, 567 U.S. 519 (2012). In 2018, two individuals and a group of States led by Texas filed this suit, challenging the constitutionality of Section 5000A on the ground that Congress transformed that provision into an unlawful command to purchase insurance when it reduced the applicable tax amount to zero in 2017. The Executive Branch declined to defend Section 5000A, and it has joined the plaintiffs in arguing that the provision is unconstitutional and that the entire ACA is invalid as a result.

A group of states led by California intervened in the district court as defendants to defend Section 5000A's constitutionality. Upon the establishment of the 116th Congress, the House intervened as a party in the court of appeals to defend the statute.

2. The district court held that Section 5000A is unconstitutional and that the entire ACA is invalid. The Fifth Circuit affirmed in significant part. The House and California filed separate petitions for writs of certiorari. See No. 19-841 (House petition); No. 19-840 (California

petition). Texas, joined by the two individual plaintiffs, filed a conditional cross-petition, contending that the Fifth Circuit erred by not affirming the district court's holding that all of the ACA is categorically inseverable from Section 5000A. See No. 19-1019. On March 2, 2020, this Court granted California's petition (No. 19-840) and Texas's cross-petition (No. 19-1019). The House is a party to both cases. It is a respondent aligned with petitioners in No. 19-840 and a cross-respondent in No. 19-1019.

3. These cases present three questions: (1) whether the individual and state respondents possess Article III standing to challenge the constitutionality of Section 5000A; (2) whether Section 5000A, as amended, exceeds Congress's constitutional authority; and (3) whether, if Section 5000A is invalid, the provision is severable from the remainder of the ACA.

**ARGUMENT**

1. The House has a unique and important interest in this litigation. The House has a vital interest in the validity of the ACA—a historic statute that reshaped the Nation's healthcare system and provided health care to millions of Americans, and that has assumed even more importance in the midst of a pandemic in which numerous individuals have lost their otherwise applicable health insurance coverage. The House also has an important institutional interest in the proper application of severability principles, as well as an interest in ensuring that those who challenge the constitutionality of federal statutes have suffered injuries sufficiently concrete to confer Article III standing.

Both federal law and this Court's precedents recognize the important role of the Legislative Branch in defending the constitutionality of Acts of Congress, particularly when the Executive Branch does not. The U.S. Code empowers the House to intervene to defend a statute on the occasions when the Executive Branch has declined to do so. See 28 U.S.C. § 530D(b)(2).

That statute reflects the recognition of Congress and the Executive Branch that, because "declar[ing] an Act of Congress unconstitutional * * * is the gravest and most delicate duty" that a court "is called on to perform," *Blodgett* v. *Holden*, 275 U.S. 142, 147-48 (1927) (Holmes, J.), a court should hesitate to do so without the participation of a federal entity defending the Act. For that reason, this Court has long recognized that Congress may "defend the validity of a [federal] statute when an agency of government, as a defendant charged with enforcing the statute, agrees with plaintiffs that the statute is inapplicable or unconstitutional." *INS* v. *Chadha*, 462 U.S. 919, 940 (1983).

2. In view of the House's unique institutional interests, the House believes that its participation in oral argument would be of material assistance to the Court. Because the Executive Branch has attacked the validity of Section 5000A, the House is the only federal party to this case defending the statute. Federal law specifically recognizes the value of having a federal party defending the constitutionality of a federal statute. 28 U.S.C. §§ 2403(a), 530D. The House is best positioned to address the federal interests reflected in the ACA and the severe disruption to myriad federal programs that would result from striking down the entire statute. And the House is uniquely positioned to address the questions of Congressional intent implicated by the severability analysis. Reflecting the strength of the House's interest in this case, the Fifth Circuit permitted the House to participate in oral argument below.

3. In recent years, this Court has often permitted oral argument by Chambers or Members of Congress at oral argument as either a party—as the House is here—or as an amicus. See, *e.g.*, *United States* v. *Windsor*, 570 U.S. 744 (2013); *Seila Law LLC* v. *Consumer Financial Protection Bureau*, No. 19-7 (Feb. 14, 2020); *Department of Commerce* v. *New York*, 139 S. Ct. 2551 (2019); *United States* v. *Texas*, 136 S. Ct. 2271 (2016); *McConnell* v. *FEC*, 540 U.S. 93

(2003); *United States* v. *Lovett*, 328 U.S. 303 (1946); *Jurney* v. *MacCracken*, 294 U.S. 125 (1935). Given that the House is both a party to this litigation and a coequal Branch of government with vital interests in this litigation, hearing from the House at argument is especially warranted here.

4. In addition, an enlargement of oral argument time is warranted because of the significance and number of issues presented in this this case. This case concerns substantial jurisdictional, constitutional, and remedial questions. The parties have joined issue on whether any of the state or individual plaintiffs has standing to challenge the constitutionality of the ACA; whether Section 5000A, properly construed, is constitutional; and if Section 5000A is invalid, whether it is severable from the remainder of the ACA. Given the number and substantiality of these issues, one hour of argument time may be insufficient to fully address them in a way that is most helpful to the Court. In addition, this is a case of overriding national importance, as the outcome affects the health care of millions of Americans.

This Court has routinely enlarged argument time in similar circumstances. See, *e.g.*, *Seila Law LLC*, No. 19-7 (Feb. 14, 2020); *Financial Oversight and Management Board for Puerto Rico* v. *Aurelius Investment, LLC*, No. 18-1334 (Oct. 15, 2019); *Dep't of Homeland Sec.* v. *Regents of the Univ. of Calif.*, No. 18-587 (Nov. 12, 2019); *Dep't of Commerce*, No. 18-966 (Apr. 12, 2019); *Michigan* v. *EPA*, No. 14-46 (Mar. 9, 2015). Enlarging argument time to 40 minutes per side is equally appropriate here.

## CONCLUSION

For the foregoing reasons, the House respectfully requests that this Court enlarge the oral argument time for parties supporting California to 40 minutes, with 30 minutes allocated to California and 10 minutes allocated to the House.

Respectfully submitted,

/s/ Douglas N. Letter

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