Nos. 18-1023, 18-1028, 18-1038

IN THE

Supreme Court of the United States

MAINE COMMUNITY HEALTH OPTIONS, *Petitioner,*

v.

UNITED STATES, *Respondent.*

MODA HEALTH PLAN, INC., ET AL., *Petitioners,*

v.

UNITED STATES, *Respondent.*

LAND OF LINCOLN MUTUAL HEALTH INSURANCE COMPANY, AN ILLINOIS NONPROFIT MUTUAL INSURANCE CORPORATION, *Petitioner,*

v.

UNITED STATES, *Respondent.*

On Writ of Certiorari to the U.S. Court of Appeals for the Federal Circuit

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PETITIONERS' JOINT MOTION TO ENLARGE AND DIVIDE ARGUMENT TIME

Pursuant to Supreme Court Rules 21, 28.3, and 28.4, Petitioners jointly move to enlarge and divide argument time such that the undersigned counsel for Petitioners Moda Health Plan, Inc. and Blue Cross and Blue Shield of North Carolina would have 30 minutes of argument time and the undersigned counsel for Petitioner Land of Lincoln Mutual Health Insurance Company ("Land of Lincoln") would have 10 minutes (increasing the total argument time to 80 minutes). Alternatively, Petitioners respectfully request 25 minutes of argument time for counsel for

Petitioners Moda Health Plan, Inc. and Blue Cross and Blue Shield of North Carolina and 10 minutes for counsel for Petitioner Land of Lincoln (increasing the total argument time to 70 minutes). The arguments of counsel would fully apply to the remaining Petitioner in this case, Maine Community Health Options.

Counsel for the United States has stated that the Government takes no position on this motion, provided that the Government receives equal time as Petitioners collectively.

These consolidated cases include four petitioners, three of which are separately represented and separately briefed the case before this Court. One of those petitioners, Land of Lincoln, is in liquidation in Illinois state court under the supervision of the Director of the Illinois Department of Insurance. The Director has appointed outside counsel to handle this matter and has overseen and approved all the filings in this Court. The proposed enlargement and division of argument time would materially assist the Court and ensure a full exploration of the important question presented. Moreover, this Court has often granted divided argument where (as here) a state government and a private party appear on the same side of the case.

STATEMENT

1. These cases involve the "risk-corridors" program established by the Patient Protection and Affordable Care Act ("ACA"), 42 U.S.C. § 18062, which mandates that for the first three years of the ACA, the government "shall pay" mathematically determined amounts to health insurers based on a statutory formula in order to

induce them to participate in health insurance exchanges and to reduce the premiums they would otherwise charge.

A divided Federal Circuit panel agreed that the government's initial statutory commitment to make risk-corridor payments was unambiguous, but held that appropriations riders temporarily foreclosing certain sources of funds for the risk-corridors program had repealed the statutory obligation. The Court of Appeals relied not on the text of the appropriations riders but rather on legislative history surrounding their enactment. Further, it reached its decision even though the riders were included in spending bills enacted several years *after* the ACA was adopted, and *after* Petitioners had already performed their part of the bargain. The net effect was a bait-and-switch in which the federal government has paid insurers $12 billion less than what was promised.

2. These cases present a fundamental question of federal law: whether appropriations riders temporarily restricting the sources of funds available to satisfy the government's payment obligations may be construed, based on their legislative history, to repeal retroactively the government's obligations to parties that have already performed their part of the bargain. The decision below upsets substantial – and settled – investment-backed expectations and undermines the government's reliability as a business partner, both inside and outside the healthcare industry. The importance of this case is illustrated by the range of amici supporting Petitioners, including 24 States and the District of Columbia, as well as the National Association of Insurance Commissioners.

This Court has previously enlarged argument time in cases addressing matters of extraordinary public importance. *See, e.g.*, *Rucho v. Common Cause*, 139 S. Ct. 1316 (2019) (mem.) (enlarging time to 70 minutes and dividing argument); *Abbott v. Perez*, 138 S. Ct. 1544 (2018) (mem.) (same); *United States v. Texas*, 136 S. Ct. 1539 (2016) (enlarging time to 90 minutes) (mem.); *Michigan v. EPA*, 135 S. Ct. 1541 (2015); *Obergefell v. Hodges*, 135 S. Ct. 1039 (2015) (mem.) (150 minutes); *National Fed'n of Indep. Bus. v. Sebelius*, 565 U.S. 1193 (2012) (mem.) (360 minutes); *League of United Latin American Citizens v. Perry*, 546 U.S. 1149 (2006) (mem.) (120 minutes); *McConnell v. Federal Election Comm'n*, 539 U.S. 911 (2003) (mem.) (240 minutes).

3. In addition, enlargement and division of argument time would materially assist the Court in light of the argument of the United States in its Respondent's brief. The United States has advanced an alternative argument for affirmance that was not adopted by the Federal Circuit. Enlargement and division of argument time would ensure a full exploration of all of the issues before the Court.

4. Further, this Court has often granted motions for enlargement of time and divided argument when both a state government party and a private party appeared on the same side of the case. *See, e.g.*, *Department of Commerce v. New York, et al.,* No. 18-966 (Apr. 12, 2019) (mem.) (granting motion for enlargement of time and divided argument); *American Legion v. American Humanist Ass'n*,139 S. Ct. 951 (2019) (mem.) (granting divided argument and enlarging time to 70 minutes); *Tennessee Wine & Spirits Ass'n v. Blair*, 139 S. Ct. 783 (2019) (mem.) (granting

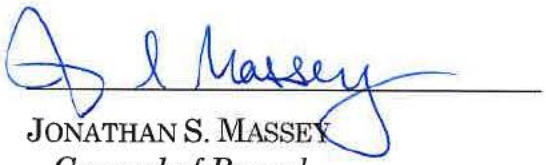
divided argument); *Sturgeon v. Frost*, 139 S. Ct. 357 (2018) (mem.) (same); *Janus v. American Fed'n of State, Cty., & Mun. Emps., Council 31*, 138 S. Ct. 974 (2018) (mem.) (same); *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 466 (2017) (mem.) (same); *Wittman v. Personhuballah*, 136 S. Ct. 1241 (2016) (mem.) (enlarging time to 70 minutes and dividing argument); *Utility Air Regulatory Grp. v. EPA*, 135 S. Ct. 1541 (2015) (mem.) (granting motion for enlargement of time and divided argument); *Oneok, Inc. v. Learjet, Inc.*, 135 S. Ct. 884 (2014) (mem.) (granting divided argument).

In this case, the State of Illinois has distinctive interests as a sovereign because Land of Lincoln is currently in liquidation in Illinois state court under the supervision of the Director of the Illinois Department of Insurance, who acts as the statutory and court-affirmed liquidator. *See In the Matter of the Liquidation of Land of Lincoln Mutual Health Insurance Co.*, No. 2016 CH 9210 (Cook County). After the federal government refused to honor its risk-corridor commitments, Land of Lincoln was forced to enter liquidation on October 1, 2016, three months prior to the end of the policy year, and nearly 50,000 policyholders in Illinois lost their health insurance as a result. As a federal district court observed, Land of Lincoln policyholders (many of whom had previously been uninsured) were required "to find coverage for the remainder of that year," and "[s]ome policyholders were placed in the unenviable position of finding short-term health coverage and restarting their co-payment and deductible amounts from zero." *Dowling v. U.S. Dep't of Health and Human Servs.*, 325 F. Supp. 3d 884, 898 (N.D. Ill.), *vacated on jurisdictional grounds*, 905 F.3d 517

(7th Cir. 2018). The Director of the Illinois Department of Insurance seeks to vindicate before this Court both Land of Lincoln's rights and the public interest of the State of Illinois.

5. Accordingly, Petitioners jointly move to enlarge and divide argument such that the undersigned counsel for Petitioners Moda Health Plan, Inc. and Blue Cross and Blue Shield of North Carolina would have 30 minutes of argument time and the undersigned counsel for Petitioner Land of Lincoln would have 10 minutes (increasing the total argument time to 80 minutes). Alternatively, Petitioners respectfully seek 25 minutes of argument time for counsel for Petitioners Moda Health Plan, Inc. and Blue Cross and Blue Shield of North Carolina and 10 minutes for counsel for Petitioner Land of Lincoln (increasing the total argument time to 70 minutes).

Respectfully submitted,



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