

In the Supreme Court of the United States

STATE OF CALIFORNIA, ET. AL.,

Petitioners,

AND

UNITED STATES HOUSE OF REPRESENTATIVES,

Petitioner,

V.

STATE OF TEXAS, ET. AL.,

Respondents,

AND

UNITED STATES OF AMERICA, ET. AL.,

Respondents.

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

**INDIVIDUAL RESPONDENTS' OPPOSITION TO CALIFORNIA ET. AL'S AND UNITED
STATES HOUSE OF REPRESENTATIVES' MOTION TO EXPEDITE CONSIDERATION OF
THE PETITION FOR A WRIT OF CERTIORARI, TO EXPEDITE MERITS BRIEFING AND
ORAL ARGUMENT IN THE EVENT THAT THE COURT GRANTS THE PETITION, AND TO
EXPEDITE CONSIDERATION OF THIS MOTION**

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EXECUTIVE SUMMARY

Individual Respondents Neill Hurley and John Nantz respectfully request that this Court deny Petitioners California, *et. al.*'s Motion to Expedite Consideration of the Petition for a Writ of Certiorari and to Expedite Consideration of This Motion and the United States House of Representatives' Motion to Expedite Consideration of the Petition for a Writ of Certiorari, to Expedite Merits Briefing and Oral Argument in the Event that the Court Grants the Petition, and to Expedite Consideration of This Motion and allow the Petitions for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit, both filed on January 3, 2020. This matter should be briefed and proceed in accordance with the normal schedule provided by the Rules of the Supreme Court of the United States.

Petitioners have failed to demonstrate that any exigent circumstances exist that warrant expediting review of their petitions for a writ of certiorari. They have also failed to show any compelling reasons why the briefing schedule and oral argument schedule should be shortened, in the event that one or both petitions for a writ of certiorari are granted. And, Petitioners fail to take into consideration the timing for likely conditional cross-petitioners.

The district court entered a stay of its order granting partial final summary judgment, and proceedings remain stayed throughout the course of the appellate process in this case. This is the type of case that is typically considered on an ordinary briefing schedule; this Court has previously heard at least two challenges to the constitutionality of the same law in the ordinary course. Political considerations,

such as Petitioners' desires to deflect attention away from the current efforts to replace the Affordable Care Act with single-payer Medicare for All, are not exigent circumstances that warrant expedition of this case, as this Court is not a political branch of government.

This Court would be best-served by the most thorough briefing - not by the fastest briefing. And, this Court should decline Petitioners' invitation to politicize this case, particularly in an election year. Therefore, it should exercise deliberate consideration of the important issues presented in this appeal under the normal schedule set forth in its procedural rules.

ARGUMENT

Petitioners have failed to demonstrate that accelerated review of the motion to expedite or petitions for a writ of certiorari are warranted. Nor have they shown that an accelerated merits-stage briefing and oral argument schedule would be proper. Petitioners have presented no evidence that any exigent or compelling circumstances exist that would warrant the interruption of this Court's normal operations. Additionally, requiring two briefs in opposition to a writ of certiorari to be prepared on this expedited schedule risks sacrificing the thorough and effective presentation of the issues that this Court deserves. Accordingly, this Court should deny Petitioners' motions and, pursuant to its Rules, allow this case to proceed in the ordinary course.

I. No exigent circumstances exist that warrant expedition of this case.

This Court’s procedural rules provide Respondents thirty days from the date the case is placed on the Court’s docket to respond to a petition for a writ of certiorari. Sup. Ct. R. 15(3). Petitioners have requested that the Court reduce that time to an insufficient eighteen days (to respond to two petitions for a writ of certiorari). If this Court grants their motions, Respondents will have less than three weeks to read and review both Petitions, analyze the authorities cited therein, draft two briefs in opposition, and ensure they are printed and filed. Respondents need at least thirty days to prepare thorough drafts of their briefs in opposition to the petitions. The hasty schedule suggested by Petitioners may potentially result in overlapping briefing and arguments. Shortening the certiorari and merits-stage briefing and argument schedules would hinder Respondents’ ability to exclude duplicative arguments, coordinate with other counsel, and deliver detailed, succinct briefs and arguments.

Orders to expedite cases in this Court are infrequently entered and are typically limited to exceptional circumstances that are not present in this case. For example, this Court has found a need for expedited consideration in cases implicating national security concerns. *See, e.g., Ex parte Quirin*, 317 U.S. 1, 19 (Granting expedited consideration of a case determining the constitutionality of trying petitioners accused of war crimes in a military tribunal “in view of the public importance of the questions raised by [the] petitions and of the duty which rests on the courts, in time of war as well as in time of peace, to preserve unimpaired the constitutional safeguards of civil liberty, and because in [the Court’s] opinion the

public interest required [it to] consider and decide those questions without any avoidable delay.”). *See also New York Times Co. v. United States*, 403 U.S. 713, (1971) (Granting expedited consideration because case presented issues concerning the publication of classified materials related to the Vietnam War); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952) (Granting expedited consideration because case presented issues about whether the seizure of most of the country’s steel mills was a proper exercise of the President’s military power).

Petitioners’ claimed reason for seeking an expedited schedule is that the Fifth Circuit’s remand to the district court makes the constitutionality of the Patient Protection and Affordable Care Act (the “Act”) uncertain, and that this uncertainty makes decisions pertaining to health insurance difficult. CA Mot. to Expedite 5,6. This is an inadequate reason to expedite this case and deny Respondents sufficient briefing time. In fact, this Court has previously considered at least two challenges to the constitutionality of the same law without expediting the proceedings. *See Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012); *see also King v. Burwell*, 135 S.Ct. 2480 (2015).

The district court explicitly stayed its order granting partial final summary judgment, which declared the entirety of the Act to be unconstitutional, in December of 2018. Health insurance markets have continued to function since that time. The district court’s stay will remain in place throughout the course of appellate proceedings, which maintains the status quo until final appellate resolution of this

case. There are thus no special circumstances that warrant expedited consideration of this case.

Finally, if this Court elects to grant Petitioners' motions, prudence counsels that the petitions for a writ of certiorari and any conditional cross-petitions filed pursuant to Supreme Court Rule 13(4) be considered together. In light of the partial remand by the Fifth Circuit, such cross-petitions may be required in order to preserve all issues should certiorari be granted. Given that any conditional cross-petitions would be due March 17, *see* Sup. Ct. Rule 13, granting Petitioners' expedited schedules would result in all subsequent filing deadlines associated with the petitions differing from those related to any conditional cross-petitions. And accelerating the cross-petitions' deadlines would unduly prejudice Respondents. The only other option is the best option—for this Court to observe its ordinary schedule pursuant to its rules.

CONCLUSION

For the foregoing reasons, this Court should deny Petitioners' motions to expedite, and allow certiorari briefing and any merits briefing and oral argument scheduling to proceed in the ordinary course.

Respectfully submitted,

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