

IN THE SUPREME COURT OF THE UNITED STATES

No. 19-840

STATE OF CALIFORNIA, ET AL., PETITIONERS

v.

STATE OF TEXAS, ET AL.

No. 19-1019

STATE OF TEXAS, ET AL., PETITIONERS

v.

STATE OF CALIFORNIA, ET AL.

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

MOTION OF THE FEDERAL RESPONDENTS FOR DIVIDED ARGUMENT AND
RESPONSE TO MOTIONS FOR EXPANDED ARGUMENT

Pursuant to Rules 21.4 and 28.4 of the Rules of this Court, the Solicitor General, on behalf of the United States and the other federal parties, seeks leave to divide the oral argument for the federal respondents and State respondents/cross-petitioners in the above cases; responds to the motion of the amici States Ohio and Montana (amici States) to participate in oral argument and for expanded argument; and states its position on the forthcoming motion from the U.S. House of Representatives. Counsel for the State respondents/cross-petitioners have authorized us to state that they agree with the motion seeking leave to divide the oral

argument for the federal respondents and State respondents/cross-petitioners and agree with the response to the motion of the amici States, and therefore join in the portions of this filing addressing these two positions.

1. The United States respectfully seeks leave to divide the oral argument for the federal respondents and State respondents/cross-petitioners in these cases. This Court consolidated the two cases and allocated a total of one hour for oral argument. The United States moves to allocate 15 minutes of oral argument time to the federal respondents in No. 19-840 and No. 19-1019 and 15 minutes to the State respondents in No. 19-840 and cross-petitioners in No. 19-1019. Granting this motion would not require the Court to enlarge the overall time for argument.

The Patient Protection and Affordable Care Act (ACA), Pub. L. No. 111-148, 124 Stat. 119, established a framework of economic regulations and incentives that restructured the health-insurance and healthcare industries. Among other provisions, the ACA contains a “[r]equirement to maintain minimum essential coverage,” 26 U.S.C. 5000A (emphasis omitted), which is colloquially known as the “individual mandate.” The ACA also specifies “[t]he amount of the penalty imposed” for noncompliance with the individual mandate, 26 U.S.C. 5000A(c), often referred to as the “[s]hared-responsibility payment,” 26 U.S.C. 5000A(b) (emphasis omitted). In National Federation of Independent Business v. Sebelius,

567 U.S. 519 (2012) (NFIB), this Court considered a challenge to the validity of the individual mandate and held that, to save the mandate from unconstitutionality, it could be construed as a valid exercise of Congress's taxing power, U.S. Const. Art. I, § 8, Cl. 1.

In December 2017, Congress enacted the Tax Cuts and Jobs Act (TCJA), Pub. L. No. 115-97, Tit. I, 131 Stat. 2054, which eliminated the shared-responsibility payment as of January 1, 2019. Following the TCJA's enactment, several plaintiffs, including Texas and 17 other States (State respondents/cross-petitioners) and two individual plaintiffs, brought this suit challenging the constitutionality of the individual mandate and the enforceability of the remainder of the ACA. The State respondents/cross-petitioners argued that Congress's elimination of the shared-responsibility payment abrogated the basis of NFIB's saving construction of the individual mandate and that the remainder of the ACA is inseverable from the mandate. The district court entered a declaratory judgment declaring the individual mandate unconstitutional and inseverable from the remainder of the ACA. The court of appeals agreed that the individual mandate is no longer constitutional but remanded the case for the district court to reconsider severability and to consider the federal government's argument that relief should be confined to redressing the plaintiffs' cognizable injuries.

This Court granted writs of certiorari in these cases to determine whether the plaintiffs have standing to challenge the individual mandate and associated insurance-reform provisions; whether, as a result of the elimination of the shared-responsibility payment, the individual mandate remains a valid exercise of Congress's legislative authority; and whether, if the individual mandate is now invalid, the remainder of the ACA's provisions are inseverable from it. The State respondents/cross-petitioners have primarily relied on their own injuries as the basis for Article III standing, State Resp./Cross-Pet. Br. 19-30, while the federal government has relied on the injuries suffered by the individual plaintiffs, Gov't Br. 13-23. And while the State respondents/cross-petitioners have argued for nationwide relief in the form of a declaratory judgment declaring the ACA unconstitutional and unenforceable throughout the United States, State Resp./Cross-Pet. Br. 46-48, the federal government has argued that the Court must limit any remedy to redressing the cognizable injuries incurred by the plaintiffs, Gov't Br. 15-16.

2. The United States respectfully submits that dividing the argument time between the federal respondents and the State respondents/cross-petitioners would be of material assistance to the Court. The United States has a significant interest in this case because it implicates the validity of a major federal statutory scheme and the extent to which the federal government

may enforce that scheme throughout the United States. The State respondents/cross-petitioners also have a significant interest in this case because they must comply with certain ACA provisions and are involved in implementing portions of the ACA. See State Resp./Cross-Pet. Br. 20-25. And the interests of the federal government and the State respondents/cross-petitioners are distinct in a number of ways. The federal government has a distinct interest in arguing that any remedy should be cabined to provisions that cause the plaintiffs' cognizable injuries. And the State respondents/cross-petitioners have a distinct interest in addressing the question of their Article III standing. The federal government accordingly requests that the Court grant the motion for divided argument.

3. The United States opposes the motion of the amici States to participate in oral argument and for expanded argument. While the amici States assert that they are arguing a unique combination of two positions -- that the individual mandate is unconstitutional and severable, see Amici States Mot. 1 -- the existing parties will fully represent those two positions at argument. Both the federal government and the State respondents/cross-petitioners have argued that the individual mandate is unconstitutional, see Gov't Br. 23-36; State Resp./Cross-Pet. Br. 30-36, while the State petitioners/cross-respondents have argued that the mandate is severable from the remainder of the ACA, see State Pet./Cross-

Resp. Br. 35-48. Duplicative oral argument from nonparties on these points will not materially assist the Court in deciding this case. And, in any event, if the Court grants the amici States oral argument time, the Court should enlarge the oral argument time rather than reduce the time allotted to the federal government and the State respondents/cross-petitioners; both parties should receive 15 minutes of oral argument time.

4. The U.S. House of Representatives has informed the United States that it intends to file a motion to divide oral argument time with the State petitioners/cross-respondents along with a motion to expand oral argument time. The United States does not oppose the division of oral argument time between the House and the State petitioners/cross-respondents. The United States does oppose, however, the expansion of oral argument time. The arguments made by the House and the State petitioners/cross-respondents are largely overlapping and duplicative, and there is no evident reason why they cannot present those arguments in the time allotted.

Respectfully submitted.

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Counsel of Record

JULY 2020