

DOUGLAS N. LETTER
GENERAL COUNSEL

TODD B. TATELMAN
PRINCIPAL DEPUTY GENERAL COUNSEL

MEGAN BARBERO
DEPUTY GENERAL COUNSEL

JOSEPHINE MORSE
DEPUTY GENERAL COUNSEL

U.S. HOUSE OF REPRESENTATIVES
OFFICE OF GENERAL COUNSEL

219 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6532
(202) 225-9700
FAX: (202) 226-1360

BROOKS M. HANNER
ASSOCIATE GENERAL COUNSEL

ADAM A. GROGG
ASSOCIATE GENERAL COUNSEL

SARAH E. CLOUSE
ASSOCIATE GENERAL COUNSEL

JONATHAN B. SCHWARTZ
ATTORNEY

August 25, 2020

Scott S. Harris
Clerk of the Court
Supreme Court of the United States
One First Street N.E.
Washington, D.C. 20543

Re: *California, et al. v. Texas, et al.*, No. 19-840
Texas, et al. v. California, et al., No. 19-1019

Dear Mr. Harris:

I write with regard to the reply briefs filed by cross-petitioners on August 18, 2020, in the above-captioned cases. Those reply briefs contain material outside the scope of the Court’s briefing order. The Court may wish to consider directing the cross-petitioners to file reply briefs that comply with that order.

The cross-petition here included two questions presented:

1. Whether the unconstitutional individual mandate to purchase minimum essential coverage is severable from the remainder of the ACA.
2. Whether the district court properly declared the ACA invalid in its entirety and unenforceable anywhere.

Conditional Cross-Petition i (No. 19-1019). Tracking those two questions, the cross-petition included separate arguments that “the individual mandate is not severable from the remainder of the ACA,” *id.* at 11-18, and that “a declaratory judgment” should not be “limited by geography,” *id.* at 18-21.

After the Court granted the petition and cross-petition, the parties filed a joint motion for an extension of time, which provided a proposed briefing schedule. The parties agreed to a four-brief schedule. See Motion 2 (Mar. 20, 2020). Because both the petition and cross-petition had raised substantively identical questions regarding severability, compare Conditional Cross-Petition i (first question presented), with Petition i (No. 19-840) (“whether the minimum coverage provision is severable from the rest of the ACA”), the parties agreed that severability would be addressed in the first through third briefs, but not the fourth brief. That fourth brief would, instead, be “limited to the question of the geographic scope of any remedial order,” Motion 2 (Mar. 20, 2020)—that is, the cross-petition’s second question presented.

The Court granted that motion, issuing the requested briefing schedule. Consistent with the parties' agreement, the Court ordered that the cross-petitioners' reply briefs be "limited to Question 2 presented by the petition for certiorari in No. 19-1019."

Despite the parties' agreement and the Court's order, the recently filed reply briefs are not limited to addressing the cross-petition's second question. Instead, both briefs, like the cross-petition itself, contain separate arguments addressing severability issues (the cross-petition's first question presented), see Texas Reply Br. 3-11; Hurley Reply Br. 3-11, and the geographic scope of the judgment (the cross-petition's second question presented), see Texas Reply Br. 12-19; Hurley Reply Br. 1-3.

The material regarding severability—at pages 3-11 of both briefs—is thus improperly included and inconsistent with the Court's order. A direction from the Court that the cross-petitioners file reply briefs that comply with the Court's order, and therefore omit that improper material, would be appropriate.

Thank you very much for your time and assistance on this matter.

Very truly yours,

/s/ Douglas N. Letter
Douglas N. Letter