

IN THE SUPREME COURT OF THE UNITED STATES

No. 19–841

UNITED STATES HOUSE OF REPRESENTATIVES, Petitioner,

v.

STATE OF TEXAS, ET AL., Respondents,

and

UNITED STATES OF AMERICA, ET AL., Respondents.

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

OPPOSITION TO MOTION TO EXTEND TIME TO FILE RESPONSES TO PETITIONS FOR WRITS OF
CERTIORARI

Petitioner the United States House of Representatives opposes the individual and state respondents' motion for an extension of time to file their briefs in opposition to the House's petition for a writ of certiorari.

1. For all the reasons stated in the House's motion to expedite consideration of its petition for a writ of certiorari, filed on January 3, 2020, the swift resolution of this case is paramount. The Fifth Circuit's decision threatens the orderly operation of the healthcare sector and casts doubt over whether millions of individuals will continue to be able to afford vitally important care. As the federal government itself argued below, the continuing uncertainty about the ACA's lawfulness will seriously damage the healthcare sector.

Although the Court has denied the House’s request to expedite certiorari consideration, the Court could consider the certiorari petition in the ordinary course and still grant certiorari (should it decide to do so) in time to hear and decide the case this Term. Under this Court’s Rules, the respondents’ briefs in opposition are due on February 3, absent any extensions. If the oppositions are filed on that day, the House will—without prejudice to its right to file a reply brief—waive the 14-day waiting period, provided by Supreme Court Rule 15.5, between the filing of a brief in opposition and distribution of the petition and other materials to the Court. As a result, if the respondents file their briefs in opposition in the normal course under Supreme Court Rule 15.3, the Court could consider the petition at its conference on February 21, 2020, and, should it grant certiorari, order a merits briefing schedule that would permit argument in the case to occur this Term.

The individual and state respondents’ requested extension, however, would not permit the Court to consider whether to grant certiorari until April 2020 at the earliest. At that point, it will be too late, even under an expedited merits briefing schedule, for the Court to hear and decide the case this Term. Granting the requested extension would therefore ensure that uncertainty about the ACA’s status will endure at least into late 2020, likely through next year’s open enrollment period. The individual and state respondents have provided no justification for extending the crippling uncertainty now afflicting the healthcare sector for so long.¹

¹ Respondents’ suggestion that the extension is warranted to align the House’s petition with “any cross-petitions” they may file lacks merit. As the House pointed out in its reply in support of its motion to expedite, “it seems certain that any such cross-petition would argue that the Fifth Circuit should have affirmed the district court’s severability decision striking down the entirety of the Act.” House Mot. to Expedite Reply 10. Respondents have not denied that proposition. Because the House’s petition places the correctness of the Fifth Circuit’s severability decision in issue, this Court need not await a possible cross-petition on severability before deciding whether to grant the House’s petition.

2. For the same reasons, the House notes that it also opposes any extension of time for the United States or any other party to file a brief in opposition. The United States's brief in opposition is also due on February 3, 2020. To the extent any party seeks an extension of time to file a brief in opposition, the House respectfully requests that the Court provide it an opportunity to file a formal opposition before the Court acts on that extension request.

Respectfully submitted,

/s/ Douglas N. Letter

Douglas N. Letter

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