

No. 19-10011

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

STATE OF TEXAS; STATE OF ALABAMA; STATE OF ARIZONA; STATE OF FLORIDA; STATE OF GEORGIA; STATE OF INDIANA; STATE OF KANSAS; STATE OF LOUISIANA; STATE OF MISSISSIPPI, by and through Governor Phil Bryant; STATE OF MISSOURI; STATE OF NEBRASKA; STATE OF NORTH DAKOTA; STATE OF SOUTH CAROLINA; STATE OF SOUTH DAKOTA; STATE OF TENNESSEE; STATE OF UTAH; STATE OF WEST VIRGINIA; STATE OF ARKANSAS; NEILL HURLEY; JOHN NANTZ,

Plaintiffs – Appellees

v.

UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF HEALTH & HUMAN SERVICES; ALEX AZAR, II, SECRETARY, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; UNITED STATES DEPARTMENT OF INTERNAL REVENUE; CHARLES P. RETTIG, in his Official Capacity as Commissioner of Internal Revenue,

Defendants – Appellants

STATE OF CALIFORNIA; STATE OF CONNECTICUT; DISTRICT OF COLUMBIA; STATE OF DELAWARE; STATE OF HAWAII; STATE OF ILLINOIS; STATE OF KENTUCKY; STATE OF MASSACHUSETTS; STATE OF NEW JERSEY; STATE OF NEW YORK; STATE OF NORTH CAROLINA; STATE OF OREGON; STATE OF RHODE ISLAND; STATE OF VERMONT, STATE OF VIRGINIA; STATE OF WASHINGTON; STATE OF MINNESOTA,

Intervenor Defendants – Appellants

**On Appeal from the United States District Court
for the Northern District of Texas**

No. 4:18-cv-167-O

Hon. Reed O'Connor, Judge

MOTION TO INCREASE ORAL ARGUMENT TIME

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The state defendants and the U.S. House of Representatives respectfully move this Court to increase the amount of time allocated for oral argument in this appeal. Specifically, they request that this Court allocate 45 minutes of argument for each side. The state plaintiffs, individual plaintiffs, and federal defendants take no position on this motion.

1. The plaintiffs in this case—several States and two individuals—challenge the constitutionality of one provision of the Patient Protection and Affordable Care Act of 2010. They further assert that the provision is inseverable from the rest of the ACA. A group of States intervened in the proceedings below to defend the constitutionality of the challenged statute, 26 U.S.C. § 5000A, and to argue that even if it is unconstitutional, it is severable from the rest of the ACA. In the district court, the federal defendants agreed with the plaintiffs that Section 5000A is unconstitutional, and further argued that it was inseverable from two of the ACA’s other provisions, the “community-rating” and “guaranteed-issue” reforms.

The district court agreed with the plaintiffs, holding Section 5000A unconstitutional and inseverable from the rest of the ACA. The state defendants and the federal defendants timely appealed. This Court permitted the House of Representatives to intervene on appeal. Like the state defendants, the House argues that Section 5000A is constitutional and that, even if not, it is severable from the rest of the ACA. Meanwhile, the federal defendants have changed

positions on appeal, and now join the plaintiffs in arguing that Section 5000A is both unconstitutional and inseverable from the entire ACA.

Briefing completed in this case on May 22, 2019, and this Court scheduled oral argument for July 9, 2019. In its scheduling order, the Court allocated 30 minutes of argument per side.

2. The state defendants and the House of Representatives now respectfully move to increase oral argument time to 45 minutes per side. Specifically, they request that the Court allocate 45 minutes for the state defendants and the House to divide among themselves; and likewise allocate 45 minutes for the state plaintiffs, individual plaintiffs, and federal defendants to divide among themselves. This case involves a number of important issues, including whether plaintiffs have standing to maintain this action, whether Section 5000A, as amended, is constitutional, and, if not, whether Section 5000A is severable from all or some of the rest of the ACA. Moreover, multiple parties on both sides of this case will present oral argument. Increasing argument time to 45 minutes per side will be most useful to this Court's considerations of the important issues raised in this appeal.

Dated: June 3, 2019

Respectfully submitted,

s/ Donald B. Verrilli, Jr.

s/ Samuel P. Siegel

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CERTIFICATE OF SERVICE

I certify that on June 3, 2019, I electronically filed the foregoing document with the Clerk of the Court of the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I certify that all other participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: June 3, 2019

/s Samuel P. Siegel

Samuel P. Siegel

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of Federal Rule of Appellate Procedure 27(d)(2) and Fifth Circuit Rule 27.4 because it contains 433 words, according to the count of Microsoft Word. I further certify that this brief complies with typeface and style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E) because it has been prepared in Microsoft Word using 14-point Times New Roman font.

Dated: June 3, 2019

/s Samuel P. Siegel

Samuel P. Siegel