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July 5, 2019

**VIA CM/ECF**

Mr. Lyle W. Cayce, Clerk  
U.S. Court of Appeals for the Fifth Circuit  
600 S. Maestri Place  
New Orleans, LA 70130-3408

Re: No. 19-10011, *Texas v. United States*

Dear Mr. Cayce:

Pursuant to Rule 28(j), the State Plaintiffs submit the following response to the Individual Plaintiffs' letter of July 3, 2019:

The Supreme Court's decision in *Department of Commerce v. New York*, No. 18-966 (June 27, 2019), confirms that the State Plaintiffs have standing to challenge the ACA's individual mandate.

The Court unanimously held that a group of state plaintiffs could challenge the inclusion of a citizenship question on the 2020 census based on injuries to those States attributable to the "predictable" actions of third parties. Slip op. 11. Article III was satisfied based on the plaintiffs' "expectation" that "the reinstatement of a citizenship question would result in noncitizen households responding to the census at lower rates than other groups," slip op. 9, because that was the "predictable effect of Government action," slip op. 11. That is, a State has standing to challenge a federal action when that action may have the "predictable effect" of causing third parties to act in a way that injures the State. All nine Justice fully agreed with that holding.

The ACA's individual mandate provides that "[a]n applicable individual *shall* . . . [be] covered under minimum essential coverage." 26 U.S.C. § 5000A(a)

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(emphasis added). As in *Department of Commerce*, “third parties will likely react in predictable ways” (slip op. 9) to that command: by securing health insurance, either through the private market or through state programs like Medicaid and CHIP.

Ample evidence here “establish[es] a sufficient likelihood” (slip op. 9) that some people will sign up for health coverage because of the mandate. The CBO has explained that some individuals would “comply with [the] mandate, even in the absence of penalties,” simply because they feel compelled to do so by the law. *See Texas Br. 20*. And some individuals “who enroll[ed] in insurance because of the mandate . . . would continue to do so solely because of a willingness to comply with the law” even “with no penalty at all.” *See Texas Br. 16*. The affidavits of the Individual Plaintiffs (ROA.635-37; ROA.639-41) confirm not only that “third parties will likely react in predictable ways” (slip. 10) to the ACA’s command, but that they already have.

Sincerely,

/s/ Kyle D. Hawkins

Kyle D. Hawkins

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cc: All counsel of record (via CM/ECF)

### **CERTIFICATE OF SERVICE**

In accordance with Federal Rule of Appellate Procedure 28(j) and Fifth Circuit Rule 28.4, this filing was served via CM/ECF on all registered counsel and transmitted to the Clerk of the Court on July 5, 2019. Counsel further certifies that: (1) any required privacy redactions have been made in compliance with Fifth Circuit Rule 25.2.13; (2) the electronic submission is an exact copy of the paper document in compliance with Fifth Circuit Rule 25.2.1; and (3) the document has been scanned with the most recent version of Symantec Endpoint Protection and is free of viruses.

/s/ Kyle D. Hawkins  
KYLE D. HAWKINS  
*Counsel for Plaintiffs-Appellees*

### **CERTIFICATE OF COMPLIANCE**

This letter complies with the type-volume limitation of Federal Rule of Appellate Procedure 28(j) because it contains 341 words.

/s/ Kyle D. Hawkins  
KYLE D. HAWKINS  
*Counsel for Plaintiffs-Appellees*