

Nos. 19-840; 19-1019

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IN THE  
SUPREME COURT OF THE UNITED STATES

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CALIFORNIA, ET. AL.

*Petitioners,*

v.

TEXAS, ET AL.

*Respondents.*

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TEXAS, ET AL.

*Cross-Petitioners,*

v.

CALIFORNIA, ET AL.

*Cross-Respondents.*

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

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**REPLY IN SUPPORT OF  
MOTION OF RESPONDENT UNITED STATES HOUSE OF REPRESENTATIVES FOR  
ENLARGEMENT OF ARGUMENT TIME AND DIVIDED ARGUMENT**

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Respondent United States House of Representatives (House) respectfully submits this reply to the opposition to its motion filed by Texas and the other respondent States (collectively, Texas) that are challenging the constitutionality of the Affordable Care Act. Neither California and the other petitioner States (collectively, California) nor the Department of Justice objects to the House's motion for divided argument. That is for good reason: the objections advanced by Texas are baseless.

## ARGUMENT

1. Texas asserts that the interests of the House and California are duplicative. That is incorrect. The House has distinct and enduring institutional interests in how this Court's standing doctrine applies to lawsuits challenging federal statutes (particularly those brought by state governments); in how principles of constitutional interpretation apply to federal statutes; and in how principles of severability will apply in those cases in which this Court determines that a federal statutory provision is unconstitutional. State governments do not share those institutional interests, or even themselves have common views on those questions—as is made obvious by the fact that Texas and California disagree *in this case* about how this Court's doctrines of standing, constitutional interpretation, and severability should apply.

In all events, if the risk of duplicative argument were a sufficient reason to deny a divided argument motion, then there would be no reason to allow Texas and the Department of Justice to divide argument in this very case.<sup>1</sup> Indeed, Texas itself welcomed the participation of the House as *amicus curiae* at oral argument in *Texas v. United States* (No. 15-674) even though there was no meaningful difference in the substantive arguments advanced by Texas and by the House in that case. See Joint Motion of Respondents and United States House of Representatives for Leave to Participate in Oral Argument as Amicus Curiae for Enlargement of Time for Oral Argument and for Divided Argument, *Texas v. United States*, No. 15-674 (Mar. 31, 2016); Order, *Texas v. United States*, No. 15-674 (Apr. 8, 2016) (granting motion).

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<sup>1</sup> Although Texas and the Department of Justice diverge on one ancillary remedial point, Texas is perfectly willing to allow the Department of Justice to advance that argument during the time allotted to respondents—making clear that Texas does not view that, or any other, part of the argument of the Department of Justice to be inconsistent with its own interests.

2. As the House explained in its motion for divided argument, the House’s institutional interests are strongly implicated in this case because the Department of Justice has declined to defend the constitutionality of the Affordable Care Act and the House is the only federal party doing so. Specifically, the Department is advancing positions on standing, the scope of Congress’s constitutional power, and severability that would, if adopted by this Court, substantially expand the scope of available constitutional challenges to Acts of Congress and substantially increase the adverse consequences that would follow from such challenges when they are successful. Needless to say, the House does not believe that those arguments advance the interests of the United States, and it is therefore particularly important that the House participate in argument.

3. On the other side of the scale, it is difficult to understand what legitimate interest Texas has in opposing the House’s participation in argument. That participation would not affect the ability of Texas to present its case at argument in any way.

Citing *Virginia House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945 (2019), Texas contends that the House cannot participate as a party in this litigation. But that case concerned whether a state-government entity had *standing* to defend a redistricting plan in federal court. Here, the House’s standing is irrelevant because California has standing. See *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, No. 19-431, 2020 WL 3808424, at \*8 n.6 (U.S. July 8, 2020) (holding that Third Circuit “erred by inquiring into the [intervenors’] independent Article III standing,” where another party “clearly had standing to invoke the Third Circuit’s appellate jurisdiction” and both that party and the intervenors sought the same relief). And in any event, the House does have standing. See Reply Brief for Petitioner 10, *United States House of Representatives v. Texas*, No. 19-841 (Feb. 12, 2020).

As for the distinct question of whether the House is a proper party to this case, the court of appeals granted the House intervenor party status, and Texas did not seek certiorari to review that decision. Nor has it objected to the House's participation in the briefing of this case. There is thus no basis for invoking *Bethune-Hill* as a reason to deny the House participation at argument.

4. Enlargement of the argument time also is appropriate here. This is a highly important case, the outcome of which could affect the daily lives of millions of people. Certainly this case is no less consequential than many others in which the Court has granted 40 minutes of argument time per side. See, e.g., Order, *Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment, LLC*, No. 18-1334 (Sept. 11, 2019); Mot. for Divided Arg. 5.

#### **CONCLUSION**

For the foregoing reasons and those stated in the House's motion, the House respectfully requests that this Court enlarge the oral argument time for parties supporting California to 40 minutes, with 30 minutes allocated to California and 10 minutes allocated to the House.

Respectfully submitted,

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