

No. 19-10011

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

STATE OF TEXAS; STATE OF WISCONSIN; 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

MOTION TO EXPEDITE ORAL ARGUMENT

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The United States hereby moves to expedite the oral argument and, in particular, respectfully requests that the Court schedule oral argument during its scheduled sitting in July 2019. This motion is unopposed.

1. In this case, plaintiffs challenge the constitutionality of the requirement, contained in the Patient Protection and Affordable Care Act, that certain individuals purchase health insurance. Plaintiffs further argue that the mandate is not severable from the remainder of the Act. A group of States have intervened to defend the constitutionality of the statute and to urge that even if the individual mandate is unconstitutional, it is severable from the rest of the Act. The House of Representatives also has intervened on appeal, and agrees that the individual mandate is constitutional and is severable regardless.

In district court, the United States took the position that the mandate is unconstitutional and that it is not severable from the so-called guaranteed-issue and community-rating provisions of the Act, but that the remaining provisions of the Act are severable. After further consideration, the United States has informed this Court of its new position that it agrees with the district court that the mandate is unconstitutional and not severable from the remainder of the Act, and that it therefore intends to file a brief on the appellees' schedule.

The opening briefs for the intervenor appellants were filed on March 25, 2019. Appellees' brief and the brief for the United States are due on May 1, 2019.

2. The United States respectfully requests that the case be calendared for oral argument in the sitting scheduled for the week of July 8. Prompt resolution of this case will help reduce uncertainty in the healthcare sector, and other areas affected by the Affordable Care Act. The importance of doing so is underscored by the change in the alignment of the parties on appeal. We are not asking the Court to shorten the period for the filing of reply briefs, which would be due under the rules on May 22, 2019.

3. We have conferred with counsel for the other parties. The House consents to the relief requested in this motion: expedited scheduling of oral argument in this case for the Court's regularly scheduled argument session in July 2019. The intervenor States and the plaintiff-appellees do not oppose this motion.

Respectfully submitted,

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s/Martin V. Totaro

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APRIL 2019

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing motion complies with the type-volume limitations contained in Federal Rule of Appellate Procedure 27(d)(2) because it contains 383 words. This motion also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Microsoft Word 2016 in Garamond 14-point font, a proportionally spaced typeface.

s/Martin V. Totaro
MARTIN V. TOTARO

CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2019, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/Martin V. Totaro
MARTIN V. TOTARO