No. 24-A__

In The
Supreme Court of the United States

PRINCIPLE HOMECARE, LLC, MARTON CARE INC., PROMPT HOME CARE LLC, AND CARE CONNECT CDPAP, INC.,

Applicants,

v.

JAMES V. MCDONALD, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE NEW YORK STATE DEPARTMENT OF HEALTH,

Respondent.

To the Honorable Sonia Sotomayor, Associate Justice of the United States Supreme Court and Circuit Justice for the Second Circuit

Emergency Application for Writ of Injunction

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QUESTIONS PRESENTED

By legislative fiat, New York State has made it illegal—beginning April 1, 2025 and continuing indefinitely—for more than 600 small businesses in the State to continue operating pursuant to longstanding contracts, and is handing the entire economic value of those contracts to a private, State-appointed monopolist. Despite totally devaluing those contracts for the provision of "fiscal intermediary" services in a popular home healthcare program, destroying these longstanding businesses, taking their private property, and handing it to another private entity, the State has not provided any—let alone just—compensation. And the State has not demonstrated that this severe impairment of existing contracts governing a $9 billion-per-year industry—amounting to their industrywide nullification by the stroke of a pen—is a reasonable means of accomplishing a significant and legitimate public purpose. That purpose, even in the State's telling, is nothing more than generalized and unsubstantiated cost savings purportedly to be gained by destroying a thriving ecosystem of small businesses and replacing it with a State-sanctioned monopoly.

The district court nonetheless dismissed Applicants' claims on the pleadings and denied as moot Applicants' motion for a preliminary injunction. The United States Court of Appeals for the Second Circuit declined to issue an emergency injunction pending the resolution of Applicants' expedited appeal. The result is that, absent emergency relief from this Court, hundreds of small businesses will completely and permanently shut down, irreparably depriving them of their constitutional rights and their ability to continue as going concerns before Applicants can be heard in the court

of appeals, effectively nullifying their appellate rights and their opportunity to seek certiorari from this Court on questions of nationwide importance.

The questions presented on this writ of injunction application are:

1. Whether the challenged legislation, called the Consumer Directed Personal Assistance Program Amendment, which permanently extinguishes the contracts of hundreds of small businesses as of April 1, 2025, renders them completely valueless, provides no compensation for doing so, and is neither reasonable nor necessary to advance a significant and legitimate public purpose, violates the Takings and Contracts Clauses of the United States Constitution, both facially and as applied to Applicants.

2. Whether the courts below erred in departing from this Court's well-settled holdings that parties have a protected property interest in their contracts and instead concluding that certain contracts—private contracts in which the contractual counterparty receives state funding—are categorically exempt from this rule, such that this newly identified subset of contracts is not entitled to *any* protection under the Takings Clause and can be taken by the State without compensation.

3. Whether the courts below erred in employing the equivalent of rational basis review in evaluating a Contracts Clause claim, contrary to this Court's precedents, by wholly deferring to the State's bare assertion that a severe, industrywide nullification of existing contracts is justified by the purported—but unsubstantiated—resulting cost savings, thereby effectively rendering the Contracts Clause a dead letter.

PARTIES AND RULE 29.6 STATEMENT

Applicants are PRINCIPLE HOMECARE, LLC, MARTON CARE INC., PROMPT HOME CARE LLC, AND CARE CONNECT CDPAP, INC. Applicants were the Plaintiffs in the United States District Court for the Southern District of New York and are the Appellants in the United States Court of Appeals for the Second Circuit. Applicants have no parent corporations, and there is no publicly held corporation owning 10% or more of any of Applicants' stock.

Respondent is JAMES V. MCDONALD, in his official capacity as Commissioner of the New York State Department of Health. Respondent was the Defendant in the United States District Court for the Southern District of New York and is the Appellee in the United States Court of Appeals for the Second Circuit.

DECISIONS BELOW

The decisions in this case in the lower courts are styled *Principle Homecare, LLC v. McDonald*. The order of the United States Court of Appeals for the Second Circuit, dated March 25, 2025, denying Applicants' emergency motion for an injunction pending appeal is attached hereto as Exhibit A. The order of the United States District Court for the Southern District of New York, dated February 27, 2025, denying Applicants' motion for an injunction pending appeal is attached hereto as Exhibit B. The final judgment entered by the Clerk of the United States District Court for the Southern District of New York, dated February 26, 2025, is attached hereto as Exhibit C (the "Final Judgment"). The order of the United States District Court for the Southern District of New York, dated February 26, 2025, granting Respondent's

motion to dismiss and denying as moot Applicants' motion for a preliminary injunction is attached hereto as Exhibit D (the "District Court Order") and is also available at 2025 WL 622876. The District Court Order and Final Judgment are on appeal in the circuit court. The docket number in the United States District Court for the Southern District of New York is 24-cv-7071, and the docket number in the United States Court of Appeals for the Second Circuit is 25-466.

JURISDICTION

Applicants have a pending appeal in the United States Court of Appeals for the Second Circuit, pursuant to 28 U.S.C. § 1291. This Court has jurisdiction pursuant to 28 U.S.C. § 1651.

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TO THE HONORABLE SONIA SOTOMAYOR,
ASSOCIATE JUSTICE OF THE SUPREME COURT AND
CIRCUIT JUSTICE FOR THE SECOND CIRCUIT:

Pursuant to Rules 20, 22, and 23 of the Rules of this Court, and 28 U.S.C. § 1651, Applicants Principle Homecare, LLC ("Principle Homecare"), Marton Care Inc. ("Marton Care"), Prompt Home Care LLC ("Prompt Home Care"), and Care Connect CDPAP, Inc. ("Care Connect") (collectively, "Applicants") respectfully request issuance of an emergency injunction to temporarily bar further implementation or enforcement of the challenged amendment to New York State's Consumer Directed Personal Assistance Program ("CDPAP"), including implementation or enforcement of the April 1, 2025, trigger date after which existing fiscal intermediaries are no longer permitted to provide fiscal intermediary services in the State.

Applicants are four small New York businesses that have long provided such fiscal intermediary services under CDPAP—a program that allows individuals requiring home care to hire a friend, non-spousal family member, or trusted confidant to serve as their caregiver. Fiscal intermediaries serve a critical function in facilitating the program, helping over 290,000 home care recipients manage the financial, administrative, and regulatory responsibilities associated with it. Applicants provide these services under private contracts with Medicaid managed care organizations ("MMCOs"), private companies that contract with the State to provide healthcare services to Medicaid beneficiaries. Applicants operate within a thriving ecosystem of approximately 600 fiscal intermediaries across New York and have invested significant amounts of money over many years and worked hard to differentiate themselves

and grow their customer bases by providing tailored services to their local communities, accounting for their consumers' unique linguistic, cultural, and other needs.

But the State is now set to destroy this entire industry, eliminating hundreds of fiscal intermediaries in one fell swoop by permanently prohibiting them from providing fiscal intermediary services starting April 1, 2025—just *six days* from now. Applicants will thereby be put out of business entirely in favor a single private monopolist gifted a multi-billion-dollar-a-year program. The State, which premised this drastic maneuver on nothing more than unsubstantiated claims of efficiency and cost savings, will provide no compensation for this taking of private property and evisceration of existing contracts—thus running roughshod over fiscal intermediaries' constitutional rights under the Takings and Contracts Clauses.

Applicants initially sought a preliminary injunction, and later an injunction pending appeal, in the United States District Court for the Southern District of New York. Those motions were denied, as was Applicants' subsequent emergency motion for an injunction pending appeal in the Second Circuit. The result below places the lower courts on the wrong side of a circuit conflict regarding whether there are certain classes of contracts that are not cognizable property within the meaning of the Takings Clause, despite this Court's longstanding and unequivocal precedent that "[v]alid contracts are property." *Lynch v. United States*, 292 U.S. 571, 579 (1934). The lower courts further erred by employing the equivalent of rational basis review in evaluating Applicants' Contracts Clause claim, again contrary to this Court's precedent. Reasoning that the CDPAP Amendment was "not so irrational" as a purported

cost-saving measure "that it offends the Constitution," Ex. D at 23, the lower courts deferred entirely to the State's unsubstantiated assertions of efficiency as justification for the permanent abrogation of existing contracts—rendering the Contracts Clause completely toothless. Not only that, but the courts below also held that there could be no contractual impairment at all merely because the "economic relationship" among fiscal intermediaries, MMCOs, and consumers "depends upon the flow of Medicaid reimbursement dollars from the State." *Id.* at 13.

These stark departures from this Court's constitutional jurisprudence spell trouble for myriad industries—and for liberty itself. The fact that Applicants' contracts involve funds that ultimately flow from government coffers is in no way unique. The decisions below would upend the reasonable reliance that countless businesses across the Nation have placed in their longstanding private contracts in government-created industries, or in any industry that a government entity ultimately funds in whole or in part. In our world of interlocking regulatory regimes and public funds flowing in some fashion to everything from farming to energy to health care to scientific research to the defense sector to education to space travel, there is nary an industry that could not—under such a parsimonious reading of the Constitution—be taken wholesale by a State or by the federal government and handed to a government-sanctioned monopolist without compensation. This invitation to mischief cannot be permitted to stand. As this Court has explained, "[t]he Founders recognized that the

protection of private property is indispensable to the promotion of individual freedom," as "property must be secured, or liberty cannot exist." *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 147 (2021) (citation and alteration omitted).

The result below poses an immediate and concrete threat of irreparable harm: Applicants' unrebutted declarations establish that, absent emergency injunctive relief, their businesses will be shut down completely as a result of the April 1 cutoff—before their appeal can be heard, and before they even have a *chance* to petition this Court for certiorari to redress these indisputably clear violations of their constitutional rights. The State, meanwhile, has no interest in enforcing unconstitutional—and potentially calamitous—legislation. The public interest weighs heavily in favor of emergency relief, because without it, not only will hundreds of small companies be put out of business and thousands of their employees laid off, but tens of thousands of vulnerable care recipients will be left without essential home care services, as the transition to a single statewide monopolist has been an unmitigated disaster. Indeed, with only days to go before the April 1 cutoff after which existing fiscal intermediaries will no longer be permitted to provide these services, there are still approximately 70,000 consumers, as well as approximately 230,000 personal assistants, who have not even *started* the process of registering with the new monopolist (or found an alternative to CDPAP), let alone completed the transition. This is why "key lawmakers and stakeholders involved in the program are warning" that the transition will not be completed in time, resulting, as one lawmaker noted, in "overcrowding in our emergency rooms" and "wait lines for nursing homes." Ct. App. Dkt. No. 24.1 at Ex. V; *see*

also Ct. App. Dkt. No. 24.1 at Ex. W (similar). In the face of the State's stubborn insistence on driving this train forward at full speed despite the fast-approaching cliff, emergency intervention by this Court is the only way to avert disaster.

Given these "critical and exigent" circumstances, *Ohio Citizens for Responsible Energy, Inc. v. NRC*, 479 U.S. 1312, 1312 (1986) (Scalia, J., in chambers), Applicants respectfully request that the Circuit Justice—or the full Court after referral—grant this application to enjoin further implementation or enforcement of the CDPAP Amendment pending final disposition of Applicants' expedited appeal in the United States Court of Appeals for the Second Circuit and any petition for writ of certiorari, if such writ is timely sought (whether for direct review of the Second Circuit's decision, or, if the decision results in a remand, following remand and any subsequent appeal to the Second Circuit) and, if the petition is granted, upon final disposition of the case, either by this Court or by the lower courts following remand. In the alternative, Applicants request that the Court treat this application as an application for a writ of injunction together with either a request for oral argument or a petition for writ of certiorari before judgment; immediately enjoin enforcement of the April 1, 2025, trigger date pending further review by this Court; and set the case for expedited argument and review. *See Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., Occupational Safety & Health Admin.*, 595 U.S. 109, 120–21 (2022). In addition, to the extent the application will not be resolved by April 1, Applicants respectfully request that the Circuit Justice or the Court enjoin enforcement of the April 1, 2025, trigger date on an interim basis pending a decision on the application.

STATEMENT OF THE CASE

A. New York's Consumer Directed Personal Assistance Program.

CDPAP is a statewide program that empowers elderly, chronically ill, and disabled New Yorkers to hire a friend, non-spousal family member, or confidant to serve as their caregiver. N.Y. Soc. Servs. Law § 365-f ("§ 365-f") (Ex. E). Under CDPAP, care recipients (or "consumers") directly employ their caregivers (or "personal assistants") and pay their wages using funds from Medicaid. § 365-f(1), (3). Launched in 1995, CDPAP has been an incredibly popular program that today serves over 290,000 consumers. *See* Ex. E at 8; Ct. App. Dkt. No. 24.1 at Ex. U ¶ 7.

For most consumers, who are already contending with health challenges, it is not feasible to personally handle the administrative responsibilities of being an employer—a role that involves myriad legal and regulatory requirements such as wage and benefit processing, tax withholding, personnel recordkeeping, and compliance with New York State Department of Health ("DOH") program requirements. *See* § 365-f(3), (4-a)(a)(ii). To address this issue, the CDPAP statute provided for "fiscal intermediaries," a network of private businesses that assist consumers with these employer-related responsibilities while complying with enumerated statutory duties. § 365-f(4-a). Today, there are over 600 fiscal intermediaries currently providing these critical services to consumers across New York State; within this ecosystem, different companies have developed geographic, linguistic, and cultural specializations responsive to the care-recipient pool. Dist. Ct. Dkt. No. 34-3. These fiscal intermediaries

are private businesses that have competed for years to best serve consumers, investing significantly in staff, supplies, IT systems, and office space, for example, as necessary to discharge their duties in accordance with CDPAP's requirements. *See, e.g.*, Ex. F ¶¶ 6, 19–20; Ex. G ¶ 16; Ex. H ¶ 7; Ex. I ¶ 17.

Fiscal intermediaries are paid for their services primarily through contracts with MMCOs, Ex. F ¶ 5; Ex. G ¶ 5; Ex. H ¶ 5; Ex. I ¶ 4, which are private companies that contract with States to provide healthcare services to Medicaid beneficiaries. Ex. J.[1] These contracts are generally uniform for all fiscal intermediaries, based on the same standard template and containing the same material terms.[2] Absent termination, the contracts automatically renew at the end of each one-year term, *see id.* § 10, and, as a practical matter, this automatic renewal provision keeps these private contracts in effect indefinitely. Ex. F ¶ 5; Ex. G ¶ 5; Ex. H ¶ 5; Ex. I ¶ 4. The contract parties have the right to terminate their contracts without cause, and the contracts also terminate in the event of misconduct by either party—that is, if either party is "excluded, suspended, or barred from participating in any government health care program." Ex. J § 11.

[1] In limited circumstances, fiscal intermediaries may enter into a contract with a county—also referred to as a local social services district—for the provision of fiscal intermediary services. § 365-f(4-d)(a)(i).

[2] *Compare* Ex. J (DOH form fiscal intermediary contact), *with* Dist. Ct. Dkt. No. 34-6 (illustrative Principle Homecare contract), Dist. Ct. Dkt. No. 34-7 (illustrative Marton Care contract), Dist. Ct. Dkt. No. 34-8 (illustrative Prompt Home Care contract), *and* Dist. Ct. Dkt. No. 34-9 (illustrative Care Connect contract).

B. The CDPAP Amendment.

On April 20, 2024, New York Governor Kathy Hochul approved the State's annual budget, which included the CDPAP Amendment, eliminating the 600-plus existing fiscal intermediaries as of April 1, 2025, in favor of a single, statewide, State-appointed fiscal intermediary (the "Statewide Fiscal Intermediary"). Ex. E at 8; Dist. Ct. Dkt. No. 34-3; Dist. Ct. Dkt. No. 34-10 at 152–60 (Part HH).

The CDPAP Amendment was hastily pushed through as part of the legislative budget process and enacted under the guise of reducing waste, fraud, and abuse. Dist. Ct. Dkt. No. 34-2; Dist. Ct. Dkt. No. 34-11 at 86–87. But this reasoning was asserted without any study, record, or factual basis, Dist. Ct. Dkt. No. 34-11 at 90–91, and against the backdrop of recent Office of the Medicaid Inspector General audits that revealed a *99% accuracy rate* in submitted claims under CDPAP, Dist. Ct. Dkt. No. 34-12 at 27. The CDPAP Amendment was also pushed through even though the procurement process for the selection of the Statewide Fiscal Intermediary would be exempt from the State Comptroller's review and oversight, § 365 f(4-a)(b)—an inexplicable feature in light of the State's purported interest in combating supposed fraud. Although it claims the CDPAP Amendment would yield cost savings, the State did not conduct any economic impact studies in support of this assertion. Dist. Ct. Dkt. No. 34-11 at 86–87, 90–91. The State also seems to have given little thought to the care recipients who will be harmed by this transition from community-based, specialized fiscal intermediary services to a single statewide megalith.

On September 30, 2024, DOH announced that Public Partnerships LLC ("PPL") "won" the bid to become the Statewide Fiscal Intermediary. *See* Dist. Ct. Dkt. No. 34-2. PPL had no relevant prior New York experience and a history of significant operational problems in other States, including Pennsylvania, where PPL's botched transition—from just 36 private entities to one—left thousands of participants without essential services. *See* Dist. Ct. Dkt. No. 34-14 at iii–v, 25–29. The botched Pennsylvania transition caused a serious disruption in services and forced unpaid caregivers to abandon their duties in search of a different job, leaving vulnerable Pennsylvanians in a void of essential services. *Id.* at 25–29. At the time of the transition, Pennsylvania's program had approximately 20,000 participants, *id.* at iii, far fewer than the estimated 290,000 in New York, Ct. App. Dkt. No. 24.1 at Ex. U ¶ 7.[3]

C. Hundreds Of Small Businesses Will Be Irreparably Harmed By The CDPAP Amendment.

Applicants are New York-based fiscal intermediaries that serve an array of consumers across the State. Ex. F ¶¶ 1, 4; Ex. G ¶¶ 1, 4; Ex. H ¶¶ 1, 6; Ex. I ¶¶ 1, 5. Applicants embody the American Dream—small businesses built by immigrants, descendants of Holocaust survivors, and, above all else, New Yorkers who have devoted their lives to serving the State's most vulnerable. Each Applicant has existing MMCO contracts that have automatically renewed each year since their initial execution. Ex. F ¶ 5; Ex. G ¶ 5; Ex. H ¶ 5; Ex. I ¶ 4. As discussed below, Applicants have

[3] In New York state court, a fiscal intermediary (represented by the undersigned) alleges that DOH preselected PPL as the statewide contract awardee and then engaged in a sham public contract bidding process. *See* Dist. Ct. Dkt. No. 34-15 ¶ 1. Similar allegations were raised by fiscal intermediaries in multiple additional proceedings. *See, e.g.*, Dist. Ct. Dkt. No. 34-16 ¶¶ 1–2; Dist. Ct. Dkt. No. 34-17 ¶¶ 2–4.

made substantial investments in their businesses to provide consumers the best possible service and remain competitive in the free market. Now, they are among the hundreds of fiscal intermediaries that the State has decided to put out of business in favor of a single private monopolist.

Applicant Principle Homecare is a minority-owned fiscal intermediary, founded in 2015, that currently serves Chinese-, Haitian-Creole-, Korean-, and Spanish-speaking consumers (among others) throughout New York State. Ex. F ¶¶ 3, 6–7. Principle Homecare invested significant funds to build the business from the ground up, including on software and technology to provide a more streamlined experience for consumers. *Id.* ¶¶ 6, 19. It works aggressively to monitor and prevent any potential fraud—conducting home visits to connect a voice with a face, conducting daily rollcalls to make sure the consumer and the personal assistant are in the same place, utilizing electronic and telephonic systems to clock personal assistants in and out, and reporting any instances of noncompliance. *Id.* ¶ 9.

Applicant Marton Care is a fiscal intermediary whose founder started the company in 2017 after serving as a personal assistant for his own grandfather, a Holocaust survivor who battled dementia and mobility issues at the end of his life. Ex. G ¶ 3. Marton Care currently serves Arabic-, Spanish-, and Yiddish-speaking consumers throughout New York State. *Id.* ¶ 4. Marton Care has made substantial investments in its business, including investing in opening a new office in Amherst, New York to better serve its upstate consumers. *Id.* ¶ 16.

Applicant Prompt Home Care, founded in 2017, is a fiscal intermediary that currently serves consumers belonging to racial and ethnic minority groups throughout New York State, with a special focus on the Dominican community in the Bronx. Ex. H ¶¶ 3, 6. All of Prompt Home Care's employees—including the team members handling enrollment, HR, and payroll—speak Spanish, and virtually all of them are themselves Dominican. *Id.* ¶ 8. Prompt Home Care invested hundreds of thousands of dollars to get the business off the ground and has continued to invest money to expand the business and improve the delivery of services to consumers, including opening a second storefront location in the Bronx in 2022. *Id.* ¶ 7.

Applicant Care Connect is a fiscal intermediary founded in 2016 by two Ukrainian immigrants who opened the business on the belief that individuals in need have the right to receive care from those they love and trust and who provide them with happiness and peace. Ex. I ¶ 3. Care Connect's language competencies include Albanian, Chinese, Hindi, Punjabi, Russian, Spanish, and Ukrainian. *Id.* ¶ 5. Care Connect invested significant amounts of money to build the business from the ground up and approximately $100,000 to customize its client-facing software to help make the process as seamless as possible. *Id.* ¶ 17.

Absent emergency relief from this Court, Applicants and hundreds of other existing fiscal intermediaries face imminent irreparable harm, including the total loss of their customers and businesses. Ex. F ¶ 17; Ex. G ¶ 14; Ex. H ¶ 21; Ex. I ¶ 15. The constitutional deprivations and business harms will culminate on April 1, at

which time the CDPAP Amendment will be fully implemented. § 365-f(4-a-1)(a). Applicants will have their private contracts extinguished, will no longer be permitted to operate as fiscal intermediaries, will be forced to lay off their staff, and will be completely displaced by PPL. Ex. F ¶¶ 16–17; Ex. G ¶¶ 13–14; Ex. H ¶¶ 20–21; Ex. I ¶¶ 14–15. Once this happens and Applicants are stripped of their contracts, employees, and customer relationships, there will be no going back, regardless of whether Applicants prevail on appeal and, thereafter, on renewed proceedings in the lower courts. Ex. F ¶ 22; Ex. G ¶ 19; Ex. H ¶ 33; Ex. I ¶ 19. Indeed, in the absence of any revenue, they will shut their doors, depriving them of the ability to prosecute their merits appeal at all, let alone seek certiorari from this Court at the conclusion of proceedings below.

D. Procedural History.

Applicants filed this action on September 18, 2024, and the State moved to dismiss. On January 3, 2024, approximately three months before the April 1 statutory deadline, Applicants moved for a preliminary injunction against the further implementation and enforcement of the CDPAP Amendment. Applicants each submitted a declaration, unrebutted in the record, regarding the severe, irreparable harm the CDPAP Amendment will have on them, including the extinguishment of their contracts, severance of their long-term business relationships, and shuttering of their businesses. Ex. F ¶¶ 19, 22; Ex. G ¶¶ 12, 19; Ex. H ¶¶ 15, 32–33; Ex. I ¶¶ 12, 19.

The district court heard oral argument on February 20, 2025. Dist. Ct. Dkt. No. 55. On February 26, the court granted the State's motion to dismiss and denied

Applicants' preliminary injunction motion as moot. Ex. D. Despite the well-settled rule that parties have a protected property interest in their contracts, the district court held that Applicants' contracts did not constitute a protected property interest—and were thereby excluded from the protections guaranteed under the Takings Clause—because the ultimate source of the funds they receive, by way of their contractual counterparties, is Medicaid. *Id.* at 30–32. Further, the district court adopted the State's interpretation of a disputed contract provision at the pleading stage to find that Applicants' contracts has not been "impaired" in a manner giving rise to a Contracts Clause claim. *Id.* at 12–15. The Court then "substantially defer[red] to the State's conclusion" that the supposed cost savings derived from the CDPAP Amendment constitute a legitimate government purpose that itself justifies severe (and industrywide) contractual impairment. *Id.* at 16–29.

On February 26, the Clerk of the Court entered final judgment in favor of Respondent. Ex. C. That same day, Applicants filed a notice of appeal from the District Court Order and the Final Judgment and moved before the district court for an injunction pending appeal. The district court denied that motion on February 27. Ex. B.

The next day, on February 28, Applicants moved for an injunction pending appeal before the Second Circuit. That motion was considered first by a single judge, who "decline[d] to grant any temporary relief pending decision of the motion" and referred the matter to a motions panel. Ct. App. Dkt. No. 25. On March 25, the court of appeals summarily denied the motion for an injunction pending appeal based on

Applicants' purported failure to meet "the requisite standard." Ex. A. The merits appeal has been expedited. *Ibid.*; *see also* Ct. App. Dkt. No. 22.1.

In light of the severe constitutional violations and the irreparable harms resulting therefrom, Applicants now seek emergency equitable relief from this Court.

REASONS FOR GRANTING THE APPLICATION

The All Writs Act, 28 U.S.C. § 1651(a), authorizes an individual Justice or the full Court to issue an injunction when (1) the circumstances presented are "critical and exigent"; (2) the legal rights at issue are "indisputably clear"; and (3) injunctive relief is "necessary or appropriate in aid of the Court's jurisdiction." *Ohio Citizens*, 479 U.S. at 1312 (citations and alterations omitted). The Court also has discretion to issue an injunction "based on all the circumstances of the case," without its order "be[ing] construed as an expression of the Court's views on the merits" of the underlying claims. *Little Sisters of the Poor Home for the Aged v. Sebelius*, 571 U.S. 1171 (2014). The Court has previously granted emergency injunctive relief, on applications brought under the All Writs Act, where the applicants have shown that their constitutional claims are "likely to prevail, that denying them relief would lead to irreparable injury, and that granting relief would not harm the public interest." *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 16 (2020) (per curiam). A Circuit Justice or the full Court may also grant injunctive relief "[i]f there is a 'significant possibility' that the Court would" grant certiorari "and reverse, and if there is a likelihood that irreparable injury will result if relief is not granted." *Am. Trucking Ass'ns, Inc. v. Gray*, 483 U.S. 1306, 1308 (1987) (Blackmun, J.); *see also Ohio v. EPA*, 603 U.S.

279, 304 (2024) (Barrett, J., dissenting) (urging consideration of whether the Court "would be likely to grant certiorari").

I. The Violations Of Applicants' Constitutional Rights Are Indisputably Clear, Applicants Are Therefore Likely To Succeed On The Merits, And The Lower Courts' Contrary Decisions Exacerbate Or Create Confusion On Constitutional Issues Of Nationwide Importance.

A. The CDPAP Amendment Indisputably Violates The Takings Clause.

The Fifth Amendment, made applicable to the States by the Fourteenth Amendment, *see Chicago, B. & Q.R. Co. v. Chicago*, 166 U.S. 226, 239 (1897), provides that "private property" shall not "be taken for public use, without just compensation." U.S. Const. amend. V. "The Founders recognized that the protection of private property is indispensable to the promotion of individual freedom," as "property must be secured, or liberty cannot exist." *Cedar Point*, 594 U.S. at 147 (citation and alteration omitted). Thus, "while property may be regulated to a certain extent, if a regulation goes too far it will be recognized as a taking." *Palazzolo v. Rhode Island*, 533 U.S. 606, 617 (2001) (quoting *Penn. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922)).

Under this Court's regulatory takings jurisprudence, government action effects a *per se* taking when, without compensation, it either "requires an owner to suffer a . . . physical invasion of her property" (not at issue here) or "completely deprive[s] an owner of '*all* economically beneficial use' of her property." *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 538 (2005) (alteration omitted) (quoting *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1019 (1992)). All other regulatory takings claims "are governed by the standards set forth" in *Penn Central Transportation Co. v. City of New*

York, 438 U.S. 104 (1978), which "identified several factors"—economic impact, interference with investment-backed expectations, and character of the government action—that serve as "the principal guidelines for resolving regulatory takings claims that do not fall within the physical takings or *Lucas* rules." *Lingle*, 544 U.S. at 538–39 (citation and internal quotation mark omitted).

Applicants here have a constitutionally protected property interest in their contracts, and, because those contracts are incontestably being completely destroyed—and their full value transferred to a State-appointed monopolist—without compensation, the CDPAP Amendment effects a taking under both a categorical and a non-categorical analysis. It is thus indisputably clear that the CDPAP Amendment violates the Takings Clause, both facially and as applied.

Yet the district court's decision—left undisturbed by the court of appeals' summary denial of Applicants' motion—sidestepped this straightforward conclusion by holding that fiscal intermediaries do not have *any* constitutionally protected property interests in their contracts, and thus no property that could be taken, despite the actual nullification of their indisputably valuable contracts and the actual transfer of their full value to another private entity. In doing so, the lower courts disregarded this Court's longstanding precedent and deepened widespread confusion among the lower courts on a key constitutional issue—whether a contract necessarily constitutes cognizable property subject to the protections of the Takings Clause.

Given the conflict among circuit courts on this question, which is of immense national significance insofar as it relates to the government's ability to appropriate

private property with impunity, it is likely that at least four Justices of this Court would vote to grant certiorari. And because the lower courts in this case came out on the wrong side of the circuit conflict—allowing the government to effect a complete deprivation of contractual rights without compensation—it is also likely that a majority of the Court would hold that the CDPAP Amendment violates the Takings Clause.

1. The CDPAP Amendment Effects A Regulatory Taking Of Fiscal Intermediaries' Contracts.

"Valid contracts," such as Applicants' contracts here, "are property" within the meaning of the Takings Clause and thus cannot be taken through government action "without making just compensation." *Lynch*, 292 U.S. at 579; *accord U.S. Tr. Co. of N.Y. v. New Jersey*, 431 U.S. 1, 19 n.16 (1977); *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1003 (1984) ("[V]alid contracts are property within [the] meaning of the Taking Clause."). The CDPAP Amendment plainly effects a taking of those contracts under both a categorical and non-categorical takings rubric.[4]

[4] The State erroneously argued in the lower courts that categorical takings apply only to real property. Although this Court has not resolved the issue, the D.C. Circuit rightly rejected the same argument as "without basis in the law" because "[o]ne may be just as permanently and completely dispossessed of personal property as of real property." *Nixon v. United States*, 978 F.2d 1269, 1285 (D.C. Cir. 1992); *see also Philip Morris, Inc. v. Reilly*, 312 F.3d 24, 51 (1st Cir. 2002) (Selya, J., concurring) ("Limiting per se takings analysis to cases involving real property is a crude boundary with no compelling basis in the law."). Moreover, the categorical takings analysis is not a distinct creature from the non-categorical analysis (which indisputably applies to all property interests); it is just an extreme version of it. As the First Circuit has explained, "the *Penn Central* regulatory takings framework is not practically different from utilizing per se rules," which, in effect, are "simply shortcuts" to a fuller *Penn Central* analysis. *Philip Morris*, 312 F.3d at 35 (majority opinion). Indeed, courts have applied categorical takings to all sorts of property interests—not just land. *See, e.g.*, *Anderson v. Spear*, 356 F.3d 651, 669 (6th Cir. 2004) (unexpended campaign contributions); *Rose Acre Farms, Inc. v. United States*, 373 F.3d 1177, 1196–97 (Fed. Cir. 2004) (chickens); *Nixon*, 978 F.2d at 1285 (presidential papers).

The CDPAP Amendment effects a categorical taking because it "completely deprive[s]" fiscal intermediaries, including Applicants, of "*all* economically beneficial use" of their contracts. *Lingle*, 544 U.S. at 538 (alteration omitted) (quoting *Lucas*, 505 U.S. at 1019). The State did not just tinker with these contracts, such as by limiting the prices charged or the services provided. Rather, the CDPAP Amendment extinguishes the contracts entirely and transfers them wholesale to a State-selected monopolist. It is the most severe deprivation possible—total and complete. That, alone, establishes a taking.

Even if the CDPAP Amendment did not effect a categorical taking, it would be unconstitutional under *Penn Central*. The *Penn Central* analysis involves a "complex of factors including [1] the regulation's economic effect on the [property owner], [2] the extent to which the regulation interferes with reasonable investment-backed expectations, and [3] the character of the government action." *Palazzolo*, 533 U.S. at 617 (citing *Penn Central*, 438 U.S. at 124). Here, each of those factors weighs heavily in favor of finding that the CDPAP Amendment effects a taking.

As discussed, the economic impact here is indisputably extreme to the maximum degree. As for interference with reasonable investment-backed expectations, Applicants incontestably made substantial investments in their businesses on the reasonable expectation that their contractual relationships would endure. *See* Ex. F ¶¶ 6, 19; Ex. G ¶ 16; Ex. H ¶ 7; Ex. I ¶ 17. When the State interfered with the contracts that would compensate fiscal intermediaries for their investments, it interfered with investments made in reliance on the continuity of those contracts, which were

valid under the regulatory regime existing at the time the fiscal intermediaries entered into the contracts. That is common sense, reflected in the case law. *See, e.g.*, *Cienega Gardens v. United States*, 331 F.3d 1319, 1346–47 (Fed. Cir. 2003) (holding investment-backed expectations were "reasonable" where plaintiffs "entered into contracts in reliance on a different regulatory regime"). In short, the CDPAP Amendment completely upended fiscal intermediaries' reasonable investment-backed expectations.

Finally, the character of the government action clearly weighs in favor of an unlawful taking. The CDPAP Amendment creates—and hands the full value of the fiscal intermediary industry to—a private monopolist at the expense of roughly 600 other private companies that have built their businesses and substantially invested in the industry for years. That monopolist will now have full control over a multi-billion-dollar industry that was, until now, dispersed across hundreds of competitors. This is precisely the type of "extraordinary" government action—the raw seizure and "total abrogation" of a class of property rights held by a group of private citizens, and their transfer to others (in this case, to a single private company)—that constitutes an unlawful taking. *Hodel v. Irving*, 481 U.S. 704, 714–17 (1987). This is so regardless of whether the CDPAP Amendment targets a "serious public problem," *id*. at 718, though it is doubtful that a generalized desire for cost savings could constitute such a problem even if the State had substantiated it, which the State has not. *See infra* Section I.B.2.

2. The Courts Below Committed A Fundamental Legal Error And Thereby Deepened A Well-Established Conflict In The Lower Courts On An Urgent Constitutional Issue Of Nationwide Importance.

This Court's takings jurisprudence leads inexorably to the conclusion that the CDPAP Amendment effects an unlawful taking of private property without just compensation. Nevertheless, the district court dismissed Applicants' takings claim on the pleadings, analogizing to cases that discuss whether there exists a property right in Medicaid reimbursement, and *not* whether property rights exist in contracts—the only right Applicants assert. *Compare* Dist. Ct. Dkt. No. 1 ¶¶ 155, 164, *with* Ex. D at 31. This maneuver resulted in a novel (and incorrect) holding that a certain class of contracts—those that pertain to a State-created program and involve funds that ultimately flow from Medicaid, even if through a contractual counterparty—are not cognizable property within the meaning of the Takings Clause. This allowed the district court to effectively bypass the takings analysis altogether. Moreover, in reaching this errant conclusion, the district court perpetuated confusion among the lower courts as to whether contracts are necessarily property subject to a traditional Takings Clause analysis—even if their deprivation is not always *violative* of that clause, once that analysis is conducted—and the court of appeals allowed that confusion to deepen by denying Applicants' emergency motion.

Nearly a century ago, this Court stated, absolutely and unequivocally, that "[v]alid contracts are property" under the Takings Clause, "whether the obligor [is] a private individual, a municipality, a state, or the United States." *Lynch*, 292 U.S. at 579. But *Lynch* did not break new ground—rather, it merely reiterated an already

well-established principle rooted in this Court's early takings jurisprudence. *See, e.g.*, *Long Island Water Supply Co. v. City of Brooklyn*, 166 U.S. 685, 690 (1897) ("A contract is property, and, like any other property, may be taken under condemnation proceedings for public use . . . subject to the rule of just compensation." (citing *New Orleans Gas Co. v. La. Light & Heat Producing & Mfg. Co.*, 115 U.S. 650, 673 (1885))); *City of Cincinnati v. Louisville & Nashville R.R. Co.*, 223 U.S. 390, 400 (1912) ("Every contract, whether between the state and an individual, or between individuals only, is subject to [eminent domain]." (citing, *inter alia*, *West River Bridge Co. v. Dix*, 47 U.S. (6 How.) 507 (1848))).[5]

This rule held firm over time. Decades after *Lynch*, this Court restated that "[c]ontract rights are a form of property and as such may be taken for a public purpose provided that just compensation is paid." *U.S. Tr. Co. of N.Y.*, 431 U.S. at 19 n.16. The Court subsequently cited *Lynch* with approval and relied on its holding that "valid contracts are property within [the] meaning of the Taking Clause." *Ruckelshaus*, 467 U.S. at 1003. Meanwhile, the Court continued to recognize a wide range of property interests as protected under the Takings Clause, including trade secrets, *see id.* at 1003–04, and certain liens, *Armstrong v. United States*, 364 U.S. 40, 43 (1960), to name a few.

Under the blanket rule articulated in *Lynch* and its progeny, Applicants have protected property interests in their contracts. But the lower courts deviated from

[5] *West River Bridge* has been described as this Court's first case addressing the States' eminent domain authority. *See, e.g.*, Leslie Bender, *The Takings Clause: Principles or Politics?*, 34 Buff. L. Rev. 735, 761 (1985).

that rule, creating a novel (and broad) exception under which contracts relating to a State-created program that is ultimately State-funded categorically do not constitute property within the meaning of the Takings Clause. The district court held that, because Applicants are "ultimately compensated for their services with Medicaid funds from DOH," they have "no valid property interest" in their contracts. Ex. D at 30–31. By summarily denying Applicants' motion for an emergency injunction pending appeal, the court of appeals effectively left the district court's ruling undisturbed. In doing so, the lower courts aligned themselves with a minority of circuits that have similarly found exceptions to the unambiguous rule expressed in *Lynch*.

This confusion among the lower courts originates from this Court's decision in *Connolly v. Pension Benefit Guaranty Corp.*, 475 U.S. 211 (1986), which involved a challenge to the application of the withdrawal liability provisions set forth in the Multiemployer Pension Plan Amendments Act of 1980. In that case, although contracts were not the alleged property interest, *id.* at 221, the Court stated in dicta that "the fact that legislation disregards or destroys existing contractual rights does not always transform the regulation into an illegal taking," *id.* at 224. On its face, this statement by the Court *reaffirmed* that the takings analysis for contracts is the same as for all other categories of property. That is, the mere fact that a contract is impacted by regulation "does not *always* transform the regulation into an illegal taking," *ibid.* (emphasis added), meaning courts must undertake the same regulatory takings analysis for contracts that they would apply in any other context for any other type of property. *See id.* at 224–27 (applying traditional *Penn Central* factors). *Connolly*

thus teaches that there is no special rule for contracts. But *Connolly* did not disturb—and in fact assumes the continuing validity of—the Court's repeated holding that "[v]alid contracts are property" within the meaning of the Takings Clause. *E.g.*, *Lynch*, 292 U.S. at 579.

Following *Connolly*, the majority of circuits to address the issue have read that decision as set forth above and continued to apply the Court's longstanding precedent that contracts are property for purposes of the Takings Clause.[6] But other circuits have mistakenly questioned *Lynch*'s continued viability in the wake of *Connolly*, holding that contracts—either generally or in certain instances—do not constitute property within the meaning of the Takings Clause and are therefore outside its ambit; one circuit even read *Connolly* as "effectively overruling" *Lynch*.[7] The decisions below amplify this conflict among the lower courts.

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[6] *See, e.g.*, *Wheelwright v. Ogden City Airport*, 2024 WL 256992, at *3 (10th Cir. Jan. 24, 2024) (unpublished) ("[T]he Fifth Amendment also extends to intangible rights, such as leaseholds and contracts." (citing *Lynch*, 292 U.S. at 579)); *Cienega Gardens*, 331 F.3d at 1329 ("[T]here is also ample precedent for acknowledging a property interest in contract rights under the Fifth Amendment." (citing, *inter alia*, *Lynch*, 292 U.S. at 579)); *Vesta Fire Ins. Corp. v. State of Florida*, 141 F.3d 1427, 1431 n.8 (11th Cir. 1998) ("[W]e recognize that insurance contracts can be property subject to an unconstitutional taking under the Fifth Amendment."); *S.C. State Educ. Assistance Auth. v. Cavazos*, 897 F.2d 1272, 1276 (4th Cir. 1990) ("The court's analysis proceeds from the principle that contractual rights are generally recognized to be property for purposes of the Takings Clause." (citing *Lynch*, 292 U.S. 579–80)); *Educ. Assistance Auth. v. Cavazos*, 902 F.2d 617, 628 n.18 (8th Cir. 1990) ("Clearly, a contractual right against the United States can constitute property within the meaning of the fifth amendment." (citing *Lynch*, 292 U.S. at 577, 579)).

[7] *See, e.g.*, *Pro-Eco, Inc. v. Bd. of Comm'rs*, 57 F.3d 505, 510 n.2 (7th Cir. 1995) ("We read *Connolly* . . . as effectively overruling, if it had not already been overruled, *Lynch*."); *Ohio Student Loan Comm'n v. Cavazos*, 900 F.2d 894, 900–02 (6th Cir. 1990) (distinguishing *Lynch* and holding the "agreements" at issue were "not 'property' under the Takings Clause"); *see also Buffalo Tchs. Fed'n v. Tobe*, 464 F.3d 362, 374–75 (2d Cir. 2006) (expressing "misgivings" about *Lynch* and noting that it had "been called into question" (citing *Connolly*, 475 U.S. at 224; *Pro-Eco*, 57 F.3d at 510 n.2; *Ohio Student*, 900 F.2d at 900–02))

In addition to being legally unsound, the lower courts' circumscribed conception of "private property" under the Takings Clause is contrary to deeply embedded principles protecting property rights from uncompensated government seizure regardless of the character of the property. Indeed, the "protection of property rights is necessary to preserve freedom and empowers persons to shape and to plan their own destiny in a world where governments are always eager to do so for them." *Cedar Point*, 594 U.S. at 147 (citation and internal quotation marks omitted). If the lower courts' deviation from *Lynch*, its precursors, and its progeny is left undisturbed, the Takings Clause will offer little protection against government action that runs roughshod over contractual rights—even in extreme cases such as this one, where the government action in question completely and permanently eviscerates hundreds (if not thousands) of contracts in one fell swoop and transfers the *entire* value of those contracts to another private company of its choosing.

Nor is there anything unusual about the fact that these contracts happen to involve funds that ultimately flow from government. Indeed, given the interlocking nature of modern regulatory regimes and the flow of public funds into countless industries—from farming to space travel and everything in between—the decisions below would, if allowed to stand, invite government actors to run roughshod over the property rights of myriad businesses nationwide. Under the lower courts' artificially constrained reading of the Takings Clause, it is hard to conceive of an industry that would be immune from uncompensated government seizure efforts.

The Takings Clause violation in this case is indisputably clear. Moreover, given the conflict and confusion among the lower courts surrounding the continuing validity of *Lynch*'s holding that contracts constitute property for purposes of the Takings Clause (an important constitutional question of immense national significance), the deepening of that conflict wrought by the decisions below, and the lower courts' resolution of that important federal question in a way that conflicts with relevant decisions of this Court (and fundamental principles of liberty), it is likely that at least four Justices of this Court would vote to grant certiorari and that the Court would reverse. *See* Sup. Ct. R. 10(a), (c). For all these reasons, Applicants are likely to succeed on their claim that the CDPAP Amendment violates the Takings Clause.

B. The CDPAP Amendment Indisputably Violates The Contracts Clause.

The Contracts Clause provides that "[n]o State shall . . . pass any . . . Law impairing the Obligation of Contracts." U.S. Const. art. I, § 10, cl. 1. To determine whether a law violates the Contracts Clause, this Court considers (1) "whether the state law has, in fact, operated as a substantial impairment of a contractual relationship," and, if so, (2) whether that impairment is "upon reasonable conditions and of a character appropriate to the public purpose justifying its adoption." *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244 (1978) (citation omitted). This test is more stringent than the "the less searching standards imposed on economic legislation by the Due Process Clauses." *Pension Ben. Guar. Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 733 (1984); *see also, e.g.*, *Melendez v. City of New York*, 16 F.4th 992, 1032 (2d Cir. 2021) (noting that the Contracts Clause standard is "more demanding than . . .

rational basis review"). "The severity of the impairment measures the height of the hurdle the state legislation must clear." *Allied*, 438 U.S. at 245. Thus, a "[s]evere impairment . . . will push the inquiry to a careful examination of the nature and purpose of the state legislation." *Ibid*. The purpose must be "significant and legitimate," *Energy Rsrvs. Grp., Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 411 (1983), and there must be a "showing in the record . . . that [a] severe disruption of contractual expectations was necessary to meet an important general social problem," *Allied*, 438 U.S. at 247.

The CDPAP Amendment indisputably violates the Contracts Clause. It nullifies fiscal intermediaries' existing contracts, and it does so without any evidence that this severe impairment is a reasonable and appropriate means of advancing a significant and legitimate public purpose. In concluding otherwise, the courts below again subjected contracts in a government-created industry to special and far more lenient rules—and thus effectively exempted them from any finding of impairment—without any basis in this Court's jurisprudence. The decisions below also allowed the mere invocation of cost cutting and "efficiency" concerns to supply the requisite significant and legitimate public purpose, accepting *without any substantiation* the State's naked assertion that the CDPAP Amendment would result in such cost savings.

By absolving the State of any responsibility to substantiate its claims about the CDPAP Amendment's purpose and reasonableness, and instead demanding that *Applicants*, on a motion to dismiss, prove a negative and plead facts demonstrating the *non-existence* of an underlying record basis for the State's contentions, the district

court's decision upends this Court's longstanding requirement that there be some "*showing in the record* . . . that [a] severe disruption of contractual expectations was necessary to meet an important general social problem." *Allied*, 438 U.S. at 247 (emphasis added). The district court's decision—left undisturbed by the Second Circuit's summary denial of Applicants' motion for an injunction pending appeal—thus gives the State *carte blanche* to impair private contracts as long as it asserts—with or without support—that doing so will cut costs. That spells the end of the Contracts Clause as a limitation on State power.

1. The CDPAP Amendment Substantially Impairs Applicants' Existing Contracts And Does Not Reasonably And Appropriately Advance A Significant And Legitimate Public Purpose.

The CDPAP Amendment permanently and irrevocably nullifies every existing contract between fiscal intermediaries and MMCOs and thus constitutes a substantial impairment of those contracts. *See Allied*, 438 U.S. at 250 (finding substantial impairment where a law "permanent[ly]" and "irrevocably" altered contractual relationships); *see also, e.g.*, *Melendez*, 16 F.4th at 1034 (when a state law "effectively repudiates" a contract, "rendering [it] permanently and completely unenforceable," that "is certainly a substantial impairment of contract"). That is true even though the fiscal intermediary industry emerged because of CDPAP and relies on Medicaid funds. As this Court has made clear, "[o]nce arranged, [contractual] rights and obligations are binding under the law, and the parties are entitled to rely on them." *Al-*

lied, 438 U.S. at 245. That reasoning applies with full force here: Although Applicants' contracts could not have been *formed* but-for CDPAP, now that those contracts *have* been arranged, Applicants are "entitled to rely on them."[8]

Because the CDPAP Amendment substantially impairs Applicants' contracts, the State must show that the impairment is "upon reasonable conditions and of a character appropriate to the public purpose justifying its adoption." *Allied*, 438 U.S. at 244. This Court has "found five factors significant" in assessing whether a challenged law is reasonably and appropriately drawn: (1) whether the legislature has declared "an emergency need," (2) whether the law "was enacted to protect a basic societal interest, not a favored group," (3) whether "the relief was appropriately tailored to the emergency that it was designed to meet," (4) whether "the imposed conditions were reasonable," and (5) whether the law "was limited to the duration of the emergency." *Id*. at 242. All five of these factors weigh in Applicants' favor.

First, the State has never declared an emergency need for the CDPAP Amendment. As the district court observed, "the State primarily argue[d] that the purpose of the amendment was to save on administrative costs and improve efficiency." Ex. D

[8] It is of no moment that Applicants' contracts terminate if "either Party is excluded, suspended or barred from participating in any government health care program." Ex. J ¶ 11; *see* Ex. D at 13. That provision plainly covers misconduct by (and resulting disqualification of) the individual fiscal intermediary, consistent with the meaning of such language throughout government contracting. *Cf.* 20 C.F.R. § 404.1503a (using a similar "excluded, suspended, or otherwise barred" condition to ensure "program integrity"). It does not cover, and does not free the State to undertake, a wholesale shutdown of the fiscal intermediary industry. Critically, the termination provision is triggered if either party is excluded, suspended, or barred from "*any* government health care program." Ex. J ¶ 11 (emphasis added). If the provision were not limited to misconduct, fiscal intermediaries' contracts would terminate any time they were prevented from participating, for whatever reason (*e.g.*, eligibility parameters), in any government healthcare program anywhere in the country—a patently absurd result.

at 19 (internal quotation marks omitted). But general cost savings and efficiency are not significant public purposes justifying the wholesale nullification of an entire industry's private contracts. *Cf. U.S. Tr. Co. of N.Y.*, 431 U.S. at 26 ("If a State could reduce its financial obligations whenever it wanted to spend the money for what it regarded as an important public purpose, the Contract Clause would provide no protection at all."). Indeed, these concerns do not come close to the kinds of emergency conditions that have traditionally justified severe impairment of contracts. *See Allied*, 438 U.S. at 249 (Contracts Clause violation where law "was not enacted to deal with a situation remotely approaching . . . broad and desperate emergency economic conditions"); *Treigle v. Acme Homestead Ass'n*, 297 U.S. 189, 195 (1936) (Contracts Clause violation where state law "d[id] not purport to deal with any existing emergency and the [contract-impairing] provisions" were "neither temporary nor conditional").

Second, the CDPAP Amendment protects a favored entity—the single Statewide Fiscal Intermediary—at the expense of Applicants and the hundreds of other existing fiscal intermediaries, contrary to the basic societal interest in thriving small businesses, market competition, and the protection of liberty interests embedded in property rights. And it does so to the detriment of consumers, who will be deprived of the benefits that flow from competition among fiscal intermediaries, including their choice of a fiscal intermediary and the existence of an ecosystem of competitors vying for their business by providing superior levels of service and by specializing geographically, linguistically, and culturally.

Third, even if cost cutting and efficiency were a significant public purpose, the CDPAP Amendment is not appropriately tailored to that end. This Court has explained that there must be some "showing in the record . . . that [a] severe disruption of contractual expectations was necessary to meet an important general social problem." *Allied*, 438 U.S. at 247. Here, there is none. Not only did the State fail to conduct any economic impact study before pushing the CDPAP Amendment through the budget process, *see* Ex. D at 24, but it also provided no evidence—apart from its own say-so—to support the Amendment's purported cost savings. The State relied solely on a line-item in a *post hoc* budget plan, Dist. Ct. Dkt. No. 41-2 at 35, which asserted $500 million in yearly savings from the CDPAP Amendment—without any explanation or substantiation—and a single legislator's equally bald assertion of the same. The State could have submitted a declaration from the Department of Health to explain the factual basis (if any) for this figure, or to explain why the State believes (contrary to basic economic theory) that a monopoly will somehow *improve* efficiency, but it chose not to do so. If the bare invocation of cost savings were sufficient to withstand scrutiny under the Contracts Clause, it would provide no limit on what the State could do in the name of "efficiency."[9]

Nor has the State ever explained why it could not reasonably realize its purported cost-saving goal through other means more appropriately tailored than the

[9] The State also asserted in the district court that the CDPAP Amendment was needed to combat fraud and abuse, but the State did not press that argument in response to Applicants' motion for an injunction pending appeal in the Second Circuit. And for good reason: There was no study, record, or other factual basis for this asserted public purpose, Dist. Ct. Dkt. No. 34-11 at 90–91, and recent Office of the Medicaid Inspector General audits revealed a 99% accuracy rate in submitted claims under CDPAP, Dist. Ct. Dkt. No. 34-12 at 27.

sledgehammer approach of industrywide contract nullification. The State itself has attributed the increase in Medicaid costs to myriad factors unrelated to fiscal intermediaries, including "medical cost increases," "increases to reimbursement rates," and "growing aging and high utilization populations." *See* Dist. Ct. Dkt. No. 41-2 at 23. With all the other spending inputs the State could have targeted for cost savings, its decision to instead destroy hundreds of businesses' contracts cannot be deemed "appropriately tailored" to any theoretical "emergency" that it was purportedly "designed to meet." *Allied*, 438 U.S. at 242.

Fourth, the imposed conditions were not reasonable. The CDPAP Amendment "impose[s] a sudden, totally unanticipated, and substantial" impairment upon Applicants' contracts, without providing any compensation. *Allied*, 438 U.S. at 249; *see also Melendez*, 16 F.4th at 1035 (citing approvingly the proposition that, in determining whether a regulation upsets reasonable expectations, the question is whether the plaintiff "purchased into an enterprise already regulated *in the particular* to which he now objects" (emphasis added) (citation omitted)); *compare, e.g.*, *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 445 (1934) (finding a contract impairment reasonable in part because the contract-impairing law provided compensation).

Fifth, the CDPAP Amendment is not limited in duration at all. It does not cause "simply a temporary alteration of the contractual relationships of those within its coverage," but rather "permanent[ly]" and "irrevocably" nullifies Applicants' contracts. *Allied*, 438 U.S. at 250; *see also* Ex. D at 26 (district court holding that, to the

extent the CDPAP Amendment impairs Applicants' contracts, it "works a severe, permanent, and immediate change in [Applicants'] business relationships to MMCOs as well as with the State" (citation, alteration, and internal quotation marks omitted)).

Because all the applicable factors thus weigh in Applicants' favor, the CDPAP Amendment is clearly not a reasonable and appropriate means of advancing a significant public purpose—and it therefore indisputably violates the Contracts Clause.

2. The Lower Courts' Supremely Deferential Analysis Contradicts This Court's Contracts Clause Precedent, Effectively Renders The Contracts Clause A Dead Letter, And Is A Constitutional Issue Of Nationwide Importance.

In denying relief on Applicants' Contracts Clause claim, the courts below watered down this Court's Contracts Clause standard beyond recognition, effectively reducing it to rational basis review. *See, e.g.*, Ex. D at 23 ("[T]he CDPAP Amendment is not so irrational such that it offends the Constitution[.]"). Far from recognizing the heightened "hurdle" the State must clear in a case of severe impairment, *see Allied*, 438 U.S. at 245, the district court repeatedly *lowered* the bar for the State, allowing it simply to assert cost savings as a significant public purpose, absolving it of any burden to substantiate its claims of cost savings with record evidence, and holding that the CDPAP Amendment satisfies constitutional scrutiny on the basis of the State's asserted public purpose alone, while declining to consider any of the other factors this Court has identified as "significant" in a Contracts Clause analysis. *Id.* at 242.

These errors have grave consequences for Contracts Clause jurisprudence. By permitting the State to assert cost savings without any record substantiation, and

concluding that *that alone* suffices to justify the nullification of a broad swath of contracts—even when *all* other relevant factors weigh in favor of the plaintiffs—the district court's decision renders the Contracts Clause completely toothless. So long as the State asserts—with or without support—that the destruction of a class of contracts will cut costs, the inquiry is over, and the challenged law survives.

To make matters worse, the district court accorded the State these advantages at the *pleading* stage, where the court must "assume the well-pleaded factual allegations in the complaint are true." *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 195 (2024). Under the district court's analysis, no Contracts Clause claim can ever make it past a motion to dismiss if the State points to purported cost savings, unless the plaintiffs allege facts demonstrating "bad faith" or "duplicitous[ness]." Ex. D at 21. That approach further guts both the Contracts Clause and this Court's precedent.

As Contracts Clause jurisprudence shifted over the Nation's history—away from a more categorical protection of contract rights toward the reasonable-and-appropriate standard that prevails today—it has raised the "worry that a balancing test risks investing judges with discretion to choose which contracts to enforce." *Sveen v. Melin*, 584 U.S. 811, 829 (2018) (Gorsuch, J., dissenting). Here, the lower courts have gone even further, effectively conferring that discretion upon the *States*. The Court should put a stop to this erosion of a key constitutional right. Such extreme deference to the States is irreconcilable with "the high value the Framers placed on the protec-

tion of private contracts," which "enable individuals to order their personal and business affairs according to their particular needs and interests." *Allied*, 438 U.S. at 245.

The violation of Applicants' rights under the Contracts Clause is indisputably clear. Moreover, given that the courts below applied a substantively and procedurally erroneous, supremely deferential Contracts Clause standard that conflicts with relevant decisions of this Court and effectively renders the Contracts Clause a dead letter—raising an important federal question of broad significance—it is likely that at least four Justices of this Court would vote to grant certiorari and that the Court would reverse. *See* Sup. Ct. R. 10(c). For all these reasons, Applicants are likely to succeed on their claim that the CDPAP Amendment violates the Contracts Clause.

II. The Equities Weigh Strongly In Favor Of Injunctive Relief.

A. Applicants Will Be Irreparably Harmed—And Will Have Their Appellate Rights Frustrated—Absent Injunctive Relief.

The alleged "violation of constitutional rights" wrought by the CDPAP Amendment, on its own, demonstrates a "presumption of irreparable injury." *Agudath Israel of Am. v. Cuomo*, 983 F.3d 620, 636 (2d Cir. 2020) (citation omitted); *see also Hecox v. Little*, 104 F.4th 1061, 1088 (9th Cir. 2024) ("It is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury." (citation omitted)); *BST Holdings, L.L.C. v. Occupational Safety & Health Admin.*, 17 F.4th 604, 618 (5th Cir. 2021) (similar); *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) (similar); *cf. Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of*

Okla., 463 U.S. 1311, 1313 (1983) (White, J., in chambers) (granting stay and recognizing harm arising from "void[ing]" of season's broadcast contracts).[10]

In addition to the irreparable harm caused by constitutional violations, Applicants will lose all of their consumers when the transition to the Statewide Fiscal Intermediary is completed on April 1, 2025. Ex. F ¶¶ 17–18, 22; Ex. G ¶¶ 14–15, 19; Ex. H ¶¶ 21–22, 33; Ex. I ¶¶ 15–16, 19. At that point, Applicants and the rest of the roughly 600 existing fiscal intermediaries will no longer be permitted to provide fiscal intermediary services—the only service Applicants provide—and *all* consumers must transfer to the Statewide Fiscal Intermediary, find an alternative care program, or risk being left without assistance. § 365-f(4-a-1)(a).

Applicants developed relationships with their consumers through years of personalized service and community involvement. Ex. F ¶ 21; Ex. G ¶ 18; Ex. H ¶¶ 26–30, 32; Ex. I ¶ 18. Once these individuals are forced to undergo the burdensome process of switching fiscal intermediaries, it will be very difficult (nearing impossible) for Applicants to get them to return. Ex. F ¶ 22; Ex. G ¶ 19; Ex. H ¶ 33; Ex. I ¶ 19. The harm flowing from the loss of these "relationships with customers" is both irreversible and immeasurable and, as a result, irreparable, *Register.com, Inc. v. Verio, Inc.*, 356 F.3d 393, 404 (2d Cir. 2004), as numerous circuit courts have held.[11]

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[10] *But see Del. State Sportsmen's Ass'n, Inc. v. Del. Dep't of Safety & Homeland Sec.*, 108 F.4th 194, 203 (3d Cir. 2024) (concluding that, outside the First Amendment context, "constitutional harm is not necessarily synonymous with the irreparable harm necessary for issuance of a preliminary injunction" (citation and alteration omitted), *cert. denied sub nom. Gray v. Jennings*, No. 24-309, 2025 WL 76443 (U.S. Jan. 13, 2025).

[11] *See Oman Fasteners, LLC v. United States*, 125 F.4th 1068, 1088–89 (Fed. Cir. 2025) (identifying "damage to [plaintiff's] customer relationships" as irreparable harm); *Air Evac EMS, Inc. v. McVey*,

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Moreover, with their contracts extinguished, their business-critical relationships severed, and their sole revenue source cut off, Applicants ultimately will be forced to close their doors entirely. Ex. F ¶ 17; Ex. G ¶ 14; Ex. H ¶ 21; Ex. I ¶ 15. Such a total loss of an ongoing business "[c]ertainly" amounts to irreparable harm. *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 932 (1975).[12] As each Applicant has attested, there will be no bringing these businesses back from the dead once they close, as customers will not return *en masse* and the businesses will not have funds to rebuild. Ex. F ¶ 22; Ex. G ¶ 19; Ex. H ¶ 33; Ex. I ¶ 19.[13]

With the impending April 1 nullification of Applicants' contracts, the irreversible transfer of their full economic value to the statewide monopolist, the inevitable closure of Applicants' businesses, and the full realization of Applicants' constitutional injuries, the need for relief here is "critical and exigent." *Ohio Citizens*, 479 U.S.

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37 F.4th 89, 103 (4th Cir. 2022) ("loss of customers" constitutes irreparable harm); *Certified Restoration Dry Cleaning Network, L.L.C. v. Tenke Corp.*, 511 F.3d 535, 550 (6th Cir. 2007) ("interference with customer relationships" constitutes irreparable harm); *Foodcomm Int'l v. Barry*, 328 F.3d 300, 304–05 (7th Cir. 2003) (recognizing "complete loss of [customer] relationship" as irreparable harm); *BellSouth Telecomms., Inc. v. MCIMetro Access Transmission Servs., LLC*, 425 F.3d 964, 970 (11th Cir. 2005) ("loss of customers" constitutes irreparable injury); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 841 (9th Cir. 2001) ("threatened loss of prospective customers" supported finding of irreparable harm).

[12] *See also Am. Trucking Ass'ns, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1058 (9th Cir. 2009) (irreparable harm from potential loss of entire business); *Steves & Sons, Inc. v. JELD-WEN, Inc.*, 988 F.3d 690, 719 (4th Cir. 2021) ("permanent loss of a business" is a "well-recognized form of irreparable injury"); *Nemer Jeep-Eagle, Inc. v. Jeep-Eagle Sales Corp.*, 992 F.2d 430, 435 (2d Cir. 1993) (explaining that even a mere "*threat* to the continued existence of a business can constitute irreparable injury" (citation omitted)); *Warren v. City of Athens*, 411 F.3d 697, 711–12 (6th Cir. 2005) (explaining that the risk of going out of business constitutes irreparable harm).

[13] In denying Applicants' motion for an injunction pending appeal, the district court ignored the irreparable harm from loss of customers and the unrebutted evidence that they and the businesses will never return. And it found, without any legal or factual support, that the well-established "total loss of a business is irreparable harm" rule does not apply simply because Applicants' businesses "operate in a state-created market"—the same fundamental error that infected the court's analysis of Applicants' constitutional claims. Ex. B at 2.

at 1312. Moreover, because emergency injunctive relief is necessary to prevent Applicants and hundreds of other small businesses from permanently shuttering before Applicants can exercise their appellate rights and before this Court has an opportunity to consider whether to grant certiorari at the conclusion of the merits appeal process, injunctive relief is "necessary or appropriate in aid of the Court's jurisdiction." *Ibid*.

B. The Balance Of Hardships And Public Interest Likewise Favor Injunctive Relief.

The public interest in preserving fiscal intermediaries' constitutional rights and forestalling the irreparable harms arising from the CDPAP Amendment weighs heavily in favor of emergency relief. The State's purported (but, as discussed, unsubstantiated) countervailing interest in saving money pales in comparison. The government simply "does not have an interest in the enforcement of an unconstitutional law"—a proposition the State did not dispute below. *Am. C.L. Union v. Ashcroft*, 322 F.3d 240, 247 (3d Cir. 2003) (citation and internal quotation marks omitted), *aff'd and remanded*, 542 U.S. 656 (2004); *see also N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013); *Scott v. Roberts*, 612 F.3d 1279, 1297 (11th Cir. 2010).

But there are additional considerations that push the scales even further in favor of emergency injunctive relief—namely, that an injunction is the only way to ensure that all of the 290,000-plus elderly, chronically ill, and disabled New Yorkers served by CDPAP will continue receiving services uninterrupted after April 1. That is because the process of transitioning to a Statewide Fiscal Intermediary has been

an unmitigated disaster. On February 21, a coalition of MMCOs and related organizations issued a stark warning to DOH: "PPL will NOT be ready to serve all [CDPAP] consumers on April 1," resulting in "serious disruption to care for thousands of individuals who rely on [CDPAP] to remain independent." Ct. App. Dkt. No. 12.9 at Ex. P.

Things have not gotten better. The State's latest press release indicates that, as of March 24, only approximately 165,000 consumers had "either *started* or completed the registration process" with the Statewide Fiscal Intermediary, while fewer than 55,000 were in the "process of transitioning" to an alternative care program.[14] Given that there are over 290,000 total CDPAP consumers, *see* Ct. App. Dkt. No. 24.1 at Ex. U ¶ 7, this means approximately 70,000 consumers had *not even started* the registration process with just one week to go, not to mention the undisclosed number who had started but not completed the process. These consumers will be without a fiscal intermediary come April 1. The figures for personal assistants are even worse,

[14] *CDPAP Update: State Department of Health Announces Plan to Protect Cdpap Consumers & Workers Who Register After April 1 Transition Deadline*, N.Y. State Dep't of Health (Mar. 24, 2025), https://www.health.ny.gov/press/releases/2025/2025-03-24_cdpap_update.htm (emphasis added) (hereinafter "March 24 Press Release"). This press release also announces a "late registration window" that the State claims "will ensure program participants can continue to receive care" by providing consumers the opportunity to register with the Statewide Fiscal Intermediary through April 30 and "workers who have not yet completed the transition" the opportunity to "retroactively receive payments for hours worked in April upon completion of their registration" with the Statewide Fiscal Intermediary, "as long as they complete their registration by April 30." This window, while a welcome admission that the transition cannot be completed by April 1, does not alleviate the emergency (or the harm to Applicants), because it does not stay the April 1 deadline after which current fiscal intermediaries must stop providing services. Instead, it depends on personal assistants continuing to provide care to consumers without having an existing fiscal intermediary relationship, in the hope that they and the consumers for whom they work will register by April 30 and that they will then receive backpay. But there is no reason to believe the consumers and personal assistants who have not yet begun the registration process will complete it by April 30, or that caregivers will continue to work, without pay, in exchange for a contingent IOU.

with only approximately 170,000 having "either started or completed the registration process" as of March 24, out of around 400,000 total.[15] In fact, the transition process is so far behind that the State has resorted to *paying* personal assistants to register with the Statewide Fiscal Intermediary ahead of the April 1 deadline.[16] And the State's mandate that fiscal intermediaries transfer their sensitive business data for the Statewide Fiscal Intermediary's use has already been enjoined by two state courts.[17] This disastrous transition has led "key lawmakers and stakeholders involved in the program" to warn that the April 1 deadline "will not be met at the current rate of registrations," with one lawmaker issuing a dire prognostication of "overcrowding in our emergency rooms" and "wait lines for nursing homes." Ct. App. Dkt. No. 24.1 at Ex. V; *see also* Ct. App. Dkt. No. 24.1 at Ex. W (similar).

Thus, the public interest strongly favors emergency injunctive relief preserving the *status quo* so existing fiscal intermediaries can continue to serve their vulnerable consumers after April 1—and prevent them from falling victim to serious disruptions in care, overcrowded emergency rooms, and worse—while Applicants pursue their expedited appeal. Indeed, given that Applicants will otherwise be forced out of business in short order following the April 1 trigger date, such relief is necessary to enable

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[15] March 24 Press Release; *see* Letter from N.Y. State Sen. Leroy Comrie to N.Y. Gov. Kathy Hochul (Mar. 13, 2025), https://www.nysenate.gov/sites/default/files/admin/structure/media/manage/file-file/a/2025-03/sen.-comrie-cdpap-delay-sign-on-letter-updated-1.pdf.

[16] *New York State Department of Health Provides Update on Latest CDPAP Transition Progress, Including New Testimonials Demonstrating Positive Transition Experience*, N.Y. State Dep't of Health (Mar. 17, 2025), https://www.health.ny.gov/press/releases/2025/2025-03-17_cdpap.htm.

[17] *See Maxim of N.Y., LLC v. N.Y. State Dep't of Health*, No. 602917/2025, NYSCEF No. 29 (N.Y. Sup. Ct. Nassau Cnty. Feb. 13, 2025); *Caring Prof'ls, Inc. v. N.Y. Dep't of Health*, No. 601181/2025, NYSCEF No. 54 (N.Y. Sup. Ct. Nassau Cnty. Jan. 27, 2025).

Applicants to pursue and exhaust their appellate rights, including, if necessary, on a petition for certiorari before this Court.

CONCLUSION

For the reasons stated herein, Applicants respectfully request that the Circuit Justice or the Court grant the application. In addition, to the extent the application will not be resolved by April 1, Applicants respectfully request that the Circuit Justice or the Court enjoin enforcement of the April 1, 2025, trigger date on an interim basis pending a decision on the application.

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Respectfully submitted,

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