No. 24A921

In The
Supreme Court of the United States

PRINCIPLE HOMECARE, LLC, et al.,

Applicants,

v.

JAMES MCDONALD,
Commissioner, New York State Department of Health,

Respondent.

BRIEF IN OPPOSITION TO EMERGENCY APPLICATION FOR WRIT OF INJUNCTION

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INTRODUCTION

Applicants—four companies that receive Medicaid funds for performing payroll-related tasks—seek the sweeping and extraordinary relief of an injunction pending adjudication of their appeal in the Second Circuit and, if they do not prevail in that appeal, the filing and adjudication of a petition for certiorari. Such an injunction would upend the State's ongoing transition to restructure one of its large-scale Medicaid programs, the Consumer Directed Personal Assistance Program (CDPAP). That ongoing transition, which is scheduled to be completed by April 1, 2025, is moving the State from a costly and wasteful CDPAP model to a more efficient model that is already used by essentially every other State with CDPAP. The new model will save New York's Medicaid program hundreds of millions of dollars per year while facilitating more effective oversight of CDPAP. The Court should deny applicants' request for an injunction to abruptly halt the ongoing transition and force Medicaid to pay for not only the four applicants' future payroll services but also those of hundreds of other companies that are not parties to this litigation.

In New York, CDPAP funds at-home nursing or personal care services for approximately 280,000 qualifying individuals known as "consumers," who hire personal assistants to provide these services. CDPAP also pays entities known as fiscal intermediaries to assist consumers with their personal assistants' payroll and similar administrative tasks. While most States have one or only a few fiscal intermediaries, New York had approximately 600 fiscal intermediaries recently operating in the State, driving up Medicaid costs to unsustainable levels.

In 2024, the New York Legislature enacted an amendment to the statute authorizing CDPAP, which requires New York to transition to one statewide fiscal intermediary and certain prescribed subcontractors through a procurement process, with all other fiscal intermediaries prohibited from providing fiscal intermediary services under CDPAP by April 1, 2025. Applicants, four fiscal intermediaries that will be prohibited from operating in CDPAP on April 1, 2025, filed suit in the U.S. District Court for the Southern District of New York. They alleged, among other things, that the CDPAP Amendment violated the Contracts and Takings Clauses of the U.S. Constitution. The court (Garnett, J.) dismissed the complaint for failure to state a claim and denied applicants' request for a preliminary injunction as moot, and applicants appealed. The district court then denied applicants' request for an injunction pending appeal, and the Second Circuit did the same.

This Court should deny applicants' request under the All Writs Act for sweeping injunctive relief to halt the ongoing, statewide transition pending their appeal. Applicants fail to identify any reason why this Court would be likely to grant review in this case—a fundamental consideration for any preliminary relief. *See Rostker v. Goldberg*, 448 U.S. 1306, 1308 (1983) (Brennan, J., in chambers). And applicants cannot show a likelihood of success on the merits, much less a clear legal right to injunctive relief, based on alleged violations of the Contracts Clause and Takings Clause of the U.S. Constitution. Here, the district court applied this Court's settled constitutional jurisprudence to the specific contracts at issue and made a case-specific determination that applicants had failed to allege a constitutional violation. As the

district court explained, the CDPAP Amendment does not violate the Contracts Clause because the terms of applicants' contracts condition Medicaid funding on authorization under state law to participate in CDPAP, and the contracts provide for immediate termination of the contract if such authorization ceases. The CDPAP Amendment thus does not impair applicants' contracts but rather triggers expressly contemplated contract terms—i.e., termination based on the loss of state-law authorization to participate in CDPAP. Relatedly, the CDPAP Amendment does not violate the Takings Clause because applicants' contracts, on their own terms, do not provide a right to continued participation in CDPAP or to future Medicaid payments.

Applicants ignore the crux of these merits determinations—burying the discussion of the specific terms of their contracts in a short footnote within their forty-page application—and do not contend that the district court's particularized, contract-specific determinations present any issue worthy of this Court's review. In their motion papers, applicants instead badly mischaracterize the district court's decision to invent purported legal issues that are not presented here and would not be subject to review by this Court. The district court did not announce any categorical rules about contracts that relate to government funding. Nor did the court hold that valid contracts cannot confer property rights. This case is thus not an appropriate, or even an available, vehicle to resolve the manufactured constitutional issues that applicants highlight in their papers.

The equities and public interest also weigh against applicants' requested injunction. Even a relatively short injunction of six months to a year would likely cost

New York's Medicaid program hundreds of millions of dollars in expected savings, requiring equivalent cuts elsewhere in the State's Medicaid program and negatively affecting services to beneficiaries. Upending the ongoing CDPAP transition at this late stage would also introduce widespread confusion among consumers who have already transitioned or who will soon transition to the statewide fiscal intermediary.

For all these reasons, no injunction is warranted. But if the Court disagrees, any injunction should apply only to the four applicants here. Applicants have not provided any basis for an injunction that would apply to the hundreds of other fiscal intermediaries that are not parties to this litigation.

STATEMENT

A. Statutory and Regulatory Background

1. New York's Medicaid Program

Medicaid is a jointly funded federal-state program administered by the States to furnish medical assistance to low-income individuals. *See* 42 U.S.C. § 1396a; 42 C.F.R. § 430.0. To receive federal funds, States must submit a Medicaid plan to the U.S. Centers for Medicare and Medicaid Services. *See* 42 U.S.C. § 1396a(b); 42 C.F.R. § 430.10. Although state Medicaid plans must meet minimum federal standards set by the Medicaid Act and implementing regulations, States retain broad discretion in choosing how to structure their Medicaid programs and expend Medicaid funds. *See* 42 C.F.R. § 430.0; *Community Health Ctr. v. Wilson-Coker*, 311 F.3d 132, 134 (2d Cir. 2002).

The New York State Department of Health (DOH) is responsible for administering New York's Medicaid program. *See* N.Y. Social Services Law (SSL) § 363-a(1). DOH generally limits the "amount, duration and scope of medical assistance authorized" under the Medicaid program to that which is "medically necessary and appropriate, consistent with quality care and generally accepted professional standards." 18 N.Y.C.R.R. § 500.1(b). To help prevent, detect, and investigate fraud and abuse in the Medicaid program, DOH has an independent inspector general's office that reviews claims for Medicaid reimbursement. *See* N.Y. Public Health Law § 31(1).

DOH also administers certain aspects of the State's Medicaid program through local social services districts (i.e., county departments of social services) and through Medicaid managed care organizations (MCOs). The local districts directly administer Medicaid benefits to recipients. *See* SSL §§ 61, 62. MCOs are private health insurance plans that contract with the State to deliver Medicaid services to beneficiaries. *See* 42 U.S.C. § 1396b(m)(1)(A); 42 C.F.R. § 438.2.

2. Fiscal Intermediaries in the Consumer Directed Personal Assistance Program (CDPAP)

CDPAP is a Medicaid program "intended to permit chronically ill and/or physically disabled individuals receiving home care services . . . greater flexibility and freedom of choice in obtaining such services," SSL § 365-f(1). Eligible Medicaid beneficiaries, known as "consumers," hire a personal assistant to provide home health aide, personal care, and skilled nursing tasks that are reimbursed by Medicaid. 18 N.Y.C.R.R. § 505.28(b)(2)-(3); *see* SSL § 365-f(2); 18 N.Y.C.R.R. § 505.28(c). Such tasks

include bathing, grooming, toileting, administering medication, performing medical tests to monitor the consumer's medical condition, changing beds, and preparing meals. 18 N.Y.C.R.R. § 505.28(b)(10), (15), (17); *see id.* § 505.14(a)(5). Currently, approximately 280,000 consumers in New York employ personal assistants through CDPAP. (*See* Compl. ¶ 3 (Sept. 18, 2024), S.D.N.Y. ECF No. 1.)

The consumer (or a designated representative) is responsible for recruiting, hiring, scheduling, and supervising the personal assistant. *See* 18 N.Y.C.R.R. § 505.28(b)(4); SSL § 365-f(3). Certain administrative tasks related to this employment may be performed by the State's Medicaid program or, as in New York, by fiscal intermediaries that contract to do so. *See* 18 N.Y.C.R.R. § 505.28(b)(8), (j)(1)(vii). These administrative tasks include processing wages and benefits for consumers' personal assistants, maintaining employment records for those assistants, and maintaining records of consumers' CDPAP authorizations. *Id.* § 505.28(j)(1). New York's Medicaid program reimburses fiscal intermediaries for performing these tasks for consumers. *See id.* § 505.28(b)(9), (j)(1).

Consumers may enroll in CDPAP through a local district or an MCO. To serve these consumers and receive Medicaid reimbursement, a fiscal intermediary must contract with the local district or MCO with which the consumers are enrolled. *See id.* § 505.28(e)(1)(v), (j)(1)(vii). Local districts independently contract with fiscal intermediaries, while MCOs use a model contract disseminated by DOH to contract with fiscal intermediaries. (*See* Emergency Appl. for Writ of Inj. ("Appl."), Ex. 5 ("Model Contract").) Applicants' contracts at issue here track the language of this

model MCO contract (*see* Appl. at 7 & n.2), which authorizes reimbursement for fiscal intermediary services for a term of one year, with automatic renewal for additional one-year terms absent termination (*see* Model Contract ¶¶ 9-10.)

As relevant here, the contract's termination clause provides that the "Agreement shall terminate automatically and immediately in the event that either Party is excluded, suspended or barred from participating in any government health care program." (*Id.* ¶ 11.) The termination clause also provides that "[e]ither Party shall have a right to terminate this Agreement without cause upon 60 days written notice." (*Id.*) Multiple other provisions of the contract require that fiscal intermediaries agree to comply with state Medicaid laws: for instance, the fiscal intermediary "shall comply with all applicable federal and state laws and regulations relating to the provision of" CDPAP. (*Id.* ¶ 36; *see id.* ¶ 6 (similar, requiring fiscal intermediaries "to comply with all state and federal laws and regulations, including Medicaid program requirements"); *see also id.* ¶ 5 (fiscal intermediary must "comply fully and abide by the rules, policies and procedures that the MCO . . . has established or will establish to meet general or specific obligations placed on the MCO by statute, regulation, Medicaid Contract, or DOH guidelines or policies").)

3. The CDPAP Amendment

Before the state law amendment at issue here, New York's CDPAP model had become an extreme outlier compared to other States. Nearly all other States use one or only a few fiscal intermediaries. By contrast, in 2024, New York's Medicaid program was funding over 600 fiscal intermediaries. (Decl. of Jessica Preis ("Preis Decl."), Ex.

B ("Financial Plan"), at 113 (Jan. 31, 2025), S.D.N.Y. ECF No. 41-2;[1] *see* Compl. ¶ 8.) That CDPAP model required New York to spend hundreds of millions of Medicaid dollars to cover rising overhead and other administrative costs for all of these fiscal intermediaries, rather than using those funds to pay for consumers' personal care services. (*See* Financial Plan at 35, 113.)

To address these skyrocketing administrative costs and to maintain CDPAP's fiscal viability, legislation was introduced in 2024 to transition New York's CDPAP to a model with one fiscal intermediary. The State Division of the Budget estimated that this transition would save the State's Medicaid program approximately $500 million annually, including during the next fiscal year beginning April 1, 2025. (*See id.* at 23, 35.)

The Legislature enacted the CDPAP Amendment in April 2024. *See* Ch. 57, pt. HH, 2024 N.Y. Laws (Legis. Retrieval Sys.), pp. 60-64 (amending SSL § 365-f). The Amendment authorized selection of one statewide fiscal intermediary through a procurement process to contract with DOH. *Id.*, § 1, 2024 N.Y. Laws, p. 60; *see* SSL § 365-f(4-a). The statewide fiscal intermediary must perform the usual administrative tasks and, among other things, (i) be capable of performing these tasks with demonstrated cultural and language competencies specific to the population of consumers and available workforce of personal assistants; (ii) have experience serving individuals with disabilities; and (iii) have experience providing fiscal intermediary services on a

[1] Available at https://www.budget.ny.gov/pubs/archive/fy25/en/fy25fp-en.pdf.

statewide basis in at least one other State. SSL § 365-f(4-a)(b)(i)(B). The statewide fiscal intermediary must also subcontract with at least one fiscal intermediary in each of four rate-setting regions. Subcontractors must have a proven track record of delivering administrative services in that region and meet other requirements, includeing demonstrating cultural and linguistic competency specific to the population of consumers and available workforce of personal assistants. *See id.* § 365-f(4-a)(a)(ii)(J)(ii-b). Except for the statewide fiscal intermediary and its subcontractors, other fiscal intermediaries cannot provide fiscal intermediary services within CDPAP after April 1, 2025. SSL § 365-f(4-a-1)(a).

In June 2024, DOH issued a request for proposals seeking bids for the role of the single statewide fiscal intermediary.[2] In September 2024, after a competitive bidding process, New York announced its selection of Public Partnerships LLC as the statewide fiscal intermediary. (Shapiro Decl., Ex. 2 ("Press Release"), S.D.N.Y. ECF No. 34-2.) Public Partnerships has a demonstrated track record of providing statewide administrative services for more than fifteen States, including States with large Medicaid programs.[3] Public Partnerships also has a diverse alliance of over thirty facilitators to ensure access to multilingual, culturally sensitive home care. (*See* Preis Decl., Ex. I, S.D.N.Y. ECF No. 41-9; Press Release at 3-6.)

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[2] *See* DOH, *Request for Proposals: RFP #20524* (June 17, 2024), https://www.health.ny.gov/funding/rfp/20524/20524.pdf.

[3] *See* PPL First LLC, *State Programs* (2025), https://pplfirst.com/programs/.

Since the fall of 2024, DOH has worked with Public Partnerships, fiscal intermediaries, and consumers to transition to the new CDPAP model, with the transition scheduled to be completed by April 1, 2025. (*See* Preis Decl., Ex. P, S.D.N.Y. ECF No. 41-16; Press Release at 5.) At this point, nearly 80% of CDPAP consumers have already started or completed the transition, or have opted to move to a Medicaid program other than CDPAP for home care. However, some fiscal intermediaries and related companies have attempted to disrupt the transition by refusing to transfer consumers' data to DOH or, in some instances, by providing false or deceptive information to CDPAP consumers—such as falsely telling consumers that they will no longer qualify for any CDPAP services on April 1, 2025, or providing incorrect information about the requirements of the transition. In response, DOH sent cease and desist letters to offending entities and ramped up its efforts to combat misinformation and facilitate a successful transition. DOH also recently extended the deadline from April 1 to April 30, 2025, for consumers to transition to the statewide fiscal intermediary. Although fiscal intermediaries other than Public Partnerships and its subcontractors must cease fiscal intermediary operations under CDPAP by April 1, consumers who transition to the statewide fiscal intermediary after April 1 will continue to receive care and will receive retroactive payments for their personal assistants' care services provided after that date.[4]

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[4] *See* DOH, Press Release, *CDPAP Update: State Department of Health Announces Plan to Protect CDPAP Consumers & Workers Who Register After April 1 Transition Deadline* (Mar. 24, 2025), https://www.health.ny.gov/press/releases/2025/2025-03-24_cdpap_update.htm.

B. Procedural History

In August 2024, applicants here—four fiscal intermediaries—sued New York's Commissioner of Health (DOH) in the U.S. District Court for the Southern District of New York. (*See* Compl. at 1.) The lawsuit was brought solely on behalf of the four applicants here and not on behalf of any putative class of fiscal intermediaries. The complaint alleged that, pursuant to 42 U.S.C. § 1983, the CDPAP Amendment violated (i) the Contracts Clause of the U.S. Constitution by interfering with applicants' rights and obligations under their contracts with MCOs, and (ii) the Takings Clause of the U.S. Constitution by depriving applicants of their property rights in these contracts.[5] (*Id.* ¶¶ 146-181.) Applicants sought a declaratory judgment that the CDPAP Amendment is unconstitutional on its face and as applied to them. Applicants also sought a sweeping permanent injunction barring DOH from enforcing the CDPAP Amendment entirely—i.e., relief that would apply to hundreds of fiscal intermediaries that are not plaintiffs in this lawsuit. In the alternative, applicants sought injunctive relief barring enforcement of the CDPAP amendment against each of them. (*Id.* at 50-51.)

In November 2024, DOH moved to dismiss the complaint for failure to state a claim. In January 2025, applicants moved for a preliminary injunction to halt the entire CDPAP transition. After hearing argument on both motions, the district court

[5] Although applicants' complaint alleged violations of due process and equal protection (Compl. ¶¶ 182-203), applicants do not raise those claims in their application for injunctive relief here.

granted the motion to dismiss and denied applicants' motion for a preliminary injunction as moot. (Appl., Ex. D ("Dismissal Order").)

First, the district court concluded that applicants had failed to state a Contracts Clause claim because, at the first step of that analysis, no contractual provision or right was impaired within the meaning of the Contracts Clause. The court explained that the CDPAP Amendment does not alter any right or obligation under applicants' agreements with MCOs. Rather, as the court explained, applicants' contracts require immediate termination of the agreement if applicants are "excluded, suspended or barred" from participating in CDPAP, including exclusions or prohibitions pursuant to changes in the State's Medicaid program. (*Id.* at 13.) Accordingly, the court determined that the CDPAP Amendment does not interfere with applicants' contracts but rather triggers express terms and obligations to which applicants had agreed. Specifically, the Amendment excludes applicants from the CDPAP Medicaid program as of April 1, 2025, and the termination clause in the contracts then results in the immediate termination of applicants' contractual relationships with MCOs based on applicants' exclusion from CDPAP. (*Id.* at 12-15.)

The court further concluded that, in any event, applicants' claim failed under the second step of the Contracts Clause analysis. As the court explained, even if the CDPAP Amendment substantially impaired applicants' contracts, the Amendment comports with the Contracts Clause because it reasonably and appropriately serves legitimate and significant government purposes. (*See id.* at 16-29.) Specifically, the court found—based on the complaint, attached or incorporated documents, and

materials in the public record subject to judicial notice—that the transition served the legitimate public purpose of reducing costs in the Medicaid program, facilitating the long-term viability of CDPAP, and allowing for greater fiscal accountability while maintaining the eligibility and care provided to consumers. (*Id.* at 20-22.) For example, the court observed that it was reasonable for the Legislature to conclude that over 600 individual fiscal intermediaries likely have higher overhead costs than a single fiscal intermediary that can economize on such expenses. (*Id.* at 26.) And the court rejected applicants' arguments regarding the purported inefficiencies of having one fiscal intermediary rather than many, observing that the State is the only payor in CDPAP and that there are thus no free-market pressures for fiscal intermediaries to decrease costs and increase efficiencies. (*See id.* at 27.)

Second, the court concluded that applicants had failed to state a claim under the Takings Clause because they did not plausibly allege a protectable property interest based on the specific terms in their contracts at issue here. Acknowledging the general principle that valid contracts may confer property rights, the court emphasized that the express terms of applicants' individual contracts with MCOs did not grant rights to future Medicaid payments or continued participation in CDPAP. (*Id.* at 30-32.) To the contrary, as the court pointed out, applicants' contracts require immediate termination upon exclusion from CDPAP (*id.* at 31), and applicants here "entered into the contracts with knowledge" of these terms (*id.* at 32).

The district court entered final judgment dismissing the complaint. Applicants then filed a notice of appeal to the U.S. Court of Appeals for the Second Circuit. They

also moved in the district court for an injunction pending appeal, which the district court declined to grant (*see* Appl., Ex. B). The court explained that applicants had failed to demonstrate a likelihood of success on the merits in light of its decision dismissing their complaint. (*Id.* at 2.)

The court acknowledged the asserted harm to applicants in having to cease fiscal intermediary operations under CDPAP. But the court distinguished this harm from the irreparable harm caused by the closure of a private business operating in the free market. As the court explained, applicants operate in a state-created Medicaid program where New York is the only payor. The court noted that, if applicants are ultimately successful on appeal, the court would have additional options to fashion a remedy to restore applicants to their status as fiscal intermediaries. Moreover, the court observed that halting the ongoing statewide transition at this late date—after the State had invested significant resources in preparing and registering consumers for the transition—would harm the State, Medicaid beneficiaries, and the public interest. Considering all factors, the court concluded that an injunction pending appeal was not warranted. (*See id.* at 2-3.)

In late February 2025, applicants moved in the Second Circuit for a sweeping injunction to halt the statewide transition pending appeal—requesting that the court order such relief by the following day. They also requested that the appeal be expedited. A judge of that court (Robinson, J.) deferred decision on applicants' emergency motion and granted the request to expedite the appeal. (Order (Feb. 28,

2025), 2d Cir. ECF No. 19.1.) On March 25, 2025, a panel of the Second Circuit denied applicants' motion for an injunction pending appeal. (*See* Appl., Ex. A.)

ARGUMENT

THE COURT SHOULD DENY THE SWEEPING AND EXTRAORDINARY INJUNCTIVE RELIEF THAT APPELLANTS SEEK

An injunction pending appeal is "an extraordinary remedy never awarded as of right." *See Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). The applicants must show that they are likely to succeed on the merits. *See id.* In this context, where applicants are seeking injunctive relief before the circuit court has ruled (or even received briefing) on the merits, applicants' likelihood of success showing must demonstrate that, if applicants do not prevail in the circuit court, the Court would likely grant certiorari review and conclude that the decision below was erroneous. *See Does 1-3 v. Mills*, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring in the denial of application for injunctive relief) (citing *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam)); *Rostker*, 448 U.S. at 1308 (Brennan, J., in chambers). "Were the standard otherwise, applicants could use the emergency docket to force the Court to give a merits preview in cases that it would be unlikely to take—and to do so on a short fuse without benefit of full briefing and oral argument." *Does 1-3*, 142 S. Ct. at 18 (Barrett, J., concurring). Applicants also must establish that they are "likely to suffer irreparable harm" absent injunctive relief, that "the balance of equities tips in" their favor, and that "an injunction is in the public interest." *See Winter*, 555 U.S. at 20.

Moreover, an injunction under the All Writs Act, 28 U.S.C. § 1651(a), which grants judicial intervention withheld by the lower court, "demands a significantly higher justification" than a stay under 28 U.S.C. § 2101(f), which simply suspends judicial alteration of the status quo. *Ohio Citizens for Responsible Energy, Inc. v. Nuclear Regul. Comm'n*, 479 U.S. 1312, 1313 (1986) (Scalia, J., in chambers); *accord Nken v. Holder*, 556 U.S. 418, 429 (2009). Such injunctive relief should be granted "sparingly and only in the most critical and exigent circumstances," where the legal rights at issue are "indisputably clear." *Hobby Lobby Stores, Inc. v. Sebelius*, 568 U.S. 1401, 1403 (2012) (Sotomayor, J., in chambers) (quotation marks omitted); *accord Ohio Citizens*, 479 U.S. at 1313 (Scalia, J., in chambers); *see also Roman Catholic Diocese v. Cuomo*, 141 S. Ct. 63, 66 (2020) (per curiam) (concluding that "applicants ha[d] clearly established their entitlement to relief"). Applicants come nowhere close to satisfying these stringent standards here.

A. Applicants Are Unlikely to Succeed on the Merits Because This Court Would Not Likely Grant Certiorari and Because Applicants Fail to Establish a Clear Right to Relief.

Applicants' request for relief should be denied because they fail to make a strong showing that they will likely succeed on the merits. *See Nken*, 556 U.S. at 426 (quotation marks omitted). That is so for two reasons.

First, the Court would be exceedingly unlikely to grant certiorari if the applicants do not prevail on appeal because the district court ruling under review by the Second Circuit is a case-specific decision that applied established Contracts Clause and Takings Clause precedent to the particular terms of the contracts at issue

here. Applicants ignore those contract terms almost entirely, primarily arguing instead that the district court's decision turned on purported categorical rulings about the application of the Contracts or Takings Clause to all contracts involving government funding. But the district court's decision was not based on any such categorical rules, and it does not implicate any circuit split or novel legal issue of nationwide importance. Second, and in any event, applicants fail to establish an "indisputably clear" constitutional violation. *See Wisconsin Right to Life, Inc. v. Federal Election Comm'n*, 542 U.S. 1305, 1306 (2004) (Rehnquist, C.J., in chambers). The district court correctly dismissed applicants' claims based largely on the plain language of applicants' own contracts with MCOs.[6] For the same reasons, the Court should reject applicants' request for a writ of certiorari before judgment (*see* Appl. at 5), as they have not shown that the case is of such imperative public importance as to justify deviation from normal appellate practice and require immediate determination in this Court, *see* S. Ct. R. 11.

Contracts Clause. Applicants are unlikely to obtain certiorari review or otherwise succeed on the merits of their Contracts Clause claim. The Contracts Clause provides that no State shall pass any law "impairing the Obligation of Contracts." U.S. Const. art. I, § 10. Summarizing this Court's well-settled precedents, the district court

[6] Although applicants pleaded both facial and as-applied challenges (*see* Appl. at ii), their motion does not discuss fiscal intermediaries that have contracts with local districts rather than MCOs (*see id.* at 7 n.1). Accordingly, applicants cannot clearly show that the CDPAP Amendment is unconstitutional in all its applications, and their facial challenge fails. *See United States v. Salerno*, 481 U.S. 739, 745 (1987).

explained that the Contracts Clause does not prevent States from exercising their police power for the general welfare—a sovereign power that "is paramount to any rights under contracts between individuals." *Manigault v. Springs*, 199 U.S. 473, 480 (1905). To assess whether a state law violates the Contracts Clause, the district court further explained, the first step is to determine whether the state law at issue substantially impairs an existing contractual obligation. *See Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244 (1978). If there is no such impairment at the first step, then the nature and purpose of the law at the second step are irrelevant. *See id.* at 244-45. However, if there is an impairment, then the court considers the nature and purpose of the law, i.e., whether the law is reasonable and appropriate given the public purpose justifying its adoption. *See id.*

The district court applied this established law to the specific contracts at issue here—a contract-specific ruling that is not worthy of this Court's review and is correct in any event. As the district court determined, applicants' claim failed at the first step because they identified no provision or right in their contracts that the CDPAP Amendment had impaired. (Dismissal Order at 13.) Instead, by excluding applicants from participating in CDPAP as fiscal intermediaries, the Amendment triggers the operation of applicants' own existing contractual obligation—i.e., the termination clause to which applicants had agreed. (*See id.* at 13-15.) The termination clause provides that the "Agreement shall terminate automatically and immediately in the event that either Party is excluded, suspended or barred from participating in any government health care program." (Model Contract ¶ 11.) This clause is part of the

rights and obligations to which applicants and the MCOs agreed and is binding under law. *See Allied Structural Steel*, 438 U.S. at 245. The Amendment thus does not nullify applicants' contracts (*contra* Appl. at 27), but rather makes the legislative policy determination to exclude from CDPAP fiscal intermediaries like applicants that are not the statewide fiscal intermediary selected through the competitive bidding process. *See* SSL § 365-f(4-a), (4-a-1)(a). As the district court determined, it is the binding and valid termination clause in applicants' own contracts that provides for immediate termination of their contracts based on applicants' exclusion from CDPAP. (Dismissal Order at 13-15.)

Applicants barely discuss the terms of their own contracts or the court's actual reasoning (*see* Appl. at 28 n.8), much less put forth an argument as to why this contract-specific ruling presents any question worthy of certiorari review. And it does not. The district court's Contracts Clause ruling does not implicate any circuit split. Nor does the district court's particularized analysis of the specific contract language at issue here eliminate the force of the Contracts Clause or implicate any issues of nationwide importance (*contra* Appl. at 32-34). Indeed, the CDPAP Amendment adopts for New York a fiscal intermediary model that nearly all States with CDPAP already use. And the district court's analysis does not even apply to all fiscal intermediaries in New York's CDPAP because the court addressed only fiscal intermediary contracts with MCOs, not fiscal intermediary contracts with local districts.

Moreover, the applicants are unlikely to succeed on the merits of their Contracts Clause claim for the additional and independent reason that the district court's ruling regarding the operation of the termination clause is correct. Applicants' only contrary argument, raised in a footnote, is their contention that the termination clause's reference to "excluded, suspended or barred" covers only exclusions, suspensions, or bars based on misconduct. *See* Appl. at 28 n.8. But a plain reading of that clause shows that it is not so limited. The text of the clause nowhere mentions misconduct or places any such limit on the types of exclusions, suspensions, or bars that trigger automatic termination. Legal and general definitions confirm that the broad terms "excluded" or "barred" include state-law changes that exclude or bar certain entities from participating in a Medicaid program.[7] *See, e.g.*, *Black's Law Dictionary* ,"bar" (vb.), (Westlaw 12th ed. 2024) ("To prevent or prohibit, esp. by legal objection," e.g., where a statute of limitations bars a claim); *Merriam-Webster Online Dictionary*, "bar" (vb., definitions 4(a)-(b)) ("to keep out: exclude"; "to put forth legal objection to"; and to "prevent, forbid," such as "a decision barring his participation"); *Merriam-Webster Online Dictionary*, "excluded" (vb., definition 1(b)), ("to bar from participation, consideration, or inclusion"). And other provisions in applicants' contracts further confirm this understanding by repeatedly and expressly subjecting

[7] By contrast, applicants cite only a single regulatory provision governing Social Security benefits that has no application here and, in any event, does not limit the definition of "excluded, suspended or barred" to misconduct. *See* Appl. at 28 n.8 (citing 20 C.F.R. § 404.1503a).

applicants to all state and federal laws governing the Medicaid program. (*See* Model Contract ¶¶ 6, 36; *see also id.* ¶ 5.)

Applicants err in arguing that the termination clause must be read as limited to misconduct because the clause covers exclusions from any government health care program, and it purportedly would be "absurd" for the contract to terminate based on applicants' exclusion from a non-CDPAP program for reasons unrelated to misconduct. *See* Appl. at 28 n.8. But there is nothing absurd about the termination clause, which ensures CDPAP's operational success and program integrity. For example, it makes perfect sense that the contract is immediately terminated if a fiscal intermediary or MCO is excluded from Medicaid for any reason—not just misconduct—because the excluded entity can no longer be paid by Medicaid and thus cannot lawfully comply with the terms of the contract. And as another example, if an MCO that serves individuals enrolled in Medicare and Medicaid was excluded from Medicare for reasons unrelated to misconduct, that MCO would likely lose a significant source of funds essential to its reliable operation, including in the CDPAP Medicaid program, and immediate termination of that MCO's contracts allows New York's Medicaid program to act quickly to ensure continued CDPAP services through a more reliable MCO.

Applicants' remaining Contracts Clause arguments are also meritless. Applicants focus on the district court's alternative ruling that even if the CDPAP Amendment impaired applicants' contracts, such an impairment was reasonable and appropriately serves the State's legitimate and significant interest in altering its

CDPAP to reduce costs, increase efficiency, and enhance oversight of fiscal intermediary services. *See* Appl. at 26-34. As an initial matter, it is unlikely that this Court would ultimately need to review this alternative holding because applicants' Contracts Clause claim fails, and no further analysis is needed, based solely on the lack of any contract impairment. In any event, the district court's alternative ruling turned on its particularized analysis of the circumstances here—i.e., that especially in the context of New York's extreme outlier CDPAP model, the CDPAP Amendment advanced a significant and legitimate public purpose and was drawn in an appropriate and reasonable manner. (*See* Dismissal Order at 16-29.)

Applicants do not contend that this analysis implicates any circuit split, and they fail to demonstrate that it presents any issue of nationwide importance. Indeed, applicants' various objections are specific to this case, and wrong in any event. For example, applicants contend that New York's CDPAP transition is sudden and not based on an emergency rationale. Appl. at 28-29, 31. But the CDPAP Amendment implemented a year-long transition in an industry subject to year-long contracts. (*See* Model Contract ¶¶ 9-10.) Applicants also err in contending that the CDPAP Amendment shuts down a competitive industry in a free market and creates an inefficient monopoly by selecting a single statewide fiscal intermediary (*see* Appl. at 10, 29). As the district court correctly explained, fiscal intermediaries do not actually compete on price because the Medicaid program is the only payor for fiscal intermediary services (*see* Dismissal Order at 27).

There is also no merit to applicants' argument that the district court improperly applied rational basis review or failed to support its conclusion that any impairment was reasonable and appropriate here. *See* Appl. at 27, 32-33. The district court did not merely speculate as to whether the CDPAP Amendment was rationally related to any legitimate government interest. To the contrary, the court considered the complaint's specific allegations and documents attached or incorporated by reference therein, along with legislative history of the CDPAP Amendment and other public documents subject to judicial notice. (*See, e.g.*, Dismissal Order at 21-23.) Based on this detailed analysis, the court properly concluded that the Amendment advances the State's significant and legitimate interest in controlling rising Medicaid costs (*see* Financial Plan at 23), including the rising cost of CDPAP—which has increased 1200% since 2016 (*id.* at 113). And New York reasonably decided to address these rising costs by adopting a model used by nearly all other States with CDPAP, which have one or very few fiscal intermediaries. (*See id.* at 35, 113.) In short, New York properly relied on other States' experience and basic economic principles in concluding that transitioning to this model would allow CDPAP to use economies of scale to make the program more cost-effective, allowing more of the State's Medicaid dollars to go toward beneficiaries' care rather than administrative tasks. *See, e.g.*, *Papa v. Katy Indus., Inc.*, 166 F.3d 937, 942 (7th Cir. 1999) (noting benefit from economies of scale); *ALLTEL Corp. v. FCC*, 838 F.2d 551, 557 (D.C. Cir. 1988) (same). Contrary to appellants' assertions (Appl. at 28-32), the Contracts Clause does not require New York to declare

an emergency, conduct economic impact studies, or reject other cost-saving measures before implementing the CDPAP model commonly used across the country.

Takings Clause. Applicants are also unlikely to succeed on the merits of their Takings Claim because they are unlikely to obtain certiorari review of that claim and have failed to establish an indisputably clear right to relief. The Takings Clause provides that private property shall not "be taken for public use, without just compensation," U.S. Const. amend. V. *See Kelo v. City of New London*, 545 U.S. 469, 472 n.1 (2005). Takings may occur when the government physically acquires private property for a public use (a categorical taking), or when government regulations restrict an owner's ability to use his or her own property (a regulatory taking). *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 147-48 (2021). Neither type of taking occurs unless the owner has a property interest protected by the Takings Clause that the State purportedly took. *See Tyler v. Heppin Cnty., Minnesota*, 598 U.S. 631, 638 (2023).

The district court applied these settled principles to the specific contracts and alleged property interest at issue here—a case-specific ruling that is not worthy of this Court's review and is correct in any event. Applicants have no property interest in their continued participation in CDPAP or future Medicaid payments, as the district court properly concluded and as applicants do not dispute. (*See* Dismissal Order at 30-31.) Instead, applicants claim a property interest only in their contract rights. *See* Appl. at 20. But as the district court recognized, applicants' contracts contain no provision conferring a right to continued CDPAP participation or future Medicaid payments. To the contrary, and as explained, the contracts contain a termination clause that

requires termination of all contractual rights upon applicants' (or MCOs') exclusion from CDPAP as well as provisions requiring applicants (and MCOs) to abide by all state and federal laws governing Medicaid. (*See* Dismissal Order at 31-32.) And while applicants' contracts require Medicaid reimbursement for proper performance of services under CDPAP, the contracts do not protect applicants against exclusion from CDPAP, nor authorize reimbursement after applicants' exclusion from CDPAP. (*See* Model Contract ¶¶ 6, 9, 11.)

Accordingly, the CDPAP Amendment does not effectuate a taking because the Amendment removes applicants' ability to continue participating in CDPAP as fiscal intermediaries that receive Medicaid reimbursements—which applicants have no property interest in continuing to receive. And despite discussing case law recognizing that contracts *may* confer a property right protected by the Takings Clause (*see* Appl. at 20-25), applicants fail to point to any purported property interest that the State purportedly took aside from applicants' interest in continuing to receive Medicaid funds in exchange for fiscal intermediary services. Under similar circumstances, courts have held that contracts do not confer a property right to continued participation in the Medicaid program or to future Medicaid payments. *E.g.*, *Kelly Kare, Ltd. v. O'Rourke*, 930 F.2d 170, 176 (2d Cir. 1991) (provider had no cognizable property right in contract with local district or right to continued participation in Medicaid program); *see also Grossman v. Axelrod*, 646 F.2d 768, 770-71 (2d Cir. 1981) (provider lacked cognizable property right in future Medicaid payments for Takings Clause claim).

Entirely ignoring the district court's reasoning, applicants badly mischaracterize the court's decision. For example, the district court nowhere announced a categorical rule that contracts do not create a protected property interest, as applicants contend (*see* Appl. at 16, 20). To the contrary, the court acknowledged that contracts may create property rights (Dismissal Order at 31). Nor did the district court create any broad rule that contracts involving state funding can never create property interests, as applicants suggest (*see* Appl. at 24). Instead, the court concluded that applicants' contracts here do not create any such rights that were taken by the CDPAP Amendment. Applicants' discussion of a purported circuit split or confusion on broader questions about whether valid contracts create property rights is irrelevant (*see* Appl. at 20-25), because no such questions are presented in this case.

There is also no merit to applicants' repeated assertion that their property rights were taken and transferred to the statewide fiscal intermediary. *See, e.g.*, Appl. at 16, 18-19, 24. Applicants' individual contracts terminated based on their own terms. DOH went through an independent and comprehensive procurement process to enter into a different contract with the statewide fiscal intermediary.

B. The Remaining Factors Also Weigh Heavily Against Injunctive Relief.

The extraordinary relief of a writ of injunction—particularly to halt the entire CDPAP transition based on the as-applied claims of the four applicants here—is

unwarranted for the independent reason that the equities and public interest weigh heavily against such relief.

First, an injunction would severely harm the State, Medicaid providers and beneficiaries, and the public interest. Applicants seek an across-the-board injunction that would halt the entire statewide transition for all fiscal intermediaries. But if the transition is delayed, New York's Medicaid program would likely lose the anticipated savings that the Amendment is designed to bring—estimated to be $500 million annually (Financial Plan at 35). An injunction delaying the transition would allow the number of fiscal intermediaries and their associated costs to continue rising. The State would need to make significant cuts to the Medicaid program to compensate for those lost savings and rising costs, negatively affecting delivery of Medicaid services and potentially limiting direct CDPAP services to consumers. (*See id.* at 35, 113.) *See Glidedowan, LLC v. New York State Dep't of Health*, No. 6:24-cv-06731, 2025 WL 669510, at *4 (W.D.N.Y. Mar. 3, 2025). Moreover, DOH's inspector general's office would need to continue dedicating its limited resources to overseeing the substantial—and likely growing—number of fiscal intermediaries, leaving the State's Medicaid program more vulnerable to fraud and abuse.[8] And injunctive relief would also harm the State's interest in enforcing the CDPAP Amendment drafted and passed by the

[8] *See, e.g.*, U.S. Atty's Off. for E.D.N.Y., Press Release, *Eight Individuals Charged in $68 Million Social Adult Day Care and Home Health Care Scheme* (Oct. 9, 2024) (noting fiscal intermediary's participation in scheme to defraud New York's Medicaid program), https://www.justice.gov/usao-edny/pr/eight-individuals-charged-68-million-social-adult-day-care-and-home-health-care-scheme.

State's duly elected representatives. *See Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 595 U.S. 267, 277-78 (2022).

Applicants misplace their reliance on a February letter from MCOs to assert that the transition will necessarily fail and cause thousands of consumers to lose their personal assistants or CDPAP services absent injunctive relief. *See* Appl. at 38-40. The February letter does not account for later efforts by both DOH and Public Partnerships to address MCOs' concerns and facilitate a successful transition, including sending cease-and-desist letters to fiscal intermediaries that spread false and deceptive information to consumers about the transition, and conducting significant outreach to directly transition consumers without the cooperation of recalcitrant fiscal intermediaries. Indeed, nearly 80% of consumers have now started or completed registration for the transition (or opted to enroll in a different Medicaid program for home care), and they may continue to do so until April 30, 2025—while getting reimbursed for services provided in the interim. An injunction abruptly halting the ongoing transition, especially one issued at this late stage and with no certain end date, would drastically upend the ongoing process and introduce widespread confusion among consumers who already have or will soon switch to the statewide fiscal intermediary. *See, e.g.*, *Glidedowan*, 2025 WL 669510, at *4.

Applicants also misplace their reliance on separate state-court litigation, where other plaintiffs challenged the transfer of CDPAP data to the statewide fiscal intermediary based on alleged privacy concerns. *See* Appl. at 39. The limited temporary restraining orders (TROs) issued in those two cases do not halt the State's

transition to the statewide fiscal intermediary. The TROs merely prevent the State from requiring those fiscal intermediary plaintiffs to share consumer and personal-assistant data with DOH, until the state courts receive briefing on the preliminary injunction motions. *See* Mem., Exs. Q-R, 2d Cir. ECF No. 12.9. Both TROs are limited in scope, allowing DOH and Public Partnerships to continue outreach efforts to consumers, who can voluntarily register with Public Partnerships without any data transfer from fiscal intermediaries. Meanwhile, other trial and appellate courts that have considered constitutional challenges to the CDPAP Amendment have denied preliminary injunction requests or dismissed the cases entirely.[9]

Finally, applicants' assertions of irreparable harm absent an injunction do not warrant emergency relief. They are not irreparably harmed based on the alleged constitutional deprivations (*see* Appl. at 34-35, 37) because, as discussed, applicants failed to state any plausible claim of a constitutional violation. And applicants could provide fiscal intermediary services for government-funded programs other than

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[9] *See, e.g.*, *Jeannot v. New York*, No. 24-cv-05896, 2025 WL 80689, at *1, 15 (E.D.N.Y. Jan. 13, 2025) (dismissing complaint raising statutory and constitutional claims); *Glidedowan*, 2025 WL 669510, at *10, 12, 14 (denying preliminary injunction motion based on Contracts and Takings Clause claims, among others); Decision & Order at 11-12, *Matter of Corning Council for Assistance & Info. for the Disabled, Inc. v. McDonald*, Index No. 908147-24 (Sup. Ct. Albany County Sept. 30, 2024) (denying preliminary injunction based on constitutional claims) (reproduced at Preis Decl., Ex. A, S.D.N.Y. ECF No. 41-1); *Matter of Corning Council for Assistance & Info. for the Disabled, Inc. v. McDonald*, 2024 N.Y. Slip Op. 78950(U), at 1 (3d Dep't 2024) (same) (reproduced at Preis Decl., Ex. O, S.D.N.Y. ECF No. 41-15); *Save Our Consumer Directed Home Care, Inc. v. New York State Dep't of Health*, 2025 N.Y. Slip Op. 25033, at 12-14 (Sup. Ct. Albany County 2025) (denying preliminary injunction based on Contracts Clause and other constitutional claims).

CDPAP, *see* 38 U.S.C. § 1703D(h)(1), or transition their operations to another compatible market, such as by providing payroll services for private entities. Ultimately, the alleged harm to applicants does not outweigh their claims' lack of merit or the harms to the State and public interest from an injunction—particularly when applicants seek to force the State to continue using limited Medicaid funds to pay for their services and the services of 600 other fiscal intermediaries, in contravention of the State's interest and the Legislature's policy choice.

* * *

For all these reasons, the Court should deny applicants' motion for an injunction pending appeal in its entirety. However, if the Court were to disagree and determine that some injunctive relief pending appeal is warranted, the Court should limit any such relief to the four applicants here. *See Gill v. Whitford*, 585 U.S. 48, 73 (2018) (noting "remedy must be tailored to redress the plaintiff's particular injury"); *see also McHenry v. Texas Top Cop Shop, Inc.*, 145 S. Ct. 1, 1 (2025) (granting stay of district court's nationwide injunction). Applicants did not bring a class action, and they cannot assert claims or harms on behalf of third-party fiscal intermediaries that are not litigants here. Moreover, as discussed, applicants have not made the showing necessary to support any facial claim. Nor are all 600 fiscal intermediaries similarly situated; many are part of larger entities that also provide separate services and are unlikely to close due to the CDPAP transition. Applicants failed to provide any basis for an injunction applying to fiscal intermediaries that are not parties here.

CONCLUSION

The emergency application for a writ of injunction should be denied.

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March 28, 2025

Respectfully submitted,

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