No. 24-A921

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

Reply Brief in Support of Emergency Application for Writ of Injunction

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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.

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

In response to this emergency application, the State does not meaningfully dispute that hundreds of New York companies are just days away from being put out of business—their contracts extinguished and their customer relationships severed—by legislation establishing a statewide, State-appointed private monopolist to displace the existing fiscal intermediary industry. Nor does the State dispute that a "violation of constitutional rights" establishes a "presumption of irreparable injury." *Agudath Israel of Am. v. Cuomo*, 983 F.3d 620, 636 (2d Cir. 2020); *see also* Appl. 34–35 (collecting cases). Instead, the State doubles down on the troubling positions it took below that would effectively permit it to take and nullify whole industries-worth of contracts without compensation and hand their full value to a favored private monopolist, simply because the industry is ultimately government-funded and the government in its infinite wisdom declares that such private-industry and small-business destruction will save some money—without so much as substantiating that assertion. As for the public interests, the State blinks reality as to the economic, employment, and public health disaster that is fast-approaching absent an emergency injunction—not to mention that, come April 1, Applicants will have no more contracts or business and will thereby be deprived of their appellate rights.

The State does not dispute that the CDPAP Amendment effects a taking under both a categorical and a non-categorical analysis, if contracts constitute protected property interests. This is unsurprising, as Applicants' (and all fiscal intermediaries')

contracts are incontestably being destroyed and their value transferred without compensation. The State, however, embraces the problematic notion that certain contracts—including the ones here—may be excepted from this Court's longstanding rule that "[v]alid contracts are property" within the meaning of the Takings Clause, *Lynch v. United States*, 292 U.S. 571, 579 (1934); *see also* Appl. 17, 20–21 (collecting cases)—such that they are not entitled to any protection under the Takings Clause and can be taken by the State without compensation. The State downplays this extraordinary maneuver, suggesting the decision below is "case-specific" and merely "applied established Contracts Clause and Takings Clause precedent." Resp. 2, 16. Not so. Left uncorrected, the district court's decision would deepen the already-broad and troubling confusion among the lower courts as to the continuing validity of this Court's holding in *Lynch*—despite its foundational place in protecting the liberty interests inherent in contracts. And it would mean that companies (or, as here, entire *industries*) with government-related contracts can have them all taken away and given to another private company with the stroke of a pen. That cannot be—and is not—the law. It is therefore likely that this Court would grant certiorari and reverse, and that Applicants will succeed on the merits of their takings claim.

The State also does not dispute, as it pertains to the Contracts Clause, that the CDPAP Amendment permanently extinguishes fiscal intermediaries' existing contracts and renders them valueless. Nor does it meaningfully grapple either with the fact this April Fool's Day Massacre of an entire industry's contracts cannot be justified by mere invocations of efficiency or cost-savings—or else any government entity

could nullify any class of contracts by the same handwaving—or with the fact that the State has entirely failed to substantiate the purported savings. In other words, the State's bare assertion of a rationale cannot survive "a careful examination of the nature and purpose of the state legislation," as required by *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 245 (1978), and its progeny, and as to which the State bears the burden of demonstrating that its severe impairment of contracts is "upon reasonable conditions and of a character appropriate to the public purpose justifying its adoption," *id*. at 244. Were it otherwise—if, in other words, the decisions below were allowed to stand—the Contracts Clause would be rendered a dead letter.

Seeking to avoid these weighty issues, the State argues that this wholesale destruction of contracts was contemplated by the contracting parties themselves and written into their contracts (form contracts with the same material terms across the entire industry). But this absurd conclusion misreads the misconduct-related termination clause to apply to an industry-wide, government-forced shutdown; it would, moreover, have ludicrous consequences whereby any fiscal intermediary (including the new Statewide Fiscal Intermediary, if its contract includes the same form language) would have its contracts automatically terminated any time that entity became ineligible (for any reason, no matter how benign) to participate in *any* government healthcare program anywhere in the country.

As for the balance of hardships and public interest, the State mischaracterizes Applicants' request as one for a "sweeping" injunction that would "upend the ongoing [transition] and introduce widespread confusion among consumers." Resp. 1, 2, 28.

But the record actually supports the opposite conclusion, i.e., the transition is in complete disarray, threatening consumers' access to services come April 1, while the requested injunction will simply preserve the *status quo*—consumers' continued receipt of services from existing fiscal intermediaries—while Applicants' constitutional claims are fully adjudicated. The State's new late-registration deadline, meanwhile, only allows personal assistants to work *for free* (assuming they can afford to do so) in the hopes that they will later receive backpay *if* they and their consumers complete their registrations with PPL by April 30. By design, this eleventh-hour stop-gap measure does *not* allow any existing fiscal intermediaries to remain in business, as the State concedes. Resp. 10. That the State is fighting the narrow relief sought in this application—which it should see as a gift that will allow for continuity of care—and is instead insisting on driving the CDPAP train off a cliff is not only incomprehensible, but also completely contrary to the public interest.

This Court should 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.

ARGUMENT

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.

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

This Court has long held that "[v]alid contracts are property" within the meaning of the Takings Clause. *Lynch*, 292 U.S. at 579; *see also* Appl. 17, 20–21 (collecting cases). And the State does dispute that, assuming a protected property interest exists, the CDPAP Amendment effects both categorical and non-categorical takings by completely extinguishing fiscal intermediaries' contracts and transferring their full value wholesale to another private entity without any, let alone just, compensation. Appl. 18–19.[1]

Instead, the State doubles down on the erroneous premise that the takings inquiry turns on whether Applicants have "a right to continued CDPAP participation or future Medicaid payments." Resp. 24. But Applicants already explained that the relevant property interests here are fiscal intermediaries' *contracts*, and that there is no basis in law to conclude that there exists a disfavored class of contracts that are

[1] The State attempts to elide the issue by disputing whether the "individual contracts" themselves were transferred to PPL, while ignoring the irreputable proposition that the *value* of those contracts has, in fact, been so transferred. Resp. 26.

somehow exempt from ordinary takings analysis. Appl. 20.[2] Seemingly attempting to square the circle, the State employs a tautology whereby, after *acknowledging* that Applicants have not claimed a property interest in CDPAP or in government funding, it suggests (contrary to *Lynch*) that fiscal intermediaries' property interests in their contracts turns on whether they possess "an interest in continuing to receive Medicaid funds." Resp. 24–25. That errant reasoning is precisely why, if the State were correct, government would have *carte blanche* to nullify—without compensation—any contract in which the contractual counterparty received State funding. And any such government-funding carveout would run flatly contrary to *Lynch*'s holding, which by its express terms applies "whether the obligor [is] a private individual, a municipality, a state, or the United States." *Lynch*, 292 U.S. at 579.

If contracts are cognizable property—and they are—then the State, via the CDPAP Amendment, has indisputably taken them here without just compensation.

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.

The decisions below amplify persistent confusion and a long-percolating conflict among the lower courts regarding the continuing validity of *Lynch*'s holding that all manner of contracts constitute property for purposes of the Takings Clause. Appl. 20–25 & nn.6–7. The State does not dispute the existence of this conflict, which

[2] Seeking to create ambiguity where none exists, the State cites a smattering of inapposite cases that discuss whether there exists a property right in Medicaid reimbursement, *not* whether property rights exist in *private contracts*, which is the issue here. Resp. 25.

stems from a misreading of this Court's decision in *Connolly v. Pension Benefit Guaranty Corp.*, 475 U.S. 211 (1986). Instead, the State argues—incorrectly—that the *Lynch*/*Connolly* issue is "not presented" in this case. Resp. 3; *see also id.* at 26.

First, the State's position before this Court is a wholesale reversal of its arguments below. *See* Dist. Ct. Dkt. 40 at 18 (dismissing *Lynch* as "case law from 1934" and arguing—consistent with the courts on the wrong side of the circuit conflict—that "more recent controlling precedent makes clear that not all contracts are protected property rights," citing *Connolly*).

Second, the State makes much of the fact that the district court did not expressly reject *Lynch*'s holding by "announc[ing] a categorical rule that contracts do *not* create a protected property interest." Resp. 26 (emphasis added). That is true, but irrelevant—and Applicants never suggested otherwise. What matters is that, by suggesting that certain contracts are *exempt* from *Lynch*'s holding—and thus shielded from *any* takings analysis—the district court deviated from *Lynch* and, just like the courts that have misread *Connolly* as overruling *Lynch*, amplified the nationwide confusion as to whether contracts remain cognizable property interests under the Takings Clause. Indeed, that confusion is apparent on the face of the Response, as the State repeatedly adopts the view of the courts on the wrong side of the circuit conflict. *See id.* at 25 ("contracts *may* confer a property right protected by the Takings Clause" (emphasis in original); *see also id.* at 13, 26 (similar).

Because 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 Nursery v. Hassid*, 594 U.S. 139, 147 (2021) (citation and internal quotation marks omitted), the confusion surrounding *Lynch* urgently demands this Court's attention. It is, therefore, likely that at least four Justices would vote to grant certiorari and, because the constitutional violation is indisputably clear, that the Court would reverse.

B. The CDPAP Amendment Indisputably Violates The Contracts Clause.

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 indisputably violates the Contracts Clause, both facially and as applied, because it "operate[s] as a substantial impairment of a contractual relationship," and that impairment is not "upon reasonable conditions and of a character appropriate to the public purpose justifying its adoption." *Allied*, 438 U.S. at 244 (citation omitted); *see* Appl. 25–32. In cases such as this one, where the contractual impairment is "[s]evere," the reviewing court must undertake "a careful examination of the nature and purpose of the state legislation," and the State's purported justification for the impairment must be supported by a "showing in the record." *Id.* at 245, 247. The State first tries to dodge that examination, and then to defang it. Both efforts should be rejected.

There is no dispute that the CDPAP Amendment permanently extinguishes fiscal intermediaries' contracts and renders them valueless. That should be the end of the impairment analysis. But the State—like the district court—suggests there was no substantial impairment because the CDPAP Amendment supposedly triggers a contractual termination provision that applies if "either Party is excluded, suspended or barred from participating in any government health care program." Ex. J § 11; *see* Resp. 18. The State even suggests that Applicants "ignore[d]" this part of the district court's analysis—while admitting in the same breath that Applicants *did* address it, and then proceeding to respond to Applicants' arguments. Resp. 3, 17, 19–21. As Applicants explained, the State (and the district court) fail to read this contract term according to its plain, narrow, and well-established meaning; the State's gross misinterpretation would lead to an absurd result whereby a fiscal intermediary's contract would terminate any time that fiscal intermediary is prevented from participating, for any reason, in any government healthcare program anywhere in the country—including for benign reasons entirely outside the entity's control, like geographic restrictions, financial-capacity requirements, or changes in the relevant statutory scheme. Appl. 28 n.8. The State has no answer to Applicants' argument on this score. Instead, the State tries to avoid the absurdity by proposing a *narrower* application. *See* Resp. 21 (discussing hypothetical exclusion from Medicare or Medicaid). The State also invokes general dictionary definitions of the individual terms "excluded" and "barred"—an approach that fails to account for the fact that the term of art "excluded, suspended, or otherwise barred" is used in the Medicaid context to

ensure "[p]rogram integrity," *see* 20 C.F.R. § 404.1503a, and throughout government contracting law requires "misconduct" or other "cause," *e.g.*, FAR subpt. 9.4; 12 C.F.R. pt. 367.[3]

Because the impairment here is indisputably substantial, the CDPAP Amendment is only constitutional if it can withstand a "careful examination" of its nature and purpose, evaluated via the five *Allied* factors—an analysis as to which the *State* bears an evidentiary burden. *See Allied*, 438 U.S. at 245, 247. The State fails to carry that burden with respect to the CDPAP Amendment.

As for the statute's supposedly significant public purpose, all the State can muster is the contention that it has "a significant and legitimate interest in controlling rising Medicaid costs." and that "New York reasonably decided to address these rising costs" through the CDPAP Amendment. Resp. 23. But mere cost savings and "efficiency" cannot justify the wholesale nullification of an entire industry's contracts. Appl. 28–32. As this Court has instructed, "[e]ven when the public welfare is invoked as an excuse," contract rights "cannot be cut down without moderation or reason[.]" *Allied*, 438 U.S. at 243 (citation and internal quotation mark omitted). The State does not even try to explain why it could not have cut costs in ways that were less destructive of contract rights.

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[3] The State references "other" contract provisions that require compliance with state law. Resp. 20–21. But the only logical reading of those provisions is that Applicants must abide by applicable regulations *while performing their contracts*. *See, e.g.*, Ex. J ¶ 36 ("During the term of this Agreement, FI shall comply with all applicable federal and state laws[.]"). Those provisions thus assume continuation—not termination—of the contracts.

Even if cost savings could in theory suffice to justify the State's destruction of an entire industry's contracts, the State offers no substantiation of the Amendment's supposed estimated cost savings—either contemporaneous or otherwise. Instead, it simply invokes the same budgetary line-item that the district court cited (and which Applicants already addressed, *see* Appl. 30), and then generally references "basic economic principles," rather than record evidence. Resp. 23.[4] But "trust me" does not qualify as the requisite "showing in the record," nor does it demonstrate that the Amendment reasonably and appropriately advances any purported efficiency goals. *Allied*, 438 U.S. at 245, 247.[5]

Moreover, the State *does not even mention* the five *Allied* factors, let alone respond to Applicants' explanation that, taken together, those factors establish the CDPAP Amendment's unconstitutionality. *See* Appl. 28–32. The State instead suggests that satisfaction of only one factor—whether the law is appropriately tailored to its purported end—suffices to defeat a Contracts Clause claim.[6] Not so. And even

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[4] In the district court, the State objected to Applicants' invoking axiomatic economic principles, but it reversed course on appeal and now purports to do the same. To the extent such principles are relevant, they plainly support Applicants' position that competition among fiscal intermediaries promotes efficiency and quality of services. The State ignores this competition over *services*, erroneously focusing on whether fiscal intermediaries "compete on price," which is a red herring. Resp. 22.

[5] According to the State, the district court's decision also was reasonable because other States "have one or very few fiscal intermediaries." Resp. 23. But this explanation is conspicuously conclusory. The State does not grapple with whether the experiment in other States worked or whether those other States' experiences are appropriate comparators to CDPAP—nor does it cite any court anywhere that has upheld those transitions in other States in the face of a constitutional challenge. Such bare assertions cannot possibly constitute a "showing in the record" that the contractual impairment "was necessary to meet an important general social problem." *Allied*, 438 U.S. at 247.

[6] The State baldly asserts—without citation—that it was "not require[d]" to "declare an emergency, conduct economic impact studies, or reject other cost-saving measures," Resp. 23–24, but it does not even try to grapple with the legal standards as to which Applicants raised those issues, *see* Appl. 28–31.

if it were, the Amendment is not appropriately tailored, nor is the advancement of its purported goals substantiated, as discussed.

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.

The decisions below drastically weaken the long-established standard for reviewing Contracts Clause claims and, if allowed to stand, would make it effectively impossible for such a claim to survive the pleadings stage. *See* Appl. 32–34. Courts would be required to rubberstamp any contract-impairing legislation, no matter the severity, so long as the government defendant makes a naked assertion of cost saving. *See, e.g.*, Ex. D at 23 ("[T]he CDPAP Amendment is not so irrational such that it offends the Constitution[.]").[7]

Pursuant to this standard, the State has no burden. Rather, it is the plaintiff's burden to allege facts demonstrating "bad faith" or "duplicitous[ness]." *Id.* at 21. But the application of such motives to the Contracts Clause analysis has no basis in reason or precedent—running counter to the "careful examination" this Court has required. *Allied*, 438 U.S. at 245. It is the rare case, moreover, where such a showing of bad faith could be made *at the pleadings stage*, before the plaintiff is entitled to any discovery and therefore must rely only on public statements. Under such a toothless

[7] The State seemingly conflates "nationwide importance" with "emergency," completely misunderstanding Applicants' argument. Resp. 22. The State elsewhere focuses on whether the district court's threshold contract interpretation error is of nationwide import. *See* Resp. 19. Setting aside that, as discussed, the district court's interpretative error could itself have widespread implications for government contracting, that clear legal error can be readily corrected on appeal, after which the court of appeals will necessarily have to consider the "reasonably and appropriately" prong of the analysis.

standard, the government would be able to impair any contract for any reason—even absent any showing that it is in the public good—so long as it keeps quiet about the bad stuff. That sort of extreme deference to the States is irreconcilable with "the high value the Framers placed on the protection of private contracts," which "enable individuals to order their personal and business affairs according to their particular needs and interests." *Ibid*.

Thus, the State's position—adopted by the district court and left undisturbed by the court of appeals' summary denial of Applicants' emergency motion—renders the Contracts Clause a dead letter, both from a substantive and a procedural perspective. The Contracts Clause violation is indisputably clear, and Applicants are likely to succeed. It is, moreover, likely that at least four Justices would vote to grant certiorari on this important federal question, and that the Court would reverse.

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 State does not dispute that the overwhelming weight of authority holds that alleged "violation[s] of constitutional rights" establish a "presumption of irreparable injury." *Agudath*, 983 F.3d at 636 (citation omitted); *see* Appl. 34–35 (collecting cases). Nor does it dispute that the loss of customer relationships constitutes irreparable harm, or that Applicants' current customers—all CDPAP consumers—will be snatched from them by operation of the challenged statute. Appl. 35 & n.11; *see* Ex. F ¶¶ 17–18, 22; Ex. G ¶¶ 14–15, 19; Ex. H ¶¶ 21–22, 33; Ex. I ¶¶ 15–16, 19. And the State does not dispute that the loss of an ongoing business is "[c]ertainly" the "type

of injury [that] sufficiently meets the standards for granting interim relief, for otherwise a favorable final judgment might well be useless." *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 932 (1975); *see* Appl. 36.[8] The Court need look no further.

Seeking to sidestep these severe (and quintessential) irreparable harms, the State speculates that Applicants "could provide fiscal intermediary services for government-funded programs other than CDPAP or transition their operations to another compatible market." Resp. 29–30 (citation omitted). In other words, the State says Applicants are not irreparably harmed by the destruction of their current businesses—which solely provide CDPAP services—because the vestigial, customer-less corporate shell that remains theoretically could be repurposed to start an entirely *new* business. If that were right, the uncontested caselaw about the destruction of a business constituting irreparable harm would not exist. The State's speculation is also factually and legally unsupported; indeed, it is *belied* by Applicants' unrebutted testimony that they will be forced to close their doors permanently once their contracts are extinguished and their business-relationships are severed. Ex. F ¶¶ 13, 22; Ex. G ¶¶ 12, 19; Ex. H ¶¶ 15, 33; Ex. I ¶¶ 12, 19.

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

In addition to the immediate and concrete threat of irreparable harm to Applicants, the public interest weighs strongly in favor of emergency injunctive relief. *See*

[8] Tellingly, the State does not even try to defend the district court's novel assertion that the total destruction of a business does not constitute irreparable harm if that business "operate[s] in an entirely state-created market." Ex. B at 2; *see* Appl. 36 n.13.

Appl. 37–40. The State does not dispute that it "does not have an interest in the enforcement of an unconstitutional law." *Id.* at 37 (collecting cases). Sidestepping that proposition, the State asserts an interest in enforcing laws "drafted and passed by the State's duly elected representatives." Resp. 27–28. But the case it cites addressed the inapposite question whether a State attorney general should have been permitted to intervene in appellate proceedings after the State official "who had been defending the law decided not to seek any further review." *Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 595 U.S. 267, 271 (2022). Even in that unrelated context, the Court merely explained that States have "the power to enact and enforce any laws that do not conflict with federal law." *Id.* at 277. It goes without saying that laws that violate the Constitution conflict with federal law.

The State also contends it "would need to make significant cuts to the Medicaid program" to compensate for lost savings. Resp. 27. As discussed, however, the record does not substantiate the State's *ipse dixit*. The State could have submitted a supporting affirmation below but, seemingly straining to avoid an evidentiary hearing on Applicants' preliminary injunction motion, chose not to. It cannot now backfill that evidentiary void by citing a district court decision from a separate case.

The Response, moreover, only underscores that the transition is significantly behind schedule and, absent a miracle (or an injunction), will place tens of thousands of vulnerable consumers at risk of being left without the care they need. The State's arguments to the contrary fall flat. The State asserts, for instance, that "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)," Resp. 28, but that is cold comfort to the tens of thousands who have not yet even begun registering, and who are days away from being left without a fiscal intermediary to facilitate critical care. *See* Appl. 38 (noting approximately 70,000 consumers had not even started the registration process one week ahead of the deadline). Moreover, the State's 80% figure fails to distinguish between the number of consumers who have merely "started" the process and an unknown number who have "completed" it, rendering the State's figure meaningless. And the State ignores the significantly larger number of personal assistants who have not even started the process. *See id.* at 38–39.[9]

While the State touts its newly instituted one-month grace period for late registrations, Applicants already explained that this purported fix is mere window dressing. *See id.* at 38 n.14. This late-registration window was intentionally designed *not* to extend the April 1 deadline, it will remain illegal for existing fiscal intermediaries to provide fiscal intermediary services as of that date, and any consumers who have not completed their transitions by April 1 will still be left without a fiscal intermediary. Instead, this eleventh-hour Band-Aid invites personal assistants to work for free (and without the oversight of a fiscal intermediary) and receive backpay *if* both the

[9] The State faults Applicants for citing a piece of evidence from February but ignores the myriad pieces of more recent evidence discussed in the application—evidence demonstrating that any efforts by the State and PPL to "address MCOs' concerns and facilitate a successful transition" (Resp. 28) have failed. *See* Appl. 38–39; *see also* 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/filefile/a/2025-03/sen.-comrie-cdpap-delay-sign-on-letter-updated-1.pdf ("Not only is there confusion amongst home care workers and care-recipients on new methods to receive adequate payment, care, and basic service requirements PPL will now provide, but there are also a host of statutory violations of state and federal law that PPL must address as they and the state Department of Health look to finalize the transition.").

consumer and the personal assistant complete their registrations within the thirty-day window.[10]

Finally, the State contends that Applicants seek "sweeping" relief and that enjoining the April 1 date would lead to "widespread confusion." Resp. 1, 2, 28. Not so. The limited relief Applicants seek—a *status quo* injunction to temporarily enjoin enforcement of the April 1 deadline and any further forced transition of consumers to PPL—will reduce chaos and confusion by pausing the State-induced scramble to transition tens of thousands more consumers and hundreds of thousands more personal assistants on a needlessly compressed timeframe. Such relief will allow consumers who have not yet transitioned to the Statewide Fiscal Intermediary to continue receiving services from their trusted fiscal intermediaries. And it will allow Applicants to remain in business long enough to prosecute their expedited appeal, petition this Court for certiorari if necessary, and vindicate their constitutional rights.

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The State tries to limit relief to just the four Applicants. In support of this request, the State cites inapposite caselaw in which this Court discusses the basic

[10] The State also implies that this Court should ignore the botched transition on the basis that it was caused by "fiscal intermediaries that spread false and deceptive information to consumers." Resp. 28. But the State cites no evidence for this argument; instead, it simply references cease-and-desist letters that the State *itself* prepared and that were not sent to Applicants. This issue was not briefed in the lower courts, and the State does not attach the referenced letters to its Response. Similarly, the State's reference to "recalcitrant fiscal intermediaries" who have not "cooperat[ed]" with the transition rings hollow in light of its admission that multiple state courts have granted TROs *in favor* of fiscal intermediaries who were unwilling to share their consumer data. *Compare ibid.*, *with id.* at 28–29. In any event, this transparent attempt to shift blame to the very entities whose constitutional rights are being trampled cannot change the fact that tens of thousands of vulnerable consumers are at imminent risk of losing their home care.

requirement that each plaintiff have standing, *Gill v. Whitford*, 585 U.S. 48, 73 (2018), and in which this Court stayed a district court's nationwide injunction, *McHenry v. Texas Top Cop Shop, Inc.*, 145 S. Ct. 1, 1 (2025). Of course, neither standing nor a nationwide injunction is at issue here. Rather, Applicants pleaded, and the application expressly presses, both "facial[] and as-applied" constitutional challenges. Appl. 16. And this Court undoubtedly has the power to enjoin or stay statutes and rules in their entirety when an applicant shows a likelihood of success on a facial challenge. *See, e.g.*, *Chrysafis v. Marks*, 141 S. Ct. 2482, 2482 (2021) ("This order enjoins the enforcement of . . . Part A of the COVID Emergency Eviction and Foreclosure Prevention Act[.]").[11]

CONCLUSION

For the reasons stated herein and in the initial application, 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.

[11] The State footnoted argument that "applicants cannot clearly show that the CDPAP Amendment is unconstitutional in all its applications"—because the application "does not discuss fiscal intermediaries that have contracts with local districts," Resp. 17 n.6—ignores that the application repeatedly references the CDPAP Amendment's "industrywide" taking and severe impairment of fiscal intermediaries' contracts, *e.g.*, Appl. i, ii, 13, 29, 31; *see also id.* at 19 ("the full value of the fiscal intermediary industry"). The State, moreover, does not even attempt to explain why Applicants' arguments would apply differently with respect to public-counterparty as opposed to private-counterparty contracts. If anything, public contracts are afforded even more protection under the Contracts Clause. *See Condell v. Bress*, 983 F.2d 415, 418 (2d Cir. 1993). If what the State is really arguing is that Applicants indisputably raised and pressed facial claims suffer from an unspecified pleading defect, such argument was not raised in the district court and thus is forfeited. *See Exxon Shipping Co. v. Baker*, 554 U.S. 471, 487 (2008); *Otal Invs. Ltd. v. M/V Clary*, 673 F.3d 108, 120 (2d Cir. 2012).

Dated: March 28, 2025

Respectfully submitted,

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