No. 17-1179

IN THE

Supreme Court of the United States

AMERICAN ECONOMY INSURANCE COMPANY, et al.,

Petitioners,

v.

STATE OF NEW YORK, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK COURT OF APPEALS

BRIEF FOR RESPONDENTS IN OPPOSITION

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Whether the closure of a statutory workers'-compensation fund implicated the Contracts Clause when New York's highest court has found that the closure affected no terms of the contracts between insurance carriers and employers?

2. Whether the closure of the fund constituted a taking when it appropriated no property interest, but instead merely reduced the value of carriers' contracts with their insureds?

3. Whether the closure of the fund satisfied due process when the New York Legislature found that the fund's continuing operation would impose hundreds of millions of dollars in unnecessary costs on businesses?

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INTRODUCTION

This case concerns the New York Legislature's authority to regulate the Special Fund for Reopened Cases, a statutory fund created by the Legislature and unique to New York's workers'-compensation system. While the Fund was open, private insurance carriers could apply to transfer their liabilities from workers'-compensation policies to the Fund in a narrow category of cases involving claims made long after the workplace injury occurred, if certain conditions were satisfied. When the costs of operating the Fund skyrocketed, the New York Legislature closed the Fund to future transfer applications. The New York Court of Appeals unanimously held that the Legislature could permissibly regulate the Fund in this manner under the Contracts Clause, the Takings Clause, and the Due Process Clause of the United States Constitution.

Certiorari is not warranted to review the Court of Appeals' decision. That decision creates no circuit split and presents no question of nationwide significance because it involves a unique statutory fund not found in any other State, interpretations of contractual provisions that do not warrant this Court's attention, and features specific to New York's workers'-compensation scheme. These case-specific circumstances make the case a poor vehicle for considering broad questions about the permissibility of retroactive legislation—particularly when there is also serious doubt that the Legislature's action had retroactive effect at all. In any event, the Court of Appeals faithfully applied this Court's precedents. Certiorari should be denied.

STATEMENT

1. When an employee is injured in the course of employment, New York's Workers' Compensation Law requires the employer to pay the employee certain benefits, including wage-replacement and medical benefits. *See* Workers' Comp. Law (WCL) § 10(1); *see also id.* §§ 13, 14, 16. To assure payment of these benefits, New York law requires employers to obtain insurance coverage. *See id.* § 50; *see also Matter of Raynor v. Landmark Chrysler*, 18 N.Y.3d 48, 53 (2011). Many employers obtain such coverage from an approved private insurance carrier.

Under a typical policy issued by a private carrier for this purpose, the carrier agrees to cover all benefits that an employer is required to pay under the WCL for injuries incurred during the policy term. Such policies generally cover *injuries* incurred only during a single year, but an injury may require the employer (and therefore the insurer) to pay *benefits* for years or decades after the policy year has ended—for instance, when an injured worker requires extended periods of medical care, or is entitled to wage replacement for many years after the injury. *See New York Workers' Compensation Handbook* § 1.08(1) (Lexis 2018); *see also* WCL § 13(a).

2. This case involves a narrow category of workers'-compensation claims: those that arise in so-called "reopened" cases. In New York, the Workers' Compensation Board is responsible for adjudicating disputed workers'-compensation claims and determining when an injured worker is entitled to benefits. *See Handbook*, *supra*, § 1.09. When the Board resolves a disputed claim and issues an award, it will formally "close" the case if it determines that no further

proceedings are contemplated for the underlying injury. *See Matter of Casey v. Hinkle Iron Works*, 299 N.Y. 382, 385 (1949). The closure of a case is a purely administrative action that does not by itself affect the employer's or carrier's liability. To the contrary, it is routine for payments under an award to continue for months or years after the underlying case has been closed. *See* Arthur Larson & Lex K. Larson, 13 *Larson's Worker's Compensation Law* § 131.01, at 131-3 (2014).

Despite having been closed, a case may "reopen" if "further issues arise that require Board resolution." *Handbook*, *supra*, § 11.06(1). For example, years after the Board closes a worker's case, the worker's injury could worsen, requiring additional medical treatment that was not anticipated when the case was closed. (*See* N.Y. Ct. of App. R. ("R.") 38 [¶ 59].[1]) Or the worker's earning power could increase, entitling him to more wage-replacement benefits. *See* 13 *Larson's Worker's Compensation Law*, *supra*, § 131.01. Reopening a closed case allows the Board to alter the worker's award "to correspond to a claimant's changed condition." *Id.*

3. Because claims in reopened cases may arise years after the case has been formally closed, they present unique challenges for both workers and carriers. Workers face the risk that the responsible carrier, who is contractually and statutorily obligated to cover any change in benefits, will no longer be in business when the worker's case reopens many years later. And carriers are burdened because claims in reopened cases are difficult to predict and may impose

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[1] The state court record is available from the New York Court of Appeals' Court-PASS website, which is available at https://www.nycourts.gov/ctapps/courtpass/Public_search.aspx.

financial obligations long after the relevant policy term has expired.

To address these concerns, the New York Legislature established the Fund for Reopened Cases in 1933—then and now the only fund of its kind in the nation. *See* 13 *Larson's Worker's Compensation Law*, *supra*, § 131.06(1), at 131-59. Rather than pay claims in reopened cases themselves, carriers could apply to transfer the case to the Fund and, if certain eligibility requirements were satisfied, the Fund would accept the transfer and pay the claims going forward.[2] *See Matter of De Mayo v. Rensselaer Polytech Inst.*, 74 N.Y.2d 459, 462-63 (1989).

Transfer to the Fund was not automatic. Rather, the Fund would accept an application for a transfer only after an "involved process" of adversarial administrative proceedings (R. 57-58 [¶¶ 22, 26]), in which the carrier bore the burden of showing that the criteria for transfer were met (R. 58 [¶ 29]). These criteria were often contested, and a "complex body of case law" developed regarding when a reopened case was eligible for transfer. (R. 60 [¶ 36].) Once a reopened case was transferred, the Fund assumed the responsibility of administering the case and paying claims going forward.

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[2] The Fund's eligibility criteria included time limitations: a case was eligible for transfer only if the reopened claim occurred more than (a) seven years after the injury and (b) three years after the last payment of wage-replacement benefits. WCL § 25-a(1); *see Handbook*, *supra*, § 2.18(1). In addition, a case could be transferred only if it had been "truly" closed, meaning that no further proceedings were contemplated at the time the Board designated the case as closed. *See Matter of Casey*, 299 N.Y. at 385; *see also Matter of Jones v. HSBC*, 304 A.D.2d 864, 866 (3d Dep't 2003).

The Fund was funded by assessments charged to carriers, *see* WCL § 151(1), (4), and carriers were in turn permitted to recoup the cost of those assessments by charging their insureds a surcharge on premium. *See Matter of Selective Ins. Co. of Am. v. State Workers' Comp. Bd.*, 102 A.D.3d 72 (3d Dep't 2012). The net result of this funding scheme was that, while carriers were formally liable for the Fund's costs, employers in New York ended up paying the lion's share of those costs.

4. The Fund was intended to provide relief in what was expected to be a limited number of cases; indeed, it was initially financed by a one-time assessment on insurance carriers. *See Handbook*, *supra*, § 2.18(3). But "the financing then provided for the Fund was not satisfactory and it proved less so as the years went by." (R. 125; *see* R. 167-168.)

As relevant here, the costs of operating the Fund grew enormously starting in 2006, when there was a huge "surge in reopened cases" that persisted over the next seven years. (R. 39 [¶ 68], 66 [¶ 59].) The parties dispute the cause of that increase, but not its effect: after 2006, the Fund's liabilities skyrocketed, and the annual assessments required to maintain the Fund more than tripled from less than $100 million in 2006 to nearly $315 million in 2013. Nearly the entire cost of this increase was borne by employers in the form of higher insurance premiums. (R. 66-67 [¶ 59].)

As a result of the Fund's skyrocketing costs, the Legislature decided to close the Fund in 2013. *See* Ch. 57, pt. GG, § 13, 2013 McKinney's N.Y. Laws 290, 401 (Thomson/West) (amending WCL § 25-a(1-a)). Carriers actively supported the closure, stating that the Fund "may have served a purpose when originally instituted"

but now "simply add[s] costs to the system without providing any benefits to injured workers." Am. Ins. Ass'n, Press Release, AIA Endorses Gov. Cuomo's Workers' Compensation Proposals (Jan. 23, 2013).

The closure was intended to have only prospective effect: rather than disturb any cases that carriers had already transferred to the Fund, the Legislature instead closed the Fund only to *new* transfer applications by carriers, based on newly reopened cases. And this prospective closure itself was delayed to avoid unsettling carriers' expectations: the Legislature gave carriers a nine-month grace period to submit applications for any cases that were then eligible for transfer, or would become eligible during the grace period. *See* Ch. 57, pt. GG, § 13, 2013 McKinney's N.Y. Laws at 401.

In the same legislation that closed the Fund to new applications, the Legislature also enacted other measures that substantially benefitted carriers. For example, the legislation streamlined the process for collecting assessments, and allowed carriers to more straightforwardly pass along those assessments to employers. (R. 401.)

5. a. Petitioners here are a group of companies that issue workers'-compensation policies under the Liberty Mutual brand. Petitioners filed this action in New York State Supreme Court seeking declaratory relief and a permanent injunction to keep the Fund open to new transfer applications. Petitioners alleged that their past premium had assumed the continuing existence of the Fund, and that preventing them from transferring their cases to the Fund thus imposed retroactive liability in violation of the Contracts Clause, the Takings Clause, and the Due Process Clause of the United States Constitution. (Pet. App. 9a.)

The state trial court dismissed petitioners' claims, concluding that the Fund's closure had no retroactive effect because it only barred the transfer of future claims in reopened cases, without undoing any past transfers. (Pet. App. 48a, 51a-52a.) The intermediate appellate court reversed and granted summary judgment to petitioners, declaring the Legislature's closure of the Fund unconstitutional on all three of petitioners' theories. (Pet. App. 29a-40a.)

b. The New York Court of Appeals unanimously reversed and ordered petitioners' claims dismissed. The court found "debatable" petitioners' characterization of the closure as having any retroactive effect, in light of the fact that the closure affected only future transfer applications based on newly reopened cases. (Pet. App. 13a.) But "even assuming arguendo that the [closure] has retroactive impact to the extent it imposes unfunded liability costs" on petitioners, the court found no constitutional violations. (Pet. App. 13a.)

First, the court rejected petitioners' Contracts Clause claim because it found that the Fund's closure "does not impair any term of plaintiffs' contracts with their insureds." (Pet. App. 16a.) Petitioners had never entered into any contract with the Fund itself to accept transfer applications in perpetuity. And no provision in petitioners' policies with their insureds entitled them to transfer their liabilities to the Fund, nor did any provision excuse petitioners from covering workers'-compensation claims in reopened cases if such a transfer were denied or otherwise unavailable. To the contrary, the plain terms of petitioners' contracts "require [petitioners] to pay all necessary benefits on reopened cases," including those "that otherwise would have qualified for transfer to the Fund" before its closure. (Pet. App. 17a-18a.) The court

thus held that the Fund's closure did not alter or impose any contractual liability on carriers in violation of the Contracts Clause; instead, the effect of the closure was to *preserve* petitioners' pre-existing contractual obligations. (Pet. App. 20a.)

Second, the court rejected petitioners' Takings Clause claim because they had not identified any cognizable property interest taken by the Fund's closure. Petitioners had expressly conceded that they were not asserting a taking based merely on the increased financial obligations allegedly imposed by the Fund's closure. (Pet. App. 22a.) Instead, petitioners argued that the Fund's closure effected a taking by reducing the value of their contracts. The court rejected that argument (Pet. App. 23a) as foreclosed by this Court's decision in *Omnia Commercial Co. v. United States*, 261 U.S. 502, 511 (1923). *See Palmyra Pac. Seafoods, L.L.C. v. United States*, 561 F.3d 1361, 1365 (Fed. Cir. 2009) ("[T]he government does not 'take' contract rights pertaining to a contract between two private parties simply by engaging in lawful action that affects the value of one of the parties' contract rights.").

Finally, the court concluded that the Fund's closure did not violate the Due Process Clause because it rationally advanced a legitimate government purpose—reducing costs for employers in New York. The court observed that closing the Fund would enable carriers, rather than the Fund, to pay and administer claims in reopened cases more efficiently, and would eliminate the high transaction costs associated with transferring cases to the Fund. These changes would directly reduce the costs that are ultimately passed on to employers. (Pet. App. 27a.)

REASONS FOR DENYING THE PETITION

A. The New York Legislature's Treatment of a Unique Statutory Fund Implicates No Circuit Split and No Issue of Recurring Importance.

This case presents questions that turn almost entirely on the unique circumstances of this dispute, making the case a poor vehicle to provide "guidance for future cases" (Pet. 5) about retroactive legislative changes to contractual obligations.

1. New York's statutory fund for reopened cases is the only fund of its kind in the nation. *See* 13 *Larson's Worker's Compensation Law*, *supra*, § 131.06(1), at 131-59. And the manner in which the New York Legislature closed the Fund was also unique: as the Court of Appeals acknowledged (Pet. App. 13a), some of those features indisputably operated only prospectively while others could arguably be characterized as having retroactive effect. While the court below assumed (without deciding) that the closure here had retroactive effect, any analysis of retroactivity in the unusual circumstances here will have limited significance for other cases.[3]

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[3] Amici insurers associations assert (Amicus Br. 26) that the resolution of this case will provide guidance for the closure of a different set of statutory funds, so-called second injury funds (SIFs). But second injury funds are significantly different from the Fund at issue here. Second injury funds provide reimbursements to carriers when a worker's covered injury is more severe—and thus more costly—because of the effects of an earlier injury. *See* WCL § 15(8); *see also* 8 *Larson's Worker's Compensation Law*, *supra*, § 90.01(1). These funds thus apply to new workers'-compensation awards, rather than to modifications of prior awards, as the Fund here does; and second injury funds provide

Moreover, the legal conclusions that petitioners ask this Court to review here turned on the unique facts of this case. The Court of Appeals' due process ruling relied on the unusual history of this Fund, which had seen an unprecedented surge of applications in recent years that had vastly increased the costs of operating the Fund until they were well out of proportion to its limited benefits. (Pet. App. 5a, 26a-27a.) The crux of the Court of Appeals' Contracts Clause ruling was its conclusion that the particular contracts between these petitioners and their insureds unconditionally obligated petitioners to pay benefits on reopened cases regardless of whether the Fund was available to accept transfer applications. (Pet. App. 18a.) And the court's Takings Clause holding turned on the absence of any statutory language conferring on petitioners the right to transfer their liabilities to the Fund in perpetuity. (Pet. App. 23a.) If any such contractual or statutory entitlements had existed, the Court of Appeals may very well have reached different legal conclusions—as the court itself suggested by distinguishing two of its earlier precedents that had invalidated retroactive legislation based on demonstrated interference with pre-existing contractual or statutory rights. (Pet. App. 19a-20a, 23a-24a.)

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reimbursements rather than accepting a transfer of carriers' liability, as the Fund here does. Moreover, it is speculative whether any State's second injury fund will be closed in the foreseeable future—only five such funds have closed in the last fifteen years—and if such a fund is closed, it is speculative whether the closure will be done in any way similar to the closure of the Fund in this case. Given these uncertainties, there is no need to grant certiorari here to provide guidance about the constitutional implications of closing a second injury fund.

None of the cases cited by petitioners involves circumstances remotely comparable to those presented here. Most of the cases do not involve a State's workers'-compensation system at all, let alone the closure of a statutory fund for paying workers'-compensation claims. And the facts of the cases that do involve workers' compensation are readily distinguishable. Unlike in this case, where the New York Court of Appeals found no impairment of any contract provision, the South Carolina and Wisconsin cases cited by petitioners found that the challenged statutes had materially altered existing insurance contracts. *See Harleysville Mut. Ins. Co. v. State*, 401 S.C. 15, 29-30 (2012) (mandating insertion of new provision); *Society Ins. v. Labor & Indus. Review Comm'n*, 326 Wisc. 444, 478-83, 2010 WI 68 ¶¶ 56-68 (2010) (altering implied contract term). And the Fifth Circuit invalidated a statute that retroactively imposed *new* financial obligations, not contemplated by any contract or statute, on insurers that had largely exited the marketplace. *See United States Fid. & Guar. Co. v. McKeithen*, 226 F.3d 412, 416-17 (5th Cir. 2000), *cert. denied*, 532 U.S. 922 (2001). Here, by contrast, the New York Court of Appeals found that the effect of the Fund's closure was to *preserve* petitioners' pre-existing contractual obligations, rather than to impose new ones. (Pet. App. 20a.) Thus, far from demonstrating any "division among lower courts" over the resolution of a common constitutional question (Pet. 30), these decisions instead all turned on their distinct facts. No conflict warranting this Court's review is presented by disparate legal conclusions drawn from disparate facts and circumstances.

2. This dispute is also a particularly inapt vehicle for clarifying this Court's decision in *Eastern Enterprises v. Apfel*, 524 U.S. 498 (1998), as petitioners propose. (Pet. 17-18.) What divided the Court in *Eastern Enterprises* was not some "overarching constitutional concern" about retroactive legislation (Pet. 18), but rather a specific legal question: whether the Takings Clause applied to a statute that merely imposed an obligation to pay money without appropriating a "specific property interest." *Eastern Enters.*, 524 U.S. at 541 (Kennedy, J., concurring in judgment and dissenting in part). This case provides no occasion to revisit that question because, as the New York Court of Appeals found, petitioners expressly "concede that the mere obligation to pay money . . . cannot constitute a taking." (Pet. App. 22a).

In any event, there is no meaningful split among the lower courts about how to resolve the question that divided this Court in *Eastern Enterprises*. Following the views of Justice Kennedy and the four dissenting justices in *Eastern Enterprises*, "all circuits that have addressed the issue have uniformly found that a taking does not occur when the statute in question imposes a monetary assessment that does not affect a specific interest in property."[4] *McCarthy v. City of Cleveland*, 626 F.3d 280, 285 (6th Cir 2010); *see also Parella v. Retirement Bd. of R.I. Emps.' Ret. Sys.*, 173 F.3d 46, 58 (1st Cir. 1999); *Berwind Corp. v. Commissioner of Social Sec.*, 307 F.3d 222, 234 n.16 (3d Cir. 2002), *cert. denied*, 538 U.S. 1012 (2003); *West Virginia CWP Fund v. Stacy*, 671 F.3d 378, 386 (4th

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[4] *United States Fidelity & Guaranty Co.* is not to the contrary, as the court there expressly adopted the view that a "taking must refer to an identifiable property interest or fund." 226 F.3d at 420.

Cir. 2011), *cert. denied*, 568 U.S. 816 (2012); *Swisher Int'l, Inc. v. Schafer*, 550 F.3d 1046, 1054 (11th Cir 2008), *cert. denied*, 558 U.S. 932 (2009); *Commonwealth Edison Co. v. United States*, 271 F.3d 1327, 1339 (Fed Cir. 2001) (en banc), *cert. denied*, 535 U.S. 1096 (2002).[5]

B. The Court of Appeals Faithfully Applied This Court's Precedents.

In any event, the Court of Appeals correctly applied state and federal law in dismissing petitioners' claims, and there is no reason to disturb the court's thorough and well-reasoned decision.

1. The Court of Appeals properly dismissed petitioners' Contracts Clause claim, based on its finding that no term of petitioners' contracts with their insureds was impaired by the closure of the Fund. (Pet. App. 17a-18a.) That holding rested on the court's interpretation of the plain language of petitioners' insurance contracts, which contained no provision that entitled petitioners to transfer their contractual liabilities to the Fund or that conditioned petitioners' obligations to their insureds on the Fund's acceptance of such transfers.

The New York Court of Appeals' interpretation of the contract language is entitled to "great weight" in this Court. *General Motors Corp. v. Romein*, 503 U.S. 181, 187 (1992) (quotation marks omitted). While this Court is not strictly bound by that interpretation for

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[5] The state courts that have addressed this question are in accord. *See AFT Michigan v. State*, 497 Mich. 197, 218 (2015); *Fitchburg Gas & Elec. Light Co. v. Department of Pub. Util.*, 467 Mass. 768, 779-80 (2014); *Empress Casino Joliet Corp. v Giannoulias*, 231 Ill. 2d 62, 81-85 (2008).

purposes of determining whether a contract has been made that implicates the Contracts Clause, *id.*, it will not disturb a state court's contract interpretation unless it is "manifestly wrong," *Hale v. Iowa State Bd. of Assessment & Review*, 302 U.S. 95, 101 (1937) (Cardozo, J.)—and no decision from this Court has done so for eighty years, since *Indiana ex rel. Anderson v. Brand*, 303 U.S. 95, 100-07 (1938).

Petitioners have identified no manifest error in the Court of Appeals' interpretation of their contracts warranting the extraordinary result of overriding that court's findings. As the court below correctly reasoned, petitioners' contracts were worded broadly to make petitioners liable for "all benefits required of their insureds [i.e., the employers] by the Workers Compensation Law." (Pet. App. 17a.) This language was broad enough to "obligate [petitioners] to cover the costs of liability on any reopened case that otherwise would have qualified for transfer to the Fund," regardless of whether or not the Fund continued to accept those cases. (Pet. App. 17a.) And no language in the contracts limited petitioners' liability based on the Fund's operation—indeed, those contracts did not even mention claims in reopened cases, let alone condition petitioners' obligation to cover those claims.[6]

Petitioners argue that a provision in their contracts making them liable for benefits owed by their insureds under the WCL "in effect during the policy period" implicitly incorporated the statutory opportunity to transfer claims in reopened cases. (Pet.

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[6] Petitioners' insurance contracts contain a lengthy list of specific exclusions from coverage; that list contains no provision absolving petitioners of their obligation to pay claims in reopened cases. (Pet. App. 95a-96a, 99a-100a.)

20.) But the New York Court of Appeals specifically rejected that argument (Pet. App. 20a-21a), and this Court should not disturb that determination. This Court also rejected a similar argument in *General Motors Corp.*, holding that the employment contracts in that case did not implicitly incorporate the substantive provisions of the State's workers'-compensation law in effect at the time the contracts were formed. 503 U.S. at 187-91. To conclude otherwise, the Court explained, would transform *every* statutory amendment into a Contract Clause claim, "severely limit[ing] the ability of state legislatures to amend their regulatory legislation." *Id.* at 190. The same result is warranted here.

Petitioners and their amici claim that under state-court precedents the mere reopening of a case extinguished carriers' pre-existing liability for claims arising from such cases (Pet. 9; *see also* Amicus Br. for Insurers Ass'ns 11-13, 19), but they are mistaken. The New York Court of Appeals' rejection of that argument here (Pet. App. 18a) is dispositive of the meaning of state law and not subject to review in this Court. *See Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975). In any event, the state-court decisions cited by petitioners and their amici stand at most for the proposition that liability for claims in reopened cases shifted from carriers to the Fund only *after* a lengthy and complicated administrative process determined that the conditions for such a transfer were satisfied—not the moment a case was reopened. *See, e.g.*, *Matter of De Mayo*, 74 N.Y.2d at 462-63 (recognizing that liability transfers "[o]nce section 25-a(1) has been triggered").

2. The Court of Appeals also correctly dismissed the Takings Clause claim, based on its conclusion that petitioners had no vested contractual or statutory

right to transfer claims in reopened cases that was impaired by the Fund's closure. (Pet. App. 23a.) In the court below, petitioners asserted a taking of their "constitutionally protected interest in their insurance contracts, the diminution in whose value, like the diminution in the value of any other type of property, can constitute a taking." (N.Y. Ct. of App. Resps.' Br. 52 (quotation marks omitted).) But the Court of Appeals faithfully applied this Court's precedents in rejecting this argument, holding that "the government does not 'take' contract rights pertaining to a contract between two private parties simply by engaging in lawful action that affects the value of one of the parties' contract rights." (Pet. App. 23a (quotation marks omitted).) This principle follows from this Court's decision in *Omnia Commercial Co.*, which held that the government does not "take" any contractual interest unless it has "appropriated" the contract—i.e., acquired "the obligation or the right to enforce" it. 261 U.S. at 511. *Compare Brooks-Scanlon Corp. v. United States*, 265 U.S. 106, 119-21 (1924) (taking occurred where government requisitioned private contract for the production of a ship), *with NL Indus., Inc. v. United States*, 839 F.2d 1578, 1579 (Fed. Cir. 1988) (no taking where government interference with contract amounted to a "frustration of a [claimant's] business").

Petitioners do not challenge that holding here. Instead, petitioners now change tack to argue that the Fund's closure constitutes a taking because it "impairs petitioners' property by requiring them to pay money for claims that were beyond their clear contractual obligations." (Pet. 29.) But as already explained, petitioners expressly waived this argument below. See *supra* at 8, 12. And in any event, petitioners' new

argument fails because the Fund's closure did not require them to pay claims in reopened cases; as the Court of Appeals held (Pet. App. 20a), that obligation to pay arose from petitioners' contracts. Far from imposing any new payment obligation, the Fund's closure thus merely preserved petitioners' pre-existing contractual liability.

3. Finally, the Court of Appeals correctly dismissed petitioners' Due Process Clause claim, holding that the Fund's closure was justified by a rational legislative purpose—i.e., reducing costs for New York employers by "hundreds of millions of dollars" a year. (Pet. App. 26a (quotation marks omitted).) There was no error in that conclusion.

Petitioners criticize (Pet. 13) the legitimacy of a separate rationale that the Court of Appeals did not rely upon—the Governor's assertion that closing the Fund would eliminate a "windfall" for carriers (Pet. App. 88a)—but the validity of that rationale is immaterial to the due process inquiry. As the Court of Appeals correctly held, the Fund's closure satisfies rational basis review so long as it was "rationally related to *any conceivable* legitimate State purpose." (Pet. App. 27a (quotation marks omitted).) *See, e.g.*, *F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307, 314-15 (1993). And as the court below found (Pet. App. 27a n.6), "the parties and the amici curiae agree that the net result [of the closure] would be savings to New York businesses." *See also* Scott J. Lefkowitz & Steven G. McKinnon, *New York State Workers Compensation Board Assessments: A Discussion of Assessments and Recent Increases Impacting Employers* 9 (Apr. 2013) (discussing cost savings).

Petitioners dispute the degree of savings that will result, and question the Legislature's judgment that those cost savings justify closing the Fund. (Pet. 26.) But these criticisms are not enough to overcome the deferential standard for rational basis review, which does not permit courts "to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought." *Williamson v. Lee Optical of Okla. Inc.*, 348 U.S. 483, 488 (1955); *see also City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976) ("[T]he judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines.").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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