No. 26-

In the Supreme Court of the United States

THE OPERATING ENGINEERS TRUST FUND OF WASHINGTON, D.C., ET AL.,
Petitioners,

v.

UNITED STATES,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Affordable Care Act created a transitional "reinsurance" program to subsidize commercial health insurers' extension of coverage in individual-insurance markets. Congress financed this program in part by requiring group health plans to contribute billions of dollars to it, even though they were ineligible to benefit. Other federal laws require group health plans to hold all of their assets in trust to cover healthcare costs for employees and dependents. Thus, for group health plans like the two petitioners here, the contributions mandated by the ACA came from—and could only come from—assets held in trust by the plans. The petitioners brought this suit to seek just compensation under the Fifth Amendment for the taking of their trust property to finance the reinsurance program.

In the decision below, the Federal Circuit—the only circuit with jurisdiction over such claims—held that the plans have no recourse under the Takings Clause. The Federal Circuit reasoned that the ACA did not effectuate a taking of the plans' private property on the theory that the ACA itself was "indifferent" as to where the plans' contributions to the reinsurance scheme came from, even though other federal statutes guaranteed that the moneys could only be paid from trust assets. App. 9a. The question presented is:

Whether the ACA's requirement that group health plans contribute billions of dollars to subsidize reinsurance for third parties was a taking of the plans' private property.

LIST OF PARTIES TO THE PROCEEDINGS

The petitioners (plaintiffs-appellants below) are the Operating Engineers Trust Fund of Washington, D.C., and the Stone & Marble Masons of Metropolitan Washington, D.C. Health and Welfare Fund.

The plaintiffs in the district court also included the Electrical Welfare Trust Fund and a certified class of similarly situated parties. Those plaintiffs were not parties to the judgment in the court of appeals and are not petitioners in this Court.

The respondent (defendant-appellee below) is the United States of America.

RELATED PROCEEDINGS

This case is related to the following proceedings:

- *Electrical Welfare Trust Fund v. United States*, No. 16-2186 (D. Md.), judgment entered July 21, 2017
- *Electrical Welfare Trust Fund v. United States*, No. 17-1937 (4th Cir.), judgment entered October 23, 2018
- *Operating Engineers Trust Fund of Washington, D.C. v. United States*, No. 17-cv-1732 (Fed. Cl.), stipulated dismissal on March 6, 2019
- *Electrical Welfare Trust Fund v. United States*, No. 19-cv-353 (Fed. Cl.), judgment entered July 10, 2023
- *Electrical Welfare Trust Fund v. United States*, No. 23-2105 (Fed. Cir.), remanded for settlement on December 20, 2023
- *Operating Engineers Trust Fund v. United States*, No. 24-1107 (Fed. Cir.), judgment entered October 2, 2025

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INTRODUCTION

This case presents an important question of constitutional law affecting the group health plans that millions of Americans rely on to pay for medical expenses for themselves and their families. Federal law has long required that group health plans hold all of their assets in trust for the benefit of plan participants and other beneficiaries. Plans use those trust assets to pay for the medical care that workers have been promised.

The Affordable Care Act, however, treated these trust assets as ripe for the taking. It forced group health plans to fork over $10 billion in plan assets—assets that were necessarily held in trust for beneficiaries—as part of a new government-mandated "reinsurance" program. But this program didn't work like a typical risk-spreading program, where everyone contributes and anyone can benefit. By authorizing payments to commercial insurers based on their coverage of high-risk individuals, the program was designed so that *only* commercial insurers would benefit from it. Group health plans do not operate in the individual-insurance market, do not deny healthcare to high-risk individuals, and could not receive any reinsurance payments. Group health plans were thus required to contribute billions of dollars to a program from which they received nothing.

The ACA's raiding of group health plans is flagrantly unconstitutional. The federal government cannot take private property to fund subsidies to third parties—robbing Peter to pay Paul—without triggering the protections of the Fifth Amendment's Takings Clause. As a matter of black letter trust law, a group health plan and its trustees have a property interest in the assets they are required by federal law to hold in trust. That is what a trust is: a relationship in which the trustees have a legal

interest in specific property and a fiduciary duty to keep and use that property for a specific purpose to benefit a third party—here, the employees and other beneficiaries covered by the plan. Federal laws that long predate the ACA require group health plans to hold their assets in trust for the sole and exclusive benefit of the employees whose paycheck contributions funded the trusts in the first place, and for the employees' families. When the federal government—or a state or local government—invades a group health plan's property interest and takes trust assets for public purposes, the Fifth Amendment demands the payment of just compensation.

In the decision below, the Federal Circuit nonetheless concluded that no taking occurred here. The court viewed this case as involving merely an "obligation to pay money" and concluded that the petitioners lack any cognizable property interest protected by the Takings Clause because "money is fungible." App. 7a–8a. That reasoning is both wrong and dangerous. It is well settled that the Takings Clause protects private property held in a specific, identifiable trust, as was true here—even when the property is money. As this Court has explained, the Takings Clause applies when "the government commands the relinquishment of funds linked to a specific, identifiable property interest such as a bank account." *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 614 (2013). That principle should have resolved this case, because the ACA mandated that group health plans relinquish funds that were necessarily linked to the plans' "specific, identifiable property interest" in their trusts and the assets held in those trusts. *Id.*

The Federal Circuit was also wrong to focus on the language of the ACA in a vacuum. When Congress identified group health plans as contributors to the

reinsurance program, it knew that it was targeting trust funds because it has long imposed on them separate statutory requirements to hold all of their assets in trust. The combined effect of those federal laws ensured that the contributions mandated by the ACA would come—and could only come—from trust property. Requiring a group health plan to contribute trust assets for public purposes is a taking, regardless of whether the taking is accomplished through the operation of two federal laws or just one. To conclude otherwise leaves a massive loophole in the Takings Clause.

The decision below disregards those principles, invites future abuse, and deprives millions of hard-working Americans of money they contributed into group health plans to pay for medical care for themselves and their families. Indeed, the consequences of the Federal Circuit's error go beyond the $10 billion that the government illegally seized from group health plans in the ACA. If left to stand, the decision below will also provide a roadmap for the government to target trust assets for seizure in the future—with potentially sweeping consequences. And given the Federal Circuit's exclusive appellate jurisdiction over monetary claims against the government, there is no prospect of further percolation. This Court's intervention is thus urgently needed.

OPINIONS BELOW

The Federal Circuit's opinion (App. 1a–12a) is reported at 153 F.4th 1369. The Court of Federal Claims' opinion at summary judgment (App. 26a–58a) is reported at 166 Fed. Cl. 709, and its order denying reconsideration (App. 13a–25a) is reported at 167 Fed. Cl. 174. The Claims Court's earlier opinion on dismissal (App. 59a–108a) is reported at 155 Fed. Cl. 169.

JURISDICTION

The Federal Circuit entered judgment on October 2, 2025. On December 3, 2025, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including Sunday, March 1, 2026. This Court's jurisdiction is invoked under 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment provides in relevant part: "nor shall private property be taken for public use, without just compensation." U.S. Const. amend. V.

Pertinent statutory provisions are set forth in the petition appendix at App. 111a–21a.

STATEMENT

I. Legal background

This case concerns a provision in the Patient Protection and Affordable Care Act of 2010 (ACA), Pub. L. No. 111-148, 124 Stat. 119, requiring group health plans to contribute money to a transitional reinsurance program that exclusively benefitted commercial health insurers operating in the individual-insurance market, not the group health plans themselves. Federal laws predating the ACA already required the affected group health plans to hold their assets in trust for the benefit of the employees and families covered by the plans. The combined effect of those laws and the ACA was, therefore, to mandate that plan assets—moneys held in trust by the plans, representing the paycheck contributions of millions of employees—be transferred to a federal program to subsidize third parties.

A. ERISA and Taft-Hartley

The ACA provisions at issue apply to "group health plans." 42 U.S.C. § 18061(b)(1)(A). The ACA defines that term to mean a benefits plan covered by the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001 *et seq.*, that "provides medical care … to employees or their dependents." 42 U.S.C. § 300gg-91(a)(1); *see id.* § 18021(b)(3).[1]

ERISA is the main federal law regulating the health and pension plans that employers or unions sponsor for the benefit of employees. ERISA aims to "protect … the interests of participants in employee benefit plans and their beneficiaries" by "establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans," drawn from the common law of trusts. 29 U.S.C. § 1001(b); *see Cent. States, Se. & Sw. Areas Pension Fund v. Cent. Transp., Inc.*, 472 U.S. 559, 570 (1985). As particularly relevant here, ERISA requires that "all assets of an employee benefit plan shall be held in trust by one or more trustees" for the benefit of plan participants and their beneficiaries, subject to limited exceptions. 29 U.S.C. § 1103(a). The trustees of the plan have a fiduciary duty to manage those assets "for the exclusive purpose" of providing "benefits to participants and their beneficiaries" and defraying the "reasonable expenses of administering the plan." 29 U.S.C. § 1104(a)(1)(A); *see id.* § 1103(c)(1) (requiring that "the assets of a plan … be held for the exclusive purposes of providing benefits to participants in the plan and their

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[1] Unless otherwise noted, all internal quotation marks, citations, alterations, brackets, and ellipses have been omitted from quotations throughout this petition.

beneficiaries and defraying reasonable expenses of administering the plan").

The relevant ACA provisions also encompass a type of group health plan known as a "multiemployer plan," established under the Labor-Management Relations Act of 1947 (Taft-Hartley), 29 U.S.C. §§ 141 *et seq.* Like other ERISA employee benefit plans, a multiemployer plan established under Taft-Hartley must hold all of its assets in "trust … for the sole and exclusive benefit of the employees" who fund the trust "and their families and dependents." 29 U.S.C. § 186(c)(5). Employers may agree to create such a plan with one or more unions in collective bargaining, and the trust fund is governed by a board of trustees split equally between representatives of labor and management. *See id.* The vast majority of employers contributing to Taft-Hartley trust funds are small employers, often in the construction, agriculture, mining, manufacturing, or trucking industries. CAJA 294–95.

Taft-Hartley trusts can be established for a variety of benefits, including pensions. 29 U.S.C. § 186(c)(5)(A). The Taft-Hartley trusts at issue here are those that hold assets to pay for the "medical or hospital care" of employees and their families. *Id.* Those trusts constitute "multiemployer plan[s]" as defined in ERISA, 29 U.S.C. §§ 1002(37), 1301(a)(3), and "group health plan[s]" as defined in the ACA, 42 U.S.C. § 300gg-91(a)(1). Because Taft-Hartley trusts are covered by ERISA, the trustees of such a plan are fiduciaries who are subject to the obligation, described above, to use the assets of the plan exclusively for the benefit of plan participants and beneficiaries. *See, e.g.*, *Local 144 Nursing Home Pension Fund v. Demisay*, 508 U.S. 581, 592 (1993).

B. The ACA's reinsurance scheme

The ACA made significant changes to the market for individual insurance. Among other things, the law generally prohibited insurers from denying coverage to individuals based on preexisting health conditions. *See King v. Burwell*, 576 U.S. 473, 481–83 (2015). The ACA also included three "risk-mitigation programs" designed to stabilize the newly reformed insurance markets, which were expected to see an influx of high-risk individuals needing insurance. *Maine Community Health Options v. United States*, 590 U.S. 296, 302 (2020). Two of those programs—including the risk-corridors program at issue in *Maine Community*—were "closed systems," in the sense that they involved mandating contributions only from entities that could be eligible to benefit from the programs. CAJA 263. This case concerns the one program to operate differently: the transitional reinsurance program, or TRP. *Id.*

For the transitional reinsurance program alone, Congress devised a scheme under which group health plans (funded by employee contributions) were required to provide billions of dollars in annual subsidies to commercial insurers doing business in the individual-insurance markets. Specifically, for each benefit year from 2014 to 2016, the ACA required "health insurance issuers" and "third party administrators on behalf of group health plans" to pay into a reinsurance program. 42 U.S.C. § 18061(b)(1)(A). The ACA provided the program would pay out *only* to "health insurance issuers," not group health plans—who received nothing. *Id.* Commercial insurers lobbied heavily for that result, describing the payments from group health plans as a way of "subsidizing premiums in the individual market." CAJA 266 (emphasis omitted).

The ACA authorized the Department of Health and Human Services to adopt regulations to implement the program and to establish formulas for contributions and payments. *See* 42 U.S.C. §§ 18041(a)(1)(C), 18061(b)(2). "Between July 2011 and March 2014, HHS published three sets of proposed and final rules defining the group of entities that were required to contribute to the TRP." App. 31a–32a. In its third final rule, the agency mandated contributions into the reinsurance scheme from (1) any "health insurance issuer"; (2) for the 2014 benefit year, any "self-insured group health plan … whether or not it uses a third party administrator"; and (3) for the 2015 and 2016 benefit years, any "self-insured group health plan … that uses a third party administrator." 79 Fed. Reg. 13744, 13834 (Mar. 11, 2014).[2]

The statute refers to reinsurance contributions from "*third party administrators* on behalf of group health plans." 42 U.S.C. § 18061(b)(1)(A) (emphasis added). In the preamble to the 2014 final rule, HHS acknowledged that the "better reading" of the text is that only those group health plans that use a third-party administrator can be required to contribute, and that "a self-insured, self-administered plan should not be a contributing entity." 79 Fed. Reg. at 13773. The agency nonetheless

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[2] In general, a health benefits plan covered by ERISA can be operated in either of two ways. The plan may elect to "purchase … insurance" from a third party to cover the cost of paying claims when people covered by the plan get sick and need benefits. 29 U.S.C. § 1002(1). Or the plan's sponsor, such as an employer or union, may assume the financial risk of paying benefits as claims arise—an arrangement known as a self-insured or self-funded plan. *See, e.g.*, *Gobeille v. Liberty Mut. Ins. Co.*, 577 U.S. 312, 317 (2016). Under either setup, many plans and insurers use a "third-party administrator" to handle the process of receiving, reviewing, and paying claims for benefits under the plan. *See id.*

insisted that the text could "reasonably be interpreted in more than one way," and it chose to continue to require contributions from self-insured, self-administered plans for the 2014 year. *Id.*

A contributing entity's "reinsurance contribution" was determined by multiplying a fixed amount by the number of "covered lives" for that entity. 45 C.F.R. § 153.405(a). The required contributions were $63 per covered life for 2014, $44 per covered life for 2015, and $27 per covered life for 2016. App. 33a.

Over its three-year lifespan, the transitional reinsurance program took in more than $20 billion from contributing entities, with approximately $10 billion coming from group health plan trust funds. *See* Cong. Rsch. Serv., R44690, *The Patient Protection and Affordable Care Act's (ACA's) Transitional Reinsurance Program* 16–17 (2017) (CRS Report); Pet. C.A. Opening Br. 3.[3] The vast majority of those funds were paid out to commercial issuers operating in the individual-insurance market, although about $500 million was also deposited into the Treasury. CRS Report 6, 16; *see* 42 U.S.C. § 18061(b)(3)(B)(iii)–(iv) and (b)(4). None of the money went to the group health plans who were required to contribute to the program.

II. Procedural background

A. The petitioners are two Taft-Hartley trust funds established to provide medical benefits to covered employees and their families: the Operating Engineers

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[3] The $10 billion figure is derived from documents the government produced in discovery showing the payments made by each of the thousands of self-funded group health plans who were forced to contribute to the reinsurance program. *See* D. Ct. Doc. 83, at 2, 4–5 & Ex. 1 (Oct. 28, 2022).

Trust Fund of Washington, D.C., and the Stone & Marble Masons of Metropolitan Washington, D.C. Health and Welfare Fund. App. 27a.

Both are "group health plans" as defined in the relevant ACA provisions, and both were required to contribute to the reinsurance program for each of its three years. App. 29a–30a. The Operating Engineers Trust Fund was forced to contribute a total of $323,154, and the Stone & Marble Masons Fund was forced to contribute a total of $46,777. App. 33a–34a. And because the plans are required by federal law to hold their assets in trust, the contributions that the ACA required of them necessarily came from "monies held in their respective trust accounts." App. 34a.

The plans brought this putative class action in the Court of Federal Claims in 2019, alleging that the ACA's mandate for group health plans to contribute to the transitional reinsurance program violated the Fifth Amendment's prohibition on taking private property "without just compensation." U.S. Const. amend. V; *see* App. 34a, 37a–38a.

The plans were joined as plaintiffs by the Electrical Welfare Trust Fund, which was differently situated in one important respect. The petitioners are self-funded plans that use third-party administrators. By contrast, the Electrical Welfare Trust Fund is a self-funded, self-administered plan (with no third-party administrator). *See* App. 64a–65a. The Electrical Welfare Trust Fund contended that HHS's rule requiring self-administered plans to contribute to the reinsurance program was contrary to the statutory text and constituted an illegal exaction. App. 81a–87a. The Claims Court agreed with that contention; certified a class of similarly situated self-administered group health plans who had been injured by

the agency's illegal exaction; and entered partial final judgment in the class's favor. *See* App. 15a n.3. The government ultimately entered into a settlement agreement with the illegal-exaction class, which the Claims Court approved in 2024. *See Elec. Welfare Trust Fund v. United States*, 171 Fed. Cl. 362, 374–75 (2024). Those self-administered plans are not parties here.[4]

B. For the non-self-administered Taft-Hartley plans who are the petitioners here—the Operating Engineers Trust Fund and the Stone & Marble Masons Fund—the litigation continued on the plans' takings claims. The plans explained that they were required by law to hold all of their assets in trust for the benefit of participating employees and their families, as reflected in the written instruments establishing and governing each trust fund. App. 29a–30a; *see* Pet. C.A. Opening Br. 10–13 (reviewing plan documents). The plans argued that the assets they hold in trust are "property," and the government unlawfully took that property by requiring the plans to contribute to the ACA's reinsurance program. App. 40a–41a.

The Claims Court rejected those arguments at summary judgment and accordingly dismissed the plans' motion for class certification as moot. App. 26a–58a. The Claims Court held that the plans lack any cognizable property interest in the moneys they were required to pay because "a property interest in money alone is generally not cognizable under the Takings Clause." App. 42a. The Claims Court acknowledged a line of cases,

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[4] Nor does this case involve any fully insured plans. For a fully insured plan, the ACA's mandate of reinsurance contributions fell on the plan's insurer, which could then seek to pass its costs on to the plan but was not required to do so under the ACA. *See* p. 8, *supra* (citing the HHS regulation defining contributing entities).

including decisions of this Court, establishing that "one's property interest in a *specific fund* of money … is cognizable under the Takings Clause." App. 44a (original emphasis). But it viewed those cases as implicated only when the government "appropriates the fund *in toto*." *Id.* And although the ACA mandated that group health plans contribute billions of dollars of trust assets that would otherwise have gone to employee healthcare, the ACA did not require that any specific funds be "appropriated in their entirety." App. 45a.

The Claims Court also understood the plans to be arguing that a taking had occurred because these plans hold their assets in particular "trust accounts." App. 47a. The court stated that the plans had waived that argument but also rejected it on the merits. App. 52a–56a. The plans moved for reconsideration to clarify that their arguments had not been waived. The Claims Court declined to reconsider, App. 13a–25a, and the plans appealed.

C. The Federal Circuit rejected much of the Claims Court's reasoning but nonetheless affirmed. App. 1a–12a. In particular, the Federal Circuit agreed with the plans that the Claims Court had misunderstood the relevant precedents in holding that "a government actor only implicates one's property interest in a specific fund when it appropriates the fund *in toto*." App. 5a. The Federal Circuit found "no support" for that theory in prior decisions of this Court. App. 11a.

The Federal Circuit nonetheless affirmed on the alternative theory that "this case involves the mere obligation to pay money," App. 8a, and "the Takings Clause does not apply to legislation requiring the payment of money," App. 7a–8a. The Federal Circuit acknowledged the plans' contention that, as self-insured plans, ERISA and Taft-Hartley require them to hold

"100% of their assets in trust" for the "single purpose" of "provid[ing] health and welfare benefits to covered workers and their families." App. 8a–9a. But in the court of appeals' view, the takings analysis must instead focus on the text of the ACA, which required group health plans to "make payments" into the reinsurance program, 42 U.S.C. § 18061(b)(1)(A), while being "indifferent as to how the regulated entity elects to comply or the property it uses to do so," App. 9a (quoting *E. Enters. v. Apfel*, 524 U.S. 498, 540 (1998) (Kennedy, J., concurring in the judgment and dissenting in part)). The Federal Circuit further reasoned that any separate federal requirement imposed on the plans to "keep their assets in trust" did not "transform" the ACA's "obligation to pay into a taking." *Id.*

Finally, the Federal Circuit found that the result would be the same even focusing on the plans' trust accounts. App. 11a–12a. On that point, the Federal Circuit agreed with the Claims Court that "one simply cannot have a cognizable interest in money itself," so that being required to pay the money "from a certain account" does not matter for Fifth Amendment purposes. App. 12a.

REASONS FOR GRANTING THE PETITION

I. The Federal Circuit's conclusion that the plans lack a cognizable property interest in the moneys they hold in trust is wrong and dangerous.

The ACA's transitional reinsurance program required group health plans like the two petitioners to pay billions of dollars to subsidize large commercial health insurers. The group health plans undisputedly got nothing out of the reinsurance program, so the mandated contributions cannot be defended as legitimate user fees for a government service. And for self-funded plans like the petitioners, the moneys the plans were required to

contribute could only have come from assets the plans were holding in trust, as required by federal law.

Commanding group health plans to surrender billions of dollars of trust assets, to be used in a federal program subsidizing third parties, is a taking of "private property … for public use," for which the Fifth Amendment requires the payment of "just compensation." U.S. Const. amend. V. Traditional principles of trust law make clear that group health plans have a property interest in the assets they hold in trust for the benefit of employees. Congress cannot freely take that private property whenever it wishes to subsidize third parties—at least not without paying just compensation. And that is equally true when the taking occurs as a result multiple federal laws, as was true here, with one statute requiring the payment of money and other statutes ensuring that the payment could only come from assets held in trust.

A. Group health plans have a property interest in the assets they hold in trust.

The Takings Clause of the Fifth Amendment states that "private property" shall not be "taken for public use, without just compensation." U.S. Const. amend. V. "Because the Constitution protects rather than creates property interests, the existence of a property interest is determined by reference to existing rules or understandings that stem from an independent source such as state law." *Phillips v. Wash. Legal Found.*, 524 U.S. 156, 164 (1998). Here, those background principles all confirm that group health plans have a property interest in the assets they hold in trust.

The legal concept of a trust presupposes and depends on *property* interests. "In its simplest form, a trust is created when one person (a 'settlor' or 'grantor') transfers property to a third party (a 'trustee') to

administer for the benefit of another (a 'beneficiary')." *N.C. Dep't of Revenue v. Kimberly Rice Kaestner 1992 Fam. Tr.*, 588 U.S. 262, 265 (2019). The trustee has a "legal interest" in the property and a fiduciary duty to keep and use it for the benefit of the beneficiary, who has an "equitable interest" in the trust property. *Id.*; *see, e.g.*, Amy Morris Hess, George Gleason Bogert & George Taylor Bogert, *Bogert's The Law of Trusts and Trustees* § 1 (2025) (*Bogert's*) (a trust is "a fiduciary relationship in which one person holds a property interest, subject to an equitable obligation to keep and use that interest for the benefit of another"); 1 Restatement (Third) of Trusts § 2 (2003) (a trust is "a fiduciary relationship with respect to property") (Restatement).

Accordingly, a trust "cannot be created unless there is trust property." Restatement § 2 cmt. i. That principle is ancient and well predates ratification of the Fifth Amendment. Commentators have traced the "modern conception of the trust" to a type of conveyance of interests in land in medieval England known as a *use*, "by which property was given to one in use for another." Ronald J. Scalise, Jr., *Some Fundamentals of Trusts: Ownership or Equity in Louisiana?*, 92 Tul. L. Rev. 53, 58 (2017); *see Bogert's* § 2 (historical overview). The "crucial feature" of a trust has always been a "division of property rights." Scalise, 92 Tul. L. Rev. at 61 (emphasis omitted).

The federal statutory scheme here confirms those principles. As explained above (at 9–10), the trust funds at issue in this litigation were established in collective-bargaining under Taft-Hartley to pay for employee medical care. Congress drew on "traditional trust law principles" in crafting Taft-Hartley and, later, ERISA. *Cent. States, Se. & Sw. Areas Pension Fund v. Cent.*

Transp., Inc., 472 U.S. 559, 570 n.10 (1985). ERISA requires that any employee welfare benefit plan operate as a trust, holding "all assets" in trust for the benefit of plan participants, subject to limited exceptions. 29 U.S.C. § 1103(a). And Taft-Hartley likewise commands that each plan like the kind at issue here be organized as "a trust fund … for the sole and exclusive benefit of the employees" who fund the trust "and their families and dependents." *Id.* § 186(c)(5).

State law points in the same direction, underscoring that trusts presuppose and require interests in specific property. The trust instruments that created the Operating Engineers Trust Fund and the Stone & Marble Masons Fund specify that the trusts are deemed to be located in and governed by the laws of the District of Columbia. CAJA 350, 388. The D.C. courts have recognized that one of the basic "elements of a trust" is "trust property, which is held by the trustee for the beneficiary." *Cabaniss v. Cabaniss*, 464 A.2d 87, 91 (D.C. 1983). And D.C.'s version of the Uniform Trust Code likewise provides that a trust is created by the "[t]ransfer of property to another person as trustee." D.C. Code § 19-1304.01(1). In sum, interests in specific property are an essential feature of any trust, including a Taft-Hartley trust fund to pay for employee healthcare.

B. The Takings Clause protects the plans' property interests in trust assets, including money.

If a trust held real property for the benefit of private parties and Congress condemned the land for public purposes, the Fifth Amendment would plainly require the payment of "[j]ust compensation." *Cf. Chippewa Indians of Minn. v. United States*, 305 U.S. 479, 480–81 (1939) (federal appropriation of lands held in trust for the benefit

of an Indian tribe was a taking). The Federal Circuit was wrong to conclude that the result should be different here merely because the Operating Engineers Trust Fund and the Stone & Marble Masons Fund assert a property interest in the money they were required to contribute to the reinsurance scheme. The Fifth Amendment protects the plans' traditional property interests in the assets they are required to hold in trust when the government mandates monetary payments that could only come from those trust assets, as was true here.

1. This Court's precedent establishes that the Takings Clause applies when "the government commands the relinquishment of funds linked to a specific, identifiable property interest such as a bank account or parcel of real property." *Koontz v. St. Johns River Water Mgmt.*, 570 U.S. 595, 614 (2013); *see id.* at 611–17 (relying on that principle to hold that a monetary exaction imposed during a permitting process can constitute an unconstitutional condition). The seminal trilogy of cases involved governmental efforts to confiscate the interest earned on privately owned moneys deposited in specific accounts. *See id.* at 615–16.

In *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155 (1980), the Court addressed a Florida statute that required state court clerks to deposit any private funds entrusted to the court in an interpleader action into interest-bearing accounts. Florida law deemed the interest earned on those accounts to be income of the clerk's office, not the owners of the funds. *See id.* at 156 n.1, 157–58. This Court held that confiscating the interest earned by the interpleader funds was a "taking violative of the Fifth and Fourteenth Amendments." *Id.* at 165. The Court explained that the deposited funds were "plainly … private property." *Id.* at 160. And citing the

general rule that "interest … follows the principal," the Court further explained that the private parties who owned the deposited funds also had a property interest—protected by the Fifth Amendment—in the interest that their deposited funds earned. *Id.* at 162.

The Court followed the same approach in two later cases involving funds held by lawyers in trust for their clients. *See Brown v. Legal Found. of Wash.*, 538 U.S. 216, 220 (2003); *Phillips*, 524 U.S. at 159–60. As the Court explained, every state has adopted "an Interest on Lawyers Trust Account (IOLTA) program," under which lawyers are required to hold certain client funds in interest-bearing accounts; the dispute in those cases was whether states could require that the interest earned in IOLTA accounts be used for public purposes. *Phillips*, 524 U.S. at 159–60; *see Brown*, 538 U.S. at 221–24 & n.2.

The first case to reach the Court, *Phillips*, involved Texas's IOLTA program. *See Phillips*, 524 U.S. at 162–63. The Court explained there that, as a matter of Texas law, client funds held in trust by a lawyer are the "private property" of the client. *Id.* at 164. And following the same logic as in *Webb's*, the Court also concluded that Texas adhered to the "rule that interest follows principal," *id.* at 165, such that the interest accruing to funds held in IOLTA accounts "is the private property of the owner of the principal," *id.* at 172.

The Court in *Phillips* left open for remand whether Texas had in fact taken the relevant property. 524 U.S. at 172. In *Brown*, the Court confronted that issue and assumed that Washington's similar IOLTA program constituted a taking for which the state was required to pay just compensation—and indeed that the confiscation of interest was appropriately viewed as a "*per se* taking" akin to the occupation of even "a small amount" of a

landowner's real property. 538 U.S. at 235. The Court nonetheless concluded, based on the particular operation of Washington's IOLTA program, that the claimants in that case were not entitled to any compensation because they had not been deprived of any net value. *Id.* at 240. Four members of the Court dissented on the latter point, but they too agreed that the interest earned in the accounts constituted "private property" protected by the Fifth Amendment. *Id.* at 241 (Scalia, J., dissenting).

The Court's decisions in *Webb's*, *Phillips*, and *Brown* demonstrate that the Takings Clause protects property interests in money—interest-on-principal income there, trust assets here—at least when the government's confiscation of that money is required to come from a specific, identifiable source in which the claimant has a property interest. Thus, "if the Federal Government seizes someone's paycheck," it cannot avoid its constitutional obligation to pay just compensation for the taking merely because the seizure involves a sum of money rather than some other type of property. *Brown*, 538 U.S. at 250 (Scalia, J., dissenting).

That logic should have resolved this case. Because the affected group health plans were required under ERISA and Taft-Hartley to hold all of their assets in trust, the federal government's command that they contribute money to the ACA's reinsurance scheme necessarily implicated specific property interests, not merely fungible money. The plans could only satisfy the ACA's mandate by handing over trust assets, and background principles of trust law confirm that the plans had property interests in those assets. The group health plans are thus in the same position as the private property owners in the interest-on-principal cases. Indeed, *Phillips* and *Brown* are particularly instructive because both cases involved

moneys held in trust—funds held by a lawyer in trust for the benefit of a client. And like the clients in *Phillips* and *Brown*, the group health plans that were required to pay into the ACA's reinsurance scheme have a "specific, identifiable property interest" in the trust funds taken from them. *Koontz*, 570 U.S. at 614.

The federal government commanded group health plans to surrender billions of dollars held in trust for workers and their families, trust assets that otherwise would have been used to pay for medical benefits. The Fifth Amendment requires the government to pay just compensation for taking that private property.

2. In holding otherwise, the Federal Circuit reasoned that "regulatory actions requiring the payment of money are not takings." App. 8a (quoting *Commonwealth Edison Co. v. United States*, 271 F.3d 1327, 1339 (Fed. Cir. 2001) (en banc)). The court derived that mistaken view from Justice Kennedy's and Justice Breyer's concurring and dissenting opinions, respectively, in *Eastern Enterprises v. Apfel*, 524 U.S. 498 (1998), which are not controlling here and which in any event the Federal Circuit misread.

In *Eastern Enterprises*, a company formerly involved in the coal industry argued that Congress had taken its property without just compensation under a 1992 law retroactively requiring the company to contribute money to a pension fund for retired coal miners. *See* 524 U.S. at 516–17 (plurality op.). Justice O'Connor, joined by Chief Justice Rehnquist and Justices Scalia and Thomas, agreed with the company—concluding that the 1992 law was a regulatory taking. *Id.* at 529. In their view, it did not matter that "the Federal Government ha[d] not specified the assets that Eastern must use to satisfy its obligation," nor did it matter that the 1992 law required

the payment of "a dollar amount." *Id.* That logic fully supports the plans' takings claims in this case.

Justice Kennedy, writing for himself only, would have held that the 1992 law violated due process but was not a taking. *E. Enters.*, 524 U.S. at 539 (opinion concurring in the judgment and dissenting in part). As relevant here, he took the position that the Takings Clause does not apply when a law requires "the payment of benefits" but is "indifferent as to how the regulated entity elects to comply or the property it uses to do so." *Id.* at 540. And four dissenting justices likewise would have held that the Takings Clause generally does not apply to a "liability to pay money." *Id.* at 554 (Breyer, J., dissenting).

The Federal Circuit was wrong to cobble together from the concurring and dissenting opinions in that case any general principle that "one simply cannot have a cognizable property interest in money itself." App. 12a. As even the dissenting justices recognized at the time, the Takings Clause "can apply" to a "monetary interest," at least when the government takes such an interest in the context of "a specific, separately identifiable fund of money." *E. Enters.*, 524 U.S. at 555 (Breyer, J., dissenting) (discussing *Webb's*); *see also id.* at 540 (Kennedy, J., concurring in the judgment and dissenting in part) (recognizing that a monetary exaction can be a taking when it "operate[s] upon … an identified property interest"). And in any event, the Court has subsequently made clear—including in its later decisions in *Koontz* and *Brown*—that there is no general rule that the government may always command the payment of money without triggering the Takings Clause.

To be sure, the Court has limited the application of the Takings Clause to situations in which the government requires monetary payments associated with other

specific property interests, but this case fits comfortably within that tradition. The ACA's "confiscations of money," *Koontz*, 570 U.S. at 616, from group health plans were necessarily associated with the specific, identifiable property interests of the affected plans in the assets they must hold in trust.

3. The government contended below (Br. 31–32) that recognizing that a taking occurred here could have "radical" implications for the regulation of self-funded group health plans governed by ERISA because such plans are always required to hold their assets in trust. In the government's telling (*see id.*), any future federal fee imposed on group health plans will constitute a taking if the plans prevail here. The Federal Circuit did not endorse that alarmism, and for good reason.

When the government charges a fee, the government is in a sense taking money from the private parties whom it charges. But this Court has made clear that a "reasonable user fee is not a taking if it is imposed for the reimbursement of the cost of government services," even when the government *requires* private parties to use those services. *United States v. Sperry Corp.*, 493 U.S. 52, 63 (1989); *see id.* at 62 n.9 (observing that "money is fungible" and finding that no taking had occurred when the government deducted a fee from a monetary award). As long as a user fee charged for government services represents at least a "fair approximation of the cost of benefits supplied," imposition of the fee is not a taking. *Id.* at 60 (quoting *Massachusetts v. United States*, 435 U.S. 444, 463 n.19 (1978)).

What is distinctive about this case is that group health plans were ineligible to benefit in any way from the reinsurance scheme, which therefore cannot be defended (as to them) as a user fee. Congress required both "health

insurance issuers" and "third party administrators on behalf of group health plans" to pay into the reinsurance program. 42 U.S.C. § 18061(b)(1)(A). But Congress made sure that *only* the contributing health insurance issuers were eligible for payments from the program. *See id.* § 18061(b)(1)(B) (authorizing only "reinsurance payments to health insurance issuers described in subparagraph (A) that cover high risk individuals in the individual market"). The transitional reinsurance program was the only one of the ACA's three risk-mitigation programs to operate in that larcenous way. *See* p. 7, *supra*.

Treating the government's actions as a taking would not call into question reasonable federal fees imposed on group health plans. Nor would it affect the government's authority to tax such plans. Legitimate federal and state taxes "are not takings." *Koontz*, 570 U.S. at 615; *see Tyler v. Hennepin Cnty.*, 598 U.S. 631, 637 (2023) (describing state property taxes as "not themselves a taking"); *cf. City of Pittsburgh v. Alco Parking Corp.*, 417 U.S. 369, 375 (1974) (discussing due-process limits on "arbitrary" state taxes that effectively operate as confiscations). But when the government takes private property for public purposes, the mere fact that the government might have been able to achieve "an economically equivalent result through taxation" is no reason to disregard the taking that actually occurred. *Koontz*, 570 U.S. at 615–16.[5]

[5] To be clear, the mandatory reinsurance contributions at issue here were not taxes, and the government did not seek to defend them on that basis. In fact, the government successfully argued in related litigation that the contributions were *not* taxes. *See Elec. Welfare Trust Fund v. United States*, 907 F.3d 165, 168–70 (4th Cir. 2018).

C. The government cannot evade the Takings Clause by separating its constitutional violation into two laws rather than one.

The Federal Circuit gave no apparent consideration to the background principles of trust law that should have informed any assessment of the plans' property interests in the assets they hold it trust. It likewise gave no meaningful attention to ERISA and Taft-Hartley, neither one of which is even cited in the court of appeals' 11-page opinion. The Federal Circuit instead treated the takings question as one that could be resolved on the basis of the text of the ACA, observing that the ACA merely required the plans "to make payments to an applicable reinsurance entity," App. 9a (quoting 42 U.S.C. § 18061(b)(1)(A)), while being "indifferent" as to where those payments came from, *id.* (quoting *E. Enters*, 524 U.S. at 540 (Kennedy, J., concurring in the judgment and dissenting in part)). To the extent that the Federal Circuit addressed the separate federal laws requiring that group health plans hold their assets in trust, it merely observed that those requirements do not "transform" the ACA's "bare statutory requirement to pay money into a taking." *Id.*

The Federal Circuit was wrong to give short shrift to the full scope of federal commands imposed on group health plans. When the ACA mandated that group health plans contribute to the reinsurance program, ERISA and Taft-Hartley already guaranteed that those contributions would have to come from each plan's trust property. Accordingly, the ACA was hardly "indifferent" as to the source of the plans' contributions. App. 9a. Mandating contributions from group health plans that are required by law to hold all of their assets in trust is simply another way of mandating contributions of trust assets. Congress

cannot evade its obligation to pay just compensation by splitting a taking into two laws rather than one.

The situation here is therefore very different from one in which Congress requires individuals to pay money while aware that most of them will make the payments from a "checking account." App. 9a. Having a checking account is a personal choice, even if many people predictably make the same choice. Group health plans had no such choice here. They were already required by federal law to hold all their assets in trust; Congress was presumably aware of that obligation in enacting the ACA; and the combined effect of the ACA, ERISA, and Taft-Hartley was to require them to contribute trust property into a reinsurance scheme to benefit third parties. The government may take private property in that fashion, but only if it pays just compensation.

II. The question presented warrants review.

A. The Federal Circuit's flawed decision sets a national rule.

The decision below sets a national rule and forecloses any other judicial avenue for non-self-administered group health plans like the petitioners to recover even a penny of the billions of dollars of trust assets taken from them to fund the ACA's reinsurance scheme. The Claims Court has exclusive jurisdiction under the Tucker Act over takings claims asserted against the United States seeking more than $10,000 (like the claims here). *See* 28 U.S.C. § 1491(a)(1); *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1016–17 (1984). And the Federal Circuit has exclusive jurisdiction to review decisions of the Claims Court. 28

U.S.C. § 1295(a)(3). No other circuit could hear and decide these claims.[6]

Congress created the Federal Circuit in recognition of a "special need for nationwide uniformity in certain areas of the law," including "[n]ontort claims against the Federal Government." *United States v. Hohri*, 482 U.S. 64, 71–72 (1987). But that structural choice also magnifies the Federal Circuit's errors. Unlike the regional courts of appeals, the Federal Circuit is often the only federal appellate court that can consider a given question. And when the Federal Circuit commits a serious error of law, this Court has not hesitated to grant further review, even in the absence of any circuit conflict. *See, e.g.*, *Soto v. United States*, 605 U.S. 360, 366–67 (2025); *Feliciano v. Dep't of Transp.*, 605 U.S. 38, 43–44 (2025); *Vidal v. Elster*, 602 U.S. 286, 292 (2023); *Minerva Surgical, Inc. v. Hologic, Inc.*, 594 U.S. 559, 566 (2021).

Notably, the Court granted certiorari at the behest of several large health insurers in *Maine Community Health Options v. United States*, *supra*, after the Federal Circuit had ruled for the government in a dispute about another temporary risk-mitigation scheme in the ACA, known as the "risk corridors program." 590 U.S. at 306–07. For that program, the ACA required health insurers participating in the newly reformed insurance exchanges to pay money to the government if the insurers exceeded a certain threshold of profits for years 2014, 2015, or 2016. *Id.* at 302. The ACA also required the government to pay subsidies to participating insurers with losses below a

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[6] Federal district courts have concurrent jurisdiction with the Claims Court over takings claims seeking $10,000 or less under the Little Tucker Act, 28 U.S.C. § 1346(a)(2), but the Federal Circuit also has exclusive appellate jurisdiction over those cases, *id.* § 1295(a)(2).

certain threshold in those years. *Id.* The risk corridors program took in less money each year than the government was supposed to pay out, but Congress restricted HHS from using appropriations to fill the gap. *Id.* at 304. The insurers who were supposed to be paid sued for damages. *Id.* at 305–06. After the Federal Circuit ruled that Congress had impliedly repealed or suspended any obligation to make the relevant payments, this Court granted review and reversed. *Id.* at 307.

The case for granting further review and reversing is just as compelling here, if not more so. Both the risk corridors program at issue in *Maine Community* and the reinsurance program at issue here operated for three years as part of the initial implementation of the ACA's insurance reforms. *See* 590 U.S. at 302. The claimants in *Maine Community* asserted that the government owed participating insurers roughly $12 billion, and the takings liability at stake in this case is about $10 billion for group health plans. *Id.* at 305; *see* p. 9, *supra*. And, unlike in *Maine Community*, this case comes to the Court without any lurking issue about whether the challengers have a cause of action. All agree that traditional takings claims can be asserted in the Claims Court under the Tucker Act. *See Maine Community*, 590 U.S. at 327 & n.14; *id.* at 333 & n.3 (Alito, J., dissenting). The Court should grant review and reverse here as well.

B. The Federal Circuit's flawed decision harms American workers and families covered by group health plans.

The decision below has a direct and harmful effect on millions of hard-working Americans and their families whose group health plans were raided by Congress to subsidize commercial health insurers in the reinsurance scheme. The Department of Labor has estimated that, in

2016, ERISA group health plans covered about 131 million Americans. Dep't of Labor, *Report to Congress: Annual Report on Self-Insured Group Health Plans* 5 (Mar. 2019) (DOL Report), https://perma.cc/D4NX-QNPQ. About 26 million Americans are covered by multiemployer trust funds, like the two petitioners here. CAJA 295 (expert report). The vast majority (about 90%) of employers contributing to multiemployer plans "are small employers with fewer than 50 employees." *Id.* "[I]n some industries, like construction, most contributing employers have 20 or fewer employees." *Id.*

The victims of the government's conduct here are thus not the BlueCrosses and United Healthcares of the world, but rather the many Americans working in small businesses with self-funded group health plans, especially multiemployer plans. Those plans often provide "affordable, high quality health coverage for American workers" who might otherwise be "left out of typical employer plans, including part-time workers and workers in industries with very fluid employment patterns." CAJA 294. Construction is a paradigmatic example, but multiemployer trust funds are also common in, for example, agriculture, mining, manufacturing, and trucking. *See id.* (listing those and other examples).

Most multiemployer plans are self-funded, meaning they were on the hook for the reinsurance contributions required by the ACA. CAJA 308; *see* pp. 7–9, *supra*. Self-funded plans assume financial responsibility for paying out claims as covered employees and their families incur medical expenses. Under Taft-Hartley, the assets set aside to cover those expenses must be held in a trust fund and typically represent paycheck contributions from employees, whose unions may have bargained for contributions to the trust fund in lieu of higher wages. In

2016, self-insured group health plans financing benefits through trusts (including multiemployer plans) "reported approximately $82 billion in assets and $10 billion in liabilities." DOL Report 15.

Requiring those plans to turn over billions of dollars for the reinsurance program was thus a significant financial hit—one that necessarily meant less money available to pay claims, to increase coverage, or to cover other necessary expenses. *See* CAJA 270–74 (economic impact analysis). To take a concrete example, the ACA required one of the petitioners, the Operating Engineers Trust Fund, to contribute more to the reinsurance scheme for the 2014 benefit year than the plan spent on vision benefits in that year for all covered participants combined. *Id.* The same pattern surely played out repeatedly at other affected Taft-Hartley trust funds and for other group health plans more broadly.

C. The Federal Circuit's flawed decision invites future abuses.

The Federal Circuit wrongly decided an important question of constitutional law that is practically significant to millions of Americans—reason enough to grant further review. But the decision below also urgently warrants this Court's attention because it will invite future abuses if allowed to stand. In an era of budget shortfalls and antipathy to new taxes, there will always be a temptation for legislators to finance new pet projects using someone else's money. Group health plans were the unfortunate victims of that impulse in this specific case. But with the Federal Circuit's decision now on the books, nothing will stop Congress from doing the same thing again and again.

The decision below means that Congress does not need to concern itself with the Takings Clause whenever

it wishes to confiscate funds held in trust by group health plans in order to finance subsidies to third parties—or for whatever other public purposes Congress desires. As long as the relevant statute is styled as merely a command for the plans to pay money, the plans have no recourse to the Takings Clause under the Federal Circuit's precedent. And Congress can engage in that end-run without having to contend with the legal and political constraints that would apply if it sought to impose similar costs on group health plans through new taxes or fees.

We are aware of no other circumstance in which Congress has taken trust assets from group health plans (or anyone else) to fund a federal program that provides absolutely no benefit whatsoever to those parties themselves. But what was once unprecedented may well become routine if the decision below is left unreviewed.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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