No. 25-1050

In the Supreme Court of the United States

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

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether certain group health plans' obligation to make monetary contributions to a federal healthcare-reinsurance program between 2014 and 2016 constituted a taking of private property without just compensation under the Fifth Amendment.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-12a) is reported at 153 F.4th 1369. The opinion of the Court of Federal Claims denying partial reconsideration (Pet. App. 13a-25a) is reported at 167 Fed. Cl. 174. The opinion of the Court of Federal Claims granting partial summary judgment to the government (Pet. App. 26a-58a) is reported at 166 Fed. Cl. 709. An earlier opinion of the Court of Federal Claims granting in part and denying in part the government's motion to dismiss (Pet. App. 59a-108a) is reported at 155 Fed. Cl. 169.

JURISDICTION

The judgment of the court of appeals was entered 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 March 1, 2026, and

the petition was filed on March 2, 2026 (Monday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. Most Americans who have private health insurance coverage obtain it through their employers. See Cong. Research Serv., *U.S. Health Care Coverage and Spending* 1 (updated Mar. 30, 2026). The cost of such coverage is typically covered by a combination of employer and employee contributions, with the employer's share serving as "part of an employee's compensation package." *Liberty Univ., Inc.* v. *Lew*, 733 F.3d 72, 91 (4th Cir.) (citation omitted), cert. denied, 571 U.S. 1071 (2013).

An employer-sponsored "group health plan" is a form of "employee benefit plan" governed by the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.* See 29 U.S.C. 1002(1) and (3), 1191b(a)(1). The sponsor of a "self-insured" group health plan "set[s] aside funds and pay[s] for health benefits directly" rather than "purchasing group plans from insurers." Cong. Research Serv., *Federal Requirements on Private Health Insurance Plans* 2 (updated Mar. 12, 2025). Some such plans "retain a third-party administrator to perform tasks like assembling a provider network, billing those providers, and processing claims." *Pritchard* v. *Blue Cross Blue Shield*, 159 F.4th 646, 654 (9th Cir. 2025).

The federal government subsidizes group health plans through favorable tax treatment. While employees pay income and payroll taxes on their wages, they typically do not pay taxes on their employer's contributions to their health coverage. See 26 U.S.C. 106. Group health plans have also long been subject to "comprehen-

sive regulation" under ERISA. *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U.S. 645, 650 (1995); see *id.* at 651; see also, *e.g.*, 29 U.S.C. 1181-1183, 1185-1185c.

The assets of a group health plan, like those of all employee benefit plans governed by ERISA, must "be held in trust," subject to various statutory exceptions. 29 U.S.C. 1103(a); see 29 U.S.C. 1103(b). And the plan's assets must generally "be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan." 29 U.S.C. 1103(c)(1).

b. The Patient Protection and Affordable Care Act (ACA or Act), Pub. L. No. 111-148, 124 Stat. 119 (2010), was designed to "improve national health-insurance markets and extend coverage to millions of people without adequate (or any) health insurance." *Maine Community Health Options* v. *United States*, 590 U.S. 296, 301 (2020). "Federal and state law, as well as professional obligations and embedded social norms, require hospitals and physicians to provide care when it is most needed, regardless of the patient's ability to pay." *National Fed'n of Indep. Bus.* v. *Sebelius*, 567 U.S. 519, 593 (2012) (Ginsburg, J., concurring in part, concurring in the judgment in part, and dissenting in part). "As a consequence, medical-care providers deliver significant amounts of care to the uninsured for which the providers receive no payment," which results in higher health-care prices and more expensive health-insurance premiums. *Ibid.*

The ACA sought to address those problems through several "interlocking reforms." *King* v. *Burwell*, 576 U.S. 473, 478 (2015). The Act's guaranteed-issue and community-rating provisions, for example, generally barred

"insurers from taking a person's health into account when deciding whether to sell health insurance or how much to charge." *Id.* at 479. The Act's individual mandate required "individuals to maintain health insurance coverage or make a payment to the IRS." *Id.* at 481. The Act also provided for the creation of "virtual health-insurance markets, or 'Health Benefit Exchanges,' in each State," where any individual could buy health insurance. *Maine Community*, 590 U.S. at 301 (citation omitted). But participation in those exchanges "posed some business risks" for insurers, which Congress sought to ameliorate by creating "several risk-mitigation programs." *Id.* at 301-302; see *id.* at 302 n.1.

c. As relevant here, one such program was the Transitional Reinsurance Program (TRP), which helped stabilize premiums in the individual-health-insurance market between 2014 and 2016, the early years of the ACA's implementation. See 42 U.S.C. 18061; Pet. App. 66a. The ACA contemplated that each State would establish a program under which "health insurance issuers, and third party administrators on behalf of group health plans, [we]re required to make payments to an applicable reinsurance entity." 42 U.S.C. 18061(b)(1)(A). The reinsurers would then "make reinsurance payments to health insurance issuers * * * that cover[ed] high risk individuals in the individual market." 42 U.S.C. 18061(b)(1)(B). If a State declined to collect TRP contributions, the ACA authorized the Department of Health and Human Services (HHS) to collect payments on the State's behalf. See 42 U.S.C. 18041(c)(1).

The ACA directed HHS to prescribe "the method for determining the amount each health insurance issuer and group health plan" was obligated to contribute to the TRP. 42 U.S.C. 18061(b)(3)(A). HHS had to design

the method so as to generate TRP contributions totaling $12 billion for 2014, $8 billion for 2015, and $5 billion for 2016. See 42 U.S.C. 18061(b)(3)(B)(iii) and (iv).

Exercising that statutory authority, HHS promulgated regulations in 2013 that required self-insured group health plans to make TRP contributions. 78 Fed. Reg. 15,410, 15,455 (Mar. 11, 2013). HHS explained that "[a] wide range of health insurance issuers and self-insured group health plans contribute to the reinsurance pool because successful implementation of [the TRP], in combination with the range of Affordable Care Act reforms starting in 2014, benefit[s] all of their enrollees." *Id.* at 15,519. "[F]or example, those reforms should lead to fewer unreimbursed health costs, lowering the costs for issuers and group health plans." *Ibid.*

To calculate their TRP contributions, self-insured group health plans had to multiply the number of their qualifying enrollees by a contribution rate applicable to each benefit year. 45 C.F.R. 153.405(a). HHS established the national contribution rate annually when announcing the national reinsurance payment parameters for each benefit year. 45 C.F.R. 153.230(b). HHS set a contribution rate of $63 per qualifying enrollee for 2014, 78 Fed. Reg. at 15,460; $44 per qualifying enrollee for 2015, 79 Fed. Reg. 13,744, 13,775 (Mar. 11, 2014); and $27 per qualifying enrollee for 2016, 80 Fed. Reg. 10,750, 10,775 (Feb. 27, 2015).

2. Petitioners—the Operating Engineers Trust Fund of Washington, D.C., and the Stone & Marble Masons of Metropolitan Washington, D.C. Health and Welfare Fund—are self-insured group health plans. Pet. App. 1a, 3a-4a. Each plan's trust agreement provided that the plan's assets would be exclusively used to pay benefits and defray plan expenses, "[e]xcept as specifically per-

mitted by ERISA, the Internal Revenue Code, and other applicable law." C.A. App. 331, 366. As self-insured group health plans that were administered by third-party administrators between 2014 and 2016, petitioners were required under the ACA to make TRP contributions for the 2014-2016 benefit years. See 42 U.S.C. 18061(b)(1)(A); Pet. App. 31a-32a, 66a. For those three years, the Operating Engineers Fund made a total TRP contribution of $323,154, and the Stone Masons Fund made a total TRP contribution of $46,777. Pet. App. 33a-34a. Neither petitioner's "annual contributions amounted to even 1% of [its] annual income for the same year." *Id.* at 45a n.10; see *id.* at 51a-52a.

In 2019, petitioners filed a putative class action in the Court of Federal Claims under the Tucker Act, 28 U.S.C. 1491(a)(1), alleging in pertinent part that their mandatory TRP contributions constituted takings without compensation in violation of the Just Compensation Clause of the Fifth Amendment. Pet. App. 3a, 34a, 39a, 60a n.1. The Court of Federal Claims granted summary judgment to the government on that claim, *id.* at 26a-58a, and therefore denied petitioners' motion for class certification as moot, *id.* at 29a.

3. The court of appeals affirmed. Pet. App. 1a-12a.

In general, the court of appeals observed, "the mere imposition of an obligation to pay money does not give rise to a claim under the Takings Clause of the Fifth Amendment." Pet. App. 7a (citation and ellipsis omitted). Petitioners contended that that principle does not apply in this case "because the TRP contributions were effectively required to be paid from a specific account" by virtue of ERISA's requirement that a group health plan's assets be held in a trust. *Id.* at 4a; see *id.* at 8a-9a; 29 U.S.C. 1103(a); see also *Eastern Enters.* v. *Apfel*,

524 U.S. 498, 541 (1998) (Kennedy, J., concurring in the judgment and dissenting in part) (surveying prior takings cases in which "a specific property right or interest [was] at stake").

The court of appeals rejected that argument. It noted that the ACA was "indifferent as to how" plans paid their contributions to the TRP, and that the statute "neither target[ed] a specific property interest nor depend[ed] upon any particular property for the operation of its statutory mechanisms." Pet. App. 9a (quoting *Eastern Enters.*, 524 U.S. at 540, 543 (Kennedy, J., concurring in the judgment and dissenting in part)); see 42 U.S.C. 18061. The court concluded that "[t]he separate requirement that [petitioners] must keep their assets in trust does not transform this bare statutory requirement to pay money into a taking." Pet. App. 9a. For example, the court explained, while "Congress is likely aware that many taxpayers will pay their taxes out of their checking account, * * * that practical reality does not transform an obligation to pay into a taking." *Ibid.*

ARGUMENT

Petitioners renew (Pet. 13-25) their contention that their required contributions to the Affordable Care Act's Transitional Reinsurance Program between 2014 and 2016 constituted uncompensated takings in violation of the Fifth Amendment. The court of appeals correctly rejected that contention, and its decision does not conflict with decisions of this Court or any other court of appeals. Petitioners also overstate the practical importance of the decision below, particularly given the TRP's expiration a decade ago and its minimal economic impact on petitioners and other group health plans. Further review is not warranted.

1. The court of appeals correctly rejected petitioners' takings claim. Pet. App. 6a-12a.

a. The Fifth Amendment provides that "private property" shall not "be taken for public use, without just compensation." U.S. Const. Amend. V. Of course, money can be a form of private property that the government orders to be paid for public use. But the Just Compensation Clause plainly does not encompass all mandatory payments to the government or to fund government programs. "It is beyond dispute that 'taxes and user fees,'" for instance, are not takings. *Koontz* v. *St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 615 (2013) (brackets and citation omitted). Because money, "[u]nlike real or personal property, * * * is fungible," *United States* v. *Sperry Corp.*, 493 U.S. 52, 62 n.9 (1989), government-imposed obligations to pay money generally do not raise the same concerns as governmental invasions or appropriations of other forms of private property. Cf. *Horne* v. *Department of Agric.*, 576 U.S. 351, 358-360 (2015).

Under this Court's precedents, a payment obligation generally does not constitute a taking unless the obligation at least targets a specific, identified fund of money. See *Koontz*, 570 U.S. at 614-615 (indicating that the mandatory "relinquishment of funds linked to a specific, identifiable property interest" may constitute a "*per se*" taking). In *Eastern Enterprises* v. *Apfel*, 524 U.S. 498 (1998), the Court addressed whether a federal statute effected a taking by requiring a former mining company to fund health benefits of retired miners. In opinions by Justices Kennedy and Breyer, five Justices took the view that there was no taking because the statute imposed "an ordinary liability to pay money" rather than targeting a "specific, separately identifiable fund." *Id.*

at 554-555 (Breyer, J., dissenting); accord *id.* at 540 (Kennedy, J., concurring in the judgment and dissenting in part) (explaining that "[t]he law simply imposes an obligation to perform an act, the payment of benefits," and "is indifferent as to how the regulated entity elects to comply or the property it uses to do so"). The remaining four Justices concluded that the law effected a taking under a three-factor test derived from *Penn Central Transportation Co.* v. *City of New York*, 438 U.S. 104 (1978). See *Eastern Enters.*, 524 U.S. at 522-537 (opinion of O'Connor, J.); see also *id.* at 547-550 (Kennedy, J., concurring in the judgment and dissenting in part) (concluding that the statute violated due process on retroactivity grounds).

Other cases track the distinction drawn in *Eastern Enterprises* between takings and ordinary obligations to pay money. In *Webb's Fabulous Pharmacies, Inc.* v. *Beckwith*, 449 U.S. 155 (1980), for example, this Court held that a county committed a taking when it confiscated the interest generated by private funds that were temporarily deposited in the county court's registry. *Id.* at 155-156, 164-165. In *Brown* v. *Legal Foundation of Washington*, 538 U.S. 216 (2003), the Court assumed that a State's appropriation of interest from lawyers' trust accounts to fund legal services for the indigent was a taking. *Id.* at 235; see *Phillips* v. *Washington Legal Found.*, 524 U.S. 156 (1998) (holding that interest on such accounts was property for takings purposes). And in *Koontz*, the Court relatedly held that a monetary obligation that "burdened [a person's] ownership of a specific parcel of land" would be a taking. 570 U.S. at 613; see *ibid.* (distinguishing *Eastern Enterprises*).

Targeting a specific fund, however, does not necessarily render a payment obligation a taking. For exam-

ple, this Court held in *Sperry* that the government did not commit a taking by deducting for itself "a percentage of any award made by the Iran–United States Claims Tribunal in favor of an American claimant before remitting the award to the claimant." 493 U.S. at 54; see *id.* at 59-64. Distinguishing *Webb's*, where there was no "justification for the deduction of the interest other than the bare transfer of private property to the county," the Court deemed the deduction a "reasonable user fee" for access to the tribunal. *Id.* at 62 n.8, 64; cf. *Webb's*, 449 U.S. at 163-164 (describing the taking of interest as a pure confiscation).

b. Under those principles, petitioners' required contributions to the TRP were not takings within the meaning of the Fifth Amendment. Like the statute at issue in *Eastern Enterprises*, and unlike those in cases like *Webb's* and *Brown*, the ACA's TRP provision (and HHS's implementing regulations) simply required petitioners to make monetary contributions to reinsurance entities, without requiring that the contributions be made with any particular identified funds. See 42 U.S.C. 18061; Pet. App. 9a. The contribution amounts were calculated to raise amounts specified by the statute (*e.g.*, $12 billion for 2014), 42 U.S.C. 18061(b)(3)(B), and thus bore no inherent relationship to any particular accounts or funds of money. As the Federal Circuit explained well before this case, a payment obligation is not a taking unless it at least targets "an actual sum of money * * * , as opposed to some abstract sum of money capable of being calculated." *Adams* v. *United States*, 391 F.3d 1212, 1225 (2004), cert. denied, 546 U.S. 811 (2005). The TRP statute therefore imposed "an ordinary liability to pay money," *Eastern Enters.*, 524 U.S. at 554 (Breyer, J., dissenting), rather than an uncompensated taking.

Petitioners contend (Pet. 19-20) that because ERISA generally requires a group health plan to hold its assets in trust, 29 U.S.C. 1103(a), the ACA effectively targeted those specific trust funds. But the TRP statute did not at all require the plans to pay directly—it expressly contemplated payment by "third party administrators on behalf of group health plans." 42 U.S.C. 18061(b)(1)(A); see *Arnes* v. *United States*, 981 F.2d 456, 459 (9th Cir. 1992) ("Generally, a transfer is considered to have been made 'on behalf of' someone if it satisfied an obligation or a liability of that person."). And even if the statute had required direct payment by the plans, it is not clear that the TRP contributions had to be paid out of trust funds. ERISA contains various exceptions to the trust requirement, see 29 U.S.C. 1103(b), and petitioners appeared to recognize below that they may have been able to make their contributions using borrowed funds, see C.A. Oral Argument 3:55-4:40, https://perma.cc/54VZ-4P8C. The statute also required contributions from "health insurance issuers" in addition to group health plans, 42 U.S.C. 18061(b)(1)(A), and issuers are not subject to Section 1103(a)—further undermining petitioners' depiction of the TRP statute as specifically targeting their trust funds.

In any event, petitioners cite no authority for the proposition that an otherwise ordinary obligation to pay is rendered a taking whenever Congress is "presumably aware" (Pet. 25) that the payor is required by other law to hold its assets in a single fund. By petitioners' logic, all group health plans—indeed, all "employee benefit plan[s]" that are covered by ERISA and thus required to hold their assets in trust, 29 U.S.C. 1103(a)—would effectively be immunized from governmental monetary charges (which could not be collected without triggering

an obligation for the government to supply just compensation). While petitioners acknowledge (Pet. 23) that such plans are properly subject to "[l]egitimate federal and state taxes," they do not explain what differentiates those legitimate charges from their TRP contributions.

c. Moreover, the TRP statute would not have effected a taking even if it had targeted specific funds. As noted above, even that type of payment obligation is not a taking when it is part of a government program from which the payor "benefit[s] directly." *Sperry*, 493 U.S. at 63; see *id.* at 60-63.

A central premise of petitioners' claim is that group health plans "got nothing out of" the TRP, which was thus purportedly "larcenous." Pet. 13, 23; see Pet. 22, 30. But that conclusion depends on a blinkered view of the TRP, in isolation from other interlocking measures of the ACA adopted to improve health-insurance markets. As HHS explained, group health plans (such as petitioners) were required to contribute to the TRP because that program was a necessary element of ACA reforms designed in part to "lower[] the costs" for those plans. 78 Fed. Reg. at 15,519; see p. 5, *supra*. And plans like petitioners benefited from the ACA and related laws in other ways: For example, the individual mandate incentivized more employees to participate in such plans, and the tax exemption for employer contributions to employee health coverage effectively subsidized that form of employee compensation. See 26 U.S.C. 106. Whether or not petitioners' TRP contributions were "precisely calibrated" to match the benefits they received from the ACA, *Sperry*, 493 U.S. at 60, the statute did not simply confiscate petitioners' money for the exclusive benefit of other parties or the government, cf. *Webb's*, 449 U.S. at 163-164.

Nor would the TRP contributions constitute takings if viewed through a regulatory-takings lens, though petitioners do not explicitly raise such an argument. See *Eastern Enters.*, 524 U.S. at 529-537 (opinion of O'Connor, J.); *Connolly* v. *Pension Benefit Guar. Corp.*, 475 U.S. 211, 224-227 (1986). The contributions were a minuscule portion of the plans' annual income, see Pet. App. 45a n.10, 51a-52a, and had a negligible "economic impact" on petitioners, *Penn Central*, 438 U.S. at 124. The TRP statute did not interfere with petitioners' reasonable "investment-backed expectations," *ibid.*, in light of the long pre-ACA history of comprehensive federal regulation of group health plans, see pp. 2-3, *supra*—including various requirements that impose financial burdens on such plans, see, *e.g.*, 29 U.S.C. 1185-1185c (mandating coverage of certain benefits). The "character of the governmental action" here is more accurately characterized as an adjustment of the myriad "benefits and burdens" granted to and imposed on health insurers by federal law, rather than a "physical invasion by government." *Penn Central*, 438 U.S. at 124; cf. *Eastern Enters.*, 524 U.S. at 537 (opinion of O'Connor, J.) (statute at issue "single[d] out certain employers to bear a burden that [wa]s substantial in amount, based on the employers' conduct far in the past"). The court of appeals' rejection of petitioners' claim was correct under any takings framework.

2. The court of appeals' decision does not satisfy this Court's criteria for granting a writ of certiorari. See Sup. Ct. R. 10. For the reasons set forth above, the decision below does not conflict with this Court's precedents. To the contrary, petitioners propose a significant extension of the heretofore narrow category of cases in which payment obligations have been viewed as Fifth

Amendment takings. See *Koontz*, 570 U.S. at 613; *Webb's*, 449 U.S. at 164-165.

Petitioners do not contend that the court of appeals' decision conflicts with decisions of any other courts. Although they note (Pet. 25-26 & n.6) that Tucker Act claims like theirs are channeled to the Federal Circuit, see 28 U.S.C. 1295(a)(2) and (3), the regional circuits regularly confront takings claims involving obligations to pay money. See, *e.g.*, *Ballinger* v. *City of Oakland*, 24 F.4th 1287, 1292-1297 (9th Cir.) (rejecting a takings challenge to a city's imposition of a tenant "relocation fee" on landlords), cert. denied, 142 S. Ct. 2777 (2022); *id.* at 1297 (collecting cases from the Second, Fourth, Sixth, Eleventh, and Federal Circuits); *McCarthy* v. *City of Cleveland*, 626 F.3d 280, 285 (6th Cir. 2010) ("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").

That, among other factors, distinguishes this case from *Maine Community Health Options* v. *United States*, 590 U.S. 296 (2020), contra Pet. 26-27, in which this Court granted certiorari to decide whether the Court of Federal Claims' Tucker Act jurisdiction extended to certain claims involving the ACA's "Risk Corridors" program. 590 U.S. at 302, 307. The constitutional issue in this case, by contrast—whether an obligation to pay money that purportedly must be satisfied from a particular fund constitutes a taking—could arise in any circuit, or in the courts of any State, see *Sheetz* v. *County of El Dorado*, 601 U.S. 267, 276 (2024) (noting that "the Fourteenth Amendment * * * incorporates the Takings Clause against the States"). Petitioners' failure to identify *any* decision deviating from the approach taken

by the decision below confirms the novelty of their position. As noted above, moreover, petitioners have not even established that a central premise of their theory—that group health plans' TRP contributions had to be made from their trust funds specifically—is correct.

Finally, petitioners exaggerate (Pet. 27-30) the practical importance of this case. The TRP and petitioners' obligations to contribute to it ended a decade ago, and their contributions—amounting to less than $400,000—represented less than 1% of their income during the relevant three-year period. See Pet. App. 45a n.10, 51a-52a; cf., *e.g.*, Pet. Br. at 18, *Maine Community*, *supra* (No. 18-1028) (stating that one health insurer was owed $210 million in risk-corridor payments and had to "rais[e] $165 million in additional private capital" to "escape[] receivership"). And because the TRP contribution amounts were based on each group health plan's number of enrollees, 45 C.F.R. 153.405(a), the economic effect was likely negligible for all such plans. While petitioners assert (Pet. 29) that the court of appeals' decision "invite[s] future abuses," they identify no proposed laws, nor any laws enacted in the 16 years since the ACA's enactment, that would contravene the Just Compensation Clause as petitioners incorrectly understand it.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted.

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