NO. 25-_____

In the Supreme Court of the United States

KENNETH FITCH; PHYLIS REINARD;
DEBORAH HEIM; MARY FRYE;
ALAN RIVKIN; HOWARD KILIAN;
AND ALL THOSE SIMILARLY SITUATED,

Petitioners,

v.

STATE OF MARYLAND; WES MOORE, GOVERNOR OF MARYLAND;
HELEN T. GRADY, SECRETARY OF BUDGET AND MANAGEMENT,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

Deborah Holloway Hill
Counsel of Record
P.O. Box 43207
Nottingham, MD 21236
(410) 428-7278
dhill@dahhlaw.com

August 18, 2025 *Counsel for Petitioners*

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QUESTIONS PRESENTED

Petitioners, retired state employees, filed a complaint alleging that their employer, the State of Maryland, breached a statutory unilateral contract to provide state subsidized prescription drug benefits in retirement. The District Court found a contract existed for certain State retirees. The Fourth Circuit reversed that decision, ruling that a contract was not created based on the unmistakability doctrine.

Six months after Petitioners appealed, Maryland established the Qualified Resident Program that will provide access to and subsidize state and federal healthcare programs for illegal aliens.

THE QUESTIONS PRESENTED ARE:

1. Whether the use of the unmistakability doctrine renders a fulfilled statutory unilateral employment contract illusory.

2. Whether Maryland may discriminate in favor of illegal aliens and against State retirees by providing subsidies for prescription drug benefits through Medicare Part D; and if so, whether the specific discriminatory provisions of the Qualified Residence Program in Maryland's Access to Care Act are unconstitutional.

PARTIES TO THE PROCEEDINGS

Petitioners and Plaintiffs-Appellants below

- Kenneth Fitch
- Phylis Reinard
- Deborah Heim
- Mary Frye
- Alan Rivkin
- Howard Kilian
- All similarly situated

Respondents and Defendants-Appellees below

- State of Maryland
- Wes Moore, Maryland Governor, in his official capacity
- Helen T. Grady, Maryland Secretary of Budget and Management, in her official capacity

CORPORATE DISCLOSURE STATEMENT

Because no petitioner is a corporation, a corporate disclosure statement is not required under Supreme Court Rule 29.6.

LIST OF PROCEEDINGS

Direct Proceedings Below

U.S. Court of Appeals for the Fourth Circuit

Nos. 23-2135, 24-2266

Fitch et al., Plaintiffs-Appellants *v.* *Maryland et al.*, Defendants-Appellees

Opinion: May 20, 2025

United States District Court, District of Maryland

No. 18-cv-2817

Fitch et al., Plaintiffs *v. Maryland et al.*, Defendants

Memorandum and Opinion: September 29, 2023

Memorandum and Order (Explanatory Ruling): November 20, 2024

Initial Memorandum Opinion: December 30, 2021

Related Proceedings

U.S. Court of Appeals for the Fourth Circuit

No. 22-1362

Published: 61 F.4th 143 (2023)

AFSCME Maryland Council 3, Plaintiff-Appellant *v.* *Maryland, et al.*, Defendants-Appellees

Opinion: February 21, 2023

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF CONTENTS – Continued

Page

APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

Page

CONSTITUTIONAL PROVISIONS

STATUTES

TABLE OF AUTHORITIES – Continued

Page

JUDICIAL RULES

EXECUTIVE ORDERS

OTHER AUTHORITIES

PETITION FOR A WRIT OF CERTIORARI

Kenneth Fitch, Phylis Reinard, Deborah Heim, Mary Frye, Alan Rivkin and Howard Kilian, and all those similarly situated by and through undersigned counsel in this appeal respectfully petition this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

A. Opinion for Which Review Is Sought

Petitioners seek review of the opinion of the U.S. Court of Appeals for the Fourth Circuit, dated May 20, 2025. (App.1a). This opinion affirmed the opinion and order of the District Court of Maryland, dated September 29, 2023 (App.41a). These opinions were not designated for publication.

B. Prior Circuit Court Opinion

Previously, the Fourth Circuit issued an opinion, dated February 21, 2023 (App.43a), which is published at 61 F.4th 143 (2023). That opinion affirmed the unpublished decision of the District Court of Maryland, dated December 30, 2021 (App.46a).

JURISDICTION

The Judgment of the Court of Appeals was entered on May 20, 2025. (App.1a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following pertinent constitutional and statutory provisions are reproduced in the Appendix.

STATEMENT OF THE CASE

This petition challenges a Fourth Circuit decision regarding the application of the unmistakability doctrine to statutory unilateral contracts and raises constitutional issues about state-subsidized healthcare benefits for illegal aliens. It argues that the doctrine is wrongly applied to unilateral contracts involving state employment and highlights a significant federal conflict over healthcare subsidies.

A. Statutory Background

1. Since 1993, Maryland (the "State") offered its retired employees healthcare inclusive of a prescription drug subsidy coextensive with those available to active employees and established the State Employee and Retiree Health and Welfare Benefits program ("Health Benefits Program") for that purpose. With the establishment of the Health Benefits program, the State made an offer to its employees contingent of whether they fulfilled certain specific terms found in 1993 Maryland Laws Ch. 10 (S.B. 50), codified at Md. Code Ann., State Pers. & Pens. ("SPP") § 2-508(b) entitled "State Subsidy Entitlement" which provided that:

> (4)(i) If a retiree receives a State disability retirement allowance or has 16 or more years of creditable service, the retiree or the retiree's surviving spouse or dependent child is entitled to the same State subsidy allowed a State employee.
>
> (ii) In all other cases, if a retiree has at least 5 years of creditable service, the retiree or the

> retiree's surviving spouse or dependent child is entitled to 1/16 of the State subsidy allowed a State employee for each year of the retiree's creditable service up to 16 years.

The Petitioners who began service on or before June 30, 2011, satisfied those terms and began receipt of the subsidy at retirement. App.48a.

In 2003, Congress passed the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub.L. No. 108-173, 117 Stat.2066 (codified at 42 U.S.C. § 1395w-101 *et. seq*. ("Part D")). In 2004, the Governmental Accounting Standards Board ("GASB") recommended new accounting standards to recognize Other Post Employment Benefits ("OPEB") liabilities which required public employers to account for OPEB benefits (typically health insurance coverage) for retirees the same way the State accounted for pension benefits. In response, the State reaffirmed its commitment to providing its own prescription drug plan for retirees with the passage of 2004 Md. Laws ch. 296 (codified SPP § 2-509.1) ("Ch. 296"). The Maryland General Assembly expressly declared that "notwithstanding the enactment of [Part D] or any other federal law permitting states to discontinue prescription drug benefit plans to [state] retirees," Maryland "shall continue to include a prescription drug benefit plan in the health benefit options . . . available to retirees under §§ 2-508 and 2-509 of this subtitle". *Id.* App.48a

To satisfy this recommendation, the legislature passed laws in 2005 creating an irrevocable trust for that purpose and outlining a separate criterion for qualification for employees to receive the Subsidy during retirement, *i.e.* a minimum of five service years prior to vesting into the Subsidy and to retire from

State service with a minimum of sixteen years. The General Assembly codified the legislative intent in SPP § 2-508(b)(4)(i) and (ii) and until this day still acknowledges that an employee employed before June 30, 2011, is entitled to a subsidy in its regulations. App.51a.

In 2010, the U.S. Congress attempted to close the doughnut hole in Part D by increasing drug discounts for Part D beneficiaries. In 2011 the Maryland General Assembly enacted legislation 2011 Md. Laws ch. 397 codified as SPP § 2-509.1(b) ("Chapter 397") to discontinue prescription drug benefits for all Medicare-eligible State retirees in fiscal year 2020 (July 1, 2019). App.50a

As a result of the federal government's mandate for greater discounts for Part D participants, the doughnut hole was expected to close six months earlier than expected on January 1, 2019. The Maryland General Assembly decided to advance the date of the transfer of retirees to Part D to January 1, 2019 when it enacted 2018 Md. Laws Chapter 10. Notices of the elimination of the subsidy and the effective date of transfer was sent to retirees in May of 2018, seven years after Chapter 397 was enacted. App 50a.

In July of 2019, the Maryland General Assembly passed Senate Bill 946 as 2019 Md. Laws, Chapter 767 (codified as SPP § 2-509.1(d)-(k) ("Chapter 767) creating three new prescription plan programs designed to replace the Health Benefits Program specifically for retirees who were hired prior to July 1, 2011. Those programs are:

> (1) The Maryland State Retiree Prescription Drug Coverage Program, available to retirees who "retired on or before December 31, 2019." SPP § 2-509.1(d)(1)(ii). Under the program,

> Medicare-eligible retirees' out-of-pocket costs would be capped at the same level as a non-Medicare-eligible retirees' out-of-pocket cost. *Id*. § 2-509.1(d)(2)(i).
>
> (2) The Maryland State Retiree Catastrophic Prescription Drug Assistance Program, available to retirees enrolled in a prescription drug benefit plan under Medicare, who entered into state service on or before June 30, 2011, and who retired on or after January 1, 2020. *Id.* § 2-509.1(e)(1)(i)–(ii). The program would cover additional out-of-pocket costs once the retiree entered the catastrophic phase of Part D. *Id*. § 2-509.1(e)(2).
>
> (3) The Maryland State Retiree Life-Sustaining Prescription Drug Assistance Program, available to any retiree who participates in either of the first two programs. *Id.* § 2 509.1 (f)(1). Retirees would be reimbursed for out-of-pocket costs for life-sustaining medications covered through Maryland's prescription drug benefits but not covered by Medicare Part D. *Id*. § 2-509.1(f)(2).

App.53a.

To circumvent 42 U.S.C. § 18032(f)(3) of the Federal Affordable Care Act, the Maryland General Assembly required the Maryland Exchange and the Maryland Department of Health to create a report outlining various options that would allow illegal aliens access to State and Federal Healthcare programs. This culminated in the presentation of Senate Bill 705 ("SB705") in the January 2024 Session of the Maryland General Assembly. SB 705 classified illegal aliens as

"qualified residents" and once a waiver was obtained from the Secretary of Health and Human Servies and/or the Secretary of Treasury, the bill indicated that the State would approve subsidies that would reduce premium costs of these healthcare programs. CA JA050.

On May 16, 2024, Senate Bill 705 passed as Maryland's Access to Care Act, 2024 Md. Laws Chapter 841 (codified as Maryland Code Insurance Annot. § 31-124) ("Chapter 841") and established the Qualified Resident Program. Pursuant to the Respondent's response to Petitioner's appellate brief, the waiver has been obtained.[1]

B. Factual Background

The State of Maryland offered a health coverage, through statute, that included prescription drug coverage if the employee worked a minimum of five years state service and retired after sixteen years of state service. For state employees who accepted this offer, the subsidy would be applied during their retirement. The promise and provision of this benefit for the duration of their retirement induced Petitioners (and all those similarly situated) to continue to work for the State of Maryland and forgo additional options and opportunities for employment and benefits from other employers. The subsidy was a fringe benefit of the position and although the State expressed that the retiree could choose to participate, money for the prescription drug subsidy was applied every year for Petitioners retirement during employment. CA JA045.

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[1] *Fitch v. Maryland*, 24-2266, Doc 21 P. 22

Once a retiree turned 65 years of age or retired disabled, the retiree would be placed on Medicare Part D ("Part D") and the state would apply the Subsidy to reduce the costs of prescription drugs. The Subsidy also reduced the amount that Petitioners paid for premiums and allowed access to the State formulary. That formulary covered more medications at a reduced cost than offered by Part D. The reduced cost of medications, co-pays and premiums was one of the benefits of employment and the continuation of those benefits during retirement made the terms outlined in SPP § 2-508 an attractive offer that the Petitioners accepted and relied on while planning their retirement. CA JA045.

Although the Maryland General Assembly passed Chapter 397 in 2011, Petitioners were not informed of this change in their benefit until seven years later (2018). Employees who retired between 2011 and May 2018 were still offered this benefit by the Department of Budget and Management and their retirement pension was reduced to cover the costs of the benefit. In fact, Petitioner Heim paid to receive service credits for continuation of post-retirement benefits (inclusive of the subsidy) in February of 2018 only to be informed three months later that the Subsidy had been eliminated seven years earlier. She did not receive a refund. CA JA047.

Petitioners sued for declaratory and injunctive relief to stay the enforcement of Chapter 397 arguing that the Respondents breached the contract the State had with retirees over the continuation of the Subsidy and that their out-of-pocket prescription drug costs would drastically increase. Petitioners relied on the case of *City of Frederick v. Quinn*, 35 Md. App. 626

(1977) and Maryland contract law regarding contract formation and vesting. The District Court issued a preliminary injunction to maintain the status quo of the parties while litigation was pending. CA JA048

In response to the passage of Chapter 767, the American Federation of State & Municipal Employees Council ("AFSCME") 3 intervened into the case on November 1, 2019, seeking to enjoin the State from requiring current employees who had five years of State service prior to July 1, 2011 from retiring by December 31, 2019. Chapter 767 required this retirement so that current employees could be qualify for the Maryland State Retiree Prescription Drug Coverage Program. CA JA049

In 2021, the District Court issued an order finding on behalf of the Petitioners that a unilateral contract did exist with the State, however it did not exist for State retirees who retired after January 1, 2019 or current active employees because those groups did not satisfy the condition precedent, *i.e.*, retirement on or before December 31, 2018. At the request of the Intervenor Plaintiff, the District Court entered final Judgment against AFSCME and in favor of Respondents. App.43a.

2. The Fourth Circuit decided that the State did not enter into a contract with either current employees or retirees based on the unmistakability doctrine. App.15a. In response, the District Court dissolved the injunction and granted summary judgment for the respondents in September of 2023. App.32a. Petitioners appealed the District Court decision. CA JA409.

In May of 2024, the Qualified Resident Program of Maryland's Access to Care Act was approved by

the Governor of the State of Maryland. After obtaining a waiver, the law would allow subsidies for premiums for illegal aliens who accessed State and Federal healthcare programs through the program. CA JA058.

On August 29, 2024, Petitioners filed a Rule 60(b) Motion for Relief from Final Judgment & Request for Indicative Ruling under Rule 62.1 asserting that the State had violated the Equal Protection Clause when it passed the Qualified Resident Program to allow a healthcare subsidy for illegal aliens after eliminating a healthcare subsidy from State retirees while passing laws to allow a healthcare subsidy for illegal aliens. The District Court decided that the law did not apply to illegal aliens and the circumstances CA JA032.

C. Procedural History

1. On September 10, 2018, Petitioners filed a complaint in the Circuit Court for Baltimore City seeking declaratory and injunctive relief for breach of contract and state and constitutional violations, namely the Article 24 of the Declaration of Rights under the Maryland Constitution, the Takings Clause of the Fifth Amendment of the United States Constitution, the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, and the Due Process Clause of the Fourteenth Amendment of the United States Constitution. The injunction sought to enjoin Respondents from enforcing SPP § 2-509.1(b). App.19a.

On September 11, 2018, the Respondents removed the case to the US District Court for the District of Maryland stating that the Court has jurisdiction under 28 U.S.C. §§ 1331 and 1441 and supplemental juris-

diction over the State law Constitutional claims pursuant to 28 U.S.C. § 1367. App.52a.

On October 9, 2018, the Respondent filed a Motion to Dismiss arguing that the State couldn't afford to continue subsidizing prescription drug coverage and wanted to maintain their triple A bond rating.

On October 10, 2018, the Court orally granted Plaintiffs' Motion for Preliminary Injunction to maintain the status quo while litigation was pending. A written order was entered on October 15, 2018, maintaining the status quo by directing that the State continue to provide prescription drug coverage to current retirees and to any eligible employee who might retire during the pendency of the case. App.52a.

In response, the Maryland General Assembly passed 2019 Md Laws Ch. 767 creating three new prescription drug benefit programs. Chapter 767 was primarily directed towards current employees who were hired prior to July 1, 2011, and had vested into the Health Benefits Program. Current employees were instructed to retire on or before December 31, 2019, to be eligible for the Maryland State Retiree Prescription Drug Coverage Program. This program would reimburse the retiree for out–of–pocket costs that exceed the limits established for non-Medicare–eligible retirees in § 2–508(d)(2)(iii). The second program, the Maryland State Retiree Catastrophic Prescription Drug Assistance program was directed towards current employees hired prior to July 1, 2011, who retired after January 1, 2020. This program would reimburse a participant for out–of–pocket costs after the participant has entered catastrophic coverage under the prescription drug benefit plan under Part D. The third program, the Maryland State Retiree Life Sustaining Prescription

Drug Assistance Program would reimburse out of pocket costs for medications not covered by Part D. App.53a.

On November 1, 2019, AFSCME intervened arguing that SPP §§ 2-508 and 2-509.1 created a contract between the State and current employees despite the Health Benefits Program expiration on January 1, 2019. App.54a.

On December 30, 2021, the District Court issued an Order and Memorandum opinion stating that State retirees who retired before July 1, 2011 (and all those similarly situated had an enforceable unilateral contract with the State; that the Petitioners (and all those similarly situated) had adequately pleaded a breach of a unilateral contract claim, subject to a demonstration by Defendants that their proposed modification was reasonable. The District Court decided that any active employee or retiree who retired after January 1, 209 did not have an enforceable contract with the State. The District Court granted the Respondents Motion to Dismiss as to Intervenor Plaintiff AFSCME. The District Court entered a Final Order of Judgment and Order of Declaratory Judgment against AFSCME ruling that under State law, Maryland had created a unilateral contract and under state law active state employees have no vested entitlement to prescription drug benefits. App.78a.

2. AFSCME appealed to the Fourth Circuit on March 8, 2022, arguing that active employees should not have been dismissed from the case and that the court's determination of the existence of a unilateral contract was erroneous and inconsistent with Maryland law. App.32a. The Fourth Circuit used *United States*

Trust Co. v. New Jersey[2], *National Railroad Passenger Corp. v. Atchison, Topeka & Santa Fe Ry. Co.,*[3] *United States v. Winstar Corp.*[4] *and Dodge v. Board of Education*[5] to decide that SPP §§ 2-508 and 2-509.1 did not create a contract because the language of the statutes did not indicate a clear and unmistakable intent on behalf of the State to create a contract, therefore neither active employees nor retirees had a contract. CA JA023.

1. Based on *AFSCME Council 3* ruling the District Court dissolved the injunction and dismissed the case in its entirety on September 29, 2023. Petitioners and all those similarly situated would have to register for Medicare Part D (without the subsidy) between October of 2024 and December of 2024 to have prescription drug coverage in 2025. App.32a.

2. Petitioners timely appealed the District Court ruling on October 24, 2023. In February of 2024, Petitioners brief asserted that the AFSCME case analysis did not apply to Petitioner's case because the contract was unilateral and state law regarding contracts formation was not observed. *See Baker v. Baltimore County*, 487 F. Sup. 466 (D. Md 1980); *Erie R.R. Co. v. Tompkins*, 304 U.S. 64,78 (1938) (In non-federal question cases before a federal court . . . the court must apply the substantive law of the state in which the claim rose) and the decision was delivered without notice to Petitioners. Respondents responded asserting

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[2] 431 U.S. 1, 17 n.14 (1977)

[3] 470 U.S. 451 (1985)

[4] 518 U.S. 839 (1996)

[5] 302 U.S. 74 (1937)

that the Summary Judgment entered on their behalf was correct since words of contract was not used in the statute that would create a binding contract that was enforceable against the State.

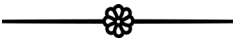
1. On August 29, 2024, Petitioners filed a Motion for Relief from Final Judgment ("60(b) Motion") and Request for Indicative Ruling ("Rule 62.1") in the District Court due to the passage of the Maryland Access to Care Act which created the Qualified Resident Program. This program granted aliens who were in the country illegally access to State and Federal healthcare programs as well as it would provide a subsidy to reduce the cost of premiums once the U.S. Secretary of Health & Human Services and/or the U.S. Secretary of Treasury signed a waiver allowing the State to disregard federal law. CA JA JA032. Receiving no response from the District Court, the Petitioners filed an Emergency Motion for Preliminary Injunction to be reviewed once the District Court ruled on the Indicative Ruling Request due to the destruction of Hurricane Helene and the advent of Hurricane Milton during the registration period for Medicare Part D. CA JA030.

On November 20, 2024, the District Court held that the 60(b) Motion failed to show any extraordinary circumstances necessary for the Court to vacate its order and denied the Rule 62.1 request. In addition, the District Court stated that the Equal Protection argument lacked merit since lawfully present noncitizens had equal access to buy insurance and unlike the Petitioners were not entitled to the benefits of Medicare Part D. App.29a.

2. On December 18, 2024, Petitioners filed a second notice of Appeal with the Fourth Circuit. (24-

2266). Petitioners outlined the seven-year history of the case culminating in the passage of the Qualified Resident Program that gave a healthcare subsidy to illegal aliens, emphasizing the District Court's refusal to address the allegations asserted in a timely manner

Both appeals were consolidated and the Fourth Circuit affirmed the Summary Judgment in favor of the Respondents and the denial of the 60(b) motion and request for Indicative Ruling under Rule 62.1. App.2a.



REASONS FOR GRANTING THE PETITION

A Petition for a writ of certiorari may be granted, " . . . if a United States Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court". Sup. Ct. R. 10(c). This case meets that criterion with the two issues discussed below.

I. THE QUESTION PRESENTED IS IMPORTANT AND RECURRING

A. The Battle Between Individual Right vs. State's Rights in Employment

States have unrestricted autonomy to fashion the terms and conditions of employment for their workers. Each State determines the legal structure and funding mechanism of its own employee pension systems and other post-retirement employment benefits. The State also enjoys unrestricted autonomy devising their state policy regarding their employees. Unlike the Employment Retirement Security Act of 1974 ("ERISA") enacted by Congress to protect employees in the

private sector, there is not a nationally consistent rule structure for government employees that would address vesting, funding and fiduciary requirements. This leaves the state government employee subject to local political direction and the unmistakability doctrine.

The unmistakability doctrine is a cement barrier to the Petitioners' ability to contract with their employer because it requires the surrender of individual rights (the right to contract in the employment context) to protect the sovereign powers of State and local governments. *See United States v. Winstar Corp*., 518 U.S. 839, 871 (1996) (the purpose of the doctrine is to avoid unnecessarily infringing on a state legislature's ability to legislate regarding state sovereign rights unless it is clear beyond any doubt that the legislature meant to give up that right.)

The continued use of the unmistakability doctrine to negate the fruits of labor (given by public sector employees over countless years of service) can be likened to a feudal system that practices the "bounty-springing-from-a-gracious-sovereign theory" to the employee's detriment. *The City of Frederick v. Quinn*, 35 Md. App 626, 630 (1977) "The medieval or even colonial concepts of a compassionate and generous sovereign rewarding his humble, devoted subjects is completely alien to our modern view of a democratic government's obligation to its citizens" because State employees are not indentured to the State and the era of slavery has passed. *Hall v. United States*, 92 U.S. 237 (1837) (wherefore slavery existed the slave was incapable of entering into any contract.) Yet, the State's interference with their employees' freedom to contract has been recognized as being within the

police power of the state and part of that power flows from the use of the unmistakability doctrine.

When does the state become more important than the individual that it represents? When it subjugates their free will and confiscates the fruits of their labor without recompense. When its continued sovereignty becomes more powerful than the individual that created the structure. The concept that God given rights of individuals must be a supplicant to an all-knowing sovereign power is why the colonist rose up and fought the Revolutionary War. This struggle between individual and state's rights must be addressed. "It is a question of which of two powers or rights shall prevail — the power of the State to legislate or the right of the individual to liberty of person and freedom of contract." *Lochner v. New York*, 198 US 45, 58 (1905).

Federal circuit courts utilize the unmistakability doctrine when justifying the State's lack of intent to contract with its employees. But the State writes the statute that lays out the promise to its employees. Then the State argues that the language they used does not signal contractual intent. The unmistakability doctrine justifies this subjugation of the employee right to contract and enables the government to act with near impunity in stealing labor without repercussions. The bottom line is that the States offer illusory promises for an employee's meaningful consideration with full knowledge that the unmistakability doctrine will negate the contract. This conflicts with the individual rights of the employee to contract.

Under Maryland law of contract, illusory contracts are unenforceable. *Cheek v. United Healthcare of the mid-Atlantic, Inc.*, 378 Md. 139, 148 (MD 2003). The State is aware that any statutory promise to their

employees is unenforceable because 1) there is no mutuality of obligation and therefore no consideration; and 2) the State retains the right to decide whether to perform the promised act. *See Floss v. Ryan's Family Steak Houses, Inc.*, 211 F.3d 306 (6th Cir. 2000) (the promise to provide arbitration forum was illusory because employer reserved the right to alter the applicable rules and procedures without any obligation to notify, much less receive consent from its employees); also *Penn v. Ryan's Family Steak House, Inc.*, 269 F.3d 753, 759, 761 (7th Cir. 2001) (holding that the employer's promise was illusory and that the arbitration agreement was unenforceable.)

The Fourth Circuit cannot have it both ways. If a contract must be clear, definite and unambiguous to be enforceable, then any unilateral employment contract created by the State, fulfilled by the performance of its employees and subsequently eliminated by the unmistakability doctrine is illusory. This makes the case for individual rights a losing one.

B. The Decision Below Is Incorrect

The Fourth Circuit decision is wrong. The Fourth Circuit decided that the language in SPP §§ 2-508 and 2-509.1 did not overcome the presumption outlined in that the legislature intended to bind itself contractually. In reaching that decision, the Fourth Circuit stated that, "[i]t is of first importance to examine the language of the statute" which should demonstrate, "both [the contract's] existence and the authority to make it . . . clearly and unmistakably appear [in the statutory language], and all doubts must be resolved in favor of the continuance of power of the state legislature to modify or repeal the enactments of the pre-

vious legislature."App.23a-24a. Yet the Fourth Circuit did not review what type of contract was applicable to these requirements.

The unmistakability doctrine is not applicable to a statutory unilateral contract due to its method of acceptance and the contract formation timing. Unlike a bilateral contract, a unilateral contract is a contract which is accepted, not by traditional acceptance, but by performance. 2 WILLISTON ON CONTRACTS § 6:2 (4th ed.). This becomes problematic when confronted with the clear language requirement in the unmistakability doctrine. The unmistakability doctrine requires a clear indication that the legislature intends to bind itself in a contractual manner. *U.S. Trust Co.*, 431 U.S. at 17-18 n. 14 (1985) making the difference in unilateral and bilateral acceptance and contract formation significant.

For a bilateral contract acceptance is a return promise communicated from the offeree to the offeror and the contract is formed as soon as the promise is made. In contrast a unilateral contract is accepted by action and a contract is formed only once the act is finished and no binding agreement exists until then. Since a unilateral contract is not formed until completion, words of contract are not used to extend the offer. As a result, the clear language needed to create a contract under the unmistakability doctrine will always be missing therefore public sector retirees are penalized for accepting and fulfilling an illusory promise. The decision permits government employers to make illusory promises dependent solely on their discretion, undermining the individual rights of the employee.

The criteria the Fourth Circuit uses to define the State's intention to unmistakably create a contract

are decidedly at odds with the type of contract the statutes in this case created. It is clear that no precise language is necessary to create a binding unilateral contract and to require words of contract dooms any statutory unilateral employment contract for public sector retirees. Therefore, any review for contractual language such as "agree" or "covenant" to demonstrate intent will always fail if contractual language is necessary requirement to determine the existence of a contract under the unmistakability doctrine.

II. THE RESTRICTIONS PLACED ON AMERICAN CITIZENSHIP MERITS THIS COURT'S REVIEW

A. States Are Deeply Divided on Whether Aliens Not Lawfully Present in the United States of America Can Receive Medicare and Medicaid Benefits

There is a well-recognized and entrenched conflict within the country challenging states' rights versus federal rights regarding whether illegal aliens should be granted the benefits of citizenship, specifically to access state and federal healthcare programs. In August 2024, nineteen (19) states[6] sued in the United States District Court for the District of North Dakota to block the Defendants, the United States of America and the Centers for Medicare and Medicaid Services ("CMS") efforts to help aliens not lawfully present in the United States access subsidized federal healthcare. *The State of Kansas v. United States*, 1:24-cv-00150.

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6 Alabama, Arkansas, Florida, Idaho, Indiana, Kansas, Kentucky, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, South Carolina, South Dakota, Tennessee, Texas and Virginia

The Defendants in this action were joined in opposition to the motion for preliminary injunction by nineteen states and the District of Columbia[7]. The State of Kansas plaintiffs opposed a rule change promulgated by the Centers of Medicare and Medicaid Services that revised the definition of "lawfully present" to allow Deferred Action for Childhood Arrivals recipients ("DACA") to enroll in health insurance plans through the Affordable Care Act ("ACA") exchanges. Appellate review by the Eighth Circuit maintained the status quo and allowed the injunction to remain in place, ordering the District Court to expedite the briefing schedule for full consideration by a merits panel. *State of Kansas v. United States*, 124 F.4th 529 (2024).

In July of 2025 twenty-one (21) states[8] filed a lawsuit in the United States District Court for the District of Rhode Island against the US Department of Justice, US Department of Health and Human Services, US Department of Education and the US Department of Labor over an executive order that removes illegal aliens from access to public benefits reserved for American citizens, (inclusive of state and federal healthcare) after President Trump signed an executive order to end taxpayer subsidization of public benefits

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[7] The Defendants States include California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Mexico, New Jersey, New York, Oregon, Rhode Island, Vermont and Washington.

[8] The Plaintiff states are Arizona, California, Colorado, Connecticut, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington, Wisconsin and the District of Columbia.

to aliens not lawfully present in the United States[9]. *State of New York v. US Department of Justice*, 1:25-cv-00345. The *State of New York* Plaintiffs seek injunctive relief to stop the States from screening individuals for their lawful status before allowing them access to public benefits, inclusive of state and federal healthcare programs. Regardless of the district court's decision on August 20th of this year, the decision will be appealed as the struggle between state and federal law as it pertains to the status of aliens not in this country legally continues.

Federal healthcare benefits, normally the province of American citizens, are now being hotly contested to include aliens who are here illegally and forms a significant backdrop for the conflict in this case.

This case presents a question under the Equal Protection Clause that is collateral to an issue that has sharply divided the country and the courts and is ripe for review.

B. This Case Presents an Issue of National Importance

The conflict between the States over the recipients of public benefits does not adequately address the conflict between American citizens and illegals not lawfully present in the United States over their access to public benefits exclusive to American citizens. As it currently stands the ACA does not allow federal healthcare subsidies or coverage for aliens who are unlawfully present in the United States. 42 U.S.C. § 18032(f)(3). However, the State of Maryland has passed a law

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[9] Executive Order No. 14,218, 90 Fed. Reg. 10,581, *Ending Taxpayer Subsidization of Open Borders.*

and received a waiver [10] allowing them to circumvent this federal law. Pursuant to the Equal Protection Clause eligibility for this benefit—and the government's decision to subsidize these public benefits for individuals without legal status—necessitates that Petitioners' subsidy be reinstated in order to avoid the monikers of discriminatory intent and/or disparate impact/treatment by State action. When the constitutional violation is unequal treatment, as it is here, a court theoretically can cure the unequal treatment either by extending the benefits or burdens to the exempted class, or by nullifying the benefits or burdens for all. *Heckler v. Mathews*, 465 U.S. 728 (1984).

When Maryland passed its Access to Care Act to establish the Qualified Resident Program, it did so with the knowledge that it had just eliminated a subsidized health care benefit for its former employees the previous year. If the Qualified Resident Program was enacted with a discriminatory intent which resulted in a discriminatory effect against American citizens it violates the equal protection clause. *See Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). It is undisputed that the enforcement of the statute that created the Qualified Resident Program has created two classes of Medicare eligible recipients whose drug costs are and were subsidized, indistinguishable except with respect to whether they are or are not citizens of the United States of America.

It has been established that illegal aliens are entitled to the constitutional protections found in the Equal Protection Clause therefore, the State has an obligation not to disfavor its own citizens.

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[10] *Fitch v. Maryland*, 24-2266, Doc 21.

This case asserts that Americans were treated differently than aliens who entered this country illegally and the Fourth Circuit decision has allowed the State to treat American citizens like this without demonstrating or articulating any compelling government interest to deprive American citizens of their right to expect equal treatment under the laws. No State can be allowed to treat Americans, like second class citizens in their own country. If the State wishes to give illegal aliens subsidized healthcare, they should give it to their own citizens as well.

C. The Decision Below Is Incorrect

> An abuse of discretion is where the judge has acted in an arbitrary or irrational manner, where he has completely failed to consider the right factors, or where he relied on faulty legal or factual premises. . . . Put simply, an abuse of discretion is when the district judge is "fundamentally wrong."

United States ex rel. Nicholson v. MedCom Carolinas, Inc., 42 F.4th 185 (4th Cir. 2022) (citations omitted). The Fourth Circuit failed to address the District Court's faulty factual misstatements of the Petitioner's arguments under the abuse of discretion allegations. This made any decision from the district court "fundamentally wrong" as to be "unsupportable" rather than " . . . merely mistaken and constitutes an abuse of discretion subject to reversal." *Nicholson* at 198. This makes review by this Court of the order entered into this case essential.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Deborah Holloway Hill
Counsel of Record
P.O. Box 43207
Nottingham, MD 21236
(410) 428-7278
dhill@dahhlaw.com

Counsel for Petitioners

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