STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. KEN-25-53

MAINE STATE CHAMBER OF COMMERCE and
BATH IRON WORKS CORPORATION

Plaintiffs-Appellants

v.

STATE OF MAINE DEPARTMENT OF LABOR and
LAURA A. FORTMAN, in her official capacity as
Commissioner of the State of Maine Department of Labor

Defendants-Appellees

On Questions Reported by the Kennebec County Superior Court
DOCKET NO. AUGSC-CV-2025-00007

REPLY BRIEF OF APPELLANTS

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To its credit, DOL has not hidden the ball: it admits it adopted a Rule compelling employers offering PFML benefits via a private plan to pay premiums into the State's plan to shore up the fiscal viability of the Fund. Red. Br. at 15-16 & n.5 (citing A.163, 166). Stated bluntly, section XIII(A)(4)(b) is a money grab. The governing statute, however, bars DOL from addressing fiscal viability in this manner. The Legislature determined that employers offering a private plan need not pay into the Fund, 26 M.R.S. § 850-F(8), and decreed that the tool for ensuring fiscal viability prior to implementation is a delay in benefit payments, *id.* § 850-P. DOL cannot unilaterally mandate otherwise.

ARGUMENT

I. The Rule compelling employers offering a substitute private plan to pay into the State plan stretches the PFML statute beyond its breaking point.

The Legislature clearly mandated that an "employer with an approved private plan . . . is not required to remit premiums under this section." *Id.* § 850-F(8). DOL, however, would read into this unequivocal language an implied caveat: that employers offering private plans *can* be compelled to remit premiums, *as long as DOL imposes those premiums before administratively processing the employer's application for a substitute plan*. DOL's creative interpretation is contrary to the statute's clear text and does not provide a reasonable interpretation of the statute to which this Court should defer.

A. The statute unambiguously bars DOL from collecting premiums from employers offering a private plan.

DOL turns the PFML statute on its head. Section 850-F(8) contains no time limit on its mandate that employers with an approved private plan are "not required" to remit

premiums. *Id.* Thus, section 850-F(8) precludes DOL from requiring employers offering an approved private plan to pay premiums into the Fund *at any time*. DOL, however, would read this unqualified provision to implicitly allow premium payments because it does not say that DOL must begin accepting applications before premiums become due in early 2025. DOL's gamesmanship is patent.

As an initial matter, DOL's emphasis on the importance of the January 1, 2025, premium obligation is misplaced. The January 1, 2025, date applies only to employers who choose not to offer a private plan. The trigger date for the premium obligation in section 850-F(2) clearly does not apply to employers offering a private plan because those employers are exempted from premium payments in section 850-F(8).

Even if the January 1, 2025, date applied to all employers, it is a red herring because DOL had control over the timing of applications and could have allowed them prior to the first premium payment. Although section 850-F imposes an obligation to pay premiums beginning January 1, 2025, DOL neglects to mention that such premiums are to be "remitted quarterly." *Id.* § 850-F(2). The agency's regulations further clarify that such payments are to be made "[o]n or before the last day of the month following the close of the quarter for which premiums have accrued." 12-702 C.M.R. ch. 1, § X(A). Thus, there was no need for section 850-F(8) to specify that exemptions had to be available as of January 1, 2025, in order for the exemptions to apply from the outset. DOL could have—and should have—complied with the unqualified language in section 850-F(8) through the simple expedient of allowing employers to submit applications

under a schedule that enabled the agency to process the applications before payment became due on April 30, 2025. Instead, it mandated a delay and then used that delay to render the first premium payment unavoidable. *Id.* § XIII(A)(2), (4).

Further, DOL's focus on the timing of employers' applications rests on two erroneous conclusions: (1) that an employer must have an approved private plan in place by January 1, 2025, in order to take advantage of the exemption, and (2) that an employer does not have an "approved" private plan for purposes of the exemption in section 850-F(8) unless and until DOL has reviewed and approved an employer's application. Both conclusions are incorrect.

First, the conclusion that an employer must have an approved private plan in place by January 1, 2025, in order to be exempt under section 850-F(8) makes no sense in the context of how the Legislature structured the implementation of the PFML program. The Legislature provided that PFML coverage *only goes into effect as of January 1, 2026*. 26 M.R.S. § 850-B; *see also* 12-702 C.M.R. ch. 1, § XIII(A)(4)(c). Thus, even if DOL must administratively process an application for a plan to be "approved," any employer who obtains DOL approval of a plan before January 1, 2026, will have an "approved" plan—as DOL describes that term—at all times required under the PFML statute. Yet DOL *still* mandates that such employers remit non-refundable premiums.

Second, the PFML statute does not make the date of DOL's administrative determination the magic moment at which an employer offers a substitute private plan. An application for a private plan must be granted by DOL if it meets the requirements

of section 850-H. A plan that "confer[s] rights, protections and benefits" as described in section 850-H qualifies as an "approved" plan. 26 M.R.S. § 850-H(1). DOL has no discretion to withhold its administrative acceptance of such a plan. Certainly, DOL can determine that a plan *fails* to satisfy section 850-H—in such an instance, the employer has not offered an approved plan and must pay into the Fund. But if DOL determines that a plan *does* satisfy section 850-H, then the employer has offered an approved plan at all relevant times during the implementation period for the PFML statute.

This reading does not render any of section 850-H surplusage. It is consistent with the requirement that an employer "apply to the department for approval," *id.*, because employers must submit an application showing that they offer a substantially equivalent private plan. It is also consistent with the additional requirements to obtain approval in section 850-H(2) and to maintain approval in section 850-H(3). Under the plain reading advanced by Plaintiffs, all of the obligations in section 850-H remain enforceable by DOL. Plaintiffs simply urge the Court to conclude, consistent with the legislative scheme, that—as long as DOL ultimately determines that an employer has satisfied the requirements of section 850-H—the employer is exempt from premiums under section 850-F(8) because it has offered an approved plan not only as of the arbitrary date of DOL's administrative determination, but also as of all relevant times prior to implementation on January 1, 2026.

The Legislature chose to balance the financing of the PFML program differently than DOL. It chose to only impose on employers who opt for private plans the

obligation to pay "costs arising out of the administration of private plans." *Id.* § 850-H(7). When read together with section 850-F(8), the Legislature plainly intended to allow recovery of only costs, and not premiums, from employers offering private plans.[1] Further, it chose to ensure the Fund's financial stability in the ramp-up to implementation by allowing DOL to delay the implementation of benefit payments. *Id.* § 850-P. It did not allow for collection of premiums from employers who opted for a private plan. By specifying allowable costs and a relief mechanism for financial viability, the Legislature precluded DOL's approach. *Violette v. Leo Violette & Sons, Inc.*, 597 A.2d 1356, 1358 (Me. 1991). It is therefore unsurprising that the Legislature did not expressly permit "refunds" of premiums to employers with private plans—the PFML statute does not authorize those premiums, so no refunds were contemplated.

B. Even if the statute is ambiguous, DOL fails to demonstrate that deference to its interpretation is appropriate.

Ultimately, DOL's argument that the PFML statute clearly authorizes the agency to collect premiums from employers offering substitute private plans because it is silent as to the date when DOL must process employers' applications is really an argument that the statute is sufficiently ambiguous to permit DOL to collect the premiums. But even if ambiguity exists, this Court should not defer to DOL's interpretation.

[1] DOL's contrary reading is absurd. Employees covered by private plans are ineligible for benefits paid out of the Fund and will therefore cost the State less than their counterparts on the State's plan; yet DOL claims that the PFML statute authorizes it to levy *both* premiums *and* costs on employers offering private plans (but only premiums on those using the state plan). The structure of the PFML statute as a whole provides no support for the notion that the Legislature intended to penalize private plans in this way. Blue Br. at 28-34.

1. DOL's interpretation is unreasonable.

This Court should not defer to DOL's interpretation if it is inconsistent with legislative history, *Nat. Res. Def. Council, Inc. v. Daley*, 209 F.3d 747, 752 (D.C. Cir. 2000), and it is. Seeking to marginalize the sponsors' testimony that, "[f]or a business with existing benefits, there would be no need to pay into the state fund under this law," Blue Br. at 33 (quoting testimony of Sen. Daughtry and Rep. Cloutier), DOL argues that no employer could have "existing benefits" before DOL promulgated its rules because "no substantially equivalent plan could exist until [DOL]'s rules were finalized." Red Br. at 23. This would render the sponsors' statement meaningless; if no business could offer "existing" benefits until DOL adopted implementing rules and approved plans, then the sponsors were saying that *every* business must pay into the Fund. The Court should not presume that the sponsors were being so disingenuous. The plain meaning of their statement is that an employer who offers a private plan as of January 1, 2026, need not pay into the Fund. DOL points to no legislative history in its favor.

The Court also should not defer to DOL because—contrary to DOL's blandishments—its interpretation leads to absurdities. *Ma v. Ashcroft*, 361 F.3d 553, 559 (9th Cir. 2004). It forces employers and employees to pay twice (for no State benefits).

It is no help to employers or employees that the Rule requires them to pay into the State plan in 2025 but allows them to pay for private plans later. Though insurers are efficient enough to fund private plans without lead-up payments in 2025 (unlike the State), those covered by private plans are still paying premiums to both the State and a

private insurer for coverage that would be operative *for the same period*. Thus, under the Rule, employers and employees will in fact pay twice for coverage that starts in 2026.

Further, DOL's assertion that employers and employees covered by private plans will receive benefits from the PFML program is speculative and strained. Theoretically, an employer *may* choose to use the State plan after three years, 12-702 C.M.R. ch. 1, § XIII(A)(3), (9), or cancel the plan under narrow circumstances, *id.* § XIII(A)(5); or an employee *may* someday join an employer covered by the State plan. Importantly, however, the record before the Court states that Plaintiffs will satisfy the PFML by offering a private plan, and there are *no* facts in the record suggesting that Plaintiffs or their employees will ever join the State plan. A.42, ¶ 16. And even if (speculatively) some employers and employees did, many will not—and those who do will be counterbalanced by others moving to private plans. Those that do join the State plan, moreover, will have to pay premiums. 26 M.R.S. § 850-F(2), (5); *see* 12-702 C.M.R. ch. 1, § XIII(A)(8)-(9). The *potential* for some *future* benefit by *some* employers and employees (who would then have to pay into the Fund) does not justify imposing premiums *now* on *all* employers and employees with private plans. The fact remains (and the record reflects) that the Rule forces Plaintiffs and their employees to pay premiums during a period in which they will not be covered by the State plan or receiving State benefits.[2]

[2] DOL's asserted concern with free-riding employers who declared an intent to use a private plan but then used the State's plan, all in an effort to avoid paying premiums in the run-up to implementation, does not justify imposing non-refundable premium payments. At the very least, DOL could have allowed for refunds once an employer's application was reviewed by DOL and deemed satisfactory. DOL instead flouted the PFML statute.

Accordingly, DOL's reading of the statute will in fact result in employers and employees paying twice (one payment in exchange for State benefits they will never receive). Indeed, DOL admits that employees covered by an approved private plan will not receive a refund of wages withheld for the April 30 premium payment that DOL has mandated. Red Br. at 32-33. While this moots the equal protection problem that a contrary reading would have created, *see* Blue Br. at 35-37,[3] it underscores Plaintiffs' central point: DOL has adopted an interpretation that harms the very employees the PFML statute was designed to protect. The Rule is thus unreasonable.

2. DOL offers no valid reason for the Court to defer to DOL and abdicate its responsibility to say what the law means.

Because of DOL's unreasonable interpretation of the PFML statute, this Court need not decide the extent of deference owed to DOL. But if the Court does go further, it should not blindly defer to DOL's legal analysis.

DOL was not exercising an expertise that justifies deference. Although DOL was tasked with adopting rules for the PFML program, 26 M.R.S. § 850-Q, interpreting section 850-F(8) does not require specialized expertise. In *Maine Association of Health Plans v. Superintendent of Insurance*, relied upon by DOL, the Court deferred to a board's calculation of aggregate measurable cost savings because it was specifically authorized

[3] As part of its broader confusion over the nature of the arguments raised by Plaintiffs, *see* Red Br. at 29-33, DOL misunderstands Plaintiffs' equal protection argument. That argument was based on potentially unequal treatment of employers offering a private plan and employers utilizing the State plan (not employers v. employees). Blue Br. at 35-37. Regardless, by adopting the most natural reading of the Rule, DOL has implicitly conceded the consequent harm to employees from unrecoverable loss of wages. Thus, DOL has not adopted the reading of the Rule that—while avoiding harm to employees—would have violated equal protection.

to make that calculation. 2007 ME 69, ¶¶ 42-44, 58, 923 A.2d 918. This case does not involve technical judgment or a specific authorization to choose who pays premiums.

Even if DOL has relevant expertise, the Court should not surrender its power to say what the law is by applying the rigid two-step deference analysis under *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). Rather, while giving due weight to agency expertise, the Court must exercise its own legal judgment.[4]

DOL puts great weight on various pre-*Chevron* cases, *see* Red Br. at 36, but it misreads those cases. The cited cases stand for the simple proposition that the Court defers to agency factual findings. *See, e.g.*, *Cent. Me. Power Co. v. Pub. Utils. Comm'n*, 153 Me. 228, 230, 136 A.2d 726, 729 (1957).[5] Some also acknowledge the proposition that the Court gives practical deference to expert judgment on technical issues. *See, e.g.*, *New Eng. Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 448 A.2d 272, 279 (Me. 1982). These cases are consistent with the rule that courts "decide questions of law." *Cent. Me. Power Co.*, 153 Me. at 230, 136 A.2d at 729; *see Mech. Falls Water Co.*, 381 A.2d at 1091 (the Court decides questions of law on the same standard as on appeal from Superior Court).

Plaintiffs take no issue with deference to factfinding, but rather with the rigid two-step *Chevron* standard that compels courts to defer to reasonable agency interpretations of law even if a better interpretation is available. *See Cobb v. Bd. of*

[4] The Court can reach this issue to the extent necessary to decide this case. The validity of *Chevron* deference is properly raised as an argument bearing on the first issue reported by the Superior Court. A.9. It is not necessary to identify and agree upon each party's arguments, just the questions of law reported under M.R. App. P. 24(a).
[5] *See also, e.g.*, *In re Me. Clean Fuels, Inc.*, 310 A.2d 736, 741 (Me. 1973); *Mech. Falls Water Co. v. Pub. Utils. Comm'n*, 381 A.2d 1080, 1091 (Me. 1977); *Cent. Me. Power Co. v. Pub. Utils. Comm'n*, 405 A.2d 153, 182 (Me. 1979).

Counseling Pros. Licensure, 2006 ME 48, ¶ 13, 896 A.2d 271. It is this rule that the Court has adopted without analysis. Notably, DOL does not—and cannot—contest the fundamental separation of powers principle that contradicts *Chevron*, namely, that the judiciary has "exclusive" authority to say what the law means. *Moulton v. Scully*, 111 Me. 428, 89 A. 944, 953 (1914); *see* Blue Br. at 38-40. That should end *Chevron* deference in Maine; the Court cannot disregard article III, section 2 of the Maine Constitution.

DOL relies on *Guilford Transportation Industries v. Public Utilities Commission*, which did not address *Chevron*'s viability under the Maine Constitution or explain its tension with this Court's pre-*Chevron* cases. 2000 ME 31, ¶¶ 9, 11, 746 A.2d 910. Rather, *Guilford* simply cited two pre-*Chevron* cases, *id.* ¶ 11—cases which stand for the rule that an agency's interpretation should "have weight" as a "guide" but cannot serve as "a hard and fast rule for the construction of statutes" without wrongfully "transferring . . . judicial functions to administrative agencies," *State v. York Utils. Co.*, 142 Me. 40, 44, 45 A.2d 634, 635-36 (1946); *see Cent. Me. Power Co. v. Me. Pub. Utils. Comm'n*, 436 A.2d 880, 885 (Me. 1981) (granting "due consideration," not "conclusive" weight, to agency interpretation). These cases did not mandate deference in *Chevron*'s sense, but rather gave due deference in practical terms while expressly retaining the power to say what the law is. *See also* Blue Br. at 40 n.12 (citing cases); *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 387-90 (2024) (discussing pre-*Chevron* cases); *Sampson-Sawyer Co. v. Johnson*, 156 Me. 544, 552, 167 A.2d 1, 5 (1960). This Court should re-assert this approach as a matter of Maine law, instead of rotely following *Chevron*'s defunct rule. Blue Br. at 42.

DOL's other arguments also fail. The notion that agencies may have relevant expertise is fair enough; but this principle only justifies giving due consideration to an agency's expertise, not mandating deference to any reasonable agency interpretation of the law. *Loper Bright Enters.*, 603 U.S. at 385-86. Nor can deference be justified in this case because the Legislature reviews "major substantive" rules. *See* 5 M.R.S. § 8071. That is irrelevant here; the Rules were designated "routine technical" and were not reviewed by the Legislature. 26 M.R.S. § 850-Q. Further, Plaintiffs have already explained that MAPA mandates deference to agency factual findings while, notably, not doing so for legal interpretations. Blue Br. at 41 & n.15. Finally, article III, section 2 does not require the Court to defer to agency legal interpretations. Rather, the deference owed to the executive branch under article III, section 2 only extends to agency factfinding. *Friends of Lincoln Lakes v. Bd. of Env't Prot.*, 2010 ME 18, ¶ 12, 989 A.2d 1128.

The Court should not continue applying *Chevron*—an innovation of federal law—under Maine law, given this Court's pre-*Chevron* cases and Maine's separation of powers doctrine. Under the Maine Constitution, the Court alone says what the law means.

II. The Rule does effect an unconstitutional taking.

DOL's justifications based on administrative feasibility or the need to ensure the solvency of the Fund do not override constitutional protections. The Constitution is not subject to administrative convenience. By forcing private plan employers and employees to fund the program through non-refundable premiums, without corresponding benefits, section XIII(A)(4)(b) violates the Takings Clauses.

A. Payment of money can constitute a taking.

DOL oversimplifies the jurisprudence relating to takings claims involving money. Plaintiffs do not contest that "an appropriation of money does not constitute a per se taking." *Me. Beer & Wine Wholesalers Ass'n v. State*, 619 A.2d 94, 97 (Me. 1993). But DOL ignores the reality that a "per se" taking is not the only type of taking. *See id.* at 97 & n.4. A per se taking "requires no case specific analysis of the appropriation but is compensable 'per se'"; other types of takings, however, require a case-specific analysis. *Id.* A per se taking is not at issue here,[6] given that the government may generally collect money via lawfully imposed taxes or fees. *See Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 615 (2013). But that does not end the inquiry; instead, the Court must engage in a case-specific analysis. *See id.* at 615-16. Supreme Court precedent elucidates that a taking results when the government (1) retains money beyond what is owed, or (2) confiscates money without any corresponding benefit. *See Tyler v. Hennepin Cnty., Minn.*, 598 U.S. 631, 639-41 (2023); *Webb's Fabulous Pharmacies v. Beckwith*, 449 U.S. 155, 163-65 (1980); *Massachusetts v. United States*, 435 U.S. 444, 462 (1978). DOL fails to engage in the necessary case-specific analysis. In this case, both of these state actions have occurred—and, thus, Plaintiffs have established a taking.

DOL argues that the compelled payment of money can never effect a taking, relying on cases like *Eastern Enterprises v. Apfel*, 524 U.S. 498 (1998) (plurality op.) and

[6] Nor are potential or future profits at issue, making DOL's cite to *MacImage of Maine, LLC v. Androscoggin County*, 2012 ME 44, ¶ 36, 40 A.3d 975, similarly inapposite. This case involves certain payments, not speculative loss.

circuit court cases interpreting *Eastern Enterprises*. *See* Red Br. at 42-44. DOL's position overstates the law, particularly given *Tyler*, 598 U.S. at 648 (finding that the county's retention of money constituted a taking), and *Webb*'s, 449 U.S. at 163-65. The cases cited by DOL are distinguishable because (1) the monetary obligations at issue were imposed by the legislature—not by an agency, contrary to the statutory scheme; and (2) the monetary contributions resulted in direct benefits to the payors in connection with their trade or business.[7] By contrast, DOL has imposed a fee on employers who provide private plan benefits and employees who will not benefit from the PFML program.[8]

B. The Rule imposes an unconstitutional user fee.

DOL fails to meaningfully dispute that the premiums are user fees and not taxes. Indeed, it does not engage with, or even cite to, the four factors this Court analyzes in "determining whether an assessment is a fee or a tax." *State v. Biddeford Internet Corp.*, 2017 ME 204, ¶ 20, 171 A.3d 603.[9] For that reason alone, this Court should deem the

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[7] *See E. Enters.*, 524 U.S. at 514 ("[U]nder the Coal Act, those companies which employed the retirees in question, and thereby benefitted from their services, will be assigned responsibility for providing health care benefits promised in their various collective bargaining agreements." (quotation marks omitted)); *Commonwealth Edison Co. v. United States*, 271 F.3d 1327, 1329, 1333 (Fed. Cir. 2001) (concluding that there was no Fifth Amendment claim based on the Energy Policy Act's requirement that "domestic utilities that benefited from the uranium processing services to contribute to the remediation costs"); *Swisher Int'l, Inc. v. Schafer*, 550 F.3d 1046, 1049-50 (11th Cir. 2008) (upholding constitutionality of the Fair and Equitable Tobacco Reform Act, which imposed assessments on manufacturers based on that specific manufacturer's market share).

[8] Although DOL argues that employers have no property right in the timing of the exemption from premium payments, the statutory exemption creates a property interest in the money that would otherwise be paid into the Fund by employers with approved private plans. Once the statutory conditions are met, the employer's right to retain its property is vested, and any state action to the contrary is a taking. *See supra* Part I(A).

[9] DOL suggests in a footnote that this Court "could" rule that the premiums are taxes based on an IRS Revenue Ruling. *See* Rev. Rul. 2025-4, I.R.B. 2025-7; Red Br. 46 n. 25. This undeveloped (and thus waived) assertion is unpersuasive, as the factors articulated in *State v. Biddeford Internet Corporation*, which govern this Court's analysis, do not simply defer to the IRS and demonstrate that the premiums are fees. 2017 ME 204, ¶ 20, 171 A.3d 603; *see* Blue Br. at 48 n.18. Further, because the premiums are not taxes, the PFML program is a fee-based insurance policy rather than a "broadly applicable social benefit program." Red Br. at 28-29, n.13.

argument waived and simply analyze whether the premiums (*i.e.*, fees) are unlawful. *Cf. Aseptic Packaging Council v. State*, 637 A.2d 457, 462-63 & n.4 (Me. 1994).

Eastern Enterprises did not call into question the Supreme Court precedent relied upon by Plaintiffs, which establishes that user fees must "be a fair approximation of the cost of benefits supplied" to survive scrutiny. *United States v. Sperry Corp.*, 493 U.S. 52, 60 (1989); *Webb's*, 449 U.S. at 163-65 (holding the government's retention of interest accrued on an interpleader fund was a taking because it was "not reasonably related to the costs of using the courts"); *Massachusetts*, 435 U.S. at 462-63 (stating that the government has an interest "in making those who specifically benefit from its services pay the cost," *i.e.*, a user fee).[10] Section XIII(A)(4)(b) cannot meet this standard.

DOL fails to effectively distinguish *Webb's*, which is directly analogous to the facts here. The fact that the funds at issue in *Webb's* were the property of Webb's creditors, 449 U.S. at 161, is no different than the money at issue here being (in part) the property of BIW's employees. Further, like *Webb's*, the PFML statute provides a separate statutory mechanism to reimburse DOL for the costs of administering private-plan benefits, *see* 26 M.R.S. §§ 850-A(1), 850-H(7), in contrast with the "forced contribution" required by section XIII(A)(4)(b), *Webb's*, 449 U.S. at 165. DOL is admittedly imposing the cost of financing the Fund on employers offering private plans,

[10] Contrary to DOL's assertion, Plaintiffs did not misrepresent the holding in *Brown v. Legal Foundation of Washington*, 538 U.S. 216, 235 (2003), where the Supreme Court was "unanimous in concluding that a State Supreme Court's seizure of the interest on client funds held in escrow was a taking despite the unquestionable constitutional propriety of a tax that would have raised exactly the same revenue." *Koontz*, 570 U.S. at 616. *Brown* merely held that the "just compensation" was zero under the facts of the case. 538 U.S. at 237-240.

without any relationship to the employers' costs of using the program. *See* Red Br. at 15; 26 M.R.S. § 850-A(9). *Webb's* prohibits such regulatory confiscation. Further, Plaintiffs are not "ignore[ing] stipulated facts," Red Br. at 47, *see* A. 42-43, ¶¶ 16, 20-23; as of April 30, 2025, BIW and its employees remitted approximately $1.2 million to the Fund, in exchange for *no* PFML benefits.[11] Such a result is hardly a "fair approximation of the cost of benefits supplied." *Sperry Corp.*, 493 U.S. at 60; *Webb's*, 449 U.S. at 165.[12]

C. The Maine Constitution is self-executing.

DOL's argument that the Takings Clause of the Maine Constitution is not self-executing is simply wrong. The provisions of the Declaration of Rights "are self-executing and do not depend upon enabling legislation to become effective. . . . Any implementing legislation . . . may not in any way impair those rights, as the Legislature also is bound by the organic law of the State." *State v. Bachelder*, 403 A.2d 754, 758-59 (Me. 1979); *see Knick v. Twp. of Scott, Pa.*, 588 U.S. 180, 192 (2019). Further, this Court has endorsed a direct action under article I, section 21. *See King v. Town of Monmouth*, 1997 ME 151, ¶¶ 13-14 & n.11, 697 A.2d 837.

CONCLUSION

For these reasons, section XIII(A)(4)(b) of the Rules should be invalidated.

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[11] Plaintiffs are not alone in seeking to be exempt from "a requirement that is in fact borne by the public as a whole." Red Br. at 47. A declaration from this Court that the rule is invalid will protect all employers and employees covered by private plans. *See, e.g.*, Brief for Amici Cianbro Companies et al.

[12] DOL's reliance on *Franklin Memorial Hospital v. Harvey*, 575 F.3d 121, 123 (1st Cir. 2009) is also inapposite. BIW's forced contribution is *not* voluntary, especially when its failure to remit such premiums could result in a 100% penalty. *See* 12-702 C.M.R. ch. 1, § XI(A). DOL's decision to compel premium payments does not equate to voluntarily providing services under a state program in return for compensation, as in *Franklin*.

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CERTIFICATE OF SERVICE

I, Joshua D. Dunlap, hereby certify that an electronic copy of this Reply Brief of Appellants was served upon counsel at the address set forth below by email on the date of filing and a hard copy will be served by first class mail, postage-prepaid once the clerk has accepted the format pursuant to M.R. App. P. 7(c)(4).

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