IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: 2025-125411

In the matter between:

THE MINISTER OF HEALTH	First Applicant
THE DIRECTOR GENERAL, NATIONAL DEPARTMENT OF HEALTH	Second Applicant

and

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF FINANCE	Second Respondent
NATIONAL TREASURY	Third Respondent
SOLIDARITY TRADE UNION	Fourth Respondent
BOARD OF HEALTHCARE FUNDERS OF SOUTHERN AFRICA NPC	Fifth Respondent
SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM	Sixth Respondent
HOSPITAL ASSOCIATION OF SOUTH AFRICA	Seventh Respondent
THE SOUTH AFRICAN MEDICAL ASSOCIATION NPC	Eighth Respondent
HEALTH FUNDERS ASSOCIATION	Ninth Respondent
SAKELIGA NPC	Tenth Respondent

In re:

Case No: 2024-057449

SOLIDARITY TRADE UNION	Applicant
and	
THE MINISTER OF HEALTH	First Respondent
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Second Respondent
THE DIRECTOR GENERAL, NATIONAL DEPARTMENT OF HEALTH	Third Respondent
THE MINISTER OF FINANCE	Fourth Respondent
NATIONAL TREASURY	Fifth Respondent

And in re:

Case No: 2024-058172

BOARD OF HEALTHCARE FUNDERS OF SOUTHERN AFRICA NPC	Applicant
and	
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF HEALTH	Second Respondent

And in re:

Case No: 2024-11209

SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM	Applicant
and	
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF HEALTH	Second Respondent
THE MINISTER OF FINANCE	Third Respondent
NATIONAL TREASURY	Fourth Respondent

And in re:

Case No: 2025-020969

HOSPITAL ASSOCIATION OF SOUTH AFRICA	Applicant
and	
THE MINISTER OF HEALTH	First Respondent
THE MINISTER OF FINANCE	Second Respondent
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Third Respondent

And in re:

Case No: 2025-045340

THE SOUTH AFRICAN MEDICAL ASSOCIATION NPC	Applicant
and	
THE MINISTER OF HEALTH	First Respondent
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Second Respondent
SPEAKER OF THE NATIONAL ASSEMBLY	Third Respondent
CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES	Fourth Respondent

And in re:

Case No: 2025-083348

HEALTH FUNDERS ASSOCIATION	Applicant
and	
THE MINISTER OF HEALTH	First Respondent
THE MINISTER OF FINANCE	Second Respondent
NATIONAL TREASURY	Third Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Fourth Respondent

And in re:

Case No: 2025-134493

SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM	Applicant
and	
MINISTER OF HEALTH	First Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Second Respondent
MINISTER OF FINANCE	Third Respondent
NATIONAL TREASURY	Fourth Respondent

And in re:

Case No: 2025-147065

SAKELIGA NPC	Applicant
and	
MINISTER OF HEALTH	First Respondent
MINISTER OF FINANCE	Second Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Third Respondent
SPEAKER OF THE NATIONAL ASSEMBLY	Fourth Respondent
CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES	Fifth Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Fourth Respondent

FILING NOTICE

DOCUMENT FILED:

1. MINISTER'S SUPPLEMENTARY AFFADAVIT IN THE STAY APPLICATION.

FILED BY: **KGOSANA ATTORNEYS**

SIGNED AND DATED AT PRETORIA ON THE 13 FEBRUARY 2026



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Kgosana/Dept of Health 11/2025

TO: **THE REGISTRAR**
OF THE ABOVE HONOURABLE COURT

AND TO: **THE STATE ATTORNEY, PRETORIA**
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AND TO: **WEBBER WENTZEL ATTORNEYS**
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REF: C ERUSMUS/J KEUS/ X64/2025

AND TO:

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: 2025-125411

In the matter between:

THE MINISTER OF HEALTH	First Applicant
THE DIRECTOR GENERAL, NATIONAL DEPARTMENT OF HEALTH	Second Applicant

and

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF FINANCE	Second Respondent
NATIONAL TREASURY	Third Respondent
SOLIDARITY TRADE UNION	Fourth Respondent
BOARD OF HEALTHCARE FUNDERS OF SOUTHERN AFRICA NPC	Fifth Respondent
SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM	Sixth Respondent
HOSPITAL ASSOCIATION OF SOUTH AFRICA	Seventh Respondent
THE SOUTH AFRICAN MEDICAL ASSOCIATION NPC	Eighth Respondent
HEALTH FUNDERS ASSOCIATION	Ninth Respondent
SAKELIGA NPC	Tenth Respondent

MINISTER'S SUPPLEMENTARY AFFIDAVIT IN THE STAY APPLICATION

I, the undersigned

MAKULE ASNATH KGOSANA

state under oath as follows:

1 I am adult female attorney and director at Kgosana Attorneys, the applicants' attorneys.

2 The facts in this affidavit are true and correct and fall within my personal knowledge.

3 I ask that the annexures to this affidavit be read as if specifically incorporated.

CONSTITUTIONAL COURT DIRECTIVES

4 The purpose of this affidavit is to place into the record newly issued directives from the Constitutional Court and the correspondence between the affected parties which preceded it. The directives are relevant to, and impact on, the above stay application pending in the High Court, Gauteng Division, Pretoria, and set down for hearing on 23-25 and 27 February 2026.

Correspondence between the Constitutional Court and parties

5 On 2 February 2026 and on the direction of the Chief Justice, the Registrar of the Constitutional Court addressed correspondence to the parties in four applications pending before the Constitutional Court:

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5.1 **CCT128/25 and CCT 129/25**: The Minister and President's applications for leave to appeal against the judgment of Twala J dismissing points of law raised by the Minister of Health and the President in the High Court applications of the Board of Healthcare Funders ("**BHF**") and South African Private Practitioners Forum ("**SAPPF**") to review the President's decision to sign and assent to the National Health Insurance Act, 20 of 2023 ("**the Presidential assent challenge**"). This application had been set down for hearing in the Constitutional Court on 26 February 2026.

5.2 **CCT 251/25 and CCT269/25**: The applications brought by BHF and the Premier of the Western Cape respectively seeking to challenge the parliamentary process in relation to the National Health Insurance Bill, 2023 on the basis of the alleged failure by Parliament to facilitate public participation therein ("**the public participation challenge**").

6 I attach a copy of the Registrar's letter, which I mark as Annexure "**MK1**".

7 Amongst others, the Registrar (at the direction of the Chief Justice) addressed a letter to all the parties inviting them to provide the Court with their views on "*the removal of the assent challenge matters from the [Constitutional Court] roll until such time as the Court disposes of the public participation challenge applications*".

8 In motivating the call for the parties' views, the Registrar, at the direction of the Chief Justice, pointed out the following in paragraph 4 of the letter:

> *"In the event that the public participation challenge proves to be ultimately successful, the merits of the assent challenge may be*

rendered moot. In these circumstances, one of the options open to the Court is to remove the matters on the assent challenge from the rolll for 26 February 2026 pending the outcome of the public participation challenge."

9 On 4 February 2026, responses from the following parties were filed expressing and in certain instances motivating their views on the Chief Justice's proposal:

9.1 Werksmans Attorneys, on behalf of BHF, a copy of which letter is attached as Annexure "**MK2**". BHF opposed the Chief Justice's proposal.

9.2 Webber Wentzel, on behalf of SAPPF, a copy of which letter is attached as Annexure "**MK3**". SAPPF was against the Chief Justice's proposal.

9.3 The Office of the State Attorney Cape Town, on behalf of the Chairperson of the National Council of Provinces and the Speaker of the National Assembly, a copy of which letter is attached as Annexure "**MK4**". They abided the decision of the Chief Justice.

9.4 The Office of the State Attorney Pretoria, on behalf of the President, a copy of which letter is attached as Annexure "**MK5**". The President supported the Chief Justice's proposal.

9.5 Kgosana Attorneys, on behalf of the Minister of Health and Director General of the National Department of Health, a copy of which letter is attached as Annexure "**MK6**". They supported the Chief Justice's proposal.

Constitutional Court's directives

10 On 9 February 2026, the Constitutional Court issued two sets of directives.

11 First, in relation to the Presidential assent challenges, the Constitutional Court removed the matter from the roll for 26 February 2026 and postponed the hearing *sine die*. The Court directed that –

11.1 If both of the public participation challenges are unsuccessful, the Presidential asset challenges *"will be set down for hearing without further delay"*; and

11.2 *"if one or both of the public participation challenges are successful, further directions will be issued in the Presidential assent challenges requiring the parties to make submissions on mootness and the further conduct of those cases"*.

12 A copy of the Presidential assent challenges directive is attached as Annexure "**MK7**".

13 Second, in relation to the public participation challenges, the Court made detailed directives for the filing of further process and the hearing of the applications. In both matters, answering affidavits are to be filed by Monday 23 February 2026, replying affidavits by 9 March 2026 and written argument by Monday 23 March and Wednesday, 8 April 2026 respectively. Both matters are set down to be heard together from 5 May 2026 to 7 May 2026.

14 A copy of the public participation challenges directive is attached as Annexure "**MK8**".

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SUBSEQUENT CORRESPONDENCE BETWEEN THE PARTIES

15 On 11 February 2026, my offices addressed correspondence to all parties in the stay and consolidation application, addressing the implications of the Constitutional Court's directives for this matter. I attach a copy of this letter, marked **MK9**. The letter requested, *inter alia*, that all parties to the stay and consolidation application:

15.1 Consent to the admission of this supplementary affidavit addressing the developments in the Constitutional Court (an earlier draft version of this affidavit was attached to the letter).

15.2 Consent to an urgent approach to this Court for further case management of the stay and consolidation applications.

15.3 Respond to the Minister's proposal that, in light of the Constitutional Court's directives and approach, all parties consent to the stay application alternatively, consent to the postponement of the stay and consolidation application pending the finalisation of the public participation challenges in the Constitutional Court.

16 All parties were requested to respond by close of business on 12 February 2026.

17 At the time of filing this affidavit, correspondence was received from the legal representatives for the South African Private Practitioners Forum (SAPPF), the Health Funders Association (HFA) and the Hospital Association of South Africa (HASA). Their correspondence adopted a common position:

17.1 They consented to the filing of the supplementary affidavit, subject to the inclusion of their further correspondence.

17.2 They further consented to the urgent approach for further judicial case management.

17.3 They refused to consent to the granting of the stay application or the postponement of the stay and consolidation application.

17.4 All indicated that they would only be amenable to consider such proposals if the President and/or the Minister provided undertakings that they will not bring into operation or implement the National Health Insurance Act, 20 of 2023.

18 Copies of this correspondence are attached as **MK10**, **MK11** and **MK12**.

19 The applicants contest much of what is set out in the letters but have not been in a position to respond to the letters given the limited time available and the unavailability of the Minister. The applicants will seek an opportunity to file a supplementary affidavit putting up the applicants letter or letters in reply when these become available.

LEAVE

20 The applicants ask for the Court's leave for this affidavit and its annexures to be admitted into the record.

21 This information in this affidavit and the annexures is relevant to the determination of the application pending before this Court and is necessary for the Court to consider.

22 Its contents ought not to be contentious and its admission poses no prejudice to any party.

23 These developments occurred after all of the affidavits and heads of argument were filed in the application and therefore could not have been brought to the Court's attention any earlier. This affidavit was prepared urgently on receipt of the Constitutional Court's directives.

MAKULE KGOSANA

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at BROOKLYN SAPS on this the 13 day of FEBRUARY **2026**, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, have been complied with.

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ST MAROELA

COMMISSIONER OF OATHS

SOUTH AFRICAN POLICE SERVICE
COMMUNITY SERVICE CENTRE
2026 -02- 13
GEMEENSKAPSDIENSSENTRUM
SUID-AFR

MK1

CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 128/25

In the matter between:

MINISTER OF HEALTH	Applicant
and	
BOARD OF HEALTHCARE FUNDERS NPC	First Respondent
SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM	Second Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Third Respondent
MINISTER OF FINANCE	Fourth Respondent
NATIONAL TREASURY	Fifth Respondent

Case CCT 129/25

In the matter between:

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Applicant
and	
BOARD OF HEALTHCARE FUNDERS NPC	First Respondent
SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM	Second Respondent
MINISTER OF HEALTH	Third Respondent
MINISTER OF FINANCE	Fourth Respondent

NATIONAL TREASURY Fifth Respondent

DIRECTIONS

The Chief Justice has issued the following directions:

1. The Court has considered the parties' representations concerning the possible removal of these matters (presidential assent cases) from the roll on Thursday, 26 February 2026. The Court has concluded that the interests of justice and considerations of judicial economy make it appropriate to remove the matters from the roll.

2. Accordingly, the matters are removed from the roll and the hearing thereof is postponed *sine die*.

3. Simultaneously with the issuance of these directions, the Chief Justice will be issuing directions in cases CCT 251/25 and CCT 269/25 (public participation cases) in which the Board of Healthcare Funders NPC and the Premier of the Western Cape Government respectively seek orders declaring inter alia that Parliament's adoption of the National Health Insurance Bill was invalid due to an alleged breach by Parliament of the duties imposed by sections 59(1)(a) and 72(1)(a) of the Constitution to facilitate public involvement.

4. In terms of the simultaneous directions in the public participation cases, those cases are to be heard on Tuesday, Wednesday and Thursday, 5-7 May 2026.

5. If both of the public participation cases are unsuccessful, the presidential assent cases will be set down for hearing without further delay.

6. If one or both of the public participation cases are successful, further directions will be issued in the presidential assent cases requiring the parties to make submissions on mootness and on the further conduct of those cases.

7. Further directions may be issued.

BOYBOY MOLOI
REGISTRAR
CONSTITUTIONAL COURT

TO: KGOSANA ATTORNEYS INCORPORATED
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AND TO: WERKMANS ATTORNEYS
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AND TO: OFFICE OF THE STATE ATTORNEY, PRETORIA
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AND TO: MINISTER OF FINANCE
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AND TO: NATIONAL TREASURY
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CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 251/25

In the matter between:

BOARD OF HEALTHCARE FUNDERS NPC	Applicant
and	
SPEAKER OF THE NATIONAL ASSEMBLY	First Respondent
CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES	Second Respondent
MINISTER OF HEALTH	Third Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Fourth Respondent
DIRECTOR-GENERAL, NATIONAL DEPARTMENT OF HEALTH	Fifth Respondent
MINISTER OF FINANCE	Sixth Respondent
SPEAKER OF THE EASTERN CAPE PROVINCIAL LEGISLATURE	Seventh Respondent
SPEAKER OF THE FREE STATE PROVINCIAL LEGISLATURE	Eighth Respondent
SPEAKER OF THE GAUTENG PROVINCIAL LEGISLATURE	Ninth Respondent
SPEAKER OF THE KWAZULU-NATAL PROVINCIAL LEGISLATURE	Tenth Respondent
SPEAKER OF THE LIMPOPO PROVINCIAL LEGISLATURE	Eleventh Respondent

SPEAKER OF THE MPUMALANGA PROVINCIAL LEGISLATURE	Twelfth Respondent
SPEAKER OF THE NORTH WEST PROVINCIAL LEGISLATURE	Thirteenth Respondent
SPEAKER OF THE NORTHERN CAPE PROVINCIAL LEGISLATURE	Fourteenth Respondent
SPEAKER OF THE WESTERN CAPE PROVINCIAL PARLIAMENT	Fifteenth Respondent
MEMBER OF THE EXECUTIVE COUNCIL FOR THE DEPARTMENT OF HEALTH, EASTERN CAPE	Sixteenth Respondent
MEMBER OF THE EXECUTIVE COUNCIL FOR THE DEPARTMENT OF HEALTH, FREE STATE	Seventeenth Respondent
MEMBER OF THE EXECUTIVE COUNCIL FOR THE DEPARTMENT OF HEALTH, GAUTENG	Eighteenth Respondent
MEMBER OF THE EXECUTIVE COUNCIL FOR THE DEPARTMENT OF HEALTH, KWAZULU-NATAL	Nineteenth Respondent
MEMBER OF THE EXECUTIVE COUNCIL FOR THE DEPARTMENT OF HEALTH, LIMPOPO	Twentieth Respondent
MEMBER OF THE EXECUTIVE COUNCIL FOR THE DEPARTMENT OF HEALTH, MPUMALANGA	Twenty-first Respondent
MEMBER OF THE EXECUTIVE COUNCIL FOR THE DEPARTMENT OF HEALTH, NORTH WEST	Twenty-second Respondent
MEMBER OF THE EXECUTIVE COUNCIL FOR THE DEPARTMENT OF HEALTH, NORTHERN CAPE	Twenty-third Respondent
MEMBER OF THE EXECUTIVE COUNCIL	

FOR THE DEPARTMENT OF HEALTH, WESTERN CAPE Twenty-fourth Respondent

Case CCT 269/25

In the matter between:

PREMIER OF THE WESTERN CAPE GOVERNMENT Applicant

and

CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES First Respondent

SPEAKER OF THE NATIONAL ASSEMBLY Second Respondent

SPEAKER OF THE WESTERN CAPE PROVINCIAL PARLIAMENT Third Respondent

SPEAKER OF THE EASTERN CAPE PROVINCIAL LEGISLATURE Fourth Respondent

SPEAKER OF THE KWAZULU-NATAL PROVINCIAL LEGISLATURE Fifth Respondent

SPEAKER OF THE NORTH WEST PROVINCIAL LEGISLATURE Sixth Respondent

SPEAKER OF THE NORTHERN CAPE PROVINCIAL LEGISLATURE Seventh Respondent

SPEAKER OF THE GAUTENG PROVINCIAL LEGISLATURE Eighth Respondent

SPEAKER OF THE LIMPOPO PROVINCIAL LEGISLATURE Ninth Respondent

SPEAKER OF THE MPUMALANGA PROVINCIAL LEGISLATURE Tenth Respondent

SPEAKER OF THE FREE STATE PROVINCIAL LEGISLATURE Eleventh Respondent

MINISTER OF HEALTH Twelfth Respondent

DIRECTIONS

The Chief Justice has issued the following directions:

1. These applications are set down for hearing together on Tuesday, 5 May 2026 to Thursday, 7 May 2026.

2. Any respondents who have filed notices of opposition but not answering affidavits must file their answering affidavits on or before Monday, 23 February 2026, together with applications for condonation.

3. The applicants in both matters must file replying affidavits, if any, on or before Monday, 9 March 2026.

4. Written argument must be lodged by—

   (a) the applicants in both matters, on or before Monday, 23 March 2026; and

   (b) the respondents in both matters, on or before Wednesday, 8 April 2026.

5. The applicants are not required to prepare physical records. The CaseLines electronic evidence management platform (CaseLines) will instead be used. There will be separate records on CaseLines for these two cases. In that regard:

   (a) the Registrar will upload onto CaseLines all papers filed prior to the issuance of these directions;

   (b) any party filing a document subsequent to the issuance of these directions must upload it onto the applicable CaseLines record.

6. In preparation for the hearing

   (a) the legal representatives for each party to the proceedings are, if not already registered, required to register accounts on CaseLines through https://sajustice.caselines.com;

   (b) the legal representatives for each party to the proceedings must email the name, surname and email address of each legal representative, who should be granted access to the matter on CaseLines, to Mr Asanele Diko at dikoa@concourt.judiciary.org.za, no later than Thursday 12 February 2026;

(c) each legal representative will be granted full access to this matter on CaseLines upon request.

7. Should any party identify missing or duplicated material, they must notify Mr Diko immediately.

8. As to the hearing:

(a) Subject to what is said hereinafter, legal representatives are required to prepare for and participate in the hearing with full familiarity of the functionalities of CaseLines, including viewing, navigating and presenting documents electronically.

(b) Parties must ensure that their respective legal representatives have appropriate access, equipment and connectivity to utilise CaseLines without technical interruption.

(c) The Court expects counsel to be sufficiently familiar with the layout and organisation of the CaseLines bundle to ensure efficient navigation.

(d) In the event that any party experiences connectivity or technical difficulties, they should contact Mr Diko.

9. As to pagination:

(a) To ensure efficient navigation of the record and pleadings during oral argument, parties must cite the CaseLines pagination.

(b) Each party must ensure that their written submissions and any supplementary documents make reference to the CaseLines pagination.

10. As to directing during oral argument:

(a) The legal representative presenting oral submissions must use the CaseLines "direct to page" functionality whenever the Court is referred to a specific page in the bundle.

(b) The "direct to page" function works as follows:

i) Select "view case list".

ii) Select "review evidence".

iii) Select the relevant document, or page, from the list of documents in the master bundle, located on the left-hand side of the screen.

(c) Select "present" at the top of the screen, which is located in-between "view" and "notes". This will produce a horizontal bar. On the right-hand side of this bar is a "page direction" section.

(d) Select "direct to page", which is located in-between "lawyers, judges, court staff" and "page direction history".

(e) Counsel must ensure that the relevant page has fully loaded on CaseLines before proceeding to make any substantive submissions on the contents of that page.

(f) Where a party relies on multiple pages, or documents, in quick succession, they must prepare a pre-identified list of such references to minimise delays during oral argument.

11. Further directions may be issued.

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MK2

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11 February 2026

Dear Sirs/Mesdames

CCT 128/25 MINISTER OF HEALTH V BOARD OF HEALTHCARE FUNDERS NPC AND OTHERS; CCT 129/25 PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA V BOARD OF HEALTHCARE FUNDERS NPC AND OTHERS;CCT 251/25 BOARD OF HEALTHCARE FUNDERS NPC V SPEAKER OF THE NATIONAL ASSEMBLY AND OTHERS; AND CCT 269/25 PREMIER OF THE WESTERN CAPE V CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES AND OTHERS

1 We refer to the above matter.

2 We acknowledge receipt of the Court's directions, dated 9 February 2026, in which the matters concerning the reviewability of the President of the Republic of South Africa's assent to the National Health Insurance Act No. 20 of 2023 (CCT 128/25 and CCT 129/25, respectively) were removed from the roll and postponed *sine die* ("the presidential assent matters"). We also note the parallel directions issued in CCT 251/25 and CCT 269/25 ("public participation matters"), which establish an expedited timeline for those proceedings and state that the presidential assent matters will be reinstated if the challenges to the public participation matters fail.

3 The Board of Healthcare Funders NPC ("BHF") has, in its previous communication to the Court, expressed its now obvious concerns regarding the prejudice that flows from the indefinite suspension of the presidential assent matters.

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4 The BHF thus respectfully requests that, if the public participation matters do not proceed for hearing in May 2026 for any reason, the presidential assent matters be re-enrolled for hearing on the same basis articulated by the Court in its directive of 9 February 2026 (namely, that the presidential assent matters will proceed "without further delay" if the public participation challenges fail in so far as they do not proceed).

5 We thank the Court and reiterate our client's readiness to proceed whenever directed to do so.

6 We trust that the above is in order.

Yours faithfully

Werksmans Inc.
THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE

cc:

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Dear Chief Justice, Deputy Chief Justice and Justices of the Constitutional Court

CCT 128/25 Minister of Health v Board of Healthcare Funders NPC and Others; CCT 129/25 President of the Republic of South Africa v Board of Healthcare Funders NPC and Others; CCT 251/25 Board of Healthcare Funders NPC v Speaker of the National Assembly and Others; and CCT 269/25 Premier of the Western Cape v Chairperson of the National Council of Provinces and Others

1. We write on behalf of the South African Private Practitioners Forum ("**SAPPF**") in response to the Court's letter of 2 February 2026 regarding the proposal to remove the "assent challenge" (matters **CCT 128/25** and **CCT 129/25**) from the roll for 26 February 2026.

2. We acknowledge the Court's invitation to indicate our views, and we do so with respect.

3. For reasons set out below, SAPPF does not support the removal of these matters from the roll. We respectfully submit that the consolidated hearing on 26 February 2026 should proceed as scheduled, given the distinct and pressing constitutional issues at stake in the assent challenge, the advanced stage of those proceedings, and the prejudice that further delay would cause.

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The background to these proceedings

4. The National Health Insurance Act 20 of 2023 ("**NHI Act**") is unprecedented in its constitutional consequence. As a result, multiple challenges have been instituted by a variety of parties: reviews of the President's decision to assent to the NHI Bill (the "**assent challenges**"), substantive constitutional challenges to the NHI Act itself (the "**constitutional challenges**"), and challenges to Parliament's processes in passing the NHI Bill (the "**public participation challenges**").

5. SAPPF instituted its assent challenge as well as a constitutional challenge in the High Court (Gauteng Division) on 1 October 2024. Instead of pleading thereto, the President of the Republic of South Africa ("**President**") and the Minister of Health ("**Minister**") raised points of law under Rule 6(5)(d)(iii), questioning the jurisdiction of the High Court to determine the review, the reviewability of the President's decision to assent to a Bill and the obligation on the President to produce the record of his decision.

6. They lost on *all* three of their points of law in a carefully reasoned judgment handed down by Twala J on 6 May 2025, which judgment will be considered in the hearing before this Court on 26 February 2026. Importantly, Twala J ordered the President to produce the record of his decision to assent to the NHI Bill in terms of Rule 53 of the Uniform Rules of Court within 10 days. Instead of accepting this result and producing the record, the President and the Minister sought leave to appeal *both* directly to the Constitutional Court and conditionally in the High Court.

7. The President and the Minister's applications for leave to appeal have already delayed the enforcement of Twala J's order by more than eight months – during which time SAPPF has not had access to the record or been able to supplement its founding papers. It has now been more than one year and four months since SAPPF instituted the assent challenge, without it being able to progress the merits of its challenge.

8. SAPPF respectfully submits that further delay – beyond the hearing date set for 26 February 2026 – would not be in the interests of justice, would undermine SAPPF's interest in the finality of Twala J's judgment and its right of access to court.

9. The letter of 2 February 2026 notes that if the public participation challenges prove to be ultimately successful, the merits of the assent challenge may be rendered moot. It is apparently for this reason that it is suggested that the President's and the Minister's applications for leave to appeal be removed from the roll pending the outcome of the public participation challenges.

10. The delay of the hearing on the applications for leave to appeal in the assent challenges pending the final determination of the public participation challenges would, in effect, amount to a stay of the assent challenges in circumstances where such relief has not been sought by any party before the Court and where it is not in the interests of justice.

11. It cannot be in the interests of justice to stay the assent challenges in circumstances where:

(i) SAPPF is not a party to the public participation challenges and has no influence over those proceedings;
(ii) the decision of this Court in the public participation challenges will not be dispositive of any of the points of law raised in the assent challenges; and
(iii) any portended mootness regarding the merits of the assent challenges is speculative, and would in any event not dispose of Twala J's order directing the President to furnish the record of his decision, which must either be set aside or complied with.

12. A delay in this Court's hearing will also have unintended consequences for the six substantive constitutional challenges in the High Court and affect parties who are not before this Court. This is because the Minister of Health has sought to stay the constitutional challenges pending, amongst others, this Court's decision in the applications for leave to appeal directly to it in the assent challenges. Any delay in this Court will therefore significantly increase the length of the sought-for stay in the High Court, with consequences for the rights of the parties in the High Court to access court.

13. The Minister has repeatedly indicated that the implementation of the NHI Act will continue apace while the various challenges progress through the courts. In these circumstances, the challenges cannot be heard sequentially. The continued implementation of the NHI Act is doing serious harm to the constitutional rights of healthcare providers and patients, and to the public purse, and damaging the rule of

law. Moreover, a sequential hearing would have the effect of prolonging damaging legal uncertainty.

14. We elaborate on each of these points below.

The judgment of Twala J on the points of law stands

15. A critical factor weighing in favour of proceeding with the assent challenge is Twala J's judgment in SAPPF's case – a judgment which granted SAPPF substantial relief, but which has been stalled pending appeal.

16. In that judgment, Twala J confirmed that the President's decision to assent to and sign the NHI Bill is reviewable by the courts, rejecting the President's argument that such an act is immune from judicial scrutiny.

17. The High Court asserted its jurisdiction to hear the matter, holding that the case did not fall within the exclusive purview of the Constitutional Court. Twala J further held that the President's assent must comply with the principle of legality and rationality. In other words, the President is bound to act lawfully and reasonably, and cannot be placed above the law even when performing a function derived from the Constitution.

18. Most concretely, Twala J granted an order compelling the President to produce the full record of the decision-making process that led to his assent to the NHI Bill. The court directed President Ramaphosa to furnish this Rule 53 record within ten days. This was a vital and hard-won piece of relief for SAPPF: the record of the President's decision is essential for the proper ventilation of the review's merits, as it would likely shed light on what information the President considered or ignored when he decided to sign the Bill.

19. However, that High Court-ordered relief has been frustrated by subsequent events. The President (together with the Minister of Health) moved swiftly to appeal Twala J's judgment. They filed for leave to appeal directly to this Court, arguing that the President's assent is not subject to review.

20. As a result of that appeal, Twala J's orders (including the order to produce the record) were automatically suspended and have not taken effect. To date, the President's Rule 53 record remains undisclosed, leaving SAPPF's hands tied in terms of advancing the

substantive review. The matter now comes before this Court as an application for leave to appeal for hearing on 26 February 2026 in CCT 128/25 and CCT 129/25, where the President and Minister (as applicants) seek to overturn Twala J's decision, and SAPPF (with others) urges its confirmation.

21. There is a critical importance to resolving this impasse promptly. Twala J's judgment, which SAPPF submits was correct and is of considerable constitutional significance, hangs in the balance. Until this Court hears the appeal and decides whether to uphold or reverse Twala J's orders, SAPPF's case languishes in a suspended state.

22. Given the above, to now remove the assent challenge from the roll (and postpone it indefinitely until after the public participation matters are resolved) would seriously subvert the gains SAPPF achieved in the High Court and prolong the suspension of Twala J's orders.

23. With that order under appeal, SAPPF has already endured many months of stasis. SAPPF respectfully requests the Court not to countenance a scenario in which the High Court's order (a vindication of constitutional accountability) remains in abeyance, potentially for another protracted period, while unrelated matters (the public participation cases) play out elsewhere. In our respectful view, the suspension of Twala J's record-production order is itself a compelling reason why the assent challenge must be heard without further delay: only a hearing on 26 February 2026 can lift the logjam, either by affirming the order (and thus allowing the record to be produced and the review to proceed) or by finally determining that SAPPF cannot obtain that relief. Either outcome is preferable to the current limbo where access to court has been put on ice.

24. The production of the record, in particular, is a matter that cries out for resolution by the decision of this Court. Twala J's order directing the President to deliver the record of his assent decision remains binding unless set aside by a court or abandoned – yet it is now suspended by the applications for leave to appeal to this Court. SAPPF submits that any potential subsequent mootness of the merits of the assent challenge cannot undo Twala J's order. Notwithstanding any possible future mootness of the merits of the assent challenges, it remains necessary for this Court to determine the applications for leave to appeal against that judgment and order by the hearing on 26 February 2026.

The cases are distinct and raise separate independent constitutional questions

25. The public participation challenges would plainly not be dispositive of the legal issues raised in the assent challenges. Moreover, as Twala J's judgment is the first to address the reviewability of the President's decision to assent to a Bill and the concomitant duty to produce the record of that decision, the interests of justice favour this Court determining those issues even if subsequent events were to render the merits of the assent challenges moot (for the reasons given below, SAPPF contends that any mootness is speculative, at best) .

26. The merits of the assent challenges (when reached) also raise distinct and independent constitutional questions.

27. The two sets of challenges do not overlap in the legal questions they pose or the outcomes they seek. The assent challenge is rooted in the President's conduct and asks whether that final step of signing the Bill complied with the principle of legality, whereas the public participation challenges are rooted in Parliament's conduct and ask whether the legislative law-making process met constitutional standards.

28. Each proceeding addresses a separate facet of constitutionality. Indeed, whether or not the NHI Act is ultimately found to be substantively or procedurally defective, the lawfulness of the President's assent is an independent question of great constitutional principle – one that warrants determination on its own merits.

29. Therefore, SAPPF submits that the assent challenge cannot be subsumed into, or rendered redundant by, the public participation challenges.

Possible future mootness cannot justify a stay

30. We are mindful that the primary rationale given for a potential removal is concern about mootness and judicial economy – i.e. that if the public participation challenges succeed, the assent challenge might become moot, and hearing it now might be unnecessary. We respectfully submit that this rationale, at this juncture, is speculative. There is as yet no certainty that the public participation challenges will succeed; nor is there certainty on what remedial scope success in those cases would entail.

31. SAPPF submits that the issues raised in the assent challenge – both the points of law and the merits – are live issues that should be resolved within a reasonable period of time. The right of access to courts in section 34 of the Constitution requires.

32. A pre-emptive stay on the basis that a matter *may* become moot requires the Court to suspend a live dispute on the strength of a hypothetical future event. This Court could freeze the assent challenges only to discover that the portended mootness never eventuates, while the NHI Act will have been substantially implemented with irreparable harm done to constitutional rights and public funds.

33. For mootness truly to eventuate, the NHI Act will have to be declared invalid in the Constitutional Court proceedings and that declaration of invalidity would have to become operative.

34. In the Parliamentary challenges, *each and every one* of the following events must occur: (i) this Court must decide to hear the Parliamentary challenges; (ii) this Court must find that Parliament failed to fulfil its obligation to facilitate public participation and declare Parliament's conduct invalid under section 172(1)(a) of the Constitution; (iii) this Court must then set aside the resultant NHI Act *in its entirety (as opposed to specific sections on which there may have been insufficient public participation);* and (iv) the declaration of invalidity must not be suspended or, if suspended, the period of suspension must have expired. The portended mootness may, thus, not occur at all.

35. Moreover, even if the portended mootness were to occur, it would plainly not be for a very long time.

36. The public participation challenges were launched on 5 August 2025 and 2 September 2025. The Parliamentary challenges are at an early stage, and it is uncertain as to when they may be finalised. This Court might only hear the public participation cases much later in 2026, and their outcome is not predetermined. Meanwhile, the assent challenge is properly before the Court now, with concrete issues ripe for determination.

37. If, hypothetically, the assent challenge were heard now and the public participation case were heard later, the Court is well capable of crafting its judgments to avoid conflict or redundancy – for example, by deciding each on its own merits and noting, if it comes to pass, that one outcome has obviated the need for certain relief in the other. This is not an uncommon situation; courts often address parallel challenges by deciding one and then considering its effect on the other. The key point is that mootness should be addressed when and if it materialises. As of today, the assent challenge is emphatically not moot. It raises live controversies that affect the parties and the public. It would be unjust to treat it as subordinate to another case that has not yet been determined.

The chronology of the applications demonstrates the prejudice to SAPPF, which brought its application first

38. SAPPF also wishes to highlight the chronology of these matters, which underscores why the assent challenge should not be delayed in deference to the later-filed public participation cases. SAPPF initiated the High Court proceedings challenging the President's assent well before the procedural/public-participation challenges were instituted. In fact, the NHI Bill was signed into law on 15 May 2024, and shortly thereafter, by 1 October 2024, SAPPF and BHF had launched a comprehensive review application in the Gauteng Division of the High Court, Pretoria, to challenge the President's assent decision. This was one of the first salvos of litigation against the NHI Act's validity.

39. By contrast, the direct challenges targeting Parliament's public participation process were initiated only afterwards, in 2025. This is, give or take, a year later.

40. Respectfully, it would be inequitable for SAPPF's earlier case to be put on hold because other parties later brought different challenges. SAPPF did everything a responsible litigant could: it approached the High Court expeditiously to ventilate the constitutionality of the President's assent. The fact that additional challenges emerged subsequently should not now operate to SAPPF's detriment. SAPPF's case proceeded through the High Court and is now before this Court on application for leave to appeal; it is ready for adjudication.

41. In these circumstances, fairness requires that SAPPF should get its day in court on 26 February 2026, as scheduled.

The parties have already incurred significant costs

42. There are also significant considerations of cost, efficiency, and finality, which militate against removing the assent challenge from the 26 February roll. All parties (including the state respondents) have by now invested substantial effort and resources in preparing for the upcoming hearing. Written submissions have been filed, counsel have been briefed, and the Court itself has set aside time for this consolidated hearing. SAPPF, as a not-for-profit body representing private healthcare practitioners, operates on tight resources; the costs incurred in litigating up to this point have been considerable.

43. If the matter were postponed or removed from the roll at this juncture, much of that preparatory work would have to be duplicated later (when the case eventually resumes), driving up costs for all sides. Additionally, there may be wasted costs – for example, if counsel and attorneys have reserved time for the February hearing that cannot easily be redeployed. While cost alone is not determinative, it is respectfully submitted that avoiding unnecessary cost and delay is an element of the interests of justice. Here, adjournment would mean significant sunk costs and further expenditure down the line, which can and should be avoided by proceeding as planned.

44. Finality becomes another victim of postponement. Currently, the assent challenge is fully ready for adjudication: the issues have been clarified, and Twala J's judgment provides a framework of factual and legal findings for this Court to review. The Constitutional Court, by setting down the matter, has shown its willingness to resolve these issues now. If the case is instead removed from the roll, SAPPF faces an indefinite wait for finality. During that period, the status of the NHI Act (and the President's conduct in assenting to the NHI Act) remains uncertain. This extends the period of uncertainty and public anxiety regarding the law. Conversely, a judgment by this Court on the assent challenge would bring a key degree of clarity. Even if the public participation challenges remain pending afterwards, the Court's decision on the assent issue would at least settle one major aspect of the broader controversy that is ripe for determination.

Broader procedural concerns and constitutional imperatives

45. Finally, SAPPF addresses some broader procedural and constitutional concerns that arise if the assent challenge were to be stayed in favour of the public participation challenges. It does so with deference to the Court's managerial prerogative, but out of a duty to highlight the potential implications.

46. *First*, SAPPF notes that no formal application has been made by any party to remove or postpone the assent matters. Typically, if a party seeks to stay one case pending the outcome of another, it brings a substantive application setting out the grounds (for example, that a pending matter will likely dispose of or significantly affect the stayed matter, and that prejudice would result from proceeding in parallel). Here, by contrast, none of the litigants in CCT 128/25 or 129/25 has approached the Court to request a postponement or stay. On the contrary, SAPPF and its co-litigants have been ready and willing to proceed.

47. *Second*, preferring one constitutional challenge over another in this manner may carry unintended consequences for the broader administration of justice. By staying the assent challenge, the Court might inadvertently send a signal that challenges involving legislative process are to be resolved before (or instead of) challenges involving presidential assent. Yet there is no hierarchy in the Constitution that dictates this. Both the Legislature and the President must act within the bounds of the Constitution. Both types of challenge serve as important checks and balances in our constitutional democracy.

48. *Third*, there is the matter of the sequencing dispute currently unfolding in the High Court. We bring to the Court's attention that the Minister of Health has initiated an application in the High Court (Gauteng Division) seeking to consolidate and stay various NHI-related cases, effectively arguing that all other challenges to the NHI Act's validity should be paused pending the final outcome of this Court's decision in the assent challenge litigation.

49. That High Court application (referred to as the "stay and consolidation" application) was directed at several litigants who have launched substantive constitutional challenges against the NHI Act in the High Court, including Solidarity, the Health Funders Association, Hospital Association of SA, the SA Medical Association, and SAPPF itself.

In that forum, the Minister's position was the reverse of the scenario here: the Minister contended that the assent challenge (which, at the time, was thought to be on a fast track via this Court) should be decided first, and that the substantive constitutional challenges should wait.

50. The Minister also referred to the public participation challenges in his founding papers. Yet it is plain that he did not regard those cases as dispositive of the present matter. On the contrary, he made clear that the assent challenges raised discrete and important constitutional questions that warranted resolution by this Court on an expedited basis. The Minister acknowledged this expressly in paragraph 49 of the founding affidavit, deposed to by Dr Nicholas Crisp, who stated:

> "*The Minister's approach on the appeals (by not seeking leave to appeal to the Full Court of the High Court, and in preferring the application for direct leave to appeal to the Constitutional Court) indicates his intent that the appeals should be determined finally and expeditiously.*"

51. A delay of the hearing before this Court may have unintended consequences for the litigants in the substantive constitutional challenges, who are not before this Court. If the constitutional challenges are stayed, a sequential hearing of the public participation and assent challenges in this Court will result in a prolonged stay and an extensive delay in the progress of the constitutional challenges.

52. The Minister, in his replying affidavit in the High Court, said that such a circumstance should be avoided. He stated that "*there is no reason why the reviews of the President's decision to sign and assent to the NHI Bill and the challenges based on an allegedly flawed public participation process in Parliament could not be heard together*".

53. A copy of the founding and replying affidavits by the Minister can be made available for this Court should it deem it necessary.

54. The Minister's approach in that application is significant not because it binds him to a particular view now, but because it affirms that the assent challenge raises constitutionally distinct and independently important questions deserving of timely resolution. His decision to approach this Court directly, and to seek a stay of all other proceedings pending this Court's guidance, demonstrates the institutional and public

interest in finalising the assent issue without deferral. That institutional interest has not diminished—and neither has SAPPF's entitlement to a resolution of its claims.

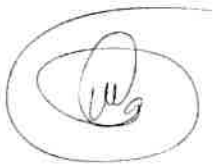
55. *Fourth*, and finally, we wish to emphasise the constitutional importance of the assent challenge issues in their own right. The question of a President's obligations when faced with a potentially unconstitutional bill is a novel and significant issue in our jurisprudence. It engages the interface between the Executive and the Legislature, and the role of the judiciary in reviewing that interface. SAPPF's case could set important precedent on how far the principle of legality extends in overseeing presidential assent, and on the accountability mechanisms (like record production) that ensure transparency in that process.

56. These issues merit the attention of the Court independently of the fate of the NHI Act under other grounds of challenge. The assent challenge is ripe for hearing, and if SAPPF is correct, the Court will be confronted with an unconstitutionality by the President which it is duty-bound, under section 172 of the Constitution, to declare unlawful. That unlawfulness stands independently as a basis for the NHI Act to be subjected to judicial scrutiny, and that scrutiny is ripe for determination on 26 February 2026.

Conclusion

57. SAPPF appreciates the opportunity to present its views on this matter. SAPPF has the utmost respect for the Court's role in managing its docket and related cases. However, for all the reasons set out above – the distinct and vital nature of the assent challenge, the earlier initiation and protracted delay of SAPPF's proceedings, the significance of Twala J's judgment and the need to resolve it, the prejudice to SAPPF from further delay, the costs already incurred, and the broader interests of justice – the Court is respectfully requested to allow the assent challenge to be heard on 26 February 2026 as scheduled.

Yours faithfully



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YOUR REF:

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Dear Sir

RE: CCT 128/25 MINISTER OF HEALTH v BOARD OF HEATHCARE FUNDERS NPC AND OTHERS: CCT 129/25 PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA v BOARD OF HEALTHCARE FUNDERS NPC AND OTHERS; CCT 251/25 BOARD OF HEALTHCARE FUNDERS NPC v SPEARKER OF THE NATIONAL ASSEMBLY AND OTHERS; AND CCT 269/25 PREMIER OF THE WESTERN CAPE v CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES AND OTHERS

1. We act on behalf of our clients the Chairperson of the National Council of Provinces and the Speaker of the National Assembly in case numbers CCT 269/25 and CCT 251/25.

2. We acknowledge receipt of and thank you for your letter dated 2 February 2026, sent on the direction of the Chief Justice.

3. We write in response to the Chief Justice's invitation for the parties to express their views on the possible removal of the assent challenge matters from the roll for 26 February 2026 pending the outcome of the public participation challenge.

4. We received late instructions from our client yesterday and we are instructed to abide the decision of the Chief Justice.

5. We humbly apologize to all for the delay of our client's reply.

6. Thanking you all.

Yours faithfully

STATE ATTORNEY



Per: S KARJIKER

/cv

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AND TO: SPEAKER OF THE MPUMALANGA PROVINCIAL LEGISLATURE

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AND TO: SPEAKER OF THE NORTH-WEST PROVINCIAL LEGISLATURE

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MMABATHO

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AND TO: MEMBER OF THE EXECUTIVE FOR THE DEPARTMENT OF HEALTH, NORTHWEST

Twenty-Second Respondent in CCT 251/25

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AND TO: MEMBER OF THE EXECUTIVE FOR THE DEPARTMENT OF HEALTH NORTHERN CAPE

Twenty-Third Respondent in CCT 251/25

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Belgravia

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AND TO: MEMBER OF THE EXECUTIVE FOR THE DEPARTMENT OF HEALTH, WESTERN CAPE

Twenty-Fourth Respondent in CCT 251/25

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AND TO: OFFICE OF THE STATE ATTORNEY, CAPE TOWN

Attorneys for the Applicant in CCT 269/25

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04 FEBRUARY 2026

Enquires: Mr R.J Sebelemetsa
Email: rsebelemetsa@justice.gov.za

My Ref: 0266/2025/Z64
Your Ref: CCT 128/25

TO: **REGISTRAR OF THE CONSTITUTIONAL COURT OF SOUTH AFRICA (ON BEHALF OF THE CHIEF JUSTICE OF THE REPUBLIC OF SOUTH AFRICA)**

EMAIL: mokoena2@concourt.org.za

Dear Registrar

RE: MINISTER OF HEALTH V BOARD OF HEALTHCARE FUNDERS NPC AND OTHERS (CCT 128/25); PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA V BOARD OF HEALTHCARE FUNDERS NPC AND OTHERS (CCT 129/25); AND BOARD OF HEALTHCARE FUNDERS NPC V SPEAKER OF THE NATIONAL ASSEMBLY AND OTHERS (CCT 251/25)

1. We act for, and thus address this letter on behalf of, the President of the Republic of South Africa ("**President**") who is the applicant in CCT 129/25 and is cited as a respondent in CCT 128/25 and CCT 251/25.

2. We are grateful for the opportunity to indicate our views in response to the "**Registrar's letter**" of 2 February 2026 sent at the direction of the Chief Justice.

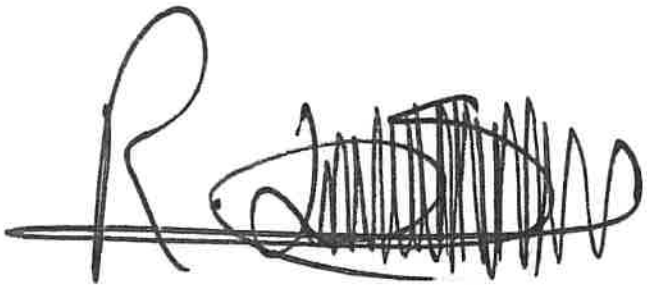
3. In that letter, the Registrar sought the parties' views on removing from the roll the "**assent challenges**" under case numbers CCT 128/25 and CCT 129/25 pending the determination of the parliamentary "**public participation challenges**" under case numbers CCT251/25 and CCT 269/25.

4. We are of the view that doing so is both logical, legally and procedurally sound. This is so because, as stated in the Registrar's letter, the assent challenges may be rendered moot by the determination of the public participation challenges. We note in this regard that certain of the public participation challenges are brought by parties to the assent challenges even though they were only launched a considerable time after those parties themselves brought the assent challenges. Moreover, many of the parties cited in the assent challenges have also been cited in the public participation challenges. It is therefore desirable that the public participation challenges, which are by their nature directed at the parliamentary process which precedes presidential assent, be determined first.

5. There is a further practical consideration which militates strongly in favour of removing the assent challenges from the Court's roll pending the outcome of the public participation challenges: the assent challenges currently only raise questions of law for determination of the Court which, as indicated, will be rendered moot should the public participation challenges succeed. However, the assent challenges (which for the moment raise only questions of law) are based on underlying review proceedings directed at reviewing the President's assent. Should the appeals in the assent challenges be dismissed (and depending on the determination of the questions of law) then the underlying review application will likely proceed. The assent review proceedings are at an early stage; only the founding affidavits have been filed by the applicants. Accordingly, should the assent challenges be allowed to proceed there is every chance that considerable resources will be expended by the parties in filing further affidavits, preparing heads of argument and in hearing the underlying review applications in the assent challenges. All of this will be wasted and will prove to have been for no good purpose should the public participation challenges succeed.

6. For these reasons, we are of the view that the assent challenges ought to be removed from the roll pending the determination of the public participation challenges.

Yours faithfully,



MR R.J(JOSEPH) SEBELEMETSA
FOR: STATE ATTORNEY (PRETORIA)

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CC:	*Health MEC – Free State*

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CC: Health MEC – Gauteng
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CC: Health MEC – North-West
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MK6

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4 February 2026

PER EMAIL

Mr N Mthethwa

Registrar of the Constitutional Court

mokoena2@concourt.org.za

mathiba@concourt.co.za

Generaloffice@concourt.org.za

Dear Sir/Madam

RE: CCT 128/25 Minister of Health v Board of Healthcare Funders NPC and Others; CCT 129/25 President of the Republic of South Africa v Board of Healthcare Funders NPC and Others; CCT 251/25 Board of Healthcare Funders NPC v Speaker of the National Assembly and Others; and CCT 269/25 Premier of the Western Cape v Chairperson of the National Council of Provinces and Others.

1. We acknowledge receipt of and thank you for your letter dated 2 February 2026, sent on the direction of the Chief Justice.

2. We act on behalf of the Minister of Health and the Director-General of the National Department of Health ("**our clients**").

3. We write in response to the Chief Justice's invitation for the parties to express their views on the possible removal of the assent challenge matters from the roll for 26 February 2026 pending the outcome of the public participation challenge.

4. Our clients' approach in both the High Court and Constitutional Court litigation is to have the constitutionality of the National Health Insurance Act 20 of 2023 determined in the

most efficient and expeditious manner possible, with optimal employment of scarce judicial and party resources. Hearing the assent matters on 26 February 2026 in circumstances where they might thereafter be rendered moot by successful public participation challenges would not be consistent with this approach.

5. Our clients accordingly consent to the removal of the assent challenge matters from the roll for 26 February 2026 pending the outcome of the public participation challenges.

6. At the same time, our clients commit to facilitating the expeditious disposal of the public participation challenges in order that there may be certainty about the legal position as soon as possible. They will naturally be bound by and comply with any timetable laid down by the Court to achieve an expedited adjudication of the public participation challenges.

7. Our clients have taken note of the submissions made on behalf of BHF and SAPPF. Time does not permit an adequate response to them and our clients' rights are reserved. Nothing should be inferred from the failure to respond to any points. However there are inaccuracies in those submissions that need to be corrected and brief responses that must be provided for there to be a fair consideration of the Chief Justice's suggested manner of proceeding.

8. In response to BHF:

   8.1 Neither the President nor the Minister have delayed a hearing on the merits of the assent challenge. They questioned, as they were entitled to do, which Court enjoys jurisdiction to consider such a novel challenge. There is well-established authority for the determination of jurisdictional issues *in limine*.

   8.2 Neither the President nor the Minister have delayed in relation to their answering affidavits in the public participation challenges. The applicants in those cases recognise that the scale of the task in preparing those affidavits means that the ordinary rules of this Court would not apply. Directions have yet to be given by this Court for the filing of answering affidavits and the dates

will be complied with. Preparation of the Minister's answering affidavits in the public participation challenges is proceeding intensely and this Court's directions as to a filing date will be met.

8.3 There is no basis for BHF's surprising suggestion that it will take this court a decade to dispose of the public participation challenges.

8.4 The correct legal position is that a stay will be granted where it is in the interests of justice to do so. It is not confined to the circumstances of a plea of lis pendens or lis alibi pendens.

8.5 This Court enjoys the inherent jurisdiction under section 173 to protect and regulate its own process. This manifestly entitles this Court to raise the issues it has done mero motu and to proceed in the manner that it has done in its letter under reply in order to provide for the most economical, efficient and expeditious disposal of the various challenges to the NHI Act. These challenges threaten to engulf the legal system if all were to be considered simultaneously, as the challengers would prefer.

8.6 The parties are not prejudiced in that their views have been heard and BHF and SAPPF have made full use of the opportunity provided, with submissions together running to 25 pages in total.

9. In response to SAPPF, where points are not already dealt with above:

9.1 It is wrong to characterise the contingency upon which the hearing of the assent challenge is delayed as speculative. Two very substantive and serious challenges have been made to the procedure followed by Parliament. If successful, they will sever the NHI Act's constitutionality at its parliamentary roots. All other challenges will most certainly be rendered moot. Procedural challenges have not led to partial invalidity but to the setting aside of statutes in their entirety.

9.2 It is simply false, seriously misleading of this Court and statutorily incorrect to say that "the Minister has repeatedly indicated that the implementation of the NHI Act will continue apace while the various challenges progress through the courts." The opposite is true. The NHI Act has yet to be brought into force by the President in terms of section 59. The President and the Minister

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have made it clear that in terms of section 59(2), provisions will be brought into force in stages, incrementally.

9.3 Section 57(1)(b) of the NHI Act, "National Health Insurance must be gradually phased in using a progressive and programmatic approach based on financial resource availability" – the Minister will most certainly respect this statutory injunction, and in his affidavits in the stay proceedings has set out in detail how this will unfold.

9.4 The suggestion that the Minister is doing "serious harm to the constitutional rights of healthcare providers and patients" is similarly false. The focus of early incremental implementation is health system strengthening and enhancing healthcare for vulnerable groups, which will be of public benefit, regardless of whether or not the NHI Act is ruled unconstitutional.

9.5 The judgment of Twala J forming the subject matter of the appeals, is, for the reasons explained in the Minister's heads of argument, patently flawed in multiple respects, including the factual basis upon which the matter was decided.

9.6 There can be no reason to proceed with the determination of the issue of the production by the President of the record, if the public participation challenges are successful.

9.7 Whilst the assent challenges and the public participation challenges indeed raise distinct issues, the determination of the public participation challenges is logically anterior to the assent challenges. If Parliament's process was flawed, everything that followed was unconstitutional and invalid. The challenges that are logically posterior will manifestly become moot. The logic of this Court's proposal is accordingly, with respect, compelling.

Director: Makule Asnath Kgosana LLB(UL), LLM Development and Management Law (UL), Postgrad. Dipl. In drafting and Interpretation of Contracts (UJ), **Attorney** Ngoako CK|MA Makamela, **Candidate Attorneys** Selolo, MT Zungu| **Compliance Officer** |TMC Moshiga **Legal Secretary** MF Charlie | **Office Admin,** D Nkoane|**Office Manager,** CM Gwangwa
|**Company Reg No:** 2022/411818/21 | **VAT Reg No:** 4870320589

9.8 The fact that BHF and SAPPF's challenges might have been brought first chronologically does not in any way upset the logic of determining the public participation challenges first.

9.9 Wasted costs arising from mootness due to unforeseen circumstances is a risk that any litigant accepts in commencing litigation. It cannot be a reason to force an overburdened apex Court with litigation that ultimately proves unnecessary.

9.10 It is incorrect, as SAPPF suggests, that the Minister's stay application in the High Court is subject to the final outcome only of the assent challenges (see para 48.) The stay application in the High Court is premised on allowing the Constitutional Court to decide all the matters before it first, because if its decision in any of those result in nullity, the substantive High Court challenges will similarly become moot. Massive court and party resources will have been expended on a fruitless exercise in the High Court.

9.11 Thus the stay application is also contingent upon the public participation challenges.

9.12 The Minister has not changed his stance in the manner suggested by SAPPF in paragraphs 49 and 50. As challenges have arisen in the Constitutional Court, they have been added to the notice of motion in the stay application, requiring adjudication of such challenges in the Constitutional Court to be decided, to the extent necessary, before the substantive challenges in the High Court. This is because a striking down by the apex Court is the end of the road for an Act of Parliament. No further enquiry as to constitutionality is required. The quote in paragraph 50 is taken out of context.

10. We sincerely apologise for the lateness of this letter, the 9am time limit having been overlooked.

11. We look forward to receiving the Court's decision at its earliest possible convenience as this may affect the hearing dates for our clients' upcoming application for stay and consolidation of the of the High Court frontal challenges to the validity of the NHI Act, which has been set down for hearing in the North Gauteng High Court on 23, 24, 25 and 27 February 2026.

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Yours faithfully,

Makule Kgosana

THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE

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CC: Speaker – Free State Provincial Legislature
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CC: Speaker – Gauteng Provincial Legislature
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MK7

CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 128/25

In the matter between:

MINISTER OF HEALTH	Applicant
and	
BOARD OF HEALTHCARE FUNDERS NPC	First Respondent
SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM	Second Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Third Respondent
MINISTER OF FINANCE	Fourth Respondent
NATIONAL TREASURY	Fifth Respondent

Case CCT 129/25

In the matter between:

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Applicant
and	
BOARD OF HEALTHCARE FUNDERS NPC	First Respondent
SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM	Second Respondent
MINISTER OF HEALTH	Third Respondent
MINISTER OF FINANCE	Fourth Respondent

NATIONAL TREASURY Fifth Respondent

DIRECTIONS

The Chief Justice has issued the following directions:

1. The Court has considered the parties' representations concerning the possible removal of these matters (presidential assent cases) from the roll on Thursday, 26 February 2026. The Court has concluded that the interests of justice and considerations of judicial economy make it appropriate to remove the matters from the roll.

2. Accordingly, the matters are removed from the roll and the hearing thereof is postponed *sine die*.

3. Simultaneously with the issuance of these directions, the Chief Justice will be issuing directions in cases CCT 251/25 and CCT 269/25 (public participation cases) in which the Board of Healthcare Funders NPC and the Premier of the Western Cape Government respectively seek orders declaring inter alia that Parliament's adoption of the National Health Insurance Bill was invalid due to an alleged breach by Parliament of the duties imposed by sections 59(1)(a) and 72(1)(a) of the Constitution to facilitate public involvement.

4. In terms of the simultaneous directions in the public participation cases, those cases are to be heard on Tuesday, Wednesday and Thursday, 5-7 May 2026.

5. If both of the public participation cases are unsuccessful, the presidential assent cases will be set down for hearing without further delay.

6. If one or both of the public participation cases are successful, further directions will be issued in the presidential assent cases requiring the parties to make submissions on mootness and on the further conduct of those cases.

7. Further directions may be issued.

BOYBOY MOLOI
REGISTRAR
CONSTITUTIONAL COURT

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MK8

CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 251/25

In the matter between:

BOARD OF HEALTHCARE FUNDERS NPC	Applicant
and	
SPEAKER OF THE NATIONAL ASSEMBLY	First Respondent
CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES	Second Respondent
MINISTER OF HEALTH	Third Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Fourth Respondent
DIRECTOR-GENERAL, NATIONAL DEPARTMENT OF HEALTH	Fifth Respondent
MINISTER OF FINANCE	Sixth Respondent
SPEAKER OF THE EASTERN CAPE PROVINCIAL LEGISLATURE	Seventh Respondent
SPEAKER OF THE FREE STATE PROVINCIAL LEGISLATURE	Eighth Respondent
SPEAKER OF THE GAUTENG PROVINCIAL LEGISLATURE	Ninth Respondent
SPEAKER OF THE KWAZULU-NATAL PROVINCIAL LEGISLATURE	Tenth Respondent
SPEAKER OF THE LIMPOPO PROVINCIAL LEGISLATURE	Eleventh Respondent

SPEAKER OF THE MPUMALANGA PROVINCIAL LEGISLATURE	Twelfth Respondent
SPEAKER OF THE NORTH WEST PROVINCIAL LEGISLATURE	Thirteenth Respondent
SPEAKER OF THE NORTHERN CAPE PROVINCIAL LEGISLATURE	Fourteenth Respondent
SPEAKER OF THE WESTERN CAPE PROVINCIAL PARLIAMENT	Fifteenth Respondent
MEMBER OF THE EXECUTIVE COUNCIL FOR THE DEPARTMENT OF HEALTH, EASTERN CAPE	Sixteenth Respondent
MEMBER OF THE EXECUTIVE COUNCIL FOR THE DEPARTMENT OF HEALTH, FREE STATE	Seventeenth Respondent
MEMBER OF THE EXECUTIVE COUNCIL FOR THE DEPARTMENT OF HEALTH, GAUTENG	Eighteenth Respondent
MEMBER OF THE EXECUTIVE COUNCIL FOR THE DEPARTMENT OF HEALTH, KWAZULU-NATAL	Nineteenth Respondent
MEMBER OF THE EXECUTIVE COUNCIL FOR THE DEPARTMENT OF HEALTH, LIMPOPO	Twentieth Respondent
MEMBER OF THE EXECUTIVE COUNCIL FOR THE DEPARTMENT OF HEALTH, MPUMALANGA	Twenty-first Respondent
MEMBER OF THE EXECUTIVE COUNCIL FOR THE DEPARTMENT OF HEALTH, NORTH WEST	Twenty-second Respondent
MEMBER OF THE EXECUTIVE COUNCIL FOR THE DEPARTMENT OF HEALTH, NORTHERN CAPE	Twenty-third Respondent
MEMBER OF THE EXECUTIVE COUNCIL	

FOR THE DEPARTMENT OF HEALTH, WESTERN CAPE	Twenty-fourth Respondent

Case CCT 269/25

In the matter between:

PREMIER OF THE WESTERN CAPE GOVERNMENT	Applicant

and

CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES	First Respondent
SPEAKER OF THE NATIONAL ASSEMBLY	Second Respondent
SPEAKER OF THE WESTERN CAPE PROVINCIAL PARLIAMENT	Third Respondent
SPEAKER OF THE EASTERN CAPE PROVINCIAL LEGISLATURE	Fourth Respondent
SPEAKER OF THE KWAZULU-NATAL PROVINCIAL LEGISLATURE	Fifth Respondent
SPEAKER OF THE NORTH WEST PROVINCIAL LEGISLATURE	Sixth Respondent
SPEAKER OF THE NORTHERN CAPE PROVINCIAL LEGISLATURE	Seventh Respondent
SPEAKER OF THE GAUTENG PROVINCIAL LEGISLATURE	Eighth Respondent
SPEAKER OF THE LIMPOPO PROVINCIAL LEGISLATURE	Ninth Respondent
SPEAKER OF THE MPUMALANGA PROVINCIAL LEGISLATURE	Tenth Respondent
SPEAKER OF THE FREE STATE PROVINCIAL LEGISLATURE	Eleventh Respondent
MINISTER OF HEALTH	Twelfth Respondent

DIRECTIONS

The Chief Justice has issued the following directions:

1. These applications are set down for hearing together on Tuesday, 5 May 2026 to Thursday, 7 May 2026.

2. Any respondents who have filed notices of opposition but not answering affidavits must file their answering affidavits on or before Monday, 23 February 2026, together with applications for condonation.

3. The applicants in both matters must file replying affidavits, if any, on or before Monday, 9 March 2026.

4. Written argument must be lodged by—

   (a) the applicants in both matters, on or before Monday, 23 March 2026; and

   (b) the respondents in both matters, on or before Wednesday, 8 April 2026.

5. The applicants are not required to prepare physical records. The CaseLines electronic evidence management platform (CaseLines) will instead be used. There will be separate records on CaseLines for these two cases. In that regard:

   (a) the Registrar will upload onto CaseLines all papers filed prior to the issuance of these directions;

   (b) any party filing a document subsequent to the issuance of these directions must upload it onto the applicable CaseLines record.

6. In preparation for the hearing

   (a) the legal representatives for each party to the proceedings are, if not already registered, required to register accounts on CaseLines through https://sajustice.caselines.com;

   (b) the legal representatives for each party to the proceedings must email the name, surname and email address of each legal representative, who should be granted access to the matter on CaseLines, to Mr Asanele Diko at dikoa@concourt.judiciary.org.za, no later than Thursday 12 February 2026;

(c) each legal representative will be granted full access to this matter on CaseLines upon request.

7. Should any party identify missing or duplicated material, they must notify Mr Diko immediately.

8. As to the hearing:

(a) Subject to what is said hereinafter, legal representatives are required to prepare for and participate in the hearing with full familiarity of the functionalities of CaseLines, including viewing, navigating and presenting documents electronically.

(b) Parties must ensure that their respective legal representatives have appropriate access, equipment and connectivity to utilise CaseLines without technical interruption.

(c) The Court expects counsel to be sufficiently familiar with the layout and organisation of the CaseLines bundle to ensure efficient navigation.

(d) In the event that any party experiences connectivity or technical difficulties, they should contact Mr Diko.

9. As to pagination:

(a) To ensure efficient navigation of the record and pleadings during oral argument, parties must cite the CaseLines pagination.

(b) Each party must ensure that their written submissions and any supplementary documents make reference to the CaseLines pagination.

10. As to directing during oral argument:

(a) The legal representative presenting oral submissions must use the CaseLines "direct to page" functionality whenever the Court is referred to a specific page in the bundle.

(b) The "direct to page" function works as follows:

i) Select "view case list".

ii) Select "review evidence".

iii) Select the relevant document, or page, from the list of documents in the master bundle, located on the left-hand side of the screen.

(c) Select "present" at the top of the screen, which is located in-between "view" and "notes". This will produce a horizontal bar. On the right-hand side of this bar is a "page direction" section.

(d) Select "direct to page", which is located in-between "lawyers, judges, court staff" and "page direction history".

(e) Counsel must ensure that the relevant page has fully loaded on CaseLines before proceeding to make any substantive submissions on the contents of that page.

(f) Where a party relies on multiple pages, or documents, in quick succession, they must prepare a pre-identified list of such references to minimise delays during oral argument.

11. Further directions may be issued.

BOYBOY MOLOI
REGISTRAR
CONSTITUTIONAL COURT

TO: WERKSMANS ATTORNEYS
Attorneys for the Applicant in CCT 251/25
The Central
96 Rivonia Road
Sandton
JOHANNESBURG
Tel: 011 535 8198 / 011 535 8424
Email: nkirby@werksmans.com / hmichael@werksmans.com / bmoti@werksmans.com / sphakathi@werksmans.com / svanrooyen@werksmans.com
Ref: Mr N Kirby/Ms H Michael/Ms B Moti/BOAR3329.73

AND TO: OFFICE OF THE STATE ATTORNEY, CAPE TOWN
Attorney for the First and Second Respondents in CCT 251, and First and Second Respondents in CCT 269/25
4th Floor, 22 Long Street
CAPE TOWN
Tel: 021 441 9200
Email: skarjiker@justice.gov.za / cvisagie@justice.gov.za
Ref: 1986/25/P27 and 2032/25/P27

C/o OFFICE OF THE STATE ATTORNEY, JOHANNESBURG
Room 1320, 11th Floor North State Building
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JOHANNESBURG
Tel: 011 330 7600
Email: sbedrow@justice.gov.za
Ref: Ms S Bedrow

AND TO: KGOSANA ATTORNEYS
Attorneys for the Third, Fifth, Sixteenth, Nineteenth and Twenty-first Respondents in CCT 251, and Twelfth Respondents in CCT 269/25
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133 Valley Road
Sunnyside
PRETORIA
Tel: 012 326 1452 / 063 655 9347
Email: info@kgosana-attorneys.co.za / makule@kgosana-attorneys.co.za
Ref: BHF/CON12/2025; KGOSANA/DEPT OF HEALTH/05/2025.

AND TO: PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA
Fourth respondent in CCT 251/25
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West Wing
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PRETORIA
Email: presidentrsa@presidency.gov.za / robert@presidency.gov.za / angeline@presidency.gov.za / malebo@presidency.gov.za

AND TO: MINISTER OF FINANCE
Sixth Respondent in CCT 251/25
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AND TO: OFFICE OF THE STATE ATTORNEY, EAST LONDON
Attorneys for the Seventh Respondent in CCT 251/25 and Fourth Respondent in CCT 269/25
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17 Fleet Street

EAST LONDON
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Email: ckela@justice.gov.za
Ref: 1301/25-P2 (Mr Mosia)
C/o SHARED LEGAL SERVICES
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BISHO
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AND TO: SPEAKER OF THE FREE STATE PROVINCIAL LEGISLATURE
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cecawood@gmail.com / delangejeanne@gmail.com

AND TO: SPEAKER OF THE GAUTENG PROVINCIAL LEGISLATURE
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asanda.makhubalo@gauteng.gov.za / geert.kuit@gauteng.gov.za /
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AND TO: GARLICKE AND BOUSFILED INCORPORATED
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La Lucia
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AND TO: SPEAKER OF THE LIMPOPO PROVINCIAL LEGISLATURE
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AND TO: SPEAKER OF THE MPUMALANGA PROVINCIAL LEGISLATURE
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AND TO: SPEAKER OF THE NORTH-WEST PROVINCIAL LEGISLATURE
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MMABATHO
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AND TO: SPEAKER OF THE NORTHERN CAPE PROVINCIAL LEGISLATURE
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Nobengula Extension
Galeshewe
KIMBERLEY
Email: pmontwedi@ncpg.gov.za / zmaneli@ncpg.gov.za / kvictor@ncpg.gov.za

AND TO: SPEAKER OF THE WESTERN CAPE PROVINCIAL LEGISLATURE
Fifteenth Respondent in CCT 251/25 and Third Respondent in CCT 269
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AND TO: MEMBER OF THE EXECUTIVE FOR THE DEPARTMENT OF HEALTH, FREE STATE
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AND TO: MEMBER OF THE EXECUTIVE FOR THE DEPARTMENT OF HEALTH, GAUTENG
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AND TO: MEMBER OF THE EXECUTIVE FOR THE DEPARTMENT OF HEALTH, LIMPOPO
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AND TO: MEMBER OF THE EXECUTIVE FOR THE DEPARTMENT OF HEALTH, NORTHWEST
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AND TO: MEMBER OF THE EXECUTIVE FOR THE DEPARTMENT OF HEALTH, NORTHERN CAPE
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Belgravia

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AND TO: MEMBER OF THE EXECUTIVE FOR THE DEPARTMENT OF HEALTH, WESTERN CAPE
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AND TO: OFFICE OF THE STATE ATTORNEY, CAPE TOWN
Attorneys of the Applicant in CCT 269/25
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11 February 2026

WITH PREJUDICE

PER EMAIL

TO: **THE STATE ATTORNEY, PRETORIA**

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CNR THABO SEHUME & FRANCIS BAARD

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PRETORIA

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EMAIL: rsebelemetsa@justice.gov.za

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AND TO: **MINISTER OF FINANCE**

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NEW MUCKLENUEK

PRETORIA

DOCEX 42, BROOKLYN

AND TO: **WEBBER WENTZEL ATTORNEYS**

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C/O HILLS INCORPORATED

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AND TO:

NORTONS INC. ATTORNEYS

SEVENTH RESPONDENT'S ATTORNEYS

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AND TO: **ENS AFRICA ATTORNEYS**

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REF: C ERUSMUS/J KEUS/ X64/2025

AND TO: **KRIEK WASSENAAR & VENTER INC**

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To whom it may concern,

RE: CASE NO: 2025-125411 MINISTER OF HEALTH AND ANOTHER V THE PRESIDENT OF THE REPUBLIC AND OTHERS: APPLICATION FOR STAY OF CERTAIN PROCEEDINGS

1. We refer to –

   1.1 the recent exchanges between the Registrar of the Constitutional Court, writing on the direction of the Chief Justice, and the parties involved in the various proceedings relevant to the challenges to the National Health Insurance Act 20 of 2023 pending in that Court; and

   1.2 the two sets of directives issued by the Chief Justice pursuant to the exchange.

2. We include with this letter a draft affidavit setting out the import, and attaching copies, of the exchanges and directives referred to in paragraph 1. We respectfully ask that all the parties consent to the filing of the affidavit in Case No CCT 2025-125411 *Minister of Health and Another v the President of the Republic and Others* (**"the stay and consolidation application"**), as it is necessary that Judge Neukircher urgently be alerted to these developments and because the applicants will make reference to them if and when the stay application is argued.

3. For the benefit of those parties that are not engaged in the Constitutional Court litigation, what the Constitutional Court has in essence decided, after inviting and hearing the parties' views, is to remove from the Constitutional Court's roll the point of law appeals in BHF and SAPPF's challenges to the assent and signature of the NHI Bill by the President, and to enrol on a truncated timetable BHF's and Premier: Western Cape Provincial Government's (**"WCPG"**) public participation challenges. These are now set down for hearing from 5-7 May 2026. We highlight to the extent necessary that the WCPG is not a party to the stay application in the High Court, nor the CC assent challenge in the CC.

4. The Chief Justice was motivated in making her proposal by the concern that "*[i]n the event that the public participation challenge proves to be ultimately successful, the merits of the assent challenge may be rendered moot.*"

5. The relevant directive provides in relevant part as follows –

> "*1. The Court has considered the parties' representations concerning the possible removal of these matters (presidential assent cases) from the roll. … The Court has concluded that the interests of justice and considerations of judicial economy make it appropriate to remove the matters from the roll.*
>
> *[Postponement, removal from the roll and set down of the public participation challenges are then dealt with]*
>
> *5. If both the public participation cases are unsuccessful, the presidential assent cases will be set down for hearing without further delay.*
>
> *6. If one or both of the public participation cases are successful, further directions will be issued in the presidential assent cases requiring the parties to make submissions on mootness and on the further conduct of those cases." (emphasis added)*

6. The rationale underlying the decisions of the Constitutional Court is, with respect, compelling and mirrors directly the rationale underlying the Minister's High Court stay application. Only, the rationale for the stay in the High Court is that much more compelling, particularly from the perspective of judicial economy and the interests of justice, when regard is had to the scale of the pending frontal challenges. The Constitutional Court was obviously also motivated by the fact that if the Act stumbles at the first hurdle of public participation in the legislative process, everything that followed it will have been constitutionally invalid.

7. Apart from these considerations, the opposition to the stay has very substantially been motivated on the basis of a predicted slow turn-around time on the part of the Constitutional Court in its adjudication of the challenges to the NHI Act pending before

it. These concerns have been shown by the recent developments to be entirely unfounded.

8. It is further our respectful submission that it is appropriate and in the interests of justice that the High Court fall in line with the approach adopted by the apex Court, the Constitutional Court and by the Chief Justice.

9. In the circumstances, we respectfully submit that in light of the example (to put it at its lowest) set by the Chief Justice and the Constitutional Court in the correspondence and the directives attached to the draft affidavit, it is manifestly appropriate that the parties to the stay and consolidation application in the High Court adopt a similar course, in the "*interests of justice and [for] considerations of judicial economy*".

10. Our clients thus propose that your clients consent to the relief sought in the stay application, with each party to bear its own costs. Given the limited opposition to the consolidation, with only a few parties squarely opposing it, we propose that the relief in that part of the notice of motion also be consented to.

11. Alternatively, our clients request that your clients consent to the stay and consolidation application being postponed *sine die*, pending the outcome of the public participation challenges (CCT251/25 and CCT269/25) in the Constitutional Court. At that point the matter may be reassessed.

12. We are of the respectful view that, in light of the approach of the Chief Justice and the Constitutional Court to the challenges pending before it, and the fact that that Court has to all intents and purposes stayed the presidential assent challenges, continued opposition to the stay and consolidation application in the High Court would be unreasonable. If any of the parties who oppose the stay and consolidation persist in their opposition, our clients will apply for an adverse costs order against them on the basis that the protection afforded in *Biowatch Trust v Registrar Genetic Resources and Others* 2009 (6) SA 232 (CC) has been forfeited in respect of the period following the date of receipt of this letter.

13. In light of the above developments, kindly provide your clients' urgent response to the following requests by no later than the close of business on 12 February 2026:

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13.1 Your clients' written consent to the admission of the draft affidavit in the stay and consolidation application.

13.2 Your client's response to the proposals in paragraphs 10 and 11 of this letter .

13.3 Your clients' willingness and to jointly request of Neukircher J that she convene an urgent case management meeting to discuss the developments in the Constitutional Court, the parties' responses to the with prejudice proposals in paragraphs 10 and 11 of this letter, and, if the matter is to proceed, whether the hearing dates should be altered, given that 26 February 2026 is no longer required for the hearing of the Constitutional Court matter.

13.4 Your clients' consent to this with prejudice letter being placed before Neukircher J for purposes of the case management meeting.

Yours faithfully,

Makule Kgosana
Kgosana Attorneys Inc

MK 10

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P O Box 783347 Sandton South Africa 2146
Docex 152 Randburg
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Kgosana Attorneys
Attorneys for the Minister of Health

Email: info@kgosana-attorneys.co.za
makule@kgosana-attorneys.co.za
charlie@kgosana-attorneys.co.ca

Attention: Ms Makule Kgosana

D Band/A Richards/0528590 our ref
KGOSANA/DEPT OF HEALTH 10/2025 your ref
12 February 2026 date

Dear Ms Kgosana

THE MINISTER OF HEALTH v THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA CASE NO. 2025-125411 - THE MINISTER OF HEALTH'S STAY AND CONSOLIDATION APPLICATION

1. We refer to your letter of 11 February 2026. On behalf of the Health Funders Association (HFA), we address each of your requests made therein in turn below.

2. Our client consents to the filing of the draft affidavit attached to your letter, provided that this response is also attached to the affidavit.

3. As to the proposals in paragraphs 10 and 11 of your letter, the HFA does not agree to the Minister's proposed suspension of proceedings, whether in the form of the stay sought or a postponement *sine die*, and does not agree to consolidation.

4. However, should the President and/or the Minister be prepared to provide appropriate undertakings that they will not bring into operation or implement the National Health Insurance Act, 20 of 2023 for as long as a stay of proceedings is in place, our client would be willing to engage on the terms of a possible stay of proceedings.

5. Our client consents to an urgent case management meeting with the Honourable Madam Justice Neukircher.

law | tax | forensics | IP
Edward Nathan Sonnenbergs Incorporated registration number 2006/018200/21
M.M. Katz (chairman) M. Mgudlwa (chief executive) M.W. Matlou (chief operating officer) Y.A. Mendelsohn (chief operating officer)
a list of directors is available on our website ENSafrica.com/letterheadSA
level 1 BBBEE rating

ORIGINAL THINKING

6. All our client's rights are reserved.

Yours faithfully,

Edward Nathan Sonnenbergs Inc.

Per:

Darren Band & Altair Richards

Cc: Honourable Madam Justice Neukircher
Email: PMoitsi@judiciary.org.za

Cc: Office of the State Attorney, Pretoria (on behalf of the President)
Email: rsebelemetsa@justice.gov.za | Pskhonde@justice.gov.za

Cc: Nortons Incorporated (on behalf of HASA)
Email: anthony@nortonsinc.com | michelle@nortonsinc.com | melissa@nortonsinc.com

Cc: Assenmacher Brandt (on behalf of SAMA)
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Cc: Werksmans (on behalf of BHF)
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Cc: Serfontein Viljoen & Swart (on behalf of Solidarity)
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WITH PREJUDICE

To: **Kgosana Attorneys (on behalf of the Minister of Health)**
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The State Attorney (on behalf of the President of the Republic of South Africa)
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12 February 2026

Dear Ms Kgosana and Mr Sebelemetsa,

Re: The Minister of Health v the President of the Republic of South Africa and Others [Case No.: 2025-125411] ("The Minister's stay and consolidation application")

1. We refer to the *with prejudice* letter from the Minister of Health's attorneys dated 11 February 2026 ("**the letter**").

2. We do not intend to respond to each and every allegation contained in the letter at this stage and our failure to respond to any particular allegation should not be construed as an admission thereof. We reserve our right to respond in further detail at the appropriate time and in the appropriate forum.

3. We note that the letter proposes that, in light of the Constitutional Court's directions in the assent and public participation challenges, it would be appropriate for the High Court and the respondents in the Minister's stay and consolidation application to *"fall in line"* and *"adopt a similar course"* by the parties either consenting to the relief sought or agreeing to postpone the hearing *sine die* pending the outcome of the public participation challenge.

4. The letter further contends that if the respondents continue to oppose the stay and consolidation application, then their opposition would be *"unreasonable"* and would justify the Minister seeking an adverse cost order against them—notwithstanding the protection afforded to them under *Biowatch*.

5. For the reasons set out below, our client rejects the proposal that it consent either to the stay and consolidation application or to a postponement *sine die*. Our client further rejects the assertion that its continued opposition to the stay and consolidation is unreasonable and justifies an adverse cost order.

5.1 *First,* the letter suggests that inferences should be drawn from the Constitutional Court's issuance of directions in the assent and public participation challenges, and that those directions have a direct bearing on the Minister's stay and consolidation application.

5.2 It bears emphasis that the Constitutional Court merely issued *directions* in respect of the assent and public participation challenges. It has not engaged with or expressed any view on the merits of either challenge, nor has it established any new precedent regarding stays that would bind the High Court or any other court. The directions are merely case management measures issued in the exercise of the Court's ordinary powers to regulate its court roll and manage its capacity. They carry no precedential weight and have no principled impact on the Minister's stay and consolidation application. They cannot reasonably be interpreted as determinative or dispositive of the Minister's stay and consolidation application. To suggest that these directions have a direct bearing on the Minister's stay and consolidation application and oblige our client to agree to the stay and consolidation or a postponement without the High Court first hearing oral or written submissions is baseless and misconceived. In the circumstances, there is no factual or legal basis whatsoever to suggest that our client should "*fall in line*" and "*adopt a similar course*."

5.3 *Second,* the directives are entirely distinguishable from the issues before the High Court. The Constitutional Court sits as a court of final instance, hears matters *en banc,* and exercised its own constitutional jurisdiction in determining its competency to hear the assent and public participation challenges. Similarly, the High Court has its own constitutional jurisdiction and is constitutionally obliged to adjudicate the issues raised in the substantive applications. The High Court is certainly not obliged to wait on the Constitutional Court to do so. In fact, the Constitutional Court has repeatedly emphasised the importance of the High Courts exercising their jurisdiction over constitutional matters to assist the Constitutional Court in its final determination of those matters.

5.4 Accordingly, there is nothing in the directions to suggest that the High Court is impeded from adjudicating the substantive applications pending the outcome of the assent and public participation challenges.

5.5 *Third,* the directives introduce no substantive change to the facts underlying the stay application. Prior to the directions being issued, the Constitutional Court was poised to hear the assent challenges before the public participation challenges. The Court has only recently decided to reverse this order. This reversal does not alter the fact that the Constitutional Court will deal with the applications before it sequentially.

5.6 In addition, the order sought by the Minister extends beyond the public participation challenges, it expressly includes the assent challenges. This means that the stay could still extend years after the public participation challenges, because it will remain in operation until such time as the Court has finally determined the assent challenges.

5.7 *Fourth,* the letter suggests that *"from the perspective of judicial economy and the interests of justice"* it is appropriate and reasonable for our client to consent to the Minister's stay and consolidation application. This approach fails to account for our client's right to access courts guaranteed by section 34 of the Constitution, and our client's right in section 38 of the Constitution to approach, in its own interest and in the public interest, the court for appropriate relief.

5.8 *Fifth,* the Minister alleges that our client would be acting unreasonably if our client does not consent to the Minister's proposal and goes so far as to allege that its continued opposition would fall within the exception of *Biowatch.* However, the Minister's allegation rests on a fundamental misconception. It disregards the fact that the President has failed to provide an undertaking not to commence the NHI Act *despite the directives.*

5.9 In the circumstances, the President faces a dilemma (and it is for this reason that we address this letter to the President's attorneys).

5.10 If the President believes that the Constitutional Court is likely to imminently strike down the NHI Act in the public participation challenges, then it would be irrational and unconstitutional to commence the NHI Act. This is especially so in circumstances where the President has not commenced the Act for almost two years (since May 2024). The converse is equally true: the

President would be acting rationally and constitutionally if he undertakes not to commence the NHI Act pending the resolution of the public participation challenges by the Constitutional Court, especially when he has already delayed the commencement of the Act for other reasons. Accordingly, the President can and ought to provide an undertaking that he will not commence the NHI Act (at the very least) pending the determination of the public participation challenges.

5.11 On the other hand, if the President's position is that there is little or no prospect that the Constitutional Court will not strike down the NHI Act in the public participation challenges, and on that basis he believes it is rational and constitutional to pre-empt that determination by now rushing to bring the Act into force before the Court determines the matters, after years of delay, then there is no basis on which this Court can grant a stay and certainly not on the basis of the Chief Justice's directives. This Court cannot grant a stay while the President intends to proceed with the NHI Act's commencement and cause its implementation. For all the reasons set out in our client's papers and submissions, commencement of the Act will cause immediate and severe prejudice to a suite of constitutional rights, values, and safeguards.

5.12 Absent an unequivocal written undertaking from the President not to implement the NHI Act (which has not been forthcoming despite previous requests), it is certainly not *"unreasonable"* for our clients to oppose a stay, and to refuse to agree to an adjournment (which functions as a stay), when the President and Minister intend to commence and implement the NHI Act, notwithstanding the pending public participation challenges. It must be stressed that it would be entirely unacceptable to our client for the Minister to be in a position to implement the NHI Act, which he has averred he is bound to do once the Act comes into force, in circumstances where our client's application is put on hold for an extended period of time, given the very serious constitutional issues and prejudice to the public implicated in the proceedings.

5.13 In the current context, the President's ongoing failure to provide an undertaking not to implement the Act even pending the final determination of the public participation challenges and notwithstanding the Constitutional Court's impending determination of the public interest

challenges, is only consistent with an intention to imminently bring the NHI Act into force despite those challenges.

6. In light of the above, our client does not consent to the relief sought in the stay and consolidation application, nor does it agree to a postponement of the hearing *sine die* pending the outcome of the public participation challenges before the Constitutional Court.

7. In relation to the requests to admit the draft affidavit in the stay and consolidation application and a case management meeting:

7.1 our client consents to the admission of the draft affidavit on condition that this correspondence (and any further related correspondence) is attached to the affidavit; and

7.2 our client consents to an urgent case management meeting being convened before the Honourable Judge Neukircher with the other parties in the Minister's stay and consolidation application to provide her with an update.

8. Our client's rights are expressly reserved.

Kind regards

[Unsigned due to electronic transmission]

Anthony Norton / Michelle Rawlinson / Melissa Steele
Nortons Incorporated
Attorneys for HASA

MK12

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Your reference	Our reference	Date
	MG Versfeld / G Penfold / P Singh 4008778	12 February 2026

Dear Ms Kgosana and Ms Skhonde

RE: MINISTER OF HEALTH STAY AND CONSOLIDATION APPLICATION (CASE NO: 2025-125411) ("the stay application") – WITH PREJUDICE

1. We refer to the Minister of Health's attorneys letter dated 11 February 2026 ("**the Minister's letter**").

2. As we understand it, your clients' position is the following:

2.1 You rely on the recent exchanges between the Registrar of the Constitutional Court and the parties, and on the directives issued by the Chief Justice, in terms of which the public participation challenges have been enrolled for hearing in May 2026, and the presidential assent challenges have been removed from the roll for the time being.

Senior Partner: G Driver **Managing Partner:** S Patel **Partners:** BW Abraham RB Africa C Alexander AK Allie NG Alp TB Ball DC Baymiah AP Blair K Blom N Blom AJR Booysen AR Bowley M Bux V Campos RI Carrim T Cassim SJ Chong ME Claassens KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland R Cruywagen JH Davies KM Davis PM Daya L de Bruyn A de Meyer PU Dela M Denenga C Dennehy DW de Villiers HM de Villiers ST Dias BEC Dickinson DA Dingley W Drue E Durman GP Duncan CP du Toit TC Dye L Dyer SK Edmundson LF Egypt KH Eiser JC Els S Farren K Fazel G Fitzmaurice JB Forman L França M Garden MM Gibson H Goolam C Gopal CI Gouws PD Grealy L Green JM Harvey JS Henning KR Hillis CM Holfeld PM Holloway SJ Hutton KT Inglis ME Jarvis JC Jones CM Jonker S Jooste LA Kahn L Kamukwamba M Kennedy A Keyser GR Kgaile MT Kgoadi A Khumalo KE Kilner MD Kota JC Kraamwinkel AC Kruger S Kruger J Lamb LC Lambrechts LM Lamola B Lötter E Louw CF Mackenzie M Mahlangu V Mannar CCT Marupen-Shkaidy G Masina T Masingi N Mbere MC McIntosh SJ McKenzie CS Meyer A Mhlongo AJ Mills D Milo M Mkhabela DR Mogapi P Mohanlall L Moolman LE Mostert VM Movshovich M Mpungose A Muir C Murphy D Naidoo P Naidoo DC Nchabeleng DP Ndiweni ST Ngcamu LM Nkanza C Nöthling PD Novotny M Nxumalo AN Nyatsumba MB Nzimande A October L Odendaal N Paige AS Parry GR Penfold SE Phajane MN Phala M Philippides BA Phillips MA Phillips CH Pienaar MP Pool DJ Rafferty D Ramjettan GI Rapson K Rew G Richards-Smith SA Ritchie J Roberts BJ Rule S Rule G Sader H Samsodien DA Serumula KE Shepherd ZK Sibeko N Singh N Singh-Nogueira CF Sieberhagen P Singh S Sithole J Smit C Smith P Soni MP Spalding MW Straeuli LJ Swaine Z Swanepoel WV Tembedza A Thakor T Theessen TK Thekiso C Theodosiou T Theunissen R Tlhavani G Truter PZ Vanda SE van der Meulen JP van der Poel MS van der Walt CS Vanmali N van Vuuren JE Veeran HM Venter B Versfeld MG Versfeld TA Versfeld C Vertue T Viljoen DM Visagie EME Warmington J Watson M Wessels AWR Westwood RH Wilson JS Whitehead KD Wolmarans

2.2 You submit that the rationale adopted by the Constitutional Court – namely considerations of judicial economy and the interests of justice – should be mirrored by the High Court.

2.3 On that basis, you propose that the parties consent either (a) to the relief sought in the stay and consolidation application, or (b) to the stay application being postponed sine die pending the outcome of the public participation challenges.

2.4 You further contend that continued opposition to the stay would be unreasonable and may warrant an adverse costs order notwithstanding *Biowatch*.

3. We record that our client does not accept that the Constitutional Court's directives have the legal consequences attributed to them in the Minister's letter.

4. The Constitutional Court did not have a formal stay application before it. The Constitutional Court's directive did no more than to manage its own roll by sequencing the hearing of the two procedural challenges before it, namely the public participation challenges and the assent challenges.

5. The High Court, by contrast, has before it a formal stay application concerning the substantive constitutional challenges to the NHI Act brought by six parties. The circumstances are materially different – whereas the procedural challenges detail rule-of-law harm of the *same* kind, the substantive constitutional challenges detail serious and ongoing infringements of constitutional rights occasioned by the NHI Act and its implementation.

6. The determination of the substantive constitutional challenges, accordingly, cannot be halted while implementation continues. Where ongoing and serious rights infringements are alleged, the suspension of adjudication without safeguards in place is constitutionally impermissible.

7. Moreover, the postponement of the assent challenges in the Constitutional Court is for a more defined and limited period, with strict timelines in place and a set hearing date. The Constitutional Court has undertaken that the assent challenges will proceed "*without delay*" should the public participation challenges fail.

8. The sought-for stay of the substantive constitutional challenges, however, is indefinite, as it depends on numerous contingent events and possible permutations in both the public

participation challenges and the assent challenges, and is likely to persist for many years. Indeed, the Constitutional Court's decision to hear the matters sequentially materially extends that timeline, as the Health Funders Association's supplementary submissions demonstrate.

9. That consequence directly engages our client's right of access to court under section 34 of the Constitution. SAPPF's rights of access to court continues, on a daily basis, to be frustrated. Nothing in the Constitutional Court's directives suggests that this right may be subordinated. On the contrary, the Constitutional Court has underscored the importance of access to court by providing that the assent challenges will proceed expeditiously if public participation challenges fail.

10. There is thus no merit in the contentions, in paragraphs 6 and 8 of the Minister's letter, that the rationale for a stay in the High Court is more compelling than that which gave rise to the Constitutional Court's directives, or that the High Court should simply "*fall in line with the approach adopted by the apex Court*".

11. In these circumstances, we do not accept that continued opposition to the stay is unreasonable. On the contrary, absent undertakings that implementation will not proceed, it is constitutionally necessary.

12. Notwithstanding the above, and in the spirit of seeking a principled and workable solution, our client is prepared to consider consenting to a postponement of the stay application pending the final determination of the public participation challenges in the Constitutional Court, provided that an undertaking is furnished that the NHI Act will not be brought into operation by the President or implemented during this period.

13. Such an undertaking is both necessary and appropriate for the following reasons:

13.1 The NHI Act is presently not in force, and the President has elected not to bring it into operation to date.

13.2 Where ongoing and serious constitutional rights infringements are alleged, a halt on implementation is the minimum constitutional safeguard required to justify a pause in adjudication.

13.3 Without such an undertaking, the President and the Minister would remain at liberty to commence and implement the NHI Act. That would risk rendering aspects of the

pending substantive challenges academic or practically ineffective, and continue to cause uncertainty, wasted public resources and prejudice to the health care providers, beneficiaries, and schemes who are affected thereby.

13.4 The President and the Minister plainly consider that there is a real possibility that the NHI Act may be declared invalid in the public participation challenges. That is why the Minister says in the Minister's letter (at para 6) that the Constitutional Court "*obviously was also motivated by the fact that if the Act stumbles at the first hurdle of public participation in the legislative process, everything that followed will have been constitutionally invalid*". On that logic, implementation in advance of that determination would raise serious questions of rationality and constitutional propriety. Indeed, it would be irrational to support the prioritising of the public participation challenges (as the President and Minister have done in their submissions to the Constitutional Court) on the basis that these challenges may succeed, with the result that the NHI Act will be declared invalid, whilst insisting upon the implementation of the NHI Act in the intervening period.

13.5 In a letter addressed to the Registrar of the Constitutional Court dated 4 February 2026 (attached, marked "**A**"), the Minister's attorneys accepted that implementation would not continue apace while the challenges proceed through the courts (at para 9.2). The undertaking sought here is consistent with that position.

13.6 Critically, the provision of the undertaking referred to above would be a sign of good faith by the government that it is meaningfully open to efforts to discuss and advance the government's NHI objectives collaboratively with affected stakeholders, outside of litigation.

13.6.1 It is now a matter of public record that there exists a fundamental dispute between the National Treasury and the Department of Health regarding the affordability of the NHI and the government's approach to legal proceedings relating to the NHI Act. This dispute is not new, but has become increasingly apparent.

13.6.2 The National Treasury has never endorsed the NHI Act and has, over the years, raised formal concerns with the Presidency regarding both the constitutionality of the NHI Bill and the lack of detail on the NHI Fund's financing.

13.6.3 Most recently, in November 2025, the Minister of Finance publicly rejected the Department of Health's proposal to scrap medical aid tax credits (amounting to approximately R34 billion per annum) to fund the NHI, describing this as "*an attack on the middle class*".

13.6.4 The Minister of Finance's call for settlement negotiations in the National Assembly, and his response through his spokesperson, suggest that this dispute extends to whether and how the matters currently before the courts, can be settled, if at all.

13.7 The government wants an adjournment of the stay application and asks SAPPF and other parties to agree thereto. Were the undertaking provided as a just and equitable condition of the adjournment, it would show a good faith commitment to the possibility of such negotiations, and would allow all parties to take seriously the Minister of Finance's concern that continued NHI-related litigation risks fiscal uncertainty for both the budgets of the Department of Health and the South African government. Were the undertaking refused, it would confirm that your client has ensured that litigation is regrettably necessary to resolve the disputes. It would also underline why a removal or adjournment of the stay application on your client's terms is not just and equitable.

14. In our respectful view, the provision of such an undertaking is thus the minimum condition for any order by agreement that allows for an adjournment of the stay hearing that purports to reflect the "*interests of justice*". It would be just and equitable for that to be a factor in any order that the Court may make, were it to postpone the hearing of the stay application.

15. Should the requested undertaking not be provided, our client will have to maintain its opposition to any postponement or stay, and highlight the government's refusal to stay implementation of legislation that is constitutionally challenged (where that constitutionality now is soon to be decided by the Constitutional Court on the potentially dispositive basis your client has embraced).

16. In that event, our client reserves its right to place a further affidavit and short submissions before the Court responding to the affidavit which the Minister seeks to admit in the stay application.

17. In the circumstances, kindly confirm by close of business on 13 February 2026 whether your clients are prepared to furnish the undertaking referred to in paragraph 12 above.

18. With regards to the remaining requests at paragraph 13 of the Minister's letter:

18.1 our client consents to the admission of the Minister's draft affidavit in the stay application;

18.2 our client consents to the convening of an urgent case management meeting before the Honourable Judge Neukircher to provide her with an update on the developments in the Constitutional Court; and

18.3 our client consents to the Minister's letter being placed before the Honourable Judge Neukircher for the purposes of case management meeting, provided that this response is similarly placed before her.

19. Our client's rights are fully reserved, including in relation to costs.

Yours faithfully



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4 February 2026

PER EMAIL

Mr N Mthethwa

Registrar of the Constitutional Court

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Generaloffice@concourt.org.za

Dear Sir/Madam

RE: CCT 128/25 Minister of Health v Board of Healthcare Funders NPC and Others; CCT 129/25 President of the Republic of South Africa v Board of Healthcare Funders NPC and Others; CCT 251/25 Board of Healthcare Funders NPC v Speaker of the National Assembly and Others; and CCT 269/25 Premier of the Western Cape v Chairperson of the National Council of Provinces and Others.

1. We acknowledge receipt of and thank you for your letter dated 2 February 2026, sent on the direction of the Chief Justice.

2. We act on behalf of the Minister of Health and the Director-General of the National Department of Health ("**our clients**").

3. We write in response to the Chief Justice's invitation for the parties to express their views on the possible removal of the assent challenge matters from the roll for 26 February 2026 pending the outcome of the public participation challenge.

4. Our clients' approach in both the High Court and Constitutional Court litigation is to have the constitutionality of the National Health Insurance Act 20 of 2023 determined in the

most efficient and expeditious manner possible, with optimal employment of scarce judicial and party resources. Hearing the assent matters on 26 February 2026 in circumstances where they might thereafter be rendered moot by successful public participation challenges would not be consistent with this approach.

5. Our clients accordingly consent to the removal of the assent challenge matters from the roll for 26 February 2026 pending the outcome of the public participation challenges.

6. At the same time, our clients commit to facilitating the expeditious disposal of the public participation challenges in order that there may be certainty about the legal position as soon as possible. They will naturally be bound by and comply with any timetable laid down by the Court to achieve an expedited adjudication of the public participation challenges.

7. Our clients have taken note of the submissions made on behalf of BHF and SAPPF. Time does not permit an adequate response to them and our clients' rights are reserved. Nothing should be inferred from the failure to respond to any points. However there are inaccuracies in those submissions that need to be corrected and brief responses that must be provided for there to be a fair consideration of the Chief Justice's suggested manner of proceeding.

8. In response to BHF:

   8.1 Neither the President nor the Minister have delayed a hearing on the merits of the assent challenge. They questioned, as they were entitled to do, which Court enjoys jurisdiction to consider such a novel challenge. There is well-established authority for the determination of jurisdictional issues *in limine*.

   8.2 Neither the President nor the Minister have delayed in relation to their answering affidavits in the public participation challenges. The applicants in those cases recognise that the scale of the task in preparing those affidavits means that the ordinary rules of this Court would not apply. Directions have yet to be given by this Court for the filing of answering affidavits and the dates

will be complied with. Preparation of the Minister's answering affidavits in the public participation challenges is proceeding intensely and this Court's directions as to a filing date will be met.

8.3 There is no basis for BHF's surprising suggestion that it will take this court a decade to dispose of the public participation challenges.

8.4 The correct legal position is that a stay will be granted where it is in the interests of justice to do so. It is not confined to the circumstances of a plea of lis pendens or lis alibi pendens.

8.5 This Court enjoys the inherent jurisdiction under section 173 to protect and regulate its own process. This manifestly entitles this Court to raise the issues it has done mero motu and to proceed in the manner that it has done in its letter under reply in order to provide for the most economical, efficient and expeditious disposal of the various challenges to the NHI Act. These challenges threaten to engulf the legal system if all were to be considered simultaneously, as the challengers would prefer.

8.6 The parties are not prejudiced in that their views have been heard and BHF and SAPPF have made full use of the opportunity provided, with submissions together running to 25 pages in total.

9. In response to SAPPF, where points are not already dealt with above:

9.1 It is wrong to characterise the contingency upon which the hearing of the assent challenge is delayed as speculative. Two very substantive and serious challenges have been made to the procedure followed by Parliament. If successful, they will sever the NHI Act's constitutionality at its parliamentary roots. All other challenges will most certainly be rendered moot. Procedural challenges have not led to partial invalidity but to the setting aside of statutes in their entirety.

9.2 It is simply false, seriously misleading of this Court and statutorily incorrect to say that "the Minister has repeatedly indicated that the implementation of the NHI Act will continue apace while the various challenges progress through the courts." The opposite is true. The NHI Act has yet to be brought into force by the President in terms of section 59. The President and the Minister

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have made it clear that in terms of section 59(2), provisions will be brought into force in stages, incrementally.

9.3 Section 57(1)(b) of the NHI Act, "National Health Insurance must be gradually phased in using a progressive and programmatic approach based on financial resource availability" – the Minister will most certainly respect this statutory injunction, and in his affidavits in the stay proceedings has set out in detail how this will unfold.

9.4 The suggestion that the Minister is doing "serious harm to the constitutional rights of healthcare providers and patients" is similarly false. The focus of early incremental implementation is health system strengthening and enhancing healthcare for vulnerable groups, which will be of public benefit, regardless of whether or not the NHI Act is ruled unconstitutional.

9.5 The judgment of Twala J forming the subject matter of the appeals, is, for the reasons explained in the Minister's heads of argument, patently flawed in multiple respects, including the factual basis upon which the matter was decided.

9.6 There can be no reason to proceed with the determination of the issue of the production by the President of the record, if the public participation challenges are successful.

9.7 Whilst the assent challenges and the public participation challenges indeed raise distinct issues, the determination of the public participation challenges is logically anterior to the assent challenges. If Parliament's process was flawed, everything that followed was unconstitutional and invalid. The challenges that are logically posterior will manifestly become moot. The logic of this Court's proposal is accordingly, with respect, compelling.

Director: Makule Asnath Kgosana LLB(UL), LLM Development and Management Law (UL), Postgrad. Dipl. In drafting and Interpretation of Contracts (UJ), **Attorney** Ngoako CK | MA Makamela, **Candidate Attorneys** Selolo, MT Zungu | **Compliance Officer** | TMC Moshiga **Legal Secretary** MF Charlie | **Office Admin,** D Nkoane | **Office Manager,** CM Gwangwa
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9.8 The fact that BHF and SAPPF's challenges might have been brought first chronologically does not in any way upset the logic of determining the public participation challenges first.

9.9 Wasted costs arising from mootness due to unforeseen circumstances is a risk that any litigant accepts in commencing litigation. It cannot be a reason to force an overburdened apex Court with litigation that ultimately proves unnecessary.

9.10 It is incorrect, as SAPPF suggests, that the Minister's stay application in the High Court is subject to the final outcome only of the assent challenges (see para 48.) The stay application in the High Court is premised on allowing the Constitutional Court to decide all the matters before it first, because if its decision in any of those result in nullity, the substantive High Court challenges will similarly become moot. Massive court and party resources will have been expended on a fruitless exercise in the High Court.

9.11 Thus the stay application is also contingent upon the public participation challenges.

9.12 The Minister has not changed his stance in the manner suggested by SAPPF in paragraphs 49 and 50. As challenges have arisen in the Constitutional Court, they have been added to the notice of motion in the stay application, requiring adjudication of such challenges in the Constitutional Court to be decided, to the extent necessary, before the substantive challenges in the High Court. This is because a striking down by the apex Court is the end of the road for an Act of Parliament. No further enquiry as to constitutionality is required. The quote in paragraph 50 is taken out of context.

10. We sincerely apologise for the lateness of this letter, the 9am time limit having been overlooked.

11. We look forward to receiving the Court's decision at its earliest possible convenience as this may affect the hearing dates for our clients' upcoming application for stay and consolidation of the of the High Court frontal challenges to the validity of the NHI Act, which has been set down for hearing in the North Gauteng High Court on 23, 24, 25 and 27 February 2026.

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02 February 2026

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Dear Sirs and Mesdames,

CCT 128/25 Minister of Health v Board of Healthcare Funders NPC and Others; CCT 129/25 President of the Republic of South Africa v Board of Healthcare Funders NPC and Others; CCT 251/25 Board of Healthcare Funders NPC v Speaker of the National Assembly and Others; and CCT 269/25 Premier of the Western Cape v Chairperson of the National Council of Provinces and Others

1. I write at the direction of the Chief Justice regarding matters CCT 128/25 Minister of Health v Board of Healthcare Funders NPC and Others and CCT 129/25 President of the Republic of South Africa v Board of Healthcare Funders NPC and Others which are set down for a consolidated hearing at the Constitutional Court at 10h00 on Thursday, 26 February 2026.

2. The Court is also seized with applications in CCT 251/25 Board of Healthcare Funders NPC v Speaker of the National Assembly and Others and CCT 269/25 Premier of the Western Cape v Chairperson of the National Council of Provinces and Others, and how those applications are to be dealt with is still to be determined by the Court.

3. In matters CCT 128/25 and CCT 129/25, the issue for determination relates to the President's conduct in assenting to the National Health Insurance Bill, [B11B-2019] (**NHI Bill**) (**assent challenge**). In matters CCT 251/24 and CCT 269/25, the issue raised in the applications relates to the public participation process conducted by Parliament in passing the NHI Bill (**public participation challenge**).

4. In the event that the public participation challenge proves to be ultimately successful, the merits of the assent challenge may be rendered moot. In these circumstances, one of the options open to the Court is to remove the matters on the assent challenge from the roll for 26 February 2026 pending the outcome of the public participation challenge. In its consideration, the Court of course wishes to hear the views of the parties and to that extent, the Court invites the parties to indicate their views with regards to the removal of the assent challenge (matters CCT 128/25 and CCT 129/25) from the roll until such time as the Court disposes of the public participation challenge applications (matters CCT 251/24 and CCT 269/25).

5. As the date of the hearing is imminent for matters CCT 128/25 and CCT 129/25, this Court requests that the parties write back to the Court with their views by 09h00 on Wednesday, 04 February 2026.

Yours faithfully,

NOKUBONGA MTHETHWA
REGISTRAR
CONSTITUTIONAL COURT

REGISTRAR OF THE CONSTITUTIONAL COURT OF SOUTH AFRICA

P/Bag X1, Constitution Hill, Braamfontein 2017

2026 -02- 02

CC-001

REGISTRAR OF THE CONSTITUTIONAL COURT OF SOUTH AFRICA

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4 February 2026

Dear Sirs/Mesdames

CCT 128/25 MINISTER OF HEALTH V BOARD OF HEALTHCARE FUNDERS NPC AND OTHERS; CCT 129/25 PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA V BOARD OF HEALTHCARE FUNDERS NPC AND OTHERS; CCT 251/25 BOARD OF HEALTHCARE FUNDERS NPC V SPEAKER OF THE NATIONAL ASSEMBLY AND OTHERS; AND CCT 269/25 PREMIER OF THE WESTERN CAPE V CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES AND OTHERS

1 We refer to the above matter and your letter dated 2 February 2026.

2 We write on behalf of the Board of Healthcare Funders NPC ("**BHF**") in response to your letter dated 2 February 2026, written at the direction of the Chief Justice, inviting the parties' views on whether the assent challenge matters (CCT 128/25 and CCT 129/25), presently set down for hearing on 26 February 2026, should be removed from the roll pending the determination of the public participation challenges (CCT 251/25 and CCT 269/25).

3 The BHF respectfully submits that there is no basis to remove the assent challenge matters from the roll, particularly at this stage.

3.1 This submission is made in the context that, as the jurisprudence of this Court required it to do, the BHF initiated its assent challenges in the High Court in a timely manner — within a month of the President of the Republic of South Africa's ("President") assent to the NHI Bill some twenty-one months ago.

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3.2 The BHF has, at all times, co-operated fully and acted expeditiously in an attempt to facilitate the hearing of the assent challenge on its merits. This includes co-operating in relation to and not opposing the President and the Minister of Health's ("Minister") applications for leave to appeal to this Court.

3.3 The BHF has acted reasonably and responsibly and in the exercise of its rights under section 34 of the Constitution of the Republic of South Africa, 1996 ("Constitution"). This includes a right to the timely adjudication of its dispute, including the determination of any applications for leave to appeal and any appeals that may follow. As this Court has held in *Ex Parte Minister of Safety and Security: In re S v Walters* [2002] ZACC 6; 2002 (4) SA 613 (CC):

> "It is an established principle that the public interest is served by bringing litigation to a close with all due expedition. The law and the judicial process, in performing their vital conflict-resolution role, must provide a structure and mechanism whereby conflicts can be resolved and their consequent tensions can be relieved openly, fairly and efficiently. Delays and interruptions in the smooth course of litigation inevitably frustrate the proper performance of this role: justice delayed is justice denied."

3.4 The President and the Minister have delayed a hearing on the merits of the assent challenge, whilst simultaneously pushing ahead with implementation of the NHI Act. The conduct of the President and the Minister in the public participation challenges — where neither has filed answering affidavits timeously — has a similar delaying effect.

3.5 If the appeals in the assent challenge are removed from the roll, to be re-enrolled only after determination of the public participation challenge, the BHF faces the prospect of further delays of many years still to come before the merits of the assent challenge can be heard at first instance, let alone appeals exhausted. These delays are not in the interests of justice, do not lend themselves to the rule of law or principle of legality where the conduct of organs of state is challenged as being in violation of the Constitution, and give rise to a violation of the BHF's rights under section 34 of the Constitution.

3.6 It cannot be in the interests of justice for the BHF to be asked to wait for up to a decade before a challenge — timeously and properly instituted, alleging a disregard of the Constitution motivated by an ulterior purpose on the part of the President of the country — is heard on its merits, all the while the President carries on regardless.

4 The balance of this letter is given over to expanding on why, in the particular circumstances, the assent challenge should not be removed from the roll.

5 First, the assent challenge is ripe for hearing.

5.1 It entails the determination of narrow points of law on confined legal issues, quintessentially engaging this Court's jurisdiction. It does not entail the determination of any questions of fact.

5.2 Heads of argument have been filed, the matter has been set down, the parties have spent considerable resources in progressing it, and the Court is fully seized of the issues for determination.

6 By contrast, the public participation challenges are at a materially earlier stage. Answering affidavits have not yet been filed, and there is presently no indication that those matters will be heard, let alone finally disposed of, in the near future. On any realistic assessment, given the volume of affidavits expected to be filed in the public participation challenges, they will unlikely be finalised this year (or

even next year). The BHF, which filed the assent challenge in May 2024, should not have to wait to prosecute its case absent a truly compelling case.

7 Secondly, the premise underlying the suggested removal — namely that the public participation challenge may ultimately render the assent challenge moot — is inherently speculative. Whether the public participation challenge will succeed (and, if it succeeds, what remedy will be ordered) is presently unknown. Whether, if it were to succeed, it would fully dispose of the issues raised in the assent challenge is also uncertain. The Court has heard no submissions on these questions and cannot, as the pleadings in the public participation challenge are not closed. The Court is, with respect, being asked to place a matter ready for hearing in abeyance on the basis of a contingent and unknown future outcome in proceedings that are not yet ripe for adjudication.

8 On this point, we respectfully submit that there is no inherent logic requiring that the assent challenge await the outcome of the public participation challenge. While it may be suggested that a successful public participation challenge could, in due course, render aspects of the assent challenge moot, the converse is equally conceivable. The assent challenge may make the public participation challenge moot. In any event, the mere possibility of future mootness cannot, without more, justify deferring a matter that is ripe for hearing. The two challenges raise distinct constitutional questions and proceed on different legal bases, and there is no principled basis for according precedence to one over the other. Moreover, even if the assent challenge were to be determined by this Court based on the issues set down for hearing at the end of February 2026, it is likely that the matter would in due course be remitted to the High Court, irrespective of the outcome. Delaying the hearing of the assent challenge would therefore not avoid further proceedings; it would simply defer them, potentially for a prolonged and indeterminate period.

9 Thirdly, no party has brought a formal application for a stay or for the removal of the assent challenge matters from the roll. The Court is not presently seized with a stay application, and there is accordingly no evidence upon which such relief could be granted. In these circumstances, BHF respectfully submits that the Court should be slow to remove a matter from the roll in the absence of a properly motivated application by a party seeking that relief.

10 If a stay were to be granted, it would necessarily be pursuant to section 173 of the Constitution. In that regard, BHF aligns itself with the well-established principle that a court's inherent power under section 173 is an extraordinary power, to be exercised sparingly and only in clear cases. This is not such a case. By way of analogy, stays or removals from the roll are typically granted in circumstances analogous to *lis alibi pendens*, where the same dispute between the same parties is pending elsewhere, and the outcome of the one matter will be dispositive of the other. That is plainly not the case here. The assent challenge and the public participation challenge involve distinct causes of action, distinct constitutional enquiries, and possibly distinct remedies. There is no reason for the one to wait (for a protracted period) for the other.

11 Granting a removal in these circumstances would, with respect, set a troubling precedent. It would permit a ripe matter and set down for hearing to be deferred on the speculative possibility that another matter, which is not yet ready for hearing, may, at some future point, render it moot. That approach risks introducing uncertainty into how the judicial system performs its role and could incentivise delays, especially in constitutional litigation of considerable public importance.

12 In the event that the Court is not persuaded that the assent challenge should proceed to hearing at this stage, rather than staying the applications, BHF respectfully submits that the more appropriate course would be for this Court to dismiss the applications for leave to appeal in the assent challenge because it would not be in the interests of justice to hear the matter at this time. That approach would allow the matter to progress in the High Court, where applications for leave to appeal to the Supreme Court of Appeal or a Full Court of the High Court are presently pending.

13 Finally, and importantly, no party has requested a stay or the removal of the matter from the roll based on its own interests. In the absence of such a request, BHF respectfully submits that the Court should confine itself to the considerations expressly raised in paragraph 4 of the Registrar's letter. It is, however, reasonably foreseeable that the state parties, who are pursuing stay relief in proceedings before the High Court, may support the granting of a stay in these proceedings. In those circumstances, we caution that no additional considerations or interests be relied upon at this late stage. In this regard, it bears noting that both the assent challenge and the public participation challenge have been before this Court for several months, about half a year. During that period, the state parties have not sought a stay of the assent challenge. In those circumstances, particularly given the proximity of the hearing date, it would be inappropriate to introduce additional considerations or interests at this late stage.

14 For all these reasons, BHF respectfully but firmly urges that the assent challenge matters not be removed from the roll and that the hearing scheduled for 26 February 2026 proceed as arranged.

15 These submissions have been prepared within the short time available to us, and we trust that they will be of assistance to the Honourable Court.

16 We trust that the above is in order.

Yours faithfully

Werksmans Inc.
THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE

cc

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