Nos. 23-726, 23-727

IN THE
Supreme Court of the United States

MIKE MOYLE, SPEAKER OF THE IDAHO HOUSE OF REPRESENTATIVES, ET AL., *Petitioners*
v.
UNITED STATES OF AMERICA, *Respondent*

THE STATE OF IDAHO, *Petitioner*
v.
UNITED STATES OF AMERICA, *Respondent*

On Writs of Certiorari before Judgment to the United States Court of Appeals for the Ninth Circuit

BRIEF OF INDIANA AND 21 OTHER STATES AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether the Emergency Medical Treatment and Labor Act (EMTALA) preempts state laws that protect human life and prohibit abortions, such as Idaho's Defense of Life Act, and requires hospitals to perform abortions disallowed by state law.

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INTEREST OF THE *AMICI* STATES

Less than two years ago, the Court "return[ed] the issue of abortion to the people's elected representatives." *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 232 (2022). In many States, including Idaho, the people's elected representatives have voted to protect prenatal life by prohibiting most abortions, exercising States' traditional authority to regulate public health and welfare within their borders.

The United States has attempted an end run around this Court's decision in *Dobbs* by obtaining a federal injunction that prevents hospitals receiving Medicaid and Medicare funds from complying with Idaho's abortion regulations. More remarkable still, the United States is attempting to prevent private compliance with Idaho law through legislation, the Emergency Medical Treatment and Labor Act (EMTALA), 42 U.S.C. § 1395dd, enacted under the Spending Clause. Its position entails that the federal government can pay private entities to disregard state laws, even in traditional areas of state concern.

If accepted, the United States' position would permit the Executive Branch to seek decrees overriding all manner of state laws and fundamentally transform the relationships among citizens, their States, and the United States. *Amici* States have a profound interest in the rejection of that position to preserve the federalist structure, their power to regulate for the welfare of their citizens, and state laws adopted

by citizens' elected representatives to protect unborn children from intentional destruction.

SUMMARY OF ARGUMENT

I. Idaho, like many States, prohibits most abortions to protect unborn children. As this Court recently reaffirmed in *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022), the power to enact laws like Idaho's regulating medicine, health, and safety resides with the States. No constitutional provision creates a federal police power. As the United States reads EMTALA, however, it may direct hospitals to disregard generally applicable state medical regulations. And under its reading, emergency room physicians may ignore state medical regulations whenever they think it necessary to do so. Nothing in the Government's argument limits its sweeping assertion of authority to the abortion context.

II. EMTALA cannot be read to preempt state laws regulating medicine, including abortion restrictions. The statute requires hospitals accepting Medicaid and Medicare funds to stabilize patients with emergency medical conditions. But EMTALA does not purport to establish national standards as to what care is, or is not, medically necessary or appropriate. It simply prevents hospitals from refusing to stabilize patients using otherwise lawful medical procedures. Construing EMTALA's stabilization requirement as requiring hospitals to provide abortions in violation of state law is particularly implausible. By its terms, the stabilization requirement's protections extend to *both* "pregnant wom[e]n" *and* their "unborn child[ren]."

There is no "direct" conflict between EMTALA and Idaho law that supports a preemption finding.

III. Adopting the federal government's capacious view of preemption would raise significant constitutional difficulties. EMTALA is Spending Clause legislation. Although Congress may seek to entice States and regulated entities to change their behavior through the Spending Clause, this Court has stressed that this power cannot be wielded to destroy the federal-state balance. But that is how the United States seeks to employ Spending Clause legislation here. In the United States' view, the federal government can pay hospitals to violate Idaho's abortion laws with impunity—and then sue the State of Idaho to enjoin those laws as a matter of federal supremacy. Or put another way, the United States believes that the federal government can establish a financial relationship directly with a citizen that, at the citizen's election, immunizes the citizen from state police power.

A proper understanding of grant conditions and the federal spending power—not to mention the basic dual-sovereign structure of American constitutional government—does not permit such an arrangement. Whatever the status of federal conditions for other purposes, voluntarily accepted conditions cannot be considered "law" capable of preempting state law under the Supremacy Clause. Rather, federal grant recipients continue to be governed by the state police power, which informs whether citizens can qualify for federal grants under specified grant conditions. The proper question in this case is thus not whether Idaho's abortion regulation is preempted by federal law, but whether the Idaho law prevents hospitals

from qualifying for federal Medicare grants. The answer to that question is "no" under EMTALA's express terms, but framing the question properly is critical for the constitutional balance. Construing EMTALA to excuse private hospitals and doctors from complying with state medical regulations would radically restructure the relationships among the federal government, States, and citizens. It would allow the federal government to displace state law by paying private parties, replacing lawmaking by elected state officials with a system of private barter.

IV. The extent to which the United States has overstepped its role is underscored by its failure to satisfy the one of the most basic requirements for bringing suit—identifying a cause of action. No statute gives the federal government a cause of action to seek injunctive relief against States to prevent enforcement of state laws that allegedly disqualify hospitals from accepting federal funds. And equity cannot be used to evade EMTALA's comprehensive remedial scheme. This Court should reverse to forestall the United States's blatant attempt to undermine *Dobbs*'s holding and displace valid state medical regulations.

ARGUMENT

I. Through Its Novel—and Breathtakingly Broad—View of EMTALA, the United States Seeks To Invert State and Federal Roles

The Constitution prescribes a "healthy balance of power between the States and the Federal Government." *New York v. United States*, 505 U.S. 144, 181 (1992) (quotation omitted). In our federalist system, the "regulation of health and safety matters is primarily[,] and historically, a matter of local concern."

Hillsborough Cnty. v. Automated Med. Labs., Inc., 471 U.S. 707, 719 (1985); *see De Buono v. NYSA-ILA Med. & Clinical Servs. Fund*, 520 U.S. 806, 814 (1997). The federal government lacks a "plenary police power." *United States v. Lopez*, 514 U.S. 549, 566 (1995). The power to regulate health, safety, and medicine resides with the States.

Not long ago in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), this Court confirmed that States' traditional power to regulate medicine extends to protecting prenatal life. It "returned" authority to regulate abortion "to the people and their elected representatives," empowering "States [to] regulate abortion for legitimate reasons." *Id.* at 300, 302. The Court stressed that state regulations to protect prenatal life would be subject to "the same standard of review as other health and safety measures." *Id.* at 237. Idaho's prohibition of intentionally causing "the death of [an] unborn child" thus represents a traditional exercise of state police power over matters firmly committed to the States. Idaho Code § 18-604. No enumerated power authorizes the federal government to countermand state laws protecting prenatal life.

Through a novel construction of EMTALA—a law on the books for nearly four decades—the United States seeks to invert traditional state and federal roles for vast numbers of hospitals. The United States argues that compliance with EMTALA's "stabilization requirements encompass abortion care in certain circumstances," even if those abortions are prohibited by state law. U.S. Br. in Opp. to Stay ("U.S. Opp.") 14–15. Critically, however, the United States identifies

no principle that would limit its argument to abortion. Indeed, the United States has made no effort to hide the ball about the argument's scope. Below, it argued that "EMTALA frames [its] stabilization requirement in broad terms. It does not exempt *any form of care*[.]" C.A. Dkt. 35 at 12 (emphasis added).

The implications are staggering. Under the United States's view, EMTALA "mandates whatever a medical provider concludes is medically necessary to stabilize whatever condition is present"—state laws be damned. *Texas v. Becerra*, 89 F.4th 529, 541 (5th Cir. 2024). Doctors may now claim that EMTALA immunizes them from state regulation and discipline whenever they engage in conduct that they or the federal government deem "necessary" for patient stability. The inescapable implication is that federal—not state—law governs physician conduct and medical practice in countless emergency rooms nationwide.

Some States allow physicians to prescribe medical marijuana. S*ee, e.g.*, Ark. Const. amend. 98, § 3; 35 Pa. Stat. § 10231.401 et seq. Others, like Indiana, ban marijuana possession for any reason. *See, e.g.*, Ind. Code § 35-48-4-11; Kan. Code § 21-5705(d)(2). If the United States is correct, however, physicians in all 50 States must prescribe marijuana whenever they deem it "necessary" to stabilize patients. And what of other state restrictions? Those restrictions, too, must fall away under the United States's theory whenever hospitals and physicians deem it "necessary" to stabilize patients, even if other treatment options permitted by state law are available. Under the United States'

view, hospitals may overcome any state regulation on medical care simply by accepting federal funds.

The impetus for the federal government's claim to a new, expansive authority is clear: It disagrees with this Court's decision to return "the issue of abortion" to the States. *Dobbs*, 597 U.S. at 256. Rather than allow elected state officials who "evaluate [competing] interests differently" to protect prenatal life, *id.*, the United States seeks to reimpose a federal abortion right. And in pursuit of that goal, it is ready to accept any amount of collateral damage to traditional state authority—up to the point of saying it may displace any state regulation by offering some federal funds.

II. EMTALA Does Not Preempt Generally Applicable State Laws Regulating Medicine

EMTALA's plain language cannot be read to displace generally applicable state laws governing health, safety, and medicine. EMTALA "simply . . . impose[s] on hospitals the legal duty to provide . . . emergency care," regardless of the patient's insurance status. *Gatewood v. Wash. Healthcare Grp.*, 933 F.2d 1037, 1041 (D.C. Cir. 1991); *see Texas*, 89 F.4th at 539; *Correa v. Hosp. S.F.*, 69 F.3d 1184, 1189 (1st Cir. 1995) (Congress was "concerned . . . about reports that hospital[s] . . . are refusing to accept or treat patients with emergency conditions if the patient does not have medical insurance."). It leaves to States the job of deciding whether abortion constitutes appropriate medical practice.

A. EMTALA does not establish national standards of care

To begin, it is helpful to understand what EMTALA requires of hospitals participating in Medicaid

and Medicare. If a person comes to the emergency room and requests "examination or treatment for a medical condition," the hospital must provide a medical screening. 42 U.S.C. § 1395dd(a). The hospital then must evaluate whether the patient has an "emergency medical condition," § 1395dd(b)(1), defined as a condition "manifesting itself by acute symptoms of sufficient severity" that "the absence of immediate medical attention could reasonably be expected to result in" "placing the health of the individual . . . in serious jeopardy" or "serious impairment to bodily functions" or "serious dysfunction of any bodily organ or part," § 1395dd(e)(1). If a patient's condition qualifies, then the hospital must provide "such treatment as may be required to stabilize the medical condition" or "for transfer" to another facility that can provide treatment. § 1395dd(b)(1). This "stabilization or transfer" requirement achieves EMTALA's goal of providing emergency care to the uninsured and preventing patient dumping. *See Bryan v. Rectors & Visitors of Univ. of Va.*, 95 F.3d 349, 351 (4th Cir. 1996).

What EMTALA does not do is establish national standards as to what constitutes appropriate stabilizing treatment for every serious medical condition. EMTALA explains that "to stabilize" a patient means "to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility." 42 U.S.C. § 1395dd(e)(3)(A). EMTALA, however, does not purport to define what constitutes "necessary" or appropriate "medical treatment" for the wide range of con-

ditions that physicians may see. The only specific intervention it requires is the "deliver[y]" of "the placenta" with a baby. *Id*; *see* § 1395dd(e)(3)(B). Regulation of all other interventions is left to the States. In fact, EMTALA disclaims "any supervision or control over the practice of medicine or the manner in which medical services are provided." § 1395.

As courts have recognized for decades, "[t]he statutory language of the EMTALA clearly declines to impose on hospitals a national standard of care." *Eberhardt v. City of L.A.*, 62 F.3d 1253, 1258 (9th Cir. 1995). "EMTALA was not intended to establish guidelines for patient care." *Harry v. Marchant*, 291 F.3d 767, 773 (11th Cir. 2002); *see Marshall v. E. Carroll Parish Hosp. Serv. Dist.*, 134 F.3d 319, 322 (5th Cir. 1998); *Bryan*, 95 F.3d at 351. It is "no substitute" for state laws, such as "medical malpractice" laws, that regulate the medical profession. *Baber v. Hosp. Corp. of Am.*, 977 F.2d 872, 880 (4th Cir. 1992). It would be surprising indeed if EMTALA's targeted direction to stabilize patients permitted doctors to ignore any and all state laws that offend their sense of necessity. Congress does not "hide elephants in mouseholes." *Whitman v. Am. Trucking Ass'n*, 531 U.S. 457, 468 (2001).

B. EMTALA does not mandate abortions

It is implausible to construe EMTALA as requiring hospitals and physicians to perform abortions prohibited by state law. EMTALA nowhere mentions the topic of abortion, as one would expect if Congress were legislating on one of the most contentious issues in American politics. *See West Virginia v. EPA*, 597 U.S. 697, 721 (2022); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159–60 (2000). As even the

United States concedes, "when Congress intends to create special rules governing abortion," "it does so explicitly." U.S. Opp. 33. Here, however, Congress nowhere created an abortion-specific exception to the general rule that state law governs the conduct and "practice of medicine." 42 U.S.C. § 1395.

To the contrary, Congress directed hospitals to care for both pregnant women and their unborn children. EMTALA defines an "emergency medical condition" to include one that "could reasonably be expected to result" in "placing the health of the individual (or, with respect to a pregnant woman, *the health of the woman or her unborn child*) in serious jeopardy." 42 U.S.C. § 1395dd(e)(1)(A) (emphasis added); *see* § 1395dd(e)(1)(B). EMTALA thus places obligations on hospitals to consider both the health of a "pregnant woman" and "her unborn child." But performing an abortion necessarily places the "health of . . . [an] unborn child . . . in serious jeopardy"—indeed, it results in the child's destruction. To read EMTALA as mandating abortions would "put the statute 'at war with itself.'" *United States ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 434 (2023).

The United States would have this Court focus on hospitals' obligations to pregnant women only. U.S. Opp. 30–31. But that EMTALA imposes obligations on hospitals to pregnant women does not allow hospitals to ignore the health of unborn children. Hospitals cannot "pick and choose" between their dual obligations. *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 511

(2018). They must stabilize both women and unborn children. *See Texas*, 89 F.4th at 542, 544.

C. EMTALA does not preempt Idaho laws protecting unborn children

As a result, EMTALA does not preempt generally applicable state abortion regulations (or any other generally applicable state medical regulations). In considering preemption claims, this Court "'start[s] with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.'" *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). "That approach is consistent with both federalism concerns and the historic primacy of state regulation of matters of health and safety." *Id.* Thus, it is not enough for the United States to posit a possible conflict between federal and state law here. The United States "must . . .present a showing . . . of a conflict . . . strong enough to overcome the presumption that state and local regulation of health and safety matters can constitutionally coexist with federal regulation." *Hillsborough*, 471 U.S. at 716; *see also Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981) (requiring Spending Clause conditions to be "unambiguous[]").

The United States comes nowhere close. EMTALA expressly states that "[t]he provisions of this section *do not preempt* any State or local law requirement, *except* to the extent that the requirement *directly conflicts* with a requirement of this section." 42 U.S.C. § 1395dd(f) (emphasis added); *see Cipollone v. Liggett*

Grp., Inc., 505 U.S. 504, 517 (1992) ("Congress' enactment of a provision defining the pre-emptive reach of a statute implies that matters beyond that reach are not pre-empted."). The preemption issue thus reduces to whether Idaho law "directly conflicts" with EMTALA. But there is no conflict for the reasons above.

Idaho law makes particularly clear that it poses no barrier to providing stabilizing medical treatments consistent with EMTALA. Idaho law not only allows doctors to provide any number of interventions apart from abortion to address a pregnant woman's condition. Idaho law also expressly allows doctors to administer medical treatment that might cause "the accidental death of, or unintentional injury to, the unborn child." Idaho Code § 18-622(4). And it allows Idaho doctors to perform an abortion if "necessary to prevent the death of the pregnant woman" while giving "the best opportunity for the unborn child to survive." § 18-622(2)(a)(i)–(ii). So like EMTALA itself, Idaho law embraces the dual requirements of caring for both a pregnant woman and her unborn child.

The alleged conflict is not "direct[]" either. For the conflict to be "direct," Idaho law would have to countermand EMTALA's stabilization requirement—for example, by ordering hospitals to deny all care to pregnant women or requiring those hospitals to hand over a percentage of their federal grants to the State. *Lawrence Cnty. v. Lead-Deadwood Sch. Dist. No. 40-1*, 469 U.S. 256, 260–68 (1985) (declaring a state law preempted that channeled away grants received by local governments in conflict with a federal statute). But all Idaho has done is enact a generally applicable law on abortion. Any conflict is "merely incidental"

and hence "preemption does not apply." *In re T.D. Bank, N.A.*, 150 F. Supp. 3d 593, 607 (D.S.C. 2015).

The United States's preemption argument and request for an injunction against enforcement of Idaho law, moreover, only make sense if every hospital in Idaho must accept federal funds. But hospitals may comply with both federal and state law simply by turning down federal money. Not all Idaho hospitals are Medicare providers. *See* D. Ct. Dkt. 17-9 at 2 (noting "[t]here are 52 Medicare-participating hospitals in Idaho"); *III.B. Overview of the State – Idaho – 2023*, HRSA Maternal & Child Health, https://mchb.tvisdata.hrsa.gov/Narratives/Overview/da820095-c0e3-4708-a1a7-abb733cde3af (listing a total of 53 hospitals in Idaho). Nonparticipating hospitals do not violate federal law even if they refuse a service that the Department of Justice deems required by EMTALA. Rejecting or being ineligible for further federal grants does not amount to "violating" federal law.

III. Construing EMTALA to Preempt Idaho Law Raises Serious Constitutional Difficulties

Construing EMTALA to excuse private hospitals from complying with Idaho's prohibitions on abortion would raise serious constitutional difficulties. EMTALA is Spending Clause legislation. Any conditions it imposes on States depends on States accepting them knowingly. Under the United States' theory, however, Congress may cut out the States by paying private parties to ignore state law. That theory—which has no readily discernable limits—threatens to "undermine the status of the States as independent

sovereigns in our federal system." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 577 (2012) (opinion of Roberts, C.J., joined by Breyer and Kagan, JJ.).

A. The Supremacy Clause applies to federal law, not grant conditions

The Supremacy Clause provides that "the Laws of the United States . . . shall be the supreme law of the land." U.S. Const. art. VI. Although Spending Clause legislation may be "law" for some purposes, *see Health & Hosp. Corp. v. Talevski*, 599 U.S. 166, 178 (2023), it is not "law" for purposes of the Supremacy Clause, *see* Philip Hamburger, *Purchasing Submission: Conditions, Power, and Freedom* 132 (2021).

To begin with, conditions imposed by Spending Clause legislation are not self-executing. "Unlike ordinary legislation, which 'imposes congressional policy' on regulated parties 'involuntarily,' Spending Clause legislation operates based on consent," *i.e.*, the consent of the individual accepting a federal grant, as opposed to the consent of the people writ large. *Cummings v. Premier Rehab Keller*, 596 U.S. 212, 219 (2022) (quoting *Pennhurst*, 451 U.S. at 16–17). Consequently, a grantee need not accept a federal condition in the first instance, and if it does, the "typical remedy" is "action by the Federal Government to terminate funds." *Talevski*, 599 U.S. at 183 (quoting *Gonzaga Univ. v. Doe*, 536 U.S. 273, 280 (2002)); *see also Townsend v. Swank*, 404 U.S. 282, 292 (1971) (Burger, C.J., concurring) ("The appropriate inquiry in any case should be simply whether the [grantee]

has indeed adhered to the provisions and is accordingly entitled to utilize federal funds in support of its program.").

It would be odd to treat spending conditions as "law" for purposes of the Supremacy Clause because "Congress' legislative powers cannot be avoided by simply opting out." David Engdahl, *The Contract Thesis of the Federal Spending Power*, 52 S.D. L. Rev. 496, 498 (2007); *see also Coyle v. Oklahoma*, 221 U.S. 559, 572 (1911) ("'[A]ll constitutional laws are binding on the people . . . whether they consent to be bound by them or not.'" (quoting *Pollard v. Hagan*, 44 U.S. 212, 224 (1845)). The distinction is critical to a proper understanding of the Spending Clause and its limits. Congress's spending power "has no incidental power, nor does it draw after it any consequences of that kind." Statement of President Monroe, 39 Annals of Cong. 1842 (1822). Because spending "conditions do not purport to bind . . . in the manner of law," "[n]o federal condition, by whatever means adopted, should be understood to defeat the obligation of contrary state law." Hamburger, *supra*, at 131. Indeed, if a law requires "legislative sanction or support, the State authority must be relied on." Monroe, *supra*, at 1842.

"[R]ead[ing] the Supremacy Clause in the context of the Constitution as a whole," *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 325 (2015), it does not require States to give way in their traditional areas of regulation simply because private entities have accepted federal grant money. "Hamilton wrote that the Supremacy Clause 'only declares a truth which flows immediately and necessarily from the in-

stitution of a Federal Government.'" *Id.* at 325 (quoting The Federalist No. 33, at 207 (Alexander Hamilton) (J. Cooke ed., 1961)). But the "truth" that federal law is supreme over state law is "expressly confine[d]" "to laws made pursuant to the Constitution." The Federalist No. 33, *supra*, at 207. Such a description "would have been grossly inapt if the Clause were understood to give affected parties a constitutional . . . right," *Armstrong*, 575 U.S. at 325, to subject the States' laws to preemption unilaterally. If the Supremacy Clause now allows the federal government to write citizens blank checks to violate state law, then it has far surpassed its purpose of stating "a truth" and now grants affirmative rights.

The United States has cited only a single preemption case, D. Ct. Dkt. 17-1 at 26, involving a federal grant where this Court invalidated a state statute restricting how localities could spend federal grants authorized by Congress for "any" purpose. *See Lawrence Cnty.*, 469 U.S. at 260–68. But this Court did not squarely address whether grant conditions are properly understood to constitute "law" under the Supremacy Clause. And *Lawrence County* at most can be understood to preclude States from interfering with the relationship between an eligible federal grant recipient and the grantor—not as a case precluding the State from enacting generally applicable police-power statutes that may preclude grant eligibility.

B. Using grant conditions to displace state laws would upend the federal structure

Treating grant conditions as "law" capable of displacing generally applicable state exercises of the police power threatens a fundamental alteration of the

relationships among citizens, their States, and the federal government. Instead of using federal funding to "induce governments and private parties to cooperate voluntarily with federal policy," *Fullilove v. Klutznick*, 448 U.S. 448, 474 (1980) (citation omitted), the federal government's position would allow it to pay private citizens to violate state law. This Court has never—and should not now—countenance such a capacious understanding of congressional power.

The Constitution does not grant the federal government a "plenary police power." *Lopez*, 514 U.S. at 566. Nor has it ever been "understood to confer upon Congress the ability to require the States to govern according to Congress' instructions." *New York*, 505 U.S. at 162. Rather, our Constitution "rests on what might at first seem a counterintuitive insight, that 'freedom is enhanced by the creation of two governments, not one.'" *Bond v. United States,* 564 U.S. 211, 220–21 (2011) (quoting *Alden v. Maine,* 527 U.S. 706, 758 (1999)). This Court thus has been "careful[] . . . to avoid creating a general federal authority akin to the police power." *Nat'l Fed'n of Indep. Bus.*, 567 U.S. at 536. It has repeatedly rejected attempts by the federal government to erode the distinction "between what is truly national and what is truly local"—including in the tax and spending context. *Lopez*, 514 U.S. at 567–68; *see Nat'l Fed'n of Indep. Bus.*, 567 U.S. at 676 (joint dissent of Scalia, Kennedy, Thomas, and Alito, JJ.) (collecting cases).

For example, in *Linder v. United States*, 268 U.S. 5 (1925), this Court rejected use of the power to tax for the general welfare to regulate the practice of med-

icine. It stated that "[o]bviously, direct control of medical practice in the states is beyond the power of the federal government," which meant that "[i]ncidental regulation of such practice by Congress through a taxing act cannot extend to matters plainly inappropriate and unnecessary to reasonable enforcement of a revenue measure." *Id.* at 18; *see United States v. Doremus*, 249 U.S. 86, 93 (1919) (invalidating a federal regulation of physicians predicated on the taxing power because it invaded the police power of States and observing, "[o]f course Congress may not in the exercise of federal power exert authority wholly reserved to the states").

Similarly, in *United States v. Butler*, 297 U.S. 1 (1936), the Court invalidated a federal grant program under the Agricultural Adjustment Act that involved transfer payments from producing farmers to non-producing farmers. The statute, the Court explained, "invade[d] the reserved rights of the states. It is a statutory plan to regulate and control agricultural production, a matter beyond the powers delegated to the federal government." *Id.* at 68. And the grants were a critical part of that invasion: "The tax, the appropriation of the funds raised, and the direction for their disbursement, are but parts of the plan. They are but means to an unconstitutional end." *Id.* Critically for this case, any choice of the citizen to participate was irrelevant, because even so "[a]t best, it is a scheme for purchasing with federal funds submission

to federal regulation of a subject reserved to the states." *Id.* at 72.

That is precisely what the United States advocates here—a purchase of citizen submission to federal regulation—with the added problem that such submission would (at least according to the federal government's theory) directly subvert state law on a matter reserved to the States. For after *Dobbs*, 597 U.S. at 215, there can be no doubt that state police power encompasses abortion regulation. *See id.* at 302 ("The Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion."). And the Court in *Butler* was clear that using the spending power to undermine core state police powers at the election of the citizen is unconstitutional: "An appropriation to be expended by the United States under contracts calling for violation of a state law clearly would offend the Constitution." 297 U.S. at 73. That same observation applies here. The Court should not permit a new use of the Spending Clause that allows the federal government to "set policy in the most sensitive areas of traditional state concern, areas which otherwise would lie outside its reach." *Nat'l Fed'n of Indep. Bus.*, 567 U.S. at 675–76 (joint dissent of Scalia, Kennedy, Thomas, and Alito, JJ.).

C. Allowing citizens to opt out of state laws contravenes our form of government

The United States' attempt to use private bargaining under EMTALA to suspend state-police-power regulations without the State's consent also implicates the Republican Form of Government Clause. *See* U.S. Const. art. IV, § 4. A republican form of gov-

ernment is one where the people are governed by legislatively enacted laws, not one where a different sovereign tempts some citizens to exempt themselves from state laws. *See* Hamburger, *supra*, at 147. Manifestly, "the purchase of submission is not what traditionally was understood as a republican form of government." *Id.* That observation is particularly apt where submission is not undertaken by the State itself, but by a citizen being paid by the federal government to violate state law.

Although this Court has never directly enforced the Guarantee Clause against the United States, the Court has observed that "perhaps not all claims under the Guarantee Clause present nonjusticiable political questions." *New York*, 505 U.S. at 185; *see Democratic Party of Wis. v. Vos*, 966 F.3d 581, 589 (7th Cir. 2020) ("We do not interpret *Rucho* or any other decision by the Supreme Court as having categorically foreclosed all Guarantee Clause claims as nonjusticiable, even though no such claim has yet survived Supreme Court review."). One type of claim that this Court has not foreclosed is a claim arising from Congress (or the Executive Branch) "actively interfer[ing] in the states' republican self-governance." Hamburger, *supra*, at 147. That is the case here. The United States' attempt to pay hospitals to violate valid state laws enacted by elected state officials constitutes a paradigmatic violation of the Republican Form of Government Clause.

IV. The United States Lacks a Cause of Action

The novelty of the United States's position—that it can give private parties money to violate state law and then sue States to interrupt enforcement of the violated provisions—is underscored by its inability to

identify a cause of action. To sue a State, "the federal government," "like any other plaintiff," "must first have a cause of action." *United States v. California*, 655 F.2d 914, 918 (9th Cir. 1980). But no statute provides the United States a cause of action here.

In a footnote in an earlier filing, the United States attempted to justify its suit by invoking "equitable" practice. U.S. Opp. 38 n.10. But the "power of federal courts of equity to enjoin unlawful executive action is subject to express and implied statutory limitations." *Armstrong,* 575 U.S. at 327; *see Ziglar v. Abbasi*, 582 U.S. 120, 132 (2017) (If Congress "does not itself so provide, a private cause of action will not be created through judicial mandate."). Those limitations include the principle that the "'express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others.'" *Armstrong*, 575 U.S. at 328 (quoting *Alexander v. Sandoval*, 532 U.S. 275, 290 (2001)). That rule applies here.

EMTALA provides a comprehensive scheme of enforcement. EMTALA authorizes the federal government to seek civil monetary penalties against *hospitals and physicians* who "negligently violate[]" its stabilizing requirements. 42 U.S.C. § 1395dd(d)(1). And consistent with Congress's "typical" choice of "remedy" for violations of Spending Clause conditions, EMTALA authorizes the federal government to exclude hospitals and physicians who violate EMTALA from participating in other federal programs. *Talevski*, 599 U.S. at 183 (quoting *Gonzaga Univ.*, 536 U.S. at 280); *see* 42 U.S.C. §§ 1395a-7(b)(5), 1395cc(b)(2). EMTALA, however, does not authorize the federal government to seek injunctive relief against States for

their regulatory choices—a tactic that would engender serious federalism concerns.

The novelty of this suit cuts against the United States's position too. As this Court recently reiterated, "[t]he equitable powers of federal courts are limited by historical practice." *Whole Woman's Health v. Jackson*, 595 U.S. 30, 44 (2021) (citing *Atlas Life Ins. Co. v. W. I. Southern, Inc.*, 306 U.S. 563, 568 (1939)). Federal courts have "no authority" to create causes of action or "remedies previously unknown to equity jurisprudence." *Grupo Mexicano de Desarrollo, S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 332 (1999). Rather, a suit at equity must fall "within some clear ground of equity jurisdiction." *Boise Artesian Hot & Cold Water Co. v. Boise City*, 213 U.S. 276, 285 (1909).

At no stage of litigation, however, has the United States identified a single precedent authorizing it to seek injunctive relief against States over generally applicable statutes that allegedly conflict with Spending Clause conditions on grants to private parties. Both *United States v. Washington*, 593 U.S. 832 (2022), and *Arizona v. United States*, 567 U.S. 387 (2012), arose out of disputes about state statutes that allegedly conflicted with the federal government's own operations. The radical expansion of federal enforcement authority that the federal government seeks here must come from Congress, "not be created through judicial mandate." *Ziglar*, 582 U.S. at 133.

CONCLUSION

The Court should reverse.

Respectfully submitted,

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