Nos. 23-35440 & 23-35450

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

STATE OF IDAHO,
Defendant-Appellant,

v.

MIKE MOYLE, Speaker of the Idaho House of Representatives, et al.,
Movants-Appellants.

On Appeal from the United States District Court
for the District of Idaho, No. 1:22-cv-00329-BLW
Hon. B. Lynn Winmill

BRIEF OF AMICUS CURIAE PUBLIC CITIZEN IN SUPPORT OF PLAINTIFF-APPELLEE AND AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

Amicus curiae Public Citizen, Inc., is a nonprofit, non-stock corporation. It has no parent corporation, and no publicly traded corporation has an ownership interest in it of any kind.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Constitutional Provisions

Statutes

Regulations

Other Authorities

INTEREST OF AMICUS CURIAE[1]

Public Citizen, a consumer advocacy organization with members in all 50 states, appears before Congress, administrative agencies, and the courts on a wide range of issues. Public Citizen is a longstanding advocate of policies to improve access to health care, and it supports federal initiatives to expand such access by lowering the cost of health care and removing other barriers that prevent individuals from obtaining needed care.

Many federal health care programs, including Medicare and Medicaid, use federal funding to support the provision of medical services to beneficiaries. These programs typically impose various substantive obligations on program participants. Of relevance here, the Emergency Medical Treatment and Labor Act (EMTALA) requires hospitals that participate in Medicare to screen patients who come to the emergency room and to provide treatment to stabilize emergency medical conditions.

[1] This brief was not authored in whole or part by counsel for a party, and no one other than amicus curiae or their counsel made a monetary contribution to the preparation or submission of the brief. Counsel for all parties have consented to its filing.

This case presents the question whether EMTALA requires hospitals participating in Medicare to provide an abortion when needed to stabilize a pregnant patient's emergency medical condition. The answer to that question is yes, under the plain language of EMTALA. Accordingly, state laws that restrict the availability of abortions in circumstances where EMTALA requires a funding recipient to perform them are preempted under the terms of EMTALA's express preemption provision, 42 U.S.C. § 1395dd(f).

Idaho and its amici argue, however, that EMTALA's preemption provision is unconstitutional because, absent consent of the states, Congress lacks the constitutional authority to preempt state law through laws enacted pursuant to the Spending Clause. Public Citizen submits this brief because it is concerned that Idaho's proposed limitation on the preemptive effect of federal law would weaken EMTALA's protections for pregnant patients, and other patients, needing emergency room treatment. More broadly, it would distort the meaning of the Constitution's Supremacy Clause; and, by granting states the ability to hold their citizens criminally or civilly liable for complying with federal spending programs, it would frustrate Congress's ability to expand

consumer access to health care and other benefits through the exercise of the spending power.

INTRODUCTION AND SUMMARY OF ARGUMENT

"[H]ealthcare facilities that wish to participate in Medicare and Medicaid have always been obligated to satisfy a host of conditions that address the safe and effective provision of healthcare." *Biden v. Missouri*, 595 U.S. 87, 94 (2022). Under EMTALA, one such condition imposed on hospitals participating in Medicare is the requirement to screen emergency room patients, provide treatment to stabilize emergency medical conditions, and refrain from transferring patients before they are stabilized. 42 U.S.C. § 1395dd. Hospitals that do not comply with those duties face termination from the Medicare program, as well as liability for civil penalties and damages brought by injured patients or financially injured medical facilities. *Id.* §§ 1395cc(b)(2), 1395dd(d).

In a subsection titled "Preemption," EMTALA provides that it does not "preempt any State or local law requirement, except to the extent that the requirement directly conflicts with a requirement of this section." *Id.* § 1395dd(f). Congress's intent in enacting this preemption clause is unmistakable: If a state law requirement "directly conflicts"

with EMTALA's requirements, the state law is preempted to the extent of that conflict. The effect of preemption is also unmistakable: Persons subject to both EMTALA's requirements and a conflicting state law cannot be subject to civil or criminal liability by the state for complying with EMTALA. *See Nixon v. Mo. Mun. League*, 541 U.S. 125, 133 (2004) (explaining that preemption "leaves the private party free to do anything it chooses consistent with the prevailing federal law" because "[o]n the subject covered, state law just drops out").

The United States has explained how Idaho's abortion laws directly conflict with—and are thus preempted by—EMTALA's requirement that Medicare-funded hospitals provide treatment, including but not limited to an abortion, necessary to stabilize an emergency medical condition. U.S. Br. 37–43. If this Court agrees, that should be the end of the matter: "[T]he act of Congress … is supreme; and the law of the State … must yield to it." *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 211 (1824). Idaho, however, argues for another outcome. Although it does not contend that Congress lacked the constitutional authority to enact the substantive requirements of EMTALA (or Medicare), it argues that Congress cannot preempt conflicting state law through the exercise of the spending power

and, therefore, that EMTALA's express preemption provision is unconstitutional. That view, which would sweep well beyond the immediate issue of emergency room abortions and allow states to dictate the relationship between the federal government and program participants, cannot be reconciled with the text of the Supremacy Clause or the Supreme Court's precedents.

ARGUMENT

I. Congress's constitutional exercise of its Spending Clause power preempts conflicting state laws.

A. As the Supreme Court has explained, federal statutes do not of their own force preempt conflicting state laws. Rather, "[p]reemption is based on the Supremacy Clause." *Murphy v. NCAA* 584 U.S. 453, 477 (2018). The Supremacy Clause provides that the "Constitution, and the Laws of the United States which shall be made in Pursuance thereof … shall be the supreme Law of the Land … any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. The Supremacy Clause "creates a rule of decision" that "instructs courts what to do when state and federal law clash." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 324–25 (2015). Specifically, courts "must not give effect to state laws that conflict with federal laws."

Id. at 324. "Thus, a court may not convict a criminal defendant of violating a state law that federal law prohibits" or "hold a civil defendant liable under state law for conduct [that] federal law requires." *Id.* at 326.

The "Laws of the United States" to which the Supremacy Clause refers include laws enacted pursuant to the Spending Clause. The enumeration in article I, § 8, of the Constitution of the "Power[s]" that Congress may exercise does not distinguish between the spending power and Congress's other enumerated powers. U.S. Const. art. I, § 8. And every legislative power that Congress has—including the spending power—must be exercised by following the constitutional process for a bill to "become a Law." *Id.* art. I, § 7, cl. 2; *see also Clinton v. City of New York*, 524 U.S. 417, 448–49 (1998) (holding that a "line item veto" of a spending law conflicted with the constitutional process for enacting laws). Indeed, the Constitution expressly ties "Appropriations" to Congress's exercise of its law-making powers. U.S. Const. art. I, § 9, cl. 7 ("No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law."). Like other federal laws, "laws that Congress enacts via its spending power" are "laws" that are capable of "secur[ing]" federal rights and are actionable in private actions under 42

U.S.C. § 1983. *Health & Hosp. Corp. of Marion Cty. v. Talevski*, 599 U.S. 166, 171 (2023).

In short, the Supremacy Clause states that the "Constitution, and the Laws of the United States which shall be made in Pursuance thereof … shall be the supreme Law of the Land." The Supremacy Clause nowhere distinguishes among laws enacted pursuant to Congress's various powers, much less excludes laws enacted pursuant to the spending power.

B. Like other federal laws, a law enacted pursuant to the Spending Clause can impose legally enforceable substantive requirements on the recipients of federal funds. Congress can prohibit a recipient, "in the course of his project duties … from engaging in activities outside of" the scope of the federally funded project. *Rust v. Sullivan*, 500 U.S. 173, 193–94 (1991). Congress can also "establish and impose reasonable conditions relevant to federal interest in the project and to the over-all objectives thereof." *South Dakota v. Dole*, 483 U.S. 203, 208 (1987) (upholding Congress's authority to reduce federal highway funding for states that had not raised the minimum drinking age) (quoting *Ivanhoe Irrigation Dist. v. McCracken*, 357 U.S. 275, 295 (1958)). Although a condition

imposed through a federal spending law may not violate a recipient's constitutional rights, *see Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 214 (2013), if the condition is constitutional, Congress retains "broad power under the Spending Clause of the Constitution to set the terms on which it disburses federal funds." *Cummings v. Premier Rehab Keller, PLLC*, 596 U.S. 212, 216 (2022).

Congress's power to enact laws creating federal spending programs and imposing substantive obligations on program participants also includes the power to hold participants liable for their failure to comply. For example, the Supreme Court has recognized that laws enacted pursuant to the Spending Clause may prohibit discrimination on the basis of race, color, national origin, sex, disability, or age in federally funded programs, and that these legal prohibitions can be enforced through civil actions brought by private parties. *See*, *e.g.*, *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 198 n.2 (2023) (discussing Title VI of the Civil Rights Act of 1964); *Cummings*, 596 U.S. at 217–18 (discussing disability discrimination under the Rehabilitation Act of 1973 and the Patient Protection and Affordable Care Act); *Sossamon v. Texas*, 563 U.S. 277, 281 (2011)

(discussing religious discrimination under the Religious Land Use and Institutionalized Persons Act of 2000); *Davis v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 632–33 (1999) (discussing sex discrimination under Title IX of the Education Amendments of 1972). A defendant's liability for violating a condition imposed through a law enacted through the spending power is subject to the same legal principles as a defendant's liability for violating a duty that Congress has imposed pursuant to the exercise of any other Article 1, § 8, power. *Cf. Sabri v. United States*, 541 U.S. 600, 605–08 (2004) (upholding constitutionality of criminal bribery statute enacted pursuant to the spending power).

C. In accordance with the plain text of Article I and the Supremacy Clause, the Supreme Court has consistently held that federal statutes enacted pursuant to the Spending Clause preempt conflicting state laws. For instance, Social Security retirement benefits are an exercise of Congress's spending power. *See Flemming v. Nestor*, 363 U.S. 603, 609 (1960). In *Bennett v. Arkansas*, 485 U.S. 395 (1988) (per curiam), the Supreme Court held that the Social Security Act's bar on attaching Social Security benefits through legal process preempted an Arkansas law allowing seizure of the Social Security benefits of prisoners to "defray the

cost of maintaining [the state's] prison system." *Id.* at 396. The Court declined to read an "implied exception" into the Social Security Act to avoid the "clear inconsistency" between the Social Security Act and Arkansas law. *Id.* at 397. Instead, the Court explained that there was "a 'conflict' under the Supremacy Clause—a conflict that the State cannot win." *Id.*

Likewise, in *Lawrence County v. Lead-Deadwood School District No. 40-1*, 469 U.S. 256 (1985), the Supreme Court held that a state may not "regulate the distribution of funds that units of local government in that State receive from the Federal Government in lieu of taxes," *id.* at 257–58, because Congress had provided that local units "may use the payment for any governmental purpose," *id.* at 258 (quoting 31 U.S.C. § 6902(a)). The Court rejected the argument that denying states the authority to direct how localities use the funds would raise federalism concerns, concluding that "pursuant to its powers under the Spending Clause, Congress may impose conditions on the receipt of federal funds, absent some independent constitutional bar." *Id.* at 269–70.

To be sure, a federal statute enacted pursuant to the spending power, like one enacted pursuant to another enumerated power, would

not displace state law if Congress lacked the constitutional authority to enact it. *Cf. Murphy*, 584 U.S. at 479–80 (declining to read a statute enacted pursuant to the Commerce Clause to preempt state law where the statute impermissibly regulated the conduct of states rather than "private actors"). But "when Congress enacts a valid statute pursuant to its Article I powers, 'state law is naturally preempted to the extent of any conflict with [the] federal statute.'" *Haaland v. Brackeen*, 599 U.S. 255, 287 (2023) (quoting *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000)).

Here, Idaho does not contend that Congress lacked the constitutional authority to enact Medicare or to require hospitals that participate in Medicare to comply with EMTALA's requirements. Idaho also does not contend that, in enacting EMTALA, Congress failed to follow the constitutional process required for a bill to "become a Law." U.S. Const. art. I, § 7, cl. 2. Because under the Constitution EMTALA is a "Law[] of the United States," it is "the supreme Law of the Land," *id.*, art. VI, cl. 2, with respect to conflicting state law.

II. Idaho's suggestion that laws enacted pursuant to the Spending Clause cannot preempt conflicting state law absent the states' consent lacks merit.

Idaho does not grapple with the text of the Supremacy Clause and does not contend that EMTALA is not a "Law[] of the United States." It nonetheless argues that EMTALA's express preemption provision is unconstitutional because EMTALA cannot "bind" a state that has not agreed to EMTALA's terms. *See* Idaho Br. 16–18, 20, 22; Moyle Br. 64, 67–71. That argument is incorrect.

A. At the outset, EMTALA does not "dictate[] what a state legislature may and may not do" or "stop [state] legislators from voting on any offending proposals." *Murphy*, 584 U.S. at 474. For instance, EMTALA does not require the Idaho legislature to repeal its abortion laws or compel state-owned hospitals to participate in Medicare. EMTALA operates only on those hospitals (public or private) that voluntarily participate in the Medicare program. Thus, EMTALA "regulates the conduct of private actors, not the States." *Id.* at 479.

When Congress regulates private parties pursuant to "the exercise of a power conferred on Congress by the Constitution," *id.* at 477, federal law does not bind the states. Under the Supremacy Clause, though, that

"federal law is supreme in case of a conflict with state law." *Id.* Although an express preemption provision, like the one in EMTALA, "might appear to operate directly on the States," it in fact "operates just like any other federal law with preemptive effect": "It confers on private entities … a federal right to engage in certain conduct subject only to certain (federal) constraints." *Id.* at 478–79.

EMTALA exemplifies this approach. A hospital that participates in Medicare must provide stabilizing treatment to emergency room patients as a condition of participation. *See* 42 U.S.C. § 1395cc(a)(1)(I)(i) (conditioning Medicare payments on participating hospitals' "compliance with the requirements of" EMTALA). That requirement creates rights and obligations secured by law, not just contractual obligations to the federal government enforceable through termination of the Medicare participation agreement. *See id.* § 1395cc(b)(2). Thus, EMTALA authorizes the federal government to seek civil penalties against negligent hospitals and creates a damages action for patients and medical facilities harmed by a hospital's failure to comply with its EMTALA duties. *Id.* § 1395dd(d). In other words, EMTALA confers "federal rights on private actors" (*i.e.*, the right to stabilizing treatment)

and imposes "federal restrictions on private actors" (*i.e.*, hospitals) that are enforceable through "civil action[s]." *Murphy*, 584 U.S. at 480. And when "Congress enacts a law that imposes restrictions or confers rights on private actors; [and] a state law confers rights or imposes restrictions that conflict with the federal law; … federal law takes precedence and the state law is preempted." *Id.* at 477.

B. Idaho identifies no authority for the proposition that a state must consent before its laws that conflict with federal laws may be preempted, and Supreme Court precedent belies the theory that a state's lack of consent can defeat preemption. *See supra* pp. 9–10. Nonetheless, analogizing Spending Clause provisions to contracts, Idaho quotes out of context the Supreme Court's observation that "[t]he legitimacy of Congress's exercise of the spending power thus rests on whether the State voluntarily and knowingly accepts the terms of the contract." Idaho Br. 17 (quoting *Nat'l Fed. of Ind. Bus. v. Sebelius*, 567 U.S. 519, 577 (2012) (*NFIB*) (op. of Roberts, C.J.)) (cleaned up); *see also* Moyle Br. 65, 67–68. That principle applies when the federal government exercises its spending power to induce states, as funding recipients, to take an action. As explained above, Congress cannot directly compel states to act. But

Congress "may use [the spending] power to grant federal funds to the States, and may condition such a grant upon the States' 'taking certain actions that Congress could not require them to take.'" *NFIB*, 567 U.S. at 576 (op. of Roberts, C.J.) (quoting *Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 686 (1999)). In that context, the Court has said that the state's acceptance of federal conditions must be voluntary and knowing—akin to a party's acceptance of the terms of a contract—to avoid an end run around anticommandeering principles. *Id.* at 577.

NFIB shows how that principle works. That case involved Medicaid, a federal program that is implemented through agreements with states. *Id.* at 541–42 (majority op.). *NFIB* concluded that Congress could not induce states to expand Medicaid by threatening to withhold traditional Medicaid funds from states that refused to expand. *Id.* at 579–80 (op. of Roberts, C.J.). "[T]hreats to terminate other significant independent grants" to states that do not accept a spending condition were "viewed as a means of pressuring the States to accept policy changes." *Id.* at 580.

By contrast, the federal government operates Medicare through agreements directly with providers, 42 U.S.C. § 1395cc(a), rather than jointly with the states, *see id.* §§ 1396a–1396b (Medicaid). And EMTALA is a condition imposed on Medicare participants—not on the states. EMTALA, therefore, does not commandeer the states or use federal financial incentives to require the states to take any particular action. And just as Congress did not need the states' consent to enact Medicare, it does not need the states' consent to ensure that statute's requirements, including the requirement that hospitals provide emergency room patients with stabilizing medical treatment, are enforceable. So long as the hospitals that participate in the program have knowingly and voluntarily accepted the legal requirements imposed on them, those requirements are fully enforceable. A state's consent has no role to play.

Idaho complains that the conditions imposed on hospitals through Medicare should not preempt state law because they are imposed through agreements that are contractual in nature. Idaho Br. 22. The Supreme Court has already rejected that argument. Like EMTALA, "[m]any other federal statutes preempt state law in this way, leaving the context-specific scope of preemption to contractual terms." *Coventry*

Health Care of Mo., Inc. v. Nevils, 581 U.S. 87, 98 (2017). And the "Court has several times held that those statutes preempt state law." *Id.*

Indeed, a rule that required state consent to implementation of a federal spending program—and concomitant preemption of state laws that conflict with federal requirements—would be unworkable. If a conflicting state law were not preempted, a program participant would be subject to inconsistent federal and state duties—and to liability under either federal or state law. The effect of a state-consent requirement would be to leave both state and federal laws in effect "like equal opposing powers." *Gibbons*, 22 U.S. (9 Wheat.) at 210. That is precisely the situation the Supremacy Clause was designed to avoid. *Id.*; *see Mut. Pharm. Co. v. Bartlett*, 570 U.S. 472, 486 (2013) ("When federal law forbids an action that state law requires, the state law is 'without effect.'" (quoting *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981))).

With respect to EMTALA, the rule for which Idaho argues would mean that states could effectively override *any* of EMTALA's requirements related to screening, treating, and transferring emergency room patients, and other Medicare provisions as well. *See* 42 C.F.R. pt. 482 (establishing conditions for hospital participation in Medicare).

Other preemption provisions in Medicare would also be unconstitutional. For instance, Medicare bars states from imposing "premium taxes" on payments and premiums paid to Medicare+Choice organizations, 42 U.S.C. § 1395w-24(g), and on prescription drug plans and sponsors participating in Part D drug plans, *id.* § 1395w-112(g); and establishes uniform payment structures for certain entities that "supersede" state law. *See Medicaid & Medicare Advantage Prods. Ass'n of P.R., Inc. v. Emanuelli Hernández*, 58 F.4th 5, 9 (1st Cir. 2023) (quoting 42 U.S.C. § 1395w-26(b)(3)). There is no principled distinction between these provisions and EMTALA's preemption of state laws that directly conflict with a hospital's duty to provide treatment to stabilize patients who come to emergency rooms. If state consent is required for preemption, then Medicare cannot preempt conflicting state law, and express preemption provisions would be unconstitutional, absent a state's consent.

C. At bottom, Idaho has not put forward any workable theory that would effectively exclude federal spending legislation from the "Laws of the United States" that make up the "supreme Law of the Land." U.S. Const. art. VI, cl. 2. Instead, Idaho argues for a state-consent requirement as a way to buttress state authority in the federal system,

in support of its preferred view on the allocation of federal and state power. *See* Idaho Br. 20–22; Moyle Br. 71–72. Idaho's position cannot be reconciled with the constitutional design.

First, the Supremacy Clause directly addresses how federalism concerns created by conflicting federal and state laws should be resolved. "[U]nder the Supremacy Clause, … any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield." *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 108 (1992) (internal quotation marks omitted). Thus, when congressional intent to preempt is clear, as it is when state law and EMTALA directly conflict, the Supremacy Clause dictates the outcome: "federal law takes precedence and the state law is preempted." *Murphy*, 584 U.S. at 477. Any other outcome—no matter how aligned with a particular state's conception of federalism—flouts the constitutional text.

Second, the Constitution commits to Congress, not to the states, the power to spend federal tax revenues to "provide for the common Defen[se] and general Welfare of the United States." U.S. Const. art. I, § 8, cl. 1. "This grant gives the Federal Government considerable influence even in areas where it cannot directly regulate." *NFIB*, 567 U.S. at 537 (op. of

Roberts, C.J.). "[O]bjectives not thought to be within Article I's 'enumerated legislative fields' may nevertheless be attained through the use of the spending power and the conditional grant of federal funds." *Dole*, 483 U.S. at 207 (citation omitted). That power "is of course not unlimited": Congress, for instance, can only act "in pursuit of the general welfare" and spending conditions must be related "to the federal interest in particular national projects or programs." *Id.* (internal quotation marks omitted). But where Congress's exercise of the spending power does not exceed those limits, the Constitution does not give states a say in whether a national spending program can be implemented. Where the Framers wanted to permit states to foreclose congressional action, they said so expressly. *See*, *e.g.*, U.S. Const. art. IV, § 3, cl. 1 (requiring state consent before Congress can create new states out of existing states). They imposed no such restriction on Congress's exercise of its spending power.

Third, Idaho's conception of federalism impermissibly interposes states between the national government and the people of the United States. When the Framers replaced the Articles of Confederation with the Constitution, they "envisioned a uniform national system, rejecting

the notion that the Nation was a collection of States, and instead creating a direct link between the National Government and the people of the United States." *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 803 (1995). They deliberately rejected a system in which a "government by one sovereign" would be implemented "through the agency of a second," which they considered a major failing of the Articles of Confederation. *FERC v. Mississippi*, 456 U.S. 742, 792 (1982) (O'Connor, J., concurring in the judgment in part and dissenting in part). Instead of such a system, the Framers authorized "direct national legislation" so that "'the execution of the laws of the national government [would] not require the intervention of the State Legislatures.'" *Id.* at 793 (quoting The Federalist No. 16 (Alexander Hamiliton)). As a result, "[n]o trace is to be found in the constitution of an intention to create a dependence of the government of the Union on those of the states, for the execution of the great powers assigned to it." *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 424 (1819).

The Framers considered giving Congress the power to veto state laws as a "means of adjusting conflicting state and national laws." *Mississippi*, 456 U.S. at 794 (O'Connor, J., concurring in the judgment in

part and dissenting in part). They rejected that plan and "adopted the Supremacy Clause" instead, "substitut[ing] judicial review of state laws for congressional control of state legislatures. *Id.* at 794–95. "The National Government received the power to enact its own laws and to enforce those laws over conflicting state legislation," while the states "retained the power to govern as sovereigns in fields that Congress cannot or will not pre-empt." *Id*. at 795.

Idaho's position that states—not Congress—must decide whether federal spending laws have preemptive effect would impose a scheme in which implementation of national spending programs would "require the intervention of the State Legislatures." The Federalist No. 16. Far from vindicating federalism principles, Idaho's position would cut out federalism's heart by returning to a system where "the central government had to rely upon the cooperation of state legislatures to achieve national goals." *Mississippi*, 456 U.S. at 791 (O'Connor, J., concurring in the judgment in part and dissenting in part). Although Idaho may wish that Congress's power to provide for "the general Welfare of the United States" were more cabined, *see* Idaho Br. 20; Moyle Br. 72, it does not assert that any of the substantive requirements of EMTALA

(or Medicare) exceed Congress's Article I powers. That failure is fatal to its contention that EMTALA's express preemption of directly conflicting state laws is unconstitutional because it removes any legitimate basis for declining to regard EMTALA as "the supreme Law of the Land … any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2.

CONCLUSION

For the foregoing reasons, this Court should affirm the district court's injunction.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B)(i) because, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and the Rules of this Court, it contains 4472 words.

This brief also complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 29(a)(4), 32(a)(5), and 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Brief of Amicus Curiae Public Citizen with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit on October 22, 2024, using the Appellate Electronic Filing system and that service will be accomplished by the CM/ECF system.

/s/ Nandan M. Joshi
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