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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ST. LUKE'S HEALTH SYSTEM, LTD.,

Plaintiff,

v.

RAÚL LABRADOR, Attorney General of the State of Idaho,

Defendant.

Case No. 1:25-cv-00015-BLW

REPLY IN SUPPORT OF MOTION TO DISMISS [DKT. 25]

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REPLY

I. This Court lacks jurisdiction over St. Luke's speculative suit.

A. With no constitutionally affected interest in performing abortions and no substantial threat of enforcement, St. Luke's lacks standing.

"Pre-enforcement standing injuries are predicated on the anticipated enforcement of the challenged statute in the future and the resulting chilling effect in the present." *Seattle Pac. Univ. v. Ferguson*, 104 F.4th 50, 59 (9th Cir. 2024). That's what St. Luke's lawsuit alleges. St. Luke's fears that someday its providers could be prosecuted under Idaho Code § 18-622 and it would face secondary effects. That it is having "to advis[e] its physicians about how to proceed" regarding Idaho Code § 18-622, Dkt. 27 at 3, is the alleged "chilling effect in the present." St. Luke's must therefore meet the *Peace Ranch v. Bonta*, 93 F.4th 482 (9th Cir. 2024), pre-enforcement standing test. And even if the *United States v. Idaho* injunction were not in place, St. Luke's would still have to satisfy pre-enforcement standing, since Idaho Code § 18-622 is not being enforced against it.

St. Luke's conduct is not arguably affected with a constitutional interest. St. Luke's never identifies how its course of conduct—violating state-law standards of medical practice—is affected with a constitutional interest. It confuses the issue by saying it has a "constitutional interest . . . in being free from preempted state regulation." Dkt. 27 at 4. This doesn't address how its *conduct* is affected with a constitutional interest. Another district court recently encountered a plaintiff who contended that if he were to enforce state statutes he would violate federal law (and vice versa). That court held that the plaintiff—like St. Luke's—lacked standing for failure to satisfy the first prong of the *Driehaus* test because "the statute at issue must ostensibly prohibit the exercise of a specific constitutional right." *Splonskowski v. White*, 714 F. Supp. 3d 1099, 1104 (D.N.D. 2024). The Supremacy Clause does not afford St. Luke's a constitutional right that it can enforce. *Cf. Armstrong v. Exceptional Child Ctr., Inc.*,

575 U.S. 320, 327 (2015) (Supremacy Clause does not create a cause of action).

St. Luke's next says the Ninth Circuit "has found the *Driehaus* test satisfied by pre-enforcement plaintiffs in multiple challenges to abortion laws since *Dobbs*." Dkt. 27 at 5. But the Ninth Circuit's cases after *Peace Ranch*, whether related to abortion or not, involve conduct allegedly affected with a constitutional interest. *E.g., Seattle Pac. Univ.*, 104 F.4th at 59 ("As a religious university with specific parameters undergirding its employment practices, SPU's employment decisions are plainly affected with First Amendment interests."); *Planned Parenthood Great Nw. v. Labrador*, 122 F.4th 825, 837 (2024) (alleging First Amendment right to refer for abortion); *Ariz. All. for Retired Ams. v. Mayes*, 117 F.4th 1165, 1182 (concerning First Amendment voter outreach). St. Luke's conduct is not affected with a constitutional interest.

St. Luke's makes two arguments relating to its providers. First, it complains that its providers will be "subject to conflicting state and federal obligations about whether they may terminate a pregnancy when necessary to prevent damage to the mother's health." Dkt. 27 at 4. Second, it says its providers may be prosecuted, convicted, and face licensing penalties under Idaho Code § 18-622, in violation, according to St. Luke's, of these providers' liberty interests. Dkt. 27 at 5. These arguments are, however, claims that its providers would bring, even though St. Luke's told the Court it was not bringing claims on behalf of them. Dkt. 27 at 2 n.3.[1] Additionally, the arguments go to the second prong of the *Peace Ranch* test because they address whether the state statute arguably proscribes the conduct. These arguments do not explain how St. Luke's providers' (or St. Luke's) desire to flout state-law standards of medical practice purportedly in accordance with EMTALA is affected with a constitutional interest.

St. Luke's wants this Court to avoid *Peace Ranch*. It argues that the fact that Idaho Code § 18-622 merely exists is sufficient for purposes of standing. Dkt. 27 at 3 (citing *Weaver's Cove*

[1] St. Luke's also does not claim to assert some type of associational organizational standing on behalf of its physicians. *See* Dkt. 27 at 2 n.3.

Energy, LLC v. R.I. Coastal Res. Mgmt. Council, 589 F.3d 458, 468 (1st Cir. 2009)). But St. Luke's argument was rejected by the Ninth Circuit long before *Peace Ranch*. *E.g., Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1139 (9th Cir. 2000) (en banc) ("We have held that neither the mere existence of a proscriptive statute nor a generalized threat of prosecution satisfies the 'case or controversy' requirement.").

St. Luke's still does not identify a substantial threat of enforcement. St. Luke's still only offers speculation to support standing should the injunction be vacated. In response to the Attorney General's uncontested point that if the United States were to change its position St. Luke's would not risk its Medicare funding by complying with Idaho law, St. Luke's deflects by arguing it will face harm from private litigants who would sue it. Dkt. 27 at 6. But such alleged injury is neither traceable to nor redressable by the Attorney General. If it is correct that the federal government will not enforce EMTALA against it for complying with Idaho Code § 18-622, then there is no standing for a suit against the Attorney General.

B. St. Luke's suit is not prudentially ripe.

St. Luke's says that this suit is prudentially ripe. According to St. Luke's, the Court only needs to engage in statutory interpretation and apply the law. Dkt. 27 at 8. But according to the Court the challenge to Idaho Code § 18-622 is an as-applied challenge. *See United States v. Idaho*, No. 1:22-cv-00329-BLW (D. Idaho), Dkt. 95 at 16–17. An as-applied challenge "attacks the application of a statute to a specific set of facts." *Am. Apparel & Footwear Ass'n v. Baden*, 107 F.4th 934, 938 (9th Cir. 2024) (citation omitted). The facts are also important in considering whether there is a case or controversy ready for adjudication by the Court.

St. Luke's says that the facts can be addressed "in later phases of the litigation." Dkt. 27 at 9. But why? Is that because they don't exist right now—especially given that the best examples of a supposed conflict—the allegedly six airlifted women—all had conditions that

the State has noted to the Supreme Court support an abortion to save the mother's life? That facts don't exist right now for an as-applied challenge is why this suit is not ripe.[2]

St. Luke's also accuses the Attorney General of putting the cart before the horse. Dkt. 27 at 9. But trying to decide a legal conflict before you know whether you have facts affected by the legal conflict is what puts the cart before the horse. Federal courts are prohibited from issuing advisory opinions. *E.g., Carney v. Adams*, 592 U.S. 53, 58 (2020).

C. Without an ongoing or threatened violation of federal law by the Attorney General, the *Ex parte Young* exception is inapplicable.

St. Luke's does not dispute the general principle that sovereign immunity would normally bar its claim. It instead rests its opposition on the *Ex parte Young* exception. For this argument, it spends most of its brief rehashing general principles that the Attorney General already set forth: "The *Young* exception permits relief against state officials only when there is an ongoing or threatened violation of federal law." Dkt. 25-1 at 16 (cleaned up).

The Attorney General's first point was that "the Complaint does not allege that the Attorney General is currently [violating] or is about to violate federal law." Dkt. 25-1 at 16. St. Luke's meager response is that "[b]ecause this suit looks forward rather than backward, sovereign immunity does not stand in its way." Dkt. 27 at 12. But that's just conclusory. St. Luke's does not explain how there is an ongoing or threatened violation of federal law by the Attorney General. That's because there is none.

St. Luke's also does not deal with the Attorney General's point that it has failed to allege "any enforcement action taken by the Attorney General in contravention of that

[2] As the Attorney General noted in his opening brief, "[f]urther factual development is needed to understand why St. Luke's transferred these women out of state, why St. Luke's providers did not provide an abortion in Idaho if they determined [it] was necessary to save the life of the mother, why St. Luke's contends its providers must wait 'until death is imminent' even though the Idaho Supreme Court has held this understanding of the law to be incorrect, and why St. Luke's believes that Idaho's law will result in severe harm." Dkt. 25-1 at 13.

injunction or that was otherwise taken to enforce Idaho Code § 18-622, nor any threat to violate the injunction." Dkt. 25-1 at 16.

II. St. Luke's fails to show that it has stated a claim.

A. St. Luke's erroneously contends the federal government can preempt state law by paying private parties to violate it.

St. Luke's contends, contrary to more than 40 years of precedent, that the federal government can bind states to Spending Clause funding conditions to which the states never agreed—simply by entering into agreements with private parties. It makes no attempt to address those binding precedents. *Compare* Dkt. 25-1 at 16-20 *with* Dkt. 27 at 24-25 (no mention of, *e.g.*, *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981), *Nat'l Fed'n of Indep. Bus v. Sebelius*, 567 U.S. 519, 577 (2012), or *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006)). Instead, St. Luke's relies on tautologies about the supremacy of Spending Clause legislation (which is undisputed *if* knowing and voluntary acceptance exists), non-existent claims of "veto power," assertions of "federal policy objectives" that are not in EMTALA (which is protective of unborn life and does not purport to legalize abortions contrary to state laws), mistaken uses of cases, and unexplained citations to off-point cases. *See* Dkt. 27 at 24-25.

St. Luke's relies on *United States v. Butler*, 297 U.S. 1 (1936). Dkt. 27 at 24-25. *Butler*, however, was not a Spending Clause case, and in any event pre-exists modern Spending Clause jurisprudence.

St. Luke's gives mistaken treatment to *Gonzales v. Oregon*, 546 U.S. 243 (2006), which, like *Butler*, is an odd case to cite in favor of federal preemption: *Gonzales upholds* a state law regarding medical care against the federal government's preemption claim. In fact, *Gonzalez* highlights a problem with St. Luke's misuse of EMTALA: as to the sole area of medical practice for which Congress prescribed a standard in *Gonzales* (medical treatment of narcotic

addiction), it did so *explicitly*. *Id.* at 272 ("when Congress wants to regulate medical practice in the given scheme, it does so by explicit language in the statute."). Just as in *Gonzales*, where it was "difficult to defend the Attorney General's declaration that the statute impliedly criminalizes physician-assisted suicide," *id.*, here it is difficult to defend St. Luke's argument that EMTALA impliedly mandates abortions contrary to Idaho law.[3]

St. Luke's cites three cases, without even a parenthetical explanation, for the proposition that "the Supreme Court has repeatedly applied ordinary preemption principles to spending legislation that directs federal funding to entities other than states." Dkt. 27 at 25. But two of the three cases are not Spending Clause cases and contain no discussion at all of the knowing or voluntary consent requirements. *See Coventry Health Care of Missouri, Inc. v. Nevils*, 581 U.S. 87 (2017); *Bennett v. Arkansas*, 485 U.S. 395 (1988). The third case, *Lawrence Cnty. v. Lead-Deadwood Sch. Dist. No. 40-1*, 469 U.S. 256 (1985), was a Spending Clause case but did not involve payments to or contracts with non-governmental parties, and the knowing or voluntary requirements were not at issue. The complained-of "condition" for receipt of the funds was explicit in the federal statute ("each unit of general local government . . . may use the payment for any governmental purpose."). *Id.* at 258. Instead, the issue was that a state statute attempted to impose conditions on the *federal* program (Payment in Lieu of Taxes Act). *Id.* at 259. *Lawrence Cnty.* has no application here. This is no doubt why Justice Alito observed at oral argument, "I've looked at those cases. I haven't found any square discussion of this particular issue." *Moyle v. United States*, No. 23-276, 2024 WL 1767599, *71 (April 24, 2024) (Oral Arg.

[3] The Supreme Court's skepticism in *Gonzalez* that a federal statute aimed at one problem impliedly preempts state law addressing a different problem applies here. 546 U.S. at 272–73 ("The primary problem with the Government's argument, however, is its assumption that the CSA impliedly authorizes an Executive officer to bar a use simply because it may be inconsistent with one reasonable understanding of medical practice. . . . The CSA's substantive provisions and their arrangement undermine this assertion of an expansive federal authority to regulate medicine.").

Tr. at 71).

B. St. Luke's lacks a cause of action.

St. Luke's claims it has an equitable cause of action to enforce 42 U.S.C. § 1395dd as against the Attorney General. St. Luke's acknowledges that like the Medicaid provision at issue in *Armstrong*, the federal government can withhold funds, which is the first aspect of 1395dd that signals Congress's intent. *Armstrong*, 575 U.S. at 326 ("As we have elsewhere explained, the 'express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others.'") (quoting *Alexander v. Sandoval*, 532 U.S. 275, 290 (2001)). This, *combined with* Congress' creation of civil monetary penalties and private causes of action, specifically against hospitals and providers, including injunctive relief, signifies Congress' intent to foreclose private enforcement of EMTALA against the Attorney General. Dkt. 25-1 at 20–22.

St. Luke's says it's implausible that Congress would have foreclosed a private Medicare provider from pursuing an allegedly greater enforcement mechanism than that provided by the private causes of action, monetary penalty, and administrative enforcement of EMTALA against the hospital and its physicians. Dkt. 27 at 24. But St. Luke's argument ignores that the Supreme Court pays attention to Congress' chosen and more limited enforcement mechanisms that appear in the statute itself and provide a private right of action. *Cf. Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 188 (2023)("[T]he existence of a more restrictive private remedy [in the statute itself] for statutory violations has been the dividing line between those cases in which we have held that an action would lie under § 1983 and those in which we have held that it would not.") (alterations by the Court; quoting *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 121 (2005)).

And so, St. Luke's lacks an equitable cause of action against the Attorney General, a

non-party to the contract between St. Luke's and the federal government, to enforce EMTALA, a statute only applicable against St. Luke's and not applicable to the Attorney General.

C. EMTALA's text, context, and purpose do not show a basis for preempting state abortion law.

St. Luke's fails to engage the only federal appellate determination rejecting its central argument that "EMTALA obliges participating hospitals to provide stabilizing care that sometimes encompasses termination of pregnancies." Dkt. 27 at 19. It makes no effort to respond to the directly contrary holdings in *Texas v. Becerra* that: (i) "HHS's Guidance exceeds the statutory language," (ii) the "statute unambiguously forecloses [St. Luke's] position," and (iii) "[t]he inclusion of one stabilizing treatment [delivery of the unborn child and the placenta, 42 U.S.C. § 1395dd(e)(3)(A)] indicates the others are *not mandated*." 89 F.4th 529, 541 & n.11, 542 (5th Cir. 2024), cert denied, 145 S. Ct. 139, 2024 WL 4426546 (U.S. Oct. 7, 2024) (Mem.) (emphasis added); *see* Dkt. 25-1 at 25.

St. Luke's re-writes EMTALA to require "stabiliz[ing] pregnant women with emergency health conditions," Dkt. 27 at 20, when the statute actually requires stabilizing the *condition* (not the woman) and defines the condition in terms of both the woman and the unborn child. 42 U.S.C. § 1395dd(e)(1)(A)(i). Under the plain statutory text, you can't stabilize the condition by killing the unborn child any more than you can stabilize the condition by killing the woman.

St. Luke's contends that there are instances where "the pregnancy complication itself means the fetus would not have survived even absent immediate pregnancy termination." Dkt. 27 at 20. But its claim isn't limited to that scenario; instead, St. Luke's is also claiming that stabilizing the condition sometimes requires killing an otherwise viable unborn child, even though the condition is defined in terms of the unborn child's life or health.

St. Luke's assertion that "every patient who has a bonafide emergency should receive

stabilizing care" merely begs the question. *Id.* at 21. The issue is, what constitutes "stabilizing care," and who is the patient who should receive stabilizing care? EMTALA specifically includes the unborn child as one of the patients who must receive stabilizing care. 42 U.S.C. § 1395dd(e)(1)(A)(i).

Contrary to St. Luke's argument, Idaho does not seek "to narrow EMTALA's scope." *Id.* at 21. Rather, EMTALA already has a narrow scope and purpose, which St. Luke's seeks to *expand* into an abortion mandate. No one disputes that EMTALA protects individuals "with and without insurance." *Id.* (quoting *Gatewood v. Washington Healthcare Corp.*, 933 F.2d 1037, 1040 (D.C. Cir. 1991)); *see also* 933 F.2d at 1041 (EMTALA creates a cause of action merely "for what amounts to failure to treat" based on the treatments permitted by state law). EMTALA "impos[es] a legal duty 'to provide emergency care to all,'" so long as the care is available at the hospital and consistent with state standards. *Hardy v. N.Y.C. Health & Hosp. Corp.*, 164 F.3d 789, 792–93 (2d Cir. 1999)); 42 U.S.C. § 1395dd(b)(1). But if state law prohibits a particular treatment, then the treatment is not available, and EMTALA does not require it. EMTALA "clearly declines" to establish a national standard of care. *Eberhardt v. City of Los Angeles*, 62 F.3d 1253, 1258 (9th Cir. 1995).

Finally, lacking textual support inside EMTALA, St. Luke's looks beyond it to the Affordable Care Act, citing a provision of that law about abortion found in subsection (d) that says: "[n]othing in this Act shall be construed to relieve any health care provider from providing emergency services as required by State or Federal law, including ... EMTALA." 42 U.S.C. § 18023(d) (internal quotation marks omitted). But St. Luke's overlooks subsection (c), which explicitly states that the Affordable Care Act does not "preempt or otherwise have any effect on State laws regarding the prohibition of . . . abortions." 42 U.S.C. § 18023(c)(1).

St. Luke's response as a whole, ignores the holding, reasoning, and authorities cited in

Texas v. Becerra, and St. Luke's argument should therefore be rejected. *Compare* Dkt. 27 at 22 *with* Dkt. 25-1 at 27–28.[4]

D. St. Luke's complaint lacks a cognizable legal theory.

St. Luke's fails to recognize that its lawsuit hinges on EMTALA creating a nationwide standard of care. When EMTALA applies, participating hospitals must provide "within the staff and facilities available at the hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition." 42 U.S.C. § 1395dd(b)(1). But who and what determines the treatments that are available and what staff may perform those treatments? The Attorney General says that role is left to the State. In its earlier brief, St. Luke's told the Court that EMTALA creates a standard of care. Dkt. 2-1 at 17–18. Now it suggests that EMTALA does not. Dkt. 27 at 22–23.

St. Luke's refusal to tell the Court the basis of its claim justifies dismissing this suit. The Attorney General is only left to guess whether St. Luke's claims that EMTALA permits doctors (or even LPNs for that matter) to use whatever treatment the medical staff member believes is necessary to treat the stabilizing condition, regardless of what state law has to say about the scope of practice or available treatments. Maybe St. Luke's asserts that some governmental body's or non-governmental body's guidelines, or even hospital polices, provide the answer. The failure to identify a theory, let alone a cognizable one, is fatal to St. Luke's suit.

CONCLUSION

For the foregoing reasons, St. Luke's Complaint should be dismissed.

[4] Either way, St. Luke's Medicare funding will continue, and it therefore lacks standing. The existing injunction assumes St. Luke's interpretation of EMTALA is correct, and St. Luke's may proceed with the abortions it argues for. If the Attorney General's interpretation of EMTALA is correct, St. Luke's will not be in violation of EMTALA in abiding by Idaho's law.

DATED: February 26, 2025.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 26, 2025, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

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