NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AMERICAN MEDICAL RESPONSE OF INLAND EMPIRE, Plaintiff - Appellant, v. COUNTY OF SAN BERNARDINO, a California municipal corporation; et al., Defendants - Appellees.	No. 24-3195 D.C. No. 5:24-cv-00267-KK-SP MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Kenly Kiya Kato, District Judge, Presiding

Argued and Submitted April 8, 2025
Pasadena, California

Before: CALLAHAN, DESAI, and DE ALBA, Circuit Judges.

In California, prehospital emergency medical services are governed by the Emergency Medical Services System and Prehospital Emergency Medical Care Personnel Act ("EMS Act"). Cal. Health & Safety Code § 1797 *et seq.* The EMS Act authorizes a county to grant emergency medical service providers the

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

exclusive right to operate within certain geographic areas in the county so long as "a competitive process is utilized to select the provider" pursuant to a State-approved "local plan." Cal. Health & Safety Code § 1797.224. The California Legislature intended such authorization "to confer state action immunity from federal antitrust laws for actions taken by local government entities under the EMS Act." *Redwood Empire Life Support v. Cnty. of Sonoma*, 190 F.3d 949, 951 (9th Cir. 1999).

Plaintiff-Appellant American Medical Response of Inland Empire ("AMR") is an emergency medical services provider that has served San Bernardino County since the late 1970s. In December 2022, San Bernardino County and Inland Counties Emergency Medical Agency ("ICEMA") (collectively, "County Defendants"), publicized a Request for Proposal ("RFP") to select a single ambulance provider in a designated geographic area in the County. AMR and Consolidated Fire Agencies ("ConFire") submitted proposals, and the County Defendants awarded the contract to ConFire. AMR brought suit in federal court alleging a claim under the Sherman Act, 15 U.S.C. § 1, which the district court dismissed for lack of subject matter jurisdiction because the "County Defendants are immune from liability."[1] AMR timely appealed.

[1] The district court also declined to exercise supplemental jurisdiction over AMR's two state-law claims. AMR does not challenge this portion of the district court's order.

We review the district court's decision de novo, taking all factual allegations in the complaint as true and construing the pleadings "in the light most favorable to the nonmoving party." *Est. of Bride v. Yolo Techs., Inc.*, 112 F.4th 1168, 1174–75 (9th Cir. 2024) (citation omitted). We affirm.[2]

Section 1 of the Sherman Act declares that every contract or conspiracy in restraint of trade is illegal. 15 U.S.C. § 1. "While the Sherman Act clearly forbids anticompetitive conduct by *private* market players," *Kay Elec. Co-op. v. City of Newkirk*, 647 F.3d 1039, 1041 (10th Cir. 2011) (Gorsuch, J.), the Supreme Court in *Parker v. Brown*, 317 U.S. 341 (1943), held that the law "did not apply to anticompetitive restraints imposed by the States," *City of Columbia v. Omni Outdoor Adverts.*, 499 U.S. 365, 370 (1991) ("*Parker* immunity"). The Supreme Court later explained that a local government is entitled to *Parker* immunity when its restriction on competition constitutes "an authorized implementation of state policy." *Omni*, 499 U.S. at 370. Referred to as the "clear articulation test," the Supreme Court has held that "when a local governmental entity acts pursuant to a clearly articulated and affirmatively expressed state policy to displace competition, it is exempt from scrutiny under the federal antitrust laws." *F.T.C. v. Phoebe Putney Health Sys. Inc.*, 568 U.S. 216, 219 (2013).

AMR does not dispute that the EMS Act "clearly articulated and

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[2] The County Defendants' motion for judicial notice is GRANTED. Dkt. 23.

affirmatively expressed" the California Legislature's policy to displace competition in the field of emergency medical services, but argues that the County Defendants did not act "pursuant to" this policy when awarding ConFire the exclusive contract. For example, AMR argues that the RFP required the County Defendants to award the monopoly to the provider that received the "highest score," and that AMR received a higher score than ConFire. According to AMR, this shows that the County Defendants awarded the monopoly to their "politically preferred provider in complete disregard of the State-mandated competitive process."

We are unpersuaded. While AMR received the highest total score, ConFire received the highest median score. The RFP does not define what the "highest score" means, and also provides that the County Defendants will award the contract to the "highest scoring Proposer . . . whose proposal presents the greatest value" and that "best meets the needs of the County." Accordingly, even if AMR had the "highest score," the plain language of the state-approved RFP gave the County Defendants discretion to award the monopoly to the provider whose proposal presented "the greatest value" to the County. Moreover, the County Defendants articulated how ConFire presented the "greatest value" to the County, namely, by being eligible for supplemental state funding, by improving public safety through closer integration or coordination of services, and by promising

faster response times than AMR. The award of the monopoly to ConFire was thus the "foreseeable result" of the State's policy. *Phoebe Putney*, 568 U.S. at 227.

Even if the County Defendants erred in implementing the state-approved RFP and awarded the contract "in complete disregard of the State-mandated competitive process" as AMR alleges, the County Defendants are still entitled to *Parker* immunity. The Supreme Court held in *Omni* that a local government was entitled to *Parker* immunity even when the nature of its regulation was allegedly substantively or procedurally defective. 499 U.S. at 371. And this court has similarly held that a local government does not "forfeit" *Parker* immunity merely because it imperfectly exercises its power under state law. *See Llewellyn v. Crothers*, 765 F.2d 769, 774 (9th Cir. 1985); *Boone v. Redevelopment Agency of City of San Jose*, 841 F.2d 886, 891 (9th Cir. 1988).[3]

AFFIRMED.[4]

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[3] We note that the state court may be a more appropriate forum to litigate AMR's challenges to the County Defendants' execution and administration of the RFP. *See Llewellyn*, 765 F.2d at 774 ("Ordinary errors or abuses in the administration of powers conferred by the state should be left for state tribunals to control") (internal quotation marks and citation omitted). Indeed, AMR has already filed a lawsuit in San Bernardino County Superior Court, which enjoined performance of the County Defendants' contract with ConFire. *See Am. Medical Response of Inland Empire v. County of San Bernardino, et al.*, Case No. CVSB2416492.

[4] Although the district court dismissed AMR's antitrust claim for lack of subject matter jurisdiction, *see* Fed. R. Civ. P. 12(b)(1), dismissal is more appropriate for failure to state a claim upon which relief can be granted, Fed. R.

Civ. P. 12(b)(6). Like sovereign immunity, state-action immunity does not deprive federal courts of subject matter jurisdiction, but rather explains why the plaintiff's claim is not actionable. *See, e.g.*, *Tritchler v. Cnty. of Lake*, 358 F.3d 1150, 1153–54 (9th Cir. 2004).