

Abortion Back Before the Supreme Court

Insights

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The Supreme Court has [granted certiorari](#) on the question of whether the federal Emergency Medical Treatment and Labor Act (EMTALA) preempts state laws that restrict abortions. Proponents of Idaho's restrictive abortion law persuaded the U.S. Supreme Court to take up the question just days after the Fifth Circuit [ruled](#) that EMTALA does not preempt Texas's restrictive abortion law.

The Supreme Court also granted a stay of the Idaho District Court's prior [preliminary injunction](#), which had been granted on August 24, 2023, pursuant to which the state could not enforce its restrictive abortion law to the extent that the statute conflicted with EMTALA-mandated care. In particular, the District Court had found that the state law directly conflicts with EMTALA because it is impossible to comply with both statutes and because the Idaho law "frustrates Congress's intent to ensure adequate emergency care for all patients who turn up in Medicare-funded hospitals[,] because it will deter emergency care that includes abortions. (The ruling had still allowed Idaho's law to be implemented in situations outside of EMTALA-mandated care.)

The Supreme Court's decision today to stay the preliminary injunction allows Idaho's restrictive abortion law to be fully implemented, even to the extent it may preclude hospitals from providing abortions to stabilize emergency conditions, while the case is pending before the Supreme Court. Notably, the Supreme Court's Order indicates that the case will be heard during the April 2024 argument session.

The Supreme Court's decision to take up the question now is unusual because the Ninth Circuit had not yet addressed the state's appeal from the Idaho District Court decision to grant the preliminary injunction, with a hearing scheduled for later this month.

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