

Supreme Court considers EMTALA preemption of state abortion bans

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On April 24, the Supreme Court will hear arguments in *Idaho v. United States* and *Moyle v. United States*, consolidated cases asking whether the Emergency Medical Treatment and Labor Act (EMTALA) preempts, under certain emergency circumstances, an Idaho law banning most abortions.

The Supreme Court's decision may chart a course for numerous federal and state cases brought in the wake of *Dobbs v. Jackson Women's Health Organization* that question the interplay between state laws limiting abortion, medical exceptions to those laws, and EMTALA.

EMTALA requires Medicare-participating hospitals to provide appropriate medical screening for individuals presenting to the emergency department, or other particular hospital settings, and, if the individual is determined to have an emergency medical condition ("EMC"), to provide stabilizing treatment or arrange for an appropriate transfer to another facility able to provide such treatment.

State abortion bans, depending on their scope, may prohibit abortion procedures even in the EMCs contemplated by EMTALA, resulting in confusion and legal risk for providers and hurdles for patients requiring reproductive health care. *Idaho* and other pending cases may elucidate, or further complicate, the scope of EMTALA's obligations in the face of these state bans.

Conflict between EMTALA and state abortion bans

EMTALA does "not preempt State or local law ... except to the extent that the [State or local law] requirement *directly conflicts* with a requirement of this section." Thus, if emergency stabilizing treatment might result in termination of a pregnancy, the question in a state with an abortion ban is whether such treatment conflicts with state law.

July 2022 Guidance (<https://go.cms.gov/3JmsVdA>) from the Department of Health and Human Services ("HHS") "remind[ed] hospitals of their existing obligation to comply with EMTALA," which the agency interprets as conflicting with and preempting state law, *and requiring the provision of appropriate stabilizing treatment*, when a state law prohibits abortion and does not include an exception for the life of the pregnant person that is as broad as EMTALA's definition of an EMC.

The agency has since announced investigations of hospitals (<https://bit.ly/4dgfH03>) that did not offer abortion care — as necessary stabilizing treatment for an EMC — in violation of EMTALA.

Despite HHS's position (which currently cannot be enforced in Texas due to the *Texas v. Becerra* ruling, discussed below), providers in states with total abortion bans or those with narrow "medical emergency" exceptions may still risk licensing actions, as well as state criminal or civil prosecution, risks that may ultimately result in delayed or denied care.

Litigation surrounding EMTALA and abortion

Idaho v. United States

In 2022, the United States filed suit in federal court challenging Idaho's broad abortion ban, principally arguing the law is preempted to the extent it directly conflicts with EMTALA. The court issued a preliminary injunction (<https://bit.ly/3UnBRWw>), prohibiting Idaho from enforcing its abortion law as applied to EMTALA-mandated care.

EMTALA does "not preempt State or local law ... except to the extent that the [State or local law] requirement directly conflicts with a requirement of this section."

In particular, the district court held that the federal government demonstrated a substantial likelihood of succeeding on the merits of its challenge that EMTALA directly conflicts with, and thus preempts, Idaho's state abortion ban with respect to EMTALA-mandated care.

The district court noted that the Idaho law permitted, only as an affirmative defense to criminal liability, those "abortions that the treating physician determines are *necessary* to prevent the patient's death," while EMTALA's stabilization requirement is broader on two levels: it requires emergency care "to prevent injuries that are more wide-ranging than death," and it requires stabilizing treatment

when the “harm is probable, when the patient could ‘reasonably be expected’ to suffer injury.”

As the court concluded, “where federal law requires the provision of care and state law criminalizes that very care, it is impossible to comply with both laws. Full stop.”

The court also concluded Idaho’s abortion ban, the “clear and intended effect” of which the court found was to curb abortion care, including in emergencies, obstructed Congress’ purpose and objectives in enacting EMTALA.

A 9th U.S. Circuit Court of Appeals panel granted (<https://bit.ly/49Nj23n>) the state Legislature’s request to stay the injunction, allowing the Idaho ban to fully take effect. The State itself appealed the preliminary injunction.

Following a request by the federal government, the 9th Circuit elected to rehear the case *en banc* (<https://bit.ly/3JqHdtK>), vacating the panel’s opinion and restoring the preliminary injunction in the meantime. The *en banc* court then denied the Legislature’s stay motion (<https://bit.ly/4aJQDg3>) and scheduled oral argument on the merits.

The Supreme Court’s ruling in Idaho may clarify or complicate the EMTALA preemption landscape and other pending cases.

Idaho (<https://bit.ly/3JmuSHh>) and its Legislature (<https://bit.ly/3vWJJF4>) sought review from the Supreme Court, arguing their entitlement to a stay of the preliminary injunction pending appeal. In Jan. 5, 2024, orders (<https://bit.ly/49NjFtL>), the Supreme Court granted the State’s applications and stayed the preliminary injunction. The Court further treated the stay applications as petitions for writs of certiorari, granted the petitions, and announced that it would hear oral argument on the merits question of EMTALA’s preemption of the state law.

Texas v. Becerra

Before the U.S. challenged Idaho’s law, the state of Texas, joined by two provider groups, brought a federal suit challenging HHS’s July 2022 Guidance. On Aug. 23, 2022 (the day before the Idaho district court ruled), the Northern District of Texas ruled (<https://bit.ly/4aCnGCB>) that the plaintiffs had demonstrated a substantial likelihood of success on the merits and preliminarily enjoined HHS from enforcing its interpretation of EMTALA in Texas.

The court concluded that the HHS Guidance (1) likely exceeds HHS’s statutory authority and the permissible construction of EMTALA, and (2) was likely improperly issued without notice-and-comment rulemaking.

The district court found that Congress had not spoken to EMTALA’s obligations as they pertain to abortion. And, the court read EMTALA’s definition of an EMC (which, for a pregnant person,

references a condition that threatens the individual’s health or the health of the “unborn child”) as imposing “equal obligations to the pregnant woman and her unborn child.”

These equal obligations, according to the court, “create a potential conflict in duties that the statute does not resolve.” Accordingly, the court found the Texas law does not conflict with EMTALA, but instead fills the void when such a conflict arises. Contrasting *Idaho*, the Texas district court found “it is not impossible for hospitals and physicians to comply with both Texas law and EMTALA.”

As a result, the court held that the HHS Guidance impermissibly goes beyond EMTALA in “purport[ing] to resolve the conflict between the health of the pregnant woman and the unborn child where EMTALA does not.”

HHS is currently prohibited from enforcing its interpretation “as to when an abortion is required and EMTALA’s effect on state laws governing abortion” within the state of Texas or against the plaintiff-providers’ members. The federal government appealed to the 5th U.S. Circuit Court of Appeals, which affirmed the district court’s decision (<https://bit.ly/4aXqydd>). On April 1, 2024, the Government petitioned the Supreme Court for review (<https://bit.ly/3U5eWhf>).

State challenges

Concurrently, a number of lawsuits have been brought by individual plaintiffs against states with abortion bans, including Idaho (<https://bit.ly/4aFFkph>), Texas (<https://bit.ly/3TVYVu8>), and Tennessee (<https://bit.ly/49GSWiA>), seeking to clarify the states’ medical exceptions. In Oklahoma (<https://bit.ly/3JITAY6>), individuals also filed a federal complaint with HHS raising EMTALA violations; HHS declined to find an EMTALA violation in this case.

For now, at least two courts have sided with plaintiffs. In the Texas case, the Travis County District Court issued a temporary injunction (<https://bit.ly/3Q4eejL>) allowing physicians to use their own medical judgment to determine what care is needed in emergency situations, despite the Texas ban. However, the injunction is on hold as Texas has appealed the ruling directly to the Texas Supreme Court, which held oral argument in November 2023. In Idaho, the Court rejected the state’s motion to dismiss in December 2023, allowing the case to proceed.

Takeaways

The Supreme Court’s ruling in *Idaho* may clarify or complicate the EMTALA preemption landscape and other pending cases. *Texas v. Becerra*’s EMTALA preemption analysis, for which the government now separately seeks Supreme Court review, may be impacted by the Court’s *Idaho* decision, but it is nonetheless distinct: The *Texas* case centered on the HHS Guidance, rather than just the text of EMTALA itself, and involves a different state law.

The state cases, while they address largely the same legal concept (and *some* of the same state laws), will be decided on different factual circumstances. (EMTALA is a fact-specific, case-by-case analysis.) Varied injunctions of the state laws (and stays of those injunctions) issued by different courts could also add to confusion regarding legal obligations.

EMTALA may also factor into decisions beyond emergencies. In the 5th Circuit's separate ruling (<https://bit.ly/3UxCUU9>) regarding the FDA's approvals of the abortion medication mifepristone, the court held that the plaintiff-providers sufficiently established "conscience injury" standing at the preliminary relief stage by reasoning that EMTALA requires doctors to offer abortion care when necessary, and thus physicians could be required to provide abortion services even over their own religious or moral objections.

This case is now in front of the Supreme Court, and Justice Amy Coney Barrett raised the issue during the case's March 26, 2024, oral argument (<https://bit.ly/440B69f>). (See more regarding standing in this case here: <https://reut.rs/4aWzcZm>.)

The *Idaho* argument is April 24 at 10 am ET, with an expected ruling by the end of the Supreme Court's term in June.

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