Nos. 23-726, 23-727

In the Supreme Court of the United States

MIKE MOYLE, SPEAKER OF THE IDAHO HOUSE OF REPRESENTATIVES, ET AL.,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

STATE OF IDAHO,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF *AMICI CURIAE* OF 121 MEMBERS OF CONGRESS IN SUPPORT OF PETITIONERS AND REVERSAL

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STATEMENT OF INTEREST OF *AMICI CURIAE*[1]

Amici are 121 Members of the United States Congress, twenty-six Senators and ninety-five Members of the House of Representatives, representing thirty-six States and led by a unanimous Idaho delegation. A complete list of *Amici* is found in the Appendix to this brief. As pro-life elected representatives, *Amici* are committed to protecting women, unborn children, and families from the harms of abortion violence. Under a proper textual interpretation, the Emergency Medical Treatment and Active Labor Act ("EMTALA"), 42 U.S.C. § 1395dd, safeguards women and unborn children, and does not authorize elective induced abortion. The EMTALA abortion mandate subverts these important interests and contravenes Congress' pro-life policy stance.

SUMMARY OF ARGUMENT

EMTALA does not contain a national abortion mandate for "stabilizing" abortions. *See* 42 U.S.C. § 1395dd. Congress enacted EMTALA to address the systemic problem of patient dumping, and particularly safeguard women in "active labor" (hence the title) as well as their unborn children. "Patient dumping can take many forms. The most common is for economic reasons. It can be carried out by

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[1] No party's counsel authored any part of this brief. No person other than *Amici Curiae* and their counsel contributed any money intended to fund the preparation or submission of this brief.

transferring a patient to another hospital, refusing to treat them, or subjecting them to long delays before the patient finally leaves." *Equal Access to Health Care: Patient Dumping: Hearing Before the Subcomm. on Hum. Res. & Intergov'tal Rels. of the H. Comm. on Gov't Operations*, 100th Cong. 1–2 (1987) (statement of Ted Weiss, Chairman, Subcomm. on Hum. Res. & Intergov'tal Rels. of the H. Comm. on Gov't Operations). EMTALA says nothing about abortion.

The Department of Justice ("DOJ") is attempting to rewrite EMTALA to devise federal protections for abortion. Agreeing with the DOJ's statutory interpretation, the district court held "EMTALA obligates the treating physician to provide stabilizing treatment, including abortion care." *United States v. Idaho*, 623 F. Supp. 3d 1096, 1109 (D. Idaho 2022). The district court then held EMTALA preempts Idaho's pro-life law in instances in which the state law is not as broad as the purported EMTALA abortion health exception. *Id.* at 1117. This holding devises a health exception in certain circumstances for elective induced abortions—"those drugs or procedures used with the primary intent to end the life of the human being in the womb"[2]—under the guise of "stabilizing" abortions.

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[2] *AAPLOG Statement: Clarification of Abortion Restrictions*, Am. Ass'n of Pro-Life Obstetricians & Gynecologists (July 14, 2022), https://aaplog.org/aaplog-statement-clarification-of-abortion-restrictions/. For conciseness, *Amici* use "abortion" to refer to "elective induced abortion" in this brief. *Amici* further define this term *infra* Section I.B.

Amici write to highlight how (I) EMTALA's text and legislative history is pro-women and pro-unborn children. The DOJ is attempting to devise a health exception to permit elective induced abortions, but a proper reading of the statute does not authorize abortion violence; (II) federal policy is pro-life and has limited the harms of elective induced abortion through funding restrictions, conscience protections, and other pro-life safeguards; and (III) the U.S. Department of Health and Human Services ("HHS") formulated the EMTALA abortion mandate, which violates the major questions doctrine, and is part of a disquieting string of federal administrative actions that have sought to contrive federal abortion protections, especially following this Court's decision in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022). Accordingly, *Amici* urge the Court to reverse.

ARGUMENT

I. EMTALA Does Not Protect Elective Induced Abortion, But Instead Safeguards Women in Active Labor, as Well as Unborn Children.

Congress passed EMTALA's anti-patient dumping provisions to ensure emergency care for women in active labor and their unborn children. The DOJ is attempting to contrive protections for elective induced abortion. Yet, EMTALA does not mention abortion once, and a proper interpretation shows the statute does not require "stabilizing" abortions.

A. EMTALA's Text and Legislative History Show Congress Enacted an Anti-Patient Dumping Statute to Protect Both Women in Labor and Their Unborn Children.

The United States healthcare system grappled with patient dumping before the passage of EMTALA. Historically, there was a "common-law 'no duty' rule, which allowed [hospitals] to refuse treatment to anyone. Hospitals believed indigent patients should receive care through charitable organizations or through uncompensated care provided by hospitals." U.S. Comm'n on Civ. Rts., *Patient Dumping* 2 (2014). Some courts tried to extend other legal theories to hold hospitals liable, such as finding that "a duty to provide treatment may arise when a hospital affirmatively 'undertakes' to render aid," or applying a negligence theory when "hospitals that misdiagnose and mistreat patients who die after they are sent home." Karen I. Treiger, *Preventing Patient Dumping: Sharpening the Cobra's Fangs*, 61 N.Y.U. L. Rev. 1186, 1196–1197 (1986). The no-duty rule, however, prevailed in the United States, and "it was left to Congress and state legislatures to fashion a response to the patient dumping problem." *Id*. at 1197.

Congress' first major effort to address patient dumping—the Hill-Burton Act—fell short. *See* 42 U.S.C. §§ 291 to 291o-1. The Hill-Burton Act provided funds to states to construct and modernize hospitals and other medical facilities. *Id*. § 291. The statute contained anti-patient dumping provisions, requiring that Hill-Burton hospitals "will be made available to

all persons residing in the territorial area of the applicant" and the hospital will provide "a reasonable volume of services to persons unable to pay therefor." *Id*. § 291c. The statute, however, did not have a definition for "emergency." U.S. Comm'n on Civ. Rts., *supra*, at 3. There were also enforcement issues. "[Hill-Burton] regulations did not require states to develop their own regulations, to set-up monitoring and oversight, or to enforce the law. . . . [and] from a federal stance, HHS repeatedly failed to enforce Hill-Burton." *Id*. Consequently, patient dumping remained an issue even after the passage of the Hill-Burton Act.

By the 1980s, patient dumping had received national attention. Lauren A. Dame, *The Emergency Medical Treatment and Active Labor Act: The Anomalous Right to Health Care*, 8 Health Matrix 3, 6 (1998). As the House Committee on Ways and Means reported when considering EMTALA initially:

> The Committee is greatly concerned about the increasing number of reports that hospital emergency rooms are refusing to accept or treat patients with emergency conditions if the patient does not have medical insurance. The Committee is most concerned that medically unstable patients are not being treated appropriately. There have been reports of situations where treatment was simply not provided. In numerous other instances, patients in an unstable condition have been

> transferred improperly, sometimes without the consent of the receiving hospital.

H.R. Rep. No. 99-241(I), at 27 (1985), *as reprinted in* 1986 U.S.C.C.A.N. 579, 605.

Women in active labor, as well as their unborn children, were common victims of patient dumping. Shortly after the enactment of EMTALA, a Subcommittee of the House Committee on Government Operations held a hearing on the issue of patient dumping. *Equal Access to Health Care*, *supra*. Chairman Ted Weiss opened with this story:

> A pregnant woman, whose labor pains have begun, knows she is about to give birth. She goes to the emergency room of a nearby private hospital. The emergency intake staff interview her and ask her about her ability to pay and her insurance status.
>
> She is uninsured and has no means to pay the hospital for delivering her baby. Preliminary tests that might have shown that her baby is in trouble are not done. The hospital staff refuse to admit her, and she has no way of knowing her baby is having difficulty.
>
> After waiting 3 hours in the emergency room, in active labor, she prevails upon the hospital staff to send her by ambulance to the nearest public hospital. After she arrives at the public hospital, her baby is born, but it is dead. According to the physician in the public

> hospital, had she received prompt attention, her baby's life could have been saved.

Id. at 1. This was not the only tragic example of patient dumping of women in active labor. The Subcommittee heard numerous stories during the hearing, detailing the horrors pregnant women and unborn children endured from patient dumping:

- A woman at six and a half months pregnancy "began having labor pains and passing blood clots." "Once at the hospital, the woman was told by a nurse that because she did not have a private doctor, nothing could be done for her." The woman traveled two hours to a university hospital, where she delivered a premature baby. The baby died minutes after birth. *Id*. at 43 (statement of Judith G. Waxman, Managing Att'y, Nat'l Health L. Program).
- An uninsured woman presented to a hospital in active labor. "The hospital kept her two hours and fifteen minutes, in a wheelchair in their lobby. She was checked only once, and no tests were done which would have shown that the fetus was in profound distress." She left the facility to go to a county hospital where she delivered a stillborn child. *Id*. at 258 (statement of Lois Salisbury, Att'y, Coal. to Stop Patient Dumping).
- A hospital denied admittance to a woman in active labor because she had Medicaid coverage. The woman could not present her insurance card at a second private facility, so it

sent her to the county hospital "[e]ven though the baby was found to be in trouble." "[T]he baby was born dead. . . . Her baby might have lived if she had been given thorough care at either of the two private hospitals." *Id*. at 270–271.

- A woman who was "9 months pregnant and with no insurance, sat in labor for three hours in the Brookside Hospital waiting room" without a medical evaluation. She transferred to a county hospital where "her baby was born dead." If she had received "prompt attention at [the initial hospital, it] might well have helped increase[] her baby's chances of survival." *Id*. at 280 (emphasis removed).

Spurred by these types of tragic stories of patient dumping, Congress explicitly has protected women in active labor as well as unborn children throughout EMTALA's legislative history. The original statute, "Examination and Treatment for Emergency Medical Conditions and Women in Active Labor" ensured stabilizing treatment or an appropriate transfer for women in active labor. Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. No. 99-272, § 9121(b), 100 Stat. 82, 164 (1986). Congress included within the "active labor" definition "a time at which . . . a transfer may pose a threat of the health and safety of the patient *or the unborn child*." *Id*. § 9121(b), 100 Stat. at 166 (emphasis added).

In 1989, Congress expanded protections for unborn children within EMTALA, recognizing that

transferring hospitals must "minimize[] the risks to . . . the health *of the unborn child*." Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, § 6211(c)(5)(B), 103 Stat. 2106, 2246 (emphasis added). An "emergency medical condition" includes "acute symptoms of sufficient severity . . . such that the absence of immediate medical attention could reasonably be expected to result in . . . placing . . . , with respect to a pregnant woman, the health of the woman *or her unborn child*[] in serious jeopardy." *Id.* § 6211(h)(1)(A), 103 Stat. at 2248 (emphasis added). For pregnant women having contractions, an "emergency medical condition" includes situations in which a "transfer may pose a threat to the health or safety of the woman *or the unborn child*." *Id.* (emphasis added).

In its current form, EMTALA requires hospitals with an emergency department to determine whether an individual who requests service has an emergency medical condition. 42 U.S.C. § 1395dd(a). An emergency medical condition is defined as:

> a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—(i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman *or her unborn child*) in serious jeopardy, (ii) serious impairment to bodily functions, or (iii) serious dysfunction of any bodily organ or part.

Id. § 1395dd(e)(1)(A) (emphasis added). For women having contractions, an "emergency medical condition" includes circumstances such "(i) that there is inadequate time to effect a safe transfer to another hospital before delivery, or (ii) that transfer may pose a threat to the health or safety of the woman *or the unborn child*." *Id.* § 1395dd(e)(1)(B) (emphasis added).

If an individual has an emergency medical condition or is in labor, EMTALA requires the hospital to provide stabilizing care or appropriately transfer the individual. *Id.* § 1395dd(b)(1). Under the statute, "to stabilize" means:

> to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility, or, with respect to [a woman in labor], to deliver (including the placenta).

Id. § 1395dd(e)(3)(A).

Consistent with its legislative history, EMTALA explicitly protects an "unborn child" at four separate points in the current statute. *Id.* § 1395dd.[3] (1) In

[3] In this regard, EMTALA also is consistent with modern medicine, which considers the unborn child as a second patient. *Written Testimony of Monique C. Wubbenhorst, M.D., M.P.H., F.A.C.O.G., F.A.H.A, in Examining the Harm to Patients from*

transferring a woman in labor, medical professionals must certify that "the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks . . . to the *unborn child* from effecting the transfer." *Id.* § 1395dd(c)(1)(A)(ii) (emphasis added). (2) EMTALA defines "appropriate transfer" as "a transfer . . . in which the transferring hospital provides the medical treatment within its capacity which minimizes the risks to . . . the health of the *unborn child*." *Id.* § 1395dd(c)(2)(A) (emphasis added). (3) Under the statute, an "emergency medical condition" considers "with respect to a pregnant woman, the health of the woman or her *unborn child*." *Id.* § 1395dd(e)(1)(A)(i) (emphasis added). (4) Regarding pregnant women having contractions, an "emergency medical condition" includes a situation in which "transfer [of the patients] may pose a threat to the health or safety of the woman or the *unborn child*." *Id.* § 1395dd(e)(1)(B)(ii) (emphasis added).

EMTALA's text and legislative history display Congress' commitment to safeguarding both women and unborn children from the harms of patient dumping. EMTALA says nothing about abortion, let alone mandates "stabilizing" abortions.

Abortion Restrictions and the Threat of a National Abortion Ban: Hearing Before the H. Comm. on Oversight & Reform, 117th Cong. 1, 3 (2022).

B. The EMTALA Abortion Mandate Is Contriving Protections for Elective Induced Abortion.

Abortion terminology is critical to understanding the real issue in this case: whether EMTALA mandates elective induced abortions. As the American Association of Pro-life Obstetricians and Gynecologists ("AAPLOG") describes, "[a]bortion . . . is a vague term with a multitude of definitions depending on the context in which it is being used."[4] Elective induced abortions have "the primary intent to end the life of the human being in the womb." *AAPLOG Statement*, *supra* note 2. Elective induced abortions are not medically required. AAPLOG explains, "'[e]lective' . . . refers to inductions done in the absence of some condition of the mother or the fetus which requires separation of the two to protect the life of one or the other (or both)." Rsch. Comm., Am. Ass'n of Pro-Life Obstetricians & Gynecologists, *Concluding Pregnancy Ethically*, Prac. Guideline No. 10, at 5 (2022).

A medically-indicated maternal-fetal separation is different from an elective induced abortion. This may be colloquially known as an "abortion to save the mother's life." As AAPLOG explains, a "medically-indicated maternal-fetal separation" is "[d]one to prevent the mother's death or immediate, irreversible

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[4] *Glossary of Medical Terms for Life-Affirming Medical Professionals*, Am. Ass'n of Pro-Life Obstetricians & Gynecologists 1, 1 (June 2023) https://aaplog.org/wp-content/uploads/2023/06/Glossary-of-Medical-Terms_20230615_7.pdf.

bodily harm, which cannot be mitigated in any other way. Examples include treatment of ectopic pregnancy, previable delivery for early pre-eclampsia with severe features, or previable delivery for other life-threatening conditions in pregnancy." *Glossary of Medical Terms*, *supra* note 4, at 2. However, medical professionals accomplish these procedures with the acknowledgment that they "are treating two patients, the mother and the baby, and every reasonable attempt to save the baby's life would also be a part of [the] medical intervention."[5] In fact, "[t]he procedures themselves are done in a manner to maximize survival of both." Pro. Ethics Comm., Am. Ass'n of Pro-Life Obstetricians & Gynecologists, *Hippocratic Objection to Killing Human Beings in Medical Practice*, Comm. Op. No. 1, at 9 (2017).

Idaho's Defense of Life Act prohibits elective induced abortions, except in cases of rape or incest. Idaho Code § 18-622(1) to (2) (2023). The law recognizes that it does not apply to procedures "necessary to prevent the death of the pregnant woman." *Id.* § 18-622(2)(a)(i). In this circumstance, the law provides for a medically-indicated maternal-fetal separation, in which the doctor considers both the health of the mother and unborn child, "provid[ing] the best opportunity for the unborn child

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[5] *What is AAPLOG's Position on "Abortion to Save the Life of the Mother?"*, Am. Ass'n of Pro-Life Obstetricians & Gynecologists (July 9, 2009), https://aaplog.org/what-is-aaplogs-position-on-abortion-to-save-the-life-of-the-mother/.

to survive" unless it "pose[s] a greater risk of the death of the pregnant woman." *Id*. § 18-622(2)(a)(ii).

This case is not about medically-indicated maternal-fetal separation. Rather, it is about elective induced abortion. The DOJ contends Idaho's law conflicts with EMTALA because "all abortions are banned in Idaho," and women are entitled to "stabilizing" or "emergency abortion[s]" under EMTALA. *United States*, 623 F. Supp. 3d at 1101–1102, 1105. Again, Idaho's law only restricts elective induced abortions. In this regard, Idaho's law is consistent with EMTALA since it does not restrict medically-indicated maternal-fetal separations. *See* 42 U.S.C. § 1395dd(f) (directing non-preemption unless there is a direct conflict between EMTALA and state law). Consequently, the DOJ is seeking to contrive a health exception for emergency room doctors to perform elective induced abortions, which do not consider the unborn child as a second patient, and, in fact, directly intend harm to the child.

Health exceptions are problematic in abortion jurisprudence. "The 'health' definition is a trap door for any legal prohibition or regulation of abortion." Clarke D. Forsythe, *Abuse of Discretion: the Inside Story of* Roe v. Wade 152 (2013). *Roe v. Wade*[6] had a companion case, *Doe v. Bolton*. 410 U.S. 179 (1973), *overruled by Dobbs*, 142 S. Ct. 2228. In *Doe*, the Supreme Court instituted a health exception under which a physician's "medical judgment may be

[6] 410 U.S. 113 (1973), *overruled by Dobbs*, 142 S. Ct. 2228.

exercised in the light of all factors—physical, emotional, psychological, familial, and the woman's age—relevant to the wellbeing of the patient." *Id*. at 192. Virtually any situation could fit *Doe*'s health exception, and federal courts often weaponized it to strike down pro-life laws. Forsythe, *supra*, at 8, 152. Contriving an abortion health exception within EMTALA likewise would be problematic. It would embroil the federal judiciary once again in the abortion debate, with litigation seeking to define the scope of such a health exception. Regardless, this outcome is avoidable since EMTALA says nothing about abortion, and a proper reading of the statute does not support an abortion mandate.

C. An EMTALA Abortion Mandate Does Not Exist Under a Proper Statutory Interpretation.

EMTALA does not mandate "stabilizing" abortions. EMTALA requires "[n]ecessary stabilizing treatment for emergency medical conditions and labor." 42 U.S.C. § 1395dd(b). Nothing in EMTALA's text discusses abortion, let alone requires states to permit the practice. *See* 42 U.S.C. § 1395dd. As the Fifth Circuit noted in *Texas v. Becerra*, "[a] plain reading shows that Congress did not explicitly address whether physicians must provide abortions when they believe it is the necessary 'stabilizing treatment' to assure that 'no material deterioration of the condition is likely to result' of an individual's emergency medical condition." No. 23-10246, at 17 (Jan. 2, 2024) (citing 42 U.S.C. § 1395dd(b)(1), (e)(3)(A)).

In this post-*Roe* world, it is questionable whether elective induced abortions could be "medical treatment" under EMTALA's plain language. "[M]edical treatment is historically subject to police power of the States, not to be superseded unless that was the clear and manifest purpose of Congress." *Id.* at 19 (citations omitted). Idaho has defined the scope of state medical practice to exclude elective induced abortions. Idaho Code § 18-622. Many States agree with Idaho. Besides Idaho, seventeen States prohibit elective abortion at fertilization,[7] and an additional seven States protect human life beginning at six,[8]

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[7] Ala. Code § 26-23H-4 (2019); Ariz. Rev. Stat. § 13-3603 (1977), *permanent injunction partially affirmed by Planned Parenthood Ariz., Inc. v. Brnovich*, 524 P.3d 262 (Ariz. Ct. App. 2022), *argued sub nom Planned Parenthood Ariz., Inc. v. Mayes*, No. CV-23-0005-PR (Ariz. Dec. 12, 2023); Ark. Code Ann. § 5-61-304 (2019); Ind. Code § 16-34-2-1 (2022); Ky. Rev. Stat. Ann. § 311.772 (2019); La. Stat. Ann. § 40:1061 (2022); Miss. Code Ann. § 41-41-45 (2022); Mo. Rev. Stat. § 188.017(2) (2022); N.D. Cent. Code § 12.1-19.1-02 (2023); Okla. Stat. tit. 21 § 861 (1999); S.D. Codified Laws § 22-17-5.1 (2022); Tenn. Code Ann. § 39-15-213 (2023); Tex. Health & Safety Code Ann. § 170A.002 (2022); Utah Code Ann. § 76-7a-201 (2023), *preliminarily enjoined by Planned Parenthood Ass'n of Utah v. Utah*, No. 220903886 (Utah Dist. Ct. July 11, 2022), *argued*, No. 20220696 (Utah Aug. 8, 2023); W. Va. Code § 16-2R-3 (2022); Wis. Stat. § 940.04 (2001), *declared inapplicable to consensual abortions by Kaul v. Urmanski*, No. 2022CV1594 (Wis. Cir. Ct. Dec. 5, 2023), *petition to bypass filed*, No. 2023AP2362 (Wis. Feb. 20, 2024);Wyo. Stat. Ann. § 35-6-123 (2023), *preliminarily enjoined by Johnson v. State*, No. 18853 (Wyo. Dist. Ct. Apr. 17, 2023).

[8] Ga. Code Ann. § 16-12-141 (2020); Iowa Code § 146E.2 (2023), *preliminarily enjoined by Planned Parenthood of the Heartland, Inc. v. Reynolds*, No. EQCE089066 (Iowa Dist. Ct. July 17, 2023), *appeal docketed*, No. 23-1145 (Iowa July 21, 2023); Ohio Rev.

twelve,[9] or fifteen[10] weeks' gestation. Although there is no federal law limiting abortion at a gestational age, federal policy is overwhelmingly pro-life. *Infra* Section II. For their part, *Amici* maintain that elective abortions are not healthcare because they expose women to unnecessary health and safety risks,[11] raise the risk of intimate partner violence,[12] undermine women's equality,[13] and of course, intentionally end the life of a separate, unique, human being.[14]

Code Ann. § 2919.195 (2019), *preliminarily enjoined by Preterm Cleveland v. Yost*, No. A2203203 (Ohio Ct. C.P. Oct. 12, 2022); S.C. Code Ann. § 44-41-630(B) (2023).

[9] Neb. Rev. Stat. § 71-6915 (2023); N.C. Gen. Stat. § 90-21.81B (2023).

[10] Fla. Stat. § 390.0111 (2023). Florida also has a trigger law that limits abortions after six weeks gestation, however, the law has not gone into effect yet. *Id.*

[11] *E.g.*, Rsch. Comm., Am. Ass'n Pro-Life Obstetricians & Gynecologists, *Medication Abortion*, Prac. Guideline No. 8, at 3–4 (2020).

[12] Comm. on Health Care for Underserved Women, Am. Coll. of Obstetricians & Gynecologists, *Reproductive and Sexual Coercion*, Comm. Op. No. 554, at 2 (reaffirmed 2022) ("[T]he prevalence of [intimate partner violence] was nearly three times greater for women seeking an abortion compared with women who were continuing their pregnancies.").

[13] Helen M. Alvaré, *Nearly 50 Years Post*-Roe v. Wade *and Nearing its End; What Is the Evidence that Abortion Advances Women's Health and Equality?*, 34 Regent U. L. Rev. 165, 213 (2022).

[14] *See* Fred de Miranda & Patricia Lee June, *When Human Life Begins*, Am. Coll. of Pediatricians 1, 1–2 https://acpeds.org/assets/imported/3.21.17-When-Human-Life-Begins.pdf (Mar. 2017).

Setting that issue aside, the appropriate canon to apply in this case is *expressio unius*. Under "the interpretive canon, *expressio unius est exclusio alterius*, 'expressing one item of [an] associated group or series excludes another left unmentioned.'" *Chevron U.S.A. Inc. v. Echazabal*, 536 U.S. 73, 80 (2002) (citing *United States v. Vonn*, 535 U.S. 55, 65 (2002)) (alteration in original). This Court has held, "[t]he *expressio unius* canon applies only when 'circumstances support[ ] a sensible inference that the term left out must have been meant to be excluded.'" *Nat'l Lab. Rels. Bd. v. SW Gen., Inc.*, 137 S. Ct. 929, 940 (2017) (citing *Echazabal*, 536 U.S. at 81) (second alteration in original). There are two prominent reasons why the *expressio unius* canon applies to this case.

First, considering the statute as a whole, EMTALA does not direct what type of stabilizing treatment medical professionals provide to patients. The Medicare Act, which includes EMTALA, directs that "[n]othing in this subchapter shall be construed to authorize any Federal officer or employee to exercise any supervision or control over the practice of medicine or the manner in which medical services are provided." 42 U.S.C. § 1395. "Section 1395 underscores the 'congressional policy against the involvement of federal personnel in medical treatment decisions.'" *Texas*, No. 23-10246, at 18 (citations omitted). This provision supports the application of *expressio unius*, since Congress did not authorize federal officers to mandate stabilizing treatments that are unenumerated in EMTALA.

Second, the EMTALA abortion mandate transforms the nature of EMTALA's narrow right to access stabilizing treatment in emergency rooms. EMTALA established "a right unique in the American health care system: a right to medical care without regard to ability to pay." Dame, *supra*, at 4. Congress, however, carefully delineated that this "right [to access healthcare] is limited to stabilizing emergency care in hospital emergency rooms." *Id*. From this limited right, the DOJ is extrapolating a right to access "stabilizing" abortions. *Cf*. *Dobbs*, 142 S. Ct. at 2245 ("[*Roe*] held that the abortion right, which is not mentioned in the Constitution, is part of a right to privacy, which is also not mentioned."). Inferring an abortion right contradicts Congress' intent to narrowly construe EMTALA's right to healthcare access and would have wide-reaching political and social consequences. Thus, the *expressio unius* canon is appropriate because Congress carefully delineated the healthcare right.

The application of the *expressio unius* canon forecloses reading an abortion mandate within EMTALA. In EMTALA, the "associated group" is "stabilizing treatment." *See* 42 U.S.C. § 1395dd(b)(1), (e)(3)(a). As the Fifth Circuit recently noted, "EMTALA does not specify stabilizing treatments in general, except one: delivery of the unborn child and the placenta." *Texas*, No. 23-10246, at 18 (citing 42 U.S.C. § 1395dd(e)(3)(A)). Accordingly, "[t]he inclusion of one stabilizing treatment indicates the others are not mandated," such as "stabilizing"

abortions. *Id*. Thus, under *expressio unius*, EMTALA does not authorize an abortion mandate.

In sum, EMTALA's text and legislative history show Congress has sought to protect both women in labor and unborn children from patient dumping. Here, the DOJ is seeking to contrive protections for elective induced abortion, but a proper statutory interpretation does not support an EMTALA abortion mandate.

II. The Abortion Mandate Subverts Congress' Pro-life Policy Stance.

Congress has demonstrated a consistent commitment to protecting human life in federal policy, particularly the lives of unborn children. Following *Dobbs*, federal law provides no right or legally protected interest in elective abortion. Rather, Congress has manifested a long-standing policy of protecting human life through pro-life statutes. An EMTALA abortion mandate conflicts with federal statutes that set a pro-life policy stance.

A. There is No Federal Right or Legally Protected Interest in Elective Induced Abortion Following *Dobbs*.

There is no federal right or legally protected interest in elective induced abortion, and none existed before *Roe v. Wade* contrived it. *See* 410 U.S. 113. *Roe* was a consequence of abortionists turning to judicial activism to create an abortion "right." The Supreme Court in *Roe* held the "right of privacy, whether it be

founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action . . . or . . . in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." *Id*. at 153. As Justice Alito wrote in *Dobbs*:

> *Roe* . . . was remarkably loose in its treatment of the constitutional text. It held that the abortion right, which is not mentioned in the Constitution, is part of a right to privacy, which is also not mentioned . . . And that privacy right, *Roe* observed, had been found to spring from no fewer than five different constitutional provisions—the First, Fourth, Fifth, Ninth, and Fourteenth Amendments.

Dobbs, 142 S. Ct. at 2245. The *Roe* Court then concocted an arbitrary trimester test for determining the constitutionality of abortion regulations. *Id.* at 2266 (citing Forsythe, *supra*, at 127, 141).

Planned Parenthood of Southeastern Pennsylvania v. Casey subsequently clarified that abortion was a substantive due process right, not a privacy right, and declared that the right to a pre-viability abortion "is the most central principle of *Roe v. Wade*." 505 U.S. 833, 871 (1992), *overruled by Dobbs*, 142 S. Ct. 2228. Justice Alito noted in *Dobbs* that "[t]he *Casey* Court did not defend [*Roe*'s] unfocused analysis and instead grounded its decision solely on the theory that the right to obtain an

abortion is part of the 'liberty' protected by the Fourteenth Amendment's Due Process Clause." *Dobbs*, 142 S. Ct. at 2245.

Dobbs refuted *Roe* and *Casey*'s faulty foundations by holding there is no constitutional right to abortion. The Due Process Clause protects rights guaranteed by the first eight Amendments and, at issue in *Dobbs*, unenumerated fundamental rights. However, for unenumerated fundamental rights, the Court must "ask[] whether the right is 'deeply rooted in [our] history and tradition' and whether it is essential to our Nation's 'scheme of ordered liberty.'" *Id*. at 2246 (citations omitted) (second alteration in original). After analyzing abortion under this test, the Court held "[t]he inescapable conclusion is that a right to abortion is not deeply rooted in the Nation's history and traditions." *Id*. at 2253.

There likewise is no federal statute protecting a right to elective induced abortion.[15] Rather, Congress has repeatedly rebuffed anti-life bills that would concoct legal protections for abortion. *See*, *e.g.*,

[15] The Hyde Amendment, discussed *infra* Section II.B, generally prohibits funds for abortion, but does not apply "in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed," and in cases of rape or incest. Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, div. H, tit. V, §§ 506–507, 136 Stat. 4459, 4908 (2022). Accordingly, the Hyde Amendment is an abortion funding restriction and does not mandate or protect a general right to elective induced abortions.

Women's Health Protection Act of 2023, H.R. 12, 118th Cong. (2023); Women's Health Protection Act of 2021, H.R. 3755, 117th Cong. (2021). Thus, there is no federal statutory basis for devising an administrative abortion mandate within EMTALA.

B. The EMTALA Abortion Mandate Undermines Congress' Pro-life Policy Stance.

Federal policy is overwhelmingly pro-life. A plethora of statutes protect women, unborn children, families, and medical professionals from the harms of abortion violence. Congress maintains a pro-life policy stance, but the EMTALA abortion mandate contravenes that policy.

Many federal statutes highlight the emphasis Congress has placed on protecting women and unborn life from the harms of abortion violence. The Born-Alive Infants Protection Act recognizes that children born alive after attempted abortion are legal persons under federal law and cannot be left to die without medical care. 1 U.S.C. § 8. The Partial-Birth Abortion Ban Act prohibits the horrific abortion method that induces labor just to kill the child when she is partially born. 18 U.S.C. § 1531. In the findings of the Partial-Birth Abortion Ban Act, Congress described the unborn child as "living" and partial-birth abortion as a "gruesome and inhumane procedure." Pub. L. 108-105, § 2(1), 117 Stat. 1201, 1201 (2003). Congress even noted that part of its motivation for banning the procedure stemmed from the belief that the procedure cultivates a "complete disregard for infant human

life." *Id*. § 2(14)(L), 117 Stat. at 1206. Federal law also bars the use of the United States Postal Service to mail or common carriers to interstate ship abortion-inducing drugs, including the chemical abortion regimen of mifepristone and misoprostol. 18 U.S.C. §§ 1461 to 1462. As expressions of public policy, these statutes overwhelmingly manifest Congress' intention to protect human life from abortion.

Over the past half-century, Congress has enacted numerous statutes protecting medical professionals who conscientiously object to taking a human life through abortion, including the Church Amendments, 42 U.S.C. § 300a-7, Coats-Snowe Amendment, 42 U.S.C. § 238n, and Weldon Amendment, *see*, *e.g.*, Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, div. H, tit. V, § 507(d), 236 Stat. 4459, 4908–4909 (2022). There are conscience protections throughout federal law, such as in the Danforth Amendment to Title IX's definition of sex discrimination, 20 U.S.C. § 1688, amendments regulating managed-care providers in the Medicare and Medicaid programs, 42 U.S.C. §§ 1395w-22(j)(3)(B), 1396u-2(b)(3)(B), and Affordable Care Act provisions regarding insurance, 42 U.S.C. § 18023(b)(4).

Congress regularly restricts public funding of elective abortion. The Hyde Amendment has been a cornerstone of every federal health and welfare appropriations bill since Congressman Henry Hyde first proposed it in 1976. *See* Departments of Labor and Health, Education, and Welfare Appropriation

Act, 1977, Pub. L. No. 94-439, tit. II, § 209, 90 Stat. 1418, 1434 (1976). The present version of the Hyde Amendment restricts abortion funding except "in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed" and in cases of rape or incest. Consolidated Appropriations Act, 2023, div. H., tit. V, §§ 506–507, 136 Stat. at 4908. Congress also restricts abortion in other areas. The Dornan Amendment prohibits the District of Columbia from expending public funds for abortion except if the mother's life is at risk or in cases of rape or incest. *Id.* div. E, tit. VIII, § 810, 136 Stat. at 4723. Federal programs often include explicit abortion funding prohibitions, such as Title X, which restricts recipients from using public funds "in programs where abortion is a method of family planning." 42 U.S.C. § 300a-6. Congress has enacted restrictions on federal assistance if those funds promote abortion. For instance, Congress enacted the Biden Amendment—named after President Joe Biden when he was a Senator—to prevent federal funds from supporting biomedical research relating to abortion. 22 U.S.C. § 2151b(f)(3).

These statutes amply demonstrate that federal policy opposes abortion violence. Again, there is no federal right or legally protected interest in elective abortion following the *Dobbs* decision. Rather, federal abortion policy protects infants born alive after a

botched abortion, prohibits gruesome partial-birth abortions, bans the mailing of abortion-inducing drugs, safeguards conscientious objections towards abortion, and restricts the public funding of abortion. Accordingly, federal policy is pro-life. Interpreting an abortion mandate within EMTALA would directly conflict with federal pro-life policy.

III. The EMTALA Abortion Mandate Violates the Major Questions Doctrine and Is Part of a String of Lawless Federal Administrative Actions Devising Abortion Protections.

Especially since the Supreme Court decided *Dobbs*, 142 S. Ct. 2228, federal administrative agencies have engaged in a chain of actions to contrive abortion protections within federal laws, including through the EMTALA abortion mandate. In EMTALA, Congress has not authorized HHS to set a national abortion policy, and, accordingly, the abortion mandate violates the major questions doctrine.

A. The HHS EMTALA Abortion Mandate Violates the Major Questions Doctrine.

The EMTALA abortion mandate emerged as a direct response to the *Dobbs* decision. President Biden issued Executive Order 14,076 ("E.O. 14,076"), indicating "the Federal Government is taking action to protect healthcare service delivery and promote access to critical reproductive healthcare services, including abortion. It remains the policy of my

Administration to support women's right to choose and to protect and defend reproductive rights." 3 C.F.R. 400, 400 (2022). In E.O. 14,076, President Biden contrived a variety of ways to protect abortion throughout federal regulations, including within EMTALA. *See generally id*. at 400–402. Specifically, E.O. 14,076 directed HHS to submit a report:

> identifying steps to ensure that all patients—including pregnant women and those experiencing pregnancy loss, such as miscarriages and ectopic pregnancies—receive the full protections for emergency medical care afforded under the law, including by considering updates to current guidance on obligations specific to emergency conditions and stabilizing care under the Emergency Medical Treatment and Labor Act, 42 U.S.C. 1395dd, and providing data from the Department of Health and Human Services concerning implementation of these efforts.

Id. at 401. HHS subsequently issued the EMTALA abortion mandate.

The EMTALA abortion mandate devised a duty to provide "stabilizing" abortions regardless of state laws that have more robust protections for human life. Ctrs. for Medicare & Medicaid Servs., *Reinforcement of EMTALA Obligations Specific to Patients Who Are Pregnant or Are Experiencing Pregnancy Loss* (Aug. 25, 2022), https://www.cms.gov/files/document/qso-22-22-

hospitals.pdf. Specifically, the guidance contends the physician's duty to provide stabilizing treatment under EMTALA requires the physician to perform an abortion if "abortion is the stabilizing treatment necessary to resolve that condition." *Id.* at 1. "Any state actions against a physician who provides an abortion in order to stabilize an emergency medical condition in a pregnant individual presenting to the hospital would be preempted by the federal EMTALA statute due to the direct conflict with the 'stabilized' provision of the statute." *Id.* at 5–6. The guidance highlighted HHS' enforcement mechanism for the EMTALA abortion mandate. *Id.* at 5. When HHS issued the guidance, HHS Secretary Xavier Becerra simultaneously sent a letter to health care providers to reinforce the guidance's abortion mandate. Letter from Xavier Becerra, Sec'y, U.S. Dep't Health & Hum. Servs. to Health Care Providers (July 11, 2022), https://www.hhs.gov/sites/default/files/emergency-medical-care-letter-to-health-care-providers.pdf.

President Biden issued a subsequent executive order that highlighted the EMTALA abortion mandate as one of the "critical steps to address [*Dobbs*'] effects" which had "eliminat[ed] the right recognized in Roe." Exec. Order No. 14,079, 3 C.F.R. 412, 413 (2022). Recently, the White House recommitted to the EMTALA abortion mandate, announcing "[t]he Administration has long taken the position that the required emergency care can, in some circumstances, include abortion care," and

outlining the steps HHS is taking "[t]o increase awareness of EMTALA."[16]

The Fifth Circuit recently affirmed a permanent injunction against the EMTALA abortion mandate because "the Guidance goes beyond EMTALA by mandating abortion," and HHS failed to conduct notice-and-comment under the Medicare Act, 42 U.S.C. § 1395hh(a)(2). *Texas*, No. 23-10246, at 23–24. Yet, the EMTALA abortion mandate is unlawful for another prevalent reason: it violates the major questions doctrine.

In *Dobbs*, the Supreme Court held there is no federal constitutional right to abortion and returned the abortion issue to the democratic process. 142 S. Ct. at 2242–2243. Under the major questions doctrine, more concisely, HHS must have explicit authority from Congress to regulate abortion because *Dobbs* restored the legislatures' full authority to create abortion policy. The doctrine "refers to an identifiable body of law that has developed over a series of significant cases all addressing a particular and recurring problem: agencies asserting highly consequential power beyond what Congress could reasonably be understood to have granted." *West Virginia v. Env't Prot. Agency*, 142 S. Ct. 2587, 2609

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[16] Press Release, White House, Fact Sheet: White House Task Force on Reproductive Healthcare Access Announces New Actions and Marks the 51st Anniversary of Roe v. Wade (Jan. 22, 2024), https://www.whitehouse.gov/briefing-room/statements-releases/2024/01/22/fact-sheet-white-house-task-force-on-reproductive-healthcare-access-announces-new-actions-and-marks-the-51st-anniversary-of-roe-v-wade/.

(2022). As the Court recognized, "there are 'extraordinary cases' that call for a different approach—cases in which the 'history and the breadth of the authority that [the agency] has asserted,' and the 'economic and political significance' of that assertion, provide a 'reason to hesitate before concluding that Congress' meant to confer such authority." *Id*. at 2608 (citation omitted) (alteration in original).

In *Biden v. Nebraska*, the Supreme Court recently rejected the "Government's reading of the HEROES Act, [under which] the Secretary [of Education] would enjoy virtually unlimited power to rewrite the Education Act," including the cancellation of $430 billion in student loans. 143 S. Ct. 2355, 2373–2374 (2023). Likewise, HHS cannot rewrite EMTALA to manufacture an abortion mandate. And just as the Court "f[oun]d it 'highly unlikely that Congress would leave' to 'agency discretion' the decision of how much coal-based generation there should be over the coming decades" in *West Virginia v. Environmental Protection Agency*,[17] it is equally unlikely that EMTALA authorizes HHS to set a national abortion policy.

Abortion is a heated political topic. As *Dobbs* notes, there has not been "a national settlement of the abortion issue," but, rather, abortion has been a contentious issue over the past half-century after "*Roe* and *Casey* [] enflamed debate and deepened division." 142 S. Ct. at 2243. Congress has not delegated

[17] 142 S. Ct. at 2613 (citation omitted).

authority to HHS to settle the abortion debate. Nonetheless, HHS has tried to institute a national abortion policy under the guise of stabilizing medical care even though EMTALA's text and legislative history, discussed *supra* Section I, do not support an abortion mandate. Thus, the EMTALA abortion mandate violates the major questions doctrine.

B. Federal Administrative Agencies Have Devised Protections for Abortion.

The EMTALA abortion mandate is part of a concerning string of federal administrative actions that have manufactured protections for abortion without Congress' authorization. Most of these actions occurred after this Court issued its decision in *Dobbs*, 142 S. Ct. 2228. Many *Amici* have opposed these actions through letters and administrative comments. These are some examples of the various agencies, regulations, and policies that have contrived abortion protections.

1. HHS finalized a rule that "remov[ed] restrictions on nondirective options counseling and referrals for abortion services and eliminat[ed] requirements for strict physical and financial separation between abortion-related activities and Title X project activities." Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services, 86 Fed. Reg. 56,144, 56,144 (Oct. 7, 2021) (to be codified at 42 C.F.R. pt. 59). Title X, however, contains an explicit abortion funding restriction that "[n]one of the funds

appropriated under this subchapter shall be used in programs where abortion is a method of family planning." 42 U.S.C. § 300a-6. As Members of Congress commented, the rule "defies the law and [] siphon[s] tens of millions of taxpayer dollars in Title X funding towards Planned Parenthood and the abortion industry, to the detriment of American taxpayers, the consciences of health care providers, and the lives of unborn children." Joni K. Ernst et al., Comment Letter on Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services 1 (May 17, 2021), https://www.ernst.senate.gov/imo/media/doc/2021.05.06%20-%20%20Title%20X%20Public%20Comment%20Letter.pdf.

2. HHS proposed a rule that would insert "termination of pregnancy" within "sex discrimination" in the Affordable Care Act's Section 1557's anti-discrimination protections. Nondiscrimination in Health Programs and Activities, 87 Fed. Reg. 47,824, 47,878 (proposed Aug. 4, 2022) (to be codified at 42 C.F.R. pts. 438, 440, 457, 460 and 45 C.F.R. pts. 80, 84, 86, 91, 92, 147, 155, 156). As Members of Congress highlighted, "[t]his proposed rule flagrantly flies in the face of Congressional intent and the underlying text of Section 1557." Roger Marshall et al., Comment Letter on Nondiscrimination in Health Programs and Activities 1 (Oct. 3, 2022), https://eppc.org/wp-content/uploads/2022/10/1557-6-Senate-15-House.pdf. "[U]nder the guise of nondiscrimination in health care, [the proposed rule] discriminates against

unborn children and health care providers who are committed to caring for both of their patients, the pregnant mother and her unborn child." *Id*.

3. The Department of Veterans Affairs ("VA") promulgated an interim final rule permitting abortion counseling and abortions in the medical benefits package and Civilian Health and Medical Program of the Department of Veterans Affairs for the life or health of the mother, or in cases of rape or incest. Reproductive Health Services, 87 Fed. Reg. 55,287, 55,294 (Sept. 9, 2022) (to be codified at 38 C.F.R. pt. 17). This enabled abortion-on-demand, as the VA did not constrain the definition of "health." As the House Committee on Veterans' Affairs' Chairman Mike Bost and Health Subcommittee Chairwoman Mariannette Miller-Meeks wrote, "the health exception is overly broad and subjective," and there is a "continued lack of transparency regarding the interim final rule." Letter to Denis R. McDonough, Sec'y, U.S. Dep't of Veterans Affs. 1 (Sept. 14, 2023), https://veterans.house.gov/uploadedfiles/2023_9_14_mb.mmm_to_secva_re._abortion_data.training_videos.pdf. Although "Congress has historically prohibited taxpayer funded abortions," the Chairman and Chairwoman noted, but "[t]his Administration has used all levers available to undermine that definitive policy pronouncement." *Id*. at 2.

4. The Department of Defense established a policy promoting abortion travel for Service members.[18] As Minority Members of the Senate Committee on Armed Services wrote, "[t]he policies . . . are a blatant attempt to circumvent numerous federal statutes that distance the military from abortion-related decisions." Letter to Lloyd J. Austin III, Sec'y of Def., U.S. Dep't of Def. 2 (Mar. 1, 2023), https://senatorkevincramer.app.box.com/s/frhbvr4u0hiis6cfw7yeenqi8z6o3f5w. Federal law "say[s] nothing about funding travel to receive an elective abortion. Taking such significant liberties with federal law is a grave matter." *Id.*

5. The Equal Employment Opportunity Commission proposed a rule under the Pregnant Workers Fairness Act, 42 U.S.C. § 2000gg-1, directing "a covered entity [must] provide a reasonable accommodation for a known limitation of a qualified employee or applicant related to pregnancy, childbirth, or related medical conditions, absent undue hardship," and then included abortion under "related medical condition." Regulations to Implement the Pregnant Workers Fairness Act, 88 Fed. Reg. 54,714, 54,766–54,767 (proposed Aug. 11, 2023) (to be codified at 29 C.F.R. pt. 1636). Yet, "Congress chose not to include the term 'abortion' or 'abortion services' in the law. . . . Abortion is not a

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[18] Memorandum from Gilbert R. Cisneros, Jr., Under Sec'y of Def., U.S. Dep't of Def., to Senior Pentagon Leadership (Feb. 16, 2023), https://media.defense.gov/2023/Feb/16/2003163307/-1/-1/1/MEMORANDUM-ADMINISTRATIVE-ABSENCE-FOR-NON-COVERED-REPRODUCTIVE-HEALTH-CARE.PDF.

medical condition related to pregnancy; it is the opposite. It terminates the pregnancy, tragically ending the life of an unborn child." Virginia Foxx & Mary E. Miller, Comment Letter on Regulations to Implement the Pregnant Workers Fairness Act 2 (Oct. 10, 2023), https://edworkforce.house.gov/uploadedfiles/comment_letter_on_pwfa_proposed_rule_10-10-23.pdf.

6. The Office of Refugee Resettlement ("ORR"), which is part of HHS' Administration for Children and Families, proposed a rule ensuring elective induced abortion "access" for unaccompanied minors "regardless of whether the Federal Government may pay for the abortion under the Hyde Amendment." Unaccompanied Children Program Foundational Rule, 88 Fed. Reg. 68,908, 68,946 (proposed Oct. 4, 2023) (to be codified at 45 C.F.R. pt. 410). As pro-life Members commented, "the policy is a flagrant violation of the Hyde Amendment," and it "makes taxpayers complicit in facilitating abortions for the minors in the custody of ORR, and it does not act in the best interest of the minors." Christopher H. Smith et al., Comment Letter on Unaccompanied Children Program Foundational Rule 1–2 (Dec. 4, 2023) (on file with author).

Federal administrative agencies have assumed the mantle of the nation's *ex officio* medical board on abortion without authorization from Congress. *See Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 99 (1976) (White, J., concurring in part and dissenting in part), *overruled by Dobbs*, 142 S. Ct.

2228. These devised abortion protections, including the EMTALA abortion mandate, are unlawful under the major questions doctrine and contradict federal laws that show a clear policy preference to support human life and limit the harms of elective induced abortion.

In sum, EMTALA says nothing about abortion but instead safeguards women in active labor as well as unborn children. An abortion mandate contravenes federal pro-life policy, violates the major questions doctrine, and is part of a string of lawless federal administrative actions that have devised protections for abortion.

CONCLUSION

EMTALA does not mandate elective induced abortions in America's emergency rooms. For the reasons set forth above, *Amici* urge the Court to reverse.

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February 27, 2024

APPENDIX

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LIST OF *AMICI CURIAE*

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James Risch (ID)

John Barrasso (WY)	John Hoeven (ND)
Marsha Blackburn (TN)	Cindy Hyde-Smith (MS)
Mike Braun (IN)	John Kennedy (LA)
Ted Budd (NC)	James Lankford (OK)
Bill Cassidy (LA)	Mike Lee (UT)
John Cornyn (TX)	Markwayne Mullin (OK)
Kevin Cramer (ND)	Cynthia Lummis (WY)
Ted Cruz (TX)	Pete Ricketts (NE)
Steve Daines (MT)	Marco Rubio (FL)
Joni Ernst (IA)	John Thune (SD)
Lindsey Graham (SC)	Roger Wicker (MS)
Josh Hawley (MO)	Todd Young (IN)

U.S. House of Representatives

Lead Representatives:

Russ Fulcher (ID–01)

Mike Simpson (ID–02)

Robert B. Aderholt (AL–04)

Mark Alford (MO–04)

Rick W. Allen (GA–12)

Jodey Arrington (TX–19)

Brian Babin (TX–36)

Donald J. Bacon (NE–02)

James R. Baird (IN–04)

Jim Banks (IN–03)

Aaron Bean (FL–04)

Cliff Bentz (OR–02)

Jack Bergman (MI–01)

Andy Biggs (AZ–05)

Gus M. Bilirakis (FL–12)

Mike Bost (IL–12)

Ken Buck (CO–04)

Tim Burchett (TN–02)

Michael Burgess, M.D. (TX–26)

Eric Burlison (MO–07)

Mike Carey (OH–15)

Jerry L. Carl (AL–01)

Buddy Carter (GA–01)

Ben Cline (VA–06)

Andrew S. Clyde (GA–09)

Mike Collins (GA–10)

Dan Crenshaw (TX–02)

John Curtis (UT–03)

Jeff Duncan (SC–03)

Dr. Neal Dunn (FL–02)

Mike Ezell (MS–04)

Randy Feenstra (IA–04)

Brad Finstad (MN–01)

Scott Fitzgerald (WI–05)

Charles Fleischmann (TN–03)

Mike Flood (NE–01)

C. Scott Franklin (FL–18)

Tony Gonzales (TX–23)

Bob Good (VA–05)

Lance Gooden (TX–05)

Paul A. Gosar, D.D.S. (AZ–09)

Garret Graves (LA–06)

Sam Graves (MO–06)

Mark Green, M.D. (TN–07)

Marjorie Taylor Greene (GA–14)

Michael Guest (MS–03)

Harriet M. Hageman (WY)

Andy Harris, M.D. (MD–01)

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Bill Huizenga (MI–04)

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David Kustoff (TN–08)

Nick Langworthy (NY–23)

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Debbie Lesko (AZ–08)

Barry Loudermilk (GA–11)

Tracey Mann (KS–01)

Lisa McClain (MI–09)

Mary Miller (IL–15)

John R. Moolenaar (MI–02)

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