



Debrief of the Supreme Court Oral Argument in *Moyle, Speaker of the Idaho House of Representatives v. United States*

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Introduction

The Supreme Court heard oral argument in *Moyle, Speaker of the Idaho House of Representatives v. United States* on April 24, 2024.¹ The case implicates whether the Emergency Medical Treatment and Active Labor Act (EMTALA)² requires emergency room medical personnel to perform “stabilizing” abortions in certain circumstances.³ Congress passed EMTALA to address patient dumping and protect women in active labor as well as their unborn children. The statute says nothing about abortion. As Idaho opened during oral argument:

When Congress amended the Medicare Act in 1986, it put EMTALA on a centuries’ old foundation of state law. States have always been responsible for licensing doctors and setting the scope of their professional practice. Indeed, EMTALA works precisely because states regulate the practice of medicine. And nothing in EMTALA requires doctors to ignore the scope of their license and offer medical treatments that violate state law.⁴

The Supreme Court is now determining whether EMTALA contains an abortion mandate that preempts pro-life state laws.⁵ The case affects conscience rights, preemption doctrine, and states’ powers to protect human life from abortion violence.

Background of EMTALA, the Abortion Mandate, and Idaho’s Pro-life Law

Congress passed EMTALA to address patient dumping in emergency rooms. “Patient dumping can take many forms. The most common is for economic reasons. It can be carried out by transferring a patient to another hospital, refusing to treat them, or subjecting them to long delays before the patient finally leaves.”⁶ Under EMTALA,

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¹ No. 23-726, U.S. Docket (Apr. 24, 2024). The case is consolidated with *Idaho v. United States*, No. 23-727, U.S. Docket (argued Apr. 24, 2024).

² 42 U.S.C. § 1395dd.

³ Brief for the Respondent at 2, *Moyle*, No. 23-726 (Mar. 21, 2024).

⁴ Transcript of Oral Argument at 4, *Moyle*, No. 23-726 (Apr. 24, 2024).

⁵ Questions Presented at 1, *Moyle*, No. 23-726 (Jan. 5, 2024).

⁶ *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).

hospitals with an emergency department must determine whether an individual who requests service has an emergency medical condition.⁷ If an individual has an emergency medical condition, the hospital must provide stabilizing care or appropriately transfer the individual.⁸ EMTALA does not mention abortion once. Rather, the statute treats—consistent with modern medicine—the unborn child as a second patient and explicitly protects the “unborn child” in four separate provisions.⁹

In June 2022, the Supreme Court reversed *Roe v. Wade*,¹⁰ and held there is no federal constitutional right to abortion.¹¹ The Executive Branch subsequently sought to contrive abortion protections throughout federal law. One instance occurred when the U.S. Department of Health and Human Services (HHS) issued guidance reinterpreting EMTALA.¹² HHS’ guidance states that 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” preempting any contrary state law.¹³ When HHS issued the guidance, HHS Secretary Xavier Becerra simultaneously sent a letter to healthcare providers to reinforce the guidance’s abortion mandate.¹⁴ HHS’ guidance and Secretary Becerra’s letter essentially imposed an abortion mandate upon emergency rooms across America, threatening state sovereignty to protect human life as well as infringing upon medical rights of conscience.

In *Moyle*, the U.S. Department of Justice (DOJ) seeks preemption of Idaho’s Defense of Life Act under this theory of an EMTALA abortion mandate.¹⁵ The Defense of Life Act prohibits elective induced abortions—“those drugs or procedures used with the primary intent to end the life of the human being in the womb”¹⁶—except in cases of rape or incest.¹⁷ The law recognizes that it does not apply to procedures “necessary to prevent the death of the pregnant woman.”¹⁸ Here, 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.¹⁹ Again, Idaho’s law only restricts elective induced abortions. This means the DOJ is asking the Court to devise a health exception in certain circumstances for elective induced abortions. The

⁷ 42 U.S.C. § 1395dd(a).

⁸ *Id.* at § 1395dd(b)(1).

⁹ *Id.* at § 1395dd.

¹⁰ 410 U.S. 113 (1973).

¹¹ *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2242 (2022).

¹² *See Reinforcement of EMTALA Obligations Specific to Patients Who Are Pregnant or Are Experiencing Pregnancy Loss*, CTRS. FOR MEDICARE & MEDICAID SERVS. (Aug. 25, 2022), <https://www.cms.gov/files/document/qso-22-22-hospitals.pdf>.

¹³ *Id.* at 1.

¹⁴ Letter from Xavier Becerra, Sec’y, U.S. Dep’t of 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>.

¹⁵ *See* IDAHO CODE § 18-622 (2023).

¹⁶ *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/>.

¹⁷ IDAHO CODE § 18-622(1) to (2).

¹⁸ *Id.* at § 18-622(2)(a)(i).

¹⁹ *United States v. Idaho*, 623 F. Supp. 3d 1096, 1101–1102, 1105 (D. Idaho 2022).

DOJ's stance is problematic because first, elective induced abortions do not consider the unborn child as a second patient, do not analyze the medical risks to the unborn child, and do not provide medical care to the unborn child to maximize his or her chances of survival when medical professionals must separate the two patients.²⁰ Second, "[t]he 'health' definition is a trap door for any legal prohibition or regulation of abortion,"²¹ enabling abortion-on-demand for virtually any situation under the guise of a health exception, notwithstanding pro-life state laws that protect human life from conception.

Procedural History of the Case

The DOJ filed suit against Idaho in August 2022, alleging preemption of the state's Defense of Life Act under the Supremacy Clause and EMTALA.²² The District Court granted a preliminary injunction, determining that "the Supremacy Clause says state law must yield to federal law when it's impossible to comply with both. And that's all this case is about. . . . [W]hether Idaho's criminal abortion statute conflicts with a small but important corner of federal legislation. It does."²³

A Ninth Circuit motion panel stayed the district court's injunction pending appeal.²⁴ The panel held:

[T]he federal government has sued Idaho claiming that a federal law unrelated to abortion preempts the will of the people of that state, through their elected representatives, to 'protect[] fetal life,' as *Dobbs* described it. Because there is no preemption, the Idaho Legislature is entitled to a stay of the district court's order improperly enjoining its duly enacted statute.²⁵

While the appeal was pending before the Ninth Circuit panel, the *en banc* Ninth Circuit vacated the stay with no explanation.²⁶

The Idaho Legislature, who intervened in litigation to help defend the law, and the State of Idaho separately filed applications in the Supreme Court to stay the preliminary injunction.²⁷ The Supreme Court granted a stay, considered the applications as petitions for a writ of *certiorari*, and then agreed to review the case. The Supreme

²⁰ *But see* IDAHO CODE § 18-622(2)(a)(ii) (ensuring medical care for both the mother and unborn child when separation of the two patients is "necessary to prevent the death of the pregnant woman").

²¹ CLARKE D. FORSYTHE, *ABUSE OF DISCRETION: THE INSIDE STORY OF ROE V. WADE* 152 (2013).

²² Complaint at 15–16, *United States*, 623 F. Supp. 3d 1096 (citing U.S. CONST. art. VI, cl. 2; 42 U.S.C. § 1395dd).

²³ *United States*, 623 F. Supp. 3d at 1102.

²⁴ *United States v. Idaho*, 83 F.4th 1130 (9th Cir. 2023).

²⁵ *Id.* at 1133 (citing *Dobbs*, 142 S. Ct. at 2261) (alteration in original).

²⁶ *United States v. Idaho*, 82 F.4th 1296 (9th Cir. 2023).

²⁷ Application for Stay of the Preliminary Injunction Issued by the United States District Court for the District of Idaho, *Moyle*, No. 23-726 (Nov. 20, 2023); Emergency Application for a Stay Pending Appeal, *Idaho*, No. 23-727 (Nov. 20, 2023).

Court is now determining “whether EMTALA preempts state laws that protect human life and prohibit abortions, like Idaho’s Defense of Life Act.”²⁸

What the Parties Argued Before the Supreme Court

Idaho argued that “EMTALA takes state law practice of medicine standards as it finds them.”²⁹ Idaho relied upon a few arguments. First, “[42 U.S.C.] Section 1395, the Medicare Act’s opening provision, forbids the federal government from controlling the practice of medicine. That’s the role of state regulation.”³⁰ Second, “subdivision (f) in EMTALA codifies a statutory presumption against preemption of state medical regulations.”³¹ Third, “EMTALA’s stabilization provision is limited to available treatments, which depends on the scope of the hospital staff’s medical license. Illegal treatments are not available treatments.”³² Fourth, the Supreme Court has a “presumption against preemption of state regulations,” and, fifth, there is a “need for clear and unambiguous Spending Clause conditions,” which makes “the administration’s reading [] wholly untenable.”³³ According to Idaho, “[t]he administration’s position ultimately is untethered from any limiting principle.”³⁴

The DOJ argued that under EMTALA, “[i]n cases like these, where there is no other way to stabilize the woman’s medical condition and prevent her from deteriorating, EMTALA’s plain text requires that she be offered pregnancy termination as the necessary treatment. And that’s how this law has been understood and applied for decades.”³⁵ In the DOJ’s view, “Idaho’s ban on abortion is enforceable in virtually all of its applications, but in the narrow circumstances involving grave medical emergencies, Idaho cannot criminalize the essential care that EMTALA requires.”³⁶ Accordingly, the DOJ urged the Supreme Court to uphold the district court’s judgment.

Questions the Justices Posed to the Parties

Chief Justice John G. Roberts, Jr.

Chief Justice Roberts asked clarifying questions about the standard of review for when doctors choose to separate the mother and unborn child, questioning, “what happens if a dispute arises with respect to whether or not the doctor was within the confines of Idaho law or wasn’t,” whether “the doctor [is] subjected to review by a medical authority,” and “[e]xactly how is that evaluated?”³⁷ The Chief Justice inquired about conscience protections for religiously affiliated hospitals as well as individual

²⁸ Questions Presented at 1, *Moyle*, No. 23-726. The issue presented is the same in the consolidated case. Questions Presented at 1, *Idaho*, No. 23-727 (Jan. 5, 2024).

²⁹ Transcript of Oral Argument, *supra* note 4, at 127.

³⁰ *Id.* at 4.

³¹ *Id.* at 5 (citing 42 U.S.C. § 1395dd(f)).

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 130.

³⁵ *Id.* at 65.

³⁶ *Id.* at 66–67.

³⁷ *Id.* at 29.

doctors who conscientiously object to performing abortions.³⁸ He clarified that in conscience cases “there [does not need to] be somebody in the emergency room that can provide an abortion.”³⁹ Chief Justice Roberts also generally asked about the consequences for hospitals that do not comply with EMTALA’s provisions.⁴⁰

Justice Clarence Thomas

Justice Thomas’ questions revolved around preemption doctrine and the Spending Clause. Justice Thomas noted that “normally, when we have a preemption case, there’s some relationship between the parties,” and questioned Idaho if it is “engaged in some sort of quasi-contractual relationship” with the federal government.⁴¹ He raised this issue to the DOJ, again describing, “normally, when we have [] a preemption case, it’s a regulated party who is involved in the suit, and they use it as an affirmative defense,” such as in *Wyeth v. Levine*, but “in this case, [the DOJ is] bringing an action against the state, and the state’s not regulated.”⁴² The Justice inquired if the DOJ is “aware of any other Spending Clause legislation that preempts criminal law.”⁴³

Justice Samuel A. Alito, Jr.

Justice Alito asked Idaho about how “the concept of good-faith medical judgment must take into account some objective standards, but it would leave a certain amount of leeway for an individual doctor,” and ultimately depends upon the facts of the individual case.⁴⁴ The Justice questioned the DOJ about the Spending Clause, such as “[h]ow can [it] impose restrictions on what Idaho can criminalize simply because hospitals in Idaho have chosen to participate in Medicare?”⁴⁵ He inquired about the DOJ’s theory of health, and whether it includes mental health, non-immediate serious risks, and temporary “‘impairment to bodily functions’ or ‘serious dysfunction of any bodily organ or part.’”⁴⁶ Justice Alito posed questions to the DOJ about how EMTALA uses the phrase, “unborn child,” and noting “it seems that the plain meaning [of ‘emergency medical condition’ under the statute] is that the hospital must try to eliminate any immediate threat to the child, but performing an abortion is antithetical to that duty.”⁴⁷

Justice Sonia Sotomayor

Justice Sotomayor discussed preemption, indicating, “the problem we’re having right now is that [Idaho is] sort of putting preemption on its head. The whole purpose

³⁸ *Id.* at 87–89.

³⁹ *Id.* at 89.

⁴⁰ *Id.* at 90–91.

⁴¹ *Id.* at 6.

⁴² *Id.* at 68 (citing *Wyeth v. Levine*, 555 U.S. 555 (2009)).

⁴³ *Id.* at 67.

⁴⁴ *Id.* at 31–32.

⁴⁵ *Id.* at 71.

⁴⁶ *Id.* at 74–80 (citing 42 U.S.C. § 1395dd(e)(1)(A)(ii) to (iii)).

⁴⁷ *Id.* at 106.

of preemption is to say that if the state passes a law that violates federal law, the state law is no longer effective.”⁴⁸ The Justice expressed concern that some states do not have a “life of the mother” exception, which Idaho rejected, and then the Justice contended “[s]ome have been debating it at least.”⁴⁹ Justice Sotomayor posed hypotheticals of different medical situations to Idaho, querying whether each example would meet Idaho’s abortion exception.⁵⁰ She delved into the stabilizing treatment required under EMTALA.⁵¹ The Justice asked the DOJ to explain “exactly how [it] define[s] where the daylight exists” between EMTALA and Idaho’s law, and whether death must “be imminent or immediate” under the Idaho Supreme Court’s recent decision.⁵²

Justice Elena Kagan

Justice Kagan discussed federalism and the standard of care under EMTALA, noting “the federal government [is] interfering . . . in a state’s healthcare choices” already through EMTALA.⁵³ In the Justice’s view, EMTALA’s stabilizing requirement is “an objective standard . . . that clearly has reference to accepted medical practice, not just whatever one doctor happens to think.”⁵⁴ Justice Kagan noted “with respect to certain rare but extremely obviously important conditions and circumstances, abortion is the accepted medical standard of care,” and this “appropriate standard of care . . . also has to be about protecting a woman’s health.”⁵⁵ The Justice also asked the DOJ about the consequences of the Spending Clause theories propounded by Idaho and other Justices, and confirmed that the “[Spending Clause] question has never been a part of this case” in the lower courts.⁵⁶

Justice Neil M. Gorsuch

Justice Gorsuch asked Idaho to clarify that state law permits abortions to remove an ectopic pregnancy, death does not need to be imminent in these situations, and the good faith standard controls the doctor’s decision.⁵⁷ The Justice asked Idaho about the “unborn child” language within EMTALA.⁵⁸ He delved into the Spending Clause, asking about the clear statement rule and whether the DOJ’s theory would extend “even if it covers all hospitals in the state and effectively transforms the regulation of medicine into a federal function.”⁵⁹ The Justice discussed EMTALA’s existing enforcement mechanisms, and noted this is “an equitable cause of action. [The DOJ] didn’t cite any

⁴⁸ *Id.* at 14.

⁴⁹ *Id.* at 17.

⁵⁰ *Id.* at 24–27.

⁵¹ *Id.* at 33–36.

⁵² *Id.* at 111–12 (citing *Planned Parenthood Great Nw., Haw., Alaska, Ind., Ky. v. Idaho*, 522 P.3d 1132 (Idaho 2023)).

⁵³ *Id.* at 9–10.

⁵⁴ *Id.* at 10–11.

⁵⁵ *Id.* at 21–22, 37–38.

⁵⁶ *Id.* at 116–17.

⁵⁷ *Id.* at 42–43.

⁵⁸ *Id.* at 43.

⁵⁹ *Id.* at 81–82, 100.

statute to enforce EMTALA. And one of the rules in equity traditionally at least is that you don't get an equitable relief if there's an adequate remedy at law."⁶⁰ The Justice mentioned 42 U.S.C. § 1395, which indicates that "nothing in this subchapter allows a federal officer to exercise any control over the practice of medicine."⁶¹ Justice Gorsuch also had the DOJ clarify that federal law protects hospitals and other entities that conscientiously object to performing abortions.⁶²

Justice Brett M. Kavanaugh

Justice Kavanaugh focused his questions on the differences between what treatment EMTALA requires and what Idaho law permits. He asked Idaho and the DOJ about medical conditions that they had identified in the briefing, whether Idaho's law covered these conditions, and whether EMTALA and Idaho law conflicted over the treatment of any other medical conditions.⁶³ Justice Kavanaugh noted that Congress passed EMTALA to address patient dumping, and asked the DOJ to respond to Idaho's argument "that the law was not designed contextually to deal . . . with abortion or other specific kinds of care."⁶⁴

Justice Amy Coney Barrett

Justice Barrett asked Idaho about the types of situations in which the Idaho law permits an abortion, and what guidance covers these scenarios.⁶⁵ The Justice questioned Idaho over whether there is a conflict between Idaho's law and EMTALA, and if not, then "[w]hy are [the parties] here?"⁶⁶ Justice Barrett posed questions about conscience protections for doctors and hospitals.⁶⁷ She also noted how, in the DOJ's view, "there might be some situations in which EMTALA would require an abortion, but the Hyde amendment wouldn't permit federal funds to be used to pay for it."⁶⁸ Regarding the Spending Clause, Justice Barrett commented that "it does seem odd that through a side agreement between a private entity and the federal government, the private entity can get out of state law."⁶⁹ She asked if Congress, under the DOJ's Spending Clause theory, could prohibit abortions or gender reassignment surgery, which the DOJ affirmed Congress could do.⁷⁰ Justice Barrett noted to the DOJ that "the primary difference between EMTALA and the Idaho statute to be this health, [] that Idaho focuses on the risk of life, but the federal government says that EMTALA . . . it's health and life?"⁷¹

⁶⁰ *Id.* at 83–84.

⁶¹ *Id.* at 99.

⁶² *Id.* at 92.

⁶³ *Id.* at 45–50, 117–19.

⁶⁴ *Id.* at 120.

⁶⁵ *Id.* at 27–29.

⁶⁶ *Id.* at 50–51.

⁶⁷ *Id.* at 54–55.

⁶⁸ *Id.* at 93.

⁶⁹ *Id.* at 96.

⁷⁰ *Id.* at 96–98.

⁷¹ *Id.* at 122.

Justice Ketanji Brown Jackson

Justice Jackson delved into statutory interpretation, finding that EMTALA requires “the provision of stabilizing care for people who are experiencing emergency medical conditions,” and EMTALA’s provisions “displace the prerogatives of hospitals or states or whomever with respect to that fairly narrow slice of the healthcare universe.”⁷² She sees a direct conflict between Idaho’s law—which permits the separation of the mother and child to save the mother’s life—and EMTALA’s stabilization requirement.⁷³ Justice Jackson asked both parties about the requirements under EMTALA and Idaho’s law, and indicated she would apply preemption doctrine to this case.⁷⁴ The Justice said if Congress did not require stabilizing abortions under EMTALA’s ambiguous text, then there should have been “the clear statement that Congress meant for you not to have to provide an abortion pursuant to the mandate of providing stabilizing care.”⁷⁵

What Comes Next

The Supreme Court likely will issue a decision in the early summer. The Justices first face the procedural question whether the DOJ has a cause of action under the Spending Clause to sue a state over its criminal law for allegedly conflicting with EMTALA. Justices Thomas, Alito, and Barrett particularly expressed skepticism over this type of cause of action.

On the merits, the Court faces questions of federalism, preemption, and statutory interpretation. Justices Sotomayor, Kagan, and Jackson indicated they find EMTALA preempts Idaho’s Defense of Life Act in situations in which doctors must perform stabilizing abortions for the mother’s health. Other Justices tried to see if there is a limit to the DOJ’s theory that federal law can control the states’ practice of medicine, and inquired if there is a clear statement that Congress attached an abortion mandate to EMTALA under the Spending Clause.

Chief Justice Roberts as well as Justices Gorsuch and Barrett raised the topic of conscience rights during the oral argument. In response to their questioning, the DOJ affirmed that federal law protects doctors under the Coats-Snowe⁷⁶ and Weldon Amendments,⁷⁷ and extends to hospitals under the Church Amendments.⁷⁸ According to the DOJ, the EMTALA abortion mandate cannot force conscientiously objecting hospitals or doctors to perform “stabilizing” abortions.

⁷² *Id.* at 7–8.

⁷³ *Id.* at 19.

⁷⁴ *Id.* at 55–60, 101.

⁷⁵ *Id.* at 126.

⁷⁶ 42 U.S.C. § 238n.

⁷⁷ *E.g.*, Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, div. H, tit. V, § 507(d), 136 Stat. 4459, 4908–4909 (2022).

⁷⁸ 42 U.S.C. § 300a-7.

In interpreting EMTALA, the Court also will contend with how EMTALA protects the “unborn child” at four distinct points. Justices Alito and Gorsuch raised this language during oral argument, asking about how it squares with the parties’ legal theories.

There were a few points that no party or Justice raised during oral argument but might be pivotal in the decision. First, there is a difference in intent between a medically-indicated maternal-fetal separation and an elective induced abortion. An elective induced abortion directly intends to kill the unborn child. In contrast, a medically-indicated maternal-fetal separation directly is “[d]one to prevent the mother’s death or immediate, irreversible bodily harm, which cannot be mitigated in any other way.”⁷⁹ 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.”⁸⁰ During oral argument, the Justices appeared to assume that all abortions are alike, and did not delve into how the intent in these procedures might be different.

The Justices and parties secondly did not analyze the statute’s title: the Emergency Medical Treatment and *Active Labor* Act. When Congress passed EMTALA, it was concerned about patient dumping of women in active labor, as well as the effects the practice would have upon unborn children.⁸¹ This shows Congress was concerned with the welfare of both patients: the mother and unborn child. EMTALA’s text echoes this concern because it protects the “unborn child” at four separate points in the statute. Unlike the DOJ’s stance, EMTALA does not speak to a broader ability to obtain an elective induced abortion during pregnancy.

Moyle presents important questions about the Spending Clause, preemption, and the statutory interpretation of a law that protects both mothers and unborn children from patient dumping. The decision will impact the enforceability of pro-life state laws, and poses a great opportunity to strengthen conscience rights caselaw in our post-*Roe* America.

⁷⁹ *Glossary of Medical Terms for Life-Affirming Medical Professionals*, AM. ASS’N OF PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS 1, 2 (June 2023) https://aaplog.org/wp-content/uploads/2023/06/Glossary-of-Medical-Terms_20230615_7.pdf.

⁸⁰ *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/>.

⁸¹ Brief *Amici Curiae* of 121 Members of Congress in Support of Petitioners and Reversal at 4–11, *Moyle*, No. 23-726 (Feb. 27, 2024).