Moyle v. United States: Does EMTALA Include an Abortion Mandate?

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On June 27, 2024, the Supreme Court dismissed *Moyle v. United States* as improvidently granted. Accordingly, the Court vacated the stay against the preliminary injunction, which blocks Idaho from fully enforcing its pro-life law.[1] The case presented the issue of whether the Emergency Medical Treatment and Active Labor Act ("EMTALA")[2] requires emergency rooms to perform "stabilizing" abortions in certain circumstances, and thus, preempts pro-life state laws. The Court's decision was fragmented, and although some Justices opined on the merits, the statutory interpretation issue remains open. Yet, litigation will continue in the Idaho case, as well as in a Texas case[3] that challenges the EMTALA abortion mandate.

Background of the EMTALA Abortion Mandate

"This case presents an important and unsettled question of federal statutory law:"[4] does a federal statute that requires emergency rooms to provide stabilizing care to a woman that presents with an emergency medical condition include providing her an abortion? And if so, which emergency medical conditions qualify for receiving an abortion, and which do not?

In 1986, Congress passed EMTALA to prevent patient dumping and ensure public access to emergency services regardless of one's ability to pay.[5] Patient dumping refers to the practice of denying poor or uninsured individuals medical treatment or referring them to other hospitals because of their inability to pay.[6]

For almost four decades, EMTALA has required all medical facilities receiving federal Medicare funds [most hospitals in America] to provide emergency medical treatment to those in need, including uninsured women who are pregnant or going into labor.[7]

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[1] Moyle v. United States, No. 23-726 (U.S. June 27, 2024).
[2] 42 U.S.C. § 1395dd.
[3] Becerra v. Texas, No. 23-1076 (U.S. filed Apr. 1, 2024).
[4] *Moyle*, slip op. at 1 (Alito, J., dissenting).
[5] 42 U.S.C. § 1395dd.
[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).
[7] 42 U.S.C. § 1395dd.

On June 24, 2022, the Supreme Court held in *Dobbs v. Jackson Women's Health Organization* that abortion is not a fundamental right under the Constitution and returned the issue back to the democratic process.[8] Immediately following this decision, the State of Idaho passed the Defense of Life Act, a law which criminalizes performing an abortion except in the cases of saving the mother's life, rape, or incest.[9] Idaho's abortion law furthers the state's legitimate interests in preserving maternal health and safety and protecting unborn life.

Separately, in its own reaction to the *Dobbs* decision, the Biden Administration issued an Executive Order tasking the U.S. Department of Health and Human Services ("HHS") with creating a new Interagency Task Force on Reproductive Healthcare Access to leverage all possible federal means to increase abortion access in the United States.[10] HHS' solution was to reinterpret an abortion mandate within EMTALA. Two weeks after *Dobbs*, on July 11, 2022, the Centers for Medicare and Medicaid Services, a division of HHS, issued new federal guidance to hospitals that receive Medicare funds in a memorandum entitled, "Reinforcement of EMTALA Obligations specific to Patients who are Pregnant or are Experiencing Pregnancy Loss."[11] This memorandum informed healthcare-agency directors across the country that, according to HHS' interpretation of EMTALA: "If a physician believes that a pregnant patient presenting at an emergency department is experiencing an emergency medical condition as defined by EMTALA, and that abortion is the stabilizing treatment necessary to resolve that condition, the physician must provide that treatment."[12] This was not the official HHS position until the agency published this document on July 11, 2022.[13]

Two lawsuits arose from the EMTALA abortion mandate. In one case, *Texas v. Becerra*, on July 14, 2022, the State of Texas and pro-life medical organizations sued the federal government under the Administrative Procedure Act. Specifically, the issue was whether HHS' abortion mandate exceeds its statutory authority, and whether the abortion mandate was procedurally unlawful because HHS failed to comply with notice-and-comment requirements before promulgating a rule. The district court issued a permanent injunction against the EMTALA abortion mandate.[14] In January 2024, a Fifth Circuit panel unanimously affirmed the permanent injunction.[15] HHS filed a petition for a writ of *certiorari* in the Supreme Court on April 1, 2024 on the issue of whether

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[8] 597 U.S. 215, 142 S. Ct. 2228 (2022).
[9] IDAHO CODE § 18-622 (2023).
[10] Protecting Access to Reproductive Healthcare Services, Exec. Order 14,076, 87 Fed. Reg. 42,053 (July 8, 2022).
[11] CTRS. FOR MEDICARE & MEDICAID SERVS., *Reinforcement of EMTALA Obligations Specific to Patients Who Are Pregnant or Are Experiencing Pregnancy Loss (QSO-21-22-Hospitals-UPDATED JULY 2022)* (rev. Aug. 25, 2022), https://www.cms.gov/files/document/qso-22-22-hospitals.pdf.
[12] *Id.* at 1.
[13] *See* Texas v. Becerra, 89 F.4th 529, 540 (5th Cir. 2024) (discussing the substantive change between HHS' prior guidance documents and the EMTALA abortion mandate).
[14] Texas v. Becerra, No. 5:22-cv-185 (N.D. Tex. Jan. 13, 2023).
[15] *Texas*, 89 F.4th 529.

EMTALA preempts state law in the circumstance where abortion is required to stabilize a medical condition that threatens serious harm to the mother's health.[16]

Then, in the present case, on August 2, 2022, the United States sued Idaho over its Defense of Life Act.[17] On August 24, 2022, the Southern District Court of Idaho issued a preliminary injunction against Idaho's law. A Ninth Circuit panel stayed the injunction, and then the Ninth Circuit *en banc* subsequently overturned the stay without explanation. Idaho filed an emergency application in the Supreme Court to stay the preliminary injunction since HHS' abortion mandate posed serious, irreparable harm that necessitated immediate relief. The Supreme Court granted the application, treated it as a petition for a writ of *certiorari,* and granted the petition on the statutory interpretation issue.

The United States argued that EMTALA is in direct conflict with, and thus, preempts Idaho's Defense of Life Act under the Supremacy Clause of the Constitution.[18] Idaho disagreed, arguing that EMTALA does not require federally mandated abortions.[19] Idaho alleged that HHS' EMTALA guidance was the Executive Branch's attempt to limit the *Dobbs* decision. Idaho argued that HHS's EMTALA guidance was an unlawful expansion of EMTALA's requirements on healthcare providers.[20]

AUL filed an *amici* brief in this case on behalf of 121 Members of Congress opposing HHS' EMTALA abortion mandate.[21] Our brief argued that HHS' new interpretation of EMTALA contradicts Congress' original intent in passing EMTALA, which was to prevent patient dumping of women in active labor as well as protect unborn children in emergency medical situations.[22] The Supreme Court heard oral argument on April 24, 2024. The Court announced its decision on June 27, 2024.[23]

Given the controversial nature of abortion and the important federal question raised, it is likely that the EMTALA abortion mandate issue will return to the Supreme Court in the not-too-distant future, whether in *Moyle v. United States* or *Texas v. Becerra*.

Per Curiam Opinion

In a *per curiam* opinion, the Supreme Court dismissed the case as improvidently granted. Accordingly, the Court vacated the stays entered by the Court, which allows the preliminary injunction to go back into effect against Idaho's pro-life law.[24] Litigation will continue in the Ninth Circuit following this decision.

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[16] Petition for a Writ of Certiorari at I, *Becerra*, No. 23-1076.
[17] Complaint, United States v. Idaho, No. 1:22-cv-329 (S.D. Idaho Aug. 2, 2022).
[18] *Id.*
[19] Brief for Petitioner, *Moyle*, No. 23-726.
[20] *Id.*
[21] Brief *Amici Curiae* of 121 Members of Congress in Support of Petitioners and Reversal, *Moyle*, No. 23-726.
[22] *Id.*
[23] *Moyle*, slip op. at 1 (per curiam).
[24] *Id.*

Dismissal of the case was a 5-4 decision, with Chief Justice Roberts, and Justices Sotomayor, Kagan, Kavanaugh, and Barrett voting in favor of dismissal. The Court's decision to vacate the Ninth Circuit's stay was 6-1-2. Justice Gorsuch did not sign on to an opinion indicating his vote, while Justices Alito and Thomas dissented from the decision to vacate the stay. Although the Court's holding is straightforward, the opinion is fragmented, and no majority of Justices could agree on *why* they dismissed the case or vacated the stay.

Justice Kagan's Concurrence

Justice Kagan wrote a concurrence agreeing to dismiss the case as well as indicating her opinion on the merits. Regarding the merits, writing on behalf of Justices Sotomayor and Jackson, she concluded that Idaho's law is too limiting and EMTALA easily preempts it.[25] She did not find that EMTALA's references to protecting unborn children bears any internal inconsistency.[26]Accordingly—here only writing on behalf of Justice Sotomayor and herself—Justice Kagan agreed to dismiss the case as improvidently granted. She concluded Idaho does not deserve a stay of the preliminary injunction placed on Idaho at this stage of the litigation because Idaho's "understanding of EMTALA is not 'likely to succeed on the merits.'"[27]

Briefly applying statutory interpretation to EMTALA, Justice Kagan found that there is a direct conflict between Idaho's law and EMTALA. In her opinion, Idaho's law does not permit "termination of a pregnancy [] needed to prevent serious harms to a woman's health," whereas EMTALA requires just opposite.[28] According to Justice Kagan, EMTALA requires "hospital(s) to offer the treatment necessary to prevent the emergency condition from spiraling downward. And on rare occasions that means providing an abortion." [29] Justice Kagan evidently understood Idaho's law to prohibit medical professionals from finding that a woman needs an abortion unless that woman's death is "imminent." In her opinion, Justice Kagan believed Idaho's law requires medical professionals to let medical complications persist before state law permits an abortion. Under this logic, Idaho's Defense of Life Act might cause women to suffer serious health consequences, which could otherwise be prevented, such as a loss of fertility due to a permanently damaged uterus.[30]

Justice Barrett's Concurrence

Justice Barrett wrote for a three-Justice plurality, including Chief Justice Roberts and Justice Gorsuch. She noted that "because the shape of these cases has substantially shifted since [the Court] granted certiorari," the Court should not rule on the merits of this case at this emergency stage of review.[31] In a thorough examination of the record,

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[25] *Id.* at 2 (Kagan, J., concurring).
[26] *Id.* at 5.
[27] *Id.* at 4 (citing Nken v. Holder, 556 U.S. 418, 434 (2009)).
[28] *Id.* at 2.
[29] *Id.* at 5.
[30] *Id.* at 3.
[31] *Id.* at 1 (Barrett, J., concurring).

Justice Barrett concluded that the parties had not fully settled on, nor had they fully developed, their legal arguments.

First, Idaho revised and redefined its statute in light of an abortion case that reached the Idaho Supreme Court.[32] Whether that court's holding controls in this case is unclear.[33] Second, while the text of Idaho's law and EMTALA seem to conflict on their face, the parties may not be as in conflict they purport to be.[34] Both sides seemed to support the position that abortion is justified in cases of "PPROM [preterm prelabor rupture of membranes], placental abruption, pre-eclampsia, and eclampsia."[35] "Idaho represents that its exception is broader than the United States fears, and the United States represents that EMTALA'S requirement is narrower than Idaho fears."[36] However, it is unclear whether these concessions are official stipulations in this case. And finally, Idaho raised a novel Spending Clause argument challenging the United States' standing to sue: can a statute regulating private parties, which Congress passed under the Spending Clause, preempt a state law?[37]

The Supreme Court granted *certiorari* in this case to stay the preliminary injunction based on Idaho's claim that Idaho would suffer irreparable harm by having to perform elective abortions in violation of both state law and medical conscience protections. According to Justice Barrett, the issues were narrower than they initially appeared, and did not warrant emergency relief. Accordingly, the Court returned the case to the Ninth Circuit for further adjudication on the merits.[38]

Justice Jackson's Partial Concurrence and Partial Dissent

Justice Jackson concurred in the Court's decision to vacate the stay so that the preliminary injunction could remain in place against Idaho's law. The Justice, however, dissented from the dismissal of the case. In Justice Jackson's view, "[t]his Court typically dismisses cases as improvidently granted based on 'circumstances . . . which were not . . . fully apprehended at the time certiorari was granted.'"[39] Accordingly, "[t]his procedural mechanism should be reserved for that end—not turned into a tool for the Court to use to avoid issues that it does not wish to decide."[40] In the Justice's view, "[t]he United States is still hamstrung in its ability to enforce federal law while States pass laws that effectively nullify EMTALA's requirements," and this situation has negative consequences for healthcare providers.[41] She noted other States have similar pro-life laws, and HHS filed a petition for a writ of *certiorari* in the Texas EMTALA

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[32] *Id.* at 3 (citing Planned Parenthood Great Nw. v. State, 171 Idaho 374, 522 P.3d 1132 (2023)).
[33] *See id.*
[34] *Id.* at 5.
[35] *Id.*
[36] *Id.* at 7.
[37] *Id.* at 6.
[38] *Id.* at 1.
[39] *Id.* at 2 (Jackson, J., concurring in part and dissenting in part) (citing The Monrosa v. Carbon Black Exp., Inc., 359 U.S. 180, 183 (1959)) (alterations in original).
[40] *Id.*
[41] *Id.* at 3.

abortion mandate case.[42] Accordingly, "[t]his pre-emption issue is not going away anytime soon and will most certainly return to this Court."[43]

On the merits, Justice Jackson believed "[t]he textual conflict is plain" between Idaho's pro-life law and EMTALA's stabilization requirements.[44] According to Justice Jackson, the threat of prosecution under state law might deter doctors from providing stabilizing care to patients.[45] Since the Supreme Court has already interfered with litigation by hearing this case, it should just decide the issue.[46] "There is simply no good reason not to resolve this conflict now."[47]

Justice Alito's Dissent

Justice Alito dissented from the *per curiam* opinion, joined in full by Justice Thomas, and partially joined by Justice Gorsuch. Specifically, Justice Gorsuch only abstained from Part III of the dissent, which discussed why the Court should retain the stay of the preliminary injunction.

The dissent began by noting that *Dobbs v. Jackson Women's Health Organization* returned the abortion issue to the democratic process, and states, including Idaho, enacted new pro-life laws.[48] However, the federal government reacted to the *Dobbs* decision:

> Shortly before Idaho's law took effect, President Biden instructed members of his administration to find ways to limit *Dobbs*'s reach. In response, Government lawyers hit upon the novel argument that, under EMTALA, all Medicare-funded hospitals—that is, the vast majority of hospitals—*must* perform abortions on request when the 'health' of a pregnant woman is in serious jeopardy.[49]

The dissent rejected the "preemption theory [a]s plainly unsound."[50]

In Part I of the dissent, Justice Alito interpreted the statute. First, EMTALA's text did not show an abortion mandate. "At no point in its elaboration of the screening, stabilization, and transfer requirements does EMTALA mention abortion. Just the opposite is true: EMTALA requires the hospital at every stage to protect an 'unborn child' from harm."[51] The dissent rejected the Government's argument to borrow the Dictionary Act's definition of "individual," which would not protect unborn children, but Justice Alito indicated "[t]hat assertion falls flat in light of EMTALA's express

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[42] *Id.*
[43] *Id.*
[44] *Id.* at 4.
[45] *Id.* at 5.
[46] *Id.* at 6–7.
[47] *Id.* at 7.
[48] *Id.* at 1–2 (Alito, J., dissenting) (citing *Dobbs*, 597 U.S. 215).
[49] *Id.* at 2 (citations omitted) (emphasis in original).
[50] *Id.*
[51] *Id.* at 5.

protection of the unborn child."[52] Likewise, Justice Alito rejected the Government's argument that "'it is for the pregnant woman, not state law, to decide how to proceed' when her health is at risk" because of "a provision stating that an individual may not be treated without consent."[53] However, this "logic is faulty. The right to withhold consent does not necessarily carry with it the right to demand whatever cannot be done without consent."[54]

Second, "[f]or those who find it appropriate to look beyond the statutory text, the context in which EMTALA was enacted reinforces what the text makes clear. Congress designed EMTALA to solve a particular problem—preventing private hospitals from turning away patients who are unable to pay for medical care."[55] Congress passed EMTALA with broad bipartisan support, including from pro-life Members, such as Representative Henry Hyde.[56] During this period, the Hyde Amendment's abortion funding restriction only had one exception, which was for the life of the mother. Accordingly, "the Hyde Amendment thus prohibited federal funds from paying for the health-related abortions that the Government says EMTALA mandates."[57] Moreover, President Reagan had a robust pro-life policy platform, and signed into law both EMTALA and the amendments to EMTALA.[58]

Third, the Government's other sources were not persuasive. The Government identified HHS enforcement decisions, but the dissent noted these decisions are from more than twenty years after EMTALA's enactment and did not help interpret the statute's original meaning."[59] Moreover, five of those HHS enforcement decisions dealt with ectopic pregnancy, but the Idaho law does not ban treatment of this condition, and the remaining decision indicated a hospital discharged a sick pregnant woman without calling for an ambulance to transport her.[60] The Government's other argument inferred an Affordable Care Act provision—which says "[n]othing in this Act shall be construed to relieve any health care provider from providing emergency services as required by State or Federal law, including . . . EMTALA"—contains an abortion mandate.[61] Yet "[t]he inference is totally unwarranted. . . . [The provision] reaffirms the duty of participating hospitals to comply with EMTALA, but it does not expand what the text of EMTALA requires."[62]

Part II of the dissent determined the EMTALA abortion mandate was inconsistent with the Spending Clause. "Because the enforcement of conditions attached to the receipt of federal money depends on a recipient's knowing and voluntary consent, 'the

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[52] *Id*. at 6.
[53] *Id*. at 7 (citations omitted).
[54] *Id*.
[55] *Id*. at 8 (citations omitted).
[56] *Id*.
[57] *Id*. at 8–9.
[58] *Id*. at 9–10.
[59] *Id*. at 10.
[60] *Id*.
[61] *Id*. at 10–11 (citing 42 U.S.C. § 18023(d)) (alterations in original).
[62] *Id*. at 11.

conditions must be set out unambiguously.'"[63] The dissent, however, noted "[t]he statute does not mention abortion, let alone expressly bind hospitals to perform abortions contrary to state law."[64] Moreover, "recipients must be given a 'legitimate choice whether to accept the federal conditions,'" but Idaho never "'agree[d]' to be bound by EMTALA, let alone to surrender its historic power to regulate the practice of medicine or the performance of abortions within its borders."[65] Justice Alito noted, "[t]he potential implications of permitting preemption here are far-reaching."[66]

> Under the Government's view, Congress could apparently pay doctors to perform not only emergency abortions but also third-trimester elective abortions or eugenic abortions. It could condition Medicare funds on hospitals' offering assisted suicide even in the vast majority of States that ban the practice. It could authorize the practice of medicine by any doctor who accepts Medicare payments even if he or she does not meet the State's licensing requirements.[67]

The dissent cited the Medicare Act's provision, which "disclaims any construction that would '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' in a particular State."[68] Likewise, "EMTALA's narrow preemption clause also respects core state powers by providing that the Act 'do[es] not preempt any State or local law requirement, except to the extent that the requirement directly conflicts with a requirement of this section.'"[69]

Part III of the dissent indicated the Court should not vacate the stay of the preliminary injunction. "In order to obtain that injunction, the Government was required to make a strong showing that it was likely to prevail on the merits. And as I have explained, its argument was almost certain to lose."[70] The dissent considered the ongoing conflict, such as in medical scenarios concerning PPROM or mental health. The dissent determined:

> Idaho has always permitted abortions that are necessary to preserve the life of a pregnant woman, but it has not allowed abortions for other non-life-threatening medical conditions. This balance reflects Idaho's judgment about a difficult and important moral question. By requiring Idaho hospitals to strike a different balance, the preliminary injunction thwarts

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[63] *Id.* at 12 (citing Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy, 548 U.S. 291, 296 (2006)).
[64] *Id.*
[65] *Id.* at 12–13 (citations omitted).
[66] *Id.* at 13.
[67] *Id.* at 13–14.
[68] *Id.* at 14 (citing 42 U.S.C. § 1395).
[69] *Id.* (citing 42 U.S.C. § 1395dd(f)) (alteration in original).
[70] *Id.* at 16 (citation omitted).

> the will of the people of Idaho as expressed in law by their elected representatives.[71]

Accordingly, the dissent did not interpret an abortion mandate within EMTALA and voted against dismissal of the case.

Conclusion

The Supreme Court declined to decide the issue of whether EMTALA imposes an abortion mandate upon emergency rooms across America. Three Justices indicated EMTALA extends to abortion, three Justices found an abortion mandate is irreconcilable with EMTALA's protection of unborn children, and the remaining three Justices did not opine on the merits. However, this issue may soon return to the Court. The Supreme Court is sending *Moyle* back to the Ninth Circuit for further litigation. Afterwards, there will be an opportunity for the parties to file renewed petitions for a writ of *certiorari*.

HHS has filed a petition for a writ of *certiorari* in the Texas case, which also presents the issue of whether EMTALA includes an abortion mandate. Notably, the Texas lawsuit has challenged the EMTALA abortion mandate under the APA. Since the Supreme Court overruled *Chevron* deference in *Loper Bright Enterprises v. Raimondo*, now "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires."[72] The *Loper Bright* holding is favorable to the pro-life argument that HHS exceeded its authority in devising an abortion mandate. Some members of the Court showed reluctance to decide the Spending Clause issue in *Moyle*. The administrative law issues in *Becerra v. Texas* present alternate grounds upon which these Justices may rule.

In the meantime, it is essential that states include clear statutory definitions for "abortion" within their pro-life laws. Likewise, state medical boards should continue to issue guidance about the application of state pro-life laws to different medical scenarios. During the district court litigation in *Moyle*, and even at the Supreme Court oral argument, there was disagreement about the limits of Idaho's pro-life law and the extent of EMTALA's purported abortion mandate. States have legitimate interests in the "preservation of prenatal life at all stages of development; the protection of maternal health and safety; . . . [and] the preservation of the integrity of the medical profession."[73] It is important for States to further these interests with robust pro-life laws that defend mothers and unborn children, even in medically complex scenarios.

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[71] *Id*. at 22.
[72] Loper Bright Enters. v. Raimondo, No. 22-451, slip op. at 35 (U.S. June 28, 2024).
[73] *Dobbs*, 142 S. Ct. at 2284 (citations omitted).