

“SCOTUS Has a Chance to Right the Wrong Its EMTALA Ruling Forced,” *Slate*

News

April 24, 2024

In an article for *Slate*, Partner Lindsay Harrison and co-author Dahlia Lithwick discuss Idaho’s near-total abortion ban and the federal Emergency Medical Treatment and Labor Act (EMTALA), which conflict with one another. The article drew the attention of Supreme Court Justice Kagan, who mentioned it during oral argument today.

EMTALA “*requires* that hospitals that participate in Medicare (meaning virtually every private hospital in the country) provide stabilizing care when the health of a patient is in serious jeopardy. As any emergency physician can explain, sometimes an abortion *is* the stabilizing care necessary to protect a patient’s health,” the authors write.

“As a result of that state’s cramped statutory exceptions for emergency abortion care, a woman showing up to an ER in Idaho could be at imminent risk of losing her reproductive organs, and yet a physician could still not be allowed to end her pregnancy to save them, unless or until she is about to die,” the authors add.

In January, the Supreme Court issued a stay allowing Idaho’s law to take effect again, despite the conflict with EMTALA. The article explains how this has dramatically increased the number of women who must be transported by helicopter out of Idaho to receive the stabilizing care required by EMTALA, citing data from St. Luke’s Health System.

Today, during the Supreme Court arguments in this case, Justice Elena Kagan asked about this data, noting “I read recently that the hospital that has the greatest emergency room services in Idaho has just in the few months that this has been in place had to airlift six pregnant women to neighboring states, whereas, in the prior year, they did one the entire year.” If Idaho were right about the law’s limited effects, Justice Kagan asked, “why is this happening?”

The article concludes that the Supreme Court Justices “have an opportunity to undo the harm their earlier ruling has already caused. Their decision will affect the law not just in Idaho but in every state whose laws clash with EMTALA.”

Related Attorneys



Lindsay Harrison

Managing Partner, Washington, DC
lharrison@jenner.com
+1 202 639 6865

Related Capabilities

Reproductive Health Task Force

Related Locations

Washington, DC

© 2026 Jenner & Block LLP. Attorney Advertising. Jenner & Block LLP is an Illinois Limited Liability Partnership including professional corporations. This publication, presentation, or event is not intended to provide legal advice but to provide information on legal matters and/or firm news of interest to our clients and colleagues. Readers or attendees should seek specific legal advice before taking any action with respect to matters mentioned in this publication or at this event. The attorney responsible for this communication is Brent E. Kidwell, Jenner & Block LLP, 353 N. Clark Street, Chicago, IL 60654-3456. Prior results do not guarantee a similar outcome. Jenner & Block London LLP, an affiliate of Jenner & Block LLP, is a limited liability partnership established under the laws of the State of Delaware, USA and is authorised and regulated by the Solicitors Regulation Authority with SRA number 615729. Information regarding the data we collect and the rights you have over your data can be found in our Privacy Notice. For further inquiries, please contact dataprotection@jenner.com.

Stay Informed

