

# Key Takeaways from SCOTUS Arguments in Idaho EMTALA Abortion Cases

## Client Alerts

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The US Supreme Court heard oral arguments on Wednesday in the consolidated cases of *Moyle v. United States*, Case No. 23-726 and *Idaho v. United States*, Case No. 23-727. These cases asked the justices to consider whether the federal Emergency Medical Treatment and Labor Act (EMTALA) conflicts with Idaho’s criminal abortion ban, which applies to all abortions except those “necessary to prevent the death of the pregnant woman” or that follow reported rape or incest. Idaho Code § 18-622.

EMTALA requires all hospitals that accept Medicare funds to provide stabilizing treatment to any individual who the hospital “determines has an emergency medical condition.” 42 U.S.C. § 1355dd. If the hospital lacks the staff or facilities to treat the individual, EMTALA mandates that it transfer the individual to a facility who can provide that care. EMTALA was enacted to guard against the practice of private hospitals “dumping” patients—often those without insurance—on county or state facilities. Violations of EMTALA may result in fines and/or the loss of Medicare funding. The statute has been a powerful bulwark to ensure that all patients receive stabilizing care in emergency situations.

In August of 2022, the United States filed suit against the State of Idaho, arguing that the state’s near-total abortion ban violates the Supremacy Clause because it conflicts with EMTALA’s mandate to stabilize any individual who the hospital “determines has an emergency medical condition.” Under the Supremacy Clause, federal law is the “supreme Law of the Land” and overrides state law where the two conflict. This principle is also known as the preemption doctrine. Idaho’s ban criminalizes all abortions except for those that are “in [a physician’s] good faith medical judgment . . . necessary to prevent the death of the pregnant woman.” Idaho Code § 18-622. The United States argued that this law was directly in conflict with EMTALA because it prohibits a doctor from providing an abortion to stabilize a patient experiencing a medical emergency short of death, even if an abortion is the requisite standard of care. The district court agreed and issued an injunction prohibiting Idaho from “enforcing Idaho Code § 18-622(2)-(3) as applied to medical care required by [EMTALA].” *United States v. Idaho*, 623 F. Supp. 3d 1096, 1117 (D. Idaho 2022). A three-judge panel on the Ninth Circuit reversed the preliminary injunction, the Ninth Circuit voted to grant rehearing, and while rehearing was pending, Idaho sought relief from the Supreme Court.

In the wake of *Dobbs v. Jackson Women's Health Organization*, the June 2022 US Supreme Court decision that overturned *Roe v. Wade*, reports of pregnant women being refused emergency care at hospitals spiked as hospitals operating in states with stringent abortion bans dealt with the uncertainty of whether state or federal law applied in any given case. Complying with EMTALA in a ban state meant risking criminal and civil penalties, and the medical licenses of the providers involved; while conversely, complying with state law meant risking fines from the federal government, or even the hospital's ability to participate in Medicare. In Idaho, the state's near-total abortion ban forced hospitals operating in the state into this impossible dilemma.<sup>[1]</sup>

During Wednesday's argument, the justices appeared to be split on the reach of the federal government's preemption power and whether Idaho's abortion ban was in conflict with EMTALA. While we await a ruling in the case, there are four key takeaways from the argument that businesses navigating the complex patchwork of state and federal laws regulating abortion—and healthcare more broadly—should keep in mind.

- **Ongoing confusion about when the exceptions apply.** There were several points in the argument where the Justices expressed confusion about the role of exceptions in Idaho's abortion ban. Early in Idaho's presentation, Justice Sotomayor provided examples of women who had been denied care for serious medical emergencies, including near-death experiences, because treatment would have required an abortion. Idaho's advocate was non-committal about whether those instances would necessarily fall under the exceptions to Idaho's abortion ban, even going so far as to suggest that the interpretation of what constituted an exception would be up to the prosecutorial discretion of individual prosecutors. Idaho's counsel later backed down from this position, affirming that "good faith medical judgment" was the correct standard to evaluate whether an abortion was appropriate. Later, Justices Kavanaugh and Barrett both questioned whether there was even a conflict between EMTALA's requirement for hospitals to provide stabilizing medical care and Idaho's exception "to prevent the death of the pregnant woman," suggesting they saw the two as coextensive. Regardless of the Court's ultimate conclusion in these cases, these colloquies highlight the lack of clarity surrounding when an abortion can be performed in ban states, the amount of deference owed to medical providers, and the capaciousness of the common exceptions found in state abortion statutes.
- **Questions were raised about how and when the Federal Government can affirmatively raise preemption cases.** Several justices pressed Solicitor General Prelogar on why the United States sued Idaho, given that the state itself is not regulated by EMTALA. Justice Thomas noted that a more traditional preemption suit would involve the regulated party who is unable to comply with both laws bringing an action alleging one is preempted by the other. Although the Solicitor General maintained that such a suit was an appropriate action by the United States to enforce its sovereign interests, these questions indicate that at least some of the Justices believe that questions of preemption should be litigated by the regulated industries—in this case, the hospital in Idaho, and not the United States. This could place a significant onus on private businesses, especially within

the healthcare industry, as they are faced with an increasing patchwork of state-by-state laws that potentially conflict with federal mandates.

- **Two justices suggested that States may be able to avoid preemption through state criminal law.** Although the issue was not briefed, Justices Thomas and Alito both expressed skepticism that the federal government’s Spending Clause power, which gives Congress the authority to require states to meet certain conditions to receive federal funds, could preempt a state criminal law. The Court has never before made this distinction. If such a theory were to gain traction, we could see an increasing number of states turning to criminal law to nullify the applicability of federal law in their states.

We suggest that businesses both inside and outside of the healthcare industry continue to monitor these developments closely. The ruling in *Moyle* and *Idaho* will guide the obligations of healthcare providers and the standard of care for pregnant people in this country. It could also have broader implications beyond the abortion context if the Court’s opinion meaningfully changes the law regarding preemption or Congress’s Spending Clause power.

## Footnotes

[1] Amici in the case highlighted several real-world examples, where practitioners in Idaho believed they could not treat a pregnant patient experiencing a medical crisis, some with preeclampsia, HELLP syndrome, a septic abortion, and in hypovolemic shock due to blood loss. In each of these cases, a fetal heartbeat was detected when the patient presented for emergency treatment, and a physician determined that termination was medically necessary to ensure the health of the patient. See Brief of American College of Obstetricians and Gynecologists et al., as Amici Curiae in Support of Respondent at 14-18; Brief of Idaho Coalition for Safe Healthcare, Inc. in Support of Respondent at 6-14. These terminations were required under EMTALA, but put these practitioners and their hospitals at risk of criminal penalties under Idaho’s abortion ban. Faced with this conflict, hospitals evacuated the women out of state to hospitals that could provide them with abortion care.

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