New American

Written by **Michael Tennant** on January 7, 2024

# Supreme Court to Decide Whether Biden Can Use Federal Emergency-room Law to Override State Abortion Bans

sshepard/iStock/Getty Images Plus

The Supreme Court agreed Friday to hear a case in which the Biden administration is attempting to use a novel interpretation of federal law to preempt state abortion bans.

The court also granted a stay of a lower court's injunction against an Idaho abortion law until such time as the justices issue their decision in the case.

After *Dobbs v. Jackson Women's Health Organization* (2022) rightly returned abortion regulation to the states, the fanatically pro-abortion Biden administration sought every avenue it could to preserve the *status quo ante*. One such approach was to reinterpret the 1986 Emergency Medical Treatment and Active Labor Act (EMTALA), which requires emergency rooms in hospitals that accept Medicare funds to provide "stabilizing care" to all incoming patients regardless of their ability to pay.

Seventeen days after the *Dobbs* decision came down, Health and Human Services (HHS) Secretary Xavier Becerra issued guidance to hospitals declaring that "any state laws or mandates that employ a more restrictive definition of an emergency medical condition [than HHS' definition] are preempted by the EMTALA statute."

"Thus," Becerra explained,

> if a physician believes that a pregnant patient presenting at an emergency department, including certain labor and delivery departments, 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. And when a state law prohibits abortion and does not include an exception for the life and health of the pregnant person — or draws the exception more narrowly than EMTALA's emergency medical condition definition — that state law is preempted.

Using this guidance document — not a properly promulgated regulation, let alone an act of Congress — as its weapon, the Justice Department sued the state of Idaho over its Defense of Life Act, which bans abortions except as necessary to save a pregnant woman's life. The Biden administration argued that Idaho's law as applied to patients covered by EMTALA should be vacated because it did not allow for abortions to preserve the "health of the pregnant person."

In August, U.S. District Judge B. Lynn Winmill accepted the administration's spin on EMTALA and

issued a preliminary injunction against the Defense of Life Act's application to emergency rooms.

Idaho appealed Winmill's order, and a three-judge panel of the 9th U.S. Circuit Court of Appeals unanimously moved to stay the injunction. Before the panel could even issue its opinion in the appeal, the entire court — over four dissents — vacated the stay and granted en banc review of the case, a rare occurrence.

Idaho then appealed to the Supreme Court, which will hear the case in April and issue its decision this summer.

The high court was likely spurred to hear Idaho's appeal by a January 2 decision from a three-judge panel of the 5th U.S. Circuit Court of Appeals unanimously upholding a district court's injunction against the Biden administration's EMTALA gambit in Texas. (Rather than waiting for the feds to take it to court, the Lone Star State went on offense and sued Becerra.) The Supreme Court frequently steps in when lower courts issue conflicting decisions.

In its appeal to the Supreme Court, Idaho argued:

> The United States is wrong that EMTALA requires abortions. Nothing in the statute or the caselaw supports that view — to the contrary, EMTALA treats an unborn child as a *patient*. Indeed, EMTALA expressly demands that the child of a pregnant woman in labor be *delivered*, independently treating emergency medical conditions of an "unborn child" no differently than conditions of a pregnant woman. [Emphasis in original; citations omitted.]

In fact, "EMTALA does not even mention abortion."

Moreover, EMTALA is part of the Medicare Act, which courts have repeatedly ruled does not trump state laws, Idaho contended. "EMTALA ensures that patients are not *denied* treatments that are authorized under state law because of an inability to pay. It does not ensure that patients are offered unauthorized treatments." (Emphasis in original.)

"The United States' position conflicts with the universal agreement of federal courts of appeal that EMTALA does *not* dictate a federal standard of care or displace state medical standards," wrote the state. "The district court's injunction effectively turns EMTALA's protection for the uninsured into a federal super-statute on the issue of abortion, one that strips Idaho of its sovereign interest in protecting innocent, human life and turns emergency rooms into a federal enclave where state standards of care do not apply." (Emphasis in original.)

Of course, had Congress, in decades past, not overstepped its constitutional bounds, EMTALA would not exist to be used as a cudgel against states. EMTALA and the Medicare Act are manifestly unconstitutional, the federal government having been granted no authority over healthcare whatsoever.

Still, given those laws' existence and the courts' previous interpretations of them, the Supreme Court — which still seats all six justices who voted to overturn *Roe v. Wade* — seems likely to tell the Biden administration to stop misusing EMTALA to further its anti-life agenda.

"We are very pleased and encouraged by the Supreme Court's decision today," Idaho Attorney General Raul Labrador said in a statement Friday. "The federal government has been wrong from day one. Federal law does not preempt Idaho's Defense of Life Act. In fact, EMTALA and Idaho's law share the same goal: to save the lives of all women and their unborn children. Today, the Supreme Court's decision is a big step in stopping the administration's lawless overreach."