

US Law Week

Supreme Court Abortion Punt Adds Chaos for Providers and Patients

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- *Northwestern professor examines reinstated Idaho abortion ban*
- *Dismissal adds uncertainty for hospitals and pregnant patients*

The US Supreme Court dismissed a case that should have clarified hospitals' obligation to provide treatment for pregnant patients under the Emergency Medical Treatment and Labor Act. Patients facing medical emergencies in Idaho are once again legally entitled to care guaranteed by EMTALA. But on the ground, across the states, the Supreme Court's failure to resolve the substantive question before it will only add to the chaos and uncertainty facing doctors and pregnant people alike.

Moyle v. US didn't reach the merits of the government's argument—that EMTALA requires hospitals to provide patients with stabilizing care, including abortion, when necessary to protect against serious health consequences.

Where the mandate conflicts with Idaho's abortion ban, which makes a narrower exception only "to prevent the death of the pregnant woman," the federal statute should preempt the state law. A district court found accordingly and entered a preliminary injunction prohibiting enforcement of Idaho's ban under the narrow circumstances covered by EMTALA.

By dismissing the case "as improvidently granted," the Supreme Court allowed the injunction it had initially blocked to be reinstated, avoiding the worst possible outcome for those concerned about the health and lives of pregnant women.

The tumult left intact by the court's non-decision featured prominently in an opinion by Justice Ketanji Brown Jackson, who dissented from the dismissal. "The conflict between state and federal law still exists—in real life," she wrote.

A half-dozen states ban abortion without an exception for health, raising the precise legal question *Moyle* ducked. This preemption issue "is not going away anytime soon," Brown Jackson warned, noting the Fifth Circuit recently affirmed an injunction preventing the application of EMTALA to require stabilizing emergency abortions in Texas. The US has petitioned for certiorari.

Given this unsettled terrain, health-care providers in ban states must contend with a terrible dilemma. An amicus brief submitted on behalf of Idaho doctors noted that “when presented with a pregnant patient in an emergency, they are unsure whether to comply with EMTALA—and risk spending two to five years in prison for providing what the State deems an unnecessary abortion—or comply with Idaho law by delaying stabilizing care or transferring the patient out of state—and risk losing the ability to participate in Medicare, and risk harming the patient or losing their life altogether.”

By these accounts, the threat of criminal liability is pushing providers in ban states to deny medical treatment that is standard, and vital to patient health. Brown Jackson said doctors are being “cowed into not providing abortion care” when such care is required to prevent catastrophic consequences.

Idaho patients have been granted a reprieve while the litigation proceeds. But an ultimate decision by the court vindicating the importance of pregnant women’s health seems doubtful. On top of clues gleaned from oral argument in the case, the fractured opinions in *Moyle* suggest that only Justices Elena Kagan and Sonia Sotomayor share Brown Jackson’s clarity on what EMTALA requires.

For providers that face the prospect of criminal liability in ban states, without a statement from the court as to EMTALA’s primacy, the incentives will thus continue to align in the direction of disallowing care.

Pregnant patients in ban states have already suffered enormously. The ruling in *Moyle* means this suffering will not end.

While stabilizing treatment is critical for anyone who presents with a dire medical emergency, those who will be most harmed by the court’s unwillingness to confirm EMTALA’s function in the abortion space are those who are most vulnerable.

Marginalized people tend to experience medically complex pregnancies and also lack access to adequate primary care. This makes emergency treatment particularly crucial for pregnant people who are, as described by various *Moyle* amici, Black, Indigenous, Latina, disabled, low-income, rural, victims of domestic violence, and especially pregnant patients whose identities span these categories.

Over time, stories of pregnant patients denied stabilizing care may well shape the public’s perceptions of extreme abortion bans while moving judges skeptical of EMTALA’s reach—but at excruciating cost. These stories will tell of agony and loss that’s even more tragic because it’s needless.

The case is *Moyle v. United States*, U.S., 23-726, 2024, Decided 6/27/24.

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