SUPREME COURT
OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

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MIKE MOYLE, SPEAKER OF THE IDAHO)
HOUSE OF REPRESENTATIVES, ET AL.,)
Petitioners,)
v.) No. 23-726
UNITED STATES,)
Respondent.)

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IDAHO,)
Petitioner,)
v.) No. 23-727
UNITED STATES,)
Respondent.)

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3 MIKE MOYLE, SPEAKER OF THE IDAHO)

4 HOUSE OF REPRESENTATIVES, ET AL.,)

5 Petitioners,)

6 v.) No. 23-726

7 UNITED STATES,)

8 Respondent.)

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10 IDAHO,)

11 Petitioner,)

12 v.) No. 23-727

13 UNITED STATES,)

14 Respondent.)

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16 Washington, D.C.

17 Wednesday, April 24, 2024

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19 The above-entitled matter came on for

20 oral argument before the Supreme Court of the

21 United States at 10:03 a.m.

22

23

24

25

1 APPEARANCES:

2 JOSHUA N. TURNER, Chief of Constitutional Litigation

3 and Policy, Boise, Idaho; on behalf of the

4 Petitioners.

5 GEN. ELIZABETH B. PRELOGAR, Solicitor General,

6 Department of Justice, Washington, D.C.; on behalf

7 of the Respondent.

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1 P R O C E E D I N G S

2 (10:03 a.m.)

3 CHIEF JUSTICE ROBERTS: We will hear

4 argument this morning in Case 23-726, Moyle

5 versus United States, and the consolidated case.

6 Mr. Turner.

7 ORAL ARGUMENT OF JOSHUA N. TURNER

8 ON BEHALF OF THE PETITIONERS

9 MR. TURNER: Thank you, Mr. Chief

10 Justice, and may it please the Court:

11 When Congress amended the Medicare Act

12 in 1986, it put EMTALA on a centuries' old

13 foundation of state law. States have always

14 been responsible for licensing doctors and

15 setting the scope of their professional

16 practice. Indeed, EMTALA works precisely

17 because states regulate the practice of

18 medicine. And nothing in EMTALA requires

19 doctors to ignore the scope of their license and

20 offer medical treatments that violate state law.

21 Three statutory provisions make this

22 clear. First, Section 1395, the Medicare Act's

23 opening provision, forbids the federal

24 government from controlling the practice of

25 medicine. That's the role of state regulation.

1 Second, subdivision (f) in EMTALA codifies a
2 statutory presumption against preemption of
3 state medical regulations. And, third, EMTALA's
4 stabilization provision is limited to available
5 treatments, which depends on the scope of the
6 hospital staff's medical license. Illegal
7 treatments are not available treatments.
8 Add in this Court's own presumption
9 against preemption of state regulations, combine
10 that with the need for clear and unambiguous
11 Spending Clause conditions, and the
12 administration's reading becomes wholly
13 untenable.
14 The administration's misreading also
15 lacks any limiting principle. If ER doctors can
16 perform whatever treatment they determine is
17 appropriate, then doctors can ignore not only
18 state abortion laws but also state regulations
19 on opioid use and informed consent requirements.
20 That turns the presumption against preemption on
21 its head and leaves emergency rooms unregulated
22 under state law.
23 It's unsurprising that no court has
24 endorsed such an expansive view of EMTALA, and
25 until Dobbs, nor had HHS. Everyone understands

1 that licensing laws limit medical practice.
2 That's why a nurse isn't available to perform
3 open-heart surgery, no matter the need, no
4 matter her knowledge. The answer doesn't change
5 just because we're talking about abortion.
6 The Court should reject the
7 administration's unlimited reading of EMTALA and
8 reverse the district court's judgment.
9 I welcome the Court's questions.
10 JUSTICE THOMAS: The -- normally, when
11 we have a preemption case, there's some
12 relationship between the parties. Is the state
13 being regulated by the federal government under
14 EMTALA, or is the state in -- engaged in some
15 sort of quasi-contractual relationship?
16 MR. TURNER: Yes, Your Honor. In this
17 case, the state, Idaho, for example, has no
18 state hospitals that participate in -- with the
19 emergency rooms in EMTALA. And so, in this
20 case, there isn't even a quasi-relationship.
21 The parties being regulated by EMTALA here are
22 hospitals and doctors.
23 And I think your question is getting
24 at the Armstrong issue, and we think that is a
25 significant question. It wasn't part of the

1 question presented. We think the Indiana amicus
2 brief raises significant questions and deals
3 with that argument well. But the question
4 presented here is one of direct conflict between
5 Idaho's law and EMTALA, and on that question, we
6 don't think it's hard at all.
7 And, Your Honors, going to that direct
8 conflict, I think, if you consider the express
9 limitation within the statute of availability --
10 JUSTICE JACKSON: Well, before we do
11 that, can I just step back and get your
12 understanding of the statute? You made some
13 representations as to how you see it working.
14 And so let me tell you what I think, and then
15 you can tell me whether you agree, disagree, or
16 otherwise.
17 So I think that there are two things
18 that are plain, pretty plain, on the -- the face
19 of this statute. One is that EMTALA is about
20 the provision of stabilizing care for people who
21 are experiencing emergency medical conditions.
22 That's one thing I think the statute is doing.
23 And I also think that it is operating
24 to displace the prerogatives of hospitals or
25 states or whomever with respect to that fairly

1 narrow slice of the healthcare universe. This
2 idea of emergency medical services is like one
3 very minor part or small part of -- of the sort
4 of overall healthcare -- provision of
5 healthcare.
6 So what that means is that when a
7 hospital wants to only provide stabilizing care
8 in emergencies for people who can pay for it,
9 for example, EMTALA says, no, I'm sorry, you
10 have to stabilize anyone who's experiencing an
11 emergency medical condition, or when a hospital
12 wants to provide stabilizing treatments to
13 people who are experiencing only certain kinds
14 of emergency conditions, EMTALA says, no, here's
15 the list of conditions and you have to provide
16 stabilizing care for those people.
17 Similarly, if a state says, look, it's
18 our job to govern all of healthcare in our state
19 and we say that only certain kinds of healthcare
20 can be given to people who are experiencing
21 emergency medical conditions, we don't want
22 whatever treatment, we want only certain kinds
23 of treatment, EMTALA says, no, we are directing
24 that as a matter of federal law, when someone
25 presents with an emergency condition, they have

1 to be assessed and the hospital must do what is
2 -- ever is in its capacity to stabilize them.
3 Is that your understanding of the
4 statute?
5 MR. TURNER: Partially, Your Honor.
6 We agree that EMTALA does impose a federal
7 stabilization requirement, but the question here
8 is what is the content of that stabilization
9 requirement, and for that, you have to reference
10 state law.
11 JUSTICE JACKSON: Okay. Well --
12 JUSTICE KAGAN: If I could just -- I
13 mean, I think what you just said is important
14 because, when you concede that EMTALA imposes a
15 stabilization requirement, it is, this statute,
16 the federal government interfering, if you will,
17 in a state's healthcare choices.
18 So EMTALA is on its face a statute
19 that says it's not all the state's way. There
20 are federal requirements here. There is a
21 requirement to stabilize emergency patients.
22 And you agree with that?
23 MR. TURNER: Yeah, Justice Kagan, we
24 agree that EMTALA -- EMTALA's purpose was narrow
25 to bridge this gap that existed in some states

1 --

2 JUSTICE KAGAN: Okay. So, I mean --

3 MR. TURNER: -- and the failure to

4 treat.

5 JUSTICE KAGAN: -- we can just take

6 off the table this idea that, you know, just

7 because it's a state and it's healthcare, that

8 the federal government has nothing to say about

9 it. The federal government has plenty to say

10 about it in this statute.

11 Now, you're right, now there's a

12 question of what's the content of this

13 stabilization requirement. And as far as I

14 understood your opening remarks, you say, well,

15 this is left to the states.

16 But, if I'm just looking at the

17 statute, the statute tells you what the content

18 of the stabilization requirement is. It's to

19 provide such medical treatment as may be

20 necessary to assure within reasonable

21 probability that no material deterioration of

22 the condition is likely to occur if the person

23 were transferred or didn't get care.

24 So it tells you very clearly it's an

25 objective standard. It's basically it -- you

1 know, it's a standard that clearly has reference
2 to accepted medical practice, not just whatever
3 one doctor happens to think.
4 But it's here is the content of the
5 standard. You have to stabilize. What does
6 that mean? It means to provide the treatment
7 necessary to assure within reasonable medical
8 probability that no material deterioration
9 occurs.
10 MR. TURNER: Yeah, let me respond in
11 two ways. First, the objective standard that
12 you set forth there in that understanding is
13 contrary to the administration's view. They say
14 it is a totally subjective standard and whatever
15 treatment a doctor determines is appropriate,
16 that's --
17 JUSTICE KAGAN: I think that that's
18 not true. I mean, I think you guys can argue
19 about this yourself. But, as I understand the
20 solicitor general's brief -- and we'll see what
21 the solicitor general says -- but the solicitor
22 general says it's not up to every individual
23 doctor. This is a standard that is objective
24 that incorporates accepted medical standards of
25 care.

1 MR. TURNER: Well, and the more
2 fundamental point is the definition that you
3 quoted of stabilizing care in the operative
4 position -- provision in (b)(1) is also
5 textually explicitly qualified by that which is
6 within the staff and facilities available at a
7 hospital. So then we come --
8 JUSTICE JACKSON: Yes. And that's
9 what --
10 JUSTICE KAGAN: That's quite right.
11 That's quite right. It says within the staff
12 and facilities available at the hospital. And
13 if you just look at that language, I mean, it's
14 absolutely clear that that's not a reference to
15 what state law involves. The staff and
16 facilities available.
17 If you don't have staff available to
18 provide the medical care, then I guess you can't
19 provide the medical care. If you don't have the
20 facilities available to provide the medical
21 care, then you can't provide the medical care.
22 A transfer has to take place for the good of the
23 patient.
24 MR. TURNER: This is a really
25 important --

1 JUSTICE KAGAN: But this is -- this --
2 the availability here, because -- it's the
3 availability of staff and facilities. It's, you
4 know, do you have the right doctors? Do you
5 have enough doctors? Do you have the right
6 facilities? Or is it better for the patient to
7 transfer them to the hospital a few miles away?
8 MR. TURNER: You're exactly right. Do
9 you have the right doctors? How do you answer
10 that question except by reference to state
11 licensing laws?
12 JUSTICE JACKSON: But you absolutely
13 can't do that. I mean, that's sort of the
14 initial point that I was trying to make, which
15 is that the federal mandate is to provide
16 stabilizing care for emergency conditions,
17 regardless of any other directive that the state
18 has or the hospital has that would prevent that
19 care from being provided. That's -- that's the
20 work of the statute.
21 MR. TURNER: Justice Jackson, that's
22 not even HHS's conclusion. In the state
23 operations manual, which they proffered on page
24 36 of their brief, it defines what makes a staff
25 person available under the statute, and they say

1 it has to --

2 JUSTICE SOTOMAYOR: Counsel, I -- I --

3 this whole issue --

4 JUSTICE JACKSON: And does it say that

5 they're not available if state law doesn't --

6 doesn't allow this procedure?

7 MR. TURNER: It says they are

8 available to the extent they are operating

9 within the scope of their medical license. And

10 that is our argument. They want to now draw it

11 far more narrow and look only at physical

12 availability. We agree that's a component, but

13 there's also a legal availability component here

14 too.

15 JUSTICE SOTOMAYOR: Counsel, the

16 problem we're having right now is that you're

17 sort of putting preemption on its head. The

18 whole purpose of preemption is to say that if

19 the state passes a law that violates federal

20 law, the state law is no longer effective.

21 So there is no state licensing law

22 that would permit you -- permit the state to say

23 don't treat diabetics with insulin. Treat them

24 only with pills, Metformin. And a doctor looks

25 at a juvenile diabetic and says, without

1 insulin, they're going to get seriously ill and
2 the likelihood -- and I don't know what that
3 means under Idaho law, we'll get to that shortly
4 -- because, I don't know, this -- we believe
5 this is a better treatment.
6 MR. TURNER: Yeah.
7 JUSTICE SOTOMAYOR: Federal law would
8 say, you can't do that. Medically accepted --
9 objective medically accepted standards of care
10 require the treatment of diabetics with insulin.
11 The medically accepted obligation of doctors
12 when they have women with certain conditions
13 that may not result in death but more than
14 likely will result in very serious medical
15 conditions, including blindness for some, for
16 others, the loss of organs, for some, chronic
17 blood strokes, Idaho is saying, unless the
18 doctor can say in good faith that this person's
19 death is likely, as opposed to serious illness,
20 they can't perform the abortion.
21 So I don't know your argument about
22 state licensing law because this is what this
23 law does. It tells states, your licensing laws
24 can't take out objective medical conditions that
25 could save a person from serious injury or

1 death.

2 MR. TURNER: Yeah, I think there are

3 two crucial responses to your point. Let me

4 begin with the preemption point.

5 Subdivision (f) and Section 1395

6 actually are telling HHS, the federal

7 government, and courts just the opposite, that

8 you don't --

9 JUSTICE SOTOMAYOR: No, it's saying

10 you can't preempt unless there's a direct

11 conflict. If objective medical care requires

12 you to treat women who are -- who present the

13 potential of serious medical complications and

14 the abortion is the only thing that can prevent

15 that, you have to do it.

16 MR. TURNER: No --

17 JUSTICE SOTOMAYOR: Idaho law says the

18 doctor has to determine not that there's merely

19 a serious medical condition but that the person

20 will die.

21 MR. TURNER: Yeah.

22 JUSTICE SOTOMAYOR: That's a huge

23 difference, counsel.

24 MR. TURNER: Your Honor, we agree that

25 the -- there is daylight between how the

1 administration is reading EMTALA and what
2 Idaho's Defense of Life Act permits. We agree
3 that there's a controversy here. But what I'm
4 saying is that --
5 JUSTICE SOTOMAYOR: No, no, no, no,
6 no, there's more than a controversy because what
7 you're saying to us is, if EMTALA doesn't have
8 preemptive force in not just Idaho, it has a
9 saving condition for abortions when it threatens
10 a woman's life.
11 MR. TURNER: Well, when the --
12 JUSTICE SOTOMAYOR: But what you're
13 saying is that no state in the nation -- and
14 there are some right now that don't even have
15 that as an exception to their anti-abortion
16 laws.
17 What you are saying is that there is
18 no federal law on the book that prohibits any
19 state from saying, even if a woman will die, you
20 can't perform an abortion.
21 MR. TURNER: Your Honor, I know of no
22 state that does not include a life-saving
23 exception. But, secondly, the government --
24 JUSTICE SOTOMAYOR: Some have been
25 debating it at least, and if I find one -- but

1 your theory of this case leads to that
2 conclusion.
3 MR. TURNER: I think our point is that
4 EMTALA doesn't address that very --
5 JUSTICE SOTOMAYOR: Does your
6 theory --
7 CHIEF JUSTICE ROBERTS: Could I --
8 could I hear your answer?
9 MR. TURNER: Yeah. In -- the
10 administration's reliance on a standard like
11 best clinical evidence or some national norm, I
12 think that's very fraught because what it really
13 is saying is the text itself doesn't address
14 what stabilizing treatment is required.
15 You go outside the text to
16 professional standards that are floating out
17 there that might change day to day, and that
18 really boils down to a question between a
19 conflict between what the ACOG says and what
20 Idaho law says, and that's not --
21 CHIEF JUSTICE ROBERTS: Thank you.
22 Thank you, counsel.
23 JUSTICE JACKSON: Actually, can I just
24 clarify? Because I'm not sure I understand.
25 You know, sort of looking at this from

1 a broader perspective, it seems to me that
2 EMTALA says you must provide whatever treatment
3 you have the capacity, meaning staff and
4 facilities, to provide to stabilize patients who
5 are experiencing emergency medical conditions.
6 Idaho law seems to say you cannot
7 provide that treatment unless doing so is
8 necessary to prevent a patient's death to the
9 extent the treatment involves abortion.
10 Why is that not a direct conflict?
11 You have "you must" in a certain situation,
12 that's what the federal government is saying,
13 and "you cannot if it involves abortion" says
14 Idaho.
15 MR. TURNER: I think the nurse example
16 really highlights the reason why, because a
17 nurse might be available. The nurse may be --
18 may even think she knows how to, and under the
19 flat must provision in EMTALA, the
20 administration's reading would say call her into
21 action, put her into the operating room, and
22 open the patient up.
23 JUSTICE JACKSON: Right. And --
24 MR. TURNER: But that is not --
25 JUSTICE JACKSON: -- and Idaho --

1 JUSTICE KAGAN: Well, that --
2 JUSTICE JACKSON: -- would say no,
3 that's still a conflict. So, fine, let's say
4 the -- let's say the administration's position
5 is that nurse can do it.
6 Are you suggesting that federal law
7 would not take precedence, would not preempt a
8 state law that says no, she can't?
9 MR. TURNER: Well, whether federal law
10 could do that is a different question than
11 whether EMTALA here does do that. And I think
12 the answer is clear that it doesn't.
13 I mean, it's like the Gonzales v.
14 Oregon, case where the Controlled Substances
15 Act, you know, this Court noted that that was --
16 the provisions there rely upon and -- and assume
17 a medical profession being regulated by state
18 police powers. That's the same with EMTALA.
19 EMTALA is a four-page statute. Congress didn't
20 attempt to address the standards of care for
21 every conceivable medical treatment in --
22 JUSTICE KAGAN: It -- it definitely
23 didn't address the standards of care. It did
24 leave that to the medical community. It said,
25 you know, the -- Congress was not going to

1 address every treatment for every condition, but
2 it said you do what is needed to assure
3 non-deterioration.
4 So I guess the question here is, do
5 you concede that with respect to certain medical
6 conditions, an abortion is the standard of care?
7 MR. TURNER: No, because a standard of
8 care under Idaho -- well, I should say, in
9 Idaho, there is a lifesaving exception for
10 certain abortions, and that is the standard of
11 care. And the standard of care is necessarily
12 set and determined by state --
13 JUSTICE KAGAN: Well, I think you have
14 to concede that with respect to certain medical
15 conditions abortion is the standard of care
16 because your own statute, as interpreted by your
17 own courts, acknowledges that when a condition
18 gets bad enough such that the woman's life is in
19 peril, then the -- the -- the doctors are
20 supposed to give abortions.
21 MR. TURNER: And --
22 JUSTICE KAGAN: And the reason that
23 that's true is that with respect to certain rare
24 but extremely obviously important conditions and
25 circumstances, abortion is the accepted medical

1 standard of care. Isn't that right?
2 MR. TURNER: Yes, and that -- that was
3 my point, that there is a lifesaving exception
4 under Idaho law. Now the question here is --
5 JUSTICE KAGAN: Now -- now the
6 question is, is it also the accepted standard of
7 care when, rather than the woman's life being in
8 peril, the woman's health is in peril?
9 So let's take -- you know, all of
10 these cases are rare, but within these rare
11 cases, there's a significant number where the
12 woman is -- her life is not in peril, but she's
13 going to lose her reproductive organs, she's
14 going to lose the ability to have children in
15 the future, unless an abortion takes place.
16 Now that's the category of cases in
17 which EMTALA says, my gosh, of course, the
18 abortion is necessary to assure that no material
19 deterioration occurs. And yet Idaho says,
20 sorry, no abortion here. And the result is that
21 these patients are now helicoptered out of
22 state.
23 MR. TURNER: Yeah. Your Honor, the --
24 the hypothetical you raise is a very difficult
25 situation, and these situations, I mean, nobody

1 is arguing that they don't raise tough medical
2 questions that implicate deeply theological and
3 moral questions. And Idaho, like 22 other
4 states, and even Congress in EMTALA recognizes
5 that there are two patients to consider in those
6 circumstances. And the two-patient scenario is
7 -- is tough when you have these competing
8 interests.
9 JUSTICE KAGAN: You know, that would
10 be a good response if federal law did not take a
11 position on what you characterize as a tough
12 question, but federal law does take a position
13 on that question. It says that you don't have
14 to wait until the person is on the verge of
15 death. If the woman is going to lose her
16 reproductive organs, that's enough to trigger
17 this duty on the part of the hospital to
18 stabilize the patient. And the way to stabilize
19 patients in these circumstances, all doctors
20 agree.
21 MR. TURNER: And Idaho law does not
22 require that doctors wait until a patient is on
23 the verge of death. There is no imminency
24 requirement. There is no medical certainty
25 requirement. That's --

1 JUSTICE SOTOMAYOR: I'm sorry, answer
2 the following question, and these are
3 hypotheticals that are true.
4 Hold on one second, and you can tell
5 me whether Idaho's exception -- and we still go
6 back to the point that even if Idaho law fully
7 complies with federal law -- you have a pregnant
8 women -- woman who is early into her second
9 trimester at 16 weeks, goes to the ER because
10 she felt a gush of fluid leave her body. She
11 was diagnosed with PPROM. The doctors believe
12 that a medical intervention to terminate her
13 pregnancy is needed to reduce the real medical
14 possibility of experiencing sepsis and
15 uncontrolled hemorrhage from the broken sac.
16 This is a story of a real woman. She
17 was discharged in Florida because the fetus
18 still had fetal tones and the hospital said
19 she's not likely to die, but there are going to
20 be serious medical complications. The doctors
21 there refused to treat her because they couldn't
22 say she would die.
23 She was horrified, went home. The
24 next day, she bled. She passed out. Thankfully
25 taken to the hospital. There, she received an

1 abortion because she was about to die.
2 MR. TURNER: Yeah.
3 JUSTICE SOTOMAYOR: What you are
4 telling us, is that a case in which Idaho, the
5 day before, would have said it's okay to have an
6 abortion?
7 MR. TURNER: Under Idaho's lifesaving
8 exception, a doctor could in good faith -- if
9 the doctor could in good-faith medical judgment
10 determine --
11 JUSTICE SOTOMAYOR: No. I'm asking
12 you. The Florida doctor said, I can't say she's
13 going to die.
14 MR. TURNER: Yeah. And, Your Honor,
15 my point is that --
16 JUSTICE SOTOMAYOR: If your doctor
17 says, I can't, with a medical certainty, say
18 she's going to die, but I do know she's going to
19 bleed to death if we don't have an abortion, but
20 she's not bleeding yet, so I'm not sure.
21 MR. TURNER: The doctor doesn't need
22 to have medical certainty. The Idaho Supreme
23 Court answered that question --
24 JUSTICE SOTOMAYOR: Counsel, answer
25 yes or no. He doesn't have -- he doesn't --

1 cannot say that there's likely death. He can
2 say there is likely to be a very serious medical
3 condition --
4 MR. TURNER: Yeah. Based on --
5 JUSTICE SOTOMAYOR: -- like a
6 hysterectomy.
7 MR. TURNER: Based on the --
8 JUSTICE SOTOMAYOR: Let me go to
9 another one. Imagine a patient who goes to the
10 ER with PPROM 14 weeks. Again, abortion is the
11 excepted. She's up -- she was in and out of the
12 hospital up to 27 weeks. This particular
13 patient, they tried -- had to deliver her baby.
14 The baby died. She had a hysterectomy, and she
15 can no longer have children. All right?
16 You're telling me the doctor there
17 couldn't have done the abortion earlier?
18 MR. TURNER: Again, it goes back to
19 whether a doctor can in good-faith medical
20 judgment make --
21 JUSTICE SOTOMAYOR: That's a lot for
22 the doctor to risk when --
23 MR. TURNER: Well, I think it's
24 protective --
25 JUSTICE SOTOMAYOR: -- when --

1 MR. TURNER: -- of doctor judgment,
2 Your Honor.
3 JUSTICE SOTOMAYOR: -- when Idaho law
4 changed to make the issue whether she's going to
5 die or not or whether she's going to have a
6 serious medical condition. There's a big
7 daylight by your standards, correct?
8 MR. TURNER: It is very case by case.
9 The examples, the prong --
10 JUSTICE SOTOMAYOR: That's the
11 problem, isn't it?
12 JUSTICE BARRETT: Counsel, I'm kind of
13 shocked actually because I thought your own
14 expert had said below that these kinds of cases
15 were covered.
16 MR. TURNER: Yeah.
17 JUSTICE BARRETT: And you're now
18 saying they're not?
19 MR. TURNER: No, I'm not saying that.
20 That's just my point, Your Honor, is that --
21 JUSTICE BARRETT: Well, you're
22 hedging. I mean, Justice Sotomayor is asking
23 you would this be covered or not, and it was my
24 understanding that the legislature's witnesses
25 said that these would be covered.

1 MR. TURNER: Yeah, and those doctors
2 said, if they were exercising their medical
3 judgment, they could in good faith determine
4 that lifesaving care was necessary. And that's
5 my point. This is a subjective standard.
6 JUSTICE BARRETT: But some doctors
7 couldn't, is -- some doctors might reach a
8 contrary conclusion, I think --
9 MR. TURNER: Well --
10 JUSTICE BARRETT: -- is what Justice
11 Sotomayor is asking you. So --
12 MR. TURNER: And -- and let me --
13 JUSTICE BARRETT: -- if they reached
14 -- if they reached the conclusion that the
15 legislature's doctors did, would they be
16 prosecuted under Idaho law?
17 MR. TURNER: No. No. If they -- if
18 they reached the conclusion that the -- Dr.
19 Reynolds, Dr. White did, that these were
20 lifesaving --
21 JUSTICE BARRETT: What if the
22 prosecutor thought differently? What if the
23 prosecutor thought, well, I don't think any
24 good-faith doctor could draw that conclusion,
25 I'm going to put on my expert?

1 MR. TURNER: And that, Your Honor, is
2 the nature of prosecutorial discretion, and it
3 may result in a -- a case that require --
4 JUSTICE BARRETT: Does Idaho put out
5 any kind of guidance? You know, HHS puts out
6 guidance about what's covered by the law and
7 what's not. Does Idaho?
8 MR. TURNER: There are regulations.
9 DAPA has some regulations. But I think the --
10 the guiding star here is the Planned Parenthood
11 v. Wasden case, which is a lengthy, detailed
12 treatment by the Idaho Supreme Court of this
13 law, and it made clear, the court made clear,
14 that there is no medical certainty requirement.
15 You do not have to wait for the mother to be
16 facing death.
17 JUSTICE JACKSON: Counsel, I don't --
18 CHIEF JUSTICE ROBERTS: Thank you,
19 counsel.
20 Is there -- what happens if a dispute
21 arises with respect to whether or not the doctor
22 was within the confines of Idaho law or wasn't?
23 Is the doctor subjected to review by a medical
24 authority? Exactly how is that evaluated?
25 Because it's an obvious concern. If

1 -- if -- if you have an individual exception for
2 a doctor, and we're having a debate about is
3 that covered by your submission that nothing in
4 Idaho law prohibits complying with EMTALA, I
5 mean, who -- who makes the decision whether or
6 not something's within or without?
7 MR. TURNER: So, I mean, I -- I
8 imagine there are two ways the law can be
9 enforced or at least two. The Board of Medicine
10 has licensing oversight over a doctor. And the
11 Idaho Supreme Court made clear that that
12 doctor's medical judgment is not going to be
13 judged based on an objective standard, what a
14 reasonable doctor would do. That's not the
15 standard.
16 The second way would be if a --
17 CHIEF JUSTICE ROBERTS: Well, what --
18 what is the standard?
19 MR. TURNER: The doctor's good-faith
20 medical judgment, which is subjective.
21 CHIEF JUSTICE ROBERTS: And it's not
22 subject to review by any medical board if
23 there's a complaint against the doctor that --
24 MR. TURNER: Yeah.
25 CHIEF JUSTICE ROBERTS: -- his

1 standards don't comply? Let's say he's the only
2 doctor at the particular emergency room, and he
3 has his own particular standard.
4 MR. TURNER: What -- what the Idaho
5 Supreme Court has said is that you may consider
6 another doctor's opinion only on the question of
7 was it a pretextual medical judgment, not a
8 good-faith one.
9 CHIEF JUSTICE ROBERTS: Thank you.
10 Justice Thomas?
11 Justice Alito?
12 JUSTICE ALITO: Well, I would think
13 that the concept of good-faith medical judgment
14 must take into account some objective standards,
15 but it would leave a certain amount of leeway
16 for an individual doctor. That was how I
17 interpreted what the -- what the state supreme
18 court said.
19 Now you have been presented here today
20 with very quick summaries of cases and asked to
21 provide a snap judgment about what would be
22 appropriate in those particular cases, and,
23 honestly, I think you've hardly been given an
24 opportunity to answer some of the hypotheticals.
25 But would you agree with me that if a

1 medical doctor, who is an expert in this field,
2 were asked bang, bang, bang, what would you do
3 in these particular circumstances which I am now
4 going to enumerate, the doctor would say: Wait,
5 I don't -- this is not how I practice medicine.
6 I need to know a lot more about the individual
7 case.
8 Would you agree with that?
9 MR. TURNER: Absolutely. And ACOG
10 has, you know, in the case of PROM, for example,
11 ACOG doesn't just knee-jerk stay an abortion is
12 the standard of care. ACOG itself says that
13 expectant management is oftentimes the
14 appropriate standard of care.
15 And so these are difficult questions
16 that turn on the facts that are on the ground
17 between the doctor as he is assessing them with
18 his medical judgment that he's bringing to bear
19 but is also necessarily constrained by Idaho
20 law. Just like every other area of the practice
21 of medicine, state law confines doctor judgment
22 in some ways.
23 JUSTICE ALITO: Thank you.
24 CHIEF JUSTICE ROBERTS: Justice
25 Sotomayor?

1 JUSTICE SOTOMAYOR: There is a
2 difference between stabilizing a person who
3 presents a serious medical condition requiring
4 stabilization than a person who presents with a
5 condition, quoting Idaho's words, where there is
6 a -- poses a great risk of death to the pregnant
7 woman.
8 You agree there's daylight between the
9 two?
10 MR. TURNER: We agree, and I think
11 this is most --
12 JUSTICE SOTOMAYOR: And so there will
13 be some women who present serious medical
14 condition that the federal law would require to
15 be treated who will not be treated under Idaho
16 law?
17 MR. TURNER: No, I disagree with that.
18 Idaho hospitals are treating these women.
19 They're not treating these women with --
20 JUSTICE SOTOMAYOR: Stop.
21 MR. TURNER: -- abortions necessarily,
22 Your Honor, and that's an important point.
23 JUSTICE SOTOMAYOR: And that's my
24 point. Just answer the point, which is they
25 will present with a serious medical condition

1 that doctors in good faith can't say will
2 present death but will present potential loss of
3 life. Those doctors -- potential loss of an
4 organ or serious medical complications for the
5 woman. They can't perform those abortions?
6 MR. TURNER: Yeah. Your Honor, if
7 that hypothetical exists, and I don't know of
8 a -- a condition that is so certain to result in
9 the loss of an organ but also so certain not to
10 transpire with death. If that condition exists,
11 yes, Idaho law does say that abortions in that
12 case aren't allowed.
13 And I think --
14 JUSTICE SOTOMAYOR: All right.
15 That -- let me stop you there because all of
16 your legal theories rely on us holding that
17 federal law doesn't require -- cannot preempt
18 state law on these issues.
19 And so, when I asked you the question
20 if a state defines likelihood of death more
21 stringently than Idaho does, you would say
22 there's no federal law that would prohibit them
23 from doing that?
24 MR. TURNER: Well, I would say that
25 EMTALA does not contain a standard of --

1 JUSTICE SOTOMAYOR: So there is no --
2 no standard of care.
3 In your briefing, you make the SG's
4 position here, and you almost argue that now,
5 that -- that their position that federal law
6 requires stabilizing treatment and not equal
7 treatment of patients, which was a position you
8 took in your brief, you seem to have backed off
9 from it here, you seem to agree that federal law
10 requires some stabilizing condition, whether or
11 not you provide it to other patients.
12 But I have countless briefs that say
13 that both -- that HHS has filed -- that
14 pre-Dobbs, pre-2009, this is not an
15 unprecedented position, that HHS in countless
16 situations cited hospitals for discharging
17 patients who required an abortion as a
18 stabilizing treatment.
19 Congress discussed that topic in the
20 Affordable Care Act and explicitly said that
21 nothing in the Affordable Care Act shall be
22 construed to relieve any healthcare provider
23 from providing emergency services as required by
24 state or federal law.
25 Medical providers have told us that

1 for decades they have understood both federal
2 law and state law to require abortions as
3 stabilizing conditions for people presenting
4 serious medical risk. Lower courts, there's at
5 least cases of lower courts saying you have to
6 provide abortion.
7 So this is not a post-Dobbs
8 unprecedented position by the government.
9 MR. TURNER: It absolutely is. The --
10 in Footnote 2, the administration cites to two
11 spreadsheets that contain 115,000 rows of
12 enforcement instances. The administration --
13 JUSTICE SOTOMAYOR: Counsel --
14 MR. TURNER: -- has not identified a
15 single instance --
16 JUSTICE SOTOMAYOR: -- counsel,
17 pre-Dobbs, this wasn't much of a question. But
18 there is HHS guidance and there's at least three
19 cases in which it was invoked. The fact that we
20 didn't have to -- that HHS didn't have to do it
21 much before pre-Dobbs doesn't make their
22 position --
23 MR. TURNER: My point is more --
24 JUSTICE SOTOMAYOR: -- unprecedented.
25 MR. TURNER: My point is more

1 fundamental, Your Honor. It's not just that
2 there are few instances. There are no
3 instances. And not just on the issue of
4 abortion. On any instance where HHS has come in
5 and told a hospital: You have to provide a
6 treatment that is contrary to state law. And
7 this isn't just about abortion. Consider
8 opioids.
9 JUSTICE SOTOMAYOR: Oh, now we're back
10 to that. Okay. Thank you.
11 CHIEF JUSTICE ROBERTS: Justice Kagan?
12 JUSTICE KAGAN: Mr. Turner, practicing
13 medicine is hard, but there are standards of
14 care, aren't there?
15 MR. TURNER: Yes, there are.
16 JUSTICE KAGAN: And one of those
17 standards of care with respect to abortion is
18 that in certain tragic circumstances, as you
19 yourself, as your own state's law acknowledges,
20 where a woman's life is in peril and abortion is
21 the appropriate standard of care, isn't that
22 right?
23 MR. TURNER: That's right.
24 JUSTICE KAGAN: And EMTALA goes
25 further. It says that the appropriate standard

1 of care can't only be about protecting a woman's
2 life. It also has to be about protecting a
3 woman's health. That's what EMTALA says,
4 doesn't it?
5 MR. TURNER: No, it doesn't. It
6 defines emergency medical condition with a
7 broader set of triggering conditions, but the --
8 the key question here is what is the
9 stabilization requirement, and that is qualified
10 by the availability term.
11 JUSTICE KAGAN: The -- the
12 stabilization requirement is -- is written in
13 terms of making sure that a transfer would not
14 result in a material deterioration as to the
15 emergency condition. Nothing about has to be at
16 death's door, right?
17 MR. TURNER: I think that's right,
18 yeah.
19 JUSTICE KAGAN: And there is a
20 standard of care with respect to that on
21 abortions too, right? If a woman is going to
22 lose her reproductive organs unless she has an
23 abortion, which happens in certain tragic
24 circumstances, a doctor is supposed to provide
25 an abortion, isn't that right?

1 MR. TURNER: EMTALA doesn't contain
2 any standard of care. I don't know where the
3 administration is drawing --
4 JUSTICE KAGAN: Do you -- do you
5 dispute that there's a medical standard of care
6 that when a woman is about to lose her
7 reproductive organs unless she has an abortion,
8 that -- that doctors would not say that an
9 abortion is the appropriate standard of care in
10 that situation?
11 MR. TURNER: Your Honor, what I
12 dispute is that there's a national uniform
13 standard of care that requires a top-down
14 approach in all states. Idaho has set its own
15 standard of care, and it has drawn the line on a
16 difficult question.
17 And it's inconceivable to me to think
18 that Congress attempted to answer this very
19 fraught complicated question in a four-page --
20 in four pages of the U.S. Code. It did not --
21 JUSTICE KAGAN: Congress said as to
22 any condition in the world, if an emergency
23 patient comes in, you're supposed to provide the
24 emergency care that will ensure that that
25 patient does not see a material deterioration in

1 their health.
2 MR. TURNER: And always within the --
3 JUSTICE KAGAN: That's what Congress
4 said. And the abortion exceptionalism here is
5 on the part of the state saying we're going to
6 accept that with respect to every other
7 condition but not with respect to abortion --
8 MR. TURNER: Abortion isn't
9 exceptional.
10 JUSTICE KAGAN: -- where we will not
11 comply with the standard of care that doctors
12 have accepted.
13 MR. TURNER: Your Honor, abortion
14 isn't exceptional. There are numerous cases
15 where states intervene and say the standard of
16 care in this circumstance for this condition is
17 X, not Y. Opioids, for example.
18 In New Jersey, a doctor cannot
19 stabilize chronic pain with more than a five-day
20 supply of opioids. In Pennsylvania, it can be
21 seven. In other states, there is no limit.
22 Their reading of EMTALA requires that those
23 limitations get wiped out and you impose a
24 national standard.
25 There are numerous other instances

1 where states are coming in and saying, in our
2 state, the practice of medicine must conform to
3 this standard. And Idaho has done that with
4 abortion. It's done it with opioids. It's done
5 it with marijuana use. There are countless
6 examples, Your Honor.
7 JUSTICE KAGAN: And your theory --
8 although the Supreme Court has narrowed the
9 reach of your statute, your theory would apply
10 even if it hadn't? I mean, it would apply to
11 ectopic pregnancies. It would apply even if
12 there were not a death exception.
13 I mean, all of your theory would apply
14 no matter what, really, Idaho did, wouldn't it?
15 MR. TURNER: If -- yeah, I think the
16 answer is EMTALA doesn't speak to that, but
17 there are other background principles and
18 limitations like rationale basis review, Justice
19 Rehnquist, the Chief Justice recognized --
20 JUSTICE KAGAN: But your theory of
21 EMTALA is that EMTALA preempts none of it? That
22 a state tomorrow could say even if death is
23 around the corner, a state tomorrow could say
24 even if there's an ectopic pregnancy, that still
25 that's a -- that's a -- a choice of the state

1 and EMTALA has nothing to say about that?

2 MR. TURNER: Yeah. And that

3 understanding is a humble one with respect to

4 the federalism rule of states. It's the primary

5 care providers for their citizens, not the

6 federal government.

7 JUSTICE KAGAN: It may be too humble

8 for women's health, you know? Okay. Thank you.

9 CHIEF JUSTICE ROBERTS: Justice

10 Gorsuch?

11 JUSTICE GORSUCH: I just wanted to

12 understand some of your responses or efforts to

13 respond to some of the questions that we've

14 heard today.

15 As I read your briefs, you thought --

16 Idaho thinks that in cases of molar and ectopic

17 pregnancies, for example, that -- that an

18 abortion is acceptable.

19 MR. TURNER: Correct, Your Honor.

20 JUSTICE GORSUCH: And the example of

21 someone who isn't immediately going to die but

22 may at some point in the future, that that would

23 be acceptable?

24 MR. TURNER: It goes back to the

25 good-faith medical standard, but, yes, if the

1 doctor should determine -- cannot determine in
2 good faith that death is going to afflict that
3 woman, then no --
4 JUSTICE GORSUCH: So it doesn't matter
5 whether it happens tomorrow or next week or a
6 month from now?
7 MR. TURNER: There is no imminency
8 requirement. This whole notion of delayed care
9 is just not consistent with the Idaho Supreme
10 Court's reading of the statute and what the
11 statute says.
12 JUSTICE GORSUCH: And the good faith,
13 as I read the Idaho Supreme Court opinion, that
14 -- that controls? That's the end of it?
15 MR. TURNER: Absolutely, it is.
16 JUSTICE GORSUCH: All right. And then
17 what do we do with EMTALA's definition of
18 "individual" to include both the woman and, as
19 the statute says, the unborn child?
20 MR. TURNER: Yeah. It's -- you know,
21 we're not saying, Your Honor, that EMTALA
22 prohibits abortions. So, for example, in
23 California, stabilizing treatment may involve
24 abortions consistent with what that state law
25 allows its doctors to perform.

1 But I think our point with the unborn
2 child amendment in 1989 is that it would be a
3 very strange thing for Congress to expressly
4 amend EMTALA to require care for unborn
5 children, and it's not just when the child --
6 when the mother is experiencing active labor.
7 The definition of "emergency medical condition"
8 requires care when the child itself has an
9 emergency medical condition regardless of what's
10 going on with the mother.
11 And so it would be a strange thing for
12 Congress to have regard for the unborn child and
13 yet also be mandating termination of unborn
14 children.
15 JUSTICE GORSUCH: Thank you.
16 CHIEF JUSTICE ROBERTS: Justice
17 Kavanaugh?
18 JUSTICE KAVANAUGH: I just want to
19 focus on the actual dispute as it exists now,
20 today, between the government's view of EMTALA
21 and Idaho law, because Idaho law has changed
22 since the time of the district court's
23 injunction both with the Idaho Supreme Court and
24 with a clarifying change by the Idaho
25 legislature.

1 You say in your reply brief, and so
2 too the -- the Moyle reply brief says, that for
3 each of the conditions identified by the
4 Solicitor General where, under their view of
5 EMTALA, an abortion must be available, you say
6 in the reply brief that Idaho law, in fact,
7 allows an abortion in each of those
8 circumstances, and you go through them on pages
9 8 and 9 of the reply brief, each of the
10 conditions.
11 Is there any condition that you're
12 aware of where the Solicitor General says EMTALA
13 requires that an abortion be available in an
14 emergency circumstance where Idaho law, as
15 currently stated, does not?
16 MR. TURNER: So, certainly, the
17 administration maintains that there is such
18 conditions. The ones they identify in the
19 affidavits --
20 JUSTICE KAVANAUGH: What is your --
21 what is your view?
22 MR. TURNER: And my view is that
23 yes -- and I'm going to reference Footnote 5
24 from the gray brief -- the mental health
25 condition situation. The administration says

1 that's not on the table. That's not a scenario
2 where abortion is the only stabilizing care
3 required. And I'm not sure where that construct
4 of only stabilizing care comes from because,
5 under their view, it's the doctor's
6 determination that controls, not this imposed
7 only requirement.
8 But be that as it may, the American
9 Psychiatric Association -- and so I'm taking
10 General Prelogar up on her offer in Footnote 5
11 that there are no professional organizations
12 that set abortion as a standard of care.
13 The American Psychiatric Association,
14 in a 2023 position paper, says that abortions
15 are imperative for mental health conditions.
16 That sounds like a necessity to me. And I don't
17 know how, if a woman presents at seven months
18 pregnant in an Idaho emergency room and says,
19 I'm experiencing severe depression from this
20 pregnancy, I'm having suicidal ideation from
21 carrying this pregnancy forth, that that
22 wouldn't under the administration's reading be
23 the only stabilizing care.
24 JUSTICE KAVANAUGH: So you think the
25 Ninth Circuit panel, when it said every

1 circumstance described by the administration's
2 declarations involved life-threatening
3 circumstances under which Idaho law would allow
4 an abortion, is what the Ninth Circuit panel
5 said?
6 MR. TURNER: We agree with that
7 because the conditions identified in the
8 affidavits were all conditions that would fit
9 under the lifesaving exception, and that's
10 telling because, you know, these doctors, when
11 put under oath in an affidavit, couldn't come up
12 with any of these harrowing circumstances. They
13 identified other ones.
14 But I think what the government
15 doesn't want to talk about, again, is the mental
16 health exception here. That is -- I just don't
17 know how you can read their understanding of --
18 JUSTICE KAVANAUGH: Well, I'm just
19 trying to figure out is there really a -- other
20 than the mental health, which we haven't had a
21 lot of briefing about, is there any other
22 condition identified by the Solicitor General
23 where you think Idaho law would not allow a
24 physician in his or her good-faith judgment to
25 perform an emergency abortion?

1 MR. TURNER: Not in their affidavits.
2 They maintain nonetheless that when you compare
3 the definition of what an emergency medical
4 condition is, it is broader than the definition
5 of the lifesaving exception in Idaho law. And
6 so they present this --
7 JUSTICE KAVANAUGH: Well, that's what
8 they -- they say, but then, when we get down to
9 the actual conditions that are listed, the
10 examples -- and Justice Sotomayor was going
11 through some of those -- you have said in your
12 brief at least that each of the conditions
13 identified by the government, actually, Idaho
14 law allows an emergency abortion.
15 MR. TURNER: And I agree, and I think
16 the injunction here is also --
17 JUSTICE KAVANAUGH: Well, what's --
18 what does that mean for what we're deciding
19 here?
20 MR. TURNER: Well, what it means for
21 Idaho --
22 JUSTICE KAVANAUGH: If Idaho -- if
23 Idaho law allows an abortion in each of the
24 emergency circumstances that is identified by
25 the government as EMTALA mandating that it be

1 allowed?

2 MR. TURNER: I'll say two things. I

3 mean, the real practical first response is that

4 Idaho's under an injunction that includes an

5 incredibly broad requirement that preempts state

6 law --

7 JUSTICE KAVANAUGH: Right. I -- I

8 understand that. And that may mean that there

9 shouldn't be an injunction. I take your point

10 on that. What's your second?

11 MR. TURNER: My second point, Your

12 Honor, is I don't know how this Court can make

13 the determination on whether there are any

14 real-world conditions without first answering

15 the statutory interpretation question of what

16 EMTALA's stabilization requirement actually

17 requires. That has to be addressed, and it has

18 to be addressed not only because that's for the

19 direct --

20 JUSTICE KAVANAUGH: Well, I was just

21 picking up on your reply brief. You're the one

22 who said it in your reply brief --

23 MR. TURNER: Yeah.

24 JUSTICE KAVANAUGH: -- that there's

25 actually no -- no real daylight here in terms of

1 the conditions. So I'm just picking up on what
2 you all -- you all said.
3 MR. TURNER: Yeah. I understand, Your
4 Honor.
5 JUSTICE KAVANAUGH: Thank you.
6 CHIEF JUSTICE ROBERTS: Justice
7 Barrett?
8 JUSTICE BARRETT: I guess I don't
9 really understand why we have to address the
10 stabilizing condition if what you say is that
11 nobody has been able to identify a conflict.
12 And on the mental health thing, the SG
13 says -- I just picked it up to check Footnote
14 5 -- "Idaho badly errs in asserting that
15 construing EMTALA according to its terms would
16 turn emergency rooms into federal abortion
17 enclaves by allowing pregnancy termination for
18 mental health concerns."
19 So, if that's the only space that you
20 can identify where Idaho would preclude an
21 abortion and EMTALA would require one, and the
22 government is saying no, that's not so, what's
23 the conflict?
24 MR. TURNER: Well, Your Honor, I mean,
25 of course, we think we win whether you find no

1 factual conflict and, therefore, the injunction
2 had to go away.
3 JUSTICE BARRETT: But why? Why are
4 you here? I mean, you know, the government says
5 -- you say --
6 MR. TURNER: Well, they sued us, Your
7 Honor.
8 JUSTICE BARRETT: Well, hold on a
9 second. You're here because there's an
10 injunction precluding you from enforcing your
11 law. And if your law can fully operate because
12 EMTALA doesn't curb Idaho's authority to enforce
13 its law, what's --
14 MR. TURNER: Well, it can't under the
15 injunction because the injunction says that
16 Idaho's law is preempted in an incredibly broad
17 range of circumstances to avoid --
18 JUSTICE BARRETT: As -- as it
19 conflicts with EMTALA, I thought.
20 MR. TURNER: It -- it -- it is much
21 broader than that. It -- and this was based on
22 the proffered injunction by the administration
23 to avoid an emergency medical condition, not in
24 the face of an emergency medical condition.
25 So what that means is Idaho's law

1 can't even operate when a doctor determines that
2 a condition might need to be avoided that hasn't
3 yet presented itself. That's far broader than
4 the emergency medical condition and
5 stabilization requirement under EMTALA because
6 the stabilization requirement under EMTALA is
7 only triggered when there has been a
8 determination that --
9 JUSTICE BARRETT: Okay. Well, I -- I
10 would like to hear the Solicitor General's
11 response to that.
12 But let me just ask you one other
13 thing about the mental health consideration
14 because I can -- I can understand Idaho's point
15 that a mental health exception would be far
16 broader than Idaho law and had the potential to
17 expand the availability of abortion far beyond
18 what Idaho law permits.
19 But the stabilization requirement only
20 exists up until transfer, right, until transfer
21 is possible? So it's hard for me to see how,
22 with a mental health condition, that couldn't be
23 stabilized before needing to transfer, right?
24 At that point, the Idaho hospital
25 could say: Well, you're -- you're stable,

1 you're not immediately going to be suicidal,
2 we'll leave you in the care of, you know, a
3 parent or a partner who will then seek
4 appropriate treatment.
5 MR. TURNER: Well, that flexible view
6 of stabilization is very different than the
7 government's very rigid view of stabilization,
8 which is, if an emergency medical condition
9 calls for an abortion, it's got to be provided
10 right there and then if it's available in this
11 very limited sense. And so the stabilization
12 continuum that you're talking about, I agree,
13 that's built into EMTALA because --
14 JUSTICE BARRETT: The statute says
15 until transfer is possible.
16 MR. TURNER: Well, the -- the transfer
17 provision kicks in if a hospital is unable to
18 stabilize a condition. And so, if a patient
19 presents at a hospital and that hospital has the
20 capability, the availability to stabilize the
21 condition, in the case of mental health, I
22 invite General Prelogar to come up here and tell
23 you that I've got it all wrong and that, you
24 know, the mother that I described would not need
25 to receive stabilization in that circumstance

1 and instead would be transferred to a
2 psychiatric hospital or something and that
3 wouldn't constitute dumping under their reading.
4 I just don't see how that comports
5 with everything they've said about the rigid
6 view of stabilization that if a condition calls
7 for it and a hospital can do it, it's got to be
8 done there and then.
9 JUSTICE BARRETT: Does Idaho have any
10 kind of conscience exemption for doctors under
11 state law?
12 MR. TURNER: It does. And there are
13 federal conscience protections as well. And I
14 think that is a key point here, Your Honor.
15 The administration told this Court in
16 the FDA case that individual doctors are never
17 required to perform an abortion from what I
18 could tell, but that doesn't extend to
19 hospitals. And so, in the case of Catholic
20 hospitals, and there are hundreds of them
21 treating millions of patients every year, under
22 the administration's reading, Catholic hospitals
23 who faithfully adhere to the ethical and
24 religious directives are now required to perform
25 abortions.

1 JUSTICE BARRETT: Is that because no
2 federal conscience exemption applies?
3 MR. TURNER: I don't know why they say
4 that's the line that they draw between
5 individual doctors and religious institutions
6 because Coats-Snowe on its face seems to cover
7 both.
8 JUSTICE BARRETT: Okay. Thank you.
9 CHIEF JUSTICE ROBERTS: Justice
10 Jackson?
11 JUSTICE JACKSON: I'm really surprised
12 to hear you say that Idaho law permits
13 everything that the federal law requires. So I
14 just -- I'm trying to understand that because it
15 seems to me that if that's the case, then why
16 couldn't emergency room physicians in Idaho just
17 ignore Idaho law and follow the federal
18 standard?
19 I mean, if -- if -- if the state is
20 doing exactly what the -- what the federal law
21 says is required, if it's okay by Idaho, then,
22 fine, we set Idaho aside. We do what the
23 federal law says and we all go home.
24 MR. TURNER: Well, I mean, our
25 reading, of course, is that there is no

1 conflict. And so as doctors aren't having to
2 make this choice of do I follow EMTALA or do I
3 follow --
4 JUSTICE JACKSON: So your
5 representation on the -- on behalf of Idaho is
6 that if a -- an emergency room physician in
7 Idaho follows EMTALA in terms of when an
8 abortion is required to stabilize a patient,
9 they will be complying with Idaho law such that
10 there's going to be no prosecution and no
11 problem?
12 MR. TURNER: Yes, because they have to
13 comply with Idaho law to comply with EMTALA.
14 JUSTICE JACKSON: No, no. I'm asking
15 you, if they -- if they comply with EMTALA, will
16 they necessarily have satisfied the requirements
17 of Idaho law? Because that's what you seemed to
18 say in response to Justice Kavanaugh and in
19 response to Justice Barrett. So I just want to
20 make clear if that's the position of the State.
21 MR. TURNER: EMTALA -- the scope of
22 EMTALA's stabilization requirement is
23 necessarily determined by Idaho law in this
24 case. So --
25 JUSTICE JACKSON: No. You're saying,

1 if they follow Idaho law, then they will be
2 following EMTALA law.
3 MR. TURNER: Well, I --
4 JUSTICE JACKSON: I'd like for you to
5 -- I'd like for you to --
6 MR. TURNER: -- I think it's both,
7 Your Honor.
8 JUSTICE JACKSON: No, it's not. I'd
9 like for you to entertain the other possibility.
10 You seem to be saying every situation in which
11 the United States says here's a stabilization
12 situation that the United States would say the
13 person has to have an abortion, the physicians
14 would say we're following EMTALA and abortion is
15 required, I thought you said in response to
16 Justice Kavanaugh, yes, Idaho law would also say
17 that's a situation in which an abortion is
18 allowed.
19 If that's the case, then it seems to
20 me there is no daylight, there's no conflict, as
21 you've said, but it's because Idaho law is in
22 full compliance with what the federal law is
23 saying. We're getting it wrong, you're saying.
24 Like this death thing, that's not what we really
25 mean. What we mean is whenever it's necessary

1 to stabilize a patient who is experiencing
2 deterioration, as federal law requires.
3 MR. TURNER: No. I -- I -- I think I
4 understand the point that you're making. And
5 the best way that I can think of it, Your Honor,
6 is that EMTALA's stabilization requirement
7 requires medical judgment to determine what is
8 the appropriate stabilizing treatment, right?
9 And how does a doctor exercise medical
10 judgment? Well, his training, his experience,
11 perhaps reference to professional standards of
12 care that are national, but --
13 JUSTICE JACKSON: How about -- how
14 about --
15 MR. TURNER: -- necessarily state law
16 standards as well.
17 JUSTICE JACKSON: -- how about --
18 that's not just something you're sort of coming
19 up with. I mean, as Justice Kagan said at the
20 beginning, EMTALA tells the doctor how he's
21 supposed to decide it in this particular
22 circumstance with reference to the medical
23 standards of care concerning when a patient is
24 deteriorating in an emergency condition
25 situation.

1 MR. TURNER: Yeah, EMTALA --
2 JUSTICE JACKSON: So, if that's the
3 standard in EMTALA, are you representing that
4 that is exactly what Idaho is saying so that all
5 the doctors need to do is follow EMTALA and
6 they'll be fine under Idaho law?
7 MR. TURNER: Well, of course, we're
8 saying that Idaho doctors need to comply with
9 EMTALA. The question is how do doctors comply
10 with EMTALA, and EMTALA --
11 JUSTICE JACKSON: Let me ask you
12 another question. Let me -- I -- I think I
13 understand your point. You're saying Idaho is
14 actually -- could actually be requiring more and
15 the federal law has to make them do what Idaho
16 says.
17 MR. TURNER: Well, and it's important
18 that --
19 JUSTICE JACKSON: Yeah.
20 MR. TURNER: -- EMTALA itself, it
21 codifies this presumption of a backdrop of state
22 law. There are background principles here, and
23 that's what --
24 JUSTICE JACKSON: All right. Let me
25 explore that with you for just a second.

1 I -- I had thought that this case was
2 about preemption and that the entirety of our
3 preemption jurisprudence is the notion that the
4 federal government in certain circumstances can
5 make policy pronouncements that differ from what
6 the state may want or what anybody else may
7 want, and the Supremacy Clause says that what
8 the federal government says takes precedent.
9 So you've been saying over and over
10 again Idaho is, you know, a state and we have
11 healthcare policy choices and we've made --
12 we've set a standard of care in this situation.
13 All that's true. But the question is
14 to what extent can the federal government say:
15 No, in this situation, our standard is going to
16 apply?
17 MR. TURNER: And --
18 JUSTICE JACKSON: That's what the
19 government is saying, and I don't understand
20 how, consistent with our preemption
21 jurisprudence, you can be saying otherwise.
22 MR. TURNER: Yeah, if I can put a
23 finer point on it. I don't think it's -- the
24 question is necessarily what can Congress do but
25 what did Congress do here with EMTALA, and --

1 JUSTICE JACKSON: All right. So what
2 did it do here?
3 MR. TURNER: Yeah. It started, it
4 opened the Medicare Act by saying the federal
5 government shall not control the practice of
6 medicine. And then, in EMTALA itself, it says
7 state laws are not preempted. And then, when it
8 -- and then, when you get to --
9 JUSTICE JACKSON: State laws are not
10 preempted to the extent --
11 MR. TURNER: Of a direct --
12 JUSTICE JACKSON: -- or are only
13 preempted to the extent they --
14 MR. TURNER: -- of a direct conflict.
15 JUSTICE JACKSON: -- of a direct
16 conflict. And so now we are -- we are
17 identifying a direct conflict. So why --
18 MR. TURNER: Well --
19 JUSTICE JACKSON: -- is preemption not
20 working there?
21 MR. TURNER: And -- and whether
22 there's a direct conflict based on this Court's
23 longstanding precedent includes clear statement
24 canons that -- we think we win on the text. Let
25 me be very clear. The text to us is very clear,

1 it's an easy question. But the government's got
2 to come -- overcome a lot of other hurdles, one
3 being --
4 JUSTICE JACKSON: I hear you saying
5 two things, that we're -- there's not a direct
6 conflict because everything we -- the federal
7 government requires, we allow, which the amici,
8 Physicians For Human Rights, who have looked at
9 Idaho's law and says it prevents a lot of things
10 in circumstances in which the federal government
11 would require them, they disagree with you on
12 the facts, but, anyway, you say no conflict
13 because we actually are doing exactly what -- or
14 allowing exactly what the federal government
15 allows.
16 And you say no conflict because the
17 federal government in this situation wanted the
18 states to be able to set the standards. And I
19 guess I don't understand how that's even
20 conceivable, given this standard, given this
21 statute --
22 MR. TURNER: Yeah.
23 JUSTICE JACKSON: -- that is coming in
24 to displace state prerogatives.
25 MR. TURNER: And if I can't convince

1 you on the second, let me add a third.
2 JUSTICE JACKSON: Yes, please.
3 MR. TURNER: And there the clear
4 statement canon. So the Spending Clause
5 condition nature of this requires Congress to
6 speak clearly and unequivocally that it is
7 imposing a abortion mandate. It -- that's not
8 here in the statute.
9 And, secondly, this Court's
10 presumption --
11 JUSTICE JACKSON: But doesn't that
12 make abortion different? I mean, what do you
13 mean? They say provide whatever is necessary to
14 stabilize. So you're saying they'd have to say
15 provide whatever is necessary, including
16 abortion? That's the only way that is taken
17 account of here?
18 MR. TURNER: No, what I'm saying is,
19 when we -- when we go and look at the phrase
20 "available" and what it means, the government --
21 the administration is saying, well, they're
22 adding this tag that says consistent with state
23 law.
24 And we're saying no, under the clear
25 statement canon, it's a presumption against

1 preemption. And what the government actually --
2 what Congress would need to do if it wanted to
3 preempt this very traditional area of state law
4 is to put a tag regardless of state law, and
5 that is missing.
6 JUSTICE JACKSON thank you.
7 CHIEF JUSTICE ROBERTS: Thank you,
8 counsel.
9 General Prelogar.
10 ORAL ARGUMENT OF GEN. ELIZABETH B. PRELOGAR
11 ON BEHALF OF THE RESPONDENT
12 GENERAL PRELOGAR: Mr. Chief Justice,
13 and may it please the Court:
14 EMTALA's promise is simple but
15 profound. No one who comes to an emergency room
16 in need of urgent treatment should be denied
17 necessary stabilizing care. This case is about
18 how that guarantee applies to pregnant women in
19 medical crisis.
20 In some tragic cases, women suffer
21 emergency complications that make continuing
22 their pregnancy a grave threat to their lives or
23 their health. A woman whose amniotic sac has
24 ruptured prematurely, for example, needs
25 immediate treatment to avoid a serious risk of

1 infection that could cascade into sepsis and the
2 risk of hysterectomy. A woman with severe
3 preeclampsia can face a high risk of kidney
4 failure that could require life-long dialysis.
5 In cases like these, where there is no
6 other way to stabilize the woman's medical
7 condition and prevent her from deteriorating,
8 EMTALA's plain text requires that she be offered
9 pregnancy termination as the necessary
10 treatment. And that's how this law has been
11 understood and applied for decades.
12 That usually poses no conflict with
13 state law. Even states that have sharply
14 restricted access to abortion after Dobbs
15 generally allow exceptions to safeguard the
16 mother's health. But Idaho makes termination a
17 felony punishable by years of imprisonment
18 unless it's necessary to prevent the woman's
19 death.
20 I think I understood my friend today
21 to acknowledge several times that there is
22 daylight between that standard and the necessary
23 stabilizing treatment that EMTALA would require.
24 And the Idaho Supreme Court recognized the same
25 thing when it specifically contrasted the

1 "necessary to prevent death" exception and said
2 it was materially narrower than a prior Idaho
3 law that had a health exception that tracked
4 EMTALA.
5 The situation on the ground in Idaho
6 is showing the devastating consequences of that
7 gap. Today, doctors in Idaho and the women in
8 Idaho are in an impossible position. If a woman
9 comes to an emergency room facing a grave threat
10 to her health, but she isn't yet facing death,
11 doctors either have to delay treatment and allow
12 her condition to material -- to materially
13 deteriorate, or they're airlifting her out of
14 the state so she can get the emergency care that
15 she needs. One hospital system in Idaho says
16 that right now it's having to transfer pregnant
17 women in medical crisis out of the state about
18 once every other week. That's untenable, and
19 EMTALA does not countenance it.
20 None of Petitioners' interpretations
21 fit with the text, and so they have tried to
22 make this case be about the broader debate for
23 access to abortion in cases of unwanted
24 pregnancy. But that's not what this case is
25 about at all. Idaho's ban on abortion is

1 enforceable in virtually all of its
2 applications, but in the narrow circumstances
3 involving grave medical emergencies, Idaho
4 cannot criminalize the essential care that
5 EMTALA requires.
6 I welcome the Court's questions.
7 JUSTICE THOMAS: General, are you
8 aware of any other Spending Clause legislation
9 that preempts criminal law?
10 GENERAL PRELOGAR: With respect to
11 criminal law in particular, Justice Thomas, I'm
12 not immediately thinking of relevant cases. We
13 have a whole string cite of cases in our brief
14 at page 46 that reflect times where the Court
15 has recognized the preemptive force of Spending
16 Clause legislation, including in situations
17 where the funding restrictions apply to private
18 parties, so that could include the Coventry
19 Health case, for example. Lead-Deadwood is
20 another example of this. But I'm not
21 immediately recalling how that would apply in
22 criminal law.
23 Of course, this Court hasn't drawn
24 those kinds of distinctions in recognizing the
25 force of the Supremacy Clause.

1 JUSTICE THOMAS: Now the -- normally,
2 when we have a -- a preemption case, it's a
3 regulated party who is involved in the suit, and
4 they use it as an affirmative defense, for
5 example, in Wyeth or something.
6 On the -- in this case, you are
7 bringing an action against the state, and the
8 state's not regulated. Are there other examples
9 of these types of suits?
10 GENERAL PRELOGAR: Sure. I mean,
11 there are numerous examples where the United
12 States has sought to protect its sovereign
13 interests in situations where a state has done
14 what Idaho has done here and interposed a law
15 that conflicts. So I'd point to Arizona versus
16 United States as an example of that. United
17 States versus Washington. There are a number of
18 cases where this Court has recognized that the
19 federal government can protect its interests in
20 this kind of preemption action.
21 And, as I mentioned before, the Court
22 has a long line of cases recognizing that that
23 preemption principle applies in the context of
24 federal funding restrictions that apply to
25 private parties too.

1 JUSTICE THOMAS: But even when the
2 party that you're bringing the action against is
3 not a regulated party?
4 GENERAL PRELOGAR: That's correct,
5 because what Idaho has done here is directly
6 interfered with the ability of the regulated
7 parties who have taken these funds, federal
8 funds with conditions attached, from being able
9 to comply with the federal law that governs
10 their behavior. And this was an essential part
11 of the bargain that the federal government
12 struck with hospitals in substantially investing
13 in their hospital systems.
14 And what the state has done is said
15 you, through our operation of state law, are no
16 longer permitted to comply with this fundamental
17 stabilization requirement in EMTALA in this
18 narrow category of cases.
19 JUSTICE THOMAS: Well, normally,
20 wouldn't it be the regulated party that would
21 actually be asserting the preemption that you're
22 talking about?
23 GENERAL PRELOGAR: Certainly, I can
24 imagine situations, for example, where a
25 regulated party would assert a preemption

1 defense and to say the state law itself is
2 preempted to the extent that it prevents that
3 party from being able to comply with federal
4 law. But I'm not aware of any principle or
5 precedent in this Court's case law to suggest
6 that that's the only way for the government to
7 protect its sovereign interests.
8 JUSTICE THOMAS: That is the normal
9 way, though?
10 GENERAL PRELOGAR: I think that that's
11 often the fact pattern of particular cases.
12 JUSTICE ALITO: I don't understand how
13 your argument about preemption here squares with
14 the theory of Spending Clause -- of Congress's
15 Spending Clause power. The theory is Congress
16 can tell a state or any other entity or person,
17 look, here's some money or other thing of value,
18 and if you want to accept it, fine, then you
19 have to accept certain conditions.
20 But how does the Congress's ability to
21 do that authorize it to impose duties on another
22 party that has not agreed to accept this money?
23 GENERAL PRELOGAR: There are no duties
24 being imposed on Idaho here. It's not required
25 to provide emergency stabilizing treatment

1 itself. The duties are -- are --

2 JUSTICE ALITO: Well, all right.

3 GENERAL PRELOGAR: -- applied to the

4 hospital.

5 JUSTICE ALITO: Not -- not duties.

6 How can you impose restrictions on what Idaho

7 can criminalize simply because hospitals in

8 Idaho have chosen to participate in Medicare? I

9 don't understand how this squares with the whole

10 theory of the Spending Clause.

11 GENERAL PRELOGAR: Well, I think that

12 it squares with this Court's long line of

13 precedents cited at --

14 JUSTICE ALITO: Well --

15 GENERAL PRELOGAR: -- page 46 of our

16 brief --

17 JUSTICE ALITO: Well, I -- I've --

18 I've looked at them.

19 GENERAL PRELOGAR: -- that the Court

20 has recognized that --

21 JUSTICE ALITO: I've looked at those

22 cases. I haven't found any square discussion of

23 this particular issue. But I -- I'm interested

24 in the theory. Can you just explain how it

25 works in theory?

1 GENERAL PRELOGAR: Sure. So Spending
2 Clause legislation is federal law. It's passed
3 by both houses of Congress. It's signed by the
4 president. It qualifies as law within the
5 meaning of the Supremacy Clause, and --
6 JUSTICE ALITO: Absolutely.
7 Absolutely.
8 GENERAL PRELOGAR: And -- and so I
9 think the Supremacy Clause dictates the relevant
10 principle here --
11 JUSTICE ALITO: No, but what the law
12 --
13 GENERAL PRELOGAR: -- that in a
14 situation where --
15 JUSTICE ALITO: I'll let you finish.
16 Yes, go ahead.
17 GENERAL PRELOGAR: In a situation
18 where Congress has enacted law, it has full
19 force and effect under the Supremacy Clause, and
20 what a state can't do is interpose its own law
21 as a direct obstacle to being able to fulfill
22 the federal funding conditions. And this
23 theory, Justice Alito --
24 JUSTICE ALITO: No, it's -- it's a --
25 GENERAL PRELOGAR: -- would mean no

1 conditions --

2 JUSTICE ALITO: -- it's a question --

3 GENERAL PRELOGAR: -- under Medicare

4 are enforceable.

5 JUSTICE ALITO: -- it's -- no.

6 They're absolutely enforceable against the

7 hospital that chooses to participate.

8 GENERAL PRELOGAR: Well, I guess the

9 -- the argument then would be that if a hospital

10 is instead bound by the state law and the state

11 law gets to control, it would mean that

12 hospitals couldn't participate in Medicare at

13 all.

14 And that's not the argument that the

15 state's making here. What it wants is for its

16 hospitals to be able to accept Medicare funding

17 but not have to face the restrictions that are

18 attached to those funds as an essential part of

19 the bargain. And there is no precedent to

20 support that outcome.

21 JUSTICE ALITO: Well, I -- I -- I just

22 don't think -- I don't understand how -- how the

23 theory works. But let me move on to something

24 else.

25 Let -- I'm going to try to restate

1 your general theory, and I want you to tell me
2 if this is right. I think your argument is, if
3 a woman goes to an emergency room and she has a
4 condition that requires an abortion in order to
5 eliminate "serious jeopardy" to her "health,"
6 the hospital must perform the abortion or
7 transfer the woman to another hospital where
8 that can be done.
9 Is that a fair statement of your
10 argument?
11 GENERAL PRELOGAR: So it includes not
12 just serious jeopardy to her health but,
13 obviously, also serious dysfunction of her
14 bodily --
15 JUSTICE ALITO: Right. Right.
16 GENERAL PRELOGAR: -- organs or a
17 serious impairment of a bodily function.
18 JUSTICE ALITO: Right.
19 GENERAL PRELOGAR: And the other
20 caveat I would make is that it would -- it would
21 require pregnancy termination only in a
22 circumstance where that's the only possible way
23 to stabilize her and prevent that cascade of
24 health consequences.
25 JUSTICE ALITO: Does this apply at any

1 point in pregnancy?

2 GENERAL PRELOGAR: So the pregnancy

3 complications that we have focused on generally

4 occur in early pregnancy, often before the point

5 of viability. There can be complications that

6 happen after viability, but there, the standard

7 of care is to deliver the baby if you need the

8 pregnancy to end because it's causing these

9 severe health consequences for the mom.

10 JUSTICE ALITO: Well, what if it --

11 what if it occurs at a point where delivering

12 the baby is not an option? You're out of the

13 third trimester, but it's really not an option

14 to deliver the baby.

15 GENERAL PRELOGAR: You said that

16 you're in the --

17 JUSTICE ALITO: Out of the first

18 trimester.

19 GENERAL PRELOGAR: -- third trimester?

20 JUSTICE ALITO: No. I'm sorry. Out

21 of the first trimester.

22 GENERAL PRELOGAR: So, if you're

23 contemplating a situation where delivery is not

24 an option, then I think, in that circumstance,

25 if the only way to prevent grave risk to the

1 woman's health or life is for the pregnancy to
2 end and termination is the only option, then,
3 yes, that's the required care that EMTALA has
4 through its stabilization mandate.
5 But, critically, in -- in many of
6 these cases --
7 JUSTICE ALITO: Okay. That -- that --
8 GENERAL PRELOGAR: -- the very same
9 pregnancy complication means the fetus can't
10 survive regardless.
11 JUSTICE ALITO: I -- I understand
12 that.
13 GENERAL PRELOGAR: There's not going
14 to be any way to sustain that pregnancy.
15 JUSTICE ALITO: Let me ask you
16 squarely the question that was discussed during
17 Mr. Turner's argument. Does the term "health"
18 in EMTALA mean just physical health, or does it
19 also include mental health?
20 GENERAL PRELOGAR: There can be grave
21 mental health emergencies, but EMTALA could
22 never require pregnancy termination as the
23 stabilizing care.
24 JUSTICE ALITO: Why?
25 GENERAL PRELOGAR: And here's why.

1 It's because that wouldn't do anything to
2 address the underlying brain chemistry issue
3 that's causing the -- the mental health
4 emergency in the first place. This is not about
5 mental health generally. This is about
6 treatment by ER doctors in an emergency room.
7 And when a woman comes in with some grave mental
8 health emergency, if she has happens to be
9 pregnant, it would be incredibly unethical to
10 terminate her pregnancy. She might not be in a
11 position to give any informed consent. Instead,
12 the way you treat mental health emergency is to
13 address what's happening in the brain. If
14 you're having a psychotic episode, you
15 administer antipsychotics.
16 JUSTICE ALITO: Well, I -- I really
17 want a simple, clear-cut answer to this question
18 so that going forward everybody will know what
19 the federal government's position is. Does
20 "health" mean only physical health, or does it
21 also include mental health?
22 GENERAL PRELOGAR: With respect to
23 what qualifies as an emergency medical
24 condition, it can include grave mental health
25 emergencies, but let me be very clear about our

1 position. That could never lead to pregnancy
2 termination because that is not the accepted
3 standard of practice to treat any mental health
4 emergency.
5 JUSTICE ALITO: Does the term "serious
6 jeopardy" in -- in (e)(11)(i) mean an immediate
7 serious risk or may a risk of serious
8 consequences at some future point suffice?
9 GENERAL PRELOGAR: The standard is
10 defined in terms of whether you need immediate
11 medical treatment. And so the relevant question
12 is, in the absence of immediate medical
13 treatment, are you going to have this serious
14 jeopardy to your health, dysfunction of your
15 organs, will your bodily systems start shutting
16 down, so it is pegged to the urgency of acute
17 care in an emergency room.
18 JUSTICE ALITO: So it has to be
19 immediate?
20 GENERAL PRELOGAR: The -- the relevant
21 standard under the statute is phrased in terms
22 of whether these consequences will occur without
23 immediate treatment, yes. So it's focused on
24 the interaction between having some kind of
25 urgent health crisis that takes you to an

1 emergency room in the first place and then how
2 proximate these -- these consequences are likely
3 to be.
4 JUSTICE ALITO: Well, there are two
5 different things there, whether the person is --
6 whether the woman is in immediate jeopardy or
7 whether the person -- the woman needs immediate
8 care in order to eliminate jeopardy at a later
9 point.
10 So I understand your answer to be that
11 the woman need not be in immediate jeopardy, but
12 if she doesn't get care right away, jeopardy at
13 some future point may suffice?
14 GENERAL PRELOGAR: So the statutory
15 standard itself is focused on immediate health
16 risks. It's looking at the possibility that if
17 the woman doesn't get treatment then and there,
18 what will happen, what will reasonably be
19 expected to occur is that her organs could start
20 shutting down or she might lose her fertility or
21 have other serious health consequences.
22 It is focused on this temporal link
23 between the immediate need for treatment, which
24 is I think reflective of the fact that Congress
25 was narrowly focused on this emergency acute

1 medical situation.

2 JUSTICE ALITO: Do the terms

3 "impairment to bodily functions" or "serious

4 dysfunction of any bodily organ or part" refer

5 only to permanent impairment or dysfunction?

6 GENERAL PRELOGAR: I think --

7 JUSTICE ALITO: Or do -- does it also

8 refer to temporary impairment or dysfunction?

9 GENERAL PRELOGAR: I think it can also

10 refer to temporary impairment, but I'm not sure

11 that it's easy to parse the two. For example, a

12 lot of times a pregnant woman in distress, she

13 might start suffering liver damage or kidney

14 malfunction and you don't know ex ante whether

15 that's going to be permanent or not. The

16 instruction that Congress gave in EMTALA is you

17 need to stabilize to guard against those very

18 serious health risks.

19 JUSTICE GORSUCH: General, I'd -- I'd

20 like to -- if you -- yeah, just understand kind

21 of the scope of your argument here on the

22 Supremacy Clause and how it operates in your

23 mind, putting aside the -- this case.

24 Could the federal government condition

25 the receipt of funds on hospitals that they

1 comply with medical ethics rules provided for by
2 the federal government, a medical malpractice
3 regime, and a medical licensing regime such that
4 effectively all state medical malpractice laws,
5 all state medical licensing laws would be
6 preempted?
7 GENERAL PRELOGAR: And you're
8 imagining that this is regulatory action or that
9 Congress has passed a statute creating kind of a
10 federal malpractice regime?
11 JUSTICE GORSUCH: You call it.
12 GENERAL PRELOGAR: I mean, I think I
13 have a broad view of Congress's authority to
14 enact statutes, and so what I'd want to assess
15 in that situation is, you know, whether Congress
16 is acting pursuant to one of its enumerated
17 powers.
18 JUSTICE GORSUCH: Spending Clause.
19 This is all Spending Clause.
20 GENERAL PRELOGAR: Yeah. So -- so I
21 think that very likely Congress could make those
22 kinds of judgments and attach conditions to the
23 receipt of federal funds. And, you know, in
24 Medicare, there are substantial conditions.
25 JUSTICE GORSUCH: Even if it covers

1 all hospitals in the state and effectively
2 transforms the regulation of medicine into a
3 federal function --
4 GENERAL PRELOGAR: You know, there
5 might be a point --
6 JUSTICE GORSUCH: -- historically?
7 GENERAL PRELOGAR: -- at which this
8 Court thinks that it's really encroaching on the
9 state's prerogatives in ways that are
10 inconsistent with our constitutional structure,
11 but I don't think --
12 JUSTICE GORSUCH: You don't --
13 GENERAL PRELOGAR: -- we're anywhere
14 close to that --
15 JUSTICE GORSUCH: -- you don't see --
16 GENERAL PRELOGAR: -- in this case.
17 JUSTICE GORSUCH: But do you see any
18 bounds just in principle?
19 GENERAL PRELOGAR: I think the bounds,
20 you know, would have to come from this Court's
21 case law concerning federalism principles. The
22 Court has said in cases like Gonzales versus
23 Oregon that, of course, the federal government
24 has authority to comprehensively regulate on
25 health and safety, including with respect to

1 medical care. And so I don't think that there's
2 any principle of exclusive governance of this
3 area by the state.
4 But, obviously, I'm sure you could
5 construct hypotheticals that really --
6 JUSTICE GORSUCH: All right. Okay.
7 GENERAL PRELOGAR: -- seem to be the
8 federal government entirely taking over a state
9 function and maybe that would be subject to a
10 different principle.
11 JUSTICE GORSUCH: Yeah. And EMTALA
12 and -- and Medicare allow the federal government
13 to enforce the EMTALA dictate through civil
14 monetary penalties?
15 GENERAL PRELOGAR: That's correct,
16 yes.
17 JUSTICE GORSUCH: And also, you can
18 terminate the Medicare agreements if a hospital
19 violates EMTALA in your view?
20 GENERAL PRELOGAR: Yes. Generally,
21 the hospital is given the opportunity to come
22 into compliance and to develop a plan to ensure
23 that there won't be future EMTALA violations.
24 It would obviously be an extreme sanction to --
25 to terminate Medicare funding, but that is a

1 possibility.
2 JUSTICE GORSUCH: And there's also a
3 private right of action for EMTALA violations
4 that it have the possibility of equitable relief
5 as well?
6 GENERAL PRELOGAR: Yes. Certainly,
7 monetary relief and -- and possibly equitable
8 relief as well.
9 JUSTICE GORSUCH: In -- in this case,
10 you -- you -- you brought an equitable cause of
11 action. You didn't cite any statute to enforce
12 EMTALA. And one of the rules in equity
13 traditionally at least is that you don't get an
14 equitable relief if there's an adequate remedy
15 at law.
16 And as we just discussed, there's a
17 pretty reticulated statute here. Seminole Tribe
18 says, when you have a reticulated statute and
19 lots of remedial options, you don't get
20 equitable relief. Thoughts?
21 GENERAL PRELOGAR: So let me say at
22 the outset that the United States has long been
23 recognized to have an action in equity, an
24 inherent action in equity to appeal to the
25 courts of this -- of this nation to protect its

1 sovereign interests. And that's been reflected
2 in things like --
3 JUSTICE GORSUCH: Its sovereign -- its
4 proprietary interests? You mentioned Washington
5 and you mentioned --
6 GENERAL PRELOGAR: Arizona versus --
7 JUSTICE GORSUCH: -- Arizona.
8 GENERAL PRELOGAR: -- United States --
9 JUSTICE GORSUCH: Arizona was an --
10 GENERAL PRELOGAR: -- is another
11 example of that.
12 JUSTICE GORSUCH: Arizona -- Arizona
13 was -- just sorry to interrupt, but Arizona was
14 an immigration case and --
15 GENERAL PRELOGAR: Right.
16 JUSTICE GORSUCH: -- the border, and
17 Washington was an attempt by a state to impose
18 its worker compensation laws on the federal
19 government in a way different from others. I --
20 I take those points. And equity is all about
21 proprietary interests and things like that. Do
22 we have that here?
23 GENERAL PRELOGAR: The -- well, I
24 think that the Court -- it's not -- I want to
25 make sure to make clear that there are a long

1 line of cases that stand for this principle,
2 including cases that have addressed it directly
3 like In re Debs --
4 JUSTICE GORSUCH: Oh, Debs.
5 GENERAL PRELOGAR: -- Wyandot, so --
6 JUSTICE GORSUCH: Do you really want
7 to rely on Debs, General? I mean, that wasn't
8 exactly our brightest moment.
9 GENERAL PRELOGAR: I do think, though,
10 that it reflects the history and tradition of
11 this nation in recognizing that it's entirely
12 appropriate for the United States to seek to
13 protect its interests in this manner.
14 And let me say, Justice Gorsuch --
15 JUSTICE GORSUCH: What do you --
16 GENERAL PRELOGAR: -- this is a really
17 important issue to the United States. It wasn't
18 pressed below. It wasn't passed upon.
19 JUSTICE GORSUCH: I'm just trying --
20 GENERAL PRELOGAR: We haven't briefed
21 it at all.
22 JUSTICE GORSUCH: I'm trying to --
23 GENERAL PRELOGAR: It's not
24 jurisdictional.
25 JUSTICE GORSUCH: I'm just trying to

1 understand where it comes from. What is the
2 proprietary interest here?
3 GENERAL PRELOGAR: It comes from --
4 JUSTICE GORSUCH: It seems to me
5 it's -- it's your money and how it's being
6 spent, and Congress has given you lots of tools.
7 GENERAL PRELOGAR: I think it also
8 comes from the recognition under obstacle
9 preemption principles that there are important
10 functions to be served by having the Medicare
11 program in place.
12 And Idaho has directly interfered with
13 the ability of hospitals to accept these federal
14 funds when they stand willing and able to comply
15 with EMTALA's mandates and fulfill Congress's
16 desire here to make sure that no matter where
17 you are in this country, if you have an urgent
18 medical need and you go to an ER, you can be
19 stabilized.
20 JUSTICE GORSUCH: Thank you.
21 JUSTICE JACKSON: General, is there --
22 CHIEF JUSTICE ROBERTS: Counsel, your
23 friend on the other side said that your position
24 would require religiously affiliated hospitals
25 with emergency rooms to perform abortions. Was

1 he right?

2 GENERAL PRELOGAR: No. My friend was

3 wrong. There are federal conscience protections

4 that apply at the entity level to hospitals as

5 well. The key provisions are in the Weldon

6 Amendment and also Coats-Snowe, although that

7 depends on the residency program of a particular

8 hospital.

9 Now HHS said in a 2008 rulemaking on

10 conscience protections that it had never come

11 across a hospital that had a blanket objection

12 to providing life-preserving and

13 health-preserving pregnancy termination care,

14 but if a hospital had that kind of objection and

15 HHS recently informed me they still have not

16 come across that hospital, that would be honored

17 vis-à-vis HHS's enforcement ability.

18 CHIEF JUSTICE ROBERTS: You said that

19 applies at the entity level. Can individual

20 doctors in the emergency room -- do they have a

21 conscience exemption?

22 GENERAL PRELOGAR: Oh, yes. Yes.

23 They're protected under the church amendments

24 principally. And our position is that EMTALA

25 does not override either set of conscience

1 protections. So, if an individual doctor has a
2 conscience objection to providing pregnancy
3 termination, EMTALA itself imposes obligations
4 at the entity level, and the hospital should
5 have plans in place to honor the individual
6 doctor's conscience objection while ensuring
7 appropriate staffing for emergency care.
8 CHIEF JUSTICE ROBERTS: Well, does
9 that -- does that mean that there must be
10 somebody in the emergency room that can provide
11 an abortion? What if -- what if there are two
12 doctors, three doctors, and they all have a
13 conscience exemption?
14 GENERAL PRELOGAR: No. In that
15 circumstance, EMTALA could not override those
16 individual doctors' conscience protections, but
17 my understanding is that as a matter of best
18 practice, because hospitals want to be able to
19 provide emergency care, they do things like ask
20 doctors to articulate their objections in
21 advance so that that can be taken into account
22 in making staffing decisions and who's on call.
23 Hospitals have a lot of plans in place --
24 CHIEF JUSTICE ROBERTS: Are -- are you
25 saying --

1 GENERAL PRELOGAR: -- for these kinds
2 of contingencies.
3 CHIEF JUSTICE ROBERTS: Yeah. Are --
4 are you saying that there must be somebody
5 available and on call in -- in a hospital of
6 that sort?
7 GENERAL PRELOGAR: The conditions of
8 participation for Medicare require hospitals to
9 be appropriately staffed to provide emergency
10 treatment. Now, in a situation where a hospital
11 doesn't -- hasn't done that and it doesn't have
12 anyone on hand who can provide care, you know,
13 maybe all of the doctors called in sick that day
14 and there's just literally no one in the
15 emergency room, or in this case, if everyone had
16 a conscience objection, then the hospital would
17 not be able to provide the care. But there are
18 conditions of participation that are meant to
19 ensure that there is good governance of
20 hospitals and organization to account --
21 CHIEF JUSTICE ROBERTS: When you say
22 --
23 GENERAL PRELOGAR: -- for these
24 situations.
25 CHIEF JUSTICE ROBERTS: -- and the

1 consequence of them not being able to provide
2 the care would be what?
3 GENERAL PRELOGAR: In that
4 circumstance, I think they would likely be out
5 of compliance with the conditions of
6 participation that require them to be
7 appropriately staffed. But, if the question is
8 could you force an individual doctor to step in
9 then over a conscience objection, the answer is
10 no. And I want to be really clear about that.
11 CHIEF JUSTICE ROBERTS: I know, but
12 the question --
13 GENERAL PRELOGAR: We don't understand
14 EMTALA to displace it.
15 CHIEF JUSTICE ROBERTS: Excuse me.
16 The question is whether or not they must have
17 available someone who can comply the procedures
18 required by EMTALA. And what would be the
19 consequence if they didn't? Would it be
20 eventual termination of their participation in
21 Medicare?
22 GENERAL PRELOGAR: That's right. So,
23 if a hospital was continually disobeying the
24 requirement to have in place sufficient
25 personnel to run their emergency room, then I

1 imagine that HHS would, through enforcement
2 action, work with that hospital to try to bring
3 it into compliance. And if the hospital
4 ultimately is just leaving itself in a position
5 where it can never provide care, then it would
6 terminate the Medicare funding agreement.
7 JUSTICE GORSUCH: I thought --
8 JUSTICE BARRETT: General --
9 JUSTICE GORSUCH: -- you just said a
10 minute ago -- I'm sorry.
11 JUSTICE BARRETT: Oh, no, go ahead.
12 JUSTICE GORSUCH: I thought you -- I
13 just want to clarify this colloquy. I thought
14 you said a minute ago, though, if the hospital
15 had a conscience objection and therefore didn't
16 provide certain care, that that wouldn't render
17 it out of compliance. Which is it?
18 GENERAL PRELOGAR: That's correct.
19 JUSTICE GORSUCH: Okay. All right.
20 GENERAL PRELOGAR: So the hospital
21 could assert a conscience objection --
22 JUSTICE GORSUCH: That's all.
23 GENERAL PRELOGAR: -- and EMTALA would
24 not override that.
25 JUSTICE BARRETT: My question -- I

1 have a question about the Hyde amendment. So I
2 gather from the briefing that there might be
3 some situations in which EMTALA would require an
4 abortion, but the Hyde amendment wouldn't permit
5 federal funds to be used to pay for it. And you
6 said in your brief that EMTALA requires in other
7 circumstances as well stabilizing treatment to
8 be given that federal funds don't cover.
9 Can you give an example of that? And
10 am I right about the Hyde amendment? And then
11 can you give an example of that?
12 GENERAL PRELOGAR: Yes. So you are
13 right about both things. It is common under
14 EMTALA that hospitals are going to have to
15 provide care where there's not federal funding
16 available. And I'll give you an example of a
17 Medicare patient who goes in and his emergency
18 medical condition means he needs a particular
19 drug that's not covered by Medicare benefits.
20 Still, the hospital has to provide him with
21 stabilizing treatment and give him that
22 medication, even though the federal funding
23 isn't going to pay for it.
24 And that also applies to people who
25 are uninsured, who aren't covered by Medicare in

1 the first instance. The -- the whole point of
2 EMTALA was it doesn't matter your circumstances,
3 it doesn't matter whether you can pay or not, it
4 doesn't matter the particulars of your
5 situation, this is a guarantee. You can get
6 stabilizing treatment.
7 I want to say, though, that I don't
8 think there's any inconsistency between the
9 lines Congress drew in EMTALA and Hyde. And
10 Congress itself has recognized that these
11 statutes address discrete issues. I'm thinking
12 here of the provision in the Affordable Care Act
13 that was exclusively about abortion, and there,
14 Congress said nothing in the ACA displaces Hyde
15 and the other federal funding restrictions on
16 abortion, but also, nothing in the ACA displaces
17 EMTALA's requirement to stabilize.
18 And that shows two things. It shows
19 first that Congress recognized that stabilizing
20 care can sometimes be pregnancy termination.
21 And I think it also showed Congress's
22 recognition that these statutes addressed their
23 own distinct spheres.
24 And one final point on Hyde, Justice
25 Barrett. My friend isn't drawing a line based

1 on Hyde either because his point is, even if a
2 woman is on the brink of death and she goes to
3 an emergency room and there are federal funds
4 available under Hyde to treat her, still,
5 hospitals have no obligation under EMTALA to
6 provide that care.
7 JUSTICE BARRETT: So what about the
8 colloquy I was having with your friend about
9 what stabilizing treatment entails -- let's
10 imagine a situation in which a woman is, I don't
11 know, 10 weeks, and is told that if you carry
12 this pregnancy to term, it could have, you know,
13 consequences for your health, but you just would
14 need to abort before, like, say, 15 weeks,
15 something like that. So there's not an
16 immediacy, like -- so she's stable when she
17 leaves the hospital, but in Idaho, there's no
18 place else that she can go at least until she's
19 15 weeks.
20 What is the federal government's
21 position then?
22 GENERAL PRELOGAR: I think, if I'm
23 understanding the hypothetical correctly, that
24 she likely wouldn't have an emergency medical
25 condition in the first place because the

1 definition of having an emergency medical
2 condition is that, without immediate treatment,
3 you are reasonably -- you will reasonably be
4 expected to have serious dysfunction of your
5 organs or serious impairment of your bodily
6 functions.
7 And so, in that situation where a
8 woman is somewhat high risk, you know, maybe she
9 -- she has certain complications where doctors
10 can say there's some danger with continuing this
11 pregnancy, I don't think that that creates the
12 kind of emergency medical condition that EMTALA
13 is aimed at.
14 JUSTICE BARRETT: Okay. Last
15 question, and this is about the Spending Clause
16 issue.
17 So it does seem odd -- and I think
18 kind of what some of the questions are getting
19 at -- it does seem odd that through a side
20 agreement between a private entity and the
21 federal government, the private entity can get
22 out of state law, right?
23 So, in another administration, would
24 it be possible then in reliance on the spending
25 power for Congress to say, you know, any

1 hospital that takes these funds cannot perform
2 abortions or any hospital -- despite state law
3 requiring -- a state constitutional amendment
4 requiring abortion to be available, is that
5 possible or, you know, with gender reassignment
6 surgery? I mean, you can imagine it kind of
7 going back and forth through Spending Clause
8 litigation in ways that would be unusual.
9 GENERAL PRELOGAR: Yes, I think
10 Congress has broad power under the Spending
11 Clause to attach conditions. Now it doesn't
12 mean that it's wholly unlimited. Obviously,
13 Congress would be having to act pursuant to an
14 enumerated power, it would have to comply with
15 other constitutional limits, and so the law
16 would have to be valid. The Spending Clause
17 itself has built-in limits, things like
18 relatedness and pure notice.
19 JUSTICE BARRETT: So it would have to
20 be acting pursuant to an enumerated power in
21 forbidding gender reassignment surgery or
22 abortion or those sorts of things?
23 GENERAL PRELOGAR: Oh, no. I just
24 meant that it would have to be valid spending.
25 JUSTICE BARRETT: The Spending Clause?

1 GENERAL PRELOGAR: The Spending Clause
2 --
3 JUSTICE BARRETT: The Spending Clause.
4 GENERAL PRELOGAR: -- itself would be
5 enough.
6 JUSTICE BARRETT: Okay. Okay.
7 GENERAL PRELOGAR: Yes. So we think
8 --
9 JUSTICE GORSUCH: Yeah. So --
10 GENERAL PRELOGAR: -- the Spending
11 Clause itself would be enough.
12 JUSTICE GORSUCH: -- so just to follow
13 up on that and going back to where I started
14 with could -- could the federal government
15 essentially regulate the practice of medicine of
16 the states through the Spending Clause, the
17 answer, I think, is yes, Congress could prohibit
18 gender reassignment surgeries across the nation,
19 it could ban abortion across the nation, through
20 the use of its Spending Clause authority, right?
21 GENERAL PRELOGAR: Congress does have
22 broad authority under the Spending Clause. And,
23 yes, if it satisfies the conditions that the
24 Spending Clause themself -- itself requires,
25 then I think that that would be valid

1 legislation.
2 JUSTICE GORSUCH: How --
3 GENERAL PRELOGAR: And the Court has
4 in many contexts recognized --
5 JUSTICE GORSUCH: How do we --
6 GENERAL PRELOGAR: -- the Spending
7 Clause legislation preempts. So to Justice --
8 JUSTICE GORSUCH: So the -- the answer
9 is yes? Okay.
10 So how do we reconcile that with the
11 statement in 1395 that nothing in this
12 subchapter allows a federal officer to exercise
13 any control over the practice of medicine?
14 GENERAL PRELOGAR: So, at the outset,
15 I think, if Congress itself is doing it, then
16 that provision is inapplicable by its own terms.
17 That's looking at the --
18 JUSTICE GORSUCH: You don't think it
19 informs our view and understanding of the
20 statute in any way?
21 GENERAL PRELOGAR: Well, I think, in
22 the event of some kind of direct conflict, you
23 know, looking at EMTALA in particular, it's the
24 later in time enacted statute, and it's clearly
25 more specific, so it would control.

1 But this Court itself has rejected the
2 idea that there would be that kind of conflict.
3 And I'm thinking of the CMS vaccine case where
4 the litigants relied on this exact same
5 provision of the Medicare Act, Section 1395, and
6 this Court said no, that can't bear the weight
7 that those litigants could place on it or it
8 would call into question all of the conditions
9 of participation in Medicare.
10 JUSTICE GORSUCH: Do you agree that
11 our clear statement rule with respect to
12 Spending Clause legislation, our clear statement
13 rule with respect to federalism are in play
14 here?
15 GENERAL PRELOGAR: I think that here,
16 Congress has spoken clearly with respect to what
17 providers --
18 JUSTICE GORSUCH: Oh, I -- I --
19 GENERAL PRELOGAR: -- are supposed to
20 do.
21 JUSTICE GORSUCH: That's not the
22 question. Do you think those presumptions
23 apply? Forget about whether you can satisfy
24 them.
25 GENERAL PRELOGAR: The requirement of

1 clear notice under Spending Clause legislation,
2 yes, I think that that does apply, and providers
3 have always understood their obligations under
4 EMTALA.
5 JUSTICE GORSUCH: Okay.
6 JUSTICE JACKSON: General, let me ask
7 you to respond to a couple of things
8 Petitioners' counsel said and just give you the
9 opportunity to respond.
10 He suggested or said that you haven't
11 identified a circumstance in which something
12 that EMTALA requires Idaho wouldn't allow. And
13 I -- I didn't get a chance to ask him, but I
14 took -- I took him to sort of mean that the way
15 that Idaho's statute operates, it basically
16 allows for a doctor to say, well, in my view,
17 you know, this health-threatening circumstance
18 could eventually lead to death, and so I'm going
19 to do it. So, to the extent that doctors are
20 still able to do that, I guess, he's saying
21 there's no preemption.
22 But is it true that there really isn't
23 in operation a difference between the two -- the
24 EMTALA and what Idaho has required here?
25 GENERAL PRELOGAR: No. That is

1 gravely mistaken on three levels. It's
2 inconsistent with the actual text of the Idaho
3 law. It's inconsistent with medical reality.
4 And it's inconsistent with what's happening on
5 the ground.
6 And this is a really important point,
7 so let me try to unpack this. On the text
8 itself, Idaho's law only allows termination if
9 it's necessary to prevent death. And that is
10 textually very narrow compared to what EMTALA
11 requires with the category of harm to begin
12 with. In Idaho, doctors have to shut their eyes
13 to everything except death, whereas, under
14 EMTALA, you're supposed to be thinking about
15 things like, is she about to lose her fertility?
16 Is her uterus going to become incredibly scarred
17 because of the bleeding? Is she about to
18 undergo the possibility of kidney failure? So I
19 think that that is one critical distinction.
20 The other critical textual distinction
21 is the idea of necessity. Under Idaho law, you
22 have to conclude that death will necessarily
23 result, which is also materially different, and
24 the Idaho Supreme Court specifically recognized
25 it.

1 Second, with respect to the actual
2 medical reality here, there are numerous
3 conditions that we are worried about where a
4 doctor's immediate concern is not death. That's
5 a far more remote possibility. They're thinking
6 about the health circumstances that EMTALA
7 guards against.
8 And let me give you two examples. The
9 first is PPROM, premature rupture of the
10 membranes. We have declarations at 594 that
11 explain this in detail and also at JA 615 to
12 617.
13 What the doctors explained there --
14 this is Dr. Fleischer and Dr. Cooper -- is a
15 woman comes in with PPROM, her sac is ruptured.
16 There's no chance the fetus is going to be able
17 to survive, but at that point, she doesn't have
18 active signs of infection, and so, until she
19 deteriorates, you can't think she's close to
20 death. What you're worried about is she will
21 become infected. She might develop sepsis. She
22 might have these dramatic consequences for her
23 future, but it's not about death. So I think
24 that is one example where you can't do it.
25 And then, finally, just the actual

1 practice on the ground, women in Idaho today are
2 not getting treatment. They are getting
3 airlifted out of the state to Salt Lake City and
4 to neighboring states where there are health
5 exceptions and there are laws because the
6 doctors are facing mandatory minimum two years
7 in prison, loss of their license, criminal
8 prosecution.
9 The doctors can't provide the care
10 because until they can conclude that a
11 prosecutor looking over their shoulder won't
12 second-guess that maybe it wasn't really
13 necessary to prevent death.
14 CHIEF JUSTICE ROBERTS: Thank you,
15 counsel.
16 Justice Thomas?
17 Justice Alito?
18 JUSTICE ALITO: We've now heard --
19 let's see -- an hour and a half of argument on
20 this case, and one potentially very important
21 phrase in EMTALA has hardly been mentioned.
22 Maybe it hasn't even been mentioned at all. And
23 that is EMTALA's reference to the woman's
24 "unborn child."
25 Isn't that an odd phrase to put in a

1 statute that imposes a mandate to perform
2 abortions? Have you ever seen an abortion
3 statute that uses the phrase "unborn child"?
4 GENERAL PRELOGAR: It's not an odd
5 phrase when you look at what Congress was doing
6 in 1989. There were well-publicized cases where
7 women were experiencing conditions, their own
8 health and life were not in danger, but the
9 fetus was in grave distress and hospitals
10 weren't treating them. So what Congress did --
11 JUSTICE ALITO: Well, have you seen --
12 GENERAL PRELOGAR: -- is that it --
13 JUSTICE ALITO: -- have you seen
14 abortion statutes that use the phrase "unborn
15 child"? Doesn't that tell us something?
16 GENERAL PRELOGAR: It tells us that
17 Congress wanted to expand the protection for
18 pregnant women so that they could get the same
19 duties to screen and stabilize when they have a
20 condition that's threatening the health and
21 well-being of the unborn child.
22 But what it doesn't suggest is that
23 Congress simultaneously displaced the
24 independent preexisting obligation to treat a
25 woman who herself is facing grave life and

1 health consequences.

2 JUSTICE ALITO: Well, let's walk

3 through the provisions of the statute that are

4 relevant to this issue regarding the status and

5 the potential interests of an unborn child.

6 Under (b)(1), if a woman goes to a

7 hospital with an "emergency medical condition"

8 -- that's the phrase -- the hospital must either

9 stabilize the condition or, under some

10 circumstances, transfer the -- the woman to

11 another facility.

12 So we have this phrase, "emergency

13 medical condition," in that provision. And

14 then, under (e)(1), the term "emergency medical

15 condition" is defined to include a condition

16 that places the health of the woman's unborn

17 child in serious jeopardy.

18 So, in that situation, the hospital

19 must stabilize the threat to the unborn child.

20 And it seems that the plain meaning is that the

21 hospital must try to eliminate any immediate

22 threat to the child, but performing an abortion

23 is antithetical to that duty.

24 GENERAL PRELOGAR: But, in a

25 circumstance --

1 JUSTICE ALITO: Now -- and you -- you
2 go -- you go so far as to say that the statute
3 is clear in your favor. I -- I don't know how
4 you can say that in light of the -- of those
5 provisions that I just read to you.
6 GENERAL PRELOGAR: The statute did
7 nothing to displace the woman herself as an
8 individual with an emergency medical condition
9 when her life is in danger, when her health is
10 in danger. That stabilization obligation
11 equally runs to her and makes clear that the
12 hospital has to give her necessary stabilizing
13 treatment.
14 And in many of the cases you're
15 thinking about, there is no possible way to --
16 to stabilize the unborn child because the fetus
17 is sufficiently before viability that it's
18 inevitable that the pregnancy is going to be
19 lost, but Idaho would deny women treatment in
20 that circumstance --
21 JUSTICE ALITO: Doesn't --
22 GENERAL PRELOGAR: -- even though it's
23 senseless.
24 JUSTICE ALITO: Doesn't what I've read
25 to you show that the statute imposes on the

1 hospital a duty to the woman certainly and also
2 a duty to the child? And it doesn't tell the
3 hospital how it is to adjudicate conflicts
4 between those interests and it leaves that to
5 state law.
6 Now maybe a lot -- most of your
7 argument today has been dedicated to the
8 proposition that the Idaho law is a bad law, and
9 that may well be the case. But what you're
10 asking us to do is to construe this statute that
11 was enacted back during the Reagan
12 administration and signed by President Reagan to
13 mean that there's an obligation under certain
14 circumstances to perform an abortion even if
15 doing that is a violation of state law.
16 GENERAL PRELOGAR: If Congress had
17 wanted to displace protections for pregnant
18 women who are in danger of losing their own
19 lives or their health, then it could have
20 redefined the statute so that the fetus itself
21 is an individual with an emergency medical
22 condition. But that's not how Congress
23 structured this. Instead, it put the protection
24 in to expand protection for the pregnant woman.
25 The duties still run to her.

1 And in a situation where her own life
2 and health is gravely endangered, then, in that
3 situation, EMTALA is clear. It says the
4 hospital has to offer her stabilizing treatment.
5 JUSTICE ALITO: The -- the only --
6 GENERAL PRELOGAR: And she doesn't
7 have to accept it. These are tragic
8 circumstances. And many women want to do
9 whatever they can to save that pregnancy. But
10 the statute protects her and gives her that
11 choice.
12 JUSTICE ALITO: The only way you try
13 to get out of the statutory interpretation that
14 I just posited is by focusing on the term
15 "individual." And you say, a-ha, in the
16 Dictionary Act, "individual" is defined to
17 exclude an unborn child or a fetus. That's the
18 only way you can try to get out of what I've
19 just outlined.
20 And isn't it true that under the
21 dictionary -- that Dictionary Act definitions
22 apply only if they are not inconsistent with the
23 statutory text? And when you have a text that,
24 certainly, you wouldn't dispute the fact that
25 the hospital has a duty to the unborn child

1 where the woman wants to -- wants to have the
2 pregnancy go to term, it indisputably protects
3 the interests of the unborn child. So it's
4 inconsistent with the definition in the -- in
5 the Dictionary Act.
6 GENERAL PRELOGAR: No, not at all.
7 The duty runs to the individual with the
8 emergency medical condition. The statute makes
9 clear that's the pregnant woman. And, of
10 course, Congress wanted to be able to protect
11 her in situations where she's suffering some
12 kind of emergency and her own health isn't at
13 risk, but the fetus might die.
14 That includes common things like a
15 prolapse of the umbilical cord into the cervix
16 where the fetus is in grave distress, but the
17 woman is not at all affected. Hospitals
18 otherwise wouldn't have an obligation to treat
19 her, and Congress wanted to fix that.
20 But to suggest that in doing so
21 Congress suggested that the woman herself isn't
22 an individual, that she doesn't deserve
23 stabilization, I think that that is an erroneous
24 reading of this statute.
25 JUSTICE ALITO: Nobody's suggesting

1 that the woman is not an individual and she
2 doesn't -- she doesn't deserve stabilization.
3 GENERAL PRELOGAR: Well, the --
4 JUSTICE ALITO: Nobody's suggesting
5 that.
6 GENERAL PRELOGAR: -- I think the
7 premise of the question would be that the State
8 of Idaho --
9 JUSTICE ALITO: It wasn't the
10 predicate. It wasn't --
11 GENERAL PRELOGAR: -- can declare that
12 she cannot get the stabilizing treatment even if
13 she's about to die. That is their theory of
14 this case and this statute, and it's wrong.
15 CHIEF JUSTICE ROBERTS: Justice
16 Sotomayor?
17 JUSTICE SOTOMAYOR: General, this --
18 this lack of conflict which your opposing
19 counsel colleague says doesn't exist, you
20 mentioned a situation where it does. Why don't
21 you succinctly state what you -- well, they
22 admit there's daylight. Tell us exactly how you
23 define where the daylight exists.
24 GENERAL PRELOGAR: The daylight, as I
25 see it, exists on two dimensions. They think

1 that doctors can only provide stabilizing care
2 when the woman is facing death. And we think,
3 no, you can take into account things like kidney
4 failure, the risk of a seizure, and life-long
5 neurological impacts based on that.
6 JUSTICE SOTOMAYOR: Well, they -- they
7 said the recent decision of the Oregon court
8 says you don't need death to be imminent or
9 immediate, I think, is the word they used if I'm
10 not wrong.
11 GENERAL PRELOGAR: So what the Idaho
12 Supreme Court said in that decision is that
13 there's no particular level of imminency and no
14 certain percent chance requirement. But what
15 the court couldn't do is turn away from the
16 language requiring the type of harm to
17 exclusively be death.
18 And also, the inherent concept of
19 necessity requiring some degree of imminence,
20 it's true that it's a subjective standard under
21 Idaho law, and the court made that clear, but
22 what the Idaho Supreme Court also said is
23 prosecutors are free to come in and have other
24 medical experts second-guess doctors' decisions
25 by saying maybe you didn't subjectively think

1 she really needed it as necessary to prevent
2 death because, look, her -- her sac had
3 ruptured, but she wasn't yet infected.
4 And that's exactly the kind of
5 situation that leads to women being driven out
6 of state, dumped on neighboring states by Idaho,
7 and criminalizing the care, the essential care
8 that they need.
9 JUSTICE SOTOMAYOR: Thank you.
10 CHIEF JUSTICE ROBERTS: Justice Kagan?
11 JUSTICE KAGAN: Yeah, if you could
12 just talk a little bit about that because, as I
13 understood it, for example, I read recently that
14 the hospital that has the greatest emergency
15 room services in Idaho has just in the few
16 months that this has been in place had to
17 airlift six pregnant women to neighboring
18 states, whereas, in the prior year, they did one
19 the entire year.
20 So, if Mr. Turner is right about what
21 the state is trying to convey to hospitals about
22 when they'll be prosecuted, like, why is this
23 happening?
24 GENERAL PRELOGAR: I think that the
25 reason this is happening is because those

1 doctors can look at the text of the statute
2 itself, they can look at the Idaho Supreme
3 Court's decision, which made clear, very clear,
4 that this was a departure from prior Idaho laws
5 that tracked EMTALA. And they can recognize
6 that their livelihood is on the line, their
7 medical license, their ability to practice
8 medicine, their freedom if they have to go to
9 jail and serve one of these minimum two-year
10 sentences of imprisonment, and they simply
11 cannot provide the care, even consistent with
12 their subjective medical judgment, because as a
13 matter -- matter of medical reality, for many of
14 these conditions, it's not yet putting a woman
15 at the brink of death or necessary to prevent
16 her death, yet they know that the standard of
17 care is to provide her with termination because
18 she is just going to get worse and worse and
19 worse if they wait it out.
20 And the other important point about
21 this, and I think it goes back to this dual
22 stabilization idea, is that, tragically, in many
23 of these cases, the pregnancy is lost. There's
24 not going to be any way to save that fetus
25 because a woman who has PPROM at 17 weeks, there

1 is no medical way to sustain the pregnancy to
2 give the fetus a chance. So in that situation,
3 what Idaho is doing is waiting for women to wait
4 and deteriorate and suffer the lifelong health
5 consequences with no possible upside for the
6 fetus. It just stacks tragedy upon tragedy.
7 JUSTICE KAGAN: And it -- it -- it
8 can't be the appropriate -- you know, it's like
9 -- it's become -- transfer is the appropriate
10 standard of care in Idaho. But it can't be the
11 right standard of care to force somebody onto a
12 helicopter.
13 GENERAL PRELOGAR: And it's entirely
14 inconsistent with what Congress was trying to do
15 in the statute. You know, one of the primary
16 motivators here was to prevent patient dumping.
17 The idea was we don't want people to have to go
18 somewhere else to get their care. You go to the
19 first emergency room in your state, and they
20 have to treat you and stabilize you.
21 But this effectively allows states to
22 take any particular treatment they don't want
23 their hospitals to provide and dump those
24 patients out of state. And you can imagine what
25 would happen if every state started to take this

1 approach.
2 JUSTICE KAGAN: A question on the
3 Spending Clause questions that you've been
4 asked. I mean, what would -- if you accepted
5 some of these theories, what -- what would the
6 consequences of something like that be that we
7 would have to worry about?
8 GENERAL PRELOGAR: I think that it
9 would call into question any number of federal
10 spending statutes that provide funds to private
11 parties, and there are a bunch of them. You
12 know, there's the Medicare system itself, which
13 is of course a major federal spending program.
14 There are funds provided under Title VI, under
15 Title IX, a lot of federal statutes out there
16 that give funds to private parties and insist on
17 conditions of compliance with the federal
18 funding restrictions.
19 And if the Court were to suddenly say
20 that can't preempt contrary state law, then I
21 think that it would seriously interfere with the
22 ability of the federal government to get its
23 benefit of the bargain in those spending
24 programs.
25 JUSTICE KAGAN: And you mentioned

1 before that this question has never been a part
2 of this case?
3 GENERAL PRELOGAR: That's right. They
4 did not make these arguments in the lower court.
5 They briefly referred to the Spending Clause,
6 but I don't understand them to have pressed this
7 argument specifically. And so I think that --
8 the lower courts did not address it. I think
9 the district court said in a footnote, they
10 briefly refer to it in a footnote of their
11 brief, and it's essentially waived.
12 JUSTICE KAGAN: Thank you.
13 CHIEF JUSTICE ROBERTS: Justice --
14 Justice Kavanaugh?
15 JUSTICE KAVANAUGH: You've touched on
16 what's happening on the ground, and that's an
17 important consideration in answer to the
18 question of what's happening. But Idaho is
19 representing -- and I just want to get your
20 answer on this -- that, as I count it, nine
21 conditions that have been identified by the
22 government where EMTALA would require that an
23 abortion be available, an abortion is available
24 under Idaho law. And that's in the reply brief.
25 Now, are there other conditions?

1 You've ruled out mental health. Are there other
2 conditions you would identify, or are you just
3 saying that that's not really happening on the
4 ground? I think that's part of your answer, but
5 I just want to get a fuller answer on that.
6 GENERAL PRELOGAR: It certainly isn't
7 happening on the ground. These are the
8 conditions that we're worried about. And I
9 think the problem with my friend's theory that
10 Idaho law would permit it is that you just can't
11 square it with the text of the statute.
12 You know, the -- the --
13 JUSTICE KAVANAUGH: What if there were
14 --
15 GENERAL PRELOGAR: -- the State of
16 Idaho --
17 JUSTICE KAVANAUGH: I'm sorry -- keep
18 going.
19 GENERAL PRELOGAR: Well, I just wanted
20 to say they're not the ultimate authority on
21 what the Idaho law means. That's the Idaho
22 Supreme Court, of course. And it has addressed
23 this issue in the Planned Parenthood case. And
24 I think it's really significant that, in Planned
25 Parenthood, the Idaho Supreme Court expressly

1 contrasted this statute with other statutes that
2 contain health-preserving measures and
3 recognized this was a -- a total departure from
4 that. The legislature wanted to focus
5 exclusively and more narrowly on a "necessary to
6 prevent death" exception.
7 So I think that -- that that
8 essentially means that the Supreme Court of
9 Idaho has already touched on this issue, and
10 it's no wonder, then, that doctors who are
11 facing these kinds of pregnancy complications,
12 where in their medical judgment it's not
13 necessarily to prevent death yet, but the woman
14 is going to suffer serious health consequences,
15 their hands are tied and they can't provide that
16 care under the Idaho law.
17 JUSTICE KAVANAUGH: If the -- what's
18 on page 8 and 9 of the reply brief were Idaho
19 law, would there be a problem still?
20 GENERAL PRELOGAR: So if we had an
21 authoritative Idaho Supreme Court decision that
22 said Idaho law allows for termination in the
23 circumstances where EMTALA would require it,
24 yes, of course. Then the conflict goes away.
25 JUSTICE KAVANAUGH: Well --

1 GENERAL PRELOGAR: But I can't imagine
2 the court would say that because, of course,
3 here --
4 JUSTICE KAVANAUGH: That's not quite
5 what 8 and 9 say, but I -- I take your point on
6 that.
7 Separate question, different category.
8 I think one of the themes on the other side is
9 that this law passed in 1986 was a very
10 important law addressing a very important
11 problem; namely, the problem where hospitals
12 were turning away poor and uninsured patients
13 who came in for emergency care. And the idea
14 was that can't happen. We can't allow hospitals
15 in this country to turn away poor and uninsured
16 people in an emergencies.
17 But their theme is that the law was
18 not designed contextually to deal with specific
19 -- with abortion or other specific kinds of
20 care. And so they make a textual argument, but
21 I think they also make a broader contextual
22 argument about the whole idea of what was going
23 on in 1986. And I want to make sure -- I don't
24 think that's really come up too much. I want to
25 make sure you respond to that.

1 GENERAL PRELOGAR: I appreciate having
2 the chance to address that. So at the outset, I
3 don't think they can square that theory with the
4 text of the statute, which says, in no uncertain
5 terms, here is the fundamental guarantee. If
6 you have an emergency medical condition and you
7 go to an ER in this country, they have to
8 stabilize you. They have to give you such
9 treatment as may be necessary within reasonable
10 medical probability to ensure that you don't
11 deteriorate.
12 And, yes, Congress did not provide a
13 reticulated list of all possible emergency
14 medical conditions and all possible treatments,
15 but it was very clear that Congress set a
16 baseline national standard of care to ensure
17 that, no matter where you live in this country,
18 you can't be declined service and the -- the
19 urgent urgent needs of your medical condition
20 addressed.
21 And, you know, it would be no
22 different if the state had come out and decided
23 to ban epinephrine. That's the singular way to
24 treat anaphylaxis, a severe allergic reaction.
25 That would violate the statute, and we would be

1 up here making the exactly same arguments,
2 because Congress didn't want that. If you have
3 anaphylaxis and you go to an ER anywhere around
4 this country, they're going to give you
5 epinephrine. And Congress mandated that.
6 And I don't see any way to try to draw
7 lines around to exclude pregnancy complications
8 in the very narrow but tragic circumstances
9 where the only way to address the woman's
10 condition and prevent material deterioration is
11 for the pregnancy to end.
12 JUSTICE KAVANAUGH: Thank you.
13 CHIEF JUSTICE ROBERTS: Justice
14 Barrett?
15 JUSTICE BARRETT: So, General, I -- I
16 understand the primary difference between EMTALA
17 and the Idaho statute to be this health, that --
18 that Idaho focuses on the risk of life, but the
19 federal government says that EMTALA -- well,
20 EMTALA says that the health is -- am I right,
21 it's health and life?
22 GENERAL PRELOGAR: That's -- that's
23 the principal difference, but I think it's also
24 the difference between necessary to prevent
25 death versus the health concerns would be

1 reasonably expected to occur. So I think that
2 that is a standard that builds in a little more
3 space for doctors to take action.
4 JUSTICE BARRETT: Got it. Is the
5 federal government aware of any state, other
6 than Idaho, that has a law that does not take
7 health into account?
8 GENERAL PRELOGAR: There are six other
9 states that have severe abortion restrictions
10 without a health exception. So I think that
11 those are the primary category of states we're
12 concerned about here.
13 JUSTICE BARRETT: Thank you.
14 GENERAL PRELOGAR: I should -- I
15 should make clear that there are some pending
16 judicial challenges in those states, and so
17 their laws are not always enforceable or in
18 effect right now.
19 JUSTICE BARRETT: Besides Texas, has
20 the federal government -- has the federal
21 government brought suits similar to the one
22 brought in Idaho and Texas in any of these other
23 states?
24 GENERAL PRELOGAR: To be clear, Texas
25 was not our --

1 JUSTICE BARRETT: Right. Okay.
2 GENERAL PRELOGAR: -- affirmative
3 litigation. They sued us. But we have not
4 brought affirmative litigation in other states.
5 And I think it's -- this case has been on a
6 course and Idaho's law was particularly severe
7 because at the point at which we sued it seemed
8 to cover ectopic pregnancy, and the state
9 conceded that. Now, they have modified the law
10 to exclude that, but it was one of the most
11 pressing concerns because of that.
12 JUSTICE BARRETT: Thank you.
13 CHIEF JUSTICE ROBERTS: Justice
14 Jackson?
15 JUSTICE JACKSON: General, Petitioner
16 relies pretty heavily on clear statement rule
17 principles. And I wonder whether you might
18 comment on my thought that those principles
19 actually cut against them in this case.
20 As you said, Congress set a baseline
21 national standard of care. It has said, in no
22 uncertain terms, that the hospital must provide
23 stabilizing care to people experiencing
24 emergency medical conditions. There was no, as
25 you've said, you know, particular conditions --

1 or particular treatments talked about, carved
2 out, et cetera.
3 So if a clear statement is required,
4 wouldn't it be the requirement of exemption --
5 of exempting abortion? I mean, you know,
6 Justice Alito has talked about some of the
7 references to unborn child, but none of them
8 read like an exemption that I would think our
9 clear statement rule would require in a
10 circumstance in which the baseline is this
11 clear, national standard of care.
12 GENERAL PRELOGAR: Yes. I agree. I
13 think that Congress clearly was requiring
14 stabilization and made that an unqualified
15 mandate. It wasn't exempting particular
16 conditions or particular type of treatments.
17 And, you know, this Court has said that there's
18 no canon of donut holes. That was in Bostock,
19 that when you have a provision like that, the
20 fact that you don't have a specific enumeration
21 of one of its applications doesn't mean that you
22 should read in some kind of implicit exception.
23 So I think that --
24 JUSTICE JACKSON: If we're looking for
25 something clear, we would need to see, I would

1 think, the clear statement that Congress meant
2 for you not to have to provide an abortion
3 pursuant to the mandate of providing stabilizing
4 care.
5 GENERAL PRELOGAR: Yes. And I think
6 it's important to recognize that every relevant
7 actor has understood the statute this way from
8 the beginning. They understood Congress's clear
9 mandate here.
10 This has been the agency's position
11 all along. We are not adopting a new position.
12 That's reflected in our enforcement activity and
13 in HHS's guidance and rulemakings in this area.
14 Providers have understood it. Even
15 those hospitals that don't provide elective
16 abortions, they have always provided life
17 sustaining and health sustaining pregnancy
18 termination consistent with EMTALA.
19 Congress itself recognized it in the
20 Affordable Care Act. And I don't think there's
21 any reasonable argument to be made that people
22 misunderstood what Congress was doing in this
23 statute.
24 JUSTICE JACKSON: Thank you.
25 CHIEF JUSTICE ROBERTS: Thank you,

1 counsel.
2 Rebuttal, Mr. Turner.
3 REBUTTAL ARGUMENT OF JOSHUA N. TURNER
4 ON BEHALF OF THE PETITIONERS
5 MR. TURNER: Thank you, Your Honors.
6 EMTALA takes state law practice of
7 medicine standards as it finds them. As Justice
8 Gorsuch noted, that's what Section 1395 says.
9 And, in fact, in the vaccine mandate case that
10 was referenced, that's what the Solicitor
11 General's office told this Court when it said
12 that 1395 does not require -- does not allow
13 federal officials to dictate particular
14 treatments for particular cases.
15 That's exactly what they are trying to
16 do here with EMTALA. It's also confirmed by
17 subdivision (f). That -- that codifies a
18 presumption against preemption. So to Justice
19 Jackson's colloquy at the end, that is the
20 point. You do presume that state law continues
21 to operate alongside EMTALA. You don't presume
22 the opposite.
23 It's supported by the CMS operations
24 manual, which is HHS's Rosetta Stone of EMTALA
25 enforcement. It tells doctors, it tells CMS

1 enforcement agents on the ground that you
2 consider what is available by referencing what
3 is within the scope of that doctor's license.
4 That is exactly what we are saying.
5 It is also specifically directed in 42
6 CFR 489.11, which requires hospitals to assure
7 that their medical staff comply with state law.
8 That's a federal regulation that directs
9 hospitals to require their hospital staff to
10 comply with state law.
11 It's also confirmed by the 115,000
12 enforcement instances that totally lack any
13 theory that would support, any case history that
14 would support the administration's reading. She
15 says that this is -- always been understood to
16 be the case. Well, you'd think that we would
17 find in those 115,000 instances a single example
18 where state law was overridden by EMTALA and
19 there isn't one.
20 Finally, the text. The text qualifies
21 EMTALA's stabilization requirement by the staff
22 that is available. We know nurses can't perform
23 open heart surgery and we know janitors can't
24 draw blood. It's know the just a plain mandate
25 devoid of reference to state law.

1 And we know the word "available" even
2 in a common usage incorporates state law. For
3 example, you heard just the other day that when
4 considering whether a bed is available for
5 homeless people, it has both a physical sense
6 and a legal sense. And whether cigarettes or
7 alcohol are available to people in Idaho, there
8 is both a physical question and a legal
9 question.
10 Opioids are available in hospitals.
11 They are on the shelf. They are physically
12 there. But there is a legal question that comes
13 into play too. It is the same with abortions.
14 In response to the Chief Justice's
15 question on conscience, General Prelogar said
16 that both hospitals and doctors are exempt from
17 EMTALA's supposed abortion mandate. We're
18 relieved to hear that. But I think that it
19 highlights the utter inconsistency of the
20 administration's reading.
21 So if EMTALA's stabilization
22 requirement is general enough not to override
23 extra textual protections like conscience
24 protections, then it cannot be so specific and
25 include a requirement that is in direct conflict

1 with state law. Those two don't jibe.
2 This Court does not lightly find a
3 direct conflict. Congress must speak clearly.
4 It has not done so here.
5 The administration's position
6 ultimately is untethered from any limiting
7 principle. I think we heard that. There's just
8 no way to limit this to abortion. And there's
9 no way to limit it to Idaho. There are 22
10 states with abortion laws on the books. This
11 isn't going to end with Idaho.
12 It's not going to end with the six
13 states that General Prelogar mentioned because
14 all of the states that have abortion regulations
15 define the health and the emergency exception
16 narrower than EMTALA does. So this question is
17 going to come up in state after state after
18 state.
19 It's also not limited to physical
20 health. I know General Prelogar says that
21 there's no circumstance in which a health --
22 mental health condition would require
23 stabilization with an abortion but now she's
24 just fighting with the American Psychiatric
25 Association. The very standards that she's

1 setting up to say controls the EMTALA inquiry.
2 That's not consistent. And it isn't limited to
3 EMTALA.
4 Justice Thomas, Alito, Justice
5 Gorsuch, you all pointed out the major Spending
6 Clause implications that are at play here. And
7 I disagree that we didn't brief this. It's on
8 pages 20 to 21 of our opening brief. We
9 recognize that this is hugely concerning if the
10 federal government can pay private actors to
11 violate state laws, not just any state laws,
12 state criminal laws. The implications of that
13 are vast.
14 It leaves the federal government
15 unbound by enumerated powers. And I think
16 General Prelogar admitted that.
17 The Court doesn't have to answer that
18 question on our reading. It does on theirs.
19 CHIEF JUSTICE ROBERTS: Thank you,
20 counsel. The case is submitted.
21 (Whereupon, at 11:57 a.m., the case
22 was submitted.)
23
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