

# [***Takeaways from the Supreme Court's oral arguments over emergency abortions***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6BW6-4V11-JBSS-S000-00000-00&context=1516831)

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**Body**

(CNN) &#8212; In a Supreme Court [*hearing on the Biden administration's challenge to aspects of Idaho's strict abortion ban*](https://www.cnn.com/politics/live-news/abortion-supreme-court-idaho-04-24-24/index.html), US Solicitor General [*Elizabeth Prelogar*](https://www.cnn.com/2024/04/24/politics/solicitor-general-elizabeth-prelogar-idaho-abortion/index.html) sought to appeal to conservative justices who just two years ago ruled that states should have the ability to prohibit the procedure.

The dispute, stemming from the Justice Department's marquee response to the high court's reversal of Roe v. Wade in 2022, turns on whether federal mandates for hospital emergency room care override abortion bans that do not exempt situations where a woman's health is in danger but her life is not yet threatened.

To prevail, the Biden administration will need the votes of two members of the court's conservative bloc, and with Justice Brett Kavanaugh signaling sympathies toward Idaho, the case will likely come down to the votes of Chief Justice John Roberts and Amy Coney Barrett. The two justices had tough questions for both sides of the case.

The court's far-right wing, perhaps in an attempt to keep those two justices on their side, framed the case as a federal overreach into state power. The court's liberals, meanwhile, focused on the grisly details of medical emergencies faced by pregnant woman that were not covered by the limited life-of-the-woman exemption in Idaho's ban.

Here are the key takeaways from oral arguments:

Prelogar tailors her appeal to an abortion-hostile court as 'narrow' circumstances of medical emergencies

Prelogar said that there was a real conflict between Idaho's law and the federal law, known as the Emergency Medical Treatment and Labor Act (EMTALA), but she painted it as a narrow one. She stressed that, in this case, the administration is not trying to interfere with Idaho's overall ability to criminalize abortions outside of certain medical emergencies.

Idaho and its defenders argue that the Biden administration is trying to circumvent the Supreme Court's 2022 ruling that let states prohibit abortion, and to rebut that argument, Prelogar described Idaho has an outlier among states that have banned the procedure.

"They have tried to make this case be about the broader debate for access to abortion in cases of unwanted pregnancy, but that's not what this case is about at all," Prelogar said. "Idaho's ban on abortion is enforceable in virtually all of its applications. But in the narrow circumstances involving grave medical emergencies, Idaho cannot criminalize the essential care" that EMTALA requires.

Prelogar's argument was met with deep skepticism from several of the court's conservative justices, but others - including Roberts and Barrett - asked probing questions of both sides. The court's liberal wing, meanwhile, all signaled they would coalesce around the Biden administration.

The solicitor general later stressed that federal conscience protections protect individual doctors with moral objections to abortion from being forced to perform abortions.

Barrett appeared particularly interested in the question of how much of a conflict there was between Idaho's ban and the Biden administration's interpretation of the federal emergency health care law. Liberal justices teed up questions aimed at teasing out the scope of that conflict.

Idaho attorney struggles with questions from female justices about serious pregnancy complications

Idaho's attorney Joshua Turner was subjected to a brutal and extended line of questioning from the female justices of the court exploring how the state's abortion ban plays out in medical emergencies - particularly in dire situations where a woman's health is at risk but her life is not yet in danger.

Justice Sonia Sotomayor asked Turner point blank: "What you are saying is that there is no federal law on the book that prohibits any state from saying, even if a woman will die, you can't perform an abortion?"

Justice Elena Kagan offered a hypothetical in which a woman was about to lose her reproductive organs due to a pregnancy complication. As Turner danced around the "difficult" and "tough" situation her question as posing, she pushed harder: "That would be a good response if federal law did not take a position on what you characterize as a 'tough question.'"

Sotomayor jumped in with even more visceral examples of women suffering sepsis and hemorrhaging due to pregnancy complications not yet threatening their lives. She also asked about a patient experiencing complications who was denied an abortion earlier in her pregnancy, and by then she was able to deliver the fetus, the baby died and she in the meantime was forced to get a hysterectomy.

Turner said that whether Idaho's ban applied to those situations was a case-by-case assessment, an answer that Barrett said "shocked" her.

"I thought your own expert had said [during lower court proceedings] that these kinds of cases were covered," she said. "And you're now saying they're not?"

Conservatives frame case as federal encroachment of state power

As they grilled Prelogar, some of Republican-appointed justices sought to frame the case as a federal encroachment on state power.

The court's far-right wing suggested that accepting Biden's interpretation of the federal health care law would open the door to the federal government taking control of powers that are usually reserved for the states.

Justice Clarence Thomas asked whether there are any other examples of laws passed under the Spending Clause laws that would override a state's criminal prohibitions. EMTALA was passed under Congress' Spending Clause authority by conditioning federal funding for hospitals on hospitals' compliance with federal mandates.

Justice Neil Gorsuch, meanwhile, asked if the federal government could use health care funding programs to transform state regulation of medicine into essentially a federal function.

Prelogar tried to assure Gorsuch that that scenario was far afield from the dispute in this case. She said the Supreme Court could set limits that would prevent the federal government to take control of a state function, but "I don't think we're anywhere close to that" in this case.

Conservatives also ask about mental health care requirements

An issue that simmered just below the surface of the dispute as it worked its way up to the Supreme Court came to the forefront: Whether doctors would be required to perform an abortion under the administration's reading of the law for a severe mental health problem, such as depression.

The debate unfolded first after a question from Justice Brett Kavanaugh, who attempted to suggest that, practically, there was little daylight between Idaho's strict abortion ban and EMTALA's requirements to stabilize a patient's health.

Turner, Idaho's attorney, shot back that mental health could essentially open a loophole. Conservatives have long opposed allowing exceptions to strict abortion bans for mental health.

"I don't know how, if a woman presents at seven months pregnant in an Idaho emergency room and says, 'I'm experiencing severe depression from this pregnancy. I'm having suicidal ideation from carrying this pregnancy forth,' that that wouldn't, under the administration's reading," lead to an abortion, Turner said.

Justice Samuel Alito, a fellow conservative, picked up on that same theme, repeatedly pressing Prelogar to explain whether the Justice Department views mental health as a way around Idaho's abortion ban.

"I really want a simple, clear-cut answer to this question," Alito asked. "Does 'health' mean only physical health or does it also include mental health?"

Prelogar did her best to try to shut down that line of questioning. She said the federal law at issue does require hospitals to stabilize a pregnant patient with "grave mental health emergencies" but, she quickly added, that circumstance wouldn't lead to an abortion.

"Let me be very clear about our position," Prelogar said. "That could never lead to pregnancy termination because that is not the accepted standard of practice to treat any mental health emergency."

Supreme Court's action on abortion cases puts it at center of presidential ***politics***

As the argument Wednesday veered into the weeds of Medicare funding and standards of care, the bigger political picture was at times difficult to see: The Supreme Court, by considering the case at all, has once again thrust itself into an election year already driven by its earlier decision to overturn Roe v. Wade.

Abortion - and specifically strict laws like the one Idaho enacted - have emerged as a central issue in the race between President Joe Biden and former President [*Donald Trump*](https://www.cnn.com/2013/07/04/us/donald-trump-fast-facts/index.html). Biden has increasingly sought to blame Trump for Roe's demise because his three conservative nominees to the high court - Gorsuch, Kavanaugh and Barrett - all [*voted to overturn the landmark 1973 precedent that established a constitutional right to abortion*](https://www.cnn.com/2022/06/24/politics/dobbs-mississippi-supreme-court-abortion-roe-wade/index.html).

In that sense, even though a win for Idaho would be a significant loss for Biden's policies, it could give a political boost to candidate Biden in terms of both fundraising and energizing Democratic voters who support abortion. That is exactly the kind of political influence that the Supreme Court, especially under Roberts, has generally tried to avoid.

A ruling is likely to land sometime in late June, potentially around the same time that the court will decide another key abortion matter pending on its docket: Whether the US Food and Drug Administration overstepped its authority by expanding access to the abortion pill mifepristone.

Together, the decisions would put abortion back on the front burner of American ***politics*** just weeks before the GOP nominating convention in Wisconsin.

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