



ABORTION POLICY

HEALTH CARE

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Ohio doctors fear effects of emergency abortion care case set to go before U.S. Supreme Court

BY: **SUSAN TEBBEN** - APRIL 23, 2024 5:00 AM

📷 Because of Idaho's abortion ban and a court decision that does not protect emergency room physicians from prosecution under that law, some Idaho physicians are advising their pregnant patients, or those trying to become pregnant, to purchase memberships with companies like Life Flight Network or Air St. Luke's in the Boise area to avoid potentially significant costs if they need air transport in an emergency. (Courtesy of Life Flight)

A federal law that allows emergency departments to treat patients without regard to their ability to pay will be under U.S. Supreme Court scrutiny this week, and Ohio doctors are concerned about the case's local impact on emergency abortion care.

The nation's highest court will hear oral arguments in [Idaho v. United States](#), an appeal in which the state is questioning elements of a 1986 law called the Emergency Medical Treatment and Labor

Act (EMTALA). The law compels emergency rooms to treat all patients who are experiencing emergency medical conditions and stabilize or transfer those patients, whether or not insurance or financial payment has been confirmed.

“It is the only guarantee of universal health care in the United States, and it only applies to emergency departments,” Dr. Laurel Barr, a practicing emergency physician in central Ohio, said at a press conference discussing EMTALA and the Supreme Court case.

The U.S. Department of Justice sued after [Idaho passed their own abortion ban](#) that only provides exceptions for the life of the pregnant individual. The DOJ argued the EMTALA preempts any such law.

After the 2022 decision by the court in [Dobbs](#) – which overturned the nationwide right to abortion care and returned the decision to the states – the U.S. Department Health and Human Services sent out a memo with guidelines telling medical professionals that EMTALA still preempted state laws, including in the use of medically necessary abortions.

“If a pregnant patient is experiencing an emergency medical condition and abortion is the stabilizing treatment necessary to resolve that condition, the physician must provide that treatment to stabilize that patient,” said Ohio health care attorney Jennifer Nelson Carney.

At issue in the Idaho case is whether or not abortions can be considered a stabilizing treatment, but Carney said depending on how the Supreme Court rules, the case could have ripple effects far beyond reproductive health.

“(Plaintiffs) think that what they’re asking for is to have the court rule that abortion is not a possible treatment to stabilize, but the likelihood is that, if the court were to go that way, that it would be a much broader implication that would result in people not being treated at all,” Carney said.

She called it the “classic legal analysis of slippery slope,” and potentially criminalizing conduct covered under EMTALA “places health care providers in a very grim situation of risking criminal liability if they follow just their expertise, training and ethical obligations.”

“If the opinion says that states can decide what health care services are subject to EMTALA and what aren’t, that is just a brand new health care framework that we haven’t seen in 40 years,” Carney said.

Ohio is already too familiar with conflicting regulations for physicians, which can cause hesitation when it comes to providing needed care. Though voters approved a constitutional amendment establishing the right to reproductive care such as abortion and miscarriage treatment with 57% of the vote last November, laws still remain on the books in the state that require a 24-hour waiting period before an abortion can take place and for doctors to have hospital privileges within a certain distance from a health clinic that provides abortions services.

“The big problem right now for us is that Issue 1 has passed ... and yet we have seen nothing done with the laws in Ohio,” said Dr. Amy Burkett, an OB/GYN who also served on the board of directors for Ohio Physicians for Reproductive Rights, a leader in the campaign to pass Issue 1.

To that end, abortion clinics have joined with the ACLU of Ohio in lawsuits to undo regulations that conflict with the recently minted constitutional rights. Most recently, the groups [filed a lawsuit](#) in the Franklin County Court of Common Pleas to eliminate “several Ohio laws that together force abortion patients to wait a minimum of 24 hours after receiving unnecessary state-mandated information in person before they can access their desired abortion care,” the clinics said in announcing the suit.

A separate lawsuit that has been active in one form or another since the fall of *Roe v. Wade* asks a Hamilton County court to permanently [strike down a six-week abortion ban](#) still enacted in the state, though the various court cases targeting it have largely prohibited its enforcement.

With those lawsuits still working their way through the courts, Dr. Marcelo Azevedo, also a member of OPRR as part of its executive committee, said the EMTALA decision from the Supreme Court could have the same effect that the undoing of *Roe v. Wade* had on Ohio medicine.

“I would prepare ourselves for having that same level of confusion that we had after the decision in *Dobbs*,” Azevedo said.

That confusion could filter directly from hospital administration decisions to the patients. Barr said before EMTALA, a trend of “patient dumping” was present in hospitals. The term refers to private hospitals who transferred patients to public hospitals after finding out they couldn’t pay or didn’t have the needed insurance.

Without EMTALA, the situation could return to those days, even when it comes to conditions that don’t involve pregnancy. For those who are stable but need a refill of their insulin prescription, for example, “hospitals will have no financial incentive to treat you when you’re sick, so then they won’t let me provide that prescription unless you swipe a credit card,” according to Barr.

“It will become an issue where if you can pay, you’ll get your care,” Barr said. “If you can’t, you’ll die.”

The U.S. Supreme Court is set to hear oral arguments in the Idaho case on Wednesday, April 24.



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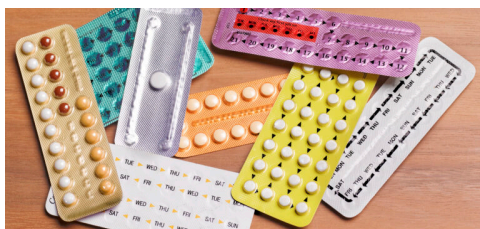


Susan Tebben is an award-winning journalist with a decade of experience covering Ohio news, including courts and crime, Appalachian social issues, government, education, diversity and culture. She has worked for The Newark Advocate, The Glasgow (KY) Daily Times, The Athens Messenger, and WOUB Public Media. She has also had work featured on National Public Radio.

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