Nos. 23-726, 23-727

In the Supreme Court of the United States

MIKE MOYLE, SPEAKER OF THE IDAHO HOUSE OF REPRESENTATIVES, ET AL.,
Petitioners,
v.
UNITED STATES,
Respondent,

IDAHO,
Petitioner,
v.
UNITED STATES,
Respondent.

On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF *AMICUS CURIAE* STANTON INTERNATIONAL IN SUPPORT OF PETITIONERS

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STATEMENT OF IDENTITY AND INTERESTS OF *AMICUS CURIAE*

Pursuant to Supreme Court Rule 37, *Amicus Curiae*, Stanton International, submits this brief.[1] *Amicus Curiae* provides holistic, professional solutions which uphold the dignity of both mother and child. Stanton International believes that women deserve better, more compassionate, and higher quality alternatives to the abortion clinic and coercive abortion tactics of the past. In 2006, Brandi Swindell founded Stanton International in Boise, Idaho. Almost two decades later, Stanton International has provided exceptional wellness care for thousands of women considering abortion through services including ultrasound exams, pregnancy tests, women's wellness exams, STI testing, health coaching, client advocacy, resources and referrals, and options counseling. Stanton International's licensed medical professionals and trained client advocates are devoted to professional, compassionate, and confidential care, marked by excellence. Stanton International holds accreditation from the Association for Ambulatory Heath Care. All of Stanton International's services are no charge to their clients.

In addition to Stanton International's flagship clinic in Idaho, its healthcare services have expanded into multiple states, two additional countries, and the organization launched Stanton Mobile, which provides critical medical services and resources to universities, refugee, and marginalized communities, and other

[1] No counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this *Amicus Curiae* brief.

under-served locations around the Treasure Valley in Idaho and beyond.

A Senate Committee asked Brandi Swindell, Founder and CEO of Stanton International, to share testimony regarding the life-changing work that Stanton International successfully implements. https://www.youtube.com/watch?v=_TlnldIHagA&t=233s. During the hearing, she shared, with the permission of the Stanton client this feedback:

> I was in a very bad place in my life when I decided to get an abortion.
>
> My mom told me she wouldn't have anything to do with my baby. My boyfriend was a drug addict and causing abuse in my life and left me, and I was diagnosed with having severe panic attacks and hyperemesis at just 5 weeks into my pregnancy. I was so sick I would throw up 20-30 times a day and had to get IV fluids. I thought there was no way I could do this. I was so sick I felt like I could die. I already had one daughter and didn't think anyone would love me with two. I thought my only option to have a future was to abort my baby.
>
> I drove to Planned Parenthood and saw Stanton Healthcare across the parking lot. I had heard about them and thought to myself, "I'm going to go in there and if they can help me and can change my mind about getting an abortion, then so be it. And if not, I'm

> going across the parking lot to Planned Parenthood to get an abortion.
>
> I went to Stanton Healthcare and found that they are a real clinic that helped me with everything I needed. They loved me and showed me I wasn't alone, gave me things I needed for my baby, counseling to get out of my life-threatening abusive relationship, encouraged me I could make it through having hyperemesis, encouraged me that I could have a life with this baby, encouraged me to find a church I was loved after having been hurt elsewhere, and gave me ultrasounds to see my baby. Seeing my daughter's heartbeat made me stop feeling the panic attacks that made me want to abort and stop feeling the horrible nausea and see my baby was a real person that I couldn't kill. It instantly made me feel attached to my baby and love her.

https://www.help.senate.gov/imo/media/doc/Swindell.pdf. Stanton International serves women and children, many times saving both and altering the trajectory of their lives from a place of hardship to one of hope. https://stantoninternational.org/stories-of-hope/.

Amicus Curiae has worked for nearly twenty years providing healthcare and solutions to the women of Idaho. Stanton International has tirelessly devoted its time and resources toward making the State of Idaho safe for women and children, including children

in the womb, creating a community of hope and a landscape in which women are empowered to overcome and identify challenges to achieve long-term success. *Amicus Curiae* files this brief to encourage this Honorable Court that States, like Idaho, do not need the federal government to force Idaho's emergency rooms to conduct elective abortion, nor is the President's mandate lawful.

SUMMARY OF THE ARGUMENT

Petitioners assert that EMTALA authorizes a federal mandate that requires hospitals to perform abortions throughout the nation and that its new, post-*Dobbs* interpretation of EMTALA preempts Idaho's duly enacted State law. Both arguments fail. As outlined below, EMTALA has never been used as a tool to force the performance of elective abortion, and there is no basis for expanding the comprehensible scope of the statute now. *Amicus Curiae* asks this Court to reverse the Ninth's Circuit's erroneous holding.

ARGUMENT

To begin, we first emphasize that Idaho's Defense of Life Act protects the emergency medical needs of all women and girls in the State of Idaho. Idaho's Defense of Life Act promotes emergency, life-saving care for women and children, which includes emergency treatment for ectopic pregnancies, pre-eclampsia, sepsis, placental abruption, or any other emergency condition requires immediate treatment or early delivery. J.A.547; 564-66, 581-82 (treating ectopic or molar pregnancy is not considered abortion and allowed under Idaho Code §18-604(1)(c)); J.A.547-48, 573-78, 567-68, 514-15, 519-520, 522-23 (pre-eclampsia, eclampsia, or other pregnancy complications require life-saving treatment or early delivery, both permitted under Idaho's Defense of Life Act); J.A.546-48; 571-72; 515-16, 518 (Idaho's Defense of Life Act allows for the emergency treatment of sepsis caused by the premature rupture of membranes); J.A. 569-70, 572-73, 547-48, 516-19 (Idaho's Defense of Life Act protects emergency treatment of placental abruption).

Any argument that Idaho's Defense of Life Act endangers a woman's life, or her health runs antithetical to the very nature of the act, which again protects the life, health, and safety of women and children in Idaho. Such argument, whether purposely misguided for political gain or based on an honest ignorance, is contrary to the express language of the act and the findings of the Idaho Supreme Court in its interpretation of the act. *Planned Parenthood Great Nw. v. State*, 171 Idaho 374, 407 (2023) (finding that the act was a proper exercise of state legislative

authority to promote the health, safety, and welfare of the people of Idaho) (quoting *State v. Leferink*, 133 Idaho 780, 784 (1999)); *see also, e.g., id.* at 522 (concluding that treatment for ectopic and non-viable pregnancies per definition are not considered "abortion" under Idaho's Defense of Life Act); *id.* at 445-46 (holding that the "plain language" of the act "leaves wide room for the physician's 'good faith medical judgment'" regarding whether a certain treatment or even an abortion is "necessary to prevent the death of the pregnant woman" and measured by the "facts known to the physician at that time.").

Therefore, considering the Idaho Supreme Court's determination that the act was a valid exercise of the Legislature's authority, *id.* at 396, and this Court's holding that "[t]he [United States] Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion," *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228, 2284 (2022), it would reason that the abortion regulation at issue rests squarely within the power of the State legislature. The Idaho Supreme Court cautioned that if it were to shirk its duty or replace its responsibility with "personal policy preferences" or succumb to emotion of the moment or political opinion, "the Idaho Constitution would no longer be the voice of the people of Idaho—it would be effectively replaced by the voice of a select few sitting on this Court." *Planned Parenthood*, 171 Idaho at 390. *Dobbs* recognized that not all Americans nor all States would agree on abortion policy and predicted a continuation of "widely divergent views." 142 S. Ct. at 2240. Yet, the Biden Administration and the Ninth Circuit failed to exercise the same resolve to respect "the voice of the

people of Idaho" or provide space for pluralism, and, in doing so, silenced it with the heavy amplified pulpit of the Executive Branch. Surely, this was not the outcome this Court envisioned when deciding *Dobbs*.

President Biden's Executive Order re-federalized abortion law just two weeks after *Dobbs*, and in it he re-cast the Emergency Medical Treatment and Labor Act ("EMTALA") into something unrecognizable—a new abortion law. Exec. Order No. 14076, 87 Fed. Reg. 42053, 42053 (July 8, 2022); 42 U.S.C. § 1395dd. Even under *Roe*, EMTALA never required emergency rooms to perform abortions. The plain language of the statute protected pregnant women and their unborn children for over three decades. In 1989, Congress amended the statute to specifically protect the "unborn child," 42 C.F.R. § 489.24; 42 U.S.C. § 1395dd(e)(1)(A)(i) and subsequently was interpreted as requiring neonatal intensive care. *Id.*; Exec. Order No. 13952, 85 Fed. Reg. 62187, 62187 (Sept. 25, 2020). EMTALA never included the word abortion or required hospitals to perform abortions. On July 11, 2022, however, the U.S. Department of Health and Human Services issued guidance, in the form of a federal mandate, revising EMTALA to now require abortion to be performed in emergency rooms across the country as a routine, stabilizing treatment, and it self-elevated its mandate to act as a trump card over all state laws pertaining to abortion. App. 31- 44. Then another mere two weeks later, the Petitioners filed this lawsuit against Idaho, banning the State from enforcing its abortion law. J.A.1-23.

Post-*Dobbs*, the Biden Administration snatched powers under EMTALA it does not have, and has

never had, to further its political goal of "expanding access" to elective abortion—not emergency medical care. There are several problems to this tactic. This Amicus Curiae brief focuses on one: no case since EMTALA's inception has interpreted the act as the Biden Administration has here—as creating a right to abortion. EMTALA protects both the pregnant mother and her unborn child.[2] The hypothetical emergencies alleged by Petitioners are not prohibited under Idaho's Defense of Life Act. Idaho Code § 18-604(1)(c); *United States* v. *Idaho*, 83 F.4th 1130, 1137 (9th Cir. 2023); J.A. 514-16, 519-20, 522-23, 546-58, 564-82.

[2] Petitioners misrepresent the non-emergency nature of abortion, which is an intentional procedure to end the life of an unborn child, one that is usually scheduled on an outpatient basis, and not an "emergency" covered under EMTALA, which fails to apply to medical treatment after a patient is admitted to the hospital. It is hard to imagine any medical situation that would require that an immediate, elective abortion be performed inside the emergency room that could not wait until a patient is admitted into the hospital or taken into a labor and delivery room that would not already be exempt under Idaho's Defense of Life Act. *See also* https://aaplog.org/wp-content/uploads/2022/08/AAPLOG-Myth-v-Fact_v5.pdf.

I. SINCE ITS INCEPTION, COURTS HAVE UNIVERSALLY NEVER APPLIED EMTALA TO MEAN WHAT THE PETITIONERS PURPORT IT DOES IN THIS CASE.

Few lower court cases have interpreted the scope of EMTALA as it applies to the rights of a pregnant mother and her unborn child. However, it is clear that no previous case, in the history of the federal statute, had ever adopted the interpretation that Petitioners do here.

Congress enacted EMTALA to thwart hospitals from rejecting patients due to an inability to pay. 68 F.R. 53,222, 53,223 (Sept. 9, 2003); H.R.Rep. No. 99–241, pt.3, at 27 (July 31, 1985) (stating that Congress was "greatly concerned about the increasing number of reports that hospital emergency rooms are refusing to accept or treat patients with emergency conditions if the patient does not have medical insurance"). EMTALA requires that a pregnant mother and her unborn child who come to the hospital for emergency treatment receive 1) medical screening, 2) stabilization of known emergency medical conditions and labor, and 3) if the individual remains unstablized, the individual's transfer to a different hospital facility is restricted. 42 U.S.C. § 1395dd(a)-(c); *Pennington-Thurman v. Christian Hosp. Ne.,* No. 4:19-CV-162 PLC, 2019 WL 5394500, at *3 (E.D. Mo. Oct. 22, 2019). Further, a participating hospital with specialized capabilities, such as a neonatal intensive care unit, shall not refuse to accept an appropriate transfer. *Penn v. Salina Reg'l Health Ctr., Inc.*, No. CIV.A. 11-1243-MLB, 2012 WL 1658910, at *5 (D. Kan. May 9, 2012).

Lower courts have interpreted EMTALA as applying to a pregnant mother and her unborn child simultaneously. For example, even when a hospital accepts a pregnant mother into its emergency ward and the child has not yet been born, once the patient is admitted to the hospital's labor room to give birth, she no longer maintains an actionable claim under the statute for either herself or her child. *Rivera v. Hosp. Episcopal Cristo Redentor*, 613 F. Supp. 2d 192, 199 (D.P.R. 2009) (holding that EMTALA provided no federal cause of action for death of a child due to improper EMTALA screening once the pregnant mother has been admitted to the hospital as the child was deemed to be admitted at the same time as the pregnant mother). Once a pregnant mother is accepted to the emergency room and screened and is admitted into the hospital as an inpatient, her unborn child "necessarily becomes an inpatient for purposes of EMTALA coverage at the same time[.]" *Preston v. Meriter Hosp., Inc.*, 307 Wis. 2d 704, 708 (2008).

And while there are one or two outliers that fall outside of this general interpretation of EMTALA, the courts in those cases have either found additional protections for unborn children or the unborn child predeceased the pregnant mother's arrival to the emergency room. In *Lima-Rivera v. UHS of Puerto Rico, Inc.*, for example, the court held that even though the unborn child was admitted as an inpatient to the hospital and born in the operating room, the baby was in critical condition at birth and required specialized care. 476 F. Supp. 2d 92, 96–99 (D.P.R. 2007). The court determined that under EMTALA the baby should have been transferred to a neonatal

intensive care unit, instead the hospital failed to transfer and stabilize the baby and he died. *Id.*

In *Morin v. E. Maine Med. Ctr.*, a federal court acknowledged a pregnant woman's desire to obtain an abortion, but in the context that the protections of EMTALA apply throughout the birthing process, until after the pregnant woman has birthed the placenta. 780 F. Supp. 2d 84, 94 (D. Me 2010). In *Morin*, the plaintiff arrived at the emergency room, but it was determined that her 16-week-old had died in utero. *Id.* At that point, the hospital released the plaintiff against her wishes, while she was still having contractions, had not yet birthed her deceased child, nor had completed birth of the placenta. *Id.* The express language of EMTALA protected the plaintiffs' right to medical care through the expulsion of the placenta. *Id.* Morin, plainly on its facts, was not a case about abortion, as the plaintiffs' unborn child died of natural causes and the hospital obtained this information upon screening the patients, both the pregnant mother and the unborn child. *Id.* Outside of the context of the Biden Administrations' interpretation of EMTALA, the statute has never been applied to require any hospital to assume liability for failing to perform an abortion, nor has it been used to invalidate otherwise constitutional and unduly enacted law. EMTALA has universally been used to protect the unborn.

Given EMTALA's history and each case interpreting the statute since its inception, Petitioners' expansion of federal power under EMTALA is unlawful and "in excess of its statutory jurisdiction." *Texas v. Becerra*, 623 F. Supp. 3d 696,

724 (N.D. Tex. 2022), judgment entered, No. 5:22-CV-185-H, 2023 WL 2467217 (N.D. Tex. Jan. 13, 2023), and aff'd, 89 F.4th 529 (5th Cir. 2024), and appeal dismissed, No. 22-11037, 2023 WL 2366605 (5th Cir. Jan. 26, 2023), and aff'd, 89 F.4th 529 (5th Cir. 2024). EMTALA simply "does not mandate" abortion nor does it overrule the abortion law of every State in the country. 89 F.4th at 542.

CONCLUSION

Just two terms ago, this Court determined that it was "time to heed the Constitution and return the issue of abortion to the people's elected representatives." *Dobbs*, 142 S. Ct. at 2243. The elected representatives of Idaho have protected the life, health, and safety of its women and children under the Defense of Life Act, and it has done so by evolving past elective abortion, as is their right. It is not the job of the Biden Administration to override the ruling of this Court in *Dobbs*, or the vote of Congress in passing and amending EMTALA, or the will of the Idaho's elected representatives to *ultra vires* re-federalize abortion law—but that is the sad reality of what it has done. This Honorable Court should, therefore, reverse the decision of the Ninth Circuit.

Respectfully submitted,

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