Nos. 23-726, 23-727

In The Supreme Court of the United States

MIKE MOYLE, SPEAKER OF THE 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 *AMICI CURIAE* UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, CATHOLIC HEALTH CARE LEADERSHIP ALLIANCE, CHRIST MEDICUS FOUNDATION, NATIONAL CATHOLIC BIOETHICS CENTER, CATHOLIC BAR ASSOCIATION, CATHOLIC MEDICAL ASSOCIATION & CATHOLIC BENEFITS ASSOCIATION IN SUPPORT OF PETITIONERS AND REVERSAL

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other

INTERESTS OF *AMICI CURIAE*[1]

Amicus **United States Conference of Catholic Bishops** (USCCB) is a nonprofit corporation, the members of which are the active Catholic Bishops in the United States. The USCCB advocates and promotes the pastoral teachings of the U.S. Catholic Bishops in such diverse areas of the nation's life as the free expression of ideas, fair employment and equal opportunity for the underprivileged, the importance of education, and the sanctity of human life.

Amicus **Catholic Health Care Leadership Alliance** (CHCLA) is an alliance of Catholic organizations whose mission is to support the rights of patients and professionals to receive and provide health care in accordance with the moral, ethical, and social teachings of Jesus Christ and His Church through ongoing evangelization, education, advocacy, and mutual support. CHCLA's allied members include professionals involved in all areas of health care, including physicians and nurses, as well as practice groups and hospitals. CHCLA members are engaged in the active practice of health care on a daily basis, working in both secular and religious environments, and adhere to Catholic doctrine as their sincerely held religious beliefs. Its members collectively provide medical care to

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[1] Pursuant to S. Ct. Rule 37.6, *Amici* state that no counsel for a party wrote this brief in whole or in part, and no counsel, person, or party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity, other than *Amici*, their members, or their counsel, has made a monetary contribution to this brief's preparation or submission.

hundreds of thousands of patients across the country. CHCLA believes that the position taken by Respondent and HHS will significantly impact: (1) the duty of health care providers in general to protect the life of an unborn child under EMTALA; (2) the ability of CHCLA members to practice medicine without being required or forced to perform intentional abortions as a treatment option under EMTALA, which is a violation of CHCLA members' conscience rights as practitioners of the Catholic faith; and (3) health care access for the underserved patients for whom CHCLA members provide care.

Amicus **Christ Medicus Foundation** (CMF) was established to defend conscience and religious freedom rights in health care and to advance Christ-centered Catholic pro-life health care in the marketplace. Today, CMF works to share the healing of Jesus Christ through promoting conscience rights in health care, offering life-affirming Catholic health and wellness solutions for individuals and families, and supporting the expansion of pro-life medical care that serves pregnant mothers and families most in need. CMF co-founded the Health Care Civil Rights Taskforce to use education and non-legal advocacy to protect vulnerable patients from unjust denial of medical care, religious support, or family support. For decades, it has helped lead coalitions and movements to care for and protect the life, health, and dignity of patients, families, and medical professionals with a special concern for persons who are materially poor, historically marginalized, or otherwise vulnerable.

Amicus **National Catholic Bioethics Center** (NCBC) is a nonprofit research and educational institute committed to applying the principles of natural moral law, consistent with many traditions including the teachings of the Catholic Church, to ethical issues arising in health care and providing health care in accordance with the moral, ethical, and social teachings of Jesus Christ and His Church through ongoing evangelization, education, advocacy, and mutual support.

Amicus **Catholic Bar Association** (CBar) is a community of legal professionals that educates, organizes, and inspires its members to faithfully uphold and bear witness to the Catholic faith in the study and practice of law. The CBar's mission and purpose include upholding the principles of the Catholic faith in the practice of law and assisting the Church in the work of communicating Catholic legal principles to the legal profession and society at large. This includes the principles of religious liberty and rights of conscience with respect to religious beliefs.

Amicus **Catholic Medical Association** (CMA) has over 2,000 physicians and hundreds of allied health members nationwide. CMA members seek to uphold the principles of the Catholic faith in the science and practice of medicine—including the belief that every person's conscience and religious freedoms should be protected. The CMA's mission includes defending its members' right to follow their consciences and Catholic teachings in their professional work.

Amicus **Catholic Benefits Association** ("CBA") is an Oklahoma non-profit limited cooperative association committed to assisting its

Catholic employer members in providing health coverage to their employees consistent with Catholic values. The CBA provides such assistance through its website, training webinars, legal and practical advice for member employers, and litigation services protecting members' legal and conscience rights. The CBA's member employers include 78 Catholic dioceses, over 7000 parishes, over 1300 schools and colleges, as well as social services agencies, hospitals, senior housing, and closely held for-profit employers. One of the conditions of membership is that the member affirm that its health care coverage complies with Catholic values.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case arises from a suit filed by the United States against the State of Idaho alleging that the Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. § 1395dd, preempts that State's statutory protections for unborn life. *Amici* urge this Court to reverse the decision of the U.S. Court of Appeals for the Ninth Circuit and vacate the preliminary injunction granted by the District Court that prevents enforcement of Idaho's law.

The position of the Respondent United States and of the U.S. Department of Health and Human Services (HHS) entirely disregards the duties and responsibilities owed by hospitals to an unborn child under EMTALA. To assert that abortion—intentionally taking an unborn child's life—is required under EMTALA is contrary to the unambiguous text and intent of that statute and other federal laws. As *Amici* explain, pregnancy complications can *always* be safely and ethically

treated without intentionally taking the life of an unborn child in a direct abortion. Respondent's interpretation of EMTALA, however, not only ignores this fact, but also violates the conscience rights of pro-life hospitals and other providers who have medical, ethical, or moral objections to the intentional killing of unborn children. This grave violation of conscience rights risks pushing sorely needed medical professionals, hospitals, and other institutions[2] out of the provision of health care, seriously endangering access to medical treatment for millions of people across the nation.

Amici therefore offer this brief to explain the significant impact of requiring abortions on both the unborn child and on Catholic hospitals and professionals, who provide safe and ethical treatment of all pregnancy complications without performing abortions. Accordingly, *Amici* urge this Court to reject Respondent's efforts to fabricate a federal abortion mandate that will override state law and, in so doing, violate the rights of religious health care providers who desire to treat and protect the lives and health of both the mother *and* her unborn baby in compliance with the text and purpose of EMTALA.

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[2] This brief uses the term "providers" to refer generally to medical professionals, including doctors, nurses, and other individuals involved in the provision of medical care, as well as entities such as hospitals and clinics.

ARGUMENT

I. EMTALA EXPRESSLY PROTECTS UNBORN CHILDREN, WHICH PRECLUDES ABORTION.

A. EMTALA Imposes a Duty on Providers to Protect the Lives of Unborn Children.

The Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. § 1395dd, provides no authority for Respondent to coerce the provision of abortions and ***in fact requires hospitals to care for unborn children as patients***. Specifically, EMTALA's plain language states that it protects the health of the "unborn child," just as it does the health of a pregnant woman, from being placed in "serious jeopardy." This duty arises in the context of an "emergency medical condition," which EMTALA defines as:

> (A) a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in – (i) placing the health of the individual (or, ***with respect to a pregnant woman, the health of the woman or her unborn child***) in serious jeopardy, (ii) serious impairment to bodily functions, or (iii) serious dysfunction of any bodily organ or part; or (B) with respect to a pregnant woman

> who is having contractions – (i) that there is inadequate time to effect a safe transfer to another hospital before delivery, or (ii) that ***transfer may pose a threat to the health or safety of the woman or the unborn child***.

42 U.S.C. § 1395dd(e)(1)(A) & (B) (emphasis added).

Based on the very definition of "emergency medical condition" in EMTALA, unborn children are a protected class within the statute. *Cf., e.g., Romine v. St. Joseph Health Sys.*, 541 F. App'x 614, 618 (6th Cir. 2014) (citing *Cleland v. Bronson Health Care Group, Inc.*, 917 F.2d 266, 268 (6th Cir. 1990)) ("EMTALA 'applies to any and all patients'"). Because an abortion means intentionally taking an unborn child's life, it is the antithesis of protecting the unborn child's life and health and therefore is most certainly not required under EMTALA. Thus, there is absolutely zero Congressional authorization under EMTALA for Respondent to impose via regulatory or sub-regulatory actions, or by litigation, a requirement on hospital emergency rooms and their personnel to perform abortions.

Respondent's position then is entirely contrary to EMTALA's text, which unambiguously protects the life and health of an unborn child. HHS, however, in accordance with an executive order from the President, directed its Centers for Medicare & Medicaid Services (CMS) to issue guidance regarding the provision of abortions as a "treatment" requirement under EMTALA. The CMS guidance, along with a letter from HHS Secretary Xavier Becerra to all health care providers, stated that, in certain circumstances, abortion is *required* in

response to an emergent complication that arises during pregnancy. HHS's communications about hospital responsibilities under EMTALA fail to mention the concurrent responsibility EMTALA imposes to protect the life and health of the unborn child. The result is an invalid memorandum that is wholly at odds with the statutory command to provide treatment to an unborn child in a provider's care. *See, e.g., United States v. Haggar Apparel Co.*, 526 U.S. 380, 392 (1999) (if a "regulation is inconsistent with the statutory language . . . the regulation will not control").

Respondent's efforts to force abortion under EMTALA have a clear motivation: undermining this Court decision in *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022). The July 8, 2022 executive order by the President discussed only the pregnant mother when it ordered HHS to rely on EMTALA as a means of increasing access to abortion and made no mention whatsoever of the responsibility under EMTALA to the "unborn child." In his executive order, the President directed HHS to

> identify[] steps to ensure that all patients—including pregnant women and those experiencing pregnancy loss, such as miscarriages and ectopic pregnancies—receive the full protections for emergency medical care afforded under the law, including by considering updates to current guidance on obligations specific to emergency conditions and stabilizing care under the Emergency Medical Treatment and Labor Act, 42 U.S.C. 1395dd, and

> providing data from the Department of Health and Human Services concerning implementation of these efforts.

Exec. Order No. 14,076, 87 Fed. Reg. 42,053 (July 8, 2022).

On July 11, 2022, HHS Secretary Xavier Becerra issued a letter purporting to outline the duties owed by providers under EMTALA. The letter states that, when a pregnant woman presents to an emergency department with an emergency medical condition and "abortion is the stabilizing treatment necessary to resolve that condition, the physician must provide that treatment." Letter from Xavier Becerra, Secretary, U.S. Dep't of Health & Human Servs., to Health Care Providers (July 11, 2022), *available at* https://www.hhs.gov/sites/default/ files/ emergency-medical-care-letter-to-health-care-providers.pdf. Secretary Becerra, however, never mentions in his letter the responsibilities under EMTALA to the unborn child, a relevant duty that the EMTALA statute expressly references no less than four times.

In the guidance memorandum issued by CMS along with the Secretary's letter, mention of the duties owed to the unborn child is likewise totally omitted. The guidance (technically an update to a prior guidance memorandum) explains what constitutes an "emergency medical condition" or "EMC":

> An EMC includes medical conditions with acute symptoms of sufficient severity that, in the absence of immediate medical attention, could

> place the health of a person (including pregnant patients) in serious jeopardy, or result in a serious impairment or dysfunction of bodily functions or any bodily organ. Further, an emergency medical condition exists if the patient may not have enough time for a safe transfer to another facility, or if the transfer might pose a threat to the safety of the person.

Reinforcement of EMTALA Obligations specific to Patients who are Pregnant or are Experiencing Pregnancy Loss, (QSO-21-22-Hospitals-UPDATED JULY 2022), July 11, 2022, *available at* https://www.cms.gov/medicareprovider-enrollment-and-certificationsurveycertificationgeninfopolicy-and-memos-states-and/reinforcement-emtala-obligations-specific-patients-who-are-pregnant-or-are-experiencing-pregnancy-0. The updated memorandum goes into further detail about "stabilizing treatment" and again only discusses duties to the "pregnant patient." As with the President and the Secretary, CMS makes no mention of the duties that EMTALA places on hospitals to also treat the "unborn child."

Taking these three documents together, a hospital could read the materials and come away with no idea that EMTALA requires providers to protect the life and health of the unborn child and the mother alike. This is not guidance. This is misdirection. Moreover, it is a clear example of cherry-picking certain words in a statute and ignoring others, which is impermissible. *See, e.g., Reiter v. Sonotone Corp.*, 442 U.S. 330, 338-39 (1979)

("In construing a statute we are obliged to give effect, if possible, to every word Congress used.") (citations omitted).

In a separate case, one brought by the State of Texas against HHS, the Fifth Circuit succinctly explained how this new administrative guidance differed from what preceded it—namely by specifically prescribing, for the first time under EMTALA, that EMTALA could require abortion as necessary treatment. *Texas v. Becerra*, 89 F.4th 529, 543 (5th Cir. 2024). But as the Fifth Circuit held, EMTALA does not empower HHS to prescribe *any* form of treatment because "EMTALA does not govern the practice of medicine." *Id.*; *see also id.* ("HHS's argument that 'any' type of treatment should be provided is outside EMTALA's purview.").

Just as the sub-regulatory guidance from HHS could not intrude upon state law governing the practice of medicine, Respondent likewise may not obtain effectively the same result through litigation and injunctions.

B. The Federal Government Has No Authority under EMTALA, or Any Other Federal Law, to Coerce Health Care Providers to Perform Abortions.

HHS's authority to issue regulations implementing EMTALA does not permit HHS to disregard the plain text and meaning of the law. No statutory language, Congressional intent, or judicial precedent under EMTALA exists authorizing HHS to require medical professionals and health care entities (*i.e.*, hospitals and other health care

providers) to intentionally kill an unborn child. Before the current presidential administration began in 2021, to our knowledge, HHS had never previously made a Departmental legal interpretation that EMTALA requires health care providers to intentionally kill an unborn child in the nearly 40 years since Congress enacted the law. And, even if HHS had made such a Departmental legal interpretation, an interpretation that EMTALA in some circumstances requires the intentional killing of unborn children would still clearly and unequivocally contravene the express will of Congress in the EMTALA statute and numerous other federal statutes Congress has repeatedly enacted.

And yet, on August 2, 2022, the United States instituted this case against the State of Idaho claiming that EMTALA preempts the State's statutory protections for the unborn contained in its Defense of Life Act, Idaho Code § 18-604 *et seq*. Since EMTALA does not permit abortion, the attempted abortion mandate by Respondent under EMTALA fails and its flawed interpretation of EMTALA does not preempt Idaho's Defense of Life Act. The District Court's injunction against enforcement of the Defense of Life Act was therefore erroneous.

II. INTERPRETING EMTALA TO PREEMPT PRO-LIFE LEGISLATION LIKE IDAHO'S DEFENSE OF LIFE ACT RISKS VIOLATING THE CONSCIENCE RIGHTS OF CATHOLIC HOSPITALS AND PROFESSIONALS, LIKELY LIMITING PUBLIC ACCESS TO HEALTH CARE IN THE FUTURE.

A. Catholic Health Care is a Significant Part of the American Health Care Delivery System.

The Catholic Church teaches that Jesus is the Divine Physician. *See, e.g.,* Matthew 9:12 (ASV); Mark 2:17 (ASV); Luke 5:31 (ASV). Jesus expressly tells His Apostles to heal the sick. Matthew 10:8 (ASV). So important is Jesus' command to heal the sick that the Catholic Church He founded (*see* Matthew 16) identifies visiting the sick as a corporal work of mercy. *See, e.g., The Corporal Works of Mercy*, U.S. Conf. Catholic Bishops, *available at* https://www.usccb.org/beliefs-and-teachings/how-we-teach/new-evangelization/jubilee-of-mercy/the-corporal-works-of-mercy. The provision of health care to the sick by Catholics in North America predates the founding of the Republic. "As early as 1727, the Ursuline Sisters were asked by the colonial governor in New Orleans to come from France and provide badly needed care. In 1827, the Sisters of Charity congregation was called upon to take charge of the Baltimore Infirmary" at the University of Maryland, ultimately establishing 44 hospitals. Peter J. Levin, *Bold Vision: Catholic Sisters and the Creation of Am. Hosps.*, J. Community Health

36:343, 343 (2011). As immigration to the United States increased, "the establishment of hospitals became a primary focus of many [Catholic] congregations," with the result that Catholics "founded hundreds of hospitals that, through the years, have served hundreds of millions of patients and their families." *Id.* at 344, 347; *see generally* Barbara Mann Wall, *Am Catholic Hosps.*, 2-5 (2011) ("Catholic hospitals began as individual stand-alone institutions . . . established with religious missions to care for Catholics and non-Catholics.").

Catholic health care professionals and Catholic health care entities, in the aggregate, are one of the largest providers of medical care in the United States, providing medical care to one in seven hospital patients every day, with over 100 million inpatient visits and 17.5 million emergency room visits annually, according to the Catholic Health Association. *See* 2023 *U.S. Catholic Health Care* https://www.chausa.org/docs/default-source/default-document-library/the-strategic-profile.pdf (citing the 2021 *American Health Association Annual Survey*, Catholic Health Association of the United States).

According to the Catholic Health Association, as of 2024, there are 665 Catholic hospitals in the United States, including 134 critical access hospitals, 232 trauma centers, and 294 facilities providing obstetric services. *Id.* Catholics provided health care to the sick and the poor long before health care became a profitable enterprise because doing so provided a means of living out their religious faith. *See* Levin, *supra*, 343.

B. The Authoritative Teachings of the Catholic Church Prohibit Abortion, which is Never Necessary to Protect the Life of the Mother.

Catholic health care professionals and Catholic health care entities nationwide have a sincere religious belief that the intentional killing of unborn children is an evil act that gravely harms both the unborn child and the child's pregnant mother. These beliefs are based on words of Sacred Scripture: "Before I formed thee in the belly I knew thee, and before thou camest forth out of the womb I sanctified thee[.]" Jeremiah 1: 5-6 (ASV). Furthermore, Catholic teaching prohibits the intentional killing of unborn children:

> 2271 Since the first century the Church has affirmed the moral evil of every procured abortion. This teaching has not changed and remains unchangeable. Direct abortion, that is to say, abortion willed either as an end or a means, is gravely contrary to the moral law:
>
> > You shall not kill the embryo by abortion and shall not cause the newborn to perish.
> >
> > God, the Lord of life, has entrusted to men the noble mission of safeguarding life, and men must carry it out in a manner worthy of themselves. Life must be protected with the utmost care from the moment of conception:

> abortion and infanticide are abominable crimes.
>
> 2272 Formal cooperation in an abortion constitutes a grave offense. The Church attaches the canonical penalty of excommunication to this crime against human life. A person who procures a completed abortion incurs excommunication *latae sententiae*, by the very commission of the offense, and subject to the conditions provided by Canon Law. The Church does not thereby intend to restrict the scope of mercy. Rather, she makes clear the gravity of the crime committed, the irreparable harm done to the innocent who is put to death, as well as to the parents and the whole of society.

Catechism of the Catholic Church, Pt. 3, § 2, ch. 2, art. 5, I, Nos. 2271-2272.

The Ethical and Religious Directives (ERDs) issued by the United States Conference of Catholic Bishops are binding on all Catholic health care institutions in the United States and address abortion directly as well:

> Abortion (that is, the directly intended termination of pregnancy before viability or the directly intended destruction of a viable fetus) is never permitted. Every procedure whose sole immediate effect is the termination of pregnancy before viability is an abortion.

U.S. Conference of Catholic Bishops, *Ethical and Religious Directives*, no. 45, at 18-19 (6th ed. 2018), https://www.usccb.org/resources/ethical-religious-directives-catholic-health-service-sixth-edition-2016-06_0.pdf.

Importantly, the ERDs also specifically give direction for those situations where there is a risk to the mother and treatment of the mother will unintentionally cause the death of the unborn child; this treatment is justified and acceptable. Directive 47 of the ERDs provides:

> Operations, treatments, and medications that have as their direct purpose the cure of a proportionately serious pathological condition of a pregnant woman are permitted when they cannot be safely postponed until the unborn child is viable, even if they will result in the death of the unborn child.

Id. at 19. In other words, this type of care ***is <u>not</u> an abortion and is <u>not</u> prohibited***.

In fact, ***abortion is never necessary*** to protect the life of a pregnant mother, and Idaho's statute protecting the life of unborn children cannot conflict with EMTALA. This fact has been apparent for decades. Health care providers, particularly Catholic health care providers, have a consistent record of applying the ERDs and have been able to stabilize pregnant women experiencing a serious pathological condition, consistent with EMTALA, without resorting to the direct and intentional termination of the life of the unborn child.

Respondent has provided no evidence to the contrary despite over three decades since EMTALA's promulgation.

The fact that abortion is ***never necessary*** has long been known to Western medicine. For example, in 1992, Ireland's top gynecologists issued a public statement that "there are no medical circumstances justifying direct abortion, that is, no circumstances in which the life of a mother may only be saved by directly terminating the life of her unborn child." John Bonner *et al.*, *Statement by Obstetricians*, The Irish Times, (April 1, 1992). And top American physicians have likewise said that in practice they have never "seen a situation where an emergent or even urgent abortion was needed to prevent a maternal death." 157 Cong. Rec. 6877-78 (2011) (letters of physicians entered into record in support of legislation to protect the right of health care workers to refuse to participate in abortions and opining that intentional abortion is never medically necessary; letter of John Thorp, M.D., of Univ. of N. Carolina School of Medicine, OB-GYN: "I have not seen a situation where an emergent or even urgent abortion was needed to prevent a maternal death.").

A 2022 article in *Ethics & Medics*, published by *Amicus* NCBC, discusses in detail issues concerning various pregnancy complications and how they can be properly treated without directly and intentionally terminating the life of the unborn child. John A. Di Camillo & Jozef D. Zalot, *Medical Interventions During Pregnancy in Light of* Dobbs, 47 Ethics & Medics (Aug. 2022), *available at* https://static1.squarespace.com/static/5e3ada1a6a2e8d6a131d1dcd/t/62fd2714a7bfe76313e74b48/1660757780241/E%26M_August_22_publish.pdf. The article

specifically refutes the need for abortion in the situations raised by Respondent (and its *amici*) related to emergency medical conditions under EMTALA involving pregnancy complications, including ectopic pregnancy, complications of pregnancy loss, and emergency hypertension disorders, all of which can be treated consistent within medical ethics and Catholic teachings without performing an intentional abortion.

For example, as treatment for an ectopic pregnancy, the article identifies options that are deemed by NCBC ethicists to be consistent with Catholic doctrine. *Id.* at 3. The article also dispels the myth that treating a miscarriage is somehow providing an abortion: "If an unborn child dies in utero, it is permissible to remove the remains through a surgical procedure . . . typically a dilation and curettage, [which] is the same one used on living children in the case of elective abortions—but it is not a direct abortion when the child has already died[.]" *Id.* at 4.

Unfortunately, false claims abound that state abortion restrictions will prevent physicians from being able to treat ectopic pregnancies, miscarriage, and other life-threatening complications in pregnancy (such as an intrauterine infection). This is blatantly absurd, as not a single state law restricting abortion (including Idaho's law) prevents treatment of these conditions.

> According to the Royal College of Obstetricians and Gynaecologists (RCOG): "When undertaking a termination of pregnancy, the intention is that the fetus should not survive and

> that the process of abortion should achieve this." Our intent when we treat an ectopic pregnancy or other life-threatening conditions in pregnancy is to save the life of the mother, not to directly end the life of the preborn human being. Therefore, these are not abortions, a fact even Planned Parenthood acknowledges.

Christiana Francis, M.D., *Written Testimony of Christina Francis, MD for the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce hearing on "Roe Reversal: The Impacts of Taking Away the Constitutional Right to Abortion,"* AAPLOG (July 16, 2022) (internal citations omitted), *available at* https://aaplog.org/wp-content/uploads/2022/07/Written-Testimony-Dr.-Francis-Final.pdf.

Amici agree that, if both the object and intent of the act are not to separate the baby from the mother pre-viability, an intentional abortion has not occurred. Under EMTALA health care providers are not restricted from engaging in best medical practices which include attempts at saving both the lives of the mother and her unborn child, without engaging in an intentional abortion, even if indirectly and unintentionally the pregnancy is ended. Actions that do not constitute an intentional and direct attack on the unborn child, for example the induction of labor to remove pathological tissue that is endangering the life of the mother, *e.g.*, chorioamnionitis or pre-eclampsia, or in ectopic pregnancy a salpingectomy, even pre-viability, are ethical options. Even in one of the most serious types

of cases, maternal pulmonary hypertension, morally licit care can be provided to prevent the death of the mother and child, without directly and intentionally separating the unborn child from the mother.

C. Creating a False Conflict between EMTALA and Pro-Life Laws Like Idaho's Risks Driving Catholic Providers out of Health Care.

A woman can always be treated for health complications during pregnancy, and so long as there is no intent to kill the child in the womb, the unintended death of the child is a tragic event and not an abortion. Respondent and its *amici*, though, would have the Court believe otherwise and so hold that abortion is sometimes necessary treatment and thus that EMTALA preempts pro-life protections like those in Idaho law. Allowing the lower court's injunction to stand amounts to reading EMTALA as a mandate for the performance of intentional abortion; otherwise, there would be no conflict between EMTALA and Idaho law to justify preemption.

Many health care providers, including hospitals, believe that human life begins at conception or fertilization. Respondent is attempting to improperly invoke EMTALA to override federal religious liberty and other protections to force hospitals and their staff to perform abortions. And, if the hospital fails to do so in certain circumstances, it could be punished under EMTALA, which could impact certification to participate in Medicare as well as result in fines and other administrative sanctions. *See* 42 U.S.C. § 1395dd(d). The effect is

to place Catholics in an unfortunately all too familiar position of being forced to fight against an abortion requirement that conflicts with their sincerely held religious beliefs. *E.g., Little Sisters of the Poor Saints Peter & Paul Home v. Penn.*, 140 S. Ct. 2367 (2020) (long running legal dispute between Catholic women religious and states over exemption to contraception mandate, which included requirement for coverage of abortifacient drugs).

Catholic health care providers have an established record of providing safe and ethical treatment for pregnancy complications that does not involve nor require abortions. Seeking to protect the life and dignity of both the mother and unborn child, the Church has set forth what is ethically acceptable medical treatment. But reading EMTALA to displace pro-life laws, like Idaho's, risks a regulatory domino effect.

Over time, many Catholic medical practitioners and Catholic health care entities would feel pressure to opt out of programs covered by EMTALA so as to avoid the loss of medical licenses, the threat of crushing legal fines, and a hostile regulatory environment. *See* 42 U.S.C. § 1395dd(d) (physicians and hospitals subject to substantial civil penalties and private lawsuits for violation of EMTALA). It is hard to overstate the devastating impact that such a scenario would have on the delivery of health care in the United States, especially given that Catholic health care entities serve millions of patients including the materially impoverished in urban and rural settings.

III. RESPONDENT'S POSITION IS CONTRARY TO FEDERAL LAW RESPECTING THE RIGHTS AND HUMAN DIGNITY OF ALL.

Outside of EMTALA, the specific Congressional intent relevant to this appeal is expressed through federal laws that clearly and unequivocally protect the conscience and religious freedom rights of medical professionals, health care entities, and the public generally to decline to participate in or subsidize abortions.

The Weldon Amendment, which has been included in every Labor/HHS appropriations act passed since 2005, explicitly forbids the federal government from discriminating against any "health care entity," expressly defined in the amendment to include "hospitals," on the basis that it does not provide or perform abortions. *See, e.g.,* H.R. 2617, Consolidated Appropriations Act, 2023, 117th Congress (2021-2022), at § 507(d)(1), 136 Stat. 4908. There is no conflict between EMTALA and the Weldon Amendment because the former does not require abortions, but if there were such a conflict, the Weldon Amendment would govern because it is specific to abortion and enacted *after* EMTALA. *See, e.g., RadLAX Gateway Hotel v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (when two statutes conflict, the more specific of the two governs over the more general); *Carcieri v. Salazar*, 555 U.S. 379, 395 (2009) (more recent statute governs in case of irreconcilable conflict between two statutes).

Other federal laws are to similar effect. The Church Amendments, 42 U.S.C. § 300a-7 *et seq.*, enacted in the 1970s, prohibit recipients of certain

federal funds from discriminating against a health care provider who refuses to participate or assist in an abortion if doing so would be "contrary to his religious beliefs or moral convictions." 42 U.S.C. § 300a-7(d) & (e); *see id.* at § 300a-7(c); *see* 119 Cong. Rec. 9,595 (1973) (statement of Sen. Church); *see also* 42 U.S.C. § 238n (Coats-Snowe Amendment of 1996) (prohibiting abortion-related discrimination in government-funded activities regarding training and licensing of physicians).[3]

In passing these laws, Congress has acted over several decades to protect the conscience and religious freedom rights of medical professionals and health care entities, and to prohibit discrimination against medical professionals and health care entities on the basis of their decision not to perform abortions. By purporting to use EMTALA to require individuals and entities to provide abortions, Respondent has exceeded its statutory authority and acted contrary to the express will of Congress under federal law. Congress has expressly prohibited the federal government from requiring health care entities to perform abortions.

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[3] Beyond the several federal conscience statutes specifically protecting religious or moral convictions against complicity in abortion, HHS's guidance would also be subject to the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.*, which prohibits the federal government from substantially burdening a person's religious exercise unless doing so is the least restrictive means of furthering a compelling government interest. Because, as discussed elsewhere in this brief, intentional abortion is in fact ***never necessary to stabilize an emergency medical condition*** to preserve the life or physical health of the mother, a mandate to perform such abortions fails the least restrictive means test.

Respondent's actions, however, ignore these binding legislative restrictions and attempt to create out of whole cloth a power to impose intentional abortion as a service that must be provided under EMTALA. This would be problematic enough on its own, but here Respondent's position is premised on a conflict between EMTALA and pro-life state legislation when no such legislative conflict exists. Creating such a conflict where there is none, as Respondent attempts to do, only sows unnecessary confusion that threatens to drive religious providers out of health care.

EMTALA, though, is wholly compatible with pro-life laws like Idaho's, as well as the conscience protections of other federal laws, and the injunction against Idaho's Defense of Life Act should be vacated.

CONCLUSION

For these reasons, these *Amici* respectfully ask the Court to reverse the decision of the Ninth Circuit and vacate the District Court's preliminary injunction.

This 27th day of February, 2024.

Respectfully submitted,

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