

# Texas federal appeals court upholds state ban on abortions over Biden administration's emergency provision

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A federal appeals court in Texas ruled on Tuesday that a long-standing US law could not be used to require hospitals and doctors in the state to perform emergency abortions in the event of a pregnancy that threatens a woman's life.

The US Court of Appeals for the Fifth Circuit sided with a lower court and ruled that the Emergency Medical Treatment and Labor Act (EMTALA) of 1986 could not mandate an abortion by healthcare providers under its emergency-care provisions as maintained by the Biden administration.

Following the Supreme Court's decision in June 2022 to overturn the constitutional right to abortion, Texas and other states moved swiftly to ban all or most procedures through "trigger laws" or by reactivating laws that had been previously struck down by the courts.

In Texas, the Supreme Court's *Dobbs v. Jackson Women's Health Organization* decision activated a law signed by Governor Greg Abbott in 2021 that revived a 1925 law banning all abortions with very few exceptions. The Biden White House then issued its executive order under EMTALA to ensure access to abortion in certain emergency situations.

The language in the Department of Health and Human Services (HHS) directive stated, "When a state law prohibits abortion and does not include an exception for the life of the pregnant person—or draws the exception more narrowly than EMTALA's emergency medical condition definition—that state law is preempted." Emergency abortions are mandated under the "stabilizing" stage of the EMTALA provisions, the guidance stated.

Within days of the guidance from HHS, Texas

Attorney General Ken Paxton filed a lawsuit in US district court in the Northern District of Texas claiming the EMTALA provisions would "force abortions" to be carried out in hospitals across the state.

The lower court ruled in Paxton's favor, supporting his argument that the Biden administration was "flagrantly disregarding the legislative and democratic process—and flouting the Supreme Court's ruling before the ink is dry—by having his appointed bureaucrats mandate that hospitals and emergency medicine physicians must perform abortions."

In the unanimous three-judge appeals court ruling, Justice Kurt Engelhardt wrote, "EMTALA does not address any specific medical procedures or treatments besides the requirement 'to deliver (including the placenta).'" Judge Engelhardt further wrote, "We agree with the district court that EMTALA does not provide an unqualified right for the pregnant mother to abort her child especially when EMTALA imposes equal stabilization obligations."

The three-judge panel also said the Biden administration did not adhere to the proper rule-making process when the administration instructed healthcare providers that they were protected by EMTALA if they believed an abortion was medically necessary. The panel also said claimed the federal emergency-care law did not "directly conflict" with the Texas abortion ban which includes exceptions for medical emergencies.

The participation of extreme right-wing and reactionary forces in the Texas decision reveals the political alignment against the fundamental democratic right to abortion. President Donald Trump appointed Judge Engelhardt in 2018 and Judge Cory Wilson in 2020, and Judge Leslie H. Southwick was appointed by

President George W. Bush in 2007.

Two weeks after Texas Attorney General Paxton filed the lawsuit against the Biden administration, the state amended the complaint to include as plaintiffs the American Association of Pro-Life Obstetricians & Gynecologists (AAPLOG) and Christian Medical & Dental Associations (CMDA). Such groups are among the those who were in the forefront of the decades long political campaign to overturn the Supreme Court's 1973 *Roe v. Wade* decision and are continuing to push to ban abortion outright nationwide.

The appeals court decision follows by three weeks another significant case in Texas attacking abortion rights. As reviewed here on the WSWS, the Texas Supreme Court's decision to block Kate Cox, a 31-year-old woman whose "life and future fertility" were endangered by a pregnancy marked by serious medical problems, from having a medically necessary abortion was made for transparent political purposes.

It serves as a green light for similar decisions to be made in states across the US that will have the greatest impact on working class and poor women who do not have access to alternatives such as traveling out of state to obtain an abortion legally. Meanwhile, doctors and hospital staff have been placed in a precarious position, according to Ellie Schilling, a lawyer who consults on abortion issues with hospitals in Louisiana, and who told the *Washington Post*, "It just puts them on notice that you may either be violating state law and get thrown in jail or you may be violating federal law and ... could get sued."



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