



Supreme Court Overturns Restrictions On Abortion Access

June 29, 2020

EVAN: Hey, y'all. This is Evan (ph).

ERIC: And Eric (ph). And we're in West Redding, Pa.

EVAN: We got engaged in March and celebrated our engagement by immediately quarantining together.

ERIC: If we can survive this, marriage should be easy, right?

EVAN: This podcast was recorded at...

KELSEY SNELL, HOST:

2:05 p.m. on Monday, June 29.

ERIC: Things may have changed by the time you hear this, but we'll still be planning a wedding.

(SOUNDBITE OF THE BIGTOP ORCHESTRA'S "TEETER BOARD: FOLIES BERGERE (MARCH AND TWO-STEP)")

SNELL: I hope that they get to have the wedding of their dreams with lots of people already vaccinated and not wearing masks (laughter).

CARRIE JOHNSON, BYLINE: Yes. Best wishes to you both.

SNELL: Very exciting - hey there. It's the NPR POLITICS PODCAST.

I'm Kelsey Snell. I cover Congress.

JOHNSON: I'm Carrie Johnson, national justice correspondent.

SNELL: And we have Sarah McCammon here with us.

Hi, Sarah.

SARAH MCCAMMON, BYLINE: Hey there.

SNELL: We brought you in today because this morning the Supreme Court overturned abortion access restrictions in Louisiana. Sarah, this is something you cover really closely. Can you give us an idea of what the law said and why this was before the court?

MCCAMMON: Yeah. So it required doctors who perform abortions in Louisiana to have what are known as hospital admitting privileges, which is kind of what it sounds like it means. These

are physicians who are allowed to admit patients to a hospital. Doctors who perform abortions just don't do the volume to admit patients very often, so they often have trouble getting these admitting privileges.

And major medical groups are opposing these laws. They've weighed in in this case and similar ones, saying that these are medically unnecessary requirements. And I should note, Kelsey, that this law is very, very similar to a Texas law that was struck down by the Supreme Court in 2016, of course with a very different makeup of the court, which we'll talk about more. So today the court said basically, that 2016 decision stands, and this Louisiana law does not stand.

SNELL: This was an interesting decision. This isn't the first abortion case, like Sarah just mentioned. So what did the court say about Louisiana specifically?

JOHNSON: Well, the court said that the Louisiana statute that they were considering was almost word for word identical to the Texas statute they had invalidated at the Supreme Court level only four years ago in 2016. The difference this time, Kelsey, is that the court makeup was different. This is the first major abortion case to come to the Supreme Court since Justice Anthony Kennedy retired. President Trump had two appointees join the court in between then and now, Neil Gorsuch and Brett Kavanaugh. And they both voted against getting rid of this Louisiana law.

But the court majority written by Justice Stephen Breyer basically said that because this statute was so similar to the one they had thrown out in Texas four years ago and because there was really no medical benefit to women seeking abortion to have their doctors have admitting privileges, that these restrictions posed an undue and significant burden on them. And they basically scrapped the law. And interestingly enough, Chief Justice John Roberts, who voted against throwing out that Texas law, this time around sided with the court's four liberals here. He sided with Justice Stephen Breyer in invalidating the Louisiana law.

SNELL: This is in line with the thinking about Chief Justice Roberts that he's trying to prevent the court from being seen as a political arm, something that is making partisan policy. So is he succeeding in that? Are people feeling like he is guiding the court away from partisanship?

JOHNSON: Well, in his writing today, Chief Justice Roberts basically said, listen. We have to side on behalf of precedent here even if I don't like it. But he's gotten criticism from the left and the right outside the court for doing just that. Ilya Shapiro, a legal analyst at the Cato Institute, basically said that John Roberts has voted to invalidate other kinds of precedents. And he thinks the chief justice is basically playing some kind of game of 87-dimensional chess and he should just start calling balls and strikes like he's supposed to. And, you know, a lot of other people are saying this underscores how important the 2020 election is going to be and how judges are going to be an issue all over again in the election.

SNELL: Yeah. Sarah, I have seen some press releases in particular from the Susan B. Anthony List about that specific thing.

MCCAMMON: I'm now hearing advocates say this election is critical. 2020 is critical because judges will be at stake. I spoke to Marjorie Dannenfelser, the president of the Susan B. Anthony List, which is an anti-abortion rights group. Here's what she had to say.

MARJORIE DANNENFELSER: We now - I believe very strongly because I'm already hearing it that this will intensify the presidential election, that our voters who understand the difference between Supreme Court justices will be even more motivated to re-elect the president.

SNELL: Carrie, not all of the justices agreed, obviously, with the chief justice on this and with the liberal side of the court. But they didn't all argue the same thing. Can you tell us a little bit about what the dissents were like?

JOHNSON: To say that they disagreed would be an understatement. Justice Clarence Thomas pointed out that in his view, *Roe v. Wade* dating all those decades back is grievously wrong. And he thought that patients seeking abortions are the ones who had the right to sue here, not the doctors. Justice Samuel Alito basically says that the majority opinion twists the law. And President Trump's two appointees to the court, Neil Gorsuch and Brett Kavanaugh, were also critical. Gorsuch said we have lost our way. To arrive at today's result, we must have brushed aside rules and taken shortcuts. And Brett Kavanaugh wanted more fact finding.

One of the strains throughout these dissents is that they didn't think that several of these doctors had demonstrated that they were really trying very hard to get these admitting privileges, and they wanted much more of a record and evidence about that developed at the lower court. But because they lost, we're not going to get that, at least in this case.

SNELL: So practically speaking, what difference will this have for women who are seeking an abortion or for their providers?

MCCAMMON: Well, in Louisiana, it means that the three clinics that remain in that state can stay open. And that's a state that's down to just three clinics down from something like 11 within the past 20 years or so. So like many states across the country, especially conservative states with restrictive laws, we've seen a dwindling number of clinics and places where women seeking abortions can get them. So it means there, the status quo is maintained, and those clinics can stay open; for a lot of other states, probably the same thing.

The Guttmacher Institute, which supports abortion rights, did an analysis earlier this year and said that something like 15 states could have - could be affected if this Louisiana law had been upheld either because about five states had similar laws on the books that would have put heavy restrictions on doctors who provide abortions. And about 10 others were sort of politically positioned because of the makeup of their legislatures and their governorships to quite possibly pass similar legislation. So for women in mostly these Midwestern and Southern states, it means that at least for this reason, clinics cannot be shut down.

SNELL: All right. I think that's a good place to leave it. Carrie and Sarah, thank you both for being here.

JOHNSON: Happy to do it.

MCCAMMON: Any time.

SNELL: Let's take a quick break. And when we get back, we'll talk about a new Russia controversy involving the Trump administration.

And we're back. And now I am joined by Tamara Keith and Phil Ewing.

Hi, guys.

TAMARA KEITH, BYLINE: Hello. Hello.

PHIL EWING, BYLINE: Hi. Thanks for having me.

SNELL: So there were two major controversies involving the White House this weekend. We're specifically talking about Russia today, but I want to first acknowledge a video that President Trump retweeted of a Trump supporter shouting, quote, "white power." Tam, can you kind of walk us through what happened there?

KEITH: So there were some protesters and counter protesters in the Villages in Florida. The Villages is a conservative-leaning adult active retirement community in Florida. And at one point very early in this video, someone says, white power. The president retweeted this video. According to the White House, when he realized that this white power message was in it, he took that tweet down, according to press secretary Kayleigh McEnany, who was asked about it today. He did watch the video before retweeting it but apparently, according to her, didn't hear the person saying, white power.

SNELL: So the White House is saying he wasn't aware of this, but this is not the first time the president has retweeted or said racist things.

KEITH: Oh, no; absolutely not. I mean, it's not even the first time in the last 24 hours. You know, President Trump, in the last several weeks, has really - just as an example - keyed in on the idea of various statues being torn down - Confederate statues, saying, you know, that it is our culture that's being torn down. Well, who is our exactly? So this is really a moment in the president's campaign, a moment in the - in President Trump's presidency when he's leaning in to these divisions, in part because it worked for him in 2016.

SNELL: NPR is going to continue following this, but I just wanted to make sure we brought it up here before moving on to the other story. And that story, Phil, once again involves Russia. Tell me more about what's going on.

EWING: Well, the story was first reported on Friday by The New York Times. And it said, basically, that Russian paramilitary or intelligence forces in Afghanistan have been paying Taliban insurgents there to target American forces. And according to another story by The Washington Post, at least one American soldier has been killed as the result of one of these attacks. So not only is that a big deal, but the Times reported that President Trump had been briefed about this assessment by the intelligence community and that he and his advisers basically haven't done anything about it because they can't decide what to do. That brought us through the weekend. The president and the head of the intelligence community, John Ratcliffe, both said that, in fact, he has not been briefed in person about it, although we don't know what material he's seen in written form.

KEITH: Kayleigh McEnany was pressed on this repeatedly, and what she said is that President Trump hasn't been personally briefed on this. The vice president hasn't been personally briefed on this. I actually asked, was this in the PDB - the presidential daily brief, the written briefing that the president gets from the intelligence community every day?

(SOUNDBITE OF ARCHIVED RECORDING)

KEITH: So you say that he wasn't briefed. Does that mean it wasn't in the PDB either?

KAYLEIGH MCENANY: He was not personally briefed on the matter. That is all I can share with you today is that both the CIA director, the national security adviser and the chief of staff can all confirm neither the president or the vice president was briefed.

KEITH: They're also saying, though, that the intelligence isn't rock-solid, that there is disagreement in the intelligence community, and that's why the president wasn't briefed because it wasn't - you know, it wasn't actionable yet. And she would not engage on the idea of what should be done if it's true.

SNELL: You know, these reports have raised a ton of questions all over Washington. You know, my inbox is a messy place, and today it is full. It is just full of statements and questions about who knew what and when. And, you know, I suspect that it's going to be something that people - Democrats and Republicans are going to be asked about all week. So what do we think happens next?

EWING: Well, the speaker, Nancy Pelosi, and the minority leader in the Senate, Chuck Schumer, both have asked for all members of their respective chambers to get briefings about this from the intelligence community and the Defense Department. We don't know yet whether the administration will agree. But they already have begun making arrangements for smaller numbers of members of Congress to get information about this. And as always with the intelligence world, it's going to be very complicated for those of us in the public, on the outside, to know exactly what those people see. And as we heard from the White House briefing today, as we heard Tam talk about, because it sounds like there isn't consensus within the spy world about exactly what they've uncovered or what it means or what could happen next, we likely will get interpretations along those lines from members of Congress when they have these briefings from the administration.

Democrats, very likely, will say that this is serious and that the president has neglected his responsibility, and it'll be interesting to hear what Republicans say about this because they certainly have a script that they could follow based on similar instances in the past, including with the Ukraine affair and impeachment. But if we hear from Republicans that they're just as concerned, that they feel there might have been some negligence by the president or his administration, that will be a very interesting data point. If we hear them defend him or if we hear them echo some of this rhetoric from the White House on Monday about how there's division about this within the intel community, then that could be the place where they can live politically going forward and try to move ahead.

KEITH: But the president's reaction to this has been something to see in that the reaction has been very quickly to say, well, I didn't know anything about it, rather than to express any sort of outrage at the idea that this could have been happening, that Americans could have been targeted. Congressional Republicans have been expressing a lot of outrage about the idea that this could have happened.

SNELL: I expect we're going to be hearing a lot more of this in the coming weeks and days, but we have to leave it there for today. You can sign up for a roundup of our best online analysis at npr.org/politicsnewsletter.

I'm Kelsey Snell. I cover Congress.

KEITH: I'm Tamara Keith. I cover the White House.

EWING: And I'm Phil Ewing, election security editor.

SNELL: And thank you for listening to the NPR POLITICS PODCAST.