The New Abortion Fight Before the Supreme Court

0:01

from The New York Times I'm Sabrina tavernes and this is the

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[Music] daily as the presidential race moves

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into high gear abortion is at the center of it Republican controlled States

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continue to impose new banss including just this week in Florida but in Washington the Biden

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Administration is fighting back challenging one of those banss in a case that is now before the Supreme

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Court today my colleagues Pam Bellic and Abby venicle

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[Music] explain it's Wednesday May

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[Music]

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1st so Pam in the two years since roie Wade was overturned more than a dozen

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states have instituted pretty strict bans but as all of these Bans are

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happening at the state level something is happening at the federal level and that is the Biden Administration is

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fighting back in a kind of unusual way and that effort came to the Supreme

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Court last week tell me about it yeah so the case that went before The Supreme

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Court last week is basically a fight between the state of Idaho and the Biden

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Administration over whether Idaho's abortion ban violates a federal law

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that's been on the books for decades and if it does then does Idaho have to

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change its abortion ban and this case really gets at a bigger question about

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whether there are still ways that the federal government can limit State's

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ability to ban or restrict abortion dobs eliminated the constitutional right to

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abortion right it said that there's no guarantee anywhere in the country that people have a right to abortion access

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and that states can make their own laws around abortion but it didn't completely

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eliminate any other way that federal government laws or regulations interact

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with abortion right so that left the Biden Administration looking around to try to

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figure out what if anything the federal government could do to weigh in on

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abortion and it turned out that there were really very few tools left to the

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federal government but it does find this one federal law from 40 years ago and

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the law really has nothing to do with abortion it doesn't mention abortion it is all about emergency room medical care

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but the Biden Administration thinks that it has found a way to use this law to fight some of

3:07

the strictest abortion bans that states like Idaho are putting into play

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interesting so the Biden Administration is kind of rumaging around in its back closet right looking for ways to protect

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abortion rights there's nothing really there but it finds this kind of old dress this law you're talking about tell

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me about this law right so this is the emergency medical treatment and Labor Act as an

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abbreviation it's referred to as mtala and mtala was passed to try to fix

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a problem that was getting increasingly widespread in the country in the

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1980s and what was happening was a problem called patient

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dumping what this meant was that mostly private hospitals if a patient showed up

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to their emergency room and the patient didn't have insurance or couldn't otherwise pay these private hospitals

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were closing their doors to these patients H and they were sending them to public

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hospitals County hospitals and there were these horrific examples of people

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who were showing up in emergency rooms at public hospitals having been kicked

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out of the private hospital with stab wounds and gunshot wounds I mean there

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was one case in Texas where a man with third degree burns stumbled into a

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county hospital with a catheter and an IV line that had been inserted by the

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Private Hospital that had kicked him out oh my God and this was creating a lot of

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public alarm and getting a lot of attention and some of the cases involved

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pregnant women in labor and these private hospitals were turning them away before their babies could be

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born and one example in Texas this woman

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went to a private hospital and when she told them that her husband had just lost

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his job they pushed her legs together started an IV line and sent her over to

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this County hospital and she was crowning according to the doctor who was

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at the hospital and the baby was just coming any minute she delivered in the hallway of the

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hospital so this is a serious public problem yeah and Congress is under

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pressure to take action to try to prevent this and so in 1986 they enact

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mtala this federal law which really was Landmark it was really kind of groundbre

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breaking and basically what this law does is it says emergency rooms in

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hospitals that receive medicare funding which is almost all hospitals in the

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country have to treat any patient that shows up with any emergency medical

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condition it requires emergency rooms to stabilize the patient they have to give

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at least a basic standard of treatment to make sure that their health doesn't

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get worse that their condition doesn't deteriorate and if they can't do that they don't have the ability to do that

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they have to transfer the patient to a hospital that can and it crucially does not matter if they can't pay for it or

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if they have no insurance but where does abortion come into this we're obviously

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talking about this in the context of an abortion fight right I mean from what you're saying it sounds like this law

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really had to do with you know women who were coming in trying to deliver babies not women who were coming in trying to

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have abortions to get rid of babies exactly I mean abortion is not mentioned in mtala and it was not really something

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that even came up in the passage of the law the law was really addressing these

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horror stories of women in labor being turned away from hospital emergency

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rooms but the law does include this two-word phrase that decades later

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becomes part of the abortion debate and that phrase is unborn child now at the

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time that phrase shows up very much in this context that we've been talking

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about of women who are about to deliver a baby so abortion is not mentioned in

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this law at all and it wasn't even really in the background of at the time

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when it was passed after mtala has passed it has been used over the last

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four decades to basically try to ensure that patients

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with all kinds of conditions don't get turned away from emergency rooms and it doesn't come into the

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abortion debate until nearly four decades later when the Biden Administration decides that it can use

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this law to try to at least open some cracks into these very rigid State

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abortion banss okay so you brought us back to the beginning where we started this conversation which is this current

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case right Idaho versus the Biden Administration so how did that fight actually break out yeah so after roie

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Wade was overturned a number of States including Idaho put into place near total abortion banss Idaho's ban has

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very limited exceptions for abortion and one of the only times abortion is allowed is to keep a pregnant woman from

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dying but the Biden Administration issues a memo and it says Hey hospitals

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hey States we're just reminding you the interpretation of mtala applies to women

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who come to emergency rooms and need emergency abortions so what the Biden

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Administration is saying is this federal law says preventing death is not the

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only reason that emergency rooms have to treat people they also have to prevent

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People's Health situation from getting worse because there are many situations

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where a woman is bleeding you know severely or she has a severe infection

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but maybe she's not about to die and so there's a pretty wide Gulf between

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situations where a pregnant woman might need an abortion to save her life and

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when she might need an abortion to protect her health so the Biden Administration is saying look this

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Federal laww requires that you protect not just the woman's life but also the

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Woman's Health which of course brings it into direct conflict with Idaho's ban

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right exactly and what the Biden Administration is going after here is

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something much broader something that goes beyond emergency room Care What

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They're targeting here is the concept in Idaho's ban that you can't intervene

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except to save the life of the mother and by pointing to mtala and saying this

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Law requires you to intervene to protect a patient's Health they want to force

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states with these strict bans to acknowledge and allow abortions in a

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number of these cases of pregnancy complications that happen and by doing

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that it really wants to also create a crack in the foundation of these abortion B

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got it so that's the crack in the foundation that you're talking about it's not just about this narrow demographic of women who would be in the

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situation but it gives them legally potentially a path to do something bigger and the Biden Administration

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actually decides to be very aggressive with this mtala law and so very soon

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after roie Wade is over returned the Biden Administration sues Idaho and says

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your abortion ban is violating this federal law and your abortion ban cannot

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stand and Pam what does Idaho say in response what's its argument here so

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Idaho says it is not violating mtala and it accuses the Biden administration of

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wanting to turn emergency rooms into abortion clinics and wanting to force Idaho doctors to provide abortions

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against Idaho's law and this is also where that phrase unborn child comes up

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Idaho is picking up on that language in mtala and it's saying that because the

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federal law mentions unborn child that that means you have two patients to consider when a pregnant woman goes to

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an emergency room and if you're doing an abortion then you're in their view

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killing one of those two patients and that's why they are outlawing the

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ability to do that so in other words this law from 1986 is really being used

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by both sides through the lens of 2024 both by the Biden Administration who's

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saying it says that abortions need to be provided in emergency rooms and by Idaho

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saying no not so fast the unborn child has equal protection here because that's

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in the law right so you have both sides using this 40-year-old law that really

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had nothing to do with abortion when it was passed and they're trying to cast it in a light that serves their side of the

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abortion debate and so this case ends up in the Supreme

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Court and it's important to note that this fight isn't just between Idaho and

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the Biden Administration there are about half a dozen states that have strict

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abortion banss like Idaho including Texas which has been embroiled in a

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lawsuit over amtala with the Biden Administration also so whatever the

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Supreme Court rulle rols in this case is going to have implications across the country and it's going to help shape

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what states can do if they want to ban or restrict [Music]

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abortion after the break my colleague supreme court reporter Abby venicle on

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the oral arguments we'll be right back

14:05

so Abby our colleague Pam Bellic just walked us through how this very unusual Idaho abortion case got to the Supreme

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Court you covered the oral arguments last week how did they go so a lot of

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the oral argument really focused on a question about how far states can go

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when they are crafting their own abortion laws and sort of the backdrop of this is that there's part of the

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Constitution that deals with this question of what happens when a state

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law and a federal law are in conflict and it's called preemption and the

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general principle is that when a state and federal law Collide if they're in

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conflict with each other that the federal law wins and so the argument in this case really focused in on whether

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the Idaho abortion law directly conflicted with the federal Impala law

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or not we will hear argument this morning in case 23726 Mo vers and the argument started

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out with the lawyer for Idaho Joshua Turner Mr Turner thank you Mr chief

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justice and may it please the court when Congress amended the Medicare act in 1986 it put mtala on a centuries old

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Foundation of state law and Turner says that he does not see a direct conflict

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between Idaho's abortion law and the federal law nothing in mtala requires

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doctors to ignore the scope of their license and offer Medical Treatments that violate state law he argues that in

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Idaho if a woman's life is in danger that there are exceptions that allow

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abortions and that there's flexibility for doctors to use good faith judgment

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and he's saying that Idaho is satisfying the federal Law's requirement to provide women with stabilizing care the court

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should reject the administration's unlimited reading of mtala and reverse the disregards judgment I welcome the

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Court's questions in other words you know nothing to see here our ban gives exceptions if the woman's life is at

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risk and that is in full compliance with this federal law this mtala that

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mandates care right so how do the justices respond to this argument Turner's making so when the lawyer for

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Idaho started making that argument a group of justices right away seemed

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skeptical and those were the liberal justices Council the problem we're having right now is that you're sort of

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putting preemption on its head Justice Sonia Sor jumped in pretty quickly to

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say what do you mean that there's not a conflict between Idaho's abortion law

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and federal law Idaho law says the doctor has to determine not that there's

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merely a serious medical condition but that the person will die yeah that's a

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huge difference Council we agree and you know to kind of bring this down to I

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answered the following question and these are hypotheticals that are true Justice Sodom starts with these

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hypotheticals of cases and she explains that they're pulled from real life examples when delaying an abortion until

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a woman was close to death had permanent effects on the Woman's Health imagine a patient who goes to the Y with pre-

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prompt 14 weeks she gives one example where there's a patient whose water broke at 14 weeks in the pregnancy uh

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she was in and out of theal Hospital up to 27 weeks the baby died she had a

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hysterctomy and she can no longer have children and she said that Delan and abortion caused this woman to lose her

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fertility all right you're telling me the doctor there couldn't have done the abortion earlier and Justice Sodor asks

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would Idaho's abortion ban allow abortions in this kind of situation when a woman's health is Gravely affected

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even though she didn't die and Idaho's lawyer responds that it's up to the doctor again it goes back to whether a

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doctor can in good faith medical judgment that's a lot for the doctor to risk and that this is Case by case the

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examples I'm kind of shocked actually because I thought your own expert had said below that these kinds of cases

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were covered and you're now saying they're not and as this exchange is going on another Justice jumps in which

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is a bit of a surprise because it's Justice Amy cone Barrett who is one of the Court's conservatives and she jumps

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in and says well you're hedging I mean Justice sotoor is asking you would this be covered or not and it was my

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understanding that the legislator's witnesses said that these would be covered wait a second in the record in

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the documents leading up to this case she thought that Idaho was arguing that

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those kind of examples the kind of example where you know a woman needs an

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abortion or she has to have a hysterectomy this sort of really extreme loss of organs and loss of future

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fertility she says I thought all of that was covered she's essentially looking at

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these medical scenarios and saying hold on a second wait there's a question here about whether that would be legal and

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kind of scratching her head which is interesting and unusual given that she's a conservative who's pretty skeptical

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usually of arguments in favor of abortion rights that's right and of course we can only observe what she said

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and try to figure it out but you know she might have found herself more in an

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alliance with the liberal justices which Not only would be surprising given her

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sort of positions and her past record on abortion but also could potentially set

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up a gender split on the Supreme Court in an abortion case which would be you

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know pretty stunning okay so interesting kind of gender divide forming here what

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do the men on the conservative side of the Court say so the men on the court

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the conservative justices they jumped in pretty quickly after that and Justice

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Kavanaugh comes in just want to focus on the actual dispute as it exists now

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today and he's kind of suggesting that the justices turn away from the

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hypotheticals and focus back on what it actually says in the legal documents

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that were filed by each side before the oral argument those you have said in your brief at least that each of the

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conditions identified by the government actually Idaho law allows an emergency abortion and Justice Kavanaugh says that

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the federal government in their briefs listed all these specific conditions

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where a woman should be provided access to an abortion under the federal mtala

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law and based on Idaho's own legal filings he says the state says it would

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allow exceptions for abortions in these same types of situations if you're the one who said it in your reply brief that

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there's actually no real daylight here in terms of the conditions so I'm just picking up on what you all you all said

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I understand so in other words the conservative justices are really kind of responding in the way that we would expect them to right they're sympathetic

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to Idaho's argument they're saying that law is flexible enough to comply with M

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tala that's right thank you Council and so that sort of wrapped up the first

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part of the argument and the next person up to the podium was the lawyer arguing

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for the federal government General preer Mr chief justice and may it please

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the court so what did the federal government solicitor general argue what was her case so Elizabeth progger who

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you know she's actually from Idaho oh right yes and she argues you know before

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the court all the time and she started out by bringing the argument back to

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this idea that the liberal justices were really focus on before no one who comes

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to an emergency room in need of urgent treatment should be denied necessary stabilizing care which is the federal

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government's view that there is a profound gap between what mtala requires

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and what is in the Idaho abortion law the situation on the ground in Idaho is showing the devastating consequences of

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that Gap and she points to the real life consequences of this one hospital system

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in Idaho says that right now it's having to transfer pregnant women in medical crisis out of the state about once every

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other week that's untenable and Impala does not countenance it and the solic

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general is saying that this has you know gotten to the point where every other week Idaho hospitals are airlifting

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women to hospitals in other states to provide abortion care airlifted out of

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state and is that true yes so there's been local reporting in Idaho that since

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this abortion law has gone into effect which has just been you know a number of months that six women have been

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airlifted to other states so Justice Kagan pushes on that you know it's it's become transfer is the appropriate

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standard of care in Idaho but it can't be the right standard of care to force somebody onto a

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helicopter she says that it just doesn't seem to make sense that the right

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standard of care is to put a pregnant woman on a helicopter to another state

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jceo but one of the most interesting things that happens in the interaction with the solister general is actually that

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Justice Alo jumps in and he sort of takes the conversation in a totally new

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Direction um we've now heard let's see uh an hour and a half of argument on

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this case and one potentially very important phrase in mtala has hardly

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been mentioned and that is M tala's reference to the woman's quote unquote unborn child isn't that an odd phrase to

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put in a statute that imposes a mandate to perform abortions have you ever seen

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an abortion statute that uses the phrase unborn child and he says you know isn't it strange that this federal law that

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you are arguing to require abortions includes language that would typically

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be used by people who are against abortion and it seems that the pl meaning is that the hospital must try to

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eliminate any immediate threat to the child but performing an abortion is antithetical to that Duty it's not an

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odd phrase when you look at what Congress was doing in 1989 there were and the slicer General responds by

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saying let's look at back to what this law actually meant and what it was designed to address in the

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1980s and she explains how when this law went into effect You Know Not only would

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a woman potenti be dumped from one emergency room if she couldn't pay but

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that if a woman came in and the medical problem was actually with the fetus that

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she also might be dumped Congress wanted to expand the protection for pregnant women so that they could get the same

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duties to screen and stabilize when they have a condition that's threatening the health and well-being of The Unborn

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Child and she says that's actually why the language is there that it's not sort of anti-abortion code so what's Alo

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really up to here I mean clearly this idea of unborn child you know it's very

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important in the anti-abortion movement it's essentially linked to this idea of personhood and that the fetus is

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actually a person that should be protected but that's not really what this case hinges on so what's he

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doing you know we again can't get inside Justice alito's head but in the lead up

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to these arguments there had been sort of speculation about whether the idea of fetal person Ood would make an

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appearance it's not the focus of the legal arguments here but if you look

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back to the do's case that case also was not a fetal personhood case but that

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language made its way into his opinion he wrote the majority opinion for the

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court and so I think it'll be interesting once a decision comes out

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whichever way it goes with this court whether the language of fetal personhood

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makes it it way into the Court's decision in some way and that is

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important because you know it's the Supreme Court and the language that they

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use then gets cited by courts and judges all over the country and right now fetal

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personhood is not sort of the accepted mainstream in the legal world but

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language like that from the Supreme Court it could be cited in cases around the country interesting so so even

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though the case isn't actually about that Alo can just kind of sprinkle it through and it could be cited later as

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evidence that the Supreme Court is actually elevating this and talking about this yeah that's a possibility and

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it's definitely something people will be watching out for when the court makes its decision and the case later this

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year thank you Council the case is submitted so Abby do you have a sense

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after this very interesting set of arguments here how the justices will

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rule you know we're in a bit of uncharted waters here it's hard to say

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how the court is going to come out in this case I think Justice bar jumping in to say that she was shocked by some of

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the arguments being made by Idaho raised some questions about whether she could

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potentially align herself with the other you know women justices who are all

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liberals but a majority of the conservative justices did seem to be know sympathetic to Idaho's arguments it

28:00

could be a case that comes down to Justice Barrett and the Chief Justice

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who was actually pretty quiet during arguments and you know wouldn't say that

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it was clear how he was going to come down on this and you know I think that's something that's important about this

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case is that you know it's likely to give us a substantive real window into

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how the justices now post jobs are thinking about abortion and how it's

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playing out in all these different ways in States throughout the country Abby I

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guess I'm thinking you know whatever the outcome is there's something else that's happening here and I'm thinking here

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about the timing right the ruling will come just as the presidential campaign really heats up in the end of June and

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we know that very strict abortion bans don't play very well to the mainstream

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American voters so if this ruling does go for Idaho it would draw lines around

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abortion access that are even more restrictive than many states have at such a political

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moment you know I think it's certainly fair to say that this decision will be closely watched and that it also could

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draw the court into the politics of abortion and one of the things you know

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that I just can't help but think is that when the court made its decision in DOS

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to overturn roie weight that Justice Alo made a point of saying that the court

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was getting out of the business of abortion that this was something that would be left to the states and now the

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court you know as we've seen in this case is wrestling with very sort of

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granual hypotheticals about you know the different emergencies that could come up

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and when is this okay and when is this not okay and they are still very much in the weeds of

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abortion so so much for the Supreme Court being done with abortion cases it's right back there smack dab in the

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middle of one of the most contentious issues in American life that's right it certainly is and so yeah it's it's hard

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not to think about the court putting itself again in the middle of this

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Fierce debate in the middle of a huge political

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fight Abby thank you thanks so much for having [Music]

30:52

me we'll be right back [Music]

31:07

here's what else you need to know today we can see different cohorts of NYPD officers one is going across Butler

31:12

Lawns towards Hilton Hall the on Tuesday tensions over Pro Palestinian protests

31:19

continue to escalate on University campuses across the country at Columbia

31:24

University in New York hundreds of police officers in riot gear began arresting demonstrators on Tuesday night

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about 20 hours after protesters had occupied a campus Building they're entering the encampment now there I I

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mean I know sory reported on this before there is about a crowd of I'd say 30 or 40 police officers with batons and uh

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zip ties right outside the Gaz of solidarity encampment right now the Columbia University student radio

31:49

station reported that police used tear gas to disperse people and that at least

31:55

one person was lying on the ground unconscious during the raid earlier in

32:01

the day the University closed the campus to everybody but students who lived there and said it would move to expel

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students who had occupied the building in Oregon Portland State University

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closed its campus after students there broke into its Library police officers made scores of

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new arrests at universities in California Georgia North Carolina and

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Virginia more than 1,000 protesters have been taken into custody on us campuses

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since the original Roundup at Colombia on April

32:39

18th today's episode was produced by Stella tan Alex Stern and Jessica Chong

32:46

it was edited by MJ Davis Lynn contains original music by Maran Lozano and was

32:52

engineered by Chris Wood our theme music is by Jim brunberg and Ben Lanser of

33:03

[Music] wonderly that's it for the daily I'm Sabrina taveri see you tomorrow

33:12

[Music]