

Boom! Lawyered 201: Hello! It's 2018 and Your Right to Vote Has Been Canceled

- Imani: Hello, fellow wanderers. Welcome to our first episode of Boom! Lawyered for 2018. Boom! Lawyered is a Rewire.News podcast hosted by the legal journalism team that isn't quite sure if this year is going to be worse than the last year, but is hoping for the best. I'm Imani Gandy.
- Jess: And I'm Jess Pieklo. Rewire.News is dedicated to bringing you the best reproductive rights and social justice news, commentary, and analysis on the web, and the Team Legal podcast is part of that mission, so thank you so much for listening and subscribing.
- Imani: Yes, thank you. We love you. We also somehow managed to survive 2017 and a year of Trump as president and Republicans in charge of basically everything, but it's a brand new year. It's 2018. We have midterm elections, and people are fed the fuck up. Hopefully, we can build on that. We can build on democratic wins in places like Alabama -- ALABAMA, people -- and make 2018 the year we start taking shit back.
- Jess: Seriously. Let's start taking shit back this year, but if we're going to do that, we're going to have to deal with all the barriers to voting that Republicans have tossed up, things like voter ID laws in the over 30 states that have them, or folks getting kicked off registered voting rolls in places like Ohio, those kinds of things.
- Imani: This episode, we're going to take a look at some of the biggest voting rights fights happening as we head into the 2018 midterms, and we're going to get to some listener questions and reviews, so strap in. It's going to be a bumpy ride.
- Jess: 2018 started out with a good dose of voting rights news. Probably most importantly, President Trump announced that he was disbanding his voter suppression, I mean, his "voter integrity commission", headed up by Mike Pence and Kris Kobach. That commission was set up to find evidence that millions of illegal voters, by which Trump obviously meant brown folks, cost him the popular vote to Hillary Clinton.
- Imani: I'm pretty sure that being completely unqualified and a certified jackass is what cost him the popular vote.
- Jess: I feel like that's a pretty safe bet. Anyway, soon after the commission went caput, Trump started tweeting about how we need national voter ID laws because that's how he does policy via tweets. Imani, let's talk about voter ID. What are voter ID laws?
- Imani: Voter ID laws, Jessica, are a solution looking for a problem, that's what they are.
- Jess: What do you mean by that?

Imani: Well, proponents of voter ID laws say that they're necessary to prevent in person voter fraud, but the incidence of in person voter fraud are so infinitesimal that it's not even worth mentioning. Republicans will carry on about voter ID saying ridiculous stuff like, "Well, if you need an ID to buy beer or get on an airplane, what's the big deal about requiring an ID to vote?"

Jess: Right, but buying a beer or getting on an airplane isn't a constitutional right. Voting is.

Imani: Exactly.

Jess: What's the deal with these voter laws, then? Are they all the same, or what?

Imani: Nope. Some are more strict than others, but all of them have been enacted with one goal in mind, and that is keeping folks who tend to vote for Democrats, people of color and students, from voting. According to the National Conference of State Legislatures, there are two categories of voter ID laws. There are strict voter ID laws and there are non-strict voter ID laws.

Jess: Okay. Could you tell me and the listeners a little more about these categories, please?

Imani: Sure can. Non-strict voter ID laws allow voters who don't have the right ID to cast a ballot with no further action required by the voter. For example, voters without ID may be given a provisional ballot and later, election official will verify that the voter was eligible and registered. If they were eligible to vote and registered to vote, then that ballot will be counted.

Jess: If there are those non-strict voter ID laws, that means that there are strict voter ID laws, right?

Imani: Indeed there are. In strict voter ID states, voters without the appropriate identification must vote on a provisional ballot and then take additional steps after election day for it to be counted. For instance, the voter may be required to return an election office within a few days after the election and present an acceptable ID to have the provisional ballot counted. If the voter for some reason does not come back to show ID, then their ballot will not be counted.

Jess: What you're saying is that some of these laws are worse than others.

Imani: That is exactly what I'm saying. Take the Iowa and Missouri voter ID laws, which were just in the news recently. Missouri's law says that Missourians must present identification at the polls. The law also says that valid forms of identification include the following: a driver's license, a state issued ID card, a US passport, a copy of a utility bill, a bank statement or a paycheck stub. If voters present these non-photo IDs at the polls, they will be required to sign affidavits attesting to their identities.

Jess: Let's hold up here for a second. What do you mean by an affidavit?

Imani: Okay. An affidavit is basically a document that states some facts and you attest to those facts under the penalty of perjury. You're saying, "What I've written in this affidavit, in this document, is true and I swear it is true on penalty of perjury." In this case, a Missouri voter would have to swear an oath that they are who they say they are. They would sign an affidavit saying, "My name is Imani Gandy and I'm allowed to vote, and I swear this under penalty of perjury." That's what an affidavit is.

Jess: Okay. That's how the Missouri law works. Let's talk a little bit about Iowa. Starting January 1st, 2019, Iowa voters are going to have to show some kind of ID to vote, as well. That's going to be something like a driver's license, a non-driver's ID, a passport, a military ID, veteran's ID, or a voter ID card. Voters who don't have that ID will be offered a provisional ballot and they can vote so long as they can provide ID up until the Monday after the election day to have that vote counted.

Imani: Those are two quick examples of the various voter ID laws in the states and what voters in those places have to do to actually cast a ballot. In the grand scheme of things, neither the Missouri law nor the Iowa law is particularly oppressive. Setting aside the fact that the goal with all voter ID laws is to suppress the vote, Missouri and Iowa don't make it as difficult to vote as say, I don't know, Texas. After this short break, we're going to take a look at Texas, because naturally, Texas is at the center of the fight.

Let's talk about Texas, because leave it to Texas to have the most strict voter ID law in the nation. Also, leave it to Texas to have the messiest possible litigation about its most strict ID law in the nation.

Jess: What do you mean? Messy how?

Imani: Oy vey. Okay, so Texas passed a voter ID law in 2011. It was called SB14.

Jess: Oh, I'm terrible with numbers. All right, I'm going to say this again. SB14.

Imani: SB14, yes. SB14 said that every voter must present at their polling place either a Texas driver's license, a Texas election identification certificate, a Texas personal identification card, a Texas concealed handgun license, a United States military ID card containing the person's photograph, a US citizenship certificate containing the person's photograph, or a US passport.

Jess: Stop it. Did you say you can use a concealed handgun license to get an ID to vote?

Imani: Yes, you can use a concealed handgun license, but you can't use a student ID card. Do you want to know why that is?

Jess: I'm going to say because students maybe tend to vote for democrats.

Imani: Ding ding ding, pretty much. Because of the Voting Rights Act -- Section 5 of the Voting Rights Act -- Texas had to ask the Department of Justice for permission to

enact this law, SB14. Now, this is called the pre-clearance requirement. It applies to states like Texas that have a history of voter suppression.

Jess: Okay, so Section Five of the VRA, this is the pre-clearance requirement, right? The part that says those states with a history of voting discrimination, like Texas, need to get the federal government's okay before they can change their election laws, right?

Imani: You got it. You got it. Wouldn't you know, pre-clearance was denied, and wouldn't you know, Texas sued. They lost. A district court in DC struck down the law, saying that the law would negatively impact minority voter turnout and impose strict burdens upon the poor. After Texas filed the lawsuit, the court decided to wait until the Supreme Court issued a ruling in *Shelby v. Holder*. Now, *Shelby v. Holder*, which you may remember, is the huge Voting Rights Act case that was pending before the court at that time. When the US Supreme Court finally issued its decision in *Shelby v. Holder* in 2013, the court essentially gutted the Voting Rights Act.

Jess: Right. That's the decision where Chief Justice John Roberts declared the country post-racial and said that Congress couldn't demand those states like Texas with a history of voting discrimination to go through pre-clearance without evidence that racial discrimination in their elections was still an ongoing thing. Ruth Bader Ginsburg had a pretty epic dissent in this decision and she called the entire thing full of hubris and said that getting rid of pre-clearance was basically the same thing as throwing away your umbrella in a rain storm.

Imani: Got to love RBG. Of course, Texas was all, "Yeehaw," and tried to implement its crappy voter ID law immediately. That law meandered through the courts in 2013 and 2014. The Department of Justice filed a lawsuit challenging the law under Section Two of the Voting Rights Act, since *Shelby* had just demolished Section Five of the Voting Rights Act by striking down Section Five of the Voting Rights Act.

Jess: Right, so in *Shelby*, we had sections Four and Five, which dealt with pre-clearance, but now we're talking about Section Two, and that section prohibits any voting practices or procedures that discriminate on the basis of race or color. It's used to go after what are called at large election procedures, or those that affect all elections, say, for example, voter ID laws.

Think of it as the foundation of the Voting Rights Act. Section Four and Five targeted specific states with the history of voting discrimination. Section Two targets all practices that target all elections, whatever the state they're in. Basically, the Obama Department of Justice thought Texas' SB14 was bullshit, and since they couldn't sue anymore under Section Five, they sued under Section Two.

Imani: If you think that's confusing, it gets worse. Eventually, the Supreme Court ruled that Texas could implement the law SB14 for the 2014 election. Over a year later, a three judge panel of the Fifth Circuit court of appeals ruled that the law violated Section Two, but they didn't find enough evidence to prove discriminatory intent, so the court kicked the case back down to the district court, back down to Judge Nelva Gonzales Ramos' court.

Jess: Oh, good grief.

Imani: Yes, I'm not done, either. Texas still wasn't satisfied, so they asked for a rehearing en banc. Now, you may remember that en banc means in Latin full court, so asking for a rehearing en banc means you think that the three judge panel got it wrong and you want the full court of appeals to hear the case.

Jess: Did the full court of appeals hear it?

Imani: They sure did, in April 2016, and the full court came to the exact same conclusion that the three judge panel of that court did. The law violates Section Two, but there wasn't enough evidence of discriminatory intent, so again, the case was kicked back down to Judge Ramos' court.

Jess: Oh my god. I'm getting dehydrated, I think.

Imani: Stay with me, Jess. Do I need to slap you across the face?

Jess: You might, but that's impossible, because we're like hundreds of miles away from each other.

Imani: We really are, and it makes me sad.

Jess: I'm sad.

Imani: But I digress. After a bunch of legal shenanigans that are far too wimpy to get into, Judge Ramos ruled that the law was enacted with discriminatory intent. She said that SB14, after all of the shenanigans, was enacted with discriminatory intent. That ruling came down in April 2017, but do you know what happened a couple months before that, about a month after Donald Trump was inaugurated?

Jess: I do know this one. The Department of Justice switched sides in the case, which is, I know, fucking shocking, right? Under Obama, the Department of Justice said that the law was enacted with discriminatory intent, but once Jefferson Beauregard Sessions III took helm of the Department of Justice, they said that it was no longer enacted with that discriminatory intent, that it was just fine.

Imani: That's right, but Judge Ramos ignored the DOJ and their newfound position and said that the law SB14 was enacted with discriminatory intent.

Jess: That's good, right?

Imani: It sure is, but a mere two months later, in June 2017, Texas governor Greg Abbott signed SB5 into law. Now, SB5 made some changes and was a little bit different from SB14. Republicans hoped that these changes would be enough to pass Constitutional Muster. For example, an affidavit option was now available. A voter could sign a form stating that they were unable to obtain photo ID for specific reasons listed in the law,

like taking time off from work, but the law was basically the same as SB14, and so Judge Ramos struck it down again.

Jess: Let me guess. I'm going to guess they appealed to the Fifth Circuit, which stayed the ruling because the Fifth Circuit are a bunch of jerks.

Imani: Wait, but what does stayed the ruling mean?

Jess: Oh, oh, right, right. Stayed the ruling means that they effectively put it on pause.

Imani: Right, so just like before the 2014 election when the Supreme Court said that SB14 could be implemented, the Fifth Circuit said that Texas could implement SB5 for the November 2017 elections. That's because the Fifth Circuit stayed Judge Ramos' ruling that the law was enacted with discriminatory intent. That's the state of state of Texas' Herculean efforts to pass a voter ID law. Now, here's a question that I have for you, Miss Court Whisperer. Do you think that the case will end up before the Supreme Court?

Jess: These questions always make me nervous, because there's at least a 50% chance I'm going to be wrong, but I do think so, kind of, maybe. This is what I'll say. The Supreme Court already endorsed the idea of voter ID laws once, and that was in 2008. That decision is *Crawford v. Marion County*. That involved Indiana's voter ID law and there, liberal justice John Paul Stevens said that states don't actually have to have evidence of voter fraud to justify passing those laws, that protecting the integrity of the electoral system was enough. That's a disaster.

We have that decision that as a basic principle says these laws are okay. Now, the fight has turned over to the amount of proof over whether these laws are racially discriminatory, and that's what we've got going on in Texas with the Fifth Circuit, and also in Alabama, where there's active litigation around that state's voter ID laws. Right now, we're waiting for decisions to come down in both those cases. We're going to have one from the Fifth Circuit like we talked about, and the 11th Circuit.

Remember, we talked about this in one of our other episodes that when courts of appeals disagree on answers to the same question, in this case, whether a voter ID law is racially discriminatory or not, that's the kind of case and question that the Supreme Court is likely to take up, so yes, I think we're going to get a voter ID case before the Supreme Court, and also, lawyers are the worst because we take forever to answer a yes or no question.

Imani: We really are the worst. We're the worst. Of course, no matter what happens with these voter ID laws in court, they are all just tools of voter suppression. I want to reiterate that. The point is to keep voters of color away from the polls, and now there's even proof of that. A bunch of social science muckety mucks recently conducted a study using an algorithm that definitively proves that these laws are tools of voter suppression. There was a great article about that story in Wired Magazine, and we're going to go ahead and post that in the show notes, because it's well worth reading.

Jess: It really is. It's a great piece, and please, if you get a chance, check it out. Wow, that was a lot of information, Imani.

Imani: It's Texas, Jess. Texas is by definition a lot. That was going to be their slogan before they went with, "Everything's bigger in Texas." It was going to be, "Texas: We're a Lot."

Jess: It still works. Okay, I feel like we should recap here. Texas has been leading the fight for the most Draconian voter ID laws since about 2011, and its current law, SB5, is in effect but still in the courts while advocates try and show that it was passed with an intent to discriminate against voters of color.

Oral arguments happened in that case in December and we're waiting for the Fifth Circuit to rule. That could be months or it could be weeks. Who knows? These courts do what they want. Meanwhile, Alabama's voter ID law is also in the courts, and so by the end of the year, we could know or not if the Gorsuch court is going to step into this fight just in time for the 2020 presidential elections to happen. Hooray.

Imani: Oy vey.

Jess: On that note, let's take a quick break, and then after, we're going to walk you through just what it's like to try and get a voter ID card here.

Imani: Jess, do you want to know what annoys the shit out of me?

Jess: I'm sure you're going to tell me.

Imani: You know me so well.

Jess: I do.

Imani: It annoys the shit out of me when conservatives hand wave the idea that it is difficult, and in some cases impossible, to get a voter ID card.

Jess: Yeah, that's damn annoying. They refuse to grasp the basic idea that it's really hard for some folks to get ID.

Imani: It really is, and just to demonstrate how much of a pain in the ass it is, let me go ahead and ask you some questions. Let's say you live in Texas and you want to get a voter ID card. What's the first thing you would do?

Jess: I'd probably go to the DMV.

Imani: That makes sense. That's what most people would do. In Texas, the DMV is called the Department of Public Safety office.

Jess: Okay, so I'd go there, then. That's easy enough.

Imani: You would think so, Jessica. You would think, but in Texas, 79 of the 254 counties don't have a Department of Public Safety Office.

Jess: What? Where did you hear that?

Imani: I got that information from Judge Ramos' 2014 decision striking down SB14, that Texas law that we talked about. In her ruling, she spent several pages talking about how difficult it is for some people to get the required photo ID. Here's another fun fact. If you happen to live on the Mexican border, you're looking at a 100 to 125 mile drive, and that's just to get to the DPS.

Jess: That's a lot.

Imani: It really is a lot, especially if you don't drive or don't have a car. How's a person supposed to get to a DPS that is 100 miles away if they don't have a car?

Jess: If I didn't have a car, I suppose I'd ask a friend or family member to take me.

Imani: Jess, you're one of my favorite people in the entire world and I love you to pieces, and I would 100% not drive two hours each way and then spend God knows how long waiting for your ass at the DPS so you could get a voter ID card. I love you, but I have my limits.

Jess: That seems fair, and I mean, what if I were a single mom? That would mean I would have to find someone to take care of my kids while someone who is 100% not you, Imani, drives me all over Texas trying to get me a photo ID card.

Imani: Precisely, and what if you were a working class mom? It's highly unlikely that you would be able to get time off of work to spend a whole day driving around Texas searching for DPS offices.

Jess: It's a colossal pain in the ass is what you're saying.

Imani: That is exactly what I'm saying, and it's really hard not to think that it's a feature and not a bug. Let's say you have friends and family that are way better people than I am, and they are happy to drive you to the DPS. Once you get to the DPS, what's going to happen?

Jess: Well, I'm supposing that I wait in line, ask for a photo ID card, get my picture taken, and then I walk out with my shiny new Texas approved voter ID card.

Imani: Well, it would be nice if it were that easy, but of course, it is not. To get a voter ID card, you need to verify who you are. To verify who you are, you need a birth certificate, so Jess, do you have your birth certificate? Because I sure as hell don't have mine, and I have no idea where it is.

Jess: I mean, I have one, but it's not exactly handy. What happens if I don't have a copy of it?

Imani: Well, you have to get one, and as you can imagine, that process is a pain in the ass, too. First, a lot of birth certificates have mistakes on them. If your name is spelled wrong, then you have to go through a whole rigmarole to get that fixed before you can get your ID card.

Second, some people have never been issued a birth certificate. A lot of elderly Black folks, for example, were birthed by midwives at home. They don't have birth certificates. A lot of rural folks, Black, white, Latino, whatever, were born on farms. They don't have birth certificates, either. A lot of trans people don't have birth certificates that match their current gender identity. Did you know that in 2010, the birth certificates of all American citizens born in Puerto Rico expired? Because they did.

Jess: What? The birth certificates expired?

Imani: Yes. If you are in American born in Puerto Rico, your birth certificate expired in 2010. If you need a birth certificate and you were born in Puerto Rico, good luck with that.

Jess: Oh god, I can't even imagine this process. How do you get a new birth certificate? I bet it costs something like an arm and a leg to get one.

Imani: Well, not an arm and a leg per se. You can get one for \$5, but for some people, like low income folks, homeless folks, even \$5 is \$5 too much, but even if you do have \$5, Puerto Rico isn't just going to hand out birth certificates without some verification of your identity.

Jess: Oh my god, this loop. If I were a Puerto Rican and I didn't have a photo ID or a driver's license, I would have to get a copy of my birth certificate, but in order to get copy of my birth certificate, I have to have photo ID.

Imani: Yes.

Jess: Okay, that's ridiculous.

Imani: Yes, and it's not just Puerto Rico. In Texas, for example, in order to get a certified copy of your birth certificate, you need an ID card, and in order to get an ID card, you need a certified copy of your birth certificate, and round and round we go.

Jess: If you don't have it and can't get it, you're screwed, so what you're saying is that we're screwed, Imani.

Imani: Pretty much, unless Congress does something to fix the Voting Rights Act.

Jess: Well, I'm not holding my breath for a Voting Rights Act fix from Congress at all. I'm just hoping they don't make anything worse or that the Gorsuch Court doesn't for

that matter, because they might make voting a whole lot harder as of this summer by handing states a nifty new way to purge voters from their rolls. We're going to talk about that in just a moment.

Okay, so last week, the Supreme Court heard oral arguments in a case out of Ohio called *Husted v. A. Philip Randolph Institute*. Here's some background on the case. In 1993, congress enacted the National Voter Registration Act.

Imani: Wait, wait, wait, what does the National Voter Registration Act do?

Jess: I'm glad you asked, Imani. It does two things primarily. It's supposed to make it easier to vote by letting people register at places like the DMV, like we talked about with voter ID, or by mail, for example. It also lets states set their own practices for keeping their voter rolls up to date and removing folks who have died, for example, because let's face it, managing elections is a lot of work. Okay, so that's the National Voter Registration Act. Nine years later, Congress enacted the Help America Vote Act.

Imani: Oh, for crying out loud, what is the Help America Vote Act?

Jess: Right? It doesn't do exactly what it says it does, but it does do some things. Importantly, it requires states to maintain a voter registration system that culls ineligible voters from their voter lists. This is a little wonky, so I'm going to take it slow here. Those systems can take registered voters off the rolls if they haven't either responded to a notice or haven't voted in two consecutive federal elections, okay, so that's that part of it. Congress also said that you can't just be removed as a registered voter just for not voting, so in other words, failing to vote can't be a trigger that takes your names off the voting rolls.

Imani: I imagine Ohio tried to pull some nonsense, anyway.

Jess: Bingo. Then, Ohio's Secretary of State, John Husted, and under the direction of failed republican presidential nominee, John Kasich, Ohio went voter suppression bananas and put in place a couple different systems to keep its rolls up to date.

Imani: Okay, so what are those different systems, then?

Jess: Sure. The first we'll talk about compares the post office's change of address database with Ohio's own voter registration database, and election officials would compare those to see if they could find any voters who were registered and may have moved. If they did, the state would mail them a notice and if those voters didn't respond to that notice and then not vote for four more years, their registration is canceled, you're off the rolls.

Imani: Wait, okay, so you're telling me that Ohio is kicking eligible voters off the rolls for not returning a piece of government paper?

Jess: That's exactly it. I mean, how many pieces of paper do you get that you just don't respond to? That's stupid. I'm not even going to get into that.

Imani: I literally don't open my mail for months at a time. I mean, seriously, who actually gets mail now? It's just circulars, penny savers, and annoyances.

Jess: This is what I'm telling you. Between 2011 when it was implemented and 2016, Ohio purged roughly 1.2 million people from its rolls, according to Reuters. Naturally, civil rights groups sued on behalf of folks who had been kicked off, arguing that this process violated the Motor Voter Act, the National Voter Registration Act that we talked about earlier, and the Help America Vote Act. A district court disagreed and said, "No, the Ohio process was just fine."

Imani: The district court was a jerk.

Jess: Seriously. Thankfully, the Sixth Circuit Court of Appeals reversed and said that the state was using the failure to vote as a trigger, and remember we said that the law specifically said they couldn't do that. That was good news. Then, the Supreme Court took up the case, and well, that's not usually good news. Imani, can you believe this shit?

Imani: You know, I really can believe this shit, because at this point, I think the Republican's only chance of winning is to make sure a bunch of people don't vote. Whatever they're going to do to enable that to happen, they're going to do if that means they end up sitting at the Supreme Court for the rest of their lives arguing nonsense law instead of just letting people vote.

Jess: Yes, and reading the tea leaves on this case, I got to say, I don't feel so great about the outcome here. Even Justice Briar seemed sympathetic with Ohio and the job of keeping their voter rolls clean, and I get it. I've done elections work. It's a lot of spreadsheets. In 2008, we'd sit there literally with a thick sheet after sheet after sheet. There's lines of people, and you're checking line by line to make sure "are you who you are?", and that's without ID. This was in Minnesota, in a state where it's pretty easy to vote, and they even have same day registration.

There is a lot of work that goes into it, but you can't use that work as an excuse to just cull people off the rolls. Here we have evidence that folks who tend to vote democratic are the ones that are getting purged. I mean, voting is a fundamental right. You shouldn't lose your right to cast your ballot and have it counted just because you didn't mail in a goddamn piece of paper. It's absurd, right?

Imani: It is absurd, and I'm a little disappointed in Justice Briar, because he's usually the nerd Supreme Court justice, right? It seems to me that there's got to be some data set that he can look at and come to a sensible conclusion. I don't know. Maybe there's hope for him. Maybe, maybe.

Jess: Hopefully. If the court rules for Ohio broadly, what it means is it could green light other states from implementing an identical process or something very similar, and maybe that doesn't impact the midterm elections because of when the ruling comes down this summer, but it sure as hell could the 2020 presidential election. Even a

narrow ruling for Ohio could do that given that conservatives feel pretty big and mighty these days just broadly, so I don't know. We're probably not going to get an answer until this summer. We'll be here when we do, and hopefully it's a good one.

Imani: Hopefully it's a good one, but I'm not optimistic. Just like you said, I'm not optimistic, mostly because everything seems to be terrible now, so why not just throw one more terrible thing on the pile of terrible things? All I want is to be able to get Trump and those fools out of the White House, and it seems like states are going to make it hard for the people, the demographics, Black people, young people, elderly people, who could make that happen, Republicans are trying to keep them from the polls and it really enrages me.

Now is in the point in the podcast where we take a listener question and try to answer it. This question comes from a member of our Facebook group, Boom! Lawyered, which you should totally join, and it's about the Mississippi law, HB1523, that was passed in April 2016 in response to Obergefell. The case is called *Barber v. Bryant*, and Jessica, what the hell is up with *Barber v. Bryant*?

Jess: Okay, so a couple weeks ago, the Supreme Court said that they were not going to take this case up and it is bad news for civil rights advocates, but it's not terrible news, so let's talk a little bit about it. HB1523 is a disaster of a civil rights law. It's one of those so called "First Amendment Defense Acts". You remember those, Imani?

Imani: FADA!

Jess: FADAs, because the first amendment, religious conservatives will have you believe, is under this constant nonstop assault by things like civil rights, right?

Imani: Yes, yes, the gay agenda. It's the gay agenda.

Jess: The gays and the brown folks. It's all you all doing out there. All you all doing out there? What the fuck is coming out of my mouth? I don't even know what that was. FADA, HB1523, that passed, and what HB1523 does is it prevents the state and Mississippi from taking any legal action against someone who refuses to serve LGBTQ people on the basis of that person's religious beliefs or moral convictions, that same sex marriage is a sin, that being transgender is a sin, or anything having to do with their basic opposition to anything outside of "traditional male to female marriage." If they have an opposition to it, HB1523 says that you can go ahead and use that as a basis to discriminate.

Thankfully, some folks sued and they said that this law is a violation of the Establishment Clause. A lower court and the 11th Circuit Court of Appeals disagreed kind of. They didn't really get to the merits of the case, so they didn't say that the law was unconstitutional. What they said was these folks didn't have standing to challenge the law, and standing is a legal concept that says you basically have to have an injury. The law has to do something to hurt you, your rights. You have to lose money. You have to have something on the line, and the courts have said that they didn't have the ability to challenge this law yet.

I think that decision is bullshit, and the Supreme Court didn't step into that. That happened. Folks wanted to know what that meant broadly and if it had anything to do with the Colorado case with *Masterpiece Cakeshop*, which we've talked about. The good news is no, it doesn't have to do with *Masterpiece Cakeshop*. That case is ongoing in its own little silo and world and we'll get a decision likely in June on that.

The bad news is that it means the Mississippi law is still in effect. Silver lining, it means that another plaintiff can go forward and challenge it because a decision in the first case on standing doesn't mean that it was a decision on the merits, that it was a decision on the constitutionality. It's, I guess, Imani, a mixed bag.

Imani: A mixed bag. If I recall, I remember Republicans and conservatives being very excited about this case as if it were a decision on the merits, and that's why it's really important when you're reading about this sort of news is to understand what the procedural posture of a case is, meaning where it is in the stage of litigation, because if it's dismissed for lack of standing, that doesn't mean that the case is over. It means someone else can file it. It doesn't mean that that law is actually constitutional, because no one's decided. The court has not actually decided that.

Jess: Right. Obviously, it would be better to have a court decision that blocked the law, but we don't have that yet, and it's important to make sure that folks don't buy the line that conservatives are selling that this is an endorsement by the courts of the Mississippi law, because it is absolutely not that.

Imani: Exactly, absolutely not that. On that note, we are going to turn to our listener reviews. Yay, listener reviews.

Jess: Yay.

Imani: We need a listener reviews theme song. Maybe somebody should beatbox. Do you know how to beatbox?

Jess: No.

Imani: I'm not even going to try. Okay, so we're going to start with a review from Jack of All Trades. It just says, "Love it. Boom." That's it. Short, succinct, to the point. I like it. Moving on, we have a comment from Ziggy Stardust. The title is, "Team Legal Strikes Again. Imani and Jessica are fantastic. They are smarter and funnier than I am and turn issues that could be boring into interesting and insightful commentary. There's rarely half an episode that goes by in which I don't laugh. I've been following Imani since TWIB, and am super excited to hear her in my ears again." I'm so excited to be in your ears. Thank you, Ziggy Stardust.

Jess: Thank you.

Imani: This one is from Waynick. I know you, buddy. It says, "Team Legal, making life in Trump's timeline a bit less perplexing and vexing. While I'm not a lawyer, I'm not a

legal neophyte by any means. Imani knows what I'm talking about." Yes, I do. "Hell, my wife is an attorney. Also, thanks Imani." You're welcome. I actually introduced this couple and they've been married for like five years.

"My wife is an attorney who is passionate about SCOTUS, and I still manage to learn a metric fuck ton from each and every episode. Listening to these brilliant legal breakdowns should be a requirement for anybody of legal voting age and I'm not even being hyperbolic. We are nothing if we're not properly informed. My only complaints about the podcast are that the episodes are not nearly released as frequent as they need to be in order to keep us all sane, and that half hour of Imani and Jess bantering at one time isn't enough. We need more Team Legal, ladies. In a perfect world, y'all would be paid to do this daily. Keep up the good fight. Keep being awesome. Keep ripping the patriarchy to shreds." Thank you, Waynick, and thank your wife, as well.

Jess: Thank you so much, and a metric fuck ton is a good amount of knowledge.

Imani: It's an excellent amount of knowledge, and he does have a lot of knowledge. Moving on to Certainly Cheryl. Certainly Cheryl, it's like Suddenly Susan. Sorry. That is an old '90s throwback for you Gen X-ers. "Thanks so much. With all the drama of the current political and legal landscape, I frequently find myself desperately searching for both information so I can understand what's going on and humor, because if I couldn't laugh, I'd never stop crying. You two expertly provide both. Thanks for all you do." Thank you, Certainly Cheryl, Certainly Cheryl.

Okay, the next one we have is Gemini Geek. "You ladies rock. I'm just now getting a chance to binge listen to the podcast and while the first episode is rapid fire legal overload, I'm really enjoying learning about the legal system. Happy I can replay the podcast and digest this info at my own pace. The Beckett and Ally ep was very insightful on the trans community. Thanks for the range in topics." Thank you, Gemini Geek, and yes, that Beckett and Ally episode was one of my favorites. I love them.

Jess: Same. They're so awesome.

Imani: I just love them. The next one is from Trucks Mama, Trucks Mama. "Love this podcast. Complex issues presented in a fun way. Imani and Jessica are great. They explain things succinctly and clearly. Whenever I see that a new episode has been posted, I carve out some me time to enjoy it. Great work, ladies." Thank you, Trucks Mama. I hope you are a mama that owns a truck. The next one we have is from Luka Kaiju. "All rise, oh yes, oh yes, podcast court is in session and awesomeness is presiding."

Jess: That's fantastic.

Imani: Thank you. "I borrowed six figures to spend four years in night law school and not a single professor, and I did have some excellent ones, did a better job of explaining the nuances of US law and theory than Jess and Imani." That is such a great compliment.

Jess: Wow.

Imani: "This is no slog through the murky morass of arcane legal concepts. The law is explained in order to put it most entertainingly into the context of current events. This light of reason is fun, informative, badly needed, and could not come at a better time. These two deserve lifetime appointments, but don't take my word for it. Listen to an episode *res ipsa loquitur* [EDITOR'S NOTE: Latin meaning 'the thing speaks for itself']." Fantastic. Awesome. Thank you so much, Luka.

Jess: That was great.

Imani: Yes, that was great. We have two more, and then we will end this episode. The first one we have is from Victoria 7401. "Love this easy to understand," ...ellipses. God, I hate these ellipses in the Apple podcast app. Anyway, "I found Imani via Twitter and so I had to listen to this podcast. Jessica and Imani are delightful to listen to as they talk about the issues of the day. I love their blunt interpretations of the law. Keep on keeping on." Thank you, Victoria, we will do. We will do our damndest to keep on keeping on.

Our last one, we have from Alice and Joe 2786. "Team Legal is literally the," ellipses. Apple, fix your podcast app. "They're offering it to you for free #blessed. This podcast is outstanding. Imani and Jessica are brilliant, perceptive, 'herlarious.'" We're herlarious instead of hilarious. "And so good at explaining things. Thank you, Angry Black Lady and Hegemommy."

Thank you, Alice and Joe, and speaking of angry black lady and hegemony, those are our Twitter handles and you should follow us, me @AngryBlackLady, Jessica @Hegemommy. That concludes our first episode of the 2018 year. Hopefully this year will be better than the last. Get involved, get mad, resist this Trump administration, and hopefully have a good year.

Boom! Lawyered is created and hosted by Imani Gandy and Jessica Mason Pieklo. The show is produced by Nora Hurley. Our executive producer is Marc Faletti, and Rewire.News's editor-in-chief is Jodi Jacobson.