

## Boom! Lawyered: Who Can Stop Trump's Court Takeover?

Imani Gandy: Hello fellow law nerds. Welcome to our special SCOTUS wrap up episode of Boom! Lawyered, a Rewire.News podcast, hosted by the legal journalism team that really just needs a beer, like a beer, maybe a bucket of beer, maybe we could just dive into a cask of beer and just drink our way out. I'm Imani Gandy ...

Jess Pieklo: 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 a big thank you to our subscribers and a welcome to our new listeners.

Imani Gandy: Also a big apology to our new listeners because this is probably the worst episode you could start with because it's going to be downright dreary. So if you're looking for a shiny, happy episode. You know, people holding hands, REM type stuff, I suggest you go listen to our love letter to Sonia Sotomayor, because that's a good one. She's a boss and that episode will make you happy. This episode? It's not going to make you happy. We apologize in advance.

Jess Pieklo: Yeah, seriously, the Sonia Sotomayor episode is one to keep in your back pocket for when it's really grim and today might be one of those days after this episode because the news we have isn't necessarily going to make you happy and so we do apologize for that in advance, but let's get on with it because it's also, you know, the news. We've got to deal with it, right, Imani?

Imani Gandy: We gotta do ... Do we have to? Can't we just go drinking?

Jess Pieklo: We really do.

Imani Gandy: Okay.

Jess Pieklo: All right, so in this episode we're going to talk about the wreckage left by SCOTUS this term. Then we're going to talk about just how deep the rot goes in the federal courts, and then finally, we'll talk about what chance we have to stop this bleeding.

Imani Gandy: And then we're all going to jump out a closed window.

Jess Pieklo: All right so Trump is conducting an outright takeover of the federal courts and it's nearly complete, let's be honest. And this last Supreme Court term left wreckage everywhere.

Imani Gandy: Literally everywhere. The first thing that I think is important for us to note is that Mitch McConnell's plan worked. Back when Scalia died, he had a plan to hold that seat open, ostensibly because the American people needed to have a say in who the next Supreme Court justice was going to be even though the

American people had already decided that they wanted Obama to pick that justice. That didn't matter. McConnell held the seat. He held the seat so long that we ended up with Neil Gorsuch on the Court.

Jess Pieklo: And this was very strategic. Under the Republicans in the Obama administration, they had really slowed judicial nominations to a crawl and Scalia's death was a turning point and really a place to pivot the court. And McConnell and the Republicans knew that whoever they could get to replace Scalia would be just as bad as Scalia and so that was the idea. And, like Imani said, it worked.

Imani Gandy: Right and you can tell that it worked. And he's also very smug about it because he tweeted a photo of himself and Neil Gorsuch last week. I think it was last week. And it was very much a sort of digging the knife into the backs of all of the people who believed that the Constitution granted President Obama a right to replace Scalia on the Court, not the next president.

Now, a lot of folks, I think, thought that Clinton would be that next president. Ha. That didn't happen. So here we are with Trump. Trump replaced Scalia with Gorsuch and now with Kennedy's retirement, he's going to get a chance to replace a relatively moderate, non-partisan justice with yet another right wing extremist.

Jess Pieklo: Right and so this victory lap that Mitch did with this picture of Gorsuch was really upsetting and offensive for a lot of reasons, but not least of all because of the wreckage, as we said, of decisions that the Court had even, just that week, unleashed.

Imani Gandy: Right and so next, we are going to talk about the ways in which those decisions devastated progressives and devastated our ability to organize.

So, Jess, what are the ways in which the decisions last week really screwed progressives over?

Jess Pieklo: Wow, okay, so when we talk about some of the big themes from the Court, really sticking it to Democrats isn't one that gets a lot of attention but I think we've got to spend some time on it.

So we had the Court, first of all, say that gerrymandering is A-OK so long as it's done on partisan lines but not along racial lines.

Imani Gandy: Which is, if you think about it as a thinking sentient human being, it is obvious that there is a lot of overlap between partisan grounds and racial grounds when it comes to gerrymandering because Black and brown people tend to vote for Democrats. And if you are saying that it is okay to gerrymander Democrats out of representation in their districts, you're essentially saying it's okay to do that for Black and brown voters. And somehow that seems a little bit not right.

Jess Pieklo: Right. So those gerrymandering cases were all about voter dilution, more or less, right? And then we have the Ohio voter purge case. And that was Ohio running around and kicking people off the polls if they hadn't voted or returned a card that said, "Yo, I moved. Here's my new address" effectively. And so that's another way they can make it harder for Democratic voters to go to the polls and cast a vote.

Imani Gandy: And just for the record, that is the point of these laws. That is the point of the Ohio voter purge rule. That is the point of voter ID laws, to ensure that Black and brown voters can't vote. It's just that Republicans have gotten sneakier and trickier about it and instead of saying, "Yeah, we're gerrymandering the fuck out of Black people." They're just gerrymandering the fuck out of Democrats and oh, look what happens? It just so happens that so many Black people are Democrats and now their votes are being diluted.

Jess Pieklo: Funny how that works, huh?

Imani Gandy: Isn't it, though?

Jess Pieklo: So we've got that electoral nonsense happening. And then we have the Janus decision that makes it impossible, more or less, under the current make up for public sector unions to collect what are called agency fees from non-union members. And those are fees that help the unions when they're doing things like collectively bargaining for all the employees, including those freeloaders who aren't joining the union and are just getting to enjoy the benefit of the extra wages and health insurance.

Imani Gandy: Right and just be clear that it's not even unusual or bizarre to think that people would choose to not give agency fees or to not pay union dues and then reap the benefits, because that's the economical smart thing to do. If you can get something for nothing then that's what people are going to do. And so by allowing workers to get something for nothing, they have essentially decimated public sector unions and ensured that workers aren't going to be able to collectively bargain to protect themselves from the shitty policies that employers want to foist on them.

Jess Pieklo: So this is the electoral reality that progressives and liberals face now going into the mid-term elections and what we have is the Court making it really difficult for liberals and progressives have their voices heard in the upcoming 2018 and 2020 elections.

Imani Gandy: Yeah, we're screwed. I mean, I wish I had ... I wish I could be more positive and happy for you all but I'm just ... I'm tired. And so the next thing that we want to talk about is the weaponization of the first amendment. And if you, smart listener, have been listening to all of our podcast episodes or have been following Jessica and I as we lose our minds on Twitter over the past week, but in the months leading up to that as well, you've probably heard us talking about

weaponizing the first amendment. And I just want to read to you an opening line from Elena Kagan's dissent in the Janus case. She says: "There is no sugar coating today's opinion. The majority overthrows the decision entrenched in this nation's law and in its economic life for over 40 years. As a result, it prevents the American people acting through their state and local officials from making important choices about workplace governance, and it does so by weaponizing the first amendment in a way that unleashes judges, now and in the future, to intervene in economic and regulatory policy."

Jess Pieklo: Yeah, so this is a line from her dissent in Janus as Imani said, but it's applicable well beyond this case. And so when we talk about weaponizing the first amendment, what do we mean?

We mean, essentially, that evangelicals and conservatives are finding a way to make first amendment legal arguments to protect their political agenda. Janus was one example of it. It was a way for them to punch public sector unions in the gut.

Another way that they are doing this, we saw, is the idea of free speech for evangelicals and corporations, but nobody else.

Imani Gandy: Right, so in that case, we have to look at the juxtaposition between Masterpiece Cake Shop, which was "The cake is free speech and we don't have to serve cake to gay people, because gay people are icky," and the Muslim ban, Trump v. Hawaii.

So what we have in Masterpiece Cake Shop is a couple of the commissioners, the Colorado Civil Rights commissioners, being told, apparently, by Justice Kennedy and others that they had said mean things about religion and therefore, those mean things that a couple of the commissioners said, somehow tainted the entire proceedings. So they ruled in favor of the baker on the basis of him being discriminated against on the basis of religion.

Now if you look at Trump v. Hawaii and the Muslim ban, what do we have there? We have a case in which Trump spent about two years, we're talking about the Republican primary, the Presidential election and then his first year and a half in office talking about how much he wants to ban Muslims. He tweeted about it. He talked about it on the campaign trail. He talks about it at every chance he seems to be able to get-

Jess Pieklo: All of his surrogates talk about it, too.

Imani Gandy: Rudy Giuliani-

Jess Pieklo: They won't stop.

Imani Gandy: The whole point of Rudy Giuliani was to go and find an executive order that would ban Muslims without calling it a Muslim ban.

So on the one hand, the Supreme Court is saying “you can't say mean things about religion and therefore gay people you can't be served cake at this particular cake shop,” but other the other hand saying, “it's fine that Trump has been basically talking shit about Muslims for two years because ‘national security.’”

Jess Pieklo: Right. And when we first talked about the Muslim ban case in our reaction pod, we talked about the fact that in the decision John Roberts purports to overturn Korematsu and Korematsu is the decision that upheld the executive order blessing Japanese internment. And the thing is, it's like a backhanded compliment because he overturned it, but he overturned it by upholding something that is absolutely and entirely in the spirit of that internment. Right, Imani?

Imani Gandy: Yeah, I mean, he basically said Korematsu is no longer good law while writing the next Korematsu, because in the future someone is going to have to go back and say, Trump v. Hawaii no longer good law because it's terrible law.

And I'd like to make another really crucial point about Korematsu. Sonia Sotomayor, essentially, called Roberts out in her dissent, saying that the ruling in Trump v. Hawaii was very Korematsu-ish. So in response, clearly annoyed that Sotomayor had called him out, Roberts says, oh yeah, okay, well fine. Korematsu is no longer good law. It's not acceptable to detain people on the basis of race. And now I'm emphasizing "on the basis of race" for a reason, because great, we can't put people in camps because they're Black or because they're brown or because they're Muslim to the extent that Muslim is a race and there's definitely a conversation that goes on among Muslim theists about whether or not it's a race or not. But the point is, is that he left open the possibility to round up people and detain them based on characteristics that are not race.

So immigration status, whether or not you are an activist. They're making lists of activists, making lists of journalists. What if they decide to detain all journalists? All of these things were left open. And John Roberts is a smart guy. If he had wanted to say you can't detain people on the basis of protected status, he could have easily said that. And ‘protected status’ would have included race, ethnicity, religion, sexual orientation, all of these things. Well, not necessarily sexual orientation because the Court hasn't really decided that.

But the point is-

Jess Pieklo: Grab a whiskey.

Imani Gandy: Is that the door is open for detentions on the basis of other things. Yeah, it's terrible. So the point is, is that John Roberts is a smart guy and if he had wanted to say that you cannot detain people on the basis of a protected status, a protected class, then that means you can't detain people on the basis of things like race and gender and ethnicity and religion and creed, and I'd like to say sexual orientation, but here we are in 2018 and we haven't yet decided whether or not LGBTQ people are a suspect class or a protected class, or whether being LGBTQ is an immutable characteristic such that they deserve protected status, because Kennedy up and retired before getting around to that part.

Jess Pieklo: Yeah, so that signals some really not great things for future terms, too. And again, I'd just like to give out a little shout out right now to Susan Collins who said she's so convinced that Neil Gorsuch is going to vote to uphold precedent along with John Roberts and we just gave our listeners two immediate examples in Janus and the Muslim ban where both justices voted to do not that.

Imani Gandy: Right. Right. And ... now you know ... Sometimes I want to talk and this has been such a frustrating week and such a horrible Supreme Court term that a person like me who almost always has something to say, I find myself rendered speechless sometimes.

Jess Pieklo: There's a lot of deep sighing happening and I think the fact that we've got Kennedy leaving and basically, let's be honest, just peacing out at the end of the term. He announced after all of the decisions and according to reports, didn't even bother to tell his colleagues that he was leaving until he submitted his resignation letter. So who does that? Who works with someone for 30 years and just says, "I'm out."

Imani Gandy: Yeah, if you ever do that to me, Jess, we're getting a divorce.

Jess Pieklo: I couldn't. I could even imagine.

Imani Gandy: Could you imagine-

Jess Pieklo: I felt bad when I told my first law firm that was one of the worst places, with the exception of a few good people, I will just say that, but which was a terrible place and environment for me. I was mortified and went out of my way to tell people that I had enjoyed working with them and all of these things. And that was only a couple of years and I was a baby lawyer and he's a Supreme Court justice for 30 years. Like, what?

Imani Gandy: Thirty years, I know. It's insane. And so now he's leaving and as you've said, that leaves Roberts as the swing vote and we don't want Roberts as the swing vote because he's conservative.

Jess Pieklo: Yeah.

Imani Gandy: And most importantly, he's not known for checking executive power and in this administration with this person who we have been forced to call our president because I guess he won the election or whatever, he is not a guy who wants to be checked. He is not a guy who is going to shy away from his authoritarian tendencies and we need a Court that is willing to check executive power and we don't have that Court right now.

Jess Pieklo: And we've also seen that like Gorsuch, Roberts is more than willing to twist and turn the law to fit a particular ideology and in a lot of ways, this is his moment. He is the Court's opinion driver in Citizen's United, the first amendment case that unleashed a lot of this roomful of terrors that we have right now. And he has the opportunity with another conservative placement on the Court to really seal that legacy. And so this idea that he is going to be a moderating factor is ridiculous.

And I see the media falling for it. They fall into the same trap that they did with Gorsuch with Roberts, that they are these nice guys who shouldn't ... we shouldn't fear or we're overreacting when we state their record very clearly and they're dangerous.

Imani Gandy: They are dangerous and I think a lot of the people who like to stand for these guys just haven't read their opinions and don't really know what they're about so they're just ... This is the feedback loop of journalists who don't know what they're talking about who are pontificating about things that they really ought to leave to us.

Jess Pieklo: Or ... yeah and-

Imani Gandy: Or other people who have been doing this work a lot longer and who actually understand how the courts work.

Jess Pieklo: Yeah, and there's this ... I think I called it a gosh golly gee whiz approach by a lot of the reporters covering the Supreme Court right now and particularly with the Kennedy replacement to be like, well, I don't know, the Federalist Society said they didn't ask about abortion so I guess abortion's not part of the equation.

This is just willfully dumb and it's dangerous because lives are on the line. And it would be one thing if it was just the Supreme Court, but it's not. The rot goes way, way deep. It goes way deeper than just the Supreme Court and we'll talk about that in just a second.

Imani Gandy: As Jessica pointed out earlier, the rot goes so much deeper than the Supreme Court. It goes deep down into the Circuit Courts and even further down into the District Courts. But, specifically, Trump is on his, I believe, 15th wave of judicial nominations. 15th wave of judicial nominations. And lest you think that these are respectable, responsible jurists who have a history of good ruling on the bench or who have, I don't know, even served as judges before at all, no, no, no,

no. You'd be horribly wrong. And Jess, just tell us a little bit about some of these horrible people that he has elevated to the bench.

Jess Pieklo: Oh my gosh. So Chad Readler is one that I'm spending a little bit of time focusing my attention and anger on. He currently serves in the Department of Justice and he's a nominee for the Sixth Circuit Court of Appeals. That covers cases that come out of Ohio and Michigan and Kentucky and Tennessee and it's a really important circuit.

It had been pretty moderate and with Trump's backing and the Republicans' help, it swung solidly back to the right. But a couple of highlights of Readler's and I've written about him at Rewire.News so make sure and go there if you really want to get the full rage-inducing bio that he has, but for example, he's a big proponent of the family separation policy and has been defending it within the administration. He also is the guy who put his name on the brief that the Department of Justice filed that told a federal district court to go ahead and strike Obamacare because the tax plan rendered it all useless. That was so bad, by the way, that many in the-

Imani Gandy: Wasn't it so bad that a lot of people in the DOJ refused to sign on to the brief?

Jess Pieklo: Yeah, people wouldn't sign on to it. People quit over it. So this is not like he's some casual conservative.

He also, by the way, represented the Trump campaign in Ohio when they were accused of roughing folks up at the polls, so he's a peach.

Imani Gandy: He sounds like a real nice guy. And from what I understand, the Seventh Circuit, which used to be relatively moderate has now also swung to the right and the Seventh Circuit covers cases that come out of Illy ... Illyanna. I almost said Illyanna because Illinois, Indiana have apparently merged into one state and they're now known heretofore as Illyanna.

Those cases come out of Illinois, Indiana, and Wisconsin.

Jess Pieklo: One highlight from the Seventh Circuit Court of Appeals is Amy Coney Barrett who is a former Notre Dame law professor and a Supreme Court short lister and my personal favorite for the Trump administration to nominate as a Kennedy replacement as a complete 'fuck you' to the Civil Rights Movement.

Imani Gandy: Oh, wouldn't that be nice. And then we can talk about the District Court nominees. I mean, they're just ... He's putting people on the bench that have never served on the bench.

Do you remember back when George Bush nominated what's her name, Harriet Meyers?



Jess Pieklo: Oh.

Imani Gandy: Remember the Harriet Meyers nomination and how absurd it was and how it was the biggest flop and everyone laughed and mocked him and it was like, no maybe not, that's not just a good idea?

Trump is basically appointing just scores of Harriet Meyers to the bench all over the country.

Jess Pieklo: The Harriet Meyers nomination produced one of the greatest satire blogs to this day that was a shadow blog pretended to be written by Harriet Meyers and I'm sure in the Way Back Machine we can find it. And it is like hold your stomach laughing.

So let's put some perspective on this, okay? When Trump took office there were 145 total vacancies in the federal courts thanks to Republicans gumming up the works under the Obama administration and he has put on the bench so far, 42 folks. 23 in his first year alone. How does that stack up with Obama?

Well when Obama took office there were only 54 judicial vacancies to fill.

Imani Gandy: So he had 54 to fill. Trump has already filled 42 and one plus one, carry the three, divided by two, we're fucked.

Jess Pieklo: Yeah. So we had, under Obama, fewer vacancies to start going in. Then the creation of a judicial crisis thanks to republican obstructionism and now an acceleration of putting yahoos on the bench.

Imani Gandy: Right, and one thing that's really important to recognize and to understand is that a lot of these folks are really young and when we say lifetime appointments we mean lifetime appointments. There's no requirement that these judges retire at any certain time. They can be on there, literally, for life. And so we're talking ... John Roberts right now is what? 54 years old?

Jess Pieklo: Yeah, he'll be on the bench for 30 years.

Imani Gandy: So he's going to be on the bench for 30 years. He's going to be on the bench until 2050. It's 2018 right now.

Jess Pieklo: If the republic lasts that long.

Imani Gandy: Exactly. If the republic lasts that long.

Jess Pieklo: And so it's not just the Supreme Court, right? It's that we've got all of these young'uns on the District Court and Federal Courts of Appeals, so the Republicans are really launching an all-out attack on this and it makes a

difference. These lifetime appointments make a difference in actual people's lives.

Imani Gandy:

Yeah, we're not just mentioning the age because we're trying to engage in some sort of agism or we're trying to diss people who are elderly. We're talking about who is appointed, who they are appointed by and when.

For example, Gavin Grimm, right? He's the transgender young man who sued the Gloucester school board and asked them to change its policy of refusing to allow him to use the bathroom that he preferred, the bathroom that aligned with his gender identity. The district court judge who dismissed Grimm's case was a Reagan appointee. So Grimm's case was first dismissed by a Reagan appointee who had been on the bench for 30 years, long before trans rights were even on the radar of American's consciousness. Now that's not to say that there weren't trans people then but I'm talking about this current wave of consciousness of activism of justice for trans people.

By way of contrast, when Gavin Grimm's case went up to the Supreme Court and got kicked back down to the Fourth Circuit, then got kicked back down to the District Court again, there was a switch in the judge, so the case was before a different judge, not the Reagan appointee who dismissed it in the first place.

The case ended up before an Obama appointee, an Obama appointee who happens to be also a Black woman and that Black woman Obama appointee, said that Gavin Grimm could proceed with his case.

So that matters. It matters if you have a 75, 80 year old white guy who was appointed by a 75 year old white guy 30 years ago making decisions about social justice issues which he may not really fully have a grasp of, and even if he did, doesn't really give a shit about.

Jess Pieklo:

Right, and before anybody says, "Oh whatever. You guys just don't like conservatives" I think it's important to remember that it hasn't always been this way. That we have gotten good members of the federal judiciary appointed from, seriously, I'm going to do it, both parties.

Lee Yeakel is one example. He's the judge out of Texas that gave us so many good decisions in the Whole Woman's Health case and those weren't radically political decisions. That was simply applying the facts and the law to the point where Kennedy signed on, eventually, when it got up to the Supreme Court.

Imani Gandy:

So the point is, is that it really matters, who appoints justices matters, how long they are appointed for matters. And if progressives are going to organize in any meaningful way to protect the rights of marginalized and vulnerable people, it is imperative that progressives spend a lot of time focusing on the courts and understanding deep in your soul and your bones, in the marrow of your bones, that courts matter and that whatever irritations or inconsistencies or anger or

ire that you have at the current establishment, it's important to remember that you're not just voting for the current establishment. You're voting for future establishment. You're voting for your kids' Supreme Court. You're voting for your kids' civil rights, your kids' human rights. So I really urge people to try to hold that to heart.

Jess Pieklo: And so we'll talk about what we can, if we can, do anything about this in a second.

Imani Gandy: So now that we've spent 15 or 20 minutes just prophesizing doom and gloom and telling you how screwed we are, let's take a moment to be a little bit more positive and optimistic and talk about what it is that we can do to stop the bleeding. What it is that progressives can do to make sure that the rights, the human rights and civil rights of vulnerable people in this country are protected.

Jess Pieklo: I think first of all we have to spend a little bit of time talking about the Senate and what its role here is. They are supposed to advise and consent on these nominations. So the filibuster's all we have that remains right now in the Senate for the Supreme Court and so that, with the current makeup, requires us to not lose any Democrats and to hold on to two Republicans.

So when Susan Collins is out there with her nonsense saying that she has every reason to think that Neil Gorsuch is going to vote to uphold Roe, remind her and any reporters who are parroting that nonsense, that Gorsuch has already voted against abortion rights in his tenure at the Court.

Imani Gandy: Absolutely and, okay, so let's talk about some specific examples of the Senate blocking appointments in the past. Blocking the elevation of really, really crappy people to the bench, people who would decimate the rights of vulnerable people in the country.

Jess Pieklo: So the most famous example we have of this is probably Bork, Robert Bork.

Imani Gandy: Bork, Bork, Bork, Bork, Bork.

Jess Pieklo: Bork, Bork, Bork.

Imani Gandy: I can't help it.

Jess Pieklo: It's just been a term, listeners, and this is about where Imani and I are at. Bork, Bork.

Anyway, he is the reason we got Justice Kennedy so it's appropriate on a whole lot of reasons why we should talk about him, but he was terrible. He would have been, for sure, the vote to overturn Roe v. Wade and that was basically a big crusade for it and Democrats held the line. Senator Kennedy gave a really fantastic speech that I encourage everybody to go Google. Say "Google Kennedy

speech on Bork" and listen to it. It is a fiery call to action about the consequences of a vote for a radical ideologue and I think we all need to put it in our pipe and smoke it.

Imani Gandy: And we also have Miguel Estrada. Democrats successfully blocked Miguel Estrada, didn't they?

Jess Pieklo: They did and Republicans are still mad about it because they wanted to be able to say that they were the party that nominated the first Latino to the Supreme Court. And Miguel Estrada is like a John Roberts in a lot of ways, an ideological, right wing executive power loving conservative. And Democrats held the line. So while we are giving folks on the left a brow-beating about this nomination, we also, I think, have some examples of when they were successful and so we can say, "Hey, not all hope is lost." If we really ... 'Goonies never say die,' right? If we really put our back into it, we can maybe get there.

Imani Gandy: I really like how you mixed Goonies with Ice Cube. Goonies never say die and also put your back into it.

Jess Pieklo: I mean it's a Jess snapshot, if we're honest. So that's some procedural ways that we can block them. But I'm also hearing some rumblings about this thing called court packing. Imani, what the hell is happening?

Imani Gandy: What is happening is that, I think, people who did not listen to folks like us who were screaming about how important the courts were are now starting to realize that they screwed up and they're trying to figure out ways to stop the bleeding.

And while I admire the think outside the box mode that a lot of folks are in, court packing is not a viable option and I'm going to explain why. In order to pack the courts, Democrats would need to take back the White House, the Congress, the House of Representatives and the Senate. That happening ... That couldn't possibly happen until at least 2020, at the minimum 2020. And what we're talking about here in terms of the decimation of reproductive rights of pregnant people, that's going to happen within the next 18 months. So for those people who are sort of pontificating about court packing and whether or not that could help and what if we increase the number of justices to 13?

That's great. Think about it, talk about it. It's never going to happen, but if you want to talk about it, great, but that doesn't do anything right now for the people who are going to be suffering in the interim. And moreover, if you want to talk about court packing, all you have to do is go back and look at what happened when FDR packed the courts. It wasn't a picnic.

Jess Pieklo: And it doesn't address what we've spent about, I don't know, 10, 15 minutes of this show on, which is the fact that the courts are not just the Supreme Court. So any plan to expand the Court, which maybe would be a good idea, I don't

know. Maybe 13 members are better than nine. I don't know. But if you're not including a plan to address the Federal Courts of Appeals and the District Courts and the fact that we now have, literally, dozens and inching towards hundreds of very young, very conservative ideologues on the bench, you're not going to get anywhere.

And I've also seen nothing about where are the legal pipelines, cases, types of things that can get this. Overturning bad decisions is a thing that takes time, as the conservative movement has shown us with *Roe v. Wade* and the fight over Kennedy's seat.

Imani Gandy: Right. These things take time. It is always harder to give rights back to people than it is to take them away, right? So if the Court ends up overturning *Roe* or if the Court ends up enforcing abortion restrictions to such an extent that the right to an abortion means nothing, it's going to be very hard, and it's going to take decades to get those rights back to pregnant people. And that's why the GOP has been organizing for this very moment for 40 years. This moment is the culmination of decades of work, of activism, of marching, of protesting, of terrorism on the part of the anti-choice right.

Jess Pieklo: Just one final thought on that, too, I've seen nothing, and I would like to see a lot more about it's one thing to just put more people on, but we have to talk about who we're putting on. And the fact of the matter is diversity of our candidates, even from Democratic presidents has been lukewarm, I would say, and what we need and what we've talked about on this podcast a couple different times is really the result of real diversity on the bench in the form of Justice Sotomayor's opinions and her jurisprudence and that's the way that we move the needle forward, folks.

Imani Gandy: That's right. We move the needle forward by following Justice Sotomayor right into the moon.

Jess Pieklo: To the moon!

Imani Gandy: To the moon and back! I'm following you, Sonia, I'm going to be holding on to your leg and just like, "Take me with you."

Oh boy.

Imani Gandy: So ...

Jess Pieklo: It's bad.

Imani Gandy: Yeah, it's bad. That's where we are folks. I wish we had better news for you. There are things you can do. Call your Congresspeople if you are a constituent of Susan Collins or of Lisa Murkowski or of Joe Manchin, call them. Fax them. Write them. Send petitions. Make it clear that nominating justices who are going to

overturn Roe or who refuse to answer questions honestly about their position on Roe is not going to work for you. It has to be unacceptable and we have to ensure that Democrats hold the line. That means holding their feet to the fire and just ... I don't know. I don't know, Jess. What do we do besides just start drinking whiskey right now?

Jess Pieklo: Well, we've got this moment. We've got 2018 and maybe 2020 to really just push, make that final push because if we are not successful, I think the news is even worse.

The rot in the federal judiciary goes really deep, guys, so this is important that we do that and if you need proof of it, just look at this last Supreme Court term because it was real bad, Imani.

Imani Gandy: It was terrible.

Jess Pieklo: But we do have to take a break to regroup, to take care of ourselves, to come back more fired up and ready to go. So Imani and I are taking a little bit of time off. We'll be off for July just for the podcast. You'll still see us at Rewire.News and on Twitter yelling at folks and about things.

Imani Gandy: Yelling at ... That's a ... Can we rename our podcast Yelling at Folks and About Things.

That's my favorite. At any rate, please do hit us up on Twitter. I'm @angryblacklady. Jessica is @hegemommy. H-E-G-E-M-O-M-M-Y. Check out the hashtag #TeamLegal. Check out our Facebook group, Boom! Lawyered. You can keep in touch with us over there during the summer and have an enjoyable summer.

Get some rest while you can and we will see you back in about a month.

Jess Pieklo: Yeah, take care of yourselves. See you on the tubes, kids.

Imani Gandy: 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 our editor in chief is Jodi Jacobson.