

[Boom! Lawyered: Myth-Busting the Anti-Choice 'Born Alive' Bills](#)

Imani Gandy: Hello fellow law nerds. Welcome to another episode of Boom! Lawyered, a Rewire.News podcast hosted by the legal journalism team that is super jazzed about Captain Marvel coming out. Woo hoo!

Jessica Pieklo: Woo!

Imani Gandy: I'm Imani Gandy.

Jessica 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 thanks to our subscribers, and a welcome to our new listeners.

Imani Gandy: So Jessica.

Jessica Pieklo: Yeah?

Imani Gandy: Did you know that there is an epidemic of babies being aborted after they're born?

Jessica Pieklo: I'm sorry. What?

Imani Gandy: You heard me. There are perfectly healthy babies that are being born, and then doctors are aborting them. And frankly, Jessica, I'm appalled that you don't know about this, and that you haven't issued a strongly worded letter against it.

Jessica Pieklo: No, no. Imani, that does not make any sense. You cannot abort a newborn.

Imani Gandy: According to Donald Trump and Ben Sasse, you can.

Jessica Pieklo: No.

Imani Gandy: Which is why they are simply outraged that Senate Democrats have blocked a federal bill called the Born Alive Survivor Protection Act. And in expressing his outrage on Twitter, Donald Trump said, "Senate Democrats just voted against legislation to prevent the killing of newborn infant children. The Democrat position on abortion is now so extreme that they don't mind executing babies after birth."

Jessica Pieklo: Executing babies after birth.

Imani Gandy: Executing babies after birth. He even blamed the Nadler congressional probe into his corruption on Democrats, "killing babies after they were born."

Jessica Pieklo: Oh, good fucking grief. Okay. The thing is, executing babies after birth is a thing. It's called murder. It's called infanticide, and we already have a way to deal with that. It is the laws on the books that prohibit murder and prohibit infanticide.

Imani Gandy: Yeah, you know. We really do have those laws on the book.

Jessica Pieklo: We do.

Imani Gandy: And that's what we are going to talk about today. We are going to talk about the latest effort by anti-choicers to demonize Democrats and pro-choice advocates for their refusal to support Born Alive bills and to essentially bait them into advocating for murder. We're going to talk about the three biggest misconceptions about Born Alive bills, and we're going to give you all the tools that you're going to need to shut down anti-choice lies about later abortion.

Jessica Pieklo: And we're also going to explain why it's important to use the term "later abortion," and not "late-term abortion," and how all of this political theater could fair should the Roberts Court ever weigh in.

Donald Trump: Lawmakers in New York cheered with delight upon the passage of legislation that would allow a baby to be ripped from the mother's womb moments from birth. These are living, feeling, beautiful babies, who will never get the chance to share their love and their dreams with the world. And then we had the case of the governor of Virginia, where he stated he would execute a baby after birth.

Imani Gandy: What you just heard is one Donald J. Trump freaking out about the fact that babies are being executed after birth. I mean, they are draining babies of their blood, and putting that blood into a chalice, like a gold chalice, like a Raiders of the Lost Ark type of Holy Grail situation, and then pro-choice advocates are drinking that blood in order to gain the baby's life essence and live forever.

Jessica Pieklo: I heard this was a plot line in the next season of Game of Thrones, actually.

Imani Gandy: You might be right. Here's what happened. There were some unfortunate comments from Governor Ralph Northam.

Jessica Pieklo: Yeah.

Imani Gandy: Old Governor Ralph Northam of Mr. Blackface in the Med School Yearbooks, Governor Ralph Northam.

Jessica Pieklo: Med school yearbooks, like ...

Imani Gandy: Who has yearbooks in med school? First of all, why you got a yearbook in med school? Second of all, why are you in blackface? But that's neither here nor there.

Jessica Pieklo: That's ... Maybe it's both.

Imani Gandy: Maybe it's both here and there. Who knows? But in addition to Northam's comments, Delegate Kathy Tran sparked this debate initially. Both of them misspoke, and it's unfortunate that they misspoke, but even after they clarified their comments, it was too late. Anti-choicers had their sound bite, and they started screaming about how Democrats want to abort newborns, how they want to execute newborns, and in the wake of all of that screaming came the Born Alive Survivor Protection Bill, which was introduced by Ben Sasse in the wake of these unfortunate comments.

Jessica Pieklo: Well, so let's go into the comments a little bit, because I think the context is going to help. And they're unfortunate, but they're not so bad as to suggest Raiders of the Lost Ark chalice infant sacrifices.

Imani Gandy: Well, that's true.

Jessica Pieklo: I have all sorts of imagery in my head with this episode, and none of it's good.

Imani Gandy: We need to maybe write a screenplay after. Right after we finish recording, let's just get the screenplay going.

Jessica Pieklo: We're going to do some anti-abortion fanfic on this.

Imani Gandy: Exactly, exactly. Look for our new Tumblr, guys. Virginia Delegate Kathy Tran said in a committee hearing that a bill that she was sponsoring would technically allow abortion when a woman was showing signs of labor. The bill was an effort to roll back abortion restrictions that have been enacted over the last several years in Virginia, so during this committee hearing, a Republican lawmaker asked her whether the bill would allow for an abortion to occur when a woman is in labor and about to give birth. And unfortunately, Kathy Tran said yes.

Jessica Pieklo: Mm-hmm (affirmative).

Imani Gandy: Of course, she didn't mean that the bill's going to allow abortions to occur for newborns, and she tried to explain that. And then Governor Ralph Northam tried to explain it, and somehow made it worse by saying-

Jessica Pieklo: Shocked.

Imani Gandy: Right? I am so surprised. Northam, make something worse? Perish the thought. He said, "If a mother is in labor, I can tell you exactly what would happen. The infant would be delivered. The infant would be kept comfortable. And the infant would be resuscitated if that's what the mother and the family desired. And then a discussion would ensue between the physicians and the mother."

Jessica Pieklo: Okay, hold up. Northam is a physician. First of all, he should know better than to just start speaking about science in front of Republicans as though they are just going to follow along. What he is describing here is end-of-life care in those situations where a pregnant person with a non-viable pregnancy or some severe fetal abnormality goes into labor, and the steps that are taken to create comfort in that difficult situation. He is not describing a patient going up and saying, "You know, eight-and-a-half months, but I'm kind of done with this, so can we just get this over with?" That's not what's happening.

Imani Gandy: It really isn't, and the Born Alive Survivor Protection bill would require doctors to use all means available to save the life of a child Born Alive after an attempted abortion. The bill says that providers must, "exercise the same degree of professional skill, care, and diligence to preserve the life and health of the child as they would for 'any other child Born Alive at the same gestational age.'" Ben Sasse is calling this an infanticide ban.

Jessica Pieklo: Infanticide is already banned. It is. Infanticide is already banned. We know that. We have a similar bill that already exists, right? The Born Alive Infant Protection Act of 2002, so if there was any lingering doubt, it should be put to bed. This whole Born Alive Survivor Protection bill, it's nothing but a publicity stunt, nothing.

Imani Gandy: It's a publicity stunt, and it's important to describe what the Born Alive Infant Protection Act of 2002 does. And what it does, it defines an infant as Born Alive following, "natural or induced labor, cesarean section, or induced abortion," as a person with corresponding legal protections. George W. Bush signed it into law 2002, so why are we here?

Jessica Pieklo: We are here, because hmm, let's see. It's a little sweaty right now for Republicans looking into 2020.

Imani Gandy: Yes.

Jessica Pieklo: Maybe?

Imani Gandy: It is. It is a tad sweaty. So let's talk about what lessons we can learn from all of this, right? Let's talk about how it is that the anti-choice reaction has been so over the top based on really just some misspeaking by Northam and Tran. I mean, they just said the wrong thing in the wrong way, but that gave anti-choicers all the ammo that they needed to just freak out about how Democrats want to murder babies. And frankly, it really just goes to show that neither Democrats nor Republicans really know how to talk about abortion in a way that is based in science and grounded in fact.

Jessica Pieklo: And even when they should have those tools, like Northam should have those tools as a physician, they get so wrapped up in the garbage stigma around it in the political environment that they still step in it. Here's a man who, of anybody

out there, should not have stepped in it, and yet he stepped in it real bad, and here we are.

Imani Gandy: Here we are.

Jessica Pieklo: We talked about all of how we got here. Let's get into some of these myths about Born Alive bills, so that our listeners can counter them.

Imani Gandy: Born Alive myth number one: There are scores of abortion providers that are murdering newborns and nothing is being done about it.

Jessica Pieklo: Scores of them. They're running wild on the streets.

Imani Gandy: Willy nilly. They're just aborting babies hither and yon.

Jessica Pieklo: Hither and yon. That's totally our folk duo, Hither and Yon.

Imani Gandy: We're going to become a singer-songwriter duo called Hither and Yon.

Jessica Pieklo: You're Hither, I'm Yon?

Imani Gandy: That's ... Maybe I want to be Yon and you should be Hither, but the point is-

Jessica Pieklo: We'll take a poll.

Imani Gandy: Right, we'll do a straw poll, but the point is that none of this is true.

Jessica Pieklo: None.

Imani Gandy: Back in 2013, Rewire.News did an investigative report, and that was six years ago for sure, but there is nothing to suggest that anything has changed since then.

Jessica Pieklo: What'd we learn in that report, Imani?

Imani Gandy: What we learned is that anti-choicers are full of crap, essentially. Our investigative team sent FOIA requests, which is Freedom of Information Act requests, under those various state laws, and we got responses from 38 Attorneys General. Not one Attorney General provided any evidence that it has ever had any cause to prosecute a physician for delivering and then killing a newborn. It's just not happening. There are no cases of fetuses surviving abortions only to be killed by a doctor. This is just something that the anti-choice camp has developed, has made up, and is now selling to the people as just a really disgusting form, and the lowest form possible, of fear mongering.

Jessica Pieklo: But Imani?

Imani Gandy: Yes, Jessica?

Jessica Pieklo: Kermit Gosnell. That's what they're going to say. Kermit Gosnell.

Imani Gandy: But you know what I have to say about Kermit Gosnell?

Jessica Pieklo: Mmm, what?

Imani Gandy: He's a fucking murderer.

Jessica Pieklo: Oh yeah.

Imani Gandy: That's it. He's a goddamn murderer. He was convicted of first-degree murder and involuntary manslaughter. He pleaded guilty to federal drug charges, and he was sentenced to life in prison without parole. Kermit Gosnell is a murderer, and in fact, it was pro-choice advocates and reproductive rights journalists like those at Rewire.News that were at the forefront of uncovering all of this murderous shit that Kermit Gosnell was doing.

Jessica Pieklo: Yes, so in sum, illegal providers like Gosnell are rare, and abortion advocates who oppose them made sure to blow the whistle, bring them to light, and they are not running around willy nilly all over the streets, and cause for legislation like Sasse introduced. Nope. End of story. Not happening.

Imani Gandy: Not happening. Nope, not happening.

Let's get to myth number two when it comes to these Born Alive bills.

Jessica Pieklo: All right, what is it?

Imani Gandy: If you oppose Born Alive bills, it means that you support infanticide and you support murdering babies.

Jessica Pieklo: That's ridiculous. There's end-of-life care for babies just as there's end-of-life care for adults. End of story.

Imani Gandy: That's right, and it's family members who decide what that end-of-life care should be, right?

Jessica Pieklo: Mm-hmm (affirmative).

Imani Gandy: Some people opt to let the baby die naturally. Others opt to try to resuscitate it. Others opt to provide some sort of palliative care, comfort care, wrap it, cuddle it, swaddle it, and just have a few moments with the baby before it dies. This is a decision that must be made between physicians and the patients, and this bill would force resuscitation even if that's not what the parents want.

Jessica Pieklo: Right. I really want to underscore that point, that this is a decision made between physicians and patients, and conservatives are trying to take that decision away here, and they are using ridiculous political rhetoric and peddling on families' pain to really just undercut abortion, and that's all that this is about.

Imani Gandy: That's absolutely right. Let's move on to myth number three, shall we? Pregnant people are getting later abortions as a matter of convenience.

Jessica Pieklo: Oh yes. This is the flip side of abortion providers running around on the streets and just aborting babies as they're about to be delivered.

Imani Gandy: Right, and the flip side of that is sometimes people get pregnant, and they spend nine months and all of the harrowing shit pregnancy does to your body, and they get to that nine month, and it's approaching April, the end of April. And you know what happens at the end of April? Coachella. And frankly, there are pregnant people who want to go to Coachella who don't really want to have a baby right now, so they just wander into an abortion clinic at 40 weeks and decide, "You know what? Get this sucker out. I want to go see Beyonce for two days."

This shit is not happening. When later abortions do occur, they cannot be called elective, and Dr. Willie Parker, who is one of our heroes, and frankly, I've met the man. He's easy on the eyes, but he is really, really ... He's just a hero in this movement in my opinion, and he told the Washington Post last year that his patients come to him for later abortions under difficult circumstances, such as fetal genetic anomalies or extreme poverty.

Let's remember now, given the just ridiculous number of abortion restrictions in states across the country, oftentimes people are pushed out of that early abortion window, when it's not as expensive, when it's easier, when there are fewer complications, and they're pushed into these later abortion windows because states force them to, right?

Jessica Pieklo: Right, and this isn't just anecdotal evidence coming from Dr. Parker either. Ibis Reproductive Health has studied this, and they have released reports that show many of the reasons why patients are forced into later abortions, and they include not knowing about or having access to services early on, financial stresses that make it impossible to continue a pregnancy, a devastating diagnosis late in their pregnancy, and as you mentioned, all of these restrictions on early abortion care that push people into later and later procedures. This isn't a place that folks want to be in. This is a place they find themselves in.

Imani Gandy: Absolutely, and they find themselves in that place because of states who are trying to decimate abortion rights. This leads me to another point, why it matters that we say "later abortion" and not "late-term abortion."

Jessica Pieklo: This is really important, Imani. Why do we? Why do we say later abortion?

Imani Gandy: Well frankly, because words matter. The word "term" is a medical term for the end of pregnancy. It has a specific meaning. It means the 37th to 40th week of pregnancy, so when a person is at term, it means that person is about to give birth.

Jessica Pieklo: So "late-term" suggests exactly what the antis are doing, conflating abortion with birth, and we don't want to do that, right? We don't want to do that, because patients and providers lose in that equation, patriarchy wins. Democrats aren't out there advocating for aborting already born babies like Republicans are claiming, so later abortion, not late-term abortion.

Imani Gandy: Let's talk about why it is our listeners should care about this fight, other than being able to smack down arguments with people on Facebook and Twitter, or responding to your Uncle Jim, who still manages to think that Barack Obama is a Kenyan and can't stop sending you messages about it from his Hotmail account. Why should listeners care?

Jessica Pieklo: Well, because so much is at stake, right? We're having this trumped up debate over aborting babies after they're born at a time when some states are trying to restore abortion rights. That's what was happening in Virginia that sparked this, and while other states like Arkansas and Missouri are passing these trigger laws that would immediately criminalize abortion in their states should Roe fall, so it's not hyperbolic to say that abortion rights are in the precipice right now, and any of this rhetoric and legislating around it is an additional threat.

Imani Gandy: Absolutely, and another important point is that anti-choicers want to conduct the abortion debate at the margins.

Jessica Pieklo: Yes they do.

Imani Gandy: They want to have the abortion debate focus on later abortions, even though approximately 90% of all abortions in the United States occur in the first trimester or 12 weeks of pregnancy. According to the Guttmacher Institute which, despite the rantings and ravings of anti-choicers, is actually a non-partisan group, two-thirds of abortions occur at eight weeks or earlier, about 10% take place between the 13th and 22nd week of pregnancy, and 1.3% take place after 21 weeks of gestation. Focusing on the margins means focusing on the hardest cases, and the hardest cases spark more outrage, because the hardest cases are the most heartbreaking for the pregnant person, even though that's not what anti-choicers are concerned about.

Jessica Pieklo: Absolutely, and that segues into another reason why our listeners should care about it, and it's because of the Roberts Court. If a law like this were to get enacted, there's obviously a really good chance that the Court would weigh in on it, and frankly I don't feel too optimistic about how that would go. We've seen this playbook before. Antis have set the stage in the Court and, not surprisingly, Kennedy made it all really, really bad, didn't he?

Imani Gandy: Ugh, he always does.

Jessica Pieklo: He does.

Imani Gandy: This is the Kennedy who said in *Gonzales v. Carhart* that, "You know, I don't have any evidence that abortion really harms and traumatizes pregnant women, but I'm going to assume it does, because it probably does, right?"

Jessica Pieklo: Mm-hmm (affirmative).

Imani Gandy: Kennedy, why? What did you do to us, Kennedy?

Jessica Pieklo: In the early 2000s, we saw Republicans enact a very similar strategy around, "partial birth abortion bans." And it started in the states, in Nebraska, and that ban went up to the Supreme Court, and the Court struck that law in *Stenberg v. Carhart*. And then an election happened, and Sandra Day O'Connor retired, and we got Sam Alito, and we have a brand new Court.

A couple years later, we have the Supreme Court upholding an identical federal law, the first time ever it's upheld a pre-viability abortion ban, and the playbook was all what we're seeing her: Extreme rhetoric, trading on patients' and providers' pain, and substituting market-driven language and talking points in place of clear, sober, scientific descriptions of medical procedures and situations.

Imani Gandy: Right. Anti-choicers don't want to talk about science.

Jessica Pieklo: No.

Imani Gandy: They want to make up terms like "partial birth abortion" or "dismemberment abortion," which is the term that they've invented for D&E bans, and it's as you said. They are just playing on the sympathies of people who really, really, really believe that babies shouldn't be aborted after they're born, even though that's not happening. They're not really keen on providing actual facts. They're keen on playing on the emotions of people.

Jessica Pieklo: Absolutely, and that's what this has been all about. And so here we are, having to explain to folks that, no, abortion advocates are not out there trying to abort babies on the delivery table.

Imani Gandy: There's a lot of heated rhetoric around later abortion, and it's on purpose. Republicans are using this as an electoral strategy. They're talking about Democrats wanting to murder newborns to pump up their interest for 2020, to distract from the investigations that are going on into Trump's many corruptions.

And I'm hoping that, in this episode, we were able to demystify some of that rhetoric, some of those outright lies around later abortion, so that when that Uncle Jim of yours, who for some reason still has a Hotmail account, starts frothing at the mouth about post-birth abortion, you have what you need to rebut that nonsense, even if it's only in your head silently, because Uncle Bob or Uncle Jim or whatever the fuck his name is is really annoying, and you just don't feel like having that argument in the moment.

Jessica Pieklo: Yeah, which is a fair place to be in, quite frankly, as someone who has been there. Don't. Sometimes it's better to rebut silently in your head, but seriously though, we are going to see this rhetoric get more ridiculous and more dangerous and more divisive, and so hopefully, you all can walk away with this and say, "No, that's not happening," and also explain to other folks why something like saying "later abortion" matters.

Because it does, and so with each little step, we change hearts and minds. Thank you all.

Imani Gandy: And if you want to talk more about how you can change hearts and minds, or if you want to talk about how to get Uncle Bob off that Hotmail account, you can find us on Twitter. I'm @angryblacklady. I should really not say that, because my mom still has a Hotmail account, and my mom's a genius.

Jessica Pieklo: And I have an Uncle Jim. He's okay.

Imani Gandy: You can find me on Twitter @angryblacklady. You can find Jess on Twitter @hegemommy. You can follow Rewire.News @rewire_news, and you can and should join our Facebook Group.

Jessica Pieklo: Do it.

Imani Gandy: Go look it up on Facebook, answer the question, we'll let you right in. Other than that, we're going to just see you on the tubes.

Jessica Pieklo: See you on the tubes.

Boom! Lawyered is created and hosted by Jessica Mason Pieklo and Imani Gandy. This episode was produced by Marc Faletti, who is also our executive producer, and the Rewire.News editor-in-chief is Jodi Jacobson.