

[Boom! Lawyered: Predicting the Next Two Years](#)

Imani Gandy: Hello, fellow law nerds! Welcome to a very special episode of Boom! Lawyered, a Rewire.News podcast hosted by the legal journalism team that wishes their dog would stop pawing at their leg. 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: Hey, Jess! I just wanted to take this time to wish you a very happy second anniversary.

Jessica Pieklo: Aw, Imani! Happy Kindle Anniversary.

Imani Gandy: Wait, what? Oh, come on, I am hurt. You know we have been Kindle-married way longer than two years. No, I mean this is the two-year anniversary of our podcast, Boom! Lawyered.

Jessica Pieklo: Ahh, that's right. Oh my God, two years! That's bananas. Oh my God. How time flies.

Imani Gandy: It's a flat circle as you like to say.

Jessica Pieklo: It really is!

Imani Gandy: It really is. Over the past two years, you and I have covered so much material, that I'm pretty sure that our listeners who have listened to every single episode could probably pass the bar.

Jessica Pieklo: Yeah, no ...

Imani Gandy: Maybe not.

Jessica Pieklo: It's not that our listeners aren't extremely intelligent. You are! But, I mean, Imani, you've taken the bar. You know how terrible that is.

Imani Gandy: You're right. You're right. The bar sucks. It sucks. And it's really hard. I nearly had a nervous breakdown the summer that I studied for it. Actually, no, wait. I did have a nervous breakdown the summer that I studied for it.

Even so, I think it's safe to say that our listeners now understand a lot about how the law works, particularly when it comes to, for example, Title VII and discrimination because of sex.

Jessica Pieklo: Oh, totally. You know what else I think they know a lot about?

Imani Gandy: I have a feeling by the tone of your voice, that you're going to say the ...

Jessica Pieklo: The Administrative Procedures Act!

Imani Gandy: Oh Lord, here we go.

Jessica Pieklo: Seriously though, think about it. No, for real, though. There's so much going on policy-wise and in the courts. And it requires knowledge of the Administrative Procedures Act, right?

We've got the fight over Title X funding, for example, and whether or not the administration was arbitrary and capricious regarding the Domestic Gag Rule.

Imani Gandy: Mm, arbitrary and capricious.

Jessica Pieklo: Hey, now you're taking my lines. I'm the one who's supposed to be getting hot and bothered about arbitrary and capricious.

Imani Gandy: Hey, what can I say? Your love for the APA has rubbed off on me, and now I think the APA is sexy, too.

Jessica Pieklo: Mission accomplished. Seriously. No, but for real, whether it's talking about Trump's efforts to add a citizenship question to the census, or the Department of Labor's efforts to permit employers to discriminate against their employees because they think they have a, oh, I don't know, a sincerely held religious right to be a bigot.

Helping you listeners understand the APA has honestly been truly delightful. I really can't express that enough. I'm just going to take a moment, Imani, and collect myself. Because I got a little emotional.

Imani Gandy: So while Jess fans herself, I'm going to tell you what we are going to do for this most joyous of occasions. Our two-year anniversary!

Jessica Pieklo: Yay!

Imani Gandy: Instead of doing a retrospective of what we have talked about over the last two years; which is probably what you think we would do for our two-year anniversary; we're going to break the mold.

In this episode, we're going to read the tea leaves, and talk about what we can expect in the next two years.

Jessica Pieklo: Specifically, we're going to talk about what you can expect when it comes to abortion rights, LGBTQ rights, and then, so we don't leave you on a sour note, wanting to, oh, I don't know, dramatically walk into the ocean and sleep with

the fishes, we're going to talk about one good thing that we can look forward to in the next two years.

Imani Gandy: Wait, wait, wait, wait, wait. We're going to be positive?

Jessica Pieklo: Yep.

Imani Gandy: What are we going to talk about that's going to be positive?

Jessica Pieklo: You're going to have to wait, Imani.

Imani Gandy: Ooh, I can't wait.
[music]

Jessica Pieklo: Okay, Imani. Our listeners know that it's a dangerous time for abortion rights. You and I talk all the time. Like, honestly, all the time. Honestly. All the time.

Imani Gandy: Literally.

Jessica Pieklo: Literally, all of our time is spent talking about the legal challenges to Roe versus Wade, and the possibility that the Roberts Court could re-criminalize abortion in our lifetime.

But how about we put some meat on those bones? In the next two years, what's on your radar when it comes to abortion rights in the court?

Imani Gandy: Well, you've got to talk about the litigation surrounding all of these extreme and unconstitutional pre-viability abortion bans.

Jessica Pieklo: Oh, absolutely. I feel like we have to put the refrain from the episode where we were singing about it, right?

Imani Gandy: Right.

Jessica Pieklo: What was it, "These abortion bans are unconstitutional?"

Imani Gandy: Yeah.

Jessica Pieklo: What was your little ditty? Do you have it?

Imani Gandy: I can't remember. Like, "abortion bans are unconstitutional. If you think they're not, you're wrong." Or something? (singing). I think it was something along those lines.

Jessica Pieklo: Something along those lines. We're going to talking about these for a long time, so it feels appropriate to have a refrain, right?

Imani Gandy: Yeah, yeah, absolutely. Absolutely. But Georgia, Missouri, Alabama, Ohio, Mississippi, the list goes on and on of states that have passed blatantly unconstitutional pre-viability abortion bans.

Now, lawsuits challenging those bans have been working through the federal courts, and the good news is that none of these bans are in effect.

The bad news is that the federal courts are now stacked with judges nominated by President Trump. And these judges have very clearly stated that they want to end legal abortion.

If they keep their word, then at some point, a court is going to uphold one of these bans specifically to force the Court to revisit Roe.

Jessica Pieklo: Absolutely. I just think it's important to really note part of the strategy here, which we have talked about on this show quite a lot over the last two years. And that is a way for the right to gut abortion rights without even having to overturn Roe.

In this case, what they're doing is messing around with the definition of "viability," right? And trying to tag it to something like a heartbeat. If they could do that, then they don't even need to overturn Roe versus Wade. They can just get the Court to say, "This works."

Imani Gandy: Yikes. That's sad. And I hate it.

Jessica Pieklo: Ugh. It's terrible.

Imani Gandy: But what about you, Jess? What's on your radar when it comes to abortion rights?

Jessica Pieklo: I mean, I definitely agree that these pre-viability abortion bans are a big deal. Also, another big deal is how and what the court decides to do with the precedent of Whole Woman's Health.

Imani Gandy: Oy vey. That really actually makes me nervous. But let me just a quick recap about-

Jessica Pieklo: Yeah.

Imani Gandy: ... what Whole Woman's Health was about. You may recall, back in 2016, abortion rights advocates got this huge win, this landmark decision in Whole Woman's Health versus Hellerstedt, and that case dealt with an omnibus abortion bill out of Texas. It was just a patchwork of shitty abortion restrictions.

Jessica Pieklo: Yep. Frankenstein monster of bullshit.

Imani Gandy: Yeah. It was a Frankenbill. Exactly.

What the case was about, was specifically about two provisions: One requiring doctors to get admitting privileges in a hospital within 30 miles of where the abortion is performed.

Two is the ASC requirement, the Ambulatory Surgical Center requirement, which requires that abortion clinics retrofit themselves to be essentially inpatient hospitals, clinics, right?

Jessica Pieklo: Mm-hmm (affirmative). Yep.

Imani Gandy: They had to change the size of the hallway so two gurneys could go by in the hallway, even though when you're doing abortions, you're not having gurneys running up and down hallways.

Jessica Pieklo: Right.

Imani Gandy: They have restrictions about the size of closets and how many HVAC systems need to be in each room.

Jessica Pieklo: Water fountains in each room, kind of thing.

Imani Gandy: Water fountains in each room. Really oppressive restrictions that would have cost millions and millions of dollars for health, for abortion clinics to comply with in Texas.

Jessica Pieklo: Yep.

Imani Gandy: So the court said, "Nah. Nope. Nein. Nyet. Texas, we know you're trying to say that these laws are about 'women's health and safety?' But you're full of shit."

There's absolutely no data to support that these laws will actually increase the health and safety of pregnant people, because abortion is extremely safe; more safe than childbirth, more safe than a colonoscopy, more safe than a lot of things.

The court was like, "Nope, not going to do it." So that's what Whole Woman's Health was about.

Jessica Pieklo: Right. It was an important win because it put the brakes on the ability of anti-choice lawmakers to just claim abortion restrictions advance patient safety, right? Like you said, they need data now. They need evidence.

Well, that win is at risk of being undercut or maybe even undone entirely. Here's how.

In *Whole Woman's Health*, the court said that there wasn't any evidence that admitting privileges requirements advance patient safety without substantially burdening abortion rights. That's what made them unconstitutional.

But anti-abortion advocates claim *Whole Woman's Health* is effectively limited only to Texas. That what the Roberts Court did was establish that Texas didn't show that the benefit of the admitting privileges requirement outweighs the burden.

But that other states like Louisiana and Arkansas, for example, can actually show that identical requirements to the ones the court struck in *Whole Woman's Health*, are actually constitutional.

Imani Gandy: I mean, what the fuck, man? You know what I mean?

Jessica Pieklo: That's really the only appropriate reaction, I think.

Imani Gandy: I don't have much of a reaction besides, "What the fuck." Because quite frankly, this case that you're talking about specifically, the one in Louisiana, *June Medical Services versus Gee*, the provisions are exactly the same. They are the same.

It's not like there's some difference in health and safety when it comes to abortion patients in Louisiana versus abortion patients in Texas. They're the same. We shouldn't even be having this conversation.

But the makeup of the Court is such that they're going to be willing to have this conversation, and potentially, just limit the scope of *Whole Woman's Health* to Texas. And that's really a problem.

Jessica Pieklo: It's really a problem. Like you said, we shouldn't be having this conversation. But here we are; this is actually a very live fight right now. The Supreme Court is considering *June Medical Services versus Gee*, that case out of Louisiana that you mentioned, at its October first conference.

Imani Gandy: That's like two weeks from now! I can't take it. How is this happening so fast?

Jessica Pieklo: And we've covered this case on the podcast a bunch. I mean, we interviewed attorneys from the Center for Reproductive Rights about how the case; so listeners, go back and listen to those episodes. They'll help you get caught up.

Anyway, how the Court resolves *June Medical Services* could definitely, sincerely change the abortion rights landscape almost immediately. And we could know what the Court is doing with *June Medical Services* in just a couple of weeks.

Imani Gandy: Right, and if they issue a bad decision, if they let the Fifth Circuit, which went rogue and decided to just throw the middle finger up at Whole Woman's Health and go its own way.

If the Court allows that to happen, then that means every other state that wants to enact these sorts of admitting privileges or ambulatory surgical center requirement provision, are going to do so.

They're going to frame their legislation and the cases are going to be framed by attorneys in order to match what Louisiana did, and not what Texas did, even though they're the same.

So I'm still confused as to how that's going to work. But logic doesn't make sense anymore, because we're living in Trump's America.

Jessica Pieklo: Yeah.

Imani Gandy: I got to say again, "What the fuck, man?"

Jessica Pieklo: Yeah. I mean, obviously, a lot is on the line for abortion rights in the next two years. And you and I are going to have plenty to talk about.

Imani Gandy: Plenty.

Jessica Pieklo: So much.

Imani Gandy: It's not like we haven't already been talking about this stuff for seven or eight years now.

Jessica Pieklo: No.

Imani Gandy: I mean, for Christ's sake.

Jessica Pieklo: Our friendship has been forged in the fires of anti-choice fuckery.

Imani Gandy: Absolutely right. I mean, I love you to death, I wish we could have forged our friendship with something more positive. But hey, out of all this, at least there's this one glimmer, and that is that you are one of my best friends in the world. Yay.

Jessica Pieklo: Oh, I love you.

Imani Gandy: Oh, of course.

Jessica Pieklo: All right.

Imani Gandy: All right, well, I'm going to start crying, so let's move on to LGBTQ rights.

Jessica Pieklo: What about LGBTQ rights, Imani? What do you think we've got in store there in the next two years?

Imani Gandy: Well, that's going to make me cry, too, because quite frankly, the answer is nothing good. Nothing good, unfortunately. The Supreme Court is slated to hear arguments in a group of Title VII cases.

The end result could be that employers will be permitted to discriminate against their employees on the basis of sexual orientation and gender identity.

Jessica Pieklo: Pffft.

Imani Gandy: Pffft.

Jessica Pieklo: Sorry.

Imani Gandy: That's absolutely right.

Jessica Pieklo: That gets the fart noise.

Imani Gandy: And "What the fuck, man," are basically the only reactions that we need for this episode.

So there are three cases that are sitting at the Supreme Court right now. The outcomes of these cases could prove to be disastrous for LGBTQ people.

One of those cases is called Altitude Express versus Zarda. That case involves a man named Donald Zarda. He was—he actually passed away now—but he was a skydiving instructor who sued Altitude Express, claiming that the company fired him for being gay and failing to conform to the "macho male sex stereotypes" of his co-workers.

The Second Circuit held that Title VII, which prohibits discrimination on the basis of sex, among other characteristics, protects an employee from being fired because they are gay. That's the Zarda case.

Jessica Pieklo: Then there's the case of Bostock versus Clayton County. That involves Gerald Bostock. Now, he alleges he was fired from his job as a child welfare services coordinator from a Georgia county juvenile court system, after his employer found out that he's gay.

A three-judge panel from the 11th Circuit ruled that Bostock couldn't sue his employer because Title VII doesn't ban discrimination based on sexual orientation.

Imani Gandy: And you know what that means; we've got a circuit split.

Jessica Pieklo: Circuit split!

Imani Gandy: A circuit split between what the Second Circuit said in the Zarda case that I mentioned; and a split with the 11th Circuit in this Bostock case that you're talking about.

Jessica Pieklo: Yep.

Imani Gandy: You love arbitrary and capricious? I love circuit splits!

Jessica Pieklo: Nothing gets Imani going like a good circuit split.

Imani Gandy: Circuit split ... circuit split ... I just like the way it rolls off. Circuit split ... Oy, vey. Whoo! Okay.

Jessica Pieklo: Too much Outlander for you, I got to say.

Imani Gandy: I know!

Jessica Pieklo: It's bleeding over into everything.

Imani Gandy: [Scottish accent] I dinna know what you're talking about. [laughter]

We also got, there are these two sexual orientation cases, right, then we also have a case involving gender identity.

Jessica Pieklo: Yes.

Imani Gandy: That case is called Harris Funeral Home versus EEOC. In that case, the Sixth Circuit Court of Appeals ruled in favor of Aimee Stevens, who is a trans woman, and said that it is analytically impossible to fire an employee based on that employee's status as a trans person, without being motivated, at least in part, by the employee's sex. Let me repeat that. That was kind of a mouthful.

Jessica Pieklo: Yeah.

Imani Gandy: Aimee Stevens is a trans woman. Her employer said that they would not allow her to present herself as a woman at work. Aimee Stevens is claiming that that decision is necessarily discrimination on the basis of sex, because what she is doing is not conforming to societal standards about what men should be and what women should be, right?

Jessica Pieklo: Right.

Imani Gandy: Discrimination because of sex inherently includes discrimination against employees because of a change in their sex.

Jessica Pieklo: Absolutely. This case is so important; it's the first substantive transgender rights case that the Roberts Court has heard. This is historic just for that reason.

Then we have the evolution of the law. Over the years, the EEOC and private litigants had tried to get federal courts to recognize that Title VII bars discrimination on the basis of sex to equate to gender identity.

They were a little slow to do so. Under the Obama administration, though, they made really important strides towards recognizing sexual orientation discrimination and gender identity discrimination under federal law.

As a result, the federal courts caught up. So there's not really the kind of conflict around this issue that folks in the Trump administration, or the attorneys who are representing the employers in these cases, are claiming.

Anyway, as a result, several courts had previously ruled that sexual orientation discrimination is not covered. But now, they've increasingly ruled the opposite; that these claims are covered. And they're doing so citing a Supreme Court case called Price Waterhouse versus Hopkins.

Imani Gandy: Price Waterhouse versus Hopkins is really going to be the linchpin, I think, in a lot of these cases, right?

Jessica Pieklo: Yep.

Imani Gandy: It's this 1986 case where a plaintiff named Ann Hopkins said that she'd been denied a promotion at work because she was "too macho." Her employer actually said that she needed to wear makeup and feather her hair and be more feminine and all of this patriarchal bullshit.

The Court agreed that such comments were indicative of gender discrimination, and held that Title VII, which bars discrimination because of biological sex, also bars gender stereotyping. That's discrimination based on someone failing to act and appear according to societal expectations defined by gender.

So, in light of this case, Price Waterhouse, it's pretty hard to claim that because of sex, does not encompass sexual orientation and gender identity.

Jessica Pieklo: It makes my brain hurt, right? Because what is being gay or trans, if not a failure in some way to act and appear according to traditional societal expectations defined by gender?

But ADF and the Trump administration is saying effectively that "No, 'because of sex' means biological sex, and that's what the statute says, and there's no wiggle room there."

Now, the Court has a couple of options of what it could do with these cases. It could do the right thing and rule like the vast majority of the federal courts, that gender identity and sexual orientation discrimination are both forms of sex discrimination, and thus, unlawful under Title VII.

Imani Gandy: Or, the Court could do what I think we're braced for, and rule that neither are covered, which would leave LGBTQ workers shit out of luck.

Jessica Pieklo: Yeah, and that ruling would also be bad just for workers generally. I mean, the framing is just terrible, right? Are you a guy who isn't quite macho enough? You might not get promoted, and that might be okay.

Or what if you are a woman who likes to wear pants?

Imani Gandy: (...).

Jessica Pieklo: That kind of behavior; I know, shocking, right? But that kind of behavior could be considered gender nonconforming, and in violation of your company's dress code? Right?

In the Stevens case, one of the defenses that the employer is making is that Stevens wouldn't adhere to their dress code, which is determinative based on biological sex. Right? If the Court goes the wrong way in the Stevens case, that's the kind of thing being a woman who wears pants, that could get you fired.

Imani Gandy: Yeah, and I have to say, I mean, I graduated from law school in 2001. Right around 2000 is when I was doing interviews. I interviewed for a law firm in Atlanta, King and Spalding. They still force women to wear skirt suits.

Jessica Pieklo: Yeah. Yeah.

Imani Gandy: This is not something that is uncommon.

Jessica Pieklo: No.

Imani Gandy: There are judges, for example, that will look down upon women attorneys who appear before them in pantsuits.

Jessica Pieklo: Absolutely. I mean, I had very similar experiences where they said there were certain judges that you just never appeared before unless you were wearing a skirt suit.

Imani Gandy: Right.

Jessica Pieklo: Places where business formal for female attorneys absolutely meant that we had to wear skirt suits and not pantsuits.

Imani Gandy: Right.

Jessica Pieklo: Just an excellent point to bring that out, because it's not like it's some sort of fringe thing. The impact really would be broad.

And I mean the Court, I guess, could always split the difference too, and find that one type of discrimination is covered and the other isn't. They could say, "Okay, sexual orientation discrimination is covered, but gender identity isn't." Or vice versa. That seems really weird, but I mean, these are weird times. We are in the upside down.

Imani Gandy: That's true. We are in the upside down. And these cases are obviously a really big deal.

Jessica Pieklo: Yeah.

Imani Gandy: And we'll know this summer what the Court does in them. I mean, this is a huge Supreme Court term.

Jessica Pieklo: Huge.

Imani Gandy: This is a massive term when it comes to a lot of social justice issues that ... well, free-thinking, progressive, non-MAGA people actually care about. It's concerning, and I'm worried, and I'm nervous, and I don't like it.

But. Jess. Are there any other issues on your radar for LGBTQ rights?

Jessica Pieklo: Oh, there are. And it's not going to make you feel any better.

Imani Gandy: Why is that not surprising?

Jessica Pieklo: I'm fun at parties, I swear.

I think we've got to talk about religious refusals. Right?

Imani Gandy: Yeah.

Jessica Pieklo: Basically, the expansion of Masterpiece Cakeshop into all sorts of other areas of the law in our lives.

For our listeners who might not remember, Masterpiece Cakeshop is the case where a Colorado baker refused to bake a cake for a same-sex wedding. The Supreme Court sort of split the difference in that case, and didn't say that that behavior was okay. But it didn't say that wasn't, either.

Imani Gandy: Right.

Jessica Pieklo: Now we have states and the Trump administration arguing, for example, that foster care and adoption agencies that receive government funding can refuse to place kids in LGBTQ families because of a religious objection to same-sex marriage. The Roberts Court is considering taking a case out of Philadelphia on just this issue.

Imani Gandy: It's noteworthy that they have made religious refusals as well, right?

Jessica Pieklo: Yes.

Imani Gandy: So it's not just that foster care and adoption agencies are permitted to refuse to place children with LGBTQ families. It's also that they are allowed to refuse to place children with Jewish families.

Jessica Pieklo: Right.

Imani Gandy: With Muslim families. With any non-Christian family ... That's just not the way the law is supposed to work.

We did an entire episode on this; you should go back and listen to it about Miracle Hill, which is an adoption agency in South Carolina, that was granted a waiver to refuse to place kids with non-Christian families.

Jessica Pieklo: Yeah.

Imani Gandy: That doesn't make any sense. Especially considering how many kids there are that need homes. How many kids that are wallowing in the foster care system?

And here we are saying that we're not going to place these children in perfectly healthy home situations, simply because those people are not the religion that we prefer in this country, and are not the sexual orientation that "we prefer in this country." It's diabolical.

Jessica Pieklo: And over the last two years, as we were talking about Masterpiece Cakeshop and other issues around that case, we noted that what conservatives were doing was using an objection to marriage equality to same-sex marriage as a wedge to get broader protections to be able to discriminate more widely. We're seeing that actually play out. So that's huge.

We also have courts starting to recognize religious exceptions to local anti-discrimination ordinances, too.

Imani Gandy: Right, like the Arizona Supreme Court, for example, just did in this case called Brush and Nib Studio, which was a case involving a couple of women who make wedding invitations. And apparently, express their love for God through their wedding invitations.

Therefore, forcing them to provide wedding invitations for LGBTQ couples, somehow is an affront to their religious sensibility. And they should therefore be allowed to discriminate against LGBTQ people because ... Jesus.

I mean, that's not the way it is supposed to work. If you are in commerce, if you are selling goods in commerce, you cannot discriminate against who you are going to sell those goods to. Who you are going to provide these services to. That's just not the way the law is supposed to work.

And yet, that's the way the law seems to be working now.

Jessica Pieklo: Right, so folks are citing Masterpiece Cakeshop kind of disingenuously here, right? Because again, that case didn't actually say that religious conservatives get these kind of refusal rights. But, they're going with it and really trying to expand it. Why? Because they've got Kavanaugh on the bench, and a much more conservative justice department than even two years ago.

Now, groups like Alliance Defending Freedom and The Becket Fund are just really going to try and go to town and expand religious refusal rights as a way to push back against LGBTQ rights. And really, frankly civil rights generally. I think the next two years are going to be really big for this.

Imani Gandy: They really are, and just to jump in for a minute, Alliance Defending Freedom and The Becket Fund are essentially very very Christian evangelical law firms that have been handling a lot of these cases when it comes to denying LGBTQ rights.

The Becket Fund handled, I don't know, dozens of lawsuits regarding the birth control benefit and employers' efforts to avoid providing birth control coverage in the health insurance plans that they offer their employees.

They're essentially like ... I don't know. I don't know if you ever watched the show Angel? I'm going to go off on a tangent here. But you remember, there was that law firm that was this evil devil law firm? That's what Alliance Defending Freedom and The Becket Fund are like.

They are just these ... evil, mean lawyers that think that it's okay to discriminate people, just because of the way that they exist. Just because of who they are. I find that just grossly offensive.

Jessica Pieklo: And their alumni are now high-level staffers in the Trump administration.

Imani Gandy: I mean, their alumni are in HHS, they're just like ... they're just fucking up everybody's program, and we're all ... What are we supposed to do about it, right? I mean, besides hopefully maybe vote these people out. But, I don't know.

Jessica Pieklo: Yeah.

Imani Gandy: It's a mess. It's depressing and I honestly am considering walking into the ocean.

Jessica Pieklo: No.

Imani Gandy: Maybe we ought to get to the good news. Because you promised me good news, Jess.

Jessica Pieklo: I did! I really did. Believe it or not, sincerely, the next two years aren't necessarily all gloom and doom. I mean that from the bottom of my cynical, jaded heart. There are some things that are even making Imani and I, I don't know, dare we say it, hopeful? A little bit?

Imani Gandy: Don't say it out loud. Don't say it out loud; it might curse it.

Jessica Pieklo: I can't jinx it.

Imani Gandy: Exactly. There are. I mean, there are state efforts to protect abortion access. We did an entire episode on the Kansas Supreme Court's decision-

Jessica Pieklo: Kansas?

Imani Gandy: Kansas, of all places! Wichita, Summer of Mercy, Kansas, where Dr. Tiller was murdered in cold blood in a church.

The Kansas Supreme Court has said that abortion is a human right and is a natural right, and actually cited John Locke in issuing this decision. So that's amazing.

Jessica Pieklo: Yep.

Imani Gandy: There's California legislation that has been proposed to protect abortion access. There's California legislation that's been proposed to protect intersex people.

There are not a lot of states that are concerned about intersex people, which I think is one of the amazing things about living in this state.

There are also some state-level abortion protections being passed in states like New Hampshire. I mean, whoever thinks about New Hampshire? It's a tiny little state up in the northeast! But, New Hampshire's trying to do the damn thing.

So there are states that are committed to protecting abortion access, and they are going to do so as long as the voters allow them to. I mean, essentially, there are going to be efforts to undo what Kansas did through the ballot. And that's problematic, but still; we've got state courts that are getting their check on. And that's really really hopeful.

Jessica Pieklo: Right, and as the fight over abortion rights get worse in the federal courts, which is what I think we're all braced for, we're going to need states stepping up, whether it's through their courts or in the legislature, to protect access. So it's great to see that happening. I expect to see more of that happening. Good news there.

Imani Gandy: Yeah. Absolutely good news. Especially if the 2020 election goes well for Democrats, then a federal response could be one answer to state attacks on abortion rights.

I mean, for example, Elizabeth Warren just the other day, said that she's talking about federal legislation to protect Roe. I mean, that's the sort of thing that can happen if Democrats are able to take control of the government and get their shit together. There are some things to be hopeful for.

Jessica Pieklo: And even in that is the shift, right, because what we hear are folks willing to go on the offense to protect and expand rights, instead of always playing defense.

It is that shift in tone; and it may be a response to things being terrible. Probably is. I don't actually care at this point. I'm just happy to hear folks being willing and excited about going on the offense to protect this stuff.

Imani Gandy: It's also really really important to note, as we get back to the Administrative Procedures Act ...

Jessica Pieklo: Whoo!

Imani Gandy: Whoo! A lot of these really crappy agency rules can be undone with a new president, right? The Title X Domestic Gag Rule, for example. The Religious Imposition nonsense, the Department of Labor, as you mentioned up at the upfront, trying to say, "Oh, it's just totally fine for employers to cite religious beliefs in order to be bigots." For example, contraception coverage.

Jessica Pieklo: Yep.

Imani Gandy: The Trump administration's efforts to undercut the birth control benefit. There's also this issue with the public charge, and the Trump administration's efforts to essentially stick it to poor people through really shitty agency rulemaking.

I mean, all of these are things that can be undone with literally the stroke of a pen. Because with presidential turnover comes agency leadership turnover.

Jessica Pieklo: Right, that is so important because all of the worst of the Trump administration's actions have happened either through rulemaking or executive orders; and those are things that are not permanent. They don't have to be permanent. It's fixable.

Imani Gandy: It is fixable. And that's good. That's good news. That's positive news, that's hopeful news. Things are bad, they are definitely bad. But they can get better.

Jessica Pieklo: Yeah.

Imani Gandy: That's what we should focus on. For the next two years, let's just focus on making better shit better. High five!

Jessica Pieklo: High five! Good job, team!

Imani Gandy: All right. That's going to end our two-year anniversary very special episode!

Jessica Pieklo: Two years!

Imani Gandy: Whoo! Congratulations to us, congratulations to you listeners who have either stuck by us from the get-go, or who jumped in in the middle. We love all of you equally.

If you would like to talk to us about any of this stuff, you can find me on Twitter. I'm @angryblacklady. You can talk to Jess on Twitter @hegemommy. H-E-G-E-M-O-M-M-Y. And you can follow @Rewire_News. @Rewire_News!

Also, join our Facebook group. We're like 1.3 thousand members deep right now. And it's amazing.

Jessica Pieklo: What?

Imani Gandy: So, you guys are amazing. Answer the questions, and we will see you on the tubes. And for another two years! Whoo!

Jessica Pieklo: See you on the tubes, folks.

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.