

[Boom! Lawyered: Shredding the Claim that Abortion Clinic Protests Are an 'Essential Service'](#)

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 excelling at social distancing. 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 Jess, I'm a stay-at-home kind of person. "It is known," in the words of the Dothraki. So I have no problem staying home, especially if doing so means I'm not spreading the Rona or contracting the Rona from infected people.

Jessica Pieklo: I mean, staying at home is pretty easy.

Imani Gandy: It is, but apparently people don't get it. There's even a website called staythefuckhome.com that encourages people to well, stay the fuck home.

Jessica Pieklo: That's amazing. My first response to that was "get out," which like, no, don't, stay the fuck home. I mean, I'm sure as hell staying the fuck home.

Imani Gandy: Listen, I've been staying the fuck home since before you were born.

Jessica Pieklo: Wait, Imani. I'm older than you.

Imani Gandy: Yeah. That's a minor detail and only by three months. The point is during this outbreak, it is critical that people stay home, but people aren't doing it. Last week I saw a video on Twitter posted by some spring breakers in Florida and do you know what they were doing?

Jessica Pieklo: Hmm. I'm pretty sure I don't want to know what they were doing. Do I want to know? I don't think I do.

Imani Gandy: Probably not, but I'm going to tell you anyway.

Jessica Pieklo: Alright.

Imani Gandy: There were a group of college-aged kids who were, and I shit you not, drinking beer from one another's butt cracks.

Jessica Pieklo: I'm sorry. What? No.

Imani Gandy: You heard me. I saw people with their faces smushed up against other people's, asses drinking beer as it slid down that person's ass crack.

Jessica Pieklo: Well, that's enough for the podcast today folks. I'm going to go see while on the tubes.

Imani Gandy: No, no, no, no, no, no, no, no, no. Wait, we've got to do a show! We've got to a show.

Jessica Pieklo: I don't know. I don't know, Imani. I'm not doing a show that leads off with people drinking beer from other people's ass cracks during a coronavirus pandemic. That's just, nope, sorry. See you on the tubes.

Imani Gandy: Okay. Okay. We can see our listeners on the tubes, but first we should talk about how anti-choicers are handling these stay at home orders.

Jessica Pieklo: They're not drinking beer out of each other's butt cracks, are they?

Imani Gandy: Not... as far as I can tell.

Jessica Pieklo: Small victories, silver linings. But anti-choice protesters are defying stay at home orders in States like North Carolina, California, and Michigan so that they can continue their campaign of clinic harassment.

Imani Gandy: In fact, clinic protesters were so flagrantly ignoring these stay at home orders by congregating outside of abortion clinics that cops actually started arresting people.

Jessica Pieklo: And because the anti-choice community is nothing, if not litigious, those arrests resulted in, you guessed it, lawsuits.

Imani Gandy: Lawsuits. In response to being arrested for violating stay at home orders, protestors in both North Carolina and Michigan have filed lawsuits arguing that those orders violate their religious rights and their free speech rights.

Jessica Pieklo: And get this. Not only are they claiming these arrests are first amendment violations, I mean we expect that, right?

Imani Gandy: Mm-hmm (affirmative), mm-hmm (affirmative).

Jessica Pieklo: Some protesters are even claiming that they are performing an essential service by protesting clinics. They say those protests are actually protected by the stay at home orders. And it's not just some quack like anti-choice protester making that claim either, it's one of the most prominent anti-choice law firms in the country. They're out there floating this legal theory as well.

Imani Gandy: And that's what we're going to talk about in this episode. Is protesting in abortion clinic during a global pandemic performing an 'essential service.' Of course, it's fucking not. So we're going to lay waste to that claim and others that

anti-choicers are making to defend putting the public at risk by continuing to protest abortion clinics during the coronavirus pandemic.

Jessica Pieklo: Okay, Imani, I really just can't wrap my head around this idea that protesting an abortion clinic is some kind of essential service that must go on while damn near everything else is closed. Can we start there? I mean, I have a question. What the fuck is going on?

Imani Gandy: That is a really good question. And here's what we know so far: nearly every state in this country is currently under a local stay at home order as governments try and slow the spread of the coronavirus. And while reasonable people like you, me, and our Boom! Lawyered family of law nerds take these orders very seriously, there are some anti-choice numpties out there that have different ideas.

Jessica Pieklo: They think those orders don't apply to them. It's really that simple.

Imani Gandy: Let's take a look at North Carolina for example. Protesters in North Carolina in conjunction with an anti-abortion group called Love Life have been relentless in protesting clinics in Charlotte, in Greensboro and in the Raleigh, Durham area, long before the Rona hit. And they show no signs of slowing down now that the Rona has hit. They have been gathering in large groups, holding hands while they pray, the little infected Gumby hands. They've been leaning into patients' cars as they try to find parking at a clinic and in one instance threatened a clinic escort volunteer by coughing in his face.

Jessica Pieklo: Oh my God. Now, I'm not a scientist, but that sounds like a recipe for a coronavirus outbreak.

Imani Gandy: Yeah, it's pretty bad. Kelsea McLain, who is a leader with the Triangle Abortion Access Coalition, wrote a piece for Rewire.News about the protest that she witnessed back in the middle of March. And as a volunteer was trying to help patients find parking. Because what happens in these situations is that protestors would often block the entrances to the parking lots in order to try to force pamphlets into their cars and lean into their cars to yell at them. So while there was a volunteer who was trying to make sure that people could find a place to park, a protester walked up to this volunteer, coughed in his face and said something like, "I sure hope I'm not sick."

Jessica Pieklo: Oh my God, what a jackass.

Imani Gandy: Yeah, yeah, yeah. Definitely a jackass. And what's worse is this volunteer was high risk. He was in his 60s or 70s.

Jessica Pieklo: Ohh.

Imani Gandy: Yeah. So I guess they're trying to kill off old people during this coronavirus epidemic isn't just for people like Dan Patrick.

Jessica Pieklo: And Dan Patrick for those of you who don't know is Texas' Lieutenant governor. He's the guy who said that old people would be happy to just die if it meant the economy wouldn't go tits up. To which I say, "Okay, first you jackass."

Imani Gandy: Seriously, good Lord. So on March 27th Guilford County, which is where Greensboro is located, issued a stay-at-home order. That order was amended on March 30th but it basically contains the same provisions as the March 27th order. But the March 30th order added an exemption designating "religious facilities, entities, groups and gatherings" as essential business or operations.

Jessica Pieklo: Ooh, so let me guess. They're saying that harassing people in front of clinics is a religious gathering.

Imani Gandy: Pretty much. They're just marching up and down public sidewalks, praying. That's all they're doing.

Jessica Pieklo: Mm-hmm (affirmative) sure.

Imani Gandy: And they believe that they should be permitted to "walk and pray" outside abortion clinics because doing so presents a visible demonstration of their deeply held religious conviction that innocent lives are being ended inside, and that there exists an urgent need to intercede both for the unborn and for the confused and hurting mothers who often feel they have no other choice but to abort. That's all they're doing.

Jessica Pieklo: Little plump grandmas just holding their rosary beads or crosses or whatever and praying, praying, Imani. Because we all know that's what happens at these protests. Prayer, she said sarcastically. Exactly. Exactly. Oh my God.

Imani Gandy: So the order prohibits public and private gatherings of more than 10 people. It also designates certain businesses as essential, others as nonessential, and orders all nonessential businesses to close.

Jessica Pieklo: Okay.

Imani Gandy: This order permits individuals to leave their home for outdoor activities, which include things like walking, hiking, cycling, running, all the shit that you like to do, and all the shit that I hate to do. And these are things that are categorized as essential activities as long as they comply with social distancing requirements.

Jessica Pieklo: And those social distancing requirements include maintaining a six foot distance from other people, washing hands with soap and water for 20 seconds, which I'm just really glad people are finally starting to wash their hands in all of this. Let me say that was apparently a problem I'm glad we're remedying. Covering

coughs or sneezes and not shaking hands. Like those are the general social distancing norms and procedures we've agreed on?

Imani Gandy: Absolutely. And so guess what happened next?

Jessica Pieklo: I'm going with everybody went home and decided to stay indoors and follow the stay-at-home order. That's my guess.

Imani Gandy: Oh, you're so cute when you're naïve! No, that's not what happened. That's not what happened at all. They kept right on protesting, which led to the arrest of a group of protesters on March 28th outside a woman's choice clinic in Greensboro, North Carolina.

Jessica Pieklo: Okay. Well, I bet after they were arrested, they went home and thought better of running up on pregnant people than spreading the virus, like it gave them a chance to reflect?

Imani Gandy: Ah, no, no, no. Not at all. More people protested on March 30th, two days later and more people were arrested.

Jessica Pieklo: And then they went home?

Imani Gandy: Again. No, no, not at all. The Thomas More Society got involved and filed a lawsuit on behalf of a handful of these anti-choice protesters who were arrested.

Jessica Pieklo: Oh, good grief. The Thomas More Society. Okay, so they are a conservative litigation firm out of the Chicago suburbs that specializes in representing anti-choicers.

Imani Gandy: Right. There's some of David Daleiden's lawyers, right?

Jessica Pieklo: Mm-hmm (affirmative).

Imani Gandy: We remember David Daleiden? The "Oh my God. Planned Parenthood is selling baby heads on the black market for pennies and the dollar." That guy, "Baby heads. Baby heads. Get your baby heads."

Jessica Pieklo: When this is all over, we're opening a baby head food truck, Imani. [laughter] Sorry folks. We've lost our minds, but that's exactly, that's the Thomas More Society. They represent clinic protestors usually, and they've been encouraging protestors to continue protesting clinics despite these stay-at-home orders.

Imani Gandy: That's because the lawyers at the Thomas More Society think that harassing abortion providers and their patients is "essential business" that can stay open under these stay-at-home orders.

Jessica Pieklo: Which is a totally bonkers argument to make. They claim they are connecting patients to reproductive healthcare by trying to block their access to it. Now, I actually sat in on the strategy call that they held and I wrote about it at Rewire.News. These folks even said on that call that the clinic protests were going to continue in part to thank President Trump for all those judges hell-bent on overturning Roe versus Wade that he's appointed. So they're actually out there protesting as a thanks.

Imani Gandy: Gee whiz, that's fantastic. In the North Carolina lawsuit that the Thomas More Society filed on behalf of these protestors, they claimed that the order violates their first amendment rights to free speech and the free exercise of religion. They're claiming that they've been prohibited from engaging in speech or other expressive activities in traditional public fora, that's plural for forum...

Jessica Pieklo: Fora!

Imani Gandy: ... based solely upon the pro-life content and the viewpoint of their speech. They're also alleging that there's no compelling, substantial or even legitimate interest that justifies the restrictions on these protestors' speech since they say they're complying with social distancing requirements.

Jessica Pieklo: But are they though? I mean are they complying with social distancing requirements?

Imani Gandy: No, Jess. No they're not. I had a DM exchange on Twitter with Calla Hales. Now she's the executive director of a preferred women's health clinic in Charlotte, North Carolina, and she's kind of a bad ass and we interact a lot on Twitter with her. She's frequently complaining about the fact that there are always protestors that are just haranguing her and her patients.

Imani Gandy: And she says that these ongoing protests have been a public health nightmare. She told me, "they are still not observing social distancing despite their claims. I've seen them demarcate six feet, but then move around and approach patients by leaning into cars and handing out pamphlets." And she showed me some photos that she had taken of protestors. They're just literally leaning inside people's cars to try and hand them disease-ridden papers and pamphlets and to harangue them with their coronavirus-laden spittle just in their cars, in their faces.

Jessica Pieklo: And I mean, we talked about this in our last episode. When you're pregnant, you're already immunocompromised. You're immunosuppressed to some degree. So this idea of spreading coronavirus to rooms over a person who's already immunosuppressed, that's terrible. That is not a good idea.

Imani Gandy: No, it's not. And she also told me that even after these people were arrested on March 28th, that there were more protestors this past Saturday on the 4th and that they're planning to protest this weekend on the 11th.

Jessica Pieklo: And if any of our listeners want to have a sense of what these protest looks like, we actually have some old footage of this. A while back we did a video documentary called Care in Chaos, which Calla Hales' clinic was actually featured in, and you get to see just the sea of humanity that descends on this clinic. And the idea that that kind of activity is still going on right now is really just terrifying. And it's also happening in other places. Like Michigan -- there, protesters are generally being jerks and getting inpatients faces also except the lawsuit that's been filed in Michigan adds an equal protection claim.

Jessica Pieklo: So in addition to arguing the same first amendment stuff that's happening in North Carolina, these folks are saying that it's unfair that people are allowed to go outside and exercise, but they can't go out in front of clinics and continue to be an asshole. So like I can go for a trail run, that's unfair that they can't then go protest clinics because those are clearly the same activities.

Imani Gandy: Right? Exactly. So where does all of this leave us, Jess? We've got states like Texas using COVID-19 to try and ban abortion by claiming it's not an essential medical service. We have anti-choicers claiming that protest in clinics is an essential service. So are we really living in a world where during a health crisis of this magnitude, someone can't get an abortion, but they sure as hell can go protest in abortion clinic? Is it possible that performing an abortion isn't considered essential, but protesting one is?

Jessica Pieklo: I mean, yeah, that's kind of what the anti-choice movement is pushing for and it's scary to think they're having some success. So the Fifth Circuit just handed down a decision that effectively says States can use the coronavirus outbreak to suspend abortion rights perhaps indefinitely.

Imani Gandy: And states like Ohio and Alabama have also tried this trick. But fortunately, lower courts blocked those efforts. But unfortunately and naturally conservatives appealed. And with the Fifth Circuit decision, it's entirely possible that these freshly Trumpified courts will let more of these orders take effect.

Jessica Pieklo: The impact of that is terrifying because if they do, conservatives will have de facto banned abortion without the Supreme court having to reverse Roe versus Wade at all.

Imani Gandy: I also just can't help but wonder, Sex in the City style. Like as I looked out the window, I couldn't help but wonder are conservatives actually pretty jazzed about this pandemic? Because it seems to me that they've been able to get away with a lot of crap that they otherwise wouldn't have been allowed to get away with, specifically banning abortion in Texas and forcing people to travel upwards of 800 miles to get an abortion. All the while spreading the Rona hither and yon, willy nilly. I just feel like there are anti-choicers out there who feel like this pandemic is some sort of sign from God that they're on the right path when it comes to protesting clinics. I don't know, maybe it's just me.

Jessica Pieklo: Yeah, no, I think that's legitimate and I wish our listeners could have seen your like Gumby arms doing the spreading the coronavirus hither and Yon.

Imani Gandy: I was like one of those things outside of a car dealership.

Jessica Pieklo: Totally. Hey, we're all getting our movement in as we can like under house arrest. I mean that's right. I think you make a good point. They're really actually exploiting it and this really tees up the opportunity for John Roberts, like they're doing his dirty work for him. He doesn't even have to issue a ruling striking down Roe versus Wade, Texas, Oklahoma, these other States, they're just going to go ahead and do it.

Imani Gandy: It just seems to me that once the coronavirus pandemic is over, if it's ever over, that these anti-choicers, these anti-choice lawmakers are going to use these temporary bans and morph them into permanent bans because once something is already banned, it's easier to keep it banned. It's much harder to unban something that's already been banned. Oh, I just gave myself a headache.

Imani Gandy: On that note, I think the whole, we got to end the episode thing that you were going with earlier. Let's just corral that in right now and say, if you want to donate to us, give us money. I know these are tough times for a lot of people, with people out of work and people using the disposable income they have to help other people who are out of work. But if you enjoy this podcast and if you have a little bit of disposable income, we would love your support to keep it going.

Jessica Pieklo: If you can, please throw us a couple bucks. It'll only take a second and every dollar really does count.

Imani Gandy: The link is rewire.news/boomgive. That's [rewire.news/ B-O-O-M-G-I-V-E](https://rewire.news/B-O-O-M-G-I-V-E).

Jessica Pieklo: It's also in the show notes in your app.

Imani Gandy: So if you would like to talk to us about any of this stuff or any other stuff including, I don't know what you're binge watching on Netflix while you stay at home between now and the year 2030, please hit us up on Twitter. You can find me @angryblacklady. You can find Jess @hegemommy, H-E-G-E-M-O-M-M-Y. And I like how Jess was doing a little shoulder shimmy while I was spelling out her name.

Imani Gandy: If you'd like to, I don't know, convene with us on Facebook perhaps, you should join our Facebook group, Boom! Lawyered, answer the questions. We are going to change it at some point. We really are. But just say something in there that lets us know that you're not some sort of anti-choice jackass and that you're just there to just sort of bask in the pro-choice reproach justice and rights love.

Imani Gandy: It's fantastic. And aside from that, Jess, now you get to say it. What are we going to do?

Jessica Pieklo: We'll see you on the tubes, folks.

Imani Gandy: We'll see you on the tubes, folks. Boom! Lawyered is created and hosted by Jessica Mason Pieklo and Imani Gandy. Marc Faletti produces the show.