

[Actual Good News on COVID-19 Abortion Bans](#)

- Imani Gandy: Hello, fellow law nerds! Welcome to another episode of Boom! Lawyered, a Rewire.News podcast hosted by the legal journalism team that has been watching Schitt's Creek desperately. Just desperately every day, because it's the only thing that's keeping me happy. 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. 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, you know how we generally just pile on bad news for 20 to 30 minutes a week and then we're just like, "Peace out, see you on the tubes."
- Jessica Pieklo: I mean, that's not all we do, but okay.
- Imani Gandy: I know, that's why I said generally. But we do it a lot, because we're living in rough times and we have been living in rough times since long before the 'Rona hit. So we do our weekly podcast and we try to frame the bad news as delicately and humorously as possible, so as not to leave our listeners wanting to self-defenestrate.
- Jessica Pieklo: Self to what? I'm sorry, what? What did you say? I don't even know what that is. What's that word?
- Imani Gandy: Self-defenestrate. So, defenestrate means to throw something or someone out a window. So as far as I'm concerned, self-defenestrate means to throw oneself out a window.
- Jessica Pieklo: Okay, Imani, we definitely don't want our listeners to do that though. Please, no.
- Imani Gandy: I know. Today they won't even have to consider doing that.
- Jessica Pieklo: That's because we actually have good news to report. I feel weird even saying that, but it's true, we do. So you know all those Republican efforts to try and use the Coronavirus pandemic to ban abortion, guess what? They're floundering.
- Imani Gandy: Thank God, because the arguments they are making are ri-goddamn-diculous.
- Jessica Pieklo: In the last two days alone, medication abortion services had been restored in both Texas and Oklahoma, while brand new lawsuits had been filed in Arkansas, Tennessee and Louisiana.

Imani Gandy: Sweet, fancy Moses. You didn't even mention the Supreme Court petition. There's already one Supreme Court petition filed in this latest round of 'Rona abortion bans.

Jessica Pieklo: No wonder we are so tired. The landscape of abortion access is shifting rapidly and it feels like something new is happening every day, because literally, it is. What states are trying to use COVID-19 to try and ban abortion? How are the courts responding? It's almost impossible to keep up with.

Imani Gandy: That's what we're going to talk about this week. So strap in, please return your tray tables to their upright and locked position.

[music break]

Imani Gandy: So first things first: abortion remains legal in all 50 states and DC. Whoo, it's true!

Jessica Pieklo: It's weird to say that, but applaud it. But that's thanks to the courts, frankly. So far, eight lawsuits had been filed to protect abortion access during the Coronavirus outbreak. Those lawsuits have produced three courts of appeals decision and like Imani said, one Supreme Court petition.

Imani Gandy: That is a lot of court filings and a lot of opinions in a matter of weeks. So much so that Judge Myron Thompson in Alabama issued a preliminary injunction on a Sunday, on Easter Sunday.

Jessica Pieklo: Hallelujah.

Imani Gandy: Alabama. He's in Alabama, they are very religious people. He's out here issuing preliminary injunction orders on a, I almost said goddamn, but you can't goddamn Sunday when you're talking about Easter, but then I just did it. So what am I supposed to do, Jess? I'm a heathen.

Jessica Pieklo: You are.

Imani Gandy: But the point is so many court filings, so many lawsuits, so many opinions.

Jessica Pieklo: Jesus rose, as did Judge Thompson. As I mentioned in the upfront, this week alone advocates have filed lawsuits in Louisiana, Arkansas, and Tennessee to challenge efforts in those states to try and "delay" abortion care. Those new challenges joined ongoing cases in Alabama that Imani mentioned, Ohio, Oklahoma, and Texas.

Imani Gandy: Okay, that's seven, seven, but we said there were eight lawsuits. Don't make me do my whole Monica Friends "seven, seven, seven, seven" thing again. So, but you said there were eight, so we can't have lost track already. Where's that other lawsuit?

Jessica Pieklo: Iowa. The great state of Iowa, that's the eighth. Unlike the other seven lawsuits though, the fight in Iowa is over. Attorneys for the state and advocates there have entered into a settlement agreement and that agreement says basically conservatives in the state will stop using COVID-19 to try and ban abortion.

Imani Gandy: I mean, they're just going to wait till all of this passes to restart abortion bans. I mean, you notice how there hasn't been a lot of movement in just the regular non-COVID-19 abortion rights cases, and everything's seems to be flowing at a rapid velocity on these COVID-19 abortion cases. But they're always going to try to ban abortion, 'Rona or no 'Rona.

Jessica Pieklo: 'Rona or no 'Rona. We're getting a whole new soundtrack out of quarantine folks, let me tell you. So we've talked about some of these lawsuits before on the show. Unlike other attempts to end legal abortion, say bypassing a law that bans the procedure at six weeks like some states have done, officials in conservative-led states have tried something new. Governors across the country began announcing executive orders that suspended non-essential medical procedures and surgeries from taking place right now.

Imani Gandy: In states where Democrats are in charge, abortion is considered an essential service that can't be delayed, because duh, right? But in states like Texas where Republicans rule, it's a different story. They've tried to claim that abortion care isn't essential and can be delayed. That's really the nugget of the fight here, and that's why this month the map of abortion access has looked like some kind of CNN state of play election night graphic.

Jessica Pieklo: I mean, it totally has. That state of play is exactly right, because if this last week of court filings has proven anything, it's just how political these latest attempts to ban abortion access are. So, let's walk through the timeline here to give listeners a clear picture of what we're talking about. We'll focus on Texas, because, you know, Texas.

Imani Gandy: Texas. Okay, so here we go. On March 22nd, Governor Greg Abbott announces an executive order delaying non-essential medical services as part of the state's COVID-19 response.

Jessica Pieklo: The very next day, indicted Attorney General Ken Paxton announces that that EO covers abortion providers and that his office is fully prepared to jail anyone who violates it.

Imani Gandy: Then on March 25th, so that's three days after the EO, the executive order – (singing) EO, EO, EO -- is released, advocates sue to block it. I don't know why EO, EO, EO -- that seems like it should be a song.

Jessica Pieklo: Imani's going to turn this into an EDM party by the end of the episode.

Imani Gandy: So at the very end of March, American hero Federal District Judge Lee Yeakel issues a temporary restraining order that blocks Texas from enforcing the executive order. Now Yeakel is the judge who provided over Whole Woman's Health versus Hellerstedt, that landmark 2016 case. He routinely issues very thoughtful and comprehensive orders and then the Fifth Circuit comes in and just fifth-circuits all over the goddamn place, basically ignoring settled law and going rogue, but I digress.

Jessica Pieklo: Well, here's a good example of it. The very next day after Yeakel's order, the Fifth Circuit said, "Nah, Texas can go ahead and ban abortion right now." Then it followed up by issuing a bonkers opinion that basically created a national emergency exception to the right to abortion.

Imani Gandy: Well, Judge Yeakel didn't really like that decision very much, so he went ahead and issued a second TRO on April 9th after plaintiffs asked for another narrower TRO. Now this one was very detailed and had extensive findings of fact on the impact and burden of Texas' actions. So, I bet you can guess what happened next.

Jessica Pieklo: The very next day, again, the very next day, the Fifth Circuit, once again, blocks the Yeakel's order.

Imani Gandy: Because it went and Fifth Circuited all over the place, as it does. Exactly, good God. So as of April 10th, abortion was basically banned in Texas, but nowhere else, just in Texas. Because while the Fifth Circuit was giving us all whiplash, other federal courts were issuing orders that said abortions could continue in those states.

Jessica Pieklo: The situation was so bad that providers filed an emergency petition over the weekend with the Roberts Court to try and restore access in the state. Imani, think about that for a second. Abortion rights advocates thought they stood a better chance of opening up clinics if Sam Alito weighed in, rather than the Fifth Circuit taking another swing at it.

Imani Gandy: Well, the gamble paid off. In between Saturday's emergency filing and recording this podcast, the Fifth Circuit blinked. Late Monday night the Fifth Circuit issued an order that lets Yeakel's second TRO take effect.

Jessica Pieklo: The Fifth Circuit issued that decision only after it was clear their other opinions upholding Texas' COVID-9 abortion ban were so wildly outside the legal mainstream that the Supreme Court was going to have no choice but to embarrass the Fifth Circuit.

Imani Gandy: So that's great, wonderful. But what does this all mean? Can someone get an abortion in Texas now?

Jessica Pieklo: In theory, yes. For right now they can. Under Yeakel's order, medication abortion and those abortions that would reach the state's 20 week ban can continue while the underlying litigation proceeds. Now on Tuesday, advocates withdrew their Supreme Court petition and as of the recording of this podcast, Texas hadn't yet filed their own. So that means that right now the Supreme Court is staying out of the COVID-19 abortion fight.

Imani Gandy: Now that's great news. Very, very good news, as is news that courts continue to block this nonsense effort by the states to ban abortion during this pandemic.

Jessica Pieklo: It is, I love having a podcast about good news.

Imani Gandy: Yeah, all right.

Jessica Pieklo: But Imani ...

Imani Gandy: No, no.

Jessica Pieklo: Okay, so I hate to do this.

Imani Gandy: No.

Jessica Pieklo: But okay, I'm just going to do this.

Imani Gandy: Oh, no.

Jessica Pieklo: I'm worried about these orders.

Imani Gandy: No, no, no. Don't make a liar of me, Jess.

Jessica Pieklo: Wait, wait. What do you mean?

Imani Gandy: Well, I said in the upfront that this episode wouldn't leave our listeners wanting to self-defenestrate, and then here you come with your I'm worried about these orders business. Don't do it, no. That's all folks, see you on the tubes. Podcast episode over. Nice job everyone, high five!

Jessica Pieklo: No, no, no, no, no, no, but wait, wait, I'm sorry. I really sincerely am. But I have to tell our listeners why I'm worried, it's just who I am. I mean, frankly, Imani, you knew that when you became my work wife.

Imani Gandy: You're right, you're right. This is what I signed up for. So, what do you mean that you're worried, Jess? You're worried about orders keeping abortion access open? What on earth are you talking about, my love?

Jessica Pieklo: I know. I'm sorry, just hear me out. Okay, so hear me out. The attacks on medication abortion during all of this are so obviously in bad faith, right?

Imani Gandy: They are so absurd, right? The whole concern apparently is that abortion providers are using a PPE that could better be served taking care of COVID-19 patients. But medication abortion involves taking pills, there's no PPE involved, and even if there is on the off, very, very minuscule chance that there is some sort of abortion complication that requires admission to a hospital, even then being pregnant and delivering a baby uses more PPE than any abortion ever could. So what the ever-loving fuck?

Jessica Pieklo: Exactly, exactly. I mean, courts have really seen all of that nonsense, all of that bad faith, and that is fantastic. But in these orders protecting medication abortion and abortions that would otherwise time out under state gestational limits, like a 20 week ban, courts are creating a huge carve out for later abortion. These orders are working like de facto D&E bans, and I don't think that's dawned on everyone yet.

Imani Gandy: Ah, crap. You're right, as usual. Okay, fine. So say more about that.

Jessica Pieklo: So this is my thinking. Dilation and extraction is the most common form of later abortion, right? It's sometimes called surgical abortion, but that's a misnomer, because there's no real surgery involved in the procedures at all.

Imani Gandy: So they're procedural abortions?

Jessica Pieklo: Right. So anyways, anti-choicers had been trying to outlaw D&E procedures for eons now.

Imani Gandy: This is true, they have. 11 states, including Texas, have attempted to enact some sort of D&E ban. Texas' is hung up in court right now. The Fifth Circuit court of appeals is actually waiting for the Supreme Court to issue a decision in June medical services first before deciding whether or not Texas' D&E ban can take effect.

Jessica Pieklo: But thanks to these COVID-19 orders, the Fifth Circuit doesn't need to issue a ruling right now, D&E abortions have been effectively banned at the moment.

Imani Gandy: Did I already say oh crap? Because, oh crap.

Jessica Pieklo: Oh crap, indeed. See what I'm saying? I'm worried that if and when this Coronavirus madness is over and these orders start to lift, that we'll see anti-choicers use the fact that D&E procedures were suspended now to say, "See? Banning them altogether is not really a big deal, there's no undue burden there."

Imani Gandy: That is absolutely what they're going to try to do, because they are the worst. But fortunately, the lawyers working these cases are excellent and they're not going to countenance any of Texas' shenanigans.

Jessica Pieklo: Countenance shenanigans? Dude, Imani, I'm sorry, you got to stop watching all these BBC shows. What? Countenance shenanigans?

Imani Gandy: Or maybe you need to start watching more BBC shows. Have you thought about that, Jess?

Jessica Pieklo: Okay, this is now digressed into an exchange between my children, basically. I think we are done here.

Imani Gandy: I'm just saying. So, that's going to wrap it up for us this week. So if you enjoy this podcast, if you enjoy me and Jess, if you enjoy listening to us talk about abortion rights and if you have a little bit of disposable income, we would love your support to keep this going.

Jessica Pieklo: If you can, please throw us a couple bucks, it will only take a second and truly every dollar counts.

Imani Gandy: It really does. Honestly, we're blown away by the extremely generous donations that you've already made. We've had multiple hundred dollar donations and people are signing up to give monthly, which is just incredible.

Jessica Pieklo: I mean, I'm speechless. Well, and Imani and I are lawyers, so we take this privacy stuff seriously. If you're okay with us shouting you out by name, hit one of us up on Twitter with the hashtag #BoomLawyered and we'll celebrate you right here on the damn pod.

Imani Gandy: Woo.

Jessica Pieklo: You can support us at rewire.news/boomgive.

Imani Gandy: That's rewire.news/boomgive. And we now have text giving, because it is the 21st century and we are on top of it.

Jessica Pieklo: What? Get out. What?

Imani Gandy: I know. You can text BOOMGIVE, B-O-O-M-G-I-V-E, all one word, to 44321. That's BOOMGIVE to 44321. That is so rad.

Jessica Pieklo: Oh my God, we're joining the youths.

Imani Gandy: The youths.

Jessica Pieklo: There's also a link in the show notes in your app. Thank you all so much for the support.

Imani Gandy: Thank you for the support. If you'd like to talk to either of us about anything at all, you can find me on Twitter at @AngryBlackLady, you can find Jess on Twitter

at @Hegemommy, H-E-G-E-M-O-M-M-Y. You can join our Facebook group, answer the questions if you can, or just say something that lets us know that you're not some sort of anti-choice numpty.

Imani Gandy: Aside from that, what are we going to do, Jess?

Jessica Pieklo: We'll see you on the tubes, because y'all should be staying home still.

Imani Gandy: See you on the tubes, stay home. Social distancing.

Imani Gandy: Boom! Lawyered is created and hosted by Jessica Mason Pieklo and Imani Gandy. Marc Faletti produces the show.