

BOOM! LAWYERED: NUKE THE FILIBUSTER?

Imani Gandy: Hello, fellow law nerds! Welcome to another episode of Boom! Lawyered, a Rewire News Group podcast hosted by the legal journalism team that is still a little verklempt about the fact that we have a Biden administration now, instead of that other jackass administration. I mean ... I guess I'm Imani Gandy?

Jessica Pieklo: And I'm Jess Pieklo?

[laughter]

Rewire News Group is dedicated to inspiring you to own your relationship to sex, abortion, parenthood, and power. 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: Like I said in the upfront, life is weird, man.

Jessica Pieklo: So weird!

Imani Gandy: It's just weird under the Biden administration. You were just mentioning that you don't really know how to handle it, now that there's not just crisis after crisis after crisis.

Jessica Pieklo: I'm anticipatorily sweaty.

Imani Gandy: Yes. We were sweaty for four straight years. Now, my sweat glands are recovering. I don't know if they regenerate like the liver does, but I'm feeling fresh and clean. I don't know how to feel about it.

But, Jesus, that said ...

Jessica Pieklo: Imani, Democrats just might snatch defeat from the jaws of victory.

Imani Gandy: No ...

Jessica Pieklo: Like they are wont to do!

Imani Gandy: No ... Why? Democrats, why?

Jessica Pieklo: I mean, we're weakened.

Imani Gandy: Yeah. I mean, so far so good. We're weakened. That is a fact.

Jessica Pieklo: Okay. All right. Good show. Let's pack it up. We're weakened, but there's already some nonsense afoot when it comes to the Senate, Mitch McConnell, and the filibuster.

Imani Gandy: And my question is why, right? Democrats have a majority with Kamala Harris as a tie-breaker. I know there was a lot of consternation about power-sharing agreements. And people were mad at Democrats because frankly, a lot of people don't understand how Senate committees work, but that's another topic for another time.

But there is this heavy-hearted feeling that even though we basically control Congress now, somehow, Democrats are going to manage to screw it up. I just need you to tell me that that's not the case.

Jessica Pieklo: I can't do that, Imani.

Imani Gandy: Jess ...

Jessica Pieklo: Sorry.

Imani Gandy: All right. Should we talk about the filibuster, then, I guess?

Jessica Pieklo: Yes! We have to talk about the filibuster. If we don't talk about the filibuster, we're not going to get shit done!

Imani Gandy: And that's basically what the filibuster is. It's the Senate procedural version of, "We ain't gettin' shit done."

The filibuster is a Senate tactic to delay or block a vote on legislation. You've probably seen Mr. Smith Goes to Washington where he's all, "I will not yield." The white people are all, Whoo-hoo! That's a talking filibuster.

You may also remember Wendy Davis in the Texas Senate-

Jessica Pieklo: Wendy Davis-

Imani Gandy: ... remember?

Jessica Pieklo: Yeah, yeah, yeah.

Imani Gandy: That was an amazing talking filibuster she did for 14 hours or something by herself. But essentially-

Jessica Pieklo: In those sneakers.

Imani Gandy: In those sneakers that became all the rage. But essentially, the filibuster allows a Senate minority to just gum up the works by holding the floor. And would it surprise you if I told you that the filibuster became a tool of white supremacy?

Jessica Pieklo: Get out!

Imani Gandy: Ha! Well, I never. So let's talk about that. In the early days of the filibuster; back in the beginning days of the filibuster, legislation could be held up by literally two, three or four people.

Jessica Pieklo: Okay.

Imani Gandy: If two, three, or four senators wanted to be obstructionists, they could. It was during Woodrow Wilson's presidency that the rule allowing two-thirds of the Senate to end a filibuster arose. That was later reduced to three-fifths. So right now, ending a filibuster requires 60 votes. Okay?

Jessica Pieklo: Okay. And the filibuster is basically just talking or blocking.

Imani Gandy: Right.

Jessica Pieklo: It is a rule designed to just block shit in the Senate.

Imani Gandy: Right. To keep it from even coming up for a vote. Just blocking shit just to block shit.

Jessica Pieklo: All right.

Imani Gandy: Even with these new Woodrow Wilson-era reforms that allowed breaking this deadlock, Southern segregationist Democrats were so racist and so well-organized, that they were able to block civil rights legislation that would have ended Jim Crow and the racial terror of the late 19th, early-to-mid 20th century.

Basically all of the Jim Crow from all of the time immemorial. Senate segregationist Democrats were like, "We still need that, so we're going to go ahead and block civil rights legislation."

And ironically, because these racist asshats were so successful in using the filibuster to block civil rights legislation, no one else wanted to use it to obstruct any other kinds of legislation, because they didn't want to be associated with this Jim Crow tactic.

Jessica Pieklo: Hold up, hold up, hold up.

Imani Gandy: Yep.

Jessica Pieklo: It used to be unpopular to be an obstructionist asshole in the Senate?

Imani Gandy: Oh yeah. No, it used to be that the Senate wanted to get stuff done.

Jessica Pieklo: What?

Imani Gandy: That's the point of the Senate, is to get shit done. I know it's like, who can even fathom that? You and I are basically 100 years old. We don't even remember a time when the Senate used to actually get shit done.

David Litt has this really good article in the Atlantic that he published on Monday, that explains all of this. And points out that the United States Senate became this auguste body that passed most of the New Deal; that passed the Marshall Plan; that created the interstate highway system and all of these big structural changes, as my homegirl Liz likes to say.

But it also allowed a bunch of racist assholes to stymie legislation that would have, as I said, reduce the racial terror that white people were perpetrating against black people.

Jessica Pieklo: Okay.

Imani Gandy: And I'm sure it won't surprise you to know that the longest filibuster in history came in 1957 from none other than Strom Thurmond, who-

Jessica Pieklo: Oh, that guy.

Imani Gandy: ... shocking surprise, was protesting civil rights legislation.

And here's where it gets real fucked up. The most obstreperous use of the filibuster was blocking anti-lynching laws. There was this dude named Henry Cabot Lodge back in 1920, who introduced the law that said, "You know what? Maybe we shouldn't be hanging black people from trees."

Jessica Pieklo: Seems reasonable.

Imani Gandy: And some of these senators were like, "No, maybe we should still keep hanging black people from trees. Because I like hanging black people from trees." So what they did is- they used-

Jessica Pieklo: It's a family affair.

Imani Gandy: It actually was a family affair. There-

Jessica Pieklo: It was. It was not a joke.

Imani Gandy: It was not a joke at all. There is really horrifying imagery of black people literally hanging from trees.

Strange Fruit? That's where that song, Strange Fruit, comes from.

Jessica Pieklo: Yep.

Imani Gandy: With white people picnicking in their Sunday best, underneath the bodies of black people. I mean, the history of this country is super fucked up.

Jessica Pieklo: This is how white women propped up racism by bringing their kids to lynchings and saying, "Look, this is our family value."

Imani Gandy: Yes. And the filibuster was used 200 times between 1920 and 2005.

Jessica Pieklo: 200 ...

Imani Gandy: 200 times to block 200 efforts to pass an anti-lynching law. It's so egregious that in 2005, the Senate passed a resolution formally apologizing to lynching victims for its inaction.

Which, I guess that's nice, but it's about 100 years too late. And all the lynching victims aren't exactly alive to benefit from this quote-unquote formal resolution.

The point of this is to say, as Obama said at John Lewis's funeral earlier this year, it is a relic of Jim Crow. And it needs to get gone.

Jessica Pieklo: Yeah.

Imani Gandy: It needs to be gone. I know in my heart of hearts that the filibuster needs to go, but my brain is still protesting. And we can talk about that a little bit later.

But for now, suffice it to say that ending a filibuster requires 60 votes. Democrats hold 50 seats in the Senate. In order to pass bills; to get bills to the floor for a vote; they need to find 10 Republicans to support their legislative efforts. So good luck with that. Right? You're familiar with this Congress, right, Jess?

Jessica Pieklo: Oh, a little.

Imani Gandy: You think that they're going to be able to find 10 Republicans?

Jessica Pieklo: Ay-yi-yi.

Imani Gandy: It's questionable. But let's just say that the Senate is very, very polarized. And I just, I just ... ugh. It's so stressful.

And it's even more stressful because please tell me, please talk to me about the Democrats who are just gumming up the works.

Jessica Pieklo: I was going to say, it's not just that we would need to find 10 Republicans. We also apparently might need to bring a couple Democrats along on a Democratic agenda, which ... let's just let that hang for a minute. Okay?

Arizona Senator Kyrsten Sinema and West Virginia Senator Joe Manchin are the two main Democratic senators who have said, "You know what? That filibuster is totally cool. And, it's an excellent way to govern this country."

So again, Imani, I have to ask you: Why are Democrats like this? Why?

Imani Gandy: I just ... All right, let me just take a beat-

Jessica Pieklo: Pull it together ...

Imani Gandy: ... and just talk to you about- Let's talk about the origins of the filibuster. I talked to you about the racist ass-hatted-ness of the filibuster.

Jessica Pieklo: Yeah. So the racism is what keeps the filibuster, right?

Imani Gandy: Let's talk about what makes the filibuster.

Jessica Pieklo: Ooh, I love this.

Imani Gandy: Why did that just turn into a Seinfeld bit? You can't just keep the filibuster. You have to make the filibuster.

Jessica Pieklo: Because we're 800 years old.

Imani Gandy: Yeah, we are. Have you ever wondered why it is that senators can filibuster, but representatives in the House can't?

Jessica Pieklo: Honestly, I have. That's a good question.

Imani Gandy: And I will tell you why.

Jessica Pieklo: I love this question.

Imani Gandy: I'll tell you why. It's because the filibuster was a mistake. Literally.

Jessica Pieklo: What?

Imani Gandy: The filibuster was a mistake. It was basically a copy editing error. I swear, this is true.

Jessica Pieklo: Get Esther on this! What!

Imani Gandy: I know. Esther is our senior editor. She's a copy editing and editing genius. Neither here nor there, or both here and there. Who knows.

But Aaron Burr, back in the day ... way back in the day-

Jessica Pieklo: Aaron Burr?

Imani Gandy: Way-

Jessica Pieklo: Aaron Burr. From Hamilton, Aaron Burr?

Imani Gandy: Yes. That Aaron Burr. Lin-Manuel Miranda's Aaron Burr. He took a look at the Senate rule book and was basically like, "You know what? There are too many words."

Jessica Pieklo: I mean, I agree.

Imani Gandy: I mean, there are too many words. But the problem is, he cut out what he thought was superfluous language that was actually not superfluous language. Because that language was the, quote, previous question motion.

Jessica Pieklo: A previous question huh? What?

Imani Gandy: It's a previous question motion. It basically allows a majority of lawmakers to end debate and force a vote on a bill. That's how it works in the House. There's no infinite debate in the House of Representatives.

Without that language in the Senate rules, it means that U.S. senators can endlessly debate a bill without ever bringing it for a vote.

Literally, because Aaron Burr crossed out this language; this previous question motion; it set up a system whereby senators can just block and block and block, endlessly debate a bill, without ever bringing it to the floor.

Jessica Pieklo: Seems great.

Imani Gandy: Yeah. Totally awesome.

Jessica Pieklo: Seems like a cool way to run a country.

Imani Gandy: Right. So when you hear people talk about how the Founders intended the Senate to be able to endlessly debate a bill; that it's just part of the history of the Senate, and it's what the framers would have wanted. You can go ahead and slap them, Moonstruck style.

Jessica Pieklo: Oh, I love that.

Imani Gandy: And tell them to snap out of it. Yeah. I know you love Moonstruck-style slap. So feel free to go ahead and just get your Cher on, because it's not true.

You've been conned by a dipshit; and I'm going to call Aaron Burr a dipshit, who was fresh off the heels of literally murdering Alexander Hamilton in a duel. This

guy was like, "Pew-pew-pew! You're dead. I'm going to go to the Senate and fuck shit up." That's what happened.

Jessica Pieklo: So basically, toxic masculinity is the reason for the filibuster.

Imani Gandy: Toxic masculinity and a copy editing mistake. Yes. This is amazing. Basically, this is all Aaron Burr's fault. Not only did he murder Alexander Hamilton, but he murdered democracy on the first day. Aaron Burr murdered democracy!

Jessica Pieklo: Yes. Yes.

Imani Gandy: That's the lead! Yes, that is the lead. Let's fast forward to now.

Jessica Pieklo: Okay.

Imani Gandy: ... That's a really weird fast forward sound, but we're going to just move beyond that, and talk about why it is a handful of Democrats are so petrified of killing the filibuster.

Jessica Pieklo: Imani ...

Imani Gandy: Yes ...

Jessica Pieklo: The Senate loves tradition and norms.

Imani Gandy: Blah. Blah.

Jessica Pieklo: There is nothing more important to the Senate than governing by norms. I mean, that's what Mitch McConnell has learned, right? That is what the Senate is for.

It's a deliberative, intentional body to make sure that the House doesn't just go ham, right? That we are adults; the Senate, they're the adults. Okay. Hold on, hold on, hold on.

Imani Gandy: Your delivery is so good that I can't really even tell if you're being serious or not right now.

Jessica Pieklo: And, Imani, if we lose the filibuster-

Imani Gandy: Yeah, yeah.

Jessica Pieklo: ... Republicans have hurt us. And they're going to hurt us again.

Imani Gandy: Yeah. That's true; it does hurt.

Jessica Pieklo: So I'm going to say that, you know what? Those are the reasons for keeping the filibuster. The norms are important. The Senate is an important and mature deliberative body with the-

Imani Gandy: Mature.

Jessica Pieklo: ... business of governing at its core.

Imani Gandy: Yes.

Jessica Pieklo: That's why we keep the Senate filibuster.

Imani Gandy: Okay. I know you're being sarcastic here, but-

Jessica Pieklo: Okay.

Imani Gandy: What if I agree with the Democrats' reasons for being scared to kill the filibuster? The look you're giving me right now is fucking fantastic.

But seriously, what if I agree with them?

Jessica Pieklo: Wait, I'm supposed to answer? We've been friends for a long time.

Imani Gandy: We have. We have.

Jessica Pieklo: So I'm going to call you in on this one.

Imani Gandy: Please, okay, do it.

Jessica Pieklo: So-

Imani Gandy: Drag me, drag me.

Jessica Pieklo: Oh no, I would never do that.

Look. The arguments for not keeping the filibuster, I think, quite frankly, are part and parcel of a bad-faith obstructionism across the board.

We know that Republicans are the party of bad-faith obstruction. We know that. They don't get anything done. And they don't want Democrats, especially, to get anything done.

The worst thing for Republicans right now would be for Democrats to have a single policy success, let alone 18 months of policy successes leading up to the midterm elections. Okay?

Imani Gandy: Yeah.

Jessica Pieklo: What they want, what Mitch McConnell wants, why he's going back to, "This is about norms and traditions," and why you're hearing all of those talking points, is because they want to be able to use this as an electoral point to say:

"Look. In the midterm elections, Democrats have had 18-some-odd months to lead, and they haven't done shit. They had control of the presidency, the House, and the Senate. And guess what? They still couldn't get anything done."

And a lot of people are going to be like, "Yep, you're right. Those Democrats really can't get anything done." So, that is why. Okay?

And let's have a word with those Democratic obstructionists who are joining the ranks. What they want to do is to be able to blame Republicans for blocking Democratic measures to their voters back home, right?

Imani Gandy: Yeah.

Jessica Pieklo: I have some sympathy for being a Democrat in West Virginia. That ain't easy, I have to imagine.

However, what we need to do as advocates is explain to those voters that this time it's actually not Mitch McConnell that's not giving them a COVID check. It's their own damn Democratic senator. And if you want a COVID check, talk to your Democratic senator and have them get on board.

Imani Gandy: There's a New York Times reporter; I think she's with the Times; Amanda Litman, who tweeted the other day something like: A lot of people don't understand what the filibuster is, or how it works. But what they do understand is that Democrats will have had control of the White House, the Senate, and the House. And if they don't get anything done, they're going to be pissed off.

And if you come at them with, "Well, they didn't have cloture. They didn't have 60 votes and blah, blah, blah," they're going to tune out. They don't care about that shit.

What they want to know is why they don't have a COVID check, why the pandemic isn't under control, and why it is nothing has changed since the homicidal canned yam got booted out of office.

Jessica Pieklo: Yeah. The bottom line at a most fundamental level; and I will be evangelical about this; is that we have to blow up the filibuster if we want to get any liberal, let alone progressive, policy enacted. Because it's not just about getting it passed.

We're in negotiations as, I mean, this is how the sausage gets made. We have to negotiate with these people, too. Getting a bill to its form and final passage with

a filibuster threat hanging over, it ain't happening with the folks who are in that mushy middle. That's all.

Imani Gandy: What about the fact that as history has shown us, Democrats take control of the government, then Republicans take control of government? It just swings back and forth like a pendulum.

My concern is what happens in 2022, when Republicans; or if Republicans take back either the House or the Senate, and they start screwing us again. If you think about what happened back in 2009. Harry Reid nukes the filibuster in order to get Obama's district court judges, his lower court judges confirmed.

Jessica Pieklo: Yeah.

Imani Gandy: And we were all like, "Good, because we really need these judges." Then what happened, Mitch McConnell came along and nuked it even further. That gave us these shit justices. That gave us Gorsuch, who's not as shit as we thought he was. We've already been through that. But it definitely gave us Shit Justice Brett McBeer and Shit Justice Amy Coney Barrett.

It seems to me; and maybe this is just my ... I don't know, my concern about Democrats being ... not to put too fine a point on it, nutsacks. Right?

But we need a Mitch McConnell. Democrats need a Mitch McConnell, and we don't have one. And I don't have faith that even if Democrats do nuke the filibuster, that they will be able to stop being nutsacks long enough to actually get shit done.

If they nuke this filibuster, they need to go absolutely buck wild on everybody's asses. They need to pass so much legislation that people are like, "Enough already. I'm tired of getting all this stuff done. Too much progress." That's how buck wild Democrats need to go.

I'm talking about unpacking the courts. \$2,000 stimulus checks, retroactive to the beginning of the pandemic. Some kind of healthcare plan that gets the millions of people who are uninsured, insured. You know what I mean? That's the sort of shit that needs to get done.

Do you think Democrats have the ovaries for this? Because I am very, very skeptical. I'm just worried that they have two years to get shit done. They nuke the filibuster and they still piss away these two years.

Jessica Pieklo: I mean, look. That is a legitimately fair concern with a lot of the Democrats in the Senate. I will say that I do feel, I think, maybe a little more optimistic in this space, given the fresh round of folks in the Democratic bench that we see coming into the Senate, and in Democratic leadership in general.

So if you were to say, "Hey, Jess, do you think it's going to be Dianne Feinstein who leads the charge on all of these progressive measures? Killing the filibuster and all of that?" I'm going to say No.

Imani Gandy: No, right.

Jessica Pieklo: A couple of the junior senators from Georgia? Perhaps.

Imani Gandy: That's true.

Jessica Pieklo: I think that there's there. But also I really want to go back to this point that you raised earlier. Because this is one of the main sticking points for me. Is that Democrats have no choice but go big or go home.

I don't know if you've noticed the country's in shambles.

Imani Gandy: Yes. Yes, it is.

Jessica Pieklo: There's a lot of shit to fix. And like you said, most voters don't actually care about those rules. I mean, look: I am as big of a rules nerd as they come. And I didn't know the origin story of the filibuster and Aaron Burr and the copy edit.

Do you think voters who are not this dialed in, because they have other shit to deal with, and made better life choices than I did, are going to be that dialed in? I don't think so.

Imani Gandy: Yeah.

Jessica Pieklo: So why would Democrats twist themselves into pretzels worrying about a fight over rules language? When all they need to do is say, "Hey, look, I want to forgive your student loans, but Mitch McConnell and the Republicans are making it impossible because of this rule."

That, to me, seems like if we can just deliver policy results, I think we've got to believe that voters will deliver electoral wins.

Imani Gandy: Yeah. Yeah.

Jessica Pieklo: I mean, it's like the Indiana Jones and the Last Crusade, Imani.

Imani Gandy: It's like the what? Oh, wait, how did we from the filibuster to Indiana Jones?

Jessica Pieklo: It's the leap of faith scene in that movie! I swear to God.

Imani Gandy: Okay. Okay.

Jessica Pieklo: Stick with me. All right?

Imani Gandy: Yep. Okay, okay.

Jessica Pieklo: So we're battling Nazis. We don't know what the future holds.

Imani Gandy: We actually are battling Nazis!

Jessica Pieklo: I was not joking when I said it was like the Last Crusade.

Imani Gandy: I know you weren't; you weren't.

Jessica Pieklo: Here we are. We know the forces of good are on our side. We know that we can vanquish the Nazis. But the path isn't clear; we can't actually see it.

We just know that we've done our homework. We've been obsessing about this shit for at least the last four years. If we take the leap of faith and govern like we actually won-

Imani Gandy: Yeah. Sky's the limit; it could happen. Yeah, okay.

Jessica Pieklo: I'm just saying ... I'm just saying. And, like I mentioned, we may not have any choice but to go for it. Because like in the Last Crusade, we're fighting actual Nazis!

Imani Gandy: Yes. Yes.

Jessica Pieklo: This is a real thing!

Imani Gandy: How did we get to the point where we're fighting actual Nazis? My God. So, okay. All right.

Basically, you're saying you just got to close your eyes and jump. Close your eyes and jump.

Jessica Pieklo: Take the leap of faith, Democrats. Do it!

Imani Gandy: Yeah. Yeah. Okay. All right. All right. I'm on board now. I'm on board for that. But-

Jessica Pieklo: Okay.

Imani Gandy: Let's say they can't get Manchin and Sinema on board. Let's say Democrats don't nuke the filibuster. That doesn't necessarily mean that every Biden-Harris policy is going to be dead on arrival. Right?

Jessica Pieklo: Did you just "Well, actually" me? I think you just "Well, actually'd" me. I mean, you're not wrong. But I'm just saying.

Imani Gandy: Yeah, that's true, I did, I did.

Jessica Pieklo: No, you're absolutely right. It's not truly an all-or-nothing situation, even though I have been shriekier than usual in this episode about it. It would be so much better if we didn't have the filibuster.

But if we end up stuck with it, Dems, do you have a workaround for Senate Republicans and a couple of those holdouts. And those Senate Republicans; those 45 of which, by the way, voted to not move forward with impeaching Trump for sedition. Those are the folks that we will be dealing with in the Senate.

Democrats can use what's called budget reconciliation.

Imani Gandy: Oh, boy. That sounds real wonky. That sounds wonky. I need you to explain what that is.

Jessica Pieklo: Yeah. Get some caffeine. I'm actually not going to get into the weeds on it, because there is a lot. But the TLDR on it is that it's a process that can only be used on taxing and spending measures, which is basically the budget.

Imani Gandy: Right. So it is super weedy, as you said. But let me just see if I got this right.

Jessica Pieklo: Yeah.

Imani Gandy: Budget reconciliation is a way to expedite consideration of certain legislation, if that legislation is related to spending, revenue, the debt limit, right? Budget shit.

Jessica Pieklo: Yeah. Yeah.

Imani Gandy: And in the Senate, reconciliation bills aren't subject to filibuster.

Jessica Pieklo: Right.

Imani Gandy: That means that Democrats can shove policy into the budget, then try to get it passed through this budget reconciliation process, which disallows Republican senators to filibuster. So they can enact controversial shit, as long as it's related to taxing and spending.

Jessica Pieklo: Yes. That's the key.

Imani Gandy: What kinds of things are related to taxing and spending? The ACA! Yeah. Republicans used this budget reconciliation process when they tried and failed to repeal the ACA.

Instead of repealing the ACA, which was wildly unpopular with a majority of Americans, because people thought it was Obamacare; and that somehow worked; the Republicans ended up using this budget reconciliation process to zero out the penalty associated with the individual mandate. Right?

Jessica Pieklo: Mm-hmm (affirmative).

Imani Gandy: We talked about that. How, if you didn't buy insurance, then you had to pay this tax ... was it a tax? Was it not a tax? There was a whole lawsuit about that.

The SCOTUS got involved, Roberts got involved. They went ahead and zeroed out that mandate.

Jessica Pieklo: Right. Right, right. And just to lay a finer point on what bad-faith actors the senators are; Republicans led by Ted Cruz launched that bad-faith lawsuit, arguing that because the penalty was now zeroed out in the budget reconciliation process, the individual mandate was unconstitutional.

Imani Gandy: Then they went even bananasier, which is not a word, but I'm going to say it. Then they said, "Well, because the individual mandate is unconstitutional, the entire ACA is unconstitutional." Because the mandate couldn't be severed, ripped apart from the rest of the statute. That's the ACA case that is pending at SCOTUS right now. Right?

Jessica Pieklo: Yep.

Imani Gandy: We heard oral arguments back in November, and we're still waiting for that decision, which is very yikes-inducing. I mean, yikes-yikes-yikes-yikes-yikes.

Jessica Pieklo: Yeah. Yikes, indeed. Okay. But hold on. It's going to get even nerdier, Imani.

Imani Gandy: If that's even possible.

Jessica Pieklo: Strap in.

Imani Gandy: Hit me, hit me.

Jessica Pieklo: Reconciliation is a budget move, more or less, right?

Imani Gandy: Yeah.

Jessica Pieklo: And Congress typically only passes one budget a year. That's a process that starts in February, and ends whenever the fuck it ends, sincerely.

Imani Gandy: Right.

Jessica Pieklo: Usually, it's supposed to be by the end of June, but that has not always been the case. But end of June might flag for you for some reason, Imani. I don't know.

Imani Gandy: Oh, I don't know. Maybe it's because the end of June is usually when we get big SCOTUS decisions, like whether or not the ACA is unconstitutional. And going to therefore throw millions and millions of people off of their insurance. In a pandemic when people have COVID-19, which is going to be considered a pre-existing condition.

Jessica Pieklo: I'm literally the Elmo flaming GIF right now.

Imani Gandy: You actually are. Your hands are upraised, and I think your office is on fire. But it is entirely possible that Democrats are dealing with a budget right around when SCOTUS drops a decision. And that might determine how Democrats deal with the ACA. Do Democrats try to do this budget reconciliation process in order to save the ACA somehow?

Jessica Pieklo: Yeah. It's really getting hot in here, because I'm going to drop some more.

Imani Gandy: Oh God, so much nerdery. I love it.

Jessica Pieklo: And it involves Chuck Schumer.

Imani Gandy: Oh, boy.

Jessica Pieklo: So Chuck Schumer has said that Democrats get two bites at the reconciliation apple. And I'm going to be honest: I don't totally know how.

I was watching cable news. And my understanding is that it has to do with the fact that in 2020, it was basically just a total disaster year across the board. Nothing got done, especially in Congress. Because we were in lockdown, and there were insurrections. It was just wild times.

But basically Congress didn't get their business finished, which is how Schumer explained it, more or less, on MSNBC last night. That there is this hangover, which gives the Democrats an opportunity for two bites at the reconciliation apple.

Let's say he's right. That means the Democrats would have two shots at getting some policy proposals through.

Imani Gandy: That's better than one.

Jessica Pieklo: It's better than one. But Imani, I mean, Ian Millhiser at Vox explained it this way. The Senate Democrats represent 41 million more Americans than Senate Republicans.

Imani Gandy: Yeah.

Jessica Pieklo: Have I mentioned the Senate is an undemocratic hellscape? Because 41 million Americans want shit to get done! And it might not because of a copy edit! What?

Imani Gandy: Yeah. I mean, because you got two senators in Wyoming who represent the six people who live in Wyoming. Then you get two senators in California who represent the literal 87 billion people who live in California. There's an inequity there.

Jessica Pieklo: And I love you, Wyoming.

Imani Gandy: Hey, you've got great wide open spaces. (singing) Why am I singing Dixie Chicks all of a sudden? I don't know.

But the point is, is the Senate is a very undemocratic body. And the fact that a minority of senators could just gum up the works when Democrats represent more people; it just seems, at its core, unfair.

Jessica Pieklo: Yeah. Land doesn't vote. People do.

Imani Gandy: Exactly.

Jessica Pieklo: People want shit done, and the filibuster is standing in the way.

Imani Gandy: Okay. I have a question, then.

Jessica Pieklo: Okay.

Imani Gandy: If Democrats can use this budget reconciliation process, does that mean that these fights around taxing and spending is how we could maybe go about repealing the Hyde Amendment?

Jessica Pieklo: Ooh, that's sexy.

Imani Gandy: The Hyde Amendment is this rider to the budget that says you can't use federal funds to pay for abortion, except in certain circumstances: rape, incest, and life endangerment. That's taxing and spending.

Jessica Pieklo: Yep.

Imani Gandy: So it seems to me that Democrats could use budget reconciliation to get the Hyde Amendment the fuck out of there. Right?

Jessica Pieklo: Definitely. Definitely. I mean-

Imani Gandy: Passing the budget in the Biden-Harris administration is going to turn into a huge abortion fight.

Jessica Pieklo: I mean, look, we know that Republicans are going to use abortion any way they can. And if they also know via Mitch McConnell, just being parable; that at most, Democrats, if they don't kill the filibuster, will have two bites at the apple to try and get a whole bunch of big policy. I mean, we're talking COVID relief, we are talking sincerely infrastructure. We're talking voting protections, we're talking Green New Deal.

This is an administration that has the potential to enact some really radical progressive policies, and Republicans know that. So what is a better way to create a distraction than to throw abortion all over the place?

I would expect this to be a place where Democrats are maybe a little soft. And a good opportunity for us to hold the Biden-Harris administration's feet to the fire, and fellow Democrats to the fire, to say:

"Understand you're going to be negotiating a lot of priorities if we don't kill the filibuster. Negotiating abortion rights access is not one of them that we are willing to trade on."

Imani Gandy: That's a really good point, especially because it seems like whenever there's horse trading going on in the Senate-

Jessica Pieklo: Exactly.

Imani Gandy: ... abortion rights get thrown under the bus.

Jessica Pieklo: Immediately.

Imani Gandy: I'm done with the goddamn Hyde Amendment. I'll tell you what, I don't want to have to write another article next year about how horrible the Hyde Amendment. I want it out.

So what can Democrats do? Can Democrats do anything else besides nuke the filibuster, and besides use this budget reconciliation process? Is there something else that's feasible?

Jessica Pieklo: We got to pressure the holdouts, sincerely. Why, why are you siding with Jim Crow history, and standing in the way of progress, unless you believe in those values?

I think Democrats also not only need to put the pressure on them, but to take that logic line all the way through. "Oh, so you're opposed to ending the filibuster. That must mean you like it for upholding Republican priorities." Make them say that, and run those electoral ads. Then they can lose in re-election.

I think we have to stop being afraid of hard fights internally. Honestly. And if the last election taught us anything, it is that being cowardly in our own spaces gets us nowhere.

Imani Gandy: Yeah.

Jessica Pieklo: Raphael Warnock won a Senate race in Georgia by being unapologetically pro-choice, pro-LGBTQ, and pro-faith. There is a lot for Democrats to learn in that space, because he took the fight to where the fight was, and won.

Imani Gandy: Right.

Jessica Pieklo: That is my last TED talk on killing the filibuster: We win when we run on issues and when we run on our values. And we lose when we try to play nice with those folks who never shared our values and our interests to begin with.

Imani Gandy: Okay. Okay. I think you convinced me.

Jessica Pieklo: ...

Imani Gandy: Well done. Well done, Pieklo. You've convinced me. I'm still worried about the nutsackedness of Democrats. But I think the answer is to fire up voters, and to just take the fight straight to Democrats.

And say, "Look, nuke the goddamn filibuster and then pass a bunch of stuff. Then you won't have to worry about re-election, because voters will be clamoring to re-elect you. Because you've shown that you can pass stuff that helps them."

Jessica Pieklo: Joe Biden could be the next FDR. Just saying.

Imani Gandy: I really think he could. He really could.

Jessica Pieklo: That's a different episode.

Imani Gandy: That is a different episode. Well, that was fun. I mean, nerdy, I love the backstory- I love the backstory about Aaron Burr. I love the fact that the filibuster just happened because of a copy editing mistake made by a man who had just shot Alexander Hamilton for no goddamn reason. I love all of that.

Jessica Pieklo: And I love that we can agree and disagree. You know?

Imani Gandy: Yeah.

Jessica Pieklo: I love the back-and-forth. I do.

Imani Gandy: I do, too. It's the second episode in a row we've done that.

Jessica Pieklo: That's right.

Imani Gandy: Look at us. Look at us. I call that personal growth. It's like that Paul Rudd GIF: Look at us. Who would have thought?

Jessica Pieklo: We're growing in real time with the audience.

Imani Gandy: In real time. It's fantastic. And listeners, you're growing with us. If you want to grow and talk and chat, maybe duel, not in real life: you can follow me on Twitter @angryblacklady. You can follow Jess on Twitter @hegemommy. H-E-G-E-M-O-M-M-Y. Bring your virtual pistols. It will be virtual pistols at dawn.

Also, you should follow Rewire News Group on Twitter @rewirenewsgroup. And that same thing on Instagram, @rewirenewsgroup.

Jess, you should tell them about the newsletter, because the newsletter is exciting. I just signed up for the newsletter, and I've worked here for eight years-

Jessica Pieklo: Imani!

Imani Gandy: ... that doesn't make any sense. I know.

Jessica Pieklo: There's my public scold of Imani. You should do better than Imani and sign up for the newsletter immediately!

Imani Gandy: Yes.

Jessica Pieklo: Go to rewirenewsgroup.com/subscribe. With the weekly newsletter, it will catch you up on everything that we have over at Rewire News Group. Our editor-in-chief Galina Espinoza drops a little note in it; it's always lovely.

But that way, you won't miss anything that we have happening over at Rewire News Group. So please go to rewirenewsgroup.com/subscribe.

Imani Gandy: And if you want to give us money; because I know you want to give us money; you should go to rewirenewsgroup.com/boomgive.

It's money like yours that helps Jess and I continue to get on the mic and argue with each other. Then hug it out at the end, because that's who we are. So go to rewirenewsgroup.com/boomgive and just give whatever you can. Pretty please?

Jessica Pieklo: Pretty please.

Imani Gandy: We got a Facebook group that's still popping. So you should go over there and do that whole thing. There's a lot of really cool people in our Facebook group.

We've got a really nice little nerd family over there, and I love it. Aside from that-

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

Imani Gandy: Yeah. Just see you on the tubes. Whoo! Tubes.

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