

BOOM! LAWYERED: SUPREME COURT ELECTION CONSPIRACIES AND ABORTION CASES

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 just got a onesie from Rihanna Savage Fenty and is sending her co-host and wife a Rihanna Savage Fenty onesie so we can all be wearing onesies. [laughter]

I'm Imani Gandy.

Jessica Pieklo: And I'm Jess Pieklo, and I cannot wait for this onesie. Rewire News Group is dedicated to inspiring you to own your relationship to sex, abortion, parenthood, and power, and the Team Legal podcast is part of that mission. So a big thanks to our subscribers and a welcome to our new listeners.

Okay. So out of the gates, we have some lovely news to share. We appreciate this Boom! Lawyered family so, so much and just here, listen to this note that we got from one of our listeners, Jane. She said, "I just got my first job as a law clerk, and I'm excited to share this part of my paycheck with Boom! Lawyered. Y'all's podcast helped me make the decision to go to law school and get me this job. In the meantime, I can't thank you enough."

Imani Gandy: What? First of all, shout out to Jane for using y'all's, because I think that more people should use the contraction y'all's. but honestly, this is the kind of stuff that makes me really happy, because going to law school is a hard choice. It's expensive. And if you go and you don't know what you want to go for, it can turn out to be a real disaster. So I love that people are going to law school after listening to our podcast, and they're like, "I want to go. And I want to do repro rights law." That makes me excited. Not to say that Jane is doing repro rights law, but whatever kind of law she/they/they're planning to do, I think it's going to be amazing. So shout out to you, Jane.

And if you want to be like Jane ... And who doesn't want to be like Jane, because Jane sounds fucking awesome ... you should go to rewirenewsgroup.com/boomgive. That's rewirenewsgroup.com/boomgive to be like Jane, be like Jane. Jane, jazz singer.

Jessica Pieklo: Thank you for that little indulgence. It's just it's such a nice way to open the show. So I suppose, by the way, we should probably let folks know what we're actually going to talk about.

Imani Gandy: We're not going to do 30 minutes about Jane?

Jessica Pieklo: I mean, we could. Jane probably deserves it, but a lot of news keeps happening.

Imani Gandy: That's true. So much news keeps happening. And in this episode, we're going to talk about three things. First, the very first abortion rights case is on the Supreme Court's calendar for 2021. So that's a thing that's happening.

Jessica Pieklo: Then we're going to talk about the fact that Justice Clarence Thomas is spouting election conspiracy theories from the bench, which yikes.

Imani Gandy: Yikes. And our third and final topic will be the unrelenting campaign by one Virginia school district to try and discriminate against trans students, because exactly. So let's get to it, shall we?

Jessica Pieklo: Let's do it.

Imani Gandy: So on Monday, the Supreme Court announced that it would be taking up its first abortion rights case of 2021.

Jessica Pieklo: The case involves the Trump era domestic gag rule, and it's the first thing we're going to talk about on today's show.

Imani Gandy: We've talked about the gag rule in this podcast before. That's the rule that blocks healthcare providers from participating in the federal Title X program if those health care providers provide abortions or even mention abortion. If you even think about an abortion, like in the back of your mind, you won't get Title X funding, and it's ridiculous.

Jessica Pieklo: If an abortion is but a glimmer in a provider's eye, they lose federal funding. Seriously. But Title X is the federal grant program designed to provide access to reproductive health care services, like birth control and STD screenings, those things, to low-income individuals.

Imani Gandy: Title X is a wildly successful public health care program, and it's one that conservatives routinely politicize, just like the Trump administration did by making it all about abortion. And it's just enough. Enough already. So Title X regulations prohibit funds from being used for abortion care, right? We think that should change, but that's what the Trump administration did.

So back in 2019, the Trump administration issued this rule that made some pretty drastic changes to the Title X program. One change would block funds from going to any healthcare provider that referred for abortions. You can't even tell someone that you can go somewhere else for an abortion. Can't talk about it at all.

Jessica Pieklo: Yeah. So this means that if a particular provider, like say Planned Parenthood, who didn't offer abortions, so let's say that their doctors or nurses even mentioned it as an option to a patient, out of the program. That's it. They're done.

Imani Gandy: You can't even talk about it. And the second change requires that providers physically separate any abortion-adjacent business activities from the rest of its business. Abortion-adjacent business activities. So this change is fucking nonsense ...

Jessica Pieklo: It is.

Imani Gandy: ... and it's all about making it too expensive and burdensome for reproductive healthcare providers to even keep abortion in their orbit. Like we're talking if you're going to mention abortion or have any kind of abortion-adjacent business, you've got to have a separate entrance to the clinic, that sort of stuff. It's really that granular and that absurd.

Jessica Pieklo: I mean, essentially the Trump administration wanted to turn every Planned Parenthood and Title X clinic into a crisis pregnancy center. Like that's the TLDR on that, right?

Imani Gandy: Yeah, and we know how awful crisis pregnancy centers are, just terri-bad.

Jessica Pieklo: So the changes to the Title X program proposed by the Trump administration were so drastic that Planned Parenthood left the program entirely. They bounced.

Imani Gandy: They bounced.

Jessica Pieklo: They were out.

Imani Gandy: Yeah.

Jessica Pieklo: They did, and they bounced to the tune of \$60 million in lost federal funding. So this isn't like-

Imani Gandy: That's not a small chunk of change. That's a lot of money that could be going to help a lot of low-income people with their healthcare needs. Ugh.

Jessica Pieklo: Right, right. And so that's why providers across the country sued and said, "Yo, this is bullshit." That wasn't the legal argument.

Imani Gandy: That's actually what the argument was, the, "Yo, this is bullshit," argument. Yeah.

Jessica Pieklo: I mean, kind of.

Imani Gandy: Yeah.

Jessica Pieklo: What they argued was that the rules changing the Title X program were arbitrary and capricious, which is like the legal equivalent of, "Yo, this is bullshit."

Imani Gandy: Yep. Yep. Yep.

Jessica Pieklo: So guess what happened?

Imani Gandy: What happened? What happened? Does it have to do with one of my favorite things in the world?

Jessica Pieklo: Oh, it does, Imani. We got a circuit split in the case.

Imani Gandy: Circuit split, baby. Woo woo! Circuit split!

Jessica Pieklo: It's like jazz hands for circuit splits.

Imani Gandy: Jazz hands air horns.

Jessica Pieklo: Dang it. Okay. We had this flurry of litigation across the country, and we got a circuit split. The Fourth Circuit Court of Appeals said the changes were garbage, as they are. But the ninth circuit, the ninth circuit, which normally is pretty good on this stuff, in an en banc ruling upheld the changes. So providers asked SCOTUS to step in, which it did, and that's what they said they're going to do on Monday. So this case is going to be heard in the fall, which will give the Biden/Harris administration time to start unwinding the Trump changes, which they have already said they plan to do. So that's good news.

Imani Gandy: Wait, wait, wait. So Jess, when you talk about unwinding the Trump changes, does that mean we're going to start getting into the ... Folks, she's already starting to unzip her hoodie.

Jessica Pieklo: I legit ...

Imani Gandy: I literally started talking-

Jessica Pieklo: ... just unzipped my Patagonia better sweater.

Imani Gandy: She knew I was going to mention the Administrative Procedures Act, and she legitimately started to unzip her hoodie! That was my favorite. But so that's what this is, right? This is APA time. You love the APA. Sexy, sexy APA time.

Jessica Pieklo: It is sexy, sexy, APA time. It's true. We have this fight over rules and administrative agency actions, and it is enough to make me unzip my Patagonia better sweater, let me tell you. Here's the thing, though, right? As we've talked about on this podcast, rulemaking takes time. Will HHS be able to get a new rule through before or through the notice and comment period and get that rule in place in enough time to take this case off the docket? Hopefully ...

Imani Gandy: Hopefully.

Jessica Pieklo: ... but we don't yet. And we've got this big fight over the Biden nominee to run HHS, right?

Imani Gandy: Oh, God, yeah.

Jessica Pieklo: Former California Attorney General, Xavier Becerra. He took the Trump administration on over all of these changes, and Republicans have gone gangbusters just opposing his nomination.

Imani Gandy: Yeah, they're not going to-

Jessica Pieklo: So there's a lot at play here. If the Trump gag rule is still in place when the Supreme Court hears this case, Imani, I don't feel so great about it, I will be honest.

Imani Gandy: That's because we've got a 6/3 Federalist Society court. That's why.

Jessica Pieklo: Yeah. But a lot can happen, so let's hope it does.

Imani Gandy: Let's just think about the sexy, sexy APA and the sexy, sexy circuit splits. Woo woo!

So for our second topic today, we're going to talk about how one Justice Clarence Thomas went full election truther the other day. So do you remember how there were reports that Ginni Thomas was essentially ass deep in all of the insurrection shenanigans? Right? She was promoting the insurrection shenanigans. She actually ended up writing a letter to the former clerks of Clarence Thomas saying that if she had somehow encouraged some sort of division among this family of clerks, she was really sorry. She was really sorry to the clerks. Not so sorry to the American people, which is a little bit bizarre.

So in response, folks on the left were like, "What the hell?" And Republicans are like, "Eh, it's no big deal." Well, it turns out it is a big deal, because Ginni Thomas's election truther politics seem to have somehow become injected into Clarence Thomas's jurisprudence because he was just five by five when it came to Trump's nonsense claims about the election in Pennsylvania. And you can always tell I've been watching a lot of Buffy, because I say shit like five by five, because Faith used to always say, "Hey, man, it's five by five."

But no seriously, so let's just talk a bit about Trump's ridiculous election claims. Trump argued that Pennsylvania should not have been able to extend the absentee ballots deadline, right? Remember Pennsylvania extended the absentee ballot deadline, partially because of this pandemic that has killed half a million people and partially because of the post office slowdown that Trump was responsible for. Right? So Pennsylvania decides to expand voting rights in order to make sure everyone can fricking vote.

Trump didn't like that. He thought that Pennsylvania didn't have the right to change their own election rules and that the Supreme Court should step in and change what the Pennsylvania Supreme Court already decided. So that's just, you want to talk about overreaching federal government? Like hello. The Supreme Court jumping into overturn state rules seems like a pretty

quintessential case of that. But the Supreme Court couldn't find a fifth vote in order to side with Trump, right? Because Amy Coney Barrett had joined the court too late and she wasn't able to join in on the decision. RBG had just passed away. So basically the Supreme Court had to extend a very reluctant middle finger to Donald Trump.

Jessica Pieklo: Like that much.

Imani Gandy: Like a half middle finger. So here comes the other day. That's not a thing that people say.

Jessica Pieklo: Here comes the other day? February has been like a decade of a month, folks.

Imani Gandy: It honestly has.

Jessica Pieklo: That's all I'm going to say.

Imani Gandy: It honestly has. So the other day we get this ruling that the Supreme Court is not going to take this case, because there's no point in taking this case because the election already happened and Biden already won. Clarence Thomas, however, thought he would take the time to write a pretty snarky dissent in which he was like, "Well, you know what? Trump might have a point. Maybe we should be stepping in and telling Pennsylvania what they should do about their state elections. Maybe we should be saying that absentee voting has just gone too far and we need to reign it in." Essentially he has set the stage for future voting rights shenanigans, and we can be assured that future voting rights shenanigans are coming down the pipe.

Jessica Pieklo: Yes.

Imani Gandy: So this is what people talk about when they wonder about the partiality or the impartiality of Supreme Court Justices. How do you have Ginni Thomas, literally who was a Tea Partier, who was literally fomenting this insurrection, she's married to this guy on the court. And I'm sorry, but you're not going to convince me that their politics don't end up co-mingling. You're not going to be able to convince me of that.

Jessica Pieklo: Yeah. And it's distressing to see conservatives in the media just insist on this big lie that there is election fraud, that there's election fraud. And to see that get recirculated in a Supreme Court opinion complaining about not taking up an election case is distressing to say the least.

Imani Gandy: Yeah.

Jessica Pieklo: We should not have conspiratorial Justices.

Imani Gandy: We shouldn't.

Jessica Pieklo: In general, I'm just a fan of our Justices not engaging in conspiracy theories, insurrections. I don't know. Maybe that makes me an institutionalist.

Imani Gandy: Just like Roberts.

Jessica Pieklo: I mean-

Imani Gandy: Enough of Clarence Thomas. Just talking about him makes me sweaty. We were talking about sexy APA stuff, and now I'm sweaty thinking about how I cannot-

Jessica Pieklo: You're sweaty for the right reasons then.

Imani Gandy: I'm not sweaty in a good way. I'll tell you what.

So the third topic we're going to talk about today is Gavin Grimm, Gavin Grimm. I love Gavin Grimm, mostly because I've been watching the show, Grimm, and now every time I try to find my tweets about the show, Grimm, the first tweets that come out are all my tweets screaming about Gavin Grimm's case and how the school district in Virginia should literally suck it and stop trying to stick it to trans people.

So let me go back and explain.

Jessica Pieklo: I mean, because we've been yelling about this for a little while.

Imani Gandy: Like five years.

Jessica Pieklo: No.

Imani Gandy: Five years, yes. So in 2015 ...

Jessica Pieklo: What?!

Imani Gandy: ... Gavin Grimm, who is trans and was a high school student in Virginia at the time in the Gloucester School District, he sued his school district after administrators at his school refused to let him use bathrooms that corresponded with his gender identity. Grimm argued that denying him access to facilities like bathrooms and locker rooms was a violation of Title IX, which it is. Title IX is the federal law that prohibits sex based discrimination in schools that receive federal funding. It's a Title IX violation. We shouldn't even be here. Why are we talking about this anymore?

Jessica Pieklo: Yeah, seriously. And I mean, it's just really hard to overstate what a big deal Grimm's case was at the time. For starters, it was one of the first to recognize trans students' rights under Title IX out of the gates.

Imani Gandy: And the Obama administration at the time that because 2015 back before the orange homicidal candy yam, as you like to call him, back in the halcyon days of the Obama administration ...

Jessica Pieklo: The salad eating days of the Obama administration.

Imani Gandy: The salad eating days when we were all just happy and eating salads. So Vanita Gupta chimed in and sided with Grimm.

Jessica Pieklo: Wait. Vanita?

Imani Gandy: Yes. Our girl Vanita.

Jessica Pieklo: Our Vanita Gupta.

Imani Gandy: That's right. It's Imani and Jess's Vanita Gupta. Nobody else's. [laughter] But go back and listen to our first episode of this season of 2021. We talk about our love for Vanita Gupta. But she chimed in and sided with Grimm, and this absolutely helped move the law in the right direction. In the direction of recognizing that trans students are covered by Title IX. And then came Trump, and the Trump administration tried to reverse all of this progress under the Obama administration, first at the Department of Education with Betsy my yacht sank DeVos, and then at the Supreme Court. Why? Why?

Jessica Pieklo: I know. I mean, what's wild is that back in 2017, the Supreme Court was set to hear Gavin's case, but the Trump administration reversed support of those claims. So the Obama administration was on Gavin's side and then the election happened and Trump wasn't. And so that kicked the case back down to the lower court that again ruled in Gavin's favor, because of course these claims are covered by Title IX.

Imani Gandy: Right.

Jessica Pieklo: So well, the school district has once again asked the Supreme Court to take up the case, and I'm guessing that's because it thinks that the conservative majority is sympathetic to the claims that Title IX doesn't actually require schools to accommodate trans students like Gavin. Now, we're not going to know for some time if the Justices take the case, but they're going to consider it amid a backdrop of all of these bills in the states targeting trans students.

Imani Gandy: What is the ... Here I go with the Seinfeld again. What is the deal ...

Jessica Pieklo: What is the deal ...

Imani Gandy: What is the deal with all ... I mean, honestly, though, suddenly conservatives are very, very concerned about the fate of girls' sports and this latest wave of trans panic bills. They almost entirely target trans kids who want to play school sports,

which point of order, conservatives have never given a shit about women's sports or girls' sports.

Jessica Pieklo: No.

Imani Gandy: So the fact that they're pretending to care about girls' sports just as another way to get at trans people is just grossly just disingenuous and just icky, and I hate it. I really do.

Jessica Pieklo: It's so gross. And it even came up briefly during Merrick Garland's confirmation hearing. So you can bet that conservatives will be looking to use trans kids as an electoral wedge to rile up their base well into the midterms. That's just what they're going to do. They're broadcasting it plain as day. Here it is.

Imani Gandy: Yeah. And it's just why? Why must we pick on the most vulnerable among us? Why is it that conservatives can only win by attacking vulnerable people and stripping people of their voting rights? They don't represent the majority in terms of the thought process on this issue, so what the heck? I mean, there was even a race, I believe it was in Iowa, where the Republican candidate tried to make the Democratic person's candidacy about their support for being able to use the bathroom that you want to fricking use, and that Republican lost. So they're not being able to whip up public sentiment against trans people, but they're going for it anyway, because they're hateful people. And that's really, it's sad.

Jessica Pieklo: Yeah.

Imani Gandy: It's sad.

Jessica Pieklo: I mean, we gave just a smattering of some of what's happening in the states in the last episode. And literally conservatives are suggesting inspecting the body parts of kids who want to play sports to confirm if they are a boy or a girl and are on the appropriate team. And as a former athlete and as a parent, every time I hear that, I just go into a blind rage. I cannot believe that this is an actual policy conversation that we are having in this country, particularly when we have 500,000 people who've died from coronavirus, among other things. So I just that's it.

Imani Gandy: Stop obsessing about people's genitals. Other people's genitals do not involve you.

Jessica Pieklo: They really don't.

Imani Gandy: They don't. And on that note-

Jessica Pieklo: Unless they've asked them to.

Imani Gandy: Right. Unless someone has specifically said, "My genitals are your concern," nobody else's genitals are your concern.

And on that note, we're going to close before we go any more off the rails. If you want to talk to us about anything besides your genitals, you can find me on Twitter @angryblacklady. You can find Jess on Twitter @hegemommy, H-E-G-E-M-O-M-M-Y. You should follow Rewire News Group @rewirenewsgroup, both Facebook and Instagram. Join our Facebook group. It's popping off. There's almost 2000 people in there just loving on each other and rubbing law books against other law books. I don't know what I'm talking about.

But yeah, once again, shout out to Jane. If you have any money, please give us your money. rewirenewsgroup.com/boomgive. Be like Jane, be like Jane, be like Jane. Okay, what are we going to do, Jess? Besides be like Jane?

Jessica Pieklo: We are going to be like Jane and we are going to see you on the tubes, folks.

Imani Gandy: See you on the tubes, folks. Be like Jane.

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