

BOOM! LAWYERED: ARKANSAS WOOS AMY CONEY BARRETT WITH A VERY BAD BAN

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 on team Meghan Markle. I'm Imani Gandy.

Jessica Pieklo: And I'm Jess Pieklo. Rewire News Group is dedicated to inspiring you to own your relationship to sex, abortion, parenthood and power. And the #TeamLegal podcast is part of that mission. So a big thanks to our subscribers and a welcome to our new listeners!

Imani Gandy: This month is endometriosis awareness month and we are lucky enough to have Caroline Reilly, our #TeamLegal legal fellow who has endometriosis and has spent the past couple of weeks just crushing coverage about endometriosis across all of our platforms on Instagram and on Twitter. She had an Instagram Live yesterday or maybe the day before, that did gangbusters. She's been giving information about what it's like to experience endometriosis, what it's like to talk to your doctors about endometriosis, what it's like to be a partner with someone who has endometriosis. Please do check out that coverage. Go follow Caroline Reilly on Twitter. Find her on Instagram. She's in beast mode when it comes to endometriosis awareness and wants everyone to know that—just get your facts straight, basically. She's all about getting the facts straight on endo and we appreciate her for that. But we're not going to talk about endometriosis today because there are shenanigans afoot, outright shenanigans. For one, Arkansas has lost its entire goddamn mind.

Jessica Pieklo: Do we need to write them a letter? We might need to write them a letter.

Imani Gandy: I might. Needs an open letter to Arkansas, please stop losing your whole entire goddamn mind.

Jessica Pieklo: They are absolutely off to the races on terrible abortion bans. Just gone. Boom.

Imani Gandy: Yeah. Yeah. That's what we're going to talk about first. WTF, Arkansas question mark.

Jessica Pieklo: On Tuesday, Arkansas Governor Asa Hutchinson signed a bill that would ban all abortions. All of them, just all of them, all the in the state, except those that are deemed necessary for a quote unquote medical emergency.

Imani Gandy: And I'm pretty sure the only medical emergency that was actually talked about was having an ectopic pregnancy. And I suppose we should be thankful that they're not going the route of trying to reimplant ectopic pregnancies into the uterus, which is something that some jackass in Ohio thought that you could do, which you can't. But the one thing I really wanted, the one point I really want to

make about these bans is that taxpayers are paying for them. If you live in Arkansas, you are paying to defend these outright unconstitutional abortion bans. And I think that that's something we should talk about more because we're in a pandemic, we're in a situation where we're trying to argue about \$15 minimum wage and how families are going to put food on their table. And states like Arkansas are just siphoning off taxpayer money to pay for lawsuits that they are going to lose.

Jessica Pieklo: Yeah, this bill is really bad too. Let's talk about it a little bit. It's set to take effect in August. There's a little bit of time here and advocates have promised a legal challenge. The top line here that everybody needs to know is that abortion is still legal in Arkansas and everywhere else despite...

Imani Gandy: Abortion is still legal in Arkansas.

Jessica Pieklo: All right, these jackasses are trying their best, but abortion is still legal. This bill though is absolutely designed to create a legal challenge to Roe. That is what they have been very clear about. And if it is allowed to take effect, it is going to be the most restrictive abortion ban in the country, hands down.

Imani Gandy: And it's not like abortion isn't already incredibly restricted and difficult to access in Arkansas.

Jessica Pieklo: Oh no, you can get an abortion anywhere in Arkansas, at any time. I'm going to go pick up some soft tacos and get an abortion.

Imani Gandy: Why soft tacos? Why not hard tacos?

Jessica Pieklo: I don't know. I was thinking drive thru.

Imani Gandy: But yeah. Drive thru abortions are a thing. Abortion providers are just falling out of the sky. If you need one, you just yell into the air and someone will be right by your house. That's not actually true.

Jessica Pieklo: No, it's totally not true.

Imani Gandy: 97% of Arkansas counties have no clinics that provide abortions. None.

Jessica Pieklo: That's wild.

Imani Gandy: Pregnant people in Arkansas already have to deal with so many undue burdens when trying to obtain an abortion so let's talk about some of those burdens. The state of Arkansas also mandates phone counseling by a state directed program.

Jessica Pieklo: Oh, I bet that's really unbiased too.

Imani Gandy: Oh I'm sure they give totally unbiased information. Unbiased and medically accurate information I'm sure. That rules the day in Arkansas. They also make patients make at least two trips to a clinic separated by a 72 hour waiting period. You need a smooth 72 hours just to make sure that the decision that you've already made is actually the decision that you want to make.

Jessica Pieklo: That's a full work week. Sincerely.

Imani Gandy: You know how pregnant people are with their brain, their brains don't work so good. Sometimes they say, "Hey, I want to have a kid." Then two days later, "Nah, no I don't." Then the day after that, "Ah, maybe I do." Arkansas wants you to go through that process because you just can't make decisions on your own without interference from the state. And of course they require parental involvement for those younger than 18 who are seeking an abortion, which obviously ignores the fact that not everyone lives in a perfect Leave It to Beaver style family environment, where you can talk to your parents about what's going on with your reproductive autonomy and tell them you need an abortion.

Perhaps you are pregnant because of there's been some sexual assault in the home. Why should you have to tell your parents that you're getting an abortion? It's ridiculous. And then finally, this what really grinds my gears. We're in a pandemic right now and there's a lot of telehealth going on, not for abortion. Arkansas prohibits the use of telemedicine to administer medication abortion, which is just pills. They make you go see a doctor. A doctor, I'm sure doctors are very careful when it comes to the pandemic, but who knows who's going to breathe on you or lick your face in the elevator. It's just a bad situation. You shouldn't have to go to a clinic to get pills.

Jessica Pieklo: I'm sorry, lick your face in an elevator?

Imani Gandy: I don't know. You don't lick people's faces in elevators? You should try it, it's kind of fun.

Jessica Pieklo: I've been in quarantine for a year now. At this point I might lick somebody's face in an elevator. I'd be so happy to see another human being. This is terrible. This bill just literally, like we said, bans abortion, except for medical emergencies, which whatever those are deemed and is designed to directly challenge Roe versus Wade and Imani, we have been yelling about Trump judges because we have Trump judges all over the Eighth Circuit. What are they there to do? Uphold terrible laws like this. What are we looking at for a timeframe here? Advocates have promised a legal challenge before August. Got a couple months here. It'll likely then go up to the Eighth Circuit, no matter what happens. The law is either going to be blocked or it's not. And one side's not going to be happy so they'll appeal it up to the Eighth Circuit. I'm guessing we're probably a year out or so before it lands before Justice Amy Coney Barrett, AKA Justice Kingdom of God. That's my best read on it.

Imani Gandy: We've got a little bit of breathing room before. With these bans, I can't talk about bans anymore. Let's move on to our next topic, shall we? This is actually a good topic. It's a positive topic.

We're going to talk about the COVID stimulus. Because there are a lot of people who are up in arms about the COVID stimulus. And I think that a lot of folks don't really know what's in it. Sure, there's this argument about whether or not \$2,000 is the same as \$1,400. And that argument, I just, I can't argue with people about that anymore. It's ridiculous. And there is also arguments about the fact that the \$15 minimum wage didn't pass, but let's talk about some of the stuff that is in the bill that is going to help people. The Senate finally passed a COVID relief bill. And just because it didn't include all of the things that progressive Democrats wanted to include in it, it doesn't mean there isn't a bunch of really, really great stuff in it. And Jess, I see you starting to wiggle a little bit and I know you want to talk about the expansion of the Affordable Care Act so I'm just going to shoot it over to you so you can just geek out over it.

Jessica Pieklo: I'm literally crawling out of my chairs to talk about the Affordable Care Act, which okay I realize I go to therapy to talk about some of this stuff too, because I get so excited about health insurance, but this is a really big deal. This is such a big deal. Let me indulge me for a minute here.

Imani Gandy: I'd be willing to indulge you.

Jessica Pieklo: I'm going to collect myself so I don't just Jess brain all over the place on health insurance, but this is what happened and it's going to get lost in the shuffle and I really do want to spend a few minutes on it. This is the first time the federal government has taken meaningful steps to increase access to health insurance since the Affordable Care Act was passed. That's huge. In a decade, what just happened is the first, most meaningful expansion of access to health insurance in over 10 years. Applause, that's a big fucking deal to quote Joe Biden. And the expansions are structured in such a way that if Democrats are smart and don't screw this up, they can even campaign off them during the midterms and try and make them permanent. And that's in part tied to when they're timed to expire. It's almost like we've got some strategic thinking here too.

Imani Gandy: Strategic thinking from Democrats? The hell you say.

Jessica Pieklo: Hold on, I'm not even done. It also pushes us towards universal coverage and Medicare for all.

Imani Gandy: Okay. How exactly? You said a couple of things here.

Jessica Pieklo: Your face is amazing right there. You were like, no.

Imani Gandy: I'm like, what? I don't know. I am not a health insurance nerd the way you are. And honestly, a lot of this stuff I find horribly confusing. I'm going to need you to

take a step back and explain some stuff to me. First of all, what do you mean when you say that the expansions are structured in a way that if Democrats are smart, they can campaign off of them?

Jessica Pieklo: They're timed to expire around midterms. Great opportunity for folks who have received the benefit of that and then also want to keep that.

Imani Gandy: That makes sense.

Jessica Pieklo: Let's not screw that up. That's real simple, just math, but let's talk about this getting to universal coverage. Because I'm literally, I've got to, my hair bands are in my hand to keep me from hitting the microphone I'm so excited about it. States in the South have really refused to expand Medicaid to low income adults under the ACA. This has been a huge fight in terms of getting folks on board. The Senate fix offers them a temporary infusion of billions of dollars to reconsider that decision.

Imani Gandy: Okay. You're saying that the Obama administration offered states just a ton of money to expand Medicaid. And expanding Medicaid in the states would mean that health insurance would be more readily available to low income people who need it because Medicaid is essentially the health insurance program for low income folks.

Jessica Pieklo: You're tracking.

Imani Gandy: All right, I'm on board so far. But because Obama is Black and something about death panels and you can keep your insurance if you want and all of that shit that went on during the ACA debate, a lot of Republicans in these Republican led states refused Medicaid expansion. They looked at the money Obama was offering them and said, "No, we don't want that. We're just going to go ahead and let our low income people continue to suffer without healthcare." Now Biden is saying, "Okay look, I'm going to throw you more money, just billions of dollars and then if I do that, will you just fricking expand Medicaid, you jackasses?" Is that right? Is Biden basically just slipping them twenties under the table to get them to expand Medicaid?

Jessica Pieklo: Imagine if Texas and Florida alone expanded their Medicaid programs, what that would do in terms of just getting people coverage and access to healthcare in terms of millions of people? Yeah, we're literally saying here, take the money and give people coverage. It's nothing more complicated than that.

Imani Gandy: And especially in Texas where they're not even allowing Planned Parenthood to participate in any of these programs, a lot of low income people get their healthcare from Planned Parenthood because they don't have any other recourse. The fact that Texas hasn't expanded Medicaid, it's really, they're just really sticking it to poor people in Texas. Go on. Go on.

Jessica Pieklo: Medicaid expansion is one of the pathways for universal coverage in the stimulus here. The bill also changes the formulas for health insurance tax credits to make them more generous for most people. And that means that more people can then qualify under the Affordable Care Act in the exchanges.

Imani Gandy: Okay. Okay. Okay. Here's another basic bitch question coming at you because again, I am confused.

Jessica Pieklo: You're my favorite basic bitch on insurance, Imani.

Imani Gandy: I want to be your basic bitch always. Health insurance tax credit. Basically what is a health insurance tax credit?

Jessica Pieklo: Yeah, this is an excellent question because most people don't have to think about this if they get their health insurance from their job, from employer provided health insurance. You don't think about this. That's all your employer's problem. But if you are responsible for your own health insurance coverage, like we all are under the ACA with the individual mandate and the penalty associated to it, that's all a tax scheme. In enacting and implementing the Affordable Care Act, Congress created a tax scheme. And so you literally now get a certificate that you file your taxes that says, "Yes, I have insurance," or, "No, I don't have insurance." And there is a penalty or not depending on what the Supreme Court decides later this summer, associated with that. Literally it is a credit. It's like you returned a bunch of makeup at Sephora and they give you a store credit. Think of it as a store credit from the federal government for your health insurance.

Imani Gandy: Okay. That makes sense. I love the fact that you're such a healthcare whiz and nerd because the way that you can liken health insurance to Sephora really just sticks into my brain quite well. You're saying then that now this just basically means more people will have more money in their pocket. It sounds like this is a really good deal for working class folks who don't have health insurance through their employers? Am I wrong in that?

Jessica Pieklo: No, you're completely right. And it's also a really good deal for all of those folks who Republicans were trotting out in opposition to the Affordable Care Act who said, "I'm going to lose my health insurance. It's going to make me close my business because it's too expensive." Well guess what? The stimulus package in ACA expansion also covers them. This is why literally I'm like, oh my God, this is so great. Because what the bill does is also provide health insurance tax credits to folks who have solid middle class incomes and don't currently qualify for help with their premiums. One of the big complaints was that Obamacare raised insurance premium on these folks. Well hey, guess what? They get help with their premiums. This is the demographic that includes a lot of self employed people and business owners. These are always the folks that Republicans trot out as the Affordable Care Act killed the jobs. Well, you just got more health insurance.

Imani Gandy: Essentially more people are going to be able to get these tax credits, not just low income people, but people with solid middle class incomes will be able to get these tax credits, which in turn means that they'll have money to help them pay their premiums, which in turn means that they have more money to pay for the other stuff that they need to pay for to live. It's just more money in people's pockets, less money being paid out for health insurance.

Jessica Pieklo: And there is even more.

Imani Gandy: Oh, Jesus Christ. I don't think I can take it.

Jessica Pieklo: Sincerely. Hold onto your butt, Imani, this is amazing. Another part of the bill helps folks who have lost jobs. We've just been talking about the pool of people who buy their health insurance on the exchanges. They're responsible for their own coverage. They don't get it through a job. Well, what about all those folks who've lost jobs? Anybody who has collected unemployment this year, even for one week, you get to qualify for the most generous ACA tax credits, as well as the biggest reduction in co-pays in deductibles. This is a really big deal. And for folks who have lost their job and still want to keep their employer sponsored coverage, this is historically a colossal pain in the ass. The stimulus package provides a temporary 100% subsidy to pay for that coverage.

Imani Gandy: When I lost my job at a law firm back in 20 whatever.

Jessica Pieklo: Yeah, 20 whatever is basically how we just qualify everything these days.

Imani Gandy: And I have a pituitary tumor, so I need health insurance. I need healthcare so I ended up paying for COBRA but COBRA was still something like \$800 a month, which if you've lost your income, trying to pay \$800 a month to keep your employer based insurance, that's bananas. Are you saying that this COVID stimulus bill, if I'm on employment for at least one week, I can get a 100% subsidy to pay for my COBRA?

Jessica Pieklo: That's exactly what I'm saying.

Imani Gandy: That's bananas.

Jessica Pieklo: It's so bananas. COBRA is the federal law that basically provides coverage when you lose your employer sponsored coverage, but the employee has to pay for it. And like you said, it's expensive because you're basically, the employee's basically taking on the burden of their own premium payment and a portion of their employer's. That adds up. And it really adds up if like you said, you're not bringing in any money. Well hey, the stimulus package just said, "We are going to cover that for you to the tune of a 100% to get you on your feet, keep you insured during a pandemic." This is a really, really big deal.

Imani Gandy: I just want to drive this point home because you've been geeking out about this for a couple of days on Slack and I've been like, I don't really know what she's talking about, but she's smart so I'm just going to assume she's right. But you said something that I thought was really, really important. You said that this is a huge tax cut for working folks. Can you explain how? Because when I hear tax cuts, I'm just used to hearing tax cuts for rich people. I don't even know what a tax cut for working people looks like.

Jessica Pieklo: You asked me about how tax credits for health insurance works. Well, that's effectively money that we pay and get back as for complying with the law. The Biden Harris administration and Senate Democrats in the COVID stimulus package have effectively expanded access to coverage and made it cheaper. That means that we, people who are getting our insurance on the exchanges, are paying less. We have less of a tax burden. That's a tax cut. That is a tax cut. And Democrats make everything a pain in the ass so it's not the same thing as getting the check from the IRS that says, here is \$2,500 for overpaying on your federal income tax. It doesn't feel the same way. It requires a sort of a lot of adult math and thinking about money to really feel the benefit of it. But is sincere. When we talk about expanding the safety net to help the working class, to help middle income folks, not just the top 1%, Biden Harris and Senate Democrats just delivered in a really, really big way. And that is only on the Affordable Care Act provisions. I don't know, it's a lot.

Imani Gandy: It's good news. It's good news.

Jessica Pieklo: I've got more good news.

Imani Gandy: You can't possibly.

Jessica Pieklo: I can and I will. I am all about sharing the good news when it comes to stuff that is happening, particularly at the federal government, because we just survived barely four years of awfulness. Check this out. The Biden administration is beginning the process of unwinding Trump era campus, sex assault rules.

Imani Gandy: That's sounds like a huge deal. That sounds like a really big deal.

Jessica Pieklo: I'm going to breathe in and I'm going to breathe out. On Monday, still this week, all this good stuff is happened and it's still this week. Sorry. On Monday.

Imani Gandy: Jess, calm down.

Jessica Pieklo: On Monday, I will not. I refuse. On Monday, President Biden signed an executive order that directed the US Education Department to review all its existing regulations, orders, guidance and quote unquote policies for consistency with the administration's policy to guarantee education free from sexual violence. Hold on, I'm going to say that again. They want to make sure that our policies in

higher ed are consistent with the administration's policy to guarantee education free from sexual violence.

Imani Gandy: That shouldn't be as amazing as it is, but considering that in 2017, the Trump administration straight up reversed Obama era guidelines that had spelled out measures schools should follow in order to try to prevent sexual assault on campus. This is a big deal because Trump was basically like, hey, rapers paradise on college.

Jessica Pieklo: Rapers paradise!

Imani Gandy: I know it's not something to laugh about, but it was truly, truly awful. Trump's education secretary Betsy DeVos argued that the Obama guidelines resulted in too many students being falsely charged and the accused being treated unfairly.

Jessica Pieklo: And this was after she had private meetings with a bunch of men's rights activists to help rewrite this nonsense. The Obama administration was like, you know what? It is important that people can go to school without being sexually harassed or assaulted. That is a policy priority to make sure that they can achieve our educational goals of go to school, don't get assaulted.

Imani Gandy: That seems like a pretty standard goal.

Jessica Pieklo: Betsy DeVos was like, "Hmm. I need to rethink that."

Imani Gandy: Yeah. In May of 2020, just last year. Last year, wow. Betsy DeVos unveiled final regulations on how colleges should deal with sexual misconduct allegations on campuses. She said that the rules would require, and I quote, "Schools to act in meaningful ways to support survivors of sexual misconduct without sacrificing important safeguards to ensure a fair and transparent process."

Jessica Pieklo: This was the big due process.

Imani Gandy: Can we not with the due process nonsense when it comes to non-constitutional stuff? Honestly people, it's fine if you want to use the word due process as a synonym for some sort of fairness, some sort of procedure that is steeped in fairness, but when you use the term due process, especially when you use the term due process talking to lawyers, that means a very specific thing to us.

Jessica Pieklo: It does.

Imani Gandy: It's not a lack of due process that has forced for example, Al Franken to resign or that may force Cuomo to resign. It's just accountability. But Biden's order directs a review of the 2020 regulation to quote, "Determine whether the regulation and agency action are consistent with the policies of the Biden and Harris administration." And again, like you said, the Biden Harris administration policy is, hey, go to school and don't get raped. That seems like I don't see why we

need to have a larger discussion about this issue because you shouldn't have to suffer or worry about suffering sexual assault when you're just trying to get a goddamn education. Just trying to get my college degree, man.

Jessica Pieklo: I'm sorry. I was all distracted thinking about the fact that we were going to talk about the Administrative Procedure Act again. Because you just said the words, final regulation.

Imani Gandy: I did. I did.

Jessica Pieklo: And review and all I can think of.

Imani Gandy: Agency action.

Jessica Pieklo: Agency action. We've got some notice in comment, baby. Seriously though, the Trump administration spent four years just wrecking this country via its administrative agencies and if the Administrative Procedure Act can be used to rectify those harms, that's sexy as hell and I'm here for it.

Imani Gandy: It is real sexy. It's real sexy. And on that sexy note, we're going to end this episode.

Jessica Pieklo: I love that.

Imani Gandy: If you want to talk about the sexy, sexy APA with me on Twitter, you can follow me @angryblacklady, Your best bet to talk about the sexy, sexy APA is to follow Jess on Twitter, she's @Hegemommy, H-E-G-E-M-O-M-M-Y. If you would like to follow Rewire News Group on Twitter and Instagram, just @RewireNewsGroup, that's the handle. And you should also join our Facebook group, which is popping. We got 1400 members. Everyone's great and having fun. It's fabulous. And again, please make sure to check out our Endometriosis Awareness Month coverage. Again, followed Caroline Reilly. She's great. She's been crushing it. And aside from that, what are we going to do, Jess?

Jessica Pieklo: We're going to see you on the tubes folks.

Imani Gandy: We're going to see you on those sexy, sexy tubes, folks.

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