

[BOOM! LAWYERED: THE SUPREME COURT JUST FIRED A MAJOR WARNING SHOT AT ROE](#)

Imani Gandy: Hello, fellow law nerds! Welcome to a special episode of Boom! Lawyered, a Rewire News Group podcast hosted by the legal journalism team that's just like, "Really? Just come on, man." 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: So today the Supreme Court announced that it would be taking up a case that could completely upend abortion rights. So I guess we're glad that they finally stopped growing weed and gardening and cross-stitching in the meadow and decide to take a case that they don't need to take. So we're going to talk about that today. The case is JWHO. J woo!

Jessica Pieklo: J woo woo!

Imani Gandy: Woo woo, that's the sound of the police. I'm sorry. [laughter]

Already off the rails. JWHO vs. Dobbs and it's about Mississippi's 15 week abortion ban. So that's what we're going to talk about today. First, we're going to talk about what the Mississippi case is about. Second, we're going to talk about what it means for abortion rights, that the Supreme Court decided to take this case and why Amy Coney Barrett just may be the most important Supreme Court Justice on the bench right now. And third, we're going to turn to our inveterate SCOTUS whisperer, Jessica Mason Pieklo, for some details about what's going to happen next. Then finally, as a special treat, we're going to talk to Hillary Schneller. She is one of the attorneys on the case from the Center for Reproductive Rights. So let's get this party started

So first, what is this case about? Jess, what's this case about?

Jessica Pieklo: Well, so Mississippi wants to ban abortion at 15 weeks gestation and the Supreme Court just might let them do it. That's really what this case is about.

Imani Gandy: But I thought that they can't do that because of the whole pre-viability abortion bans are unconstitutional?

Jessica Pieklo: It's true. This is a ban on abortions pre-viability and this should be a non-starter because both Roe and Casey say that pre-viability abortion bans are, say it with me, unconstitutional. And yet, Imani, here we are.

Imani Gandy: Here we are. Lynn Fitch, who is Mississippi's Attorney General, has been so desperate to ban abortion that I kind of got to hand it to her, right? She's been attacking viability as a standard for years, even going so far as to make truly

ridiculous arguments like, "This 15 week abortion ban, isn't a ban, it's a regulation. It doesn't ban abortion, it just regulates the time period during which you can get an abortion. So like, if you want to get an abortion, you're perfectly welcome to between Thursday and Friday on the full moon before 15 weeks." I mean, Jesus Christ on a cracker. But, Attorney General Fitch got the Court to bite on her dipshit argument that the ban on pre-viability abortions is not absolute when the ban on pre-viability abortion is absolutely absolute.

Jessica Pieklo: This is exactly it. This is the nugget. The Court is only going to consider one question in this case and that is, are all pre-viability abortion bans unconstitutional? Is there any wiggle room? Is effectively the question that the state of Mississippi has teed up for the Court to consider.

Imani Gandy: Can we just slide this ban in? Like you won't even feel it.

Jessica Pieklo: Oh god, I mean, basically that's where we're at, at this point. Mississippi says, "No, the right to pre-viability abortion is not absolute. I realize that there's 50 ish or so years of case law that says otherwise," but Mississippi is thinking that's more of a suggestion, really. Let's see, we've got, oh, actual quotes from Casey, right? "Viability marks the earliest point at which a state's interest in fetal life is constitutionally adequate to justify a legislative ban on non-therapeutic abortions." Lots of lawyer words there, what does that mean? Viability, the earliest possible place that a state can use its power to ban abortion, and the Supreme Court's going to give this a think, Imani.

Imani Gandy: You know what, they're going to have a real chin rub about this because you don't know. I mean, maybe Gorsuch is going to rub his new beard, although he did shave it, right?

Jessica Pieklo: He shaved it, yeah.

Imani Gandy: So sad.

Jessica Pieklo: He's back on the bad list.

Imani Gandy: But he's got really great skin now, at least. So at least he's showing all of his glow, good for you Justice Gorsuch for getting on the skincare train. But basically, a state cannot ban abortion before fetal viability.

Jessica Pieklo: Right.

Imani Gandy: And just in case you don't know, viability is the point at which the fetus can survive on its own, outside of the womb, without taking up space in somebody's body that may not want it there. So you can't ban abortion before fetal viability, that's it, end of discussion, everyone go home, see you on the goddamn tubes.

Jessica Pieklo: And viability is meaningful too. It's not just like, "Oh, it can kind of exist, in theory, outside of the womb." The fetus has to have a meaningful shot at life. So like the Court has had some things to say about this.

Imani Gandy: Yeah. So that's the end of the discussion, right?

Jessica Pieklo: But it's not the end of the discussion, thanks to my white Midwest nemesis. I don't know if you know this, but I have beef with Amy Coney Barrett.

Imani Gandy: Yeah, you do have beef.

Jessica Pieklo: It's Amy Coney Barrett's world now and I'm just a squirrel trying to get a nut, Imani.

Imani Gandy: Wait, you're not the only squirrel out there trying to get a nut. We're all trying to get nuts. We're all squirrels trying to get nuts.

Jessica Pieklo: I'm sorry, but as a white woman from the Midwest, this one feels personal, okay? Like I got to wrestle her in a corn maze about this, Imani. I'm hot.

Imani Gandy: Oh god, she's hot. Okay, so we got some nice white Midwest lady shots fired over here.

Jessica Pieklo: Let me at her, I'm spoiling for a fight. When I go over this top, like Stallone style here, all right? Like, look, I'm taking off my rings, my bracelets. I want a statue carved in my honor out of butter in South Bend, Indiana, dammit.

Imani Gandy: I love this idea of you going over the top. Like, you know in the movie, he always just turns his baseball cap around. That means he's about to go over the top, man.

Jessica Pieklo: Oh it's rally cap time.

Imani Gandy: We need some kind of move like that. We need something like that for you. Okay, but let's talk-

Jessica Pieklo: Have you seen me three beers into a woman's soccer game? I fully turn my cap around.

Imani Gandy: Okay, let's all settle down. All right, so we've told you what this case is about, right? So let's talk about what it means that the Court took this bullshit case and how Amy Coney Barrett, the woman that Jess wants to arm wrestle in a cornfield, is the most important Justice on the Supreme Court right now.

Jessica Pieklo: I mean, I'd debate her too. Let's be clear.

Imani Gandy: I mean, it's the Barrett Court now, right? She's the belle of the abortion ban ball. Mississippi basically waited until she was on the bench and then filed this 200 page brief that basically asked if Amy Coney Barrett could pretty, pretty please ban abortion because abortion makes us sad.

Jessica Pieklo: This is going to be the first substantive abortion rights case that Amy Coney Barrett hears and it's exactly what conservatives were hoping for. If conservatives win, it's going to open the door for states to ban abortion without having to even overturn Roe vs. Wade at all and that is huge. It would be a political windfall for conservatives because they could still fundraise off of a very big, scary Roe vs. Wade, legal abortion is out there taking the babies, but it would still allow states to pass any absurd abortion restriction they want, like these 15 week bans or these six week bans that we see states trying to pass. Sounds good to the Trump judges, right?

Imani Gandy: Yeah, and I think that's an important point that you raised because I've seen people on Twitter asking like, "Well, if they overturn Roe vs. Wade, then what are they going to fundraise off of?" And it's critical to know that yes, I would say some of them really would like to overturn Roe vs. Wade, but to the extent that you think that they are fundraising off of the idea that Roe vs. Wade even exists, you're absolutely correct. And so this is a way that allows states to restrict abortion without actually overturning Roe vs. Wade. I mean, this is one way to get there. So it allows conservatives to keep fundraising off of it, "Oh my God, they're killing babies." When really, nobody's killing babies because, A, there's no killing babies involved, and B-

Jessica Pieklo: That's a crime.

Imani Gandy: That's a crime, and if you know someone who's killing babies, you should probably call the FBI. But setting that aside, it does allow these states to just winnow away at abortion until it doesn't exist while still claiming that big abortion is coming for your family.

So now that we've told you what the case is about, and we've told you why it's a BFD that Amy Coney Barrett is on the Court and what that means for the future of abortion rights, let's talk some nuts and bolts. Let's talk about, when is this case going to be argued? When is it going to be decided? When do I know to go outside and pour a 40 of Mickey's onto the curb for Roe vs. Wade?

Jessica Pieklo: Okay, so one of my favorite things about covering the Supreme Court over the last 10 years is they don't tell you shit about how they do anything. So we don't actually know when this case is going to be argued, but we have some good guesses. They haven't taken a lot of cases so far. So this is likely going to be on the Court's fall term, which means we're probably going to hear it argued sometime around October, November this year.

So another thing to keep in mind, is that the Court has spent the last year hearing cases remotely because of the pandemic. So more likely than not, this is going to be a case that the Justices hear in-person. So this really could be one of the first, if not the first, abortion rights case that Amy Coney Barrett hears in-person while on the bench. And so, the Court hasn't said how it's going to handle arguments in the next term, out of the pandemic, but this case is definitely in the mix. So we're going to have arguments sometime in the fall, probably in-person.

Imani Gandy: So two things, one, does this mean that we might have an opportunity to do one of our Jess and Imani hit DC, twerk in a lobby, go and drink beer in a bar. Like one of those events that we like to do, maybe every year, usually at least once a year, it's always fun. It's always fun going on trips with Jess because she will twerk in a bar and she does not give a fuck.

Jessica Pieklo: It's true.

Imani Gandy: So what you're saying, essentially, is that this is going to be part of Sweaty SCOTUS Season 2022, right? They're going to hear the case this year, but then it's next June, or next end of May going into June, where we're going to be sweating through our t-shirts waiting for a decision.

Jessica Pieklo: You know, these Justices just their time. So it's May 2021 now and they announced that they're taking up the case. They're going to take their time putting it on the calendar, that'll happen in the fall, then there'll be arguments and then they're going to take their time thinking about it and deciding it. And oh god, they're going to be so many opinions written, no matter what the Court decides. The one thing I predict is there will be about eleventy bazillion words filed from the Court in relation to this case. And so all of that takes time, so you're right, we are going to be sweating for a full year, Imani. That's one thing that I can predict with certainty around this case, is that we will spend the next year sweating about.

Imani Gandy: But we spent all of 2020 sweating.

Jessica Pieklo: I know.

Imani Gandy: Do we ever get to not sweat? Maybe we should get our sweat glands removed. All right, so can we talk about what the impact ... If the Court sides with conservatives and the Court says, "Sure, states can ban pre-viability abortions." What's going to happen? Where are we going to be? Abortion landscape time.

Jessica Pieklo: The abortion landscape, just a real quick snapshot, is not great, I hate to say. Maybe you've heard, it's kind of rough out there. Right now there are over 20 states poised to ban abortion outright. So that's just like ready and go. 11 states currently have trigger laws that would ban abortion if Roe vs. Wade falls. So what does that mean, if we were to get a decision from the Court in this case,

that says, "Yeah, pre-viability abortion bans. Totally cool." It is, in theory, possible that 11 states could say, "Great. Now you cannot get an abortion here." So that is terrifying. And we have 12 states, other than Mississippi, that have already tried similar nonsense with these pre-viability abortion bans. 15 week bans, 12 week bans, six week bans, they've all been struck down, but that is game on all over again if the Court were to side with Mississippi in this case. We know that there would be a rush to amend courthouse filings to try and have bans that were otherwise declared unconstitutional, revived. So it would be a mess of litigation.

Imani Gandy: It's just going to throw all ... It's going to throw abortion law to chaos, essentially. It's going to be very chaotic. And I feel like it's a personal attack because they know we cover this stuff. So if they could just give us a break, because I want to go glamping and I might not be able to go glamping because these jackasses are intending to ban abortion. I hate it.

So we've told you a ton about what this case is about, but you don't have to take our word for it because we just got the green light to talk to Hillary Schneller from the Center for Reproductive Rights, and she's one of the attorneys on the case. So let us head to the bat phone and talk to her now.

Jessica Pieklo: We are thrilled to be joined with Hillary Schneller, Senior Staff Attorney at the Center for Reproductive Rights and lead attorney on this case. Hillary, thank you so much for taking time out of what, I can only imagine, is maybe one of the most bonkers mornings in your professional career so far. Thank you so much for taking time to join us.

Hillary Schneller: Absolutely, thank you for having me.

Jessica Pieklo: So Imani and I have been talking about this case for a long time because it's been bouncing around the Court for a while now. And I think one of the things that I know I want to hear from you on, is just your reaction to the Court taking the case after thinking about taking it so many times.

Hillary Schneller: Yeah. I mean, I know you all have been speculating along with everyone else about why it took the Court so long to make a decision as to whether they would review this case. It seems like it was a tough decision for the Court to decide to take it up or not. It really shouldn't have been, as you all know, there's no circuit split here. The right to abortion has been affirmed and reaffirmed time and again by various compositions of the Court. So it's certainly very alarming and, frankly, outrageous that they have decided to take it, but as to why it took them so long, the machinations behind the scenes are sort of a mystery to everyone.

Imani Gandy: So I guess then you probably wouldn't know why it is they just said they were going to take it, but no one wrote anything. For sure, I thought someone was

going to write something, maybe Sonia Sotomayor might have something hot and spicy to say, but nothing.

Hillary Schneller: Yeah, I'm really not sure how common or uncommon it is for Justices to write a dissent from a grant of cert, when the Court is granting cert to hear the case fully on the merits. I know perhaps the Justices who perhaps were internally dissenting are holding their fire for the actual hearing on the merits.

Jessica Pieklo: Imani and I had speculated that maybe some of the Justices were working on some hobbies, like cross-stitch, instead of deciding to take up the case, but clearly they've gotten around to some post-pandemic work, apparently. When is your office expecting that the Court is actually going to hear this case? I mean, one of the things with covering the Supreme Court is, you well know, is these are long arcs. We're going to be talking about this for a while now. So what are some of the likely dates on the calendar for us?

Hillary Schneller: So it certainly won't be heard until next term. So at the earliest, sometime in the fall, and based on some speculating out of dates, maybe around late fall or December. [inaudible 00:16:55] get a more specific date from the Court soon.

Jessica Pieklo: And this is probably going to be one of those cases that they don't decide pretty quickly either. I mean, we sort of have a running joke here on Boom! Lawyered about sweaty SCOTUS Mondays and waiting for decisions and stuff. Is this a case that you anticipate we'll be waiting a while to hear from the Court on?

Hillary Schneller: Yeah, I mean, I would expect just like June Medical, just like Whole Woman's Health, we would hear about this case in June of 2022.

Jessica Pieklo: For folks who want to know more about what is going on with this fight, why the Court is getting into it now, what's at stake, where are some good resources? Where could they go to learn more about this case?

Hillary Schneller: I mean, I think you all have done a fantastic job covering this case and the related issues. I always tell folks to keep up with their local abortion funds, the local clinics. The clinic we represent in this case is Jackson Women's Health Organization, which has been the only provider of abortion services in Mississippi for over a decade. So the local funds, the clinics, and of course the Center for Reproductive Rights. So where I work will be keeping folks posted on all the goings on related to this case and really the incredible ripple effects it has. Not just for the right to abortion, but so many personal fundamental rights to make decisions about our bodies, our lives, and futures.

Jessica Pieklo: And if you had to tell our listeners one thing about this case that they should know as they are taking in this news, what would you want them to know?

Hillary Schneller: So it's hard to think of one thing, but I think one-

Jessica Pieklo: That's such a setup lawyer question too. Here's a lawyer going to ask a lawyer to boil it down to one point, go.

Hillary Schneller: I mean, two things to keep in mind. One that's really important for people continuing to access abortion over the next several weeks, months, and year, is that abortion is still legal and accessible in Mississippi. I think a lot of reporting around these cases can be very confusing. The other thing really is to say that this is absolutely about the right to abortion, but it is truly about the panoply of fundamental personal rights that the Court has said, the constitution guarantees are for us, as individuals, to make. And to understand that the state of Mississippi and its sister states, is arguing it should be the government, that the state should get to decide these things for us and that obviously should not sit well with anyone.

Imani Gandy: The party of small government, ladies and gentlemen. I just want to say thank you so much for joining us, it's always a real treat for me to talk to lawyers who just really stuck with it, stuck with litigation, and are litigating cases that are so fundamental to the rights that so many of us hold dear. So I just want to thank you for doing the work that you do.

Jessica Pieklo: Sincerely.

Hillary Schneller: Well, right back at you guys. It's a pleasure to listen to you and I'll continue listening in as this fight continues along this year.

Jessica Pieklo: Well, we've had some pretty good luck. We had folks from the Center on when the Court decided to take up June Medical Services and got reactions right away from that, and that case didn't turn out so bad. So it's not over till it's over. Let's hope the trend continues.

Hillary Schneller: Yes, yes, exactly.

Imani Gandy: So again, I just want to really thank you for being here and taking the time to join us.

Hillary Schneller: Thank you so much for having me.

Jessica Pieklo: Well, that was fascinating. I love hearing from attorneys on the cases. Like we talk and we tell folks all the time, don't go to law school and law school's terrible, but we so appreciate the people who go to law school and are out there fighting these fights. So thank you for doing all of that.

Imani Gandy: Better people than I. Couldn't do it.

Jessica Pieklo: Thanks so much to Hillary Schneller for joining us on such short notice. Wow.

Imani Gandy: Yeah, and thanks to CRR for all the hard work that they do. So let's go back over what we covered today. We talked about JWHO.

Jessica Pieklo: J whoop whoop.

Imani Gandy: J whoop whoop.

Jessica Pieklo: I'm going to do that every time we talk about this case, I'm sorry.

Imani Gandy: It's so fun to say. So we talked about JWHO vs. Dobbs, which is the 15 week ban case out of Mississippi, and it is directly challenging decades long judicial precedent that bars states from banning abortion pre-viability. That means that states, up until maybe next year when the Court issues a ruling, states are not allowed to ban abortion unless the fetus is able to survive outside of the womb. But, as we discussed, this is Amy Coney Barrett's Court now. So she's putting on her tiara and her party dress and she's all ready to be the belle of the abortion ball.

Jessica Pieklo: And I'm going to arm wrestle her. I'll arm wrestle her. I don't care how good she looks, I'm gonna arm wrestle her.

Imani Gandy: Okay, Jess. And then finally, we talked about what to expect next, and that is just absolute fuckery that may occur right in time for the midterms. Did I miss anything?

Jessica Pieklo: Yeah, I'd like unsalted butter, please.

Imani Gandy: What?

Jessica Pieklo: When I beat Amy Coney Barrett in arm wrestling, I want my statue carved in unsalted butter.

Imani Gandy: Okay, may I ask why?

Jessica Pieklo: Because I'm salty enough, that's why. Booyah.

Imani Gandy: Oh fucking hell. Okay, we got to go. We got to go. If you want to talk to Jess about her butter statue, you can follow her on Twitter @hegemommy, H-E-G-E-M-O-M-M-Y. If you would like to just facepalm with me ad infinitum, you can follow me on Twitter @angryblacklady, which is spelled exactly how it sounds. If you want to follow [@RewireNewsGroup](#) on Twitter and Instagram, you should, especially now because abortion is what we do. It's what we do and if you want to keep up on what's going on with this case and all the abortion cases, you really just got to hit that follow button for Rewire News Group.

Oh yeah, you're probably going to want to join our Facebook group. This is a good time, we're probably going to get an influx of members of people come

looking, scrambling through the door like Weeknd and that Super Bowl gif. You know, where he's like wandering around, looking through mirrors. That's how people are going to be coming into the Boom! Lawyered group, looking for friendly faces and hands to hold as we walk through this journey of nonsense together. 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 the tubes, folks.

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