

## Boom! Lawyered: Here's What You Need to Know About the Plan to End Roe

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 super jazz hands about the fact that Kristen Clarke was confirmed yesterday. She's going to be the new head of the civil rights division of the DOJ. Whoo whoo!

I'm Rewire News Group senior editor of law and policy, Imani Gandy.

Jessica Pieklo: I'm Jess Pieklo, Rewire News Group's executive editor.

Rewire News Group is the one and only home for expert reproductive journalism that inspires you to sweat with us through the month of June while we wait for upcoming Supreme Court decisions. The Team Legal podcast is part of that mission. So a big thanks to our subscribers and welcome to our new listeners.

So I actually haven't stopped sweating since last week, Imani, when the court announced it was going to take *Dobbs v. Jackson Women's Health Organization*, or JWHA, as we like to call it here on the podcast.

Imani Gandy: Yeah. It's been a real sweaty, sweaty week. It has indeed.

Jessica Pieklo: Yeah. So we are going to be all over this story, as you can imagine. And I am just going to ask you folks, if you haven't already, go over to [Rewirenewsgroup.com](https://rewirenewsgroup.com), because we have a reaction there. And we also have this really great piece from Erin Matson. Did you know that abortions have something in common with roads and bridges?

Imani Gandy: What?

Jessica Pieklo: They do. Erin wrote this amazing piece about how it's all infrastructure. Go check it out.

Imani Gandy: That's right. Yeah, she did. It's a really great piece. Erin Matson, she's a Rewire alum, actually. She's a lovely person. And yeah, the piece was really powerful. It makes a really key argument that we need to invest in abortion the same way that we invest in roads and bridges. And she lays out actually really smart ways to do that. So you should go over to Rewire News Group, check out that piece.

And I would just like to take a moment to give a special shout out to "I love Cheese Pie" on Twitter...

Jessica Pieklo: I mean, I love cheese pie too, but that's an excellent Twitter handle.

Imani Gandy: ...who tweeted a very complimentary thing about us last week. They said, "Just yelled 'those motherfuckers,'" in all caps, "when listening to Boom! Lawyered, and spooked the hell out of my husband and my cat. I wish I could tell you that this was the first time. #podcast" So thank you "I love cheese pie," who's apparently the sensei of sarcasm and butt jokes, which I can appreciate as a sarcasm and butt joke enthusiast myself.

Jessica Pieklo: I love the image of us being the only legal journalism team that will spook the hell out of your husband and cats.

Imani Gandy: I'm going to use that as one of my next [*inaudible*]. That would be fantastic.

Jessica Pieklo: That's amazing.

Imani Gandy: So moving on, we are all still reeling from the Supreme Court's decision to take the Mississippi 15-week ban case, *Dobbs v. Jackson Women's Health Organization*, or JWHO.

Jessica Pieklo: J-Whoop! Sorry, it's going to be a long year.

Imani Gandy: She's going to do that every time. And I'm going to laugh every time because it's going to be funny every goddamn time.

But state legislatures have been trying to enact gestational abortion bans with such sound and fury that it seems almost chaotic and haphazard.

Jessica Pieklo: But it's not. That's the thing. It's actually the result of a plan that was set in motion by Alliance Defending Freedom, a Christian conservative law firm that has been labeled a hate group by the Southern Poverty Law Center. And that's what we're going to talk about today.

First, we're going to introduce you to a new segment though, called: This Week in J-Whoop!

Imani Gandy: J-Whoop!

Jessica Pieklo: I'm shameless.

Imani Gandy: Yes.

Jessica Pieklo: The Supreme Court announced that abortion rights are on the line. And so Imani and I decided that, hey, you know what? We are going to do a recurring segment given the news here. And this is either going to be a major update on the case or something that's just happening in the space that's going to help you all connect the dots to this case and what's happening on the abortion rights landscape over the course of the next year, because it's changing. This way you have information that maybe you missed, didn't know is part of the fight, and it's all

about arming you to do what you can in your communities. So, J-Whoop! This week in J-Whoop.

Imani Gandy: J-Whoop! This week in J-Whoop.

So that's going to be our first topic, This Week in J-Whoop. Our second topic, we're pretty much going to blow your goddamn minds by revealing that the Supreme Court taking J-Whoop is the combination of a specific, years-long strategy by the right to overturn Roe vs. Wade.

And third, we're going to tell you about the super secretive summer intern program run by Alliance Defending Freedom, this powerful conservative organization that is almost definitely part of some sort of Illuminati conspiracy. Maybe.

Jessica Pieklo: Wait, the Illuminati?

Imani Gandy: The Illuminati. J-Whoop and the Illuminati. It's on. This next 14 months, it's going to be on, Jessica.

I just called you Jessica.

Jessica Pieklo: You did!

Imani Gandy: That's how on it's going be.

Jessica Pieklo: That's how on it is. You used my full name. I still have Mary J Blige ear-worming from your setup here.

Jessica. Imani called me Jessica. I'm going to go sit in the corner and think about that.

All right. So this week in J-Whoop. Imani, Texas, man. Texas. We need to talk about what Texas did, because last week, the Supreme Court said, "Hey, we are super excited to go all in." And did I say rawl in? We are super excited to go rawl in.

Imani Gandy: Maybe you meant to say brawl in. They're brawling. Supreme Court's ready to go brawling over abortion rights.

Jessica Pieklo: It's going to be the most amazing year covering this case.

The Supreme Court announced that it's taking this case, right? And Texas was all, hold my beer, because what we are going to do is really up the ante.

So this week, Governor Abbott signed into law SB 8. This is this absolutely bananas law that Imani and I have been talking about. We've got coverage on

the site too. This would ban abortion at six weeks, and would basically let any old Jack sue to enforce it, right? There's this problem about pre-viability abortion bans being unconstitutional.

Imani Gandy: That's a thing.

Jessica Pieklo: It's a thing. Anyway.

So lawmakers are absolutely drunk with possibility with Amy Coney Barrett on the case, or on the court, with the court taking this case. And so, we're going to see Texas. We're going to see other places really getting in on the game.

SB 8 bans abortion at six weeks. Don't call it a heartbeat ban though. It's not a heartbeat. Fetuses don't have heartbeats.

Imani Gandy: They do not. They do not have cardiovascular systems of any kind. They don't have a heart. It's not even a fetus. It's an embryo at six weeks.

Jessica Pieklo: Oh yeah.

Imani Gandy: And I just want to say, just reiterate how just absolutely bonkers this bill is. It confers standing on anyone and everyone, not even just in Texas, anywhere in the country. Do you live in Alaska? Do you hate abortion? Why don't you go ahead and sue TEA Fund, which is an abortion fund in Austin, Texas, for providing services to people seeking an abortion for quote, unquote, aiding and abetting an abortion.

This is, I'm speechless, honestly. You can't just confer standing on everyone to sue an abortion clinic or a person who helps the person getting get an abortion. It's ridiculous.

Jessica Pieklo: And so the whole purpose of this is just to keep the pressure on abortion rights supporters while the Supreme Court case putters along. And literally it's really like we are in that pressure vise grip right now, and that's the whole point.

Imani Gandy: Yes, it is.

Jessica Pieklo: 15 week bans and Mississippi. Why 15 week bans, Imani, and why Mississippi?

Imani Gandy: Well, that's what we're going to talk about right now. That's our second topic. Why 15 week bans and why Mississippi?

You know, I was thinking about this very question this week. And so I dug up some reporting from Peter Montgomery over at Right Wing Watch, which is an organization that basically keeps tabs on all the bonkers things that the right wing is doing. He issued a report in 2018 about a conference called Evangelicals

For Life. This conference took place the day after the March For Life back in 2018.

Now, would it surprise you if I said that the Mississippi 15 week ban, this specific law that is at the Supreme Court right now, was developed by Alliance Defending Freedom, this Christian conservative law firm, as part of a concerted strategy to quote, make Roe totally irrelevant or reverse it.

Jessica Pieklo: I'm sorry, what?

Imani Gandy: Yeah.

Jessica Pieklo: Hold on.

Imani Gandy: This is not coincidence. That was a plan to make Roe totally irrelevant or reverse it.

Jessica Pieklo: You're telling me Alliance Defending Freedom's legal brains cooked up the Mississippi 15 week ban as part of a piece of model legislation.

Imani Gandy: Yep.

Jessica Pieklo: Okay. All right. I'm tracking so far. Mississippi was the first state it was introduced.

Imani Gandy: Yep.

Jessica Pieklo: Okay. Amy Coney Barrett may or may not have had thoughts about that bill before she was a federal judge? I guess, maybe, we may never know. I don't know and it's at SCOTUS, Imani! What's happening? This is really bad.

Imani Gandy: It's really bad. It's really bad. So let me just give you some background on this really bad thing that I'm about to tell you.

So Kevin Theriot and Denise Burke of Alliance Defending Freedom, which again has been labeled a hate group, an anti-LGBTQ hate group, by the Southern Poverty Law Center. So they did a panel at this quote unquote pro-life conference, Evangelicals For Life, where they laid out their plans specifically to reverse Roe. They said that they had developed this model legislation that they were going to start deploying in the states. They said that this model legislation specifically was a 15 week ban. They said that Mississippi had already introduced this legislation, this 15 week ban legislation, so we're talking back in January 2018. Mississippi had already introduced ADF's model legislation banning abortion at 15 weeks.

This is what Denise Burke, who is senior counsel at ADF, said to this panel of fetus firsters. "We have a strategic plan that is comprehensive, start to finish,

from when we're considering legislation all the way up to the Supreme Court to challenge Roe. And we are focusing right now on two specific types of abortion bans. So we're not looking at regulation, we're actually looking to enact abortion bans."

Jessica Pieklo: So now it's a ban. It's not a regulation.

Imani Gandy: Right.

Jessica Pieklo: Because I mean, I've just been reading a lot of briefs from attorneys from the state of Mississippi saying that this is a regulation. It's not a ban. And so I'm really appreciative of ADF clearing this up for me, because I was getting hella confused there. They can't keep their stories straight.

Imani Gandy: Right.

Jessica Pieklo: Okay.

Imani Gandy: This was back in 2018. So apparently it was a ban in 2018. Maybe in the three years ensuing it somehow morphed back into a regulation. I don't know. But it was a very clear and specific plan to ban abortion at 15 weeks, which is basically the first trimester.

Jessica Pieklo: Okay. So that was my question. Why 15 weeks? Why 15? Why not 14 or 16 or 18 or 22? What is 15? What's magic?

Imani Gandy: Because they seem to think that most Americans think abortion is fine in the first trimester, but then should be banned thereafter. So they want to start saying that any kind of abortion after the first trimester is a later abortion, which is ridiculous.

Jessica Pieklo: Okay.

Imani Gandy: And that abortion at 13 or 14 weeks is not a later abortion. But at any rate, they picked 15 week bans for that reason.

They also picked 15 week bans because the 20 week bans just weren't cutting it in terms of getting pro-choice advocates, pro-choice attorneys to file lawsuits challenging them. Right?

Jessica Pieklo: Yeah.

Imani Gandy: So at this conference, Denise Burke was pretty smug when she was crowing that Mississippi's and other states' 20 week bans hadn't been challenged in court. And she said the reason was because abortion advocates fear a bad decision.

Now whether that's true or not, I can understand how that would be true, because considering the federal judiciary that we have, you couldn't possibly rely on a federal court to say a 20 week ban is a pre-viability ban and therefore unconstitutional. I understand why they might be afraid, but I think it's pretty interesting that she is making this claim, that Denise Burke is making this claim with respect to Mississippi, since you can't even get an abortion at 20 weeks in Mississippi. So why would you be challenging that state's 20 week abortion ban, right? That goes for a ton of states. A lot of states don't have clinics or providers that perform 20 week abortion. So there's no one to sue over whether or not that 20 week ban is constitutional.

And let me say again, every 20 week, well, not again for the first time, but let me say for the first time, every 20 week ban that actually has made it to court has been struck down. In fact, every pre-viability abortion ban that has made it to any federal court has been struck down. Why? Because pre-viability bans are unconstitutional. Jess wants to do the jazz hands. She's got them up. She's got them up.

Jessica Pieklo: I am so excited about the jazz hands.

This is insider baseball stuff, but the idea that ADF is at this conference, basically going "Neener-neener!" to the ACLU and all these other attorneys. We're going to go ahead and push this law because we don't think that you've got it in you to challenge it. We think you're scared of a loss. That is brazen.

Imani Gandy: Yeah.

Jessica Pieklo: I just want folks to understand that that is basically ADF mooning the entire pro-choice movement.

Imani Gandy: But also mooning it from a position of weakness. To the extent that, as I've said, no federal court has upheld one of these bans, so why they would go to, oh, they're afraid of a loss, versus A) there are no providers in this state that perform these abortions, and B) bite me, honestly. I kind of want PPFA and the Center for Reproductive Rights and the ACLU to just be like, Hey, you, ADF? Bite me.

Jessica Pieklo: That is an amazing image. But it's such a good point. ADF is saying this at the time when those challenges were being made, they were losing. So sure, what good is the pre-viability abortion ban if nobody's willing to bring a lawsuit? But also when those lawsuits were brought, they were being lost. So this is a really good example of the anti-choice movement also just taking the reins and making their own narrative. This is them just telling a story that they want to hear, regardless of truth in it.

So, all right. The anti-choice movement regrouped and decided it was, I don't know, what? Time to go bigger with the bans. So they went more extreme and landed on even earlier bans? That's what happened?

Imani Gandy: Yeah. And that's how we got the 15 week ban. They essentially wanted to bait the Center or the ACLU or whomever into challenging one of these bans because they think that they can win.

Look, the 15 week bans, as I said, essentially limit abortion to the first trimester. It's unconstitutional, right? And so advocates began looking at friendly states, friendly states where they—

Jessica Pieklo: Hold up. Hold up. A friendly state? What's a friendly state? We're in the upside down.

Imani Gandy: We are in the upside down.

Well, in the eyes of the anti-choicer, a friendly state consists of a state where there's an aggressively anti-choice governor, like Tate Reeves of Mississippi, or an aggressively anti-choice attorney general, like Lynn Fitch in Mississippi, and really conservative federal courts, like the 5th Circuit. No, wait, is Mississippi in the 5th Circuit? It is.

Jessica Pieklo: Yep.

Imani Gandy: It is, yeah. Mississippi is in the 5th Circuit, and we all know that the 5th Circuit is hyper, uber conservative. Right? And we're talking 2018. We're talking Trump is just starting to stack the 5th Circuit with people like James Ho, who called abortion a moral stain on this country. I mean, this is just, this is the 5th Circuit.

Jessica Pieklo: Yeah. The 5th Circuit was conservative back when Imani and I were still actual attorneys in big law places. The 5th Circuit was conservative before the 5th Circuit was conservative.

Imani Gandy: So they're looking for these friendly states so that they can introduce these laws, get these laws passed. These are voter suppressed states, gerrymandered states. If you look at a map of Mississippi, there's a lot of blue there. Of course the blue happens to be in and around Jackson, sort of on the, never eat shredded wheat, west side of the state. Do you do that? Never eat shredded wheat when you have to figure out the compass?

Jessica Pieklo: Soggy waffles. Mine was never eat soggy waffles.

Imani Gandy: Soggy waffles.

Jessica Pieklo: I still do it too.

Imani Gandy: I do too!

Jessica Pieklo: And this to figure out if it's left or right.

You listening to the podcast can't see that, but I did just hold up my hands—

Imani Gandy:

With the L's.

Jessica Pieklo:

To see which one was the L and which one wasn't.

Imani Gandy:

So it's crucial to understand that more states are becoming friendly in this way. Right? A lot of what's stopping states, like for example, Pennsylvania, which is trying to push forward with a Down syndrome ban, and with a fetal burial requirement. The only thing—a Down syndrome ban and a heartbeat ban as well.

Jessica Pieklo:

Yeah.

Imani Gandy:

The only thing standing in the way of Pennsylvania Republicans passing that crap is Tom Wolf, who's a Democrat. Right? So what do you do? You further gerrymandered the state. You further voter suppressed the state so you can get a Republican governor who's going to sign those laws, sign those bills into law. It's bad, but we should move on.

Jessica Pieklo:

Yeah. So that's how we got Mississippi. That's how we got J-Whoop, and it's all Amy Coney Barrett's fault. Alliance Defending Freedom, the Blackstone Institute and Amy Coney Barrett.

Imani Gandy:

And that's our third topic. We're going to talk about how we have Alliance Defending Freedom to thank for this test case, this 15 week ban in Mississippi. We're going to talk about the strategy for getting this case to the Supreme Court. And we're going to talk about what role Amy Coney Barrett may or may not have had in it.

Jessica Pieklo:

Reporting this week kind of lit the internet on fire because it showed that Amy Coney Barrett took speaking fees from the Blackstone Legal Fellowship.

We've done some reporting on the Blackstone Legal Fellowship over at Rewire News Group. This is a summer internship program run by the Alliance Defending Freedom. And we've talked about ADF already on the show. They're that conservative, legal advocacy organization. They do all sorts of things. They write model legislation, like this Mississippi 15 week ban. They're responsible for a lot of the model legislation, the anti-trans bills sweeping through the states. This is a big issue for them. They also bring lawsuits. They like to sue folks—

Imani Gandy:

Masterpiece Cake Shop.

Jessica Pieklo:

—who are fans of civil rights. Masterpiece Cake Shop. They have a few notable alums, among them, Josh Hawley. So, you know, that really gives the flavor for who ADF is, and in particular, this arm of them, the Blackstone Institute.

Okay. So the timeline is really important here. Amy Coney Barrett was already on the 7th Circuit Court of Appeals when the Mississippi bill was introduced. But we know how legislation works, right? So this was in the works prior. It's not like in the beginning of 2018, all of a sudden they were like, boom, here's a piece of legislation that came fully formed out of the sight of ADF's head, right? There's work there.

So Amy Coney Barrett is involved with Blackstone, taking speaking fees and just sort of out there promoting their cause beforehand. That's bad. That suggests that she's involved, at least in spirit, in this. All right?

So there's no indication, though, that she's going to recuse herself from hearing this Mississippi 15 week ban, even though we know she was taking speaking fees from Blackstone, we know that Blackstone and ADF were involved in this. And even if Amy Coney Barrett isn't involved directly, that's really too close for comfort.

Imani Gandy: Doesn't look good.

Jessica Pieklo: It doesn't look good. Judges are supposed to recuse themselves when there is the appearance of impropriety, right? That is the thing. Whenever it looks bad, right? It's the, does it look bad? Does it smell bad? Taste? And they should do that.

And the Supreme Court has no formal code of ethics. They're the only court in the entire country that actually doesn't have a process for mandating this kind of thing. It's kind of just up to their own judges' discretion.

So what do we know about Jackson Women's Health versus Dobbs? Dobbs versus Jackson Women's Health? We know that the Court thought about this case a lot before taking it. We know that it takes four justices to decide to take a case, but it takes five justices to decide to change the law. And that's the question that we all need to be asking onfAmy Coney Barrett and the court around this case. Why are you thinking about it so long? What was Amy Coney Barrett doing? Why isn't she recusing?

Imani Gandy: Yeah. And just in case you think we're trying to draw tenuous connections in order to drag Amy Coney Barrett's name through the mud, Blackstone is a really terrible organization and it's a very secretive organization that a lot of folks don't know about. Back in 2014, two Rewire News reporters did this extensive expose on Blackstone, looking at ADF's tax filings. And I just want to tell you a little bit about what they're about. They essentially want to push this country even further into theocracy. They believe in using legal careers to quote, reorder society, according to a Christendom-ic worldview in which there's no separation between church and state.

And so these Blackstone legal fellows attend these programs, and people like Amy Coney Barrett go and give lectures. And then these people, these fellows, graduate from this program and then they go on to be sort of placed, installed in positions of power, positions of leadership, positions of influence. We're talking clerks for state judges, federal judges, working with state attorneys general. They're working their way up into the upper echelons of government where they're going to have a lot of influence on our lives.

And so that's why it's a big deal that Amy Coney Barrett is affiliated with this organization. That's why it's a big deal that Alliance Defending Freedom is going to be making arguments in favor of this 15 week ban, and Amy Coney Barrett, who has ties to Alliance Defending Freedom is like, yeah, that's cool. That's not a conflict of interest. It is.

Jessica Pieklo: You really were not kidding when you said we were going to talk about the Illuminati on this episode, because that's bonkers!

Imani Gandy: It is. And the funny part is, one of the Blackstone officers, one of the people who worked with the program, was like, it's not like it's the Illuminati or anything. If you have to say, it's not like it's the Illuminati, it's definitely the fricking Illuminati. I'm sorry, that's just the rule. Jesus Christ.

Jessica Pieklo: I don't make the rules. That's just the rule. It's so much projection.

Imani Gandy: So much projection.

Jessica Pieklo: That is wild. And so that was back in 2014, Rewire News Group published this piece.

Imani Gandy: Yeah, yeah.

Jessica Pieklo: And so 2018 is when the Mississippi bill is introduced. So that is a long arc of bullshit that ADF and Blackstone is cooking up there.

Imani Gandy: Yeah. Yep. Yep. Yep.

So what did we learn today, Jess?

Jessica Pieklo: Well, we learned that it's off to the abortion races now that the Supreme Court has taken up J-Whoop. I apologize. Now that the Supreme Court has taken up JWFO. And that's with the Texas lawmakers enacting the six week ban. They feel really confident it's going to be upheld thanks to the Supreme Court taking up this case. And that's really the part that I want to make folks understand. The Supreme Court taking this case sent a clear signal to lawmakers to just really go for it. And that is what we're going to see.

Imani Gandy: And we also learned that the Mississippi 15 week case is really the golden goose for the anti-abortion movement, right? This law was specifically enacted in Mississippi and it wasn't a fluke. It was a strategy by the right. It was a strategy by Alliance Defending Freedom. They had no bones about going to a conference of Christian evangelicals and saying, "We are going to reverse or outright overrule Roe. And here's how we're going to do it. We're going to introduce these 15 week ban in Mississippi." What happens three years later? That 15 week ban is at the Supreme Court with Mississippi attorney generals and Mississippi attorneys defending it.

Jessica Pieklo: And that's the third thing we learned this episode, that it was the right-wing litigation mill Alliance Defending Freedom we have to thank for this mess.

Imani Gandy: So that's going to end our episode for us today. We hope that we've helped you put some of this stuff in order, because it may seem really chaotic, and it may seem like these states are just going absolutely bonkers, throwing gestational bans at the wall, but it's actually ordered. There's a reason that this is happening and it's a specific plan that was put in place by the right wing.

And so if you're going to be arguing with people on Twitter, we've given you a lot of ammo today, I think, to go and bring some cogent arguments to the people. And even if they don't understand them, bring them to the people anyway, because there might be someone on Twitter who's watching you have this argument with some anti-choice numpty who's going to learn. That's a Twitter tip from me to you. If you're going to argue with people, make sure you come with really great arguments, because people might be watching.

And you can help us spread the Boom! Lawyered word. You can help us help other people understand this case. J-Whoop!

Jessica Pieklo: Spread the Boom! Lawyered word. I also just got so excited thinking about the fact that you're going to be in Colorado soon, and I'm literally bringing Imani to the people. I am so excited. It's going to be amazing.

Imani Gandy: I'm going to be coming out of this COVID pandemic hole I've been in, rubbing my eyes like, "Sunlight? People? Hugging?"

Jessica Pieklo: Imani was one of the last people not related to me by blood that I saw in the before time, so it's all coming full circle.

Imani Gandy: It's all coming full circle.

And if you want to get excited about the fact that Jess and I are going to be in the same state, you can find me on Twitter, @angryblacklady. You can find Jess on Twitter, @hegemommy. And you know what you can and should do in order to help us, help keep this Boom! Lawyered ship afloat? Help us help you bring

Boom! Lawyered to the people? You should donate.  
Rewirenewsgroup.com/boomgive. That's rewirenewsgroup.com/boomgive.

What else? Oh, Twitter, Instagram. You should follow us on Twitter and Instagram. Rewire News Group. We've got a lot of really great content. You should head over to rewirenewsgroup.com. Like we said, Erin Matson's got this great piece that explains how our abortions are like roads and bridges. They are. So go read that.

Jessica Pieklo: Infrastructure, baby.

Imani Gandy: Infrastructure. Big infrastructure, big structural change.

And on that note, what are we going to do?

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.