

# Boom! Lawyered: Here Comes the Supreme Court Train Wreck

- Imani Gandy: Hello fellow law nerds. Welcome to a brand new season of Boom! Lawyered, a Rewire News Group podcast hosted by the legal journalism team that believes abortion is health care and that the Colorado mountains are self care. I'm Rewire News Group Senior Editor of Law And Policy Imani Gandy.
- Jessica Pieklo: And I'm Jess Pieklo, Rewire News Group's Executive Editor. Rewire News Group is the one and only home for expert repro journalism that inspires you to take it to the streets. And the Boom! Lawyered Podcast is part of that mission. So a big thanks to our subscribers and a welcome to our new listeners.
- Imani Gandy: So the last time you heard from us we were banging on about how this was going to be the last year of Roe and how we, the legal journalism team at Rewire News Group, would be holding your hand and walking you through it. We figured we would be all up inside Mississippi's business for a year. After all, we had assumed at the time that Dobbs vs Jackson Women's Health Organization—say it with me, Jess, JWHO.
- Jessica Pieklo: J-WHOOP.
- Imani Gandy: We assumed that JWHO would be the case to end Roe, and we were planning to slow-walk the death of Roe so that by the time SCOTUS actually shivved it to death, you'd be well prepared. But no, no, no, no, no. SCOTUS up and decided to kill Roe on the shadow docket on a Wednesday in September. Why? Because of Texas of course. Oh Jesus.
- So Texas basically showed up at the abortion cookout with potato salad that had raisins in it, right? And they screwed up our summer plans. So now we're sitting around eating potato salad with raisins in it, and Roe is essentially dead, right? So not only do we have the first direct challenge to Roe vs Wade happening this Supreme Court term (the Mississippi case), we also have Texas's shenanigans to deal with as well.
- Jessica Pieklo: Spoiling that abortion cookout.
- Imani Gandy: I mean, honestly, whatever you do listeners, don't show up to a cookout with potato salads that contain raisins. That's just number one rule of the Black cookout, really.
- Jessica Pieklo: Basic etiquette really.
- Imani Gandy: Essentially. But first I wanted to give a shout out to Renee Bracey Sherman, who is the ED of We Testify, and Laurie Bertram Roberts, who is the ED of

Yellowhammer, the abortion fund in Alabama. These are two women who are busting their asses for abortion rights. We published a piece that Renee Bracey Sherman wrote with Dr. Tracy Weitz that detailed how the fall of Roe can be directly tied to anti-Blackness and the utter disregard for Black lives, particularly in Mississippi, which has the highest percentage of Black people in any state. 38% of Mississippians are Black.

Jessica Pieklo: The piece is so good.

Imani Gandy: It's really, really good. It's a powerful, powerful piece. So definitely head over to [rewirenewsgroup.com](http://rewirenewsgroup.com) to check that out. Also, I interviewed Laurie Bertram Roberts and she spilled so much tea about how white Christian evangelicals are coming for the 14th amendment. And the 14th amendment is essentially the basis of all of the rights related to the intimate parts of our lives. Creating a family, sexual relationships, marriage. They're coming for those rights. It's a straight up panty grab essentially.

Jessica Pieklo: It is.

Imani Gandy: It's a panty grab. It's a panty grab. And so you've really got to go over to [rewirenewsgroup.com](http://rewirenewsgroup.com). Give those pieces a read. And finally, I don't want to embarrass Jess too much, but if you haven't subscribed to her newsletter, The Fallout, by now, I don't understand what's going on in your life. It is so well written. It's going to give you all of the information that you need to know about the post Roe fallout. And Jess is writing it. I mean, what more do I need to tell you? So go to [rewirenewsgroup.com/subscribe](http://rewirenewsgroup.com/subscribe) and please sign up. Do it now. You do not want to miss this. You don't want to miss "Jess brain" in your inbox.

Jessica Pieklo: That sounds a little naughty.

Imani Gandy: It does, doesn't it?

Jessica Pieklo: We'll take it though. It's been a hell of a summer and we are so excited to be back.

Imani Gandy: We are so excited to be back.

Jessica Pieklo: Because our fans. Imani.

Imani Gandy: Yes.

Jessica Pieklo: Our listeners.

Imani Gandy: They're the best.

Jessica Pieklo: Can we talk about the fact that they do things like remind seasoned members of the media establishment that Justice Amy Coney Barrett actually has a nickname?

Imani Gandy: Yes. Yes.

Jessica Pieklo: This is fantastic.

Imani Gandy: It's amazing. So one of our listeners, @damewritesalot, which is an amazing handle...

Jessica Pieklo: Snaps to that.

Imani Gandy: Snap snap to that. They responded to a tweet by Dan Rather. So Dan Rather has a Substack and he wrote a piece called, "If You Don't Want To Be Seen As A Partisan Hack..." And so this amazing listener of ours, @damewritesalot, responded to Dan Rather and said: "Justice Kingdom of God, as she was dubbed by the Boom! Lawyered podcast, does not care about reproductive rights. She was appointed specifically to take them away. She is a rabid frothing anti-choice Catholic. There will be no swaying her. Our only hope is to expand the court." Yes. Thank you @damewritesalot.

Jessica Pieklo: Holler.

Imani Gandy: Holler. She just read Amy Coney Barrett for filth in 280 characters. Love it.

Jessica Pieklo: To Dan Rather, who ... has a Substack?

Imani Gandy: I know.

Jessica Pieklo: The Dan Rather Substack.

Imani Gandy: Hey man.

Jessica Pieklo: I love all of this.

Imani Gandy: Substacks are the wave of the future apparently. But let's get back to the topic at hand.

Jessica Pieklo: Oh yes.

Imani Gandy: The Supreme Court is back and it's going to be fucking terrible.

Jessica Pieklo: Oh my god. I mean that is it in a nutshell, and what we're going to talk about in this episode basically: What to expect when you're expecting one of the worst Supreme Court terms in history.

Imani Gandy: I appreciate the “what to expect when you're expecting” pun. That was classy. Very classy. Oy. So topic one of the podcast, the pandemic fallout part deux. I don't know if we're in the third wave or the fourth wave or what wave of this pandemic, but this pandemic won't stop pandemicing, right?

Jessica Pieklo: Nope.

Imani Gandy: It just can't stop.

Jessica Pieklo: Can't stop. Won't stop.

Imani Gandy: Can't stop. Won't stop. And once again, it is screwing up how the Supreme Court does business.

Jessica Pieklo: What if I'm not really mad about all of it though, Imani?

Imani Gandy: What are you talking about, Jess? You love the Supreme Court. You're the biggest Supreme Court nerd that I know. Who's always in the Supreme Court when there are these oral arguments going on about abortion rights and contraception? Oh yeah, that's Jessica Mason Pieklo. So what are you talking about that you're not mad about it?

Jessica Pieklo: I mean, the pandemic is literally truly screwing up the day to day business of the Court still. It means that at least through the end of the year the Supreme Court is mostly closed with a few exceptions.

Imani Gandy: So the Court returned to in-person arguments for the first time since March 2020 on Monday, with some tweaks.

Jessica Pieklo: Not twerks though.

Imani Gandy: God no. Why?

Jessica Pieklo: What if?

Imani Gandy: No. Why am I picturing Sam Alito twerking now? Jess, what have you done to me?

Jessica Pieklo: It's a brand new season. And we know Sam Alito is very online. So Justice Alito, if you are listening and you twerk, it might not be bad to let the audience know. I'm sorry.

Imani Gandy: Just post it to TikTok, Sammy. Post it to TikTok.

Jessica Pieklo: Sammy? So here are some of the tweaks, not twerks, to how the Court is doing its business. So when they have oral arguments, it's only lawyers, Court staff,

and members of the media that have a quote-unquote hard pass that are allowed in for arguments. And “hard pass on arguments” is a whole bevy of jokes waiting to write themselves.

Imani Gandy: Yeah, exactly.

Jessica Pieklo: But the idea is that it keeps the numbers down and social distancing at least plausible. So okay, good. We're trying to be a little responsible. But! Because the court remains closed to the public for arguments, the justices decided that they'll livestream the arguments because we still need to be like, moderately, like a *modicum* of transparency. Just itsy bitsy. Like, let the public have a general idea in the vaguest sense what's going on.

Imani Gandy: That's exciting.

Jessica Pieklo: It's exciting. Because what does that mean? It means we can listen in real time.

Imani Gandy: Yeah. Yeah. And I did that on Monday. It was, I mean, it was, I didn't...

Jessica Pieklo: How was it?

Imani Gandy: Actually, it was fun. It was actually really fun. It was fun to listen to the arguments. It was fun to follow my law nerds Twitter list to see what the law nerds were talking about. It was actually great fun. And on October 13th, I mean this is a little outside of our issue area, but not really, the Supreme Court is going to hear arguments in *U.S. vs Tsarnaev*, the Boston Marathon bomber case. And they're basically going to be deciding whether or not to reinstate the death penalty for him. So we're going to be able to listen to the Supreme Court hear oral arguments in a death penalty case. That's kind of a big deal.

Jessica Pieklo: It is kind of a big deal. So I mean, while I love the environment and the energy of being at the court for arguments and whatnot, this is a change that I really hope sticks. We've talked about this on the podcast before, but everything that the Court does is just tilted against transparency. It's tilted against public access. And that's bullshit because this is the highest court of the land. The only way that folks really have accountability here is through avenues of visibility. And so I hope this sticks. This is really good. *And* it means that...

Imani Gandy: That you can stay home.

Jessica Pieklo: Well I can stay home. But even better, it means that you and I get to live-tweet the *Dobbs vs JWHO* arguments because we have a date. Finally!

Imani Gandy: We do! So let's talk about that. Topic two of this podcast today is going to be the argument date in *Dobbs*, and the fact that Jess and I, we together as a unit, are going to be live-tweeting them because we both live in Boulder, Colorado now. I

basically uprooted my life to move closer to Jess, to be near her and dear to her. What am I talking about?

Jessica Pieklo: This is amazing.

Imani Gandy: But the point is that we are going to be live-tweeting the arguments together. And it's going to be, I mean I know that they're early, right? It's like 8:00 AM our time. I'm pushing for mimosas.

Jessica Pieklo: Oh. Well we should talk about that. Are you crafty? Can you sew?

Imani Gandy: I don't, not really. I mean I can, but I'm not great at it.

Jessica Pieklo: Okay. Because I was one wondering if maybe we took some of those Savage Fenty onesies that you've ordered and found a way to stitch them together so we could be one conjoined unit for the live-tweeting. What? That's not a good idea?

Imani Gandy: That's hilarious. Well that's a *weird* idea.

Jessica Pieklo: We haven't even told people when this is happening and we're already talking about-

Imani Gandy: It's December 1st. It's December 1st.

Jessica Pieklo: Let me give them the details. This is going to be so amazing. Everybody.

Imani Gandy: Okay. Okay.

Jessica Pieklo: Okay. Seriously. This is how excited we are to be back. We cannot contain ourselves. We're talking about crafts.

Imani Gandy: Punch drunk.

Jessica Pieklo: So we have a date for the first direct challenge to Roe versus Wade in nearly 50 years. This is like drum roll time, right? Everyone mark your calendars for December 1st at 10:00 AM Eastern, 8:00 AM in the vortex as Imani mentioned.

Imani Gandy: 8:00 AM Mountain time.

Jessica Pieklo: That is exciting. We will be live-tweeting it. We will have on our social channels the feed that y'all can listen in if you want to hear what Imani and I's color commentary is offering up. It's exciting times. What'll they be talking about though?

Imani Gandy: Well, they're going to be talking about Dobbs vs Jackson Women's Health Organization, Jessica.

Jessica Pieklo: Abobo? Is there a little abortion on the docket?

Imani Gandy: Maybe a little. We're going to just chat abobo. Yeah. The case is called Dobbs vs Jackson Women's Health Organization. It involves Mississippi's 15 week pre-viability abortion ban.

Jessica Pieklo: Wait, I know this song. [singing] Pre-viability abortion ban.

Imani Gandy: [singing] Pre-viability abortion ban.

Jessica Pieklo: You aren't bad enough. You, like, went slow jazz and I went like, Charleston.

Imani Gandy: [singing] Pre-viability abortion bans are unconstitutional. I said pre-viability abortion bans, they're unconstitutional. [rapping] I said pre-viability abortion bans.

All right, let's just not do this any longer.

Jessica Pieklo: We hit all the genres.

Imani Gandy: We got it all. But yeah, this is a big deal. This is a case about a pre-viability abortion ban, which under Roe vs Wade and Planned Parenthood vs Casey is patently unconstitutional.

Jessica Pieklo: Yep.

Imani Gandy: The Supreme Court thought it would be a good idea to take this case anyway. They conferenced on it about 10 times before they decided to take it. And the very fact, as we talked about when they took it in May, the very fact that they took it is a huge problem.

Jessica Pieklo: Yeah.

Imani Gandy: Because there was no reason for them to take it.

Jessica Pieklo: Nope.

Imani Gandy: Under the law, a 15-week gestational ban is unconstitutional. Mississippi's attorney general conceded that at 15 weeks no fetus is viable. So why are we here? Because the Supreme Court wants us to be here. There is no appellate court in this country that has upheld a pre-viability abortion ban as being constitutional. Note these gestational bans are not constitutional. And so it is absolutely frustrating that we even have to deal with this.

Jessica Pieklo: It's awful. And as you said, the fact that the Court took the case is a red flag. The fact that once the Court took the case, states just kind of went bananas and

opened the floodgates with litigation and then that got even worse with Texas. And what happened later this fall. It's really, the fall and winter is shaping up to be a rough time for reproductive rights and access in particular.

And we had plans to be on the ground in DC for the arguments and in the courtroom covering them. We had a whole thing, and then the pandemic made a mess of those plans. So instead, as I mentioned and got really excited around crafts, Imani and I are going to be live-tweeting the arguments together. We will be tuned in and going through the arguments in real time on our social channels. So that is absolutely the best place to catch us. It is color commentary in real time. We will have our follow-up coverage with the podcast here, on the website, and the social channels. But please join in the fun with us because these are dark times, but we've built a really good community here and we're going to have to get a way through this, right? And so this is one place to start. And I mean, hey, coping skills.

Imani Gandy: I mean honestly, who do you want to spend the JWHO arguments with? Jessica and me obviously.

Jessica Pieklo: Yes.

Imani Gandy: I mean, come on. Come on. So let's talk about Texas. You mentioned that Texas essentially was one of the states that went bananas after the Supreme Court decided to take the case. So that's our third topic for today.

Jessica Pieklo: It is.

Imani Gandy: What the hell Texas? Just what the hell? So in case you missed it, which I mean, if you're listening to this podcast is *highly* unlikely.

Jessica Pieklo: Who knows.

Imani Gandy: Who knows.

Jessica Pieklo: It's been a hell of a year.

Imani Gandy: It's been a weird year. Maybe you were trapped under something heavy. I don't know. I'm not going to judge you. What I am going to do is tell you that about a month ago the Supreme Court low key overturned Roe vs Wade when they let Texas's law SB 8 take effect. Now SB 8 is a six week gestational ban. People are calling them quote unquote heartbeat bans, but there's no such thing as a fricking heartbeat ban because six week embryos don't have fricking heartbeats.

Jessica Pieklo: Nope they don't.

Imani Gandy: But nevertheless, the Supreme Court decided to let this patently unconstitutional gestational ban take effect, and it threw abortion access in Texas into chaos.

Jessica Pieklo: Total chaos. It is difficult in the best circumstances to get an abortion in Texas. Patients and providers have been dealing with the fallout in neighboring states. Oklahoma has been taking a bunch of those patients and now a state judge just let one of their laws take effect that's going to put a pinch on pipeline access there too. It's really bad. But here's an update with where things stand in that fight, because it is absolutely informing the Dobbs fight, informing what's going on in the states. This is basically going to be the biggest year for abortion rights and access that I think we've seen since we've been doing this work ever.

So the fight over Texas's SB 8 could absolutely go back up to the Supreme Court. This is not over by any stretch. The providers have filed another petition with the court on a motion to dismiss that had happened at the lower courts and have asked the Supreme Court to fast track that. It's not going to happen, but the briefing and whatnot is going on. So the Supreme Court is going to jump back into at some point the Texas fight this year. Okay? So that's *one* piece that's out there.

Imani Gandy: Yeah. It's really, really bad. SB 8, I mean look, I can't even stress how bad it is. And the fact that this is the case, this case challenging SB 8 is called *Whole Woman's Health vs Jackson*, the fact that this is the case that actually ended up shanking Roe as opposed to the Mississippi case, which we expected would happen after briefing and amicus briefs and oral arguments and contemplation, perhaps a camping trip. I don't know. But instead the Supreme Court decided to just gut Roe on the shadow docket.

And so the Senate Judiciary Committee actually had a hearing on SB 8 and the shadow docket and it's, I mean, I have several thoughts about it. On the one hand I think it's fantastic that this has reached the level of "we need to have a fricking committee hearing about this," because this is absolutely bananas. But on the other hand, it's hard for me to get excited about these sorts of institutional measures when nothing is going to be done ultimately, right? The shadow docket is going to keep going. These nine justices, six of whom are captured by the Federalist Society, are going to continue to keep screwing up our rights. And so, yeah, it's great that it's now come to the fore, but I need more. I need something to be done.

Jessica Pieklo: Right. And I'm with you 100% on that. I loved having the Senate Judiciary Committee take up this issue, but if folks in the Senate aren't also going to take up Supreme Court reform substantively—unpacking the court, dealing with the filibuster—then this is all theater, truly. Nothing will happen, and we will have providers and patients and advocates throwing themselves in front of members of Congress, laying out their trauma, laying out their burdens, and a lot of

opportunities for soundbites, and the Supreme Court will continue to operate as it always has. So we need big structural reform. And if these judiciary committee hearings are the first step towards that, then hey, applause all around. But if it was just an opportunity for senators to look tough like they're doing something on Texas and abortion, then get out of here with that nonsense. We don't need it.

Imani Gandy: Honestly.

Jessica Pieklo: We got serious stuff to do.

Imani Gandy: Honestly. And like you said, abortion providers and abortion funds are in Texas essentially just throwing themselves in front of the bus trying to protect their patients, trying to ensure that their patients will continue to have or will have access because access has been decimated in Texas right now, but to sort of resume the already bare access that existed before Texas passed this law. So you have people like Dr. Alan Braid for example who intentionally performed an abortion after six weeks, wrote an op-ed in the Washington Post about it saying, this is why I went and I violated this law and performed an abortion after six weeks. Because—I mean he didn't say this—because the law is fricking bullshit.

Jessica Pieklo: Yeah.

Imani Gandy: And because it's hurting his patients. And so what happened? I mean he basically performed the abortion, wrote the op-ed and said, come at me bro. And so who came at him? A felon from Arkansas.

Jessica Pieklo: What?

Imani Gandy: Right? We have this random guy from Arkansas. What was his name? Stewart Smalley or Charles Stilley or I don't even know.

Jessica Pieklo: It was not Stewart Smalley.

Imani Gandy: I don't care what his name is. This jackass, this felon, he literally is currently serving a 15 year sentence for fraud and tax evasion. This guy filed a lawsuit against Alan Braid from Arkansas where he is being confined in his house. In addition, there's some guy who, I mean, I actually love this guy, Felipe Gomez, who is a pro-choice guy in Illinois who also filed a lawsuit pursuant to this ridiculous law. But his lawsuit is basically like: I'm pro-choice, this law is bullshit, the Supreme Court should uphold Roe vs Wade. And while I salute you, Felipe Gomez, because I think that is an admirable standpoint and an admirable thing to do, there's no way on God's green internet that a person from Illinois should be able to file a lawsuit against a provider who performed an abortion in Texas. This is not how litigation is supposed to work. But that's not the only lawsuit, is it Jess?

Jessica Pieklo: No. I mean, the Biden Administration got in on the action. The Department of Justice finally did something. Jesus Christ, guys. Good job. Cracker and cheese at the table. Drinks in the cooler. Welcome to the party. Seriously.

The Biden Administration has basically accused Texas lawmakers of running the state like a mobbed-up side hustle whose sole purpose is to get around the Constitution.

Imani Gandy: So true.

Jessica Pieklo: Which, you know what, we've given attorney general Merrick Garland plenty of grief because frankly he's earned it, but that's a good claim. Texas lawmakers are basically running the state like a mobbed-up side hustle to avoid the Constitution.

Imani Gandy: They absolutely are.

Jessica Pieklo: So DOJ came and filed this law and said, hey, Texas, you can't pass laws for the sole purpose of evading the Constitution. That's not a thing that you can do. It was filed in federal court in, and it's heard in front of a President Obama appointee. We don't have any ruling on it yet, but it is the one lawsuit right now that is poised if any to actually put a pause on SB 8. Because it's got, yes, this vigilante enforcement mechanism, which Imani's been talking about and is absolutely bonkers, but it's got that effective six week near total ban as soon as cardiac activity. And so patients in Texas need to be able to access abortion. And so the DOJ lawsuit might be the opportunity to get an injunction filed. Of course it'll go back up to the Fifth Circuit and then we all know what that song and dance looks like. But the fight is important and it is good to see the Department of Justice come in in real constitutional claims, not just like "we're defending abortion clinics," which is important, but doesn't have the ability to sort of go writ large with other states when and if they copycat this law.

Imani Gandy: And they are copycatting this law.

Jessica Pieklo: And they're going to do that. We know that. This is their plan.

Imani Gandy: But just in case it wasn't clear, the main part that we're so sort of verklempt about when it comes to SB 8 is not even that it's this bullshit pre-viability unconstitutional ban, because those have been in the works for years and years, it's this new mechanism whereby anyone in the country can file a lawsuit against someone who provides an abortion or who quote unquote aids and abets an abortion and then collect this \$10,000 bounty. So the state of Texas has essentially said, you know what? We're not even going to enforce this law because we know that if we enforce this law you're just going to haul us into court and then there's going to be an injunction and then the law's going to be

blocked. We really want this law to take effect so we're out of it. We're just going to let the people do it.

Jessica Pieklo: What a hassle all of that would be.

Imani Gandy: It would just be such a pain in the butt. We're just going to let random motherfuckers from all over the country file lawsuits and we'll just see what happens. And the Supreme Court said, that seems fine. That seems great. So that's where we are right now. We're essentially in a place where the Supreme Court has waterboarded Roe vs Wade. It's on life support, but kind of still hanging on. And meanwhile, we're waiting to see whether they're going to explain why they've decided to waterboard Roe the way they did in the Texas case. We're waiting for that explanation in the Mississippi case. And we're not going to get that explanation until next June, but we are going to get a peek into what the justices are thinking on December 1st when we listen to oral arguments and live-tweet them from Jess's house where we will be drinking mimosas hopefully at 8:00 AM.

Jessica Pieklo: In a conjoined onesie, maybe. If we can figure that out.

Imani Gandy: In a conjoined onesie.

Jessica Pieklo: I don't know. Welcome back to the show folks! It's been so long! We're so happy to be back!

Imani Gandy: Well before we go any further off the rails, I'm going to go ahead and close out this show.

Jessica Pieklo: Seriously, take me off the air.

Imani Gandy: Just got to get Jess off the air. If you want to talk to Jess about any of this, her Twitter handle is @Hegemommy, H E G E M O M M Y. If you want to talk to me, I'm @angryblacklady. You know how to spell it. It's angry. It's Black. It's lady. Put them all together. If you would like to donate to us, you really should because we need your help to keep this going. We need your help to continue to explain to you how the Supreme Court is basically just like taking Roe into the woods and just sticking it with sticks. Just poking it in the eye with sticks, then covering it with honey and tying it to a tree and letting the bears attack it. If you want to know all of the stuff that's going on in this country with abortion rights, you're going to want to donate. [rewirenewsgroup.com/donate](http://rewirenewsgroup.com/donate). Again, I'm going to tell you that Jess is writing the premier newsletter when it comes to abortion rights right now, and you're going to want to subscribe to that. That's [rewirenewsgroup.com/subscribe](http://rewirenewsgroup.com/subscribe). And I don't know man.

Jessica Pieklo: That's about it.

Imani Gandy: That's really it. What a terrible way to end to podcast. I don't know bro. Just like whatevs man. Listeners, we love you. We're glad to be back for another season. We are going to be with you every step of the way, so please just hold our hands and let's jump together.

Jessica Pieklo: Let's jump.

Imani Gandy: And on that note, we're just going to, what are we going to do, Jess?

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

Imani Gandy: We'll see you on the tubes.

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