

## Boom! Lawyered: WTF Is Going on With the Texas Abortion 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 anxiously awaiting snow in Boulder, Colorado. 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 dream up new ways to support abortion access. Like, I don't know, it's the fall... maybe a chili cook-off. 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, Jess...
- Jessica Pieklo: Yeah?
- Imani Gandy: You hosted a pretty bad-ass panel yesterday.
- Jessica Pieklo: That was fun.
- Imani Gandy: It was such a good panel. It was basically a panel about what abortion access looks like in Texas after SB 8. You had Dr. Moayedi on. You had Aimee Arrambide on, who used to be a Rewire alum and we love her.
- Jessica Pieklo: Our first intern.
- Imani Gandy: She's our first intern and now she's kicking ass in Texas. Kicking so much ass in Texas and wearing really cute glasses, which is neither here nor there. But it was a really great conversation. And it was really nice to see that we had a great turnout. People are really activated around this issue and they are really interested to learn about the actual problems on the ground. And I think that's a wonderful thing. We're in crisis mode, but I feel like we're coming together.
- And that's a good thing. So if you missed that panel, which you probably did, because it sold out basically in a day, which is fantastic. It is on the Tubes, the YouTubes, in fact.
- Jessica Pieklo: The YouTubes.
- Imani Gandy: You can go to [youtube.com/rewirenewsgroup](https://youtube.com/rewirenewsgroup) and we've got the video there. We also have other videos there. Like, I don't know, did you miss my Caftan Chat with Tawny Newsome last year?

Jessica Pieklo: Oh, that was so good.

Imani Gandy: It's there. Also, we here at Boom! Lawyered pride ourselves on consistency, which is why, for the past four years, we've been dropping podcasts into your ear holes on Thursdays. But we're going to try something new. So starting the week after next, we are going to be dropping podcasts on Monday.

Jessica Pieklo: What?

Imani Gandy: This is an exciting thing. That means you have all week long to just primal scream with us, to listen, to laugh, to learn about abortion rights, and then take that knowledge with you on Monday, straight through to the weekend. And then what? You come back the following Monday, bam, more Boom! Lawyered in your ear holes.

Jessica Pieklo: Amazing.

Imani Gandy: This is really exciting. So unfortunately that means we're not going to have an episode next week, unless something bonkers happens, like I don't know, Justice Breyer retires. No, but if Breyer retires, that'd be good. That'd be good. But anything else? No, I'm not going to even speak anything horrible about abortion rights into existence. Just going to let you know that we'll be back the following Monday and then just be on the lookout for Boom! Lawyered in your podcast feeds on Mondays throughout the fall and the winter. So that's exciting, isn't it?

Jessica Pieklo: So exciting.

Imani Gandy: Also-

Jessica Pieklo: What? More?

Imani Gandy: There's more. We've got a lot of really good stuff going on on the website at [rewirenewsgroup.com](http://rewirenewsgroup.com). So I wanted to take a moment to share with you a couple of things. Number one, we've got great news out of Utah. Lizzie Tribone wrote about how Utah jails are going to be providing the pill to incarcerated people in Utah. That's bad-ass, right?

Jessica Pieklo: That's really good.

Imani Gandy: That's a really good step forward in terms of reproductive freedom, especially in Utah, not exactly the most reproductively free state.

Jessica Pieklo: For our neighbors in Utah, good work.

Imani Gandy: Are they our neighbors? Wait, they're our neighbors, aren't they?

Jessica Pieklo: Yeah.

Imani Gandy: I have no idea where Colorado is on the map, by the way. I legitimately texted Jess a while back and was like, "Jess, do you know how many states are around us?"

Jessica Pieklo: She was amazed.

Imani Gandy: There are six or seven states. I'm used to California. We had two states and the ocean. Neither here nor there. Also, over at [rewirenewsgroup.com](http://rewirenewsgroup.com), we have a really great roundup of five cases that could finish off abortion rights for good. Our legal fellow, Caroline Reilly, put it together and it's super useful. So head over to the website and check that out.

Jessica Pieklo: Yeah, because things just are not slowing down and they are not stopping.

Imani Gandy: No. It's literally can't stop, won't stop time.

Jessica Pieklo: They could stop though. It might be nice if they did stop.

Imani Gandy: Would you please stop? We're asking you to stop. We need you to stop. So I want to get to the fan shout-out portion of the show, which is quickly becoming my favorite portion of the show. Today, we have a tweet from @ohkristen. @ohkristen says, "We're discussing Roe v. Wade in my law and policy class tomorrow. So in addition to the assigned readings, I'm relistening to Rewire News Group's Boom! Lawyered's," which is funny, "Rewire News Group's Boom! Lawyered's We'll Hear Arguments." She was listening to our We'll Hear Arguments covering Roe v. Wade. Quote, the snarky comments make it the best, cc: @angryblacklady and @hegemommy.

Jessica Pieklo: Oh. I love that.

Imani Gandy: So I want to say shout out to you, Kristin Boo Neil, which is a very cute Halloween name. I appreciate you. For those of you who aren't aware, We'll Hear Arguments is the podcast that Jess and I did. It breaks down the oral arguments in Roe v. Wade. It's snarky. It's fun. It's informational. You should go listen to it.

Jessica Pieklo: It's got the actual archive audio in it, so you can hear the attorney for the state of Texas kind of fumbling around and Imani and I record scratch going like, what is this guy saying? So if you want to know where all of these arguments that you're hearing in Dobbs and in the Texas case, like, everything old is new again. So check it out. The archive audio specifically, if you are a history nerd, a law nerd, you're listening to this podcast, there's some good gems in there. Fun times. Great oldies.

Imani Gandy: No know what's not fun times, though?

Jessica Pieklo: Oh God, what?

Imani Gandy: The Fifth Circuit Court of Appeals.

Jessica Pieklo: No.

Imani Gandy: The Fifth Circuit Court of Appeals is not fun times. And quite frankly, the Fifth Circuit Court of Appeals is why we can't have nice things. It's why the polar caps are melting. It's why the dodo bird is extinct. It's why there are llamas just running around in the streets.

Jessica Pieklo: Zebras. Zebras were loose in DC, and I guarantee you it was the Fifth Circuit Court of Appeals' fault.

Imani Gandy: Exactly. So let's just talk about that for a minute. Jess, can you just talk to me about why the Fifth Circuit Court of Appeals is basically, I don't know, targeting us personally.

Jessica Pieklo: Well, Imani, it all started way back in 1940...

Imani Gandy: The dictionary defines the Fifth Circuit Court of Appeals as...

Jessica Pieklo: [laughter] In this essay, I will explain why Judge Ho is the absolute worst. No, truly though. They are awful. So we were celebrating this amazing... let me enunciate that 10 more times. Aaaaamaaaaaziiiiing preliminary injunction decision that we got from Judge Robert Pitman in the Department of Justice's case against Texas. And this 103 page opinion was basically like, "Yo, Texas. You cannot act like the mafia to avoid the constitution." That was amazing.

Imani Gandy: It was.

Jessica Pieklo: And so then Texas filed a notice of appeal, which we knew they were going to do. We predicted it. Everybody knew.

Imani Gandy: Yeah.

Jessica Pieklo: The sun rises in the east. Texas files a notice of appeal immediately. That is the way that the world works, right? And so what happens? We get, what, 48 hours maybe?

Imani Gandy: 48 yeah. It was a nice 48.

Jessica Pieklo: Maybe. A hot 72, maybe.

Imani Gandy: Yeah.

Jessica Pieklo: I think I took a bath, one bath, and then the Fifth Circuit Court of Appeals was like, "Hey. I know you guys are feeling good. But you know what? We're going to pause enforcement of that order, because we got some things to think about." So listeners-

Imani Gandy: It's just so frustrating.

Jessica Pieklo: ... that means that right now, SB 8 is back in effect.

Imani Gandy: And not only that, not only is SB 8 still in effect, the Supreme Court is just sitting on the petition. Essentially a petition was filed with the Supreme Court that says, "Can we please skip over the Fifth Circuit Court of Appeals, because they're the worst. And we need you to take a look at this enforcement mechanism, because it is bonkers. And it cannot be that nobody can file a lawsuit challenging this law." One would think that this would be an urgent thing, right? Because abortion is essentially decimated in Texas right now. People are struggling. Nah, the Supreme Court's just sitting on it.

Jessica Pieklo: Tick tock. Tick tock.

Imani Gandy: Tick tock. Tick tock. I mean, it's just ... At any rate, that's what we're going to be talking about in this episode. What on earth did the Fifth Circuit do? What on earth did they do on this Texas ban?

Jessica Pieklo: And then there's more. We're going to update y'all on Cameron vs. EMW Women's Surgical Center. This is a sneak attack on abortion rights happening out of Kentucky that was at the Supreme Court this week.

Imani Gandy: And then what we're going to do is we're all going to hold hands and sing kumbaya, right? We're going to get in touch with the earth. We're going to touch grass, reconnect with Mother Nature. We're going to have some gin and tonics. For those of you who don't drink, they will be non-alcoholic.

Jessica Pieklo: Ooh, yeah.

Imani Gandy: And we're just going to feel and emote.

Jessica Pieklo: We're going to breathe it in, and breathe it out.

Imani Gandy: Breathe it out.

Jessica Pieklo: Breathe it in-

Imani Gandy: So let's go.

Jessica Pieklo: ... Breathe it out.

Imani Gandy: Topic number one. What the fuck is up with the Fifth Circuit in Texas? But seriously, the Fifth Circuit is back to being the absolute worst. Right?

Jessica Pieklo: It is.

Imani Gandy: Last Friday night, they issued a temporary administrative stay of this preliminary injunction order, right?

This 113-page beauty that Judge Pitman put out. That injunction stopped enforcement of SB 8 for a hot 72? 48? 72 hours. And then the Fifth Circuit came in and was like, na, na, na, na, na, "We're not going to..." he, he, he, and stayed that order. So SB 8 is back in effect again.

Jessica Pieklo: Yeah. I've got skin peeling off my lips, they're so chapped from irritation as a result of this. What the Fifth Circuit did was just literally hit the pause button. It's a temporary stay. So Texas appealed, the Fifth Circuit could have said, "You know what? The normal course of business is to let the injunction stand while the appeal continues on." Right? That is how things normally work. That is how things work in circuit courts of appeals that function like the law intends. But what the Fifth Circuit Court of Appeals did was once again go rogue. Because what the Fifth Circuit Court of Appeals does is always go rogue. Going rogue is the base for the Fifth Circuit Court of Appeals. They said, "Nah, we are going to pause Pitman's order while the appeals proceeds or while we think about that." So we are once again in this limbo where there is no way for folks to challenge this law without it getting gummed up and just dying on the vine functionally at the Fifth Circuit.

Imani Gandy: And that's on purpose, right? Because they know that the longer they take to address these issues, if they just issue a temporary administrative stay, and then wait a week or two or three. And then they'll issue an order and it'll be 75 pages of blah, blah, blah, "Why it is that we can't block this law." And then the Supreme Court will get involved again. They'll sit on it for another fucking few months. Meanwhile, abortion is practically unavailable in Texas. It's functionally unavailable in Texas. Roe has functionally been nullified in Texas. So this is a problem.

Jessica Pieklo: It's a problem.

Imani Gandy: But I do want to talk... Actually, I want you to talk about this. Because we actually got a question on Twitter. No, it wasn't a question on Twitter. It was a question from our own favorite Esther Gim.

Jessica Pieklo: Oh.

Imani Gandy: The only Esther Gim we know. So I guess she's our favorite Esther Gim. She actually asked, "So was it all the work that Pitman put into this 113-page order, was it all for nothing?" And no, it wasn't.

Jessica Pieklo: No.

Imani Gandy: So why don't you explain a little bit?

Jessica Pieklo: No. I mean, that's a really good question. Because especially dealing with the Fifth Circuit, it can feel like it is. We sort of get to that point of nihilism of why bother? Why bother having a judge go through the act of issuing 100 plus pages of detailed findings and reasoning when the Fifth Circuit is just going to basically toss a spitball at it.

So it matters because district court findings of fact—and we've talked about this a little bit on the podcast, but it's really good to remind folks—district court findings of fact are effectively like edicts and declarations of truth from the federal judiciary. If the district court declares something a fact, that means it is a functional truth.

Imani Gandy: Right.

Jessica Pieklo: If the district court says it is a fact that abortion is a largely safe and common and normal medical procedure, then it means as far as the federal court is concerned, the truth of the matter is that abortion is normal and safe. That is huge.

Imani Gandy: It is huge.

Jessica Pieklo: It really is. Because normally, appellate courts can't then go back and come up with their own facts. They can't be like, "Eh, the district court said abortion is normal. We think it's weird and totally out of the norm so we're going to say something else." Appellate courts are bound by those findings of fact. So Pitman doing the work matters. Even if the Fifth Circuit is going to ignore it, it matters. Those findings of fact push back against abortion stigma, they normalize the fact that folks who are not women get abortion. This is huge.

Imani Gandy: Yes. So huge.

Jessica Pieklo: So while it may feel like we are in a cycle of losing, the long arc of justice really does bend in our favor. And Pitman's order is one of those places where we can look to to say, "Look, right now is rough but we're winning the long game and this is how we know." And that may be cold comfort in the short term and it's doing nothing to open up access in Texas. Access is now under threat in places like Kansas and Oklahoma and Louisiana and here in Colorado, as we're absorbing those patients also. And thank you for giving me the opportunity to

talk about that Imani, because those findings matter. And they matter not just because it feels good for us to say that, but because they carry the weight and effect of the force of law.

Imani Gandy: Woo, that was a word. I love that. It was one of those times where I'm like, "Oh, listen to Jess talking and sounding all smart."

Jessica Pieklo: Aw.

Imani Gandy: Bringing information to the people. But also, I wanted to add a little bit of snark into what you said. Because what I loved so much about Pitman's order is the way that he just laid out the law, laid out Supreme Court precedent in a way that if you just kind of read it in the sunlight in the right way, he's definitely throwing shade at the justices of the court.

Jessica Pieklo: Oh, yeah.

Imani Gandy: Sort of saying, "What are y'all doing? This is your own law. Roe v. Wade says this. Planned Parenthood vs Casey says this. This is your own precedent." It cannot be that people who have a problem with this law have no recourse to challenge it. It cannot be that there is no equitable way that the United States can sue a state that is openly defying the Constitution.

You're supposed to be holding up the law of the land. What the heck? And the fact that a district court judge had to call out the Supreme Court like that? I think that says a lot. That says a lot. So, whoo. Judge Pitman, if we had a, I don't know, a calendar-

Jessica Pieklo: That's inappropriate, Imani.

Imani Gandy: Can we put Judge Pitman on-

Jessica Pieklo: We are not making a calendar.

Imani Gandy: Not in any kind of risque outfit. Like, a nice robe and a gavel in hand. I don't want to see the man in a speedo. I'm just saying we should celebrate somehow. This person who spent that much time writing such a great order, including pregnant people, including trans ... I mean, I cannot even tell you how much that made my heart sing because I've been screaming at Twitter for weeks.

Jessica Pieklo: You really have.

Imani Gandy: Not only women need abortions. And people are like, "Waaa, don't you mean people. You mean..." Everyone's got something to say. So it's really, really nice to see a federal judge be like, "Yeah, it's just not women who need abortion care." You ding dongs. He didn't say that, that's my addition. But one thing I do want to talk about, you mentioned this at the upfront, is Judge James Ho.

Jessica Pieklo: Ugh.

Imani Gandy: He is the worst.

Jessica Pieklo: *This* fucking guy. Are you watching What We Do in the Shadows? That's just my What We Do in the Shadows call back. *This* fucking guy.

Imani Gandy: He's awful. He's a Trump judge. He's literally written dissents from the Fifth Circuit saying certain abortion restrictions can't stand because they're unconstitutional. He'll write a dissent that says, "Yeah, but abortion is baby killing and murder." Blah, blah, blah. I mean, he hates abortion and he will do or say anything to eradicate it. So the fact that he was sitting on the panel that decided it was okay to block Pitman's order and to continue to let SB 8 be in effect, that says a lot. He's a big Federalist Society darling.

Jessica Pieklo: Oh, yeah. So much so the Federalist Society actually had an event about SB 8 and Ho was speaking at the event along with the Texas Solicitor General. What in the actual loving hell is going on?

Imani Gandy: How is that okay? How is that okay? I don't understand. Oh my God. But yeah, he basically goes out of his way to beg the Supreme Court to reverse Roe v. Wade whenever he gets a chance.

Jessica Pieklo: Yeah.

Imani Gandy: So...

Jessica Pieklo: So the fight in Texas is live and it is real. And so here's the latest. This week, the Department of Justice filed a brief with the Fifth Circuit explaining why that injunction barring enforcement of SB 8 needs to stand while this lawsuit challenging the law proceeds. So basically, the Department of Justice is saying, "Hey, Pitman did his job. The law says that the injunction should stand while we have this proceed." Maybe you guys could try doing your jobs too? I don't know, that might be good. So we've got that.

I will say that I'm not super optimistic about how the Fifth Circuit is going to take the Department of Justice brief. So we have to wait for the, what I'm going to say is the inevitable ruling from the Fifth Circuit that says, basically, "thank you Biden administration, but we're good. We're good. We're going to stay the course here. Thanks though. Appreciate the concern."

Also, I just got a flag that this could also go up to the Supreme Court. So we could be in the place where we have some kind of emergency filing in USA v. Texas on SB 8. At the same time, we have this petition that the providers have filed challenging the previous order. Like we're playing whack-a-mole with Supreme Court orders and Texas SB 8 here, but truly we could be at the place

where the court has two emergency petitions about this law in front of it at the same time.

Imani Gandy: Is anyone confident that the Supreme Court is going to do anything else but continue to shank Roe in the kidney?

Jessica Pieklo: No. No, no, no.

So, we're talking about a lot of different cases. Let's talk about that providers' ones for a real quick minute here. You mentioned it in the upfront that they filed the second request with the Supreme Court to step back in and block SB 8. So if you remember, there was this emergency petition and the Supreme Court basically sat on its hands and let SB 8 take effect and said, "We don't know, maybe we should let this take effect and see how the law shakes out and then the nine smartest legal minds of the country might be able to figure out just exactly what the hell is going on here."

Jessica Pieklo: So SB 8 took effect, the providers said, "Hey, you said, when it took effect, you would think about it again." So they filed another petition and said, "Could you please think about it quickly?" And the Supreme Court was like, "No, we're not going to think about it quickly." So that's still pending. There's briefing that's going to happen in that case and that's all due at the end of the month.

Imani Gandy: Can I just say that is absurd to me, that the briefing is due two weeks from now. This law has already been in effect for six weeks. This isn't just like a normal law where someone, I don't know, might not be able to get a driver's license in time or do some administrative thing. This is healthcare. These are people who are going to be saddled with a pregnancy that they may not be able to terminate and that's a lifetime project, right?

Jessica Pieklo: It truly is.

Imani Gandy: You are saddling someone with a lifetime project that they did not sign up for. I'm just outraged at the Supreme Court and the Fifth Circuit are just sitting on their hands and hoping that SB 8 takes effect and that people just won't notice and that it won't be that big of a deal. So that in a year from now, it'll be like, "Well, it's already been in effect for a year and it's not that big of a deal. I mean, we're not hearing that many complaints about it." Ugh!

Jessica Pieklo: And we're not even talking about the meat and potatoes, right?

Imani Gandy: No, this is just procedural nonsense. This is all just nipping at the lawsuit around the edges. The meat and potatoes is crystal clear, until the Supreme Court says otherwise. Until the Supreme Court says that Roe vs. Wade is no longer good law, this law is unconstitutional. I think we're all expecting the Supreme Court to Supreme Court and either gut or reverse Roe outright, but they haven't done that yet. So they should be following their own precedent.

Jessica Pieklo: And dragging the heels on this to let it take effect is really bad, because we've got Dobbs in the wings. So it is entirely possible that we are going to get a ruling in Dobbs that then lets Texas' SB 8 take effect on the merits. We'll be done fighting about the procedure and just gearing up to fight about the merits, this constitutionality question of it. Court issues Dobbs and then it's like, "Oh, hey."

Imani Gandy: It's so bad. It's bad. Oh, and you know what's even worse?

Jessica Pieklo: No.

Imani Gandy: Kentucky. There's shit going on in Kentucky, we're going to talk about that next, because there's a SCOTUS case involving Kentucky. This one is even more of a procedural clusterfuck than SB 8.

Jessica Pieklo: I'm personally attacked by this episode. I want to know what I did to everybody to make this episode so much procedure. So much procedure.

Imani Gandy: So there's this case out of Kentucky, Cameron v. EMW Women's Surgical Center. The underlying case is about a D&E ban, it's essentially a 15-week ban. The actual issue that's before the Supreme Court is whether or not Attorney General Daniel Cameron, who you may remember as that fucking guy who screwed up the Breonna Taylor investigation.

Jessica Pieklo: Yes.

Imani Gandy: Daniel Cameron is now trying to intervene. He's trying to insert himself into a lawsuit that he had *already* taken himself out of. He's trying to reinsert himself into this lawsuit because the Democratic Governor of Kentucky and his top dog have both decided that this law is not worth appealing, it's not worth trying to enforce. Now to explain the procedural morass is honestly probably going to make your brain explode, but just let me try to explain it as simply as possible.

Jessica Pieklo: Okay.

Imani Gandy: Daniel Cameron was sued. Daniel Cameron said to the court, "I don't belong in this lawsuit. I would like to be dismissed from this lawsuit, but I agree to be bound by the end result of this lawsuit. So whatever the judgment is, I'm not going to complain about it. I will be bound by it. In addition, I will reserve my right to appeal. So if I don't like the judgment that I'm agreeing to be bound by, I can file an appeal with the Sixth Circuit, get back in the case and then, wooh, we're off to the races."

He didn't do that. He didn't file an appeal with the Sixth Circuit. The Sixth Circuit ruled on the case, ruled in a way that Daniel Cameron didn't like. So then he went crying to the Supreme Court and said, "I want to *intervene*, because the Sixth Circuit ruled in a way that I don't like. I know I said I agreed to be bound by

the judgment. And I know I said that I could appeal and I didn't appeal, but it's not fair, because I want to get back in." That's essentially the Clueless, the movie Clueless version of what's going on in this case right now.

Jessica Pieklo: So hold on a second. Are you trying to tell me here that abortion is about *politics*?

Imani Gandy: No, no. I would never suggest that. That's a wild thing to say. That's an absolutely bonkers-

Jessica Pieklo: That this is a *partisan* issue?

Imani Gandy: No, no, no, no, no, no, no, no. No, why would I ever suggest that. That would be a bonkers thing for me to suggest, Jess. Of course, it's partisan.

Jessica Pieklo: I mean, what the heck?

Imani Gandy: That is essentially what the Supreme Court, at least the ones who have common sense, like Sonia Sotomayor, was asking the person arguing on behalf of Kentucky during Supreme Court arguments this week, "You agreed to be bound by this judgment and yes, there's now a Democratic governor and yes, he doesn't want to appeal this case anymore, because the underlying law is nonsense. You can't complain about that now. That's not the way it works." But given this court-

Jessica Pieklo: They did seem inclined to let him complain about it and let him get a second crack at it.

Imani Gandy: And that's just not how it works from a civil procedure standpoint. That is not how any of this is supposed to work. But again, we are dealing with a court that is outcome determinative. If they want Daniel Cameron to come back in, because that means someone's going to be there to try to defend this bullshit Kentucky restriction, then they're going to let Daniel Cameron come back in.

Jessica Pieklo: Justice Sotomayor completely had Kentucky's number on this. She walked them through during oral arguments. She's like, "And this is the point in which you said you would be bound by the decision. Right? And this is the point in which you decided not to appeal. Correct?" I mean, I love those moments for Sotomayor, because you see her prosecutorial history come out. She can *really* walk an unsuspecting lawyer into her rhetorical trap and just grab them. So that was great. And she was also just having none of it. She was just like, "No, no, no, no, no, no." Normally there's some comity, not comedy like ha ha comedy, like C-O-M-I-T-Y, some back and forth between the attorneys and the justices. This time, she was like, "No, you guys are fools for trying to bring this argument and I'm not in the mood."

Imani Gandy: Just to explain what the underlying case is about: So in 2018, Kentucky lawmakers passed this D&E ban, which is essentially a 15-week ban. It bans the most common abortion procedure in the second trimester. EMW Women's Surgical Center sued and was like, "No, this is unconstitutional." Arguing that because the law effectively outlaws the most common form of abortion in the second trimester, it's obviously an undue burden on the right to an abortion before the fetus becomes viable. Right? Right? Right? Because why? Let's sing it together, Jess.

(singing) Pre-viability abortion bans are unconstitutional.

Imani Gandy: I mean, this is just ... The reason why we've turned it into a song is because it's so ridiculous that we have to keep saying it over and over and over, that we might as well make it interesting for you, right?

Jessica Pieklo: Exactly.

Imani Gandy: So the district court blocks Kentucky from enforcing the law-

Jessica Pieklo: Because duh.

Imani Gandy: ... because duh. The state's health secretary appealed to the U.S. Court of Appeals for the Sixth Circuit, right? And then that's where it gets messy. There was an election in between, voters elected a Democrat, Daniel Cameron's a Republican. He wasn't really happy with Beshear's decision not to continue to appeal it. And that's why he jumped in.

Jessica Pieklo: And Cameron sees this as a springboard for national ambitions.

Imani Gandy: Oh, 100%.

Jessica Pieklo: That's why he's still just grinding this ax. He sees this as a way to springboard into a presidential primary in 2024. Let's just call it what it is.

Imani Gandy: Absolutely. And you know, he's tried at the Sixth Circuit. He asked them, "Well, can I get back in?" And they were like, "No, because this case has been going on for years. You got out years ago, you can't come back in." And so then he goes crying to the Supreme Court and it's just ... What's really frustrating about it is that he's likely going to get what he wants. And what's even more frustrating about it is that this procedural mess doesn't even really matter because by the time this Kentucky case winds its way up to the Supreme Court, the court will have already ruled in Dobbs. And it just all might be moot, right?

Jessica Pieklo: And what if I told you I think that this argument, even though this is an abortion case, what if I told you I thought yesterday they were arguing about things *other than* abortion in this?

Imani Gandy: Yeah. You said this to me, and it made me shut down for like a couple of hours because it really made my stomach hurt. So please explain to the listeners while I go grab a drink.

Jessica Pieklo: So, the nugget of this fight is basically: when can attorneys, state attorneys in whatever capacity, act as partisan actors, right? Like, attorney generals are attorneys for the state. They're also partisans. They're also Republicans or Democrats, right? But while they are carrying out their duties, they are supposed to suspend their partisan affiliations, right? And just represent the interest of the commonwealth, of the state, of the people. All of this is about when there is a split in leadership at the state level and one party wants to do something and another party in leadership wants to go a different direction. And they're fighting about when and how that should happen.

Meanwhile, in the background is the January 6th insurrection, is the fight over the big lie, is the coming presidential election, and concerns about whether gerrymandered states controlled by Republican attorneys general will respect election results certified by state legislatures, or if they would strike out on their own and have some authority to challenge those.

And so, I just think we need to have a very sober conversation about that because the fight at the court this week was an abortion case. It absolutely was, but it was also about power. And we need to be talking about those things in the same breath because conservatives use abortion as means to grab power all the time. And I just really ... It was one of those moments when I don't know, like if you're a kid and your parents are fighting and you hear them talking in code and you know that there's another conversation going on. We've been in this space for over a decade now, Imani, we know when they're looking towards the next thing, the third thing, the fourth thing. And I'm just going to plant that flag here and say, yeah, this is about abortion, but this is also about gerrymandered states looking out for the opportunity to strike out on their own when it suits them.

Imani Gandy: Right. It's about whether or not Republicans will ever certify an election in a state where Democrats have won. I mean, it sounds so bizarre to say that out loud, right?

Jessica Pieklo: I promise it's not a tinfoil hat on my head right now-

Imani Gandy: It's not.

Jessica Pieklo: ... but we have to have this conversation. Our unwillingness to have these conversations earlier is part of why we're here now.

Imani Gandy: Why we're here. Absolutely. Oy oy oy.

Jessica Pieklo: That got grim. My apologies.

Imani Gandy: That did get grim. And on that grim note, if you would like to be grim with us on Twitter, you can follow me @AngryBlackLady. You can follow Jess @Hegemommy. If you want to help us out, you should donate to us [rewirenewsgroup.com/donate](http://rewirenewsgroup.com/donate). We really need all the help that you can give us to help keep this abortion ship upright. Follow us on Instagram, follow us on Twitter. Join our Facebook group. Everybody just join hands and activate. This is an exciting time. It's a terrifying time, but we're going to be here with you. But until then, what are we going to do?

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

Imani Gandy: See you on the ding dang tubes, folks.

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