

## **Boom! Lawyered: Rapid Reaction—Roe’s Last Stand at the Supreme Court**

**Jess Pieklo:**

You don't slip a constitutional mickey in the mix, right?

**Imani Gandy:**

That's exactly what it was.

**Imani Gandy:**

Hello, fellow law nerds. Welcome to a very special... like, a very, very special reaction episode. Think of the most special reaction episode you could possibly think of, that's what this is. This very special reaction episode of Boom! Lawyered, a Rewire News Group podcast, hosted by the legal journalism team that is so excited to feel our feelings with you at our happy hour, this afternoon, 5:00 Eastern, it's going to be a hootenanny. I'm Rewire News Group Senior Editor of Law and Policy, Imani Gandy.

**Jess 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 name abortion as a motherfucking fundamental right that it is, on Dobbs Day. The Boom! Lawyered podcast is part of that mission. So, a big thanks to our subscribers and a welcome to our new listeners. It is a day, Imani. We have teams across the country.

**Imani Gandy:**

We do.

**Jess Pieklo:**

Chronicling this moment. And folks, we couldn't do it without your help. So, thank you for the support that you've offered, thank you for your ongoing support at [rewirenewsgroup.com/donate](https://rewirenewsgroup.com/donate). If you can, give. It's keeping this show on the road.

**Jess Pieklo:**

Wow.

**Imani Gandy:**

Whoa. So, I mean, this happened.

**Jess Pieklo:**

It did.

**Imani Gandy:**

It is happening. We are in the middle of the day that is happening right now.

**Jess Pieklo:**

It's still happening-

**Imani Gandy:**

It's still happening. We're not done-

**Jess Pieklo:**

It won't stop happening-

**Imani Gandy:**

Can't stop, won't stop. So, it is Dobbs day bitches. Dobbs vs. Jackson Women's Health Organization, JWHO. There were oral arguments at the Supreme Court today and I don't know what I was expecting but it didn't go the way I expected. I expected a more robust conversation about abortion and the importance of abortion and the fundamentalness of abortion and how it's a liberty interest. And I think the reason that we didn't have that full conversation is because of the way the case got to the court, right? We didn't have full briefing on whether or not the Supreme Court should overturn Roe vs. Wade and Planned Parenthood vs. Casey, because that's not what Mississippi asked the court to do.

Mississippi asked the court to uphold its 15 week gestational ban based on current law, based on law as it stands, based on Roe and Casey. And then, when the court said, okay, we'll take a look at that. And it was time for Mississippi to file its merits brief, it's big ass brief. In that brief they were like, okay, yeah, I know, I know. Can you just overturn Roe vs. Casey? And you don't do that. If you want the Supreme Court to overturn precedent, you have to ask the Supreme Court, in your cert petition, in your initial filing, in your initial appeal, hey, can you do this thing? Can you overrule this precedent? So, maybe that's why the arguments, they weren't what I expected, they weren't-

**Jess Pieklo:**

Yeah. You don't slip a constitutional mickey in the mix, right?

**Imani Gandy:**

That's exactly what it was, they slipped a constitutional mickey.

**Jess Pieklo:**

But truly, it's such an important point because we've been talking about this case for months now, really months-

**Imani Gandy:**

Months.

**Jess Pieklo:**

When the court first announced it was taking the case, back in May, right? That was lifetimes ago. And we've had so much coverage about the fact that this is an unconstitutional pre-viability abortion ban, what that means. We've talked about the fact that there is no disagreement in the lower courts, that bans like Mississippi's, which tries to outlaw abortion at 15 weeks, are just patently unconstitutional. The courts aren't confused about that but yet, here we are. And as you noted, we didn't even really get to the meat and potatoes. So, what did we get to though today? Let's tell the people what actually went down.

**Imani Gandy:**

I mean, what seemed to go down is, I mean, certainly, when Julie Rikelman for the Center for Reproductive Rights was arguing on behalf of the clinic, The Pink House, Jackson Women's Health Organization, it seemed like they were trying to steer her in a direction to get her to admit certain things and she was refusing to do it, right? One of my favorite moments in the argument was when Clarence Thomas pretended he was some caveman justice who was like, "I'm just the Supreme Court Justice, I don't understand what rights are. Can you explain to me what the right to abortion is? Where it can be found? If you talk about the second amendment, I know what that right is. If you talk about the fourth amendment, I know what that right is. But if you talk about abortion, I don't get it."

And Julie Rikelman was like, well, it's a fundamental right. This court has said, time and time again, that it's a component of liberty, that it actually is integral to women's dignity, to the way they live their lives. I mean, she was just, kind of, like, poo-poo-poo-poo-poo. But that, sort of, questioning from Thomas was indicative of the sorts of questions that conservatives were asking. A lot of them were bad faith, right? Particularly from Thomas and Alito, bad faith.

**Jess Pieklo:**

Yeah. This is such an important point. So, the fight here, in *Dobbs vs. Jackson Women's Health*, is functionally, from conservatives' standpoint, does a constitutional right to an abortion exist at all? And if so, where, right? That's-

**Imani Gandy:**

"What's abortion? I don't get it"

**Jess Pieklo:**

That was really Thomas' point. And as the person who is, sort of, out in front here, I agree with you, Rikelman, for The Center for Reproductive Rights, did an excellent job at really pushing back against that. But I also thought that it was Justice Sotomayor, once again. I mean, this was her day and we are all just grateful to be part of it, in that sense.

**Imani Gandy:**

Honestly.

**Jess Pieklo:**

Because what she did and what she's so good at doing was, nail down both the real world harms and the constitutional text for the right to abortion in basically one argument. And she did so in a way that painted Scott Stewart, the solicitor general for the state of Mississippi, in a corner. He could not say there's no constitutional basis for it because she's like, have you met the 14th amendment, sir? For example. And he also couldn't carry on with that argument that he tried to make, which is that, effectively, Roe and Casey are anti-democratic because they violate the will of the people.

And she was effectively like, excuse me? The will of the people is that we don't force gestation, we don't force birth and death and the possibility of death in childbirth. And also that we recognize the liberty interest, that's the will of the people. And so, it was masterful. That and I also honestly feel like she was talking to Congress there because look, I don't think this case is going to end up well, we'll get into all of that. But one possibility for a way out is Congress doing something. And I really truly felt like the first 10 minutes of Justice Sotomayor's time was looking directly in a Jim Halpern stare to Congress to say, it's about to get real bad folks and y'all are the only ones who can do something about it.

**Imani Gandy:**

And as you said, Sonia Sotomayor is so good about, sort of, connecting these constitutional principles to real world harm and she did that. We say all the time, abortion is super safe, there are so few abortion complications, childbirth is actually 14 times more dangerous than abortion is. And she said that, she said that statistic, in order to really push back on this idea that abortion is anti-democratic, abortion is something that is unusual, abortion is something that the Supreme Court justices, for 50 years, have been carving out special rules in order to uphold this anti-democratic unconstitutional thing that Justice Thomas doesn't even understand what it is or where it's located or where it can be found in the constitution. And I love that. One of the things that Sonia Sotomayor said was... or was it Sonia Sotomayor or was it Rikelman?

Actually it was Rikelman, in response said, the court interprets the constitution all the time. She said something that simple, which was like, I mean, kind of, a burn, because are you seriously sitting in the Supreme Court asking an attorney appearing before you, where does abortion come from? How is abortion made? What do you mean how is abortion made? Go read the cases where your predecessors laid out how this is done, how it is constitutional, how it's a fundamental right. And if you have to, and I'm going to encourage listeners, if you are feeling some kind of way about this and you want just to feel

better, go read Kansas Supreme Court's decision, that found the right to an abortion in Kansas' Constitution and in natural law, right? Talking about John Locke philosophy. A lot of these justices wanted to talk about the *philosophy* of abortion and, oh, are there any *secular* people? They wanted to talk about abortion as if this was some-

**Jess Pieklo:**

They being, Sam Alito.

**Imani Gandy:**

Yeah. They, right? Exactly. They being Sam Alito. As if it's some cerebral thing, the outskirts of which can never be confined. But it's just, what the fuck man? I don't know. I found it stressful. But I do want to ask you as our resident Cassandra court whisperer, what does, what does this portend for the decision in this case?

**Jess Pieklo:**

You're going to make me talk about Chief Justice John Roberts now, aren't you?

**Imani Gandy:**

He's your favorite guy.

**Jess Pieklo:**

God bless it. Okay, here we go.

**Imani Gandy:**

Let's do it. Strap in folks, this is going to be a good one.

**Jess Pieklo:**

Chief Justice John Roberts was really bad today, really bad. And okay, so John, we got to talk here. Look, I know that you're not a fan of abortion rights. You have made that very clear throughout the course of your career as chief justice. You really, really don't like them, it's cool, I get it. But we also don't craft judicial opinions based on personal opinions, chief justice. So, this whole mucking around you did today, about whether or not there were personal justices' notes in Planned Parenthood vs. Casey, about whether or not, oh, I don't know, Roe is actually precedent or that's just dicta. Like, the amount of bad faith from the court's resident institutionalist today, said to me that the fix is in. That what they want to do is effectively, and I'm going to use their own language and frame against them, legislate from the bench. Imani, you have been brilliant on this point in this case, which is that, the undue burden standard doesn't apply to bans like Mississippi's.

There is *no reason* for us to be having an undue burden conversation because that is a legal standard that applies to abortion regulations, like TRAP laws, right? When we talked about June Medical Services, the last big abortion rights case before there was Texas last month, all of that, that was abortion rights'

regulations, that's undue burden standards. Roberts is just going to ignore that, he's just going to ignore that fact and find a way to let the court both let Mississippi's ban take effect and rewrite abortion rights law here, in a way to gaslight all of us and say they're not doing it. What he was looking for was a way to say, "what are you crazy ladies talking about? We didn't just overturn Roe vs. Wade and Planned Parenthood vs. Casey, we just applied them in a totally *novel* and *brand new* and out of the realm way that has never been done before and renders them totally meaningless. That's not a reversal though."

**Imani Gandy:**

And you've been saying that, you've been very clear about this, right? About how there's going to be gaslighting from the bench, about how they needed accomplices in Mississippi in order to make this happen. And just yesterday, we were talking about this and I was, sort of, coming to the side or, at least, sort of, moving to the side of thinking that, maybe they weren't going to kill Roe vs. Wade and Planned Parenthood vs. Casey, in this case, because of the way the case made it up there. Because of what I talked about earlier, about the fact that Mississippi didn't ask the court to do the thing that the court looks like it's about to do.

And I thought to myself, well, for someone like Roberts, who is this institutionalist, is he really going to overturn 50 years of precedent? Precedent that women and pregnant people have relied on. One in four women, this was a stat that was read out several times today, one in four women have had an abortion. That's a quarter of our population that have relied on this decision. So, to say that there hasn't been enough reliance interests or that the decision was so egregiously wrongly decided that it *doesn't matter* that people have relied on it, it's just absolutely... it's cruelty-

**Jess Pieklo:**

It is.

**Imani Gandy:**

...is what it is. It's discounting entirely the harm that is going to happen, that is already happening, but that will happen in spades, particularly to women of color. I think it was Solicitor General Elizabeth Prelogar, who was arguing for Justice, as we like to say, arguing for justice-

**Jess Pieklo:**

I love that, I'm sorry.

**Imani Gandy:**

Comma, the department of. But I think it was she who brought up the point that, not only is it 14 times worse, generally, for people to give birth versus getting an abortion but for people in Mississippi, it's 75 times worse. For women of color in Mississippi, it is 75 times worse to give birth than to get an abortion. What are we doing here, folks? And to your point about Sonia Sotomayor sort of looking at Congress and saying, you need to fix this. That's one of the reasons I've been saying, for months now, that voting rights and abortion rights are so intertwined, right? Because how is Congress supposed to fix this? How is Congress supposed to give women and pregnant people their dignity back, after we were about to have

it stripped from us? How is Congress going to do that? How are the people supposed to elect representatives to do that for them, if everything is gerrymandered and voter suppressed?

**Jess Pieklo:**

I mean, that's a real good question, Imani.

**Imani Gandy:**

How is that supposed to be possible?

**Jess Pieklo:**

Got an answer for us Senator Manchin?

**Imani Gandy:**

I would like an answer, Manchin, Sinema, anyone, because this is not good, this is not good. So, I mean, so to finish my train of thought, which I'd lost, I originally thought that maybe they would just do something like uphold the ban or expand the undue burden standard but not actually gut Roe and Casey straight on. Because to give an opportunity for a full briefing and a full hearing on this momentous thing that's about to happen-

**Jess Pieklo:**

No need.

**Imani Gandy:**

But no, apparently, there's no need for that.

**Jess Pieklo:**

Can I talk a *little bit* about Amy Coney Barrett here?

**Imani Gandy:**

Please, please, your white lady nemesis.

**Jess Pieklo:**

Sorry. We'll get back to some real programming but I just got to do this, because Amy Coney Barrett, Justice Amy Coney Barrett spent a lot of time talking about safe haven laws. And I really want to spend a moment here because this is something that is not new and it may sound reasonable to folks who are new to the abortion rights fight and this is an opportunity for us to talk about why that's not. So, if you're unaware, safe haven laws exist in all 50 states and they allow folks, after delivering a baby, to effectively offer up that baby, without consequence. To self-terminate parental rights and offering that baby up for adoption is a safe haven, you're not threatened with prosecution for neglect or anything like that. And

the state of Mississippi argued that, because there are safe haven laws now, that that's an adequate substitute for the right to terminate a pregnancy.

And Amy Coney Barrett loves this line of argument and she really tried to stress test it because she knows it's unpopular, right? There's no way to substitute adoption for abortion. But this is a pretty, pretty popular talking point among the right and one that we saw worked out in some early unconstitutional, pre-viability abortion bans in the federal courts. We saw the Eighth Circuit, in particular, entertain this idea, before it was packed full of Trump judges, when Arkansas had a 12 week ban and North Dakota had a six week ban. And state attorney generals in those states said, "hey, guess what? We don't need the right to abortion anymore because people can just give up a baby after they have it, no harm, no foul." And so, this is one of those moments where, if you're newer to this fight, it's just abortion and adoption are different outcomes, potentially, for pregnancy, they are not interchangeable. And the fact that conservatives were suggesting that they are, says a lot about where they see pregnant people in this equation.

**Imani Gandy:**

As incubators. And I think that Amy Coney Barrett, it was smart for that line to come from her, as an adoptive parent, particularly as an adoptive parent of children of color.

**Jess Pieklo:**

Yes.

**Imani Gandy:**

Because one of the things that I say all the time is that, people will say that adoption is a solution but when it comes right down to it, there are not a lot of people in the market for Black babies. Just recently, my parents came to visit, this past October, and I was talking to them about the process of adoption and they said, you know, they had a choice between me and a lighter skinned baby and they chose me *specifically* because they knew I was unlikely to get adopted-

**Jess Pieklo:**

Oh, Imani.

**Imani Gandy:**

So, the fact that Amy Coney Barrett has dark skinned Black children does benefit her. But if she were a normal person, she would understand that adoption only happens after a person has been pregnant for nine to 10 months and it's that pregnancy that can kill you, it's that pregnancy that can change your life. It can make it more difficult for you to take care of the kids that you already have. It could mean that you get fired from your job because we don't have adequate pregnancy discrimination laws in place, right? It means that, once you give birth to that child and you need to take leave to recover from giving birth, you may not get it, because right now we're fighting about parental leave, we're literally fighting about it. About whether or not people should get four weeks after having a baby that this state is forcing you to have.

I want to make that clear, this country wants to force people to have babies and then, as soon as those babies are born, they are out. And maybe you're going to get a maternity ranch in Texas, where some nice Christian ladies will take you in for a *year* and maybe help you for a *year*. But I don't know, I feel like you need to take care of a baby for more than one year.

**Jess Pieklo:**

I mean in my experience, that's how it goes.

**Imani Gandy:**

So, what happens after that year? Yeah. I mean, I don't have kids but I don't know, I've seen a lot of kids, I know how they operate and they pretty much need constant care between ages zero and 18.

**Jess Pieklo:**

Can attest, that's the case.

**Imani Gandy:**

So, I just find it, as an adoptee, I find it repulsive. I really do find it repulsive when people say, you could just adopt, just adopt.

**Jess Pieklo:**

So, was that the cringiest moment from a conservative justice for you or were there others?

**Imani Gandy:**

Oh God-

**Jess Pieklo:**

I mean, who can pick, really? But what would you say?

**Imani Gandy:**

So, one of the most cringe moments for me and one that I knew was going to happen was the comparisons to Plessy vs. Ferguson-

**Jess Pieklo:**

Oh, God.

**Imani Gandy:**

Plessy vs. Ferguson, what was that, 1896? Where the court said, separate but equal is fantastic, right?

**Jess Pieklo:**

Mm-hmm (affirmative).

**Imani Gandy:**

Separate but equal, all good, that's something that we can live by. That was clearly wrong, that was clearly wrong when it was decided. And for some reason, well, and not for some reason, because of the connection between Blackness and abortion, a lot of conservatives, a lot of anti-choicers, love to bring up... they love to bring up Dred Scott, for one, they love to bring up slavery and they love to bring up issues of separate but equal. They love to bring up issues where the court decided, rightfully, that, hey, maybe Black and white people shouldn't be separate and they did the right thing. They did the right thing in Brown vs. Board of Education, right? These watershed cases, they kept calling them watershed cases. And the question becomes, is Roe vs. Wade and is Planned Parenthood vs. Casey one of those watershed cases? Such that it is so *wrong*, that it doesn't matter how many people have been relying on it. Because as, what was it Kavanaugh said? "You know, in Plessy vs. Ferguson, people relied on that too."

**Jess Pieklo:**

Oh my God.

**Imani Gandy:**

How you can fix your mouth to compare white people not wanting to sit next to Black people in a train car to forcing people to give birth is beyond me. But that's what he did. He likened those two things, and they are not the same! They're not the same.

**Jess Pieklo:**

Yeah. That was so bad. As was the full on, I mean, you mentioned Justice Thomas being like, "I'm a justice on the highest Court of the land but, boopity-boop, what's this abortion nonsense?" But he was really, really, really focused in his line of arguments, in a dangerous way, on fetal personhood and consistently brought up, in a way that he was trying to paint abortion rights advocates into a corner, the idea of what was basically mocking a bodily autonomy argument. And was saying, so is there the right to bodily autonomy to ingest a substance that would harm your pregnancy before viability, does that right exist? And so effectively trying to apply things like chemical endangerment statutes to pregnant people before their pregnancies are viable, which is something we've seen, this isn't new, right? This is something that's happening. And as we talk about, all of the ways in which criminalizing abortion leads to criminalizing other pregnancy outcomes, Justice Thomas was like, "no, they're right! It does! And we're psyched about that," basically.

**Imani Gandy:**

And here's why that is so incredibly messed up. When we're talking about the criminalization of pregnancy and we're talking about criminalizing women, pregnant people who may be drug dependent or drug addicted, and they go to a hospital and they give birth and their baby tests positive for cocaine or crystal methamphetamines, as happened to Brittney Poolaw, for example. She's now serving what? Four years in jail for manslaughter, because she admitted to taking crystal meth. And even though there was

*no evidence* that the meth led to the death of her child, she's in jail for that. And that has happened over and over, over the last 20 years. Actually, the case that Thomas kept bringing up, this case out of South Carolina, I think he's talking about Regina McKnight. Regina McKnight was convicted of some form, I don't know if it was manslaughter, I think it was probably manslaughter, and served something like seven or eight years in prison before her conviction was overturned by the South Carolina Supreme Court. She was accused of having ingested cocaine and thereby caused the death of her child. Same situation, there was no medical evidence that connected those two outcomes but it doesn't matter. When you have a Black woman who is a bad mother, right? We like to call certain people bad mothers and nothing they can do will ever make them a good mother. So, if you are a mother who is drug addicted or drug dependent and you do drugs while you're pregnant, you are a bad mother and you deserve to suffer. You don't deserve help, you don't deserve rehab or assistance, you deserve to suffer. You deserve to go to jail, you deserve to have your kids taken away from you. That's what Thomas wants. That's the rubric that Thomas wants. That's the fetal personhood rubric, right? If you do anything to damage the fertilized egg or embryo or blastocyst, then you could be liable.

**Jess Pieklo:**

This is such an important point and I think is a great bridge to what I saw as one of the highlights from Sotomayor and sort of for progressives, generally, in this case because... So, one of the core issues here is whether or not the court should move away from viability as a legal standard at all, right? And so, what does that leave us with? Is a question. One possibility is applying undue burden standard just broadly, to whatever the hell the court wants to apply it to. Another is fetal personhood, like Justice Thomas was going for. And the court's trying to figure this out. And so, Justice Sotomayor is like, "okay, I'm going to ask you directly, state of Mississippi, if it's not fetal viability, what is it? Oh, and by the way, let's talk about all these other pain arguments that you've made and how they would never fall or hold any water in any other areas of the law."

And this is where her background as a prosecutor really came to light, because she started talking about the Daubert standard, and that is the standard that courts use to judge scientific evidence in criminal trials, right? Like lie detector tests, for example. Things that juries would have to decide, hey, is this scientific? What does the scientific community have to say about it? And us, as laypeople, how should we interpret it? And anti-choicers have, as Imani and I have been talking about for eons now, been making up their own science when it comes to abortion. The Charlotte Lozier Institute, they just make up stuff. And Justice Sotomayor, from the bench, was like, "hey, state of Mississippi, did you know that a dead body will recoil from physical touch? That wouldn't make it in to a criminal trial under Daubert. Why should we create a constitutional line around abortion rights, like you're asking to here."

And so, the ability to bridge the bullshit is basically what Sonia Sotomayor did today and it was so powerful. You have to know the law to see that happening, which is why I'm glad we get the chance to, sort of, talk about that, to be like, "yeah, you know what? If you can't convict someone of a *crime*, based on this standard, why would we allow the anti-choicers to use it to determine constitutional rights for you and I?! That's bonkers."

**Imani Gandy:**

That is bonkers, yeah. And the other, sort of... I mean, she didn't spend that much time on this but I caught it, was her question: "Isn't is this a religious view?"

**Jess Pieklo:**

Yes.

**Imani Gandy:**

Right?

**Jess Pieklo:**

Oh my gosh!

**Imani Gandy:**

People were talking about, oh, some people are pro-choice and some people are pro-life and oh, is the court neutral? Blah, blah, blah. I mean, we could talk about Kavanaugh's court neutrality nonsense and some other points because, Jesus Christ, the idea that the court is neutral on abortion is absolutely absurd, considering six of them were put on the bench in order to kill abortion.

**Jess Pieklo:**

I mean.

**Imani Gandy:**

But this idea that this abortion fight is being run into the ground by white Christian evangelicals, right? They've managed to rope in some Black Christian evangelicals but it is primarily being run by white Christian evangelicals, it's pushing white supremacy, it's a cold war, exactly. And so, because, for example, Jews believe that, actually, life starts at the first breath. Brett being a bad Jew here. [laughs] So it's like, you know,, it just makes me wonder, how other religions view abortion rights, the life begins at conception, that argument. And whether or not we're even... *Why* do we have to pick one particular viewpoint of this essentially religious and philosophical question?

**Jess Pieklo:**

Yeah. Last I checked, we don't. That's called being in a multi-culti society.

**Imani Gandy:**

Right?

**Jess Pieklo:**

Right. Sorry, but we just don't do that. I know Sam Alito would *really* like the court to have a detailed debate on when life begins, why that is at conception and how come *he* is the best justice to make that

determination. But that's not how things work in this country, at least not yet, Justice Alito. And I know you check your social media, so you probably heard me say that.

We're going to have to talk about what the court's going to do.

**Imani Gandy:**

I mean, like I said, I thought the court might just give Mississippi, kind of like a side win, you know like a little win on the side, slip them a win, but then really get into the meat and potatoes when the Texas case comes up on the merits. But these arguments, I don't know, what do you think?

**Jess Pieklo:**

I'm concerned, I'm concerned. So, I think it is pretty clear that the justices, a majority of justices, will find a way to allow the Mississippi 15 week ban to take effect. And if that happens, immediately what will also happen is, Louisiana's 15 week ban will take effect, for example. There are other states that have bans tied to the outcome of a ruling here. So, when the conservatives were saying, "this is just about Mississippi, it's just about 15 weeks." Don't listen to any of it. It was an hour and a half, almost two hours, of gaslighting from conservatives. And so, I'm real concerned.

And honestly, I was extraordinarily disappointed in Chief Justice John Roberts today. I should know better, so maybe I'm disappointed in myself. I'm going to take this to my therapist. But the reality is that, like I've said, he's no friend to abortion rights but I assumed that he would, at least, try to cover his own butt a little harder than he did today.

And what he made clear is that, as far as the chief justice—so like, the intellectual grounding point for the conservatives on the court—is concerned, that there's not legitimate precedential value to Roe and Casey. And that sent a chill down my spine, because like you, like we had talked about, sort of, between us prepping for arguments, talking about this case, I really thought or think, there's a way that the court upholds the 15 week ban and does so in a way that gaslights us all, rewrites Casey and Roe significantly, but then, really saves the shank for when it gets the Texas six week ban on the merits. Maybe they won't wait, maybe they really truly feel that they don't have to wait. Or maybe, Imani, it doesn't matter. Maybe they give us a decision in Dobbs that is basically brand new law.

**Imani Gandy:**

They could do that, honestly. I have no faith in this court as an institution at all.

**Jess Pieklo:**

No. And that's why I think Breyer was so mad today.

**Imani Gandy:**

Yes. He was very mad.

**Jess Pieklo:**

He was so mad today. And you should be a little mad at yourself, Breyer, because you helped cause this. But the reality is, Justice Breyer was fuming because they all know, there's no legitimacy left in this court when they do the thing that they look all poised to do.

**Imani Gandy:**

Right. I mean, he kept talking about this specific section in Casey-

**Jess Pieklo:**

15 pages. He assigned the country homework!

**Imani Gandy:**

He assigned homework. And it's these critical 15 pages that if you read them, basically calls bullshit on everything the conservatives were saying. You know like, they were really trying to do this, "Who knows? Like, who knows what the law really is? I mean, substantive due process, what even is substantive due process?" As you know, because we've told you, it's those rights that deal with how you relate with people, family, abortion, contraception, adoption, marriage. Shit doesn't matter. And they were actually trying to convince us that this would be siloed to abortion rights in Mississippi. You and I know that's not true, our listeners know that that's not true.

**Jess Pieklo:**

Right. Right.

**Imani Gandy:**

This is contraception on the line, this is same sex marriage on the line. This could be interracial marriage on the line, given the way the country is going.

**Jess Pieklo:**

Absolutely.

**Imani Gandy:**

You cannot rule any of this stuff out.

**Jess Pieklo:**

Let's not forget that the Trump judges wouldn't say they thought Brown vs. Board of Education was rightly decided.

**Imani Gandy:**

Precisely.

**Jess Pieklo:**

We're having a conversation about Roe vs. Wade today because that is the case in the crosshairs at the moment. But the same judges who wouldn't say that Roe vs. Wade was correctly decided, wouldn't say that Brown vs. Board of Education was correctly decided and people need to know that.

**Imani Gandy:**

Right. Absolutely.

**Jess Pieklo:**

Is it time for our drinks yet?

**Imani Gandy:**

I think it's almost time for our drinks. I'm going to leave here and I'm coming over to your house, in order to get this party started. I would like to say that we are having this happy hour this afternoon and we would love for you to join us. We've got Elie Mystal, we've got Lizz Winstead, we've got Andrea Grimes, former Rewire alum *and* former If/When/How alum. And it's going to be a lot of fun. So, today was kind of crappy, these arguments weren't great but come feel your feelings with us, we will make sure that you don't end the day on a sad sour note.

**Jess Pieklo:**

And no matter what happens, folks, the courts don't have the last say on this. The fight continues, no matter what happens after today, when the decision comes down in Texas. This isn't the end.

**Imani Gandy:**

And on that note, if you'd like to talk to us about any of this stuff, find me on Twitter at AngryBlackLady, find Jess on Twitter at Hegemommy. You should follow all of Rewire's social channels, Rewire News Group on Twitter and on Instagram. Jess and I did a fun little Instagram Live this morning, if you go to my Twitter account and I think RNG's Twitter account, you can find it. It's just a little 25 minute-

**Jess Pieklo:**

We woke up-.

**Imani Gandy:**

Just a little colloquy, that's the word I'm looking for. And on that note, see you on the tubes.

**Jess Pieklo:**

See on the tubes, folks.

**Speaker 3:**

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

