

Boom! Lawyered: The Numpties Are Marching for “Life” Again

- Imani Gandy: Oh, my God, they are really...
- Jess Pieklo: They're clearly winning.
- Imani Gandy: Charlie Sheen style. That was a callback. That was a deep cut. *[theme song plays]*
- Hello fellow law nerds. Welcome to a brand new year. It is 2022, and we are kicking off this year with a new episode of Boom Lawyered, a Rewire News Group podcast hosted by the legal journalism team that survived the Marshall Fire. I just wanted to give a shout out to all Coloradans affected by the Marshall Fire. I am a Coloradan now and I'm really leaning into it. I'm really feeling the Colorado spirit. Actually, I like the community here. Everyone's joined together to help everyone out and it's nice. I like living here, Jess. Way to go on convincing me to move here. 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 take a break y'all, because rest is radical, 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 it is a new year, a brand new year, and this is the year folks. This is it.
- Jess Pieklo: It is.
- Imani Gandy: This is the year that Jess and I have been training for, for literally a decade. We've been on the beach doing laps. We've been doing those suicide things. I almost died once.
- Jess Pieklo: Burpees.
- Imani Gandy: Jess had me pulling a tire. We were just pulling tires, running up and down the art museum steps in Philadelphia, just a real straight up Rocky and Apollo vibe. And we are here to get you through it. But first I want to talk to you about something amazing that we have coming up. So we are very, very excited to announce that we are doing this amazing virtual event called the New Repro Playbook. And it is happening on Friday, January 21st at 1:00 PM Eastern, that's 11:00 AM Mountain Standard Time. If you believe that Mountain Standard Time is a real time, which I actually don't quite yet, but I'm working on it.
- Jess Pieklo: It is.

Imani Gandy: But we will be putting the Eventbrite information so that you can RSVP. We're going to put that in the episode notes for you. Listen, our editor in chief and our president, Galina Espinoza, is going to be sitting down with Alexis McGill Johnson, who is the head of Planned Parenthood, with Fatima Goss Graves, who is the head of National Women's Law Center, and Mini Timmaraju, who is the new head of NARAL. These are three women of color who have undertaken running these three major repro rights organizations at a time when Roe versus Wade is going to fall. Imagine what it must be like to be a woman of color at the head of organizations at this moment of time. That's what Galina is going to talk to them about. It's going to be a really, really great conversation. I'm looking forward to it. You should RSVP. Do it now because we're going to run out of spots. We are. We're going to run out of spots.

Jess Pieklo: And what a moment, right? To gather these women together and really just be like, wow, take stock. There's a heaviness to it but also bringing together in community. The conversation's going to be amazing.

Imani Gandy: It's going to be fantastic. And I'm really excited that they agreed to do it with us. We're the tiny little publication that could. We're like everyone's favorite indie band. And I love that these three powerhouses are going to be sitting down with Galina. It's fantastic. Truly. Do you know what else I love?

Jess Pieklo: What?

Imani Gandy: I love one of our listeners, earthmom227. They tweeted in the middle of December, tweeted this at you actually, listening to your year end podcast, Boom Lawyered with Angry Black Lady. Happy to hear you both, but furious at the same time. I'm long past my fertility, but I have daughters, nieces and female students who need these services ready to keep fighting. I love that. I love that...

Jess Pieklo: Thank you.

Imani Gandy: Four days before Christmas earthmom227 was thinking about how she was going to keep on fighting. I see her pronouns are she, her. So it's all good. Thank you earthmom227. Thank you for listening.

Jess Pieklo: Thank you.

Imani Gandy: We really appreciate it.

Jess Pieklo: And that sentiment, this isn't just about us. We do this for everyone, because you may not think you need these services, but then you do.

Imani Gandy: Or you know someone who does, you 100% know someone who does.

Jess Pieklo: Exactly.

Imani Gandy: So it was a tough holiday break. We got some really bad news. Ms. Sarah Weddington died over break. Literally, I find it so profoundly depressing that she died before the 49th anniversary of Roe. She didn't get to make it to 50. She didn't get to see Roe make it to 50. And she died knowing that Roe was likely going to be overturned. That bothers me.

Jess Pieklo: It's like the year couldn't just stop being 2021. It just was going out like that. The close of the year was so rough with the Supreme Court letting Texas's SB 8 stand and then the oral arguments and Dobbs and just hearing the justices apparently just so eager to just trash this legacy. And then someone who's just been so important in movement spaces and just human rights advocacy, it's a loss, it's tough.

Imani Gandy: It really is. And Susan Hays, she's a Democratic candidate for Texas ag commissioner. She tweeted a really lovely thread about Sarah Weddington. Apparently Weddington was Hays's law professor at the University of Texas. And what stood out to me in that thread was this tweet. Quote, "at 27, she argued Roe to the Supreme Court a fact that always made me feel like a gross underachiever. "Honestly, at 27 I was probably drunk at a bar in Charlottesville, Virginia. I was not even coming close to arguing a case that would be so seminal for the rights of pregnant people in this country. But Susan Hays went on to say, "Ironically, she worked on the case because law firms would not hire women in the early seventies, leaving her with lots of time for good trouble."

Imani Gandy: First of all, as a black woman, I love the use of the phrase good trouble. That's a John Lewisism. You got to get into good trouble. Sarah Weddington 100% got into good trouble at a time when most people don't even really know what they're doing with their lives. And so she was a powerhouse. She had to argue Roe twice. She rolled in there so prepared, and as a black woman I can understand. I rolled into court frequently and had people underestimate me because, oh, I'm just this wee black woman, and what could I possibly know about the law? From listening to the oral arguments, you get the sense that Weddington went through the same stuff. These men, they did not expect her. They weren't ready for her jelly.

Jess Pieklo: No. They were not. And just a generous person. What folks may not realize about Weddington is she mentored an entire movement too. The number of attorneys and advocates who trained under her, who took classes from her at the University of Texas, she just was generous with her time and her spirit and really believed in scaffolding power, of building systems to lift up generations. That's what she gave us. And, man, we owe a lot to her.

Imani Gandy: I love that. Scaffolding power, that's a really great turn of phrase.

Jess Pieklo: Especially because, Imani, 2022 is going to be a wild one for abortion rights.

Imani Gandy: This is the year. This is it.

Jess Pieklo: Literally, all bets are off.

Imani Gandy: All bets are off.

Jess Pieklo: All bets are off. Who really knows what could happen this year? Who knows? We've got Texas's SB 8, which is still in effect, and there's no clear path for getting it blocked right now. There's yet *another* petition before the Supreme Court. Providers went back to the Supreme Court and were like, "Hey, the Fifth Circuit is going to start doing some nonsense. Let's hurry it up." Supreme Court's like, "Hmm. No." We're so screwed." So here's what happened over break. The Fifth Circuit Court of Appeals held oral arguments on the question of whether or not the Texas Supreme Court... How many courts are going to weigh in on this ban before we actually get some substance?

Imani Gandy: I wonder what the maritime law court thinks.

Jess Pieklo: Has the US tax court weighed in yet, truly? The patent office might have something to say about this, but all of these other courts are apparently going to weigh in first on the bounty scheme and then maybe we'll get to the point about, oh yeah a six week abortion ban is unconstitutional. I don't know. It's just a mess, Imani.

Imani Gandy: It is a mess. And I, first of all...

Jess Pieklo: You listened to the hearing?

Imani Gandy: I did.

Jess Pieklo: Thank you for that, from all of us.

Imani Gandy: For the love of God, man. So the issue in the hearing is whether or not this pre-enforcement action, whether or not these abortion providers can maintain this action against the state licensing officials who the Supreme Court said are the only remaining defendants in the case. The Supreme Court dismissed the case as to everyone else, as to Paxton, as to that jackass individual guy who was like, "I'm going to start suing from my basement." The Supreme Court dismissed the case against all of these other people.

Imani Gandy: But because licensing officials retain some enforcement power, they have the power to strip medical licenses from abortion providers, the Supreme Court said, "Okay, fine, abortion providers, you can sue these licensing officials." So then these licensing officials wanted the Fifth Circuit to, quote, certify a question of law to the Supreme Court. That means they wanted the Fifth Circuit to ask the Texas Supreme Court whether or not these defendants were proper defendants

under Texas state law. Because, generally, federal courts of appeal don't necessarily like to guess at what a state's law is even ,though they can literally just open a fucking code book and read it. But that's neither here nor there.

Jess Pieklo: I was just going to say, these are supposed to be some pretty bright people. It seems like everybody's passing the buck.

Imani Gandy: Read a book, jackasses. But they wanted the Fifth Circuit to ask the Texas Supreme Court to weigh in on this issue. Now, of course, this just means that it just kicks the can further down the road. It's just more months of arguing, more months of briefing. And, look, I'm as much of a civ pro nerd as anyone. And even I...

Jess Pieklo: Not me. Wouldn't be me.

Imani Gandy: Wouldn't be me. And even I was like, "Okay, come on now. We're really going to talk about the Erie doctrine, this particular civil procedural jiggery pokery rule thing that discusses whether or not federal courts have to ask states what their law is." Even I don't like the Erie doctrine, and that's all this hearing was really about. And, again, for a case that is ostensibly supposed to be about the right to abortion, these arguments were not about abortion, just like the prior two sets of arguments about this case were not about abortion.

Jess Pieklo: Nope.

Imani Gandy: It was a masterclass in civil procedure. It was a masterclass in the Erie doctrine, which nobody gives a shit about. And ultimately the Fifth Circuit is slow walking this decision. It is allowing these Texas officials, these Texas defendants to slow walk this decision and as Higginson, who is one of the judges on the panel on the Fifth Circuit, kept pointing out, this is antithetical to the Supreme Court's remand order, which basically says, "We're going to remand this and then you have to deal with this shit now." You have to deal with this immediately. Immediately doesn't mean setting a hearing for middle of February.

Jess Pieklo: Nope.

Imani Gandy: That's not immediate and...

Jess Pieklo: That's not immediate.

Imani Gandy: And let me just tell you, judge Higginson was so annoyed. So annoyed to the point that he was actually having a pretty heated and tense debate back and forth with noted racist Edith Jones, noted abortion hater Edith Jones. It got really tense because essentially Edith Jones wants to wait for the Dobbs decision. She kept saying, "Well, aren't we expecting the Supreme Court to issue this ruling? And shouldn't we just wait?"

Jess Pieklo: No.

Imani Gandy: And no. Mark Herron from the Center for Reproductive Rights kept saying, "No, because that's not immediate." The court remanded and said, "We have a right to move forward. And if you're going to wait three months for a Texas decision, that is not allowing us to move forward with this litigation." So Jess...

Jess Pieklo: What a mess.

Imani Gandy: It's bad. What I keep coming back to is that abortion has been functionally illegal in Texas since September 1st, and what these lawyers are doing, what the Fifth Circuit is doing, what the Supreme Court is doing is just playing a game of cat and mouse. It's a shell game. They're just waiting for Dobbs, waiting for Godot, waiting for Guffman, I don't know what they're waiting for. But they're waiting for Dobbs and they're doing it in a way that is not in keeping with the procedure, with the way things are supposed to work.

Jess Pieklo: We're so outside of the norm here, I just really need to stress that. You and I have been doing this show for years now, talking about abortion challenges in the courts and there's a normal course that cases take, and that is completely out the window. So while the Fifth Circuit and the Texas Supreme Court potentially sit there and stroke their chins over whether or not this enforcement mechanism is legitimate, whether or not the Erie doctrine is in play here, what they're doing is hiding the harm of allowing SB 8 to take effect. We're not talking about the daily impact on Texans who need immediate care. We're not talking about the daily impact on providers. We're not talking about the impact in all of the neighboring states.

Jess Pieklo: All of that is obscured by conversations about original jurisdiction and secondary jurisdiction and state courts versus federal courts, all of which is important stuff, but none of it is as important as the human toll. So it's gummed up in Texas and it's gummed up at the Supreme Court. I mentioned earlier, the providers are trying desperately to get any movement in this and they've filed another petition at the Supreme Court. And this one is to basically try to circumvent this cat and mouse game that you just described. And they asked the Supreme Court to expedite, to move that petition along quickly as well. And Alito, and the Fed Soc Six were like, "We could expedite it or we could give Texas until February to respond to this." So we'll hear whether or not the Supreme Court thinks Texas Supreme Court should weigh in, I don't know, sometime in February, sometime in March, that's when we'll hear. So meanwhile, we're creeping up on almost 200 days where SB 8 has been in effect and we've got a bunch of federal judges just sitting on their hands.

Imani Gandy: You mentioned the Fed Soc Six. And that's a phrase like fetch, we are going to make that happen this year. So the Fed Soc Six stands for the Federalist Society Six. These are the six conservative justices on the Supreme Court who were

groomed, handpicked by the Federalist Society to all think the same way, to all as espouse the same conservative ideals to ensure that there is absolutely no diversity of thought on the bench. Elie Mystal of The Nation talks about this all of the time, about how the fact that we have these six people, they all think the same way. It means that we don't have robust discussions of the law, of the constitution, of norms. And that's really, really problematic. So when you hear us talking or tweeting about the Fed Soc Six, you know that's what we're talking about.

Imani Gandy: And second of all, there is an ongoing human rights crisis in Texas right now. You talked about the human toll, and I feel like I'm a civ pro nerd, we're both lawyers, I love the law, I love getting into the weeds of the law. But frankly, Johnny Appleseed in Texas who needs an abortion does not really care about the Erie doctrine. Johnny Appleseed wants to get abortion care because Johnny Appleseed needs an abortion past six weeks and they are not able to do that in Texas, and I think that we cannot stress that enough. We really can't.

Jess Pieklo: No. You know what's really bananas? We're talking about all of this, SB 8 in effect, we're *waiting* on the Dobbs decision. We haven't even gotten the decision in Dobbs versus Jackson Women's Health yet, to see whether or not the Supreme Court has shown its work and formally overturned Roe versus Wade altogether. But all the courts are acting like they have.

Imani Gandy: And again, I know I've said this before, that is alarming. That tells you how hyperpartisan this court is, that everybody in the country knows what is going to go down and therefore other bits of litigation have been stayed, are being slow walked, waiting for the Supreme Court to issue this ruling in Dobbs. And yesterday was an opinion day and we didn't get the Dobbs opinion. And you had made this horrific prediction at the end of last year that the court was somehow going to drop the Dobbs decision before the Roe anniversary just to really give us the shaft, and it's unlikely. It is unlikely. We're likely to get the Dobbs decision in June, but there's no rule that says we have to get the Dobbs decision in June.

Imani Gandy: It's just become a norm that the biggest cases, the biggest decisions are dropped on the last day of the term, and then the justice says, "Peace out," before people can start rioting with pitchforks. But there is no reason that the court couldn't drop Dobbs Monday, Tuesday. Well, not Monday, it's a holiday, Tuesday, Wednesday, happy days, Thursday, Friday, happy day. But do you know what I mean? It's very alarming that we are dealing with the court that just doesn't seem to give a F at all. I hate it.

Jess Pieklo: You mentioned my dark off the cuff prediction from the last episode of ah, the Supreme Court will just drop Dobbs right around the Roe anniversary to twist the shank. And here we are, Roe anniversary week. You know what that means, Imani?

Imani Gandy: Let's see. Time for us to run into the mountains, build a compound, adopt 30 or 40 dogs.

Jess Pieklo: I like where this is going.

Imani Gandy: And just sit around on a rocking chair, whittling and smoking out of corn cob pipes.

Jess Pieklo: That isn't exactly where I was going. But I'll take it.

Imani Gandy: It's a good idea. Right? You got to admit.

Jess Pieklo: I mean, this idea has some legs. No, unfortunately, because it's the Roe anniversary week, it is also time for the annual March for Life...

Imani Gandy: No.

Jess Pieklo: Happening everywhere across the country, especially in Washington, DC. And guess what, Imani? Guess what?

Imani Gandy: I hate it already.

Jess Pieklo: You do. You're going to hate it more. And I'm sorry we're friends, but sometimes friends have to do this. This March for Life, well, it's all about fetal personhood folks, all about fetal personhood, which, as we've said, is the next big push for the anti-choice movement. The catch phrase for this year's March for Life is, hold onto your buds, equality begins in the womb.

Imani Gandy: No.

Jess Pieklo: Yes.

Imani Gandy: No.

Jess Pieklo: Yes.

Imani Gandy: I'm going to end this podcast. Now I'm going to immediately leave my condo. I'm going to... Are there any active volcanoes in the United States, Mount St. Helens, what's going on there? I'm going to go there and I'm going to just dive headlong into it because I hate this. I hate this equality begins in the womb. Because you know what they're doing? They're co-opting reproductive justice language.

Jess Pieklo: Oh, yeah.

Imani Gandy: They're trying to set up a regime where a blastocyst or an embryo has rights that are supposed to be balanced against the rights of a pregnant person, the rights

of a person that is alive and breathing on their own. And they do this all the time. They do this, Feminist for Life, the Susan B. Anthony list. They always take feminist ideals, and Susan B. Anthony is no friend of mine, bitch was problematic, but I'm just saying, they take feminist ideals and they twist them and they pervert them to anti-feminism, and it drives me bonkers.

Jess Pieklo: It is. It's so bad. And, hey, look, I know it's tempting to dunk on the anti-choice numpties and their march, because their signs are ridiculous, equality begins in the womb, pre-born, truly, this is just... It's nonsense. Except the fact of the matter is, and God, this pains me to say, they're currently winning.

Imani Gandy: Oh my God.

Jess Pieklo: They're currently winning.

Imani Gandy: Like Charlie Sheen style. That was a callback. That was a deep cut.

Jess Pieklo: That was a deep cut. So they're winning the messaging war, but they're also doing things like lobbying members of Congress to effectively rewrite the 14th amendment to create a right to life. This is what they're doing while they're also marching, because it's not just taking a victory lap, there's advocacy behind this. So they're trying to get Congress, the courts to recognize that a fertilized egg is a human being with full rights like you said. That's bananas. They're also setting up trainings across the country to teach folks how to effectively lobby their state lawmakers. They're indoctrinating the youth.

Imani Gandy: Not the youths.

Jess Pieklo: The youths, they're indoctrinating the youths. they've got an entire propaganda network to advance their agenda. It's not a lo-fi operation here at all.

Imani Gandy: Not at all. And having grown up amongst evangelicals in the plains of Nebraska, you surely understand this more than I do and know more about this than I do, but in reading about stories of people who have been able to extricate themselves from this March for Life culture, they really get you early, right?

Jess Pieklo: Oh, yeah.

Imani Gandy: At age 12, long before you have the capacity for critical thought, they are drilling this shit into your head. Some nun somewhere is telling you that abortion is murder and that an embryo is like an acorn that must be allowed to grow into a person slash tree. And when you're 12 or 13, that young, you believe it. You're not thinking about the fact that as statistics show, one in four women is going to have an abortion by the age of 45.

Imani Gandy: You're not thinking about the fact that the classmates that you're standing around with, being indoctrinated with all this garbage, some of these people are

going to have abortions by the time they're 45. And you're not thinking about the logical conclusion of this abortion is murder nonsense, which is that if you think abortion is murder then that means do you think people who are getting abortions are murderers. And that's not something that a 12 year old brain can handle. And it's just this unethical brainwashing of these kids. Some of them get out, some of them don't.

Jess Pieklo: It's wild, not only is it the brainwashing in terms of the actual substance, but the peer pressure. There's absolutely no space for evangelical or Catholic kids to be different and accepted in these kinds of communities. And it's a big deal. The biggest field trip that we had in Catholic school was going to the March for Life. You fundraise for it. They're busing kids from all over the place, get to stay in a hotel. If you don't think those high schoolers aren't having sex during the March for Life... It's one big hookup culture for the Catholic high school kids.

Jess Pieklo: It's ridiculous. And I know folks think the personhood stuff is really out there and we probably sound really strange, but I need folks not to get complacent. This is not about sending abortion back to the states. The anti-choice movement will never be satisfied. There's no limiting principle for them, absent full recriminalization, absent full legal recognition of fetal personhood. So it may look funny to me and you that they're out there with signs saying, "An egg is a person," but we can't do that. We just can't.

Imani Gandy: We really can't.

Jess Pieklo: Because it affects birth control. It affects IVF. It affects absolutely all of miscarriage management care. And it doesn't stop there.

Imani Gandy: It doesn't stop there. And we talked about this last year, but it's the overwhelming sense of "this can't be happening" that is leading people to ignore those of us who see what's coming down the pipe. We know what's happening. We were the ones who predicted that we were going to be here. So all of the people who ignored us and thought, oh, don't be so silly, patting you on the head, Roe is going to be fine. Roe is not fine. We've been telling you for a decade Roe is not fine. So when we tell you what their next steps are, I need you to trust us. I need you to believe that we know what we're talking about. Because you will read sleepy-eyed cis white dudes writing articles in the Washington Post about how, oh yes, they're going to be mollified by a 15 week ban. It's going to be fine. Everyone's going to compromise.

Imani Gandy: There's going to be no compromise. Not only do people who believe in reproductive justice not want to compromise, but these anti-choicers don't want to compromise. They will not rest until every sperm is sacred. And I need people to get on board for that. And if you're not on board for that, then stop talking and pass the mic to people who are on board.

Jess Pieklo: You heard the lady.

Imani Gandy: You heard me. I said what I said. And on that note, we are going to close this, our first episode of 2022. Thank you for joining us. Thank you for writing with Boom Lawyered.

Jess Pieklo: Seriously, folks.

Imani Gandy: We're going on five years now. My mind can't even fathom it.

Jess Pieklo: I love it.

Imani Gandy: We appreciate you. If you would like to talk to us about any of this stuff, I'm @AngryBlackLady on Twitter, Jess is @Hegemommy on Twitter. H-E-G-E-M-O-M-M-Y for those of you who don't know. You should follow all of the things. Rewire News Group, Instagram. I almost said, MySpace.

Jess Pieklo: Do we have a MySpace account?

Imani Gandy: We should start a band and then get a MySpace. Instagram, Twitter. We are doing really amazing things with social media. We have a new graphics person, Cage. We've got our social media person, Anagha. Both of them are literally crushing it. Just crushing it. So please follow us. And what else are we going to do?

Jess Pieklo: We'll see on the tubes folks.

Imani Gandy: Yeah, let's just go ahead and see you on the tubes, folks. Boom Lawyered is created and hosted by Jessica Mason Pieklo and Imani Gandy. Marc Faletti produces the show.