

Imani Gandy: Hello fellow law nerds. Welcome to another episode of "Boom! Lawyered," a Rewire News Group podcast hosted by the legal journalism team, one of whom was unable to convince the other to go to a Wednesday night show at Red Rocks. But it's okay, she's a busy lady, I understand. I'm Rewire News Group's Editor-at-Large, 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 get cozy. It's cozy season, Imani, and the "Boom! Lawyered" podcast is part of that mission. So a big thanks to our subscribers, a welcome to our listeners, and hello viewers.

Imani Gandy: Jess, I am jazzed about this episode because it has been a really long time since we did a huge nerdy deep dive into some constitutional issues that might make some of our listeners and viewers scream, but the real nerdy ones, they're gonna ride with us. So let's do this.

Jess Pieklo: I love this, I love it.

Imani Gandy: Okay, here we go. So last week, the Supreme Court heard a case out of California called National Pork Producers Council v. Ross. The case is about a ballot initiative, Proposition 12, that places conditions on pork sold in California. There are requirements that pigs be bred in a certain way, that they have enough room to turn around in their cages. Essentially Californians are like a bunch of hippie-loving animal welfare enthusiasts, and they just weren't down with the way pigs were being produced and sold in California.

So on its face, the case is about whether California's pork regulations affect the national marketplace, the national marketplace for pork to such an extent that it violates the Commerce Clause of the Constitution. The Commerce Clause. Now, why would these pork regulations be unconstitutional? Because they impose a burden on interstate commerce or because they burden commerce in another state. So this is a case about the relationship between states in the bacon marketplace, essentially.

Jess Pieklo: But Imani.

Imani Gandy: Yes.

Jess Pieklo: It's also a case about abortion.

Imani Gandy: What?

Jess Pieklo: It is, it is. I know, I know, you're thinking, Jess, you do this all the time. You literally make everything about abortion. And what does pork have to do with abortion?

Imani Gandy: ♪ What's pork but a secondhand abortion ♪ ♪ What's pork got to do, got to do with it ♪ ♪ Who needs some pork when you've got an abortion ♪

Jess Pieklo: You can tell we're a little excited about this episode.

Imani Gandy: A little.

Jess Pieklo: But truly, it turns out that pork, in this case, has basically everything to do with abortion, so let's get into it.

Imani Gandy: Yeah, today we are going to give you a crash course in what exactly the Commerce Clause is, what the Dormant Commerce Clause is, duh, duh, duh, and how exactly a case about regulating pork in California is a low-key abortion case.

Jess Pieklo: Let's get into this.

Imani Gandy: Regulators, mount up. Let's do this.

Jess Pieklo: All right, first thing's first, Imani.

Imani Gandy: Yeah.

Jess Pieklo: What is the Commerce Clause, and what is the Dormant Commerce Clause?

Imani Gandy: Well, Jess.

Jess Pieklo: Oh, I love this.

Imani Gandy: So the Commerce Clause is a provision in the Constitution that gives Congress the power, the authority, to regulate interstate commerce, right? We're talking about the movement of goods from one state to another. If you're in law school, everyone in law school's always talking about the sale of widgets, right? We're always talking about widgets, right?

Jess Pieklo: Really, what is a widget?

Imani Gandy: The widget market is deep, right? So it's the sale of widgets between one state and another. In the Federalist Papers, our homie Jimmy Bob Madison, Jim Bob Madison with the gold flute.

Jess Pieklo: Wait, Jim Bob Madison and the crystal flute. Jim Bob Madison and the crystal flute sounds like a caper.

Imani Gandy: It does, it sounds like a new Indiana Jones movie. But okay, so James Madison said that the purpose of the Commerce Clause was to do away with barriers that states had erected to sort of inhibit trade. We're talking things like tariffs, monopolies, price gouging, that sort of thing.

Jess Pieklo: And it made sense that the time, right? Like here we are back in the Founders' business when they were debating, do we do Articles of Confederation, which is sort of this loose conglomerate of states and everybody's YOLOing across however they want to do their own marketplace and commerce, or do we need some kind of organizing, uniform principles so that everybody can just kind of get along and New Hampshire isn't flexing on Georgia unnecessarily, and vice versa. Like, that's the conversation at the time. So I'm tracking.

Imani Gandy: Absolutely, so let's talk about what the Dormant Commerce Clause is.

Jess Pieklo: Okay.

Imani Gandy: So the Dormant Commerce Clause is essentially a judge-made addition to the Commerce Clause, right? The Supreme Court has said that even though Congress has the authority to exercise its power to regulate interstate commerce, sometimes when it's not exercising that authority, when its authority to regulate interstate commerce lies dormant, it still has the power to prevent states from regulating the marketplace or doing anything that would burden interstate commerce, right?

So even though Congress isn't directly regulating interstate commerce, Congress is saying to states, "Hey man, you can't be doing anything wild and crazy in your state that's gonna burden interstate commerce or is gonna burden another state's intrastate commerce." So essentially, if a state goes too far in regulating commerce, the Dormant Commerce Clause comes bursting through the Commerce Clause of the Constitution like the Kool-Aid man. Like, "Oh yeah, I'm the Dormant Commerce Clause."

Jess Pieklo: I love that image. That is a whole new Schoolhouse Rock thing. But again, like putting it into the historical context, here is the Constitution that is serving as a unifying principle for when the states start acting out of line, right? A state gets out of pocket, the Dormant Commerce Clause says "Yo, yo, yo, you have to fall back into line." So this is cool. I got this.

One way to think about the Dormant Commerce Clause, too, is that it is a tool to prohibit discrimination. And I know that sounds weird, but here, follow, just stay with me here. If a state law discriminates against interstate transactions it's presumptively valid. And so a law that burdens or preferences one state's products, for example, that discriminates. We usually think about discrimination on the terms of race and gender, sexual orientation, that thing, but discrimination just means that sort of preference.

So here, let's ground it in an example. Let's say, because California has Napa and all this great wine, that they decided to pass a law that says we are only going to sell California wine. We don't want any of that crappy wine from, I don't know, New Jersey? Does New Jersey make wine? I don't know.

Imani Gandy: Ooh, New Jersey's coming for us now, Jess.

Jess Pieklo: Look, my fellow Pythons in New Jersey, I'm sure your wine is fantastic. I just don't know if it reaches the Napa status. But that's okay, it doesn't have to, because if California were to pass that law, the Dormant Commerce Clause says it's presumptively invalid. Like you just can't pass a law that says, "Only our state's products in this state, screw the rest of y'all."

Imani Gandy: Okay, I get that. Laws that discriminate, presumptively invalid.

Jess Pieklo: Yep.

Imani Gandy: But what if the law doesn't discriminate, right? So in this pork case, right, California isn't saying, "No New Jersey pork in our state. We're not letting anyone sell any pork from New Jersey in our state." What if the law, as it does, simply says, "Look, if you're going to sell pork in California, it needs to be raised and produced in a certain way." You need to know the provenance of this pork, what pig it came from, how that pig was raised, was it raised humanely. What happens then?

Jess Pieklo: So we get a test.

Imani Gandy: Oh, God.

Jess Pieklo: Even better, we get a balancing test.

Imani Gandy: Oh, I was like, it's either gonna be a balancing test or a three-pronged test. It's one or the other.

Jess Pieklo: Lawyers love a test when they don't have an answer, and we have a balancing test here. So the Supreme Court laid out a balancing test in a case called *Pike v. Bruce Church*, so *Pike v. Bruce Church*. I'm not gonna get into the details of it. That's where the balancing test shows up. And this is what they say.

So the law's benefit to the state must exceed the burden that the law has on interstate commerce. So it has to just really, really, really truly benefit, in this case, the folks of California, so much so that it's okay that there are some marketplace burdens. So the bottom line is this: A state can't regulate commerce that exists outside of its borders. That's a general proposition, and that makes sense, right? Like do we want Missouri passing laws that regulate commerce in Colorado? I don't think so. That is called the extraterritorial principle. So a state law violates this extraterritorial principle. This is the nerdiest episode we've had in a while.

Imani Gandy: I know, and I'm loving it.

Jess Pieklo: I'm just gonna say that as a side bar. I'm literally, like, all in it. So a state law violates the extraterritorial principle if it applies to out-of-state commerce, either expressly or practically, and that kind of makes some sense here.

Imani Gandy: So Jess.

Jess Pieklo: Uh huh, I know, that was a lot, it was a lot.

Imani Gandy: I mean, honestly. What does the Dormant Commerce Clause have to do with abortion? We told our listeners and viewers at the upfront that this pork case was a low-key case about abortion. Let's make that connection.

Jess Pieklo: Right, it is a low-key case about abortion, and so I've just given you a whole bunch of law, right? So the Dormant Commerce Clause prevents states from regulating commerce extraterritorially, like we just talked about, right? And in the wake of the Dobbs decision, we have a bunch of states that have come in with all of these brand new, totally bananas regulations around abortion that we have not seen before. And abortion is commerce. I know we don't think about it that way, but it is.

So regulations on abortion have the ability to affect the marketplace. That means the question becomes, do state regulations on abortion reach beyond their borders to regulate commerce around abortion in another state? So can states with their own bans basically reach in and affect the marketplace of other states? Also why this is so important is because the Dormant Commerce Clause is one of the pillars of the right to travel. And the right to travel is something that we've talked a lot about in the wake of the Dobbs decision, because that right is under attack in a post-Dobbs world.

Imani Gandy: So Caroline Kitchener at the Washington Post reported in June that the Thomas Moore Society is drafting model legislation that would allow private citizens of a state to sue anyone who helps a resident of that state obtain an abortion. Let me say that again. They are drafting model legislation that would allow private citizens of one state to sue anyone anywhere who helps a resident of that state obtain an abortion. That's bonkers.

Jess Pieklo: My face is doing so much right now.

Imani Gandy: It's bonkers. She also reported that the National Association of Christian Lawmakers, which the name of that group alone is enough to give me night terrors, right. But the National Association of Christian Lawmakers is an anti-abortion group led by a gaggle of Republican state legislators. They've been working on similar legislation. And this is just not good. It's not good when a state is trying to enlist its own citizens to go and try and yoke up people in other states who help in-state residents get abortions. That doesn't make any sense.

Jess Pieklo: It's really bad, and Imani, would it surprise you if I told you that Missouri was already trying it?

Imani Gandy: I mean, with Missouri, can we not? Can we not? Y'all have been just paving the way when it comes to bullshit laws that strip people of their rights. I just need you to stop.

Jess Pieklo: Our friends in Missouri, we feel for you. It's rough there. There's a bill pending in Missouri that would allow private citizens to sue anyone who helps a resident of Missouri obtain an abortion outside of the state, right? So reaching into the other states, like we've been talking about. The Dormant Commerce Clause would bar Missouri from regulating conduct that occurs outside of its own borders theoretically, like getting an abortion. However, we know that the one thing that I do agree with Clarence Thomas on is abortion exceptionalism in the law, so if ever there was a time that the Dormant Commerce Clause would not apply, it would probably be to abortion is my guess.

Imani Gandy: Yeah, you're probably right. So I want to talk a little bit more about this whole private citizen lawsuit shenanigans. We saw a lot of that in the kerfuffle about SB-8, right? Texas SB-8. So the question here will become, will Missouri be barred from enlisting private citizens as agents of the state to, in effect, restrict people's right to travel through the threat of lawsuits, right? Missouri, the Missouri governor, Missouri Department of Health, Missouri attorney general, they're not gonna be suing anybody. They're not involved. The law says they cannot be involved. They want to enlist citizens, private citizens, to enforce the laws of Missouri.

And as we saw in *Whole Women's Health v. Jackson*, that was the case last year about Texas SB-8, which they were the originators, the architects of this idea where you enlist private citizens to just sue any random motherfucker about an abortion that was obtained. The question becomes who can be sued for a remedy? Because if you recall in *Whole Women's Health v. Jackson* the attorneys for the plaintiff filed a lawsuit that sued basically everybody - courts, the court clerks, judges, commissioners, everybody - because they were looking for someone who had enough of a hand in this law that it would warrant naming them as a defendant. But the courts kept dumping their defendants. They kept saying no, you can't sue these people, you can't sue these people. None of these people are agents of the state. So the case got just dismissed. The plaintiffs left with no remedy. So what are we supposed to do? What is supposed to happen in this situation?

Jess Pieklo: I wish I knew. I mean, this is what, that Texas SB-8 and all of this has done is put us in the upside down. We don't have clear answers, and the law used to have some pathways for us, and that's just not the case. The other thing is also, this probably won't surprise you, Imani, it's not just about abortion. States are trying this with gender-affirming care as well also, like Idaho. How about you knock it off?

Imani Gandy: Yeah, Idaho had a law where they were gonna criminalize parents who took their children out of state for gender-affirming care.

Jess Pieklo: Yep, yep. And we also have states like California, for example, that are passing really good abortion protection laws in their own states, and saying, "We are not going to allow our citizens to be subject to lawsuits in other places that have these bans." It's an open question on how or if the Dahmer, I did it. At some point in this podcast, it was gonna happen. I have been struggling with saying the Dormant Commerce Clause for two weeks now, and it keeps

coming out as the Dahmer Commerce Clause. It's out of my system, it's done. But truly, there's an open question about whether or not conservatives could use a Commerce Clause argument to come after California's laws. We just don't know.

Imani Gandy: This has been a lot, so I'm just gonna do a little recap of what we've done so far.

Jess Pieklo: Oh, good idea.

Imani Gandy: Let's just go over what we know so far. We know that Congress can regulate interstate commerce. We know that when that power to regulate interstate commerce lies dormant, Congress can still tell states not to do things that burden interstate commerce. We know that California passed these pork regulations because they really care about animal welfare, and we know that Missouri is trying to pass a law that would potentially burden interstate commerce in order to "save the babies," right?

So as you mentioned, the Dormant Commerce Clause would theoretically bar Missouri from passing a law that would potentially burden interstate commerce, right, passing a law that prohibits the right to travel for abortion. And that's something that we know that the FedSoc Six would like. The FedSoc Six would love for Missouri to be able to just yoke up people in surrounding states in order to criminalize them for obtaining or helping someone to obtain an abortion. But here's the problem. The FedSoc Six is split on the Dormant Commerce Clause.

Jess Pieklo: Get out.

Imani Gandy: I will not get out.

Jess Pieklo: This is a little sexy. We just made the Dormant Commerce Clause sexy, Imani.

Imani Gandy: We did it with the APA, and now we're doing it with the Dormant Commerce Clause. Ooh, ooh.

Jess Pieklo: I don't know why it turns into a shoulder shimmy, but it does .

Imani Gandy: So here's the thing. Conservatives on the court are split on the Dormant Commerce Clause. So this presents a bit of a sticky wicket for a justice like Clarence Thomas, right? He hates the Dormant Commerce Clause, hates it. He thinks it's judicially created nonsense. You know, you were mentioning abortion exceptionalism. Kind of like he thinks Roe and the constitutional right to an abortion was judicially created nonsense. So here's what he said in a 1997 case called "Whatever v. Whatever," it's doesn't really matter. He said, "The Dormant Commerce Clause has no basis in the text of the Constitution, makes little sense, and has proved virtually unworkable in application." And for you diehard law nerds, the case is 1997, Camps Newfound/Owatonna v. Town of Harrison. So that's Camps Newfound/Owatonna v. Town of Harrison.

So Jess, I ask you this. What is a justice to do, what is a justice, just a justice in the world trying to make it on the Supreme Court in these United States, what's he to do when he hates the Dormant Commerce Clause, and the Dormant Commerce Clause would actually provide a barrier, would allow a state like Missouri, let's say, to extend its abortion hostile laws outside of its territory? The Dormant Commerce Clause would do that. Justice Thomas would like that, but he hates the Dormant Commerce Clause, but he loves abortion.

Well, I'm gonna tell you it. I'm gonna tell you what the answer is. It doesn't matter because the man has no goddamn principles. It doesn't matter.

Jess Pieklo: I thought that maybe is where we were going.

Imani Gandy: I mean, let's say there's a hypothetical abortion case that comes up on a Dormant Commerce Clause issue, right? The case would not be about discrimination. We talked about, that would be presumptively invalid. It would have to go to this balancing test that you talked about. Lawyers love this balancing test, this balancing test out of this case called Pike, right? So the balancing test, as you said, I'm gonna repeat it, it says that the benefit of the law must exceed the burden on commerce.

Jess Pieklo: Oh boy.

Imani Gandy: The benefit of the law must exceed the burden on interstate commerce. Now, how do you think a justice who hates abortion, but also hates the Dormant Commerce Clause is gonna rule on that?

Jess Pieklo: Yeah.

Imani Gandy: The balance is going to tip in favor of, "Hey ladies, hey preggos, you can't leave the state, you can't help anyone get an abortion because we just don't like abortion," right? So the inquiry is gonna require a balancing of rights. Does the benefit of the state's desire to protect the quote, unquote, sarcastic quote, unquote, "unborn," does that outweigh the burden to interstate commerce of infringing on a pregnant person's right to travel? And this becomes an argument about morality, right?

Jess Pieklo: Thanks, I hate it, I'm done.

Imani Gandy: Thanks, I hate it. It becomes a question about the morality of abortion versus the morality of raising pigs in a sustainable, non-gross manner, right?

Jess Pieklo: Right, right. So an animal welfare law that voters of California passed has the potential to open up a pathway for all sorts of fuckery in the abortion landscape because it creates the opportunity for justices and Trump judges to talk about morality in the law as a presumptively valid place for lawmakers to be operating from. So then we get to think about

things like what about the morality of pig production and pig farming versus abortion, right? How will that issue turn in the federal courts if given the opportunity to take a look at it?

I feel terrible about this. I really, truly do, all right, because, you know, look, the pig case is kind of easy in the sense that when you read through the record, it's horrible. Pig farming and production, really bad. There are a lot of voters in California. A lot of people got together and said, "This represents a collective value," a collective morality if you will. Saving the "unborn," that is messier, right? A lot messier.

But again, as you've said, that may not matter if the Federalist Society courts treat morality and commerce, which also morality and commerce is just kind of a weird thing, but that's fine, the same way they've treated sincerely held religious beliefs in the Religious Freedom Restoration Act cases, the birth control cases. Remember that, Imani, when we were like, "I have a sincerely held religious belief that I am not going to hand out birth control via PEZ dispensers." Like what? That's where we were at. It was bananas.

Imani Gandy: Right, and we talked about, for years we talked about sincerely held belief. Is it a sincerely held belief, or is it just a held belief? Because if people sincerely believe.

Jess Pieklo: Politically convenient.

Imani Gandy: Right, politically convenient. That is not grounded in science. Are courts required to accept the morality of one group of people and pit it against the morality of another group of people? That's not the job of the court. But you can bet your bottom dollar that that is what the court is going to undertake as its job. Moreover, that cuts against any argument that the Dormant Commerce Clause could help abortion in this context. There's a really solid colorable argument that the Dormant Commerce Clause doesn't prevent one state from enforcing its criminal laws beyond its borders, right?

So it's unclear how much effect this ruling would have on any future abortion case because you and I don't think abortion is murder, right? The people listening to this podcast don't think abortion is murder. But there is a debate going on in society writ large about whether or not abortion is murder. And there are states that believe it is.

So if those states have incorporated into their criminal law, their criminal code, that abortion is murder, then they're going to argue we should be able to enforce our criminal laws outside the border. You can't just go and become a cannibal in New Hampshire and then expect that you're not gonna have consequences if you come and try and eat someone from Missouri. Not the best analogy, but you know what I mean. There are certain criminal laws that are sort of universal. The question is: Where does abortion fall in that scale of morality?

Jess Pieklo: And as you mentioned, the conservative justices are split on the Dormant Commerce Clause, so we're just literally fumbling around in the dark here. Justice Gorsuch, not a huge fan of the Dormant Commerce Clause, which I was kind of surprised by. He teamed up

with Justice Kagan during oral arguments in this California case to talk about whether or not morality was a good enough reason to constitute a state interest that can be balanced against the burden on interstate commerce. And I just want to say one thing about this. So Gorsuch appears split on this, but he is a bad faith actor, and I would not at all be surprised if he's just out there asking questions like Neil Gorsuch does, having a little walk about in the law, to come to the place where he's gonna side with the rest of the conservatives.

I am skeptical that he's really split on this. I think he's performing a little bit. But I will give him the benefit of the doubt for right now, only right now.

Imani Gandy: I'll give him the benefit of the doubt for right now also because he teamed up with Kagan on a really important and critical issue, right? Kagan asked during oral arguments in the pork case whether it would be impermissible for a state to say, "You know, we're not gonna traffic in products that have been produced by slavery."

Would it have been permissible for California to say, hey, Missouri, to the extent that these products are produced by slave labor, we're not gonna accept those. And Neil Gorsuch picked up on that line of questioning.

Jess Pieklo: He did.

Imani Gandy: And said, you know, a majority of voters in California don't want to be a part of this practice, of this horrific way, inhumane, of raising pigs, inhumane way of raising pigs, excuse me. So why isn't that good enough, right? Whether it's - he asked, whether it's slavery or horse production or pig production. Why isn't a state's expression of its values and morality, why is that not good enough, right? And then Steve Mazie on Twitter pointed out very aptly that Gorsuch's questions were kind of Little Sisters of the Poor-ish.

Jess Pieklo: A hundred percent.

Imani Gandy: And for those of you who may not remember our Little Sisters of the Poor, they were these nuns who complained that the Obama administration was being really mean to them by forcing them to basically sell birth control pills in yogurt that they provided in the cafeteria. It was like birth control yogurt by Yoplait, with birth control in the bottom.

Jess Pieklo: Instead of probiotics.

Imani Gandy: Right, it's just birth control. And so Gorsuch is sort of likening being forced to participate in pig evil, in this evil way of producing pigs, similarly to the way the nuns complained about having to participate in the evil of handing out birth control. Because part of what the Obama administration did is say, "Hey, you don't have to hand out birth control. Just fill out this form, and if you fill out this form, we'll step in and do it." And the Little Sisters were like, "Oh, but if we fill out the form, it's the same thing as shoving birth control into people's faces, because we are participating in a process, the end of which leads to people taking birth control." Setting

aside the fact that those of you who are familiar with this case know that the Little Sisters never in a million years would have had to provide birth control because of the type of health insurance plan that they had, and I'm not gonna start talking about ERISA because nobody wants to talk about ERISA right now.

Jess Pieklo: I kind of love ERISA.

Imani Gandy: I know you do. That's why we're not going there. We're doing Dormant Commerce Clause. We can't do Dormant Commerce Clause and ERISA in the same episode.

Jess Pieklo: Our producer's kill us.

Imani Gandy: But the point is, is you can't make this argument that participation in evil is the same as evil itself.

Jess Pieklo: Oh, but they can and they do.

Imani Gandy: But that's the kind of argument that they want to make.

Jess Pieklo: It's bad, and then you have Sam Alito and John Roberts who just love the Dormant Commerce Clause, love it. It's the best, isn't it, because it is a tool of deregulation. They are deregulatory chaos agents. They would just like do it. So they love that. They want to break it, deregulate everything. This is their, that staple of the conservative agenda. But can you imagine the consternations of Sam Alito getting an abortion case that involves the Dormant Commerce Clause?

Imani Gandy: Poor little Sammy Alito.

Jess Pieklo: I mean, the votive candles that will be lit as he's focusing on what to do. Because, I mean, Clarence Thomas does not like abortion, but he at least hates the Dormant Commerce Clause. Sam Alito hates abortion, loves the Dormant Commerce Clause. That's a conflicted man.

Imani Gandy: So what's going to happen?

Jess Pieklo: I have no idea. I have no idea. I love this case, I love this episode, I love talking about all of this law. But I have no sense of where this California case is going to turn out of what that ruling will be, the impact that that will have. And I am just grateful that we may have a legal out on this because what California has said is, "Hey, look, just send the case back down to the lower court and let us do a bunch of fact-finding." Let us just figure out, like, is the California marketplace so big that Proposition 12 effectively regulates commerce outside of its borders, as the pork producers are arguing? We don't even know. We haven't even gotten to that part of the record, so send the case back. That'll take a couple of years at least. You and I can study up, and I can make a better prediction.

But the reality is too, I don't like the court wading into this area at all, because what we saw with the birth control cases and any of the sincerely held religious belief arguments around RFRA, which is sort of where this morality line of arguments in these Dormant Commerce Clause cases would track, it's outcome determinative. And we know who's sitting on the Supreme Court, and we know who is in the federal courts, and it is a bunch of Federalist Society stooges. And so they will just interpret the law to the outcome they want.

So that's great. Also we have this case, 303 Creatives that we've talked about a couple of times on this show, that's like out there in the wings. So I think if you pair the pork and morality case with 303 Creative later this term, and that's the case where evangelicals are looking to impose their morality on the marketplace by getting a license to discriminate against LGBTQ customers. We have a whole new area of the law shaping up for evangelical shenanigans.

Imani Gandy: So are we looking at the intersection of Dormant Commerce Clause and Civil Rights Act movements? I mean, that's an interesting dovetail. I kind of like that.

Jess Pieklo: I mean, you know, I mentioned the Articles of Confederation at the beginning of the show.

Imani Gandy: And Jim Bob Madison and his crystal flute.

Jess Pieklo: Jim Bob Madison and his crystal flute. The current conservative legal movement is really just looking to take us back to those Articles of Confederation, baby. They were pretty cool.

Imani Gandy: Pretty sweet with those Articles of Confederation. Your face right now. All right, Jess' face is telling me that we need to wrap this up. So if you would like to talk to either of us, you can find us on Twitter. We would love to talk to you about this extremely nerdy Dormant Commerce Clause stuff. Hey, we might even give you a lesson on ERISA if you ask. But if you made it through this episode, just hop into our mentions, or the mentions of Rewire News Group, and post a Schitt's Creek GIF, just so we know how many of you are on board for this extremely nerdy stuff.

And please follow me on Twitter @AngryBlackLady. Follow Jess on Twitter @Hegemommy. That's H to the E to the G to the E. No, wait. H to the E to the G to the E to the M to the O to the M-M-Y, whoo! Follow Rewire News Group on YouTube. You can subscribe to our podcast wherever you normally get your podcasts if you don't want to watch us. And what are we gonna do, Jess?

Jess Pieklo: See you on the tubes, folks.

Imani Gandy: We will see you on the tubes, the YouTubes, that is.