

Imani Gandy: Hello, fellow law nerds. Welcome to another episode of Boom! Lawyered, a Rewire News Group podcast hosted by the legal journalism team, half of which is going to see Beyoncé in France. I'm *Rewire News Group's* editor-at-large, Imani Gandy.

Jess Pieklo: And I'm Jess Pieklo, *Rewire News Group's* executive editor and the one who is not seeing Beyoncé in France. It's okay. *Rewire News Group* is the one and only home for expert repro journalism that inspires you to support your friends who are seeing Beyoncé in France. And the Boom! Lawyered podcast is part of that mission. So a big thanks to our subscribers and a welcome to our new listeners and viewers. So y'all, today is a day we are gonna be talking about an attorney in Florida who's making claims that his client—a fetus, by the way, his client's a fetus—is being illegally detained in prison and should be released. Let me say that again. He's making claims that his client, who is a fetus, is being illegally detained in prison and should be released. His client's mother, Natalia Harrell, is in prison on murder charges. And so first thing's first, Imani, this Florida attorney is arguing that innocent fetuses don't belong in jail.

Imani Gandy: This is gonna be a complicated one 'cause there are a lot of feelings on either side of this issue. And so I'm hoping, I'm hoping to change some hearts and minds with this episode, that's my goal.

Jess Pieklo: Wow.

Imani Gandy: But first, let's talk about what's going on here, okay.

Jess Pieklo: Okay.

Imani Gandy: So in July of last year, Natalia Harrell went to a bar with a friend. Her friend's name was Gladys Borcela. At the end of the night, the pair ended up in an Uber where they got into an argument. Natalia pulled out a gun and shot and killed Gladys. Natalia was six weeks pregnant at the time.

Jess Pieklo: First of all, yikes.

Imani Gandy: Yeah, it's already yikes.

Jess Pieklo: What an Uber.

Imani Gandy: Yeah, what a night out, like that'd be like you and me going out to Red Rocks in the—

Jess Pieklo: I was just gonna say—

Imani Gandy: I just shoot you in the cab.

Jess Pieklo: Can you imagine coming back from Brandi Carlile and like pew pew? I don't know why I went pew pew. That's terrible, I'm very sorry. This is a serious case. We need none of that, Jessica. Apologies. Okay.

Imani Gandy: We need a little. We need a little.

Jess Pieklo: So Natalia has been held without bond since July, and now that she's eight months pregnant, her attorney is arguing that the jail staff has endangered the fetus by refusing to provide proper prenatal care and putting her in dangerous situations. So here's a couple of examples of what she's been subject to. Staff left her in a van with no air conditioning. Yikes, okay. The temperature in the van reached a hundred degrees and she was only released from that van after staff heard her banging on its walls. And as somebody who's been pregnant twice, you're already hot and sweaty. I can't even imagine the claustrophobia that this woman was going through. So that's just one example of her treatment that this attorney is saying, "Hey, really bad for my client, the fetus."

Imani Gandy: The fetus. So Harrell's attorney, Florida man William Norris, has filed a writ of habeas corpus in a state court in Florida. Now, a habeas petition argues that a person has been illegally detained, right. It literally means "produce the body" and is traditionally used for alive persons. Alive, born ass people.

Jess Pieklo: Born ass people!

Imani Gandy: Just born ass people who've already been born and are being detained illegally. In this case, the "person" is a fetus. Now everyone's, the first glaring question in everyone's mind is obviously this, isn't this just a gateway to personhood? And the answer to that question is yes, but it's complicated. And we are going to explain why it's complicated. Like on the one hand, people are concerned that they, you know the ubiquitous they, are going to use this case against us. Right? But you have to remember, they're already using everything they can against us, right? We're already living in a post-Roe world and they already want "personhood" so I'm not sure how this case is going to get them any closer to "personhood" on our behalf, right. At our behest, our talking about this case, I don't think it's gonna make them want "personhood" more. If we're gonna have to live with "personhood," if we're gonna have to live in a world where antis are trying to turn eggs into people, then I think we might as well achieve some reproductive justice goals along the way.

Jess Pieklo: Ooh.

Imani Gandy: And to try and keep pregnant people out of prison, right? That's a good reproductive justice goal.

Jess Pieklo: Yeah, that's a spicy take. That's a—

Imani Gandy: I think it's a good take.

Jess Pieklo: Yeah. So let's remind folks what personhood is, because we do have some new folks to the pod and a lot has happened since *Dobbs* on, like, this accelerated timeline that I think has even somewhat caught Imani and I off guard. So "personhood" is the idea that life begins at conception and not just like hypothetically, but legally. And this is really important, right? The idea that a fertilized egg is the equivalent of a human being and is therefore entitled to all of the constitutional protections humans like you and I enjoy, particularly the due process and equal protection concerns of the Fifth and Fourteenth Amendment. Like I love how conservatives love due process and equal protection as soon as a fetus is involved.

Imani Gandy: Right.

Jess Pieklo: It's like their favorite fucking thing.

Imani Gandy: Absolutely. And you know, "personhood" would create federal constitutional protection for fertilized eggs between conception and birth. And this is going to be yet another way that red states tried to control the abortion politics in blue states, right?

Jess Pieklo: Right.

Imani Gandy: We've been talking about that for a couple of weeks now, with respect to the medication abortion ban that's going on in Texas, right? This rogue Trump judge Matt Kacsmaryk is expected this week to essentially ban mifepristone in an attempt to control the abortion politics in blue states. Nevermind the "send it back to the states" stuff, they wanna send it back to red states so red states can make the rules and then impose them on everybody else.

Jess Pieklo: Yeah, but I mean, Imani isn't this bad though? We put the question out there. Isn't this really the slippery slope to "personhood," which is really bad. I mean, doesn't making the argument that the fetus is an unborn child who is being illegally detained functionally concede that a fetus is a person?

Imani Gandy: Yeah, it does. And actually, the brief, if you read the brief, that's what explicitly what Florida man ignores—

Jess Pieklo: Look at my face.

Imani Gandy: I know, it's bad. I mean that this is the "pro-life position" right?

Jess Pieklo: Yeah.

Imani Gandy: "Unborn children are people and therefore enjoy constitutional rights." One of those constitutional rights is not to be imprisoned without trial, right? You have the right to confront your accuser. You have the right to a speedy trial. I mean, these are things that the due process clause says you have to do. If you're a fetus, how you gonna get that? But, you know,

we are, as I said earlier, we're already in the bad place. We are already living in a post-*Roe* world. We are living basically according to the rules that anti-choicers set.

Jess Pieklo: Yeah.

Imani Gandy: And so this is not a case where we still have *Roe*, we still have the legal right to abortion, we're still trying to expand access, and thereby throwing our support behind an argument like this would actually hurt us. It's not going to hurt us anymore than we're already hurt. And at the same time, it could actually do some good for pregnant people who are in prison right now who are gonna maybe end up giving birth on a jail room floor shackled to something. So in my view, I think that reducing harm to these pregnant people, even if it's just for nine months, I think that's a good thing.

Jess Pieklo: So what you are saying is that fetal "personhood," in this case, maybe a pathway to harm reduction and harm reduction is good advocacy. And we understand that the anti-choice movement will create and find fetal "personhood" and has already done so that basically out of whatever they want. So, you know, there is an opportunity is what I'm hearing, for folks to weaponize this sloppy argument by the anti-choice folks to create some real good for actual pregnant people who are suffering actual harms in prison. Do I get that right?

Imani Gandy: I love that. Weaponize their sloppy argument. I love that.

Jess Pieklo: I love this. I think it assumes though that we don't get caught up in abortion exceptionalism, which was is one of my concerns here. So on the one hand, so yeah. So on the one hand, if a fetus is a person, then every pregnant person in jail should be released from jail. And at least until that pregnancy is done, right? Until there's a born ass person, right? On the other hand, if a fetus isn't a person, then efforts to pass a "personhood" amendment in Florida, for example, or continue down this, like, lane of the a fetus is a person under the U.S. constitution should fail and advocates should be able to use those sorts of lawsuits to demonstrate why a "personhood" regime would be unworkable. And we've talked about that on this podcast before, like, good luck driving while pregnant under "personhood," for example.

Imani Gandy: Right, and that's a really critical point, right? Like, if we can show that Florida doesn't really think that eggs are people, doesn't really think that fetuses deserve constitutional protections because they are unwilling to release these fetuses from prison.

Jess Pieklo: Right.

Imani Gandy: That's important when it comes to the argument for "personhood," or at least it would be if we had a legitimate court. But if you think about the argument in *Roe*, right? One of the things that Texas argued in *Roe* is that fetuses are people. And the Supreme Court rejected the personhood argument in *Roe* saying, "Uh-uh. No they're not." And one of the reasons they rejected Texas's argument is because Texas hadn't been behaving as if fetuses are people. They hadn't been behaving as if Texas, the state government, was living under a "personhood"

regime. And so one of the things that case did by saying, "Ah, Texas, you haven't been actually living as if you know 'personhood' is in your state. You haven't been arresting pregnant people, you haven't been arresting doctors." What did that do? It prompted all of the shit that we've been dealing with over the last 49 years where states try to shore up their "personhood" bona fides by doing things like criminalizing doctors and criminalizing pregnant people and saying, you know, not Texas didn't say this, but there are states that have allowed, for example, estates to be made in the name of a fetus so that someone can be sued for wrongful death. In Alaska, I believe you can count a "unborn child" as a dependent on your taxes. Or at least there was a bill that was introduced to make that happen. I am not sure if it passed, and that's something that I should look up. But my point is, is that *Roe* paved the way for these arguments to be made, so if Florida does what it is likely to do, and that is carve out some sort of exception for pregnant prisoners, then Florida is essentially committing, or excuse me, Florida is essentially committed to violating the constitutional rights of its citizens and advocates should make that clear and point that out at every turn.

Jess Pieklo: So this is also a really excellent opportunity for calling bluffs is what I'm hearing.

Imani Gandy: Yes, yes.

Jess Pieklo: Yeah, to clear up this lie from the anti-choice movement that it's about babies and life rather than just controlling the bodies of pregnant people, controlling people. If you think they care about babies and life and the constitutional rights of, I don't know, blastocysts, because you know, Imani, blastocysts are people too, they'd figure out a way to stop infringing on their rights. There's actually a pro-family argument they could be making here.

Imani Gandy: And would it surprise you if there were precedent for releasing pregnant people from jail?

Jess Pieklo: What?

Imani Gandy: Yeah. There's precedent, not in this country, mind you.

Jess Pieklo: Oh, okay.

Imani Gandy: Not in this country.

Jess Pieklo: Excuse me.

Imani Gandy: Excuse me, I'm very familiar with the law and I do not believe that I've ever seen such a thing. No, not in this country, but we are dealing with a group of people. Do you remember these people were all complaining about how "America's abortion policy is worse than China's, it's worse than China's. We're up there with like some of the—" They pick these countries that they think are the worst countries in the world. Literally, Jess is just falling off of her seat. And then they decide that if America is worse than these worst countries, then we

really need to change. Well, since we're now looking to other countries for their abortion policies, let's talk about Brazil's policy.

Jess Pieklo: Oh yeah.

Imani Gandy: When it comes to pregnant people, right? In 2018, the Brazilian Supreme Court granted a collective habeas corpus to all pregnant women and mothers of young children held in pre-trial detention in the Brazilian prison system. Let me say that again. They granted a blanket habeas corpus, right? If you're pregnant, you're in jail, you had to be pulled out of jail. But it gets even better. This included all women who were subject to pre-trial detention who were either pregnant, breastfeeding or had children up to 12 years of age and who have not committed a violent crime and/or crimes against their children. Now this idea that you should release pregnant people up until their child turns 12 years old is pretty big. Because if you recall, we've been talking about the criminalization of pregnancy for lo these many podcast episodes and one of the things they like to do, is take pregnant people who may be, who may have substance abuse problems and then throw them into jail. Remember Amanda Kimbrough, we talked about her quite a bit. She ended up in prison, she ended up with a ten year prison sentence. She had something like an eight-year-old kid already that she was trying to take care of. So, you know, they're splitting up families but we don't talk enough about the existing children that are left behind when they criminalize pregnant people and throw them in jail.

Jess Pieklo: Absolutely. Absolutely. And it's not like Brazil is this, like, radically progressive place. It's actually really appropriate for us to look to Brazil in this moment right now for this argument because they actually saw it through. If Brazil is gonna recognize life at conception, which functionally it's been doing, then it needs to see it all the way through. And so that's basically what Imani and I are saying here. And I just gotta say, there's, everything about this episode is melting my brain.

Imani Gandy: Yeah. What do you mean?

Jess Pieklo: Listeners, I'm all over the place because here, fetal "personhood" could create this paradox situation for us, right? Where we now have the ability to potentially use it in some ways to get folks out of jail, while at the same time I know that "personhood" in and of itself will be used to sweep more people into the criminal justice system. So we can use "personhood" to get the people who were swept up by "personhood," potentially out of the carceral system.

Imani Gandy: That's a bit of a mind fuck. That's a bit of a mind fuck.

Jess Pieklo: It hurts. I dunno what to do with this, but I think we should think about that because really, truly, like this is the upside down and this is what regimes like "personhood" force us to figure out. Can we do that? Is up down, Imani?

Imani Gandy: Yeah.

Jess Pieklo: Right?

Imani Gandy: Yeah. But we should still, I think we should still look to Brazil. Like let me tell you what, let me just say what the rule again is, right? If you're pregnant, if you're breastfeeding, if you have children up to the age of 12 and you have not committed a violent crime or a crime against your child, then you should be released from prison.

Jess Pieklo: Okay, point of order.

Imani Gandy: Yes.

Jess Pieklo: Natalia killed someone.

Imani Gandy: Yes, she did.

Jess Pieklo: Like that's a violent crime.

Imani Gandy: Yeah.

Jess Pieklo: And look, I mean in my being, I am an abolitionist, but I mean, doesn't she belong in jail? She killed someone.

Imani Gandy: Yeah, setting aside the abolitionist arguments, because you and I, I think you and I both became abolitionists right around the same time. We did a podcast episode back in 2020, during the height of the George Floyd uprising.

Jess Pieklo: 2 0 2 0, folks.

Imani Gandy: 2 0 2 to zero to the two to the zero. Yeah, 2020 talking about police abolition, talking prison abolition, talking about the people who are working towards prison abolition, talking about how we just need to give them a bunch of money and try and figure out what it is they can work out because the current system is not working. The current policing system is not working. But let's set that aside. Even if you want to argue that Natalia Harrell, because she killed someone belongs in prison, her baby doesn't, her baby didn't kill anybody. The fetus residing within her did not shoot anybody in an Uber. So what gives?

Jess Pieklo: Is it an accessory?

Imani Gandy: Is it accomplice after the fact because—

Jess Pieklo: Is it a co-conspirator?

Imani Gandy: And go to the police?

Jess Pieklo: And I mean, Imani, it's not like jail is a safe place for either pregos or they're developing pregnancies, right? And we don't even have a lot of great data on this in this country because that's just how highly we think of incarcerated pregnant people in this country. We do have a study published in 2017 by the National Institute of Health that tried to get a sample from five of the largest prisons in the country. And it found, would it surprise you, that miscarriage rates are slightly higher than average if you are pregnant and in prison? Okay, but it's also more complicated in that because of course not all prisoners are held for the duration of their pregnancies. And we know, like you've suggested and said so far on the show, that those who do deliver in jails and prison do so under terrible conditions. Often they're shackled while delivering, which is not at all about the health and safety of the pregnant person or the baby that is about to be delivered. It is all about covering the asses of jail officials for whatever. Okay. Since I'm just wrecking my brain in this episode, I've got a couple questions for you.

Imani Gandy: Oh Lord, here we go.

Jess Pieklo: Would qualified immunity for jail and prison officials that the harm that pregnancy and delivery, that folks who deliver in jail, would they lose the ability to make qualified immunity arguments there? And you know, if there's this "personhood" carveout, because, I mean, there should be liability, right? And what about the racial disparities that already exist when it comes to incarceration rates? Like, can we find some good here? Like, how can we use this, Imani? How?

Imani Gandy: I wish I had the answer to that question, right? Because we know this is just nonsense, right? We know Florida's not going to say, "You know what? You're right Florida man, we really shouldn't be incarcerating fetuses." So I mean we're not gonna go the Brazil route because this country loves mass incarceration, right? This country runs on mass incarceration. If you were to look at how many products and goods are made by people who are in prison and not getting paid, you would be alarmed. So we're not gonna go that route. And also, do they really care that much that there are Black and brown people that are giving birth on jail room floors being shackled?

Jess Pieklo: That's the thing.

Imani Gandy: They don't care about that, right? And it's like, and it's not even just that they're trying to cover their asses when it comes to the way they treat their prisoners, it's also about, they want to control people. They get off on, like, shackling a—what's a pregnant person gonna do? Try to escape when she's got a baby hanging out of her vagina? Like, come on guys. Like, why are we shackling prisoners?

Jess Pieklo: Like, literally make a quick dash before I deliver the placenta.

Imani Gandy: Like, cut the cord, I gotta go. Like, it doesn't make any sense. It doesn't make any sense.

Jess Pieklo: It's absurd. It's completely absurd.

Imani Gandy: But since we are here, we should talk about what the court is likely to do, right? Like, what would, if the Supreme Court were to hear this argument, if it were to reach to that level, what would the Supreme Court do? And look, I love this idea. And I was on Twitter being like, "Yeah, let's fucking go. I love this." And people were like, "I don't know, I don't like it because of 'personhood,' it's a slippery slope." And I get that I'm not shading or mocking those people at all 'cause those are good concerns and I'm super glad that that's the first thing that you thought of, right? Because that's important, right? It's very, very important. And I can see the flaws in my own argument, right? Isn't cheering a lawsuit like this just an example of exposing, like, uselessly exposing hypocrisy, right? We know the GOP doesn't give a fuck. We also know the Supreme Court doesn't give a fuck. So is this just more feel good antics? Like "Yeah, you want 'personhood,' well we're gonna give you 'personhood.'" But then maybe not thinking that that sort of aggressive stance is really harmful in the long run, right? Is there even a point to this lawsuit, to these sorts of lawsuits when we know that the Supreme Court is illegitimate and is just going to do whatever the hell it wants?

Jess Pieklo: So I actually think that there is a big structural argument to be made here in the benefit of these kinds of lawsuits similar to the harm reduction argument that you were making earlier on the show. And that is that what is going on here is not just exposing hypocrisy for clicks right? We're not saying like, "Yeah those anti-choicers don't care about anything. So they're gonna continue to incarcerate fetuses." Like, it's not just about exposing the hypocrisy, it's about exposing the unworkability of "personhood," as we've been talking about, and using that unworkability to make the case to the public that the Supreme Court and the federal courts as they have been cooked by conservatives are illegitimate and need reform. This is absolutely a path to make a structural reform argument about our justice system. Three years ago, remember? Remember, the beginning—

Imani Gandy: I remember those days, yeah.

Jess Pieklo: Of the Biden administration, even in progressive spaces, there was pushback against the idea of court reform. It was gonna be too much.

Imani Gandy: Yeah.

Jess Pieklo: It might hurt feelings.

Imani Gandy: Yeah.

Jess Pieklo: You know, I mean, and then Democrats felt a little brave and decided that they would form a study group.

Imani Gandy: Study—it was a commission, but I like calling it a study group.

Jess Pieklo: I mean it was, it was the Biden Supreme Court Commission with some brilliant minds on that commission. And they came back with a report that was like, I don't know, seems hard. The Court's okay, let's just try to get along folks. And like here, I'm here to tell you that that ship has sailed.

Imani Gandy: Yeah.

Jess Pieklo: This is not—we're not gonna do a paper, there's no book report that's gonna get us to a federal judiciary that functions the way this country needs us to.

Imani Gandy: Yeah, and I just wanna make another point. Like I really wanna make this point clear. I am not cheerleading this lawsuit because I wanna expose more hypocrisy 'cause I'm on record saying, this notion that we're exposing hypocrisy, it doesn't do anything but make us feel good, right? Take the Herschel Walker nonsense, right? With all of these women came for and they were like, "Herschel Walker paid for my abortion." "Herschel Walker paid for my abortion." "Herschel Walker paid for my abortion." "Herschel Walker paid for my abortion."

Jess Pieklo: Look under your seat. Herschel Walker paid for your abortion, too.

Imani Gandy: Right? And so the discourse on Twitter was immediately like, "Oh these hypocritical Republicans, they're still gonna stand by their man even though he's gotten so many abortions, they're supposedly 'pro-life.'" Like, we know they didn't give a shit about how many abortions Herschel Walker paid for.

Jess Pieklo: They can't be shamed.

Imani Gandy: They had their guy, they wanted to run a Black guy against Warnock and they picked like the worst person that they could possibly pick and decided to run with it. So yeah, I don't think it's useful to point out that Herschel Walker stans were being hypocritical and their support for him, 'cause it doesn't get us anywhere.

Jess Pieklo: Right.

Imani Gandy: But it does get us somewhere to expose the unworkability of "personhood." Right? It does get us somewhere to talk about cases like Ryan Magers, that guy who—

Jess Pieklo: That fucking guy.

Imani Gandy: Who got a judge in Alabama to open up an estate for his fetus because he was mad that his ex-girlfriend, in concert with her parents and her doctor, got an abortion. He wanted to sue the clinic and in order to sue the clinic for wrongful death, he had to open up an estate in "Baby Doe's" name and a judge let him do that, right? Like these are the things, it's important to talk about these things because it shows how ridiculous and unworkable "personhood" is, and

the only way to make it work for them is to cherry pick the rights that they want to afford to these newly created people that they've decided are people now, right?

Jess Pieklo: Absolutely. Absolutely.

Imani Gandy: And also, all of the stuff that you talked about about court reform, about court reform being sort of like, ah, we don't know. And Democrats forming their little study group and deciding it was too partisan to reform the courts, that was all before *Dobbs*. That was the year of our Lord 2020. We are now in the year of our Lord 2023. We no longer have abortion rights. Women and pregnant people, we are second class citizens. If you are capable of becoming pregnant, you are not a full person. So now we're talking about, you know, Florida man and these other anti-choicers who want to have eggs. They want eggs to have more rights than you.

Jess Pieklo: Yep.

Imani Gandy: More rights than you. And so any way that we can expose that, we can expose that hypocrisy, it's not just for clicks, it's to show that these people are corrupt, the courts are corrupt, and we need to reform them. And there's a stomach for that now. And that's why I think it's important to have these conversations.

Jess Pieklo: Absolutely. *Dobbs* changed everything and exactly, like, this creates a pathway for really solidifying a court reform argument while also potentially being a really good way to combat the incarceration of pregnant folks for doing drugs. Because we know that this is one of the main pipelines of getting pregnant folks into the carceral system, right? States are imprisoning women based on the claim that their drug use is the equivalent of child abuse. And they were doing that before Florida man's argument, right? It's still the illegal detention of an innocent "person." And if the state wants to argue that it's in the best interest of that "unborn child," then it should get guardianship over every pregnancy and really hammer that home until it's forcing—or really hammer home the message—that what it's doing is forcing every positive pregnancy test to deliver a healthy baby to the state, right? They need to take Wisconsin's cocaine mom law, that law that allows judges to establish a guardianship over the developing pregnancy if the pregnant person is deemed a threat, they need to take that national, like if this is real, it's so dystopian, but if it's real, then do that. Put your money where your mouth is and honestly what it will show similar to Imani's point that cherry picking these constitutional arguments will show just how corrupt the conservative movement is and the federal judiciary that accepts those arguments is. Like showing the true intentions of the anti-choice movement has the potential for real galvanizing effects.

Imani Gandy: I couldn't agree more, but I have a question for you.

Jess Pieklo: Nope, too bad. No.

Imani Gandy: Show's over, see you on the tubes. But so, as I mentioned earlier, The Supreme Court already said that fetuses aren't people, right?

Jess Pieklo: Yeah.

Imani Gandy: Rejected "personhood" in *Roe v. Wade*, does that holding such as it is still hold any water, right? Because you know, one might argue that that "holding" wasn't really a holding, but it was just dicta, right? It was just, just sort of just musings by the justices that don't really hold any precedential value, but that lawyers will look to when they're making their arguments before- Why are you smiling? Is it not dicta?

Jess Pieklo: That dicta is flaccid, Imani.

Imani Gandy: Oh Jesus Christ. We've got a flaccid dicta guys. The dicta is flaccid, so.

Jess Pieklo: I'm really sorry.

Imani Gandy: So it doesn't mean anything anymore.

Jess Pieklo: Anytime I hear dicta I can't, like—I go there.

Imani Gandy: One can't expect you to. We're all immature when it comes to the word dicta. So it doesn't hold any water anymore. The fact that the Supreme Court already said that there's no fetal "personhood" doesn't mean that they have to—I mean they obviously don't have to hold onto that because it's not precedent—but does that even inform their future decisions at all?

Jess Pieklo: I mean, no. So *Roe*'s gone. And even the, like, even the good parts, Imani and I have been very hard on *Roe v. Wade* in the duration of our careers. But even the good parts of that decision now are gone. And I think you brought up a really interesting point at the beginning when you were talking about *Roe* and this early conversation that we had about "personhood," and we did a whole podcast episode on "we'll hear arguments about this," and the idea that you cannot create fetal "personhood" without absolutely deprioritizing the rights of the actual born person here. Like, I don't know. *Dobbs* is the standard now, but the point that you made is that the anti-choice movement can now go back to that flaccid dicta.

Imani Gandy: Jesus. You love saying that way too much. Go back to that flaccid dicta.

Jess Pieklo: And what they can see is a pathway for actually getting a court to enshrine and accept fetal "personhood." And what is that pathway? If the state behaves as though every fertilized egg is an actual born ass person, then they have a compelling argument before the courts that fetal "personhood" is a legitimate belief, is a legitimate interest of the state. They're actually acting like it as opposed to not, which we have been—which we've seen. So honestly, that's one of the things that jumps out to me as a concern is the way that the anti-choice movement in all of its deviousness is like, "mwah ha ha ha, I see an opening here."

Imani Gandy: And what's interesting to me is in that episode of "We'll Hear Arguments," and we should put it in the show notes.

Jess Pieklo: Yeah.

Imani Gandy: When we talked about balancing the rights of the pregnant person against the rights of the developing pregnancy. I see a world where the Supreme Court issues an opinion when it comes to releasing innocent fetuses from prison, that they'll do a balancing test of the rights of the innocent fetus versus the rights of public safety, right? Like I can see them sort of- I can see them ignoring a balancing test in favor of the fetus when it comes to born ass people but when it comes to mass incarceration, this country's love for mass incarceration, they're gonna find a way to keep those pregnant people in jail and they'll say, "Well we can't, we can't feasibly release them because obviously you can't release the fetus without releasing the person." And that's the point, really. Right, right? Like, that's the point. But they're gonna say, "Well we gotta balance." 'Cause you know, people love their goddamn balancing test and that's what it's gonna be, so.

Jess Pieklo: Yeah. And I just also, the idea that there is an opening for conservatives to make a really racist public safety argument, given the way that they already view Black and brown moms is like I just, it all feels like fuckery.

Imani Gandy: It does. And it is, it's absolute fuckery.

Jess Pieklo: And this is what happens. This is what happens when you have a Supreme Court stop refuse—or refusing to recognize a right that has previously for almost 50 goddamn years recognized. It throws an entire system in chaos, and chaos is a ladder. Chaos creates opportunity and the anti-choice movement knows this and it's seizing on it in every chance that it can. Can we get a drink?

Imani Gandy: Yeah, let's go get drinks.

Jess Pieklo: I need booze.

Imani Gandy: Yeah, we need something. If you would like to go get morning drinks with us, have some breakfast wine, perhaps you can find me on Twitter @AngryBlackLady, you can find Jess on Twitter at @Hegemommy, H-E-G-E-M-O-M-M-Y. You should follow Rewire News Group on Twitter, on Instagram and you should subscribe to our YouTube channel, youtube.com/RewireNewsGroup. That's where you're gonna get notifications that our pods are available. If you don't wanna watch us, just get your podcasts. Oh, I was gonna say orally, but "aurilly," not orally. "Aurilly" where you normally—

Jess Pieklo: Your ear holes.

Imani Gandy: In your ear holes, not any other place where you normally get your podcast. Not appropriate. Google Play, Apple Podcasts, wherever, Spotify, yada, yada, yada. My goodness.

Jess Pieklo: It's my fault, I made the dick joke.

Imani Gandy: You made the dicta joke. And I just wanna say specifically because there was one person on Twitter where I was like, "I hope I can change your mind with this episode." So if you happen to be listening to this and you were one of the people that were like, "Yeah, Imani, I don't know, maybe you might be a little bit off," let's talk about it. Like, I wanna talk about it and I'll be nice. I'll be nice. We'll be cool. We'll be chill. We'll just, like, hang out, and, like, drink some wine and talk about "personhood" and why it's not necessarily a bad thing to support what is intended to be a bad case. And on that note, Jess, what are we gonna do?

Jess Pieklo: We're gonna go drink and see you on the tubes, folks.

Imani Gandy: Drink and see you on the tubes, folks.