

Imani Gandy: Hello, fellow law nerds. Welcome to another episode of Boom! Lawyered, a Rewire News Group podcast hosted by the legal journalism team that really needs cisgender people to stop both sides-ing the ongoing trans genocide. Thank you very much. I'm Imani Gandy, Rewire News Group's editor-at-large.

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 stand up for trans folks. And the Boom! Lawyered podcast is part of that mission. So big thanks to our subscribers, and a welcome to our new listeners and viewers.

So, look, Imani and I are all about the jokes, but the reality is, is what we're gonna talk about right now is not that funny. There is an all out assault right now on gay and trans folks, the likes of which we haven't seen in at least 20 years. We've got hundreds of bills being introduced to eradicate LGBTQ folks from society, an ongoing fearmongering campaign that has seen like legacy newspapers like the New York Times not even able to step up and away from their own anti-trans coverage and do things like, I don't know, bring on a trans reporter to talk about the issues at hand. You know, we've got right wing extremists threatening actual genocide and mincing words around this by attempting to quote unquote "ban transgenderism." It is clear that trans folks are under siege.

Imani Gandy: And that's what we're gonna talk about. The first thing we're gonna talk about is this Neo-Lavender Scare that has been ongoing for the past couple of years now. For those who don't recall, because you might be wee babes, wee babes in the woods, the Lavender Scare. Well, I mean, I wasn't alive during the Lavender Scare either because it happened in the '50s, right around the Red Scare, right? It was this, this sort of targeted fearmongering campaign aimed at ferreting out and removing gay employees, gay government employees from public service. And you know, this is right in the '50s at the height of McCarthyism, so it's very much tied to these sort of, these sort of fascist, you know, anti-people, anti-democracy movements.

Jess Pieklo: I'm really glad that we're starting with this background because A, I think you're right. There are a lot of folks who don't know that at one point in our history, there was an actual movement to eradicate gay and trans folks from public life, from public service. But that it is here again.

Imani Gandy: It is, and, you know, it's just very distressing. And as a person, I mean, I've talked about this before, but I have letters signed by J. Edgar Hoover authorizing the government, the feds, to go rifling through my grandparents' trash, because they were Jewish communists, right?

So this is around the time where government was cracking down on people that they didn't like and trying to remove those people from civic society, and that includes gay and trans people. And guess what? As Jess said, we are right back there again. In February of last year, the Movement Advancement Project published a report entitled Under Fire: The War on LGBTQ People in America. The report details the ways in which anti-LGBTQ advocates are attempting to literally erase gay folks, gay and trans folks from society by doing things like making it

impossible for gay youth to be themselves in school, making it impossible for trans youth to be themselves in school. They are banning or fining teachers and schools for even talking about LGBTQ people or issues, right? We have these "don't say gay" bills that are flourishing again, they're banning books written by LGBTQ authors, written by anybody that talks about LGBTQ people, or even have LGBTQ characters in them. They're banning teachers from supporting LGBTQ students. They're disallowing gay teachers, gay and trans teachers, from being themselves, and they're even targeting them for firing. They're trying to get them fired out of these fake concerns that LGBTQ teachers, inherently by who they are, are grooming their students, grooming children.

Jess Pieklo: And that's not where it ends. They're also criminalizing and banning transition so that trans folks just can't be themselves, right? When you target transition-related health care, which is what these bans do, in criminalizing supportive parents and doctors, you are making a brand new class of criminal citizenry, which is what these bills are designed to do. We've got one in Texas, right? They introduced a bill to make supporting trans kids or supporting your trans kids and their gender-affirming care child abuse. Child abuse, Imani.

Wyoming introduced a similar bill this year. Florida has said, hold my beer on this, and will remove children, potentially, if the parents are supporting them in gender-affirming care. All right? It's also prohibiting transgender and non-binary people from updating identity documents like birth certificates, driver's license, ID cards. Very important. If you're gonna be a person in the world, and I don't know, you get pulled over by the cops, you should have your ID cards match your identity, right? They're trying to pass policies that require government, schools, and teachers to only recognize sex assigned at birth or inaccurate pronouns.

Imani Gandy: They are enshrining inequality into law, right? As progressives push for more equality, anti-LGBTQ folks are trying to make inequality against LGBTQ folks legal as a matter of law, right? They want to make it so that you are legally allowed to discriminate against gay and trans people simply for who they are. And they're trying to do that so that they can keep gay and trans folks on the fringe of society because they're fearmongering around these people's existence. They're trying to repeal non-discrimination protections so that LGBTQ folks won't have protection when it comes to being fired for being who they are, being denied public accommodations, right? Being able to walk into a bakery and order a cake. They're being denied housing, medical care, all of these things, governmental programs on the basis of their identity.

And what's really just disturbing about this, besides everything, of course, is that opponents are wielding religion as a weapon against LGBTQ folks, right? So it's not that they are opposed or they hate, or they have some sort of phobia when it comes to gay and trans people. It's that their religion says that they are going to hell, their religion doesn't recognize their existence, and they are beholden to their religion, and they expect everyone else to be beholden to, to their religion as well, and therefore discriminate against the people they don't like, in this case, gay and trans folks.

Jess Pieklo: It's really rough. And it goes one level deeper too, because it's part of this process of erecting systemic and structural barriers to make change harder too, right? Imani, I mean, we've talked about this a lot on the podcast, about how efforts to do things like disenfranchise voters and gerrymandering makes it harder for those of us who believe in equality to elect leaders that protect us. It makes it harder for gay and trans folks to elect leaders that protect them. This is literally the tyranny of the majority that James- Jimmy-Madison.

Imani Gandy: Jim Bob Madison.

Jess Pieklo: Jim Bob Madison, one of those important founders that we're always waxing poetic about in these debates, right? This is the tyranny of the majority that we were warned about. And it is also right out of the anti-abortion playbook.

Imani Gandy: It is, and Jess and I have been talking about this for years. I mean, it's fascinating, to me, watching people catch up to the things that we've been saying, not to like blow smoke up our own asses, but we have been talking about this stuff and trying to prepare people, and society really for what's coming. And you know, one of the key points I keep going back to-the fact that voting rights is the, is the single, I think, policy issue that has driven all of these quote unquote cultural wars, right?

Jess Pieklo: Yes.

Imani Gandy: John Roberts in the '80s, working for the Reagan administration, made undercutting, undermining the Voting Rights Act, his mission. He's been doing this shit since like 1983, right? There's a reason why Shelby v. Holder right, in 2013, basically gutted the Voting Rights Act. And there's a reason why all of these laws seem to follow, right? Because if you don't have the right to vote, if you're allowing states to gerrymander people out of, you know, existence, essentially, if you're allowing them to, to impose these oppressive voting rights laws that act as voter suppression laws, then how are people supposed to vote for representatives who will express their values in government? Right? You can't. You can't. And so that's what the anti-abortion folks have been doing. That's how they got to overturn Roe, and that's what trans, the anti-trans and anti-gay folks are doing.

Jess Pieklo: It is, I mean, it's wild in how identical it is. And, you know, surprise, surprise, 20 years out from Shelby County v. Holder, and we're seeing truly the fruits of that case come.

Imani Gandy: We're only ten years out, you said 20. It's ten.

Jess Pieklo: I said 20. The math is like hard.

Imani Gandy: The math ain't mathing. The vibes are in shambles, and the math ain't mathing. So the second thing we're gonna talk about is the flood of anti-trans bills in recent years, right? There's a website, a [trans legislation tracker](#), I think it's called, just like translegislationtracker.com or something to that effect. And the data compiled by that website,

by the people running that website, tells an alarming, an alarming story. So in 2021, the number of bills introduced more than doubled from the previous years, bills that attacked trans rights, right? 144 bills were introduced in 37 states, 144 bills in 37 states. 18 of those bills passed, including Arkansas' "Save Adolescents From Experimentation" Act.

Jess Pieklo: Experimentation?

Imani Gandy: Yeah. Because they had to make it the SAFE Act, right? Like, you had to, these are the things you gotta do. Like, what would we do if we were gonna do, like, an ABOBO Act, you know-Aborting Babies Or Birthing- what's an O word? Birthing, something-

Jess Pieklo: Ospreys?

Imani Gandy: Ospreys? Otters. But that's about as ridiculous as Republicans get when they're trying to cram some sort of, you know, cram some sort of name for a bill into a predetermined acronym, it's absurd. But the SAFE Act, the SAFE Act, which bans gender-affirming care, became law despite a veto by then-governor, Republican Governor Asa Hutchinson, who called the bill a vast government overreach, right? These are the people who are talking, even the GOP over the weekend tweeted something about, oh, the Republicans want a government so small, you can't even see it. What are you talking about? All Republicans are doing is, is flexing their governmental muscles to just tear people down, to strip people of their rights. Ugh.

Jess Pieklo: That's, like, the really only appropriate reaction. And Imani, would it surprise you to learn that in 2022, those bills became even more draconian?

Imani Gandy: Shocking. Shocking

Jess Pieklo: Shocking Shocked face right here is what it is. Check out these statistics. Like, my palms are so sweaty, I keep grabbing the script and it's like smeared at this point because I'm so emotional about what's going on here. Okay, 174 bills were introduced in 2022. 26 passed. Those includes laws, banding-banding—banning gender-affirming care, and creating harsh penalties for providers. Laws enshrining the definition of quote unquote "men" and quote unquote "women," and blocking trans students from participating in sports.

Imani Gandy: Which this particular, I mean, all of this grinds my gears, it's all terrible, but I have never in my life heard conservatives wax on about women in sports as I have in the last two years as they are trying to strip trans girls of their right to play on sports teams, right? There are studies that show that the hormone therapy that people go through, it essentially brings them down to the same level, right? As the other women that they're playing with, right?

It's not a matter of men joining women's teams. No, it's women joining women's teams. But all of a sudden, all of these conservatives really, really care about women's sports. They really, really care about girls and sports, even though they probably don't even know what Title IX is. They don't care that Title IX is unfunded. They don't care that the women's soccer team makes, you

know, way, way less than the men's soccer team. And they've won way, way more championships, right? They don't care that the first thing to go in some public high schools is girls' sports, right? Because girls sports isn't important. But now it's super important, why? Because we need to peer into your child's underwear to make sure that they have the appropriate genitals and they have the nerve to call trans people groomers.

Jess Pieklo: It's, I mean, that's an entire word that Imani just gave you folks. What do you say? But they don't even stop there. Right? This is the year that we see the "Don't Say Gay or Trans" bills that stigmatize LGBTQ teachers and students in school under this guise of quote unquote, "parental rights," right? This idea that no, the parents have the rights to assert well over this and hey, look, I've got two kids of my own. And yes, parental rights are a thing, but not as a weapon to undermine and attack and try to eradicate a group of folks that you have a religious bias against, sorry.

Imani Gandy: And what's wild about these "Don't Say Gay" bills, is that they're not new, they're so not new that in April of last year, Kay Ivey, right, the governor of Alabama, signed into law, a don't say gay bill after repealing won the prior year.

Jess Pieklo: What?

Imani Gandy: So in 2021, she repealed a "Don't Say Gay" bill, because back in 2021, this panic had not yet reached, its, its zenith, right? And then just last year, she was like, JK, just kidding. I'm gonna go ahead and sign another, "Don't Say Gay" bill into law. We've been here before, right? DeSantis is like, you know, he's also.

Jess Pieklo: You see my face?

Imani Gandy: I'm actually, I'm gonna let you talk about DeSantis because I'm getting sweaty just doing it. Just, yeah.

Jess Pieklo: First all, rude, but okay. we're friends and have been doing this show for a while. I will, but, oh, this man, okay. He signed one of these bills into law last year, which has prompted nearly half of queer Floridians to consider leaving the state. That's according to a study out of UCLA Law School about the impact of the Florida "Don't Say Gay" bill, like, people are fleeing, if they have the means to, or considering it. It's horrifying. And that's just not the way that, like, life should be.

But it's not just Florida. More than 30 states have introduced such laws, and as we saw with the anti-abortion playbook, they will keep trying these bills until they pass, right? Bills that carve out exemption for discrimination on religious grounds, bills that prohibit non-binary designation on birth certificates, you know, these bills likening gender-affirming care to child abuse, Texas, Florida, Wyoming, we're looking at you, right? So there's part of the amplification.

Imani Gandy: And one of the things I wanna bring up about this likening gender-affirming care to child abuse. You know, we did a podcast about Texas doing that, I think it was last year. And, you know, I read some of the, there was a lawsuit and I read some of the briefs, some of the orders that came out of the court. And the court, in this lawsuit, one of these lawsuits challenging this policy, said that, that foster care, no, no. It wasn't challenging this policy, I'm sorry. It was a lawsuit challenging foster care systems generally about the ways in which children are treated in Texas' foster care systems. And the judge said that people who age out of Texas' foster care system have the same level of PTSD as combat veterans. Like, that's how bad it is to grow up in the Texas foster care system, it's like being in a war. Right?

And imagine if you're a gay or trans youth, right? You've just been ripped from your parents and thrust into a foster care system that hates your existence, given to people, most likely white Christians, who hate your existence. That in and of itself is child abuse. Not-loving your child is not child abuse. Ugh. 2023. It gets worse. The bills got worse this year.

Jess Pieklo: Fucking hell.

Imani Gandy: Yeah, so we've got an Oklahoma bill proposing, banning gender-affirming care for adults, right? So it's not just children they're concerned about, now it's adults up to age 26 years. And, you know, yeah, 26 years, I was gonna ask you the health-care expert, what is, why does 26 years old ring a bell to you?

Jess Pieklo: Did you see me just jump all over myself? Like, call on me.

Imani Gandy: Pick me, pick me. I have the answer.

Jess Pieklo: But so listeners and viewers, this is, this is a classic trojan horse move here. So 26 is the age that the Affordable Care Act allows you to stay on your parents' health insurance. This was a huge advancement for folks, like, I turned 18 and was functionally out on my own, right? Like now, so not only is this an attack on trans adults, this is yet again, another attack on the Affordable Care Act. Because if they can undermine this 26 provision for trans folks, they can undermine it for everybody. I'm so fucking mad, I'm sorry, go on.

Imani Gandy: Physicians who provide gender-affirming care could be subject to felony charges and the loss of their medical license.

Jess Pieklo: What?

Imani Gandy: Yeah, yeah. Providing health care, right? Abiding your, the oath that you took to do no harm. The Hippocratic Oath, that could land you in jail and that could strip you of your medical license. We already talked about the Wyoming bill that would make gender-affirming care child abuse. There's just lots more fuckery in school going on besides the, don't say gay or trans bills. There's an Arizona bill, which would encourage parents to report and ban books, which quote, promote gender fluidity or gender pronouns. How do you promote a pronoun? It's

just a bit of grammar. Everyone has pronouns. So we're banning the English language because you're freaking out that people are asking you to, to call them by a pronoun that you may think is weird or that you don't think aligns with how you perceive that person? What's wrong with you? Ugh, another bill.

It gets even worse. Another bill would require both a guardian and a teacher to approve of a student's pronouns, right? So a student walks in and says, "I want you to refer to me as they/them." Right? The parents and the teacher have to agree. Why it is the teacher has to agree about what a child is going to call themselves is baffling to me. It's baffling to me.

Jess Pieklo: Why are we doing pronouns by committee?

Imani Gandy: Right, right?

Jess Pieklo: What, what? I mean, just imagine mandating that teachers have to disrespect your student's identity. Your kid's identity like that. That's a mandate from the state. Oh, and by the way, a couple of us are gonna get together and discuss it first and we're gonna take a vote.

Imani Gandy: Right, "sorry, you're not she/her anymore." We decided. Like, what is-ugh, I can't. But it gets worse, right? We've seen this wave of just absolute freak out over drag shows, right?

Jess Pieklo: Yes.

Imani Gandy: We've seen these drag first of all, people have been dressing in drag since the dawn of goddamn time, right? Like, since the dawn of goddamn time. But because now people have managed to associate drag shows with, you know, "transgenderism," quote unquote, whatever the fuck that is. Because you can't, like, trans people are not an ideology, they're not an -ism. There are people, right? That would be like saying Black-ism. Like what even is that?

Jess Pieklo: I don't even know. But I was just sitting here thinking like, have you seen the pope?

Jess Pieklo: Right? Jesus Christ. I mean, the man is wearing very fetch dresses. Okay? So there's an Arizona bill that would make it a crime to expose your kid to adult, quote unquote "adult-oriented businesses." And this includes singing, lip syncing, or even doing a monologue while wearing quote, "clothing, makeup, or other accessories," close quote, differing from your sex at birth, right? So this is the like anti-"Mrs. Doubtfire" clause. Right? You can't take your kids to go see "Mrs. Doubtfire" because in "Mrs. Doubtfire," Robin Williams is singing and doing monologues and dialogues. The whole-half the damn movie is him in drag. Or "Mulan," right?

"Mulan's" about this Chinese girl who becomes a warrior, but she pretends to be a boy so she can go and be this warrior 'cause she's like a super badass with a sword. Can't take, can't take your kids to go see "Mulan" because, it's a girl dressing as a boy. And that's a drag show. And it's dangerous for your kids. "Mulan" is grooming your kids, guys.

Jess Pieklo: And this moral panic, because that's exactly what this is, this is moral panic, which is a very useful tool for authoritarianism, which is what we're seeing. It can't be stopped in entertainment spaces, right? So like, yeah, Imani, you're totally right. This is like the "Mrs. Doubtfire" clause. But the question is, can you actually, with these kinds of bans, be gender nonconforming in public, right? Generally as a proposition, if you are gender nonconforming in any way, shape, or form, and you are speaking at a rally, right? If you are gender nonconforming and you are proselytizing on the street corner, can you do that anymore? I don't know, I don't know it's vague and that's the point.

Okay. So 2023 is remarkable in a terrible way for something else, because this is where we see the beginning of national anti-trans legislation. So like abortion, don't think that this fever around banning whatever they wanna ban is gonna stay in the states. As soon as they can pipeline this up to Congress, they will. So you're gonna love this. No, you're actually gonna hate.

Imani Gandy: I'm not gonna love it.

Jess Pieklo: You're fully gonna hate it. Did you know that we have a Women's Bill of Rights, Imani?

Imani Gandy: Oh yeah. I'm sure it includes stuff like equal pay and you know, the right to bodily autonomy and you know, all of that kind of stuff, right?

Jess Pieklo: The fuck it does not. What it includes is an attempt to erase trans recognition by the federal government and define man or woman or boy or girl by a person's assigned sex at birth. And this is the part that you're really gonna hate to declare that assigned sex at birth immutable.

Imani Gandy: Man. So this is an attempt to just like head off at the pass any arguments about how trans people deserve equal protection rights under the 14th Amendment, right? Because.

Jess Pieklo: Smart one.

Imani Gandy: I'm a smart girl, right? So when we talk about immutability, right? We're talking about characteristics that cannot be changed. And immutability is tied to the level of scrutiny that a court will undergo when examining laws that target a specific group, right?

So laws that target race, right? Black people can't go to the grocery store, right? That's a law that a court would look at, I mean, imagine if that were actually a law, I wouldn't mind it, I'd just get Instacart, but, right, but a court would look at that and say, that's a racial classification. We look at racial classifications using something called strict scrutiny, right?

Jess Pieklo: Right.

Imani Gandy: When it's gender, if it's something that says, you know, women can't go to the grocery store. We look at those classifications using intermediate scrutiny, like it's a heightened



level of scrutiny. It's not strict, it's intermediate. And then there's of course the "eh, fuck it, who cares?" level of review, which is rational basis review, which basically means the state can do whatever they want as long as they have some reason to do it.

So when we talk about, about groups of people that are entitled to that protection, immutability is a key, key component. And what's fascinating to me is that now we're having an argument about immutability on both sides. On the one hand, people who believe in trans rights and believe that trans people are people, and understand that gender dysphoria is something that is very difficult for trans people to undergo and transitioning helps them deal with that, it's a medical condition. And transitioning is the medical care that is indicated for that transition, right? And so, in my view and in the view of people who have two brain cells to rub together, gender identity is immutable, right? I mean, you talk to trans people and they say they felt this way from a young, young age, right?

And another thing that bugs me about immutability, guess what's considered immutable that is 100 percent not immutable? Religion. You're not born Catholic and you have to stay Catholic. You're not born-Jess has left the room, right? People change their religion all the time, but what the courts wanted to do is to give Christians a way to complain that anything that discriminates against them is entitled to the highest level of scrutiny, but apparently not trans people? Trans people aren't entitled to the highest level of scrutiny or any level of scrutiny whatsoever. Man, listen.

Jess Pieklo: So I got another one for ya.

Imani Gandy: I don't want it.

Jess Pieklo: Too bad.

Imani Gandy: Goddamit.

Jess Pieklo: Too bad because this one. Have you heard about the "My Child, My Choice" Act? Imani?

Imani Gandy: I already hate it.

Jess Pieklo: My Child, My Choice Act.

Imani Gandy: Like, oh God, Like my body, my choice. We get it, we get what you're doing, guys.

Jess Pieklo: Very clever guys. It's so clever. This abomination would require a teacher to get written consent from parents anytime a lesson on gender identity, sexual orientation, or transgender studies is to be taught. Now, get this, if 50 percent don't want the lesson taught, it can't be taught, so once again, we're doing it by committee folks.

Imani Gandy: We're just crowdsourcing, like, whether or not people can learn certain topics in school?

Jess Pieklo: Yeah. A quick Twitter poll here?

Imani Gandy: Jesus. Just crowdsource don't say gay. That's, okay, I guess that's what we're doing.

Jess Pieklo: That's how it is.

Imani Gandy: And so let's talk about the third thing, our third topic today, we've hinted at it, but the parallels between anti-trans bills and anti-abortion bills. And we gotta sit back, we gotta go way in the way back machine way back to 2011, Right around when we became friends, right? 2011, the burgeoning years of our friendship, that was when the Tea Party exploded onto the political scene. And we saw this new flood of anti-choice bills just swamp legislatures across the country. A lot of model bills, a lot of bills drafted by organizations like Americans United for Life, or ALEC where they just sort of pass these bills around to different red state legislators and they just fill in the blanks. It's Mad Lib bills is essentially what it is.

Bills of very various absurdity and scientific legitimacy were introduced over and over and over again until the federal judiciary was so borked that it was willing to accept the constitutionality of these once unconstitutional bills. Right, what these people were doing, they were just-Texas for example, started introducing a six week ban, like back in like 2013, and they kept introducing it over and over and over fucking for ten years until it finally passed, right?

Jess Pieklo: Yep. Yep. And the same thing is happening with these anti-trans bills. The point is to flood legislatures with anti-trans bills over and over and over again until some of them eventually get passed, I mean, Imani and I gave a little recap at the top of the episode, and each year more were introduced and more were passed. And there is a point to this, not just to try and get them passed, but because this kind of activity is actually a strategy.

It moves what's called the Overton window. And the Overton window is basically that baseline of what folks who, we'll just call 'em the normies, the regular guys and gals and nonbinary friends, like, out there who just see the world, right? If we are introducing more and more legislation, and each round of it is more and more extreme, what becomes the center shifts, is ever more radicalized to a conservative position. And that's what's happening here. That's how concern over women's sports and girls in sports can morph into a ban on gender-affirming care for adults up to 26. It's the Overton window shift. And that's the strategy that's at hand.

Imani Gandy: And if you think about it, like think about John Kasich, right? In Ohio,

Jess Pieklo: Do you have to?

Imani Gandy: I really don't want to

Jess Pieklo: I really would rather not.

Imani Gandy: But John Kasich vowed, yeah. I think it was two or three years ago when a six-week ban came across his desk, he was like, oh no, we're not doing a six-week ban, it's way too extreme. It's just two weeks after a person knows they're pregnant. No, we're not gonna do that. But this 20-week ban that's on my desk, now that's pretty reasonable. We all can agree that sluts shouldn't be getting abortions after 20 weeks, right? When in fact, you know, once, once upon a time when we had the rule of law, when we had Roe v. Wade, before the court went rogue, there were rules, and the rule was pre-viability. We used to sing a song about it, right. Pre-viability.

I mean, that was the rule. Whether it was a 20-week ban, a six-week ban, a 10-, 12-, 14-, 18-week ban, they were all as unconstitutional as the rest of them. But you know, when you're taught in polite society, you're like, six weeks terrible. 20 weeks, eh, maybe. And so that's what they're doing with trans bills, right? Don't they have a point? So Jess?

Jess Pieklo: Yeah?

Imani Gandy: We gotta talk about Anthony Kennedy. We gotta talk about Anthony Kennedy and how he turned out to be a punk, that's the fourth thing we're gonna talk about today.

Jess Pieklo: I mean yeah, he's a punk. Tony Kennedy's a punk.

Imani Gandy: He's a punk ass, right? We're still mad at Tony and we've been saying this for years, but here's why. When Anthony Kennedy renounced, I said renounced, he renounced his position, I mean, that's essentially what he did, right. He renounced his position on the Court and everything that he said he fucking stood for. But when he announced his retirement, it truly did feel like a betrayal of his legacy when it comes to equal rights for LGBTQ people.

Jess Pieklo: Yep.

Imani Gandy: Right. Like, he seemed to ride pretty hard for LGBTQ folks, like, over the course of his career. For someone who was relatively conservative.

Jess Pieklo: Yeah. I mean, for a Republican dude.

Imani Gandy: Right? Exactly, but you know, he had rulings in cases like Lawrence v. Texas, which decriminalized sodomy, Obergefell v. Hodges, which decriminalized same sex marriage. And in these cases he talks a really good game about the dignity of LGBTQ people, right. It is undignified to not let them get married and divorced in the same way that hetero couples do, right?

Jess Pieklo: Yep.

Imani Gandy: It's undignified to peer into the bedrooms of gay folks and say, here's what you can and cannot do with a consent, a consenting partner. But apparently he didn't give that much of a crap about the dignity of LGBTQ folks. He didn't give enough of a crap to not retire during an administration that would replace Kennedy with someone who didn't care about equality for gay and trans people and and/or someone who was actively hostile to those rights. And I would say that the last three justices that we got were both of those things, right? Not only don't they care, they're actively hostile to it. And it's not like he didn't have a chance to show LGBTQ folks that he was more than just talk about dignity. Right?

Jess Pieklo: Right, I mean, Masterpiece fucking Cakeshop Imani, he had a chance in Masterpiece Cakeshop to make it clear that religious animus against gay and trans folks wouldn't be tolerated under the law. This was the core issue in that case. And what did he do? He punted.

Imani Gandy: He punted.

Jess Pieklo: He punted like a punk ass bitch. He did, I mean it's, he had the opportunity to take the court down an equal protection analysis and was like, yeah, you know what? We're gonna save that, I'm good. Let's hold that for another day. Instead, what he did was just kind of cater to the religious right that had complained in that case that the Colorado Civil Rights Commission was too mean to Phillips, this guy who didn't wanna bake a cake for gay couples because of his religious beliefs, and how were they mean to him, Imani, they were mean to him. The Colorado Commission of Civil Rights was mean to him by pointing out things like the historical truth, that the First Amendment had been used as a weapon to try and shield folks from complying with anti-discrimination laws, that people had made First Amendment religious claims against things like racial integration, against Social Security at one point. Like, that's what the Colorado Commission of Civil Rights pointed out, and Kennedy was like, "Yeah, you know what? That seems sus, that's mean."

Imani Gandy: That's really mean. Why would you say that Christianity was used to prop up slavery? I mean, that's that you can't.

Jess Pieklo: I demand an apology.

Imani Gandy: I mean, I demand pistols at dawn because this is just rude. But I mean, that's, like-turned out to be a punk ass bitch. He also could have done the same thing in Obergefell v. Hodges. Right, the same sex marriage case. And the more I think about that case, the more I absolutely fucking hate it.

Jess Pieklo: Oh yeah.

Imani Gandy: And you know, and at the time it was, I mean it was such a huge deal at the time. I mean it really was because, you know, gay folks tried during the Obama administration really,

really hard to move him off of being, you know, off of supporting policies that discriminated against gay people, it was under Obama that Don't Ask, Don't Tell got repealed, right?

Jess Pieklo: Yes.

Imani Gandy: It was under Obama that the American Care Act, the Affordable Care Act, excuse me, the Affordable Care Act included that section 1557 that says, yeah, you gotta provide care to trans people. You can't discriminate against trans people. And so when 2015 came around with Obergefell we were all overjoyed, but here we are like seven, eight years later and I kind of hate it. Lisa Needham, who is a friend of the podcast, contributor to RNG, and our Brandi Carlile pal. But she wrote about how Kennedy's opinion is backfiring.

Like, lo these many years later because of his insistence in making sure that bigots don't feel like bigots, right. Bigots don't, you can't make bigots feel like bigots 'cause it's mean and it's sad. And she described it as Kennedy basically writing "very fine people on both sides" language in his opinion, right? Like you gotta serve the gay folks cakes. But also you gotta not be mean when religious people wanna discriminate against gay people because of their religion. It's horseshit.

Jess Pieklo: Yeah, yeah. I'm still mad Roberts read his dissent from the bench in Obergefell.

Imani Gandy: Yeah. And his gay sister was in the freaking gallery, my God.

Jess Pieklo: And his dissent was like, you hurt my feelings.

Imani Gandy: Yeah. I'm sad, I'm not a bigot, meh.

Jess Pieklo: Again, where, Imani, is the equal protection analysis? Where? Where? Is it here? Where?

Imani Gandy: Under your chair.

Jess Pieklo: Seriously. Because had we just had a sliver of equal protection analysis, when the Court had the opportunity to, it would have given LGBTQ activists some idea of what was to come as they are looking for full equal rights in non marriage contexts. Right. Because Obergefell, these decisions should build on each other so that if you can't discriminate against gay and trans folks in marriage licenses, you can't also discriminate against them in rental housing, in mortgages, right. Like, this is how civil rights works.

Imani Gandy: I mean, he alluded to an equal protection analysis in his opinion. Right, he.

Jess Pieklo: Great.

Imani Gandy: The idea that sexual orientation should be granted some level of heightened scrutiny was implicit in Kennedy's decision in Obergefell. Implicit not explicit, 'cause God forbid he'd be explicit about it. But he even used the term immutable, right? That term immutable is rearing its head again in this episode, he used the term immutable to describe sexual orientation.

Again, that's the touchstone of determining the level of judicial scrutiny to use when we're talking about discriminating against a, you know, a quote unquote "discreet and insular minority." That means a group of people who don't have the political power to make change for the better for themselves. 'Cause there's just not enough of them, right. There're just not enough trans voters, there're just not enough gay voters to affect the sort of widespread change that needs to happen. But he never discussed in the opinion what level of scrutiny courts should apply to sexual orientation cases. And it would've been so easy for him to do so because are there any more people in the country right now that are under siege than gay and trans folks? Trans folks, especially trans women of color and especially, especially? I don't know, there's not, but instead he just wanted to talk about their dignity rather than talking about something that he could do as a matter of law to protect these people.

Jess Pieklo: Okay. So I can't believe I'm gonna do this, but yeah, to be fair, to be fair.

Imani Gandy: To be fair.

Imani Gandy: To be fairish, no court has engaged in an equal protection analysis, right? So, like, maybe that's asking a little too much of Tony Kennedy

Imani Gandy: Is it?

Jess Pieklo: No, but like, I'm trying here. We've got like even Ann Claire Williams, a Black Clinton appointee to the Seventh Circuit, punted on this question, and the equal protection analysis in her landmark decision recognizing transgender students' rights to use bathroom facilities that align with their gender identity. Okay, so like, it, you know, and to Imani's point earlier, it was hard to move liberals on this issue. Barack Obama was not a supporter of marriage equality on his presidential run. He was moved there and it wasn't because he was pandering to the right, it was because we were, he was afraid of losing Democratic voters, okay?

But the reality is Tony Kennedy had an opportunity and power and ability and passed on all of it. And because he passed, because he punted like the punk ass bitch that he is, we have the Bostock decision.

And that's a statutory decision and it's vulnerable and under attack. And we've talked about that on the pod.

Imani Gandy: So Bostock is for our new listeners.

Jess Pieklo: Oh, Bostock is the decision that Justice Gorsuch wrote, and we gave him a little too much credit for this too, that says under Title VII, the law that prohibits employment discrimination, that you can't be fired for being gay or trans.

Imani Gandy: Yeah, yep. I mean, yeah, Ann Claire Williams may not have done that, but that opinion, the Ash Whitaker case was a boss ass opinion, number one, and number number two, I'm still mad at Tony because he's a goddamn Supreme Court Justice and he had multiple opportunities to engage in an equal protection analysis. And if he had done so in Obergefell, then I bet Ann Claire Williams would have also, because she would've had some hint from above, right? From the court above her that this was an analysis that needed to be made. So yeah, still mad Tony.

But the bottom line is that we have six Federalist Society captured stooges on the Supreme Court who don't care about protecting the civil rights of trans people and who are actively hostile to trans people. The goal is to punish trans people for existing, to make life difficult for trans kids to exist. It's pure cruelty for cruelty's sake. And I have to say, in light of the sort of discourse that has gone on since that jackass Michael Knowles stood up at CPAC and said, you know, we have to "eradicate transgenderism." I've seen far too many well-meaning centrists, right? And they tend to be white guys. These just well-meaning centrists who are like, I mean, he didn't say that he wants to kill transgender people. He said he wants to eradicate transgenderism. Well, ha first of all, as I said earlier, transgenderism is not an ideology. There's no such thing as being as transgender-ism, just like there's no such thing as Black-ism.

But you know, in addition, it just seems to me that people are parsing language, they're splitting hairs, they're playing semantic games because they are too chicken shit to take a strong stand. And why are they too chicken shit? Likely because they have conservatives at their Thanksgiving table or Republican friends or people who are just asking questions. They don't quite understand why trans people exist. And so they're just asking questions. They're not necessarily transphobic. So when you say eradicate transgenderism, you're not necessarily calling for the killing of people, but you are.

And if you're not calling for the killing of people you're calling for, for imposing mental harm on them and mental harm, if you look up genocide, if you look at the UN's definition of genocide, imposing mental harm or bodily harm on a group of people counts as genocide. How are you gonna detransition trans people? That's what they want. They want trans people to "revert," quote unquote, back to their biological sex. How you gonna do that, forcibly? What if trans people refuse?

Jess Pieklo: I don't know, Imani, these same centrist told me the Court would never overturn Roe.

Imani Gandy: That's a good point. Yeah, yeah. So these folks are always right about everything all. "Oh, don't worry, your pretty little head, Roe's not gonna go anywhere". "Oh, don't worry,

you're pretty little gay head. Obergefell v. Hodges isn't going anywhere". Meanwhile, Iowa has just introduced a bill to, to eradicate same sex marriage.

Jess Pieklo: Okay, let's get a drink.

Imani Gandy: Let's go get a drink. If you'd like to get a drink with us and talk about any of this stuff. Talk about why it is that you should support trans rights and why it is if you, especially if you are a cis gay, they're coming for you too. So don't be a pick me queer. Please, if you would like to do any of these things, talk about this with us, follow me on Twitter @AngryBlackLady, follow Jess on Twitter @Hegemommy. H-E-G-E-M-O-M-M-Y.

Follow Rewire News Group on Twitter, on Instagram, and on YouTube. If you sign up for YouTube to get the little notifications, you'll find out exactly when our podcast goes live. And if you don't wanna look at us, I don't know why you wouldn't, 'cause we're gorgeous, but it's okay. You can get your podcast where you normally do Apple, Google Play, Spotify, et cetera. Huh, let's get a drink. Jess, what are we gonna do first though?

Jess Pieklo: We are gonna see you on the tubes folks.

Imani Gandy: We're gonna see you on the tubes folks.