

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-my script says, "XXYY." 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 stand up for trans kids. 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.

Imani Gandy: So, Jess.

Jess Pieklo: Yeah?

Imani Gandy: The dominoes, they are falling.

Jess Pieklo: Wait, what? What are you talking about? What dominoes? I don't play Dominoes.

Imani Gandy: The dominoes, it's 'cause you're not Black.

Jess Pieklo: Fair, I play Cribbage.

Imani Gandy: "I play Cribbage!" I mean, the dominoes of our democracy.

Jess Pieklo: Oh, yes!

Imani Gandy: Right? Those dominoes. Once you tip over one, all the others start following. Right? You got it? You got it.

Jess Pieklo: Yes, yes, yes. Sorry, sorry, sorry. I'm a little slow on the uptake. But, yeah, unfortunately that part is crystal clear, right? The conservative legal movement knocked over abortion, and now they're going after marriage equality, birth control, and well, you know, basically everything else.

Imani Gandy: Yeah, but I have good news. I have good news.

Jess Pieklo: I'm sorry what? Which is what, exactly?

Imani Gandy: That we are here! That's why we're here.

Jess Pieklo: Yes! Right, okay. Fair. That is really good news, because as bad actors start pushing those dominoes over, we jump in and keep you informed, so that you folks can push back. And, you know who we count on to make that possible?

Imani Gandy: You! You guys, yinz guys, as they say in Pittsburgh. "Yous guys! Hey, you guys!" We rely on you, our fearless listeners and viewers.

Jess Pieklo: Your monthly donations, big or small, allow us to continue producing our unique brand of journalism and analysis.

Imani Gandy: We've been the canaries in the coal mine on this stuff for a minute now. And, that would be exhausting, except for we have your support, right? Like, all of the support from all of you, means so much to us.

Jess Pieklo: It really does. And so, we wanna do something very special- and, if I'm honest, I think very Boom! Lawyered, also- for folks who sign up now to donate \$10 a month or more.

Imani Gandy: We have produced, we have produced our first blooper reel.

Jess Pieklo: A blooper reel! I love this so much. You all, this blooper reel?

Imani Gandy: I'm so sweaty, it's so exciting.

Jess Pieklo: Is epic. You, I can't even, I, it's too much. It's too much.

Imani Gandy: Just sign up for the monthly donation, and you're gonna get access to this exclusive reel of our most ridiculous outtakes. We are putting it all out there. And, believe you me, Jess and I do a lot of dumb shit.

Jess Pieklo: Oh my God.

Imani Gandy: Before we actually, like, get the podcast going, and release it to you. A lot of dumb shit.

Jess Pieklo: So much. The songs we sing.

Imani Gandy: Oh my God, the songs.

Jess Pieklo: So, go to RewireNewsGroup.com/Donate.

Imani Gandy: That's RewireNewsGroup.com/Donate.

Jess Pieklo: And, sign up for \$10 a month to get that blooper reel, people, you will not be disappointed.

Imani Gandy: You really won't, you really won't.

Jess Pieklo: You know what's disappointing?

Imani Gandy: Oh God, so much. But, what? What do you have in mind?

Jess Pieklo: Ron "Puddin' Fingers" DeSantis.

Imani Gandy: Oh God. Ye 'Old Puddin' Fingers. Freaking.

Jess Pieklo: Unfortunately, we have to talk about this man, a little bit, okay? Last May, Ron DeSantis signed into law, one of the most draconian anti-trans bills in the country. It cuts off trans kids from being able to receive puberty blockers. A group of plaintiffs filed a lawsuit challenging the gender-affirming care ban. The case is called Doe v. Ladapo, and it landed in the courtroom of a judge, who might as well have pulled DeSantis' underwear over his head. Right? Like, this opinion should become the standard for judges hearing cases today, challenging these gender-affirming care bans. And, that's what we are gonna talk about on this episode, folks.

Imani Gandy: Yeah, that's what we're gonna talk about. Number one, first thing we're gonna talk about, Ron DeSantis is the worst! And, Judge Robert Hinkle, he's the best. So, the same week that DeSantis announced his run for presidency, he signed into this, he signed into law, just, like, a bunch of really shitty anti-trans bills. And, these bills target trans people as groomers, castigates them as groomers. He signed into law a bill that targets drag shows. One that restricts discussion of preferred pronouns in school. Another one that forces people to use bathrooms that may not align with their gender identity.

But, the one that we're gonna talk about today is the gender-affirming care ban for minors. During his signing of this bill, he had this huge ceremonial signing. And, do you know what he did? He threw Sharpies into the crowd.

Jess Pieklo: Stop it!

Imani Gandy: He threw Sharpies into the crowd. Like, it's giving Donald Trump throwing paper towels at people after Hurricane Maria, like, super freaking tacky. But, during this ceremony, he made a bunch of arguments that have routinely been debunked, just, like, debunked AF, by major medical associations, and people who are experts when it comes to trans healthcare. For example, he said, at his ceremonial signing, where he threw Sharpies, he said that children are routinely being mutilated, right? He also made the ridiculous claim that he was somehow protecting parents' rights by banning gender-affirming care.

Jess Pieklo: This guy

Imani Gandy: This fuckin' guy.

Jess Pieklo: This fucking guy, right? He think he's, like, some kind of, like, fascist Dr. Phil out there, right?

Imani Gandy: Fascist Dr. Phil.

Jess Pieklo: Like, thinking he's protecting parents' rights, you know? I don't know, the parental right to, I suppose, abuse your children by ignoring their gender dysphoria, right? Because, gender dysphoria is a major medical issue, and parents who are getting their children care are just simply doing right by them, huh?

And, I mean, how can he claim to be protecting parents' rights, when he's literally threatened to remove trans kids from their parents, because their parents have decided to do the thing, and get them care, right, to just respect their identity, their gender identity. It's, I mean, there's a legal term of art for this.

Imani Gandy: Mhm, share it.

Jess Pieklo: It's "bullshit."

Imani Gandy: Ah, yes! Bullshit. That is a legal term of art. Well, guess what? There is a U.S. district court judge in Florida who ruled that Old Puddin' Fingers DeSantis' gender-affirming care ban is unconstitutional. And, he minced no words in saying so, right?

Jess Pieklo: Oh. that's so good.

Imani Gandy: It's so good. That judge's name is Robert Hinkle. And, he wrote a barn burner of an opinion, issuing a preliminary injunction, that would allow three minors to receive puberty blockers. And, in the process he decimated Florida's truly absurd arguments, like, Florida Republicans have offered real dumb arguments, guys. That's another term of art, "real dumb arguments." Right? As to why the state of Florida should be able to withhold medical care from minors. The opinion also provided a really sharp analysis of the equal protection issues, that are raised by Florida's effort to ban kids from using puberty blockers, to ban trans kids from using puberty blockers.

Jess Pieklo: Another thing that's so fantastic about this opinion is that he also made it clear that the state of Florida wouldn't be harmed in any way. Right? Like, we have seen so many conservative snowflakes run up to the courts with, like, literally, "I don't like abortion. Therefore, stop it!" as the basis of their legal claims. And, finally. we have a federal judge who's saying, "Hey, your feelings do not equal injury," right?

Here's what he wrote. "The plaintiff's adolescent children will suffer irreparable harm, the unwanted and irreversible onset of, and progression of, puberty in their natal sex. If they do not promptly begin treatment with GnRH agonists, the treatment will affect the patients themselves, nobody else, and will cause the defendants no harm." I really wanted to add "fucking."

Imani Gandy: "No fucking harm."

Jess Pieklo: But, he didn't. He didn't because he's a classy bitch, and I am not.

Imani Gandy: "He's a classy bitch." I guarantee that's the first time anyone has ever called Judge Robert Hinkle "a classy bitch." But, like, but truly, you know? We, you and I, know that the harm that they're thinking about is that trans people make them feel icky. Right?

Jess Pieklo: Exactly.

Imani Gandy: It makes them feel icky inside. But, what they do in their briefs is make it an argument about states protecting the health and welfare of its citizens, which is, you know? To make, to just add insult to injury, they cite 'Dobbs' for that proposition, right?

Jess Pieklo: Oh, come on!

Imani Gandy: Because, that's what Mississippi was doing. It was "protecting women." You know, 'cause only women can get pregnant in the eyes of Mississippi. "Protecting women from harm"

Jess Pieklo: Also, a legal term of art.

Imani Gandy: Yeah, exactly. 100%.

Jess Pieklo: Oh, but can we talk about how this opinion is a masterclass in equal protection analysis?

Imani Gandy: Yes.

Jess Pieklo: Because, it's like, it's a love letter to equal protection. It's fantastic. As Judge Hinkle noted in his order, banning puberty blockers and cross-sex hormones violates the equal protection clause of the 14th Amendment, because under any level of judicial scrutiny, including the lowest level, which is rational basis, there's no legitimate rational basis, for the state to bar trans kids from using puberty blockers while allowing cisgender kids to use them in order to delay the onset of their puberty, right? Like, that's pretty basic equal protection analysis 101.

And, we've talked about levels of judicial scrutiny on this podcast before. Strict scrutiny is reserved for the worst kind of classifications based on immutable characteristics, which is primarily race. Intermediate scrutiny tends to be reserved for sex-based classifications, while rational basis review is reserved for, functionally, everything else.

Imani Gandy: Right, but even with rational basis review, which is what Florida was advocating for, there needs to be meaningful analysis. That's what Judge Hinkle said.

Jess Pieklo: Right.

Imani Gandy: There needs to be meaningful analysis. We often say rational basis review, is just, "eh, fuck it" review, but Hinkle's like, "Even within that, eh fuck it, like, you gotta have a reason to say, eh, fuck it." You can't just say, "eh, fuck it," and blindly accept that a reason for state action, is what the state says that it is, right?

Jess Pieklo: Exactly.

Imani Gandy: You cannot just blindly accept whatever Florida's putting forth, for why they wanna ban trans kids from taking puberty blockers. Right?

He pointed out that Florida's decision to ban this treatment, is not rationally related to a legitimate state interest. Right? He pointed out that dissuading a person from conforming to their gender identity, rather than to their sex assigned at birth. That's not a legitimate state interest.

Jess Pieklo: What the is the state doing? Like, why do they care?

Imani Gandy: Right? Don't be trans, it's not a state interest. Like, that's essentially what, "we just don't want people being trans. That's our interest, and that's legitimate." That's essentially what Florida's arguing, but it's not, it's absolutely illegitimate. And, since the motivating factor in the enactment of this statute, was essentially transphobia, the statute is invalid. Like, you can't discriminate.

Jess Pieklo: No, you can't. Sorry, Florida, you really can't.

Imani Gandy: And, what's really important to recognize is that even if this statute were neutral, even if somehow this ban on trans kids taking puberty blockers, were somehow neutral, the very fact that it was motivated by animus makes it invalid, right? And we talk about this a lot, particularly when it comes to voting rights cases, right? We talked about this, with respect to *Merrill v. Milligan*, or *Allen v. Milligan*, which is what it's called now. You rarely get legislators coming straight out, and being like, "You know what? We don't want them coloreds voting!" That's not usually something that they say.

But here? Here they have no problem. They literally! They literally, I swear to God, y'all, they've got legislators, defense experts, who are on tape, going on the radio, talking about how trans people are demons. And then they're trying to go into the legislature to be like, "What do you mean? It's not motivated by animus. We just, you know? Trans people. We just don't want people to be trans. But we don't dislike them, we just don't think people should be trans."

Jess Pieklo: Not all demons.

Imani Gandy: They're, I mean. Jesus, not all demons. Hashtag not all demons. I swear to God, like, these people just, they have no shame. They have no shame, whatsoever.

Jess Pieklo: Ugh. I mean, we joke, but.

Imani Gandy: Truly.

Jess Pieklo: Come on!

Imani Gandy: Come on, man.

Jess Pieklo: Hey, come on. Demons.

Imani Gandy: Yeah demons.

Jess Pieklo: You are an elected representative, and you go on the airwaves, and that actually comes out of your mouth? In all seriousness? And, not a "Saturday Night Live" skit.

Imani Gandy: Not great.

Jess Pieklo: What's with you? Okay. Ultimately, though, Hinkle noted that intermediate scrutiny applied because a law that bans trans kids from gender affirming care, but not cisgender kids, necessarily relates to sex, right? Like, that's, I mean it's, we're celebrating an opinion, that's like, yeah. Like, you know? But, that's the world that we're in. In other words, in order to determine whether or not providing puberty blockers to a specific kid is legal or not, you have to determine the minor-in-question's sex assigned at birth. Pretty simple.

Imani Gandy: Yeah. And. also the standard for intermediate scrutiny is that the government action must be substantially related, quote, unquote, "substantially related" to a, quote unquote, "sufficiently important interest."

Jess Pieklo: Lawyers, man.

Imani Gandy: I know, real. What the fuck does substantially related mean? What the fuck is a sufficiently important interest, as opposed to a legitimate state interest.

Jess Pieklo: Look, we like prongs. That don't mean a lot. That we can fight about.

Imani Gandy: That's true. That's true. But, I mean, obviously the judge said that there was no legitimate rationale, under rational basis review. So, there clearly is no legitimate or sufficiently important interest under the intermediate scrutiny standard.

But, but what I loved about the opinion is that he detailed the history of the levels of judicial scrutiny, right? And, discussed how heightened scrutiny is appropriate for statutes showing, quote, "prejudice against discreet and insular minorities." And, we talk about discrete and insular minorities quite a bit.

And, whether or not a group is discrete or insular, relates to how much political clout that group has, right? Hinkle went on to notice that transgender status is rarely an appropriate basis on which to parcel out government benefits or burdens. Like, that just makes sense. Trans people don't have a whole lot of clout right now. There's not a lot of them, generally, they're spread out across multiple states. They don't have like a political action committee. That's actually, where the government is actually listening to their needs, and representing them. No, they're being targeted for, essentially, what I consider to be a cultural genocide.

And so, yeah, they're a discrete and insular minority.

Jess Pieklo: And Hinkle's opinion is so smart on this, right? Like, interestingly, he said that race is the paradigm, and that leaving affirmative action, or leaving aside affirmative action, is a remedy for prior discrimination. It is almost never appropriate to parcel out government benefits or burdens, based on race. The same is true of transgender people. Like, you were just explaining, like, this is just smart, clear, legal reasoning, and it's, thank you. So, and, just, like, an amazing and timely connection to make, particularly at the time when we are waiting for the Supreme Court to decimate affirmative action, in the Students For Fair Admissions case.

Right? Like, that's, it's just being able to connect the dots, like that, like.

Imani Gandy: And, I like how he says it's almost never appropriate. To parcel out government benefits and burdens.

[Both] Because sometimes it is. Because sometimes it is!

Imani Gandy: But, that's usually if you're trying to help people. Right? Like, affirmative action was intended to help people. If there is, sometime down the line, there's a law that's enacted, that treats transgender people different, because it's trying to help them, then that wouldn't be in opposition, or in violation, of the Equal Protection Clause. And, I like that Hinkle makes that distinction. I also like the way that this opinion is a masterclass on how to challenge the anti-scientific and anti-trans nonsense that is spewing forth from legislatures, like Florida's.

Jess Pieklo: Oh my god.

Imani Gandy: I mean, for the love of Christ, people, my brothers and sisters in Christ, these laws are backed by bullshit science, and it was really refreshing to see Hinkle take on these so-called experts, who claim that puberty blockers are somehow dangerous. And, in the process, were just spewing, just, basic anti-trans propaganda.

He specifically called out the medical authorities, medical organizations like American Academy of Pediatrics, The American College of Obstetricians and Gynecologists, The American, why are all these colleges American? I guess 'cause we're in America, The American College of Physicians, and the American Medical Association, right? Basically, every legitimate medical association, organization, WPATH also, right? These are organizations that are dedicated to

making sure that trans people get the care that they need. That gender dysphoria is treated like a real medical issue. And, that it is treated as if it were such, right? Like.

Jess Pieklo: Right. Yeah, I mean it was, as you said, refreshing to hear him, basically, call out the defense experts for being biased advocates and testifying as such, rather than testifying as experts, right? And, like, this little detail, hold on, sit down for this, because, one defense expert, he noted, joined an amicus brief in another lawsuit, regarding gender-affirming care, in which the brief stated that transgender individuals have a false belief in their gender identity, and that they are maintaining a charade or delusion. Their expert, their unbiased expert, said this in an amicus brief, which is, you know, a friend of the court brief, that advocates for a particular position or side.

Not a sense of neutrality. Right? Another, gets better, or worse? All of it? Another called gender-affirming care a lie, a moral violation, a huge evil, and diabolical. What is it with the demons? You know? and that, I, like, this even hurts to say, but, it is so perfectly out of the Florida moment, "and that treatment of transgender folks is a woke idea." Or, no, hold on. Wait for the whole thing. "Or is profiteering by the pharmaceutical industry, or doctors."

Imani Gandy: Oh yeah! You know, doctors are really getting rich off of gender-affirming care. Like, that's the argument? Jesus Christ.

Jess Pieklo: I mean, it's bank, right? They are making bank off of this stuff. I mean, it's that, like, up is down, all of it is just crazy with these folks.

Imani Gandy: And, these are just basic falsehoods, right? These are basic falsehoods, that anti-trans advocates are making all across the country, in order to justify these sorts of bans. And, so, it was refreshing to see a judge

Jess Pieklo: Yeah. take those claims head on, right? Explicitly saying gender identity is real. Like, that was in the beginning of his order. Gender identity is real. And then, he basically called out, like, the Florida legislatures to either put up or shut up. He said, "Any proponent of the challenge statute and rules, should put up or shut up. Do you acknowledge that there are individuals with actual gender identities, opposite their natal sex, or do you not?"

And, then he went on to say that these dog whistles about demons, and moral violations, and delusions should not be tolerated, because they're trying to have it both ways. Like, to claim that it's a moral violation, but then, also, to be like, "Well I guess gender identity is, kind of, real, because that's why we gotta ban it." Like, it doesn't make any. It doesn't make any sense, and I hate it. So, I have a question for you.

Jess Pieklo: But, hold on. But, "put up or shut up," is kinda hot. It's, wow man. Yes. That's, like, a "taking off the rings and earrings," kind of statement, from a federal judge.

Imani Gandy: Truly, and I actually went and I read the Arkansas District Court order. Because, the Arkansas gender-affirming care ban was also struck down, and then that striking down, that's, I almost said "that struck-downedness," is what I almost said. That's not a real word, but you know, the Eighth Circuit Court of Appeals, which is, itself, a pretty conservative appellate court upheld the order that the ban was, basically, you know, a violation of the Constitution. I read that district court order, and it does not go as hard as Hinkle went, right?

Like, it doesn't make, it goes through the analysis, and it's very, like, matter of fact, but I really enjoy the fact that Hinkle just came out swinging for trans people. "Gender identity is real. If you don't believe it, put up or shut up!" What? I mean, he might as well have just said, "What the actual fuck, Florida?" Right?

Jess Pieklo: I mean, functionally, that's the legal equivalent of "what the actual fuck, Florida."

Imani Gandy: And so, I really hope that other courts that are going to be striking down these bans, because any court worth its salt is going to have to, I really hope that they go this hard for trans people.

Jess Pieklo: It was a breath of fresh air.

Imani Gandy: It really was. And, I have a question for you, our Cassandra of the Courts.

Jess Pieklo: Okay, sure, shoot. Go ahead.

Imani Gandy: What's gonna happen next? What happens now?

Jess Pieklo: Well, so Florida hates this decision. And, they will appeal it to the 11th Circuit Court of Appeals, which is pretty conservative. Now, not as conservative as the Eighth Circuit that you were just talking about with Arkansas. So, if the 11th Circuit follows the law, and also follows what the Eighth Circuit did, with respect to that Arkansas gender-affirming care ban, then the 11th Circuit should uphold this ruling. Folks, the 11th Circuit should uphold this ruling.

And, then there's still unanimity in the federal courts, that these bills are bullshit. Right? Like, and that is the important thing to really note, as Gillian Branstetter noted on Twitter, when the decision came down, the federal courts are reading these statutes for filth. And, they should. And, it's good to see, especially because we so rarely, it feels like, these days, have good news, and good decisions coming out of the federal courts.

Imani Gandy: And, Gillian is with the ACLU, right?

Jess Pieklo: Oh yes. Thank you, yes.

Imani Gandy: eah. So, that's good. This is good.

Jess Pieklo: It is!

Imani Gandy: This is great. I like, I like the fact that someone smacked Puddin' Fingers in the face. I think it's great. So, if you would like to talk to Jess or I about any of this stuff

Jess Pieklo: Except Puddin' Fingers.

Imani Gandy: Except Puddin' Fingers. We don't wanna talk about Puddin' Fingers anymore, 'cause it's kind of gross. You can find me on Twitter, @AngryBlackLady. You can find Jess on Twitter, @Hegemommy. You can find us both on BlueSky, under those same names.

Jess Pieklo: It's lovely over there.

Imani Gandy: It's like a breath of fresh air. People are nice.

Jess Pieklo: It's like a walkabout in the neighborhood.

Imani Gandy: It really is, it really is. You should also follow Rewire News Group on Instagram, on Twitter, on TikTok, and you should subscribe to our YouTube channel, so that you'll get notifications whenever we have podcasts. And, given it's Sweaty SCOTUS Season, right? We're gonna be doing live reaction podcasts. So, you're gonna wanna. You're gonna wanna hang onto your butts for those.

Jess Pieklo: Definitely. And, we are coming up on the one year anniversary of the Dobbs decision. Which was a terrible day. One of the worst days ever. Rewire News Group put together a special editorial package marking that anniversary. So, you definitely wanna go to the website, and check that out.

Imani Gandy: Yeah. And, I'm gonna blow a little bit of smoke up our own asses. We won an award from the digital. We won a Digital Health Award for our "The Day 'Roe' Died" podcast. That was the podcast that we recorded. We were very emotional on the day that Roe fell, so good for us. We're an award-winning podcast!

Jess Pieklo: We are.

Imani Gandy: And, you know, we actually really couldn't do it without you. So, again. If you wanna see that blooper reel, you're gonna need a monthly donation.

Jess Pieklo: You wanna see the blooper reel.

Imani Gandy: You wanna see the blooper reel. [RewireNewsGroup.com/donate](https://rewirenewsgroup.com/donate), go there. And, aside from that, what are we gonna do, Jess?

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

- We're gonna see you on the tubes, folks.