

This transcript is a version of the episode.

Imani: Hello fellow law nerds! Welcome to another episode of Boom! Lawyered, I'm Rewire News Group's Editor at Large Imani Gandy.

Jess: I'm Jess Pieklo, Rewire News Group's Executive Editor. Rewire News Group is the one and only home for expert repro journalism and the Boom! Lawyered podcast is part of that mission. A big thanks to our subscribers and welcome to our new listeners.

We've been talking a lot about who gets to be a person. That discussion is fundamentally about who gets to avail themselves of the rights that are guaranteed by the Constitution.

We already know that people capable of becoming pregnant no long can avail themselves of the right to privacy guaranteed by the Constitution. It's also becoming clear that trans people may soon be foreclosed from seeking the same kind of healthcare services that cisgender people.

Imani: We've also talked a lot about how conservatives coming for birth control. For years they've been likening it to abortion, calling emergency contraception abortions. Now they're starting to call emergency contraception "morning after abortions."

Jess: We've also talked about our old friend Matty K?

Imani: Ugh not him again. Remind our listeners who he is?

Jess: Matt Kacsmayk or Matty K is that Trump judge in Texas who's got a real stick up his ass when it comes to human sexuality, including repro rights and LGBTQ rights. He's a former religious liberty lawyer and actually worked to overturn protections for contraception. So it's no surprise that he's the jamoke that he is on the bench.

Imani: He's also the judge in the mifepristone case. We've talked about that case at length and your latest issue of your [newsletter the Fallout discusses the case](#). If the Supreme Court issues a bad ruling in that case, he'll be the jamoke who paved the way for the criminalization of medication abortion.

Jess: Yep that's him. OK, so why are we talking about all the things we've talked about in the past?

Imani: Because it's all connected, man. The right to privacy in the Constitution being stripped away, the attacks on birth control, and Matty K—it's all connected.

Jess: Connected to what?

Imani: To the case we're talking about today, man.

The case is called Deanda v. Becerra, and Matty K's pawprints are all over it. And it's about whether or not teens can get birth control from Title X-funded health centers without their parents consent. Matty K says no they cannot even though Title X regulations say yes they can.

This is a big deal because one of Congress's specific goals in creating the Title X program was to address the reproductive health needs of adolescents and ["prevent unwanted pregnancies among sexually active adolescents."](#)

Jess: None of that matters to Matty K who ruled in favor of Alexander Deanda, a father of three who is "raising each of his daughters in accordance with Christian teaching on matters of sexuality, which requires unmarried children to practice abstinence and refrain from sexual intercourse until marriage."

They're arguing that the Title X regs subvert parental authority in violation of the Texas Family Code, which gives parents the right to consent to medical and dental care for their children and the due process clause of the 14th Amendment.

And MK agreed! He didn't grant an injunction and this is key. He could have barred the clinics from continuing to provide contraception without consent from a parent. But he did rule the Title X regs, which bar Title X clinics from requiring parental consent are unlawful.

Imani: Here's what he said.

- Title X's prohibition violates both the plaintiff's fundamental parental right under the U.S. Constitution to control how his children are raised and Texas Family Code.
- As a result, MK struck down the critical provision of Title X which says: "To the extent practical, Title X projects shall encourage family participation. However, Title X projects may not require consent of parents or guardians for the provision of services to minors, nor can any Title X project staff notify a parent or guardian before or after a minor has requested and/or received Title X family planning services."

Jess: I have to chime in here. That provision you just mentioned required that Title X orgs provide birth control to minors? That's an admin reg that was promulgated by the HHS in 2021.

Imani: You and your admin regs.

Jess: You just don't understand the love a woman can have for admin regs! It's a love that no one understands! That dare not speak its name!

Imani: OK you need to settle down.

Jess: I will not settle down. But we should remind our listeners what Title X is all about.

Imani: Good call. For those who don't know or who need a refresher, Title X is a federal grant program established in 1970 to offer comprehensive family planning and associated preventive health treatments to those who might not otherwise have access to them. The program requires grantees to provide these services with a focus on low-income people so services are either free or low-cost.

Jess: Under Title X regs I just mentioned, the family planning projects funded by Title X must offer “a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents).”

Imani: So Jess I have a question: If Title X authorizes clinics to provide birth control to teens without parental consent, why are we in court about this?

Jess: Because of that Christian conservative dude in Texas who is raising his daughters according to Christian teachings. And that requires either slapping a chastity belt on his daughters and throwing the keys into the woods or filing a lawsuit whining about the government banning Title X clinics from requiring consent.

And naturally he's represented by Jonathan Mitchell—that same fucking guy who is responsible for Texas' SB 8 the abortion bounty hunter ban.

Imani: I have great news, Jess. We can end this podcast right now because courts have already rejected these sorts of challenges to Title X. No court has ever said that parents have a right to intervene in these sorts of reproductive decisions. For 40 years, lower federal courts have held that Title X prohibits the imposition of a parental notification or consent requirement, including under pertinent state laws like the Texas Family Code section at issue in this case. The Second, Eighth, Tenth, and D.C. Circuit Courts of Appeal have held that Title X prohibits a consent requirement.

Jess: Also, the Supreme Court has already affirmed the rights of minors to access contraception. In *Carey v. Population Services International*, the Court ruled that it's unconstitutional for a state to place any restrictions on the advertisement, sale, and distribution of contraceptives to individuals of any age.

That case involved a New York law that made it a crime for anyone other than a licensed pharmacist to distribute contraceptives; for anyone—including a licensed pharmacist—to advertise or display contraceptives; and for any person to sell or distribute contraceptives to a person under age 16.

Imani: The Court struck down all of these provisions as unconstitutional. The Court also reaffirmed that minors have constitutional rights and made clear that those rights include the right to contraception, drawing in part on cases that recognized a constitutional right to abortion for minors. The Court said a blanket prohibition on minors' right to contraception was clearly unconstitutional, and rejected all of the state's attempts to justify its law.

So how can a parent prevent a minor from obtaining contraception from a Title X funded program when Title X specifically requires Title X to offer services to adolescents and SCOTUS has already said states can't restrict distribution of contraception? What's going on here?

Jess: Cooked up political attack on contraception.

- Comstock Act is a zombie purity statute that prohibits lewd and lascivious materials from being shipped in the mail.
- Conservatives are reanimating comstock to challenge mife approval in Texas.
- Parallel arguments in title x case

What's going on is that we have a Supreme Court that is amenable to the claims of Christian conservative parents who want to interfere in their children's privacy in ways not sanctioned by federal law. They want to bend federal law to their will.

And they've got Alliance Defending Freedom in their corner, and this firm as much as we despise them has had a lot of success in bringing these kinds of civil rights-killing cases to the Court. ADF is basically the plaintiff here. Amicus brief is all about trans kids and parental rights. It's a tell. And we have an ongoing campaign via these kinds of lawsuits and conservative social media influencers to undermine the idea that contraception generally is a public health good. It's an honest to god campaign to take away the pill.

Imani: So what happens next?

Jess: Oral arguments in the Fifth Circuit are on November 6. And then we wait.

Imani: Wait for the inevitable batshittery to come from the Fifth circuit like we did in the mife case.

Jess: And then it becomes a question of IF the Supreme Court is going to step in and side with this newfangled idea of parental rights.

Imani: And by the way, a lot of this wouldn't be a problem if republicans weren't filing their cases in the Amarillo Division in the northern district of Texas specifically to get Matty K. There's some good news on this front: Senate Dems have demanded that federal regs be created so that cases are assigned to a judge at random.

A week or so ago, a federal judicial rules-making panel decided to look into whether to create regs stop state attorneys general and activists from "judge shopping." I know that just tickled your admin law bone.

Jess: I do love a regulation.