

This transcript is a version of the episode.

Imani: Hello fellow law nerds! Welcome to a special reaction episode of Boom! Lawyered!, a Rewire News Group podcast. 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.

The Court just wrapped oral arguments in *FDA v. Alliance for Hippocratic Medicine*, the case that could resurrect the Comstock Act and rewind mifepristone access nationwide

Or could it, Imani?!

Jess: Justices are concerned about the reach of the lower court's decision

Is this the judicial ethics creeping in?

- Jackson asking about limiting the remedy to the plaintiffs'
- Gorsuch seemed to agree and expressed concern about 'Rash' of nationwide injunctions

Imani: Erin Hawley didn't have a great day! Jackson/Gorsuch/Kagan and even Barrett made problems for her

- She was wildly overstating the problem and the justices seemed not to be buying it
- They grilled her on the declarants... particularly Francis and Skop. Barrett even noted that the fact that Francis said she performed a D&C doesn't mean she was dealing with live tissue.
- "How many members of your organization are ob/gyns who practice in hospitals?"
 - Barrett wanted to know about harm to these doctors... even mentioned dentists (there is no harm)
- Lot of talk about conscience—Barrett points out no evidence that people have been forced to do something over their conscience objections

Jess: Is it for show? Ultimately if there are 5 votes for standing then there are five votes for Comstock here.

Imani: Alito teed up the next mifepristone case in case they lose.

Jess: Plaintiffs originally challenged mifepristone approval altogether but the Fifth Circuit and SCOTUS didn't bite on that part of the lawsuit. Clearly Alito wishes they did.

EMTALA was everywhere—these justices and the advocates are clearly thinking about these cases together.

The interplay of state abortion bans and federal law is a major issue after Dobbs—we've got it in the EMTALA cases in April and it's lurking in Deanda and the Title X birth control challenge

Imani: Prelogar pointed out that EMTALA applies to Medicare-funded hospitals, not to doctors so it's not true that EMTALA overrides conscience even though Hawley kept arguing that the DOJ was arguing both sides of that issue.