

This transcript is a version of the episode.

Imani: Hello fellow law nerds! Welcome to another 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.

Today we're talking about Idaho—again. Now that Idaho is done making its arguments that people in emergency rooms who need abortions to keep their health from deteriorating can go pound sand, they're arguing before the 9th Circuit that anyone who “recruits, harbors, or transports” a minor within Idaho for the purposes of “procuring an abortion” out of state can be criminalized as an abortion trafficker.

Imani: What the hell is an abortion trafficker? I've honestly read this statute and I have to agree with the Plaintiffs here. The statute is vague. It makes no sense. And I don't like it.

Jess: Well that's because it's not really about “trafficking” and more about criminalizing direct aid to folks who need and abortions and forcing parental involvement in the repro health care decisions of minors despite supreme court precedent to the contrary.

Imani: The case is called *Matsumoto v. Labrador* and involves section 18-623 of Idaho's criminal code, the state's so-called abortion trafficking statute. The law makes it a crime for an adult to procure an abortion or obtain abortion-inducing drugs for a pregnant, unemancipated minor, with the intent to conceal the abortion from the minor's parents or guardian. This includes recruiting, harboring, or transporting the minor within Idaho for the purpose of the abortion.

There is an affirmative defense if the minor's parent or guardian consented to the trafficking.

It is not a defense that the abortion provider or drug provider is located in another state. The Idaho Attorney General has discretionary authority to prosecute violations of this law, even if the local prosecutor declines to do so. Violations are punishable by 2-5 years imprisonment.

The case was brought by Lourdes Matsumoto and two abortion aid organizations, Northwest Abortion Access Fund and Indigenous Idaho Alliance. All parties have in the past helped young people in Idaho obtain legal abortions services in other statutes

without obtaining the consent of the minor's parents or guardians. This aid includes counseling as well as providing transportation and funds. Plaintiffs are claiming that the statute violates their First Amendment rights to speak about abortion and to associate and engage in expressive conduct regarding abortion and violates their 14th Amendment rights to.

Jess: Let's first talk about how hard it is to get an abortion in Idaho—there's a total ban with an emergency exception so narrow patients are airlifted out of the state in a medical crisis for abortion care. The state has disbanded the group that studies and reports on maternal mortality in the state. OB-GYNs have left in droves.

For teens this is even harder given the reality of being a teenager. So with that backdrop Idaho legislators pass what is effectively an attack on direct aid—this statute targets adults who help minors obtain abortions—even information about them!

So if you undermine the adult support network for teenagers that forces parents back into the decision making process here.

And here's the thing. Study after study has shown that minors who have a good relationship with their parents DO involve them in their decision-making around abortion and birth control. It's the kids who don't have that kind of relationship and are the most vulnerable that need a different path and support.

Imani: That's why we have judicial bypass laws, which SCOTUS has upheld.

Jess: And why this law is an attack on that precedent! The Supreme Court has said in both *Planned Parenthood v. Danforth* and *Bellotti v. Baird* that states can't force parental consent to an abortion—but that's effectively what the Idaho law does.

And! In *Danforth*, the Missouri statute at issue also required written spousal consent for an abortion if the patient was married. So this is how antis start to put consent requirements back in.

Imani: Yep, and it's not going to stop with consent for abortion. They're going after contraception too. So there's another attack on precedent. *Carey v. Population Services* is a 1977 case that found that teens have a right to contraception.

Jess: I've kind of offhandedly referred to this Idaho law as a travel ban—because when you center the minors affected by it, it is! And this is *Dobbs* unraveling even more than the right to an abortion—here it is encroaching on the right to travel as well.

Imani: Plaintiffs in this case alleged an infringement on their right to travel, so this is definitely a travel ban case. But for whatever reasons of litigation strategy, Plaintiffs did not raise the travel ban claims as part of their request for injunctive relief, so that is still a live issue.

Imani: We gotta talk about Myron Thompson in Alabama. This week he refused to toss out a lawsuit brought by Yellowhammer and West Alabama Women's Center. Since abortion is now illegal in Alabama they wanted clarity from the AG that they were not going to get prosecuted for criminal conspiracy for helping patients coordinate travel to and care in states where abortion remains legal for care.

Jess: Yup. Alabama AG Steve Marshall declared shortly after *Dobbs* that Alabama law prohibits anyone from assisting or otherwise facilitating an out-of state-act that, if performed in Alabama would constitute a crime, including performing or attempting to perform abortions/

So Yellowhammer and West Alabama Women's Center sought a declaratory judgment from the federal court saying basically "declare that the AG can't constitutionally prosecute us like he's threatening." And boy did Myron Thompson deliver.

Imani: "The Constitution protects the right to cross state lines and engage in lawful conduct in other States, including receiving an abortion. The Attorney General's characterization of the right to travel as merely a right to move physically between the States contravenes history, precedent, and common sense."

It's a 98-page banger of an opinion, but Myron Thompson is known for that. We've both praised him in the past for his fiery opinions calling out the bullshit tactics of Alabama's various attorneys general over the years as well as speaking the truth about the political context of some of these bans.