

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.

Imani: Well folks we got the first abortion case of the term—FDA v. Alliance for Hippocratic Medicine and it wasn't bad! In fact it was pretty OK!

Jess: Unanimous opinion on standing. This is good news! Very narrow and doesn't at all touch the Comstock Act claims. That's on purpose—it's a delay tactic and political cover.

I mean neither Alito nor Thomas mentioned Comstock. Do you think Ginny sent a group text or something to tell them to shut up with all the comstockery until after the election?

Imani: By the way, quit being cowards and using the code section instead of the name of the Act. Important to know that 1461 and 1462 are the Comstock Act.

Jess: Kavanaugh has the unanimous opinion so you know it's not going to be very deep

Imani: My first thought exactly. It's basically an civ pro 101 white paper on standing. Yawn. That said, I'm glad to have been vindicated because I've been losing my mind over these standing arguments for damn near a year.

Jess: Thomas has a concurrence attacking all kinds of associational standing that most progressive groups use to bring claims—and again—he didn't mention Comstock despite really wanting to talk about it in oral arguments. His silence is a huge red flag!

Imani : Thomas is still mad about third-party standing in June Medical Services.

- Here's why Thomas is wrong: abortion providers who want to provide abortions and therefore challenge abortion restrictions are aligned with abortion patients who want to obtain abortions from abortion providers absent restrictions.

- Thomas says: "Just as abortionists lack standing to assert the rights of their clients, doctors who oppose abortion cannot vicariously assert the rights of their patients." That makes no sense. Because doctors who oppose abortion are not aligned with the patients who are seeking abortion. That's abjectly stupid.

- "In June Medical Services, attorneys for Louisiana have asked the Court to rule that abortion providers do not have legal standing to challenge Act 620 on behalf of their patients. They argue that abortion providers have a financial incentive to skirt "health and safety" restrictions like Act 620 and thus can't be trusted to faithfully advocate in the

best interests of their patients—they simply want to “provide as many abortions as possible.”

Jess: The fight against mifepristone approval isn't over for conservatives though. The case gets remanded. Idaho, Missouri, Kansas have intervened in this case and are waiting to move it forward in front of Matty K. Then there's the election. A Trump win sets up an FDA that would revoke approval—a Biden wins means the states litigation becomes their primary weapon

Imani: Don't fall for the “It's a win for abortion rights” okey-doke. Any time access remains open, it's a win for abortion rights. But that's not what the media means when they say it's a win. It's lowkey “hysterical feminazis and radical leftists all were convinced that scotus was going to rule for AHM and they didn't. Neener neener. Like the Dobbs leak softened the blow.

Ultimately, AHM was asking for too much and giving it to them would have been ridiculous.

The parade of horrors was too absurd: It's telling that one of the examples Kavanaugh used related to guns: And that's something we definitely mentioned on one of our podcasts: Would surgeons have a right to sue gun manufacturers if treating child gunshot victims made them feel sad. Of course we can't have that! i.e. the causal chain is too attenuated.

What's next? More litigation in Texas with Matty K. It will be interesting to see if the reporting on the junk science used to bolster his opinion will impel him to stop using those junk science studies. Probably not.

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