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Speaker 1 0:16

Hello, fellow law nerds, welcome to a very special final episode of the summer session of boom lawyer, a rewire News Group podcast hosted by the legal journalism team that has clearly found pleasure in being with you over this summer. It's been a new experience, but we love it. I'm rewire news group's editor at large, Imani Gandy,

Speaker 2 0:34

and I'm Jess peak low rewire news group's Executive Editor. Rewire News Group is the one and only home for expert repro journalism that inspires you to revisit the earlier episodes, because we had some great conversations this summer. Imani, we really did, and the boom lawyer podcast is part of that mission. So a big thanks to our subscribers, and welcome to our new listeners. And like we said, everyone, welcome to the last episode of summer session. Summer Session is a special summer season of boom lawyered where we bring on some guests and talk about law politics and well, whatever we want, because this is our show, damn it, and

Speaker 1 1:09

because this is our show, damn it, today, we thought that we'd take questions from you, our dear listeners and fellow law nerds, so let's get into it. Yes, our first question comes from Lisa Corrigan, and she asks, What can Kamala Harris do to go beyond the quote, restore row language,

Speaker 2 1:29

oh, we are coming in hot to start this episode. I love this I love this question from friend of the pod and my personal friend, Dr, Lisa Corrigan, who on Twitter, has just been breaking it down around this election, definitely go check it out. This is what I got to say. First, I love the reproductive freedom frame coming from Harris as a candidate, because it opens up a world of imagination beyond a trimester system where the state has any legitimate interest in pregnancy outcomes to start with, right like we can just put trimesters in the dustbin, compared to Democrats before. This is, like, really revolutionary language, but she is on record as supporting a return to Roe, so advocates are going to have to keep pushing her. The good news, though, I think she's movable, right? Like I do think she's movable on this issue, so she's on record as restore Roe, but she's using language that's broader to me, that says that's an opening. In the meantime, though, if she's elected, there is the TLDR that she can do to take more like executive actions while waiting for Congress to get off its ass and pass a bill codifying Roe, which I mean, Imani, let's face it, we've talked about that on this podcast a bunch. Is it likely to happen anytime soon and soon, and if it does, you think this Supreme Court is likely to uphold a codify roe law, not this court?

Speaker 1 2:53

No longtime listeners of the pod will know that. We think promises to codify roe are garbage, right? Every time Biden tweeted that he wanted to codify Roe, I died a

Speaker 2 3:04

little. You really did. I could see your flame flickering. Really. The

Speaker 1 3:08

one time I tweeted about politics when I was in Europe was when he tweeted another codify row. And I was like, God damn. You know, Biden,

Unknown Speaker 3:16

oh, my God, it was like a bat signal to you.

Speaker 1 3:19

I'm like, I'm in Portugal. Man, I ain't got time for this shit. But honestly, and as you said, Kamala has been on her quote codified real bullshit at times. But as you said, I think it's the floor for her. It's not the ceiling, and it felt like the ceiling with bite. That is such an important point, which is why I was so pleased that in Kamala Harris's campaign ad about reproductive freedom. She not only said the word abortion a bunch of times, but you may think isn't a big deal, but considering there was literally a website dedicated to when is Joe Biden going to say the word abortion? I think it's important that she's coming out hot, just like abortion, abortion, abortion, abortion. But she also talked about restoring abortion access and not codifying row, restoring abortion access, is a far broader initiative than just codifying row, because I swear to God, if I hear one more person talk about codifying Roe, or if I see another goddamn meme about how rovenber is

Unknown Speaker 4:13

coming row, your vote of money,

Speaker 1 4:16

I'm gonna walk into a fucking lake with my socks on. No, please don't. Please don't just I cannot, but

Speaker 2 4:21

Okay, so I also do think we need to acknowledge, though, that even though we believe it's necessary to go beyond codifying roe because it is codifying roe would still be a lot better than the situation we are in now. And that is a real point of tension. You know, I've been in communication with providers who, you know, barring any other option, would be more than happy to re codify roe at a minimum, given what they've seen in their areas. And so I just think that we need to be able to talk about both things in a in a yes and kind of way, right? Um, so we still need Harris to go beyond Roe, and whether she will or not remains to be seen, but protesting Kamala Harris on abortion rights sounds a lot more palatable than protesting Donald Trump and ending up in prison. So yeah, she can do some stuff,

Speaker 1 5:20

yeah, yeah. And also we have to think about the practicalities of codifying. Yeah, right. Any bill codifying roe would be appealed to Matt Kas Merrick or Reed O'Connor, and they would enjoin

the law, saying that, you know, it conflicts with Texas or any other abortion hostile state, so called respect for life. The Fifth Circuit would uphold that ruling, and then this codified roe bill would be locked in litigation for four or five years. So realistically, codifying roe would get us maybe a few days of abortion access before litigation would grind that access to a halt

Speaker 2 5:56

again, right? Or like some kind of rocket docket on the shadow docket to the court, you know? I mean, really we can the the point is, I think the conservative court can't be trusted on anything, and so a legislative strategy is going to have to think beyond the court. But there are executive actions that Harris could take, right, like executive action. Oh, I mean, come on, this is hot stuff. She could expand access to medication abortion via executive action. Yeah, you

Speaker 1 6:29

know what else you could do. She could direct the FDA to review the restrictions on mifepristone that exists now and lift them where necessary. Oh, that's

Speaker 2 6:38

sexy, right? Like it's too restricted. Make it more available. Yeah,

Speaker 1 6:42

abortion pills should be raining from the sky.

Speaker 2 6:49

I'm already prepared for the live action take on that she could continue to support pharmacies dispensing abortion pills, right? Because, due to completing the certification process that the FDA had implemented. January last year, places like Walgreens and CVS started dispensing abortion pills, but it became a whole big hoorah, and we should encourage them. Wherever there's a pharmacy to dispense pills, you're going to King Soopers to pick up your groceries, you should be able to get your abortion pills there as well.

Unknown Speaker 7:19

I love that. That's such a Colorado

Speaker 2 7:23

listeners. For those of you who don't know, King Soopers is our grocery store here in Colorado, and I kind of forget that it's not the grocery store everywhere. You

Speaker 1 7:31

could have said something like Harris Teeter making a supers run.

Unknown Speaker 7:35

Anyone need anything?

Speaker 1 7:36

Exactly? She could support telemedicine for medication abortion and preempt state laws trying to block it through telehealth bans. Oh,

Speaker 2 7:47

I love that. I love that she could issue an executive order that would address barriers for specific populations right like reviewing policies to improve abortion access for federal employees, military personal personnel and those folks in federal custody, those are populations that they have jurisdiction over and are often left out of conversations about abortion access.

Speaker 1 8:09

I do love that she could support abortion providers by providing guidance and resources to help providers navigate these complex legal landscapes that they find themselves in now, right? Like, like, a like picture this. What if there was an if, when, how like resource, right? If, when, how has resources about what you can do if you find yourself on the wrong end of the law? What if those resources were on a government landing page? What Right? Right? She could also take action exploring ways to let the federal government protect providers from out of state proxy prosecutions. Yeah,

Speaker 2 8:46

she could do no. Department of life is going to do that. You know

Speaker 1 8:49

what else she could do? Huh? She could explore options to lease federal lands to abortion providers, put an abortion clinic on every bit of federal land in the country. Why not? Why not do that?

Speaker 2 9:00

Can you imagine going to Rocky Mountain National Park to soak in the scenery while also having an abortion and a place to rehab afterwards? I

Speaker 1 9:13

think that's lovely. Springs. Rocky Mountain abortions. Let's, let's get it done. Send

Unknown Speaker 9:17

me the glacier man. That's, yes, I

Unknown Speaker 9:19

want to go to Steamboat Springs. Hell.

Speaker 2 9:24

I mean, she could just direct the Department of Justice to enforce existing laws protecting clinic access and patient rights, like the face act. Remember the face act of mine?

Speaker 1 9:33

I've heard of it. I've heard of it. I know her. I know her also. There's the goddamn Comstock Act, 19th century anti obscenity law that Sam Alito, for one, is obsessed with, as evidenced by his dissent in the mifepristone case. This term, right? What about the Comstock Act? Doesn't the FDA have an obligation to not violate the Comstock Act? I mean, shut up, Sammy, but you know, the Comstock Act would prohibit mailing abortion pills and supplies and all kinds of abortion related stuff. So let's get that off the books. Maybe, I mean, Harris could, what could Harris do to get that off the books? That's exciting stuff.

Speaker 2 10:10

Yeah, say we are not going to enforce that shit. No. And if you've read the nearly 900 page project 20 or 2025 plan, or read even a summary of the provisions related to referral rights. This Comstock Act is a big deal, right? Trump's team are working on perverting it into a nationwide abortion ban. Now, because they're jabronis, they don't use the word Comstock Act, and they're bitch asses, so they then use the statutory number, knowing that nobody is just got like a regular life to lead. Is going to know what they're talking about. But listeners, if you see anywhere, a reference to 18, USC, 1461, that tattoo that somewhere on my body, that's the Comstock Act. Yeah. Should she become president? HARRIS will have to partner with Congress in rescinding this AB, this obsolete and nonsense statute to make it impossible for future administrations to use it as a cudgel against the right to bodily autonomy. It's an excellent place to start. It

Speaker 1 11:13

is 18, USC, 1461, remember that? Remember that Harris can also protect pregnant people through EMTALA compliance by hospitals, right? Although Joe Biden has been defending the EMTALA statute in court, his administration hasn't used it as a cudgel against hospitals who are forcing their patients to hang out in parking lots until they're about to go into septic shock. Yeah. Do you remember JC Sutton? We did a podcast on JC Sutton about how she was forced to sit in a hospital parking lot until she was and I quote, fixing to have a heart attack, right? They made her sit in a hospital parking lot until she was fixing to have a heart attack. She filed a complaint with the Biden administration alleging violations of EMTALA, and they smacked it down. They didn't do anything

Speaker 2 11:59

with it. And there's recent reporting out of the Associated Press on patients from places like Texas that were turned away from emergency abortion care treating things like ectopic pregnancies, which is a doomed pregnancy to start. And they've now filed lawsuits saying, Hey, we didn't get the emergency care that we're entitled entitled to, and we actually have physical injuries to our reproductive capacity. That's a personal injury lawsuit. And again, we've talked about this on the podcast. Abortion bans force providers into medical malpractice. There's an excellent example of that. And the EMTALA case that we covered last term, well, the court didn't resolve it. It just merely kicked it down the road. And those arguments are pending before the Ninth Circuit, and are going to happen before the end of this year. So this EMTALA issue is a live one. This needs to stop Harris, if she is elected, would need to enforce EMTALA against every hospital that is ignoring its Federal obligation to provide emergency abortions. We are in a health care crisis.

Speaker 1 13:01

We are indeed. So thank you. Lisa Corrigan for that. Wow. We

Speaker 2 13:05

got fired up about I saw that question.

Speaker 1 13:08

I was like, Yeah, we're gonna answer this. All right. Our second question is from Katie podar, uh huh. And they asked, What are the odds that a state like Michigan that has solidified abortion access into law could have that overturned in a Trump presidency. Well,

Speaker 2 13:26

Katie, the odds are immaculate. They're good if Trump signs a national abortion ban, they're also good if Trump just appoints an attorney general who will enforce the Comstock Act and in connection with the head of the post office ban the shipping of abortion pills and any materials used to perform abortion right? There's more than one way to enact a national abortion ban under a Republican administration.

Speaker 1 13:56

It's worth pointing out that it would be the height of hypocrisy, which for Republicans granted, is unexpected, but it's still worth noting. Right? For years, we heard conservatives caterwauling about leaving abortion to the states. Oh, Donald Trump didn't like end abortion. He just left it to the state, which is what really everybody wants. Everybody want the state to have control over abortion. But we all know that's a load of crap, right, right, but it will be fun pointing it out once they start telling states that they can't regulate abortion in their own borders, since the supremacy clause means that any contrary state law protecting abortion rights would be preempted, right, by this national ban, this potential national ban.

Speaker 2 14:37

Again, why that EMTALA case is so important? Right? Because it's really that federal tension, or that tension that the dots decision has created between the relationship between the federal government and the states, particularly on abortion, we're getting into it. This is I love it. I

Speaker 1 14:52

love it. Next question is from valerian, my friend, Valerian, oh, they asked if there was one thing you wish every American, or people in general understood about US law. What would it be and why? My answer to you, Valerian is that laws don't mean anything anymore, now that the court is hyper partisan, with Sam Alito feeling he's on a mission from God to make sure his side wins, and Martha and Alito feeling she's on a mission from God to troll the gays living across the lagoon at her beach house using various black

Speaker 2 15:20

Oh, God, that sound grim.

Speaker 1 15:23

I would want people to know that Sam Alito basically has more power right now than the President of the United States, and we're all just pretending that this is normal. Yes,

Speaker 2 15:34

that was an entire word the gays across the way will be one of my favorite phrases from the summer of the leaders. Everything that Imani just said is true, but and we're not powerless against it. That's the one thing that I would want folks to know, is that right now, it is a clown court under Robert's tenure, he has completely stripped whatever legitimacy there was from the court under his leadership. And long time listeners of the pod will know that I've been suspicious of the court since jump, but that's a different episode.

However, just like a Harris administration could change some things, we're already starting to see Democrats and progressives coalesce around and understanding that court reform isn't just some kind of pie in the sky idea that progressives have been talking about for a little while. It is a necessary part of civic infrastructure reform that we have to take on. And if we continue to press elected officials, they will take it on, and I'm going to go and do something that I never do and be optimistic, because I think that if Trump fever can break from the Conservative Party, there is even an opportunity to get a couple Republicans on board with court reform. If it's done, right? That's a really banana thing to come out of my mouth. But I said it. I said, what I said? I said, what I said? All right, our next question is from literally three balls in a trench coat. I first of all, thank you just for having that screen name and they act or they ask, excuse me, What the actual fuck is going on these days? Maybe it's too existential, though,

Unknown Speaker 17:36

honestly, it's

Unknown Speaker 17:38

right on vibe. So

Unknown Speaker 17:39

what the fuck is going

Unknown Speaker 17:40

on? Imani, honestly, who the

Speaker 1 17:42

hell knows? Seriously, we are stuck in a system with six unelected jamoks who are more beholden to Leonard Leo and Harlan crow than they are to the American people, right? Yeah, it took Joe Biden three years to come up with the idea that, hey, man, maybe an enforceable Code of Ethics would be a good idea, right? And, yes, it's fantastic that he has a plan for court reform now that he wrote that op ed, but we really could have used it three years ago. Yeah? And the only energy he had three years ago was for a commission that came out with a report

that said, Yeah, court reform would be bad. Let's not do that. Let's put the court shit the bed for a few more years before we do anything about it. Well, the court, the court, really shut the bed for the three years, right? And in addition to that, Biden's plan is too narrow, right? Like term limits, fantastic. Like having a President choose new Supreme Court Justice every two years, fantastic. But what we need is wholesale reform of the federal judiciary. And actually leaning into wholesale reform will push back on Republican nonsense and complaining that all Democrats are trying to trying to do is stack the courts. It's not about stacking the courts. It's about reforming the judiciary top to bottom. Like for example, we need more Circuit Courts of Appeal, so many more. And I've been saying this for years, but nobody's listening to me. Nobody's taking my calls, so I don't know what the fuck is going on.

Speaker 2 19:09

We should, we should have at least 13 Circuit Court of Appeals in addition to, like, the maritime courts and the military courts and all of that, yeah, and and corresponding number of justices to match the corresponding number of Circuit Court of Appeals, and we need to staff the district courts. It should not take litigants years and years and years and years and years and years and years and years for their cases to get through federal court. That is no system that is completely unworkable. But honestly, I don't know what the hell's going on either. Romani,

Speaker 1 19:43

yeah, I was about to ask, literally, three Cobalts in a trench coat. Wants to know what the fuck is going on? Jess, what the fuck is going on? I

Speaker 2 19:49

mean, look, I'm not saying that he's a mobster. I'm just saying that Justice Neil Gambino Gorsuch is acting a little like it, talking about, well, Biden better be careful with Supreme Court reform. So you know what could happen. It's a nice presidency. You got there. Wouldn't want anything to happen to it, like,

Unknown Speaker 20:09

what is this? He

Speaker 2 20:10

should be careful. I wrote a piece eons ago, lifetimes ago, when Gorsuch was first appointed, about how his appointment had changed the Supreme Court forever, because people may have memory hold the fact that the only reason he's on the bench is because we don't have a justice Merrick Garland. And then, once he was appointed, he went and did things like, was the master of ceremonies for the Boulder County Republican parties for the July parade. Like, what? What in what universe is that an appropriate behavior for a Supreme Court justice? Apparently, this one, yeah, so I, you know, I mean, I just think that, like, again, as you said, court reform, it's not just about the Supreme Court. It's about whole scale, widespread federal judicial reform. And

Speaker 1 20:59

here's what worries me about Gambino Gorsuch. I love this on Gambino Gorsuch, from now on, he's going to take out his frustrations on Kamala Harris, right? What if he voids the election somehow gets together with his five other unelected jamoks from the Federalist Society field of jackasses and install President Trump. What if we have Bush v gore? Dot point now. Stop, stop, stop,

Speaker 2 21:25

stop. Don't even put that evil into the world. I mean, you know, we've got a couple Bush v Gore litigators on the bench currently, looking at you, Brett Kavanaugh and Amy Coney Barrett John Roberts was even roped into all of that. God, it's

Speaker 1 21:38

so thick, it's it's thick and it's bullshit. But I have, we have one last question. Okay, this question is from one of our staff members, and it's tailored for you. Our Cassandra of the courts, Esther Gim asks, Who do you predict will eventually replace John Roberts as Chief Justice right now? Who are your front runners and who are your dark horses?

Speaker 2 22:02

Oh, I love this question, and I legitimately expected you to say Esther Gim, longtime listener, first time caller, all right, so I do love nerding out on like the court stuff. Listeners may not know that there's actually no requirement that the Chief Justice start out as an Associate Justice of the Supreme Court. So like, you don't have to start out on the bench and then get promoted or earn your way up. There's no merit involved in that. They often do, but they don't. John Roberts is an example of the exception. But either way, it's a it's a spot that is appointed by the President and confirmed by the Senate. So two different administrations, two different potential Chief Justices, a Republican administration. Okay, I've said this before on the podcast, so this probably won't surprise some folks, but I have a sense that if they're looking for an internal promotion, that right now, Justice Amy Coney Barrett is being tailored. I didn't want to say groomed, because that has the worst connotation now, but being tailored to be promoted to Chief, I think that we saw a lot of evidence of that this term. All right, so if I if they're going to do an internal promotion, I think that's where it goes.

Speaker 1 23:16

Um, first lady chief isn't so bad, not honestly, Amy Coney Barrett is, I mean, I don't agree with her politics at all, but she's not a dipshit like Brett Kavanaugh, for example. Yeah,

Speaker 2 23:24

she's far more dangerous. And yes, I definitely agree she's not a dipshit. And I mean, look, the Republicans appointed the first Supreme Court female justice and Sandra Day O'Connor, like they'll run with that for the ages, Dark Horse candidates, though, that's where it gets weird and bad, right? I mean, if we are talking a vindictive Trump administration, why not appoint Matt because America's chief as Chief Justice, or James Ho from the Fifth Circuit, or Eileen cannon gets an immediate promotion for helping Trump secure the presidency. Like, that's all terrible. And

Speaker 1 24:02

then let me just interject, because I just want people to remember who James Ho is, right, yeah, Fifth Circuit Judge. He is one of the judges who said in the mifepristone case that one of the injuries that these doctors and and dentists were claiming is that it makes them sad that they can't look at that they can't look at pregnant people, because pregnant people, pregnant women, are esthetically pleasing, and you're going to be denying all these weirdo creeps who like to walk up to random women on the street and just rub their bellies. Right? That

Unknown Speaker 24:32

is so weird. I memory hold that. It's

Speaker 1 24:35

so creepy what she freaking said. And I also want to point out when I saw you right in the crib, in the script, Maddie Kay, I literally said out loud, oh, fuck off. I was just like, No, I reject this out of hand, but please. Okay, let's, let's

Speaker 2 24:51

look at a happier timeline. All right, Kagan for teeth, yeah, like, if they're gonna go mild and do a, like, very straight up merit promotion like Kagan is the way to go. She's been the foil to John Roberts her entire tenure on the bench. Like that would be great. But if we're gonna go bold, because we're taking new steps and we're forward looking and we're sort of like shaken off the status quo, I want to Chief Justice Jackson, yeah, that woman is doing originalism better than any of the originalists, and giving us a forward looking jurisprudence, right, like she is outlining a vision of democracy that exists in our day, not in days of your My completely random appointee that I would love to Say and she is a woman who was in her name was in circulation when, when Jackson was appointed, is Judge Leandra Kruger from the California Supreme Court. So folks may not know about her.

She's been on the court since 2015 as an Associate Justice, and before that, held several high ranking posts in the Department of Justice, including as a Deputy Assistant Attorney General in the Office of Legal Counsel. So that's the office that gives legal advice to the White House. So, you know, legal advice for the executive branch and and she's also an official in the Solicitor General's office, so she's got like, Kagan esque type of credentials. That's who I'd like to see. What about you? Both

Speaker 1 26:21

Justice Jackson and Leandra Kruger are black women, so I love the idea of a black woman president, the first black woman president, appointing the first black woman Chief Justice of the Supreme Court. Oh, that

Unknown Speaker 26:32

would be so great. That

Unknown Speaker 26:34
feels good. That

Speaker 2 26:35
does feel good, and like no shade to justice. Sotomayor, I just think she's been on the court for a while, and has clearly signaled that she's maybe ready to do something else or take a break. And so we should give that woman the opportunity if she were to decide. So

Speaker 1 26:47
absolutely, absolutely. So this was a this was fun,

Speaker 2 26:51
and we've, like, barely touched any questions, right? We have to do another one.

Speaker 1 26:56
We did. We got a lot of great questions, some of which could be entire episodes in and of themselves, so we apologize if we didn't get to your question. It's probably because it was too good. We would have had to spend an hour trying to explain it, right? So we will save these questions for future amas, or we might even do a whole ass episode on your question, which will be exciting for everyone. Yeah. So

Unknown Speaker 27:17
keep the questions coming. Like, let's keep the conversation going in Twitter,

Speaker 1 27:21
truly, absolutely any I mean, I'm actually running the rewire News Group account now. So if you tweet at the rewire News Group account, I will see it. If you have questions, I will add it to our list of questions that we will, you know, we'll throw some ama throughout the season if you want to talk to me personally, not through the RNG account. You can find me on Twitter at angry black lady. You can find Jess on Twitter at hedge mommy, H, E, G, E, M, O, m, m, y. I'm also on blue sky threads and tick tock, and you should follow rewire News Group on all of the things tick tock, blue sky threads, Instagram. You know, we're still, we're still suffering the loss of our prior tick tock account, so it would really mean a lot to us if you could just take a moment right now. Do it right now. Go to tick tock and follow our new account. Just search for our news group. You can find it

Speaker 2 28:06
group without the vowel you Yeah. And

Unknown Speaker 28:14
aside from that, Jess, what are we going to do? We're

Unknown Speaker 28:17
going to see on the tubes. Folks,

Unknown Speaker 28:19
we will see you on the tubes. Folks, you

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