

Imani Gandy (0:0.261)

Hello, fellow law nerds. Welcome to a special episode of Boom! Lawyered, a Rewire News Group podcast hosted by the legal journalism team that is really interested in what you have to say and think. True story. I'm Rewire News Group's editor-at-large, Imani Gandy. It sounded like I was being sarcastic, but I wasn't. I really do care what you think and the questions that you have to pose.

Jessica Pieklo (0:23.348)

Listeners, she cares. I'm Jess Pieklo, Rewire News Group's Executive Editor. Rewire News Group is the one and only home for expert repro journalism that inspires you to ask us anything. We'll answer it. And the Boom! Lawyered podcast is part of that mission. So a big thanks to our subscribers and a welcome to our new listeners.

Now we know folks that you have a lot of questions around the, I don't know, ongoing chaos, the dumpster fire 2.0 that is the Trump administration. And so we thought we would take some time to answer those questions. The first one though, Imani, is a doozy. No, but truly so good. It comes from Instagram user, I think it's Kayla, but it is K-A-A-L-A-1-1-2-0 and it is about personhood. Here's the question. If personhood becomes law, what would happen to pregnant people, women and girls in terms of legal rights such as privacy, due process, marital and relationship decisions, healthcare, discrimination, rape and sexual assault, and free speech, just to name a few. Would those rights be nullified if a fetus is given more protection than the pregnant person? Wouldn't that mean multiple civil rights and other rights granted by the Constitution would no longer mean we are included since, you know, now a fetus would be a person?

Imani Gandy (2:6.145)

Love this question. I love this question because it gives me an opportunity to go on a rant about the difference between natural personhood and juridical personhood. Yes, this again. I wrote a piece about this. It was one of the first pieces I wrote while I was researching what personhood would actually mean for this country. And at the time, there were a lot of states that were trying to pass these fetal personhood bills.

Jessica Pieklo (2:17.500)

Oh, this again.

Imani Gandy (2:35.609)

Because in their mind, if they were able to elevate a fetus to the status of person, thereby making a fetus the same as, know, whole ass breathing, already alive people, then that would somehow gain them the victory that they want, right? That all fetuses are people, eggs are people, blastocysts are people. that fetocys, blastocysts, fetocys, I said fetocys. Sorry, blastocysts, fetuses, and embryos would automatically have the same rights as pregnant people, right? But that presupposes that when a fetus is granted legal

personhood, that they would get the same rights as natural people. And when you really break it down, person is a legal term of art, right? It's not just this random colloquial concept.

Jessica Pieklo (3:21.601)

Oh boy.

Imani Gandy (3:31.387)

A person refers to an existing human being with emotions and actions and thoughts and feelings. And legally, the term person refers to entities entitled to constitutional protection, entities that are conferred constitutional protection by courts, right? And so let's go back to the slave days, right?

Jessica Pieklo (3:52.366)

Okay?

Imani Gandy (3:59.663)

Dred Scott v. Sanford demonstrated that the Supreme Court once denied personhood to enslaved people, right? Now that didn't mean that enslaved persons weren't people, colloquially speaking, but it just meant that under the law, they were not granted the same rights that white people were, okay? And so if you think about what a natural person is, right, it refers to a human being as is commonly understood in common parlance. It refers to people who are born and who are then automatically entitled to constitutional rights. Now, the constitutional rights for natural persons may change as we saw in June of 2022, right? Before Dobbs, constitutional persons, natural persons had the right to an abortion. After Dobbs, natural persons like you and I no longer had a right to an abortion. Okay, that's natural persons.

Jessica Pieklo (4:43.842)

Mm-hmm.

Imani Gandy (4:57.325)

Now let's talk about juridical persons, juridical spelled J-U-R-I-D-I-C-A-L. These refer to, I'm loving this by the way.

Jessica Pieklo (5:7.584)

Yeah it's great. There's nothing better than when Imani just opens up—like give her the whole runway.

Imani Gandy (5:12.311)

I am loving it. So juridical personhood refers to artificial persons, right? Refers to, for example, corporations that are granted legal rights by the state. Corporations aren't granted rights when they're born, quote unquote, born, right? Because they're not born, they are

created. And so juridical persons don't have rights that automatically attach at birth, right? They are entitled to rights that are granted to them by the state.

And these rights may vary from state to state. And the concept of corporate personhood is a very, very good example of what I'm talking about, right? Corporate personhood is an example of juridical personhood, and that raises all these complex thorny issues. And you get debates about corporate personhood and the sort of rights that they are entitled to by law in cases like Citizens United, right? In cases like all of the disputes over the contraception mandate, right? Whether or not Hobby Lobby was enough of a juridical person so that they could deny birth control benefits to their employees. so, corporations aren't alive, right? They don't breathe, but they are granted rights that are typically reserved for natural people in order to protect the collective people who comprise their shareholders, right?

And Citizens United saying that corporations are entitled to free speech and that money is speech, they were basically saying that shareholders who are people that comprise this corporate person are permitted to use their money collectively to influence elections in the same way that natural persons are. And so going back to the original question, if a fetus is elevated to a person, will they get all of the same constitutional rights that natural persons have?

If you'd have asked me before 2022, I would have said no. I would have said, or I would have said possibly not. Post 2022, even though fetuses aren't natural persons in the way that you and I would describe a natural person, they are a juridical person, they will be granted the same rights as a natural person by the state. So what we end up having is a situation where you're weighing the rights of a pregnant person against the rights of a fetus or an embryo. And that's when you start to get concerned about the sort of the politics, right? The zeitgeist right now is that if you're a pregnant person, you don't have the same rights as the fetus that you're carrying.

Jessica Pieklo (7:47.726)

Right. And this distinction, while nerdy, is also so important and one that the anti-choice movement knows about because I'm thinking about when we did our show, We'll Hear Arguments, that was a breakdown of the oral argument audio archive from Roe vs. Wade. There is an entire episode that we dedicated to this question of personhood called, Being Born Actually Matters. And in the argument,

Imani Gandy (8:14.202)

Right.

Jessica Pieklo (8:17.078)

the attorneys for Texas that were trying to enforce their abortion ban had made that distinction. And what we know from the anti-choice movement is that they take everything

and build on it. So if they see juridical personhood as a pass through to get to the rights of natural personhood, damn well they're gonna take it.

Imani Gandy (8:40.731)

Absolutely. So thank you for that question. That was fun. I really enjoyed that. That was super fun. Our second question also comes from Kayla. I hope we're pronouncing your name right. Kaala1120. And I gotta say good on you for being so curious and interested in learning more about personhood and also giving us an opportunity to just rant about it because we love that. So this person asks,

Jessica Pieklo (8:46.040)

I love that so much.

Imani Gandy (9:7.009)

If states have an interest with laws regarding a person's body, would that mean their bodies could or would be owned by the state, government, and or person that they are married to if legally married? This is such a smart question, right? Such a smart question. So if a state mandates that a person cannot make certain choices about their own body, right, such as terminating a pregnancy, then I think the interpretation that the state's influence over that person's body absolutely is a form of ownership or dominion. I think that's a really sound interpretation, a sound analogy, because the state is essentially taking claim, dominion over your body for a period of nine or 10 months or for however long your pregnancy lasts. And I do want to point out that Elie Mystal, who is the justice correspondent for The Nation, and you've probably seen him on MSNBC, and he's a friend of the show, he's been on the show a couple of few times,

Jessica Pieklo (9:54.274)

Mm-hmm.

Imani Gandy (10:4.449)

In his book, *Allow Me to Retort a Black Guy's Guide to the Constitution*, he repeatedly refers to an unwanted forced pregnancy as the state's interest, right? As the fetus that the person is carrying against their will is the state's interest. And I really like that phrasing because it highlights exactly what is happening, right? The whole idea behind Roe allowing states to start regulating abortion at a certain point is because

Jessica Pieklo (10:20.035)

Yes.

Imani Gandy (10:33.509)

the court found that at a certain point, the states had such an interest in potential life that they could override your decision, right? And so now states have this sort of ubiquitous interest in life such that they can ban abortion outright. And so what is happening is that

the state is forcing you to carry that interest to term, right? The fetus that you don't want to be carrying and the pregnancy that you want to terminate,

Jessica Pieklo (10:42.689)

Mm-hmm.

Imani Gandy (11:3.405)

is really the state's interests. So yeah, you're carrying around the state's interests. States are treating people like they're not fully autonomous people, but rather subjects whose decisions are subject to state approval. So sounds like ownership to me. And if it's not ownership, it's at least like some weird leasing program where the state leases your body for 10 months, then according to Amy Coney Barrett, you just give up the product of that pregnancy for abortion, no big deal, easy peasy.

Jessica Pieklo (11:33.046)

Mm-hmm. Mm-hmm. I mean, and you know, we're making gallows humor jokes, but again, I am here to remind our listeners that there are at least three state attorney generals right now that are arguing that they have a, the state has a sovereign interest in maintaining pregnant teens within their boundaries, among other things. And this question really also gets to the direction that advocates have been pushing the thought in this area in response. And I really want to call out Dr. Michelle Goodwin here, who's doing excellent work on the way that the 13th Amendment, speaking of ownership of the state over bodies, is a way to push back against all of this rhetoric. And this has come up quite a bit. But really, to take a solid clear-eyed look at to your point, dominion and ownership when it comes to personal autonomy. We also have other examples from common law in this. I mean, the idea of coverture is all about interest and dominion and ownership over the reproductive capacities of somebody and a bargain for exchange, if you will, for that, right?

You know, there is a dowry attached to that and that is, you know, the understanding that reproduction and commerce and capitalism are one in the same. And of course, the whole premise behind the push to end no fault divorce in conservative circles right now ties right into that because no fault divorce is premised on the idea of autonomy. There doesn't have to be a reason.

You don't have to be subject to abuse. You don't have to be subject to infidelity. You just can decide that you are done with this man and want to move on. That is an expression of autonomy, of self-ownership, right? That right now is into all of this. So, wow, we're coming in hot.

Imani Gandy (13:30.651)

Coming in hot with these great questions, love it.

Jessica Pieklo (13:33.300)

Okay, so our third question comes from a Bluesky user named Mary Cohn or Mari Cohn, and it is about same-sex marriage. If SCOTUS decides not to just reverse *Obergefell*, and that's the Supreme Court decision that recognized marriage equality, but ban same-sex marriage entirely, what's to stop states like hers of California from ignoring the Supreme Court and continuing to issue marriage license?

Imani Gandy (14:2.523)

I mean, the short answer is the supremacy clause, right? The supremacy clause, you know, SCOTUS decides that same-sex marriage is banned, then that's federal law. That's the rule of the land. And any state laws that conflict with that would be ostensibly struck down under the supremacy clause. Notably, the supremacy clause only seems to apply when it's about people who are trying to assert their own personal rights against the rights of the government, right? Because there were supremacy clause issues

Jessica Pieklo (14:11.746)

Mm-hmm.

Jessica Pieklo (14:29.634)

Yeah.

Imani Gandy (14:32.099)

in the EMTALA case, right? The emergency abortion cases. It just didn't seem to matter. It did not seem to matter that Idaho was passing laws that were contrary to what the federal law was. Eh, didn't seem to matter.

Jessica Pieklo (14:45.506)

Yeah. Yeah. And I mean, that is very true. And I think, you know, it's also important to remember that in the fight for marriage equality, that was twofold, right? We had *Obergefell*, but before we had *Obergefell*, we had *Windsor* and *Windsor* was the case that struck the federal defense of marriage act because listeners, maybe you are new and to the space and younger and didn't know that there was a federal definition of marriage. that included only a union between one man and one woman. And the steps to *Obergefell* included overturning *Windsor*. So, you know, I can see a couple scenarios.

Imani Gandy (15:23.141)

Wait, you just said overturning *Windsor* instead of overturning DOMA.

Jessica Pieklo (15:26.676)

Oh, and overturning DOMA, sorry. Thank you for that. So yeah, *Windsor* was about overturning that federal statute. And then once that federal statute went away, *Obergefell* was about upending the state laws. So procedurally, I could see some wiggle room absent a federal declaration like DOMA, right? The Supreme Court would have to say not only are we reversing *Obergefell*, but we are also mandating constitutionally a definition of marriage. That's a wild thing.

I also kind of want to see like what if states took a FAFO approach, right? Like what if they just fucked around and found out? Like, I do think we saw that from the other side in response to marriage equality. Remember Kim Davis, that bitch is still refusing, right? Like, so the conservative legal movement took a very strong position in opposition to *Obergefell* and

Imani Gandy (16:1.263)
Mm-hmm.

Imani Gandy (16:9.721)
was just about to say.

Imani Gandy (16:15.065)
Yeah, yeah.

Jessica Pieklo (16:24.556)
you know, goddess forbid something happen and we lose that decision and we lose those rights. I would like to see the progressive legal movement flex its muscle and try some things as well.

Imani Gandy (16:36.731)
But we also have to understand as we're sort of seeing play out in politics right now, progressive people, people on the left, people in the center left tend to be institutionalists. So they tend not to be the type of person that are going to flagrantly disavow the constitution and disavow the supremacy clause on principle. Whereas conservatives are more than willing to do that, right? As you said, Kim Davis is like, I don't give a shit about the supremacy clause. You're not getting a marriage license from me. Honestly, I

Jessica Pieklo (16:47.064)
Yeah.

Jessica Pieklo (16:57.386)
Mm-hmm.
Right.

Imani Gandy (17:6.819)
I would love to be wrong, but I honestly don't see Gavin Newsom, for example, making a California policy that you can still get married in this state, even though the federal government has said no, because they're institutionalists. They feel like they have to follow the rules. I would love for Democrats to learn that they actually don't, particularly when those rules are hurting people and what they are doing is fighting for personal liberty, fighting for individual rights, fighting for things like same-sex marriage.

Jessica Pieklo (17:8.803)

Mm-hmm.

Jessica Pieklo (17:35.744)

Yeah, I mean, it's not like ACT UP was waiting for the rules to get followed.

Imani Gandy (17:39.779)

Right, right. And so it may be down to us, to individuals, to urge our democratic leaders to stop obeying these laws that hurt people, that infringe on their liberty. Great question. Love that question.

Our fourth question comes from BlueSky user Jamie in PEI, and it's about funding cuts to USAID. And they're asking, Do the recent changes to USAID have any effect on abortion, repro, health orgs outside the United States?

The answer to that question is yes. First of all, just for those who don't know, and honestly, I wasn't completely aware of everything that USAID did, so I've been learning about this stuff as well as we go along, but the US Agency for International Development is responsible for distributing foreign aid.

Jessica Pieklo (18:17.706)

Yes.

Imani Gandy (18:34.593)

USAID funded programs address everything from food insecurity to climate change to human rights to the empowerment of women and girls across the globe. When it comes to health-related issues, USAID is globally active when it comes to HIV and AIDS, family planning, maternal and child health and survival among other areas. It's a very, very important program that provides relief from poverty to a lot of people.

And you may have heard in the news that people are already starting to lose their lives because of this funding freeze that Trump has imposed. And I also want to point out that Jessica Hamzelou writing for the MIT Technology Review has said that recent estimates suggest that more than 8,000 women will die from complications related to pregnancy and childbirth if this funding is not reinstated within the next 90 days. Right. Also,

Jessica Pieklo (19:29.793)

Mm-hmm.

Imani Gandy (19:32.001)

On January 24th, Trump reinstated the global gag rule. And that's a policy that requires non-governmental organizations, NGOs that receive United States health funding, to agree that they're not going to offer any abortion counseling, any abortion care, any family planning counseling or family planning care. And so this move dropped a whole host of organizations that require funding to perform their work. And Jessica Hamzelou points out,

that MSI Reproductive Choices, which is an organization that provides support for reproductive healthcare in 36 countries, they lost \$14 million in funding as a result of this funding freeze, right? And as a result, over 2 million women and girls who would have received contraceptive services with that money are no longer able to do so. And so, you know, it's just, it's hard to overstate

Jessica Pieklo (20:24.877)
Mm-hmm.

Imani Gandy (20:29.829)
how problematic this is, right? I mean, apparently the funding budget for 2025 for USAID was 42.8 billion. That's \$42.8 billion that are not going to cover humanitarian aid, sanitation, gender equality, family planning, economic growth. It's a very, very important program that lifts people out of poverty. And, you know, Trump is just like, funding freeze. It's bad. It's bad.

Jessica Pieklo (20:38.924)
Yeah.

Jessica Pieklo (20:57.142)
It's so bad. you know, when I had the great fortune to go on that reporting trip to Ghana eons ago, lifetimes ago, I got to see firsthand—and that was not a USAID funded trip, but we were in partner with folks at USAID who was doing work in Ghana—got to see firsthand some of the programs that they were doing. What was that? That was working with women who had recently birthed on breastfeeding initiatives to stem the transmission of HIV because breast milk has got natural antibodies to it. And most of the transmission at the time was coming through heterosexual contact in families. women, postpartum women were at extreme risk.

It was about getting folks generalized testing in the one teaching hospital in Accra that some folks would spend an entire day walking to just to get service and then walk back. So in addition to the services, it's also an exercise of soft power internationally because one of the things that blew me away in that trip is I landed, and I've told you this before, It was Chinese influence and investment everywhere. And it was clear that China understood the importance of this region and what stabilizing it would mean for its own interest. You know, I mean, we just punched ourselves in the gut in terms of our ability to continue to offer a stabilizing influence in here. I'm not here to like do an imperialism colonial. It's all bad, but you know, it's about to get worse. Okay. Wow.

Imani Gandy (22:39.333)
Mm-hmm.

Jessica Pieklo (22:46.316)

Heavy shit, but thank you for that question, because it's a super important one and the international stuff always trickles back down here as well.

So our final question for this episode, and we have a bunch more that we are going to get into on social and stuff, but we don't want to keep you here folks for like the next four hours. But our final question comes from bluesky user repro-truth, and it is about that MAHA executive order. OK, and that was fun. That last podcast we did so.

Imani Gandy (23:15.109)

Maha meaning "Make America Healthy Again."

Jessica Pieklo (23:17.374)

Oh, the Make America Healthy Again. Thank you. Thank you. So their question: I have a question related to your last podcast. In addition to everything you pointed out, do you think the attack on mental health medication, etc. is also motivated by a desire to get more bodies into the military via hampering diagnosis and treatment?

Imani Gandy (23:38.683)

Well, the executive order explicitly says so with respect to getting more bodies into the military, right? After carrying on about how kids in this country are ADHD, addled fat kids with liver disease, essentially, the executive order goes on to say, quote, this poses a dire threat to the American people and our way of life. 77 % of young adults do not qualify for the military based in large part on their health scores, right? So that's right there kind of giving away the game. Like, do we care about childhood disease, chronic disease? Or are we just trying to make sure that they can pass their health test so we can ship them off to foreign countries to fight in wars?

Jessica Pieklo (24:20.394)

Exactly. And I hadn't really thought of it as a way to hamper diagnosis, but I think that's a really smart framing of it too. And I can definitely see that being a thing given how weaponized psychiatry has been. I mean, even with RFK's entire approach, he's just bought in hook line and sinker to that eugenics through line there. I mean, you it used to be that if you were out, if you were an out member of the LGBTQ committee, That was considered a mental illness that could disqualify you from entry into the United States. And that's not ancient history, folks. That was in 1990, by the way. So the idea of using disorders and illness in a weaponized way as a funnel for the military industrial complex, chilling and likely.

Imani Gandy (25:10.981)

Yeah, yeah. I just want to point out that you said if you're out in the LGBT committee, like I love the idea that there's a committee and like if you're out, you get to join the LGBT committee. Like I joined the committee a year ago and I feel like, like I'm still waiting for my toaster and I'm waiting for my placard, but it's very exciting stuff.

Jessica Pieklo (25:27.351)

I don't know what's going on in my brain today. I immediately went to like, I'm the bisexual pro tem then.

Imani Gandy (25:39.820)

Amazing.

Jessica Pieklo (25:42.595)

I need a vacation, oh my god.

Imani Gandy (25:45.051)

But I really do like this idea that, you know, leaving mental health issues untreated in order to up the sort of health scores of people could be a problem. And certainly RFK Jr. is in a position to make some of those things happen. And that's really frightening. Whew. Well, that was fun. I actually really enjoyed that.

Jessica Pieklo (26:8.076)

No bueno. It was though! Yes!

Imani Gandy (26:11.579)

That was really fun. We have a lot of questions that we didn't get to hear, but we're going to be answering some of them on social. So, you know, if you have a question that we didn't get to keep them coming and keep an eye on our social channels on Instagram and on TikTok, because we're going to get to some of those other questions because they're important questions. They are smart questions as we knew they would be because come on, you all been law nerds for as long as you have been. Of course, you're asking us smart questions.

Jessica Pieklo (26:16.354)

Mm-hmm.

Imani Gandy (26:38.343)

Um, but in the meantime, if you want to chat with Jess or me about any of this stuff, you can find us both on Bluesky. AngryBlackLady is me. Jess is Hegemommy. You should follow again, Rewire News Group on Instagram, TikTok, Threads. Um, and I don't know, I guess that's it. What are we going to do Jess?

Jessica Pieklo (27:2.326)

We're going to see you the tubes, folks.

Imani Gandy (27:4.155)

We're going to see you on the tubes, folks.