

[COLD OPEN]

Imani Gandy

We could have new listeners who don't know about noted dildo hoarder Anthony Comstock. Listen, Anthony Comstock loved dildos, but he also hated dildos. The man was conflicted, but make no mistake, the Comstock Act could be used to ban nailing dildos to your friends.

Jessica Pieklo

Dildo hoarder.

Jessica Pieklo

Look, no judgment here, but why would I want to mail dildos to my friends?

Imani Gandy

You might not want to, but people wanna buy dildos, and in order to buy dildos, sometimes you have to get them mailed to you.

Jessica Pieklo

Okay, okay. Can we just please stop saying dildos and tell the listeners what the Comstock Act does?

.....

Imani Gandy

Hello, fellow law nerds. Welcome to another episode of Boom! Lawyered, a Rewire News Group podcast hosted by the legal journalism team that didn't vote for Elon Musk to be president. I'm Rewire News Group's Editor-at-Large, Imani Gandy.

Jessica Pieklo

And I'm Jess Pieklo, Rewire News Group's Executive Editor. Rewire News Group is the one and only home for expert repo journalism that inspires you to keep calling Democrats. And the Boom! Lawyered podcast is part of that mission. So a big thanks to our subscribers and welcome to our new listeners.

Imani Gandy

Jess, we gotta talk about Pam Bondi.

Jessica Pieklo

Thanks, no, I'd really rather not.

Imani Gandy

Well, she's attorney general now. She's Pam Bondi, attorney general. She's attorney general Pam Bondi.

Jess Pieklo
Imani, we get it.

Imani Gandy
Clarence Thomas swore her in last Wednesday. That's a week ago. And in her first week, she's already taken a wrecking ball to the rule of law. She's already said that she's going to open criminal investigations into private companies that refuse to implement Trump's anti-DEI order, which I don't even know what sort of criminal charges she could possibly bring.

Jessica Pieklo
Ooh, ooh, ooh. I got it. Probably Rico charges. And that's because, you know, any company that hires black folks is part of the woke mob. Amani and Rico is all about mob busting.

Imani Gandy
Mmm, yeah.

Jessica Pieklo
Also, you know, RICO—it sounds splashy and sexy and just the kind of thing a broad like Bondi would want to lead with.

Imani Gandy
A broad like Bondi with nice walking stems. Look at the great gams on that broad Bondi. Also, I would like to point out that the reason that RICO sounds splashy and sexy is because we're both Gen X and I can't stop thinking of Rico Suave. That ridiculous song from the 90s.

Jessica Pieklo
Suave. That was amazing.

Imani Gandy
But do you want to know what else Attorney General Pam Bondi has done already? She revived the federal death penalty, which considering she was the attorney general in Florida for eight years between 2011 and 2019, that's not surprising because they love the death penalty in Florida.

Jessica Pieklo
Yeah, that's pretty bad. And also par for the course for someone who considers herself quote unquote pro-life.

Imani Gandy
She also established a quote, weaponization working group. The purpose of which is to review alleged political bias in past DOJ actions.

Jessica Pieklo

I'm sorry, I'm rubbing my temples. Can we go through this? What is a weaponization working group, Imani?

Imani Gandy

Well, they're going to review all the stuff that the Biden administration did, including prosecuting Trump for election interference so that she can make sure there was no political bias at play. She's also gonna make sure that nobody's being too mean to anti-abortion advocates. She thinks that the Biden administration abused the FACE Act and targeted quote unquote, pro-life activists. She actually said in her Senate confirmation hearing that she was committed to enforcing the FACE Act, the Freedom of Access to Clinic Entrances Act, emphasizing that it protects both abortion clinics and pregnancy centers.

Jessica Pieklo

Right, crisis pregnancy centers. The fake clinics that lie to pregnant people, right?

Imani Gandy

Yep, that's the same one.

Jessica Pieklo

Right. So basically it sounds like she's turning the DOJ into a tool for prosecuting Trump's political enemies while at the same time setting in motion the policies that Project 2025 demands.

Imani Gandy

And here's the really bad news. We're gonna have a Comstock Act problem.

Jessica Pieklo

Well, no shit, Sherlock.

I mean, truly, Sam Alito has a bug up his ass about the Comstock Act and it's coming, right? Remember how in oral arguments for the mifepristone case last year, Alliance for Hippocratic Medicine v. FDA, Sam Alito suggested that the FDA should have considered the Comstock Act when it was approving protocol changes in 2016 and 2021.

Imani Gandy

He sure did. And I recall Solicitor General Prelogar being like, "really bitch?" during oral arguments in the way that she does, that's very nice and professional. But then she pointed out that all the FDA was supposed to be doing when it made those protocol changes, which allowed pills to be sent through the mail and did away with the in-person dispensing requirements. All that they were required to do was consider safety and efficacy concerns.

Jessica Pieklo

Yes.

Right, because it's not the FDA's responsibility to enforce the law. It's the goddamn Department of Justice's job to do that.

Imani Gandy

Right, and you and I lost our minds because it was obvious that Comstock was going to be a problem if Trump was elected and Democrats didn't move on it until months later, months after Sam Alito was playing footsies with the Comstock Act. It took a month.

Jessica Pieklo

Right. He did.

Jessica Pieklo

Months, months, we can't stress that enough. It took them months to even say anything about it. That's months they could have spent holding press conferences and explaining to people that Comstock would be a national abortion ban that wouldn't have to pass through Congress.

Imani Gandy

You know, it took them months because partly I think they didn't believe that Trump would actually end up being the Republican nominee, much less the candidate, much less the new president, right? Remember we kept saying that all it would take is an attorney general willing to enforce a statute that hadn't been enforced really in over a century. And I feel like Democrats were just kind of like, eh, it's not going to happen. But what if I told you based on a meeting that she had with Louisiana governor, Jeff Landry, that Pam Bondi is that attorney general who would be willing to enforce this zombie statute.

Jessica Pieklo

Well, I mean, I'd be shocked, truly and thoroughly shocked.

Imani Gandy

I feel like you're being sarcastic.

Jessica Pieklo

Yes, I'm being sarcastic. Of course I'm being sarcastic. She said that she's ready to work with Governor Landry and law enforcement officials to bring or to figure out a way to keep those darn abortion doctors in New York from sending pills to pregnant people in Louisiana. And I'm here to say, the easiest way to do that would be to begin enforcing the Comstock Act.

Imani Gandy

Well, it certainly would alleviate the pressure on the courts to figure out how the shield law states are going to maintain comedy, that's C-O-M-I-T-Y, not C-O-M-E-D-Y, with abortion ban states, right? Like states are supposed to work together and there's this brewing fight

between shield states like New York and abortion ban states like Louisiana and Texas. And that's a big fight that's coming.

Jessica Pieklo

Well, funny you should mention that, Pam Bondi—

Imani Gandy

Don't you mean attorney general? Pam Bondi?

Jessica Pieklo

My God, I swear, Imani, I will fight you in the streets if we do this for the entirety of her tenure. Attorney General Pam Bondi was in Louisiana to review security for the Super Bowl. But do know what else happened recently in Louisiana?

Imani Gandy

I think I know this one. They reclassified mife and miso as controlled substances?

Jessica Pieklo

Yeah, they sure did. They did that last fall. even more recently, a couple of weeks ago, fact, Louisiana indicted an abortion doctor in New York for allegedly prescribing abortion pills online to a pregnant minor. Dr. Margaret Carpenter and her company Nightingale Medical were indicted, as was the minor's mother. They were charged with criminal abortion by means of abortion inducing drugs, which is a felony in Louisiana.

This indictment, along with the civil lawsuit against Dr. Carpenter that our friend, not really, Ken Paxton, that Ken Paxton in Texas filed is going to test the strength of New York's shield law, which provides protections to New York doctors who prescribe abortion pills to patients in states where abortion is outlawed.

Imani Gandy

Yeah.

But like I said, states like Louisiana and Texas won't have to bother indicting or suing doctors in abortion-friendly states who prescribe pills to patients in abortion-hostile states if the one and only Attorney General, Bondi, enforces the Comstock Act.

Jessica Pieklo

I'm glad you caught that I was waiting because what's good for the goose is good for the Gandy, right?

Imani Gandy

Hey man, hey man. You know what? I deserve that and I'll take it. I'll take it. Let's talk about Attorney General Pam Bondi. During her meet and greet with Governor Landry, District Attorney Tony Clayton, who's a Black man by the way, and I just want to say I am very

disappointed in you Tony Clayton, okay? He's a Democrat and a Black man and he's all in on prosecuting abortion pill providers. But he specifically asked Pam Bondi to seek nationwide consistency in laws governing abortion pill shipments. And this is according to reporting from NOLA.com. Tony Clayton is the district attorney responsible for getting the charges together so the grand jury could indict Dr. Carpenter and the mother of the pregnant minor.

Jessica Pieklo

Hold up. The DA wants national, nationwide consistency when it comes to shipping abortion pills.

Imani Gandy

Yep, yep. And Pam Bondi, Attorney General Pam Bondi, reportedly said, I would like to work with you. And you know what that sounds like to me? Sure does, sure does.

Jessica Pieklo

The Comstock Act.

We have talked so much about the Comstock Act, but I bet our listeners could use a refresher.

Imani Gandy

And we could have new listeners who don't know about noted dildo hoarder Anthony Comstock and the 19th century anti-obscenity law, which could be used in the 21st century to ban the mailing of anything Congress used as obscene. Listen, the man was conflicted. He loved him some dildos, but also he hated him some dildos. And when he confiscated people's dildos, he kept those dildos. He was a complicated man. But make no mistake, the Comstock Act—

Jessica Pieklo

Dildo hoarder.

Imani Gandy

could be used to ban mailing dildos to your friends.

Jessica Pieklo

Okay, look, no judgment here, but why would I want to mail dildos to my friends?

Imani Gandy

Listen, you might not want to, but there are people who want to buy dildos. And in order to buy dildos, sometimes you have to get them mailed to you.

Jessica Pieklo

Okay, can we just please stop saying dildos and tell the listeners what the Comstock Act actually does?

Imani Gandy

Listen, I'm just trying to speak truth to dildo here. I mean, he would literally confiscate people's sex toys and then he would hoard them. I'm not making that up.

Jessica Pieklo

No, you're not. She's not.

Imani Gandy

But anyway, the Comstock Act made it a federal offense to transport by mail or other common carriers, which today would include UPS and FedEx and even, I don't know, bike messengers. It made it a federal offense to transport by mail obscene materials like pornography, contraceptives, information about contraceptives, and any article, instrument, substance, device, drug, medicine, or other thing that can be used to produce an abortion. This is a law that was passed in 1873, 18 dickety two.

Jessica Pieklo

my God.

Imani Gandy

when we all wore onions on our belts, as was the style at the time. It was during the Ulysses S. Grant administration. Now, notably, Congress repealed the provisions of the Comstock Act that made it a crime to mail contraceptives or information about contraceptives. That happened in 1971. But abortion and pornography are still governed by the Comstock Act, even though it's basically a zombie dormant statute.

But hey, right? At least contraceptives will be protected since those provisions were repealed in 1971, right?

Jessica Pieklo

Not necessarily. Remember, this is a court that allowed a nonprofit craft store to be exempt from providing contraceptive coverage in the insurance plans offered to their employees. Do you remember a little case called *Burwell versus Hobby Lobby*, Imani?

Imani Gandy

Oy.

Imani Gandy

I sure do. I really do. That was like our first big case together. Low those many years ago.

Jessica Pieklo

It was. I may have twerked in a hotel lobby in DC.

Imani Gandy

You definitely twerked in the hotel lobby in DC and our Black waitress just kind of looked at you like, I'll allow it.

Imani Gandy

But I also remember how the Supreme Court let junk science run wild in the Hobby Lobby case. Part of the reason the Supreme Court let Hobby Lobby exempt itself from the Obama-era contraception mandate is that they had, quote, sincerely held beliefs, sincerely held religious beliefs that four contraceptives, Plan B, Ella, and two forms of IUDs might prevent an already fertilized egg from developing any further by inhibiting its attachment to the uterus, right? Those sincerely held beliefs that these particular contraceptives prevented a fertilized egg from attaching to the uterus makes them abortifacients. So if those four contraceptives become reclassified as abortion, then those contraceptives could ostensibly be covered by Comstock, not as contraceptives, but as abortion-inducing drugs.

Jessica Pieklo

Mm-hmm.

Jessica Pieklo

Exactly. In Hobby Lobby, Sam Alito was basically setting the stage for anti-abortion advocates to redesignate contraceptives as abortifacients, or to at least have the courts respect that anti-scientific viewpoint and exempt them from generally applicable laws like the one that said, hey, employers, you have to provide insurance coverage for birth control to your employees with a couple of exceptions for religious employers.

Alito, you may remember, also dropped a footnote in Hobby Lobby that says, owners of the companies involved in these cases and others who believe that life begins at conception regard these four methods as causing abortions. But federal regulations, which define pregnancy as beginning at implantation, do not so classify them. So what he's saying is, sure, federal regs don't define pregnancy as beginning at implantation, but these religious folks think that preventing implantation is the same thing as abortion, and really, who are we to disagree?

Imani Gandy

So forget about science. Contraception is just now in the eyes of the beholder. So if Pam Bondi, excuse me, Attorney General Pam Bondi decides that all contraception is the same as abortion and can find some ding-dongs at, say, the Charlotte Lozier Institute to back that up, then what is contraception becomes a legal question based on religion and not science. And that's bad. Do we want the research arm of the Susan B. Anthony list, and that's what the Charlotte Lozier Institute is, do we want them to be determining what is or isn't contraception so that the Comstock Act can kick in the front door like the goddamn Kool-Aid man?

Jessica Pieklo

That is quite an image. mean, but but you are exactly right. Comstock is like the hungry hippo chomping up all of our rights related to contraception and abortion. And let's not forget that people like Ted Cruz have said that hormonal birth control is an abortion inducing drug. Brett Kavanaugh even said it at his confirmation hearing.

Imani Gandy

Yeah, I remember, I remember. But my question for you is, why are we even dealing with this 150-year-old statute, right? Democrats campaigned on codifying Roe, but this statute has been a sword of Damocles hanging over abortion rights' head for over a year now. And everybody knew that enforcing the Comstock Act would essentially be a de facto abortion ban. So why wasn't it repealed?

Jessica Pieklo

Well, Senator Tina Smith, Democrat from Minnesota, introduced a bill to repeal the Comstock Act in June last year, but it wasn't a full repeal. A source told our senior multiplatform reporter Garnet Henderson that the broad obscenity language remains essential to its prosecution of child sexual abuse material.

Imani Gandy

But surely the distribution of child sexual abuse material is a crime outside of the Comstock Act.

Jessica Pieklo

Well, yes it is, Imani, and the DOJ declined to give Garnet an example of how, because it's a crime outside of the Comstock Act, Comstock is necessary to enforce.

Imani Gandy

So if Pam Bondi, Attorney General Pam Bondi, starts enforcing the Comstock Act, what happens?

Jessica Pieklo

Like you said, would be a de facto total abortion ban. But Sam Alito would probably get some butterflies in his stomach. I bet Martha Ann has a flag for this very occasion.

Imani Gandy

Mm-hmm.

She probably does. She can fly it at her beach home across from those gays who keep flying their rainbow flags and how she can't stand that. Gosh, that woman is a piece of work.

So I wonder which will happen first. Is Pam Bondi, Attorney General Pam Bondi going to start prosecuting people who ship abortion supplies under the Comstock Act? Or is

whatever jamoke that ends up being the head of the FDA just going to unilaterally deauthorize mifepristone, Presto-Chanjo, no big deal.

Jessica Pieklo

Yes. That's fine. Yeah.

Jessica Pieklo

Yeah, I mean, it sounds like dealer's choice to whatever President Elon Musk has to say, right? I mean, that's really either our options. And we also know that RFK Jr. as head of HHS is very concerned about abortion pills in the water as an environmental hazard. And this is something that the anti-abortion, anti-choice movement has been advocating on junk science forever. And so we're going to get these petitions. Like, it's just a mess.

But before we shut this shit show down, I wanted to go back to what that Louisiana DA said about wanting nationwide consistency, because this is a thorn in my side. It's just a gussied up way of saying ban, right? Conservatives have been claiming that they want to send the issue of abortion back to the states.

Imani Gandy

Mm-hmm. Yeah.

Jessica Pieklo

Hey, what do you know? Some states aren't cooperating with that Christian nationalist agenda of eradicating abortion. States like New York are shielding doctors from prosecution at the hands of states like Louisiana. So when a DA who is prosecuting a New York doctor says he wants consistency in laws governing shipping abortion pills, what he's saying is, Attorney General Pam Bondi, please enforce the Comstock Act so I don't have to try and get through Kathy Hochul, who has said she's not turning over Dr. Carpenter, to have a shot at prosecuting that doctor here in Louisiana. And by the way, I want to point out that Dr. Carpenter is ready for this fight. She formed her medical group in anticipation of these kinds of fights. She's basically volunteering to be the test case for shield laws.

Imani Gandy

You know, they love playing semantic games, right? Do you remember when states like Missouri were trying to argue that their gestational abortion bans weren't bans but deadlines?

Jessica Pieklo

They do.

Jessica Pieklo

I'd like an extension, please. Where do I file for the extension?

Imani Gandy

You gotta file with the goddamn, like HHS for an abortion extension, right? I mean, they were literally arguing, no, no, no, no, no, we're not banning abortion at 12 weeks. We're just saying that you have 12 weeks to get an abortion. It's a deadline. It's not a ban. I mean, these are the games that they like to play, the word games that they like to play. A national standard would ban anything that doesn't meet the national standard.

Jessica Pieklo
Right.

Imani Gandy
Right? And they're afraid to say ban because we were promised that this issue was going to be sent back to the states. Right? Abortion was going to be decided by the states. So instead of saying ban, because they promised they weren't going to ban shit, they say national standards. It sounds better, but it's the same thing.

Jessica Pieklo
It really is. It's the same thing.

Imani Gandy
Same goddamn thing. And on that note, if you would like to talk to us about national standards or nationwide consistency or people who like to hoard dildos, you can find Jess and me on Blue Sky. Please don't talk to us about dildos. We don't want to talk about dildos, but we will talk to you about the Comstock Act. We are both on Blue Sky. I'm angry black lady. She's hegemoommy.bsky.social. You can and you should follow rewire news groups and all the things.

on Blue Sky, on threads, on Instagram, on TikTok for as long as it lasts. You might find our links somewhere out there on Reddit. Go to rewirednewsgroup.com and read our reporting. It's a good time. It's a great place to be to get information about repro rights. And we're always gonna try to inform you and not leave you in a place of despair. Because that's what we're all about here at the Boom! Lawyered Podcast. So on that note, Jess, what are we gonna do?

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

Imani Gandy
We're gonna talk to you about dildos!