

[COLD OPEN]

Jessica Pieklo

I'm hyperfixating.

Imani

You seem really sweaty.

Jessica Pieklo

I am really sweaty. Do you want eugenics, Imani? Because this is how you get eugenics.

Imani

Wait, how do you get eugenics?

Jessica Pieklo

By rolling over when 17 state attorneys general say they want to roll back discrimination protections for people with disabilities? Eugenics, Imani! Eugenics!

Imani

Yeah, that sounds bad.

We don't want eugenics. Eugenics is bad.

[SHOW]

Hello, fellow law nerds. Welcome to another episode of Boom! Lawyered, a Rewire News Group podcast hosted by the legal journalism team that stands against eugenics wholeheartedly. 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 repro journalism that inspires you to join us in Washington, DC on April 3rd for a live show. And the Boom! Lawyered podcast is part of that mission. So a big thanks to our subscribers and welcome to our new listeners.

Imani, I'm hyperfixating.

Imani

Yeah. Yeah, I know. I know you're in a bit of a lather. You're in a bit of a lather. So why don't we talk to me about you, Jess? How are we doing? Not good?

Jessica Pieklo

Not good, not good. Okay, we gotta talk about section 504 of the Rehabilitation Act and how conservative attempts to weaken it or just eliminate it is straight up eugenics.

Imani

Okay, what is section 504 of the Rehabilitation Act and why are we gonna talk about it?

Jessica Pieklo

Okay, hold on. You're right. **got a couple**, I'll pull myself together here.

Imani

Yeah, yeah, reign it in, reign it in.

Jessica Pieklo

Section 504 of the Rehab Act basically extended the protections of the Civil Rights Act to people with disabilities. It says that individuals with disabilities, quote, should not be denied the benefit of or be subjected to discrimination under any program or activity receiving federal financial assistance.

Imani

Yeah, that's, I messed that up.

Imani

Section 504 of the Rehabilitation Act, which would serve as a model for the Americans with Disabilities Act 13 years later, and the ADA is super important when it comes to disability rights. Section 504 basically said that everything touched by the United States government needed to be fully accessible to people with disabilities. Schools, universities, public offices, transit systems, hospitals.

Jessica Pieklo

Yes.

Jessica Pieklo

Yep. And naturally a bunch of conservative state attorney generals have filed a lawsuit trying to either weaken or eliminate section 504. And the people need to know that this is how you get eugenics. Do you want eugenics? Because this is how you get it, Imani. They claim it's about budgets. You know, maybe it's just too expensive to provide accommodations to people with disabilities. Or, you know, they claim it's about the regulations being too expansive because the Biden administration updated section 504 to bolster protections for people with disabilities, which included protections for people with gender dysphoria.

Imani

Ah, there it is. There it is. They're obsessed with trans people. Trans people are like 1 % of the population and it seems as if the entire United States government has decided to target this tiny group of people who are just trying to live their lives, right? I'm gonna need conservatives to get over their obsession with trans people and go touch some goddamn grass. Okay.

Jessica Pieklo

Yup.

Jessica Pieklo

Mm-hmm.

Jessica Pieklo

For real.

Imani

So this case that you're talking about, that the 17 state attorneys general, you know, I love to say attorneys general. So the case is called Texas v. Becerra. It's another Texas v. Becerra case. There's so many Texas v. Becerra about a wide range of things, ranging from birth control to family planning **to like, mean, knock it the fuck off, man**. Texas v. Becerra, this version is a lawsuit that 17 states filed back in September.

Jessica Pieklo

Mm-hmm.

Jessica Pieklo

For real.

Imani

challenging the constitutionality of Section 504 of the Rehabilitation Act. These attorneys general are claiming that the litigation was triggered by disagreements with recent regulatory updates to Section 504, specifically, as you pointed out, protections for gender dysphoria. But if you read the complaint, their disagreement extends far beyond so-called administrative quibbles.

Jessica Pieklo

Oh yeah, this is my shocked face on that, right? Rather than merely contesting specific provisions, these states have launched a comprehensive assault on section 504 itself. In the state's demand for relief, which is the section of the complaint where the plaintiff tells the court, hey man, this is what I want you to do, right? The states have asked the court to issue a permanent injunction blocking the government from enforcing the final rule.

The prayer for relief also asks that the court declare section 504 unconstitutional. That's no administrative quibble.

Imani

Jess, they didn't really mean to ask the court to declare section 504 unconstitutional as a whole. Because after word got out about the comprehensive complaint—in which they asked the court to declare section 504 unconstitutional as a whole—these attorneys general were basically set back on their heels by the response from the public. So they filed a status report a couple of weeks ago in the litigation and status reports are...

Jessica Pieklo

Mm-hmm.

Imani

...documents that both parties file in litigation. They file it with the court to just basically say, this is our briefing schedule. This is our discovery schedule. This is basically the outline of what's gonna happen and when in this case, right? These AGs file the status report saying, whoa, whoa, whoa, hey, whoa, whoa, whoa, whoa, whoa. We're not trying to declare all of section 504 unconstitutional. We're just really trying to stick it to trans people.

But given the proliferation of attacks on people with disabilities writ large, it's pretty hard to take them at their word, right? First of all, we shouldn't be trying to stick it to trans people at all, right? Second of all, they haven't amended their complaint to remove the prayer for relief that section 504 be declared unconstitutional as a whole, right?

Okay, so listen to this. This is what they wrote in their status report. Their status report, which is not like,

Jessica Pieklo

Mm-hmm.

Right.

Jessica Pieklo

Right.

Imani

It's not like an affidavit or a declaration that's signed under penalty of perjury. It's just basically like, hey, Judge so-and-so, this is what we're planning to do in this litigation. Here's what they said: Defendants continue to evaluate their position in light of the president's recent executive order, which provides that agencies shall not, quote, promote or otherwise inculcate gender ideology. Later in the Joint Status Report, these AGs say, quote, plaintiffs clarify that they have never and do not plan to move this court to declare or enjoin section 504 of the Rehabilitation Act 29 US Code section 794 as unconstitutional on its face. Plaintiffs have not sought and do not seek to enjoin the disbursement of funds from the department on the basis that the statute is unconstitutional. So you know Jess, I feel like maybe you're being a little harsh on these attorneys general.

They're representing to the court that they're not going after disability protections writ large. They're just trying to stick it to trans people. But here's the question, why the fuck would we believe them?

Jessica Pieklo

But we shouldn't. We shouldn't. Exactly. They've tipped their hand because although they're claiming that this is really about just making sure gender dysphoria isn't protected, their lawsuit asks the court to declare the entire statute unconstitutional.

So respectfully to the state attorneys general, amend your complaint, motherfuckers. Then I'll believe you, right? They can amend their complaint and take out the part where they

want the court to declare the whole thing constitutional. Then we can believe them. And as you and I both know, a status report in which the state attorneys general pinky swear that they're only trying to stick it to trans people and not everyone with disabilities is A) morally abhorrent because as you pointed out, shouldn't be trying to do that anyway. Like, dude, nobody needs to stick it to trans people no matter what. And B) it means nothing. It means fuck all because what is the status report? It's an FYI, right? Until they amend their complaint, until they do something under oath to remove the demand that the court declare section 504 unconstitutional, we should be very wary. And we've got Elon Musk DOGEing everywhere. None of this matters right now unless they're going to tell the court under threat of perjury that this is going away.

Imani

Yeah, I mean, their status report is ridiculous, They say, nothing in plaintiff's complaint seeks to restrain the disbursement of federal funds from the department on the basis that the statute is unconstitutional or to otherwise prevent the federal government from allocating or applying the provisions of the Rehabilitation Act to any recipients of such funds.

Jessica Pieklo

Except for the fact that that is exactly what they're asking for when they ask the court to declare Section 504 unconstitutional, Imani. I'm going to lose it. I am so sweaty because this is maddening. It's more of the same targeting of trans people in order to train the ire of a country on a small group of folks who, as you said, are just trying to live. Meanwhile, we've got the South African jamoke literally looting the government.

Imani

Jess, you seem really sweaty.

Jessica Pieklo

...like installing his AI bots everywhere and I don't know, it's just bad.

Imani

It's really bad, but let's backtrack for a moment and fill our listeners in so they can rage with us. I know, Jess, I know.

Jessica Pieklo

It's eugenics, Imani. I mean, really, it's part of the plan to eliminate quote unquote undesirable characteristics from the populace. And don't even get me started on Buck versus Bell, the Supreme Court case that actually greenlights all of this and is probably gonna be one of the precedents the Roberts Court keeps intact **because it serves**.

Imani

I know. I know Jess.

Imani

Yeah, yeah, that was the case where Oliver Wendell Holmes said something like, one generation of imbeciles is enough. Yeah, yeah, yeah. And honestly, you're preaching to the choir here. It is eugenics, it is bad, and Buck v. Bell has never been overturned, so technically it is still good law, right? And that's why Section 504 of the Rehabilitation Act was so revolutionary, precisely because it rejected the premise of eugenics and essentially extended the 1964 Civil Rights Act—

Jessica Pieklo

I mean, yeah.

Jessica Pieklo

Mm-hmm.

Imani

—to people with disabilities. And the way it came about is a good blueprint for the ways in which citizen action can translate into material gains for vulnerable people, right? Because



the sort of zeitgeist of the 504 protests isn't well known and it is amazing. I certainly wasn't aware of how hard people with disabilities fought to get section 504 signed, right? Because it's not something that we talk about a lot.

Jessica Pieklo

Oh yes.

Jessica Pieklo

Mm-hmm. Right. Oh, I love it. It means talking about the 70s greatest generation.

Imani

So we're gonna talk about it right now.

Imani

April 5th, 1977. That's my 1970s background music.

Jessica Pieklo

I was like two and a half.

I was about to turn three years old.

Imani

I was, you were about to turn three years old. I was three, yeah, yeah, I was gonna turn three years old about three, in a couple of months, because we're a couple of months apart.

Okay, April 5th, 1977, dozens of disabled people entered San Francisco's Office of Health, Education and Welfare, and they occupied it for 25 days in what remains the longest occupation of a federal building in US history. The people who occupied the building were from diverse, racial and social backgrounds, and they had a wide range of disabilities and the way they all worked together to use their abilities to help other people with disabilities

was actually very remarkable. Here's how the Longmore Institute on Disability at San Francisco State University described it. Quote, they came on crutches using canes and in wheelchairs. Some used American Sign Language, others augmented communication devices. Many others contributed simply by showing up to offer support.

Jessica Pieklo

Mm-hmm.

Imani

Most arrived with little more than the clothes on their backs, guided by a few vague ideas about why they were there. Yet, enough of them had political smarts, experience with building coalitions, tenacity, and fire in their bellies to confront the government of a major world power about their civil rights and win.

Jessica Pieklo

Thank you for including this part in today's show because it's going to be what gets me down off this ledge. I love this discussion because so many people don't know the history of disability rights in this country. And I feel kind of grateful because as you know, Imani, I was raised by a disability rights advocate. My dad did ADA disability litigation, Olmstead settlements.

The entire arc of my childhood was informed by the coalition building that happened in the late seventies within the disability and racial justice communities. And wow, could we take a page of that today? And it wasn't just San Francisco, right? In their effort to get Nixon to sign the Rehab Act, hundreds of protesters around the country occupied several federal buildings.

Most were starved out within a day or two, but what set San Francisco apart is that they were able to maintain the occupation for a month. And that's thanks to really solid organizing. The resourcefulness of the organizers combined with months of cementing relationships with local community organizations resulted in a coalition of supporters that included the Black Panthers, the gay communities Butterfly Brigade, labor unions, the Glide Memorial Church, Safeway and McDonald's along with sympathetic local and national politicians.

Imani

Black Panthers and McDonald's. Two great tastes that taste great together.

Jessica Pieklo

Listen, when you're doing sit-ins at the federal government, why wouldn't you want to be eating a McRib at the same time? Or a McDLT?

Imani

Oh my God, I forgot about McDLTs. Did they have McDLTs in the 70s where the hot side stays hot and the cold side stays cold? I feel like that was like an 80s creation. But either way, your point is valid. Very, very valid. Please continue. I'm loving this.

Jessica Pieklo

I mean, the long and the short of it is that the 504 occupiers held on at the San Francisco offices of Department of Health, Education and Welfare for nearly a month, generating national attention and ultimately helping to gain the support necessary for signing Section 504.

Imani

And the circumstances surrounding whether or not these regulations would be signed were kind of harrowing because basically Dick Nixon was being a bit of a dick about it. He really was being a bit of a dick about, I mean, he vetoed section 504 at first, which at the time led critics, even in his own party, to call it his most inhumane veto, particularly because his complaint at the time was that he was over budget and there was just no money to ensure that people with disabilities weren't being discriminated against. And you have to remember that this was like right around when a lot of veterans were coming back from Vietnam. They were coming back from Vietnam with disabilities. And here was this guy, he was saying, I don't have money to help y'all. I'm gonna keep spending tons of money dropping bombs in Cambodia for no fucking reason, right? But then again, it seems to be

always about budgets when it comes to people with disabilities, as you mentioned earlier, right?

Jessica Pieklo

Mm-hmm.

Imani

When we talk about the ADA, we talk about reasonable accommodations. Part of the reasonableness is a financial inquiry. How much is it going to cost to accommodate a person with disabilities at a certain location, right? Either the reasonable accommodations are too expensive or the regulations themselves are too expansive, as you said, because now the main reason people seem to be pissed off, these attorneys general seem to be pissed off, is because of gender dysphoria.

And if all disabilities get swept under the rug along with it, then that's just fine.

But really, this lawsuit is about who we decide is worthy of participating in society, right? It's about eugenics. And it goes hand in hand with other policies of the Trump administration, right? Like the Make America Healthy Again nonsense from wellness farm and bear carcass enthusiast, RFK Jr.

Jessica Pieklo

Right.

Jessica Pieklo

Oh, completely, or threatening colleges and universities federal funding if they have masking policies, right? I mean, the implications of this cannot be overstated. Section 504, the first civil rights law to explicitly recognize and protect people with disabilities could be rendered entirely unenforceable. This would be catastrophic when it comes to protections for people with disabilities.

Imani

Right.

Imani

Unless they amend their complaint instead of expecting us to take their word for it just because they filed a status report saying they're not really trying to make the whole statute unconstitutional, right? So amend your goddamn complaint and then maybe we might believe you guys. So what are the lessons to be learned here?

Jessica Pieklo

Right?

Jessica Pieklo

For real.

Well, I think one of the lessons is clearly that collective action works. Look, what the 504 protesters were able to do in the 1970s is phenomenal. And that's without social media. That's without cell phones, right? That was certainly no TikTok and blue sky to get the word out at all. And the reality that coalition building works, but that doesn't mean coalition building with your enemies.

Imani

Right, right. Yes, yes, thank you. Also, the outcry from the public after it came to light that these attorneys general were asking the court to declare section 504 unconstitutional in their complaint, that outcry forced the AGs to issue the status report, which quite frankly, I think is bullshit. I think it was just a way so that they can move forward with this litigation without having to deal with the overt outcry from the public. But it does...

it does demonstrate that they are concerned about how it looks that they're trying to end section 504. They may still go ahead and do it on the low, but they're not going to want a lot of people to know about it now because they know that the outcry was so strong, right? The Trump administration is clearly targeting people with disabilities, which is why I don't believe that they're not going after section 504 as a whole, right? They're trying to eliminate the Department of Education, right? Linda McMahon was just confirmed.

Jessica Pieklo

Mm-hmm.

Jessica Pieklo

Mm-hmm.

Imani

And apparently Trump is going to issue an executive order that just shutteres the Department of Education. Even though you can't do that, that would take an act of Congress. But he's trying to eliminate the Department of Education, primarily because, or at least one of the large reasons is because it would mean no more accommodations for students with disabilities. Schools would no longer be required to accommodate students with disabilities, right? If you think about the way that he's been talking about DEI.

It's not just DEI that's the enemy anymore. It's DEIA. And the A stands for accessibility, right? When he was talking about how the people at the FAA weren't given an opportunity to get jobs because of accessibility concerns, that's a blow against people with disab- that's saying people with disabilities don't have the right to try to work for the goddamn FAA, right? And then, you know,

Jessica Pieklo

Mm-hmm. Right.

Mm-hmm.

Jessica Pieklo

right.

Imani

I gotta say it again. We've got RFK Jr. and antivaxxer and all around fucking weirdo, right, who is heading up the department of HHS. And that's an absolute nightmare because he seems to be coming for kids who have disabilities. He's coming for mental health at all, right? He wants to send people to wellness farms so that they can kick their SSRI habit, right? You and I, let's just head on over to a wellness farm somewhere in the Rockies and maybe we can wean ourselves off our wellbutrin.

Jessica Pieklo

Mm-hmm.

Imani

It's ridiculous.

Jessica Pieklo

Yeah, yeah, it is a total nightmare. And I think...

Imani

Okay, so other lessons. What other lessons can we learn from this situation?

Jessica Pieklo

Yeah. Another lesson to be learned is I think that sadly people aren't rising up to protect trans people, right? Like it shouldn't be, well, that's a relief reaction when it turns out that these attorneys generals really just want to make sure that people with gender dysphoria, which is considered a protected disability in some cases, are the ones being screwed by this lawsuit, right? Like it's not just a woof, dodge that bullet. Like no.

Imani

Yeah.

Jessica Pieklo

No! People get it together! Act right!

Imani

Act right. Act right. Stand up for trans people because just this is targeting, relentless targeting. It upsets me and I'm cis. I can't fathom what it's like for trans people trying to live their lives knowing that an entire government has trained its sights on them. It's just, it's a lot. Okay. So what is going on with this lawsuit now?

Jessica Pieklo

Well, thankfully, it stayed for the moment. The status report includes a request that the court allow the case to remain stayed or paused since the Trump administration is likely going to resolve the lawsuit as it continues its relentless attacks on trans people. So we have a pause, but I think all the issues that we've raised in this show are still there. Will there be an amended complaint that removes the request to take 504, a declaration of its unconstitutionality out of it. You know, what is the Trump administration doing with the Biden administration's guidance here on 504 and its applicability to gender dysphoria? Things have to resolve, but in the meantime, folks need to pull themselves together and understand that wedge lawsuits like this that pit one community against another, in this case, you know, trans students against the disabled community,

They're about getting at all of us.

Imani

Right, right. Because there's obviously intersections between the trans community and people with disabilities. And like you said, I really have been disheartened by the, it only turns out that they're going after the gender dysphoria reg and not the entire statute. Both are bad. Both are equally bad. And if you would like to talk to us about how all of these things are bad and how you really need to start loudly standing up for trans people because the policies that they are training on trans people will trickle out to other marginalized communities. And you wanna make sure that there are people who are gonna stand up for you, just like you're standing up for them, right? So let's do that. You wanna talk to us about any of the things we've discussed in this show or about how you can stand up for trans people, you can find both of us on Blue Sky. I'm AngryBlackLady, Jess is hegemommy, H-E-



G-E-M-O-M-M-Y.bsky.social. rewirenewsgroup.com is on Blue Sky. We're also on TikTok and Instagram where honestly, I just wanna give a shout out to BeigeBabyJesus one time because if there's one thing that they have been doing, it's been taking these briefs, amicus briefs, in all of these cases, there's so many lawsuits about Trump's policies, and they've been breaking them down in a segment that they've aptly named, Debriefing Da Brief. It's a great little two-minute nugget about what these amicus briefs are from a person who had the God-given sense not to go to law school, but who has somehow fallen in love with the law anyway, and that makes Jess and me so proud. So please check out our TikTok and our Instagram and get on board with BeigeBabyJesus' content.

Jessica Pieklo

So good.

Imani

And on that note, what are we going to do Jess?

Jessica Pieklo

We are gonna see you on the tubes and in DC live on April 3rd. Get tickets in the show notes.

Imani

Get tickets, Black Cat, April 3rd, Washington, D.C. Jess and I will be there along with Feminist Buzzkills hosts, Lizz Winstead and Moji. It's gonna be so great, so excited. See you on the tubes, folks.

Jessica Pieklo

Woohoo!

See you on the tubes.