

Boom! Lawyered 206: Bonus Episode: Today's SCOTUS Arguments in 'NIFLA v. Becerra'

Imani: Hello, fellow law nerds. Welcome to a special episode of Boom! Lawyered, brought to you by the legal journalism team that just really wants to talk to you about these fake pregnancy clinics, and the lying liars that they are.

I'm Imani Gandy, and I'm here with Jessica Mason Pieklo, Rewire.News' Vice President of Law and Courts, and our resident court whisperer. Today the Supreme Court heard oral arguments in NIFLA, National Institute of Family Life Advocates v. Becerra. It's a case about the California Reproductive FACT Act, and its requirement that clinics disclose that they are not licensed if they are not licensed, and disseminate information about California's publicly funded family planning services.

Jessica, let's get into this a bit. First, I think the most burning question on everyone's mind is: how much did Clarence Thomas have to say during oral arguments today?

Jessica: He would not shut up.

Imani: I can only imagine.

Jessica: That's the headline from the story, is that Justice Thomas would not shut up. No. [laughs] As to be expected, Justice Clarence Thomas did not say a single word. For folks who are getting caught up to speed on the court, that's pretty much his MO. Justice Thomas doesn't say anything. Today, he was right on point.

Imani: Awesome. Tell us a little bit about what is at stake in this case?

Jessica: Sure. The case is a challenge to the California Reproductive FACT Act, that you mentioned, but it's broader than that because there are two other states, Illinois and Hawaii, that have similar laws on the books, and a broad ruling that insulates crisis pregnancy centers, these fake clinics, from the kinds of disclosures that California and other states have required really would open the door to a whole host of ways that they could further cloak and deceive people to get them in the door. While that wasn't an issue that the Justices dove into a lot during oral arguments, it's definitely out there, and I think one that deserves some attention.

Imani: Did the Justices talk at all about the efforts and the scientific basis that the California legislature used in concocting this law?

Jessica: No, they didn't. One of the things I would say that was the most surprising, and maybe most surprising isn't the right way to say it ... Most disappointing and sort of expected, but yet nonetheless kind of hoping that they'll get it right, is that with the exception of Justice Sotomayor, the court really did not seem to be focused on much except for the burden on the clinics that would have to comply with the law.

When we're talking about the fact that these clinics see hundreds of thousands of patients in California alone, and then you sort of extrapolate that out nationwide, the idea that there are poor women who are really sort of in the throes of this battle,

they were completely erased from the conversation all together and instead focused on the fact that a crisis pregnancy center would have to disclose that even if they offer ultrasounds, they will not counsel or refer for abortions.

Imani: But isn't that not what the FACT Act requires? It just requires them to point out to their clients that there are these services that are available publicly funded from California. So, the law doesn't target CPCs and require them to say, "Oh, we don't offer abortion services." It just says, "You can go over here and get all of these family planning services." Did that make any difference to the Justices?

Jessica: It really didn't, in part because they seemed to be buying into this argument that Alliance Defending Freedom, and the conservatives, are making that this law is gerrymandered. What I mean by that is that the statute is on its face supposed to apply to everybody, but has certain carve-outs for it.

For example, clinics that take Medi-Cal patients, that's the state's sponsored Medicaid program, they don't have to post that requirement. So, ADF and some of the other Justices said, "Well, you know, doesn't that mean that it's basically picking and choosing who it applies to?" I mean, sure, okay, unlike-

Imani: That doesn't make any sense, because if those clinics are already publicly funded clinics, so why would they need to put up a notice about California offering-

Jessica: Right.

Imani: Am I getting something wrong here?

Jessica: This was exactly the point that California made, which was, the state identified a problem, and that is certain businesses are targeting low income women, and women in rural areas, women in ... Patients who are isolated from a variety of factors. They're targeting them for misinformation and inaccurate information. So, we're going to go to the sources of that information and make sure that they get a phone number.

I mean, really, that's what we're talking about. We're not even talking about a list of clinics, doctors, or anything like that. You qualify for these services if you meet a certain income threshold, by the way. One of the things that was really interesting in oral arguments, and I think the State of California did a good job on, and I hope it picks up with Justice Kennedy here, although I am suspicious that it will, is that in *Planned Parenthood v. Casey*, this big abortion rights case, the court there upheld a whole bunch of disclosures that had nothing to do with abortion.

The disclosures were things like the punitive father of your developing pregnancy, your child, will have some financial obligations potentially. Or, should you choose to carry your pregnancy to term, then that means that you are available for other state resources, potentially. The Supreme Court in *Planned Parenthood v. Casey* said those kinds of disclosures were all fine and dandy. In this case, ADF and conservatives are saying that similar types of requirements here, which are actually less ownership when you think about it.

Imani: Right.

Jessica: I mean, it's not even like these places are having to say, "Oh, by the way, you go down the street and Planned Parenthood will offer you contraception." It's nothing like that. They're arguing that doing that in of itself is targeting their speech. It doesn't make any sense, quite frankly, because what they're trying to do is make an argument that they're being targeted for their religion.

But the court didn't specifically take up the free exercise, the religious exercise question in this case. ADF wanted them to, but the court didn't grant cert on that. So, this is the conservatives' way to argue a point that the court tried to tell them they couldn't argue. It's shady as shit.

Imani: I just want to back up for a minute. So, Planned Parenthood v. Casey, in that case there were a bunch of mandatory disclosures that Pennsylvania instituted. The court said some were okay, and some were not. So, here we seem to have a situation where these anti-choicers want to have their cake and eat it too, right?

They want to be able to force doctors to disclose false information to clients, but don't want to be forced to disclose to their clients actual true information. So, how is the court going to square that?

Jessica: Well, you basically just made the same point that Justice Breyer made in oral arguments, except he called it, "What's sauce for the goose is sauce for the gander," which I always thought it was, "What's good for the goose is good for the gander," but whatever. Justice Breyer is an odd dude, man.

Imani: He is.

Jessica: He is an odd dude. But, this was his exact point, which is effectively, ADF and anti-choice shops, you guys are trying to have it both ways. You're trying to say that you have all of this right to speak abortion speak whenever you want to, except when it's in the context of making sure that potential clients and patients have access to a full range of information.

During oral arguments, one of the greatest moments was ... Justice Sotomayor really broke this down. I will say again and again and again, she is by far the strongest advocate progressives have on the court. She just gets it. She is the one who drilled down immediately that this is a case about taking advantage of poor, low income patients, and the practices that go into that.

She went through and basically read off a description of one of the websites of one of the plaintiffs, one of the crisis pregnancy centers in the lawsuit, and said, "Well look, you go to the home page, and there's a picture of a woman, and it looks like she's wearing a lab coat and a stethoscope. And they're talking about all of these medical services that they provide."

This was one of the unlicensed clinics. She's like, "If I already have limited time and limited resources, and I'm stressed the hell out because I find myself with an unplanned pregnancy. If I take a look at this website, I'm going to assume that I'm getting some kind of medical advice. Maybe I will even be sophisticated enough to say and to be able to see that this isn't a doctor, but still like a nurse practitioner or something."

A lot of people who go get their birth control pills refills, they don't necessarily see a doctor each time, right? We have levels of staff that do that, and so she really got the package of deception that is at play here. And ADF and the conservative justices did all they could to sort of push her off of that. But she held her ground.

Imani: As always, I think we know Kennedy is probably going to be the swing vote. Were you able to glean any insight from his questions about how he's going to come down on this?

Jessica: Yeah, he's super sympathetic to the CPCs here.

Imani: Really?

Jessica: He tried to push out ... He really is. I mean, I think it falls into this whole issue that he has about ... What he made very clear here is that it felt that this was really meant to evangelicals.

Imani: Oh, for Christ's sake.

Jessica: I mean, the hypothetical he kept ... Oh, it was ridiculous, Imani. I mean, you probably would have thrown your notebook. I'm not even kidding. One of the hypotheticals he had is, "So if I run a pro-life pregnancy center, and I want to put an advertisement out that says pregnant? Confused? Come in for a pregnancy test, and we're pro-life, and have the phone number, does the State of California require a disclosure that we're not a licensed medical facility?"

The law pretty clearly says that it does, if it's doing certain things. One of them is providing pregnancy tests. To Justice Kennedy, you would think that that was the same thing as making them actually sign people up for a free abortion right then and there because God ... If only that could happen. Can you imagine?

Imani: Yeah.

Jessica: That's like my utopia. Looking for a pregnancy test? Here, let me sign you up for your free abortion if you need it. That was really a problem for him, and it's something that I noticed, too, in the press pit when we were getting ready ... Is that I think ... And Imani, we've talked about this. You know, there's a lot of framing about this as an abortion rights case, and it kind of is an abortion rights case, but it's not. It's really a truth in advertising case.

Imani: No, it's not. Yes.

Jessica: This is really about what kind of power and what kind of authority does the state have to make sure that certain services are delivered at a certain level of trustworthiness.

Imani: Right.

Jessica: We actually have another really good example of this, that you and I know about in terms of lawyers. The states regulate the practice of medicine, the practice of law, what lawyers can disclose in that all the time. But yet again, you say the word "abortion," and all of a sudden it becomes a whole big fucking speech thing. Excuse me.

When it's not really what that is, right? So, in the press pit, where informed journalists, all men-

Imani: Of course.

Jessica: Talking about the fact that we get lots of disclosures in the medical context right? You pick up a prescription. What does your prescription say on the back of it? It says, "Don't operate heavy machinery. Make sure and take with food and water."

Imani: Right.

Jessica: It's got disclosures. They're like, but maybe this is different because it's abortion. No.

Imani: No.

Jessica: Abortion is healthcare. It's not different. It's only different if you think abortion is icky, and if you think abortion is icky, I don't care. It still makes it healthcare.

Imani: Right. And if you think abortion is icky, then maybe you shouldn't be covering cases about it. If you don't understand the basic concepts of abortion rights as a human right, then perhaps you should go into some other form of work because the last thing we need is more men trying to mansplain reproductive rights for pregnant people. It's truly absurd.

Jessica: Yeah, that was the entire hour of oral arguments. There was not a single female attorney arguing at all.

Imani: Are you serious?

Jessica: No, it was all men. It was men from California. It was men from ADF, and it was men from the Department of Justice, which is really interesting because this is a case that doesn't involve the federal government at all, but the Trump Administration decided it was going to jump in anyway and say, "Hey, you know what? Technically, we're not on the side of any particular party, but let's go ahead and put the full weight of our authority behind Alliance Defending Freedom here."

Imani: Isn't that because there are a lot of ADF people who are now in HHS?

Jessica: Winner, winner, chicken dinner. That's exactly right.

Imani: All right.

Jessica: We have so many folks from the Alliance Defending Freedom in the administration, including the top dog at the Solicitor General's Office. Now, he sent his underling, Jeffrey Wall, to argue today. Wall did okay. He's a good attorney, but I think it's important to figure out -- what is DOJ's motives here? Why, if they do not have a dog in the fight so to speak, are they chiming in and taking 15 minutes?

I think what's really at stake here is that they see the sort of slippery slope argument. That's what lawyers talk about when it's like ... We have to draw a principle, otherwise we go down this slippery slope and everything is regulated speech. Which, is kind of what they were saying. It, honestly, at the end of the day made no sense.

Imani: Talking about regulated speech, did the court talk ... Did any of the Justices talk about the difference between commercial speech and political speech?

Jessica: They didn't directly. Kennedy did the thing where you sort of talk about it without talking about it in the sense that for him, even saying the word "abortion," is political speech.

Imani: Oh, for Christ's sake.

Jessica: Because people have opinions about it. That would be like saying, "I have opinions on the tax code, so therefore that's political speech." I mean, you can see just how ridiculous that gets, right?

Imani: Yeah, it seems to me that ADF and anti-choicers have done a really good job at making people believe that something as simple as a healthcare issue has become wrapped up in the First Amendment. I mean, it just doesn't make any sense to me, and I was really hoping that the Justices would be able to pierce that bullshit, but it doesn't sound like anyone but Sotomayor did.

Jessica: Well, hold on to your butt because this is how Harris, who argued for the CPC's, closed his argument here, which was ... And this is almost as direct a quote as I can get, is writing as fast as you have to since we don't get technology in the courtroom. But, "We should not politicize the practice of medicine in this way." Harris said, clutching his pearls to the Justices as he closed his argument.

I mean, seriously, they-

Imani: Wait, what? "We shouldn't politicize health?"

Jessica: Yeah.

Imani: They're the ones politicizing healthcare! What the fuck?

Jessica: Yeah, that's ... And then the buzzer went, and we all had to stand up and be quiet. So, I was doing the internal scream. There's the dude on Twitter, who's like the eternal scream, that was me inside my head.

Imani: Jesus. So, it seems to me that the court is actually looking at this as a First Amendment case, and not even really touching the truth in advertising part. I mean, are we really just going to now allow corporations, or non-profits, or whatever, to lie to poor people?

Jessica: Well, it certainly is getting there. I guess if you're lying about comprehensive reproductive healthcare, then the court seems to be pretty sympathetic to that. But I mean, that falls into a really huge umbrella. We talked about this in one of the other episodes, I think, and that can get into things like so-called conversion therapy, right?

I think it's important to remember that conservatives have this big push to deliver social services under the guise of religion. So, why they're talking about this as abortion, it's really ... And I hate to sort of use the analogy, but it fits. It's a Trojan horse for a whole lot of other things that they can get their way into.

Yeah, I mean, think about disclosures related to climate science, for example. I mean, what we've seen conservatives do, the conservative movement broadly do very well, is to take the abortion issue and mobilize evangelicals on it, and then have the ability to blow it out into other areas.

I really feel like these CPC cases are that way because if they can successfully challenge a state disclosure law that says places that are comprehensive reproductive healthcare clinics have to disclose that they're not comprehensive reproductive healthcare clinics, then that goes for places that offer only a particular type of mental health counseling, of substance abuse counseling. Those kinds of things. I mean, we have to remember that religious conservatives are in the very big business of delivering social services.

Imani: Right. Well, I mean also when you think about it, if you want to talk slippery slopes, so now are we saying that, for example, stores that claim to serve only Halal meat, or stores that claim to serve Kosher meat, but when in fact they aren't, they're not supposed to disclose that to their clientele?

Jessica: Well, I mean that's a really good question. One of the arguments that the right has made on this is that that's effective ... Like doing that is effectively mushing together the free speech and the free religious exercise issues here. Again, not to be too picky of a lawyer, but this is one of the things they teach you in law school, is to issue spot. What's the issue?

Here, in NIFLA v. Becerra, the issue isn't "does this impinge on religious exercise rights," but "is this a free speech issue?" So, let me back up for a second. Commercial speech is speech, right? Of course, this is a free speech case. This is a First

Amendment case because we're talking about disclosures, and disclosures are words, and words are speech, so First Amendment, right?

But it's really sort of what the level of scrutiny. What power does the court have to undo these laws? What California has said, is that it really doesn't matter what level of scrutiny we have. We have a really good reason for enacting this, and gave their ... Which goes back to your first question, Imani, which was did they get into the evidence? One of the reasons they really didn't is because, and this is another little nit-picky lawyer point, is at the Trial Court level, and the Appellate Court level, this case was decided as a preliminary injunction.

So that means that they hadn't developed a record yet. It hadn't gone to trial. There wasn't evidence. So, the CPCs are sitting here saying, "We have all of this burden to comply with this law," but they didn't actually have to put any evidence in to show that burden yet. So, that could be the difference. Breyer seemed to be upset about that, even Gorsuch seemed upset about that.

Imani: Wait, what? Gorsuch seemed upset about something?

Jessica: Yeah, I know.

Imani: Can you explain what Gorsuch, what his ... What did he have to say? How terrible was he?

Jessica: He just smirks. It's really like ... He's got resting smirk face. I say that as a smirker, but he does. He's got resting smirk face. He seemed to sort of latch onto this point that Breyer made, which was there wasn't enough evidence, so maybe what the Supreme Court should do is instead of issuing a ruling, kick it back down to the lower courts to develop the record, and then there would be something for the court to decide.

Really, sort of what's the burden on clinics here. Gorsuch sort of bought into that, but I don't buy it for it a second-

Imani: So that's good news, right? Don't you think?

Jessica: Yeah. I mean, yeah it is. Maybe it would give him an out. But I'm suspicious of everything he does, and the reason I am giving him some side-eye on this one is because he's like, "I'm very concerned about the record. I mean, as far as I know, this is like a \$9,000.00 a month advertising tax on these places."

Imani: Oh, please.

Jessica: I'm like, really?

Imani: Especially when there's-

Jessica: So ... That kind of stuff-

Imani: \$18,000.00 a month, as I mentioned in our most recent episode on these pay-per-click advertisements with Google, so that they can game the system. I mean, if they're talking about having it be a \$9,000.00 tax, maybe stop gaming Google, and save some of that money. I mean, it's just ... It seems rather ludicrous. It seems so obvious to me that this is about not lying to pregnant people. I find it really hard to believe that that didn't really seem to play into oral arguments, except for with Sotomayor.

Jessica: Yeah, it really ... I mean, it was specifically with Justice Sotomayor who really drilled it down. Justice Ruth Bader Ginsburg was the first out of the gates with a question, and it was a fair question, but it was a very Ruth Bader Ginsburg question, which was, "What if this was an abortion clinic that we forced to put up a disclosure that says we don't offer adoption services? Would that be okay?"

Of course, the clinics had some reasons why that wouldn't be okay, but that was also such a crappy analogy, I thought. That's not what ... I mean, that's not really what this is about. People don't walk into an abortion clinic, or a comprehensive reproductive healthcare clinic, thinking that their only ... They assume ... They're walking in, they think they're going into a clinic.

CPCs are set up to look like clinics. That's cosplay. You called it exactly perfectly when you said that. That's why this case, and even as I'm sputtering into the microphone right now about this, it makes me so mad because it's the worst kind of circular logic.

Imani: Right. I also mentioned on our podcast the other day, the argument that [Elia 00:22:18] Shapiro had made about how this same sort of thing ... That abortion clinics aren't required to post notices about adoption. But that's because abortion clinics aren't in the business of lying to their patients. So, you walk into an abortion clinic, and they're going to tell you everything that you need to know because the last thing these clinics want to do is to be coercing or encouraging people to get abortions if they're not sure that they want one. Abortion clinics don't like.

Jessica: Right. Well-

Imani: The CPC clinics are, by definition, liars.

Jessica: And California, I thought, did a really good job on this point, because they ... The attorney for the State of California mentioned that yes, what the disclosure is, is that the State of California has some financial services available for low income patients. That's the extent of the disclosure, and those financial services are available regardless of what the pregnancy outcome is, which I thought really cut to the heart of the plaintiff's argument here.

They assume that a disclosure is going to drive someone to have an abortion. Maybe it was, maybe it would, maybe it's not. I mean, the idea is that it's their choice. But what I think it shows is that they're really fearful that when armed with the full range of information, that patients make informed choices that fit their needs, and not a political agenda.

Imani: Right. In terms of the sort of rhetoric around abortion, I mean we talked about this earlier about how absurd it is that in almost every other context, these people are more than happy to get in people's faces and yell about the evils of abortion. But when it comes to someone walking into their clinic, they're not willing to tell that person about the evils of abortion.

They're willing to lie to them, and make them think that they're going to get information about an abortion when they're not. So, I just ... Did the Justices address that at all? Or, was there any sense of them recognizing the hypocrisy of the anti-choices' argument?

Jessica: Sotomayor did really perfectly, because the plaintiffs started out by saying, "Well, it's really important to note that we're not offering medical services," and she was like, "Hold up? What the hell do you think an ultrasound is?"

Imani: What? Wait a minute.

Jessica: What do you think a pregnancy test is? You know? Because-

Imani: Yeah, what the fuck is an ultrasound?

Jessica: The argument that he was making. Yeah, the argument that they were making was that the disclosures in Casey, that we talked about, that those disclosures were triggered by the imminent availability and delivery of a specific medical procedure. In that case, abortion. So, that was information going to inform a patient's choice about abortion. But, it's the same damn thing, Imani.

Imani: It's ... Yeah. It's so frustrating. It's really frustrating. What did John Roberts have to say? What do you think his deal is?

Jessica: He was kind of rude. Normally, he lets the parties and the Justices sort of speak, but he got a little snippy with ... I think it was Justice Kagan. It might have been Justice Sotomayor. I was sitting behind one of the big-ass pillars, so I was like straining my neck as much as I could.

They were talking over each other. At one point, it was either Kagan or Sotomayor, because they were both talking. Robert specifically stepped in and was like, "Hey, would you let the attorney speak?" Cutting off the line of questioning.

Imani: What?

Jessica: Which, is rude as hell.

Imani: Really?

Jessica: Yeah.

Imani: That was really rude, and unusual.

Jessica: Yeah. I mean, normally if it gets real heated, then that would happen. But these weren't even heated exchanges. I mean, the only people who were getting real hyped up about this, were Justice Sotomayor, and going through all of the deceptive targeting that goes into this places, and why the State of California would have a reason for wanting to regulate these facilities.

Justice Alito was pretty tee'd off, too, about the idea that pro-life ... The way he called pro-life clinics would have to disclose a pro-abortion message. But that's pretty much to be expected. I mean ... And frankly, Alito's kind of always in a state of permanent pissed off. If Gorsuch is permanently smirking, Alito is permanently scowling.

Imani: Right. Well, it should be interesting how Alito rules considering he was the Appellate Court Judge in Casey, right?

Jessica: You'd think that there'd be consistency.

Imani: How is he going to square that in his mind?

Jessica: Yeah. I don't ... I didn't get the sense that the distinction that the clinics wanted to make between that sort of triggering argument, which ... I won't get too much into the weeds here, but that triggering argument is the same exact argument that they made in the birth control cases, when they were trying to avoid insurance coverage for birth control.

They said that if they covered birth control, if they complied with the ACA, that they would be facilitating sin. All those sluts would go get birth control pills and have sex without having babies. And that that was a burden-

Imani: Right, just for our listeners real quick, we're talking about the birth control benefit cases. Specifically, the ones where employers or schools that offer health insurance plans were complaining that filling out a form ... Just simply filling out a form saying "We do not offer these services," would trigger the government jumping in and offering them instead, so that means somehow, by filling out a form, they were being complicit in sin, which is ludicrous, but that was the argument that they made.

Jessica: And that's the analogy that they made here. I mean, it's basically a copy and paste type of version of that argument here. It didn't seem to get quite as much traction. Again, the court was really sort of focused on the burden, which might be good news for us. If they're focused on the burden, and if the court is concerned that there's not enough of a developed record, then that wouldn't be a straight loss.

It would probably mean that the case got kicked back to the lower courts to develop that record, and everything we've seen is that California had every damn good reason to pass this law. I mean, they've got hundreds of crisis pregnancy centers in the state, and a fraction of the number of abortion clinics. So this is a real need here.

Imani: I guess my final question to you, and it sounds like to me I already know the answer, but in terms of how the court is going to rule, it seems like the best scenario for us, for the repro-rights community, would be for them to kick the case back down to develop a fuller record, and then once it gets back up, hope that data nerd, Stephen Breyer, just steps in and is like, "Whoa, whoa, whoa guys," and examines the data, sort of how he did in Whole Woman's Health, and comes to a conclusion that the CPCS are full of crap.

Jessica: Yeah, that would be a good outcome. I mean, Justice Breyer, by way of background, is a former tax attorney. So, he loves numbers and equations and stuff like that, which is one of the reasons why the Whole Woman's Health decision was so good, because it had all of that data and evidence. That would be a good outcome for us here.

Imani: I mean, obviously a better outcome would be for them to just smack the CPCs down and tell them to stop lying, but it sounds like that's not what's going to happen right now.

Jessica: Yeah, you know, I mean it's always tough to read the tea leaves out of arguments, because the Justices just sort of pick and choose what they want to focus on. Sometimes that's to confirm a bias, and sometimes it's to try and change their mind. I could also see them splitting the difference between the requirements for the licensed and unlicensed facilities.

The unlicensed notice that you just have to say, "Hey, I'm unlicensed," even though Kennedy was kind of grouchy about that, I don't necessarily know that that means that he would strike that per se. I mean, he's also just kind of grouchy.

Imani: But also, how can you be grouchy about a sign that tells customers that they're about to enter a healthcare clinic that is not populated by doctors? That seems basic to me.

Jessica: Yeah, it is pretty basic and this is where he gets into his sympathies that it was targeting evangelicals and folks based on their religious viewpoint, which is what that mushing of speech and religion that the clinics here are trying to get away with. He bought into that. I don't know what that will do on his vote. I don't feel like he's on our side right now.

Imani: Yeah.

Jessica: I would think, at a minimum, the non-disclosure part would be fine, but I don't know, man. It was really upsetting to hear ... Again, I shouldn't be surprised, but that doesn't make it any less upsetting. It was really upsetting to be in the courtroom for an hour and have only one person of all of these very learned people, even show a whiff of concern of the patients who are being deceived here.

Imani: Right.

Jessica: Nobody gives a shit about poor people.

Imani: Well, yeah. I mean, I think that we know that, but it's very disturbing. Especially when it comes to the delivery of healthcare services, whether you're talking about Hyde, or whether you're talking about the Hyde Amendment, which precludes federal funding being used for abortion, even though it should.

Or, whether you're talking about CPCs targeting young, vulnerable people of color. It just really does seem like screwing over poor people, screwing over people of color, is just fine. The only ally we seem to have on the court is one of the people of color, and the other one, just never says anything anyways. So, I don't understand. Gosh.

Jessica: So, we won't end up hearing anything from the court probably until the end of the summer. The court term ends at the end of June, so I would expect that we get a decision, since they argued the case late, towards the end of that. But, if you know ... If they do somehow just say, "Hey, you know what? This is a messy case and we don't want to deal with it," they have an easy way to kick it back on this lack of evidentiary record, so we could see something quicker if that's the case. If we're in the early weeks of June, and we still don't have a decision, then I'm going to get sweaty and say we're probably losing.

Imani: Oh, gosh. I think that this, and what Masterpiece Cake Shop, are probably the two big cultural issue cases. Those usually tend to come out at the last minute, right?

Jessica: Mm-hmm (affirmative). Yeah.

Imani: Oy.

Jessica: Oy is right.

Imani: Well, do you have any other comments? Anything that I may have missed? Anything that you want to mention before we wrap up?

Jessica: Again, I would just really ... I guess I want to close on two points. One is that this is a case where the media has not done a good job of identifying the issue, and it's bought into the framing that this is an abortion rights case, when it's an abortion adjacent case, is how I would describe it.

Sure, it involves abortion rights in the sense that it's access, but this isn't about the right to an abortion, which the State of California is like, "Hello, fundamental right. We have some power in regulating this here."

Imani: Right.

Jessica: Then the other is that, again, we're talking about ... I just think it's really important to center the people who are affected by this. The people who are affected by this are people who are geographically isolated, who are low income, who maybe don't have English as a primary language. One of the concerns that the Justices had was about all the language requirements, 13 different languages. Well, yeah. There are a lot of different languages spoken in California. It's a pretty diverse place.

Imani: Wait. They were complaining about having to post the notice in multiple languages, when California is one of the most diverse states with a lot of foreign language ... Primarily foreign language-speaking people?

Jessica: Yeah.

Imani: What's the point of putting up a notice in English if people speak Spanish and their English isn't very good? How is that a problem? How is that intrusive?

Jessica: Exactly, and it's not. That question, I think, shows the exact point, which is that there's no real burden here. I mean, we're talking about undue burdens, even if we're not talking about undue burdens. A little extra font, and some extra verbiage in a different language to make sure a disclosure is effective, completely fine. Again, when you're dropping 18 grand on paper click, I mean, come on.

Imani: Yeah, that's depressing.

Jessica: That was another point. I should say one more thing is they wanted to talk about this as ... These are non-profits. They do this out of the goodness of their heart. We talked about this. Non-profit is ... That's some shady stuff there. They may not be a for-profit center, and the State of California's answer, I thought, was pretty great on this. They said basically, "Well, for-profit healthcare centers aren't in the business of serving poor patients."

Imani: Oh, that is a good point.

Jessica: Yeah. I mean, you know? Why are you targeting non-profits? Well, because for-profits don't do this by their business model.

Imani: Right. That's interesting. That's very interesting. Well, that's it for us, law nerds. I think we're going to end here. You should probably take a look at Rewire.News in the upcoming hours. I'm sure Jessica will have a piece up explaining what she saw.

If you have any questions about this case, or really any other of the cases that we've talked about over the course of our Boom! Lawyered season, feel free to check us out at the #TeamLegal hashtag on Twitter and Facebook. You can find me @AngryBlackLady on Twitter. You can find Jessica @Hegemommy. You can join our Facebook group, Boom! Lawyered, where if you have any questions, we'll be sure to keep the conversation going over there. Thank you for listening.

Jessica: Thank you so much. And Imani, thanks for jumping in and talking about the case with me.

Imani: Oh, it's always my pleasure.

Speaker 3: Boom! Lawyered is created and hosted by Imani Gandy and Jessica Mason Pieklo. The show is produced by Nora Hurley. Our executive producer is Marc Faletti, and Rewire's editor-in-chief is Jodi Jacobson.