

[Boom! Lawyered: Midterm Results and the Voting Rights Battles That Will Follow](#)

- Imani Gandy: Hello fellow law nerds. Welcome to another episode of Boom! Lawyered, a Rewire.News podcast hosted by the legal journalism team that is semi-excited about the results last night. Not overwhelmingly excited, but definitely there are some positive things that happened. I'm Imani Gandy,
- Jessica Pieklo: And I'm Jess Pieklo. Rewire.News is dedicated to bringing you the best reproductive rights and social justice news, commentary, and analysis on the web, and the Team Legal podcast is part of that mission. A big thanks to our subscribers and a welcome to our new listeners.
- Imani Gandy: As a nonprofit, Rewire.News relies on your donations to fund Boom! Lawyered and all of our evidence-based journalism. If you like our show and you want to hear more of it, please donate online.
- Jessica Pieklo: You can support us rewire.news/donation.
- Imani Gandy: That's rewire.news/donation.
- Jessica Pieklo: All right Imani. The midterm elections happened, and unless you were trapped under something heavy you probably saw that it was kind of a big deal. We got some good news, right, like the fact that Democrats took control of the House of Representatives.
- Imani Gandy: Woo hoo!
- Jessica Pieklo: But we also got some bad news.
- Imani Gandy: I feel like I've seen a lot of people on Twitter talking about "Oh, it wasn't a blue wave. It was a blue fart," and I think that we need to actually recognize that despite the Republicans' best efforts to gerrymander Democrats out of existence, Democrats still took the House back, so that's big.
- Jessica Pieklo: It is big. It really is, and I think you're totally right on the money that we need to take the time to savor these wins, because A) it's been a real long two years so far, and B) it's gonna be a real long two years coming into the next election too. Let's take this moment and enjoy it. But we also got some kinda crappy news out of the election too, like all the voter disenfranchisement stuff that we've talked about is happening, and it happened last night. So, bad that it maybe flipped some of the races.
- Imani Gandy: Yeah. I really want Brian Kemp to fall down into a shallow puddle. I don't want to injure anybody. I'm not about violence against other people, but I would like him to have really wet socks for like a month straight, just so wet he can't get

them dry and his feet just turn into prunes, because what went on in Georgia yesterday was unconscionable. It really was unconscionable.

Jessica Pieklo: Everywhere he walks it should be stepping on LEGOs barefoot, basically.

Imani Gandy: Exactly.

Jessica Pieklo: That's what I wish for him. What happened in Georgia was unconscionable, and this episode we are gonna talk about the election. We're gonna talk about what it means for the Democrats to control the House and what if anything can be done about the sorry state of our nation's voting system.

Imani Gandy: So Jessica. Democrats took back the House of Representatives. It's a big deal, right? Especially when we're talking about all of the investigative power that the House now has.

Jessica Pieklo: Absolutely. The House win for Democrats is a huge deal. Basically, the Trump administration has been running around unchecked since January of 2017. There have been absolutely no stops on that power, and as of the results of the midterm elections, that can come to a change, because we now have ... Democrats have the ability to investigate via the House. What does that mean? It means for example that Bob Muller's not the only person looking into Trump, so this is just out of the gates going to be a huge check on the administration.

Imani Gandy: Right, and it means that the House has subpoena power.

Jessica Pieklo: Ooh, what's subpoena power? That sounds kinda sexy.

Imani Gandy: It means the House can send subpoenas to people and be like, "Hey you. Show up and testify. Hey you, turn over these documents. Hey, Donald Trump. Give us your fucking tax returns." These are very, very important devices that Democrats now have and can wield and hopefully will wield if they have the political stomach for it.

Jessica Pieklo: Absolutely, and I think we will see some of that. I know Nancy Pelosi was out of the gates early saying, "We're not going to come after the Republicans the way they came after us." Nancy, have a seat on that please. We actually need to do some of this stuff, but with some of the leadership changes on the committees I think that is a possibility.

For example, the House Judiciary Committee. That's now going to be under the chairmanship of New York Representative Jerrold Nadler, and he's been on Trump's case from the beginning about his weird business relationships, all of these interests that he's kept that every other President would have long ago gotten rid of so as to not create any constitutional conflicts of interest.

The Emoluments lawsuits that we've talked about -- he's in charge of the House Judiciary Committee, so I feel pretty confident that he's going to want to start really spending some time looking at those business practices, looking at Trump companies, looking at to what extent Trump was interfering with the FBI Russia investigation. All of this is within the purview of the Judiciary Committee, and we have a good guy in charge.

Imani Gandy: Looking at Ivanka Trump, who apparently has gotten Chinese trademarks recently for a bunch of stuff, there's a lot of shady shit going on with the Trump family between Kushner and Ivanka and Donald, and it'll be really interesting to see some of the stuff that they have been trying to keep hidden for the past two years and which Republicans have allowed them to keep hidden for the past two years.

Jessica Pieklo: We might even get some of the 99% of the Kavanaugh documents that never got released, right? We might actually get to see what he knew and what he did during those Bush years.

Imani Gandy: Yeah, and if the information in those documents is damning enough, we could be looking at impeachment. I would not hang your hat on it. Again, I've been very strident about the fact that impeaching Kavanaugh is a long shot, because we've just never impeached a sitting judge before. We tried to but the Senate acquitted him. Let's not get too wide-eyed about the possibility of impeachment, but let's not pooh-pooh it either. That Kavanaugh hearing was shady as fuck. You know it, I know it, he knows it.

Jessica Pieklo: Absolutely.

Imani Gandy: If there are documents that prove that he lied with respect to his DC Circuit confirmation in 2006, that he lied with respect to anything related to Dr Blasey Ford, there could be some shit come down the pipe for Kavanaugh. But one of the things that I'm really super excited about is Adam Schiff, who's now going to be chairing the House Intelligence Committee. Representative Schiff is a former prosecutor who has said that he really wants to take a look into whether or not Trump and his cohorts, his cronies, his ... I don't know. These jackasses that he surrounds himself with, most of whom are his family, unfortunately ... Whether or not they were laundering money through Russia. That's the kind of stuff that I'm really hoping Democrats dig their teeth into.

Jessica Pieklo: Within a matter of 24 hours we have the possibility of real possible investigations into some of this Trump nonsense.

Imani Gandy: Absolutely. And then we've got Auntie Maxine. Woooooo! Maxine Waters has been riding Trump's ass from the get-go. She has reclaimed her time. She does not give a single fuck about anything that these conservatives have to say about her, about anything that Donald Trump, who continuously calls her "low IQ", which may well turn out to have been a bad idea because now she's

Chairperson of the Financial Services Committee, and that in and of itself, the fact that this black women who Trump has been insulting incessantly over the past two years is now chairing the Financial Services Committee, ooh child. If that doesn't make his orange supremacist head explode I don't know what will.

Jessica Pieklo: Yeah. Just having her there, she's fantastic and brilliant, but having her with some actual power now behind that is gonna be goooood.

Imani Gandy: Yes indeed.

Jessica Pieklo: I'm excited about that. But I don't want to be that downer, but I guess I'm going to go ahead and be that downer because we have the possibility that Democrats actually show some political spine and they issue subpoenas and they try and call witnesses, and the Trump administration says, "Well, screw you. I'm not going to comply. I don't have to. Go ahead and issue 5,000 subpoenas and I'm just going to tack 'em all up on my wall." There's a real good chance they could just tell him to go pound sand, and then what do we do?

Imani Gandy: I guess the first thing that comes to mind is you try to enforce the subpoenas through the federal courts. You start in DC and that will likely then move to the Supreme Court, and that's where the rubber's gonna hit the road.

Jessica Pieklo: It really is.

Imani Gandy: That's where Donald Trump is going to see whether his investment in Brad McBeer/Bart O'Kavanaugh was worth it. That's where we're going to see how much immunity Kavanaugh and the other conservatives on the court are willing to allow this man, and I'm not optimistic, but at the same time I have to believe that if the Supreme Court sees this President just openly flouting the rule of law, I have to believe that their instincts as Justices will kick in and will supersede whatever conservative leanings that they had and whatever pull or drive that they have to just support this President no matter what because he's a conservative and he's one of ours. I have to think that John Roberts is not going to sit idly by and let Donald Trump wipe his ass with subpoenas.

Jessica Pieklo: Yeah, I agree. I think too that there's this huge universe of possibility in terms of who these investigations target. We're talking about Trump 'cause he's obviously the person of interest number one, but it's anybody in his circle, so it's one thing for Brad McBeer to say in a law review article he doesn't believe that the President should have to answer to a subpoena while in office, but it's an entirely different thing to take that logic and extend it to some of his campaign workers for example, or other folks who were around in his operations and in his inner circles and not the President himself. These investigations have potential to do real good and bring some real daylight into things, and there is the chance that the Supreme Court won't totally screw it up. Hey ... That's good news!

Imani Gandy: That is good news. It's really good news, and it might seem a little bit wonky and a little bit cerebral, and it's certainly not as satisfying as if Beto O'Rourke had won or Andrew Gillum had won, but really those races were going to be hard fought anyway. Those were always a tossup, so I think yes, we need to mourn that we could have had "Vanilla Obama", as they're calling Beto O'Rourke, defeat Ted Cruz, the Zodiac Killer. That would have been lovely but let's not pooh-pooh the fact that Democrats have a lot of power and can use it should they choose to. They just need to have the political will to do so.

Jessica Pieklo: Absolutely. And some momentum. Yes, it would have been great to have O'Rourke win, but he got what? Over 4 million votes in Texas? That's more than Hillary Clinton got in the 2016 election, so that's amazing. Good job, y'all!

Imani Gandy: It is amazing, and he also I believe was the impetus for some down-ballot races to flip from red to blue. What he did in Texas is amazing, and I believe that that state has a real opportunity to turn purple. Let's not despair, but let's despair a little bit, because the voting-

Jessica Pieklo: It wouldn't be the show if we weren't.

Imani Gandy: It really wouldn't be Boom! Lawyered if we didn't despair at least for a moment. But we really do need to talk about the Voting Rights Act.

Jessica Pieklo: All right. We had a terribly managed election in many places across the country, and Imani we can pretty much thank the Roberts court for that, huh.

Imani Gandy: Yeah, we really can. John Roberts really hit it out of the park back in 2013 in *Shelby v Holder* when he essentially decreed that racism was dead and therefore there was no longer a need for the coverage formula which would determine what states were so goddamn racist that any time they wanted to make a change to their voting laws they had to clear it with the Department of Justice.

Jessica Pieklo: *Shelby County vs Holder* is, as Imani said, the 2013 Supreme Court decision that basically gutted the Voting Rights Act, and under the Voting Rights Act, certain states and jurisdictions that had a history of racial discrimination in running their elections had to run through what the law called this process of pre-clearance, and that was any time they wanted to make a substantial change to their election laws, and this was pretty broad, they needed to get okay from the Department of Justice and the reason was is because your voting rights shouldn't change whether you live in Alabama, Georgia, or New York and California. In theory, we are supposed to have access to the polls and our right to vote should be uniform in that way. But yeah, that's just not how it's worked opening up.

Imani Gandy: Yeah. It really isn't how it's worked out at all, and I just want to briefly explain the Voting Rights Act and the two sections that we're talking about, 'cause I

think there's a lot of confusion about what the Voting Rights Act does, and I've seen a lot of people talking about, "Oh, we need a new Voting Rights Act." We actually don't need a new Voting Rights Act. It's not like we need to go through this long, arduous process of crafting a Voting Rights Act and getting it passed through Congress. The infrastructure is already there. Shelby v Holder did not decimate the Voting Rights Act, which is why you'll hear a lot of lawyers talking about it being gutted. It wasn't decimated. It was simply rendered toothless. The two provisions of the Voting Rights Act that are at issue, one requires that certain jurisdictions and states and counties preclear any changes to their voting laws with the Department of Justice because those states, jurisdictions, and counties have a history of racism in their voting laws and trying to prevent primarily voters of color from voting, right Jessica?

Jessica Pieklo: Right, and that's the part that the 2013 Shelby County vs Holder decision effectively gutted. The decision said Congress had come to these determinations a while ago, but they haven't held hearings on it recently so there's not enough evidence to suggest that these places in say, oh I don't know, Texas and North Carolina and Georgia, are still running their elections as a racist shitshow, so that part has to go. But there's another part that says Congress can if they want to come up with a new formula, right Imani?

Imani Gandy: Right, and that's what we need Congress to do. We don't need Congress to pass an entirely new VRA. What we need them to do is to just go back to the drawing board and figure out a new coverage formula. The coverage formula as it existed prior to 2013 didn't just cover states and it didn't just cover states primarily in the South. It covered a couple of counties in New York for example. I believe there are a couple of counties in Alaska that were problematic because of the way that they treat indigenous voters. So this next coverage formula could very well expand coverage beyond what there was initially, and I think that it should because we are seeing states that were not previously covered by the formula that Congress had developed. We're seeing those states really push hard for voter suppression, places like Ohio, which we've talked about a lot on this show right?

Jessica Pieklo: Uh-huh.

Imani Gandy: Ohio with their insistence on purging voters from the rolls if they haven't voted in a couple of years and don't return the mail that says "Hey man. You still in town? You wanna vote?" There are a lot of states that saw Shelby v Holder as the moment where they could immediately begin to implement these voter ID laws. In fact, Texas the very next day implemented one of the most strict voter ID laws in the country, one that was struck down multiple times because it was surprisingly, unsurprisingly, racist as fuck.

Jessica Pieklo: Right, and that was North Carolina's too. Remember that amazing decision from the Fourth Circuit where they were like ... What language did they use?

Imani Gandy: "Surgical precision." It targeted black voters with surgical precision. And North Dakota for example. We saw the Supreme Court essentially sanction stripping 2300 Native American people of their right to vote. So North Dakota should probably be included in the coverage formula based on that state's behavior over the last five years. I just want our listeners to understand that when they're talking about the Voting Rights Act, try to avoid saying we need a new one, because a new one sounds so daunting. It sounds like there's this huge long process that we have to go through. We really just need to restore it. The infrastructure is there. We just need to hound Congresspeople, hound your Congresspeople to get to the drawing board and develop a new coverage formula, because quite frankly there are a lot of races I believe that were flipped-

Jessica Pieklo: Yep.

Imani Gandy: Solely due to voters. Certainly North Dakota, Heidi Heitkamp might have had a better chance if Native American people had been permitted to vote. Certainly, what's going on in Georgia, that race has not yet been called, but I think the race is separated by something like 100,000 votes,

Jessica Pieklo: Good grief.

Imani Gandy: And Brian Kemp had purged something like 750,000 people from the rolls over the past however many years. That stuff has to have an impact, and I don't think that Democrats can expect to win elections in the future if they don't restore the Voting Rights Act, to be quite frank.

Jessica Pieklo: No, they can't really. These are really important points for a couple reasons. One, like you mentioned, the Voting Rights Act still exists. It's just that since 2013 Republicans in Congress haven't gotten around to coming up with any new formulas, so go fuckin' figure there.

Imani Gandy: And why would they, right?

Jessica Pieklo: Right. So that is part of it, but this is also again why the Democrats winning the House is such a big deal, because now we have Representative Elijah Cummings, who's taking over as Chair of the House Oversight and Government Reform Committee. He can start to hold hearings on all of these disasters that took place. What the hell happened in North Dakota? What the hell was happening in Georgia? What the hell was going on in Kansas, in all of these states. New York. I'm stuttering because it was just so ubiquitous, so all over the place. But he can start to have some of those hearings and that collects evidence and data points that becomes Congressional findings, and from those findings that new coverage formula emerges. We can't get the formula without the findings and we don't get the findings without a hearing, so now we have Democrats who are in the position to finally hold some hearings! Yay! That's all really exciting.

Imani Gandy: It really is. When I heard yesterday that Brian Kemp sent voting machines to Gwinnett County, which is a very, very black county in Georgia, without power cords ... Really?! That's not incompetence. That's malice.

Jessica Pieklo: Exactly.

Imani Gandy: And I believe that's the sort of stuff that Representative Cummings hopefully will begin to turn his head to and hopefully we can see some real movement in restoring the rights to vote for primarily black and brown voters who tend to vote democratic.

Jessica Pieklo: Yeah, I mean that was like Kansas randomly closing polling places and then Lyft jumping in and saying, "I don't know what Kansas is doing, but we'll drive you to vote for free."

Imani Gandy: Yeah, that's how bad it is!

Jessica Pieklo: Yeah. That was absurd. What was it? Dodge City I believe the name of that ... It was like, "Gotta get the hell out of Dodge in order to vote." I mean, what is happening?

Imani Gandy: For real. Last night wasn't this monstrous, enormous electoral victory across the board for Democrats, but it was a real important win, and we have some good, strong placeholders for moving forward in terms of pushing back against the Trump administration.

So get on it for 2020. If you want a Democratic Senate and you want a Democratic President get movin' now.

That's gonna wrap up our show for today. It's been a stressful few months but we are happy that you stuck with us-

Jessica Pieklo: We really are.

Imani Gandy: Throughout it all.

Jessica Pieklo: And it really has been.

Imani Gandy: We hope that you will continue the conversation with us on Twitter. You can follow me @angryblacklady. You can follow Jess at ... I almost said "at Jessemommy". You can follow her @hegemommy. You can follow Rewire.News at @Rewire_News, and you should join our Facebook group, Boom! Lawyered, answer the question, and we will let you write in.

Jessica Pieklo: Yes, please and we will see y'all on the tubes.

Imani Gandy: See ya on the tubes.

Jessica Pieklo:

Boom! Lawyered is created and hosted by Jessica Mason Pieklo and Imani Gandy. Our producer is Nora Hurley. This episode was produced by Marc Faletti, who is also our executive producer, and the Rewire.News Editor-in-Chief is Jodi Jacobson.