

[This Lawsuit Could Bring Reproductive Justice to the Supreme Court](#)

- 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 super friggin' stoked that the United States won the Women's World Cup. I'm Imani Gandy. Yay!
- 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, so big thank you to our subscribers, and a welcome to our new listeners.
- Imani Gandy: Advocates recently filed a lawsuit challenging a Georgia law that would ban abortion at around six weeks. The case is called SisterSong versus Kemp, and it's a really, really big deal, not just because the Georgia law is ridiculous and should be blocked, but because this lawsuit specifically centers Black women in the legal challenge. In this episode, we're going to tell you all about the case and how it could introduce the concept of reproductive justice to Supreme Court jurisprudence.
- Jessica Pieklo: Okay, Imani, so where should we begin?
- Imani Gandy: Reproductive justice, let's begin there. Woo!
- Jessica Pieklo: Okay. I love all this World Cup enthusiasm that we're bringing into this next episode. Seriously, Imani caught World Cup fever and it feels like one of the greatest accomplishments of our professional working together. I feel so proud. Enough of that! Reproductive justice. We expect most of our listeners to know what reproductive justice or RJ is, but in case you don't, let's cover it real quick. Reproductive justice centers three interconnected human rights values. Those are one, the right not to have children, and that's using safe birth control, abortion or abstinence, two, the right to have children, and under the conditions that we choose, and three, the right to parent the children that we have in safe and healthy environments.
- Imani Gandy: Black women coined the term in 1994 as a reaction to the mainstream reproductive rights movement. The mainstream reproductive rights movement was focused primarily on the legal right to abortion, the legal right to contraception, and it failed to take into account the experiences of women of color. Reproductive justice actually centers the lives of communities of color, instead of the lives of middle class White people who had basically been battling on both sides of the abortion debate for years, right?
- Jessica Pieklo: Yeah.
- Imani Gandy: Reproductive justice also recognizes that the sort of pro-choice, pro-life dichotomy wasn't particularly adequate, and it failed to account for the lived

experiences of women of color. It's important to recognize the reproductive justice is not just a new name for pro-choice politics. It's actually a new framework, and it's a framework that's based on human rights, and actually I'm going to quote the introduction of a really, really key book called "Radical Reproductive Justice, Foundation, Theory, Practice and Critique". It's a book that was edited by Loretta Ross, who is basically the mother of reproductive justice, and includes essays from people like Dorothy Roberts, who is an amazing professor who wrote this book called "Killing the Black Body", which you should absolutely buy and read.

Jessica Pieklo: Do read it.

Imani Gandy: Please read it. It also includes essay from "pro-life feminists". These are feminists who don't necessarily support or "believe" in abortion, but who approach that from a reproductive justice framework rather than a Christian evangelical framework.

Jessica Pieklo: Imani talks about this book all the time. Seriously, go read it. It is fantastic. We have a shared library, and it's in our shared library.

Imani Gandy: Yes. We have a work/spouse library in Kindle, and it really cements our relationship.

Jessica Pieklo: We're Amazon married.

Imani Gandy: We're bound together forever in books. Here's a quote from that book. It's a framework based on the "human right to make personal decisions about one's life and the obligation of government and society to ensure that conditions are suitable for implementing one's decision". This has a lot to do with what Jess and I will call positive rights versus negative rights, right?

Jessica Pieklo: Yes.

Imani Gandy: Legal rights versus human rights, and reproductive justice is all about human rights, not as much concerned with legal rights because as we are seeing now with the Trump administration, legal rights and human rights don't often meet, they don't often mesh in the way that they should. Reproductive justice tries to ensure that we are focused on human rights, the human right to control one's body, the human right to control one's reproduction.

Jessica Pieklo: Yeah.

Imani Gandy: In addition, reproductive justice is basically a way for women of color to center themselves in this conversation and to lead this movement that demands reproductive autonomy using a human rights lens, and using a lens that incorporates everyone and involves everyone.

Jessica Pieklo: That was a really helpful primer. I hope listeners go back and revisit it if they are ever feeling fuzzy at all on the concept of RJ. Let's talk about this law suit that's using this reproductive justice frame, SisterSong versus Kemp.

Imani Gandy: This law suit, Jess, is a breath of God damned fresh air.

Jessica Pieklo: Hallelujah.

Imani Gandy: I mean I read this and my heart got full, I honestly teared up a little bit, because it approaches this fight that we've been having about abortion rights in this new way from this RJ framework, and all you have to do is read the very first footnote to know that this law suit is going to be something different than anything you've ever seen before. Here's what that footnote says. "Plaintiffs use woman or women as shorthand for people who are or may become pregnant, but people of all gender identities, including transgender men and gender diverse individuals may also become pregnant and seek abortion services, and would also thus irreparably be harmed under HB 481.

Jessica Pieklo: Imani, shut the front door!

Imani Gandy: I know, right? In the very first footnote, we're talking about pregnant people, we're talking about gender non-binary people, we're talking about the fact that it's not only women who get pregnant, and I have to say, I've been sort of talking a lot about this on Twitter and trying to encourage people to use more inclusive language, and I don't want to be sanctimonious about it, because it wasn't until two or three years ago that I began using this language, so it's not like Jess and I are more enlightened than you or know more than you, it's just that we made a decision that we were going to use this terminology, and so the fact that that terminology has now made it into a law suit, a law suit that will probably make it to the Supreme Court, is such a big deal.

Jessica Pieklo: It is. Really, advocates pushing for this framing is huge, so let's get more into it. The law suit is a challenge to HB 481, also called "Living Infants Fairness and Equality", the LIFE Act.

Imani Gandy: Blech. This is when we do the puke, fart noise. Jesus.

Jessica Pieklo: In which Governor Brian Kemp, who essentially stole the election from Stacey Abrams. We will never stop reminding listeners of that, signed into law earlier this year.

Imani Gandy: Let's just take a step back and talk about how truly awful Brian Kemp is. We did a podcast, I believe, about all of the voting rights shenanigans that were going on during the November 2018 election. This man essentially stole the election. He was in control, he was in charge of overseeing the election that he was running in, and it led to all kinds of voter suppression, of course of Black voters

and other reliably Democratic voters, so the very fact that was in office to sign this bullshit law, it really grinds my gears, if I may use an old timey terminology.

Jessica Pieklo: Exactly, and I mean part of the fallout of that stolen election is having this bill signed into law. Let's talk about it. HB 481 bans abortion after a "heartbeat" is detected, which usually happens around six weeks of pregnancy. Now most people don't know that they are pregnant at that time. I sure as hell didn't when I was pregnant with my second child. That's basically about two weeks after a missed period.

Imani Gandy: We should talk for a moment about how these bills are just bullshit, right? We've discussed this before. Our research assassin, Brie Shea and I, we wrote an article about these "heartbeat bans" and I think, I just want to reiterate that the language of the law is scientifically inaccurate.

Jessica Pieklo: Yep.

Imani Gandy: At six weeks, and embryo does not have a heartbeat. In fact there's no cardiovascular system of any kind. The "heartbeat" that these folks are talking about in a six week embryo is a group of cells with electrical activity. That's all that it is, right, but heartbeat is so much more provocative, and so that's the language that anti-choice advocates and legislators have settled on.

Jessica Pieklo: They can't call it a fetal cardiac pole ban.

Imani Gandy: No, that doesn't really sound-

Jessica Pieklo: A fetal cardiac pole activity ban.

Imani Gandy: People would be, "What the fuck is a fetal cardiac pole?"

Jessica Pieklo: That doesn't have the same sort of swagger to it. We've talked about heartbeat bans in previous episodes, but Georgia's is slightly different, right Imani? Maybe you should explain.

Imani Gandy: Because Black women. Hooray. Just to peel back the curtain, when we write these scripts, a lot of times we'll just use fillers like yada, yada. You know, we'll make sure to go off and rip on this topic, so literally in this script, I wrote Black women, hooray, yada, yada. If we ever have swag ...

Jessica Pieklo: We're going to put it on a mug.

Imani Gandy: I'm going to put that on a mug. It's just going to say Black women, hooray, yada yada. What's so key about this law suit is that first of all, the lead plaintiff is SisterSong, and SisterSong is a reproductive justice collective. It was founded essentially by the mother of reproductive justice, and they joined with lots of other reproductive justice organizations that are focused on women of color,

Latino women, indigenous women, what have you. They're the lead plaintiffs. There are a couple of providers that are also plaintiffs, and then there are three professors, all of whom are women, from Emory University, which is in Atlanta. They are also plaintiffs.

This law suit was filed by the ACLU, and naming SisterSong as the lead plaintiff in this law suit is huge and sends a message. First of all, SisterSong, as I said, is a reproductive justice collective and they're the ones who have been attacking reproductive autonomy and attacking the ways in which the government is trying to steal from us and control our reproductive autonomy from this reproductive justice lens. It's an amazing organization. Monica Simpson is currently the executive director of it, but it was founded by Loretta Ross. Both of them are brilliant women. It might be weird to reproductive justice activists as your heroes, but those two women are two of my heroes.

I talked to Monica Simpson last week and I asked her about this law suit and how she felt about it and whether or not she felt that it was intentional that her organization SisterSong was named lead plaintiff. She said, yes, she believed it was absolutely intentional. She said the Georgia is this hub of social justice activity. Not just SisterSong is there, but there are scores of other RJ organizations that are located in Atlanta.

Essentially this law suit is an effort to approach abortion rights from a more intersectional lens. It's a way to approach the abortion rights fights from a proactive sort of posture as opposed to a reactive posture, because so much of what abortion rights advocates do, and so much of what we as legal journalists covering this fight do, is react to the shit that is being thrown at us, right? We react to all of these horrible restrictions and laws that are being thrown at us rather than trying to come up with a way that is proactive, that allows us to get in front of the fight. You know, I could go on and gush about SisterSong for an hour, so let me just stop right now. I love you, Monica and Loretta. Thank you for everything that you do, but let's get into what this law suit is actually about. Jess, hit me with some facts.

Jessica Pieklo: Okay. As I said earlier, the law suit challenges the so called LIFE Act, which says it shall be the policy of the state of Georgia to recognize the presence of a fetal heartbeat at the point of fetal viability, creating a compelling state interest to protect "the independent essence of the second life" as a "objective state protection" from abortion, and it shall be the policy of the state of Georgia to recognize unborn children as natural persons.

Imani Gandy: There is so much horrific language in that one little bit that it's really hard for me-

Jessica Pieklo: I just had to back away from the mic, I was so upset.

Imani Gandy: I mean the independent essence of the second life? What are you talking about? We can talk about ...

Jessica Pieklo: That's some goop style shit right there.

Imani Gandy: What the fuck? The independent essence? I'm sorry I don't know of any fetuses that are able to independently grow themselves, but maybe, I don't know, maybe I've just not been watching the right science fiction movies. Also calling it an object of state protection? Why are we referring to people as objects? Furthermore, if you're "pro-life" why are you referring to this preborn, unborn, baby born child as an object of state protection?

Jessica Pieklo: Baby born?

Imani Gandy: What's a baby born child? I mean it's just nasty, and it's a way to get around the Supreme Court jurisprudence, right, because the Supreme Court has said in *Roe v. Wade* that a fetus is not a person. If a fetus is not a person, a six week embryo with fetal heart pole cardiac activity is also not a person.

Jessica Pieklo: We gave a lot of law there. Let's really break it down and explain for listeners what it does. First of all, it gives fertilized eggs, blastocysts, embryos and fetuses that have not attained viability yet the status of a class of living distinct persons that deserve full legal recognition. There's some of your fetal personhood right there.

Imani Gandy: Indeed. The bill also amends state law to define "natural person" to mean "any human being including an unborn child".

Jessica Pieklo: Get this. The bill also includes embryos and fetuses in state population based determinations. What?

Imani Gandy: I mean, so this is a census thing, right? We did an episode about the census. There's fighting going on right now about the census. Apparently Steve Doocy is now a Supreme Court justice and seems to know more about the census than the Supreme Court does, but we're now going to start including embryos and fetuses as part of the population for population based determinations for things like representation and taxes and shit? Really?

Jessica Pieklo: But not brown people.

Imani Gandy: But not brown people, because brown people aren't really people. The bill also amends the state tax code to redefine dependent to allow a fetus at any stage of development to qualify as a dependent minor.

Jessica Pieklo: Accountants are going to have their hands full with this. That's just all I'm going to say right there.

Imani Gandy: It doesn't even make any ... What happens if you're pregnant and then you have a miscarriage or some sort of pregnancy loss?

Jessica Pieklo: Yeah, I mean that's the beginning of it. Yes, yes. Yeah.

Imani Gandy: This is essentially a back door to personhood, right? Georgia has granted personhood to so called unborn children from the moment of fertilization, and they did this without having to go through this messy constitutional amendment process, which is what Alabama had to do last year in order to introduce personhood into that state. This isn't the first six week ban law suit, right? There have been many others, so why are we making such a big deal about this one, Jess?

Jessica Pieklo: You're absolutely right, Imani. This is not the first one. Laws like Georgia's are not novel, and neither are the law suits challenging them. In fact they go back years. In 2013, both Arkansas and North Dakota passed six week bans that were permanently blocked by the Eight Circuit Court of Appeals. Iowa's six week ban was blocked in state court in January. A federal court recently blocked Kentucky's six week ban, and even more recently Ohio's six week ban ... everybody's got this six week ban frenzy right now. We expect Georgia's law will similarly be struck down, so in that respect, you're absolutely right. This law suit may seem unremarkable.

Imani Gandy: Why are we so excited about this law suit in particular? Let me go ahead and answer my own question, because it is the first law suit to specifically center Black women, and it is the first law suit to center Black women using an RJ lens. The law suit highlights how the attacks on abortion rights in Georgia will hit Black women the hardest, and it emphasizes how difficult childbirth in Georgia is for Black women. Frankly, that's just amazing, this idea that we're going to center Black women in a conversation about abortion rights in a way that we never have before is truly groundbreaking.

Jessica Pieklo: It really is. I can't stress that enough. I mean you and I were both scratching our heads trying to figure out if any other law suit that we could think of has focused on Black women or other women of color in this way.

Imani Gandy: We did, and I remember asking you, and you were all, "Yeah, I ran five miles while thinking about it," and I was like, "You did what? Were you being chased? Why were you running five miles?" I was sitting my Black ass on the couch, and I was thinking about it, but we both came to the same conclusion, that this is the first law suit that centers Black women and other women of color. A lot of other law suits will talk about how these laws will disproportionately harm women of color, but there's never a focus on it. Black women have never been the focal point of the law suit.

Jessica Pieklo: They talk around race, but not to race.

Imani Gandy: Exactly, exactly. Listen to this quote. Listen to this fire quote. "Georgians face a critical shortage of reproductive health care providers, including obstetrician gynecologists, and the rate at which Georgians, particularly Black Georgians, die from pregnancy-related causes is among the highest in the nation."

Jessica Pieklo: I mean that is, like non-lawyers probably are like, what? You know, that's super exciting? That's spicy in a complaint.

Imani Gandy: It's so spicy.

Jessica Pieklo: That is like hot and sexy legal language right there. Here, I've got another one. "Georgians face one of the highest risks of pregnancy-related deaths in the nation, and pregnancy is three times as deadly for Black Georgians as it is for White Georgians."

Imani Gandy: Here's another one. I've got one for you. "Rather than working to end preventable deaths and rather than honoring Georgians' reproductive health care decisions, the legislature has instead chosen to criminalize abortion from the earliest stages of pregnancy."

Jessica Pieklo: This is amazing legal pleading, and I just want to talk for like a second about the art of legal writing here and the rhetoric, because when you start with the subject of the law suit effectively as Black women, and women is shorthand for Black people and people of color in the state who can become pregnant, and then you set out from the very beginning as your factual allegations, these populations suffer the hardest when their rights are restricted in this fashion, and law makers are just flat out fucking ignoring them is basically a summary of that last point. That, from a pleading standpoint, is really powerful because you have not said, oh, this is necessary ... I mean, look, they're all attacks on constitutional rights, that's all very important, but this is the difference between, as Imani was talking about, an abortion rights focus and a reproductive justice focus framing for the law suit. This isn't just about a constitutional right, this is about the lives of Georgians who are at stake, and they make no bones about it from the beginning, and it gives me chills.

Imani Gandy: As you can see, we are very excited about this law suit, and I don't know, hopefully our energy, maybe it's the World Cup energy that we're bringing, I'm not sure, but hopefully this energy will excite you too, and I'm going to tweet out the complaint because it's a long one, but it's really worth reading to sort of understand the direction that we're going in terms of focusing these legal fights on reproductive justice.

Jessica Pieklo: Yes.

Imani Gandy: This law is a part of a nation-wide assault on abortion rights. I mean Jessica just listed of, you know, several six week bans and law suits related to six week bans, and anti-choicers' sort of salt the earth strategy goes way beyond just outlawing

abortion. It can also criminalize miscarriage, and also criminalize some forms of birth control. By passing laws that are flatly unconstitutional under both Roe versus Wade and Planned Parenthood versus Casey, anti-choice legislators are trying to provide a test case for the U.S. Supreme Court, and they are hoping that one of these test cases, and there are so many that are percolating right now. The number of cases percolating right now is obscene, but they're hoping that the conservative majority on the court will gut both Roe versus Wade and Planned Parenthood versus Casey. If that happens, pregnant people's right to reproductive autonomy will then end up being determined by a patchwork of state laws, and that's never a good thing.

Jessica Pieklo: Precisely. I wrote about this last week and we've talked about this on the podcast. This isn't a hypothetical threat. The call is coming from inside the house. Clarence Thomas is chomping at the bit to gut Roe and spent a fair amount of time this term complaining that the court hasn't yet undone abortion rights.

Imani Gandy: He also spent a fair amount of time complaining about the key judicial principle that should essentially force the court to not gut Roe versus Wade, and that's stare decisis, right, that's precedent. It's this principle that if you said shit in the past, you should follow the shit that you said in the past. I mean that's really ...

Jessica Pieklo: Put that on your bar exam this summer.

Imani Gandy: Exactly. I was about to say if you have a comm law final, maybe next year, just go ahead and write that down when the professor asks you what stare decisis is. He's complained about it in multiple cases. Jess just said she wrote a piece about it, and it's clear that this is what he wants. You know, the reason ... I hope this law suit is a case that he ends up having to write the opinion on, because for him, a Black man having to write an opinion in a case that centers Black women, and for him to turn his back on Black women and to essentially say I don't give a shit that Black Georgians are dying when they give birth, is really going to put a pin in this moment, and it's really going to make clear what Clarence Thomas' legacy is and has been, and that is and has been to not really give a shit about Black people.

Jessica Pieklo: I wish I could screenshot, or could have a screenshot of my face when you were just talking there, because it looks ... you can see it and it hurts.

Imani Gandy: One thing that is critical about this law suit is that it may be a vehicle, finally, for Black women to have a national conversation about reproductive autonomy as it pertains specifically to us, right?

Jessica Pieklo: Ooh, say more about that.

Imani Gandy: Okay. If you follow me on Twitter, you've been following my writing, you know one of my biggest pet peeves is the way in which anti-choicers use Black women

and use Black women's bodies as pawns in their weaponized fight against abortion, right? They'll accuse Black women of perpetrating a Black genocide. They are essentially accusing us of trying to exterminate our own people. They will falsely accuse Planned Parenthood of erecting clinics in all Black neighborhoods, so that, you know, if you're a Black woman and you go walk outside, there's a Planned Parenthood to your left and a Planned Parenthood to your right. Look under your couch, there's probably a Planned Parenthood clinic under your couch if you're a Black woman.

I mean that's how obsessed these antis are with Planned Parenthood, and this claim that Margaret Sanger, the founder of Planned Parenthood wanted to use abortion to exterminate Black people, which is horse shit, which you know is horse shit because I've told you a million times that it's horse shit. Despite all of these ridiculous paternalistic claims about Black women's reproduction, we have always understood reproductive coercion, because this country was built from the wombs of Black women.

Jessica Pieklo: Okay. You say this quite a bit. We've been friends for a long time. We have had these conversations, but I don't know that people totally understand just how dead serious you are by those statements. What do you mean? This is real.

Imani Gandy: Yeah, it's absolutely real. When I say that this country was built from the wombs of Black women, I'm being literal. Literal, literal, literal. This country was literally built from the wombs of our people, of my people. I won't say our people because you're White, Jess. I'm sorry.

Jessica Pieklo: It's all right. Nobody's perfect, Imani.

Imani Gandy: You know, domestic slave breeding, which is absolutely as dehumanizing as it sounds, was very, very widespread during slavery. Domestic slave breeding became particularly widespread as the trans-Atlantic slave trade was dwindling, right? Slavery. You're going to Africa, you're going to these places, you're grabbing up people, you're yoking them up, you're putting them on ships and you're sending them across the Atlantic. That became sort of disfavored as slavery entered it's like 200th, 300th, 400th year. They already had this sort of crop of Black women that were enslaved in this country, and so they began to use them for breeding purposes. They began to use Black women's bodies as they would use an animal's. They would, you know, put Black men and Black women together, enslaved Black men and Black women, and essentially force them to have children.

Slave owners would routinely rape their enslaved Black women, bear children with their enslaved Black women, and then sell those children into slavery. Thomas Jefferson did it, which is why I get really, really irritated when people try to talk about the sort of, oh, this love story between Thomas Jefferson and Sally Hemings, as if Sally Hemings had any choice or consent to the life that she was consigned to. Sure, maybe she made the most of her situation, but she was routinely raped by one of the founding fathers of this country, and it really,

really irritates me that we don't talk about that enough, or that when we do talk about it, we try to romanticize it as if it was some Loving v. Virginia kind of situation, when it was routine repeated rape. Ugh.

Black women were seen as animals. We weren't viewed as human, so our worth as semi-humans, I guess, was determined by our fertility. The more fertile Black women were, the more valuable we were, the more sort of prestigious the slave owner was. You've got this crop of women, this crop of brood mares that you're using to create more slaves to work on your plantation. It's disgusting, but if you think about being an enslaved woman in that situation, if you think about having children and having those children literally ripped from your arms, you can imagine what it was Black women did in order to prevent that shit from happening, and that included turning to herbal abortifacients, that included other DIY methods of abortion, you know, falling down stairs on purpose, having people punch you in the stomach, all of these horrible self-harm type of things that Black women would do to avoid this fate that they had been consigned to.

It also included self-harm. It was not uncommon for Black women who were on the middle passage, who were on those ships across the Atlantic, to throw themselves overboard, because frequently here's how it went down. A lot of the Black men, they would be chained up in these ships. Black women were frequently not chained up because the people on the ships, the people running the ships wanted to rape them. That's literally what happened. When they were unchained, if they could find a chance, they would literally throw themselves overboard. They would rather drown than be sent to America to work for free for White people. If they had a child, they would often kill their newborn, because they would rather kill their own child, commit infanticide, than to see that child be sold to White people to be enslaved. We're talking about a horrific period of time during which Black women had literally no control over their reproduction.

Jessica Pieklo: Fast forward to this law suit now, and having that history, knowing that history and understanding that attacks on abortion rights are attacks on reproductive autonomy and they are effectively the state flexing its muscle, determining who gets to have a child, when they get to have a child, and under what circumstances they get to have a child, right, the very inverse of principles of RJ and the fact that we have Black women in particular, people of color, centered in this law suit, is one of the reasons, the primary reasons why Imani and I have been shouting about it for about 20 minutes now, because it is not just important, but it is powerful as hell.

Imani Gandy: It is. It absolutely is, and one of the things that Jess and I have been discussing, and I actually talked about this with Monica Simpson, who is the current head of SisterSong, the lead plaintiff in this case, is the ways in which the comparison between abortion and slavery are both apt and inapt. They're inapt. You get a lot of anti-choicers who say, oh, well abortion is just like slavery, and slavery was legal for a while and we were able to abolish it, so we should abolish abortion. Just because abortion is legal right now doesn't mean it's morally

correct. These sorts of arguments just strip Black women of their agency, and it removes enslaved Black women's experience from the historiography of slavery, right? It pretends as if Black women didn't even really exist, and that's very, very frustrating the ways in which Black women are marginalized and made smaller in a period of time during which they were the center, they were the focal point, and they were the sort of economic engine of this country.

When slavery was abolished by the 13th amendment, it didn't just abolish, you know, trading in people, it abolished all badges and incidents of slavery, and so the question becomes, and the question I was sort of bandying about with Monica Simpson is whether or not the 13th amendment, to the extent that it abolishes badges and incidents of slavery, should also have something to say about slave breeding and about the reproductive control of Black women. I mean that's a constitutional argument that not a lot of people have made in courts, but it's certainly one that Black scholars have been making in law review articles and the like.

Jessica Pieklo: To just further get our law nerd on here, it is really exciting in the sense that constitutional jurisprudence around abortion rights is in flux right now. We spend so much time talking about the attacks on abortion rights and the undue burden standard and what that means, that by specifically centering the impact of an abortion ban on Black women and bringing race a a constitutional element into the analysis, things could change, and that's exciting because we know that this isn't an impact that's isolated to Georgia. We know that these statements are true across the country in terms of impacts on bans, and so if we can force the court to consider race as it plays out in these attacks on reproductive autonomy, I am here for it.

Imani Gandy: Absolutely here for it. I'm not sure what this means in terms of policy, but I do know that Black women have never been able to control our reproduction, and the laws that are banning abortion now are part of a history of subjugating Black women's freedom and demonizing Black women, demonizing Black mothers, demonizing Black babies, and so I'm hoping that this law suit will lead to a sort of national reckoning about the ways in which anti-choicers use Black women as pawns in these wars, in these wars about abortion, and frankly, the way that Black women are being treated now is not all that different from the way that Black women were treated during slavery, right? I mean White supremacy exerted a stranglehold on Black women's reproductive freedom then, and White supremacy is still exerting a stranglehold on Black women's reproduction now.

I don't know. I'm very animated about this, as you can probably tell. I'm very excited about this new direction that the law is taking, that abortion jurisprudence is taking, but I guess the question that you, listener, are probably interested in is what is going to happen next? How is this case going to move forward?

Jessica Pieklo: Okay. The litigation is in the very beginning stages. The law suit was filed something like two weeks ago, and the law itself isn't even set to take effect

until January 1st, 2020, so first things first. The law suit asks the law to be blocked before that January 1st, 2020 deadline. We've got a little bit of time. The court's going to have a hearing and, like we said, should block the law. No matter how the lower court rules, there will be an appeal because, as we've also said, the entire point of these bills is to get a court of higher authority, so that would be an appeals court, and ultimately the Supreme Court, to overturn abortion rights. In this process, though, because the complaint centers Black women, the court will have to grapple with the impact and effect these kinds of laws have on people of color specifically.

Imani Gandy: You know what that means, Jess?

Jessica Pieklo: What does that mean, Imani?

Imani Gandy: It means data, data.

Jessica Pieklo: Ah, data.

Imani Gandy: Justice Breyer, Mr. Nerdman himself, is probably going to get very excited about some of the data, and honestly, I would love to read ... I don't know. I have a feeling how the 5-4 majority court is going to rule, but I would love to read a dissent from Breyer just going into the data about how these laws specifically affect Black women. I would love to see that. I would also love to see the spiciest dissent from Sonia Sotomayor talking about reproductive justice as a framework, and just this notion that reproductive justice, that RJ is going to make its way into abortion rights jurisprudence, that the term reproductive justice will be in a Supreme Court reporter, which wow, that reference just really dated me, because no one uses those.

Jessica Pieklo: For the kids listening, those were the books we used to use in the olden days to look up Supreme Court opinions, before the interwebs.

Imani Gandy: I'm dying. I think we might be the last generation of law school students that had to actually do this shit using books, like check case law using books. I'm excited to read on ...

Jessica Pieklo: Some of those fuckers would hide books. Let's talk about that in an episode sometime. Anyway, we don't need to do that.

Imani Gandy: Yeah, we'll talk about asshole law school student tactics someday. You know, the idea that the Supreme Court is going to have to reckon with this new framework, with this human rights framework and potentially talk about reproductive justice and talk about abortion as being a human right, I find that very exciting, and I really do see a world in which Sonia Sotomayor writes a dissent that is very similar to that dissent she wrote in the 4th amendment case, *Utah v. Strieff*, which a lot of people said ended up being a Black Lives Matter manifesto, I would love for her to write the reproductive justice manifesto so

that, you know, in a generation from now when all this fuckery that the Republicans have done to the court has dissipated, and we're back to sort of, we're even keel, you know, future Supreme Court judges, justices, future federal court judges are going to have to reckon with this, and that just makes me very, very happy.

Yeah, we're living in a shitty time when it comes to abortion rights, but there are glimmers of hope. There are people like Monica Simpson, and there are people who work with Monica Simpson, other advocates, other reproductive justice organizations that focus on AAPI women, reproductive justice organizations that focus on indigenous people, that focus on Latinx people. The notion that all of these groups are coming together and have decided to take a new way forward when it comes to these cases, it gives me some hope in a time where there's not a lot of hope to go around.

Jessica Pieklo: Absolutely, and who knows, you know? We've got a little ways out before anything like this would pipeline up to the Supreme Court. Maybe there's some changes and we could get a Sonia Sotomayor majority opinion. Who knows?

Imani Gandy: Oh, wouldn't that be lovely. Pack the courts, man.

Jessica Pieklo: Pack the courts, man.

Imani Gandy: All right, that's going to do it for us today. You should follow me on Twitter. I'm @angryblacklady. You should follow Jess on Twitter. She's @hegemommy, H-E-G-E-M-O-M-M-Y. You can follow Rewire.News @rewire_news, and you should join our Facebook group, Boom! Lawyered. Go and answer the questions. They're very short, it's very easy. If you weren't around for all of our Brad McBeer stuff, Brad McBeer, Justice Kegstand, Justice Beerfunnel, all of those things were also accurate names for him, and aside from that, we will see you on the tubes.

Jessica Pieklo: See you on the tubes.

Announcer: Boom! Lawyered is created and hosted by Jessica Mason Pieklo and Imani Gandy. This episode was produced by Marc Faletti, who is also our executive producer, and the Rewire.News editor in chief is Jodi Jacobson.